EXPLAINING RAPE LAW SEVERITY

A Thesis

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By

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ABSTRACT

This paper explores explanations for differences in rape law severity. Drawing on theories of gender stratification, hypotheses are developed using gender equality measures. Threat hypotheses are also tested by examining the effects of minority presence on statute construction. Political and historical accounts are also tested for explanatory power. Ordinal probit models are used to test these hypotheses using data obtained from the rape statutes of all fifty states in the years 1970, 1980, and 1990. Key findings are that (1) female economic equality is a significant factor explaining increased legal severity; (2) minority presence in the former Confederate south is associated with legal severity; (3) the presence of a Republican governor and Republican controlled legislature are associated with increased legal severity; (4) the political ideology of state citizens also possesses significant explanatory power. These results support hypotheses that the state acts in the interest of the economically powerful and racial majority. As female economic power increases, the state will enact laws in their interest. More importantly, this paper also finds support for the hypothesis that historical prejudice and racial fear are associated with the state enacting more severe rape laws.
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CHAPTER 1

INTRODUCTION

What factors influence the severity of rape law? Statutes concerning individual crimes have evolved differently in various state jurisdictions during the past fifty years. The statutes are important because they define the crime, the range of penalties, and influence the relative difficulty or ease of obtaining a conviction. Consequently, the leverage a prosecutor has to force a plea bargain is affected as well. The result is disparate sentences for identical crimes in different states. The statutes defining rape law are no exceptions to this trend.

Social theorists have spent much time addressing the role of law as a method of maintaining social order. Several competing social theories attempt to explain the factors associated with state differences in their criminal codes. One contention is that the severity of rape sentencing is related to the degree of female equality within the states. Feminist theorists suggest that rape and rape law is a key area of concern for women because of the involvement of the female body and the association with gender equality (Bridgeman & Millns 1998). Women’s lives are influenced by the fear of rape (Ferraro 1995; Walklate 1995; Gordon & Riger 1989). Due to such fears, women have been found by researchers to favor harsher penalties towards convicted rapists in hopes
of deterring future rapes (Gordon & Riger 1989), and to prefer more punitive responses for domestic abuse (Mills & Bohannon 1992). It is plausible that female economic and political strength is related to the degree to which elected officials are receptive to these interests.

Conflict theory offers another perspective that would attempt to explain the severity of the rape laws. Conflict theorists assume that there are divergent class interests in the formation and enforcement of laws within a society (Turk 1969, Spitzer 1983, Quinney 1980). This perspective views law as, in effect, a weapon of control used on behalf of the ruling class or economic elite (Jacobs 1979). The weapon is typically directed at those classes of people perceived as racially and culturally dissimilar (Liska et al. 1981). Whites are the racial majority and have greater control over economic resources. It follows that law may be created for their benefit. Theorists and researchers have noted the relationship between the presence of ethnic minorities within a population, and the fear felt by the ethnic majority (Quillian 1996; Liska 1982; Blalock 1967; Blumer 1958). This fear is due to the white majority’s apprehension about losing their political and economic power (Bobo & Hutchings, 1996). In turn, when the established socio-political order of majority groups is threatened by minority presence, this fear inspires enhanced forms of social control (Liska et al. 1981).

Research has linked the race of the offender to sentencing for sex crimes (Johnson 1957; Partington 1965; LaFree 1980). Studies rooted in conflict theory have focused on the fear of black men, and the relationship between sentencing and interracial rape (LaFree 1980). Rape of course was at one time a capital offense. Historical reports noted that the death penalty was disproportionately used for black
offenders accused of raping white women (Florida Civil Liberties Union 1964; Wolfgang & Reidel 1973). Studies of interracial crime and its unique effect on society are not limited to sex crime. The white fear of crime and victimization is also directly affected by the degree of interracial crime (Liska 1982). The presence of even a small number of non-whites in white neighborhoods has been associated with white fear of victimization (Quillian 1996).

Geographic region has also been found to play a role in sentencing. Racial factors that influence sentencing are more pronounced in the southern states, suggesting that historical regional prejudice may magnify minority threats (Middleton 1976). Research has also shown that blacks convicted of rape in the southern states were disproportionately executed compared to their white counterparts, and in comparison to blacks in the northern states (Bowers et al 1973). In addition, black males who rape white women are more likely to be convicted and receive harsher sentences than any other racial combination of victim and offender (LaFree 1980). White prejudice of black males in the South are illustrated by Dollard who wrote, “Rape is, of course, an atrocious act to everyone in our society; to a southern man, when it is committed by a negro on a white woman, it is in a class by itself and justifies the severest punishment” (Dollard 1937).

Race relations in southern states are unique. Therefore, it is not surprising that empirical studies of the South have found disproportionate sanctions against blacks. Slavery in the southern states laid the foundations for racism. The southern slave economy reinforced a culture that maintained a racially oppressive society (Wilson 1996). The southern states also have a unique legal history of passing repressive codes
focused on both free and non-free blacks. For example, South Carolina law required the re-imprisonment of free black sailors landing on their shores, and Arkansas law required the expulsion of all free blacks in 1859 (Stampp 1956). Examining racial issues in the post civil war era requires examining the South separate from the North because of this deep-rooted racism. Researchers studying the South noted the extreme difference in the post civil war caste systems compared to the North in residential segregation, labor opportunities, racial interaction, and the legal and non-legal methods of maintaining this caste system not present in the northern states (Marden 1952).

If racial conflict theories are correct, we would expect to see more punitive rape laws in states with more blacks. We would also expect to see an increased effect in the southern states due to an increased fear of interracial crime and presence of deep-rooted racism in this region. Historians and sociologists have written about the prevalence of racism which still lingers from the days of slavery in the southern culture (Dollard 1937; Stampp 1956; Marden 1952).

This study analyses the rape statutes of all fifty states in 1970, 1980 and 1990. After coding all state statutes, I analyze them using a pooled time-series, cross-sectional panel analyses, with an ordinal approach. I test social and political explanations that might influence the severity of the statutes to find out which set of accounts best explain these statutes.

**Literature on rape**

Current research focuses primarily on several narrow aspects of rape and rape law. Many authors examine variables affecting rape rates, factors that may influence individuals to commit rape, and the social ramifications and the effects of rape. Barron
and Straus (1989), for example, researched how factors including the degree of gender inequality influence the rate of rape within a state. They found that gender inequality is related to rape rates.

Other authors using feminist theory frame rape as an oppressive act against women (Bridgeman & Millns 1998). This school of thought examines rape from two different perspectives. The first perspective depicts rape and the fear of rape as a method of social control used by males to maintain a superior gender status (Brownmiller 1975; Riger & Gordon 1981; Sanday 1981). This perspective asserts that rape is used as a tool by men to assert their power over women through the enforcement of their sexual rights (Barron & Strause 1989).

Hypothesizing that rape rates will be influenced by the degree of gender inequality, empirical analysis found only weak relationships. Barron and Strause found support for this theory in cases involving extreme levels of gender inequality using an expanded measure of female equality. Departing from traditional measures of female equality that centered on relative gender group differences in education, income, and life expectancy, the researchers represented equality with an index comprised of the female income level relative to men as well as the number of women occupying high political and judicial office. Using this scale of economic, political, and legal measures, the authors found a significant relationship between the degree of gender inequality and rape rates by state (Barron & Strause 1989). Peterson and Bailey also found support for inequality hypotheses using only mean income levels of men and women to explain the 1980 rape rates (Peterson & Bailey 1992).
A second feminist perspective views rape as a backlash against improvements toward equality between the genders. This argument suggests that as women begin to achieve equal economic and political statuses relative to men, the threat of that equality may cause an increase in the rape rate. This increase is the result of male fear and hostility towards female equality (Russel 1975). Some authors see this increase in the rape rate as an unintended consequence of the feminist movement and growing equality between the genders (Williams & Holmes 1981).

Recent empirical analysis of what has been coined the "backlash hypothesis" has shown some support for this theory. Ellis and Beattie in their 1983 study of gender equality and rape within 26 cities and 25 standard metropolitan statistical areas found that temporary increases in rape may have been a response to an increase in gender equality. Like Barron and Strause, the inequality measure used was also based on the relative number of female professional occupations (Ellis & Beattie 1983). Barron and Strause also found limited support for the backlash hypothesis in their 1984 study, finding a positive relationship between an increase in gender economic equality and the 1979 rape rates. Seeking to clarify short term versus long-term reactions to greater gender equality as well as test the two feminist theories, Whaley examined 109 cities using 10 and 20-year lags. After creating an index of gender inequality for 1970, she tested the relationship between inequality and rape rates in 1980 and 1990. She also tested an identical index for 1980 with rape rates in 1990. Using only select variables including the percentage of male executives, managers, and administrators, Whaley found moderate support for the backlash theory. An increase in the relative percentage
of men in these occupational categories of the labor force showed a significant negative relationship with rape rates (Whaley 2001).

Analysis of Past Literature

Primarily, past researchers examined the rape rates in relation to the levels of gender inequality found within a society (Messerschmidt 1986). What has not been examined is what affect increasing levels of equality have in shaping the laws defining rape. Rape is after all, a legal construct defined by the legislatures within each state. Actions that qualify as first-degree rape in one state may only be classified as second or third degree sexual assault in another.

Researchers have sought to find relationships between rape law reform and the effects on the justice system. Studying the effects of rape law reform in six different cities, Spohn and Horney (1992) examined jurisdictions that varied by their rape statutes in the later 1970’s. Despite many insignificant results, when studying Detroit they found a relationship between the implementation of a modern legal code containing more precise definitions, and an increase in the percentages of overall indictments for rape. They hypothesized that statutory changes made the law clearer for prosecution. In turn, the prosecutor was more willing to file charges in borderline cases, such as those without a clear showing of force, uncorroborated events, or those involving acquaintances which the former statutes dissuaded.

What has not been explored by researchers are the variables that influence the formation of rape law itself. The crime of rape is defined and punished differently in various states. Despite the disparate definitions and punishments associated with the
crime of rape, to the best of my knowledge no research exists that tries to discover variables explaining the degree to which the states take a punitive stance towards this crime. Testing theories to explain the differences in punitive sanctions could add insight to the current body of social research by attempting to explain influences on the creation of the law itself instead of testing explanations for rape rate.

THEORETICAL BACKGROUND

Common approaches in political sociology view state decisions concerning public outcomes as the result of external social influences (Jacobs & Carmichael 2002). This premise is important because under a threat theory perspective, groups have the power to affect law formation by shaping the legislative process in accordance with their own fears and wishes.

In my research, I construct a theoretical framework to derive my hypotheses with two perspectives rooted in conflict theory. These two hypotheses are modeled on a threat perspective. They both concern the majority groups better able to influence the legal system and the population of minorities within the state. I will also use one theoretical concept borrowed from feminist literature that seeks to explain the relationship between growing gender equality and its influence on law formation.

I draw from the conflict perspective that law favors those who control the economic and political resources within a society. It also follows that this group would have the power to focus the law on those groups of people perceived as threatening to the established socio-political order (Liska, et al. 1981). This threat effect is due to majority group fears of racial minorities (Jacobs and Carmichael 2002, Jacobs & Wood 1999).
Minority Threat

Research that examines the impact of dominant racial groups threatened by a prominent minority population is abundant. Blalock proposed that whites perceive an increased minority presence as a threat to their dominant status (Blalock 1967). Liska suggested that racially dissimilar groups pose a threat to the current social order and inspire heightened social controls (Liska et al. 1981). This view was also expressed by Heinz (1983) who suggested that whites translate feelings of racial tension into crime concerns despite not feeling a direct threat of victimization.

Recent empirical studies have shown that the minority population is a significant factor influencing white fear, resulting in greater social control. Support for this idea can be seen in white prejudice and fear being positively related to minority size (Quillian 1995). As minority size increases, so does the threat to socio-political dominance (Jackson 1989). Larger minority group presence has also been found to be a significant factor in studies attempting to explain differences in police department size (Jacobs 1979; Liska et al. 1981) and per officer expenditures (Jackson 1989). Minority group presence has also been found to be a factor explaining an increase in arrest rates when the crime rate is held constant (Liska 1984). Minority size is linked to spending on corrections (Jacobs & Helms 1997), and it is a significant factor predicting the legalization of the death penalty (Jacobs & Carmichael 2002). It follows that the size of the minority population should influence the severity of criminal punishment. Past studies have also shown that geographic regions with a history of slavery have differential sentencing for interracial crimes (Bowers et al 1973; LaFree 1980). These differentials may be result of a racist culture that still lingers from the days of slavery.
(Dollard 1937; Marden 1952). It is therefore reasonable to expect that areas harboring historically anti-black sentiment in the former Confederacy would be more likely to have repressive laws triggered by their long running fear of black males.

The first set of hypotheses derived from literature by conflict theorists state that there will be a positive relationship between the percentage of non-whites within a state and the punitive nature of the rape law. I also expect an increased effect in the former Confederate states. The literature suggests the greater the presence of a racial minority, the greater threat to the majority class who will in turn assert a greater degree of control on the population.

**Gender Stratification**

The literature also suggests that explanations for variations in rape law may be rooted in stratification theory. Stratification theories attempt to explain how power and privilege are differentially allocated within a society (Lenski 1966). Feminist literature suggests that because men are currently the more economically powerful gender, the state acts in their interests (Peterson & Runyan, 1993).

When discussing the state of rape law and its evolution in the United States, Jennifer Temkin wrote, “[despite] the refocusing which has taken place in American law, very little has been achieved towards moving away from a situation in which what is protected is male sexual privilege, at the expense of female sexual autonomy” (Nickolson & Bibbings 2000). Law is thus a device to ensure male privilege, and is consequently institutionalized through formal state policy. The state itself institutionalizes the interests of men and legitimizes the social norms of the gender by
framing state policy from the male perspective (MacKinnon 1983; Bridgeman & Millns 1998).

Given the gendered nature of rape law suggested by the literature, those states with a greater disparity in resources between males and females should also have a legal system more advantageous to male interests. Theories based on Marxist perspectives suggest that a key variable, if not the most important variable affecting sexual inequality, is a woman’s relative economic power (Blumberg 1979; 1984). When comparing sixty-one pre-industrial societies, Blumberg found that greater economic inequalities between the genders was related to a greater degree of violence towards women. She also noted that the economic differential between the genders was the strongest predictor of violence compared with other measures of power previously noted by Lenski, including politics, force, and ideology (Blumberg 1984).

When studying twelve pre-industrial societies, Sanday (1973) examined the relationship between economic and political power. She noted that a woman’s control over economic resources precedes their political influence. According to Blumberg, economic power can translate into direct power or influence, further supporting Sanday.

Based on the previous literature, it is reasonable to assume that states with a greater degree of economic inequality for females in relation to males, the less power and influence the women in that state will possess. Given the gendered nature of rape laws expressed in the literature, I hypothesize that we would expect the laws in states displaying a greater degree of gender inequality would be more favorable towards the male defendants.
CHAPTER 2

DATA AND METHODS

Sample

The racial threat theory and female economic equality theories are tested using data from 50 states. Data were obtained from the 1970, 1980, and 1990 census. Data for the dependent variable representing the legal severity was obtained from each state’s statutes. The effects of the explanatory variables are not likely to be instantaneous given the lengthy legislative process required to change legal codes. Therefore, the explanatory variables are lagged one year prior to the timing of the dependent variable.

Dependent Variable

The racial threat and female economic equality theories are tested using rape statutes from 50 states in the years 1971, 1981, and 1991. An index was created using elements of the statute to measure overall severity. Severity is measured by the legal burden or procedural difficulty for a prosecutor to secure a conviction for first-degree rape. Changes in rape law have generally taken the form of revisions in perpetrator exemptions, inclusive definitions, and evidentiary rules. These changes represented by the dependent variable have narrowed the class of persons traditionally considered exempt from prosecution, defined the crime with specificity, thus limiting defendants
ability to argue ambiguous definitional meanings and lowering the amount of evidence required to secure a conviction.

The first element of the index that I expect will be positively associated with increased prosecutorial power is the ability to prosecute the spouse of the victim. Historically, the crime of rape did not apply to forcing sex upon one’s spouse. This older view of rape is rooted in the antiquated view that wives are the sexual property of their husbands; thus it would not be possible for a husband to rape his wife (Russell 1990). The prevalence of marital rape occurrences has been difficult to measure given its legal history. Russell researched the phenomena and estimates that 14% of all married women report being the victim of spousal sexual assault after conducting a survey of 930 women (Russell 1990). Given the historical nature of the exemption and the number of possible cases involving the spouse of a victim, this is an important element of rape law, which should significantly contribute to prosecutorial power.

The presence of a rape shield law is the second element of the index that I expect will be positively associated with increased prosecutorial power. States clearly vary in what type of specific evidence is admissible. What is common, however, is the inadmissibility of the victim’s prior sexual history with persons other than the defendant as evidence of their moral character. This was thought to increase the proportion of victims reporting the crime, as well as increasing prosecutions for rape by countering the myths about sexually active women (Spohn & Horney 1992). Sexually active women historically were seen as less virtuous and more likely to have consented to sexual acts. When researchers examined the effects of rape reform in Michigan,
officials cited the restrictions on admitting evidence of the victims' past as one of the most significant aspects of rape reform (Marsh et al. 1982).

The third and fourth elements of the index involve the presence of inclusive definitions that describe the crime of rape. There is a general agreement among researchers who study rape law that inclusive definitions of rape would allow prosecution of a greater number of criminals not covered under the previously ambiguous definitions (Bienen 1980). Other researchers believe that more exact and inclusive definitions of the circumstances of the crime allow prosecutors to obtain more convictions by making the law much more clear. Inclusive definitions also make it easier to convict the defendant under lesser-included offenses (Loh 1980). For example, if the definitions for sexual crimes within a state are precise, the offenders may clearly be found guilty under a lesser-included offense such as second-degree sexual assault instead of being found innocent of actual rape because of vague definitions. Traditional rape law is vague and the circumstances that define rape unclear. A traditional statute would look similar to “Carnal knowledge of a woman, not one’s wife, by force and against her will.” One can see how terms and circumstances would be debatable between the defense and the prosecution over what actions would be included.

Over time, legislatures adopted definitions that were more specific, and defined circumstances which if satisfied would automatically make a defendant eligible for rape prosecution. For this reason, elements three and four of the index is the presence of a specific legal definition making a defendant guilty of rape if they employed a firearm in any way during the commission of the crime or if there were multiple offenders
carrying out the same act. This means the prosecutor can automatically prosecute the
defendant for rape if either of these specific and often non-debatable elements are
satisfied along with the other required core elements such as penetration and non-
consent. For example, if a defendant had used a firearm to force sex upon a victim
under a typical common law statute, the presence of the firearm would be used only as
evidence to support another required element, for example showing the sex act was non-
consensual. If the state required there to be actual force instead of threat of force, the
prosecutor could still fail to satisfy the legal definition of rape. If however, the statute
defined the presence of a firearm specifically as an element in itself that satisfies the
definition of rape, then the presence of the firearm would not simply be evidence of
another element, but would be enough along with penetration and non-consent to satisfy
the definition of rape.

The fifth element of the index that I expect will be positively associated with
increased prosecutorial power is the presence of a lower evidentiary standard for victim
injury. To commit the crime of rape, some states require that the victim suffer actual
bodily injury apart from the forced sex act. Other states only require the victim be
threatened with imminent bodily harm. The statutes requiring actual bodily injury
would inherently exempt all those perpetrators who used intimidation and fear of force
instead of actual injury. In addition, from a prosecutor’s position it will be a much
easier burden to show the victim was threatened with injury than to debate whether any
injury was severe enough to fulfill the statutory requirements.

Unfortunately, many elements of a legal statute will appear to operate
independently. This, however, is partially due to the requirements of statutory
construction, which does not allow for redundancy. There are mandates in the
creation of statutes that are unavoidable. It is a “cardinal rule of statutory
interpretation that no provision should be construed to be entirely redundant” (Kungs v.
United States; Rake v. Wade; Colautti v. Franklin). The presumption is that every word
and every phrase adds something to the statutory command (Eskridge & Frickey 1995).
In criminal cases, drafters are even more careful not to allow for any redundancy due to
additional requirements beyond the requirement to construe strictly on statutes whose
purpose is to punish. The rule of lenity simply states that when construing penal
statutes, if the statute does not clearly outlaw conduct, the defendant cannot be punished
(Eskridge & Frickey 1995). Thus, any redundancy in subject matter or cause to
question the meanings of two related statutory elements because of overlapping themes
may result in the defendant escaping prosecution because the statute must be read in the
favor of the defendant. In a practical example, if the defendant’s conduct is described
by two elements of the same statute, the defendant could argue the elements could not
be valid or mean what the prosecutor alleges they mean because the elements cannot be
redundant, and thereby escape conviction. Even though these elements must not be
redundant, the alpha coefficient between the elements of this index (weapons, multiple
offenders, lowering the standard of threat, providing the ability to prosecute a spouse,
and the presence of a rape shield law) is nevertheless .73.

Measurement

Consistent with previous studies (Barron & Strause 1989) I measure the gender
equality theory using an abridged economic gender equality index. This variable was
created using the following measures of economic equality:
The percent of women relative to men in civilian labor force plus the percent of women relative to men in professional and technical occupations plus the percent of women relative to men who are employed as managers of non-farm occupations plus the percent of women who are employed relative to men who are employed plus the median income of female workers relative median income of male workers plus the percent of female-headed families above poverty level relative to male-headed families above poverty level divided by five.

I assess the racial threat theory by using a measure of the percentage of blacks in the total population of each state. I expect the percentage of blacks within the state would appropriately test the threat hypothesis due to the proposed relationship between the size of the minority population and the threat effect felt by the white majority. I also test for the presence of an increased threat effect in the former Confederate states. Authors have noted the historical presence of prejudice and racism within these states (Dollard 1937). Because of this concentrated presence, it is reasonable to expect an increased effect in the former Confederate states. To test for this a dummy variable for the states comprising the former Confederacy has also been included. Some researchers (Stampp 1956; Marden 1952) have described the historical nature of fear and discrimination towards the minority population. To test the explanatory power of this historical perspective, controls will also be used to measure increased effects during specific years. It is reasonable to suspect there may be a residual presence of prejudice and racism given these historical accounts. I therefore expect that the effects to be stronger in the earlier years and slowly dissipate over time, and I expect that the states comprising the former Confederate south with larger black populations will have more
severe rape laws earlier in the study. The first year of the study takes place in 1970, immediately after the civil rights movement. One could expect that the law had not yet caught up with changing public opinions towards blacks. I therefore expect these laws to be more severe, reflecting the racist past of the Confederacy. Because public opinion has changed since the civil rights movement, I also expect the size of the black population to have a diminishing effect on the severity of law in later years.

Additional controls are included that may explain the differential severity of rape laws. Because the political process is crucial to pass a law, I examine the legislative and gubernatorial characteristics of each state. Past research has found a positive relationship between Republican political strength and the severity of legal sanctions (Jacobs & Helms 1996; 1997; 1999). This research was premised on the theory that conservative candidates use law and order campaigns as a political wedge to obtain votes from the less affluent constituents who will not benefit from the party’s economic policies (Jacobs & Carmichael 2001). The conservative Republican economic position is in alignment with the small number of people who are affluent. That group or persons would not be able to deliver enough votes to carry an election without using a wedge issue to shave some votes from the much larger lower middle and working classes. Not only national, but also state Republican officials have supported policies that increase imprisonments (Jacobs & Carmichael 2001). It follows that a violent and visible street crime such as rape would be a prime law for conservative officials to target as a way to increase potential votes through a “get tough” approach. To control for these explanations, I analyze the presence of a Republican governor as well as the presence of a state legislature with a composition
greater than 60 percent Republican members. A dummy variable coded 1 is used to represent the presence of a Republican governor or a Republican legislature.

Separately, both the percentage of minorities within a state and a Republican legislature may account for some portion of the degree of severity in the legal code. These individual variables combined may have an influence beyond their additive effect that would add to the explanatory power. I construct this variable by multiplying the Republican dummy legislature with the percentage of blacks in the state.

The general political ideology of the state populace may also be a factor explaining the severity of the legal code. Because political officers are accountable to the voting population, those representing a conservative constituency would be expected to appease conservative values else risk the loss of re-election. Populations with a more conservative political ideology are more likely to believe that crime is a rational choice by the offender and that severe punishment is an effective deterrent. To estimate the liberal-conservative ideology for the state citizenry, Berry et al. (1998) computed an ideology score based on voting records within each state’s congressional districts. After identifying the ideological position of each incumbent by his or her voting record, Berry estimated a similar position for the challenger.

This factor may influence both Democratic and Republican officials to enact law more in tune with a conservative tough on crime approach. Alternatively, because of the gendered nature of rape law, and the feminist implications, the state’s political ideology may have an alternate effect on the rape laws. It is plausible that a state with a liberal ideology may be more inclined to support feminist interests. Studies have found that individuals voting for leftist or liberal parties are more likely to support feminist
ideals (Banaszak & Plutzer 1993). Because of the gendered nature of rape law, a state with a liberal political ideology may be more inclined to support harsher punishment towards the crime of rape, thus supporting feminist ideals.

In sum, I expect positive relationships between the severity of the state's rape law and the degree of female economic equality. The percentage black within the state also should have a positive relationship with increased effects in the South. Because literature describes racial prejudice as a residual historical effect, I also expect these results to vary by time. Because racism in the South is thought to be rooted in the slave culture, I would expect the effects to be stronger during earlier years. I expect the presence of a Republican governor and the presence of a Republican controlled legislature will have a positive relationship with legal severity. As well, I expect increasingly severe rape laws when the Republican legislature is interacted with the percentage of blacks within the state. Finally, there are plausible reasons to think that ideology may have a positive or a negative sign.

Analysis

Estimation

In this analysis, I use a pooled time-series and cross-sectional panel analyses, with an ordinal approach. The coded statutes display both cross sectional and longitudinal variation. With both types of variation present, this procedure will produce estimates that are more efficient because it analyzes a greater number of cases.

The dependent variable is an index that is discrete and ordered, representing legal severity where the distance between measures of severity are not known. Ordinal probit models have become a commonly used and appropriate estimation procedure for
this type of dependent variable (Agresti 1996). Given the five component ordinal scale as a dependant variable (Y), this type of ordinal regression model would appropriately be characterized as an unobservable latent variable representing legal severity underlying the observed ordinal variables (Hedeker & Mermelstein 2000). Ordered probit models assume that the vector of Y is comprised of subsets dependent on a common latent variable (η) comprised of unobservable vectors Y*. The conditional density ρ(Y|η) describes the joint density function of all indicators in Y for a given latent variable η (Arminger & Kusters 1989). This assumes that there is a set of multiple indicators (Y_{j,i},...,Y_{j,i}) for each latent variable.

For this dependent variable, the five categorical dummy variables (Y_1, Y_2, Y_3, Y_4, and Y_5) will be connected to the latent underlying η through an ordinal probit model (Arminger & Kusters 1989) using a maximum likelihood approach that takes the form:

\[ P(Y_{i}^* = j|X_i) = F(\alpha_j - \beta X_i) - F(\alpha_{j-1} - \beta X_i) \]

Where F is the cumulative standard normal density function. Here the unobserved dependent variable has conditional expectations given the varying independent variables. This measurement model provides the probability that the i\textsuperscript{th} category takes the value j on the ordinal dependant variable (Winship & Mare 1984).

Ordinal probit measures will also retain some of their key properties seen when analyzing dichotomous dependent variables such as the ceiling and floor effects (Winship & Mare 1984), as well as correcting for the errors that will be heteroscedastic and not normal when the thresholds in the dependant variable are not the same distance apart (Long 1997).
Ordinal probit is essentially modeling the unit change in the independent variable X on the unobserved variable Y (Winship & Mare 1984). Here the dependant variable is ordered and categorical, with an unobserved latent variable. The model used estimates the slope coefficients for the effect of the independent variables on the latent underlying variable that is represented by the observed dependant variable.

**Results**

Table 1 shows the expected signs along with the means and standard deviations across states and over time. Because the signs of the coefficients are predicted, tests for significance will be one-tailed with the exception of the states liberalism-conservatism score that will be two-tailed.

**Ordinal Probit Results**

Table 2 presents ordinal probit results. In Model 1, I test the effects of minority presence and female economic equality on the severity of rape law while controlling for political variables. Model 2 analyzes these explanations while also examining plausible interaction effects. Minority presence variables are analyzed as an interaction with geographic location, specifically the former Confederate south. Political variables are also examined. The political ideology of the state is introduced along with an interaction between a Republican controlled legislature and the percentage of blacks in the state. Model 3 also includes interactions with years. Model 4 also controls for the rape rate per state.

As predicted in Model 1 I find a significant positive coefficient on the degree of gender income equality. I also included several political variables including the presence of a Republican governor, and the presence of a Republican controlled (>60%)
state legislature. Because the citizen ideology of a state is inherently political, I also include a measure of liberal ideology among the populace of the state as reported by Berry et al. (1998). Although this model does not find significant relationships between legal severity and the percentage of blacks, liberal ideology or Republican officials, it does find a significant relationship between rape severity and female economic equality.

Variables added to Model 2 test for possible interaction effects between variables measuring minority presence and the political characteristics of the state. I do not find a significant relationship between the percentage of blacks within former Confederate states. Female economic equality measures continue to be significant predictors of rape law severity. I also find a significant interaction between a Republican controlled legislature and the percentage of blacks within the state. This indicates increased explanatory power beyond the additive components when both variables are present within a state.

The Model 3 displays interesting results when theoretically important variables are interacted with various years. Although minority presence has not been significant in the first two models, Model 3 produces significant positive coefficients when the Confederate south is interacted with the year 1970. The significant effects of female economic equality continue to persist in the final model.

Coefficients on the political variables are also significant and positive in Model 3. The presence of a Republican governor is a significant predictor of rape law severity. Also significant is the interaction between the presence of a Republican controlled legislature and the percentage of blacks within the state. When interactions with years
are examined, the presence of conservative ideology within the state’s population is significant in 1970.

All variables significant in model 4 continue to be significant after controlling for the state’s rape rate. This variable was included despite measurement issues that plague official rape rates in each state. This variable was added to eliminate possible concerns that more severe rape laws were a state’s reaction to an increase in the number of rapes.
CHAPTER 3

DISCUSSION

Conclusions about Gender Equality

Not surprisingly, these results corroborate theories that suggest rape law may be rooted in stratification theory. Feminist theorists suggest that because men are the more economically powerful gender, the state acts in their interests (Peterson & Runyan 1993). These results also corroborate the view that sexual inequality is directly related to a woman’s relative economic power (Blumberg 1979). This study implies that in states where the economic inequality gap between males and females is lower, the state will enact laws more sensitive to the interests of females. Authors such as Lenski have hypothesized that power and privilege within a society is rooted in economic power. This finding supports these theories by showing the positive relationship between the increasing economic power held by women and legal changes that accommodate their interests.

Also supported by these findings are previous studies that found relationships between economic control and political power. Authors have sought to show a relationship between a woman’s control over economic resources and their corresponding political influence (Sanday 1973). Because statute formation is a
political process, one can infer by these findings that economic power achieved by women results in political power to obtain change.

**Conclusions about Minority Presence**

Perhaps the most important findings of this study are the significant relationships between the severity of rape law and threat theory variables. Although the relationship between female economic equality and rape law severity was expected, what is interesting is the explanatory power of minority presence. These findings suggest that legal severity is also driven by residual racism against the black male.

Racial threat theorists expect that those states containing the largest minority populations would be more likely to enact punitive laws (Blalock 1967). The greater presence of racial minorities means that this minority group will be more visible within the state. This visibility may elicit fear from the dissimilar majority and manifest itself directly through the political actors in the state in the form of more punitive legal code. This study is consistent with the threat theory because the rape statutes dictate the amount of power a prosecutor has to force a plea bargain or convict African Americans accused of rape.

The presence of a larger minority population in conjunction with a Republican controlled legislature provides a powerful explanation for the severity of rape law. This would suggest that Republican officials use a get-tough approach towards minorities and appeal to the interests of the white majority. Because there are a larger number of minorities within certain states, perhaps the Republican officials in those states are in a better position to capitalize on possible fear felt by the majority and secure more votes. This is plausible because independent studies found that larger minority populations
lead to greater amounts of white fear (Quillian 1995), and the Republican Party has been known to employ wedge strategies to secure more votes. Since the Republican economic position benefits only the small number of affluent, the party would not be able to secure enough votes to win an election without using a wedge issue. The Republican Party has used a law and order campaign as a wedge issue because it appeals to the much larger lower middle and working classes (Jacobs & Carmichael 2001). This combination of Republican tactics and the greater availability of blacks within the state would account for the increased explanatory power when these variables are considered together.

These results also corroborate the historical perspective that increased racism and fear of the black male rapist lingers in the former Confederate states. Rape laws are more likely to be severe in former Confederate states with larger African American populations. These findings also show a significant relationship in the Confederate south between legal severity during the years immediately following the civil rights movement. In this study, the significance of this variable dissipates over time. This finding supports the view that the prejudice in the South is a result of historical racism lingering from a history of slavery.

**Conclusions about Political Controls**

These results also show that political accounts have significant explanatory power. These accounts support past research that found relationships between the Republican Party and increased legal sanctions (Jacobs & Helms 1996; 1997; 1999). This study found that a state legislature controlled by Republican officials explained rape law severity when combined with the percentage of blacks in each state. These
results support prior studies describing how the Republican Party used fear of crime and racism towards minorities as a wedge issue to obtain votes from the working class and lower class whites. When a growing minority population threatens the white majority, the Republican legislatures are more likely to enact laws that will appeal to these interests. Threat theorists argue that when a dominant population feels threatened by a minority population, they seek more punitive measures from the state. This study supports the idea that the Republican Party may be more receptive to the concerns of the racial majority.

The presence of a Republican governor is also a significant predictor of rape law severity. This lends support to those researchers seeking to establish a relationship between the Republican Party and increased social control. It also supports studies hypothesizing that Republican officials may use law and order as a wedge issue to obtain votes. The same campaign strategies previously noted for presidential campaigns may also be employed by a state’s governor to obtain more votes from the working class (Jacobs & Carmichael 2001).

Along with the political party of the Governor and legislature, this study found that states with a populace having a liberal political ideology are more likely to enact punitive law. This is plausible because a state with a liberal ideology may be more inclined to support feminist interests. This is supported by studies finding that individuals voting for leftist or liberal parties are more likely to support feminist ideals (Banaszak & Plutzer 1993). Although past literature has shown that liberals are generally adverse to harsh punishment (Brillon 1988; Langworthy & Whitehead 1986),
the strength of liberal support for feminist movements in the late 1960’s early 1970’s may have superceded their adversity to harsh punishment.

**Broader Implications**

Although many studies attempt to explain the degree of social control implemented by a society, none that I am aware of attempted to use these explanations to account for law formation. This investigation uses aggregate data to test possible explanations of rape law severity. This method has several advantages compared to a more localized analysis. Relationships that may previously have gone unnoticed are now apparent in these findings. Using an aggregated approach also allows this study to link various theoretical perspectives including political sociology, historical sociology and stratification to account for factors influencing law formation. This study supports theories within political sociology that suggest political party strategy and citizen ideology influence legal severity. It also supports stratification theory that suggests state actions are catered towards the more economically powerful genders. Threat theorists who hypothesized that larger minority presence is a key variable in predicting social control are also supported.

Political sociologists suggested that states with strong Republican parties would be likely to implement a more punitive legal code. Past literature noted the importance of having wedge issues to obtain votes when economic platforms do not appeal to the majority of the populace. One caveat to this theory was the possibility of an underlying conservative ideology of the state’s citizens. This alternative explanation asserts that the constituency may have been demanding the more punitive legal codes from their representatives. This is plausible because the ideology of the citizens is inherently
political and will influence the elected representative to appease the citizen's demands for law and order. This study however reveals that both explanations are significant and operate independently of each other. The strength of the Republican Party is still a significant predictor of rape law severity even after the citizen ideology is held constant.

The most important implication is the historical influence of race in the process of law formation. One would expect that economic variables would be powerful predictors determining which group would benefit in the law. What was not expected is the role that residual racism plays in the type of rape law a state chooses to enact. This supports threat theorists who state that measures of social control are influenced by the fears of the racial majority. Threat theory predicts that a larger presence of African Americans within a society would be closely related to more punitive sanctions. This study not only supports this theory, but also goes farther to show the historical nature of racism within the United States. These results imply that the severity of the legal code was influenced by residual racism still present from the days of slavery. Historians have long noted the historical roots of racist practices and attitudes, especially in the former Confederate states. This study suggests that these same racist attitudes were also driving the legal formation of the state's rape codes. At the very least, these findings, show the historical and continuing links between race and social control. The persistence of this link shows the racial divide in this country is still present. What is promising in the data is the dissipating significance of minority presence as a predictor of legal severity in the southern states. This might indicate that the civil rights movement may have had an effect on the attitudes and fears of the population in this
region to neutralize some of the historical racism, which would not have been apparent without using a historical approach.

More generally, the findings of this study are interesting because they link various theoretical approaches from a number of sub disciplines within sociology. The explanatory variables that have been used by sociologists to explain arrest rates (Liska 1984), police size (Jacobs 1979) and per officer expenditures (Jackson 1989) in the criminal justice system are also significant predictors much earlier in the legal and political process. The same elements of racism used by historians to explain social order in the traditional South are also significant predictors of rape law severity. Finally, those variables used by political sociologists to explain determinants of social control are also related to the formation of rape law. All these perspectives were drawn upon to support theories in stratification claiming that the state acts in the interest of those with economic power, with political sociologists advocating the importance of partisan strategy and the influence of citizen ideology, and threat theorists claiming that the presence of "dangerous" classes of people drive legal outcomes. These findings also suggest that a combination of explanations borrowed from these various sub disciplines within sociology provide a greater understanding into the core factors driving law formation than any one perspective alone.
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Sanday, P.R. (1973) "Toward a Theory of the Status of Women." *American Anthropologist* 75 (No. 5)1682-700


Whaley, Rachel Bridges (2001). “The Paradoxical Relationship Between Gender Inequality and Rape; Toward a Refined Theory”,  *Gender and Society, Vol 15, No.4*


**Cases Cited**


### APPENDIX A

<table>
<thead>
<tr>
<th>Variables</th>
<th>Predicted sign</th>
<th>Mean</th>
<th>Overall SD</th>
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<th>Within SD</th>
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<td>.300</td>
<td>.180</td>
<td>.241</td>
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<td>Republican Legislature (Interaction/black pop)</td>
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<td>Republican legislature</td>
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<td>19.111</td>
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<td>Liberalism-Conservatism Score</td>
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<td>15.980</td>
<td>14.760</td>
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Table 1: Summary of Variable Diagnostics and Expected Directions of Relationships
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<tr>
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<th>Model 1</th>
<th>Model 2</th>
<th>Model 3</th>
<th>Model 4</th>
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<td>(.0269)</td>
<td>(.0263)</td>
<td>(.0269)</td>
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<td>--</td>
<td>--</td>
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<td></td>
<td></td>
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<td></td>
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<td>.0502**</td>
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<td>Rape Rate Logged</td>
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**Regions**

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<td></td>
<td>.7444</td>
<td>.1290*</td>
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<td></td>
<td>2.1131***</td>
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<td>(1.2022)</td>
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<td>.2326</td>
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<tr>
<td></td>
<td>*= .05</td>
<td>** = .01</td>
<td>*** = .001</td>
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Results one-tailed, except Liberalism-Conservatism score is two-tailed.

Table 2. Ordinal Probit Regression of Rape Severity Index on Selected Explanatory Variables Using Annual Data