

Sarah Lawrence College

DigitalCommons@SarahLawrence

Women's History Theses

Women's History Graduate Program

5-2019

Please Pull My Nightgown Down When You Are Through: Marital Rape Activism, Opposition, and Law, 1974-1989

Katherine Swartwood
Sarah Lawrence College

Follow this and additional works at: https://digitalcommons.slc.edu/womenshistory_etd



Part of the [Women's History Commons](#)

Recommended Citation

Swartwood, Katherine, "Please Pull My Nightgown Down When You Are Through: Marital Rape Activism, Opposition, and Law, 1974-1989" (2019). *Women's History Theses*. 44.
https://digitalcommons.slc.edu/womenshistory_etd/44

This Thesis - Open Access is brought to you for free and open access by the Women's History Graduate Program at DigitalCommons@SarahLawrence. It has been accepted for inclusion in Women's History Theses by an authorized administrator of DigitalCommons@SarahLawrence. For more information, please contact alester@sarahlawrence.edu.

Please Pull My Nightgown Down When You Are Through: Marital Rape Activism, Opposition,
and Law, 1974-1989

Katherine Swartwood

Submitted in partial completion of the Master of Arts Degree at Sarah Lawrence College

May 2019

Acknowledgements

I would first like to thank my graduating Sarah Lawrence College Women's History cohort for helping me develop my project over the last two years: Cristina Tanzola, Caitlin O'Keefe, Katya Duncan, Fareeha Rashid, T.C. Mann, and Cara Schooley, as well as other Women's History students, Kat Sturgill and Marian Phillips.

I also want to thank the faculty that made this thesis possible. To my thesis advisor, Nadeen Thomas and the director of the Women's History Program, Mary Dillard, along with Visions/Revisions professor, Lyde Sizer for helping shape my thesis from its origins.

And to my sister, Nicole Swartwood for always letting me think through ideas with her and providing me with direction.

Finally, I thank all of my family and friends from the University of Tennessee-Chattanooga that encouraged me from the start: Alison, Caty, Erica, Isabel, Nicole, and Samantha.

To everyone who supported me, critiqued me, uplifted me, and let me rant to them.

At the time of this thesis, 2019, marks the 40-year anniversary of the first successful conviction of marital rape, in the United States, Commonwealth v. James K. Chretien (1979).

For all the victims impacted by marital rape. For all those who fought and still are fighting.

Table of Contents

Introduction:	4
Chapter 1: <i>The Missing Histories of Marital Rape</i>	17
Chapter 2: <i>Marital Privacy and the Family: How Preserving Social Institutions led to Violence Against Women</i>	43
Chapter 3: <i>Fragile Masculinity and the Response to Marital Rape Law and Activism</i>	63
Chapter 4: <i>When States Fail, Women Rise: How Women's Organizations Shaped National Conversations Regarding Marital Rape</i>	84
Chapter 5: <i>Marital Rape on the Stand: How Marital Rape Litigation Affected the Marital Rape Exemption</i>	103
Conclusion: <i>The Boyfriend Loophole</i>	128
Bibliography:	132

Dear Victims,

There is no such thing as RAPE in marriage—It is impossible. There is only assault and battery, ill feeling and disaster. If a woman marries it is ‘for better or for worse, in sickness and in health, to love and obey, etc etc. If afterward she has a change of heart/mind, then she has the right to a divorce and settlement. She has no right, nor does the husband to charge such a heinous crime with a partner as RAPE. I have playfully raped my wife many times. I would be crushed if she made such a charge against me and I know our little girls one day would call her a whore...I reiterate, there is no such thing as marital rape—only mismatched people who should get divorced.

-Mr. Ta¹

This letter, which is simply addressed “Dear Victims,” was sent to the National Clearinghouse for Marital Rape. At the top, double underlined are two words, “A Classic!” A worker in the Clearinghouse upon opening the envelope must have been flabbergasted by the man’s harsh language and clear lack of basic comprehension regarding consent and rape. She must have felt sympathy for the poor man’s wife, who has by her own husband’s admission been raped before. The author of the letter has no qualms giving the organization his name and address as he eagerly awaits their response. Did the Clearinghouse deign to answer the man? Did they pass the letter around as an example for what they fought for every day, trying to change public opinion and criminalize marital rape? We might not ever know what happened after the worker opened the envelope and the top left corner was marked. We do not know the date it was written, sent, received, or who read the letter. We can assume Mr. Ta wrote the letter at some point in the late 1970s or early 1980s based upon the archival material found alongside it. The letter in its entirety is no longer than two sheets of white 8x10 letter paper, yet it carries with it generations of ideas about women’s place-- their body’s place-- in marriage. It encompasses not only legal ideas of marriage rights, but also a collective history of men’s belief systems regarding

¹ Mr. Ta, Letter to the National Clearinghouse on Marital and Date Rape. n.d. *National Clearinghouse on Marital Rape Archive*.

² Sociologists: David Finkelhor, Kersti Yllo. Legal scholars and lawyers: Susan Estrich, Lalenya Weintraub

women. Men believed they had the right to use women for their own pleasure without consequences, enough so that they could brag about their actions to total strangers.

Examining the topic of marital rape through history has proven to be a challenge. Lawyers, legal scholars, and sociologists dominate the literature, while historians remain mostly absent.² In particular, in the 1980s when marital rape studies began, the initial work belonged to sociologists who aimed to explore contemporary concerns regarding the legality of spouse rape; these included: oral histories of victims, quantitative understandings of the effect of marital rape, and how courts/legislators treated marital rape. However, these works scarcely paid attention to how the history of rape in marriage impacted events of the 1970s, 1980s, and beyond.

Only a few histories examined marital rape activism, legislation, or trials. Most histories referenced in this thesis were brief, with some exceptions. These works, in addition to those in other disciplines, did not engage in conversations between each other; they neither built on one another, nor did they follow a general theme or argument so that the reader could construct an informed understanding based on the available research. Due to these challenges, I stitched my historiography with threads from many disciplines, including sociology, history, anthropology, and legal scholarship, and focused on those scholars who examined marital rape, at least in part, in a historical context.

Three explanations may provide insight upon this patchwork of scholarship: (1) the variety of fields that have studied the topic have made it difficult for scholars to be aware of one another across disciplines, (2) the lack of comprehensive scholarship completed before and during the 20th century creates the obstacle of identifying prominent leaders in the study of marital rape, and (3) the recentness of the marital rape movements in the 1970s and 1980s means

² Sociologists: David Finkelhor, Kersti Yllo. Legal scholars and lawyers: Susan Estrich, Lalenya Weintraub Siegel, Cassandra DeLaMothe, and Jill Hasday.

some historians may avoid the topic. Each of these explanations could reasonably account for the absence in historical research regarding the marital rape, though it is imperative to call on historians to overcome such barriers to give voice to victims and activists of marital rape in the 1970s. Some of these women are still alive, fighting for an end to violence against women. Now is the time to record these histories and make them known.

Another obstacle among marital rape scholarship is that scholars tended to prioritize domestic violence and rape studies over marital rape. Comprehensive on rape and domestic abuse activism exists regarding the 1970s and 1980s, yet marital rape research is scarce. This prompts the question: why have historians neglected marital rape scholarship? There is not one singular answer to this question, yet I hypothesize that it lies within the intricacies of marital rape conversations. It is possible that historians continue to struggle to navigate complex histories like that of marital rape in America. For instance, the idea that marital rape could be subsumed under the label either rape or domestic violence could constitute an absence in scholarship. However, I argue that marital rape existed separately from either category; after all, it possessed its own set of laws and legal challenges. While marital rape should be understood as its own entity, it does require study alongside 1970s and 1980s rape and battered women's activism. The three topics do not exist exclusive of each other, but in tandem. Therefore, scholars must examine both the commonalities among the activism against each crime, while also paying close attention to the subtle differences. In the case of marital rape, a woman's status as a wife of the assailant meant she could not charge her husband with rape, yet this did not hold true in other crimes committed by a husband against a wife. Therefore the question becomes, what made rape in marriage different from other marital crimes as well as the crime of rape itself?

In order to obtain these answers, this project examines motivations behind the marital rape exemption, or the absence of marital rape in states' criminal codes, how popular opinion and gendered divisions of power fought against feminist change, how feminists and activists in the 1970s advocated for more inclusive rape laws, and finally how marital rape trials transformed marital rape law. This project only looks at heterosexual couples with charges of marital rape, because same sex couples could not legally marry in the United States during the 1970s and 1980s. These analyses may also appear to lack consideration of race and ethnicity. This was not an intentional oversight, so much that the documents and court trials often did not speak to the couples' ethnicity or race. In some cases, due to the sensitive content of the trials, some records do not include descriptions or even the names of the victim and defendant.

Furthermore, in the confines of this project, I only examine women as victims of marital rape and men as perpetrators. This is not to imply that wives could not rape their husbands; however, the majority of victims in these crimes were women. Based on women's historical lack of status and legal/political power as compared to men, I primarily rely on this dynamic to explore marital rape as an issue of violence against women. It is worth noting that during the 1970s and 1980s, rape activists advocated for gender-neutral rape statutes, and as seen later in this project, marital rape trials challenged states' use of gendered roles in rape law. The Women's Liberation movement of the 1970s ushered in the use of more inclusive terms, such as "sexual assault," which encompassed various acts of sexual aggression as well as broader legal definitions to include men as victims and women as perpetrators.

Marital Rape Scholarship from the 1970s and 1980s

As these changes to marital rape law began to take hold in the 1970s, it is essential to understand the impact this period had on women's activism. Scholars refer to this period of feminist social movement as Second Wave Feminism, the First Wave occurring in the 19th Century with the Women's Suffrage Movement, but at the time activists referred to their work as the Women's Liberation Movement. Scholars often credit Betty Friedan's *The Feminine Mystique* with the surge of feminist ideals in the mid-20th Century; she would later co-found The National Organization for Women, a group dedicated to women's advancement and equality. Friedan, alongside others, raised national consciousness regarding the women's rights. In order to better fight against women's oppression in the United States, it became imperative to understand why women lacked the same social and economic power as their husbands and male peers. They began to question why women primarily reared children rather than joining the workforce, why, when women did hold careers, they made less money than men, why women faced violence at a higher rate than men, and other inequalities. This thesis primarily examines marital rape during this period. As a result of the activism and scholarship produced during the 1970s and 1980s, legislatures and courts created effective changes to the marital rape exemption. In order to understand how these developed, it is important to look at texts on marital rape published during the decade between 1975 and 1985; these texts include *Against Our Will: Men, Women, and Rape* by Susan Brownmiller, *Rape in Marriage* by Dianna Russell, and *License to Rape: Sexual Abuse of Wives* by David Finkelhor and Kersti Yllo.

The first of these texts, Susan Brownmiller's *Against Our Will: Men, Women, and Rape*, published in 1975, examines the crime of rape across countries, centuries, religions, and race through various forms of oppressions including police behaviors, war, and prisons. Her study is

significant, especially in regards to marital rape, since her book was published before the first U.S. state criminalized marital rape, one year later. Although her book does not specifically focus on marital rape, Brownmiller provides some of the first scholarly resources on marital rape in the 20th century. Speaking on the history of the marital rape exemption in the United States, Brownmiller traces its origins to the Christian Bible and Sir Matthew Hale. She does not delve too much into the background of marital rape; instead, she discusses contemporary concerns. With conviction she writes, “In cases of rape within a marriage, the law must take a philosophic leap of the greatest magnitude, for while the ancient concept of conjugal rights (female rights as well as male) might continue to have some validity in annulments and contested divorces—civil procedures conducted in courts of law—it must not be used as a shield to cover acts of force perpetuated by husbands on the bodies of their wives.”³ She calls on the legal system to update the laws to criminalize marital rape and to give this crime the same attention that other rape laws, like statutory rape, received previously. Brownmiller writes her study of rape with a strong feminist voice, calling out the injustices women suffered under the criminal justice system and the law.

In comparison to Brownmiller, Diana Russell’s influential study of marital rape, published in 1982 as *Rape in Marriage*, explores marital rape in depth. She provides a detailed background on marital rape by discussing it in a legal and historical context. Her research makes a major contribution to marital rape scholarship. Russell does not limit her study to only victims of marital rape, yet she utilizes the information gathered from it to write her book focusing on the crime. The study includes 930 female interviewees based in San Francisco, California, 87 of

³ Susan Brownmiller, *Against Our Will: Men, Women, and Rape*, (New York: Simon and Schuster, 1975), 381.

whom reported at least one instance of completed or attempted marital rape;⁴ 644 of the participants had been married; this constitutes a 14% marital rape rate.⁵ She builds her hypothesis around the notion that the percentage of women who have been raped was higher than commonly believed or previously reported.⁶ She concludes that previous reports of low victim rates stemmed other studies “lacking methodological soundness” or “methodology that would allow for generalizations to a larger population than the one studied.”⁷ In order to recruit women, Russell sent “Dear Resident” letters in English, Spanish, and/or Cantonese to potential respondents. The letter did not note “rape” as the focus; instead using the word “crime” so as not to alert husbands, fathers, and boyfriends.⁸ The researchers conducted ninety-two interviews with randomly selected women.

Russell traces the prevalence of marital rape, the types of sexual assault wives encountered, and the effects on the victims. When discussing the data, Russell notes that these numbers only constitute women willing to disclose the information, not the actual numbers. Ultimately she found that the most common form of forced sexual assault perpetrated by husbands or ex-husbands was penile-vaginal at 85 percent, 10 percent were victims of attempts at this, and the remaining 5 percent constituted either victims of completed or attempted forced

⁴ When discussing respondents who identified as victims of marital rape, Russell highlights the fact that some women may be unable to tell their stories out of fear of their husbands murdering them or committing suicide. She reports that in the same year of the study, 1978, 1095 wives were murdered by their husbands in the United States. She proposes that a large number of husbands who murdered their wives may have raped them, too. She bases this on the fact that at the time, one-third of women seeking refuge from their husbands reported wife rape.

⁵ Diana Russell, *Rape in Marriage*. 2nd ed. (Bloomington: Indiana University Press, 1990), 57.

⁶ Russell, *Rape in Marriage*, 28.

⁷ Russell, *Rape in Marriage*, 28.

⁸ Russell, *Rape in Marriage*, 31.

anal, oral, or digital penetration.⁹ She explains that three respondents were divorced when the first instances of “marital rape” occurred, which while prosecutable in some states, remained sanctioned in others. In order to explain the low percentage of anal, oral, and digital penetration, Russell clarifies data regarding this was only collected when the women interpreted “intercourse” to include it, and that since these forms of sex were considered socially taboo, it is likely women would only contribute this information when directly asked.¹⁰ Additionally, she notes that the low respondent rate, 14%, could be a result of women failing to recognize marital rape in their relationship based on ideas of sex as an extension of wifely duties.¹¹

Furthermore, Russell’s exploration of the trauma associated with marital rape is extremely significant since many supporters of the marital rape exemption believed that as a crime, it should carry less severe punishments since victims did not face the same traumatic after-effects that victims of other sexual assaults encountered. In order to combat this myth, Russell reports, “and 61 percent of women raped by a stranger report being extremely upset, as compared to 59 percent of women raped by a husband.” Forty-one out of sixty-nine women raped by their husbands reported feeling extremely upset, no one reported feeling “not at all” upset.¹² In regards to long-term effects, 52 percent of marital rape victims, 52 percent of victims of relative rape, not including husbands, 39 percent of stranger rape victims reported suffering (36/69 women raped by their husband or ex-husband suffered “Great” long term effects, 20/69

⁹ Russell, *Rape in Marriage*, 57.

¹⁰ Russell, *Rape in Marriage*, 58.

¹¹ Russell, *Rape in Marriage*, 58.

¹² Russell, *Rape in Marriage*, 191, 192.

reported “some”).¹³ Negative long-term effects included negative feelings or beliefs towards men, towards their husbands, and/or towards themselves. Additionally, changes in behavior such as increased depression, anxiety, mistrust, anger, were reported, as was negative impacts on women’s sexual feelings.¹⁴ Two women in the study also contemplated suicide.¹⁵ Ultimately, Russell demonstrates that victims of marital rape experience trauma at nearly the same rates and in similar ways as victims of other sexual assaults.

Overall, the research Russell accomplished is significant, as the first major sociological study of marital rape victims in the United States. Her work dispelled popular myths regarding marital rape, especially concerning the trauma associated with the crime. Not only did her research help further marital rape scholarship in the 1980s, but also it also actively assisted in marital rape trials. The presiding judge in *People v. Liberta* directly referenced *Rape in Marriage* when writing his appellate opinion to deem the marital rape exemption unconstitutional in New York State. Hence, Diana Russell’s *Rape in Marriage* still remains one of the most prominent texts on marital rape in the United States.

Finally, David Finkelhor and Kersti Yllo’s *License to Rape: Sexual Abuse of Wives*, published in 1985, also includes two studies of marital rape victims: one which involved a survey and another in which they interviewed a separate sample of victims. Through their work, Finkelhor and Yllo attempt to draw attention to the overlooked crime of marital rape and mobilize the criminalization of marital rape in all U.S. states. They conducted their research on marital rape as part of a larger survey on child sexual abuse; they hired a research organization to

¹³ Russell, *Rape in Marriage*, 192, 193.

¹⁴ Russell, *Rape in Marriage*, 193.

¹⁵ Russell, *Rape in Marriage*, 59.

administer a survey to 600 parents of children aged six to fourteen in the Boston area and adapted the questions to include marital rape.¹⁶ In a self-administered portion, the survey asks, “Has your spouse ever used physical force or threat to try and have sex with you?”¹⁷ Ultimately, the survey was administered to 323 women, but the researchers admit to its limitations in the fact that only women with children aged six to fourteen living with them received the questionnaire; therefore, the study did not include women without children, women with older children, and few women married fewer than six years.¹⁸ They also interviewed fifty women who experienced sexual assault by their husbands; these women did not participate in the Boston survey. They recruited these interviewees from family planning agencies and received other respondents from self-referrals, referrals from battered women shelters, and from an ad in *Ms.* magazine.¹⁹ All of the women interviewed were white, from various ethnic backgrounds including French, Italian, English, Polish, and Scandinavian, held various social and class statuses, and included some unmarried, but cohabitating women.²⁰ Finally, as they explain, they interviewed only women who ended their marriages because their study “is essentially about sexual assaults that occurred in marriages that eventually came to an end, about sexual assaults seen through the eyes of divorced and separated wives.”²¹ They explain that the vast majority of their participants were

¹⁶ David Finkelhor and Kersti Yllo, *License to Rape: Sexual Abuse of Wives* (New York: The Free Press, 1987), 203.

¹⁷ Finkelhor and Yllo, *License to Rape*, 204.

¹⁸ Finkelhor and Yllo, *License to Rape*, 204.

¹⁹ Finkelhor and Yllo, *License to Rape*, 208.

²⁰ Finkelhor and Yllo, *License to Rape*, 209-210.

²¹ Finkelhor and Yllo, *License to Rape*, 211.

separated women, and posit that women living with their abusers may be too afraid to speak out against them.²²

Although they only interviewed separated women, their research and findings can be applied to any victims of marital rape.

In addition to Russell, Finkelhor and Yllo's *License to Rape* provides important insight into the contemporary crime of marital rape. With intentions to raise awareness of the crime of marital rape and create change, Finkelhor and Yllo focus on social conditions contributing to marital rape. These included myths, husbands who commit marital rape, and the law; they also examined the impact of marital rape on victims, public opinions on marital rape, and work to criminalize marital rape. They found that some women submitted to sexual abuse from their husbands in order to protect their children. One woman explained, "All I could think was that [my daughter] had been through enough. I didn't want her to see this, too. So I just withdrew from the scene mentally, as I had done in previous episodes of physical assault. I thought 'He's not doing this to me. He's just doing this to my body.'"²³ And when examining the effects of marital rape on victims, Finkelhor and Yllo quote one woman who, after her failed suicide attempt and divorce from her husband explained, "He ruined my life. Until this day, I hate sex. I don't get nothing out of it. I hate it so bad. It seems like every time I have it, it's just a flashback."²⁴

Finkelhor and Yllo's inclusion of women's voices directly and prominently in their research added to their work. By recording and sharing these women's stories Finkelhor and Yllo countered traditional myths and assumptions regarding marital rape with direct anecdotes about

²² Finkelhor and Yllo, *License to Rape*, 210-211.

²³ Finkelhor and Yllo, *License to Rape*, 109.

²⁴ Finkelhor and Yllo, *License to Rape*, 129.

the trauma and effects of marital rape. Marital rape can be an emotionally and physically destructive crime, which politicians consistently ignored in favor of preserving the marital rape exemption under the guise of marital privacy and protecting the family. By utilizing the voices of marital rape victims, Finkelhor and Yllo retaliated against these traditional belief systems and called for action moving forward, the first step of which relied on helping victims of marital rape escape and recover from their abuse.

Chapter Summary

Due to the limited approach that marital rape has been met with in the past, I hope to create a more comprehensive study of the marital rape exemption. The core question I seek to answer in this project is in what ways was marital rape overtaken by the anti-rape and battered women's movements of the late 1970s and 1980s. In order to counteract this overshadowing, I highlight the efforts of marital rape activists to criminalize marital rape and explore contributing factors to the longevity of the marital rape exemption in the United States.

Chapter 1 explores the diverse scholarship surrounding marital rape. This analysis looks at works from legal scholars, psychologists, sociologists, and historians of marriage and rape to examine how scholars understood the crime of marital rape.

Chapter 2 examines why the marital rape exemption remained the primary policy in the United States for more than 200 years. The chapter explores the role The Family played in extending the marital rape exemption and women's lack of status, marital privacy, and myths surrounding marital rape.

Chapter 3 focuses on masculinity and how men specifically viewed the marital rape exemption during the 1970s and 1980s. In this chapter I examine primary documents collected

from the archives that highlight men's beliefs and behaviors towards efforts to criminalize marital.

Chapter 4 highlights women's activism in regards to marital rape and the role women's organizations played in altering public opinion and definitions of rape and sexual assault. I analyze documents from the National Clearinghouse on Marital and Date Rape, the National Organization for Women, and the National Center on Women and Family Law.

Chapter 5 examines the role of the court in regards to marital rape and the exemption. I look at *Oregon v. Rideout*, *People v. Liberta*, *State v. Brown*, and *Merton v. State*.

Finally, in my conclusion I will explore the lasting legacy of marital rape in U.S. and how contemporary America treats issues of Violence Against Women.

Chapter 1: *The Missing Histories of Marital Rape*

“Are we to put the stamp of truth upon the libel set forth, that men and women in the matrimonial relation are to be equal.”²⁵

-New York Legislator Mr. Burnett

²⁵ Mr. Burnett quoted in Elizabeth Cady Stanton, Susan Brownell Anthony, and Matilda Joslyn Gage, *History of Woman Suffrage*, 2nd ed. (Rochester, NY: Charles Mann, 1889), 613.

The study of marital rape encompasses many facets for scholars to examine, which often leads to niche conversations on marital rape. This variety of scholarship provides broad explorations of marital rape in the United States, but fails to provide comprehensive works detailing marital rape. Therefore it is essential to examine what marital rape scholars and marriage and rape historians deem important topics of discussion and how these differ across fields.

Sir Matthew Hale and the Marital Rape Exemption

Despite the diversity and shortcomings of marital rape scholarship, some commonalities exist. For instance, most scholars of marital rape relate the origin of the “marital rape exemption,” or the name given to exclusion of marital rape as a criminal offense in legal codes, to the same source, as well as the notion that the marital rape exemption maintained its place for so many centuries based on the idea that wives existed as the property of their husbands. As for the inauguration of the exemption in common law, scholars credit Sir Matthew Hale, who during his life in the 17th century, held careers as a judge, lawyer, and Chief Justice. He is most known for his book, *The Pleas of the Crown*, where he penned his infamous words on marital rape. *The Pleas of the Crown* detailed a variety of 17th century laws, though the book was not published until 1736, nearly eighty years after his death; it left a lasting impact on American and British criminal conduct. On the topic of marital rape, Hale states, “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 her husband which she cannot retract.”²⁶

²⁶ Sir Matthew Hale, *The History of the Pleas of the Crown* quoted in Thomas Walter Williams, *The Whole Law Relative to the Duty and Office of a Justice of the Peace*, 2nd ed. (London: printed for G.G.J. & J. Robinson, and C. & G. Kearsley, 1808), 421.

It was these words that solidified the marital rape exemption as common law both in Britain and America.

As Hale asserted in his statement about marital rape, when a wife signs a marriage contract with her husband, she signs over her body as well; her consent is not required in the moment. For Hale, “matrimonial consent” means women involuntarily consented to sex with their husbands. This encapsulates the concept of implied consent, or the idea that by being legally wed, a woman does not need to verbally or physically establish consent in individual sexual encounters with her husband. In this way, the legal system viewed the marriage certificate as an overarching expression of her consent. Implied consent upheld the marital rape exemption until the 1970s in America. If a woman automatically gave her consent in marriage then “marital rape” itself was an oxymoron.

Although Hale worked as a British jurist, scholars note his influence on the American judicial system. Legal historian, Jill Hasday claims that more than 100 years after the publication of *The Pleas of the Crown*, scholars and courts failed replace Hale’s rationale behind the marital rape exemption with their own theories because “his arguments grounded in principles of marital status law and common law coverture still seemed so convincing to them.”²⁷ Hale’s impact did not diminish in the early 1800s. Marital rape scholars in the 1980s claimed that Hale’s proclamation shaped the exemption. Diana Russell, one of the first published America scholars on marital rape, writes that the origin of the marital rape exemption “is invariably traced to...Matthew Hale.”²⁸ Additionally, David Finkelhor and Kersti Yllo affirm Hale’s impact by stating, “Although this jurist was writing at a time when marriage was irrevocable and wives had

²⁷ Jill Elaine Hasday, “Contest and Consent: A Legal History of Marital Rape,” *California Law Review* 58, no. 5 (2000): 1396-1397.

²⁸ Russell, *Rape in Marriage*. 2nd ed. (Bloomington: Indiana University Press, 1990), 17.

no independent legal or economic rights, Hale's doctrine has endured. It has been incorporated into laws around the English-speaking world and reaffirmed again and again, as recently as 1977, by judges and lawyers writing about rape."²⁹ Even as courts began to outlaw marital rape, courts relied on Hale's doctrine to establish precedent.³⁰ Together these scholars elucidate how Matthew Hale's comments on marital rape endured for 240 years until the first state would outlaw marital rape in 1976.

Wives and Property

Scholarship regarding marital rape often highlights a common theme: property, or more accurately, women's status under the law. Scholars note that the marital rape exemption maintained credibility because the United States considered women to be the property of their husbands or fathers. By property, these experts refer to women's lack of social, political, and economic independence. In her 1980 article, "The Marital Rape Exemption: Legal Sanction of Spouse Abuse," legal scholar Jan Glasgow explains that in marriage, a husband possessed a "superior role" over the wife; thus his wants and needs were considered more important than the wife's needs-- including sex.³¹ When the couple married, what legal identity a wife might have possessed merged with her husband's. This lack of an individual legal identity for white women made it difficult to take legal action against their husbands. As former Supreme Court Justice, Joan Hoff explains, "The married woman by herself was often legally classified with 'lunatics,

²⁹ David Finkelhor and Kersti Yllo, *License to Rape: Sexual Abuse of Wives* (New York: The Free Press, 1987), 2.

³⁰ *People v. Liberta*, 64 NY 2d 152 (1984).

³¹ Jan Glasgow. "The Marital Rape Exemption: Legal Sanction of Spouse Abuse," *Journal of Family Law* 18, no. 3 (1979-1980): 569.

idiots ... and infants.”³² U.S. society did not deem women able to participate in legal or political matters, comparing them to those they believed could not intellectually engage with such affairs, including children and disabled persons.

Women’s lack of legal, political, and economic status undoubtedly contributed to the State’s failure to criminalize spousal rape, but early scholars confounded this with the idea of women as men’s property. This white-centric view of women’s role in marriage overlooks America’s slave holding past by fixating solely on white women as property. This ignorance is not unique for Second Wave Feminism or scholarship born from this period, which often failed to include an intersectional approach or understanding to feminist activism. These scholars did not acknowledge how the statuses of enslaved black women and white married women in the 1800s differed. One newspaper author described marital rape as “an extension of slaveowner mentality.”³³ By ignoring enslaved black women’s legal status as the complete property of their white owners, marital rape scholars created a unified experience of wifhood. Since many of these experts are white men and women, it is likely they relied on what theorist Joan Scott calls “the evidence of experience,” which she explains as, “When experience is taken as the origin of knowledge, the vision of the individual subject (the person who had the experience or the historian who recounts it) becomes the bedrock of evidence on which explanation is built.”³⁴

Since white scholars understood how marital rape impacted white women, they embraced this

³² Joan Hoff, “*Law, Gender, and Injustice* (1991) quoted in Sandra Day O'Connor, “The Legal Status of Women: The Journey toward Equality.” *Journal of Law and Religion* 15, no. 1/2 (2000):31.

This statement reveals more than just how women were treated. It highlights how people with disabilities have been seen as unfit to participate in politics, handle legal matters, and be treated equally as able bodied persons.

³³ “Marital Rape a Crime,” *Evening Ledger*, December 27, 1984. National Clearinghouse on Marital Rape Archive.

³⁴ Joan Scott, “The Evidence of Experience.” *Critical Inquiry* 17, no. 4 (1991): 777.

particular type of historical experience for themselves without acknowledging the intersectional histories faced by women of color. In particular, they neglected the vast history of black women as a commodity and the property of their white owners. This is not a critique that only applies to emerging marital rape scholars but a majority of scholars and their histories detailing Second Wave Feminism. While it is problematic to describe the issue as one of property law, feminist scholars from the 1970s and 1980s rely heavily on this notion and thus, I have chosen in this section to refer to this factor as “property” for the purpose of continuity and analysis between the disciplines.

Historian Roy Porter supports the “women as the property of their husbands” assertion in his 1986 chapter, “Rape- Does it have a Historical Meaning?” in the book *Rape*. He explains, “From Old Testament Jewish codes up to feudalism, rape was treated primarily as theft, as a property offense, but one perpetrated against *men*. The crime was principally that of stealing or abducting a woman from her rightful proprietors, normally her father or husband.”³⁵ Porter’s statement shows that although Hale played a role in *officially* developing the marital rape exemption, husbands engaged in intercourse without consent with their wives long before Hale codified it in *The Pleas of the Crown*. Porter shows how women’s lack of political status regarded them as the property of their husbands and fathers in such that if a man raped a woman, he did not commit a crime against her person, rather he committed a property crime against the woman’s husband or father. His statement speaks to marital rape history because it highlights how long this concept of women as the property of their husbands persevered. While it may not have been an accurate assumption moving into the mid 1970s, Second Wave scholars believed the marital rape exemption was rooted in this idea.

³⁵ Roy Porter. “Rape- Does it have a Historical Meaning?” in *Rape*, ed. Sylvana Tomaselli and Roy Porter. (New York, NY: Basil Blackwell, 1986), 207.

Legal scholar Lisa Eskow in her 1996 article titled, “The Ultimate Weapon?: Demythologizing Spousal Rape and Reconceptualizing Its Prosecution,” explains how women’s bodies as the property of their fathers and husbands were a commodified good. She describes how as property, a woman’s chastity was of special importance because her father could use his daughter’s virginity to bargain for economic or social gain, and husbands could also benefit from this perceived worth.³⁶ Thus, men’s interest in the protection of their daughter’s chastity remained connected to how much value their daughter could bring them. This subjugation held women to be considered less than a person and more of an object. This too has created a lasting legacy into modern society as we continue to see women objectified for profits in media and advertisements.

Since the State did not criminalized marital rape, women in sexually violent marriages had little legal recourse. Glasgow explains that during Hale’s period there was no escape from marriage; it might only end with death or a private act of Parliament, which would not be accessible for many.³⁷ Many women remained in unhappy, violent, and sexually exploitive marriages until death did they part. For marital rape in particular, Eskow notes that there existed no legal basis for trying a husband for raping his wife, since his wife was considered his legal property. If he raped another man’s wife, he could be charged for committing an act against another man’s property.³⁸ These scholars claim that a woman being considered her husband’s possession contributed to the marital rape exemption, in that men could not be charged for raping

³⁶ Lisa Eskow “The Ultimate Weapon?: Demythologizing Spousal Rape and Reconceptualizing Its Prosecution.” *Stanford Law Review*, 48, no. 3 (1996): 680.

³⁷ Glasgow, “The Marital Rape Exemption,” 569.

³⁸ Eskow “The Ultimate Weapon?” 680.

their wives since their bodies legally belonged to them. English Common Law and the effect it had on American Common Law failed women in this way.

It would not be until the 1970s and 1980s that America would begin to embrace real legal change. Together these marital rape scholars illustrate how understanding property law, or women's lack of legal status, is essential to determining why the marital rape exemption remained the status quo for so long, even after the U.S. did not consider women as the actual property of the men in their lives. If read together, these studies provide a more holistic understanding of how women's lack of status affected them in regards to marital rape. Individually, however, each scholar only briefly discusses the importance of women as property, despite them all affirming its significance. Most condensed the topic to a single paragraph, or even just a sentence. Bringing these scholars together is crucial because it allows readers to understand how scholars view property as essential factor in the existence of the marital rape exemption. Though this narrow focus also highlights how scholars neglected other areas contributing to the exemption. Scholars across the study of marital rape scholarship reflect this brevity, as authors tend to focus on one small part, rather than attempting to construct a comprehensive exploration of each factor contributing to the marital rape exemption in America. As noted earlier, marital rape scholars failed to acknowledge one another in their research, most likely due to the variety of fields and topics they studied within marital rape research.

Marital Activism in the Early Women's Rights Movement

Historian Eleanor Flexner's *Century of Struggle: The Women's Rights Movement in the United States*, published in 1959, explored women's activism in the 19th and early 20th centuries. Flexner discusses women's involvement in various fields of activism including education, trade

unions, labor, and suffrage. She, too, does not spend time exploring women's marital activism in the 1800s. However, she briefly notes in her chapter, "The Beginnings of Reform" that "men and women who wished to found their marriage on a mutual concept of human dignity" utilized marriage contracts to protest traditional forms of marriage.³⁹ In this short exploration, she includes two marriages: Robert Dale Owen and Mary Jane Robinson, 1832, and Lucy Stone and Henry Blackwell, 1855. Historians most often consider Lucy Stone's marriage as an example of marital activism in the 19th century. Despite these inclusions, Flexner provides little information further explaining marital activism and its importance to the Women's Rights Movement. Her inclusion of the two marriages and their nontraditional contracts under "The Beginnings of Reform" highlights, at least in part, that transforming women's role in marriage was a first step to furthering women's political and social power in the United States.

Ellen DuBois's 1978 *Feminism and Suffrage: The Emergence of an Independent Women's Movement in America 1848-1869*, specifically traces how the women's movement in mid 1800s developed. She remains close to her focus on the campaign for women's suffrage, but succeeds in including the foundations that contributed to it, such as women's status in marriage. DuBois explains,

Not only were eighteenth- and early nineteenth-century women prohibited from owning real property or controlling wealth; they could not be said even to hold property in themselves. Law and custom granted the husband ownership, not only of his wife's labor power and the wages she earned by it, but of her physical person as well, in the sexual rights of the marriage relation. No people, with the exception of chattel slaves, had less property rights over themselves in the eighteenth- and early nineteenth-century America than married women.⁴⁰

³⁹ Eleanor Flexner, *Century of Struggle: The Women's Rights Movement in the United States*, (Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 1959), 64.

⁴⁰ Ellen DuBois, *Feminism and Suffrage: The Emergence of an Independent Women's Movement in America 1848-1869*, (Ithaca, New York: Cornell University Press, 1978), 45.

DuBois highlights the way in which husbands benefited from their wives' subjugated role in their marriage. Not only did he possess rights to her property, but her body as well, specifically in regards to sex, as DuBois points out. DuBois then connects women's forced dependency on their husbands to activists fighting for the right to vote. She writes, "To women fighting to extend their sphere beyond its traditional domestic limitations, political rights involved a radical change in women's status, their emergence into public life."⁴¹ Therefore, she makes it clear that it was essential in the early U.S. Women's Rights Movement for married women to advocate for equality within their marriage as well as at the ballot.

Additionally, DuBois classically compares a wife's lack of status to that of a slave in America, though she admits slaves held a worse position than a married woman. The reliance on this comparison further demonstrates how Second Wave Feminists failed to accurately understand the difference between the treatment of white women and slaves. More than other historians, DuBois attempts to include enslaved women in marital activism. In a later chapter, DuBois succinctly includes information about black women and marriages in the 19th century when she explains that according to research conducted by women's right activist, Frances Gage at the Freedmen's Bureau, that freed slave women refused "legal marriages and the submission to men that emancipation seemed to require."⁴² DuBois fails to provide more information regarding either white women's or black women's role in advocating for equal roles in marriage.

DuBois sheds some light on this possible absence of marital activism when she reveals that some First Wave feminists opposed a harsh stance against marriage. First Wave feminists refer to women's rights activists following the Seneca Falls Convention in 1848. The convention

⁴¹ DuBois, *Feminism and Suffrage*, 46.

⁴² DuBois, *Feminism and Suffrage*, 69.

served as one of the first known conferences dedicated to women's status in the United States. This "wave" of feminism ended in the 1960s, when the Second Wave emerged. Most often these First Wave feminists are herald for their suffrage work.

DuBois writes that prominent women's rights activists, Elizabeth Cady Stanton and Susan B. Anthony, held "militant positions on marriage and domestic reform" which other suffragettes did not support.⁴³ In particular at a National Woman Suffrage Association meeting, which discussed the possibility of expanding divorce law, some women found the conversation dangerous and a threat to the marital bond.⁴⁴ Again DuBois fails to provide details or further explanations, but we can understand from her brief mention that progressive marital activism was not necessarily a goal shared by all suffragettes in the 19th century.

Finally, like the majority of historians discussing marital activism, DuBois mentions Lucy Stone's marriage to Henry Blackwell. However, instead of presenting the marriage as a form of protest, she almost criticizes Stone's marriage and her role as a mother. She explains that Anthony believed maternity replaced suffragettes' political convictions and undermined their mission. In a letter to another activist about Stone, Anthony wrote, "I do feel it is so foolish for her to put herself in the position of maid of all work and baby tender. What man would dream of going before the public on such an occasion at this one night-tired and worn from such a multitude of engrossing cares."⁴⁵ Furthermore, DuBois commends Anthony's failure to marry,

⁴³ DuBois, *Feminism and Suffrage*, 192.

⁴⁴ DuBois, *Feminism and Suffrage*, 192.

⁴⁵ Susan B. Anthony to Antoinette Brown Blackwell, April 22, 1958, quoted in Ellen DuBois, *Feminism and Suffrage: The Emergence of an Independent Women's Movement in America 1848-1869*, (Ithaca, New York: Cornell University Press, 1978), 27-28.

citing her as “the only first-generation national women’s rights leader to remain single.”⁴⁶

DuBois makes a strong assertion here. When Stanton and Anthony, along with Matilda Joslyn Gage and Ida Husted Harper, wrote the original history of the Women’s Suffrage Movement, *History of Woman Suffrage*, they crafted a positivist history for themselves. In turn, the authors left some voices out. Further compounded by historians’ primary focus on white women’s role in women’s suffrage, one cannot be sure that Anthony remained the only early women’s rights activist to decline to marry.

Focusing on women’s activism in the marital rape movement, Maria Bevacqua’s *Rape on the Public Agenda: Feminism and the Politics of Sexual Assault*, published in 2000, traces how rape has been historically propelled from the private to the public arena for debate and consideration. While Bevacqua examines rape as a general topic, she does provide some important insights on the ways marital rape both became part of the public conversation and how it was left behind. She primarily focuses on what she calls the “anti-rape movement” which she defines as having “its roots in second-wave feminism.”⁴⁷ This minimizes the work of First Wave feminists.

While Bevacqua mostly focuses in the 20th century, she does briefly acknowledge the work of some early feminists, most notably, Lucy Stone. At most, Bevacqua provides one vague paragraph that could be connected to marital rape consciousness during the 19th century. In general, most histories of the early women’s movement in the U.S. focus on suffrage, often neglecting the other causes within the movement, especially marital activism and a married woman’s right to her own person. Writing on marital rape activism in the 1800s, Bevacqua also

⁴⁶ DuBois, *Feminism and Suffrage*, 192.

⁴⁷ Maria Bevacqua, *Rape on the Public Agenda* (Boston: Northeastern University Press, 2000), 4.

dedicates a small paragraph to prominent women's rights advocate, Lucy Stone and her marriage to Henry Blackwell. She notes that the couple's position against traditional marriage could be interpreted as a one against men's sexual control over their wives, stating, "Blackwell refused his legal right 'custody of the wife's person.'"⁴⁸ Bevacqua provides no further insight into this statement presumably from Blackwell or analysis on 19th century marital rape activism. This quote actually originated in the marital contract between Stone and Blackwell. The wedding officiant recited the document at the wedding, and newspapers subsequently printed it. The document read,

While we acknowledge our mutual affection by publicly assuming the relationship of husband and wife, yet in justice to ourselves and a great principle, we deem it a duty to declare that this act on our part implies no sanction of, nor promise of voluntary obedience to such of the present laws of marriage, as refuse to recognize the wife as an independent, rational being, while they confer upon the husband an injurious and unnatural superiority, investing him with legal powers which no honorable man would exercise, and which no man should possess. We protest especially against the laws which give to the husband:

1. The custody of the wife's person....6. Finally, against the whole system by which "the legal existence of the wife is suspended during marriage," so that in most States, she neither has a legal part in the choice of her residence, nor can she make a will, nor sue or be sued in her own name, nor inherit property.

We believe that personal independence and equal human rights can never be forfeited, except for crime; that marriage should be an equal and permanent partnership, and so recognized by law; that until it is so recognized, married partners should provide against the radical injustice of present laws, by every means in their power.⁴⁹

As Bevacqua explained, there is room for analysis arguing this marital contract included the sexual power husbands could yield over their wives. For instance, if scholars believed "women as property" was the key component to the preservation of the marital rape exemption in America, then Stone and Blackwell's insistence that he, as her husband, would not acknowledge

⁴⁸ Bevacqua, *Rape on the Public Agenda*, 19.

⁴⁹ Lucy Stone and Henry Blackwell quoted in Howard Zinn and Anthony Arnove eds., *Voices of a People's History of the United States*, 2nd ed. (New York: Seven Stories Press, 2009), 129.

his right to absorb her legal identity could be connected to ideas of marital rape. Furthermore, the statement, “while they confer upon the husband an injurious and unnatural superiority, investing him with legal powers which no honorable man would exercise” could also allude to marital rape and wife beating.

Compared to Bevacqua, legal scholar, Jill Hasday, in her article published the same year, “Contest and Consent: A Legal History of Marital Rape” argues the importance of 19th century women’s activism in marital rape, asserting the right of a husband to rape his wife as an essential factor in the subjugation of women in that era. Hasday explains that other historians underestimated the scope of the 19th century women’s rights movement and their activism beyond suffrage. Instead, Hasday seeks to highlight how women’s rights advocates passionately campaigned for “self-ownership” or the social, political, and economic freedom for women from their husbands. This, she argues, is fundamental in understanding how contemporary arguments on the criminality of marital rape in the 1970s and 1980s developed.

Hasday incorporates the writings and protests of many prominent 19th century women’s rights activists including those of Elizabeth Cady Stanton, Paulina Wright Davis, Lucinda B. Chandler, and Lucy Stone. Through these women she crafts a history of anti-marital rape activists that dates back more than 100 years before the laws began to change in America. In particular, she notes that these women concentrated their efforts on the belief that women should control marital intercourse. For example, although Hasday explains that Stanton did not explicitly include acts of marital rape within her activism, she spoke on wives’ duty “to grace [her husband’s] home, to minister to his necessities, to gratify his lust” and “hence our laws make her a mere dependent.”⁵⁰ Focusing on the “to gratify his lust” statement, it is clear that

Stanton understood how husbands utilized women's bodies for their own pleasure and sexual needs. Furthermore, Hasday explains Stanton deemed it essential that women control marital intercourse in order to self determine when to become mothers, questioning,

Did he ever take in the idea that to the mother of the race, and to her alone, belonged the right to say when a new being should be brought into the world? Has he, in the gratification of his blind passions, ever paused to think whether it was with joy and gladness that she gave up ten or twenty years of the heyday of her existence to all the cares and sufferings of excessive maternity? Our present laws, our religious teachings, our social customs on the whole question of marriage and divorce, are most degrading to woman Here, in my opinion, is the starting-point; here is the battleground where our independence must be fought and won.⁵¹

Stanton asserts that forced motherhood oppresses women by requiring women to forgo other passions in order to focus on rearing children. She accuses the husband of being so obscured by "his blind passions" that he does not consider how sexual intercourse can affect his wife for decades after. Stanton made it clear in her work that women should dictate when to engage in sex with their husbands so that they would self-determine when to be mothers. Here she calls for action; women in the fight for equality should first begin with oppressive marriages. In order to achieve the goal of self-ownership, women needed to fight the customs and laws that allowed their husbands to obtain their property and legal identity at marriage.

Like Bevacqua, Hasday also references the marriage of Stone and Blackwell to acknowledge anti-marital rape sentiments during this period. Hasday focuses on Stone maintaining her maiden name rather than taking her husband's is an example of their protest against conventional marital ideas. Hasday explains that compared to Stanton, Stone often felt

⁵⁰ Elizabeth Cady Stanton to Gerit Smith 1-3 (Jan. 5, 1851) (on file with author; Elizabeth Cady Stanton Papers, Library of Congress) quoted in, Jill Elaine Hasday "Contest and Consent: A Legal History of Marital Rape." *California Law Review* 88, no. 5 (2000): 1419.

⁵¹ Elizabeth Cady Stanton to Gerrit Smith (Dec. 21, 1855), quoted in Jill Elaine Hasday "Contest and Consent: A Legal History of Marital Rape." *California Law Review* 88, no. 5 (2000): 1420.

less inclined to voice her thoughts on marriage in fear of public backlash, however, Stone did not allow this fear to quench her desire for self-ownership.⁵² Hasday paints Stone as a woman ardently against marriage, though eventually her resolve was broken by Henry Blackwell, who promised Stone that she would be the ultimate decider of when and how she became a mother.⁵³ Blackwell provided Stone with a type of marriage that most women in her life were not afforded as this promise of control permitted Stone both the freedom from the constraints of motherhood, unless she wished for it, and the freedom from forced intercourse in marriage. Stone serves as an example of marital rights activism planting its roots in 19th century feminist movements. Hasday proves that women in the mid-1800s consciously evaluated their status as “wives” and its effects on their individual liberty. Furthermore, through Stone one can understand that women actively fought against the customs of the period that attempted to constrain women.

Hasday asserts that Stone and Blackwell protested conventional ideas of women’s subjugation within marriage.⁵⁴ Stone, as Hasday uses her, illustrates ways in which women were able to protest marital rape, a husband’s ownership of their wives, and gain a freedom from forced motherhood. However, Hasday neglects to mention why Stone later faded from the women’s movement. According to historian Faye Dudden, after the couple had a child, Blackwell pressured Stone to stay home and raise their daughter as he experienced income trouble, despite Stone’s earnings from speaking.⁵⁵ Her loss of connections, financial insecurity, family life, and marital strife ultimately led to her withdrawal from the women’s movement in

⁵² Jill Elaine Hasday, “Contest and Consent: A Legal History of Marital Rape,” *California Law Review* 58, no. 5 (2000): 1422, 1423.

⁵³ Hasday, “Contest and Consent,” 1424.

⁵⁴ Hasday, “Contest and Consent,” 1424.

⁵⁵ Faye E. Dudden, *Fighting Chance* (New York: Oxford University Press, 2011), 6.

the 1850s.⁵⁶ Though it is significant that Hasday failed to include Stone's eventual removal from the women's movement, which was due to her husband's insistence to be at home with the child. This is indicative of a culture in which even progressive men and women were continually subjected to the pressures and ideals of the period they lived in.

Hasday's article is an important assessment of 19th century women's activism to end marital violence. She provides a missing piece to the history of the marital rape exemption, one that Bevacqua overlooks in favor of focusing on more contemporary issues of rape. To understand how feminists in the 1970s lobbied for change, it is critical to understand that these debates did not suddenly appear, but actually have a historical past within early feminist movements in the mid 1800s. Failure to address this creates a one-dimensional perception of First Wave Feminism, one that only advocated for suffrage, rather than the broad spectrum of social pressures they sought to challenge. Furthermore, it provides exaggerated credit to Second Wave feminists as radicals against patriarchal control in social institutions like marriage in America. In this way, scholars depict First Wave feminists as subtle reformers and Second Wave feminists as the enlightened generation of women's activists. Instead it is crucial to not compare the two eras of feminist activism, but understand what factors allowed Second Wave feminism in the 1970s to lead a successful campaign against the marital rape exemption.

Marital Rape in 20th Century Rape Activism

Many scholars of rape activism fail to properly include marital rape. Bevacqua's *Rape on the Public Agenda* explores rape in public discourse. Bevacqua briefly references marital rape in various places throughout her book. She notes the work of the D.C. Task Force on Rape in 1973, organized by Councilman Tedson Meyers. The Task Force was charged with examining legal

⁵⁶ Dudden, *Fighting Chance*, 6.

and institutional responses to rape in D.C.⁵⁷ The Task Force contained members of the community, notably a representative from a local rape crisis center; in fact, the group held a majority of women at the helm, yet the final report declined eliminating the marital rape exemption.⁵⁸ D.C. created the Task Force primarily to evaluate how police officers, medical professionals, and court systems treated rape victims.⁵⁹ Overall, Bevacqua frames this Task Force as evidence of D.C.'s commitment to rape reform during this period; however, if this was true, it is only in part, as the Task Force disregards criminalizing marital rape.

In a section titled, "Husband-Wife Exclusion," the Task Force explains why it failed to recommend criminalizing spousal rape by stating,

The Task Force is divided as to whether or not the spousal exclusion should be retained in the revised statutes... Some members of the Task Force... believe that the exclusion should be retained for marital persons living together since the marital sexual relationship is a protected private one, with which the criminal courts should not interfere. These members also wish to state that by retaining the spousal exclusion, they do not wish to imply that they philosophically believe there is a *right* to unwanted sexual acts.⁶⁰

The Task Force remained further divided by those who wished to criminalize marital rape in part, i.e., separated couples, stating, "We all agree if the exclusion is retained at all, it should not apply to persons separated by judicial decree or to persons separated in fact even without a judicial decree since these persons have agreed to suspend the sexual part of their marital relationship and live separate and apart."⁶¹ Other members believed the marital rape exemption

⁵⁷ Bevacqua, *Rape on the Public Agenda*, 105, 106.

⁵⁸ Bevacqua, *Rape on the Public Agenda*, 105, 106

⁵⁹ Kristen M. Williams, *The Prosecution of Sexual Assaults*, Publication no. 7, PROMIS Research Project, Washington D.C., Institute for Law and Social Research, 1978.
<https://www.ncjrs.gov/pdffiles1/Digitization/48438NCJRS.pdf>

⁶⁰ "Report of District of Columbia Task Force on Rape" repr., in Leroy G. Shultz eds. *Rape Victimology*, (Springfield, Illinois: Charles C. Thomas Publisher, 1975), 366.

⁶¹ "Report of District of Columbia Task Force on Rape," 366.

should have been abolished in its entirety. These disputes made it impossible for the Task Force to recommend criminalizing marital rape. Their division highlights the three main stances on the marital rape exemption, complete abolishment, partial abolishment based on separation status, and finally retaining the exemption, in the case due to marital privacy. Those who wished to maintain the exemption wanted to explicitly state that failing to recommend the criminalization of marital rape did not reflect their belief that husbands had a right to rape their wives. Without further explanation, it seems they simply do not believe wives should have the legal ability to charge their husbands with rape in cases of unwanted sexual intercourse. Why should the sanctity of marital privacy force women to legally endure sexual violence if these members did not “philosophically” believe in a husband’s right to force himself upon his wife?

Bevacqua, herself, does not digest the implications of the Task Force choosing not to suggest criminalizing marital rape in their final report beyond explaining it as “not ideal by the [The D.C. Rape Crisis Center’s] standards.”⁶² While challenging rape laws may not have been the primary focus of the D.C. task force, their failure to actively include wives as victims of rape illustrates U.S. behavior towards marital rape, meaning the crime was often deemed less important than other types of rape reform. Furthermore, Bevacqua’s quick note, just an example in parentheses, highlights how easily scholars brush over marital rape within their research.

Political scientist, Kristin Bumiller’s *In An Abusive State: How Neoliberalism Appropriated the Feminist Movement Against Sexual Violence*, published in 2008, examines how 1970’s feminists through their anti-rape movement unwittingly participated in creating a “criminalized society” with negative effects on women, particularly those subjected to the

⁶² Bevacqua, *Rape on the Public Agenda*, 106.

welfare state.⁶³ Bumiller explains, "...Since society has defined sexual violence as a social problem...this creates policies that reinforce stereotypical assumptions about women's dependency and the character of intimate partner violence."⁶⁴ She criticizes the narrow focus of help afforded to victims of sexual assault, claiming that instead of developing comprehensive reforms and understandings of these types of violence, activists and the state rely on solutions.⁶⁵

One form of reform Bumiller discusses is the Violence Against Women Act (VAWA), passed in 1994. VAWA served as the first implementation of a national policy against issues of gendered-based violence in the United States. As Bumiller explains, Congress passed the act under the Commerce Clause and Enforcement Clause of the Fourteenth Amendment. She asserts that through its passage, VAWA determined sexual and domestic violence to be a public issue or a "social problem" rather than a private matter.⁶⁶ Bumiller critiques this development, stating, "The VAWA also reframes the issue as a matter of federalism. This rubric contrasts the domain of the 'state' as a private and domestic and permissive of 'traditional' forms of mistreating women with the promise of a cosmopolitan assertion of rights based identities in a federal system."⁶⁷ She opposes the idea that the State should play a role in determining a standard for equal treatment.

Her argument fails to consider the nuance of specific forms of rape, in particular marital rape. Within the United States, the lack of standard for marital rape laws created broad definitions of rape, spousal rape, victims, and perpetrators. Individual states relied on the notion

⁶³ Kristin Bumiller, *In An Abusive State: How Neoliberalism Appropriated the Feminist Movement Against Sexual Violence*, (Durham, North Carolina: Duke University Press, 2008), xii.

⁶⁴ Bumiller, *In An Abusive State*, xiv.

⁶⁵ Bumiller, *In An Abusive State*, xiv.

⁶⁶ Bumiller, *In An Abusive State*, 140.

⁶⁷ Bumiller, *In An Abusive State*, 141.

that marital rape and domestic violence should remain in the private sphere. By relying on this logic, some states maintained their marital rape exemptions longer than others, allowing women to legally be raped by their husbands without their perpetrators facing consequences. Therefore, shifting the conversation of marital rape as a private encounter between husband and wife into the public consciousness was essential to creating any laws that barred it. While she does acknowledge the crime of marital rape, Bumiller's generalization of rape crimes fails to consider how this form of rape differed from others types of sexual assault. Bumiller's work demonstrates how scholars neglect the specific challenges the criminalization of marital rape encountered. Marital rape shared some of the similar difficulties in prosecutions as other sexual assault crimes, such as the perceived lack of the victim's credibility and ability to prove consent. However, in some instances, they faced these challenges differently. While many people understood rape as a crime, until the 1970s, a large portion of the American population did not actively believe marital rape could exist, including wives and some state laws actively defined rape as act perpetrated against a female who is *not* the wife of the actor. Therefore, marital rape greatly benefited from state legislatures and courts taking initiative.

Marital History and the Absence of Marital Rape

Not only did histories of rape often overlook marital rape, but histories of marriage did as well. Stephanie Coontz's *Marriage, A History* published in 2005, and Elizabeth Abbott's *A History of Marriage* published in 2010, provide insight into how marriage historians factored in the impact of spousal rape on the institution of marriage. Coontz's approach to the history of marriage differs from Abbott's as reaches further back and more broadly into history. Coontz explores the meaning of marriage across cultures, whereas Abbott steadily remains in North

America and its European roots; both cover a variety of topics pertaining to marriage. While each scholar very briefly mentions marital rape, neither establishes it as a crucial piece of marital history. Although Coontz touches on 19th century women's activism by mentioning Stone and Blackwell's marriage, she only dedicates one vague sentence. She states, "Women's rights activists Lucy Stone and her husband, Henry Blackwell, wrote their own marriage vows, declaring that in entering 'the sacred relationship of husband and wife,' they intended to disobey all laws that 'refuse to recognize the wife as an independent rational being [and] confer upon the husband an injurious and unnatural superiority.'"⁶⁸ In the following paragraph, Coontz acknowledges the work of an English advocate for the criminalization of marital rape, Elizabeth Elmy. British historian Maureen Wright claims Elmy as "the first woman ever to speak from a public platform on the sensitive topic of conjugal rape" and "the most significant British feminist theorists of her generation."⁶⁹ Through her work in the WEU she advocated for wives legal rights and against forced maternity.⁷⁰ Ultimately, her campaign failed.⁷¹ Wright asserts this failure is not the fault of Elmy's work, but of the "patriarchal legislature."⁷² While Elmy was a British suffragette, and thus not mentioned by other authors examined in this work, Coontz's specific inclusion of her activism to end marital rape provides evidence of pre-1970s' women's desire to remove the marital rape exemption.

⁶⁸ Stephanie Coontz, *Marriage, a History*, (New York, New York: Viking, 2005), 181.

⁶⁹ Maureen Wright, *Elizabeth Wolstenholme Elmy: The Biography of an Insurgent Woman*, (Manchester, UK: Manchester University Press, 2011), 1.

⁷⁰ Wright, *Elizabeth Wolstenholme Elmy*, 160.

⁷¹ England officially criminalized marital rape in 1991 by the Appellate Committee of the House of Lords.

⁷² Wright, *Elizabeth Wolstenholme Elmy*, 238.

Instead of focusing on marital rape, each author highlights an adjacent topic without quite connecting the dots. For example, Coontz discusses feminism and marriage in the 1970s. Specifically, she notes how this era ushered in new understandings of marriage and the American family. Coontz points to increased women's work during this era for this adjustment. Women no longer had to rely on a man for an income, as women's wages began to rise during this period.⁷³ This was also the decade when women first gained the ability to open credit in their name. Women dove into the workforce in the 1970s as a result of the recession, which especially hindered men's job security, and the gendered wage gap allowed women to fill men's positions at lower costs to employers.⁷⁴ In this era women gained a new sense of autonomy, permitting them to shelve the traditional pressures of marrying young and rearing a family as their primary occupation, which remained the primary expectation for young American women late into 1950s. Thus, a husband was no longer a necessity for women to have a home or steady income, and if already married, a wife did not have to solely rely on him. Coontz fails to address how these experiences differed among affected black women, other women of color, and immigrant women in the United States.

While Coontz does not connect these rapid changes in marriage to marital rape activism, understanding marriage and women's rights in the context of the 1970s is crucial to understanding why outlawing marital rape was successful in this period. Without these initial changes, women might not have felt secure enough to leave a sexually violent husband if they did not think they would be able to support themselves and their children. The popularity of

⁷³ Coontz, *Marriage, a History*, 259.

⁷⁴ Coontz, *Marriage, a History*, 258-259

divorce by 1980 stood at 50 percent.⁷⁵ This could have also impacted women's desire to leave a husband who raped them. California implemented the first no-fault divorces in 1969, allowing women to divorce their husbands more freely.⁷⁶ Divorce no longer held the same stigma, allowing women to leave their husbands without the same fear of social ostracization they may have encountered previously. By highlighting the changes to marriage and divorce in the 1970s and 1980s, Coontz sets a basis for marital rape activism, however, she, like many historians, overlooks the explicit importance of marital rape.

Elizabeth Abbott's *A History of Marriage*, published in 2010, also neglects marital rape; however, it does highlight domestic abuse. While the two crimes are different, they share many similarities and can shed light on one another. Abbott introduces the topic through a 1977 Michigan case where Francine Hughes was tried for burning down the house of her ex-husband while he lay drunk inside.⁷⁷ This occurred after a night of beating, being forced to burn her school supplies, demands that she drop out of school, threats of murder, and a police visit where the cops failed to arrest her ex-husband.⁷⁸ She was acquitted of first-degree murder but on the basis of temporary insanity, rather than self-defense.⁷⁹ Abbott explains this as a loss for battered women in court, explaining that the judge even remarked that the trial failed to focus on the real issue- self-defense against abusive husbands.⁸⁰ She compares Hughes's trial to one in which a woman in Tennessee was charged with second-degree murder. The judge in this case stated,

⁷⁵ Stephanie Coontz, *Marriage, a History*, 263.

⁷⁶ No-fault divorces allowed married couples to separate without proof that one spouse wronged the other in some way, e.g., adultery.

⁷⁷ Elizabeth Abbott, *History of Marriage* (Toronto: Penguin Canada, 2010), 351.

⁷⁸ Abbott, *History of Marriage*, 352, 533.

⁷⁹ Abbott, *History of Marriage*, 558.

⁸⁰ Abbott, *History of Marriage*, 558.

“This battered wife syndrome is just another cause, just a new word for your old fighting couple.”⁸¹

By comparing these two cases, Abbott highlights the variation in the American judicial system as it pertained to violence against women perpetrated by their husbands. This is especially significant to marital rape in instances where legislation failed to create laws barring men from raping their wives, and instead, courts took the lead. Each judge’s personal interpretation of laws, made it difficult for American courts to set a standard for prosecuting marital rape. For example, *People v Liberta*, the 1984 case that outlawed marital rape in New York State, was criticized by legal scholar, Cassandra DeLaMonthe, for its failure to set a unified framework for other courts to utilize because of the specific circumstances.⁸² The American court system, in some cases, had the ability to create change where legislators failed, which will be explored in Chapter 5, but it too left many women vulnerable to abuse and sexual assault by their partners. The study of domestic violence is important to marital rape scholarship. Husbands could be charged with crimes of violence against their wives, like battery, before marital rape was criminalized. In some cases this could have served as a roundabout way to prosecute a husband for marital rape, if the husband also physically abused his wife.

Reading between the lines in scholarship like Abbott’s and Coontz’s is valuable because it provides insight in two ways. The first is that it demonstrates how marriage scholars value marital rape in relation to the overall history of marriage. In these cases, the authors proved that marital rape was barely on their radar. The second way in which it is enlightening, is that these authors discuss topics central to marital rape without even realizing it, showing just how

⁸¹ Abbott, *History of Marriage*, 558.

⁸² Cassandra DeLaMothe, “Liberta Revisited: A Call to Repeal the Marital Exemption for All Sex Offenses in New York’s Penal Law,” *Fordham Urban Law Journal*, 23, no. 3 (1996): 868.

complex the crime of marital rape is. A number of the scholars mention marital rape in small notes or discuss tangential topics without connecting them to marital rape.

Conclusion

As evidenced in this chapter, there are many angles and scholarly fields from which marital rape can be explored; yet scholars often focus on small parts rather than creating a comprehensive history of the crime in the United States. Furthermore, since the scholarship surrounding marital rape is limited, scholars often overlook important aspects of marital rape in order to focus on particular factor, neglecting the intricate and unique history marital rape law in the United States possesses. Therefore, it is imperative to create dialogue between marital rape scholars to see which areas have been deemed most important, and which areas have been skimmed over.

Chapter 2: *Marital Privacy and the Family: How Preserving Social Institutions led to Violence Against Women*

“They know they’re going to have something done to them...This will lead to people divorcing themselves much quicker.”⁸³

-Representative Robert Carrier

⁸³ Robert Carrier quoted in “Marital Rape: Rep. Michael Causes Stir,” *Maine Times*, May 25, 1985.

In early America, men employed a number of reasons to maintain the marital rape exemption, but none greater than the obsession with preserving the social institution of The Family and women's place within it. Many scholars pointed to women's status as their husband's "property" as a main factor in the marital rape exemption, even in the late 20th century. But at its core women's status was not about being labeled the so-called property of their husbands, but about their subjugated presence in society and how their role within the family perpetuated their lack of autonomy.⁸⁴ Approaching this from the separate spheres argument, or the belief that men should occupy the public realm, i.e., politics and business, and women should remain in the private, i.e., family and homemaking, thus creating two separate spaces for men and women to exist in, we can understand that society deemed U.S. women unfit for the socio-political world and thus sought to seclude them inside the household.

By forcing women into the domestic realm, society, i.e., men who held the political/social power, could retain an idealized version of the family, which included women at the head of domestic affairs. Sociologists Barbara Laslett and Johanna Brenner explain in their article, "Gender and Social Reproduction: Historical Perspectives," that separate spheres first developed among white, industrial entrepreneurial, bourgeois families in the nineteenth century as they began to reorganize their structures and duties as a result of the new economy. Immigrant and lower class men and women eventually followed suit, though they did not possess the same privilege as upper class women who could afford not to work.⁸⁵

⁸⁴ Some Women's Historians find separate spheres argument both too limiting and too dichotomous to accurately portray 19th and 20th century histories of women. Some scholars note that separate spheres often marks women as autonomous creatures forced to remain within the household. For more readings regarding critiques of historians utilizing separate spheres, I suggest Linda K. Kerber's "Separate Spheres, Female Worlds, Woman's Place: The Rhetoric of Women's History."

⁸⁵ Barbara Laslett and Johanna Brenner, "Gender and Social Reproduction: Historical Perspectives." *Annual Review of Sociology* 15,: (1985), 389.

As work transitioned from the home to the industrial public, both men and women grappled with these changes. Bourgeois women now possessed increased responsibility for childrearing without aiding in the labor as they once did and men were no longer considered the moral teachers of the children; instead they became primary income earners.

The ideal of the moral mother and the claim that it was no longer men but women who were endowed with ethical superiority, were embodied in beliefs that celebrated women's piety, purity, and domesticity. Men in contrast, were seen as aggressive, competitive, sexual.⁸⁶

Despite this gendered division, due to women's "ethical superiority," women's role in the family remained an important aspect of society.⁸⁷ This ideal "continued to dominate American's perceptions of women's 'true' nature and role."⁸⁸

The idea of the separate spheres perpetuated women's lack of status in the society, allowing men to remain unthreatened in their political monopoly.⁸⁹ Sociologist Ashlyn K. Kuersten writes that the separate spheres doctrine continued well after the ratification of the Nineteenth Amendment, which gave women the right to vote in the United States, as women were excluded from juries and discouraged from obtaining higher education degrees or pursuing male dominated professions.⁹⁰ Therefore, society blocked women from the legal realm,

⁸⁶ Barbara Laslett and Johanna Brenner, "Gender and Social Reproduction: Historical Perspectives." *Annual Review of Sociology* 15 (1985): 389.

⁸⁷ Barbara Todd, "Separate Spheres: Woman's Place in Nineteenth-Century America" *Canadian Review of American Studies* 16, no. 3: (1985), 329.

⁸⁸ Stacy Lorraine Braukman and Michael A. Ross, "Married Women's Property and Male Coercion: United States Courts and the Privy Examination." *Journal of Women's History*, 12, no. 2: (2002), 62.

⁸⁹ This is not to mean women had no autonomy or activity in the so-called public sphere. Women engaged in a number of social movements and protests. Generally, these were connected the Victorian ideal of "moral women." For examples, white women participated in the abolitionist movement and the temperance movement. Of course, one can not forget women's activism towards suffrage in the 19th and 20th century America.

⁹⁰ Ashlyn K. Kuersten, *Women and the Law: Leaders, Cases, and Documents*. (California: ABC-CLIO, 2003),16.

preventing women from providing input on laws that affected them directly. American colleges often refused to train women as lawyers, a feat even more difficult for women of color. Women struggled to find support as political candidates. It was not until 1973 that women could serve on juries in all 50 U.S. States, 1957 for federal courts. Therefore, the U.S. political system failed to value women's opinions in deciding court and deemed them unable to participate in their legal system. This state sponsored exclusion of women allowed men to remain the primary lawmakers and servers of "justice" in the United States. In turn this meant that women did not always have the opportunity to collaborate on the creation of laws within their states.

Maintaining women's distance from political decisions and adhering to the male dominated political system are essential factors in the marital rape exemption's longevity. Why would the government want to interfere in private familial matters when it could jeopardize the existing power system in the United States? By exploring the ways America centered the Family as its core value, we can decipher how government institutions disguised their non-efforts to outlaw spousal rape as essential to the preservation of marriage and the sanctity of the law. This chapter dissects American's fixation on the Family affected the State's failure to criminalize marital rape.

Marital Privacy, The Family, and the State's Response

Marital privacy encompasses the idea that the State should not make laws affecting the marital contract; in other words, issues within the family should remain within the family. Legal scholar, Elizabeth Schneider, explains in "The Violence of Privacy" that historically, ideas of privacy in the law protected men and punished women. She asserts that as the State understood domestic abuse (and marital rape) as a private matter, they failed to effectively condemn male

violence, demonstrating that women could continue to be seen as the their husband's property and thus not deserving of legal interaction.⁹¹ In large part, this focus on marital privacy, and neglect of women's autonomy, stemmed from the obsession with maintaining an idealized family dynamic. America held family as the moral center; since one is first a member of a family before one is considered an active member in society, it was important to support the family at any cost. Families contributed to children's education, morals, social power, and more. Sydney Goldstein, a then expert on marriages and families, explains in his 1940 article, "The Family as a Dynamic Factor in American Society," why the idea of the family was so essential to American life. He writes,

It is out of the family of today that the world of tomorrow must inevitably come. Society is not composed of men and women who come out of the void or who grow up in Orphan Asylums; but of men and women who are born into families and who come directly out of family environment and are moulded by family influence. Studies have been made repeatedly to show how even one unfit and defective family can spread its poison through a number of generations and over large geographical areas and place unbearable burdens upon society in the form of disease and insanity, delinquency and vice. Studies are also being made that reveal the contribution that sound and competent families make to society and the way in which these families enrich and vitalize the bloodstream of social life. From these families come forth men and women who extend the boundaries of human knowledge, deepen and expand the range of human experience, greaten and refine the heritage of the centuries. It is not incorrect to state that the family is one of the chief agencies through which the achievements of the past are conserved; the treasures of the present cultivated; and the endowments of the future transmitted.⁹²

Goldstein's statements depict why marital privacy haunted 20th century Americans. The Family taught children how to contribute to society. Any type of "defective family" endangered the very foundation of American society-- the American family. If women participated in the work force, who would rear the children? If children did not receive the proper tools to become adults, the

⁹¹ Elizabeth M. Schneider, "The Violence of Privacy," *Connecticut Law Review* 23, no.4 (1991): 978.

⁹² Sidney E. Goldstein, "The Family as a Dynamic Factor in American Society." *Living* 2, no. 1 (1940): 8.

entire United States culture would suffer. If spouses began to divorce, if couples had children out of wedlock, if husbands could suddenly be charged with raping their wives, how could society hold together its most important institution? By failing to criminalize marital rape as a means to protect the Family, the State maintained patriarchal control over women and their bodies.

Ideas of preserving the Family affected the way in which Americans viewed government intrusion into marital rape. Legislators and legal scholars who supported the marital rape exemption believed that not officially outlawing marital rape gave couples a better opportunity to reconcile.⁹³ This particular theory was rooted in the belief that interference in marital violence issues would be more damaging to a couple than the actual violence. Therefore, supporters did not understand the severity of marital rape or domestic abuse. To most defenders of the marital rape exemption, a certain level of violence could be excusable, especially in marital sexual assault, as long as the institution of the Family remained intact. Thus, the State's apathetic approach to the marital rape exemption allowed husbands to legally rape their wives. As a result, society willingly sacrificed women's health, safety, and human rights for what they deemed more significant—The American Family. Women were not considered as individuals within a unit—as someone with value—rather they were understood as an expendable component in the greater societal function.

As the Women's Movement progressed, some opinions began to change. For some dissenters, it was clear that the marital privacy approach harmed women and the Family instead of protecting them. Sol Wachtler, the Appeals Judge in the landmark 1984 New York State case, *People V. Liberta*, echoed this view when he explained,

⁹³ Jill Elaine Hasday, "Contest and Consent: A Legal History of Marital Rape," *California Law Review* 58, no. 5 (2000): 1422.

...It is not tenable to argue that elimination of the marital exemption would disrupt marriages because it would discourage reconciliation. Clearly, it is the violent act of rape and not the subsequent attempt of the wife to seek protection through the criminal justice system, which "disrupts" a marriage. Moreover, if the marriage has already reached the point where intercourse is accomplished by violent assault it is doubtful that there is anything left to reconcile.⁹⁴

Wachtler illustrates how the marital privacy argument lacked substance and ultimately led to the continued victimization of women in marriage. Privacy did not protect the marriage— it protected the abuser. While Wachtler's comments were in direct response to arguments from the defense of Mario Liberta and the rape of his estranged wife, Denise, his remarks highlight the ways in which proponents of the exemption neglected logic in order to defend the Family. By encouraging the government to stand at a distance, men sexually assaulted their wives without the expectation of legal consequences. For defenders of the exemption it was essential to ensure the State's limited involvement by maintaining the idea that marital rape fell under marital privacy and thus should not be disturbed by litigation. Furthermore, the idea that men and women would happily recouple if marital rape remained legal is untrue. Sociologists David Finkelhor and Kersti Yllo explain that victims of marital rape experienced increased anger towards their husbands following the assault, claiming it was the most common reaction among the women participating in their study.⁹⁵ The resentment felt towards one's spouse after rape. Many victims reported a desire to kill their husbands, further proves Wachtler's point that victims of marital rape may not desire reconciliation with their abusive husbands.

Wachtler serves as an example of how state courts created change within marital rape law when legislators failed to intervene. Even as states began to develop new laws and programs for

⁹⁴ *People v. Liberta*, 64 NY 2d 152 – NY (1984).

⁹⁵ Finkelhor and Yllo, *License to Rape*, 118.

victims, they often missed the mark. For instance, a 1979 article in the *San Francisco Recorder* titled, “Domestic Violence Counseling Proposed,” reported on the ways some politicians attempted to handle marital violence controversies. The article details Democratic State Senator Robert Presley’s initiative to counsel domestic abusers, rather than forcing them to endure the American criminal justice system. He states that this program could, “save the marriage, the family, and the individual” and would be geared towards “the first [time] offender, the person who does not have a history of wife beating, or violence against a spouse or mate” because “jail is often not the answer in domestic violence cases.”⁹⁶ On the surface, Presley appears to possess good intentions. Instead of shoveling men straight into court, the state would provide an opportunity for counseling so that this behavior may be corrected and no further violence will occur within the family. But, the program is only open to those who fit the first time offender description, which in this case is defined as someone with no prior domestic abuse related or felony convictions within the previous five years.⁹⁷ At the time this must have seemed like a good idea. In fact, considering that the criminal justice system notoriously failed victims of sexual assault and domestic violence, the pool of eligibility should have been massive.

Furthermore, the culture surrounding marital violence discouraged women from reporting their abuse. For instance, in 1986, historians Sylvana Tomaselli and Roy Porter argue in their book, *Rape*, that women often decided not to report instances of rape based on police attitudes.⁹⁸ The 1993 *Harvard Law Review* article, “Developments in the Law: Legal Responses to Domestic Violence,” further explains this hesitation: “inadequate [reporting] stems from beliefs that men

⁹⁶ San Francisco Recorder, “Domestic Violence Counseling Proposed” 1979.

⁹⁷ San Francisco Recorder, “Domestic Violence Counseling Proposed” 1979..

⁹⁸ Sylvana Tomaselli and Roy Porter, *Rape* (New York, NY: Basil Blackwell, 1986.), 22.

may rightfully use force against women, from concerns about police interference in the private sphere of the family, from doubts that the victim will press charges, and from the lack of professional recognition for handling domestic cases...Even when police do respond to domestic violence calls, they often avoid arresting the batterer and seek merely to placate the parties.”⁹⁹ Thus, Presley’s “no previous history” requirement allowed serial abusers to avoid actual punishments for their actions against their wives due to women underreporting both physical and sexual assaults. Presley failed to mention any of these hindrances or provide solutions to aid women navigating the stigma of reporting marital assault.

Additionally, when the *Harvard Law Review* published this article, 40 percent of all calls police respond to were domestic violence related; and “30 percent of murdered women were killed by their male partners.”¹⁰⁰ According to statistics provided by the Federal Bureau of Investigation, “a woman is beaten every 18 seconds” and the Surgeon General asserted this violence served as “one of the leading causes of injury to women in the United States.”¹⁰¹ These statistics highlight how marital violence remained a pervasive issue in the United States. As a leading cause of injury and primary contributor to women’s murders, domestic violence deserved serious legal ramifications.

Presley’s belief that jail time is not a proper penalty for domestic abuse cases shows the lack of seriousness applied to such acts of violence. Men who had a history of abuse, though not reported, skirted jail time because of larger societal attitudes towards marital conflicts. By embodying these attitudes, Presley’s Program allowed for the continuation of this practice, even

⁹⁹ “Developments in the Law: Legal Responses to Domestic Violence.” *Harvard Law Review*, 106, No. 7 (1993): 1535.

¹⁰⁰ “Developments in the Law,” 1501.

¹⁰¹ “Developments in the Law,” 1501.

as it meant to serve as a symbol of progress. Whether due to ignorance or gross negligence, the program disregarded issues within the criminal justice system and how they affected reporting. Presley's limited awareness demonstrates the minimal effort States' invested in protecting women from their abusive husbands. Presley's initiative may have seemed like a victory in 1979, but at its crux, it represented a narrow attempt to placate the Women's Movement. One must wonder if Presley also advocated for simple counseling in regards to assault charges outside marriages or between two men in a bar fight? Why allow domestic abusers to receive counseling in exchange for their crimes, but not others?¹⁰²

The goal of Presley's counseling program rested on maintaining the family system, not aiding women in toxic situations. Presley expressly states his desire to conserve the family. Thus Presley and his program represented the ways in which family violence was treated differently than other forms of violence. Through Presley we can see how preserving the familial institution allowed wives to suffer at their husband's hands. This failure to value women contributed to the longevity of marital rape exemption in that familial needs were placed above the individual woman's. "E pluribus unum" did not exist only as motto for the United States, but as a philosophy society condemned women to live.

The majority of male legislators tolerated domestic abuse and sexual assault because they did not value women's presence in society beyond their roles in the family. In fact, regarding marital rape, some states still adhere to this belief. In 2015, Brian Patrick Byrne, a data journalist working at Vocative, a popular news site, published an article describing thirteen states' existing exceptions for marital rape. According to Byrne, states including Connecticut, Idaho, Maryland, Ohio, and South Carolina require the use of or threat of force/violence for an assault to be

¹⁰² I had difficulty finding specifics of the program, such as if participating in the program counted as a first time offense, if it was implemented, if there were critics, etc. More information may be gleaned from the Robert Presley Papers held at the California State Archives. Unfortunately, I was unable to visit in regards to this project.

considered marital rape.¹⁰³ And in Virginia, husbands may avoid jail time if they agree to attend therapy, at the wife's acquiescence.¹⁰⁴ This is startlingly familiar to Presley's 1979 counseling program. Byrne's article illustrates how some states have failed to progress over 40 years. Consequently, for some women in America, the obsession on the Family continues to permit marital rape and violence.

Women's Status (or Lack of)

As discussed in the introduction, marital rape scholars considered women's status in the social and political sphere as the foundation of marital rape laws. Most commonly, they refer to this as an issue of women as property. Journalists, judges, scholars, and activists in the 1980s all understood the marital rape exemption as an extension of women's status as her husband's property. In analyzing how women's position in society impacted marital rape law, I explore how women's dependency on their husbands, their role in the family, and lack of a legal identity contributed to longevity of the marital rape exemption. I accomplish this by focusing on three major factors: domestic violence, divorce, and cultural distrust of women.

Wife Abuse

Because of their status, many women endured violence at the hands of their husbands without the expectation of justice. Legal scholar, Reva B. Siegel explains in her 1996 article, "The Rule of Love': Wife Beating as Prerogative and Privacy," that American and British common law permitted husbands to physically punish their wives, but through 19th century

¹⁰³ Brian Patrick Byrne, "These 13 States Still Make Exceptions For Marital Rape." *Vocative*. July 28, 2015. <https://www.vocativ.com/215942/these-13-states-still-make-exceptions-for-marital-rape/index.html>

¹⁰⁴ Byrne. "These 13 States Still Make Exceptions For Marital Rape."

women's activism, reformed this practice.¹⁰⁵ This form of physical punishment was known as chastisement and husbands had this right so long as they did not inflict permanent injury.¹⁰⁶ Since chastisements fell under common law rather than statutory law, there was no official definition of the tolerated violence, meaning the severity could differ based on location and community values. Specifically, Siegel discusses these spousal punishments as examined by Sir William Blackstone, an influential 18th century English jurist. Although Blackstone was English, Siegel credits his opinions with influencing American common law, much like Matthew Hale did in the previous century.

In regards to chastisements, Blackstone states,

[F]or, as he is to answer for her misbehavior, the law thought it reasonable to intrust [sic] him with this power of restraining her, by domestic chastisement, in the same moderation that a man is allowed to correct his apprentices or children; for whom the master or parent is also liable in some cases to answer. But this power of correction was confined within reasonable bounds...¹⁰⁷

Additionally, he explains that upper class men generally refrained from this now outdated rule, but that lower class citizen still adhere to this "ancient privilege;" however, he notes that courts will allow husbands "to restrain a wife of her liberties, in case of any gross misbehaviour."¹⁰⁸ Blackstone's comments reduce wives to the same status as children—in need of guidance and discipline for misbehaving. This control over women's behavior highlights how British society understood a woman's place within the family as an inferior to her husband. Despite 19th century

¹⁰⁵ Reva B. Siegel. "'The Rule of Love': Wife Beating as Prerogative and Privacy." *The Yale Law Journal* 105, no. 8 (1996): 2218.

¹⁰⁶ Siegel. "'The Rule of Love': Wife Beating as Prerogative and Privacy," 2118.

¹⁰⁷ William Blackstone. *Commentaries on the Laws of England* (1765; repr., Chicago: The University of Chicago Press, 1979), 432.

¹⁰⁸ Blackstone. *Commentaries on the Laws of England*, 433.

women's rights activists' efforts to strengthen protections against marital violence, other social reforms like the temperance movement and white women's suffrage rose to the forefront. This forced marriage activism into the shadows, though not entirely. Activists continued to advocate on behalf of married women's rights, creating new reforms such as allowing women to have credit in their name, own property, divorce freely, and outlawing marital rape.

Separation

There was and still is a misconception that women can easily break off violent relationships.¹⁰⁹ However, this is more complicated than some might assume. Women might not leave abusive partners for a number of reasons. These can include: financial dependence on the abuser, isolation from their friends and family, and fear of more violence if they attempt to leave.¹¹⁰ In order to end a violent relationship, women must rely on a number of support systems to aid them in the process. For example, women often lean on shelters, police officers, their religious organizations, and their friends and families to encourage and assist them in their efforts to flee domestic violence.¹¹¹ Without necessary resources, women are less likely to leave their violent husbands.¹¹²

Not every woman had an opportunity to divorce or separate from her husband. Before divorces, death served as the main, legal escape from violent marriages. Therefore, the evolution

¹⁰⁹ "Developments in the Law," 1502-1503.

¹¹⁰ "Developments in the Law: Legal Responses to Domestic Violence." 1532. Jonel Thaller, Jill Theresa Messing, and Bonnie E. Carlson. "Intimate Partner Abuse." In *Handbook of Social Work Practice with Vulnerable and Resilient Populations*, edited Alex Gitterman. (New York: Columbia University Press, 2014), 400.

¹¹¹ Thaller, Messing, and Carlson. "Intimate Partner Abuse." 402, 403.

¹¹² Michael Strube and Linda S. Barbour. "Factors Related to the Decision to Leave an Abusive Relationship." *Journal of Marriage and Family* 46, no. 4 (1984): 838.

of divorce law benefited women in abusive marriages by allowing these marriages to end. Historian Loren Schweninger explains in “The Evolution of Divorce Laws” that most American colonies rarely granted full divorces, but some women had the ability to seek a “separation of bed and board” from their husbands through the court.¹¹³ She asserts that women sought these for financial reasons, but also as refuge from their violent spouses.¹¹⁴ While the separations would not permit women to remarry, they could liberate women from immediate danger. This practice was limited since these separations required approval through the courts; therefore, women’s lives remained at the will of men. If the wife’s argument was deemed non-compelling, she may be forced to remain in an abusive relationship. These stipulations differed from colony to colony, but according to Schweninger, they generally included things like bigamy, desertion or abandonment, and adultery; however, Schweninger does not include violence on the list of viable option for separating in early America.¹¹⁵ This highlights the lack of concern given to marital assaults. If violence and rape did not represent adequate grounds for divorce then women had no escape from brutal marriages.

Eventually, development of no-fault divorces in the late 1960s, allowed women an opportunity to escape abuse without the need to provide viable proof. Although women legally gained a right to divorce in 1937, this does not mean it came easy to all. Divorce and legal separations remained limited until 1969 when California instituted no-fault divorces. Previously couples could file for divorce if either husband or wife could be deemed at fault for ending the

¹¹³ Loren Schweninger, “The Evolution of Divorce Laws.” In *Families in Crisis in the Old South: Divorce, Slavery, and the Law*. (Chapel Hill: NC, University of North Carolina Press, 2012.) 2.

¹¹⁴ Schweninger, “The Evolution of Divorce Laws,” 2.

¹¹⁵ Schweninger, “The Evolution of Divorce Laws,” 6.

marriage. At-fault divorces required proof that husband and wife did not collude in order to gain a divorce.¹¹⁶

Another factor possibly contributing to a woman's inability to leave her husband was financial dependence. In the 1970s, women faced job discriminations such as insufficient protections for pregnant workers, lack of opportunities for promotions or prestigious positions, the wage gap, and women's inability to get credit in their own name until 1974. Social norms forced women to depend on their husbands financially. Subsequently, unemployed women became isolated more than employed women, further restricting their access to support systems.¹¹⁷ Preserving the Family relied on limiting divorce and maintaining married women's financial reliance on their husbands. Although the State approved small victories over time, women continued to face adversities that relegated them to their traditional roles as wives and mothers. If they could not easily divorce their husbands, they posed less of a threat to the idealized family structure, which people considered fundamental to the continuation of American society.

The absence of support from law enforcement and the criminal justice system compounded women's inability to leave their husbands. If women could not rely on law enforcement to aid them when needed, they could be less likely to report violence. Combined with the victims' dependency on her abuser, law enforcements' lack of response to domestic calls and the laws' apathy towards marital rape, a number of women remained in dangerous relationships.

Despite the challenges women faced when attempting to divorce abusive spouse, the options of divorce and separation provided some of the first changes to the marital rape

¹¹⁶ Schweninger, "The Evolution of Divorce Laws," 6.

¹¹⁷ Thaller, Messing, and Carlson. "Intimate Partner Abuse," 395.

exemption in America. For instance, the primary stipulation included by states that updated the marital rape exemption after 1976, was that rape could occur between husbands and wives who were divorcing, legally separated, or possessed an order of protection against the other party. Thus the evolution of divorce law in America greatly impacted the marital rape exemption. Such as discussed in Chapter 2 with the D.C. Task Force on Rape, separating from one's spouse was understood as a cancellation of the voluntary sexual relationship, thus convincing some states to outlaw marital rape between divorcing couples.

The Lying Wife

Critics of the criminalization of marital rape continued to ignore the injustice women faced. Instead of convicting husbands in court, they strapped women to the fiery stake. They shifted the narrative from abusive husbands to conniving wives, propagating the belief that seeking punishment for spousal rape would allow wives to enact revenge against their husbands by falsely accusing them. Proponents of the exemption preferred to construct their own falsities rather than believe women. Rape scholars like Susan Estrich, have touched on this rape myth, generally referring to it in some form as the “vindictive wife.”¹¹⁸ In this scenario, the wife of a perfectly innocent man maliciously claims he raped her in order to punish him in times of marital strife. However, I find the “vindictive wife” moniker limiting and thus suggest calling it the Lying Wife myth. This encompasses more than just a vengeful wife, speaking to greater stereotypes of dishonest, unreliable, emotionally volatile, spiteful, and irresponsible women. By using a broader term we can understand how culture constructed a distrust of women, one that pervaded multiple aspects of American life.

¹¹⁸ Susan Estrich. *Real Rape*. (Cambridge, MA: Harvard University Press. 1987), 77.

An article published on May 30, 1980 by Michael Blumstein in *The Miami Herald*, encompasses this mistrust. The piece followed Florida's struggle to pass marital rape legislation. After seven years, the Florida House authorized a bill to criminalize marital rape, but not without debate. Blumstein includes quotes from two dissenting House Republicans. While Representative Tom Bush focused on marital privacy, Representative Dorothy Sample from St. Petersburg demonstrated this mistrust of women. Blumstein cites Sample as the only female representative to disagree with the bill. She stated, "Any female with a short fuse or a mental problem can race out and charge her husband with rape and then change her mind a week later."¹¹⁹ Sample's proclamation embodied concerns regarding the lying wife, one who destroys the reputations of innocent men at her will. Through her remarks, Sample encouraged Floridians to question how they could possibly trust the word of a woman. Sample demonstrates how some women, especially those in power, relied on gendered myths to perpetuate the marital rape exemption. It is ironic that as a female state Representative, Sample pushed the idea that women were fickle, untrustworthy, and volatile in regards to serious legal matters, yet she must have relied on constituents trusting a woman's judgment in government in order to be elected.

As I will discuss further in Chapter 3, these beliefs towards wives were not uncommon. Why does society brand women, especially those who are victims of rape, as liars? Rape scholar, Lisa Cuklanz, explains that fears of false rape allegations stemmed from expectations of women's sexual propriety, meaning that men assumed women caught in imprudent sexual relationships would claim rape in order to maintain their reputation.¹²⁰ This belief, combined

¹¹⁹ Michael Blumstein, "House Bill Would Permit Wife To Charge Husband With Rape." *Miami Herald*, May 30, 1980. National Clearinghouse on Marital Rape Archive.

¹²⁰ Lisa M. Cuklanz, *Rape on Trial: How the Mass Media Construct Legal Reform and Social Change*. (Pennsylvania: University of Pennsylvania Press, 1996), 30.

with other rape myths such as rape is perpetrated only by physically violent strangers, allowed distrust of rape victims to invade the criminal justice system. Finkelhor and Yllo, in *License to Rape*, assert that Matthew Hale primarily influenced this skepticism. Hale poetically penned, “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.”¹²¹ Finkelhor and Yllo explain at the time of their study in 1985, “many states have required judges to read [Hale’s quote] to juries in all rape trials.”¹²² This was known as the “Lord Hale Instruction.” The Courts’ readings of Hale certainly biased the jury.

How can juries be impartial in the consideration of the defense and prosecution’s individual arguments when the judge instructs them that rape accusations provide a special burden on the defense to prove innocence in rape cases? This is especially of interest considering in court it is not the responsibility of the defense to convince the jury of their guiltlessness, but of the prosecution to persuade the jury of the defendant’s guilt? Courts literally quoted the man responsible for the marital rape exemption and therefore could not be trusted as an impartial presence in the quest for justice. *People v. Rincon-Pineda* (1975), a California Supreme Court case, found that the Hale instruction should not mandatorily be delivered in rape trials. The decision was reached after a trial judge chose not to repeat it to the jury. Two trials occurred for this rape case. In the first, the judge repeated it and the trials resulted in a hung jury. The second jury found the defendant guilty of raping a young woman, where the judge did not provide the instruction. The defendant appealed, arguing that the trial judge’s failure to recite the cautionary instruction to the jury resulted in his conviction. In writing the opinion, Judge C.J. Wright states,

¹²¹ Sir Matthew Hale, *The History of the Pleas of the Crown*; quoted in David Finkelhor and Kersti Yllo, *License to Rape: Sexual Abuse of Wives*. Wives (New York: The Free Press, 1987), 176.

¹²² Finkelhor and Yllo, *License to Rape*, 176.

The trial judge was of the opinion that a once unimpeachable rule of law could not appropriately be applied to circumstances such as those present herein. Because he considered it to be demeaning of the victim in the instant case, the judge refused to deliver to the jury a cautionary instruction which originated in the 17th century and which reflects adversely on the credibility of the complaining witness in a prosecution for sexual assault. The judge's failure to so instruct the jury is the sole objection before us on this appeal. We have previously held the instruction in issue to be mandatory, and the omission of the instruction was accordingly erroneous. However, upon reviewing the evidence before the jury we conclude that the error was not prejudicial. Moreover, we are of the opinion that as presently worded the instruction is inappropriate regardless of the particular evidence which might be adduced at trial.¹²³

Regarding the distrust of marital rape victims, Finkelhor and Yllo fault the fear of false accusations, or as they referred to it, the “frivolous-complaints” argument.¹²⁴ They question why vindictive wives would falsely accuse their husbands with rape, a crime they explain caused special scrutiny on victims, when wives could indict their husbands on a number of existing crimes, including, but not limited to: “theft, kidnapping, sodomy, [and] forgery?”¹²⁵ In the 1970s, men could be convicted of battery and assault against their wives. Therefore why did critics assume women would willingly subject themselves to the punitive criminal justice system in order to punish their husbands? Why would they place themselves at the center of public scrutiny? As it will be discussed in Chapter 5, Greta Rideout, the complaining witness in America’s *Oregon v. Rideout*, became a national spectacle. Across the country people described her a feminist pawn, a provoker of the violence committed against her, hysterical, and a liar as the trial progressed.¹²⁶ Every move the victim made could cause scrutiny. For victims of marital rape, it could be extremely difficult to report the crime. Police often failed to deem the complaint

¹²³ *People v. Rincon-Pineda* 14 Cal.3d 864, (1975).

¹²⁴ Finkelhor and Yllo, *License to Rape*, 169.

¹²⁵ Finkelhor and Yllo, *License to Rape*, 175

¹²⁶ Helen Benedict, *Virgin or Vamp: How the Press Covers Sex Crimes*, (New York: Oxford University Press, 1992), 67-69.

serious, the criminal justice system considered victims of sexual assault liars, and in the case of marital rape, society condemned the existence of the crime. Cultural perceptions of women constructed a burdensome process of reporting marital rape. Furthermore, experts estimate false sexual assault accusations only compromise between 2-8% of all reports.¹²⁷ Therefore, it is unlikely to assume America's misogynistic archetype of the Lying Wife held legitimacy. Instead The Lying Wife myth exists as a fantasy constructed by a male dominated society to undermine women's authenticity.

Conclusion

Attempts to preserve the Family contributed to marital rape laws by trying to force women into certain familial roles, usually within the household. By maintaining stable marriages, supporters of the marital rape exemption believed that were providing an opportunity for families to remain intact. Although some women were complacent in belief that men could legally rape their wives, the majority of criticism originated from men who relied on a chauvinistic view of society. In order to understand the primary motivations behind men's resistance to criminalizing the marital rape exemption, Chapter 3 examines a selection of primary sources that will shed light onto masculinity, men's rights, and misogyny in the 1970s and 1980s.

¹²⁷ The FBI estimates 8%, whereas some feminist scholars, such as Susan Brownmiller, have estimated false reports fall as low as 2%. Due to the lack of reporting, victim blaming, and other factors, we will never clarify an exact number.

Chapter 3: *Fragile Masculinity and the Response to Marital Rape Law and Activism*

“A woman can charge her husband with assault if he uses force to compel her to do the dishes. She can call the police and have her husband arrested. She can go to court and get a court order forbidding her husband to return to the house... The state, try as hard as it might, can't always figure out what's going on in somebody's marriage... With marital rape, there is no evidence. How is the state going to handle rape between a husband and wife who were living together when the alleged rape occurred? Very badly, is how the state would handle such a thing.”¹²⁸

-Bill McClellan

¹²⁸ Bill McClellan, “Lawmakers Resurrect Marital Rape Issue.” *St. Louis Post Dispatch*. January 26, 1987. National Clearinghouse on Marital Rape Archive.

The Women's Liberation Movement in the 1970s created several victories for women's autonomy, including improved labor rights. We now refer to this movement for progress as Second Wave Feminism. When the 1973-1975 recession hit, much like in World War II, women's workplace participation benefited from the situation. During this period, women dove into employment as female-dominated professions maintained job security and women's wages rose compared to men's.¹²⁹ The recession and subsequent housing inflation impacted women's new career roles by forcing white families to rely on two incomes.¹³⁰ These changes shifted the traditional family ideal from the husband as the sole wage earner, and the wife as the sole homemaker to husband and wife optimistically sharing equal roles in both. Despite these shifts, it would be incorrect to assume that as women developed into economic providers, their roles as primary homemakers were dismantled and shared equally between husband and wife. These changes were specific to white women, as women of color already held working positions. While white women's work force participation increased from 16.3 percent to 33.7 percent from 1890 to 1960, black women's participation only shifted from 39.7 percent to 41.7 percent in the same period.¹³¹

Women's labor mobility in the 1970s did not equally affect all women, often disproportionality benefiting white women over women of color. Black women in the 1970s faced discrimination in the workforce and from government policies. Alice Kessler-Harris explains that as women entered the workforce to aid their families in the recession, the government cut back on social programs such as day care, after school programs, and welfare

¹²⁹ Coontz, *Marriage, a History*, 258-259.

¹³⁰ Coontz, *Marriage, a History*, 259.

¹³¹ Claudia Goldin. "Female Labor Participation: The Origin of Black and White Differences, 1870 and 1880." *The Journal of Economic History* 31, no 1 (1977): 87.

aid, which greatly affected black women, especially those acting as head of households.¹³² Even as laws and policies required employers not to discriminate against employees on the basis of sex or gender, this still happened in practice. Black women continue to earn less as compared to their white peers.¹³³ Additionally, black women faced job insecurity, not just in scarcity of jobs, but within the jobs they already held since black women were often ‘last to be hired and the first to be fired.’¹³⁴ These racist and sexist practices deem black women as undesirable, disposable workers.

By 1976, many white women who went work in order to aid their husbands and families during the economic strife claimed working provided them with “a sense of importance they had never gotten from full time homemaking.”¹³⁵ This new family dynamic caused stress for some married couples. As white women ventured outside the home, gained new financial independence, and increased equal rights under the law, they began to realize they should not be restricted by marriage. It was now easier to separate since no-fault divorces were introduced in 1969 and attitudes regarding divorce were no longer as stringent; women did not have to fear being labeled social pariahs due to their marital status.

Black women, however, still faced discrimination for their marital status. In 1965 Daniel Patrick Moynihan, Assistant Secretary of Labor under President Johnson, published *The Negro Family: The Case for National Action*, also known as the Moynihan Report. In the report,

¹³² Alice Kessler-Harris, *Women Have Always Worked*, (Urbana, Illinois: University of Illinois Press, 2018), 172.

¹³³ Ernest Spaights and Ann Whitaker. "Black Women in the Workforce: A New Look at an Old Problem." *Journal of Black Studies* 25, no. 3 (1995): 286.

¹³⁴ Spaights and Whitaker. "Black Women in the Workforce," 286.

¹³⁵ Coontz, *Marriage, a History* 259.

Moynihan credits the “breakdown” of black families for causing welfare dependency.¹³⁶ Factors of this “breakdown” included the separation of black married couples and black women raising illegitimate children. Moynihan writes,

The white family has achieved a high degree of stability and is maintaining that stability. By contrast, the family structure of lower class Negroes is highly unstable, and in many urban centers is approaching complete breakdowns...As a direct result of this high rate of divorce, separation, and desertion, a very large percent of Negro families are headed by females...The percent of nonwhite families headed by a female is more than double the percent for whites.¹³⁷

Moynihan Report vilified black women for failing to rear children properly due to their mothers dominant role in the family.¹³⁸ Cathy Scarborough explains, “The report proposed that Black society mimic the sexual hierarchy of white middle-class society in order to improve its conditions.”¹³⁹ Even as a general acceptance towards separated families grew for white couples, black families faced backlash and were seen as negatively affecting their children.

Unmarried white women benefited from a new sense of autonomy, as they did not require a husband in order to financially support themselves. The Equal Credit Opportunity Act of 1974 prohibited creditors from discriminating against people based on religion, race, gender, color, nationality, sex, or marital status, affording women with the ability to open credit in their name.

Increased women’s work, social change, and women’s political growth led some men to feel insecure. Masculinity scholar, Michael Kimmel writes in *Manhood in America*,

...Feminism demanded that men change—that men cease abusing, raping, and battering women, that men begin to share in daily chores around the household, and that they

¹³⁶ Daniel P. Moynihan. *The Negro Family. The Case for National Action*, 1965, 12.

¹³⁷ Moynihan. *The Negro Family*, 5, 9.

¹³⁸ Cathy Scarborough. "Conceptualizing Black Women's Employment Experiences." *The Yale Law Journal* 98, no. 7 (1989): 1462.

¹³⁹ Scarborough. "Conceptualizing Black Women's Employment Experiences," 1462.

accept women working right alongside them...Animated by these fears, by the antipathy for women's entry into the public sphere, and by a growing resentment of any demands that they change, many men resisted women's efforts to either open up the public sphere or to transform the private sphere.¹⁴⁰

Many men felt threatened by the Women's Liberation Movement and the possibility of losing the socio-political clout they maintained for centuries. Why should men change when their current power system was operating successfully, at least for themselves? Of course the issue was not men—it was women! Feminists failed to understand men's position. How were men meant to navigate women's sensitivities to rape, violence, and equal rights? Instead of sympathizing with the Women's Movement, men, especially those in power, mocked, harassed, and insulted the efforts of women's rights activists who attempted to legislate the criminalization of marital rape. Throughout this chapter, I will examine several primary sources that speak to men's understandings of the marital rape exemption between the decades of the 1970s and 1980s.

It is poignant to refer to the "Dear Victims" letter in the introduction. In his short letter, Mr. Ta illustrates the way in which many men reacted to women's rights activists advocating to criminalize marital rape. He conveys just one example the backlash women faced in this endeavor, with disdain and disbelief. Today, his response would be understood as an instance of "toxic masculinity." The phrase, "toxic masculinity," was coined by psychologist Shepherd Bliss who is credited with first using the term in a dissertation discussing pro-men movements in the 1980s. It is now used to indicate how men have internalized societal pressures and negative expectations of men. As such they adopt domineering and violent attitudes.¹⁴¹ While the phrasing may be new, it is not difficult to trace these behaviors through the past. This chapter will focus on how men (husbands, politicians, journalists, and activists) resisted criminalizing marital rape

¹⁴⁰ Michael S. Kimmel, *Manhood in America* (New York: Oxford University Press, 2006), 180-181.

¹⁴¹ Terry A. Kupers . "Toxic masculinity as a barrier to mental health treatment in prison." *Journal of Clinical Psychology* 61, no. 6 (2005): 714.

and added to debates about the exemption's validity in the late 1970s and 1980s. By examining their reactions in the context of the economic and social chaos that developed in these two decades, I argue that men contributed to the continued legality of wife rape.

The Ridicule of Consent

Lenore Walker, an activist and scholar working on battered women, later began serving Colorado as a psychologist focused on working with courts to provide expert testimony for women who killed their husbands after suffering from Battered Women's Syndrome.¹⁴² In 1980, she wrote a letter to Laura X, the director of the National Clearinghouse for Marital Rape. In this letter, Walker described a conversation she had with a Montana State Senator, Patricia Regan, involving a piece of legislation she introduced in Montana regarding marital rape as well as three other issues concerning marriage and battered women. According to Walker, Senator Regan noticed her male colleagues disapproved of legislation completely criminalizing marital rape; so Reagan tried to appeal to them by compromising. Regan altered the legislation to make marital rape illegal only in instances where couples lived apart or separated.¹⁴³

States found this tactic popular for several reasons as they began to outlaw marital rape. A primary explanation is that legislators failed to recognize the reality and seriousness of marital rape. Leading marital rape scholar, Diana Russell, explains that even judges did not accurately understand the issue, and in one case, interrupted a woman as she tried to retell the trauma of her

¹⁴² "Specializing in Forensic Evaluations and Expert Testimony." Walker and Associates.
<http://www.drloreewalker.com/walker-associates/>

¹⁴³ Lenore Walker, Letter to Laura X, 1980. National Clearinghouse on Marital Rape Archive.

husband's assault by saying that he did not wish to hear her discuss her rape since she was a married woman.¹⁴⁴

As legislators and legal experts began studying marital rape, they often allowed marital rape myths to permeate their opinions and actions. For instance, in Kansas, a Special Committee on the Judiciary met in 1982 to evaluate their state rape statutes. The committee concluded that while they should not allow a total marital rape exemption, they should limit the criminalization to include only separated couples. They argued, "The Committee believes that rape does occur in marriage, but that it is most likely to occur when marital discord is evident and the parties are estranged."¹⁴⁵ The Committee's suggestion shows that while legislators could admit that marital rape occurred, they were reluctant to acknowledge that it could happen in any kind of married relationship. The language employed by the Kansas legislators demonstrates how marital rape could have been seen as a type of revenge from husbands against their estranged wives. Instead, as seen in Chapter 1, women who reported marital rape were seen as seeking vindictive revenge against their husbands. Rather than understanding spousal rape as something that could and did happen in marriages that appeared happy and successful from the outside, these legislators asserted that it most often took place between estranged couples.

By stating that marital rape does occur, but focusing solely on estranged marriages, the Kansas legislators disregarded women in their own state who experienced marital rape if divorce proceedings had not begun. To them, these women did not matter enough because these women were not raped in the right way, in the right kind of relationship to deserve state protection. For many legislators across the country, marital rape myths like this impeded the State's ability to

¹⁴⁴ Russell, *Rape in Marriage*, xix.

¹⁴⁵ Special Committee on Judiciary, "Committee Report" 1982. National Clearinghouse on Marital Rape Archive.

produce comprehensive legislation to protect wives in their own homes. Other prevalent myths at the time included: the idea that marital rape was not as serious as other types of rape, spousal rape fell under marital privacy and the government should not get involved, women claim marital rape to enact revenge on the husband, and marital rape simply does not exist.

The ignorance displayed by the Kansas legislature was not unique. Montana Senator Regan's composure demonstrates how male politicians disregarded the question of marital rape. In order to retaliate against Senator Regan's proposed legislation, some unidentified male legislators crafted a "Consent Agreement" for their wives. The agreement typed in capital letters reads,

DUE TO A SITUATION IN OREGON WHERE A MAN IS ON TRIAL FOR RAPING HIS WIFE, AND ANOTHER MAN IS CHARGED WITH RAPE OF HIS WIFE, THE FOLLOWING "CONSENT AGREEMENT" IS FURNISHED TO MONTANA MALES AS A PUBLIC SERVICE. IT IS RECOMMENDED THAT NO SEXUAL CONTACT BE MADE UNTIL THE FOLLOWING FORM IS FILLED OUT AND SIGNED. REMEMBER, SHE MAY BE WILLING TONIGHT, BUT TOMORROW YOU MAY BE CHARGED WITH RAPE!!!¹⁴⁶

It also asks the wife to check one of four options for consent with sex with her husband: "Beg, Ask, Agree, Grudgingly agree (please pull my nightgown down when you are through)"¹⁴⁷ The bottom of the form states that more copies "may be obtained from Senator Pat Regan."¹⁴⁸ These were distributed to all of the legislators in order to mock Regan's attempt to outlaw marital rape. Addressing the condition that couples must be living separately for marital rape to occur, one male legislator even commented that since their profession required most of the male legislators to have separate living arrangements in the capital city, they could be found guilty of such

¹⁴⁶ "Consent Agreement" Montana State Legislators, 1980. National Clearinghouse on Marital a Rape Archive. Original emphasis.

¹⁴⁷ "Consent Agreement" Montana State Legislators, 1979.

¹⁴⁸ "Consent Agreement" Montana State Legislators, 1979.

misconduct. These jokes alone shows how these men hardly evaluated their behavior towards their wives. Furthermore, it shows how male legislators whose female constituents charged their representatives with the responsibly of advocating on their behalf, failed to even respect them.

In the letter to Laura X, Walker states that this Consent Agreement "...was probably responsible for winning the vote to pass the marital rape legislation in Montana..."¹⁴⁹ and that following the distribution of the form and a male legislator's "plea" for Regan to understand how their circumstances (living separately from their wives during session) meant they were vulnerable to the proposed law, "Everyone laughed, embarrassed a bit and then [were] shamed into voting to pass the bill."¹⁵⁰ These two comments made by Walker suggest that without these interruptions, the marital rape bill in Montana would have failed. Thus, these male legislators, in an effort to undermine the authority of a female colleague by mocking an important piece of a legislation dealing with women's autonomy and a right to make decisions about her own sex life, actually pushed the bill into passing.

Should marital rape activists be thankful for this "humorous consent form" as Walker describes it?¹⁵¹ It appears that without it, the legislation most likely would not have passed. However, it is a sign of the fact that women's contributions as politicians are not taken seriously by their peers. And their victories of important pieces of legislation, like this, are placed on the shoulders of misogynistic men who were more apt to joke about rape, than try to educate themselves about the extent of this traumatic crime. Regan's male colleagues forced her to turn a situation meant to humiliate and mock her into a victory for women in Montana. Walker asserts

¹⁴⁹ Walker, Letter to Laura X, 1980.

¹⁵⁰ Walker, Letter to Laura X, 1980.

¹⁵¹ Walker, Letter to Laura X, 1980.

that Regan used her “great sense of humor” to defuse the situation.¹⁵² While this could have been a show of Regan’s humor, I find it more likely to be a display of resilience and strategy. Regan understood that she was operating in a boy’s club in politics and knew that she could not display any sign of backing down. After all, the bill passed. It is clear that Regan worked hard for this victory, although the political compromise meant that many women in sexually violent marriages were still vulnerable. Crediting the men who created the consent form for this achievement ignores the efforts Regan made as a state legislator to change not only the law in Montana, but also the culture of sexism among her male colleagues.

Additionally, it is important to examine how Walker constructs the letter itself. It is difficult to discern exactly the tone Walker attempts to convey in her letter to Laura X. She writes parts of the letter in a seemingly upbeat manner with hints of exasperation. “Notice how these men never quite get the point of sexual consent!” she jokes when discussing the male legislators.¹⁵³ The sentence itself seems lighthearted but could constitute a tone of resentment and anger towards these men’s complete lack of comprehension of consent in the 1980s. The inclusion of the letter is important because it demonstrates marital rape activists’ collaborative efforts. It is possible without Walker, the NCMDR might not have known about the Consent Agreement. By sending it to the NCMDR, Walker not only aided her fellow feminists in collecting information, especially that concerning legislators working on marital rape laws, but also she also provided insight into the letter that might not have been discovered elsewhere, such as Regan’s humorous attitude.¹⁵⁴

¹⁵² Walker, Letter to Laura X, 1980.

¹⁵³ Walker, Letter to Laura X, 1980.

¹⁵⁴ I found no other information regarding the Consent Agreement. Only one other scholar discusses it, and that is Diana Russell in the new introduction to her book *Rape in Marriage*, which was published in 1990. She claims women working in the women’s center at the University of Montana provided her with the document.

There are several possible ways to analyze this document and the letter attached. When Walker describes the Consent Agreement as “humorous,” does she mean the men that created it found the idea of marital consent amusing, thus writing the form to convey the humor they found in Regan attempting to legislate it? Or does she mean that it’s funny that these men attempted to reduce the issue of marital rape into a consent form as a means to mock a female Senator attempting to protect the rights of married women? Or was she simply exasperated from dealing with incompetent men? The consent form represents much more than just a “humorous” experience in the legislature. It showcases how male legislators in Kansas in the late 1970s and early 1980s found it appropriate to mock and humiliate their peers, wives, and, constituents since they did not understand the reality of marital rape. They did not know what it meant to be coerced or forced into sex with their partner, nor understand the trauma that rape victims experience. These men charged with setting the laws in their state, believed marital rape to be a frivolous issue.

As the form continues, it states, “This is a ‘ONE TIME AGREEMENT.’ Any sexual contact other than the above time and date will require a new agreement.”¹⁵⁵ Here the legislators show that they subscribe to Hale’s doctrine of implied consent in marriage, mentioned in Chapter 1. These men mocked the idea that women, especially their wives, could choose not to consent to sex from one encounter to the next. They saw their marriage as an opportunity to demand sex whenever they wanted. This is especially made clear by the inclusion of “Grudgingly agree (please pull my nightgown down when you are through)” as an option of agreement for the wife

Therefore, I have found no evidence of Regan directly commenting on the form and what it meant to her.

¹⁵⁵ “Consent Agreement” Montana State Legislators, 1980.

on the form.¹⁵⁶ The legislators frame this as an exasperated acceptance by their wives and it seems innocent enough, but again, they are ignoring the fact that not all women were afforded an opportunity to even “grudgingly” agree to sex. For some women in America, husbands did not stop to ask; they demanded, whether through threats or through violence.

The document does not provide an option for a wife to deny sex with her husband. Based on the format of the Consent Agreement this makes sense. The form is crafted in a way that the wife must fill out the form by herself regarding the sex that is about to take place. This is done without the inclusion of the husband, as he does not have to mark or sign anything. The first two of the four categories of sexual consent are for when the wife is requesting sex: “Beg” and “Ask,” while the next two presume a response to the husband’s request for sex. Therefore, all the power lies in her hands. But why is it that the wife is the only one meant to fill out the form, even in jest? Why does the husband not require a form to fill out when he requests sex from his wife? The husband’s lack of participation on the consent form shows that these men thought issues of consent lay only with the woman. Thus this form was not about holding a husband liable for his actions with or against his wife. Instead this form was meant to hold a woman accountable for agreeing to sex with her husband. This was so she could not later revoke her consent in revenge against her husband. The creators of the consent form demonstrated their belief that women are fickle in matters of consent and they, the husband, should not fall victim to this.

The debate over consent plagued the anti-rape movement in 1970s, and it continues now. American courts “struggle” to determine consent in rape trials. How are judges supposed to ascertain if a woman is telling the truth; did she consent to sex and then regret it the next day? How does one navigate consent with an intoxicated or incapacitated individual? How do they

¹⁵⁶ “Consent Agreement” Montana State Legislators, 1980.

know the woman “wasn’t asking for it?” In a 1979 *San Francisco Chronicle* column, a woman, self-referred to as “Furious with Ignoramus” wrote author Ann Landers asking for advice over disagreement with her husband in relation to rape and consent. Her husband claimed it was the duty of women to avoid dangerous men and if they failed to, they were asking for it.

Furthermore, he exclaimed that women lead men on, only to claim rape later and that the Women’s Movement solely portrayed women as victims even though that was a false assumption.¹⁵⁷ While we may never know for certain whether this encounter between husband and wife was authentic, Furious’s portrayal of the argument illustrated commonly held beliefs regarding consent and women’s untrustworthy behavior. The husband, like many opposed to criminalizing marital rape, failed to understand very concept of consent. Even as Furious attempted to include spousal rape victims in the argument, her husband barreled through to blame women.

Often the debate over sexual consent is reduced to “he said, she said” arguments. How are courts supposed to determine whether a woman is lying, especially in the case of marital rape? In a letter to the editor published January 11, 1979, in *The New York Times*, George Nodelman addresses this question. As we have seen, as states began to outlaw marital rape, they included a few previsions, e.g., only separating couples qualified. Another restriction some placed on marital rape charges was the use or threat of violence against a victim in order to indict a spouse with rape. Nodelman proposes,

¹⁵⁷ “A Case of Rape,” *San Francisco Chronicle*, December 31, 1979. National Clearinghouse on Marital Rape Archive.

While the husband makes the point that not only women constitute victims in rape cases, one can infer he means men falsely accused of rape become victims, not those who have been sexually assaulted. It is also important to note that the anti-rape movement of the 1970s and 1980s aimed to popularize gender-neutral language e.g., “spousal rape” and “marital rape” instead of “wife rape,” and “spousal abuse” instead of “wife abuse” to portray rape as non-gender specific crime. Additionally, they sought to redefine definitions of rape that referred to females as the victims, rather than any person assaulted and fought to include sodomy as to apply to men who have been raped.

The first point is that for the crime of rape to be committed there has to be either an assault or a threat against the victim. Such acts in themselves are crimes, either as assault or attempted assault. Charges against a husband for these crimes can now be brought in this state... The crux of this point, then, is that the wife can charge her husband with the alternative acts of assault, and if this had been done in the recent case in Oregon, I am quite certain that the defendant would have been convicted.¹⁵⁸

This in turn made marital rape more palatable to courts. They could understand the idea of a husband beating his wife, but not raping his wife. Thus, this stipulation for violence allowed legislators and courts to conceptualize marital rape but only based on the physical assault. Nodelman provides insight into one reason why these laws developed as they did. However, this restriction on what types of marital rape could be charged is problematic in that it fails to include victims who were raped via coercion or incapacitation. Nodelman even suggests that in reference to the unsuccessful conviction in *Oregon v Rideout*, the first trial of cohabitating spousal rape in America, if the prosecution had relied on the charge of assault and battery, there might have been a different outcome.¹⁵⁹

Despite Nodelman's shrewd observation regarding evolution of marital rape laws, he too falls prey to the anti-feminist rhetoric of the 1970s and 1980. Nodelman, like Representative Presley discussed in Chapter 2, failed to understand the trauma associated with marital violence, and thus believed in lesser punishments for perpetrators of marital rape as compared to stranger rape. He explains that marital rape may result in "resentment or injured feelings," but certainty could not evoke a "traumatic experience."¹⁶⁰ Therefore, he believes the current sentencing (10-30 years for rape, 1-3 years for assault) is sufficient and "the punishment should fit the crime and

¹⁵⁸ George Nodelman, "If A Husband Rapes His Wife: To the Editor," *New York Times*. January 11, 1979.

¹⁵⁹ Nodelman, "If A Husband Rapes His Wife."

¹⁶⁰ Nodelman, "If A Husband Rapes His Wife."

not satisfy the outcries of women lib.”¹⁶¹ Russell addresses this myth, explaining that marital rape was in fact traumatic to victims.¹⁶² Russell, as well as others studying marital rape during this period, sought to prove that this form of violence should be regarded in line with other types of sexual assault, that is as serious, emotionally disturbing experiences. In spite of these facts, many continued to assume intimate partner violence was tolerable and thus perpetrators did not deserve harsh sentences. In the forty years since the publication of these articles, America still grapples with the reality of consent and post-traumatic stress resulting from rape and, as a result, perpetrators continue to avoid serious consequences just as they did in the early 1970s.

Overall, the consent form, the letter sent along with it to the National Clearinghouse on Marital Rape, and other supporting documents provide insight into the minds of 1980s state lawmakers in America, as well as other men during this period. Together these illustrate how men comprehended (or failed to comprehend) the nuances of consent. Additionally, by examining the Consent Agreement and the letter explaining the circumstances, it is possible to understand how little male legislators valued female lawmakers and legislation to protect their female constituents. Instead of educating themselves about the trauma of marital rape and issues of consent, or even empathizing with their female constituents, male legislators, particularly in Montana, thought it best to joke around, lest this be a serious topic. It is uncertain which male legislators actually created the documents and if any male legislators disagreed with the joke against Regan. Some male legislators did support legislative actions for violence against women issues in the United States, such as the case of Representative Presley discussed in Chapter 2. Furthermore, since the 1980s, consent culture has pushed for obtaining consent before sexual

¹⁶¹ Nodelman, “If A Husband Rapes His Wife.”

¹⁶² See Diana Russell, “Trauma of Wife Rape” in *Rape in Marriage*. 2nd ed. (Bloomington: Indiana University Press, 1990), 190-205.

encounters to become a normalized practice. In this way, activists hope to promote a culture that accepts the fact that consent is not always black and white. By waiting for enthusiastic consent, the belief is that sexual assault and uncomfortable sexual experiences may be reduced.

The Evils of Women's Liberation

In the 1980s, men were not only opposed to criminalizing marital rape because of questions of consent. Some men had harsher stances, which categorized wives and activists as nefarious actors. For instance, in March 1980, Richard Doyle published an article in Minnesota's *St. Paul Pioneer Press* titled, "Anti Male," which decried the feminist movement and women's efforts to abolish the marital rape exemption.¹⁶³ Doyle was a prominent men's right activist. According to the National Coalition for Men (NCFM) website, Doyle founded the Men's Rights Association (now Men's Defense Association) as well as Men's Equality Now (MEN), an international organization; he also edited and published articles in *The Liberator*, a men's rights news magazine.¹⁶⁴ He explained his motivation for creating such organizations by saying, "I founded the Men's Defense Association for the following purpose: To preserve the intact traditional, nuclear family through restoration of equal (not identical) rights for the male sex across a broad spectrum of life, including divorce, employment and crime punishment, as well as equal dignity in image."¹⁶⁵

¹⁶³ Found within a folder at the National Clearinghouse on Marital Rape Archive, the small, six-paragraph clipping does not provide much information about the author or the newspaper itself. Research shows that *Pioneer Press* mainly served the Minneapolis/St. Paul area, but circulated in several counties within the state. The paper did not appear to have a major left or right political leaning. It is difficult to discern *Pioneer Press*'s motivations for publishing the article, which appears to be heavily opinion based. Was it simply an opinion piece? Was Doyle a common contributor? Did they often post anti-feminist articles?

¹⁶⁴ "Richard F. Doyle, MRA." National Coalition for Men, n.d., <https://ncfm.org/advisor-board/richard-f-doyle/>

¹⁶⁵ Richard F. Doyle quoted in Conservapedia. "Richard Doyle." Conservapedia. n.d. https://www.conservapedia.com/Richard_Doyle

His “Anti-Male” article encapsulates his beliefs regarding the Women’s Movement’s threat to the American family—to American society. He describes proposed marital rape legislation as “politically popular, but philosophically deplorable” and that “Politicians are falling over each other in eagerness to sponsor anti-male laws and thereby curry favor with the high priestesses of women’s lib.” He listed a number of legislative efforts, which he deems as pro-female and thus anti-male. These include bills which allowed women to bring charges of rape against their husbands, girls playing on boys sports teams, counties financing “battered women’s shelters” (which he placed within quotations), and a bill that he perceives only factors in women’s rights to custody (automatic deduction of child support from father’s wages) and not the husband’s.¹⁶⁶ In regards to marital rape legislation, HF 1362, he states it “would pave the way for vindictive spouses to ‘punish’ with unsubstantiated charges, mates who have fallen into disfavor. Due process of law be damned” and that HF 1981, funding for battered women’s shelters, would “further finance already state-supported women’s lib headquarters.”¹⁶⁷

Although Doyle could otherwise be considered an outlier due to his work in the Men’s Rights Movement, his piece epitomizes men’s reactions to marital rape legislation. As seen through the opening letter, the consent agreement, and legislation introduced, men across the political spectrum held a misogynistic view of the marital rape exemption. Doyle’s article highlights a theme from explored in the Chapter 1—The Lying Wife. He resolves that criminalizing marital rape allows women to falsely allege sexual assault perpetrated by their husbands. This statement echoes that of Sample’s from the previous chapter, further exemplifying this as a popular excuse to support the marital rape exemption. Doyle proclaims

¹⁶⁶ Richard F. Doyle. “Anti-Male.” *St. Paul Pioneer Press* March 25, 1980. National Clearinghouse on Marital Rape Archive.

¹⁶⁷ Richard F. Doyle, “Anti-Male.”

due process will be damned if HF 1362 is passed, indicating that any charges of marital rape jeopardize the American legal system. Doyle differentiates the crime of marital rape from others. Finkelhor and Yllo question this motive when they explain for any other crime, people generally trusted investigation procedures that served to determine the validity of the accusation, but not in the case in the case of marital rape.¹⁶⁸ As evidenced by Doyle's article, men's mistrust of women pervaded the campaign to criminalize marital rape in America.

This distrust of women did not end with the wife; the entire Feminist Movement suffered as well. Take, for instance, Doyle's language towards the Women's Liberation Movement. He accuses the government of pandering to "the high priestesses" and battered women's shelters as fronts to fund the Women's Movement. Again, this was not a solitary belief. In what I call the "Dear Friend" letter penned by Kentucky State Representative, Woody Allen in March 1982, Allen calls for his "Friends" to aid in the defeat of a piece of legislation that would increase the marriage license fee by \$10, using the excess revenue to fund battered women's shelters.¹⁶⁹ He writes,

In Colorado and other states – Lesbians – have been the leaders in the formation and direction of these programs for 'abused women.' ...Nothing in this bill will prevent... radical feminists... felons...or even convicted sex offenders from operating or counseling in these spouse abuse centers. Frankly, I'm sick and tired of the government using our taxpayer dollars to promote the...anti-family...anti religious...pro abortion...social agenda of a small group of left-wing activists...[T]his bill gives a blank check to spouse abuse centers – regardless of how it is operated...regardless of whether most of the residents are prostitutes... and regardless of whether the objective is to break up marriages or to put them back together.¹⁷⁰

¹⁶⁸ Finkelhor and Yllo, *License to Rape*, 175.

¹⁶⁹ Woody Allen, "Dear Friend Letter," March 1982. National Clearinghouse on Marital Rape Archive.

¹⁷⁰ Allen, "Dear Friend Letter."

Additionally, the letter encourages the reader to call a toll-free number at the State Capitol in order to reach their representative, whose name he provides at the end of the form.¹⁷¹

Both Doyle and Allen demonstrate the mistrust of the Women's Movement. In *Backlash: The Undeclared War Against American Women*, scholar Susan Faludi explains this response to feminism originated as a product of the "New Right." The New Right Movement began in the 1970s as a conservative response to the Civil Rights, free-love, and student movements of the 1960s. The New Right held large Christian support. One reason the New Right and others opposed to criminalizing marital rape feared the Women's Liberation Movement was its danger to existing family dynamic. Men maintained that women should endure marital violence in order to preserve the Family and men's place at the head of it. Members of the New Right feared the Women's Movement, depicting them as "malevolent spirits capable of great evil and national destruction."¹⁷² Thus they perceived feminists as amoral agitators set on dismantling America, as they knew it. This depravity is reflected in the language used by Allen and Doyle. Allen claimed "lesbians" organized the drive towards state funded battered women's shelters.¹⁷³ The idea that feminists identified as lesbians was common among those who opposed the Women's Liberation Movement. Conservatives referred to these women as lesbians because they perceived the idea of two women exiting without a need for men as directly opposing the model of the idealized American Family. Any women that refused patriarchal oppression could be deemed a "man-hater," a "lesbian" or "anti-family." Only a misandrist woman could imagine a world in which they possessed equal autonomy as men. Men like Doyle and Allen's limited knowledge

¹⁷¹ It is notable that the letter contains a P.S. statement informing constituents against the sale of liquor on Sundays to contact their representatives as well.

¹⁷² Susan Faludi, *Backlash: The Undeclared War Against American Women* (1991; repr., Three Rivers Press, 2006) 244.

¹⁷³ The author does not view lesbianism as an amoral sexual orientation; however, this was a common belief among anti-feminists and thus is discussed here.

concerning lesbians and prejudice forced them to believe that no heterosexual woman would advocate against physical and sexual assault in marriage. Clearly, men felt threatened by the concept of women's liberation and homosexuality as anti-family rhetoric; thus they resorted to using a sexual orientation as an insult.

Additionally, Allen's grouping of "radical feminists," felons, and convicted sex offenders along with his uncertainty regarding who would benefit from these spouse abuse centers ("prostitutes") illustrates his belief that any licentious character could be involved within the Women's Movement. Allen wanted the residents of Kentucky to associate feminists with those deemed villainous, disregarding logic as he sought to persuade others. For instance, why would feminists employ convicted sex offenders to counsel victims in battered women's shelters when those who would use such places suffered from marital rape and domestic violence? Allen did not want his readers to think rationally when reading his "Dear Friend" letter. Instead he used fear mongering and inflammatory language to convince constituents that criminals occupied the Women's Movement and thus any of their initiatives should be met with suspicion. Furthermore, what did Allen mean by his assumption that prostitutes may seek assistance within these spouse abuse centers?

Doyle too relied on this method. Both men proclaimed the State pandered to the Women's Movement. Doyle insisted politicians were "falling all over themselves" in order to aid feminists, while Allen asserted governments carelessly funded the feminist agenda.¹⁷⁴ This particular view of government intervention is worth investigating based on the information discussed in Chapter 2. The State failed to create comprehensive legislative changes, programs, or police training for marital rape and domestic abuse, largely due to claims that marital violence should remain a private issue. Thus Doyle's and Allen's statements that politicians readily

¹⁷⁴ Doyle, "Anti-Male."

provided services to victims are false. As seen previously, although various states provided some form of relief, they were not exhaustive. Often they neglected issues such as including marital rape in provisions to change existing rape laws and granted allowances for perpetrators. While men assumed governments eagerly aided women, activists fought on behalf of these issues. Therefore, Doyle's and Allen's works depict how those who opposed the Women's Movement and criminalizing marital rape deemed any positive governmental support of feminist-backed proposals as excessive. For these men, the fact that politicians even recognized a need for state funded programs or new laws regarding marital rape was reason to label them pawns in the Women's Movement.

Conclusion

Ultimately, this chapter frames the opposition many feminists encountered as they advocated for protections for violence against women in the 1970s and 1980s. The majority of criticism originated with men; however, that does not mean all women believed in the goals of marital rape activism. For example, Representative Sample, a female state legislator from Florida from the previous chapter, believed in the myth of the lying wife and voted against a measure to criminalize marital rape in her state. Often, people labeled feminists as radicals or lesbians in an attempt to cast them as immoral actors set on ruining the foundations of American life when in actuality they wanted to create protections for women. Activists in the 1970s endured name-calling, violence, and hatred in order to advocate for married women's protections. It is important to understand the hardships these women faced as they organized for equality under the law.

Chapter 4: *When States Fail, Women Rise: How Women's Organizations Shaped National Conversations Regarding Marital Rape*

“The problem is that we women have accepted men’s definition of justice and tried to conform to it. When we women grow up and start defining justice on our own, then perhaps there will some progress for women.”¹⁷⁵

-Beth Greene

¹⁷⁵ Beth Greene, Letter to Joanne Shulman, January 19, 1982. National Center on Women and Family Law Archive at Radcliff Institute.

As evidenced by the previous chapters, feminists in the 1970s and 1980s faced many obstacles in their attempts to criminalize spousal rape in America. They fought stereotypes, women's secondary status, and their greatest foe, perceptions of the idealized family. In this chapter, I highlight activists' efforts to create effective change for married women in the United States. Second Wave feminists did participate in rallies and physical protests, examples of what we may consider traditional activism. Marital rape activists tended not to engage their work in this way. Instead, this chapter focuses on how feminists operated "behind the scenes" in the campaign to outlaw marital rape as the State failed to intervene on their behalf. Primarily this is analyzed through the work of organizations such as The National Clearinghouse on Marital and Date Rape (NCMDR), the National Organization for Women (NOW), and the National Center on Women and Family Law (NCWFL), as well as marital rape scholars who emerged during this period. Additionally, I look at how their activism contributed to modifications in American law, making it clear that even as changes seemingly occurred outside of feminist intervention, e.g., judges creating precedent when state legislators failed, they were rooted in women's endeavor to challenge preconceived conceptions of marital rape in the late 20th century. Further information regarding specific marital rape trials will be discussed in the following chapter.

Women's Rights Organizations

The 1960s ushered in a new era of equality, inclusion, and unrest that bled into the 1970s and 1980s. During these decades, the Civil Rights, the Women's Liberation, and Counterculture movements rose across America. This period bore new organizations and government initiatives that focused on understanding the radical differences among the status of various American groups of people based on race, nationality, gender, and class. In 1963, Betty Friedan published

the feminist text, *The Feminist Mystique*. Her book raised national awareness for women's rights, selling millions of copies.¹⁷⁶ However, according to Georgia Duerst-Lahti, the text lacked a working agenda to combat inequality.¹⁷⁷ Nonetheless, scholars have credited *The Feminine Mystique* as the launching point of Second Wave Feminism, mobilizing women across the country to recognize the disadvantages society placed upon on them and encouraging them to create change. Within three years, Friedan, along with other activists at the Third Annual Conference of Commissions on the Status of Women, founded The National Organization for Women (NOW), one of the premier feminist organizations born from the Women's Liberation Movement. Friedan served as the inaugural president of NOW. The group provided the political and social agenda Duerst-Lahti claimed Friedan lacked in *The Feminine Mystique*. NOW engaged in several forms of feminist protest and activism throughout the 1960s and beyond, advocating for women's rights to abortion, labor rights, rape reform, and more.

The Conferences of Commissions on the Status of Women where NOW was founded also contributed to the rise of Second Wave Feminism. Sponsored by the Women's Bureau, a government agency focused on women's labor rights, the annual conferences were spaces where women and men met yearly to discuss issues concerning women and pass resolutions for change. These conferences and individual state commissions were based on President Kennedy's *The President's Commission on the Status of Women* (PCSW). Kennedy established the PCSW with Executive Order 10980, on December 14, 1961. The commission, which met eight times over two years, was headed by former first lady Eleanor Roosevelt and largely planned by Esther Peterson, a labor feminist and the highest serving woman in Kennedy's administration. The

¹⁷⁶ Alan Wolfe, *An Intellectual in Public*. (Ann Arbor: University of Michigan Press, 2003), 213.

¹⁷⁷ Georgia Duerst-Lahti. "The Government's Role In Building the Women's Movement." *Political Science Quarterly*, 104, no. 2 (1989): 256.

PCSW primarily sought to understand where gender inequalities existed and how to improve upon these areas. Due to Peterson's involvement in the labor rights movement, the PCSW leaned towards labor rights for women. Historian Cynthia Harrison explains, "The commission's most frequent justification for promoting opportunities for women in the work force rested on the premise that women needed to work to support their families."¹⁷⁸ The PCSW understood that women in families in need of a second income had sufficient reason for securing employment. As a result, many believed the PCSW encouraged married women to work; the commission attempted to distance themselves from this idea.¹⁷⁹

The President's Commission on the Status of Women is significant since it was one of the first times the federal government had placed itself as an authority on women's rights, establishing a governmental responsibility to advance American women's status.¹⁸⁰ The commission, along with Friedan, helped usher in a national conversation regarding women's rights in America. The rumblings of the 1960s exploded in 1970s as feminists gained traction. Kristin Bumiller explains in her book, *In an Abusive State*, in the 1970s, "Most activists groups named the [absence of rape laws] as a failure of the state to recognize and protect women; in fact, the often flagrant denial of violence against women was characterized as state sanctioned violence and was seen as complicit with other forms of patriarchal control that oppressed women."¹⁸¹ The State's deficient protection of women therefore forced activists to adopt the role of protector. It was women and their organizations that recognized the needs of married women to have equal protection under the law; it was women and their organizations that created

¹⁷⁸ Cynthia E. Harrison "A "New Frontier" for Women: The Public Policy of the Kennedy Administration." *The Journal of American History* 67, no. 3 (1980): 643.

¹⁷⁹ Harrison "A "New Frontier" for Women," 643.

¹⁸⁰ Harrison "A "New Frontier" for Women," 630.

¹⁸¹ Bumiller, *In An Abusive State*, 2.

battered women's shelters to house victims of domestic abuse and rape; it was women and their organizations that created the change necessary to outlaw marital rape in America.

Women's organizations served an essential role in developing the Women's Liberation Movement in the United States. Through their grassroots organizing, protesting, and lobbying, women's groups changed the gendered landscape of America in the mid 20th century. Together, women fought for various forms of equality in order to elevate women's status. These included improving labor policies and practices to be more inclusive of women, redefining rape, gaining legal access to abortion, and much more.

Laura X and the National Clearinghouse on Marital and Date Rape

The National Clearinghouse on Marital and Date Rape opened in Berkeley, California in 1978, just two years after Nebraska criminalized marital rape and within in the same year marital rape made national headlines in *Oregon v Rideout*. (This case will be discussed in further detail in Chapter 5.) The *Rideout* case became the first American trial of marital rape between cohabitating spouses. This distinction is significant as many of the early modifications to marital rape laws in America permitted couples in the process of separating, divorcing, or obtaining an order of protection against the other to charge a spouse with marital rape. In this way the State understood the couples' desire to end the relationship as a wife's reclaiming of her sexual consent, yet could not comprehend a wife's desire not to engage in sex with her husband when living together. Although Oregon provided wives with the right to charge their husbands with rape just one year before, no such indictments had been made. Spectators on either side of the exemption awaited the verdict with bated breath; would a husband *actually* be considered a rapist for having "sex" with his legal wife? Unfortunately, Oregon acquitted John Rideout of rape.

Following the *Rideout* trial, organizations like the National Clearinghouse on Marital and Date Rape prioritized providing women with not only adequate but also equal protection under the law. They viewed married women at a disadvantage under patriarchal law, as most rape statutes excluded them. As 20th century feminists understood it, women should no longer be treated as the property of their husbands, especially in regards to marital rape. Laura X, a prominent Second Wave feminist, undertook the mission to end marital rape, leading the NCMDR organization.¹⁸² According to Siobhan Elliot and Anastasia Rego, Laura X described gaining her feminist roots when she watched her cousin get married, comparing it to child auctions, writing,

...The seeds were sown for me to become Laura X and protest all forms of slavery. My name is an acknowledgement and protest against the lack of women's rights, history, and self-ownership. Nothing is more fundamental to a person than the autonomy over one's body, but sovereignty is something that women simply do not have in our daily lives, even and especially in the place that society says is supposed to be 'safe'—in one's own home with one's own spouse.¹⁸³

Laura X carried her focus on marriage rights throughout her career as a feminist leader as she passionately worked to criminalize marital rape and in her opinion, end the patriarchal slavery of women to their husbands.

Elliot and Rego credit Laura X as the founder of the Women's History Library in Berkeley, California, which not only became a safe space for battered and rape victims, but also created publications that interviewed rape victims and examined the crime of rape in America. In addition to this work, they also credit her with "coining the term *herstory*, resurrect[ing] International Women's Day (March 8), and declar[ing] March National Women's History

¹⁸² Laura is famously quoted as saying, that like Malcom X, "I don't want to have *my* owner's name, either." I could not find the source of the original quote, only other historians and authors claiming she said it.

¹⁸³ Laura X quoted in Siobhan Elliot and Anastasia Rego, "Introduction" in "Accomplishing the Impossible: An Advocate's Notes From the Successful Campaign to Make Marital and Date Rape a Crime in All 50 U.S. States and Other Countries," *Violence Against Women* 5, no. 9: (1999), 1065-1066.

Month.”¹⁸⁴ While Laura X was certainly a supporter of recording women’s history, due to her work with the Women’s History Library, it would be unjust at this time and in regards to the other activists who contributed to WHM to claim Laura X as the sole founder.¹⁸⁵ Overall, these points highlight the great work Laura X accomplished on behalf of the Women’s Liberation Movement and rape victims throughout the 1970s, but her most notable work lies with the National Clearinghouse on Marital and Date Rape.

Laura X and the NCMDR advocated for legislative resolutions to the marital rape exemption. Maria Bevacqua, explains this method was not unusual for rape activists of this time, as “improved rape laws would send the message that sexual assault would not be tolerated.”¹⁸⁶ Therefore, the NCMDR heavily focused their attention on gathering information about marital rape exemption statutes across America. While the NCMDR might not have picketed Congress, they protested unequal rape laws across the country, influencing their eventual changes. Women working within the organization collected data, information regarding each individual state’s rape laws, and from every state, newspaper clippings that mentioned marital rape; they also

¹⁸⁴ Elliot and Rego, “Accomplishing the Impossible,” 1066.

¹⁸⁵ Women’s History Month (WHM) in America transformed from a single day, to a single week, to fortnight of conferences held at Sarah Lawrence College by women’s studies pioneer, Gerda Lerner. By 1980, The National Women’s History Project (NWHF) organization developed in Santa Rosa California. Molly Murphy MacGregor, Mary Ruthsdotter, Maria Cuevas, Paula Hammett, and Bette Morgan are credited with its founding.¹⁸⁵ According to the organization’s website, the NWHF aided in lobbying Congress to formally adopt the month long recognition. In 2015, Laura X served as panelist for Bryn Mawr College’s “Women’s History in the Digital World 2015,” where she explained, in part, her role in International Women’s Day and National Women’s History Month. As Laura X recalls, she was inspired by 1917 Russian protest to stage a demonstration in Berkeley on March 8, 1969 for International Women’s Day (IWD); she claims that there had been no other demonstration for IWD since the 1940s and more than 30 erupted in the following year. This is where she began the inklings of Women’s History Month. She does not provide specific information on how she otherwise contributed to the founding of the month, but she does explain, “Besides handling the distribution of our library’s resources, the people at National Women’s History Project have carried on the ideas we had when we founded our library beyond our wildest dreams, including their idea and work making Congress declare March as Women’s History Month.” Through this statement, Laura X credits the NWHF with successfully convincing the federal government to recognize WHM. It may be that Laura X conceptualized the idea of a Women’s History Month but the NWHF made that dream a reality for the United States; however, it is unclear whether this is accurate considering the various influences that contributed to WHM.

¹⁸⁶ Bevacqua, *Rape on the Public Agenda*, 90-91.

corresponded with state Representatives, lawyers, and counselors- anyone that could provide expert insight into the advancing conversations regarding marital rape. It is clear that the NCMDR endeavored to utilize a holistic approach to criminalizing marital rape, wanting to understand the crime from as many angles as possible.

In regards to legal work, the NCMDR often corresponded with Democratic State Committeeman Dennis Drucker from the 35th Assembly District in Queens, New York. It appears that Drucker served as the primary law expert for the organization even though he was stationed on the East Coast and the NCMDR on the West. The archive holds several letters from Drucker's office seemingly in response to an inquiry regarding marital rape laws in certain states; most letters date from 1982, while others included no dates. In one letter addressed to Laura X from Drucker, he apologizes for his delay in responding to multiple questions of statutory marital rape laws and provides the NCMDR with information regarding states such as Delaware, Vermont, Rhode Island, Colorado, Wyoming and Kansas. He even includes recommendations on how to campaign for more inclusive laws dependent on the individual state's policies.¹⁸⁷ For example, under the Colorado section of his letter Drucker wrote,

The Colorado marital exemption is highly restrictive. I would urge a two front campaign. One would be to bring pressure on district attorneys to prosecute those cases in which husbands are clearly not exempt...The Rideout would not be prosecutable under the present Colorado statute. The method of changing the law to protect all wives would simply be to repeal section 18-3-409...¹⁸⁸

While it is uncertain if the NCMDR adopted Drucker's suggestion for their campaign, it is evident they trusted his opinion due to the volume of correspondence regarding marital rape statutes. Drucker equipped the NCMDR with precise legal knowledge and facts that they passed

¹⁸⁷ Dennis Drucker, Letter to Laura X, January 16, 1982. National Clearinghouse on Marital Rape Archive.

¹⁸⁸ Drucker, Letter to Laura X.

onto other activists fighting to criminalize marital rape in America during the mid 1970s and 1980s.

Through their advocacy, the NCMDR not only became an organization focused on criminalizing marital rape, but a resource for others who shared this goal. For example, when the Assistant Attorney General of Colorado, Kathleen M. Bowers, needed information regarding statutory marital rape laws in 1980, she contacted Laura X, who provided her with a document outlining the laws of several states.¹⁸⁹ Bowers was not the only one who relied on the material the NCMDR collected. University Research Assistants and other anti-rape groups, like the Pennsylvania Coalition Against Rape, contacted the NCMDR to procure information for its own causes.

Primarily, the NCMDR tasked itself with educating Americans in an attempt to alter public perceptions of wife rape and encourage officials to modify the very definition of rape to include married women assaulted by their husbands. Laura X, who often wrote in *Off Our Backs*, a feminist news journal popular in the 1970s, described some of the efforts for the National Clearinghouse on Marital Rape. In March 1981, she requested funding from supporters, writing, “Our proposal to give a training session on the psychological and legal blocks to combat marital, cohabitation, and date rape has been accepted as a fundraiser for the Association for Women in Psychology Conference.”¹⁹⁰ This highlights other forms of feminist activism the NCMDR participated in during its campaign to end marital rape. While little information is provided on the actual training, the existence of it shows that the NCMDR actively engaged with other women’s organizations in various fields; she also mentions speaking at the Women and Law

¹⁸⁹ Kathleen M. Bowers. Letter to Laura X. March 12, 1980. National Clearinghouse on Marital Rape Archive.

¹⁹⁰ Laura X, “Marital Rape Clearinghouse,” *Off Our Backs*, 11 no. 3, (1981): 28.

Conference in the article. By working with women across disciplines, Laura X and the NCMDR built their own list of resources and knowledge base regarding marital rape law in America. Specifically by working with psychologists, they could further develop their understanding of the psychological effects of marital rape, banishing preconceived beliefs that marital rape traumatically affected victims significantly less than victims of other forms of sexual assault.

Overall, the work the National Clearinghouse on Marital Rape accomplished in its lifespan is essential to any American marital rape scholarship moving forward. Its endeavor to criminalize marital rape has been preserved in their archive, providing an invaluable wealth of sources that speak to the conversation on marital rape in the 1970s and 1980s. This allows future researchers of American marital rape history and law to build an informed study regarding American attitudes, policies, and activism during Second Wave Feminism. Even more so, any scholars of sexual violence or domestic assault can utilize the information in their archive so that marital rape no longer remains in the shadows of women's history.

National Organization for Women

While the National Clearinghouse on Marital and Date Rape acted as a primary organization for reforming rape laws during the Women's Liberation Movement, it was not the only one. Another prominent organization that advocated for more inclusive rape laws in the 1970s was the National Organization for Women (NOW). NOW's Rape Task Force Coordinator in 1974, Mary Ann Larger self describes NOW's efforts,

For a feminist organization which was the last group on ‘the bandwagon’ on the rape issue, we have now become the nation’s leading activist feminist group on this issue...[I am] firmly convinced that NOW’ activities this past year were instrumental in advancing public concern about rape which has led to the abundance of research projects, community action programs, media support and related activities now going across the country.¹⁹¹

Despite NOW’s valiant effort to influence rape statutes, they too often excluded marital rape. For example, in NOW’s “Suggested Draft of Rape Resolution 1974 Conference” they listed two proposals for “Re-Definition of Rape:”

A. ‘Rape’ shall include forcible oral-anal contact, oral-penis contact, oral-vulva contact, penil-vulva contact, and any artificial substitute.

B. Non-consent of a spouse to sexual intercourse shall be a legal right in the following instances (1) when spouses are living separate and apart the laws of rape shall apply; (2) where sexual intercourse with a spouse is physically injurious to the health of the spouse, as in heart condition, venereal disease or after childbirth.¹⁹²

These suggestions were born out of the 1973 NOW conference where members decided that the Rape Task Force should set the goal of developing a new model rape law, with a focus on adult victims.¹⁹³ It is telling that NOW acknowledged concerns of marital rape as early as 1974, but by limiting the circumstance where it applies, they demonstrated not only their lack of understanding of marital rape but their failure to fully consider the sexual violence wives in America faced within their own households. NOW explained that marital rape should be illegal in cases where forced sexual intercourse could be physically injurious to the victim, or in cases such as sexually transmitted diseases, childbirth recovery, or heart conditions. They do not

¹⁹¹ Mary Ann Largen, Letter to Wilma Scott Heide. January 28, 1974. National Organization for Women Archive at Radcliff Institute.

¹⁹² National Organization for Women, “Proposals,” 1974. National Organization for Women Archive at Radcliff Institute.

¹⁹³ Mary Ann Largen, Letter to New Rape Task Force Members, January 23, 1974. National Organization for Women Archive at Radcliff Institute.

include other forms of physical violence that regularly accompanies sexual assault, such as beating, or as rape definitions often required “use of violence” or “force.”

Furthermore, they ignored the non-physical violence victims of marital rape faced. According to Finkelhor and Yllo, spousal rape resulted in long term effects that included ‘betrayal, anger, humiliation and guilt.’¹⁹⁴ One victim of marital rape even stated,

My whole body was being abused. I feel if I’d been raped by a stranger, I could have dealt with it a whole lot better... When a stranger does it, he doesn’t know me, I don’t know him. He’s not doing it to me as a person, personally. With your husband, it becomes personal. You say, This man know me. He knows my feelings. He knows me intimately, and then to do this to me—it’s such a personal abuse.¹⁹⁵

This of course is just one woman’s interpretation of the violence she encountered. She would not know for certain how she would react to stranger rape, but the purpose of her statement regarding her assault was to inform the readers that in her experience, the intimate relationship she shared with her husband increased the trauma of her assault. This was no random act of violence, instead it was a personal attack perpetrated by a man meant to love and cherish her; this was an act of betrayal. The emotional trauma resulting from sexual assault should be understood as a form of injury when defined by NOW’s proposal. Therefore, NOW’s omission of consideration for marital rape victims is problematic as it ignored the rights of married women to live free of sexual violence.

This omission extended into drafts of official state bills. Zelda Nordlinger, a NOW women’s rights activist, wrote to NOW Legislative Offices on October 10, 1974 about bill she hoped to introduce at the Virginia General Assembly at the start of the following year. She explained that someone, unnamed, with experience writing legislation drafted the bill and

¹⁹⁴ Finkelhor and Yllo, *License to Rape*, 117-118.

¹⁹⁵ Finkelhor and Yllo, *License to Rape*, 118.

modeled it after Washington State and Michigan's Rape Bill.¹⁹⁶ The bill proposes three pages' worth of changes to rape law in Virginia, namely a redefinition that "'sexual contact' includes the intentional touching of sexual organs, groin, inner thighs, buttocks, or breasts..." and definitions of sexual assault in the first, second, and third degree and their proposed punishments. The last section of the proposed bill reads, "A person does not commit sexual assault under this section if the victim is his or her legal spouse, unless the couple are living apart and one of them has filed for legal separation of divorce."¹⁹⁷ In this proposed bill supported by NOW, a full marital rape criminalization is again ignored in favor of other changes to rape law. Why is it that NOW failed to consider the women who had yet to separate from their husbands—those who may be unable to remove themselves from the situation due to children, financial need, or threat of violence against them?

A letter from Stanley L. Brodsky, an associate professor of psychology at the University of Alabama to Mary Ann Largen, reveals that NOW might have been willing to study marital rape even if they declined to include it proposed rape reforms in 1974. In the letter, Brodsky includes an outline for a concept paper studying contemporary rape laws in America. In section "A. The Attack" under "Methods and Content" is a handwritten dictation stating "MARITAL ASSAULT- ATTACK BY HUSBANDS."¹⁹⁸ Largen seemingly added this note after reading Brodsky's letter. While Brodsky failed to include spousal rape victims, Largen proposed they

¹⁹⁶ Zelda Nordlinger, Letter to NOW Legislative Office, October 10, 1974. National Organization for Women Archive at Radcliff Institute.

¹⁹⁷ "A Bill" included by Zelda Nordlinger, Letter to NOW Legislative Office, October 10, 1974. National Organization for Women Archive at Radcliff Institute.

¹⁹⁸ Stanley L. Brodsky, Letter to Mary Ann Largen, March 18, 1974. National Organization for Women Archive at Radcliff Institute.

should be included within this possible study, promoting the belief that marital rape victims were important inclusions to research on rape in the mid 1970s.

Thus far, all the NOW sources including marital rape originated in 1974, before Nebraska became the first state to criminalize marital rape, before Finkelhor and Yllo or Diana Russell published their influential studies on marital rape, and before Laura X established the National Clearinghouse on Marital Rape. In regards to marital rape activism in the 1970s, 1974 is relatively early, meaning that NOW may have been at a disadvantage to advocate against the marital rape exemption. Marital rape trials had not begun and therefore did not help raise public consciousness as *Oregon v. Rideout* did in 1978 and no prominent research on marital rape victims had been published yet.

In regards to their marital rape activism, there appears to be a gap in the NOW archive. The archive at the Radcliff institute did not provide much information beyond the work accomplished (or not accomplished) in 1974 in their campaign to reform the marital rape exemption. However, by 1984, NOW was actively involved in some efforts to criminalize marital rape. In the 1984 New York Appellate case, *People v. Liberta*, which resulted in New York State abolishing the marital rape exemption, including non-separating couples, NOW Chapters, New York City and New York State filed an amicus brief on behalf of the trial.¹⁹⁹ Therefore, NOW was able to grow as a more inclusive women's organization that advocated against the sexual violence women in America faced, rather than excluding those who were already overlooked.

¹⁹⁹ "Feminist Chronicles- 1985," Feminist Majority Foundation.
<http://www.feminist.org/research/chronicles/fc1985.html>

Amicus briefs or "friend of the court" are filed in appellate cases by a third party and provide the court with relevant information regarding the case.

National Center on Women and Family Law

While the National Organization for Women has retained its prominence as an important feminist organization, The National Center on Women and Family Law (NCWFL) has seemingly been forgotten. The group, now defunct, was founded in 1979 (the same year as the National Clearinghouse on Marital and Date Rape). It was based in New York City, but advocated against marital rape and domestic abuse across the country. The NCWFL dedicated its time to researching and challenging laws that affected women and children in America in addition to providing legal services to low-income women who faced family violence. The organization maintained a large focus on battered women but did not neglect marital rape as a component of domestic violence. Its work, highlighted by the documents in the archive, demonstrates how these two forms of violence often entangled each other, rather than existing solely as separate entities that often overlooked the complexities of marital rape.

The National Center for Women and Family Law did not work alone, as none of the other organizations did. Correspondence between the NCWFL and the National Clearinghouse on Marital Rape reveals the two organizations shared information and updates in their shared goal to criminalize marital rape. It appears the NCMDR subscribed to the NCWFL's marital rape mailings, which served as an update on marital rape law in the U.S. One mailing titled "MARITAL RAPE EXEMPTION PACKET" lists six options for documents detailing marital rape a person can request and the charge associated with each document. The documents included a marital rape exemption chart with state-by-state summaries, summaries of marital rape litigation, scholarly articles on marital rape, a marital rape fact sheet, and two articles

seemingly written by Joanne Shulman, an attorney at the NCWFL.²⁰⁰ This document and the work the NCMDR accomplished demonstrate the importance of sharing information between activists. The knowledge and research of marital rape did not belong to any one group; in order to criminalize marital rape, a collaborative effort was necessary. By sharing resources, women's organizations and activists had the ability to further the movement to criminalize marital rape by relying on the information researched by another organization. This community network allowed for more resources and knowledge to be exchanged all over the country.

Another document the NCWFL distributed, titled "SUMMARY OF 1981 DEVELOPMENTS IN MARITAL RAPE LITIGATION" by Joanne Schulman, was sent to the NCMDR as part of the marital rape mailings. The document includes legal victories and defeats marital rape encountered that year. In it Shulman even instructs readers to contact Laura X at the NCMDR for more information regarding similar cases, further showing how women's organization worked together. In regards to their victories, Shulman writes,

Overall, we have made tremendous progress in the courts in outlawing marital rape. The majority of American 'case law' now supports the position that a so-called 'common law' spousal exemption to marital rape does not exist today, if one ever did. Thus, if rape statutes do not include an express spousal exemption, American case law now holds that such an exemption cannot be implied.²⁰¹

The "we" Shulman refers to includes not only the NCWFL, but all marital rape activists reading the mailing update. This is a collective victory shared between organizations, crisis centers, and individuals working to criminalize marital rape.

The particular piece of progress Shulman mentions here is significant because it asserts that by 1981, the majority of American case law found that states could not place a common law

²⁰⁰ National Center on Women and Family Law, "Marital Rape Exemption Packet" n.d. National Clearinghouse on Marital Rape Archive.

²⁰¹ Joanne Shulman, "Summary of 1981 Developments in Marital Rape Litigation," December 10, 1981. National Clearinghouse on Marital Rape Archive.

marital rape exemption if they did not already possess an explicit exemption. Common law is based on practices and precedent rather than laws dictated by legislatures. Therefore, this may less like a victory and more like stagnation (if something did not exist before in the law, it does not exist now), but the marital rape exemption stemmed from common law beliefs set forth by Sir Matthew Hale's *The Pleas of the Crown*, explained in Chapter 1. Hence, the fact that U.S. courts found that states could not interpret common law to uphold marital rape exemptions is significant as a first step in combatting the legality of wife rape because states could not rely on the old method for excusing husbands for raping their wives.

Additionally, Shulman announces a recent marital rape defeat of which the NCWFL was unaware and unable to have “any ‘input’ such as by filing ‘amicus briefs.’”²⁰² While we may never know for certain how the amicus briefs influenced the courts’ decisions, the NCWFL’s efforts to provide resources in litigation concerning marital rape demonstrate another way in which women’s organizations advocated against marital rape in the 1970s and 1980s. The trial she refers to here is *State v. Brown* in Colorado. She asserts, “In the New Jersey and Florida marital rape cases, decided favorably, we filed amicus briefs and we believe this was useful.”²⁰³ No record of the filed amicus briefs or for which cases the NCWFL provided them were found in the archive, but Shulman’s mention of the briefs highlights some of the work the NCWFL engaged as marital rape activists, especially in trials. As Shulman notes, the cases in which it provided amicus briefs ruled in its favor; therefore, the NCWFL directly utilized its efforts to produce information on marital rape and the effects on victims to aid courts in marital rape trials and helped produce successful outcomes.

²⁰² Shulman, “Summary of 1981 Developments in Marital Rape Litigation.”

²⁰³ Shulman, “Summary of 1981 Developments in Marital Rape Litigation.”

Furthermore, in response to the failure in Colorado, Shulman calls on activists to contact the NCWFL if they are aware of any courts dealing with marital rape so that it can intervene.²⁰⁴ This document and the inclusion of this call for information further demonstrate the importance of collaborative activism for marital rape. No one organization could overcome this national issue. Through this network, the NCWFL relied on other groups and individuals to alert them about marital rape trials and legislation in their own states in order to help one another gather information and create strategies to fight for the criminalization of marital rape.

Conclusion

In an unaddressed, unsigned, and untitled document found in the NCWFL archive, an unknown activist writes in regards to the battered women's movement of the 1970s and 1980s,

While not all programs for battered women came out of feminist efforts, there are certain realities we must account for. It is clear that professional, religious and grassroots services for battered women existed long before our current movement began... None of these program catalyzed a movement on behalf of battered women. Only an environment in which women were organizing on their own behalf – a feminist political presence – could create and mobilize this new movement. No other explanation adequately accounts for the proliferation of services and reforms in the 1970s... The work of the women's movement allowed us to say that violence against women is not an aberration but rather a reality that millions experience... Although I may be romanticizing our earliest efforts, we were forced to be organizers and advocates for social change because every system imaginable discriminated against battered women and because we had no resources. We assigned ourselves a variety of tasks – changing systems, starting institutions, altering public consciousness, mobilizing movements and forming a sisterhood in which women were freed of self-blame and men, not women, were held accountable for male violence.²⁰⁵

While this writer speaks directly to the efforts of activists in the battered women's movement, her words can be applied to sum up marital rape activism and any activism regarding gender-based violence. While efforts to criminalize marital rape existed prior to the women's movement

²⁰⁴ Shulman, "Summary of 1981 Developments in Marital Rape Litigation."

²⁰⁵ Unknown Activist. n.d. National Center for Women and Family Law Archive at Radcliff Institute.

in the 1970s, it was this national activism which created effective change. Too often states fail to intervene without public mobilization. Therefore, as the activist asserts, women took responsibility and action to protect women from further violence. Women became involved at every level through shelters, rape crisis centers, women's organizations, lobbying, filing amicus briefs, and protesting. They fought to educate the United States on the crime of marital rape, showing that like other forms of sexual violence, it should require serious charges and punishments. Women did not deserve less bodily autonomy due to their marital status. Although trials like *Oregon v. Rideout* in 1979 increased public consciousness concerning marital rape, the activism that followed helped shape the conversation towards equality and the criminalization of the act. Women's organizations fought for a focus on male violence, rather than women's actions, which could be perceived as instigators of marital rape and abuse. The work marital rape activists accomplished in the 1970s and 1980s helped alter the landscape of violence against women's issues by highlighting how the law, criminal justice system, and legislators often failed to protect women.

Chapter 5: *Marital Rape on the Stand: How Marital Rape Litigation Affected the Marital Rape Exemption*

“When a defendant intends to use the kind of ‘force’ that is enough in his mind to test the existence or persistence of complainant’s true intentions, but not enough to achieve sexual intercourse if she ‘really’ rejects him, there is no intent to commit rape.”²⁰⁶

- *United States v. Bryant* (1969)

²⁰⁶ *United States v. Bryant*, 137 U.S.App.D.C., quoted in “Report of District of Columbia Task Force on Rape” in Leroy G. Shultz eds. *Rape Victimology*, (Springfield, Illinois: Charles C. Thomas Publisher, 1975), 339.

While many changes to marital rape law originated in the legislature, some occurred in court, although these trials would not have been possible without the original alterations to criminal codes and rape statutes. As states began to update these, victims gained an opportunity to seek justice for their husband's actions, though, as courts often operate, not all victims were successful in their quest. Despite some losses, trials provided a space to grow public consciousness, engage activists, and in some cases, change the laws, although this was accomplished through appellate cases following the initial trial. While this chapter primarily examines the role of the appellate court in marital rape law, it would be remiss to discuss marital rape in court without first reviewing the trial that helped usher in a national conversation on marital rape in the 1970s—*Oregon v. Rideout*.

Oregon v. Rideout

In 1978, an Oregon man stood trial for raping his wife in one of the most notorious marital rape cases in American history. At the time of the trial Oregon already criminalized marital rape, but it had not yet indicted a husband on rape charges. *Oregon v. Rideout* created a national conversation on marital rape. As psychologist Lawrence Wrightsman and attorney Julie Allison assert in *Rape: The Misunderstood Crime*, “Prior to 1978, most people had not thought about the possibility of a man raping his wife. Even professional people ignored the matter.”²⁰⁷ As the media swarmed the trial, accounts of the assault, the marriage, and the actors circulated across the country.

The couple in question, Greta and John Rideout, had an abusive relationship. According to journalist and novelist, Helen Benedict in her book, *Virgin or Vamp: How the Press Covers*

²⁰⁷ Julie Allison and Lawrence S. Wrightsman. *Rape: The Misunderstood Crime*. (Newbury Park, CA. Sage Publications, 1993), 85.

Sex Crimes, Greta married John Rideout reluctantly and the two lived an impoverished life with their only child.²⁰⁸ The physical abuse continued to escalate and on three times separate occasions Greta left John. John convinced her to try again, and Greta returned “by the fear of loneliness, by lack of money, by the struggle to bring up her child alone, and by...her hope that she could change John.”²⁰⁹ Then in 1978, John went on a rampage after waking up from an afternoon nap. He demanded Greta engage in sexual intercourse with him, but Greta, upset at her husband’s recent violence and threats to kick her and her child out of the home, refused. In response, “Greta said John hit her in the face, almost breaking her jaw, choked her, dragged her home from a neighboring field, and forced her to submit to sex in front of her daughter. John said they quarreled, she kneed him in the groin, he slapped her, and they made up and made love.”²¹⁰

After the assault, Greta managed to escape and run to a nearby neighbor’s house where she called a women’s crisis line. Two days later she pressed charges against her husband. Greta waited to report the rape based on police instruction under Oregon law.²¹¹ This is inability to press timely rape charges, especially against one’s spouse, highlights the behavior surrounding sexual assault in the 1970s. Why should a woman be required to wait to press rape charges against their husband when Oregon allowed for such cases to be prosecuted? It seems this incubation period would allow women to deliberate on whether or not they should actually press charges.

²⁰⁸ Helen Benedict. *Virgin or Vamp: How the Press Covers Sex Crimes*. (New York, NY. Oxford University Press, 1992), 45.

²⁰⁹ Benedict, *Virgin or Vamp*, 45.

²¹⁰ Benedict, *Virgin or Vamp*, 45.

²¹¹ Allison and Wrightsman. *Rape: The Misunderstood Crime*, 85.

Thankfully, Greta remained steadfast and reported her husband. In an interview before the trial she explained, “If I hadn’t called, I would have sunk into the gutter...I didn’t want to live my life like that...If I hadn’t called, if I had stayed...I might have been brainwashed into thinking I had deserved it.”²¹² Greta showed great resilience in not only reporting her rape, but also bringing it to trial. In her statement, she refers to psychological effect of domestic violence—the notion that victim internalizes the abuse as something deserved and thus fail to report crimes. The United States National Crime Survey of 1979 found that only 50 percent of forcible rape cases were reported to police, while some researchers estimated a higher number.²¹³ Additionally, as discussed in the introduction, researchers like Diana Russell, David Finkelhor, and Kersti Yllo found that marital rape victims encounter trauma at similar rates as victims of nonmarital rape. Therefore, in 1978, when Greta reported her assault, she became one of the first women to press charges, and see their case through in court. Although the case displayed her life, previous actions, and the trauma she sustained from her husband’s abuse and assault, she deemed it necessary to see her husband tried for rape.

The *Rideout* trial illustrates the classic rape trial conundrum of “he said, she said” arguments. Greta claimed the sex was nonconsensual while John insisted otherwise, forcing juries, judges, police officers, and prosecutors to find enough evidence to accept the victim’s accusation as truthful and the perpetrators as false. Unfortunately for Greta Rideout, the jury acquitted her husband. Many factors contributed to this outcome. While some state legislators acknowledged the possibility of marital rape, only three states criminalized marital rape at the

²¹² Greta Rideout quoted in *Virgin or Vamp: How the Press Covers Sex Crimes*. (New York, NY: Oxford University Press, 1992), 46.

²¹³ Jennifer Temkin. “*Women, Rape and Law Reform*” in *Rape*, ed. Sylvana Tomaselli and Roy Porter. (New York, NY: Basil Blackwell, 1986), 21.

time of *Rideout*. Although some states willingly outlawed marital rape, few trials reached the stand as marital rape proved difficult to prosecute.

As discussed in Chapter 2, in the 1970s many people failed to recognize marital rape as a crime rather than a private confrontation between husband and wife. Even if prosecutors, legislatures, and judges understood the existence of the crime of marital rape, the jury must too be convinced. This proved difficult as juries often struggle with establishing consent. The jury's uncertainty often led and still leads to acquittals. The perceived unlikeliness of winning cases of spousal rape most certainly impacted a district attorney's willingness to prosecute such cases, accounting for the gap between legislative and judicial action. Lucy Reed Harris examines the nuance of consent in rape trials in her 1976 article, "Towards a Consent Standard in the Law." She explains, "Society's abhorrence of rape is reflected in extremely severe punishments, which tend to discourage convictions in all but the most violent cases of rape. Ironically, this same abhorrence creates disbelief that any man could commit rape and a concomitant distrust of the complainant's accusation."²¹⁴ This disbelief further extended to victims of marital rape as Americans struggled to understand how a man could rape his wife. Harris presents another criminal justice conundrum regarding rape cases, in that if rape was viewed as a deplorable act that only the most vicious and evil criminals committed, then people may be afraid to ruin a man's life over rape allegations if there is any doubt the accuser lied.²¹⁵

²¹⁴ Lucy Reed Harris, "Towards a Consent Standard in the Law." *The University of Chicago Law Review* 43, no. 3 (1976): 616.

²¹⁵ This criminal justice system's philosophy of prioritizing the futures of male perpetrators of sexual violence over providing justice still exists today. One of the most popular recent cases is *People v. Turner* (2015) where a college student, Brock Turner sexually assaulted an unconscious woman. The court found Turner guilty of three counts of felony sexual assault, charges that could have led to 14 years in prison. Instead a judge assigned six months, three of which Turner served. Judge Persky stated, "A prison sentence would have a severe impact on him. I think he will not be a danger to others." While the criminal justice failed to adequately punish Turner, the public spread his name in a way that will haunt him moving forward (he has even tried overturning his conviction) and a criminal justice text book editor used Brock's name and photo to define rape, making him literally the textbook

Furthermore, proving a rape case “beyond a reasonable doubt” can be difficult if there are no witnesses beyond those directly involved (victim and perpetrator). While the use of DNA evidence is now useful in determining who committed a crime, it can only prove that intercourse took place, rather than determining whether the act was consensual or not. Harris explains that in order to argue against rape allegations “the defense attorney aggressively tries to discredit the prosecution’s evidence of nonconsent on cross examination by making humiliating inquiries into the complaining witness’ reputation, behavior, dress, acquaintances and sexual experience.”²¹⁶ Therefore the trial places the victim at the forefront in a negative way, transforming it from a means of ascertaining the guiltiness of the defendant and instead criticizes the victim in order to portray her as an unreliable witness. This fate proved true for Greta Rideout as the judge ruled Greta’s sexual history and fantasies admissible in court, providing her with no way to explain or deny them.²¹⁷

Second Wave feminists and legal scholars fought this defense strategy by enacting what is known as rape shield laws. Rape shield provides victims with protection against the defense’s use of the victim’s past sexual history in court. Judges may make some exceptions. Although it differs from state to state, judges can make allowances if the victim’s previous sexual history contradicts statements provided early or it could impact motive to lie. Advocates believed that broadcasting victims’ sexual past deterred them from reporting sexual assault and defense strategies that vilify victims led to a higher rate of acquittals.²¹⁸ The Violence Against Women

definition of a rapist. While Turner may have received some retrospective justice, more than 40 years have passed since the *Rideout* trial and in that time, one may have suspected America’s treatment of rapist to change.

²¹⁶ Reed Harris, “Towards a Consent Standard in the Law,” 617

²¹⁷ Benedict, *Virgin or Vamp: How the Press Covers Sex Crimes*, 51.

²¹⁸ Lynn Hecht Schafran and Jillian Weinberger, “‘Impressive Progress Alongside Persistent Problems’”: Rape Law, Policy and Practice in the United States” in *International Approaches to Rape*, ed. Nicole Westmarland

Act in 1994, created a federal rape shield law. Therefore, the enactment of rape shield laws provided a significant victory to anti-rape activists. By 1986, all states and the federal government adopted rape shield laws, several years before all states would outlaw marital rape.²¹⁹

Rideout dragged these harsh debates on rape shield, women's trustworthiness in trials, and the legality of marital rape into the public eye. While some scholars had already begun to research marital rape before the trial, the general public remained blind to the growing movement to eliminate the exemption in the United States. News of the trial circulated across the country through broadcast and print news. It reached people across the nation, showing them really for the first time, that marital rape is a real crime that despite the *Rideout*'s acquittal could carry serious consequences.

Throughout the duration of the trial, media reporters crowded into the courtroom for an opportunity to record the proceedings. Scholars note how *Rideout*, as a highly publicized trial, impacted conversations of marital rape in the late 1970s. Media and gender scholar, Lisa Cuklanz in her chapter, "Mainstream Coverage: Trials as News Events," explains how the media, like trials, focused on the witnesses' character and authority on the stand. In regards to *Rideout*, Cuklanz explains how the use of the victim's sexual past affected the image of the victim the media crafted. She states, "In the *Rideout* trial, where [Greta's sexual history] was allowed, the preponderance of damaging personal information about Greta *Rideout* suggested a verdict of 'not guilty' for John even at the very beginning of the trial."²²⁰ The media portrayed Greta as an

and Geetanjali Gangoli (Great Britain: Bristol University Press, 2011), 200-201.

²¹⁹ Schafran and Weinberger, "Impressive Progress Alongside Persistent Problems," 201.

²²⁰ Cuklanz, *Rape on Trial*, 49.

intellectual liar with a “complicated sexual past,” who sought fame from the trial and John as Greta’s vulnerable victim.²²¹ Newspapers reported the defense attorney, and President of the Oregon State Bar in 1980, Charles Burt’s argument primarily focused on Greta possessing “a terrible, terrible sexual problem that neither [Greta nor John] had the maturity”²²² to resolve. Reporter Timothy Kenny sums this contentious sexual past as including “homosexual fantasy, two abortions, an affair a Minnesota man and alleged relations with her brother-in-law.”²²³ Benedict notes these pervasive stories of Greta’s sexual past filled almost every newspaper reporting on the trial even though the claims were based on statements given by John that Greta never gained the opportunity to refute.²²⁴

Burt himself did not believe marital rape should be criminalized, stating, “A woman who’s still in marriage is presumably consenting to sex...Maybe this is the risk of being married, you know?...If this law’s interpretation isn’t corrected it will bring a flock of rape cases under very bad circumstances...The remedy is to get out of the marital situation.”²²⁵ Despite the criminalization of marital rape in Oregon in 1978, Burt preferred women seek divorce, rather than accuse their husband of rape. He even suggested Oregon correct this misstep in their rape statute to re-establish the marital rape exemption, warning women that not having the right to accuse their husband of rape is just a part of marriage.

²²¹ Cuklanz, , *Rape on Trial*, 52-53.

²²² Charles Burt quoted in Timothy Kenny, “Man Found Innocent of Raping Wife,” *Nashua Telegraph*. December 28, 1978.

²²³ Timothy Kenny, “Man Found Innocent of Raping Wife,” *Nashua Telegraph*. December 28, 1978.

²²⁴ Benedict, *Virgin or Vamp*, 57.

²²⁵ Charles Burt quoted in Cynthia Gorney, “The Rideouts: Cased Closed, Issue Open,” *The Washington Post*, December 29, 1978.

The trial and the news surrounding it painted Greta as sexually immoral and untrustworthy because she previously retracted an accusation of rape earlier in her life.²²⁶ Scholars like Finkelhor and Yllo and Cuklanz note that the trial focused more on her previous actions, rather than John's abuse and rape. The judge's admittance of Greta's sexual history allowed for the trial's focus to shift. The media perpetuated the defense's mischaracterization to the national public. District Attorney Gary Gortmaker believed that despite the treatment of Greta, it would not discourage other women from reporting. He explained, "I think if a person is strong enough and if there are these facts they will come forward. I don't really think this [decision] will have much of an effect on the law."²²⁷ We will never know exactly how the decision in *Oregon v. Rideout* affected rape reporting, but it certainly had an impact on how the U.S. moved forward regarding the marital rape exemption. The National Clearinghouse on Marital Rape and the National Center on Women and Family Law created their organizations the year following the *Rideout* verdict, both of which actively worked to research and advocate for a complete marital rape exemption in every state in the U.S. Despite its failings, *Oregon v. Rideout* is significant because it raised public consciousness on the crime of marital rape and highlighted how the criminal justice system and the media portrayed the victims.

People v. Liberta

While *Oregon v. Rideout* provides insight into criminal proceedings involving marital rape, the 1984, New York State Appellate case, *People v. Liberta* shows the power state courts possessed when faced with questions of the constitutionality of the marital rape exemption.

²²⁶ Benedict, *Virgin or Vamp*, " 57.

²²⁷ Gary Gortmaker quoted in Timothy Kenny, "Man Found Innocent of Raping Wife," *Nashua Telegraph*. December 28, 1978.

Unlike *Rideout*, the victim in *Liberta* was living separately from her husband and had an order of protection against him, which was required in New York in 1984 in order to charge a spouse with rape. As states began to alter their marital rape exemption statutes, the definition of the act of marital rape became increasingly complicated in the late 1970s and 1980s. For some states, the first change to these statutes involved divorce or separation. States like Michigan and New York, for instance, required couples who wanted to charge one spouse with rape to currently be engaged in the process or already completed separating, divorcing, or obtaining an order of protection against the assailant.²²⁸

Scholars Julie Allison and Lawrence S. Wrightsman assert in their book, *Rape: The Misunderstood Crime*, that the 1978 update to the New York statute considered these couples, in the case of marital rape, unmarried.²²⁹ Often this has been seen as a stepping-stone towards the abolishment of the marital rape exemption. But if states like New York did not consider these couples married, then do these changes actually signify an update to the marital rape exemption? Although the state considered the couple no longer married for the purposes of the statute, technically their marital contract remained intact. These amendments to rape statutes, certainly reflected progress, though not quite the complete change many feminists fought for. Despite their limitations, by allowing separating couples to charge one another with rape, states showed at least a partial willingness to consider issues of sexual consent in marriages. Without this specification, husbands may have been able to utilize sexual violence as means to punish wives who threatened or attempted to leave without many consequences. Furthermore, by allowing married couples the ability to be convicted of rape against one another, the state, and the

²²⁸ Temkin, "Women, Rape and Law Reform," 28.

²²⁹ Allison and Wrightsman. *Rape: The Misunderstood Crime*, 97.

introduction of rape shield laws, proved that women's past sexual encounters should not always affect the outcome of a rape trial. There is no doubt courts continued to struggle with conversations of consent, but states no longer forced women to adhere to ideas of implied consent.

This New York statute proved essential to the trial *People v. Liberta*,²³⁰ a prominent court cases which resulted in New York State outlawing marital rape, despite marital status. Mario and Denise Liberta married in 1978, but soon after Denise sought an order of protection in Family Court against her husband. In 1980, the Court granted the order, which required Mario vacate their shared residence, remain physically separated from Denise, and attend visits with their then two year old son on weekends. One weekend in March 1981, Mario missed his visit, prompting him to contact Denise and ask for a makeup. Three days later Denise agreed to meet her husband with their son at the motel where he was living, but only under the condition that a friend remained with them; however, these are not the events that ultimately occurred. Upon arriving at the hotel, the designated friend abandoned Denise, Mario, and their son. What should have been a lighthearted visit between a father and son turned violent between husband and wife. Mario threatened to kill Denise and forced her to perform oral sex on him as well as engage in sexual intercourse in front of their toddler. During the assault Mario demanded Denise instruct their son to watch as he raped his wife. Soon after, Denise went to a hospital to treat injuries she suffered during the rape. The next day she entered a local police station where she pressed charges against

²³⁰ Despite the importance of *People v. Liberta*, it often lives in the footnotes of marital rape scholarship. Many authors use it to support a variety of arguments, but apart from that, it does not receive much recognition. While several scholars have referenced *People v. Liberta* in their work, they are mostly snapshots that fit into a larger grand narrative. When they go beyond a ten-foot footnote at the end of the page, authors add little more than a summary of circumstances behind the case and the decision of the court. This lack of scholarly work surrounding *People v. Liberta* is reflective of the scarcity other marital rape scholarship discussed earlier. The scholars that examine *People v. Liberta* provide, albeit brief, commentary on the significance of the case, specifically the subject matter and the time in which it was tried and upheld in the Appellate court. The variety of fields that have studied the case allows for a wider perspective of the significance surrounding the case.

her husband. In 1981, Mario was indicted for rape in the first degree and sodomy in the first degree.²³¹ Liberta became one of the first husbands convicted of raping his wife.²³² The 1978 update to the New York statute made this prosecution possible whereas before, the marriage contract would have allowed Mario to escape rape charges.

In her 1987 book, *Real Rape*, lawyer Susan Estrich suggests the brutality Mario Liberta inflicted upon his wife and the fact he assaulted her in the presence of their two-year-old child most likely affected the New York courts.²³³ Estrich implies the horrific nature of the crime influenced prosecutors to bring this case to trial. At the time, marital rape trials still remained uncommon despite the increasing number of states criminalizing marital rape in some form. As discussed in Chapter 2, many misconceptions regarding rape, domestic violence, and women affected the probability of victims prevailing over their assailants in court. According to a report distributed by the National Criminal Justice Reference System (NCJRS), researchers Carolyn C. Hartley and Roxann Ryan examined the strategies utilized by prosecutors in domestic violence. Particularly in these trials, prosecutors rely on what they call, “telling the story of the violence.” Hartley and Ryan explain this strategy,

The ‘story’ often began with a witness—the victim, an eyewitness, an investigating officer, or an examining physician—who could give a graphic account of the events surrounding the crime... The prosecutors elicited a *step-by-step replay of events*, rich in detail, about what occurred. Asking a series of questions, prosecutors drew out the story of events: what the witness saw, heard, felt, including the witness’s emotional reaction to the events... If the witness used a particularly graphic or descriptive word or phrase, the prosecutor reinforced the testimony by repeating the words when asking another question, or by making reference to the powerful description later in the testimony.²³⁴

²³¹ *People v. Liberta*, 64 NY 2d 152 (1984).

²³² Allison and Wrightsman. *Rape: The Misunderstood Crime*, 97.

²³³ Estrich. *Real Rape*, 78.

²³⁴ Carolyn C. Hartley and Roxann Ryan, “Prosecution Strategies in Domestic Violence Felonies: Telling the Story of Domestic Violence, Executive Summary,” *National Institute of Justice of the Office of Justice*

Therefore, New York prosecutors might have chosen the Liberta case to challenge the marital rape exemption in their state due to the appalling events of the assault and the way in which Denise could deliver the story. If the prosecution could connect emotionally with the jury, they had a higher chance to win the original trial, which they did.

Despite his conviction under Penal Code update, Mario appealed under the Equal Protection Clause of the Fourteenth Amendment.²³⁵ This clause asserts that the United States may not “...deny to any person within its jurisdiction the equal protection of the laws.”²³⁶ Liberta used the clause to argue the unconstitutionality of the 1978 statute in New York since it only targeted a certain group of men.²³⁷ Additionally, Liberta argued the marital rape exemption should apply to him since he remained married to his wife at the time of the incident, even though under the 1978 update, he was “treated as an unmarried man.”²³⁸ Essentially, the defense argued the marital rape exemption created an unequal right to rape women. Married men who were not separated from their wives had the legal right to rape their wives. Additionally, Liberta asserted that the gender specific language in such statutes was also unconstitutional, referring to the fact that states often defined only women as victims of marital rape, and husbands as perpetrators.²³⁹

Programs, U.S. Department of Justice. 1998, 5. Original emphasis.

²³⁵ Lalenya Weintraub.Siegel, “The Marital Rape Exemption: Evolution to Extinction.” *Cleveland State Law Review*, 43 (1995): 366.

²³⁶ “Fourteenth Amendment,” Legal Information Institute. <https://www.law.cornell.edu/constitution/Amendmentxiv>

²³⁷ Allison and Wrightsman. *Rape: The Misunderstood Crime*, 97.

²³⁸ *People v. Liberta*, 64 NY 2d 152 (1984).

²³⁹ Weintraub Siegel “The Marital Rape Exemption,” 366.

The presiding judge of the New York Court of Appeals, Sol Wachtler actually agreed with Liberta's defense. However, instead of Liberta's desired outcome, Wachtler dismissed the constitutionality of entire the marital rape exemption in New York State.²⁴⁰ Through *People v. Liberta*, Wachtler asserted the marital rape exemption held no constitutional basis since it only protected some victims from the crime of rape, stating,

We find there is no rational basis for distinguishing between marital rape and nonmarital rape. The various rationales which have been asserted in defense of the exemption are either biased upon archaic notions about the consent and property rights incident to marriage or are simply unable to withstand even the slightest scrutiny. We therefore declare the marital exemption for rape in the New York Statute to be unconstitutional.²⁴¹

Therefore, it was no longer about Mario's right to rape his wife, but Denise's right to seek justice in an instance of marital rape. This trial allowed New York to become one of the first states in U.S. to abolish a full exemption and deem the exemption unconstitutional.

Psychologist Rebecca M. Ryan in 1995 states, "...cases such as *People v. Liberta* will shape the conceptions future lawyers have of both rape and marriage," explaining that other courts utilized the constitutional arguments set by Wachtler.²⁴² The *Liberta* decision remains significant because in addition to declaring the marital rape exemption unconstitutional, it challenged four social myths that contributed to the longevity of the exemption, all of which have been discussed throughout this thesis. These include the idea that state interference into marital privacy would damage the chance for reconciliation, that it is difficult to prove non-consent versus consent, that vindictive wives would use marital rape charges as revenge against

²⁴⁰ Susan Estrich. *Real Rape*. (Cambridge, MA. Harvard University Press. 1987) 87.

²⁴¹ *People v. Liberta*, 64 NY 2d 152 (1984).

²⁴² Rebecca M. Ryan, "The Sex Right: A Legal History of the Marital Rape Exemption." *Law & Social Inquiry* 20, no. 4 (1995): 998.

their husbands, and that marital rape is not as traumatic on the victims as it is in other rapes.²⁴³

Judge Wachtler directly attacked these common misconceptions, stating,

... A related argument is that allowing such prosecutions could lead to fabricated complaints by “vindictive wives...” Proving lack of consent... is often the most difficult part of any rape prosecution, particularly where the rapist and the victim had a prior relationship... The possibility that married women will fabricate complaints would seem to be no greater than the possibility of unmarried women doing so... The final argument in the defense of the marital exemption is that marital rape is not as serious an offense as other rape and is thus adequately dealt with by the possibility of prosecution under criminal statutes, such as assault statutes, which provide less severe punishments. The fact that rape statutes exist, however, is a recognition that the harm caused by a forcible rape is different, and more severe, than the harm caused by an ordinary assault... Under the Penal Law, assault is generally a misdemeanor unless either the victim suffers “serious physical injury” or a deadly weapon or dangerous instrument is used... Thus, if the defendant had been living with Denise at the time he forcibly raped and sodomized her he probably could not have been charged with a felony, let alone a felony punishment equal to that for rape in the first degree. Moreover, there is no evidence to support the argument that marital rape has less severe consequences than other rape. On the contrary, numerous studies have shown that marital rape is frequently quite violence and generally has more severe, traumatic effects on the victim than other rape.²⁴⁴

Wachtler, in his opinion for *Liberta*, illustrated how many of the arguments in support of the marital rape exemption had no intellectual basis. He credited scholars like Diana Russell with working to dismantle these marital rape myths, citing her as a reference for more information. Wachtler highlighted contemporary marital rape scholars, giving further authority to their research. By holding Mario Liberta accountable for his actions against his wife, *People v. Liberta* provided courts with an example of how to dispute the myths concerning trauma stemmed from marital rape, and the myth that women falsely accuse men of rape.

Ultimately, *Liberta* demonstrated how contradictory legal opinions operated alongside each other in the 1980s. While the stagnant beliefs of the past often halted the progress feminists

²⁴³ Estrich. *Real Rape*, 77-78.

²⁴⁴ *People v. Liberta*, 64 NY 2d 152 – NY (1984).

fought for in marital rape law, Higher Courts had the power to create protections for victims. The partial exemption existed in New York for six years before *Liberta* abolished it. We will never know exactly how many women did not have the ability to charge their husbands for acts of marital rape during this period. *Liberta* liberated women from the constraints of their current rape statute, giving wives an equal opportunity to seek justice against the husbands that raped them.

Although some scholars labeled *People v. Liberta* a “landmark case,” it had its downsides.²⁴⁵ Lawyer Lalanya Weintraub Siegel, in her article, “The Marital Rape Exemption: Evolution to Extinction,” explains that *Liberta* ultimately deferred to the state legislature to create a new marital rape statute based on Wachtler’s opinion, which outlawed all forcible rape committed by any person regardless of gender.²⁴⁶ Lawyer Cassandra DeLaMothe in her 1996 article, “Liberta Revisited: A Call to Repeal the Marital Exemption for All Sex Offences in New York’s Penal Law 1996,” focuses on *Liberta*’s limitations and how the Court’s deference to the New York State legislature inadequately allowed the state to handle rape cases. DeLaMonthe explains the narrow decision in *Liberta* did not provide a sufficient framework for other courts to build on. She notes that after the *Liberta* trial, in an unpublished opinion, a man accused of raping his wife, but only charged with sexual misconduct, was found not guilty since the judge interpreted the marital rape exemption based on the *Liberta* decision as only applying to rape rather than misdemeanors like sexual misconduct.²⁴⁷ Through this example DeLaMonthe attempts to highlight that although the *Liberta* decision revolutionized marital rape law in some

²⁴⁵ Weintraub Siegel “The Marital Rape Exemption,” 366.

²⁴⁶ Weintraub Siegel “The Marital Rape Exemption,” 367.

²⁴⁷ Cassandra DeLaMothe, “Liberta Revisited: A Call to Repeal the Marital Exemption for All Sex Offenses in New York's Penal Law,” 23, no. 3 (1996), 871.

ways, it remained limited in others. However, DeLaMonthe's criticism of the narrowness of the *Liberta* case seems misplaced.

If Wachtler had created a specific standard for marital rape convictions for other courts to use, it could have been extremely beneficial for marital rape trials across the country. However, his failure to create such a framework could be linked to the scope of his trial and hesitation to move beyond it. Furthermore, while Wachtler does not explicitly direct how states should charge sexual assault as misdemeanors versus felonies, he does make clear in his opinion quote above that defendants like Mario Liberta should not receive lesser punishments, such as misdemeanor convictions, for rape. In addition, in the example DeLaMonthe provides against *Liberta*, the prosecutor reduced the charges to a misdemeanor and the court interpreted this reduction in charges to not fit under the *Liberta* decision. Thus the fault does not lie with the *Liberta* opinion, but with the prosecutor's failure to consider marital rape charges as serious crimes of violence.

DeLaMonthe highlights four main limitations she finds in the case. The first being that just because the New York Court of Appeals overturned the marital rape exemption, it does not mean every court did.²⁴⁸ This is the same issue Siegel found with *Liberta*. However, I find her blame on the narrowness of the *Liberta* case misplaced. While it would have been helpful if Wachtler had created a specific framework for all sexual abuses committed by a husband against his wife, it might have gone beyond the scope of the case. The other three issues that DeLaMonthe points to are less of a direct result of *People v. Liberta*. Instead these other limitations include: lack of a standard definition for "force" in marital rape cases, gender bias,

²⁴⁸ DeLaMothe, "Liberta Revisited," 868.

and the difficult nature of finding proof in marital rape cases.²⁴⁹ In regards to force, it certainly would have been beneficial for Wachtler to create a standard definition. States define force in ambiguous and various manners. In some cases the threat of weapon or extreme violence is needed. Therefore, “force” as defined in these ways may not have applied the *Liberta* trial. Although Denise suffered physical injuries and Mario threatened her life, the summary of events mentioned no weapon, meaning Wachtler might not have considered establishing a set standard in relation to this case. Furthermore, gender bias and difficulty proving consent in marital rape trials are concepts *Liberta* touched on, though did not delve into specific detail. He did explain that marital rape alongside other rape trials suffer from proving consent. He even reference the myth of the “vindictive wife,” which directly refers to the gender bias in the criminal justice system and U.S. culture to assume women often lie about consensual sex as means of punishment against their partner. *Liberta* could not solve these problems, which remain prominent in today’s judicial system, but Wachtler could have discussed them more in his opinion since they act as some of the greatest barriers against sexual assault convictions.

Overall, *People v. Liberta* is a significant to the study of marital rape in the United States. Not only did it provide a constitutional basis for abolishing the marital rape exemption, it also demonstrates an important example of state judiciaries furthering women’s rights by providing them with the right to report their husbands for sexual violence. Furthermore, it highlights the role courts played in challenging state laws, even when legislatures considered criminalizing marital rape controversial.

²⁴⁹ DeLaMothe, “*Liberta* Revisited,” 868.

The Marital Rape Exemption and the Fourteenth Amendment Under Appeal

In *People v. Liberta*, the defendant appealed his rape charge under the Fourteenth Amendment as means to question the constitutionality of the marital rape exemption. Fortunately in the appellate decision, the judge ruled the exemption unconstitutional, but upheld the conviction. In regards to that trial, the defense appealed Liberta's conviction for marital rape by arguing against the validity of the exemption for protecting only certain men from rape convictions. It makes sense to argue against the marital rape exemption in a marital rape trial. Liberta would not be the only man to attempt an appeal based on the Equal Protection Clause of the Fourteenth Amendment and the marital rape exemption. Two other appellate cases worth examining in the study of spousal rape are *State of Colorado v. Vincent Brown* (1981) and *Henry Lewis Merton Jr. v. State* (Alabama, 1986). Neither defendant committed an act of marital rape, yet built their appeal around the marital rape exemption's constitutionality under the Fourteenth Amendment.

In *Merton v. State*, the state found guilty Henry Merton guilty of first degree rape and sodomy of an eight-year-old child and sentenced him to life in prison.²⁵⁰ In his appeal, Merton raised four issues, one of which involved the constitutionality of the marital rape exemption. The defense argued that Alabama's sexual assault and sodomy statutes were unconstitutional under the Fourteenth Amendment since the statutes criminalized certain acts by unmarried persons, but not those committed by married persons.²⁵¹ Judge William Bowen asserts that in 1986, the Alabama Court of Appeals in *Williams v. State* found the state's sodomy statutes unconstitutional based on these factors; however, as he explains, rather than invalidating the complete marital rape

²⁵⁰ *Merton v. State*.500 So. 2d 1301 (1986).

²⁵¹ *Merton v. State*.500 So. 2d 1301 (1986).

exemption in all forms of sexual assault, the Court only enlarged the sodomy statute to include married perpetrators and victims.²⁵² In *Williams* the court understood their limited actions, explaining that since only the unconstitutionality of the sodomy statute was presented before them, they could not invalidate the entire marital rape exemption, but their reasoning could be applied to other cases moving forward.²⁵³ At the time, Alabama's sexual assault statute defined rape in the first degree in part by this standard: "(a) A male commits the crime of rape in the first degree if: (1) He engages in sexual intercourse with a female by forcible compulsion" and as Bowen explains, "The definition of "female" is limited...to the following: *An female person who is not married to the actor. Persons living together in cohabitations are married for the purposes of this article, regardless of the legal status of their relationship otherwise."²⁵⁴ In order to alter both the sodomy statute and the sexual assault statutes in Alabama to criminalize marital rape, both *Williams* and *Merton* relied on *People v. Liberta*. Bowen writes, "The reasoning in *Liberta* is sound. We adopt it as our own,"²⁵⁵ copying Watchtler's bases for not distinguishing between marital and nonmarital rape.

Like *Liberta*, *Merton* relied on the Appellate Court's ability to invalidate the marital rape exemption in their state. The two cases differ primarily in the fact that *Merton* was not convicted of marital rape, unlike *Liberta*, yet built part of his defense around the exemption's constitutionality. Bowen fails to focus on this fact in his decision, instead he highlights why the exemption is unconstitutional and thus cannot be applied in this trial. *Merton* was not the only Appellate case to attempt this strategy. In 1981, the defendant in *State v. Brown* tried to appeal

²⁵² *Merton v. State*.500 So. 2d 1301 (1986).

²⁵³ *Merton v. State*.500 So. 2d 1301 (1986).

²⁵⁴ *Merton v. State*.500 So. 2d 1301 (1986).

²⁵⁵ *Merton v. State*.500 So. 2d 1301 (1986).

his sexual assault conviction under the same premise. While this trial occurred years before *Liberta* and *Merton*, it provides important insight into how some Appellate courts failed to criminalize marital rape when confronted with the opportunity.

State v. Brown involved the defendant, Vincent Brown, a robber, who in December 1978, entered Leslie Bennett's home and raped her. Bennett awoke to find a man, Brown, rifling through her belongings; when she screamed, Brown grabbed her, threatened her with a knife, and attempted to pour vodka down her throat twice. Brown forced Bennett to undress and eventually vaginally penetrated her. Following the assault, Brown passed out on the couch, allowing Bennett to seek a neighbor's help to contact the police who found Brown in the victim's living room. The State originally charged Brown with second degree-burglary and first-degree sexual assault; the jury found him guilty of sexual assault, and he was sentenced to seven to eight years.²⁵⁶

He appealed his rape conviction under the Fourteenth Amendment, arguing it was unconstitutional for married men to be protected by the marital rape exemption, while strangers could be prosecuted for rape. Unlike Bowen, Judge Gilbert A. Alexander explains the lack of reasoning for this appeal by stating,

The defendant argues that the alleged unconstitutionality of the marital rape exemption infects the first degree sexual assault statute, rendering his conviction invalid... He lacks standing, however, to raise argument. One who asserts the unconstitutionality of a statute must himself be adversely affected by that unconstitutionality. Here the defendant's argument is premised upon the belief that the marital rape exemption adversely affects victims of spousal sexual aggression, rather than himself. Criticism of the marital rape exemption is based upon the premise of expanding, not further restricting, protections for women against sexual assault. According to the argument, the woman, not the rapist is the subject of discrimination... Consequently, if the victim of spousal sexual aggression were to challenge the validity of the exemption and prevail, her husband-assailant would not be freed. Rather, the marital exemption would be invalidated and the husband-assailant would have to face sexual assault charges. Thus neither should a stranger-rapist

²⁵⁶ *People v. Brown* 632 P.2d 1025 (1981), Answer Brief, National Clearinghouse on Marital Rape Archive.

expect to be freed if the marital exemption were held invalid...²⁵⁷

In his decision, Alexander holds that Brown had no standing to challenge the marital rape exemption in Colorado because the supposed unconstitutionality of the marital rape exemption did not directly affect the defendant. Even if his argument had a legal basis, what would Colorado do regarding their sexual assault statutes? As Alexander points out in his decision, “Logically, his argument is that, given the decision to exempt said husband from criminal liability, the legislature could not rationally punish any man for sexual assault. In his view, then, there is no crime of sexual assault extant in Colorado.”²⁵⁸ Ultimately, this appellate case provides more questions than answers regarding marital rape litigation in the 1980s. Why did the defense believe this to be an effective strategy? Rationally, the defense’s motive would not have encompassed invalidating the marital rape exemption since this would not benefit Brown. Just as the court asserts in *State v. Colorado*, this defense argument failed based on its lack of logical reasoning.

Unlike in *Liberta* and *Merton*, when confronted with the question of the marital rape exemption’s constitutionality, Alexander upheld its validity. He explains although some beliefs regarding marital rape,

i.e, that women are the property of their husbands, merge into the identity of their husbands, or implicitly consent to ongoing sexual intercourse during marriage are somewhat outmoded..., the emotional trauma suffered by a person victimized by an individual with whom sexual intimacy is shared as a normal part of an ongoing marital relationship is not nearly as severe as that suffered by a person who is victimized by one with whom that intimacy is not shared...Additionally, the marital exemption finds significant support in avoiding emotional issues and proof problems inherent in this the most sensitive area of family relations. These problems are obviously not encountered to such an extent in situations involving strangers to the marital relationship...Finally, the marital exception removes a substantial obstacle to the possible resumption of normal

²⁵⁷ *People v. Brown* 632 P.2d 1025 (1981).

²⁵⁸ *People v. Brown* 632 P.2d 1025 (1981).

marital relationships... The legitimate state objective of preserving permanency of normal marital relations.²⁵⁹

In Alexander's decision in *State v. Brown*, he upheld many of the common marital rape myths explored in previous chapters. He states that many prominent beliefs were only "somewhat outmoded" rather than completely outdated. Furthermore, he concedes to the notion that marital rape victims faced fewer traumas than nonmarital rape victims, (which as stated previously, researchers found to be false) and therefore, the crime of marital rape deserves less severe punishments than other forms of sexual assault. Finally, Alexander asserts that the state legislature is better suited to address the complexities of sexual assault statutes and not courts, which could explain why he preferred to uphold traditional marital rape beliefs instead of intimately questioning them as Wachtler did in *People v. Liberta*.

Together, *Merton* and *Brown* highlight the far reach of the marital rape exemption in the criminal justice system. In each of these trials, a child rapist and robber/stranger rapist attempted to bastardize the Equal Protection Clause of the Fourteenth Amendment to protect their perceived right to sexually assault others, rather than victims actively discriminated against by the marital rape exemption. While there are many ways to interpret the equal protection clause, protecting one's right to sexually assault another person seems beyond scope and logic. Ultimately, these two appellate cases demonstrate the lengths to which men tried to use the marital rape exemption to their benefit, even when it should not have directly included them.

Conclusion

In cases of violence against women, the criminal justice system notoriously has a complicated past. Often in such trials, the defense paints the victim as the actual villain,

²⁵⁹ *People v. Brown* 632 P.2d 1025 (1981).

attempting to shame her or him into admitting the charges are nothing but an intricate lie in order to slander the victim's character to prove their unreliability. In *Oregon v. Rideout*, the media latched onto this image of the victim, criticizing her on a national stage. Despite the courts' faults, in some instances they have opportunity to expand the law in order to protect more victims, such as in *People v. Liberta*. By deeming the marital rape exemption unconstitutional in New York State, *Liberta* influenced other state courts, such as in *Merton v. State*, to criminalize marital rape. Although there were some limitations as DeLaMothe noted, these outcomes were significant, demonstrating the role of Appellate Courts in reshaping state laws, particularly in cases of marital rape, when state legislatures failed to do so. Therefore, studying marital rape trials and their subsequent appeals is imperative to the study of marital rape. Both their victories and their losses highlight the policies State courts relied on once states granted married women the right to charge their husband with rape. Even if states criminalized marital rape, the way in which the courts conducted trials provides insight into how the criminal justice treated victims, understood the crime of marital rape, and the extent to which they were willing to assert married women deserved equal protections under the law, not rapists.

While courts played a significant role in diminishing the marital rape exemption in individual states, it is important to highlight the role activists played in helping these trials. Activists collected research and materials to not only better educate themselves, but also judges and legislators on the trauma victims faced, poor police practices, and difficulties victims face in court. Organizations like the NOW and NCWFL filed amicus briefs in marital rape trials, which they believe contributed to several marital rape victories. NOW even filed one in *Liberta*. Watchler even used Diana Russell's research to determine that marital rape is in fact traumatic on its victims. As the marital rape movement of the 1970s and 1980s progressed, activists had

the ability to expand their networks. This allowed advocates to assist in marital rape trials across the country, instead of focusing only on large trials. This was not a perfect system. Activists and women's organizations sometimes overlooked cases and appeals concerning the marital rape exemption, but their work helped shift the traditional dialogue of the marital rape exemption into a public issue in need of reform.

Conclusion: *The Boyfriend Loophole*

In a 2011 study, the Center for Disease Control estimated that 45.4 percent of female rape victims and 29 percent of male rape victims in the United States “had at least one perpetrator who was an intimate partner.”²⁶⁰ That’s an estimated 11,146,000 victims of rape committed by intimate partners.²⁶¹ A significant portion of the United States is effected by these crimes, and yet politicians still debate providing protective laws and policies for victims. President Bill Clinton signed The Violence Against Women Act (VAWA) in 1994, just one year after every state in America officially had some law criminalizing marital rape. VAWA was intended to create comprehensive reforms and programs to help victims of violence, particularly women suffering from domestic violence. The Violence Against Women act requires reauthorization; most recently President Barack Obama reauthorized VAWA in 2013. Previous reauthorizations took place in 2000 and 2005. Each new incarnation has allowed VAWA to expand its mission. President Obama expanded VAWA to include LGBTQ+ people and gave tribal courts the ability to prosecute domestic abusers.

In February 2019, Congress allowed VAWA to lapse during a government shut-down. While this did not immediately affect funding, some activists saw this expiration as a clear message. Amanda Pyron, executive director of the Chicago Metropolitan Battered Women’s Network explains, “What that shows is a lack of prioritization of domestic violence by lawmakers. The lack of a permanent reauthorization of VAWA almost seems to indicate we are

²⁶⁰Center for Disease Control and Prevention. Prevalence and Characteristics of Sexual Violence, Stalking, and Intimate Partner Violence Victimization — National Intimate Partner and Sexual Violence Survey, United States, 2011. Retrieved from <https://www.cdc.gov/mmwr/preview/mmwrhtml/ss6308a1.htm#Table3>

²⁶¹ Center for Disease Control and Prevention, Prevalence and Characteristics of Sexual Violence.

going to outlive or outrun violence against women.”²⁶² While continued reauthorizations of VAWA give the the Act opportunities to develop new procedures, giving it the ability to lapse so often demonstrates a perceived temporality of violence against women.

Ultimately Democrats declined reauthorizing the act as a chance to expand and alter previous protections. In April 2019, the House of Representatives passed their authorization sending it to the Senate. House Republicans opposed the new VAWA for its existing and newly suggested protections for transgender people in prison to be housed according to their preferred gender. Another point of debate focused on provision, which would place a life-long ban on convicted domestic abusers and stalkers from purchasing firearms. States like California already have laws that reduce a domestic abusers ability to own and purchase guns. The National Rifle Association (NRA) staunchly opposed this measure, encouraging Congress to vote against VAWA. NRA spokesperson Jennifer Baker stated, “The gun control lobby and anti-gun politicians are intentionally politicizing the Violence Against Women Act as a smokescreen to push their gun control agenda.”²⁶³ In the United States, those convicted of misdemeanor domestic abuse are restricted from owning guns, with exceptions to some police officers and active military personal. The U.S. accomplished this in 1997, with the Domestic Violence Offender Gun Ban, or the Lautenberg Amendment, an amendment in the Omnibus Consolidated Appropriations Act of 1997. The Lautenberg Amendment does not provide an exhaustive ban for domestic abusers because it did not account for the so called “boyfriend loophole.” The Lautenberg Amendment only bars domestic abusers who are currently or previously married to

²⁶² Amanda Pyron quoted in Kate Thayer, “The Violence Against Women Act Has Expired. Advocates Aay That Sends a Dangerous Message and are Pushing for Permanent Protections,” *Chicago Tribune*. February 21, 2019. <https://www.chicagotribune.com/lifestyles/ct-life-violence-against-women-act-expired-20190220-story.html>

²⁶³ Jennifer Baker quoted in Susan Davis, “House Passes Bill Protecting Domestic Abuse Victims; GOP Split Over Gun Restrictions,” *National Public Radio*, April 4, 2019. <https://www.npr.org/2019/04/04/707685268/violence-against-women-act-gets-tangled-up-in-gun-rights-debate>

their victim; therefore, domestic abusers who are simply dating cannot be banned from owning guns.

Domestic violence is not only physically and mentally threatening, but life threatening as well. The CDC estimates that 55 percent of women's murders are connected to intimate partner violence.²⁶⁴ In a report by Everytown For Gun Safety, a non-profit organization dedicated to reducing gun violence, they explain,

When a gun is present in a domestic violence situation, it increases the risk of homicide for women by 500 percent. Over the past 25 years in the U.S., more intimate partner homicides have been committed with guns than with all other weapons combined. And in 2011, more than half (53 percent) of all American women who were murdered with guns were killed by intimate partners or family members.²⁶⁵

This is why the boyfriend loophole is significant. In some ways, the loophole presents the opposite problem the marital rape exemption did four decades ago. As the exemption provided husbands certain allowances, the boyfriend loophole gives unmarried perpetrators allowances not afforded to married men who abuse their wives. Ultimately, at their cores, the exemption and the loophole are the same, in that they privileged the safety of some women over others. Closing this gap in gun restrictions is important because limiting domestic abusers access to firearms is not simply a gun control issue; it is also a public safety and health concern.

When House Democrats declined reauthorizing VAWA they attempted to expand protections within in an administration that is dismantling previous sexual assault policies that

²⁶⁴ Center for Disease Control and Prevention. Racial and Ethnic Differences in Homicides of Adult Women and the Role of Intimate Partner Violence — United States, 2003–2014. Retrieved from https://www.cdc.gov/mmwr/volumes/66/wr/mm6628a1.htm?s_cid=mm6628a1_w

²⁶⁵ Everytown for Gun Safety. Guns and Violence Against Women: America's Uniquely Lethal Domestic Violence Problem, 4. Retrieved from <https://everytownresearch.org/documents/2015/04/guns-and-violence-against-women.pdf/>

aided victims.²⁶⁶ House Democrats took a stand against unequal protections, but in the process, left an important piece of legislation that affects vulnerable victims. Even though the House passed their version of the Act, the Republican led Senate must also approve it. Many anti-LGBTQ+ and pro-gun politicians may have reason to vote against this reauthorization, especially with the NRA, which donates hundreds of thousands of dollars to political campaigns, lobbying against its passage. In the House, 33 Republicans voted in favor of VAWA. The effects of failing to reauthorize VAWA in an attempt to expand it are yet to be seen as politicians continue to debate. Closing the boyfriend loophole and increasing protections for transgendered people is imperative.

VAWA supporters in the House stood behind a podium with a large purple sign, stating, “Reauthorize Violence Against Women Act. #VAWA4ALL.” The hashtag, VAWA4ALL, is part of a social media campaign to show support for VAWA to be a more inclusive legislation that does not discriminate against gender identity, race, ethnicity, or marital status, just as the crimes of domestic abuse and sexual assault do not discriminate against whom they victimize.

²⁶⁶ Secretary of Education, Betsy DeVos proposed easing college administration’s responsibilities regarding sexual assaults on campus and allowing accused students to cross examine victims.

Bibliography

Primary

- “A Case of Rape,” San Francisco Chronicle, December 31, 1979. National Clearinghouse on Marital Rape Archive.
- Allen, Woddy. “Dear Friend Letter,” March 1982. National Clearinghouse on Marital Rape Archive.
- Anthony Susan B. Letter to Antoinette Brown Blackwell. (April 22, 1958). Quoted in Ellen DuBois, *Feminism and Suffrage: The Emergence of an Independent Women’s Movement in America 1848-1869*. Ithaca, New York: Cornell University Press, 1978.
- Baker, Jennifer. Quoted in Susan Davis, “House Passes Bill Protecting Domestic Abuse Victims; GOP Split Over Gun Restrictions,” *National Public Radio*, April 4, 2019. <https://www.npr.org/2019/04/04/707685268/violence-against-women-act-gets-tangled-up-in-gun-rights-debate>
- “A Bill” included by Zelda Nordlinger, Letter to NOW Legislative Office, October 10, 1974. National Organization for Women Archive at Radcliff Institute.
- Blackstone, William. *Commentaries on the Laws of England*. 1765. Reprint, Chicago: The University of Chicago Press, 1979.
- Blumstein, Michael. “House Bill Would Permit Wife To Charge Husband With Rape.” *Miami Herald*, May 30, 1980.
- Bowers, Kathleen M. Letter to Laura X. March 12, 1980. National Clearinghouse on Marital Rape Archive.
- Brodsky, Stanley L. Letter to Mary Ann Largen, March 18, 1974. National Organization for Women Archive at Radcliff Institute.
- Mr. Burnett. Quoted in Elizabeth Cady Stanton, Susan Brownell Anthony, and Matilda Joslyn Gage, *History of Woman Suffrage*, 2nd ed. Rochester, NY: Charles Mann, 1889.
- Burt, Charles. Quoted in Timothy Kenny, “Man Found Innocent of Raping Wife,” *Nashhua Telegraph*. December 28, 1978.
- Burt, Charles. Quoted in Cynthia Gorney, “The Rideouts: Cased Closed, Issue Open,” *The Washington Post*, December 29, 1978.
- Carrier, Robert. Quoted in “Marital Rape: Rep. Michael Causes Stir,” *Maine Times*, May 25, 1985.

- Center for Disease Control and Prevention. Prevalence and Characteristics of Sexual Violence, Stalking, and Intimate Partner Violence Victimization — National Intimate Partner and Sexual Violence Survey, United States, 2011. Retrieved from <https://www.cdc.gov/mmwr/preview/mmwrhtml/ss6308a1.htm#Table3>
- Center for Disease Control and Prevention. Racial and Ethnic Differences in Homicides of Adult Women and the Role of Intimate Partner Violence — United States, 2003–2014. Retrieved from https://www.cdc.gov/mmwr/volumes/66/wr/mm6628a1.htm?s_cid=mm6628a1_w
- “Consent Agreement” Montana State Legislators, 1980. National Clearinghouse on Marital a Rape Archive.
- Doyle, Richard F. Quoted in Conservapedia. “Richard Doyle.” Conservapedia. n.d. https://www.conservapedia.com/Richard_Doyle
- Doyle, Richard F. “Anti-Male.” *St. Paul Pioneer Press* March 25, 1980. National Clearinghouse on Marital Rape Archive
- Drucker, Dennis. Letter to Laura X, January 16, 1982. National Clearinghouse on Marital Rape Archive.
- Everytown for Gun Safety. Guns and Violence Against Women: America’s Uniquely Lethal Domestic Violence Problem, 4. Retrieved from <https://everytownresearch.org/documents/2015/04/guns-and-violence-against-women.pdf/>
- “Fourteenth Amendment,” Legal Information Institute. <https://www.law.cornell.edu/constitution/Amendmentxiv>
- Goldstein, Sidney E. “The Family as a Dynamic Factor in American Society.” *Living* 2, no. 1 (1940): 8-11.
- Gortmaker, Gary. Quoted in Timothy Kenny, “Man Found Innocent of Raping Wife,” *Nashhua Telegraph*. December 28, 1978.
- Hale, Matthew. *The History of the Pleas of the Crown*. Quoted in Thomas Walter Williams, *The Whole Law Relative to the Duty and Office of a Justice of the Peace*, 2nd ed. London: Printed for G.G.J. & J. Robinson, and C. & G. Kearsley, 1808.
- Kenny, Timothy. “Man Found Innocent of Raping Wife,” *Nashhua Telegraph*. December 28, 1978.
- Largen, Mary Ann. Letter to New Rape Task Force Members, January 23, 1974. National Organization for Women Archive at Radcliff Institute.

- Largen, Mary Ann. Letter to Wilma Scott Heide. January 28, 1974. National Organization for Women Archive at Radcliff Institute.
- McClellan, Bill. "Lawmakers Resurrect Marital Rape Issue." *St. Louis Post Dispatch*. January 26, 1987. National Clearinghouse on Marital Rape Archive.
- Merton v. State*. 500 So. 2d 1301 (1986).
- Moynihan, Daniel P. *The Negro Family. The Case for National Action*, 1965.
- National Center on Women and Family Law, "Marital Rape Exemption Packet" n.d. National Clearinghouse on Marital Rape Archive.
- National Organization for Women, "Proposals," 1974. National Organization for Women Archive at Radcliff Institute.
- Nodelman, George "If A Husband Rapes His Wife: To the Editor," *New York Times*. January 11, 1979.
- Nordlinger, Zelda. Letter to NOW Legislative Office, October 10, 1974. National Organization for Women Archive at Radcliff Institute.
- People v. Brown* 632 P.2d 1025 (1981), Answer Brief, National Clearinghouse on Marital Rape Archive.
- People v. Liberta*, 64 NY 2d (1984).
- People v. Rincon-Pineda* 14 Cal.3d 864, 1975.
- Pyron, Amanda. Quoted in Kate Thayer, "The Violence Against Women Act Has Expired. Advocates Say That Sends a Dangerous Message and are Pushing for Permanent Protections." *Chicago Tribune*. February 21, 2019.
<https://www.chicagotribune.com/lifestyles/ct-life-violence-against-women-act-expired-20190220-story.html>
- "Report of District of Columbia Task Force on Rape." Reprinted in in Leroy G. Shultz eds. *Rape Victimology*. Springfield, Illinois: Charles C. Thomas Publisher, 1975.
- "Richard F. Doyle, MRA." National Coalition for Men, n.d., <https://ncfm.org/advisor-board/richard-f-doyle/>
- Rideout, Greta. Quoted in *Virgin or Vamp: How the Press Covers Sex Crimes*. New York, NY. Oxford University Press, 1992.

United States v. Bryant, 137 U.S.App.D.C., quoted in “Report of District of Columbia Task Force on Rape” in Leroy G. Shultz eds. *Rape Victimology*, (Springfield, Illinois: Charles C. Thomas Publisher, 1975)

Unknown Activist. n.d. National Center for Women and Family Law Archive at Radcliff Institute.

San Francisco Recorder, “Domestic Violence Counseling Proposed” 1979.

Shulman, Joanne. “Summary of 1981 Developments in Marital Rape Litigation,” December 10, 1981. National Clearinghouse on Marital Rape Archive.

Stanton, Elizabeth Cady. Letter to Gerit Smith 1-3 (Jan. 5, 1851) (on file with author; Elizabeth Cady Stanton Papers, Library of Congress). Quoted in, Jill Elaine Hasday "Contest and Consent: A Legal History of Marital Rape." *California Law Review* 88, no. 5 (2000): 1373-1506.

Stone, Lucy and Henry Blackwell. Quoted in Howard Zinn and Anthony Arnove eds., *Voices of a People's History of the United States*, 2nd ed. New York: Seven Stories Press, 2009.

Special Committee on Judiciary, “Committee Report” 1982. National Clearinghouse on Marital Rape Archive.

“Specializing in Forensic Evaluations and Expert Testimony.” Walker and Associates.
<http://www.drloreewalker.com/walker-associates/>

Mr. Ta, Letter to the National Clearinghouse on Marital and Date Rape. n.d. National Clearinghouse on Marital Rape Archive.

Walker, Lenore. Letter to Laura X, 1980. National Clearinghouse on Marital Rape Archive.

X, Laura. Quoted in Siobhan Elliot and Anastasia Rego, “Introduction” in “Accomplishing the Impossible: An Advocate’s Notes From the Successful Campaign to Make Marital and Date Rape a Crime in All 50 U.S. States and Other Countries,” *Violence Against Women* 5, no. 9: (1999), 1064–1081

X, Laura. “Marital Rape Clearinghouse,” *Off Our Backs*, 11 no. 3, (1981), 28.

Secondary

Abbott, Elizabeth. *History of Marriage*. Toronto: Penguin Canada, 2010.

Allison, Julie and Lawrence S. Wrightsman. *Rape: The Misunderstood Crime*. Newbury Park, CA. Sage Publications, 1993.

- Benedict, Helen. *Virgin or Vamp: How the Press Covers Sex Crimes*. New York: Oxford University Press, 1992.
- Bevacqua, Maria. *Rape on the Public Agenda*. Boston: Northeastern University Press, 2000.
- Braukman, Stacy Lorraine and Michael A. Ross, "Married Women's Property and Male Coercion: United States Courts and the Privy Examination." *Journal of Women's History*, 12, no. 2 (2002): 57-80.
- Brownmiller, Susan. *Against Our Will: Men, Women, and Rape*. New York: Simon and Schuster, 1975.
- Bumiller, Kristin. *In An Abusive State: How Neoliberalism Appropriated the Feminist Movement Against Sexual Violence*. Durham, North Carolina: Duke University Press, 2008.
- Byrne, Brian Patrick. "These 13 States Still Make Exceptions For Marital Rape." *Vocative*. July 28, 2015. <https://www.vocativ.com/215942/these-13-states-still-make-exceptions-for-marital-rape/index.html>
- Coontz, Stephanie. *Marriage, a History*. New York, New York: Viking, 2005).
- Cuklanz, Lisa M. *Rape on Trial: How the Mass Media Construct Legal Reform and Social Change*. Pennsylvania: University of Pennsylvania Press, 1996.
- DeLaMothe, Cassandra. "Liberta Revisited: A Call to Repeal the Marital Exemption for All Sex Offenses in New York's Penal Law," *Fordham Urban Law Journal*, 23, no. 3 (1996): 857-894.
- "Developments in the Law: Legal Responses to Domestic Violence." *Harvard Law Review* 106, No. 7 (1993): 1498-1620.
- DuBois, Ellen. *Feminism and Suffrage: The Emergence of an Independent Women's Movement in America 1848-1869*. Ithaca, New York: Cornell University Press, 1978.
- Dudden, Faye E. *Fighting Chance*. New York: Oxford University Press, 2011.
- Duerst-Lahti, Georgia. "The Government's Role In Building the Women's Movement." *Political Science Quarterly*, 104, no. 2 (1989): 249-268.
- Eskow, Lisa. "The Ultimate Weapon?: Demythologizing Spousal Rape and Reconceptualizing Its Prosecution." *Stanford Law Review*, 48, no. 3 (1996): 677-709.
- Elliot, Siobhan and Anastasia Rego, "Accomplishing the Impossible: An Advocate's Notes From the Successful Campaign to Make Marital and Date Rape a Crime in All 50 U.S. States and Other Countries," *Violence Against Women* 5, no. 9 (1999): 1064-1081.

- Estrich, Susan. *Real Rape*. Cambridge, MA: Harvard University Press. 1987.
- Faludi, Susan. *Backlash: The Undeclared War Against American Women*. 1991. Reprint, New York: Three Rivers Press, 2006.
- “Feminist Chronicles- 1985,” Feminist Majority Foundation.
<http://www.feminist.org/research/chronicles/fc1985.html>
- Finkelhor, David and Kersti Yllo, *License to Rape: Sexual Abuse of Wives*. New York: The Free Press, 1987.
- Flexner, Eleanor. *Century of Struggle: The Women's Rights Movement in the United States*. Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 1959.
- Glasgow, Jan. "The Marital Rape Exemption: Legal Sanction of Spouse Abuse," *Journal of Family Law* 18, no. 3 (1979-1980): 565-586.
- Goldin, Claudia. “Female Labor Participation: The Origin of Black and White Differences, 1870 and 1880.” *The Journal of Economic History* 31, no 1 (1977): 87-108.
- Harrison, Cynthia E. "A "New Frontier" for Women: The Public Policy of the Kennedy Administration." *The Journal of American History* 67, no. 3 (1980): 630-646.
- Hartley, Carolyn C. and Roxann Ryan. “Prosecution Strategies in Domestic Violence Felonies: Telling the Story of Domestic Violence, Executive Summary,” *National Institute of Justice of the Office of Justice Programs, U.S. Department of Justice*. 1998.
- Hasday, Jill Elaine. “Contest and Consent: A Legal History of Marital Rape,” *California Law Review* 58, no. 5 (2000): 1373-1506.
- Hoff, Joan. “*Law, Gender, and Injustice* (1991). Quoted in Sandra Day O'Connor,. "The Legal Status of Women: The Journey toward Equality." *Journal of Law and Religion* 15, no. 1/2 (2000): 29-36.
- Hecht Schafran, Lynn and Jillian Weinberger, ““Impressive Progress Alongside Persistent Problems””: Rape Law, Policy and Practice in the United States.” in *International Approaches to Rape*, ed. Nicole Westmarland and Geetanjali Gangoli. Great Britain: Bristol University Press, 2011.
- Kessler-Harris, Alice. *Women Have Always Worked*. Urbana, Illinois: University of Illinois Press, 2018.
- Kimmel, Michael S. *Manhood in America*. New York: Oxford University Press, 2006.
- Kuersten, Ashlyn K. *Women and the Law: Leaders, Cases, and Documents*. California: ABC-CLIO, 2003.

- Kupers, Terry A. "Toxic Masculinity as a Barrier to Mental Health Treatment in Prison." *Journal of Clinical Psychology* 61, no. 6 (2005): 713-724.
- Laslett, Barbara and Johanna Brenner. "Gender and Social Reproduction: Historical Perspectives." *Annual Review of Sociology* 15 (1985): 381-404.
- Porter, Roy. "Rape- Does it have a Historical Meaning?" in *Rape*, eds. Sylvana Tomaselli and Roy Porter. New York, NY: Basil Blackwell, 1986.
- Reed Harris, Lucy. "Towards a Consent Standard in the Law." *The University of Chicago Law Review* 43, no. 3 (1976): 613-645.
- Russell, Diana. *Rape in Marriage*. 2nd ed. Bloomington: Indiana University Press, 1990.
- Ryan, Rebecca M. "The Sex Right: A Legal History of the Marital Rape Exemption." *Law & Social Inquiry* 20, no. 4 (1995): 941-1001.
- Scarborough, Cathy. "Conceptualizing Black Women's Employment Experiences." *The Yale Law Journal* 98, no. 7 (1989): 1457-1478.
- Schneider, Elizabeth M. "The Violence of Privacy," *Connecticut Law Review* 23, no. 4 (1991): 973-999.
- Schweninger, Loren. "The Evolution of Divorce Laws." In *Families in Crisis in the Old South: Divorce, Slavery, and the Law*. Chapel Hill: NC, University of North Carolina Press, 2012.
- Scott, Joan. "The Evidence of Experience." *Critical Inquiry* 17, no. 4 (1991): 73-797.
- Siegel, Reva B. "'The Rule of Love': Wife Beating as Prerogative and Privacy." *The Yale Law Journal* 105, no. 8 (1996): 2117-2207.
- Spaights, Ernest and Ann Whitaker. "Black Women in the Workforce: A New Look at an Old Problem." *Journal of Black Studies* 25, no. 3 (1995): 283-296.
- Strube, Michael and Linda S. Barbour. "Factors Related to the Decision to Leave an Abusive Relationship." *Journal of Marriage and Family* 46, no. 4 (1984): 837-844.
- Temkin, Jennifer. "*Women, Rape and Law Reform*" in *Rape*, ed. Sylvana Tomaselli and Roy Porter. New York, NY: Basil Blackwell, 1986.
- Thaller, Jonel, Jill Theresa Messing, and Bonnie E. Carlson. "Intimate Partner Abuse." In *Handbook of Social Work Practice with Vulnerable and Resilient Populations*, edited Alex Gitterman. New York: Columbia University Press, 2014.
- Todd, Barbara. "Separate Spheres: Woman's Place in Nineteenth-Century America" *Canadian Review of American Studies* 16, no. 3 (1985): 329-337.

Tomaselli, Sylvana and Roy Porter, *Rape*. New York, NY: Basil Blackwell, 1986.

Weintraub Siegel, Lalenya. "The Marital Rape Exemption: Evolution to Extinction." *Cleveland State Law Review*, 43, (1995): 351-378.

Williams, Kristen M. *The Prosecution of Sexual Assaults*, Publication no. 7, PROMIS Research Project, Washington D.C., Institute for Law and Social Research, 1978.
<https://www.ncjrs.gov/pdffiles1/Digitization/48438NCJRS.pdf>

Wolfe, Alan. *An Intellectual in Public*. Ann Arbor: University of Michigan Press, 2003.

Wright, Maureen. *Elizabeth Wolstenholme Elmy: The Biography of an Insurgent Woman*. Manchester, UK: Manchester University Press, 2011.