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A comparative critical discourse analysis of the news coverage of the rape law reform in Sweden and Denmark

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Avdelningen för mänskliga rättigheter

Historiska institutionen

Kurskod: MRSK62

Termin: 2019 HT/Autumn

Handledare: Darcy Thompson

Omfång: 15.831 (23.907)



Sammenfatning

En komparativ kritisk diskursanalyse af nyhedsdækningen omkring reform af voldtægtslovgivning i Sverige og Danmark

Denne afhandling undersøger diskursen omkring den samtykkebaserede voldtægtslovgivning i Sverige og Danmark. I juli 2018 implementerede Sverige en samtykkebaseret voldtægtslov som bliver evalueret løbende. Samtidigt med dette har den nuværende danske regering lovet, at den danske voldtægtslov også bliver ændret til at være samtykkebaseret. Jeg fokuserer på otte danske og svenske nyhedsartikler fra hvert land, hvor den samtykkebaserede voldtægtsreform diskuteres. Artiklerne er valgt ud fra de to aviser i hvert land med flest onlinebesøg; Aftonbladet og Ekstra Bladet. I analysen af disse artikler bruger jeg elementer fra Faircloughs 'Critical Discourse Analysis' og Entmans 'Framing Theory.' Jeg analyserer mediers brug af 'framing', interaktionskontrol, høflighed, modalitet og ordbetydning i de valgte nyhedsartikler. Analysen er struktureret som en tekstanalyse og en analyse af den sociale praksis. Jeg analyserer diskursordenen, de ideologiske og politiske effekter af diskursen og den sociale matrix af diskurs. Jeg identificerer de overordnede rammer i samfundet og konkluderer, at fortolkningen af samtykke og voldtægt er dynamisk og påvirkes af skiftende magtdynamikker. Jeg konkluderer, at udviklingen i den svenske lovgivning og nyhedsdækning af lovgivningen kan ses som en forløber for den danske udvikling - afhængig af voldtægtslovgivningens udformning og den politiske og juridiske reaktion derpå.

Nøgleord: Voldtægt, samtykke, ligestilling, nyhedsmedier, kritisk diskursanalyse og framing.

Abstract

This thesis examines the discourse concerning the consent-based rape law reform in Sweden and Denmark. Sweden implemented the consent-based rape law July 2018 and has since been evaluating the law while the current Danish government promised that the law will change to a consent-based law. I focus on eight Danish articles and eight Swedish news articles in which the consent-based rape law reform is discussed. The articles are chosen from the two newspapers with most online visits in each country; Aftonbladet and Ekstra Bladet. In analysing these articles, the study will use elements from Fairclough's Critical Discourse Analysis and Entman's framing theory. The study analyses the use of frames in news media while also analysing the use of interactional control, politeness, modality, and word meaning in the chosen news articles. The study specifically focuses on text analysis and an analysis of the social practice in which the orders of discourse, the ideological and political effects of discourse and the social matrix of discourse are studied. I identified the overarching frames in the coverage and found that the interpretation of consent and rape is dynamic and influenced by changing power dynamics. I found that the development in the Swedish legislation and news coverage of the legislation can be seen as a precursor for the Danish development depending on the nature of the law following the publication of this thesis and the political and legal response to the reform.

Keywords: Rape, consent, gender equality, news media, critical discourse analysis, and framing.

TABLE OF CONTENTS

ABSTRACT	3
INTRODUCTION	5
1.1 RESEARCH QUESTION AND PURPOSE	6
1.2 CONTEXT	6
RESEARCH REVIEW	10
2.1 MAINSTREAM MEDIA AND PUBLIC THOUGHT	10
2.2 A STUDY OF ‘THE NORDIC PARADOX’	12
THEORETICAL FRAMEWORK	14
3.1 FRAMING THEORY	14
METHOD AND EMPIRICAL DATA	17
4.1 CRITICAL DISCOURSE ANALYSIS	17
4.1.1 CDA Framework	19
4.1.2 Sampling Process and Data	21
4.1.3 Research Tools and Procedure	22
4.1.4 Limitations and Internal Validity	24
ANALYSIS	25
5.1 MAIN FRAMES IN THE COVERAGE OF CONSENT-BASED RAPE LEGISLATION	25
5.1.1 Swedish Articles	25
5.1.2 Danish Articles	30
5.1.3 Final Observations	35
5.2 SOCIAL PRACTICE	36
5.2.1 The Social Matrix of Discourse	36
5.2.2 Orders of Discourse	37
5.2.3 Ideological and Political Effects of Discourse	38
CONCLUDING DISCUSSION	39
6.1 FRAMING THEORY	40
6.2 RELATING THE STUDY TO THE EXISTING FIELD OF RESEARCH	41
6.3 FUTURE DIRECTIONS	43
REFERENCES	44
7.1 NEWS ARTICLES	47
APPENDIX	50
8.1 FIGURE 1.	50
8.2 FINDINGS: COMPLETE TEXT ANALYSIS OF THE DANISH AND SWEDISH ARTICLES	51
8.2.1 The Swedish Articles	51
8.2.2 The Danish Articles	58

Introduction

July 2018, Sweden passed a law that recognises sex without consent as rape. The law states that a person must give verbal or physical consent - and passiveness is not considered consent. In Denmark the rape law is still based on force which means that prosecutor have to prove that the perpetrator used violence, threats, or that the victim had been exploited in a vulnerable condition to secure a rape conviction. The current Danish government promised that the law will change in near future to a consent-based law and a proposal for such a law will be presented February 2020. This possible reform has been widely discussed in both the parliament and the media because of the fears of false accusations, and a general belief in rape myths.¹ While Sweden has been evaluating the past year with the new law, Danish media has both criticised and praised the consent-based rape law. The discussion reached its peak following the release of the Amnesty International report “Time for Change: Justice for Rape Survivors in the Nordic Countries.” Amnesty International claims that the Nordic countries, Denmark, Finland, Norway, and Sweden, are no exception to the widespread gender-based violence in Europe and that impunity for sexual violence remain high in these countries.² The discussion of a consent-based rape law is not new in Denmark and the latest effort to change the rape legislation to consent-based was rejected by a majority of the political parties February 2017.³ This thesis studies social, legal and political change in which the dominant ideology incorporates feminist ideals in the shared framework of rape and consent. A study of news media reveals the change in the public consciousness and an examination of the Swedish and Danish rape law reform is important to show how the view of gender, rape, sexual violence and the rape law reform has transformed. The consumption of news media is an essential step in incorporating ideas into mainstream perception of rape and of feminist views.

¹ See list of common rape myths at: “Myths and Facts” (June 7, 2016) <<https://www.ourresilience.org/what-you-need-to-know/myths-and-facts/>> accessed January 10, 2020

² Amnesty International, “Time for Change: Justice for Rape Survivors in the Nordic Countries” (2019) <<https://www.amnesty.org/en/documents/eur01/0089/2019/en/>> accessed January 10, 2020

³ Andersen LS, “Samtykkelov Gør Det Ikke Nødvendigvis Lettere at Bevise Voldtægt” (May 1, 2019) <<https://www.information.dk/udland/2017/12/samtykkelov-goer-noedvendigvis-lettere-bevise-voldtægt>> accessed January 10, 2020

News media constructs narratives and realities and analysing the framing of news is essential to understand the narratives in public opinion. Note that while news constructs narratives it does not mean that news is facts. To claim that news narratives mirror society and public consciousness would be to oversimplify a greater issue, but reality and representation are connected. It is important to examine how dominant discourses or grand narratives are constructed in media and how the Danish and Swedish version of the rape law reform compare, to discuss how one might act as a precursor to the other.

1.1 Research Question and Purpose

Can the Swedish development from a force-based to consent-based legislation be seen as a precursor to the Danish transformation in the public discourse of consent, the narrative of rape and gender equality and how do the narratives surrounding the consent-based rape law in Denmark and Sweden compare? It is essential to analyse how consent-based rape legislation is perceived in Denmark and Sweden and how the narrative of this is determined by the political climate, the media, and the law. The thesis is structured as a comparative analysis of the public narratives of sexual violence and rape in the legislative apparatus and mass media with focus on framing theory and critical discourse analysis. I will also analyse how the two countries compare and affect each other and how it is narrated in the discourses. The narrative created in the courts is influential in how media constructs stories for the public and thus shape society. The purpose of this is to highlight which issues are relevant in the Danish and Swedish discourse and illuminate the different power relations in the discourse. Finally, I will discuss how media and the legislature influence each other, but also how the discourse in Denmark and Sweden affect each other and the legislature in each country.

1.2 Context

Rape is a serious crime, human rights violation, and affects the individual's right to bodily integrity and sexual autonomy. Rape impairs the enjoyment of numerous human rights, including the rights to physical, mental and sexual health; personal security; equality and non-discrimination; and equal protection before the law. It occurs in both heterosexual and same-sex relationships and outside intimate relationships. All sexual violence, regardless of gender, gender identity or gender expression

of the victim, is equally serious as a human rights issue.⁴ It is essential to protect the bodily integrity and sexual autonomy of people. Recognising structural violence against women as gender-based violence and that women and girls are subjected to a higher risk of violence than men mean that the first step in combating gender based violence is to adopt and effectively implement consent-based laws on sexual violence.⁵ In the following, I briefly outline the different relevant conventions Sweden and Denmark are parties to, and what the attached obligations are. This explanation is to establish consent in rape legislature as a prerequisite to achieve gender equality and the protection of women and girls.

The Council of Europe Convention on Preventing and Combatting Violence against Women and Domestic Violence (the Istanbul Convention)

The purpose of the Istanbul Convention is to prevent violence against women. It is a legally binding document and is the most comprehensive instrument to prevent gender-based violence and compels states to “take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention that are perpetrated by non-State actors.”⁶ It asserts that states are required to ensure effective investigation and prosecution of acts of violence against women, including sexual violence.⁷ The convention states that “consent must be given voluntarily as the result of the person’s free will assessed in the context of the surrounding circumstances.”⁸ Notably, the convention describes sexual violence and rape as not only vaginal, anal or oral penetration of a sexual nature but also engaging in other non-consensual acts of a sexual nature or causing another person to engage with non-consensual acts with a third person.⁹

The Istanbul Convention calls for the parties to take necessary legislative or other measures to ensure that the above-mentioned intentional conducts are criminalised.¹⁰ The legal definition of crimes of rape must be based on the lack of consent rather than on the use of force or threats by the perpetrator or the victim’s resistance. Although the Istanbul Convention states, that consent is

⁴ Amnesty International, “Time for Change: Justice for Rape Survivors in the Nordic Countries” (2019) <<https://www.amnesty.org/en/documents/eur01/0089/2019/en/>> accessed January 10, 2020. p. 10

⁵ Council of Europe (November 2014). “The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, p. 6; Amnesty International (2019), p. 11

⁶ Council of Europe (November 2014). art. 5(2)

⁷ *ibid.* art. 49(2)

⁸ *ibid.* art. 36(2)

⁹ *ibid.* art. 36(1)

¹⁰ *ibid.* art. 36

assessed in the surrounding circumstances, it does not provide a definition of consent. The convention also states that ‘intentional conducts’ are criminalised. Both Sweden and Denmark have ratified the Istanbul Convention but in an evaluation report of the Danish implementation of the convention, GREVIO¹¹ strongly encouraged “the Danish authorities to move away from the current sexual violence legislation and base it on the notion of freely given consent as required by Article 36, paragraph 1 of the Istanbul Convention.”¹² The legislation in Denmark does not meet the requirements of the convention and the implementation of ‘consent’ (among other factors)¹³ is necessary for Denmark to fulfil the requirements. Negligent rape is not included in the convention but the GREVIO report on the Swedish implementation of the convention states that the even if it is too early to assess the practical implementation of the offence of negligent rape, it values the “legal innovation and shift in responsibility that lies in the concept of “negligent rape” and welcomes the desire to push the boundaries of legislation in order to ensure respect for women’s physical, sexual and psychological integrity.”¹⁴

November 2019, *the Platform of independent United Nations and regional expert mechanisms on violence against women and women's rights* released a joint call to act against rape and to ensure that consent is central to the definition of rape. They announce that even states that have proclaimed a zero tolerance on violence against women and girls, demonstrate that sexual violence is deeply imbedded in still predominantly patriarchal societies. They call upon states to revise criminal/penal codes to ensure that the definition of rape rests upon the absence of consent and to eradicate harmful and discriminatory gender stereotypes around sexual violence including from within criminal justice systems that have often resulted in impunity for perpetrators.¹⁵ The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the

¹¹ “Group of Experts on Action against Violence against Women and Domestic Violence”. The independent expert body responsible for monitoring the implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) by the Parties.

¹² GREVIO (2017) (*Baseline*) “Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) Denmark”, p. 68

¹³ See list of proposals and suggestions by GREVIO in the report.

¹⁴ GREVIO (2019) (*Baseline*) “Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) Sweden”, p. 7

¹⁵ OHCHR, “International Day on the Elimination of Violence against Women 25 November 2019” (November 25, 2019) <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25340&LangID=E#_ftnref1> accessed January 10, 2020

European Convention on Human Rights, other conventions and case laws are also influential in protecting women's rights and the prohibition of gender-based violence.¹⁶

¹⁶ UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendations Nos. 19 and 20, adopted at the Eleventh Session, 1992 (contained in Document A/47/38), 1992, A/47/38, <<https://www.refworld.org/docid/453882a422>> accessed January 10, 2020; Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, <<https://www.refworld.org/docid/3ae6b3b04.html> > accessed January 10, 2020

Research Review

In this chapter, I first present and discuss the research of how media influences society, legislation and how legislation affects society. Following this section, I present how scholars have studied issues of ‘the Nordic paradox’ and what this paradox implies. Finally, I situate this thesis within the field of research.

2.1 Mainstream Media and Public Thought

The relationship between media and public opinion have long been studied by various scholars. While some scholars argue that media’s only role is drawing additional attention to issues others believe that framing techniques in media can change the public opinion and legislation.¹⁷ Depending on the subject and the use of framing techniques, news reporting can be tremendously influential. Scholars have supported the notion that the media is responsible of supplying information and images through which we understand our lives. Several studies draw on framing theory to examine the construction of reality and how certain versions of reality are prioritised over others.¹⁸ Notable is the work by communications professor Lisa M. Cuklanz “Rape on Trial: How the Mass Media Construct Legal Reform and Social Change.”¹⁹ Cuklanz analysed the coverage of three high-profile rape cases

¹⁷ Van Aelst, P., Melenhorst, L., van Holsteyn, J., & Veen, J. (2015) “Lawmaking and News Making: Different Worlds after all? A Study on News Coverage of Legislative Processes in the Netherlands.”. *Journal of Legislative Studies*. 21(4), 534–552; Gillooly, S. N. (2018) “A Media Framing Analysis: The Coverage of Rape in Indian and Western News Sources.” *J. S. Asian Stud.* 06 (02) 2018. p. 90

¹⁸ Mendes K, (2011) “Framing Feminism: News Coverage of the Womens Movement in British and American Newspapers, 1968–1982” *Social Movement Studies*, p. 83; O’Hara S. (2012) “Monsters, Playboys, Virgins and Whores: Rape Myths in the News Media’s Coverage of Sexual Violence” *Language and Literature* 21(3) 247–259; Smith, O. (2019) “Narratives, Credibility and Adversarial Justice in English and Welsh Rape Trials” in Ulrika Andersson, Monika Edgren, Lena Karlsson and Gabriella Nilsson (eds.) *Rape Narratives in Motion*. Palgrave Studies in Crime, Media and Culture. doi: 10.1007/978-3-030-13852-3_6; Jayanathan, D. & Pedersen, M. K. (2018) “‘A stronger Denmark’ vs. ‘to welcome people seeking refuge’ - An analysis of Danish and Swedish newspapers’ and policy documents’ framing of ‘the refugee crisis’ and border controls.” Malmö University, p. 3, 66; Cock, R., Mertens, S., Sundin, E., et al. (2018) “Refugees in the news: Comparing Belgian and Swedish newspaper coverage of the European refugee situation during summer 2015.” *Communications*, 43(3), pp. 301-323.

¹⁹ Cuklanz, L. (1996). “Rape on Trial: How the Mass Media Construct Legal Reform and Social Change.” University of Pennsylvania Press

coverage in media and illustrated that the reporting is framed by the media to emphasise specific social understandings. Cuklanz notes that a rape reform has been successful if measured in terms of statutory changes, but the movement has been less successful in changing the understanding of rape that has been based on rape myths.²⁰ She claims that the public trials create a platform for rape victims to be heard, but her study concludes the opposite; that the media is still influenced by rape myths. The consent-based rape law reform in Sweden and Denmark could further women's rights and gender equality and although the reform might not result in higher conviction rates it can lead to an increase in reported rapes – which Cuklanz fails to account for. The increased reporting of rapes does not mean that the number of rape victims is increasing, but that more victims report rape because of the reform, and the new understanding of what constitutes rape. Additionally, Cucklanz's study is too positive regarding the future of rape legislation and culture because her analysis shows how difficult it is to achieve justice for rape victims in court and that rape myths are shaping public opinion. Gillooly agrees with Cucklanz that media contains subjective judgments and that some of these judgments develop from framing techniques in media, or the context provided by news media. Framing techniques are comprehensive conceptualisations that are capable of perpetuating a public change of opinion.²¹ Gillooly analyses the coverage of rape in news sources from India and western sources (United States and United Kingdom) to identify framing techniques in news media and discusses how these techniques have been used to create a progressive legislative reform in India. According to Gillooly, the rapid legislative change in the Indian legislature would not have happened nearly as rapidly as it has, and is continuing to do, without the push of the media.²²

Both Cuklanz and Gillooly argue that the public discourse, the media, politics, and the courts influence each other to establish a “master narrative” or a “dominant discourse” that is created and recreated.²³ Cobos also analyses how news media uses a certain language regarding gender and sexual assault – with a focus on *The New York Times* and *The Wall Street Journal* over a six month's period.²⁴ According to Cobos, rape culture and the language used to talk about rape in society creates societal and cultural standards of non-contested versus contested cases of rape.²⁵ Another study of framing techniques is by Ashley and Olson and also showed that various framing techniques were

²⁰ Cuklanz (1996). p. 15

²¹ Gillooly (2018). p. 90

²² Gillooly (2018)

²³ Cuklanz (1996). p. 12; Gillooly (2018).

²⁴ Cobos, A. (2014) “‘Rape Culture’ Language and the News Media: Contested Versus Non-Contested Cases.” *ESSACHESS Journal for Communication Studies*, Vol. 7, No 2 (14): 37-52.

²⁵ Cobos (2014) p. 38

used to undermine the American women's movement. The media coverage of the women's movement in American newspapers was sparse and used various framing techniques such as humour or puzzlement and delegitimised feminism.²⁶ Ashley and Olson notes that while the press coverage cannot account for the movement's decline, the media did not promote women's equality. The discourses of rape law reform in this thesis do not constitute a movement or social protest, but it is and has been a part of movements and protests. It is therefore essential to continue analysing media's representation of what affects gender equality and protect the legal security of victims of sexual assault and rape – the consent-based law reform being a key element that could lead to further changes for women and girls.

2.2 A Study of 'The Nordic Paradox'

While the Nordic countries are often considered the leaders of gender equality, there is a paradoxical coexistence of gender-based violence, rape, and gender equality.²⁷ This paradox is also obvious in the lack of studies and especially comparative studies regarding these issues. The image that gender equality has already been 'solved' or 'dealt with' has permeated large parts of the academic work and further obscured the issues that threaten gender equality and security. Some literature, however, focuses on the Nordic Paradox and discusses the differences between the Nordic countries. Sanandaji explains that the Nordic countries have surprisingly few women among top managers and business owners. He argues that the Nordic welfare states are, unintentionally, holding women back and argues that liberalisation and smaller government would bring social, economic progress and gender equality.²⁸ The book is thought-provoking but clashes with other scholars. Others blame sexism in the culture and thus claim that a patriarchal agenda thrives in the Nordic countries. Despite generous parental leave, low gender pays gaps and equal access to education for women, inequality is not only visible as a disproportionate number of women among top managers and business owners, but also in a higher average of women who have experienced intimate partner violence (IPV) – issues that increased liberalisation and smaller government do not solve. In a study published in the Journal

²⁶ Ashley, L. & Olson, B. (1998). "Constructing reality: Print media's framing of the women's movement, 1966 to 1986." *Journalism and Mass Communication Quarterly*, 75(2). p. 272

²⁷ 2019 Global Report "Harnessing the power of data for gender equality: Introducing the 2019 EM2030 SDG Gender Index". p. 6

²⁸ Sanandaji, N. (2016) "The Nordic gender equality paradox: how Nordic welfare states are not only empowering women, but also (un)intentionally holding them back." Stockholm: Timbro.

Social Science & Medicine, researchers believe that while high prevalence of IPV and gender equality are contradictory, they coexist in the Nordic countries.²⁹ This belief is further supported by a study of IPV in Sweden which claims that while the paradox is considered one of the most puzzling in the field, the reason for it is rarely questioned and remains unanswered.³⁰

Similar to the study by Ashley and Olson, Askanius and Møller Hartley analyses the media coverage of the #metoo movement in Denmark and Sweden and finds that while the Swedish reporting largely centred around a confrontation with patriarchy, the Danish reporting described the movement as a witch-hunt.³¹ Askenius and Møller Hartley discuss how the Swedish discussion about #metoo was a discussion of equality and gender, while the Danish discussion existed on the premise that gender equality was reached and was therefore not necessary to discuss. This argument is shared by Dahlerup, who did a survey among Danish MP's, that show a large majority in parliament, including all the male MPs from the four right-wing parties, consider gender equality to be a 'closed case' and would thus not prioritise new policies on promoting gender equality.³² The limited comparative research on gender-based issues and the high prevalence of gender-based violence can also be considered a paradox and while Swedish research surpasses Danish research in volume, it still does not question the original paradox of equality and gender-based violence.

This comparative study with framing theory is a considerable contribution because of the limited research in the Nordic countries, and the thesis offers new insight and dimension to this field since it explicitly discusses consent in relation to rape. Sex without consent is rape and my examination of framing techniques and discursive strategies is therefore a necessary addition to the growing field of research. Other scholars and I have identified a gap in the research regarding 'the Nordic paradox' and the limited research in this field is a paradox in itself and a range of issues need to be questioned. Using framing theory and the support of the previous work of other scholars, this thesis will not fill the gap in the research, but it will contribute to the growing comparative studies of Nordic countries and gender equality.

²⁹ Gracia, E., & Merlo, J. (2016). "Intimate partner violence against women and the Nordic paradox." *Social Science & Medicine*, 157, p. 27–30.

³⁰ Wemrell, M., et. al.(2019) "The Nordic Paradox and intimate partner violence against women (IPVAW) in Sweden." *Sociology Compass*

³¹ Askanius, T. & Møller Hartley, J. (2019). "Framing gender justice: A comparative analysis of the media coverage of #metoo in Denmark and Sweden." *Nordicom Review*, 40(2), p. 24

³² Dahlerup, D. (2018) "Gender Equality as a Closed Case: A Survey among the Members of the 2015 Danish Parliament." *Scandinavian Political Studies*, vol. 41, no. 2, p. 188-209.

Theoretical Framework

In this chapter, I present and discuss the theoretical framework for the thesis. I apply framing theory to uncover how the media coverage of the rape law reform in Denmark and Sweden differs.

3.1 Framing Theory

Framing theory offers a way of revealing the power of a communicating text and the transfer of information from one location (i.e. news media) to one's consciousness.³³ The framing theory has roots in both sociology³⁴ and psychology³⁵. I apply Entman's framing theory, which explains that framing involves selection and salience: "To frame is to select some aspects of a perceived reality and make them more salient in a communicating text, in such a way as to promote a particular problem definition, causal interpretation, moral evaluation, and/or treatment recommendation".³⁶ Frames define problems, the reason for those problems, make moral judgments, and suggest solutions and Entman further argues, that one sentence might or might not include all or none of these elements and a frame in a text might not include all of the elements.³⁷

Frames have at least four locations in a communication process: the communicator, the text, the receiver, and the culture.³⁸ The four locations might not encompass the same four frames, but all involve selection and salience. Salience is to make a piece of information more noticeable or memorable and is highly effective in communication. Depending on the schemata of the receiver and the surrounding culture, the understanding of salient information might be difficult to notice and while salience in framing can be very influential, it does not guarantee an effect in the reality of the

³³ Entman, R. M. (1993) "Framing: Toward clarification of a fractured paradigm." *Journal of Communication*, 43(4), p. 51

³⁴ Goffman, E. (1974) "Frame analysis: An essay on the organization of experience". New York: Harper and Row.

³⁵ Kahneman, D. & Tversky, A. (1984) "Choices, values, and frames." *American Psychologist*, Vol 39(4): 341-350

³⁶ Entman (1993) p. 52

³⁷ *ibid.*

³⁸ *ibid.*

receiver.³⁹ In analysing media, it is essential to examine why media include or omit different pieces of information and what they choose to highlight. Selection is an integral part of communication because in order to communicate efficiently, it is impossible to include every existing piece of information. Media organises and edits information with specific perspectives into stories and these frames determine what the receiver focuses on and how the receiver views the problem or issue. This does not imply that media automatically changes people's minds, but it does mean that the receiver is more or less likely to change its view or opinion based on the existing schemata. Framing has a major impact on political communication and the frame in a news text is essentially the imprint of power because it is a picture of actors and interests trying to or already dominating a narrative.⁴⁰ Framing theory is used to show how framing information mirrors interests and ideology and how it is understood and repeated in a socio-cultural context. Entman argues that understanding framing theory as a research paradigm might help different studies in mass communication because they could benefit from an explicit and common understanding of the concept of frames.⁴¹

Entman's framing theory and the concept of a single paradigm has been criticised and scholars have claimed that a single paradigm is neither possible nor desirable and that a diverse theoretical and methodological approach leads to a more comprehensive understanding of framing.⁴² Framing theory has also been criticised for being too vaguely theorised because it can be used to explain everything. Scholars disagree over what constitutes framing in both its theoretical and practical boundaries.⁴³ According to Cacciatore et al., scholars should abandon the general "framing" label and instead rely on more specific terminology.⁴⁴ They further argue that despite Entman being extensively cited among other scholars, his definition of salience is too loose to have practical value.⁴⁵ Additionally, Entman's own empirical work overlaps with the theory of agenda-setting⁴⁶ and therefore makes it difficult to distinguish between the two theories.⁴⁷ Cacciatore et al. argue that a

³⁹ Entman (1993) p. 53

⁴⁰ *ibid.* p. 55

⁴¹ *ibid.* p. 56

⁴² Borah, P. (2011) Conceptual Issues in Framing Theory: A Systematic Examination of a Decade's Literature, *Journal of Communication* 61(2), p. 247

⁴³ Cacciatore et al. (2016) "The End of Framing as we Know it ... and the Future of Media Effects." *Mass Communication and Society*, 19(1), p. 8-9, 15

⁴⁴ Cacciatore et al. (2016) p. 9

⁴⁵ *ibid.* p. 13

⁴⁶ The influence of media affects the presentation of the reports and issues made in the news that affects the public mind. The news reports make it in a way that when a particular news report is given importance and attention than other news the audience will automatically perceive it as the most important news and information are given to them.

⁴⁷ Cacciatore et al. (2016) p. 13

research frame with a deductive approach is more useful than to “continue to inductively explore issue-specific content categories or even use clustering techniques to mine content data for what they call ‘frames,’ with little conceptual concern for how these content categories would impact audiences within a framing effects model”.⁴⁸ Cacciatore et al. do not believe that framing theory is ‘dead yet’ but calls for a more narrow conceptual understanding of framing and even that scholars should abandon the general term ‘framing’ as a catch-all phrase.⁴⁹ While I do not believe that it would benefit me to construct a new term replacing ‘framing’ for this thesis, I do agree that a single research paradigm is not constructive and makes the theory ambiguous and ineffective. I also agree that a deductive approach is more beneficial but because of the limited scope of the thesis, it is not possible for me to do, since it would require a more extensive research and that an increased focus on agenda-setting theory and priming theory will enable me to distinguish those from framing theory and not blend the three theories. Despite its criticism, I believe that Entman’s framing theory is valuable if applied appropriately and that its vague terminology should not diminish its significance in examining the construction of reality.

⁴⁸ Cacciatore et al. (2016) p. 14

⁴⁹ *ibid.* p. 20

Method and Empirical Data

Using comparative critical discourse analysis, it becomes possible to evaluate the content of the discourse and compare the different media discourses in Sweden and Denmark with a focus on the emerging different views on the consequences and meanings of a consent-based rape law. I have chosen Norman Fairclough's approach because it appears to be the most developed method in researching communication and culture within the Critical Discourse Analysis movement. In this chapter, I first present and explain what Critical Discourse Analysis is with an increased focus on the broader movements and key premises. Following this, I explain Fairclough's framework for Critical Discourse Analysis and the different elements it incorporates. Finally, I describe my data sample, my research tools, my procedure and the limitations of the study.

4.1 Critical Discourse Analysis

Critical Discourse Analysis (CDA) is multidisciplinary in its nature. It has been used by a variety of different fields such as linguistics, anthropology, ethnology, sociology but has also become interesting to medical professionals, business institutions, historians and number of other practices.⁵⁰ A discourse is a particular way of talking about and understanding the world (or an aspect of the world).⁵¹ CDA studies the links between language use and social power. It stems from the principle that language is a social and practical construct that is characterised by a symbiotic relationship with society.⁵² CDA is used to describe both the approach Fairclough developed and a broader movement in which other authors have contributed to. CDA is a social constructionist approach and key premises of social constructivism have roots in post-structuralism.⁵³ Discourse analytical approaches claim that of structuralists and poststructuralists, that the access to reality is through language. Norman Fairclough's approach agrees with other social constructionists, that discourse is active in

⁵⁰ Bloor, M & Bloor, T. (2007) "The Practice of Critical Discourse Analysis: An Introduction." London: Hodder Arnold, p. 2

⁵¹ Jørgensen, M. & Phillips, L. (2012) "Discourses Analysis as Theory and Method." London: SAGE Publications, p. 1

⁵² Amer, M. (2017) "Critical discourse analysis of war reporting in the international press: the case of the Gaza war of 2008–2009." *Palgrave Communications* 3, 13, p. 2

⁵³ Jørgensen & Phillips (2012) p. 6

constructing the social world – but also insists that discourse is only one of many aspects of social practice. Discourse is therefore not only seen as constitutive but also as constituted which separates CDA from poststructuralist discourse theory.⁵⁴

Language create representations of a perceived reality that contribute to constructing reality. Reality and material still exist and are given meaning through discourse.⁵⁵ Language and discourse gives meaning and creates our understanding of the world; changes in discourse change the social world.⁵⁶ Only temporary structures of understanding exist but are always changing with society.⁵⁷ As Jørgensen and Phillips states; language is not a reflection on a pre-existing reality, language is structured in a series of discourses and meanings differ between discourses, discourses are maintained and transformed in discursive practices and this should be examined and explored through analysis of the specific contexts.⁵⁸

Fairclough's CDA considers discourse to be text, talk and other semiological⁵⁹ systems. Discursive practice is one moment of every social practice in a dialectical relationship with the other moments of a social practice.⁶⁰ CDA being in a dialectic relationship with other social dimensions also implies that discourse is influenced by these dimensions.⁶¹ The purpose of CDA is not to decide what is true or false in a discourse because 'true' reality can never be revealed outside the discourse.⁶² The purpose is instead to explore patterns of the discourse and to identify social consequences of different discursive representations.⁶³ Common understandings that seem obvious are important to analyse because while statements seem 'true', they too are a product of a discourse. To be able to analyse what seems true but is a part of a discourse is problematic because scholars often are part of the culture and ideology⁶⁴ they are studying. And while Fairclough differentiates between ideological and non-ideological discourses, one would have to be removed from the discourse to be capable of make the distinction between ideological and non-ideological discourses.⁶⁵ Ideological discourses

⁵⁴ Jørgensen & Phillips (2012). p. 65

⁵⁵ *ibid.* p. 8-9, 61

⁵⁶ *ibid.* p. 9

⁵⁷ *ibid.* p. 11

⁵⁸ *ibid.* p. 12

⁵⁹ Patterned communications system based on non-linguistic language. A system of signs constructed by convention i.e. gestures and fashion.

⁶⁰ Jørgensen & Phillips (2012) p. 18-19, 61-62

⁶¹ *ibid.* p. 65

⁶² According to Fairclough and other social theorists such as Foucault, Giddens, Berger & Luckman, there is no such thing as a 'true' reality because the perceived reality is an interpretation.

⁶³ Jørgensen & Phillips (2012) p. 21

⁶⁴ "Ideology, for Fairclough, is 'meaning in the service of power'." Jørgensen & Phillips. (2012) p. 75

⁶⁵ Jørgensen & Phillips (2012) p. 22

contribute to unequal power relations in society and are referred to as ‘ideological effects’ and the purpose of CDA is to contribute to a more equal society by being aware of and acting against ideologised and institutionalised inequality.⁶⁶ Having a critical approach is beneficial to uncover unequal power relations imbedded in society because CDA theorists take the side of oppressed social groups. The purpose of criticising those in power is to bring about change and while CDA does not consider whether statements are ‘true’ or ‘false’, it does provide a ‘critical language awareness’ to facilitate justice.⁶⁷ Discursive practices contribute to the creation and recreation of unequal power relations and the focus of CDA is thus on the discursive practices that construct representations of the world and the role of the discursive practices in promoting the interests of particular social groups over others.⁶⁸

4.1.1 CDA Framework

Fairclough’s framework consists of different concepts connected in a three-dimensional model and is based upon the principle that texts can only be understood in relation to other texts and the social context.⁶⁹ Jørgensen and Phillips draw on four books by Fairclough in their presentation of CDA.⁷⁰ Fairclough refers to discourse as language use as social practice, the kind of language used within a specific field, and a way of speaking which gives meaning to experiences from a particular perspective.⁷¹ Discourse has three different functions where it contributes to the construction of social identities, societal relations and systems of knowledge and meaning.⁷² An analysis of a discourse centres around two main points: the communicative event and the order of discourse which is the configuration of all the discourse types which are used within a social institution or a social field.⁷³ In this thesis the communicative event is a newspaper article and the order of discourse is media discourse. The order of discourse is important since there are specific discursive practices within an order of discourse.⁷⁴ A communicative event either reproduces or challenges the existing order of

⁶⁶ Jørgensen & Phillips (2012) p. 63-64

⁶⁷ *ibid.* p. 64

⁶⁸ *ibid.* p. 63

⁶⁹ *ibid.* p. 64, 70

⁷⁰ “Discourse and Social Change (1992b), Critical Discourse Analysis (1995a) and Media Discourse (1995b) as well as on Discourse in Late Modernity co-written with Lilie Chouliaraki (Chouliaraki and Fairclough 1999).” Jørgensen & Phillips. (2012) p. 65

⁷¹ Jørgensen & Phillips (2012) p. 66-67; Fairclough, N. (1992) “Discourse and Social Change.” Polity Press, p. 64

⁷² Jørgensen & Phillips (2012) p. 67

⁷³ *ibid.*

⁷⁴ *ibid.* p. 67

discourse.⁷⁵ A communicative event always exists in three dimensions; a text, a discursive practice⁷⁶ and a social practice (see figure 1 in appendix).⁷⁷ A CDA analysis will focus on these elements, which would be an analysis of the linguistic features of the text, processes related to the construction and consumption of the text, and the social practices the text is situated in.⁷⁸ These elements might intersect on multiple levels but should be analysed separately because they represent two different dimensions.⁷⁹ Other relevant terms are intertextuality and interdiscursivity. Interdiscursivity is when different discourses and genres mix.⁸⁰ A high level of interdiscursivity, which are creative discursive practices (when discourse types and genres are combined or mixed), is a sign of new discourses and socio-cultural change because through change in discourse, the boundaries and what is perceived as right or reality changes. A low level of interdiscursivity signals a continuation or stabilisation of an already established discourse because conventional discourses do not work toward change.⁸¹ Interdiscursivity is a form of intertextuality, which is when communicative events draw on earlier events, which happens continuously.⁸² The first feature of CDA is the analysis of the discursive practice. Fairclough argues that an analysis often progresses from interpretation of the discourse practice to description of the text and back to interpretation of these in light of the social practices concerning the discourse, but an analysis might also start with an analysis of the social practices or the text.⁸³ An analysis of the discursive practice examines how the text is produced and consumed. It is relevant how the text is processed before it is printed. There is a significant difference between articles by Ritzau which are distributed to various newspapers or articles written by Ekstra Bladet's journalists. This enables a consideration of what the different texts were subjected to.⁸⁴ Additionally, intertextuality and interdiscursivity are analysed in this stage.⁸⁵ Discursive practices include processes of production, distribution and consumption (interpreting a text). When something is communicated, the speaker or writer also presents his or her understanding and interpretation of their reality. The rules of production and consumption create the text and the social context of these

⁷⁵ *ibid.* p. 70

⁷⁶ "A primarily non-discursive practice is (...) the physical practice that is involved in the construction of a bridge, whereas practices such as journalism and public relations are primarily discursive" Jørgensen & Phillips. (2012) p. 65

⁷⁷ Fairclough (1992), p. 73; Jørgensen & Phillips. (2012) p. 68

⁷⁸ Jørgensen & Phillips (2012) p. 68

⁷⁹ *ibid.* p. 69; see figure 1. in the appendix

⁸⁰ *ibid.* p. 73

⁸¹ *ibid.* p. 82-83

⁸² *ibid.* p. 73

⁸³ Fairclough (1992) p. 231

⁸⁴ Fairclough (1992) p. 233; Jørgensen & Phillips. (2012) p. 82

⁸⁵ Fairclough (1992) p. 232-234

communicative events is therefore important to analyse. Articulating one fact or opinion over another is not unintentional and the distributor of the text also influence the text and how its interpreted. This all contributes to the understanding of the social context. Intertextuality is the texts capability to refer to other texts or events. This can happen both directly and indirectly. The text thus introduces itself to existing orders of discourse.⁸⁶ Fairclough explains interdiscursivity as extending “intertextuality in the direction of the principle of the primacy of the order of discourse”⁸⁷. While intertextuality is the phenomenon of texts drawing on other texts, interdiscursivity refers to the phenomenon of how a text is comprised of not only texts but also other genres and discourses. Interdiscursivity therefore refers to the entire discourse and language system. Although an analysis of intertextuality and interdiscursivity would be interesting, I have chosen not to focus on analysing the discursive practice since it would not be useful in answering my research question because it would require a more extensive research of other discourses in Sweden and Denmark. I have, however, focus on the fact that Ekstra Bladet and Aftonbladet are part of the political spectrum and therefore encompass different political opinions and values and that this results in different readerships.

In the next and final section of the chapter, I describe my data sample, my research tools, my procedure, the limitations of the study and internal validity.

4.1.2 Sampling Process and Data

The data consists of articles from Danish and Swedish newspapers. The newspaper articles were collected from Danish Ekstra Bladet and Swedish Aftonbladet. I selected these newspapers because they are the most read online newspapers in each country.⁸⁸ The newspapers are both daily tabloid format. I have chosen to only focus on news articles to present the political and gendered landscape of Denmark and Sweden. Analysing news articles is especially interesting because news is considered to be only facts and not opinions. There are many opinion-pieces on the consent-based rape law but since these are heavily influenced by the authors own political views and experience, I will not include these in the analysis.

Aftonbladet is an independent social democratic newspaper whereas Ekstra Bladet was traditionally considered centre-left politically but today is without any political affiliations. Ekstra Bladet often

⁸⁶ Fairclough (1992) p. 84

⁸⁷ *ibid.* p. 85

⁸⁸ Danske Medier Research, “FDIM” (*Toplisten*) <<https://fdim.dk/statistik/internet/toplisten>> accessed January 12, 2020; “Top Sites in Sweden” (Alexa) <<https://www.alexa.com/topsites/countries/SE>> accessed January 12, 2020

prides itself on not being politically correct and their slogan is “Tør – hvor andre tier” which translated is “To dare where others do not”. The majority of the articles are written by Ritzau (Ritzaus Bureau A/S). Ritzau is a news agency owned by a number of media groups and provides news to these groups. The majority of the Danish articles were written by Ritzau’s journalists and thus reach a very broad demographic in Denmark since they are published in multiple newspapers independent of political position. The remaining articles were written by different Ekstra Bladet journalists. Similar to the Danish articles, the majority of the Swedish articles are also written by a news agency. Only one of the Swedish articles was not written by TT News Agency (Swedish: TT Nyhetsbyrån or TT). TT is also an impartial political agency and its Board of Directors consists of editors and directors of a number of different newspapers including Aftonbladet.⁸⁹

I have selected eight Danish articles from Ekstra Bladet and eight from Aftonbladet. I went to the newspaper’s respective websites and searched for articles containing the search words: ‘samtykkelovgivning’, ‘voldtægslov’, ‘samtyckeslag’ and ‘våldtäktslag’ - which translated means consent-law or consent-based legislation and rape law. I focused my search of the Swedish articles on the period from when the law was passed July 2018 and to approximately a year forward. I specified my search of the Danish articles to 2018 and 2019 because of the increased political interest in the rape legislation. I rejected any articles that concentrated on specific cases of rape or sexual assault because my research question is centred around the narrative of the consent-based rape legislation and not rape cases. My initial strategy was to collect around 10 articles from each newspaper but after studying all available articles, I concluded that the study would suffer if I valued quantity over quality – meaning that some articles (between 3-5 in each newspaper) were repetitive and did therefore not add any or only limited information/contribution to the study. Additionally, the limited scope further decreased the number of available articles. Therefore, I chose to analyse the eight Danish articles and the eight Swedish articles.

4.1.3 Research Tools and Procedure

Fairclough’s CDA text analysis focuses on the use of different tools to illuminate how a text can help create discourses and support different interpretations.⁹⁰ These tools are: interactional control,

⁸⁹ Svärkrona Z, “DEBATT: Gaza – Eldprov För Medierna” (March 8, 2011)

<<https://www.aftonbladet.se/debatt/a/L0MPxP/gaza--eldprov-for-medierna>> accessed January 11, 2020

⁹⁰ Jørgensen & Phillips (2012) p. 63

cohesion, politeness, ethos, transitivity, modality, word meaning, wording and metaphors.⁹¹ I only applied the tools relevant for the thesis which are interactional control, politeness, modality, and word meaning. I will briefly explain the chosen tools and why they are relevant to my research question. The object of analysing interactional control is to describe who controls the interaction and to what extent the interaction is controlled by one or multiple actors. This is applied to illustrate power structures and dominance. Additionally, I analysed which turn-taking rules operate – if any and how the topic is introduced.⁹² Politeness is analysed to determine if strategies of positive or negative politeness were used, by whom, and what purpose it served.⁹³ An analysis of modality examines the use of propositions in the text to uncover the degree of affinity expressed. Here I especially focused on whether modalities are subjective or objective and which modalities were most used.⁹⁴ Finally, an analysis of word meaning studied key words (consent and rape) in the text and how the meaning of these words changed.⁹⁵ This was analysed to illuminate how key words in the text have significant meaning and how and why they change their meaning i.e. how consent is understood and how it has changed. The analysis of the individual articles is included in the appendix since it is not essential for it to be integrated in the core of this thesis. I present the first part of my analysis by separating the different frames used in the articles and using the above-mentioned tools to discover the different power relations within the discourses.

The second and last part of the CDA model is to analyse the social practice. The objective of this is to specify: “the nature of the social practice of which the discourse practice is a part, which is the basis for explaining why the discourse practice is as it is; and the effects of the discourse practice upon the social practice.”⁹⁶ I explored where the discursive belongs in the network of discourses and discerned the social and cultural structures that frame the context of the discursive practice in what Fairclough calls the “Social Matrix of Discourse”. I determined the order of the discourse by specifying the relationship of the social practice with the discourse it connects to and the effects of reproducing or transforming orders of discourse to which it contributes. Finally, I analysed the discourse with an enhanced focus on the ideological and hegemonic effects of discourse.⁹⁷

⁹¹ Fairclough (1992) p. 234-237

⁹² Fairclough (1992) p. 152-158, 234-235

⁹³ *ibid.* p. 162-166, 235

⁹⁴ *ibid.* p. 158-162, 236

⁹⁵ *ibid.* p. 185-190, 236

⁹⁶ *ibid.* p. 237

⁹⁷ *ibid.* p. 237-238

The text analysis and analysis of the social practice is used to comparatively examine the narratives of consent-based rape law in Sweden and Denmark. By applying the techniques of CDA and framing theory I have examined the similarities and differences in the discourses and used my results to discuss the possible future scenarios of gender equality and legal security for rape victims in the two countries.

4.1.4 Limitations and Internal Validity

Sweden and Denmark are not the only countries that have passed a consent-based rape law or are discussing consent in relation to rape. Ideally, I would have included other Nordic countries such as Finland and Norway, because the discourse surrounding rape and sexual violence in these countries is just as important and interesting to analyse. I chose Denmark and Sweden as my focus because I have more political and legal knowledge of these countries and because of the limited scope of the thesis, I expected my study to suffer if it had to include other countries. I also chose these countries because of the political and legal development concerning consent-based rape legislation. An analysis including other countries would have had to be more superficial regarding the attention to the political and cultural differences between the countries. An additional limitation to this study, is the necessary choice to exclude an analysis of intertextuality and interdiscursivity as explained previously. While this analysis would have been interesting, it would have taken the focus from other elements in order for me to do it justice. Finally, I am limited by the fact that the Danish consent-based reform is promised to be presented by the government the month following the examination of the thesis. This excludes future changes to the discourse to be analysed in this thesis and is frustrating since I expect the discourse to be further exposed to changes the period shortly after the examination. While I do not believe that it would make the analysis irrelevant, it does beg the question if my conclusion could be corroborated by an analysis of future documents and articles.

Regarding ethical considerations of this study, I am aware that I have a predisposition against the Danish rape legislation and the rape culture of Denmark. My knowledge of this has enabled me to be more aware of possible prejudice's and to look for ethical support elsewhere than to assume my own subjective understanding of rape and women's rights should be the basic opinion. I am, however, not able to provide an entirely objective analysis or assessment because my perspective will influence the direction and conclusion of the study, but by explaining the procedure of the Critical Discourse Analysis and applying framing theory, I also explain my reasoning and following conclusion.

Analysis

The analysis is in two parts. I first present my findings of the text analysis by presenting the overarching patterns of framing and key issues of the Swedish and Danish articles. In discussing the main frames, I present my analysis of the articles by focusing on the chosen research tools: interactional control, politeness, modality, and word meaning. After this, I explore the similarities and differences between the news coverage in the two countries in my analysis of the social practice. Here, I analyse the social matrix of discourse, the orders of discourse and the ideological, and political effects of discourse.

5.1 Main Frames in the Coverage of Consent-based Rape Legislation

In the following, I present my findings as separated into individual frames, but a more extensive and complete text analysis of the individual articles can be found in the appendix.

5.1.1 Swedish Articles

The Swedish discourse is primarily concerned with evaluating the rape law reform that came into force July 2018, but the discourse in news articles from Aftonbladet is separated into frames and are subjected to different framing techniques. I have uncovered two main frames which I present and analyse below.

The reform cannot be assessed yet

The dominant frame in the Swedish coverage is the call for Supreme Court practice directions which argue that the possible successes and failures of the law cannot be ascertained yet. The reason for this is that the boundary of what constitutes negligent rape and rape with intent is difficult to distinguish. The articles' wish for clarity is twofold since it both calls for more time because the first year after the law came into force is not enough time to properly assess the usefulness of the law and that prosecutors await a ruling from the Supreme Court to guide them. The request for the Supreme Court to provide guidance is repeated by several actors in the majority of the Swedish articles. There are

multiple reasons why this frame is dominant. The interaction is controlled by the actors calling for an interpretation because these requests often are presented in the concluding observations in the article and thus hold a different importance than possible previous statements. Additionally, the fact that many actors request the Supreme Court practice direction gives an appearance of consensus among the actors – which further establishes the frame as dominant. The actors use politeness in responding to other actors’ arguments. Because the central purpose of the frame is to discontinue an assessment of the law before it is practical, the actors mainly speak to a broader audience and not individuals. The actors use modality to establish their argument as the central argument. Even though the argument calls for inaction to not assess the law before, it is possible to properly evaluate the argument is expressed with authority and thereby further establishes itself as dominant. Interactional control, politeness, and modality is expressed in the examples below.

Debika Ray Berghog⁹⁸ states in the article “Få fällda för nya brottet oaktsam våldtäkt”⁹⁹ that court practice is required to differentiate between negligent rape and rape with intent. The Supreme Court is to issue practice directions to guide and assists the legal profession and the public. Ray Berghog further states that only time will tell if and when they will receive directions. Ray Berhogs arguments seem careful but effective in claiming that ‘time will tell’ and that it is too early to properly assess the legislation. But the growing number of relevant cases and their implications are changing the discourse because the focus of the frame is narrowing and therefore creates a suspense regarding the court practice directions. Every time a case involving negligent rape or rape with intent is brought to the courts, the more information or practice is given to the legal profession. While this article does not establish interactional control, the use of modality, politeness, and word meaning creates the support for the broader frame to control the interaction.

Another example is the article written by Simon Pålsson ”Ett år med samtyckeslagen: Sex män har dömts för oaktsam våldtäkt”¹⁰⁰. He writes that one year after the consent law came into force, six men have been convicted of the new criminal classification “negligent rape.” According Helena Rosvall¹⁰¹, the effects of the law cannot yet be ascertained and the difference between intent and

⁹⁸ Prosecutor specialised in sexual offences

⁹⁹ English translation: “Few convicted of negligent rape”; TT, “Få Fällda För Nya Brottet Oaktsam Våldtäkt” (March 10, 2019) <<https://www.aftonbladet.se/nyheter/a/21LPEB/fa-fallda-for-nya-brottet-oaktsam-valdtakt>> accessed January 11, 2020

¹⁰⁰ English translation: “One year with the consent-based law: Six men convicted for negligent rape”; Pålsson S, “Ett År Med Samtyckeslagen: Sex Män Har Dömts För Oaktsam Våldtäkt” (July 9, 2019) <<https://www.aftonbladet.se/nyheter/a/LAardP/ett-ar-med-samtyckeslagen-sex-man-har-domts-for-oaktsam-valdtakt>> accessed January 11, 2020

¹⁰¹ Expert prosecutor at the Swedish Prosecution Authority

negligence is difficult to distinguish. Rosvall states that it is still too early to draw any certain conclusions about how the practice has changed and she expects a ruling from the Supreme Court in the near future. Justice minister Morgan Johansson (S) stated March 2018 (according to TT) that he expected higher conviction numbers following the new law but Rosvall is not convinced that this will be the case. Rosvall explains that the difference between the old and new law is that violence or threats or exploitation are no longer a necessary prerequisite for the crime, and the prosecutor's burden of proof has not changed. The article states nothing new concerning the ongoing evaluation of the law and Rosvall dismisses Johansson's 'optimism' regarding the higher conviction rate. She concludes the article by arguing that while the legal rules of rape have changed, the prosecutor's burden of proof remains the same. As stated previously, the actors use politeness in responding to each other; Rosvall states that 'she is not convinced' rather than immediately dismissing Johansson's argument. The articles might seem somewhat at a standstill because they all request guidance from the Supreme Court, but this request is evidence of the struggle of what constitutes negligent rape. Regarding word meaning, the legislation, as mentioned previously, is mirrored in society and it has therefore not only bearing on how the courts judge cases but also how society and the public view and understand rape. When actors in media speak up and voice that rape without consent as rape – it has an effect on both the legislation, the courts and the public. According to the different actors who created and supported this frame, it is ineffective to continue to assess the legislation before there is something concrete to assess. Without a clear distinction of what constitutes negligent rape and rape with intent, a possible assessment would not bring useful conclusions and might even harm the objectives of the legislation. If it was to be decided that the law was useless, it could influence others into thinking that there was not use for consent to be included in the legislation. Word meaning is dynamic and the value of meaning of a new legislation is fragile and it is thus important for the actors to repeat their wish for clarity, give time for the legislation to be tried in the Supreme Court before any (harmful, wrong or hurried) assessments are made.

The reform is effective

The second frame in the coverage is 'the reform is effective' frame. The articles state that the reform is making a difference in convicting people who, without the law reform, would otherwise have been declared not guilty. While I still judge the previous frame to be dominant, this frame existed before the previous frame. This frame was further strengthened when the Supreme Court stated, that being together in the same bed does not imply a willingness to have sex if consent has not been given. This

frame might very well be dominant in the future but because of the current lack of related court cases, the frame has not yet become the dominating one. The articles supporting this frame mainly constructed their arguments based on moral and ethical considerations rather than actual proof of the effectiveness of the reform. The articles often refer to specifics in cases and argue that the law is effective because the offender otherwise would not have been deemed guilty. The different actors use of modality in their arguments strengthens the arguments and is moreover supported by them referring to cases in which the reform made a clear difference. This substantiates their arguments and strongly implies that without the law rapists would have been acquitted. This creates the framework for the discourse to gain the control of the interaction. Furthermore, the actors use positive politeness in explaining the rape victims' emotions which make the actors seem empathetic. This is exemplified in the articles below.

In the article “Ny samtyckeslag har redan haft effekt”¹⁰² Christina Voigt, a prosecutor on one of the first cases after the consent-based law came into force, states that had the previous legislation still been effective, the defendant of the discussed rape case, would have (at most) been convicted of a sexual offense and may have received a month's imprisonment or a fine.

Another article “Jurister: Utan nya lagen hade mannen friats”¹⁰³, states that a 27-year-old man has been sentenced to prison for negligent rape after his case was tried in the Supreme Court. The case was first tried in the District Court and Court of Appeal and the ruling in both courts was rape with intent. The Supreme Court, on the other hand found that there was no evidence of intent and then ruled negligent rape instead. Because of the rape law reform, the man received a prison sentence and without the law reform he would, according to lawyers, most likely have been judged not guilty. This ruling provides important guidance to future cases in what distinguishes rape with intent and negligent rape. According to My Hedström¹⁰⁴, the ruling from the Supreme Court emphasised that no one is responsible of saying that they do not want sexual advances and that lying next to someone in a bed is not automatically an invitation for sex. Bengt Ivarsson¹⁰⁵ also argues, that the ruling hopefully will influence how people behave and that everyone should always ensure, that the other person wants to have sex before one initiates it.

¹⁰² English translation: “New consent-based law has already been in effect”; TT, “Ny Samtyckeslag Har Redan Haft Effekt” (November 8, 2018) <<https://www.aftonbladet.se/nyheter/a/112p73/ny-samtyckeslag-har-redan-haft-effekt>>

¹⁰³ English translation: “Lawyers: Without the new law the man would be released”; TT, “Jurister: Utan Nya Lagen Hade Mannen Friats” (July 11, 2019) <<https://www.aftonbladet.se/nyheter/a/awa54a/jurister-utan-nya-lagen-hade-mannen-friats>> accessed January 11, 2020.

¹⁰⁴ Chief at the prosecutor's office

¹⁰⁵ Lawyer at Kihlstedts Advokatbyrå

The frame is influenced by modality and politeness because of how the actors and the article discuss the changes from the previous law to the current one and reflects on the decision by the Supreme Court. The absence of politeness in their explanation of the cases conveys strong connotations. Being only sympathetic to the victim and not the convicted man might, at first glance, seem natural but in other contexts the opposite is more common. That the actors sympathise with the victim expresses their support of the reform and their values. This is also discernible in the next article in which Agneta Bäcklund¹⁰⁶ argues from the Supreme Courts' viewpoint.

Agneta Bäcklund argues in the article “Var för oaktsam – fällt för nya våldtäktsbrottet”¹⁰⁷ that the man convicted of negligent rape could have asked or waited for a reaction from the woman, before starting the intercourse. But he did not do enough to figure out if she was participating voluntarily. According to Bäcklund, the man could have asked her if she was interested in intercourse or waited for a reaction or response from her. The new rape law states that the courts should pay particular attention if voluntary expression has been expressed through words or actions or otherwise. The Supreme Court also stated that you agree to lie together in underwear in a bed does not mean that you automatically agree to having sexual intercourse. The man in question denies committing the crime and claims that he thought she wanted sex. He also pointed out that he stopped the intercourse when he noticed that the woman did not want to continue. The article is heavily influenced by modality while explaining the verdict. Bäcklund and the article only discuss the case in which the man was deemed guilty. Bäcklund is not sympathetic towards the man but criticises that he did not make sure, that the victim wanted to have sex. The article attains the interactional control because of the use of modality and politeness, and that this article brings an answer to what the previous articles were asking for. Part of the reason of why the previous frame was dominant, is because this frame is fragmented. While the claim that the reform is effective is common for many articles, it is fragmented because the articles are divided in before and after the Supreme Court issued a ruling on a rape case. The frame does therefore not have the same focus as the previous frame and has less power and sway because of it. In regard to word meaning the frame tries to establish a common understanding of the rape law reform. It succeeds in some degree because it connects certain values and principles to the

¹⁰⁶ Agneta Bäcklund is a Justice of the Supreme Court in Sweden.

¹⁰⁷ English translation: “Was too careless – convicted of new crime rape”; TT, “Var För Oaktsam – Fälls För Nya Våldtäktsbrottet” (July 11, 2019) <<https://www.aftonbladet.se/nyheter/a/xPVGPG/var-for-oaktsam--falls-for-nya-valdtaktsbrottet>> accessed January 11, 2020

law and how one should act. But the previous frame includes many of the same ideals and this frame is therefore not solely successful in controlling word meaning of the consent-based rape law reform.

5.1.2 Danish Articles

The Danish news articles are discussing whether to follow in Sweden's footsteps and reform the rape legislation. The news coverage from Ekstra Bladet is separated into two different frames. I present and analyse the frames in this chapter.

Dealing with myths

The first and dominant frame in the Danish articles deals with rape myths. The majority of the Danish articles discusses what they argue are misconceptions of a consent-based rape law and argue that the reality of a such a law would be different. A minority of the articles argues that exactly these misconceptions are a real possibility if a consent-based rape law is passed. The articles show that the actors are acting in the best interest of either women's legal security, women's rights and/or the legal system and thereby the state – which in some articles are presented as mutually exclusive. Arguing that a potential consent-based rape law reform would bring a reverse proof of guilt implies that the opposing actors do not have these interests in mind. Analysing interactional control, politeness, modality, and word meaning enables a deeper understanding of the structure and purpose of the frame. I analyse the frame with the different tools by highlighting relevant articles.

In the article “Naser Khader ændrer holdning til samtykke: Jeg troede, at svenskerne var skøre”¹⁰⁸ Naser Khader¹⁰⁹ presents his change of heart of the consent-based rape law. He admits that he first thought that Swedes were ‘crazy’ with ‘the consent-ting’ but after having talked to multiple women about their experiences, he has since changed his mind. Admitting that he was wrong and biased because the consent-based rape law was passed in Sweden, is a strategic move and is beneficial in advocating for a reform. He and the reform gains power because he is perceived as willing to admit his mistakes.

¹⁰⁸ English translation: “Naser Khader changes opinion of consent: I thought the Swedes were crazy”; Termansen J, “Naser Khader Ændrer Holdning Til Samtykke: Jeg Troede, at Svenskerne Var Skøre” (October 7, 2018) <<https://ekstrabladet.dk/nyheder/politik/naser-khader-aendrer-holdning-til-samtykke-jeg-troede-at-svenskerne-var-skoere/7339853>> accessed January 11, 2020

¹⁰⁹ Member of the Danish Parliament for the Conservative People's Party

The same can be said for the article about Lior in the article “27-årige Lior: Jeg har krænket flere kvinder - det har alle mænd”¹¹⁰, who also had ‘his eyes opened’ in the wake of the #metoo movement and now realise how he sexually violated numerous women by not respecting when they said no to sex or sexual acts. These statements are expressed with politeness, modality and are powerful in controlling the interaction. The articles function as a counter argument to the myths surrounding both rape in general especially the consent-based rape law reform and the consequences of such a law. An example of such an argument is by Preben Bang Henriksen¹¹¹ in the article “V frygter bevisproblemer ved svensk voldtægtslov”¹¹² in which he states that (translated to English by the author): “In Danish law, everyone is innocent until proven otherwise. Rape must be proved by the prosecution”¹¹³ and describes the burden of proof in the Swedish consent-based rape law: “This means in a rape trial the defendant in court must prove he/she is innocent.”¹¹⁴ Politeness is not only how you address other actors – but also how you address the topic and present yourself and the articles utilise this strategy. Naser Khader and Lior use politeness while presenting themselves as not all-knowing and as people who make mistakes. This is highly effective in a country that puts a premium on Janteloven¹¹⁵ (English: The Law of Jante). Preben Bang Henriksen uses negative politeness, but an increasing amount of modality. He expresses no doubt about his statements and implies that Sweden is quite different from Denmark because Denmark follows the legal principle ‘innocent until proven guilty’. While arguments similar to those made by Preben Bang Henriksen previously have dominated the discourse, it has since changed to discuss and contradict the negative myths surrounding the rape law reform. An analysis of word meaning in this frame is essential in understanding the differences between Bang Henriksen, Naser Khader and Lior’s statements. The word consent has different connotations depending on the actor. Bang Henriksen expresses it as being contradictory to the legal

¹¹⁰ English translation: “27-year-old Lior: I have violated several women - so have all men”; Nørgaard M, “27-Årige Lior: Jeg Har Krænket Flere Kvinder - Det Har Alle Mænd” (October 2, 2018) <<https://ekstrabladet.dk/nyheder/samfund/27-aarige-lior-jeg-har-kraenket-flere-kvinder-det-har-alle-maend/7332768>> accessed January 11, 2020

¹¹¹ Former legal spokesperson for the Venstre Party

¹¹² English: “V fears burden of proof problems with the Swedish rape law”; Ritzau /Nyheder, “V Frygter Bevisproblemer Ved Svensk Voldtægtslov” (May 24, 2018) <<https://ekstrabladet.dk/nyheder/politik/danskspolitik/v-frygter-bevisproblemer-ved-svensk-voldtaegtslov/7170065>> accessed January 11, 2020

¹¹³ Original Danish quote: ”I dansk ret er enhver uskyldig, indtil det modsatte er bevist. Voldtægter skal bevises af anklagemyndigheden.”

¹¹⁴ Original Danish quote: “Det betyder ved en voldtægtsanklage, at den mistænkte i retten skal bevise, at han/hun er uskyldig.”

¹¹⁵ Janteloven is a social code that puts an emphasis on collective accomplishments and well-being and disparages focus on individual achievements. Norman RT, “What Is Janteloven?” (July 28, 2019)

<<https://www.scandinaviastandard.com/what-is-janteloven-the-law-of-jante/>> accessed January 11, 2020

principle presumption of innocence and burden of proof. Naser Khader's statements convey different principles of gender equality and security, while Lior situates the concept of consent around himself and other men as something ignored and almost obscure. The interaction is controlled by this frame, because the men leading it manages to relate to the reform on different levels – which creates a compelling frame. Additionally, the frame dominates the discourse because it deals with the uncertainties and concerns of the rape law reform and these concerns are at the forefront because of the next identified frame. The main purpose of the frame is to convince others that the myths surrounding the consent-based rape law are untrue and that the reform would benefit not only future rape victims in their experience with the police and courts and therefore not expose them to secondary victimisation. It further argues that the reform would benefit future generations since the reform could change the rape culture by educating people of sexual boundaries and mutual respect.

A critique of Denmark

The second frame in the Danish articles focuses primarily on the critique made by Amnesty International in its report on rape survivors in the Nordic countries.¹¹⁶ As explained earlier, this report criticises Denmark for having a 'pervasive rape culture' and claims that men can rape and sexually assault women with impunity. This sparked a discussion of the report and the possible political and legal implications for Denmark. But the frame is influenced by the Danish self-image. This image is partly responsible for the 'Nordic paradox' since Denmark considers itself to have achieved gender equality, and the report threatens this image.¹¹⁷ The frame is connected to the previous frame because they are a part of the same conversation and do therefore overlap in several articles.

In the article "Amnesty: Danmark bør gøre som Sverige"¹¹⁸ Helle Jacobsen¹¹⁹ refers to the Swedish consent-based rape law and encourages Denmark to follow the example set by Sweden because the law emphasises that everyone has the right to their own body and sexuality. The article further refers to a study that shows that in 2016, the police received 791 reported rapes but only 50 cases ended in a conviction. Jacobsen denies that the rape law reform would reverse the burden of

¹¹⁶ Amnesty International (2019) "Time for Change: Justice for Rape Survivors in the Nordic Countries"

¹¹⁷ Dahlerup (2018)

¹¹⁸ English translation: "Amnesty: Denmark should do as Sweden"; Ritzau /Nyheder, "Amnesty: Danmark Bør Gøre Som Sverige" (May 24, 2018) <<https://ekstrabladet.dk/nyheder/samfund/amnesty-danmark-boer-goere-som-sverige/7169908>> accessed January 11, 2020

¹¹⁹ Program manager of women, gender and LGBTI rights at Amnesty International Denmark

proof because the prosecutor still has to prove that a criminal act occurred. Finally, the article explains that Amnesty International and other actors hope that the reform will lead to debate and awareness of rape and consent in gymnasiums and schools around the country and will influence society through this. Both the study and Jacobsen's arguments have a powerful effect in supporting the frame. Jacobsen uses a low level of negative politeness and high level of modality in her matter of fact explanation and suppresses misconceptions regarding the reform. Even though I judge the article to support this frame it does overlap with the previous frame because it also deals with the myths surrounding the reform. Helle Jacobsen and Amnesty International Denmark appear in several articles and together they establish a common word meaning and the interactional control – although the frame does challenge the previous frame it does not succeed in being the dominant frame.

The article "Lovændring går for langsomt: Nu viser Kirstine blodig natkjole frem"¹²⁰ focuses on Kirstine Holst¹²¹ who was raped in 2017. The man she accused was not convicted and when Holst received the box of evidence from the rape, she saw that the dress she had been wearing had bloodstains on it. According to Holst, the bag containing the dress had never been opened by the police, which made her feel like the police and the courts never took her case seriously. Holst states that every day she posts the same six pictures on her Twitter profile; pictures of the evidence bag and the bloodstained dress. The article states that while the Danish Ministry of Justice estimates that 5400 women are forced or tried to have sex with yearly, another research study from Syddansk University estimate that the number is closer to 24.000 women every year. The article continues to explain that the current law is problematic because it does not take the "freezing" reaction into account.¹²² Holst believes that the police would have taken her case more seriously if they knew that the chance of conviction was bigger than it is today. The current justice minister Nick Hækkerup states in the article, that it is important that the legislation reflects modern society and makes it clear that sex without consent is rape and that the government will present a proposal for a new rape legislation. The article is similar in form to the article concerning Lior but this article is from the victim's point of view. Holst demands action by sharing the ignored evidence of her rape and hope that this will change the

¹²⁰ English translation: "Law change goes too slowly: Now Kirstine shows off bloody nightgown"
Smith E, "Lovændring Går for Langsomt: Nu Viser Kirstine Blodig Natkjole Frem" (August 8, 2019)
<<https://ekstrabladet.dk/112/lovaendring-gaar-for-langsomt-nu-viser-kirstine-blodig-natkjole-frem/7740853>> accessed January 11, 2020

¹²¹ Journalist, communications advisor and activist associated with Amnesty International

¹²² See also Möller A, Söndergaard HP and Helström L, "Tonic Immobility during Sexual Assault - a Common Reaction Predicting Post-Traumatic Stress Disorder and Severe Depression" (2017) 96 Acta Obstetrica et Gynecologica Scandinavica 932 <<https://www.ncbi.nlm.nih.gov/pubmed/28589545>> accessed January 11, 2020

law and practice for future rape victims. This is a strong, emotional message and by using modality, controlling the interaction, and cementing the word meaning of consent, Holst builds a strong structure of the frame. The article uses negative politeness in discussing the law but since Holst requires action, the article benefits from it. Again, this article overlaps with the previous frame, but the expressed displeasure of the current law sorts the article into the frame of critique against the legislation.

The final article I use as an example of this frame is the article “Sønderlemmende kritik af Danmark”¹²³ by Kristoffer Olesen. The article discusses Amnesty International’s criticism of the pervasive rape-culture in Denmark. Anna Blus, a researcher at Amnesty International, describe the ‘Nordic paradox’ and explains that it is an alarmingly high number of estimated rapes and a general degree of impunity despite being in the lead of gender equality. The Amnesty rapport includes interviews of 18 rape victims – one being Kirstine Holst. She briefly describes the ‘freeze’ reaction that rape victim experience and hopes that Amnesty’s suggestion of a rape law reform will be followed. The article echoes the previous one but is interesting to the analysis because of two elements. First, the heading of the article carries strong connotations and therefore also causes strong reactions. Gender equality being perceived as ‘solved’ in Denmark produces a self-image that clashes with the heading of the article. Additionally, while the majority of the articles are written by Ritzau, the article in question is written by Ekstra Bladet journalist Kristoffer Olesen. He uses the pronoun ‘we’ which implies that ‘we’ are being criticised. These combined elements could create powerful opinions depending on existing political affiliations and is therefore capable of dividing the discourse into for and against a rape law reform. The article does not succeed in establishing a different word meaning or in controlling the interaction but does influence the frame and destabilises the different positions of the discourse because the authors implications clash with the other actors in the article. The main purpose of the frame is to discuss the criticism put forth by Amnesty International and actors affiliated with the organisation. The frame deals with the Nordic paradox and threatens the belief of Denmark being a gender equality nation. The activist nature of the frame, while not dominant, does question the status quo and is thus perceived according to the existing schemata of the receiver. A criticism of Denmark and its culture is not always well-received because of the Danish self-image. The frame cannot be considered dominant because of this.

¹²³ English translation: “Scathing criticism of Denmark”; Olesen K, “Sønderlemmende Kritik Af Danmark” (March 5, 2019) <<https://ekstrabladet.dk/nyheder/samfund/soenderlemmende-kritik-af-danmark/7541548>> accessed January 11, 2020

5.1.3 Final Observations

Framing a discourse involves selecting aspects of an interpreted reality and promoting this reality and thereby making it more salient. The use of selection and salience in these discourses becomes clear as the different actors argue their case. They each make moral and political judgments, define problems, and create solutions for these problems. A clear example of this is the Swedish frame of calling for a Supreme Court practice direction. Hereby, the actors define the problem as not being able to assess the success of the rape law reform. While the solution of calling for a Supreme Court practice direction might seem obvious, the choice of the solution could be different looking at the Danish discourse which is in a different setting and entails other expectations.

While analysing the articles, I became aware of a prominent difference in the way the coverage is constructed in the two countries. The Swedish coverage is mainly centred around women prosecutors who have had experience applying the law. Only one man (other than various male defendants) was mentioned. Justice minister Morgan Johansson (S) stated March 2018 (according to TT) that he expected higher conviction numbers following the new law but Rosvall argued that she was not convinced that this will be the case in the article "Ett år med samtyckeslagen: Sex män har dömts för oaktsam våldtäkt"¹²⁴. The Danish articles can be separated into three categories of actors: politicians, victims/violators and actors associated with Amnesty International. Nick Hækkerup and Preben Bang Henriksen both have a law degree (cand.jur.) but they are both politicians and therefore subject to other interests.¹²⁵ The Swedish coverage has a clearer objective because it is controlled by different prosecutors, and they bring a level of validity into the discourse that the Danish coverage does not contain. It is also interesting that the majority of the Danish actors are male, and it is possible to argue that the fact that issues concerning (mainly) women and girls are being discussed by primarily men is further evidence of Denmark being unaware of its actual level of gender equality.

¹²⁴ English translation: "One year with the consent-based law: Six men convicted for negligent rape"; Pålsson S, "Ett År Med Samtyckeslagen: Sex Män Har Dömts För Oaktsam Våldtäkt" (July 9, 2019) <<https://www.aftonbladet.se/nyheter/a/LAardP/ett-ar-med-samtyckeslagen-sex-man-har-domts-for-oaktsam-valdtakt>> accessed January 11, 2020

¹²⁵ "Justitsminister Nick Hækkerup CV" <<https://www.regeringen.dk/ministrene/justitsminister-nick-haekkerup/>> accessed January 11, 2020; (See CV) "Preben Bang Henriksen" <<https://www.ft.dk/medlemmer/mf/p/preben-bang-henriksen>> accessed January 11, 2020

5.2 Social Practice

First, I explore where the discursive belongs in the network of discourses and discern the social and cultural structures that frame the context of the discursive practice in what Fairclough calls the “Social Matrix of Discourse”. Secondly, I analyse the relationship of the social and discursive practice with the discourse it connects to with an enhanced focus on the ideological and hegemonic effects of discourse.¹²⁶ Third and finally, I analyse the ideological and political effects of the discourses to illuminate the possible changes to social relations, social identities and systems of knowledge and belief.

5.2.1 The Social Matrix of Discourse

The social matrix of discourse are the social structures and hegemonic relationships that constitute the framework for social and discursive praxis. The framework is constantly produced and reproduced. The discursive practice is inherently connected to the social practice and structure. The social practice influences how the reality is perceived and reproduced and the description of ‘reality’ is subsequently recreated in the social practice. The interaction between the discursive practice and social practice makes it difficult to distinguish where one ends, and another begins.

The social and hegemonic structures in Sweden and Denmark regarding rape, sexual violence and gender are different. The discourses in the two countries also have different positions to the two countries’ structures. The Swedish discourse mainly reflects on the legislation and calls for a Supreme Court practice direction while it also focuses on repeating the normative and educational elements of the law. The Danish discourse tries to separate itself from previous discourses of a potential rape law reform. In contrast to this, the Danish discourse’s link to the social and hegemonic relationship can be described as both conservative, normative, imaginative and concerned because many actors either protests or wish for a consent-based rape legislation. The Danish discourse has repeated many previous arguments from years past but the Swedish reform and the Amnesty International report on rape survivors in the Nordic countries has brought new life into an ‘old’ discourse, and thus has the Danish discourse not only transformed itself but also transformed the basis for gender equality and legal security for women. The Swedish discourse has a different advantage point than the Danish discourse. The social and hegemonic structure in Sweden provides a different

¹²⁶ Fairclough (1992), p. 237-238

trajectory than the Danish discourse because of the fact that the law is passed. There is therefore a different shared ‘reality’ that creates the framework for a different discourse. The blend of traditional arguments of existing gender equality and progressive arguments for change that I have identified in the Danish discourse can be understood as competing frames. The social and political domains of the Danish society are recreating these frames and establishes the progressive frame as dominant because of its volume and outside pressure. The Swedish discourse has reinforced the existing frame as dominant but also brought the evaluation of the frame and law into question. None of the articles criticise the existing frame of consent-based rape legislation, and consent is thus further cemented as hegemonic.

5.2.2 Orders of Discourse

The objective is to specify the relationship of the instance of social and discursive practice to the orders of discourse it draws upon, and the effects of reproducing or transforming orders of discourse to which it contributes.¹²⁷

Though the political and cultural structure of Sweden and Denmark differs in many ways, there are similarities between the two countries – for instance in terms of social and hegemonic relationships. Discussing a consent-based rape legislation from two different advantage points creates parallels. Though the two countries are separate in terms of governance and views on gender equality – they both consider themselves to be pro-equality. The consent-based rape legislation is discussed on different levels in the two countries. While Swedish media discusses the timeframe after the law was passed, focusing on different cases and looks to the Supreme Court for guidance in how to apply the legislation, the Danish media primarily focuses on advocating for or against a consent-based rape law and the possible implications of such a law. Interestingly, the Swedish media has incorporated the values of the legislation into the discourse while the Danish media also uses a more conventional style in discussing the legislation. The different social and hegemonic structures provide different societal realities. The Swedish legislation and increased focus on gender provide the framework for a more feminist approach to rape and sexual assault. The Swedish consent-based rape law has been a major interest of Denmark and the Supreme Court’s ruling on the first case of negligent rape has equally been of interest in Denmark. An increased focus on the legal security for rape victims in the

¹²⁷ Fairclough (1992), p. 237-238

Nordic countries has created the framework for the discourse in Denmark to develop what eventually resulted in a promise to reform the rape legislation in Denmark.

5.2.3 Ideological and Political Effects of Discourse

The contrast between Denmark and Sweden has grown in the past years. While Sweden has continuously become more aware of gender and sexual diversity, Denmark has transformed slower and been less susceptible to different movements¹²⁸. In the Danish discourse, the consent-based rape law has been subject to criticism from several different points. The critique ranges from a fear of making the victim/survivor the protagonist of the story and thereby not adhering the presumption of innocence, which is an international human right.¹²⁹ Another critique was that the law is normative which means that the law describes something that ought to be rather than what is. The final critique is that the law is difficult to apply and would result in an increase of guilty verdicts and therefore increase the chance of wrongful convictions. Rape is crime which is very hard to prove in courts and is often based on one person's word against the other(s). The lack of documentation makes it difficult to create proof of guilt beyond a reasonable doubt. Another element that hinders rapist from being convicted are rape myths. These are common in both media and in the courts. The continued support of the rape myths creates societies where the majority of rapes go unreported – because they are not considered real rapes. In the article "Lovændring går for langsomt: Nu viser Kirstine blodig natkjole frem"¹³⁰, Kirstine Holst states that she believes, that the police would have taken her more seriously if they thought the chance of conviction was better. This is again an example of how the low reporting of rape, low conviction rate and minimal political and legal action creates a downward spiral. But these shared beliefs are both political and ideological and influence social relations and identities and therefore the common understanding of rape, victims and consent. The majority of the discourses have an impact on society, and it is not only the dominating discourse that influence the perceived reality. The effects of discourse do not only concern the dominating frame but every frame.

¹²⁸ Such as #MeToo, #TimesUp, #Niunamenos, #NotOneMore, and others.

¹²⁹ UDHR, UN Doc. A/RES/217 (III), 10 December 1948. Art. 11

¹³⁰ English translation: "Law change goes too slowly: Now Kirstine shows off bloody nightgown"

Smith E, "Lovændring Går for Langsomt: Nu Viser Kirstine Blodig Natkjole Frem" (August 8, 2019)

<<https://ekstrabladet.dk/112/lovaendring-gaar-for-langsomt-nu-viser-kirstine-blodig-natkjole-frem/7740853>> accessed January 11, 2020

Concluding Discussion

The purpose of the thesis was to identify the differences and similarities in the Swedish and Danish discourses and illuminate the different power relations in the two countries regarding the understanding of rape and consent. In this chapter I first discuss my research question and how the discourses in Denmark and Sweden influence each other and the legislation in each country. Secondly, how my analysis relates to the existing fields of research and the chapter concludes with a discussion of the limitations of the study and future directions.

My research question: How does the narratives surrounding the consent-based rape law in Denmark and Sweden compare and can the current Swedish narrative be seen as a precursor to the Danish transformation from a force-based to a consent-based rape legislation in the public discourse of consent, the narrative of rape, and gender equality?

My analysis shows that the Swedish discourse has dealt with the misconceptions of rape and a consent-based legislation and is primarily concerned with how useful the reform has been or will be following the Supreme Court practice direction. Although the Danish discourse is becoming less concerned with the above-mentioned myths, there is still scepticism surrounding the reform. I identified two frames within each discourse of the consent-based rape law. The articles divided into the frames were analysed individually and I found that, despite the Danish scepticism against the reform, it is possible to view the Swedish trajectory as a precursor for the Danish discourse and legislation. I identified a number of requirements if this is to happen. Firstly, it depends on the expected proposal for the Danish rape law reform. If it follows the example set by Sweden, it is possible to expect a similar transformation in Danish discourse. Following the reform there are still a number of uncertainties; one of them being the expected assessment of a Danish reform, which the Swedish discourse is evidence of, and this can unfold in multiple ways depending on rape cases, the political climate and the media coverage of this. How the Danish courts would implement and judge cases of negligent rape, and if this element will be included in the reform, remains to be seen but will influence future discourse.

I expect further research of The Nordic Paradox and the increased focus will influence the political and cultural landscape of the Nordic countries. The increased focus on gender-based issues

is both a result and cause of the consent-based rape law. The narrative of rape and gender equality is changing in the discourse in Sweden and Denmark but as the analysis shows, the discourses are either on different trajectories or different places on the same trajectory. While this depends on the reform proposal and the following response to this, I argue that the Swedish discourse can be seen as a precursor for a Danish future discourse and transformation and although the narratives are contradictory in several ways such as focus and purpose of the discourses, it is possible to imagine the Swedish discourse as a future scenario in a Danish context. While the Danish discourse on several occasions compare itself to Sweden and Swedish legislation, Sweden did not compare itself to Denmark once. Denmark uses Sweden as both a positive and negative example. As argued previously, the pressure from the media, Amnesty International Denmark, and the Swedish consent-based rape law reform together created an increased interest for a Danish consent-based rape law reform.

6.1 Framing Theory

Framing theory was not only valuable in separating the articles into frames but an increased focus on selection and salience improved the analysis of the articles. Framing the discourses and dividing the different purposes of the articles has been instrumental in identifying the underlying power structures in the discourse. Framing theory was helpful as an analytical tool but was also essential in capturing the nuances of the discourses. The concept of selecting certain aspects of a perceived reality and making them more salient in a text that promotes particular problems, underlying interpretations, moral evaluation, and possible solutions was present during the analysis. While CDA also incorporates some of these elements, it does not conceptualise it as well as framing theory. Framing theory created the core structure of the interpretation of my findings and enabled me to uncover the different elements of each articles and the reasons for choosing the individual elements. Other scholars have exclusively utilised framing theory as both method and theory, but I do believe that the tools and procedure provided by CDA were essential in constructing an appropriate analysis of the chosen articles. Framing theory, while effective, does not encompass the necessary tools to systematically analyse the articles. Framing theory and CDA combined made the analysis and thesis possible.

6.2 Relating the Study to the Existing Field of Research

The thesis's conclusion that the perception of what constitutes consent and rape is highly influenced by the media corresponds with the previous literature that support the theory that media is responsible of supplying information and images through which we understand our lives.¹³¹ As explained earlier, there is an apparent difference between the actors in the Swedish and Danish discourse. While the Swedish discourse is dominated by female specialists on the rape law and criminal law, the Danish actors are separated into three different categories and the only actors with a law degree are male politicians. It is therefore possible to argue that this in some way accounts for the increased scepticism toward a possible reform. Cobos states that masculine performances of behaviour are normalised for males in America and that using a discourse that recognises all sexual assault and rape cases as a global human rights issue is the only way to stop the normalising of rape culture values.¹³² This study echoes Cobos' statement as I argue that the Danish development from normalising rape to recognising that sex requires consent, the Swedish development is even further and implemented the new offences negligent rape and negligent sexual assault.

The thesis situates itself together with other studies researching the Nordic paradox but while other studies have focused on issues relating to the #metoo movement, intimate partner violence, and women being under-represented in top jobs in business this thesis is centred around the coverage of a rape law reform and therefore makes the study essential in uncovering the perception of rape, victimisation and how we value and protect human rights related to women. The study is thus intimately connected to gender equality and patriarchy. Nima Sanandaji argues that the Nordic welfare states are, unintentionally, holding women back from top jobs in business and argues that liberalisation and smaller government would bring social, economic progress and gender equality.¹³³ This study, however, uncovers deeper issues imbedded in the social and discursive structure in the Nordic countries where men hold primary power over women and therefore decides what constitutes rape and sex. The limited legislative protection of women's rights to bodily integrity and sexual autonomy are connected to how few women are employed in top jobs in businesses and can therefore not be solved by a liberated market and smaller government.

¹³¹ Mendes (2011); O'Hara (2012); Cuklanz (1996); Gillooly (2018); Cobos (2014)

¹³² Cobos (2014) p. 50

¹³³ Sanandaji (2016).

In the study by Enrique Garcia and Juan Merlo regarding intimate partner violence, they discuss if the Nordic paradox could be a potential information bias and that their data of higher level of IPV in Nordic countries than in other EU countries is caused by higher levels of disclosure than in less equalitarian countries. They, however, rejects this because the same survey suggests that the Nordic countries have lower levels of disclosure of IPV than the average percentage of EU. According to the survey, the most most serious incident of IPV that came to the attention of the police is 20% EU (average), Denmark is 10% and Sweden is 17%.¹³⁴ While the authors do not come to an answer regarding the higher levels of IPV, my study suggests that the discursive and social practice influences an already existing culture of androcentric control. The thesis supports Garcia and Merlo's study and I agree that further studies into the Nordic paradox is necessary for not only IPV or rape but the entire scope of gender related issues. While reasons for the paradox still remains unanswered it has become clear in this thesis that studies surrounding the paradox of equality benefits from including discourse in the analysis. How and why issues are presented and discussed as they are, reveals answers to important questions of how and why society and legislation is structured the way it is. Analysing media coverage, completing surveys and critical studies are essential in achieving this.

The study by Askenius and Møller Hartley discusses how the Swedish discourse of #metoo was a discussion of equality and gender, while the Danish discussion existed on the premise that gender equality was reached and was therefore not necessary to discuss.¹³⁵ This again echoes my analysis and conclusion since I argue that the Danish perspective and self-image is enabling a different and defensive discourse. But I also argue that the Danish discourse is subject to external influence from Sweden. Though Sweden is a part of the Nordic paradox, it is also ahead of Denmark in responding to the suggestions from the independent expert body (GREVIO) regarding the implementation of the Istanbul Convention and has implemented a consent-based rape law.

¹³⁴ Gracia & Merlo (2016)

¹³⁵ Askenius & Møller Hartley (2019)

6.3 Future Directions

As I explained while discussing the limitations of this study, Sweden and Denmark are not the only countries that have passed a consent-based rape law or are discussing consent in relation to rape. Future studies might benefit from including other countries or relating the Nordic countries' development to other countries with a consent-based rape law such as England and a stronger understanding of the Nordic paradox might be possible by comparing to other EU countries. The different elements of the Nordic paradox should also be studied. For instance, this would be an analysis of the different self-images of the Nordic countries regarding equality and where this perception originates from. A historic and cultural perspective is relevant in dealing with these questions.

A wider discussion of the normalisation of aggressive masculine sexual behaviour is needed and the cult of masculinity must be addressed and studied to learn why male dominated violence continues to be reproduced. This requires studies of different perspectives and the male dominated aversion against a consent-based rape law is just one perspective that needs to be studied further. I further believe that the gendering of governing positions in the Nordic countries needs to be studied and discussed as political representation is important in promoting gender equality.

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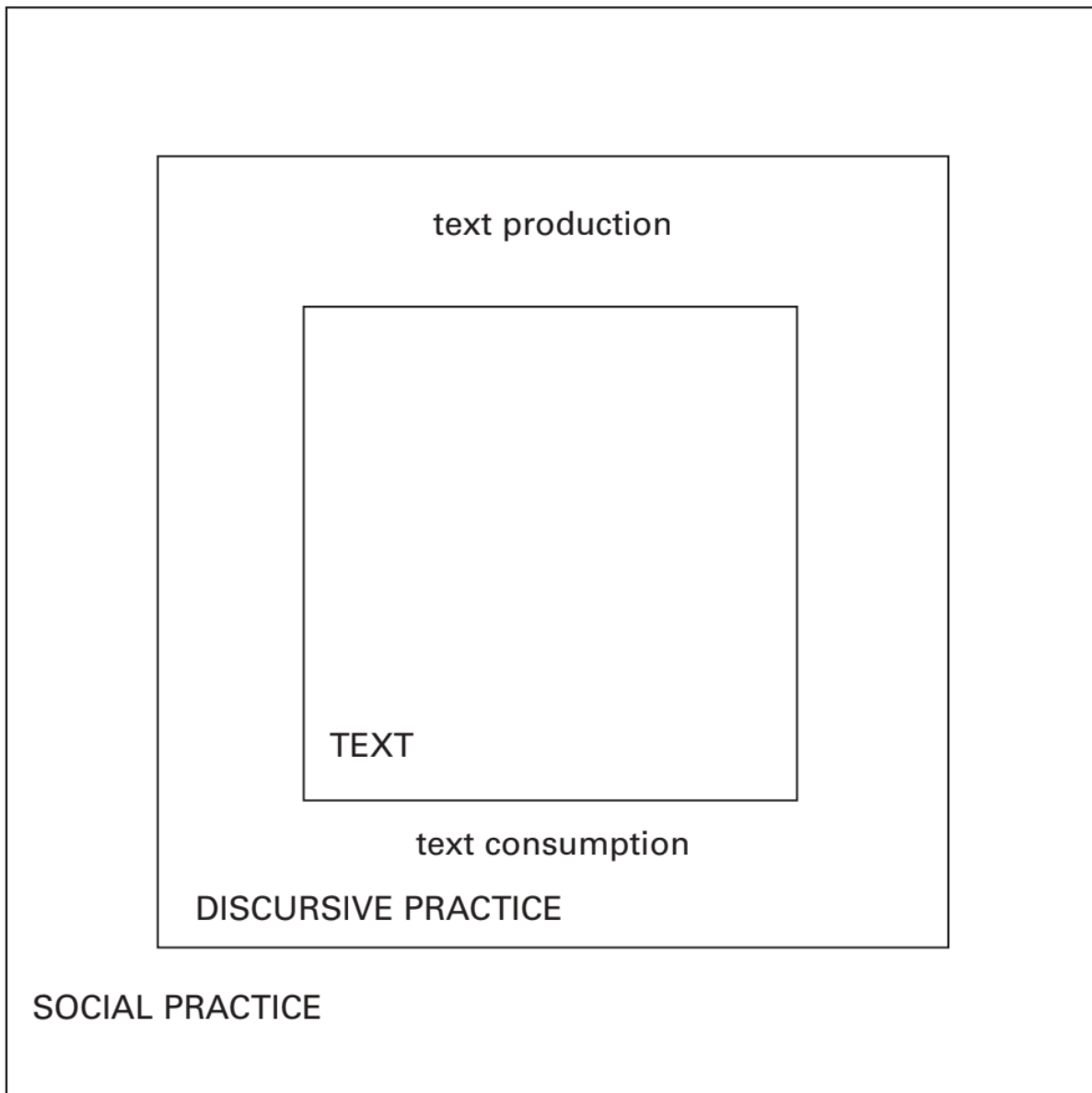
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Appendix

8.1 Figure 1.



Fairclough's three-dimensional model for critical discourse analysis¹³⁶

¹³⁶ Fairclough, N. (1992) "Discourse and Social Change." Polity Press, p.73

8.2 Findings: Complete text analysis of the Danish and Swedish articles

8.2.1 The Swedish Articles

”Ny samtyckeslag har redan haft effekt”

The first article “Ny samtyckeslag har redan haft effect”¹³⁷ argues that the consent-based rape law has been influential in several convictions. Ekot (Swedish Radio) has examined 20 rape convictions and found that the new law has had a bearing on four convictions. Previously, many cases could at most be judged as sexual harassment whereas they now are considered rape according to Christina Voigt. She was a prosecutor on one of the first cases after the consent-based law came into force and according to Voigt, had the previous legislation still been effective, he would have (at most) been convicted of a sexual offense and may have received a month's imprisonment or a fine. Christina Voigt use of modality in her argument shows her affinity and her argument is moreover supported by referring to the case. This creates the framework for the discourse to gain the control of the interaction. Furthermore, she uses positive politeness in her way of explaining the rape victim emotions which make her seem empathetic to the victim. Voight is the only actor in the article and is perceived as the main actor in the discourse.

“Alla våldtäktsdomar granskas för oklarheter”

The next article “Alla våldtäktsdomar granskas för oklarheter”¹³⁸ states that the Prosecutor’s Development Centre in Gothenburg¹³⁹, when the article was published, had gathered around twenty rape cases to examine. They are examining how the courts implement the law with focus on how the courts interpret consent. Most of those cases deals almost exclusively with rapes that involved violence, threats or that the perpetrator ‘exploited a particularly vulnerable situation’. Three of the cases ended in the Supreme Court and all had different outcomes. Two of the three cases resulted in a higher penalty value than could have been expected before the law reform. The minimum penalty

¹³⁷ English translation: “New consent-based law has already been in effect”; TT, “Ny Samtyckeslag Har Redan Haft Effekt” (November 8, 2018) <<https://www.aftonbladet.se/nyheter/a/112p73/ny-samtyckeslag-har-redan-haft-effekt>>

¹³⁸ English translation: “All rape judgments are examined for obscurity”; TT, “Alla Våldtäktsdomar Granskas För Oklarheter” (November 18, 2018) <<https://www.aftonbladet.se/nyheter/a/BJP6b0/alla-valdtaktsdomar-granskas-for-oklarheter>> accessed January 11, 2020

¹³⁹ Swedish: Åklagarmyndighetens Utvecklingscentrum Göteborg. It is their responsibility to monitor the development of sexual offences.

for serious rape has been raised from four to five years in prison, and it has been considered that the penalty value for rape of the normal degree should also be affected. The article continues explaining negligent rape and how they're still waiting on the courts to decide how the law is interpreted according to Karin Lundström Kron¹⁴⁰. Lundström Kron states that the boundary between negligent rape and rape with intent is difficult to distinguish and that they will have to see how the Supreme Court handles this issue. While still discussing the consent-based rape law, this article differs from the first one because it is less focused on the successes or failures of the law and instead deals with the actual legislation and how to implement a law that many lawyers find unclear. Lundström Kron further states, that quite a few parts of the legislation were left to the legal application to interpret and they are trying to get cases to the Supreme Court to see how they interpret consent. Analysing the use of politeness, modality, word meaning, and interactional control again clarifies the power relations and 'true' meaning of the article. Lundström Kron uses modality and positive politeness in her explanation of hers and the Prosecutor's Development Center in Gothenburg's objective; that they simply need to see how it is interpreted. This is presented as a reasonable request that needs to be met for the prosecutors to do their job properly. While the focus of this article might be different from the first one, they do overlap in either claiming that the law is somewhat successful because of cases in which the defendant might not otherwise have been convicted and stating that more guidance is needed. Viewing the articles as a continuous conversation it becomes possible to see that the 'conversation' has evolved and that this article seized the interactional control.

“Första oaktsamma våldtäkten överklagas inte”

The article “Första oaktsamma våldtäkten överklagas inte”¹⁴¹ explains that the first case of negligent rape has been tried in court, the accused was found guilty, and the case was not appealed. The article states that it is important to have this type of case tried in higher courts and describes the case and the events of the rape. In the fall of 2018, a man and a woman made contact through the app Tinder and decided to meet in the man's apartment. They later both agreed that they had intercourse and participated in other sexual acts. But they have different versions of what happened. The woman feared for her life and fought to defend herself against the man and the man felt that they were

¹⁴⁰ Prosecutor

¹⁴¹ English translation: “The first negligent rape is not appealed”; TT, “Första Oaktsamma Våldtäkten Överklagas Inte” (November 24, 2018) <<https://www.aftonbladet.se/nyheter/a/KvgKdy/forsta-oaktsamma-valdtakten-overklagas-inte>> accessed January 11, 2020

‘playing’ and had ‘passionate sex’. The man was sentenced to one year in prison for negligent rape. While it cannot be proven that it was the man’s intention to rape the woman, he should have realised that she was not partaking voluntarily. The man considers himself innocent but did not appeal the judgment, according to his lawyer. Though Anne Ramberg¹⁴² understands the ruling, she still believes that it is important to try the case at the Supreme Court. She further states that it might not be a large number of cases that are relevant to the new law and do not meet the requirements set for an intentional rape. The purpose of the article is slightly different from the previous articles since it primarily focuses on communicating the facts of the first case of negligent rape. The article is descriptive of a specific case rather than an evaluation of the law. The only part of the article to reflect on the greater picture is the comments from Anne Ramberg. She also uses modality and a level of politeness in her explanations and arguments but does not bring any new insights to the discourse and does consequently not control the interaction.

“Få fällda för nya brottet oaktsam våldtäkt”

The article “Få fällda för nya brottet oaktsam våldtäkt”¹⁴³ clarifies that negligent rape was introduced as a new offence and a part of the sexual offence legislation. The scope of the legislation has therefore widened but so far only three people have convicted of negligent rape nine months after the consent-based rape law came into force, according to prosecutors TT spoke to. The legislature does not give a clear indication of what differentiates negligent rape and the mildest form of intent and this needs to be tried in court. The article briefly summarises the three difference cases of negligent rape. While the first case did not appeal against the ruling and the third, at the time of the article, the appeal had not yet expired, the second case did appeal against the ruling. Prosecutors hope for a more extensive guidance of how negligent rape should be interpreted. Debika Ray Berghog¹⁴⁴ states that it is up to the courts to decide what is considered rape with intent and what is negligence. According to Ray Berghog, there is not much guidance to work with and it is the Supreme Court that builds practice. Although this article, at first glance, seems similar in context and content, it does differ from the previous articles. Discussing the result (or possible results) of three cases instead of only one changes the basis of the discussion. The focus of the article is still that the Supreme Court should provide a

¹⁴² Swedish lawyer and the general secretary for the Swedish Bar Association from 2000-2019.

¹⁴³ English: “Few convicted of negligent rape”; TT, “Få Fällda För Nya Brottet Oaktsam Våldtäkt” (March 10, 2019) <<https://www.aftonbladet.se/nyheter/a/21LPEB/fa-fallda-for-nya-brottet-oaktsam-valdtakt>> accessed January 11, 2020

¹⁴⁴ Prosecutor specialised in sexual offences.

ruling on the new law and thereby guiding other lawyers. The argument that more time has to pass before the legislation can be adequately evaluated resembles previous articles. At the time of publication there was the possibility for one case (if not two) to reach the Supreme Court and this changes the effect of the article. Ray Berhog states that she will not draw any conclusions about the fact that there were no court practice directions at the time – and that only time will tell if and when they will receive directions. Ray Berhog arguments thus seem careful but effective in claiming that ‘time will tell’ and that it is too early to properly assess the legislation. The growing number of relevant cases and their possibilities is changing the discourse. The rising number of cases increase the chance of a Supreme Court ruling and this creates a suspense regarding the court practice directions. As the others – the article is highly influenced by modality and politeness. There are, however, no new meanings to words than the earlier established meanings (i.e., consent, rape, negligent rape and practice directions). The article does control the interactions since it brings new information that somewhat changes the context of the discourse. The use of selection and salience drives the discourse forward and further establishes the wait for direction as the centre of the discourse.

“Vill att HD prövar våldtäkt vid sömn”

The following article “Vill att HD prövar våldtäkt vid sömn”¹⁴⁵ explains that a man had intercourse with a woman while she was sleeping, and the Court of Appeal cleared him of rape charges (negligent rape). The Prosecutor-General, Petra Lundh¹⁴⁶, requests that the Supreme Court tries the case and that a clear understanding of negligence can be made. The man was cleared of the charges because it could not be proven that the man knew the woman was sleeping. The case is described as a ‘typical situation’ where both parties are under the influence and sexual acts occur. Afterwards, one person claims that the other person wanted sex, who denies it. Petra Lundh and My Hedström¹⁴⁷ both comment on the case. As mentioned above, Lundh does not agree with the Court of Appeal’s decision and appealed the case to the Supreme Court. She believes that the defendant should have done more to ensure that the sex was consensual. Hedström agrees with Lundh as she explains, that the he did not look at her to check if she was awake and wanted sex. She further argues that because the new

¹⁴⁵ English translation: “Want the Supreme Court to try rape during sleep”; TT, “Vill Att HD Prövar Våldtäkt Vid Sömn” (May 28, 2019) <<https://www.aftonbladet.se/nyheter/a/Vb5mVV/vill-att-hd-provar-valdtakt-vid-somn>> accessed January 11, 2020

¹⁴⁶ Prosecutor-General of Sweden

¹⁴⁷ Manager at the Prosecutor's Office

legislation put an increased emphasis on consent, and she did not believe it was enough to simply respond ‘mmm’, as the man claimed. The explanation from the Courts of Appeal on their judgment is limited, and the arguments made by Hedström and Lundh are thus controlling the interaction. According to the article, the general prosecutor claims that the man should be convicted of rape with intent but is also concerned with the Supreme Court’s assessment of the new crime negligent rape and above all to receive guidance on where the lower limit for negligence is. The arguments by Hedström and Lundh appeal to emotions and are very influenced by modality. This article is especially relevant in this analysis since it differs greatly from the Danish articles. Hedström and Lundh gives judgment on the case in question despite it being decided in Courts of Appeal and argue that the man was careless. The article is less influenced by politeness because the actors Hedström and Lundh strongly disagree with the Court of Appeal’s decision and the actions of the defendant and makes these arguments quite clear.

”Ett år med samtyckeslagen: Sex män har dömts för oaktsam våldtäkt”

The only Swedish article not written by TT is the article ”Ett år med samtyckeslagen: Sex män har dömts för oaktsam våldtäkt”¹⁴⁸ by Simon Pålsson. Pålsson writes that one year after the consent law came into force, six men have been convicted of the new criminal classification ‘negligent rape’. According to Helena Rosvall¹⁴⁹, the effects of the law cannot yet be ascertained and the difference between intent and negligence is difficult to distinguish. Between the law came into force on July 1st, 2018 and approximately a year after on June 28th, 2019, there was a total of 84 prosecutions in which negligent rape was included in either the first or second degree.¹⁵⁰ In 45 of the cases the defendant was convicted of rape and six people were convicted of not acting consciously of the fact that the other person did not voluntarily participate in the sexual act. It is still too early to draw any certain conclusions about how the practice has changed and Helena Rosvall expects a ruling from the Supreme Court in the near future (which they issued a couple of days after). Justice minister Morgan Johansson (S) stated March 2018 (according to TT) that he expected higher conviction numbers following the new law but Rosvall is not convinced that this will be the case. The basic difference

¹⁴⁸ English translation: “One year with the consent-based law: Six men convicted for negligent rape”; Pålsson S, “Ett År Med Samtyckeslagen: Sex Män Har Dömts För Oaktsam Våldtäkt” (July 9, 2019) <<https://www.aftonbladet.se/nyheter/a/LAardP/ett-ar-med-samtyckeslagen-sex-man-har-domts-for-oaktsam-valdtakt>> accessed January 11, 2020

¹⁴⁹ Expert prosecutor.

¹⁵⁰ There is, what I am assuming, a typo in the article and the next information only makes sense if the year 2018 and 2019 is changed.

between the old and new law is that violence or threats or exploitation are no longer a prerequisite for the crime - but the prosecutor's burden of proof has not changed. The article states nothing new concerning the ongoing evaluation of the law and Rosvall dismisses Johansson's 'optimism' on the higher conviction rate. She does get the final word and says that while the legal rules of rape have changed, the prosecutor's burden of proof remains the same. The article again expresses that the need for court practice directions, but that the article uses statistics from the past year conceptualises the law. Six people were convicted of negligent rape. This article touches on topics which are highly debated in the Danish media. The fear is that many will be falsely convicted of negligent rape and that the burden of proof would change. This article negates this and, on the contrary, argues that one should not expect a higher conviction rate. The article is less influenced by modality and discusses the 'numbers' rather than a case and is therefore quite different from the previous articles. There is some level of politeness because Rosvall states that 'she is not convinced' rather than immediately dismissing Johansson's argument. The articles might seem somewhat at a standstill because they all request guidance from the Supreme Court, but this request is evidence of a struggle of what constitutes negligent rape. The legislation, as mentioned before, is mirrored in society, and it has therefore not only bearing on how the courts judge cases but also how society and the public view and understand rape. When actors in media speak up and voice that rape without consent has rape – it has an effect on both the legislation, the courts and the public.

“Var för oaktsam – fälls för nya våldtäktsbrottet”

The article “Var för oaktsam – fälls för nya våldtäktsbrottet”¹⁵¹ argues that the man convicted of negligent rape could have asked or waited for a reaction from the woman, before starting the intercourse. But he did not do enough to figure out if she was participating voluntarily. According to Agneta Bäcklund¹⁵², the ruling from the Supreme Court stated that a person who is against his/her own will be subjected to sexual acts has no responsibility to say no or in any other way to express reluctance. One should choose to participate voluntarily and should not have to oppose involuntary advances. Bäcklund further explains, that the man could have asked her if she was interested in intercourse or waited for a reaction or response from her. Before the law reform came into force,

¹⁵¹ English translation: “Was too careless – convicted of new crime rape”; TT, “Var För Oaktsam – Fälls För Nya Våldtäktsbrottet” (July 11, 2019) <<https://www.aftonbladet.se/nyheter/a/xPVGPG/var-for-oaktsam--falls-for-nya-valdtaktsbrottet>> accessed January 11, 2020

¹⁵² Justice of the Supreme Court

threats, violence, coercion, or the perpetrators had to exploit the victim's particularly vulnerable situations (such as being drunk, having slept or feeling serious fear) for an act to be considered as rape. The new legislative text states that the courts should pay attention to if voluntary expression has been expressed through words or actions or otherwise. The man in question denies the crime and claims that he thought she wanted sex. He also pointed out that he stopped the intercourse when he noticed that the woman did not want to continue. The article is heavily influenced by modality as seen when Bäcklund argues 'that even if you agree to lie together in underwear in a bed does not mean that you voluntarily participate in sexual intercourse or other sexual acts.' Bäcklund and the article only discusses the case in which the man was deemed guilty. Bäcklund therefore is not sympathetic towards the man but criticises that he did not make sure, that she victim wanted to have sex. The article attains the interactional control because of the use of modality and politeness, and that the article brings the answer which the previous articles were asking for.

“Jurister: Utan nya lagen hade mannen friats”

The article “Jurister: Utan nya lagen hade mannen friats”¹⁵³ states that a 27-year-old man has been sentenced to prison for negligent rape after his case was tried in the Supreme Court. The case was first tried in the District Court and Court of Appeal and the ruling in both courts was rape with intent. The Supreme Court on the other hand found that there was no evidence of intent and therefore ruled negligent rape instead. Because of the rape law reform, the man received a prison sentence and without the law reform he would, according to a number of lawyers, most likely have been judged not guilty. This ruling provides important guidance to future cases in what distinguishes rape with intent and negligent rape. According to My Hedström, chief at the prosecutor's office, the ruling from the Supreme Court emphasised that no one is responsible of saying that they do not want sexual advances and that lying next to someone in a bed is not automatically an invitation. Bengt Ivarsson also states that the ruling hopefully will influence how people behave themselves and that you should always ensure, that the other person wants to have sex. The article discusses the same case as the previous article and the response to the case is important to analyse because it brings the discussions from the law was passed to the first case in the Supreme Court full circle. The article is influenced by modality and politeness because of the way the actors and the article discuss the changes from the

¹⁵³ English translation: “Lawyers: Without the new law the man would be been released”; TT, “Jurister: Utan Nya Lagen Hade Mannen Friats” (July 11, 2019) <<https://www.aftonbladet.se/nyheter/a/awa54a/jurister-utan-nya-lagen-hade-mannen-friats>> accessed January 11, 2020

previous law to the current one and reflects on the decision by the Supreme Court. The article achieves interactional control for this direction of the discourse and does conclude the analysis of the Swedish discourse.

8.2.2 The Danish Articles

“V frygter bevisproblemer ved svensk voldtægtslov”

The first article “V frygter bevisproblemer ved svensk voldtægtslov”¹⁵⁴ (English: V fears burden of proof problems with the Swedish rape law) states that The Venstre Party¹⁵⁵ will not follow Sweden’s example and vote for a rape law reform. According to Preben Bang Henriksen¹⁵⁶, the Swedish law reverses the burden of proof (a reverse onus clause) and it thus becomes the defendant’s job to prove his or her own innocence instead of proving guilt. Helle Jacobsen¹⁵⁷ states that the Swedish rape law increases legal security and that Denmark should follow the example set by Sweden. She further argues that the Swedish law emphasises that all people have the right to decide what to do with their own body and sexuality. It requires both persons to ensure that sex is voluntary. Josephine Fock¹⁵⁸ also wants the Parliament to consider whether the rape legislation should be stricter. While the article is evenly divided in pro and con arguments regarding a consent-based rape law, there is no direct interaction between the different actors in the article. The article is published shortly after the Riksdag¹⁵⁹ passed the rape law reform. Preben Bang Henriksen states that his understanding of the Swedish rape is that the burden of proof is reversed, and the defendant would have to prove his or her innocence – by submitting written contracts. Additionally, the headline centres around the Venstre Party, and their understanding of the consent-based rape law – which strengthens the belief that a consent-based rape law reverses the burden of proof. Preben Bang Henriksen further states that in the Danish legal system, everyone is innocent until proving guilty and he implies that this is not the case in Sweden. The interaction is mainly controlled by Preben Bang Henriksen because his argument is not contradicted, and this argument is presented in the headline. The three actors take turns in the article in that they all are featured – but they do not respond to each other or comment on previous

¹⁵⁴ English: “V fears burden of proof problems with the Swedish rape law”; Ritzau /Nyheder, “V Frygter Bevisproblemer Ved Svensk Voldtægtslov” (May 24, 2018) <<https://ekstrabladet.dk/nyheder/politik/danskpolitik/v-frygter-bevisproblemer-ved-svensk-voldtaegtslov/7170065>> accessed January 11, 2020

¹⁵⁵ Left, Denmark's Liberal Party

¹⁵⁶ Former legal spokesperson for the Venstre Party

¹⁵⁷ Program manager of women, gender and LGBTI rights at Amnesty International Denmark

¹⁵⁸ Former legal spokesperson for the Alternative Party

¹⁵⁹ The national legislature and the supreme decision-making body of Sweden

statements. The article is structured in a way that makes the argument, that the defendant in a rape trial must prove his/her own innocence, the focus and presents this argument as a fact. This can be identified in two sentences where the modality is expressed: “I dansk ret er enhver uskyldig, indtil det modsatte er bevist. Voldtægter skal bevises af anklagemyndigheden.” (English: In Danish law, everyone is innocent until proven otherwise. Rape must be proven by the prosecution) and regarding the Swedish rape law: “Det betyder ved en voldtægtsanklage, at den mistænkte i retten skal bevise, at han/hun er uskyldig.” (English: This means in a rape trial the defendant in court must prove he/she is innocent). Since these arguments are not contradicted but further strengthened by Preben Bang Henriksen, and it is possible to view the article as a representation of public opinion and understanding, the arguments cited above can be viewed as a general understanding of consent-based rape law at the time the article was published.

Following the renewed interest in the rape law, the possibility of reform and Amnesty International Denmark’s then ongoing work on the report that would be published March 2019, Amnesty International Denmark (and Helle Jacobsen) is the main character of a number of different articles, where they try to clear up myths (or fake news) surrounding the consent-based rape law. Amnesty International Denmark is somewhat successful in controlling the interaction because the following articles are not focusing on the reverse burden of proof.

“Amnesty: Danmark bør gøre som Sverige”

The article “Amnesty: Danmark bør gøre som Sverige”¹⁶⁰ refers to the Swedish consent-based rape law. Amnesty International in Denmark encourages Denmark to follow the example set by Sweden because the law emphasises that every-one has the right to their own body and sexuality. If sex is not voluntary, it is rape. Danish rape law requires that for rape to happen, there need to be either violence, threats, or coercion involved. Helle Jacobsen refers to some rape cases where the victim had been crying and the man still was not convicted. With a consent-based rape law, the focus would be on if it was likely that consent was given if the victim was crying. In 2016, the police received 791 reported rapes but only 50 cases ended in a conviction. Helle Jacobsen denies that the rape law reform would reverse the burden of proof because the prosecutor still has to prove that a criminal act occurred.

¹⁶⁰ English translation: “Amnesty: Denmark should do as Sweden”; Ritzau /Nyheder, “Amnesty: Danmark Bør Gøre Som Sverige” (May 24, 2018) <<https://ekstrabladet.dk/nyheder/samfund/amnesty-danmark-boer-goere-som-sverige/7169908>> accessed January 11, 2020.

Amnesty hopes that the reform will lead to debate and awareness of rape and consent in gymnasiums and schools around the country.

”Lovændring går for langsomt: Nu viser Kirstine blodig natkjole frem”

The third article is not written by Ritzau but by Emmely Smith: “Lovændring går for langsomt: Nu viser Kirstine blodig natkjole frem”¹⁶¹. The article focuses on Kirstine Holst who was raped in the summer of 2017. The man she accused was not convicted and when Holst received a box of the evidence from the rape, she saw that the dress she had been wearing had bloodstains on it. But the bag containing the dress had never been opened by the police. According to Holst, this made her feel like the police, and the courts never took her case seriously. The article also states that while the justice ministry estimates that 5400 women are forced or tried to have sex with yearly, another research study from Syddansk University estimate that the number is closer to 24.000 women yearly and that the current law is problematic because it does not take the “freezing” reaction into account. Holst believes that the police would have taken her case more seriously if they knew that the chance of conviction was bigger than it is today. The current justice minister Nick Hækkerup stated that it is important that the legislation reflects modern society and makes it clear that sex without consent is rape and that in the new year the government will present a proposal for a new rape legislation. Kirstine Holst worked with Amnesty International on achieving a rape law reform and she was included in the Amnesty International report on rape survivors that was published the following year. Her effort is therefore connected to Amnesty International Denmark and can be viewed as one unit. Nick Hækkerup answers the request for a consent-based rape law, which further establishes that Amnesty International Denmark is controlling the interaction.

“27-årige Lior: Jeg har krænket flere kvinder - det har alle mænd”

The following article is by Marie Nørgaard: “27-årige Lior: Jeg har krænket flere kvinder - det har alle mænd”¹⁶². The article is somewhat unusual in that a man addresses rape and sexual assault culture in Denmark and relates this to his own actions. 27-year-old Lior supposedly did not know that he was

¹⁶¹ English translation: “Law change goes too slowly: Now Kirstine shows off bloody nightgown”; Smith E, “Lovændring Går for Langsomt: Nu Viser Kirstine Blodig Natkjole Frem” (August 8, 2019) <<https://ekstrabladet.dk/112/lovaendring-gaar-for-langsomt-nu-viser-kirstine-blodig-natkjole-frem/7740853>> accessed January 11, 2020.

¹⁶² English translation: “27-year-old Lior: I have violated several women - so have all men”; Nørgaard M, “27-Årige Lior: Jeg Har Krænket Flere Kvinder - Det Har Alle Mænd” (October 2, 2018) <<https://ekstrabladet.dk/nyheder/samfund/27-aarige-lior-jeg-har-kraenket-flere-kvinder-det-har-alle-maend/7332768>> accessed January 11, 2020.

sexually assaulting women by groping and kissing strange women. That shouting after women was not only a compliment and that every time, he pressured a woman to say yes rather than no he was crossing a line. He looked at the statistics and realised that while so many women were sharing their experiences with sexual assault, hardly no men were taking responsibility – they were instead sharing the #notallmen hashtag. After realising this, he admitted to himself that he too was guilty of sexually assaulting women. He further claims that every man is or has been like him and that they are constantly pushing women’s boundaries and assaulting them. Lior also states that men do not view their actions as a violation and do not remember them as such. The article is relevant because he, while admitting to sexually assaulting women, also believes that a consent-based rape law would increase legal security for women. While he does say that this should not include ‘NemID’¹⁶³, he also argues that the consent-based rape law would not spoil the romantic mood, as others claim. This argument is specifically strong because of his gender and experience with sexually assault, and it promotes the agenda for reform.

”Naser Khader ændrer holdning til samtykke: Jeg troede, at svenskerne var skøre”

Another important change in the discourse is representative is apparent in the article about Naser Khader. Julie Termansen wrote the article “Naser Khader ændrer holdning til samtykke: Jeg troede, at svenskerne var skøre.”¹⁶⁴ Naser Khader states, that he had an automatic reaction every time he heard something about Sweden and was automatically against the idea of consent-based rape law in the beginning. After talking to women about their experiences, he realises that consent is not about signing a document. According to Khader, he thought that Swedish people were crazy but realised that he had misunderstood consent and how it is implemented. He further explains that Denmark needs a change in how it deals with rape cases and suggest that Denmark looks to England, where a consent-based law has been in effect for 15 years. Khader admits that it is still too early to say how the law would be enforced. This furthermore establishes the discourse of consent-based rape law as an opportunity for Denmark to prioritise legal security for women and gender equality. It is now

¹⁶³ Log-in solution for Danish Internet banks, government websites and some other private companies.
Translation: EasyID

¹⁶⁴ English translation: “Naser Khader changes opinion of consent: I thought the Swedes were crazy”; Termansen J, “Naser Khader Ændrer Holdning Til Samtykke: Jeg Troede, at Svenskerne Var Skøre” (October 7, 2018) <<https://ekstrabladet.dk/nyheder/politik/naser-khader-aendrer-holdning-til-samtykke-jeg-troede-at-svenskerne-var-skoere/7339853>> accessed January 11, 2020

possible to see how previous opponents of the reform, change their opinions and instead suggest consent-based rape law as a solution rather than a problem.

“Samtykke til sex skal hjælpe voldtægts ofre”

According to Amnesty International and Helle Jacobsen in the article “Samtykke til sex skal hjælpe voldtægts ofre”¹⁶⁵, the Danish rape law rests on an ancient view of women and that women’s bodies are accessible until she has said no or physically fights against sex. If the law is changed to be consent-based, it would result in more reported rapes. Amnesty refers to a Swedish study that shows that seven out of ten victims freeze from terror during rape – which means that it is not considered rape. The Danish Ministry of Justice estimates that 5100 rapes happen every year in Denmark but only 700-900 of those are reported and only 60-70 result in convictions. Trine, a rape survivor and lawyer, argues that if the law was consent-based, it would not only be her responsibility to prove that she was forced, but the defendant would also have to explain what made him think that she consented to sex. The statements made by Helle Jacobsen at the start of the article have less of an influence. Jacobsen criticises the Danish legislation and repeats previous arguments. In some cases, this would help cement the discourse as dominant but because the article does not support the dominant frame, it instead does nothing to further the frame it is connected to. New information is required to gain dominance. The arguments involving Trine are somewhat successful in gaining control, but it is lost because her case is still ongoing. It is possible to argue that a rape law reform would not change her case or cases similar to it because the police choose to withdraw the charge against the man. The article should mention negligent rape to bring new input to the discourse but does not. The article, while influenced by modality and politeness in the explanation of the rape case, does not successfully gain the interactional control or affect the meaning of consent or rape.

”Ikke godt nok’: Vil have flere dømt for voldtægt”

¹⁶⁵ English translation: ”Consent to sex will help rape-victims”; Ritzau /Nyheder, “Samtykke Til Sex Skal Hjælpe Voldtægts ofre” (October 24, 2018) <<https://ekstrabladet.dk/nyheder/samfund/samtykke-til-sex-skal-hjaelpe-voldtaegtsofre/7365885>> accessed January 11, 2020

In the article "Ikke godt nok: Vil have flere dømt for voldtægt"¹⁶⁶ the former minister for equality Eva Kjer Hansen (Venstre) claims that far too few rape cases result in convictions and that the legal security for women needs to be examined. Eva Kjer Hansen has a few suggestions (similar to the rape law reform) to help promote equality and legal security for rape victims. She further acknowledges that her suggestion won't solve every problem because rape cases often are a matter of word against word. Kjer Hansen claims that many victims do not report rape because they give up in advance because there are still so few who are convicted. She states that it is simply not good enough in Danish society and we should be able to provide better protection for women. Kjer Hansen describes the 'freeze' reaction and that you cannot fight when you are frozen. Kjer Hansen further argues for the possibility of tightening the law in cases of rape with multiple assailants who film and share the rape on social media or if the rape happened in strange or improbable place or if the woman was almost unconscious and thus unable to resist the rape. She argues that if these elements are included as something to be assessed in relation to whether or not a rape has taken place, she believes that we will see more convictions. There are several interesting elements in this article. First of all is the heading of the article which claims that more people should be convicted of rape. This is problematic because she does not consider the burden of proof in rape cases. Her arguments stretch in different directions. She acknowledges that rape cases often result in word against word, argues for a tightening of elements that does not concern consent-law and criticises Denmark for not including consent. Kjer Hansen makes a surprising amount of arguments but does not explain how each should be accomplished. The article does not succeed in gaining the interactional control because she provides half-solutions and states these in a fashion that might provoke people. Her critique does more harm than good to the discourse because the fear of false accusations is given new life by her statements. Helle Jacobsen considers the reality and dismisses the myths while Kjer Hansen confusingly tries to advocate for a consent-law without the practical perspective in mind. Kjer Hansen uses an amount of modality that exceeds all other articles but with the use of words like 'we' in criticising Denmark puts the blame on Danish society and the Danish people. This together with the Danish self-image does not create the framework for further development towards a rape law reform because it damages the existing work into contradicting the myths connected to the consent-based legislation.

¹⁶⁶ English translation: " 'Not good enough': Want more convicted of rape"; Ritzau /Nyheder, "Ikke Godt Nok: Vil Have Flere Dømt for Voldtægt" (December 12, 2018) <<https://ekstrabladet.dk/nyheder/politik/ikke-godt-nok-vil-have-flere-doemt-for-voldtaegt/7435528>> accessed January 11, 2020

“Sønderlemmende kritik af Danmark”

The article “Sønderlemmende kritik af Danmark”¹⁶⁷ by Kristoffer Olesen discusses Amnesty International’s criticism of the pervasive rape-culture in Denmark. Anna Blus, a researcher at Amnesty International, describe the ‘Nordic paradox’ and explains that it is an alarmingly high number of estimated rapes and a general degree of impunity despite being in the lead of gender equality. The Amnesty rapport includes interviews of 18 rape victims – one being Kirstine Holst. She briefly describes the ‘freeze’ reaction that rape victim experience and hopes that Amnesty’s suggestion of a rape law reform will be followed. The article echoes the previous one but is interesting to the analysis because of two elements. First, the heading of the article carries strong connotations and therefore also causes strong reactions. Gender equality being perceived as ‘solved’ in Denmark produces a self-image that clashes with the heading of the article. Additionally, while the majority of the articles are written by Ritzau, the article in question is written by Ekstra Bladet journalist Kristoffer Olesen. He uses the pronoun ‘we’ which implies that ‘we’ are being criticised. These combined elements could create powerful opinions depending on existing political affiliations and is therefore capable of dividing the discourse into for and against a rape law reform. The article does not succeed in establishing a different word meaning or in controlling the interaction but does influence the frame and destabilises the different positions of the discourse because the authors implications clash with the other actors in the article.

¹⁶⁷ English translation: “Scathing criticism of Denmark”; Olesen K, “Sønderlemmende Kritik Af Danmark” (March 5, 2019) <<https://ekstrabladet.dk/nyheder/samfund/soenderlemmende-kritik-af-danmark/7541548>> accessed January 11, 2020