

1998

Predicting the Effect of Italy's Long-Awaited Rape Law Reform on "The Land of Machismo"

Amy J. Everhart

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Amy J. Everhart, Predicting the Effect of Italy's Long-Awaited Rape Law Reform on "The Land of Machismo", 31 *Vanderbilt Law Review* 671 (2021)

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Predicting the Effect of Italy's Long-Awaited Rape Law Reform on "The Land of Machismo"

ABSTRACT

In 1996, the Italian Parliament enacted a new rape law, replacing a law written in 1936 under the direction of Fascist-era leader Benito Mussolini. While the old law classified rape as a crime against public morality, the new law declares it a crime against the person. That it took sixty years to reform the law is a reflection of Italy's long history of subordinating its women. That the law has finally been reformed is a reflection that those women have united to change that attitude. This Note discusses the history of the rape law in Italy and the role of Italian women in forcing its reform. The Note begins by describing the history of women in Italy, from the pre-fascist era to the present. It then discusses the evolution of the rape law itself, from its conception to its 1996 revision. The Note next conducts a legal analysis of the current rape law. It then considers how the new law will affect the men and women in a country that has traditionally preferred its women scantily clad on magazine covers rather than power-dressed in Parliament. The Note concludes that while the new rape law will be successful in drawing attention to the problem of rape in particular and the recognition of women as equal to men in general, Italian women must persevere in their efforts to change their country's deeply entrenched attitudes toward women.

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I. INTRODUCTION

Alessandra Mussolini is the granddaughter of World War Two-era Fascist Italian leader Benito Mussolini.¹ She is also a prominent member of the Italian Parliament,² where she and her female parliamentary deputies recently played a role in reforming Italy's outdated and controversial rape law, a law written under the influence of Benito Mussolini himself in 1936. The old law declared rape a crime against public morality.³ The new law,⁴ passed in February 1996, reclassifies rape as a crime against the person. For Alessandra Mussolini and other Italian women, the reclassification, accompanied by other significant changes in the law, symbolizes the recognition of Italian women as equal to men and places rape on the same level as other violent crimes.

But has enough really changed in Italy from the time of Grandfather Mussolini to the time of Granddaughter Mussolini to ensure the success of the new law? Has the relatively young Italian women's movement succeeded in erasing the image of the male Italian lover who stands on street corners and cajoles female

1. See Richard Owen, *Blood Lines*, TIMES (London), May 17, 1997, available in LEXIS, News Library, CURNWS File [hereinafter Owen, *Blood Lines*].

2. See *id.* At least one reporter has questioned Alessandra Mussolini's political ideals as inconsistent. Although she is fiercely loyal to the memory of her grandfather, Benito Mussolini, and has taken up the cause of the far right as a member of the post-fascist *Alleanza Nazionale* political party, she is a champion of women's rights and had a prominent role in forcing the passage of the new rape law. She has also campaigned for maternity benefits, pensions for housewives, and additional state-supported women's refuges. *Id.*

3. See *infra* Part II.B.1.

4. See *infra* Part II.B.3.

passersby?⁵ Has it erased the images of female anatomy spread across Italian newsstands?⁶

Alessandra Mussolini and her modern Italian sisters no longer play the purely maternal role that her grandfather prescribed for Italian women. Benito Mussolini probably would not recognize the Italian woman of the 1990s, because she has undergone several transformations since his time, from her expansion into a dual role⁷ to her eager participation in the women's movement that gathered and grew around such issues as rape reform. How would Mussolini react to this transformed woman and her achievements, including an overhaul of his rape law? More importantly, how are the men of modern Italy reacting?

Some suggest a backlash.⁸ "Murders of Italian Women Seen as Price for Liberation," screamed the headlines only a week after the new rape law was enacted in February.⁹ "Italy stained with blood!"¹⁰ Many feminists argue they have not gone too far in their struggle to change "a country used to Latin traditions of male dominance and pride."¹¹ They have simply brought the crimes out into the open.

While the Italian women's movement has done much for the reform of the rape law, the rape reform movement has done much to shape the women's movement and the state of feminism in Italy as well. Italian women have rallied around a common cause, and that cause has urged the political participation of a group traditionally expected to remain silent and stay in the corner.

5. Reporter Robert Graham wrote recently:

I once commissioned a carpenter in Rome to make the frame for a double bed. The design was agreed on, but I decided to add a detail and provide a set of rollers for the under-carriage. "Rollers!" exclaimed the carpenter with a mixture of indignation and amazement. . . . "No Italian would use rollers! Why, with an Italian lover on such a bed, it would be in the next room in no time."

Robert Graham, *Sex and the Birth Deficit—Something Profound Is Happening to Italian Sexual Mores*, FIN. TIMES, July 31, 1995, at 7, available in LEXIS, News Library, ARCNWS File.

6. See *id.*

7. See *infra* Part II.A.3.

8. Richard Owen, *Murders of Italian Women Seen as Price for Liberation*, TIMES (London), Feb. 14, 1996, available in LEXIS, News Library, ARCNWS File [hereinafter Owen, *Murders*].

9. *Id.*

10. *Id.* A map captioned "Italy stained with blood!" showed the scenes of eight murders of women, all of which took place in the week after the rape law passed. *Id.* Although the motives in the cases ranged from a love affair gone wrong to drugs, Italians still questioned whether the growing independence of women was causing a more violent society. *Id.*

11. *Id.*

This Note will analyze how successful the rape reform movement has been as an instrument for Italian women to establish and affirm their political equality in a country that has traditionally stifled their voices. Part II provides a historical analysis of the Italian woman and her role in the evolution of the rape law. Part III analyzes the current rape law. Part IV predicts the law's consequences, including an analysis of its effect on violence against women, its effect on Italian politics, and alternative approaches to reducing rape in Italy.

II. THE ITALIAN RAPE LAW AND THE WOMEN WHO FORCED ITS REVISION: A HISTORICAL ANALYSIS

From 1936 to 1996, Italy and its women¹² were governed by the same rape law. Although the law remained solid and inflexible for those sixty years, Italy's women were transformed during that time. When the law first took effect, Fascist leader Benito Mussolini controlled Italy, its laws, and its women. By 1996, Italian women were not only refusing to abide by the law, but they were playing a role in changing it, represented in Parliament by members of their own sex, although in numbers not nearly equal to those of men. That year, the conflict between an ancient law and a fluid people finally erupted, but the history leading to that point is rich and complex.

A. *The Evolution of the Italian Woman: From Pre-Mussolini to the Rape Reform Movement*

Italian women share a rich history—a history that began long before Benito Mussolini announced that women existed solely to give birth to and raise soldiers for his armies.¹³ In its relatively short existence as a unified country, Italy and its political atmosphere have been molded by a people eager to take active roles in its creation. From the socialism of the late nineteenth and early twentieth centuries to the fascism of the Mussolini era,

12. The Author recognizes that rape takes victims in all sexes, races, and creeds; however, because this Note analyzes the effect of Italy's rape law reform efforts on the Italian women's movement, it will focus mainly on the problem of rape as it has affected and continues to affect Italy's women, as well as women in general. For more information on the effects of rape on male victims, see Arthur Kaufman *et al.*, *Male Rape Victims: Noninstitutionalized Assault*, 137 AM. J. PSYCHIATRY 221, 223 (1980). For further information on rape and race, see Kristin Bumiller, *Rape as a Legal Symbol: An Essay on Sexual Violence and Racism*, 42 U. MIAMI L. REV. 75 (1987).

13. See LUCIA CHIAVOLA BIRNBAUM, *FEMINISM IN ITALY* 3 (1986).

from the resistance that followed to the recent movement of the new left, Italian women have challenged the paternalistic oppression embodied in such cultural regimes as the Catholic Church, and in such socioeconomic forces as depression and war.

1. Pre-Fascist Italy

Although modern Italy was unified only as recently as 1870,¹⁴ traces of ancient cultures have influenced its recent history. Italians remember and celebrate female deities worshipped in ancient times, such as the earth mother and Greek and Roman goddesses,¹⁵ all of whom preceded the male god of Judeochristianity.¹⁶ After the establishment of Christianity, the Madonna and female saints were worshipped and equated with God.¹⁷ The Madonna and the female deities were early examples of a dual image reflecting the Italian woman of the first half of the twentieth century. They evoked power, but that power was derived from passion and sensuality, traits traditionally associated with women. Consequently, women in classical times did not achieve dominance as a consequence of the worship of these female deities.¹⁸

During the nineteenth century, the Napoleonic Code¹⁹ placed Italian women under men's guardianship, ordering women to be passed from fathers to husbands as property.²⁰ A woman's virginity was her dowry for marriage, and motherhood was her prescribed destination in life.²¹ Women did not have the right to

14. *See id.* at 267.

15. *Id.* at 4.

16. *See id.* The female deities are the subject of contemporary debate among feminists and non-feminists, who differ over whether the matriarchal power represented by the female deities evidences female dominance. *See id.* at 5.

17. *See id.*

18. *See id.* at 10. As classical scholar Sarah B. Pomeroy analogized, "Were women dominant in sixteenth century England because Elizabeth I was queen?" *Id.* at 5.

19. The Napoleonic Code was the model for most European legislation in the nineteenth century. *See id.* at 13.

20. *See id.*

21. *See id.* One woman who challenged these traditional notions of women's sole role as mother was Anna Maria Mozzoni, referred to by one author as Italy's "feminist socialist foremother." *Id.* at 19. As early as 1864, Mozzoni asked for the emancipation of women, advocating the right of divorce and helping to form the socialist party in Italy. *See id.* "[S]he pulled the veil away from the idealistic middle-class view of the Italian family in which woman was an angel and the husband a priest," and asserted that "[m]en socialists who expressed surprise that women could demand the vote . . . wanted women to remain 'happy Vestal Virgins, forever at the stove with cooking stains on their white robes.'" *Id.* at 20. Contemporary Italian feminists look to Mozzoni's voice for such inspirations as

vote and would not secure it until 1945.²² Nevertheless, the slow industrialization and economic depression that changed Italy in the latter part of the nineteenth century changed the lives of Italian women as well.²³ Many of them went to work in the textile and agrarian industries, bringing their babies with them.²⁴ Many of them rioted for food and demonstrated in the face of an 1891 papal announcement that enjoined women from working outside the home.²⁵

During World War One, women continued to assert their political presence by demonstrating against the war, and after the war they vocally opposed the returning soldiers' reoccupation of factories and fields.²⁶ It was against this backdrop that Benito Mussolini appeared, immersing Italy into the fascist era and sending its women "into the corner."²⁷

2. The Fascist Era: Women in the Corner

As in pre-fascist times, it was motherhood that defined the separation between the sexes in fascist Italy.²⁸ Italians considered women a gift given by God for the sole purposes of sexual intercourse and reproduction.²⁹ They believed God had assigned the task of motherhood exclusively to women.³⁰ Men, on the contrary, were assigned responsibility for the family as a group.³¹ Men were in charge of earning money to support the family. This created an image of male authority, which extended to authority over female sexuality.³² Women were essentially

the following: "You will not have any freedom that you have not defended every day and in every moment." *Id.* at 21.

22. *See id.* at 15.

23. *See id.* at 15-16.

24. *See id.* at 16.

25. *See id.*

26. *See id.* at 23-25. Before demonstrating against the first world war, Italian women had vocally opposed other war efforts, beginning as early as the 1890s when Italy invaded Abyssinia. *See id.* at 23.

27. *See infra* note 30.

28. *See* Franca Bimbi, *Three Generations of Women: Transformations of Female Identity Models in Italy*, in *VISIONS AND REVISIONS: WOMEN IN ITALIAN CULTURE* 149, 154 (Mirna Cicioni & Nicole Prunster eds., 1993). One of the slogans fascists used to glorify war in the 1930s reflected this: "War is to man what motherhood is to woman." BIRNBAUM, *supra* note 13, at 34.

29. *See* Bimbi, *supra* note 28, at 154. "The woman is 'given' for the marriage alliance between families; her dowry marks the importance of the fact that she gives herself to her new family. . . . [A] woman is a body given for the purpose of motherhood." *Id.*

30. *See id.* This included not only childbearing, but also feeding, clothing, early upbringing, and healthcare. *See id.*

31. *See id.*

32. *See id.* at 156.

servants, whose place, as one Italian woman recalled, "was in a corner."³³

Two influences, among others, combined to create these disparate definitions of men and women: Catholicism and Fascism.³⁴ Under the teachings of Catholicism, which even today heavily influence social morality in Italy, man is the image of God and woman is the auxiliary of man. A woman uses this auxiliary function to reproduce children.³⁵ Pope Pius X reaffirmed the subordination doctrine in 1909, defining a woman's duty as creating and nurturing her family.³⁶

The fascists in pre-World War Two Italy also supported the idea of women's traditional role.³⁷ Those fascists implemented a policy that restricted women to tasks of the home, dismissing women from professional and school employment,³⁸ work "thought to stimulate independent ideas in women and to discourage them from bearing children."³⁹ In restricting women's roles, the fascists hoped for the "reinvigoration and increase of the race."⁴⁰ To further this campaign, Mussolini set penal sanctions for abortion and the advocacy of birth control and imposed taxes for "unjustified celibacy" and childless marriages.⁴¹ He declared that an ideal family consisted of twelve children,

33. *Id.* at 153. One woman recalled:

We women sat on the edge of the hearth or in a corner, ready to serve the men. If you weren't quick about it, you got into trouble. They didn't move a finger, you know. And the kids had to be fed first because the menfolk wanted to eat in peace. My father-in-law sat at the head of the table with the youngest and the eldest son on either side, then came the third son on one side and on the other side my husband. *My place was in a corner.*

Id. (emphasis added) (quoting Franca Bimbi, *In Famiglia Attraverso Lo Specchio. Età, Generazioni, Identità*, in *STUTTURE E STRATEGIE DELLA VITA QUOTIDIANA* 385 (Franca Bimbi & V. Capocchi eds., 1986).

34. See BIRNBAUM, *supra* note 13, at 34.

35. See *id.* at 34-35. According to the teachings of Catholicism, God formed Eve from Adam's rib for the purposes of procreation. Eve caused Adam's fall when she was tempted by the desire to know good and evil. Eve is the inferior of the couple. See *id.*; see also Anne-Marie Leath Storey, Note, *An Analysis of the Doctrines and Goals of Feminist Legal Theory and Their Constitutional Implications*, 19 VT. L. REV. 137, 140 n.30 (1994) (citing Genesis 2:18 (King James)). The Bible also indicates elsewhere that, although man was formed in God's image, woman was formed in man's image and is therefore inferior. See *id.* (citing I Corinthians 11:7-9).

36. See BIRNBAUM, *supra* note 13, at 35.

37. See *id.* Mussolini himself believed women to be "incorrigibly frivolous, uncreative, and unintellectual." *Id.* at 37.

38. See *id.* at 36.

39. *Id.*

40. *Id.* at 37.

41. *Id.*

which would ensure an army large enough to fight successful battles in war.⁴²

Some authors have suggested that Italian women did not resist fascism.⁴³ Most women's groups of the time focused on spreading the Catholic faith and promoting familial activities.⁴⁴ Other authors, however, argue that women did resist, but in subtle ways. For instance, rather than doubling the population, Italian women responded to Mussolini's orders by allowing the birth rate to fall.⁴⁵ Sicilian women's groups were especially vocal, engaging in protests for food and work and often imprisoned for seditious behavior. They especially opposed the male resort to violence.⁴⁶ Whether or not resistance existed in the years before the war, it became full-blown during World War Two.

3. World War Two: Resistance and a Dual Role

Sometimes called "the first feminism," the Italian women's resistance to fascism in World War Two involved women of all classes.⁴⁷ This resistance occurred in both subtle and overt ways, from women's refusal to report to the Nazis to their acting as spies and soldiers.⁴⁸

A Milan women's group formed in 1943 to fight for the emancipation of both Italy and its women. The group's efforts grew into massive demonstrations against fascism and Nazi massacres. Many of the demonstrators, who included women from all facets of Italian society, were captured and raped, tortured, or killed.⁴⁹ Women from outside Milan also engaged in antifascism activities, from participating in sabotage to distributing provisions to soldiers fighting for liberation.⁵⁰ During the war, Italian women not only denounced the German effort,

42. *See id.*

43. *See id.* at 37-38. One study suggested that Italian women were actually attracted to fascist male figures. *See id.*

44. *See id.* The theme of a national women's conference in 1923 was "the restoration of the family and family education for the greater good of the nation." *Id.* Many see a particular incident in 1935 as evidence of women's conformity. Mussolini asked women to donate their wedding rings for war expenses. *See id.* at 39. Many of these women, however, purchased new rings immediately thereafter. *See id.*

45. *See id.* at 38. The birth rate continues to fall. *See id.*; *see also* Graham, *supra* note 5, at 7 (analyzing the current birth deficit in Italy, which is accelerating, having fallen to 9.3 per thousand in 1994 as compared to 9.9 per thousand in 1992).

46. *See* BIRNBAUM, *supra* note 13, at 39-40.

47. *Id.* at 45.

48. *See id.* at 46-47.

49. *See id.*

50. *See id.* at 47.

but also built democratic institutions.⁵¹ In 1945, they finally won the right to vote.⁵²

Women also had a role in producing the new Italian constitution,⁵³ which took effect on January 1, 1948, and contains two articles of special interest to women. Article 3 grants all citizens equal social and legal status regardless of distinctions based on sex, among other classifications.⁵⁴ Article 37 provides for equal rights and wages in the work force regardless of sex, but also stipulates that work conditions must not prevent women from fulfilling "their essential family duties."⁵⁵ The Constitution also grants voting rights to women⁵⁶ and makes them eligible for public office⁵⁷ and membership in the Chamber

51. *See id.*

52. *See* GIBBERT H. FLANZ, *COMPARATIVE WOMEN'S RIGHTS AND POLITICAL PARTICIPATION IN EUROPE* 212 (1983). In the first municipal elections in 1945, approximately 81% of all eligible women voted. *See id.*

53. Of the 556 members of the elected Constituent Assembly that approved the new constitution on December 22, 1947, 21 were women. *See id.* at 213.

54. *Id.* (construing COST. [Constitution] art. 3 (It.)). The first paragraph of Article 3 states:

All citizens are invested with equal social status and are equal before the law, without distinction as to sex, race, language, religion, political opinions and personal and social conditions.

Id. Article 3 also holds the state responsible for such inequalities, requiring in the second paragraph:

It is the responsibility of the Republic to remove all obstacles of an economic and social nature which, by limiting the freedom and equality of citizens, prevent the full development of the individual and the participation of all workers in the political, economic and social organization of the country.

Id.

55. *Id.* Article 37 reads:

Female labor enjoys equal rights and the same wages for the same work as male labor. Conditions of work must make it possible for them to fulfill their essential family duties and provide for the adequate protection of mothers and children. The law prescribes the minimum age for paid labor. The Republic prescribes special measures for safeguarding juvenile labor and guarantees equal pay for equal work.

Id. at 213-14 (quoting COST. art. 37). For further discussion of Article 37 and the equality of Italian women in the workplace, see generally Paolo Wright-Carozza, *Organic Goods: Legal Understandings of Work, Parenthood, and Gender Equality in Comparative Perspective*, 81 CAL. L. REV. 531 (1993).

56. *See* FLANZ, *supra* note 52, at 214. Article 48 grants voting rights to all citizens over 21. *Id.* (citing COST. art. 48).

57. *See id.* Article 51 (1) states: "[A]ll citizens of either sex are eligible for public office and for elective positions on conditions of equality, according to the requisites established by law." *Id.*

of Deputies.⁵⁸ Despite these gains, however, the Constitution was not written in completely gender-neutral language.⁵⁹

The women involved in the resistance embodied a combination of the traditional domesticity of the fascist era and a new self-confidence.⁶⁰ This "dual role" signified a possibility that women could combine work, study, and family and assume more than the single role of motherhood.⁶¹ As the birth rate declined, women found themselves with more freedom to work. With the combination of work and family came the responsibility of juggling the two, and this added responsibility gave women even more independence.⁶²

Through this dual role, women "ma[d]e explicit in the public sphere the social value of expressive abilities while simultaneously bringing to private life professional skills and instrumental abilities directed at maintaining balance within the range of their social involvements."⁶³ The "dual role" model was the birth of the modern Italian woman.

It was against this backdrop that the women who would later establish the Italian women's movement were born. Women growing up in the 1950s and 1960s witnessed their mothers smoke, travel, walk alone in public, and question sexual mores.⁶⁴ They witnessed the passage of such legislation as that enacted in 1950 to protect working women during pregnancy.⁶⁵ Simultaneously, however, women were becoming marginalized—evidenced by such factors as decreases in women's involvement in Parliament and in the number of female factory workers—leading to an overall lack of female representation in the political process.⁶⁶ Political parties that claimed to represent women's

58. See *id.* Article 56 states: "[A]ll persons who have reached the age of twenty-five years are eligible for membership in the Chamber of Deputies." *Id.*

59. The new Constitution avoided using the term "everyone," which, under the rules of grammar, would have required it to be followed by the word "his." The Constitution, however, refers to "he" several times, such as in Article 84, which describes powers of the President. These uses are most likely linguistic problems rather than examples of gender discrimination. See *id.* at 214 n.1.

60. See BIRNBAUM, *supra* note 13, at 46.

61. Bimbi, *supra* note 28, at 157.

62. See *id.*

63. *Id.* at 159.

64. See Luisa Passerini, *The Women's Movement in Italy and the Events of 1968*, in VISIONS AND REVISIONS: WOMEN IN ITALIAN CULTURE, *supra* note 28, at 167, 168-69.

65. See FLANZ, *supra* note 52, at 214. In 1971, this law was amended to provide eight weeks of leave before and twelve weeks after delivery, with 80% of regular pay. See *id.*

66. See Passerini, *supra* note 64, at 169.

interests treated women with paternalism.⁶⁷ This atmosphere led to the solidarity of women and the emergence of their explicit behavior in the late 1960s.⁶⁸

4. 1968: Anti-Institutionalism and the Rise of the Women's Movement

The contemporary women's movement in Italy began in 1968, at the same time the new left was emerging around the world.⁶⁹ The atmosphere in Italy at this time was one of social discontent, indicated by two separate revolts, that of students and that of workers.⁷⁰ Although women were only marginally involved in these movements, the revolutionary atmosphere gave rise all over Italy to the formation of women's collectives, "institutions of participatory democracy" whose common goal was *l'autocoscienze*, or self-knowledge.⁷¹ Another common theme of these collectives was feminist rage, directed toward a multitude of issues, including wages for housewives, feminist creativity, separatism, and abortion.⁷² Most of the groups concentrated on eradicating the subordination of women by rejecting authority. The collectives advocated anti-authoritarianism, anti-institutionalism, and anti-representation.⁷³

It was this idea of anti-institutionalism that prevented feminist groups from uniting to propose a law legalizing abortion

67. See SIDNEY TARROW, *DEMOCRACY AND DISORDER: PROTEST AND POLITICS IN ITALY 1965-1975* 329 (1989). A press release by the Chamber of Labour in March 1966 addressed women first as workers and second as pillars of the family, praising them in a patronizing fashion for their "high moral and civic contributions." It encouraged women to "transcend women's issues and unite with their male comrades in supporting peace and progress" and reminded them of "their responsibility to seek a better life for their families." *Id.* This paternalism of political parties toward groups they claimed to represent was not exclusive to women; it reflected the fascist notion of ordering participation. See *id.*

68. See Passerini, *supra* note 64, at 169.

69. The new left political movement emerged in retaliation against such current events as the Vietnam War and the Soviet Union's invasion of Czechoslovakia. See BIRNBAUM, *supra* note 13, at 80.

70. See Passerini, *supra* note 64, at 175.

71. BIRNBAUM, *supra* note 13, at 81.

72. See *id.* In many demonstrations of the era, feminists carried banners communicating one clear message—rage:

Siamo donne (We are women)
 siamo tante (we are many)
 siamo stufe (we have had it)
 tutte quante (all of us)

Id.

73. See Tamar Pitch, *The Political Use of Laws: The Italian Women's Movement and the Rape Campaign*, 7 *ALSA FORUM* 139, 143 (1983).

in the mid-1970s,⁷⁴ because doing so would have implied (1) recognizing and involving themselves with institutions, (2) legislating for other women, and (3) reducing the issue of abortion to a question of social justice.⁷⁵ Rather than subject themselves to the paternalism of political parties, women involved in the abortion movement chose to maintain their autonomy, rejecting assistance from the new left.⁷⁶

Despite the unwillingness of the women's movement to become involved in abortion legislation, however, it was in these same consciousness-raising groups of the 1970s that the idea of reforming the fascist-era rape law was first considered and eventually expanded to symbolize the state of the relationship between the sexes in Italy.⁷⁷ Any reluctance women's groups demonstrated in recognizing institutions eventually disappeared, as women finally rallied around the movement to reform the rape law. This movement, however, was not without its own internal strife.

5. The 1970s and the 1980s:

The Unification of Women around the Rape Reform Movement

The 1970s and the 1980s reflected a change in the trend of laws providing special protection for women and children.⁷⁸ Many protective measures of the fascist and post-fascist era were repealed in the name of equality.⁷⁹ Despite the reflection of equality in the legislation of the time, however, social attitudes continued to reflect traditional values. Many Italians continued to

74. In 1974, recently established feminist groups demanded the right of abortion free of charge in state hospitals. Although the public swayed in favor of the feminist groups, Parliament did not fully cooperate in legislation enacted in 1978. In practice and in a 1981 referendum, however, it supported these groups' demands. See FREDERIC SPOTTS & THEODORE WIESER, *ITALY: A DIFFICULT DEMOCRACY* 219 (1986).

75. See Pitch, *supra* note 73, at 144-45.

76. See TARROW, *supra* note 67, at 330. A 1975 demonstration for abortion was organized entirely by a coalition of women's groups, without assistance from political parties or unions. Party members were not allowed to carry their own banners, and men were completely excluded from participation in the event. See *id.*

77. See Pitch, *supra* note 73, at 141.

78. See FLANZ, *supra* note 52, at 215.

79. See *id.* For example, a law was repealed that banned women in the construction industry from working on suspension bridges. *Id.* Equal treatment is required in the employment context, with the exception of certain activities in which "by reason of their nature or the context in which they are carried out, the sex of the worker constitutes a determining factor." *Id.* at 216 (quoting Equal Treatment for Men and Women as Regards Employment Act, No. 903, art. 13 (Dec. 9, 1997) (It.)).

believe women were not capable of performing certain jobs, both because of inferior physical strength and a higher record of absenteeism due to maternity leave.⁸⁰

In the political arena, women were slowly gaining ground, earning more seats in the Italian Chamber of Deputies,⁸¹ the European Parliament,⁸² and the civil service.⁸³ By the late 1970s, however, few women had obtained leadership positions in these bodies, and for the most part, political decisions were still largely made by men.⁸⁴

The women's movement chose rape as the next issue on its agenda explicitly for political reasons. It intended the rape reform movement to unite women and bring them "back into the streets."⁸⁵ The rape campaign differed from earlier campaigns of the women's movement, such as the lackluster abortion campaign. The rape campaign involved a penal law, rather than a law dealing with social transformation. "The penal code is the symbolic organizer of the hierarchy of 'goods' which a community deems worth defending and therefore affirming."⁸⁶ The women's movement was attempting to gain recognition of women's worth through the legal recognition of a woman as the injured party at the hands of a rapist.⁸⁷ Even the campaign's leaders asserted the purpose for reforming the rape law was first and foremost to proclaim women equal citizens, not to decrease rape or offer better legal protection to the rape victim.⁸⁸ Regardless of their motives, women for the first time rallied around womanhood, ignoring partisan ties. It was this movement that would eventually motivate the rest of Italy to support the idea of rape reform as well.

80. *See id.*

81. By 1979, the percentage of women in the Italian Chamber of Deputies was 8.1—52 women out of 630 members. *See id.* at 217.

82. The Italian delegation to the European Parliament in 1979 consisted of 13.6% women, or 11 of 81 members, the same ratio as that of Great Britain. France was represented by 22.2% women. The difference in the countries' representation by women was probably due to the fact that, in Italy, only 7.6% of the candidates for positions were women, whereas in France that number was 25%. *See id.*

83. *See id.*

84. *See id.* at 218. "[T]here remains a wide gap between appearances and realities as far as the political roles of women are concerned. . . . [T]he decisions in matters of economics, work and foreign policy are still made by men." *Id.*

85. Pitch, *supra* note 73, at 147.

86. *Id.* at 148.

87. *See id.*

88. *See id.*

6. Recent Events Leading to the Passage of the Current Rape Law

By the late 1980s and the early 1990s, the environment in Italy caused the outrage over rape to extend beyond the women's movement to the general public. An onslaught of brutal rapes led to massive media coverage of the issue. One newspaper told the story of a woman who was raped and beaten by fifteen youths, and who afterward fled 700 miles to Rome after being branded a "slut who asked for what she got" because she wore miniskirts and was "pretty."⁸⁹ A man who repeatedly raped his two daughters over a ten-year period was fined only \$8,000.⁹⁰ Another rape victim was the subject of a public act of contrition, at which the rapist's sister and his girlfriend were present to condemn the victim as a whore.⁹¹

In 1992, 609 sexual assault charges were filed in Italy, despite allegations by women's rights groups that the true number was ten to twenty times higher. The groups contended that victims seldom reported rape because they believed the crime usually went unpunished.⁹² Even The Vatican spoke out against the onslaught of sex crimes: "From this chain of infamous crimes, there emerge disconcerting signs of a decadence that is advancing at the same speed as the degradation of sentiments and the corruption of human nature."⁹³ During the summer of 1995, sociologists warned that the number of violent crimes committed by young groups, known as the "herd instinct" problem, was rising.⁹⁴ Massive media coverage of such anecdotal and statistical evidence and pressure from all facets of Italian society finally led to the passage of a new rape law.

B. *The History of Italy's Rape Law*

Unlike Italian women, Italian rape law did not undergo much change between 1936 and 1996. Italian women began a formal campaign in 1977 to update the law, but struggled for almost two decades before achieving what they hope will prove to be success.

89. Clare Pedrick, *Italian Rape Case Stirs Public Rage*, DALLAS MORNING NEWS, June 15, 1988, at 1C. The victim's mother declared in tears, "One thing is certain. No one will marry my daughter now." *Id.*

90. *See id.*

91. *See id.*

92. *See* Steven Heilbronner, *Lawyer Works to Change Italy's Rape Law*, CHI. TRIB., June 19, 1994, at 5.

93. Bruce Johnston, *International: Italy to Review Rape Laws as Violent Sex Crimes Rise*, DAILY TELEGRAPH, Aug. 17, 1995, at 11, available in 1995 WL 6978799 (quoting the Vatican's official newspaper, L'OSSER VATORE ROMANO).

94. *Id.*

Despite Parliament's efficiency in passing other legislation safeguarding the equality of the sexes,⁹⁵ rape reform legislation stagnated in the midst of political bickering and a lack of consensus among parties.

1. 1936: The Origin of the Controversy

Before February 1996, Italy was governed by a rape law written under the authority of Benito Mussolini,⁹⁶ and thus considered by many to be a product of fascism.⁹⁷ The law took effect in 1931, and despite many reform attempts, did not change for sixty years.⁹⁸

The rape law was originally included in a section of the Italian Penal Code (Code) entitled "Crimes against Public Morality and Decency."⁹⁹ Placement in that section required the rape victim to accuse an offender publicly before the state would prosecute.¹⁰⁰ Rape was the only crime in the Italian Penal Code for which this public accusation was irrevocable.¹⁰¹ The Code's rape provision also distinguished between penetration and other violent sexual acts, with the punishment for violent sexual acts one-third of the punishment term for penetration.¹⁰² A statutory rape provision prohibited sexual acts with minors under age fourteen and with mentally handicapped persons.¹⁰³

95. See Dacia Maraini, *Too Long; Italian Women Still Await a Just Rape Law*, MONTREAL GAZETTE, Aug. 28, 1995, at E3, available in 1995 WL 6978799. Parliament has recently passed legislation regarding the family, divorce, abortion, and equal rights in the workplace. See *id.*

96. Mussolini enlisted Alfredo Rocco, the Fascist minister of justice, to sponsor the Italian Penal Code, commonly called the Rocco Code. See Edward M. Wise, *Introduction to THE ITALIAN PENAL CODE xxx* (Edward M. Wise trans., Fred B. Rothman & Co. 1978) [hereinafter THE CODE]. Rocco's primary goal in sponsoring the creation of a new code was to "make Italy fascist." *Id.* at xxxi.

97. See *id.* at xxi, xxxi. Some Italians argue that despite the intentions of the Code's authors, the Code is not completely fascist. See *id.* at xxxi. After Mussolini was forced from office, many Italians believed the Code's replacement was inevitable. Despite its fascist origin, the Code remains intact today, although the February 1996 rape law amendment demonstrates that the Code does not remain unchanged. See *id.* at xxxi.

98. See *id.* at xxi.

99. *Id.* at 177.

100. See *id.* at 182; see also Tamar Pitch, *Rape Reform in Italy: The Endless Story*, in 4 ITALIAN POLITICS: A REVIEW 162, 165 (Raffaella Y. Nanetti & Raimondo Catanzaro eds., 1990).

101. See Pitch, *supra* note 100, at 165.

102. See THE CODE, *supra* note 99, at 177-78. Punishment for penetration, or *violenza carnale* (carnal violence), was imprisonment for three to ten years. See *id.* at 177.

103. See *id.*

2. The 1970s and the 1980s: Two Decades of Rejected Proposals

Italian women launched the first anti-rape campaign in the late 1970s.¹⁰⁴ At this time, the women's movement was anti-institutional—reluctant to use the criminal justice system to achieve its goals.¹⁰⁵ Not only were women divided over whether to use the criminal justice system, they were also divided over how to organize a delegation to represent them in presenting a rape bill to Parliament.¹⁰⁶ In 1977, a committee was created to study the fascist-era rape law.¹⁰⁷ The committee consisted of members of three political groups: The *Unione Donne Italiane* (Union of Italian Women) (UDI);¹⁰⁸ the *Movimento di Liberazione della Donna* (Women's Liberation Movement) (MLD);¹⁰⁹ and the *Movimento Femminista Romano* (Roman Feminist Movement) (RFM).¹¹⁰ The committee drafted a bill to replace the current rape law, and with the help of other feminist collectives, gathered 300,000 signatures to present the bill to Parliament in 1979.¹¹¹

The bill was a *legge di iniziativa popolare*, a law by popular initiative.¹¹² It redefined rape as a crime against the person rather than against public morality.¹¹³ This was a symbolic

104. See Pitch, *supra* note 100, at 164. Other attempts had been made to revise the rape law, but this was the campaign that initiated widespread public debate in Italy and officially began the twenty-year struggle leading to the recent legislative reform. See *id.* at 165.

105. See *id.* at 164. The proponents of the bill were more interested in the symbolism of the bill than the penalties. See *id.*

106. See *id.*

107. See Pitch, *supra* note 73, at 141.

108. The UDI developed as a result of the emancipationist movement and the active involvement of women in the anti-fascist struggle following World War Two. It was founded during that period for the purposes of advocating on behalf of women. While it tried to appeal to all women, no matter their political affiliation, in reality it consisted of left-wing women, associating itself with the socialist and communist parties. See ITALIAN FEMINIST THOUGHT: A READER 10 (Paola Bono & Sandra Kemp eds., 1991) [hereinafter ITALIAN FEMINIST THOUGHT].

109. The MLD was a separatist group, in federation with civil rights groups, but not necessarily women's groups. Although it was active within the feminist movement, some of its members defected because of its allegiance to a mixed body. See *id.* at 211-13.

110. See *id.* at 212. The MFR was born in 1973 when a group of feminists from the MLD left that movement and joined a collective that had formed in 1971, the *Collettivo di Lotta Femminista* (Feminist Struggle Collective). Since its formation, the MFR has been active in the women's movement in Italy. See *id.* at 62-63. For a more detailed history of the group and several writings by members, see *id.* at 62-81.

111. See *id.* at 213. "People's bills," those drafted outside parliamentary procedure, must be signed by at least 50,000 people before being sent to Parliament. Pitch, *supra* note 100, at 173 nn.4 & 5.

112. See ITALIAN FEMINIST THOUGHT, *supra* note 108, at 212-13.

113. See Pitch, *supra* note 73, at 142.

gesture,¹¹⁴ designed to eradicate the degradation of women and remove rape's special status, which differentiated it from other violent crimes.¹¹⁵ The bill also abolished distinctions between penetration and other sexual acts.¹¹⁶ This proposal was intended to prevent the indictment of the victim, especially prevalent in "intensive, offensive, and degrading interrogations" aimed at distinguishing between penetration and other violent sexual acts.¹¹⁷ Eradicating the distinction also communicated the notion that "every part of a woman's body is to be considered equally violable."¹¹⁸

One of the most controversial changes the bill proposed was the requirement of mandatory prosecution. Proponents of this proposal intended it as a symbolic gesture to show that rape is a serious crime which the state has the responsibility of prosecuting, indicating that rape offends all of society rather than just women.¹¹⁹ This provision was also intended to protect women from the risks associated with reporting the crime.¹²⁰ Automatic prosecution also raised the issue of the status of rape in marriage.¹²¹ Opponents of prosecuting marital rape argued it would offend family privacy.¹²² Despite this, the bill demanded that marital rape not be excepted from the scope of the law.¹²³

The bill abolished statutory rape but added the crimes of sexual molestation and group sexual violence.¹²⁴ Furthermore, it prohibited questioning the victim about her previous sexual and private life.¹²⁵ Finally, the bill called for open trials that included the participation of women's associations.¹²⁶

After the people presented their bill, each of the political parties represented in Parliament drafted and presented similar bills.¹²⁷ A parliamentary committee then integrated the bills and

114. Including rape among crimes against the person rather than crimes against public morality does not change the procedure or the penalties. See Pitch, *supra* note 100, at 165.

115. See *id.*

116. See Pitch, *supra* note 73, at 142.

117. Pitch, *supra* note 100, at 165.

118. *Id.* at 165-66.

119. See *id.* at 166.

120. See *id.*

121. The existing law made no distinction between marital and non-marital rape. See *id.*

122. See *id.*

123. See Pitch, *supra* note 73, at 142.

124. See *id.*; see also Pitch, *supra* note 100, at 166.

125. See Pitch, *supra* note 73, at 142.

126. See *id.*

127. See ITALIAN FEMINIST THOUGHT, *supra* note 108, at 212-13; see also Pitch, *supra* note 100, at 173 n.5. One exception was the Communist Party,

presented a common proposal.¹²⁸ This proposal basically followed the people's, or women's, bill, but differed in three fundamental ways.¹²⁹ First, the proposal did not abolish statutory rape.¹³⁰ Second, it differentiated between marital and non-marital rape, requiring the former to be prosecuted after the victim reported the rape.¹³¹ Third, it allowed for the participation at trial of only one association or organization,¹³² and only with the victim's consent.¹³³

Parliament refused to adopt the common proposal.¹³⁴ This prompted a mass demonstration by women all over Italy, who once again urged the passing of their original bill—the "people's bill."¹³⁵ Because the bill was written mainly by feminist groups, it became known as the "women's law," but internal debate thrived within the feminist movement¹³⁶ regarding both the method and substance of the proposal.¹³⁷

Regarding the method of proposal, some women suggested they should have had a larger role in actually drafting the bill, rather than simply adding their signatures to a bill drafted by three large feminist groups.¹³⁸ They disliked the idea of political representation, especially by the organized groups that had drafted the bill.¹³⁹ Other women rejected the idea of using the criminal justice system at all, uncomfortable with "formulating in articles of law the experience of and the political practice on sexual violence and, more generally, on sexuality."¹⁴⁰ They disagreed with the revival of "man's law" and preferred to develop a solution on their own terms.¹⁴¹

which had presented a bill in 1977. See *ITALIAN FEMINIST THOUGHT*, *supra* note 108, 212-13.

128. See *ITALIAN FEMINIST THOUGHT*, *supra* note 108, at 213.

129. See Pitch, *supra* note 100, at 166.

130. See *id.*

131. See *id.*

132. The association or organization's aims had to be "the protection of the interests offended by the crime." *Id.*

133. See *id.* The consent was irrevocable. See *id.*

134. See *id.*

135. *ITALIAN FEMINIST THOUGHT*, *supra* note 108, at 213.

136. *Id.*

137. See *THE MILAN WOMEN'S BOOKSTORE COLLECTIVE, SEXUAL DIFFERENCE: A THEORY OF SOCIAL-SYMBOLIC PRACTICE* 72 (Teresa De Lauretis ed., 1987) [hereinafter *SEXUAL DIFFERENCE*].

138. See *ITALIAN FEMINIST THOUGHT*, *supra* note 108, at 237-39. The bill's authors assumed other women would back it and therefore did not set aside a great amount of time for debate before submitting the bill to Parliament. See *SEXUAL DIFFERENCE*, *supra* note 137, at 72.

139. See *SEXUAL DIFFERENCE*, *supra* note 137, at 74.

140. *Id.* at 72.

141. *Id.*

As to the substance of the proposal, some women disapproved of changing rape from a crime against public morality to a crime against the person, arguing that such a change would force victims to denounce their attackers publicly, a humiliating and degrading experience.¹⁴² Still other women argued that solving the problem of sexual violence in Italy would require more than merely amending the rape law.¹⁴³ They argued for broader educational reform of both men's and women's attitudes.¹⁴⁴ One advocate stated: "Living only to let others live: [W]omen don't seem to have any other way of symbolically legitimizing their existence. To my mind this is the most dramatic and difficult condition which we have to change."¹⁴⁵ Proponents of the bill argued that changing the law to redefine rape as a crime against the person would force Italy to recognize formally that the object of sexual violence is the victim's body, which is to acknowledge the victim, the injured party.¹⁴⁶

Debate over these issues continued for the next decade, as further attempts were made to reform the rape law. The next significant step in the movement did not occur until December 1987, however, when a group of women senators from different political groups signed and presented a bill against sexual violence.¹⁴⁷ At this time, women were still divided on many of the same issues that had troubled them previously, but their division was over the law itself and was not based on allegiance to certain political groups.¹⁴⁸ Women had become unified,¹⁴⁹ although disagreement over the technicalities of the rape reform remained.¹⁵⁰

The women senators' bill was similar to the 1979 people's bill.¹⁵¹ It included rape as a crime against persons, barred the distinction between penetration and other sexual acts, added group rape, called for the presence of associations and

142. See ITALIAN FEMINIST THOUGHT, *supra* note 108, at 212.

143. See *id.* at 244-45.

144. See *id.* at 245-47.

145. *Id.*

146. See *id.*

147. See Pitch, *supra* note 100, at 162. Women elected to Parliament in 1987-88 constituted the highest number ever, 10% of the total. See *id.* at 163. As in 1979, the women senators' bill was only one among several the Senate Justice Committee considered in drafting a common proposal. See *id.* at 168.

148. See ITALIAN FEMINIST THOUGHT, *supra* note 108, at 213.

149. See Pitch, *supra* note 100, at 163. This unification stemmed from a number of factors, including the unprecedented number of women in Parliament. See *id.* at 162-63.

150. See ITALIAN FEMINIST THOUGHT, *supra* note 108, at 213.

151. See Pitch, *supra* note 100, at 168.

organizations at trial with the victim's consent, abolished statutory rape, and called for automatic prosecution.¹⁵²

Automatic prosecution was the most controversial issue the 1987 bill raised.¹⁵³ Opponents argued for the protection of privacy and the freedom of individual choice to prosecute,¹⁵⁴ while proponents advocated forcing the state to take immediate action against rape offenders.¹⁵⁵ The common proposal presented by the Senate Committee called for automatic prosecution for all types of rape except marital rape.¹⁵⁶ The proposal also included a statutory rape provision, with an exception for sexual acts between minors over age thirteen with an age difference between them of no more than four years.¹⁵⁷ Although the Senate approved the proposal, feminists were vehemently opposed.¹⁵⁸ The bill passed back and forth between the Chamber and the Senate with changes, but once again eventually died, leaving the original fascist-era rape law intact.

During the early 1990s, an alarming increase in sex crimes incited outcries from not only Italian women, but also the general public and some of Italy's most influential male leaders, including The Vatican and the prime minister.¹⁵⁹ In May 1995, women deputies from all parties drafted another bill and presented it to Parliament.¹⁶⁰ The bill once again included rape as a crime against the person rather than against public morality. It also barred a distinction between marital and non-marital rape. The bill doubled the sentences mandated by the old law. It also provided that victims' identities be revealed only with their consent.¹⁶¹ Trials involving minors were to be closed to the public.¹⁶² Parliament ultimately accepted a revised version of this bill.

152. See *id.*

153. See *id.*

154. See *id.* at 168-69.

155. See *id.* at 168.

156. See *id.* at 169.

157. See *id.*

158. See *id.* Feminists were concerned merely with getting the law passed, but they believed it would not be accepted by conservative and Catholic voters as presented. See *id.*

159. See Johnston, *supra* note 93, at 11. The Vatican blamed the degradation of men for 1995's "summer of nightmares," a summer marred by "almost daily accounts of rape and incest." *Id.*

160. See Jorge Pina, *Italy: Women Deputies of All Stripes Draw Up Anti-Rape Bill*, Inter Press Serv., May 24, 1995, at 1, available in LEXIS, News Library, INPRES File. The bill took only one-and-a-half months to draft. It was signed by 73 of Italy's 95 women deputies. Among those signers was Alessandra Mussolini. See *id.* The bill was accompanied by 230,000 women's signatures. See *id.*

161. See *id.*

162. See *id.*

3. The Victory Cry of 1996: The Law in Its Current Form

In February 1996, the Italian Parliament finally amended the fascist-era rape law. After six decades of stagnation, the latter two punctuated with urging by Italian feminists, Parliament reclassified rape as a crime against personal integrity, rather than as a crime against public morality.¹⁶³ The new law raises the minimum sentence for the commission of acts of sexual violence from three years to five, although the maximum sentence remains the same, at ten years. The law also eradicates the distinction between penetration and other sexual acts, ordering the same punishment for all acts of "sexual violence."¹⁶⁴

The law also includes a list of aggravating circumstances that increase the penalty to imprisonment for a term of six to twelve years.¹⁶⁵ It calls for automatic prosecution by the state on complaint by the victim, a complaint that is irrevocable. The victim has six months in which to make the complaint.¹⁶⁶ One of the most controversial portions of the new law legalizes sex between consenting minors ages thirteen to sixteen.¹⁶⁷ The law also includes a provision criminalizing group rape.¹⁶⁸

III. THE CURRENT RAPE LAW: A LEGAL ANALYSIS

The new rape law contains many significant changes. The reclassification of rape from a crime against public morality to a crime against the person is perhaps the most symbolic and certainly the most widely reported. The increase in the minimum

163. See *Italy Toughens Rape Law, Drops "Moral" Classification*, AP, Feb. 14, 1996, at 1, available in LEXIS, News Library, ARCNWS File.

164. The full text of article 609(2) reads: "Whoever, with violence or threat or by means of abuse of authority, forces someone to complete or undergo sexual acts, is punished with imprisonment from five to ten years." CODICE PENALE [C.P.] 609-bis (It.). The Author was unable to obtain a published English translation of the new rape legislation, and thus relied on a copy of the Italian version translated into English by Beth Walla, a student at Vanderbilt Law School. The citations to specific provisions refer to the Italian version of the provisions. The translated version is on file with the Author.

165. See C.P. 609-ter. The aggravating circumstances include sexually violent acts committed (1) with a person under age 14, (2) with the use of weapons or alcohol, narcotics, or habit-forming substances, or other instruments or substances harmful to the victim's health, (3) by a person who holds himself out to be a public official or a deputy of public service, (4) on a person who is subject to limitations on personal liberty, or (5) with a person under age 16 for which the offender is the legal guardian. See *id.*

166. See C.P. 609-septies.

167. See C.P. 609-quater.

168. See C.P. 609-octies.

length of imprisonment will have the most immediate and measurable effect on the sexual violence problem. Other changes, however, are more controversial, such as the legalization of sex between consenting minors. Also noteworthy is the absence of suggested provisions Parliament omitted from the final version of the new law.

A. *Reclassification from Crime against Public Morality to Crime against the Person*

The significance of including rape in the section of the Italian Penal Code reserved for crimes against personal integrity, or more simply, crimes against the person, constitutes a recognition of victims as *subjects* rather than *objects*.¹⁶⁹ Rape victims have already suffered a violation of bodily integrity as a result of the crime itself, which is horrendous because it separates the victim's body from her person, objectifying her.¹⁷⁰ Recognizing rape as a crime against the victim's person reinforces her status as a full human being, a status robbed by the act of rape.¹⁷¹ One court recognized in 1988:

[I]n the crime of rape the victim is treated as an object, not as a subject. A human being cannot, must not be degraded to the condition of being treated as a mere body. Rape reduces a human being to a body to be possessed and it is precisely this which constitutes the criminality of the act.¹⁷²

Maintaining a victim's integrity is especially important in light of courts' tendency to treat the victim as the accused.¹⁷³ The traditional criminal trial process in effect places the *victim* on trial,¹⁷⁴ questioning her credibility and publicizing information

169. See ITALIAN FEMINIST THOUGHT, *supra* note 108, at 212. In a 1983 demonstration in front of Parliament, women paraded with placards reading, "Person-Marina. Person-Stefania. Person-Anna," establishing their status as human beings. BIRNBAUM, *supra* note 13, at 220.

170. See ITALIAN FEMINIST THOUGHT, *supra* note 108, at 212.

171. See *id.*

172. Tina Langostena Bassi, *Violence Against Women and the Response of Italian Institutions*, in VISIONS AND REVISIONS: WOMEN IN ITALIAN CULTURE, *supra* note 28, at 199, 212 (quoting Cass. Sez. Ter., 16 Nov. 1988).

173. See ITALIAN FEMINIST THOUGHT, *supra* note 108, at 212. The questioning of the victim's conduct and life leads to the inference that courts assume she provoked the rape. See *id.*

174. See Georgia Wralstad Ulmschneider, *Rape and Battered Women's Self-Defense Trials as "Political Trials": New Perspectives on Feminists' Legal Reform Efforts and Traditional "Political Trials" Concepts*, 29 SUFFOLK U. L. REV. 85, 86 (1995).

about her past sexual history.¹⁷⁵ Legal scholars blame this courtroom victimization of the victim on the prevalence of rape myths that tend to place blame for the crime on the victim.¹⁷⁶ Many feminists believe the courts' treatment of rape victims, particularly female rape victims, in this manner is a result of the judicial application of male-biased laws.¹⁷⁷

The recognition of the rape victim as a human being is essential in protecting one of the most fundamental human rights, the right to do with one's sexuality what one desires.¹⁷⁸ Reclassifying rape as a crime against the person is an important symbolic gesture that assures rape victims a dignity they did not have under the old classification scheme. Rape violates more than the victim's body: it violates her humanity as well.¹⁷⁹ Recognizing this is an important step toward recognizing the rights of the victim in general.¹⁸⁰

In the context of rape, this gesture symbolizes much more than a recognition of the victim as a subject rather than an object. Because the rape victim is more often a woman than a man,¹⁸¹ and because rape is widely considered a women's issue,¹⁸² erasing the objectification of the victim erases the objectification of women as a group. "[U]nlike victims of other

175. See generally Morrison Torrey, *When Will We Be Believed? Rape Myths and the Idea of a Fair Trial in Rape Prosecutions*, 24 U.C. DAVIS L. REV. 1013 (1991) (discussing the prevalence of rape myths and proposing solutions to dispel them).

176. See *id.* at 1017-18. For a list of common rape myths, see *infra* note 279.

177. See Ulmschneider, *supra* note 174, at 86-87; see also *infra* Part IV.B.1 (discussing feminists' disparate views of the best approach to law reform - conforming to or rebelling against traditionally male-biased laws).

178. See Bassi, *supra* note 172, at 212.

179. See Dorothy E. Roberts, *Rape, Violence, and Women's Autonomy*, 69 CHI.-KENT L. REV. 359, 360 (1993).

180. One author suggests taking a property approach to rape, arguing that nonconsensual sex denies women a form of property. See Alexandra Wald, Note, *What's Rightfully Ours: Toward a Property Theory of Rape*, 30 COLUM. J.L. & SOC. PROBS. 459, 461 (1997). She states: "Women's sexuality is, socially, a thing to be stolen, sold, bought, bartered, or exchanged by others. But women never own or possess it, and men never treat it, in law or in life, with the solicitude with which they treat property." *Id.* at 459 (quoting CATHARINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* 172 (1989)). According to Wald, during the eighteenth century, women's bodies were the property of men, either their father or their husband, who could actually receive damages for the rape of a woman in whom he held a property interest. See *id.* at 470.

181. See Brande Stellings, Note, *The Public Harm of Private Violence: Rape, Sex Discrimination and Citizenship*, 28 HARV. C.R.-C.L. L. REV. 185, 185-86 (1993). Although it is also physically possible for men to be raped, the majority of rape victims are women. See *id.*

182. See, e.g., *id.* (arguing that, not only is rape a problem mostly particular to women, but it is also an act of sexual discrimination that deprives women of their civil rights).

crimes, women who have been raped cannot ever feel fully secure in their persons, because all of the precautions in the world cannot eradicate the single biggest risk factor for rape – their femaleness.”¹⁸³

It is the symbolic purposes of the new law, then, that should have the most impact on the largest group of people. In other words, remedies for the individual victim may be achieved by increasing penalties and definitions, but by changing rape from a crime against public morality to a crime against the person, a mere symbolic gesture, women achieve a remedy for the affirmation of their rights as a group as well.¹⁸⁴

Furthermore, although this gesture is symbolic, and indeed, intended to be so by the reformers, its impact ideally will lead to changes in public perceptions of rape and its victims, and thus lead to more frequent reporting of the crime.¹⁸⁵ In turn, this should lead to an increase in arrests, convictions, and punishments of rape perpetrators.¹⁸⁶

B. *Other Provisions*

Although the reclassification of rape as a crime against the person has received most of the media attention, other provisions of the new rape law will also have a great impact. These include the imposition of stiffer penalties, a provision requiring mandatory prosecution, a provision allowing consensual sex between minors from thirteen to sixteen years of age, and an obscure message about marital rape.

1. Increased Penalties

The new law raises the minimum penalty for rape conviction from three years to five, although it does not raise the maximum penalty of ten years.¹⁸⁷ It is too soon to determine whether this increase will minimize Italy's rape problem, although this provision is the most measurable of the provisions in the new law, and its consequences will have the most immediate and direct

183. *Id.* at 185.

184. *See id.* at 188.

185. *See* Ronet Bachman & Raymond Paternoster, *A Contemporary Look at the Effects of Rape Law Reform: How Far Have We Really Come?*, 84 J. CRIM. L. & CRIMINOLOGY 554, 555 (1993).

186. *See id.* It remains to be seen whether reporting, and consequently arrests, convictions, and punishments, will actually increase as a consequence of the new rape law's passage. Studies have shown that, in the United States, which has also passed new rape legislation in recent decades, such increases have not been significant. *See infra* note 219.

187. *See* C.P. 609-*bis*.

impact on rape perpetrators. Whether intended to punish or deter, this provision should reduce the incidence of rape and increase its reporting. The increase in reporting rape should occur because the victim should feel more secure knowing her perpetrator faces stiffer penalties. If convictions do not increase, however, the increased penalties will have minimal deterrent effect. Therefore, the success of the other new provisions will ultimately affect the success of this most obvious one, as they operate on a broader level to increase overall reporting, arrest, and conviction rates. Finally, it is noteworthy that at least several legal scholars have questioned whether harsher penalties actually serve to deter others from committing the same crime.¹⁸⁸

2. Mandatory Prosecution

Under the old law, the state could not prosecute a rape offender unless the victim publicly accused him. Under the updated law, the state automatically prosecutes when the victim complains. A major point of contention during the two decades of rape reform debate, the mandatory prosecution requirement places the entire burden on the state to take responsibility for rape offenders. This is yet another symbolic gesture, demonstrating that rape is a crime offensive to all of Italy, rather than just to women. Opponents of mandatory prosecution advocated the old method of giving the victim the option of filing a civil suit so she could decide if she wanted to proceed with a public trial, which was often a humiliating experience.¹⁸⁹ This position also reflects women's desire to retain individual choice.¹⁹⁰

A female rape victim's desire to be allowed the option of subjecting herself to the rape trial process is understandable. Courts have often treated female rape victims with little dignity, subjecting them to further victimization,¹⁹¹ and, even if courts did treat rape victims with respect and consideration, the process would still be a painful and public reminder of the rape experience. Under the new law, however, rape, like other crimes,

188. See, e.g., Michele H. Kalstein et al., *Calculating Injustice: The Fixation on Punishment as Crime Control*, 27 HARV. C.R.-C.L. L. REV. 575 (1992) (questioning the use of harsh penalties to control crime). See also David H. Norris & Thomas Peters, *Fiscal Responsibility and Criminal Sentencing in Illinois: The Time for Change Is Now*, 26 J. MARSHALL L. REV. 317 (1993) (discussing several theories of punishment and proposing a cost-effective approach to their application).

189. See SEXUAL DIFFERENCE, *supra* note 137, at 74.

190. See *id.*

191. See *infra* Part IV.B.1.

is prosecuted by the state, and the victim is not a party, but a witness to the crime.

The question becomes whether rape should be treated like other crimes in this way. In some respect, rape differs from other crimes.¹⁹² This is true not only because of its elements, but also because of society's and the legal system's historic treatment of it and its victims.¹⁹³ Crimes are usually determined by examining the defendant's actions and the crime's intended consequences. In the case of rape, courts traditionally have focused on the victim much more than the defendant.¹⁹⁴ Furthermore, consent is a key issue in determining whether rape has occurred, but it is not as pertinent in the case of other crimes.¹⁹⁵ These differences make mandatory prosecution unfair to the rape victim, because in every other way she is treated unlike victims of other crimes; under the mandatory prosecution regime, she will be thrust into the trial atmosphere as a witness, as are other crime victims.

Reformers must decide if they want rape prosecution to conform with other violent crimes, receiving full support from a government willing to take complete responsibility for prosecuting the perpetrator, or if they want to make rape a special crime and achieve legislation aimed at addressing the special needs of rape victims. The quandary is that neither can be accomplished without compromising the other. Therefore, perhaps the answer is to use other methods to improve the courtroom experience for rape victims. All crime victims will suffer some sort of pain as witnesses in the trials of their own perpetrators.

The problem with rape trials as they exist now is that they inflict undue pain on the victim. If this can be minimized by educating society about rape myths and the unfair treatment of rape victims, mandatory prosecution might be a better alternative than making the rape victim responsible for choosing whether to prosecute. Although opponents might argue that rape victims will always suffer more pain than other crime victims because of the personal nature of the crime, forcing the victim to take a public stand against her perpetrator is likewise a painful imposition, and one that can be eliminated with mandatory prosecution. In this way, the state can ease some of the victim's burden.

192. See Shawn J. Wallach, Note, *Rape Shield Laws: Protecting the Victim at the Expense of the Defendant's Constitutional Rights*, 13 N.Y.L. SCH. J. HUM. RTS. 485, 485 (1997).

193. See *id.*

194. See *id.* at 485-86.

195. See *id.* at 486.

3. Consensual Sex between Minors from Thirteen to Sixteen Years of Age

The most controversial aspect of the new rape law, Article 609(a), was denounced by one right-wing lawyer as a "teenage free love charter."¹⁹⁶ It declares sexual acts with a minor a crime, even if consensual, but excludes consensual sex between minors from thirteen to sixteen years of age.¹⁹⁷ Proponents of this provision include feminists who argue that the state should not limit the sexual freedom of anyone old enough to make such a decision for himself, just as the state should not legislate morality in any sense.¹⁹⁸ The Catholic Church, however, continues to vehemently oppose the provision.¹⁹⁹

The difference between regular rape and statutory rape is the lack of consent required to constitute the former crime.²⁰⁰ In statutory rape, the victim is considered unable to give knowing consent because of lack of maturity or capacity to reason, and therefore consent is neither an element of the crime nor a defense.²⁰¹ In the provision at issue here, Italian lawmakers have decided that children at least age thirteen are old enough to decide whether to engage in sexual conduct with someone not over the age of sixteen.

The issue is whether Parliament should be allowed to control the moral aspects of persons' lives, or whether that type of decision should be left to the individual. Because this provision deals specifically with minors, however, another decisionmaker must be considered along with the minor and the state—the minor's parent. The quandary of how much control a state should have over parents' raising of children, as well as how much control a state should have over children's moral choices, is complex and beyond the scope of this Note.²⁰² This issue is,

196. Richard Owen, *Land of Machismo Gets Tough on Rape*, TIMES (London) Feb. 9, 1996, at 12.

197. See C.P. 609-*quater*.

198. See Pitch, *supra* note 100, at 169.

199. See *id.*

200. See IRVING J. SLOAN, RAPE 51 (1992).

201. See *id.* Lack of consent is prescribed by statute and is based on such reasons as the victim being underage or unaware of what is happening to her because she is asleep, drugged, or a victim of fraud. *Id.* at 51-52.

202. For more information on the special nature of statutory rape, see Heidi Kitrosser, *Meaningful Consent: Toward a New Generation of Statutory Rape Laws*, 4 VA. J. SOC. POLY & L. 287 (1997); Michelle Oberman, *Turning Girls into Women: Re-evaluating Modern Statutory Rape Law*, 85 J. CRIM. L. & CRIMINOLOGY 15 (1994). For a feminist view of the issue, see Frances Olsen, *Statutory Rape: A Feminist Critique of Rights Analysis*, 63 TEX. L. REV. 387 (1984).

however, one the Italian women's movement must carefully analyze before accepting this provision as it currently exists. The movement should consider more than women's interests in determining the best solution to this problem; it should consider children's interests, the state's interests, and parents' interests as well.

4. Marital Rape

The old rape law did not distinguish between marital and nonmarital rape.²⁰³ Article 29 of the Italian Constitution stipulates that marriage is based on the equality of spouses, both as citizens and as persons, both natural and legal.²⁰⁴ Based on that idea, the Supreme Court held in 1976 that the rape law applied to marital rape:

[This interpretation is] in keeping both with the words of the law and with an interpretation of these words, consonant not only with the penal code in force, but also with the constitutional principles of the unconditional protection of human dignity and the guaranteeing of personal freedom, which includes the freedom to do what one wills sexually with one's body; it is, moreover, in keeping with the evolution of social mores, and with legislation that aims not only at raising the marital relationship from the level of mere sexual instrumentality to the level of a spiritual and material communion between the partners, but also at creating an equal role for them both by eliminating the subordinate role of the woman who, in practice, is an adult liable to the imposition of nonvoluntary sexual acts.²⁰⁵

The court explained that the object of the crime is not the sexual act between the husband and the wife but the violence used to force nonconsensual sex.²⁰⁶

Despite the constitutional and judicial influences on the matter of marital rape, tradition and social norms have prevented such notions from becoming the law of the land, although they are slowly starting to take hold.²⁰⁷ Many Italians even today consider marriage a contract in which the husband provides financial support in consideration for housework and sex from his wife. The wife is therefore obligated to provide sex for her

203. See Bassi, *supra* note 172, at 207.

204. *Id.* at 207-08.

205. *Id.* at 208-08 (quoting Cass., sez. ter., 16 Feb. 1976, *aff'd*, Cass. sez. ter., 5 Nov. 1982).

206. See *id.* at 209. The court added, "[E]ven if the nonconsent of the partner is unjustified, this does not do away with the criminal nature of the action, and has pertinence only in terms of civil law." *Id.* (quoting Trib. (Rome), sez. sex., 26 June 1985).

207. See *id.* at 207.

husband on demand as one of her marital duties.²⁰⁸ Therefore, the crime of marital rape is considered by many to be impossible.²⁰⁹ The courts have denounced this notion, citing the Italian Constitution for the proposition that equality in marriage may only be achieved if sex is “based only on the free and spontaneous consent of both parties.”²¹⁰ Besides the traditional notions of the roles of the husband and the wife in marriage, there is a reluctance to breach the privacy of the family unit to convict a husband for rape.²¹¹

The new rape law is similar to the old in omitting a distinction between marital and nonmarital rape. In light of the fact that marital rape is rarely reported, treating marital rape like nonmarital rape creates an incentive to report. Because the statute does not distinguish, however, the decisions of the judicial system will likely be the determinants in further delineating the rape laws regarding married persons. History has demonstrated that judicial decisions will not have much impact, however, until society’s attitudes toward the roles of the sexes in marriage change.

C. An Omitted Provision: Allowing the Presence of Women’s Organizations at Rape Trials

One of the proposals that was not included in the new law was that of allowing women’s organizations to appear at rape trials to lend support to the rape victim and represent women’s interests. The request for participation was another demand for

208. *See id.* at 207-08.

209. *See id.* at 208. The Rome Tribunal commented in 1985, “It has been maintained that, if the crime is committed against one’s wife, it is to be considered an impossible crime, in that the marital obligation must be considered as one of the rights and duties that derive from the matrimonial relationship. Such an approach is totally erroneous and arbitrary.” *Id.* at 208 (quoting Trib. (Rome), sez. sex., 28 June 1985 (construing COST. art. 29)).

210. *Id.*

211. The same reluctance may contribute to the lack of prosecution of husbands in sexual violence cases. *See id.* at 204 (discussing the suspiciously high number of “bump and fall” injuries inflicted on Italian housewives—“the most dangerous job in the world and one that every year causes more injuries than accidents on the roads or in the workplace . . .”). Italy’s highest court ruled in September 1996 that a man could not be convicted of maltreatment if his violent actions were occasional, provided his partner did not report him. This infuriated Italian feminists. The victim-wife, however, was pleased with the ruling, dismissing an attack prompted “solely by jealousy” as “one of those things that can happen in any family.” John Hooper, *Italian Ruling Sparks Outrage for ‘Sanctioning Wife-Battering’*, GUARDIAN, Sept. 20, 1996, at 13, available in 1996 WL 4044833.

official recognition of their status as a collective political actor.²¹² This idea was criticized by opponents, who were uncertain that any organization could appropriately represent all women's interests:

In a rape trial, the individual woman almost certainly needs the support of other women. But who should these other women be? Women in organized movements, or those with whom she has some real tie? . . . Political representation must not be reconstituted among us, since it is one of the things against which we have struggled in order to attain a minimum of existence and self-expression.²¹³

Many women questioned what the organizations' role would be at trial. Would the organizations be allowed to intervene at trial, offering tactics? The issue of the representation by women's organizations at rape trials is one with too many open-ended questions. Rape has been recognized as a problem affecting not only individuals, but also women as a group. Unless reformers can delineate exactly what the role of women's organizations would be at rape trials, the idea seems unlikely to pass muster, especially in light of the struggle women faced achieving the passage of more conservative provisions, such as increasing penalties and reclassifying rape as a crime against the person. Furthermore, although women demonstrated solidarity toward the end of the rape reform movement, they have more often disagreed over how to best represent women's interests in Italy. Finding a group to represent all women's interests might be an impossible task.

IV. PREDICTIONS OF THE LAW'S CONSEQUENCES

Italy's new rape law will be more than words on paper only if it is aggressively enforced. Its immediate effects on sexual violence are already discernible, but further legislative and social reform is needed—reform that protects women's interests rather than conforming with "men's law." The desired change in fundamental attitudes will be slower to come, but a strong women's advocacy movement can encourage that change. Women's participation in Italy's political arena has already seen improvement in part because of the rape reform movement and perhaps will see greater improvement with continued perseverance.

212. See Pitch, *supra* note 73, at 142.

213. SEXUAL DIFFERENCE, *supra* note 137, at 74.

A. *Effect on Violence against Women*

The provision of the new rape law which increases the penalties for rapists will have the most measurable effect on rape in Italy. These increased penalties, if enforced, should act as a deterrent. This provision will not be as effective if the number of rapes reported does not rise, however, for a rape must be reported before it can be prosecuted. The law's symbolic exclamation, the reclassification of rape as a crime against the person rather than a crime against public morality, should serve to increase public awareness of rape and encourage victims to report the crime; however, some critics of the new law worry that this increased public awareness is too brash a statement about women's rising power in a country known for its traditional views of women. This, they worry, could lead to a backlash by men and false hopes for women.

1. Will the Law Work "in a country used to Latin traditions of male dominance and pride"?

Defining rape as a crime against the person will not erase the fact that women have been the subordinate sex in Italy since ancient times. Some women's groups argue that fundamental attitudes toward women must be uprooted before any real change can occur. Others warn of a backlash by men.

The new rape law is only another sign of women's growing independence, and sociologists have speculated that Italy is becoming more violent as resentment toward women grows.²¹⁴ One psychiatrist called a series of murders of women occurring within days of the new law's passage "the price Italian women are paying for women's liberation."²¹⁵ Women's groups dismiss the notion that violence in Italy is worsening, arguing that such violence has plagued Italian society for years and is only being more widely reported;²¹⁶ however, even the women's groups who initiated the rape reform in 1977 admitted their goals for reform were both symbolic and pragmatic. As one newspaper columnist noted, the law does more than increase penalties for rapists. It proclaims female dignity and power and attempts to displace traditional notions of female subordination. Any suggestion of a change of this magnitude will likely produce fear:

214. See Owen, *Murders*, *supra* note 8.

215. *Id.* Psychiatrist Raffaele Morelli suggests men have not accepted women's new-found control over their own lives. See *id.*

216. See *id.*

A law against sexual assault, which would sanction the notion of female dignity and sexual freedom, is seen as a threat. On the face of it, it appears to be a specific law. In reality, it calls into question something that touches deeply upon the customs of this nation and culture. Consequently, it arouses fear.²¹⁷

That men recognize the growing influence of the Italian women's movement is evidenced by the fact that men's rights groups have formed to protect their own interests.²¹⁸

Despite the fear of backlash and the notion that more must be done, the amendment of Italy's rape law was necessary and long overdue. Even if it proves to be a small gesture in the enduring struggle for equality of the sexes in Italy, it has already produced some positive change. The first man to be sentenced under the new rape law received not only a five-year prison sentence but also tremendous press attention.²¹⁹ The symbolic aspects of the new law, as well as its immediate and more measurable effects already have, at the very least, triggered debate and raised issues in a country where such issues have been buried in the corner along with its women for far too long.

2. False Hopes?

One of the worries plaguing opponents of the new amendment is that revisionists will see it as the final solution to the problem of sexual violence. The amendment is merely a necessary first step toward broader changes that Italy must implement to enforce the new law and change Italy's notions of women as the subordinate sex.

The type of solution chosen—traditional legal reform—must also be questioned. Many women still do not trust the Italian legal system to handle the complex issues raised by sexual crimes and behavior. One editor of the feminist magazine *Noi Donne* argued against passage of the amendment: "I think that if you change the law, you would be giving many women false hope that all they have to do is file a charge and their troubles would be

217. Maraini, *supra* note 95.

218. One issue such groups have attacked is a recent proposal for legislation under which children in Italy would take their mother's surname. See Richard Owen, *Mum's the Word in Italian Push for Names Change*, *TIMES* (London), Aug. 14, 1996, available in LEXIS, News Library, MAJRPA File.

219. See *First Rapist Sentenced in Italy*, Xinhua News Agency, Feb. 21, 1996, available in LEXIS, News Library, ARCNU5 File. The 31-year-old man, who seduced an 11-year-old girl on the phone and then raped her, was sentenced to five years' imprisonment. The girl's parents reported the rape to the police immediately after learning of it. See *id.*

resolved."²²⁰ It is too soon to tell whether the new legislation will deter rapists sufficiently to allow women to feel safe on Italy's streets, if such a goal is even realistic. Empirical studies in the United States, whose various states have made substantial revisions to their rape laws in the last few decades, have indicated that such revisions have not put a dent in the number of arrests, prosecutions, and convictions of rapists in that country.²²¹ Time will tell if Italy sees a similar outcome.

Furthermore, reformists must delineate the issues and set precise and realistic goals. An improved rape law realistically can only curb, not eradicate, the crime, and it certainly cannot eradicate deeply entrenched attitudes toward the sexes in such a traditional, even stubborn country. Nonetheless, while it is true that the new rape law is not the perfect solution to the problem of rape itself or the broader issue of gender equality, it is a necessary first step, especially because of its symbolic statement. Italy must now work to enforce the law and implement broader social changes through education and further reform. This will prevent false hopes by making women aware of the legal process and its limited solutions.

220. Heilbronner, *supra* note 92, at 5. Bia Sarasini is the cultural editor of *Noi Donne*, which means "We Women." See *id.*

221. See Morrison Torrey, *Feminist Legal Scholarship on Rape: A Maturing Look at One Form of Violence Against Women*, 2 WM. & MARY J. WOMEN & L. 35, 45-46 (1995). Such studies of rape law reforms in Michigan, Washington, California, six urban environments, and Canada indicated that the only change in the criminal justice response following reform was a significant increase in the reporting of rape, but that increase diminished soon after the passage of the legislation and its attendant publicity. See *id.* at 46; see also Bachman & Paternoster, *supra* note 185, at 556-57 & nn. 9-10 (quoting the results from the study of six urban jurisdictions as dismal: "Our primary finding was the overall lack of impact of rape law reforms We have shown that the ability of rape reform legislation to produce instrumental change is limited.") Bachman and co-author Raymond Paternoster conducted their own study of the effectiveness of rape law reform in the United States, focusing on three issues: (1) the reporting of rape to the police, (2) the probability of going to prison for rape, and (3) whether there has been an increase in date rape. See *id.* at 558. They concluded that legislative rape law reform has had little impact on victim behavior and actual practices in the criminal justice system, as they found only small increases in the reporting of rape. See *id.* at 573. They concluded: "Although attitudes about rape and rape victimization may have become more enlightened over the past two decades, there is little evidence to suggest that these attitudes have been translated into significant performance changes in the criminal justice system." *Id.* at 574.

B. *Political Effects: Goals of Italian Feminists in Bringing about the Reform*

Italian women devoted themselves to the rape reform movement with several goals in mind. Besides the pragmatic goals of encouraging victims to report rape and reducing the number of incidents by requiring harsher punishments of rapists, reformers also wanted to make a broader statement. The reclassification of rape as a crime against the person rather than a crime against public morality, in particular, is a symbolic change that reflects the equality of the sexes. Furthermore, the existence of the movement itself and the success it achieved reflect the increasing participation of women in Italian politics.

1. The Reform Effort as a Symbolic Request for Official Recognition of Women as Equal Citizens

Italian feminists intended, through the reclassification of rape as a crime against the person, to achieve several goals. On a symbolic level, they hoped to establish women as equal to men.²²² Even that goal, however, created a political rift among women—the same rift that had been present in the abortion debates of the 1970s.

One group considered women an oppressed social group needing protection; this group, the liberal feminists sought for women to achieve “equality” in the classic sense of the word, because “women are just as rational as men and . . . should have equal opportunity with men to exercise their right to make rational, self-interested choices.”²²³ They believed women are or could be situated similarly to men and thus should be treated like men under law. They proposed accomplishing this equal treatment by achieving gender-neutral legislation and the equal opportunity for women to participate in the legal system.²²⁴

222. See *supra* Part II.B. Feminist groups that advocated rape law reform in the United States were also largely motivated by symbolic and ideological issues, focusing on societal perceptions about rape and rape victims, including (1) the belief that rape is not a serious and violent offense and (2) the belief that rape victims are partially to blame for the rape. See Bachman & Paternoster, *supra* note 185, at 554-55. Their intended purpose in reforming the laws, then, was to educate the public about rape and its accompanying myths and stereotypes. See Bachman & Paternoster, *supra* note 185, at 555.

223. Storey, *supra* note 35, at 151 n.99 (quoting Patricia A. Cain, *Feminism and the Limits of Equality*, 24 GA. L. REV. 803, 829 (1990)).

224. See Kathleen Mahoney, *Theoretical Perspectives on Women's Human Rights and Strategies for Their Implementation*, 21 BROOK. J. INT'L L. 799, 803 (1996).

A second group, the cultural feminists, believed women are denied existence in the present social system because of their different sex. They hoped to modify the social system by imposing on it the voice of the traditionally excluded sex²²⁵ and by challenging the suppression of femininity.²²⁶

This same distinction in ideologies is represented in contemporary feminist debate, not only in Italy but also in the United States and other Western democracies.²²⁷ Many radical feminists do not believe "modest changes in the definition of crimes of sexual assault will transform the cultural expression of sexual domination in a patriarchal system of law."²²⁸ They argue that the symbolic gesture of reclassifying rape is a weak gesture that will merely serve to placate feminists. The Italian women's movement was motivated by a sense of injustice, and acknowledging the dignity of women by mere reclassification within the established criminal justice system satisfied their sense of justice.²²⁹

Ultimately, then, it seems that whether the success of the rape reform movement will move women toward achieving equality with men depends on the definition of equality, and whether the divergent theorists within the movement can agree on a definition. Asked one legal scholar:

But who defines equality? Is it possible that the search should not be for equality after all, but for power? Is there a difference between equality and power? These are questions that women must answer individually in order to achieve their desired goals. Feminist legal theory is the vehicle through which these decisions

225. See *SEXUAL DIFFERENCE*, *supra* note 137, at 73. See also Mahoney, *supra* note 214, at 805 ("When women are compared to men, their opportunity to be treated as equal is limited to the extent that they are the same as men. . . . In other words, 'if men don't need it, women don't get it.'").

226. See Mahoney, *supra* note 214, at 809. One method of challenging this suppression is by viewing stereotypical feminine traits in a positive light, including such traits as passivity, emotion, and connectedness. See *id.* According to child psychologist Carol Gilligan, women's conception of self differs from that of men. Women see themselves as interdependent beings whose identity depends on others, while men see themselves as autonomous and individual. See *id.* at 809-10. These differences, according to Gilligan, lead women and men to make moral decisions differently. See *id.* at 818. Women are concerned with their responsibility to others and consider the effects of their decisions on others, as well as the broader context of the circumstances that produced the decisions. See *id.* at 810-11. Men, on the other hand, focus on the abstract principles that must be upheld. See *id.* So-called "cultural feminists" suggest the law predominantly reflects the male model of moral reasoning, demonstrated by its hierarchical organization, adversarial format, and abstract methodology. *Id.* at 811.

227. See Bumiller, *supra* note 12, at 76.

228. *Id.* at 76.

229. See *id.* at 82.

can be debated, and through which change can be accomplished in the law. The difficulty arises in attempting to apply feminist legal theory to the law when women define equality and power, and what they seek from each, in different ways.²³⁰

Even if classic equality is achieved, many women will argue that equality in that sense is not the proper goal regarding issues particular to the female sex. In other words, ignoring the differences between men and women might not be the best approach.²³¹ Achieving "equality" in the traditional sense cannot be the goal of feminist legal theory, they argue, because such a theory cannot be gender-neutral, but must be women-centered, "gendered by its very nature because it takes as its raw building material women's experiences."²³² Rape is an example of an issue in which the paternalistic legal framework that is already in place might not be the best approach, because it affects women on a much larger scale than it affects men.²³³ Furthermore, "there is often a unique way [rape is] typically lived or experienced by women as contrasted with men in our culture."²³⁴ According to one author, although the thought of rape makes everyone uneasy, men and women think about it in different ways:

[T]he thoughtful normal man . . . finds it difficult to believe He knows that all thoughts of sex—which he equates with fun, romance, and mutual admiration—would leave him if the woman were really struggling to get free He does not realize that, to the rapist, the act is not "love," nor ardor, and usually not even passion; it is a way of debasing and degrading a woman. . . . To most women, [rape] is almost as unreal as it is to most men because they themselves have not experienced it. . . . One way of

230. Storey, *supra* note 35, at 137.

231. *See id.* at 157-58.

232. *Id.* at 158.

233. Susan Brownmiller writes: "From prehistoric times to the present, I believe, rape has played a critical function. It is nothing more or less than a conscious process of intimidation by which all men keep all women in a state of fear." DONALD MEYER, *SEX AND POWER: THE RISE OF WOMEN IN AMERICA, RUSSIA, SWEDEN, AND ITALY* 399 (1987) (quoting *AGAINST OUR WILL: MEN, WOMEN AND RAPE* 15 (1975)).

234. Storey, *supra* note 35, at 158 (quoting Martha A. Fineman, Note, *Feminist Theory in Law: The Difference It Makes*, 2 COLUM. J. GENDER & L. 1, 15-16 (1992)). One advocate of the difference doctrine is Carol Gilligan, who believes attempting to equalize men and women is irrational. *See id.* at 159 (citing CAROL GILLIGAN, *A DIFFERENT PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT* 1-2 (1982)). Gilligan believes men are abstract thinkers who define themselves by individual achievement, while women are contextual thinkers who define themselves by their relationships. *See id.* at 159-60. Therefore, women's voices differ from men's in that they value "responsibility, connection, selflessness, and caring," while men value "separation, autonomy, and hierarchy." *Id.* at 160.

coping . . . is to imagine, and then believe, that women to whom rape happens are in some way vastly different from oneself. . . .²³⁵

Not only do men and women have different perceptions of rape, women conduct their lives differently to avoid being raped. For example, they might avoid using public transportation or going to the movies after dark. They are aware of where and when they walk. They have men record messages on their answering machines to avoid letting anyone know they live alone. They carry their keys in a position that will allow them to use the keys as a weapon. They avoid working late hours. Effectively, they rearrange their lives.²³⁶

One group outspoken on this issue is the Milan Women's Bookstore Collective, which believes that "there are no laws which can give value to female sexuality if such value is not already socially recognized."²³⁷ The goal of making women equal to men allows men to be the measure for how women are defined.²³⁸ This is not true equality, the Collective argues, and it is not the best solution for problems particular to women.

The obvious example of this is the disparate treatment of female rape victims in the courtroom. Courts traditionally apply male-biased laws in rape trials, and many feminists suggest this application disempowers women, tacitly condones male violence, and supports cultural norms that perpetuate women's inequality.²³⁹ By allowing the introduction of evidence pertaining to the victim's sexual history, lifestyle, mode of dress, and attendance at bars; by seeking proof that the victim consented and did not do everything in her power to escape the rape; and by assuming distrust of the victim, trial courts ensure that "the law of rape is a law for men."²⁴⁰ Through such treatment, courts expect women to be virtuous "good girls," but to respond to forceful attacks by men with aggressive, manlike force. Feminists argue that women are socialized from birth to be passive in all aspects of life, sexually, socially, and physically.²⁴¹ Furthermore, most women are at a physical disadvantage to the average male assailant, and thus naturally will respond with verbal rather than

235. Mary Ruffolo Rauch, *Rape—From a Woman's Perspective*, 82 ILL. B.J. 614, 614 (1994).

236. See Stellings, *supra* note 181, at 198; see also Wald, *supra* note 180, at 492-93.

237. SEXUAL DIFFERENCE, *supra* note 137, at 67.

238. See *id.*

239. See Ulmschneider, *supra* note 174, at 86-87.

240. *Id.* at 88-89, 105 & nn. 21-23.

241. See *id.* at 103.

physical protests.²⁴² The recognition that women respond differently than men when confronted with rape suggests that the laws addressing rape should be consistent with these gendered differences.

It may be impossible, however, to abrogate an established legal system or reject paternalism in favor of complete autonomy. A true "women's law"²⁴³ might not easily be achieved, especially given the disparate views of women. Furthermore, although the idea of a "women's law" sung by the "women's voice" seems promising in theory, in application, a society that hears the women's voice might associate women with the very negative traits from which they are striving to dissociate themselves, including passivity, incompetency, and timidity.²⁴⁴ Critics of this view of feminism assert that determining what are authentic "women's voices" may be difficult, particularly because "women have never been allowed to speak outside the structure of patriarchal societies."²⁴⁵ Affirming the qualities traditionally associated with women as essentially feminine "is to accept a male vision of womanhood which has been foisted upon women."²⁴⁶

The use of legislative reform not only to control, but also to teach,²⁴⁷ was the original intention of the reformers in this instance, and if that is the end they were seeking, success seems more within their grasp. If the new rape law is considered a tool for change, as a means to an end rather than an end in itself, at least that goal will be achieved. Before achieving success on their own terms and defining the rape law in their own voice, women must first establish that voice and force society to hear it. The symbolic thrust of the new rape law at least gives women the voice, both through the massive media attention and the freshness of the concept itself, in a country that has traditionally balked at recognizing women's full personhood. Perhaps such methods, even if at first on men's terms, are the only way women will eventually speak for themselves. The best solution in the

242. See *id.* at 103-04. "Specifically, the law of rape enshrines the male standard of defensive behavior as the only legitimate response to rape; it 'safeguards' men from successful prosecution for rape; and it ultimately affords men greater sexual access to women." *Id.* at 104.

243. Pitch, *supra* note 100, at 170-71.

244. Storey, *supra* note 35, at 160.

245. Mahoney, *supra* note 225, at 811.

246. *Id.* As Catharine MacKinnon remarks on behalf of women: "Take your foot off our necks, then we will hear in what tongue women speak." *Id.* at n.61 (quoting FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW 45 (1987)).

247. See Martha I. Morgan, *The Bitter and the Sweet: Feminist Efforts to Reform Nicaraguan Rape and Sodomy Laws*, 26 U. MIAMI INTER-AM. L. REV. 439, 473 (1993) ("[L]aws not only control, but also teach.").

meantime is to recognize differences in the sexes and construct proposals and laws to address those differences. Eliminating aspects of the law that promote male dominance and further victimize the female rape victim will place the responsibility for male violence on men and society in general, both inside and outside the courtroom.²⁴⁸ Once this has been accomplished, women should strive for “[t]he ultimate goal,” which “is not simply to remove the aspects that disadvantage women, but to describe a feminist vision of criminal justice.”²⁴⁹

2. The State of Italian Women and Politics in the Aftermath

After the abortion law debate ended in the mid-1970s, Italian feminists needed another issue to mobilize and unify the women in their country.²⁵⁰ Thus began a political journey that would help shape the state of feminism in Italy over the next two decades. With the passage of the long-awaited rape amendment, a milestone similar to the abortion law reform, comes the question of where Italian women stand now.

In 1994, women constituted approximately fifteen percent of Parliament’s lower house, the Chamber of Deputies, which was led by a female speaker, Irene Pivetti.²⁵¹ This was a fifty percent increase from 1992.²⁵² Before the 1996 elections, however, the Constitutional Court overruled a law that required all political parties to make thirty percent of their candidates women. This ruling encouraged the Equal Opportunities Commission to promote women candidates through a television campaign. It also encouraged Italian leaders to promote the unity of women beyond party lines. Actions such as these are essential to maintaining the upward mobility of Italian women’s participation in politics.²⁵³

248. See Ulmschneider, *supra* note 174, at 116. One legal scholar suggested rewriting rape legislation using a ‘reasonable woman’ standard to address the unique viewpoint women victims have of rape. She argues, for instance, that if force is the determinant element of rape, the court should decide whether a reasonable woman under the same circumstances as the victim would have perceived that the defendant was using force. See Rauch, *supra* note 235, at 618.

249. Dorothy E. Roberts, *Foreward: The Meaning of Gender Equality in Criminal Law*, 85 J. CRIM. L. & CRIMINOLOGY 1, 3 (1994).

250. See SEXUAL DIFFERENCE, *supra* note 137, at 72.

251. See Simonetta Nardin, *Women Work to Keep Few Political Offices in Italy*, CHI. TRIB., Apr. 21, 1996, at 6.

252. See Heilbronner, *supra* note 92, at 5.

253. Italy in general has traditionally ranked lower than other major Western democracies with regard to political participation. Reasons for this apathy might include a slow-moving bureaucracy, a highly stratified society, and industrialization and urbanization. See RAPHAEL ZARISKI, *ITALY: THE POLITICS OF UNEVEN DEVELOPMENT* 80-81 (1972).

Women's cooperation advocating the new rape legislation is only one example of their recent accomplishments. Women in Parliament have played influential roles in drafting and passing laws on pension reform, work conditions, and family rights.²⁵⁴ In the past, Italian women have found success mobilizing around one particular issue, such as abortion and rape reform. Now that they have achieved the latter, the question remains what the next mobilizing issue will be. Already, in September 1996, Italian women from all corners of the political arena joined forces once again to condemn a ruling by the highest court that they claimed could legitimize wife-battering.²⁵⁵

Italian women must learn an important lesson from the rape reform movement. The movement was successful in large part because of their cohesiveness as a group and because they stepped across party lines to achieve a common goal.²⁵⁶ History has demonstrated that Italian women have always fought for their beliefs, albeit in subtle form at times, but this most recent success has been a dramatic one, and it has demonstrated their progress.

After the collectives of the 1970s failed to establish a new order of gender roles in Italy, many declared the women's movement dead.²⁵⁷ Indeed, traditional ideas about men and women still dominate Italian society, due in part to the continued reign of traditional Catholicism.²⁵⁸ The movement has

254. In 1995, Alessandra Mussolini battled for the passage of maternity leave for women deputies in Parliament when she was told to take sick leave after becoming pregnant because parliamentary rules did not include maternity leave. See Nardin, *supra* note 251.

255. See *supra* note 211 and accompanying text.

256. Alessandra Mussolini, herself a staunch supporter of the far Right, has stated: "Italy is still in many ways a backward society. Very few important executive posts are occupied by women, and fewer than 10 per cent of [parliamentary members] are women. I am very happy to make common cause on these issues with left-wing women [parliamentary members]." Owen, *Blood Lines*, *supra* note 1. When asked about her political philosophy, she responded:

I don't have a philosophy. I deal in realities, the concrete. I am not a militant, and as a student I never took part in demonstrations and street protests. I think many of my fellow [parliamentary members] who were politically active in their youth have ended up with a kind of closed mentality: [I]f you present them with a draft law, they first look to see if it fits the ideology of Left or Right. I, by contrast, look at everything with an open mind: [M]y fight against sexual violence is a fight on everybody's behalf, it cuts across party lines. People want ideals in politics, but above all they want concrete results.

Id.

257. See TARROW, *supra* note 67, at 332.

258. See *id.* In a surprising twist to the continuing impact of Catholicism in Italy, but in yet another demonstration of women's devotion to their womanhood,

significantly affected Italy's cultural state, however, most notably by increasing women's involvement in organized politics.²⁵⁹ Although women have not achieved equality in sheer numbers through political measures, movements such as that to urge rape law reform are a step in the right direction.

C. *Alternative Approaches*

Now that the women's movement has achieved success in bringing about a major overhaul of the archaic rape law, it will undoubtedly shift its focus and apply its steadily growing clout to other issues; however, Italy's rape problem is only a step closer to being solved. Reformers might want to study rape law reforms other countries have achieved and borrow successful ideas to create new legislative proposals in continuing their work toward eliminating rape in Italy. Furthermore, they should go beyond the law in seeking solutions. The Italian rape campaign has focused almost entirely on legal reform, rarely considering social and educational reform.²⁶⁰ Rape crisis centers and shelters for battered women are ideas Italian feminist groups have barely begun to consider.²⁶¹ Such groups have traditionally put their efforts into waging legislative reform campaigns, rather than implementing the reforms themselves.²⁶² Furthermore, the prevalence of political parties in Italian politics has left little room for citizens' initiatives.²⁶³ Even the self-help groups of the early 1970s considered themselves to be a temporary solution to problems the state would eventually solve.²⁶⁴

The rape law reform is a necessary step toward reducing sexual violence, and even toward establishing women as equal to men in Italian society and the political arena. Broader social reform, however, is equally important. Recently, a hotline for frightened or oppressed women was established. This hotline has been so successful that it has become a "powerful campaign

a group of Italian nuns recently joined the feminist movement. Richard Owen, *Italy's Militant Nuns Join Feminist Sisters*, *TIMES* (London), Mar. 6, 1996, at 15. One newspaper reported the move as "[w]itches and saints unit[ing] in struggle," while one of the nuns explained: "To be a woman means to be able to express my female nature without fear." *Id.* Contributions the nuns plan to make to the movement include their experience with violence, poverty, drug addicts, and AIDS. *See id.*

259. *See* TARROW, *supra* note 67, at 332.

260. *See* Pitch, *supra* note 100, at 170.

261. *See id.*

262. *See id.*

263. *See id.*

264. *See id.*

center for women's rights."²⁶⁵ Other solutions beyond the scope of the law will be equally powerful, and now that women have shaped the law in their favor, they must work equally hard to bring about social change. They can accomplish this tedious task through further legal reform as well as educational efforts.

1. Further Legal Reform

Italy's new rape law is a giant step toward reducing rape, but reformers should consider further legal reform. Italy is not the only country that has moved to reform its rape laws in recent years. It should look beyond its borders and study the progress of similar movements in other countries.

The United States provides an excellent example of a rape law reform movement that has achieved much success.²⁶⁶ Through various rape law reforms in the last few decades, feminists there have alerted the public that rape law has historically failed to protect women's interests.²⁶⁷ In the late 1960s and early 1970s, reformers began to object to rape laws that defined rape as excluding all sexual conduct except penile-vaginal penetration, exempted marital rape, and required the victim's utmost resistance to demonstrate nonconsent in rape prosecutions.²⁶⁸ One of the more widely debated issues of current rape law reform concerns the required elements of force and lack of consent to prove rape, including how to define those elements and whether

265. Owen, *Murders*, *supra* note 8.

266. For a summary of the U.S. rape law reform movement that began in the 1970s, see Torrey, *supra* note 221, at 39.

267. See Roberts, *supra* note 249, at 5.

268. See Torrey, *supra* note 221, at 38. The book that alerted women to these issues and sparked the rape law reform movement was *Against Our Will: Men, Women and Rape*, by Susan Brownmiller. *Id.* at 36 ("As a result of the questions raised by Brownmiller and other feminists, people began to see rape not just as violence or sex, but as a form of 'mass terrorism' and an act of male domination over women.").

Like the rape law reform movement in Italy, the movement in the United States was led by feminists, and, as in Italy, those feminists did not all agree as to the best approach. See *id.* at 38. One group, the liberal feminists, whose dominant ideology of privacy, autonomy, and individual choice shaped the reform, effected three major changes in many states' laws: (1) rape was defined by the lack of "consent," (2) sexual coercion was viewed as individual and gender neutral rather than institutional and sex specific, and (3) rape was characterized as "violence" rather than "sex." *Id.* at 38-39. Radical feminists, on the other hand, concerned with the power disparity between men and women, charged that such reforms could not correct women's oppression, which they contended occurs in both the public and private spheres. See *id.* at 40. Furthermore, they argue that characterizing rape as "violence" rather than as "sexual violence" obscures the unique nature of rape, which is different and more serious than assault, as "an objectification and denial of the basic humanity of the victim." *Id.* at 44.

they even should be elements of the crime.²⁶⁹ Another major area of recent reform has involved the rules of evidence.²⁷⁰ Reformers objected to evidence rules that perpetuated the assumption that the rape victim is lying, as well as those rules that allowed the admissibility of testimony concerning the victim's prior sexual history.²⁷¹ To cure those ills, the reformers achieved the passage of rape shield laws to shift the focus of the court's attention to the alleged rapist's actions, rather than the victim's conduct.²⁷² Another problem the United States is currently addressing is acquaintance, or "date" rape.²⁷³

Another country that has recently revised its rape law is Nicaragua. That country's revised law embraces gender neutrality and adopts a broader definition of acts constituting rape.²⁷⁴ Italian lawmakers might want to consider similar legislation in their continued battle against rape. Furthermore, Italy should act quickly, using the momentum the passage of the current law has created through massive media coverage to propel the passage of laws that further reduce the rape problem there.

2. Social and Educational Reform

From the beginning of the rape reform debate, the women's movement was split over the best method to use to meet its objectives. Some women rejected the notion of utilizing the criminal justice system at all, arguing that the change needs to be made on a broad social level. Even those who argue for social reform, however, differ as to the best approach. Some women

269. See *id.* at 41-42 (discussing the disparate and inconsistent definitions of "consent" and "coercion," especially as defined by men as opposed to by women).

270. See *id.* at 36.

271. See *id.* at 39.

272. See Ulmschneider, *supra* note 174, at 112. Although rape law reform varies among U.S. jurisdictions, four common themes reflect reforms achieved in many of them: (1) replacement of the single crime of rape with a series of offenses graded by seriousness, with accompanying commensurate penalties, (2) a change in the consent standard by modifying or eliminating the requirement that the victim resist the attacker, (3) elimination of the requirement that the victim's testimony be corroborated, and (4) restrictions on the introduction of evidence of the victim's prior sexual conduct. See Bachman & Paternoster, *supra* note 185, at 559-60.

273. Torrey, *supra* note 221, at 46.

274. See Morgan, *supra* note 247, at 450-51. Interestingly, the new law reclassifies rape in Nicaragua as a crime "Against Persons and their Physical, Psychological, Moral and Social Integrity" rather than simply as a crime "Against Persons." *Id.* at 451. Nicaraguan reformers, similar to Italian reformers, intended this as a symbolic gesture. See *id.* at 450-51. The new Nicaraguan law also requires a harsher prison sentence, although many reformers had urged the death penalty. See *id.* at 453.

prefer to erase the typical female attitude toward the law, which they perceive as a sign of inferiority.²⁷⁵ They want to enforce the idea of men and women as equal. Others advocate the notion of sexual difference, in which women use their own resources and attributes to find solutions.²⁷⁶ "Women are not aware of the law; instead they are very aware of the interest and desires of the people with whom they are in contact."²⁷⁷

These groups have adopted the anti-institutionalism remnants of the 1970s women's collectives. They believe that women cannot trust an institution that cannot represent them—that is, the patriarchal Italian government. They argue that men believe sexual violence is an aberration, while they and most women know it stems from the normal state of relations between the sexes.²⁷⁸ Without the same basic belief system, men cannot adequately represent women's interests in finding a solution to the problem of sexual violence.²⁷⁹

Those skeptical of the impact of the recent legislative victory regarding rape are correct in emphasizing the importance of other mechanisms of social change. Redefining women's role will require more than an act of Parliament. The education of decisionmakers in the criminal justice system, for instance, will dispel myths associated with rape.²⁸⁰ Furthermore, reformers

275. See *SEXUAL DIFFERENCE*, *supra* note 137, at 73.

276. See *id.*

277. *Id.* This was an observation made by a woman during the Umanitaria Conference. *Id.*

278. See *id.* at 77.

279. See *id.*

280. Some of the common rape myths:

[W]omen mean "yes" when they say "no," women are "asking for it" when they wear provocative clothes, go to bars alone, or simply walk down the street at night; only virgins can be raped; women are vengeful, bitter creatures "out to get men;" if a woman says "yes" once, there is no reason to believe her "no" the next time; women who "tease" men deserve to be raped; the majority of women who are raped are promiscuous or have bad reputations; a woman who goes to the home of a man on the first date implies she is willing to have sex; women cry rape to cover up an illegitimate pregnancy; a man is justified in forcing sex on a woman who makes him sexually excited; a man is entitled to sex if he buys a woman dinner; women derive pleasure from victimization.

Torrey, *supra* note 175, at 1014-15.

Some of the truths a recent study uncovered about rape in the United States: (1) More than 75% of rape victims were raped by someone they knew, (2) most of the victims did not suffer serious injuries, although nearly half feared they would be injured or killed, (3) rape victims were much more likely to experience major health problems, such as depression and risk of suicide, than women who hadn't been raped, and (4) people decide where to place blame for rape based on the victim's attributes, not those of the alleged perpetrator. See Deborah W. Denno, *Introduction to Men, Women and Rape*, 63 *FORDHAM L. REV.* 125, 135-37 (1994).

should alert society to the traditional problems that occur in rape laws and trials, specifically by focusing on the cultural assumptions underlying them.²⁸¹ The social and behavioral sciences are advancing at a rapid rate and can be of great assistance in this educational process.²⁸² For example, in one U.S. study designed to analyze cultural myths and how they perpetuate rape, the researcher concluded that rape is "the logical and psychological extension of a dominant-submissive, competitive, sex role stereotyped culture."²⁸³ To counter those myths, she proposed a long-range strategy to address sex role stereotyping among people at very young ages.²⁸⁴

Finally, reformers must not overlook the use of mass media to educate Italian society about the problem of rape, dispel common myths associated with it, and draw images of the Italian woman as she should be depicted in modern society—someone with a voice. Currently, the mass media foster, rather than dispel, traditional attitudes toward rape and women's issues.²⁸⁵ Studies have shown that acceptance of violence against women in the mass media fosters a similar acceptance in the real world, as well.²⁸⁶ Mass media stimuli used in the study included television soap opera portrayals of rapes that evolved into romances.²⁸⁷ Such responses have been proven to exist even when subjects are aware the media information is fictional, because these images are recalled more readily from memory.²⁸⁸ Increases in the

281. See Ulmschneider, *supra* note 174, at 116-17.

282. See Torrey, *supra* note 221, at 47. Women's Studies departments are still largely absent from Italian educational institutions, but they would be excellent centers for discourse on the topics of rape in particular and women's issues in general. Vita Fortunati, *Multicultural Education and the Challenge of Ethnic Studies and Feminism: An Italian Perspective*, 6 YALE J.L. & HUMAN. 99, 101 (1994).

283. Torrey, *supra* note 175, at 1018.

284. See *id.* "Developing an accurate theoretical understanding of rape attitudes and assaultive behavior will help make social change efforts more effective." *Id.* at 1019. The study was conducted by Martha Burt in 1980. See *id.* at 1017-18. Two other social scientists who questioned feminist contentions about rape conducted a similar study in 1985 and reached similar conclusions, determining that, indeed, there is a discernible nexus between the acceptance of rape myths, rape, and "callous, unbelieving attitudes towards rape victims." *Id.* at 1019.

285. See *id.* at 1032.

286. See *id.* at 1033. One study exposed subjects to films depicting sexual violence against women as positive and yielded results showing the exposure increased their acceptance of violence against women and rape myths. See *id.* at 1032. Another study that exposed one group of male students to a rape slide-audio show and another group to a mutually consenting version determined that the former group had more violent sexual fantasies. See *id.*

287. See *id.* at 1033.

288. See *id.* at 1033-34.

media's sexually violent treatment of women and in the level of exposure to those portrayals exacerbate the problem.²⁸⁹ One study yielded the following explanation:

Recent laboratory research examining the effects of [mass media] violent sexuality, such as those analyzed herein, indicate that they stimulate rape fantasies, increase the levels of electric shock administered to a female victim in comparison to neutral, sexual, or aggressive stimuli, and reduce perceptions of the degree of trauma suffered by a rape victim. Moreover, a number of studies have shown that sexual arousal to sexually violent pictorials and stories (but not arousal to nonviolent sexuality) is correlated with callous attitudes towards rape and with a self-reported possibility of committing a rape.²⁹⁰

Reformers should see these studies as convincing evidence that the media greatly influence society's attitudes. Indeed, it was the press, with its coverage of the onslaught of violent sexual crimes in the 1990s, that alerted the public to the increasing rape problem and need for reform in the latter years of the rape law reform movement.²⁹¹ This massive media coverage mobilized not only the women of Italy, but also men, the message reaching as far as The Vatican and the powers of Parliament. This is the kind of power the media hold in society today, and reformers who realize this will have a useful tool for communication and education.

V. CONCLUSION

Even Benito Mussolini would probably not stand in the way of the Italian women of the 1990s, who as a group have demonstrated perseverance and patience in their trek to reform his demeaning rape law. It is this cohesiveness and ability to expand beyond party lines that will earn them an important place in the Italian political arena. In a country where political parties and a slow political process have dominated, perhaps the rest of the citizenry can learn a lesson from these women.

The rape law itself is a valid beginning, although it must not be considered an end in itself. The new law will serve as an important instructional tool, symbolizing the recognition of women as human beings, rather than mere bodies. This recognition will not lead to the immediate removal of all scantily clad bodies displayed in Italian newsstands, because a country so

289 See *id.* at 1034 & n.93.

290. *Id.* at 1035 (quoting Neil M. Malamuth & Barry Spinner, *A Longitudinal Content Analysis of Sexual Violence in the Best-Selling Erotic Magazines*, 16 J. SEX RES. 226, 235 (1980)).

291. See *supra* Part II.A.6.

entrenched in traditional attitudes toward gender roles will be slow to change. Italian women must continue to force their way into politics, to demand legal change on their own terms rather than compromising under the patriarchal system. They must also expand their reform efforts beyond the law to encourage educational and social reform. Tools such as the rape reform effort have proven excellent catalysts, but they are only the beginning of the long journey out of a dark corner. Italian women have long since realized they must not wait to be invited to dinner.

*Amy Jo Everhart**

* J.D. Candidate, 1998, Vanderbilt Law School; B.A., University of North Dakota at Grand Forks. The Author thanks the members of the *Journal* for their generous devotion of time and talent to every assertion, footnote, and comma in this Note. She also thanks Beth Walla for dedicating her Italian language skills to the translation of the statute on which this Note is based. Finally, she dedicates this Note to her parents, Fred and Marge Everhart, and her sister, Lisa Everhart, for not doubting her dreams, even at their most daring.