

A COMPREHENSIVE EXAMINATION OF THE STATE-TO-STATE
CHANGES IN RAPE LAWS IN THE UNITED STATES

by

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(Under the Direction of Jody Clay-Warner)

ABSTRACT

In this study, I use event history analyses to examine the spread of rape law reforms in the United States between 1970 and 2006. Specifically, I investigate the adoption of the following rape law reforms: 1) creating gender-neutral rape laws, 2) eliminating the resistance requirement, 3) redefining rape as sexual assault, and 4) passing a strong rape shield law. The main purpose of my research is to advance our theoretical understanding of the law formation process.

Using conflict theory, political opportunity theory, and the diffusion framework to guide my analyses, I examine the following: 1) how state characteristics (i.e., the percent of women in the state legislature, having a liberal government ideology, the rate of reported rapes) and the interstate process of diffusion affect a state's likelihood of passing each rape law reform; 2) if the same social factors and processes that significantly affect the adoption of non-controversial rape law reforms also affect the adoption of controversial rape law reforms; 3) how the prior adoption of partial rape law reforms affects a state's likelihood of passing a stronger version of each rape law reform; and 4) how the adoption of other rape law reforms affects the adoption of each rape law reform.

My analyses produced several important findings. First, the results indicate that women's economic power is significantly related to a state's passage of rape law reforms and that being in close proximity to other states that adopted the rape law reform significantly decreases a state's likelihood of passing that particular rape law reform. Importantly, these findings are similar for both the controversial and non-controversial rape law reforms. On the other hand, the prior adoption of a weaker, partial rape law reform significantly decreases a state's likelihood of passing the stronger version of the reform only for the two more controversial rape law reforms. Finally, although the prior adoption of other rape law reforms does not affect a state's likelihood of passing each of the rape law reforms, there are significant associations between the different rape law reforms adopted during the same legislative session. The theoretical implications of these findings are discussed.

INDEX WORDS: Rape law reforms, Legal change, Controversial law reforms, Gender equality, Diffusion

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DEDICATION

I would like to dedicate this dissertation to my family. Thank you for your constant love and support.

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CHAPTER 1: INTRODUCTION

Since the beginning of the rape law reform movement in the 1970s, there have been major revisions to the rape laws in the United States (Berger, Neuman, and Searles 1991). Prior to these reforms, most states relied on the common law definition of rape, which defined rape as carnal knowledge of a female, not a spouse, forcibly and against her will (Bienen 1980; Largen 1988; Russell 1990). Additionally, most states had special evidentiary rules and requirements, such as the resistance requirement, that were unique to rape prosecutions. Thus, originally, the crime of rape was limited to female, non-spousal victims of rape committed by a male, and the essential elements of the crime of rape included penile-vaginal penetration, force, and the non-consent of the victim (Edwards 1996). Also, to prove force and lack of consent, there had to be evidence that the victim physically resisted the offender.

Given the limitations of the rape law, rape law reform advocates challenged the use of the common law definition of rape on the grounds that it did not provide equal or adequate protection for all victims of sexual violence (Spohn and Horney 1992). Also, rape law reform advocates challenged the special evidentiary rules on the grounds that they focused on the victim's behavior rather than on the behavior of the offender. Since these evidentiary rules were not required to prosecute any other crimes, law reform advocates argued that victims of rape faced legal barriers that were not in place for victims of other crimes and that these special evidentiary rules should be eliminated.

Due to the complexity of rape laws, rape law reform efforts were multidimensional in that advocates sought multiple changes within four different areas of traditional rape laws – the

definitional dimension, the evidence dimension, the statutory age offenses, and the penalty structure (Berger et al. 1991; Berger, Searles, and Neuman 1988). Importantly, rape law reform activists focused much of their attention and efforts on reforming the definitional dimension, which contains the spousal exemption, gender-specific criteria, and carnal knowledge provision (penile-vaginal penetration), and the evidence dimension, which includes the resistance requirement, the use of evidence of the victim's sexual history, and the cautionary jury instructions. Advocates also pushed for multiple reforms for the statutory age offenses¹ (i.e., statutory rape), which prohibits sexual activity for youth under a certain age, and the penalty structure, which specifies the penalties for each sexual offense (Berger et al. 1988). While rape law reform advocates were successful in changing at least some aspects of the rape laws in all states, there was great variation in the timing, number, and strength of these changes throughout the country. Thus, there is a considerable amount of variation in the current status of the rape laws in the United States.

Given the high rate of rape in the United States, rape laws affect a substantial number of women (and men) each year. Specifically, estimates suggest that there are 876,000 incidents of rape perpetrated against women in the United States each year, with over 300,000 women and 90,000 men experiencing at least one rape or attempted rape each year (Tjaden and Thoennes 1998). Also, approximately 20 percent of women and 3 percent of men experience a rape or attempted rape in their lifetime (Tjaden and Thoennes 1998). Given these estimates, it is clear that rape is a significant social problem in the United States; however, while these estimates suggest a high rape rate in the United States, it is important to note that due the limitations and special evidentiary rules and requirements in the rape laws in the United States, only some of

¹ Since statutory age offenses criminalize sexual activity with minors that would otherwise be considered legal between two consenting adults, I do not focus on statutory age reforms in this paper.

these victims are legally protected against rape. Thus, the rape laws do not provide equal protection for all rape victims. Given the prevalence of sexual violence, it is important to examine the social factors and processes that increase the likelihood of eliminating the barriers women (and men) face in regard to their legal protection against this crime.

Purpose of the Present Study

Although there is a plethora of research assessing the success of the rape law reform movement, this research mainly focuses on increases in the number of reported rapes or increases in the proportion of successful rape prosecutions (Clay-Warner and Burt 2005; Futter and Mebane 2001; Gunn and Linden 1997; Horney and Spohn 1991; Spohn and Horney 1996). Conversely, with only a few exceptions (Berger et al. 1991; Call, Nice, and Talarico 1991, McMahon-Howard, Clay-Warner, and Renzulli forthcoming 2010) there is a dearth of research on the factors that predict the success of the actual passage of rape law reforms in the United States. Therefore, the purpose of the present study is to investigate the social factors and processes that contribute to the passage of rape law reforms. Using separate event history analyses, I examine how social factors and processes affect a state's likelihood of adopting the following of rape law reforms: 1) creating gender-neutral rape laws, 2) eliminating the resistance requirement, 3) redefining rape as sexual assault, and 4) passing a strong rape shield law.

Research Questions

Using the adoption of the rape law reforms as an example of legal change, I seek to advance the empirical and theoretical understanding of legal change. My guiding research question is how are multifaceted legal reforms achieved? To address this question, I use conflict theory, political opportunity theory, and research on the process of diffusion to examine the effects that a number of social factors and processes have on a state's likelihood of adopting rape

law reforms. That is, I examine how certain social conditions, such as a high percentage of women in the state legislature, a liberal government ideology, or a high rate of reported rapes, affect a state's likelihood of passing rape law reforms. Also, I examine how interstate characteristics involved in the process of diffusion, which account for each state's infectiousness, susceptibility, and proximity to the source of diffusion, affect the adoption of different of rape law reforms. Therefore, my first research question is: How do a state's gender climate, political climate, and the interstate process of diffusion affect the adoption of rape law reforms?

Since most of the previous research on law reforms focuses on the factors that affect the adoption of a single law reform, I go beyond previous research by examining the adoption of multiple reforms included within a larger law reform movement. Most law reforms are usually a part of a larger package of law reforms as there are often multiple goals included within a law reform movement. For example, activists involved in the gay rights movement advocated for a number of different law reforms – such as repealing sodomy laws, reforming hate crime laws, passing anti-discrimination laws, and legalizing same-sex marriage. Unfortunately, there is little research that examines multiple law reforms within the same study. By examining multiple reforms included within a larger law reform movement, I am able to address several empirically and theoretically important questions regarding the factors that affect the adoption of law reforms.

While previous researchers have suggested that some social factors and processes may differentially affect the adoption of controversial and non-controversial laws (McMahon-Howard et al. forthcoming 2010; Soule and Earl 2001), there has been no study to date that examines the adoption of controversial and non-controversial law reforms in the same study. Therefore, in the present study, by examining the adoption of two non-controversial rape law reforms (gender-

neutral rape/sexual assault statutes and the elimination of the resistance requirement) and two controversial rape law reforms (the redefinition of rape as sexual assault and the adoption of a strong rape shield law), I am able to determine if the predictions from conflict theory, political opportunity theory, and the diffusion framework hold up despite the controversial nature of different, but related, policies. Thus, my second research question is: Do the same social factors and processes that affect the adoption of non-controversial rape law reforms also affect the adoption of controversial rape law reforms?

I also address a gap in the literature by considering the effects of the adoption of prior, partial reforms on the adoption of a stronger reform for both non-controversial and controversial law reforms. While the results from McMahon-Howard et al.'s (forthcoming 2010) study suggest that the prior adoption of a weaker, partial marital rape law reform significantly decreases a state's likelihood of adopting a stronger marital rape law reform, I seek to examine if this pattern holds true for both controversial and non-controversial rape law reforms. Therefore, my third research question is: How does the adoption of a weaker, partial rape law reform affect a state's likelihood of adopting the stronger reform for controversial and non-controversial rape law reforms?

Finally, by examining multiple law reforms included in a larger law reform movement, I am able to investigate the interrelationships between the reforms. Here, I examine how the prior adoption of other rape law reforms affects a state's likelihood of adopting each rape law reform. Thus, my fourth research question is: How does the prior adoption of other rape law reforms affect a state's likelihood of adopting each particular rape law reform? I also examine whether certain rape law reforms were more likely to be adopted at the same time as other rape law reforms.

Importance and Contributions of the Present Study

The present study contributes to research on rape law reforms, diffusion, and the law formation process. First, in collecting and analyzing the longitudinal data for this study, the results from this research provide several important empirical contributions to the literature on rape law reforms. Importantly, the findings from the present study indicate how intrastate characteristics and interstate processes affect the adoption of multiple rape law reforms. Since the earliest research on the rape law reform movement consisted of case studies that described changes made to the rape laws in specific states (Marsh, Geist, and Caplan 1982) or cities (Spohn and Horney 1992) and cross-sectional analyses of the social and political factors associated with the adoption of rape law reforms throughout the United States (Berger et al. 1991; Call et al. 1991), this research cannot provide us with definitive knowledge regarding the *causal* factors or systematic processes influencing the adoption of rape law reforms. These studies were also hampered by data limitations. Either these studies were conducted early in the reform period (mid 1980s) when many states were still in the process of making changes to their rape laws, or these studies only examined one dimension or element of rape law reform. For the studies conducted early in the reform period when not enough time had elapsed for patterns to emerge, the researchers only had limited information on the patterns in the spread of rape law reforms. Thus, they were unable to determine what distinguishes the states that passed certain rape law reforms from those that had not.

In a more recent study, McMahan-Howard et al. (forthcoming 2010) improved upon this earlier research by constructing and utilizing a longitudinal dataset with data from 1976 to 2002 to examine the social and political factors that predict the elimination of the marital rape exemptions over time. Also, in using a heterogeneous diffusion model, McMahan-Howard et al.

(forthcoming 2010) examined both the intrastate and interstate factors that affect a state's likelihood of abolishing the spousal exemption. That is, instead of simply examining variables suggested by conflict theory (i.e., each state's political and social characteristics), McMahon-Howard et al. pushed the research on rape law reform further by including variables that measure how changes in other states' marital rape laws affect a state's likelihood of abolishing their marital rape exemption.

While McMahon-Howard et al.'s (forthcoming 2010) study provides important insights into the law formation process in general and the elimination of spousal exemptions in particular, the researchers only focused on the reform of one element of rape law. While affecting a small proportion of all rape victims, the marital rape exemptions were surrounded by much controversy and elicited debates over issues related to marriage and the family (i.e., the state's right to interfere in marital and family issues, expectations regarding the right or ability to withdraw consent to sex in marriage, etc). Therefore, given the limited focus on marital rape laws and the specific social issues involved, the results of this study cannot be generalized to the adoption of other rape law reforms. Also, McMahon-Howard et al. (forthcoming 2010) failed to situate the efforts to eliminate the spousal exemptions within the larger rape law reform movement and failed to consider the possible interrelationships between the changes to the different elements of rape law enacted through rape law reforms.

To overcome the weaknesses of these previous studies, I collected data from the beginning of the rape law reform movement to the present to examine the factors that predict the changes to multiple elements of state's rape laws. In collecting and analyzing longitudinal data, I am able to examine the causal effects of both within-state and between-state factors on the timing of the adoption of rape law reforms. Also, I am able to examine patterns that have

emerged and continue to emerge over the entire course of the rape law reform movement. Furthermore, in collecting and analyzing longitudinal data on the changes to *multiple* dimensions and elements of rape law, I can account for the interrelationships between the changes to different elements of a state's rape law enacted during the rape law reform movement. Thus, the present study, which offers a further examination of the factors and processes that affect the likelihood of the adoption of multiple rape law reforms, is warranted, especially for its empirical and theoretical contributions to the literature on rape law reforms and legal change.

Importantly, this comprehensive analysis of the passage of rape law reforms offers a unique opportunity to examine whether or not the same social factors and processes that contribute to the successful reform of one element of rape law also affect the passage of reforms of the other elements of rape law. Since an early assessment of the changes made to states' rape laws indicated that there was a considerable amount of within state variation in the passage of the different dimensions of rape law reform (i.e., passing progressive, feminist-oriented reforms for certain dimensions, but leaving other dimensions of the rape law untouched) (Berger et al. 1991; Berger et al. 1988), there is reason to believe that certain social and political factors and processes had different effects on the adoption of reforms for each element of rape law.

Although the rape law reform movement is discussed as addressing rape as a uniform issue, the social issues underlying the relative success or failure of reforming each dimension or element of rape law may be quite different. Indeed, while the original definition of rape and associated evidentiary requirements arose from the same social concern - protecting women as men's property - the social forces that contribute to the resistance to or passage of reforms for each element of rape law may differ. For example, while opposition to eliminating the spousal exemptions may have been related to efforts to maintain men's power over women, maintain the

family unit, and/or protect men from “vindictive wives” (McMahon-Howard et al. forthcoming 2010), opposition to the gender-neutral rape laws, which would criminalize same-sex rape or sexual assault, may have been related to the stigma associated with same-sex relationships. Since certain social and political factors may be related to the concerns driving the resistance to reforming one element of rape law but not the others, these social and political factors may have different effects on the likelihood of adoption of specific rape law reforms. Thus, research is needed to determine if social factors and processes differentially affect the adoption of rape law reforms.

Similarly, given that the efforts to reform certain elements of rape laws were more controversial or more strongly resisted than others, the present study also examines if social factors and processes differentially affect the adoption of controversial and non-controversial laws. For instance, as Soule and Earl (2001) and McMahon-Howard et al. (forthcoming 2010) suggest, instead of *increasing* the likelihood of the spread of the new law, spatial proximity may have a negative effect on the spread of controversial legislation. That is, while being in close proximity to states that have passed a non-controversial law may increase a state’s likelihood of passing a similar law, being in close proximity to states that have passed a controversial law may *decrease* a state’s likelihood of passing a similar law. Since most diffusion research suggests that being in close proximity to the source of diffusion increases an actor’s likelihood of adopting the innovation, the existence of the negative effects of spatial proximity warrants further exploration. Thus, while examining multiple rape law reforms, this study provides a unique opportunity to explore the differential effects of proximity on the adoption of more or less controversial law reforms while holding the type of offense (rape) constant.

The present study also advances the theoretical understanding of law reform and the criminalization process. As Grattet, Jenness, and Curry (1998) point out, theoretical explanations of criminalization remain underdeveloped. Similar to Grattet et al.'s (1998) research, I move beyond a simple conflict theory explanation of criminalization by acknowledging the importance of diffusion processes. That is, while using conflict theory to suggest a set of intrastate characteristics that likely lead to successful rape law reform, I also borrow from institutional theory to suggest that state legislators look to other states for guidance in creating laws. In line with more recent research on the diffusion of laws (McMahon-Howard et al. forthcoming 2010; Soule and Earl 2001), I also move beyond Grattet et al.'s approach to the study of criminalization by recognizing that some states are more influential in the diffusion process, while other states are more receptive to legal changes. As a result, I examine the role that states' infectiousness and susceptibility play in the diffusion process, utilizing heterogeneous diffusion models (see Strang and Tuma 1993; Myers 2000). By examining reforms for multiple elements of rape law, I test the generality of these theoretically developed models.

Additionally, since previous theory and research has failed to consider the effects of related changes in a law, the present study contributes to the research on the criminalization process by examining how the adoption of prior, partial reforms affect a state's likelihood of passing the stronger version of the reform for each rape law reform. While McMahon-Howard et al. (forthcoming 2010) found that previous or incremental changes to a state's marital rape statute decreased the likelihood of completely abolishing the spousal exemption, the researchers failed to consider the effects of the prior adoption of other rape law reforms on a state's likelihood of adopting a strong marital rape law. With a comprehensive examination of rape law reforms, in addition to examining the effects of prior, partial reforms, I also examine how the

adoption of other rape law reforms affects a state's likelihood of adopting each of the rape law reforms. That is, as was the case with Michigan, I examine if states compromised adopting one or more rape law reforms in order to ensure the passage of other rape law reforms. For example, I examine if the adoption of a gender-neutral rape law increases or decreases a state's likelihood of eliminating the resistance requirement. Again, this is especially relevant here since the passage of one rape law reform was often perceived as coming at the expense of another (Marsh et al. 1982). While accounting for the relationship between the different rape law reforms is important empirically, considering the outcome of related law reform goals is also important theoretically, as discussed below.

Given the debate among political opportunity theorists over whether the factors that create a political opportunity for social movement mobilization are the same factors that create a political opportunity for policy change, research is needed to examine if the prior adoption of weaker, partial reforms and the prior adoption of related reforms creates a political opportunity for the adoption of favorable legislation. That is, while previous research has found that the adoption of favorable legislation signals opportunity for activists and encourages social movement mobilization (Cornwall, King, Legerski, Dahlin, and Schiffman 2007), there is little research that examines if the adoption of partial reforms and the adoption of related legislation creates a political opportunity for the adoption of additional legislation. Therefore, by examining the effects of both the prior adoption of weaker, partial reforms and the prior adoption of related reforms on a state's likelihood of passing four different rape law reforms, the results from the present study will be able to determine if these two factors create a favorable environment for policy change. Furthermore, the results from my analyses will be able to determine whether or not political opportunity theory provides a useful framework for studying policy outcomes.

Overall, since the rape law reforms focused on expanding the legal protection against rape and eliminating legal barriers to successful prosecution of sexual assault cases (i.e., the resistance requirement), the present study is important for our understanding of the social conditions that account for the timing and success of laws aimed at protecting many women (and men) from violence. Both theoretically and empirically, a longitudinal analysis of the social conditions and processes that affect each state's likelihood of adopting rape law reforms provides us with a better understanding of how laws protecting society from violence, especially in regard to violence against women, are passed successfully in the United States. Additionally, identifying the factors and processes that increase the likelihood of the successful passage of rape law reforms provides useful information for criminologists, social movement researchers, and law reform activists.

Before discussing the specific details of the present research project, however, I briefly discuss the history of rape laws in general and the justifications for each element of rape law in particular in chapter 2. Specifically, I discuss the history and justifications for the spousal exemptions, the gender-specific definition of rape, limiting the definition of rape to forced penile-vaginal penetration, the use of the victim's past sexual history to discredit the victim's testimony, the cautionary jury instructions, and the resistance requirements. Then, in chapter 3, I discuss the emergence of the rape law reform movement, the goals of the movement and the justifications for the proposed changes in the rape law, and I provide a general overview of the relative success of the reforms of each element of rape law in the United States. In chapter 4, I review the only three studies that examine the social and political factors and processes associated with the adoption of rape law reforms. Additionally, given the dearth of research on the adoption of rape law reforms, I also provide a general overview of previous research that

examines the social factors that contributed to the successful adoption of other laws advancing the rights of women (i.e., women's suffrage, passage of the ERA, etc.).

Next, I review the basic tenants of conflict theory, political opportunity theory, and the diffusion framework in chapter 5. Using these three theoretical perspectives along with the findings from previous studies, I then present several hypotheses regarding the factors predicted to affect the likelihood of adopting the different rape law reforms. In chapter 6, I discuss the data and methods I use for the present study.

In chapters 7, 8, and 9, I present and discuss the results from my analyses. Specifically, in chapter 7 I discuss the results of the analyses designed to determine how social factors and processes affect the adoption of rape law reforms and whether or not these factors and processes differentially affect the adoption of non-controversial and controversial rape law reforms. In chapter 8 I discuss the results of the analyses examining the effects of the prior adoption of weaker, partial reforms on a state's likelihood of adopting the stronger version of the reform for each of the four rape law reforms. Then, in chapter 9 I discuss the results of the analyses examining the interrelationships between the rape law reforms. Finally, in chapter 10, I provide a brief summary and conclusion based upon the results from the present study.

CHAPTER 2

HISTORY OF RAPE LAWS

As mentioned in the previous chapter, since the rape laws in the United States were derived from English Common Law, which treated rape as a crime against a man's property, rape was defined originally as the carnal knowledge of a female, not a spouse, forcibly and against her will (Bienen 1980; Largen 1988; Russell 1990). Thus, the legal definition of rape in the United States was limited to male-on-female, non-spousal, non-consensual, forced penile-vaginal penetration. While the goal of my study is to identify the factors that contribute to the passage of the rape law reforms designed to address these specific limitations, it is first necessary to understand the origins of the U.S. rape laws. In this section, I review the history of the original legal definition of rape under English Common Law in order to provide insight regarding each of the elements of the traditional rape laws in the United States. Also, I discuss the history and justifications for the special evidentiary rules and requirements found in these rape laws, linking them to the original construction of rape as a property crime and the related concerns with the prior chastity of the victim and the fear of false accusations of rape.

First, in explaining the original legal construction of rape as a property crime and the related focus on the chastity of the victim, I discuss the gender-specific terminology, the significance of carnal knowledge (penile-vaginal penetration), and the spousal exemption as they were written in the original legal definition of rape. Next, I discuss how the focus on the chastity of the victim and strong suspicion of false allegations of rape were used to justify special evidentiary rules and requirements included in the original rape law. Under English common

law, these special evidentiary rules, which include the chastity requirement and cautionary jury instructions, focused on proving the lack of consent of the victim and assessing the credibility of the victim. Given that these evidentiary rules are unique to rape, the justifications for their use warrant close attention. Thus, while discussing how these evidentiary rules are related to the construction of the crime of rape as a property crime and the concern with the destruction of the *value* of the woman as a man's property, I explain the link between these unique rules and requirements and the distrust of women. Finally, after explaining the original justifications for each of the dimensions or elements of rape laws in England, I provide a brief overview of the link between the rape laws in England and the traditional rape laws in the United States. As this discussion will demonstrate, the elements of the original rape laws in the United States and the justifications for these laws were almost identical to those under English common law, but the element of force and the related resistance requirement were added as additional evidentiary requirements in the U.S. rape laws.

Rape as a Property Crime

Dating back to ancient Babylonian and Mosaic law, the crime of rape was codified originally as a property crime, not a violent crime, and the law was designed to protect the chastity of an unmarried woman or to protect against the adultery of a married woman (Brownmiller 1975). At the time, a woman was expected to be either an unmarried virgin who was the property of her father or a married woman who was the property of her husband. Through marriage, a woman was transferred from the property of her father to the property of her husband. Since an unmarried woman's virginity held a certain monetary value for her father in terms of her bride price, a woman's chastity was viewed as her father's valuable property that needed to be legally protected. Also, since a man's property was passed down through his

offspring, the legitimacy of his children needed to be ensured to protect the proper ownership of his property. Thus, the rape law was constructed as a property crime to protect the value and rightful ownership of a man's property. Therefore, the rape of an unmarried virgin was a crime against her father's property, and the rape of a married woman by a perpetrator who was not her spouse was a crime against her husband's property. Importantly, these expectations and related property rights laid the foundation for the original rape laws in England (Temkin 2002).

Given that women were considered to be the property of men, the original rape laws in England were created to protect the father's or husband's property – his daughter or wife (Pagelow 1984). As a property crime, the English rape law was concerned primarily with the “theft of virginity” since protecting the chastity of an unmarried woman was important for maintaining her purity, which determined her value to a potential spouse (Temkin 2002). That is, the “rape of an unmarried woman rendered her unmarriageable because her value to future husbands was destroyed” (The Harvard Law Review Association 1986:1257). In contrast, the rape of an unmarried, non-virgin was not considered to be significant damage to a man's property since she was already considered impure.

While the earliest laws in England were mainly concerned with the rape of virgins, the rape of any woman, regardless of her chastity, was included in the Statutes of Westminster in the 13th century under Edward I (Brownmiller 1975; Temkin 2002). As for the rape of non-virgins, the primary concern was with the rape of a married woman by a man who was not her spouse (Brownmiller 1975). Again, the law was constructed to protect women as men's property and the “rape of a married woman brought disgrace upon her husband and family” (The Harvard Law Review Association 1986:1257). Thus, rape was a crime against the father or husband, not against the woman or her body. Therefore, most rape prosecutions involved either the rape of a

virgin or the rape of a married woman by a man who was not her spouse. Furthermore, as will be explained in more detail later, the truthfulness of a rape allegation made by an unmarried, non-virgin was looked upon with great suspicion. As a result, a number of special evidentiary rules and requirements, such as the admissibility of evidence of the victim's past sexual history and the cautionary jury instructions, were included in the original rape law in England.

Elements of the Original Legal Definition of Rape

Since the original purpose in criminalizing rape was to protect a man's property and the related chastity of a woman, the original offense was defined in gender-specific terms and only included forced penile-vaginal penetration. That is, according to the legal definition, the crime was gender specific in terms of the offender and the victim - only men were capable of committing an act of rape and only women were capable of being the victim of rape. Also, since the value of a woman was based on her chastity and any penile-vaginal penetration would render her unchaste, the rape law specified penile-vaginal penetration as an essential element of the crime as it was this act, specifically, that devalued the man's property. Therefore, other forced sexual acts, such as forced anal intercourse, forced vaginal or anal penetration by a foreign object, forced cunnilingus, and forced fellatio, were not included in the rape statute. Thus, for most states, there was only one rape statute. This statute only criminalized forced penile-vaginal penetration.

Also, since the original rape law was constructed as a property crime, the law included an explicit spousal exemption. Since a woman was transferred from the property of her father to the property of her husband through the marriage contract, the spousal exemption specified that a man could not be charged with raping his wife, since this would be considered destruction of his own property. What this meant, then, was that he could do as he wished with his own property,

including forcing his wife to have sex. The justification for the marital rape exemption was stated in the 17th century by England's Chief Justice, Sir Matthew Hale (Russell 1990). Hale stated,

But the husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto the husband which she cannot retract (Russell 1990:17).

This reasoning indicated that the marriage contract served as a woman's "implied" and "irrevocable" consent to sex with her husband (Eskow 1995). Although Hale's statement held no authority nor did it reflect any court decision, the United States' marital rape exemption laws strongly reflected Hale's statement (Russell 1990).

Evidentiary Rules and Requirements

In addition to the limitations contained in the definition of rape, the original rape laws contained evidentiary rules and requirements that were unique to rape prosecutions. Among other special evidentiary requirements² in the original rape laws, the most prominent evidentiary rules and requirements included the chastity requirement, which was related to the admissibility of evidence of the victim's past sexual history, and the cautionary jury instructions (Anderson 2002, 2004). The justifications for the inclusion of these unique elements of the rape law are also related to the original construction of rape as a property crime. Since the original rape law was concerned primarily with the chastity of the victim, as the woman's chastity was what was considered to be stolen or damaged, the victim's past sexual history was deemed relevant in a rape case and was therefore admissible in rape trials (Anderson 2002). That is, if there was evidence that an unmarried woman was already unchaste prior to the time of the rape, then the rape itself was not what originally devalued or damaged the man's property and evidence of the

² While not found in the rape laws of all states, some states included a prompt complaint and/or a corroboration requirement.

previous unchaste acts or character of the victim was seen as relevant information for the prosecution of rape as a property crime.

Also, since it was assumed that unchaste women who lost their value as a result of voluntarily engaging in sexual intercourse would try to lie and claim that they were raped, there was a concern with false accusations of rape. As a result, special evidentiary requirements and rules such as the use of cautionary jury instructions were included in the original rape laws (Anderson 2002, 2004). Since these special evidentiary rules arose from the concern with false allegations of rape, which focused primarily on allegations made by unchaste women, I will provide a detailed explanation of the chastity requirement followed by a brief discussion of the cautionary jury instructions.

Evidence of the Victim's Past Sexual History

Under English common law, evidence that the complainant was unchaste prior to the alleged rape was used as evidence to discredit her testimony and question whether or not she consented to sex. Thus, as Anderson (2002) explains, there was an underlying “chastity requirement” embedded within the rape laws. Anderson (2002) traces the history of the “chastity requirement” to Biblical laws in which only the rape of a virgin was considered an offense. The first indication that the laws of England recognized the rape of non-virgins as a crime appears in the Statutes of Westminster around 1275 (Anderson 2002). These statutes, however, treated the rape of a non-virgin differently than the rape of a virgin by assigning it a lesser penalty. That is, the rape of a virgin was a felony, and offenders were punished by having their eyes and testicles removed. On the other hand, an offender found guilty of rape of a non-virgin received corporal punishment, but was not subjected to the removal of his eyes or testicles (Anderson 2002).

Although there was no explicit exclusion of non-virgins written in the early common laws of England, concern with virginity is evident in that the “blood and her dress stained with blood” was required to show that a woman was raped (the presence of blood was assumed to be associated with the rupture of the hymen of a virginal woman) (Anderson 2002). Here, the relevance of the victim’s sexual history was related to the concern with the chastity of a woman and the protection of a man’s property. The sexual history of the victim, however, was also used to discredit the testimony of the victim and show that the victim consented to the sexual intercourse.

Admitting evidence of the victim’s past sexual history was seen as relevant to the issue of consent and the victim’s credibility. The assumption was that unchaste women were unlikely to resist sexual advances from men and were also more likely to lie. It was also assumed that if a woman had consented to sex in the past, then she was more likely to consent to sex on other occasions, including the alleged rape in question. In other words, the admissibility of this evidence for the purpose of establishing consent was based on the notion that “previous sexual activity implies consent” (Marsh et al. 1982: 22). On the other hand, if a woman had not consented to sex in the past and was a virgin prior to the alleged rape, then she was viewed as being more likely to refuse sex. The complainant’s sexual history was also used to assess her credibility as a witness, since unchaste women were seen as immoral and more prone to lie (Anderson 2002; Spohn and Horney 1991).

The issues of proving consent and establishing the lack of credibility of the witness via the use of evidence regarding the victim’s past sexual history and general character or reputation are related to the strong fear of false accusations of rape (Largen 1988). Therefore, given the assumptions that, compared to chaste women, unchaste women were less likely to refuse sex

with a man and were more likely to lie, it was assumed that unchaste women were more likely to lie and bring forth false accusations of rape. With the strong fear of false accusations of rape and the need to determine the truthfulness of an alleged victim's testimony, Call et al. (1991) argue that the common law operated under the "rule of automatic admissibility" in that it viewed just about all questions regarding the alleged victim as relevant in a rape trial. In particular, questions about the complainants past sexual history were viewed as relevant and admissible for seeking to establish consent and assessing her credibility (Spohn and Horney 1991). Thus, as a result of this distrust of rape complainants, victims were routinely questioned about their past sexual history during rape trials (Anderson 2002; Spohn and Horney 1991).

As Anderson (2002) points out, the historical use of the victim's sexual history to imply consent and to discredit her testimony shows "an informal, though powerful, normative command that women maintain an ideal of sexual abstinence in order to obtain legal protection" (p. 53). With such a view of consent, Anderson calls attention to the "chastity requirement," which she traces to the "distorted normative vision of consent to sexual intercourse that was ingrained in the rape law," in which consent was viewed as "temporally unconstrained permission that was nonspecific as to act and transferable to others" (p. 53). Specifically, once a woman married and had sex with her husband, then the law treated this as her implied consent, or ongoing consent, to sex with her husband – thus, the wife's consent is temporally unconstrained. Even outside of marriage, if an unmarried woman engaged in consensual sex with a man (or multiple men), then she was assumed to be willing to consent to future sexual acts with that man in particular and with other men in general – here, the woman's consent is viewed as not specific to a particular sexual encounter nor specific to a particular sexual partner.

Furthermore, if a woman consented to other sex acts with a man (excluding intercourse), then it was assumed that the man could reasonably believe that this implied her consent to sexual intercourse as well – here, the woman’s consent is unconstrained to a particular act. As Anderson (2002) argues, unless an unmarried woman was a virgin, she was viewed as “indiscriminate in her sexual life” and likely to consent to sex in general as “her sexual consent lost its differential and unique nature” (p. 54). Thus, with the use of a victim’s sexual history to cast doubt on her credibility and to challenge her lack of consent, the traditional rape laws only protected unmarried, chaste women from rape and married women from non-spousal rape. Hence, Anderson refers to this as the implied “chastity requirement” in traditional rape laws.

Cautionary Jury Instructions

Suspicion of the credibility of the testimony of rape complainants was not just relevant to the resistance requirement. In fact, the suspicion or fear of false allegations of rape was the main justification for the cautionary jury instructions (Anderson 2004). Due to a concern with false accusations of rape, English common law, as well as the U.S. rape laws, allowed judges to issue cautionary jury instruction in rape cases (Anderson 2004). Directly addressing the concern with false accusations of rape, the cautionary jury instruction, also referred to as the “Lord Hale jury instruction” (Largen 1988), required judges to warn juries to take extra care to assess the testimony of the alleged victim due to the ease of falsely accusing a man of rape. The cautionary jury instructions served as a check on the credibility of the victim’s testimony.

The use of cautionary jury instructions can be traced back to the 1600s in England where Sir Matthew Hale stated that rape is an accusation “easily to be made and hard to be proved, and harder to be defended by the party accused, tho never so innocent” (Hale 1971; as cited in Spohn and Horney 1991, p. 24). Concerned with defending against false accusations of rape, Hale’s

statement served to warn juries to examine carefully the testimony of the victim while keeping in mind that women may be motivated to lie about rape. Also, Hale was concerned that the highly charged nature of the crime would cause juries to believe the victim too easily. Thus, Hale further stated that it was necessary to “be the more cautious upon trials of offenses of this nature, wherein the court and the jury with so much ease be imposed upon without great care and vigilance; the heinousness of the offense many times transporting the judge and jury with so much indignation, that they are over-hastily carried to the conviction of the accused thereof by the confident testimony, sometimes of malicious and false witnesses” (Hale 1971; as cited in Anderson 2004, p. 960).

English Common Law and Rape Laws in the United States

The previous discussion of the history of and justifications for the elements of the rape law in England is important given that they formed the basis for the original rape laws in the United States (Brownmiller 1975; Friedman 2004). In the 17th century, as the English settlers established the original colonies in what is now the United States, they brought with them their ideas of law, which were grounded in English common law (Friedman 2004). Thus, the earliest rape laws in Colonial America strongly resembled the rape laws in England. Indeed, the justifications for the proposed reforms for each of the different elements of rape law were almost identical to those found in England. Discussing these justifications in the colonial era, Donat and D’Emilio (1992) state:

a woman’s value within society was based on her ability to marry and to produce legitimate heirs. The ability to attract a spouse was influenced by the woman’s perceived purity. The rape of a virgin was considered a crime against the father of the raped woman rather than against the woman herself. A raped woman could not expect to marry into a respectable family and might very well remain the economic liability of her father (p. 10).

Original Definition of Rape in the United States

In line with the beliefs and customs of England, most of the original rape laws in the United States consisted of a single statute that defined rape as carnal knowledge of a female, not a spouse, forcibly and against her will (Russell 1990). Therefore, the original rape laws in the United States were written in gender-specific language, which required forcible penile-vaginal penetration, and included a spousal exemption. Furthermore, the focus on women as men's property and the suspicion of false allegations of rape that led to the special evidentiary rules and requirements in England also resulted in similar rules in the United States. That is, most states included the implicit chastity requirement and explicit resistance requirement and allowed the use of the cautionary jury instructions. Additionally, although not found in the rape laws in England, the original rape laws in the United States also included a resistance requirement.

Evidentiary Rules and Requirements in the Original Rape Laws in the United States: Chastity Requirement, Cautionary Jury Instructions and the Resistance Requirement

Since the laws in America were derived from English common law, the underlying "chastity requirement" existed in the earliest rape laws in the United States (Anderson 2002). Although these early rape laws did not include an explicit chastity requirement, many did reference the section of Deuteronomy that addressed the rape of a virgin (Anderson 2002). Even if the written law did not explicitly exclude unchaste women from its protection, the chances of such rapes making it to court or resulting in a conviction were extremely low. The rape law operated to protect only "respectable" *white* women from rape. Especially in the late 18th century and early 19th century when white womanhood was associated with extreme modesty, innocence, chastity, and dependence on men, only the rape of a white, chaste woman was likely to result in a successful conviction (Anderson 2002).

In reviewing appellate rape cases in the United States from 1900 to 1975, Anderson (2002) found that the defense was allowed to use evidence of a victim's unchaste *reputation* and/or evidence of her unchaste *conduct* to cast doubt on the credibility of her testimony and/or to question her lack of consent.³ While evidence of a victim's unchaste reputation or unchaste conduct was first used primarily to cast doubt on her credibility, beginning in the 1920s some courts began to use such evidence primarily to question the victim's lack of consent to sex with the defendant (Anderson 2002). Evidence of the victim's unchaste reputation or unchaste conduct included the testimony of men who claimed to have had sex with the victim in the past, the testimony of others who claimed to have knowledge of the victim's sexual history, and direct questioning of the victim about her past sexual history (Anderson 2002). While not all courts allowed evidence of specific sexual acts the victim engaged in with other men (the evidence of unchaste conduct with others), all courts allowed evidence of the victim's past sexual history with the defendant to be admitted. A history of past consensual sex with the defendant was used to show that the defendant lacked *mens rea*. That is, the courts admitted and accepted the argument that the past consensual sexual relationship between the complainant and the defendant could lead the defendant to reasonably believe that he had her consent to have sex with her again, including during the incident in question. Also, both the victim's unchaste reputation and unchaste acts were used as evidence to show that the victim had a history and/or a reputation of consenting to sexual acts and was therefore unlikely to refuse sex with the defendant during the incident in question.

³ Some courts only allowed evidence of the victim's unchaste reputation, while other courts allowed evidence of both.

Cautionary Jury Instructions

Similar to other parts of England's rape law, Lord Hale's cautionary jury instructions were adopted by American courts and remained a part of rape trials throughout the 19th and 20th centuries despite the additional rights granted to criminal defendants.⁴ Anderson (2004) notes that the first mention of the cautionary jury instructions in U.S. courts dates back to an 1856 California Supreme Court case where it was stated that "from the days of Lord Hale to the present time, no case has ever gone to the jury upon the sole testimony of the prosecutrix, unsustained by facts and circumstances corroborating it, without the Court warning them of the danger of a conviction on such testimony" (People v. Benson, 6 Cal. 221, 223; as cited in Anderson 2004, p. 960). Beginning with this court case in 1856 and continuing until 1975, the use of the cautionary jury instruction was mandatory in rape trials in California (Eskow 1995). Although the use of the cautionary jury instruction was not banned completely in 1975, it was limited in such a way that it could only be used in rape trials in California at the discretion of the judge, and this remains the case even today (Eskow 1995). Similar to California, all other states originally adopted the cautionary jury instructions, which remained unchallenged until the 1970s when they were limited by rape law reforms.

While the exact wording of the cautionary jury instructions varied from state to state, they all included three similar elements: (1) it is easy for a victim to accuse someone of rape, (2) it is difficult for a defendant to disprove the charge of rape, and (3) the jury should carefully examine and scrutinize the testimony of the victim more than they examine the testimony of others in the trial (Morris 1988). Also, although the justification for its inclusion changed, the cautionary jury instructions were included in the Model Penal Code in both 1962 and 1980

⁴ It is important to note that Hale's cautionary jury instructions arose in England during a time when criminal defendants were not ensured certain safeguards by the criminal justice system (i.e., the presumption of innocence until proven guilty, the prosecution must prove guilt beyond a reasonable doubt, etc.) (Anderson 2004).

(Anderson 2004). In regards to the cautionary jury instructions, the Model Penal Code states, “in any prosecution before a jury [for sexual offenses], the jury shall be instructed to evaluate the testimony of a victim or complaining witness with special care in view of the emotional involvement of the witness and the difficulty of determining the truth with respect to alleged sexual activities carried out in private” (Model Penal Code 213.6(5), 1980; as cited in Anderson 2004, p. 949). It is important to keep in mind that the main focus of the cautionary jury instructions was protecting defendants against false allegations of rape. Despite the stated concern with the “emotional involvement of the witness,” in the commentary to the 1962 Penal Code, it was stated that basing a conviction solely on the testimony of the victim should be cautioned against due to the unique “psychological involvement” of judges and juries that is likely to arise in rape cases. Regardless of whose psychological or emotional involvement is seen as problematic, the commentary to the Model Penal Code suggested that either corroboration of every element of the crime or the cautionary jury instructions could be used in cases which rested solely on the testimony of the victim. Since corroboration of every element of the crime was unlikely, the use of the cautionary jury instructions was recommended.⁵

Resistance Requirement

Although not included in the English common law definition of rape, the element of force and the related resistance requirement were added to the definition of rape in the United States

⁵While the majority of states allowed for the use of the cautionary jury instructions in cases where there was a lack of corroboration, 15 states added a corroboration requirement, which specified that a conviction of rape could not rely solely on the unsupported testimony of the victim, to their rape law (Anderson 2004; Spohn and Horney 1991). Given the fear of false accusations of rape and the related assumption that the credibility of an alleged victim’s testimony is to be questioned, the corroboration requirement that existed in some states specified that additional evidence, such as torn clothing or physical injury, was needed to support or corroborate a victim’s testimony (Anderson 2004). Although not derived from English Common Law, these states added a corroboration requirement to their rape law as an additional check on the victim’s credibility (Anderson 2004; Yale Law Journal, 1972). Also, the corroboration requirement was included in the Model Penal Code, which states, “no person shall be convicted of any felony under this article [for sexual offenses] upon the uncorroborated testimony of the alleged victim” (Model Penal Code 1980, as cited in Anderson 2004, p. 7 of 73).

(Berger 1977). That is, according to the original rape law in the United States, rape was committed “by force and against her will.” The phrase “by force and against her will” placed emphasis in the rape law on the victim’s lack of consent (Spohn and Horney 1992). Force was included as a means of establishing that the victim did not consent to sexual intercourse. Thus, force was a “secondary issue” to lack of consent (Edwards 1996). According to the original rape laws in the United States, the presence of force was evident, however, only if the victim “physically resisted the assailant to the ‘utmost’ of her ability throughout the assault” (Edwards 1996, p. 245).⁶ Since the presence of force was established by the victim’s physical resistance, the prosecution had to present objective evidence that the victim “resisted to the utmost,” meaning that “the victim had to use all of her physical power to combat the assailant until she was overpowered or exhausted” (Edwards 1996, p. 245). Thus for the prosecution to prove rape beyond a reasonable doubt, the main focus was on the lack of consent of the victim; the element of force was significant only in that it served to prove the nonconsent of the victim (Largen 1988).

It was the historic distrust and suspicion of the credibility of rape complainants that justified including the utmost resistance requirement as a means to prove lack of consent (Berger 1977; Edwards 1996; Wicktom 1988). Since it was believed that there were numerous reasons why women were likely to bring a false accusation of rape (i.e. out of vengeance, due to mental illness, to cover up an affair, etc.), a woman’s subjective testimony was seen as unreliable for establishing lack of consent and the resistance requirement was included to provide objective evidence of the victim’s non-consent (Edwards 1996; Wicktom 1988). Despite the fact that many women may not physically resist a rapist out of fear of injury/death or out of shock, the

⁶ Giving in or complying with the rapists demands was seen as evidence of consent.

“utmost resistance” requirement “caused rape trials to focus almost exclusively on whether the victim responded appropriately to the assault” (Edwards 1996, p. 2 of 38).

Summary of Justifications

Overall, as discussed above, the limitations of the original rape law and the special evidentiary requirements trace back to women’s inferior status compared to men. Under English Common Law, because women were considered to be the property of men, the crime of rape was constructed to legally protect the value of a woman as a man’s property. Thus, the legal definition of rape was limited to forced penile-vaginal penetration by a man against a woman who was not his spouse. While primarily concerned with the rape of virgins, English common law also recognized the rape of non-virgins under the statutes of Westminster in the 13th century; however, special evidentiary rules and requirements were needed. Since unchaste women were assumed to be more prone to lie and less prone to say no to a man’s sexual advances, evidence of the victim’s past sexual history was admissible in court to serve as evidence to disprove her lack of consent and to discredit her testimony.

Since the earliest laws in what is now considered the United States were constructed by the English settlers in the 17th century, the original rape laws in the United States were very similar to those under English common law. Specifically, the original rape laws only protected women from forced sexual intercourse by a man who was not her husband. Also, following English common law, evidence of a victim’s past sexual history was admissible in court and judges were allowed to use cautionary jury instructions. Additionally, although not derived from English common law, original rape laws in the United States included a resistance requirement, which stated that a victim of rape had to physically resist her attacker, to prove the presence of force and the lack of consent.

In the United States, the legal definition of rape and the special evidentiary rules and requirements remained untouched until the 1970s. During the second women's rights movement, feminist activists and law-and-order groups began to demand changes in the rape laws to broaden the definition of rape and to remove the special evidentiary requirements (Spohn and Horney 1992). In the next chapter, I discuss the criticisms of the traditional rape laws in the United States and the related goals of the rape law reform movement as well as the changes that were made to the rape laws from the 1970s to the present.

CHAPTER 3

RAPE LAW REFORMS

As presented in the previous chapter, a review of the history of the rape law in the United States shows that the original legal definition of rape was strictly limited to female victims of forced penile-vaginal penetration committed by a man who was not their spouse. In addition to these limitations, the original rape laws contained special evidentiary rules and requirements (use of the victim's sexual history, use of cautionary jury instructions, and the resistance requirement), which were not found in the laws for other violent crimes. While I explained the justifications for these limitations and special evidentiary rules and requirements in the previous chapter, the purpose of this chapter is to explain the efforts to revise these elements of the rape laws in the United States. Specifically, in this chapter, I discuss the emergence and success of the rape law reform movement in the United States.

First, I discuss the factors that contributed to the rise of the rape law reform movement, including the criticisms of the traditional rape laws and the justifications for the reforms. Next, I explain the specific goals of the rape law reform movement. In the last section, I discuss the varied success of the reforms regarding each of the following elements of rape law: the redefinition of rape in gender-neutral terms, the redefinition of rape as sexual assault, the elimination of the marital rape exemption, the passage of rape shield laws, the prohibition of the cautionary jury instructions, and the elimination of the resistance requirement.

Emergence of the Rape Law Reform Movement

Although there were previous attempts to reform the rape statutes in the United States during the first women's rights movement (Hasday 2000), it was not until the early 1970s that a serious, organized, and coordinated effort at rape law reform gained strength (Largen 1988). In the early 1970s, the second women's rights movement was gaining strength, and rape law reform was a main focus of the movement (Spohn and Horney 1992). At the forefront of the rape law reform movement, the National Organization for Women (NOW) was largely responsible for initiating the rape law reform movement and launching a strong attack against the traditional rape laws (Largen 1988). Specifically, members of NOW, along with other feminist activists and scholars, strongly criticized the limitations and special requirements embedded in the traditional rape laws (Spohn and Horney 1992).

In addressing the limitations in the legal definition of rape, critics charged that "all rapes are not treated equally" (Spohn and Horney 1992, p. 19). That is, certain types of rape or rape victims were not considered to be as worthy of protection under traditional rape law. Males, spouses, and same-sex victims were not protected under the rape laws. Forced object penetration and forced oral and anal sex were either not criminalized at all or were only recognized as second or third degree offenses. Also, victims who did not physically resist their attacker and/or incur serious injuries did not qualify as "real" victims (Spohn and Horney 1992), and promiscuous women, especially prostitutes, were not seen as legitimate victims. Thus, feminists justified the need for the redefinition of rape on the grounds that the traditional definition of rape did not provide equal protection for all victims.

Furthermore, feminists critiqued the traditional definition of rape for framing the crime of rape primarily as a sexual offense. Instead of focusing on the sexual nature of the offense,

feminist activists argued that the primary focus of the law should be on the use of force, violence and/or coercion, and power and control during an *assault* against a person. As Searles and Berger (1987) point out, feminists argued that rape needed to be redefined as sexual assault “in order to emphasize that rape was a violent crime and not a crime of uncontrollable sexual passion...[and] equating rape with other assaults was intended to divert attention from questions of the victim’s consent, for assault is, ‘by definition, something to which the victim does not consent’” (pp. 25-26). Also, in redefining the crime as sexual assault, rape law reformers sought to move the law beyond only protecting against penile-vaginal penetration by including other forms of sexual violence.

Given the limitations (the victim must be a *non-spousal woman* assaulted by a *man*) and the special evidentiary requirements and allowances, feminists argued that the original rape laws in the United States stood apart from the laws of other serious crimes (i.e., robbery, burglary, and homicide). For example, unlike rape, a robbery victim is not required to resist his or her attacker and the past sexual history or reputation of the victim is irrelevant in homicide cases. Critics argued that these special evidentiary rules make the successful prosecution of a rape case much more difficult than the successful prosecution of other serious crimes (Anderson 2004). Also, the focus on the behavior and character of the victim, instead of that of the defendant, was unique to the crime of rape. As a result, “compared to other crimes against the person, the reporting, arrest, and conviction rates for rape are very low. The inadequate definition of rape contributes to these low rates because the focus on the victim’s conduct discourages reporting, the element of nonconsent is difficult to prove, and, therefore, prosecutors are reluctant to bring cases and juries are reluctant to convict” (Wicktom 1988, pp. 400-401).

Critics also argued that the limitations and special requirements for rape “resulted in pervasive skepticism of the claims of rape victims and allowed criminal justice officials to use legally irrelevant assessments of the victim’s character, behavior, and relationship with the defendant in making decisions regarding the processing and disposition of rape cases” (Spohn and Horney 1992, p. 18). Although false allegations of rape make up less than 5 percent of reported rapes, which is similar to the rate of false reports for other crimes, the traditional rape laws in the United States went to great lengths to protect defendants from the possibility of being falsely accused of rape. While the criminal justice system in the United States protects the rights of criminal defendants, most of these legal safeguards against false accusations are unique to rape cases, and critics have argued that they are unfairly biased against the rape victim. On this matter, critics contend that the traditional rape laws reflected and perpetuated stereotypes of rape in that only “real rapes” or “aggravated rapes” (rapes perpetrated by armed strangers) were eligible for prosecution (Estrich 1987). As a result, victims of “simple rapes” (rapes perpetrated without a weapon by someone known to the victim) were less likely to report their rapes to the police because their assault did not meet the stereotype (Estrich 1987; Spohn and Horney 1992; Williams 1984). Given that simple rapes occur much more frequently than aggravated rapes, but are less likely to be reported to the police, critics argued that rape laws that perpetuate stereotypes about rape contribute to the underreporting of rape in the United States.

Feminists also argued that the traditional rape laws focused too much attention on the behavior of the victim instead of focusing attention on the behavior of the offender. Thus, critics often argued that rape cases were processed in such a way that it seemed like the rape victims were put on trial instead of the alleged rapists (Spohn and Horney 1992). Indeed, many critics of the use of a victim’s past sexual history to discredit her testimony point to the double standard

actively involved – while the woman’s past sexual history cast doubt on her credibility, the defendant’s past sexual history was not questioned and was viewed as irrelevant to his credibility (Spohn and Horney 1991). As a result of this focus on the victim’s behavior, critics argued that rape victims were likely to be re-victimized by the criminal justice system as they were repeatedly asked humiliating, degrading, and victim-blaming questions about the rape and about their past sexual experiences (Marsh et al. 1982).

In addition to these surmounting criticisms of the rape laws provided by legal scholars, there was a convergence of several other factors that contributed to the rise and strength of the rape law reform movement in the 1970s. Importantly, in the early 1970s, social scientists were producing empirical research that dispelled prevailing myths, stereotypes, and misconceptions about rape (Largen 1988). At the same time, in the late 1960s and early 1970s, there was an alarming increase in the number of reported rapes, which contributed to a growing public concern about rape (Largen 1988; Spohn 1999). Also, while the rape rate was increasing, researchers were finding and reporting that, compared to other serious crimes, rape cases had the highest rate of police unfounding, the lowest arrest rate, and the lowest conviction rate (Largen 1988). Thus, while the public’s concern over rape grew, their perceptions of the effectiveness of the criminal justice system declined. As a result, certain law and order groups and crime control advocates joined the efforts of feminists and other women’s groups in the rape law reform movement. Finally, Largen (1988) also cites the rise in the number of female lawyers and lawmakers as a significant factor contributing to the rape law reform movement.

Goals of the Rape Law Reform Movement

As Largen (1988) explains, “Although rape law reform eventually became a process that brought together a great variety of individuals and organizations with varying interests and

objectives, both the basic rape law reform goals and the rape law reform process were established by the women activists who had initiated the reform drive” (p. 274). Specifically, these feminist activists had several symbolic and instrumental goals. Symbolically, rape law reform advocates sought to redefine rape and change the evidentiary requirements for rape cases in order to show a rejection of the sexist and patriarchal views underlying traditional rape laws (Spohn and Horney 1992). Critics saw traditional rape law as serving the interests of men since the law preserved the notion of women as men’s property and the right for men to view and treat women as sexual objects. The feminist reformers hoped that the adoption of rape law reforms would show a rejection of this view of gender relations and shift the focus of the rape law toward protecting women from harm (Spohn and Horney 1992). Also, feminist activists sought to change the perception of rape as a sexual crime to a more accurate view of rape as a violent crime (Spohn and Horney 1992) and to show support for the rights of rape victims (Marsh et al. 1982). Such changes were seen as challenging and changing cultural norms at a time in which the status of women in the United States was improving (Bienen 1980; Marsh et al. 1982). As Marsh et al. (1982) explain, “such efforts are part of a larger statement that, as women move into more autonomous roles in society, their activities deserve to be acknowledged and respected. Reformed rape laws, then, reflect and legitimate increasingly varied and independent roles and styles of behavior for women in society. They define the crime in terms consistent with emerging concerns of women” (p. 3).

As for the instrumental goals, the reformers sought to: (1) redefine the crime of rape to extend its coverage to persons previously excluded (i.e., victims of spousal rape, male victims, and victims of same-sex assault) and to recognize other forms of sexual assault (i.e., forced object penetration, forced oral or anal sex, forced sexual contact, etc.); (2) eliminate legal

requirements for rape cases that were not required for other violent crimes (i.e., evidentiary requirements such as the corroboration requirement and resistance requirement); (3) establish “rape shield” laws that would prohibit the use of irrelevant information regarding the victim’s past sexual history in court; and (4) change the penalty structure in rape cases to include different degrees of the offense (i.e., 1st degree rape through 4th degree rape) according to the seriousness of the offense and to require mandatory minimum sentences (Berger et al. 1988; Horney and Spohn 1991; Marsh et al. 1982).

Given the unique alliance between feminist reformers and law-and-order reformers, however, the rape law reform advocates did not all agree on which reforms should be passed. That is, although feminist activists set the goals of the rape law reform movement, the law-and-order reformers, who were by and large not feminists, did not agree with all of these goals. Specifically, criminal justice officials supported and advocated for the rape law reforms that cleared up any inconsistencies in the laws, which included making the statutes gender neutral and creating graded offenses based on the degree of seriousness of the offense, and they supported the reforms that laid out specific procedural guidelines and improved the effectiveness of the criminal justice system (Berger et al. 1991). On the other hand, non-feminist reformers opposed reforms that “altered the traditional conception of rape” (Berger et al. 1988, p. 348) or that broadened the crime of rape “to include cases other than ‘classic rape’” (Berger et al. 1991, p. 224). Thus, efforts to redefine rape as sexual assault and eliminate the spousal rape exemption were met with strong resistance from non-feminist reformers inside the rape law reform movement (Berger et al. 1991). Given the debates and disagreements over redefining rape as sexual assault and eliminating the spousal rape exemption, efforts to pass these two rape law reforms may have been clouded by this controversy from within the rape law reform movement.

There was also controversy surrounding the efforts to eliminate the spousal rape exemption and pass the rape shield laws from outside of the rape law reform movement. In fact, researchers argue that the marital rape laws and the rape shield laws were the most controversial rape law reforms (Russell 1990; Spohn and Horney 1992). The marital rape exemption has generated much controversy among legal scholars (Anderson 2003). While most legal scholars have criticized the spousal rape exemption for not providing equal protection to all victims of rape, there are still legal scholars that use controversial assumptions to defend the continued use of the spousal rape exemptions (Anderson 2003). For instance, some legal scholars point to the assumption that there is ongoing consent to sex in marriage to justify why spousal rape should not be a crime. Other legal scholars simply assume that marital rape is not a widespread social concern and that it is not serious enough to warrant criminalization (Anderson 2003). Claims that spouses do not have a right to refuse sex in marriage and that the rape of a spouse is not serious enough to criminalize have generated heated debates among legal scholars.

The rape shield laws have also sparked debates among legal scholars (Largen 1988). Indeed, Spohn and Horney (1992) state that “of all the reforms, the rape shield laws clearly have engendered the most controversy.” (p. 28). Legal scholars argue that the rape shield laws have produced a “conflict between the defendant’s rights, the rights of the victim to privacy or the equal protection of the laws, and the state’s interest in securing reports of and arrests and convictions for rape” (p. 28). Legal scholars in support of the rape shield laws claim that these laws are necessary not only to protect the privacy of the victim but also to protect against the use of legally irrelevant information that attempts to discredit or cast doubt on the victim’s testimony. While acknowledging that some aspects of the victim’s sexual history may be relevant at trial (i.e., the source of semen), these legal scholars argue that sexual history

information that is used to question the victim's character or discredit the victim's testimony should be prohibited. On the other hand, legal scholars concerned with protecting individual rights and freedoms strongly criticize the rape shield laws for violating the rights of defendants since they limit the defendant's ability to use all factual evidence to help build a strong defense (Spohn and Horney 1992). Similarly, defense attorneys strongly oppose rape shield laws and they justify this opposition by pointing to the Sixth Amendment right of compulsory process, which gives defendants the right to use any evidence to prove his innocence (Call et al. 1991). Thus, previous researchers have found that the efforts to redefine rape as sexual assault, eliminate the marital rape exemption, and create rape shield laws have generated debates among rape law reform activists, legal scholars, defense attorneys, and advocates for victims' rights and defendants' rights.

Despite the debates surrounding some of the rape law reforms, the rape law reform advocates lobbied state legislators in an effort to achieve statutory changes in the rape laws. That is, the rape law reform activists used the legislative process as their strategy to reach their goals. As Largen (1988) explains, the legislative process "offered access to (and influence with) lawmakers, an access that the case-law process did not permit private citizens. It also permitted immediate, rather than long-term change, and more certainty of success" (p. 274). Also, although the rape law reform advocates sought to pass comprehensive rape law reform bills, instead of trying to change each element of rape law individually, reformers often had to compromise by dropping the proposed reform for one element of rape law, in order to pass other reforms (Marsh et al. 1982).

Since reformers mainly sought legislative changes, it is important to point out the source of their opposition and allies within the legislative branch. As mentioned previously, women

legislators, who were “frequently at the forefront of reform efforts,” served as key supporters of rape law reforms (Largen 1988). More importantly, the support of women legislators who were members of their state’s defense bar was essential to the adoption of at least some rape law reforms. State defense bars, which are organizations concerned with providing representation to individuals accused of committing crimes, are primarily made up of defense attorneys. Since opposition to rape law reforms mainly came from defense attorneys, who were “disproportionately represented in state legislatures,” women members of the defense bar who supported rape law reforms created a critical dissension among the members of the state bar. As Largen (1988: 274) explains, “the dissension among states’ bar members and members of such organizations as the American Civil Liberties Union (ACLU) effectively undermined the strength of the opposition.” If it were not for the dissention among the members of the defense bar, which was mainly a result of the presence of women, the rape law reforms may not have advanced (Largen 1988).

Success of Rape Law Reform Efforts

To date, the majority of the research evaluating the “success” of the rape law reform movement has consisted of impact studies (for an early review of these impact studies see Berger et al. 1988). These studies measure success as an increase in the proportion of rapes reported to police (Clay-Warner and Burt 2005) or an increase in successful rape prosecutions (Futter and Mebane 2001; Gunn and Linden 1997; Spohn and Horney 1996). While increased reporting and case processing were two important goals of the rape law reform movement, it was the legal changes in the states’ rape laws that were expected to facilitate these goals. Only a few researchers (Berger et al. 1991; Call et al. 1991; March et al. 1982; McMahon-Howard et al. forthcoming 2010; Spohn and Horney 1991), however, have examined the success of the rape

law reform movement in terms of what reforms were passed successfully and what factors account for the passage of those reforms.

Marsh et al. (1982) provide a detailed discussion and analysis of the processes involved in the passage of Michigan's comprehensive rape law reform bill in 1974, which was the first in the nation. First, it is important to note that Michigan passed a comprehensive rape law reform bill that completely revised the rape law in that state. Thus, proposals for reforming different elements of a state's rape law were passed simultaneously. The revised rape laws in Michigan redefined rape in gender-neutral terms, created four degrees of offenses that recognized multiple forms of sexual assault, eliminated the resistance requirement, and created a strong rape shield law.

Among the numerous factors conducive to the passage of this legislation, Marsh et al. (1982) point to the establishment of a rape crisis center, the formation of the Michigan Women's Task Force on Rape, and the drafting of proposed rape reform legislation. Interestingly, however, when presented with the proposed rape reform bill, the Judiciary Committee strongly opposed the portion of the legislation that would allow wives to bring charges of rape against their husbands, prompting the Committee to draft a revision. As Marsh et al. (1982) explain:

In this version, the sexual history evidentiary section and spousal protection clause had been excised. One senator said that if spouses could charge rape, married women would use the law in divorce proceedings in order to win property settlements, and that such a provision would discourage reconciliation...Although the evidentiary section and protection for separated spouses were eventually reinstated, Task Force members compromised and accepted the spousal exclusion in order to win passage of the rest of the bill (p. 15).

While Marsh et al. do not explain why the rape shield laws and the elimination of the spousal exemptions were more strongly resisted than other reforms, comments from other researchers

support their claim. That is, in discussing the relative success of rape law reforms, Russell (1990) states:

the women's movement was very successful in drawing public attention to the issue of rape in the early 1970's, and equally successful in pressuring for changes in the laws pertaining to extramarital rape... However, these reforms did not sail through the state legislative bodies; rather they came after a considerable grass-roots lobbying effort by a coalition of feminists and law and order groups... [and]... there seems to have been an even greater reluctance to change laws condoning wife rape (p. 18).

Thus, as was the case in Michigan and in other early efforts to pass rape reform legislation, there was variation in the amount of support for reforming different elements of the rape laws. As a result, removing the spousal exemptions and passing rape shield laws had to be omitted from the agenda in some states in order to pass the other reforms.

After the adoption of Michigan's comprehensive rape law reform legislation, other states followed in making changes to their rape laws. While the goal of the rape law reform movement was to enact comprehensive reforms in each state, the reforms in some states came about through gradual changes in their laws. Thus, there was variation in the approach to passing rape law reforms in each state. As a result, states' rape law reforms "vary in comprehensiveness and encompass a broad range of reforms" (Horney and Spohn 1991: 118). In fact, there is variation in the success of the adoption of particular reforms both between states and within states. In regard to the variation in the adoption of reforms between states, a review of the success of the reforms shows that some states were able to pass more reforms and/or stronger reforms (i.e., Michigan, Illinois, Pennsylvania) compared to other states (i.e., Mississippi, Georgia, Texas) (Berger et al. 1988; Horney and Spohn 1991). For example, while Michigan created a gender-neutral statute with a strong rape shield law in the 1970s, Mississippi's rape law remains gender specific and still includes an explicit chastity requirement. Currently, the Mississippi rape law

specifies that “every person who shall be convicted of an assault with intent to forcibly ravish any female of previous chaste character shall be punished by imprisonment in the penitentiary for life, or for such shorter time as may be fixed by the jury, or by the court upon the entry of a plea of guilty” (Miss. Code Ann. § 97-3-71, 2007). Thus, as this example clearly shows, the success of the adoption of rape law reforms varies from state to state.

In regard to the variation in the adoption of the reforms within states, a review of the success of the reforms shows that certain reforms were more likely to be passed compared to other reforms. For example, based on a review of the status of rape law reforms in 1985, Berger et al. (1988) point out that eliminating the spousal exemptions and passing the rape shield laws were more difficult and less successful than redefining rape as sexual assault and eliminating the resistance requirement. Hence, as Berger et al. (1988) state, “rape law reform has been rather piecemeal, and statutes that contain reforms on certain dimensions do not necessarily contain reforms on others” (p. 344).

Thus, while there have been many improvements in rape laws in the United States, there are still states that have major limitations and roadblocks to prosecution. To better understand the variability in the adoption of these rape law reforms, in the next section, I will review the relative success of the efforts to reform the following elements of rape law: gender-specific statutes, specification of carnal knowledge, spousal rape exemptions, the admissibility of evidence of the victim’s sexual history, cautionary jury instructions, and the resistance requirement.

As one of the main foci of rape law reform, feminist activists put a considerable amount of effort into changing the legal definition of rape in each state. Again, since rape was defined as carnal knowledge of a *female, not a spouse*, forcibly and against her will, activists specifically

sought to extend the legal protection against rape to victims of spousal rape, male victims, same-sex victims, and those who experienced other types of forced sexual acts other than forced penile-vaginal penetration. While almost all states created gender-neutral statutes and changed their rape statute to sexual assault statutes that included multiple forms of sexual assault, efforts to eliminate the spousal exemption met resistance and only achieved limited success. Also, although the efforts to pass strong rape shield laws and prohibit the cautionary jury instructions were moderately successful, almost all states eliminated the resistance requirement. I discuss the success of each of these reforms below.

Success of Efforts to Redefine Rape in Gender-Neutral Terms

While there is very little discussion in the literature of the specific efforts to define rape in gender-neutral terms, thereby recognizing both men and woman as offenders and victims, these efforts were relatively successful. In fact, defining rape in gender-neutral terms was one of the most successful rape law reforms as 32 states had changed their gender-specific rape law to a gender-neutral rape law between 1970 and 1980 (Bienen 1981). Five additional states adopted a gender-neutral rape law by 1985. According to Berger et al.'s (1988) review, as of 1985, only 13 states⁷ still retained a gender-specific definition of rape⁸ specifying that rape can only be committed by a male perpetrator against a female victim, one state⁹ defined rape in regard to a male perpetrator and a female or male victim, and 37 states¹⁰ defined rape in gender-neutral terms for both the perpetrator and the victim (Berger et al. 1988; Searles and Berger 1987). The

⁷ Alabama, Delaware, District of Columbia, Georgia, Idaho, Kansas, Maine, Maryland, Mississippi, Missouri, New York (for first degree rape only), Oregon, and Virginia.

⁸ It is important to note, however, that even when a state has a gender specific rape law, they may define other sexual offenses in gender neutral terms.

⁹ Louisiana

¹⁰ Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Hawaii, Illinois, Indiana, Iowa, Kentucky, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming.

success of the gender-neutral reforms and the lack of research attention to the efforts to reform this element of rape law seem to indicate that the adoption of gender-neutral rape laws did not create much controversy or need for discussion.

Success of Efforts to Redefine Rape as Sexual Assault

Since the original rape law only criminalized forced penile-vaginal penetration, rape law reform advocates sought to redefine the crime of rape in terms of sexual assault. Based upon Berger et al.'s (1998) review of the status of rape law reforms in 1985, rape law reformers were successful in redefining rape as sexual assault in almost half of the states. That is, 23 states defined the primary offense (the offense equivalent to the traditional rape statute) in terms of sexual assault.¹¹ Of these 23 sexual assault statutes, 13 required penetration (vaginal, oral, or anal)¹² and 10 included penetration and touching.¹³ While the remaining 28 states retained their word "rape" in their statutes, 11 states broadened its definition of rape to include vaginal, oral, and anal penetration¹⁴ and 17 retained the traditional meaning of rape as vaginal penetration.¹⁵ Given that there were disagreements between the feminist and non-feminist rape law reform advocates over whether or not rape should be redefined as sexual assault (Berger et al. 1991), it is not surprising that this reform was only moderately successful by the mid-1980s.

¹¹ States with "sexual assault" statutes may use the following terms in their laws: sexual assault, sexual battery, sexual abuse, criminal sexual penetration, gross sexual imposition, sexual intercourse without consent, or criminal sexual conduct.

¹² Arizona, Florida, Illinois, Iowa, Montana, Nevada, New Jersey, New Mexico, North Dakota, South Carolina, Texas, Vermont, and West Virginia.

¹³ Alaska, Colorado, Connecticut, Michigan, Minnesota, Nebraska, New Hampshire, Rhode Island, Wisconsin, and Wyoming.

¹⁴ Arkansas, Delaware, Hawaii, Louisiana, Massachusetts, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, and Washington.

¹⁵ Alabama, California, D.C., Georgia, Idaho, Indiana, Kansas, Kentucky, Maine, Maryland, Mississippi, Missouri, New York, North Carolina, Oregon, Utah, and Virginia.

Success of Efforts to Eliminate the Spousal Rape Exemption

Of all of the elements of rape law, the efforts to eliminate the spousal exemptions met the greatest resistance and were the least successful. Although a few states completely abolished their marital rape exemptions in the late 1970s (Nebraska in 1976, Oregon in 1977, and New Jersey in 1979), it was not until the 1980s and 1990s that many states started actively working to change their marital rape laws (Finkelhor and Yllo 1985; Russell 1990). Indeed, it was not until 1993, when North Carolina finally eliminated the marital rape exemption from its rape statutes, that spousal rape became a crime in all 50 states under at least some conditions (Bergen 1996; Finkelhor and Yllo 1983; Russell 1990).

Although spousal rape is recognized as a crime in all 50 states, there are still major limitations to spousal rape laws in most states. According to McMahon-Howard et al.'s (forthcoming 2010) review, as of 2002, only 24 states and the District of Columbia had no spousal rape exemptions, indicating that it is illegal for a man to rape his wife under all conditions. In 26 states, however, there are still a few limitations to the marital rape law. Specifically, in twenty states,¹⁶ a spouse may be exempt if the victim is unable to legally consent because she/he is mentally or physically impaired, unconscious, or asleep (Anderson 2003; Bergen 1996). In fifteen states,¹⁷ there are additional requirements for spousal rape that are not necessary for non-spousal rape cases (Anderson 2003). For example, in some states, a spouse may be exempt if the victim does not suffer from serious injuries as a result of the rape (Flowers 2000). Also, there are special requirements for the reporting of marital rape that are not required in other types of rape cases. Furthermore, in many states, spousal rape does not hold as severe of

¹⁶ Alaska, Arizona, Connecticut, Hawaii, Idaho, Iowa, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Nevada, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Virginia, Washington

¹⁷ Alaska, Arizona, California, Connecticut, Idaho, Illinois, Maryland, Minnesota, Mississippi, Nevada, Ohio, Oklahoma, South Carolina, Tennessee, Virginia

a penalty as “traditional” rape and/or marital immunity still exists for other sexual offenses (i.e. sexual abuse, sexual assault, etc). In sum, although the laws regarding marital rape have drastically changed over the past 20 years, there are still major advancements that must be made to make marital rape equivalent to non-spousal rape.

Success of Efforts to Eliminate the Resistance Requirement

Contrary to the limited success of some of the other rape law reforms, challenges to the utmost resistance requirement led most states to revise their resistance requirements during the 1970s. The resistance requirement, however, was not eliminated completely. Instead, most states changed their “utmost” resistance requirement to a “reasonable” resistance requirement (Fried 1996; Wicktom 1988). The reasonable resistance requirement indicated that a victim must put forth a reasonable amount of resistance towards the offender given the circumstances of the assault. Thus, if the circumstances of the assault were such that it was reasonable to believe that a woman would not resist out of fear for her life or the risk of serious physical injury, then resistance was not required (Wicktom 1988). Although this change was seen as an improvement over the utmost resistance requirement, the reasonable resistance requirement was criticized because it did not take the victim’s subjective account of the rape, her own thoughts, fear, or unique reaction, into consideration (Fried 1996). Instead, the reasonable resistance requirement was based on others’ opinions of what women, in general, would think was necessary to do in a similar situation. As a result of such criticisms, additional efforts were made to eliminate completely the resistance requirement from rape statutes.

Additional criticisms were brought against the resistance requirement. Wicktom (1988) argues that resistance “is not a reliable indicator of the victim’s nonconsent” (p. 3 of 27). To support her claim, Wicktom points to research that indicates that many rape victims use passive

resistance (i.e., plead with the attacker) instead physical resistance in an effort to minimize potential injury/death or because the victim is in a state of shock. As a result of the prevalence of passive resistance, Wicktom argues that evidence of resistance is lacking in many rape cases, and therefore should not be used to establish nonconsent. The strongest criticism of the resistance requirement was that physically resisting a rapist actually increased a woman's likelihood of death or serious injury as a result of the attack (Anderson 1998).¹⁸ Anderson (1998) suggests that it was this criticism, in particular, that led to states eliminating the resistance requirement. Indeed, most states completely removed the resistance requirement from their rape statute. As of 1998, 31 states¹⁹ and the District of Columbia had no mention of the resistance requirement in their rape statutes, and the statutes in six states²⁰ explicitly stated that rape victims were not required to physically resist their attacker (Anderson 1998).²¹

Success of Efforts to Pass Rape Shield Laws

Similar to the marginal success of the marital rape laws, efforts to pass strong rape shield laws were only moderately successful. Although the use of the victim's past sexual history to discredit her testimony had waned almost completely by the 1970s (Wayman 1992), the use of the victim's past sexual history to question her lack of consent remained, with some limitations (i.e., the defense had to enter consent as the reason for the defendant's plea of not guilty), until rape law reform advocates began calling for rape shield laws in the 1970s (Anderson 2002). Michigan was the first state to enact a rape shield law in 1974 through its comprehensive rape

¹⁸ It is important to note that more recent research has found that physical resistance does not increase the likelihood of injury or death, and that, in fact, it decreases the likelihood of rape completion (cite).

¹⁹ Arizona, Arkansas, California, Colorado, Connecticut, Georgia, Hawaii, Illinois, Indiana, Kansas, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Wisconsin, and Wyoming.

²⁰ Alaska, Florida, Iowa, Kentucky, Maine, and Ohio.

²¹ Despite these changes, some state codes that do not require resistance still allow evidence of resistance (or lack thereof) to be used to establish force and/or lack of consent.

law reform bill (Marsh et al. 1982). Michigan's rape shield law limited the admissibility of information regarding the victim's past sexual history to that which is related specifically to the victim's sexual history with the defendant or that which is necessary for establishing the source of semen, disease, or pregnancy. Regardless of the limitations, under the Michigan rape shield law, a judge must rule, prior to the evidence being admitted at trial, that using evidence of a victim's past sexual history to establish certain facts in the case outweighs its potential inflammatory or prejudicial effect against the victim.

Shortly after Michigan was successful in adopting a rape shield law, other states began to adopt their own rape shield laws. As of 2002, forty-eight states and the District of Columbia have since adopted their own rape shield laws (Anderson 2002). The specifics and strength of the rape shield laws, however, vary from state to state (Anderson 2002; Spohn and Horney 1991). Anderson (2002) classifies these different rape shield laws into four different categories based on the type and amount of evidence of the victim's past sexual history that is allowed to be admitted at trial: *legislated exceptions laws*, *Constitutional catch-all laws*, *judicial discretion laws*, and *evidentiary purpose laws*.

According to Anderson's review in 2002, twenty six states,²² including Michigan, have *legislated exception laws*, which prohibit evidence of a victim's past sexual history under *most* conditions. In these states, however, there is at least one exception to the prohibition. Although the number of exceptions vary from state to state, with 21 states allowing two or more exceptions, these exceptions allow at least one or more of the following: evidence of past sexual conduct between the defendant and the alleged victim; evidence to show the source of semen, pregnancy, disease, or injury; evidence to show a unique pattern of sexual behavior by the

²² Alabama, Florida, Georgia, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Vermont, Virginia, West Virginia, and Wisconsin.

alleged victim; evidence to show that the defendant reasonably believed the alleged victim consented; evidence to show that the alleged victim had a motive to lie about being sexually assaulted; and evidence of past false accusations of sexual assault made by the alleged victim (Anderson 2002). The legislated exception laws are considered to be the strongest rape shield laws since they only allow sexual history evidence under very limited, and specific, conditions, which are not open to discretion.

Eleven states²³ and the District of Columbia have *Constitutional catch-all laws*, which include one or more of the exceptions discussed above in addition to a Constitutional exception.²⁴ The Constitutional exception contained within these statutes allow a judge to rule that evidence of a victim's past sexual history is admissible as determined by the Constitution. Thus, if the evidence of the victim's past sexual history does not meet the requirements of admissibility specified by the statute, a judge may allow the evidence to be admitted on Constitutional grounds (Anderson 2002).

In nine states, there are no specific legislated exceptions or Constitutional exceptions to the rape shield laws prohibiting the admissibility of evidence of the victim's past sexual history. Instead, the rape shield laws in these states are *judicial discretion laws*, which place the admissibility of evidence of the victim's prior sexual conduct at the sole discretion of judges. That is, these laws specifically state that judges should use their discretion to allow or prohibit the use of evidence of the victim's past sexual history (Anderson 2002). Since the only limitation on the admissibility of sexual history evidence is that it must be relevant to the case and that its relevance is not outweighed by the prejudicial nature of the evidence, Anderson points out that these new laws really do not operate as rape shield laws as these are the same

²³ Connecticut, Hawaii, Illinois, Iowa, Mississippi, New York, North Dakota, Oregon, Tennessee, Texas, and Utah.

²⁴ Some Constitutional catch-all statutes also allow evidence that the alleged victim engaged in prostitution.

limitations that existed for sexual history evidence prior to the enactment of rape shield laws. That is, the discretion granted to judges under these rape shield laws is “exactly the discretion granted to judges before rape shield laws came into effect.” (Anderson 2002: 63).

Finally, the rape shield laws in four states are *evidentiary purpose laws*, which limit the admissibility of sexual history evidence depending on the stated purpose for using such evidence. Specifically, in California and Delaware, sexual history evidence is admissible *only* for the purpose of attacking the credibility of the victim. Conversely, in Nevada and Washington, the victim’s prior sexual history is admissible *only* to prove that the victim consented to the sexual activity in question (Anderson 2002). Since rape law reformers sought to prohibit the use of sexual history evidence to discredit the victim or challenge the victim’s lack of consent, these evidentiary purpose rape shield laws, which allow for such use, are considered weak rape shield laws.

Overall, although almost all states passed some form of rape shield law, only about half of the states (26) passed the strongest type of rape shield law – the legislated exception laws - by 2002. Given that some of the weaker rape shield laws (i.e., judicial discretion laws) do not provide any more protection against using evidence of the victim’s past sexual history to discredit the victim’s testimony, the efforts to pass the rape shield laws were only moderately successful.

Success of Efforts to Prohibit the Use of Cautionary Jury Instructions

While strong arguments were made against the use of the cautionary jury instructions, the efforts to prohibit the use of the cautionary jury instructions were only marginally successful. The cautionary jury instructions have been criticized for not being based upon any empirical facts (Morris 1988). Morris (1988) examined the validity of the three underlying elements of the

cautionary jury instruction – that rape is an accusation that is (1) easy to make, (2) hard to disprove, and (3) that the testimony of a rape victim warrants more consideration in assessing truthfulness than the testimony of other witnesses. In reviewing the empirical literature, Morris found that a large number of rapes are not reported to the police, there is a low conviction rate for rape cases, and that there is no evidence to suggest that there are any differences in the rate of false reports for rape compared to other crimes. Therefore, Morris concluded that there is no empirical evidence to justify the need for cautionary jury instructions.

Although states began prohibiting the use of cautionary jury instructions in 1970 and the cautionary jury instructions have been eliminated or prohibited in most states, thirteen states still allow, but do not require, the use of cautionary jury instructions.²⁵ Twenty states prohibited the use of cautionary jury instructions through case law (Anderson 2004).²⁶ Additionally, eight states eliminated the cautionary jury instructions via legislative changes such that their statutes now explicitly prohibit the use of cautionary jury instructions (Anderson 2004).²⁷ The remaining states either do not mention the cautionary jury instructions at all or they discuss the justification for the cautionary jury instructions, but they do not comment on whether or not they can be used.²⁸

²⁵ Nebraska, Oklahoma, Tennessee, Texas, Arkansas, Connecticut, Mississippi, Delaware, Hawaii, Kansas, Maine, New Hampshire, New Mexico, West Virginia, Wisconsin

²⁶ D.C. 1976, Alaska 1980, Arizona 1975, California 1975, Florida 1986, Georgia 1904, Idaho 1978, Indiana 1972, Iowa 1975, Louisiana 1974, Missouri 1925, Montana 1984, Nevada 1995, North Dakota 1984, Ohio 1903, Oregon 1983, Rhode Island 1985, Utah 1977, Virginia 1895, Washington 1971, and Wyoming 1986 (Anderson, 2004).

²⁷ In seven states (Colorado, Iowa, Maryland, Minnesota, Nevada, Pennsylvania, and South Dakota), the statutes explicitly prohibit the use of cautionary jury instructions and Florida prohibits any comments from the judge in regards to the credibility of the alleged victim/witness) (Anderson 2004).

²⁸ In Alabama, Illinois, Kentucky, Michigan, and South Carolina, courts have discussed the reasoning behind the cautionary jury instructions, but they have not made any statements in regards to its use; Massachusetts, New Jersey, New York, North Carolina, and Vermont have no mention of the cautionary jury instructions) (Anderson 2004).

Success of Efforts to Change the Penalty Structure for Rape and Sexual Assault

Since there originally was only one rape statute, there was also only one penalty specified for rape. Almost all states made at least some changes to the penalties for rape/sexual assault offenses (Searles and Berger 1988). While changes in the penalty for rape and/or sexual assault were a part of some of the other reforms discussed above (i.e., creating a lesser penalty for spousal rape), there were other reforms to the penalty structure that were not necessarily tied to other reforms. Specifically, reformers pushed for the creation of graded penalties for sexual offenses that increased in severity according to the seriousness of the offense. According to Searles and Berger's (1988) review of the rape laws in 1986, seven states created rape/sexual assault statutes that define the offenses on a single continuum (i.e., first, second, third, and fourth degree rape) with more severe penalties for first degree offenses compared to second, third, and/or fourth degree offenses.²⁹ Thirty-four states created different offenses (i.e., aggravated sexual assault, sexual misconduct, etc) that vary in seriousness (i.e., offender's use of a weapon, victim's injury, etc.) and carry more severe penalties for the more serious offenses.³⁰ Reformers also advocated for the adoption of mandatory minimum sentences, which specify a minimum number of years an offender must serve in prison if convicted, for the most serious rape/sexual assault offense (i.e., first degree rape). According to Searles and Berger's (1988) review of the status of rape law reforms in 1986, thirty three states passed mandatory minimum sentences for the most serious rape/sexual assault offense. The minimum number of years specified, however, varies considerably among these states (from one or two years to life without parole).³¹

²⁹ Connecticut, Michigan, Minnesota, New Hampshire, Vermont, Wisconsin, and Wyoming.

³⁰ Alabama, Alaska, Arkansas, Colorado, Delaware, Florida, Georgia, Hawaii, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Nebraska, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, and West Virginia.

³¹ Searles and Berger (1988) report that as of 1986, Connecticut, Georgia, Idaho, Montana, Nebraska, and New York all had a mandatory minimum sentence of one or two years. States with a minimum sentence of three or four years

Summary of the Success of the Rape Law Reform Movement

Overall, the rape law reform movement was successful in changing at least some aspects of the rape law in all states. From Berger et al.'s (1988) overview of the status of rape law reforms in the mid-1980s, they conclude that the variation in the success of the adoption of the different dimensions of rape law reform led to the "coexistence of traditional and feminist elements in contemporary rape statutes" (p. 345). While it is evident that there is significant variation in the adoption of rape law reforms, the factors that can account for this variation are less evident. According to Berger et al. (1988), this variation "is symbolic of the current status of women" (p. 345). That is, as Berger et al. explain, "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" (p. 345). Furthermore, given the disagreements between feminist and non-feminist reformers over which reforms states should adopt, Berger et al. (1988: 348) suggest that the lack of success of some reforms may have been due to the "ideologies and social control objectives" of the non-feminist reformers. Other researchers (i.e., Spohn and Horney 1992) suggest that the lack of success of some of the rape law reforms may have been due to the controversial nature of these reforms.

Early observations and explanations for the variation in the adoption of rape law reforms led researchers to examine the social and political factors that may be able to account for this variation. Thus, in the next chapter, I first discuss three research studies that examine the social

included Alaska, California, and Colorado. Also, states with a minimum sentence of five to six years included Arizona, Illinois, Indiana, Kansas, Missouri, Nevada, Ohio, Oklahoma, Texas, Utah, Virginia, and Wyoming. States with a 10 to 12 year minimum sentence included Alabama, Arkansas, Kentucky, New Jersey, New Mexico, Rhode Island. The mandatory minimum sentence was 15 years in West Virginia and 20 years in Delaware and Tennessee. Life in prison was the mandatory minimum sentence in North Carolina and life without parole was the mandatory minimum sentence in Iowa and Louisiana.

and political factors associated with the adoption of rape law reforms. Also, since the rape law reforms were concerned primarily with extending the legal protections against sexual assault for women, I then discuss other research on the adoption of legislation protecting the rights of women that may offer some insight into the adoption of different rape law reforms.

CHAPTER 4

PREVIOUS RESEARCH

In the previous chapters, I discussed the history of the rape laws in the United States, the social conditions that contributed to the rise of the rape law reform movement, the specific goals of the rape law reform movement, and the resulting changes to states' rape laws. Overall, after reviewing the history of the U.S. rape laws and the success of the rape law reform efforts, it is apparent that there is considerable variation in the rape laws in the United States. Although it is useful to review the history of the rape laws and efforts to pass rape law reforms, there is still a need to understand why some states have passed rape law reforms while others have resisted such changes. Thus, in this section, I review the literature examining the social and political factors and processes linked to the adoption of rape law reforms. Following the review of the literature on rape law reforms, I then discuss previous research investigating the factors associated with the adoption of other women's rights legislation.

Research on the Adoption of Rape Law Reforms

To date, only three studies (Berger et al. 1991; Call et al. 1991; McMahon-Howard et al. forthcoming 2010) examine the social and political factors that contribute to the success of rape law reforms in the United States. Based on the status of U.S. rape laws in the mid 1980s, two of these studies (Berger et al. 1991; Call et al. 1991) use cross-sectional analyses to investigate the associations between social, political, and gender characteristics of states and the adoption of rape law reforms. While Call et al.'s cross-sectional analysis focuses on the adoption of rape shield laws, Berger et al.'s cross-sectional analysis analyzes the passage of multiple dimensions

of rape law reform. Building and improving upon these two studies, McMahon-Howard et al. use data from 1976 to 2002 to conduct an event history analysis examining the social and political factors that affect the likelihood of the adoption of marital rape laws. In all of these studies, the researchers seek to identify several features of gender relations, state politics, and policymaking that influence the adoption of rape law reforms. Thus, the researchers examine the relationships between the adoption of rape law reforms and factors such as women's participation in the labor force and political system, the political ideology and judicial environment of the state, as well as socioeconomic conditions of the state. Since Call et al.'s study is similar to Berger et al.'s study, I first discuss the results of these two cross-sectional analyses, and then I discuss the findings from McMahon-Howard et al.'s research.

Overall, the results from Call et al.'s (1991) study provide little support for their hypotheses. While their results suggest that political and socioeconomic characteristics of states are associated with the adoption of strong rape shield laws, many of Call et al.'s findings are contrary to their expectations and somewhat contradictory. Specifically, although the researchers argue that states with large Baptist populations are *less* likely to support women's rights legislation and states that supported the ERA are *more* likely to support other women's rights legislation, they find strong rape shield laws are found in states with large Baptist populations, while support for the ERA was not associated with the passage of strong rape shield laws. Also, contrary to their expectations, Call et al. find that strong rape shield laws are associated with *low* crime rates. Consistent with their expectations, however, the researchers find that strong shield laws are found in states with large black populations, sparse populations, and liberal Democratic parties and electorates.

In a more comprehensive analysis of state adoption of rape law reforms, Berger et al. (1991) examine the effects of gender equality and the political culture in each state on the adoption of rape law reforms. Whereas Call et al.'s (1991) study only examines the efforts to reform one element of rape law, Berger et al.'s (1991) study examines four dimensions of rape law reform (the definitional dimension, consent dimension, evidence dimension, and spouse dimension).³² Berger identifies 11 elements of rape law that make up each of the four dimensions of rape law reform.³³ Using these 11 elements of rape law, Berger et al. (1991) create an overall rape law reform index for each state as well as separate indexes for each of the four different dimensions of rape law reform. A separate measure of whether the statute criminalized nonconsensual sexual contact not involving force or other extreme circumstances is also included.

Overall, Berger et al. (1991) find that characteristics of states' gender/feminist environment, political environment, and law-and-order environment are related to the adoption of rape law reforms. Specifically, Berger et al. (1991) find that one of their feminist/gender indexes (NOW membership, political-legal resource organizations, women legislators, economic equality, and legal equality) is related to one of the dimensions of rape law reform - the criminalization of nonconsensual sexual contact not involving force or extreme circumstances.

³² The definitional dimension relates to whether the statute defines rape in gender neutral terms, uses terms such as sexual assault or sexual battery instead of "rape," or defines the offense on a continuum of the degree of seriousness. The consent dimension relates to whether the statute prohibits the cohabitant – voluntary companion exemption, the mistake-of-age defense, and the mistake-of-incapacitation defense. The evidence dimension relates to whether or not the statute allows the victim's past sexual history to be admissible in court. The spouse dimension relates to whether the statute includes a spousal exemption or if there are limitations on the spousal exemption.

³³ The 11 elements or components include 1) the statute defines the primary offense in regards to sexual assault instead of "rape," 2) there is a graded offense structure that defines and punishes the offenses based on the degree of seriousness, 3) the statute is gender-neutral in regards to the victim and offender, 4) the statutes recognize nonconsensual sexual contact without the presence of force as a crime, 5) the statutes do not contain a spousal exemption, 6) the statutes allow spousal exemptions but provide exceptions, 7) the statutes include a voluntary social companion exemption, 8) the statutes do not allow the use of evidence of the victim's past sexual history with the defendant, 9) the statutes do not allow the use of evidence of the victim's past sexual history with persons other than the defendant, 10) the statutes do not allow the use of a mistake-of-age defense, and 11) the statutes do not allow a mistake-of-incapacity defense.

The other feminist/gender index (women lawyers and rape crisis centers), however, is not related to any of the dimensions of rape law reform. One of the political environment indexes (general policy liberalism, political ideology, and religious fundamentalism) is negatively related to the consent dimension and positively related to the evidence dimension. The increase in the rape rate is positively related to the overall rape reform index and the definition dimension. The rape rate is also positively related to statutes that either removed the spousal exemption or put limitations on the spousal exemption.

Taken together, the results from Berger et al.'s study and Call et al.'s study fail to provide consistent findings with regard to the social and political factors associated with the adoption of rape law reforms. Importantly, except for the significant finding for nonconsensual sexual contact, both Call et al. and Berger et al. fail to find the expected relationship between gender/feminist characteristics of states and the adoption of rape law reforms. In fact, of all of their measures, Berger et al.'s feminist/gender indexes "are the least likely to display significant relationships with measures of rape law reform" (p. 232). Also, based upon the results of both studies, the association between political liberalism and the adoption of rape law reforms varies across the different dimensions. Call et al. find a positive association between strong rape shield laws and liberal Democratic parties and liberal electorates and Berger et al. find that political liberalism is positively associated with the adoption of the evidence dimension. For other dimensions of rape law reform, however, the relationship is either negative or non-significant. Specifically, Berger et al.'s results suggest that there is a negative and significant relationship between political liberalism and the adoption of the consent dimension but no significant relationship for the definition and spousal dimensions. While Call et al. find a negative association between the crime rate and the adoption of strong shield laws, Berger et al. find

strong, positive associations between the rape rate and the overall rape law reform index, the definition index, and the spouse index.

Although there are possible explanations for these contradictory findings, it is important to note that both of these studies have major limitations, which prohibit any definitive conclusions regarding the association between social and political characteristics and the adoption of rape law reforms. Importantly, a major limitation of Call et al.'s (1991) and Berger et al.'s (1991) studies is that both are based on cross-sectional data, which does not allow for an analysis of the changing nature of gender equality and the overall political culture within each state. Also, a cross-sectional analysis of rape law reform is limited in that it is unable to establish a causal time order effect. For example, Berger et al. (1991) examine the effect of the percentage of women in state legislatures in 1982 and 1984 on the status of states' rape laws in 1986. A state may have changed certain dimensions of its rape law in the 1970s or early 1980s, which would have preceded their measures of their independent variables (i.e., percent of women in the state legislature in 1982 and 1984).

Also, the results of both Call et al.'s study and Berger et al.'s study are limited by the fact that they are based on the status of rape laws in 1986. At that point, there were still changes being made to rape laws nationwide. In fact, many of the rape law reforms were not passed until the mid 1980s and on into the 1990s. Thus, these analyses of the rape law reforms were a bit premature. In addition to these data limitations, both studies are limited in scope. Although Berger et al.'s (1991) study was more comprehensive than Call et al.'s (1991) study, Berger et al.'s study was still limited in that they combined changes in multiple elements of rape law to create indexes for each dimension of rape law reform. Thus, in only examining the broader dimensions of rape law, Berger et al.'s study does not provide any information on the factors

associated with the reforms of the individual elements of rape law. Furthermore, both studies are limited in that neither study considers the effects that other states may have on each other in regard to the adoption of rape law reforms.

In a more recent analysis, which moves beyond the use of cross-sectional analyses and improves upon Berger et al.'s (1991) and Call et al.'s (1991) research, McMahon-Howard et al. (forthcoming 2010) use an event history analysis to examine the social and political factors that affect the elimination of the marital rape exemptions in the United States from 1976 to 2002. McMahon-Howard et al. advance the research on the law formation process by considering the effects of incremental changes in a law, an effect previously ignored by previous researchers. That is, McMahon-Howard et al. examine if passing a number of weaker reforms, which limit the spousal exemption, increases or decreases a state's likelihood of passing a strong reform, which completely eliminates the marital rape exemption. In exploring the effect of the number of previous changes in a state's marital rape law on the likelihood of completely eliminating the exemption, the researchers investigate whether incremental changes in the marital rape law slowly moved states toward completely abolishing their marital rape exemptions or if making incremental changes was a resistance strategy to avoid completely eliminating the exemptions.

Additionally, McMahon-Howard et al. (forthcoming 2010) push the research on the law formation process further by examining how other states may affect a state's likelihood of abolishing the marital rape exemption. For example, McMahon-Howard et al. examine whether being in close proximity to other states that completely abolished their spousal rape exemptions affects a state's likelihood of eliminating their exemption. More specifically, in using a heterogeneous diffusion model, McMahon-Howard et al. (forthcoming 2010) are able to account for the possibility that some states are more infectious, which means that they have a stronger

influence on other states, and some states are more susceptible, which means that they are more vulnerable to the influence from other states, in the diffusion of legal reforms.

Similar to Call et al. (1991) and Berger et al. (1991), McMahon-Howard et al. (forthcoming 2010) find that certain social characteristics of a state, such as a higher proportion of whites in the population and a higher female labor force participation rate, significantly affect a state's likelihood of completely eliminating their marital rape exemption. Also, they found that NOW membership had a positive effect on a state's likelihood of passing a strong marital rape law during the early period of the rape law reform movement. Furthermore, in examining the effects of previous changes in a state's marital rape law, McMahon-Howard et al. (forthcoming 2010) find that an increase in the number of prior, weaker changes to a state's marital rape law significantly decreases the likelihood of completely eliminating the marital rape exemption. That is, while all states made at least one change to their marital rape law, some states completely eliminated their marital exemption with one reform, other states made several changes to their marital rape law before completely eliminating their exemption, and other states made one or more changes and continued to retain partial exemptions. In finding a strong, negative relationship between the number of previous changes and a state's likelihood of completely eliminating their exemption, McMahon-Howard et al.'s (forthcoming 2010) results indicate that making small, incremental changes significantly decreases a state's likelihood of passing a stronger marital rape law.

McMahon-Howard et al. (forthcoming 2010) also find that moving beyond a simple conflict model by incorporating a heterogeneous diffusion model greatly improves the ability to predict a state's likelihood of adopting a strong marital rape law. First, using this more complex model of the law formation process, their research points to the importance of examining how

the adoption of a law reform in other states affect a state's likelihood of adopting a similar reform. Importantly, in regard to a state's spatial proximity to other states that completely eliminated their spousal exemptions, McMahon-Howard et al.'s results indicate that spatial proximity has a negative effect on the spread of marital rape laws. Being in close proximity to other states that eliminated their exemption *decreases* a state's likelihood of abolishing the exemption. As eliminating the marital rape exemption was controversial, this finding supports the claim that the process of diffusion may operate differently for more controversial laws. Instead of close proximity to the source of diffusion increasing the likelihood of the adoption of a new law, as normally expected by the process of diffusion, being in close proximity to states that have passed a controversial law decreases the likelihood of adopting a similar law for nearby states.

Also, McMahon-Howard et al.'s (forthcoming 2010) findings demonstrate the importance of accounting for the differences in states' infectiousness and susceptibility in examining how states influence each other in the law formation process. Specifically, McMahon-Howard et al. find a significant, positive relationship between infectiousness and the likelihood of the adoption of marital rape laws. As infectiousness increases, the likelihood that at-risk states will adopt a strong marital rape law increases. Also, the researchers find that states that previously ratified the Equal Rights Amendment are more susceptible to the diffusion of strong marital rape laws, which increases their likelihood of abolishing the spousal exemption, in the early reform period, but not in the late reform period.

Overall, the previous research on the factors associated with the adoption of rape law reforms contains mixed findings. In particular, the findings in regard to the gender climate of the state are mixed. Call et al. (1991) find that their measures tapping into supportive perspectives

regarding women showed either no relationship to the adoption of strong rape shield laws or were negatively associated with the adoption of rape shield laws. On the other hand, Berger et al. (1991) and McMahon-Howard et al. (forthcoming 2010) find a positive relationship between the gender environment and the adoption of rape law reforms. Specifically, Berger et al. find a weak relationship between the gender environment, measured by factors such as NOW membership and female legislators, and the adoption of the consent dimension of rape law reform. Also, McMahon-Howard et al. find that states with a higher proportion of women in the labor force are more likely to adopt strong marital rape laws and states that ratified the ERA are more susceptible to the diffusion process and are more likely to adopt marital rape laws during the early reform period.

While these three studies produce mixed findings regarding the association between the gender environment and the adoption of rape law reforms, they also produce mixed findings in regard to the social and political environment of the state. Call et al. find strong shield laws are positively associated with liberal Democratic parties and liberal electorates, but Berger et al. find that the political environment, measured by factors such as policy liberalism and political ideology, is positively associated with the evidence dimension and negatively associated with the consent dimension. McMahon-Howard et al. (forthcoming 2010), however, find no significant effects of the political characteristics of a state on the likelihood of adopting marital rape laws. Also, although Call et al. (1991) find that strong rape shield laws are positively associated with large Black populations, McMahon-Howard et al. (forthcoming 2010) find that states with large Black populations are less likely to adopt strong marital rape laws. Also, with regard to the crime rate or rape rate, Call et al. find a negative association for the adoption of strong shield laws, Berger et al. find strong, positive associations for the overall rape law reform index, the

definition index, and the spouse index, and McMahon-Howard et al. find that the violent crime rate does not significantly affect the adoption of strong marital rape laws.

Differential Effects of Social and Political Factors on Rape Law Reforms?

Although the findings from these three studies seem contradictory and problematic at first, they actually may be indicative of the “complex and controversial” issues involved in rape law and rape law reforms (Largen 1988: 247). That is, these conflicting results may indicate that the adoption of different law reforms is associated with different social and political factors. Indeed, as Call et al. argue, “rape law reforms are not susceptible to simplistic, ideological characterization” (p. 786). Given that feminist activists and law-and-order groups, which are groups with different ideological backgrounds, were the primary forces behind the rape law reforms, it is possible that the successful reform of one element of rape law is associated with the strength of liberal forces, while the successful reforms of other elements are associated with the strength of conservative forces.

Some rape law reforms primarily support feminist interests (i.e., criminalizing spousal rape in the interest of providing all women legal protection against rape regardless of their relationship to the perpetrator), while other reforms may support both feminist interests and crime control interests (i.e., protecting women’s rights and promoting equality while getting tough on crime and improving crime control). Therefore, the likelihood of reforming certain elements of the rape law (i.e., redefining rape as sexual assault, criminalizing spousal rape, etc) may be related primarily to the strength of feminist activism, while the likelihood of reforming other elements (i.e., eliminating the resistance requirement) may be related primarily to both the strength of feminist activism and the strength of conservative law-and-order groups. Therefore,

the political climate of a state may differentially affect a state's likelihood of adopting certain rape law reforms.

Furthermore, since efforts to reform each element of rape law involve somewhat different social concerns in regard to rape, the socioeconomic characteristics of a state, which shape the social problems legislators must address, may differentially affect the outcome of rape law reforms. For example, for different reasons, the urbanicity of a state may negatively affect the adoption of gender-neutral statutes but positively affect the adoption of a strong rape shield law. That is, since one purpose of creating gender-neutral rape statutes is to criminalize male-on-male rape, states with more rural populations may be less likely to adopt gender-neutral rape laws due to the greater stigma attached to homosexuality in rural versus urban areas (Annan 2006). On the other hand, as Call et al. (1991) suggest, more rural states may be more likely to pass strong rape shield laws as the concern for protecting the privacy of the victim is greater in rural areas where the members of the community are well acquainted with each other than in urban areas where the community is more impersonal.

Additionally, since some rape law reforms were more controversial than others, social factors and processes may differentially affect the adoption of the controversial and non-controversial rape law reforms. For example, since McMahon-Howard et al. (forthcoming 2010) found that a state's spatial proximity to other states that adopted a marital rape law had a negative effect on that state's likelihood of adopting the same marital rape law, they suggest that the process of diffusion may operate differently for the spread of controversial and non-controversial rape law reforms. Thus, since these researchers suggest that spatial proximity may have a negative effect for more controversial laws, then spatial proximity may negatively affect the spread of the more controversial rape law reforms (i.e., redefining rape as sexual assault,

creating rape shield laws, and eliminating the spousal exemptions), while spatial proximity may have a positive effect on less controversial rape law reforms (gender-neutral statutes, eliminating the cautionary jury instructions, and eliminating the resistance requirement). Overall, based upon the findings from these previous studies, it is reasonable to suggest that social and political factors may differentially affect a state's likelihood of passing each of the different rape law reforms.

Predictors of the Adoption of Laws Protecting the Rights of Women

While there are only three studies that directly examine the factors that affect the adoption of rape law reforms, research on the social and political factors related to the passage of other women's rights legislation may offer some insight into the conditions favorable to adopting rape law reforms. Importantly, McCammon, Campbell, Granberg, and Mowery (2001) suggest that the "gendered opportunity structure" plays a large role in determining the success or failure of proposed legislation regarding the rights and protections of women. McCammon et al. (2001) define gendered opportunities as "opportunities emerging from changing gender relations and altered views about gender" (p. 66). They argue that as gender relations change, attitudes towards women change and affect the decisions of policymakers. More specifically, as more women participate in the public sphere (i.e., labor force, politics, etc.), there is an increased likelihood that legislators will support policies that extend the rights and protections of women.

Several researchers (Caiazza 2002; Ramirez and McEnaney 1997; Thomas and Welch 1991) examine the effects of the changing status of women, which they measure by changes in women's labor force participation rate and changes in their representation in state legislatures, on the passage of women's rights legislation. While these researchers find that increases in the proportion of women working in the paid labor force increase the likelihood of the adoption of

women's suffrage (McCammon et al. 2001; Ramirez and McEnaney 1997), liberalized abortion laws (Ramirez and McEnaney 1997), the consent dimension of rape law reforms (Berger et al. 1991), and strong marital rape laws (McMahon-Howard et al. forthcoming 2010), there are mixed findings in regard to how women's political participation affects the adoption of women's rights legislation.

Women's increased participation in politics can be seen in the increase in the number of women state legislators. In the early 1970s, only 5 percent of the state legislators were women (Thomas and Welch 1991), but by 2002, women made up 22 percent of the state legislators. From interviews with male and female state legislators, Reingold (1992) finds that female legislators are more likely than male legislators to be committed to advancing women's interests. Additionally, Thomas and Welch (1991) surveyed male and female legislators from various states and found that female legislators not only supported women's interests more than male legislators, but that these issues were given a higher priority by the female legislators compared to the male legislators.

Despite the fact that there are more women legislators than in the past and that women legislators are more likely to represent women's issues, women legislators are still far outnumbered by their male counterparts. So, the question remains, while women have gained access to positions of political power, have they also gained the *ability* to influence policies concerning women? To answer this question, Caiazza (2002) examines the proportion of women in the state legislature and other elected offices for each state and the number of "women-friendly" policies each state had adopted. Policies examined in Caiazza's analysis include legislation aimed at advancing and/or protecting the rights of women with regard to domestic violence and sexual assault, child support, welfare, employment/unemployment benefits,

reproductive rights, hate crimes, and same-sex marriages/civil unions. Caiazza finds that states with higher proportions of female representatives have significantly more women friendly policies.

Similarly, an increase in women's political participation, as evidenced by higher proportions of women in the state legislature and/or higher proportions of female lawyers, is associated with a higher likelihood that a state will adopt women's suffrage (McCammon et al. 2001), police reform legislation regarding domestic violence (Murphy 1997), rape law reforms (Berger et al. 1991) and "women-friendly" policies in general (i.e., legislation regarding domestic violence and sexual assault, child support, reproductive rights) (Caiazza 2002). These findings suggest that as women enter into positions of power, they gain a greater ability to influence laws in favor of women. Here, as women break through the "separate spheres" both literally and ideologically, a system of gender equality is more likely to develop. Thus, these findings support McCammon et al.'s (2001) hypothesis that the gendered opportunity structure has a significant effect on the success or failure of policies concerning women.

More recent research, however, suggests that the percentage of women in the state legislature has no effect on the adoption of women's rights legislation. Specifically, the percentage of women legislators had no effect on a state's likelihood of ratifying the Equal Rights Amendment (Soule and Olzak 2004), and it failed to affect a state's likelihood of passing a strong marital rape law (McMahon-Howard et al. forthcoming 2010). Thus, there are mixed findings with regard to the effect of women legislators on the adoption of women's rights legislation.

Also, while some researchers find that certain aspects of the political environment are conducive to the success of legislation advancing the rights and protections of women

(McCammon et al. 2001; Soule and Olzak 2004), others find no relationship between the political climate and the adoption of women's rights legislation (McMahon-Howard et al. forthcoming 2010). Specifically, researchers find that states with more liberal ideologies and states with a higher percentage of Democrats in the state legislature are more likely to pass domestic violence legislation (Murphy 1997) and the ERA (Soule and Olzak 2004). For example, in examining the success of state level ratification of the Equal Rights Amendment (ERA), Soule and Olzak (2004) find that states with a more liberal government ideology were more likely to ratify the ERA. Also, states with a high percent of Democrats in the state legislature were more likely to ratify the ERA when these states also had a high number of American Association of University Women (AAUW) chapters. According to Soule and Olzak (2004), their findings indicate that having elite allies (Democrats in the state legislature) is an important factor in determining the success of social movements aimed at passing the ERA. On the other hand, McMahon-Howard et al. (forthcoming 2010) failed to find a significant relationship between the political climate of a state and the adoption of a strong marital rape law. Therefore, there are mixed findings in regard to the relationship between the political environment and the adoption of women's rights legislation.

Summary of Previous Research

In sum, previous research provides conflicting findings regarding the social and political factors associated with the adoption of rape law reforms and other women's rights legislation. Perhaps, as Call et al. suggest, the predictors of the adoption of rape law reforms involve more than simple ideological factors. With diverse interest groups involved in the rape law reform movement, it is possible that different factors are needed to predict the adoption of the specific reforms for each element of rape law. While this is a plausible explanation, a longitudinal

analysis of the causal factors associated with the adoption of multiple rape law reforms is needed to test this possibility. Therefore, for the proposed study, I use data from 1970 to the present to conduct several event history analyses examining the factors that predict the likelihood of the adoption of several reforms aimed at changing different elements of the rape law in each state.

Before presenting the methods I use for this study, I discuss the theoretical perspectives that guide my analyses. Thus, in the next chapter, I first look to conflict theory, which focuses on the power inequalities between different groups (Chambliss 1993; Quinney 1970; Vold, Bernard, and Snipes 2002), to guide my analysis of the adoption of rape law reforms in the United States. Then, I discuss political opportunity theory, which points to the importance of a state's political climate for the adoption of new policies. Conflict theory and political opportunity theory, however, do not take into account how states can influence each other's policies. After discussing conflict theory and political opportunity theory, therefore, I turn to the research on the process of diffusion (Grattet et al. 1998; Strang and Tuma 1993; Soule and Earl 2001; Soule and Zylan 1997) to examine the possible effects that other states can have on a state's likelihood of adopting a particular policy.

CHAPTER 5

THEORETICAL PERSPECTIVES AND HYPOTHESES

In this chapter, I review the basic tenants of conflict theory, political opportunity theory, and the diffusion framework. Also, I discuss how these perspectives can be used together to provide a better understanding of the law formation process in general and the adoption of rape law reforms in particular. While discussing how conflict theory, political opportunity theory, and the process of diffusion can guide my analyses of the adoption of rape law reforms, I present the hypotheses for my study. Finally, I discuss the limitations of these theoretical perspectives. In addressing a neglected area of research, I discuss the need to examine the adoption of law reforms within the context of the larger law reform movement. Here, I present hypotheses regarding the effects of incremental reforms and the effects of the prior adoption of other rape law reforms on the adoption of each rape law reform.

Overview of Theoretical Perspectives

After reviewing the history of rape laws and the efforts to pass rape law reforms, the question arises as to why some states reformed certain elements of their rape law, while others failed to pass these reforms. To address this issue, I utilize insights from conflict theory, political opportunity theory, and the diffusion framework to predict policy change. First, I turn to conflict theory to examine if the conflicting interests and power differences between men and women can explain the state-to-state variation in the success of rape law reforms. I then address the role of social movements in the process of legal change and use political opportunity theory to identify aspects of the political environment that either enhance or inhibit lawmakers'

willingness to pass rape law reforms (Soule and Olzak 2004). Next, I turn to the diffusion literature to examine how states influence each other in the spread of rape law reforms and I explore how heterogeneous diffusion models can account for the possibility that certain characteristics of states make some states more influential and other characteristics make some states more vulnerable in the process of diffusion. Finally, in the last part of the chapter, I discuss how these theoretical perspectives fail to address the controversial nature of some law reforms and how partial reforms and related reforms affect policy outcomes. Here, I explore how political opportunity theory may be able to help address a gap in the literature on legal change by providing a theoretical rationale for how the adoption of weaker legislation affects the adoption of stronger legislation as well as for how the adoption of other rape law reforms affects the adoption of each rape law reform.

By using conflict theory, political opportunity theory, and the diffusion perspective in conjunction with one another, I aim to address several important empirical and theoretical questions regarding the adoption of rape law reforms, specifically, and the process of legal change, more generally. Empirically, I seek to determine if the same social factors and processes consistently predict the adoption of multiple rape law reforms. Since feminists and law-and-order groups had different interests in reforming the rape laws, some rape law reforms, such as the adoption of gender-neutral rape/sexual assault statutes, were pushed by both groups while other rape law reforms, such as expanding the traditional crime of rape to include other forms of sexual assault, were pushed by feminists but resisted by law-and-order groups. Therefore, addressing this issue will help determine if the predictions from each of these theoretical perspectives hold up despite the controversial nature of different, but related, policies. Theoretically, I seek to fill in a gap in the literature on legal change by examining if the

underlying logic of political opportunity theory can be used to predict how the adoption of a weaker law reform affects the adoption of a stronger version of the law reform and to predict how the adoption of other law reforms affects the adoption of a related law reform. Below, I outline the basic premises of each perspective.

Conflict Theory

Explaining why certain behaviors have been criminalized while others have not, conflict theorists argue that laws are created to serve and protect the interests of those in power (Chambliss 1993; Quinney 1970; Vold et al. 2002). Those who hold the most lawmaking power are those who “produce legislative majorities” (Vold et al. 2002:230). Historically and still today, white, middle-class men have dominated the lawmaking bodies in the United States. As Quinney (1970) states, “law is made by men, representing special interests, who have the power to translate their interests into public policy” (p. 35). As a result, Quinney argues that many laws in the United States have been created to serve the interests of white, middle-class men at the expense of the less powerful groups in society.

As I discussed in the chapter on the history of rape laws, since rape laws were constructed originally to protect men’s property, it is clear that these laws were created to serve the interests of men and maintain men’s power over women. As Catherine MacKinnon (1989) explains, these laws were created from the male point of view, and the state acts to maintain the social order to the benefit of men. Here, the law protects male power by maintaining men’s control over women (MacKinnon 1989). Explaining the relationship between gender, power, and law, MacKinnon (1989) states:

Those with power in civil society, not women, design its norms and institutions, which become the status quo. Those with power, not usually women, write constitutions, which become law’s highest standards. Those with power in political systems that women did

not design and from which women have been excluded write legislation, which sets ruling values (p. 238).

While MacKinnon (1989) provides a strong argument linking male dominance to the adoption of laws protecting men's interest, she does not offer any explanation as to why some states successfully pass women's rights legislation, including rape law reforms, while other states resist such changes.

According to conflict theorists, legal change emerges in an effort to resolve conflicts that arise as a result of changing social conditions (Chambliss 1993; Quinney 1970). Those in the position to make laws must respond to the contradictions and/or conflicts that arise between groups as a result of the contradictions between the existing laws and the existing social system. Therefore, conflict theorists contend that law creation is a "process aimed at the resolution of contradictions, conflicts, and dilemmas that are historically grounded in time and space and inherent in the structure of a particular political, economic, and social structure" (Chambliss 1993:9). Chambliss (1993) rejects the notion that the law changes gradually in response to changes in customs and beliefs. Instead, the law changes in response to overt conflict and opposition to the existing laws. Interest groups form to advocate for their collective interests and "groups that have the power to gain access to the decision-making process are able to translate their interest into public policy" (Quinney 1970:39).

When considering laws regarding the rights and protections of women, conflict theorists (i.e., Chambliss 1993; McGarrell and Costellano 1993) point specifically to changing gender relations as a social condition that may lead to contradictions and conflicts that must be resolved by policymakers. Chambliss (1993) points to changes in laws denying women the right to work or vote as examples of how lawmakers must respond to the conflicts and dilemmas that result from contradictions existent in the social system. These changes did not occur as a result of

gradual changes in customs and beliefs. Instead, when women began to challenge vehemently their institutionalized oppression, the lawmakers (men) had to address these conflicts and dilemmas. It was through women's violent and persistent opposition to exclusionary and discriminatory practices, policies, and laws that the biases and sexism of social institutions were exposed. As a result, "people responded to institutionalized contradictions between the ideology and the reality of the political and economic relations of the time" (p. 13). To address these conflicts and contradictions, lawmakers began to pass legislation granting women rights in the public sphere (i.e., voting rights).

Once new laws are passed, new contradictions are brought to light. In fact, once women gained the rights to work and vote, additional contradictions and conflicts arose regarding their status in the private sphere. That is, although women had gained certain rights in the public sphere, they still did not have certain rights in the private sphere (i.e., the right to refuse sex with their husbands). With their increased presence and power in the public sphere, however, women may gain the ability to influence policies concerning their rights in the private sphere. As Vold et al. (2002) state, "the greater a group's political and economic power, the more the criminal law in general tends to represent the values and interests of that group" (p. 241). Thus, as gender relations change and women gain more power, more conflicts arise and women become better able to translate their interests into public policy.

In regard to women's rights legislation, conflict theory predicts that states in which women have more economic and political power are more likely to pass women's rights legislation. Most research provides some support for this claim as researchers consistently find a signification relationship between women's labor force participation and the adoption of women's rights legislation. As mentioned in the previous chapter, researchers have found that

states with a higher proportion of women in the labor force are more likely to adopt strong marital rape laws (McMahon-Howard et al. forthcoming 2010), pass women's suffrage (McCammon et al. 2001; Ramirez and McEnaney 1997), and adopt liberalized abortion laws (Ramirez and McEnaney 1997). There are mixed findings, however, in regard to the effect of the percent of women in the state legislature on the adoption of women's rights legislation. While researchers have found that having a higher proportion of women in the state legislature and/or having a higher percentage of female lawyers is associated with the adoption of women's rights legislation (Berger et al. 1991; Caiazza 2002; McCammon et al. 2001; Murphy 1997), McMahon-Howard et al. (forthcoming 2010) failed to find a significant effect for the percentage of female legislators on the adoption of strong marital rape laws.

Political Opportunity Theory

Political opportunity theory focuses on the interaction between social movement characteristics and the political context (Meyer 2004). Specifically, political opportunity scholars predict how political factors external to the social movement affect a social movement's decision to mobilize, their choice of strategies and tactics, and their ability to affect policies (Meyer 2004). Central to the theory is the concept of the political opportunity structure, which refers to aspects of the political environment that "provide incentives for people to undertake collective action by affecting their expectations for success or failure" (Tarrow 1994: 85). Political opportunity theory suggests that aspects of the political environment, such as the presence of elite allies or the openness of the polity, enhance or constrain the mobilization and success of social movements. When the dynamics of the political system are perceived as favorable to the interests of a particular group, the group will mobilize and advocate for policy change.

Political opportunity theory was developed initially to explain social movement mobilization and protest emergence (Meyer and Minkoff 2004; Soule and Olzak 2004). The starting point for the theory was the idea that activists select goals and strategies that they believe will be most effective given the current political context. In other words, aspects of the political environment present political opportunities favorable to certain goals and strategies. Recently, political opportunity theory also has been used to explain policy outcomes. Although debated among political opportunity theorists, some scholars claim that the aspects of the political environment that instigate social movement mobilization are the same factors that affect policy outcomes (Cornwall et al. 2007; Meyer and Minkoff 2004; Soule and Olzak 2004). When applied to policy change, “political opportunity theorists argue that political factors external to the movement are important because variations in the larger political context can make government officials more or less willing to change policy” (Kane 2007: 216).

In general, researchers conceptualize political opportunities as factors that affect the “openness” of the government (Meyer and Minkoff 2004). Certain factors may create a general openness that creates political opportunities for mobilization and/or policy change for a variety of social movements. For example, Democratic control of Congress or the state legislature provides a political opportunity for mobilization and policy change across a number of social movements, such as the civil rights movement, the women’s movement, and the gay rights movement. Other political opportunities, however, may be issue specific in that they only provide political openings for particular constituencies (Meyer and Minkoff 2004). For example, in regard to the mobilization of the civil rights movement in the United States, policy decisions, such as the *Brown v. Board of Education* decision, and elected officials’ stated support for civil

rights, created a more open political environment specifically for civil rights activism (McAdam 1982).

In thinking in line of issue specific “openness,” McCammon et al. (2001) applied political opportunity theory to the adoption of women’s rights legislation and extended the theory to include gendered opportunity structures. Specifically, the researchers theorized that changes in gender relations create a gendered opportunity for the adoption of women’s rights legislation. That is, changing gender relations, such as women entering the public sphere, alter lawmakers’ views and attitudes towards women’s roles and gender expectations. Changes in their attitudes towards gender, in turn, increase policymakers’ willingness to pass women’s rights legislation. While changes in the formal political landscape and the balance of political power create *political* opportunities for policy change, shifts in the structure of gender relations create *gendered* opportunities for the adoption of certain policies. Offering support for this notion, McCammon et al. found that states with higher percentages of female college students, female lawyers and doctors, and higher numbers of prominent women’s organizations were more likely to pass women’s suffrage. Thus, consistent with predictions from conflict theory, as women enter the public sphere and gain more economic power, this creates a gendered opportunity for the adoption of women’s rights legislation.

Therefore, it is important to consider both the gendered opportunity structure and the political opportunity structure when it comes to the adoption of women’s rights legislation. In regard to women’s rights legislation, political opportunity theory suggests that certain characteristics of the political climate, such as the percentage of Democrats in the state legislature and having a more liberal government ideology, create a favorable political opportunity for the adoption of women’s rights legislation; however, previous research provides

mixed support for the effect of political opportunity structures on women's rights legislation. For example, Soule and Olzak (2004) found that having a larger percentage of Democrats in the state legislature increased a state's likelihood of ratifying the ERA *only when* the state also had a large number of AAUW chapters. Also, while Soule and Olzak (2004) found that states with a more liberal government ideology were more likely to ratify the ERA, McMahon-Howard et al. (forthcoming 2010) found that having a liberal government ideology was unrelated to the adoption of strong marital rape laws.

The Diffusion Framework

The diffusion framework is used to explain how a new idea or event spreads from one or more actors in a social system to other actors in the social system. Rogers (2003) defines diffusion as "the process in which an innovation is communicated through certain channels over time among the members of a social system" (p. 5). The basic assumption of the diffusion framework is that new ideas, events, or policies spread as actors communicate and share information with one another. Specifically in regard to legal change, diffusion researchers suggest that when policymakers are considering the adoption of a particular law, they may review the policies adopted by nearby states to guide their decision making process (Grattet et al. 1998). In an explanation of the process of diffusion, Grattet et al. (1998) state:

Because policymakers have a limited understanding of what constitutes optimal policy, especially in terms of acceptability to key constituencies, selecting policy is highly contingent on information available from other policymaking bodies. One strategy in such a context is for policymakers to mimic policies adopted by other policymakers with which they frequently interact or have close ties...[and] units possessing similar self-images (i.e. that see themselves as occupying a similar cultural category) also tend to adopt similar policies" (p. 288).

Using heterogeneous diffusion models, researchers account for the effects of each actor's *propensity, infectiousness, susceptibility, and spatial proximity* to other actors on the spread of

the adoption of a new idea, event, or policy (see Myers 2000; Strang and Tuma 1993). A state's intrinsic rate of adoption, or the "propensity" effects, refers to internal characteristics of actors that have a direct effect on the likelihood of an event (Myers 2000; Soule and Earl 2001; Strang and Tuma 1993). Although diffusion models account for these propensity effects, diffusion researchers point to the interstate processes as the key determinants of the probability and timing of a state's adoption of a particular policy. That is, since the process of diffusion refers to the process by which actors affect other actors in a social system, the focus is on interstate processes (Strang and Tuma 1993). Thus, in the present case, the process of diffusion involves the process by which states that have already adopted a particular law reform influence other states that have not yet adopted that particular reform.

The most common factor included in diffusion models is a measure of an actor's *spatial proximity* to the source of diffusion. In regard to legal reforms, researchers include a measure of a state's *spatial proximity* to other states that have already adopted that particular law reform in order to account for the effects of the adoption of the reform in nearby states on a state's likelihood of passing a similar reform. At the same time, while actors that are in close proximity to each other are likely to influence each other, diffusion researchers also recognize that not all actors are equally influential or equally vulnerable in regard to the spread of a new idea or event. Therefore, using complex heterogeneous diffusion models, researchers account for differences in each actor's *infectiousness* (or influence) and *susceptibility* (or vulnerability). While *infectiousness* refers to how much influence an actor or event has on other at-risk actors or events, *susceptibility* refers to how easily an at-risk actor can be influenced by other actors (Myers 2000). In regard to legal reforms, researchers need to include a measure of *infectiousness* to account for the fact that legal reforms in some states are more influential in the

diffusion process than changes in other states. Also, to account for the fact that some states are more receptive to legal changes, a measure of *susceptibility* is needed in the diffusion model (Soule and Earl 2001). Since some states may be more susceptible to adopt a particular law or innovation, susceptibility is a measure of a state's vulnerability or responsiveness to the law reforms passed by other states. Thus, a state's susceptibility indicates how likely it is for a state to mimic the actions of other states who already adopted a particular law reform.

Previous research on the diffusion of events, from race riots (Myers 2000), to hate crime laws (Soule and Earl 2001), to marital rape laws (McMahon-Howard et al. forthcoming 2010) to educational reform (Renzulli and Roscigno 2005), have examined one or more of the mechanisms that encourage or discourage the spread of the event. In finding significant effects for susceptibility and infectiousness, researchers have gained a better understanding of how states influence each other in regard to policy change. In accounting for differences in infectiousness, for example, McMahon-Howard et al. (forthcoming 2010) show that larger or more drastic changes in a law are more infectious than smaller, less significant changes in a law. In other words, compared to previous less severe changes in states' marital rape laws, a state is more likely to adopt a strong marital rape law when more severe changes have occurred previously in other states. Also, both McMahon-Howard et al. (forthcoming 2010) and Soule and Earl (2001) show that laws passed in states with split legislative houses are more infectious on at-risk adopters.

In regard to spatial proximity, previous researchers find that laws adopted in nearby states have an effect on a state's likelihood of adopting a similar policy (Grattet et al. 1998; McCammon et al. 2001; Renzulli and Roscigno 2005; Soule and Earl 2001; Soule and Zylan 1997; Strang and Meyer 1993; Strang and Tuma 1993). Most researchers find that being in close

proximity to other states that already adopted a particular policy *increases* a state's likelihood of adopting a similar policy (Grattet et al. 1998; McCammon et al. 2001; Renzulli and Roscigno 2005; Soule and Zylan 1997). For example, research indicates that the passage of women's suffrage in nearby states increased a state's likelihood of passing women's suffrage (McCammon et al. 2001). On the other hand, other research on hate crime laws (Soule and Earl 2001) and marital rape laws (McMahon-Howard et al. forthcoming 2010) provides evidence for the negative effects of spatial proximity – that the adoption of a law in nearby states decreased a state's likelihood of passing a similar law. With these findings, these researchers suggest that spatial proximity may have a negative effect for more controversial legislation. This claim, however, has not been fully developed or fully examined.

Using Conflict Theory, Political Opportunity Theory, and the Diffusion Framework Together

These three perspectives – conflict theory, political opportunity theory, and the diffusion framework – each have their own unique strengths and weaknesses. A major strength of conflict theory is that it clearly identifies the social conditions that give rise to challenges to the existing laws. Also, conflict theory points to whose interests are served by existing laws and how power affects a groups' ability to access and influence the law-making process. Conflict theory, however, does not focus enough attention on aspects of the political environment that affect how law-makers respond to demands for change. Political opportunity theory, however, identifies the political climate under which law-makers are most likely to act in favor of social movement activists. While both conflict theory and political opportunity theory highlight important social and political conditions conducive to policy change, neither perspective sufficiently addresses how states influence each other in the law formation process. Although some political opportunity scholars consider the adoption of laws in nearby states as a factor that may affect a

state's political opportunity structure (see Cornwall et al. 2007; McCammon et al. 2001), these researchers fail to employ heterogeneous diffusion models. On the other hand, while the diffusion framework primarily focuses on how states influence each other and accounts for each state's susceptibility and infectiousness, diffusion researchers must rely on other theoretical perspectives and research to determine the factors that constitute each state's propensity for policy change. Thus, in using these three perspectives together, I capitalize on each of their strengths.

Since a heterogeneous diffusion model can incorporate predictions from conflict theory and political opportunity theory as propensity factors, I use the diffusion perspective as the basic framework for my analyses. Thus, I make predictions for the effects of propensity, infectiousness, susceptibility, and proximity. First, I draw on conflict theory and political opportunity theory to predict how states' gender and political environments affect the adoption of rape law reforms. Next, I use insights from political opportunity theory and the diffusion perspective to model and predict how a state's infectiousness, susceptibility, and proximity to other states that previously adopted each of the reforms affect the spread of rape law reforms.

Propensity

As mentioned in the previous chapter, propensity refers to the internal characteristics of actors that affect the likelihood of an event. Since the actors in the proposed study are states, I identify several intrastate characteristics that tap into each state's propensity to adopt rape law reforms. As each state's propensity is unaffected by characteristics or processes related to other states, these attributes are often thought of as controls in the diffusion literature because they do not rely on the connection between actors.

I use the basic tenants of conflict theory and political opportunity theory to guide my selection of variables that measure a state's propensity to adopt rape law reforms and to make predictions for the effects of the propensity variables on the likelihood of reforming each element of the rape law. Specifically, I use the following indicators of the structural foundation of a state to tap into each state's propensity to adopt rape law reforms: the percentage of women in the paid labor force, the percentage of women in the state legislature, the number of NOW members per capita, the percentage of Democrats in the state legislature, the dominant political ideology of the state, and party competition in each state.

According to both conflict theory and McCammon et al.'s (2001) extension of political opportunity theory, which focuses on the gendered opportunity structure, changing gender relations affect the adoption of women's rights legislation. Where women are entering the public sphere and gaining more economic and political power, lawmakers are more likely to pass women's rights legislation. Thus, I expect women's economic and political power to be positively related to the adoption of rape law reforms.

Hypothesis 1: Women's economic power will be positively related to a state's likelihood of adopting gender-neutral laws, eliminating the resistance requirement, redefining rape as sexual assault, and passing strong rape shield laws.

Hypothesis 2: Women's political power will be positively related to a state's likelihood of adopting gender-neutral laws, eliminating the resistance requirement, redefining rape as sexual assault, and passing strong rape shield laws.

Also, both conflict theorists and political opportunity theorists suggest that social movements are largely responsible for initiating legal change (see Giugni, McAdam, and Tilly

1999). Theoretically, when social movement activism is strong, states should be more likely to pass legislation supporting the interests of activists. Therefore, the strength of feminist activism should be positively related to the adoption of women's rights legislation (Murphy 1997; McCammon et al., 2001; Soule and Olzak 2004). Here, I expect to find that states with a higher level of feminist activism will be more likely to adopt rape law reforms.

Hypothesis 3: Feminist activism will be positively related to a state's likelihood of adopting gender-neutral laws, eliminating the resistance requirement, redefining rape as sexual assault, and passing a strong rape shield law.

Since rape law reform activists consist of both feminists and law-and-order groups, which have different ideological backgrounds, predicting the effects of the political environment on the likelihood of the adoption of rape law reforms is not an easy task. Also, previous research on rape law reforms (Berger et al. 2001) suggests that the political environment may differentially affect the adoption of different dimensions of rape law reform. Based on political opportunity theory (Meyer and Minkoff 2004), however, the political opportunity structure (POS) should have a similar effect on the adoption of multiple rape law reforms. Aspects of the political climate that may affect the success of activists' efforts to reform laws include the following: having allies in power in the state legislature, the government ideology of the state, and the presence of political party competition within the state legislature. Since researchers suggest that Democrats are more likely than Republicans to pass policies favoring the rights and protections of women, Democrats often serve as elite allies for women's rights activists (see Soule and Olzak 2004). Therefore, states with a higher percentage of Democrats in the state legislature will be more likely to pass rape law reforms.

Hypothesis 4: The percentage of Democrats in the state legislature will be positively related to a state's likelihood of passing gender-neutral sexual assault statutes, eliminating the resistance requirement, redefining rape as sexual assault, and adopting a strong rape shield law.

Also, according to political opportunity theory, characteristics of the political system make the political environment more or less open to policy change. Since the ideology of lawmakers can determine how open the political environment is to certain policy changes, I include a measure of the government ideology of the state. Since lawmakers with a more liberal ideology are more likely to support women's rights legislation, I predict that states with a more liberal government ideology will be more likely to pass rape law reforms.

Hypothesis 5: States with a more liberal government ideology will be more likely to pass gender-neutral rape laws, eliminate the resistance requirement, redefine rape as sexual assault, and pass a strong rape shield law than states with a less liberal government ideology.

Another aspect of the political climate that may affect policy outcomes is the existence of a split-party government. Since legislation is more difficult to pass when there is a split-party government, the presence of a split-party government will decrease the likelihood of passing each rape law reform.

Hypothesis 6: States with a split-party government will be less likely to pass gender-neutral rape laws, eliminate the resistance requirement, redefine rape as sexual assault, and pass a strong rape shield law than states without a split-party government.

Finally, since lawmakers are often responsive to concerns over high crime rates, a high rape rate may create a political opportunity for rape law reform activists. A high rape rate is a

relevant concern for both feminists and law-and-order groups, as well as for the larger community. While activists can use a high rape rate to justify the immediate and pressing need to reform the rape law, legislators may feel pressure from activists and the larger community to respond to the high rape rate. With an interest in the need to address concerns about rape, having a high rape rate is expected to increase a state's likelihood of passing gender-neutral rape laws, redefining rape as sexual assault, eliminating the resistance requirement, and passing strong rape shield laws.

Hypothesis 7: The rape rate will be positively related to a state's likelihood of passing gender-neutral rape laws, eliminating the resistance requirement, redefining rape as sexual assault, and adopting a strong rape shield law.

Infectiousness

Since states may vary in regard to their infectiousness, or their ability to influence the adoption of legislation in other states, a model of the diffusion of rape law reforms needs to account for the possibility that certain changes in states' rape laws will be more influential than others. In regard to the process of diffusion, the infectiousness of an actor or event is linked to visibility. For example, Myers' (2000:183) examined the diffusion of race riots and used the sum of "the severity of all riots that have previously occurred" to account for the infectiousness of previous riots and found that infectiousness had a positive effect on the diffusion of riots. Myers argued that since more media attention is given to more severe riots, these riots are more visible. As a result, a larger number of people become aware of these more severe riots, which affects the likelihood of the spread of rioting. Similarly, in examining the spread of marital rape laws, McMahon-Howard et al. (forthcoming 2010) found that when states made larger or more severe changes to their marital rape law, these changes were more infectious and other states

were more likely to pass a strong marital rape law as a result. Therefore, if states that make stronger changes to their laws are more infectious, then I predict that when other states make larger changes for each rape law reform, which increases the overall strength of that particular reform across the U.S., a state's likelihood of passing that particular reform will increase.

Hypothesis 8: Infectiousness will be positively related to the likelihood that at-risk states will pass each particular rape law reform.

Susceptibility

Just as states may vary in regard to their infectiousness, or the amount of influence their legal changes have on other states, states may also vary in regard to their susceptibility, or how easily they give in to the pressure to pass a legal reform following the passage of that reform by other states. As McMahon-Howard et al. (forthcoming 2010) explain, “while the adoption of a law reform in other states puts pressure on at-risk states to adopt a similar policy, differences in the susceptibility of the at-risk states will determine which states will adopt the legal reform in response to this pressure” (p. 8). To account for differences in states' susceptibility to adopt a particular law, previous researchers point to the importance of the prior adoption of related legislation. For example, in examining the spread of hate crime legislation, Soule and Earl argue that whether or not the state previously repealed their sodomy law taps into how susceptible that state is to the pressure to adopt hate crime laws. As Soule and Earl (2001:292) explain, since these states may be “more attuned to legal issues concerning gays and lesbians...[and] more sensitive or conditioned to policies extending rights and benefits to gays and lesbians,” they may be more likely to be aware of and respond to the adoption of hate crime legislation in other states by passing similar hate crime legislation. Indeed, Soule and Earl found that a state's susceptibility is positively related to the state's likelihood of adopting hate crime legislation.

Similarly, in their research on marital rape laws, McMahon-Howard et al. (forthcoming 2010) suggest that prior ratification of the Equal Rights Amendment (ERA) may tap into a state's susceptibility to the diffusion of strong marital rape laws. McMahon-Howard et al. argue that since the ERA guaranteed equal rights for women (Crowley 2006), states that ratified the ERA may be more attuned to and more sensitive to the passage of women's rights legislation in other states. As a result, these states may be more likely to pay attention to the recent adoption of laws protecting women from violence in other states and may be more likely to adopt similar laws in response. Indeed, McMahon-Howard et al. found that a state's susceptibility was positively related to the state's likelihood of adopting a strong marital rape law during the early part of the rape law reform movement. Therefore, as other states are passing rape law reforms, states that have ratified the ERA may be more likely to pass similar rape law reforms. Thus, I predict that more susceptible states will be more likely to adopt each rape law reform.

Hypothesis 9: State's that are more susceptible will be more receptive to contagious influence from states that have already adopted a rape law reform and will be more likely to pass each rape law reform.

Proximity

Propensity, infectiousness, and susceptibility may be important mechanisms for the diffusion of events, but the geographic proximity to the source of diffusion may be just as important. Specifically, changes in the laws of bordering states may affect a state's decision to adopt a particular law. By communicating and sharing knowledge with each other, nearby states may influence each other in regard to drafting and adopting social policies (Strang and Tuma 1993). As McMahon-Howard et al. (forthcoming 2010) explain, "since information may easily transcend state borders via commuting and relocating workers, shared newspapers, radio, and

television, these avenues of communication increase a state's exposure to and knowledge of legal changes in bordering states" (p.10). This knowledge of the adoption of a law in a nearby state may encourage or discourage policymakers in neighboring states to pass a similar law. The direction of the effects of spatial proximity has been a focus of recent research on the diffusion of legal changes (McMahon-Howard et al. forthcoming 2010; Soule and Earl 2001).

Generally, being in close proximity to a state that adopts a new law increases a state's likelihood of adopting a similar law (Grattett et al. 1998; McCammon et al. 2001; Renzulli and Roscigno 2005; Soule and Zylan 1997); however, for more controversial laws, the effect may be just the opposite. That is, as Soule and Earl (2001) found for hate crime laws and McMahon-Howard et al. (forthcoming 2010) found for marital rape laws, in the case of more controversial laws, being in close proximity to a state that passed a controversial law may decrease a state's likelihood of passing a similar law. Since the adoption of a controversial law may be followed by negative reactions from constituents, McMahon-Howard et al. suggest that these negative reactions may decrease the likelihood that a similar law will pass in nearby states. On the other hand, since negative social reactions are unlikely to follow the adoption of noncontroversial laws, spatial proximity will have a positive effect for the adoption of noncontroversial laws. Therefore, for the less controversial rape law reforms - creating gender-neutral rape laws and eliminating the resistance requirement, I hypothesize that being in close proximity to other states that already adopted the particular rape law reform will increase the likelihood that nearby states will adopt a similar reform. Conversely, for the more controversial rape law reforms – redefining rape as sexual and passing strong rape shield laws, I predict that spatial proximity will have a negative effect on a state's likelihood of passing these rape law reforms.

Hypothesis 10: Being in close proximity to other states that already adopted the particular rape law reform will increase the likelihood of passing a similar reform for gender-neutral laws and abolishing the resistance requirement.

Hypothesis 11: Being in close proximity to other states that already adopted the particular rape law reform will decrease the likelihood of passing a similar reform for redefining rape as sexual assault and adopting a strong rape shield law.

Advancing Theories of Legal Change

Although using conflict theory, political opportunity theory, and the diffusion framework together may provide a better understanding of legal change, they all fail to consider how the controversy surrounding some law reforms may affect policy outcomes. For example, while recent research suggests that the process of diffusion may operate differently for controversial laws compared to non-controversial laws (McMahon-Howard et al. forthcoming 2010; Soule and Earl 2001), as mentioned above, this claim has not been fully examined. Therefore, I explore this possibility in the present study by comparing the results for two non-controversial rape law reforms to the results for two controversial rape law reforms (hypotheses 10 and 11). Also, these three theoretical perspectives fail to address fully how partial reforms affect policy outcomes. Although recent research suggests that the adoption of prior, partial reforms may decrease a state's likelihood of passing stronger reforms (McMahon-Howard et al. forthcoming 2010; Soule and Earl 2001), there is little additional research that examines this possibility. Therefore, I examine the effects of weaker, partial reforms on the adoption of stronger reforms, and I use political opportunity theory to make competing hypotheses. Finally, these three theoretical perspectives fail to address fully how the prior adoption of favorable legislation affects the later

adoption of related legislation. Although researchers have found that the adoption of favorable legislation creates a political opportunity for social movement mobilization (McAdam 1982; Meyer 2004), few researchers have examined the effect of the prior adoption of favorable legislation on the later adoption of related legislation. Therefore, I examine the effects of the prior adoption of other rape law reforms on the later adoption of each rape law reform. Overall, I fill a gap in the literature on law reforms by examining the effects of the prior adoption of partial rape law reforms and the adoption of related rape law reforms.

The Adoption of Partial Rape Law Reforms and Related Rape Law Reforms

To address a gap in the theoretical and empirical literature on the law formation process, I seek to advance the above theories of legal change by examining the effects of prior policy changes on future policy changes. Political opportunity theorists suggest that prior policy change creates a more open political opportunity structure for the mobilization of certain social movements (McAdam 1982; Meyer 2004). Although political opportunity theorists identify the adoption of partial reforms as a factor that may enhance social movement mobilization (Cornwall et al. 2007), very little attention has been given to the relationship between partial reforms and policy outcomes.

The studies that have examined the effects of partial reforms on the adoption of stronger reforms have produced mixed findings. In their research on women's suffrage, McCammon et al. (2001) draw from political opportunity theory and hypothesize that a state's adoption of partial women's suffrage (i.e., school suffrage) should create a political opportunity, and more specifically a gendered opportunity, that increases the state's likelihood of adopting stronger women's suffrage laws (i.e., the right to vote in primary elections and/or the right to vote for the president). They suggest that the adoption of partial suffrage laws should change attitudes

toward women's participation in politics and increase the state's likelihood of adopting major forms of women's suffrage; however, their results fail to support this hypothesis.

While there is no support for the notion that prior, partial reforms create a political opportunity for the adoption of a full reform, as McCammon et al. suggested, there is some support for the notion that the prior adoption of partial reforms inhibits the adoption of a stronger or full reform. Both Soule and Earl (2001) and McMahan-Howard et al. (forthcoming 2010) suggest that the adoption of weaker legislation serves as a resistance strategy for legislators. In their research on the adoption of hate crime laws, Soule and Earl find that the adoption of weaker, civil legislation requiring police to collect data on hate crimes or legislation providing civil redress for victims of hate crimes decreases a state's likelihood of passing a stronger, criminal hate crime law. Although Soule and Earl did not examine the effects of the adoption of a weaker or partial *criminal* law reform on a stronger or full *criminal* law reform, McMahan-Howard et al.'s (forthcoming 2010) research examines the effect of the adoption of a partial marital rape law reform on a state's likelihood of passing a full marital rape law reform that completely eliminates the marital rape exemption. Here, the researchers find that passing a partial marital rape law significantly decreases a state's likelihood of completely abolishing the marital rape exemption.

Given the paucity of research and the conflicting findings cited above, I make competing hypotheses regarding the effect of the prior adoption of weaker, partial rape law reforms on a state's likelihood of passing the stronger version of the reform for each rape law reform. On the one hand, just as smaller legislative victories can create a political opportunity for greater social movement mobilization (McAdam 1982), the adoption of weaker or partial reforms may make the political environment more conducive to the adoption of a stronger reform. Therefore, to the

extent that the factors that create political opportunities for social movement mobilization are the same factors that create political opportunities for policy change, political opportunity theory would suggest that the adoption of prior, partial reforms increases a state's likelihood of passing a stronger reform.

Hypothesis 12: States that previously adopted a weaker, partial reform will be more likely to pass a stronger version of the reform for creating gender-neutral rape/sexual assault statutes, eliminating the resistance requirement, redefining rape as sexual assault, and passing strong rape shield laws.

On the other hand, although some political opportunity theorists suggest that the aspects of the political environment that initiate social movement mobilization may also facilitate policy change, there is a growing literature that suggests that some aspects of the political environment differentially affect social movement mobilization and policy change (Cornwall et al. 2007; Meyer and Minkoff 2004). Importantly, some aspects of the political environment that create favorable conditions for social movement mobilization may simultaneously create unfavorable conditions of policy change. According to Cornwall et al. (2007), the prior adoption of related legislation is one such factor that differentially affects mobilization and policy outcomes. Thus, although prior policy change may create a political opportunity for social movement mobilization, such policy changes may inhibit the adoption of stronger policy reforms.

While the adoption of past legislation may be seen as a partial victory that encourages additional mobilization for activists, lawmakers may view their adoption of such legislation as an effort to pacify activists. As Cornwall et al. state, "rather than take direct action in favor of a social movement's goals, lawmakers may search for ways to symbolically appease activists or initiate partial solutions to perceived problems" (p. 241). Here, the prior adoption of weaker,

partial reforms may decrease a state's likelihood of passing a stronger reform as legislators may pass a weaker version of the proposed law reform in an effort to appease reform advocates without upsetting opponents (Cornwall et al. 2007). That is, as reformers continue to press for legal reform, legislators may continue to pass weaker versions as a way to resist adoption of the stronger law. Therefore, instead of intermediate or partial policy reforms creating a political opportunity for additional policy changes, these reforms may actually create an unfavorable environment and inhibit stronger reforms. Therefore, if the adoption of partial reforms creates a unfavorable environment for the adoption of stronger reforms, then the prior adoption of partial rape law reforms will decrease a state's likelihood of passing a stronger version of the reform.

Hypothesis 13: States that previously adopted a weaker, partial reform will be less likely to pass a stronger version of the reform for creating gender-neutral rape/sexual assault statutes, eliminating the resistance requirement, redefining rape as sexual assault, and passing strong rape shield laws.

Another factor that may create a more open or closed political opportunity for mobilization and policy changes is the adoption of related legislation. Researchers suggest that “the ‘small victories’ generated by past legislation can be emotionally transforming and instigate new efforts at mobilization” (Cornwall et al. 2007:241). Also, policy scholars suggest that “the preexisting policy environment may condition the ability and willingness of state actors to create innovations in social policy” (Soule and Zylan 1997: 749). The idea here is that states that adopt one type of policy are likely to adopt related policies in the future (Soule and Olzak 2004). Thus, the adoption of one type of policy should create a preexisting policy environment favorable to the adoption of related legislation. Therefore, to the extent that the political opportunities for mobilization are the same political opportunities for policy change, then the prior adoption of

other rape law reforms should increase a state's likelihood of passing another dimension of rape law reform.

Hypothesis 14: The adoption of other rape law reforms will increase a state's likelihood of adopting each rape law reform.

On the other hand, just as the prior adoption of partial reforms may create an unfavorable environment and inhibit the adoption of stronger reforms, the prior adoption of related legislation may create an unfavorable environment and inhibit the adoption of similar laws. Again, while research findings support the notion that "favorable changes in policy" provides a more open political environment for additional social movement mobilization (McAdam 1982; Meyer 2004), there is little research to support the notion that the adoption of past legislation creates a political opportunity for the adoption of related legislation. In fact, whether the prior adoption of favorable legislation both encourages additional mobilization among social movement activists *and* lays the groundwork for the adoption of similar policies is a matter of debate (Cornwall et al. 2007). In a study specifically designed to "address the lack of congruence between opportunities for mobilization and opportunities for policy reform," Cornwall et al. (2007: 241-242) found that while the prior adoption of related women's rights legislation - a femme sole or sole trader law and school suffrage - was significantly associated with activist organizing, the adoption of these laws had no effect on the passage of a women's suffrage bill. Thus, these researchers argue that although past legislation creates a political opportunity for mobilization, it does not create a political opportunity for bill passage.

Furthermore, based upon the few studies that have examined the effect of prior reforms on the later adoption of related reforms, the previous research suggests that, if prior reforms do affect policy outcomes, it is a negative effect (Soule 2004; Soule and Earl 2001; Soule and

Olzak 2004; Soule and Zylan 1997). Specifically, with one exception (Soule and Zylan 1997), researchers have found that the prior adoption of related legislation either has no effect (Soule and Earl 2001; Soule and Olzak (2004) or a negative effect on the adoption of similar legislation (Soule 2004). For example, in finding that states that previously passed “gay-friendly policies” were more likely to pass same-sex marriage bans, Soule (2004) states, “these findings indicate that the previous policy environment is an important determinant of state policy decisions. However... rather than prompting states to be more liberal toward gays and lesbians, prior gay-friendly legislation actually leads states to be more conservative and to pass laws more punitive to gays and lesbians” (pp. 468-469). Therefore, if the adoption of other rape law reforms creates an unfavorable environment for the adoption of other rape law reforms, then the adoption of each rape law reform will decrease a state’s likelihood of adopting other rape law reforms.

Hypothesis 15: The adoption of other rape law reforms will decrease a state’s likelihood of adopting each rape law reforms.

Summary of the Theoretical Perspectives and the Contributions of the Present Study

Overall, in reviewing these three separate theoretical perspectives – conflict theory, political opportunity theory, and the diffusion perspective - that address the adoption of public policies, several statements can be made about what factors likely influence a state’s likelihood of adopting rape law reforms. Although conflict theory, political opportunity theory, and the diffusion framework recognize the importance of the social and political culture, the two schools of thought diverge on their primary assumptions regarding the underlying forces that determine the likelihood that a state will adopt a policy. Researchers focusing on conflict theory and political opportunity theory primarily stress the importance of women’s political and economic power in shaping legislation as well as the conflicting interests and power of liberal and

conservative groups (Berger et al. 1991; Call et al. 1991; Cornwall et al. 2007; McCammon et al. 2001; Murphy 1997), but they do not fully consider the effects that surrounding states can have on a state's likelihood of adopting a particular piece of legislation.³⁴ On the other hand, diffusion researchers recognize the social and political factors as determining each state's propensity to adopt a particular law and they stress the importance of the spatial and temporal proximity of a state to a state that has already adopted the legislation (Strang and Tuma 1993). Since research addressing a variety of legislative changes provides support for each theoretical perspective, I use all three to guide my hypotheses in regards to the adoption of reforms for multiple elements of rape law.

These three theoretical perspectives fail to address the role of controversy in the adoption of reforms, the effects of the prior adoption of weaker, partial reforms, and the effects of the adoption of related legislation. Therefore, in the present study, I seek to determine if the predictions from each of these three theoretical perspectives hold up despite the controversial nature of some of the reforms. Also, I contribute to political opportunity theory by examining if political opportunity theory is useful for explaining policy outcomes. I also examine whether the adoption of partial reforms and the adoption of related legislation can be viewed as factors that create a more open or closed political opportunity for stronger or additional policy changes.

Additionally, since previous studies of the adoption or rape law reforms have been limited either due to methodological weaknesses or data limitations, the present study offers significant contributions to the theoretical and empirical literature on rape law reforms. Berger et al. (1991) utilized predictions from social movement theories to examine the social and political characteristic of states that are correlated with the adoption of multiple rape law

³⁴ McCammon et al.'s (2001) research is the exception – they consider having nearby states that have adopted women's suffrage as a factor that enhances the gendered opportunity structure of a state, which in turn increases the likelihood that that state will also adopt women's suffrage.

reforms. Due to the cross-sectional nature of Berger et al.'s study, however, their results could not identify the causal determinants of the adoption of rape law reforms. As a result, the usefulness of social movement theories for explaining the adoption of rape law reforms could not be assessed and the influence of the adoption of rape law reforms in other states was not examined.

Although McMahon-Howard et al. (forthcoming 2010) improved upon the methodological weaknesses of Berger et al.'s study by utilizing a heterogeneous diffusion model to examine the factors that predict the adoption of a marital rape law reform over time, their study was limited to the examination of only one rape law reform. Since marital rape law reforms posed a threat to the "preservation of the traditional family unit," it was one of the most controversial and resisted rape law reforms. Given the unique nature of marital rape laws, it is unknown whether the results of McMahon-Howard et al.'s study hold true for other rape law reforms. Therefore, by examining the adoption of multiple rape law reforms, the present study builds and improves upon previous research on rape law reforms.

While a longitudinal examination of several rape law reforms is warranted for its contribution to the literature on rape laws and other women's rights legislation, the importance of the present study is much broader. Since most research and theoretical explanations of policy change and/or the law formation process have neglected to consider the effects of the prior adoption of partial reforms and related reforms on the adoption of a particular policy, the present study pushes the research on legal change further by considering these important factors. In examining the effects of incremental changes in rape law reforms, the present study examines if incremental reforms for each element of rape law slowly move states toward adopting strong

reforms for each element of rape law or if states adopt smaller, incremental changes instead of adopting the stronger reforms.

More importantly, there has been no research to date that has tested both the effects of the social, political, and gender environments and the effects of diffusion processes on a state's likelihood of reforming multiple elements of the rape law. Therefore, while previous researchers have failed to consider how the success of one goal of a law reform movement (i.e., the adoption of one dimension of rape law reform) affects the likelihood of the success of other goals (i.e., the adoption of other dimensions of rape law reform), the present study examines the interrelationships between the success of different goals within the same social movement, which will provide a better understanding of the process of law reforms.

Given the originality of the present study, I collected original data to test each of the hypotheses about the adoption of rape law reforms. Using data from secondary data sources, I constructed a dataset for the analysis of each rape law reform. In the next chapter, I discuss the data and analytical strategy that I use for this study. First, I discuss all of the data sources for the dependent and independent variables included in the present study. Next, I explain the coding for each of the dependent and independent variables. Finally, I discuss the analytical strategy I use and the models I test for the present study.

CHAPTER 6

METHODS

In this chapter, I discuss the data and methods I use to examine the factors that affect the adoption of rape law reforms. In the first section, I describe each of the data sources I use to gather data on the dependent and independent variables. Next, I describe each of the dependent and independent variables and explain the coding for each variable. In the last section, I discuss the analytical strategy and the empirical models I use for the present study.

Data

Since the dependent variables measure whether or not a state passed a specific rape law reform in a given year, the unit of analysis is the state-year. Therefore, I gathered data for each state for each year from 1970 to 2006 from multiple sources. First, I used the legislative history, which is found under the current state statutes, to identify the years a change was made to each state's rape statute. Then, using the yearly session laws for each state, which report any changes made to the state statutes, I collected data on all changes, if any, made to each state's rape statute in each year. Since rape law reform activists focused on the legislative process, instead of the common-law/case-law process, to achieve reforms (Largen 1988), it is most appropriate to use statutory changes in states' rape laws to measure my dependent variables (McMahon-Howard et al. forthcoming 2010).

Also, I used several secondary sources to gather information regarding the social, political, and gender characteristics of each state. Below, I explain the data sources and the coding for each of these variables. With a few exceptions, which are noted below, all variables

are measured yearly. If data were not available for a particular year, then linear interpolation was used to estimate these missing values.³⁵ The observed years are from 1970 (marking the beginning of the rape law reform movement) to 2006 (the last year of data collection). All independent variables are lagged one year to ensure that the social, political, and gender equality factors are measured prior to the adoption of each rape law reform.

Dependent Variables

The dependent variables include state adoption of the following: *gender-neutral rape/sexual assault statutes*, *law eliminating the resistance requirement*, *law redefining rape as sexual assault*, and *strong rape shield law*. The first two dependent variables – *gender-neutral rape/sexual assault statute* and *law eliminating the resistance requirement* – measure the adoption of two non-controversial rape law reforms. The other two dependent variables – *law redefining rape as sexual assault* and *strong rape shield law* – measure the adoption of two more controversial rape law reforms.³⁶

The first dependent variable, *gender-neutral law*, measures whether or not the state's rape/sexual assault statutes are written in gender-neutral terms for both the victim and the offender. In other words, the statutes are gender neutral if both men and women can be prosecuted for rape/sexual assault and the statutes apply to both male and female victims of rape/sexual assault. If the rape or sexual assault statutes still limit the scope of the legal definition of rape or sexual assault to only male perpetrators and/or only female victims, then the state is considered to have a gender-specific law. Also, a state is considered to have a gender-specific law if any of the following conditions exist in any of the state's rape/sexual assault

³⁵ Both Chow and Lin (1976) and Lanning (1986) discuss the appropriateness of using linear interpolation to handle missing data in time series analyses.

³⁶ These rape law reforms were classified as non-controversial or controversial based on the findings from previous research (Berger et al. 1991; Lagen 1988; Spohn and Horney 1992)

statutes: the statutes require that the victim and offender be of the opposite sex, the statutes only recognize forcible penile-vaginal intercourse (an act that must involve a male and a female), separate statutes exist for male victims and/or female offenders, lesser penalties exist for cases involving male victims and/or female offenders, or the statutes contain any other sex specific provisions (i.e., rape of a female of previously chaste character). Thus, this variable is coded 0 (gender-specific law) if the state still defines rape or sexual assault in gender-specific language as indicated above and 1 (gender-neutral) if the statutes define rape/sexual assault as a crime that any person (male or female) can commit against any other person (male or female). Thirty eight states have gender-neutral rape/sexual assault statutes (see Table 1).

The second dependent variable, *elimination of the resistance requirement*, measures whether or not a state removed the resistance requirement. This variable is coded 0 if the state's rape/sexual assault statute specifies that in prosecuting rape cases there must be evidence that the victim resisted in any way. Thus, a state is considered to have a resistance requirement if the statutes contain any of the following specifications: the victim resisted to the utmost of her ability, the victim showed earnest resistance, the victim used a "reasonable amount" of resistance given the circumstances, the victim's resistance was overcome, or the victim was prevented from resisting. This variable is coded 1 if the state removed the resistance requirement so that the statutes no longer require the victim's resistance during the rape/sexual assault.³⁷ Statutes without a resistance requirement include statutes that explicitly state that resistance is not required, statutes that are silent in regards to the victim's resistance, statutes that state that the sexual act is without the victim's consent, and statutes that state that the victim submits, is

³⁷ Originally, the statutes in all states either explicitly or implicitly included a resistance requirement. Where the resistance requirement was not explicitly stated, it was implicitly included by the phrase "forcibly and against her will." Therefore, these states are said to have a resistance requirement until the phrase "forcibly and against her will" is replaced by other language.

compelled, or is overcome due to threats or other actions by the offender. Forty one states completely eliminated the resistance requirement (see Table 2).

The third dependent variable, *law redefining rape as sexual assault*, measures whether or not the state redefined rape as sexual assault by criminalizing other forms of sexual assault (in addition to forced penile-vaginal penetration) in the primary offense statute. Specifically, a state is considered to have sexual assault statutes if the state's primary sexual offense statute criminalizes forced oral sex, anal sex, and/or object penetration in addition to penile-vaginal penetration. This variable is coded 0 (penile-vaginal penetration only) if the state only criminalizes penile-vaginal rape and 1 (multiple forms of sexual assault) if the state criminalizes other forms of sexual assault (oral sex, anal sex, and/or object penetration) by including these acts in the main rape/sexual assault statute. Thirty seven states redefined rape as sexual assault so as to include other forms of sexual assault in the primary sexual offense statute (see Table 3).

Finally, the fourth dependent variable, *strong rape shield law*, measures whether or not a state strongly restricts the admissibility of evidence of the victim's reputation and/or past sexual history in court. Using Anderson's (2002) classification of rape shield laws, only legislative exception and constitutional catch-all rape shield laws, which are statutes that specify very limited conditions under which a victim's past sexual history may be admitted as evidence for reasons unrelated to the victim's credibility or consent (i.e., to prove the source of semen, disease, or pregnancy), are considered strong rape shield laws. Thus, judicial discretion rape shield laws, which allow discretionary judicial decisions to determine the admissibility of evidence of the victim's past sexual history, and evidentiary purpose rape shield laws, which permit the use of sexual history information for specific evidentiary purposes (i.e. to prove the victim consented or to attack the victim's credibility) are considered weak rape shield laws. This

variable is coded 0 if the state does not have a rape shield law or if the rape shield law specifically states that judges can use their own discretion in allowing evidence of the victim's past sexual history or if the law states that evidence of the victim's sexual history can be used to prove consent or can be used to attack the victim's credibility. This variable is coded 1 if the state has a rape shield law that only permits the use of the victim's sexual history under very specific circumstances (i.e., to show the source of semen, pregnancy, or disease; the victim's past sexual history with the defendant; the victim's past sexual history that shows a pattern of sexual behavior; evidence that is constitutionally required to be admitted, etc). Thirty seven states passed a strong rape shield law (see Table 4).

Independent Variables

The independent variables in the present study measure the intrastate characteristics (propensity factors) and the interstate process of diffusion (infectiousness, susceptibility, and spatial proximity) that may affect a state's likelihood of adopting each different rape law reform. First, I discuss the propensity measures, which I group together in regards to indicators of the gender climate (percent of female labor force participants, percent of female legislators, and NOW membership) and the political climate (government ideology, split-party government, percentage of Democrats in the state legislature, and rate of reported rapes) as suggested by conflict theory and political opportunity theory. Next, I discuss the variables measuring the interstate process of diffusion, which include the infectiousness (cumulative extent of change in each rape law reform), susceptibility (state ratification of the Equal Rights Amendment and the total number of states that adopted each rape law reform), and spatial proximity (number of bordering states that passed the specific rape law reform) variables. Then, I discuss measures of the prior adoption of weaker, partial rape law reforms (the number of previous changes in the

specific rape law reform) and the adoption of other dimensions of rape law reform. Finally, I discuss my control variables (percent of the state population that is white, urbanicity, the state population, and the regional location of the state) that I include in the models.

Propensity

Gender Climate Variables

To tap into the gender climate of each state, I use measures of women's economic and political power and a measure of feminist activism. McMahon-Howard et al.'s (forthcoming 2010) study is used as a model for generating the measures of women's economic and political power as well as for the measure of feminist activism. The *percentage of female labor force participants*, which includes women who were 16 years old or over and who were employed in the civilian labor force, is used as an indicator of women's economic power and the *percentage of female legislators* is used as an indicator of women's political power. Data from the United States Census Statistical Abstracts (United States Census Bureau 1970-2007) are used to create these two gender climate variables. Also, to tap into the strength of feminist activism, I use the number of *NOW members* per capita in each state. After gaining special permission from the NOW executive board, I collected state-level data on NOW membership both by searching the NOW Archives at the Schlesinger Library in Cambridge, Massachusetts (National Organization for Women 1959-2002) and by obtaining membership data directly from NOW headquarters in Washington, D.C.³⁸ Using NOW membership data (1967, 1977-1997), the *NOW membership* variable measures the number of NOW members in each state divided by the total state population.³⁹

³⁸ I would like to thank NOW for granting me permission to access and utilize these data.

³⁹ Although the NOW records include original state membership numbers from 1967, the NOW records do not contain state membership data from 1970 to 1976. Therefore, using the 1967 data and the 1977 data, I use linear interpolation to estimate NOW membership numbers from 1967 to 1975. Also, since I do not have NOW

Political Climate Variables

To capture the overall political climate of each state, I use two general measures, which include the dominant *government ideology* in each state and whether there is a *split-party government* in the state, and two issue-specific measures, which include the *percentage of Democrats in the state legislature* and the *rate of reported rapes* in each state.⁴⁰ As a key indicator of the general receptivity or openness of the political opportunity structure, I include a measure of the dominant *government ideology* of the state (see Meyer and Minkoff 2004 for a more detailed discussion of measures of the political opportunity structure). Following previous research (Barclay and Fisher 2003; McMahon-Howard et al. forthcoming 2010; Soule and Olzak 2004), I use Berry et al.'s (2007) government ideology scores to measure the dominant *government ideology* of each state.⁴¹ The government ideology score is based upon the ideological position of the governor, the members of Congress, and the members of the state legislature in each state for each year. Scores are weighted based upon the power distribution among the political parties and in relation to the governor. Higher values indicate a more liberal state government ideology.⁴²

Also, as an indicator of a more closed political opportunity structure, I include a measure of *split-party government*, which refers to whether the dominant political party of the state legislature differs from the political party of the governor. The United States Census Statistical

membership data past 1997, I again use linear interpolation to estimate NOW membership numbers from 1997-2006.

⁴⁰ Given the missing data for D.C. for these political climate variables, D.C. is removed from the analysis.

⁴¹ Berry et al.'s (2007) government ideology scores are used in place of other measures of policy innovativeness (i.e. Savage, 1978), which have been used in past research (Berger et al., 1991; Grattet et al. 1998; Soule and Earl 2001). Whereas other measures of a state's policy innovativeness do not vary over time, Berry et al.'s measures are time variant. Given that the openness or innovativeness of a state's political environment is subject to change, this measure of government ideology is more appropriate for the analyses used in this study.

⁴² Although conceptions of liberal government ideology vary, Gans (1993) argues that they all suggest that those with a more liberal government ideology tend to favor more equality compared to those with a more conservative ideology.

Abstracts (1970-2007) provide data on the political party composition of the state legislature and the political party of the governor for each state for each year. *Split-party government* is coded 0 (same political party) if the dominant political party of the state legislature was the same political party of the governor (i.e. both Democrats) and coded 1 (different political parties) if the political party of the governor was different from that of the state legislature (i.e. Democratic governor and predominantly Republican state legislature).

Since Democrats are more likely to support women's rights legislation (see Soule and Olzak 2004), Democrats in the state legislature serve as elite allies in power for women's rights activists. Therefore, I include the *percentage of Democrats in the state legislature* as an issue specific indicator of a more open political opportunity structure. The United States Census Statistical Abstracts (1970-2007) provide data on the *percentage of Democrats in the state legislature*. Finally, concern over a specific social issue can create a more open political opportunity for the passage of related legislation. Therefore, since there may be more social concern regarding rape in states with a higher rape rate, I use the *rape rate* as an issue specific indicator of a more open political opportunity structure. Data from the FBI's Uniform Crime Reports (UCR) (FBI 1970-2007) are used to measure the *rape rate* in each state. The UCR provides information on all crimes reported to the police in a given year. The number of rapes per 100,000 inhabitants is used to measure the *rape rate*.

Infectiousness

Infectiousness refers to how influential the actions of one state are on the actions of all other states. Since previous researchers link infectiousness with visibility and since larger or more severe changes in a state's law receive more attention from other states than smaller or less severe changes (McMahon-Howard et al. forthcoming 2010), I use the extent of a state's change

in the particular dimension of rape law reform in each year to measure infectiousness.

Specifically, following McMahon-Howard et al.'s (forthcoming 2010) research, I measure infectiousness by the *cumulative extent of change* in the particular dimension of rape law reform. Since the measure of infectiousness depends on the particular dimension of rape law, I created a separate infectiousness variable for each rape law reform. For each infectiousness variable, I went through a five step process to calculate the values for infectiousness.

First, for each dimension of rape law reform, I created categories based on the strength of that dimension of rape law.⁴³ Second, using data from the state session laws, I coded the strength of each state's rape law in 1969 for each dimension. Third, I recorded whether or not a state made a change in that dimension of their rape law in each year and I measured the *extent of the change*, if any, in each dimension. I used the categories of the strength of the status of each dimension to code the *extent of change* in each year. Beginning with the strength of the status of each dimension in 1969, I code the *extent of change* in each given dimension according to the following: 0 if there was no change; 1 if there was a change in the dimension, but the category for the strength of the status of the dimension remains the same; 2 if there was a change in the

⁴³ Coding for strength of the gender neutral statute on a scale of 0 (weak) to 4 (strong); coded 0 if their statute is gender specific for the offender and the victim; coded 1 if their main rape/sexual assault is still gender specific, but their lesser offenses are gender neutral; coded 2 if their statutes are gender specific for the offender, but gender neutral for the victim; coded 3 if their statutes are gender neutral for the victim and offender, but contain other gender related requirements (i.e., victim and offender must be of the opposite sex); and coded 4 if their statutes are completely gender neutral. Coding for strength of the sexual assault statute on a scale of 0 (weak) to 2 (strong); coded 0 if the statute only recognizes penile-vaginal rape; coded 1 if the statutes include some other forms of sexual assault; coded 2 if the statutes include all of the following forms of sexual assault: forced oral sex, anal sex, and object penetration. Coding for the strength of the status of a state's resistance requirement on a scale of 0 (weak) to 2 (strong); coded 0 if their statutes state that a victim must physically resist to the utmost of her ability; coded 1 if their statutes state that the victim must show earnest resistance, put forth a reasonable amount of resistance, have her resistance overcome, or be prevented from resisting; and coded 2 if a state's statute does not have a resistance requirement. Coding for strength of the rape shield law on a scale of 0 (weak) to 3 (strong): coded 0 if the state does not have a rape shield law; coded 1 if the rape shield law requires a hearing and allows judicial discretion to determine the admissibility of evidence of the victim's sexual history; coded 1 if the rape shield law permits the use of evidence of the victim's sexual history to attack the victim's credibility or to prove that the victim consented; coded 2 if the rape shield law prohibits the use of the victim's sexual history as evidence except under very specific circumstances or unless it is constitutionally required; coded 3 if the rape shield law prohibits the use of the victim's sexual history as evidence except under very specific circumstances stated in the statute.

dimension that places the strength of the status of the law into the next higher category (i.e., change from strength category 0 to strength category 1); and 3 if there was a change in the dimension that moves the strength of the status of the dimension up two or more categories (i.e. from strength category 0 to strength category 2 or 3). Higher values for the *extent of change* indicate a larger or more severe change in the law.

Fourth, since a measure of the overall infectiousness must incorporate the different levels of infectiousness of all states, the measures of each state's *extent of change* in each dimension in a given year is summed to measure the *extent of all state's changes* in a given year. Finally, since infectiousness accumulates over time, the value for the *extent of all states' changes* from the previous year is summed with those from the current year to measure the *cumulative extent of change* in each dimension of a states' rape/sexual assault statutes. Following this multi-step process, I created a separate measure of infectiousness for all dimensions of rape law reform included in this study.

Susceptibility

I include a measure of susceptibility to account for the possibility that some states may be more vulnerable than other states to the influence from states that adopted the rape law reforms. Here, a measure of susceptibility must incorporate a specific characteristic of the state, which is expected to make the state more responsive to other states, as well as the prior actions of other states that are pressuring the state to respond in a similar manner. Following McMahon-Howard et al. (forthcoming 2010), since the measure of susceptibility should incorporate a state-level characteristic that taps into the likelihood that the state will pay attention to the adoption of rape law reforms in other states and makes the state more likely to follow the actions of these other states, I use prior ratification of the Equal Rights Amendment to create the susceptibility

measure. Compared to states that failed to pass the ERA, states that ratified the ERA may be more sensitive to legal issues concerning women's rights and protections. Since states that ratified the ERA may be more likely to pay close attention to the adoption of women's rights legislation in other states and more likely to pass other women's rights legislation, previously ratifying the ERA combined with exposure to other states that have passed each dimension of rape law reform meets the requirements of susceptibility as stated above. Therefore, I first created a variable measuring state *ERA ratification*, which was coded 1 if the state ratified the ERA and coded 0 if the state failed to ratify the ERA or if the state ratified and then rescinded prior to the year of data (see Crowley 2006). Then, to create the *susceptibility* measure, I multiplied the ERA ratification variable by the total number of states that adopted the particular rape law reform prior to the year of data. Since the measure of susceptibility is specific to the particular dimension of rape law reform under investigation, I created four different measures of susceptibility (one for each dimension of rape law reform included in the study).

Proximity Variable

To examine the effects that the adoption of rape law reforms in nearby states may have on a state's likelihood of adopting each of the rape law reforms, I include a measure of *interstate spatial proximity*. I use the number of bordering states that have adopted the specific reform to measure *interstate proximity*. This variable is lagged one year so that the number of bordering states that have adopted the reform is measured in the year prior to a state's decision to adopt a law. A separate measure of interstate proximity is created for each dimension of rape law reform. Only the interstate proximity variable corresponding to the specific dimension of rape law reform under investigation is included in each analysis. For example, for the analysis of the

adoption of a strong rape shield law, only the variable measuring the number of bordering states that previously adopted a strong rape shield law is included in the analysis.

Adoption of Partial Rape Law Reform Variables

In order to investigate the effect that the prior adoption of weaker, partial reforms has on a state's likelihood of passing a stronger reform for each dimension of the rape law, I use the number of prior changes to the specific dimension of rape law to measure *prior partial reforms*. Using data collected from the state session laws, the value for *prior partial reforms* represents the number of times a state changed the particular dimension of the rape law prior to the year of data. For example, if a state changed its resistance requirement from an utmost resistance requirement to a reasonable resistance requirement in 1981 and completely eliminated the resistance requirement in 1986, then the state would have 0 prior changes between 1970 and 1981 and 1 prior change in the resistance requirement for the years 1982, 1983, 1984, and 1985. A separate *prior partial reforms* variable was created for each of the four different rape law reforms. Only the *prior partial reforms* variable corresponding to the dimension of rape law under investigation is included in the analyses. For example, in examining the factors that predict the likelihood of passing a strong rape shield law, only the *prior partial reforms* variable that measures the number of prior changes to the rape shield statute is included in the analysis.

Adoption of Related Rape Law Reforms Variables

To examine how the *prior* adoption of other rape law reforms affects a state's likelihood of passing another rape law reform, I use several variables indicating whether or not the state passed other dimensions of rape law reform in a previous year: *prior gender-neutral law passed*, *prior resistance requirement eliminated*, *prior sexual assault statute created*, *prior strong rape shield statute passed*, and *prior strong marital rape law passed*. Each variable is coded 1 if the

state reformed that particular element of the rape law *during a previous year* and coded 0 if it did not make a change in that element during a previous year. Except for the variable related to the dimension of rape law under investigation, each variable is included in the analysis. For example, in the analyses of the factors predicting the adoption of a strong rape shield statute, I include *gender-neutral law passed*, *resistance requirement eliminated*, *sexual assault statute created*, and *strong marital rape law passed*, but I do not include *rape shield statute passed*.

Also, to examine how reforms passed for other dimensions of the rape law are related to the adoption of each rape law reform *during the same year*, I use several variables indicating whether or not a state passed other dimensions of rape law reform in the same year: *gender-neutral reform passed*, *resistance requirement eliminated*, *reform redefining rape as sexual assault passed*, *strong rape shield statute passed*, and *strong marital rape law passed*.⁴⁴ Each variable is coded 1 if the state reformed that particular dimension of the rape law during the given year of data and coded 0 if it did not make a change in that element during that specific year. Except for the variable related to the element of rape law under investigation, each variable is included in the analysis.

Control Variables

Control variables measuring the *percentage of the state population that is white*, the *urbanicity* of the state, the size of the *state population*, and the *regional location* of each state are included in the analysis. Following Call et al. (1991) and McMahon-Howard et al. (forthcoming 2010), I include several measures of the social climate in each state, such as the racial composition of the state and the urbanicity of the state. Using data on the racial composition of each state from each year of the United States Census (1970, 1980, 1990, 2000), I measure the *percent of the state population that is white* (this variable is 10-year time varying). Using data

⁴⁴ Data for the year of the adoption of strong marital rape laws comes from McMahon-Howard et al.'s (2010) study.

from the Statistical Abstracts (US Census Data 1970-2007), I measure the *urbanicity* of each state by the percentage of the state population that lives in urban areas. I also use data from the Statistical Abstracts (US Census Data 1970-2007) to measure the size of the *state population* (in thousands). Finally, I used the four main U.S. census regions to determine the *regional location* of each state. I use dummy coded regional variables for the *Northeast*, *Midwest*, and *West* (using the *South* as the reference category) to measure the regional location of each state.

Analytic Strategy

The analyses of the legislative adoption of rape law reforms are sensitive to temporal dimensions of social causation. Because my interest is the probability of a state adopting each of the different dimensions of rape law reforms in any given year and laws can only be adopted once a year during annual legislature meetings, I use a discrete time event history model with a dichotomous dependent variable for the analysis of each rape law reform (Allison 1984). Event history analysis is used to predict the likelihood of the occurrence of an event. In this study, I am predicting the likelihood that a state will adopt a specific rape law reform in a given year. The likelihood of a state adopting a rape law reform in a given year is measured by the hazard rate. Grattet et al. (1998) describe the hazard rate as “the probability that a particular state will adopt a law in a particular year. It is an unobserved variable that is estimated from observed years of passage for states’ [laws]” (p. 296).

The unit of analysis is the state year. Each analysis begins in 1970, which marks the beginning of the rape law reform movement. Four separate analyses are conducted for the present study since the cases included in each of the analyses for each specific reform depend upon if/when each state adopted the reform. For each analysis, there is a separate case for each state up until the year that the state adopts the specific reform. Any state that has yet to adopt

the specific rape law reform is said to be “at risk” of adopting that reform in that particular year. Once a state adopts the reform, it is no longer at risk and it is dropped from the analysis.⁴⁵ Conversely, if a state never adopts the reform, it remains in the sample for all time periods and is right censored. For example, for the analysis of rape shield laws, if state X passed a strong rape shield law in 1975, then six separate records are included in the data, one for 1970, 1971, 1972, 1973, 1974, and 1975 for that state. In a separate analysis of the resistance requirement, if state X never eliminated the resistance requirement, then there would be 37 cases for that state included in the data analysis for the resistance requirement (a case for that state for each year from 1970 to 2007). To accurately assess states at risk for adopting legislation, I omit even years for Arkansas, Montana, Nevada, North Dakota, Ohio, Oregon, and Texas, since the legislature in these states only meet every other year (Council of State Governments 2003).

Given that legislative sessions only meet once a year, each state has only one chance of adopting the law reform in a given year. Since discrete time modeling specifies that there are only certain times when a unit can be “at risk,” discrete time modeling, rather than continuous time modeling, is used in this analysis. Since the hazard rate can be represented in logistic form (Box-Steffensmeier and Jones 1997), discrete-time logit event history models are used for the present analyses. Using logit estimators, the coefficients represent how much the log-hazard of adopting a rape law reform increases or decreases with respect to each independent variable. A one unit change in the independent variable will either increase or decrease the hazard of adopting a specific rape law reform by a given percent (determined by the coefficient). Odds ratios are calculated for ease in interpreting the results. By stepping in the partial reform and other rape law reform variables, I am able to compare the differential effects of these sets of

⁴⁵ Since if/when a state adopts a reform may be different for each of the rape law reforms, the number of cases included in each analysis will be different for each rape law reform.

variables on the likelihood of a state adopting each dimension of rape law reform. Log likelihood tests are used to determine the model fit.

More specifically, I use heterogeneous diffusion models, which factor in differences in actors' degrees of infectiousness and susceptibility (Strang and Tuma 1993). Therefore, I am able to incorporate all propensity, infectiousness, susceptibility, and spatial proximity variables into the same model. I use the following equation for each event history model:

$$\lambda_n(t) = \exp[\alpha X_n + \sum_{s \in S(t)} (\beta V_s + \gamma W_n + \delta Z_{ns})]$$

Where: $\lambda_n(t)$ is equal to the hazard of adoption for an individual n at time t .

α is a parameter estimate for the effects of X_n (i.e. propensity variables).

β is a parameter estimate for the effects of V_s (i.e. infectiousness)

γ is a parameter estimate for the effects of W_n (i.e. susceptibility)

δ is a parameter estimate for the effects of Z_{ns} (i.e. proximity or pairwise influence of actors on n due to social proximity)

n is an actor at risk for adopting, s is a prior adopter and t is time.

Descriptive Statistics

I show the descriptive statistics for the variables included in the event history analyses in Tables 5 through 8. Since the data vary both by state and by year, the mean values for each variable, based upon all state-year observations for each state, were used to create the grand mean as well as the minimum and maximum values for each independent variable. Also, I provide the correlations between each of the independent variables used in the analyses for each of the four rape law reforms in Tables 9 through 12. The correlations are also based upon the mean value of each independent variable from all state-year observations for each state.

In the next three chapters, I discuss the results from the analyses of the adoption of the four different dimensions of rape law reform included in the present study: adoption of gender-neutral statutes, elimination of the resistance requirement, passage of sexual assault statutes, and

adoption of a strong rape shield law. First, in chapter 7, I address my first research question: Do the same social factors and processes similarly affect the adoption of each rape law reform despite the controversial nature of some of the reforms? Then, in chapter 8, I discuss the results of the analyses that include the partial reform variable, in addition to the propensity, infectiousness, and proximity variables included in the analyses from chapter 7, to address my second research question: Does the prior adoption of a weaker, partial rape law reform increase or decrease a state's likelihood of passing a stronger version of that rape law reform? Then, in chapter 9, I discuss the results of the analyses examining the effects of the adoption of other rape law reforms on the adoption of each type of reform.

Table 1. Year States Adopted Gender-Neutral Rape/Sexual Assault Statutes

1972.....	Ohio
1974.....	Florida, Massachusetts, Michigan
1975.....	Arizona, Colorado, Connecticut, Nebraska, New Mexico, Wisconsin
1976.....	Iowa
1977.....	Nevada, South Carolina, Vermont, Wyoming
1978.....	Tennessee
1979.....	Rhode Island, Utah
1983.....	Illinois, Texas
1984.....	Washington, West Virginia
1985.....	Delaware
1986.....	Hawaii, Minnesota, Virginia
1988.....	Alaska
1989.....	Maine
1990.....	Oklahoma
1991.....	Montana, Oregon
1995.....	Pennsylvania
2000.....	New York, Louisiana
2003.....	Arkansas, New Hampshire
2005.....	North Dakota, South Dakota
Censored.....	Alabama, California, Georgia, Idaho, Indiana, Kansas, Kentucky, Maryland, Mississippi, Missouri, New Jersey, North Carolina

38 states passed gender-neutral rape/sexual assault statutes

12 states maintain some gender-specific provisions in their rape/sexual assault statutes

Table 2. Year States Eliminated the Resistance Requirement

1971.....	Delaware, New Hampshire
1972.....	Ohio
1973.....	Montana, North Dakota
1974.....	Florida, Massachusetts, Michigan
1975.....	Arkansas, Colorado, Connecticut, Minnesota, Nebraska, New Mexico, South Dakota, Wisconsin
1976.....	Indiana, Iowa, Pennsylvania
1977.....	Arizona, Nevada, South Carolina, Vermont, Wyoming
1978.....	Alaska, New Jersey, Tennessee
1979.....	Rhode Island
1980.....	California
1981.....	Hawaii, Maine, Virginia
1982.....	New York
1983.....	Illinois, Kansas, Oklahoma, Texas
1988.....	Kentucky
1989.....	Utah
1999.....	Oregon
2000.....	Idaho
Censored.....	Alabama, Georgia, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Washington, West Virginia

41 states completely eliminated the resistance requirement

9 states still retain some type of resistance requirement

Table 3. Year States Redefined Rape as Sexual Assault

1971.....	Delaware
1972.....	Ohio, Pennsylvania
1973.....	Montana, North Dakota
1974.....	Florida, Massachusetts, Michigan
1975.....	Arkansas, Colorado, Connecticut, Minnesota, Nebraska, New Hampshire, New Mexico, South Dakota, Washington, Wisconsin
1976.....	Iowa, West Virginia
1977.....	Arizona, Nevada, South Carolina, Vermont, Wyoming
1978.....	Alaska, Louisiana, New Jersey, Tennessee
1979.....	Rhode Island
1981.....	Oklahoma
1983.....	Illinois, Kansas, Texas
1986.....	Hawaii
1992.....	Kentucky
1994.....	Idaho
Censored.....	Alabama, California, Georgia, Indiana, Maine, Maryland, Mississippi, Missouri, New York, North Carolina, Oregon, Utah, Virginia

37 states redefined the primary rape statute as sexual assault
13 states retain a limited penile-vaginal primary rape statute

Table 4. Year States Passed a Strong Rape Shield Law

1974.....	Michigan
1975.....	Montana, Nebraska, New Hampshire, New York Wisconsin
1976.....	Georgia, Kentucky, Maryland, Pennsylvania, West Virginia
1977.....	Alabama, Massachusetts, Missouri, Ohio, South Carolina, Vermont, Wyoming
1978.....	New Jersey
1980.....	Hawaii
1981.....	Indiana, Oregon, Virginia
1982.....	Connecticut
1983.....	Florida, Iowa, Maine, North Carolina
1985.....	Illinois
1986.....	Texas
1987.....	Minnesota
1988.....	Louisiana
1991.....	Tennessee
1993.....	Oklahoma
1994.....	Utah
1998.....	Arizona, North Dakota
Censored.....	Alaska, Arkansas, California, Colorado, Delaware, Idaho, Kansas, Mississippi, Nevada, New Mexico, Rhode Island, South Dakota, Washington

37 states passed strong rape shield laws

13 states passed weak rape shield laws

Table 5. Descriptive Statistics for the Adoption of Gender Neutral Sexual Assault Laws

	Mean	SD	Minimum	Maximum
Dependent Variable				
Passed Gender Neutral Law	0.04	0.19	0.00	1.00
Independent Variables				
Propensity				
Gender Climate				
% Female Labor Force	42.63	3.66	31.55	48.99
% Female Legislators	11.48	8.06	0.36	35.64
NOW Membership	4.07	4.02	0.00	25.02
Political Climate				
% Democrats	59.75	20.26	0.00	100.00
Government Ideology	47.60	22.80	0.00	97.92
Split-Party Government	0.36	0.48	0.00	1.00
Rape Rate	27.81	15.60	3.60	256.00
Susceptibility				
ERA x Prior Law	8.92	12.20	0.00	37.00
Infectiousness				
Extent of Change Gender Neutral	6.27	7.83	0.00	39.00
Proximity				
# Bordering States w Gender Neutral Law	1.65	1.60	0.00	6.00
RLR Variables				
Prior Partial Reforms - Gender Neutral Law	0.63	0.64	0.00	3.00
Sexual Assault Reform - Concurrent	0.04	0.19	0.00	1.00
Resistance Requirement Reform - Concurrent	0.04	0.19	0.00	1.00
Rape Shield Reform - Concurrent	0.02	0.16	0.00	1.00
Marital Rape Reform - Concurrent	0.01	0.11	0.00	1.00
Sexual Assault Reform - Previous	0.35	0.48	0.00	1.00
Resistance Requirement Reform - Previous	0.40	0.49	0.00	1.00
Rape Shield Reform - Previous	0.41	0.49	0.00	1.00
Marital Rape Reform - Previous	0.16	0.37	0.00	1.00
Control Variables				
% White	83.40	12.41	28.16	100.00
% Urban	65.41	14.21	32.20	94.40
Population	5195.01	5957.25	305.00	36154.00
NE Region	0.19	0.39	0.00	1.00
MW Region	0.23	0.42	0.00	1.00
W Region	0.20	0.40	0.00	1.00
S Region	0.38	0.49	0.00	1.00

N=975

Table 6. Descriptive Statistics for the Elimination of the Resistance Requirement

	Mean	SD	Minimum	Maximum
Dependent Variable				
Eliminated Resistance Requirement	0.06	0.23	0.00	1.00
Independent Variables				
Propensity				
Gender Climate				
% Female Labor Force	41.81	3.75	31.55	48.98
% Female Legislators	10.33	8.21	0.36	40.82
NOW Membership	3.34	3.72	0.00	25.02
Political Climate				
% Democrats	63.37	20.62	0.00	100.00
Government Ideology	49.56	22.68	0.00	97.92
Split-Party Government	0.37	0.48	0.00	1.00
Rape Rate	26.46	16.19	3.60	256.00
Susceptibility				
ERA x Prior Law	8.99	14	0.00	41.00
Infectiousness				
Extent of Change Resistnace Requirement	6.71	7.92	0.00	31.00
Proximity				
# Bordering States w/o Resistance Requirement	1.83	1.84	0.00	8.00
RLR Variables				
Prior Partial Reforms - Resistance Requirement	0.39	0.6	0.00	6.00
Gender Neutral Reform - Concurrent	0.03	0.23	0.00	1.00
Sexual Assault Reform - Concurrent	0.06	0.23	0.00	1.00
Rape Shield Reform - Concurrent	0.03	0.16	0.00	1.00
Marital Rape Reform - Concurrent	0.01	0.1	0.00	1.00
Gender Neutral Reform - Previous	0.17	0.38	0.00	1.00
Sexual Assault Reform - Previous	0.36	0.48	0.00	1.00
Rape Shield Reform - Previous	0.34	0.47	0.00	1.00
Marital Rape Reform - Previous	0.08	0.28	0.00	1.00
Control Variables				
% White	82.73	12.86	28.16	99.35
% Urban	64.93	14.36	32.20	91.30
Population	4504.65	4014.51	305.00	24212.00
NE Region	0.11	0.32	0.00	1.00
MW Region	0.17	0.38	0.00	1.00
W Region	0.25	0.43	0.00	1.00
S Region	0.47	0.50	0.00	1.00

N=720

Table 7. Descriptive Statistics for the Redefinition of Rape as Sexual Assault

	Mean	SD	Minimum	Maximum
Dependent Variable				
Passed Sexual Assault Reform	0.05	0.21	0.00	1.00
Independent Variables				
Propensity				
<i>Gender Climate</i>				
% Female Labor Force	42.19	3.78	31.55	48.98
% Female Legislators	10.90	7.83	0.36	35.64
NOW Membership	3.81	3.94	0.00	25.02
<i>Political Climate</i>				
% Democrats	61.41	19.87	0.00	100.00
Government Ideology	48.90	23.00	0.00	97.92
Split-Party Government	0.38	0.49	0.00	1.00
Rape Rate	26.33	15.44	3.60	256.00
Susceptibility				
ERA x Prior Law	10.00	14.36	0.00	37.00
Infectiousness				
Extent of Change Sexual Assault	6.79	8.31	0.00	33.00
Proximity				
# Bordering States w/ Sexual Assault Reform	1.98	1.87	0.00	8.00
<i>RLR Variables</i>				
Prior Partial Reforms - Sexual Assault Law	0.52	0.60	0.00	2.00
Gender Neutral Reform - Concurrent	0.03	0.18	0.00	1.00
Resistance Requirement Reform - Concurrent	0.05	0.22	0.00	1.00
Rape Shield Reform - Concurrent	0.03	0.17	0.00	1.00
Marital Rape Reform - Concurrent	0.01	0.10	0.00	1.00
Gender Neutral Reform - Previous	0.19	0.39	0.00	1.00
Resistance Requirement Reform - Previous	0.28	0.45	0.00	1.00
Rape Shield Reform - Previous	0.43	0.50	0.00	1.00
Marital Rape Reform - Previous	0.17	0.37	0.00	1.00
Control Variables				
% White	82.66	13.27	27.25	99.81
% Urban	66.40	15.16	32.20	94.40
Population	5645.22	6419.18	305.00	36154.00
NE Region	0.16	0.37	0.00	1.00
MW Region	0.19	0.39	0.00	1.00
W Region	0.24	0.43	0.00	1.00
S Region	0.40	0.49	0.00	1.00

N=776

Table 8. Descriptive Statistics for the Adoption of a Strong Rape Shield Law

	Mean	SD	Minimum	Maximum
Dependent Variable				
Adopted Strong Rape Shield Law	0.04	0.20	0.00	1.00
Independent Variables				
Propensity				
<i>Gender Climate</i>				
% Female Labor Force	42.28	3.56	31.55	49.59
% Female Legislators	12.56	9.34	0.36	40.82
NOW Membership	3.96	3.78	0.00	25.02
<i>Political Climate</i>				
% Democrats	57.52	20.91	0.00	100.00
Government Ideology	45.29	22.82	0.00	94.25
Split-Party Government	0.43	0.49	0.00	1.00
Rape Rate	30.17	16.10	3.60	102.20
Susceptibility				
ERA x Prior Law	10.67	14.22	0.00	37.00
Infectiousness				
Extent of Change Rape Shield	5.87	9.83	0.00	37.00
Proximity				
# Bordering States w Strong Rape Shield	1.34	1.51	0.00	6.00
RLR Variables				
Prior Partial Reforms - Rape Shield Law	0.52	0.57	0.00	2.00
Gender Neutral Reform - Concurrent	0.03	0.16	0.00	1.00
Sexual Assault Reform - Concurrent	0.04	0.18	0.00	1.00
Resistance Requirement Reform - Concurrent	0.04	0.19	0.00	1.00
Marital Rape Reform - Concurrent	0.01	0.09	0.00	1.00
Gender Neutral Reform - Previous	0.37	0.48	0.00	1.00
Sexual Assault Reform - Previous	0.52	0.50	0.00	1.00
Resistance Requirement Reform - Previous	0.52	0.50	0.00	1.00
Marital Rape Reform - Previous	0.1	0.3	0.00	1.00
Control Variables				
% White	84.97	11.08	28.16	99.51
% Urban	68.35	14.24	32.20	94.40
Population	4184.23	5796.99	305.00	36154.00
NE Region	0.13	0.33	0.00	1.00
MW Region	0.20	0.40	0.00	1.00
W Region	0.38	0.49	0.00	1.00
S Region	0.29	0.45	0.00	1.00

N=904

Table 9. Correlation Matrix for the Adoption of Gender-Neutral Statutes

Variables	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	
1. GN Law																											
2. F Lbr Force	.03																										
3. F Leg	.04	.61*																									
4. NOW	.02	.46*	.36*																								
5. % Dem	-.01	-.02	-.37 [‡]	.02																							
6. Govt Ide	.04	.09*	.04	.21*	.23*																						
7. Party Cmp	.04	-.04	.05	.02	-.13*	-.09*																					
8. Rape Rate	.03	.41*	.25*	.36*	.10*	.05	-.01																				
9. Infectious	.03	-.11*	-.15 [‡]	-.02	.16*	.05	.05	-.04																			
10. Suscept	.07*	.42*	.57*	.49*	-.21*	.19*	-.02	.20*	-.04																		
11. Adj	-.05	.63*	.50*	.15*	-.25*	-.06 [†]	-.02	.22*	-.12*	.16*																	
12. Partial Ref	.03	.60*	.54*	.45*	-.13*	.05	.00	.27*	-.14*	.48*	.32*																
13. RR Leg	.47*	-.05	-.04	-.01	-.02	.05	-.03	-.02	.11*	-.02	-.07*	-.10*															
14. SA Leg	.41*	-.06*	-.04	.00	.03	.04	-.01	-.01	.15*	-.03	-.07*	-.12*	.65*														
15. RS Leg	.18*	-.04	-.03	-.01	.03	.04	-.07 [‡]	-.04	.18*	.00	-.06*	-.05 [†]	.28*	.34*													
16. MR Leg	.12*	.10*	.08*	.05	-.02	.04	.04	.00	-.03	.06*	.05 [†]	.05 [†]	.02	.02	.04												
17. Prev RR	.17*	.37*	.36*	.27*	-.31*	.02	-.02	.10	-.03	.56*	.26*	.44*	.25*	.13*	.06 [†]	.07*											
18. Prev SA	-.01	.08*	.12*	.00	-.27*	-.21*	-.03	.00	-.15*	.20*	.05	.32*	-.10*	-.16*	-.07*	.03	.41*										
19. Prev RS	.03	.49*	.30*	.25*	.05	.24*	-.11*	.11*	-.04	.33*	.37*	.37*	-.03	-.01	.20*	.09*	.17*	-.05									
20. Prev MR	.03	.38*	.38*	.17*	-.26*	.05	.01	.04	-.16*	.34*	.27*	.34*	-.05	-.04	.00	.29*	.23*	.14*	.45*								
21. % White	.03	-.33*	.08*	-.24 [‡]	-.55*	-.13*	.12*	-.31	.00	.04	.08*	-.08*	.05	.03	.01	.04	.18*	.24*	-.12*	.08*							
22. Urbanicity	.04	.01	.04	.18*	.01	.28*	-.01	.20*	-.03	.33*	-.03	-.10*	.03	.01	-.03	-.04	.08*	-.09*	.04	.04	-.21*						
23. Population	-.03	.06 [†]	.03	.24*	.05	.20*	.06 [†]	.11*	-.05	.29*	.15*	-.03	-.01	-.02	-.02	-.01	.13*	-.20*	.09*	-.01	-.18*	.58*					
24. NE Reg	.02	.00	.14*	.20*	-.20 [‡]	.19*	-.08 [‡]	-.22 [‡]	.01	.33*	-.05 [†]	.11*	.02	.00	.02	.04	.26*	.14*	.24*	.23*	.24*	.19*	.16*				
25. MW Reg	-.02	.01	.06*	-.19 [‡]	-.42 [‡]	-.17 [‡]	.06*	-.08	-.02	.06 [†]	.18*	-.11 [‡]	.03	.01	-.01	.00	.18*	.10*	-.12*	.07*	.33*	-.07 [‡]	-.11 [‡]	-.26*			
26. W Reg	.05 [†]	-.14*	.12*	.08*	-.20 [‡]	.02	.15*	.17*	.01	.05	-.09 [‡]	-.01	.02	.02	-.01	-.01	-.04	-.08*	-.26 [‡]	-.14 [‡]	-.02	.23*	.10*	-.24 [‡]	-.27*		
27. S Reg	-.04	.11*	-.27 [‡]	-.06 [‡]	.68*	-.03	-.12 [‡]	.11*	.00	-.11 [‡]	-.04	.02	-.06*	-.03	.00	-.02	-.33 [‡]	-.13 [‡]	.13*	-.13*	-.47	-.28 [‡]	-.11	-.38	-.43	-.39	

Table 10. Correlation Matrix for the Elimination of the Resistance Requirement

Variables	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	
1. RR Law																											
2. F Lbr Force	.00																										
3. F Leg	.01	.62*																									
4. NOW	.04	.51*	.42*																								
5. % Dem	-.08*	.16*	-.23*	.12*																							
6. Govt Ide	.03	.25*	.34*	.26*	.12*																						
7. Party Cmp	-.03	-.04	.05	-.04	-.25*	-.21*																					
8. Rape Rate	.01	.39*	.29*	.35*	.13*	.12*	-.04																				
9. Infectious	.23*	-.21*	-.21*	-.09*	.09*	-.02	-.02	-.06†																			
10. Suscept	.10*	.30*	.58*	.42*	.04	.47*	-.04	.18*	.03																		
11. Adj	-.04	.56*	.36*	.25*	-.05	.13*	.01	.13*	-.14*	.07*																	
12. Partial Ref	.02	.39*	.43*	.20*	.05	.28*	-.03	.12*	-.14*	.50*	.38*																
13. GN Leg	.54*	.00	.03	.03	-.05	.04	.04	.01	.20*	.09*	-.03	.07*															
14. SA Leg	.73*	-.05	-.02	-.02	-.05	.02	.03	.00	.27*	.06	-.07†	-.02	.64*														
15. RS Leg	.29*	-.01	-.03	.03	.03	.03	-.06	-.01	.18*	.06	.00	-.03	.24*	.24*													
16. MR Leg	.04	.09*	.06*	.05	-.01	.08*	.03	.03	-.04	.05	.10*	.03	-.02	.05	.08*												
17. Prev GN	.22*	.26*	.47*	.14*	-.09*	.22*	.03	0.12*	-.04	.53*	.11*	.35*	.42*	.25*	.06	.00											
18. Prev SA	-.08*	-.08*	.13*	-.15*	-.07*	-.03	-.02	-.13*	-.30*	.20*	-.16*	.06†	-.03	-.09*	-.05	-.01	.21*										
19. Prev RS	-.01	.54*	.29*	.19*	.22*	.30*	-.09*	.21*	-.18*	.23*	.58*	.40*	.03	-.05	.24*	.10*	.16*	-.06									
20. Prev MR	-.01	.36*	.34*	.11*	-.13*	.21*	-.03	.07*	-.17*	.08*	.39*	.19*	.00	-.02	.04	.30*	.06†	-.06	.42*								
21. % White	.08*	-.46*	.02	-.30*	-.53*	-.02	.18*	-.35*	.06	.10*	.00	.04	.07†	.09*	-.02	.01	.12*	.17*	-.21*	-.03							
22. Urbanicity	.06	-.03	.09*	.07†	-.13*	.18*	-.10*	.27*	.03	.13*	-.04	.10*	.07†	.02	-.01	.00	.14*	-.05	-.10*	.00	-.08*						
23. Population	.01	.00	-.06	.13*	.05	.14*	.14*	.19*	.01	.04	.09*	-.07†	.00	-.03	.02	.02	-.07†	-.06†	.12*	.08*	-.12*	.46*					
24. NE Reg	.08*	-.19*	-.07*	-.06	-.10*	.26*	.26*	-.25*	.11*	.06	-.09*	-.07*	.03	.04	.05	.02	-.07†	-.02	-.11*	-.08*	.26*	.16*	.16*				
25. MW Reg	.06*	-.17*	-.10*	-.16*	-.35*	-.07†	-.07†	-.14*	.05	-.15*	.14*	-.03	.04	.07*	.01	.00	-.08*	-.04	-.04	.08*	.27*	.07†	.07†	-.16*			
26. W Reg	.03	-.06†	.29*	.06*	-.40*	-.04	-.04	.15*	.03	.18*	-.16*	.10*	.03	.01	-.04	-.02	.18*	.07*	-.30*	-.04	.17*	.27*	-.16*	-.20*	-.26*		
27. S Reg																											

Table 11. Correlation Matrix for the Redefinition of Rape as Sexual Assault

Variables	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	
1. SA Law																											
2. F Lbr Force	-.05																										
3. F Leg	-.02	.66*																									
4. NOW	-.04	.56*	.43*																								
5. % Dem	-.03	.09*	-.22*	.13*																							
6. Govt Ide	.03	.24*	.29*	.29*	.17*																						
7. Party Cmp	.01	-.03	.11*	.00	-.24*	-.15*																					
8. Rape Rate	.00	.36*	.25*	.34*	.13*	-.14*	-.02																				
9. Infectious	.29*	-.25*	-.25*	-.14*	.15*	-.04	-.04	-.07†																			
10. Suscept	.05	.38*	.57*	.46*	-.02	.40*	.04	.21*	-.01																		
11. Adj	-.08*	.55*	.41*	.35*	-.17*	.02	.06†	.19*	-.17*	.15*																	
12. Partial Ref	-.12*	.66*	.64*	.43*	-.16*	.08*	.01	.23*	-.35*	.36*	.61*																
13. GN Leg	.62*	.01	.03	.03	-.01	.05	.04	.01	.18*	.08*	-.04	-.02															
14. RR Leg	.73*	-.03	-.01	.01	-.04	.04	-.02	.00	.24*	.07*	-.07†	-.10†	.54*														
15. RS Leg	.25*	-.01	.00	.01	.01	.00	-.07*	-.02	.21*	.06†	-.01	-.04	.22*	.25*													
16. MR Leg	.04	.09*	.07*	.07†	-.04	.05	.03	.03	-.04	.04	.07*	0.08*	.05	.04	.06†												
17. Prev GN	.24*	.27*	.38*	.15*	-.17*	.03	.01	0.11*	-.05	.22*	.18*	.33*	.43*	.24*	.07*	.02											
18. Prev RR	.28*	.33*	.38*	.26*	-.21*	.07†	.00	.04	-.06†	.50*	.17*	.29*	.23*	.37*	.12*	.05	.45*										
19. Prev RS	-.05	.63*	.47*	.28*	.07*	.26*	-.11*	.22*	-.23*	.33*	.49*	.53*	.03	-.04	.21*	.07*	.26*	.29*									
20. Prev MR	-.05	.41*	.50*	.10*	-.25*	.11*	-.02	.09*	-.23*	.19*	.36*	.52*	-.01	-.03	.03	.26*	.23*	.23*	.44*								
21. % White	.07*	-.41*	-.02	-.34*	-.52*	-.10*	.17*	-.30*	.05	-.02	.00	-.14*	.04	.07*	.02	.03	.06†	.07†	-.15*	.13*							
22. Urbanicity	.00	.04	.11*	.12*	-.13*	.12*	-.04	.24*	-.05	.25*	.18*	.16*	.05	.03	-.03	.00	.17*	.20†	-.02	-.01	-.15*						
23. Population	-.06†	.13*	.14*	.31*	.02	.15*	.10*	.19*	-.12*	.35*	.16*	.11*	-.03	-.04	-.04	-.01	-.10†	.28*	.03	-.06†	-.18*	.54*					
24. NE Reg	.02	.01	.18*	.13*	-.10*	.30*	-.05	-.24*	.01	.30*	-.03	-.04	.03	.03	.03	.02	.10*	.24*	.06†	.02	.26*	.05	.10*				
25. MW Reg	.04	-.10*	-.08*	-.21*	-.35*	-.08*	.13*	-.09*	.02*	-.01	.15*	-.07*	.01	.06*	.02	.02	-.12*	.05	.00	.13*	.29*	.01	-.04	-.21*			
26. W Reg	.01	-.10†	.16*	.00	-.32*	-.10	.17*	.16*	.02	.08*	-.03	.15*	.02	.03	-.02	.00	.13*	.09*	-.26*	.03	.04	.35*	.08*	-.25*	-.28*		
27. S Reg	-.06†	.16*	-.21*	.07*	.64*	-.08*	-.21*	.12*	-.04	-.29*	-.07*	-.06	-.06	-.09*	-.01	-.03	-.08*	-.30*	.18*	-.14*	-.46*	-.35*	-.12*	-.36*	-.40*	-.46*	

Table 12. Correlation Matrix for the Adoption of a Strong Rape Shield Law

Variables	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	
1. RS Law																											
2. F Lbr Force	.02																										
3. F Leg	-.01	.62*																									
4. NOW	.01	.52*	.34*																								
5. % Dem	.05	-.03	-.38*	.04																							
6. Govt Ide	.05	.06†	.05	.18*	.28*																						
7. Party Cmp	-.10*	.03	.12*	.13*	-.14*	-.01																					
8. Rape Rate	-.03	.53*	.34*	.51*	.04	.02	.07†																				
9. Infectious	.20*	-.10*	-.17*	-.05†	.18*	.10*	-.06*	-.11*																			
10. Suscept	.00	.56*	.59*	.48*	-.12*	.23*	.16*	.39*	-.11*																		
11. Adj	.01	.59*	.38*	.18*	-.15*	-.08*	.08*	.19*	-.04	.20*																	
12. Partial Ref	-.09*	.65*	.47*	.47*	-.18*	-.02	.06*	.44*	-.17*	.53*	.50*																
13. GN Leg	.14*	.00	-.03	-.01	.01	.05	.00	.01	.18*	-.01	.00	-.05															
14. RR Leg	.19*	-.03	-.05	-.01	-.01	.04	-.05	-.04	.23*	-.04	-.03	-.08*	.56*														
15. SA Leg	.18*	-.06†	-.05	-.04	.01	.04	-.01	-.04	.26*	-.06†	-.05	-.09*	.58*	.77*													
16. MR Leg	.05	.07*	.03	.04	.00	.04	.00	.06*	-.02	.06†	.04	.03	-.01	.05	.05												
17. Prev GN	-.01	.21*	.33*	.10*	-.15*	.05	.09*	.21*	-.22*	.34*	.11*	.12*	-.13*	-.13*	-.13*	.04											
18. Prev SA	-.04	.39*	.40*	.14*	-.18*	-.02	.04	.31*	-.23*	.41*	.33*	.48*	-.08*	-.16*	-.19*	.01	.60*										
19. Prev RR	-.02	.37*	.34*	.16*	-.20*	-.07*	.05	.29*	-.25*	.43*	.33*	.43*	-.11*	.21*	-.16*	-.18*	.04	.56*	.74*								
20. Prev MR	-.01	-.06*	.10*	-.11*	-.10*	.01	.03	-.02	-.18*	.13*	.07**	-.03	-.03	-.06*	-.06†	-.03	.28*	.24*	.19*								
21. % White	.00	-.24*	.14*	-.26*	-.51*	-.02	.10*	-.33*	-.03	.02	.05	-.04	.04	.05	.04	.01	.12*	.12*	.14*	.07*							
22. Urbanicity	-.02	.12*	.27*	.13*	-.01	.25*	.03	.29*	-.07*	.30*	-.10*	.01	.02	.00	-.01	.05	.34*	.19*	.12*	.11	-.03						
23. Population	.04	-.09*	-.01	.10*	.10*	.13*	.05	.04	.00	.10*	-.08*	-.02	-.01	.01	-.01	-.02	-.13*	.00	-.23*	-.03	-.16*	.44*					
24. NE Reg	0.06†	-.07*	-.01	-.04	.11*	.38*	-.07*	-.30*	.06	.03	-.10*	-.17*	.02	.06†	.05	.00	-.07†	-.03	-.06*	.03	.27*	.15*	-.02				
25. MW Reg	.04	-.09*	-.08*	-.17*	-.35*	-.14*	-.02	-.20*	.01	-.02	.13*	.12*	.01	.03	.02	-.04	-.23*	.08*	.07*	-.02	.30*	-.19*	-.03	-.19*			
26. W Reg	-.10*	.13†	.45*	.24*	-.37*	-.04	.17*	.35*	-.09*	.27*	-.07*	.15*	-.02	-.04	-.04	.04	.27*	.08*	.07*	.08*	.00	.35*	.06*	-.30*	-.40*		
27. S Reg	.03	-.02	-.41*	-.08*	.63*	-.11	-.11*	.02	.05	-.29*	.04	-.15*	.00	-.03	-.02	.00	-.14*	-.14*	-.10*	-.09*	-.47*	-.31*	-.03	-.24*	-.32*	-.50*	

CHAPTER 7

RESULTS AND DISCUSSION:

THE DIFFUSION OF RAPE LAW REFORMS

In this chapter, I present the results of the analyses designed to address the following two research questions: 1) How do a state's gender climate, political climate, and the interstate process of diffusion affect the adoption of rape law reforms? 2) Do the same social factors and processes that significantly affect the adoption of non-controversial rape law reforms also significantly affect the adoption of controversial rape law reforms? After answering these research questions, I then summarize my findings regarding the adoption of rape law reforms and discuss the limitations of these findings.

While predictions from both conflict theory and political opportunity theory suggest that the same social factors should affect the adoption of each of the rape law reforms, findings from previous research (Berger et al. 1991; McMahon-Howard et al. forthcoming 2010) indicate that the effects of these social factors and processes may be different for some rape law reforms. Since the results and conclusions from previous research on the adoption of rape law reforms (Berger et al. 1991; Call et al. 1991; McMahon-Howard et al. forthcoming 2010) are limited due to methodological weaknesses, I improve upon previous research by using longitudinal data to examine whether or not the social factors and processes that affect the adoption of one rape law reform also affect the adoption of other rape law reforms. I also examine if the direction of these effects is the same for each rape law reform.

Also, while previous researchers (McMahon-Howard et al. forthcoming 2010; Soule and Earl 2001) suggest that that the process of diffusion may operate differently for controversial laws compared to non-controversial laws, there is no research to date that compares the causal determinants of the adoption of controversial and non-controversial law reforms. Therefore, the present study provides a unique opportunity to examine if the process of diffusion operates differently for more controversial legislation. If the process of diffusion operates differently for non-controversial and controversial legislation, then spatial proximity should have a positive effect for passing non-controversial rape law reforms (gender-neutral rape laws and eliminating the resistance requirement) and a negative effect for the controversial rape law reforms (redefining rape as sexual assault and passing a strong rape shield law).

Below, in the main section of the chapter, I present the results and provide a discussion of the event history analyses examining the adoption of each rape law reform. Then, in the following section, I compare the results for the two non-controversial rape law reforms to the results for the two controversial rape law reforms to determine if the same factors and processes affect the adoption of different, but related, policies, despite the controversial nature of some of the rape law reforms.

Results for the Adoption of Multiple Rape Law Reforms

I present the results of the event history analyses predicting the adoption of gender-neutral rape/sexual assault statutes (model 1), the elimination of the resistance requirement (model 2), the adoption of statutes redefining rape as sexual assault (model 3), and the adoption of a strong rape shield law (model 4) in Table 13. The table includes the coefficients, standard errors, and significance level for each variable included in each model. Below, I discuss the results for the effects of the gender climate, political climate, and diffusion variables.

Gender Climate Variables

Among the gender climate variables, only the percentage of women in the labor force significantly affects the adoption of rape law reforms (Table 13). More specifically, the effect of the percentage of the labor force that is comprised of women is positive and statistically significant for the adoption of gender-neutral rape/sexual assault statutes (model 1) and the elimination of the resistance requirement (model 2), and the effect is positive and marginally significant for the adoption of strong rape shield laws (model 4). These findings indicate that, net of the effects of the other variables, having a high percentage of women in the labor force increases a state's likelihood of adopting a gender-neutral rape law, eliminating the resistance requirement, and passing a strong rape shield law. In fact, a unit increase in the percentage of women in the labor force increases a state's likelihood of adopting gender-neutral rape/sexual assault statutes by 25 percent and eliminating the resistance requirement by 37 percent. Thus, these results provide partial support for hypothesis 1, which predicts a positive effect for the percentage of women in the labor force on the adoption of all of the rape law reforms. These findings indicate that states where women have more economic power are more likely to adopt rape law reforms.

Despite the significant effect for women's labor force participation, both the percentage of females in the state legislature and NOW membership fail to have a significant effect on the adoption of rape law reforms (Table 13). The coefficients for the percentage of females in the legislature and NOW membership do not reach statistical significance in any of the models (models 1 thru 4). Thus, contrary to hypothesis 2, which predicts that states with a higher percentage of women in the state legislature will be more likely to adopt each of the rape law reforms, these results indicate that the percentage of women in the state legislature does not

affect a state's likelihood of adopting any of the rape law reforms (models 1 – 4). Also, contrary to hypothesis 3, which predicts that states with a higher NOW membership will be more likely to adopt each of the rape law reforms, the results suggest that NOW membership does not affect a state's likelihood of adopting rape law reforms.

Political Climate Variables

With the exception of the significant negative effect that a split-party government has on the adoption of a strong rape shield law, none of the political climate variables are significant in any of the models (Table 13 models 1 thru 4). Thus, the results fail to provide support for the hypotheses regarding the effects of a state's political climate (hypotheses 4 – 7). Here, I predicted that states with the following political characteristics would be more likely to adopt each of the dimensions for rape law reform: a higher percentage of Democrats in the state legislature, a more liberal government ideology, the absence of a split-party government, and a high rape rate. Contrary to my hypotheses, however, these political climate variables do not significantly affect the adoption of rape law reforms.

Diffusion Variables

To examine the effects that the process of diffusion has on a state's likelihood of adopting each of the rape law reforms, I included variables measuring each state's infectiousness, susceptibility, and spatial proximity to prior adopters. The results suggest that both infectiousness and spatial proximity, but not susceptibility, have a significant effect on the diffusion of rape law reforms (Table 13). Below, I present the results for each of the diffusion variables – infectiousness, susceptibility, and spatial proximity.

The infectiousness variable is positive and significant in three out of four of the models (Table 13). Specifically, infectiousness, which is measured as the cumulative extent of change in

the particular dimension of rape law reform, is a significant predictor of the elimination of the resistance requirement (model 2), the redefinition of rape as sexual assault (model 3), and the adoption of a strong rape shield law (model 4). Thus, the results provide support for hypothesis 12, which predicts that states that pass stronger reforms for a certain element of rape law will have a greater effect on the spread of the adoption of that reform than states that pass weaker reforms.

Susceptibility, however, has no effect on the adoption of rape law reforms. Although the coefficients are positive across all four models (models 1 thru 4), the susceptibility measure fails to reach statistical significance in all four analyses (Table 13). Since I used the prior ratification of the ERA to create the measure of susceptibility, these results suggest that states that ratified the ERA were not more susceptible to the diffusion of rape law reforms. Therefore, the results fail to provide support for hypothesis 11, which predicts that states that ratified the ERA are more susceptible to the diffusion of rape law reforms and are more likely to follow the actions of prior adopters by adopting each of the rape law reforms.

On the other hand, spatial proximity is negative and statistically significant in models 1, 2 and 3 (Table 13). Thus, spatial proximity has a significant negative effect on the adoption of gender-neutral rape laws (model 1), the elimination of the resistance requirement (model 2), and the redefinition of rape as sexual assault (model 3). These results indicate that being in close proximity to other states that adopted these three rape law reforms significantly *decreases* a state's likelihood of adopting each of these rape law reforms. In fact, each unit increase in the number of bordering states that adopted the particular rape law reform decreases a state's likelihood of passing a gender-neutral rape/sexual assault statute by 42 percent, eliminating the resistance requirement by 24 percent, and redefining rape as sexual assault by 31 percent. Thus,

while these results fail to provide support for hypothesis 10, which predicts a positive effect of spatial proximity on the adoption of gender-neutral rape/sexual assault statutes and the elimination of the resistance requirement, they lend support to hypothesis 11, which predicts a negative effect of spatial proximity on redefining rape as sexual assault and passing a strong rape shield law.

Control Variables

Finally, only one of the control variables – the percentage of the population that is white – has a statistically significant effect in any of the models (Table 13). The percentage of the state population that is white positively and significantly affects a state’s likelihood of adopting gender-neutral rape/sexual assault statutes (model 1). Thus, states with a higher percentage of whites are more likely to adopt gender-neutral rape/sexual assault statutes.

Explaining the Adoption of Multiple Rape Law Reforms

The Effects of a State’s Gender Climate on the Adoption of Rape Law Reforms

Overall, the results of the event history analyses suggest that the gender climate of the state and the process of interstate diffusion significantly affect a state’s likelihood of adopting rape law reforms. Consistent with conflict theory, I predicted that states with a climate favorable to women would be more likely to pass each of the dimensions of rape law reform. Importantly, I found that states where women have more economic power are more likely to pass gender-neutral rape/sexual assault statutes, eliminate the resistance requirement, and pass a strong rape shield law. Thus, in finding a positive effect of women’s labor force participation on the adoption of rape law reforms, my results provide partial support for the prediction from conflict theory. Also, these results are consistent with previous research on the effects of women’s labor force participation on the adoption of marital rape laws (McMahon-Howard et al. forthcoming

2010) as well as other women's rights legislation (Berger et al. 1991; McCammon et al. 2001; Ramirez and McEnaney 1997).

Both conflict theory and political opportunity theory offer compelling explanations for these findings. First, consistent with conflict theory, these results suggest that as women gain more economic power, they are better able to influence the adoption of rape law reforms as well as other laws that serve and protect their interests. In states where more women are in the paid workforce, which places them in the public sphere, women may have more influence on the decisions made by lawmakers. Both their presence in the public sphere and their economic resources allow women in these states to exert more pressure on policymakers. As a result, legislators are more likely to pass laws, such as rape law reforms, that protect women's interests.

In addition to increasing the pressure on legislators to pass rape law reforms, having a higher percentage of women in the labor force may also affect attitudes towards women, which, in turn, can affect the outcome of rape law reforms. Consistent with McCammon et al.'s (2001) extension of political opportunity theory, these results suggest that as women gain more economic power, attitudes towards women change and support for women's rights legislation increases. Thus, the significance of the effect of women's increased presence in the labor force on the adoption of rape law reforms may be indicative of changing attitudes towards women, in general, and rape victims in particular.

Contrary to the predictions from conflict theory, however, I did not find a significant effect of women's political power on the adoption of rape law reforms. This finding is not completely surprising, however, given the mixed findings for the effect of the percentage of women in the state legislature on the adoption of women's rights legislation. While Murphy (1997) finds that the percentage of women in the state legislature is one of the strongest

predictors of the adoption of domestic violence reform laws, other researchers fail to find a significant effect of the percentage of women in the state legislature on the adoption of a strong marital rape law (McMahon-Howard et al. forthcoming 2010) and the ratification of the ERA (Soule and Olzak 2004).

Although female legislators may be more committed than male legislators to advancing women's interests (Thomas and Welch 1991), they may have to be selective in regard to what women's rights legislation to push so as not to isolate themselves from their male counterparts. Also, as Beckwith and Cowell-Meyers (2007) argue, female legislators' ability to pass women-friendly policies may depend on the larger political context. For instance, female legislators may be able to exert a positive influence on women's rights legislation only when the dominant governing party in power is more liberal. Further research is needed to determine the conditions under which female legislators are able to influence the adoption of women's rights legislation.

The Effects of a State's Political Climate on the Adoption of Rape Law Reforms

In addition to women's economic and political power, I also expected the strength of feminist activism to affect a state's likelihood of adopting each of the rape law reforms. Since conflict theorists (i.e., Quinney 1970) and social movement researchers (i.e., Giugni, Tilly, and McAdam 1999) suggest that the presence, strength, and activities of interest groups may increase the likelihood of the passage of law reforms, I predicted that states with a larger NOW membership would be more likely to adopt each of the rape law reforms. Contrary to what was expected, however, I found that feminist activism had no effect on a state's likelihood of adopting each of the rape law reforms. These findings are somewhat consistent with McMahon-Howard et al.'s (forthcoming 2010) findings since these researchers found that, in general, NOW

membership did not affect the adoption of a strong marital rape law over the entire course of the rape law reform movement.

On the other hand, the results are inconsistent with McMahon-Howard et al.'s (forthcoming 2010) finding regarding the time period effects for NOW membership. The researchers found that NOW membership increased a state's likelihood of adopting a strong marital rape law during the early period of the rape law reform movement (prior to 1990), but not during the later period of the rape law reform movement (after 1989). In results not shown here, I explored possible time period effects for NOW membership on each of the rape law reforms, but I failed to find a significant effect for NOW. Therefore, contrary to McMahon-Howard's (forthcoming 2010) findings, NOW membership failed to have an effect on the adoption of gender-neutral rape law reforms, the elimination of the resistance requirement, the redefinition of rape as sexual assault, and the adoption of a strong rape shield law during all time periods of the rape law reform movement. These findings, however, may be due to data limitations, which I will discuss in more detail at the end of the chapter.

In addition to the effect of the gender climate, researchers suggest that a state's political climate plays an important role in the adoption of women's rights legislation (Berger et al. 1991; Call et al. 1991; Murphy 1997; Soule and Olzak 2004). The results from my analyses, however, indicate that most measures of a state's overall political climate have no effect on a state's likelihood of adopting gender-neutral rape/sexual assault statutes, eliminating the resistance requirement, redefining rape as sexual assault, and passing a strong rape shield law. Taken together with the results from McMahon-Howard et al.'s (forthcoming 2010) study, which indicate that a state's political climate has no effect on the adoption of a strong marital rape law,

the results indicate that a state's political climate does not affect the likelihood of adopting rape law reforms.

Given the lack of significance of the political climate variables, these results are inconsistent with the predictions from political opportunity theory. According to political opportunity theory, certain aspects of the political environment create more favorable conditions for social movement mobilization and policy change (Meyer and Minkoff 2004). In the case of women's rights legislation, political opportunity theory suggests that factors such as having a more liberal government ideology and having a high percent of democrats in the state legislature should increase a state's likelihood of passing laws protecting women's rights. In regard to rape law reforms, however, these political factors do not affect a state's likelihood of passing the legislation. These results do not necessarily mean that the political climate does not matter for the adoption of rape law reforms. Instead, it is possible that a state's political climate affects the adoption of rape law reforms in a more complex way than political opportunity theory suggests. Additional research is needed to further explore how the political climate of a state may affect the adoption of rape law reforms and other women's rights legislation.

Theoretically, this lack of statistically significant findings informs two general debates in the social movement literature. First, since political opportunity theory was developed originally to explain social movement mobilization and activists' choice of strategies and tactics, some scholars question the usefulness of political opportunity theory for explanations of policy outcomes (Meyer 2004; Meyer and Minkoff 2004). Here, my findings suggest that political opportunity theory does not provide a useful explanation of policy change.

Second, and related to the first debate, there is debate over whether or not the factors that create political opportunities for social movement mobilization are the same factors that create

political opportunities for policy change (Meyer and Minkoff 2004). Although social concern over high rape rates is cited as a factor that contributed to the rise of the rape law reform movement (Largen 1988; Spohn 1999), my results suggest that a state's rape rate had no effect on the successful adoption of rape law reforms. Similarly, while a more liberal government ideology and a high percentage of Democrats in the state legislature may create a political opportunity for the mobilization of women's rights activists (see Soule and Olzak 2004), my results suggest that these two aspects of the political climate do not create a political opportunity for the adoption of rape law reforms. Thus, these findings suggest that the factors that contribute to the rise of a social movement may differ from the factors that contribute to the outcomes of the social movement.

Empirically, the lack of statistically significant results for the political climate variables points to the importance of utilizing longitudinal data to examine the adoption of law reforms. For example, the lack of significance of the rape rate is inconsistent with Berger et al.'s (1991) findings regarding the relationship between the rape rate and the adoption of rape law reforms. In fact, in Berger et al.'s study, the rape rate showed the "strongest effects on rape law reform" as it was associated with several of their reform measures – the definition index, spouse index, and the overall rape law reform index (p. 232). Importantly, although Berger et al. report that the rate of reported rapes is positively associated with rape law reforms, it cannot be determined from their analyses whether the adoption of reforms led to an increase in rape reporting or if an increase in reported rapes led to the adoption of rape law reforms. Thus, given that the present study directly examines the effect of an increase in the rate of reported rapes *prior to* the adoption of the reforms and finds that the rape rate is unrelated to the adoption of reforms, the

results from the present study indicate that the rape rate does not directly affect the adoption of reforms.

The Effects of the Process of Diffusion on the Adoption of Rape Law Reforms

While my findings regarding the effects of a state's gender and political climate on the adoption of rape law reforms are important, my results suggest that modeling the process of interstate diffusion is important as well. By modeling the process of diffusion, I am able to examine how states influence each other in the adoption of rape law reforms. More specifically, in using a heterogeneous diffusion model, not only am I able to examine how the adoption of rape law reforms in neighboring states affects a state's likelihood of adopting each rape law reform, I am also able to examine the possibility that some states are more influential, or infectious, in the diffusion of rape law reforms as well as the possibility that some states may be more vulnerable, or susceptible, to the influence from other states that previously adopted the rape law reforms. In doing so, I found that while both infectiousness and spatial proximity are important determinants of the spread of rape law reforms, susceptibility does not affect the diffusion of these legal reforms. I discuss the effects of infectiousness, susceptibility, and spatial proximity in more detail below.

First, consistent with McMahon-Howard et al.'s (forthcoming 2010) findings for marital rape laws, I found that states that made stronger or more severe changes for each rape law reform were more influential (infectious) in the diffusion of the elimination of the resistance requirement, the redefinition of rape as sexual assault, and the adoption of a strong rape shield law. Why are states that make larger changes in their rape laws more influential? When a state makes more severe or stronger changes to their rape laws, such changes may gain more attention from other states. Compared to these stronger changes, weaker changes in a state's rape law may

not gain attention or generate conversation among legislators in other states. Also, weaker changes may not be as “newsworthy.” Therefore, other states may not be aware of weaker changes in a state’s rape law. As states make stronger changes in their rape laws, however, other states are more likely to take note and mimic the actions of these states.

Although the results suggest that states that made large changes to their rape laws are more influential in the diffusion of rape law reforms, the results from the present study indicate that states that previously adopted the ERA are no more susceptible to the diffusion of rape law reforms than states that did not ratify the ERA. To the extent that certain states are more vulnerable to the influence of other states that previously adopted each of the rape law reforms, a state’s susceptibility should affect the likelihood of adopting the reforms.

Given the lack of significance for susceptibility, the results of the present study suggest that a state’s susceptibility does not play a significant role in the adoption of rape law reforms. Similarly, in their analysis of the adoption of strong marital rape laws, McMahon-Howard et al. (forthcoming 2010) found that over the entire course of the rape law reform movement a state’s susceptibility did not affect the likelihood of the adoption a strong marital rape law; however, when the researchers examined possible time period effects, they found that a state’s susceptibility was significant during the early period of the rape law reform movement (1976-1989), but not during the later reform period (1990-2002). In results not shown here, I explored possible time period effects, but susceptibility remained insignificant during all time periods of the rape law reform movement. Therefore, the results of the present study contradict McMahon-Howard et al.’s findings in regard to the effect of a state’s susceptibility during the early reform period. Thus, a state’s susceptibility only affects the adoption of one dimension of rape law

reform – eliminating the spousal rape exemption – and only during the early period of the rape law reform movement.

On the other hand, my results indicate that spatial proximity has a negative effect on the adoption of gender-neutral rape/sexual assault statutes, the elimination of the resistance requirement, and the redefinition of rape as sexual assault. Thus, being in close proximity to other states that adopted each rape law reform significantly decreased a state's likelihood of passing the rape law reform. Although the majority of states eventually adopted each of the rape law reforms, being in close proximity to states that already passed these rape law reforms was not a factor that increased a state's likelihood of passing these reforms. This does not mean that rape law reforms did not diffuse over time. In fact, the majority of the states eventually adopted each of the rape law reforms (see Tables 1 thru 4).

Instead, while spatial proximity negatively affects the diffusion of rape law reforms, other factors work to increase a state's likelihood of adopting rape law reforms. These findings are consistent with recent research on the diffusion of law reforms (McMahon-Howard et al. forthcoming 2010; Soule and Earl 2001) and support Soule and Earl's (2001) claim that when deciding whether or not to adopt law reforms, "states face countervailing pressures, some toward conformity, others toward nonconformity" (p. 283). That is, for rape law reforms, as spatial proximity creates pressure toward heteromorphism, other factors simultaneously create pressure towards isomorphism (see Soule and Earl 2001). For instance, while being in close proximity to other states that eliminated the resistance requirement (spatial proximity) decreases a state's likelihood of eliminating the resistance requirement, other states making large or more severe changes to their resistance requirement (infectiousness) increases a state's likelihood of also eliminating the resistance requirement. Thus, the process of diffusion involves both "pressures

towards isomorphism” as well as “heteromorphic forces” (Soule and Earl 2001: 283). Indeed, my results indicate that these countervailing pressures operate similarly for the adoption of different rape law reforms.

Summary of the Factors and Processes that Affect the Adoption of Rape Law Reforms

In sum, these results suggest that the gender climate of a state and the process of diffusion significantly affect a state’s likelihood of adopting rape law reforms. Specifically, women’s economic power has a positive effect on the adoption of most rape law reforms, but women’s political power and the strength of feminist activism have no effect on the adoption of most rape law reforms. Also, states that made larger or more severe changes for each rape law reform were more influential in the diffusion of rape law reforms, but being in close proximity to other states that adopted each rape law reform decreased a state’s likelihood of adopting the same reform. These results were consistent for each of the rape law reforms; this suggests that the same factors and processes similarly affect the adoption of rape law reforms, despite the controversial nature of some of the reforms. Below, I discuss the comparisons between the results for the non-controversial and controversial rape law reforms.

Comparing the Adoption of Non-Controversial and Controversial Rape Law Reforms

In comparing the results for the non-controversial and the controversial rape law reforms, the results suggest that the same factors that affect (or fail to affect) the adoption of non-controversial rape law reforms also affect the adoption of controversial rape law reforms (Table 13 models 1-4). Importantly, the measures of the gender climate that have a significant effect on the adoption of non-controversial rape law reforms also have a significant effect, which is in the same direction, on the adoption of controversial rape law reforms. States where women have more economic power are more likely to pass both non-controversial reforms (the creation of

gender-neutral rape/sexual assault statutes and the elimination of the resistance requirement) and one of the controversial reforms (the strong rape shield law), but both women's political participation and the strength feminist activism fail to affect the adoption of all rape law reforms.

The findings regarding the effects of women's economic power on the adoption of each of the rape law reforms are consistent with predictions from conflict theory and from McCammon et al.'s (2001) extension of political opportunity theory. First, where women have more power, they will be in a better position to influence the adoption of women's rights legislation. Also, in states where women have more economic power, there is more likely to be more favorable attitudes towards women, which creates a gendered opportunity for the adoption of women's right legislation. Thus, since the rape law reform movement was very much a part of the larger women's rights movement and the rape law reforms were clearly framed as concerning women's rights, women's economic power similarly affects a state's likelihood of adopting each of the rape law reforms, regardless of the controversial nature of the reforms.

Also, the political climate variables fail to affect the adoption of both non-controversial and controversial rape law reforms. That is, with one exception, the political climate of the state, which includes the percentage of democrats in the state legislature, the political ideology of the state, split control of the state legislature, and the rape rate, fails to affect the adoption of all rape law reforms. These findings are important given that they conflict with claims made by previous researchers that the political opportunity structure "matters less" for the adoption of controversial legislation (Haider-Markel and Meier 1996; Soule 2004). Since these previous researchers did not compare the factors that affect the adoption of controversial and non-controversial legislation, they were unable to test and support their claim directly. Conversely, since the present study examined the adoption of both controversial and non-controversial rape law

reforms, the results from the present study are able to refute this claim. Importantly, since the political opportunity structure failed to affect both non-controversial and controversial rape law reforms, these results suggest that the political opportunity structure does not play a significant role in the adoption of reforms, in general. Thus, the political opportunity structure does not differentially affect controversial legislation.

Finally, the measures of the interstate process of diffusion have the same directional effects on the adoption of non-controversial and controversial rape law reforms. First, infectiousness has a positive effect on the adoption of one of the non-controversial reforms (eliminating the resistance requirement) and on both of the controversial reforms (redefining rape as sexual assault and passing a strong rape shield law). Thus, for both controversial and non-controversial rape law reforms, the results indicate that making more severe or stronger changes in rape law reforms increases the amount of influence a state has on the likelihood of other at-risk states adopting similar rape law reforms. Second, spatial proximity has a negative effect on the adoption of both non-controversial reforms (creating gender-neutral rape/sexual assault statutes and eliminating the resistance requirement) and on one of the controversial reforms (redefining rape as sexual assault). That is, the adoption of a rape law reform in a nearby state decreases a state's likelihood of adopting that same reform for both controversial and non-controversial rape law reforms.

These findings are important given the recent claim that the process of diffusion may operate differently for controversial and non-controversial legislation (McMahon-Howard et al. forthcoming 2010; Soule and Earl 2001). While other diffusion factors, such as infectiousness and susceptibility, consistently create pressure towards isomorphism, recent research suggests that spatial proximity may create pressure toward heteromorphism (McMahon-Howard et al.

forthcoming 2010; Soule and Earl 2001). Since previous researchers found that spatial proximity negatively affects the diffusion of controversial legislation (McMahon-Howard et al. forthcoming 2010), these researchers suggest that spatial proximity may positively affect the diffusion of non-controversial legislation and negatively affect the diffusion of controversial legislation. Therefore, I predicted that spatial proximity would positively affect the adoption of the two non-controversial rape law reforms (gender-neutral laws and the elimination of the resistance requirement) (hypothesis 13) and negatively affect the adoption of the two controversial rape law reforms (redefining rape as sexual assault and passing strong rape shield laws) (hypothesis 14). Instead, however, I found that spatial proximity negatively affects the adoption of all rape law reforms, regardless of the controversial nature of some of the reforms.

Taken together with McMahon-Howard et al.'s (forthcoming 2010) finding in regard to marital rape laws, these results suggest that being in close proximity to other states that passed each rape law reform decreases a state's likelihood of passing the same law reform regardless of the controversial nature of some of the reforms. While these results are contrary to my hypothesis regarding the differential effects of spatial proximity for controversial and non-controversial reforms, it is important to note that they are consistent with both McMahon-Howard et al.'s (forthcoming 2010) findings in regard to the adoption of strong marital rape laws and Soule and Earl's (2001) findings in regard to the adoption of hate crime legislation. In both studies, the researchers found that spatial proximity has a negative effect on the diffusion of laws - an increase in the number of bordering states that passed a strong marital rape law *decreased* a state's likelihood of abolishing the spousal exemption (McMahon-Howard et al. forthcoming 2010) and an increase in the proportion of bordering states that passed a hate crime law decreased a state's likelihood of passing the same hate crime law (Soule and Earl 2001).

Conversely, research on the adoption of women's suffrage indicates that that "the passage of full, presidential, and primary suffrage in one or more neighboring states significantly encouraged the passage of these types of suffrage in a particular state" (McCammon et al. 2001: 61). Therefore, since research indicates that spatial proximity has a positive effect on the diffusion of less controversial legislation (i.e., women's suffrage) and a negative effect on more controversial legislation (hate crime laws and marital rape laws), Soule and Earl (2001) and McMahon-Howard et al. (forthcoming 2010) suggest that the process of diffusion may operate differently for controversial legislation.

Previous researchers, however, have not compared the effects of the process of diffusion for controversial and non-controversial legislation in the same study. From comparing the effects of the process of diffusion for both controversial and non-controversial rape law reforms in the present study, we now know that the effects of the interstate process of diffusion are significant and in the same direction for both non-controversial and controversial rape law reforms. Furthermore, the findings from the present study refute the claims from previous researchers (McMahon-Howard et al. forthcoming 2010; Soule and Earl 2001) that the controversial nature of reforms can explain the negative effects of spatial proximity. Instead, for both controversial and non-controversial *criminal* law reforms, it may be that the adoption of a strong law reform in nearby states decreases a state's likelihood of passing the same strong reform, but increases the state's likelihood of passing a weaker version of the law reform. Additional research is needed to investigate why spatial proximity has a negative effect on the diffusion of rape law reforms, specifically, and criminal law reforms more generally.

Summary of Findings

The results from these analyses indicate that the same social factors and processes affect the adoption of both controversial and non-controversial rape law reforms. Also, these effects are in the same direction for each rape law reform. Furthermore, while the results provide little support for my hypotheses regarding the effects of states' gender and political climates on the adoption of rape law reforms, these results are important in light of the methodological advancements of the present study over past research on rape law reforms (Berger et al. 1991; Call et al. 1991). Since the findings from the present study conflict with some of the findings from these previous studies, these differences are especially important. Indeed, contrary to these previous studies that offered speculative conclusions based upon cross-sectional analyses (Berger et al. 1991; Call et al. 1991), several conclusions regarding the causal determinants of the adoption of rape law reforms can be made with confidence based upon the analyses in the present study.

First, the gender climate of a state plays an important role in the adoption of rape law reforms. States where women have more economic power are more likely to pass gender-neutral rape/sexual assault statutes, eliminate the resistance requirement, and pass a strong rape shield law. Somewhat surprisingly, however, neither women's political power nor the strength of feminist activism had a significant effect on the adoption of the rape law reforms. Second, the results indicate that the political climate of a state has little, if any, effect on the outcome of rape law reforms.

Third, the interstate process of diffusion significantly affects the adoption of rape law reforms. With the exception of McMahon-Howard (forthcoming 2010) et al.'s study, previous studies (Berger et al. 1991; Call et al. 1991) neglected to consider how states influence each

other in regard to the adoption of rape law reforms. The present study examined the role of these interstate processes and, in doing so, identified two important interstate factors that affect the spread of rape law reforms. First, for most rape law reforms, states that make more severe changes for the reform are more infectious in the diffusion of that particular rape law reform, which increases the likelihood that at-risk states will pass a similar reform. Also, for most rape law reforms, having more bordering states that passed the reform decreases a state's likelihood of passing the same reform. Thus, contrary to McMahon-Howard et al.'s (forthcoming 2010) claim that spatial proximity differentially affects the adoption of controversial and non-controversial reforms, the present study indicates that the interstate process of diffusion operates similarly for the adoption of different rape law reforms despite the controversial nature of some of the reforms.

Limitations

While these results offer important insights into the adoption of rape law reforms, some caution must be taken in interpreting the results for the effect (or lack of effect) of NOW membership on the adoption of the reforms. Indeed, the finding that NOW membership failed to affect the adoption of these rape law reforms during any and all periods of the rape law reform movement is quite surprising given that McMahon-Howard et al. (forthcoming 2010) found that NOW membership had an effect on the adoption of a strong marital rape law during the early period of the rape law reform movement. The lack of a significant effect for NOW in the present study, however, may be due to data limitations. While the data used in McMahon-Howard et al.'s (forthcoming 2010) study was collected from a single source (NOW headquarters), the data used in the present study came from both NOW headquarters and the NOW archives at the Schlesinger Library at Harvard University. Since data on NOW membership was not regularly

and consistently collected until 1977, the data from the earlier years (1970-1976) may be inconsistent with the data from the later years (1977-1997). Beginning in 1977, NOW collected membership data and reported these data from multiple years in a single spreadsheet. Therefore, since these later data (1977 to 1997) were consistently collected and reported, these data are more reliable. Conversely, when searching the NOW archives for earlier membership data, I was unable to find membership data for all states for all years between 1970 and 1976. Instead, I found one file that contained the earliest documented state membership data for 1967 and another file that contained regional membership data for 1974. These data indicate that while 16 states had no members in 1967, the number of members in the remaining 34 states ranged from 1 to 106. Due to the rapid increase in NOW members between 1970 and 1976, which I discuss below, my use of linear interpolation to estimate the number of NOW members in each state between 1970 and 1977 may have produced weak estimates of yearly NOW membership. Therefore, the data for 1970 to 1976 are less reliable than the data for 1977 to 2006.

NOW was founded in 1966 and they gained approximately 300 charter members in the first year (www.now.org/history/the_founding). According to the data from NOW archives, there were 534 members as of February 6, 1967. Also, these data indicate that membership was increasing rapidly during the late 1960s and early 1970s. For example, membership numbers were tracked for each of the four main census regions over the course of five months (March to July) in 1974, and the data indicate that membership increased from 6,824 members in March to 12,923 members in July in the Eastern region, from 4,894 to 7,464 in the Southern region, from 5,198 to 8,178 in the Midwestern region, and from 4,219 to 8,786 in the Western region. Thus, in 1974 alone, NOW membership increased by 77 percent (from 21,135 to 37,351) in less than 6 months. Then, based upon the data provided by the NOW headquarters, there were 59,019

members in 1977. Therefore, NOW membership increased by 58 percent over the course of about 3 years (from 1974 to 1977).

While these data indicate that NOW membership increased rapidly during the early 1970s, the increase was not consistent across states or across years. Therefore, since linear interpolation was used in the present study to account for the missing data between 1967 and 1977, the accuracy of the data on state-level NOW membership between 1967 and 1977 is limited. This is especially problematic for the present study considering the fact that between 29 and 54 percent of the states that adopted the rape law reforms included in the analyses did so prior to 1977 (see Tables 1 thru 4). Although this presents a weakness for the measure of feminist activism, it is still the best measure of state-level feminist activism from the 1970s to the present.⁴⁶ Therefore, additional research is needed to determine whether or not the strength of feminist activism had an effect on a state's likelihood of adopting rape law reforms. This research should incorporate an improved measure of feminist activism. Despite these limitations with the NOW data, however, the results presented in this chapter provided much improved knowledge of the factors and processes that affect the adoption of rape law reforms.

While the present chapter focused on a number of factors that contribute to the adoption of different rape law reforms, the next chapter focuses on the effects of one additional factor – the prior adoption of weaker, partial rape law reforms. In building upon the analyses presented in the present chapter, I examine the effects of passing weaker versions of each rape law reform on a state's likelihood of passing the stronger version of each reform. Since the effects of incremental changes have been ignored in previous research on law reforms, the explanatory models presented in the present chapter are compared to the explanatory models in the next

⁴⁶ Several attempts were made to obtain membership data from the American Association of University Women to create another measure of state-level feminist activism; however, these attempts have not been successful.

chapter to determine the relative importance of considering such previous changes in models of legal change.

Table 13. Coefficients from Discrete-Time Event History Analysis Using Logit Estimates of State Adoption of Rape Law Reforms on Selected Independent Variables

	Model 1		Model 2		Model 3		Model 4	
	Gender		Resistance		Sexual		Rape	
	Neutral		Requirement		Assault		Shield	
	b	SE	b	SE	b	SE	b	SE
Propensity								
<i>Gender Climate</i>								
% Female Labor Force	0.32**	0.11	0.30*	0.12	0.09	0.11	0.26 [†]	0.13
% Female Legislators	0.00	0.03	-0.06	0.04	-0.01	0.04	0.03	0.04
NOW Membership	-0.09	0.07	0.06	0.06	0.01	0.09	0.04	0.06
<i>Political Climate</i>								
% Democrats	0.00	0.02	-0.02	0.01	-0.02	0.01	-0.01	0.01
Government Ideology	0.01	0.01	-0.01	0.01	0.01	0.01	0.01	0.01
Split-Party Government	0.36	0.37	-0.43	0.40	0.37	0.42	-0.91*	0.45
Rape Rate	0.00	0.01	0.01	0.01	0.01	0.01	0.00	0.02
Infectiousness								
Cumulative Extent Change	0.02	0.02	0.09***	0.02	0.10***	0.02	0.07***	0.01
Susceptibility								
ERA x Prior Law	0.01	0.02	0.02	0.02	0.02	0.02	0.00	0.01
Proximity								
# of Bordering States with Law	-0.54**	0.19	-0.27*	0.14	-0.37*	0.16	-0.19	0.18
Controls								
% White	0.06**	0.02	0.04	0.02	0.03	0.02	0.00	0.03
% Urban	0.03 [†]	0.02	0.02	0.02	0.03	0.02	-0.01	0.02
Population	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Northeast	-0.38	0.74	0.91	0.75	-0.70	0.76	-0.31	0.79
Midwest	-0.38	0.75	0.82	0.73	-0.17	0.73	-0.11	0.73
West	0.46	0.65	0.19	0.70	-0.75	0.68	-1.90*	0.81
Constant	-23.97***		-18.72**		-9.29 [†]		-9.01	
Model Log Likelihood	-139.71		-128.27		115.17		-126.03	
Pseudo R2	0.09		0.18		0.21		0.17	
†p<.10; *p<.05; **p<.01; ***p<.001; two-tailed tests	N=975		N=720		N=776		N=904	

CHAPTER 8

RESULTS AND DISCUSSION:

THE EFFECTS OF PRIOR, PARTIAL REFORMS

In chapter 7, I discussed the results of the event history analyses predicting the diffusion of the adoption of gender-neutral rape/sexual assault laws, the elimination of the resistance requirement, the redefinition of rape as sexual assault, and the passage of strong rape shield laws. In this chapter, I address my third research question: How does the adoption of weaker, partial rape law reforms affect a state's likelihood of adopting the stronger version of the rape law reform. After presenting the results of the analyses designed to answer this question, I discuss the implications of these findings.

Since most researchers have neglected to consider the effects of passing weaker, partial criminal law reforms on a state's likelihood of passing a stronger, full criminal law reform, I improve upon previous research by testing the effects of passing weaker reforms on a state's likelihood of passing a stronger reform for the adoption of gender-neutral rape/sexual assault statutes, the elimination of the resistance requirement, the redefinition of rape as sexual assault, and the adoption of strong rape shield laws. If the adoption of partial reforms creates a political opportunity for additional policy changes, as political opportunity suggests, then passing weaker, partial reforms will increase a state's likelihood of passing a stronger, full reform for each rape law reform. On the other hand, if the adoption of partial reforms creates an unfavorable environment for additional policy changes, then passing weaker, partial reforms will decrease a state's likelihood of passing a stronger, full reform for each of the rape law reforms. Before I

present the results from the event history analyses, however, I provide general descriptive statistics regarding the prior adoption of weaker reforms for each of the dimensions of rape law reform.

Descriptive Statistics on Prior Partial Reforms for Each Rape Law Reform

With a few exceptions, all states made at least one change to each dimension of their rape law between 1970 and 2006. For each of the rape law reforms, states did one of the following: 1) adopted the strongest, full reform without passing any prior, weaker reforms, 2) passed one or more weaker reforms before adopting the stronger, full reform, or 3) passed one or more weaker reforms without ever adopting the stronger, full reform. Below, I describe the variation in the path to full reform for each of the different rape law reforms included in my study.

Thirty-eight states fully reformed the gender dimension of the rape law by passing gender-neutral rape / sexual assault statutes that allow for both males and females to be both victims and the offenders without any gender-specific provisions. About half of these states (17) passed full gender-neutral rape/sexual assault statutes without passing any prior, weaker reforms.⁴⁷ The other 21 states first passed weaker, partial reforms before they fully reformed the gender dimension of the rape law to allow both males and females to be both victims and offenders without any gender-specific provisions.⁴⁸ For example, in 1971, legislators in Colorado passed a weaker, partial gender-neutral reform by creating new deviate sexual intercourse and sexual assault offenses that recognized both male and female victims; however, both of these offenses remained gender specific in regard to the offender, and the main rape and gross sexual imposition statutes remained gender specific in regard to both the offender and the

⁴⁷ Arizona, Iowa, Illinois, Massachusetts, Michigan, Nebraska, Nevada, New Mexico, Ohio, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Washington, Wisconsin, and Wyoming.

⁴⁸ Alaska, Arkansas, Colorado, Connecticut, Delaware, Florida, Hawaii, Louisiana, Maine, Minnesota, Montana, New Hampshire, New York, North Dakota, Oklahoma, Oregon, Pennsylvania, South Dakota, Texas, Virginia, and West Virginia.

victim. In 1975, however, legislators in Colorado passed a stronger, full reform by creating all new sexual offense statutes, which were all gender neutral for both the victim and the offender. Finally, the remaining 12 states passed partial, gender-neutral reforms, but they never completely removed the gender-specific language and/or provisions from their rape/sexual assault statutes.⁴⁹

Among the 41 states that completely eliminated the resistance requirement (see Table 2), 33 states⁵⁰ did so without passing any weaker resistance requirement reforms, while eight states passed a weaker reform limiting the resistance requirement before completely eliminating the resistance requirement.⁵¹ For example, in 1973, the legislators in Utah created new sexual offense statutes, such as the forcible sodomy and forcible sexual abuse statutes, which did not include a resistance requirement; however, the “earnest resistance” requirement remained for other sexual offenses, such as aggravated sexual assault. In 1989, however, the Utah state legislators removed the “earnest resistance” requirement from all of the sexual offense statutes. Finally, among the 9 states that failed to completely eliminate the resistance requirement, five states⁵² passed a weaker reform at least limiting the resistance requirement, and four states – Georgia, Louisiana, Mississippi, and North Carolina – failed to make any changes to their resistance requirement.

Of the 37 states that redefined their *primary* rape/sexual assault statute to include other forms of sexual assault beyond the traditional penile-vaginal rape (see Table 2), the majority of

⁴⁹ California, Georgia, Idaho, Indiana, Kansas, Kentucky, Maryland, Missouri, New Jersey, North Carolina, Alabama, and Mississippi.

⁵⁰ Alaska, Arizona, Arkansas, California, Connecticut, Delaware, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, Wisconsin, and Wyoming.

⁵¹ Colorado, Hawaii, Kentucky, Maine, Oregon, Pennsylvania, Texas, and Utah.

⁵² Alabama, Maryland, Missouri, Washington, and West Virginia.

states (30) did so without previously passing any weaker reforms.⁵³ The other 7 states passed a weaker reform, which included other forms of sexual assault as lesser offenses, before redefining the primary offense to include other forced sexual acts.⁵⁴ Finally, although all of the remaining 13 states passed a weaker reform to include other forms of sexual assault as lesser offenses, these states failed to pass a stronger reform redefining the *primary* offense so as to include other forms of sexual assault.⁵⁵

Finally, of the 36 states that passed a strong rape shield law, 27 states⁵⁶ passed a strong rape shield law without passing any prior, weaker shield laws. The other nine states⁵⁷ passed a weaker reform, which either allowed the judge to use his/her discretion in regard to the admissibility of a victim's sexual history or allowed the use of the victim's sexual history specifically to prove consent or discredit her testimony, prior to passing a strong rape shield law. The remaining 14 states passed one or more weak rape shield laws, but failed to adopt a strong rape shield law.⁵⁸

Overall, the path to full reform varied across the different dimensions of rape law reform. In regard to states passing full gender-neutral rape/sexual assault reforms, about half of the states passed the full reform without any prior reforms and the other half did so after passing prior, weaker reforms. Thus, there does not appear to be one path to full reform that was more successful than the other for gender-neutral rape law reforms. On the other hand, for the other

⁵³ Alaska, Arizona, Arkansas, Delaware, Florida, Illinois, Iowa, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Washington, West Virginia, Wisconsin, Wyoming.

⁵⁴ Colorado, Connecticut, Hawaii, Idaho, Kansas, New Hampshire, Texas.

⁵⁵ Alabama, California, Georgia, Indiana, Maine, Maryland, Mississippi, Missouri, New York, North Carolina, Oregon, Utah, and Virginia.

⁵⁶ Alabama, Arizona, Connecticut, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Missouri, Montana, Nebraska, New Hampshire, New York, North Carolina, Ohio, Oregon, South Carolina, Tennessee, Utah, Vermont, Virginia, West Virginia, and Wisconsin.

⁵⁷ Florida, Hawaii, Iowa, Minnesota, New Jersey, Oklahoma, Pennsylvania, North Dakota, and Texas.

⁵⁸ Alaska, Arkansas, California, Colorado, Delaware, Idaho, Kansas, Mississippi, Nevada, New Mexico, Rhode Island, South Dakota, Washington, and Wyoming.

three dimensions of rape law reform, the majority of states that passed full reforms did so without passing any prior, weaker reforms. Therefore, for redefining rape as sexual assault, eliminating the resistance requirement, and passing a strong rape shield law, it seems as though pushing for one strong reform was more successful than pushing for incremental changes. To see if these patterns hold up in multivariate analyses, I use event history analyses to examine the effects of prior, partial reforms on the adoption of the stronger, full reforms for each of the dimensions of rape law reform.

Results for the Effects of Partial Reforms

I conducted four separate event history analyses designed to examine the effects of passing prior, partial reforms on a state's likelihood of fully adopting each rape law reform. The results from these analyses are presented in Table 14. More specifically, the table presents the coefficients, standard errors, and significance level for each variable included in each model for the adoption of gender-neutral rape/sexual assault statutes (model 1), the elimination of the resistance requirement (model 2), the adoption of statutes redefining rape as sexual assault (model 3), and the adoption of a strong rape shield law (model 4). Each model includes all propensity, susceptibility, infectiousness, and proximity variables in addition to the variable measuring the adoption of prior, partial reforms for each of the rape law reforms. Although represented in the table by the same variable name, the variables measuring the *prior, partial reforms* are specific to the dimension of rape law reform under investigation in each model.

The results indicate that the prior adoption of weaker, partial reforms only significantly affects a state's likelihood of passing a stronger, full reform for redefining rape as sexual assault (Table 14 model 3) and passing a strong rape shield law (Table 14 model 4); however, the adoption of prior, weaker reforms has no effect on a state's likelihood of passing a stronger

reform for the gender-neutral rape/sexual assault statutes (Table 14 model 1) nor does it affect a state's likelihood of completely eliminating the resistance requirement (Table 14 model 2). As predicted (hypothesis 15), for both redefining rape as sexual assault and passing a strong rape shield law, a state's adoption of a weaker version of the reform significantly decreases the state's likelihood of passing the stronger version of the reform (see Table 14 models 3 and 4, respectively). In fact, a unit increase in the number of prior, weaker reforms decreases a state's likelihood of redefining rape as sexual assault by 79 percent and decreases a state's likelihood of passing a strong rape shield law by 87 percent.

Also, it is important to note that the results for the gender and political climate variables presented in Table 14 are consistent with the results from the analyses of the diffusion of each dimension of rape law reform presented in Table 13 of chapter 8. Using log likelihood tests comparing the models from Table 13, which exclude the effects of prior reforms, to the respective models from Table 14, which include the effects of prior reforms, the results indicate that adding the variables measuring the prior adoption of weaker, partial rape law reforms significantly improves the model fit for the analyses of redefining rape as sexual assault (Tables 13 and 14, model 2; $-2 \text{ Log likelihood } X^2 = 6.24, df=1, p=.01$) and passing a strong rape shield law (Tables 13 and 14, model 4; $-2 \text{ Log likelihood } X^2 = 13.69, df=1, p=.00$). This suggests that accounting for the prior adoption of weaker, partial rape law reforms does help to explain a state's likelihood of fully adopting each specific rape law reform.

Discussion of the Effects of Partial Reforms

Taken together with the results from McMahon-Howard et al.'s (forthcoming 2010) research, the results of the present study suggest that the prior adoption of a weaker version of a rape law reform decreases a state's likelihood of passing stronger or full rape law reforms for

different dimensions of states' rape laws. Specifically, passing weaker or partial reforms significantly reduces a state's likelihood of passing stronger reforms for eliminating the marital rape exemption (McMahon-Howard et al.), redefining the primary offense of rape as sexual assault, and passing a strong rape shield law. At the same time, however, the adoption of weaker reforms has no effect on a state's likelihood of passing stronger gender-neutral rape law reforms and completely eliminating the resistance requirement.

Interestingly, passing prior, weaker reforms *inhibited* the adoption of a stronger reform only for the rape law reforms that were more controversial and/or more strongly resisted. Previous researchers argue that the spousal rape exemptions and the rape shield laws were the two most controversial rape law reforms (Largen 1988: 275; Marsh et al. 1982). Additionally, the efforts to redefine rape as sexual assault were surrounded with controversy since the "non-feminist reformers resisted changes designed to broaden rape statutes to include cases other than 'classic rape'" (Berger et al. 1991: 224). Thus, for rape law reforms that were more strongly opposed or more strongly resisted, which includes redefining rape as sexual assault, passing strong rape shield laws, and eliminating the spousal rape exemption, these reforms were more likely to pass when pushed as one strong reform.

The finding that the adoption of prior, partial reforms only affects the adoption of the more controversial rape law reforms warrants some attention. While only a few researchers (McCammon et al. 2001; McMahon-Howard et al. forthcoming 2010) have examined the effects of partial reforms on the adoption of a stronger version of the reform, these previous findings support the notion that partial reforms only affect the adoption of controversial legislation. McMahon-Howard et al. (forthcoming 2010) examined the adoption of one of the most controversial rape law reforms, the elimination of the spousal rape exemptions, and found that

states that passed partial marital rape law reforms were less likely to completely eliminate the spousal rape exemptions. Conversely, McCammon et al. (2001) examined the adoption of less controversial women's rights legislation, the passage of women's suffrage, and found that passing prior, partial reforms had no effect on a state's likelihood of passing full, presidential, and primary women's suffrage. Taken together, these results suggest that the adoption of partial reforms decreases the likelihood of passing stronger reforms for controversial legislation, but has no effect on the adoption of stronger reforms for less or non-controversial legislation.

Why would the adoption of partial reforms have a negative effect on the adoption of a stronger reform only for controversial legislation? First, since less controversial legislation may have fewer opponents, legislators may be more willing to pass a stronger version of the reform later since they may view their actions as inconsequential given the lack of controversy and strong opposition. If legislators did not perceive the opposition as threatening and/or did not receive much criticism after passing a partial reform for less or non-controversial legislation, then the adoption of the partial reform may have no effect on the adoption of a stronger reform. On the other hand, if legislators pass partial reforms for controversial legislation, they may be unwilling to revisit the issue in an effort to avoid losing the support of constituents. Given the controversy surrounding such legislation, legislators' subsequent decisions may receive more attention, produce more conflicts both among legislators and between legislators and their constituents, and generate heated debates. Therefore, once legislators pass a partial reform, which they may view as "compromise legislation" that will appease activists pushing for the reforms without upsetting opponents (McMahon-Howard et al. forthcoming 2010), legislators may avoid any future involvement with related legislation in an effort to avoid additional conflicts and debates.

Given the significant effects that the prior adoption of partial reforms has on the adoption of stronger reforms, these results have important implications for theoretical explanations of policy change. First, theoretical explanations of legal change need to address the role of partial reforms. Although additional research is needed to determine *why* partial reforms negatively affect the adoption of stronger legislation only for controversial legislation, the results from the present study suggest that partial reforms play an important role in the adoption of controversial legal reforms. Therefore, both the role of partial reforms and the role of the controversial nature of reforms need to be incorporated into theoretical explanations of legal change.

Second, the significant negative effects of partial reforms challenge claims from existing theoretical perspectives on legal change. Specifically, these results challenge the claim from political opportunity theory that the same political factors that create a favorable environment for social movement mobilization also create a favorable environment for policy change. That is, although previous research supports the notion that the adoption of prior, partial reforms can create favorable conditions for social movement mobilization, the results from the present study suggest that the adoption of partial law reforms does not create a favorable environment for the adoption of stronger reforms. Instead of creating a political opportunity for policy change, for some criminal law reforms, the adoption of partial reforms may create a closed political opportunity structure for the adoption of stronger reforms.

Additionally, these results also inform an ongoing debate in the social movement literature over which tactic is more successful for passing a strong reform— pushing for several moderate reforms leading to a stronger reform or pushing for the adoption of one strong reform. Based upon the present study, as well as McMahon-Howard et al.'s (forthcoming 2010) research, there is empirical evidence suggesting that pushing for one strong reform is more successful than

pushing for several moderate reforms over time – at least for controversial reforms. These findings are informative for social movement activists who are seeking the most effective strategy in advocating for the adoption of controversial legislation.

Activists must decide whether to make radical demands and push for stronger, sweeping legislative changes or make more modest demands by pushing for (or accepting a compromise of) weaker legislative changes in an effort to pass a series of reforms over time that increasingly move toward stronger legislative changes. The results of the present study suggest that for controversial legislation, when activists push for or accept compromise legislation, this significantly reduces the likelihood of passing a stronger version of the reform. For example, as discussed previously, the majority of states (30 out of 37) that redefined rape as sexual assault and the majority of states that passed strong rape shield laws (27 out of 36) did so by passing one strong reform. When weaker versions of these reforms were passed, however, states were less likely to pass the stronger reforms. Thus, while both activists and researchers disagree over which tactics are more successful for social movements (Cress and Snow 2000; Gamson 1975; Kane 2007; Piven and Cloward 1977), the results from the present study indicate that pushing for full reform with one strong, sweeping legislative change is more successful. Indeed, the early feminist rape law reformers used more radical tactics and pushed for significant changes in the rape laws (Largen 1988), and the results from the present study suggest that this approach proved successful.

Finally, these results contribute to the literature on legal change. With the exception of a few studies (McCammon et al. 2001; McMahan-Howard et al. forthcoming 2010), the role of partial reforms has been overlooked in both the theoretical and empirical literature on law reforms. Also, only a few studies (McMahan-Howard et al. forthcoming 2010; Soule and Earl

2001) have considered the controversial nature of law reforms for theoretical and empirical explanations of legal change. There have been no studies to date, however, that examine the effects of partial reforms for **both** controversial and non-controversial reforms. Therefore, the findings from the present study, which suggest that partial reforms negatively affect the adoption of stronger reforms only for controversial legislation, offer important contributions to the literature on legal change.

In the present chapter, I examined how prior changes in each rape law reform affect a state's likelihood of adopting the stronger version of each rape law reform. In the next chapter, I investigate the interrelationships between the rape law reforms. More specifically, I examine how the prior adoption of other rape law reforms affects the adoption of each rape law reform. Also, I explore whether there are significant associations between rape law reforms adopted during the same year.

Table 14. Coefficients from Discrete-Time Event History Analyses Examining the Effects of Incremental Changes in Rape Law Reforms

	Model 1		Model 2		Model 3		Model 4	
	Gender Neutral		Resistance Requirement		Sexual Assault		Rape Shield	
	b	SE	b	SE	b	SE	b	SE
Propensity								
<i>Gender Climate</i>								
% Female Labor Force	0.34**	0.12	0.30*	0.12	0.09	0.11	0.30*	0.14
% Female Legislators	0.00	0.03	-0.06	0.04	0.05	0.05	0.01	0.04
NOW Membership	-0.08	0.07	0.07	0.06	0.00	0.10	0.07	0.07
<i>Political Climate</i>								
% Democrats	0.00	0.02	-0.02	0.01	-0.02	0.01	-0.01	0.01
Government Ideology	0.01	0.01	-0.01	0.01	0.01	0.01	0.01	0.01
Split-Party Government	0.35	0.37	-0.42	0.40	0.10	0.43	-0.94*	0.46
Rape Rate	0.00	0.01	0.01	0.01	0.00	0.01	0.01	0.02
Infectiousness								
Cumulative Extent Change	0.02	0.02	0.09***	0.02	0.09***	0.02	0.07***	0.01
Susceptibility								
ERA x Prior Law	0.01	0.03	0.02	0.02	0.03	0.02	0.02	0.02
Proximity								
# of Bordering States with Law	-0.54**	0.19	-0.28*	0.14	-0.32*	0.17	-0.23	0.19
Rape Law Reform Variables								
Prior Partial Reforms	-0.20	0.41	0.17	0.31	-1.56*	0.68	-2.03**	0.64
Controls								
% White	0.06**	0.02	0.04	0.02	0.03	0.02	0.02	0.03
% Urban	0.03 [†]	0.02	0.01	0.02	0.02	0.02	-0.01	0.02
Population	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Northeast	-0.43	0.74	0.94	0.75	-1.09	0.78	-0.69	0.86
Midwest	-0.48	0.77	0.85	0.73	-0.40	0.74	0.01	0.74
West	0.47	0.65	0.18	0.70	-0.72	0.67	-1.93*	0.87
Constant	-24.50***		-18.40**		-10.50 [†]		-16.16	
Model Log Likelihood	-139.59		-128.12		-115.57		-119.18	
Pseudo R2	0.10		0.19		0.23		0.21	
[†] p<.10; *p<.05; **p<.01; ***p<.001; two-tailed tests	N=975		N=720		N=776		N=904	

CHAPTER 9

RESULTS AND DISCUSSION:

THE INTERRELATIONSHIPS BETWEEN THE RAPE LAW REFORMS

Using political opportunity theory to guide my analyses, in the previous chapter, I examined the effects of the prior adoption of weaker, partial rape law reforms on a state's likelihood of adopting a stronger version of each rape law reform. I found that states that adopted weaker, partial reforms were less likely to adopt the stronger version of the reform for controversial rape law reforms. Thus, the adoption of partial reforms created an unfavorable environment for the adoption of stronger reforms. These results suggest that legislators passed partial rape law reforms in lieu of passing the stronger version of the reforms. Could the same be true for the adoption of related reforms? Did legislators pass one form of rape law reform in lieu of passing other rape law reforms? Alternatively, did the adoption of some rape law reforms pave the way for the adoption of other rape law reforms? Or, were legislators more likely to pass some rape law reforms simultaneously? In this chapter, I first examine whether the prior adoption of *other* rape law reforms creates a favorable or unfavorable environment for the later adoption of each rape law reform. Then, I explore the interrelationships between the rape law reforms by investigating the associations between rape law reforms adopted during the same year.

Political opportunity theory suggests that the political context plays an important role in determining social movement mobilization and successful policy outcomes (Meyer 2004). One aspect of the political environment that may affect both mobilization and policy outcomes is a

state's policy history. Although researchers have established that the adoption of past legislation creates a political opportunity for mobilization (McAdam 1982; Meyer 2004), there is very little research that examines the effect of the prior adoption of related legislation on a state's likelihood of passing additional law reforms. Therefore, although I do not examine social movement mobilization, I seek to further this line of research by examining how the *prior* adoption of other rape law reforms as well as the *simultaneous* adoption of other rape law reforms affects a state's likelihood of adopting each of the rape law reforms.

To the extent that the political opportunities for mobilization are the same political opportunities for policy change, as political opportunity theory suggests, then the adoption of one form of rape law reform should increase a state's likelihood of passing another dimension of rape law reform. On the other hand, if the adoption of one form of rape law reform creates a more closed political opportunity for the adoption of additional rape law reforms, then the prior adoption of each rape law reform will decrease a state's likelihood of adopting other rape law reforms (at least for the more controversial rape law reforms). Finally, instead of the prior adoption of rape law reforms affecting the later adoption of other reforms, some rape law reforms may be more likely to pass if other rape law reforms are passed at the same time. Using event history analysis, I explore each of these possibilities. Before discussing the results from the multivariate analyses, however, I provide descriptive statistics on the interrelationships between the rape law reforms.

Descriptive Statistics on the Interrelationships Between the Rape Law Reforms

With the exception of Alabama and Mississippi, all states passed two or more strong rape law reforms between 1970 and 2006. Of the thirty-eight states that adopted gender-neutral rape/sexual assault statutes (Table 1), 18 states did so *in the same year* that they passed some

other rape law reform, 18 states did so *after* they passed some other rape law reform, and two did so prior to passing other rape law reforms. Of the 41 states that completely eliminated the resistance requirement (Table 2), 31 states did so *in the same year* that they passed some other rape law reform, 8 states did so *after* they passed some other rape law reform, and two did so prior to passing other rape law reforms. Among the 37 states that redefined rape as sexual assault (Table 3), 28 states did so *in the same year* that they passed some other rape law reform, four states did so *after* they passed some other rape law reform, and five did so prior to passing other rape law reforms. Finally, of the 37 states that passed a strong rape shield law (Table 4), nine states did so *in the same year* that they passed some other rape law reform, 20 states did so *after* they passed some other rape law reform, six did so prior to passing other rape law reforms, and two did so without passing any other rape law reforms. Overall, except for the adoption of strong rape shield laws, at least half of the states that adopted each of the rape law reforms did so *in the same year* that they passed other rape law reforms.

Since there appears to be a strong relationship between the adoption of one form of rape law reform and the adoption of other rape law reforms during the same year, I explore these relationships further. First, it is important to note that the majority of the states (36) passed more than one strong rape law reform *in the same year*. Only seven states⁵⁹ passed **four** strong reforms *in the same year*. Six of these seven states adopted gender-neutral rape/sexual assault statutes, eliminated the resistance requirement, redefined rape as sexual assault, and passed a strong rape shield law in the same year. The other state, which is New Jersey, eliminated the resistance requirement, redefined rape as sexual assault, passed a strong rape shield law, and adopted a strong marital rape law in the same year. Therefore, for the majority of states that

⁵⁹ Michigan (1974), Nebraska (1975), New Jersey (1978), South Carolina (1977), Vermont (1977), Wisconsin (1975), and Wyoming (1977).

passed four strong rape law reforms in the same year, the strong marital rape law was the rape law reform that was excluded from the bill(s) that passed in the state legislature.

Eleven states⁶⁰ passed **three** strong reforms in the same year. All of these eleven states adopted gender-neutral rape/sexual assault statutes, eliminated the resistance requirement, and redefined rape as sexual assault in the same year. Therefore, for all of the states that passed three strong reforms in the same year, the strong rape shield law and the strong marital rape law were the two rape law reforms that were excluded from the bill(s) that passed in the state legislature.

Finally, the remaining eighteen states⁶¹ passed **two** strong reforms in the same year. Of these 18 states, ten states eliminated the resistance requirement and redefined rape as sexual assault in the same year, three states redefined rape as sexual assault and passed a strong rape shield law in the same year, two states adopted gender-neutral rape/sexual assault statutes and redefined rape as sexual assault in the same year, another two states eliminated the resistance requirement and passed a strong rape shield law in the same year, and only one state adopted gender-neutral rape/sexual assault statutes and passed a strong marital rape law in the same year. Overall, the elimination of the resistance requirement and the redefinition of rape as sexual assault were the two rape law reforms that were passed together most often, as 28 states passed both reforms during the same year.

Results for the Interrelationships Between the Rape Law Reforms

I present the results of the multivariate analyses designed to examine the interrelationships between the different rape law reforms in Tables 15 and 16. More specifically, I present the results of the event history analyses examining the effects of the *prior* adoption of

⁶⁰ Connecticut (1975), Florida (1974), Illinois (1983), Iowa (1976), Massachusetts (1974), Nevada (1977), New Mexico (1975), Ohio (1972), Rhode Island (1979), Tennessee (1978), and Texas (1983).

⁶¹ Alaska (1978), Arizona (1977), Arkansas (1975), Colorado (1975), Delaware (1971), Hawaii (1986), Indiana (1976), Kansas (1983), Maine (1989), Minnesota (1975), Montana (1973), New Hampshire (1975), North Dakota (1973), Oregon (1981), Pennsylvania (1976), South Dakota (1975), Virginia (1981) and West Virginia (1976).

other rape law reforms on a state's likelihood of adopting each particular rape law reform in Table 15. Next, I report the results of the event history analyses examining the adoption of different rape law reforms *in the same year* in Table 16. In each table, the results are presented separately for analyses predicting the adoption of gender-neutral rape/sexual assault statutes (model 1), the elimination of the resistance requirement (model 2), the redefinition of rape as sexual assault (model 3), and the adoption of a strong rape shield law (model 4). The table presents the coefficients, standard errors, and significance level for each variable included in each model. Each model includes all propensity, susceptibility, infectiousness, and proximity variables in addition to the variables measuring the adoption of other rape law reform.

The results indicate that the *prior* adoption of other rape law reforms had no effect on a state's likelihood of adopting gender-neutral rape/sexual assault statutes (Table 15 model 1), eliminating the resistance requirement (Table 15 model 2), redefining rape as sexual assault (model 3),⁶² or passing a strong rape shield law (Table 15 model 4). In each of the models in Table 15, the coefficients for the variables measuring the prior adoption of each rape law reform fail to reach statistical significance. Therefore, the results fail to provide support for both

⁶² The variable measuring the prior elimination of the marital rape exemption was removed from the analyses of the redefinition of rape as sexual assault because Stata indicated that this variable "predicts failure perfectly." This shows that there is a perfect relationship between the prior elimination of the marital rape exemption and the redefinition of rape as sexual assault. Specifically, none of the states that eliminated the marital rape exemption in a given year later redefined rape as sexual assault during a subsequent year. This is primarily due to the fact that 15 of the 23 states that eliminated the marital rape exemption did so *after* they redefined rape as sexual assault during a previous legislative session (Arkansas, Colorado, Delaware, Kentucky, Louisiana, Massachusetts, Nebraska, New Hampshire, North Dakota, Pennsylvania, Tennessee, Texas, Vermont, West Virginia, and Wisconsin). Also, another state (New Jersey) eliminated the marital rape exemption and redefined rape as sexual assault *simultaneously*, during the same legislative session. Finally, the remaining seven of the 23 states that passed the marital rape law have never redefined rape as sexual assault (Georgia, Indiana, Maine, Missouri, Montana, North Carolina, and Oregon). Overall, the fact that there are no states that eliminated the marital rape exemption before they redefined rape as sexual assault indicates that the redefinition of rape as sexual assault was more successful earlier and it diffused faster than the elimination of the marital rape exemption.

hypothesis 15, which predicted a significant positive effect, and hypothesis 16, which predicted a significant negative effect, for the prior adoption of other rape law reforms.

On the other hand, there are significant relationships between the different rape law reforms adopted *in the same year* for the adoption of gender-neutral rape/sexual assault statutes (Table 16 model 1), the elimination of the resistance requirement (Table 16 model 2), and the redefinition of rape as sexual assault (Table 16 model 3). There were no significant associations, however, between the adoption of the other rape law reforms and the adoption of a strong rape shield law in the same year (model 4). I discuss these significant results in more detail below.

For the adoption of gender-neutral rape/sexual assault statutes (Table 16 model 1), the coefficients are positive and significant for variables measuring the elimination of the resistance requirement, the redefinition of rape as sexual assault, and the elimination of the marital rape exemption in the same year. For the elimination of the resistance requirement (Table 16 model 2), the coefficients are positive and significant for the variables measuring the redefinition of rape as sexual assault and the adoption of a strong rape shield law in the same year. Finally, for the redefinition of rape as sexual assault (Table 16 model 3), the coefficients are positive and significant for the variables measuring the adoption of gender-neutral rape/sexual assault statutes and the elimination of the resistance requirement in the same year.

Thus, the results suggest that states were likely to pass multiple rape law reforms in the same year. While taking into account the effects of a state's gender climate, political climate, and the process of diffusion, these results indicate that states that eliminate the resistance requirement, redefine rape as sexual assault, or completely eliminate the marital rape exemption are more likely to pass a gender-neutral rape/sexual assault statute at the same time. Also, when a state redefines rape as sexual assault or passes a strong rape shield law, the state is more likely

to eliminate the resistance requirement at the same time. Finally, when a state passes a gender-neutral rape/sexual assault statute or eliminates the resistance requirement, the state is more likely to redefine rape as sexual assault at the same time.

Discussion of the Interrelationships Between the Rape Law Reforms

Overall, the results suggest that the prior adoption of other rape law reforms has no effect on the later adoption of rape law reforms; however, there are significant relationships between rape law reforms adopted during the same year. Below, I discuss the importance of these two findings for the empirical and theoretical literature on legal change.

Prior Adoption of Other Rape Law Reforms

As discussed previously, political opportunity theorists have begun to challenge the idea that the political factors that create opportunities for mobilization are the same political factors that create opportunities for policy change (Meyer and Minkoff 2004). Importantly, the findings from the present study further challenge this notion. Although the adoption of favorable legislation may create an opportunity for mobilization, the results from the present study indicate that the adoption of favorable legislation does not create a political opportunity for the later adoption of related legislation. Here, the prior adoption of other rape law reforms failed to have a significant effect on the later adoption of each rape law reform. On the other hand, I found significant relationships between rape law reforms adopted during the same year.

While research findings support the notion that “favorable changes in policy” provide a more open political environment for additional social movement mobilization (McAdam 1982; Meyer 2004), only a few studies have examined how the “preexisting policy environment” affects the adoption of related legislation (Soule 2004; Soule and Earl 2001; Soule and Olzak 2004; Soule and Zylan 1997). With the exception of Soule and Zylan (1997), researchers have

found that the prior adoption of favorable legislation either has no effect or a negative effect on the adoption of related legislation. For example, Soule and Earl (2001) found that a state's prior repeal of the sodomy law had no effect on a state's likelihood of adopting hate crime legislation, and Soule and Olzak (2004) found that states that were early adopters of other civil rights legislation were no more likely than other states to ratify the ERA. Interestingly, Soule (2004) found that states that repealed the sodomy law and states that passed hate crime laws were *more* likely to pass a ban on same-sex marriage, and Soule and Earl (2001) found that states that previously passed legislation requiring data collection or allowing civil redress for hate crimes were *less* likely to pass criminal hate crime laws. In finding a negative effect for the prior adoption of related legislation, these researchers suggest that legislators may pass certain laws in lieu of passing other, related laws (Soule and Earl 2001) or that legislators "may be willing to support controversial legislation occasionally, but may protect themselves by voting the opposite way on similar subsequent issues" (Soule 2004: 472).

Similar to these previous studies, I found no significant relationship between the prior adoption of other rape law reforms and the later adoption of each rape law reform. Therefore, the results from my study provide further empirical evidence suggesting that prior legislative gains do not create a preexisting policy environment favorable for the adoption of related legislation. More importantly, these empirical findings question the overall usefulness of political opportunity theory as an explanation of legal change.

First, my findings challenge the claim that the factors that create political opportunities for mobilization are the same factors that create political opportunities for change. Since the adoption of earlier rape law reforms has no effect on the adoption of later rape law reforms, this suggests that a favorable, preexisting policy environment has no effect on policy outcomes. In

fact, the only aspect of the preexisting policy environment that affects the adoption of rape law reforms is the prior adoption of partial rape law reforms. As discussed in the previous chapter, however, the adoption of partial reforms has a negative effect on the adoption of stronger rape law reforms, albeit only for the two more controversial rape law reforms. Even when taking the prior adoption of other rape law reforms into account, partial reforms continue to have a negative effect on the adoption of these rape law reforms. Neither the prior adoption of a weaker rape law reform nor the adoption of other rape law reforms create a political environment conducive to the adoption of strong rape law reforms. Therefore, although the prior adoption of favorable legislation may be viewed as a movement gain that encourages the mobilization of activists (Cornwall et al. 2007), it does not, as political opportunity suggests, create a political opportunity for the adoption of additional legislation. If, indeed, the adoption of favorable legislation does encourage additional mobilization, as previous researchers have found, then my findings suggest that the factors that create a political opportunity for mobilization are not the same factors that create a political opportunity for policy change.

Second, given that the preexisting policy environment is *another* aspect of a state's political climate that fails to affect the adoption of rape law reforms, this finding further suggests that political opportunity theory may not be able to explain policy outcomes. Political opportunity theory identifies the political climate as an important determinant of policy outcomes; however, the findings from my study show that the policy environment and most other political climate indicators (i.e., percent democrat, government ideology, etc.) do not significantly affect the adoption of rape law reforms. Therefore, the results from my study indicate that political opportunity theory does not help explain policy outcomes for rape law reforms.

Simultaneous Adoption of Rape Law Reforms

Although the *prior* adoption of other rape law reforms has no effect on the later adoption of each rape law reform, my results indicate that there are significant relationships between rape law reforms adopted during the same year. That is, when a state adopts one type of rape law reform, the state is also likely to adopt another type of rape law reform at the same time. For example, the results from the multivariate analyses suggest that states that completely eliminated the resistance requirement were also likely to pass gender-neutral rape/sexual assault statutes and redefine rape as sexual assault during the same legislative session. Similarly, states that redefined rape as sexual assault were also likely to create gender-neutral rape/sexual assault statutes and completely eliminate the resistance requirement during the same year. Interestingly, however, states that adopted these other rape law reforms were unlikely to also adopt rape shield laws during the same year.

Also, it is important to note that there were no *negative* relationships between different rape law reforms. In other words, the results show that the adoption of one rape law reform was not significantly associated with a state's *failure* to adopt another rape law reform. Thus, although Marsh et al. (1982) found that certain reforms had to be dropped from the proposed legislation in Michigan in order for other reforms to pass, this was not the case for the adoption of rape law reforms in most states. While the proposed elimination of the spousal rape exemption had to be removed from the proposed comprehensive rape law reform bill in Michigan in order to get legislators to support the adoption of other rape law reforms, as Marsh et al.'s (1982) case study revealed, there was no such pattern found in the multivariate analyses of the adoption of multiple rape law reforms across the United States. Thus, although the final adoption of law reforms may be a product of negotiations and compromises made between law

reform activists and legislators, there is no evidence that the same compromises had to be made in each state for the adoption of rape law reforms.

These findings point to the importance of considering the simultaneous adoption of related reforms for empirical explanations of rape law reforms, specifically, and policy change more generally. As is the case with other law reform movements, rape law reform activists pushed for the adoption of comprehensive rape law reform bills that included multiple changes to states' rape laws (Largen 1988). Although states were not likely to pass *all* of the proposed rape law reforms at the same time, the results from the present study show that the majority of states passed two or more rape law reforms simultaneously. Also, while states were more likely to pass certain rape law reforms (i.e., gender neutral rape/sexual assault statutes, the elimination of the resistance requirement, and the redefinition of rape as sexual assault) as part of a package of reforms, there were some reforms (i.e., strong rape shield laws) that were excluded from the package. Excluding certain rape law reforms, however, did not have a significant affect on a state's likelihood of adopting other rape law reforms. Additional research is needed to determine *why* some reforms were likely to be adopted simultaneously while other reforms were not.

Since states were more likely to pass certain rape law reforms simultaneously, this may explain why there are no significant relationships between the prior adoption of these reforms and the later adoption of related reforms. That is, due to the success of passing multiple rape law reforms at the same time, there may only be a few states that passed other rape law reforms prior to adopting each of the rape law reforms included within the larger rape law reform movement. This may be true for other law reform movements as well. For example, although there is no significant relationship between a state's prior repeal of the sodomy law and the adoption of hate crime legislation (Soule and Earl 2001), there may be a significant association between the

repeal of the sodomy law and the adoption of hate crime legislation during the same legislative session. Previous researchers, however, have failed to examine the simultaneous adoption of related reforms. Additional research is needed to determine if the significant relationships between related reforms adopted during the same year can account for why the prior adoption of related reforms has no effect on the later adoption of other reforms included in the same law reform movement.

Overall, my findings regarding the simultaneous adoption of rape law reforms offer a significant contribution to the empirical literature on legal change by revealing the need to account for the interrelationships between law reforms. Although previous researchers have examined the effects of the prior adoption of related legislation on a state's likelihood of adopting a new law or policy (Soule 2004; Soule and Earl 2001; Soule and Olzak 2004; Soule and Zylan 1997), previous researchers have failed to investigate the relationship between similar reforms adopted during the same legislative session. Thus, previous researchers have not fully examined the interrelationships between different reforms included within a larger law reform movement. Given that most law reforms are usually a part of a larger law reform movement, which advocates for the adoption of a number of related law reforms, the failure to examine the simultaneous adoption of related law reforms presents a serious gap in the literature on legal change. Since I found significant relationships between rape law reforms adopted during the same legislative session, my results point to the importance of incorporating the interrelationships between related reforms into empirical explanations of legal change.

Table 15. Coefficients from Discrete-Time Event History Analyses Examining the Effects of the Adoption of Other Rape Law Reforms in the Previous Years

	Model 1		Model 2		Model 3		Model 4	
	Gender Neutral b	SE	Resistance b	SE	Sexual Assault b	SE	Rape Shield b	SE
Propensity								
<i>Gender Climate</i>								
% Female Labor Force	0.37**	0.13	0.29*	0.13	0.12	0.12	0.34*	0.14
% Female Legislators	-0.03	0.04	-0.04	0.04	0.08	0.05	0.01	0.04
NOW Membership	-0.10	0.07	0.04	0.07	-0.02	0.10	0.09	0.07
<i>Political Climate</i>								
% Democrats	0.00	0.02	-0.02	0.01	-0.02	0.01	-0.01	0.02
Government Ideology	0.00	0.01	-0.01	0.01	0.01	0.01	0.01	0.01
Split-Party Government	0.38	0.37	-0.49	0.41	0.07	0.44	-0.10	0.47
Rape Rate	0.00	0.01	0.01	0.01	0.01	0.01	0.01	0.02
Infectiousness								
Cumulative Extent Change	0.00	0.02	0.07***	0.02	0.07	0.02	0.08***	0.02
Susceptibility								
ERA x Prior Law	0.04	0.03	0.03	0.02	0.04	0.02	0.01	0.02
Proximity								
# of Bordering States with Law	-0.47*	0.19	-0.20	0.15	-0.32	0.18	-0.34 [†]	0.20
Other RLR Variables								
Prior Partial Reforms	0.22	0.42	0.23	0.31	-1.30 [†]	0.70	-2.18**	0.71
Prior Adoption of Gender Neutral Statute			-0.55	0.81	1.71	1.30	0.85	0.70
Prior Elimination of Resistance Requirement	-0.85	0.60			0.19	0.88	0.03	0.67
Prior Adoption of Sexual Assault Statute	-0.12	0.51	-0.79	0.69			0.15	0.76
Prior Adoption of Strong Rape Shield Law	-0.59	0.52	-1.07	0.78	-1.51	0.92		
Prior Elimination of Marital Rape Exemption	-1.00	0.75	-0.55	1.18	D	D	0.87	0.74
Controls								
% White	0.06*	0.02	0.04 [†]	0.02	0.03	0.02	0.02	0.03
% Urban	0.03 [†]	0.02	0.01	0.02	0.03	0.02	0.03	0.02
Population	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Northeast	-0.10	0.77	0.41	0.79	-1.68	0.88	-0.62	0.88
Midwest	-0.51	0.82	0.48	0.76	-0.88	0.78	0.44	0.78
West	0.33	0.67	-0.13	0.73	-1.33	0.73	1.92	0.89
Constant	-24.49***		-17.67		-11.29		-17.30	
Model Log Likelihood	-135.67		-124.89		-111.41		-116.57	
Pseudo R2	0.12		0.21		0.25		0.23	
	N=975		N=720		N=776		N=904	

[†] p<.10 ; * p<.05; ** p<.01; *** p<.001;
two-tailed tests.

Note: In model 3, the variable for the elimination of MRE was dropped (D) from the analysis in Stata because it "predicts failure perfectly."

Table 16. Coefficients from Discrete-Time Event History Analyses Examining the Relationship Between the Adoption of Multiple Rape Law Reforms in the Same Year

	Model 1		Model 2		Model 3		Model 4	
	Gender Neutral		Resistance		Sexual Assault		Rape Shield	
	b	SE	b	SE	b	SE	b	SE
Propensity								
<i>Gender Climate</i>								
% Female Labor Force	0.41*	0.16	0.59**	0.21	0.01	0.17	0.28 [†]	0.15
% Female Legislators	0.01	0.04	-0.12 [†]	0.06	0.05	0.08	0.03	0.04
NOW Membership	-0.11	0.09	0.10	0.09	-0.27	0.17	0.06	0.07
<i>Political Climate</i>								
% Democrats	0.01	0.02	-0.03	0.02	-0.01	0.03	-0.01	0.02
Government Ideology	0.00	0.01	-0.02	0.02	0.01	0.02	0.00	0.01
Split-Party Government	0.66	0.48	-1.92*	0.79	0.09	0.83	-1.00*	0.48
Rape Rate	0.00	0.01	-0.02	0.04	0.01	0.01	0.01	0.02
Susceptibility								
ERA x Prior Law	0.00	0.03	0.02	0.03	0.03	0.03	0.02	0.02
Infectiousness								
Cumulative Extent Change	-0.01	0.04	0.02	0.04	0.07*	0.03	0.06***	0.02
Proximity								
# of Bordering States with Law	-0.42 [†]	0.23	-0.34	0.21	0.00	0.29	-0.17	0.19
Other RLR Variables								
Prior Partial Reforms	0.81 [†]	0.48	0.29	0.74	-1.21	0.95	-1.92**	0.64
Concurrent Adoption of Gender Neutral Statute			1.26	1.11	4.36***	1.13	0.32	0.97
Concurrent Elimination of Resistance Requirement	2.04*	0.85			4.74***	0.75	1.02	0.93
Concurrent Adoption of Sexual Assault Statute	3.83***	0.81	6.55***	1.06			0.15	1.14
Concurrent Adoption of Strong Rape Shield Law	1.07	0.86	2.34*	0.98	1.58	1.16		
Concurrent Elimination of Marital Rape Exemption	1.99*	0.98	-1.86	10.52	0.61	2.19	1.98	1.28
Controls								
% White	0.08*	0.03	-0.01	0.03	-0.01	0.04	-0.02	0.03
% Urban	0.06*	0.03	0.01	0.02	-0.01	0.03	-0.03	0.02
Population	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Northeast	-0.69	0.97	2.31*	0.97	-0.85	1.37	0.02	0.87
Midwest	-0.99	0.93	1.35	0.90	-1.32	1.34	0.17	0.79
West	0.24	0.83	0.51	0.97	-0.41	1.18	-1.32	0.78
Constant	-32.45		-28.58		-3.02		-13.71	
Model Log Likelihood	-83.77		-59.09		-47.44		-115.39	
Pseudo R2	0.46		0.62		0.67		0.24	
	N=975		N=720		N=776		N=904	

[†] p<.10; * p<.05; ** p<.01; *** p<.001; two-tailed tests.

CHAPTER 10

CONCLUSION

The purpose of the present study was to investigate the factors that affect legal change. Specifically, using rape law reforms as an example of legal change, I sought to identify the causal determinants of the adoption of rape law reforms in the United States. Similar to previous research on the adoption of law reforms (Grattet et al. 1998; McCammon et al. 2001; McMahan-Howard et al. forthcoming 2010; Soule and Earl 2001), I examined how states' gender and political climates and the interstate process of diffusion affect the adoption of rape law reforms. Moving beyond this previous research, I used analyses of two controversial and two non-controversial rape law reforms to test claims made by previous researchers (McMahan-Howard et al. forthcoming 2010; Soule and Earl 2001) that the factors affecting legal change are different for non-controversial versus controversial law reforms. Furthermore, to address a gap in the literature on legal change, I also sought to determine the effects of the prior adoption of partial reforms and the prior adoption of related law reforms on the adoption of different law reforms included within a larger law reform movement. Below, I provide a summary of my findings and I discuss the empirical and theoretical contributions of my research.

Summary of Findings

As discussed in chapter 7, the results indicate that both a state's gender climate and the interstate process of diffusion affect a state's likelihood of adopting rape law reforms; however, a state's political climate has no effect on the adoption of rape law reforms. Furthermore, these effects (or lack of effects) are similar for the adoption of each rape law reform. So, although

some of the rape law reforms were more controversial than other rape law reforms, the social factors and interstate processes that affect the adoption of non-controversial rape law reforms also affect the adoption of controversial rape law reforms. Moreover, the direction of these effects is the same for non-controversial and controversial rape law reforms. Conversely, as reported in chapter 8, the prior adoption of partial rape law reforms only affects the adoption of controversial rape law reforms. Additionally, as discussed in chapter 9, although the prior adoption of other rape law reforms has no effect on the later adoption of each rape law reform, the results from the analyses indicate that there are significant relationships between rape law reforms adopted during the same legislative session. These findings offer important empirical and theoretical contributions to the literatures on women's rights legislation, rape law reforms, social movements, legal change, and diffusion.

Empirical Contributions

The results from the present study contribute to the empirical literature on rape law reforms and women's rights legislation by identifying the factors that affect the adoption of these reforms and legislation. Here, my results indicate that while women's economic power has a strong effect on a state's likelihood of passing rape law reforms, their political power does not affect the adoption of these reforms. Both of these findings are consistent with the results from my previous study on the adoption of marital rape laws (McMahon-Howard et al. forthcoming 2010), and the finding regarding the significance of women's economic power is also consistent with the results from other studies on the adoption of women's rights legislation (Berger et al. 1991; Caiazza 2002; McCammon et al. 2001; Murphy 1997). So, as women gain more power economically, states are more likely to pass laws that protect and advance women's interests.

As an important contribution to the literature on legal change, the present study provides the first empirical examination of speculations made by previous researchers (i.e., McMahon-Howard et al. forthcoming 2010; Soule and Earl 2001) in regard to the possible differential effects of political factors and interstate processes on the adoption of controversial and non-controversial legislation. Contrary to previous speculations, the results from the present study indicate that a state's political climate does not differentially affect the adoption of controversial and non-controversial legislation. That is, I found that a state's political climate affected neither the passage of controversial nor non-controversial rape law reforms.

Also, contrary to the suggestions made by previous researchers (McMahon-Howard et al. forthcoming 2010; Soule and Earl 2001), my findings indicate that the process of diffusion does not operate differently for controversial and non-controversial legislation. Here, I found that infectiousness played a role in the diffusion of both controversial and non-controversial rape law reforms. States that made larger or more drastic changes in their reforms exerted a stronger influence on at-risk states, which increased their likelihood of passing similar reforms. Also, I found that spatial proximity had a negative effect on the diffusion of rape law reforms, regardless of the controversial nature of some of the reforms. That is, for most of the rape law reforms, the adoption of the reform in nearby states decreased a state's likelihood of adopting the reform. Thus, these findings suggest that at the same time that other factors are increasing a state's likelihood of adopting rape law reforms, the adoption of these reforms in nearby states is decreasing the state's likelihood of adopting each particular rape law reform.

Furthermore, the results from my study address a gap in the empirical literature on social movements and legal change by determining the effects of the prior adoption of partial reforms and the prior adoption of related reforms on a state's likelihood of passing legislation as well as

the significant associations between reforms adopted during the same year. Importantly, my results suggest that the adoption of prior, partial reforms decreases a state's likelihood of passing controversial rape law reforms. This finding is consistent with the results from my previous research on the elimination of the spousal rape exemptions, which was the most controversial rape law reform (McMahon-Howard et al. forthcoming 2010). Also, these findings shed some light on an ongoing debate among social movement activists and scholars over which is more likely to result in the adoption of a strong law reform – pushing for several incremental, partial reforms over time or pushing for more sweeping legislation. The results from the present study provide additional empirical evidence that suggests that pushing for more sweeping legislation is more successful than pushing for several partial reforms over time.

Also, although previous researchers have examined the possible effects of the adoption of earlier legislation on the adoption of later, related legislation (McMahon-Howard et al. forthcoming 2010; Soule 2004; Soule and Earl 2001; Soule and Olzak 2004; Soule and Zylan 1997), researchers have neglected to consider the simultaneous adoption of related legislation. Since I found no significant effects for the prior adoption of other rape law reforms, but I found significant associations between rape law reforms adopted during the same legislative session, my results suggest that in order to examine fully the interrelationships between different law reforms, researchers need to investigate both the effects of the prior adoption of related law reforms as well as the simultaneous adoption of related law reforms.

Theoretical Contributions

In addition to these empirical contributions, my study also contributes to the theoretical literature on legal change. First, similar to previous research (McMahon-Howard et al. forthcoming 2010; Soule and Earl 2001), my results offer additional support for using conflict

theory and the diffusion framework to explain legal change. Given the significant effects for the diffusion variables, these results suggest that theoretical explanations of legal change need to account for how states influence each other in regard to the adoption of laws. Importantly, such explanations need to take into account the possibility that the adoption of laws in some states may be more influential than others. Also, consistent with previous research (McMahon-Howard et al. forthcoming 2010; Soule and Earl 2001), my results suggest that theoretical explanations of legal change need to account for the negative effects of spatial proximity.

Although my results do not support the claim that spatial proximity negatively affects controversial legislation and positively affects non-controversial legislation, both the findings from the present study along with the findings from previous research (McMahon-Howard et al. forthcoming 2010; Soule and Earl 2001) call attention to the need to determine the mechanisms that drive the negative effects of spatial diffusion. It is still plausible to suggest that the controversy surrounding the adoption of a particular law is responsible for the negative effects of spatial diffusion; however, it may be the controversial nature of a *related* reform that is behind the negative effects of spatial diffusion. That is, although some rape law reforms were more controversial than other rape law reforms, the controversy surrounding the adoption of the former may have clouded decisions regarding the adoption of the latter. Thus, legislators may have viewed the adoption of all strong rape law reforms in nearby states as controversial and opted to pass more moderate reforms in an effort to avoid any negative social reactions from their constituents.

Similarly, since most states passed two or more rape law reforms simultaneously, then the controversy surrounding the adoption of one of those reforms may have led nearby states to pass all more moderate reforms. That is, if a nearby state passes both a controversial and non-

controversial rape law reform at the same time, then the negative social reactions concerning the adoption of the controversial law may deter legislators in nearby states from passing both the controversial and the non-controversial rape law reforms. Instead, while the adoption of rape law reforms in nearby states may still place some pressure on legislators to pass similar rape law reforms, these legislators may decide to play it safe and pass more moderate reforms. Future research is needed to explore these possible explanations for the negative effects of spatial proximity.

Furthermore, my study contributes to the debate regarding the usefulness of political opportunity theory for explaining policy outcomes (Cornwall et al. 2007; Meyer and Minkoff 2004). Taken together, the results from chapters 7, 8, and 9 all challenge the usefulness of political opportunity theory as a theoretical explanation of legal change. First, the lack of significance of the political climate variables, which was discussed in chapter 7, indicates that a state's political climate has no affect on the adoption of rape law reforms. Since political opportunity theory identifies a state's political climate as a key determinant of policy change (Meyer 2004), these insignificant effects challenge the validity of political opportunity theory. Second, in examining the interrelationships between the different rape law reforms, I found that the *prior* adoption of other rape law reforms had no significant effect on a state's likelihood of adopting each of the rape law reforms. Since the *prior* adoption of other rape law reforms is a part of a state's preexisting policy environment, which is an aspect of a state's political climate, this finding further suggests that the political climate of a state is not a key determinant of policy change, as political opportunity theory suggests.

Finally, the idea that the same political factors that create a favorable environment for social movement mobilization also create a favorable environment for policy change is called

into question by the results from my study. Although political opportunity theory was developed originally to explain social movement mobilization and choice of strategies and tactics, political opportunity theorists later argued that the same factors that encourage mobilization should also encourage favorable policy change (for a discussion see Cornwall et al. 2007; Meyer and Minkoff 2004; Soule and Olzak 2004); however, the findings from the present study do not provide support for this claim. Specifically, the significant negative effects of prior partial reforms, which were discussed in chapter 8, suggest that the political factors that positively affect policy change may not be the same factors that encourage mobilization, as political opportunity theory suggests. That is, while the adoption of partial reforms may encourage additional mobilization, as previous researchers have found (McAdam 1982; Meyer 2004), the findings from the present study suggest that the prior adoption of partial reforms can discourage the adoption of stronger reforms.

Instead, given the lack of significance of the political climate, the adoption of prior partial reforms, and the adoption of prior related reforms, my findings suggest that the factors that create a political opportunity for social movement mobilization do not necessarily create a political opportunity for policy change as well. The differential effects that the political climate has on social movement mobilization and policy outcome may be due to the different motivations and interests of social movement activists and state legislators (Cornwall et al. 2007). Motivated by a genuine social concern, social movement activists may be interested in changing laws to better serve or protect the interests of a certain group. On the other hand, motivated by a concern for serving their constituents and securing their reelection, state legislators may be hesitant to support any major legislative changes that may jeopardize their

political career. Therefore, with different motivations and interests, social movement activists and state legislators may respond to certain aspects of the political climate differently.

For example, while a high rape rate may create a genuine social concern that encourages social movement activists to mobilize and advocate for rape law reforms (Marsh et al. 1982), a high rape rate may bring attention to controversial issues surrounding rape and rape laws and legislators may be unwilling to make any major policy changes amidst such debates. Instead, legislators may be more willing to pass moderate reforms to avoid harsh criticism from constituents on either side of the debate. The adoption of moderate or partial reforms, however, is another aspect of the political climate that social movement activists and state legislators may view differently. As mentioned previously, activists may see the adoption of these moderate or partial reforms as a step toward the adoption of stronger reforms, which may encourage additional mobilization. Conversely, legislators may pass these moderate reforms in lieu of passing stronger reforms as a way to appease the social movement activists without upsetting the opponents. Thus, due to the differences in the interests and concerns of activists and legislators, the factors that affect social movement mobilization (the actions of activists) may be quite different from the factors that affect policy change (the actions of legislators). Therefore, political opportunity theory may be best suited for explaining what it was originally developed to explain – mobilization and choice of strategies and tactics – instead of what it was later adopted to explain – policy outcomes.

In conclusion, my study suggests that theoretical explanations of legal change must address both the internal pressures influencing state policy change as well as external pressures from other states. Also, I found no evidence indicating that the social factors and processes that affect legal change are different for controversial versus non-controversial reforms; however,

there is evidence to suggest that prior, partial reforms only negatively affect controversial reforms. Furthermore, my study shows that there are significant associations between related reforms adopted during the same legislative session. Therefore, theoretical explanations of legal change must account for the effects of prior, partial reforms as well as for the significance of the simultaneous adoption of related reforms.

Moreover, the findings from the present study have important implications for all policy and law reform movements, such as the gay rights law reform movement, the drug law reform movement, the family law reform movement, and the public health law reform movement. For instance, if my findings and conclusions are correct, then research should show that the adoption of partial reforms should decrease a state's likelihood of passing a stronger reform for the more controversial gay rights legislation (i.e., legalizing same-sex marriage) but not for the less controversial gay rights legislation (i.e., employment non-discrimination laws). Also, although the *prior* adoption of "gay-friendly policies" may not increase a state's likelihood of passing additional gay rights legislation (Soule 2004; Soule and Earl 2001), states may be more likely to pass multiple gay rights law reforms *simultaneously*, as part of a package of reforms. While the findings from my present study offer significant contributions to the empirical and theoretical literatures on legal change, additional research is needed to determine if the findings and conclusions from my research hold true for the adoption of other law reforms. Since previous researchers have failed to examine multiple reforms included within a larger law reform effort in the same study, my study lays the groundwork for this important line of research.

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