Mind the Gap: An Exploration of the Relationship Between Law and Society in the Fight Against Rape

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Abstract

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Rape legislation and its significance as a societal problem have received increased attention in Norway, accompanied by a new legal reform proposal in late 2022. While there is a prevalent belief in the law as a solution to address the severity of rape, questions arise regarding the actual role of the law in combatting this issue. Previous literature suggests a potential gap between legal and social norms, and legal reform's impact on rape may be more symbolic than practical.

To gain insights into the role of law and punishment in addressing rape, this study combines focus group interviews with youths and young adults and individual interviews with representatives from Non-Governmental Organisations. The research delves into several key questions, employing theoretical perspectives such as legal mobilisation, punishment theory, and the relationship between law and society. It explores the symbolic and practical functions of the law highlighted by the study participants, extracts ideas from the data regarding society's contribution, and examines the interaction between law and society in the context of rape.

From a sociology of law perspective, the relationship between law and society, particularly concerning rape, is complex but essential to investigate. The findings indicate that the law operates as a means of communication, conveying messages, signalling norms, and driving transformative changes. It plays a critical role in shaping perceptions of rape and determining the legality of various sexual interactions. Punishment serves as a central element and objective of the law, aiming to deter and rehabilitate offenders while preventing both

recidivism and instances of rape within society. Additionally, there exists an inherent understanding that rape is morally wrong beyond legal definitions, which serves as a reason to punish—its illegality is less significant than its moral severity. Consent emerges as a crucial factor in distinguishing lawful from unlawful sexual encounters, as emphasised by focus groups using consent as a defining boundary.

To enhance the effectiveness of the law, a comprehensive approach encompassing societal measures is required. These measures involve challenging and combatting harmful stereotypes and attitudes associated with rape. By doing so, the legal system can develop an improved capacity to address and prevent instances of rape. It is important to recognise that while the law lays the groundwork for the fight against rape, it cannot accomplish this task alone.

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Synnøve

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1 Introduction

In recent years, there has been a growing consensus among the criminal justice system, the government and the public that victims of rape are not receiving adequate justice. On December 19th, 2022, a new proposal for revised rape legislation was put forth in Norway. As a result of this consensus, all five Nordic countries have now either implemented or discussed revisions to the legal definitions of rape (Jacobsen & Skilbrei, 2020; Skilbrei et al., 2019). A basis for reforming the law is the continued criticism of the current rape legislation, and the recommendation from the United Nations to amend section 291 of the Penal Code to ensure that the lack of free consent is at the centre of the definition of rape (FNs kvinnekomité, 2023). The UN further recommends that Norway increase its capacity and knowledge within the justice system to ensure all reported cases are thoroughly investigated. The foundation of these recommendations is an increasing worry about the prevalence of rape in Norway. In Nordic countries, both police-reported incidents and data from population-based surveys demonstrate that a significant portion of the population is affected by rape (Dale et al., 2023; Heinskou et al., 2017; Thoresen & Hjemdal, 2014), highlighting the paradoxical nature of the situation. Before 2023, the most recent prevalence study of rape in Norway was conducted in 2014 (Thoresen & Hjemdal, 2014), revealing that 9,4% of women and 1,1% of men had experienced rape at some point in their lives. However, a new study published in 2023 (Dale et al., 2023) showed a troubling finding, an increase from 2014, that 23% of women and 4% of men in their sample had experienced rape. Although it is impossible to evaluate whether this inclines an actual increase in rape or whether it is an increase in reporting or an increase in acknowledging experiences of rape, criminal statistics underline these findings (see figure on page 253 in Hennum, 2022).

As most studies on rape and rape law begin by emphasising the severity of rape in their opening paragraphs, it is widely recognised that rape is a serious crime with significant

consequences. For some people, rape is a “settled paradigm of wrongdoing in need of no explanation” (Gardner & Shute, 2000, p. 1). Conaghan (2019) argues that "rape is strictly a legal concept. And although the law cannot exclusively capture what may be considered sexual violations, it is crucial to the question of whether and what conduct constitutes rape" (p. 153). Legal definitions of rape have varied over time and place (Jacobsen & Skilbrei, 2020), where “rape laws have been reformed to shift the focus from force and resistance to lack of voluntariness” (Larcombe, 2014, p. 3). Contemporary rape laws reflect significant changes in how the legal system views gender roles, sexuality, and acceptable forms of sexual behaviour (Clay-Warner & Burt, 2005). The current version of the Norwegian Penal Code section 291 defines rape as an intentional action (*forsettlig handling*; The Penal Code, 2005). Section 291 states that committing sexual acts using violence or threats, engaging in sexual activity with an unconscious or incapable person, or compelling someone to engage in sexual activity through violence or threats is considered a criminal offence that can result in imprisonment for a maximum of 10 years (The Penal Code, 2005). The proposal recently put forth follows contemporary changes of focus towards consent.

Rape is interpreted by some scholars as a crime occurring due to a lack of gender equality and furthers inequality (i.e., MacKinnon, 2016). According to Burman (2010), a fundamental aspect of Nordic feminism is the explicit use of criminal law to achieve gender equality. Despite the significant efforts made in the Nordic countries to combat sexual violence and promote gender equality, phenomena such as rape remain a challenge for policymakers. The use of legal reform as a solution to the gravity of rape is called upon by society and various movements fighting for women’s rights (Mathiesen, 2011; McGlynn, 2010; Smart, 1989). Legal optimism represents a naive belief in how the law operates, where the tendency to believe that the law is the solution dominates the mindset (Balvig & Krarup, 1991) and is the best way to promote their interests (Mathiesen, 2011, p. 194). It is emphasised by scholars that legal

reform alone cannot solve much (e.g., Jacobsen & Skilbrei, 2020; McGlynn & Munro, 2010; Smart, 1989). While specific legal definitions of rape exist, rape is also a socially constructed phenomenon, closely linked to social attitudes (Temkin & Krahé, 2008). It is an established truth—rape is inexcusable, unjustified and ought to be forbidden. As previously mentioned, literature on rape illustrates, the legal definition of rape may not necessarily correspond to the population's definition of rape, it underscores the importance of this master's thesis.

Integrated with these discussions on various definitions and the gravity of rape is the question of what rape is and what law and punishment are and can be. With Norway now having a proposal for consent-based legislation up for hearing, it is interesting to investigate the law's role and capacity to combat crime, in this case, rape. The substantial surge in rape cases highlights the severity of rape. In 2010, when the Norwegian Parliament [*Stortinget*] enacted stricter penalties for murder, aggravated assault and sexual offences and the reasoning behind increased penalisation for rape was that "the provision on rape not only safeguards the psychological integrity of the individual but also addresses highly serious violations of physical integrity and an individual's most intimate sphere"[1] (Prop. 97 L (2009-2010), p. 18). As such, the justification for stricter punishment was based on the proportionality assessment and the need for the punishment and the severity to align. It underlines the severity of rape, while how it is handled is thus dependent on what the significance of the law and punishment is for the fight against rape, and it is this I will attempt to understand.

1.1 Aims of the Study

This study seeks to map out perspectives on the role and function of rape legislation and punishment, in relation to theories of legal mobilisation, social change and the relationship between law and society. It will delve into the symbolic and practical functions of law, and

[1] My own translation.

how the participants in this study discuss these topics. With the gravity of rape established initially, it is interesting to explore where the law falls as a solution, and this study emerges here. Therefore, the overarching research question is: "**How can we best understand the role and capacity of the law and punishment in combatting rape**?". To answer this research question, I will research several sub-questions which will highlight the role of the law in combatting rape according to the participants of this study. What symbolic and practical functions of law are underlined by the participants of this study? What ideas can be drawn from the data about the contribution of society? According to the findings, how do law and society interact when it comes to rape? To answer these questions, I make use of 11 focus group interviews of youths and young adults in Norway and three interviews of representatives from Non-Governmental Organisations (NGOs) working towards combatting rape. While the study cannot determine the actual role of the law in tackling rape, it provides a view of the law's role by analysing and discussing my research data.

1.2 Outline

The background for the study will be presented by introducing a State of the Art on rape as a field of study, focusing on rape law reform and what rape law can solve in terms of tackling rape. Further, the theoretical framework is outlined through the Sociology of Law as a research area, legal mobilisation, the relationship between law and society, and punishment theory. This framework is used to discuss the results of the findings and the analytical framework is presented in Chapter 3.3. Chapter 3 overall outlines the methodological decisions and processes for the focus groups and individual interviews and presents the ethical considerations and limitations of the study. The empirical data is presented in Chapter 4 and is separated into three sections (4.1 Definitions of Rape, Law and Society, 4.2 The Purpose of Law and 4.3 What Measures Lies Beyond the Law). These sections constitute elements of the role of the law and

punishment necessary to address the research question and are broken down through analysis. Following is a discussion of Chapter 4 in light of the theoretical framework in Chapter 5, Discussion. It is here the research question will be explored. Lastly, a conclusion will summarise the study to answer the research question.

2 Literature

2.1 Past and Current Research on Rape and Rape Law

There are a few challenges associated with defining rape and addressing it historically and in contemporary times. However, the bigger question is why we need to reform rape laws and what specific problems we hope to solve through these reforms. The relationship between rape, gender and law has been frequently studied (e.g., Frank et al., 2009; Frohmann & Mertz, 1994). Frohmann and Mertz (1994), although some years ago, discussed that the changes in the law to that date "have not resolved several serious shortcomings of the legal system about women's experiences" (p. 830). They sought to explore how social and cultural aspects construct law and the legal approaches to violence against women. In recent years, there has been a growing focus on women's societal roles and how to improve their position and address power imbalances within society (Frohmann & Mertz, 1994).

Research on rape has involved looking into whether reforming the law is a solution to the gravity of rape. As Daly and Bouhours (2010) state, "rape law reform is a long-term process of efforts to change legal culture, organizational and professional practices, and attitudes toward and beliefs about men's and women's sexualities, culpabilities, and responsibilities for sexual victimization" (p. 579). This process relies upon the practices of those reformed laws (McGlynn, 2010; Quilter, 2011), and suggests that law reform outcomes rely on how the justice system and all other instances involved implement and use those laws. However, it is difficult to predict the outcomes of law reform (Mathiesen, 2011; Smart, 1989). When a law is reformed and implemented, the consequences of said law become evident. Smart (1989) notes that "the feminist movement […] is too easily 'seduced' by law and even where it is critical of law it too often attempts to use law pragmatically in the hope that new law or more law might be better than the old law" (p. 160).

Rape law reform involves a new legal definition, and although legal definitions are not the only definitions of rape, it is interesting to note how the legal definition affects the public's definition and vice versa. Burgess-Jackson (1995) indicates that "rape" is a broad and vague concept and proposes that redefining rape widens its scope. As such, what cases amount to rape and not would then include 'borderline cases' as he sees them – cases which, under the legal definition of rape, do not fit. Skilbrei et al. (2019) problematise a conflict between the law and social understandings: "Different and conflicting conceptualisations may co-exist and cause confusion about the boundaries of the phenomenon, for instance, when legal and lay understandings are different" (p. 2). Although this refers to how rape could be defined, it illustrates the importance of social and cultural norms when deciding how to create a framework for sexual norms. Moreover, "the main dilemma for any feminist engagement with law reform is the certain knowledge that, once enacted, legislation is in the hands of individuals and agencies far removed from the values and politics of the women's movement" (Smart, 1989, p. 164). However, McGlynn (2010) and Smart (1989) find some naïveté to be legitimate, as rape law reform has indeed removed some egregious examples of attitudes and practices within the criminal justice system. These examples could arguably relate to the creation of a 'real rape' – a situation where the rape meets legal requirements, often affected by assumptions about what amounts to rape (Quilter, 2011).

Legal reform has both symbolic and practical implications (Daly & Bouhours, 2010). The essence is what we want the law to do. The practical outcomes refer to how the law impacts practice regarding evidentiary requirements, police investigation, decision-making, and court processes (Jacobsen & Skilbrei, 2020). Symbolic outcomes revolve around what signals the law emits and what the expressive qualities of the law are. As such, the two types of outcomes represent two different goals of law—reporting, investigating, and committing people of crimes as part of the practical elements; signalling society what is criminal and not and changing

attitudes towards societal issues as part of the symbolical elements. Frohmann and Mertz (1994) wrote:

> Activists and scholars hoped that reform of laws, the criminal justice system, and practices of collateral institutions would facilitate the reporting of sexual assaults and battering, encourage prosecution of these crimes, and increase convictions. These reforms were intended to challenge the cultural and political ideology that either implicitly or explicitly tolerated and supported violence against women. Reformers particularly wanted to change institutional practices that held women responsible for their victimization, with the ultimate goals of restructuring power relations between the sexes and reducing men's violence against women. (p. 831).

The practical outcomes Frohmann and Mertz (1994) reference are increased reporting and convictions, and symbolic outcomes about changing attitudes within society and reducing uneven power relations. However, it is problematic that consent-based legislation is assumed to only have symbolic effects, such as a change in attitudes in the population (Jacobsen & Skilbrei, 2020). Consent-based legislation is assumed to better represent how rape legislation can protect sexual autonomy (Sveinsdóttir, 2020; Vestergaard, 2020). And this shows how legal reforms have dual concerns: “One was with efficacy (for example, changing the law to deter rape and/or increase conviction rates), but the other involved attention to women’s perceptions and experience of the process itself (Frohmann & Mertz, 1994, p. 831). Reforming rape law could further align the public’s views on rape and its definition with the legal definition of rape.

Furthermore, Quilter (2011) analysed rape trials and found that although rape law reforms have shifted from focusing on the real rape and now accept non-consensual rape as a

criminal offence, the real rape "continues to be constructed in courtrooms as an act that has physically identifiable signs" (p. 38). Thus, reforming rape legislation from coercion-based to consent-based legislation still allows for biased attitudes to dominate the legal space. According to Dowds and Agnew (2022), legal reforms are valuable, but perhaps more important is the public awareness and education of acceptable and unacceptable conduct. Hence, the symbolic outcomes and changing the social attitudes towards sexual norms seem to be of critical importance to combatting rape. However, how can we accomplish that?

In 2019, the World Health Organization published a report detailing how we can prevent rape and a harmful rape culture. The report states that prevention is the core solution to the elimination of rape and outlines different risk and prevention factors to focus on (World Health Organization, 2019). Risk and prevention factors focus on the symbolic context when combatting rape and policymaking, therefore law-making seems to be a smaller portion of the solution. Indeed, Peacock (2022) argue that legal sanctions are (1) not necessarily what the victim-survivors want, (2) they rely on criminal justice systems known for discrimination, (3) they fail to see rape as a social and societal problem, and lastly (4) there is little evidence to prove that legal sanctions deter and prevent rape (p. 1893). Thus, the importance of symbolic outcomes and prevention factors becomes apparent. Depending on the implications of the law and what it regulates (Jacobsen & Skilbrei, 2020), *how* the law participates in the combatting of rape is central.

2.2 Theoretical Framework

The topic of rape is broad and complex, with many different angles to consider depending on one's specific interests. This thesis focuses primarily on the legal and social aspects of rape and how they coincide. In this chapter, I will establish the theoretical framework on which the coming analysis and discussion of the role of the law in Norwegian society's combatting of

rape will be based. The thesis topic will be situated within the sociology of law as a field of study. Specifically, the relationship between law and society will be outlined, as it is deemed relevant to understand how law reform might provoke changes in society and vice versa. This relationship is not linear and is further a studying process which poses difficulties in concluding the exact relationship.

Moreover, to further discuss the relationship between law and society and how it affects the prevalence of rape in Norway, I will delve into the field of legal mobilisation. Legal mobilisation is often used to invoke social change. Lastly, I will present principles behind punishment as aspects crucial for understanding the potential of punishment. In the discussion chapter of this thesis, Chapter 5, the data obtained from the focus groups will be integrated with that from the individual interviews, within the context of the theoretical framework. I would like to note that punishment is included within the term 'law' as it is an aspect of the law—I specify where it is one or the other.

2.2.1 The Role of the Sociology of Law

"The sociology of law is about the effects law has on society, of the consequences of different legal rules, but also about how society affects the development of the law"[2] (Sand, 2017a, p. 184). Exploring the effects of rape law is a challenging task; Hydén (2022) claims that the sociology of law as a discipline is placed in an impossible situation regarding understanding the functions of law in society. He poses that the sociology of law is placed between social science and legal science, therefore, the relationship between law and society is outside everyone's responsibility (Hydén, 2022). "The result is that knowledge of the role of law and legal regulation in society is a blind spot from a scientific point of view" (Hydén, 2022, p. 141). Thus, this thesis faces the challenge of relating this relationship to the phenomena of rape.

[2] My own translation.

Despite this, I assume that even the attempt at studying this furthers the cause of the sociology of law as a discipline—if squeezed between sciences, it is crucial to define and utilise the uniqueness of the sociology of law. Sand (2017a) suggests that there is no single truth regarding the impact and purpose of the law, and similarly, it is difficult to precisely define and demarcate what constitutes a theory of the sociology of law.

As Hydén (2022) writes, law and regulation are often studied using legal theory, however, legal theory differs from the theory *of* law, in which the sociology of law develops. There is a difference between the knowledge of the law and legal knowledge (Hydén, 2022). This thesis provides knowledge on the functions of law and legal rules, not how the law is constructed and applied. Hydén and Svensson (2008) state that to gain a comprehensive understanding of the law, it is essential to recognise the intrinsic nature of the legal system. Most essentially, the law is a normative institution (Sand, 2017a; Hydén & Svensson, 2008), and criminal law is "a fundamental means of both establishing and communicating normative standards" (Larcombe, 2014).

2.2.2 Legal Mobilisation

"In recent decades, how citizens see and relate to state authority has changed, and it continues to do so" states Domingo and O'Neil (2014, p. 5), referring to how people make use of the law and justice processes to inflict change in society. Marginalised and impoverished groups have often utilised legal channels to advance their rights and achieve greater equality of opportunities (Domingo & O'Neil, 2014). But how does the law work? The answer depends on the responder, but many social movements such as the Feminist and Women's movements tend to believe that legal change and legal pathways are the most influential ways to promote their interests (Mathiesen, 2011, p. 194). Zemans (1983) states that "law is mobilised when a desire or want is translated into an assertion of right" (p. 700). The question is why one decides

to mobilise? Calling for reform and having a strong belief in the intended outcomes of the law could be characterised as legal optimism (Mathiesen, 2011). Balvig and Krarup (1991) note that legal optimism, oftentimes, represents a naïve faith in how the law works, where tendencies to believe a law works when implemented, dominate ways of thinking. The phenomenon of legal optimism is closely related to legal mobilisation, which, put simply, involves seeking solutions through legal means.

Relating to Mathiesen's (2011) claims on legal mobilisation, Domingo and O'Neil (2014) use the term legal empowerment to define the process of mobilising "the law, legal systems and justice mechanisms to improve or transform […] social, political or economic situations" (p. 4). They further describe how legal empowerment could be used to shift power relations in society, both individually and collectively, and that especially marginalised groups make claims. Moreover, "legal empowerment needs to be assessed both as a process of change as well as for its more direct individual impact and social outcomes" (Domingo & O'Neil, 2014, p. 5). Ergo, and unsurprisingly, social movements mobilise the law and seek such legal empowerment as a means of change, and it appears as though this legal mobilisation has increased over the past few decades (Domingo & O'Neil, 2014).

Lempert (1976, in Zemans, 1983) defines legal mobilisation as "the process by which legal norms are invoked to regulate behaviour" (p. 173). The law impacts society in numerous ways, including but not limited to establishing norms, regulating behaviour, defining behaviour, and sanctioning those who deviate from such definitions (Vago, 1981). If, and when, the law does not answer needs arising from major social change, or when behaviour required from a legal norm differs from the actual social behaviour in society, a lag between law and society appears (Dror, 1958). The lag between them implies legal mobilisation to achieve social change or an overall likeness between law and society by changing legal norms according to social values, needs and behaviour. Dror (1958) prompts the lag of society

following changes in the law as the most problematic: “How far, if at all, can changes in the law be used to bring about social change?” (p. 796). Moreover, a lag of the law behind social change seems to be, historically, more common than the opposite (Dror, 1958).

When addressing legal mobilisation, social movements, and the law in general, it is crucial to consider the relationship between law and society. As Dror (1958) writes, “Aspects of the relationship between law and social change pose some challenging problems of great significance for an understanding of the role of law in modern societies” (p. 787). A social change could be defined in several ways, but overall implies changes in social structure or culture (Dror, 1958), and means “modifications of the way people work, rear a family, educate their children, govern themselves, and seek ultimate meaning in life” (Vago, 1981, p. 239). As such, social change is a vital and inevitable part of society and social life. It further refers to altering ways people in society “relate to each other with regards to government, economics, education, religion, family life, recreation, language, and other activities” (Vago, 1981, p. 239).

Although the current thesis is not necessarily exploring *how* social movements make use of the law for their interests, it is notable that as these social movements occupy more place in society, their opinions might transfer to other groups. Tilly (1984, in McCann, 2004) defines social movements as:

> A sustained series of interactions between powerholders and persons successfully claiming to speak on behalf of a constituency lacking formal representation, in the course of which those persons make publicly visible demands for changes in the distribution or exercise of power, and back those demands with public demonstrations of support. (p. 306)

McCann (2004) criticises this definition in his article on legal mobilisation, as it "does not clearly distinguish social movements from interest groups, minority political parties, protesting mobs, and other forms of collective action" (p. 509). As such, the term social movements for McCann (2004) refers to a particular type of social struggle, and this allows for a limitation of what the term applies to. Therefore, it is important to contextualise what social movements refer to in this thesis. As social movements could in more broad terms revolve around social struggles, this thesis' use of the term 'social movement' will point to any data or form of opinion related to the social struggle of rape. It is essential to note that any social struggle has several conflicting viewpoints—on one side you have people fighting rape with a call for consent, and on the other side, you have people fighting rape without calling for legal action. Further, such a broad social movement definition presents potential challenges as it lacks clarity on what falls outside its scope. However, unless explicitly indicated, this thesis does not delve into distinguishing between various groups and opinions within the data.

2.2.3 The Relationship Between Law and Society

"No major social change occurs or is put into effect in a society which is not reflected in some kind of change in its laws" states Friedman (1969, p. 29). The relationship between law and society is intricate, where it is difficult, and in some ways impossible, to detect in which ways they affect each other. For this thesis, it is essential to examine this relationship as it lays the groundwork for answering the research question. To explore the role law plays in fighting rape, a crime of great social character, one must delve into how, if, and when the law could be implemented as an instrument of social change. As Dror (1958) puts it, "aspects of the relationship between law and social change pose some challenging problems of great significance for an understanding of the role of law in modern societies" (p. 787). Furthermore,

the law is socially and historically constructed and is deeply embedded within society (Mather, 2008, p. 681).

First and foremost, the law could be defined in many ways, depending on where one finds the definition and from whom. Mathiesen (2011), proposes that the law is the collective system of formally implemented rules in a society, the institutions responsible for practising and controlling such rules, and the norms of social life not explicitly incorporated in the law (p. 38). Friedman (1969) defines the law as a process: "It is how structural, cultural and substantive elements interact with each other, under the influence of external or situational factors, pressing from the larger society" (p. 34). He further goes on to define what structural, cultural and substantive elements are. Structure relates to the various institutions, the form they take, and the processes they perform. Substantive components are the laws themselves and the output of the legal system. Lastly, and most importantly according to Friedman, are the cultural components. These are the "values and attitudes which bind the system together, and which determine the place of the legal system in the culture of the society as a whole" (Friedman, 1969, p. 34). Culture, therefore, determines society's use of the law.

Mathiesen (2011) lists three viewpoints for understanding law: (1) society's impact on the law, (2) the law's impact on society, and (3) the interaction between the law and society (p. 37). This illustrates that the relationship between law and society is not linear – they change with each other and because of each other. This brings me back to the phenomena of social change. Social change can be initiated by various factors, both external (environmental and structural) and internal (by social movements or technology), and social change, in general, is highly prevalent in modern societies—it has become accepted as a part of social life (Dror, 1958, p. 788). Scholars are unified in their views that law and society could impact each other both directly and indirectly and have both intended and unintended outcomes (Balvig & Krarup, 1991; Dror, 1958; Mathiesen, 2011). Directly, "a law designed to prohibit [a specific

behaviour] has a great direct influence on social change, having as its main purpose the bringing about of changes in important patterns of behaviour" (Dror, 1958, p. 797). However, this purpose might not necessarily be fulfilled, as it is up to society to follow the law. Indirectly, laws can affect institutions that further directly affect social change. For example, if a law guaranteed free legal aid for rape victims, this would be indirect as it enables processes within legal institutions and other support systems for victims, which has a direct role in social change for society and rape victims. Moreover, when the law is utilised by social movements or simply an organised utilisation, it allows various organs to directly attempt social development (Dror, 1958, p. 798). Once more it is critical to point out that outcomes of law reform are difficult to predict (i.e., Frank et al., 2009; Smart, 1989). Furthermore, the outcomes of the law can be either intended or unintended (Balvig & Krarup, 1991; Mathiesen, 2011). Mathiesen (2011) suggests that determining the consequences of the law is a complex task, and the line between intended and unintended outcomes can be ambiguous (p. 45).

The relationship between law and society can be viewed from different theoretical positions. Friedman (1969) summarises that (1) law operates independently from the broader social system and is not bound by any particular culture. It can adapt to various stages of social development. Although the legal system incorporates its customs and values, at its core, these values and practices remain timeless. The other theoretical system views the relationship between law and society in ways where (2) any part of the law is "tied to specific levels or kinds of culture. Law is not self-contained; it is culturally very specific. Changes in society which would alter its structure demands change in the legal system" (Friedman, 1969, p. 37). However, the law is not autonomous or unrelated to other aspects of society (Dror, 1958).

Despite the literature mentioned above being of old age, they are used and implemented as theoretical contributions to the research of newer times. Such as Vijeyarasa (2019; 2021) implementing Dror (1958) when discussing how the law is male-centric and there is a need for

a gendered law that considers women's lives and experiences. Thus, the theoretical remarks made in this chapter have not lost their importance in our modern society, which is a pivotal point for this study as it draws on older theoretical assumptions. Vijeyarasa (2019) makes a point that the law's position in society has not changed in its normative sense, affecting society by shaping behaviour and practice. Furthermore, modern sociology of law theories has drawn from earlier works on the relationship between law and society (i.e., Luhmann, 2013; Anleu, 2009), although I will not present them or make use of them in this thesis. In short terms, they make use of the terms such as social change and theorise the relationship between law and society.

2.2.4 Punishment Theory

According to Hauge (1996), punishment is commonly defined as the infliction of harm upon an individual who has violated the law, intending to make them feel the harm. Historically, there are many reasons why one can allow and inflict harm, in other words, punishment, on offenders. It refers to the exercise of public authority; the actions, processes and decisions made by the authorities in carrying out their duties. This thesis will go into the theoretical position most central in Norway: prevention.

Norwegian criminal law has a lengthy tradition of rationalising penalisation and punishment based on prevention, namely general and specific prevention (Hauge, 1996). Synonymous with prevention is the term "deterrence", which refers to the idea that the punishment experienced by an individual convicted of a crime is perceived as so negative that they are deterred from committing further offences future (Ot.prp. nr. 90 (2003–2004), p. 78). Punitive measures aim to bring about a rehabilitative effect whereby the convicted individual fully comprehends the reasons for the wrongfulness of their actions. This desired outcome can also be referred to as the rehabilitative function. Virtually all depictions of Norwegian criminal

law underscore prevention as the dominant feature (Hauge, 1996; Kinander, 2013). When exploring the concept of deterrence, it becomes crucial to differentiate between various types of offences, as it is evident that the deterrent effect of punishment is not uniform across offences like rape and illegal parking (Andenæs, 1971).

As aforementioned, the preventive functions of punishment could be general or specific. The general preventive effects of punishment are either deterrent, cost-benefit or habit-forming (Hauge, 1996). The deterrent effect pertains to the fear of punishment that may discourage individuals from committing illegal acts (Andenæs et al., 2016; Jacobsen, 2004). However, this effect can only be potent if society is aware of the criminal law and what is punishable. Punishment is intended to be unpleasant and serves to communicate society's judgement. While some individuals may be deterred by the fear of punishment, others may only fear the consequences of their actions when it is clear that they will face punishment. The cost-benefit effect involves individuals weighing the potential benefits of committing a crime against the potential costs of punishment (Hauge, 1996). This type of prevention is most effective when individuals deliberately plan their actions. The habit-forming/attitude-forming effect reinforces moral norms, as certain punishable actions align with moral beliefs (Hauge, 1996). For example, the norm that stealing is wrong is both a punishable and a moral norm.

The specific preventive effects of punishment can be divided into three categories: incapacitation, deterrence, and rehabilitation (Hauge, 1996). Incapacitation refers to the physical restraint of the offender to prevent them from committing further crimes, either permanently or temporarily, through various forms of detention such as imprisonment or preventive detention (Hauge, 1996). As aforementioned, deterrence occurs when the offender experiences the punishment as so negative that they refrain from committing future crimes. For example, the experience of imprisonment may be so intrusive that the offender avoids repeating it and therefore avoids committing future offences. Rehabilitation refers to the intended effect

of punishment to help the offender understand the nature of their actions and recognise that they were wrong (Hauge, 1996). The offender must realise that their actions were wrong and why they were wrong for the punishment to have a rehabilitative effect.

2.3 Contextualisation of this Study

While exploring how to best understand the role of law and punishment in the fight against rape, this thesis will explore views on rape and the law existing in Norwegian society. Specifically, this is done by how youths, young adults and representatives from NGOs express this. Throughout Chapter 2, I have outlined the background for the area relevant to my research question, with an emphasis on legal reform and what rape law can solve. The State of the Art in section 2.1 illustrates the complexity of rape, and the difficulty society and policymakers encounter when addressing the fight against rape. This literature has shown that the law has been insufficient in addressing issues like violence against women and stereotypical assumptions and highlights the historical inadequacy of the legal system. While it is acknowledged that men can also be victims of rape, the research presented suggests that it is challenging to separate rape from its gendered nature. Understanding the internal dynamics of the legal system, including the social and cultural factors that contribute to the perpetuation of violence against women, is crucial for developing effective legal strategies and interventions to combat rape and promote gender equality.

The legal reform of rape legislation and its outcomes are relevant to studying the role of the law and punishment in the fight against rape as they reflect evolving societal values and help shape norms surrounding consent and sexual violence. In my thesis, I will explore whether there is a lag between social and legal norms, with a focus on the role of the law. Here both theory on legal mobilisation and social change is pivotal for the understanding of the role of law and punishment in this sense. Legal mobilisation is often used to invoke social change, and

I argue that its importance for this thesis is (1) highlighting the relationship between law and society, (2) explaining how people utilise the law as a tool for social change, and (3) how these groups affect overall society. Additionally, comprehending the connection between law and society establishes a foundation for understanding how normative standards set by the law are intertwined with society and its impact. Lastly, punishment theory allows for situating the justifications for punishment in my data within the notions of the tradition of Norwegian criminal law.

3 Methodology

This study aims to investigate the role of law and punishment in the fight against rape by analysing data obtained from focus groups consisting of youths and young adults in Norway, as well as individual interviews with representatives from NGOs. Before conducting the analysis, specific methodological decisions were made concerning the interview process. There are separate sections for the focus groups and in-depth interviews to uphold a sense of structure. Initially, the research design is elaborated, encompassing details about the focus groups and the in-depth interview procedures. This will be followed by a description of participant recruitment strategies and preparations made for conducting the interviews. Subsequently, the chosen analytical framework and coding strategies will be presented. Finally, the chapter will discuss ethical considerations made during the process of completing this project and the limitations.

The knowledge base for this thesis is data from 11 focus group interviews and three individual interviews of representatives from NGOs. The data gives information about the relationship between law and society, and everything this relationship encompasses, from the point of view of youths and young adults, as well as organisations engaging in ongoing rape law reform debate in Norway. Thus, the data from both collection methods are different, although they together create a base of knowledge surrounding the role law, and society, play in tackling rape.

The focus groups are part of the data material from a project I participated in, researching the legal consciousness among the Norwegian population (see Frøyland et al., 2022). The three interviews I conducted with representatives from NGOs are separate from the legal consciousness project on the basis that they are not part of the material for that project. I believed that it would complement the data from the focus groups, going beyond the subjective opinions of the participants in the focus groups. Moreover, the organisations engage in the

relationship between law and society in several ways, such as actively seeking legal and societal change regarding rape. The following sections will elaborate on the research project in general and the process of conducting the focus group and individual interviews.

3.1 Research Project: The Sense of Justice and a Qualitative Approach

Before the formulation of the research question, and before most planning of this thesis, I applied for a scholarship for a research project at the Department of Criminology and Sociology of Law. This project is the project mentioned throughout the thesis, regarding the sense of justice and legal consciousness in the Norwegian public. My participation in this project allowed me to make use of the data from the research project for my master's thesis, and I decided that I wanted to emphasise qualitative data. Qualitative approaches to data collection aim to create a holistic understanding of the studied phenomena (Creswell & Poth, 2018, p. 17), and thus, I decided such an approach would be advantageous for my research. The research project also produced quantitative data I have access to should I want and need it.

The project was a collaborative project between NOVA at Oslo Metropolitan University[3], the Institute of Criminology and Sociology of Law at the University of Oslo and KRUS[4], and was financed by the Norwegian Department of Justice and Public Security. The objective of the project was to "generate new knowledge about different types of legal perception in the Norwegian population"[5] (Frøyland et al., 2022, p. 12). The most central themes were knowledge and attitudes within the population towards criminal acts and the punitive level for these. The study further highlighted how people resonate around the limits between legal and punishable acts.

[3] NOVA is a welfare research institute at Oslo Metropolitan University. In Norwegian: Velferdsforskningsinstituttet NOVA.

[4] KRUS is known as the Norwegian Correctional Service's college and education centre. In Norwegian: Kriminalomsorgens høgskole og utdanningssenter.

[5] My own translation.

3.1.1 Focus Group Interviews

Part of the qualitative data of the research project is 11 focus group interviews. Focus group interviews can be defined as guided or unguided group discussions that address a specific topic (Lune & Berg, 2017). They differ from ordinary group interviews, described as "a situation where you interview people together without having the objective of investigating group dynamics" (Wilkinson, 2016, in Skilbrei, 2019, p. 71)—in focus groups, the interviewer is often someone who facilitates the discussion rather than interviewing directly. The focus group can vary on the background of how the researcher manages the situation, as well as the size and composition of the group (Skilbrei, 2019, p. 71). An advantage of focus group interviews is that you create a knowledge base for group dynamics and that the informants play on each other's statements and one can thus cover a larger area of information (Skilbrei, 2019).

The focus groups consisted of youths and young adults in the 17-24 age group, and they were interviewed in groups of 3-7 people. A total of 11 interviews were conducted, and **Table 1** shows details regarding the selection.

Table 1

Overview of focus groups

Focus group number	Characterisation			
	Participants	Subgroup	Place	Time
1	F17, F17, F18, M18	Upper secondary students	Oslo	90 min
2**	F17, F17, F17, F17, F18, F18, M18	Upper secondary students	Oslo	90 min
3	F17, F18, F18, F18, F18	Upper secondary students	Oslo	90 min
4**	F17, F17, M17, M17, M18	Upper secondary students	Greater eastern region	90 min
5	F18, F19, F19, M18, M19	Upper secondary students	Greater eastern region	90 min
6	F17, F23, M18, M20	Upper secondary students	Trondheim	90 min
7**	F19, M22, M23	Students of social sciences	Trondheim	120 min
8	F*, F*, F*, F*	Students and employees	Greater eastern region	120 min
9	M19, M20, M21, M24	Inmates	Greater eastern region	U/N
10**	M20, M21, M23, M24	Inmates	Greater eastern region	U/N
11	F24, F24, F23, M23	Students of social sciences	Oslo	120 min

Note. N=49. The table displays the number of participants in each focus group, including their gender (F = female and M = male) and age. Subgroup refers to what group they can be characterised as. The greater eastern region refers to what in Norwegian is known as 'Østlandet'.

*Age not noted. **Focus groups discussing the rape vignette.

Recruitment was carried out through various methods, including utilising networks and employing the snowball method. To recruit adolescent participants, we reached out to upper secondary schools and received positive responses regarding their willingness to participate. Young adults were primarily recruited from higher education institutions. Additionally, we also recruited young adults who were either in custody or serving sentences in prison. The recruited groups exhibited diversity and encompassed individuals with different backgrounds, including gender (excluding the inmate group, which consisted solely of males), social class, ethnicity, and geographical affiliation. We made efforts to recruit young adults who were already in employment, but despite extensive measures, we were unable to successfully secure their participation. As shown by **Table 1**, six focus group interviews were carried out on upper secondary school students, three on students—young adults—and two on inmates. Across all interviews, more females (n=29) participated, compared to males (n=20).

3.1.2 Interview Guide

The interview guide covered various topics, attitudes towards justice, punishment, and the penal system. A comprehensive interview process, including the guide, can be found in **Attachment 1**. Initially, each participant completed a postal survey, the same as the one sent to the population in the quantitative part of the research project. Following the survey, they gathered for a discussion, where they received additional information about punishment and details of the case described in a vignette. The project features six vignettes, but this master's thesis primarily relies on data related to the rape vignette discussed in four of the focus group interviews (see **Table 1** for which groups and **Attachment 2** for the rape vignette).

A pilot interview was conducted to test the interview process with the interview guide, a process recommended by methodological literature (e.g., Sampson, 2004), which proved to be beneficial in refining and improving the research instruments. In this research project, the

pilot interview provided valuable insights into the duration and intensity of the focus group research strategy. Based on this feedback, it was decided to present and discuss a number of vignettes appropriate for each interview, although mostly only one of the two vignettes was discussed in detail. If more than one vignette was discussed, points 3-6 from the interview process (see **Attachment 1**) were repeated.

Follow-up questions were crucial in establishing trust with participants and ensuring that no information was misinterpreted during the focus group interviews. It is worth noting that I participated in five of the 11 focus groups as a researcher, although I have access to all the data from the other interviews and transcribed four. The focus groups were moderated by one to three researchers, typically two, who facilitated the interviews by ensuring that all themes and topics were covered and by asking follow-up questions to obtain more detailed responses. The interviews varied in terms of participant engagement, with some participants requiring more guidance from the researchers due to limited communication, while others were more autonomous and shared information on their initiative.

3.2 Individual Interviews

To supplement the data from the focus groups, as well as complete some research independently, I decided to interview people working for different NGOs. These organisations had to have some relation to the fight against rape. An individual in-depth interview is a data collection method which usually involves a one-to-one situation where the researcher's objective is to acquire insight into a specific topic using a semi-structured interview guide, and it allows interviewers to inquire about social and personal matters (Hennink et al., 2020; DiCicco-Bloom & Crabtree, 2006). A semi-structured interview is often revolving around several different topics the conversation will cover, although characterised by creating space for the informant to express themselves freely (Kvale & Brinkmann, 2015, p. 156). Although

the interview guide is formed in advance as an aid to the interview, the researcher is also an instrument who must listen to and respond to what the informant says and ask suitable follow-up questions (Hennink et al., 2020, p. 130). "Semi-structured in-depth interviews are the most widely used interviewing format for qualitative research and can occur either with an individual or in groups" (DiCicco-Bloom & Crabtree, 2006, p. 315).

3.2.1 Selection and Recruitment

Recruiting informants for these interviews was a meticulous process, and I based my recruiting on a predetermined list of organisations with a presence in Norway. In Norway, there "is a network of organisations that demand a change in Norway's penal code so that it establishes that sexual intercourse without consent is rape. The alliance is party-politically independent and therefore includes neither political parties nor youth parties"[6] (Samtykkealliansen, 2021), called The Consent Alliance [*Samtykkealliansen*]. Their objective is to "influence as many political parties as possible to agree to include a term of consent in the rape legislation" (Samtykkealliansen, 2021; see footnote 6). A total of 30 organisations makes up the alliance.

I chose to recruit from this network as it guaranteed that it would give me data rich in knowledge about the severity of rape and how to regulate it. These organisations understand the complexity of rape and their work aligns with my research question—understanding how we best could fight rape as a crime and what roles law and society play in this crime-fighting. They offer a more knowledgeable viewpoint when you compare it to the focus groups in terms of comprehension of the law and specifics surrounding the severity of rape. In section 4.5 I will elaborate on the decision of recruiting from this network, more specifically on what limitations it presented.

[6] My own translations of the information given by the Consent Alliance's website, www.samtykkelov.no.

I contacted seven different organisations within the network via email, introducing myself and the project, and attached to the email was an information letter. The information letter presented the aims of the project, the terms of their participation and how I would use the data (see **Attachment 3**). Out of the seven organisations, six of them responded. There was a lot of interest shown in the project, however, despite indicating interest, not all organisations continued to reply to my requests for organising interviews. This was a challenge, especially considering the time pressure of conducting them within a reasonable time to transcribe, analyse and discuss findings from the data. In sum, I conducted three interviews.

3.2.2 Conducting Individual Interviews

The two first interviews, with Organisation A and B, lasted around an hour each. They were both semi-structured conversations, where I could ask questions from the interview guide, and I asked follow-up questions where appropriate. The interview guide consisted of nine questions, as shown in **Attachment 4**. In numerous ways, the follow-up questions were just as important as the questions from the interview guide, if not more. They allowed me to ensure that I understood what the informants were saying or not, and I could get more detailed information. However, the first interview, with Organisation A, led me to realise that question number six was difficult to formulate well and did not give me the information I hoped for. Despite being a focal point of the discussions in the focus groups, it seems as though this was less relevant in these interviews. Different factors might affect how people view punishment for rape or criminal action in general—notwithstanding, Organisation A's response to this question is related to the one she gave for question number five. Therefore, I omitted it from my guide for the following interview unless it fell as a follow-up question for question number five.

The second interview, with Organisation B, was meticulous to plan and set a time and date. Due to scheduling problems, we postponed the interview several times. As a solution,

Organisation B suggested interviewing on a digital platform. Initially, I was reluctant about this as I was worried about the potential for poor sound quality of the recording, mostly, but also that it would affect the interview situation by making either of us rely on properly hearing and understanding each other consequently. At times, I found that it was challenging to pay full attention to what the informant was saying, which made the recording of the interview all the more important. The connection was lost a few times, causing me to have incomplete transcription at one point, but I assess that it did not affect the actual data.

The third interview was conducted via email as the Organisation, C, contacted me after my data collection had ended. I sent the interview guide to the Organisation and received a written response. While that meant that I gained valuable additional data, there are limitations to consider. On one hand, interviewing via email saved time and allowed the informant to reply at their convenience. Furthermore, having the informant write their answers also allowed them to fully elaborate their statements through editing their language, although this could also be a limitation as their responses are not necessarily a reflection of the initial thought processes the question induced. It further eliminated the limitations of a more formal interview setting, which could have reduced the comfort of the informant. Additionally, as proposed by Bowden and Galindo-Gonzalez (2015), email interviews reduce transcription pitfalls as the responses are already transcribed by the informant. However, email interviewing eliminates the possibility of follow-up questions that could be asked in a face-to-face setting. This made my role as a researcher more diffuse, as I was limited to providing a set of questions. The representative from Organisation C emphasised I could ask questions if I had any, although I found no need to do so. Moreover, the lack of social cues in email interviews made it difficult to contextualise statements. Nevertheless, I viewed these limitations as minimal, especially regarding social cues. In my transcription of the other interviews, as the next section of this chapter will discuss, I did not emphasise the idiosyncratic elements of my interviews. Despite its limitations, I

regarded the email interviews as an equal piece of data to the individual interviews which allowed me to achieve more depth.

3.3 The Analytical Framework

3.3.1 Transcription

I transcribed four of the eleven focus group interviews as part of my participation in the research project. Further, I transcribed the interviews with Organisation A and B. Transcription is crucial for qualitative research, and Oliver et al. (2005) propose a continuum of transcription methods from naturalism to denaturalism. Naturalism captures every detail, while denaturalism removes idiosyncratic elements such as stutters and pauses. The choice of method depends on whether the focus is on language or meanings and perceptions conveyed. Researchers should consider the impact of transcription choices on participants and research goals. In this study, a denaturalised approach was used for transcribing Norwegian interviews to focus on meanings and perceptions conveyed rather than the details of how things are conveyed. The interviews were conducted in Norwegian and relevant excerpts were translated into English by me.

All interviews were transcribed using NVivo, a digital analysis software, which I only utilised for the transcription. In addition to approaching my transcriptions in a denaturalised style, repeated words were removed if they did not affect the material. The video recording of the interview with Organisation B had a few audio lags, but despite this, I captured the essence of the conversation during transcription and do not regard myself as having lost valuable data.

An essential point of my transcriptional method was to anonymise the material while transcribing. Thus, I removed all mentions of names, schools, organisations and other personal information which could identify either informants, their local communities or their workplace. This was in line with the ethical considerations elaborated in Chapter 3.4. All anonymisation was written with "[…]", or as an example for the individual interviews, I anonymised when

they mentioned their organisation by name as "[organisation]". Clark (2006) refers to this as blanket anonymisation: "Whereby all people (including third parties) referred to in interview transcripts, field notes, diaries and other data forms, are anonymised at the earliest opportunity" (p. 5). The earliest opportunity is usually during the process of transcription. All participants have further been given pseudonyms. As an example, the informants for the individual interviews are called 'A', 'B' and 'C', and the participants in the focus groups were given initials referring to their gender (M=male, K=female) and numbers to separate them from each other. It was not deemed essential to attach the participants to anything other than their age and gender, however, I do not actively use their age as a means of argumentation in this thesis past noting whether they belong to the youth or young adult group. In line with Frøyland et al. (2022), I define youth as people between the ages of 17-19 and young adults as ages between 20-24.

3.3.2 Coding

Following the transcription of the last interviews, I began the process of coding the data, which related to categorising the data to establish a framework of thematic ideas about it (Gibbs, 2018). I formulated what Tjora (2018) names "textual codes". Such codes are words and expressions which describe a given section of data. It is argued that this way of coding does not sort the data into categories, but it gives detailed descriptions of what is being said (Tjora, 2012, p. 184). Finding textual codes in the data related to finding meanings that reoccurred throughout the material considered relevant to the research question. In this study, I chose to translate all codes and themes from Norwegian to English to match the language of the thesis. This decision aligns with the need to overcome language barriers in research, allowing non-Norwegian speakers to utilize the empirical data (Goitom, 2020). However, this decision also comes with limitations, as the quality of the translation depends on the skills of the researcher (Goitom,

2020; Mandal, 2018). As Goitom (2020) notes, speaking the same language as the participants of the research project and being familiar with their culture and context can enhance the accuracy of the translation. I focused on capturing the essence of the participants' words and included the original Norwegian words in quotations where necessary to preserve their meaning. While the translation could be considered a limitation of the study, my fluency in English and experience in writing in English provided confidence in the translations.

3.3.3 Analytical Approach

Analysis of qualitative data could be done in various ways. After coding, the themes had to be analysed. Braun and Clarke (2012) give an elaborate run down of thematic analysis, which is a "method for systematically identifying, organising, and offering insight into patterns of meaning (themes) across a data set" (p. 57). As I had already identified themes in my data through coding, I let these themes guide my analysis. The thematic analysis enables you to analyse the meaning of data across the entire data set or to conduct a comprehensive examination of a particular aspect of a phenomenon (Braun & Clarke, 2012). After identifying themes, I looked closely at the data, extracting quotes which emphasised these themes. Further, I derived both implicit and explicit meanings from what the participants were saying.

The selected theoretical perspectives played a distinct role throughout the project. Approaching my data from a sociology of law perspective, the notion is that law and society affect each other and inflict changes in both legal and social norms. This has guided the way I have structured my analysis. With this, I refer to structuring my thesis from aspects of the law—definitions and punishment—to societal measures and, therefore, society.

I have included data from all focus groups that I deemed fruitful for my analysis, beyond the four explicitly discussing rape, as when analysing the role of law, I found data which made my arguments carry more weight. Thus, in the coming analysis chapter, I attempt to specify

where statements are made in the focus groups which directly relate to rape by referring to their number (see **Table 1**). Otherwise, it is a general point of view the participants uphold when they discuss the law and punishment across all groups. A reiteration of the data using quotes, I have sometimes edited the structure of the quote without changing the meaning of what they are saying. This was to increase readability and reduce "noise" in the data for clarity. The empirical evidence is presented in Chapter 4, while the findings are discussed in Chapter 5.

3.4 Ethical Considerations

Through my participation in the research project and my research in this study, I have followed the Guidelines for Research Ethics in the Social Sciences and the Humanities (NESH). When it is said that research is carried out in line with NESH it means to ensure free, informed and expressed consent to participate in the research, and that consideration of the participants' integrity is safeguarded throughout the research process (Staksrud et al., 2021), which becomes important. In addition to following the guidelines for research ethics, I have followed ethical principles concerning people—the storage, processing and collection of personal data (Personopplysningsloven, 2018). Consent is the core of research on people or personal data and material that can be linked to individuals, and it must be informed, voluntary and documented (Staksrud et al., 2021). The research project has been approved by NSD (Norsk Samfunnsvitenskapelig Datatjeneste).

Upon recruitment for either focus groups or individual interviews, all participants received an information letter stating the research project's purpose. This includes who is responsible for the research project, why they are asked to participate, what participation entails, what the information will be used for, and how it is stored. An important aspect of the information letter is detailing their rights as voluntary participants. A central aspect of my study

and the research project is that they do not collect sensitive information, as no questions required information about their offences or victimisation, for example.

Another ethical consideration I wanted to ensure is that the NGOs I interviewed should not experience that I was out to get them. In line with this, during this whole research process, I have ensured that I have attempted to my full extent to stay neutral as a researcher. This includes not developing an opinion on what model of rape legislation I prefer, or why I might prefer one over the other. At the same time, this pertains to how I have presented the participants' views as reasonable considering the way I have written their arguments and used them in my thesis. Within this lies the importance of anonymisation, which I, as mentioned, ensured in the transcription. I can here emphasise that the interpretations of their statements are my own.

Lastly, my supervisor has a specific political position on rape, which the NGOs were aware of before they participated in my study. The recruitment of participants from the NGOs was done at a time when debates surrounding the proposal of legal reform were especially relevant, emphasising my supervisor's role in the entirety of the discussion. This could have affected their inclination to participate, as well as the interviews in general. However, I have not experienced this as an issue and cannot see ways in which this has affected my research ethically.

3.5 Limitations

I have already touched upon a few limitations in this methods chapter, such as the ones related to the conduction of the interviews. I will now delve further into some other limitations.

A central limitation to discuss is the one of transferability. The NGOs I recruited represent only one side of the rape debate, the consent-based one, as apparent by the network they are part of. They all fight for the implementation of consent-based rape legislation in

Norway, and as such, they condemn the current state of rape law, which is coercion-based. This means that I knew going into the recruiting that I would get data more biased towards one side of the debate. To solve this methodical issue, I formulated questions to identify their reasoning for why consent-based legislation is preferred. Moreover, the study's sample size, particularly for the individual interviews, is small. The fact that the same themes were not explored with a group holding different views on rape and rape laws limits the generalisability and transferability of my findings (e.g., Tjora, 2018). In the discussion chapter, I will assert that NGOs play a crucial role in addressing the issue of rape. Nonetheless, recruiting participants from this group is one of several ways in which this study could have been conducted. The question is whether my research and my findings are transferable to others. Certainly, my findings say some things by someone, but would it have been different if I had a larger selection? Furthermore, the focus groups could have had different compositions and other participants, which could have given other findings. These are all things which relate to the validity of my research.

Despite documenting the value of conducting a pilot interview for the focus groups in Chapter 3.1.2, I did not use one for the individual interviews. This was on my part a conscious decision considering the time I had to conduct these interviews before it compromised the overall quality of my master's project. In many ways, the experiences I gained from my participation in the research project on legal consciousness in Norway, made me more confident in my abilities. After formulating the interview guide and having it approved by my supervisor, I was not hesitant to interview the first informant apart from the common nerves of knowing the importance of the interview.

I will now reflect on not having transcribed all the material from the focus groups. It was a natural decision from the view of the research project to divide the workload, as the interviews were all long, and transcribing up to nine speakers at most is a complicated process.

Although I did not transcribe all the data myself, I see it as a limitation to the validity of my research. There were differences in the transcription methods used by other transcribers, who paid attention to naturalistic details like pauses and nonverbal cues, which I did not. However, I did not include these details in my analysis as I focused solely on what was being said. There were also some comments by the transcribers about words being hard to hear, but I did not find any examples where this affected the meaning of the sentence.

4 Rape and the Interactions Between Law and Society

In the following chapter, I present my key findings concerning the role of law and punishment in combatting rape and examine the relationship between law and society. The chapter is divided into six sections, each addressing a selection of themes and arguments most relevant to my research question. The first section of the chapter delves into the conceptualisation of rape in my research data. Specifically, I analyse how participants in the focus groups discuss rape and the weight they place on various aspects of the crime. I investigate how representatives from NGOs define and approach the issue of rape. This chapter establishes a framework for understanding rape.

The second subchapter moves beyond the conceptualisation of rape to explore what the participants discuss regarding law and rape law, and what it ought to achieve. It highlights different models of rape law and considers the role of law in society, shedding light on the relationship between law and society. I draw more directly on the interviews with the NGO representatives while using the focus groups to complement and deepen the analysis.

In subchapters three, four and five, I examine how the participants understand the capacity of the law to prevent rape. Specifically, I consider the concepts of general and specific deterrence, as well as the importance of victim considerations in the legal system, in that structural order. In these subchapters, I draw on data from both the focus groups and the individual interviews to explore justifications for punishing crime generally and rape more specifically. These subchapters are pivotal to understanding the role of law in the context of the focus group participants. By examining why crimes should be punished and why rape should be penalised, I provide insight into the attitudes and perspectives of this demographic on the legal system's role in addressing rape.

The final subchapter explores how the participants establish and discuss the societal mechanisms that go beyond the law and explore the role of society in combatting rape. A central

question is how society can contribute to this effort beyond relying on the legal system alone. I examine various features of society that are being said to contribute to the gravity of rape, such as gender roles, attitudes and rape myths. Again, the focus lies on the interviews with the NGOs, using the focus groups as a supplement.

4.1 Definitions of Rape, Law and Society

4.1.1 What Is Rape? Wrongdoing, Grey Area and Sexual Assault

In this section of the analysis, I aim to identify how the participants understand rape as a social and legal issue and provide an overview of the definitions of rape from both a social and legal perspective.

One of the young adult groups consistently referred to rape, and the specific scenario in question—the rape vignette— as an abhorrent crime, and using their language, a "dirty" offence. In a statement made by Organisation C, rape gives grave physical and mental consequences for the victim which cannot be compared to any other violence. They posit that sexual violence is a violation of an individual's autonomy and freedom, which is emphasised by their use of words such as "intrusive" and "depriving". They highlight that the negative consequences can lead to a loss of security in their own body and even a development of contempt towards one's own body. They use strong adjectives when describing what rape is, and they imply a deeply rooted emotional response to the trauma it creates. These implications appear unrelated to the "severity" of the rape, in other words, whether it was aggravated or a "grey area" rape. Furthermore, Organisation C claims the experiences of girls with rape and rape culture create an identification as females are more aware of the harm rape causes. They suggest that this heightened awareness is a result of their personal experiences and knowledge of rape culture. They phrase it in a way that suggests that girls are "much more aware" of the consequences, and at the same time, the experiences of rape are felt more "directly on our

bodies". They connote that females may have distinct experiences and outlooks compared to other groups concerning rape and rape culture. This is supported by Organisations A and B as well.

Although the focus groups emphasise that rape is severe regardless of the circumstances, a male participant from one group (focus group 4) expressed uncertainty about whether the perpetrator in the vignette was aware of the wrongfulness of their actions. This relates to the definition of rape; malintent is the condition for wrongfulness according to the legal definition. When directly questioned about his perception of the situation, he confirmed the interviewer's interpretation of his position on criminal liability. This participant also noted that several factors, such as the perpetrator's level of alcohol consumption, could have influenced their judgment and decision-making, making it less clear that this was a case of clear-cut rape. The other participants in the group did not agree with his view on the ambiguity of the situation, particularly the two female participants. Consequently, it is challenging to conclude whether this male participant was the sole individual in the group who held this view of the vignette, or across all groups. Moreover, the focus groups have an idea of what rape is, but the legal specifics are perhaps ambiguous. This is echoed by Organisation B when they reflect on the younger generation's use of the law as a reference point—the Organisation suggests that they do not relate to the law in this sense.

> And then there are different perceptions of how that situation was, you know. When we talk about rape, many think of it as sexual assault [*overfallsvoldtekt*] where you just know that this was not necessarily right. But many of the cases we encounter are kind of in a grey area and have some uncertainty and different perceptions of the situation. And sort of, what really is rape, it's something we encounter. (Organisation B).

The quote highlights the complexity of rape cases and how they can fall into a "grey area" where people have different perceptions of the situation due to young people not necessarily knowing the wrongness of their actions. During Organisation B's work with youths, they come across many who are unsure of what rape is, and this demonstrates their expressed need for educating and informing youths about establishing boundaries. One remark described the reprehensibility of rape and how it violates another person's rights:

> The act he did, and the way he did it too, he is taking advantage of a person who is not even capable of taking care of themselves. When she's lying there asleep and has vomit in her hair, and you start touching her and having sex with her. (Young adult, male, focus group 10).

The act of having sex with someone in this state, where they are unable to consent, is seen as wrong. Nonetheless, perceptions of rape may differ, and a social definition of rape might not correspond with the legal definition. An explanation is offered by Organisation A: "It [sexual assault and stranger rape] is a description of a situation that characterises a minority of the rapes committed, and which causes many of those who are subjected to rape not to recognise what they have experienced as rape". As such, Organisation A emphasises the existence of rape beyond the definition of rape in Norwegian criminal law. While it is crucial to have a good law that encompasses what constitutes rape, Organisation A stresses that every report cannot result in a conviction; rape exists in society regardless of a legal definition or legal prosecution. It further does not matter the gender of the perpetrator or the victim, or in what relation the rape happens for Organisation A.

An interesting finding is that the individuals in the focus groups who were discussing the rape vignette use consent as a distinction between acceptable and unacceptable sexual

interactions. The focus group participants speak of sex as being something you have to consent to, in the form of saying 'no' if something is happening that you want no part of. Both Organisation A and B imply that consent-based legislation would solidify the disparity between legal and illegal sexual acts by setting a clear norm. The law must explicitly state that the absence of free consent is the defining factor, as emphasised by Organisation A. One of the young adult focus groups (focus group 7) discusses the scenario in the vignette as unambiguous as the victim was unconscious, on account of consent not being present. As such, there appears to exist a social definition of rape based on consent, which is not reflected in the law. The emphasis on consent will be addressed in a legal sense in the next section of this chapter.

All in all, rape is viewed as unambiguous; it is inherently wrong, and no circumstances are mitigating for the severity. However, the existence of grey area situations emphasises that a clear definition of rape is missing. Adolescence is years of uncertainty in general, and misunderstanding situations does not necessarily directly translate into not knowing what rape is by its legal definition, but perhaps the social definition. The focus group discussions illustrated that consent is a premise for "good sex", although grey area rape might mean that ensuring consent is the problem. In other words, the choice of raping might relate to the social norms affecting decision-making processes.

The data has shown that perceptions of rape may vary, and this problematises setting a clear legal and social norm. It is perhaps impossible to establish norms which encompass every perception. Nevertheless, data shows that there exists a definitive and absolute definition of rape, which my informants operate with, that might not correspond with the legal definition. This is illustrated by the call for legal reform, as I will explore in the following section, and Organisation A explains that the lack of a broader legal definition of rape causes some victims to not recognise their experience as such. Specifically, this section has exemplified that males

and females may differ in their views, and as I will make clear in section 4.1.3, the NGOs stress that this is due to identification and gender roles—rape is a crime affected by gender.

4.1.2 What Is the Law and What Is Its Potential?

Rape law is an opportunity to penalise what the focus groups expressed as "one of the worst things you can do" (focus group 10). In this section, I will explore the role of rape law and arguments for and against consent-based rape legislation. While people may rely on the law as a means for combatting rape, the NGOs stress that there are mechanisms beyond the law that hold equal, if not greater, importance. I will establish these mechanisms in the following section, but first, I will examine the capacities and purposes of rape law.

The law's primary function appears to be to communicate what is right and wrong. Organisation A cites an example from their work which emphasises how the law is interpreted and illustrates how what the law communicates affects people's perception of rape. In brief, this story is about two people who meet and hit it off at a party, where the night ends in sexual engagement the victim and the perpetrator view differently. Until the victim reported the rape, it had never crossed his mind that it was rape; he had not considered his actions to correspond with the legal definition of rape before the report, and although the case was eventually dismissed, it made him aware of his wrongdoing. This underlines the transformative nature of law, even the transformative effects sharing your experiences might have. As suggested by Organisation C, the legal system has an opportunity to establish a new normative standard for society, shaping understandings of rape. Organisation A emphasises the importance of a clear and communicable law that outlines what is legal and illegal and upholds the principle of legality. The principle of legality is enshrined in the Norwegian Constitution, Article 96: "Everyone has the right to be presumed innocent until proven guilty" (The Constitution, 1814). It ensures that no one is to be convicted of criminal acts in a court of law unless evidentiary

requirements are met, and Organisation A argues that this principle is fundamental to protect legal certainty and prevent wrongful convictions.

To emphasise their views, Organisation A sheds light on international human rights standards and the definition of rape. They note that the UN recommends Norway change the legal definition of rape to include "lack of consent" (FNs kvinnekomité, 2023), a point that Organisation C supports. However, they argue that the new reform proposal does not follow this recommendation:

> A consent-based rape provision starts from the premise that a person, as a starting point, is not sexually available until consent has been given. While this proposal turns it on its head and communicates that a person is sexually available until a rejection has been given unless the person is in a situation of coercion or incapacitated. (Organisation A).

In this statement, Organisation A criticises the new proposal in Norway for suggesting that a person is always sexually available until they reject someone's advances, which contradicts the Organisation's belief. The former approach refers to an "only yes-means-yes" model, which emphasises that only an explicit and enthusiastic "yes" can be considered as consent and that any other response indicates a lack of consent. The latter is a "no-means-no" model, emphasising that any lack of consent, whether verbal or non-verbal, should be acknowledged as a refusal to engage in sexual activity. In short terms, The Council for Criminal Law (*Straffelovrådet*), hereby the Council, claim that the new proposal encompasses acts where the victim expresses in words or actions that they do not want to engage in sexual intercourse (NOU 2022: 21), thereby constituting a "no-means-no" consent-based legislation. The Council further argues that these are theoretical models that hold differences that have few practical implications.

Organisations A and C state that a "no-means-no" model continues to apply responsibility on the victim to ensure that the sexual activity in question is consensual by actively rejecting the perpetrator, instead of the responsibility laying on the perpetrator to ensure that consent has been given. Thus, they both suggest that the new proposal is not an improvement if you consider the victim, similar to the criticism they give to the current rape legislation. Organisation B explains that one of their preferences for an "only yes-means-yes" model is due to their belief that it may be easier for the younger generation to say yes rather than no, although they expressed uncertainty about which model would be most effective in the legal system. As mentioned earlier in this chapter, Organisation B works with youths and young adults who may not necessarily know what constitutes rape, leading to situations where it is unclear whether consent was given or not.

During the focus group discussion on the rape vignette, both the youths and young adults used consent as a premise for determining whether it was rape. In one young adult group (focus group 10) they explicitly stated that the victim "did not consent or was not physically present, how could the girl say yes or no at all". It is noteworthy that when Organisation A began preventive and attitude-building work targeted towards young adults, they did not initially focus on the need for a change in criminal law. Their first courses used the standards set by law and they "quickly discovered that it was impossible to communicate effectively using this approach".

When exploring the development of this social norm, the NGOs were queried about the reason behind the widespread attention consent-based legislation has garnered in Norwegian society. Organisation A observes that it has not provoked sufficient attention given the seriousness of the offence concerning prevention and attitude-building work. The involvement of organisations and other stakeholders may have contributed to increased awareness among Norwegians. Organisation B suggests that the population may hope to act as a driving force for

change, while Organisation C adds that some victims are taking matters into their own hands by sharing their stories, hoping to raise awareness and pressure for change due to the perception that the law and authorities have not adequately addressed several experiences of rape. The necessity for further conversation and attention to the gravity of rape in society and a desire for increased emphasis on prevention and attitude-building efforts is stressed by Organisation A. Further, according to Organisation C, rape cases have to be prioritised within the legal system, and the Norwegian government have to allocate more resources to combat rape. They emphasise that instances beyond the legal system must change the way they meet victims of rape, particularly within healthcare and mental health services.

Following this, some of the focus groups expressed that the Norwegian police have dismissed "too many cases", leading to a lack of trust in the police. Organisation A draws a comparison to the Smoking Act, in which the Norwegian government implemented legal changes and invested in prevention and combat measures, including attitude-changing campaigns, to reduce the number of smokers. The NGOs believe that investing in rape prevention and combat measures, similarly, could result in significant change. Organisation A contends that the law provides the groundwork for preventing, combatting and prosecuting rape, and if there are flaws in the law, the whole process will be inadequate.

> It's like building a house, you know. When the foundation is weak, the house can never be good. And that's how I think the law is a bit. It lays a foundation for how the combat, prevention, and criminal prosecution of rape will be. And if the law is skewed, then the rest will be skewed too. But just having a foundation is not enough in itself. You have to build on top of that foundation. (Organisation A).

In brief, the law is normative—it shapes understandings, and its primary function is to communicate right and wrong. These functions should not come at the expense of either the victim or the perpetrator, as upholding the principle of legality is fundamental. Further, in a perfect world, not every rape case results in a conviction but upholds the rights of every party involved.

Norway is being criticised for their legal definition of rape, and the NGOs state that Norway is committed to international standards that are not followed. This is a basis for why there is a proposal up for consultation which is consent-based. The NGOs criticise the proposal for not following a "yes-means-yes" model and problematise that Norway would continue to have a law which applies a lot of responsibility to the victim. On the other hand, it is important to consider the practical uses of rape legislation. Rape law affects people's perception of rape, as when legal rights are utilised, these established norms and perceptions are challenged. With the proposal being consent-based, it might better reflect the social norms in society. The focus groups already making use of consent as a premise for acceptable sexual behaviour emphasise that there is a social definition of rape in society among the younger generation which might better correspond with consent-based legislation. While acknowledging that consent is given more attention, according to the NGOs, rape as a societal and legal issue is not given considerable attention considering the gravity of rape. The legal system must prioritise rape across all instances. A flaw in the foundation law lays creates a shaky groundwork for preventing, combatting and prosecuting rape; building upon the foundation is equally important, implying that continuous efforts are needed to combat rape effectively.

4.2 The Purpose of Law and Punishment

4.2.1 General Deterrence Effects

The subsequent section of the analysis will reiterate the general preventive elements of punishment in my data. The focus groups present several justifications for punishment, in general, regarding its intended impact on society. The most frequently mentioned argument is the deterrent effect, as well as the function of punishment and law in controlling and safeguarding society. These arguments are consistent with Ot.prp 90 (2003-2004) and the rationale for why punishment is necessary. To exemplify these arguments, I will make use of data from the focus groups discussing the rape vignette, to further amplify the general preventive effects specific to the context of rape.

> […] It will also perhaps make people feel safe too, knowing that those around you—no one has plans to kill you. Because you know that there is an extremely large penalty that comes with it. […] So, you will then feel more secure in society. (Female, focus group 3).

The idea of the statement above is that if individuals know that there are harsh consequences for committing certain crimes, they will be less likely to engage in those behaviours, thus promoting a safer and more secure society. Organisation C further stresses that if a rape ends in punishment, it might be preventive, because then a perpetrator may choose not to rape if they know it can have consequences. Thus, the preventive effect might be a learning opportunity for both the individual and society. According to Organisations B and C, punishment and sentencing serve as a precedent. They believe that the wording and application of laws have a signalling effect that can raise awareness among members of society.

The importance of upkeeping a sense of order and safety in society is a general argument for punishment several of the focus groups make. One of the young adults (focus group 7) and a youth focus group (focus group 3) discussed that punishment keeps laws and the country in check; it is necessary to upkeep order in society. They posit that the most important reason to punish someone is to protect society and its members, and punishment ensures rule-following. The focus groups thus believe that if we do not punish crimes, the legal rules are unnecessary as no one will follow them unless we sanction breaking them. This notion of protection implies that members of society might be inherently predisposed to committing crimes, and the penal code and the sanctioning of these formal rules are crucial for social life.

However, Organisation B stress that the punishment must not be excessively intimidating:

> That you're afraid to have sex with someone because you're afraid that it's going to be … that it's going to be wrong in some way and that you could somehow be prosecuted because one was not completely sure all along. (Organisation B).

As such, this Organisation B problematises the punishment of rape cases, and sexual interactions in general that are in the grey area, where it is complicated to know whether the other person involved is consenting. The quote above highlights that punishment should not dissuade people from engaging in actions that are socially and legally acceptable in other circumstances. Therefore, in cases where criminal acts are not inherently wrong, the context in which they occur might further limit people's freedom; the general preventive effects might negatively send a message about a restriction of boundaries that can harm social life. The statement from Organisation B expresses concern about the potential consequences of sexual encounters and the fear of prosecution for not being completely sure about the other person's

consent. This fear could lead to people refraining from sexual activities, which can harm relationships and social interactions.

Furthermore, one female participant from a focus group of young adults (focus group 7) suggests that the concept of punishment should deter people from committing crimes and raise the threshold for criminal behaviour. In a separate focus group of young adults (focus group 10), participants agree that punishment should serve as a deterrent for both the offender and society, specifically in the case of rape. They believe that the severity of punishment should be significant enough to discourage any thoughts of committing rape, with the cost-benefit dimension of general prevention surfacing in their discussions. Additionally, participants across several focus groups suggest that the punishment of an individual should discourage others from committing similar offences. This view is supported by Organisation C, which highlights the preventive effects of punishment as a specific and general deterrent when teaching society about punishment and norms for legal sexual acts.

In all focus groups, there was a strong call for harsh punishment for rape. However, many participants were unsure about what the actual punishment for rape was, as reflected by the discussions. The panel of judges from the study of the sense of justice, using the same vignette, suggested an unconditional prison sentence of four years *if* it could be proven that the offender knew the victim was unconscious (Frøyland et al., 2022, p. 52) which is the standard punishment for cases like this one. Interestingly, when the focus groups discussed the rationalisation for harsh punishments, only two out of four groups set punishments that aligned with the precedence set by law and previous cases. Organisation B suggested that youths and young adults do not relate to the law and the penal code specifically. This is perhaps reflected in the lack of knowledge of the actual punishment for rape, although two of the focus groups meted out a punishment corresponding with the standard punishment. When queried about gender differences in the metering of punishment for rape, the NGOs suggest that females

identify with the victim and males with the perpetrator of rape. In a youth focus group (focus group 4), the females wanted harsher punishment compared to some of the boys, and this might be based on identification with the victim.

When discussing the advantages and disadvantages of the current rape legislation in Norway, Organisation C offers their support for the high minimum sentence for rape, stating that it is "important that the punishment is relatively high because the consequences of rape can cost society a lot of money due to the health consequences that follow a rape". The statement thus suggests that a high minimum sentence may act as a deterrent, while it at the same time emphasises a societal responsibility to punish rape severely due to its harmful impact. However, Organisation C brings up another aspect of the new proposed rape legislation in Norway which is reducing the minimum sentence. They state that although it might increase the number of trials and convictions, it might complicate the experiences of the victim. They characterise this situation as a "difficult compromise", implying that there are no easy solutions.

Questioning the fairness of punishing someone solely for the sake of setting an example and considering the impact it may have on the individual is brought up in several group discussions. During the interview, a male participant from one of the young adult focus groups (focus group 7) questions the effectiveness of the law and punishment as a preventive measure, asking, "You can set an example, but how big an example can you set?". The NGOs acknowledge these concerns, stating that we should not rely solely on punishment, but also focus on prevention and changing societal attitudes towards rape, rather than depending entirely on punishment to deter potential offenders. They believe that punishment should be an essential component of combatting rape, while accompanied by education and awareness campaigns aimed at changing attitudes towards sexual violence. Organisation C and one of the youth groups speak of the belief that punishment would deter individuals from committing rape and lead to a reduction in its occurrence; "people know that if you do something illegal, you will be

punished for it. […] it makes people do much fewer illegal things because they know the consequences of it" (focus group 2). Attitude-changing is another aspect of general prevention highlighted by punishment theory and is emphasised by all NGOs as pivotal for preventing criminal actions, and more specifically rape. Setting an example and creating a precedent is both a deterrent and an attitude-changing effect.

In essence, the general preventive effects of punishment might send a message about a restriction of boundaries that can harm social life, and I pose that this is connected to social and legal definitions of rape. General deterrence creates norms in society, which occurs when unaccepted behaviour in society is sanctioned, thus reinforcing the accepted behaviour. The law plays a crucial role in reinforcing these norms, and it is essential to have a clearer understanding of legal standards around sexual consent to prevent people from refraining from sexual activities out of fear of prosecution. Although general prevention measures can prevent rape from occurring, they can also affect legal and social norms. The precedent we set with punishment cannot be too harsh, as emphasised by the NGOs. The focus groups and the NGOs want rape to be punished harshly, aligned with the consequences of rape. The deterrent effects of punishment can help establish norms, but their effectiveness relies on society's awareness of criminal law and the punishment for breaking the law. The focus groups emphasise the importance of the deterrent aspect of general prevention, but it is essential to clarify legal and social norms to ensure that punishment aligns with the severity of the crime.

4.2.2 Specific Deterrence Effects

While punishment in Norwegian society is meant to deter members of society from committing crimes, and perhaps more significantly, signalling to society a normative framework, deterrence and prevention also happen on a more individual level. This was specified in the theory chapter

as a specific deterrent effect of the law. This section of the analysis will present the way both the focus groups and the NGOs justify punishment regarding the perpetrator.

The specific deterrence perspective is underlined as a premise of law by Organisation A when they referenced their work with female rape victims:

> No one reported to get the offender sentenced to the maximum possible, longest possible sentence, and the maximum possible number of years in prison. Those who reported were initially also aware that the probability of a conviction was almost zero. However, they justified the reports with the fact that it is important to give a clear signal to the person who committed the abuse so that he does not do it again. So that he realises that he has committed a serious criminal act. (Organisation A).

The remark highlights the importance of sending a clear message to perpetrators using the criminal justice system, despite the likelihood of a conviction of the severity of punishment being low. The focus is on the preventive effect of reporting and prosecuting crimes, rather than solely on the punishment of the offender. Reporting could potentially deter perpetrators from repeating similar actions in the future and may also serve as a warning to others. Ergo, punishment is not the sole purpose of the criminal justice system; it is a means of promoting a safe and just society by discouraging criminal behaviour. This perspective is supported by Organisation C, claiming that although punishment sets a precedent for both individuals and society, it is what we learn from someone's punishment that is pivotal.

In the focus groups when asked about why criminal actions should be punished and why it is important to punish, all groups mentioned the need for punishment to prevent the criminal action to be repeated. A female from one of the youth focus groups (focus group 2) specifies that the punishment should not destroy or ruin someone's life but rehabilitate them and ensure

new possibilities following the end of their sentence. This is supported by Organisation B when they speak of helping the offender as a way of preventing further criminal actions. If the punishment is not rehabilitating, it has not worked according to another participant from focus group 2. “[…] To avoid it happening again, you have to deal with the cause, which is the person who did it”. This argument was made by Organisation B when asked about what should change about the approach towards rape as a problem. They further emphasise that those who have raped someone or are in danger of raping, need help. This relates to the purpose of the law, and essentially what we want the law to do. Parallels can be drawn to when one of the young adult focus groups (focus group 7) speaks of setting an example; this example might not be as effective unless the example considers what punishment means for the offender. A comparison between the Norwegian and the American penal system is made:

> Like, the penal system in the USA focuses a lot on those who have done something wrong, they should sort of suffer for it. You can see that it doesn't work because people commit just as many offences. But in Norway, we focus a little more on people not doing it again. (Focus group 11).

The quote above asserts a viewpoint that is also supported in a young adult focus group (focus group 7). According to this group, harsh punishments like those they imply are employed in the US are ineffective in rehabilitating offenders, as they do not promote learning from one's mistakes. Rather, punishment should aim to facilitate a "right" reintegration into society. In a focus group with male young adults (focus group 10), rape’s “dirty” nature should indicate and result in harsh punishments. Moreover, harsh punishment should prevent it from happening again and indicate that stern penalising is needed to communicate to the offender that they should learn from their actions. This illustrates the rehabilitating effect of punishment. Other

focus groups discussed that punishment is a consequence of the actions you have taken, and for rape, no other conditions to the situation would be mitigating for the punishment (focus group 4).

Two male participants in the same young adult focus group (focus group 10) expressed the belief that punishment should be corrective in nature, rather than solely punitive. They emphasised that this is especially important for younger offenders, for whom corrective measures can be more beneficial. The goal of corrective punishment is to foster the development of "good members of society" (male, focus group 7). The emphasis on age becomes clear in the other focus groups as well, when they were offered different factors and conditions when they meted out punishment for the rape vignette. Overall, for both youths and young adults, the younger the offender is, the more the groups suggest treatment and help as a punishment. The prison sentence is disregarded, almost fully, further underlining their rehabilitating perception of punishment. In focus group 6 they speak about punishment having a domino effect, especially if you are young when punished; punishment is harmful and could cause lasting damage to the offender. The rehabilitating aspect is an ongoing theme in all focus groups, and as such becomes the most prevalent cause for the punishment of the individual.

A female from another youth focus group (focus group 1) gives a similar reasoning for punishment and emphasises that it is necessary for individuals to be removed from society and re-educated if they have not learned appropriate behaviour. She compares it to putting a small child in a time-out [*skammekroken*], stating that they must be taken out of society and given the opportunity to learn again because they did not learn it well enough the first time. This expresses a belief in the rehabilitative purpose of punishment, using an analogy of disciplining a child, implying that punishment is not simply about retribution, but rather reforming the perpetrator and helping them become better members of society. The idea that a perpetrator needs to "learn a little" suggests that the participant believes that rehabilitation is possible and that perpetrators

can change their behaviour with the right intervention. However, being "taken out of society" suggests a form of isolation, often referred to as incapacitation, which highlights the importance of considering the negative effects of punishment on the perpetrator, ensuring that punishment is not excessively punitive.

> I think in a way that self-esteem, that very feeling, would eat him up. It would be a punishment in itself if he really understands what he has done and how serious it was for the other person what he has done. And if he managed, in a way, to get over that feeling, it would be to get back that human being who is a little bit healthier and who will never do it again. And perhaps even contribute to the fact that more people will be more aware of not doing such things, then. (Female, focus group 4).

This quote shows that they consider specific deterrence as also affecting general deterrence; the punishment of individuals would deter others from doing the same thing. Punishment for the individual will, if the punishment is completed in a good manner, result in an individual who is "capable of coming back to society, without making the same mistakes again" (youth, female, focus group 4). According to a youth female (focus group 2), if a person commits rape once, it is not unlikely that they could do it again, as it indicates their capability of rape. It illustrates a belief that individuals who commit rape are likely to re-offend, implicating that punishment is necessary to prevent future offences by deterring the perpetrator and protecting potential victims. The implication is that past behaviour predicts future behaviour, underlining the need for punishment and rehabilitation of perpetrators.

All NGOs articulate that the law and the utilisation of the law are to express to individuals that their actions are criminal through punishment. Nevertheless, it is not necessarily punishment in the form of legal punishment. As the citations above show, it seems just as

important to communicate to individuals reported for rape that what they did was wrong. As such, reporting is a means for reporting wrongdoing, not an action defined as a crime being punished by law. An example from Norway was detailed by Organisation A and manifested the effect of reporting rape to express to the perpetrator the wrongfulness of their actions. The signal and message conveyed through the enforcement of the law appear to serve as sufficient punishment to the offender in certain cases. However, this does not imply that the focus group participants and the NGOs advocate for lenient penalties or impunity. Still, if punishment should be imposed, it should not solely serve as a means of retribution:

> I also think that something that becomes somewhat invisible in this legal process is that rape is about causing damage. And it's about causing serious harm, and it's about being held accountable for it. And then, in a way, the length of the sentence the offender receives, in that picture, is not the most important thing. (Organisation A).

This remark suggests that the severity of the punishment is not the most critical aspect; while punishment is essential in holding perpetrators accountable, Organisation A implies that it is equally essential to acknowledge and address the damage caused to the victim. Thus, they encourage a broader perspective on the legal process, where rehabilitation and support of victims must be given equal importance. Specific deterrence is based on preventing individuals from doing it again. However, I found interesting remarks made about what that might mean for the victim, which will be discussed in Chapter 5. Focus group 4 specified that in any situation, you should be aware of the possible consequences of your actions, thus indicating that the possibility of punishment should prevent you from performing a possible criminal action. The same story mentioned above, from Organisation A, reinforces this.

To summarise, punishment should be imposed on perpetrators in general, and especially a harsh level of punishment for rape offenders. The focus groups discussed the need for punishment to be corrective and rehabilitating, in line with Norway's basis for punishment (Ot.prp. nr 90, 2003-2004). Throughout the data from the focus groups, it became apparent that despite arguing for harsh punishment, it is important to regard the offender as a human being and an equal member of society. This underlines the rehabilitating aspect of the punishment, where for the focus groups it appears damaging to punish offenders just to punish them. They regard the rehabilitation of offenders as especially important the younger the offender is, which is an interesting aspect considering rape is a crime often committed by young adults (Hennum, 2022).

Punishment is imposed to signal to the individual offenders that their actions are criminal. I have pointed out that this is pivotal for rape victims as they often report rape to signal to the offenders of their wrongdoings. I interpret these findings as significant, as it appears as though specific deterrence is a signalling effect which could be transmitted in various ways. Not only should the penal framework deter people from committing rape but being reported and/or charged with rape implies prevention on a more personal level, with which offenders might resonate with. The specific prevention effect will seem to be more effective if it happens on an interpersonal level; the focus groups discussed specific deterrence occurring when the offender understands that punishment communicates what is wrong and prevents re-offending. However, this is dependent on the actual reporting of rape cases, and considering the number of dark numbers, it seems counter-intuitive for Norwegian society to rely on this level alone.

4.2.3 The Purpose of Law and Punishment for the Rape Victim

In the focus group discussions, the level of punishment was often considered for the sake of the victim, both in general and for rape specifically. In line with rape being regarded as a serious

offence, the consequences of rape on the victim had to be measured. Ultimately, consideration of the victim is reason alone to punish according to the focus groups. A participant from one of the youth groups (focus group 4) holds the view that punishment provides a degree of satisfaction for the victim, serving as a reminder that the perpetrator is being held accountable and experiencing discomfort on account of their wrongdoing. Furthermore, experiencing the punishment of your offender is important regarding justice:

> I also very much agree with what they say [about the rehabilitating principle of punishment], and I also think about it with perhaps justice towards those who are victims. Or with things that happen, that [the victims] should also experience that he received sanctions or that something happened to the one who did something that was not right. So, from the victim's side in a way. (Youth, female, focus group 5).

In this comment, the participant highlights the importance of feeling a sense of closure for the victims and the emotional and psychological toll rape can have on the victim. Furthermore, the participant suggests that it is essential for victims to feel a sense of justice and see that the perpetrator is held accountable. However, the balance between punishment and rehabilitation is finicky, although the punishment of perpetrators could serve justice for victims and the rehabilitation of offenders.

There was no divergence in reasoning for punishment across all focus groups, despite discussing and being presented with various vignettes. As such, those four focus groups discussing the rape vignette, all considered the importance of punishment regarding the victim in likeness to the remaining focus groups. One intriguing comparison can be drawn to the way focus groups relate to the punishment of the drug-related offence in the respective vignette. Rape and drug-related offences are highly debated in Norwegian society on the topic of

reforming legislation and sanctioning offenders. The punishment of offences without a personal victim is viewed significantly differently than an offence with a personal victim such as rape. A young adult group (focus group 10) regard the drug-related offence in question as non-criminal, and other focus groups discussing the same vignette illustrate similar reasoning. A youth focus group (focus group 5) regards drug-related offences as a political problem, and parallels can be drawn to rape. One participant from the same group stresses the meaning of harm to others when justifying the claim for a mild punishment: "But he didn't do anything that harmed anyone else, he just paid to have fun at a party and there were no evil intentions behind it and such". If considered in light of focus group 7 separating crimes based on whether there is a personal victim beyond oneself, it becomes apparent that consideration of the victim is more pivotal for the functions of punishment. However, the assertion above suggests that in cases where there are no evil intentions behind the crime, the punishment should be less severe. Thus, implying that the severity of punishment should be proportional to the seriousness of the crime.

> Because you do something, in a way, in which you have not thought through the consequences. So, it's not just you who, in a way, suffers the consequences, but also the person you've done it to. (Youth, female, focus group 4).

This statement was made concerning giving rape offenders a harsh punishment, and for this participant, it seemed as if the punishment could not be harsh enough compared to the consequences rape has for the victim; the victim had to endure the unrelenting consequences of their experience (youth, female, focus group 4). Therefore, it is not comparable to the harm of drug-related offences where oneself is the victim. In one of the young adult groups, *why* someone rapes do not appear to matter, at least not for the victim, as the punishment is different for the offender and the victim. “It doesn't make a damn difference to [the victim] if [the

offender] is addicted to cocaine or if he's just a completely normal guy. It doesn't matter to her at all" (young adult, male, focus group 7), illustrating that punishment for the perpetrator and the victim cannot be equated. If anything, he says, the contents of the punishment could be changed if the offender was affected by external factors at the time of action, but not the duration; regardless of the circumstances, if the victim feels violated, the punishment should remain the same. According to Organisation A, rape victims often report to signal to the perpetrator the wrongfulness of their actions, one could question the effect reporting has in comparison to the consequences of being raped.

Another participant in one of the youth focus groups (focus group 4) states that the law should be neutral and consider both the offender and the victim. This group was more lenient in being considerate of external factors, although they agree with the young adult group that the contents of the punishment could change. On the other hand, another young adult group claims that external factors do not change the fact that the offender should consider the consequences of their actions, stating that "even if you get high, you're pretty much in control unless you black out completely" (young adult, male, focus group 9). This proclamation echoed through the other focus groups discussing the rape vignette. If the external factors surrounding the offender are to be considered when measuring the level of punishment, the external factors surrounding the victim should also be considered. Another youth group discuss that "there will always be a reason why people somehow commit offences. And so, […] I don't think the punishment should be different on that basis" (youth, male, focus group 5). The participant suggests that regardless of motive, committing an offence still results in harm to others and therefore warrants punishment. Understanding the motives may be important for preventing future offences, but it does not justify a lenient punishment. This emphasises that the consequences of being raped and being punished for rape cannot be equated.

Organisations A and B claim that not all victims who report rape do so to punish the offender, but to send signals saying, “This is wrong, this was a rape”. They further address what it means for the victim if the offender is not charged with rape. “[I] think, perhaps, that those who have experienced and been subjected to rape do not necessarily have such great faith in being heard” (Organisation B). This is supported by Organisation A, stating: “They do not believe that it is possible to achieve justice and redress in the legal system”. Organisation A attributes it to various factors such as a lack of consent-based legislation. Earlier in the chapter, I reflected on the distinction between reporting wrongdoing versus reporting a crime. The quote above exemplifies that in the absence of legal consequences, it can discourage other victims from reporting since it may seem pointless. Nevertheless, if reporting aims to convey to the perpetrator that their behaviour is unacceptable, then reporting is not without merit.

In sum, the victim’s well-being emerges as a crucial factor for why rape should be penalised and penalised severely. In addition to the views of focus groups and NGOs that consider rape as a grave offence with serious implications for the victim, punishment is vital for the victim’s experience of the role of the law. While the NGOs detail that victims of rape refrain from reporting rapes to punish the perpetrator, the focus groups deem punishment as a sense of justice for the victim as a fundamental premise for punishment in general. To me, this implies that punishment serves not only as a momentary form of justice for the victims—but also as a means to inflict comparable pain on the perpetrator. Nevertheless, it is argued here that the agony of being victimised cannot be equated with the agony of being punished for one’s actions. As I will discuss in the next chapter of this thesis, other aspects of the process involved in providing justice for the victim are paramount to confronting the gravity of rape.

Both the focus groups and the NGOs highlight the near lack of consequences for perpetrators of rape in Norway and indicate an awareness of how victims perceive rape. Notably, rape is an egregious and serious crime given its impact on the individual victim, but it

is also viewed as such by society, to the extent that victims are unable to receive just treatment. I interpret from the data that the focus groups and the NGOs view the legal process around sexual assault and rape situations where the wrongfulness is "obvious" as less complicated than grey area situations such as the specific scenario in the vignette. As discussed in Section 4.1.1 in this chapter of my thesis, the uncertainty of what constitutes rape gives reflects the uncertainty in the legal process. I am not suggesting that the criminal justice system judge and treat victims of rape unfairly, I merely problematise the appearance of the lack of punishment for society. The concern for rape victims' well-being is reflected in the call for legal change and I find that as a key aspect of this thesis.

4.3 What Measures Lies Beyond the Law?

The NGOs expressed in their interviews that there are ways, other than the law, which contribute to the fight against rape in Norwegian society. Organisation C highlights the importance of society taking responsibility for combatting rape culture and shifting the blame onto perpetrators. They call for the creation of a safer and more just society, underlining a collective responsibility using the word "we". The need to shift the way society discusses rape is emphasised by Organisation A, noting that combatting pervasive stereotypes and rape myths is crucial. They note that while the legal system plays a role in combatting rape, it is only one part of the larger effort to combat the pervasive stereotypes and rape myths that exist in society. Organisation B stresses the importance of educating people about societal norms, including aspects of the law and legal process, to prevent illegal behaviour. This education can lead to a shift in attitudes and behaviour, as demonstrated by Organisation B's experience with young adults and explaining the illegality of sending or receiving nude photos without consent. All three NGOs agree that combatting rape culture requires a collective effort and will take time.

The NGOs specify that we must change the fundamental assumptions of rape, reflected in rape myths. To clarify, rape myths are defined by Burt (1980) as "prejudicial, stereotyped, or false beliefs about rape, rape victims, and rapists" (p. 217), and are often used as a justification for sexual aggression against women (Lonsway & Fitzgerald, 1994).

> What should change is who is to blame and who is responsible for the rape. As of today, it is still the person who is exposed to an assault who is held responsible to a very large extent. Consciously or unconsciously, directly or indirectly. […] The person who has been raped is asked questions such as "Should you have gone home with him?", "Should you have been alone at the party?", "Wasn't it stupid to go for a walk […] so late at night?". (Organisation A).

In the statement above, Organisation A notes that we must diminish the pressure we apply to victims of rape. Organisation C states that if we do not change the way we meet victims, we have victims who never define their experiences as rape. The societal stigma attached to rape often hinders the pursuit of justice, as many victims do not report or disclose their traumatic experiences. It can take years for victims to acknowledge that they have been subjected to rape, as they have been conditioned to feel responsible and guilty for the assault. Hence, it is essential to create a safe and supportive environment that encourages victims to speak out, seek help and hold perpetrators accountable, and eliminating rape myths is one step of the way.

Organisation A made a discovery which suggests that girls may conform to rape myths to avoid situations in which these myths might become reality, such as being vigilant about the fear of rape. While rape can happen to anyone regardless of gender, prevalence studies and police crime statistics highlighted by Organisations A and B show that females are disproportionately victimised, with men being the primary perpetrators of sexual abuse.

Organisations B and C also suggest that power relations amplify the position of women as victims and men as perpetrators. Societal assumptions about rape are emphasised by Organisation C, with stereotypes perpetuating the belief that "women are not raped, men are raping women", which for the Organisation leads to the assumption that men cannot be raped, or women cannot be perpetrators. Gender, gender structures, and power cannot be ignored when speaking about rape, according to Organisation C. Their analysis of Norwegian society points to the existence of how the patriarchal nature of society leads to a culture of rape and sexual abuse. Women are often made to feel responsible for their safety and well-being, perpetuating a culture of victim blaming. Rather than women being afraid of rape and modifying their behaviour accordingly, the focus should be on holding perpetrators accountable and creating a culture where they fear being caught.

Moreover, Organisation B notes that in their daily work, they often encounter young people who may not fully understand what constitutes rape, and for whom the concept of "grey area" rape may not be as clear-cut as it should be. They implicitly suggest that rape statistics and current legislation based on coercion may inadvertently reinforce rape myths, particularly regarding the typical victim or perpetrator. Organisation A supports the idea that legislation based on coercion reinforces rape myths by perpetuating the notion that rape only occurs in public spaces, where a man jumps out and assaults a woman; they express that this narrow definition does not accurately reflect the reality of rape, as most cases do not fit within these stereotypes.

Societal expectations regarding gender roles are suggested by Organisation B to be linked to our attitudes towards sexuality. Organisation A agrees, emphasising the importance of examining cultural norms related to gender and sexuality to address sexual violence issues. They argue that these norms limit young girls' freedom and increase their risk of being victimised. Similarly, Organisation A notes that societal expectations regarding boys' behaviour

normalise boundary-pushing conduct. By challenging these norms, it may be possible to shift cultural attitudes towards sexual violence and reduce its occurrence. Furthermore, Organisation A criticises society's condemnation of young girls experimenting with their sexuality and trying out social interactions and alcohol as they approach adulthood.

> When I did [work for the Organisation with raped girls and women], what shocked me was that several of them said, “When I was raped, I wasn’t surprised by it, so many people are raped. And I’ve always known that it could happen to me too”. (Organisation A)

During focus group discussions, an interesting assumption emerged regarding boys’ and men’s attitudes towards reporting and acknowledging rape. In a young adult group (focus group 10), when asked whether the punishment for a female perpetrator and male victim should differ from that of a male perpetrator and female victim, they expressed that while punishment should be the same, they doubted that a male victim would report the crime. They further believe that the seriousness of the crime increases if the perpetrator is male due to the power relations between the genders. While they did not think the criminal justice system treated perpetrators differently based on gender, they did feel that society regarded female-on-male rape as less serious. This statement is echoed in a youth group (focus group 4). This view reflects common gender stereotypes and assumptions about power dynamics between men and women, as highlighted by the NGOs.

Rape is a traumatic experience regardless of gender, but societal gender roles and stereotypes affect which cases are reported, prosecuted and discussed. These notions are deeply embedded in society and transfer to the legal system, as discussed by both the NGOs and the focus groups. Addressing these stereotypes is crucial for combatting rape and ensuring a just

legal process. There is a collective responsibility to combat rape, underlining that rape is a social problem, as well as a legal one. Harmful perceptions of rape are upheld in society, problematising the experiences of being a victim. Further, perpetrators are not held accountable due to the creation of a social sphere where the behaviour of the victim is more pivotal than the perpetrator's behaviour. Thus, society views being raped as a choice where the victim's behaviour enables rape. However, their behaviour is perhaps predetermined due to gender roles and harmful stereotypes we continue to uphold in society.

Challenging norms surrounding gender and sexuality might shift the cultural context of rape. The participants in my research operate with an absolute definition of rape, which is obstructed by the reality of stereotypes and myths about rape. A way to challenge norms is through education, and talking about rape might limit the occurrence of rape and shift harmful thinking about rape, as it did with photo sharing. Nonetheless, the stigmatic barriers in society prevent full societal participation in this discussion as victims are excluded in many ways.

5 Discussion

In the following chapter, I will connect the theoretical framework to the findings of my empirical data. I will answer my research question—how we can best understand the role and capacity of the law and punishment in combatting rape—by analysing my empirical findings in light of legal mobilisation and punishment theory, as well as discussing the relationship between law and society. I aim to answer these sub-questions: (1) What symbolic and practical functions of law are underlined, (2) what ideas can be drawn from the data about the contribution of society and (3) how do law and society interact when it comes to rape?

In overview, the key findings of this thesis are that the law is communicative, signalling, normative and transformative—it shapes understandings of rape, changes perceptions when utilised and sets norms for what sexual interactions are legal and illegal. Further, punishment is a core component of the law and the purpose of the law, both in practical terms as conflict-solving and as a norm setter. Punishment should deter and rehabilitate perpetrators of rape and prevent re-offending and acts of rape in society overall. The focus groups and NGOs call for harsh punishment for rape, and they legitimise this view by underlining the severity of rape, both for the individual victim and other members of society. Although justice for the victim is a central aspect of the reasoning for stern penalisation, it is important to consider the well-being of the perpetrator. Lastly, my informants operate with an absolute definition of rape, existing beyond the legal definition. Rape is established as a moral wrong regardless of the law. This is illustrated in the data when the focus groups use consent as a boundary between legal and illegal sexual interaction. The NGOs use criticism from the UN to advocate for consent-based legislation, and I propose that this notion promotes legal mobilisation. Enhancing the capacity of the law is multifaceted and includes various societal measures, including combatting harmful stereotypes and attitudes concerning rape.

5.1 The Law as a Tool

5.1.1 The Law Defines Rape

Findings from my research show that the primary function of law is to communicate, and what it communicates is the legal norm which society should follow. And what specifically does it communicate? Right now, based on this study, the law communicates that there are situations of rape that are not criminalised, underlined by criticism by the UN. When consent is used as the boundary between legality and illegality, it illustrates a perception of rape that the NGOs believe is not covered by today's legislation. While the proposal for legal reform is a step in the right direction as it revolves around consent, it is argued that it is insufficient and not in line with international human rights standards for defining rape. As the law sets a norm and defines rape, it is noted that rape could be defined in many ways. Findings from my research show that while there are many ways rape could occur—opening for a vast selection of definitional aspects—rape is rape. No matter how or why rape happens, there are no mitigating factors which could result in different cases of rape being defined as anything other than rape. The findings stress that the issue of grey area rape problematises the legal norm as it comes down to different understandings of rape and what the law conveys, as well as which social norms guide our sexual interactions.

The communicative role of the law is both normative and transformative—where the law affects society through setting a norm and transforming the norms established in society, while also being affected by society when changing a legal norm—but its effectiveness depends on the legal knowledge of the population and how it is conveyed. When people are informed about the law, its impact is more significant. Although there is an absolute definition of rape society may use, at least the younger generation might not relate to the law and what it communicates when they create perceptions of rape. One example from my data of how this might work is by using the example of educating the younger generation about the illegality of

sharing nude photos without consent, which can be transformative in creating perceptions of what is legal and illegal. The law's transformative effects underline how the law affects society, as it creates a social change, even if it is on a micro level. While conveying the illegality of an act is a form of legal communication, it is essential to communicate it in a more direct approach to be effective. An increase in legal knowledge among the population may also enhance the impact of the law. However, understanding the details of the law, such as the specifics of punishment, is not necessary beyond understanding the basic legal norm. For instance, the Norwegian statute on domestic help, as studied by Aubert (1969) and explained by Van der Burg (2001), illustrates that complex legal language can make the law symbolic and incomprehensible to the public. This suggests that the most critical aspect of legal communication is conveying the overall legal norm, rather than the specific details of the law's construction.

The law may "express normative standards, communicating to the citizens that they are expected to be guided by them, but leaving to the citizens a scope of discretion as to how to interpret and apply the standards" (Van der Burg, 2001, p. 47). In terms of rape, the law is thus a framework for sexual norms (Skilbrei et al., 2019). These notions support arguments I have identified in my research—the law shapes our understanding of rape, and it has the potential to change perceptions and norms within society. The normative side of the law is thus tightly knit with the interactions between law and society. Vago (1981) stresses that law can impact society in many ways, including but not limited to establishing norms, regulating behaviour, defining behaviour, and sanctioning those who deviate from those definitions. However, the level of the effect of the law's normative effect varies over time, as shown by my findings and the social change towards consent being the distinction between legal and illegal sexual conduct. Thus, the relationship between law and society becomes visible as one where society changes, and now there is a call for law to follow.

To explain how the law is normative and highlight the relationship between law and society, I would like to assess the meaning of lag. Dror (1958) states that aspects of this relationship between law and society—social change specifically—pose some "challenging problems of great significance for an understanding of the role of law in modern societies" (p. 787). With this, they refer to the independence of law, how changes in law follow changes in society or vice versa, and how we can establish whichever change comes first. As they write, the law is not autonomous, at least not unrelated to other aspects of society. Using consent as a boundary reflects a social change in which legal mobilisation is now utilised to change the law; it implies that there is a lag between the social norms surrounding rape—where consent is the main premise—and the legal definition of rape not explicitly criminalising lack of consent, according to my data. This relationship shows that society influences the law, which again has implications for society. It demonstrates that the effects are not linear, but rather occur reciprocally and in circles, in line with theoretical assumptions (Mathiesen, 2011). Findings from this research have implied that consent-based legislation would solidify the disparity between legal and illegal sexual acts by setting a clear norm which is unambiguous and comprehensible for society; the law must explicitly state that the absence of free consent is the defining factor. As such, legal mobilisation and the public debate arising from such mobilisation is an illustration of an explicit way of how the law is communicative. I would propose that legal mobilisation is a building block for the law's expressive, and normative, functions. For what is the purpose of the law unless society integrates its norms or at least reflects on the rules set by the law? Society either accepts the rules or ignores the rules, but if the "criminal law cannot communicate and maintain clear and accepted norms, it has no chance of guiding conduct and influencing community attitudes and values so as to prevent sexual violence" (Larcombe, 2014, p. 79). Following the norms of the law might further be a form of communication, along with discussing and formulating interpretations of laws within communities (Van der Burg, 2001).

There is almost always “a certain difference between actual social behaviour and the behaviour demanded by the legal norm” (Dror, 1958, p. 794). This lag between norms, when the social and the legal norm do not correspond, usually appears when the law lags behind social change. With this study, the law is pointed out as having the potential to invoke social change by mobilising the law. The NGOs, and the other members of the Consent Alliance, mobilise the law and encourages mobilisation from victims of rape especially, hoping for a change in the law. The change they want to see is a revision of today’s rape legislation. Making use of the law to inflict social change is both a historical and current process, moreover, utilising the law as a means for change underlines that the law is both normative and transformative. While changing the legal norm is called for by the mobilisation of the law, Sand (2017b) stresses that the rule of law aims to maintain stability. If there is nearly always a lag between legal norms and social norms, perhaps it indicates that there are measures to be taken beyond mobilising the law—mobilising to change social norms is perhaps equally important. This is accentuated by the NGOs as they do not see the law as the sole change agent in society; the law sets the formal norm and lays the foundation for how rape is defined. Nevertheless, the absolute definition of rape, operated with by my informants, might be independent of the legal definition—it exists despite the existence of a legal definition—and it is imaginable that it is this definition which promotes legal mobilisation.

Moreover, if the law should maintain stability, it is important to acknowledge that society changes fast, and minimising the lag between social norms and legal norms highlights the need to understand that society might think otherwise in a few years (Van der Burg, 2001). As Van der Burg (2001) states, “Legislation should therefore be regarded as one phase in [moral-reflection processes] rather than as simply the codification of consensual moral norms or goals” (p. 38). In other words, the legal norm should be viewed as both temporary and stable at the same time. Rape, established as a moral wrong, has changed both socially and legally

over the years (Gardner & Shute, 2000), illustrating that while rape as a criminal phenomenon is relatively stable, the contents of the legal definition of rape are somewhat temporary as it is subject to change. Larcombe (2014) observes that what the law communicates is contended by social, religious and moral norms, which might explain why the law might be ineffective in regulating sexual conduct.

However, what effect do we want the law to have regarding communication? The NGOs pose that consent-based legislation better communicates norms surrounding rape, especially for the younger generation. If a law is mostly symbolic, what it communicates is the most essential. This stresses that the law must be of practical use in the legal system if it is desired that the law has practical outcomes, and my findings acknowledge that this is important. If consent-based legislation is mostly symbolic (Jacobsen & Skilbrei, 2020), elements of the legislation should ensure that the implementation of the law is doable. Understanding how the law communicates and what it expresses, as well as what this communication means for society, allows learning how to structure the law and the process of implementing the law (Van der Burg, 2001). Larcombe (2014) notes that the law's communicative and symbolic functions are often overlooked when regarding the prevention of sexual violence. However, my findings accentuate that the law's communicative role is highly important and is an argument for legal reform. The communicative role is further connected to punishment and the effectiveness of deterring potential perpetrators (Larcombe, 2014).

Lastly, the findings of this research express that the legal system has to prioritise rape. When speaking of the legal system, I am referring to all instances and components from the police to the courts—the structural elements as Friedman (1969) call them. When the willingness to combat smoking was compared to the willingness to combat rape, it was illustrated that by allocating resources and fully committing to the cause of eradication, the effectiveness of the law is higher. Furthermore, my findings problematise that the legal norm

appears ineffective due to the near impunity for rape. According to the current study, the police dismiss too many cases of rape, which has led to a lack of trust in the police. All in all, my findings imply that resources and competence are something which mediate the effect of the law in society. Arguably, rape law reform alone cannot necessarily change the legal position of rape victims and may have limited effects on low conviction rates (Cowan, 2010; Daly & Bouhours, 2010; Regan & Kelly, 2003), implying that there are other aspects of changing practices beyond law reform and that processes are happening in the criminal justice system perhaps unrelated to the legal norm set by the law. These notions are interesting when considering the lack of practical outcomes of consent-based rape legislation.

5.1.2 Punishment: Practical and Normative Functions of Law

Larcombe (2014) distinguishes between primary and tertiary prevention of rape, where primary strategies deter and inhibits sexual violence before it occurs, and tertiary prevention is responses to sexual violence after it occurs. The law and other criminal justice processes, such as punishment, are viewed as mostly tertiary, and it is this aspect of prevention I will elaborate on now. Despite punishment being an aspect of the law—with communicative, signalling and normative functions—I would like to discuss the key findings on punishment separately. Much of the communicative work of the law comes from punishment, as illustrated by my findings. It is the punishment which separates "right" from "wrong", and it is the potential of the punishment which should deter you from committing rape. Looking towards specifics of the law, punishment further has normative effects, as my findings underline that knowing that some actions are punishable by law sets a norm for social conduct. The deterrent effects of punishment can help establish norms, but their effectiveness relies on society's awareness of criminal law and its punishment. In the previous subchapter, when discussing that youths and

young adults do not necessarily make use of the law as a reference point when establishing rape as something illegal, it is thus interesting to understand the importance of punishment.

As shown in the empirical data, calls were made for harsh punishment of rape. Although two out of four groups underestimate the actual standard punishment of rape, they argue that the punishment of rape should be significant enough to discourage both the individual and other members of society from committing rape. Frøyland et al. (2022) show that Norwegians in general underestimate the punishment of crimes overall and rape specifically. An important aspect of punishment in the findings of my research is that punishment should be substantial enough that it reflects the severity of the crime. Supporting the participants' notions about aligning punishment with seriousness, Jacobsen (2017) states that Norway's increase in punishment levels can be traced back to the principle of proportionality. According to this principle, the severity of the punishment should align with the gravity of the offence and should be evaluated in comparison to how society responds to other similar offences. For Hauge (2003), punishment should mainly be reserved for actions that result in harm or present a genuine risk of harm to others—it should not be used for actions that merely go against prevailing moral norms or are deemed undesirable for subjective reasons. The punishment of drug-related offences can be compared to the punishment of rape; while rape is a severe violation of an individual's autonomy, drug-related crimes often involve voluntary transactions between willing parties (Hauge, 2003), without the same level of fundamental rights being violated as in rape. Moreover, the punishment for drug-related offences is often criticised for being out of proportion compared to other criminal offences[7] (NOU 2002: 04), raising concerns about fairness within the system. Achieving better fairness could involve lowering the severity of disproportionately high offences and increasing punishments for the most serious crimes (Jacobsen, 2017).

[7] See section 9.11.3, page 337.

The focus groups made distinctions between crimes with and without a personal victim regarding the severity of the crime and the punishment of such crimes. Comparing the punishment for drug-related offences, the youths and young adults viewed the vignette in question as unproblematic—they were unsure of whether it is a case which should result in punishment at all (Frøyland et al., 2022, p. 111). An interesting notion when they discussed the drug-related vignette is that it seems as though they base the call for punishment simply on the fact that drug use is illegal in Norway (Frøyland et al., 2022, p. 113). This is in strong contrast to the case of rape, as rape in my study is established as a severe, moral wrong, and punishment should be imposed due to this, not because it is illegal by law. It is challenging to identify any valid moral justification for imposing more severe punishments on drug-related crimes compared to the punishments given for rape, in addition to the principle of proportionality. Thus, considering remarks about rape being punished more mildly compared to drug-related crimes, it is feasible to conclude that the principle of proportionality is central in the context of punishing rape—the harsher punishment for rape reflects the gravity of the crime. If punishment should be imposed due to its established severity, regardless of the legal norm, it amplifies the use of an absolute definition of rape which guides the discussion of rape and rape law. Regarding punishment, no mitigating circumstances are considered significant enough to affect the sentencing, apart from the age of the perpetrator. The younger the perpetrator is, the more openness toward a change in the contents of the punishment is offered. However, the punishment should be regarded as punishment for the perpetrator, which is important for the victim, receiving a sense of justice and closure. The proposed legal reform for drug-related offences viewed punishment as an instrument to be used with caution as "punishment is society's most powerful tool to counteract and condemn unwanted actions by its citizens"[8]

[8] My own translation.

(NOU 2019: 26, p. 247). My findings indicate that punishment might play a different role in the fight against rape, whereas my participants view punishment as pivotal for preventing rape.

By and large, punishment is pivotal to setting an example and it should prevent re-offending. The findings of this thesis underline rehabilitation and deterrence as key aspects of punishment. As such, the law should communicate legal norms *and* the sanctions available for breaking these legal norms. Furthermore, the punishment of an individual would dissuade others according to the focus groups. It was frequently emphasised that punishment has a discouraging, deterring, effect—the punishment of an individual would discourage others from committing rape, while at the same time, it would deter the individual from re-offending. Thus, punishment's general and specific deterrent effects are highly regarded in these findings. This is supported by previous research stating that Norwegian criminal law has a tradition of underscoring prevention as a dominant feature, both individually and generally (Hauge, 1996; Kinander, 2013). This rationalisation behind punishment is shared by the population of Norway, supported by Frøyland et al. (2022) when exploring findings from the quantitative data of the project. Skog (2006), however, states that most people refrain from committing rape due to moral reasons rather than the threat of punishment—thus, the desired effect of the threat of punishment is not achieved, in contrast to the Norwegian penal tradition of prevention. If moral reasons are what deter people from committing rape, it underlines the establishment of rape as a moral wrong and the absolute definition of rape I have presented in my research. Furthermore, when the Norwegian Parliament enacted stricter punishments for sexual offences, the argument for general deterrence was not considered (Nymo, 2015), but rather the proportionality assessment.

Moreover, my findings stress that punishment cannot be strictly intimidating. Nods to how big of an example can be set from punishing were made, illustrating that there is a balance between this notion and the rehabilitative effect of punishment. The findings show that

punishment should make you learn, and if it does not, the effect of punishment is low, in support of Hauge (1996). The "degree of general deterrent effects can be expected to vary greatly depending on the type of offence, type of actor, and most importantly, the context"[9] (Skog, 2006, p. 287). It is challenging to determine the extent to which these effects impact rape cases based on this study. However, the demands for severe punishments and the justifications behind them indicate that the younger generation considers the preventive effects to be crucial. The lack of a rehabilitative effect emphasises the lag between law and society—it prevents legal definitions from being implemented in society. In other words, punishment is an opportunity to internalise legal norms, *if* the punishment is proportional to the crime and if it is not retributive. Punishment is thus pivotal for setting norms in society and demonstrates how the law affects society in the ways it has potential to prevent rape from occurring.

5.2 Enhancing the Capacity of Law and Punishment

In the following, I will highlight the role of law and society in combatting rape, underlining the building upon or changing of social norms and the mobilisation of the law, as their role in the fight against rape is important; the NGOs emphasise that the law cannot fight alone. The cultural elements of the law—the values and attitudes which bind the system together, and which determine the place of the legal system in the culture of society (Friedman, 1969)— are central here. This part of the discussion will mostly outline the primary prevention of rape, in line with Larcombe's (2014) distinction between primary and tertiary prevention.

Rape has been a longstanding social and political problem, with social movements advocating for rape law reform. Discoveries uncovered from my research stress that the law is just one piece of the puzzle to tackle and combat rape, and if this task is to be taken seriously, the process has to move beyond the law. In the analysis, it was repeatedly argued that the law

[9] My own translation.

is insufficient in several ways. Past the near impunity for rape, as my informants speak of, the existence of rape myths challenges the legal process; rape myths and harmful stereotypes—especially regarding the victim—and traditional gender roles uphold the issue of rape. A belief in the effects of legal reform to challenge these stereotypes exists, while at the same time, it is acknowledged that law alone cannot eradicate rape. Fighting rape is, per my findings, connected to fighting harmful societal and social beliefs and stereotypes. However, should these symbolic functions be the main outcomes of the substantive elements of law, as Friedman (1969) defines the legal process? Skilbrei et al. (2019) argue that addressing the issue of rape requires understanding its complexities and nuances and that this requires a societal response. This includes creating a culture that supports victims and encourages reporting, as well as challenging harmful attitudes and beliefs that contribute to rape. They also highlight the importance of research and education in raising awareness and understanding of the issue, and in developing effective strategies for prevention and intervention.

This brings me to an important finding of my research. Rape is considered severe regardless of the circumstances in which the rape occurs. Organisation A operates with an absolute definition of rape, one that exists independently from the legal definition. It relates to the notion that there is a "right" definition of rape to which the law does not correspond, and there is a need for a law which is "good". At the same time, when the social and legal norms correspond, it sets off a domino effect which brings about changes in the criminal justice system and within society. Moreover, if something is illegal, it transforms perceptions both legally and socially regarding how society thinks about and relates to sexuality. Without me being able to propose what this absolute definition encompasses; it becomes evident that the call for legal reform and consent-based legislation is based on this definition. Further, this definition indicates that the social and societal mechanisms related to rape are better accounted for. When researching the new Swedish rape legislation—which is consent-based—Wegerstad (2021)

notes that the legislation "requires, in a more explicit way than before, that criminal justice practitioners have some kind of common conception of how people behave in sexual situations and a normative comprehension of what constitutes blameworthy—and acceptable—behaviour in sexual encounters" (p. 751). In other words, if transferable to Norway, actors within the legal system should hold knowledge of the social norms and use these to guide the implementation of the law. Therefore, while the population should possess the legal knowledge—the legal definition of rape—the legal system should possess social knowledge—the social definition of rape.

Law and society interact in complex ways. The social purpose of the law is to promote predictability through legal rules, requiring shared norms and laws that people can rely on (Sand, 2017a). Boundaries between law and society are indistinct as they are mutually shaped. The legitimacy of the law depends on its reflection of society's accepted values. The legal dilemma involves balancing the creation of standardised and generalised norms, ensuring normative predictability, legal certainty and predictability for citizens, while also granting authority to continuously amend laws, allowing a legal change in society (Sand, 2017b). This paradox highlights that while the law is a change agent, the rule of law aims to maintain stability. It is therefore of interest to explore the call for and the justification for reforming rape legislation in Norway. As this thesis aims to explore the law's role and capacity in the fight against rape, it is compelling to understand the role of consent-based legislation.

Bamforth (1997) questions the value of law as a tool for social change if it fails to achieve its objectives: "If law is ineffective in achieving its social goals, doubt must be cast on its worth as an instrument of social policy" (p. 273). While there has been a shift in the language used to discuss rape and consent, a finding also present in my research, assessing the impact of new legislation on social change remains complex, as previous research has emphasised (Smart, 1989). Larcombe (2014) observes that "the criminal law attempts to influence, but it is also

influenced by, the sociocultural attitudes and the normalised gender inequalities that structure the wider society in which sexual violence occurs" (p. 6). They further believe that it is rape culture rather than rape law which limits the law's role as a communicator and a normative standard. Therefore, it is reasonable to question the law's potential as a normative institution on its own. In some ways, the call for reform towards consent-based rape law could be a means to redefine rape to include those borderline cases where lack of consent is criminalised. Whether consent-based rape legislation better complements the people's views and attitudes towards rape is a challenging matter to conclude, as the outcomes of law reform are a challenge to predict. If the arguments people make about wanting reform to happen to rape legislation are not a part of the outcomes springing out of said reform, there is a new problem on the horizon. A reform towards consent-based legislation is argued by my findings to better communicate and reflect social norms in society, highlighting a belief in the law's potential as a normative institution. As such, it is interesting that a call is being made for the law as the main communicator and norm creator and changer in society, especially when Larcombe (2014) noted that the law is affected by other, perhaps conflicting, normative institutions in society.

Despite ongoing efforts to combat harmful perceptions of rape, also with legal reform, they persist even a decade after research on legal mobilisation highlighted legal empowerment being sought after as a means of change (e.g., Domingo & O'Neil, 2014; Mathiesen, 2011). Social movements[10] remain committed to using the law to tackle these perceptions, as shown by the engagement from the NGOs in my research and the Consent Alliance overall. The mobilisation of the law illustrates a belief in the law as a dominant feature of tackling the gravity of rape. Moreover, the mobilisation of the law has had a wider impact on society's perception of rape, as seen in the focus groups' use of consent as a boundary between legal and illegal sexual acts. I assert that this is a result of increased awareness. The importance of teaching

[10] The term "social movement" is used as an umbrella term as specified in Chapter 2.

boundaries to young people, as this could potentially prevent grey area situations, is further underlined. Based on these implications, it is evident that consent is emerging as a social norm among younger generations as they define rape. This has resulted in increased focus on the concepts of rape and consent over the years. However, my research reveals that this attention is inadequate considering the gravity of rape. I argue that the use of consent as a premise for the distinction between legal and illegal sex is a result of legal mobilisation as the mobilisation itself creates debate and public engagement. The public hopes to be a force for change, and mobilising the law is a way to seek this change—the legal system has an opportunity to establish a new normative standard for society. While exploring the effect of legal reform to eradicate harmful prejudices against queer people, Bamforth (1997) made an interesting finding:

> The social effect of law, law reform or debate […] can never be divorced from the relevant social background, and that, while law may reinforce existing prejudices against lesbians and gays, debate and information—which might be associated with a move to alter the law—can help in eradicating social sensitivities and consequent prejudice. Even then this will be a slow process, and the extent to which debate surrounding the process of law reform impacts upon a particular society will clearly vary depending on the strength of pre-existing feelings. (Bamforth, 1997, p. 287).

This is what my research shows. One cannot "just" change the law, but also change the social mechanisms—one has to induce social change, and this is not only done by law. There is an idea that law induces social change, but also that social change forces a change in the law. It is perhaps impossible to detach rape from its social nature, problematising the outcomes of rape law reform. My thesis has not sought a clear definition of rape, but the legal mobilisation and the ongoing public engagement suggest that the social norms surrounding rape are not reflected

in the current rape legislation. The legal mobilisation has increased the awareness of these beliefs about rape, and now there is a need to eradicate them by implementing consent-based legislation. According to Friedman (1969, p. 29), any significant societal transformation cannot take place without some corresponding modification in its legal framework. As such, the legal mobilisation has merit if the social change regarding consent has already happened. When Mathiesen (2011) distinguishes between intended and unintended outcomes of law, he further states that the law could deflect people's attention from problems of a societal nature. These problems are defined within legal frameworks despite their social nature, indicating that the law itself is insufficient to resolve the issue, relating to when Mathiesen (2011) emphasises that the law is one component in a "complex social entity" (p. 45-46). This is in line with my findings of the law being one part of the fight against rape and underlines that separating the law from society, or vice versa, could complicate the outcomes of the law. Educating and informing people of the wrongful stereotypes surrounding rape and the harm rape imposes on the victim and society is crucial. Despite the importance of informing and educating, Larcombe (2014) implies that education also is affected by a gap between what happens in practice and what education is meant to be in the books—in theory, the law and education are important to affect the prevalence of rape, but in practice, it is difficult to invoke a change.

Combatting rape myths by reforming legislation can "encourage victims to report the crime, combat anti-victim stereotypes that pervade officialdom, and empower prosecutors with the legal tools to secure convictions" (Bryden & Lengnick, 1997). As such legal reform might be largely symbolic, and rape myths are part of these mechanisms in which symbolic outcomes challenge (Jacobsen & Skilbrei, 2020). If we again compare rape legislation to the Smoking Act, although the latter was accompanied by attitude campaigns and other societal measures, the norms surrounding smoking have drastically changed. The effectiveness of such politics as the Smoking Act must be experienced as legitimate by the citizens to ensure compliance and

enforcement (Sæbø, 2012, p. 149). Unless the population complies with the legal norm, social change becomes difficult as it does not minimise the lag but enhances it—the resistance towards the law would problematise the influence the law has on society.

While practical outcomes of legal reform and legal mobilisation are pivotal for experiences of justice for victims, it is interesting to understand why NGOs are fighting for legal reform. My research acknowledges that practical outcomes are important while highlighting the need to challenge social mechanisms upholding the severity of rape. Reforming the law towards consent-based legislation, Bachman and Paternoster (1993) investigated the impact of such legal reform in the US, finding that organisations pushing for reform aimed to address societal misconceptions about rape and its victims. These included beliefs that rape was not a severe crime, that acquaintance rape was less serious than those conforming to the cultural stereotype, and the persistence of rape myths. The primary aim of legal reform was therefore symbolic, aimed at promoting awareness about the wrongfulness of these beliefs. Drawing from previous research, although rape laws have been reformed to centre around consent, cases where force, threats or use of violence have an increased likelihood of proceeding to trial (Lievore, 2004). Whether this is transferable to a Norwegian society with consent-based legislation is difficult to predict.

Moving on to what these social norms and attitudes are, I will delve into rape myths and gender roles. The presence of rape myths in society and the criminal justice system complicates most processes connected to rape. My informants speak of rape myths as something prevalent in Norwegian society and implicate that these stereotypes are harmful to society in many ways, particularly for the victims. Research on rape myths states that if we are unable to minimise and eliminate stereotypical beliefs about rape, the purpose of the law may be undermined (Temkin & Krahé, 2008), despite some progress (McGlynn, 2010), such as the challenging of the real rape stereotype (Quilter, 2011). Whether these progressions have been made in Norway cannot

be concluded in this study, although my findings allude to the idea that rape myths complicate the gravity of rape.

Observations made in my research state that rape is connected to gender and gender roles. While it no longer is any doubt that men are rape victims too, statistically women are more likely to be victimised. Supporting their notions on the meaning of gender roles, Sakaluk et al. (2014) state that traditional gender norms implicate men as pursuers and women as gatekeepers when it comes to sex. My findings further highlight the importance of examining societal norms related to gender and sexuality as a means to address issues surrounding sexual violence; there is an inevitable risk of being victimised as a young girl, while it is similarly suggested that boys' gender roles demand a culture where boundary-pushing behaviour is normalised. If these norms are challenged, this research proposes that it might be possible to shift the cultural context around sexual violence and reduce its prevalence. And, if the law has mostly symbolic implications, the law's participation in the combatting of rape should be accompanied by strategies such as educating all members of society, empowering women and thus shifting power relations, creating safe environments both publicly and privately, and ultimately transform attitudes, norms and beliefs about gender and sex (Peacock, 2022; World Health Organization, 2019). Lacking an understanding of consent has been associated with sexual aggression among men (Warren et al., 2015). This emphasises the importance of communicating consent and rape law. The social norms have to be communicated early for them to have an effect; education communicates sexual boundaries. Dale et al. (2023) state that violence should be prevented from an early age because it appears to affect a significant portion of the population already in childhood. Gavey's (2018) analysis of ways to "end rape" resonates with many of the findings I have discussed related to measures beyond the law when she lists suggestions for changing social norms; (1) educating on consent, boundaries and gender equality, (2) engaging the media by promoting positive messages about consent and boundaries,

(3) involve the community in the discussions about rape and consent, (4) empower victims of rape by challenging rape myths and victim blaming, and (5) hold perpetrators accountable. These suggestions can be used to inform policy and practice aimed at ending rape and promoting a culture of respect and consent.

6 Conclusion

While it is difficult to establish and conclude what the role of law and punishment is, this study has explored how we best can understand this role and which implications they have. And, although the sociology of law is an in-between discipline, the relationship between law and society becomes evident in several ways throughout this thesis. As has been demonstrated through this research, in simple terms, law and punishment serve to criminalise rape, provide legal protection for victims and hold perpetrators accountable. How this is accomplished has various implications. Punishment has both practical and symbolic implications. While punishment is a more practical function of law, punishment has signalling effects to which my research has applied weight. One of the primary findings of this study is the emphasis on the law as communication. However, the harsh punishments have little effect unless we hold perpetrators accountable and address and acknowledge the harm caused to the victim. How we hold them accountable occurs both practically and symbolically—practically through conviction and both general and specific deterrence, and symbolic through how legal mobilisation has transformative effects and that punishment is signalling.

Previous research has found that legal reform has both practical and symbolic implications. Rape law reform towards consent might be mostly symbolic, and, in addition, this study has emphasised that practical outcomes of rape law are important. Especially the younger generation views punishment as a central component of fighting crime in general. Although my research has illustrated that imposing punishment is not uncomplicated, it underlines that symbolic outcomes cannot be prioritised at the expense of practical outcomes. The balance between them is finicky, and one both policymakers and society must acknowledge. Symbolic outcomes include what the law signals to society—what the law expresses—while they at the same time aim to change attitudes within the population. This study reveals calls for harsh

punishment of rape, aligning with the belief that punishment should deter individuals and society.

Related to what the law expresses, this study has illustrated that an absolute definition of rape guides the discussion on rape. If something is not explicitly illegal, it is legal, and this definition appears connected to the fact that my findings show that rape is considered as severe regardless of how the rape occurs—rape is rape. This definition may not necessarily correspond with the legal definition, and if it does not, it suggests the presence of a lag. Although this absolute definition could align with the social definition of rape, this cannot be concluded in this study. The lag creates challenges for the law by highlighting the contrast between social and legal spheres. Does the absolute definition of rape relate to the social norms surrounding sexual behaviour? If so, not only does the legal system have to acknowledge this definition's existence, but if the legal definition does not correspond with the social definition, punishment may be illegitimate. This disparity encourages legal mobilisation and has likely played a role in shaping Norwegian society's current state where demand for legal reform has dominated discussions of the gravity of rape.

Doubts about the effectiveness of law as an instrument for bringing about social change have been raised, arguing that if it fails to accomplish its intended objectives, its usefulness as a tool for social policy must be called into question. And what do the law and punishment intend to do? This opens for interesting research—exploring the effectiveness of legal reform in affecting society and changing social norms. This includes uncovering the social and absolute definition of rape, which guides legal mobilisation and thus also social change in Norwegian society. Implications are that further research should explore this social and absolute definition of rape, which guides legal mobilisation and thus also social change in Norwegian society. This might illustrate whether there is a disparity between legal and social norms, and remarks can be made towards the meaning of this disparity. Rape is not illegal due to the legal norm, but

because it is severe and morally wrong. Comparisons are drawn between rape and drug-related offences, with concerns raised about the proportionality of punishments. Focus groups distinguish crimes with and without personal victims, highlighting the severity of rape—while punishment for drug-related crimes is questioned, rape is seen as a moral wrong deserving significant punishment. Mitigating circumstances have minimal impact on sentencing, emphasising the importance of justice for victims. Punishment is considered a crucial tool in preventing rape, perhaps distinct from its role in addressing other offences, and this allows for interesting future research.

The law's effect is deemed to be more effective if we change the harmful barriers that exist within society and the legal system for rape victims. The communicative and normative values of the law are further affected by societal mechanisms which complicate or enhance the role of law and punishment, depending on how we tackle these mechanisms. Rape is a complex and nuanced issue which requires more than just a legal response. My research implies a lack of sufficient action to prevent rape in society and presents a need for change; both in terms of societal attitudes towards rape and the legal system's response to it. This claim aligns with broader discussions around the need for better education and support for victims, as well as increased accountability for perpetrators—it highlights the need for a cultural shift.

The stigma and shame associated with rape often discourage victims from reporting their trauma, making it difficult to hold perpetrators accountable. Many victims do not report rape because they do not believe in the effects of the law or do not identify their experiences as rape, and education and awareness can help break down these barriers. The social taboo further contributes to victim-blaming and self-blame, delaying or preventing the recognition of the abuse. Breaking down these barriers can create a safe and supportive environment for victims to come forward.

In conclusion, there is no one answer to what the role of the law and punishment is in the fight against rape. How we best understand their role is through understanding what the law and punishment communicate and acknowledging the impact of social norms and social change on the law. Society has in ways determined that the law plays a vital role in the fight against rape through legal mobilisation, and as the law is deeply embedded in society, the want to change how the law fights rape is perhaps justified, particularly if the law currently falls short in combatting rape. The law lays the foundation of the house—the groundwork—and the societal response appears as the furnishing of the house—the fight against rape.

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Appendix

Attachment 1: Interview Process Focus Groups

Opplegg fokusgrupper

Dokumentene som inngår i opplegget

1. Informasjonsskriv med samtykkedel som signeres av deltakerne.
2. Stiftede utskrifter av den valgte tilpassede postalundersøkelsen til alle deltakerne.
3. Utskrift av oversikt reaksjonsformer til alle deltakerne og forskerne.
4. Utskrift av den valgte vignetten til alle deltakerne og forskerne, slik at de kan se på den mens de diskuterer.
5. Utskrift til alle deltakerne med beskrivelse utvalgt sak og side for avkrysning reaksjonsformer som de skal fylle i etter diskusjon.

1. **Kort introduksjon av studien, formålet for den og designet. Fortell at sakene de vil lese om, og som de skal diskutere etterpå, er fiktive.**

2. Deltakerne fyller ut **tilpasset postalundersøkelsen individuelt** og legger den i en konvolutt som de beholder foran seg på bordet (maks 15 minutter).

3. **Gruppa samles**

   Vi gir mer informasjon om **straff skriftlig** (fem minutter til å lese).

   Vi initierer felles **samtale med gruppa om den første saken**

   a) Hva slags type reaksjon mener dere er riktig i denne saken?
      a. Hvorfor?
      b. Hvis de nevner fengselsstraff: Hvor lang straff mener dere ville vært passende i dette tilfellet?
      c. Hvorfor?
      d. Hva ville dere tenkt om det var en mann/kvinne som var utøver?
      e. Hva hvis han/hun ganske nylig har kommet til Norge og har opplevd traumatiserende hendelser i landet han flyktet fra? (hvis aktuelt i den utvalgte saken)
      f. Finn på andre detaljer i lys av sakens kjennetegn og diskusjonen så langt

   b) Hva synes dere det er viktig å legge vekt på når man bestemmer straff i dette tilfellet?
      a. Hvorfor?
      b. Mener dere det betyr noe om han/hun (navn) har gjort noe lignende før?

c. Hva hvis han/hun har omsorg for barn og er sammen med dem to uker i måneden? (hvis alderen i saken passer)
d. Hva om han/hun har et rusproblem? (hvis aktuelt)

4. Deltakerne gir igjen sin **individuelle vurdering** av utskrift av reaksjonsavkrysningsside fra postalundersøkelsen.

5. Felles diskusjon hvor deltakerne skal lande på en **felles konklusjon** om reaksjon og gjennomføring av den

6. Bolk om **syn på straff**
    a. Hva mener dere bør være den viktigste grunnen til at man straffer?
    b. Hva mener dere man bør legge vekt på når man bestemmer type reaksjon?
    c. Hva mener dere man bør legge vekt på når man bestemmer omfang og lengde på reaksjonen?
    d. Hva mener dere man bør legge vekt på når man bestemmer hvordan reaksjonen bør gjennomføres?

7. Bolk om **holdninger til retts- og straffesystemet**
    a. Spørsmål om tillit til rettssystemet – politi:
        1.Hvor stor tillit har dere til politiet
            1. hvorfor?
        2.Hva er viktig for tillit til at politiet behandler partene i saken skikkelig?
    b. Spørsmål om tillit til rettssystemet – domstoler:
        1.Hvor stor tillit har dere til at domstolene?
            1. hvorfor?
        2. Hva er viktig for at dere stoler på at domstolene fatter riktige beslutninger?
    c. Spørsmål om tillit til Konfliktråd
    d. Spørsmål om tillit til kriminalomsorg:
        Når en domstol har utmålt en reaksjon, er det opp til Kriminalomsorgen å ta stilling til hvordan den skal gjennomføres. Det kan blant annet innebære at man på grunn av den dømtes helsetilstand justerer gjennomføringsform
        Hvor stor tillit har dere til at straffen gjennomføres på en ordentlig måte?

Attachment 2: Rape Vignette

Sak 4

Siv på 20 år var på fest hjemme hos en venninne hvor det var både bekjente, venner og fremmede. Det var mye alkohol på festen, og Siv drakk tett. Sent på kvelden kom Siv i snakk med Brian, som hun ikke hadde møtt før. De danset og snakket sammen en stund. Siv forlot Brian for å gå på toalettet. Siv var kraftig beruset og kastet opp på toalettet. Etter toalett-besøket var hun veldig svimmel og gikk inn på et soverom ved siden av for å legge seg nedpå. Hun sovnet med det samme. En venninne så at Siv gikk inn på soverommet, tittet inn til henne, og så at hun sov så tungt at hun virket nærmest bevisstløs.

Brian gikk etter en kort stund for å se etter Siv. Han fant henne ikke på toalettet, men da han så inn soveromsdøren som sto på gløtt, så han at Siv lå i sengen. Brian gikk deretter inn på soverommet. Da han la seg i sengen bak Siv la han merke til at hun hadde rester av oppkast i håret. Han befølte brystene hennes, uten at Siv reagerte. Han kledde av henne buksa og trusa og gjennomførte samleie, før han sovnet ved siden av henne. Siv åpnet ikke øynene mens samleiet skjedde og var helt slapp i kroppen.

Da Siv våknet opp dagen etter ble hun forvirret av å oppdage at hun var delvis naken. Hun var sår i underlivet, og merket at det rant væske ut av skjeden da hun satte seg opp. Hun skjønte at det var sæd. Hun hadde ingen minner om det som hadde skjedd. Brian hadde forlatt soverommet og leiligheten der festen hadde foregått før Siv våknet. Siv var ør og bekymret for at hun hadde blitt smittet av en seksuelt overførbar sykdom og ringte en venninne for å få råd og trøst. Venninnen kom og hentet Siv og tok henne med til overgrepsmottaket på legevakten. Etter å ha tenkt over saken i tre dager bestemte Siv seg for å anmelde hendelsen.

Brian er 23 år og tidligere ustraffet.

Attachment 3: Information Letter

Vil du delta i mitt masterprosjekt om
Lovens rolle i bekjempelsen av voldtekt?

Dette er et spørsmål til deg/dere om å delta i et masterprosjekt i rettssosiologi hvor formålet er å studere holdninger til lovreguleringen av voldtekt og straff i den norske befolkningen. I dette skrivet får du informasjon om målene for prosjektet og hva deltakelse vil innebære for deg.

Formål
Masterprosjektet skal fremskaffe ny kunnskap om rettsoppfatningen i den norske befolkningen, spesifikt for lovreguleringen av voldtekt. Rettsoppfatning generelt omfatter blant annet kunnskap og holdninger om straffbare handlinger og straffenivå for disse, hvordan folk resonnerer rundt de grensedragninger som er satt mellom lovlige og straffbare handlinger og forholdet mellom befolkningens rettsoppfatning og den faktiske straffeutmålingen i domstolene. Masterprosjektet inngår i et forskningsprosjekt om generell rettsoppfatning, på oppdrag fra Justis- og beredskapsdepartementet, der masterstudenten er deltaker.

Hvem er ansvarlig for forskningsprosjektet?
Velferdsforskningsinstituttet NOVA ved OsloMet – storbyuniversitetet er ansvarlig for prosjektet om rettsoppfatning, som gjennomføres i samarbeid med Institutt for kriminologi og rettssosiologi ved Universitetet i Oslo og Kriminalomsorgens høgskole og utdanningssenter (KRUS). Prosjektet utføres på oppdrag fra Justis- og beredskapsdepartementet. Masterprosjektet er masterstudenten selv ansvarlig for, med May-Len Skilbrei som veileder, som i tillegg er ansvarlig for den kvalitative datainnsamlingen for forskningsprosjektet om rettsoppfatning.

Hvorfor får du spørsmål om å delta?
Datagrunnlaget i det overordnede forskningsprosjektet er en spørreundersøkelse på telefon til et representativt utvalg av den norske befolkningen i alderen 16 til 74 år, et postsendt spørreskjema til både deltakerne i telefonundersøkelsen og et eget utvalg som kun får dette skjemaet, en elektronisk spørreundersøkelse til elever i ungdomsskolen og videregående skole og fokusgruppeintervjuer med ungdom og unge voksne i alderen 16 til 25 år.

Som en del av masterprosjektet vil det gjennomføres intervjuer av informanter fra ulike interesseorganisasjoner med kunnskap om både lovgivning generelt og lovreguleringen av voldtekt mer spesifikt. Masterprosjektet benytter seg videre av data fra det overordnede forskningsprosjektet, og masterstudenten har bidratt i datainnsamlingen gjennom fokusgruppeintervjuer.

Du har blitt forespurt om å delta i et intervju.

Hva innebærer det for deg å delta?
Du vil delta i en samtale om lovens rolle i møte med seksuelle normer, hvor målsetningen er å kartlegge hvordan organisasjoner som engasjerer seg i debatt rundt voldtekt resonnerer rundt rettssystemets rolle i bekjempelsen av voldtekt. Samtalen skal ikke omhandle personlige erfaringer, men navnet til deltakerne blir samlet inn for å ivareta dine rettigheter rundt personvern. Det blir gjort lydopptak av samtalen, som i ettertid blir transkribert og lagret som tekst. Selve samtalen vil vare i omtrent 1 time.

Det er frivillig å delta
Det er frivillig å delta i prosjektet. Hvis du velger å delta, kan du når som helst trekke samtykket tilbake uten å oppgi noen grunn. Alle dine personopplysninger vil da bli slettet. Det vil ikke ha noen negative konsekvenser for deg hvis du ikke vil delta eller senere velger å trekke deg.

Hva skal jeg bruke opplysningene til?
Data fra intervjuene skal brukes i en masteroppgave, og vil anonymiseres. Ingen av dataene fra intervjuene vil brukes i forskningsprosjektet om rettsoppfatning da masterprosjektet er uavhengig fra det prosjektet i den form at det er kun masterstudenten som behandler dine data.

Ditt personvern – hvordan jeg oppbevarer og bruker dine opplysninger
Jeg vil bare bruke opplysningene om deg til formålene jeg har fortalt om i dette skrivet. Jeg behandler opplysningene konfidensielt og i samsvar med personvernregelverket. Ingen deltakere vil kunne gjenkjennes i oppgaven som bygger på data som samles inn.

Hva skjer med opplysningene dine når jeg avslutter masterprosjektet?
Lydopptakene slettes senest når masterprosjektet leveres 22.05.2023 og de transkriberte intervjuene vil da gjennomgås nøye for å sikre at de ikke inneholder indirekte identifiserbar informasjon.

Hva gir meg rett til å behandle personopplysninger om deg?
Jeg behandler opplysninger om deg basert på ditt samtykke. Du vil bli spurt om å samtykke til deltakelse i starten av intervjuet.
På oppdrag fra NOVA har NSD – Norsk senter for forskningsdata AS vurdert at behandlingen av personopplysninger i dette prosjektet er i samsvar med personvernregelverket.

Dine rettigheter
Så lenge du kan identifiseres i datamaterialet, har du rett til:

- innsyn i hvilke opplysninger jeg behandler om deg, og å få utlevert en kopi av opplysningene
- å få rettet opplysninger om deg som er feil eller misvisende
- å få slettet personopplysninger om deg
- å sende klage til Datatilsynet om behandlingen av dine personopplysninger

Hvis du har spørsmål til studien, eller ønsker å vite mer om eller benytte deg av dine rettigheter, ta kontakt med:

- Masterstudenten Synnøve Aursand Pedersen (97518408, s.a.pedersen@student.jus.uio.no)
- Veileder May-Len Skilbrei (m.l.skilbrei@jus.uio.no)

Hvis du har spørsmål knyttet til NSD sin vurdering av prosjektet, kan du ta kontakt med:

- NSD – Norsk senter for forskningsdata AS på epost (personverntjenester@nsd.no) eller på telefon: 55 58 21 17.

Med vennlig hilsen
Synnøve Aursand Pedersen
Masterstudent i rettssosiologi ved Universitetet i Oslo

Attachment 4: Interview Guide NGOs

1. 1 av 10 kvinner rapporterer at de har opplevd voldtekt. Hva mener du bør endres i det norske samfunnets møte med voldtekt?
    1. Hvorfor?
2. Hvilken rolle spiller rettssystemet i bekjempelsen av voldtekt?
3. Hvilken rolle spiller det øvrige samfunnet i bekjempelsen av voldtekt?
4. Hva er det ved voldtekt som er klanderverdig?
    1. (Seksuell autonomi, alvorlighet, frihetsberøvelse osv.)
5. I fokusgruppene jeg var med på å gjennomføre ble det tydelig at jentene ønsker strengere straffer enn guttene. Hva tror du det kan handle om?
6. Videre virket ikke utøverens kjønn å ha noen betydning for straffutmåling, samt at mange ulike betingelser ikke virker å være formildende da deltakerne skulle diskutere straff. Hva tenker du om dette?
7. Hva tenker du om straffelovens potensiale til å påvirke folks holdninger?
8. De siste årene har samtykkelov fått svært mye oppmerksomhet i det norske samfunnet. Hva tenker du dette kommer av?
    1. Hvilke fordeler og ulemper ser du ved dagens voldtektslovgivning?
    2. Hvilke fordeler og ulemper ser du ved en reform av dagens voldtektslovgivning?
9. Koblet til forrige spørsmål så la Straffelovrådet fram et forslag om endring i voldtektsparagrafen i desember i fjor. Dette forslaget hevder de omfatter handlinger der hvor fornærmede uttrykker i ord eller handling at de ikke vil ha seksuell omgang. Hvilke tanker gjør du deg om lovforslaget?