

**The Body of Proof:
Representations of Rape and Consent in Medieval England's Laws and Literature**

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A dissertation submitted to the School of Graduate Studies in partial fulfillment of the
requirements for the degree of

Philosophical Doctorate in the Department of History
Memorial University of Newfoundland

April 2022

St. John's, Newfoundland and Labrador

Abstract

This research focuses on sexual assault in medieval England by examining twelfth to fourteenth-century trial records, England's medieval rape laws, and literary representations of rape in popular Middle English romance. By comparing representations of rape in romance, with contemporaneous trial documents, and the laws themselves, this dissertation argues that in medieval England, consent and non-consent to rape were based on the physical proof of resistance on the woman's body. This is the body of proof.

Analysing the five legal ages of England's *raptus* laws, from *Glanvill* to the Statute of Rapes, it is evident that the gradual displacement of victim status away from the woman herself and in favour of her male kin was in response to continual frustration with the marriage clause and a persistent fear of malicious accusations of rape. This is represented not only in the laws themselves, but also in popular romance narratives.

The analysis of previously unpublished twenty-eight cases from the court of the general eyre exposes a schism between the laws in theory and in practice. By combining these with an ecclesiastical perspective, as well as popular romance narratives, the research suggests that there were three constructed legal identities a woman could have had when appealing rape: the truly innocent victim, the reluctant but willing accomplice, and the scheming culpable woman. Through a comparison to popular romance narratives with scenes of rape and sexual violence, it is evident that these identities were not confined to the courts, but widely acknowledged in medieval English culture.

The evidence suggests that there are remarkably consistent cultural tropes used in reference to survivors of sexual assault from the Middle Ages through to the twenty-first century. Ideas around "no means yes" and that the body can enjoy the assault are exposed in this research as existing in English medieval culture. In looking at rape laws, how the laws were interpreted by the courts through actual trial records, as well as the social attitudes towards rape as represented in popular romance narratives, this research presents new understandings of the cultural and legal discourse of rape in medieval England.

Acknowledgments

This research is indebted to the support of many people over many years. I first want to thank my supervisors, John Geck and Sébastien Rossignol. Your continued guidance, feedback, and suggestions over the past four and a half years were instrumental to the development of not only my dissertation, but my future career goals. John, I am grateful for your encouragement as I attempted to explore the realm of romance literature. Your scholarly insights into Middle English romance were invaluable to my research. Your patience and guidance throughout the entire process has been crucial to the development of my work. Sébastien, thank you for always encouraging me to dig deeper, explore new connections, and think about things from an alternative perspective. From my MA in 2016 to this dissertation, you have always pushed me to explore beyond the obvious. Thank you for generously offering to help me with my palaeography. Because of your support, these women's stories are now able to be told. Thank you both for the time that you took to carefully read and revise my many chapters. I have felt supported and encouraged by both of you throughout the entire process and for that, I am truly grateful.

I would like to thank the other important members of my supervisory committee, Marica Cassis and Katherine Weikert. Thank you both for your feedback and support during the early stages of this research. I want to especially thank you both for pushing me to explore deeper into gender theory as I tried to navigate this difficult terrain. Your reading suggestions, revisions, and thought-provoking questions have broadened my methodological framework. Marica, your support throughout my comprehensive exam prep, and Katherine, your encouragement (particularly during the early stages of my conference presentations) has been extremely influential. Thank you both for being on my supervisory committee.

Numerous faculty members in the Department of History at Memorial University of Newfoundland have helped me throughout this process including Dominique Brégent-Heald, Justin Fantauzzo, Neil Kennedy, and Jeff Webb. The funding I received as part of the Doctoral Student Investment Fund, the Scholarship in the Arts travel funds, the Social Science and Humanities Research Council, and conference funding have been instrumental to the completion of this dissertation.

I am greatly indebted to my family who have continually supported me throughout my academic career. To my parents Steve and Brenda, and my husband Ian, thank you all for patiently listening to me as I talked about the ideas in this dissertation for the past four and a half years. Ian, thank you for your patience as I spent many nights tucked away in the office writing. My most profound thank you goes out to my mom, Brenda. Our countless conversations about this project, your assistance on the research trip, and your numerous rounds of meticulous editing have been crucial to the development of this dissertation. More importantly, your unwavering encouragement and support has been invaluable.

Lastly, I want to acknowledge the women and girls whose stories I have attempted to tell. This dissertation stands as a testament to their strength and perseverance in going to court and having their truth be told and preserved for future generations.

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Chapter 1: Introduction

Sexual violence and rape are difficult topics that feminist scholars have been studying vigorously since the 1980s and yet, even with the arrival of the #MeToo movement, they are still in many ways highly politicized and often polarizing topics. This thesis focuses on the representations of rape and sexual violence in England from the twelfth to the fourteenth century. Rape in medieval England was, according to the letter of the law, one of only two felonies that a married woman could appeal in court herself, the other being the murder of her husband in her arms. This has led Ruth Kittel to argue that “unlike other cases, rape was clearly and uniquely a woman’s right and responsibility.”¹ Thus, by studying rape cases, scholars are able to glimpse a unique legal autonomy for women in medieval England.

Generally, medieval English laws defined rape as when a man overpowers a woman with force, leading to her “corruption.” The gendered violence is explicit, as twelfth to fourteenth-century legal treatises, statutes, and trial documents explain how it is a crime committed by a man onto a woman. This research will explore the importance of the physical force used to overthrow the woman, to the courts, jurors, justices, as well as to popular opinions about survivors of sexual violence. The following chapters will highlight medieval England’s *raptus* laws, trial records from the court of the general eyre, ecclesiastical texts, as well as popular Middle English romances, to demonstrate how the physical force used to overthrow a woman and the resulting bodily injuries were crucial to her believability and success in court. By comparing the laws and romances it will be shown how the fictional narratives were cautionary

¹ Ruth Kittel, “Rape in Thirteenth-Century England: A Study of Common-Law Courts,” in *Women and the Law: A Social Historical Perspective, Vol. II: Property, Family and the Legal Profession*, ed. D. Kelly Weisberg (Cambridge: Schenkman Publishing, 1982), 102.

and didactic in instructing women to physically resist their own rape. But before moving forward, Margery de la Beche's story provides an extraordinary entry point into the study of sexual violence in medieval England.

Good Friday, 1347:

On the continent, the Hundred Years' War with France raged on, and King Edward III was in Calais during Easter. A wealthy heiress named Margery de la Beche, on the other hand, was at her manor home of Beaumes, near Reading in Berkshire, celebrating Easter with her household staff, her brother Michael Poynings, and some very special guests, the king's children, including the Keeper of England, Lionel. As with any residence that hosts the royal family, Margery's lively manor festivities included the accompanying royal entourage and royal armed guards.

Just before dawn of Good Friday 1347,² as Margery hosted Prince Lionel and other royal children, John de Dalton, his father Robert, and a gang of accompanying knights ascended upon Beaumes manor. The Daltons were a knightly family from Lancashire, and when they attacked Beaumes manor they likely did not expect to find a royal resistance. A bloody battle ensued leading to three deaths, the plunder of the manor, and the abduction of Margery. She was taken to the north, although the exact location remains vague. An inquisition before the justices of the assize in county Lancaster from 18 July 1347, claims that John de Dalton abducted Margery and held her at Maude de Holand's manor, which happened to be abandoned.³ By Easter Monday

² *Calendar of Patent Rolls, Edward III, Vol. VII, 1345–1348* (London: His Majesty's Stationery Office, 1903), pp. 310–311 (The National Archives (TNA): C66/220, Patent Roll, 21 Edw. III: Part 2, m 21d).

³ *Calendar of Inquisitions Miscellaneous (Chancery) preserved in the Public Records Office, Vol. II* (London: Her Majesty's Principal Secretary of State for the Home Department, 1916), pp. 503, abstract no. 2006.

John de Dalton married Margery de la Beche. The Daltons and their accomplices stayed at Holand manor until “the king’s serjant-at-arms, and the sheriff came,” at which point they fled through Lancaster and York, “until they withdrew by night to the north.”⁴

Lionel was outraged at the offence committed against him, and ultimately against his father Edward III, by members of their own military. Writs were issued by Lionel to arrest John de Dalton and all his accomplices, which ranged in number from seventeen to sixty-four. An entry dated 19 June 1347 in the *Calendar of Patent Rolls* (hereafter referred to as *CPR*) states that:

With armed force by night [they] assailed the manor of Beaumes by Redynges, co. Wilts, killed Michael de Ponynges ‘le uncle,’ Thomas le Clerc of Shipton and others there, ravished Margery late the wife of Nicholas de la Beche and broke the houses there, and that Robert le Hunte, chaplain of the said Margery, then lying sick there, for fear of the assault and evil deed presently died, that they carried away the goods and that they assaulted her men there, mutilated some so that their life was despaired of and imprisoned others and took with them from the county whithersoever they would, taking on themselves the royal power.⁵

The horror of the battle is described; men are mutilated, some are imprisoned, and the chaplain likely died from a heart attack. In a writ issued by Lionel immediately after the assault, on 31 March 1347, it states:

Inasmuch as a scandalous outcry prevails everywhere among the people and very grievous complaint has been made to the king that John de Dalton, ‘chivaler’, Robert de Holand, ‘chivaler’, Thomas de Ardern, ‘chivaler’, Edmund de Mamcestre, ‘chivaler’, and others by force ravished Margery de la Beche, united in lawful matrimony to Gerard de Isle, on the holy day of Good Friday, before the dawn, at her manor at Beaumes de Redyng, where the king’s son Lionel, keeper of England, was then staying, within the

⁴ *Calendar of Inquisitions Miscellaneous (Chancery)*, pp. 503, abstract no. 2006.

⁵ *Calendar of Patent Rolls, Edward III, Vol. VII, 1345–1348* (London: His Majesty’s Stationery Office, 1903), pp. 344–345 (TNA: C66/221, Patent Roll, 21 Edw. III: Part 2, m 21).

verge of the Marchalsea [the royal court⁶] of the household of the said keeper, and abducted her against her will whither they would without reverence for God, Holy Church or the king, and to the terror of the said keeper and the rest of the king's children then with him there and all in those parts, and are now running to and fro that they may not be brought to justice for the felony; the king has appointed the said Gerard to arrest the said persons and all others who shall be indicted of the felony wherever found and bring them before the council, and because Gerard fears bodily harm in the execution of the appointment from the said evil-doers, who are plotting to do him all the evil which they can, he was granted special licence for him and all those of his company to go armed for their self-defence. Further, he has taken him and his men and servants into his special protection and safe conduct while executing the premises.

By the Keeper & C.⁷

The gang of knights were declared outlaws and remained in hiding in Lancashire until they eventually fled to Scotland.⁸ While Margery was being held captive by John, all of her lands and possessions (which were numerous) were seized by the crown. King Edward III claimed the ultimate victim status as the records from the King's Bench state that John de Dalton and his gang were on their way to Calais to fight *pro salvatione et defensione regni nostri Angliae*, "for the salvation and defence of our [Edward III's] kingdom of England,"⁹ when they turned the king's own arms against his own children.

As the months go by, the records become more muddled in that the assault is first described by Lionel on 31 March as an abduction, without Margery's consent, but then it becomes rape, as first mentioned in August 1347, and repeated in September and November

⁶ W. R. Jones, "The Court of the Verge: The Jurisdiction of the Steward and Marshal of the Household in Later Medieval England," *Journal of British Studies* Vol. 10, No. 1 (Nov. 1970): 1–29.

⁷ *Calendar of Patent Rolls, Edward III, Vol. VII, 1345–1348*, pp. 310–311 (TNA: C66/221, Patent Roll, 21 Edw. III: Part 2, m 21d).

⁸ *Calendar of Patent Rolls, Edward III, Vol. VII, 1345–1348*, pp. 319–320 (TNA: C66/221, Patent Roll, 21 Edw. III: Part 2, m 5d).

⁹ TNA: KB 27/350, Rex, m 55r. Translations are my own.

1347.¹⁰ In an *Inquisition Post Mortem* from 1353/54, John de Dalton is described as a “knight, who raped the said Margery, also [he] married her.”¹¹ The question around the abduction and/or rape of Margery needs further examination, and although beyond the scope of this telling, it is worthy to note how Margery’s *ravishment*, that is abduction and/or rape, is not critical to the royal indictments. Her injustice was subordinate to the king’s.

Eventually there was a royal indictment for twenty-seven individuals called before Justice William de Thorpe. Of the twenty-seven “indicted in the rape of Margery late the wife of Nicholas de la Beche,” five are listed as “chivaler,” one is a “parson of the church,” and one is a woman, Mary de Dalton, John’s mother.¹² Of the indictments, there is a notable absence of one key individual, Robert de Holand, who was named by Lionel in his first writ, but is suspiciously omitted in the indictments.¹³ Immediately following the attack, on 31 March 1347, Lionel names Robert de Holand, as the first accomplice to John de Dalton. Yet, by 10 May 1347, Robert de Holand is not mentioned as an accomplice.¹⁴ Here Margery’s story takes another turn. A writ issued by Lionel on 18 July 1347 states that Margery was abducted to Holand manor, owned by Maud de Holand, wife of Robert first Baron Holand.¹⁵ Their son, Robert de Holand (born

¹⁰ *Calendar of Patent Rolls, Edward III, Vol. VII, 1345–1348*, pp. 394, 407, 436 (TNA: C66/221, Patent Roll, 21 Edw. III: Part 2, m 9d, m 34, m 15, m 9d, m 34, m 15).

¹¹ *Calendar of Inquisitions Post Mortem, Edward III, Vol. X*, (London: His Majesty’s Stationery Office, 1921), File 122, no. 82.

¹² *Calendar of Patent Rolls, Edward III, Vol. VII, 1345–1348*, pp. 460 (TNA: C66/221, Patent Roll, 21 Edw. III: Part 2, m 30d).

¹³ *Calendar of Patent Rolls, Edward III, Vol. VII, 1345–1348*, pp. 310–311 (TNA: C66/220, Patent Roll, 21 Edw. III: Part 1, m 21d).

¹⁴ *Calendar of Patent Rolls, Edward III, Vol. VII, 1345–1348*, pp. 319–320 (TNA: C66/221, Patent Roll, 21 Edw. III: Part 2, m 5d).

¹⁵ *Calendar of Inquisitions Miscellaneous (Chancery) preserved in the Public Records Office, Vol. II* (London: His Majesty’s Principal Secretary of State for the Home Department, 1916), pp. 503, abstract no. 2006; J. R. Maddicott, “Thomas of Lancaster and Sir Robert Holland: A Study in Noble Patronage,” *The English Historical Review* Vol. 86, No. 340 (1971): 449–472. Interestingly, Maddicott notes that Robert the elder’s father (grandfather to the Beaumes raider Robert) was tasked with enforcing the Second Statute of Westminster in Lancashire in 1287 (pp. 451).

c.1312),¹⁶ second Baron Holand was the man that Lionel named as part of the Beaumes raid.¹⁷ This latter Robert (second Baron Holand) married a woman named Elizabeth, who is cited in *Plantagenet Ancestry* as “possibly the illegitimate daughter of Guillaume III *le Bon*, Count of Hainault.”¹⁸ Decades later, on 20 August 1367, Edward III grants 20*l.* annually “at the instance of queen Philippa, to Elizabeth de Holand, her bastard sister.”¹⁹ Although it is at this time impossible to definitively say that the queen’s half sister, Elizabeth de Holand, is the same Elizabeth de Holand whose husband was a primary accomplice to Margery’s assault, it is, however, a possible reason for Robert de Holand’s absence in the indictments.²⁰ The evidence suggests that there was a very close kinship between one of the felons and Queen Philippa of England. Speculatively, to ensure that the courts viewed the Beaumes manor attack as an assault against the king, Robert de Holand’s name was conveniently left absent, most likely to create distance between the culprits and the queen’s kin.

¹⁶ George Edward Cokayne, *The Complete Peerage of England, Scotland, Ireland, Great Britain, and The United Kingdom: Extant, Extinct, or Dormant*, ed.1, vol.4 (London: George Bell & Sons, 1892), 236. Here Robert is stated as being 16 years old that the time of his father’s death on 7 October 1328. His father supported the insurrection of Thomas earl of Lancaster, King Edward II’s cousin. Thomas is credited for arranging Robert the elder’s marriage to Maude in ca.1308. Maddicott states that Maude was “one of two daughters and coheirs of Alan de la Zouche, a prominent Leicestershire magnate.” See J. R. Maddicott, “Holland, Sir Robert (c. 1283–1328),” *Oxford Dictionary of National Biography* (2004).

¹⁷ Douglas Richardson, Kimball G. Everingham and David Faris, *Plantagenet Ancestry: A Study in Colonial and Medieval Families* (Baltimore: Genealogical Pub. Co., 2004), 398–399.

¹⁸ Richardson et al., *Plantagenet Ancestry*, 399.

¹⁹ *Calendar of Patent Rolls Edward III, Vol. XIV* (London: His Majesty’s Stationery Office, 1913), pp. 6 (TNA: C66/276, 41 Edw. III: Part 2, Patent Roll, m 24).

²⁰ Maddicott, “Thomas of Lancaster and Sir Robert Holland: A Study in Noble Patronage,” 449–472. Maddicott notes many connections between the Holands and the royal family. For example, Robert first Baron Holand was the middleman in communications between the king and Thomas earl of Lancaster in 1311 (pp. 464). Moreover, Robert the elder was “appointed as Justice of Chester,” in 1307 (pp. 465), and for his “good service” the king granted him lands. He also acted as a witness on charters for the king’s son Edward (pp. 466). Robert first Baron Holand was “one of only ten men summoned to appear at a special *colloquium* which the king was holding at Westminster” in 1316 (pp. 466). Maddicott makes the argument that “Holland was clearly trusted by the king” (pp. 467). He also states that Beaumes raider Robert de Holand’s brother “Thomas married Joan, the Fair Maid of Kent, grand-daughter of Edward I, and assumed the title of earl of Kent in right of his wife” (pp. 449). Thus, the royal family was connected to the Holands and so there are other possible justifications for Holand’s name being omitted. See also, Maddicott, “Holland, Sir Robert (c. 1283–1328),” *Oxford Dictionary of National Biography* (2004).

Eventually all of the individuals involved were pardoned; on 28 May 1348, John's father, Robert de Dalton was pardoned "because of his good service to the king for a long time," and this pardon was extended to his wife, Mary.²¹ On 4 May 1350, John de Dalton was pardoned "for good service and because he humbly submitted himself to the king's grace."²² Two or three other men were tried and convicted, but all were pardoned on 28 November 1348. Despite John's reinstatement in the king's army, Margery's lands and possessions were transferred to her nephew, Michael de Ponynge, because Margery "consented" to marry John without the king's licence.²³ This was a very lucrative transaction, as Margery owned land in nine counties, including Southampton, Wiltshire, Oxford, Berkshire, Sussex, Norfolk, Suffolk, Essex, and Surrey.²⁴ Margery lost everything and eventually she disappeared into historical oblivion. She was legally erased from her own story once the marriage was deemed consensual, and King Edward III successfully claimed victim status over her. An entry in the *CPR* from 28 January 1350 states that on 30 September 1349 Margery died, speculatively due to the plague.²⁵

Violence against elite women, in medieval English society, was rarely recorded in trial documents. The remarkable detail in the King's Bench records of Margery de la Beche's

²¹ *Calendar of Patent Rolls Edward III, Vol. VIII, 1348–1350*, 99–100 (TNA: C66/225, 22 Edw. III: Part 2, Patent Roll, m 35).

²² *Calendar of Patent Rolls Edward III, Vol. VIII, 1348–1350*, pp. 498 (TNA: C66/230, 24 Edw. III: Part 1, Patent Roll, m 15).

²³ *Calendar of Inquisitions Post Mortem, Edward III, Vol. IX* (London: His Majesty's Stationary Office, 1916), File 99, no. 235–236.

²⁴ *Calendar of Inquisitions Post Mortem Edward III, Vol. VIII* (London: His Majesty's Stationary Office, 1913), no. 574; *Calendar of Inquisitions Post Mortem Edward III, Vol. IX*, no. 154, 155, 235 and 236. *Calendar of Inquisitions Post Mortem Edward III, Vol. X*, File 122, no. 82. One of the outlaws, Thomas de Arden, knight, had his lands forfeited to the king valued at "500 marks of land and rent." See *Calendar of Close Rolls Edward III, Vol. VIII, 1346–1349* (London: His Majesty's Stationary Office, 1905), pp. 451 (TNA: C54/183, Close Roll, 22 Edw. III: Part 1, m 25).

²⁵ *Calendar of Patent Rolls Edward III, Vol. VIII*, pp. 460 (TNA: C66/230, 24 Edw. III: Part 1, Patent Roll, m 40). The exact date of Margery's death is conflicting; an *Inquisition Post Mortem* states that she died on 27 September, or 1 October, or 2 October, or 3 October, or 4 October, or 20 October, 1349.

abduction and/or rape is extraordinary in occupying six long membranes.²⁶ The *Calendar of Close Rolls*, *CPR*, and *Inquisitions Post Mortem* further detail the case, with entries on the battle at Beaumes (and it certainly was a battle ending in theft, pillage, murder, and abduction), the declaration of outlawry, writs to local sheriffs, the purchasing of pardons, and the vilification of the woman at the centre of it all, Margery. The historical treatment of Margery, by the few scholars who have looked at her, has ranged from neglect to scathing suspicion. She has been described by some historians as simply an abducted heiress,²⁷ as a scheming wife infatuated with another man,²⁸ and as a woman whose attack “may have been a sham.”²⁹ The battle of Beaumes has been described as the attacks of a rejected marriage suitor, as an *exemplum* of the “inefficiency or corruptibility” of English jurisprudence,³⁰ and as a “lucrative” case to enrich Edward III’s “new men.”³¹ But to get to the point of Margery’s abduction and/or rape, and her subsequently culpability, there is a long lineage of anxiety towards women who endured sexual violence, throughout the high to late Middle Ages in England.

Margery’s case is exceptional for many reasons: it involves the knightly class, the king’s family and son are heavily involved, and the gang-like nature of the attack which led to the battle of English knights fighting the royal guards. The records are also exceptionally detailed, noting

²⁶ TNA: KB 27/350, Rex, m 55–56; TNA: KB27/366, Rex, m 34; TNA: KB 27/350, Rex, m 155.

²⁷ Caroline Dunn, *Stolen Women in Medieval England: Rape, Abduction and Adultery, 1100-1500* (Cambridge: Cambridge University Press, 2012), 86–87. Dunn claims that Margery is the sister of the first lord Poynings. However, my research suggests that Sir Michael first lord Poynings is the son of Thomas, first baron of Poynings and Agnes Rokesley. Thomas is the brother of Margery de la Beche. Thomas has a daughter, also named Margery Poynings which could be the cause of confusion. This latter Margery Poynings is the sister of Michael first lord of Poynings, but Margery de la Beche is his aunt, not his sister.

²⁸ John Bellamy, *Crime and Public Order in England in the Later Middle Ages* (London: Routledge & Kegan, 1973), 58–59.

²⁹ Douglas Arden, “A Bloody Elopement: The Daltons of Apethorpe and the Battle of Beams,” *Northamptonshire Past and Present* Vol. 63 (2010): 16.

³⁰ Bellamy, *Crime and Public Order in England*, 58–67.

³¹ James Bothwell, *Edward III and the English Peerage: Royal Patronage, Social Mobility, and Political Control in Fourteenth-Century England* (Woodbridge: Boydell, 2004), 59.

Margery's personal wealth with an extremely thorough lists of her possessions,³² as well as the highly detailed court records from the King's Bench.³³ Despite how exceptional this case is, it contains common elements that we see in the regular court records of rather unexceptional women and girls. Primarily among these commonalities is the decentering of Margery from her own assault, questions around her consent, and her eventual culpability. How is it that Margery became the only individual punished for life because of her abduction and/or rape? When Lionel issued his first writ immediately after the assault, the legal narrative claimed that this was an attack by knights on members of the king's household and kin. To put it simply, Lionel framed the assault as an attack by men against other men, and even against God, and (treated with rather less gravity) an attack against Margery as well. The displacement of women from their own stories of sexual violence is a common narrative trope throughout medieval England. It occurs repeatedly in court documents, legal sources, and literary sources such as romances, pastourelles, and hagiography. Questioning the mental (non)consent of the women, to determine their culpability, troubled justices and jurors who increasingly relied on physical proof of non-consent. The proof of a crime was evident by the injuries done to the woman's body, and in Margery's case, she was missing. Her absent body and her ambiguous marriage to her abductor and/or rapist worked together to undermine Margery's victim status. As will become evident throughout the following case-studies of other (less elite) women, Margery's story is sadly not unique or exceptional in its outcome.

³² *Calendar of Patent Rolls Edward III, Vol. IX, 1350–1354* (London: His Majesty's Stationery Office, 1907), pp. 137–141 (TNA: C66/234, 25 Edw. III: Part 2, Patent Roll, m 6).

³³ TNA: KB 27/350, Rex, m 55–56; TNA: KB27/366, Rex, m 34; TNA: KB 27/350, Rex, m 155.

Modern Definitions

Although the complexities and ambiguities of defining the Latin term *raptus* have been well documented by medievalists (and are explored fully in chapter 2), the modern definitions of rape are also complex. While the purpose of this research is to offer more nuanced interpretations of medieval England's legal and popular assumptions about (non)consent to rape, and while comparisons to modern-day rape issues are beyond the scope of this research, it is nonetheless fruitful to explore the modern definitions of rape and sexual violence.

The word “rape” does not appear in the Criminal Code of Canada (1985) and the crimes of sexual assault are not under Part V “Sexual Offences, Public Morals and Disorderly Conduct,” but rather included in Part VIII “Offences Against the Person and Reputation.”³⁴ Within Part V of the Criminal Code “Sexual Offences” are listed as incest (s.155), bestiality (s.160), and voyeurism (s.162). Also in Part V, under “Offences Tending to Corrupt Morals,” there are crimes related to child pornography (s.163) and corrupting and luring children (s.172–173). “Disorderly Conduct” includes nudity (s.174), loitering (s.175) and “obstructing or violence to or arrest of officiating clergyman” (s.176). While it seems logical that crimes of sexual violence and rape would be included in Part V under “Sexual Offences,” it is not surprising that such crimes are listed under Part VIII “Offences Against the Person and Reputation,” as this has a long history in medieval England's criminal laws. Canada inherited its common law (including criminal laws) from England³⁵ and thus, it is unsurprising that the echoes of medieval England's *raptus* laws are resonating in Canada's Criminal Code. Under section 271–273 of the Criminal Code, there are

³⁴ Government of Canada, “Criminal Code (R.S.C., 1985, c. C-46),” *Justice Laws Website* (July 7, 2021): <https://laws-lois.justice.gc.ca/eng/acts/C-46/>

³⁵ Government of Canada, “Where Our Legal System Comes From,” *Department of Justice* (2017): <https://www.justice.gc.ca/eng/csj-sjc/just/03.html>

the crimes of “sexual assault” (s.271), “sexual assault with a weapon, threats to a third party or causing bodily harm” (s.272), and “aggravated sexual assault” (s.273). The Criminal Code lacks a clear definition of sexual assault and simply states that “everyone who commits sexual assault is guilty of an indictable offence” followed by the terms and conditions of imprisonment. There is no clear definition as to what the crime of section 271 “sexual assault” is. However, section 272 “sexual assault with a weapon” offers more detail in stating:

Every person commits an offence who, in committing a sexual assault,
 (a) carries, uses or threatens to use a weapon or an imitation of a weapon;
 (b) threatens to cause bodily harm to a person other than the complainant;
 (c) causes bodily harm to the complainant;
 (c.1) chokes, suffocates or strangles the complainant; or
 (d) is a party to the offence with any other person.³⁶

The emphasis on physical injury, either threatened or actualized, either against the victim or against another person present, is the priority of the offence. Neither is the vagueness of the crime of sexual assault rectified in section 273 “aggravated sexual assault” which is defined as “everyone commits an aggravated sexual assault who, in committing a sexual assault, wounds, maims, disfigures or endangers the life of the complainant.”³⁷ It is clear that the crime is concentrated on the physical injury done to the body of the victim, in determining the severity of the crime, as the Justice Department states that “the higher levels of sexual assault are defined in terms of the weapons used...or the severity of violence...”.³⁸ According to the Justice Department of Canada, the severities of these crimes are listed in levels; the most serious being Level 3 aggravated sexual assault which can “endanger the life of the victim;” Level 2 involves

³⁶ Government of Canada, “Criminal Code (R.S.C., 1985, c. C-46),” section 272 (1) a–d.

³⁷ Government of Canada, “Criminal Code (R.S.C., 1985, c. C-46),” section 237(1).

³⁸ Government of Canada Department of Justice, “An Estimation of the Economic Impact of Violent Victimization in Canada, 2009,” *Department of Justice* (June 12, 2016): https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rr14_01/p10.html

weapons or bodily harm from the sexual assault, and least severe is “Level 1 sexual assault, incest, anal intercourse, voyeurism and other sexual violations.”³⁹ Progressing from Level 1 where there are “minor physical injuries or no injuries to the victim,”⁴⁰ to Level 3 with extreme bodily injury, it is evident that the degree of the crime is viewed in terms of the injury done to the victim’s body. The following research will demonstrate how the English medieval criminal courts, laws, and popular normative sources also viewed the proof and severity of the crime by the victim’s bodily injuries.

It is imperative that Part V and Part VIII of the Canadian Criminal Code be considered jointly here, despite Level 1 crimes falling under “sexual offences” and Level 2 and 3 crimes being those “against the person and reputation.” The lineage of medieval English felony law is striking; the following chapters will show that popular opinions, aided by church doctrine, ensured that the damaged reputation fell on the woman who lost her virginal status from rape. In a sense, this was a crime against her reputation. The issues around definitions and terminology will also be discussed more below, but here it is worthy to note the similarities in the violence of the crime and the damaged reputation; this harks back to the English medieval past where force, *vis*, and reputation, *fama*, were paramount.

To find a more substantial definition of “sexual assault” one must look at *Martin’s Annual Criminal Code*, a popular legal commentary on Canada’s Criminal Code, including practical court decisions, case-studies, as well as annotations of the Criminal Code.⁴¹ *Martin’s*

³⁹ Government of Canada Department of Justice, “An Estimation of the Economic Impact of Violent Victimization in Canada, 2009.”

⁴⁰ Government of Canada Department of Justice, “An Estimation of the Economic Impact of Violent Victimization in Canada, 2009.” References Brennan, S. and A. Taylor-Butts, “Sexual Assault in Canada, 2004 and 2007,” *Canadian Centre for Justice Statistics Profile Series* No. 19 Statistics Canada Catalogue No. 85F0033M (2008): 7.

⁴¹ Edward L. Greenspan, Marie Henein and Marc Rosenberg, *Martin’s Annual Criminal Code* (Toronto: Thomson Reuters, 2020), Part VIII, s. 271.

states that s.271 “sexual assault” is “committed in circumstances of a sexual nature such that the sexual integrity of the victim is violated.”⁴² This definition provides a more sexual nature to the crime than the Criminal Code, which emphasizes the violence and injuries. However, the Justice Department notes that Canada’s treatment of sexual assault is unlike other countries in that the crime is notably less about the sexual and more about the physical assault.⁴³ For example, the United Kingdom states in the Sexual Offences Act (2003), Part I that “rape” is when “he (A) intentionally penetrates the vagina, anus, or mouth of another person (B) with his penis, B does not consent to the penetration, and A does not reasonably believe that B consents.”⁴⁴ This is drastically different than Canada’s Criminal Code, most obviously by the inclusion of the word “rape.” The UK’s legislation clearly views rape in terms of biological male and female designations with an emphasis on the culprit’s ability to sexually penetrate the victim. This is similar to the criminal codes of New Zealand and California among others.⁴⁵ Canada stands in contrast to other legislative criminal codes in both its terminology (Canada does not include the word “rape”) and its emphasis on the violence, not the sexual nature, of the crime. The following chapters will further demonstrate how medieval England’s criminal laws of *raptus* similarly defined the crime by the physical bodily injuries of the victim.

⁴² Government of Canada Department of Justice, “An Estimation of the Economic Impact of Violent Victimization in Canada, 2009,” references *Martin’s Annual Criminal Code, 2010* (Greenspan and Rosenberg, 2009), s.271, pp.572.

⁴³ Government of Canada Department of Justice, “An Estimation of the Economic Impact of Violent Victimization in Canada, 2009.” The report states “In contrast, many other nations’ sexual offence legislation uses definitions that are mainly based on the sexual nature of the crimes.”

⁴⁴ UK Public General Ages, “Sexual Offences Act 2003,” *The National Archives* <https://www.legislation.gov.uk/ukpga/2003/42/part/1/crossheading/rape> Section c.42, Part 1 “Rape.”

⁴⁵ Government of Canada Department of Justice, “An Estimation of the Economic Impact of Violent Victimization in Canada, 2009.”

Scope and Aim

Through an examination of twelfth to fourteenth-century laws, trial documents, Middle English romance narratives, medical and ecclesiastical texts, this research aims to uncover the normative and legal assumptions about medieval English rape culture. Sir Matthew Hale (1609 – 76) published the “most quoted authority on the law of rape in England”⁴⁶ in his *History of the Pleas of the Crown*. He influentially stated that “rape is an accusation easily to be made and hard to be proved, and harder to be defended by the party accused, tho’ never so innocent.”⁴⁷ Hale’s hesitancy to believe rape accusations has a long lineage of acceptance among men of law in England’s medieval courts. In a crime that rarely had witnesses, the testimony of “he said, she said” disturbed jurors and justices of the courts, leading to ramifications which can still be seen today. For example, *Martin’s* states that “the absence of consent is subjective and must be determined by reference to the complainant’s subjective internal state of mind.”⁴⁸ Determining the internal state of non-consent troubled medieval jurors and justiciars to such a degree that, it will be shown, they relied on the physical proof of non-consent.

Despite the fact that in 2015 “1 in 5 women in the U.S. reported completed or attempted rape at some point during their lifetime,” it is estimated that in America 43.6% of women endure “some form of contact sexual violence.”⁴⁹ In Canada, “1 in 3 women and 1 in 8 men experienced unwanted sexual behavior in public” in 2018.⁵⁰ Of those reported, 39% of Canadian women

⁴⁶ Barbara Toner, *The Facts of Rape* (London: Hutchinson, 1977), 95.

⁴⁷ Sir Matthew Hale, *History of the Pleas of the Crown*, vol.1 (London: A. Strahan, 1763), 635.

⁴⁸ Greenspan *et al.*, *Martin’s Annual Criminal Code*, Part VIII, s.731.1.

⁴⁹ Sharon G. Smith, Xinjian Zhang, Kathleen C. Basile, Melissa T. Merrick, Jing Wang, Marice-jo Kresnow and Jieru Chen, *National Intimate Partner and Sexual Violence Survey: 2015 Data Brief – Updated Release* (Centers for Disease Control and Prevention, 2018), 1–2.

⁵⁰ Adam Cotter and Laura Savage, “Gender-Based Violence and Unwanted Sexual Behaviour in Canada, 2018: Initial Findings from the Survey of Safety and Public and Private Spaces,” *Statistics Canada* (2019): <https://www150.statcan.gc.ca/n1/pub/85-002-x/2019001/article/00017-eng.htm>

stated that they had been “physically or sexually assaulted since the age of 15” and “5% of women stated that police found out about the most serious incident of sexual assault they experienced.”⁵¹ It is well-known that rape is an extremely under-reported crime, and it is estimated that in Canada “approximately one in ten incidents are reported to police.”⁵² This is not unique to Canada, as “rape and sexual assault are thought to be two of the most under-reported crimes in the UK, as a result of both the stigma attached to the victims and the way the crime has been socially constructed within our society.”⁵³ Victim-blaming rape survivors has a long history, as will be shown throughout the following chapters, as “1 in 5 victims of sexual assault [in Canada] felt blamed for their own victimization.”⁵⁴ Sadly, this is nothing new, as demonstrated by the remarks from Sir Matthew Hale in the seventeenth century, and as will become evident in the following chapters, the longevity of victim-blaming can be traced back to the high and late Middle Ages.⁵⁵ Medieval English jurors and defendants used slander against rape survivors that is shockingly consistent to today: *what was she doing there alone? Was she drinking? Was she asking for it? Did she enjoy the assault? No does not really mean no.* The common narrative tropes, in modern-day media and the courts, include fears of false rape accusations, the binary construction of the “true rape victim” and the blame-worthy woman and

⁵¹ Cotter and Savage, “Gender-Based Violence and Unwanted Sexual Behaviour in Canada, 2018.”

⁵² Government of Canada Department of Justice, “An Estimation of the Economic Impact of Violent Victimization in Canada, 2009.”

⁵³ Amy Grubb and Emily Turner, “Attribution of Blame in Rape Cases: A Review of the Impact of Rape Myth Acceptance, Gender Role Conformity and Substance Use on Victim Blaming,” *Aggression and Violent Behavior* Vol. 17 (2021): 443–452, quote from pp. 443–444.

⁵⁴ Cotter and Savage, “Gender-Based Violence and Unwanted Sexual Behaviour in Canada, 2018.”

⁵⁵ This is not to say that victim-blaming began in the high and late Middle Ages. On the contrary, scholars have looked at the early Middle Ages and found legal punishments for women deemed culpable for their own rape. See James Brundage, *Law, Sex and Christian Society in Medieval Europe* (Chicago: University of Chicago Press, 1987), particularly chapters 2–4, pp.55–174 for discussion on Justinian, Salic, and Visigothic law codes.

that the survivor's body can enjoy the sexual assault.⁵⁶ This research explores how these modern comments and tropes have medieval origins.

Victim-blaming is defined by *The Canadian Resource Centre for Victims of Crime*, as “a devaluing act that occurs when the victim(s) of a crime or an accident is held responsible – in whole or in part – for the crimes that have been committed against them.”⁵⁷ *The Resource Centre* claims that people blame victims of violent crimes by constructing victims to be “passive individuals who seek out and submit to the violence...offenders are seen as hapless individuals who are compelled to act violently by forces they cannot control.”⁵⁸ These ideas of the passivity of the victim and the uncontrollable desires of the offender are common literary tropes, used to justify sexual violence, in Middle English romances. Modern theorists of violent crimes claim that victim-blaming is frequently the result of the “invulnerability theory,” in which people place fault on the victim “in order to feel safe themselves.”⁵⁹ Invulnerability theory suggests that people justify rape by claiming “she was raped because she walked home alone in the dark. I

⁵⁶ References to these instances are, unfortunately, numerous. See, for example: Garance Franke-Ruta, “A Canard That Will Not Die: ‘Legitimate Rape’ Doesn’t Cause Pregnancy,” *The Atlantic* (August 19, 2012) <https://www.theatlantic.com/politics/archive/2012/08/a-canard-that-will-not-die-legitimate-rape-doesnt-cause-pregnancy/261303/>; Jessica Phelan, “Judge Derek Johnson Reprimanded for Claiming Body Can ‘Shut Down’ Rape,” *Global Post* (December 14, 2012) <https://www.pri.org/stories/2012-12-14/judge-derek-johnson-reprimanded-claiming-body-can-shut-down-rape>; Charlotte Alter, “Todd Akin Still Doesn’t Get What’s Wrong With Saying ‘Legitimate Rape’,” *Time* (July 17, 2014) <https://time.com/3001785/todd-akin-legitimate-rape-msnbc-child-of-rape/>; Isabelle Gerretsen, “Rape Survivor Slams Utah Judge for Calling her Rapist a ‘Good Man’,” *NewsWeek* (April 19, 2017) <https://www.newsweek.com/judge-thomas-low-keith-robert-vallejo-julia-kirby-rape-585913>; Brett Bundale, “‘Clearly, a Drunk can Consent’: Complaints about N.S. Judge’s Comments Dismissed,” *The Canadian Press CTV News* (April 4, 2018) <https://www.ctvnews.ca/canada/clearly-a-drunk-can-consent-complaints-about-n-s-judge-s-comments-dismissed-1.3871249>; Drew Anderson, “Controversial Former Judge Robin Camp can one again Practise Law in Alberta,” *CBC News* (May 23, 2018): <https://www.cbc.ca/news/canada/calgary/robin-camp-sexual-assault-trial-judge-reinstated-lawyer-1.4674420>; Brian Flood, “Judge Removed for Questions to Rape Victim, Other Misconduct,” *Bloomberg Law* (May 26, 2020) <https://news.bloomberglaw.com/legal-ethics/judge-removed-for-questions-to-rape-victim-other-misconduct>

⁵⁷ The Canadian Resource Centre for Victims of Crime, *Victim Blaming* (August 2009) https://crevc.ca/docs/victim_blaming.pdf, pp. 2.

⁵⁸ The Canadian Resource Centre for Victims of Crime, *Victim Blaming*, 2.

⁵⁹ The Canadian Resource Centre for Victims of Crime, *Victim Blaming*, 3.

would never do that, so I won't be raped."⁶⁰ Psychologists studying violent gendered crimes found that when there was injury from the rape, then there was "greater victim blaming that intensifies the negative consequences for the victims."⁶¹ By placing fault on the survivors of sexual violence, as well as recognizing the uncontrollability of the offenders, rape can be placed on the periphery of normative culture which ensures that those who are raped are either asking for it, or had the unfortunate rare occurrence of meeting a rapist. These false narratives are not new; the English courts and popular cultural attitudes towards rape in medieval England used similar constructs. The long history of victim-blaming grounds the following research in its examination of how rape and non-consent have been socially constructed and perceived within society.

This research aims to address these large systemic issues from a medieval historical perspective. By looking at *raptus* laws, how the laws were interpreted by the courts through actual trial records, as well as the social attitudes about rape as represented in popular romance narratives, new understandings of the cultural and legal discourses of rape in medieval England will be presented. Middle English romance narratives offer the opportunity to study societal anxieties "largely invisible from more conventional historical records."⁶² Heeding the advice of P. J. P. Goldberg, reading romance in conjunction with, "not in isolation" from, contemporary legal and normative understandings of rape enables historians to be "more acutely sensitive to the ways in which one echoes the other, or conversely, offers a different emphasis."⁶³ This thesis will argue that romances, with scenes of sexual violence, were beyond fanciful entertainment, or

⁶⁰ The Canadian Resource Centre for Victims of Crime, *Victim Blaming*, 3.

⁶¹ Bernice Andrews, Chris R. Brewin, and Suzanna Rose, "Gender, Social Support, and PTSD in Victims of Violent Crime," *Journal of Traumatic Stress* Vol. 16, No. 4 (2003): 421–427, see pp. 422.

⁶² P. J. P. Goldberg, "Introduction," in *Medieval Women and the Law*, ed. Noël James Menuge (Woodbridge: Boydell, 2000), x.

⁶³ Goldberg, "Introduction," x.

hagiographical rhetoric, but rather they were legally instructive. As seen in Canada's Criminal Code above, modern day law courts still rely on physical proof of the crime. Yet scholars have so far overlooked the continuity between the current western rape culture and medieval England's legal and social attitudes towards physical injury and (non)consent. Scholars to date have focused either on fictional literary texts or on legal and normative source. The following chapters provide new insights by systematically examining the representations of rape and sexual violence in popular Middle English romance, medieval English legal documents, and actual trial records to determine how social attitudes, reflected in the literary representations of rape in romance, compared to the laws and lived experiences of contemporaneous women in rape cases.

This research will demonstrate that romance shows consistent patterns of non-consent as defined by the contemporary statutory laws and legal treatises. It is suggested that romance was legally instructive in the expectations of women to physically resist their own rapes. Furthermore, it will be shown how medieval English gender norms of heterosexual courtship and the cultural expectations of feminine passivity influenced the legal and literary representations of rape and sexual violence. The aim of this research is to demonstrate how the laws, the courts, and the popular societal opinions consistently judged non-consent to rape by the proof of the woman's bodily injury. In turn, it will explore how this allowed the space for the constructed legal identities of the true rape victim, the reluctant but ultimately willing accomplice, and the culpable blame-worthy woman.

Theory

The guiding theoretical framework for this research is queer theory's use of heteronormativity to explain how rape occurs within cultural normative identities of masculinity and femininity.⁶⁴ This is grounded in gender theory's rejection of biological essentialism and instead places masculinity and femininity as part of a social construct that can be occupied by all sexed bodies. As discussed more below, gender theory's emphasis on the complexities of gender identity as being performed, often unconsciously, is used throughout.⁶⁵ Judith Butler's explanation that gender only gains social meaning when understood within the cultural context of a given society will ground the research by exploring how medieval English culture perceived normative masculinity and femininity.⁶⁶ Through gender and queer theory, this research provides an intersectional analysis to examine age and socio-economic class differences between plaintiff and defendant, which in medieval English courts invariably refers to woman victim and accused man rapist.

There are of course limitations to a heterosexual lens of analysis, as medieval sexual practices were not exclusively heterosexual and such generalizations run the risk of obscuring the diversity of same-sex sexual practices of the period. Thus, I am cognizant of the fact that the source material, in defining rape as a crime committed by a man onto a woman, is assuming heteronormativity and that this does not reflect the realities of sexuality and sexual violence of

⁶⁴ Carine M. Mardorossian, *Framing the Rape Victim: Gender and Agency Reconsidered* (New Brunswick: Rutgers University Press, 2014).

⁶⁵ Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (New York: Routledge, 1999), specifically pp. 180 where Butler states "gender reality is created through sustained social performances." See also, Judith Butler, *Undoing Gender* (New York: Routledge, 2004).

⁶⁶ Judith Butler, *Undoing Gender*, 20.

the medieval past. Equally important to acknowledge is how same-sex sexuality has been the subject of historical investigation far more than heterosexuality, and consequently, heterosexuality has occupied a privilege position of appearing natural and unworthy of scholarly scrutiny. I aim to disrupt this trend by studying the legal and literary constructions of heterosexual courtship which open the space for sexual violence to appear as a form of sexual seduction.

Following queer theory's critique of heteronormativity, rape is not viewed as the product of "toxic masculinity," but rather, rape is perceived as a product of hegemonic masculinity and femininity, not outside the cultural bounds of acceptability but firmly entrenched within them.⁶⁷ Raewyn Connell defines hegemonic masculinity as "the configuration of gender practice which embodies the currently accepted answer to the problem of the legitimacy of the patriarchy, which guarantees (or is taken to guarantee) the dominant position of men and the subordination of women."⁶⁸ Connell argues that hegemonic masculinities are in a "dominant" position compared to "subordinate" masculinities and that these positions can change throughout history.⁶⁹ When speaking of a "rape culture" Susan Brownmiller's influential work argues that "we must look toward those elements in our culture that promote... the ideology and psychologic encouragement to commit" rape.⁷⁰ These cultural ideologies make rape appear tolerable, perhaps even inevitable, and they are largely unquestioned cultural markers that are upheld by larger

⁶⁷ Mardorossian, *Framing the Rape Victim*, 10–14.

⁶⁸ Raewyn Connell, *Masculinities*, Second Edition (Cambridge: Polity Press, 1995), 77. Here Connell notes how "European/American society" has "heterosexual men" positioned as dominant, "and the subordination of homosexual men." Thus, using an intersectional approach, not all masculinities are in a position of privilege. As will be discussed in the following chapters on Middle English romance, there are representations of dominant masculinities in romance that idealise traits such as heterosexual desire, seduction, physical prowess, and violence.

⁶⁹ Connell, *Masculinities*, 78, 198. Connell notes that "the history of masculinity...is not linear...complex structures of gender relations in which dominant, subordinated and marginalized masculinities are in constant interaction, changing the condition of each other's existence and transforming themselves as they do" (pp. 198).

⁷⁰ Susan Brownmiller, *Against our Will: Men, Women and Rape* (New York: Simon and Schuster, 1975), 391.

cultural structures, such as laws and gender norms.⁷¹ Tracey Nicholls defines “rape culture” as a culture “that normalizes and excuses rape, a social context in which the desires of privileged aggressors are prioritized over the comfort, safety, and dignity of marginalized populations that are seen as targets, prey.”⁷² Here, Connell notes that hegemonic masculinity has been viewed by feminists as violent, “not just a deviant group,”⁷³ since dominant masculinities “use violence to sustain their dominance,” including the use of sexual violence.⁷⁴

The trendy slogan that “real” men do not rape,⁷⁵ popularized by Charlize Theron in 1999,⁷⁶ or the hashtag #NotAllMen falsely position rapists as operating outside of cultural norms. This works to sustain the prevailing rape culture by marking it elusive and abnormal, while obscuring the hegemonic structures of gender performance that enable and even support the occurrence of rape. Heather Fraser and Kate Seymour describe the “cultural coupling” of sexuality and violence in mainstream culture and how the criminal justice system prescribes anger management to combat gendered violence which in turn underscores the “largely unquestioned” assumption that “masculinity and violence naturally go together.”⁷⁷ Fraser and Seymour’s discussion on the use of violence to emphasise the vulnerability of the victim⁷⁸ is

⁷¹ Tracey Nicholls, *Dismantling Rape Culture: The Peacebuilding Power of ‘Me Too’* (London: Routledge, 2020), 9–10.

⁷² Nicholls, *Dismantling Rape Culture*, 26. Nicholls comments that although these roles are not necessarily gendered, they frequently involve men “as hunters for sex and the conquerors of women” (pp. 27).

⁷³ Connell, *Masculinities*, 41.

⁷⁴ Connell, *Masculinities*, 83. See also pp. 232.

⁷⁵ Richard Cohen, “It’s Simple: Real Men Don’t Rape,” *The Washington Post* (November 25, 2014). Cohen ends the article with “but I do know with dead certainty that a rapist is not really a man – and neither is anyone who lets it happen.” See also Andee Jones, “Real Men Don’t Rape,” *Eureka Street* Vol. 23, No. 8 (2013): 36–37.

⁷⁶ Corinna Schuler, “South Africa Bans ‘Real Men Don’t Rape’ Ad After Male Outcry: Discrimination Against Men: Hollywood Actor Returned Home to Make Commercial,” *National Post* (October 7, 1999).

⁷⁷ Heather Fraser and Kate Seymour, *Understanding Violence and Abuse: An Anti-Oppressive Practice Perspective* (Winnipeg: Fernwood Publishing, 2017), 74, 87.

⁷⁸ Fraser and Seymour, *Understanding Violence and Abuse*, 18–19.

reminiscent of the Canadian Criminal Code's levels of violence informing the severity of the crime.

Criminologists and social scientists agree that rape has less to do with sexual urges, and more to do with physical domination, which is linked to “the toxicity of normative masculinity.”⁷⁹ It is widely agreed that hegemonic masculinity and the dominant cultural fetishization of sexualized violence leads to a rape culture, and yet there is a general reluctance to view rape as a cultural problem.⁸⁰ Instead, mainstream media and courts prefer to focus on the individual deviancy of rapists, much like the medieval courts of England. As will become evident, the current definitions and interpretations of sexual assault are highly reminiscent of the *raptus* laws of medieval England as there is preference to prosecute cases where visible signs of violence are evident. Moreover, this research will show how the toxicity of hegemonic gender norms in medieval England created the space for rape culture to be normalized. Queer theory suggests that social norms have supported a rape culture and, as stated by Carine Mardorossian, “when we see rape as a problem that results from normative rather than deviant identities” only then “its deterrence will stop being marginalized as a special-interest issue.”⁸¹ This informs both the popular romance and legal interpretations, as it is recognized that what is defined as a crime of sexual violence is a reflection, according to Ann Oakley, of societal expectations of appropriate gender behaviour.⁸²

⁷⁹ Mardorossian, *Framing the Rape Victim*, 11.

⁸⁰ Mardorossian, *Framing the Rape Victim*, 10–28; Fraser and Seymour, *Understanding Violence and Abuse*, 19–23.

⁸¹ Mardorossian, *Framing the Rape Victim*, 19.

⁸² Ann Oakley, *Sex, Gender and Society* (Farnham: Ashgate Publishing, 1972), specifically 68–69, 77.

It is acknowledged that gender relations and power are central to studying sexual violence.⁸³ By examining how rape is able to operate within the normative cultural expressions of masculinity and femininity, this research is founded on the belief that rape is a problem of hegemonic gender identity expression and not a result of “toxic” or “deviant” masculinity. Although it is acknowledged that greater work needs to be done to study the multiplicity of factors that make up an individual identity, as will be discussed more throughout, the source records are vague and lack identifying details such as ethnicity, disability, religion, nationality, and other intersectional perspectives. When possible, the age discrepancy of the woman and the accused, as well as the discrepancy in social classes are highlighted, in relation to power and assumed believability in court and public opinion.

Finally, post-structuralism is used in analyzing sources to determine the implicit power structures informing the composition of the texts and within the sources themselves, which are not explicitly stated.⁸⁴ Post-structuralism guides the analysis of fictional romance literature as being an attempt to portray and then make meaning of real-life experiences, which are relatable to a contemporary audience.⁸⁵ As will be discussed more in chapter 6 “Middle English Romance: A Historiography and Review,” the assumed binary distinction between legal sources and literary texts becomes ambiguous in their representations of rape. Thus, Hayden White’s distinction between the “discourse of the real” and the “discourse of the imaginary”⁸⁶ is useful in interpreting both legal and romance texts as literary sources constructed to serve a purpose. The

⁸³ Kim M. Phillips, “Written on the Body: Reading Rape from the Twelfth to Fifteenth Centuries,” in *Medieval Women and the Law*, ed. Noël James Menuge (Woodbridge: Boydell, 2000), 125; Sara M. Butler, *The Language of Abuse: Martial Violence in Later Medieval England* (Leiden: Brill, 2007), 4.

⁸⁴ Michel Foucault, “Authorship: What is an Author?,” *Screen* Vol. 20, No. 1 (1979): 13–34.

⁸⁵ Hayden White, “The Value of Narrativity in the Representation of Reality,” *Critical Inquiry* Vol. 7, No. 1 (1980): 5–27.

⁸⁶ White, “The Value of Narrativity in the Representation of Reality,” 23.

purpose, as will be shown, was didactic in informing women that they must resist their rape and that sometimes rape is an expression of seduction.

Structure

The thesis is divided into two primary fields of scholarly study: medieval English laws, and popular Middle English romance. Each of the following chapters will begin with a literature review to state the current field of scholarship on that chapter's topic and then address where the present research fits in. Chapter 2 "The Five Ages of Secular *Raptus* Laws" covers the legal history of medieval England's secular laws beginning with *Glanvill* in the twelfth century and ending with the 1382 Statute of Rapes. This chapter discusses at length the various scholarly interpretations of *raptus* and it offers a close reading of the legal texts, to put forth a more literal definition based on the primary sources. Here, the complexity of marriage in *raptus* cases is discussed as both an opportunity for legal autonomy and how it was used to settle rape cases.

Chapter 3, "The Eyre Courts in Practice," includes twenty-eight cases from the court of the general eyre, most of which are unpublished and previously never studied. This chapter systematically categorizes the trial records based on the legal age they fall under, whether they were brought forward by a woman's appeal or a royal indictment, whether there was a conviction or acquittal, and whether the conviction resulted in the full legal punishment prescribed by the law. These trial records allow for exploration into how the courts of the general eyre interpreted the laws and demonstrate the existence of a schism between the laws in theory, that is how they were written, and the laws in practice. It will be evident that the courts continually exploited the lack of physical injury to question the consent of the woman and downgrade the offence. Despite

the issues in studying case-records (discussed in chapters 2 and 3), they are nonetheless extremely important sources of resilience. As stated by Goldberg, we need to be mindful of not only “how legal discourses constructed women” but also “the ways women attempted to exercise agency even within patriarchal constraints of different legal systems.”⁸⁷ With this in mind, the case-records are in themselves texts of agency and resistance, as women continued to bring their appeals forward, to have their day in court, despite the legal constraints attempting to delegitimize their claims.

Following the secular laws and court cases, chapter 4 “Ecclesiastical Perspectives” examines the ecclesiastical legal system. Rape was the only sexual crime not to be tried in the church courts, as it fell under the jurisdiction of the king’s law. How the expanding bureaucracy of the king’s court was operating in tandem with the developing complexity of canon courts, throughout western Europe, is also discussed here. This chapter explores canon texts which offer more nuanced perspectives of mental non-consent to rape, versus the physical non-consent to rape which was paramount in the secular courts. Importantly, this chapter highlights the ecclesiastical perspectives on appropriate gender roles and performance of masculinity and femininity, as discussed in conduct literature and hagiography of virgin martyrs.

The consequences of pregnancy occurring from rape are discussed fully in chapter 5, “The Third Identity.” Here, the medical assumptions about the two-seed theory of conception will be shown as providing the scientific framework which supported the legal opinion that conception proves consent. The spectrum of medieval England’s constructed legal identities of rape survivors are fully discussed within chapter 5. That is, based on the physicality of consent or non-consent, courts constructed three identities that women could have when appealing their

⁸⁷ Goldberg, “Introduction,” ix.

own rape: the innocent victim, the reluctant but willing accomplice, or the culpable woman. The binary distinction between mental and physical consent, as presented in the previous chapter on ecclesiastical laws, will be emphasized here in relation to the secular courts. Moreover, the paradoxical nature of the marriage clause in *raptus* cases will be fully addressed to demonstrate how it both legally erased rape and turned it into consensual coitus.

The following chapters are devoted to Middle English romance. By looking at how narratives of rape and sexual violence are represented in select texts, these chapters present inferences about medieval English popular opinions and cultural norms around sexual violence. This is a difficult task, as noted by Corinne Saunders, in that the “relation of fiction and reality in Middle English romance is notoriously difficult to assess...romance straddles the actual and the fantastical.”⁸⁸ Determining the representations of reality in romance will be done by first looking at “Middle English Romance: A Historiography and Review” in chapter 6. This chapter includes a historiography on the field of popular Middle English romance and discusses how various scholars define the genre, who read the texts, and what that means for the numerous instances of sexual violence in romance. Following this, chapters 7 and 8 examine specific popular romances where scenes of rape and sexual violence are depicted. Chapter 7 “Abduction and Malicious Rape Accusations: *Sir Orfeo* and *Amis and Amiloun*,” and chapter 8 “Rape in Romance: *Sir Degare*, *Sir Gowther*, and *Le Bone Florence of Rome*” provide close linguistic analysis and readings of the scenes. This is done to uncover why the threat of rape, and the rapable body, are integral to the romance genre (and many other genres such as hagiography and pastourelles, which are beyond the scope of this thesis). It will be shown how these select popular romances have striking consistency in their representations of the legal responsibilities of women to resist

⁸⁸ Corinne Saunders, “A Matter of Consent: Middle English Romance and the Law of *Raptus*,” in *Medieval Women and the Law*, ed. Noël James Menuge (Woodbridge: Boydell, 2000), 105.

their own rape, and when they are not able to, the apparatus of legal identities is employed, by way of conception and marriage, to “erase” the rapes. It is suggested that these texts informed the listening and reading audiences on expected gendered behaviour and legal realities.

The final chapter 9 “The Body of Proof and the Rapable Body” reiterates the four main findings of this research, that is: 1) medieval English legal and normative sources viewed consent and non-consent to rape based on physical bodily proof. The laws stipulate that physical injury was the required proof of a woman’s non-consent, and conversely, pregnancy legally and medically proved a woman’s consent of the flesh. This is the “body of proof”; 2) The laws constructed three legal identities that women could have; either the innocent victim (based on physical injuries as proof of non-consent), the reluctant but willing accomplice (mental non-consent but physical consent proven by pregnancy from rape), or the culpable woman (no physical injuries to prove that a crime occurred); 3) The marriage clause in *raptus* was used paradoxically as a legal erasure of rape and as an opportunity for women’s legal autonomy in marriage choice, when choosing to marry their ravisher; 4) And lastly, that the gender expressions of medieval English culture, that passivity was a marker of femininity, and that “ladies” were expected to initially decline sex, ensured that the wooing of a reluctant lady enabled a culture of threatened rape. That is, heteronormative gender roles encouraged persistence in masculine seduction to actively entice or intimidate women into sex.

A Note on Terminology and Gender

The primary sources are explicit in that rape is a crime that can only be committed by a man onto a woman; in medieval England it is legally impossible for a man to be the victim of

rape. This will be discussed further in the following chapters, but here it is important to note the existence of legally binding and rigid gender-roles in medieval English rape cases. This thesis offers literal translations of the primary sources, which may at times appear jarring and unsettling to modern readers. Nonetheless, the translations aim at reproducing as accurately as possible the meaning of the sources.

Despite the close translations, modern theories of gender and power are integral in the analysis of the source material. Ann Oakley noted in the 1970s that when rape is viewed as a crime that is exclusively committed by men, then “it is not recognized by the law that women can initiate intercourse.”⁸⁹ Oakley warns that this legal definition of rape is grounded in, and perpetuates, cultural norms of masculinity and femininity and assumptions about women’s sexuality as passive. As will become evident throughout the thesis, medieval England’s *raptus* laws are products of, and producers of, culturally acceptable gender relations and power.

The following work will make use of the theoretical concept of gender as provided by Joan Wallach Scott, in that gender is a fundamental “element of social relations based on perceived differences between the sexes, and gender is a primary way of signifying relationships of power.”⁹⁰ In trial records and court proceedings of rape cases there are complex layers of power relations: victim and perpetrator; woman and man; plaintiff and justices; the individuals and the court systems. Gender is intrinsically a part of these power relations and is employed as a type of “symbolic representation” as Scott claims:

Gender involves four interrelated elements: first, culturally available symbols that evoke multiple (and often contradictory) representations – Eve and Mary as symbols of woman, for example, in the Western Christian tradition – but also, myths of light and dark,

⁸⁹ Oakley, *Sex, Gender and Society*, 68–69.

⁹⁰ Joan Wallach Scott, “Gender: A Useful Category of Historical Analysis,” in *Gender and the Politics of History* (New York: Columbia University Press, 1988): 28–50, quote from pp. 43.

purification and pollution, innocence and corruption. For historians, the interesting questions are, Which symbolic representations are invoked, how, and in what contexts?...The point of new historical investigation is to disrupt the notion of fixity, to discover the nature of the debate or repression that leads to the appearance of timeless permanence in binary gender representations.⁹¹

The symbolic representations of “woman” in rape narratives, as either Mary or Eve, pure or corrupted, innocent or guilty, are a binary consistent in the laws themselves, the trial records, and the normative sources of popular Middle English romance. These “symbolic representations” are both explicitly mentioned and implicitly hinted at in the primary sources’ discussions of rape victims. Power, as argued by Michel Foucault, allows space for resistance⁹² and indeed there are resistance narratives in the primary sources discussed. The following thesis aims at highlighting the “interesting questions” posed by Scott in exploring when certain “symbolic representations” are used either by the woman herself or placed onto her. By exploring the relationships of power within the laws, and the “symbolic representations” used in romance, conduct literature, and actual trial documents, we can gain nuanced interpretations of medieval England’s hegemonic structures of gender relations. Heeding Scott’s advice, I will use gender as an analytical lens will be used to “provide a way to decode meaning”⁹³ in the trial documents, romance narratives, and in the laws themselves. The necessity of understanding gender as it relates to, and is informed by power relations, is stated by Scott in that “gender legitimizes and constructs social relations...[there is a] reciprocal nature of gender and society and into the particular and contextually specific ways in which politics constructs gender and gender constructs politics.”⁹⁴ As will be discussed at length in the following chapters, there is a coherent representation of rape

⁹¹ Scott, “Gender: A Useful Category of Historical Analysis,” 43.

⁹² Christina Hughes, *Key Concepts in Feminist Theory and Research* (London: Sage Publications, 2002), 66–67.

⁹³ Scott, “Gender: A Useful Category of Historical Analysis,” 45–46.

⁹⁴ Scott, “Gender: A Useful Category of Historical Analysis,” 45–46.

in popular romance, the laws, and in trial records. This suggests that gender relations are both informing, and informed by, the same cultural symbols expressed in medieval England's normative and legal sources. I acknowledge that these relations and cultural symbols are not static, ahistorical entities.⁹⁵ Rather, the following research aims to understand the cultural symbols employed in rape narratives (woman as either Eve or Mary, pure or polluted, virgin or temptress, innocent or guilty), by the tokens of "proof" that legitimize these concepts to contemporary medieval judges, jurors, and audiences. To this point, Scott warns historians that we cannot seek to find the beginning of these complex processes, but rather we must aim to explore the process itself. She states that "to pursue meaning" out of the larger cultural processes "we need to deal with the individual subject as well as social organization...for both are crucial to understand how gender works."⁹⁶ Consequently, this research will explore the micro-level individual experiences of real women, as recorded in trial documents of the court of the general eyre, as well as the macro-level hegemonic structures of law and governance, and of cultural norms as documented in popular romance, conduct literature, and hagiography. The goal is to provide an analysis of the subjective individual experiences, and the hegemonic legal and social contexts, to answer the "interesting questions" about gender and power relations in rape narratives of medieval England.

Overall, the following chapters aim to provide new insights into cultural and legal understandings of sexual consent and physical bodily proof of rape. These issues are not confined to the Middle Ages, as the constructed legal identities of women in the courts, which this research deconstructs, continue to be upheld. Conviction rates demonstrate this historical

⁹⁵ Roberta Gilchrist, *Gender and Archaeology: Contesting the Past* (London; New York: Routledge, 1999), xv.

⁹⁶ Scott, "Gender: A Useful Category of Historical Analysis," 42.

continuity: chapter 3 will discuss Barbara Hanawalt's findings of a 10.3% conviction rate in England from 1300–48.⁹⁷ Statistics Canada stated that in 2014 Canada had a 12% conviction rate.⁹⁸ While stressing historical continuity is not the purpose of this research, it is notable how comparable the statistics are and perhaps this offers further avenues of inquiry into other comparable factors of medieval and modern societies. By combining two areas of scholarship, legal and literary, this thesis provides new insights into medieval England's rape culture and the heteronormative gender roles which allowed for, or even encouraged, sexual violence against women. Overall, I hope this research provides a deeper understanding, and facilitates further discussions on how medieval literature and laws contributed to current silencing and blaming of rape survivors, as well as assumptions about agency and identity.

⁹⁷ Barbara A. Hanawalt, *Crime and Conflict in English Communities 1300–1348* (Cambridge: Harvard University Press, 1979), 59.

⁹⁸ Cristine Rotenberg, "From Arrest to Conviction: Court Outcomes of Police-Reported Sexual Assaults in Canada, 2009 to 2014," *Statistics Canada* (October 26, 2017). <https://www150.statcan.gc.ca/n1/pub/85-002-x/2017001/article/54870-eng.htm> This is the most recent statistical information available as of November 2021.

Chapter 2: The Five Ages of Secular *Raptus* Laws

Introduction

The twelfth to the fourteenth century in England was a period of rapid growth in written documentation, bureaucracy, legal processes, and local visitations of the general eyre. This period of expanding legal administration and the king's right to rule was aided by unprecedented written documentation, access to the courts and the dissemination of legal knowledge. This chapter begins with what has been called the "golden age of English common law," beginning in the twelfth century with *Glanvill* (a twelfth-century legal treatise).¹ The legal age of *Glanvill* was followed by *Bracton*, then in the late thirteenth century, there was the age of Westminster I and II, and lastly in the fourteenth century came the final legal age, the Statute of Rapes. The periodization of England's secular *raptus* laws has been commented on by numerous scholars, such as Caroline Dunn, Henry Ansgar Kelly, and J. B. Post.² These previous scholars provide excellent analysis on the specific legislation but lack a comprehensive evaluation of the development of legal jurisprudence surrounding the laws themselves. Dunn, Kelly, and Post offer close linguistic analysis of word choice in attempts to determine the meaning of *raptus*, or *rapuit et abduxit*. James A. Brundage covers the evolution of sexual laws in Europe more generally, and John Marshall Carter coined the phrase "the four theoretical ages" of rape,

¹ Bellamy, *Crime and Public Order in England*, 1; Anthony Musson, *Medieval Law in Context: The Growth of Legal Consciousness from Magna Carta to the Peasants' Revolt* (Manchester: Manchester University Press, 2001), 36.

² Caroline Dunn, *Stolen Women in Medieval England: Rape, Abduction and Adultery, 1100–1500* (Cambridge: Cambridge University Press, 2012); Henry Ansgar Kelly, "Statute of Rapes and Alleged Ravishers of Wives: A Context for the Charges against Thomas Malory, Knight," *Viator* Vol. 28 (1997): 361–419; J. B. Post "Ravishment of Women and the Statutes of Westminster," in *Legal Records and the Historian: Papers Presented to the Cambridge Legal History Conference, 7–10 July 1975, and in Lincoln's Inn Old Hall on 3 July 1974*, ed. J. H. Baker (London: Swift Printers, 1978), 150–164.

however, this neglects the 1382 Statute of Rapes.³ This present analysis will build on the work of these previous scholars by examining the five aforementioned ages of medieval England's *raptus* laws from a holistic approach. This includes potential authorship of the treatises, date of composition, as well as contemporary interpretations of the statutes. Although scholars have studied the evolution of the Statutes of Westminster I (1275) and II (1285), and the Statute of Rapes (1382), few have looked at the entirety of medieval England's *raptus* laws from *Glanvill* to the Statute of Rapes. It is through this comprehensive analysis and close reading of the five legal ages that we can appreciate the development and ultimate frustration of the marriage clause (discussed extensively below). By looking at the development of *raptus* laws from the twelfth to the fourteenth centuries, this chapter provides new interpretations of the legal sources and suggests that there was a growing fear of the woman's right to marry her ravisher. It will aid in the understanding of the growing complexity of the legal profession and bureaucratization in general that occurred during these two centuries when women's legal rights were slowly being eroded. Finally, this chapter will provide new insights into the rape-marriage continuum, as well as the formation of legal identities that women could inhabit in the eyes of the laws.

In medieval England, rape was the only sexual crime to be tried in secular courts, as opposed to all other sexual crimes that were heard in ecclesiastical courts. As stated by Frederick Pollock and Frederic William Maitland, "almost the whole province of sexual morality had been annexed" by the church from lay authority.⁴ The church increasingly took jurisdiction over

³ James A. Brundage, *Law, Sex and Christian Society in Medieval Europe* (Chicago: University of Chicago Press, 1987); John Marshall Carter, *Rape in Medieval England: An Historical and Sociological Study* (Lanham: University Press of America, 1985), 154.

⁴ Frederick Pollock and Frederic William Maitland, *The History of the English Law Before the Time of Edward I*, ed. 2, vol. 2 (Cambridge: Cambridge University Press, 1968), 543. I acknowledge that rape can occur between various gender identities and sexualities, and it is not solely a "man perpetrator" and a "woman victim" construction. As discussed in the introduction, Statistics Canada reported that one in eight men in Canada experienced "unwanted sexual behaviour in public." See Adam Cotter and Laura Savage, "Gender-Based Violence and Unwanted Sexual

sexual deviancy, including adultery and incest, thus leaving rape as a very rare sexual crime to be under the king's law. As it is one of the main arguments of this thesis and discussed in detail in chapter 3 "The Eyre Courts in Practice," it is important to remember that the appeal of rape was at times (although by no means always the case) an avenue for women's legal autonomy in choosing to marry their ravishers. This so-called "marriage clause," which is discussed more below, placed the secular jurisdiction over rape in contention with the ecclesiastical courts who were, in the twelfth and thirteenth century, expanding their exclusive claim over marriage as a holy sacrament. Thus, while the primary focus of this chapter is on the five secular legal ages of rape, canon law will be included in chapter 4 as it was often competing for jurisdiction over sexual morality and marriage rights.

Since the early Middle Ages, the crime of *raptus* has been confusingly interconnected with *abductio*, abduction. James Brundage has traced how *raptus* in medieval Europe's legal discourse was synonymous with rape and/or abduction, meaning that *raptus* could be the abduction of a woman, the rape of a woman, or the abduction and rape of a woman.⁵ Caroline Dunn, who has written extensively on this topic, states that the term *raptus* is "one of the most ambiguous legal terms in medieval England, and indeed Europe...the term's multivalent connotation mean that the offence might conform to either or both of our modern legal categories of rape and abduction."⁶ The term itself changed in meaning from antiquity (usually denoting theft or seizure of property), to the high Middle Ages of the thirteenth century where *raptus* was almost always used to described rape, and then changing again in the fourteenth century to

Behaviour in Canada, 2018: Initial Findings from the Survey of Safety and Public and Private Spaces," *Statistics Canada* (2019): <https://www150.statcan.gc.ca/n1/pub/85-002-x/2019001/article/00017-eng.htm>

⁵ Brundage, *Law, Sex and Christian Society in Medieval Europe*, 47–59, 107–149, 209–212, 229–256, 311–319, 338–416, 469–471, 530–533. For specifically looking at medieval England, see Pollock and Maitland, *The History of the English Law Before the Time of Edward I*, vol. 2, 490.

⁶ Caroline Dunn, "The Language of Ravishment in Medieval England," *Speculum* Vol. 86, No. 1 (January 2011): 80.

become even more vague in meaning.⁷ In medieval England's secular laws, *rapuit* was rarely used for theft, as alternative words such as *abduxit*, "[he] led away," or *cepit*, "[he] seized," were used in trial documents for seizure of both goods and people.⁸ Although Dunn's close reading of 1,213 ravishment cases found that nearly half (43%) had such ambiguous language that rape and/or abduction could not be clearly confirmed,⁹ the majority of the cases under investigation here include additional words or phrases,¹⁰ such as loss of virginity or bleeding, that help to ensure that rape is the crime under consideration. As such, the language used and the word choices in individual appeals and trial records is extremely important in determining whether it is rape and/or abduction that is being discussed. This ambiguity and confusion about the exact meaning of *raptus* was added to by the thirteenth century laws themselves.

Medieval England's Jury Selection

Before looking at the legal texts, it is important to understand how the court systems worked. Trial by ordeal was becoming increasingly less popular throughout the Middle Ages. Canon law, which was working in tandem with the secular courts, increased the use of trial jurors as the Fourth Lateran Council of 1215 prohibited trial by ordeal. Since women were excluded from trial by combat and with the eventual decline of trial by ordeal, women were most often given a trial by jury when they brought forward an appeal.¹¹ Due to this, there was a societal fear that women would bring appeals forward more frequently as the fear of death, typically

⁷ Dunn, "The Language of Ravishment in Medieval England," 87–88; Dunn, *Stolen Women in Medieval England*, 17–19, 24.

⁸ Dunn, "The Language of Ravishment in Medieval England," 88–89.

⁹ Dunn, "The Language of Ravishment in Medieval England," 90–91.

¹⁰ Dunn, *Stolen Women in Medieval England*, 37–38.

¹¹ Kittel, "Rape in Thirteenth-Century England," 101–102.

generated by the other two trial methods, was nonexistent. Even though by the thirteenth century trial by combat was increasingly rare for men as well, the legal infrastructure limited women's appeals to only two – rape and the death of their husband.

By the mid-thirteenth century, both men and women normally had a trial by jury.¹² Hence, the jury selection of England's medieval courts deserves further attention. Reform of legal infrastructure occurred in the decades prior to *Glanvill* with the Assize of Clarendon in 1166, which gave royal jurisdiction not only over felonies, but “also with the political, religious and social matters” which amounted to a monumental shift in royal prerogative.¹³ As part of Henry II's legal reforms, the Assize of Clarendon ensured that the local men and women were community policing on behalf of the king through the process of presentment.¹⁴ Community members would, on sworn oath in front of royal officials (or more practically before local sheriffs), accuse others in their community of suspicion of committing felonies. As per the reform, all those named as suspicious felons would now automatically be brought under royal criminal jurisdiction, not manorial or local, nor ecclesiastical courts.¹⁵ The Assize mandated that twelve men of trustworthy integrity would be selected from each hundred to swear the oath and name the suspected felons. The hundred were sections of local counties where courts were normally held.¹⁶ John Bellamy has found that the use of twelve jurors was flexible, as numbers ranged from nine to twenty-nine jurors throughout the fourteenth century.¹⁷ Women were excluded from juries and consequently there is an inherent gendered component, of male

¹² Kittel, “Rape in Thirteenth-Century England,” 101–102.

¹³ T. A. Green, *Verdict According to Conscience: Perspectives on the English Criminal Trial Jury* (Chicago: University of Chicago Press, 1985), 6–7.

¹⁴ Bellamy, *Crime and Public Order in England in the Later Middle Ages*, 121; Musson, *Medieval Law in Context*, 91.

¹⁵ Green, *Verdict According to Conscience*, 7.

¹⁶ Green, *Verdict According to Conscience*, 6–7.

¹⁷ Bellamy, *Crime and Public Order in England in the Later Middle Ages*, 122.

judgement, in the medieval courts.¹⁸ These twelve men were not drawn from the peasantry, as medieval England wove social class and lawfulness together into the fabric of one's identity. In the thirteenth century, landholding or knighthood was expected of jurors, and this became more regulated as poorer landholders were increasingly excluded from jury selection.¹⁹ These jurors were expected to understand the laws; however, the formulaic structures of appeals acted as "signposts" to men not well versed in the growing complexity of England's common law.²⁰

Once a man was approved to be a presenting and/or trial juror, their tenure could last anywhere from eleven to twenty years.²¹ The men that made up the presenting jury were not simply stating those accused of having committed crimes, but they also passed judgement on the accused, and were responsible for whether or not their suspicions were credible enough to bring them to trial.²² The community morals and attitudes of "appropriate" and "acceptable" behaviour clearly had great impact on the presentment process. Michael Clanchy is correct in stating that the use of presenting juries was novel in *Glanvill's* time.²³ *Glanvill* explicitly described jurors as "free and lawful men of the neighbourhood" in book XIII, c.3-7.²⁴ The locality of jury selection allowed for customary local practices to have legal implications, as Clanchy claims that "their verdicts embodie[d] lawfulness in social terms...however arbitrary or unjust they might be."²⁵ Moreover, medieval trial jurors were not required to have a unanimous decision on a judgment,

¹⁸ Butler, *The Language of Abuse*, 105.

¹⁹ Musson, *Medieval Law in Context*, 116.

²⁰ Musson, *Medieval Law in Context*, 110–114.

²¹ Musson, *Medieval Law in Context*, 117.

²² Green, *Verdict According to Conscience*, 11; Bellamy, *Crime and Public Order in England in the Later Middle Ages*, 122.

²³ Michael Clanchy, further reading to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur, Treatise on the Laws and Customs of the Realm of England Commonly Called Glanvill* by Ranulf De Glanvill, trans. and ed. G. D. G. Hall (Oxford: Oxford University Press, 1993, reprint 2002), lxxii.

²⁴ Glanvill, *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, lxxii–lxxiii. Translation from Hall.

²⁵ Clanchy, further reading to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, lxxiii.

but rather they practiced the rule of the majority.²⁶ There was also, as stated by Sara Butler, the issue of local jurors being unwilling to present their superiors, mainly the high nobility, for criminal trials and consequently the criminal activity of the nobility is largely left unrecorded in plea rolls.²⁷ The exclusive selection of local men, who in turn enforced a standard of community policing in the form of jury presentments and verdicts, forced women attempting to appeal rape, to face not only legal and medical impediments, but also implicit and unspoken social judgements. These social attitudes were drawn on assumptions regarding “appropriate” female sexuality and femininity. Presenting jurors who named those suspected of committing felonies were different from trial jurors, who were tasked with determining the guilt or innocence of the accused.²⁸ However, this differentiation was not always made distinct. This is evident in the case of Sir Hugh (discussed fully in chapter 3), where the accused rapist demanded different men on his trial jury because they were the same men as the presenting jury.²⁹ This shows that in England’s medieval courts, the men who accused an individual of criminal activity could be the exact same men who determined their conviction.

The Process of Appeal

There was another means, even after the Assize of Clarendon, to bring a suspected felon to trial other than the presenting jury, and this was through a private appeal. The “private accusation by the victim of a felony or by the victim’s close kin”³⁰ initiated the private appeal

²⁶ Bellamy, *Crime and Public Order in England in the Later Middle Ages*, 150.

²⁷ Butler, *The Language of Abuse*, 6.

²⁸ Green, *Verdict According to Conscience*, 14.

²⁹ Green, *Verdict According to Conscience*, 15. Case of Sir Hugh: TNA: JUST1/1098, m 76/7; BL MS Addit. 31826, ff. 206v–207r. British Library, London; LI MS Misc. 87, ff. 35–43, Lincoln’s Inn, London.

³⁰ Green, *Verdict According to Conscience*, 11.

process, and it was the most common form of initiating a rape trial in the case studies under investigation here. The victim (or their kin) would make the accusation (appeal) to the presenting jury, who were then charged with (in theory) determining the validity of the appeal, whether it was made out of “hatred and malice” and (in actuality) whether the private accusation was believable and worthy of presenting an appeal to royal officials.³¹ *Glanvill* states that the appeal of rape should be made by the woman herself. The believability was not only the assumed guilt or innocence of the accused, but also the moral character and trustworthiness of the supposed rape survivor. In cases of rape appeals, getting the presenting jurors to believe the woman was extremely difficult and almost inevitably relied on physical bodily proof, as outlined in *Glanvill*.

The *fama*, or reputation, of both the survivor and the accused held immense importance. Upon hearing an accusation of rape, the presenting jurors’ decision to bring the private appeal to the officials was determined by numerous implicit and hidden processes not recorded in official legislation. This included consideration of the defendant’s reputation, how he has conducted himself since the appeal was made, as well as the reputation of the woman and her sexual history, among many other factors which Green correctly refers to as a “complex process of community judgement” which was made before any case was brought to the justiciars of the eyre.³² The influence of gendered forms of slander in medieval communities was immense, as female sexual promiscuity was a frequent trope used to belittle women’s reputations more than it was used against men.³³ It is important to recognize the immense number of social hurdles that these women overcame to even get to trial.

³¹ Green, *Verdict According to Conscience*, 11–12.

³² Green, *Verdict According to Conscience*, 17.

³³ Butler, *Language of Abuse*, 180–181.

I: The Age of *Glanvill*

The first legal age under consideration here is called *Glanvill*, named after the late twelfth-century legal treatise *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur* (*Treatise on the Laws and Customs of the Realm of England Commonly Called Glanvill*). The popularity of *Glanvill* is evident in the thirty-eight extant manuscripts, which can be classed into either *alpha* or *beta* tradition.³⁴ The original form of the treatise had no obvious divisions of the text, but only rubricated initials to mark sections. This is known as the *alpha* tradition of *Glanvill*. Adopted from the *alpha* tradition is the separation of the text into fourteen books, each with chapter numbers, known as the *beta* tradition,³⁵ which is the standard form of reference among scholars and will be used throughout this thesis.³⁶ Despite the changes to the *beta* manuscripts, including a larger incipit, the general legal comprehension of the treatise remained relatively the same as the *alpha* texts.³⁷ A couple of legal mistakes and omissions in all *beta* manuscripts suggest that the author of the *alpha* treatise was not the same person as the reviser for the *beta* manuscripts.³⁸ Despite different paleographic styles throughout manuscripts, both *alpha* and *beta* texts are written in *stilus vulgaris*, “the pen of the common people,” meaning in simple Latin with few subordinate clauses and simple grammatical sentence structures.³⁹

³⁴ G. D. G. Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, *Treatise on the Laws and Customs of the Realm of England Commonly Called Glanvill* by Ranulf De Glanvill, trans. and ed. G. D. G. Hall (Oxford: Oxford University Press, 1993, reprint 2002), ix-x.

³⁵ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xl.

³⁶ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xix.

³⁷ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, li.

³⁸ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, lii.

³⁹ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xli.

The treatise was likely written between 1187 and 1189, and although we cannot know for sure who the author was,⁴⁰ scholars generally agree that the individual was knowledgeable in current laws and legal processes, with a comprehension of both secular and ecclesiastical legal terms, as there are three references to canon law.⁴¹ The incipit, which is extant in all *alphas* (except Lambeth Palace Library MS 429) and all *betas*,⁴² was written during the reign of Henry II, referring to him and his grandfather Henry I repeatedly (book IV, c.6; book IX, c.13–14; book XII, c.16).⁴³ According to S. E. Thorne, the lack of references in *Glanvill* to plea rolls suggests that the text was written prior to their use, in 1189.⁴⁴ This is congruent with the documents which are used as authority in *Glanvill*, as they are dated November 1187 (book VIII, c.2–3).⁴⁵ G. D. G. Hall states that the treatise was thus likely written between 29 November 1187 and the day Henry II died, 6 July 1189.⁴⁶

There are six early *alpha* manuscripts extant, dating near 1200, of which Lincoln's Inn, Misc. 3 (hereafter referred to as *Ln*) is considered the most reliable.⁴⁷ *Ln* is an early *alpha*, written near 1200, containing the incipit; it is rubricated, with no discernible copy errors or legal misunderstandings.⁴⁸ Hall describes *Ln* as an “excellent” text and like Hall, it will be used as the basis of our investigation.⁴⁹

⁴⁰ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xxx.

⁴¹ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xi, xxxix. According to Hall, these included book VII, c.15 the decretals of Pope Alexander III; book IV, c.10 dealing with canon lawyer clerks; and book II, c.12 dealing with witnesses in church courts.

⁴² Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xlii.

⁴³ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xxx.

⁴⁴ S. E. Thorne, “Notes on Courts of Record in England,” *West Virginia Law Quarterly* XL (1934): 351; Glanvill, *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xxxi.

⁴⁵ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xxxi.

⁴⁶ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xxxi.

⁴⁷ Bodleian Library, Oxford, Rawlinson G 109; Cambridge University Library Additional 3584; British Museum, London, Royal 14 C.ii; Lambeth Palace Library, London, 429; Balliol College, Oxford, 350, as cited in Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, lxxv–lxxvi.

⁴⁸ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, lxxviii.

⁴⁹ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, lxxviii.

Very soon after the *alpha* texts were written, *beta* manuscripts appeared in the early thirteenth century and by the early fourteenth century *Glanvill* was copied, revised, and added to other manuscripts, such as Roger of Howden's *Chronica* (British Museum Royal 14 C.ii).⁵⁰ A very early *beta*, British Library Additional 24066 (hereafter referred to as *B*) was used by Hall to supplement mistakes in *Ln*, and the book and chapter numbers from *B* were referenced.⁵¹ I have consulted both manuscripts in person (*Ln* and *B*) and I have followed Hall's lead in referencing *Ln* primarily and consulting *B* when necessary. However, since a relatively small section of crime is of concern here, both *Ln* and *B* texts will be referenced throughout, with no preference of one over the other since their variations are only in spelling and not content.

Three justiciars have been named as potential authors by Hall: first, Rannulf de Glanvill, appointed in 1180;⁵² second, Hubert Walter, appointed justiciar in 1193;⁵³ and Geoffrey fitz Peter, a judge and sheriff of Northampton.⁵⁴ Despite all three men possessing the required knowledge to have potentially written *Glanvill*, according to Hall, Geoffrey fitz Peter seems unlikely to be a convincing candidate, while Hubert Walter's name being written in the margins of *Bracton* was used by Maitland as proof of Walter's authorship of *Glanvill*.⁵⁵ Since this is a large conclusion to draw from citations in *Bracton*, one is inclined to agree with Hall, in that Walter's name in *Bracton* was not referring to the author of *Glanvill*, but rather to a justiciar's authority on case examples.⁵⁶ With fitz Peter and Walter dismissed, we are left with the

⁵⁰ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, lv–lvi.

⁵¹ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, lxviii–lxix.

⁵² Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xxxi.

⁵³ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xxxii; Frederick Pollock and Frederic William Maitland, *The History of the English Law Before the Time of Edward I*, ed. 2, vol. 1 (Cambridge: Cambridge University Press, 1968), 164.

⁵⁴ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xxxii–xxxiii.

⁵⁵ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xxxii; Pollock and Maitland, *The History of the English Law Before the Time of Edward I*, vol.1, 164.

⁵⁶ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xxxii–xxxiii.

authorship of Rannulf de Glanvill. The incipit of an early *alpha* (Cambridge University Library Additional 3584), contains the initial R, while the incipit of an early *beta* (London the Law Society's Library unnumbered), states "Rado de Glanuil."⁵⁷ Glanvill's name is continually attributed to the treatise throughout the thirteenth and into the fourteenth century, as Cambridge University Library Mm I 27, written during the reign of Edward I, states "*explicit summa vocatur Glaunvyle*."⁵⁸ Thus, by the thirteenth and early fourteenth century, the treatise was attributed to justiciar Rannulf de Glanvill. Whether this is correct or not is, as stated by Maitland, an interesting fact, but ultimately not that important to the study of the treatise.⁵⁹

The treatise is hardly a comprehensive legal text of England. Rather, the major focus of *Glanvill* is civil proceedings; the treatment of criminal pleas and felonies before the king's court is placed at the end of the text and it is only briefly discussed. Similarly, there is little mentioned of manorial or feudal court procedures.⁶⁰ The intended audience of the treatise is also debated by scholars, since it is neither a comprehensive nor an official royal document.⁶¹ Despite talking about proceedings in the king's court, it was not issued by the king himself. The explicit intentions of the author include being *plerisque perutile*, "very useful to most people," by *stilo uulgari et uerbis curialibus utens*, "using the common style and words of the courts."⁶² However incomplete *Glanvill* may be, it is credited by Hall as being "the first textbook of common law" with focus on the king's court and writs.⁶³ *Glanvill*'s common law is referring to a law applicable to all free men, as decided in the king's court; it can be used by a plaintiff if they wish to go to

⁵⁷ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xxxi.

⁵⁸ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xxxi.

⁵⁹ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xxxiii.

⁶⁰ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xi.

⁶¹ Clanchy, further reading to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, lxxv.

⁶² Clanchy, further reading to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, lxxv, see also, prologue, 3. Translation is my own.

⁶³ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xi.

court, and alternatively, it can be used against a defendant in the case of a king's suit in criminal proceedings.⁶⁴ The development of English common law is beyond the scope of this study; however, it is certainly evident that by the time of *Glanvill* in the late twelfth century, common law was an acknowledged aspect of England's legal infrastructure.⁶⁵

England's history of written laws dates back to the seventh century.⁶⁶ These pre-Norman law codes were efficient in their style of stating criminal offences and their associated penalty or punishment.⁶⁷ Prior to *Glanvill*, the only other relatable legal text on the contemporary laws of England was composed during the reign of Henry I, known as the *Leges Henrici Primi*.⁶⁸ This text, dating from the beginning of the twelfth century, was written when local customs of Wessex, Mercia, and the Danelaw, inherited from pre-Norman times, were still operating as autonomous legal systems, each with their own local rules and procedures.⁶⁹ The *Leges* claimed that the king's court was superior to the local courts; however, it was reserved exclusively "for the great men and the great causes....and it offered only a flexible, occasional jurisprudence."⁷⁰ Henry I tried to establish the superiority of the king's law over the various local customs, but the onslaught of the Anarchy and the weak rule of King Stephen eroded Henry I's efforts for a common English law.⁷¹ However, by the end of the twelfth century, the English legal infrastructure was vastly different; there was a rapid development of centralized government and

⁶⁴ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xi.

⁶⁵ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xi; Pollock and Maitland, *The History of the English Law Before the Time of Edward I*, vol.1, 107–110, 136, 173.

⁶⁶ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xii.

⁶⁷ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xiv.

⁶⁸ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xiv.

⁶⁹ Hall, introduction to, *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xi–xii.

⁷⁰ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xii; quote from Pollock and Maitland, *The History of the English Law Before the Time of Edward I*, vol.1, 108.

⁷¹ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xii; H. G. Richardson and G.O. Sayles, *The Governance of Medieval England from the Conquest to Magna Carta* (Edinburgh: Edinburgh University Press, 1963), 173–215.

court systems were regularly hearing both civil and criminal cases, as the development of a common law, a law applicable to all free men and women, was growing in complexity.

Despite local customs remaining, by the time of *Glanvill* the king's court was a permanent fixture and the justiciars of the general eyre were regularly travelling by royal writ, a written legal document from the king instructing justices to take some sort of action.⁷² The court of the general eyre was a travelling court system which heard and made rulings on felony charges at the various counties it visited. This process of royal writs and inquests, summoning of the general eyre, and superiority of the king's court over local customs had begun under Henry I. However, it was his grandson, Henry II, who elaborated and expanded the infrastructure, recovering what was lost during the reign of Stephen, and ultimately developing secular law in England.⁷³ The development of the king's law under Henry II was vast, yet sporadic, with no established procedures, lacking in systematic record keeping and as the court travelled with the king, it meant that when he left England, so too did the king's court.⁷⁴ It was the king's court at the Exchequer which sat most regularly "on the bench."⁷⁵ The royal writ was the primary source of legal process in the king's court and it provided the groundwork for the development of England's common law.⁷⁶ It is in these growing royal writs that we see the introduction of "the *nisi feceris* clause" which effectively usurped the power of the manorial and local courts if local officials failed to properly administer justice, and it brought their jurisdiction under the king's

⁷² Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xii. Definition of "writ" from *Middle English Dictionary* (University of Michigan, 2021), Article 2(a) "Law: A written legal instrument compelling, authorizing, or forbidding some action, issued by a king, pope, high official, the Royal Chancery, a court, judicial body, parliament, corporate authority, etc; also *fig.*" https://quod.lib.umich.edu/m/middle-englishdictionary/dictionary/MED53684/track?counter=1&search_id=3176044 see also, Musson, *Medieval Law in Context*, 157.

⁷³ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xii.

⁷⁴ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xii.

⁷⁵ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xii. G. O. Sayles, *The Court of the King's Bench in Law and History* (Seldon Society Lecture, London 1959), 8.

⁷⁶ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xii–xiii.

court.⁷⁷ Despite the shortcomings of the *Leges*, and the sporadic nature of the king's law under Henry II, England in the twelfth century was participating in the wider western enthusiasm for legal development and proper procedures, as scholars were debating not only theology and traditional teachings, but also common law and legal jurisprudence.⁷⁸

Glanvill's primary focus was not on criminal pleas, but on writs, of which there are over seventy included.⁷⁹ These are largely royal writs, issued from Henry II, and it is the legislation of Henry II that forms the bulk of *Glanvill's* sources, rather than previous legal texts such as the *Leges*.⁸⁰ Based on these writs, *Glanvill* offers a commentary of hypothetical scenarios of court proceedings. The treatise opens with the incipit and the author's prologue, praising King Henry II for his governing of the realm and the administering of justice, *et humilium et mansuetorum equitatis uirga moderando iusticiam*, "and tempering justice for the humble and meek with the rod of equity."⁸¹ In claiming to protect the humble and meek, the treatise is using the exact same language used to describe women in both conduct literature, such as *The Knight's* book⁸² or *The Good Wife*,⁸³ as well as in romance, where Florence is continually described as meek (discussed more in chapter 8). The prologue continues:

nullus iudicum tam attrite frontis tam temerarie sit presumptionis quod a iusticie tramite aliquatenus declinare aut uiam ueritatis ullatenus presumat excedere. Ibi etenim

⁷⁷ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xii–xiii.

⁷⁸ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xiv–xv.

⁷⁹ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xviii, xxxiii.

⁸⁰ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xxxiv.

⁸¹ *Glanvill, Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, prologue, 1. Translation from Hall. Of note, Björn Weiler states that William of Malmesbury praised *mansuetudo* "civility" in kingship. See Björn Weiler, "William of Malmesbury on Kingship," *History*, Vol. 90, No. 297 (2005): 3–22, specifically 9–10, 20.

⁸² *The Book of the Knight of La Tour-Landry: Compile for the Instruction of his Daughter; Translated from the Original French into English in the Reign of Henry VI, and Edited for the First Time from the Unique Manuscript in the British Museum, Harl. 1764, and Caxton's Print, A.D. 1484, With an Introduction and Notes*, ed. Thomas Wright (London: Kegan Paul, Trench Trübner & Co., 1868 Rev. 1906), c.X, 14; c.XIII, 18; c.LXIII, 84–85; c.XCVI, 125–127.

⁸³ "How the Goode Wife Taught Hyr Daughter," in *The Trials and Joys of Marriage*, ed. Eve Salisbury, TEAMS Middle English Text Series (Rochester University, 2002), line 20 "Loke that tho be bothe meke and myld." Line 37: "Loke tho mekly ansuer hym." Line 168: "Be welle disposed, both meke and myld."

pauperem non opprimit aduersarii potentia, nec a liminibus iudiciorum propellit quemquam fauor uel gratia. Legibus namque regni et consuetudinibus de ratione introductis et diu obtentis et...

[For his Highness's court is so impartial that no judge there is so shameless or audacious as to presume to turn aside at all from the path of justice or digress in any respect from the way of truth. For there, indeed, a poor man is not oppressed by the power of his adversary, nor does favour of partiality drive any man away from the threshold of judgement. For truly he does not scorn to be guided by the laws and customs of the realm which had their origin in reason and have long prevailed...] ⁸⁴

In the implicit statement that the treatise is based on ancient customs and reason, there is a sense that *Glanvill* is not describing novel legislation. Of interest is the claim that the poor are equally deserving of justice and that the powerful are not immune to judgement. This ideological concept, of equality of all individuals before the law, does not occur in actual court proceedings, as men of higher status appear immune to punishment. As will be seen in the following chapter 3 “The Eyre Courts in Practice,” the privilege of class was explicit in the case for Sir Hugh, as well as in the high-profile case of John de Dalton and all of his accomplices. In explaining that no one is above – or below – the law, *Glanvill* is implicitly admitting the existing inequity of the courts to punish the wealthy elites, while excluding justice to the poor. We witness this repeatedly with women who appeal men of higher status of rape. The social class inequality of rapists and their victims was a common theme of reference in romance and in the pastourelle literature, where peasant women were raped by elite knights. James Brundage claims that the literature was reflecting a reality, in that elite men were disproportionately brought to court compared to their

⁸⁴ Glanvill, *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, prologue, 2. Translation from Hall.

lesser status counterparts.⁸⁵ Despite appearing in court, men of wealth were rarely convicted, and instead they were able to settle out of court.

After the prologue, *Glanvill* begins book I with *distinctio causarum secularium*, the division of secular causes, explicitly declaring that the intentions of the text are to separate pleas into either civil or criminal, those that are vicecomital from those that are royal.⁸⁶ What follows is the *capitula* or chapters, of criminal pleas. Using writs to inform on the legal procedure of the courts, *Glanvill* is divided into various felony charges, or pleas: *homicidium; incendium; roberia; raptus; crimen falsi, et si qua sunt similia*, “homicide; arson; robbery; rape; the crime of falsifying and other similar crimes.”⁸⁷ The inclusion of rape among the most serious of crimes is not surprising, as rape was described as being simultaneously incredibly serious⁸⁸ and incredibly rare, based on the low conviction rates (discussed extensively in chapter 3). What follows directly after this list of criminal pleas is the prescribed punishment: *que scilicet ultimo puniuntur supplicio aut membrorum truncatione*, “all these are punished [with the ultimate penalty] or cutting off the limbs.”⁸⁹ The extreme punishment of these most serious crimes is left for further discussion at the end of the treatise, as the remainder of book I discusses *causarum civilium*, “civil causes.”⁹⁰

Despite the preoccupation with writs and civil pleas, the procedures of litigation in local courts are not of major concern, but rather it is stated which crimes are vicecomital and

⁸⁵ Brundage, *Law, Sex and Christian Society*, 530.

⁸⁶ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xviii–xix, Book I, 1–2.

⁸⁷ Glanvill, *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, Book I, 2. Translation from Hall.

⁸⁸ Herold Schneebeck, “The Law of Felony in Medieval England from the Accession of Edward I until the Mid 14th century” (PhD dissertation, University of Iowa), vol. 2, 434–435.

⁸⁹ Glanvill, *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, Book I, 2. Translation adapted from Hall as he translated *ultimo puniuntur supplicio* as “are punished by death.”

⁹⁰ Glanvill, *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, Book I, 3–4.

consequently the duties of the local sheriff. This is followed by a statement, *quare non tractetur hic de placitis ad uicem comitem pertinentibus*, “why there is no discussion here of pleas belonging to the sheriff,” and *Glanvill* states that no further comment on the running of local courts will be made.⁹¹ To put it simply, *Glanvill* explains what takes place and what to expect in royal courts.⁹² The text is written in what Maitland and Hall describe as a “dilemmatic approach,” providing a hypothetical situation and explaining each alternative choice in turn.⁹³

After the incipit, prologue and list of pleas, books I to X focus on civil pleas, specifically examining royal writs and commenting on those writs.⁹⁴ The treatment of dowers in book VII is considered novel according to Hall, as *Glanvill* defines the dower and explicitly states the woman’s right to the dower.⁹⁵ While book XI deals with attorneys’ and local sheriffs’ duties, books XII and XIII address possessory pleas, those dealing with possessions, in both royal and local county courts.⁹⁶ It is in book XIV that *Glanvill* discusses criminal pleas. At the very beginning of the treatise book I c.2, pleas are divided into civil and criminal, however, *Glanvill* treats the civil pleas at length and only briefly at the end of the treatise in book XIV does the author return to criminal pleas. Hall states that this brief section on crime amounts for only one thirteenth of the entire treatise.⁹⁷ Of the criminal pleas listed in book I, those that fall under royal jurisdiction include: treason (book XIV, c.1), concealment of treasure (book XIV, c.2), homicide (book XIV, c.3), arson (book XIV, c.4), robbery (book XIV, c.5), rape (book XIV, c.6) and

⁹¹ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xix, Book XII, 23. Translation from Hall.

⁹² Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xxxvi.

⁹³ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xi; Pollock and Maitland, *The History of the English Law Before the Time of Edward I*, vol.1, 166.

⁹⁴ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xxii.

⁹⁵ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xxiii.

⁹⁶ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xix.

⁹⁷ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xxi.

falsifying (book XIV, c.7). Those criminal pleas which are the jurisdiction of the vicecomital include theft and brawling (book XIV, c.8).⁹⁸ *Glanvill* collapsed various criminal pleas into broad headings, such as those which *placitum de pace domini regis infracta*, “have broken the peace of the lord king.” This has led some scholars (notably among them Theodore Plucknett) to state that the speculation and theorizing in *Glanvill* was not necessarily how the law was actually practiced and that “it bore little relation to the state of the law in his [the author’s] time.”⁹⁹ Although *Glanvill*’s sources are primarily “writs, the legislation of Henry II, the practice of the king’s court and the opinions of its judges,” *Glanvill* is not shy to speculate when writs and legislation were unavailable.¹⁰⁰ While Hall does not seem to agree with Plucknett, he does accuse *Glanvill* of appearing “uninterested” in criminal pleas.¹⁰¹

Glanvill does not get to criminal pleas until the very end of the treatise, in book XIV, *de placitis criminalibus*. It begins with the betrayal of the king, the realm and the army, followed by fraudulent concealment of treasure troves, the plea of homicide, the crimes of arson and robbery and subsequently the plea of the crime of rape.¹⁰² *Glanvill* reiterates women’s limited legal capacity by stating that: *mulier autem in nullo placito de feloniam ad accusationem admittitur nisi in quibusdam exceptis casibus de quibus infra dicetur*, that is “a woman may not accuse anyone in a plea of felony, save in certain exceptional cases discussed below.”¹⁰³ Rape (book XIV, c.6), of course, was one of only two crimes that a woman could appeal herself in court, the other being

⁹⁸ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xx.

⁹⁹ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xxi. Theodore F. T. Plucknett, *A Concise History of the Common Law*, 5th ed. (Boston: Little, Brown and Co., 1956, Repr. Clark: The Lawbook Exchange, 2010), 422.

¹⁰⁰ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xviii–xxix.

¹⁰¹ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xxii.

¹⁰² *Glanvill*, *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, Book XIV, 1–6.

¹⁰³ *Glanvill*, *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, Book XIV, 1. Translation from Hall.

the death of her husband (book XIV, c.3).¹⁰⁴ With regards to the latter, *Glanvill* states that “in this plea a woman is allowed to accuse another of the death of her husband if she speaks of what she saw herself,” *quia una caro sunt vir et uxor*, “because husband and wife are one flesh.” Indeed, as a general rule a woman was allowed to accuse another of injury done to her body, as is explained below (in c.6, on rape).¹⁰⁵ In reference to the death of her husband, *Glanvill* implicitly draws connections to the plea of rape, the only other criminal plea that a woman can appeal. Thus, the injury of the flesh is paramount to the legal rights of the woman in court. This is interpreted both as her own flesh, as in the crime of rape, and through the matrimonial rights of a husband and wife, the flesh of her husband as well. This *una caro*, “single flesh” of husband and wife, both enables women to appeal the murder of their husbands, but also prohibits women from appealing rape by their husbands, as a single flesh cannot rape itself. The emphasis that *Glanvill* places on the flesh of the woman becomes especially problematic for the appeal of the crime of rape. *Glanvill* states:

Raptus crimen est quod aliqua mulier imponit viro quo proponit se a viro vi oppressam in pace domini regis. Tenetur autem mulier que tale quid patitur mox dum recens fuerit maleficium vicinam villam adire, et ibi iniuriam sibi illatam probis hominibus ostendere et sanguinem si quis fuerit effusus et vestium scissiones. Dehinc autem apud prepositum hundredi idem faciat. Postea quoque in primo comitatu id publice proponat. Deinde autem facta super hoc querimonia, iudicium ut predictum est ordinabitur. Auditur itaque mulier in tali casu aliquem accusans sicut et de qualibet alia iniuria corpori suo illata solet audiri. Sciendum tamen quod in electione accusati erit in tali casu vel honus purgationis subire vel mulieris probationem contra se sustinere.

Preterea sciendum quod si quis in huiusmodi placito convictus fuerit, simili modo ac in predictis iudiciis de eo est iudicandum. Non enim sufficit post iudicium malefactorem ipsum corruptam illam velle ducere in uxorem. Sic enim frequenter contingeret seruilis conditionis homines generosissimas mulieres unius pollutionis occasione perpetuo fedare, vel generosos homines per mulieres ignobiles fedari, et ita

¹⁰⁴ Bellamy, *Crime and Public Order in England in the Later Middle Ages*, 126. Here Bellamy argues that this legal limitation was only theoretically applied to women, and in reality, they were able to bring appeals forward for the murder of their male kin, including brothers and sons. This is also supported by Musson, *Medieval Law in Context*, 155.

¹⁰⁵ *Glanvill, Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, Book XIV, 3.

claram parentum eorum famam indecenter denigrari. Ante iudicium tamen ita receptum est quod de licencia principis vel eius iusticiarum cum parentum assensu possunt mulier accusans et accusatus beneficio coniugii sibi invicem reconciliari.

[In the crime of rape a woman charges **a man with violating her by force** in the peace of the lord king. A woman who suffers in this way must go, soon after the deed is done, to the nearest vill and there show to trustworthy men the injury done to her, and any effusion of the blood there may be and any tearing of her clothes. She should then do the same to the reeve of the hundred. Afterwards she should proclaim it publicly in the next county court; and when she has made her complaint, the form of proceeding to judgement shall be stated as above. In such a case a woman is allowed to make an accusation just as in every case of **injury done to her body**. It should be known that in such a case it is for the accused to choose whether he will submit to the burden of the ordeal, or will rely on disproving the accusation of the woman.

Moreover, it should be known that if anyone is convicted in this kind of plea the judgement against him shall be the same as in the crimes discussed earlier. Nor can the wrongdoer escape this by expressing his willingness, after judgement, to marry the **[corrupted woman]**. For if he could it would frequently happen as a result of a single defilement that men of servile status disgraced forever women of good birth, or that men of good birth were disgraced by women of low estate, and thus the fair reputes of their families would be unworthily blackened. But before judgement is given the woman and the accused can be reconciled to each other by marriage, if they have licence from the king or his justices and the consent of their families.]¹⁰⁶

The initial definition of the crime is when a “woman charges a man with violating her by force in the peace of the lord king” and so the gendered roles of the female victim and the male rapist are written into the laws and there is no option of gender-role reversal in the medieval criminal law code. Under *Glanvill* it is legally impossible for a man to be the victim of rape. The use of *raptus* in *Glanvill* seems to only imply forcible coitus and not abduction, as the *maleficium*, the sexual crime, leads to *corruptam*, the damaged sexual purity of the woman.¹⁰⁷ Furthermore, the

¹⁰⁶ Glanvill, *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, Book XIV, c.6, ff.53v. Translation from Hall, with the exception of *corruptam illiam*. Hall’s translation of *corruptam illiam* was “woman he has defiled,” but I prefer the more literal translation of the “corrupted woman.” There is more comment on this translation below. Emphases are my own.

¹⁰⁷ Saunders, “A Matter of Consent: Middle English Romance and the Law of *Raptus*,” 108; Dunn, *Stolen Women in Medieval England*, 26.

importance of physical domination of the woman's body, the *viro vi oppressam*, "by physical force," is critical to the definition and proof of the crime. Unlike modern interpretations of rape which included the mental non-consent of the victim, *Glanvill* shows that the twelfth-century definition was based on the body of the woman being dominated.¹⁰⁸ There is the assumption that, if the man violates the woman by force, then she will inevitably have physical scars, bruises, bleeding injuries, torn clothes, or tattered hair. Physical force leading to physical bodily injury of the woman is the critical proof which *Glanvill* states the woman needs to show trusted men (*ibi iniuriam sibi illatam probis hominibus ostendere et sanguinem si quis fuerit effusus et vestium scissiones*). *Glanvill* was thus primarily concerned with the injured female body, more so than the deflowered or kidnapped female body.¹⁰⁹

The legal requirement of the woman immediately after the rape to go to other "trustworthy" men and "there show...the injury done to her, and any effusion of the blood there may be and any tearing of her clothes," ensures that for her to be believed she must have physical bodily proof of the rape. The *effusio*, "effusion of blood," has been noted by scholars for its common use throughout Europe's medieval criminal courts and thus it must be regarded as a legal topos.¹¹⁰ However, when examining trial documents, it appears that if a woman consents to the rape in fear of her life, and does not physically try to fight off her attacker, then she has no physical bodily proof of injury done to her. As a result, she is considered by the law a culpable woman, for she did not resist her own rape. The true victim of rape, according to *Glanvill* and reiterated in legal codes and treatises for centuries afterwards, has bruising, bleeding, and torn

¹⁰⁸ Kim. M. Phillips, "Written on the Body: Reading Rape from the Twelfth to Fifteenth Centuries," in *Medieval Women and the Law*, ed. Noël James Menuge (Woodbridge: Boydell, 2000), 125.

¹⁰⁹ Phillips, "Written on the Body," 140.

¹¹⁰ Mark D. Meyerson, Daniel Thiery and Oren Falk, "Introduction," in *'A Great Effusion of Blood?': Interpreting Medieval Violence*, eds. Mark D. Meyerson, Daniel Thiery and Oren Falk (Toronto: University of Toronto Press, 2004), 3.

clothes. Here we see the spectrum of dualistic legal identities which the laws created for women in rape cases; there is this binary construction of the truly innocent victim (with physical bodily injury) and the blame-worthy, culpable woman (with no physical injury to show as proof of resistance). Unfortunately, this binary construction, based entirely on physical bodily proof, became damaging to women who conceived during rape (discussed more in chapter 3). It is important to recognise, as Bronach Kane and Fiona Williamson state, that these legal identities are the “textual subject...rather than being a fictive persona, or a self ‘revealed’ through writing,” these identities are created by the laws, and superimposed onto the rape survivors by the courts in practice.¹¹¹

According to *Glanvill*, once the woman has immediately shown “good men” (*probiis hominibus*) her bodily injuries as a consequence of her rape, she then has to do it again at the court of the hundred. If she misremembers, the appeal fails, and the woman would be accused of lying. The retelling of the rape to the hundred must be identical, *idem faciat*, word for word, to the statement given to the trustworthy men, such as the local sheriff or coroner, immediately after the attack. Court documents inform us that, if the woman misremembers, she could be imprisoned for a false appeal. If the retelling at the hundred is identical to the initial appeal, then the woman has the duty to make her accusation public at the next court hearing. This was a huge risk for a woman. Dealing in a period when a woman’s sexual purity was critical to her marriage market value, proclaiming sexual defilement publicly in the courts could ruin her marriage potential and the income that her marriage would generate for her family. The importance of

¹¹¹ Bronach Kane and Fiona Williamson, “Introduction,” in *Women, Agency, and the Law, 1300-1700*, The Body, Gender and Culture Number 15, ed. Bronach Kane and Fiona Williamson (London: Pickering & Chatto, 2013), 22.

sexual reputation was brought up specifically in *Glanvill* with regards to the option of concord through marriage.

The fact that *Glanvill* allows for the rapist and the survivor to marry may seem appalling to many modern audiences, but there is biblical precedent and a long history of these “marry-your-rapist laws,” some of which still exist today.¹¹² These laws date back to the Old Testament (Deuteronomy 22:28–29) where it states that when an unmarried woman is raped, she must marry the rapist. This is further supported in Exodus 22:16–17, where it states that the rape of a virgin requires monetary reparations to be paid to the woman’s father and that the woman will marry her rapist.¹¹³

This marriage clause in *Glanvill* enabled a woman the possibility of procuring a good marriage despite the fact that her sexual reputation may have been damaged by the rape. *Glanvill* warned that the marriage clause was not able to be claimed *post iudicium*, “after judgment” is made. This was a safeguard, according to *Glanvill*, against low status women accusing high born men of rape, strictly for the purposes of trapping the accused into marriage. *Glanvill* was careful to protect the reputation of good, noble men and women in stating that only *ante iudicium*, “before judgement,” could this marriage clause be claimed. Implicitly, but not so subtly, *Glanvill* warned the reader that low-status women (*mulieres ignobiles*) would maliciously claim rape by elite men (*generosos homines*) in the hopes of securing a favourable marriage and that low status men (*seruilis conditionis homines*) would rape high status women (*generosissimas mulieres*) to

¹¹² Kate Dannies, “Turkey’s ‘Marry Your Rapist’ Bill is Part of a Disturbing Global Pattern,” *The Washington Post (Online)* (Jan. 30, 2020); United Nations Population Fund (UNFPA), “My Body is My Own: Claiming the Right to Autonomy and Self-Determination,” in *State of World Population 2021 Report*, lead ed. Arthur Erken, 49. https://www.unfpa.org/sites/default/files/pub-pdf/SoWP2021_Report_-_EN_web.3.21_0.pdf

¹¹³ Cheryl Anderson, *Ancient Laws and Contemporary Controversies: The Need for Inclusive Biblical Interpretation* (Oxford: Oxford University Press, 2009), 3–4.

trap them into marriage. Thus, when rape claims were made between people of different socio-economic classes, *Glanvill* warns that the justiciars should be cautious of false and malicious claims for marriage purposes. The inequity of status between defendant and plaintiff could, according to *Glanvill*, not only ruin the reputation of the individuals involved, but also that of their families and kinship group (*claram parentum eorum famam indecenter denigrari*) as through the rape trial “the fair repute of their families would be unworthily blackened.”

The marriage clause, however, with the consent of the king and the families, could theoretically erase the rape. By reason of *uno caro* and the husband and wife becoming one flesh through matrimony, the acceptance of marriage between the female plaintiff and male defendant turned the crime of rape into a consensual sexual encounter. *Glanvill* sets the foundation for this legal paradox, and it is fully exploited nearly two-hundred years later in the infamous case of Eleanor West in 1382 (discussed below). If the marriage clause was not claimed, then the accused could undergo either a trial by ordeal (which was becoming increasingly less popular throughout the high Middle Ages), or the accused could opt for a trial jury. With the latter, the defendant would try to disprove the accusations placed against him and plead his innocence (*vel honus purgationis subire vel mulieris probationem contra se sustinere*). Disproving the “accusations of the woman” largely relied on the reputations (sexual, social, economic, and moral among other factors) of both the plaintiff and the defendant. The community policing, in terms of the individual’s reputation and the assumed believability of the woman, was a large factor contributing to the acquittals of rape trials (discussed below).

Glanvill reiterated that the appeal process was to be initiated by the woman herself, not her male kin, for she was the victim of the crime because *alia iniuria corpori suo illata solet*

audiri, the “injury [is] done to her body.”¹¹⁴ The medieval crime of rape was considered a physical crime only, with no consideration of the mental trauma in the medieval courts. *Glanvill* emphasises this by using the word *corrupta*, defined by Lewis and Short as “the spoiled parts (of the body),” which are “injured.”¹¹⁵ The damaged body belongs to the woman, as *Glanvill* writes *corruptam illam* in the feminine accusative singular. Lewis and Short’s additional definitions of the “mutilated” or “marred” body underline the physicality of the *viro vi oppressam*. The physical domination of the man over the woman results in the physically mutilated body of the woman. Alternatively, *corrupta* is defined by Niermeyer as “immoral,”¹¹⁶ which demonstrates the complexity of *raptus* as both a sexual crime and a secular felony. In this reading, the immorality is not the actions of the man, but rather the woman is immoral due to her sexual defilement. Court records support this reading, as the woman’s mental state of compliance to her attacker was not considered. The only consideration of the courts in culpability was the bleeding flesh of the woman. This will change slightly under *Bracton*, as the focus was not on the bleeding flesh of any woman, but rather, only on the virginal body. But it is here under *Glanvill* that we see the binary legal identities of the innocent victim and the culpable woman beginning to form. They are entirely dependent on the physical injuries of the woman, as visible proof of her non-consent. The truly innocent victim did not consent to the rape, as was evident under *Glanvill*, by the injuries done to her body. On the contrary, the blame-worthy, culpable woman was scheming, and possessed no physical injury to prove her malicious accusations. False accusations of rape, it was feared according to *Glanvill*, were made to trap good honest men into

¹¹⁴ *Glanvill, Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, Book XIV, c.6–7. Translation from Hall.

¹¹⁵ Charlton T. Lewis and Charles Short, “cor-rumpo,” in *A Latin Dictionary* (New York: Harper and Brothers, 1879).

¹¹⁶ J. F. Niermeyer, “corruptio,” in *Mediae Latinitatis Lexicon Minus*, (Leiden: Brill, 1954–2001), 277.

marriage. Although unprovable that *Glanvill* intended for these legal identities to develop, it will become evident that the lineage of attitudes and assumptions towards rape survivors has continued from *Glanvill* and evolved into constructed binary identities of the “good victim” and the “lying woman.” These binary legal identities continued throughout the legal ages of medieval England’s *raptus* laws, but eventually there is an emergence of a third identity, the reluctant, but willing, accomplice.

II: The Age of Bracton

The second legal age of England’s *raptus* laws are known as *Bracton*, beginning around 1230. As *Glanvill* became outdated in the late thirteen century, a legal treatise titled *De legibus et consuetudinibus Angliae* (*On the Laws and Constitutions of England*), or in the short form named after its reviser, *Bracton*, was the legal authority which replaced *Glanvill* as the textbook on the king’s court.¹¹⁷ Unlike *Glanvill*, where the prologue left the authorship ambiguous, the prologue to *Bracton* explicitly names Henry de Bracton; however, Henry de Bracton was not the author of the text, but rather its reviser. This theory was introduced in 1977 by S. E. Thorne, who argued that parts of the treatise were written prior to Henry de Bracton’s time and were thus incongruent with his career; therefore, Bracton could only be the reviser of the text, not its original author. Scholars now generally accept Thorne’s argument and agree that Henry de Bracton stopped editing and revising the treatise after 1256.¹¹⁸ Henry de Bracton worked in

¹¹⁷ Clanchy, further reading to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, lxxiv.

¹¹⁸ Paul Brand, “Bracton, Henry de,” in *The New Oxford Companion to Law*, ed. Peter Cane and Joanne Conaghan (Oxford: Oxford University Press, 2008; 2009 online); S. E. Thorne, *Essays in English Legal History* (London: The Hambledon Press, 1985), 96.

Henry III's court of *coram rege*, the king's court, and was thus knowledgeable and capable of revising the legal treatise.¹¹⁹

Henry de Bracton was likely born in Bratton Fleming, Devon, around the beginning of the thirteenth century.¹²⁰ As was the case with promotion of the justiciars' clerks of the general eyre, Bracton began his career as a clerk to senior royal justiciar William Raleigh around 1238 and by the mid-1240s Bracton was promoted to a royal justice himself. Raleigh has been suggested by scholars as a possible author of the treatise,. As a senior judge with legal knowledge and a close working relationship with Bracton, it is plausible that Raleigh, who died in 1250, wrote the treatise and left it to his senior clerk to revise and update.¹²¹ When Raleigh retired in 1239, Bracton kept his plea rolls¹²² and thus it is conceivable that the treatise was also left to him. This would also help explain why Bracton, in the mid-1250s stopped working on the treatise altogether;¹²³ perhaps the author felt it was a passion project, but the editor was less motivated to continue working on the text. The treatise is thus most likely a pragmatic legal document, written from the in-court experiences of Raleigh.¹²⁴ Acting as a junior justiciar for two general eyre circuits in 1245 and briefly as a junior justiciar on the King's Bench between 1247 and 1251, and again from 1253 to 1257, Bracton had a relatively short and an unexceptional career as a royal justiciar.¹²⁵ The fluidity with which learned men moved from the secular field to the ecclesiastical sphere is evident: Bracton, by 1249, was a priest at Wells

¹¹⁹ Clanchy, further reading to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, lxxiv; *Bracton On the Laws and Customs of England*, vol. II and III, ed. and trans. Samuel E. Thorne (Cambridge: Harvard University Press, 1968), 19.

¹²⁰ Brand, "Bracton, Henry de."; Paul Brand, "Bracton, Henry de (d.1268)," in *The Oxford International Encyclopedia of Legal History*, ed. Stanley N. Katz (Oxford: Oxford University Press, 2009).

¹²¹ Brand, "Bracton, Henry de."

¹²² Brand, "Bracton, Henry de (d.1268)."

¹²³ Brand, "Bracton, Henry de (d.1268)."

¹²⁴ Saunders, "A Matter of Consent: Middle English Romance and the Law of *Raptus*," 108.

¹²⁵ Brand, "Bracton, Henry de."; Brand, "Bracton, Henry de (d.1268)"; Thorne, *Essays in English Legal History*, 75.

Cathedral in Somerset.¹²⁶ As a capable and learned man, Bracton was promoted to archdeacon of Barnstaple in North Devon in 1264 and subsequently from that date until his death four years later in 1268, Bracton was the chancellor of Exeter Cathedral.¹²⁷

Bracton is broader in scope and more comprehensive than *Glanvill*, in attempting to cover all of England's common law, and therefore it has been called "the most ambitious English legal work of the Middle Ages."¹²⁸ Adopting a scholarly approach, *Bracton* includes references to court decisions that set precedence for the contents of the treatise.¹²⁹ It is clear that the treatise was influenced by *Glanvill*, particularly regarding "wardship, homage and relief, sale and heir," which makes it seem likely that Bracton himself (and possibly Raleigh) was working with an *alpha* manuscript of *Glanvill*.¹³⁰ There is one extant *Bracton* manuscript that includes both the entire incipit and the prologue of *Glanvill*. George E. Woodbine suggests that this peculiar manuscript was possibly the foundation of the other major legal treatise written during the reign of Edward I, known as *Fleta*, which includes elements of both *Glanvill*'s prologue and *Bracton*.¹³¹ Hall, among others, discredits this assumption based on the fact that *Fleta* used an *alpha* version of *Glanvill*, while this particular *Bracton* text is based on a *beta* tradition.¹³² A more plausible explanation for the prologue in *Fleta* is the common occurrence, by the late thirteenth century, of a single bound manuscript containing both *Glanvill* and *Bracton*.¹³³

Regardless of the extent to which *Bracton* was using *Glanvill*, both were attempting to create a

¹²⁶ Brand, "Bracton, Henry de."

¹²⁷ Brand, "Bracton, Henry de."

¹²⁸ Brand, "Bracton, Henry de." This is further supported by Thorne, *Essays in English Legal*, 77–79.

¹²⁹ Brand, "Bracton, Henry de."

¹³⁰ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, lix.

¹³¹ *Bracton De Legibus et Consuetudinibus Regni Angliae*, vol. 1, ed. George E. Woodbine (New Haven: Yale University Press, 1932), 17, fn. 1; *Glanvill, Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, lxi–lxii.

¹³² Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, lxi–lxii. Hall references: E. H. Kantorowicz, "The Prologue to *Fleta*," *Speculum* xxxii (1957): 231–249.

¹³³ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, lxii.

common law treatise. *Bracton* is roughly ten times longer than *Glanvill*, attesting to its comprehensive study of England's common law.¹³⁴ *Bracton* combines knowledge of the king's court and canon law, seen for instance, in the emphasis on the virginal body of rape victims, which stems from canon law. *Bracton*, however, is primarily concerned with property rights and criminal law, which is a divergence from *Glanvill* which only briefly covers criminal pleas.

There are nearly fifty extant *Bracton* manuscripts, however, all of them date from the end of the thirteenth century and into the fourteenth century. No original treatise revised by Henry de Bracton himself survives, but rather the closest manuscripts to Bracton's time are considered a "third generation from the original."¹³⁵ I will make use of the Harvard Law School Library's *Bracton Online*, which includes revisions and additions to S. E. Thorne's four volume translation, such as the discrepancies and variations in wording from different manuscripts.¹³⁶

As previously stated, *Glanvill* was concerned with the injured female body as proof of the crime of rape, whereas the legal age of *Bracton* was concerned with the virginal body. This is explicit in the opening discussion of the appeal of rape, as *Bracton* begins with *appellum de raptus virginum*, "appeal of the rape of virgins." The treatise states the definition of the crime in very similar terms as *Glanvill*: *Et est raptus virginum quoddam crimen quod femina imponit alicui, de quo se dicit esse violenter oppressam contra pacem domini regis*, translated as "the

¹³⁴ Brand, "Bracton, Henry de."

¹³⁵ Harvard Law School Library, *Bracton Online*, *Bracton: De Legibus et Consuetudinibus Angliae*, (2003). <http://amesfoundation.law.harvard.edu/Bracton/> Thorne, *Essays in English Legal*, 94.

¹³⁶ Harvard Law School Library, *Bracton Online*, references the following manuscripts: Oxford Bodleian Library MS Bodley 170, a late thirteenth century text (hereafter referred to as *OB*); Oxford Bodleian Library MS Rawlinson C.159, a late thirteenth or fourteenth century manuscript (hereafter referred to as *OC*); British Museum MS Additional 11353, a late thirteenth century text (hereafter referred to as *MA*); British Museum MS Stowe 380, a late thirteenth century manuscript (hereafter referred to as *MB*); British Museum MS Additional 24067, a fourteenth century manuscript (hereafter referred to as *MG*). Manuscript list was a compilation from the versions on Harvard Law School Library, *Bracton Online*.

rape of virgins is a certain crime accused by a woman to some man, by whom she says that she has been **violently overwhelmed** against the peace of the lord king.”¹³⁷ Once again the crime was defined by the use of force, *violenter*, against the woman as it was in *Glanvill*. *Opprimere* can be broadly defined as to “overpower,” “oppress,” or “molest,” but when coupled with *virginum* and *violenter*, *oppressam* is more accurately read as “rape.”¹³⁸ But unlike *Glanvill*, where *raptus* implied forced coitus with any woman, here *raptus* means exclusively the violent rape of virgins.¹³⁹

Next, *Bracton* describes the rationale for the *poena*, “the punishment,” of the man who is convicted of raping a virgin: *scilicet amissio membrorum, ut sit membrum pro membro, quia virgo cum corrumpitur membrum amittit. Et ideo corruptor puniatur in eo in quo deliquit*, that is “the loss of members, that there be member for member, for **when a virgin is defiled** she loses her member and therefore let her **defiler** be punished in the parts in which he offended.”¹⁴⁰ The *Dictionary of Medieval Latin from British Sources* (DMLBS) defines *corrumpere* as “to corrupt (morally or doctrinally),” or “to violate” or “harm.”¹⁴¹ It is important to note that *Bracton* first states the virgin as having been *oppressam*, but subsequently states that the consequence of this is the corruption of the woman. This perceived corruption could be her deteriorated marriage market value, her *fama*, or her injured body, but either way it is the woman who is “damaged.”

¹³⁷ Harvard Law School Library, *Bracton Online*, *Bracton: De Legibus et Consuetudinibus Angliae*, vol. 2, 414, lines 27–28. <http://amesfoundation.law.harvard.edu/Bracton/> Translation adapted from Harvard Law School, *Bracton Online*. Emphases are my own unless otherwise stated.

¹³⁸ *Dictionary of Medieval Latin from British Sources* (DMLBS), eds. Richard Ashdowne, David Robert Howlett, and Ronald Edward Latham (Oxford: Oxford University Press, 1965–2016), see specifically article 7 of “opprimere” where it states “to rape, violate...(woman)...*violenter virginem*.”

¹³⁹ Saunders, “A Matter of Consent: Middle English Romance and the Law of *Raptus*,” 108.

¹⁴⁰ Harvard Law School Library, *Bracton Online*, vol. 2, 414, lines 29–31. Translation from Harvard Law School, *Bracton Online*.

¹⁴¹ DMLBS, article 1–3 of “corrumpere.”

Corinne Saunders has stated that *Bracton*'s punishment "plays rhetorically with the sexual nature of the crime."¹⁴² It is here that *Bracton* defines the assumed causes of rape by its choice of punishment: *Oculos igitur amittat propter aspectum decoris quo virginem concupivit. Amittat etiam testiculos qui calorem stupri induxerunt*, translated as "Let him thus lose his eyes which gave him sight of the maiden's beauty for which he coveted her. And let him lose as well the testicles which excited his hot lust."¹⁴³ In taking away the rapist's vision, *Bracton* seems to explicitly connect the woman's beauty with the cause of her own rape. The sight of a beautiful young virgin could, according to *Bracton*, cause men to become rapists. This trope is frequently initiated in romance, where the sight of a beautiful maiden, often the protagonist, will cause men to become consumed with lust. In a sense, it is the beautiful young woman's own fault for causing her rape; bluntly stated, "ugly" women are not raped according to *Bracton*. This is suggestive of the belief that rape is done out of passion and lust, and not a crime of violence and domination.¹⁴⁴

¹⁴² Saunders, "A Matter of Consent: Middle English Romance and the Law of *Raptus*," 108.

¹⁴³ Harvard Law School Library, *Bracton Online*, vol. 2, 414–415, lines 31–01. Translation from Harvard Law School, *Bracton Online*.

¹⁴⁴ Diane Wolfthal, *Images of Rape: The "Heroic" Tradition and Its Alternatives* (Cambridge: Cambridge University Press, 1999) 62–63. Wolfthal discusses Gregory of Tours' narrative of the *Life of Saint Ebba* who, to avoid rape, mutilates her face by cutting off her nose. Although historical continuity is largely beyond the scope of this thesis, it is noteworthy that early feminist and modern scholars claim rape "is not a crime of irrational uncontrollable lust but a deliberate, hostile, violent act of degradation and possession." See Susan Brownmiller, *Against our Will: Men, Women and Rape* (New York: Simon and Schuster, 1975), 391, see also pp. 256; Brownmiller, notes the "beautiful victim" complex of rape survivors (see *Against our Will*, 333) and this has continued into present day victim-blaming, most notably by Toronto Police officer Michael Sanguinetti in 2013. Speaking at York University, Sanguinetti said "women should avoid dressing like sluts in order to not be victimized." See CBC News, "Toronto 'Slut Walk' Takes to City Streets," CBC News (April 2, 2011) <https://www.cbc.ca/news/canada/toronto/toronto-slut-walk-takes-to-city-streets-1.1087854>. The comments sparked the now international march known as the SlutWalk, in which their goal is to "speak to the bigger picture of common, persistent and documented victim-blaming." See Lindsay Herriot, "SlutWalk: Contextualizing the Movement," *Women's Studies International Forum* Vol. 53 (2015): 22–30, quote from pp.23; Ethel Tobach and Rachel Reed, "Understanding Rape," in *Evolution, Gender, and Rape*, ed. Cheryl Brown Travis (Cambridge: Massachusetts Institute of Technology, 2003), 115; Cheryl Brown Travis, "Theory and Data on Rape and Evolution," in *Evolution, Gender, and Rape*, ed. Cheryl Brown Travis (Cambridge: Massachusetts Institute of Technology, 2003), 211. The Canadian Criminal Code, referenced above, supports the notion that rape is viewed by the courts as a violent assault. Modern interpretations of rape include sexual erotic desires as present, yet minimal to the larger desire for domination. See Michael Kimmel, "An Unnatural History of Rape," in *Evolution, Gender, and*

The loss of male genitalia is also worthy of further consideration. The “hot lust” was believed to have origins in the male testicles, and consequently, every man was thus susceptible to this all-consuming lust. This meant that the “good” men were believed to have been able to control this impulsive urge for coitus at the sight of a beautiful woman, as it was weaker, less worthy men who were not able to control their impulses, and who would succumb to these urges. From the medieval perspective, this illustrates a distinct socio-economic class division in romance, as in the law. These “weak” men are usually not the male protagonist, and if they are, such as Sir Gowther (discussed in chapter 8), they must redeem themselves from such actions. There was the common societal belief that prostitution was an evil necessity in medieval Europe to allow men sexual release, or else they would become overwhelmed with this “hot lust.” It was, according to Ruth Mazo Karras “a necessary outlet for masculine sex drives which, unrelieved would undermine the social order.”¹⁴⁵ Thus, the *Bracton*-era belief in over-active male lust was grounded in contemporary societal, medical, and scientific beliefs about male sexuality. Karras

Rape, ed. Cheryl Brown Travis (Cambridge: Massachusetts Institute of Technology, 2003), 224. For more information on “rape-prone societies” where women are denied political autonomy, see Peggy Reeves Sandy, “Rape-Free Versus Rape-Prone: How Cultures Make a Difference,” in *Evolution, Gender, and Rape*, ed. Cheryl Brown Travis (Cambridge: Massachusetts Institute of Technology, 2003), 342. Laura Wilson and Amie Newins found that the “rape myths” of modern society include assumptions that females want the sexual assault, and that violence and “force is an acceptable way to obtain sexual compliance.” Wilson and Newins examined “hostile” and “benevolent” sexist attitudes towards women in relation to the belief in rape myths and it is note worthy that they defined “benevolent sexism” as “chivalrous attitudes” which limit female autonomy to “traditional gender roles.” This implies notions of a chivalrous, medieval, past in which traditional gender roles and cultural assumptions about women worked to create a “benevolent sexism” sustaining a rape culture. See Laura C. Wilson and Amie R. Newins, “Attitudes Toward Men and Rejection of Rape Myths: The Impact on Survivor Rape Acknowledgment,” *Journal of Interpersonal Violence* (June 2020): 1–18, quote from pp.3. Evolutionary psychologists still claim this concept today, in that all men inherited the “rapist gene” as this was an evolutionary technique to secure reproduction. This belief works to sustain the “boys will be boys” concept and that it is up to the woman to not get raped. This is most notoriously purported by Craig Palmer and Randy Thornhill, *A Natural History of Rape: Biological Bases of Sexual Coercion* (Cambridge: MIT Press, 2000), but more recently supported by Griet Vandermassen, “Evolution and Rape: A Feminist Darwinian Perspective,” *Sex Roles* Vol. 64, No. 9–10 (May 2011): 732–747 and William F. McKibbin, Todd K. Shackelford, Arron T. Goetz and Valerie G. Starratt, “Why do Men Rape? An Evolutionary Psychological Perspective,” *Review of General Psychology* Vol. 12, No. 1 (2008): 86–97. For further information see, Mardorossian, *Framing the Rape Victim*.

¹⁴⁵ Ruth Mazo Karras, *Common Women: Prostitution and Sexuality in Medieval England* (New York: Oxford University Press, 1996), 5–6.

states that “people believed that pressure builds up and has to be released through a safety valve (marriage or prostitution), or eventually the dam will burst and men will commit seduction, rape, adultery, and sodomy.”¹⁴⁶ This implicitly suggests that medieval Europeans believed that every man was a potential rapist if they did not have an “outlet;” that is to say, all men were potential rapists if they did not have easy access to a woman’s body through marriage or a sex worker. Consequently, sex work was regulated in urban centres and considered necessary to protect both women and men from rape, as it was “central to the construction of gender in medieval culture.”¹⁴⁷ To protect their daughters and wives, and maintain “social order” against rape, men of law regulated brothels and did not punish the men who visited them.¹⁴⁸ *Bracton* is thus heavily entrenched in, and further promoted, this notion of excessive and dangerous male sexual urges. There is a medical and legal precedence to the belief that all men, due to their genitalia and the beauty of women, are potential rapists, but it is within the power of “good” men to control these sexual impulses. The *calorem stupri*, the “hot lust,” is a common literary trope employed in romance and in conduct literature, to describe bad behaviour. The innate hot lust in all men, via testicles and visions of beautiful women, must be controlled. If a man is unable to manage his lust, he will rape. The loss of control of one’s lust is equivalent to the loss of control of one’s own reason. Here, the notions of rapists and wild beasts become conflated, as both rapists and beasts are not in control of their own impulses (further explored in *Sir Gowther* in chapter 8).

The punitive loss of testicles and vision was a unique punishment imposed on the rapist of the most vulnerable women, according to *Bracton*, while the forcible rape of all other women received a different punishment. *Bracton* was quick to state that all women, even concubines and

¹⁴⁶ Karras, *Common Women*, 6.

¹⁴⁷ Karras, *Common Women*, 7, 114–115.

¹⁴⁸ Karras, *Common Women*, 20, 32–34.

prostitutes, were worthy of legal recourse, but there was most definitely a hierarchy of victimhood:

*Non autem sequitur huiusmodi pœna de qualibet femina, licet **vi opprimatur**. Sequitur tamen alia gravis et gravior, secundum quod fuerit nupta vel vidua honeste vivens, sanctimonialis, vel matrona. Item concubina legitima, vel alia quæstu faciens sine delectu personarum, quas quidem omnes debet rex tueri pro pace sua, sed non erit de qualibet par pœna*

[Punishment of this kind does not follow in the case of every woman, though she is **forcibly ravished**, but some other severe punishment does follow, according as she is married or a widow living a respectable life, a nun or a matron, a recognized concubine or a prostitute plying her trade without discrimination of person, all of whom the king must protect for the preservation of his peace, though a like punishment will not be imposed for each.]¹⁴⁹

Again, the forcible nature of the crime is restated, and if force was applied in the rape, along with a consideration of the victim's socio-economic status and *fama*, then an appropriate punishment would be applied. Clearly, the worthiest victim was the virgin maiden, followed by nuns and widows (who must be living a respectable, chaste, life), married women (who were sexually honest to their husbands), loyal concubines (who slept with only one man), and lastly the necessary sex workers. Although *Bracton* states that some other punishment was prescribed to men convicted of raping these non-virgin women, the treatise does not indulge any further information as to what the punishment was.¹⁵⁰ *Bracton* claims that there is no discrimination amongst these women for their protection under the king's law. Yet this ideal is quickly undermined by the final line in the statement, *sed non erit de qualibet par pœna*, that "the

¹⁴⁹ Harvard Law School Library, *Bracton Online*, vol. 2, 415, lines 01–06. Translation from Harvard Law School, *Bracton Online*.

¹⁵⁰ J. B. Post, "Ravishment of Women and the Statues of Westminster," in *Legal Records and the Historian: Papers Presented to the Cambridge Legal History Conference, 7–10 July 1975, and in Lincoln's Inn Old Hall on 3 July 1974*, ed. J. H. Baker (London: Swift Printers, 1978), 151.

punishments are not prescribed equally to all women,” nor (in reality) is their access to the courts of equal opportunity. Even though *Bracton* allowed all women to be victims of rape, there was a clear hierarchy of worthy victims. The rationale for the victimhood hierarchy is simple: *maxime cum virginitas et castitas restitui non possint*, “since virginity and chastity cannot be restored.”¹⁵¹ This is the novelty of *Bracton* compared to *Glanvill*: the strong emphasis on the virginal body and the loss of virginity as the true crime. Virginity was key to the marriage market, and it was most definitely something to lose only to the right man. The stealing of a maiden’s or a nun’s virginity, who dedicated herself to God, was taking away their value in society’s sexual market forever; it could not be given back, and it could not be restored. The woman was forever changed. Further, these chaste women were committed to virtue, and to rape them was not only an offence against them personally, and their kin (fathers), but also an attack on God.¹⁵²

In very similar language and procedure to *Glanvill*, *Bracton* explains how the woman could initiate the appeal process and what the prescribed proof was that she must show:

*Cum igitur virgo sic **corrupta** fuerit et **oppressa** contra pacem domini regis, statim et dum factum recens fuerit, cum clamore et huthesio accedere debet ad villas vicinas et ibi iniuriam sibi illatam probis hominibus ostendere, sanguinem et vestes suas sanguine tinctas, et vestium scissiones. Et sic ire debet ad præpositum hundredi, et ad servientem domini regis et ad coronatores et ad vicecomitem*

[When thus a virgin has been **corrupted** and **oppressed** against the peace of the lord king, she must go at once and while the deed is newly done, with the hue and cry, to the neighbouring townships and there show the injury done to her to men of good repute, the blood and her clothing stained with blood, and her torn garments. And in the same way she ought to go to the reeve of the hundred, the king's serjeant, the coroners and the sheriff.]¹⁵³

¹⁵¹ Harvard Law School Library, *Bracton Online*, vol. 2, 415, lines 08–09. Translation from Harvard Law School, *Bracton Online*.

¹⁵² Kittel, “Rape in Thirteenth-Century England,” 103.

¹⁵³ Harvard Law School Library, *Bracton Online*, vol. 2, 415, lines 15–20. Translation adapted from Harvard Law School, *Bracton Online*. The translation of “*cum igitur virgo sic corrupta fuerit et oppressa contra pacem domini regis*” are my own.

The process requires that the woman have physical proof of non-consent, in almost identical terms to *Glanvill*: physical bodily injury, blood, bruising, as well as physical signs of force and struggle, such as torn garments. Once again, the mental nature of non-consent is replaced by the physical proof of non-consent. The immediacy of the hue and cry is a further legal requirement echoing *Glanvill*. The maiden must not waste any time in telling good trustworthy men of her rape, or else it is suspicious that she waited to make it known. Raising the hue and cry was not unique to rape cases, as it was included in English felony laws for robbery, outlawry, and homicide.¹⁵⁴ However, the “feminization” of the hue and cry has been noted by scholars as becoming an increasingly womanly activity in the fourteenth century.¹⁵⁵ The lengthy process in showing the physical proof of the crime and her non-consent to various men is also similar to *Glanvill*, in that it involves the neighbouring men, the reeve of the hundred, the king’s serjeant, the coroner, and the local sheriff. If a woman had little physical proof of non-consent to the crime, the likelihood of her reporting the sexual defilement to all these men is significantly diminished, as her reputation would suffer immensely if her plea should fail in court.

Once all of the proper men have been made aware of the crime, and they have seen the physical proof, *Bracton* states the beginning of the appeal process: *Et ad primum comitatum faciet appellum suum...ubi dicetur ei quod sequatur ad comitatum*, “and let her make her appeal

¹⁵⁴ Samantha Sagui, “The Hue and Cry in Medieval English Towns,” *Historical Research* Vol. 87, No. 236 (2014): 179–193.

¹⁵⁵ Sagui, “The Hue and Cry in Medieval English Towns,” 186–187; Judith Bennett, *Women in the Medieval English Countryside: Gender and Household in Brigstock Before the Plague* (Oxford: Oxford University Press, 1987), 26 and 41. Bennett notes that women are more often than men accused of falsely raising the hue and cry meaning that either women “misjudged situations or accused persons maliciously” or “had their complaints ignored by the courts.”

at the first county court...where she will be told to sue at the county court.”¹⁵⁶ The county courts were heard fairly regularly, as mandated by Magna Carta, holding sessions every twenty-eight days.¹⁵⁷ It is at this part in the legal process where the woman’s appeal was to be recorded, apparently (or more likely only in theory) word for word, exactly as she said it:

Et in rotulis coronatorum irrotuletur appellum suum et omnia verba appelli, secundum quod illud proposuerit per ordinem, et annus et dies quibus fecerit appellum suum. Et dabitur dies in adventu iustitiariorum, ad quem iterum proponat coram eis appellum suum per eadem verba quibus proposuit in comitatu, et a quibus recedere non licet, ne cadat appellum propter variationem, sicut in aliis appellis

[Let her appeal be enrolled in the coroners' rolls, every word of the appeal, exactly as she makes it, and the year and day on which she makes it. A day will be given [to her] at the coming of the justices, on which let her again put forward her appeal before them, in the same words as she made it in the county court, from which she is not permitted to depart lest the appeal fall because of the variance, as is true in other appeals.]¹⁵⁸

It is earlier in the treatise that the coroner’s duties are stated *si raptus virginum*, “where there is rape of virgins.”¹⁵⁹ First, *factum recens fuerit*, the rape had to have occurred recently, and the woman diligently raised the hue immediately after the crime (*ut si huthesium levatum fuerit et ecenter secutum*).¹⁶⁰ Next there was the repeated necessity of physical bodily harm, *et ruptum vestimentum, et si non ruptum, sanguine tamen intinctum*, translated as “either her garments are torn, or if not torn, stained with blood.”¹⁶¹ Only then does the treatise state *tunc attachietur appellatus per quatuor vel sex vel plures si tot inveniri possint sin autem, ad minus per duos*, “let

¹⁵⁶ Harvard Law School Library, *Bracton Online*, vol. 2, 415, lines 20–23. Translation from Harvard Law School, *Bracton Online*.

¹⁵⁷ Musson, *Medieval Law in Context*, 96.

¹⁵⁸ Harvard Law School Library, *Bracton Online*, vol. 2, 415, lines 23–29. Translation from Harvard Law School, *Bracton Online*.

¹⁵⁹ Harvard Law School Library, *Bracton Online*, vol. 2, 344.

¹⁶⁰ Harvard Law School Library, *Bracton Online*, vol. 2, 345, lines 01–03.

¹⁶¹ Harvard Law School Library, *Bracton Online*, vol. 2, 345, lines 03–04. Translation from Harvard Law School, *Bracton Online*.

the appellee be attached by four or six pledges, or more if that many may be found, or if not, by at least two.”¹⁶² If there were wounds, the coroner was ordered *videre plagas illas, et illas mensurare cuius sint longitudinis et cuius profunditatis*, that is “to view the said wounds, measure their length and depth.”¹⁶³ The inspection of the body and the recording of the woman’s words were the duty of the local coroner. The expectation was that the woman would retell the exact same words in her appeal, which were copied in the coroners’ rolls, as she stated in court.¹⁶⁴ This was meant literally not figuratively. Appeals frequently failed if a woman, for example, misremembered the door that the man came into her house and raped her, or if she stated a different time of day from that in the original recorded appeal.¹⁶⁵ These women could, and did, become imprisoned for false appeals, as was the case with Joan, daughter of Eustace, and Idena (discussed more in chapter 3).¹⁶⁶

Bracton’s inclusion of the verbatim transcription of the woman’s appeal offers the ability for an extraordinarily unique observance into the ordinary woman’s world of medieval England. Often historians are forced to study elites, royals, and nobles, due to the nature of surviving archival material. The commons, the peasantry, the artisans and the most vulnerable such as sex workers, are often excluded from the historian’s view by the simple and sad fact that very few written sources from the lower classes have survived. But the woman’s appeal, being written down in her own words, as demanded by *Bracton*, is a potential unique opportunity to view the hidden history of the ordinary, because once again, *Bracton* said that all women are deserving of

¹⁶² Harvard Law School Library, *Bracton Online*, vol. 2, 345, lines 04–05. Translation from Harvard Law School, *Bracton Online*.

¹⁶³ Harvard Law School Library, *Bracton Online*, vol. 2, 345, lines 22–23. Translation from Harvard Law School, *Bracton Online*.

¹⁶⁴ Bellamy, *Crime and Public Order in England in the Later Middle Ages*, 125–126.

¹⁶⁵ Musson, *Medieval Law in Context*, 154–155.

¹⁶⁶ TNA: JUST/1/547A m 66d; TNA: JUST1/669 m 8d.

legal recourse. This ideal of recovering a hidden past is hampered by the fact that these women did not write their own appeals, but instead they spoke their truths orally and had them recorded by a male scribe. These women were often illiterate, and they did not have access to the written records to review them. Even if the women could review the documents, they were written in a different language from what the women spoke, as court records are recorded not in the vernacular, but in Latin.¹⁶⁷ Further, the appeals are written in abbreviated Latin and contain almost identical phrases, suggesting that these were far from the words spoken by the women themselves and more in line with a standardised legal jargon used in the recording of rape appeals. Lawyers, clerks, and scribes, who were almost invariably all men, were trained in what Nathalie Zemon Davis calls “legal rhetoric.”¹⁶⁸ While trying to formulate a convincing case, these men of law heavily influenced the structure of the appeals that these women presented by including stock literary phrases, such as the crime happened at night.¹⁶⁹ While I am aware that these records are an extremely valuable source to study a unique and often ignored history, I am equally aware that they are filtered through a male scribe, during a time of increasing legal standardisation requirements.¹⁷⁰ Various medievalists acknowledge that there is little access to the “female voice,”¹⁷¹ as the appeals were written “in ways that reflected contemporary thoughts on gender and prescribed forms of behaviour.”¹⁷² To borrow Jeremy Goldberg’s phrase, the female voice is “ventriloquized” by the men of law controlling the legal documents, but to deny

¹⁶⁷ Bellamy, *Crime and Public Order in England in the Later Middle Ages*, 144.

¹⁶⁸ Nathalie Zemon Davis, *Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth-Century France* (Stanford: Stanford University Press, 1987), 17–18.

¹⁶⁹ Bellamy, *Crime and Public Order in England in the Later Middle Ages*, 124; Dunn, *Stolen Women in Medieval England*, 6.

¹⁷⁰ Christopher Cannon, “The Rights of Medieval English Women: Crime and the Issue of Representation,” in *Medieval Crime and Social Control*, eds. Barbara A. Hanawalt and David Wallace (Minneapolis: University of Minnesota Press, 1998), 165–166.

¹⁷¹ Dunn, *Stolen Women in Medieval England*, 68–69.

¹⁷² Kane and Williamson, “Introduction,” 1, 19; see also Davis, *Fiction in the Archives*, specifically pp. 18.

any access to female voice is to further silence women.¹⁷³ As the *Bracton* legal age mandated, women had the right to have their truths written down and without these sources, we perhaps would never have heard of these women or known of their existences and because of that, I believe that they must be treated with great care. Thus, despite the limitations on uncovering female voice, there is a representation of the lived realities of women in the legal records.¹⁷⁴

Bracton clearly warned against false appeals by stating that the appellor must reiterate the appeal verbatim from the coroners' rolls. After this, the text breaks into a new section titled, *de verbis appellii mulieris querentis de raptu*, "the words of the appeal of a woman complaining of rape." Here *Bracton* outlines the exact process that the appeal must take, starting with the setting: *A. FEMINA talis scilicet appellat B. quod sicut esset tali loco, tali die, tali anno etcetera ut supra, vel cum iret a tali loco usque ad talem locum, vel cum esset tali loco faciendo tale opus*, "A., such a woman, appeals B. for that whereas she was at such a place on such a day in such a year etc. (as above) (or 'when she was going from such a place to such,' or 'at such a place, doing such a thing')." ¹⁷⁵ The physical setting, the time of day, and the date are crucial to the woman's appeal. If these were misremembered or mixed up in the slightest way, deviating from what was recorded in the coroners' rolls, the appeal could fail. *Bracton* continues with the words of the woman's appeal by then offering a new definition of the crime of *raptus*:

venit idem B. cum vi sua, et nequiter et contra pacem domini regis concubuit cum ea et abstulit ei pucelagium suum sive virginitatem, et eam secum detinuit per tot noctes: et sic totum exponat factum et veritatem.

¹⁷³ Jeremy Goldberg, "Echoes, Whispers, Ventriloquism: On Recovering Women's Voices from the Court of York in the Later Middle Ages," in *Women, Agency and the Law, 1300-1700*, the Body, Gender and Culture Number 15, ed. Bronach Kane and Fiona Williamson (London: Pickering & Chatto, 2013), 31.

¹⁷⁴ Cannon, "The Rights of Medieval English Women: Crime and the Issue of Representation," 156–156, 169.

¹⁷⁵ Harvard Law School Library, *Bracton Online*, vol. 2, 416, lines 2–4. Translation from Harvard Law School, *Bracton Online*.

[The said B. came **with his force** and wickedly and against the king's peace had **intercourse** with her and **took** from her, her **virginity** and kept her with him for so many nights (and let her thus set out all the facts and the truth).]¹⁷⁶

Bracton is now explicitly referring to rape and loss of virginity by the inclusion of the words *concubuit*, *abstulit*, and *virginitatem*. The use of force, *cum vi*, is once again stated, as the proof of violence must be evident. It is logical to presume that the violence is indicative of resistance, and that the application of force is used to overwhelm the victim. This suggests, according to *Bracton*, that the woman resisted the rape, and the physical injury was proof of her non-consent. This is the most direct definition of rape presented in both *Glanvill* and *Bracton*. Why *Bracton* progressively offers a more explicit definition of rape as the treatise continues is unclear. The notion of theft, stealing the maiden's virginity by force was crucial to the crime. However, *Bracton* claims that she must have also been held prisoner, *detinuit*, for an extended period of time after the rape, *per tot noctes*, "for so many nights." This is a shift from the definition of the crime of *raptus*, according to *Glanvill*, as *Bracton* separates the rape of women from the rape of virgins which includes abduction.

The assumption was that the defendant would deny the charges, and as such *Bracton* titles the subsequent section *de defensione appellati*, "the appellee's defence." It was assumed that *B. venit et defendit feloniam et pacem et raptum et totum de verbo in verbum*, "B. comes and denies the felony and the breach of the peace and the rape and everything, word for word."¹⁷⁷ From the cases under investigation here (discussed fully in chapter 3), all of the defendants deny

¹⁷⁶ Harvard Law School Library, *Bracton Online*, vol. 2, 416, lines 4–7. Translation adapted from Harvard Law School, *Bracton Online*. The translation of *concubuit cum ea et abstulit ei pucelagium suum sive virginitatem* is my own.

¹⁷⁷ Harvard Law School Library, *Bracton Online*, vol. 2, 416, lines 10–11. Translation from Harvard Law School, *Bracton Online*.

the charges placed against them. *Bracton* claims that the man has to defend himself, *nisi exceptiones habeat sibi competentes per quas declinare possit appellum*, that is “unless there are exceptions available to him by which he may avoid the appeal.”¹⁷⁸ The most obvious exception to the charges was that the woman was in fact still a virgin (*quia adhuc virgo est*).¹⁷⁹ The female body was once again placed at the centre of the crime as *Bracton* states that if this was the appeal of the defence, then *Et quo casu probetur veritas per aspectum corporis, et per quatuor legales feminas iuratas de dicenda veritate utrum virgo sit vel corrupta*, “in that case let the truth be [proven] by an examination of her body, made by four law-abiding women sworn to tell the truth as to whether **she is a virgin or [corrupted]**.”¹⁸⁰ In previous definitions, *corrupta* was vague in meaning. But here, *Bracton* clearly states that *corrupta* is the opposite of *virgo*, corruption is the opposite of virginity. Corruption is now also described as being visibly evident to these “legal women who make an oath.” *Concubuit* leads to the visible *corruptio* of the woman and if she is visibly corrupted, she is not a virgin. It is not surprising that these “legal women” were most often called on to examine the female body for loss of virginity and “the rupture of young children’s genitals.”¹⁸¹

The inspection of her body was done by other women and this was a unique legal-medical scenario where men relied on the testimony of law-abiding women in court. This was a very rare instance where female witnesses were the authority in criminal trials in England. The

¹⁷⁸ Harvard Law School Library, *Bracton Online*, vol. 2, 416, lines 13–14. Translation from Harvard Law School, *Bracton Online*.

¹⁷⁹ Harvard Law School Library, *Bracton Online*, vol. 2, 416, line 18.

¹⁸⁰ Harvard Law School Library, *Bracton Online*, vol. 2, 416, lines 18–20. Translation adapted from Harvard Law School, *Bracton Online*. Harvard Law translated *probetur* as “ascertained.” I translated a more literal definition from D. P. Simpson, *Cassell’s Latin Dictionary* (New York: MacMillan Publishing, 1968), 474: “probo -are: *to show, prove, demonstrate*: crimen, causam.” Harvard Law school translated *corrupta* as “defiled.” I opted for a more literal definition of “corrupted.”

¹⁸¹ Hiram Kümper, “Learned Men and Skilful Matrons: Medieval Expertise and the Forensics of Rape in the Middle Ages,” in *Medicine and the Law in the Middle Ages*, eds. Wendy Turner and Sara Butler (Leiden: Brill, 2014), 88–108, quote from 108.

testimony of these “legal women” determined what happened next: *Quæ quidem si dicant ipsam esse virginem, recedet appellatus quietus de appello illo et femina custodiatur*, “if they say that she is a virgin, the appellee will depart quit of that appeal and the woman be placed in custody,”¹⁸² meaning that she would be imprisoned for false appeal. Evidently, the testimony of the *legales feminas* chosen to inspect the body of the rape survivor was upheld as absolute law. If, however, the women determined that the maiden was corrupted (*corruptam*) then *tunc inquirendum est ut videtur a quo, ab appellato vel ab alio: sed non per feminas illas, sed per patriam*, “inquiry must then be made as to the guilty party, whether by the appellee or another, but not by the said women but by the country.”¹⁸³ The law-abiding women, inspecting the body of the maiden, have fulfilled their purpose in determining the (non)virginal status of the appellant. After that, the men of law take over. It is remarkable that the maiden’s body, as the physical proof of the crime, relied on the authority of other women and it is arguable that this was the only time in criminal trials that female testimony held such legal implications and authority in the king’s court.

An alternative exception available to the accused was to claim that she was his concubine and friend (*concubinam et amicam*),¹⁸⁴ or that she had given her consent, and that he took her virginity but it was not against her will (*voluntate sua et non contra voluntatem*).¹⁸⁵ If the defendant pleaded that consent was initially given, then *Bracton* concluded that the maiden now accused him of rape because *hoc est in odium alterius mulieris quam ut concubinam habet, vel quam duxit in uxorem, et per instinctum alicuius parentis sui*, “in hatred of another woman

¹⁸² Harvard Law School Library, *Bracton Online*, vol. 2, 416, lines 20–22. Translation from Harvard Law School, *Bracton Online*.

¹⁸³ Harvard Law School Library, *Bracton Online*, vol. 2, 416, lines 22–24. Translation from Harvard Law School, *Bracton Online*.

¹⁸⁴ Harvard Law School Library, *Bracton Online*, vol. 2, 416, lines 28.

¹⁸⁵ Harvard Law School Library, *Bracton Online*, vol. 2, 416, lines 29–30.

whom he has as his concubine, or whom he has married, and at the instigation of one of her kinsmen.”¹⁸⁶ The male defendant’s claim of consent clearly held a much higher degree of truth, to *Bracton*, than the accusations made by the female plaintiff. The malicious false appeals of women made to disgrace honest men out of sexual jealousy or at the provocation of her family, is explicitly stated. As a legal textbook with wide circulation, this was devastatingly suspicious of women’s rape claims. This was not just rhetoric, but rather a legal reality which women faced in the courts. The case of Isabella de Chadeston from 1275¹⁸⁷ is a prime example of *Bracton*’s assumed malicious appeal made by a jealous woman, as she was believed to have been jealous of her lover’s new woman and thus claimed rape to trap him into marriage. Isabella de Chadeston appealed Richard de Staunford of rape, and as the Calendar of Close Rolls states, “out of fraud and malice.”¹⁸⁸ The record shows that they admit Isabella and Richard knew each other, but for seventeen years Richard had been married and living with his wife and that Isabella “fraudulently” appealed him of rape. Isabella was assumed to have made the malicious appeal due to her sexual jealousy. Evidently secular lawmakers were fearful of women’s fake rape claims. Another way the defendant could claim innocence according to *Bracton* was by having an alibi during the day which the crime supposedly occurred.¹⁸⁹

Subsequently, *Bracton* outlined the punishment for men convicted of raping virgins and it was the exact same as *Glanvill: oculos amittat et testiculos supradicta ratione*, they are to lose their eyes and their testicles.¹⁹⁰ Presumably this extreme mutilation was reserved only for the

¹⁸⁶ Harvard Law School Library, *Bracton Online*, vol. 2, 416, lines 30–32. Translation from Harvard Law School, *Bracton Online*.

¹⁸⁷ TNA: C54/93 m 17.

¹⁸⁸ Translation available in *Calendar of the Close Rolls Preserved in the Public Records Office, Edward I 1272–1279*, trans. W. H. Stevenson (London: His Majesty’s Stationary Office, 1900), 262 (TNA: C54/93 m 17).

¹⁸⁹ Harvard Law School Library, *Bracton Online*, vol. 2, 416–417, lines 32–03.

¹⁹⁰ Harvard Law School Library, *Bracton Online*, vol. 2, 417, lines 09–10.

worst kind of rapists, according to *Bracton*, and not all rapists in general. The only way a convicted rapist of a virgin could be excused from this punishment was if the woman wished to marry the man who raped her. *Bracton* was restating the marriage clause initiated in *Glanvill*, that *nisi ita sit quod femina sic **corrupta** eum petat in virum ante iudicium redditum, quia hoc est tantum in voluntate mulieris et non viri*, translated as “unless, before judgment rendered, the woman thus [**corrupted**] claims him for her husband, for this lies wholly in her discretion, not in that of the man.”¹⁹¹ As in *Glanvill*, the woman had the ability to claim her ravisher as her husband and thus legally erase the crime of rape as there was no punishment prescribed once this marriage clause was claimed. The decision to claim the accused rapist as her husband was, as with *Glanvill*, the woman’s decision. This had less to do with the woman’s retribution and legal rights and more to do with socio-economic class inequity in marriages. If the man convicted of rape could, after judgment, choose to marry the woman, *Bracton* echoes *Glanvill* in warning of the evil that would come:

*quia si hoc esset in voluntate viri sic sequeretur istud inconveniens, servum videlicet vel ignobilem mulierem nobilem et generosam unius **pollutionis** actione perpetuo fœdare, et in opprobrium generis sui ducere in uxorem.*

[For if it lay in his discretion this unseemliness would result, namely, that a villein or a common person might bring perpetual disgrace upon a woman of nobility and good family by a single act of **defilement** and take her to wife to the disgrace of her family.]¹⁹²

The explicit fear of sexual defilement, or pollution, of noblewomen by unworthy lower-class men is once again stated in *Bracton*. The marriage of vastly different social classes was not

¹⁹¹ Harvard Law School Library, *Bracton Online*, vol. 2, 417, lines 10–12. Translation provided by Harvard Law School Library. Adaption of translation of *corrupta*, which Harvard Law translated as “defiled.”

¹⁹² Harvard Law School Library, *Bracton Online*, vol. 2, 417, lines 12–15. Translation from Harvard Law School, *Bracton Online*.

acceptable in thirteenth-century England, and it imputed a bad reputation not only on the woman, but on her entire family. This is an important point, as once again the sexual reputation of the maiden, the young and presumably unmarried daughter of the family, could bring much shame to the entire family group, particularly her father. This concept is repeated vividly in the conduct literature and romances of medieval England. The daughter's good sexual reputation was a source of pride and prestige contributing to her own marriage value and her father's ability to run a good household. The daughter's bad sexual reputation reflected the blatant inability of her father to control his house. Thus, by including the marriage clause at the sole discretion of the woman, *Bracton* protected noblewomen from *raptus* by opportunistic men seeking social mobility. This implicitly suggests that if men were legally able to choose to marry the woman they raped, then rape would be a much more common crime. *Bracton* even switched the role of nobility in the following lines, if *vir raptor sit nobilis*, a nobleman rapes an *ignobilis*, "a peasant woman," the law remained the same, as the choice of marriage was always the woman's.¹⁹³ I will return to the paradox of the marriage clause below, but for now it is important to note the legal freedom that the age of *Bracton* was giving women of all social classes (in theory), one of having the ability to claim the rapist as their husband, without their parents' necessary consent. The woman was the victim of the crime and she had the sole ability to decide whether the man would endure mutilation or be saved by her hand in marriage. Instead of *Glanvill*'s necessary parental consent for marriage, *Bracton* states the woman only needs *gratia regis*, "the grace of the king."¹⁹⁴

¹⁹³ Harvard Law School Library, *Bracton Online*, vol. 2, 417, lines 15–21.

¹⁹⁴ Harvard Law School Library, *Bracton Online*, vol. 2, 417, lines 21–23. It appears based on the frequency in which marriage was used to settle cases, that the grace of the king was likely to be obtained.

If, however, the woman decided to continue with the mutilation as punishment, *Bracton* described the appeal process of those who were accessories to the crime, with the careful distinction that *unus tantum tenebitur de corruptione*, that “one man can be culpable of the rape of the virgin” but, *licet plures teneri possint de concubitu*, “many men can be accused of lying with her after” her virginity has been stolen.¹⁹⁵ As stated above, *corruptio* is the opposite of virginity thus, once the corruption occurs the other men are guilty of *concubitus*, “intercourse” with her, but not the corruption of her virginal status. *Bracton* then outlines *de appellatis de forcia*, the appeal of those accessories to the crime.¹⁹⁶

At this point in manuscripts *OC*, *MG*, *OB*, *MA* and *MB*, there is an *addicio*, an addition, where the texts explain what the practices were in *antiquitus*, “ancient times.”¹⁹⁷ In few words, *Bracton* comments on the complex legal jurisdiction of rape: *raptus mulieris ne fiat defendit tam lex humana quam divina*, that is “man-made as well as divine law forbid the rape of women.”¹⁹⁸ Rape, as previously stated, was the only sexual crime not to be tried in ecclesiastical courts. However, the text is here stating that it is a crime against both the king and God, despite being heard in secular courts. The text explains the escalation of crime and punishment, beginning with touching her, to throwing her on the ground, undressing her, and lastly lying with her.¹⁹⁹ Then, *Bracton* explains the extent of the mutilation punishment:

Lege Romanorum, Francorum, et Anglorum, equus eius etiam ad dedecus suum dedecorabitur desuper ballenro, et cauda quam propius natibus abscidi poterit. Canis si secum habet, leporarius vel alius, eodem modo dedecorabitur. Si habet ancipitrem, perdat beccum et ungues et caudam.

¹⁹⁵ Harvard Law School Library, *Bracton Online*, vol. 2, 417, lines 25–27. Translation adapted from Harvard Law School, *Bracton Online*.

¹⁹⁶ Harvard Law School Library, *Bracton Online*, vol. 2, 417–418, lines 33–05.

¹⁹⁷ Harvard Law School Library, *Bracton Online*, vol. 2, 418, line 08.

¹⁹⁸ Harvard Law School Library, *Bracton Online*, vol. 2, 418, line 07. Translation from Harvard Law School, *Bracton Online*.

¹⁹⁹ Harvard Law School Library, *Bracton Online*, vol. 2, 418, lines 08–14.

[By the law of the Romans, the Franks and the English, even his horse shall to his ignominy be put to shame upon its scrotum and its tail, which shall be cut off as close as possible to the buttocks. If he has a dog with him, a greyhound or some other, it shall be put to shame in the same way; if a hawk, let it lose its beak, its claws and its tail.]²⁰⁰

The mutilation of the genitalia of the man was not the only punishment according to these supposed ancient laws, but also the mutilation of his horse, dog, or hawk was also prescribed. The blatant de-masculinization of the rapist and his animals paints a vivid image in *Bracton* of the humiliating and very public punishment of men convicted of rape. By taking the man's genitalia away, the rapist was unarmed and his masculinity (and that of his animals) was further degraded. The legal precedent for genital mutilation was apparently not set in *Glanvill*, but rather practiced throughout the laws of the Romans, the Franks, and the English, as a universal punishment for rape. However, modern historians do not know where *Bracton* got this information from, as the pre-Norman laws under Alfred the Great did not prescribe punitive mutilation.²⁰¹ *Bracton* is bolstering the ancient lineage of rape punishments by tracing them fictitiously back to the Romans. Similarly to how the crime was defined by the physical bodily injury of the woman, the punishment was defined in the physical bodily mutilation of the man (and his horse, or dog, or hawk). These ancient laws, according to *Bracton*, further provided financial relief to the woman, as all of the rapist's money and land were given to her.²⁰² Also of interest here is the anonymous legal commentary, *Placita Corona*, composed in 1274–75, in which it states that a woman married to a convicted rapist may “claim her husband's testicles as her own property” and thus save him from genital mutilation and instead he would only be

²⁰⁰ Harvard Law School Library, *Bracton Online*, vol. 2, 418, lines 15–19. Translation from Harvard Law School, *Bracton Online*.

²⁰¹ Pollock and Maitland, *The History of the English Law Before the Time of Edward I*, vol. 2, 490.

²⁰² Harvard Law School Library, *Bracton Online*, vol. 2, 418, lines 19–20.

blinded.²⁰³ Despite the hierarchy of victimhood during the age of *Bracton*, the so-called ancient laws claimed that even if the woman was a *meretrix*, a prostitute, she was still an equal victim because *nequitiae eius reclamando consentire noluit*, “by crying out against his wicked deed she refused her consent.”²⁰⁴ Although these ancient laws are likely fictitious, they are important to the medieval understanding of the relationship of the physical bodily nature in both the crime of rape and its punishment.

At this point *Bracton* digresses into a narrative, the origins of which remain unknown,²⁰⁵ of the rape of a jester’s wife by a count. The wife escaped to Paris and told her story to King Robert the Pious.²⁰⁶ In typical literary trope, the wife is described as beautiful (*pulchra uxor*), hinting at the common romance motif that beautiful women are more likely to become the victims of rape. As we have already seen, this notion is also referred to in *Glanvill* and *Bracton* with the belief that the sight of a beautiful woman could inspire men to rape. The narrative continues by stating that the count attempts to bribe King Robert to avoid going to court, but then he ultimately goes to court to face judgement.²⁰⁷ With the consensus of the ecclesiastical and secular elite, the count is ordered to marry the beautiful wife of the jester (who happened to die, so she is now a widow). The explicit consent of the bride is not mentioned nor deemed relevant to *Bracton*’s story. Rather, we are told that she makes a good bride because *erat pulchra et sapiens*, “she was beautiful and wise,” and that despite being of Jewish descent (*de Iudeis nata*), she was a generous Christian.²⁰⁸ It is from this story that the legal precedent was allegedly set to

²⁰³ Kittel, “Rape in Thirteenth-Century England,” 103.

²⁰⁴ Harvard Law School Library, *Bracton Online*, vol. 2, 418, lines 20–22. Translation from Harvard Law School, *Bracton Online*.

²⁰⁵ Pollock and Maitland, *The History of the English Law Before the Time of Edward I*, vol. 2, 491.

²⁰⁶ Harvard Law School Library, *Bracton Online*, vol. 2, 418, lines 25–32. The text states: *Habuit eam nolentem*, translated as “had her against her will.”

²⁰⁷ Harvard Law School Library, *Bracton Online*, vol. 2, 419, lines 01–17.

²⁰⁸ Harvard Law School Library, *Bracton Online*, vol. 2, 419, lines 17–20. Translation is my own.

allow for the marriage between the rapist and the survivor as *multis locis quasi consuetudinaria habetur*, “in many places it is [held] as customary [practice].”²⁰⁹ So ends both the story of the jester’s wife and the addition of the ancient customs, at which point *Bracton* returns to cases that women could appeal themselves in court.

The legal age of *Bracton* follows *Glanvill* in allowing women to appeal only two crimes: rape, and the death of their husbands. The physical harm done to the woman’s body is justification for her right to appeal rape (*de iniuria et violentia corporis sui illata*).²¹⁰ For the death of her husband (*de morte viri sui*), *Bracton* adds the legal requirement that *interfecti inter brachia, et non alio modo*, “the husband is killed in the arms of his wife, and in no other way.”²¹¹ After explaining the appeal process a wife must take in the event of the death of her husband,²¹² *Bracton* next discusses the drawing up of writs²¹³ and other felonies such as theft and larceny.

Following this, in discussing the culpability of a criminal husband and wife, *Bracton* reiterates a common trope in conduct literature. That is, *et si obedire debeat viro, in atrocioribus tamen non erit ei obediendum*, “and though she ought to obey her husband she need not be obedient to him in heinous deeds.”²¹⁴ Similarly, the late thirteenth-century legal treatise *Mirror of Justices* allowed a wife to claim coercion by her husband in criminal cases, if she was threatened “under her husband’s rod” and was so fearful that she did as he said.²¹⁵ The tightrope-

²⁰⁹ Harvard Law School Library, *Bracton Online*, vol. 2, 419, lines 20–22. Translation adapted from Harvard Law School, *Bracton Online*. Harvard Law translated *habetur* as “regarded”, however, I opted for a more literal translation and included “practice.”

²¹⁰ Harvard Law School Library, *Bracton Online*, vol. 2, 419, line 26.

²¹¹ Harvard Law School Library, *Bracton Online*, vol. 2, 419, line 27. Translation adapted from Harvard Law School, *Bracton Online*.

²¹² Harvard Law School Library, *Bracton Online*, vol. 2, 419–420, lines 30–12.

²¹³ Harvard Law School Library, *Bracton Online*, vol. 2, 420–423, lines 19–25.

²¹⁴ Harvard Law School Library, *Bracton Online*, vol. 2, 428, lines 29–31. Translation from Harvard Law School, *Bracton Online*.

²¹⁵ Butler, *Language of Abuse*, 43.

walk of an obedient wife to a good husband, and a defiant wife to a bad husband, is a common literary theme in romance and conduct literature. As we will see in the following chapters, there was a legal precedent of women's culpability, in presumably fictional tales, that had an intentional didactic narrative.

The wifely obligation to refuse to help her criminal husband was not extended to *concubina*, a concubine, or *famula*, a female maid or servant,²¹⁶ because *Ipsæ vero accusare tenentur vel a servitio recedere, alioquin videntur consentire*, "such persons are bound to accuse [the man] or to withdraw from his service; otherwise they are taken to consent."²¹⁷ The socio-economic class implications to the application of the law, and the legal culpability of inaction are explicit. A wife should defy a bad husband, but it is understandable if she does not because she is also expected to obey him. A maidservant, on the other hand, either quits the service, and thus suffers loss of income, or is deemed to be consenting to the criminal activity of her employer.

A pregnancy occurring from rape were devastating to a woman's appeal, as the two-seed theory of conception made conception equal to consent (discussed further in chapter 5). However, *Bracton* goes into deeper discussion about the implications of pregnancy to punishment. Here *Bracton* states:

Si vero mulier pro maleficio fuerit condemnata, differtur aliquando executio iudicii postquam redditum fuerit iudicium, si prægnans fuerit, donec peperit, sive ante delictum perpetratum conceperit sive post.

²¹⁶ Harvard Law School Library, *Bracton Online*, vol. 2, 428, line 32.

²¹⁷ Harvard Law School Library, *Bracton Online*, vol. 2, 429, lines 01–02. Translation from Harvard Law School, *Bracton Online*.

[If a woman has been condemned for a crime and is pregnant, execution of sentence is sometimes deferred after judgment rendered until she has given birth, whether conception took place before the offence or after it.]²¹⁸

Bracton adds *nec de ea quæstio habeatur quamdiu prægnans fuerit, id est non torqueatur*, that “the pregnant woman cannot be tortured until after she has given birth.”²¹⁹ Since twelfth-century prisons were not separated by gender, becoming pregnant in prison while awaiting penalty was a way to defer the punishment, in what has been called “the benefit of the belly.”²²⁰ This was influenced by the teachings of canon law, in which killing an unborn baby was an unforgivable sin. Consequently, pregnant women would be held in prison until the birth of their child, at which point capital punishment could be prescribed.²²¹ Thus, beyond the legal implication that medical theories on conception and consent imposed on rape trials (discussed more in chapter 5), the consequences of pregnancy of criminally convicted women was to defer punishment.

Overall, the legal age of *Bracton* generally follows in the footsteps of *Glanvill*, in that there is a focus on the physical injuries because of the rape. However, as *Glanvill* focuses on the bodily injury of all women, *Bracton* focuses on the virginal body. The hierarchy of victimhood is explicit in *Bracton*, as the virginal body is the primary focus, and the rape of other women is either left to minimal comment or unmentioned altogether. *Bracton* would remain the legal

²¹⁸ Harvard Law School Library, *Bracton Online*, vol. 2, 429, lines 02–05. Translation from Harvard Law School, *Bracton Online*.

²¹⁹ Harvard Law School Library, *Bracton Online*, vol. 2, 429, lines 07–08. Translation from Harvard Law School, *Bracton Online*.

²²⁰ Janet Loengard, “Common Law for Margery: Separate but Not Equal,” in *Women in Medieval Western European Culture*, ed. Linda E. Mitchell, Garland Reference Library of the Humanities 2007 (New York and London: Garland, 1999), 128.

²²¹ Barbara A. Hanawalt, “Women Before the Law: Females as Felons and Prey in Fourteenth-Century England,” in *Women and the Law: A Social Historical Perspective Volume I: Women and the Criminal Law*, ed. D. Kelly Weisberg (Cambridge: Schenkman Publishing Company, 1982), 189–190.

authority from c.1230 until King Edward I issued the first royal statute relating to rape, that is the Statute of Westminster I in 1275.

III: The Age of the First Statute of Westminster

King Edward I ascended to the throne in 1272, coinciding with a period in the thirteenth century when England underwent immense legal development, expanding legislations, and growing royal jurisdiction. However, the thirteenth century was not exclusively a period of development for secular law as canon law was also increasing in complexity during this same time. Pope Gregory IX released decretals in 1234, Gregory X followed in 1274, and the centre of ecclesiastical activity in England, Canterbury, was also busy in the thirteenth century expanding its legal capacity.²²² As such, Edward I must be seen as participating in the general trend of legal development, in both secular and ecclesiastical courts. The Statute of Westminster I, enacted in 1275, is the first royal statute pertaining to rape and/or abduction and thus it is valuable to understand the legislative force behind royal statutes. As stated by Plucknett, when the king makes statutes, they “derive [their] force entirely from the royal pleasure” and it is solely from the king himself that the legislations hold substantial power.²²³ This is implied in the opening lines of the Statute of Westminster I:

These be the acts of King Edward, son of Henry, made at Westminster at his first Parliament general after his Coronation, on the Monday of Easter Utas, the Third Year of his Reign...being thither summoned: Because our Lord the King had great zeal and desire to redress the State of the Realm...²²⁴

²²² T. F. T. Plucknett, *Legislation of Edward I: The Ford Lectures Delivered in the University of Oxford in Hilary Term 1947* (Oxford: Clarendon Press, 1962), 2.

²²³ Plucknett, *Legislation of Edward I*, 5.

²²⁴ *The Statutes of the Realm: Printed by command of his majesty King George the Third, in pursuance of an address of the House of Commons of Great Britain from original records and authentic manuscripts*, vol. I, ed.

As one of the king's first legislative acts, Westminster I was a visible, textual representation of Edward I's new reign. Contrary to the types of feudal law practiced on the continent, England's king had jurisdiction over all free men and women, superseding the power of lords and local county courts.²²⁵ Despite the formal legislation issued early in the reign of Edward I, England continued to use both formal and informal dispute resolution channels, which accounts for the many court cases that ended in satisfaction being made rather than actual verdicts being put down in the court of the king's bench.²²⁶ Defining a medieval statute is difficult, as the forms that the records took varied, as too did their process of enactment. Defining the medieval understanding of a statute is equally troubling.²²⁷ Plucknett offers a simple and direct definition: "a statute, unlike other modes of legal change, was a text which is current among the legal profession and indeed among the public generally."²²⁸ What makes a statute unique, according to Plucknett, is that the textual content was known to the general public. Edward I succeeded in this respect, as the Statute of Westminster I was widely circulated throughout the kingdom with copies of it being "given to all sheriffs as well as to between two and four of the 'most faithful and worthy' knights of each shire."²²⁹ Westminster I may have been the most widely circulated statute in England, with the most elaborate plan for its general consumption in the medieval period.²³⁰ The availability of the copies of the statute made it distinctive, as unlike other

Alexander Luders (London: Dawsons of Pall Mall, 1810–1828, reprint 1963), Statute of Westminster the First, 26. Transcription of the original French text, with English translation is available in *The Statutes of the Realm*. Translation from Luders.

²²⁵ Plucknett, *Legislation of Edward I*, 6.

²²⁶ Caroline Burt, *Edward I and the Governance of England, 1272–1307* (New York: Cambridge University Press, 2013), 14–15.

²²⁷ Plucknett, *Legislation of Edward I*, 11.

²²⁸ Plucknett, *Legislation of Edward I*, 11–12. This is supported by Musson, *Medieval Law in Context*, 97.

²²⁹ Burt, *Edward I and the Governance of England*, 86.

²³⁰ Burt, *Edward I and the Governance of England*, 86.

legislative documents, statutes were widely circulated and this contributed to what Plucknett calls “a revolution in our legal system.”²³¹

Edward I was an active participant in the inception of this legal revolution; however, his statutes were not yet formalized, and the process of common law legislation was still working with a fluid understanding of statutory law in the late thirteenth century.²³² There was an immense flexibility in the medieval common law of England. Rather than being a customary fossilized legal body, this common law changed and adapted to new needs and circumstances.²³³ This makes the treatment of rape in the Statute of Westminster I in 1275 even more peculiar. The legal treatises already examined, *Glanvill* and *Bracton*, were not statutes. The treatises were written commentaries on the laws practiced and they were not officially approved by the king, unlike the statutes. The blatant change in treatment towards rape from those treatises to the Statute of Westminster I is deserving of further study.

Laws are usually derived from problems or fears. As Plucknett states, a change in the laws is a consequence of when “the law has lost contact with contemporary society and no longer meets its need.”²³⁴ There is generally no need to create new laws for non-existent problems. Equally, laws can be reactive in retro-fixing current issues, or proactive in legislating against the fears of suspected future problems. It is through the Statute of Westminster I that the gradual displacement of victimhood away from the woman herself and towards her male next of kin begins to take shape. The problem that may have initiated this change of the law was perhaps the

²³¹ Plucknett, *Legislation of Edward I*, 13.

²³² Plucknett, *Legislation of Edward I*, 13.

²³³ Plucknett, *Legislation of Edward I*, 15.

²³⁴ Plucknett, *Legislation of Edward I*, 20.

legal capacity available to young maidens to forge their own independent marriages, thus upsetting family expectations.

On 22 April 1275, parliament met with Edward I and the Statute of Westminster I was published.²³⁵ The medieval English parliament included initially landowners, “magnates, churchmen and royal ministers,” who were summoned to council the king on issues pertaining to the realm.²³⁶ The statute was largely focused on criminal law and the maintaining of order in the realm, as the introduction to the statute claimed that “offenders [are] less punished, than they ought to be.”²³⁷ Similarly to *Bracton*, there is an explicit statement that the law was equal to everyone, as in c.I it states that “common Right be done to all, as well Poor as Rich.”²³⁸ Unsurprisingly, this theoretical ideal of equality was not practiced in the courts. The implicit assumption of lawlessness was reiterated in c.IX, *Pursuit of Felons*, as the statute ordered officials to imprison felons and there was the threat of three years imprisonment, and a fine at the king’s pleasure, for corrupt officials who concealed felons.²³⁹ Evidently, there was presumed lawlessness which Edward I was intent on diminishing.

Most relevant here is c.XIII, *Ravishment of Women*. Westminster I states: “And The King prohibits that none do ravish, nor take away **by force**, any Maiden within Age, **neither by her own consent nor without**; nor any Wife or Maiden of full age, nor any other Woman, against her Will.”²⁴⁰ The use of *damoysele*, or maiden, was most likely referring to an unmarried virgin. The use of force was once again used in the definition of the crime, like *Glanvill* and *Bracton*.

²³⁵ Plucknett, *Legislation of Edward I*, 29–30.

²³⁶ J. R. Maddicott, “Parliament and the People in Medieval England,” *Parliamentary History* Vol. 35, No. 3 (2016): 336–351.

²³⁷ *The Statutes of the Realm*, vol. I, Statute of Westminster the First, 26.

²³⁸ *The Statutes of the Realm*, vol. I, Statute of Westminster the First c. I, 26.

²³⁹ *The Statutes of the Realm*, vol. I, Statute of Westminster the First c. IX, 28–29.

²⁴⁰ *The Statutes of the Realm*, vol. I, Statute of Westminster the First c. XIII, 29. Translation adapted from Luders.

However, unlike *Glanvill* and *Bracton* where *raptus* was used implicitly to mean forced coitus, under Westminster I *raptus* was conflated to mean both rape and/or abduction. The definition of *raptus* under Westminster I was (and still is) a debated point among legal scholars, as is evident from the writing of Sir Edward Coke (1552–1634), a judge who published a four-volume work titled *The Institutes of the Laws of England* in the early seventeenth century. Coke interpreted Westminster I as meaning exclusively rape, defined as “when a man hath carnal knowledge of a woman by force, and against her will.”²⁴¹ This perspective was supported by the influential work of Pollock and Maitland in their reading of the statute.²⁴² However, Post admits that the statute, although dealing primarily with forced coitus, is troubled by the inclusion of abduction.²⁴³ The conflation of rape and/or abduction in the statute is further supported by John Marshall Carter.²⁴⁴ Other notable scholars, particularly Sue Sheridan Walker and Henry Ansgar Kelly, argue that Westminster I is referring to abduction almost exclusively.²⁴⁵ My own research suggests that this is an incorrect reading. Since the foundation of his analysis rests on the inclusion of the words “ravished” and “consent,” which Kelly deems are mutually exclusive in that one cannot be raped and then consent, this appears to be a very narrow interpretation of the statute.²⁴⁶ Consent in medieval England was not incompatible with ravishment. Medieval lawmakers claimed that women could simultaneously have consent of the flesh, and non-consent of the mind, based on pregnancy resulting from rape.

²⁴¹ Sir Edward Coke, *The Second Part of the Institutes of the Laws of England* (London: M. Flesher and R. Young, 1642), 180.

²⁴² Pollock and Maitland, *The History of English Law before the time of Edward I*, vol. 2, 490–491.

²⁴³ Post, “Ravishment of Women and the Statutes of Westminster,” 153.

²⁴⁴ Carter, *Rape in Medieval England*, 46 n.1.

²⁴⁵ Kelly, “Statute of Rapes and Alleged Ravishers of Wives,” 365–366; Sue Sheridan Walker, “Wrongdoing and Compensation: The Pleas of Wardship in Thirteenth and Fourteenth Century England,” *Journal of Legal History* Vol. 9 (1988): 267–307, especially 286.

²⁴⁶ Kelly, “Statute of Rapes and Alleged Ravishers of Wives,” 366.

Further, to give consent to avoid the appeal process, and all the social stigma and economic burden that came from that, does not make the rape non-existent, even though it was considered legally to have been consensual. A more nuanced understanding of consent is necessary when interpreting the Statute of Westminster I. Moreover, since all the major legal treatises of the era, *Mirror of Justices*, *Britton*, and *Fleta*, acknowledged that the Statutes of Westminster I and II were indeed discussing rape and not abduction (analysed further below),²⁴⁷ I believe that our current analysis is correct in stating that the statutes, at least in how contemporaries understood them, are dealing primarily with forced coitus and subsequently abduction.²⁴⁸

In the first clause of c.XIII there is evidence of the constructed legal identity of the culpable woman, in that the law implicitly states that “the woman may be willing to participate.”²⁴⁹ Previous definitions of *raptus* included *contra voluntatem*, but here the crime might not be entirely against her will. The fact that the crime still occurred, even with the maiden’s consent, shows a shift in the legal understanding of the crime, in that her consent was becoming irrelevant to the courts’ definition of the crime. J. B. Post convincingly argues that this first clause of c.XIII effectively makes the consent of minors irrelevant to the fulfillment of the crime, and as such, he claims that “this may be the first secular prohibition of coition with a minor.”²⁵⁰ The definition of a minor in medieval England was fluid and differed for boys and

²⁴⁷ Kelly, “Statute of Rapes and Alleged Ravishers of Wives,” 384–385; *The Mirror of Justices*, eds. and trans. Frederic William Maitland, Andrew Horne, and William Joseph Whittaker (London: B. Quaritch, 1895), 59 states: ch. XXI Appeal of Rape “an appeal of rape is made in this wise: Arnebourgh, who is here, appeals Athelin, who is there, for that, whereas etc., there came this Athelin and knocked down, forced, and corrupted this Arnebough, against her will, feloniously, against the peace. And because it was not every rape that was accounted a mortal sin, such an appeal was not in due form unless she said, ‘and took away her virginity’.” *Fleta* and *Britton* as discussed further below.

²⁴⁸ Dunn, *Stolen Women in Medieval England*, 30.

²⁴⁹ Saunders, “A Matter of Consent: Middle English Romance and the Law of *Raptus*,” 109.

²⁵⁰ Post, “Ravishment of Women and the Statues of Westminster,” 150.

girls, thus it could be anywhere from young children to the age of about twelve or fourteen, as suggested by ecclesiastical doctrine.²⁵¹ The French verb, *ravir*, to ravish, is derived from the Latin verb *rapere*, meaning primarily “to seize and carry off.”²⁵² Although different from early medieval interpretations of *raptus*, both *ravie* and *raptus* originate from *rapere* and the DMLBS defines *rapere* as “to seize and carry off; woman carried off for sexual purpose.”²⁵³ The DMLBS offers a third meaning of *rapere*, “to bring to ecstasy” which furthers medieval suspicions of the woman’s hidden sexual desires within the very word used to define the sexual assault.

The statute claims that the crime of being *ravie* is applicable to a maiden (virgin), or wife, or a damsel of full age (that is, available for marriage, likely older than fourteen), or any other woman, who is ravished against her will. Thus, these first two clauses ensure that a minor cannot give sexual consent, and that when a woman of marriageable age does not give consent it is still a crime. The importance of “will” and age are crucial to the definition of the crime of *raptus* under Westminster I. However, unlike *Bracton*, Westminster I is not overly concerned with the loss of virginity. The rape of wives, matrons, and widows is included in Westminster I, providing a more holistic interpretation than *Bracton* as to who is a deserving victim.²⁵⁴ The broadening of victimhood to include the abduction of wives was likely the result of the not-so-rare occurrence of noblewomen being abducted for the purposes of political advantage or ransom.²⁵⁵ As will be discussed more in the ecclesiastical trials (chapter 4), the rape of wives by their husbands was an impossible appeal to bring to trial and thus it is most probable that Westminster I was protecting wives from being raped by strangers.

²⁵¹ Kelly, “Statute of Rapes and Alleged Ravishers of Wives,” 366.

²⁵² Lewis and Short, *A Latin Dictionary*, “rapio.”

²⁵³ DMLBS, “rapere” article 1 A and B.

²⁵⁴ Post, “Ravishment of Women and the Statutes of Westminster,” 154.

²⁵⁵ Saunders, “A Matter of Consent: Middle English Romance and the Law of *Raptus*,” 109.

The statute continues by stating that “and if any do, at his Suit that will sue within Forty Days, the King shall do common right; and if none commence his Suit within Forty Days, the King shall sue.”²⁵⁶ This was a change in legislation from *Glanvill* and *Bracton*, as the statute gave women who endured rape a maximum of forty days to bring their appeal forward. If the women did not appeal, the king could still sue. This speculatively could show compassion and protection for women who were afraid of the repercussions of appealing. The social stigma of openly claiming to be a survivor of rape, as well as the substantial economic burden of going to trial (which worked effectively to exclude the non-elite from bringing rape cases forward),²⁵⁷ and the potential loss of value on the marriage market, are just a few of the deterrents, not to mention the psychological trauma of the inspection by the coroner and of bringing a rapist to trial. These factors (among others, such as lack of physical injury, or pregnancy) all worked to deter women from reporting rapes, as is evident in the lack of appeals in coroner rolls during the fourteenth century.²⁵⁸ Evidence shows that the majority of rape appeals brought forward in the thirteenth century never made it to trial, as they were often found to be “false appeals,” meaning the woman did not further pursue it through all the necessary stages or settlement was made out of court.²⁵⁹ As is evident in Table 5: Summary of Eyre Cases, in chapter 5, there were few cases that went to trial, and even fewer that ended in a conviction; these statistics could have acted as deterrents to women seeking to appeal. It is in this way that Westminster I can be interpreted as

²⁵⁶ *The Statutes of the Realm*, vol. I, Statute of Westminster the First c. XIII, 29. Translation of *e si nul le fet, a la suite celi q suiwera dedenz les q rante jours, le Rey en fra comune dreiture: Et si nul ne comence sa suite dedenz quarante jours, le Rey en siwera*. Translation from Luders.

²⁵⁷ Kittel, “Rape in Thirteenth-Century England,” 102.

²⁵⁸ Hanawalt, “Women Before the Law: Females as Felons and Prey in Fourteenth-Century England,” 182.

²⁵⁹ Pollock and Maitland, *The History of the English Law*, vol. 2, 491; Schneebeck, “The Law of Felony in Medieval England from the Accession of Edward I until the Mid 14th century,” vol. 2, 437–438.

protecting those women who did not want to publicly go to trial, as it still brought them some sort of justice through the king's suit.

The time limit of forty days to appeal rape was considerably shorter than that for other felonies, such as homicide, which allowed an appeal to be made anytime within the year of the crime.²⁶⁰ Sir Matthew Hale, a chief justice in the court of the King's Bench in the late seventeenth century, commented that the forty day rule was a result of the suspicion that if the woman delayed in bringing the appeal forward "it carries a presumption that her suit is but malicious and feigned."²⁶¹ There was the possibility that the time limit was imposed to prevent women from appealing once they bore a child as a result of the rape.²⁶² Further, the forty-day rule could also be pragmatic, in the sense that the woman must show trusted men and the coroner her physical bodily injuries and any torn or blood-stained clothing. If she waited any longer than forty days, proof of the rape could disappear as the wounds and bruises might be healed. However, if the woman consented to the rape and wished to marry her accused rapist, this clause in the statute eclipsed her consent as the man could still be indicted and tried at the king's suit. This effectively made the woman's consent irrelevant if the king's suit proceeded. The allowance of the king's indictment gave the crown unprecedented legal power to interfere in the marriage clause, as "the crown [could] take spontaneous and relatively severe action against offenders," all in the name of keeping the peace of the realm.²⁶³ We can see here the potential troubles for a woman who may choose to elope and thus consent to her abduction and/or fictitious rape for the purposes of marriage. Theoretically, her kinsmen, who could feel that they had been wronged by

²⁶⁰ Schneebeck, "The Law of Felony in Medieval England from the Accession of Edward I until the Mid 14th century," vol. 2, 440–441. References *Britton*, Book I, c. xxiv, par. 1, pp. 91–92 and Book 1, c. xxv, par. 1, pp. 96.

²⁶¹ Sir Matthew Hale, *The History of the Pleas of the Crown*, vol. 1 (London: Lincoln's Inn, 1736), 632.

²⁶² Hanawalt, "Women Before the Law: Females as Felons and Prey in Fourteenth-Century England," 182.

²⁶³ Post, "Ravishment of Women and the Statues of Westminster," 154.

the crime, could encourage a royal indictment. According to Frederick Pollock and Frederic William Maitland, the crime of rape and/or abduction was often felt to be a crime not only against the woman but also against her male kin.²⁶⁴ The inclusion in Westminster I of the king's suit gave the kinsmen an alternative to override the scheming and culpable woman's consent. Since the legal ages of *Glanvill* and *Bracton*, the paradoxical use of marriage, as a theoretical erasure of rape, had been a legal option available to women. The statute of 1275 took that away from women through the king's indictment, which speculatively suggests, as supported by Pollock and Maitland, that "an appeal of rape was not unfrequently the prelude to a marriage."²⁶⁵ The frequency at which marriage was used as concord between plaintiffs and defendants could be the result of scheming couples, or it could be the tragic ending for women who failed to properly appeal and were left with few other options. There were many reasons cases failed, as explained by Post:

Cases might be dropped for vagueness of detail, mixed up dates, if the woman did not remember the door her assailant entered or which member the rape of her virginity had ruptured; if a woman was raped on a road in-between two villages the statute wording worked against her for failing to state a single village...²⁶⁶

Although there is certainly evidence that some couples used the ravishment marriage clause to form their own marriages without parental consent, there is equally evidence of the opposite in the court of the general eyre records. Some women were put in the extremely difficult position of having their appeals fail, which resulted in dwindling finances and diminished reputations, while

²⁶⁴ Pollock and Maitland, *The History of the English Law*, vol. 2, 490.

²⁶⁵ Pollock and Maitland, *The History of the English Law*, vol. 2, 491.

²⁶⁶ Post, "Ravishment of Women and the Statues of Westminster," 155.

facing the threat of being sent to prison for false appeals,²⁶⁷ and their only option was to marry the very men that raped them.

Westminster I then goes on to explain what happens if the man is convicted of rape: “and such as be found culpable, shall have Two Years Imprisonment, and after shall fine at the King’s Pleasure; and if they have not whereof they shall be punished by longer Imprisonment, according as the Trespass requir[e].”²⁶⁸ This is a drastic change in punishment from the mutilation of eyes and testicles, or loss of life, as stated in *Glanvill* and *Bracton*. The crime of rape has been downgraded by the Statute of Westminster I from a felony, the worst of crimes, to only a trespass, a minor offence resolved with amercement.²⁶⁹ As such, the punishment for convicted rapists was not the substantial punishment prescribed in the earlier treatises of loss of life or member, but merely two-year imprisonment and a monetary fine. While other crimes such as homicide remained a felony, rape did not. This downgraded legal designation of rape, and the penalty from corporal punishment to imprisonment, could be interpreted as viewing rape as a non-serious offence. The punitive imprisonment and monetary fine at the king’s suit could be as little as one or two marks.²⁷⁰ Nonetheless, fines aided in filling the royal coffers, accounting for about 1/6 of the royal revenue during the mid-thirteenth century.²⁷¹ However, Pollock and Maitland argue that “it does not seem to us correct to say that by the first of the two statutes the punishment for rape was mitigated.”²⁷² There is the possibility that having severe punishments

²⁶⁷ Schneebeck, “The Law of Felony in Medieval England from the Accession of Edward I until the Mid 14th century,” vol. 2, 438.

²⁶⁸ *The Statutes of the Realm*, vol. I, Statute of Westminster the First c. XIII, 29. Translation of *e ces qil entrovera copables, si averont la person de deus aunz, e puis serrut reinz a la volente le Roy: Et sil ne unt dount ester reinz a la volente le Rey si seient puniz par plus long person, solum ceo q le trespass le demande*. Translation adapted from Luders.

²⁶⁹ Saunders, “A Matter of Consent: Middle English Romance and the Law of *Raptus*,” 109.

²⁷⁰ Pollock and Maitland, *The History of the English Law*, vol. 2, 491.

²⁷¹ Bellamy, *Crime and Public Order in England in the Later Middle Ages*, 191.

²⁷² Pollock and Maitland, *The History of the English Law*, vol. 2, 491–492.

during the age of *Glanvill* and *Bracton* could make jurors less inclined to convict their neighbours, whereas the mitigated punishment of imprisonment and amercement could lead to more convictions.²⁷³ As will be discussed more in the following chapter, this notion is supported by the slightly higher conviction rates from the eyre rolls during Westminster I. Reduced punishment resulting in a higher conviction rate may be a valid conversation; however, I do not believe that the statistics ensure that rape was still being viewed in the courts as a serious offence. For instance, the king's indictment, resulting in imprisonment while pending the trial, was in itself viewed as "horrific punishment," as argued by Sara Butler.²⁷⁴ The embarrassment of being imprisoned, living in filthy conditions,²⁷⁵ and having to pay for them, could have been considered just punishment and contributed to an acquittal in court. It would then appear that humiliation and monetary fines were deemed just punishment for the rape of women.

Immediately following Westminster I King Edward I published the Office of the Coroner, sometime between 1275 and 1276. Here the duties of the coroner in the appeal of rape are outlined:

Further, if any be appealed of Rape, he must be attached, if the Appeal be fresh, and [they must see] apparent sign of truth by Effusion of Blood, or an open Cry made; and such shall be attached by four or six Pledges, if they may be found: If the Appeal were without Cry, or without any manifest Sign or Token, two Pledge shall be sufficient.²⁷⁶

²⁷³ This point is supported by Schneebeck, in that the punishment under the king's suit was more severe under Westminster I but that it was left ambiguous under *Bracton*. See Schneebeck, "The Law of Felony in Medieval England from the Accession of Edward I until the Mid 14th century," vol. 2, 440.

²⁷⁴ Butler, *Language of Abuse*, 92, 96; Hanawalt, *Crime and Conflict*, 267.

²⁷⁵ Bellamy, *Crime and Public Order in England in the Later Middle Ages*, 169–170.

²⁷⁶ *The Statutes of the Realm*, vol. I, Offic.2 Coronatoris, 41. *Si aute aliquis fuit appellatus de raptu, appellatus attachiare debet, si apellu recens fuit, et videant signu Veritatis, p [ampnu sanguinolentu] vel hutesiu levatu, et tales attachiari debet per quatuor pleg, vel sex, si invenii possint; si aute apellu fuit sine hutesio, et sine signo manifesto, tuc sufficiunt pleg duo.* Translation from Kelly, "Statute of Rapes and Alleged Ravishers of Wives," 367. There the manuscripts are referenced as British Library MS Harl. 667 fol.222v, compared with MS Cott. Vesp. B7.

The physical bodily injury of the woman, the effusion of the blood, is here explicitly connected to the truth of the crime's occurrence. This is following *Glanvill* and *Bracton* and thus, during the legal era of Westminster I, the binary concept of the truly innocent victim and the culpable blame-worthy woman, being one without bodily injury, is once again upheld. J. B. Post states that the first Statute of Westminster, and the subsequent statute in 1285, were concurrently functioning as "symptoms and as causes, in the strange process whereby the ordinary and straightforward remedies framed for a crude and shameful crime were taken away from the victim and put at the disposal of secondary and sometimes opposing interests."²⁷⁷ The subtle elision of the woman's legal rights was replaced by the extension of the power to appeal by her male kin, or the king. The transfer of victim status, away from the woman herself and towards her male kin or even the king (as in Margery de la Beche's case), was beginning to emerge with the Statute of Westminster I. Throughout the remainder of the thirteenth century, this process was further aided by the Statute of Westminster II in 1285.

IV: The Age of the Second Statute of Westminster

The Statute of Westminster I, enacted in 1275, was evidently considered by contemporaries insufficient, as it was quickly replaced by the Statute of Westminster II just ten years later in 1285. Westminster II was largely concerned with criminal law, as Edward I ensured that his role as dispenser of justice was reiterated at the beginning of the statute: "whereby the People of England and Ireland, being Subjects unto his Power, have obtained more

²⁷⁷ Post, "Ravishment of Women and the Statutes of Westminster," 150.

speedy Justice in their Oppressions, than they had before.”²⁷⁸ It is under c.XXXIV, *Judgement of Life and Member for Rape*, that the new statute is of concern. For the subsequent discussion, I will follow the designation of sections of the statute as suggested by Henry Ansgar Kelly.²⁷⁹ The beginning of the chapter concerning rape was curiously written in French, (sections A1 and A2 only) and, according to Post, it was written in a sloppy, ad hoc French and not in Latin like the rest of the statute and in the rest of the chapter (B1, B2 and B3). This has led scholars such as Post and Plucknett to speculate that it was a late addition to the statute which was put in quickly and without any time for revisions.²⁸⁰ The statute states:

*Purveu est que si homme ravist femme, espouse, damoisele, ou autre femme desoremes, par la ou ele ne se est assentue ne avaunt ne apres, eit jugement de via e de membre; e ensement par la ou home ravist femme, dame espouse damoisele, ou autre femme a force, tut seit ke ele se assente apres, eit tel jugement come avaunt est dit si il seit ataint a la suite le Rei, e la eit le Rei sa suite. De mulieribus abductis cum bonis viri habeat Rex sectam de bonis sic asportatis; Et uxor si sponte reliquerit virum suum, et abierit et moretur cum adultero suo, amittat imperpetuum accionem petendi dotem suam, que ei competeere posset de tenura viri, si super hoc convicatur; nisi vir suus sponte, et absque cohercione ecciastica eam reconciliet et secum cohabitari permittat, in quo casu restituatur ei accio. Qui monialem a domo sua abducat, licet monialis consenciat puniatur per prisonam trium annorum, et satisfaciat domui a qua abducta fuerit competenter, et nihilominus redimatur ad voluntatem Regis.*²⁸¹

[A1] It is Provided, That if a Man from henceforth do ravish a Woman, married, Maid, or other, where she did not consent, **neither before nor after**, he shall have Judgement of Life and Member. [A2] And likewise where a Man ravisheth a Woman, married Lady, Damosel, or other, with Force, **although she consent after**, he shall have such Judgement as before is said, if he be attainted at the King’s suit, and there the King shall have the Suit.

²⁷⁸ *The Statutes of the Realm: Printed by command of his majesty King George the Third, in pursuance of an address of the House of Commons of Great Britain from original records and authentic manuscripts*, vol. I, Statute of Westminster II, 71. Translation of *pur que populus suus Anglicanus & Hibernic sub suo regimine gubernatus celeriore justiciam q’m prius in suis oppressionibz* from Luders.

²⁷⁹ Kelly, “Statute of Rapes and Alleged Ravishers of Wives,” 367.

²⁸⁰ Post, “Ravishment of Women and the Statues of Westminster,” 156–157; Dunn, *Stolen Women in Medieval England*, 35.

²⁸¹ *The Statutes of the Realm*, Statute of Westminster II, 87.

[B1] And of Women carried away with the Goods of their Husbands, the King shall have the Suit for the Goods so taken away. [B2] And if a Wife willingly leaves her Husband, and go away, and continue on her Advouterer [adulterous lover], she shall be barred for ever of Action to demand her Dower, that she ought to have of her Husband's Lands, if she be convict thereupon, except that her Husband willingly, and without Coertion of the Church, reconcile her, and suffer her to dwell with him; which Case she shall be restored to her Action. [B3] He that carrieth a Nun from her House, although she consent, shall be punished by three Years Imprisonment, and shall make convenient Satisfaction to the House from whence she was taken, and nevertheless shall make Fine at the King's Will.²⁸²

Sections B1, B2, and B3 are written in accordance with the rest of the statute in Latin, but the sections primarily concerning rape, that is A1 and A2, are written in French. As mentioned above, Plucknett argues that this was because this first clause was a late addition made as an “amendment...when the statute was laid before parliament.”²⁸³ The theories as to why the first two clauses are written in French have been unsatisfactory. Plucknett claims that French was used to ensure that the general public perfectly understood the law, a theory which was discredited by Post, who argues that during this time English was more commonly used.²⁸⁴ Parliament discussed the second statute of Westminster on 4 May 1285, and it was publicly enacted on 28 June; thus there were nearly two months worth of time for the revision and translation of the French clauses.²⁸⁵ There is no satisfactory explanation as to why sections A1 and A2 are in a different language than the rest of the entire statute.

Regardless of these ambiguities, the statute makes important claims. Under Westminster II, the crime of rape is once again defined as a felony, punished by loss of life or member. The

²⁸² Translation from Kelly, “Statute of Rapes and Alleged Ravishers of Wives,” 368–369.

²⁸³ Plucknett, *Legislation of Edward*, 121–122.

²⁸⁴ Post, “Ravishment of Women and the Statues of Westminster,” 156; Kelly, “Statute of Rapes and Alleged Ravishers of Wives,” 369–370.

²⁸⁵ Kelly, “Statute of Rapes and Alleged Ravishers of Wives,” 370.

first clause of c.XXXIV defines the victim broadly as being any woman, virgin, maiden, or wife. However, the statute's inclusion of her non-consent, either before or after the time of the crime, is a new addition working to deteriorate the rights of the woman as the true victim of the crime. This enabled the woman to change her mind about her consent, but if under family pressure she was forced to give non-consent after the attack, then the man was still criminally liable despite the fact that he may have acted under the pretenses that she was a willing participant. This effectively erases the woman's consent to marry her abductor, as indicated in clause A2.

The use of *abductere* versus *raptus* is important, and discussed in detail below, but it is noted here the meaning of *abductere*. Lewis and Short define it as “a forcibly carrying off, ravishing” and DMLBS states “to abduct (women).”²⁸⁶ Her consent is irrelevant, as the king could still indict the man and if he were found guilty, he could be punished with the loss of life or member. This is also a new addition to *raptus* laws, as the same punishment is applied to a convicted *adulter*²⁸⁷ regardless of whether the woman brought the appeal forward or he was indicted by the king. The woman may have consented after the crime for various reasons, including but not limited to pregnancy, lack of income to go to trial, as well as the fear and perhaps stigma that came with appealing rape publicly. The woman who consents after the rape and/or abduction is deemed irrelevant in the sense that the man is still criminally liable, if convicted at the king's indictment.²⁸⁸ This worked to make the marriage clause, previously available to women in choosing to marry their ravishers, substantially more difficult. By disregarding the woman's consent, her male kin and the king could still indict and thus they

²⁸⁶ Lewis and Short, *A Latin Dictionary*, “abducere;” *DMLBS*, article 1 “abducere.”

²⁸⁷ Lewis and Short, *A Latin Dictionary*, “adulter, eri m., and adultera, ae, f.,” states: “one who approaches another (from unlawful or criminal love), an adulterer or adulteress”; *DMLBS*, “adulter, adulterous (m. or f.)” states “adulterer, adulteress” or “illicit, unauthorized.”

²⁸⁸ Schneebek, “The Law of Felony in Medieval England from the Accession of Edward I until the Mid 14th century,” vol. 2, 442–443.

were, according to Post, “allowed to override her own [wishes] despite her status as victim, and the time-honoured concord by marriage was removed.”²⁸⁹ The implications of consent afterwards were devastating to the woman’s right to marry her ravisher. However, the marriage clause was not entirely obliterated as argued by Post. Further, there was now the emergence of the constructed legal identity of the reluctant, but willing accomplice, as a woman may initially have not given her consent, but through pregnancy, her body had given physical consent. This would be viewed by the courts as her consenting after the crime, through the bodily proof of conception, and thus the king could still sue.

The anonymously authored legal treatise *Britton* is useful to historians in understanding how contemporaries interpreted the new statute. The treatise itself claims to “have been composed by Edward [I],” and although authorship remains debated, it is clear from extant copies of *Britton* that it was extremely popular as “the first great treatise...written in the vernacular language of the Courts” in French.²⁹⁰ *Britton* explains that the appeals of women were limited to *qe de la mort soen baroun tué entre ses bras de eynz le an et jour*, “the death of her husband killed within her arms, within the year and day,” and “for an infant killed within her womb.”²⁹¹ However, when it came to *rap*, rape, the author of *Britton* states that the laws were applicable to any woman, *quele qe ele soit pucele ou autre*, “whether she be a virgin or not,” who experienced violence on her body (*de violence fete au cors de femme*).²⁹² Although the definition of victim has been expanded from *Bracton*, there was still an emphasis on the physical harm done to the woman’s body. Further, *Britton* repeated that the crime was a felony regardless

²⁸⁹ Post, “Ravishment of Women and the Statues of Westminster,” 158.

²⁹⁰ *Britton: The French Text Carefully Revised, with an English Translation. Introduction and Notes*, ed. and trans. Francis Morgan Nichols, 2 Vols, (Oxford: 1865; reprint Holmes Beach, FL: W. W. Graunt, 1983), vol. 1, xvi, xxviii. Translations provided by Nichols.

²⁹¹ *Britton*, vol. 1, book 1, c.XXIV, par.7, 114. Translations provided by Nichols.

²⁹² *Britton*, vol. 1, book 1, c. XV, 55. Translations provided by Nichols.

of *la sute de la femme par appeal de felonie, ou a la nostre*, “the suit of the woman by appeal of felony, or at our suit.” Men convicted of rape were, according to *Britton*, prescribed the same punitive measures as men convicted of homicide, that is the death penalty.²⁹³ The punishment was applied to all men convicted of rape, according to *Britton*, *le quell ele soit assentue puis la felonie fere ou noun; sicum est contenue en nos estatutz de Westmoster*, translated as “whether the woman have consented after commission of the felony or not, as is contained in our Statutes of Westminster.”²⁹⁴ The apparent cohesion between the first and second Statute of Westminster was emphasised in the treatise by the use of the plural *estatutz*, and it was justified by the continued irrelevance of the woman’s consent. This point is supported by Pollock and Maitland in their reading of Westminster II as a continuation of Westminster I.²⁹⁵

The other major legal treatise, known as *Fleta*, written in Latin by an anonymous author around c.1290 and heavily influenced by *Bracton*,²⁹⁶ also states that rape, not abduction, was the primary concern of the first statute of Westminster and, *mulieres eciam rapte ultra quadraginta dies nullatenus audiantur*, “women also who are ravished will in nowise be heard after 40 days.”²⁹⁷ The author of *Fleta* presumably had access to both statutes, as the reference to *raptores mulierum*, “ravishers of wives,” was harking back to both the 1275 statute and the 1285 statute in section A2, while the *abductores sponsarum cum bonis virorum*, “abductors of wives with husbands’ goods,” was exclusively from the 1285 statute, section B1.²⁹⁸ The statutes were evidently being read and rewritten, almost verbatim, by members of the legal profession. This

²⁹³ *Britton*, vol. 1, book 1, c. XV, 55. Translations provided by Nichols.

²⁹⁴ *Britton*, vol 1, book 1, c. XV, 55. Translations provided by Nichols.

²⁹⁵ Pollock and Maitland, *The History of the English*, vol. 2, 491–492.

²⁹⁶ Thorne, *Essays in English Legal*, 78. Here Thorne calls *Fleta* the “poor man’s *Bracton*”.

²⁹⁷ Kelly, “Statute of Rapes and Alleged Ravishers of Wives,” 387; see *Fleta*, ed. and trans. John Selden (London: M. F. Guilielmum, Matthew Walbancke and Daniel Pakenan, 1647), cap.35 *de apello foeminae*.

²⁹⁸ *Fleta*, book II, cap. 52, pp. 63; Kelly, “Statute of Rapes and Alleged Ravishers of Wives,” 387.

analysis of *Britton* and *Fleta* allows various assumptions to be made about contemporaries in the legal profession and their interpretations of the statutes. Contemporaries, as stated in *Britton*, understood Westminster I and II as making rape a felony, regardless of the woman's consent. Thus, we are correct in interpreting the statutes, as understood by contemporaries, as eclipsing the woman's legal rights to marry her ravisher by proclaiming her consent irrelevant to the man's legal culpability.

Wife abduction, or rather scheming wives leaving their husbands, was largely the concern of Westminster II.²⁹⁹ This has led Henry Ansgar Kelly to state that the woman had transitioned from an abductee to a seductress.³⁰⁰ In section B1 it was the goods that the woman took away during her abduction which were of primary concern, more than the restoration of the woman herself. The king was now able to have suit for those stolen goods.³⁰¹ There was evidently a fear of wife abduction – or more appropriately termed wife elopement. The law protected a cuckold husband who lost goods of value through his wife's elopement. If the wife continued to live with her *adulter* and her husband died, she was barred from obtaining her dower (section B2), customarily one third of her husband's property. The clause regarding the abduction of nuns (section B3) was equally as concerned about material value, more so than for the woman. The statute demanded that restoration be made to the religious house, since the nun held no property herself. What Post calls "the material motivation" of the *raptus* clause is evident in the different punishments for wives, whose husbands' lands were protected, and nuns, whose religious houses

²⁹⁹ Post, "Ravishment of Women and the Statutes of Westminster," 160; Dunn, *Stolen Women in Medieval England*, 33–34. Here Dunn argues that through the use of "lexical doublets" such as to "seize and takeaway," we can interpret the statute of Westminster II as being primarily concerned with abduction, not rape. See also Dunn, *Stolen Women in Medieval England*, 38–39.

³⁰⁰ Kelly, "Statute of Rapes and Alleged Ravishers of Wives," 368.

³⁰¹ Post, "Ravishment of Women and the Statutes of Westminster," 150–151.

were granted compensation.³⁰² The frequency at which amercement was made as a result of Westminster II ensured that convictions were rare during this long legal age.³⁰³ The statute further claimed royal jurisdiction over abducted nuns, which bishops of Canterbury stated was an infringement on their legal jurisdiction, furthering the messy entanglement of *raptus* laws between secular and ecclesiastical courts.³⁰⁴

By simply but ambiguously using the term *ravie*, Westminster II conflated the crimes of rape and abduction. Previous legal ages distinguished the felony of rape, made through an appeal and claimed through a written writ, from abduction as a trespass.³⁰⁵ There was the possibility that Westminster II intentionally used *ravie* ambiguously to ensure that no matter the crime, whether rape and/or abduction, the family wealth was protected.³⁰⁶ Dunn argues that this ambiguity was intentional to ensure that a cuckold husband could sue for damages as a consequence of his wife's voluntary elopement.³⁰⁷ Despite the apparent ambiguity, a close reading of court records and plea rolls under investigation here makes clear which cases refer to abduction and those that are about rape, by the inclusion of additional information such as loss of virginity.

The culpable woman was of primary concern, and the victim of the crime of rape and/or abduction was evidently understood to be not the woman but her male kin, primarily her husband but also her father. Despite the fact that *raptus* has been upgraded to a felony again, this legal age of Westminster II (lasting from 1285 to 1382) was more focused on scheming women and

³⁰² Post, "Ravishment of Women and the Statutes of Westminster," 157.

³⁰³ Post, "Ravishment of Women and the Statutes of Westminster," 160.

³⁰⁴ Kelly, "Statute of Rapes and Alleged Ravishers of Wives," 368–369. References F. M. Powicke and C. R. Cheney, *Councils and Synods with other documents relating to the English church* 2.2 (1964), p.965 (no.7), 967 (no.10) see also 973-974.

³⁰⁵ Phillips, "Written on the Body," 128.

³⁰⁶ Post, "Ravishment of Women and the Statutes of Westminster," 158.

³⁰⁷ Dunn, *Stolen Women in Medieval England*, 17.

ensuring property rights of male kin than it was at protecting women appealing rape.³⁰⁸ This is evident in a change of emphasis in the legal records of the appeals. Previously, appeals focused on the deflowering and the physical injury done to the woman. During the age of Westminster II, however, the forced coitus was of secondary concern as the appeals focus on the loss of property and valuable goods.³⁰⁹ The victimisation of the woman's kin, usually her cuckold husband or her betrayed father, or as in the case of Margery de la Beche, the wronged king who owned the marriage rights of the woman, become central focus in the indictments or appeals.³¹⁰

There was also the novel development of a trespass suit which could be brought forward by the husband for loss of material wealth or damages, which was in addition to the felony appeal of rape and/or abduction.³¹¹ This made it possible for husbands to sue the abductor both criminally and in a civil suit, as was the case with Mariota de Wildeborleye, from the Wakefield manorial court rolls of 1316.³¹² The manorial courts were almost exclusively used for trespasses and civil crimes, such as larceny and minor assault.³¹³ Located in Wakefield, Yorkshire, Mariota was previously married to Peter de Wildeborleye; however, she left Peter for Thomas de Alestanely. The manorial roll states that Peter de Wildeborleye sued Thomas de Alestanely and Matthew de Alestanely, both sons of Gilbert, for trespass.³¹⁴ In return, Matthew, Thomas, another brother named William, and Gilbert countersued Peter for trespass. Finally, Thomas sued Mariota for trespass. When the manorial court was held, on the Wednesday following Easter

³⁰⁸ Saunders, "A Matter of Consent: Middle English Romance and the Law of *Raptus*," 110.

³⁰⁹ J. B. Post, "Sir Thomas West and the Statute of Rapes 1382," *Bulletin of the Institute of Historical Research* Vol. 53 (1980): 25.

³¹⁰ Post, "Sir Thomas West and the Statute of Rapes 1382," 25.

³¹¹ Post, "Sir Thomas West and the Statute of Rapes 1382," 25.

³¹² *Court Rolls of the Manor of Wakefield, Vol. III, 1313 to 1316, and 1286*, ed. John Lister (Leeds: J. Whitehead and Sons, 1917), 21, 62, 121–122.

³¹³ Butler, *The Language of Abuse*, 13.

³¹⁴ *Court Rolls of the Manor of Wakefield, Vol. III*, 121–122.

Sunday 1316, Thomas de Alestanely was “charged with adultery with Mariota, wife of Peter de Wildeborleye.” Thomas and Mariota acknowledged and renounced their behaviour and were fined 10s 40d each. This amercement settled the other trespass suits that Peter had with Gilbert’s other sons, Matthew and William de Alestanely, as well as with Gilbert himself. Here we can see the value, literally in amercements, of suing the ravisher for a civil trespass as opposed to a royal felony. Thomas paid an amercement directly to Peter, which otherwise would have gone to the king’s purse in a felony charge. Sara Butler found another similar case in the Wakefield manorial rolls, that of Margery Child from 1326.³¹⁵ Despite being married to Richard Child, Margery eloped with Robert de Clif, and in retaliation, Richard Child sued Robert for the loss of goods taken during the so-called fictitious abduction, asking for 20s.³¹⁶ In reviewing the case, Sue Sheridan Walker claims that this was not a forced ravishment, but rather a “consensual abduction” which was done by women who sought to take “control...over their lives and marriage” in the patriarchal society in which they lived.³¹⁷ Margery was running away with her lover, Robert, and as such she was intentionally manipulating the *raptus* laws to create a new life for herself and her former husband Richard sued civilly for damages. This scenario of fictitious abduction is what Sara Butler termed “legal fiction” and it is a term that perfectly describes these narratives of women claiming *raptus* for their own benefit.³¹⁸ Richard evidently did not miss his wife, as the trespass suit against Robert was for compensation of damages, not for the return of his “abducted” wife. Whether one sought to bring forward a felony or a civil suit was rather

³¹⁵ Butler, *The Language of Abuse*, 84–86.

³¹⁶ Butler, *The Language of Abuse*, 84; *Court Rolls of the Manor of Wakefield, Volume V: 1322 to 1331*, ed. John William Walker, Yorkshire Archaeological Society Record Series, vol. 109 (Cambridge: Cambridge University Press, 2013), 93.

³¹⁷ Butler, *The Language of Abuse*, 85; Sue Sheridan Walker, “Punishing Convicted Ravishers: Statuary Strictures and Actual Practice in Thirteenth and Fourteenth-Century England,” *Journal of Medieval History* Vol. 13 (1987): 238.

³¹⁸ Butler, *The Language of Abuse*, 85.

arbitrary and up to the individual. The advantage for the cuckold husband in a civil suit was the possibility of collecting damages, whereas in the conviction of a felony, the goods carried away by the wife went into the king's personal purse.³¹⁹

As accurately described by Kim Phillips, the legal age of Westminster II had a new focus; whereas the age of *Glanvill* was focused on the injured and "bleeding body," and *Bracton* on the "deflowered body," Westminster II was concerned with the "abducted body."³²⁰ Since *Glanvill* required bodily proof of violence to imply non-consent, the woman's mental non-consent was ignored as the importance of force and violence was paramount. This is similar to *Bracton*, which implicitly assumed the woman's non-consent through the forcible seizure of her virginity, which was the primary focus of the crime. However, with Westminster II, Phillips claims the removal of emphasis on the injured, "bleeding body," as well as the "deflowered body," and instead the law underlined the importance of the "absent body," that is the abducted woman.³²¹ Here, the victim was no longer the woman herself, but instead her male kin. This is not a sudden change but rather a gradual evolution in victimhood, beginning with Westminster I, continued to a greater extent with Westminster II and fulfilled in totality with the Statute of Rapes in 1382 where the appeal of *raptus* was no longer initiated by the woman.³²²

³¹⁹ Kelly, "Statute of Rapes and Alleged Ravishers of Wives," 403–404.

³²⁰ Phillips, "Written on the Body," 129.

³²¹ Phillips, "Written on the Body," 137.

³²² Phillips, "Written on the Body," 137; Dunn, *Stolen Women in Medieval England*, 48.

V: The Age of the Statute of Rapes

Westminster II gradually eroded the legal importance of the woman's consent in favour of other parties who wanted to prosecute the ravisher.³²³ The seemingly carelessly written French clauses of c.XXXIV, to use Post's sentiment,³²⁴ imposed capital punishment if the man was convicted at the king's suit, regardless of whether the woman consented before, during, or after the alleged crime. Forfeiture of the dower ensured that Westminster II was protecting the property and material wealth of the woman's family, which was the building block for the subsequent Statute of Rapes. Regardless of the imposed legal restrictions on the marriage clause, Post, among other scholars, has convincingly argued that couples continued to claim rape and/or abduction for the purposes of marriage. Thus, he states that the use of the marriage clause was "far from uncommon in the fourteenth century, and in 1382 the extension of legal wrong from the woman to her family was completed by statute."³²⁵ That statute is of course the novel Statute of Rapes.

The legal age of Westminster II lasted nearly one hundred years, from 1285 until 1382 when it was replaced by the Statute of Rapes. In this new age, the woman's legal right to appeal her own rape was taken away from her, and instead, it was given to her male next of kin, primarily her father or husband. This drastic new statute was blatantly protecting the patriarchal wealth of the family by eradicating the marriage clause and legally treating the "eloping couple as dead in order to maintain the integrity of family estates."³²⁶ The 1382 Statute of Rapes was the final stage in the rape legislation that was increasingly about protecting the material wealth of the

³²³ Post, "Sir Thomas West and the Statute of Rapes 1382," 24–25.

³²⁴ Post, "Ravishment of Women and the Statutes of Westminster," 156–157.

³²⁵ Post, "Sir Thomas West and the Statute of Rapes 1382," 25.

³²⁶ Post, "Ravishment of Women and the Statues of Westminster," 160.

family, and not about the justice for the female survivor.³²⁷ Perhaps unsurprisingly, this piece of royal legislation came to fruition from the petitions of one angry father, Sir Thomas West, whose daughter Eleanor forged her own independent marriage through the claim of *raptus*.³²⁸ It is because of this father's wrath that the new legal age of *raptus* emerged and thus, it is a reminder of the importance of the social community to the legal infrastructure of medieval England.³²⁹

The Statute of Rapes was initiated with a petition made in the summer of 1382, by Sir Thomas West to John of Gaunt, a royal magnate,³³⁰ which includes the retelling of the abduction of this daughter, Eleanor, by Nicholas Clifton. This is the first of two petitions made by West and it reads:

To the most honourable and dread lord the king of Castile and Leon, duke of Lancaster, Thomas West and Alice his wife humbly pray, that whereas Nicholas Clifton was lately with the retinue of the said Thomas on the last voyage to France and Brittany; and then the said Nicholas was familiar with the said Thomas for some time, until the Sunday after the feast of the translation of Saint Thomas [7 July] last past, on which day he came to the said Alice at her manor of Testwood in the county of Southampton, to ride with the said Alice to a certain place; and upon this the aforesaid Alice, with her son Thomas and her daughter Eleanor and others of their meinie, went towards this same place, by abetment and counsel of the said Nicholas, the said Alice having faith in him; and the said Nicholas led the said Alice to a great wood in the New Forest, where the said Nicholas, who was armed, had several other men at arms and archers by his ordinance and arrangement [*makement*] in ambush with the intention on ravishing [*ravyser*] the said Eleanor; and he went and approached the said ambush, taking them with him, and they made assault upon the said Alice and Eleanor, and their meinie with drawn swords, bows and arrows drawn back to the ear, and ravished the said Eleanor, with most evil affray to the said Alice and her company, who thought that the great and treacherous insurrection had been renewed; from which affray the said Alice has taken such illness that it is likely to be the cause of her death; for which they pray remedy.³³¹

³²⁷ Post, "Sir Thomas West and the Statute of Rapes 1382," 25.

³²⁸ Dunn, *Stolen Women in Medieval England*, 100.

³²⁹ Post, "Sir Thomas West and the Statute of Rapes 1382," 25; Phillips, "Written on the Body," 142.

³³⁰ Bellamy, *Crime and Public Order in England in the Later Middle Ages*, 97.

³³¹ Translation from Post, "Sir Thomas West and the Statute of Rapes 1382," 25–26. I have viewed both the French translation TNA: PRO 31/7/109, and the original Latin petition at TNA: Special Collections: Ancient Petitions SC 8/147, no. 7347. The French *ravyser* [ravisser] is the basis of the translation for Post. The Latin petition uses the word *r[apu]er[unt]*.

The petition is evidently focused on the harm done to Alice West, the wife of Sir Thomas, more so than the abduction of his daughter Eleanor. Dunn warns to be mindful of literary constructions folded into legal documents, such as the West petition including that Clifton's men had "drawn swords," as well as the attack happening in a forest, as this was commonly done to strengthen the petition or appeal.³³² Nicholas Clifton was known to the West family as he was in the retinue of Thomas West. On 19 August 1382, Sir Thomas received a warrant to arrest Nicholas Clifton, and his eight accomplices, who were all named, and the goods that were seized during Eleanor's ravishment were listed as being of £45.³³³ The arrest was based explicitly on the robbery of goods taken, listed in the *CPR*, and the abduction of Eleanor was mentioned only as an *additio*:

Commission to Thomas West, Ivo Fitz Waryn, John Dauteseye, Thomas Blount the elder, Thomas Blount the younger and John Butusthron to arrest and deliver to the gaol of Winchester Nicholas Clyfton, Philip Oldefrende, Richard Attefelde, servant of Nicholas Puncefot, John Hobeldod, Roger Bordeaux of London, tailor, John Kelfeld, John Skypton, Goucelyn, servant of Nicholas Clyfton, and William Parkere, who lately rose in insurrection with a great company at Lynhurst, co. Southampton, assaulted Alice the wife of Thomas West, knight, Thomas their son and Eleanor their daughter, and others, at Mallewod in the New Forest, and robbed them of a horse, value 19*l.*, a saddle, value 60*s.*, a silver-gilt girdle, value 60*s.*, pearls and other precious stones, value 13*l.* 6*s.* 8*d.*, and linen and woollen clothes, value 6*l.* 13*s.* 4*d.*, in addition to which Nicholas Clyfton ravished Eleanor.³³⁴

Due to the strong emphasis on loss of valuable goods (Eleanor included), Kelly was correct in stating that this petition could be interpreted as trying to protect from heiress elopement, more so

³³² Dunn, *Stolen Women in Medieval England*, 51, 95, 100.

³³³ *CPR, Richard II, Vol. II, 1381–1385* (London: Eyre and Spottiswoode, 1897), pp. 197, m 26d; see also, Post, "Sir Thomas West and the Statute of Rapes 1382," 26.

³³⁴ *CPR, Richard II, Vol. II, 1381–1385*, 197.

than protect from daughter abduction.³³⁵ Fictitious abductions of wealthy women were not uncommon, as wealthy daughters were rarely given their choice in marital partner and thus, the *raptus* marriage clause was an attractive and legally binding alternative.³³⁶ Those commissioned with the arrest were all in some way associated and known to the West family, either through remainders or marriage.³³⁷ The Statute of Rapes was passed during the next parliament session, in October 1382, and although it does not specifically name the case of Eleanor West, modern scholars believe that it undoubtedly was passed because of her elopement and her father's petition. The statute states:

item, Against the Offenders and Ravishers [*malefactores & raptores*] of **Ladies, and the Daughters of the Noblemen, and other Women**, in every Part of the said Realm, in these Days offending more violently [*violencius*], and much more than they were wont; It is ordained and stablished, That wheresoever and whensoever Ladies, Daughters and other Women aforesaid be ravished [*rapiant*], and after such Rape [*et post hic raptum*] do consent [*consenserint*] to such Ravishers [*Raptoribz*], that as well the Ravishers [*Raptores*], as they that be ravished [*quam rapte*], and every of them, be thenceforth disabled, and by the same Deed be **unable to have or to challenge all Inheritance, Dower or Joint Feoffment** after the Death of their Husbands and Ancestors; and that incontinently in this Case the next of Blood of those Ravishers [*sanguine eodem Rapienciū*], or of them that be ravished, to whom such Inheritance, Dower, or Joint Feoffment out to revert, remain, or fall after the Death of the Ravisher [*repientis*], or of her that is so ravished [*rapte*], shall have Title immediately, that is to say, after the Rape [*post raptū*], to enter upon the Ravisher, or her that is ravished [*raptam*], and their Assigns, and Land-Tenants in the same Inheritance, Dower, or Joint Feoffment, and the same to hold in State of Inheritance; and **that the Husbands of such Women, if they have Husbands, or if they have no Husbands in Life, that then the Fathers or other next of their Blood, have from henceforth the Suit to pursue, and may sue against the same Offenders and Ravishers** [*malefactores & raptores*] in this Behalf, and to have them thereof **convict of Life, and of Member**, although the same **Women after such Rape do consent to the said Ravishers** [*mulieres post hujusmodi raptum decis raptoribz consenserint de vita & membro convincendi*]. And further it is accorded, That the Defendant in this Case shall not be received to wage Battle but that the Truth of the Matter be thereof tried by Inquisition of the Country. Saving always to

³³⁵ Kelly, "Statute of Rapes and Alleged Ravishers of Wives," 373.

³³⁶ Bellamy, *Crime and Public Order in England in the Later Middle Ages*, 58.

³³⁷ Post, "Sir Thomas West and the Statute of Rapes 1382," 26; References Cal. Inq. Post Mortem, xvi, no. 495; Gaol Delivery Rolls, TNA: JUST 3/174 m 1d.

our Lord the King, and to other Lords of the said Realm, all their Escheats of the said Ravishers, if peradventure they be thereof convict.³³⁸

The statute was clearly applicable to all women by its inclusion of damsels, daughters, and wives. The patriarchal control of women was greatly extended in this statute by effectively taking away women's economic independence and thus making the marriage clause ever more difficult. This was the intent of Thomas West's first petition, as it was not the unwilling abduction of Eleanor or her ravishment that was of concern, but rather the violation of her guardian, her mother, and her master, her father.³³⁹ The families could now deter fictitious rapes and/or abductions through two new legal developments. The first, as stated by Post, was through monetary control. The family wealth remained protected by legally counting the eloping woman as dead, meaning that all her inheritance passed immediately to the next in line.

The second novel development to deter elopement was the extended power of appeal of the male kin. The legal ability to bring an appeal forward, which in previous legal ages was exclusively the right of the woman, was now entirely the right of the woman's male kin. The consent of the woman was now entirely irrelevant if her husband or father wished to pursue an

³³⁸ The transcription and translation are from *Statutes of the Realm*, vol. II. 27 (London: Dawson of Pall Mall, 1963), 27, 6 Rich. II, Stat. I, c.6. Emphases are my own. Another translation is available in Post, "Sir Thomas West and the Statute of Rapes 1382," 26–27: "item, the Commons pray, that whereas divers malefactors from day to day ravish women, ladies, damsels and daughters of the gentle of the realm, to the great dishonour and distress [*desease*] of many of the realm, [and] for which punishment of life and member is not given by law to any party in cases where the said women agree and consent afterwards; for which may it please to ordain that henceforth, when women, ladies, damsels or daughters shall in future be ravished, and afterwards consenting, the ravishers and the ravished shall be disabled from having dower, jointure or inheritance, after the death of their barons and ancestors, [in favour of] the next of blood to whom such inheritance, jointure or dower should descend, revert or come after the death of the ravisher or the ravished, their heirs of assigns; and that the barons of such women if they are married, or their fathers or next of blood if they have no barons living, shall have suit to prosecute the said malefactors and attain them for life and member, even though the said women have consented after the ravishment. And that no defendant shall be admitted for wager of battle in such case. But that the truth be tried by inquest, considering the great mischiefs and perils involved. The king wills it, saving to the king and to lords their escheats from the ravisher in such case as he be attaint." See also, *Rotuli Parliamentorum*, iii., 139, ll. 0–140.

³³⁹ Kelly, "Statute of Rapes and Alleged Ravishers of Wives," 401.

appeal. Therefore, this novel statute took away the woman's right to appeal, as she was no longer the legal victim of the ravishment; rather, the title of victim and the right to appeal lay entirely with her male guardian.³⁴⁰ To further protect family interests, the statute eliminated any potential trial by combat to ensure that an older father did not have to fight against a younger abductor, and instead the statute required a trial by jury.³⁴¹ The parliament roll states the reason for the new statute in the opening clause, where it claims that many ravishers were not facing judicial punishment of life and member because women "agree and consent afterwards."³⁴² Evidently, it was the legal autonomy of women, in choosing to marry their ravishers, which was the intended problem that the statute was trying to fix.³⁴³

The new statute did not necessarily help Sir Thomas West and thus, sometime before the next parliament sat in February 1383, Thomas made his second petition directly to the king, Richard II, in which he asked that the statute be applied to his daughter. This second petition states:

To our most gracious and dread lord the king, and to his lords of this present parliament, we your humble lieges Thomas West and Alice his wife pray, that whereas the said Thomas and Alice, as the last parliament held at Westminster the Monday after the Michaelmas last past, showed how Nicholas Clifton, with others, lately made horrible assault upon the said Alice, at Malwood in New Forest, and feloniously ravished and deflowered [*felonousement ravist et defuissolla*] their daughter Eleanor, and because of their suit a statute was made in the said parliament for punishing severely such rapes [*rapeo fortemment*] in time to come: may it please your most gracious and dread lordship that, because this statute and the penalty therein comprised were ordained because of the said felonious rape [*felonius rap*] and at the suit of the said Thomas and Alice, that the said Nicholas and Eleanor be especially included in the said statute to bear the penalty of the aforesaid statute prompted by themselves [*comensant en lour persones*], as the intent

³⁴⁰ Dunn, *Stolen Women in Medieval England*, 12; Emma Hawkes, "Preliminary Notes on Consent in the 1382 Rape and Ravishment Laws of Richard II," *Legal History* Vol. 11 (2007): 129–132.

³⁴¹ Post, "Sir Thomas West and the Statute of Rapes 1382," 27.

³⁴² Post, "Sir Thomas West and the Statute of Rapes 1382," 26–27.

³⁴³ Dunn, *Stolen Women in Medieval England*, 98; Cannon, "The Rights of Medieval English Women: Crime and the Issue of Representation," 173.

of our lords was thus in parliament, and that they be disabled from having any manner of the estate in land or rent as regards Nicholas and Eleanor if she consent at any time, and that her father or any other of her blood, can have suit to attain him according to the form of the statute notwithstanding that the said Eleanor be now covet of the said Nicholas.³⁴⁴

Unlike the first petition, which focused almost entirely on the harm done to his wife Alice, this second petition of Thomas West includes the rape and loss of virginity of his daughter Eleanor. Thomas admits that his daughter may be the wife of Nicholas Clifton, which perhaps unknown to him, was in fact true. The ambiguity about Eleanor's (non)consent to the marriage, and when the defloration occurred, whether it was during the time of the abduction or part of the consummation of the marriage, was likely intentional. This was because Eleanor's (non)consent was irrelevant, as the new statute proclaimed, in that all that mattered was the non-consent of her father in contracting the marriage. Despite the second petition focusing more on the rape and abduction of Eleanor, it was the marriage of his daughter, who gave her consent to Nicholas, that was of primary concern.³⁴⁵ The inclusion of Eleanor's consent, which can be given "at any time" in her life until she is dead, further ensured that by the law Thomas was himself the victim. Even if Thomas was not the victim during the time that he wrote the second petition, the inclusion of Eleanor's potential consent at any point in her life ensured that anytime in the future, if and when Eleanor explicitly consented, then Thomas was the victim of the ravishment. As stated by Saunders, in her analysis of the second West petition, the matter of consent was "further decentered" in the Statute of Rapes, as it was "primarily concerned with property" and

³⁴⁴ Translation from Post, "Sir Thomas West and the Statute of Rapes 1382," 27. I have viewed a photograph of the original petition, written in French and included some transcriptions of the French words bracketed in Post's translation. TNA: Ancient Petitions, SC8/146, no.7252.

³⁴⁵ Saunders, "A Matter of Consent: Middle English Romance and the Law of *Raptus*," 110–111.

consequently the new legal age of *raptus* was “increasingly complex and nuanced.”³⁴⁶ The seizure of a father’s property during the abduction, as mentioned in the first petition, was seemingly conflated with the father’s ownership over his daughter’s virginity and marriage contract.

Eleanor West came from a modest family of higher socio-economic standing than Nicholas Clifton. Thomas’s father served in the military and held land in Wiltshire and Devon.³⁴⁷ Thomas himself had a long military career from 1343 to 1386 when he died, during which time he increased the family wealth substantially according to Post, to about three times as much as what he had inherited.³⁴⁸ Thomas had only two children, his daughter Eleanor and his son, Thomas, for whom he arranged a very respectable marriage in 1384 to a wealthy widow named Joan Willington who brought with her a barony.³⁴⁹ As part of the gentlemen’s prerogative, arranging respectable (and lucrative) marriages for his children was a large concern to ensure that the patrimony was protected. As such, with only two children, the marriage of Eleanor, as Thomas’s only daughter, was of paramount concern. Thomas, as with the trend of medieval marriages, was seeking to arrange a marriage with a social superior, or at the very least an equal. Nicholas Clifton was neither of these. Nicholas was the younger son, and as such, his older brother Robert inherited the little family wealth. Nicholas was, due to the nature of primogeniture, a landless bachelor. Nicholas joined the retinue of Sir Thomas West and went with him on military campaigns in the 1380s.³⁵⁰ Far below the status of the West family, Clifton

³⁴⁶ Saunders, “A Matter of Consent: Middle English Romance and the Law of *Raptus*,” 110–111.

³⁴⁷ Post, “Sir Thomas West and the Statute of Rapes 1382,” 27. References *The Complete Peerage*, Comp. G. E. Cokayne *et al.* (13 vols 1910–1959), XII. ii. 517–518; *Calendar of Inquisitions Post Mortem*, Edward III, Vol. VIII, no. 430–431.

³⁴⁸ Post, “Sir Thomas West and the Statute of Rapes 1382,” 28. References *Complete Peerage*, XII, ii. 519 and *Calendar of Inquisitions Post Mortem*, Edward III, Vol. VIII, no. 430; xvi, no. 496.

³⁴⁹ Post, “Sir Thomas West and the Statute of Rapes 1382,” 28.

³⁵⁰ Post, “Sir Thomas West and the Statute of Rapes 1382,” 28.

was the embodiment of the fears of lawmakers since the time of *Glanvill*, in that through the claim of *raptus* there was the potential of marriage between people of social class disparities. Sir Thomas West likely opposed the match between Nicholas and Eleanor due to the lack of inheritance that he brought to the marriage.

I speculate that Thomas had hoped that the statute would be applied retrospectively to Eleanor's case, in hopes that if she was without inheritance Nicholas Clifton would find her a less attractive bride, and she would be forced to come back to her father's household. We do not know if Thomas was successful in his second petition or not.³⁵¹ On 14 March 1383, Clifton received a pardon from Queen Anne "for all felonies and rapes with which he is charged" and he was knighted a few years later.³⁵² Pardons, along with fines, were frequently given to criminals so that they could serve in a military capacity for the king.³⁵³ Not surprisingly, Clifton subsequently became an associate of the king's illegitimate brother, John Holland, the earl of Huntingdon, and he also was a member of the king's retainer in 1396.³⁵⁴ Evidently, whether or not Eleanor was barred from her inheritance as a result of her father's second petition, was irrelevant as she did not leave Nicholas. The two did marry and she appears to have been forgiven by her mother Alice. In her will, dated 1395, Alice states that a large inheritance was to be given to her daughter, Eleanor, her son-in-law, Nicholas, and their son, whom they affectionately named after Eleanor's father, Thomas.³⁵⁵

³⁵¹ Post, "Sir Thomas West and the Statute of Rapes 1382," 27.

³⁵² *CPR, Richard II, Vol. II, 1381–1385*, 236; Kelly, "Statute of Rapes and Alleged Ravishers of Wives," 373.

³⁵³ Bellamy, *Crime and Public Order in England in the Later Middle Ages*, 193, 195, 204.

³⁵⁴ *CPR, Richard II Vol. II, 1381–1385*, 236; *CPR, Richard II Vol. V, 1391–1396* (London: Her Majesty's Stationary Office by Mackie and Co., 1905), 662; cited in Post, "Sir Thomas West and the Statute of Rapes 1382," 28–29.

³⁵⁵ Post, "Sir Thomas West and the Statute of Rapes 1382," 29; Dunn, *Stolen Women in Medieval England*, 100–101.

The case of Eleanor West highlights another instance of what Sara Butler terms “legal fictions,” in that Thomas West employed a false narrative of forced abduction. Historical hindsight is rather ironic, as Nicholas’s older brother, Robert Clifton, died in 1401 with no heirs and consequently, all of the Clifton wealth passed on to his nephew, Thomas. Ultimately, Sir Thomas West’s grandson inherited the Clifton family wealth, meaning that the primary reason for the petitions, a lack of wealth and title, was void. The Statute of Rapes was formed by the false pretenses of Nicholas Clifton’s noninheritance. Of course, this was unknown in the summer of 1382. In May 1384, just over a year after the Statute of Rapes was passed, the Commons debated the harsh penalties of the law and asked for it to be replaced by the less severe punishments in Westminster II, but this appeal was refused.³⁵⁶ The 1382 Statute of Rapes remained in place until the Statute of 31 Henry VI in 1453, which gave women the ability to get out of marriages that they were forced into by their ravishers.

³⁵⁶ Kelly, “Statute of Rapes and Alleged Ravishers of Wives,” 373, 401. References *Rotuli Parliamentorum ut et Petitiones et Placita in Parlamento Tempore Ricardi R.II*, Vol. III, no. 26, 174. “Parliament VII, Richard II, 1384: Item prient les Communes, q come ordenez fust au Parlement tenuz a Westm’ l’an du regne nr edit Si le Roi fufine, qu’en quell lieu, & a quele heure aucunes Femmes feussent ravisez, & apres tiel rape euffent affentuz as tielx ravissours, q si bien les ravissours come les Femmes ravyes, & cheseun de eux, feusse defable & pur noun-able tenuz a challenger ou avoir aucun manere d’eritage, dower, ou jointfeoffement, apres la decres lours barons, & de lours auncestres; Et q meitenant enc el cas le profchein de frank de les avaunt ditz ravisours ou ravys, a qi heritage, dower, ou jointfeoffement, devroit defcendre, revertir, remendre, ou approcher, apres la mort de tielx ravissours ou ravys, eit title, meitenant apres cel rape, d’entrer fur les ravisours pi ravissez, & leur assignez, & terre-tenantz en heritablement tenir. Et q les barons de celles femmes, ou s’ils n’eient pas barons en vie q’adonques leurs piers, ou autres proscheins de leur frank, puissant fuir, & eussent la purfuite devers tielx malfeifours & ravissours, a ceux atteindre de vie & de membre, tout foit q les ditz femmes apres cel ravissement as tielx ravissours eussent affentuz; Et oultre feust ordenez q le defendant en ce cas ne ferroit pas receuz de gagier la batail, mais q la veritee de ce ferroit trie par enquete: Qe plese a nre dit Si le Roy, considerant q la dite Ordinance est faite a trop dure & redde Loy as liges nre dit Sr le Roy, ordener, q la dite Ordinance foit en ce present Parlement adnullee & annientie, & tenuz pur nul, si bn de tout temps passe come du temps a venir; & q ‘auncien Estatut fait de rapes des femes estoise en sa force. Responsio: Le Roi voet, q l’Estatut dissuis dit tiegne sa force: Salvant nientmeins a lui & as autres Seignrs du Roialme pleinement lours forfaitures dues en le cas, sicome ils les eurent devant mesme l’Estatut fait.”

Concluding Thoughts on the Five Legal Ages

The transition from *Glanvill*, to *Bracton*, to Westminster I and II and finally to the Statute of Rapes, was accompanied by a slow erasure of the woman's legal right to appeal her own rape. Instead, by the final legal age, the right to appeal was given to her male next of kin, primarily her father or husband. The legal apparatus available to women was replaced in favour of protecting the patrimony and this resulted in the shift from the legal focus on serving justice to rape victims and instead to serving justice to her male kin, the new victims of *raptus*.³⁵⁷ As stated by Kim Phillips, the final legal age of the medieval period ensured that the victim was "no longer the violated woman, but the deprived man."³⁵⁸

Although previous scholars such as Caroline Dunn, J. B. Post, and Henry Ansgar Kelly have interpreted the evolution of the Statutes of Westminster and the Statute of Rapes, little attention has been given to the entirety of *raptus* laws from *Glanvill* to the Statute of Rapes. It is through this comprehensive analysis and close reading of the five legal texts that we can appreciate the development and ultimate frustration of the marriage clause. This has not received adequate attention from scholars thus far, who focus primarily on Westminster II and the Statute of Rapes. It is clear when we include the treatises of *Glanvill* and *Bracton*, that lawmakers had a persistent concern about the inequal social classes exploiting the marriage clause. Overall, this chapter highlights the importance of recognizing that the Statute of Rapes was not a drastic change in *raptus* laws. Rather, it was a continuation of the frustration with the marriage clause that is evident in not only Westminster II (as previous scholars note) but all the way back to

³⁵⁷ Phillips, "Written on the Body," 138.

³⁵⁸ Phillips, "Written on the Body," 138.

Glanvill and *Bracton*. The fact that nearly a hundred years after Westminster II, the new statute had to rectify the elopement problem even more explicitly shows the societal anxiety that persisted throughout the fourteenth century under the age of Westminster II.³⁵⁹ Despite the legal barriers, women continued to use the marriage clause to their advantage as is evident by the case of Eleanor West, who, despite her father's public disapproval did not leave Nicholas Clifton. The following chapter will examine how these laws were applied in the court of the general eyre with twenty-eight case studies demonstrating the secular laws in practice.

³⁵⁹ Post, "Sir Thomas West and the Statute of Rapes 1382," 30.

Chapter 3:

The Eyre Courts in Practice

Introduction

Studying the written laws of *raptus*, compared to the laws in practice, often yields very different results. Although the laws progressively eclipsed women's place as victims of rape and/or abduction, in favour of their male counterparts, and increasingly tried to erode women's rights to appeal, in actuality, women continued against all odds to bring rapists to trial.¹ The following case studies involve the non-noble (with the exception of Sir Hugh) and allow for the rare opportunity to study the ordinary in what Michael Goodich calls "history from below."² Applying a micro-historical approach to demonstrate larger macro processes and legal identities, this chapter aims to highlight the inconsistencies between the theory of law and the law in practice.³ To this point, Christopher Cannon warns that the laws, constructed and implemented by men, do not necessarily illuminate the lived realities of women, and thus just studying the written laws without looking at the laws in practice distorts the actual experiences of common medieval people.⁴

¹ Dunn, *Stolen Women in Medieval England*, 80. For a brief history on the court of the general eyre, and a discussion on the circuit routes and justices for the cases studied here, see Appendix A and B.

² Michael Goodich, "Introduction," in *Voices from the Bench: The Narratives of Lesser Folk in Medieval Trials*, ed. Michael Goodich (New York: Palgrave Macmillan, 2006), 1; Hanawalt, *Crime and Conflict*, 6, 128. Here Hanawalt claims that "ordinary" criminal courts, such as the general eyre, rarely saw cases from members of the elite social classes.

³ Goodich, "Introduction," 2. Here Goodich notes "that the microcosm can illuminate the macrocosm. Through the sharpened prism of one person, his or her family, or community, it is often easier to clarify the textured dynamic of society than through the perspective of theory or high politics."

⁴ Cannon, "The Rights of Medieval English Women: Crime and the Issue of Representation," 156.

The present chapter builds on the extensive research completed by Harold Schneebeck and Barbara Hanawalt;⁵ both have thoroughly examined medieval English felony laws and the criminal trial proceedings of felony charges. While Schneebeck produced a broad survey of all felonies in medieval England, Hanawalt has provided a more feminist perspective looking at the various crimes of which women tended to be accused, convicted, and acquitted. While Hanawalt and Schneebeck looked at a wide range of felonies, not just rape, my research offers new insights into the eyre court's handling of rape trials specifically.

Schneebeck's two-volume text is extensive in scope, yet it lacks the nuanced readings and interpretations of specific cases from a modern feminist historical perspective grounded in gender and queer theory. Building on his findings, this section offers close readings and translations of the trial records, as well as a more comprehensive analysis of how the records relate to the *raptus* laws previously discussed. I modeled my approach and methodology on Schneebeck and Hanawalt, in that applying statistical findings of medieval court records is a speculative endeavour. At the end of this chapter, there is a comparative analysis of my findings about the eyre court's rape trials, to the general findings of felony trials supported by Schneebeck and Hanawalt. Table 5 at the end of the chapter categorises all cases analysed here based on their legal age, whether they were made through indictment or appeals, and the case outcome. Although the numbers of appeals that made it to trial were very low (see Table 5 and discussed more below), with conviction rates that were even lower, and despite the mechanisms of secular courts working against them, these women asserted their right to legal retribution.

⁵ Schneebeck, "The Law of Felony in Medieval England from the Accession of Edward I until the Mid-Fourteenth Century," vol. 2; Barbara Hanawalt, "The Female Felon in Fourteenth-Century England," *Viator* Vol. 5, No. 1 (1974): 253–268; Hanawalt, *Crime and Conflict*; Barbara Hanawalt, "Women Before the Law: Females as Felons and Prey in Fourteenth-Century England," in *Women and the Law: A Social Historical Perspective, Vol. 1: Women and the Criminal Law*, ed. D. Kelly Weisberg (Cambridge: Schenkman Publishing Company, 1982), 165–196.

Caroline Dunn warns that studying legal records can frustrate historians, as most often verdicts of court decisions are left unmentioned as satisfaction was made out of court, and thus there are inevitable gaps in the records themselves.⁶ It should be noted that today “many cases of abuse go undetected by both officers of law enforcement and the courts,” and “[t]he records of medieval England offer this same impression.”⁷ Whether women neglected to appeal because of the financial burden, the damaged reputation or blame placed on them, or the fact that convictions were rare and the prosecution process seemed pointless we do not know.⁸ Therefore, all statistical information below is intended simply to further the discussion and is not intended to be viewed as conclusive statistical data on medieval England’s rape appeals. Although it helps to shed light on general trends, I am equally aware that most cases of sexual abuse never made it into the records.

The Legal Age of *Glanvill*, c.1194 – c.1230

Case records during the age of *Glanvill* are difficult to access with fewer surviving than from later centuries. The plea rolls during the *Glanvill* age are more difficult to transcribe and translate due to illegibility (largely the result of parchment stains and faded ink), as well as the physical deterioration of the records themselves. I have found just one case from the legal age of *Glanvill*, dating from 1201 which is just seven years after the earliest extant eyre court plea roll of 1194. This suggests that, as far as the extant records allow us to speculate, this case occurred within the first decade of the circuits of the eyre. Located in the Cornwall eyre of 1201, a woman

⁶ Dunn, *Stolen Women in Medieval England*, 73.

⁷ Butler, *Language of Abuse*, 2.

⁸ Mavis E. Mate, *Daughters, Wives and Widows after the Black Death: Women in Sussex, 1350–1535* (Woodbridge: Boydell Press, 1998), 185; Musson, *Medieval Law in Context*, 166.

named Malot Craue appealed Robert, son of Godfried of rape.⁹ Robert came to defend himself but the brief (less than two lines long) record plainly states *testatum fuit ipse eam ita rapuit et quod visa fuit sanguinolenta*, “it is testified that he thus raped her and that she was seen bleeding.”¹⁰ Despite the physical injury she endured, the justiciars concluded that “they are in concord” (*concordati sunt*) as *cepit eam sponsam*, “he has taken her as his wife.” Here we can see the inclusion of *Glanvill*’s marriage clause which was enacted without the explicit wishes of the parties involved, suggesting that this does not appear to be a pre-arranged elopement. Because Malot herself brought the appeal forward, it strongly implies that in this case the court probably used marriage as a means of settlement in the rape trial.

The Legal Age of *Bracton* c.1230 – c.1275

Bracton outlines some of the harshest punishments for convicted rapists, that is, the loss of eyes and genital mutilation (see chapter 2). Despite these severe punishments, courts continued to prosecute rape by trial jury, meaning that men who were neighbours, or at the very least peers, with the accused rapist were responsible for determining his guilt. As previously stated, the social aspects of trial juries meant that there might have been reluctance among jurors to punish their fellow neighbours with such severe mutilations.¹¹ John Bellamy argues that those who were most likely to be convicted of a felony were either caught during the crime, or known criminals, or foreigners unknown to the jurors.¹² As such, J. B. Post has only found one single

⁹ TNA: JUST1/1171 m 3. Full transcription and translation in *Select Pleas of the Crown: Please Before the Justices in Eyre in the Reign of King John*, vol. 1 (London: The Selden Society, 1887), 3.

¹⁰ *Select Pleas of the Crown: Please Before the Justices in Eyre in the Reign of King John*, vol. 1, 3. Translation is my own.

¹¹ Hanawalt, “Women Before the Law: Females as Felons and Prey in Fourteenth-Century England,” 186–187.

¹² Bellamy, *Crime and Public Order in England in the Later Middle Ages*, 160; Hanawalt, *Crime and Conflict*, 26.

case during the age of *Bracton* in which the prescribed punishment of facial and genital mutilation was carried out. This very obscure case, coming from 1222, is referenced by *Bracton*.¹³ Since this was such a rarity, it seems peculiar and suspicious that *Bracton* has recorded this single instance of the punishment. Even if we consider *Bracton* to be truthful, the reality is that the punishment was so severe that conviction rates and the prescribed punitive methods severely decreased. This is the most probable conclusion to draw from the extremely low conviction rates during the age of *Bracton*. Otherwise, we must conclude that rape was both an extremely serious crime (based on the severity of punishment in *Bracton*) and an extremely rare crime (based on the low conviction rates). My research agrees with that of Post and Bellamy in concluding that the latter is unlikely.¹⁴

Frequently appeals would fail, as women brought the appeals forward improperly, that is, not through all of the correct channels, or if they did not raise the hue and cry immediately after the attack.¹⁵ Rape appeals were weakened by lapsed time before the accusation as it might have indicated a woman's malicious intent (as discussed in the previous chapter). This, Caroline Dunn argues, is strikingly similar to present-day concerns about the statute of limitations.¹⁶ Kathryn Gravdal notes that "the burden of proof" was entirely on the survivor, in that she "had to demonstrate that she had resisted the attack sufficiently and with due form" and if there was an attack on her reputation or moral character the case could still fail.¹⁷ Even if she followed all the

¹³ Post, "Ravishment of Women and the Statues of Westminster," 152.

¹⁴ Bellamy, *Crime and Public Order in England in the Later Middle Ages*, 181.

¹⁵ For more information on the hue and cry see Janka Rodziewicz, "Women and the Hue and Cry in Late Fourteenth-Century Great Yarmouth," in *Women, Agency and the Law, 1300-1700*, The Body, Gender and Culture Number 15, eds. Bronach Kane and Fiona Williamson (London: Pickering & Chatto, 2013), 87–97; Hanawalt, *Crime and Conflict*, 33.

¹⁶ Dunn, *Stolen Women in Medieval England*, 68.

¹⁷ Kathryn Gravdal, *Ravishing Maidens: Writing Rape in Medieval French Literature and Law* (Philadelphia: University of Pennsylvania Press, 1991), 130.

correct procedures, most often the woman and the accused ravisher would reach an out-of-court settlement.¹⁸ According to the plea rolls, these settlements were usually money or marriage and there are no follow-up records to ensure payment was received.¹⁹ Consequently, the severity of punitive mutilation during the age of *Bracton* resulted in a reduced number of appeals going to trial and even fewer being prosecuted. Of those convicted during *Bracton*'s legal age, my research has found no cases that ended in mutilation. This agrees with other scholars who have yet to find a case beyond *Bracton*'s 1222 reference.

The legal age of *Bracton* places such emphasis on the rape of virgins that it also acted as a deterrent to the prosecution of rape of non-virgins. An eyre roll from Devon in 1244 includes a case where the woman's appeal was dropped because she was a widow and the eyre roll states explicitly that *appellum de virginitate sua rapta et viro suo in brachia sua occiso*, "a woman can only appeal about the rape of her virginity and the death of her husband in her arms."²⁰ This strict interpretation of *Bracton* resulted in the acquittal of the defendant, as the jury found him *no[n] est culpabilis*. It is worth noting that the record does not diminish the woman's claim of rape, as it states that "he both seized her" (*cepit eam*) and "he had sexual intercourse with her" (*concubuit [cum] ea*). However, this was deemed irrelevant to the legal prosecution since she was not a virgin and thus her appeal was withdrawn.

Out of the two cases from the eyre rolls which are examined here during the legal age of *Bracton*,²¹ there are zero convictions for the felony of rape (as seen in Table 1). The numerous

¹⁸ Post, "Ravishment of Women and the Statutes of Westminster," 152; Saunders, "A Matter of Consent: Middle English Romance and the Law of *Raptus*," 108.

¹⁹ Dunn, *Stolen Women in Medieval England*, 79.

²⁰ TNA: JUST1/175 m 44d. Cited in Post, "Ravishment of Women and the Statutes of Westminster," 153. Translations of eyre cases are my own unless stated otherwise.

²¹ TNA: JUST1/175 m 44d; TNA: JUST1/540 m 19; TNA: JUST1/1171 m 3.

procedures involved in making a proper appeal created countless opportunities for the courts and the accused to find fault in the woman's appeal and thus the appeal would frequently fail.²² For the appeals that did not fail, the courts would seek to settle most often with an amercement or, if both the appellor and defendant were unmarried, then matrimony.

	Number of Cases	Number of Trials	Percentage of Cases that went to Trial	Number of Total Convictions	Percentage of Convictions of Cases that went to Trial	Overall Conviction Rate
Indictments	0	0	0%	0	0%	0%
Appeals	2	1	50%	0	0%	0%
Total	2	1	50%	0	0%	0%

Table 1: *Raptus* Cases in the Eyre Courts Under the Legal Age of *Bracton*, c.1230–c.1275

In the three-year period, from when Edward I ascended to the throne in 1272, to the implementation of Westminster I in 1275, there is only a single recorded *raptus* appeal that went to trial and did not settle out of court. As stated by Harold Schneebeck, this case is exemplary in demonstrating the courts', specifically the trial jurors', unwillingness to send their neighbour – a convicted rapist – to receive mutilation.²³ Recorded in the Middlesex eyre roll of 1274/1275, a young girl named Margery, daughter of Peter le Fever, appealed two men, Thomas de la Forde and Richard fitz Benedict “of raping her virginity against the peace” (*de raptu virginitatis sue contra pacem*).²⁴ Margery herself made the appeal (*Margeria appellat*), stating that ten years prior to the trial, in 1265, “Thomas himself came...to the house of Alice Marbarne” (*ip[s]e venit*

²² Schneebeck, “The Law of Felony in Medieval England from the Accession of Edward I until the Mid-Fourteenth Century,” vol. 2, 437.

²³ Cited in Schneebeck, “The Law of Felony in Medieval England,” vol. 2, 439–440.

²⁴ TNA: JUST1/540 m 19.

... *ad dom[um] Ahlae Mabarne*) and *et facit eam sanguineolentam et vi eam rapuit*, “and both raped her [Margery] with force and made her bleed.”²⁵ Thomas was also present at the hearing, as the record states that *Et p[re]dictus Thom[as] petit Jud[ice]m de appello suo*, “the aforementioned Thomas asks the judge about his own appeal.” Thomas challenged Margery’s appeal and the twelve jurors stated *q[uo]d p[re]d[i]c[t]us Thomas violavit eam contra voluntatem suam set dicunt quod non fuit virgo tunc temporis*, “that when the aforementioned Thomas violated her against her will, it was, they said, when she was not a virgin at that time.” The jurors’ verdict allowed for the prosecution of rape, but not the rape of a virgin. The record is vague in stating *Postea p[re]d[i]c[t]us Thomas satisfecit p[re]d[i]c[t]e Margerie et finem fecit cum d[omi]no R[ege] p[er] d[imidiam] m[arcam]...*, that is “afterwards, the aforementioned Thomas satisfied the aforementioned Margery and he made a fine with the lord King for half a mark.” Despite Margery le Fever’s failed appeal, there is no record that she was imprisoned for false appeal. The exact nature of the concord between Thomas and Margery is also left unmentioned. I have included Margery le Fever’s case in the table above as it is the only case I have found from the *Bracton* era that went to trial, although the accused was not convicted of felony rape. Thus, my research has not found a single *Bracton* era conviction. Critically, this case study suggests an unwillingness amongst jurors to sentence an acquainted man to mutilation. It also demonstrates the bodily injury expected of women and how that injury was secondary to the loss of virginity.²⁶ I am not aware of a case where the “legal women” inspected the body for corruption or virginity years after the crime occurred. Speculatively, then, Margery’s *fama*, her presumed sexual reputation, would have been used against her in this case. Furthermore, this case demonstrates that jurors would mitigate the felony, by claiming that the

²⁵ TNA: JUST1/540 m 19.

²⁶ Phillips, “Written on the Body,” 129, 133.

woman was not a virgin, but would still allow her to appeal the rape of a non-virgin, which was a lesser offence.²⁷

Overall, both the *Glanvill* and *Bracton* legal age have spotty records with incomplete information, sparse recording, and few details. I have found three appeals throughout both these ages, from c.1201–c.1275: one failed because the woman was not a virgin, another one was downgraded to a trespass and the last one was settled by matrimony. The eyre courts were evidently reluctant to prosecute rape as a felony as it would ensure the convicted man's mutilation. Although the sources explicitly state legally legitimate excuses for dismissing a case, the implication from these sources makes it appear that the harsh punitive measures of *Bracton* resulted in jurors' unwillingness to convict.²⁸

The Legal Age of Westminster I, 1275 – 1285

The downgrading of the offence of *raptus* to a trespass under Westminster I coincides with more indictments and convictions than during the previous legal ages. This suggests that punitive imprisonment, as opposed to mutilation, made jurors more willing to prosecute and convict rapists.²⁹ However, as will be discussed below, my research has found that this claim requires a more nuanced interpretation of how the cases actually came to trial, which was through either an indictment or appeal. Westminster I claims that any woman can appeal *raptus*, including maidens and matrons. However, when looking at the eyre rolls during this legal age and contrary to the statute, the issue of the woman's virginity repeatedly became the primary

²⁷ TNA: JUST1/540 m 19. For further analysis, see Schneebeck, "The Law of Felony in Medieval England," vol. 2, 439–440.

²⁸ Butler, *Language of Abuse*, 92.

²⁹ Schneebeck, "The Law of Felony in Medieval England," vol. 2, 445.

focus of rape trials. This is what Goodich terms “a chasm separating rhetoric and reality.”³⁰ As the eyre case records will show, despite the higher conviction rates under Westminster I, there was still a strong reluctance to convict a man of raping a virgin through an appeal, as this could lead to the punitive mutilation of the *Bracton* age. Furthermore, conviction rates depended largely on the severity of the bodily harm, tangible proof of physical resistance, the (non)virginal status of the woman, her reputation in general as well as the socio-economic status of both the woman and the accused man.³¹ If the defendant claimed to be a member of the church, he could avoid secular trials through the benefit of the clergy. If he were found guilty in the ecclesiastical courts, the secular courts would be inclined to label him a felon, as that status ensured that all of his lands and belongings were forfeited to the king’s purse.³² Unlike clergymen, who were saved from the death penalty by the benefit of the clergy, laymen who were accused of rape through an indictment were not deemed felons, as the statute stated it was a trespass.³³ Consequently, clergymen were more likely to be convicted as felons through indictments for the purposes of economic gain to the crown.

Harold Schneebeck found a total of thirty-seven *raptus* cases from the legal age of Westminster I, which is the ten-year period of 1275 to 1285. Of the thirty-seven cases, twenty-one of them, just over 56%, were initiated from a woman’s appeal, and only sixteen from royal indictments.³⁴ Of the sixteen indictments, only nine of them (just over 56%) went to trial, and two of the nine were settled out of court prior to prosecution.³⁵ One of these cases was that of

³⁰ Goodich, “Introduction,” 10.

³¹ Gravdal, *Ravishing Maidens*, 127.

³² Schneebeck, “The Law of Felony in Medieval England,” vol. 2, 458.

³³ Schneebeck, “The Law of Felony in Medieval England,” vol. 2, 458.

³⁴ Schneebeck, “The Law of Felony in Medieval England,” vol. 2, 445.

³⁵ Schneebeck, “The Law of Felony in Medieval England,” vol. 2, 446.

Juliana Pekenot, from the Surrey eyre of 1279.³⁶ This is an interesting case to demonstrate the marriage clause in practice, as the indictment failed because both Juliana and her husband/rapist Elias claimed that they were married prior to the rape. The eyre roll states that *Elyas Pekenot de Dont[o]fold rapuit Julianam filiam Horselsoule et vi concubuit cum ea et rapuit virginitatem suam*, “Elias Pekenot de Dontofold raped Juliana the daughter of Horseloul and he had both sex with her by force and raped her virginity.”³⁷ The record states *p[os]t ideo ip[s]e cap[itur]*, “after for that reason he himself was arrested,” the reason seemingly being the loss of virginity. The record continues: *postea venit predictus Elias et dicit quod ipse [affedauit] predictam Juliam antequam concubuit cum ea et Juliana venit [et hoc] idem testat[ur] iodeo inde Q[uieti]*, translated as “afterwards the aforementioned Elias came and pleads that he promised himself to the aforementioned Juliana before he had sexual intercourse with her and Juliana came, this same [thing] she testifies, for this reason from here [from now on] they are quit.”³⁸ Because both Juliana and Elias agreed that they were betrothed prior to the loss of virginity, the marriage clause was enacted to save Elias from prosecution and the case was dropped. Evidently, the legal framework situated rape and marriage on the same continuum, the former equating to illicit sex, and the latter licit sex, and when both the man and woman claimed marriage, there is a hypothetical legal “erasure” of rape. The record implicitly reveals that both Elias and Juliana acknowledged the loss of virginity. However, the loss of virginity was now legal because they were betrothed, despite any parental objections there may have been. Indeed, Juliana may have even felt parental and societal pressure to marry Elias and save her and her family’s reputation. The record does not indulge in the nuances of this marital arrangement. Nonetheless, in this case

³⁶ TNA: JUST1/877 m 61d. Referenced in Schneebeck, “The Law of Felony in Medieval England,” vol. 2, 446.

³⁷ TNA: JUST1/877 m 61d.

³⁸ TNA: JUST1/877 m 61d. Margin inscription: *quite*.

we can see how the marriage clause in rape cases both enabled couples to choose their own partner and eliminated any criminal indictments of *raptus*.

The other indictment to be settled out of court was recorded in a 1279 eyre roll of Sussex.³⁹ The jury presented William Page who worked as a miller (*Juratoriums presentant quod Will[iamu]s Page molendinar[us]*) and was accused that he *rapuit Alice de Kyngesmannesdouuter vi concubuit cu[m] eam et rapuit virginitatem suam*, that is “he raped Alice de Kyngesmannesdouuter with force [he] laid with her and raped [her] of her virginity.”⁴⁰ The record states *postea testatum est per rotulus coronatoris quod predicta Alicia appell[avit] predictum Willielmum in Com[itatu]*, that “afterwards, it was testified through the rules of the coroner that the previously mentioned Alice appealed the aforementioned William in the County” but that the appeal was not pursued, *et ipsa non venit ad p[ro]sequendum appell[lum] suum*, “and she herself did not come to prosecute her own appeal.” The record states that *i[de]o cap[itur] et pl[ur]is sui de p[ro]s[e]quendus in mia [misericordia]*, “therefore he [William] was arrested and [many of his people prosecuted with him] in paying the fine.” The terms of the *concordati* are not stated in the eyre roll, however, Schneebeck states that they most likely agreed to marriage.⁴¹ Despite Alice’s failed appeal, the king still indicted William as the eyre roll states *et juratores requisiti si culpabilis sit de predicto f[ac]to dicunt quod sit et quod concordati sunt. Ideo predictus Willielmus cap[itur]*, “and the jurors inquired if he was guilty of the aforementioned deed, they said that he was and that they agreed. Therefore, the aforementioned William was arrested.” This was the novelty of Westminster I, in that even if the woman did not appeal, or her appeal failed, the king could still indict. The court demanded William be present

³⁹ TNA: JUST1/921 m 14.

⁴⁰ TNA: JUST1/921 m 14.

⁴¹ Schneebeck, “The Law of Felony in Medieval England,” vol. 2, 447.

for his indictment. Even though we do not know what settlement was reached between Alice and William, the probability that it was marriage remains high. The king's indictment overrode Alice's consent to presumably marry William, essentially making her consent and the marriage clause irrelevant to the criminal proceedings of the indictment. Throughout my research, I have been unable to determine how Alice and William's story ended. I could not find indictment records for William Page, meaning that he may have fled to avoid trial, or he may have died.

Westminster I prescribed two years imprisonment, but the courts interpreted this as a guideline more than a binding punitive measure, as a record of indictment from the eyre roll of Kent in 1279 demonstrates.⁴² The record states that William fitz Fulchon Attehadde *rapuit Ceciliam, filiam Gilberto de Bradegate et vi concubuit cum ea et rapuit virginitatem suam*, "he raped Cecilia, daughter of Gilbert Bradegate, he [William] both had sex with her by force and raped her of her virginity."⁴³ William defended himself stating that *non rapuit predicteam Ceciliam* "he did not rape the aforementioned Cecilia." The twelve jurors concluded that *predictus Williamus concubuit cum ea et contra voluntatem suam rapuit eius virginitatem*, "the aforementioned William with force had sex with her and against her will he raped her of her virginity." The verdict includes *ideo committitur gaole et custodiatur per iii: annos per statutum*, "therefore he is committed to jail and in custody for three years as per the statute." Westminster I included a two-year prison sentence and a fine at the king's pleasure, which if not paid, would increase the prison sentence (and more often than not, the prison sentence would be dropped altogether in favour of amercement).⁴⁴ The courts in practice, however, appear to be loosely interpreting the punitive measures by issuing William fitz Fulchon Attehadde a three-year

⁴² TNA: JUST1/369 m 31; Schnebeck, "The Law of Felony in Medieval England," vol. 2, 449–450.

⁴³ TNA: JUST1/369 m 31.

⁴⁴ Schnebeck, "The Law of Felony in Medieval England," vol. 2, 457.

prison sentence.⁴⁵ Notably, this is one of the few convictions that my research has uncovered. This suggests that the less severe punishment of Westminster I made justiciars and trial jurors more inclined to indict and convict men of rape and/or abduction.

The conviction of William fitz Fulchon Attehadde was likely aided by Cecilia's loss of virginity as a consequence of the rape.⁴⁶ Despite the fact that the new statute was applicable to all women, whether maidens or matrons, the *Bracton*-era emphasis on virginity remained prevalent in the social customs of medieval marriage markets and in the assumptions about appropriate feminine sexuality. The influences of community social morals onto the legal realm were evident in rape cases where the loss of virginity, such as Cecilia's, led to a conviction, despite the unambiguous indifference written into the statute. The *Bracton*-era emphasis on virginity is blatantly clear in the only other indictment leading to conviction, which is recorded in the 1280-1281 Hampshire eyre roll.⁴⁷ Walos Perk was accused of raping Meynda, *etatem novem annorum*, "when she was only nine years old."⁴⁸ The indictment includes a standardised defence from Walos: *et Walos venit et dicit quod non rapuit predictam Meyndam contra voluntatem suam*, "and Walos came and said that he did not rape the aforementioned Meynda against her will." However, the record states that the twelve trial jurors said (*dicunt*) that Walos *vi rapuit*, "with force" raped Meynda when she was only nine years old, *de virginitate sua contra voluntate[m] suam*, "taking her virginity against her will." The emphasis on Meynda's loss of virginity and minor age is clear in the repetition of these statements in the relatively short seven-line record. The jurors sentenced Walos to prison (*committatur Gaole*) and to *penam statuti scil[icet] duos*

⁴⁵ TNA: JUST1/369 m 31.

⁴⁶ Schneebeck, "The Law of Felony in Medieval England," vol. 2, 452.

⁴⁷ TNA: JUST1/784 m 17d. Cited in Kelly, "Statute of Rapes and Alleged Ravishers of Wives," 383, and in Post "Ravishment of Women," 155.

⁴⁸ TNA: JUST1/784 m 17d.

annos, “the punishment of the statute, that is to say, two years.” The reference to Westminster I is reiterating the severity of the crime, as Westminster I explicitly prohibited the rape of minors (regardless of their consent) which Meynda certainly was. In this case, the minority of her age, as well as the loss of virginity,⁴⁹ worked to ensure a conviction through indictment.

As previously mentioned above, Schneebeck found thirty-seven cases in the plea rolls during the legal age of Westminster I, of which sixteen were indictments and twenty-one were appeals. Of the twenty-one cases brought to the courts by a woman’s appeal, only four were successful at obtaining a trial.⁵⁰ These four will be discussed in more detail below, but at this point, it is worth looking at the numbers. As seen in Table 2 below, of the twenty-one appeals, only 19% went to trial (four of the twenty-one), as opposed to just over 56% that went to trial through indictment. Of the four appeals that went to trial, three ended in acquittals and all three women were to be imprisoned for false appeal. Only one single case brought to the justices of the eyre through a woman’s appeal ended with a conviction. Thus, out of the twenty-one appeals, there is just under a 5% conviction rate (one out of twenty-one). This is less than half of the 12.5% conviction rate through indictments (two out of sixteen). As is discussed in greater detail with the case of Emma below, this suggests that a conviction through an appeal held harsher punitive measures than a conviction through an indictment. In total, out of the thirty-seven recorded cases during Westminster I, only about 35% (thirteen out of thirty-seven) went to trial. If looking at the convictions from only those that went to trial, then it is plausible to say that medieval England during the age of Westminster I had just over a 23% conviction rate (three out of thirteen), which is indeed very high. However, the picture is more accurate when one

⁴⁹ Hanawalt, *Crime and Conflict*, 105.

⁵⁰ Schneebeck, “The Law of Felony in Medieval England,” vol. 2, 452–453.

considers all the cases, not just the ones that were able to secure a trial, which was rather difficult. Of all thirty-seven cases recorded in the plea rolls, only three ended in a conviction, equivalent to roughly an 8% conviction rate.

	Number of Cases	Number of Trials	Percentage of Cases that went to Trial	Number of Total Convictions	Percentage of Convictions of Cases that went to Trial	Overall Conviction Rate
Indictments	16	9	56.25%	2	22.20%	12.50%
Appeals	21	4	19.05%	1	25%	4.76%
Total	37	13	35.14%	3	23.1%	8.11%

Table 2: *Raptus* Cases in the Eyre Courts Under the Legal Age of Westminster I, 1275–1285

The three appeals⁵¹ that went to trial and ended in the acquittal of the accused men and the imprisonment of all three women reveal the harsh realities and dangers that women faced when bringing an appeal forward. All three cases have similarities in the records. The earliest is recorded in the 1278 Cumberland eyre roll where a woman appeals *de rapo* and the appeal fails.⁵² This is identical to the Westmorland 1279 eyre record of Margery fitz Roger appealing Adam de Oliffele *de rapo*,⁵³ as both records state little detail about the rape, and there is no mention of abduction, injury, or loss of virginity, making the woman's appeal less convincing to the jurors. In contrast, the third failed appeal recorded in the Nottinghamshire eyre of 1281 gives more information, as William fitz Hugoius acted *in feloniam*, and *concubuit*, "had sexual intercourse" with Idena and *ipsam fecit sanguinolentam*, "made her bleed."⁵⁴ The inclusion of

⁵¹ TNA: JUST1/133 m 25; TNA: JUST1/983 m 23d; TNA: JUST1/669 m 8d. Cited in Schneebeck, "The Law of Felony in Medieval England," vol. 2, 452–453.

⁵² TNA: JUST1/133 m 25.

⁵³ TNA: JUST1/983 m 23d.

⁵⁴ TNA: JUST1/669 m 8d.

physical injuries and bodily harm done to Idena adds to the fulfillment of her resistance and the embodiment of the legal identity of the “true victim.” However, William was found not culpable and Idena was placed in custody *pro falso appello*, “for false appeal.”⁵⁵ From these trial records it is apparent that the lack of detail about the rapes, the non-descript physical injuries done to the women (or lack thereof), and the absence of deflowerment, all worked against their appeals and led to their own imprisonments.

The courts interpreted Westminster I broadly, as seen in the case where the conviction through indictment ended in three-years of imprisonment. Similarly, the only conviction from appeals sheds light on the courts’ mentality, in that the rape of virgins continued to be viewed as a different crime from the rape of non-virgins, despite the indifference towards them in the statute of Westminster I. The eyre of Kent from 1279 includes the case of Emma, daughter of Christine, who appealed Hugh fitz Henry de Alkyndoun of rape.⁵⁶ Emma claims that Hugh *vi concubuit cum ea et rapuit ei virginitatem suam*, “had sexual intercourse with her with force and raped her of her virginity,” but Hugh defended himself stating *non est mode*, that “this is not the manner [this is not the way that the rape occurred].” The jury found Hugh *culpabil[is]*, “guilty” of rape, however the record also states *Emma tunc non fuit virgo Ideo custodiatur in prisoa per duos annos secundum novum statutum*, that “because Emma was not a virgin at the time of the rape, he is therefore placed in prison for two years as the new statute states.”⁵⁷ The inclusion of her (non)virginal status makes no sense, as Westminster I claims that the rape of virgins and non-virgins is treated as equal. Evidently, the case of Emma proves that the courts in practice had

⁵⁵ TNA: JUST1/669 m 8d.

⁵⁶ TNA: JUST1/369 m 7d. Cited in Schneebeck, “The Law of Felony in Medieval England,” vol. 2, 453.

⁵⁷ TNA: JUST1/369 m.7d.

latitude and continued to interpret the rape of virgins as entirely different – and more severe– than the rape of non-virgins.

The law in practice was influenced by the social milieu of trial jurors, and community morals, which idealised the virginal maiden. The court’s case record suggests that Hugh only received imprisonment (as stated in the “new statute”) as opposed to mutilation (as in the previous legal age of *Bracton*), because Emma was not a virgin. Clearly, the courts interpreted the rape of virgins as a felony and more seriously than the rape of non-virgins, but they were still hesitant to convict men of raping virgins through appeal. Furthermore, Emma’s trial record strongly implies that the courts interpreted Westminster I as being applicable to both the appeal of rape of non-virgins, and (as with the case of Cecilia above) the indictment of the rape of virgins, whereas the *Bracton*-era mutilation could still be prescribed to men convicted of the rape of a virgin through appeal only.⁵⁸ This strongly indicates that, despite what the statute of Westminster I claims, the jurors and justiciars of the eyre courts continued to interpret the rape of virgins as a felony, punishable by mutilation if made by an appeal, whereas indictments were treated as trespasses, even if the woman lost her virginity.⁵⁹ Despite the statute’s indifference to maidens’ or matrons’ appeals, the jurors and justiciars of the eyre interpreted these crimes as being entirely different.

Marriage was a common means of concord between the woman and her accused rapist. However, this did not stop the king from indicting men under Westminster I, as seen in the above-mentioned case of Juliana Pekenot from Surrey in 1279. Of the twenty-one appeals from

⁵⁸ Schneebeck, “The Law of Felony in Medieval England,” vol. 2, 454.

⁵⁹ Schneebeck, “The Law of Felony in Medieval England,” vol. 2, 458.

the Westminster I era, four (19.05%) were settled out of court.⁶⁰ For example, Christiana's appeal in the Berkshire eyre roll of 1284 is indicative of the settlements which occurred out of court.⁶¹ Christiana appealed John of rape and robbery (*de raptu et rob[er]ia*), however *predicta Christiana ret[ra]xit se de appello*, "the aforementioned Christiana withdrew her appeal." The record only indulges that John *non est culpabi[lis] de predicto raptu nec rob[e]ria nec de aliquo alio malefico*, "is not culpable of the previously mentioned rape neither the robbery nor of any other crime" and that *concord[ati] sunt*, "they [Christiana and John] are in agreement."⁶² Very rarely do the records include the details of the concord. This is nearly identical to the Nottinghamshire appeal of 1280/1281, where Alice, daughter of John fitz Hermia, appealed a teacher (*magister*) named Alan de Wynibotnom of rape.⁶³ The record is vague (only four lines long) and simply states *ipsa modo non venit nec sequitur app[ellum]*, "she herself did not come [to court] nor pursue her appeal," and because of this *suum ideo ipsam cap[itur]*, "therefore she herself is arrested." The records states *predictus mag[ist]er Alanus non est culpabi[lis] de predicta felonia* "the aforementioned teacher Alan is not culpable of the previously mentioned felony," *pro concordati sunt*, "for they are in concord."⁶⁴ There is no further record of the terms of the agreement and settlement between Alice and Alan. However, as with Juliana Pekenot's case mentioned above, marriage would often be used as a method of settlement. Similarly, the case of Agatha de Trebernech highlights the use of the marriage clause under Westminster I.⁶⁵ Recorded in the Cornwall eyre of 1284 is the indictment of David de Trebernech who had been appealed previously by Agatha de Trebernech of raping her virginity, but she subsequently

⁶⁰ TNA: JUST1/983 m 23d; TNA: JUST1/669 m 3d; TNA: JUST1/48 m 37; TNA: JUST1/112 m 13d. Cited in Schneebeck, "The Law of Felony in Medieval England," vol. 2, 460.

⁶¹ TNA: JUST1/48 m 37.

⁶² TNA: JUST1/48 m 37.

⁶³ TNA: JUST1/669 m 3d.

⁶⁴ TNA: JUST1/669 m 3d.

⁶⁵ TNA: JUST1/112 m 13d.

ret[ra]xit se de appello, “withdrew her own appeal.” Even though Agatha had agreed to marry David, resulting in her appeal being dropped, David was now *requisitus*, “requested” for an indictment. It was concluded that David *concubuit cum ea sponte* “had sexual intercourse with her freely,” and that this had been against the will of Agatha (*mulieri suo contra voluntatem suam*).⁶⁶ Agatha’s consent to marry her ravisher, David, quashed her appeal but he was still indicted for a trespass⁶⁷ because he raped her before the marriage took place and it was believed to have been against her will. This marriage clause may have been, as termed by Sara Butler, “marital misery,”⁶⁸ as the marriage appears to have been a means of settlement, more than a couple’s elopement.

The ten-year legal age of Westminster I saw an 8.11% conviction rate with slightly more successful convictions coming through indictments than through appeals. Regardless of the statute’s broad approach to *raptus*, in practice the issue of virginity was clearly still influencing court decisions. Despite the actual written laws, when they were applied in a real-life court setting, their interpretation and implementation was heavily dependent upon contemporary morals and social attitudes towards rape victims and female sexuality. This is where romance (discussed in detail in chapters 7 and 8) helps historians understand the powerful underlying social attitudes, which were largely left unspoken but were always present in the courtroom.

⁶⁶ TNA: JUST1/112 m 13d.

⁶⁷ Schneebeck, “The Law of Felony in Medieval England,” vol. 2, 460–461.

⁶⁸ Butler, *Language of Abuse*, 97.

The Legal Age of Westminster II, 1285 – 1382

With the second statute of Westminster reinstating *raptus* as a felony, the punishment was loss of life which would theoretically finally put an end to the *Bracton*-era mutilation.⁶⁹ Even though Westminster II made rape and/or abduction a felony, regardless of whether the trial was initiated through an appeal or a royal indictment, the presenting juries, and even more the trial juries, rarely sentenced a man to the full extent of the statute. There was, as Thomas Green has argued, a significant social component to rape trials, in that the sexual deviancy of women was heavily influenced by social norms and the common belief that rape should be dealt with through “informal” community networks, as opposed to in the public legal criminal courts.⁷⁰ Barbara Hanawalt supports this argument in stating that under Westminster II, the successful conviction through an indictment largely depended on the social status of the woman, whether or not she was a noble, or lost her virginity.⁷¹ Indictments were rare unless the woman claimed to have been raped of her virginity.⁷² Consequently, the general eyre courts in practice, during the long legal age of Westminster II (1285 to 1382) were reluctant to convict men of rape, regardless of whether the woman was a virgin or not. There is a divergence between what the written law claimed (rape was a felony, one of the most serious crimes) and what the courts practiced in reality, as presenting and trial jurors and justiciars of the eyre were unwilling to sentence a man to death for rape. There are zero convictions of rape in the plea rolls based on a woman’s appeal during Westminster II.⁷³ Evidently, the social attitudes towards rape conflicted with the written

⁶⁹ Schneebeck, “The Law of Felony in Medieval England,” vol. 2, 462–463.

⁷⁰ Thomas A. Green, “Societal Concepts of Criminal Liability for Homicide in Medieval England,” *Speculum* Vol. 47, No. 4 (Oct. 1972): 669–694, specifically pp. 675; Schneebeck, “The Law of Felony in Medieval England,” vol. 2, 443–444.

⁷¹ Hanawalt, “Women Before the Law: Females as Felons and Prey in Fourteenth-Century England,” 182.

⁷² Hanawalt, “Women Before the Law: Females as Felons and Prey in Fourteenth-Century England,” 182.

⁷³ Suzanne Edwards, *The Afterlives of Rape in Medieval English Literature* (Hampshire: Palgrave Macmillan, 2016), 85; Kittel, “Rape in Thirteenth-Century England: A Study of the Common-Law Courts,” 101–115.

law, as the lack of convictions show that jurors did not think the punishment of death fit the crime of rape.⁷⁴ On the contrary, amercements were frequently the choice of penalty,⁷⁵ harking back to the earlier punishments of Westminster I. Table 3 shows the statistics from the specific cases in the court of the general eyre during Westminster II being studied here. Unlike Westminster I above, this table is not extensive in surveying all existing eyre cases in the plea rolls, but rather simply the ones specifically studied for this research. The process of selection was based on access to archival material and cases that covered the long legal age of Westminster II. Cases range of 1285 to 1321 coming primarily from the southern circuits (for more information on the history of the eyre court and a discussion on the circuits of the cases studied here, see Appendix A and B).

	Number of Cases	Number of Trials	Percentage of Cases that went to Trial	Number of Total Convictions	Percentage of Convictions of Cases that went to Trial	Overall Conviction Rate
Indictments	3	2	66.66%	0	0%	0%
Appeals	11	4	36.36%	0	0%	0%
Total	14	6	42.86%	0	0%	0%

Table 3 *Raptus* Cases in the Eyre Courts Under the Legal Age of Westminster II, 1285–1321

The plea rolls during Westminster II show accused men who fled from the courts, either from appeals or the king's indictment, and that such men would be suspected of culpability and considered outlaws.⁷⁶ As seen with the case of Margery de la Beche and John de Dalton, the act

⁷⁴ Schneebeck, "The Law of Felony in Medieval England," vol. 2, 463–464.

⁷⁵ Edwards, *The Afterlives of Rape in Medieval English Literature*, 86.

⁷⁶ Schneebeck, "The Law of Felony in Medieval England," vol. 2, 464.

of fleeing to the north of England into the Liberties and becoming an outlaw was a viable way to escape judgement and likely contributed to the low conviction rates. The eyre of Kent, 1313–1314, contains the indictment of William de Sutton and John Parlefreynssh, who raped and abducted (*rapuereunt et abduxerunt*) Agnes, the wife of Simon de Grevy.⁷⁷ Despite the order for their arrest, William and John fled, *non sunt inventi set subtraxerunt se*, “they were not found but in fact they took themselves away.” Fleeing criminal proceedings was an attractive way to escape prosecution. Also recorded in the same Kent eyre roll is yet another acquittal through indictment, that of Roger, son of Roger de Atlesworth.⁷⁸ Roger came to the house of Eleana, daughter of Glare Cosyn, and having discovered (*inventam*) her there, *rapuit et abduxit et eam contra voluntatem*, “he raped and abducted her against her will.” Roger came to court *et ques[tus] qual[it]er se velit de raptu predicto acquietare*, “and he wished himself to be acquitted in such a way of the complaint of the previously mentioned rape.” He also *Defendit raptu[m] et totum et quicquid est cont[ra] pacem*, “defended both the rape and everything which is against the peace.” Roger put himself before the trial jury which said that he *no[n] est culpabilis de raptu predicto*, “is not culpable of the aforementioned rape.” It appears that the non-recorded information speaks to the reasons for the acquittal. The record makes no mention of bodily injury or loss of virginity, which are two components to successful convictions. Since they are not mentioned, it is probable that Eleana had no proof of injury and consequently no proof of resistance. Speculatively, this may be why she did not appeal herself and instead the trial came through indictment. What is not recorded, that is the lack of physical bodily injury done to

⁷⁷ TNA: JUST1/383 m 50.

⁷⁸ TNA: JUST1/383 m 14.

Eleana, as well as the non-emphasis on her virginity, seemingly worked to secure an acquittal at the king's suit.

As with the previous legal age, during Westminster II a woman's appeal rarely went to trial. Schneebeck extensively researched the plea rolls and found only four cases where a woman's appeal of rape went to trial during Westminster II.⁷⁹ Of the four appeals, there is not a single conviction. The first two are recorded in the Dorset eyre roll of 1288.⁸⁰ Alice, daughter of Michael en la Gardyn de Kniythrerem appealed Stephen Bernard, who in the middle of the night came to Alice's house and *predictam Alicam nequiter cepit et prostravit et vi concubuit cum ipsa*, "he wickedly seized the aforementioned Alice and he struck [her] down and with force he laid with the very Alice."⁸¹ The records continues that Stephen *contra voluntatem et rapuit ab ea vi virginitatem suam*, "against her will he raped [her] virginity with force." Stephen came and defended himself, claiming that *non aliquam feloniam ei fecit*, "he did not commit any felony to her," stating that *nec virginitatem suam rapuit*, "he did not rape her of her virginity." He also said that *concubuit cum ipsa de volunta[ti]*, "he laid with her with her consent." Stephen claimed that the sex was *non contra voluntatem suam*, "not against her will," and the jury ruled that Alice had done this *spontanea voluntate*, "with voluntary consent" and Stephen *concubuit cum ipsam et non contra voluntatem suam*, "he laid with her and not against her will." The court concluded *predicta Alice comitatur Gaole pro f[a]l[s]o appello*, that "the aforementioned Alice is committed to jail for false appeal."⁸² The case of Alice, once again, illustrates the harsh realities and very real dangers of being sent to prison for a failed appeal. In a "he said/ she said" trial, Alice brought a strong case forward to appeal Stephen; she claimed to have endured a violent

⁷⁹ Schneebeck, "The Law of Felony in Medieval England," vol. 2, 464–465.

⁸⁰ TNA: JUST1/213 m 49 and JUST1/213 m 34.

⁸¹ TNA: JUST1/213 m 34.

⁸² TNA: JUST1/213 m 34.

attack and a loss of virginity. Stephen's claim that the sexual intercourse with Alice was done under the pretenses of consent must have seemed believable to the courts. Thus, we can speculate that Alice did not have enough bodily injury to prove a violent sexual assault, nor to prove her resistance to rape, and evidently, she was believed to have consented.

The second case, also from the Dorset eyre of 1288, is nearly identical: Alice, daughter of William le Brewer, appealed Adam le Traverner of rape.⁸³ Alice le Brewer accused Adam of *in feloniam*, “feloniously,” and *nequiter*, “wickedly,” abducting her *contra voluntatem suam*, “against her will,” *in dom[um] ip[sui]s*, “into the house of [Adam] himself.” Once there, Alice claims *vi cum ipsa concubuit et virginitatem suam ab ea abstulit*, “that he had sexual intercourse with her with force and took away from her, her virginity.” Adam was present in court (*Adam venit*), and he put himself before the jury to defend himself. The jury ruled that Adam *non est culpa[bilis] de predicto rapo*, “is not culpable of the aforementioned rape.” The records states *dicunt quod idem Adam de volentate ipsius Aliae concubuit cum ipsa*, “the jurors said because the same Adam had sexual intercourse with her, with the consent of Alice herself,” that it was *non contra voluntatem suam*, “not against her will.” The eyre record ends with *Et predicta Alice com[itur] ga[olae] pro fals[o] app[el]o*, “And the Aforementioned Alice is being committed to the gaol for false appeal.” However, *Postea perdonatur per*, “Afterwards she is pardoned for” she is poor (*pauper*).⁸⁴

Evidently, the standardisation in record keeping and use of legal terminology in the eyre rolls was formulising during the age of Westminster II. Both cases from the Dorset eyre include the adverb *nequiter*, “wickedly,” repeatedly throughout the women's appeals. Both appeals

⁸³ TNA: JUST1/213 m 49.

⁸⁴ TNA: JUST1/213 m 49.

include abduction as well as rape, *cepit*, and both include slight variations of the standard phrase *vi concubuit et virginitatem suam contra voluntatem et rapuit*, “with force he had sexual intercourse with her and against her will raped her of her virginity.” This nearly identical phrase emphasises the continued importance of the loss of virginity to a rape conviction. The fact that these appeals are so similar suggests that they are not the actual words spoken by either woman. The appeals were summarised into the “appropriate” standard, formulaic appeal, by the court clerk for the court records. Similarly, both defendants have the same phrases in their defence, stating that the rape was consensual, resulting in both women being sent to prison for false appeal. The pity shown to Alice le Brewer, in that she was pardoned from imprisonment because she was poor, also highlights the socio-economic class aspect of legal trials. We can see a paradox here in the court’s treatment towards women of “pauper” status. Despite being saved from the gaol because of her low socio-economic standing, there is a strong potential that her pauper status worked against her in the actual court proceedings for the rape, in her inability to secure a conviction. She may have been viewed negatively by the “good honest” men who made up the jury. Frequently poverty was viewed as indicative of poor moral judgement,⁸⁵ in a similar (but inverted) manner to how beauty was a marker of nobility. Such social attitudes and popular imagination about the woman’s moral status and physical appearance interfered in criminal proceedings, as Hanawalt describes convictions “depended upon the condition in society of the victimized woman.”⁸⁶

The consistency of legal phrases has led Kathryn Gravdal and Nathalie Zemon Davis, among others, to note that legal documents are themselves literary fictions, containing formulaic

⁸⁵ Bronach C. Kane, *Popular Memory and Gender in Medieval England: Men, Women and Testimony in Church Courts, c.1200-1500* (Woodbridge: Boydell Press, 2019), 62.

⁸⁶ Hanawalt, *Crime and Conflict*, 105.

language and terminology in a manner reminiscent of romance literature.⁸⁷ Despite the standardisation of legal records, there is immense value in these similar appeals as they show legal attitudes towards raped women and what medieval lawyers believed should be included to make a successful appeal in the courts. These so-called biases in the records, whether they be exaggerations, formulaic language, or standard repeated phrases, can be used by historians in understanding what medieval people interpreted as compelling arguments and useful statements to win an appeal.⁸⁸ Furthermore, the larger cultural influences affecting the structure of the appeals and indictments themselves are not always visible. Consequently, as Davis warns, there are less obvious cultural factors, such as gender assumptions and expanding royal judicial power, that the legal records are both constructing and constructed by.⁸⁹

The third appeal during Westminster II that went to trial is from the Cumberland eyre of 1292.⁹⁰ This case includes all the standard phrases that are mentioned above, but it is also unique in describing the physical bodily injury that the woman endured. Juliana de Hurtholm appealed David of *cepit eam et prostravit*, “he seized her and he laid her down,” *et vi cum ea concubuit et abstulit ab ea virginitatem suam et eam fecit sanguinolentam*, “and with force he had sexual intercourse with her and took away her virginity and he made her bleed.” Once more, the conflation of abduction and rape is identical to the two appeals of the Alices above, as is the loss of virginity. However, Juliana is unique in that she was physically injured as a consequence of her resistance to the rape. Despite her physical bodily proof (and the standard inclusions of *nequiter et in felonia*) David put himself before the jury whose verdict found him *in nullo est culp[abilis]*, “in no way culpable.” Once again, the status of “victim” went from appellor to the

⁸⁷ Gravdal, *Ravishing Maidens*, 131–132; see also, Davis, *Fiction in the Archives*.

⁸⁸ Butler, *Language of Abuse*, 20–21; Gravdal, *Ravishing Maidens*, 19; Davis, *Fiction in the Archives*, 3–4.

⁸⁹ Davis, *Fiction in the Archives*, 52–53.

⁹⁰ TNA: JUST1/137 m 14d.

accused, as the courts ruled *predicta Juliana comitatur Gaole pro f[a]ll[s]o app[ell]o*, “the previously mentioned Juliana is committed to the prison for false appeal.”⁹¹ In theory, Juliana fulfilled all of the criteria for the legal identity of the “true victim”: she was both seized and raped, she lost her virginity, and she had physical bodily proof of her resistance. Even with all the boxes ticked, Juliana could not secure a conviction and was herself imprisoned. The capital punishment of Westminster II may have continued to influence and contribute to the reluctance of trial jurors to convict men of *raptus*, despite the victims’ fulfillment of the legal criteria of the crime.

The fourth and final appeal that went to trial during the nearly one-hundred years of Westminster II is from the Hertfordshire eyre of 1287.⁹² Agnes, daughter of John de Enovere appealed Hugo fitz Thomas le Tenur *de raptu roberia et pace domini Regni infracta*, “of rape and robbery having broken the peace of the lord king.” Agnes told the jurors that she lived with her father, John, and when Hugo discovered her (*invenit ipsam Agnes*) that *vi contra pacem domini Regni rapuit virginitatem suam*, “with force against the peace of the lord King he raped her of her virginity.” Hugo was present and pleaded his defence in court (*Hugo venit et defend[it] raptu*). Throughout the trial it was revealed that Hugo *ipsam cepit et adtr[it]am p[ro]ve[x]it et vi cum ipsa concubuisse[t]*, “seized her and [she] having been bruised, he carried [her] and with force had sexual intercourse with her.” The record states in detail the violent beating that Hugo gave Agnes in the attempt to rape her, as *ipsam contra vehement[is] fluxit quod sanguis*, that Hugo acted “violently against her that blood flowed,” *per medium os et nares ipsius Agnetis*, “from the middle of her face and nose.” It was recorded that Agnes was a child at

⁹¹ TNA: JUST1/137 m 14d.

⁹² TNA: JUST1/328 m 6.

the time of the incident in 1283, *minoris etatis*, “of minor age,” *Agnes eo quod no[n] extitit tunc temporis etatis septe[m] annorum*, “that at that time she was not yet 7 years old.” The jury found that Hugo *virginitate[m] ipsius rapere non potuit*, “was not himself able to rape her of her virginity.” The jurors concluded that Hugo was to be placed in custody, *custod[it] quousque satisfecit*, until he made satisfaction (payment) to the king and to Agnes.⁹³ The jurors downgraded the entire felony to a trespass because the attempted rape of Agnes did not result in a loss of virginity. Despite the fact that in the attempt to rape a child, Hugo violently beat Agnes, the courts deemed the actions a non-felony and instead treated it as a trespass.⁹⁴ Thus the courts seem to have placed high emphasis on full penetration and completed rape.⁹⁵ In the attempt to preserve her virginal status, young Agnes fought off Hugo’s violent attack and thus, similar to hagiography and romances, the woman (in this case a girl) preserved her virginity at the expense of her physical body. The similarity to romance and hagiography is striking, in that Agnes with her physical bodily proof of resistance could still not secure a conviction of a felony. Like Florence, in *Le Bone Florence of Rome* (discussed extensively in chapter 8), the physical injury ensured victim status, but the preservation of her virginity worked against her in the secular courts, as a violent assault of a minor was not considered a felony. The preservation of her virginity was considered more important than the bodily harm done to her, much like virgin saints or romance heroines.

The emphasis on virginity and whether or not it was lost as a consequence of rape was a constant factor in the court proceedings, which is highly reflective of the social attitudes towards female sexuality, more so than a reflection of the actual statute of Westminster II. The

⁹³ TNA: JUST1/328 m 6.

⁹⁴ Schneebeck, “The Law of Felony in Medieval England,” vol. 2, 466–467.

⁹⁵ Hanawalt, “Women Before the Law: Females as Felons and Prey in Fourteenth-Century England,” 182; Hanawalt, *Crime and Conflict*, 104.

Westmorland eyre of 1292 contains three failed rape appeals on a single membrane within the roll.⁹⁶ Sabina, daughter of Thomas le White, appealed John Bella of rape and she came to court, but the appeal was dropped because she made it *maritum sine quo*, “without her husband.” Because of this, Sabina was imprisoned, *pro falso appello suo*, “for her false appeal,” and John Bella was deemed not culpable at the king’s indictment. This verdict goes against the legal rights of women, whether maidens or matrons, to appeal their own rape in court. Evidently, the jurors deemed Sabina not credible due to her marital status coupled with the absence of her husband. This reiterates the lack of legal autonomy granted to married women, who are assumed under the legal identity of their husband (one flesh equating one identity) through the “doctrine of coverture,”⁹⁷ or what Christopher Cannon calls the “unity of person.”⁹⁸ The other two appeals from that membrane are identical to each other in the court proceedings, in that both appeals failed due to a technicality. Emma appealed John of rape, but she *non venit nec sequitur app[ellum] suum*, “did not come nor did she pursue her own appeal.” At the king’s suit John was present and the jurors acquitted him. This was also how the proceeding went for the indictment of John de Preston who was previously appealed by Anabilla but she too did not pursue her own appeal. This latter John was also acquitted at the king’s suit.⁹⁹ Presumably Anabilla and Emma did not pursue their appeals because both had reached concord out of court.

The technicalities which could quash a woman’s appeal included anything from misremembering the day or the year of the rape, or even minute details such as the exact door that the man entered into the house from, or where he took her to if she was abducted. One exemplary case of failure due to a technicality is that of Joan, daughter of Eustace le Seler of

⁹⁶ TNA: JUST1/988 m 5d.

⁹⁷ Musson, *Medieval Law in Context*, 86–87.

⁹⁸ Cannon, “The Rights of Medieval English Women: Crime and the Issue of Representation,” 158.

⁹⁹ TNA: JUST1/988 m 5d.

London, recorded in the London eyre roll of 1321, among many other manuscripts.¹⁰⁰ This case was precedent setting and was recorded in the rolls of the highest court in England, commonly called the king's bench Rex rolls.¹⁰¹ In the London eyre roll of 1321, it states that Joan *fecit appellum suum versus Reyuumdumn de Lymogos de Raptus*, "makes her own appeal towards Raymond de Lymogus of rape."¹⁰² The record uniquely, but critically, states that the appeal is *in hec verba*, "in these words," meaning in her exact words. This is important to the later acquittal of Raymond, which was obtained due to a technicality. Joan le Seler claimed that Raymond raped her with an emphasis on her physical body (*corps*), and that he committed a felony (*feloni*) by raping her *eu conutre sa volunte et en countre la pees*, "against her will and against the peace." Joan tells the courts that Raymond raped her when she was a virgin and thus took away her virginity (*Reymundum de Raptu virginitatus suo*). Joan was only 12 years old at the time. Joan claimed that this was not only against the peace of the king (*Contra pacem Regis*) but also *et dignitatem suam*, "Raymond's actions went against her own dignity." The record claims *Et hoc optulit prout*, that this was exactly the appeal that Joan presented. Raymond appeared in court *mundus defendit ominem raptum et feloniam*, "he defended elegantly¹⁰³ the whole of the rape and felony." The record explicitly states that these were the exact words spoken by Joan, *Et modo in appello suo quod narrat coram Justic[iam]*, "And in this way she tells her own appeal

¹⁰⁰ TNA: JUST1/547A m 66d; The case is also in: BL MS Harleian 453, fol. 34, British Library, London; BL MS Addit. 25029, fol.106v., British Library, London; HLS MS Dunn 41, fol. 66r., Harvard Law School Library, Cambridge; HLS MS Dunn 51, fol. 86v., Harvard Law School Library, Cambridge; TCD MS E.5.11, p. 162, Trinity College Dublin, Dublin; CUL MS Gg. vi. 7, fol. 113v., Cambridge University Library, Cambridge; BL MS Harleian 1807, fol. 387v., British Library, London; BL MS Harleian 5146, fol. 95f., British Library, London; Pembroke Camb. MS 271, fol. 77v., Cambridge Pembroke College, Cambridge; Bodleian MS Rawl. D.506, fol. 5v., Bodleian Library, Oxford; Bodleian Tann. 450, fol. 378r., Bodleian Library, Oxford; See also Corinne Saunders, *Rape and Ravishment in the Literature of Medieval England* (Cambridge: D. S. Brewer, 2001), 64–65.

¹⁰¹ TNA: KB27/240 (Westminster 13 Edw. II, Easter Term) m 104d, Rex 1d; TNA: KB27/242 (Westminster 14 Edw. II Michaelmas term 1320), m 1 and m 154.

¹⁰² TNA: JUST1/547A m 66d.

¹⁰³ Lewis and Short, *A Latin Dictionary*, "Mundus, a, um, *adj.*" article 1. "clean, cleanly, nice, neat, elegant."

to the crown Justice.” This is important to the failure of the appeal because Joan herself was now deemed an accessory to the crime of rape because she changed the previously mentioned day in question (*se forc[iam] raptam per predicem diem...variatonem*). Due to the fact that Joan, in her very own words, mixed up the exact day that the rape occurred, *non posset bis esse rapta de una et eadem virginitatem*, “she is not able to be raped twice of one and her same virginity.” The misremembering of dates made *Johna non potest hoc dedic[ar]e*, “Joan not able to proclaim this,” that is that Raymond raped her of her virginity when she was twelve years old. Raymond was *inde sine die*, was released “without day,” meaning acquitted immediately. Joan, however, *pro falso appello suo predicto custodiatur*, was placed in custody “for her previously mentioned false appeal.” She was going to be sent to the gaol but *set p[ar]donat[ur] quia infra eatatem*, “she is pardoned because she is below [legal] age.” Raymond was later indicted at the king’s suit where, under the confirmation of the seal (*de subsigillo*), the jurors acquitted him (*acquietat[i] sunt de raptu et felonia predictus*). The indictment record states: *predicto compertum est quod idem Reymunndus ad sectam Regis de raptu et felonia predictus*, “at the suit of the king of rape and felonies the aforementioned Raymond is ascertained of the previously mentioned [crimes]” and he was acquitted. This ends the documentation of Joan’s rape, her failed appeal, and the indictment of Raymond. The technicality seems minor to the overall crime, which is the rape of a minor and the taking of her virginity. But it was deemed serious enough for the appeal to fail and young Joan’s memory lapse contributed to her attacker’s acquittal at the king’s suit. The record explicitly calls Joan an accomplice to her own rape, thus labelling her, at the age of twelve, with the legal identity of the blame-worthy and culpable woman.

The same case record in the Rex rolls of the king's bench is much more detailed.¹⁰⁴ Joan made her appeal stating *domini predicti Eustastini vi et armis et contra volentatem ipsius Johanne cepit ipsam Johaniam per manum suam sinist[er]am*, “he himself [Raymond] [came] to the house of the previously mentioned Eustace, with force and arms, and against the will of Joan he seized her, the same Joan, by her own left hand.” The inclusion of force and arms (*vi et armis*) is, by the mid-fourteenth century, a standard phrase in trial documents of *raptus*, but it nevertheless adds more detail to the abduction than what is recorded in the London eyre roll above. The Rex roll continues with *abduxit n[on]q[ue] ad cameram ipsius Reymondi*, that “he abducted [her] indeed into the room of the Raymond,” *et ipsam ibid[em] ad terram pro[j]ecit*, “and in that very place threw away her [Joan] to the ground,” *contra volentatem suam concubuit felonice*, “against her will he had sexual intercourse [with her] feloniously.” The physical force Raymond used to dominate Joan is emphasized in her appeal to ensure that she fulfils the identity of the “true victim.” The record indulges in graphic detail that *et ipsam de virginitate sua penit[us] rapuit contra pacem*, “and he completely raped [her], of her virginity, against the peace.” According to the Rex roll, Raymond appears in court *et dicit quod clericus est quod non potest inde s[i]n[e] ordinariis suis*, “and pleaded that he was a clergyman and that he is not able to be governed [judged] thenceforth without his own people” about this matter. Raymond was attempting to claim benefit of the clergy to escape secular courts in favour of ecclesiastical courts. Although Raymond was denied clerical status, and was indicted, he was ultimately acquitted at the king's suit (*Raymundus in nullo est calpabil[is] de raptu et feloniam predictus*). Raymond was proclaimed a *liber*, a “free man,” and Joan was ordered to pay back any damages that he incurred because of her appeal (*predicta Johanna sufficiat ad dampna*). This indeed was

¹⁰⁴ TNA: KB27/240 Coram Rege Roll Easter 13 Edw. II.

an extraordinary case, including the rape, abduction, and loss of virginity of a minor as well as the accused man claiming clerical status, resulting in the appellor being sent to prison but saved by her minority age, and then being forced to compensate her assailant for damages. Joan's failure to remember the day correctly, in her appeal, greatly diminished the chances of obtaining a conviction, as appeals were generally more likely to secure convictions than indictments. As mentioned above, the appeal of the woman generally held greater legal repercussions than a royal indictment. Here however, the justice system worked against Joan, who was still considered a child in the medieval courts, in favour of ensuring that her rapist walked free.

Claiming the benefit of the clergy was occasionally used by laymen, with no ecclesiastical ties, simply to escape secular punishment. The case of Sir Hugh, from the Yorkshire and Northumberland eyre of 1293/1294, which has been highly studied and recorded in numerous manuscripts, demonstrates the secular court's reluctance to grant men the benefit of the clergy.¹⁰⁵ Hugh, son of Henry, was indicted for the rape of a young girl (*rapuit quamdam puellam*),¹⁰⁶ named specifically in the eyre roll as Matilda, daughter of Ingrede.¹⁰⁷ The record states *duxit ad manerium suum*, "that he led her to his own manor-house," *et eam congnovit carnaliter contra suam voluntatem*, "and that he knew her carnally against her will."¹⁰⁸ Hugh was denied counsel by the justiciar (*seb non quod consules eum*) and he said to the justiciar *Domine, rogo vos quod possum habere consilium ne subripiar in curia Regis pro defectu consilii*, that is "Lord, I ask you, am I able to have counsel lest I will be seized in the court of the

¹⁰⁵ TNA: JUST1/1098 m 76/77; Lincoln's Inn MS Misc. 87, fols.35–43, Lincoln's Inn Law Library, London; BL MS Addit. 31826, fols. 206v–207r., British Library, London; transcribed in Alfred J. Horwood, *Year Books of the Reign of Edward the First: Years XXX and XXXI (1302-1302)*, Rolls Series no. 31, part A, Vol. 3 (London, 1863; reprint Kraus LTD., 1964), 529–532.

¹⁰⁶ Horwood, *Year Books of the Reign of Edward the First*, 529. Transcribed by Horwood.

¹⁰⁷ TNA: JUST1/1098 m 76/77.

¹⁰⁸ TNA: JUST1/1098 m. 76/77. "*vi concubuit cum ea contra voluntatem suam et contra pacem.*" Also transcribed in Horwood, *Year Books of the Reign of Edward the First*, 529.

King for lack of counsel.”¹⁰⁹ After he is refused counsel, Hugh claims *ego sum clericus, et non debeo respondere sine ordinariis meis*, “I am a clergyman and I ought not to respond without my ordinary.”¹¹⁰ The justiciar responds *nos dicimus quod vos amisistis privilegium clericale, eo quod estis bigamus, quia matrimonium contraxistis cum vidua, et respondebis utrum quando contraxistis cum ea fuit virgo vel*, “we declare, that you dismiss the privilege of the clergy, because you [Hugh] are bigamous, because you gather together in matrimony with a widow and when you will respond that you gathered together with her, she was indeed a virgin.”¹¹¹ Hugh responded *ispa fuit virgo quando eam desponsavi*, that “she herself was a virgin when I betrothed her.” The justiciar claimed *hoc statim debet sciri*, “that this immediately ought to be known,” and that *honeravit duodecim*, “twelve honourable men,” *qui dixerunt in virtute sacramenti*, “who lead in virtue of the oath,” must determine *ispsa fuit vidua quando dominus Hugo contraxit cum ea*, “if she was a widow when Sir Hugh came together with her.”¹¹² Hugh objects to the trial jurors *per illos sum accusatus*, “for those same men accused me,” that is the trial jurors were the same men as the presenting jurors.¹¹³ Hugh also claims *ego sum miles, et non debeo judicari nisi per meos pares*, “that I am a knight and thus I ought not to be judged unless it be my own peers,” which would be other knights.¹¹⁴ The actions taken by Hugh show a high level of legal awareness and knowledge of the right to a fair jury. The justiciar calls in knights (*nominabantur milites*) but Hugh does not plead (*non consentio*) at which point the justiciar warned him *si vos velitis legem comunem refutare, vos portabitis peonam inde ordinatam, scilicet, ‘uno die manducabitis et alio die bibebitis; et die quo bibitis non manducabitis, et e contra;*’ “if you wish

¹⁰⁹ Horwood, *Year Books of the Reign of Edward the First*, 530.

¹¹⁰ Horwood, *Year Books of the Reign of Edward the First*, 530.

¹¹¹ Horwood, *Year Books of the Reign of Edward the First*, 530.

¹¹² Horwood, *Year Books of the Reign of Edward the First*, 531.

¹¹³ Horwood, *Year Books of the Reign of Edward the First*, 531.

¹¹⁴ Horwood, *Year Books of the Reign of Edward the First*, 531.

to refute the common law, you will bring unto yourself thence ordained penalty, that is to say, ‘one day you will eat and another day you will drink; and the day which you will drink you will not eat and vice versa’.”¹¹⁵ Hugh once again refuses the trial jurors, as they are the same men who accuse him of rape. He then asks that the charges be read out to him, but the justiciar refuses to read the charge to him and says that if he wishes to have some of the trial jurors removed, he is certainly entitled to that right. But the justiciar then tells Hugh *si sciatis aliquod dicere quare removeri debent, dicatis unica voce sive in scripto*, “that if you [Hugh] know why they ought to be removed, you say [these reasons] by voice, or in writing.”¹¹⁶ This is troubling for Hugh and the justiciar refuses to read out the charges to him, claiming that he ought to read them himself. Hugh admits, *nescio legere peto consilium meum*, “I do not know how to read [and] I beg for my own counsel.”¹¹⁷ The justiciar says that Hugh ought to be able to read if he is a member of the clergy (*non, quia debent proponi per os vestrum*) and again Hugh states *ego nescio legere*, “I do not know how to read.” It was common for defendants to undergo a reading test if they claimed the benefit of the clergy,¹¹⁸ so Hugh’s inability to read the charges is troubling his clerical claims. Here, as indicated in the trial record, the justiciar exclaims, *Quomodo est hoc, quod vos voluistis juvasse vos per privilegium clericale, et modo nescitis legere calumpnias vestras*, “how is this, when you have wished to be aided by the benefit of the clergy, and yet in this manner you do not know how to read your own charges.”¹¹⁹ The record claims that Hugh stood there quietly, not responding, (*setit in pace quasi confusus*) and the justiciar felt bad for his confusion (*non sitis stupefacti*) and thus allowed a member of the court to read the charges of rape (*raptu*) to

¹¹⁵ Horwood, *Year Books of the Reign of Edward the First*, 531.

¹¹⁶ Horwood, *Year Books of the Reign of Edward the First*, 531.

¹¹⁷ Horwood, *Year Books of the Reign of Edward the First*, 531.

¹¹⁸ Bellamy, *Crime and Public Order in England in the Later Middle Ages*, 152.

¹¹⁹ Horwood, *Year Books of the Reign of Edward the First*, 532.

Hugh and he claimed *rapuit vel non*, that “he did not rape” her. The twelve jurors (*duodecim*) state *nos dicimus quod ipsa rapiebatur vi per homines domini Hugonis*, that it was not Hugh himself, but rather the “men of lord Hugh that raped her with force.”¹²⁰ The justiciar asks for clarification, to ensure that the men were not acting with the consent of Hugh (*fuit ne Hugo consentiens ad factum vel non*). The jurors responded no, Hugh’s consent was not given, and the justiciar asked to confirm if the men *cognoerunt ne eam carnaliter*, “knew the woman carnally,” and the jurors responded that this was true. The court ruled that Hugh was to be acquitted of all charges.¹²¹

The case of Sir Hugh is remarkable for numerous reasons; the first is the social hierarchy and the legal right to be tried by one’s peers. As a knight, Hugh refused to be tried by an ordinary jury, and the justiciar agreed and brought in other knights to sit on the jury. The legal right to be tried by one’s peers adds to the social morals of legal judgement. That is to say that the social attitudes and community beliefs were influencing the courts’ rulings, as one had the right to be tried by one’s social equivalents. Status, socio-economic class, and community morals were intrinsically connected to the application of the laws. It is equally remarkable that as a knight and a member of the aristocracy, Sir Hugh, was even brought to court.¹²² Further, the extraordinary documentation of the apparent speech of the justiciar and the accused is remarkable, especially in the failed attempt to claim the benefit of the clergy due to Hugh’s inability to read. Bellamy notes that legal records often only include information that pertains to specific actions which broke the law, and consequently it is rare for accessory details to be included, especially courtroom dialogue. To this point, Bellamy notes that “only if the crime was novel enough to

¹²⁰ Horwood, *Year Books of the Reign of Edward the First*, 532.

¹²¹ Horwood, *Year Books of the Reign of Edward the First*, 532.

¹²² Hanawalt, “Women Before the Law: Females as Felons and Prey in Fourteenth-Century England,” 167.

capture the interest of the clerk who compiled the court records...is there records more than the minimum information.”¹²³ Clearly, the case of Sir Hugh captivated the court clerk, as the courtroom arguments are extraordinary, but just how much is direct access to real voices remains unclear.¹²⁴ P. J. P. Goldberg reminds us that “the process by which oral testimony becomes a written deposition is complex and somewhat opaque” and thus we cannot be certain that these were Sir Hugh’s exact words.¹²⁵ Nevertheless, the inclusion of such intricate dialogue within the record is unique to the cases under investigation here, where most often we are given a few lines of information about the trial proceedings. However, Ruth Kittel argues that even brief records allow historians to explore inconsistencies between the written laws and the laws in practice, which this chapter has attempted to demonstrate.¹²⁶ Also, the high degree of legal knowledge in non-legal professionals (that is Hugh) is evident from this case record as the demand to a fair trial was repeatedly requested. This illuminates a growing legal awareness among the laity.¹²⁷ And lastly, the actions of his men did not make him accountable for their felonies. Despite the fact that the law holds maidservants accountable for their lord’s actions, as discussed previously in chapter 2, the laws in practice did not hold a lord accountable for the crimes committed, without his knowledge, by his men. The gendered and social status privileges of the laws in practice have once again become visible, whereas women and the poor were legally disadvantaged. As for Sir Hugh’s men, the charges were dropped and I have not been able to find indictments for them, to see if they were ever convicted of rape. Hanawalt suggests that gang-rape was forgiven as a form of “entry into manhood” as young men participating in a gang-rape

¹²³ Bellamy, *Crime and Public Order in England in the Later Middle Ages*, 37.

¹²⁴ Goldberg, “Echoes, Whispers, Ventriloquism,” 31, 36. Goldberg warns that the inclusion of “*dicit*” in the records intentionally signals the “orality of the deposition process” while also acting as a literary trope that “actually serves to deflect the fact that these are not the actual words of the deponent.”

¹²⁵ Goldberg, “Echoes, Whispers, Ventriloquism,” 40.

¹²⁶ Kittel, “Rape in Thirteenth-Century England,” 101.

¹²⁷ Musson, *Medieval Law in Context*, 84, 97.

was an excusable form of an “initiation ritual of youth.”¹²⁸ This is supported by the recent work of Michelle Armstrong-Partida, who states that gang-rape was a method to reinforce their “precarious masculinity” in front of their peers.¹²⁹ Although this falls outside the scope of my study, it is nonetheless an area of inquiry that deserves further investigation.

Like the previous legal ages, during the era of Westminster II men and women married to settle out of court, avoid convictions, or to elope without parental consent. There are two cases from the Wiltshire eyre of 1289 which end in marriage.¹³⁰ Agnes previously appealed a man of rape and breaking the peace of the lord king. However, when the trial was set *ipsa non venit*, “she herself did not come,” nor did the accused. It was revealed that the accused had married Agnes and the appeal was dropped.¹³¹ The other appeal of rape ending in marriage is that of Edith fitz Gilbert and Thomas. Edith previously appealed Thomas of rape and, as the standardisation of legal records requires, *et pace dom[ini] Regis infracta*, “having broken the peace of the lord King.” Like the case above, Edith did not appear in court for her appeal, nor did Thomas (*non venit*). However, unlike the previous appeal of Agnes, Thomas was still indicted at the king’s suit because the jury believed *predictus Thomas culp[ibilis] est de predicto raptu et quod ipse postea predictam Edith desponsavit*, “the aforementioned Thomas is culpable of the previously mentioned rape and because he himself afterwards married the previously mentioned Edith.”¹³² The reason for the indictment is that the marriage happened after the rape had occurred

¹²⁸ Hanawalt, “Women Before the Law: Females as Felons and Prey in Fourteenth-Century England,” 185; Hanawalt, *Crime and Conflict*, 109.

¹²⁹ Michelle Armstrong-Partida, “Precarious Manhood: Adolescence and Group Rape in Late Medieval Europe,” *Medieval Feminist Forum: Journal of the Society for Medieval Feminist Scholarship* Vol. 56, No. 2 (2021): 125–175, specifically pp. 170.

¹³⁰ TNA: JUST1/1011 m 45 and TNA: JUST1/1011 m 54. Cited in Schneebeck, “The Law of Felony in Medieval England,” vol. 2, 467.

¹³¹ TNA: JUST1/1011 m 45.

¹³² TNA: JUST1/1011 m 54.

which, for whatever reason, could not be determined in Agnes' previous appeal. Thus, even though the marriage clause acted as a legal erasure of rape, the king still could and did, as seen here, indict during the legal age of Westminster II.

As will be discussed in detail in chapter 5 "The Third Identity," the consequences of pregnancy from rape were not drawn from the legal statutes themselves, but rather from the various treatises by medical and legal professionals. *Britton*, an influential legal treatise, claims that if conception occurs during rape, then the sexual intercourse is not a felony because a woman cannot conceive without consenting.¹³³ This notion was reiterated in *Fleta*, a less influential but highly popular treatise, which states *si autem conceperit hora in appello contenta, cadit appellum, eo quod sine assensu concipere non potuit*, "if however she conceived during the crime in which she is appealed, the appeal is dropped, for this reason that she is not able to conceive without consenting."¹³⁴ This notion of conception being equivalent to consent was also reinforced in the *Mirror of Justices*.¹³⁵ The courts viewed the reluctant, but willing accomplice, scathingly, as is evident from the highly influential (in that it was copied down in various *Year Books*) case of Joan of Kent.¹³⁶

There is no record of a pregnant woman appealing rape in the eyre rolls themselves. However, the *Year Book* from the eyre of Kent of 1312–1313, contains precedent-setting cases,

¹³³ *Britton: The French Text Carefully Revised, with an English Translation. Introduction and Notes*, ed. and trans. Francis Morgan Nichols, 2 Vols, (Oxford: 1865; reprint Holmes Beach, FL: W.W. Graunt, 1983), vol. 1, book 1, c. XXIV, par. 7, pp. 114. This concept of conception equalling consent to rape is discussed in detail in chapter 5.

¹³⁴ *Fleta, seu, Commentarius juris anglicani sic nuncupatus, sub Edwardo rege primo seu circa annos abhinc CCCXL*. Early English Books Online, ed. John Seldon, Second Edition, (London, 1685), book 1, c. XXXV, pp. 54.

¹³⁵ *The Mirror of Justices*, Seldon Society ed. William Joseph Whittaker (London: Bernard Quaritch, 1895), c. XXI, 103.

¹³⁶ Schneebek, "The Law of Felony in Medieval England," vol. 2, 469–470. References *Year Books of Edward II Vol. V., The Eyre of Kent 6&7 Edward II A.D. 1313–1314*, Seldon Society, eds. Frederic William Maitland, William Vernon Harcourt and William Craddock Bolland (London: Seldon Society, 1910), 111. A full transcription and translation are available in Horwood, *Year Book of King Edward I*, Appendix I, 520–521.

including that of the appeal of Joan. The various records¹³⁷ state that Joan appealed a man by the name of E. of rape. Her appeal failed due to technicalities, which included not appealing the rape right away (*e demaunda de lappelour desicom ele en contant ne fit nul mencion de rap en contant, pur quei il demaunda judgement de son mavey conte*).¹³⁸ Because Joan did not specify the exact time and date of the rape, (*justice si agard la court qe Jone aille a la prisone pur son moveys counte*) Joan was to be imprisoned for false appeal and E. was acquitted at her appeal but he was still indicted at the king's suit (*E. quites de son appel qaunt a sa sute et responde a la seute le Roi*).¹³⁹ There E. was indicted for raping Joan and taking her virginity (*ravistes la pucelage Johane*), but she was thirty years old at the time of the indictment (*e si est ele de trent anz*) and was carrying a child (*e porte un enfant parentre ses braz*).¹⁴⁰ The justiciar asked Joan who the father of the child was and she confessed that it was E., the very man she was appealing of rape. The justiciar stated that *dit fust qe cest mervaile*, "this was a wonderful thing,"¹⁴¹ since *qe un enfant ne purr amie ester engendre sanz volunte de une part e dautre*, "a child could not be begotten unless both were consenting parties."¹⁴² Despite the fact that Westminster II made no mention of the implications of pregnancy from rape, it appears that the courts, mainly the justiciars and jurors, were entrenched in the contemporaneous medical belief of the two-seed theory of conception, as purported by *Britton*.¹⁴³ This seemingly had profound influence on the courts, as is evident in this case, as E. stated that he could not be guilty of rape "or of any other

¹³⁷ The case of Joan is recorded in three manuscripts: Bodleian MS Tanner 13, fols. 415-485, Bodleian Library, Oxford; BL MS Addit. 32086, fols. 65-67d, British Library, London; Lincoln's Inn MS Year Books, Edward I, A., Lincoln's Inn Law Library, London. I have personally studied both BL MS Addit. 32086 and LI MS Year Books, Edward I, A.

¹³⁸ Horwood, *Year Book of King Edward I*, Appendix I, 520-521.

¹³⁹ *Year Books of Edward II Vol. V., The Eyre of Kent 6&7 Edward II A.D. 1313-1314*, 111.

¹⁴⁰ Horwood, *Year Book of King Edward I*, 520-521.

¹⁴¹ *Year Books of Edward II Vol. V.*, 111.

¹⁴² Horwood, *Year Book of King Edward I*, 520-521.

¹⁴³ *Britton*, vol. 1, book 1, c. XXIV, par. 7, pp. 114.

felony” (*de ren coupable de rap ne dautre felonye*) and the jurors agreed and ultimately acquitted him of all charges. Schneebeck notes that Sir Matthew Hale claimed that the belief in conception being equivalent to consent was not legally binding in medieval rape law, but that it evidently had legal impact.¹⁴⁴ The courts constructed the legal framework, in that Joan may have not consented mentally to the sexual intercourse but regardless of that her body consented, which was evident (to the courts) by her pregnancy. The courts forced Joan to become the reluctant, but ultimately willing accomplice to her own rape, and therefore E. was not culpable.

Also within the *Year Book of the Kent Eyre of 1313–1314* is the exceptional case of Alice who appealed John of raping her virginity (*une Alice appella un Johan de raap...ravist soun pucelage*).¹⁴⁵ John defended himself unsuccessfully and was found guilty of felony rape and the record states that under the statute of Westminster II (*qe le fait fust fait auaunt le statut*), Alice was given the opportunity to “tear out John’s eyes and cut off his testicles, as he was a married man” (*il eust este agarde de ele eust creue les oyels Johan e cope ses botons pour ceo qil fust marie*).¹⁴⁶ The record ends with the statement that if John was single, *mes si ele fust seingle le juggement serreyt qil la esposast ou qil eust cele penaunce*, then “the judgment would have been that he should marry her, or suffer that penance.”¹⁴⁷ This case is remarkable in the fact that the record is regurgitating earlier *Bracton*-era punishment during the legal age of Westminster II. Despite the fact that this case is an outlier, it demonstrates the courts’ continued interpretation of physical mutilation as being punishment which could only be negated by the woman’s hand in marriage. The marriage clause was thus complex and deserves a nuanced interpretation, as it was

¹⁴⁴ Schneebeck, “The Law of Felony in Medieval England,” vol. 2, 469–470.

¹⁴⁵ *Year Books of Edward II Vol. V.*, 134.

¹⁴⁶ *Year Books of Edward II Vol. V.*, 134–135.

¹⁴⁷ *Year Books of Edward II Vol. V.*, 135.

neither wholly romantic (as in eloping couples), nor entirely marital misery mandated by the courts.

The legal expectation that women should resist rape and have physical injury as proof of that resistance ensured that to be a truly innocent victim, in the eyes of the eyre courts, women needed bodily injury. There is one case, that of Cristine de Menstre in 1301, where she resisted the rape with so much force that, as a consequence of her resistance, she was murdered.¹⁴⁸ The case is recorded very briefly (just over two lines long) in the gaol delivery roll, but it is covered more extensively in the coroner rolls of London. The gaol delivery roll states *William Le Sawiere capit[ur] pro morte Cristine de Menstr[y]...apud Wolcherchagwe*, “William Le Sawiere is arrested for the murder of Cristine de Menstry...near Wolcherchawe” and makes no mention of attempted rape.¹⁴⁹ However, the coroner rolls of London state that Cristine was found dead in “the churchyard of St. Mary de Wolcherchewawe” and eyewitnesses claimed that on Sunday at twilight, a man named William le Sawiere of Kershalton approached Cristine and tried to convince her to sleep with him.¹⁵⁰ In her attempt to escape from his grasp, Cristine was murdered as William “drew a certain Irish knife (*cultellum Yberniacum*) and struck the said Cristin[e] under the right shoulder-blade, causing a wound an inch broad and six inches deep, of which wound she then and there died.”¹⁵¹ William was brought to Newgate gaol where the jury convicted him of felony homicide (*pro mortem Cristinem*, “for the death of Cristine”) and he was sentenced to death by hanging. Bellamy claims that Newgate was a notorious prison, the largest

¹⁴⁸ TNA: JUST3/38/2 m 7d. Also available in *Calendar of Coroner Rolls of the City of London, A.D. 1300–1378*, ed. Reginald R. Sharpe (London: Richard Clay and Sons, 1913), 7–8.

¹⁴⁹ TNA: JUST3/38/2 m 7d.

¹⁵⁰ *Calendar of Coroner Rolls of the City of London, A.D. 1300–1378*, 7–8. The translator of the Cal. Cor. Rolls. calls her “Cristina.” Since I could not view the original coroner rolls, I continued to call her “Cristine” as named in the original gaol delivery roll of JUST3/38/2 m 7d.

¹⁵¹ *Calendar of Coroner Rolls of the City of London, A.D. 1300–1378*, 8.

in London, and it was reserved for the most heinous criminals, unlike the Tower of London which was used to hold elites and “foreign dignitaries.”¹⁵² I have not included Cristine’s case in the statistics of rape appeals, indictments, and convictions in Table 3, since there was neither a rape appeal nor indictment and the case was brought to the courts solely as a homicide. Of note though, Cristine was, in a sense, the perfect rape victim in that she resisted William to such a high degree that she was murdered in the process. This is very reminiscent of hagiographic stories of virgin martyrs who preserve their virginal bodies at the expense of their earthly mortal bodies.

The Eyre Courts and Women’s Constructed “Identities”

As argued by Roberta Gilchrist, “gender identity is a private experience,” yet one’s personal identity is interwoven with cultural “constructs of binary masculinity and femininity.”¹⁵³ The language used to describe one’s identity is itself a cultural construction that reflects power and control. The “cultural-linguistic construct” of gender identity is a powerful one, as Gilchrist argues identity is both internal and communal, both an “experience of personhood” and one’s experience in relation to “families, communities and generations.”¹⁵⁴ Consequently, an individual’s identity is a construction, both in the performance and in the language used to describe them.¹⁵⁵ Medieval England constructed an individual’s gender identity around binaries, male/female, masculine/feminine, and the language ensured that these pairs were not equal. The binary of gender identity was hierarchal with masculinity occupying a

¹⁵² Bellamy, *Crime and Public Order in England in the Later Middle Ages*, 169.

¹⁵³ Gilchrist, *Gender and Archaeology*, 37.

¹⁵⁴ Gilchrist, *Gender and Archaeology*, 45, 48.

¹⁵⁵ Gilchrist, *Gender and Archaeology*, 81.

position of privilege and power. The gender identity constructions in medieval English courts were a means of control. Women appealing rape were socially and linguistically prescribed certain “identities” which were interwoven with cultural notions of ideal femininity, passivity, and sexuality.

The constructed legal identities which the courts placed upon women as rape survivors were narrowly applied based on the physical bodily proof of resistance. The twenty-eight cases of the eyre studied in this chapter have demonstrated the legal realities of these constructed identities; we have seen the truly innocent victims (notably Cristine de Menstre), the reluctant but willing accomplice (the pregnant Joan of Kent) and the numerous scheming women who were deemed culpable and imprisoned for false appeal. Hanawalt warns that the actual crimes women are charged with, or considered victims of, “demonstrate the role that women were assigned in society.”¹⁵⁶ Rape holds a unique place in felony law, as it was the only felony that women were defined as the sole victims of.¹⁵⁷ Thus, the laws reflect the societal values in the society in which they were made. In medieval English society, women could only be the victims of rape, not men, which perpetuates the stereotype of female passivity as a marker of femininity and the need for male protection. Despite the patriarchal constraints of these legal identities, women continued to push beyond the boundaries, using the legal infrastructure to bring their rapists to court, or even usurp the system by enacting the marriage clause of *raptus*.¹⁵⁸ It is important to remember, as Bronach Kane and Fiona Williamson argue, that women “were active

¹⁵⁶ Hanawalt, “Women Before the Law: Females as Felons and Prey in Fourteenth-Century England,” 167.

¹⁵⁷ Hanawalt, “Women Before the Law: Females as Felons and Prey in Fourteenth-Century England,” 181.

¹⁵⁸ Hanawalt, *Crime and Conflict*, 106.

in negotiation and creating their own identities alongside commonly recognized stereotypes and norms of gender expectations.”¹⁵⁹

Overall, there were immense difficulties involved in securing a conviction of a felony, not a trespass, during all of the legal ages.¹⁶⁰ Using the gaol delivery rolls of Colchester in the years 1284 to 1288, Harold Schneebeck calculated that conviction rates were around 10% to 20%, depending on the felony committed.¹⁶¹ My findings are more consistent with those of Barbara Hanawalt, who looked at *raptus* cases in the fourteenth-century and found a 10.3% conviction rate.¹⁶² Examining only the eyre rolls, and not considering the king’s bench, year books, or patent and close rolls, I have found an overall conviction rate of 7.14% (see Table 4). This includes all rape cases examined here, both indictments and appeals, and all those that did or did not go to trial. When looking at convictions of only the indictment cases that made it to trial, the rate significantly increases to 28.57%. However, Hanawalt found that of all the criminal indictments of the fourteenth century, rape represents just 0.5%.¹⁶³ As seen from the table below, it is evident that my research of exclusively rape trials in the court of the general eyre has found more appeals were made by women than indictments, and that the statistical probability of making a successful appeal that went to trial was 42.86%. That being said, the majority of appeals failed, or concord was met out of court. Hanawalt, in examining the different types of felonies that women could be accused of, offers a comparable statistical analysis of acquittals

¹⁵⁹ Kane and Williamson, “Introduction,” 16.

¹⁶⁰ Harold Schneebeck, “The Law of Felony in Medieval England from the Accession of Edward I until the Mid-Fourteenth Century” (PhD dissertation, University of Iowa), vol. 1, 219.

¹⁶¹ Schneebeck, “The Law of Felony in Medieval England,” vol. 1, 219, n.120.

¹⁶² Hanawalt, *Crime and Conflict*, 59; Hanawalt, “Women Before the Law: Females as Felons and Prey in Fourteenth-Century England,” 186. Here Hanawalt found a 10% conviction rape from 1300–1348.

¹⁶³ Hanawalt, “Women Before the Law: Females as Felons and Prey in Fourteenth-Century England,” 181; Hanawalt, *Crime and Conflict*, 105.

and convictions.¹⁶⁴ My research findings concur with Hanawalt's, in that acquittals were most frequently the outcome of rape trials, followed by out of court settlements and the least likely outcome was a conviction.¹⁶⁵ The extremely low conviction rate of 7.14% does not necessarily indicate a general lack of judicial competence and ability to maintain order in England. Rather, as Hanawalt demonstrates, rape was unique in that it had the second lowest conviction rate in England's medieval courts, only above the crime of receiving (a 5.4% conviction rate). Hanawalt's findings are striking, in that other felonies received much higher conviction rates: larceny (22.4%), burglary (31.0%), robbery (30.6%), counterfeiting (46.8%), arson (23.2%), treason (86.7%) and homicide (12.4%).¹⁶⁶

Hanawalt's findings strongly suggest that the judicial machinery of England worked efficiently, and the low conviction rates of rape cannot be blamed on general lawlessness and a lack of criminal justice. To this point, Hanawalt argues that the high conviction rates reflect crimes that directly impact the king, mainly treason and counterfeiting.¹⁶⁷ Crimes against property and theft were of greater concern for local jurors, more than rape which was viewed as a distinctly female problem. It is possible that rape as a "women's problem" spilled over into the realm of a "man's problem" when marriage rights and virginity were of a concern.

The court of the general eyre was, according to John Bellamy, "extraordinary thorough by medieval standards...but from the fourteenth century onwards the system began to

¹⁶⁴ Hanawalt's statistical findings include looking at the different types of felonies which women were accused. Although Hanawalt and Schneebeck do examine *raptus* cases, they do not offer exclusive, detailed, examination of rape trials in the court of the general eyre from the twelfth to the fourteenth century.

¹⁶⁵ Hanawalt, "Women Before the Law: Females as Felons and Prey in Fourteenth-Century England," 181.

¹⁶⁶ Hanawalt, *Crime and Conflict*, 59. According to Hanawalt, homicide also had a low conviction rate of just over 12%. It is noteworthy that spousal homicide was, in theory, the only other felony that a married woman could appeal herself in court.

¹⁶⁷ Hanawalt, *Crime and Conflict*, 59–60.

collapse.”¹⁶⁸ Bellamy calculated a 10-30% conviction rate for all crimes in the early fourteenth century, which is roughly inline with Hanawalt’s calculations.¹⁶⁹ Roger Groot found a 0% conviction rate for rape cases in England during the late twelfth and early thirteenth century.¹⁷⁰ Groot claims that during 1194–1216 rape in England “depreciated [in] seriousness,”¹⁷¹ but my research does not support these findings. Groot offers only translations of records, so any explanation on word choice, particularly the difficulty of *raptus*, is neglected and his inclusion of “the state” is troubling when compared to the fluid medieval English legal system. John Marshall Carter argues that there was a 21% conviction rate of rape in thirteenth-century England.¹⁷² Carter employs sociological theories of group behaviour and “the nature and development of social strata”¹⁷³ when examining eyre records in seven select English counties from 1201–1321. Carter’s relatively short text lacks detailed analysis of specific cases, includes questionable translation choice, and unsupported assumptions about gendered behaviour.¹⁷⁴ One reviewer noted that Carter’s texts appeared to be “so hastily pasted together as to be totally unconvincing.”¹⁷⁵ The 21% conviction rate that Carter claims is extremely high compared to my findings. In her analysis of 142 thirteenth-century rape cases in England, Ruth Kittel found a 6% conviction rate, all of which avoided full felony punitive measures.¹⁷⁶ Kittel’s analysis of plea rolls during *Bracton* and Westminster I only, offers no case translations so the interpretation of

¹⁶⁸ Bellamy, *Crime and Public Order in England in the Later Middle Ages*, 17.

¹⁶⁹ Bellamy, *Crime and Public Order in England in the Later Middle Ages*, 158.

¹⁷⁰ Roger D. Groot, “The Crime of Rape Temp. Richard I and John,” *The Journal of Legal History* Vol. 9, No. 3 (1988): 324–334, specifically pp. 329.

¹⁷¹ Groot, “The Crime of Rape Temp. Richard I and John,” 324.

¹⁷² Carter, *Rape in Medieval England*, 108.

¹⁷³ Carter, *Rape in Medieval England*, 2.

¹⁷⁴ Carter, *Rape in Medieval England*, see for instance pp. 163 “a wife expert at domestic duties might take a lover whereas a wife lacking domestic proficiency might remain constantly faithful to her husband.”

¹⁷⁵ Guido Ruggiero, “Book Review: John Marshall Carter: *Rape in Medieval England: An Historical and Sociological Study*,” *Albion* Vol. 17, No. 3 (1985): 315–316.

¹⁷⁶ Kittel, “Rape in Thirteenth-Century England: A Study of the Common-Law Courts,” 106–110.

raptus as rape and/or abduction is not clear, nor is there any inclusion of cases made during the era of Westminster II. However, Kittel's conviction rate is close to my calculated conviction rate of 7.14%. This trend of low convictions is not exclusive to medieval England, and although beyond the scope of analysis here, other scholars have researched the low conviction rates to rape appeals and indictments in medieval France as well.¹⁷⁷

The thoroughness of the eyre did not extend to *raptus* cases in the same way that it extended to nearly every other crime brought before it. Judges and jurors convicted counterfeiting, treason, homicide, and robbery at significantly higher rates than rape.¹⁷⁸ This suggests that there were some social attitudes regarding heterosexual encounters and female sexuality, which are interfering in the courts and working against women trying to appeal rape.

	Number of Cases	Number of Trials	Percentage of Cases that went to Trial	Number of Total Convictions	Percentage of Convictions of Cases that went to Trial	Overall Conviction Rate
Indictments	7	5	71.43%	2	40%	28.57%
Appeals	21	9	42.86%	0	0%	0%
Total	28	14	50%	2	14.29%	7.14%

Table 4 *Raptus* Cases in the Eyre Courts:
From *Glanvill* to Westminster II, c.1201–c.1321

¹⁷⁷ Edna Ruth Yahil "A Rape Trial in Saint Eloi: Sex, Seduction and Justice in the Seigneurial Courts of Medieval Paris," in *Voices from the Bench: The Narratives of Lesser Folk in Medieval Trials*, ed. Michael Goodich (New York: Palgrave Macmillan, 2006), 251–272; Walter Prevenier, "Violence Against Women in Fifteenth-Century France and the Burgundian State," in *Medieval Crime and Social Control*, eds. Barbara A. Hanawalt and David Wallace (Minneapolis: University of Minnesota Press, 1998), 186–203. Prevenier states: "to preserve the existing social relations by legitimizing the sexual act through marriage... [there was a] cultural mode in which the rapist could rely on considerable tolerance and comprehension if the victim consented to marriage," pp. 191.

¹⁷⁸ Hanawalt, *Crime and Conflict*, 59.

As is evident from Table 5, conviction rates, where the full punitive application of the law was prescribed, were very low, at 7.14% of all eyre cases studied here. However, the courts were more willing to give a conviction of a trespass as a downgraded offence (as seen on Table 5), as opposed to a full felony. From the twenty-eight case studies, there were five cases which had a conviction: two were legally treated as a trespass under Westminster I and three were downgraded to a trespass, bringing the overall conviction rate to 17.86%. This statistic includes the two Westminster I-era cases which received full convictions, and three other convictions where the courts mitigated the crime to ensure a lesser punishment. Thus, there are no convictions of full felony rape in the cases studied here. Consequently, the 17.86% conviction rate statistic is highly misleading. It is more useful for statistical analysis to look at conviction rates where the written law was prescribed. This drastically alters the data, as only two out of twenty-eight eyre cases, or 7.14%, meet this criterion. This has led Kim Phillips to argue that rape laws were “full of sound and fury, signifying almost nothing,” due to the lack of felony convictions.¹⁷⁹

When examining the cases by their legal age, as seen in Table 5, there were three cases studied from *Bracton*, eleven from Westminster I and fourteen from Westminster II. Of those cases which ended in full legal convictions, both were from the legal age of Westminster I, strongly suggesting that the downgraded offence of rape to a trespass made jurors more likely to fully convict.¹⁸⁰ When including the other three cases that had a lessened conviction, there was one from each of the three legal ages under consideration, that is *Bracton*, and both Westminster I and II.

¹⁷⁹ Phillips, “Written on the Body,” 128.

¹⁸⁰ Bellamy, *Crime and Public Order in England in the Later Middle Ages*, 158.

Overall, the data suggests a reluctance to convict men of rape based on the severity of the punishment, with the worst being physical mutilation and the loss of life.¹⁸¹ The case studies illuminate the numerous socio-cultural conditions that highly influenced the criminal proceedings. Primarily, this research has discovered the chasm between the statutes' indifferences to virginity and the eyre courts' persistence on a loss of virginity to secure a conviction. The following chapter will continue this commentary by examining ecclesiastical perspectives about loss of virginity from rape.

¹⁸¹ Hanawalt, *Crime and Conflict*, 63.

Table 5: Summary of Eyre Cases

Case References (Total 28 Eyre Cases)	Convictions (5/28 including trespass = 17.86%) (2/28 full convictions = 7.14%)	Outcome
JUST1/48 m 37 (A)	No	Settled out of court
JUST1/112 m 13d (A)	No	Marriage = acquittal
JUST1/133 m 25 (A-Trial)	No	Imprisoned false appeal
JUST1/137 m 14d (A-Trial)	No	Imprisoned false appeal
JUST1/175 m 44d (A)	No	Not a virgin (widow)
JUST1/213 m 34 (A-Trial)	No	Imprisoned false appeal
JUST1/213 m 49 (A-Trial)	No	Imprisoned false appeal
JUST 1/328 m 6 (A-Trial)	No*	Attempted rape of minor downgraded to trespass
JUST1/369 m 7d (A-Trial)	No*	Not virgin at time of rape = man imprisoned for 2 years (not mutilated)
JUST1/369 m 31 (I)	Yes	Virginity by force = man imprisoned for 3 years
JUST1/383 m 14 (I)	No	Acquitted
JUST1/383 m 50 (I)	No	Guilty but fleeing punishment?
JUST1/540 m 19 (A-Trial)	No*	Not virgin =downgraded to fine
JUST1/547A m 66d (A)	No	Imprisoned false appeal minor (12) released
JUST1/669 m 8d (A-Trial)	No	Imprisoned false appeal
JUST1/669 m 3d (A)	No	Settled out of court
JUST1/784 m 17d (I)	Yes	West I punishment
JUST1/877 m 61d (I)	No	Marriage before rape
JUST1/921 m 14 (I)	No	Settled out of court, indicted, and fled
JUST1/983 m 23d (A-Trial)	No	Imprisoned false appeal
JUST1/988 m 5d (A)	No	Not a virgin (had a husband) = Imprisoned for false appeal
JUST1/988 m 5d (A)	No	Failed due to technicality = Imprisoned for false appeal
JUST1/988 m 5d (A)	No	Failed due to technicality = Imprisoned for false appeal
JUST1/1011 m 45 (A)	No	Marriage
JUST1/1011 m 54 (A)	No	Marriage
JUST1/1098 m 76/7 (I)	No	Hugh's men responsible not him
JUST1/1171 m 3 (A)	No	Marriage

YB Cornwall Eye 1312-1313 (A)	No	Failed due to technicality (Pregnant) = Imprisoned for false appeal
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Legend:

Green: Westminster II (14 total: 0 convictions)

Red: Westminster I (11 total: 2 convictions)

Orange: *Bracton* (2 total: 0 convictions)

Blue: *Glanvill* (1 total: 0 convictions)

No*: not convicted of felony rape, downgraded to trespass conviction

(A): case brought by an appeal

(A -Trial): case brought by an appeal which went to trial

(I): case brought by an indictment

Chapter 4: Ecclesiastical Perspectives

Introduction

The twelfth-century development of secular laws also coincided with an increase of procedures and litigations in ecclesiastical law. Although this chapter uses phrases such as “the church courts,” it is recognised that there was no unified voice of “the church” and that variations in opinions on ecclesiastical matters inevitably occurred and regional differences in application of canon law were abundant.¹ This chapter will provide a more holistic understanding of the pervasive rape culture that existed in medieval England, from the perspective of church doctrine. This includes an overview of the ecclesiastical debates about the sanctity of rape survivors and the nuanced interpretations of mental and physical consent which are not evident in the secular *raptus* laws previously discussed. This chapter argues that despite the discussion about mental non-consent, there was an inherent paradox in ecclesiastical debates about women’s expected resistance and acceptance of suffering. It will be shown how this paradox led to a culture of distrust about women’s accusations of rape.

Development of Canon Law

Canon lawyers were, in the twelfth century, sifting through a large amount of ecclesiastical doctrine, from the Bible, to handbooks, to papal decrees and ordinances, and there was an effort to synthesize canon law.² Thus, at the same time that the secular courts in western

¹ Linda E. Mitchell, “Women and Medieval Canon Law,” in *Women in Medieval Western European Culture*, ed. Linda E. Mitchell, Garland Reference Library of the Humanities 2007 (New York and London: Garland, 1999), 143; Brundage, *Law, Sex and Christian Society in Medieval Europe*, 5.

² Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xvii.

Europe were developing a systematic form of common law and royal courts, the ecclesiastical courts were undergoing their own revisions of texts to try and make a unified and comprehensive canon law code.³ It is no coincidence that the foundational canon law treatise, the Bolognese monk Gratian's *Concordia Discordantium Canonum*, *A Harmony of Conflicting Canons* (the *Decretum*), written by 1140, occurred around the same time as *Glanvill*.⁴ It is indicative of the larger trend in western Europe, but particularly in England, during the twelfth century, of expanding bureaucracy and legal documentation, procedure, systematic record keeping, and administration.

It is naive to think of secular law as developing in England independently of canon law. Rather, ecclesiastical doctrine was involved in secular legal thought as the learned men writing the legislation in ecclesiastical and secular courts, the “canon and common lawyers were,” according to Hall, “in constant contact and often the same people.”⁵ During the reign of Henry II it was common for civil law lawyers and members of the clergy to be working together in the legal profession and this was so common that, during the thirteenth century, it was not rare to have a royal justiciar also be a clergyman.⁶ This trend was broken under Edward I and by the early fourteenth century only about 1 out of 5 of the justiciars sitting on the King's Bench were members of the church.⁷

The two realms of law attempted to distinguish themselves from one another throughout the high Middle Ages. Despite the competing legal jurisdiction between the two court systems,

³ Robert N. Swanson, “...et examinatus dicit...”: Oral and Personal History in the Records of the English Ecclesiastical Courts,” in *Voices from the Bench: The Narratives of Lesser Folk in Medieval Trials*, ed. Michael Goodich (New York: Palgrave Macmillan, 2006), 204; Brundage, *Law, Sex and Christian Society in Medieval Europe*, 1–3, 229.

⁴ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xvii.

⁵ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xxxix.

⁶ Musson, *Medieval Law in Context*, 47.

⁷ Musson, *Medieval Law in Context*, 47.

crown and church worked together, as argued by Caroline Burt, as a “fusion of theology and political ideology gave rulers still more powerful language with which to express and emphasize their God-given authority.”⁸ It is widely acknowledged among medievalists and law scholars that only in theory were the secular and ecclesiastical courts operating in isolation from one another.⁹ In reality, the two courts were fighting over legal jurisdiction, specifically but not exclusively relating to crimes of marriage and sexual deviancy. With crimes such as spousal abuse and sexual violence, the laity could choose which court, either the king’s or the church’s, they would like to pursue their claim based on which they thought would be more beneficial to them.¹⁰

The growth of legal understanding among the laity throughout the thirteenth century helped people make informed decisions about which court system best suited their needs. Attending local manorial courts, hearing royal statutes proclaimed in the markets and attending church mass regularly aided in the “growth of legal consciousness” among the average laymen and women.¹¹ As more written documentation was being produced, a growing reliance on the written word accompanied this revolution in legal administrative growth in England.¹² At the end of the thirteenth century the Archbishop of Canterbury, John Peckham, demanded that Magna Carta be read aloud and explained to the large congregation that gathered at Canterbury cathedral for mass.¹³ This is a significant, yet not unique, demonstration of the secular and ecclesiastical institutions working together to inform the lay public about law and justice, regardless of whether it was divine law or the king’s law. England during the twelfth to the fourteenth century

⁸ Burt, *Edward I and the Governance of England*, 237.

⁹ Butler, *Language of Abuse*, 11.

¹⁰ Butler, *Language of Abuse*, 11.

¹¹ Musson, *Medieval Law in Context*, 84, 95, 97, 102.

¹² Musson, *Medieval Law in Context*, 120.

¹³ Musson, *Medieval Law in Context*, 102.

was rapidly expanding the structures of law and order, and the church was crucial to this development.

The so-called “twelfth-century renaissance in both theology and law” was aided by the establishment of central, authoritative texts that were then glossed and compiled.¹⁴ The *Decretum* was part of this trend, as were the glosses which formed as explanations of a specific text, as well as *summae* which are “comprehensive commentaries” of a text, and treatises which are commentaries on entire topics.¹⁵ These were all part of the writing output in canon and secular law. The development of canon law and common law in England was both separate and complementary during the twelfth century. Gratian’s *Decretum* was like *Glanvill*, in that both were attempting “to harmonize the conflicting texts” of various laws and compile them into a single treatise.¹⁶ Gratian’s work was blending the contemporary legal thought on process and jurisprudence with theology to create “a discipline of its own, somewhere between sacred theology and the legal science.”¹⁷ There was, in the twelfth century, a development of a canon penal law code, designed to regulate the sexual morality of society in a criminal penal system.¹⁸ Despite the development in synthesizing a canon law code, it was not, unlike the king’s law, governed by legal statutes and as such, canon law was much more flexible and willing to negotiate with local customs and individual needs.¹⁹

¹⁴ Michael H. Hoeflich and Jasonne M. Grabher, “The Establishment of Normative Legal Texts: The Beginnings of *Ius commune*,” in *The History of Medieval Canon Law in the Classical Period, 1140–1234, From Gratian to the Decretals of Pope Gregory IX*, eds. Wilfried Hartmann and Kenneth Pennington (Washington: The Catholic University of America Press, 2008), 9.

¹⁵ Hoeflich and Grabher, “The Establishment of Normative Legal Texts,” 12.

¹⁶ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xvii.

¹⁷ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xvii. Quote from Stephan Kuttner, *Harmony from Dissonance: An Interpretation of Medieval Canon Law* (Latrobe: Archabbey Press, 1960), 26-27.

¹⁸ Brundage, *Law, Sex and Christian Society in Medieval Europe*, 3.

¹⁹ Butler, *Language of Abuse*, 19.

The establishment of a comprehensive canon law code allowed canon clerks and lawyers the opportunity to study abroad and work within the expanding ecclesiastical law courts.²⁰ Gratian's *Decretum* is considered to be one of the most important texts written for the development of ecclesiastical law and it was used as the textbook for canon law within a decade after it was written.²¹ By 1274 it was mandatory in England for canon lawyers to obtain a university education.²² Canon law was a popular university subject, available at Oxford University by the end of the twelfth century and soon afterwards at Cambridge University as well.²³ In these early canon law faculties, students were expected to have a foundational knowledge of Roman law and some were even expected to have obtained a degree in civil law before acceptance into the canon law faculty.²⁴ This close connection between civil and canon law continued throughout our period of study, as a foundational three years of study in civil law was a prerequisite for entry into the Bachelor of Canon Law program at Oxford during the fourteenth century.²⁵ This further emphasises the close relationship between secular and ecclesiastical jurisdictions. Canon law school's curriculum in the twelfth and early thirteenth century was centered on Gratian's *Decretum*, studying it almost exclusively.²⁶ However, it is

²⁰ Hall, introduction to *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, xvii–xviii.

²¹ Hoeflich and Grabher "The Establishment of Normative Legal Texts," 7–8; James Brundage, "The Teaching and Studying of Canon Law in the Law Schools," in *The History of Medieval Canon Law in the Classical Period, 1140–1234, From Gratian to the Decretals of Pope Gregory IX*, eds. Wilfried Hartmann and Kenneth Pennington (Washington: The Catholic University of America Press, 2008), 98; Brundage, *Law, Sex and Christian Society in Medieval Europe*, 256.

²² Musson, *Medieval Law in Context*, 38.

²³ Brundage, "The Teaching and Study of Canon Law in the Law Schools," 98–99; Bronach C. Kane, *Popular Memory and Gender in Medieval England: Men, Women and Testimony in Church Courts, c.1200–1500* (Woodbridge: Boydell Press, 2019), 43.

²⁴ Brundage, "The Teaching and Study of Canon Law in the Law Schools," 101, 105.

²⁵ Brundage, "The Teaching and Study of Canon Law in the Law Schools," 107.

²⁶ Brundage, "The Teaching and Study of Canon Law in the Law Schools," 102.

important to note that Gratian's work was not made into official canon, as it was never authorized by the pope.²⁷

We know very little about Gratian himself, as most of his biography comes from centuries after his lifetime, such as the assertion that "he was a Camaldolese monk in the house of Sts. Felix and Nabor in Bologna," which was a rumour dating from the eighteenth century.²⁸ The author's name, *magister Gratianus*, is written in the earliest extant copies of the *Decretum*. This provides good evidence that the author of the *Decretum* was also a teacher in Bologna while the text was being compiled.²⁹ Speculatively, it can be assumed from other sources that Gratian died sometime between 1140 and 1150, as other scholars discussing the *Decretum* after 1150, such as Rufinus in his *Summa* c.1164, described the author as deceased.³⁰

Although the *Decretum* was not officially confirmed by the pope, it was an accepted authoritative text on contemporary canon law. Gratian's sources include official papal decretals and councils, as well as patristic texts, specifically those of Augustine, "Roman law, Carolingian capitularies...biblical texts and pseudo-apostolic literature ...called the Canon of the Apostles," which eventually became official canon law as a result of Gratian's work.³¹ The *Decretum* is divided into three sections, the first being *distinctiones*, regarding elections for ecclesiastical office, while the third and final section of the *Decretum* is dedicated to the sacraments.³² The second part, the *causae*, is of concern for us as it deals with criminal legal matters of both clerics

²⁷ Peter Landau, "Gratian and the *Decretum Gratiani*," in *The History of Medieval Canon Law in the Classical Period, 1140–1234, From Gratian to the Decretals of Pope Gregory IX*, eds. Wilfried Hartmann and Kenneth Pennington (Washington: The Catholic University of America Press, 2008), 22.

²⁸ Landau, "Gratian and the *Decretum Gratiani*," 23.

²⁹ Landau, "Gratian and the *Decretum Gratiani*," 23–24.

³⁰ Landau, "Gratian and the *Decretum Gratiani*," 24.

³¹ Landau, "Gratian and the *Decretum Gratiani*," 26, 29.

³² Landau, "Gratian and the *Decretum Gratiani*," 37.

and the laity.³³ Each *causa* is subdivided into various questions which are further divided into various chapters, or answers. In *causae* II to VI criminal canon law is discussed, and it is also the section in which the *Decretum* developed a novel “ecclesiastical penal law and law of criminal procedure (*negotia criminalia*).”³⁴ *Causae* XXVII to XXXVI concern laymen, particularly in relation to forming legal marriages.

Although rape cases were not supposed to be brought before ecclesiastical courts, their legal requirements of what made a valid marriage and what a husband could do sexually and physically to his wife are valuable to the understanding of secular legislation. It is worthy to examine gendered crimes in canon courts, as ecclesiastical law had a profound influence on constructing medieval gender norms.³⁵ The leading ecclesiastical courts of medieval England were Canterbury, in the south, and York, in the north. Through Canterbury and York, England’s canon courts heard cases in various degrees of social and moral issues, relating to slander and defamation, to marital issues, and misbehaving clergy members.³⁶ Suits could be brought to the church courts through private complaints which resulted in testimonies, or through the church itself which produced *ex officio* records.³⁷

As with secular courts, those who used canon courts were neither the financially burdened peasantry, nor the wealthy aristocracy.³⁸ The large economic burden of going to church court eliminated much of the poor populace. Sara Butler states that the financial burden of going to court was immense, as introducing a suit was about 3 pence, citations were an additional 4

³³ Landau, “Gratian and the *Decretum Gratiani*,” 35–36.

³⁴ Landau, “Gratian and the *Decretum Gratiani*,” 36.

³⁵ Mitchell, “Women and Medieval Canon Law,” 145.

³⁶ Kane, *Popular Memory and Gender in Medieval England*, 23.

³⁷ Kane, *Popular Memory and Gender in Medieval England*, 24.

³⁸ Goldberg, “Echoes, Whispers, Ventriloquisms,” 34.

pence, the writing of the libel cost even more at 2 shillings and 4 pence, examination ranged between 1 to 7 shillings, the proctors charged 6 pence, and if the appellant lost the suit, then they were liable for the bill of the other party.³⁹ This large financial burden, especially in a losing case, added to the urban-rural demographic divide, as the cost of paying witnesses for travel and lodgings was substantial. Consequently, going to ecclesiastical court (like the king's court) was often an urban phenomenon. Similarly to secular courts, ecclesiastic courts were too expensive for the poor, while the nobility are often absent from the records as they frequently employed different, more personal methods of legal retribution.⁴⁰ Elites opted for personal and informal channels of justice, with the exception being cases of consanguinity (marriage within the prohibited degrees of kinship).⁴¹ To avoid the substantial expenses of going to court, as well as the public humiliation, couples frequently sought family help in resolving marital disputes.⁴²

Also reminiscent of the secular courts, the witnesses in ecclesiastical courts were often called to specific cases due to their gender. According to Gratian, women should only be witnesses for “female issues” relating to the female body, such as virginity, pregnancy, childbirth, as well as family ancestry and marriages.⁴³ Alternatively, male witnesses were considered to hold greater authority of testimony for cases of abuse and adultery.⁴⁴ This is what Bronach Kane calls the ecclesiastical courts’ assumptions about “gendered forms of knowledge.”⁴⁵ Gender influenced witness testimony, as did social status, since the church courts

³⁹ Butler, *Language of Abuse*, 166. References Brian L. Woodcock's *Medieval Ecclesiastical Courts in the Diocese of Canterbury* (Oxford: Oxford University Press, 1952), 61.

⁴⁰ Butler, *Language of Abuse*, 167.

⁴¹ Kane, *Popular Memory and Gender in Medieval England*, 26–27, 59.

⁴² Butler, *Language of Abuse*, 197.

⁴³ Kane, *Popular Memory and Gender in Medieval England*, 49.

⁴⁴ P. J. P. Goldberg, “Debate: Fiction in the Archives: The York Cause Papers as a Source for Later Medieval Social History,” *Continuity and Change* Vol.12, No.3 (1997): 445; Butler, *Language of Abuse*, 147.

⁴⁵ Bronach Kane, “Women, Memory and Agency in the Medieval English Church Courts,” in *Women, Agency and the Law, 1300-1700, The Body, Gender and Culture* Number 15, eds. Bronach Kane and Fiona Williamson (London: Pickering & Chatto, 2013), 47; Kane, *Popular Memory and Gender in Medieval England*, 13–14.

deemed unfree men and women not acceptable to stand in court.⁴⁶ Further, the Fourth Lateran Council of 1215 mandated the ability to discriminate against witnesses based on their reputation.⁴⁷ Debasing the credibility of witnesses based on sexual morality, social reputation, and economic standing ensured that the courts perpetuated normative hegemonic structures of “appropriate” behaviour for everyone in medieval English society; yet this appears to disadvantage female testimony more than male.⁴⁸ For example, in the church courts, illegitimate children reflected the poor moral character of the mother and thus their testimony was less believable than a man’s.⁴⁹ The ecclesiastical courts did not allow men convicted of rape or adultery to give testimony,⁵⁰ as the reputation of the individual mattered greatly to their believability in court. According to Bronach Kane and Fiona Williamson, women seemed more likely to bring a suit forward in the canon courts versus the secular courts, as “the ecclesiastical courts have a higher number of female litigants than in other courts.”⁵¹ The types of cases heard in church courts, primarily suits relating to marriage and public slander, were more accessible to women than the exclusionary secular courts which theoretically relegated women’s appeals to rape and spousal murder. Jeremy Goldberg complicates this statistic though, as his analysis of the court of York shows that male litigants outnumber females at a ratio of 3:1, even in suits relating to marriage.⁵² The theoretical gender equality in the church courts did not (unlike secular courts) discriminate against women based on their marital status as the law of coverture did not strictly apply to canon suits. However, canon law required that the minimum canonical age of

⁴⁶ Kane, *Popular Memory and Gender in Medieval England*, 65.

⁴⁷ Brundage, *Law, Sex and Christian Society in Medieval Europe*, 412.

⁴⁸ Kane, *Popular Memory and Gender in Medieval England*, 66.

⁴⁹ Kane, *Popular Memory and Gender in Medieval England*, 72.

⁵⁰ Brundage, *Law, Sex and Christian Society in Medieval Europe*, 253.

⁵¹ Kane and Williamson, “Introduction,” 7.

⁵² Goldberg, “Echoes, Whispers, Ventriloquisms,” 31–34.

witness testimony (and marriage) be differentiated based on sex; females must be older than twelve, while males had to be at least fourteen.⁵³ While betrothals (especially among the nobility) could occur as young as seven, the union was generally not consummated until minimum canonical age was reached.⁵⁴ Once again, however, there are always exceptions to the norm, as King Edward I opted to keep his daughters unmarried until they were 14 years old or more.⁵⁵ As matrimonial suits comprise the largest number of cases in England's ecclesiastical courts, what is perhaps surprising is that more often than not, the cases were brought before the courts to legally confirm a marriage contract more so than seeking to break one.⁵⁶

Marriage

Throughout the eleventh and the twelfth centuries, ecclesiastical law laid claim to exclusive jurisdiction over valid marriages, as the church made marriage a holy sacrament.⁵⁷ Spousal partner selection depended on social status, wealth, and reputation, among other factors. Reputation was inherently viewed in gendered terms; for men this included physical prowess and household management, and for women it largely rested on sexual honour.⁵⁸ The marriage market value of women, by way of their dowry or in widowhood their accumulation of dowry and dower (typically one-third of the husband's property), was tied very closely to the family's

⁵³ Goldberg, "Echoes, Whispers, Ventriloquisms," 33.

⁵⁴ Mate, *Daughters, Wives and Widows after the Black Death*, 33; Conor McCarthy, *Marriage in Medieval England: Law, Literature and Practice* (Woodbridge: Boydell Press, 2004), 44; Ward, *Women of the English Nobility and Gentry*, 18.

⁵⁵ John Carmi Parsons, "Mothers, Daughters, Marriage, Power: Some Plantagenet Evidence, 1150–1500," in *Medieval Queenship*, ed. John Carmi Parsons (New York: St. Martins Press, 1993), 67.

⁵⁶ Kane, "Women, Memory and Agency in the Medieval English Church Courts," 53.

⁵⁷ Christopher Brooke, *The Medieval Idea of Marriage* (Oxford: Oxford University Press, 1991), 63; Ruth Mazo Karras, *Unmarriages: Women, Men and Sexual Unions in the Middle Ages* (Philadelphia: University of Pennsylvania Press, 2012), 10.

⁵⁸ Karras, *Unmarriages*, 6–7.

socio-economic position.⁵⁹ To consolidate family wealth, the nobility sought, according to Georges Duby, marital unions between cousins that were easily dissolvable if the union no longer met the needs of the families involved.⁶⁰ This was fundamentally against the church model of matrimony, which viewed marriage as the second-best alternative to celibacy. In this ecclesiastical model of marriage, the church argued for monogamy, the non-dissolvability of marriage (or as Pauline Stafford states, “one life, one wife”⁶¹) and the expansion of the prohibited degrees of consanguinity.⁶² By expanding the prohibited degrees of consanguinity, the church ensured that there was limitation on the nobility’s ability to form extensive marital alliances which would, through the control of land, threaten the power of the church itself.⁶³ As Duby argued, these two conflicting models of marriage eventually resulted in the twelfth-century victory of the ecclesiastical model.⁶⁴ By the beginning of the twelfth century, the church developed a method to regulate and enforce sexual morality which resulted in their control over marriage laws.⁶⁵ It is important though to recognise that the complexity of individual identity and kinship ties complicates Duby’s theory, as members of the church often came from noble elite families as well.⁶⁶ Further complicating the two-model theory of medieval marriage is the frequency with which the laity sought clerical approval for annulments, suggesting that the laity was working with the church to adhere to canon marital laws.⁶⁷ Despite Duby’s argument that

⁵⁹ Robert C. Palmer, “Contexts of Marriage in Medieval England: Evidence from the King’s Courts circa 1300,” *Speculum* 59 (1984): 49; Ward, *Women of the English Nobility and Gentry*, 86.

⁶⁰ Georges Duby, *Medieval Marriage: Two Models from Twelfth-Century France*, trans. Elborg Forster (Baltimore: John Hopkins University Press, 1978), 7–8, 10.

⁶¹ Pauline Stafford, *Queens, Concubines and Dowagers: The King’s Wife in the Early Middle Ages* (Athens: The University of Georgia Press, 1983), 71.

⁶² McCarthy, *Marriage in Medieval England: Law, Literature and Practice*, 128–129.

⁶³ Brundage, *Law, Sex and Christian Society in Medieval Europe*, 192–193.

⁶⁴ Duby, *Medieval Marriage*, xi, 7–8, 16–17, 21.

⁶⁵ Brundage, *Law, Sex and Christian Society in Medieval Europe*, 223.

⁶⁶ Sara McDougall, “The Making of Marriage in Medieval France,” *Journal of Family History* Vol. 38, No. 2 (2013): 106.

⁶⁷ McDougall, “The Making of Marriage in Medieval France,” 114–115.

the lay nobility and the ecclesiastical authorities were at odds over the purposes and procedures to a valid marriage, other scholars, such as Christopher Brooke, claim that Duby creates false binaries. Brooke argues that the secular courts worked with the canon courts to create a cohesive marriage law, where cases involving inheritance laws were heard in secular courts and marriage contract suits were heard in canon courts.⁶⁸ Notable legal historian T. F. T. Plucknett remarks that conflict between secular and ecclesiastical courts over marriage was “unavoidable” despite the attempts to separate jurisdictions.⁶⁹

Although the church initially stated that the freely given present consent was the only requirement to marriage,⁷⁰ this changed in the twelfth century with the inclusion of consummation being added into Gratian’s *Decretum*. As Gratian proclaimed that marriage required both consent and consummation, the consent of the individuals was upheld as crucial to the legality of the union.⁷¹ However, marriage was a means of significant property redistribution between various families which was of such great familial importance that the consent between the bride and bridegroom may have been of lesser importance.⁷² Frequently the consent of the individuals was assumed rather than determined, and although the church could annul forced marriages, often men and women of the elite aristocracy had little choice in their marital partner. This is not to say that parents cared little for their children’s happiness; on the contrary, scholars have noted doting relationships between nobles and their children despite creating marriages for political opportunity.⁷³ For their own self-interests, the canon courts were reluctant to disturb the

⁶⁸ Brooke, *The Medieval Idea of Marriage*, 126–128.

⁶⁹ Plucknett, *Legislation of Edward I*, 121.

⁷⁰ Plucknett, *Legislation of Edward I*, 116.

⁷¹ Karras, *Unmarriages*, 54.

⁷² McCarthy, *Marriage in Medieval England*, 51; Stafford, *Queens, Concubines and Dowagers*, 34; Ward, *Women of the English Nobility and Gentry*, 15–17.

⁷³ Parsons, “Mothers, Daughters, Marriage, Power: Some Plantagenet Evidence, 1150–1500,” 68–70; Ward, *Women of the English Nobility and Gentry*, 49.

marital arrangements among the most wealthy and powerful laity.⁷⁴ The business of marriage, including the contract which outlined the dowry (the bride's financial contribution given from her family to the bridegroom's family), the *dos* (the bridegroom's gift or financial compensation given to the bride's family) as well as the bride's dower (the inheritance of the wife when widowed, typically one-third of the husband's property),⁷⁵ were handled by the laity. The church, however, held control over the religious sanctity of the marital union.⁷⁶ Consequently, marriage disputes regarding landholdings were heard in the king's court, despite the fact that marriage as a spiritual union was entirely under the jurisdiction of the church.⁷⁷ This complex judicial relationship is blatantly clear in the Second Statute of Westminster c. XXXIV, where it states that a woman can reclaim her dower, only if she is reconciled with her husband with the agreement of the church.⁷⁸

Sex Crimes

While rape was considered a secular crime, the remainder of sexual crimes fell under canon law, largely adultery, incest, bigamy, and sodomy.⁷⁹ Similarly, Gratian described sexual temptation as a form of sickness, and claims that only weak individuals succumb to their lust.⁸⁰ Further, Gratian contributed to the popular belief that women were inherently more likely to fall victim to their sexual urges.⁸¹ Once again, it is important to note that the laws, as they were written, were often much different than the lived reality of individuals. Despite church doctrine

⁷⁴ McCarthy, *Marriage in Medieval England*, 50–51, 65, 80.

⁷⁵ Duby, *Medieval Marriage*, 5–6.

⁷⁶ McCarthy, *Marriage in Medieval England*, 1.

⁷⁷ Palmer, "Contexts of Marriage in Medieval England," 46.

⁷⁸ Plucknett, *Legislation of Edward I*, 121.

⁷⁹ Pollock and Maitland, *The History of the English Law*, 543; Brundage, *Law, Sex and Christian Society in Medieval Europe*, 3.

⁸⁰ Brundage, *Law, Sex and Christian Society in Medieval Europe*, 245; Gratian, *Decretum*, C.25, q.1.

⁸¹ Brundage, *Law, Sex and Christian Society in Medieval Europe*, 246; Gratian, *Decretum*, C.27, q.1, c.4.

and Gratian's canon law code, the sexual freedom granted to elite males ensured that very few were ever brought to court over extramarital sex, or excessive marital sex.⁸²

What actions are defined as criminal and/or sinful are difficult to determine, especially with regards to sexual activities. This includes rape, but also same-sex sexual practices throughout the Middle Ages.⁸³ As previously mentioned, in medieval secular courts men were legally excluded from being the victims of rape. In the twelfth century, if a man was a victim of same-sex rape, he was not to be burned to death, but instead he was expected to undergo penance.⁸⁴ Frequently, the term sodomy or a "sin against nature" was used to describe male rape survivors, as well as a wide variety of sexual activity including same-sex sexual acts, masturbation, bestiality, or "inappropriate" (non-procreative) sexual acts between men and women.⁸⁵ Thus, while definitions of terms about gender and sexuality are important, they can also obscure the spectrum of sexual practices of the medieval past and are part of the struggle of studying medieval gender and sexuality.⁸⁶ According to the medieval church, the unnaturalness of some sexual activity, such as any activity that does not result in procreation, including anal and oral sex between different-sex and same-sex individuals, was counter to the natural social and gender hierarchy.⁸⁷ Consequently, disrupting the gender hierarchy through illicit sexual acts was deemed, by canonists, as not only unnatural but also sinful.

⁸² Brundage, *Law, Sex and Christian Society in Medieval Europe*, 255.

⁸³ Tom Linkinen, *Same-sex Sexuality in Later Medieval English Culture* (Amsterdam: Amsterdam University Press, 2015), 11.

⁸⁴ Brundage, *Law, Sex and Christian Society in Medieval Europe*, 213. Brundage states "men who suffered homosexual rape also escaped execution, but were nonetheless required to do canonical penance, presumably because of the ritual pollution that they had suffered." He references Council of Nablus (1120) c. 9 and 11, in Mansi 21: 164.

⁸⁵ Linkinen, *Same-sex Sexuality in Later Medieval English Culture*, 34–35.

⁸⁶ Katherine Harvey, "Episcopal Virginity in Medieval England," *Journal of the History of Sexuality* Vol. 26, No. 2 (2017): 273–292.

⁸⁷ Linkinen, *Same-sex Sexuality in Later Medieval English Culture*, 50, 60; McCarthy, *Marriage in Medieval England*, 108–109.

Corinne Saunders claims that when ecclesiastics write about “simple rape,” that is forced coitus without abduction, it was separated into two types of *libidinosus*, “lecherous” behaviour:⁸⁸ the *raptus* of virgins known as *stuprum*, and the *raptus* of wives or prostitutes, known as *fornicatio*, “fornication.”⁸⁹ Lewis and Short define *stuprum* as “defilement, dishonor, disgrace” while noting that “violation, [is] always implying the infliction of dishonor on the subject, whether male or female, [and it is] not used of dealings with prostitutes.”⁹⁰ The Lewis and Short definition offers a sense of shame or guilt, as the dishonor belongs to the subject. The DMLBS has a slightly different definition of *stuprum* as the “(act of) sexual violation.”⁹¹ Here the physicality of the act is emphasised, while the dishonour pointed out in Lewis and Short’s definition is not implied. The DMLBS’s definition of *fornicarius* includes “fornicating, sinful” behaviour, and when used as a substantive feminine noun it can mean “concubine” or “whore.”⁹² Through *stuprum* and *fornicatio*, the sin of lechery covered the sin of rape of both chaste and unchaste women.⁹³ Thus, while the secular courts withheld the right to hear rape cases, the canon courts held jurisdiction over all other sexual and marital crimes, and if the accused claimed to be a clergymen, then he had the option to be tried in the ecclesiastical courts. Evidently, despite rape being the only sexual crime to be heard in the secular courts, it is also not as exclusive, nor clear-cut, as it may initially appear, as canon and common law jurisdiction over *raptus* cases was complex and often competing.

⁸⁸ Lewis and Short, *A New Latin Dictionary*, “libidinosus, -a, -um, *adj.*” Article 1 “(in a bad sense) lecherous; also full of desire, passion, or lust.”

⁸⁹ Saunders, “A Matter of Consent: Middle English Romance and the Law of *Raptus*,” 107.

⁹⁰ Lewis and Short, *A Latin Dictionary*, “Stuprum, i, *n.*” Article 1 and 2.

⁹¹ DMLBS, “stuprum”, Article A.

⁹² DMLBS, “fornicarius”, Article 1a, 1b, 2b.

⁹³ Saunders, “A Matter of Consent: Middle English Romance and the Law of *Raptus*,” 107.

Raptus in Canon Law

In *causa XXXVI* of the *Decretum*, Gratian discusses the various scenarios of rape and abduction leading to marriage, and it is here that he includes the use of *raptus* as meaning both forcible coitus and abduction. In the first question Gratian asks *Ait enim Ysidorus in II libro Ethimologiarum c.33: Quid sit raptus*, translated as “Indeed, Isidore [of Seville] says, in book II of his *Etymologies* c.33: What is *raptus*.”⁹⁴ To this, the answer is *Raptus quoque est illicitus coitus a corrumpendo dictus; unde qui rapto potitur stupro fruitur*, meaning “*Raptus* is actually, having been said, illegal sexual intercourse, which is called after the verb **corrumpere** [to corrupt]; hence, whoever controls [a woman] by *raptus* delights in illicit sexual intercourse.”⁹⁵ The emphasis on possession, illicit coitus, and corruption is explicit. Gratian’s inclusion of *corrumpendo* is strikingly similar to the inclusion of *corrupta* in *Glanvill* and *Bracton*. To Gratian, *raptus* is primarily a sexual crime which pollutes, or corrupts, the woman’s pure body. However, in the next answer to question one, Gratian delivers another definition of *raptus*:

Cum ergo hec illicito coitu sit corrupta, cumque ita sit abducta, id est a domo patris ducta, quod de eius nuptiis nichil actum ante fuerit, raptam appellandam negari non potest.

[Therefore, since she was corrupted by illicit coitus, and since she was in this way abducted, that is having been led from the home of [her] father, [and] because no action of her marriage had been [settled] before [the abduction and coitus], it cannot be denied that she should be called *rapta*.]⁹⁶

The definition is now stricter. Instead of applying to any woman who endures illicit sexual intercourse, answer two of question one clarifies that it is strictly applied to young maidens, who

⁹⁴ *Decretum Gratiani*, ed. Anders Winroth (Yale University Digit Collections Center: October 2019), C.36, q.1 d.a.c.1, 950 <http://gratian.org/> Translation is my own.

⁹⁵ *Decretum Gratiani*, C.36, q.1, c.1, 950. Translation and emphasis are my own.

⁹⁶ *Decretum Gratiani*, C.36, q.1, c.2, 950. Translation is my own.

are abducted from their father's homes and suffer rape. The condition that the woman must be abducted from her father's home ensures that Gratian's use of *raptus* was under the narrow interpretation of being applied only to an unmarried maiden.⁹⁷ The truly innocent victim, according to Gratian, is a young daughter, not yet married or in her husband's home, thus most likely a virgin seized from her father's house. The crime is both against her and equally against her father. As stated by Kathryn Gravdal, Gratian emphasises "the patriarchal nature of this medieval law,"⁹⁸ as the father is the victim of loss of valuable property through the seizure of his daughter's body and the loss of her virginity for the marriage market. Literal financial compensation for the lost marital value, through rape, was made as "satisfaction" between the defendant and the accused.⁹⁹ Gravdal claims that the *Decretum* explicitly states four elements that are necessary for a crime to be called *raptus* in the eyes of the church: first, illegal sexual intercourse; second, the abduction of the woman from her father's home; third, the illegal sexual intercourse involves violence; fourth, that there is no prearranged betrothal between the perpetrator and the victim.¹⁰⁰ While the use of violence in the definition of *raptus* is not explicit, the consequence of corruption is. *Corrumpere* is defined by Lewis and Short as primarily "to destroy, ruin, [or] waste," although, Lewis and Short state that it can also mean "injury."¹⁰¹ With reference to *raptus*, *corrupta* can indicate someone who is "marred, corrupted," or "mutilated,"¹⁰² and *corrupta* as a neuter plural noun refers to the specific "spoiled parts (of the

⁹⁷ Saunders, "A Matter of Consent: Middle English Romance and the Law of *Raptus*," 107. References Gratian, "*Decretum magistri Gratiani*," in *Corpus iuris canonici*, ed. AEmilius Friedberg, 2 vols (1879, 1885), vol. 1 part II, XXXVI.i.2, 1288.

⁹⁸ Gravdal, *Ravishing Maidens*, 9.

⁹⁹ Kane, *Popular Memory and Gender in Medieval England*, 1.

¹⁰⁰ Gravdal, *Ravishing Maidens*, 8.

¹⁰¹ Lewis and Short, *A New Latin Dictionary*, "cor-rump (conrump), rui, ruptum," Article 1 and 2.

¹⁰² Lewis and Short, *A New Latin Dictionary*, "cor-rump (conrump), rui, ruptum," Article A1 (corruptus, a um) and B1.

body).”¹⁰³ Thus, while Gravdal’s inclusion of violence in the canonical definition of *raptus* may initially seem as scholarly interpretation, violence is actually part of the definition of *corrupta*. Since the mutilated or spoiled body parts of the woman imply physical injury, it is reasonable to conclude that such mutilated body parts were a consequence of physical violence. Only if all four of these conditions are met (illicit sex, abduction, violence, and no pre-arranged betrothal), then would the church view the crime as *raptus*. Contrary to other crimes of sexual violence, Gratian claims that rape is measured by the visible violence used against the female victim or her legal guardian.¹⁰⁴ As stated by James A. Brundage, this legal necessity of violence was not (unlike the secular courts) restricted to visible signs of violence and resistance on the woman’s body, but also applied to her kin and any violence her family may have endured.¹⁰⁵ This reiterates the familial impact of rape and/or abduction, in that it is not only a violation of the woman’s rights but equally a violation of her family, primarily her father’s rights.

Benefit of the Clergy

If the rapist and/or abductor claimed to be a member of the church, then he fell under the “benefit of the clergy” and his *raptus* case would be automatically heard in a canon, not secular court. Gratian states *si quidem clerici sunt, decidant a proprio gradu*, “if indeed, they are clerics, let them fall from [their] very own positions [in the church].”¹⁰⁶ This clause enables any man accused of *raptus* who is of clerical status to be exempt from a secular criminal trial. This was a favourable option, not used infrequently (as already seen with the case of Sir Hugh in chapter 3),

¹⁰³ Lewis and Short, *A New Latin Dictionary*, “cor-rump (conrump), rui, ruptum,” Article B2 (*subst.*: corrupta, orum, n.)

¹⁰⁴ Brundage, *Law, Sex and Christian Society in Medieval Europe*, 249; Gratian, *Decretum*, C.27, q.2.; C.36, q.1.

¹⁰⁵ Brundage, *Law, Sex and Christian Society in Medieval Europe*, 249. This is similar to the Canadian Criminal Code section 272 “sexual assault with a weapon” subsection (b) “threatens to cause bodily harm to a person other than the complainant.” See chapter 1 for more detail.

¹⁰⁶ *Decretum Gratiani*, C.36, q.2, c.4, 952. Translation is my own.

as the punishment for ravishers in the ecclesiastical courts was relatively soft compared to that of the secular courts. A loss of rank in the church, excommunication, and spiritual solitude were the primary punitive measures which must have seemed favourable compared to possible mutilation and death under the king's law.

The punishments for convicted ravishers were differentiated by the clerical status of the man. If, according to Gratian, he was *vero laici*, "in truth a layman," the punishment was excommunication.¹⁰⁷ The church acted as a sanctuary to ravishers who sought to avoid secular criminal trials: *Sed si ad ecclesiam cum rapta confugerit, privilegio ecclesie mortis impunitatem promeretur*, translated as "But if he sought refuge in a church with the *rapta* [woman], by the privilege of the church he is deserving of impunity from death."¹⁰⁸ Although the text states that the man must have the woman with him, in actual practice this was not the case. This clause enables any rapist or abductor to flee from the harsh penalties of the secular courts, like dismemberment and death, and instead take refuge in a church. He would thus be automatically exempt from the harsh secular punishments and instead receive the ecclesiastical punishments, mainly excommunication.¹⁰⁹ Hanawalt claims that the rapist and/or abductor "had to stay in the church continuously for forty days and forty nights" and that "villagers guarded the church" to ensure that he did not attempt to flee. Only after the completion of the forty days and nights was the man able to leave without injury.¹¹⁰ When looking at the courts in practice, excommunication was rarely (and from my research never) fully applied, and instead, canon law favoured spiritual

¹⁰⁷ *Decretum Gratiani*, C.36, q.2, c.4, 952. "*si vero laici excommunicantur*." Translation is my own; Brundage, *Law, Sex and Christian Society in Medieval Europe*, 250.

¹⁰⁸ *Decretum Gratiani*, C.36, q.1, c.2, 951. Translation is my own.

¹⁰⁹ Brundage, *Law, Sex and Christian Society in Medieval Europe*, 250.

¹¹⁰ Hanawalt, *Crime and Conflict*, 37.

isolation and penance. As with secular courts, ecclesiastical courts rarely prescribed the full legal punitive measures.¹¹¹

According to Caroline Dunn, it is members of the clergy who are most often accused of committing rape in the secular courts, and consequently, they claim the benefit of the clergy. In her study of nearly 1,200 cases in England from 1100 to 1500, she found that clergymen were “substantially over-represented among the alleged ravishers” considering they only represented “around 2 per cent of the entire population.”¹¹² This over-representation of clergymen among accused rapists is also supported by the works of Gravdal in her study of fourteenth-century France. Gravdal claims that the high proportion of clerics who were accused of rape suggests that rape was a “collective” activity among the clergy, “almost as if it were a sexual rite of passage.”¹¹³ In attempting to contextualize this statistic, Dunn suggests that either men may be lying about their clerical status to gain the benefit of the clergy (as appears to be the case with Sir Hugh), or that the high status of clergymen accounts for the recording of their crimes as opposed to men of lower status occupations.¹¹⁴ Anthony Musson also suggests that false claims of clerical status were frequent among laymen seeking to avoid secular punishments.¹¹⁵

¹¹¹ Brundage, *Law, Sex and Christian Society in Medieval Europe*, 472.

¹¹² Dunn, *Stolen Women in Medieval England*, 180. However, Hanawalt claims that clergymen represent about 4.4% of all felons. See Hanawalt, *Crime and Conflict*, 136.

¹¹³ Kathryn Gravdal, “The Poetics of Rape Law in Medieval France,” in *Rape and Representation*, ed. Lynn A. Higgins and Brenda R. Silver (New York: Columbia University Press, 1991), 212–213. Gravdal is using the term “collective rape” to describe the rape of a woman by multiple men, equivalent to the colloquial modern phrase of “gang rape”.

¹¹⁴ Dunn, *Stolen Women in Medieval England*, 181–183.

¹¹⁵ Musson, *Medieval Law in Context*, 100.

Raptus and Marriage

In the canon courts, a lack of marital consummation could be used to obtain an annulment and as such, marital sex was an important element to a legal marriage.¹¹⁶ This consummation clause theoretically enabled the validity of the *raptus* marriage clause, as consummation of the union was already established through the woman's appeal of rape and the only other ingredient needed for a valid marriage was the consent of the two individuals. In 1200 Pope Innocent III explicitly allowed marriage by abduction, or after rape, if both parties consented.¹¹⁷ According to Gravdal, this was advantageous to the church as it ultimately worked to secure the church's jurisdiction over marital law.¹¹⁸ Alternatively, rape could be used to force a reluctant bride into matrimony by leveraging her decreased marriage market value.¹¹⁹ Either way, rape was a viable means to secure a valid marriage. Using coitus as a precursor to marriage, both the secular courts (through *raptus* laws) and the church courts were, as argued by Georges Duby, in a sense employing marriage as a tool to control the sexual activity of the people.¹²⁰ There is, in traditional marital arrangements, a distinction between future and present consent; the intention to marry was simply a betrothal and was easily (and frequently amongst the nobility) broken. Alternatively, present consent, said in the present tense, constituted a legally binding marriage, as ordained in the c.1160 decretals of Pope Alexander III.¹²¹ If a case includes future consent and then coitus resulting in the loss of virginity, then the courts deemed that the marriage was legally valid and the future consent was transformed into present consent with

¹¹⁶ Brooke, *The Medieval Idea of Marriage*, 131.

¹¹⁷ Brundage, *Law, Sex and Christian Society in Medieval Europe*, 338; Gravdal, *Ravishing Maidens*, 9.

¹¹⁸ Gravdal, *Ravishing Maidens*, 9–10.

¹¹⁹ Dunn, *Stolen Women in Medieval England*, 85.

¹²⁰ Georges Duby, *The Knight, the Lady and the Priest: The Making of Modern Marriage in Medieval France*, trans. Barbara Bray (London: Penguin Books, 1984), 19.

¹²¹ Brooke, *The Medieval Idea of Marriage*, 138.

carnal knowledge.¹²² Thus, if a woman agrees to marry a man in the future, and he then rapes her, it is not legally defined as rape in canon courts despite the brutality of the crime.¹²³

However, ecclesiastical consent theory to marriage, in which only the freely given consent of the bride and bridegroom was necessary, was in conflict with the necessity of non-consent in appealing rape and/or abduction.¹²⁴ Here the issue of temporality is evident. *Raptus* requires non-consent at the time of the crime, but marriage requires consent at the time of the marital vow. Consequently, secular lawmakers were forced to accept scheming women who would claim a fictitious rape (apparently not consenting to the rape) and then, as allowed by the law, consent to marry their ravisher after the crime was committed. The ecclesiastical demand to a valid Christian marriage, one in which both the bride and bridegroom give free consent and consummate the union, made the fictitious claim of rape and/or abduction a viable avenue to marriage in both the ecclesiastical and the secular courts.¹²⁵ Canon law admits that, however troubling the marriage clause in *raptus* may be in the secular world, there was no legal objection to it in the ecclesiastical realm.

In *causa* XXXVI Gratian introduces the hypothetical scenario of a man seducing a virginal maiden with gifts and he lures her *patre ignorante*, “without her father knowing,” into his house where they have intercourse and he subsequently *publice in uxorem dicitur*, “in public calls [her] wife.”¹²⁶ Gratian asks in question one, whether or not this is still considered *raptus* (*an ille raptum admiserit*), and in question two, is the rapist able to marry the ravished girl, if her

¹²² Karras, *Unmarriages*, 180, 185.

¹²³ Brundage, *Law, Sex and Christian Society in Medieval Europe*, 312.

¹²⁴ Saunders, “A Matter of Consent: Middle English Romance and the Law of *Raptus*,” 106; Duby, *Medieval Marriage*, 4.

¹²⁵ Pollock and Maitland, *The History of the English Law*, 365.

¹²⁶ Brundage, *Law, Sex and Christian Society in Medieval Europe*, 231; *Decretum Gratiani*, C.36, 950. Translations are my own.

father gives his consent (*an rapta raptori nubere possit, patre assensum prestante*).¹²⁷ To

question one, Gratian states *sit raptus*, “it is *raptus*,” and that *raptus quoque est illicitus coitus*...

“for *raptus* is illicit coitus.”¹²⁸ However, Gratian clarifies the various forms of illicit coitus:

Cum ergo hec illicito coitu sit corrupta, cumque ita sit abducta, id est a domo patris ducta, quod de eius nuptiis nichil actum ante fuerit, raptam appellandam negari non potest. Sed non omnis illicitus coitus, nec cuiuslibet illicita defloratio raptus appellatur. Aliud enim est fornicatio, aliud stuprum, aliud adulterium, aliud incestus, aliud raptus. (§ 1) Fornicatio, licet videatur esse genus cuiuslibet illiciti coitus, qui fit extra uxorem legitimam, tamen specialiter intelligitur in usu viduarum, vel meretricum, vel concubinarum. (§ 2) Stuprum autem est proprie virginum illicita defloratio, quando videlicet non precedente coniugali pactione utriusque voluntate virgo corrumpitur, patre iniuriam ad animum statim post cognitionem non revocante... (§ 5) Raptus admittitur, cum puella a domo patris violenter ducitur ut corrupta in uxorem habeatur, sive puelle solummodo, sive parentibus tantum, sive utrisque vis illata constiterit; hic morte mulctatur. Sed si ad ecclesiam cum rapta confugerit, privilegio ecclesie mortis impunitatem promeretur.

[Therefore, since she was corrupted was by illicit coitus, and since she was in this way abducted, that is having been led from the home of [her] father, [and] because no action of her marriage had been [settled] before [the abduction and coitus], it cannot be denied that she should be called *rapta*. But not all [acts of] illicit coitus, nor of every illicit deflowering, is called *raptus*. *Fornicatio* is one thing, *stuprum* another, *adulterium* [adultery] another, *incestus* [incest] another, [and] *raptus* another. 1. *Fornicatio*, seems to be any kind of illicit coitus, that is without [one's] legitimate wife, however it is especially understood [as illicit coitus] of widows, or prostitute, or concubine. 2. *Stuprum*, however, is especially the illicit deflowering of a virgin [*virginum illicita defloratio*] when it appears both the maiden is corrupted with both of their consent [*voluntate virgo corrumpitur*] [and there is] no proceeding conjugal agreement, [her] father immediately after learning [about this] is not returning this wrongdoing to his heart... 5. *Raptus* is committed, when a girl is violently [*violenter*] led from the house of her father, so that she is corrupted and had [as his] wife [*ut corrupta in uxorem habeatur*], it will be undisputed that if the violence [*vis*] is brought to the girl only, or to the parents only, or to both; this is punished by death. But, if he sought refuge in a church with the *rapta*, by the privilege of the church he is deserving immunity from death.¹²⁹

¹²⁷ *Decretum Gratiani*, C.36, 950. Translations are my own.

¹²⁸ *Decretum Gratiani*, C.36, q.1 c.1, 950. Translations are my own.

¹²⁹ *Decretum Gratiani*, C.36, q.1 c.2, 950–951; Brundage, *Law, Sex and Christian Society in Medieval Europe*, 232. Translations is my own. Brundage, provides an alternative translation, for example he translates *ducta* as “seduced.”

Here we see the canon courts making a distinction between rape with the use of force and rape through seduction, with gifts and promises, as two distinct sexual acts.¹³⁰ This is very reminiscent of romance narratives, where “bad” men attempt rape, but chivalric knights seduce the reluctant lady. Further, Gratian claims that the force used does not necessarily have to be against the woman herself, but could be against her family and it is still considered *raptus*.¹³¹ This ensures that the woman and her family are both victims of the rape and/or abduction.¹³² To answer question two, whether or not this is a lawful marriage, Gratian says it is not, for Gratian requires consent to be given before coitus.¹³³ However, in *causa XXXVI*, question two Gratian allows marriage between victim and rapist to occur, only if the woman consents, her family consents, and the rapist repents to the church and gives penance.¹³⁴ As will be discussed more below, Gratian’s definition of rape ensures that rape (as non-consensual intercourse) inherently excludes the ability to have marital rape, since the conjugal debt requires sexual consent. The marital debt was mentioned by Saint Paul in I Corinthians 7:3–4, in which it states that upon marriage neither husband nor wife has bodily autonomy, but rather they share a “marital duty” to one another.¹³⁵ Thus, cases of marital rape do not explicitly occur in the ecclesiastical court records since it was not legally a crime.

Gratian’s *Decretum* was the primary source for canon law curriculum in European universities until c.1230 when it was replaced by the decretals of Pope Gregory IX, known

¹³⁰ Brundage, *Law, Sex and Christian Society in Medieval Europe*, 249, 311.

¹³¹ Brundage, *Law, Sex and Christian Society in Medieval Europe*, 311.

¹³² Brundage, *Law, Sex and Christian Society in Medieval Europe*, 396.

¹³³ McCarthy, *Marriage in Medieval England*, 22; Brundage, *Law, Sex and Christian Society in Medieval Europe*, 250.

¹³⁴ Brundage, *Law, Sex and Christian Society in Medieval Europe*, 250.

¹³⁵ Brundage, *Law, Sex and Christian Society in Medieval Europe*, 241.

collectively as the *Liber extra*.¹³⁶ The decretals, or papal letters, of Gregory IX, quickly became the main source of curriculum once they were published. In the influential *Liber extra*, Gregory IX explicitly made the marriage clause in *raptus* cases legally binding:

Quod, quum ibi raptus dicitur admitti, ubi nil ante de nuptiis agitur, iste raptor dici non debet, quum habuerit mulieris assensum, et prius eam desponsaverit, quam cognoverit; licet parentes forsitan reclamarent, a quibus eam dictiur rapuisse.

[Even though it is said to be a question of rape when nothing is done about nuptials beforehand, a man should not be called a rapist who had the woman's assent and who betrothed or married her before he knew her sexually, even though the parents might object and claim that he raped her.]¹³⁷

Gregory IX's statement agrees with Gratian's, who stated previously that it cannot be called *raptus* if there was a prearranged betrothal (see above). However, the *Liber extra* makes it much clearer that the parental consent is irrelevant to the validity of a marriage claimed through *raptus*. This marriage clause of the ecclesiastical courts, and the church's insistence on present consent as the prelude to a valid marriage, made the secular legal identity of the scheming blame-worthy woman all the more real. The fear of the conniving and culpable woman, who arranges her own marriage through the appeal of *raptus*, and is supported by the church's consent theory, was increasingly problematic to secular lawmakers and male kin throughout the twelfth and thirteenth centuries. Although the ecclesiastical courts held jurisdiction over the legality of a valid marriage, and the secular courts could not take that away, they could and did under the Statute of

¹³⁶ Brundage, "The Teaching and Study of Canon Law in the Law Schools," 110–111.

¹³⁷ Translated by Kelly, "Statute of Rapes and Alleged Ravishers of Wives," 407. Latin text referenced by Kelly and provided in the quote from: "*Decretales Gregorii IX*," in *Corpus iuris canonice*, ed. Emil Friedberg, 2 vols (1879–1881), vol 2., liber 5, titulus 17, cap. 6, Lucius III, 809–810.
http://www.columbia.edu/cu/lweb/digital/collections/cul/texts/ldpd_6029936_002/pages/ldpd_6029936_002_00000447.html?toggle=image&menu=maximize&top=&left=.

Rapes, take away the woman's inheritance. Thus, the contention between the two court systems was tentatively settled in the late fourteenth century, in that a woman could scheme and obtain her own valid marriage through a rape appeal, but the secular courts allowed her male kin to ensure that she was disinherited to protect the patrimony. This revision of the laws ensured that the church held jurisdiction over the validity of the marriage, yet the king's law controlled and protected the family wealth.

Clandestine Marriage

The consent theory to marriage enabled clandestine marriages to be deemed legitimate,¹³⁸ which disrupted both the secular and ecclesiastical models of marriage. The nobility feared clandestine marriages as they took place without parental consent, and the church viewed secret marriages as threatening to their right to preside over marriage ceremonies as a sacrament.¹³⁹ Even though freely given present consent remained the hallmark of a valid marriage, the ecclesiastical authorities sought to legitimize their presence at the ceremony.¹⁴⁰ At the Fourth Lateran Council of 1215 ecclesiastical authorities legislated that couples must publicly state their betrothal and that the wedding ceremony must be done in the presence of witnesses.¹⁴¹ However, Innocent III proclaimed that, despite the dislike of clandestine marriages, ultimately the consent of the individuals was all that was needed for a valid marriage.¹⁴² The formality of marriages increased throughout the fourteenth century to include betrothals (future

¹³⁸ Karras, *Unmarriages*, 57–58.

¹³⁹ Dunn, *Stolen Women in Medieval England*, 111.

¹⁴⁰ Dunn, *Stolen Women in Medieval England*, 111–112.

¹⁴¹ Brundage, *Law, Sex and Christian Society in Medieval Europe*, 362.

¹⁴² Brundage, *Law, Sex and Christian Society in Medieval Europe*, 397, 414–415, 437.

consent to marry) and the public production of marriage banns.¹⁴³ Clandestine marriages were of primary concern to parents of the upper social classes, as the ability to increase the family's social standing through marriage was threatened if their children married social inferiors secretly.¹⁴⁴ The concerns of the nobility conflicted with Gratian's model of legal marriage which included only consent and consummation, thus legalising clandestine marriages.¹⁴⁵ The fear of secret marriages undermining the authority of the church transformed the legal requirements, by mandating the presence of witnesses and a priest, at the Council of Trent in 1563.¹⁴⁶

Marriage united a man and woman, but it did not ensure their equal partnership. As stated in Ephesians 5:22, a wife was subordinate to her husband "for the husband is the head of the wife."¹⁴⁷ Being a male head of the household had significant social implications, as the bad behaviour of a wife or daughter directly affected the honour of the father or male head of the house. As Duby accurately states, the sexual promiscuity of women in the house was something to be feared and controlled by the men for the sake of male honour and as such, marriage was an attractive remedy to control sexuality.¹⁴⁸ Consequently, a daughter's secret marriage, such as Eleanor West's (discussed previously in chapter 2), was an affront on the masculine gender identity expectation of good household management.

¹⁴³ Katherine L. French, *The Good Women of the Parish: Gender and Religion after the Black Death* (Philadelphia: University of Pennsylvania Press, 2008), 66.

¹⁴⁴ Karras, *Unmarriages*, 68.

¹⁴⁵ Brundage, *Law, Sex and Christian Society*, 237, 239.

¹⁴⁶ Dunn, *Stolen Women in Medieval England*, 112.

¹⁴⁷ Ephesian 5:22; Duby, *The Knight, the Lady and the Priest*, 25.

¹⁴⁸ Duby, *The Knight, the Lady and the Priest*, 47.

Hagiography

Part of the ecclesiastical campaign of controlling sexuality was indoctrination through saints' lives. As a popular literary genre, saints' lives (hagiography) were instrumental in idealising certain feminine attributes, behaviours, and gender roles which the listening and reading audience were expected to learn from, idealise, and imitate in the real world.¹⁴⁹

Hagiography was a powerful tool to normalise virginal purity and venerate women and men who exercised extreme control over their bodies.¹⁵⁰ When written in or translated into the vernacular, hagiography has a unique synergistic relationship with social practices, both influenced by the social world and heavily influencing the constructed gender identity of ideal masculinity and femininity.¹⁵¹ The pre-Norman period witnessed the development of church-promoted celibacy alongside an increase of literary output of saints' lives which reinforced the concept of preserving the virginal body at all costs.¹⁵² While making reference to Old English female saints' lives, Shari Horner notes that the female saints were frequently threatened with rape and sexual violence and that these narratives describe the physical sexual violence in more graphic detail than in secular romance or legal trial documents.¹⁵³ My research concurs with Horner's, and thus it appears that there is a lineage of emphasis on the threatened defilement of virgin martyrs that continues into the high to late Middle Ages. The female body was the locus of sexual temptation,

¹⁴⁹ Catherine Sanok, *Her Life Historical: Exemplarity and Female Saints' Lives in Late Medieval England* (Philadelphia: University of Pennsylvania Press, 2007), ix.

¹⁵⁰ Duby, *The Knight, the Lady and the Priest*, 124; Caroline Walker Bynum, *Holy Feast and Holy Fast: The Religious Significance of Food to Medieval Women* (Berkeley: University of California Press, 1987), specifically chapter 4 "Food in the Lives of Women Saints." Bynum discusses the religious significance of fasting in relation to holy devotion in hagiography, stating "the hagiographers and the women themselves saw self-starvation and illness as extensions both of Christ's suffering on the cross and of the pains of purgatory" (pp. 120).

¹⁵¹ Sanok, *Her Life Historical*, xi.

¹⁵² Dunn, *Stolen Women in Medieval England*, 25.

¹⁵³ Shari Horner, "The Language of Rape in Old English Literature and Law: Views from the Anglo-Saxon(ist)s," in *Sex and Sexuality in Anglo-Saxon England: Essays in Memory of Daniel Gillmore Calder*, eds. Carol Braun Pasternack and Lisa M.C. Weston (Tempe: Arizona Center for Medieval and Renaissance Studies, 2004), 163–164.

according to ecclesiastical doctrine and traditional church rhetoric.¹⁵⁴ As all women were considered to be descendants of Eve, the female body needed to be controlled and the church played a vital role in this social community policing of female sexuality.¹⁵⁵ Consequently, the female body is explicitly linked to sexual violence in female saints' lives.¹⁵⁶

Church doctrine promoted ideal gendered behaviour and for women this includes "submission, modesty, and motherhood" which is reflected in the hagiography of female saints as well as the secular literature of romance heroines.¹⁵⁷ Christine de Pizan (1364–ca.1430) argued that female readers should focus their attention on hagiography more so than romance, suggesting that female saints' lives were the preferred genre of moral education.¹⁵⁸ Whereas secular literature was full of adultery and illicit sex, hagiography was praised for its moral didacticism.¹⁵⁹ While there are both similarities and stark differences between the lived behaviour of women and the hagiographic texts expectations of their behaviour, it is evident that the church continually perpetuated the submissive female ideal.¹⁶⁰ In contrast to the examples of "bad" biblical women, such as Eve and Jezebel, ecclesiastics praised female saints and other women of the bible, particularly Esther and the Virgin Mary. The binary constructions of good and bad women added to the dichotomy that women were both admired and condemned.¹⁶¹

¹⁵⁴ Dunn, *Stolen Women in Medieval England*, 53.

¹⁵⁵ Karen Pratt, "The Image of the Queen in Old French Literature," in *Queens and Queenship in Medieval Europe, Proceedings of a Conference Held at King's College London April 1995*, ed. Anne J. Duggan (Woodbridge: The Boydell Press, 1997), 236.

¹⁵⁶ Horner, "The Language of Rape in Old English Literature and Law," 164.

¹⁵⁷ French, *The Good Women of the Parish*, 4–5.

¹⁵⁸ Pratt, "The Image of the Queen in Old French Literature," 238.

¹⁵⁹ Sanok, *Her Life Historical*, 28.

¹⁶⁰ French, *The Good Women of the Parish*, 13.

¹⁶¹ Stafford, *Queens, Concubines and Dowagers*, 25–28.

The medieval religious experience was heavily influenced by age and gender. Even women who took an active religious role in joining the local parish church were subjugated to gendered domestic housekeeping roles, much like their secular counterparts.¹⁶² The female life cycle heavily influenced the expected behaviour of women, as maids and matrons were given different role models to praise. The Virgin Mary, as the holy mother, and Saint Margaret, as the patron saint of childbirth, primarily targeted women who entered into marriage and were wives and mothers.¹⁶³ There was, in England during the mid-twelfth century, a growing devotion to Saint Anne as the mother of the Virgin which grew in popularity among nuns.¹⁶⁴ However, young maidens who were not yet married were targeted with the hagiographic tales of virgin martyrs, such as Saints Lucy, Cecilia, and Katherine.

Even Gratian references the virgin martyrs in his canon law code. In *causa* XXXII, question five, on loss of innocence, it states:

Many authorities prove that purity [*pudicitia*] cannot be destroyed by force [*violenter*]. For it is a virtue of the mind [*virtus animi*], and so cannot be touched by violence [*violentiam non sentit*]. Force [*vis*] can be used on the body [*corpori*], but not on the mind. So, although one's body has been violated by force [*corpus violenter corrumpatur*], if the purity of one's mind comes out undimmed, then one's chastity is even increased [*castitas duplicatur*]. So St. Lucy is reported to have said to Pascasius, "If you violate [*violari*] me against my will, I shall receive an even greater crown for my chastity. Let God pass judgment then on my senses and will." On this, Ambrose writes, in *On Virgins*, lib.V:

In reality, the flesh [*caro*] cannot be [*corrupta*], unless the mind is [corrupted] first...

Augustine, in *On the City of God*, [lib.I, c.xvii]: No one can be violated or polluted [*polluet*] by another's lust [*aliena libido*].

¹⁶² French, *The Good Women of the Parish*, 18–24.

¹⁶³ For more on the sanctity of motherhood and the influence on secular women see *Queens and Queenship in Medieval Europe, Proceedings of a Conference Held at King's College London April 1995*, ed. Anne J. Duggan (Woodbridge: The Boydell Press, 1997).

¹⁶⁴ Kati Ihnat, "Early Evidence for the Cult of Anne in Twelfth-Century England," *Traditio* Vol. 69 (2014): 1–44.

Violence cannot violate innocence if the mind preserves it. For there is no violation of the flesh [*corpori*] if the one attacked does not consent to the impure use of her flesh, rather she endures [*perseveranti*] unwillingly what another does to her; Those who have been raped are not the same as an untouched virgin: Those handmaids of God who have lost their untouched modesty through the violence of barbarians have become even more praiseworthy through their humility and shame, even if they are not the same as untouched virgins.¹⁶⁵

This *causa* remarkably demonstrates a medieval distinction between consent of the flesh and consent of the mind. Maidens who survive rape but lose their virginity, are still pure if they never mentally consented to the rape. Referencing Saint Lucy enshrined in canon law that spiritual salvation was available to women who modeled their behaviour on the virgin martyrs. Through their suffering, women were able to emulate the martyrs in that they too endured violence, but they did not mentally consent and give into the sexual temptation. Although these hypothetical women are considered forever changed and not virginal, they retain, through their suffering, a martyrdom-like religious status. This mental non-consent to rape allowed medieval women to still be considered victims and worthy of eternal salvation, even if they endured sexual

¹⁶⁵ Translation from Brundage, *Law, Sex and Christian Society in Medieval Europe*, 232; *Decretum Gratiani*, C.32, q.5: “Quod autem pudicitia violenter eripi non possit multorum auctoritatibus probatur. Est enim virtus animi, que violentiam non sentit. Corpori namque vis infertur, non animo. Unde, quamvis corpus violenter corrumpatur, si pudicitia mentis seruetur illesa, tamen castitas duplicatur. Sicut B. Lucia fertur dixisse Pascasio. Si inuitam me feceris violari, castitas michi duplicabitur ad coronam. De sensibus enim et voluntatibus iudicat Deus. Hin Ambrosius scribit in lib. V. de virginibus : C.I. Melior est virginitas mentis carnis. Tollerabilis est mentem virginem, quam carnem habere...C.II. Mente incorrupta non corrumpitur caro. Reuera non potest caro ante corrumpi, nisi mens fuerit ante corrupta. C.III. Item Augustinus de ciuit Dei [lib. I. c.18] Ita ne aliquem polluat aliena libido, metuitur ? Non polluet, si aliena erit, si autem polluet, non aliena erit. Sed cum pudicitia sit veritus animi, comitemque habeat fortitudinem, potius quolibet mala tollerare, quam malo consentire decernat, nullus autem magnanimus et pudicus in potestate habet quid de sua carne fiat, sed tantum quod annuat mente vel rennuat : quis tandem sana scilicet mente putauerit, se perdere pudicitiam, si forte in apprehensa vel oppressa carne sua exerceatur et expleatur libido non sua ?[C.IV] Proposito animi permanente, per quod etiam corpus sanctificari meruit, ipsi corpori non aufert sanctitatem violentia libidinis alienae, quam servat perseveranti sua continentiae. An uero, si aliqua femina menta corrupta, uiolatoque proposit, quod Deo uouerat, pergat uicianda ad suum deceptum, adhuc eam pergentem sanctam vel corpore dicimus, ea sanctitate animi, per quam corpus sanctificatura, amissa atque destructa? Absit his error, et hinc potius ammeneamur, ita amitti corporis sanctitatem, etiam intacto corpore.”

defilement. The survivors of rape are acknowledged in Gratian's *Decretum* as still worthy of God's love. The distinction between bodily and mental consent, as well as the explicit reference to Saint Lucy, worked to provide an avenue to sanctity through rape and sexual assault. If suffering rape was an imitation of the virgin martyrs, as Gratian claims, then enduring rape was a means for women to achieve an elevated level of holiness. To achieve this special spiritual praise, the women must never mentally consent to the rape as well as constantly preserve their innocence of the mind.

Gratian explains clearly that women who survive rape occupy a privileged position of moral superiority.¹⁶⁶ Other notable theologians, such as Thomas Aquinas, also supported this idea that rape was an avenue to spirituality.¹⁶⁷ This notion of moral elevation through surviving rape is contrary to hagiography and to secular laws, where female saints are willing to sacrifice their life in order to avoid rape, that is to say that death is better than rape in saints' lives.¹⁶⁸ Since the virgin martyrs are obviously virgins when they are martyred, rape is always threatened in hagiography and never completed,¹⁶⁹ or as Howard Bloch bluntly states, "the only real virgin – that is, the only true virgin – is a dead virgin."¹⁷⁰ The logic provided in the hagiography of virgin martyrs such as Saint Lucy or the popular English Saint Katherine, suggests that rape is worse than death so it is better to be martyred than it is to be raped. This allows for the space, according to Suzanne Edwards, in which rape survivors have endured something that is even more holy than death itself.¹⁷¹ By losing one's virginity through rape, the woman has endured an

¹⁶⁶ Edwards, *The Afterlives of Rape in Medieval English Literature*, 10.

¹⁶⁷ Edwards, *The Afterlives of Rape in Medieval English Literature*, 21.

¹⁶⁸ Edwards, *The Afterlives of Rape in Medieval English Literature*, 2.

¹⁶⁹ Edwards, *The Afterlives of Rape in Medieval English Literature*, 22.

¹⁷⁰ Howard R. Bloch, *Medieval Misogyny and the Invention of Western Romantic Love* (Chicago: Chicago University Press, 1991), 108.

¹⁷¹ Edwards, *The Afterlives of Rape in Medieval English Literature*, 21–23.

event that even the female saints viewed as too great of a sacrifice to make. The Christ-like imitation of surviving rape was potentially a greater testament to one's faith than death. This was all dependent on the chastity of the mind being preserved, which required that the woman did not mentally consent at any time.¹⁷² However, in reality theologians were hesitant to believe women who claimed mental non-consent, as they thought the weakness of the flesh (believed to be biologically inherent in female anatomy), was so strong that it could over-power the mental non-consent.¹⁷³ This of course is identical to secular lawmakers who also argued that the reluctant, but willing, accomplice to her own rape was a victim to the desires of her own body (discussed in more detail in the following chapter).

Putting that aside, sanctity through rape was further troubled with the mental non-consent of the woman. Although her mental chastity was deemed crucial to Gratian, there was the opposite effect to canonists who viewed the mental non-consent as a reluctance of the woman to endure her suffering. Virgin martyrs endure their suffering willingly and consequently, a woman who is raped, and does not willingly endure it, cannot be a martyr as a true martyr consents to their suffering for the sake of faith.¹⁷⁴ Effectively, a woman cannot accept her rape and consent mentally (to ensure sanctity) because then she loses the chastity of the mind which is so critical to Thomas Aquinas and Gratian among others. This is a no-win situation; if she consents, she is not of pure mind, and if she does not consent, she did not willingly accept her suffering. Despite the paradoxical accounts of rape and divinity, hagiographical texts of threatened rape allow for the figurative space for rape to lead to virtue, not shame.¹⁷⁵

¹⁷² Edwards, *The Afterlives of Rape in Medieval English Literature*, 24.

¹⁷³ Edwards, *The Afterlives of Rape in Medieval English Literature*, 25.

¹⁷⁴ Edwards, *The Afterlives of Rape in Medieval English Literature*, 28.

¹⁷⁵ Edwards, *The Afterlives of Rape in Medieval English Literature*, 30.

The cults of the virgin martyrs were intentionally used to appeal to young girls to instill sexual purity and promote the ideal virginal state. As will be discussed more in the following chapters, unlike romance stories, virgin martyrs are frequently threatened with rape and sexual violence but the rape never occurs and the women preserve their virginal status.¹⁷⁶ The young virginal maidens are continually described in sexualised language, but the explicit sexual act – rape – never occurs.¹⁷⁷ The literate and non-literate audience members of female saints' lives were bombarded with not only literary texts of virgin martyrs, but also images "on rood screens, stained glass windows, books and paintings," which Kim Phillips accurately states would have inevitably "had a deep effect on their imaginations and perceptions of femininity."¹⁷⁸ It is important to note that saints' lives had a broader impact on social culture, compared to courtly literature, as they were read aloud in church to a listening audience of diverse socio-economic backgrounds. Thus, female saints depicted as beautiful, sexualised young women had profound impacts on the cultural norms of medieval femininity. Although there is no uniform "medieval womanhood,"¹⁷⁹ as the complexities of individual identity are not founded on modern concepts such as sex and gender, the following discussion will make use of "women" as a collective, to draw some meaning out of hagiographical literature to a medieval lay audience.

Narratives of defiant female saints, and various images of their physical beauty in stained-glass windows or manuscript illuminations, inevitably gained the attention of a large audience of women who enjoyed these stories.¹⁸⁰ Saints who denied the sexual advances of

¹⁷⁶ Horner, "The Language of Rape in Old English Literature and Law," 172.

¹⁷⁷ Kim M. Phillips, "Desiring Virgins: Maidens, Martyrs and Femininity in Late Medieval England," in *Youth in the Middle Ages*, eds. P. J. P. Goldberg and Felicity Riddy (Suffolk: University of York Press, 2004), 53–54.

¹⁷⁸ Phillips, "Desiring Virgins," 55.

¹⁷⁹ Loengard, "Common Law for Margery: Separate but Not Equal," 117.

¹⁸⁰ Phillips, "Desiring Virgins," 58–59.

wicked men and died in defence of their virginity were offering audience members narratives of women's resilience and Christ-like determination.¹⁸¹ Catherine Innes-Parker reiterates this notion with her analysis of the Middle English Katherine Group saints' lives. The extremely graphic (and sexualised) violence against Saints Juliana, Margaret, and Katherine, all of whom are martyred as a consequence of their virginal perseverance, demonstrate to the audience of women and girls that death is confirmation of resistance and ultimate bodily autonomy.¹⁸² While hagiography theoretically allowed maidens to choose chastity over family, the narratives also demonstrate the very real dangers in asserting bodily autonomy against the wishes of men, which could result in death.¹⁸³ Through their emulation of the virgin martyrs, women were integral in producing the cultural gender norms of femininity, as much as men were in producing these texts to begin with.¹⁸⁴ This notion is supported by Barbara Hanawalt in that women were not all passive participants in the patriarchy, but some supported, upheld, and even contributed to it.

Despite the lack of completed rape in hagiography, the female saints are subjected to threatened rape and their reluctance to comply with the sexual demands invariably results in their sexualised torture and death. Thus, despite the non-completion of the rape, the bleeding female body is central to the hagiographic narrative of the idealised female saint.¹⁸⁵ The sign of morality was the untouched virginal body, and this was only to be imitated by certain women, that is unmarried daughters, or women dedicated to God.¹⁸⁶ On the contrary, regarding marriage, hagiographic literature promoted the sanctity of motherhood. The nuanced interpretation of the

¹⁸¹ Gravdal, *Ravishing Maidens*, 27–31.

¹⁸² Catherine Innes-Parker, "Sexual Violence and the Female Reader: Symbolic "Rape" in the Saints' Lives of the Katherine Group," *Women's Studies* Vol. 24, No. 3 (Jan. 1995): 208–210.

¹⁸³ Innes-Parker, "Sexual Violence and the Female Reader," 213–214.

¹⁸⁴ Phillips, "Desiring Virgins," 59.

¹⁸⁵ Gravdal, *Ravishing Maidens*, 22.

¹⁸⁶ Sanok, *Her Life Historical*, 2.

audience, taking into consideration not only gender but also age, is evident by the intentionally broad saintly behaviour.¹⁸⁷ Church doctrine was deliberately manipulated and applied to specific stages of the female life cycle, to promote either chastity or motherhood. Thus, the religious experience was both heavily dependent on the female body and the age of the woman.¹⁸⁸

The teachings of Saint Jerome, from the late fifth century, explain the virginal status of women as being in a state of constant danger of corruption. These teachings state that “if you walk laden with gold, you must beware of a robber” and Jerome warns “although God can do all things, He cannot raise up a virgin after she has fallen...He has no power to crown one who has been corrupted.”¹⁸⁹ Clearly, from the Late Roman period, ecclesiastical authorities warned women that virginity is both the ideal feminine state, but also a state that invites sexual corruption and thus one’s virginity is something to defend. If women cannot properly defend their saintly virginity, Jerome warns them that “it would have been better to have submitted to marriage with a man...than to fall into the depths of hell while striving to attain the heights [of saints].”¹⁹⁰ The negative attitude towards marriage, as the least evil of sexual sins if one must have sex, was popular throughout the medieval period and reinforced in secular romance, as virginal maidens save their pure bodies for their husbands.

The writings of Jerome, among other Church Fathers, laid the foundation for the later medieval *raptus* laws, in that virginity was worthy of protection. In part, this is evident in the

¹⁸⁷ Sanok, *Her Life Historical*, 24. Here Sanok references the legend of Saint Margaret which is specifically addressed “to widows and the wedded, especially maidens.” While broad, the salutation includes the various stages of matrimony for the average woman, from unmarried maiden, to wedded, and the elderly widow.

¹⁸⁸ French, *The Good Women of the Parish*, 140.

¹⁸⁹ Jane Tibbetts Schulenburg, “The Heroics of Virginity: Brides of Christ and Sacrificial Mutilation,” in *Women in the Middle Ages and the Renaissance: Literary and Historical Perspectives*, ed. Mary Beth Rose (Syracuse: Syracuse University Press, 1986), 135 and 138.

¹⁹⁰ Schulenburg, “The Heroics of Virginity,” 33. References the letter to Eustochium, in *Jerome, The Letters of St Jerome: Ancient Christian Writers*, 138-139.

continually harsher punishments for men who were convicted of raping a woman's virginity, as well as the legal expectation that women should defend themselves aggressively against their own rape. The previously discussed murder of Cristine de Menstre (London, 1301) fulfills the "true" victim legal identity, as she died in defence of her chastity, much like a martyr.¹⁹¹

The close connection between ecclesiastical doctrine and *raptus* laws is further evident in church teachings of sacrificial mutilation to protect one's chastity and the legal expectation of physical bodily proof of resistance to rape in secular courts. Stories of nuns mutilating their faces, as a way to protect their virginity from enemy soldiers, appear in chronicles as an unfortunate consequence of war.¹⁹² Here it is important to heed Brenda Silver and Lynn Higgins' call to re-read the rape as rape within narratives, especially in saints' lives where it is too often displaced in favour of some greater moral truth, such as the religious oppression of Christians.¹⁹³ Early Church Fathers once again helped in laying this foundation, as Jerome wrote in his *Commentary on Jonah*, "it is not lawful to commit suicide except when one's chastity is jeopardized."¹⁹⁴ Suicide in defence of virginity was further supported by Ambrose of Milan, in his writing *Concerning Virgins*,¹⁹⁵ and Augustine of Hippo in *City of God*.

¹⁹¹ TNA: JUST3/38/2 m 7d. Also available in *Calendar of Coroner Rolls of the City of London, A.D. 1300–1378*, ed. Reginald R. Sharpe (London: Richard Clay and Sons, 1913), 7–8. For full discussion, see chapter 3 "The Eyre Courts in Practice."

¹⁹² Saunders, *Rape and Ravishment*, 139–141. References Roger of Wendover's *Chronica, sive Flores Historiarum*, which recounts the self-mutilation of the nuns of Collingham.

¹⁹³ Horner, "The Language of Rape in Old English Literature and Law," 179–180.

¹⁹⁴ Schulenburg, "The Heroics of Virginity," 34. Reference St. Jerome, *Commentariorum in Jonam Prophetam Liber Unus*, P.L. 25: 1129. "Unde et in persecutionibus non licet propria perire manu, abque eo ubi castitas periclitatur."

¹⁹⁵ Schulenburg, "The Heroics of Virginity," 34. References St. Ambrose, *Concerning Virgins in St. Ambrose: Select Works and Letters, A Select Library of Nicene and Post-Nicene Fathers of the Christian Church (Second Series)*, eds. Philip Schaff and Henry Wace (New York: The Christian Literature Company, 1896) 10: 386–387.

Augustine's text blurs the distinction between the rape, abduction, and marriage of the Sabine women by the Romans.¹⁹⁶ By referring to *de raptu Sabinarum*, "the rape of the Sabine women," Augustine initially makes it clear that *non a parentibus accipi, sed vi...auferri*, "without the consent of [the women's] parents, but with force [the Sabine women] [are] taken away."¹⁹⁷ Augustine then leaves the figurative space for a just war when *ibi Mars filium suum pugnantem iuaret ut coniugiorum negatorum armis ulcisceretur iniuriam, et eo modo ad feminas quas voluerat perveniret*, translated as "in that case Mars might have helped his son in a struggle to avenge with arms the wrong done to him when alliance in marriage was refused, and to attain in this way the women that he had chosen."¹⁹⁸ Augustine even suggests that in war, the booty rightfully belonging to the victors can include the women of the land conquered.¹⁹⁹ Furthermore, Augustine discusses the difficulties of proving mental non-consent to rape when, perhaps unwillingly, the woman's body may enjoy the rape:

Sed quia non solum quod ad dolorem, verum etiam quod ad libidinem pertinet, in corpore alieno perpetrari potest, quidquid tale factum fuerit, etsi retentam constantissimo animo pudicitiam non excutit tamen pudorem incutit, ne credatur factum cum mentis etiam voluntate, quod fieri fortasse sine carnis aliqui voluptate non potuit.

[Not only what concerns pain, but also lust that can be inflicted on another's body [by force], whatever that deed might have been, although it does not thrust out modesty [virtue] that is to be retained through the most steadfast mind, but [it] thrusts in shame, shame for fear that the mind too may be thought to have consented to an act that could perhaps not have taken place without some carnal pleasure.]²⁰⁰

¹⁹⁶ Diane Wolfthal, *Images of Rape: The "Heroic" Tradition and Its Alternatives* (Cambridge: Cambridge University Press, 1999), 36.

¹⁹⁷ Saint Augustine, *The City of God Against the Pagans*, vol. I, ed. and trans. by George E. McCracken (Cambridge: Harvard University Press, 1981), Book II, c. XVII, 196–197. Translation is my own.

¹⁹⁸ Augustine, *The City of God*, Book II, c. XVII, 198–199. Translation from McCracken.

¹⁹⁹ Augustine, *The City of God Against*, Book II, c. XVII, 198–199: *Aliquo enim fortasse iure bello iniuste negatas iuste victor auferret*, translated by McCracken as "For perhaps some law of war might have justified in taking away women who had been unjustly refused."

²⁰⁰ Augustine, *The City of God*, Book I. c.XVI, 76–77. Translation adapted from McCracken.

Here, Augustine seems to imply that most victims of rape will feel shame because they will have some physical pleasure from the assault. Yet Augustine is explicit in stating that *si autem animi bonum est, etiam oppresso corpore non amittitur*, “if, however, morality [goodness] is of the soul, it is not lost even by the oppressed body.”²⁰¹ This *animi bonum*, good of the soul, appears in opposition to *pudorem*, the shame from the physical pleasure. Augustine thus concludes that through rape women can become more holy, only if their mental state is non-consenting:²⁰² *nec ipsi corpori aufert sanctitatem violentia libidinis alienae, quam servat perseverantia continentiae sua*, “nor does the violent lust of another take away the purity of the very body [which] is maintained by the steadfastness of restraining one’s passions and desires.”²⁰³

Augustine’s writing was extremely controversial to later lawmakers as to them, the bodily consent was considered paramount. Even if the mind did not consent, the woman was still culpable. Here however, Augustine was expressing a sort of sympathy for women raped of their virginity and allowing them entrance into the heavenly kingdom, so long as they maintained a mental non-consent to the rape. Augustine describes the constructed legal identity of the reluctant, but willing accomplice, in that the physical pleasure derived from the rape could lead some women to consent even though they may have initially resisted. This dogma had devastating consequences in the legal trials of rape appeals, where men of law who knew the teachings of the Church Fathers, viewed women suspiciously as lustful creatures and who may have physically enjoyed their rape.

²⁰¹ Augustine, *The City of God*, Book I. c.XVIII, 80–81. Translation is my own.

²⁰² Edwards, *The Afterlives of Rape in Medieval English Literature*, 1, 5.

²⁰³ Augustine, *The City of God*, Book I. c.XVIII, 80–81. I used Lewis and Short, *A Latin Dictionary*, “*continentia*,” article 1b: “a bridging, restraining of one’s passions and desires, abstemiousness, continence, temperance, moderation.”

Stories from the Old Testament promoted patriarchal notions of female subordination which in turn were used to justify the limited legal recourse available to women.²⁰⁴ The tale of the Levite's wife, from the Old Testament (Judges 19–21), is a graphic rape narrative which is illustrated in the Morgan Picture Bible, originating in Paris between 1240 and 1255.²⁰⁵ The gang-rape that the Levite's wife endures is depicted by illuminations (see figure 1 below); she is murdered in the process of her rape and her body, separated into twelve pieces, symbolises Israel.²⁰⁶ The displacement of the rape as a metaphor for the tribes of Israel and their struggle was intentional. The rape was intended to represent the struggle of man and the rape is the impetus for justified male violence. By centring the texts back on to the literal threat of rape to the female subject, we can appreciate the frequency with which threatened rape was used as a literary trope and the normality of threatened rape in medieval culture.²⁰⁷

The previously mentioned expectations of bodily proof of rape in England's secular *raptus* laws, and the constructed legal identity of a victim, are evident in the Morgan Picture Bible's depiction of the Levite's wife. Shown in the upper right image of folio 16r, her hair is neatly tucked and braided. This is a drastic difference to the disheveled loose tangles of hair down to her waist, in the bottom two images of that same folio, which depict her rape and murder.²⁰⁸

²⁰⁴ Cannon, "The Rights of Medieval English Women: Crime and the Issue of Representation," 159.

²⁰⁵ Wolfthal, *Images of Rape*, 37–38. References MS. M.638, Morgan Library, New York.

²⁰⁶ Wolfthal, *Images of Rape*, 37–38. MS. M.638, Morgan Library, New York, ff. 15v–16v.

²⁰⁷ Horner, "The Language of Rape in Old English Literature and Law," 181.

²⁰⁸ Wolfthal, *Images of Rape*, 41, 43.



Figure 1: Rape of the Levite's Wife. "Old Testament Miniatures, Picture Bible," Pierpont Morgan Library Manuscript MS. M.638, ff. 16r. Medieval and Renaissance Manuscripts (MRMSS) B1 369 C MS M.0638. New York, The Morgan Library and Museum.
<http://ica.themorgan.org/manuscript/page/31/158530>

Despite the Morgan Picture Bible being a continental text, there appears to be a prolific expectation for women to have physical proof of rape is apparent in her dishevelled appearance. Further, her death ensures the status of victimhood like the narratives of the virgin martyrs. An English example can be taken from the story of Potiphar's wife, Genesis 39, included with illuminations in The Queen Mary Psalter, dating from the fourteenth century (see figure 2

below).²⁰⁹ Potiphar's wife attempts to seduce Joseph, but he refuses her advances and consequently, enraged, she fakes her own rape by him. The illuminations in the psalter are nearly identical to the Morgan Picture Bible, in that the fake rape includes all the same elements of victimhood, that is the loose hair down to her waist, and her tattered clothing.²¹⁰



Figure 2: Potiphar's Wife Seduces Jacob. "The Queen Mary Psalter, ca. 1310–1320." BL MS Royal 2. B.VII, fol. 16r. London, British Library. © British Library Board. http://www.bl.uk/manuscripts/Viewer.aspx?ref=royal_ms_2_b_vii_f016r

Overlooked by previous scholars, in representing her as the victim, I believe that the biblical narrative is reiterating *Bracton*-era legal proof of rape in the secular courts. As a didactic narrative, the tale of Potiphar's wife and the accompanying illuminations demonstrate a connection between ecclesiastical doctrine and secular legal proof of the crime that has not yet

²⁰⁹ Wolfthal, *Images of Rape*, 163 – 164. References London, British Library, BL MS Royal 2. B.VII, fol. 16r.

²¹⁰ Wolfthal, *Images of Rape*, 170–171.

been noted by medievalists. My research suggests that, far from competing jurisdictions, the misogynistic doctrine of ecclesiastical and secular authorities had a common assumption about rape victims. There is a shared scepticism in claims of rape, made maliciously by women who are inherently lustful, which is not only a secular legal disbelief but evidently a biblical one as well.²¹¹ As will be discussed in the following chapters, the lustful nature of women is also profusely retold in romance.

Evidently church teachings, such as biblical stories and hagiography, worked together with secular didactic texts, such as romance and conduct literature, to monitor female behaviour.²¹² The silent and submissive woman ensured the stability of the gender hierarchy and simultaneously disadvantaged women in the legal court systems. The hagiographic literature, constructing passivity as equivalent to femininity, was attempting to educate women in order to influence their behaviour²¹³ and it was (as feminist scholars have repeatedly demonstrated) part of the intentional subordination of women.²¹⁴ The woman who is silent and patiently endures suffering is idealised in hagiographic texts and church doctrine at large.²¹⁵ Whether or not these texts succeeded in manipulating the actions of the audience is not crucial to this research,²¹⁶ but rather the importance is on the holistic approach by secular and ecclesiastical authorities to insist on female submission. The church was aided by biological assumptions about female anatomy,

²¹¹ Wolfthal, *Images of Rape*, 173, 179.

²¹² In Kane's analysis of Chaucer's *The Wife of Bath*, he argues that the Wife complained of "clerical authority over written narrative about women, as well as the extent to which men dictated the contemporary cultural memory of women in formal histories." See Kane, *Popular Memory and Gender in Medieval England*, 57.

²¹³ French, *The Good Women of the Parish*, 221.

²¹⁴ Gravdal, *Ravishing Maidens*, 21.

²¹⁵ Sanok, *Her Life Historical*, 26; Christine Owens, "Noblewomen and Political Activity," in *Women in Medieval Western European Culture*, ed. Linda E. Mitchell, Garland Reference Library of the Humanities 2007 (New York and London: Garland, 1999), 209–210.

²¹⁶ Ward, *Women of the English Nobility and Gentry*, 5–6.

dating back to Aristotle and Galen.²¹⁷ The menstruating body was proof of the original sin and the inferiority of the female anatomy was believed to have reflected and justified the inferiority of the social woman.²¹⁸ This will be discussed more in chapter 5 on pregnancy and medicine, but for now it is important to note that church doctrine was congruent with contemporary medical and scientific beliefs on inherent female passivity and sin.

With the growth of lay literacy throughout the fourteenth century, there is increasing evidence, from women's wills, that laywomen owned and gifted hagiographic texts to other women. This suggests that these narratives were popular among the gentry class of women.²¹⁹ The role model of feminine passivity was useful to the patriarchal institution of the church, as well as for moderating female public behaviour which was a direct reflection of the male head of the household. It is also worthy to note that female saints' bodies became embedded in notions of the sovereignty of the kingdom, as the preservation of the virginal body was increasingly entangled with preservation of English sovereignty.²²⁰ This, as will be discussed more in the following chapter, is also frequently a trope in romance. In looking at late-fourteenth-century defamation cases from the canon court of York, Bronach Kane argues that the gender roles, specifically relating to sexual morality, heavily influenced the individuals' reputation for both

²¹⁷ Elspeth Whitney, "Witches, Saints and Other "Others": Women and Deviance in Medieval Culture," in *Women in Medieval Western European Culture*, ed. Linda E. Mitchell, Garland Reference Library of the Humanities 2007 (New York and London: Garland, 1999), 304.

²¹⁸ Whitney, "Witches, Saints and Other "Others," 308.

²¹⁹ Ward, *Women of the English Nobility and Gentry*, 191–195.

²²⁰ Sanok, *Her Life Historical*, 89–91, 116; see also Andrea Rossi-Reder, "Embodying Christ, Embodying Nation: AElfric's Accounts of Saint Agatha and Lucy," in *Sex and Sexuality in Anglo-Saxon England: Essays in Memory of Daniel Gillmore Calder*, eds. Carol Braun Pasternack and Lisa M.C. Weston (Tempe: Arizona Center for Medieval and Renaissance Studies, 2004), 183–202. See also, Roberta Gilchrist, *Gender and Archaeology: Contesting the Past* (London; New York: Routledge, 1999), particularly chapter 6 "The Contested Garden: Gender, Space and Metaphor in the Medieval English Castle." Gilchrist argues that "in romance the female body" was associated "with the land and the queen came to symbolise the integrity of the kingdom" (pp. 139).

men and women in church courts.²²¹ Thus, while this research is focused on the feminine gender expectations, there is the reciprocal masculine gender expectations which worked simultaneously to disadvantage some men. Sexual honour and social status were not exclusively feminine issues, but men too were held to a normative gendered expectation that centred on the patriarchal framework of “expected” behaviour.²²² It is worth noting that, although this discussion has since been devoted to the feminine experience, status, gender, and sexuality were integral to the identity and reputation of both men and women in medieval European culture. What is highly indicative of patriarchal control of medieval England, is that the male “honour and household reputation ...depended upon the preservation of female chastity” which is evident, according to Kane, from the slander that was used against men in defamation cases heard in the canon courts of York.²²³ However, the sexual honour of women, and consequently the slander used against them, was highly dependent on the dichotomy of the wife or the whore, Mary or Eve. Blame was often placed onto women for tempting men into sexual sin,²²⁴ and thus even the sexual dishonour of men could, and frequently did, turn back onto women as temptresses. The passive gender expectation of women severely disadvantaged them when trying to appeal *raptus* in secular courts, as women were expected to resist which went counter to all the other teachings of passivity.

²²¹ Bronach Kane, “Defamation, Gender and Hierarchy in Late Medieval Yorkshire,” *Social History* Vol. 43, No.3 (2018): 356; Kane and Williamson, “Introduction,” 12.

²²² Kane, “Defamation, Gender and Hierarchy in Late Medieval Yorkshire,” 358.

²²³ Kane, “Defamation, Gender and Hierarchy in Late Medieval Yorkshire,” 366, 368, 373.

²²⁴ Karras, *Unmarriages*, 139.

Separation

Hegemonic gender expectations further disadvantaged women when seeking marital separations in ecclesiastical courts, as wives ought to be obedient and were expected to be physically punished when they were not. There were numerous ways to obtain an annulment of marriage or separation through the medieval church, such as claiming marriage within the prohibited degrees of consanguinity or affinity, the lack of marital consummation, impotency, the marriage between non-Christians or the forced consent of an individual.²²⁵ Despite the fact that early ecclesiastics stated that rape was a form of adultery and thus grounds for separation, Gratian discredited this statement in *causa* XXXII question five, where he states that the raped woman is not an adulterer and thus there is no grounds for separation.²²⁶

When looking at marital crimes of sexual violence and abuse, it is apparent that medieval society viewed such crimes differently than we do today.²²⁷ Even though the medieval church did not grant divorce per se, they did allow married couples to live separately, as Butler explains “*a mensa et thoro* (from table and bed), if there was spousal abuse, cruelty, or repeated adultery.”²²⁸ Although the couple could live separately, they were still legally married and thus, the interpretation of marital abuse in the eyes of canon courts was that of a crime that was both cruel and unacceptable, but not grounds for divorce. These separated couples were thought, by the church, to be living in danger of committing greater sins, such as adultery or prostitution, and consequently the church frequently attempted to reunite these separated couples.²²⁹ According to Butler, there was a gendered difference in marital court records, as “men [were] more likely to

²²⁵ McCarthy, *Marriage in Medieval England*, 139–141; Buttler, *Language of Abuse*, 68; Ward, *Women of the English Nobility and Gentry*, 47; Brundage, *Law, Sex and Christian Society in Medieval Europe*, 243.

²²⁶ Brundage, *Law, Sex and Christian Society in Medieval Europe*, 244; *Decretum Gratiani*, C.32, q.5, 808–811.

²²⁷ Butler, *Language of Abuse*, 2–3.

²²⁸ Butler, *Language of Abuse*, 14.

²²⁹ Butler, *Language of Abuse*, 121–122.

dissolve a marriage and women [were] more likely to try and restore it.”²³⁰ In trying to restore such couples where physical and sexual abuse was occurring, the canon authorities not only forced the husband to accept the wife into his home, through penance and fear of amercement, but also required the conjugal debt between husband and wife to be paid.²³¹ The church interference into dysfunctional marriages went far beyond the reach of the secular courts.

Physical Abuse

In medieval England, it was legally permitted for a husband to hit his wife, as Butler found a writ which states that the husband “himself will well and honorably manage and govern [his wife] stated before,”²³² and that he ought “to do no injury or ill to her body other than that permitted lawfully and reasonably to a husband for the purpose of control and punishment of his wife.”²³³ Due to the fact that a husband was liable, financially and legally, for his wife’s behaviour, there was a strong societal obligation for men to ensure the proper, obedient conduct of their spouses.²³⁴ Pollock and Maitland claim that the secular courts intervened into marital abuse only in a very limited capacity, specifically when the husband “killed or maimed” his wife.²³⁵ There is an association between the assumed masculine gender identity and the husband’s legal right to hit his wife for punishment and obedience.²³⁶ In both the secular and

²³⁰ Butler, *Language of Abuse*, 125.

²³¹ Butler, *Language of Abuse*, 126.

²³² Butler, *Language of Abuse*, 31. Butler cites Frederick Pollock and Frederic William Maitland, *The History of English Law before the time of Edward I*, ed. 2, (2 vols., Cambridge: Cambridge University Press, 1968), 2:436. Pollock and Maitland cite (under Note 1): “Reg. Brev. Orig. f. 89. The husband’s duty is thus expressed, ‘*quod ipse praefatam A bene et honeste tractabit et gubernabit, ac damnum vel malum aliquod eidem A de corpore suo, aliter quam ad virum suum ex causa regiminis et castigationis uxoris suae licite et rationabiliter pertinent...*’. The Norman Somma, p. 246, says that a husband may not put out his wife’s eye nor break her arm, for that would not be correction.” Translation of “*quod ipse praefatam A bene et honeste tractabit et gubernabit*” is my own.

²³³ Butler, *Language of Abuse*, 31. Translation of “*ac damnum vel malum aliquod eidem A de corpore suo, aliter quam ad virum suum ex causa regiminis et castigationis uxoris suae licite et rationabiliter pertinent*” from Butler.

²³⁴ Butler, *Language of Abuse*, 31–32.

²³⁵ Pollock and Maitland, *The History of English Law*, vol. 2, 436.

²³⁶ Davis, *Fiction in the Archives*, 81.

ecclesiastical courts a husband was permitted to physically dominate his wife, and as stated in Gratian's *Decretum*, physical violence could be used when all other methods have been exhausted, primarily confinement and physical restraints and that such methods only be used to correct behaviour.²³⁷ In what Butler has describes as a contemporary belief that "violence was integral to manliness," medieval masculine gender identity expression was grounded in violence and fighting, along with reproduction. It is important to note that rape includes both of these masculine gender identity expressions, which were celebrated when done "appropriately."²³⁸ It was within the judgment of "good" men to apply reasonable force as a corrective measure in running a good household and thus, the physical male domination over the female body is bound to notions of male honour.²³⁹ If the physical corrective measures went beyond "reasonable," then the courts would be called on to intervene, often ensuring family and community policing of the couple. Thus, like wives, husbands too had to balance on a thin line, between applying appropriate honourable correction of immoral behaviour and crossing over into excessive and dishonourable violence.²⁴⁰ The appropriate measure of force acceptable to be used against their wives was left undefined; however, ecclesiastical courts worked to ensure that extreme cases of excessive force were punished.²⁴¹ Consequently, the cases under study here are likely the most extreme cases of husband brutality which made it to one of the top church courts in England, the court of York.

The case records of spousal abuse employed formulaic rhetoric to ensure that the courts viewed the women as passive and obedient wives suffering at the hands of their husbands.²⁴²

²³⁷ Butler, *Language of Abuse*, 36.

²³⁸ Butler, *Language of abuse*, 38–39.

²³⁹ Butler, *Language of Abuse*, 258–259.

²⁴⁰ Butler, *Language of Abuse*, 262–263.

²⁴¹ Butler, *Language of Abuse*, 42, 48, 65.

²⁴² Butler, *Language of Abuse*, 53.

Similarly to the community policing through presentment and trial jurors in the secular courts, there were familial obligations in controlling spousal abuse and violence in church courts.²⁴³ Family members could be liable for ensuring the harmony between feuding couples. Butler examined hundreds of canon court records from York and Canterbury and concluded that the stock phrase “she did not dare to live with her husband out of fear for her life” ensured the victim status of the wife and allowed church courts to prescribe punitive reconciliation between the estranged husband and wife.²⁴⁴ In forcing the abusive couple to live under the same roof once again, church courts also enlisted the help of community policing, public penance, oaths of good behaviour and financial penalties if such behaviour was not upheld.²⁴⁵ The amount of money fined as punishment, if relapses in abusive behaviour occurred, was dependent on the socio-economic status of the couple but generally the church opted to keep couples together and reform behaviour rather than grant annulments and separation.²⁴⁶

Since husband and wife were considered one flesh through matrimony, there was considerable difficulty for a wife to bring a suit against her husband to court, yet spousal abuse was one such allowable suit. There are substantial gendered assumptions within the laws themselves, as is evident in spousal homicide. When a husband killed his wife, it was treated in the king’s court as a felony homicide. However, as mandated by royal statute of Edward III in 1352, “when a Servant slayeth his Master, or a Wife her Husband,” it was considered the killing of a social superior by an inferior, and it was thus ruled as petty treason.²⁴⁷ The punitive

²⁴³ Butler, *Language of Abuse*, 71.

²⁴⁴ Butler, *Language of Abuse*, 75–76.

²⁴⁵ Butler, *Language of Abuse*, 77.

²⁴⁶ Butler, *Language of abuse*, 81.

²⁴⁷ Butler, *Language of Abuse*, 87. References 1352 statute of treason 25 Edward III st. 5, c. 2.; for a translation of the statute, see *The Statutes of the Realm*, vol.1, (London: Dawsons of Pall Mall, 1963), 25 Edw. III. Stat. 5. c. 2., 320. <https://babel.hathitrust.org/cgi/pt?id=pst.000017915496&view=1up&seq=513> see also Janet Loengard, “Common Law for Margery: Separate but Not Equal,” 128.

measures for petty and high treason for women were identical, that is that they were burned, unlike men who were prescribed different punishments for petty and high treason. This is highly suggestive, as argued by Sara Butler, that a wife killing her husband was an affront against the secular social hierarchy and the moral gender hierarchy.²⁴⁸

In explaining how the York courts worked in practice, Butler highlights a case where excessive physical abuse did not lead to separation. Margery Devoine was physically abused by her husband, Richard Scot, repeatedly as eight years prior to this instance in 1349, he hit her so hard with a staff that her eye fell out of its socket.²⁴⁹ Richard refused to allow Margery to receive medical assistance, so she escaped her husband and went to see the doctor herself. The incident that led to Margery and Richard in court in 1349 is left unrecorded, however a witness on behalf of Richard claims that “it was his right to beat his wife,” while Margery’s witness argues that Richard was an adulterer with numerous children.²⁵⁰ The “legal fictions,” to borrow Butler’s term, is evident in the standardised phrases of physical abuse and the fear of coming home, as well as the inclusion of adultery and illegitimate children to ensure a separation. The standard rhetoric in the indictments, such as the crime taking place *nocte*, “at night,” shows not only a development in the ecclesiastical legal profession, but also the steps in formulating a believable case.²⁵¹

The addition of adultery works to demonstrate that the defendant was morally corrupt in various aspects of his life, and thus aided in Margery’s allegations of abuse.²⁵² By combining

²⁴⁸ Butler, *Language of Abuse*, 88.

²⁴⁹ Butler, *Language of Abuse*, 136–140. References York Cause Papers for the 14th century, preserved at the Borthwick Institute YBI CP. E.257. <https://www.dhi.ac.uk/causepapers/causepaper.jsp?id=91638>

²⁵⁰ Butler, *Language of Abuse*, 138. References York Cause Papers, Borthwick Institute YBI CP. E 257/2.

²⁵¹ Dunn, *Stolen Women in Medieval England*, 66–67; Butler, *Language of Abuse*, 208–209. References John G. Bellamy, *Criminal Trial in later Medieval England: Felony before the courts from Edward I to the Sixteenth Century* (Toronto: University of Toronto Press, 1998).

²⁵² Butler, *Language of Abuse*, 138.

abuse and adultery, the records implicitly suggest that neither one of them was strong enough grounds for separation alone.²⁵³ Although we do not know how the court ruled, this case sheds light on the acceptance of a certain level of physical violence between married couples in the ecclesiastical court. This suggests that Caroline Dunn is correct in stating that the church courts did little in protecting women against physical abuse, and therefore voluntary abduction was an attractive alternative to the church courts.²⁵⁴

The ultimate goal of ecclesiastical courts was to uphold the marital vows and keep couples together, which often resulted in sending abused women back into the homes of their abusers, and thus “perpetuating, rather than resolving marital violence.”²⁵⁵ Adultery cases were frequently brought to the courts of York and Canterbury.²⁵⁶ As seen with the case of Margery Devoine above, adultery claims are often made in conjunction with other accusations. The similarities between the claims of physical abuse and rape are worth noting, as Butler argues the gender hierarchy was influencing both crimes as “both involve masculine power over the female body; there was a thin line [where] women who defended themselves could cross from self-defence to petty treason.”²⁵⁷ The gendered division of physical domination, that is the male body physically dominating (whether sexually and/or physically abusively) the female body, provides insight into the ecclesiastical courts’ perspectives on gendered crimes of the female body. The passivity required of the female victim, to endure violence without any defence in order to avoid petty treason, was a legal necessity in ecclesiastical courts of spousal abuse. To be the innocent victim, women in church court records are passive, literally written as the direct object of the

²⁵³ Butler, *Language of Abuse*, 140.

²⁵⁴ Dunn, *Stolen Women in Medieval England*, 155.

²⁵⁵ Butler, *Language of Abuse*, 99, 130.

²⁵⁶ Butler, *Language of Abuse*, 99–100.

²⁵⁷ Butler, *Language of Abuse*, 172.

husbands' actions using the accusative case in Latin.²⁵⁸ The legal requirement of female passivity in canon courts is part of a reciprocal relationship with medieval England's expected feminine gender identity expression of the silent and enduring woman. This stock figure is a frequent trope in Middle English romance and saints' lives, as well as legal court records.

Marital Rape

Rape as a sexual crime was uniquely both criminal and sinful.²⁵⁹ As stated in Genesis and reiterated in legal treatises, upon marital vows and consummation a man and a woman are *duo in carne una*, "two in one flesh."²⁶⁰ The one flesh of the husband and the wife concept further worked to the disadvantage of women claiming rape by their husbands. Bluntly, in canon and secular courts, marital rape was a non-existent crime in medieval England, as a single flesh could not rape itself. Nor with the conjugal debt, owed mutually by both spouses,²⁶¹ should there be a refusal of intercourse between a husband and wife.²⁶² The sexual debt, although owed by both husband and wife, was only required to be stated in the marriage vow of the bride.²⁶³ Butler found a unique case of marital rape from the ecclesiastical court of York from 1298–1299, that of John and Agatha le Cupper.²⁶⁴ Agatha claimed that she was raped by her husband John and she was seeking a separation. Agatha included in her claim *Johannem de adulterio*, that "John was an adulterer," and *eandem Agatham ad domum suam adduxit invitam et ipsam eadem nocte secum jacentem volentem et consencientem carnaliter cognovit*, that "he [John] abducted the

²⁵⁸ Butler, *Language of Abuse*, 172–173.

²⁵⁹ Dunn, *Stolen Women in Medieval England*, 3.

²⁶⁰ Genesis 2:24; Brooke, *The Medieval Idea of Marriage*, 41–42.

²⁶¹ Kane, *Popular Memory and Gender in Medieval England*, 49.

²⁶² Dunn, *Stolen Women in Medieval England*, 59.

²⁶³ McCarthy, *Marriage in Medieval England*, 114.

²⁶⁴ Butler, *Language of Abuse*, 127–128.

very same Agatha against her will [*invitam*]²⁶⁵ to his house and at the same at night, knew the same [Agatha] carnally, she lying with him voluntarily and consenting.”²⁶⁶ Agatha won the sympathy of the courts for enduring a *violenta abduccione*, a “violent abduction,” and they ordered John to make satisfaction of *20li vel quod per x dies circa forum Nottinghamie fustigaretur*, “either pay 20li or be flogged for ten days around the market of Nottingham.” With *amicis intervenientibus*, “the intervention of friends,” Agatha was ordered to *reconciliavit*, “reconcile” with her estranged husband. John was *sub pena xli...vel fustigacionis per quinque dies circa forum predictum, quod ipsam [de]cetero in omnibus maritali affeccione debite et honorifice pertractabit et contra isпам graviter non delinquet*, “under the penalty of 10li...or he could be flogged for 5 days around the aforementioned market, if he does treat Agatha henceforth in all the matrimonial affection and respect, and not greatly committing an offence against her.” The intervention of their friends and family, to ensure that the couple continued to live in matrimony, was typical of canon courts.

The court of York did not view this as a case of marital rape, but rather of abduction, since agreeing to marriage (and consent was absolutely deemed necessary to matrimony) it inherently meant agreeing to sexual intercourse with one’s spouse.²⁶⁷ As stated by James Brundage, “the traditional doctrine that marriage entails virtually unlimited rights to the sexual services of the spouse and that those rights cannot be revoked so long as the marriage endures underlines and justifies what we now call spousal rape.”²⁶⁸

²⁶⁵ Translation is my own. Lewis and Short, *A Latin Dictionary*, “Invitus, a, um *adj.* Article 1: against one’s will, unwilling, reluctant.”

²⁶⁶ William Brown, *The Registers of John le Romeyn, Lord Archbishop of York, 1286–1296, Part II, and of Henry of Newark, Lord Archbishop of York, 1296–1299* (Durham: Andrews & Co., 1917) 1. nos. 254, 279–80. Translations are my own.

²⁶⁷ Butler, *Language of Abuse*, 127; Brundage, *Law Sex and Christian Society*, 70.

²⁶⁸ James A. Brundage, “Implied Consent to Intercourse,” in *Consent and Coercion to Sex and Marriage in Ancient and Medieval Societies*, ed. Angeliki E. Laiou (Washington: Dumbarton Oaks, 1993), 245–256, quote from pp. 255.

Concluding Thoughts on the Ecclesiastical Perspectives

The intention of this chapter was to illustrate the pervasive rape culture of medieval England from the ecclesiastical perspective. Theological debates about the sanctity or elevated holiness of rape survivors provides a nuanced interpretation of the differences between mental and physical consent which is entirely ignored in secular *raptus* laws. However, this theoretical debate had little impact on the canon courts' interpretations of sexual crimes against women, as mental consent was necessary for willingly enduring one's suffering, but the same mental consent also equated corruption of the chastity of the mind. The no-win situation for rape survivors in canon courts and ecclesiastical doctrine is indicative of medieval England's conflicting societal attitudes towards rape survivors in general. Hagiographic texts, biblical stories, conduct literature, and canon law codes ensured that, even though women may be threatened with sexual violence, they were expected to resist yet also be passive and subordinate. The conflicting expectations entangled women in difficult positions when bringing suits of sexual violence forward in canon courts. The church views on women as descendants of Eve, that is manipulative sexual temptresses, ensured that women claiming rape were potentially distrusted as being seductresses.²⁶⁹ The biblical story of Potiphar's wife enshrined male disbelief of malicious rape claims, similarly to the secular courts fear of the jealous woman's false accusations. This suggests that medieval English legal culture retained a distrust of women's rape and/or abduction claims.²⁷⁰ In trying to rationalise the thought of women as inherently sexual, due to their anatomy and supported in church doctrine, canonists struggled with the

²⁶⁹ Wolfthal, *Images of Rape*, 126.

²⁷⁰ Prevenier, "Violence Against Women in Fifteenth-Century France and the Burgundian State," 190.

concept of women being victims of sexual crimes. As stated by Ellen Rooney, “if all feminine behaviour can be read as seductive, women cannot avoid complicity.”²⁷¹ The following chapter will fully explore the physicality of (non)consent and discuss the constructed legal identities before moving into romance narratives to further demonstrate the legal realities embedded within these presumed fictional tales.

²⁷¹ Ellen Rooney, “Criticism and the Subject of Sexual Violence,” *Modern Language Notes* XCVIII (1983): 1275.

Chapter 5:

The Third Identity

Despite current preferences for the use of the term “survivors” of sexual violence, the medieval courts consistently viewed women who endured ravishment as being either culpable or victimised. Consequently, despite the use of survivor narratives in modern culture, to counter the passivity of victimisation,¹ the following chapter will use the language of the medieval courts. Survivor narratives were applied only to medieval women who endured the most brutal of attacks and put up the greatest resistance, and these women were viewed by the courts as true victims. The binary legal identities that raped women could have, as constructed and viewed by the medieval courts, were that of the truly innocent victim or the blameworthy and culpable woman. These two identities were created and upheld throughout all five legal ages of *raptus* laws, from *Glanvill* to the Statute of Rapes, as well as in ecclesiastical doctrine such as Gratian’s *Decretum*. Although the third identity is not explicitly stated in the secular laws, this chapter will demonstrate that there is a third legal identity, which held real legal repercussions and therefore deserves further attention. This third legal identity that a woman could occupy is that of the reluctant, but willing, accomplice to her own rape. The phrase “reluctant, but willing, accomplice” is inspired by James Brundage, who states that the laws viewed women who did not put up enough resistance to their rape as “an accomplice, even if a reluctant one.”² However, I believe that this concept more accurately describes how the courts viewed women who became pregnant because of their rape. I am proposing that there is a third identity, constructed by the courts, which women could occupy. That is, a woman who conceived because of her rape was

¹ Christine Owens, “Noblewomen and Political Activity,” in *Women in Medieval Western European Culture*, ed. Linda E. Mitchell, Garland Reference Library of the Humanities 2007 (New York and London: Garland, 1999), 212.

² Brundage, *Law, Sex and Christian Society in Medieval Europe*, 107.

considered neither entirely a true victim, nor entirely a scheming malicious woman. The duality of mental and physical consent is considered by the courts to be apparent in these pregnant rape victims. With this in-between, middle category, the entire spectrum of legal identities that women could inhabit in the secular courts of medieval England is complete.

The authors of various legal treatises throughout the twelfth and thirteenth centuries wrote about the legal implications of pregnancy from rape, based on the leading and accepted medical view of conception. As previously mentioned, the late thirteenth-century legal treatise known as *Britton*, as the authorship is attributed to John le Breton (d.1275) the bishop of Hereford and justice of the King's Bench,³ was extremely popular in medieval English legal circles. The treatise claims to have been commissioned by King Edward I and a manuscript of *Britton*, dating from c.1305, is held at the British Library, London, (BL Harley 324).⁴ Written in French, *Britton* is the first legal treatise in England not to be composed in the language of the church, but rather the language of the royal court.⁵ With *Britton*'s affiliation with the court of Edward I, the treatise holds legal significance, despite its novel inclusion of conception through *raptus*, which is not evident in the contemporary Statute of Westminster I or II. The treatise states explicitly what happens if a woman, who is also pregnant, appeals a man of rape:

en dreit de apel de rap, voloms, qe chescune femme, pucele ou autre, eyt sa accioun a sure la venjaunce de la felonie par apel en Countee de eynz xl. jours; apres quel tens ele perd sa sute; en quel cas si le defendaunt graunte le fet, et die qe ele conceust de ly enfaunt en mesme le tens, et ceo puse averreer, voloms nouns qe en ceo cas ne soit nule felonie ajugé, pur ceo qe nule femme ne peut conceyvre, si ele ne assente.

[With regard to an appeal of rape, our pleasure is, that every woman, whether virgin or not, shall have a right to sue vengeance for the felony by appeal in the county court

³ Alan Harding, "Breton [Bretun], John le [John Brito]," in *Oxford Dictionary of National Biography* (2004), accessed from <https://doi-org.qe2a-proxy.mun.ca/10.1093/ref:odnb/3340>

⁴ BL Harley 324, British Library, London. This manuscript was consulted in person by the author and compared with the text edited and translated by Francis Morgan Nicholas below.

⁵ Harding, "Breton [Bretun], John le [John Brito]."

within forty days, but after that time she shall lose her suit; in which case, if the defendant confesses the fact, but says that the woman at the same time conceived by him, and can prove it, then our will is, that it be adjudged no felony because no woman can conceive if she does not consent.]]⁶

Britton leaves nothing ambiguous about the legal implications of pregnancy from rape, by equating it to the woman's consent. Conception, according to *Britton*, automatically eliminated any possibility of a felony charge for rape, as conception legally implied consent of the flesh. This notion was further supported by the anonymously authored treatise *Mirror of Justices* (c.1290s),⁷ in which it states that a woman's consent is evident by either a resulting pregnancy, "that she conceived a child by him at the same hour" as the rape, or by lack of signs of violence, such as "no torn clothes, bloodshed, hue and cry, or other evidence of violence."⁸ Here the connection between physical bodily proof and non-consent is made explicit and for the first time the association with pregnancy, as part of this bodily proof, is mentioned. Moreover, the *Mirror of Justices* claims that a woman lacking those tokens of resistance, or if she is pregnant, must have consented to the attack. The distinction between physical and mental consent, as previously discussed in Gratian's *Decretum*, is entirely neglected in the treatises of *Britton* and *Mirror of Justices*. Unlike Gratian, these two legal texts show no concern for the woman's mental non-consent. They use the lack of physical injury as proof of culpability, and in turn it is justification for the acquittal of the accused rapist.

⁶ *Britton: The French Text Carefully Revised, with an English Translation. Introduction and Notes*, ed. and trans. Francis Morgan Nichols, 2 vols, (Oxford: 1865; repr. Holmes Beach, FL: W.W. Graunt, 1983), vol. 1, c. XXIV, 114; BL Harley 324, ff. 54, British Library, London; Kittel, "Rape in Thirteenth-Century England," 104. References *Britton*, ed. and trans. Francis Morgan Nichols, 96, and *The Mirror of Justices*, ed. William J. Whittaker, intro. F.W. Maitland, Selden Society 7 (London: B. Quaritch, 1895), 103. Translation from Nichols.

⁷ George Garnett, "'The ould fields': Law and History in the Prefaces to Sir Edward Coke's Reports," *The Journal of Legal History* Vol. 34, No. 3 (2013): 245–284, specifically, 276.

⁸ *The Mirror of Justices*, ch. XXI "De Rap," 103. The French transcription and translation are fully available in Whittaker's edited text. See also Kelly, "Statute of Rapes and Alleged Ravishers of Wives," 385.

These treatises, together with the secular laws, ensured that the burden of proof of non-consent laid exclusively with the woman, and was only verified through the inspection of her body. This point is perhaps being repeated but requires our utmost attention, as scholars thus far have not observed the use of female bodily proof of (non)consent in medieval English *raptus* laws and its implications for real women in the courts. In Figure 3 below, there is a visual representation of the physicality of consent and non-consent and the prescribed visual proof which the secular courts required. Following this, in Figure 4 there is the spectrum of legal identities, which the laws constructed of women, superimposed on the previous figure of physical bodily proof of (non)consent.



Figure 3: The Physicality of Consent and Non-Consent. Image by author.

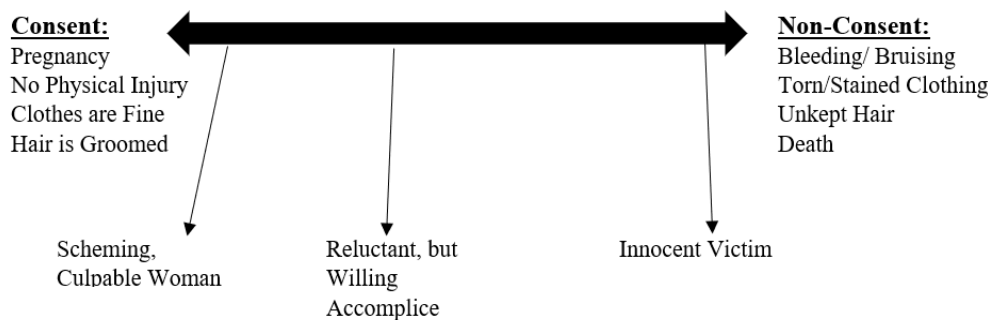


Figure 4: The Spectrum of Constructed Legal Identities. Image by author.

The bodily proof of (non)consent worked to create the legally constructed identities of women who went to court. Therefore, Figure 4 places the three identities on the spectrum according to the degree of physical proof of the crime. These two arguments, that is the physicality of consent and the resulting constructed legal identities, are continually reinforced in the actual court documents and, as it will be shown in chapters 7 and 8, in secular romance narratives. This was a patriarchal campaign of requiring bodily proof of innocence, with no regard for mental non-consent, which encompassed legal doctrine, ecclesiastical texts such as hagiography and canon court rulings, as well as conduct and romance literature. As has already been shown in chapter 3, the court of the general eyre case studies have demonstrated that the secular courts continually judged victimhood based on physical bodily proof. The previously discussed case of Joan from Kent shows the devastating repercussions of women who conceived during rape, as her case was automatically thrown out. Although Hiram Kümper warns that “the idea of pregnancy as generally obviating rape charges should not too readily be applied to the whole medieval period”⁹ the case of Joan from Kent (1313) demonstrates how the court of the general eyre could and did interpret conception as bodily consent.

The mind-body dichotomy of rape victims as discussed in the works of Gratian and Augustine of Hippo has already been highlighted in chapter 4. Theologians insisted on the persistent non-consent of the mind to ensure spiritual purity, despite the corruption to the body from rape. These nuanced interpretations of mental non-consent, as proposed in Augustine’s *The City of God*, are entirely neglected in the secular courts where the proof of rape was interpreted by an examination of the woman’s physical body.

⁹ Hiram Kümper, “Learned Men and Skilful Matrons: Medieval Expertise and the Forensics of Rape in the Middle Ages,” in *Medicine and the Law in the Middle Ages*, eds. Wendy Turner and Sara Butler (Leiden: Brill, 2014), 108.

The three constructed legal identities were entirely based on the physical - visible - proof of the crime. A true victim had to have physical injury; a reluctant but willing accomplice may have had mental non-consent, but her body consented which was evident by pregnancy; and lastly, the laws constructed the identity of the culpable woman who had no physical injuries to show as proof of the rape. Although the secular laws made no explicit mention of resistance, the implications of physical injury suggest a struggle between the two individuals and such struggle would have likely not occurred unless the woman was reluctant to comply to the assault. Thus, even though the laws only state physical injury, we can logically conclude that such injury is the consequence of resistance to the rape, as it denotes a physical altercation of some sort. However, the research suggests that if a woman consented to the rape in fear of her life and was thus compliant to the demands of the rapist and had no physical injury, then she was deemed culpable for her own rape. This legal necessity of physical injury to ensure believability in court worked to sustain the burden of a body of proof that lay entirely on the woman. This body of proof in court was also extended beyond physical injury to include the pregnant body.

Pregnancy and the Rapable Body

The woman's body was inspected for proof of not only non-consent, but also consent through pregnancy. The medical model of conception in medieval England was based on the two-seed theory of conception. This model was supported by William of Conches (tutor to English King Henry II), who wrote in his *Dragmaticon Philosophiae* that:

Conceptio ex uno semine fieri non potest: nisi enim conueniant uiri sperma et feminae, non concipit mulier. Prostitutae igitur, quae pro solo pretio coeunt, nullam delectationem illic habentes, nichil emittunt nec gignunt.

[Conception from one seed is not possible: For unless the sperm of the man and woman meet, the woman does not conceive. Therefore prostitutes, who only have coitus for money, having no pleasure there, they emit nothing, nor do they beget [a child].]¹⁰

Undoubtedly, the lack of safe and available contraceptives¹¹ resulted in female sex workers experiencing unplanned pregnancy. Unfortunately, prevailing medical theory worked against medieval female sex workers as the proof of their pleasure, and thus their consent was evident from their pregnancy. William continues with the two-seed theory in stating that:

Ad memoriam uenit michi quod nuper dixisti, sine semine feminae nichil concipi; quod non est uerisimile. Videmus enim raptas, reclamantes et plorantes uiolentiam passas, concepisse. Vnde apparet illas nullam in illo opera habuisse delectationem. Sed sine delectatione non potest sperma emitti. Etsi raptis in principio opus displicet, in fine tamen ex carnis fragilitate placet. Iterum sunt in homine duae voluntates, ratiocinatio et naturalis, quas saepe in nobis repugnare sentimus: displicet enim saepe rationi quod placet carni. Etsi igitur in rapta non est voluntas rationis, est delectatio carnis. Et quid dubitas sperma matris in conceptu esse, cum videas filios similes matribus nasci infirmitatesque earum contrahere?

[It comes to mind for me that recently you have said, without the female seed nothing can be conceived; but this is not truthful. We see, for instance, in raped women, crying out in protest and deploring having suffered violence, to have conceived. From whence it appears that none of those women in that trouble held pleasure. But without pleasure the seed is not able to be emitted. Even though of rape it is at first displeasing, in the end, however, it is pleasing to the frailty of the flesh. Therefore, there are in a human being two wills, the rational and the natural, which are thought to be incompatible in us: for what is often displeasing to the rational mind is pleasing to the flesh. Therefore, even though there is no will of reason in a raped woman, there is pleasure of the flesh. And why do you doubt there to be the sperm of the

¹⁰ William of Conches, "Dragmaticon Philosophiae," in *Corpus Christianorum Continuatio Mediaevalis* 152 (Turnhout: Brepols, 1997), VI, 8.6, 208. See also, Joan Cadden, *Meanings of Sex Difference in the Middle Ages: Medicine, Science and Culture* (New York: Cambridge University Press, 1993), 93–94. Translation is my own.

¹¹ This is not to say that contraceptives were not known in the Middle Ages. See John M. Riddle, *Contraception and Abortion from the Ancient World to the Renaissance* (Cambridge: Harvard University Press, 1994), specifically chapter 13: "Knowledge of Birth Control in the West."

mother in conception, when you see sons begotten similar to [their] mothers and who are assembled in their weakness.]"¹²

William of Conches provides the twelfth-century philosophical understanding of mental and physical consent as being incompatible in a way that is remarkably similar to the ecclesiastical debates about rape and sanctity. As stated by Danielle Jacquart and Claude Thomasset, scientific and religious thought were interwoven in the Middle Ages as “scientific writing frequently mixes with theology.”¹³ This is emphasised by the medical and theological belief that the female body is inherently more sexual, prone to temptation, and giving into bodily urges.¹⁴ William touches on the difficulty around conception and pleasure, specifically regarding sex workers and rape victims. Joan Cadden describes the fact that pregnancies from rape occur, as a direct challenge to contemporary medical theory that conception cannot occur without pleasure.¹⁵ To harmonise theory and fact, William of Conches influentially claimed that rape survivors who conceived had to have experienced pleasure. However, he is clear that in all instances, despite how much displeasure it is to the mind, the body will only conceive if the body gets pleasure from the act.¹⁶ This acknowledgment of the mental non-consent of female sex workers and rape survivors, but the physical consent of the flesh resulting in pregnancy, is grounded in the contemporary medical understanding of anatomy. Despite the so-called “misogynistic view” of conception,¹⁷ the two-seed theory of conception was logical from a rudimentary understanding of human anatomy

¹² Conches, “*Dragmaticon Philosophiae*,” VI, 8.9–10, 209–210. Translation is my own.

¹³ Danielle Jacquart and Claude Thomasset, *Sexuality and Medicine in the Middle Ages*, trans. Matthew Adamson (Princeton: Princeton University Press, 1988), 6.

¹⁴ Jacquart and Thomasset, *Sexuality and Medicine in the Middle Ages*, 14; see Cadden’s discussion on Galen, Cadden, *Meanings of Sex Difference in the Middle Ages*, 30–38.

¹⁵ Cadden, *Meanings of Sex Difference in the Middle Ages*, 95.

¹⁶ Kittel, “Rape in Thirteenth-Century England,” 104–105.

¹⁷ Dunn, *Stolen Women in Medieval England*, 53.

which was founded on the “one-sex model of humanity.”¹⁸ During sexual arousal men produce semen that is necessary for conception and the female anatomy was assumed to be an inverted, but rather similar, version of the male body.¹⁹ Cadden explains that the female body was considered, by Aristotle, Galen and those after them, to be a “less perfect” version of the male body.²⁰ Thus, the idea that men visibly produce a seed during sexual arousal and that women (with inverted anatomy) must also produce a less visible seed when aroused, was widely accepted as fact.

In the mid-thirteenth century the notable scholar Thomas Aquinas argued that sexual desire was a sickness, and in particular, it was a disease that compromised a man’s reason.²¹ Here again the incompatibility of the rational mind and the pleasure of the flesh is being reiterated. However, Galen, whose medical teachings of humoral theory were widely practiced throughout Europe, argued that sexual release was necessary for the health of the human.²² Galenic theory claimed that the balance between blood, black bile, yellow bile, and phlegm in the human body was necessary for healthy living.²³ These humours were supplemented by the qualities of being hot, cold, dry, or moist.²⁴ Sexual pleasure released bodily fluids, much like the common practice of bloodlettings. In this way, the rational mind stayed rational through sexual release. That is, the pleasure of the flesh aided in ensuring rationality, so instead of being

¹⁸ Sue Niebrzydowski, “‘so wel koude he me glose’: *The Wife of Bath* and the Eroticism of Touch,” in *The Erotic in the Literature of Medieval Britain*, eds. Amanda Hopkins and Cory James Rushton (Cambridge: D. S. Brewer, 2007), 19.

¹⁹ Jacquart and Thomasset, *Sexuality and Medicine in the Middle Ages*, 17–18. Here Jacquart and Thomasset reference the late thirteenth, early fourteenth-century medical text MS Ashmole 399, ff. 013v., Bodleian Library, Oxford. The illumination is titled “anatomy of female genitalia” and illustrates the male genitalia as inverted in females. To view the image, see <https://iiif.bodleian.ox.ac.uk/iiif/viewer/a907f97f-70d2-4353-8cf4-cb65b68a80f3#?c=0&m=0&s=0&cv=1&r=0&xywh=-1202%2C35%2C5173%2C2574>

²⁰ Cadden, *Meanings of Sex Difference in the Middle Ages*, 21–23, 33–38.

²¹ Brundage, *Law, Sex and Christian Society in Medieval Europe*, 421–422.

²² Brundage *Law, Sex and Christian Society in Medieval Europe*, 425.

²³ Jacquart and Thomasset, *Sexuality and Medicine in the Middle Ages*, 11; Cadden, *Meanings of Sex Difference*, 17.

²⁴ Jacquart and Thomasset, *Sexuality and Medicine in the Middle Ages*, 48.

incompatible, they were necessarily mutually working for the harmony of the mind and body. Furthermore, the assumed cold and wet nature of females assured that the female body craved the hot male sperm and consequently²⁵ Galen's medical theory supported ecclesiastical doctrine in that females are inherently more lustful.

Galenic theory influenced medical thought for centuries, as is evident in Lanfranc of Milan's thirteenth-century treatise *Science of Chirurgie*, preserved in Middle English at the British Museum (Add. MS. 12,056, dating from c.1420) and Oxford's Bodleian Library (Ashmole MS. 1396, c.1380). Lanfranc was a popular surgeon in Paris and his treatise influenced the medical field in Europe, but more specifically England and France.²⁶ Lanfranc perpetuated the "one-sex model" in claiming that the womb was an inverted penis, and that both produce sperm during arousal.²⁷ In these Middle English texts, Lanfranc's theory on how an embryo is conceived is explained:

Y wyl telle þe generacioun of embrion, þat ys to sigge, how a childe ys bygete in þe modire wombe. Galien and Avycene tellen þat of boþe þe spermes of Man & womman—wirchyng & sofferyng togedires, so þat iche of hem wirche in opere & suffren in opere—embrion ys bygete... so boþe þe sperms...of man & womman makyþ þe generacioun of embrion...²⁸

[I will discuss the gestation/procreation of [an] embryo, that is to say, how a child is begot in the mother's womb. Galen and Avicenna say that of both the sperms of man and woman – working and being acted upon together, so that each of them work in and are worked upon by the other – [the] embryo is begot...so that both the sperms of man and woman make the gestation of embryo...]

²⁵ Jacquart and Thomasset, *Sexuality and Medicine in the Middle Ages*, 81.

²⁶ Roman Sosnowski, "Remarks on the Language of Chirurgia Parva of Lanfranco of Milan in the Manuscript Ital. Quart. 67," *Studia Linguistica Universitatis Lagellonicae Cracoviensis* Vol. 130 (2013): 298.

²⁷ Niebrzydowski, "The Wife of Bath and the Eroticism of Touch," 19–20. References Lanfranc's, *Science of Chirurgie*, section II. IX.

²⁸ Lanfranco of Milan, *Lanfrank's Science of Chirurgie Part I*, ed. by Robert Von. Fleischhacker (Early English Text Society 102, 1894), 21–22. Accessed through the University of Michigan

<https://quod.lib.umich.edu/c/cme/AHA2727/1:2.2?rgn=div2;view=fulltext>

Middle English text taken from Additional MS. 12,056, British Museum, London. Ff.38b–39a. Translation is my own.

Lanfranc's inclusion of eleventh-century Islamic scholar Ibn Sina, or his Latin name of Avicenna, shows the wide scope (both temporally and spatially) of the two-seed theory of conception. Learned men in the Muslim and Christian worlds restated the two-seed theory of conception as fact for centuries. In his *Canon*, Ibn Sina describes the male genitalia as "complete" and the female genitalia as a smaller, less developed form of the male's.²⁹ Jacquart and Thomasset critically point out that the female anatomy is continually described as the lesser version of the perfectly developed male anatomy.³⁰ The inclusion of both male and female sperm to the gestation of the embryo was assumed as biological fact.³¹ This medieval medical thought was supplemented with ideas from leading scholars of medicine that lust and coitus were simultaneously sinful and necessary. Thus, men needed sexual release for their health, and as such England regulated brothels and sex work to ensure unmarried men had easy access to sexual release.³² Even here sex workers were traditionally blamed for seducing men into sexual temptation³³ even though they were reluctantly deemed necessary for maintaining social order. This medieval medical belief in uncontrollable male sexuality, which necessitated the toleration of sex workers,³⁴ ensures that men are the victims of their own bodies in a way that is remarkably similar to the legal identity of the rape victim who conceives.

Evidently, medical thought victimised both men and women who were unable to control their sexual bodies. However, men were largely pitied for their bodily victimisation, and as such,

²⁹ Jacquart and Thomasset, *Sexuality and Medicine in the Middle Ages*, 36–37. They reference Avicenna, *Canon*, trans. Gerard of Cremona (P. de Lavagina, Milan, 1473), book III, fen 20, 1, ch.1.

³⁰ Jacquart and Thomasset, *Sexuality and Medicine in the Middle Ages*, 36–37.

³¹ Jacquart and Thomasset, *Sexuality and Medicine in the Middle Ages*, 130.

³² Barbara A. Hanawalt, and Anna Dronzek, "Women in Medieval Urban Society," in *Women in Medieval Western European Culture*, ed. Linda E. Mitchell, Garland Reference Library of the Humanities 2007 (New York and London: Garland, 1999), 39; Kane, "Defamation, Gender and Hierarchy in Late Medieval Yorkshire," 371; Karras, *Common Women*, specifically 14–15, 76.

³³ Karras, *Common Women*, 48.

³⁴ Karras, *Common Women*, 133.

the women sex workers were condemned, but not the men who used their services. Whereas the male body was viewed as needing moderate sexual release, the secular and ecclesiastical courts criminalised these very same sexual urges in women or made them inherently sinful. While both the male and female body could betray the reason of the mind, the societal tolerance for men's sexual freedom was not extended to women and moreover it was legislated against.

Thus, it was widely believed among scholars that the female seed was only released during sexual pleasure. Critically, this was not solely a medical belief, but it was also highly supported by theologians, who were men of authority in both ecclesiastical and secular courts.³⁵ This effectively meant that a truly innocent rape victim could not become pregnant from the rape. William of Conches admits that even though the woman's mind may not consent her body, the desire of her flesh, could consent. Here we see the conflation of biblical and medical traditions, in that women are inherently more sexual than men. This is where the legal identity of the reluctant but willing accomplice is fully formed, given that the courts view these pregnant victims as willing in their flesh despite their mental non-consent. Echoing the arguments surrounding rape and sanctity, the mental non-consent is deemed irrelevant to the physical bodily consent in rape cases resulting in pregnancy. This is stated in legal treatises and the previously discussed court case of Joan from Kent. Thus, even though ecclesiastics debated the relevance of mental and physical consent, when it came to the secular courts, physical consent was legally paramount. This reiterates one of the primary arguments of this thesis, in that the courts viewed (non)consent only in terms of the condition of the physical body.

³⁵ Brundage *Law, Sex and Christian Society in Medieval Europe*, 450.

Marriage

Another main argument of this thesis is that throughout the five legal ages, there is a paradoxical nature of marriage as both an opportunity for women's legal autonomy in rape cases, and the use of marriage to legally erase the rape and turn it into consensual sex. Beginning with the age of *Glanvill*, if the defendant was a single man, there was the option of marriage between the survivor of rape and the rapist. *Glanvill* allowed the marriage to occur only with the consent of the families and this was frequently used to settle appeals. Consequently, by publicly declaring coitus, through rape appeals, young couples could force their parents to agree to marriage in order to save reputation and money, even if the marriage was not agreeable.³⁶ This was the woman's decision in that she could choose to save the man from punishment. In this unique paradox of marriage as legal autonomy and a legal erasure of rape, we see that the patriarchal systems could be – and in the case of some women such as Margery Child (1326) and Eleanor West (1381) was indeed – manipulated to the advantage of women. These “voluntary elopements” in the form of fictitious rapes and/or abductions demonstrate that when historians look past the institutionalised control of female sexuality, there was opportunity for independence and choice of marital partner. However, *Glanvill* and lawmakers alike were cautious against women forcing honest law-abiding men into marriage. In England, but not in France, the woman could only claim marriage before the court passed judgment.³⁷ The societal anxiety towards marriages of couples coming from different socio-economic classes was particularly evident in English literary culture, as will be discussed more in the following chapters.

³⁶ Post, “Sir Thomas West and the Statute of Rapes 1382,” 24.

³⁷ Kittel, “Rape in Thirteenth-Century England,” 105.

Scholars disagree about the extent to which *raptus* was claimed as a precursor to marriage. Barbara Hanawalt argues that although there are cases of *raptus* which end in marriage, the degree to which this was practiced is unknown.³⁸ Henry Ansgar Kelly claims that wife elopement was often disguised as fictitious kidnapping and that the women chose to leave with their “abductor” for a better life.³⁹ Caroline Dunn argues that since ecclesiastical courts validated clandestine marriages as legal, there was no reason for couples to fake an abduction.⁴⁰ Contrarily, Anthony Musson states that “many rape cases were begun with the sole intention of forcing marriage or some form of marital settlement.”⁴¹ However, Musson’s interpretation of strictly rape cases misses the fact that many (if not the majority) of *raptus* cases leading to marriage included abduction. When a man was convicted of rape, during the time of Westminster II, death by hanging was the legal punishment yet jurors, men of the community who would likely have known the defendant, were reluctant to send their neighbours to their death. Consequently, the strong penalty of Westminster II unintentionally led to fewer rape convictions from 1285 onwards.

Marriage was an attractive compromise as it was a legal settlement that preserved the man’s life. The informal community channels that applied the law in courts, mainly the jurors, often opted for out of court settlements or imprisonment to settle the case rather than employ capital punishment.⁴² This, according to J. B. Post, was most frequently a “material settlement” such as money or land, and the more common option was marriage between defendant and

³⁸ Hanawalt, “Women Before the Law: Females as Felons and Prey in Fourteenth-Century England,” 184.

³⁹ Kelly, “Statute of Rapes and Alleged Ravishers of Wives,” 363.

⁴⁰ Dunn, *Stolen Women*, 99.

⁴¹ Musson, *Medieval Law in Context*, 155.

⁴² Schneebeck, “The Law of Felony in Medieval England from the Accession of Edward I until the Mid 14th century,” vol. 2, 444.

plaintiff.⁴³ Post convincingly states that the frequency at which marriage was used to settle *raptus* cases “suggests that the intention of forcing marriages was the purpose of many appeals in the first place...but who was forcing who to marry is a more difficult matter.”⁴⁴ Hanawalt is equally correct in stating that *raptus* appeals which end in marriage are almost exclusively those of the elite, and more closely resemble “heiress snatching.”⁴⁵ This appears to be the case with Eleanor West (1381) and Margery de la Beche (1347). However, the cases in the court of the eyre are much more ambiguous towards the status of the women and girls involved. Table 5 in chapter 3 “The Eyre Courts in Practice,” shows that five of the twenty-eight case-studies end in marriage between the defendant and the plaintiff, equating to 17.86% of the case-studies.⁴⁶ This is a relatively high number suggesting that the frequency at which *raptus* cases ended in matrimony was not uncommon, nor exclusively elitist.

The marriage clause of rape laws appears to hold a socio-economic class element, as if it were a means of settlement among the upper classes and almost non-existent among the lowest classes. Post states that the *raptus* cases which could not be settled through marriage were due to the class disparity of a raped peasant woman appealing an elite man and attempting to marry him out of revenge or to redeem her honour.⁴⁷ This narrative is often portrayed in Middle English pastourelles and romance. The fear of a spiteful woman appealing a man of rape in order to trap him into marriage, out of revenge, was the explicit fear of lawmakers. This illuminates a real problem for women of low social class. Rich men of the nobility or knightly class could rape peasant women and girls with little to no legal repercussions. Middle English pastourelles play

⁴³ Post, “Ravishment of Women and the Statues of Westminster,” 152.

⁴⁴ Post, “Ravishment of Women and the Statues of Westminster,” 152.

⁴⁵ Hanawalt, “Women Before the Law: Females as Felons and Prey in Fourteenth-Century England,” 184.

⁴⁶ TNA: JUST1/112 m 13d; TNA: JUST1/877 m 61d; TNA: JUST1/1011 m 45; TNA: JUST1/1011 m 54; TNA: JUST1/1171 m 3.

⁴⁷ Post, “Ravishment of Women and the Statues of Westminster,” 152.

with this exact theme, as does Andreas Capellanus's widely popular text, *The Art of Courtly Love*. The indifference of Capellanus's writing in advocating for the acceptability of raping peasant women is explicit. In book I, chapter XI "The Love of Peasants," Capellanus states: "when you find a convenient place, do not hesitate to take what you seek and to embrace them [peasant women] by force."⁴⁸ The implication of the laws is feeding a dark subculture in which ladies deserve seduction, but peasant women are allowed to be raped without penalty. Cadden states that these narratives play on the biological belief that "women move from revulsion to pleasure in the course of rape" due to their inherent sex drive.⁴⁹

However, there was equally the fear of lost income through the defloration of maidens and their choice to marry their ravisher. Thus, there was growing anxiety amongst the nobility in response to ecclesiastical demand for the consent of the individuals involved, and not the parents, which made the marriage clause of *raptus* evermore a concern. Noble fathers worried about the rape and/or abduction of their daughters, whose virginity was "a financial asset in marriage-brokering" and therefore they needed to protect their daughters' virginal bodies and thus their own financial interests.⁵⁰ The emphasis on defloration in the legal age of *Bracton* could be interpreted as less of a concern for the woman and more of a concern for the protection of family property (her virginity and marriage value). The evolution in the laws of disinheriting women who consent to marry their ravishers effectively replaces the victim of *raptus* from women to men, either their male kin (primarily husbands and fathers) or the king.⁵¹ As stated by John Bellamy, in cases of fictitious abduction the woman must make herself accessible to be abducted,

⁴⁸ Andreas Capellanus, *The Art of Courtly Love*, trans. John Jay Parry (New York: Columbia University Press, 1960), book I, c. XI, 150. Translation from Parry.

⁴⁹ Cadden, *Meanings of Sex Difference in the Middle Ages*, 96.

⁵⁰ Phillips, "Written on the Body," 140–141.

⁵¹ Phillips, "Written on the Body," 143.

“but at the same time, seek to show that the abduction was carried out against her will.”⁵² There are cases, specifically that of Elenore West, which suggest that young couples claimed *raptus* to forge their own independent marriages, despite family objections because of the class-status discrepancy between the two individuals.⁵³ Marrying for love and not familial obligation is perhaps a modern romanticism and it is important to be mindful of this romantic idealism as it dangers on belittling the trauma that rape survivors endured. However, the case of Elenore West and Margery Child suggests that some women did take advantage of the marriage clause of *raptus* laws by marrying the person of their choice.

Concluding Thoughts

This short chapter restates much information already evident in the previous chapters but consolidates the primary arguments of this thesis. That is, medieval culture, including secular and ecclesiastical authorities, viewed consent and non-consent as evident by the injuries (or lack thereof) on the woman’s body, which is also reiterated in romance narratives and aided by contemporaneous medical beliefs. The physicality of (non)consent laid the foundation for the three constructed legal identities of women appealing rape: the truly innocent victim, the reluctant but willing accomplice, and the culpable woman. Throughout the five legal ages, women were able to legally claim their ravishers as their husbands, and this legally transformed rape into consensual sex. The biological medical theories of female anatomy were aided by the ecclesiastical doctrine which preached that, women were inherently burning with sexual desire.

As stated by Jacquart and Thomasset, the courtly literature “was able to become the

⁵² Bellamy, *Crime and Public Order*, 58.

⁵³ Post, “Ravishment of Women and the Statues of Westminster,” 153.

manifestation of a certain fear of women,”⁵⁴ as romance perpetuates these stereotypes to the extreme. As will be shown in the following chapters, the popular entertainment of Middle English romance reiterates these same arguments in nearly identical fashion to the legal, medical, and ecclesiastical texts.

⁵⁴ Jacquart and Thomasset, *Sexuality and Medicine in the Middle Ages*, 96.

Chapter 6:

Middle English Romance: A Historiography and Review

Introduction

During a rainy day in the English countryside, a young woman of about thirteen or fourteen years old, seeks indoor entertainment. Tired of practicing her embroidery, she asks her friends if they would like to read a romance. Excited by the thought of simple – if somewhat illicit – pleasure-reading and discussion, and one that was permitted by her mother before,¹ the young ladies eagerly agree. Going to her father's sizable book collection, she skims past a dozen or so devotional texts, and she looks for an English romance, as the girl's Latin was not particularly strong. She grabs a book off the shelf and joins her friends in a communal reading session. Each woman in the group takes turns reading passages aloud from the romance, while the others listen. The reader begins: "listen lords, gentile and noble,/ I will tell you of Sir Degare."² As the story continues the young ladies listen collectively to the description of the handsome fairy knight approaching a lost princess in the woods: will he help her find her way home, perhaps with a battle against a giant like Bevis of Hampton did against Acapart? Will he ask to joust against her father and win her hand in marriage, proving his knightly valour, like Guy of Warwick and Clarice? Or will he take her away to fairy land, like the fairy king did to Orfeo's wife Heroudis? They listen to the words the fairy knight speaks, his courtly language, and his declaration of love for the princess. The reader continues: "he seized her at once,/ And

¹ Jennifer R. Goodman, "'That Wommen Holde in Ful Greet Reverence': Mothers and Daughters Reading Chivalric Romances," in *Women, The Book, and the Worldly*, eds. Lesley Smith and Jane H. M. Taylor (Cambridge: D. S. Brewer, 1995), 30.

² "Sir Degare," in *The Middle English Breton Lays* TEAMS Middle English Text Series, eds. Anne Laskaya and Eve Salisbury (University of Rochester, 1995) https://d.lib.rochester.edu/teams/text/laskaya-and-salisbury-middle-english-breton-lays-sir-degare_lines_1-2.

did his will as he desired,/ And bereft her of her maidenhood.”³ The ladies stop to discuss what they just read. The young women talk about how the princess could not escape and she was left to “weep and cry.”⁴ What does an imagined woman reader take away from such scenes of sexual violence in romance? What if this imagined reader was Margery de la Beche, who owned six romances,⁵ or what if it was her daughter? The audience of women readers would have likely been able to connect to this scene of sexual violence, either through their own personal experiences, or through the experiences of people they knew. As a community of women “readers”⁶ it is highly probable that the audiences of romance could have identified with the violent scenes of sexual assault.

Romance Context: The Crises of the Fourteenth Century

Romance emerged as courtly literature in the twelfth century and it quickly became the most popular secular literary genre throughout medieval Europe.⁷ The term “romance” comes from the Old French term “*romanz*,” referring to vernacular languages derived from Latin.⁸ The contextual development of Middle English romance took place during a period of immense social, economic, and political upheaval in Europe, but particularly in England, as this era is

³ “Sir Degare,” lines 111–113.

⁴ “Sir Degare,” line 110.

⁵ *CPR*, Edw. III: Part 2, vol. IX, 1350–1354, m 6, pp. 137–141 (TNA: CPR C66/234, m 6). The edited volume states numerous “*livre de romance*” and mentions *Après ce qu’ Alisaundre, Innocens Lapostoill, Amour si est bel Comencement*, as well as other ‘romance’ and a book on chess.

⁶ Carol M. Meale, “...alle the bokes that I haue of latyn, englisch, and frensch’: laywomen and their books in late medieval England,” in *Women and Literature in Britain, 1150–1500*, ed. Carol M. Meale (Cambridge: Cambridge University Press, 1993), 133.

⁷ Roberta L. Krueger, “Introduction,” in *The Cambridge Companion to Medieval Romance*, ed. Roberta L. Krueger (Cambridge: Cambridge University Press, 2000), 1.

⁸ Krueger, “Introduction,” 1–2; Helen Cooper, *The English Romance in Time: Transforming Motifs from Geoffrey Monmouth to the death of Shakespeare* (Oxford: Oxford University Press, 2004), 8; Andrea Hopkins, *The Sinful Knights: A Study of Middle English Penitential Romance* (Oxford: Clarendon Press, 1990), 4.

commonly referred to as that of the crises of the fourteenth century. During the first quarter of the fourteenth century, England experienced decreased food productivity with flooding of crops, while simultaneously trying to sustain increased population numbers, both leading to the Great Famine of 1315–17. Lack of nutritious food aided in the spread of localised diseases in both human and animal populations, weakening the immune systems and allowing the advent of the plague to take hold.⁹ As a result of famine in the first few decades of the 1300s, grain increased in price in response to the growing demand. Barbara Hanawalt claims that grain went from about 5s. to over 20s., making it too expensive to buy for both human and animal consumption.¹⁰ Consequently, mortality rates rose as food was inaccessible to the poor.¹¹ Thus, decades before the plague arrived in England, the population was already enduring famine, disease, and death.

Felicity Riddy states that romance was at its height of popularity during the same time that there was “a ‘crisis in male succession’ for landowners from the Black Death until 1450.”¹² These concerns were heightened by the aftermath of the Black Death, in which the social, economic, and legal upheaval that resulted from the plague, drastically altered the social fabric of English society. Coming to England in 1348, the plague killed roughly one-third of England’s population, with urban centres most drastically hit; London’s population was reduced by half.¹³ Seeking an explanation for the plague greatly impacted the societal craze of mass fear and anxiety about the unknown causes of the sickness.¹⁴ The fourteenth century witnessed recurring plague outbreaks in 1361–62, 1369 and again in 1376, although these were not as deadly as the

⁹ Hanawalt, *Crime and Conflict*, 8.

¹⁰ Hanawalt, *Crime and Conflict*, 251.

¹¹ Hanawalt, *Crime and Conflict*, 8.

¹² Felicity Riddy, “Middle English Romance: Family, Marriage, Intimacy,” in *The Cambridge Companion to Medieval Romance*, ed. Roberta L. Krueger (Cambridge: Cambridge University Press, 2000), 245.

¹³ Gail Ashton, *Medieval English Romance in Context* (London: Continuum, 2010), 8.

¹⁴ Pamela M. King, *Medieval Literature, 1300–1500* (Edinburgh: Edinburgh University Press, 2011), 57.

first wave.¹⁵ However, it was during these subsequent outbreaks that male lineage was significantly disrupted, as primogeniture largely excluded women's inheritance, and yet the landowning elite continued to fail in securing lines of succession.¹⁶

The consequences of the plague were vast, but scholars generally agree that the implications to the labour laws were significant. With decreased population numbers, labour shortages were abundant, entire dynastic lines of inheritances were disturbed and the feudal system of England was disrupted.¹⁷ Plague survivors migrated from rural to urban centres in search of work, and attempted to negotiate higher wages as labour shortages created a higher demand for workers.¹⁸ This created more work opportunities for women, particularly in urban centres with greater ease of social mobility.¹⁹ The urbanisation in the fourteenth century was accompanied by increased literacy among the laity and the professionalization of book production.²⁰ This accessibility to work, as well as the "crisis of male succession" allowing daughters to inherit, has led scholars to debate about whether or not this was a "golden age" for women.²¹ Social mobility, along with urban immigration, and women inheriting land were all accompanied by a labour shortage that made work more readily available to those that survived the plague. The social and economic instability following the plague allowed greater opportunities for economic advancement and attracted more unsupervised women to the cities who were seeking employment. This, it has been suggested by Riddy, greatly unsettled the older

¹⁵ Ashton, *Medieval English Romance in Context*, 8.

¹⁶ Riddy, "Middle English Romance: Family, Marriage, Intimacy," 245.

¹⁷ Ashton, *Medieval English Romance in Context*, 8; Mate, *Daughters, Wives and Widows after the Black Death*, 11–12.

¹⁸ Ashton, *Medieval English Romance in Context*, 8.

¹⁹ King, *Medieval Literature*, 57–58.

²⁰ King, *Medieval Literature*, 4.

²¹ Angela Florschuetz, *Marking Maternity in Middle English Romance: Mothers, Identity and Contamination* (New York: Palgrave, 2014), 97–98; King, *Medieval Literature*, 57–58; Mate, *Daughters, Wives and Widows after the Black Death*, 11, 71, 75.

generation, who feared uncontrolled sexual promiscuity among younger men and women.²² Consequently, as stated by Cory J. Rushton and Amanda Hopkins, romance can be read in this context, as “an instrument by which sexuality was regulated;” romance was a tool to instruct sexual morals.²³ This is rather surprising when considering that rape and sexual assault are prevalent in romance, leading Rushton and Hopkins to suggest that these forms of violence were prevalent and acceptable at that time.²⁴

In 1325 civil war broke out, as the baronial rebellion began. The weak rulership of Edward II intensified debates about women’s right to rule as his queen, Isabelle of France (along with Roger Mortimer) sought to usurp the throne.²⁵ King Edward II was deposed and murdered as Isabelle took the throne in the name of her son, Edward III, who in turn arrested Mortimer and took control of the throne for himself.²⁶ This set the stage for the Hundred Years’ War between England and France. The economic surge, particularly in agriculture, from the onslaught of the Hundred Years’ War was temporary, as in England it was followed by a slide into economic decline resulting from the siphoning off of resources for the war effort, along with a mix of bad harvests and livestock diseases.²⁷ The Hundred Years’ War inflamed debates about female lineage and the English claim to the French throne, which are part of the context in which romance was read.²⁸ When King Philip IV of France died, his only surviving child was his daughter, Isabelle, who was herself the mother of the king of England, Edward III. The English

²² Felicity Riddy, “Mother Knows Best: Reading Social Change in a Courtesy Text,” *Speculum* Vol. 71, No.1 (1996): 72–73.

²³ Cory J. Rushton and Amanda Hopkins, “Introduction: The Revel, the Melodye, and the Bisyness of Solas,” in *The Erotic in the Literature of Medieval Britain*, eds. Amanda Hopkins and Cory James Rushton (Cambridge: D.S. Brewer, 2007), 4.

²⁴ Rushton and Hopkins, “Introduction,” 9.

²⁵ Andrew Galloway, *Medieval Literature and Culture* (New York: Continuum, 2006), 28.

²⁶ Hanawalt, *Crime and Conflict*, 9.

²⁷ Mate, *Daughters, Wives and Widows after the Black Death*, 14–15.

²⁸ Florschuetz, *Marking Maternity in Middle English Romance*, xvii–xviii.

claimed that Edward was the closest legitimate male descendent to Philip IV, through his mother, Isabelle. They argued that the female body could and did transmit the male seed and blood to their offspring, meaning that Edward was Philip's only grandson and heir. In 1337, Edward III officially laid claim to the French throne through his mother's transmission of his grandfather's blood. Understandably, the Valois dynasty belittled this argument and claimed that the female body was not capable of transmitting the male line, and consequently they placed Philip's cousin, Philip of Valois, on the throne.²⁹ English romance intentionally exploited and underlined the maternal transmission of the male lineage, as is apparent in the theme of the "Fair Unknown" where the hero discovers his patrimonial ancestry.³⁰ The common romance trope of the lost heir and the genre's focus on legitimacy, family reunion, and inheritance suggests that there is a single rightful heir to the throne and in romance this can be claimed through the mother's line.³¹

The complex connection between reality and fiction, and reality mimicking fiction, is evident in the "well-known Arthurian self-fashioning of the Plantagenet dynasty."³² Later there was the creation of the Order of the Round Table by Edward III in 1344.³³ Mimicking the romance brotherhood in *Sir Gawain and the Green Knight*, Edward III established the Order of the Garter in 1348, further demonstrating how fiction directly influenced the real world.³⁴ When considering the turbulence of the fourteenth century, the societal acceptance of a mythical past

²⁹ Florschuetz, *Marking Maternity in Middle English Romance*, 96–99.

³⁰ Cooper, *The English Romance in Time*, 331–359; Florschuetz, *Marking Maternity in Middle English Romance*, xviii; Dieter Mehl, *The Middle English Romances of the Thirteenth and Fourteenth Centuries* (London: Routledge & K. Paul, 1968), 71.

³¹ Cooper, *The English Romance in Time*, 325–326.

³² Christopher Michael Berard, *Arthurianism in Early Plantagenet England: From Henry II to Edward I* (Woodbridge: Boydell Press, 2019), 5–6.

³³ Jamie McKinstry, *Middle English Romance and the Craft of Memory* (Cambridge: D. S. Brewer, 2015), 16.

³⁴ Galloway, *Medieval Literature and Culture*, 28–29.

was, in a sense, a type of coping mechanism.³⁵ In this way, the real world projects itself onto the fictional worlds, and romance has the sensation of “reality linger[ing]” around the narrative.³⁶

Romance heroes and heroines typically descend from great lineages, and it is no coincidence that genealogies became increasingly popular during this time,³⁷ some of which even traced family lines back to romance protagonists. This further emphasises the actual modeled behaviour of romance. Despite the attempts to instill a chivalric code of “good” and “just” knightly violence, it was tellingly noted by contemporaries that when there was a foreign war, and the knights left, the level of crime and violence in England decreased.³⁸ The fear of knightly violence depicted in romance mirrored a real anxiety about these armed men roaming around England.³⁹ The true case of John de Dalton (discussed in chapter 1) further emphasises the realities of feloniously behaving knights. Knightly aggression was destabilising public social order, as well as threatening the king of England as private wars furthered chaos.⁴⁰ The fear of crime provoking more crimes has been described as a fear of “contagion,” and similar to illness, it was something that could be “caught.”⁴¹ This fear of the contagion of crime was heightened in 1381 with the onslaught of the Peasants’ Revolt.

During the first outbreak of the plague in England, approximately 1348–53, there were numerous measures and laws made to impose social control. Primarily the Statute of Labours in

³⁵ McKinstry, *Middle English Romance and the Craft of Memory*, 18–19.

³⁶ David N. Klausner, “Didacticism and Drama in *Guy of Warwick*,” in *Medieval Hagiography and Romance Volume 6, Medievalia et Humanistica: Studies in Medieval & Renaissance Culture*, ed. Paul Maurice Clogan (Cambridge: Cambridge University Press, 1975), 117.

³⁷ McKinstry, *Middle English Romance and the Craft of Memory*, 48.

³⁸ Richard Kaeuper, *Chivalry and Violence in Medieval Europe* (Oxford: Oxford University Press, 1999), 76; Hanawalt, *Crime and Conflict*, 46, 228, 267.

³⁹ Kaeuper, *Chivalry and Violence in Medieval Europe*, 176–185. Kaeuper mentions the work of chronicler Matthew Paris and the references to knightly violence and destruction Paris makes, noting the attacks on the church.

⁴⁰ Kaeuper, *Chivalry and Violence in Medieval Europe*, 110.

⁴¹ Claude Gauvard, “Fear of Crime in Late Medieval France,” in *Medieval Crime and Social Control*, eds. Barbara A. Hanawalt and David Wallace (Minneapolis: University of Minnesota Press, 1998), 21.

1351, were a blatant attempt to legally impose pre-plague era social structures onto the post-plague era of social turmoil.⁴² In 1378 Richard II issued a royal statute⁴³ that imposed harsh penalties for lawlessness, illegally raising armies, and abducting women and which, according to John Bellamy, described England “as though the land were at war.”⁴⁴ Barbara Hanawalt supports this notion by claiming that England “had the reputation of being the most violent country in Europe.”⁴⁵ The turmoil of the late fourteenth century was exacerbated by the 1381 Peasants’ Revolt, in which the peasantry opposed a new poll tax and in protest they burned local records.⁴⁶ The “revolutionary behaviour,” as coined by Hanawalt, took hold in Surrey and Essex which was close enough to London to demand the attention of the authorities.⁴⁷ By deliberately destroying written documentation, the peasantry demonstrated their understanding of the importance of the written word. Bellamy argues that the judicial capacity of England was significantly damaged as a direct consequence of the Peasants’ Revolt.⁴⁸ The aftermath of the Peasants’ Revolt, and the social, political, and economic fallout from the plague are critical parts of the context surrounding conduct literature and romance. It is not a coincidence that romance informed on appropriate gendered and social status behaviour during a time of such turmoil and uncertainty. The internal unrest of England during the fourteenth century aided in the spread of popular romances which harked back to a nostalgic, great, Arthurian past. As a genre, romance developed during the establishment of primogeniture, in that there actually was only one heir to

⁴² Robert Palmer, *English Law in the Age of the Black Death 1348-1381: A Transformation of Governance and Law* (Chapel Hill: The University of North Carolina Press, 1993), see specifically “Chapter One: A General Introduction”; Ashton, *Medieval English Romance in Context*, 8; King, *Medieval Literature*, 58; Mate, *Daughters, Wives and Widows after the Black Death*, 12.

⁴³ 2 Richard II, Stat. 1, c.6.

⁴⁴ Bellamy, *Crime and Public Order in England in the Later Middle Ages*, 7.

⁴⁵ Hanawalt, *Crime and Conflict*, 45.

⁴⁶ Ashton, *Medieval English Romance in Context*, 8.

⁴⁷ Hanawalt, *Crime and Conflict*, 10, 14.

⁴⁸ Bellamy, *Crime and Public Order in England in the Later Middle Ages*, 95.

the family wealth, and consequently romance legitimised this concept.⁴⁹ Fictional literature is an imperfect reflection of contemporaneous social anxieties, and with romance this often includes inheritance, male lineage, and female sexuality. Romance was grounded in the political realities of the medieval English world, and it provided a means to express, debate, and talk about social issues.⁵⁰

For literature to have an effect on the audience, whether it be laughter or sympathy, it ought to be relatable and thus, for the other worlds where women dominate men, the audience must have been able to relate to it and find it amusing. The relatability to the fiction ensures audience emotion. This is also the case for Florence (discussed in chapter 8), in that the very graphic descriptions of her abuse ensured that the audience would sympathize with her suffering. Between the mocking of dominant wives and the sympathizing with the suffering maiden, romance literature simultaneously built and upheld societal gender expectations. As stated by Sara Butler, “popular literature functioned as a form of gender control within society, ensuring that the audience would greet any deviance from the norm with laughter” and in this way, medieval romance worked to police appropriate gendered behaviour in the real medieval world.⁵¹

Conduct literature provides the opportunity to study the “youth subculture,” according to Felicity Riddy, by looking at the behaviours which the texts are trying to modify.⁵² The previously mentioned *Good Wife* was concerned about sexually promiscuous youth, in the new post-plague urban environment. The other very popular conduct text for young maidens was *The Book of the Knight of the Tower*. This text included the story of “Roper’s False Wife” in which

⁴⁹ Cooper, *The English Romance in Time*, 326–327.

⁵⁰ Melissa Furrow, *Expectations of Romance: The Reception of a Genre in Medieval England* (Cambridge: D. S. Brewer, 2009), 178.

⁵¹ Butler, *Language of Abuse*, 56.

⁵² Riddy, “Mother Knows Best: Reading Social Change in a Courtesy Text,” 83.

the wife is found with her lover and consequently her husband murders her.⁵³ The popularity of the *Knight's Book* in England ensured that this tale of spousal homicide was influential in contributing to the gendered expectations surrounding adultery. Committing adultery was a moral crime for both the husband and the wife, but it was also an excusable reason for felony homicide if the husband caught his wife in the act.⁵⁴ The *Knight's Book* contains *exempla* to both men and women, offering advice on spousal cohabitation and the gendered expectations of husbands and wives. These fictional *exempla* were not simply, as stated by Butler, “a reflection of reality, so much as an enhanced reality to demonstrate effectively and briefly the point of Christian doctrine,” and it is here that reality, fiction, and indoctrination combined through popular literature.⁵⁵ The disobedient, chastising wife was indeed a real societal concern, as manorial and ecclesiastical court records from the fourteenth century testify. Nagging their husbands, physically dominating them, or gossiping could lead to court hearings where the women faced the consequences of the laws.⁵⁶ So in reality, despite evoking laughter, dominant or misbehaving wives were a source of much anxiety.

Literature Review of Romance Genre and Definition

Middle English romance developed later than on the continent, and scholars have traditionally viewed English romances as unoriginal, less sophisticated imitations of their French counterparts.⁵⁷ The influential work of Dieter Mehl dispelled this prejudice and concluded that

⁵³ *The Book of the Knight of La Tour-Landry*, c. LXII, 79–83.

⁵⁴ Butler, *Language of Abuse*, 105–106. Butler references a case in the York courts where a Robert de Laghscale found his wife sleeping with a man named John Doughty. According to Butler, Robert murdered John, but the courts employed legal fiction to state that it was in self-defence.

⁵⁵ Butler, *Language of Abuse*, 226–227.

⁵⁶ Butler, *Language of Abuse*, 236–238.

⁵⁷ Mehl, *The Middle English Romances of the Thirteenth and Fourteenth Centuries*, 1–2.

English romance developed independently during the reign of Henry II and throughout the thirteenth and fourteenth century the genre increasingly became more popular.⁵⁸ Ironically, it is the inability to precisely define Middle English romance, what Judith Weiss calls the “slipperiness of romance,”⁵⁹ that has entertained scholars for centuries and allows for the space in which new interpretations and debates can take place,⁶⁰ some of which will be discussed below.

Nineteenth-century scholarship demonstrated a “literary prejudice”⁶¹ towards romance, in that fictional stories were not considered worthy of scholarly study, but since the twentieth century this prejudice has been confronted.⁶² Scholars now, by contrast, consider that far from fantastical “escapist” literature, romance was both created by and actively constructing the society in which it was consumed. As stated by Richard Kaeuper, it is “no simple mirror reflecting society, it is itself an active social force, identifying basic issues, asking probing questions, sometimes suggesting constructive change.”⁶³ This argument is supported by Jeffrey Jerome Cohen, who states that romance is “a catalyst to cultural creation”⁶⁴ and by Andrea Hopkins who claims that romance “evokes universal recognizable truths.”⁶⁵ Despite the

⁵⁸ Mehl, *The Middle English Romances of the Thirteenth and Fourteenth Centuries*, 2–3.

⁵⁹ Judith Weiss, “Introduction,” in *Medieval Insular Romance: Translation and Innovation*, eds. Judith Weiss, Jennifer Fellows and Morgan Dickson (Cambridge: D. S. Brewer, 2000), 5.

⁶⁰ Ashton, *Medieval English Romance in Context*, 30–31; Mehl, *The Middle English Romances of the Thirteenth and Fourteenth Centuries*, 30–31.

⁶¹ Derek Brewer, *Symbolic Stories: Traditional Narratives of the Family Drama in English Literature* (Cambridge: D. S. Brewer, 1980), 1.

⁶² Ad Putter and Jane Gilbert, “Introduction,” in *The Spirit of Medieval English Popular Romance*, eds. Ad Putter and Jane Gilbert (Toronto: Pearson Education, 2000), 15, 17; Nicola McDonald, “A Polemic Introduction,” in *Pulp Fictions of Medieval England: Essays in Popular Romance*, ed. Nicola McDonald (Manchester: Manchester University Press, 2004), 2.

⁶³ Kaeuper, *Chivalry and Violence in Medieval Europe*, 22; Richard Kaeuper, “The Societal Role of Chivalry in Romance,” in *The Cambridge Companion to Medieval Romance*, ed. Roberta L. Krueger (Cambridge: Cambridge University Press, 2000), 97–99.

⁶⁴ Jeffery Jerome Cohen, *Of Giants: Sex, Monsters and the Middle Ages* (Minneapolis: University of Minnesota Press, 1999), 63.

⁶⁵ Hopkins, *The Sinful Knights*, 2.

unrealistic events or characters in romance, Hopkins reaffirms the realistic representations in romance.⁶⁶ In relation to this analysis, by overlaying romance with an understanding of the medical, legal, and courtroom practices of England's contemporaneous rape culture, additional insights into the realities within these presumably fictional tales will be provided. Helen Cooper states that romance was the most popular secular genre of the Middle Ages because of the existence of a reciprocal relationship between the fictional and the real.⁶⁷ As a creator of cultural norms, and being created by cultural norms,⁶⁸ romance resembles law codes, in that both are shaping and reflecting social realities.

The pervasiveness of romance is evident as there are references to "romances" in other literary genres, particularly hagiography, as well as Middle English romances which are named romances in the texts themselves.⁶⁹ This is indicative of the fact that people of the Middle Ages classified romance as a distinct literary genre.⁷⁰ The intertextuality of romance stories, referencing characters from other romances, expanded the fictional romance world into one that was a coherent "interfictive world" as defined by Denis Howard Green.⁷¹ The narrative references to other fictional (and real historical) characters, places, and events create the illusion of a cohesive fictional world. It is this process of self-referencing in which romance "remains true to its own fabricated world and seeks consistency within its limits."⁷² There is a necessity

⁶⁶ Hopkins, *The Sinful Knights*, 28–29.

⁶⁷ Cooper, *The English Romance in Time*, 6.

⁶⁸ King, *Medieval Literature*, 8.

⁶⁹ Mehl, *The Middle English Romances of the Thirteenth and Fourteenth Centuries*, 10; Putter and Gilbert, "Introduction," 1.

⁷⁰ Carol Fewster, *Traditionality and Genre in Middle English Romance* (Cambridge: D. S. Brewer, 1987), 2–5; Hopkins, *The Sinful Knights*, 5. Kevin Whetter states the development of romance from epics and eventually leading to the rise of the novel. See Kevin S. Whetter, *Understanding Genre and Medieval Romance* (Aldershot: Ashgate, 2008), 39, 62–63.

⁷¹ D. H. Green, *The Beginnings of Medieval Romance: Fact and Fiction, 1150–1120* (Cambridge: Cambridge University Press, 2002), 55–59; Fewster, *Traditionality and Genre in Middle English Romance*, 3, 33.

⁷² Green, *The Beginnings of Medieval Romance*, 142.

for collective remembrance, both with the audience remembering other stories and for the fictional characters themselves to remember the deeds of other characters.⁷³ Green states that fictional literature includes both real and fictional events, places, and people, and each narrative can be placed on a spectrum “moving progressively away from reality” where history is on one end, and fiction on the other.⁷⁴ Although Green’s theory of the continuum has come under attack for its placement of history and romance as binary opposites,⁷⁵ Green himself states that fiction fills in the “gaps” of history and because of this, the binary distinction of history and fiction is at once blurred as the two are interwoven.⁷⁶ More importantly, romance can be described as being buried in history,⁷⁷ and as suggested by Geraldine Heng, “the vanishing point of history and the instantiation of cultural fantasy” is what makes the romance genre unique.⁷⁸ Romance occurs at the exact moment history begins to subside and the two (history and fiction) “collide, one vanishing into the other” to the point of obscurity.⁷⁹ One needs only to look at Geoffrey of Monmouth’s legend of King Arthur to see the complexity in separating fact from fiction. Similarly, Melissa Furrow argues that the spectrum of “truth-fiction” and “history-romance” is a useful tool for analysis.⁸⁰ Andrew Galloway, however, claims that the “elusive truth status of romance” ensures that the genre escapes classification.⁸¹ Paul Strohm argues that historians should not dismiss literature as a source to study the historical past. Rather, Strohm states that

⁷³ McKinstry, *Middle English Romance and the Craft of Memory*, 1, 64. Here McKinstry discusses the robe of Emaré as a “chain” linked to other romances. This serves as a marker of expectations for the audience who remembered these tales, but also to the fictional Emaré herself.

⁷⁴ Green, *The Beginnings of Medieval Romance*, 5–6.

⁷⁵ Florschuetz, *Marking Maternity in Middle English Romance*, 124.

⁷⁶ Green, *The Beginnings of Medieval Romance*, 152; see also, Kaeuper, *Chivalry and Violence in Medieval Europe*, 203–204.

⁷⁷ Gayle Margherita, *The Romance of Origins: Language and Sexual Difference in Middle English Literature* (Philadelphia: University of Philadelphia Press, 1994), 2.

⁷⁸ Geraldine Heng, *Empire of Magic: Medieval Romance and the Politics of Cultural Fantasy* (New York: Columbia University Press, 2003), 18, 45.

⁷⁹ Heng, *Empire of Magic*, 45.

⁸⁰ Furrow, *Expectations of Romance*, 183.

⁸¹ Galloway, *Medieval Literature and Culture*, 81.

historians should read literary sources as historical, in that there is historical context surrounding the composition of the text and historical information within the audience's anticipation and reception of the text.⁸² To this point, Strohm states that literature is "haunted by history" since it is surrounded by historical context through "discursive linkages" which are evident in the text. Consequently, according to Strohm, the literature is itself a historical source with an "aura of unspoken implication."⁸³

Time and space in romance are both real and imaginary; that is, certain locations exist as signposts to the real lived world, while others are pure fantasy.⁸⁴ However, the distinctions between the real and imagined spaces are complex and often intentionally ambiguous. The same can also be said of time; intentionally conflating the nostalgic past with contemporary concerns ensured the popularity of the genre to continually make itself relevant.⁸⁵ Other distant worlds distort the familiar just enough to make the recognizable strange, and this is often where deep social issues are presented. By intentionally displacing the concepts of time and space, romance ensures its relevance to the medieval present, by questioning the very foundation of how society structures itself, from the safe distance of fantasy.⁸⁶

Simon Gaunt offers no definition of romance, in that it, according to him, simply cannot be defined by the form the text takes, nor by its content or narrative structure, since romance intentionally plays with the audiences' "horizon of expectations."⁸⁷ This horizon is able to be

⁸² Paul Strohm, *England's Empty Throne: Usurpation and the Language of Legitimation 1399–1422* (New Haven: Yale University Press, 1998), xii.

⁸³ Strohm, *England's Empty Throne*, 214.

⁸⁴ Ashton, *Medieval English Romance in Context*, 94; Fewster, *Traditionality and Genre in Middle English Romance*, 36–37.

⁸⁵ Ashton, *Medieval English Romance in Context*, 94.

⁸⁶ Ashton, *Medieval English Romance in Context*, 112.

⁸⁷ Simon Gaunt, "Romance and Other Genres," in *The Cambridge Companion to Medieval Romance*, ed. Roberta L. Krueger (Cambridge: Cambridge University Press, 2000), 46; Hans Robert Jauss, "Towards an Aesthetic of Reception," trans. Thimathoy Bahti, *Theory and History of Literature* Vol. 2 (Brighton: Harvester Press, 1982), 23.

toyed with because of the mutual expectations of the composer of the text and the audience.⁸⁸ To this point, Gaunt states that any tidy definition of the genre oversimplifies the diversity of romance, as “any scholars trying to define what medieval romance genre is will inevitably fail to account for the richness and diversity” of romance narratives.⁸⁹ Helen Cooper offers a more complex definition of the romance genre, one resembling a family structure in that it may change “over time but can be recognized...due to their resemblance” and in this same way “any features that might be taken as definitive for the genre may be absent in any particular case without damaging the sense of family resemblance.”⁹⁰ These “memes,” or common literary motifs and themes in romance, according to Helen Cooper, include the elite status of the protagonist, a knightly quest or adventure often to a foreign land, the inclusion of magical people and/or objects, as well as love and the happily ever after ending.⁹¹ These motifs can be played with, disrupted and manipulated, as they are part of the audiences’ expectations of romance.⁹² Similarly, John Stevens argues that romances should be classified by their similarities of motifs and Ad Putter advocates for the “family resemblance approach.”⁹³

Melissa Furrow offers a similar familial definition of romance based on “likeness” and “difference” to other genres on the principle of “centrality.” In this theory, Furrow explains that there are some narratives which exemplify the iconic romance themes, such as *Guy of Warwick*, and thus they can be classified as “central.” Then there are periphery romances, those that contain fewer of the themes central to the genre, which are still classified as romance due to

⁸⁸ Cooper, *The English Romance in Time*, 8.

⁸⁹ Gaunt, “Romance and Other Genres,” 46.

⁹⁰ Cooper, *The English Romance in Time*, 8–9.

⁹¹ Cooper, *The English Romance in Time*, 10.

⁹² Cooper, *The English Romance in Time*, 15, 21.

⁹³ John Stevens, *Medieval Romance: Themes and Approaches* (London: Hutchinson University Library, 1973), 10, 16; Putter and Gilbert, “Introduction,” 1–2.

chaining, where “central members are linked to other members” by some similar feature.⁹⁴

According to Furrow, these traits include the nobility of the protagonist, a journey or quest, the discovery of identity, courtly behaviour, love, and magic.⁹⁵ Furrow claims that all romances have one of these traits, but none of them include every trait, but nonetheless, are all part of the same genre due to the principle of centrality and chaining.⁹⁶

Romance is based on the assumed naturalness of heterosexuality.⁹⁷ The theme of rape, or threatened rape, troubles the assumed romantic themes of the romance genre, and instead it requires scholars to question the purpose of such graphic violence in these stories.⁹⁸ The frequency with which rape and violence are perpetuated in romance has been acknowledged by some literary scholars. This was not unique to England, nor France, but also perpetuated as a literary trope in Spain and Germany.⁹⁹ The abundant number of literary representations of rape across Europe suggests that rape was not incompatible with the courtly chivalric world, but rather an integral part of that world.¹⁰⁰

Audience and Reception

Romance was intended to be read aloud, debated, and discussed¹⁰¹ and thus there was both a listening and reading audience.¹⁰² The actual audience of Middle English romance was

⁹⁴ Furrow, *Expectations of Romance*, 49–52.

⁹⁵ Furrow, *Expectations of Romance*, 57.

⁹⁶ Furrow, *Expectations of Romance*, 60.

⁹⁷ Ashton, *Medieval English Romance in Context*, 124.

⁹⁸ Ashton, *Medieval English Romance in Context*, 140.

⁹⁹ Classen Albrecht, *Sexual Violence and Rape in the Middle Ages a Critical Discourse in Premodern German and European Literature* (Berlin: De Gruyter, 2011) 2–10.

¹⁰⁰ Albrecht, *Sexual Violence and Rape in the Middle Ages*, 29–31.

¹⁰¹ Furrow, *Expectations of Romance*, 195, 211.

¹⁰² Green, *The Beginnings of Medieval Romance*, 35–38.

very diverse, originally reserved for the elites but becoming more “popular,” that is non-noble, as the Middle Ages progressed.¹⁰³ Anthony Musson argues that popular Middle English romance provides the unique opportunity to study non-elitist culture and “see the popular consciousness.”¹⁰⁴ The wide appeal of the popular romance genre is evident from the numerous extant manuscripts penned between the thirteenth and the fifteenth centuries.¹⁰⁵ The association of romance with an aristocratic audience was perpetuated by the genre itself, usually in the prologue where the text addresses the implied audience as “lords and ladies.”¹⁰⁶ This formulaic address, along with the standard opening prayer, is representative of the expectations of the genre and its conventions, and not a description of the actual listening audience which was more diverse.¹⁰⁷ That is not to say that the nobility was disinterested in Middle English popular romance, as evidence of manuscript ownership shows that the popular genre equally appealed to both the elite and mercantile classes.¹⁰⁸ Further, the opening salutation and prayer are evidence that romance was intended to be read aloud in a communal setting, not to be read silently and in isolation.¹⁰⁹ The episodic structure of romance furthers the argument that these stories were read aloud to a group of people. The linear plot structure, with various episodes loosely connected, served as markers for the listening audience and aided in the reception for a diverse audience, with different interests and levels of education.¹¹⁰

¹⁰³ Krueger, “Introduction,” 3; Kaeuper, *Chivalry and Violence in Medieval Europe*, 111; Putter and Gilbert, “Introduction,” 2–3.

¹⁰⁴ Musson, *Medieval Law in Context*, 27.

¹⁰⁵ McDonald, “A Polemic Introduction,” 11.

¹⁰⁶ Fewster, *Traditionality and Genre in Middle English Romance*, 22–37.

¹⁰⁷ Fewster, *Traditionality and Genre in Middle English Romance*, 31, 35.

¹⁰⁸ Mehl, *The Middle English Romances of the Thirteenth and Fourteenth Centuries*, 4, 8–9; Putter and Gilbert, “Introduction,” 21–22.

¹⁰⁹ Mehl, *The Middle English Romances of the Thirteenth and Fourteenth Centuries*, 5.

¹¹⁰ Mehl, *The Middle English Romances of the Thirteenth and Fourteenth Centuries*, 23–24.

The belief that these stories were spread by wandering minstrels has been discredited by Dieter Mehl, who claims that the reference to minstrels is part of the literary convention.¹¹¹ Even though most scholars agree that during the late Middle Ages, romance was likely read aloud in the urban households, by both the gentry and the more popular mercantile classes,¹¹² this does not necessary exclude oral recitation. Ad Putter and Jane Gilbert argue that minstrel references may have been both “literal” and “conventional,” and they caution against dismissing the oral transmission of these texts.¹¹³ Written in the vernacular, the genre was more accessible and able to be enjoyed and discussed by non-noble audiences.¹¹⁴ Despite the scholarly debate surrounding oral performance of romance,¹¹⁵ there is little doubt that popular romance was intended to be talked about and debated. Nicola McDonald states that it was a collective experience of “a community of listeners” engaged in a “shared imaginative experience.”¹¹⁶ The romantic narratives of courtly culture were a tool, according to Krueger, that worked to not only define who the nobility was, but also justified their elevated position in society. Consequently, romance responded to and constructed gender and class distinctions in the real world.¹¹⁷

It is largely assumed that romance authors were primarily men and that both men and women enjoyed listening to romance stories.¹¹⁸ Despite their lack of opportunity for formal education, women were influential in the development and the consumption of the romance genre.¹¹⁹ With book patrons and consumers in nunneries and lay households, women readers

¹¹¹ Mehl, *The Middle English Romances of the Thirteenth and Fourteenth Centuries*, 5–6.

¹¹² Riddy, “Middle English Romance: Family, Marriage, Intimacy,” 236–237; Putter and Gilbert, “Introduction,” 3. For a definition of urban gentry, see Mate, *Daughters, Wives and Widows after the Black Death*, 151.

¹¹³ Putter and Gilbert, “Introduction,” 7–10.

¹¹⁴ Cooper, *The English Romance in Time*, 12.

¹¹⁵ Putter and Gilbert, “Introduction,” 13, 15.

¹¹⁶ McDonald, “A Polemic Introduction,” 14.

¹¹⁷ Krueger, “Introduction,” 5.

¹¹⁸ Carol M. Meale, “Introduction,” in *Women and Literature in Britain, 1150–1500*, ed. Carol M. Meale (Cambridge: Cambridge University Press, 1993), 2; Alexander, “Women as Lovers in Early English Romance,” 28.

¹¹⁹ Ashton, *Medieval English Romance in Context*, 21; Ward, *Women of the English Nobility and Gentry*, 158.

contributed to the development and spread of Middle English romance.¹²⁰ Putter and Gilbert argue that women of all social classes, “from elite to lowly,” enjoyed listening and reading romance.¹²¹ However, romance was not exclusively a “feminine genre,” since, as David Salter argues, romance primarily represents men’s problems, masculine identity formation, and the characters that are women are often described in relation to characters that are men.¹²² It is important to recognise that even the characters are the products of male authors and inventors. Furthermore, the recent work of Melissa Furrow has shown that romances were not exclusively read among the laity, but that there were also numerous monasteries, inhabited by men, which included romances in their libraries.¹²³ These findings continue to enrich our scholarly understanding of the romance genre, audience, and reception.

Romance Theory

Derek Brewer influentially argued that the fictional events depicted in romances are of less importance to the meaning of the narrative than the deeper symbolic meaning below the surface. Fictional narratives, he claimed, are all symbolic stories about real human experiences.¹²⁴ To borrow Brewer’s terminology, romance has a “manifest literal” level of plot and events, “which conveys the deeper ‘latent’ or symbolic significance.”¹²⁵ This theoretical

¹²⁰ Felicity Riddy, “‘Women talking about the things of God’: a Late Medieval Sub-Culture,” in *Women and Literature in Britain, 1150–1500*, ed. Carol M. Meale (Cambridge: Cambridge University Press, 1993), 108–111; see also, Julia Boffey, “Women Authors and Women’s Literacy in Fourteenth and Fifteenth-Century England,” in *Women and Literature in Britain, 1150–1500*, ed. Carol M. Meale (Cambridge: Cambridge University Press, 1993), 159–182.

¹²¹ Putter and Gilbert, “Introduction,” 24.

¹²² David Salter, “‘Born to Thralldom and Penance’: Wives and Mothers in Middle English Romance,” in *Writing Gender and Genre in Medieval Literature: Approaches to Old and Middle English Texts*, ed. Elaine M. Treharne (Woodbridge: D.S. Brewer, 2002), 41–43.

¹²³ Furrow, *Expectations of Romance*, 223. See the appendix “Romance and the Male Regular Clergy by Order.”

¹²⁴ Brewer, *Symbolic Stories*, 1–2.

¹²⁵ Brewer, *Symbolic Stories*, 10.

framework is widely accepted among scholars such as Roberta Krueger, who states that “romance narratives do not simply reflect” society but rather “they respond to particular contexts” and question that same society.¹²⁶ John Stevens warns scholars not to “separate literature from life,” as reading romance in isolation from the cultural context in which it was consumed in, is distorting.¹²⁷ This is supported by Karen Pratt, in her article which argues that romance offers insight into the beliefs and concerns of the community it was made for.¹²⁸ However, Furrow warns that the listening and reading audience, both contemporary and modern, can only get to the symbolic meaning by first examining the literal.¹²⁹ This is reminiscent of Dieter Mehl’s argument that the moral lessons of romance are implicit, while the basic explicit plot is entertainment for the “less educated listeners.”¹³⁰ Thus, the following analysis of romance seeks to understand what the “literal” depictions of rape and threatened rape imply about the “latent” meaning of those literary motifs. This requires a dual approach: first, a re-reading of the scenes of sexual violence as rape and/or threatened rape. This necessarily involves reading the scenes as violence against women, and not as narrative building blocks. Secondly, it must be asked what the superficial rape narratives convey about the deeper symbolic level of the human experience. If Brewer is correct, in that romance models real human experiences in a fantastical way,¹³¹ then the romance genre holds real truths which the intended audience would have been able to recognise and relate to.

¹²⁶ Krueger, “Introduction,” 1; Similarly, Pamela King talks about the “denotative” literal meaning and the “connotative,” see King, *Medieval Literature*, 215.

¹²⁷ Stevens, *Medieval Romance*, 228.

¹²⁸ Karen Pratt, “The Image of the Queen in Old French Literature,” in *Queens and Queenship in Medieval Europe, Proceedings of a Conference Held at King’s College London April 1995*, ed. Anne J. Duggan (Woodbridge: The Boydell Press, 1997), 235.

¹²⁹ Furrow, *Expectations of Romance*, 9.

¹³⁰ Mehl, *The Middle English Romances of the Thirteenth and Fourteenth Centuries*, 23.

¹³¹ Brewer, *Symbolic Stories*, 78.

Medieval Gender Constructions in Romance: Masculinity

Gender in romance literature, as argued by Simon Gaunt, is both constructed and informs the narrative structure, and as such “gender and genre are inextricably linked.”¹³² A contemporaneous understanding of gender is necessary to understand the genre.¹³³ The ideal gender identity expressions presented in romance (among various other forms of medieval literature including conduct texts, hagiography, and penitentials) were explicit in their expectations of masculine activity and feminine passivity,¹³⁴ acting both in opposition to each other and complementary to one another.¹³⁵ The duality of “identity” as being influenced by interior mental states and exterior cultural norms makes the following analysis of gender norms in romance complex. Jeffrey Jerome Cohen states that “identity is a cultural effect that results from constant combination” of “subjectivity” and “embodiment” and thus identity is viewed here as an individual choice based on the acceptable standards, as constructed by the community.¹³⁶

The appropriate expression of masculinity was dependent on the socio-economic status of the individual.¹³⁷ As members of the elite, most protagonists express their masculine gender identity through fighting, wielding weapons, and successfully defeating evil men and “others,” such as fairies and giants. This is embedded in notions of chivalry, a notoriously difficult concept to define.¹³⁸ According to Richard Kaeuper, chivalry was transformed in its meaning, as it

¹³² Simon Gaunt, *Gender and Genre in Medieval French Literature* (Cambridge: Cambridge University Press, 1995), 1.

¹³³ Gaunt, *Gender and Genre*, 16.

¹³⁴ Louise M. Sylvester, *Medieval Romance and the Construction of Heterosexuality* (New York: Palgrave MacMillan, 2008), 62.

¹³⁵ Cadden, *Meanings of Sex Difference in the Middle Ages*, 178–181, 190–191.

¹³⁶ Cohen, *Of Giants*, xvii.

¹³⁷ Butler, *The Language of Abuse*, 39.

¹³⁸ Kaeuper, *Chivalry and Violence in Medieval Europe*, 4.

originally came from the Latin *militia* or the French *chevalerie*, primarily denoting a fighter on horseback.¹³⁹ Around 1100 the transformation of the term took place, from denoting the social class of knights and eventually into an “abstract” code of conduct.¹⁴⁰ The term *miles* is equally complex and was also transformed throughout the early to high Middle Ages. Originally referring to a soldier but over time acquiring more elite connotations, *miles* came to reflect the rise of knighthood within the nobility exclusively.¹⁴¹ This too is reflected in romance, where the male protagonist is a noble knight; even if he is unaware of his true identity, it is always inherent within him.¹⁴² The exclusivity of knighthood for the elites was aided by the extreme costs of becoming a knight, which included the costs for armour, training, a warhorse, as well as the time dedicated to training, all of which excluded the lower classes.¹⁴³

The public disorder that was a consequence of violent knights carrying out their own personal feuds, as well as those of their liege lords, has been suggested as the impetus for a chivalric code. This code sought to channel the violence away from personal wars and towards a just cause.¹⁴⁴ Romance perpetuates the notion of a just cause for male violence. This violence is carried out by a knight, often in defence of his honour or for the protection of vulnerable people.¹⁴⁵ The church too recognised the need to channel knightly violence and in the eleventh century there was the Truce of God and the call for the First Crusade. The former banned violence on holy days and the latter allowed knights to demonstrate their military prowess in the

¹³⁹ Kaeuper, “The Societal Role of Chivalry in Romance,” 97.

¹⁴⁰ Kaeuper, “The Societal Role of Chivalry in Romance,” 97; Kaeuper, *Chivalry and Violence in Medieval Europe*, 4; Cooper, *The English Romance in Time*, 42.

¹⁴¹ Kaeuper, *Chivalry and Violence in Medieval Europe*, 189–190.

¹⁴² Kaeuper, *Chivalry and Violence in Medieval Europe*, 190.

¹⁴³ Kaeuper, *Chivalry and Violence in Medieval Europe*, 192.

¹⁴⁴ Kaeuper, *Chivalry and Violence in Medieval Europe*, 13–15, 19–20, 159–160.

¹⁴⁵ Kaeuper, *Chivalry and Violence in Medieval Europe*, 22, 118.

name of God.¹⁴⁶ By exploiting the spiritual and praiseworthy avenues for knightly violence, romance worked to normalise and idealise “good” male aggression done by “good” knights. This is immediately disrupted by the frequent appearance of evil knights in romance. These bad knights, such as those in *Sir Degare* and *Le Bone Florence of Rome*, or Chaucer’s *The Wife of Bath* (discussed more in chapter 8), imply that violence in the name of peace can simply result in more violence.¹⁴⁷ The inclusion of knights who rape or sexually assault women suggests that romance is reiterating the societal anxiety about masculine gender expressions of violence and physical domination.¹⁴⁸ John Bellamy argues that male aggression and violence was almost encouraged in the cultural context of medieval England, since a “willingness to engage in [martial deeds was viewed] as a valuable quality of a man.”¹⁴⁹ It is not hard to imagine how such gender expectations acted as a cultural fertilizer for criminal activity and aggression. Kaeuper explains that despite chivalry’s attempt to reform knightly aggression and brutality against innocent people, it largely failed to change anything.¹⁵⁰ This is in opposition to Georges Duby’s argument that the moral reforms of behaviour, as a consequence of chivalric ideology, transformed the violence of heterosexual encounters into courtly love and seduction.¹⁵¹ The implications of chivalry are complex and far beyond the scope of this thesis, however, it is important to recognise that chivalric literature depicts societal fears of not only women, but also men. Disobedient wives and sexual temptresses litter the genre, but equally romance exploits the anxieties towards unfulfilled masculine gender identity expressions.¹⁵² Knights who cannot

¹⁴⁶ Kaeuper, *Chivalry and Violence in Medieval Europe*, 64–75.

¹⁴⁷ Kaeuper, *Chivalry and Violence in Medieval Europe*, 24.

¹⁴⁸ Kaeuper, *Chivalry and Violence in Medieval Europe*, 28.

¹⁴⁹ Bellamy, *Crime and Public Order in England in the Later Middle Ages*, 25.

¹⁵⁰ Kaeuper, *Chivalry and Violence in Medieval Europe*, 185.

¹⁵¹ Duby, *The Knight, the Lady and the Priest*, 40.

¹⁵² Roberta L. Krueger, “Questions of Gender in Old French Courtly Romance,” in *The Cambridge Companion to Medieval Romance*, ed. Roberta L. Krueger (Cambridge: Cambridge University Press, 2000), 143.

defeat their opponent or seduce the reluctant lady are indicative, by their un-fulfilment, of the expectations of medieval masculinity.

Male sexuality is complexly represented in romance, simultaneously praised and feared. It is both applauded for sexual conquests while also being described as sometimes needing to be controlled. Knights are encouraged by the secret affection of a lady and perform valiant deeds in efforts to impress her. This can be interpreted as praising the woman's position, as superior to that of the male lover, in the game of courtly love. However, female writer Christine de Pizan (1364–c.1430) warned against such concepts, as she believed this was a false notion of women's superiority. Worried that young maidens would read romance and then assume themselves to have a privileged position of control over lustful knights, Christine reminds her audience of women of the folly in such thought.¹⁵³ Often, sexual temptation by beautiful women is a thing to be feared by the male protagonists.¹⁵⁴ Female characters entice male heroes away from the journey of their quests and attempt to persuade them into sexual dangers.

In his influential text, *Of Giants*, Jeffrey Jerome Cohen suggests that the monster is the counter-part to the male chivalric hero and moreover, the monster is simultaneously feared and desired as an “intimate stranger.”¹⁵⁵ Monsters are used as markers of humanity and chivalry since they embody neither.¹⁵⁶ At the basic manifest level, the romance monster functions as a test of masculinity and chivalric identity, which the male protagonist must conquer.¹⁵⁷ The monstrous entities embody qualities that are representative of ideal masculinity (strength, courage,

¹⁵³ Pratt, “The Image of the Queen in Old French Literature,” 243–244. Pratt references Christine de Pizan's 1405 text *Livre des Trois Vertus*.

¹⁵⁴ Cooper, *The English Romance in Time*, 78.

¹⁵⁵ Cohen, *Of Giants*, xiii; Ashton, *Medieval English Romance in Context*, 125.

¹⁵⁶ Dana Oswald, *Monsters, Gender and Sexuality in Medieval English Literature* (Woodbridge: D. S. Brewer, 2010), 3, 10.

¹⁵⁷ Cohen, *Of Giants*, xii.

fierceness) and feared masculinity (irrationality, lack of reason or bodily control) which is remarkably similar to the romance rapist.¹⁵⁸ Heterosexual desire and physical power are both idealised qualities of a male protagonist as well as horrific traits of a rapist, or what Cohen describes as the “failure of masculinity.”¹⁵⁹ The knight can become the monster, and as we will see in the following chapters, some knights are monsters, but it is the code of chivalry in romance that can prevent him from becoming the monster.¹⁶⁰ The monstrosity of masculinity is thus percolating just below the surface of medieval society and romance attempts to instill chivalric behaviour into the listening and reading audiences “as a system of social control.”¹⁶¹

Since the crime of rape involves heterosexual coitus and physical domination, both of which are qualities praised by medieval society as ideal masculinity, John Bellamy seems to be correct in stating that the “root of crime lies more in social institutions and attitudes than in the personalities of individuals.”¹⁶² If medieval English culture encouraged male aggression and female passivity as ideal gendered behaviours, then we can see how the potential space is created to bring those traits past the culturally appropriate boundaries and into the realm of crime and violence. The chivalric ideal is thus active in the “construction of masculinity” and femininity, and romance actively creates gender identity expressions.¹⁶³ Consequently, Cohen is likely correct in arguing that romance was a tool used to help shape gender norms and to influence the performance of these idealised norms on the listening and reading audiences.¹⁶⁴

¹⁵⁸ Cohen, *Of Giants*, xx.

¹⁵⁹ Cohen, *Of Giants*, xx.

¹⁶⁰ Cohen, *Of Giants*, 78.

¹⁶¹ Cohen, *Of Giants*, 78.

¹⁶² Bellamy, *Crime and Public Order in England in the Later Middle Ages*, 21.

¹⁶³ Cohen, *Of Giants*, 124.

¹⁶⁴ Cohen, *Of Giants*, 148–149.

Medieval Gender Constructions in Romance: Femininity

Scholars have debated whether or not romance advanced the status of women in the real world.¹⁶⁵ Remembering that romance was not simply read at face value, but debated and discussed amongst the various audience members, Kaeuper states that romance does not offer a single view of “women” as a collective whole.¹⁶⁶ This is absolutely correct; various women are portrayed differently according to their status and identity, whether they are from this world or another world. However, I believe that collectively medieval England’s perpetuation of women’s passivity as a marker of femininity was all-encompassing, from church doctrine, conduct literature, secular romances, and criminal proceedings. The works of Augustine of Hippo idealised the silent and obedient wife, who loved her husband despite physical abuse.¹⁶⁷ Romance often places ladies on idealised pedestals, where they are admired by men, while concurrently seeking to marginalise their involvement and silence their voices.¹⁶⁸ Simon Gaunt wisely states that “romance ostensibly elevates the feminine whilst underscoring its *courtoisie* with profound misogyny and a pervasive concern with masculinity.”¹⁶⁹ That is, women characters are rarely valued for their own self-worth, but rather they are treated as objects for men’s acquisition and as status symbols, they are judged for “their usefulness” to men, and they

¹⁶⁵ Kaeuper, *Chivalry and Violence in Medieval Europe*, 209; *Women and Literature in Britain, 1150–1500*, ed. Carol M. Meale (Cambridge: Cambridge University Press, 1993), specifically the articles by Judith Weiss, Flora Alexander, Jennifer Fellows and Julia Boffey.

¹⁶⁶ Kaeuper, *Chivalry and Violence in Medieval Europe*, 211–213.

¹⁶⁷ Butler, *Language of Abuse*, 49.

¹⁶⁸ Krueger, “Questions of Gender in Old French Courtly Romance,” 137; Gaunt, *Gender and Genre*, 114–115; Judith Weiss, “The Power and the Weakness of Women in Anglo-Norman Romance,” in *Women and Literature in Britain, 1150–1500*, ed. Carol M. Meale (Cambridge: Cambridge University Press, 1993), 8; Ward, *Women of the English Nobility and Gentry*, 10.

¹⁶⁹ Gaunt, *Gender and Genre*, 121.

are treated with a high concern about their marriage market value.¹⁷⁰ The importance of marital spouse selection, as has been previously discussed, appeared to have alarmed lawmakers and this anxiety can be interpreted as being represented by the treatment of women characters in romance.¹⁷¹

Passivity was a marker of femininity which had roots in the construction of heterosexual encounters, where action was a marker of masculinity.¹⁷² This is written into some romances, where male characters attempt to persuade reluctant female characters into engaging in sex.¹⁷³ This passivity is broken, as will be evident in the following chapter, when the heroine actively rejects the man's seduction.¹⁷⁴ Additionally, when women's sexuality is portrayed as active (as will be seen with Belisaunt in *Amis and Amiloun* in the next chapter) it is shown as potentially destructive to the patrimony and social order.¹⁷⁵ This is heightened by the fact that female bodies could be associated with land and the male control of the female body resembles the control of the land. This is particularly true with Florence, in *Le Bone Florence of Rome*, as her name embodies the city for which she must produce the next heir. For her, the threat of rape is equivalent to the threat of loss of sovereignty. Men's sexual deviancy does not seem to have the same political repercussions in romance and thus there is an exaggerated danger implied in women's active sexuality.

¹⁷⁰ Weiss, "The Power and the Weakness of Women in Anglo-Norman Romance," 9.

¹⁷¹ Alexander, "Women as Lovers in Early English Romance," 27.

¹⁷² Furrow, *Expectations of Romance*, 147; Riddy, "Middle English Romance: Family, Marriage, Intimacy," 248; Elaine Tuttle Hansen, *Chaucer and the Fictions of Gender* (Los Angeles: University of California Press, 1992), 2; Elizabeth Archibald, "Lai le Freine: The Female Foundling and the Problem of Romance Genre," in *The Spirit of Medieval English Popular Romance*, eds. Ad Putter and Jane Gilbert (Toronto: Pearson Education, 2000), 42; Sylvester, *Medieval Romance and the Construction of Heterosexuality*, 65.

¹⁷³ Sylvester, *Medieval Romance and the Construction of Heterosexuality*, 91, 161–162.

¹⁷⁴ Furrow, *Expectations of Romance*, 149.

¹⁷⁵ Pratt, "The Image of the Queen in Old French Literature," 251.

Stock female romance characters, such as the nameless mother, the lovely lady or the damsel in distress, are often used as literary tools to aid in the chivalric development of a male protagonist.¹⁷⁶ Female characters frequently instil chivalric ideals onto male characters and help in the development of their knightly identity.¹⁷⁷ This is all the more peculiar when one considers the prominent role real women had in forming the romance genre, acting as patrons, manuscript owners and consumers. The narrative trajectory of some women protagonists is often going from maidenhood to marriage or motherhood, mirroring the expectations of the feminine life cycle. The choice of a husband is usually the woman's but often her male guardian consents to her choice.¹⁷⁸ In principle, this was also the expectation in the lived world. As cleverly stated by Elizabeth Archibald, romance "suggests that for women, marriage is the ultimate adventure"¹⁷⁹ as stories with a protagonist that is a woman invariably centre on issues relating to marriage and end in happy matrimony. The actions of fairies that are women are almost invariably active; the "other" women in romance are usually the most strong-willed, independent, and celebrated feminine characters as they can bestow great wealth and land to men.¹⁸⁰ Predictably though, the usurpation of female passivity by active female characters rarely, if ever, disrupts the cultural gender norms by the end of the narrative. According to Helen Solterer, gender role reversal amongst characters "often serves to vindicate the norms of its society rather than to undermine them."¹⁸¹

¹⁷⁶ Sheila Fisher, "Women and Men in Late Medieval English Romance," in *The Cambridge Companion to Medieval Romance*, ed. Roberta L. Krueger (Cambridge: Cambridge University Press, 2000), 152.

¹⁷⁷ Whetter, *Understanding Genre and Medieval Romance*, 64.

¹⁷⁸ Cooper, *The English Romance in Time*, 223, 229.

¹⁷⁹ Archibald, "*Lai le Freine*: The Female Foundling and the Problem of Romance Genre," 52.

¹⁸⁰ Cooper, *The English Romance in Time*, 225.

¹⁸¹ Helen Solterer, "Figures of Female Militancy in Medieval France," *Signs: Journal of Women in Culture and Society* Vol. 16, No. 3 (Spring 1991): 534.

Conduct literature was explicit in idealising feminine passivity. The widely popular fourteenth-century Middle English text *How The Good Wife Taught Her Daughter* reiterated the instructions that an ideal wife was to be passive and always agreeable.¹⁸² The poem states that a wife is meek and mild,¹⁸³ and explains that if one's husband be "wroth and angry/ Loke thou mekly ansuer hym,"¹⁸⁴ suggesting that when a husband is angry, or even "violently enraged,"¹⁸⁵ the wife is advised to remain meek. The Middle English Dictionary defines "meke" as "gentle, quiet, [and] unaggressive,"¹⁸⁶ furthering the notion that feminine passivity is expected even in times of masculine aggression and violence. In advising against partaking in masculine activities, such as wrestling and cock-shooting, the poem claims that a woman who engages in such activities is a "strumpet."¹⁸⁷ When a woman is involved in traditionally masculine activities, she is not referred to as manly or unwomanly, but as a sexually deviant woman, as strumpet is defined as "a prostitute" or "whore."¹⁸⁸ This is reminiscent of the sexual slander used against women in medieval court proceedings. In the other very popular fourteenth-century conduct text, *The Book of the Knight of the Tower* (*Livre pour l'enseignement de ses filles du Chevalier de La Tour Landry*), translated into Middle English in the fifteenth century, the "good" wife was submissive and she endured her suffering silently as her husband was her master.¹⁸⁹ The *Knight's Book* states that a husband "was angri of her gouernaunce, smote her with his fiste downe to the

¹⁸² Butler, *Language of Abuse*, 50.

¹⁸³ "How the Goode Wife Taught Hyr Daughter," line 20 "Loke that tho be bothe meke and myld."

¹⁸⁴ "How the Goode Wife Taught Hyr Daughter," lines 36–37.

¹⁸⁵ *Middle English Dictionary*, "wroth" Article 1(b): "inordinately angry, furious; violently enraged."

¹⁸⁶ *Middle English Dictionary*, "meke" Article 1(a): "gentle, quite, unaggressive; of a woman: modest."

¹⁸⁷ "How the Goode Wife Taught Hyr Daughter," lines 73–75: "Ne go thou not to no wrastlyng/ Ne yit to no coke schetyng/ As it were a strumpet other a gyglote."

¹⁸⁸ *Middle English Dictionary*, "strumpet" Article 1(a): "a prostitute, whore; a concubine; a loose woman, an adulteress."

¹⁸⁹ Butler, *Language of Abuse*, 51; Rebecca Barnhouse, *The Book of the Knight of the Tower: Manners for Young Medieval Women* (New York: Palgrave Macmillan, 2006), 8–11. Here Barnhouse notes that there are twenty-one extant manuscripts of *The Knight's Book*, and that it was translated into English prior to Caxton's 1483 translation.

erthe; And thane with hys fote he stroke her in the uisage and brake her nose...And therefore the wiff aught to suffer and lete the husbonde haue the words, and to be maister, for that is her worshippe.”¹⁹⁰ The poem discusses how a disobedient wife ought to expect to get physically beaten by her husband.¹⁹¹ The extreme of this is described in chapter LXIII “Of Proud Women” in which a queen answered accusations of adultery “fersely and proudly,” and the king “toke a kniff aud slow her” even though she was falsely accused.¹⁹² The narrative warns that the queen brought on her own death and that this “is a good eusaumple to euery woman to be meke and curteis, and to ansuere mekely, curtaisly and sofetly.”¹⁹³

The expectation of wifely obedience was repeated, but there was also the expectation of men to ensure control and protection of their wives, not only because of the legal culpability but also the societal expectation that masculinity was defined by an orderly house.¹⁹⁴ This is echoed in romance, as the common literary motif of an unfaithful (or the assumed unfaithful) wife put on trial is frequently displayed in romance¹⁹⁵ as a reflection of the husband’s ineptness. Accusations of adultery provide plot developments that incite both laughter and anxiety from the listening audience, as female promiscuity was a matter of male lineage and economics,¹⁹⁶ and thus it

¹⁹⁰ *The Book of the Knight of La Tour-Landry: Compile for the Instruction of his Daughter; Translated from the Original French into English in the Reign of Henry VI, and Edited for the First Time from the Unique Manuscript in the British Museum, Harl.1764, and Caxton’s Print, A.D. 1484, With an Introduction and Notes*, ed. Thomas Wright (London: Kegan Paul, Trench Trübner & Co., 1868 Rev. 1906), c. XVIII, 25. “And he, that was angry for her governance, hit her with his fist down to the earth; and then with his foot he struck her in the face and broke her nose, and all her life after she had her nose crooked...And therefore the wife out to suffer and let her husband have the words, and to be master, for that is her worship.” Translations are my own.

¹⁹¹ *The Book of the Knight of La Tour-Landry*, c. XIX, 27–28.

¹⁹² *The Book of the Knight of La Tour-Landry*, c. LXIII, 84–85.

¹⁹³ *The Book of the Knight of La Tour-Landry*, c. LXIII, 84–85. “And therefore it is a good example to every woman to be meek and courteous, and to answer meekly, courteously, and softly.”

¹⁹⁴ Butler, *Language of Abuse*, 65; *The Book of the Knight of La Tour-Landry*, c. XVIII, 25 “let her husband have the words and to be master.”

¹⁹⁵ Cooper, *The English Romance in Time*, 270; Jane Gilbert, “Gender, Oaths and Ambiguity in *Sir Tristen* and Breoul’s *Roman de Tristan*,” in *The Spirit of Medieval English Popular Romance*, eds. Ad Putter and Jane Gilbert (Toronto: Pearson Education, 2000), 237–257, specifically 241.

¹⁹⁶ Cooper, *The English Romance in Time*, 271–272.

reflected poorly on the assumed cuckold husband. Equally amusing was the condemnation of women as being inherently “sexual and sinful,” according to Jane Gilbert, thus working to sustain the false accusations of adultery, “because of society’s assumptions of feminine deceit.”¹⁹⁷ Unique to English romance, compared to those on the continent, fictional women on trial for adultery are often found to be wrongfully accused, and the false accusations come from jealous men or mothers-in-law.¹⁹⁸ Despite their innocence, the frequent disbelief of women harks back to the biblical Fall of man due to the actions of Eve and her temptations.¹⁹⁹ The trope of the falsely accused woman further perpetuates the gendered expectations of both appropriate feminine sexuality and masculine control of that sexuality.

Romance contributed to this indoctrination, as femininity was measured on the body and the female body was eroticised in romance literature.²⁰⁰ Romance heroines endure physical brutality and abuse, while “evil women” in romance are corrupted by their innate sinfulness.²⁰¹ In her examination of mothers in romance, Jennifer Fellows concludes that when women are represented as active characters, they are more likely to be villains.²⁰² These evil women characters are almost invariably old,²⁰³ but they can be either extremely ugly or extremely beautiful, in which case they are sexual temptresses. This highlights the connection between physical appearance and assumed virtue; ugly women are considered inherently less virtuous but women who are too beautiful are considered a test for male sexual temptation.²⁰⁴ This outer

¹⁹⁷ Gilbert, “Gender, Oaths and Ambiguity,” 242.

¹⁹⁸ Cooper, *The English Romance in Time*, 270–275.

¹⁹⁹ Cooper, *The English Romance in Time*, 283.

²⁰⁰ Margherita, *The Romance of Origins*, 1.

²⁰¹ Ashton, *Medieval English Romance in Context*, 103.

²⁰² Jennifer Fellows, “Mothers in Middle English Romance,” in *Women and Literature in Britain, 1150–1500*, ed. Carol M. Meale (Cambridge: Cambridge University Press, 1993), 43.

²⁰³ Cooper, *The English Romance in Time*, 294–295.

²⁰⁴ Cooper, *The English Romance in Time*, 18. See especially Chaucer’s *Wife of Bath Tale* for a play on this ugly-beautiful dichotomy.

appearance as a reflection of inner morals was also placed on masculine characters, as the knight protagonist is invariably handsome as a marker of his nobility.²⁰⁵ Sometimes in romance the perfect, passive, and obedient woman is nameless and simply referred to as a lady.²⁰⁶ Even when the protagonist is a woman, the journey is different from that of a knight's quest. The man's journey is often initiated by choice, whereas the impetus for the woman's journey is usually a result of her victimisation, such as being forced out of her home.²⁰⁷ Frequently the cause of the heroine's ejection from her home is sexual suspicion, an unsuitable marital partner, or illegitimate children which threaten the male line of succession.²⁰⁸ As will be discussed further in the following chapters, the male hero is one of action and the female heroine is one of endurance.

Social Anxieties in Romance

Nicola McDonald calls romance a "dangerous recreation" because "romance explores transgressions of cultural boundaries," such as rape, and because of these transgressions romance "continues to shock us, unsettle our assumptions about gender, sexuality...ethics, [and] morality."²⁰⁹ This adds to the genre's appeal throughout generations and centuries. In its exposure of unsettling topics, romance is intentionally provocative. It is a mechanism to discuss contemporary issues plaguing society. Dieter Mehl explains that "they [romances] did not aim at a faithful representation of present-day reality, but...at the illustration of moral truths by way of

²⁰⁵ Kaeuper, *Chivalry and Violence in Medieval Europe*, 190–191.

²⁰⁶ Ashton, *Medieval English Romance in Context*, 104.

²⁰⁷ Cooper, *The English Romance in Time*, 52, 55–56.

²⁰⁸ Cooper, *The English Romance in Time*, 116–117, 334.

²⁰⁹ McDonald, "A Polemic Introduction," 16–17; see also Ashton, *Medieval English Romance in Context*, 1–2, 14–15.

an exemplary story.”²¹⁰ Despite the fictionality of the narratives, they expose moral truths about human experiences, fears, and social attitudes of the audience.

Harking back to a nostalgic, often Arthurian past, romance uses an idealised chivalric past as a means to discuss contemporaneous issues.²¹¹ This blurs the distinction between romances and chronicles, as both use history as a moralising tool.²¹² The listening and reading audiences engage in an imaginative and collective process, where the comparison of the past and present is done communally through discussion and debate.²¹³ As stated above, romance is haunted by history and the fictional narratives are drawn from a recognisable past.²¹⁴ Attempting to instill a chivalric code of proper masculine aggression, romance reflects the societal angst about misbehaving knights committing felonies and disrupting the social order.²¹⁵ The *exempla* of knightly behaviour and proper masculine aggression were applicable to the knightly audience, who owned romances,²¹⁶ and the less elite audience seeking to mimic their social superiors. The chivalric code represented in romance stresses the fact that “good” knightly violence will suppress “bad” knightly violence, and thus Kaeuper is correct in stating that “chivalry will be praised as a solution to the problem of which it is so integral an element.”²¹⁷ The masculine gender identity expressions of physical prowess²¹⁸ and heterosexual desires are integral to both chivalric literature and the normalisation of rape in medieval English culture. Since chivalry praises heterosexuality and the proper use of physical prowess, and because these same qualities

²¹⁰ Mehl, *The Middle English Romances of the Thirteenth and Fourteenth Centuries*, 3.

²¹¹ Ashton, *Medieval English Romance in Context*, 47; Heng, *Empire of Magic*, 3.

²¹² Mehl, *The Middle English Romances of the Thirteenth and Fourteenth Centuries*, 21–22.

²¹³ McKinstry, *Middle English Romance and the Craft of Memory*, 5, 217.

²¹⁴ McKinstry, *Middle English Romance and the Craft of Memory*, 9.

²¹⁵ Kaeuper, *Chivalry and Violence in Medieval Europe*, 28, 124.

²¹⁶ Kaeuper, *Chivalry and Violence in Medieval Europe*, 31–32.

²¹⁷ Kaeuper, *Chivalry and Violence in Medieval Europe*, 125.

²¹⁸ Kaeuper, *Chivalry and Violence in Medieval Europe*, 150.

lead to rape when done “inappropriately,” chivalry is thus both the cure and the sickness. Ultimately, it is simultaneously condemning such actions while also normalising them, depending on who does them and to whom they are done to.

Helen Cooper is correct in stating that literary representations of women matter, because “the belief that fiction was persuasive: that it instructed its readers...that romance’s delight was merely a means to a didactic end” ensures that the representations are important.²¹⁹ There is strong evidence to suggest that medieval audiences mimicked romance heroes. This is blatantly clear with William Beauchamp, earl of Warwick (d.1298) in England’s West Midlands. William named his son not from a family name, but after the widely popular romance hero, Guy, from *Guy of Warwick*.²²⁰ This shows the degree to which romance characters were idealised and mimicked in the real world. It also demonstrates the complexity of separating fiction from history (as discussed above), as Guy Beauchamp became the literal Guy of Warwick.²²¹ Consequently, the previous analysis of the representations of “good” and “bad” women proves important, as they were intended to be used as *exempla*, models of behaviour to emulate and avoid.²²² The vast amount of medieval literature reiterating ideal female passivity implicitly suggests that there was a continual need to remind women of appropriate passive behaviour because it was not always being followed.²²³

The common literary motif of otherworlds, where women are the masters of men or they are their own masters and men do not exist, hints at the contemporary audiences’ familiarity with

²¹⁹ Cooper, *The English Romance in Time*, 300.

²²⁰ Fewster, *Traditionality and Genre in Middle English Romance*, 104–126.

²²¹ King, *Medieval Literature*, 24. Here King discusses the “self-fashioning” of Richard Beauchamp based on the romance *Guy of Warwick*.

²²² Furrow, *Expectations of Romance*, 16, 25, 41; Stevens, *Medieval Romance*, 50, 53.

²²³ Butler, *Language of Abuse*, 54; Cooper, *The English Romance in Time*, 57.

dominant women.²²⁴ The use of these fictional otherworlds was to critique contemporary courtly culture by offering alternatives to reality that were similar and recognisable to the “real” world.²²⁵ As will be discussed more in chapter 7 in relation to *Sir Orfeo*, fairy worlds are common in romance, where exuberant wealth and instinct-driven desires exist that are not confined by the human world.²²⁶ Because of the otherness, these alternative worlds offer an even greater distance from the reality of the “normal world” in courtly literature, and thus they provide a safe distance to play with gender-role reversals and to critique social norms.²²⁷ Despite the cultural subversion in otherworlds, in the end, romance tends to maintain and reinforces the contemporaneous hegemonic gender and social hierarchy.²²⁸

Middle English romance, conduct literature, as well as pastourelles are littered with representations of disobedient, outspoken women, and frequently these women endure physical violence as a result of their disobedience.²²⁹ The growing concern in medieval English society of the fourteenth century was appropriate gendered behaviour²³⁰ and the literature of the period reflects, comments on, and highlights some of the very real societal concerns of misbehaving young women and men, as well as chastising disobedient wives and negligent husbands. The frequency with which rape and violence against women is employed in romance discredits the argument that it was simply a tool of irony, used to evoke either laughter or sympathy in the audience.²³¹ The rape scenes are frequently obscured, with the male aggression displaced on

²²⁴ Butler, *Language of Abuse*, 56.

²²⁵ Jeff Ridder, “The Other Worlds of Romance,” in *The Cambridge Companion to Medieval Romance*, ed. Roberta L. Krueger (Cambridge: Cambridge University Press, 2000), 115, 120.

²²⁶ Cooper, *The English Romance in Time*, 173–181, 381–382.

²²⁷ Ridder, “The Other Worlds of Romance,” 128–129.

²²⁸ Krueger, “Questions of Gender in Old French Courtly Romance,” 146. This is by no means the case for all romances. Some do subvert the gender and social hierarchy throughout the entirety of the narrative.

²²⁹ Butler, *Language of Abuse*, 228.

²³⁰ Butler, *Language of Abuse*, 228.

²³¹ Albrecht, *Sexual Violence and Rape in the Middle Ages*, 39–40.

literary themes of chivalry, wooing, seduction, and even love. Male lust is placed on a continuum with male sexual domination of the female body, as romance blurs the distinction between seduction and rape.²³² The legal realities of trial by oath and trial by ordeal in romance have already been recognised,²³³ but what has yet to be discussed is the correlation between real legal expectations of rape survivors and the physical proof of non-consent in romance, as being consistent with the legal doctrine.

Romance and Hagiography

As discussed previously in chapter 4, medieval English society was grounded in gendered assumptions about “appropriate” behaviour which were heavily influenced by the very popular stories of saints’ lives. Romance too intended to educate the audience on “appropriate” behaviour and in this way, romance and hagiography are intrinsically alike in their didacticism.²³⁴ To this point Andrea Hopkins argues that certain romances, such as *Guy of Warwick* or *Sir Gowther*, can be called secular hagiography,²³⁵ and Dieter Mehl states that *Amis and Amiloun* is equally a romance and a hagiographic story.²³⁶ Considering the placement of *Amis and Amiloun* in the Auchinleck manuscript, where it is situated among other religious texts such as the *Life of Mary Magdalene*, Mehl concludes that it was not read as a romance at all.²³⁷ The immensely close connection between romance and hagiography has led Mehl to call these redemption tales

²³² Albrecht, *Sexual Violence and Rape in the Middle Ages*, 57.

²³³ Ernest C. York, “Isolt’s Trial in Bérout and *La Folie Tristan d’Oxford*,” in *Medieval Hagiography and Romance Volume 6, Medievalia et Humanistica: Studies in Medieval & Renaissance Culture*, ed. Paul Maurice Clogan (Cambridge: Cambridge University Press, 1975), 157–162.

²³⁴ Cooper, *The English Romance in Time*, 52; King, *Medieval Literature*, 113, 214.

²³⁵ Hopkins, *The Sinful Knights*, 12.

²³⁶ Mehl, *The Middle English Romances of the Thirteenth and Fourteenth Centuries*, 105.

²³⁷ Mehl, *The Middle English Romances of the Thirteenth and Fourteenth Centuries*, 111; See also Whetter, *Understanding Genre and Medieval Romance*, 42, 48. Here Whetter discusses the “generic affinity” of romance based on their placement in a manuscript.

“homiletic romances.” According to Mehl, such romances can be interpreted as “secular saints’ lives,” or “romantically embellished legends.”²³⁸

It has been suggested that romance developed out of saints’ lives, as both genres focus on a single protagonist undergoing a journey of some sort.²³⁹ For instance, the life of Saint Alexis was used as the foundation for *Guy of Warwick*,²⁴⁰ while Mehl argues that the *Legend of Pope Gregory* is inseparable from *Guy*,²⁴¹ and John Capgrave’s (1393–1464) *Life of St. Katherine* was based on the romance *Havelok*.²⁴² Although Hopkins focuses on the saintly qualities of redemption of male protagonists,²⁴³ Mehl argues that there are hagiographical elements in romances with female protagonists, which focus on the “suffering of an innocent lady.”²⁴⁴ Legends of virgin martyrs sacrificing their physical earthly bodies at the expense of saving their heavenly virginal bodies are abundant in medieval England’s hagiographic texts. Romance too was heavily focused on the physical body, as a site of temptation, sexuality, as well as anxiety and torture.²⁴⁵ Gayle Margherita states that “violence is the subtext in romance: below the surface but it exists, under the surface of love and happy endings.”²⁴⁶ She contrasts this with hagiography which “foregrounds violence that subtends courtly discourse.”²⁴⁷ Margherita is not only making reference to both the pervasiveness of violence against women in saints’ lives and

²³⁸ Mehl, *The Middle English Romances of the Thirteenth and Fourteenth Centuries*, 120–146, 252; Whetter, *Understanding Genre and Medieval Romance*, 49. Here Whetter counters Mehl’s argument that homiletic romance and hagiography are very similar by explaining the secular focus of romance.

²³⁹ Mehl, *The Middle English Romances of the Thirteenth and Fourteenth Centuries*, 11–12, 26–27.

²⁴⁰ David N. Klausner, “Didacticism and Drama in *Guy of Warwick*,” in *Medieval Hagiography and Romance Volume 6, Medievalia et Humanistica: Studies in Medieval & Renaissance Culture*, ed. Paul Maurice Clogan (Cambridge: Cambridge University Press, 1975), 103–120, specifically 103–114.

²⁴¹ Mehl, *The Middle English Romances of the Thirteenth and Fourteenth Centuries*, 12.

²⁴² Derek Pearsall, “John Capgrave’s *Life of St. Katherine* and *Popular Romance Style*,” in *Medieval Hagiography and Romance Volume 6, Medievalia et Humanistica: Studies in Medieval & Renaissance Culture*, ed. Paul Maurice Clogan (Cambridge: Cambridge University Press, 1975), 121–138, specifically 126–128.

²⁴³ Hopkins, *The Sinful Knights*, 20.

²⁴⁴ Mehl, *The Middle English Romances of the Thirteenth and Fourteenth Centuries*, 120–121.

²⁴⁵ Cohen, *Of Giants*, 96.

²⁴⁶ Margherita, *The Romance of Origins*, 43.

²⁴⁷ Margherita, *The Romance of Origins*, 43.

romance, but also to the subtle difference in their approach. The tortured martyr is made entirely visible, while the suffering heroine of romance is arguably more elusive. The woman protagonist in romance, according to Margherita, is a victim of man's desire where "lust passes into torture, romance into violence."²⁴⁸ This is identical to the continuum of lust, seduction, rape, and marriage so prevalent in romance. This notion is supported by Corinne Saunders, who states that the threat of rape and loss of virginity is paramount to female saints' lives, whereas the threat of abduction is the primary concern of romance heroines, but "rape lurks beneath the surface."²⁴⁹ While hagiography seemingly foregrounds the violence that "subtends" romance, if one re-reads the violence back into the texts,²⁵⁰ it is apparent that sexual violence and rape in romance is just as graphic as in hagiography. Evidence of this in specific romance narratives is discussed more in the following chapters.

The narratives of virgin martyrs are very similar to the narratives of romance heroines;²⁵¹ however, the women of romance save their virginity not for God, but for their husbands.²⁵² The binary construction of women, to use Howard Bloch's terms, as either the "bride of Christ" or the "Devil's gateway," was centred on the virginal body.²⁵³ The dualistic nature of women was inherited from the Virgin Mary as the saviour of man, and Eve as responsible for man's Fall.²⁵⁴ Church doctrine viewed women as victims of their biology and that their sexuality was capable

²⁴⁸ Margherita, *The Romance of Origins*, 46.

²⁴⁹ Saunders, *Rape and Ravishment*, 21.

²⁵⁰ Lynn A. Higgins and Brenda R. Silver, "Introduction," in *Rape and Representation*, eds. Lynn A. Higgins and Brenda R. Silver (New York: Columbia University Press, 1991), 4.

²⁵¹ Derek Pearsall, "John Capgrave's *Life of St. Katherine* and *Popular Romance Style*," in *Medieval Hagiography and Romance Volume 6, Medievalia et Humanistica: Studies in Medieval & Renaissance Culture*, ed. Paul Maurice Clogan (Cambridge: Cambridge University Press, 1975), 121.

²⁵² King, *Medieval Literature*, 123; Mehl, *The Middle English Romances of the Thirteenth and Fourteenth Centuries*, 122.

²⁵³ Bloch, *Medieval Misogyny and the Invention of Western Romantic Love*, 10.

²⁵⁴ Joan M. Ferrante, *Woman as Image in Medieval Literature, From the Twelfth Century to Dante* (New York: Columbia University Press, 1975), 30.

of tempting men into sin.²⁵⁵ It was also reflected, according to Church Fathers inspired by Ancient Greek philosophy, in the binary construction of men and women; that is whatever man is, woman is the direct opposite. For instance, man is active, woman is passive; man exhibits reason and self-control, woman exhibits emotion and the flesh.²⁵⁶ The cohesion between man and woman, as promoted by the church, in creating a unified whole appears to be at odds with the misogynistic doctrine that perpetuated stereotypes of women's sinfulness.²⁵⁷ The impossibility of feminine gender expectations is enshrined in the Virgin Mary as simultaneously being a pure virgin and a mother.²⁵⁸ This inherent paradox of the nature of women sustained the belief of women's vulnerability to their own inner desires which, with the help of education, could be controlled.²⁵⁹ Ironically, in romance it is the sight of a beautiful woman that can make man act irrationally, yet she is responsible and thus she looked "ravishing."²⁶⁰ This is highly relatable to the legal logic informing the punitive blinding prescribed to the perpetrator in *Bracton's* secular *raptus* laws previously discussed.

Hagiography contains narrative motifs which appear in many romances, such as the beautiful woman, the inclusion of "sexual/political persecution from a non-Christian" man, her unwavering religious devotion at the expense of her physical body, and her death.²⁶¹ These same elements are frequent literary tropes in secular romances, that is the beautiful maiden being

²⁵⁵ Sylvester, *Medieval Romance and the Construction of Heterosexuality*, 47.

²⁵⁶ Bloch, *Medieval Misogyny and the Invention of Western Romantic Love*, 9, 30; Ferrante, *Woman as Image in Medieval Literature*, 6–7; Saunders, *Rape and Ravishment*, 25–27.

²⁵⁷ Bloch, *Medieval Misogyny and the Invention of Western Romantic Love*, 66–68.

²⁵⁸ King, *Medieval Literature*, 115.

²⁵⁹ Bloch, *Medieval Misogyny and the Invention of Western Romantic Love*, 91, 164; Amy S. Kaufman, "Erotic (Subject) Positions in Chaucer's *Merchant's Tale*," in *Sexual Culture in the Literature of Medieval Britain*, eds. Amanda Hopkins, Robert Allen Rouse and Cory James Rushton (Cambridge: D. S. Brewer, 2014), 31.

²⁶⁰ Bloch, *Medieval Misogyny and the Invention of Western Romantic Love*, 143; Ferrante, *Woman as Image in Medieval Literature*, 2–3.

²⁶¹ Jacqueline Jenkins and Katherine J. Lewis, "Introduction," in *St Katherine of Alexandria Texts and Contexts in Western Medieval Europe*, eds. Jacqueline Jenkins and Katherine J. Lewis (Turnhout: Brepols, 2003), 10.

persecuted by an “other” (whether from this world or an otherworld), physical torture, devotion to faith and to her husband, and ultimately marital reunion.²⁶² The definition of a romance “other,” the enemies of virgin martyrs and romance heroines, is a difficult one. They are often pagan men, either Saracens, Jews, fairies, Turks, or idol-worshipping heretics. These “others” serve as markers to measure English courtly culture.²⁶³ “Saracens” are yet another difficult group to define in romance, as they are often undistinguishable from non-Christians, whether Muslims or “infidels.” The definition of “Saracen” in romance is most easily used to measure the “otherness” of a character or peoples against the protagonist.²⁶⁴ As such, the “others” of romance and hagiography were “sexual, religious, and racial ‘others’.”²⁶⁵

The didacticism of saints’ lives makes them a difficult historical source to interpret; however, they provide excellent insight into the societal mentality, communal beliefs, and morals of the society in which the texts were produced and consumed.²⁶⁶ Like romance, hagiography does not mirror reality, but it certainly reflects a social reality, illustrating community fears and anxieties as well as values which are considered praiseworthy. Female saints are almost invariably nobles, and this is equally true of romance protagonists. The richly worn garments of both female saints and female romance protagonists not only reflect their high status but are also linked to their physical beauty; both are represented as beautiful maidens. Furthermore, their pleasing physical bodily appearance is a visible marker of their noble identity.²⁶⁷ This connection

²⁶² Cooper, *The English Romance in Time*, 249.

²⁶³ Heng, *Empire of Magic*, 113.

²⁶⁴ Ashton, *Medieval English Romance in Context*, 12.

²⁶⁵ Anke Bernau, “A Christian Corpus: Virginity, Violence, and Knowledge in the Life of St Katherine of Alexandria,” in *St Katherine of Alexandria Texts and Contexts in Western Medieval Europe*, eds. Jacqueline Jenkins and Katherine J. Lewis (Turnhout: Brepols, 2003), 124–125.

²⁶⁶ Schulenburg, “The Heroics of Virginity,” 29–72, quote from pp. 46.

²⁶⁷ Morgan Dickson, “Verbal and Visual Disguise: Society and Identity in Some Twelfth-Century Texts,” in *Medieval Insular Romance: Translation and Innovation*, eds. Judith Weiss, Jennifer Fellows and Morgan Dickson (Cambridge: D. S. Brewer, 2000), 42, 44.

between physical appearance and social status was prevalent in the real world, as is evident from the enforcement of sumptuary laws in fourteenth-century England. Virgin martyrs and romance heroines share many similarities. Virgin martyrs endure violence, including physical beatings, mutilation, the tearing of their clothes and the exposure of their naked bodies, which is identical to the torments endured by the fictional romance heroine, Florence (discussed more in chapter 8). Divine intercession saves saints and heroines alike, as Mary intercedes to protect Florence from rape.²⁶⁸ Both romances and saints' lives include the supernatural, whether it be miracles from God or magical objects from otherworlds. That the protagonists of romance are devoutly Christian and the conflation of knightly prowess as an expression of religious piety, is often insinuated.²⁶⁹ Helen Cooper argues that it is "easy to see the transitions from saints' lives into secular fiction,"²⁷⁰ as they often included the same literary motifs to fit their specific plots. This makes the frequent literary motif (in romance and hagiography) of the violated and abused female body²⁷¹ even more important to study. Perhaps Jeffrey Jerome Cohen is correct in arguing that medieval England "was always haunted by the violence it committed against women's bodies" and thus the inclusion of these horrifying and graphic scenes in literature was to comment on and critique this cultural issue.²⁷² Regardless, audiences (whether modern or contemporaneous; whether men or women) interpret texts to make them relevant to themselves. Consequently, the text is not a static, fixed entity, but rather, it is constantly being reinterpreted by every audience. This, according to Jocelyn Wogan-Brown, allows room for "slippage," in that, despite the misogynistic attitudes towards women in hagiography and romance, there is

²⁶⁸ Cordelia Beattie "Your Oratrice: Women's Petitions to the Late Medieval Court of Chancery," in *Women, Agency and the Law, 1300–1700, The Body, Gender and Culture Number 15*, eds. Bronach Kane and Fiona Williamson (London: Pickering & Chatto, 2013), 26.

²⁶⁹ Kaeuper, *Chivalry and Violence in Medieval Europe*, 47.

²⁷⁰ Cooper, *The English Romance in Time*, 131.

²⁷¹ Cohen, *Of Giants*, 111.

²⁷² Cohen, *Of Giants*, 117.

opportunity for women audience members to make their own meaning and significance of the text.²⁷³

The intentionally edifying intrusion into secular romance was part of a greater moralising campaign.²⁷⁴ Helen Cooper found that unlike romances from continental Europe, Middle English texts are highly reflective of the doctrine of the Latin Church, as illicit sex is rare and often turned into licit marital coitus, or heroes have to repent for their sins and embark on a “penitential quest.”²⁷⁵ Andrea Hopkins identifies these redemption quests as a distinct subgroup of penitential romances.²⁷⁶ The explicit church morals intruding into the romance literature of England were deemed so great that in the sixteenth century Protestants condemned the genre as being told by monks.²⁷⁷ This demonstrates the extremely close connection between church doctrine and secular romance, in that they promoted similar beliefs and expected gendered behaviours. The silent suffering of women, as exemplified by virgin martyrs such as Saint Katherine, was described in hagiography as praiseworthy. Virgin saints usually endured a threat of rape, and their graphic physical abuse was generally focused on their feminine body, such as mutilation of their breasts. In the end, the saint dies a virgin,²⁷⁸ which is opposite to the narrative arc of romance, where the happy ending most often culminates in marital consummation. Female saints opt for death over rape, whereas romance heroines sometimes endure rape but live to be reunited with their husbands.²⁷⁹ The overt physicality in hagiography could be read as

²⁷³ Jocelyn Wogan-Browne, “‘Clerc u lai, muine u dame’: Women and Anglo-Norman Hagiography in the Twelfth and Thirteenth Centuries,” in *Women and Literature in Britain, 1150–1500*, ed. Carol M. Meale (Cambridge: Cambridge University Press, 1993), 64.

²⁷⁴ Cooper, *The English Romance in Time*, 25.

²⁷⁵ Cooper, *The English Romance in Time*, 30, 87–90, 245; See also Fewster’s analysis of *Amis and Amiloun* and *Guy of Warwick* as Christian moralising tales in, *Traditionality and Genre in Middle English Romance*, 66–99; Heng, *Empire of Magic*, 183–184.

²⁷⁶ Hopkins, *The Sinful Knights*, 20.

²⁷⁷ Cooper, *The English Romance in Time*, 38–39.

²⁷⁸ Bloch, *Medieval Misogyny and the Invention of Western Romantic Love*, 108.

²⁷⁹ Edwards, *The Afterlives of Rape in Medieval English Literature*, 27.

sexualizing the saints, or more likely, the physicality of the abuse made it especially evident to contemporaneous audiences that these women were indeed victims.

Like the language of secular laws, the physical bodily harm done to women, as recorded in trial documents, hagiography, and romances alike, aided in ensuring sympathy from the courts and audiences.²⁸⁰ The heroic passivity in saints' lives is secularised in the torturing of women in romance and idealised in the conduct literature of expected feminine behaviour. Also mirroring the secular laws' inclusion of the marriage clause, is the continuum of rape and marriage in romance. Damsels needing to be rescued from threatened rape are often then the brides of their rescuer and "thus the threat of rape vanishes into the proper grammar of marriage."²⁸¹ Almost invariably, romance stories end in marriage or marital reunion of the spouses.²⁸² This is exactly like the marriage clause in *raptus* laws, which legally transforms rape into consensual sex (see chapter 5).

There are four manuscripts which contain many Middle English romances, along with other devotional works. These include: Auchinleck, Thornton, Cambridge University Library (CUL) Ff. 2.38 and the British Library's Cotton Caligula A.ii.²⁸³ The inclusion of romance alongside religious texts in these manuscripts aids in the historical understanding of the genre. The legend of Saint Katherine was recorded in the Middle English manuscript, CUL. Ff. 2.38, dating from the fifteenth century in Leicestershire.²⁸⁴ This manuscript contains many important

²⁸⁰ Anke Bernau, "A Christian *Corpus*: Virginity, Violence, and Knowledge in the Life of St Katherine of Alexandria," in *St Katherine of Alexandria Texts and Contexts in Western Medieval Europe*, eds. Jacqueline Jenkins and Katherine J. Lewis (Turnhout: Brepols, 2003), 109–130, specifically pp. 117.

²⁸¹ Cohen, *Of Giants*, 111.

²⁸² Cooper, *The English Romance in Time*, 28.

²⁸³ Putter and Gilbert, "Introduction," 4–5; Auchinleck Manuscript, Edinburgh, The National Library of Scotland, NLS Adv MS 19.2.1; Thornton Manuscript, Lincolnshire, Lincoln Cathedral Library, MS 91; CUL Manuscript, Cambridge, Cambridge University Library, CUL MS Ff. 2. 38; Cotton MS Caligula, London, British Library, Cotton MS Caligula A.ii.

²⁸⁴ Ashton, *Medieval English Romance in Context*, 25–26.

didactic texts which demonstrate how contemporary audiences read romance literature not in isolation, but with hagiography and conduct literature. CUL Ff. 2.38 contains romances which will be studied in chapter 8, including *Sir Degare* and *Le Bone Florence of Rome*, as well as other popular stories such as *Guy of Warwick* and *Bevis of Hampton*. The compilation of this manuscript demonstrates the fluidity of literary genres to medieval audiences.²⁸⁵ The close connection between hagiography and romance, with its emphasis on the female body, further shows their intertextuality.²⁸⁶ The assumed audience of CUL Ff. 2.38 can only be speculated as a mercantile audience with some wealth and interest in stories of kinship.²⁸⁷ This would likely have been a “domestic” audience, to use Felicity Riddy’s phrase, in that the romance was read aloud within the urban household.²⁸⁸ This manuscript is not unique; rather, most Middle English romances do not appear in exclusively secular manuscripts.²⁸⁹ Middle English romances tended to be bound with religious and didactic texts, suggesting cohesion in their reception, as well as the strong likelihood that a single scribe was writing multiple literary genres.²⁹⁰ This Middle English version of the legend of Saint Katherine has been recognised as neither entirely hagiographic nor secular, but rather “a mixture of romance and popular pious legends”²⁹¹ illustrating the non-conformity, the hybridity, and intertextuality of literary genres in medieval England.²⁹² While the legend of Saint Katherine in the CUL manuscript reads more like a secular

²⁸⁵ Gaunt, “Romance and Other Genres,” 49.

²⁸⁶ Gaunt, “Romance and Other Genres,” 50.

²⁸⁷ Ashton, *Medieval English Romance in Context*, 25–26.

²⁸⁸ Riddy, “Middle English Romance: Family, Marriage, Intimacy,” 236.

²⁸⁹ Mehl, *The Middle English Romances of the Thirteenth and Fourteenth Centuries*, 7, 17–18.

²⁹⁰ Mehl, *The Middle English Romances of the Thirteenth and Fourteenth Centuries*, 19–20.

²⁹¹ Jane Cartwright, “*Buchedd Catrin*: A Preliminary Study of the Middle Welsh Life of Katherine of Alexandria and her Cult in Medieval Wales,” in *St Katherine of Alexandria Texts and Contexts in Western Medieval Europe*, eds. Jacqueline Jenkins and Katherine J. Lewis (Turnhout: Brepols, 2003), 53–86, quote from pp.83.

²⁹² Ashton, *Medieval English Romance in Context*, 27–30.

romance with a saint as the heroine,²⁹³ it is nonetheless demonstrating the close, and at times mixed, literary genres of secular romance and religious saints' lives.

The "heroics of virginity," a term coined by Jane Tibbetts Schulenburg, was purported throughout hagiographical tales of virgin martyrs, who defended their virginal status at all costs.²⁹⁴ As supported by the teachings of the church, the ideal state of all women was sexual purity, even at the expense of motherhood. Women, more than men but not exclusively so, were told that they had a much greater opportunity to enter the heavenly kingdom if they maintained their virginal status. Consequently, spiritual salvation depended, in part, on the sexual status of the female body.²⁹⁵ Church Fathers instilled a polarizing view of women's sexuality; that is, women derived from Eve were temptresses and their sexual beauty could pollute men and lead these otherwise "good" men into sin.²⁹⁶ However, the growth of the cult of the Virgin idealised feminine non-sexuality in the virginal state as both praiseworthy and saint-like.²⁹⁷ Corinne Saunders states that the "idealisation of virginity allowed women to effect a crucial identification with religious heroines of the past... [and] permitted female empowerment within the terms of received gender stereotypes."²⁹⁸ The mimicking of saints and heroines, in preserving their virginity, empowered women listening and reading within the boundaries of the socially prescribed normative gender expressions. However, there were debates about the appropriate extent to defend one's chastity.

²⁹³ Cartwright, "*Buchedd Catrin*: A Preliminary Study of the Middle Welsh Life of Katherine of Alexandria and her Cult in Medieval Wales," 84.

²⁹⁴ Schulenburg, "The Heroics of Virginity," 29–72, quote from pp.29.

²⁹⁵ Schulenburg, "The Heroics of Virginity," 31.

²⁹⁶ Schulenburg, "The Heroics of Virginity," 31.

²⁹⁷ Saunders, *Rape and Ravishment*, 120.

²⁹⁸ Saunders, *Rape and Ravishment*, 122.

Committing suicide in defence of one's threatened virginity during rape was a highly debated topic in medieval England and the consequences to the eternal soul of fallen virgins was continually discussed. The early church doctrine was extremely influential in later medieval English societal thought towards female virginity, both in the social community and in the legal courts. As described by Jane Tibbetts Schulenburg, the didactic ecclesiastical texts reinforced "praise of virginal perfection, as well as its fear – and guilt – instilling mechanisms perpetuated by the loss of virginity, [formed] an essential part of the female religious experience".²⁹⁹ Thus, the religious experience of women and girls in medieval England was highly focused on their physical body. This physicality is further emphasised in secular romance. The didacticism of hagiography was not isolated, and this research suggests that popular romance texts had a strong didactic component regarding the legal expectation of women to resist their own rape. The educational intention of not only hagiography and conduct literature, but also popular romance cannot be overstated. These texts reinforced women's passivity and the gendered expectations of heterosexual courtships which allowed significant space for the threat of rape.

Concluding Thoughts on Middle English Romance

This chapter sought to provide a brief historiographical survey of the scholarly debates surrounding Middle English romance, including the definition of the genre and its intended audiences. Tracing the origins of romance at the height of its popularity during the turmoil of the fourteenth century, it can be assumed that romance offered an artistic outlet to debate and make meaning of the medieval present. This chapter has shown that scholars are in general agreement

²⁹⁹ Schulenburg, "The Heroics of Virginity," 40.

that any single definition of romance is flawed, as the genre is too diverse and too elusive for such tidy definitions. It also appears that when reading romance in conjunction with other medieval literary genres, such as conduct texts and hagiography, romance defies any single definition. This notion is supported by the bound manuscripts themselves, such as CUL. Ff. 2.38, where romance and saints' lives appear interchangeable and at times, indistinguishable. This was further supported by the similarities between the suffering of virgin martyrs and romance heroines.

Overall, this chapter sets the foundation for the following chapters which look exclusively at rape and sexual violence in romance, to try and deconstruct the literal and latent meanings of rape narratives. Romance, as a fictional genre, initially appears as the direct opposite of reality and non-fictional written documents, such as legal trial records. However, this chapter has sought to establish that existing social attitudes towards gender, sexuality, and appropriate behaviour were intentionally embedded into fictional narratives. Next, we will explore how fears and anxieties towards these broad concepts were written into the romances, in a way that is highly reflective of the legal realities of rape survivors.³⁰⁰

³⁰⁰ Albrecht, *Sexual Violence and Rape in the Middle Ages*, 227.

Chapter 7:

Abduction and Malicious Rape Accusations: *Sir Orfeo* and *Amis and Amiloun*

Introduction

Rape is commonly threatened, and occasionally completed, in romance literature. The following two chapters will discuss scenes of rape (threatened or actualized) in Middle English romance narratives and analyse both how they reinforce the constructed legal identities of England's *raptus* laws, and how they perpetuate the actual legal requirement of resistance. This chapter begins with a brief historiography of rape in romance literature. The historiography will help frame the following close readings of Middle English romances, including *Sir Orfeo*, and *Amis and Amiloun* in this chapter, and *Sir Degare*, *Sir Gowther*, and *Le Bone Florence of Rome* in the following chapter. Overall, this chapter builds on the work of other scholars who claim that rape is a part of the courtly romance genre. However, the close readings will offer new insights by demonstrating how the legal discourse of England's *raptus* laws is clearly represented in fictional literature. Threatened rape is not merely a part of the romance genre, but rather these narratives demonstrate the legal realities that some women faced in medieval England.

Rape in Romance: A Literature Review

Legal historians are quick to note that the written laws of rape are not entirely useful sources on their own to study social attitudes towards rape. Rather, legal historians frequently turn to court documents to view how rape survivors were judged by their contemporaries and in

this way, they glean information about the cultural perceptions surrounding rape.¹ However, the ability to use literature as sources of social attitudes towards rapists and rape survivors has largely been excluded from legal historical analysis, with a few distinguished exceptions. These scholars, particularly Kathryn Gravdal, Corinne Saunders, Suzanne Edwards, Elizabeth Robertson, Christine Rose, Lynn Higgins, and Brenda Silver have established the common literary trope of rape in romance literature. Rape gained the attention of historical study, as Kim Phillips suggests, because rape is “central to the issue of gender relations.”² Feminist and gender historians in the 1990s recognised the problem of seeing sex and gender as static, ahistorical entities. Notably, Kathryn Gravdal problematized the binary construction of male and female and discussed the need to deconstruct these assumed “natural” identities.³ Here, the influential work of Judith Butler, in studying the individual performance of gender, which is entirely culturally dependent, grounds the following discussions.⁴ Butler has demonstrated that gender is not an inherent or natural thing, but a social construct that is historically dependent and performed by the individual.⁵

The assumed naturalness of heterosexuality needs to be challenged, according to Butler, because heteronormativity is a culturally created myth.⁶ Butler argues that gender and sexuality are political and cultural constructs, and that “as a shifting, contextual phenomenon, gender does not denote a substantive being, but a relative point of convergence among culturally and historically specific sets of relations.”⁷ This is what Carolyn Dinshaw influentially claims is “the

¹ Kittel, “Rape in Thirteenth-Century England,” 103.

² Phillips, “Written on the Body,” 125.

³ Gravdal, *Ravishing Maidens*, 12.

⁴ Butler, *Gender Trouble*; Butler, *Undoing Gender*.

⁵ Butler, *Gender Trouble*, xv, 48–49.

⁶ Butler, *Gender Trouble*, vii, xxix; Butler, *Undoing Gender*, 199.

⁷ Butler, *Gender Trouble*, 6, 10–11, 15.

complexities of the ‘natural’,” which must be deconstructed and scrutinised.⁸ Dinshaw argues that literature perpetuates the heteronormative myth in the Middle Ages.⁹ The assumed gender binary is, as argued by Butler, founded on circular logic and is learned and performed by individuals.¹⁰ Despite the consistency in the use of the terms “masculine” and “feminine” throughout periods of history, they do not denote the same meaning as they are not separate from historical context.¹¹ The influential work of Joan Cadden is important to our analysis, as she detailed how science, religion, and medicine were used to justify gender differences in the Middle Ages. Cadden notes the reciprocal relationship between science and culture by stating that “scientific ideas about sex differences in the later Middle Ages participated in the broader culture’s ideas about gender.”¹² To this point, Louise Sylvester argues that same-sex sexuality has been the subject of historical study far more than the scrutiny of heterosexuality.¹³ Instead, Sylvester warns that scholars must equally deconstruct the cultural creation of heterosexuality so that it does not appear as “natural.”¹⁴ Here, Sylvester claims that romance contributed to the formation of heterosexual gender norms, which are learned and performed by individuals within western European culture.¹⁵

Elizabeth Robertson and Christine Rose expose the pervasiveness of rape narratives and argue that “stories of sexual violence against women serve as a foundational myth of western culture...[as] the rapable body has been interwoven into the very foundation of western

⁸ Carolyn Dinshaw, *Getting Medieval: Sexualities and Communities, pre- and postmodern* (Durham: Duke University Press, 1999), 5–6.

⁹ Dinshaw, *Getting Medieval*, 117.

¹⁰ Butler, *Gender Trouble*, 20, 30. Here Butler refers to the “naturalistic paradigm”; Butler, *Undoing Gender*, 1–2.

¹¹ Butler, *Undoing Gender*, 9–10, 42.

¹² Cadden, *Meanings of Sex Difference in the Middle Ages*, 2.

¹³ Sylvester, *Medieval Romance and the Construction of Heterosexuality*, 16.

¹⁴ Sylvester, *Medieval Romance and the Construction of Heterosexuality*, 17.

¹⁵ Sylvester, *Medieval Romance and the Construction of Heterosexuality*, 1, 17.

poetics.”¹⁶ The necessity of critically exploring what these rape narratives reveal about the “deeper structures of culture that tolerate rape” is paramount in the analysis of Robertson and Rose.¹⁷ Suzanne Edwards, whose analysis of rape as an avenue to sanctity has already been discussed, states that the “threat of sexual violence” is “linked with normative femininity” and the following chapters supports this statement as romance worked to normalise, hide, and even legitimise sexual violence against women.¹⁸ Georges Duby argues that rape and abduction were commonplace amongst the aristocracy, and he further claimed that romance reflects this by representing courtly love as a “violent, sudden ‘love’, which like a flame once kindled was irresistible.”¹⁹ The irrationality of love sickness turns the lady into a “victim of desire,” according to Duby, at which point reality intrudes in the fictional story, transcending the fictional realm into real-world experiences.²⁰ Gravdal agrees with Duby, in that courtly literature had little to no positive implications for the treatment of women in the real world.²¹ Gravdal argues that law and literature worked together to normalise sexual violence against women and even worked to excuse male aggression as inevitable.²² This is similar to Dinshaw’s claims that the “fictional rapes” are related to “real rapes” and when we only focus on the fictional it distorts the close relationship between the two (fictional and real) which makes them appear as opposites.²³ The following close reading of the select romances will heed Dinshaw’s warning and view the fictional rapes in relation to the historical rapes, as documented in the eyre courts.

¹⁶ Elizabeth Robertson and Christine M. Rose, “Introduction,” in *Representing Rape in Medieval and Early Modern Literature*, eds. Elizabeth Robertson and Christine M. Rose (New York: Palgrave, 2001), 1–2.

¹⁷ Robertson and Rose, “Introduction,” 8.

¹⁸ Edwards, *The Afterlives of Rape in Medieval English Literature*, 80.

¹⁹ Duby, *The Knight, the Lady and the Priest*, 221.

²⁰ Duby, *The Knight, the Lady and the Priest*, 222.

²¹ Kathryn Gravdal, “The Poetics of Rape Law in Medieval France,” in *Rape and Representation*, eds. Lynn A. Higgins and Brenda R. Silver (New York: Columbia University Press, 1991), 207–208.

²² Gravdal, “The Poetics of Rape Law in Medieval France,” 223.

²³ Carolyn Dinshaw, *Chaucer’s Sexual Poetics* (Madison: University of Wisconsin Press, 1989), 11.

In her influential book, *Ravishing Maidens*, Gravdal sought to understand the purpose of rape narratives not only in hagiography but also in romance.²⁴ To this point Gravdal concluded that “rape plots can become the basis of a romantic narrative” and the trope of rape is used as a narrative building block.²⁵ Through this narrative trajectory, romance seduction can easily turn into rape and at times, according to Gravdal, the distinction between seduction and rape is distorted.²⁶ By shifting the audiences’ attention away from the sexual violence and towards the chivalry of the male protagonist, romance elides rape with a grander moral narrative.²⁷ Focusing on Chrétien de Troyes, Gravdal concludes that rape and abduction were used for five different functions: a test of a knight’s chivalry, a test of moral ethics, a signpost of nobility (or lack thereof), political sovereignty, or as a marker of a woman’s beauty.²⁸ Although this is a very compelling argument, the present research suggests an alternative view of rape narratives. Not mentioned by Gravdal, rape in romance appears to be legally instructive to women’s real expectations to resist rape and physically prove their non-consent.

Lynn Higgins and Brenda Silver’s influential text on the representations of rape convincingly argued that romance authors repeatedly wrote about and then deflected from rape. By making the threat of sexual violence integral to the plot, but subsequently deflecting the audiences’ attention away from the violence, romance perpetuates the dangerous recreation of rape as being simultaneously everywhere, and nowhere, “both so pervasive and so invisible.”²⁹ Through this repetition, rape has “been ingrained and so rationalised through their representations as to appear ‘natural’ and inevitable,” and this they claim is “an insidious cultural

²⁴ Gravdal, *Ravishing Maidens*, 1.

²⁵ Gravdal, *Ravishing Maidens*, 11.

²⁶ Gravdal, *Ravishing Maidens*, 14.

²⁷ Gravdal, *Ravishing Maidens*, 15.

²⁸ Gravdal, *Ravishing Maidens*, 43–44.

²⁹ Higgins and Silver, “Introduction,” 3.

myth.”³⁰ Recognising the didactic intentions of romance, Higgins and Silver argue that romance informed audiences on the interaction of heterosexual encounters and consequently “shaped the cognitive systems that make rape thinkable” and that it is natural.³¹ To counter this, Higgins and Silver argue that scholars need to “reread” the violence back into the narratives, to ensure that rape is understood for what it is and not a narrative tool of plot development or erased altogether.³² Their argument is similar to the work of Corinne Saunders, who exposed how medieval society established the normality of rape and sexual violence against women. According to Saunders, the patriarchal societal structures which valued masculine physical prowess and feminine passivity created the space for rape not only to occur, but to be tolerated and “upheld by established institutions.”³³ This is similar to Gravdal who suggests that romance contributed to the cultural indoctrination of interpreting a man’s sexual violence as an “expression of love,” which affectively belittled the brutality of the crime.³⁴

Caroline Dunn contends that one cannot study *raptus* without looking at the gender constructions of both medieval masculinity and femininity.³⁵ Chivalric literature is grounded in the two ideologies of love and physical prowess.³⁶ These two features of chivalric literature are simultaneously at the centre of medieval masculinity expectations and rape, in a way that explicitly connects chivalry and rape as implementing the same ideologies.³⁷ As previously discussed, medieval lawmakers believed that rape included two elements, an act done out of

³⁰ Higgins and Silver, “Introduction,” 2.

³¹ Higgins and Silver, “Introduction,” 3.

³² Higgins and Silver, “Introduction,” 4.

³³ Saunders, *Rape and Ravishment*, 6.

³⁴ Gravdal, *Ravishing Maidens*, 20, 41.

³⁵ Dunn, *Stolen Women in Medieval England*, 3.

³⁶ Rosemarie Deist, *Gender and Power: Counsellors and their Masters in Antiquity and Medieval Courtly Romance* (Druck: Universitatverlag Winter Heidelberg, 2003), 11.

³⁷ Kaeuper, *Chivalry and Violence in Medieval Europe*, 226.

passion which involved physical domination. Women's bodies and more specifically women's sexuality were (both in romance and the real world) paradoxical sites of admiration and violence.³⁸ Dunn claims that despite the low conviction rates in secular courts, romance tends to show concern for women who endure sexual violence.³⁹

Sexuality and choice of a sexual or marital partner were family matters, distinctly communal rather than private.⁴⁰ Romance exploits the communal consequences of sexuality by conflating the female body with nationhood, such as Florence in *Le Bone Florence of Rome* where the threat to her body is equally described as the threat to the city and kingdom. The male gaze usually centres on beautiful, sometimes exotic, female characters, who become the focus of the man's seduction. Alternatively, male protagonists are subjected to the female sexual gaze, but Helen Cooper warns that this gender-role reversal has less to do with the agency of women's sexuality, and more to do with men's narcissism. This is the combination of the perspective of the fictional protagonist and the actual author, both presumably men.⁴¹ Paul Strohm warns that male authorship acts as a "male fantasy-screen" which can silence or erase the female experience.⁴² This masculine gaze of the author, eroticising women's bodies and even eroticising rape, has been thoroughly discussed by romance scholars.⁴³ Diane Wolfthal examines the construction of "heroic rape" which intentionally obscures the rape as erotic lust. Here, according to Wolfthal, the rape itself is often not central to the audiences' attention and

³⁸ Deist, *Gender and Power*, 64.

³⁹ Dunn, *Stolen Women in Medieval England*, 14.

⁴⁰ Rushton and Hopkins, "Introduction: The Revel, the Melodye, and the Bisyness of Solas," 1.

⁴¹ Cooper, *The English Romance in Time*, 236–237.

⁴² Strohm, *England's Empty Throne*, 161.

⁴³ Cooper, *The English Romance in Time*, 236–237; Rushton and Hopkins, "Introduction," 10; Bloch, *Medieval Misogyny and the Invention of Western Romantic Love*, 104; Saunders, *Rape and Ravishment*, 312; Christine M. Rose, "Reading Chaucer Reading Rape," in *Representing Rape in Medieval and Early Modern Literature*, eds. Elizabeth Robertson and Christine M. Rose (New York: Palgrave, 2001), 40; Jane E. Burns, "Raping Men: What's Motherhood got to do with it?," in *Representing Rape in Medieval and Early Modern Literature*, eds. Elizabeth Robertson and Christine M. Rose (New York: Palgrave, 2001), 137–141.

eventually the “victim is constructed as a willing lover.”⁴⁴ It will be shown how this construct fits into the legal identity of the reluctant but willing accomplice, specifically in the representation of rape in *Sir Degare* (discussed in the following chapter).

Rape and sexual violence are frequently obscured in romance as markers of male chivalry. That is, the man’s interaction with women characters is used to measure the nobility (or lack thereof) of the male character.⁴⁵ Knights complete great acts of physical prowess, pious charity, and nobility for the love of a lady; on the other hand, the lust of a woman can lead men into insanity, and irrationality, committing rape, or death.⁴⁶ This contributes to a shame culture where some culturally constructed norms of masculine gender expression (for example, physical prowess, determination, and heterosexual desire) are considered toxic. Richard Kaeuper argues that women in romance are always objects of a man’s possession, in that they are “prizes to be won by knightly prowess or to be defended against the prowess of others.”⁴⁷ Using women’s bodies as challenges to men’s prowess, romance continually represents the pervasive threat of rape. This works to veil the graphic violence against female bodies and instead exploits it as a metaphor for the male character development. The trope of rape as a metaphor for some moral meaning obscures the “nexus between *literary* and *actual* rape embedded in the metaphor,” as stated by Rose.⁴⁸ Heeding this advice, the following close readings seek to illuminate the

⁴⁴ Wolfthal, *Images of Rape*, 20.

⁴⁵ Deist, *Gender and Power*, 231; Rose, “Reading Chaucer Reading Rape,” 25; Saunders, *Rape and Ravishment*, 187; Saunders, “A Matter of Consent: Middle English Romance and the Law of *Raptus*,” 119, 124; Gravdal, *Ravishing Maidens*, 44, 67.

⁴⁶ Ferrante, *Woman as Image in Medieval Literature*, 65, 73, 82.

⁴⁷ Kaeuper, *Chivalry and Violence in Medieval Europe*, 226; For further reading on the male possession of the female body as a prize of victory, see Nicola McDonald, “*The Seege of Troye*: ‘ffor wham was wakened al this wo’?,” in *The Spirit of Medieval English Popular Romance*, eds. Ad Putter and Jane Gilbert (Toronto: Pearson Education, 2000), 181–199; see also Saunders, *Rape and Ravishment*, 197–198.

⁴⁸ Rose, “Reading Chaucer Reading Rape,” 33.

pervasive legal expectations of resistance placed on women, through the combined analysis of the legal and the literary.

As Amy Vines argues, “rape is often overlooked as foundational to knight identity because it is in violation of the chivalric code,” and thus the knight who rapes “diverts the audiences’ attention away from the rape and towards the reparative act of social penitence and chivalric prowess.”⁴⁹ Conflating rape as an expression of love and admiration of the woman dangers on the verge of erasing the crime of the literary scene. This works to further silence not only actual survivor narratives, but any discussion such fictional representations may stimulate. Furthermore, the damsel in distress who needs to be rescued by the hero provides the situation to conflate physical prowess and sexuality. The woman needs to be rescued, and to do so, the man needs to defeat an enemy which is almost invariably another man or monster. As suggested by Cory Rushton, the text invites the audience to eroticise the female character’s helplessness, mocking and fetishizing her fear and encouraging the audience to “feel the desire to rape and conquer.”⁵⁰

By reading romance with a legal perspective of *raptus* laws and a contemporary understanding of the constructed legal identities of women in *raptus* cases, we can apply another interpretive lens to Middle English romance. The popularity of romance allowed for a potential space of influence in the courts; jurors may have read romance and may have been influenced by the literary recreations of rape, while romance itself appears to have been composed with

⁴⁹ Amy N. Vines, “Invisible Woman: Rape as Chivalric Necessity in Medieval Romance,” in *Sexual Culture in the Literature of Medieval Britain*, eds. Amanda Hopkins, Robert Allen Rouse and Cory James Rushton (Cambridge: D. S. Brewer, 2014), 162–163, 179.

⁵⁰ Cory J. Rushton, “The Lady’s Man: Gawain as Lover in Middle English Literature,” in *The Erotic in the Literature of Medieval Britain*, eds. Amanda Hopkins and Cory James Rushton (Cambridge: D. S. Brewer, 2007), 30–31.

inspiration from the legal realities of *raptus* laws.⁵¹ The combined analysis of the legal and the literary has been advocated for by P. J. P. Goldberg, Noël James Menuge, Corinne Saunders, Sara Butler, and Kathryn Gravdal, among others. Noël James Menuge argues that contemporary laws are “used” in romance as a tool “to make light entertainment with a serious social message, or messages.”⁵² While conceding that romance is neither entirely truthful nor fanciful, Corinne Saunders argues that “*raptus* laws [are] consistently reflected in romance,” particularly with regards to the defilement of virgins, but equally about the ambiguity of *raptus* as rape and/or abduction.⁵³ Similarly, Butler argues that literature can create “social fictions in the name of the real, that appears to be true reality” and in a sense they are real because they hold power in cultural discourse.⁵⁴ This is similar to Dinshaw’s argument that literary representations have “actual social consequences: it has real, and negative, effects on lived lives.”⁵⁵ The following analysis will build on the works of these scholars, particularly examining how the contemporary laws are used, according to Menuge, in romance. Through the contextualisation of romance and *raptus* laws, the narrative logic of the rape and sexual violence endured by characters becomes explicitly linked to the normative understandings of women’s sexuality and the legal requirements of resistances and non-consent.

⁵¹ Barbara A. Hanawalt and David Wallace, “Introduction,” in *Medieval Crime and Social Control*, eds. Barbara A. Hanawalt and David Wallace (Minneapolis: University of Minnesota Press, 1998), x.

⁵² Noël James Menuge. “A Few Home Truths: The Medieval Mother as Guardian in Romance and Law,” in *Medieval Women and the Law*, ed. Noël James Menuge (Woodbridge: Boydell, 2000), 85.

⁵³ Saunders, “A Matter of Consent: Middle English Romance and the Law of *Raptus*,” 105–106.

⁵⁴ Butler, *Gender Trouble*, 151–152.

⁵⁵ Dinshaw, *Chaucer’s Sexual Poetics*, 12.

The Token No

The following discussion is based on the theoretical framework proposed by Louise Sylvester in *Medieval Romance and the Construction of Heterosexuality*, in which she argues that romance constructed the culturally appropriate gender roles within heterosexual encounters, including seduction and courtship. Sylvester calls this construct the “heterosexual courtship script.”⁵⁶ This script in romance, according to Sylvester, includes a man’s offer of sex and a woman recipient who can either accept or decline the offer. If declined, there is the threat of rape written into the heterosexual courtship script which influences not only the fictional characters, but the actions of the audience.⁵⁷ Because rape in medieval English laws was a crime perpetrated by a man, which victimised a woman, heterosexuality is the exclusive focus of this research. However, I am aware of the various problems that such heteronormativity perpetuates, as numerous scholars have done excellent work on dismantling the assumed natural and pervasive heteronormative culture of the medieval past.⁵⁸ Despite the exclusive gendered definitions of the crime, and the romance genre’s persistent preoccupation with heterosexual desires, it is important to acknowledge that medieval sexual practices were not homogeneously heteronormative and that gender and sexuality are cultural constructs.⁵⁹

The heterosexual courtship script begins with the man’s offer of sex and it is most often (in romance) followed by the woman’s rejection of that offer and her eventual marriage to that man.⁶⁰ Despite the fact that the man prefers that the woman accept his offer, the cultural

⁵⁶ Sylvester, *Medieval Romance and the Construction of Heterosexuality*, 2.

⁵⁷ Sylvester, *Medieval Romance and the Construction of Heterosexuality*, 2, 38–39, 41.

⁵⁸ Robert Allen Rouse, and Cory James Rushton, “Introduction: A Light Thrown Upon Darkness: Writing about Medieval British Sexuality,” in *Sexual Culture in the Literature of Medieval Britain*, eds. Amanda Hopkins, Robert Allen Rouse and Cory James Rushton (Cambridge: D.S. Brewer, 2014), 3, 8; also see Linkinen, *Same Sex Sexuality*, discussed in chapter 4 “Ecclesiastical Perspectives.”

⁵⁹ Rouse and Rushton, “Introduction: A Light Thrown Upon Darkness,” 4–6.

⁶⁰ Sylvester, *Medieval Romance and the Construction of Heterosexuality*, 12.

expectation is the woman's performance of reluctance.⁶¹ The construction of passivity as a marker of femininity previously discussed greatly impacts the cultural gender expectation of the initial refusal of the woman.⁶² That is, a true lady is expected to initially decline the sexual offer because that is a marker of femininity and in this way "no" does not really mean "no." This, according to Sylvester, is the woman's "token no." Sylvester states that "it is difficult not to see the influence of medieval law" in romances where consent is questionable.⁶³ The woman's rejection of sex conforms to the expected heterosexual gender norms and in turn, further excites the man's lust. This eroticisation of the reluctant lady works to enhance the male desire to turn rejection into submission and at times this requires physical force.⁶⁴ Thus, Sylvester states that the "token resistance may be offered in response to a perceived cultural norm of femininity" and therefore "femininity is indexed by resistance to sex."⁶⁵ Consequently, the persistent threat of rape is constructed within the normalised heterosexual courtship encounters and these encounters were played out in romance where they were questioned and debated.⁶⁶ Gravdal adds that "in romance, 'ravishment' seems as natural as heterosexual love,"⁶⁷ and indeed Sylvester's theoretical framework aids in interpreting these as one in the same. That is, heterosexual seduction inherently includes a threat of rape in medieval English culture. Because of this heterosexual courtship script, Sylvester argues that "representations of heterosexual femininity and masculinity in medieval romance suggests that explicitly consensual sex is virtually impossible within our cultural construction of heterosexuality."⁶⁸ The cultural constructs leave

⁶¹ Sylvester, *Medieval Romance and the Construction of Heterosexuality*, 30, 38.

⁶² Sylvester, *Medieval Romance and the Construction of Heterosexuality*, 13.

⁶³ Sylvester, *Medieval Romance and the Construction of Heterosexuality*, 28, 43, quote from pp. 28.

⁶⁴ Sylvester, *Medieval Romance and the Construction of Heterosexuality*, 63, 47.

⁶⁵ Sylvester, *Medieval Romance and the Construction of Heterosexuality*, 48–49.

⁶⁶ Sylvester, *Medieval Romance and the Construction of Heterosexuality*, 49, 64.

⁶⁷ Gravdal, *Ravishing Maidens*, 43.

⁶⁸ Sylvester, *Medieval Romance and the Construction of Heterosexuality*, 129.

little room for the explicit consent of the woman to the man's sexual offers, otherwise the woman is not performing "appropriate" femininity.

Recognising the influential works of Judith Butler, in which gender is not inherent but performed, Sylvester's theory of the "token no" suggests that violence has been culturally inscribed into the heterosexual encounters of medieval English society.⁶⁹ The performative gender identity expression of medieval English culture encourages the use of force and/or pressure by the man to persuade the reluctant woman into sex. There is a constructed continuum from explicit non-consent to verbal pressure, and ultimately to the use of physical force and rape. Consequently, the threat of violence forms part of the constructed gender norms of heterosexual encounters, as "love and violence" are connected to one another.⁷⁰ This cultural map of heterosexual courtship insists on a constant, sometimes unsubtle, threat of sexual assault.⁷¹

The blurring of chivalry, seduction, and rape ensures that the willingness of the woman is difficult to determine, as Ellen Rooney states, "rape is a sex crime that is not a crime when it looks like sex."⁷² This conflation of reluctance and seduction as gender performance further complicates the representation of consensual sex and rape. Medieval authors played with this blurred line, as will be evident from the analysis below, and medieval justiciars and jurors were further troubled with the distinction between consensual coitus and rape. The seemingly close connection between the two is mirrored in Middle English romance, as Saunders claims that rape in romance is "never far from the surface," as a heterosexual encounter can easily turn violent.⁷³

⁶⁹ Saunders, *Rape and Ravishment*, 13.

⁷⁰ Saunders, *Rape and Ravishment*, 189–192.

⁷¹ Rouse and Rushton, "Introduction: A Light Thrown Upon Darkness," 6.

⁷² Ellen Rooney, "'A Little More Than Persuading': Tess and the Subject of Sexual Violence," in *Rape and Representation*, eds. Lynn A. Higgins and Brenda R. Silver (New York: Columbia University Press, 1991), 90.

⁷³ Saunders, *Rape and Ravishment*, 194–195.

It is the persistency that simultaneously erases the threat of sexual violence in heterosexual courtships and normalises it as a part of masculine and feminine gender encounters.⁷⁴ This normalisation works to make rape invisible and pervasive.⁷⁵

The “performance of gender,” as stated by Susan Crane, and the heterosexual courtship norms, are written into romance.⁷⁶ Heterosexual lust, central to Middle English romance, represents women characters in binaries: there is the helpless, suffering victim, and the scheming trickster.⁷⁷ The former is idealised as worthy of man’s desire, while the latter is an obstacle for the protagonist to overcome. These binary identities are nearly identical to the legally constructed identities of women in the secular *raptus* laws. The truly innocent victim suffers injuries and is worthy of legal recourse, whereas the scheming culpable woman makes malicious accusations which hurt the honour of good, honest men. Thus, in the laws and romance, when a woman performs passivity and enduring self-sacrifice, she is practicing ideal femininity. Consequently, according to Jane Burns, rape has become “a part of cultural history” that is tied not only to the crime itself, but to larger hegemonic cultural structures which aided in sustaining the patriarchal control of medieval society.⁷⁸

The seduction of a reluctant beloved in romance has attracted much scholarly debate. The stock character of the reluctant lady and the persistent lover can lead to Sylvester’s “token no,”

⁷⁴ Karen G. Casebier, “Order, Anarchy and Emotion in the Old French *Philomena*,” in *The Inner Life of Women in Medieval Romance Literature: Grief, Guilt and Hypocrisy*, eds. Jeff Rider and Jamie Friedman (New York: Palgrave, 2011), 40.

⁷⁵ Gravidal, *Ravishing Maidens*, 43–44; see also the similar discussion about Malory’s texts in Kristina Hildebrand, “‘Open manslaughter and bold bawdry’: Male Sexuality as Cause of Disruption in Malory’s *Morte Darthur*,” in *Sexual Culture in the Literature of Medieval Britain*, eds. Amanda Hopkins, Robert Allen Rouse and Cory James Rushton (Cambridge: D. S. Brewer, 2014), 13–26, specifically 15.

⁷⁶ Susan Crane, *Gender and Romance in Chaucer’s Canterbury Tales* (Princeton: Princeton University Press, 1994), 12.

⁷⁷ Hansen, *Chaucer and the Fictions of Gender*, 3.

⁷⁸ Burns, “Raping Men,” 129.

or what Gravdal claims is the persistent threat of rape, or even what Elaine Tuttle Hansen calls the feminisation of male characters. Hansen claims that through the wooing of a reluctant lady, the man must be enduring in his patience and sacrifice for the woman's love and in this way he is placed in a feminised identity that erodes the "gender differences and the power differential between male and female."⁷⁹ Using Chaucer's *The Wife of Bath*, Hansen claims that the masculinisation of the Wife and the feminisation of the knight rapist demonstrate the fluidity of gender constructions in medieval culture.⁸⁰ To this point, Hansen cleverly states that when reading fictional literature, "textuality" and "sexuality" are intricately interwoven.⁸¹ Trying to unearth the formulaic rape and threatened rape plots in romance necessarily requires an understanding of the cultural gender norms, as well as the medical and legal contexts of rape. To borrow Jamie Friedman's phrase, the contextualisation of the legal discourse is necessary because these texts are "haunted" by history; that is, historical context is informing the plot and the audience expectations of the narrative itself.⁸²

Despite all the detail about romance memes, Helen Cooper falls short in acknowledging the "token no" phenomenon so prevalent in romance. Stating that the protagonist, either male or female, usually endures a "loss of agency" but remains steadfast in their love for another character "even if they put up some resistance at first," Helen Cooper fails to recognise the importance that this resistance and "commitment" has to rape narratives.⁸³ The frequent elision of rape as a masculine expression of lust and seduction in romance essentially fetishizes sexual

⁷⁹ Hansen, *Chaucer and the Fictions of Gender*, 7–9, 148.

⁸⁰ Hansen, *Chaucer and the Fictions of Gender*, 12–14.

⁸¹ Hansen, *Chaucer and the Fictions of Gender*, 289.

⁸² Jamie Friedman, "Between Boccaccio and Chaucer: The Limit of Female Interiority in the *Knight's Tale*," in *The Inner Life of Women in Medieval Romance Literature: Grief, Guilt and Hypocrisy*, eds. Jeff Rider and Jamie Friedman (New York: Palgrave, 2011), 215–216.

⁸³ Cooper, *The English Romance in Time*, 230.

violence, but as stated by Edwards, the “legal context suggests that calling seduction rape is another popular strategy for devaluing female agency.”⁸⁴ Reading romance in conjunction with contemporary legal doctrine will inform the context and reception of the fictional rape narratives. P. J. P. Goldberg has advocated for such readings, so that we can become “more acutely sensitive to the ways in which one echoes the other, or conversely, offers a different emphasis.”⁸⁵

Marriage was a powerful mechanism for controlling sexuality and romance can be interpreted as supporting matrimony among the laity.⁸⁶ However, in romance, rape and/or abduction frequently end in marriage and thus, the literature mirrors the legal reality. As previously discussed, the marriage clause in later *raptus* laws was manipulated to transform elopements into the conflated crimes of abduction and/or rape against parental consent.⁸⁷ Often in romance knights rescue damsels in distress, frequently abducted by “bad” men or “others” and in turn, the knight wins the marriage rights of the rescued lady.⁸⁸ Here, the threat of abduction is frequently visible while rape is often obscured. Nonetheless, the continuum of lust, seduction, rape/abduction, and marriage is upheld in both romance and law. As medieval English culture viewed rape as an extreme and condemnable form of seduction, rape was considered a negative consequence of extreme male lust.⁸⁹ As will be discussed more in the specific romance examples below, there is the common narrative arc that is initiated with seduction and rape and ends happily with matrimony. It will be shown that this narrative arc is similar to the legal reality in

⁸⁴ Edwards, *The Afterlives of Rape in Medieval English Literature*, 83.

⁸⁵ Goldberg, “Introduction,” x.

⁸⁶ Robertson and Rose, “Introduction,” 4.

⁸⁷ Suzanne Edwards, “The Rhetoric of Rape and the Politics of Gender in the Wife of Bath’s Tale and the 1382 Statue of Rapes,” *Exemplaria* Vol. 23, No. 1 (2011): 4.

⁸⁸ Saunders, “A Matter of Consent: Middle English Romance and the Law of *Raptus*,” 113–114.

⁸⁹ Rushton and Hopkins, “Introduction,” 9.

that both legal and literary texts conflate lust and seduction with rape, and both have the narrative trajectory which can, and does, end in matrimony.⁹⁰

Rudine Sims Bishop's metaphor about children's literature will frame the following interpretation of the legal context of *raptus* laws in Middle English romance. Bishop states:

Books are sometimes windows, offering views of worlds that may be real or imagined, familiar or strange. These windows are also sliding glass doors, and readers have only to walk through in imagination to become part of whatever world has been created and recreated by the author. When lighting conditions are just right, however, a window can also be a mirror. Literature transforms human experience and reflects it back to us, and in that reflection we can see our own lives and experiences as part of the larger human experience. Reading, then, becomes a means of self-affirmation, and readers often seek their mirrors in books.⁹¹

Bishop's metaphor of windows and mirrors is a useful framework to structure the following close readings of romance narratives. Rape, threatened rape, and sexual violence in romance are frequently placed in an otherworld, such as fairyland, forests, or at sea. The perpetrator is usually an "other," such as a fairy knight, a Saracen, or a type of monster.⁹² Alternatively, fairy-queens can become the targets of knight rapists, but they are often distanced from the human world.⁹³ The windows into these fantasy worlds are both strange and familiar to the lived realities of women, as will become evident through their comparison with *raptus* laws. These legal realities are neutralised by the supernatural and the marvellous, as argued by Andrew Galloway, so that the stories can "present unsettling views of familiar social issues."⁹⁴ In this way, they are also

⁹⁰ Rose, "Reading Chaucer Reading Rape," 29.

⁹¹ Rudine Sims Bishop, "Mirrors, Windows, and Sliding Glass Doors," *Perspectives* Vol. 1, No. 3 (1990): ix–xi, quote from ix.

⁹² Saunders, *Rape and Ravishment*, 188, 207, 211–212; Saunders, "A Matter of Consent: Middle English Romance and the Law of *Raptus*," 116–117.

⁹³ Duby, *The Knight, the Lady and the Priest*, 223.

⁹⁴ Galloway, *Medieval Literature and Culture*, 82; see also, Sylvester, *Medieval Romance and the Construction of Heterosexuality*, 49.

mirrors reflecting a normalised feminine experience that is relatable to the audience. As stated by Rose, the “slippery vision of real rape [is] just behind and informing the fictional representation.”⁹⁵ These mirrors reflect real world problems to the listening and reading audiences, as Richard Kaeuper states “we seldom preach virtues to replace non-existent faults.”⁹⁶ In this way, rape narratives provide critical insights into the societal perceptions and anxieties around femininity, sexuality, and gender norms of heterosexual encounters.⁹⁷ As Nathalie Zemon Davis warns, fictionality does not necessarily equate “falsity,” as “it might well bring verisimilitude or a moral truth.”⁹⁸ Contrary, Goldberg adds that “truth” and “history” are not mutually inclusive, as historical writing is equally a literary construct to the medieval composer versed in rhetoric.⁹⁹ However, Sylvester warns that we should not interpret the fictional as a true mirror reflection of the real world, because fiction is not an accurate representation of reality but rather an obscured and intentionally distorted mirror image.¹⁰⁰ Rape, as an event which occurs in the select romances, is not necessarily the focus of the following analysis. Rather, it is the social attitudes, the legal influences and realities intruding into the fictional which are of primary concern here. As argued by Robertson and Rose, it is the “larger cultural framework” influencing the romance narratives that is of interest here and “by historically grounding” the analysis within the contemporary legal infrastructure, the previously discussed “windows” and “mirrors” will become apparent.¹⁰¹

⁹⁵ Rose, “Reading Chaucer Reading Rape,” 51.

⁹⁶ Kaeuper, *Chivalry and Violence in Medieval Europe*, 33.

⁹⁷ Robertson and Rose, “Introduction,” 2.

⁹⁸ Davis, *Fiction in the Archives*, 4.

⁹⁹ Goldberg, “Introduction,” x–xi.

¹⁰⁰ Sylvester, *Medieval Romance and the Construction of Heterosexuality*, 10.

¹⁰¹ Robertson and Rose, “Introduction,” 3–4.

The windows of romance, according to Kaeuper, are in the portrayal of emotions, fears, desires, and “chivalric *mentalité*.”¹⁰² This window into chivalric mentality includes the use of rape or threatened rape against women as representing real world problems,¹⁰³ while concurrently eclipsing them as a literary device for male character development and advancement. While the windows of rape in romance can be intentionally distorting, as is the case with *Sir Degare* and the fairy knight, they simultaneously act as mirrors reflecting an image of real-world experiences and emotions. To this point, the formulaic rape plots of romance are far from escapist literature, despite being placed in otherworlds. Rather, they are platforms for discussion and debate about the realities of rape, as romance was used to engage people with “the most pressing issues of their day,” according to Kaeuper, “especially issues of social order and knightly violence.”¹⁰⁴ As will become more evident in the following discussion, romance is reflecting a reality, but does not necessarily intend to be realistic.

The following close reading of *Sir Orfeo*, *Amis and Amiloun*, *Sir Degare*, *Sir Gower*, and *Le Bone Florence of Rome* will be done with continual reference to the previously discussed legal ages of *raptus* laws. It should be noted that the following analysis is not, as Paul Strohm warns against, an attempt to disentangle the author’s intentions when the romance was composed, as this would be an elusive task.¹⁰⁵ I do not claim to know the authorial intention behind the rape narratives. Instead, my intentions are to demonstrate the striking legal realism within these rape narratives. This is an analysis to find the “elsewhere of discourse,” to use Strohm’s phrase, “the space not visible in the frame but inferable from what the frame makes

¹⁰² Kaeuper, *Chivalry and Violence in Medieval Europe*, 175.

¹⁰³ Kaeuper, *Chivalry and Violence in Medieval Europe*, 230.

¹⁰⁴ Kaeuper, *Chivalry and Violence in Medieval Europe*, 35.

¹⁰⁵ Strohm, *England’s Empty Throne*, xii.

visible.”¹⁰⁶ This is not the same as describing text and context, because (and as argued by Strohm) the “elsewhere of discourse” is not an external entity to the text, but rather a part of the text itself, informing its composition and evident in its representations. By looking into the windows of the fictional worlds it will become apparent that the legal discourse and the constructed legal identities of women are mirrored in these romances.

Sir Orfeo

Sir Orfeo includes the threat of *raptus* by a supernatural being, that is the abduction by a fairy king. This is a similar theme, as will be discussed in chapter 8, to *Sir Degare* which depicts fairy rape, and *Sir Gowther*’s “demonic rape.”¹⁰⁷ *Sir Orfeo* (and *Sir Degare*) is included in the early fourteenth-century Auchinleck manuscript.¹⁰⁸ Anne Laskaya and Eve Salisbury note the strong Celtic folklore tradition in *Sir Orfeo* and the themes of “loss and restoration, sorrow and joy, wealth and poverty...the brutality of nature and the civilizing force of art.”¹⁰⁹ James Wade comments on the power of the fairy king “to suspend the rules of the human world he has intruded upon,” a theme that will be commented on below.¹¹⁰

The audience is first introduced to Orfeo as a man who truly loves playing his harp. We are told that he is a very good, self-taught, harpist and that there is no other man in the world as

¹⁰⁶ Strohm, *England’s Empty Throne*, 153.

¹⁰⁷ Saunders, *Rape and Ravishment*, 212, 228–230.

¹⁰⁸ Anne Laskaya and Eve Salisbury, “Sir Orfeo: Introduction,” *The Middle English Breton Lays*, TEAMS Middle English Text Series (University of Rochester, 1995) <https://d.lib.rochester.edu/teams/text/laskaya-and-salisbury-middle-english-breton-lays-sir-orfeo-introduction>

¹⁰⁹ Laskaya and Salisbury, “Sir Orfeo: Introduction.”

¹¹⁰ James Wade, *Fairies in Medieval Romance* (New York: Palgrave MacMillan, 2011), 77.

good as he at playing the harp.¹¹¹ Only after the lengthy description of his harping abilities are we told that Orfeo is a king in England,¹¹² that he is brave, and he is courtly.¹¹³ Clearly the emphasis of Orfeo's description is on his harping skills and the harp is a central piece to his later attempt to rescue his wife. Orfeo was descended from Pluto and Juno which places the story of *Sir Orfeo* in the pre-Christian world.¹¹⁴ The conflation of England's medieval world and the classical pagan world is purposeful, as the narrative references Thrace and Winchester as the same location.¹¹⁵

The narrative continues with stating that King Orfeo "hadde a quen of priis/ That was y-cleped Dame Heurodis," that he "had a queen of excellence/ That was called Dame Heurodis."¹¹⁶ Her four-line description includes being "the fairest lady," both loving and good, and her physical beauty is so great that no man can accurately describe her.¹¹⁷ Her coming abduction is set in the month of May, which is typical of romance fairy tradition.¹¹⁸ Similar to the hot day described in the rape scene of *Sir Degare* (discussed in chapter 8), here the May day was also hot and "everi feld is ful of flours."¹¹⁹ It is worth noting here some similarities between the princess in *Sir Degare* and Heurodis, as we are told that the queen takes "to maidens of priis/....To play bi an orchardside." As will be discussed in the following chapter, both the princess in *Sir Degare* and Queen Heurodis are accompanied by two maidens and these other maidens do not see or engage with the fairy. Furthermore, the orchard is a place frequented by supernatural encounters

¹¹¹ "Sir Orfeo," *The Middle English Breton Lays*, TEAMS Middle English Text Series, eds. Anne Laskaya and Eve Salisbury (University of Rochester, 1995) <https://d.lib.rochester.edu/teams/text/laskaya-and-salisbury-middle-english-breton-lays-sir-orfeo> lines 25–38.

¹¹² "Sir Orfeo," lines 39–40.

¹¹³ "Sir Orfeo," lines 41–42.

¹¹⁴ "Sir Orfeo," lines 43–44.

¹¹⁵ "Sir Orfeo," lines 47–50.

¹¹⁶ "Sir Orfeo," lines 51–52. All *Sir Orfeo* translations are adapted from TEAMS Middle English Text Series.

¹¹⁷ "Sir Orfeo," lines 53–56.

¹¹⁸ "Sir Orfeo," lines 57, note 57.

¹¹⁹ "Sir Orfeo," lines 58, 60.

as will be seen in the next chapter with the duchess in *Sir Gowther*. The theme that women without the protection of men will get into trouble is seemingly reoccurring.

While in the orchard, Heurodis and her ladies go “to se the flours sprede and spring/ And to here the foules sing./ Thai sett hem doun al thre/ Under a fair ympe-tre,” that is that they went “to see the spring flowers” and “to hear the birds sing./ They sat themselves down all three/ Under a fair grafted tree.”¹²⁰ There appears to be a trend of flowers and birds distracting women and enticing them into the realm of vulnerability and isolation. Flowers and birds are mentioned prior to the princess’s rape in *Sir Degare* and the sounds of birds are also mentioned in *Amis and Amiloun* (discussed below). Additionally, like *Sir Degare* and *Sir Gowther*, the maidens here sit under a tree and fall asleep.¹²¹

Heurodis sleeps in the orchard without the disruption of her ladies until midday, a signpost to the audience that a supernatural encounter is likely approaching.¹²² Although we are told that her ladies did not wake her, we are not told that they left her alone which makes the following scene more ambiguous. The narrative states that when Queen Heurodis awakes:

Sche crid, and lothli bere gan make;/ Sche froted hir honden and hir fete,/ And crached
hir visage – it bled wete – / Hir riche robe hye al to-rett/ And was reveyd out of hir wit.

[She cried, and loathsome outcry made;/ She rubbed her hand and her feet,/ And
scratched her face – it bled profusely–/ Her rich robe she tore all to pieces/ And was
driven out of her wit.]¹²³

¹²⁰ “Sir Orfeo,” lines 67–70.

¹²¹ “Sir Orfeo,” line 72.

¹²² “Sir Orfeo,” line 76.

¹²³ “Sir Orfeo,” lines 78–82.

Lothli implies being fearful or terrified, and thus Heurodis, in this state of frenzy, is first and foremost described as fearful.¹²⁴ The description of her physical self-mutilation is graphic, or as James Wade claims, “disturbing,”¹²⁵ as *froten* describes the action of crushing, grinding, or scratching.¹²⁶ She is physically harming herself, crushing and grinding her feet and hands, as a type of coping-mechanism for the utter fear.¹²⁷ At this point, Heurodis is nonverbal, having not said a single word of direct speech. The self-mutilation continues as she rips at her face to such a degree that she begins to bleed abundantly. However, we later learn that Heurodis was sent into a state of madness because she was visited by a fairy king in the orchard.¹²⁸ Heurodis later explains her self-mutilation as a state of panic and horror at what occurred in the orchard:

Ther come to me to fair knightes,
 Wele y-armed al to rightes,
 And bad me comen an heighing
 And speke with her lord the king.
 And ich answerd at wordes bold,
 Y durst nought, no y nold...
 Tho com her king, also blive,
 With an hundred knightes and mo,
 And damisels an hundred also,...
 And as son as he to me cam,
 Wold ich, nold ich, he me nam,
 And made me with him ride
 Opon a palfray bi his side;
 And brought me to his palays...
 And sethen me brought oyain hom
 Into out owen orchard,
 And said to me thus afterward,
 “Loke, dame, tomorwe thatow be
 Right here under this ympe-tre,

¹²⁴ *The Middle English Dictionary*, “Lothli (adj.).”

¹²⁵ Wade, *Fairies in Medieval Romance*, 77.

¹²⁶ *The Middle English Dictionary*, “Froten (v.).”

¹²⁷ For an analysis on Heurodis’ actions as representative of a schizophrenic episode, see A. C. Spearing, “Sir Orfeo: Madness and Gender,” in *The Spirit of Medieval English Popular Romance*, eds. Ad Putter and Jane Gilbert (Toronto: Pearson Education, 2000), 258–272.

¹²⁸ “Sir Orfeo,” lines 135–174.

And than thou schalt with ous go
 And live with ous evermo.
 And yif thou makest ous y-let,
 Whar thou be, thou worst y-fet
 And totore thing limes al
 That nothing help the no schal;
 And thei thou best so totorn,
 Yete thou worst with ous y-born.”

[There came to me two fair knights/ Well armed all quite properly,/ And bade me come in haste/ And speak to their lord the king./ And I answered with words bold,/ I dare not, nor did I want to;.../ Then came their king, as quickly,/ With a hundred knights and more,/ And damsels a hundred also,.. / And as soon as he to me came,/ Whether I wished or not, he took me,/ And made me with him ride/ Upon a palfrey by his side;/ And brought me to his palace,.../ And afterwards brought me back home/ Into our own orchard,/ And said to me this afterward,/ “Look, dame, tomorrow that you be/ Right here under this grafted tree,/ And then you shall with us go/ And live with us evermore./ And if you make a hindrance for us,/ Wherever you be, you will be fetched,/ And torn apart all limbs/ That nothing shall help you;/ And though you are so torn,/ Yet you will be carried with us.”]¹²⁹

The abduction scene is initiated by contact with armed knights who order the queen to come with them. Heurodis’ non-consent is explicit (line 140) at which point the knights leave on horseback.¹³⁰ The fairy king then approaches Heurodis with an extremely large entourage of knights and ladies and thus they are placed within the courtly world, described in courtly context and dressed in all white.¹³¹ It is unclear why the fairy king needed these other ladies with him to approach Heurodis, and it is equally uncertain as to where the two maidens who entered the orchard with Heurodis are, and why they cannot see the fairy king and his entourage. In her own words, Heurodis describes the fairy king, knights, and damsels as entirely novel; she had never set eyes on “so fair creatures exquisite.”¹³² The fairy king is dressed in traditional regalia with “a

¹²⁹ “Sir Orfeo,” line 135–174.

¹³⁰ “Sir Orfeo,” line 141.

¹³¹ “Sir Orfeo,” lines 142–146.

¹³² “Sir Orfeo,” lines 147–148.

crown on his head,” which is a marker of his royal status in the human courtly world and in the fairy otherworld. This suggests that the otherworld is like the known human world, yet highly luxurious, extravagant, and evidently dangerous.¹³³

Once again, Heurodis reiterates her non-consent as she states “whether I wished or not, he took me.”¹³⁴ As will be discussed at length in the following chapter, this abduction to fairyland is similar to the verbal construction of the rape in *Sir Degare*, in that whether the women (the princess in *Sir Degare* or Heurodis in *Sir Orfeo*) “wished” it or not, the ravishment was going to happen. Laskaya and Salisbury state that the abductor fairy king “is not overtly identified as evil,” but rather, he is represented as simply beyond the courtly world of “normal” behaviour, existing beyond human laws and customs.¹³⁵ This is also true for the fairy knight in *Sir Degare*. As Wade argues, humanized fairies in romance are *adoxic*, operating “outside the established order,” but “hardly ever evil.”¹³⁶

Heurodis describes her first abduction as leaving to fairyland by force, in that the fairy king “*made* [her] with him ride” and “*brought* [her] to his palace” and “*showed* [her] castles and towers.”¹³⁷ In fairyland, Heurodis is entirely isolated, she is away from the known courtly world, and she is the object of his actions. Once again, feminine passivity is being written into the narrative, as she is the direct object of masculine activity.

¹³³ “Sir Orfeo,” lines 149–152.

¹³⁴ “Sir Orfeo,” line 154.

¹³⁵ Laskaya and Salisbury, “Sir Orfeo: Introduction.” See also Aisling Byrne, “Fairy Lovers: Sexuality, Order and Narrative in Medieval Romance,” in *Sexual Culture in the Literature of Medieval Britain*, eds. Amanda Hopkins, Robert Allen Rouse and Cory James Rushton (Cambridge: D. S. Brewer, 2014), 100, 103.

¹³⁶ Wade, *Fairies in Medieval Romance*, 14–15.

¹³⁷ “Sir Orfeo,” line 155, 157 and 159. Emphases are my own.

Once Heurodis is “brought” back to the human world,¹³⁸ the fairy king threatens her. She can return to the same tree tomorrow and come with him to live in fairyland forever, or she can try to resist, but this will inevitably fail. Not only will the fairy king find her, “wherever [she] be,” but he also threatens her with extreme bodily harm, that is, to rip her apart by the limbs.¹³⁹ The threat of violence against Heurodis, if she attempts to resist her abduction, is shockingly graphic and entirely against the expected seduction of a courtly suitor. There is no mention of love or lust, as we will see with the fairy rapist in *Sir Degare*. Why the fairy king is insistent on taking Heurodis is left entirely unmentioned which, Wade suggests, is typical of fairies’ ambiguous reasons for action.¹⁴⁰ The use of the word *totoren* is critical, as it is defined in the Middle English Dictionary as: “to destroy...to rip up (one’s garments) in a frenzy of emotion or madness;...strip away (flesh); [or] to lacerate (skin, someone’s body, part of the body) savagely.”¹⁴¹ The fairy king’s threat is an act of brutality, yet the double meaning of madness or frenzy plays on the queen’s state of insanity. In this sense of the word, the fairy king fulfills his threat by throwing the queen into such a state of madness that she rips up her own garments. To end his threat, the fairy king claims that there is nothing she can do to stop the abduction. He states that even if she is murdered in the process, they will still take her away. Heurodis ends her only direct speech in the entire narrative with this looming threat of abduction and/or mutilation and death.¹⁴²

With this knowledge, we can now re-assess the earlier episode of her self-mutilation. Heurodis’ graphic scratching of her face, hands, and feet is reminiscent of the hagiographical

¹³⁸ “Sir Orfeo,” line 162.

¹³⁹ “Sir Orfeo,” like 170–174.

¹⁴⁰ Wade, *Fairies in Medieval Romance*, 16.

¹⁴¹ *The Middle English Dictionary*, “Toteren v.2.”

¹⁴² Edwards, *The Afterlives of Rape in Medieval English Literature*, 129.

debate about suicide and the acceptable means of avoiding rape previously discussed. Patricia Skinner notes that “the sight of a mutilated female face could engender horror and shock in the medieval viewer.”¹⁴³ The facial mutilation may be referencing the *Bracton*-era notion that men rape women because of their beauty, and thus implying that mutilation can protect against rape. This was the course of action taken at the Coldingham Abbey in the year 870. According to thirteenth-century chronicler Matthew Paris,¹⁴⁴ upon hearing that Vikings were coming, Abbess Ebba instructed the holy women to cut their noses and lips off of their faces with a razor.¹⁴⁵ Emulating the virgin martyrs, the women of Coldingham Abbey opted for self-mutilation to defend themselves from rape, torture, and murder. However, the raiders were repulsed at the sight of the mutilated women and decided to “burn down the convent with the nuns inside it.”¹⁴⁶ Although Patricia Skinner notes the paradox of facial disfigurement to preserve women’s sexual purity in hagiography and Sicilian twelfth-century laws which “imposed nose-slitting on adulteresses and mothers who pimp their daughters,”¹⁴⁷ there is, I believe, a strong correlation with *Bracton*’s punitive blinding and facial disfigurement. The fact that the mutilation saved the nuns of Coldingham from rape, and thus preserving their virginity, demonstrates the legal belief, as implied in *Bracton*, that men rape because the women are physically attractive. This legendary story, along with the similar *vita* of Saint Brigit of Ireland,¹⁴⁸ would have been well known to the contemporary audiences of the twelfth to the fourteenth century.

¹⁴³ Patricia Skinner, “Marking the Face, Curing the Soul? Reading the Disfigurement of Women in the Later Middle Ages,” in *Medicine, Religion and Gender in Medieval Culture*, ed. Naoë Kukita Yoshikawa (Cambridge: Boydell & Brewer, 2015), 181–202, quote from 187.

¹⁴⁴ David Farmer, “Ebbe the Younger,” in *The Oxford Dictionary of Saints*, fifth edition (Oxford: Oxford University Press, 2011). References Matthew Paris, *Chronica Majora*, ed. H. R. Luard (Rolls Series, London, 1872), vol. 1, 391–392.

¹⁴⁵ Shari Horner, “Spiritual Truth and Sexual Violence: The Old English “Juliana,” Anglo-Saxon Nuns, and the Discourse of Female Monastic Enclosure,” *Signs* Vol. 19, No. 3 (Spring 1994): 671.

¹⁴⁶ Horner, “Spiritual Truth and Sexual Violence,” 671.

¹⁴⁷ Skinner, “Marking the Face, Curing the Soul?,” 189.

¹⁴⁸ Skinner, “Marking the Face, Curing the Soul?,” 188.

Once we know why Heurodis was so terrified, her state of madness seems more planned. The legal requirement of proof of rape included blood, bruising, and torn or stained clothing. It is significant that Heurodis, in her state of madness, causes herself to bleed profusely, suggesting that she may have stained her clothes, and that she rips her clothes into pieces. These physical markers are all working to ensure that she appears to be a victim of *raptus*, according to the legal requirements of women under the Statutes of Westminster I and II. Heurodis has physical proof of ravishment; that is, she has bleeding, bodily injury, and torn clothing. Even though these physical injuries are self-inflicted, they act as visible markers of victimisation. The romance is intentionally demonstrating her legal identity as a true victim as she is described specifically as “*reveyd*,” she was ravished,¹⁴⁹ and Wade identifies this as a “kind of psychological ravishing.”¹⁵⁰

The next day Orfeo is determined to protect his beloved wife, so he sends Heurodis into the orchard but with the protections of “ten hundred knights.../ Each armed, strong and fierce.”¹⁵¹ Using his queen as bait to conquer the fairy king, Orfeo orders his men to use their shields as a barrier to surround Heurodis.¹⁵² The valiant knights state that they are willing to die to protect their queen, but all human attempts of resistance to the supernatural prove futile: Ac yete amidde hem ful right/ The queen was oway y-twight,/ With fairi forth y-nome./ Men wist never sche was bicomme. That is “But yet amidst them straightaway/ The queen was snatched away,/ With enchantment taken./ Men never knew where she was gone.”¹⁵³ Like when Heurodis was in the orchard with her two ladies who never saw the fairy entourage, here again the valiant human knights never saw that she was taken.¹⁵⁴ It is also worthy to note that the ravishment is

¹⁴⁹ “Sir Orfeo,” line 82.

¹⁵⁰ Wade, *Fairies in Medieval Romance*, 77.

¹⁵¹ “Sir Orfeo,” lines 181–185.

¹⁵² “Sir Orfeo,” line 187.

¹⁵³ “Sir Orfeo,” lines 191–194.

¹⁵⁴ “Sir Orfeo,” line 194.

between equals. The abduction of the queen is done by a social equal since the fairy ravisher is a king. This legally lessens the severity of the crime. We have seen in the *raptus* laws from *Glanvill* to the Statute of Rapes, that lawmakers were very concerned about sexual defilement between people of different social classes. The fact that Heurodis is a queen and abducted by a king ensures that her culpability remains ambiguous, and that the severity of the ravishment is legally diminished. Case records demonstrate that when the abductor and abducted are of similar social status, there is less immediate effort to restore the women to her cuckolded husband. We have seen this with the cases of Margery Child (1326) and Mariota Wildeborleye (1316) discussed in chapter 4.

Orfeo is distraught that Heurodis is taken and he appoints his high steward to run his kingdom while he himself retreats into the wilderness.¹⁵⁵ The composer uses the word *lore* to describe Orfeo's loss.¹⁵⁶ *Lore* is defined primarily as "a loss of thing, property or money," thus suggesting that the ravishment was equally a crime against Orfeo for a loss of property.¹⁵⁷ Like Sir Thomas West who petitioned the king leading to the Statute of Rapes (see chapter 2) which claims that men are the true victims of *raptus*, here Orfeo's loss is representative of this legal claim. The abduction of Orfeo's wife is a crime against him since he is her husband. This is identical to the claims of husbands, fathers, and legal male guardians, under the *raptus* laws of Westminster II and culminating in the Statute of Rapes.

Despite the fact that Heurodis is the character who was violently threatened and abducted, the remainder of the romance focuses exclusively on Orfeo's journey, his decision to

¹⁵⁵ "Sir Orfeo," lines 205–212.

¹⁵⁶ "Sir Orfeo," line 209.

¹⁵⁷ *The Middle English Dictionary*, "Lore n.(1)."

leave his kingdom,¹⁵⁸ followed by his time in the wilderness.¹⁵⁹ The emphasis turns towards his journey, his trials, tribulations, and his hardships, not hers. Much like the princess in *Sir Degare*, Heurodis' ravishment initiates the plot, but she is silenced and excluded from the narrative until Orfeo finds her. Her fears, madness, and abduction were a plot device to demonstrate the courtly and heroic behaviour of Orfeo. This is reiterated again at the end of the romance when Orfeo claims that he "hadde y-suffred ful yore," that he "had suffered very long ago."¹⁶⁰ Orfeo is claiming the victim status much like how the law treated men as victims in the Statute of Rapes.

While in the wilderness we are told of Orfeo's great distress,¹⁶¹ and his loss of kingdom is emphasised.¹⁶² This is reminiscent of his earlier *lore*, in that Heurodis' abduction cost him a loss of property and ultimately the sacrifice of his kingdom. The legal reality intruding into the romance is once again striking. The romance is illustrating the severe consequences of abductions for men and not women. Even though Orfeo's loss is self-imposed, it nonetheless expresses the common contemporary fears and anxieties among noblemen, that the ravishment of their daughters and wives would lessen their patrimony. Oren Falk argues that Heurodis becomes "unfit to bear the son of Orfeo," suggesting that due to her ravishment, Orfeo never recovers his patrimony from the steward.¹⁶³ Orfeo describes his loss in terms of property, as where he once had a kingdom he is now surrounded by a "river, forest, frith with flours."¹⁶⁴ This is the exact same description in line 160 that Heurodis gives of fairyland. This repetition suggests that not much separates the courtly world from fairyland. During his exile, Orfeo sees fairies in the

¹⁵⁸ "Sir Orfeo," lines 204–236.

¹⁵⁹ "Sir Orfeo," lines 237–281.

¹⁶⁰ "Sir Orfeo," line 559.

¹⁶¹ "Sir Orfeo," line 240.

¹⁶² "Sir Orfeo," line 245.

¹⁶³ Oren Falk, "The Son of Orfeo: Kingship and Compromise in a Middle English Romance," *Journal of Medieval and Early Modern Studies* Vol. 30, No. 2 (2000): 247–274, specifically pp.260–261.

¹⁶⁴ "Sir Orfeo," line 246.

woods enjoying traditional courtly activities, mainly dancing and hunting.¹⁶⁵ The mirroring of language used to describe the fairy knights and the human knights blurs man and fairy, as well as chivalric suitor and ravisher.¹⁶⁶

When Orfeo finally sees Heurodis and approaches her she “noither to other a word no speke,” but despite her silence she was sad to see the wild state of Orfeo, and that “the teres fel out of her eighe.”¹⁶⁷ Orfeo follows her back to fairyland,¹⁶⁸ which is described as a place of great luxury.¹⁶⁹ We are told that “no man may tell, nor think in thought” how beautiful fairyland is, in that the extravagance is beyond human comprehension.¹⁷⁰ Orfeo, unlike the fairy king, seeks permission to entire the premises,¹⁷¹ while the fairy king entered the orchard without permission, exemplifying a difference between the two kings.

The fairy palace is a palace of the dead and the mad.¹⁷² The severity of the fairy king’s threat is confirmed, as individuals are described as severely wounded, decapitated, some have limbs torn off, some are perpetually suffocating or drowning, and “some lay mad.”¹⁷³ It appears that the fairy king was willing to execute the violent threat uttered to Heurodis, in that whether she was whole or torn to pieces she was coming with him. The luxurious palace of the dead is described as a horrifying scene of torture.¹⁷⁴ Fairyland is both beautiful and horrific which is reminiscent of Duby’s argument that courtly romance is both loving and violent. The juxtaposition of beauty and grotesque, in fairyland, echoes the combination of ravishment as an

¹⁶⁵ “Sir Orfeo,” lines 281–317.

¹⁶⁶ “Sir Orfeo,” lines 291–293 and lines 183–184.

¹⁶⁷ “Sir Orfeo,” lines 324–327.

¹⁶⁸ “Sir Orfeo,” lines 340–351.

¹⁶⁹ “Sir Orfeo,” lines 353–376.

¹⁷⁰ “Sir Orfeo,” lines 373–376.

¹⁷¹ “Sir Orfeo,” line 381.

¹⁷² “Sir Orfeo,” lines 390–394.

¹⁷³ “Sir Orfeo,” lines 391–394.

¹⁷⁴ “Sir Orfeo,” lines 391–400.

act of love and admiration as well as violence. Both fairyland and the medieval societal opinion about why rape occurs, occupy the same space. That is, the beauty of fairyland turns at once into a horrifying reality in the same way that the beauty of the maiden (according to *Bracton*) leads to the horrific crime of rape. The juxtaposition of fairyland mirrors the contemporary popular opinions of rape culture in England, as what is initially beautiful and admirable can suddenly turn violent and horrific.

Concluding Thoughts on *Sir Orfeo*

The romance ends with the traditional happy ending expected of the genre. Heurodis leaves fairyland with Orfeo,¹⁷⁵ the loyalty of the steward is tested, and all is restored in the end. As is typical of romance, the happy reunion of Heurodis and Orfeo initiates the restoration of the kingdom, at least temporarily.¹⁷⁶ As noted above, Oren Falk has troubled this with the potential bareness of Heurodis and Orfeo's loss of kingdom. This suggests that the abduction of the female body could have political and economic consequences, whether she is or is not restored.¹⁷⁷ The ravisher in *Sir Orfeo* faces no legal repercussions, and as will be discussed in the follow chapter, this is also true for the ravishers in *Sir Degare* and *Sir Gowther*. There are no trials, no convictions, and in this narrative the ravisher king does not repent for his actions. This trend of no legal retribution for the wronged women is highly indicative of the actual courts and legal infrastructure of England's *raptus* laws. Moreover, as discussed in chapter 2, the laws themselves (as written) claim that ravishers walk around unpunished. As the metaphorical representations of

¹⁷⁵ "Sir Orfeo," lines 470–475.

¹⁷⁶ Edwards, *The Afterlives of Rape*, 119.

¹⁷⁷ Saunders, *Rape and Ravishment*, 232–233.

men are displayed in romance as fairies and fiends, it is apparent that romance is representing the lived reality of a lack of legal accountability for men who rape and/or abduct.

Overall, Heurodis' abduction and her non-consent to leave are intentionally ambiguous. However, even with the threat of extreme violence, women who consented under duress were still legally culpable for their own ravishment and could be penalized in the courts. The romance plays with the ambiguity of masculine brutality and chivalry by mirroring the two kings, Orfeo and the fairy king, while simultaneously playing with audience expectations. Orfeo was the assumed courtly king, but he opted to live among beasts in the wild, whereas the fairy king lived in a court that mirrors the court of Orfeo. The narrative of *Sir Orfeo* offers the opportunity for conversation and debates about violence against women, but ultimately upholds normative contemporary assumptions about the man's victim status in relation to a wife or daughter's ravishment.

Amis and Amiloun

Extant in four Middle English manuscripts, including Auchinleck,¹⁷⁸ the narrative of *Amis and Amiloun* focuses primarily on the loyalty and affection between two male characters. The theme of brotherhood and honouring pledges is paramount in this romance, unlike the traditional romance motifs of a knight's quest or courtly love.¹⁷⁹ Both title characters, Amis and

¹⁷⁸ Auchinleck, Advocates Library, Edinburgh, Advocates 19.2.1; British Library, London, BM Egerton 2862; British Library, London BM Harley 2386; Bodleian Library, Oxford, Bodleian 21900; Mehl, *The Middle English Romances of the Thirteenth and Fourteenth Centuries*, 105.

¹⁷⁹ Hopkins, *The Sinful Knights*, 16–17.

Amiloun, are conceived on the same night,¹⁸⁰ born on the same day,¹⁸¹ both are the son of a baron in Lombardy,¹⁸² they look identical,¹⁸³ and they are both dubbed knights at the standard age of fifteen.¹⁸⁴ This romance includes traditional folklore motifs of “an evil steward, a persistent wooer, trial by combat,” as well as divine punishment of leprosy and self-sacrifice.¹⁸⁵ The hagiographic tendency of *Amis and Amiloun* has been noted by scholars, although, the Middle English version is more centred on the fidelity of the pledge between Amis and Amiloun.¹⁸⁶

The pledge of brotherhood between Amis and Amiloun,¹⁸⁷ so central to the romance narrative, is not of concern here. Rather, it is the persistent attempts of the duke’s daughter, Belisaunt, to seduce Amis that is the focus of the present analysis. We are first introduced to Belisaunt after Amiloun leaves the duke’s house to claim his own inheritance. After the separation of Amiloun from Amis, the duke’s evil steward unsuccessfully tries to persuade Amis to swear an oath of fidelity with him. The audience is told that the duke “hadde a douhter fair and bold,/ Curteise, hende and fre,” that he “had a daughter fair and bold,/ Courteous, lovely and generous.”¹⁸⁸ The daughter, Belisaunt, is fifteen years old and thus of marital age.¹⁸⁹ We are told

¹⁸⁰ “Amis and Amiloun,” in *Amis and Amiloun, Robert of Cisyle, and Sir Amadace*, TEAMS Middle English Text Series, ed. Edward E. Foster (University of Rochester, 2007), line 40. <https://d.lib.rochester.edu/teams/text/foster-amis-and-amiloun>

¹⁸¹ “Amis and Amiloun,” line 41.

¹⁸² “Amis and Amiloun,” line 25 and 28.

¹⁸³ “Amis and Amiloun,” line 88–96.

¹⁸⁴ “Amis and Amiloun,” lines 163–165.

¹⁸⁵ Edward E. Foster, “Amis and Amiloun: Introduction,” in *Amis and Amiloun, Robert of Cisyle, and Sir Amadace*, TEAMS Middle English Text Series (University of Rochester, 2007) <https://d.lib.rochester.edu/teams/text/foster-amis-and-amiloun-introduction>

¹⁸⁶ Foster, “Amis and Amiloun: Introduction.”

¹⁸⁷ “Amis and Amiloun,” lines 142–152.

¹⁸⁸ “Amis and Amiloun,” lines 422–423. All *Amis and Amiloun* translations are adapted from TEAMS Middle English Text Series.

¹⁸⁹ “Amis and Amiloun,” line 424.

that she is the most beautiful woman in all the land,¹⁹⁰ and that she is noble and honourable.¹⁹¹ Belisaunt is repeatedly referred to as a “lovely maiden” emphasising her young virginal status. She asks her ladies “who was hold the doughtiest knight/ And semlyest in ich a sight,” that is “who was considered the doughtiest knight,/ And most splendid in each a sight.”¹⁹² The ladies tell Belisaunt that Sir Amis is the best “prize”¹⁹³ and upon hearing that, “hir love was al alight.”¹⁹⁴ Belisaunt quickly becomes lovesick for Amis; as she watches him ride she “thought her heart would break in two.”¹⁹⁵

In traditional romance fashion, Belisaunt becomes extremely infatuated with Amis as soon as she lays eyes on him. Unlike the other romances discussed in this research, here it is the woman who occupies the role of the “persistent wooer.”¹⁹⁶ Belisaunt’s characterisation of overtly forward sexual advances goes against the contemporary assumptions of appropriate feminine behaviour. Belisaunt does not approach Amis at first but rather, she watches him from a distance in a manner that is reminiscent of the rapist fairy knight in *Sir Degare* (discussed in chapter 8). However, her attempts to conform to the heterosexual gender roles of the reluctant lady cause Belisaunt severe emotional distress. Belisaunt cries and endures sorrow because Amis does not notice her, and she is not able to confess her love to him without losing her “lady-like” qualities. Belisaunt’s pain is explicit, “for sorwe sche spac with him nothing,” that is “for sorrow she spoke with him not at all.”¹⁹⁷ *Sorwe* can denote “emotional or mental distress, grief, sadness;

¹⁹⁰ “Amis and Amiloun,” lines 425–426.

¹⁹¹ “Amis and Amiloun,” line 427 and 431.

¹⁹² “Amis and Amiloun,” lines 451–452.

¹⁹³ “Amis and Amiloun,” line 468.

¹⁹⁴ “Amis and Amiloun,” line 473.

¹⁹⁵ “Amis and Amiloun,” line 476.

¹⁹⁶ Foster, “Amis and Amiloun: Introduction.”

¹⁹⁷ “Amis and Amiloun,” line 485.

anxiety,”¹⁹⁸ further emphasising her lack of ability to approach Amis and express her love for him. But to explain why Belisaunt is unable to speak to Amis we must contextualise the narrative within the period’s expected gender roles of heterosexual courtship. Belisaunt is representative of the cultural norms expected of ladies and the troubles of feminine wooing in a culture that idealises feminine passivity. The heterosexual courtship script requires the man’s offer of sex and the woman’s reluctance to accept that offer. Belisaunt exemplifies the painful process of women who are unable to be forthcoming with their emotions and desires. Her only confidante is her mother, yet she refrains from telling her mother exactly why she is upset. Nonetheless, the dialogue between mother and daughter illuminates a feminine subculture that will be brought up again in the next chapter regarding the princess’s suffering in *Sir Degare*.

Eventually, Belisaunt refuses the expected feminine passivity of ladies and becomes the active pursuer of Amis. While her father the duke is out hunting, Amis enters the garden and listens to the birds under a tree.¹⁹⁹ The romance trope of gardens as magical places has been acknowledged by scholars,²⁰⁰ as has the literary trope of supernatural beings transforming into birds and seducing humans.²⁰¹ However, the frequency of birds singing as a prelude to rape or seduction scenes has yet to be discussed. Here, Amis is listening to the birds before he is approached by Belisaunt. Moreover, Belisaunt’s mother tells her to get out of bed “and go play

¹⁹⁸ *The Middle English Dictionary*, “sorwe n.”

¹⁹⁹ “Amis and Amiloun,” lines 493–515.

²⁰⁰ See, for example: Saunders, *Rape and Ravishment*, 224; Stevens, *Medieval Romance: Themes and Approaches*, 157. Liz Herbert McAvoy notes that enclosed gardens within the medieval cultural context are “multi-valent and multi-visual space[s] that tends to haunt the imaginary...the enclosed garden articulates something both same and other...”. See Liz Herbert McAvoy, *The Enclosed Garden and the Medieval Religious Imaginary* (Woodbridge: Boydell and Brewer, 2021), 16–17.

²⁰¹ Andrzej Wicher, “Geoffrey Chaucer’s *The Merchant’s Tale*, Giovanni Boccaccio’s *The Tale of the Enchanted Pear-Tree*, and *Sir Orfeo* Viewed as Eroticized Versions of the Folktales about Supernatural Wives,” *Text Matters* Vol. 3 No. 3 (2013): 42–57, specifically on pp. 44 Wicher notes that “enchanted women” become swans and in note 2 “enchanted men, or boys, also often take on the form of birds, but they are more usually crows or ravens.”

the in to the gardin/...Ther may thou here the foules song.”²⁰² Playing in the garden is really playing the game of courtly love and seduction. Belisaunt’s mother specifically references the birds as the incentive to go out to the garden and the birds were the specific reason given as to why Amis was also in the garden. As discussed in the next chapter, the princess and Degare hear birds singing before they meet the fairy rapist knight. The princess in *Sir Degare* gets lost in the deep woods because she is listening to the birds, leading to her rape. Similarly, Heurodis in *Sir Orfeo* listens to the birds in the garden before her abduction.

Elizabeth Eva Leach argues that birds can signal sexualized rhetoric in medieval literature, such as the sexual connotation of the nightingale, and the cuckoo bird’s association with a cuckold husband.²⁰³ Leach’s analysis of the mythical hybrid sirens (half bird, half nude woman) offers further opportunity to explore the relationship between birds and sexuality in medieval thought. In looking at a thirteenth-century bestiary held at Bodleian Library, Leach notes that the illumination of the sirens displays “their immodesty portrayed to emphasize their lustful status as prostitutes.”²⁰⁴ The connections between adultery and the cuckoo, shapeshifters seducing as birds, the “sexual voraciousness” of sirens,²⁰⁵ and lustful nightingales, suggests that there is a connection between birds and sexuality. The romances under investigation here use bird songs to signal a coming rape and/or abduction either actualized or threatened. Perhaps the sounds of birds indicate a state of isolation outdoors, whether that be the woods in *Sir Degare*, the outdoors of the palace gardens in *Sir Orfeo*, or the orchard in *Amis and Amiloun*.

²⁰² “Amis and Amiloun,” lines 524–526; Alexander, “Women as Lovers in Early English Romance,” 34–35.

²⁰³ Elizabeth Eva Leach, *Sung Birds: Music, Nature, and Poetry in the Later Middle Ages* (Ithaca: Cornell University Press, 2018), 240–241.

²⁰⁴ Leach, *Sung Birds*, 263.

²⁰⁵ Leach, *Sung Birds*, 264.

Reminiscent of the ravishment in *Sir Orfeo*, Belisaunt enters the orchard where she finds Amis alone under a tree listening to the birds.²⁰⁶ We are told that she is overwhelmed with happiness at the sight of Amis so she decides to approach him.²⁰⁷ As she approaches, he recognises how beautiful she is and greets her.²⁰⁸ However, the nature of his greeting is left ambiguous and it is Belisaunt who is given direct speech:

And seyde opon hir play,
 “Sir knight, on the mine hert is brought,
 The to love is al mi thought
 Bothe bi night and day;
 That bot thou wolt mi leman be,
 Ywis, min hert breketh a thre,
 No lenger libben y no may...”

[And said in her courtly love talk,/ “Sir knight, on you my heart is brought,/ You to love is all my thought/ Both by night and day;/ That unless you will be my beloved,/ Certainly, my heart will break in three,/ No longer I may live...”]²⁰⁹

Belisaunt is clearly speaking courtly language, and as is discussed in chapter 8, the fairy knight in *Sir Degare* also speaks in a courtly manner. These two courtly speeches (Belisaunt’s and the fairy knight’s), in conjunction with Belisaunt’s eventual rape threat, and the fairy knight who rapes in *Sir Degare*, indicates that the courtly suitor can quickly turn aggressive. They also serve to demonstrate that rape culture is part of the courtly world, embedded within courtly culture, not outside of it. Belisaunt’s actions go against the appropriate gender roles of heterosexual encounters and thus, according to Edward Foster, it is not surprising to the contemporary audience that she exceeds “the bounds not only of propriety but of morality.”²¹⁰ Belisaunt’s

²⁰⁶ “Amis and Amiloun,” lines 541–546.

²⁰⁷ “Amis and Amiloun,” lines 547–551.

²⁰⁸ “Amis and Amiloun,” line 564.

²⁰⁹ “Amis and Amiloun,” lines 570–576.

²¹⁰ Foster, “Amis and Amiloun: Introduction.”

actions can be interpreted as mirroring the courtly activities of her father, the duke. While the duke is out hunting, Belisaunt is preying on Amis.²¹¹ In this way, she is partaking in typical masculine activities of hunting and approaching a lover as a potential suitor. The contemporary audience would have undoubtedly recognised the transgression of gender and social norms which Belisaunt acted upon. To this point, Foster notes that her character acts as a “counter” to the hero, in this case Amis, to “reveal the moral issues.”²¹²

Amis rejects Belisaunt’s seduction because of the social hierarchy in that it would be an offence against his lord, her father, the duke.²¹³ Amis specifically states that their union would be “michel unright,” that is “much un-right,”²¹⁴ because she is a rich female heiress, and he is a landless knight. This is reflective of the fears of lawmakers regarding *raptus* claims between individuals of unequal social classes. Amis warns Belisaunt that if they engage in this “game” of courtly love and if they are discovered, “we schuld lese, and for that sinne/ Wrethi God therto./ And y dede mi lord this deshonor,/ Than were ich an ivel traitour.”²¹⁵ In describing their love as sinful, the romance author not only references the social class disparity and Belisaunt’s usurpation of feminine passivity, but it also foreshadows the future malicious rape accusations. Amis’s use of legal terminology, that is being a traitor to the duke, is worth noting. Their love is not only sinful in the eyes of God, but according to Amis, it is also wrong in the secular laws of the king, as he would be committing petty treason against his superior lord.

²¹¹ Foster, “Amis and Amiloun: Introduction.”

²¹² Foster, “Amis and Amiloun: Introduction.”

²¹³ “Amis and Amiloun,” lines 594–612.

²¹⁴ “Amis and Amiloun,” line 598.

²¹⁵ “Amis and Amiloun,” lines 605–608.

Having been rejected, Belisaunt becomes angry and accuses Amis of preaching to her on some unfounded higher moral ground.²¹⁶ She then threatens him with a malicious accusation of rape:

“Bot yif wilt graunt me mi thought,
 Mi love schal be ful dere abought
 With pines hard and strong;
 Mi kerchief and mi clothes anon
 Y schal torende doun ichon
 And say with michel wrong,
 With strengthe thou hast me todrawe;
 Ytake thou schalt be londes law
 And dempt heighe to hong!”

[“Unless if you will grant me my thought,/ My love shall be dearly paid for/ With pains hard and strong;/ My kerchief and my clothes immediately/ I will tear every one/ And say with great wrong,/ With strength you have violated me;/ You shall be arrested according to the laws of the land/ And condemned high to hang!”]²¹⁷

This angry threat of fictitious rape is playing into the overt fears of lawmakers and secular court jurors and justiciars. These men of law feared the downfall of good honest men because of the false rape accusations made by jealous and spiteful women. We have seen this already in the actual case of Isabella de Chadeston (1275), in the *Calendar of the Close Rolls*, where she was condemned for allegedly pretending to have been raped to trap her ex-lover into marriage.²¹⁸ As mentioned in chapter 1, Sir Matthew Hale cautions against believing a woman’s accusations outright by stating “that it [rape] is an accusation easily to be made and hard to be proved, and

²¹⁶ “Amis and Amiloun,” lines 615–624.

²¹⁷ “Amis and Amiloun,” lines 628–636.

²¹⁸ TNA: C54/93 m 17.

harder to defend by the party accused, tho never so innocent.”²¹⁹ Hale is reiterating the common fears of lawmakers, as stated in *Glanvill* and culminating in the 1382 Statute of Rapes.

Belisaunt’s threat is extremely specific in referencing the necessary physical evidence of rape. She claims that she will rip apart her clothing, which is one of the prescribed signs of proof of non-consent in both *Glanvill* and *Bracton*. The Middle English Dictionary defines *todrawe*, with specific reference to this romance, as “(a) to rip off (flesh, a part of the body); (b) tear out (hair)...(d) to cause affliction; injure; harm;...oppress.”²²⁰ These actions are all part of the secular legal expectations of rape victims, that is to have a man oppress a woman to such a degree that it causes her bodily injury, whether that be torn clothing, dishevelled hair, or blood and bruising. Frances Ferguson notes that due to the necessity of physical injury as proof of non-consent, “rape has historically been easiest to prove when it is most nearly identical with battery and mayhem.”²²¹ Belisaunt is keenly aware that her words alone will not ensure a conviction, but rather physical proof is required as well. In the real medieval world, there was the continuing fear of women accusing men of rape, or of women eloping and using rape as a legal loophole. Thus, the fictional Belisaunt is stating the real legal expectations of women who accuse men of *raptus*, as well as reflecting the greater fear about women who lie about rape.

To ensure his conviction, Belisaunt is going to intentionally tear her clothing as proof. In this situation, the social class disparity works to Belisaunt’s advantage, as the female heiress who claims rape by a social inferior is also implicating a transgression of the moral social hierarchy and the king’s law. Belisaunt’s reference to the secular laws, those “laws of the land,” and the

²¹⁹ Sir Matthew Hale, *Historia Placitorum Coronae: The History of the Pleas of the Crown*, ed. Sollom Emlyn (1736), rev. ed. George Wilson (Dublin, 1778), 635.

²²⁰ *The Middle English Dictionary*, “*Todrauen* v.”

²²¹ Frances Ferguson, “Rape and the Rise of the Novel,” *Representations* Vol. 1 (Oct. 1987): 90.

punishment for convicted rapists (hanging) is striking. Corinne Saunders notes that the inclusion of rape laws in Belisaunt's speech implies that even in the courtly idealised world of romance, there is a need for legal protection against rape and punishment for the rapist, as these laws have a "role in ordering the chivalric world."²²² Belisaunt is sure that if she tears her clothes and claims rape by the knight, that she can secure a legal conviction. In a sense, Belisaunt is the "perfect rape victim," in that she is a beautiful, young (she is fifteen years old), virginal, noble daughter and there are witnesses (her ladies and her mother) to confirm that Belisaunt and Amis were alone in the garden together. In contrast, the accused rapist, Amis, is a lowly landless knight who lives in the household of her father. These factors all work to help secure a legal conviction in the real secular courts. Belisaunt is not threatening a romance vendetta by her father or seeking personal revenge, but rather, she is referencing the secular laws of the land and the legal implications for convicted rapists.

Amis is shocked by the malicious threat to accuse him of rape. He stands silently and "disliked it greatly in his heart."²²³ He is aware of the severity of her accusations as he thinks "with hir speche sche wil me spille," that is "with her speech she will have me killed."²²⁴ It is her words he fears; her accusations can cause him to hang. This is the opposite of the explicit fears in *Sir Degare*, as the princess fears the male's actions, but here, the knight fears the female's verbal threats. These are the two driving factors of secular *raptus* laws. Both the real actions of men (rape) and the fictitious accusations of women (false rape claims) are at the forefront of *raptus* laws from the age of *Glanvill* to the Statute of Rapes. As demonstrated previously, the secular *raptus* laws continually sought to protect vulnerable women from real rape while simultaneously

²²² Saunders, *Rape and Ravishment*, 197; Saunders, "A Matter of Consent: Middle English Romance and the Law of *Raptus*," 113.

²²³ "Amis and Amiloun," line 637–638.

²²⁴ "Amis and Amiloun," line 641.

expressing the fear of women's false rape accusations against good men. The duality of the laws, to protect good women from bad men, and good men from bad women, is highlighted here in *Amis and Amiloun*. The contemporary audience would have likely been aware of the duality of England's *raptus* laws since they were rewritten continually from *Glanvill*, in the early twelfth century, to the Statute of Rapes, in the late fourteenth century. Once again, romance illustrates a legal reality with striking realism that works to stimulate discussion on contemporary social issues.

For fear of his life, Amis consents to Belisaunt's demands, further highlighting the gender role reversal of this heterosexual encounter. Amis tells Belisaunt that she will "oft rape wil rewe" and that he "schal graunt the thi wille."²²⁵ Having agreed to be her lover, Amis and Belisaunt are suspected of "gret love" by the wicked steward and thus, there is the intentional blurring of lust, seduction, threatened rape, and now love, which we see again in *Sir Degare*.²²⁶ Belisaunt is depicted as the active lover and Amis as the passive recipient, as she enters the bedchamber of Amis,²²⁷ she speaks to him first,²²⁸ and she is initiating the coitus through her threat of rape. Amis claims that he wants to marry Belisaunt,²²⁹ thus setting up the common narrative arc of lust, seduction, (threatened) rape, and ending in matrimony. Amis states, however, that it is not proper for him, of such lowly status, to marry Belisaunt. Considering the events leading to the Statute of Rapes, the *raptus* marriage clause seems like a potential option for them to pursue. Belisaunt is plotting her marriage with a social inferior in a way that is reminiscent (although in no ways the same) of Eleanor West's fictitious abduction. Since

²²⁵ "Amis and Amiloun," line 656 and 660.

²²⁶ "Amis and Amiloun," lines 700–704.

²²⁷ "Amis and Amiloun," lines 724–726.

²²⁸ "Amis and Amiloun," lines 735–744.

²²⁹ "Amis and Amiloun," lines 746–747.

Belisaunt and Amis “plaid in word and dede” and “he wan hir maidenhede,”²³⁰ there is the very real legal settlement of marriage that Belisaunt and Amis (as both single individuals) could claim to save her honour as a non-virgin. The noble game of courtly love is emphasised throughout the romance; Amis and Belisaunt *played* together, and Amis *won* her virginity. The romance’s continual reference to the game of courtly seduction, in which rape plays a part, is important to take note of as threatened rape is within the rules of this game of seduction.²³¹

The narrative does not treat Belisaunt as evil for her threat against Amis, but rather, it is the steward who is depicted as evil because he knows the truth about the love affair. This suggests that the romance composer has little concern about overt feminine sexuality despite the usurpation of traditional feminine passivity.²³² When the evil steward tells the duke about Amis and Belisaunt’s secret love, he states “in thi court thou hast a thef.”²³³ Calling Amis a thief is important, as the crime went from rape (despite being falsely accused) which is a crime against women, to now the crime of theft. Amis stole her maidenhood which effectively takes away the duke’s profit from her marriage market value. The duke, as the father of Belisaunt, is now the victim, not Belisaunt herself. Legal jargon is repeatedly stated in this romance; Amis is called a traitor, sinful, having committed a felony crime, hanging as capital punishment is referenced, and now the crime of theft is stated.²³⁴ The steward tells the duke that Amis “is a traitour strong,/ When he with tresoun and with wrong/ Thi douhter hath forlain!”²³⁵ The steward’s explicit legal terminology, and the continued legal references throughout the romance, suggest that there is a

²³⁰ “Amis and Amiloun,” lines 767–768.

²³¹ Such language is repeated in lines 468, 524, 540, 570, 601, 722 and 764. It is also noteworthy that Belisaunt initiates the game, but Amis (as the man) is said to have won.

²³² Alexander, “Women as Lovers in Early English Romance,” 32.

²³³ “Amis and Amiloun,” lines 787.

²³⁴ “Amis and Amiloun,” lines 216, 307, 389, 605, 608, 635–636, 787, 790–791, 798, 800–801, 822, 824, 827, 834, 839–840, 960, 1082, 1084.

²³⁵ “Amis and Amiloun,” lines 790–792.

sub-context of legal knowledge in *Amis and Amiloun*. The real legal implications of one's actions are influencing the structure of the romance and the audiences' reactions to the romance. Statutory law protected fathers from ravished daughters and thus, the steward's malicious claims are legally correct. However, the law protected, at times begrudgingly, the rights of women to claim marriage through *raptus*. The two sides of *raptus* laws (protecting fathers and daughters) are once again emphasised in *Amis and Amiloun*.

The duke, as the victim of his daughter's stolen virginity, claims that he has a great shame and like Sir Thomas West in real life, it is the father who has been violated as stipulated under legal statute.²³⁶ The steward tells the duke that Amis must suffer capital punishment for the crime of treason for he has "forlain that may."²³⁷ This is critical to the legal context, as Amis is not accused of raping Belisaunt, as that would be legally a crime against her. However, he is accused of sleeping with her and taking her virginity which is a crime against the father who owned her marriage rights. Belisaunt's consent to coitus, like Eleanor West's consensual abduction, was irrelevant to the crime because it happened without the permission of their fathers. Moreover, the fictional Belisaunt and the actual Eleanor both engaged in a consensual relationship with a social inferior who was well known to their father, thus making it easier to name the offender in the legal appeals. There are striking similarities between Belisaunt and Eleanor West.

The duke claims victimhood as Amis was "a vile traitour" for having slept with his daughter and we are told that he wants to kill Amis himself for retribution.²³⁸ However, Amis begs the duke for a trial by combat stating that "Ichil aprove it in bataile,/ To make ous quite and

²³⁶ "Amis and Amiloun," lines 794.

²³⁷ "Amis and Amiloun," line 801.

²³⁸ "Amis and Amiloun," lines 822–828.

fre,” that is “I [Amis] will prove it in battle,/ To make us exonerated and free.”²³⁹ For the first time, there are real legal implications depicted in the romance narrative. The duke demands retribution and Amis pleads for a trial by combat. Although this is an outdated form of a judicial trial, as medieval England developed and relied upon the use of trial by jury, it is nonetheless important that the romance depicts a real legal consequence.²⁴⁰ Even though it is implied that the trial by combat is to denounce the accusations (correctly) made by the steward, those accusations are grounded in the truth that Amis took Belisaunt’s virginity without her father’s consent. The Statute of Rapes claims that men who are suspected of *raptus* cannot engage in a trial by combat with the woman’s father, for fear that the young man would unjustly defeat the old father.²⁴¹ Hence, there were real legal concerns about such practices, and for the first time in the romances under investigation here, there is a real legal trial for the accused rapist. However, as stated by Foster, the complexity of innocence and guilt in this trial are “fraught with paradox.”²⁴² This is ever more prevalent since the evil steward is the one telling the truth and Amis is lying.

The legal realities are intentionally described in the plight of Amis to find a “borwe,” those guarantors who on oath claim the accused’s innocence. We are told “in al the court was ther no wight/ Sir Amis borwe durst den,” that “in all the court there was no person/ Sir Amis’ second (guarantor) dared no one be.”²⁴³ The Middle English Dictionary defines *borwe* as “one who becomes legally responsible for the behaviour of another; one who guarantees that another will appear in court or return to receive judgement or punishment.”²⁴⁴ This was indeed a trouble

²³⁹ “Amis and Amiloun,” lines 839–840.

²⁴⁰ Despite the lack of trial by combat in England in the fourteenth century, it is worth noting that the king of France sanctioned a legal duel over a rape accusation in 1386. See Eric Jager, *The Last Duel: A True Story of Crime, Scandal, and Trial by Combat in Medieval France* (New York: Broadway Books, 2004).

²⁴¹ Post, “Sir Thomas West and the Statute of Rapes 1382,” 27.

²⁴² Foster, “Amis and Amiloun: Introduction.”

²⁴³ “Amis and Amiloun,” lines 869–870.

²⁴⁴ *The Middle English Dictionary*, “Borgh n.”

that medieval people had when going to court, especially if they were foreigners and did not have a strong social network to rely on. Nobles, however, could pay people to act as guarantors for them, or alternatively they could force their serfs to be their guarantors. Amis has trouble finding anyone to be his guarantor, unlike the steward who has twenty men.²⁴⁵ Due to his inability to secure guarantors, the people of court “seyd thai all with resoun,/ Sir Amis schuld ben in prisoun,/ For he no schuld nowhar flen.”²⁴⁶ The reality of the law is being illustrated; without guarantors Amis should be placed in custody to ensure that he does not try to flee before he faces judgment. Belisaunt and her mother offer to be guarantors for Amis,²⁴⁷ which is ironic since they both know that he is guilty, and it is comical to contemporary audiences, in that women were generally barred from being guarantors.

The remainder of the narrative is focused on the reunion and suffering between Amis and Amiloun. Since Amis knows that divine judgment will ensure that he does not win the trial by combat, he seeks Amiloun’s help to fight on his behalf.²⁴⁸ Having won the trial by combat, the duke allows Amis to marry his daughter.²⁴⁹ Through this matrimony, Amis inherits the title, lands, and wealth of the duke as Belisaunt is the transmitter of this property.²⁵⁰ The romance continues with Amiloun’s plight of leprosy, and the sacrifice that both Amis and Amiloun make to save each other.

²⁴⁵ “Amis and Amiloun,” lines 871–873.

²⁴⁶ “Amis and Amiloun,” lines 874–876.

²⁴⁷ “Amis and Amiloun,” lines 880–891.

²⁴⁸ “Amis and Amiloun” lines 1105–1160.

²⁴⁹ “Amis and Amiloun,” lines 1390–1392.

²⁵⁰ “Amis and Amiloun,” lines 1530–1535.

Concluding Thoughts on *Amis and Amiloun*

Despite the initial threat of *raptus* and the sham of a trial, the narrative arc of Belisaunt ends in matrimony with her falsely accused, threatened, rapist. This is of course typical of romance, as will be seen with the princess in *Sir Degare*, but it is also representative of the realities of rape trials. Even fictitious claims of rape and/or abduction could, and did, end in marriage between the rapist/lover and the victim/eloper, as we have seen with the cases of Eleanor West and Margery Child. *Amis and Amiloun*'s moral lessons are evidently ambiguous, as the malicious accusations of rape which initially condemn Belisaunt are transformed into an expression of love. She initially appeared as an evil character, but quickly transitioned into the "good wife" stock character by the end of the romance.

Amis and Amiloun is a rare romance because the depiction of the legal repercussions of rape and taking a maiden's virginity. No other Middle English romance under investigation here mentions the "laws of the land," nor the criminal punishments for men convicted of rape. This is a unique romance representation of legal retribution for rape. However, this legal realism is of course initiated by the malicious accusations of rape by the jealous and angry Belisaunt which, according to England's *raptus* laws of the twelfth to the fourteenth century, was a very real concern. The romance continually reiterates the duplicity of the law's intentions, in that they ought to protect women from bad men who rape, as well as good men from bad women who maliciously, or as in the case of Eleanor West, fictitiously, claim ravishment. This duality is often in conflict with each other and *Amis and Amiloun* plays with this tension.

Belisaunt's false threat of rape accusation is intended to force Amis to consent to her seduction. This eventually leads to consensual love and coitus between Amis and Belisaunt, and thus the threatened rape is turned into a loving embrace. It is not at all surprising that Amis and

Belisaunt's love begins with the threat of rape accusations and ends in happy matrimony. This mirrors the legal realities of women and men who were single and either claimed the marriage clause of *raptus* laws, or the courts forced it upon them. Here, however, the marriage clause does not appear to be a viable option as Belisaunt's father seeks retribution. Because Amiloun won the trial by combat, Amis is immorally vindicated (since he did not actually fight) against the accurate charges the steward accused him of. On this narrative level, the marriage between Amis and Belisaunt is both unimpeded (due to the divine judgement of the trial) and immoral (because Amis was indeed guilty and never fought). This reading of the legality of the marriage, as a consequence of the sham trial, suggests that the marriage clause of *raptus* laws was a point of debate and contention among contemporary audiences. Indeed, the contemporaneous case of Eleanor West encourages such a reading. It would have been simpler for Belisaunt and Amis to claim the legal loophole of the marriage clause, but that does not necessarily subdue the father's wrath and herein lies the mirroring to Sir Thomas West's complaints.

Overall, there is a subtext of legal knowledge in *Amis and Amiloun* which is brought up continually throughout the narrative. This legal knowledge is demonstrated by the characters, legal loopholes being played with, tensions regarding victimhood and consent being questioned, as well as the depiction of a trial by combat. The legalities of rape claims and the stealing of a noble-daughter's virginity are explicitly discussed in the romance which offered contemporary audiences a platform to debate these pressing social and moral issues. The following chapter will explore scenes of rape in romance, both threatened and actualized, in *Sir Degare*, *Sir Gowther* and *Le Bone Florence of Rome*.

Chapter 8:

Rape in Romance: *Sir Degare*, *Sir Gowther* and *Le Bone Florence of Rome*

Sir Degare

Sir Degare, contained in six manuscripts (including Auchinleck, which is the earliest extant version of the romance), was composed sometime between 1330 and 1340.¹ This romance includes a very graphic (according to romance standards) rape scene that leads to the conception of the protagonist, Degare. There is very little scholarly debate about the rape scene, as the graphic detail makes it clear that the sexual encounter was not consensual. However, the following close reading will demonstrate that the nameless raped princess fulfills the constructed legal identity of the reluctant, but willing, accomplice. Furthermore, it will be argued that with this legal identity, the contemporary medieval audiences would have read her pregnancy as consent of the flesh and her marriage to the rapist fairy knight as a natural and relatable ending for a rape survivor.

Sir Degare is a traditional narrative, based on a knight's quest for discovery of his identity. As an orphan, Degare, whose name means "almost lost,"² journeys to discover his patrilineage and his knightly identity, during which he must overcome various obstacles, including a dragon, and rescuing a damsel in distress. The story of Degare as a boy growing into a man through conflict and resolution has led scholars to interpret this romance as a typical coming of age narrative.³ Degare learns knightly qualities of physical prowess and courtly love

¹ Anne Laskaya and Eve Salisbury, "Sir Degare: Introduction," in *The Middle English Breton Lays TEAMS Middle English Text Series* (University of Rochester, 1995) <https://d.lib.rochester.edu/teams/text/laskaya-and-salisbury-middle-english-breton-lays-sir-degare-introduction>.

² Laskaya and Salisbury, "Sir Degare: Introduction."

³ Laskaya and Salisbury, "Sir Degare: Introduction."

from a castle of ladies, which are common literary tropes of Middle English romance. Ladies often act as the teachers of courtly love in romance and *Sir Degare* exemplifies this. Chivalric identity is not only physical prowess, but also the proper behaviour towards a lady and Degare undergoes this education after his knightly physical education. In this sense, love makes child Degare into a man and the lady gifts him with knightly status symbols to reaffirm his chivalric identity.

The romance begins with the traditional opening address, calling for the attention of “lordinges, gente and fre,” who are about to learn about a knight named Sir Degare.⁴ We are told that there is a strong warrior king in Brittany who exemplifies ideal masculine gender traits, that is he has “great power,” he is excellent at wielding weaponry, he is very strong, and he has never been unhorsed in war or tournaments.⁵ However, the king’s major flaw is his inability to produce a male heir and in turn he only has a daughter. We are first introduced to the princess as a virgin (“maidenchild”) and then she is described in formulaic descriptors of a lady, that is noble, fair, gentle, beautiful, and “moche renound in ich countré.”⁶ The absent queen-mother died in childbirth and consequently, the king is very protective of his daughter. This has led many scholars to note the threat of incest, as the king’s affection for his daughter exceeds the cultural norms of acceptable parental affection.⁷ When the princess becomes of marital age numerous potential suitors seek her hand in marriage “for love of here heritage” but the king refused to let

⁴ “Sir Degare,” lines 1–9.

⁵ “Sir Degare,” lines 10–18.

⁶ “Sir Degare,” lines 19–22. All *Sir Degare* translations are adapted from TEAMS Middle English Text Series.

⁷ Laskaya and Salisbury, “Sir Degare: Introduction,” Saunders, *Rape and Ravishment*, 215; Florschuetz, *Marking Maternity in Middle English Romance*, 13; Ashton, *Medieval English Romance in Context*, 70–72, 95–96; Elizabeth Archibald, *Incest and the Medieval Imagination* (Oxford; New York: Clarendon Press, 2001), specifically pp. 163 footnote 31. Here Archibald states that “it is impossible to judge whether this is an indication of the popularity of Incestuous Father romances, or the frequency of father-daughter incest in medieval households.” For the incest motif between Degare and his mother, see Jennifer Fellows, “Mothers in Middle English Romance,” in *Women and Literature in Britain, 1150–1500*, ed. Carol M. Meale (Cambridge: Cambridge University Press, 1993), 51.

her marry any man unless he can unsaddle him in a tournament.⁸ Marriage for inheritance of property was an incentive for rape and/or abduction in the real world. This was likely the enticement for the actual abduction and/or rape of Margery de la Beche, as John de Dalton could have greatly increased his finances from marriage by abduction. Although Dalton was not enriched, it is commonly acknowledged that marriage of an heiress by *raptus* was a means to increase one's social standing. The princess here is a wealthy heiress and the suitors evidently want to marry her for her inheritance, in this case the kingdom of Brittany.⁹

The king's claim that any potential suitors have to unsaddle him is prefaced by the fact that he has never lost a single foot out of a stirrup.¹⁰ Hence, it is no surprise that all the princess's suitors were unsuccessful in securing her hand in marriage.¹¹ On the annual feast day to commemorate the late queen's death, the king, princess, and their courtly entourage ride into a forest where an abbey is located.¹² Despite the protection of "many knyghtes by his [the king] side," the princess was with two other maidens when she told them to stop riding so that they could "don here nedes," to go to the bathroom.¹³ The three ladies dismount in the forest, separated from the court entourage. Their isolation from civilisation and the protection of court is emphasised as "the wode was rough and thikke."¹⁴ We are told that the two maidens and the princess went the wrong way and ended up in an extremely dense forest and into "a land" unlike where they were from.¹⁵ It is notable that the composer of the romance used the word "undernome" which has various meanings included to recognise, travel, seize, entrap or

⁸ "Sir Degare," lines 24–35.

⁹ Sylvester, *Medieval Romance and the Construction of Heterosexuality*, 50–51.

¹⁰ "Sir Degare," line 17.

¹¹ "Sir Degare," line 36.

¹² "Sir Degare," lines 37–42.

¹³ "Sir Degare," lines 48–54.

¹⁴ "Sir Degare," lines 55–61.

¹⁵ "Sir Degare," lines 62–65.

capture.¹⁶ When the princess and her two ladies realise that they are lost, they “cleped and criede” out together hoping that the court entourage would hear them.¹⁷ To the contrary, the audience is told that “no man” heard them cry out.¹⁸

The romance continues with the supernatural theme that is initiated with the thick forest, as we are told that the weather is hot and it is now just before noon, and so the ladies decide to lie down under a chestnut tree.¹⁹ As discussed in the previous chapter, these are all common literary motifs which suggest a supernatural encounter; mid-day is a typical time for fairy interactions, forests usually lead to an otherworld, going to sleep often initiates a dream-like state of supernatural qualities, and chestnut trees are symbolic of chastity.²⁰ This is especially important since the princess’s virginity is about to be stolen from her. The two accompanying ladies fall asleep under the chestnut tree and remain chaste, but the princess does not.²¹ Her isolation is emphasised as she is separated from not only her known world of Brittany, but also from her courtly entourage, and now even from her sleeping ladies. Her vulnerability to rape is explicit because of her isolation. This theme was mentioned in chapter 7 in reference to *Sir Orfeo*, and *Amis and Amiloun* and it will be brought up again in *Le Bone Florence of Rome*.

The princess is intrigued by her strange surroundings; she picks flowers, listens to the “song of wilde foules,” and travels further into the woods where she is lost and even more alone, as we are told “that she ne wot nevere whare se is.”²² The nameless princess wants to return to her maidens but she is lost and does not know the way back.²³ Here we have the first direct

¹⁶ “Sir Degare,” line 66. Definition from *Middle English Dictionary*, “undernimen v.”

¹⁷ “Sir Degare,” lines 66–69.

¹⁸ “Sir Degare,” lines 70.

¹⁹ “Sir Degare,” lines 72–74.

²⁰ “Sir Degare,” lines 74–75, notes 74 and 75; Saunders, *Rape and Ravishment*, 213–214.

²¹ “Sir Degare,” lines 75–76.

²² “Sir Degare,” lines 77–80.

²³ “Sir Degare,” lines 81–84.

speech of the princess where she states: “Allas!” hi seide, “that I was boren!/ Nou ich wot ich am forloren!/ Wilde bestes me willeth togrinde/ Or any man me sschulle finde!” translated as “alas!” she said, “that I was born!/ Now I know that I am lost!/ Wild beast will eat me/ Before any man shall find me!”²⁴ The princess is explicitly fearful of being overtaken and consumed by wild beasts, but little does she know that it is the approaching fairy knight who will consume her.

Later in the narrative, Degare himself enters the exact same forest and finds many wild beasts (lines 732–733); he also hears birds singing (line 734) just like his mother. This can be interpreted as a feminisation of Degare.²⁵ Fearing the threat of savage animals, the princess states that a man will not be able to find her in time. This foreshadows the coming stranger, as the fairy is an other-being in the sense that the fairy does not conform to the rules of the human courtly world. James Wade describes romance fairies as deriving from “a realm defined by its distinction from, and uniqueness to, the human worlds within romance.”²⁶ The fairy is both a part of the courtly world, in that he describes himself as a knight, and is also not bound by the conventions of courtly behaviour. As Helen Cooper notes “fairies come from Otherworlds – a dangerous borderland that cannot be controlled by human will.”²⁷

Just when the princess is in utter fear of attack by wild beasts, she sees a stranger approach her. The stranger is described in traditional courtly context:

Toward hire comen a knight,
Gentil, yong, and jolif man;
A robe of scarlet he hadde upon;
His visage was feir, his bodi ech weies;
Of countenaunce right curteis;

²⁴ “Sir Degare,” lines 85–88.

²⁵ This is similar to the argument made by Elaine Tuttle Hansen, as mentioned previously. See Hansen, *Chaucer and the Fictions of Gender*, 7–9, 148.

²⁶ Wade, *Fairies in Medieval Romance*, 3.

²⁷ Cooper, *The English Romance in Time*, 174.

Wel farende legges, fot, and honed:
 Ther nas non in al the Kynges londe
 Moreapert man than was he.

[Toward her came a knight/ Gentle, young and handsome man;/ A robe of scarlet he had upon;/ His face was fair, his body in everyway;/ Of courteous manner;/ Well-shaped legs, foot, and hand:/ There was none in all the King's land/ More attractive man than was he.]²⁸

The stranger is described first as a knight, and thus he is placed within the courtly world. The knight appears to come out of nowhere within the deep woods approaching the princess he consequently initiates the forthcoming interaction. The lengthy physical description of the knight, consisting of seven lines (whereas the princess' only physical description is that she is beautiful) is all in traditional romance fashion; he is handsome, he is noble in appearance because he is dressed in luxurious robes. The knight's outward physical beauty is a marker of his nobility and throughout this description we are being informed about the traits of ideal masculinity. Thus, it is important to remember that despite being an "other" this fairy knight is explicitly placed within a courtly context. This point is suggested by Gail Ashton who claims that the textual "border between what is real and unreal becomes increasingly porous."²⁹ The familiar signals of the courtly and knightly identity of the fairy work to place the context of rape on the fringe of a real courtly world. Helen Cooper argues that fairies are unique to humans in "their ability to break the rules...their independence of moral conventions [and their] sheer unpredictability."³⁰ These traits are apparent in the fairy knight of *Sir Degare*, in that he does not follow the ideal rules of heterosexual seduction and courtly conduct, even though he is evidently

²⁸ "Sir Degare," lines 90–97.

²⁹ Ashton, *Medieval English Romance in Context*, 95.

³⁰ Cooper, *The English Romance in Time*, 173. This is similar to Wades *adoxie* references. See Wade, *Fairies in Medieval Romance*, 15.

not ignorant of the courtly world, yet he is seemingly beyond the rules of court, in what Helen Cooper calls the realm of “somewhere else.”³¹

After his physical description, the knight is given eleven lines of direct speech:

Damaiselle, welcome mote thou be!
 Be thou afered of none wiughte:
 Iich am comen here a fairi knyghte;
 Mi kynde is armes for to were,
 On horse to ride with scheld and spere;
 Forthi afered be thou nowt:
 I ne have nowt but mi swerd ibroun.
 Iich have iloved the mani a yer,
 And now we beth us selve her,
 Thou best mi lemman ar thou go,
 Wether the liketh wel or wo.

[Damsel, welcome you are!/ Be afraid of no man:/ I am here a fairy knight;/ My kind is armed [by] nature,/ On horse to ride with shield and spear;/ Therefore afraid be thou not:/ I have nothing brought but my sword./ I have loved you for many years,/ And now we are both here by ourselves,/ You must become my lover before you go,/ Whether you like it or not.]³²

The knight discloses that he is a fairy, and that he will protect her so she should not fear any man. Traditionally, fairies in romances transgress social boundaries of the courtly world and, depending on their gender, they are either highly eroticised or dangerously lustful.³³ Wade notes that fairies occupy an *adoxic* space in that they are both “outside the established order...but they did so without contradicting” the order.³⁴ The fairy knight describes “his kind” as usually armed and on horseback, and thus placing himself within the identifiable courtly context of knighthood,

³¹ Cooper, *The English Romance in Time*, 179.

³² “Sir Degare,” lines 98–108.

³³ Rushton and Hopkins, “Introduction: The Revel, the Melodye, and the Bisyness of Solas,” 15.

³⁴ Wade, *Fairies in Medieval Romance*, 15.

while also acknowledging that he does not have those very same tokens of knighthood with him. Fear is frequently referred to, as the princess claims to fear an attack by beasts, and the fairy knight tells her not to be afraid of him.³⁵ The knight claims that he has been watching the princess for “many years” and that he loves her. This, according to Gail Ashton, perpetuates the stereotype that he is a “conventional suitor” attempting to seduce the princess in the game of courtly love.³⁶ Here, the scene for a heterosexual encounter is set; the knight approaches the princess, the knight states that he has loved her for years and now they find themselves in total isolation.³⁷ The threat of rape becomes ever more apparent as the knight claims that she will become his *lemman*, his lover, whether she likes it or not, proving that her consent to the coitus is irrelevant.³⁸ The rape is explicit:

Tho nothing ne coude do she
 But wep and criede and wolde fle;
 And he anon gan hire at holde,
 And dide his wille, what he wolde.
 He binam hire here maidenhod,
 And seththen up toforen hire stod.

[Then nothing could she do/ But weep and cry and would flee;/ And he began to seize her,/ And did his will as he desired./ And bereft her of her maidenhood,/ And soon afterwards he stood up.]³⁹

The text unambiguously tells the audience that there was nothing that the princess could do to stop the rape. Corinne Saunders describes this scene as “startling in its violence,” and indeed it is

³⁵ “Sir Degare,” line 103.

³⁶ Ashton, *Medieval English Romance in Context*, 96; Saunders, *Rape and Ravishment*, 214.

³⁷ “Sir Degare,” line 106.

³⁸ As previously discussed in chapter 7, the literary construction of “whether she wishes it or not” is nearly identical to that in *Sir Orfeo*.

³⁹ “Sir Degare,” lines 109–114.

rare to have such a graphic completed rape in Middle English romance.⁴⁰ The knight's actions are described as simultaneously being an act of desire and love, but also extremely violent.⁴¹ Seduction and rape are placed on the same continuum; the difference between the two is depicted as a sliding scale on the amount of pressure and force used to persuade the reluctant lady.⁴² The explicit details of her non-consent are rare for the romance genre to include, and similar to actual legal documents, the graphic violence inflicted upon the woman is obscured and stated rather vaguely. The vulnerability of the woman to the desires of the "noble" and "gentle" knight are emphasised by her weeping, in a unique line for romance, that shares the princess's internal fear of knowing that she is about to be raped. The knight is described as forcefully seizing the princess and doing his "will" and "desires" as he rapes her of her virginity (lines 110–113).

The seizure of her maidenhood is something to mourn, as the term *binam* is signifying loss, implying the taking away of something, or the ruining of someone's reputation, both of which can be implied in this context.⁴³ Saunders argues that the rape scene is centred around the seizure of the princess's virginity, from her perspective, in that he took her maidenhood and there was nothing she could do.⁴⁴ The knight's dominant position is emphasised by the term *torforen* in which he both stands up spatially in front of the princess, and he also physically dominates her, ensuring that he is holding the power despite her royal status.

⁴⁰ Corinne Saunders, "Erotic Magic: The Enchantress in Middle English Romance," in *The Erotic in the Literature of Medieval Britain*, eds. Amanda Hopkins and Cory James Rushton (Cambridge: D. S. Brewer, 2007), 50–51; Margaret Robson, "How's Your father? Sex and the Adolescent Girl in *Sir Degarre*," in *The Erotic in the Literature of Medieval Britain*, eds. Amanda Hopkins and Cory James Rushton (Cambridge: D. S. Brewer, 2007), 87.

⁴¹ Saunders, *Rape and Ravishment*, 214.

⁴² Sylvester, *Medieval Romance and the Construction of Heterosexuality*, 52.

⁴³ *The Middle English Dictionary*, "bininem v.", article 3(a).

⁴⁴ Saunders, "Erotic Magic," 51.

After the rape, the fairy knight speaks again, addressing the raped princess yet again as his *lemman*:

“Lemman,” he seide, “gent and fre,
 Mid schilde I wot that thou schalt be;
 Siker ich wot hit worht a knave;
 Forthi mi swerd thou sschalt have,
 And whenne that he is of elde
 That he mai himself biwelde,
 Tak him the swerd, and bidde him fonde
 To sechen his fader in eche londe.
 The swerd his god and avenaunt:
 Lo, as I faugt with a geaunt,
 I brak the point in his hed;
 And siththen, when that he was ded,
 I tok hit out and have hit er,
 Redi in min aumener.
 Yit paraventure time bith
 That mi sone mete me with:
 Be mi swerd I mai him kenne.
 Have god dai! I mot gon henne.”

[“Lover,” he said, “gentle and free,”/ I know that you shall be with child;/ For sure I know it will be a boy;/ Forth my sword you shall have,/ And when he is of age/ That he may protect himself,/ Give him the sword, and bid him to attempt/ To seek his father in each land./ The sword is good and fitting:/ Indeed, as I fought with a giant,/ I broke the point of its head;/ And soon thereafter he was dead./ I took it [the point of the sword] out and have it here,/ Ready in my purse./ Yet sometime may come/ That my son meet with me:/ By my sword I may know him./ Have a good day! I must go.”]⁴⁵

This long, eighteen-line, direct speech from the fairy knight reiterates that the rape was an action of passion and love, according to the fairy knight himself. Now that they have had coitus, she is his lover, “lemman” (line 115), and he immediately gives the prophecy of her pregnancy (lines 116–117). This is a common romance trope, in that a supernatural being will prophesise the

⁴⁵ “Sir Degare,” lines 115–132.

conception of the protagonist, as we will see with *Sir Gowther* below.⁴⁶ The fairy knight knows that she has conceived a son and he anticipates eventually meeting his mature son, and thus, offers the lady a token of identity recognition via the tip of his sword. Margaret Robson suggests that the phallic symbol of the sword, with its missing tip, could reflect a “displaced version of castration for the rapist.”⁴⁷ Although the notion of the tip-less sword representing *Bracton*-era punitive castration for men convicted of raping virgins is an enticing symbolism, it is ultimately unlikely due to the princess’s consent of the flesh nullifying any conviction of rape in the courts. The fairy knight’s spatial mobility is implied in line 122, where he suggests that their son “seek his father in each land.” The fairy knight does not intend to stay in one place, but rather moves throughout the human lands and is capable of being anywhere. This encourages the understanding that the threat of rape looms anywhere, both in the courtly world and on the fringes of court, as is the context here. The speech itself is courtly, and his position as a knight suggest that the fairy rapist is both within the courtly world while simultaneously being separate and distant from it. We are told that the sword conquered a giant, a typical romance monster, and later Degare himself will fight a giant using the sword his father left him.

The knight leaves with a final pleasant statement wishing the weeping raped princess a “good day” (line 132). Despite the lines of direct speech given to the fairy knight, the princess remains silent except for her cries. Louise Sylvester notes that in the twenty-line exchange between the fairy and the princess, all direct speech is spoken by the knight.⁴⁸ Of these twenty lines, two of them are devoted to telling the princess explicitly not to fear him (line 100 and 104).⁴⁹ As the knight disappears back into the woods, the princess’s silence speaks volumes to

⁴⁶ Saunders, “Erotic Magic,” 51.

⁴⁷ Robson, “How’s Your father?,” 89.

⁴⁸ Sylvester, *Medieval Romance and the Construction of Heterosexuality*, 52–53.

⁴⁹ Sylvester, *Medieval Romance and the Construction of Heterosexuality*, 53.

her victimisation. Her silence is also a marker of femininity, as argued by Sylvester and supported by hagiographic texts and conduct literature. In this way, her silence works to ensure her conformity to medieval perceptions of appropriate femininity.⁵⁰

The fairy knight comes and goes as he pleases, throughout various lands. The use of the term *henne* implies a spatial distance and perhaps he is leaving from “this world” for another world. The distance of the fairy knight was stated earlier when he claimed that he had loved the princess for many years, but she appears to not know who he is. The implication is that he has been watching her from a distance, unbeknownst to her. We are told that the knight bids her good day and “thi knight passed as he cam,” that he “disappeared as he came.”⁵¹ He both approached her and left her in the same physical location. This is very reminiscent of pastourelles, in that the women are approached by the knights, raped, and then the knights leave the women where they found them. Furthermore, the fact that the approaching rapist is first described as a knight is similar to trial documents where the social status of the accused man is mentioned more than that of the woman’s. This led Caroline Dunn and Ruth Mazo Karras to agree that the “literary boasting”⁵² of knights raping women highlights the fact that “rape was a class privilege.”⁵³ Knights were able to rape with little to no legal repercussions and the pastourelles, as well as the romances, mirror this legal reality. The knight walks away uncompromised by the crime he just committed.

The fairy knight undoubtedly rapes the princess against her will and he experiences no consequences for his actions. Anne Laskaya and Eve Salisbury state that “the rapist seems

⁵⁰ Sylvester, *Medieval Romance and the Construction of Heterosexuality*, 54.

⁵¹ “Sir Degare,” line 133.

⁵² Dunn, *Stolen Women in Medieval England*, 61.

⁵³ Karras, *Common Women*, 128.

exonerated, the consequences of his violent act nullified at least from his viewpoint as he vanishes into the woods as quickly as he appeared.”⁵⁴ Laskaya and Salisbury are correct; the rapist fairy knight temporarily leaves the narrative having taken what he wanted with no legal or moral repercussions. There are no criminal proceedings, and the fairy knight does not have to repent for his actions, as is typical for romance fairies.⁵⁵ As far as the narrative allows us to speculate, the rapist leaves the scene of the crime without consequence. This is the exact opposite of the princess. She fears incestuous accusations will be made against her and her father, as well as fearing for her own reputation with the loss of her virginity and consequently, being forced to abandon her child. Once Degare is born, the princess leaves the narrative until the end (as with the rapist fairy knight) and the story focuses on the development of Degare himself. This displacement emphasises the literary erasure of rape by decentering the narrative away from the fairy knight and princess and focusing instead on Degare. The minimal narrative insight into the princess’s emotions reveal a transition from fear and shame to eventual love and reunion.

The princess’s explicit fear of wild beasts in the forest is both rational and foreshadowing her future encounter with the fairy knight. The chivalric code demands good decisions and morals of knights. According to Wade, the use of power is a central “function within romance” expected of “humanized fairy characters.”⁵⁶ The conflation here of the metaphorical representation of a human man (knight), and an “other” (fairy) raping on the fringes of the courtly world (the forest), displays an anxiety about the failure of masculinity identity expression.

⁵⁴ Laskaya and Salisbury, “*Sir Degare*: Introduction.”

⁵⁵ Wade, *Fairies in Medieval Romance*, 14–15.

⁵⁶ Wade, *Fairies in Medieval Romance*, 12.

After the fairy rapist knight disappears into the woods as strangely as he appeared, the audience is told that the princess is in tears and physically hurt from the rape: “al wepende the swerd she nam,/ And com hom sore sikend,” that is “utterly weeping she took the sword,/ And came home sorely sighing.”⁵⁷ The meaning of *siken* can be “to become ill; to become ill for emotional reasons; to make the soul morally sick,”⁵⁸ or, “to sigh; moan... expressing sorrow, grief, or a troubled frame of mind.”⁵⁹ The inclusion of a word that denotes both bodily harm, which is physical illness, and emotional grief is poignant to the raped princess who is physically sore and emotionally distraught with her continued weeping. What is equally striking about this term is its ability to also be applied to lovesickness or even expressing joy.⁶⁰ The notion of rape as an expression of love has been repeated by the fairy knight, but here the ambiguous term of *siken* to describe the state of the princess can be equally interpreted as a form of affection. Although it seems likely that here the term is implying emotional grief, there is also the possibility that the princess is beginning to interpret the fairy rapist knight as her lover. This does indeed become more explicit, when in line 195 she refers to the rapist as *here lemman*, “her lover.” The extremely blatant perception of rape as an expression of love and admiration is brought up throughout the text by the continual reference to the knight and the princess as each other’s lovers.

Importantly, there are also the very real legal and medical implications of her pregnancy which imply her consent to the rape. When considering the medieval medical theory of two-seed conception, the romance narrative implies that the princess enjoyed the rape which led to her pregnancy. Medieval audiences would have likely been aware of the legal implications of

⁵⁷ “Sir Degare,” lines 134–135.

⁵⁸ *The Middle English Dictionary*, “Siken v. (1).”

⁵⁹ *The Middle English Dictionary*, “Siken v. (2).”

⁶⁰ *The Middle English Dictionary*, “Sicken v. (2),” article 1c and 1e.

pregnancy from rape, as we have already seen that Joan of Kent's case was dropped once pregnancy was established.

The fairy knight forcibly seized her virginity, which denotes the felony rape of a virgin. This was always the most serious form of rape under England's *raptus* laws. Furthermore, her royal status ensures that the illegitimate birth could have substantial repercussions for the kingdom of Brittany. Contemporary audiences would not have questioned that the coitus was non-consensual rape, as is evident from the forceful language and her weeping. Furthermore, even though the fairy claims to have been watching the princess for some time, it seems that the princess does not recognize the approaching fairy. This suggests that the rape was the most fearful and easily prosecuted form of rape under statutory law, being that of stranger rape and the loss of virginity. This type of rape occurs when the rapist and the survivor are not known to one another; it is seemingly a random act of violence perpetuated by a stranger.⁶¹ Stranger rape was more likely to end in a conviction in the eyre courts, as the neighbours and men of the community who made up the jury were more inclined to convict a foreigner, rather than someone they knew personally. The fairy knight is repeatedly marked as being foreign throughout the romance, seemingly fulfilling the "outsider" criterion for a successful conviction in secular courts. Furthermore, trials were more likely to end in a conviction if the woman had physical mutilation to show as proof of non-consent. The rape scene from *Sir Degare* implies that physical force and violence were used to overwhelm the princess. This is of course a legal requirement, as the laws from *Glanvill* to the Statute of Rapes state the necessity of the woman

⁶¹ Robson, "How's Your father?," 88; Susan Estrich, *Real Rape* (Cambridge: Harvard University Press, 1987), 4, 10, 25.

having been *vi oppressam*. However, there is ambiguity as to whether the princess has physical injuries to prove her claims, as the text does not explicitly describe her bodily injuries.

However, the fourteenth-century legal and medical context of this romance ensures that the princess was a reluctant, but ultimately willing accomplice to her own rape, since she did not give mental consent, but the weakness of her flesh consented. This is critical to the contemporary audiences' interpretation of the rape scene, and it has not yet been acknowledged by legal historians or romance scholars. Her pregnancy ensures her consent of the flesh, both within the reality of the romance itself and in the very real legal discourse informing the construction of the narrative and audiences' expectations.⁶² Audience members presumably would have known someone personally or heard about the very real legal implications of pregnancy from rape equating to the consent of the flesh and nullifying any claims of rape. Critically, the remainder of the romance works to erase the rape and turn it into consensual coitus between lovers, as this unites the already given consent of the flesh with the consent of the mind, to ensure a happy ending in matrimony. Furthermore, because the princess conceives the protagonist hero from the rape, all the brutality and the significance of the crime is deflated, as the audience no longer condemns but rather applauds the birth of Degare.

After the rape takes place, the princess returns to her ladies and they ride until they find members of her father's court who bring them back to the safety of the castle.⁶³ We are once again reminded of the trauma that the princess lives with, as a consequence of her rape and pregnancy: "His doughter siked an sorewed swith;/ Here wombe greted more and more;/ Therwhile she mighte, se hidde here sore./ On a dai, as hi wepende set,/ On of hire maiden es hit

⁶² Robson, "How's Your father?," 88; Brundage, *Law, Sex and Christian Society*, 450.

⁶³ "Sir Degare," lines 136–156.

underyet,” translated as “His daughter sickened and sorrowed greatly;/ Her womb grew more and more;/ Meanwhile she tried to hide her suffering./ On a day, as she sat weeping,/ One of her maidens perceived it.”⁶⁴ The contrast between the “glad” and “joyful” men (line 155) and the sorrowed, sickened, and weeping lady confirms that rape and pregnancy have lasting consequences for the princess while the men are blissfully unscathed and unaware. This also works to isolate the princess, as a rape survivor and an “other” within her own personal world; she hides away from everyone else at court. The physical suffering of hiding her pregnancy represents the embarrassment and shame, which many women who endure rape unfortunately feel.⁶⁵ It is striking that no man at court recognises the princesses’ suffering, but it is another woman, her maiden, who picks up on the emotional suffering of her lady. There is here a suggestion that rape, as a threat applicable to all women (in a medieval context), can bring women together. The maiden asks the princess why she is crying, to which the princess replies in direct speech:

“A! gentil maiden, kinde icoren,
 Help me, other ich am forloren!
 Ich have ever yete ben meke and milde:
 Lo, now ich am with quike schilde!
 Yif ani man hit underyete,
 Men wolde sai bi sti and street
 That mi fader the King hit wan
 And I ne was never aqueint with man!
 And yif he hit himselve wite,
 Swich sorewe schal to him smite
 That never blithe schal he be,
 For al his joie is in me,”
 And tolde here al togeder ther
 Hou hit was bigete and where.

⁶⁴ “Sir Degare,” lines 156–160.

⁶⁵ Robson, “How’s Your father?,” 83–84, 89; Saunders, *Rape and Ravishment*, 215. For more information on victim-blaming, see chapter 1.

[“A! Gentle maiden, chosen one,/ Help me, otherwise I am lost!/ I have ever been gentle and kind:/ Indeed, now I am with a living child!/ If any man should perceive it,/ Men would say by sty and path/ That my father the King begat it/ And I was never intimate with [a] man!/ And if he learns of it himself,/ Such grief shall him strike/ That never happy shall he be,/ For all his joy is in me,”/ And told her all together there,/ How it was begotten and where.]⁶⁶

Her self-identification as being *forloren* (line 164), or “lost,” could be hinting at her son Degare known as “almost lost,” but alternative meanings of *forloren* have much more serious implications. The term is associated with disgrace and ruin to one’s honour. This is a closer reading to the dishonour which was placed on women who conceive from rape, since they were viewed legally as weak for succumbing to their assumed sexual desires. The traditional feminine attributes of being meek and mild (line 165) are self-applied to the princess, in that she claims she has always exhibited the modesty and kindness of ideal femininity. It should be noted that these are the exact same words used in the First Statute of Westminster (1275), further reiterating a legal influence within the construct of the romance narrative.

The dishonour from her loss of virginity was compounded by the potential rumors of incest. The incestuous assumption, frequently discussed amongst scholars, is a traditional literary trope of the Oedipus complex.⁶⁷ The princess fears accusations that she was impregnated by her own father, the king. Following this incestuous fear, the princess exclaims that she has never been intimate with a man (line 170). This figurative detachment from the real-world occurrence of knights that rape enables a safe distance for contemporary audiences to critique real societal problems, that some knights do rape.

⁶⁶ “Sir Degare,” lines 163–176.

⁶⁷ Ashton, *Medieval English Romance in Context*, 71–72.

After disclosing how she became pregnant, the maiden creates the plan to hide the pregnancy and get rid of the child.⁶⁸ Once the healthy baby boy is born (lines 182–183) the princess places four pounds of gold and ten pounds of silver in his cradle (lines 190–192) along with a pair of gloves which will be used as an identity token for her son to find her. What is immediately clear from these gloves is the fact that the princess is now a consensual lover with the fairy rapist knight, as we are told: “And seththen she tok a paire glove/ That here lemman here sente of fairi londe,” that is “And then she took a pair of gloves/ That her lover sent her from fairy land.”⁶⁹ This simple passage demonstrates that the princess regards her former rapist as her *lemman*, her “lover,” and that there has been contact between them as he is sending her gifts from fairyland.

The princess’s change of emotion from fear to love towards the fairy rapist, may seem jarring to many modern audiences. However, it is working to unite the duality of medieval consent of the flesh and the consent of the mind. In case the medical and legal implications of pregnancy implying the princess’s consent of the flesh were too subtle, the romance ensures that her consent is now explicit, as the princess and fairy knight have mutually referred to one another as lovers. Corinne Saunders claims that the rape has now been “rewritten as an act of love” which resulted in the conception of the hero.⁷⁰ The literary erasure of the rape is happening quickly and subtly within these two lines. The entire erasure of the rape occurs with the narrative exit of the princess altogether, until her eventual reunion and marriage with the fairy knight at the end of the romance.⁷¹

⁶⁸ “Sir Degare,” lines 177–188.

⁶⁹ “Sir Degare,” lines 194–195.

⁷⁰ Saunders, *Rape and Ravishment*, 215.

⁷¹ Brewer, *Symbolic Stories*, 69–71.

Once the nameless boy is orphaned and left with a hermit (lines 224–227) the story shifts the narrative focus away from the princess and onto the boy who is eventually named Degare (line 254). Dieter Mehl states that once Degare enters the narrative, the entire plot moves to his identity quest and everything that happened prior to his birth, mainly the rape of his mother, is “subordinated.”⁷² After twenty years Degare grows into a strong man and leaves on his quest (lines 310–335) equipped with only an oak club (line 327) as a marker of his non-knightly identity. He eventually enters a forest where he rescues an earl from a dragon.⁷³ Degare encountering a dragon in the forest is reminiscent of the fears of the princess being attacked by a wild beast in the forest earlier.

After defeating the dragon, the earl gives Degare a horse and knight’s armour in return for rescuing him.⁷⁴ Thus, part of Degare’s quest to discover his chivalric identity is complete, as he is now a visually recognisable knight. Increasing the incestuous theme of the romance, Degare enters into a joust against the king of Brittany in order to win his daughter’s hand in marriage, and unsurprisingly as Degare unsaddles the previously undefeated king.⁷⁵ Degare “wonne the pris” and unbeknown to anyone but the audience, the prize is his very own mother’s hand in marriage.⁷⁶ The princess’s designation of being a prize to be won in a masculine physical competition implies her lack of ability to consent to the marriage in a way that is similar to *raptus* laws. Marriage, as a means to increase land inheritance and wealth, enabled ravishment of wealthy women to become a viable avenue to achieve social advancement. Despite the fact that the princess’s father is consenting to allow his daughter to marry the unknown jousting victor,

⁷² Mehl, *The Middle English Romances of the Thirteenth and Fourteenth Centuries*, 95.

⁷³ “Sir Degare,” lines 335–385.

⁷⁴ “Sir Degare,” lines 410–416.

⁷⁵ “Sir Degare,” lines 575–580.

⁷⁶ “Sir Degare,” line 584.

her non-consent to the marriage is suggested: “than was the damaisele sori,/ For hi wist wel forwhi:/ That hi scholde ispoused ben/ To a knight that sche never had sen,” that is, “Then was the damsel sorry,/ For she knew:/ That he should her spouse be/ To a knight that she never had seen.”⁷⁷ Seemingly, the princess does not consent to marrying the stranger knight and there is once again a lack of free will on her part, as she is passed around from fairy knight to human knight with little agency or choice. Despite her lack of freely given consent, the princess is brought to the church and the wedding ceremony occurs “Under Holi Sacrement.”⁷⁸ Even though the church demanded freely given consent to form a valid marriage, it has already been discussed that this ideal was not always realised, especially for the high nobility and royalty, where consent was largely assumed and not explicitly given. The dread, sorrow, and lack of consent given on the part of the princess is a retelling of real lived experiences of some women who had a significant lack of choice in marriage arrangements. Here, the romance is mirroring the lived experiences of noble and royal women.

After the wedding feast, Degare and the princess retire to the bedchamber to consummate the marriage when Degare remembers the gloves that were left to him.⁷⁹ The princess, immediately recognising the gloves as the identity token she left with him as a baby, is relieved to have found her orphaned son.⁸⁰ She confesses to her father that she is not a virgin, as “Twenti winters” ago she had “lost” her maidenhood “in a forest” and conceived Degare.⁸¹ There is no mention of rape or lack of consent to the sexual encounter in the woods as she described it. Rather, the princess exclaims “this is mi sone, God hit wot.”⁸² Saunders notes that the reference

⁷⁷ “Sir Degare,” lines 585–588.

⁷⁸ “Sir Degare,” lines 610–612.

⁷⁹ “Sir Degare,” lines 632–658.

⁸⁰ “Sir Degare,” lines 660–675.

⁸¹ “Sir Degare,” lines 681–689.

⁸² “Sir Degare,” line 687.

to God illustrates that the princess is no longer a rape survivor but now a “honoured mother” in line with Christian teachings.⁸³ When Degare asks his mother about his father she states “I can the of him telle nothing.”⁸⁴ This is peculiar since they have kept in contact, as is evident from the gloves from fairyland he sent to her. Also, despite being an unknown stranger, she refers to him as her *lemman*. The princess gives Degare the sword which the fairy knight left to her, and Degare claims “Whoso hit aught, he was a man!”⁸⁵ Degare claims that his father “was a man” because the sword left to him was so large. The sword enables the fairy knight to be recognised as a man in the medieval understanding of masculinity. By carrying a sword, the fairy knight is participating in a cultural gender performance of masculinity.

With the sword as a token of his father’s identity, Degare sets off to find his father which brings him to an “ancient forest” where “he was bigeten som while [ago].”⁸⁶ Returning to the forest where his mother was raped, the narrative eclipses the brutality of the violent scene with the focus now being placed on the conception of the hero. The method of the conception is not intended to be the audience’s focus. However, the text is intentionally mirroring, in a diptych structure, the fear of wild beasts in the forest, as done earlier with the princess. We are told that “No quik best he fond of man [i.e., a domesticated beast]/ Ac mani wilde bestes he seghth/ And foules singen on heghth.”⁸⁷ The parallels in Degare’s experience in the forest and his mother’s just before she was raped is striking; there are no domesticated animals in sight, but only wild beasts which was the princess’s greatest fear prior to her rape. Both the princess and Degare are listening to the birds before the fairy knight approaches (line 78). There is the intentional

⁸³ Saunders, *Rape and Ravishment*, 216.

⁸⁴ “Sir Degare,” line 702.

⁸⁵ “Sir Degare,” lines 712.

⁸⁶ “Sir Degare,” lines 728–729.

⁸⁷ “Sir Degare,” lines 732–734.

duplication of sensory experiences between mother and son, but the stark difference is that Degare is intentionally seeking his father, whereas the princess was the unassuming victim of the fairy rapist.

Unable to find his father, Degare discovers a strange castle of female huntresses, and a dwarf, and this is where Degare receives his next lesson in chivalry, that of courtly behaviour towards a lady.⁸⁸ The strangely inviting castle, filled with silent beautiful women, has been described by Laskaya and Salisbury as a man's heterosexual fantasy.⁸⁹ However, this dreamlike paradise is perpetuating the common romance theme of gender-role reversal in strange distant lands. The ladies in the castle carry bows and arrows, and are represented as huntresses carrying their venison, thus performing masculine gendered traits.⁹⁰ The otherworld of this castle allows the distance to play with gender-role reversal, if only temporarily. Degare eventually questions the unnatural state of an all-women castle by asking "whi her be so fele wimman/ Allone, withouten any man?"⁹¹ The strange setting upsets the social order both in reality and even in the narrative world of *Sir Degare*, as women unaccompanied by men are often placed in positions of vulnerability and danger, as is evident from the earlier raped princess.

Sitting at the table in silence, Degare eats the wild game which the women of the castle hunted.⁹² This harks back to the fear of the princess being consumed by wild beasts, and now Degare is himself consuming them. After seeing the lady of the castle, Degare is overtaken by lust and experiences love at first sight.⁹³ Listening to the sound of the harp and smelling the rich

⁸⁸ "Sir Degare," lines 741–990.

⁸⁹ Laskaya and Salisbury, "*Sir Degare*: Introduction."

⁹⁰ "Sir Degare," lines 772–775.

⁹¹ "Sir Degare," lines 866–867.

⁹² "Sir Degare," lines 824–825.

⁹³ "Sir Degare," lines 827–830.

fragrances of spices and wine, Degare falls asleep only to be awakened by the lady chastising him.⁹⁴ The harp, as a magical instrument of enchantment, and as previously discussed in *Sir Orfeo*, further emphasises the strange land into which we are peering. The lady awakens Degare in the morning and criticizes him for falling asleep, as a knight is threatening the castle. Notably, she calls Degare a beast for having slept all night, instead of protecting the ladies as a knight ought to do.⁹⁵ Placing knights and beasts as binary opposites suggests that the failure of Degare to protect these women is also his failure of performing the expectations of masculine chivalry.

The lady of the castle explains to Degare that she is also a victim of a knight's seduction which has turned violent in a way that is reminiscent of the princess's experience. The lady explains that she is an heiress with many suitors, and one among them is the strongest knight in all the land. This strong knight claims to have loved the lady for many years, just like the fairy rapist knight earlier, and he is enraged when she refuses his proposal.⁹⁶ The lady states: "He was aboute with maistri,/ For to ravisse me awai./ Mine knightes wolde defende me,/ And ofte fowghten hi and he;" that is "He was about with force/ For to ravish me away./ Many knights would defend me,/ And often fought they and he."⁹⁷ Ravishment in this context is making reference to abduction, not rape. However, the theme of courtly love turning to violent love with the threat of rape and/or abduction is once again being brought up in a strange otherworld. When the courtly knight lover is rejected by the lady, there is the possibility that the knight uses his physical prowess to dominate and violently attack the reluctant lady. The attempt to use force and to ravish the lady of the castle is mirroring real-life experiences of women, particularly in the fourteenth century when *Sir Degare* was composed. Margery de la Beche is an example of a

⁹⁴ "Sir Degare," lines 838–855.

⁹⁵ "Sir Degare," lines 854–855.

⁹⁶ "Sir Degare," lines 872–887.

⁹⁷ "Sir Degare," lines 888–891.

mirror reflection of this fictional lady, in that Margery was a wealthy woman who was violently attacked and abducted from her own home. By placing the earlier rape scene in a forest on the edge of the courtly world of Brittany and placing the current threat of heiress abduction within a courtly but unfamiliar land, the romance intentionally blurs the fictional and the real experiences some medieval women endured.

The lady claims to be “agast,” as a consequence of the knight who threatens to ravish her; she is fearful for her life, and she faints as a result.⁹⁸ The fear that the knight causes the lady is akin to the dread and sorrow that the fairy knight inflicts on the princess. Of the very few heterosexual encounters within this romance, two of them instill emotions of fear, shame, and sorrow on the women. Furthermore, both female characters (the princess and the lady) are described as prizes to be won by masculine physical prowess.⁹⁹

After defeating the ravishing knight and winning the marriage rights of the lady, Degare leaves to find his father. With this encounter between father and son, we are told that Degare meets a “doughti knight” which can mean brave, or worthy, honourable, noble, gracious, and handsome.¹⁰⁰ Describing the fairy rapist in such courtly language works to illuminate the potential violent methods of seduction utilized by courtly knights. After briefly duelling, Degare pulls out his pointless sword which the fairy knight immediately recognises as belonging to him.¹⁰¹ Upon identity recognition, both father and son fall into a swoon and mirroring each other not only in their physical prowess, but also in their emotions.¹⁰² Degare tells his father that his

⁹⁸ “Sir Degare,” lines 902, 905.

⁹⁹ “Sir Degare,” line 903. Here the lady claims “lest he wyne me ate last” in reference to the ravishing knight. At lines 913–915 she offers Degare her hand in marriage and her body if he defeats the threatening knight.

¹⁰⁰ “Sir Degare,” line 994; *The Middle English Dictionary*, “Doughti adj. & n.”

¹⁰¹ Sir Degare,” lines 1048–1050.

¹⁰² Sir Degare,” lines 1063–1065.

mother “is in gret mourning” and they agree to go see her. We are told that “As sone as the lady saw that knyght,/ Wonther wel sche knew the knyght;/ Anon sche chaungyed hur colowr aryght,” that is “As soon as the lady saw the knight,/ Wondrously well she knew the knight;/ Immediately she changed her colour right away.”¹⁰³ This is their first reunion since the rape twenty years ago and she refers to him as Degare’s father, not as a rapist.¹⁰⁴ The family reunion is complete with Degare and his mother obtaining a divorce, and her subsequent marriage to the fairy rapist knight.¹⁰⁵ This completes the narrative arc for the nameless princess in that her rape is turned into consensual sex between a husband and a wife and the rape is entirely legally erased by the consensual marriage. The marriage clause in *raptus* laws is enacted and as stated by Frances Ferguson, “marriage recasts rape, so that marriage is a misunderstanding corrected, or rape rightly understood.”¹⁰⁶ Marriage acts in both law and romance as a legal erasure to rape, and because the princess already gave consent of her flesh, the marriage ensures that the rape has been transformed into consensual coitus between spouses.

Concluding Thoughts on *Sir Degare*

In typical romance fashion, the story ends with all conflicts resolved; Degare finds his parents and reunites them, he is the heir to his grandfather’s kingdom, and he has a wife, thus insinuating the continuation of the dynasty. As Laskaya and Salisbury state, this is a happy ending where the previous “crimes are forgiven.”¹⁰⁷ This notion does not go far enough. Not

¹⁰³ Sir Degare,” lines 1079–1081.

¹⁰⁴ Sir Degare,” line 1083.

¹⁰⁵ Sir Degare,” lines 1091–1092.

¹⁰⁶ Ferguson, “Rape and the Rise of the Novel,” 92.

¹⁰⁷ Laskaya and Salisbury, “*Sir Degare*: Introduction.”

only are the crimes forgiven, but they are entirely erased, both in the literary world and in the legal perspective.

The contemporary fourteenth-century audience would have likely recognised that the rape was turned into consensual sex with the conception of Degare. This analysis has aimed to demonstrate the legal realities influencing the rape scene and leading to the eventual harmony between the princess's initial consent of the flesh (by her pregnancy) and her mental consent later. The rape is not a wish fulfillment on the part of the princess, as has been suggested by Gail Ashton and others, simply because she consents to the marriage later.¹⁰⁸ Nor is it a fulfillment of a sexual fantasy in an attempt to escape her overbearing father because, according to Margaret Robson, she "deliberately wanders into the forest."¹⁰⁹ Nor is the romance simply stating that marriage is the expected outcome "even in the rape case of *Sir Degare*," as argued by Helen Cooper.¹¹⁰

The transformation of the fairy rapist knight turned into a courtly lover, husband, and father, is fulfilling the ideal outcome of the marriage clause in *raptus* cases, specifically when both plaintiff and defendant are single, and a child has been conceived. This is the most logical "happy ending" from a contemporaneous legal perspective. Just as the court records depict matrimony as a form of settlement between rapist and survivor, here in *Sir Degare* it acts as a justification to the premarital rape. As stated by Ferguson, "rape simply ceases to exist because it has been, by definition, absorbed into marriage."¹¹¹ This is a legal reality that is being mirrored

¹⁰⁸ Ashton, *Medieval English Romance in Context*, 96. Fairy sexual encounters are described as wish-fulfillment in Aisling Byrne, "Fairy Lovers: Sexuality, Order and Narrative in Medieval Romance," in *Sexual Culture in the Literature of Medieval Britain*, eds. Amanda Hopkins, Robert Allen Rouse, and Cory James Rushton (Cambridge: D. S. Brewer, 2014), 100; see the analysis of scholarly opinion in Sylvester, *Medieval Romance and the Construction of Heterosexuality*, 51–52.

¹⁰⁹ Robson, "How's Your father?," 86.

¹¹⁰ Cooper, *The English Romance in Time*, 256.

¹¹¹ Ferguson, "Rape and the Rise of the Novel," 92.

in *Sir Degare*. The fairy knight was initially depicted as an usurper of social order (by raping the princess), and he is now, as suggested by Aisling Byrne, a “complex narrative devic[e] that articulate[s] an entirely orthodox ethic,” through his marriage.¹¹² It is the legal and medical contexts that are influencing the construction of the narrative and the audiences’ expectations that must be recognised in order to understand the princess’s eventual marriage to her rapist.

As has been demonstrated in the secular laws and eyre courts in practice, marriage was not an uncommon outcome for rape and/or abduction cases in medieval England. Consequently, the legal narrative trajectory of real *raptus* cases could end in matrimony, much like the princess in *Sir Degare*.¹¹³ The legal implications of her consent, given by her body through conception, nullifies any claims of rape and places her in the legal identity of the reluctant, but nonetheless, willing accomplice.¹¹⁴ Having her virginity taken, with the assumed consent of her body, ensures that under the prevailing Statute of Westminster II, there was no felony crime committed. Therefore, without any legal crime, the romance genre requires a happy ending. This necessarily demands the eventual consent of the mind of the princess, and to marry her ravisher, for the happy ending expected of romance to occur. This may even be suggestive to young women in assuring them that they too can have a “happy ending” in matrimony even if they are raped out of wedlock.

Furthermore, the marriage between the rapist and the survivor legally nullifies any rape accusations in medieval English laws. Suzanne Edwards rightly states that “juries typically exonerated ravishers if they found evidence to subsequent consent to marriage, despite the fact that the Statute of Westminster II declared a woman’s consent to marriage following her

¹¹² Byrne, “Fairy Lovers: Sexuality, Order and Narrative in Medieval Romance,” 103.

¹¹³ Edwards, *The Afterlives of Rape*, 85.

¹¹⁴ Saunders, *Rape and Ravishment*, 216.

ravishment to be irrelevant” to the king’s potential indictment.¹¹⁵ Due to the fact that the woman can consent to marriage at any time after the crime was committed, and thus the crime is no longer a crime, Edwards claims that the marriage clause “suggests...[an] open-endedness and troubles any effort to narrate what has already happened.”¹¹⁶ We see here with *Sir Degare* the graphic rape is almost immediately conflated with expressions of love, the immediate consent of the flesh of the princess, followed by the consent of the mind and the eventual marital reunion of the rapist and survivor. The romance is mirroring the legal realities of women who conceive from rape and have little choice but to marry their ravishers.¹¹⁷ But in typical romance fashion, it is spinning the happy-ending narrative as the princess learns to love the rapist and refer to him as her *lemman*. This, according to Saunders, suggests that medieval audiences debated the “impossibilities and doubts surrounding the actuality of rape” in the real world.¹¹⁸

The nullification of the crime through the princess’s marriage is representative of marriage’s ability to legally erase the crime of felony rape. This even includes the rape of virgins, as seen in the Statute of Westminster II, the eyre courts in practice, and in *Sir Degare*. Thus, the marriage between the rapist and the princess legally transforms rape, after the fact, into consensual sex while the resulting pregnancy medically and legally drives home the point that this was always consensual coitus. The literal erasure of the rape is perpetuated throughout the narrative with the conflation of rape as the fairy knight’s expression of love and the princess’s references repeatedly that he is her *lemman*. She is his lover, and he becomes hers. The rape is effectively expunged from the narrative and transformed into an expression of love, which is

¹¹⁵ Edwards, *The Afterlives of Rape in Medieval English Literature*, 86.

¹¹⁶ Edwards, *The Afterlives of Rape in Medieval English Literature*, 88. Edwards is making reference to the petition of Sir Thomas West, however, the statement equally applies to the romance narrative of the raped princess.

¹¹⁷ Saunders, *Rape and Ravishment*, 218.

¹¹⁸ Saunders, *Rape and Ravishment*, 218.

supported by the real legal and medical implications of pregnancy from rape and the marriage with the rapist. Importantly, legal realities intrude into the narrative once again, as we are told that the reason for the divorce between Degare and his mother was “For they were to nyghe off kyn” and thus the reason for divorce was marriage within the prohibited degrees.¹¹⁹ It is important to note that the romance is seeking legal realism in what makes a valid marriage. Audience members are being encouraged to recognise the invalidity of the incestuous marriage, while simultaneously they are encouraged to acknowledge the validity of the marriage between rapist and survivor.

Sir Gowther

Sir Gowther is similar to *Sir Degare* in that both romances have the presence of a supernatural being that has coitus with a female character without explicit consent. *Sir Gowther* is extant in two manuscripts, Royal MS 17.B.43, British Library, London, and MS Advocates 19.3.1, National Library of Scotland, Edinburgh, both dating from the fifteenth century and both likely originating from the North Midlands of England.¹²⁰ However, the original source of *Sir Gowther* was, according to Laskaya and Salisbury, likely a twelfth-century French text called *Robert le Diable*.¹²¹ This popular text spread across Europe with various vernacular versions being created. *Sir Gowther* was likely a part of this process, being rewritten in Middle English in the late fourteenth century.¹²² While the romance includes social milieu and public opinions

¹¹⁹ “Sir Degare,” line 1093.

¹²⁰ Anne Laskaya and Eve Salisbury, “Sir Gowther: Introduction,” in *The Middle English Breton Lays*, TEAMS Middle English Text Series (University of Rochester, 1995) <https://d.lib.rochester.edu/teams/text/laskaya-and-salisbury-middle-english-breton-lays-sir-gowther-introduction>

¹²¹ Laskaya and Salisbury, “Sir Gowther: Introduction.” This is supported by Hopkins, *The Sinful Knights*, 150.

¹²² Laskaya and Salisbury, “Sir Gowther: Introduction”; Kaeuper, *Chivalry and Violence in Medieval Europe*, 266.

about various social issues that often go unwritten, it is the focus on sexual consent, marital rape, and the rape of nuns which is of greatest concern here. Thus, the legal framework for interpreting *Sir Gowther* in England includes the era of *Bracton*, both Westminster I and II, as well as the Statute of Rapes.

The story of *Sir Gowther* is one of repentance; Gowther was born as a demon child and throughout his youth he commits various crimes, including the rape and murder of an entire convent of nuns, until he finally realises the severity of his actions and embarks on a journey of repentance and chivalry. However, Laskaya and Salisbury warn that the narrative genre of *Sir Gowther* defies definitions, as it can be read as a penitential journey, a secular hagiography, or “a tale of trial and faith.”¹²³ What Laskaya and Salisbury fail to acknowledge is the very crucial role that rape is given in Gowther’s penitential quest and discovery of himself. Beyond that, the most heinous crime, the rape of nuns, reiterates the legal implications of Westminster II (1285) in which the rape and/or abduction of holy women are treated separately. The diabolical conception of the protagonist, Gowther, is highly reminiscent of the impregnation of the Virgin Mary, in that a supernatural being impregnates a mortal woman without her knowledge or consent and that both children (Gowther and Jesus) have extraordinary abilities. Furthermore, both Gowther and Jesus inherit mortality and humanity from their mothers.¹²⁴ However, unlike the Virgin Mary’s Immaculate Conception, the lady in *Sir Gowther* is impregnated by a demon in disguise and thus participates in “the Devil’s Contract.”¹²⁵ Jennifer Fellows argues that this

¹²³ Laskaya and Salisbury, “Sir Gowther: Introduction”; Florschuetz, *Marking Maternity in Middle English Romance*, 25.

¹²⁴ Florschuetz, *Marking Maternity in Middle English Romance*, 46.

¹²⁵ Laskaya and Salisbury, “Sir Gowther: Introduction.”

sort of diabolical sexual deception is part of a genre theme which includes *Sir Gowther* and *Octavian*.¹²⁶

The narrative opens with a prayer for God to protect the audience against “the fowle fende” (line 4).¹²⁷ *Fiends* refers to those possessing various demonic qualities, including being an offspring of Satan, fallen angels, or demons who can cause madness in mortals.¹²⁸ The text then explains that fiends once had the ability to trick noblewomen into sex because they disguised themselves to look like their husbands (lines 7–9) and that this was how the legendary Merlin was conceived in Arthurian times (line 10). The fiends discussed here are biologically sexed as male¹²⁹ and perhaps they may represent the sexual predatory nature of rapists and the looming sexual dangers unique (legally speaking) to women. The narrative supports this notion by stating only a few lines later that fiends who trick women by disguising themselves as their husbands “wrought ladies so mikil wo,” that is, they “caused ladies so great woe” or pain.¹³⁰ The narrative then states: “That fend nyeght wemen nere/ And makyd hom with child;” that is, “That fiend lay with women so near/ And made them with child.”¹³¹ These lines echo the gendered crime of rape, in that women are explicitly described as the only legal victims of rape from the age of *Glanvill* to the Statute of Rapes. The romance further reinforces the potential consequence unique to women who are raped, that is conceiving from the rape. The legal realism, in stating that only women are victims of rape, whether it be by men (as in the real world) or by fiends (as

¹²⁶ Fellows, “Mothers in Middle English Romance,” 41–60.

¹²⁷ “Sir Gowther,” in *The Middle English Breton Lays*, TEAMS Middle English Text Series, eds. Anne Laskaya and Eve Salisbury (University of Rochester, 1995) <https://d.lib.rochester.edu/teams/text/laskaya-and-salisbury-middle-english-breton-lays-sir-gowther>. All *Sir Gowther* translations are adapted from TEAMS Middle English Text Series.

¹²⁸ *The Middle English Dictionary*, “Fend (n.).”

¹²⁹ Cohen, *Of Giants*, 123. Cohen explains that they “temporarily reside in illusory male works to work their sexual crimes, engendering monstrous offspring on unsuspecting women.” As for their origins, Cohen suggests that they come from the Vulgate Bible, Genesis 6:4 and are loosely connected with fallen angels.

¹³⁰ “Sir Gowther,” line 11.

¹³¹ “Sir Gowther,” lines 14–15.

in the literary reality of *Sir Gowther*), further demonstrates the vulnerability of women to sexual assault. The class element must also be noted, as the opening lines state that ladies are tricked by fiends, and thus there is an inherent class issue in that the fiends do not trick peasant women into sex. Presumably, if anything is learned from the pastourelle genre, peasant women are viewed as sexually available and do not need the “refinement” of tricking them into sex. Thus, in these opening fifteen lines of *Sir Gowther* we are introduced to the sexual predator nature of fiends who rape ladies, and that this occurrence causes women great sorrow.

Further explaining the transformation of fiends, the audience is told that “tho kynde of men wher thei hit tane,” that they took the form of human men because they themselves “had no form.”¹³² Since these specific fiends only take the shape of men, this could act as a platform for debate and contemporary social commentary on the assumed sexual impulsivity of men who rape. This notion of lovesickness or uncontrollable sexual lust, leading to rape, is stated in *Bracton* and here in *Sir Gowther* it is being suggested by the inclusion of fiends. Gowther himself inherits these qualities and thus it can be interpreted as almost inevitable that he will rape.¹³³ These demonic shapeshifting creatures have uncontrollable sexual urges, and they are described with much of the same medieval legal irrationality as men who rape. That is, when they see beautiful women, they (fiends, men who rape, or hybrids like Gowther) are deemed to be in a hysterical frenzy where they lose their reason for lust of the woman.

We are first introduced to Gowther as “a warlocke greytt”, that is a “great demon” and that he gave his mother much sorrow “with his warcus wylde,” his “wild deeds.”¹³⁴ The Middle English Dictionary defines *wylde* as “(a) lacking in restraint, undisciplined;...(b) out of one’s

¹³² “Sir Gowther,” lines 16–17.

¹³³ Sylvester, *Medieval Romance and the Construction of Heterosexuality*, 56–57.

¹³⁴ “Sir Gowther,” lines 22–24.

mind, frenzied, mad;...(c) perverse, wicked;...wanton; also, lusty; (d) without civilization...barbarous, savage...beastly.”¹³⁵ Right away Gowther is described as wild, in the sense that he is the opposite of courtly: he is impulse driven, he lacks reason, he has strong sexual urges, he acts cruelly and he is without sound judgement. The association of Gowther’s *wylde* characteristics is similar to contemporary popular opinion about men who rape; that is, according to *Bracton*, men who rape virgins lack reason, they are overcome with sexual urges, and they lack the discipline to control those sexual impulses. The legally required physical proof of resistance to rape necessarily required physical bodily harm, which in turn requires some form of brutality and domination to produce visible proof of the crime. There is thus a close connection between the legal requirement of physical injury and the presumed *wylde* and violent nature of men who rape. The romance is making the connection between rapists and *wylde* behaviour by referring to Gowther as such. This notion will become clearer throughout the romance as it plays with the fine line between a chivalrous knight and a rapist knight, between courtly and wild, and between rational and irrational.

The romance continues with the introduction of the duke and duchess of Austria and in typical romance tropes the lady is described as beautiful as a lily, innocent, and having a light complexion.¹³⁶ The courtly setting is reflected by the wedding feast and jousting tournaments that are being held.¹³⁷ This works to establish normal courtly activities, which undoubtedly would have been recognisable as such to the less elite audiences. This contextualises the narrative within the civilized, courtly world which will later be contrasted with the wilderness. However, after ten years of marriage no child is born, and their marital happiness suffers as a

¹³⁵ *The Middle English Dictionary*, “Wild(e (adj.).”

¹³⁶ “Sir Gowther,” lines 31–37.

¹³⁷ “Sir Gowther,” lines 39–45.

result.¹³⁸ Even though the romance makes it clear that both are to blame for the lack of conception, as the duke cannot beget a child nor can the duchess carry a child (line 53), it is important to remember the legal context. Infertility was grounds for an annulment, and this was particularly damaging for women whose future marriage prospects could suffer because of their presumed inability to conceive. This helps to explain the desperation of the duchess. The legal realism intrudes into the fictional narrative when the duke exclaims to his wife:

“Y tro thu be sum baryn,
Hit is gud that we twyn;
Y do bot wast my tyme on the,
Eireles mon owre londys bee”;
For gretynge he con not blyn.

[“I believe you to be somewhat barren,/ It is good that we separate;/ I do but waste my time on you,/ Heirless much our lands be”;/ For weeping he cannot cease.]¹³⁹

Clearly the fictional duke is living in the legal reality of the listening and reading audience, as he explains how infertility is grounds for separation in the fictional world, much like the real lived world. The blame of sterility placed on the duchess was also a common legal trope, as women were almost inevitably blamed for being barren while men were typically described in good reproductive health. The lack of conception was, in the medieval medical and legal world, a female problem. However, the issue of inheritance and the necessity for an heir is viewed as a male problem, both legally with primogeniture and here in the romance where the duke explicitly states that he is heirless. The fact that the duke is emotional (line 60) illuminates the complexities of medieval marriages and the importance for the woman to produce an heir for her own

¹³⁸ “Sir Gowther,” lines 52–54.

¹³⁹ “Sir Gowther,” lines 56–60.

security. The legal realism, which the contemporary audience was undoubtedly familiar with, in that barren wives were grounds for annulments in the ecclesiastical courts, is blatant in the romance. What is equally striking is the depth of emotional complexity given to this legal reality, in that the duke does not want to separate, but for the sake of his patrimony he must. These emotions are speaking to a reality that mirrors the real lived experiences of the medieval past.

The duchess is distraught from the news that she will be left alone unless she can conceive (line 61), and she repeatedly prays to God and the Virgin Mary to bless her with a child (lines 64–66). Here, the desperation for conception and the reality of impending separation from her husband foregrounds the following scene:

In hur orchard apon a day
 Ho meyt a mon, tho sothe to say,
 That hur luffe besoghth,
 As lyke hur lorde as he myght be;
 He leyd hur down undur a tre;
 With hur wyll he wroghtth.
 When he had is wylle all don
 A felturd fende he start up son,
 And stode and hur behld;
 He seyde, “Y have geyton a chylde on the
 That in is yothe full wylde schall bee,
 And weppons wyghtly weld.”
 Sche blessyd hur and fro hym ran,
 Into hur chamber fast ho wan,
 That was so bygly byld.

[In her orchard upon a day/ She met a man, then truth to say,/ That of her love besought,/ As like her lord as he might be;/ He laid her down under a tree/ With her his will he wrought./ When he had his will all done/ As a shaggy fiend he leapt up quickly./ And stood and her beheld;/ He said “I have begotten a child on you/ That in his youth full wild shall be,/ And weapons mightily wield.”/ She blessed herself and from him ran,/ Into her chamber fast she went,/ That was so firmly built.]¹⁴⁰

¹⁴⁰ “Sir Gowther,” lines 67–81.

This scene is similar to the rape scene in *Sir Degare*, in that the duchess is alone and in an orchard. Like forests, orchards are typical places that supernatural encounters occur in romance.¹⁴¹ *Sir Gowther*, like *Sir Degare*, implies that women who are alone are vulnerable to sexual predators. The approaching being here is at first described as a man (line 68) which is reminiscent of the rapist fairy knight in *Sir Degare*. We are then told that the approaching man looks like her husband, the duke, and that he initiates the physical exchange by laying her down under a tree.¹⁴² The inclusion of a tree is also a typical romance trope, as we have seen with the chestnut tree in *Sir Degare* and in *Sir Orfeo*. As stated by Laskaya and Salisbury, “trees facilitate interaction between the Otherworld and reality,” and in this way the audience is given clues that the approaching man is likely not her real husband.¹⁴³

It is important to note that when the duchess finally tells Gowther about his conception she states that it was a chestnut tree that the fiend in disguise laid her down under.¹⁴⁴ The man is the subject of the action, and she is the grammatical object of his actions. He laid her down (line 71); he did his will to her (line 72); and when he finished his desires, they are not described as being her desires as well, but that they were entirely his own (line 73). The active position of the masculine is highlighted by his direct speech,¹⁴⁵ and the duchess’s passivity is reinforced by not only her silence, but also her retreat to the protective fortress of her chamber. Her silence, much like the princess in *Sir Degare*, is a marker of her victimisation and her femininity. This duality of masculine activity and feminine passivity is highly indicative of the expected heterosexual

¹⁴¹ Saunders, *Rape and Ravishment*, 224.

¹⁴² “Sir Gowther,” line 71.

¹⁴³ “Sir Gowther,” line 71, note 71.

¹⁴⁴ “Sir Gowther,” lines 230–233.

¹⁴⁵ “Sir Gowther,” lines 76–78.

courtship script, in that the man is the active instigator, and the woman is the reluctant recipient of sexual advances. There is no mention of her desires, her will, her consent; rather, she is the object of his sexual pleasure, and she is the passive recipient of his sexual actions. Only after coitus is completed does the man transform into a shaggy fiend.¹⁴⁶ This is reminiscent of Georges Duby's argument that the courtly lover (in this case the fiend disguised as the husband) can quickly become the violent rapist (here, when the trickster fiend is revealed). The game of courtly love, as described by Duby, can be violent and sudden, as we see here.¹⁴⁷

The issue of consent is complex here. Did she consent because she thought it was her husband, or did she consent out of desperation to conceive an heir, or alternatively was this rape because she did not explicitly consent to coitus with the fiend? These are questions which scholars have debated for decades.¹⁴⁸ However, scholars have not acknowledged the legal realities informing the text. The legal context informing the audiences' expectations and reactions to the romance must be taken into consideration.

Spouses were required by ecclesiastical law to remain sexually available to one another. This marital sexual debt was owed equally, in that both the husband and the wife were legally expected to have coitus with each other. However, the sexual debt was only included in the marital vow of the woman.¹⁴⁹ She had to vow, at her marriage ceremony in front of the representatives of the church, that she would never refuse her husband sexual access to her body. Thus, the fact that the fiend approached her in the disguise of her husband, and with the looming annulment due to her assumed bareness, the duchess's consent to coitus with her husband was

¹⁴⁶ "Sir Gowther," line 74.

¹⁴⁷ Duby, *The Knight, the Lady and the Priest*, 221.

¹⁴⁸ Cohen, *Of Giants*, 127; Saunders, *Rape and Ravishment*, 224–225; Sylvester, *Medieval Romance and the Construction of Heterosexuality*, 57–60.

¹⁴⁹ McCarthy, *Marriage in Medieval England*, 114.

necessarily (legally speaking) required of her. The audience would have expected the wife to willingly accept the husband's sexual advances, as this was part of the legal requirement of medieval marriages. The wife's consent then can be said to be given even though it was not explicit, because of the marital sexual debt.

However, the fact that the man was not actually her husband, and she was ultimately deceived, places the duchess within the legal identity of the reluctant but willing accomplice to her own rape. If the coitus was completed under the false pretences that it was her husband, can this be interpreted as falsely assumed consent and ultimately rape? From a modern perspective, yes, but the issue is more complex to medieval minds. The text seems to superficially suggest that, legally speaking, it is not considered rape. However, there is an alternative reading that implies that this could be defined as medieval rape in which the duchess is an unfortunate accomplice.

The duchess was expected to consent to her husband because of the marital debt, and the fiend took advantage of this legal loophole to create an ambiguous situation in which her consent was not explicit, nor was his true identity known to her. Here, the non-consent of the duchess is problematic in social understanding, but not legally. The marital debt ensured legally that her explicit consent to coitus with her husband was not required, but the social commentary and debate about the realities of marital rape are open for discussion with this passage. Even though marital rape was a non-existent crime in medieval England, we have seen that some women did try to take their husbands to ecclesiastical courts for heinous sexual acts (see chapter 4). Clearly, marital rape was a social issue, and the potential for it to be debated here in *Sir Gowther* was likely not lost on contemporary audiences.

However, legally speaking, this could be interpreted as “stranger” rape, according to the royal statutes of the thirteenth and fourteenth centuries. This is emphasised by the differentiation in treatment between the duchess’s two sexual scenes. First, there is the sex with the fiend which is described as him doing his will and pleasure onto her. This is in opposition to the description of coitus between the duchess and her real husband in which they “make love” together.¹⁵⁰ The literary treatment between the sex with the fiend and her husband is highly suggestive that the former was non-consensual and thus (from a social perspective), it was rape. However, the duchess cannot be a truly innocent victim because of the disguise of the fiend, but neither is she the culpable scheming woman. Consequently, the duchess fulfills the legal identity of the accomplice to her own rape. This is further reinforced, to contemporary medieval audiences, with her resulting pregnancy. Like the princess in *Sir Degare*, the fact that the duchess conceived from the coitus proved (legally and medically) that she had given physical bodily consent to the coitus.

The medical two-seed theory to conception and the duality of mental and physical consent to medieval lawmakers, highly suggests that she had consent of the flesh and therefore was legally not a “true victim” of rape. However, since she unknowingly had coitus with someone other than her husband, she is perhaps best described as an accomplice to her own rape. Also like the princess in *Sir Degare*, the duchess is silent throughout the sexual encounter, which serves as a marker of her victimisation and her performance of appropriate femininity.¹⁵¹ Furthermore, both rape scenes, those of the princess and the duchess, highlight the ambiguity between consensual coitus and rape through the conception of the male protagonist.¹⁵² And

¹⁵⁰ “Sir Gowther,” line 90.

¹⁵¹ Sylvester, *Medieval Romance and the Construction of Heterosexuality*, 61.

¹⁵² Sylvester, *Medieval Romance and the Construction of Heterosexuality*, 61.

lastly, both rape scenes express notions of love and admiration for the female victims. This has led Louise Sylvester to state that the audience was “suppose[d] to understand that sexual aggression is one way in which masculine love is expressed.”¹⁵³ Once again, lust, seduction, and rape are placed on the same continuum in the chivalric world of medieval England. Masculine aggression was a normalised – although condemnable – display of love.

The romance describes the duchess repeatedly as burdened by the pregnancy and this highlights the real social and legal implications of pregnancy from rape.¹⁵⁴ Her reluctant victim status is reinforced by the description that this fiend perpetually “tempe women yon./ To deyle with hom was wothe,” that is “to tempt young women./ To have intercourse with him was sinful.”¹⁵⁵ Although we know that the duchess was not a virgin at the time of the rape, it is worthy to note that fiends (or sexual predators) prey on young women. The fact that the coitus with the fiend is described as a sin, and not a secular crime, further indulges in the ambiguous nature of rape as a secular crime, but also a sexual crime. This is particularly true of marital rape, in that the attempts to bring marital rape to court are in the ecclesiastical courts.

Once Gowther is born,¹⁵⁶ it is apparent that he is a supernatural being as he grows much quicker than a normal infant and is described as “breme and brathe,” that is “fierce and violent.”¹⁵⁷ Gowther suckles nine wet-nurses to death,¹⁵⁸ and consequently his mother has no choice but to nurse him herself. On her attempt to breastfeed Gowther, he bites off her nipple.¹⁵⁹ His consumption of the female body as an infant foreshadows his physical domination of the

¹⁵³ Sylvester, *Medieval Romance and the Construction of Heterosexuality*, 62.

¹⁵⁴ “Sir Gowther,” lines 95 and 96.

¹⁵⁵ “Sir Gowther,” lines 101–102.

¹⁵⁶ “Sir Gowther,” line 104.

¹⁵⁷ “Sir Gowther,” line 108.

¹⁵⁸ “Sir Gowther,” lines 119–120.

¹⁵⁹ “Sir Gowther,” line 130.

female body when he later rapes the nuns. Furthermore, Gowther biting off the nipple is reminiscent of hagiography and the fears of the princess in *Sir Degare*, in that she feared she would be eaten by wild beasts. The male consumption of the female body is a trend in these romances which is associated with beast-like, or monstrous, rapists.

Wild Nature

It is worth noting that Gowther is explicitly described as *wylde* numerous times. Gowther is a hybrid,¹⁶⁰ being part mortal and part demonic. The wild nature and humanity are one in the same in Gowther; he is both a dubbed knight,¹⁶¹ and a duke,¹⁶² as well as a criminal, a rapist, and a murderer. His uncontrollable sexual urges, together with his physical strength and aggression, make Gowther a fearful hybrid. When Gowther preys on women, specifically holy women, and virgins, he is not only committing an egregious felony according to contemporary statutory law, but also breaking the social moral code of appropriate masculine gender behaviour. While committing these crimes, Gowther is a dubbed knight, and thus we can read his behaviour as an *exemplum* of a criminal knight committing rape much like the fairy rapist knight in *Sir Degare*. This distance from humanity, in that Gowther is both diabolical and a mortal, allows for the literary distance to debate and discuss the crimes he commits as a knight in the courtly world. Gowther (like Degare's fairy father) is both within the courtly context familiar to the contemporary audience, and outside of that familiarity by his supernatural qualities.

¹⁶⁰ Cohen, *Of Giants*, xix–xx.

¹⁶¹ "Sir Gowther," line 150.

¹⁶² "Sir Gowther," line 169.

The Rape of Nuns

We are told that Gowther is out hunting when he comes upon a convent and when the prioress and the nuns come out to meet him, “thei wer full ferd of his body.”¹⁶³ The explicit fear of the nuns is followed by their rape and murder:

For he and is men bothe leyn hom by-
 Tho sothe why schuld y hyde?
 And sythyn he spard hom in hor kyrke
 And brend hom up, thus con he werke;
 Then went his name full wyde.

[For he and his men both lay with them-/ The truth why should I hide?/ And then he enclosed them in their church/ And burned them up, thus did he work;/ Then went his name full wild.]¹⁶⁴

This scene depicts the rare occurrence in romance where the protagonist is the one who rapes. As argued by Amy Vines, the depiction of heroes who rape “proves [that] rape is a fundamental aspect of masculine chivalric identity.”¹⁶⁵ Vines correctly states that the hero who rapes is depicted as a man in a frenzied, irrational state, and the scenes are “seen as problematic moments of weakness to be overcome” by learning the code of chivalry.¹⁶⁶ This argument is supported by the fact that physical prowess and heterosexual desires are the hallmarks of a chivalric knight and the assumed ingredients of a rapist in contemporary medieval thought. Gowther, as a dubbed knight, represents “the impulses of reckless physical self-assertion which are hidden in all of us,

¹⁶³ “Sir Gowther,” line 187.

¹⁶⁴ “Sir Gowther,” lines 189–192.

¹⁶⁵ Vines, “Invisible Woman: Rape as Chivalric Necessity in Medieval Romance,” 162.

¹⁶⁶ Vines, “Invisible Woman: Rape as Chivalric Necessity in Medieval Romance,” 162.

but are normally kept under control.”¹⁶⁷ Like men who rape because of irrational lust at the sight of a maiden’s beauty, according to *Bracton*, Gowther too is depicted as beyond rational control of his actions because of the sinfulness he inherited from his biological father.¹⁶⁸

The scene depicts felony rape and the murder of nuns, and according to Westminster II, this is a serious crime punishable by death. The romance also states that Gowther’s companions had sex with the nuns, suggesting that it was (according to modern understandings) gang-rape. This is reminiscent of the real legal case of Sir Hugh in the eyre courts where he was tried and then acquitted for the “collective rape” of young Matilda (see chapter 3). The rape of nuns, however, was a more serious offence than the rape of widows or wives, as these religious women were dedicated to God.

Pre-Norman England experienced numerous Danish raids on female religious houses, to such a degree that the forty-one female houses were depleted to just nine by 1066.¹⁶⁹ This violence mimics the story of *Sir Gowther*, as Viking raiders burned the nuns to death at the notable Barkey Abbey,¹⁷⁰ much like Gowther does after he rapes the nuns of the convent. Male violence against religious women was evidently a real problem for early medieval English society. As suggested by Shari Horner, “the geographically vulnerable convents,” in that they were isolated along the English coastline, allowed for raiders to frequently attack these secluded women.¹⁷¹ Consequently, the real rape, torture, and murder of nuns in the earlier medieval

¹⁶⁷ Richard Bernheimer, *Wild Men in the Middle Ages: A Study in Art, Sentiment, and Demonology* (Cambridge: Harvard University Press, 2014), 3.

¹⁶⁸ Hopkins, *The Sinful Knights*, 146–147.

¹⁶⁹ Horner, “Spiritual Truth and Sexual Violence,” 658–659.

¹⁷⁰ Horner, “Spiritual Truth and Sexual Violence,” 659.

¹⁷¹ Horner, “Spiritual Truth and Sexual Violence,” 660.

English past “may help shed light,” according to Horner as to why later medieval audiences “found pleasure” in stories of sexualised violence against holy women.¹⁷²

This rape scene of the nuns is the second of four in the romance; the first being the rape of the duchess by the fiend, the third being Gowther with maidens,¹⁷³ and the fourth is Gowther with wives.¹⁷⁴ We are told that after the rape and murder of the nuns, Gowther then attacks virgin maidens and by raping them of their virginity he ruins their marriage prospects. This too is a felony crime according to every medieval legal age, from *Glanvill* to the 1382 Statute of Rapes (except for Westminster I). Undoubtedly, Gowther is a serial rapist. The “meydyns maryage wold he spyll,” that is “maidens’ marriage would he spoil,” further suggests that the consequences of rape are disproportionately devastating to the women, as Gowther never faces legal repercussions.¹⁷⁵ These maidens are “spoiled” as their virginity is taken, and their marriage market value is considerably lessened. The legal reality is intruding into the romance as the narrative implies that the consequences of rape are much more disastrous for women. The rape of wives “against their will” is theoretically felony rape, but as we have seen with the eyre courts in practice, this was not of any major legal concern. Conversely, the rape of virgins remained paramount to the courts. However, it is unquestionable that the rape and murder of the nuns is the most heinous crime that Gowther commits, as is evident in the following line that describes him now as “full wild.”

The severity of the rape and murder of the nuns is reflected in the fact that it receives the most detail (line length) out of all the various crimes he commits. The fact that this scene of rape

¹⁷² Horner, “Spiritual Truth and Sexual Violence,” 660.

¹⁷³ “Sir Gowther,” line 196.

¹⁷⁴ “Sir Gowther,” line 197.

¹⁷⁵ “Sir Gowther,” line 196–197.

is entirely omitted from the Royal MS 17.B.43 British Library, London, version of *Sir Gowther*, suggests that it was too heinous of a crime to laugh about, especially for a more refined and courtly (less popular) audience.¹⁷⁶ This demonstrates how Middle English romance pushed the boundaries of acceptable social commentary, as suggested by Nicola MacDonald, in that they were indeed “danger recreations” of real societal concerns.¹⁷⁷

Laskaya and Salisbury argue that it is important to see the humanity in Gowther, as “it is easy to see such wickedness and rapists and violence against women as an evil monster, but he is indeed a man.”¹⁷⁸ While I concur with this statement, and it works to show that men (knights in particular) were guilty of felony rape, it is equally important to remember that the romance excuses Gowther for raping because of his fiend-like nature. As argued by Jeffrey Jerome Cohen, Gowther as a monster commits “every sin of the body,” including rape, and it is through the control of his bodily impulses that he is transformed into a secular saint-like figure.¹⁷⁹ The masculine body is thus susceptible to performing both monstrous and saintly acts, and it is up to the reason of the individual to choose the right path. This is like the medieval medical belief that men, who do not have easy access to women’s bodies for sexual release, will rape. This was the foundation for the legalisation of brothels in medieval England (and elsewhere on the continent), as previously discussed. Gowther’s sins are representative of the potential sins of every man, as the church believed man was susceptible to the sins of flesh and sexual pleasure.¹⁸⁰ Thus, the fiend-hybrid qualities of Gowther can be interpreted as representative of the contemporary

¹⁷⁶ Laskaya and Salisbury, “Sir Gowther: Introduction.”

¹⁷⁷ MacDonald, “A Polemic Introduction,” 16–17.

¹⁷⁸ “Sir Gowther,” line 141, note 141.

¹⁷⁹ Cohen, *Of Giants*, xix–xx.

¹⁸⁰ Hopkins, *Sinful Knights*, 170.

assumption that all men are capable of rape if they do not have “appropriate” access to women’s bodies.

Despite the severe crimes committed by Gowther, he repents for his actions, which includes living in silence, isolation, and living with dogs under the emperor’s table.¹⁸¹ The three-day battle between the sultan and the emperor is the final penance required of Gowther, as each day his physical colour changes (from black, to red, to white, signifying purification),¹⁸² and he miraculously receives the symbols of knighthood, that is an armour, a shield, and a horse. After defeating threatening Saracens, he is transformed into a rational, chivalric knight.

Concluding Thoughts on *Sir Gowther*

The happy ending required of romance is in full form in *Sir Gowther*; he is given a new patrilineage so that he is no longer of demonic origin,¹⁸³ he marries the emperor’s daughter, and consequently he inherits the Holy Roman Empire. To ensure a happy ending for all, he concocts a marriage between the earl and his mother. But, according to Laskaya and Salisbury, “most importantly he builds an abbey to atone for his devastating crime against the nuns.”¹⁸⁴ While this certainly exemplifies atonement, legally there are no repercussions for the rape and murder of the nuns and the narrative ensures that the crimes committed against them were ultimately used as narrative building blocks to Gowther’s true chivalric identity. By building an abbey, *Sir Gowther* implies that rapists can atone for their actions and no secular legal punishments are needed to restore justice. Consequently, rape is used as a measurement of the lack of nobility of Gowther,

¹⁸¹ “Sir Gowther,” lines 325–360.

¹⁸² Laskaya and Salisbury, “Sir Gowther: Introduction”; Hopkins, *Sinful Knights*, 155–156.

¹⁸³ “Sir Gowther,” lines 673–675.

¹⁸⁴ Laskaya and Salisbury, “Sir Gowther: Introduction”; “Sir Gowther,” line 699.

but the audience is expected to excuse his rapist tendencies because of his demonic hybrid nature. The monstrosity of Gowther provided the fictional screen necessary to open up the space to debate and discuss the failure of chivalry, the misbehaviour of knights, and the crimes of rape against all women in society.¹⁸⁵ This is critical, in that the Statute of Westminster II and the Statute of Rapes claim to protect all women from rape, including wives, widows, virgins and nuns, and it is beyond coincidence that Gowther explicitly rapes all the classes of women as described in the statutory laws.

Sir Gowther confronts societal issues and popular anxiety about knights who rape, the crimes of youthful men, and the violence and destruction that they can perpetuate.¹⁸⁶ Furthermore, despite what the laws state in writing, as has been determined by the courts in practice, it was the rape of virgins who garnered the greatest legal retribution. This legal reality intrudes into the fictional narrative as it is Gowther's rape of the chaste nuns and the virgin maidens which are described as the most condemnable. Cohen states that the symbolic fictional world is abruptly "tattered by an intrusion of the Real."¹⁸⁷ As suggested by Cohen, Gowther is a "monstrous hero;" he can be interpreted as representative of medieval social concerns about masculine violence, while the "fragility" existing between Gowther's monstrosity and his knightly identity is a reminder that knights are capable of monstrous crimes.¹⁸⁸ The message to young men in the audiences could be inspiring; if Gowther is capable of redemption, so too will the sins of reckless youth be forgiven if they repent. The narrative implications for young women are not as hopeful. As suggested by Richard Kaeuper, the failure of chivalry was an ever-present concern, and *Sir Gowther* demonstrates that failure of masculine identity expression via the rape

¹⁸⁵ Saunders, *Rape and Ravishment*, 218.

¹⁸⁶ Kaeuper, *Chivalry and Violence*, 270.

¹⁸⁷ Cohen, *Of Giants*, 127.

¹⁸⁸ Cohen, *Of Giants*, 77, 81.

of wives, widows, maidens, and nuns. According to Kaeuper, knights in romance are often depicted as sexual predators and “the threat of knights is so often portrayed as a specifically sexual threat.”¹⁸⁹

Overall, *Sir Gowther* highlights many social concerns about rape and women’s sexuality, including debates about marital rape and sexual debt, the consequences of conceiving from rape, and the demonic nature of men who rape wives, virgins and worst of all, nuns. *Sir Gowther* is a harsh mirror of the lived realities of women in the Middle Ages and undoubtedly, this romance was shocking and conversation-stimulating to contemporary audiences.

Le Bone Florence of Rome

Le Bone Florence of Rome is extant in just one Middle English text, making it unique compared to the previously discussed romances which have more Middle English manuscript witnesses.¹⁹⁰ The only extant Middle English version of *Le Bone* is held at Cambridge University Library (CUL MS Ff.2.38, fols.239c–254b) and is bound with other romances, including *Sir Degare*, *Guy of Warwick*,¹⁹¹ and saints’ lives, and didactic texts.¹⁹² Jonathan Stavsky suggests that the Middle English version was based on the French *Chanson de Florence* (Paris, Bibliothèque Nationale, MS nouv. acq, fr, 4192) which was popular in England from c.1275–

¹⁸⁹ Kaeuper, *Chivalry and Violence*, 226–227.

¹⁹⁰ *Le Bone Florence of Rome*, ed. Carol Falvo Heffernan (Manchester: Manchester University Press, 1976), 7–8. However, this point is contested by Jonathan Stavsky, *Le Bone Florence of Rome: A Critical Edition and Facing Translation of a Middle English Romance Analogous to Chaucer’s Man of Law’s Tale* (Cardiff: University of Wales Press, 2017), 14. Stavsky states that there are 6 versions of *Le Bone Florence of Rome*.

¹⁹¹ *Le Bone Florence of Rome*, 1–2.

¹⁹² Stavsky, *Le Bone Florence of Rome*, 22.

1325.¹⁹³ Despite the fact that CUL MS Ff.2.38 dates from c.1500,¹⁹⁴ Stavsky argues that the text was copied from another Middle English version from around the mid to late fourteenth century.¹⁹⁵ This places the narrative within the legal age of Westminster II and the Statute of Rapes, when women's legal rights were being displaced in favour of men's. Scholars, including Felicity Riddy and Jonathan Stavsky, agree that the Cambridge manuscript was compiled for a popular, urban, mercantile audience.¹⁹⁶

Unlike other popular romances about "persecuted maidens," *Le Bone Florence of Rome* is unique in that the narrative ends with Florence's healing abilities uniting the wicked men who oppressed her and together they all confess to the crimes that they committed against her.¹⁹⁷ Carol Falvo Heffernan classifies *Le Bone* as a "variant of a Miracle of the Virgin."¹⁹⁸ Marian intercession and the Cult of the Virgin were increasingly popular throughout the twelfth century, when versions of Florence's narrative were circulating. *Le Bone*, like *Amis and Amiloun*, emphasises that crimes do not go unpunished and in *Le Bone*, there is divine and secular punishments for various crimes, including those that Florence is wrongly accused of.¹⁹⁹ Indeed, the notion of divine justice is emphasised repeatedly in *Le Bone* and the narrative ends with a warning to the audience that God always achieves justice.²⁰⁰

¹⁹³ Stavsky, *Le Bone Florence of Rome*, 18.

¹⁹⁴ *Le Bone Florence of Rome*, 40–41; Stavsky debates this point and suggests that the text was compiled in the 1480s. Stavsky, *Le Bone Florence of Rome*, 27.

¹⁹⁵ Stavsky, *Le Bone Florence of Rome*, 18.

¹⁹⁶ Stavsky, *Le Bone Florence of Rome*, 27; Felicity Riddy, "Temporary Virginity and the Everyday Body: *Le Bone Florence of Rome* and Bourgeois Self-Making," in *Pulp Fictions of Medieval England*, ed. Nicola McDonald (Manchester: Manchester University Press, 2004), 199.

¹⁹⁷ *Le Bone Florence of Rome*, 3.

¹⁹⁸ *Le Bone Florence of Rome*, 5.

¹⁹⁹ *Le Bone Florence of Rome*, 12–13.

²⁰⁰ *Le Bone Florence of Rome*, 14. Lines 2176–2184.

To briefly summarize the plot, the narrative opens with the one-hundred year old king of Constantinople, Garcy,²⁰¹ infatuated by stories of Florence,²⁰² the daughter of Otes, the king of Rome, but he is rejected by her.²⁰³ Enraged, Garcy declares war on Rome²⁰⁴ and two valiant Hungarian princes, Mylys and Emere, travel to Rome to fight for Otes.²⁰⁵ Florence and Emere immediately fall in love²⁰⁶ and they have a marriage ceremony with the exchange of rings, but quite critically the marriage is not completed as there is no consummation.²⁰⁷ Emere bravely leaves for Constantinople and entrusts his brother, Mylys, to look after Florence.²⁰⁸ However, Mylys tries to trick Florence into marrying him by falsely telling her that Emere has died in combat.²⁰⁹ At this point the hagiographical tendencies of the romance are emphasised, as Florence vows to be a bride of Christ²¹⁰ and the following threats of rape are a test of her chastity.²¹¹

Upon hearing that Emere is returning,²¹² Mylys accuses Florence of adultery,²¹³ and imprisons her in a tower with armed guards.²¹⁴ Eventually, Florence and Mylys ride out together to meet Emere,²¹⁵ at which point Mylys attempts to rape Florence, but he is unable to due to

²⁰¹ *Le Bone Florence of Rome*, line 83. Felicity Riddy claims that Garcy's old age is used to exaggerate the unnaturalness of love between himself and the young maiden Florence. See Felicity Riddy, "Middle English Romance: Family, Marriage, Intimacy," in *The Cambridge Companion to Medieval Romance*, ed. Roberta L. Krueger (Cambridge: Cambridge University Press, 2000), 244.

²⁰² *Le Bone Florence of Rome*, lines 70–80. All *Le Bone Florence of Rome* translations are my own.

²⁰³ *Le Bone Florence of Rome*, lines 238–273.

²⁰⁴ *Le Bone Florence of Rome*, lines 358–381.

²⁰⁵ *Le Bone Florence of Rome*, lines 406–417, 443–453.

²⁰⁶ *Le Bone Florence of Rome*, lines 526–528.

²⁰⁷ *Le Bone Florence of Rome*, lines 996–1005.

²⁰⁸ *Le Bone Florence of Rome*, lines 1054–1065.

²⁰⁹ *Le Bone Florence of Rome*, lines 1090–1095.

²¹⁰ *Le Bone Florence of Rome*, lines 1099–1105.

²¹¹ *Le Bone Florence of Rome*, 22.

²¹² *Le Bone Florence of Rome*, lines 1258–1265.

²¹³ *Le Bone Florence of Rome*, lines 1300–1305.

²¹⁴ *Le Bone Florence of Rome*, lines 1354–1356.

²¹⁵ *Le Bone Florence of Rome*, lines 1387–1410.

divine intercession. In anger, he violently assaults Florence and abandons her in the woods.²¹⁶ Subsequently, Florence is rescued by another man, Sir Tyrry, who he brings her to his house as a place of refuge.²¹⁷ However, an evil knight, Machary, comes into Florence's bedroom in the middle of the night and attempts to rape her.²¹⁸ She successfully defends herself, but as revenge, Machary murders Tyrry's daughter and leaves the weapon in Florence's hand as she sleeps.²¹⁹ Florence is then exiled from Tyrry's home,²²⁰ at which point she is captured and sold to mariners.²²¹

While at sea, Florence endures another threat of rape,²²² and her virginity is saved by a miraculous storm which destroys the ship²²³ and Florence washes ashore. Seeking refuge in a convent,²²⁴ Florence gains healing abilities, which become renowned.²²⁵ As word spreads of a magical healer, all of her previous aggressors, Mylys, Machary and the sailor, who all happen to be suffering from diseases (leprosy,²²⁶ palsy,²²⁷ and a festering wound²²⁸) come to the convent to be healed. Unbeknown to them, Florence is the healer. Before she agrees to heal them, she demands that they all confess to the crimes that they have committed against her.²²⁹ They agree and once they all confess, she heals them of their various ailments.²³⁰ Emere, also suffering from an infected battle wound, comes to the convent and is reunited with Florence. Since she is still a

²¹⁶ *Le Bone Florence of Rome*, lines 1423–1518.

²¹⁷ *Le Bone Florence of Rome*, lines 1519–1566.

²¹⁸ *Le Bone Florence of Rome*, lines 1591–1623.

²¹⁹ *Le Bone Florence of Rome*, lines 1624–1707.

²²⁰ *Le Bone Florence of Rome*, lines 1697–1707.

²²¹ *Le Bone Florence of Rome*, lines 1783–1827.

²²² *Le Bone Florence of Rome*, lines 1840–1851.

²²³ *Le Bone Florence of Rome*, lines 1858–1872.

²²⁴ *Le Bone Florence of Rome*, lines 1889–1911.

²²⁵ *Le Bone Florence of Rome*, lines 1921–1930.

²²⁶ *Le Bone Florence of Rome*, line 1965.

²²⁷ *Le Bone Florence of Rome*, line 1976.

²²⁸ *Le Bone Florence of Rome*, lines 1991–1992.

²²⁹ *Le Bone Florence of Rome*, lines 2032–2037.

²³⁰ *Le Bone Florence of Rome*, lines 2039–2112.

virgin, their union is finally made into a proper marriage²³¹ and they have a triumphant return to Rome where they rule happily together. This is how the majority of continental versions end. However, the Middle English text goes further, in stating that Emere, upon hearing of all the wicked crimes these men committed against his beloved, orders them all to be burned to death.²³² This is rather remarkable, considering one of the condemned men is Mylys, his own brother. This works to emphasise, in the Middle English version, the theme of divine justice and secular punishments for crimes in a highly moralising tale.

Clearly, Florence undergoes many trials and tribulations throughout the narrative including: an old and ugly suitor (Garcy), the threat of war, the persistent wooing and attempted rape by her brother-in-law (Mylys), her rejection of him and his torture of her, her exile, her recovery in the household of Sir Tyrry, being falsely accused of murdering his daughter by a revengeful and rejected suitor (Machary), another exile while being sold to mariners, her trials at sea and barely escaping rape, dealing with her healing abilities, confronting the men who attempted to rape her and the reunion with her husband, Emere. Overall, there are three scenes of attempted rape in *Le Bone Florence of Rome*, making this romance not just hint at sexual violence against women, but rather rape is used as a narrative device to further the plot. This persistent threat of rape has been noted by romance scholars such as Saunders and Gravdal. However, what has not been acknowledged is the immense legal realism depicted in these three rape scenes. That will be the focus of the following discussion.

Florence is introduced into the narrative as the only child and heir to the king of Rome. She is described in traditional romance tropes as extremely beautiful, well educated, noble and

²³¹ *Le Bone Florence of Rome*, lines 2152–2160.

²³² *Le Bone Florence of Rome*, lines 2116–2121.

also good at playing the harp.²³³ Her small physical frame is repeated in the description of her appearance, as “gent and small.”²³⁴ Florence describes herself as unworthy of knightly violence in the battle against Garcy, as she claims “Y but a sympull woman.”²³⁵ The battle between Garcy and Otes is detailed, occupying roughly 700 lines,²³⁶ and it is violent as we are told that “For the love of Florence, that fair maiden,/ Many a doughty died that day.”²³⁷ One of the casualties is Florence’s own father, Otes the king of Rome. Garcy kills Otes in battle, but before he delivers the final blow, he tells the king that “with this blow I challenge Rome,/ And your daughter, bright as bloom,/ That brewed all this trouble,/ When that I have laid with her,/ And done her shame and violence,/ Then I will of her no more,/ But giver her to my chamberlain.”²³⁸ This speech is striking in that Garcy went from the courtly suitor to the violent aggressor and promises to violently rape Florence and then offer her to his men. Florence, as a female heir, is emblematic of Roman sovereignty.²³⁹ Jonathan Stavsky, in his recently published edition of *Le Bone*, states that Florence is a “body politic” in that there is a “sustained parallel between assaults on her personal sovereignty and those directed at the empire.”²⁴⁰ In this way, the three attempted rapes of Florence are not only a crime against her as a woman, but equally a threat to the political stability of Rome. Florence herself reiterates the connection between her body and her father’s empire by telling Emere that “you shall have all that you desire,/ Me and all this rich

²³³ *Le Bone Florence of Rome*, lines 37–69.

²³⁴ *Le Bone Florence of Rome*, lines 395 and 479.

²³⁵ *Le Bone Florence of Rome*, line 577.

²³⁶ *Le Bone Florence of Rome*, lines 356–1065.

²³⁷ *Le Bone Florence of Rome*, lines 643–644.

²³⁸ *Le Bone Florence of Rome*, lines 685–691.

²³⁹ Heng, *Empire of Magic*, 194.

²⁴⁰ Stavsky, *Le Bone Florence of Rome*, 5.

empire/ To rule after my father.”²⁴¹ Similar to the treatment of rape and abduction for heiresses in the real world, rape is being represented here as a threat to the male patrimony.

Epitomising feminine saintly self-sacrifice, Florence begs for the fighting to stop, and states that she will agree to wed Garcy.²⁴² She curses the day that she was born, for it has caused all these good men to die, and in return she states that “Garcy may have his will.”²⁴³ These common narrative tropes, beauty, nobility, and self-sacrifice ensure that Florence appears saint-like. This hagiographic motif becomes stronger through the repeated graphic sexual violence that Florence endures.

Once Emere leaves to pursue Garcy, Mylys makes his intentions immediately clear by stating “This heritage to me will fall/...I will wed the young bride,/ He [Emere] slept never by her side.”²⁴⁴ The marriage between Emere and Florence is deemed incomplete and easily annulable because it has not yet been consummated. The emphasis on Florence’s body is once again highlighted, as the female body is directly correlated to the male patrimony. Mylys falsely tells Florence that Emere has died in battle and Florence performs typical feminine gender expressions of romance characters, in that she swoons twice, sighs three times, and then cries.²⁴⁵ Vowing to be a bride of Christ, Florence rejects Mylys’ marriage offer, claiming that she “will love no man,/ But him that brought [redeemed] me on the cross.”²⁴⁶ As a dedicated bride of Christ, all subsequent attacks on Florence’s virginity can be viewed as both a secular crime against her, and a divine sin against the laws of the church. Mylys keeps Florence as his captive

²⁴¹ *Le Bone Florence of Rome*, lines 763–765.

²⁴² *Le Bone Florence of Rome*, lines 580–582.

²⁴³ *Le Bone Florence of Rome*, line 828.

²⁴⁴ *Le Bone Florence of Rome*, lines 1067–1070.

²⁴⁵ *Le Bone Florence of Rome*, lines 1093–1095.

²⁴⁶ *Le Bone Florence of Rome*, lines 1104–1105.

as she is imprisoned and guarded by twelve armed knights.²⁴⁷ Her vulnerability is heightened as Florence does not have the protection of good men, mainly her father and her husband. Instead, Florence is isolated from the protection of good men and is surrounded by stock characterisations of evil men. The wicked nature of Mylys is repeatedly emphasised as he is described as “false” and “evil” throughout the narrative.

We are told that Mylys intentionally misleads Florence, as “the right way lay due east,/ And he led her southwest,” isolating her even more.²⁴⁸ Upon reaching a “deep gulley,” Florence suggests that they stop,²⁴⁹ but Mylys has different intentions:

“Thou schalt hym see neuymare.”
 Tho the lady sighed wondur sare,
 And felle of on hur palfray.
 He bete hur wyth hys nakyd swyrde,
 And sche caste up many a rewoffull rerde,
 And seyde ofte, ‘Weleawaye
 Schall Y neuyr my lorde see?’
 ‘No, be God that dyed on tre,’
 The false traytur can saye.
 Up he hur caste, and forthe they rode,
 Hastely wythowten any abode,
 Thys longe somersday.
 They were nyghtyd in a wode thyck,
 A logge made that traytur wyck,
 Undurnethe a tree.
 There he wolde haue leyn hur by,
 And sche made hur preyer specyally,
 To God and Mary feyre and free:
 ‘Let neuyr thys false fende
 My body nodur schame nor schende,
 Myghtfull in mageste!’
 Hys lykyng vanysched all away.

²⁴⁷ *Le Bone Florence of Rome*, lines 1354–1356.

²⁴⁸ *Le Bone Florence of Rome*, lines 1414–1415.

²⁴⁹ *Le Bone Florence of Rome*, lines 1416–1420.

[“Thou shall him see no more,”/ Then the lady sighed terribly,/ And fell off her palfrey./ He beat her with his naked sword,/ And she cast up many woeful cries,/ And said often, “oh woe/ Shall I never my lord see?/ No, by God that died on the cross,”/ The false traitor said./ Up he cast her and forth they rode,/ Hastily without any abode,/ This long summer’s day./ They spent the night in a thick wood,/ A lodge made [by] that wicked traitor,/ Underneath a tree,/ There he would have laid by her,/ And she made her prayer specially,/ To God and Mary fair and free:/ “Let never this false fiend/ Shame nor disgrace never my body,/ Almighty in majesty!”/ His lust vanished all away.]²⁵⁰

The sexual nature of the assault is illustrated by the “naked sword” that Mylys uses to beat Florence. Her pain is explicit, as she cries out multiple times. After the physical assault, Mylys then tries to rape her, but through miraculous Marian intervention, his lust disappears. The narrative is suggesting that the worthy will be saved from bodily defilement, as Florence receives divine protection which saves her body from “shame” and “disgrace.” This echoes the real debates among theologians, previously discussed, concerning the degree of guilt and shame that virgins who are raped endure. These social issues are brought up in this scene, in that Florence knows that if she is raped, the disgrace and dishonour is hers to bear. Much like the preaching of Augustine previously discussed, virginity is not something that can be restored and once it is taken, the woman is considered forever changed. After setting a hermit on fire, and then threatening to burn Florence to death,²⁵¹ Mylys tries to rape Florence again:

And there he wolde by hur haue layne,
But sche preyed God to be hur schylde;
And ryght as he was at assaye.
Hys lykyng vanyscht all awaye,
Thorow the myght of Mary mylde.
Tymely as the day can dawe,
He led hur thorow a feyre schawe,
In wodes waste and wylde;
Euyn at undurne lyghtyd he,

²⁵⁰ *Le Bone Florence of Rome*, lines 1422–1444.

²⁵¹ *Le Bone Florence of Rome*, lines 1479–1485, 1494.

Downe undur a chesten tre,
 The feyrest in that fylde.
 He seyde, 'Thou haste wychyd me,
 I may not haue to do wyth the,
 Undo or thou schalt abbey.'
 Sche answeryd hym wyth mylde mode,
 'Thorow grace of Hym that dyed on rode,
 False traytur thou schalt lye.'
 He bonde hur be the tresse of the heere,
 And hangyd hur on a tre there,
 That ylke feyre bodye;
 He bete hur wyth a 3erde of byrke,
 Hur nakyd flesche tyll he was yrke,
 Sche gaf many a rewoffull crye.

[And there he would by her have laid,/ But she prayed to God to be her shield,/ And right
 as he was going to,/ His lust vanished all away,/ Through the might of Mary mild./
 Timely as the day can dawn,/ He led her through a fair thicket,/ In woods waste and
 wild;/ He alighted at mid-morning,/ Down under a chestnut tree,/ The fairest in that field./
 He said "you have bewitched me,/ I may not have my way with you,/ Undo [your spell]
 or you shall pay for it."/ She answered him with mild mood,/ "Through grace of Him that
 died on the cross,/ False traitor you shall lie [dead]."/ He bound her by the lock of her
 hair,/ And hung her on a tree there,/ That lady of fair body;/ He beat her with a birch-tree
 branch,/ Her naked flesh until he was exhausted,/ She gave many a rueful cries.]²⁵²

The blending of physical and sexual violence is apparent, as Mylys is frustrated at his inability to
 have sex with Florence and so he physically rips on her hair to hang her from a tree and then he
 presumably takes off her clothes in order to beat on her naked flesh with a branch. Like
 hagiographical stories of the mutilation of virgin martyrs, Florence is saved from rape by divine
 intervention yet again although this time it is at the expense of her earthly body. Allowing herself
 to be physically abused, as Florence is in a "mild mood," she knows that her virginal body will
 prevail despite the harm to her physical flesh. Florence represents the ideal, perfect (non)rape
 victim. She has many serious physical injuries, which the courts and public popular opinion

²⁵² *Le Bone Florence of Rome*, lines 1496–1518.

would immediately recognise as proof of the attempted rape. Like the explicit sources of evidence prescribed in *Glanvill*, *Bracton* and *Westminster I*, Florence has dishevelled hair, ripped and torn clothing, and bruising and bleeding flesh. The visible signs of violence that Florence acquires are nearly identical to those that are illustrated in the Morgan Picture Bible and Queen Mary's Psalter (see chapter 4). The romance is repeating the written legal (*Glanvill*, *Bracton*, and *Westminster I*) expectations of physical bodily proof of *raptus* almost verbatim. Beyond coincidence, or mere entertainment, these markers of violence on the female body ensure Florence's victim status from a contemporary legal perspective.

Florence raises the hue and cry by screaming out in pain to such a degree that Sir Tyrry "heard the cries of that fair lady,/ There he went with his men."²⁵³ Once again, Florence is demonstrating the legal expectations of women to raise the hue and cry to alert others of their rape. Upon hearing the men approach, Mylys flees and abandons Florence in the woods with "the fairest palfrey he left there,/ And herself hanging by her hair,/ And her rich garments."²⁵⁴ When Sir Tyrry and his men find Florence she is weak from the exhaustive beating Mylys had given her and her clothes are clearly described as being left behind. This suggests that Florence was naked when she was rescued by Sir Tyrry and this further works to substantiate her victim status. It is also reminiscent of the exposed and injured body of virgin martyrs in hagiography. They untangle her hair to relieve her from the tree and we are told about the severity of her injuries:

Sche myȝt not speke, þe romance seyde,
On a lyter they hur leyde,
And to the castell hur led.
They bathyd hur in erbys ofte,
And made hur sore sydes softe,

²⁵³ *Le Bone Florence of Rome*, lines 1525–1526.

²⁵⁴ *Le Bone Florence of Rome*, lines 1531–1533.

For almoste was sche dedd.
 They fed hur wyth full ryche fode,
 And all þyng þat hur nede stode,
 They seruyd hur in that stedd.

[She could not speak, the romance said,/ On a litter they laid her,/ And to the castle her led./ They bathed her in herbs often,/ And made her sore sides soften,/ For almost was she dead./ They fed her with full rich food,/ And all things that she needed,/ They served her in that spot.]²⁵⁵

The brutality of Mylys' rape attempt and subsequent violent attack is depicted in the severity of Florence's injuries. She is almost dead due to the beating he gave her. They bathe her in herbs to sooth her physical injuries and she is slowly nurtured back to health.

Like virgin martyrs, Florence willingly endures bodily injury to preserve her chastity. From the perspective of contemporary *raptus* laws, Florence is undoubtably a victim. She fulfills all the necessary criteria to ensure victim status in the courts; blood, bruising and torn and stained clothing. This has not been noted by previous scholars. The evidence strongly suggests that her physical injuries are more than hagiographical rhetoric; rather, they are legally instructive to the expectation of women to resist their rape at the expense of their physical bodies. The legal reality is paramount to the audiences' interpretations of Florence; she does everything correct from the legal perspective in that she raises the hue and cry to alert others, she resists the rape, and she has extreme bodily injury to show as legal proof of the assault.

While recovering from Mylys' assault on her, Florence is subjected to another rape attempt, this time by a knight in Sir Tyrry's household named Machary. We are told that he watched Florence "day and night," stalking her like a predator until he finally made his move:

²⁵⁵ *Le Bone Florence of Rome*, lines 1546–1554.

In hur chaumbur stode that maye,
 To hur than can he fare;
 He leyd hur downe on hur bedd,
 The lady wepyd sore for dredd,
 Sche had no socowre thare.
 Before hur bedd lay a stone,
 The lady toke hyt up anon,
 And toke hyt yn a gethe,
 On the mowthe sche hym hyt,
 That hys fortethe owte he spytt,
 Above and also benethe.
 Hys mowthe, hys nose, braste owt on blood,
 Forthe at the chaumbur dore he ȝode,
 For drede of more wrethe;

[In her chamber stood that maiden,/ To her then he went to see;/ He laid her down on her bed,/ The lady wept sorely for dread,/ She had no one to protect her there./ Before her bed lay a stone,/ The lady took it up immediately,/ And took it in a haste,/ On the mouth she hit him,/ That his front teeth out he spat,/ Above and also beneath./ His mouth, his nose, busting out blood,/ Towards the chamber door he went,/ For dread of more wrath;]²⁵⁶

The detailed physical injury which Florence gives to Machary is graphic; she hits him with the bed-stone causing him to lose his upper and lower front teeth and blood is pouring out of his nose and mouth. The text uses the exact same word, *dredd*, “dread,” to describe both Florence and her ravisher at different stages in the attempted rape. Florence is described as weeping for dread as the knight approaches her,²⁵⁷ but after she hits him the knight is then described as leaving the bedroom “for dread of more wrath.”²⁵⁸ This literary repetition works to re-centre the narrative around Florence’s acts of agency in the face of sexual violence, as she who initially felt dread imposes those feelings onto her would-be-ravisher.

²⁵⁶ *Le Bone Florence of Rome*, lines 1598–1611.

²⁵⁷ *Le Bone Florence of Rome*, line 1601.

²⁵⁸ *Le Bone Florence of Rome*, line 1611.

The initial punishment for Florence's assumed murder of Sir Tyrry's daughter is to be burned at the stake.²⁵⁹ We are told that Florence was stripped of her rich garments and dressed in "sympull atyre," when she is led to the burning fire.²⁶⁰ Reminiscent of a trial by ordeal, it is clear that Florence is about to endure the same punishment prescribed to women found guilty of treason. Although burning at the stake is not a punitive measure used in *raptus* laws, it was a common punishment, particularly for female felons. This scene is not simply included to provide excitement to the story, but rather, it is informing the audience that in this fictional story there are real legal repercussions to the crimes committed. This is retold a few stanzas later when Florence comes upon a thief who is about to be hung on the gallows.²⁶¹ Thus, even in the fictional narrative of *Le Bone Florence of Rome*, there are accurate legal punishments which are reflective of the contemporary laws of medieval England.

Having been saved from being burned at the stake, Florence is exiled into the woods where she saves a thief from the gallows. However, the thief deceives her and sells her to a mariner for nearly as much gold as her bodyweight.²⁶² Florence is now objectified for her bodily worth, which has literal monetary value. The female body is an object to be possessed by men and passed between them. This harks back to the marriage market value of virginal maidens and the very real economic loss to fathers when their daughters are raped of their virginity. The monetary value of the female body was controlled by men. The romance is depicting this in a very explicit manner, as Florence is literally being sold for her weight in gold. However, on the

²⁵⁹ *Le Bone Florence of Rome*, lines 1672–1683.

²⁶⁰ *Le Bone Florence of Rome*, lines 1672–1673.

²⁶¹ *Le Bone Florence of Rome*, lines 1711–1712.

²⁶² *Le Bone Florence of Rome*, lines 1783–1784, 1789–1790.

implicit level there is the opportunity for debates and discussions among audience members about the value of the female body beyond its monetary worth.

All of the men onboard the ship thought that they could take Florence “to leman haue fonge,/ Ylke oon aftur odur had done;” that is, that they could sleep with her, “each one of them after the other was done.”²⁶³ The threat of gang-rape is obvious, and it is here that the third rape attempt is made:

The marynere set hur on hys bedd,
 Sche had soone aftur a byttur spredd,
 The schypp sayled belyve;
 He seyed ‘Damysell Y haue thee boght,
 For thou art so worthely wrought,
 To wedde the to my wyve.’
 Sche seyde, ‘Nay that schall not bee...’
 In hys armes he can hur folde,
 Hur rybbes crakyd as they breke wolde,
 In struglynge can they stryve.
 Sche seyed, ‘Lady Mary free,
 Now thou haue mercy on me,
 ...That Y take no schame today,
 Nor lose my maydynhede.’

[The mariner set her on his bed,/ She had soon after a bitter spread,/ The ship sailed vigorously;/ He said, ‘Damsel I have bought you,/ For you are so worthily shaped,/ I will wed you as my wife.’/ She said, ‘No that shall no be...’/ In his arms he folded her,/ Her ribs cracked as they would break,/ In a struggle they engage./ She said, ‘Lady Mary free,/ Now you have mercy on me,/...That I take no shame today,/ Nor lose my maidenhood.’]²⁶⁴

Once again, Florence is the recipient of the male actions as he lays her on his bed. The mariner explains that he is enticed by her physical beauty in a way that attempts to justify his violent actions. In claiming this, the mariner exemplifies *Bracton*-era legislation which states that men

²⁶³ *Le Bone Florence of Rome*, lines 1829–1830.

²⁶⁴ *Le Bone Florence of Rome*, lines 1840–1857.

rape because of the beauty of a woman. Florence's non-consent to coitus and marriage is unambiguous as she says "no." Her verbal non-consent is immediately ignored by the mariner as he physically grabs her with such force that he cracks her ribs. The physical altercation is described as *struglynge*, that is "a struggle." This is highly indicative of the legal expectation of women to resist rape. The physical injuries denote that an altercation, or a struggle, occurred which in turn implies that the woman (here, Florence) attempted to resist the attack. Fictional Florence is demonstrating this real legal expectation and in doing so ensures that she is viewed as a victim. Adding to the didacticism of the scene, Florence states that if her virginity is taken from her, it is her shame to carry. Even though she verbally did not consent, and that she is engaged in a physical struggle to preserve her virginity, the potential burden of shame is, nonetheless, hers to endure. This notion is referenced later in the narrative when Emere and Florence finally wed because she was "chaste and clene."²⁶⁵ Rape is described in this romance repeatedly as disgraceful, and dirty, but these connotations are applied to the woman not the rapists themselves.

Thanks to Marian intervention a storm begins to form and the mariner says that all men on board will drown because of the rough waters. In typical hagiographical fashion, Florence is happy to die a virgin, as she would rather "to haue be dedd,/ Then there to haue loaste hur maydynhedd,/ Or he had hur by layne."²⁶⁶ This is paralleling the virgin martyr narrative that it is better to die than to be raped of one's virginity. After the ship is destroyed by the storm, and every man on board drowns (except the attempted rapist),²⁶⁷ Florence washes ashore and takes refuge in a convent. This concludes all three attempted rapes of Florence in *Le Bone*.

²⁶⁵ *Le Bone Florence of Rome*, line 2163.

²⁶⁶ *Le Bone Florence of Rome*, lines 1867–1869.

²⁶⁷ *Le Bone Florence of Rome*, lines 1870–1872.

While at the convent Florence gains miraculous healing abilities and the mariner is suffering from a genital wound. We are told that “Hys lymmes were roton hym froo,” that “his genitals were suppurating.”²⁶⁸ The festering wound of his genitals resulting in the secretion of pus serves as a form of divine justice in that his desire to rape Florence led to the infection of his genitals. Moreover, this echoes *Bracton*-era legislation that the convicted rapist should lose his testicles because they were the source of his burning desire to rape. While all of the offending men are confessing their sins, Mylys explicitly state that his intention was to “refte hur maydynhede,” that is “to steal her maidenhood.”²⁶⁹ There is nothing ambiguous about the attempted rapes in *Le Bone Florence of Rome*, as the men confess their desire to oppress Florence and take her virginity.

The Burning

Emere, who also comes to the convent to get his wound healed, is enraged by the attempted rapes of Florence, and in an extremely vengeful state, he orders all of the attempted rapists to be burned at the stake.²⁷⁰ Out of the seven extant versions of the story, this burning scene appears in only four of them, including the Middle English Cambridge text.²⁷¹ The Cambridge manuscript states that “He made to make a grete fyre,/ And caste them yn wyth all ther tyre,/ Then was the lady woo.”²⁷² Despite the hagiographic tendencies of the romance, Emere demonstrates that even after confession and the healing of their diseases as proof of their

²⁶⁸ *Le Bone Florence of Rome*, line 2028; *The Middle English Dictionary*, “roten adj. 1b.”

²⁶⁹ *Le Bone Florence of Rome*, line 2051.

²⁷⁰ *Le Bone Florence of Rome*, lines 2117–2121.

²⁷¹ Stavsky, *Le Bone Florence of Rome*, 12–13.

²⁷² *Le Bone Florence of Rome*, lines 2119–2121.

resolution, he does not accept divine justice. Instead, Emere demands secular punishments for the crimes committed against his wife.

As we have already seen with the real cases of Eleanor West, Margery Child, and Mariota Wildeborleye, husbands (or fathers and even kings) legally claim victim status of their daughter's or wife's ravishment. Here, Emere is claiming this legal status by demanding secular justice for the crimes against him, as the husband of Florence. Florence is woeful when they are thrown into the fire, making it clear that she does not want these men to be burned to death. However, Emere has claimed victimhood as her husband and in turn, he demands justice much like the real Sir Thomas West did. The legal reality represented in Emere's actions was dismissed by Jonathan Stavsky, who claims that "Emere's burning of the villains...is neither inevitable nor representative of late-medieval standards of conduct."²⁷³ On the contrary, this is a real legal identity that men could, and frequently did, claim. Even King Edward III claimed victim status for the loss of marriage rights to Margery de la Beche. As previously mentioned, the legal context of the Middle English *Le Bone Florence of Rome* dates from the late fourteenth century and thus, it is being read during the time of transition from Westminster II to the 1382 Statute of Rapes. This historical legal context exposes the real fears of lawmakers about protecting male rights, male property, and male honour in *raptus* cases. The Statute of Rapes ensured that husbands and fathers had the legal capacity to demand justice for the crimes against the bodies of women. The romance opens the space for contemporary audience members to discuss Emere's actions during the same time that the English parliament was debating the petition of Sir Thomas West. This legal context has been entirely ignored by scholars to date, but

²⁷³ Stavsky, *Le Bone Florence of Rome*, 6.

it is crucial in interpreting the unique ending included in the Middle English version of *Le Bone Florence of Rome*.

Concluding Thoughts on *Le Bone Florence of Rome*

Despite the work done by scholars to interpret *Le Bone* as a secular saint's life, this research suggests that the legal context of secular rape laws provides yet another layer to the explicit violence done to Florence during the attempted rapes. Physical injury and non-consent intricately relate the contemporary *raptus* laws and the romance of *Le Bone Florence of Rome*. Florence is persecuted throughout the romance because of her beauty, her wealth, and her lack of protection by "good" men. These themes are also repeated in *Sir Degare*, *Sir Orefeo*, and *Sir Gowther*. Proclaiming to be a bride of Christ, Florence acts like a virgin martyr adding to the secularised hagiographic themes of the romance.

Raptus, referring to rape and/or abduction, is evident in the first attempted rape of Florence. Mylys abducts Florence against her will, for the purposes of marriage, and in doing so, he attempts to rape her. Florence's resistance includes verbal non-consent, when she initially rejects his marriage offer and then when crying out during the offence raising the hue and cry, and spiritual resistance when praying to the Virgin Mary to preserve her chastity. Unlike Mylys, who wants to marry Florence, the second rape attempt is not for the purpose of marriage, but because of her striking beauty, reaffirming the continuum of lust and seduction leading to attempted rape. This is a common narrative arc in Middle English romance and the laws, specifically *Bracton*. Florence is so beautiful that she can drive courtly men (since Machary is a knight of Sir Tyrry's court) mad with lust.

The paradox of Florence's initial objectification as a rapable body, in that she is solely the object of male desire, and her subsequent subjectivity and agency as a defiant heroine that preserves her virginal status, concurs with contemporary legal and normative understandings of rape and women's culpability. Rape, of course, was one of two crimes that married women could prosecute independently. Florence is technically married to Emere, although the marriage is not yet consummated. In the real legal courts of medieval England, married women receive legal subjectivity and agency through the objectification of rape. Florence embodies this paradox as both a rapable body and a resisting heroine, who demonstrates subjectivity through her resistance to rape.

The third and final attempted rape encompasses the broad legal definition of *raptus*, as Florence is both captive on the ship and about to be raped. The mariner, like Mylys, wants to rape and marry Florence. The continuum of lust, seduction, rape, and marriage is being brought up again. Florence verbally resists by stating "no that will not happen," at which point the sailor attempts to rape her. Both Florence's verbal and physical resistance fail her here and she finally relies on Marian intervention.

The various forms of Florence's resistance include verbal, physical, and spiritual. Her verbal resistance fails her all three times. Her physical resistance saves her from Machary, however it is Florence's spiritual resistance, her prayers, which save her from the attempted rape by Mylys and the sailor. This further highlights the paradox of Florence's resistance, which more often successfully manifests itself as a submission of her will to a higher power, rather than any overt individual action. As Frances Ferguson argued, the woman's "truthfulness and her powerlessness" are intricately interwoven, as Florence (and real women) are believed in court

due to their lack of agency and their bodily domination.²⁷⁴ In this way, the woman's "lack of power guarantees her truthfulness,"²⁷⁵ in the eyes of the law. In looking at Chaucer's writing, Elaine Tuttle Hansen also states that women paradoxically gain "certain kinds of power by embracing powerlessness,"²⁷⁶ which remarkably reiterates the resistance offered by Florence in accepting the fate of divine intervention.

Assuming authorial intention is not the purpose of this analysis, although, thinking about the didactic messages that the author is trying to promote, or that audience members gleaned, is worth considering. Florence does everything right, but ultimately without divine intervention her resistance would have been futile. Is the author suggesting that women and girls should continue to defend themselves, but in the end only the worthy will be saved from rape? Echoing hagiographic texts, Florence's virginal body is preserved at the expense of her physical earthly body. Her physical injuries are temporary and trivial compared to the preservation of her chastity for her husband. But there is more here than mere hagiographic rhetoric. When looking at the romance from the perspective of contemporary statutory laws, the physical injuries inflicted on Florence take on a much more important meaning, beyond the traditional hagiographic motif of saints' lives and threatened virginity.

The romance appears to be purposefully incorporating the legal requirement for physical injuries. Mylys beats her specifically on her naked flesh, until he exhausts himself, causing her to have injuries so bad that he nearly kills her. Furthermore, he rips off Florence's clothing, presumably leaving them torn. The attack by Mylys fulfills all the prescribed proof of rape that *Glanvill*, *Bracton* and *Westminster I* needed, even though the rape is not actually committed.

²⁷⁴ Ferguson, "Rape and the Rise of the Novel," 97.

²⁷⁵ Ferguson, "Rape and the Rise of the Novel," 97.

²⁷⁶ Hansen, *Chaucer and the Fictions of Gender*, 190, 192.

When at Sir Tyrry's household, Florence is described as so wounded that she cannot speak, she is bathed in herbs to soothe her injuries and she was considered almost dead. And lastly, the sailor breaks her ribs. These physical injuries are what the laws state the woman must show to the authorities as evidence of rape. *Le Bone Florence of Rome* makes it clear that all attempted rapes are by force, and against her will, thus concurring with contemporary understandings of the crime all the way from *Glanvill* to the Statute of Rapes. Florence's physical injuries ensure that she is viewed as a victim. Much like the actual case of Agnes Enovere (1287), who at seven years old was violently beaten yet was able to preserve her virginity, fictional Florence emulates the expectations not only praised in hagiography, but also evident in real court documents.²⁷⁷ Unfortunately this was a double-edged sword; young Agnes Enovere fought so bravely to preserve her virginity that, despite the severe injuries she showed to the authorities, the crime was deemed a minor trespass because her virginity remained intact. Perhaps Agnes's story was not unique, and just maybe, the story of Florence provided the space to debate such court rulings.

Past scholars who have studied *Le Bone Florence of Rome* have come to different conclusions about the physical injuries done to Florence than the present research suggests. For instance, Felicity Riddy claims that Florence is a secular saint whose virginity is saved for her husband rather than Christ.²⁷⁸ Dieter Mehl also states that *Le Bone* is a secularised saints' legend, classifying the romance as "the longest of the homiletic romances (2,187 lines) it combines romantic and religious elements."²⁷⁹ Mehl argues that Florence is a passive victim of circumstance and "in particular of her beauty," and her suffering to preserve her virginity

²⁷⁷ TNA: JUST1/328 m 6. For a full discussion see chapter 3.

²⁷⁸ Riddy, "Temporary Virginity and the Everyday Body: *Le Bone Florence of Rome* and Bourgeois Self-Making," 203–206.

²⁷⁹ Mehl, *The Middle English Romances of the Thirteenth and Fourteenth Centuries*, 140.

resembles virgin martyrs.²⁸⁰ This is further endorsed by Corinne Saunders who states that *Le Bone* demonstrates how “the more directly a romance draws on the structure of hagiography, the more graphic the threat of rape is treated.”²⁸¹ Saunders states that Florence is “like the virgin martyrs,” in that the “preservation [of her virginity] proves her virtue.”²⁸² Although Florence is reminiscent of a secular saint, as these other scholars have suggested, the evidence suggest that the contextualisation of the romance within contemporary English secular laws on rape adds another layer of understanding to the narrative’s unmistakable emphasis on the injuries Florence endures. Dunn is correct in stating that Florence “had contemporary real-life parallels,” and that the horrific realities of some medieval women were “mirror[ed in] the fictitious tale.”²⁸³ However, Dunn focuses her analysis on heiress abduction and explaining how the societal anxieties surrounding marriage by capture are evident in *Le Bone* and court documents.²⁸⁴ This same argument was made by Carol Falvo Heffernan in stating that marriage by abduction was thoroughly debated by clergyman during the time of *Le Bone*’s composition.²⁸⁵ This, although a compelling argument, does not do justice to the full extent of legal realism presented within the romance and its purpose.

Florence resists all three attempted rapes, and she proves her non-consent by enduring physical injuries which she acquires at the hands of her ravishers. In the context of *raptus* laws, the emphasis on Florence’s injuries is more than saintly rhetoric, as they prove her non-consent

²⁸⁰ Mehl, *The Middle English Romances of the Thirteenth and Fourteenth Centuries*, 142.

²⁸¹ Saunders, *Rape and Ravishment*, 203.

²⁸² Saunders, *Rape and Ravishment*, 205–206.

²⁸³ Dunn, *Stolen Women*, 91–92.

²⁸⁴ Dunn, *Stolen Women*, 92, 194.

²⁸⁵ Carol Falvo Heffernan, “*Raptus*: A Note on Crime and Punishment in *Le Bone Florence of Rome*,” in *Medieval Studies in Honor of Lillian Herlands Hornstein*, eds. Jess B. Bessinger Jr. and Robert R. Raymo (New York: New York University Press, 1976), 173–179.

and thus make her a real victim. Concurring with contemporary statutory law, Florence is a true victim and the perfect model for the audience members in demonstrating women's legal responsibility to resist rape.

Final Thoughts on Rape in Middle English Romance

Romance and rape (threatened or actualized) are not, as modern readers would likely assume, mutually exclusive during this period. Rather, these select romances and their scenes of ravishment demonstrate the critical ways in which romance narratives used the threat of rape and/or abduction as a common narrative device. Literary scholars are correct, in that Middle English romance uses rape as a tool for plot development, a marker of male chivalric identity formation, and as an intentional mimicking of the lives of virgin martyrs. However, the previous chapters have attempted to demonstrate that when one reads romance in conjunction with the contemporaneous normative and legal assumptions about rape, there is the potential for a more nuanced interpretation of the actions of the fictional characters. Beyond hagiographic rhetoric, or simply to excite the audiences with more drama, the rape and/or abduction scenes are mimicking a legal reality that the medieval audience would have undoubtedly been aware of.

The actions of fictional Florence, Belisaunt, Heurodis, the duchess, and the princess make sense when viewed from the perspective of medieval England's *raptus* laws. There are continual representations of a woman's verbal non-consent not being enough to stop rape and/or abduction and that she must physically resist as well. Romance implies that male lust can lead to seduction and rape, much like the normative assumptions that men rape because of a woman's beauty. Rape and seduction are placed on the same continuum in both Middle English romance and

medieval England's *raptus* laws. Both the laws and the literary sources end this continuum of lust, seduction, and rape in the same way, which is with the potential of marriage. Romance continually excuses masculine aggression as we have seen with the fairy rapist knight, the demonic hybrid Sir Gowther, and the ravishing fairy king. These violent tendencies are normalised in romance, as if they are inevitable outcomes of women's isolation and vulnerability. Although masculine aggression is condemnable in romance, as in the laws, it is nonetheless continually depicted as a display of masculine lust. These fictional metaphors of men are continually committing felonious acts out of desire, and this is similar to the stated reasoning for Belisaunt's malicious accusations. The duality of the laws, to protect innocent women from rape and to protect innocent men from vindictive women or loss of property, are represented throughout the romances under study here.

Prevailing medical thought about conception and consent, as well as ecclesiastical demands of the marital debt, and the legal impossibility of marital rape, are all real social issues which are represented through the princess in *Sir Degare* and the duchess in *Sir Gowther*. Questions regarding malicious accusations of rape and the validity of the marriage clause in *raptus* cases are depicted through the actions of Belisaunt and her father in *Amis and Amiloun*. Florence is depicted as the perfect victim, as she has all of the legal requirements of proof to corroborate that a crime occurred. *Le Bone Florence of Rome* includes the visible markers of violence, which are the exact same tokens of proof stated in the laws from *Glanvill*, *Bracton*, and Westminster I. On the other hand, Orfeo, Belisaunt's father, and Emere display how the male next of kin can claim victim status of their wives' and daughter's ravishments, during the same time as when Sir Thomas West was petitioning similar claims in parliament. By engaging with the legal contexts of the twelfth to the fourteenth century, the era when these romances were

composed and consumed, we can uncover the deeper meanings behind the behaviours and actions of these fictional people. These characters are enduring real-life problems, which make them relatable to the audience, both contemporary and modern.

The “elsewhere of discourse,”²⁸⁶ that is informing the stories themselves and the audiences’ reactions, lies in the legal implications of medieval England’s *raptus* laws. Harking back to Rudine Sims Bishop, these fictional stories provide windows into otherworlds, which mirror a reality with many social concerns. These issues include feminine sexuality, bodily worth, rape, consent and non-consent, abduction, physical abuse, malicious accusations of rape, resistance to rape, and pregnancy from rape. These real societal concerns are addressed in the fictional romances to a high degree of realism. Thus, romance is indeed representing a legal and lived reality, which allowed the space for the audience to engage and debate extremely pressing societal issues. When reading the rape scenes of romance in conjunction with medieval England’s *raptus* laws, it is apparent that Middle English romance is representing a reality without necessarily intending to be realistic. The windows and mirrors into the lived experiences and legal expectations of real women turn the fictional worlds into sliding glass doors that we are invited to walk through.²⁸⁷

²⁸⁶ Strohm, *England’s Empty Throne*, 153.

²⁸⁷ Bishop, “Mirrors, Windows, and Sliding Glass Doors,” ix.

Chapter 9:

Conclusion: The Body of Proof and the Rapable Body

This research has demonstrated that from the twelfth to the fourteenth century, England's secular *raptus* laws gradually eroded a woman's legal right to appeal her own rape. This transition has been noted by previous historians as beginning with the Statute of Westminster I and II and culminating in the Statute of Rapes. However, scholars had not yet considered the development of *raptus* laws from *Glanvill* to the Statute of Rapes. This, as has been argued throughout this thesis, is an oversight, and when historians consider the legal treatises of *Glanvill* and *Bracton* together with Westminster I and II and the Statute of Rapes, then we can more accurately evaluate England's secular *raptus* laws. I suggest that the earlier legal treatises of *Glanvill* and *Bracton* contributed to a lineage of distrust of women's accusations that predates Westminster I. It is through this comprehensive analysis and close reading of the five legal ages that we can appreciate the development and ultimate frustration of the marriage clause within the *raptus* laws.

The legal barriers attempting to limit a woman's right to appeal rape, in efforts to protect the family wealth, shifted the legal victim status away from the woman and onto her male kin.¹ This is not a new concern in 1275 with Westminster I, but rather from *Glanvill* onwards men of law were consistently demonstrating fears about the inequality of social classes that could be exploited through the marriage clause. Despite the obstacles to appealing rape, women continued to negotiate the laws and they continued to exploit the marriage clause to their own benefit, as the case of Eleanor West highlights.

¹ Phillips, "Written on the Body," 138.

Chapter 3 “The Eyre Courts in Practice” analysed the previously unpublished cases of twenty-eight trial records from the age of *Glanvill* to Westminster II, c.1201–1321. As other scholars have argued, the eyre courts were generally a well-functioning and effective method of criminal justice. However, the conviction rates of *raptus* cases in the eyre courts are noticeably lower than those of other felonies, such as counterfeiting, treason, robbery, and even homicide.² The cases under investigation here had a 7.14% conviction rate where the full punitive application of the law was prescribed. This represents just two of the twenty-eight cases. The lack of full felony convictions suggests a reluctance to convict men of rape based on the severity of the punishment, with the worst being physical mutilation and the loss of life.³ Moreover, the low conviction rates to *raptus* cases are likely the consequences of underlying socio-cultural attitudes regarding heterosexual encounters and female sexuality, which are interfering in the courts and working against women trying to appeal rape. I suggest that the gender expressions of medieval English culture, that passivity was a marker of femininity, and that “ladies” were expected to decline sex, ensured that the wooing of a reluctant lady enabled a culture of threatened rape. That is, heteronormative gender roles encouraged persistent masculine seduction to actively entice or intimidate women into sex and it worked to belittle women’s accusations of rape. This highlights that despite the statutes’ stated indifferences to virginity, there was a continual emphasis in the eyre courts on a loss of virginity to secure a conviction. This had devastating consequences for women who were not deemed virgins at the time of the assault, and

² Hanawalt, *Crime and Conflict*, 59.

³ Hanawalt, *Crime and Conflict*, 63.

who were virgins and managed to resist full rape. Even today, the importance of virginal “purity” and the belief that the rape of virgins is the most serious sexual offence are still discussed.⁴

The importance of virginal status was paramount to ecclesiastics, who debated the possibility of the increased holiness of rape survivors and the differences between mental and physical (non)consent. The theological debates around consent of the flesh and consent of the mind are entirely neglected by the secular laws, but they appear in romances, particularly as discussed in relation to *Le Bone Florence of Rome* and *Sir Gowther*. Despite these nuanced theoretical debates in ecclesiastical doctrine, the paradoxical expectations of women to willingly endure their suffering and simultaneously resist created a no-win situation for rape survivors. The expectation of feminine subordination and passivity, as highlighted in hagiography, conduct literature, biblical stories, and canon laws codes, operated in a cultural context that believed women to be sexual temptresses.⁵ Fearing malicious accusations of rape, used to trap “good” men into marriage, the ecclesiastical perspective was complementary to secular courts in creating a legal culture of distrust of women’s rape and/or abduction claims.⁶ This was highlighted as a theme in Belisaunt’s accusations of threatened rape in *Amis and Amiloun*.

The evidence from secular and ecclesiastical texts demonstrate that medieval England viewed consent and non-consent by the injuries (or lack thereof) on the woman’s body. This was reiterated in romance and in the contemporaneous medical beliefs about conception. When reading Middle English romance in conjunction with legal and normative sources on rape, it is apparent that romance is engaging with the very same cultural fears and anxieties that the laws

⁴ Jessica Valenti, *The Purity Myth: How America’s Obsession with Virginity is Hurting Young Women* (New York: Basic Books, 2009); Rachel Sklar, “Welcome to Senator Bill Napoli’s X-Rated Mind,” *HuffPost* (2011) https://www.huffpost.com/entry/welcome-to-senator-bill-n_b_17669

⁵ Wolfthal, *Images of Rape*, 126.

⁶ Prevenier, “Violence Against Women in Fifteenth-Century France and the Burgundian State,” 190.

are engaged with.⁷ The social attitudes around gender expectations, sexuality, and appropriate behaviour often go unwritten in so-called “traditional” historical sources (such as chronicles and law codes). It is in the fictional literature where such cultural practices can be studied. The romances highlighted here, *Sir Degare*, *Sir Gowther*, *Sir Orfeo*, *Amis and Amiloun* and *Le Bone Florence of Rome* all include scenes of sexualized violence against women, either threatened or actualized. The inclusion of violence against women in Middle English romance has been noted by previous scholars, as they claim it is often reduced to a literary device to advance the plot. However, the legal realities within the romances have not yet received adequate scholarly attention. Too often these scenes are dismissed as hagiographical rhetoric to excite audiences, but there is strong evidence to suggest that the rape and/or abduction scenes are mimicking a legal reality that the medieval audience would have recognised.

Through a close reading of the select romances, it was evident that real-life issues around rape were represented, exploited, and frustrated in the fictional literature. The representations of rape as an act of love in romance further worked to minimize masculine aggression and excuse it as an unfortunate consequence of seduction. As has been discussed at length, this was not exclusively a romance construction, but was also evident in the secular laws themselves. Moreover, the actions of the characters are not random but appear to be imitating the legal realities and issues around rape in medieval England. These issues include sexuality, bodily autonomy, rape, consent and non-consent, abduction, physical abuse, marital rape, malicious accusations of rape, resistance to rape, and pregnancy from rape.

⁷ Albrecht, *Sexual Violence and Rape in the Middle Ages*, 227.

These romances stress the importance of the physical force used to overthrow the woman, as the princess in *Sir Degare* and Florence in *Le Bone Florence of Rome* are physically overpowered, and Belisaunt in *Amis and Amiloun* threatens to make herself appear as having been physically attacked. These select romances have nearly identical patterns of non-consent and consent, as defined by the contemporary statutory laws and treatises. All of the romances included in this research have shown the legal responsibilities of women to resist their own rape, and when they are not able to, the application of legal identities is used by way of conception and marriage to “erase” the rapes.

In conclusion, this thesis has aimed to demonstrate that only when we consider the legal texts, the trial records, the ecclesiastical perspectives, and romance literature together, can we truly appreciate the pervasiveness of distrusting women’s accusations of rape without physical proof. It is evident that non-consent to rape was judged (legally and in public opinion) by the proof of the woman’s bodily injury. This is not confined to the Middle Ages as the Canadian Criminal Code still prosecutes Level 3 aggravated sexual assault, based entirely on the severity of physical injury to the victim’s body, as the most serious form of sexual assault. The medieval laws explicitly demanded physical injury as evidence of the woman’s non-consent and conversely, pregnancy legally proved a woman’s consent of the flesh. Even today, lawmakers still debate whether or not pregnancy can occur in a “real rape” scenario.⁸ The medieval sources strongly indicate that the medieval laws constructed three legal identities that women could have; either the innocent victim (based on physical injuries as proof of non-consent), the reluctant but willing accomplice (mental non-consent but physical consent proven by pregnancy from rape),

⁸ Aaron Blake, “Todd Akin, GOP Senate Candidate: ‘Legitimate Rape’ Rarely Causes Pregnancy,” *The Washington Post* (August 2012) <https://www.washingtonpost.com/news/the-fix/wp/2012/08/19/todd-akin-gop-senate-candidate-legitimate-rape-rarely-causes-pregnancy/>

or the culpable woman (no physical injuries to prove that a crime occurred). As discussed at length throughout the previous chapters, these legal identities were not confined to the courtrooms but rather they are easily applied to the characters in romance, and importantly, they are also evident in the trial records of real women.

There are still many unanswered questions, beyond the scope of this thesis, that deserve further examination. For example, how do statistics of convictions in canon court records of *raptus*, where the benefit of the clergy was claimed, compare to the secular courts? More archival research needs to be done in the age of *Glanvill* to determine when the emphasis on loss of virginity emerges. Was it only after *Bracton*, or was virginal status being recorded prior to 1230, and if so, was *Bracton* simply reactionary to changing court practices? Greater attention is needed when looking at socio-economic class disparities. The traditional scholarly interpretation of clergy members and knights is a good start, but scholars should also explore the potential for power disparity in other lines of work, such as millers and teachers. Both occupations were noted in the cases under study here (William Page was a miller and Alan was a teacher), suggesting that to the medieval courts, their occupation was worthy of recording. Moreover, the complexities in studying gang-rape as an initiation into manhood leaves many unanswered questions. In a recent undergraduate class of mine, second-year students discussed rape culture on campus. They talked about some of the contributing factors, from their perspective, as to why university institutions are reluctant to pursue campus rapes, particularly when they involve people from university athletics and sports teams. The students discussed “bro culture,” in relation to group behaviour in a highly charged masculine environment as one of the enabling factors. Some students commented that the athletes who were accused of committing sexual assault on campus were “well liked” and even “looked up to.” The parallels to the medieval past

are striking, as knights and clergymen (and potentially millers and teachers) could also be counted among those with the same attributes. Notable scholar Carissa Harris asked: “how far have we really come?”⁹ In exploring sensationalized cases such those of Bill Cosby and Brock Turner, Harris draws a direct comparison to the medieval past when jurors debated intoxication prohibiting a woman to consent.¹⁰ As Harris notes, these are not new issues. I too believe that in many ways, we are still living in the medieval past when it comes to sexual violence, legal justice, and persistent victim blaming. The medieval cultural and legal constructions of physical proof of non-consent ensured that the “body of proof” was entirely the burden of the rape survivor. As this thesis has shown, this has contributed to a long history of distrust and silencing of rape survivors, the consequences of which can still be felt today.

⁹ Carissa Harris, “800 Years of Rape Culture,” AEON (May 2021) <https://aeon.co/essays/the-hypocrisies-of-rape-culture-have-medieval-roots>

¹⁰ Carissa Harris, “‘A Drunken Cunt Hath no Porter’: Medieval Histories of Intoxication and Consent,” *Medieval Feminist Forum* Vol. 45, No. 2 (2018): 109–134.

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Appendix A:
A Brief History of the Court of the General Eyre

Twenty-eight of the selected cases come from the court of the general eyre, forming the majority of the case studies under investigation in this thesis (the exceptions being the cases of Joan of Kent, Cristine de Menstre, Eleanor West, and Margery de la Beche). *Bracton* states that “justices travel from county to county for the hearing of all causes generally.”¹ These travelling justices held sessions known contemporarily as “the eyre of the justices for the common pleas.”² It is likely that the term “general eyre” is a twentieth-century invention by W. C. Bolland, but it is the term most frequently used to describe these travelling justices.³

According to David Crook, when a visitation was called, usually by the king or his council, there was planning made for the stages of the eyre and the circuits which the justices would take. Letters issued by the chancery, which after 1218 were contained in the Calendar of Patent or Close Rolls, included information on the circuits of counties to be visited and the justices tasked with the job.⁴ There were typically two types of letters patent issued from the chancery: first, those naming the justices and the counties to be visited, and second, a notification letter to the local officials in those counties, including ecclesiastical and secular men such as bishops, earls, and knights.⁵ This second letter patent informed the counties to be visited that certain justices would be holding a general eyre on a particular date, and that they were expected to be “intendant and respondent,” which is why Crook, among others, describes these letters as a

¹ Henry Bracton *de Legibus*, Harvard Law School online, II, 308. “*Sunt iustitii ad itinerandum de comitatu in comitatum, ad omnes causas generaliter vel ad certas...*”.

² David Crook, *Records of the General Eyre*, Public Records Office Handbook number 20 (London: Her Majesty’s Stationary Office, 1982), 1.

³ Crook, *Records of the General Eyre*, 1.

⁴ Crook, *Records of the General Eyre*, 3.

⁵ Crook, *Records of the General Eyre*, 5.

“writ *de intendendo*.”⁶ The third and final letter, contained in the Close Rolls and referred to as the summons, was made to the local sheriff warning him of the upcoming eyre in his county.⁷

In return, eyre justices would receive local documents concerning crown pleas which they were expected to hear at the upcoming eyre. These local documents included a *veredicta*, *privata*, the coroners’ rolls and the sheriffs’ crown plea rolls.⁸ The justices gave local jurors questions, known as the articles of the eyre, regarding criminal activity and royal affairs in their local presenting districts. The presenting jurors answered the articles in what was called the *veredictum*.⁹ As is the general trend from the twelfth to the fourteenth century of expanding legal bureaucracy and standardisation, the articles of the eyre originally totalled about nineteen in 1194, but by 1278, they reached up to 143 and they were continually being added to throughout the early fourteenth century.¹⁰ This was part of the standardisation process involved the transition from an oral *veredictum* to a written one. By 1203 *veredicta* were written down and this was aided by the development of guides, in Henry III’s reign, informing local juries on how to properly write them.¹¹

The presenting juries named those suspected of committing felonies; the accused was brought before the justices of the eyre and entered a plea, which was almost invariably that of not guilty.¹² The coroners’ rolls contained crown pleas which occurred between the visitations of the eyre and they (the coroners’ rolls) were given to the justices when they arrived at the local counties.¹³ Edward I, in the early thirteenth century, ordered that the sheriffs’ rolls were also to

⁶ Crook, *Records of the General Eyre*, 5.

⁷ Crook, *Records of the General Eyre*, 5.

⁸ Crook, *Records of the General Eyre*, 34.

⁹ Crook, *Records of the General Eyre*, 34.

¹⁰ Crook, *Records of the General Eyre*, 34.

¹¹ Crook, *Records of the General Eyre*, 34.

¹² Green, *Verdict According to Conscience*, 15.

¹³ Crook, *Records of the General Eyre*, 36.

contain crown pleas, to be used as a secondary reference to the superior coroners' rolls.¹⁴ These local representatives of the king's justice were traditionally thought of as local knights, but more recent studies have shown that these men were "semi-professional" law enforcement, often making careers for themselves by holding multiple offices.¹⁵

With the aid of chronicle references, scholars speculate that the general eyre was occurring in the reign of Henry II (r.1154–89), however the earliest extant plea roll of the eyre and articles dates from 1194.¹⁶ The general eyre was at its peak of procedure, visitation, and standardisation during the reign of Edward III.¹⁷ The last known general eyre occurred in Kent in 1348; however, after 1294 the general eyre was not held frequently and is more reasonably called individual eyres.¹⁸ Despite the sporadic nature and uneven distribution of visitations, the development of the general eyre is indicative of growing royal control to prosecute crime, by taking away jurisdiction from private pleas between individuals for the most serious of felonies.¹⁹ It is considered common knowledge that the visitations "inspired a mixture of awe, fear, and hatred" amongst the local inhabitants, and especially those of the individual eyres after 1294 (discussed in more detail below).²⁰

The responsibilities of the justiciars of the eyre included: hearing civil and crown pleas in the counties they sat in, foreign pleas (those outside the resident county), gaol deliveries, and after the Gloucester parliament of 1278, complaints accusing local officials, and pleas in the liberties.²¹ The crown pleas, which most often contain the case-studies under investigation here,

¹⁴ Crook, *Records of the General Eyre*, 37.

¹⁵ Burt, *Edward I and the Governance of England*, 32.

¹⁶ Crook, *Records of the General Eyre*, 2, 34.

¹⁷ Crook, *Records of the General Eyre*, 38.

¹⁸ Crook, *Records of the General Eyre*, 2, 7.

¹⁹ Green, *Verdict According to Conscience*, 6.

²⁰ Green, *Verdict According to Conscience*, 14–15.

²¹ Crook, *Records of the General Eyre*, 1, 7.

include new complaints since the previous eyre visitation, as well as those cases which were heard in the previous eyre but no decision was made in the court.²² This was a fairly common practice prior to 1249, as unfinished cases would wait until the next visitation, or if they were unusual cases they would be heard in *coram rege*, the court of the king.²³ As more cases came to be heard by the eyre courts, the interval between visitations became longer, especially during the reign of Henry III, when eyre courts might sit in a district once every eight years.²⁴

Once a visitation was finished, justices dealt with the monetary information arising from the eyre, including fines, a felons' goods, and their property. These separate membranes were placed at the end of the plea rolls and consequently, they are commonly referred to as amercement rolls; however they are also divided according to civil and crown pleas.²⁵ The justice's clerk made a copy of the amercement roll, known as the estreat, which was then delivered to the exchequer, who would detail the financial compensations and fines which were due.²⁶ The final concords, known as "feet of fines," became standardised during the reign of Henry II and, from 1195, they were held in the treasury.²⁷ This standardisation in form, language, and process of the feet of fines can be seen as being indicative of the entire legal process during in England at this time. It was the responsibility of the justiciar to deliver both the feet of fines and the estreat to the exchequer once the eyre was finished. These would in turn be used by the local sheriff to make a record of the money which was due.²⁸ It is important to note that during the reign of Henry III in the 1240s, the royal legal jurisdiction of the general eyre greatly

²² Crook, *Records of the General Eyre*, 1.

²³ Crook, *Records of the General Eyre*, 4.

²⁴ Musson, *Medieval Law in Context*, 138.

²⁵ Crook, *Records of the General Eyre*, 43.

²⁶ Crook, *Records of the General Eyre*, 4, 44.

²⁷ Crook, *Records of the General Eyre*, 8–9.

²⁸ Crook, *Records of the General Eyre*, 12.

expanded simultaneously with the king's worsening financial situation. The coincidence of the court of the general eyre imposing heavier fines for lesser offences during the same time period that the royal coffers were low has led Caroline Burt to argue that "the general eyre came now to be used as a financial tool" in a previously unprecedented manner. To this point, Burt notes that fines in Essex, for example, increased four times from 1227 to 1254.²⁹

The plea rolls themselves were originally the property of individual justiciars, to hold as long as they needed to check facts and when they were regarded as no longer useful to the justiciars they could dispose of them.³⁰ Consequently, because each roll was the property of the individual justice of the eyre, there was no legally binding precedent to medieval English eyre courts.³¹ It was not until 8 December 1257 when the plea rolls of the justiciars of the eyre were ordered to be held in the treasury and during the reign of Edward I that it became standard for justiciars to place their names on the plea rolls.³² Consequently, records are more abundant and easier to identify after these practices were put in place.

Edward I further standardised the two-circuit route of visitations, ensuring that there was simultaneously sessions in the north and the south.³³ Also during the reign of Edward I, there was the introduction in 1276 (JUST1/7) of the king's roll, or the rex roll, where the top of the membrane in the plea roll does not have the name of the justice, but rather *rex* is inscribed in its place.³⁴ The rex rolls were associated not with the justiciar's clerk, but with the king's clerk, formally called the keeper of the writs and rolls.³⁵ There are a number of cases under

²⁹ Burt, *Edward I and the Governance of England*, 30.

³⁰ Musson, *Medieval Law in Context*, 42; Crook, *Records of the General Eyre*, 12.

³¹ Musson, *Medieval Law in Context*, 43.

³² Crook, *Records of the General Eyre*, 12, 24–25.

³³ Musson, *Medieval Law in Context*, 139.

³⁴ Crook, *Records of the General Eyre*, 25–27.

³⁵ Crook, *Records of the General Eyre*, 26.

investigation here which come from these novel rex rolls, such as that of Walos Perk in the 1280–81 Hampshire eyre roll.³⁶

The plea rolls changed gradually throughout the twelfth to the fourteenth century, becoming more elaborate, with more subheadings and divisions, more space, and larger writing.³⁷ Typical plea roll divisions include civil pleas, essoins or excuses for non-appearance, crown pleas followed by amercements with the names of the counties placed in the margins.³⁸ It was not until the reign of Edward I that marking the dates in the margins was common practice.³⁹ In the mid-thirteenth century, more divisions occurred as foreign pleas were separated from pleas held in the county of the visitation and as justices were ordered to hear gaol delivery. This too was separated into its own section in the plea roll.⁴⁰ Crown pleas were organized based on the place of presentment and contained the indictments with a standardised phrase *de indictatis dicunt*, or *presentant*.⁴¹

Prior to Edward III, the fluidity of legal terms such as presentment and indictment were used interchangeably but became more formalised throughout the fourteenth century.⁴² These indictments, made by local presenting juries, named suspected criminals, and were given to the justices of the eyre prior to their visitation.⁴³ Even with this increased standardisation in form, rolls continued to vary depending on the individual clerks.⁴⁴

³⁶ TNA: JUST1/784 m 17d.

³⁷ Crook, *Records of the General Eyre*, 30–31.

³⁸ Crook, *Records of the General Eyre*, 31.

³⁹ Crook, *Records of the General Eyre*, 33.

⁴⁰ Crook, *Records of the General Eyre*, 31–32.

⁴¹ The common phrase of presentment is evident in a number of cases under investigation here, such as TNA: JUST1/784 m 17d and TNA: JUST1/877 m 61d. See also Crook, *Records of the General Eyre*, 32.

⁴² Musson, *Medieval Law in Context*, 152.

⁴³ Crook, *Records of the General Eyre*, 34.

⁴⁴ Crook, *Records of the General Eyre*, 33.

Appendix B:
Circuits of the Eyre for Select Case Studies

Visitations of the general eyre occurred in 1194–95, 1201–03, 1268–72, 1274–77, 1278–89 and 1292–94, after which individual eyres were held between 1299 and 1328. Anthony Musson states “by the mid-fourteenth century, the general eyre was a thing of the past,” as regular visitations stopped.¹ Case studies are drawn from the visitation of 1201–03, 1274–77, 1278–89 and 1292–94 with a few coming from the individual eyres held between 1299 and 1328. The Cornwall eyre of 1201 (JUST1/1171) is the earliest record under study here. The majority of cases come from the late thirteenth century, including the Middlesex eyre of 1274 (JUST1/540), Cumberland eyre of 1278 (JUST1/133), Surrey eyre of 1279 (JUST1/877), Sussex eyre of 1279 (JUST1/921), Kent eyre of 1279 (JUST1/369), Westmorland eyre of 1279 (JUST1/983) and Nottinghamshire eyre of 1280 (JUST1/669).

The Welsh wars from 1282–84 temporarily stopped all general eyre visitations for two years, after which our case-studies resume with the Cornwall eyre of 1284 (JUST1/112), Berkshire eyre of 1284 (JUST1/48), Hertfordshire eyre of 1287 (JUST1/328), Dorset eyre of 1288 (JUST1/213), Wiltshire eyre of 1289 (JUST1/1011), Cumberland eyre of 1292 (JUST1/137), Westmorland eyre of 1292 (JUST1/988), and the Yorkshire and Northumberland eyre of 1293–94 (JUST1/1098), at which point the impending war with France stopped all regular visitations. The late thirteenth century was a general decline of royal legal administration as Edward I was continually siphoning resources to fund his wars with France.² Only three individual eyres will be considered here, all from the early fourteenth century, including the

¹ Musson, *Medieval Law in Context*, 145.

² Burt, *Edward I and the Governance of England*, 4–5.

Cornwall eyre of 1302 (JUST1/117A), Kent eyre of 1313 (JUST1/383) and London eyre of 1321 (JUST1/547A).

Out of the forty-three counties visited, the twenty-eight select case studies come from only fourteen counties: Berkshire, Cornwall, Cumberland, Dorset, Hertfordshire, Kent, London, Middlesex, Nottinghamshire, Surrey, Sussex, Westmorland, Wiltshire and Yorkshire and Northumberland (see Map 1 below). I am cognizant of the geographic distribution of the case studies, with only three counties visited in the northern circuits of Cumberland (JUST1/133 and JUST1/137), Northumberland (JUST1/1098), and Westmorland (JUST1/983 and JUST1/988). In her research of *raptus* in the Patent Rolls, Caroline Dunn explains that the geographic distribution of cases, gaol delivery rolls, and King's Bench records has less to do with geography and more to do with the larger populations in the south.³ I follow Dunn's lead as my research has found that the courts ruled consistently regardless of whether they were in the southern or northern circuit and that the large number of cases from the southern circuit reflects the increased population density of the counties visited.

Visitation of 1201–1203

Of the specific case studies, there is just one from the general eyre visitation of 1201–03, and that is in the Cornwall eyre (JUST1/1171 m 3). Of this general eyre, the counties first visited in the south-western circuit in May–June 1201 included Cornwall, Dorset and Somerset. They were selected because they were not included in the previous visitation of 1198–99.⁴ Malot Crawe's case is located in the crown pleas of this Cornwall eyre of 1201. Between 18–25 June

³ Dunn, *Stolen Women in Medieval England*, 7.

⁴ Crook, *Records of the General Eyre*, 63.

1201, Richard Fleming, his son John, and John Briwes sat at Launceston, on the eastern boarder of Cornwall and heard the case of Malot Cawe.⁵

Visitation of 1274–1277

In the crown pleas of the Middlesex eyre of 1274 (JUST1/540 m 19) there is the case of Margery, daughter of Peter le Fever. This was part of the larger scheme of visitations from 1268–72 which were interrupted for various reasons, including social upheaval leading to longer sessions, and the death of the king, only to resume again in 1274–77. This was the final call for the general eyre in the reign of Henry III. It was an extensive programme with three main circuits: Gilbert Preston was in charge of the northern circuit including Yorkshire, Westmorland, Northumberland, Cumberland, Lancashire, Nottinghamshire, Derbyshire, Warwickshire, Leicestershire, Lincolnshire and Rutland; Richard Middleton led the midland circuit of Somerset, Dorset, Gloucestershire, Herefordshire, Worcestershire, Shropshire, Staffordshire, Oxfordshire, Berkshire, Bedfordshire, Buckinghamshire, Northamptonshire, Huntingdonshire, and Cambridgeshire; lastly, Nicholas Tower sat in the southern circuit of Wiltshire, Hampshire, Devon, Cornwall, Surrey, Sussex, Kent, Middlesex, Essex, Hertfordshire, Norfolk and Suffolk.⁶ With three circuits, incorporating thirty-seven counties, Crook describes this as the most ambitious program in the reign of Henry III, and unsurprisingly it was not fully completed.⁷ With the death of Henry III on 16 November 1272 all eyres were temporarily suspended until Edward I was proclaimed the reigning sovereign.⁸ The Middlesex eyre, containing the case of Margery,

⁵ Crook, *Records of the General Eyre*, 63.

⁶ Crook, *Records of the General Eyre*, 133.

⁷ Crook, *Records of the General Eyre*, 133.

⁸ Crook, *Records of the General Eyre*, 134.

daughter of Peter le Fever, began on 18 November 1274 with Master Roger Seaton as the primary justiciar and it is his name that appears on the membranes.⁹ The visitation ran from 18 November to 7 December 1274.¹⁰

Visitation of 1278–1289

Thirteen cases from eleven counties come from the visitation of 1278–89, providing the largest number of rape appeals and indictments in a single general eyre visitation under study here. On 16 August 1278, at the Gloucester parliament, the call for the general eyre was made to include two circuits, one in the north sitting at Cumberland, Westmorland and Northumberland, led by John Vaux, and one in the south including Hertfordshire and Kent led by John Reigate and subsequently by Solomon Rochester.¹¹ Interestingly, the compensation to the northern and southern justiciars was not equal; the southern chief justices received ten marks more annually than the northern chief justices.¹² The eyre was interrupted for two years by the Welsh wars but eventually finished in 1289.¹³ The visitations were sporadic, with some counties having no sitting justices (such as Worcestershire) and other counties visited by both circuits (this included Hertfordshire, Wiltshire, Sussex and Dorset).¹⁴

Beginning on 3 November 1278 justices sat in Cumberland and Hertfordshire, then on 27 April 1279 Kent, Surrey, and Sussex were added to the southern circuit led by Reigate.¹⁵ There is

⁹ Crook, *Records of the General Eyre*, 134.

¹⁰ Crook, *Records of the General Eyre*, 142.

¹¹ Crook, *Records of the General Eyre*, 144.

¹² Crook, *Records of the General Eyre*, 144.

¹³ Crook, *Records of the General Eyre*, 144.

¹⁴ Crook, *Records of the General Eyre*, 144.

¹⁵ Crook, *Records of the General Eyre*, 144.

a case-study included from each county. By October of that year, Reigate was summoned to visit Dorset, Summerset, Wiltshire, Hampshire, Devon, and Cornwall. This second stage of John Reigate's southern circuit began in Dorset on 20 January 1280.¹⁶ It is from these first two stages of visitation that six of the cases under investigation come from: the Cumberland eyre of 1278 (JUST1/133 m 25), Surrey eyre of 1279 (JUST1/877 m 61d), Sussex eyre of 1279 (JUST1/921 m 14), Kent eyre of 1279 (JUST1/369 m 7d), Westmorland eyre of 1279 (JUST1/983 m 23d) and Nottinghamshire eyre of 1280 (JUST1/669 m 8d).

After the Welsh wars chief justice Reigate was replaced by Rochester to complete the southern circuit. This occurred with the continuation of the general eyre in both the northern circuit, led by Vaux, and the southern circuit, headed by Rochester, on 23 April 1284.¹⁷ Extensions of visitations in both circuits were issued on 8 December 1286 with summonses for Gloucestershire in the north and Hertfordshire in the south. However, Vaux was not able to see this visitation through, as he died in 1287 and was replaced by chief justice John Mettingham.¹⁸

The post-Welsh wars phase of the visitations contains seven of the case-studies. These include: the Cornwall eyre of 1284 (JUST1/112 m 13d), Berkshire eyre of 1284 (JUST1/48 m 37), two from the Dorset eyre of 1288 (JUST1/213 m 34 and m 49), Hertfordshire eyre of 1287 (JUST1/328 m 6) and two from the Wiltshire eyre of 1289 (JUST1/1011 m 45 and m 54). This visitation was the last eyre held in Dorset, summoned on 16 April 1288, and Wiltshire, summoned on 10 November 1288.¹⁹

¹⁶ Crook, *Records of the General Eyre*, 144–145.

¹⁷ Crook, *Records of the General Eyre*, 145.

¹⁸ Crook, *Records of the General Eyre*, 145.

¹⁹ Crook, *Records of the General Eyre*, 146.

Of John Vaux's northern circuit, of which six cases come from, Crook points out that Robert Ipswich was the keeper of the writs and rolls. However, in May 1279, at the Westmorland eyre, Ellis Sutton replaced Ipswich at this position.²⁰ Sutton too was replaced on 12 October 1285 by Roger Hales, as he was promoted as a justice of the *coram rege*.²¹ This type of promotion, from clerk to justice, was common practice in the eyre courts.²²

In the crown pleas of the Cumberland eyre of 1278 there is a case of a failed appeal (JUST1/133 m 25). This visitation begun on 3 November 1278 and lasted just under a month, concluding on 1 December, with a break until the new year and resuming on 14–16 January 1279.²³ Somewhat related is the failed appeal of Margery fitz Roger appealing Adam de Oliffele (JUST1/983 m 23d) located in the crown pleas of the Westmorland eyre of 1279, which begun on 14 December 1278 and carried into 1–12 May 1279. The crown pleas are estreated and it is Vaux's name on the rolls.²⁴ These two cases (JUST1/133 m 25 and JUST1/983 m 23d) can be treated together as the justiciars for Cumberland and Westmorland were the same: John Vaux, William Saham, John Mettingham, and Master Thomas Siddington.²⁵ As was discussed in greater detail in chapter 3, these two cases have numerous similarities.

Also included in Vaux's circuit are the cases of Idena (JUST1/669 m 8d), Alice, daughter of Michael en la Gardyn de Kniythrerem (JUST1/213 m 34) and that of Alice, daughter of William le Brewer (JUST1/213 m 49). This visitation included two presenting districts: one between 3 November and 9 December 1280 in Nottingham and the other on 11 May 1281 in

²⁰ Crook, *Records of the General Eyre*, 146.

²¹ Crook, *Records of the General Eyre*, 146.

²² Musson, *Medieval Law in Context*, 46.

²³ Crook, *Records of the General Eyre*, 146.

²⁴ Crook, *Records of the General Eyre*, 147.

²⁵ Crook, *Records of the General Eyre*, 146.

Southwell. Like the Westmorland eyre of 1279, the crown pleas are estreated and it is Vaux's name on the membranes.²⁶ The other two cases, that of Alice, daughter of Michael en la Gardyn de Kniythrerem (JUST1/213 m 34) and Alice, daughter of William le Brewer (JUST1/213 m 49), both come from the Dorset eyre of 1288. The first Alice's appeal is included in the crown pleas at Sherborne, on the northern boarder of Dorset county, which took place between 30 May and 30 June 1288.²⁷ The latter is included in the crown pleas held at Lyme Regis, located on the very south-western tip of Dorset, which was held on 30 June 1288.²⁸ These crown pleas are estreated and are attributed to Mettingham.²⁹

Of Reigate's, and after the Dorset eyre, Rochester's³⁰ circuit there are eight cases. The initial keeper of the writs and rolls was John Lushill who held the position from November 1278 to 26 October 1279 while working in the eyres of Hertfordshire, Kent, and Sussex. Lushill died during the Surrey eyre and was temporarily replaced by Robert Leicester, who was then replaced in June 1280 by John Berwick.³¹ Justiciars included John Reigate, Roger Loveday, William Northborough, Walter Hopton, and Solomon Rochester, with Richard Boyland added during the Kent eyre.³² It is during this Kent eyre, in the crown pleas at Canterbury, held between 20 January–16 February, 10 April–11 June 1279 that the case of Emma, daughter of Christine, appears (JUST1/369 m 7d). These are estreated and assigned to Reigate's roll.³³

The case of Alice de Kyngesmannesdouuter (JUST1/921 m 14) was heard at the Sussex eyre of 1279, held near the southern coast at Chichester throughout 25 June–22 July, and again

²⁶ Crook, *Records of the General Eyre*, 149–150.

²⁷ Crook, *Records of the General Eyre*, 157.

²⁸ Crook, *Records of the General Eyre*, 157.

²⁹ Crook, *Records of the General Eyre*, 157.

³⁰ Crook, *Records of the General Eyre*, 157.

³¹ Crook, *Records of the General Eyre*, 157.

³² Crook, *Records of the General Eyre*, 157–158.

³³ Crook, *Records of the General Eyre*, 158.

between 15 September–2 October, and 18–25 November 1279.³⁴ This case is also contained in the crown pleas, named Reigate's roll, and they are estreated.

The Surrey eyre of 1279, held at Guilford between 6 October–18 November and 10–14 December 1279, includes the case of Julia Pekenot (JUST1/877 m 61d). This is also placed in the crown pleas as Reigate's roll and it is estreated.³⁵

After the Welsh wars, the justices, now led by Rochester, sat at Launceston for the Cornwall eyre of 1284. Held between 30 April–21 May 1284, the case of Agatha de Trebernech appears in the crown pleas (JUST1/112 m 13d), assigned to Rochester and estreated.³⁶

The Berkshire Eyre of 1284 sat at Windsor from 6–27 October 1284, at Reading from 3–12 November 1284 and after that date at Wallingford.³⁷ The appeal of Christiana is located in the crown pleas at Windsor (JUST1/48 m 37) and is marked as Rochester's roll and is estreated.³⁸

The Hertfordshire eyre of 1287 first sat at Hertford (14 April–1 May 1287), then at St. Albans (16–23 May 1287), and at Berkhamsted (16–21 May 1287).³⁹ The case of Agnes, daughter of John de Enovere, occurs in the crown pleas heard at Hertford (JUST1/328 m 6) and are also marked as Rochester's rolls and is estreated.⁴⁰

Two cases come from the Wiltshire eyre of 1289, which sat at Wilton from 14 January–19 February 1289, then at Salisbury, followed by Marlborough on 21 February 1289, and lastly at Bromham on 28 February 1289.⁴¹ Both the case of Agnes (JUST1/1011 m 45) and the case of

³⁴ Crook, *Records of the General Eyre*, 159.

³⁵ Crook, *Records of the General Eyre*, 159.

³⁶ Crook, *Records of the General Eyre*, 163.

³⁷ Crook, *Records of the General Eyre*, 163–164.

³⁸ Crook, *Records of the General Eyre*, 163–164.

³⁹ Crook, *Records of the General Eyre*, 168–169.

⁴⁰ Crook, *Records of the General Eyre*, 168–169.

⁴¹ Crook, *Records of the General Eyre*, 169–170.

Edith fitz Gilbert (JUST1/1011 m 54) were heard during the crown pleas at Wilton and are marked as Rochester's roll and estreated.⁴²

Visitation of 1292–1294

The general eyre was called again and justices were appointed on 16 April 1292 with two circuits selected.⁴³ The northern circuit included Lancashire, Westmorland, Cumberland with the additions of Northumberland on 28 August 1292, and Yorkshire on 19 February 1293. This circuit was led by Hugh Cressingham. The southern circuit included Herefordshire, Shropshire, and Staffordshire and was led by John Berwick.⁴⁴ The selection of visitations was making up for counties not visited during the previous eyre of 1289, which include all the counties in the southern circuit and Lancashire in the north.⁴⁵ The keeper of the writs and rolls in Rochester's previous circuit was John Berwick who, in 1292, was promoted to a chief justice in the general eyre.⁴⁶ Crook titles this general eyre as "the interrupted visitation of 1292–1294" since on 12 June 1294, during the eyres of Yorkshire and Surrey, both were prorogued until 3 November 1294 due to the impending war with France.⁴⁷ Despite all intentions to resume, the general eyre was left unfinished and except for the attempts made to summon another general eyre in 1329–31, there would be only individual eyres summoned after 1294.⁴⁸

⁴² Crook, *Records of the General Eyre*, 169–170.

⁴³ Crook, *Records of the General Eyre*, 170.

⁴⁴ Crook, *Records of the General Eyre*, 170.

⁴⁵ Crook, *Records of the General Eyre*, 170.

⁴⁶ Crook, *Records of the General Eyre*, 170.

⁴⁷ Crook, *Records of the General Eyre*, 171.

⁴⁸ Crook, *Records of the General Eyre*, 171.

All the cases from the interrupted visitation of 1292–1294 come from Hugh Cressingham's circuit. Along with Cressingham, there was William Ormesby, John Wogan, William Mortimer, and Master John Lovel, who on 1 September 1293 was replaced by Robert Swillington for the Yorkshire eyre.⁴⁹

During the Westmorland eyre, held at Appleby from 6–31 October 1292 the justices heard three appeals, that of Sabina, daughter of Thomas le White, Emma, and Anabilla (JUST1/988 m 5d). Placed in the crown pleas it is Cressingham's name which appears on the membrane, and it is estreated.⁵⁰

The Cumberland eyre of 1292 sat first at Carlisle (3 November–18 December 1292, and 2 January 1293), and then at Alston (3 November 1292). The case of Julian de Hurtholm was heard during the crown pleas at Carlisle (JUST1/137 m 14d). It is Cressingham's roll and it is estreated.⁵¹

The Yorkshire eyre of 1293 sat primarily at York (7 June–22 July 1293, 6 October–14 December 1293, 14 January–23 February 1294, 2–28 May and 14 June 1294), as well as briefly at Knaresborough (21 November 1293), and the liberty of St. Mary.⁵² The case of Sir Hugh appears in the gaol delivery roll for Michaelmas term of 1293 (JUST1/1098 m 76/77).⁵³

⁴⁹ Crook, *Records of the General Eyre*, 171.

⁵⁰ Crook, *Records of the General Eyre*, 172.

⁵¹ Crook, *Records of the General Eyre*, 172.

⁵² Crook, *Records of the General Eyre*, 174.

⁵³ Crook, *Records of the General Eyre*, 174.

Individual Visitations

After the interrupted visitation, the remaining three cases come from individual eyres called sporadically from 1299 to 1328. As previously mentioned, there was an attempt to revive the general eyre in 1329, however, apart from this brief attempt there was no general eyre added after 1294 that compares to the previous eyres, with various counties visited in both northern and southern circuits.⁵⁴ Contrary, the individual eyres called from 1299 to 1328 were the consequence of political opportunity. This included extending the king's law into the liberties as by holding an eyre they visibly and legally demonstrated the king's right to rule, even if just temporarily.⁵⁵ For instance, the Kent eyre of 1313, where the cases of Agnes, the wife of Simon de Grevy, and Eleana, daughter of Glare Cosyn were heard, was an opportunistic summons. The death of Robert Winchelsea, the archbishop of Canterbury, on 11 May 1313 was the opportunity that King Edward II needed, as it was not only the death of a leading ecclesiastical figure, but also the death of an outspoken opponent of the king. The very next day, 12 May 1313, the summons was made for a Kent eyre to be held and the following day justices were named.⁵⁶ The connection between the death of Archbishop Winchelsea and the summoning of the Kent eyre was noted by contemporaries. This began a privilege which the crown claimed it always possessed, in which there was a vacancy in the archiepiscopal see and the Kent eyre was summoned.⁵⁷

This eyre sat at Canterbury (1–28 July and 10 September–16 November 1313), at Rochester (18 November–1 December 1313, 27 January–4 March 1314, and 3–17 June 1314),

⁵⁴ Crook, *Records of the General Eyre*, 178.

⁵⁵ Crook, *Records of the General Eyre*, 178.

⁵⁶ Crook, *Records of the General Eyre*, 179.

⁵⁷ Crook, *Records of the General Eyre*, 179.

and lastly at Wye (25 June–3 July 1314).⁵⁸ The break at Canterbury between the end of July and early September 1313 appears to have been given for harvesting time, which the locals paid a hefty £300 sum for.⁵⁹ The justices of the Kent eyre of 1313 included Harvey Stanton, William Ormesby, Henry Spigurnel, John Mutford, and William Goldington, and on 13 June 1313 Robert Hauvill was named keeper of the writs and rolls.⁶⁰ However, only Stanton, Ormesby, and Mutford sat at crown pleas which is where the case of Agnes, the wife of Simon de Grevy (JUST1/383 m 50), and Eleana, daughter of Glare Cosyn (JUST1/383 m 14) appears. This session was held at Canterbury, and the roll is estreated with Stanton's name.

The most malicious individual eyre under study here was held in London in 1321. The citizens of London did not support Edward II's claim to the throne and consequently they were punished with the summoning of the London eyre on 14 January 1321. During this individual eyre, the citizens of London lost numerous liberties and it is no wonder that they aided in Edward II's eventual downfall in 1327, the same year that Edward III restored the city's privileges.⁶¹ The justices for the London eyre of 1321 included Harvey Stanton, William Harle, Edmund Passelewe, and Walter Friskney, with Ralph Barford as the keeper of the writs and rolls.⁶² All sessions were heard at the Tower of London, sitting from 14 January–18 March, 4 May–5 June, and 15 June–4 July 1321.⁶³ The case of Joan, daughter of Eustace, appears in the gaol delivery rolls (JUST1/547A m 66d), with Stanton's name and it is estreated.⁶⁴

⁵⁸ Crook, *Records of the General Eyre*, 181.

⁵⁹ Crook, *Records of the General Eyre*, 181.

⁶⁰ Crook, *Records of the General Eyre*, 181.

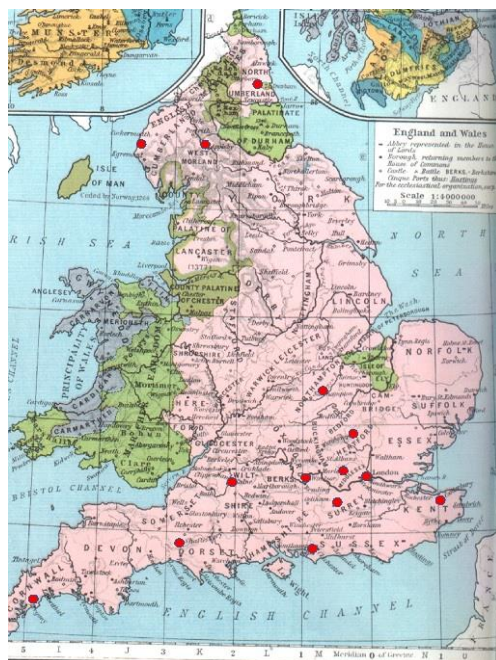
⁶¹ Crook, *Records of the General Eyre*, 179.

⁶² Crook, *Records of the General Eyre*, 181.

⁶³ Crook, *Records of the General Eyre*, 181.

⁶⁴ Crook, *Records of the General Eyre*, 181.

Map 1: Cases from the General Eyre



The locational dots are approximate based on the information given in Crook's *Records of the General Eyre*. The map is from William R. Shepherd, "Britain in 1200–1450," in *Historical Atlas* (New York: Barnes and Noble, 1929), 74.