

CONSENT OF THE FLESH

THE CULTURAL BELIEF in the duality of mental and physical (non-)consent was upheld by contemporaneous medical understandings of human anatomy and the assumed necessary conditions for procreation to occur. This chapter provides analyses of medical texts and their endorsement of the conflicting consent models by looking at the consequences of pregnancy from rape. This chapter demonstrates how the previously discussed laws, legal treatises, trial records, and ecclesiastical texts are congruent with the medical and legal assumptions of a woman's consent of the flesh. Through an examination of the two-seed theory of conception and its assumed justification of bodily consent, I will offer three legal identities of women appealing rape that medieval English culture constructed.

Two-Seed Theory of Conception

The two-seed theory of conception—a pre-modern medical model of procreation—had profound implications for medieval understandings and interpretations of the duality of mental and physical (non-)consent. Largely attributed to Hippocrates, the two-seed theory of conception requires that both the male and female produce a seed for procreation, and this was one of two theories of conception that medieval Europe inherited from Antiquity. Aristotle advocated for the one-seed model in which only the male produces a seed, and the female provides the “environment” (womb) for procreation. Despite conflicting ideas between Hippocrates and Aristotle, by the Middle Ages the Hippocratic model, endorsed by Galen, was gaining in popularity.¹ The late-thirteenth century text *De secretis mulierum* explains that doctors endorse the two-seed theory of conception, while noting that a man ought to seduce a woman “to arouse the woman's appetite for coitus so the male and female seed will run together in the womb at the same time” in order for conception to occur.² This medical model of conception was supported by William of Conches, tutor to English king Henry II, who wrote in his *Dragmaticon Philosophiae*:

1 Histed, “Medieval Rape,” 746–47.

2 Lemay, *Women's Secrets*, 63–65, 114–15.

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].³

Undoubtedly, the lack of safe and available contraceptives resulted in female sex workers experiencing unplanned pregnancies.⁴ Unfortunately, prevailing medical theory worked against medieval female sex workers as the proof of their pleasure (and thus their physical consent) was evident from their pregnancy. William continues with the two-seed theory, stating:

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 [*raptas*], crying out in protest [*reclamantes*] and deploring [*plorantes*] having suffered violence [*violentiam passas*], to have conceived. From whence it appears that none of those women in that trouble held pleasure. But without pleasure [*sine delectatione*] the seed [*sperma*] is not able to be emitted [*non potest emitti*]. Even though of rape it is at first displeasing [*Etsi raptis in principio opus displicet*], in the end, however, it is pleasing to the frailty of the flesh [*ex carnis fragilitate placet*]. Therefore, there are in a human being two wills [*duae voluntates*], the rational [*ratiocinatio*] and the natural [*naturalis*], which are thought to be incompatible in us [*repugnare sentimus*]: for what is often displeasing [*displicet*] to the rational mind [*ratiōi*] is pleasing to the flesh [*placet carni*]. Therefore, even though there is no will of reason [*non est voluntas rationis*] in a raped woman [*rapta*], there is pleasure of the flesh [*delectatio carnis*]. And why do you doubt there to be the sperm of the mother in conception, when you see sons begotten similar to [their] mothers and who are assembled in their weakness.⁵

William of Conches provides the twelfth-century philosophical understanding of mental and physical (non-)consent as being incompatible in a way that is remarkably similar to the ecclesiastical debates about rape and sanctity. Indeed, even the phrase “pleasure of the flesh” is identical to the lines spoken by St. Lucy in Jacobus’s *Golden Legend*.⁶ Scientific and religious thought were intricately interwoven in the Middle Ages, as is emphasized by the

³ William of Conches, *Dragmaticon Philosophiae*, bk. 6, chap. 8, §. 6, p. 208. I have compared this transcription to London, BL, Addit. 18210, fols. 55r–76v. Translations are my own.

⁴ This is not to say that contraceptives were not known in the Middle Ages. See Riddle, *Contraception and Abortion from the Ancient World to the Renaissance*.

⁵ Conches, *Dragmaticon Philosophiae*, bk. 6, chap. 8, §. 9–10, pp. 209–10.

⁶ See Chapter 2.

medical and theological belief that the female body is inherently more sexual than the male's and thus prone to temptation and giving into bodily urges. William touches on the difficulties concerning conception and pleasure specifically regarding sex workers and rape victims. The fact that pregnancies from rape occurred was a direct challenge to the contemporaneous medical theory that conception cannot occur without pleasure. To harmonize theory and fact, William of Conches influentially claims that rape survivors who conceived must have experienced pleasure. However, he is clear that in all instances—and despite how much displeasure it is to the mind—the body will only conceive if the body gets pleasure from the sexual act.

This acknowledgment of the mental non-consent of female sex workers and rape survivors—placed in contrast with the physical consent of the flesh resulting in pregnancy—is grounded in the medieval medical understanding of anatomy. Despite the “misogynistic view” of conception,⁷ the two-seed theory of conception was logical from a rudimentary understanding of human anatomy which was founded on the “one-sex model.” The one-sex model was not universally accepted, and references to it in common law are rare.⁸ There were various competing models of anatomy throughout the Middle Ages, including the two-sex and three-sex conceptualization. Nonetheless, the one-sex model supported the belief in the two-seed theory of conception, which undermined women's abilities to appeal rape when procreation occurred. According to this view, during sexual arousal, men produce semen which is necessary for conception, and the female anatomy was assumed to be an inverted but rather similar version of the male body. Figures 1 and 2 below visually demonstrate this assumed “inversion” of the female sex organs. Both images come from medical treatises, composed ca. 1292, which are now bound together in a single manuscript.⁹

When comparing the two images of female and male genitalia—as understood from the era of the Second Statute of Westminster II—the penile shaft in Figure 2 is inverted but rather similar to the vaginal canal in Figure 1, and indeed the inscription reads *hec est via veretri* (this is the way of the penis).¹⁰ The binary anatomy of males and females was believed to have been a hierarchical pair: the female body was considered by Aristotle, Galen and those

⁷ Dunn, *Stolen Women*, 53.

⁸ Seabourne, *Women in the Medieval Common Law*, 15–16.

⁹ Oxford, Bodleian Library, MS Ashmole 399, fols. 13v, 24v.

¹⁰ DMLBS, “veratrum,” article 1a. For more on the gendered history of medieval medicine, see Green, *Making Women's Medicine Masculine*.

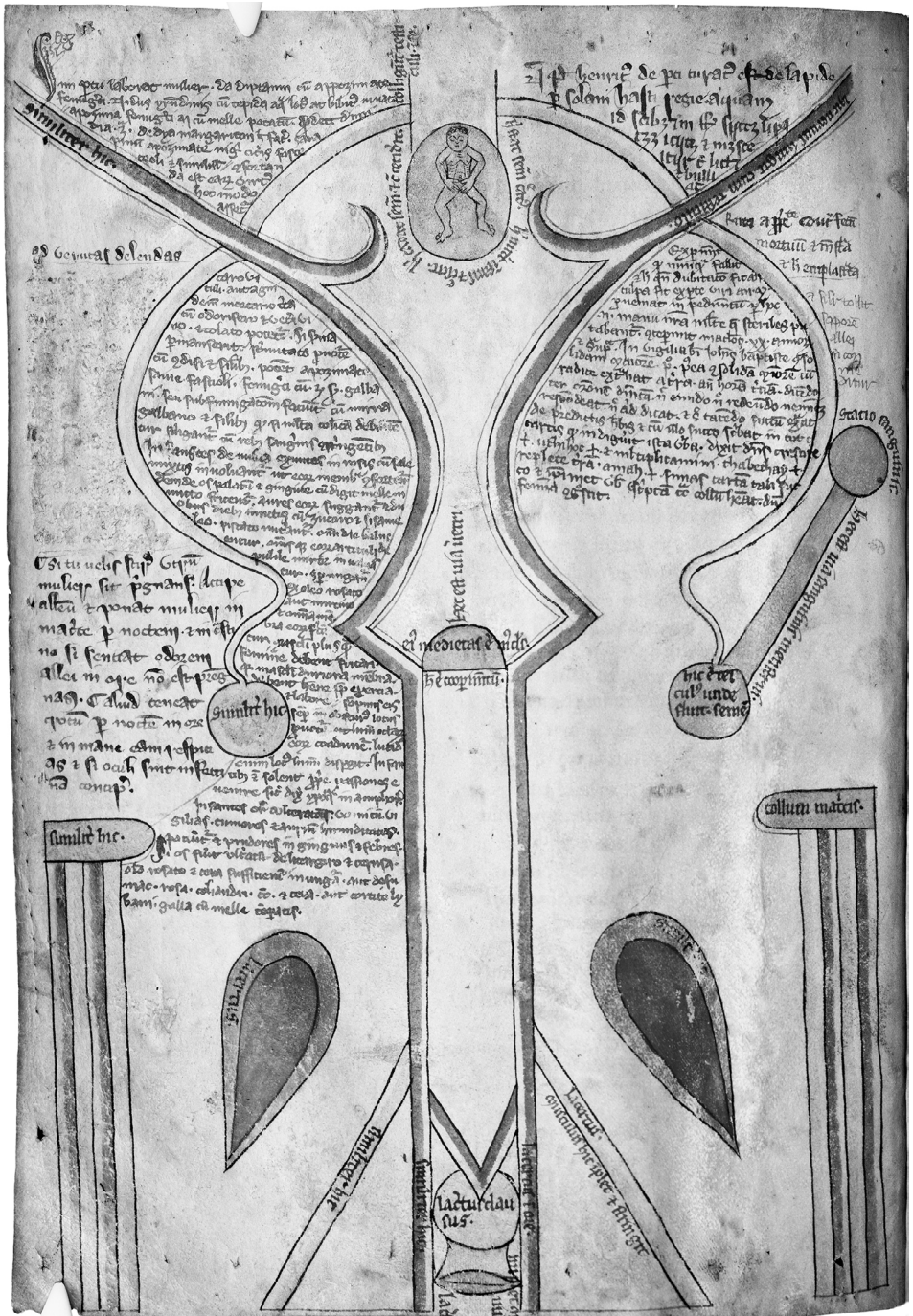


Figure 1. Anatomy of Female Genitalia. Oxford, Bodleian Library, MS Ashmole 399, fol. 13v. © Bodleian Libraries, University of Oxford.

māgnētē in dēt' nam t' q' fert' (Rasud
 ebozū vltar' corāthū' colū' suspēdit' q'ff'
 Qu' veuge p'pūditū' p'pūant' Juuēntū'
 lāp' aut' lātā' v' ad mūltā' t' d' mo' nīse
 fiat purgō' s'ō' sāguis expul' s'ō' t' vng'
 gūlās t' capillō' mōut' q' mō' t' d'
 nauiscat' mī' p'ūs ut' sū' rōmō' h' p'
 sic q' s'itō' d' uoz' v' o'f'f'ā' t' h' uos q' s'ir
 mat' v' u' mō' t' r' v' b'ā'f'icū' q' p'let'
 t' r' de teneb' p'at' i' lūc' (Infānt' au'
 res p'ūcēdē' sūnt' t' h' mūltō' d' s' f'ā' d' s'
 p'ō'terā' o'f'f'endū' ē' n'ē' l'at' ut' r'ē' p' a'nt'
 l'ē' v' m'ūlt' h'ā' s' t' b' d'ign' m'ē'f'at' a'
 venat' p' q' m' t' v' m'ūlt' h'ā' r'ē'v'ā' d' m' q'
 q'ū' t' v' m'ūlt' v' u' g' t' ut' ad' lo'quāt'
 cū' m'ē'le' p' l'at' v' u' g' t' n'ā'v'ē' t' t' i'

aq' alā' t' h'ū'cō' m' h' p' m'ū' d' f'ic' t' t' m'ū'
 s'ū' l'ā' g' m' o' s' p' m'ū' g'at' (p' d' u' e' r' m'ā' s' p'
 f'ic' a' d' u' r' ē' t' i' u' g' e' n' d' o' t' q' h' e' u' s' m' e' m' b'
 i' q' u' i' p' r' e' f' a' s' t' i' a' t' t' e' r' e' n' e' r' i' a' t' v' u' g' e' n'
 t' i' s' u' n' t' e' m' e' m' b' i' s' c' a' p' d' s' r' o' s' t' r' u' s'
 n'ā'v'ē' s' (V' e' n' e' t' e' m' p' e' r' n' e' q' o' o' g' i' e'
 m'ū'lt'ā' v' u' c' i' o' s' q' s' i' a' d' a' p' p' e' t' t' e' r'
 s' i' g' n' o' z' d' u' i' c' a' s' o' l' i' t' a' s' u' c' c' e' s' s' i' o' n' e'
 r' o' g' a' t' a' b' s' t' i' n' e' t' d' i' v' i' n' i' t' a' t' o' e' s' a' u' g' e'
 a' n' i' m' p' o' t' e' r' a' i' o' m' a' q' a' b' s' t' i' n' e' r'
 t' t' e' n' e' r' e' a' d' s' u' a' n' q' s' u' e' r' u' n' t' e' r'
 v' u' c' i' a' t' u' r' a' u' t' e' m' e' m' b' i' s' p' r' o' s' t' i' t' u' s' p'
 i' n' n' e' r' t' u' r' s' o' p' u' a' t' (S' u' s' e' i' u' s' e'
 q' u' i' ē' m' o' r' t' e' m' q' t' i' f' i' q' u' e' n' t' p' i' n' a'
 m' i' l' i' a' r' s' u' n' t' e' p' i' o' m' (S' i' n' p' u' n' a' n' s'

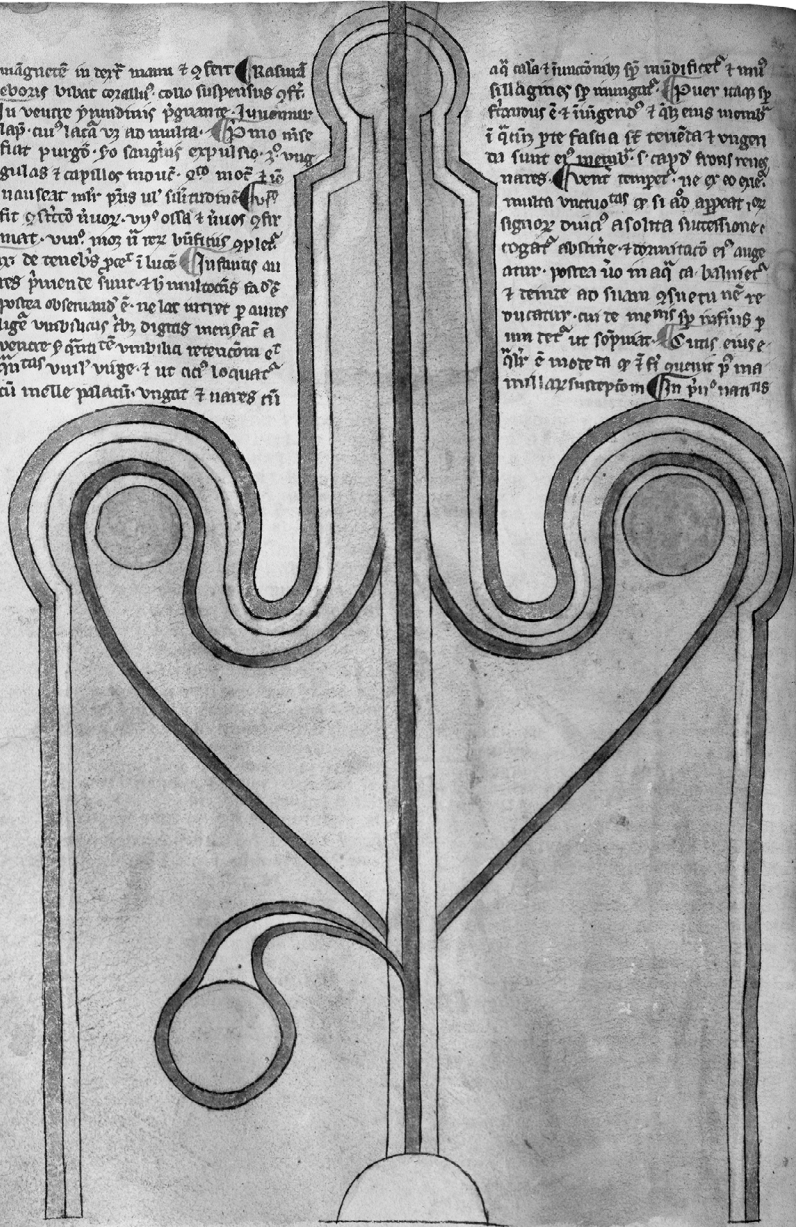


Figure 2. *Anatomy of Male Genitalia*. Oxford, Bodleian Library, MS Ashmole 399, fol. 24v. © Bodleian Libraries, University of Oxford.

after them to be a “less perfect” version of the male body.¹¹ Thus, the idea was that men visibly produce a seed during sexual arousal and that women, with their inverted male anatomy, must also produce a less visible seed when aroused.

In the mid-thirteenth century, the notable scholar Thomas Aquinas argued that sexual desire was a sickness and a disease that compromised a man’s reason. Here again the incompatibility of the rational mind and the pleasure of the flesh is 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. Humoral theory claimed that the balance between blood, black bile, yellow bile, and phlegm in the human body was necessary for healthy living. These humors were supplemented by the qualities of being hot, cold, dry, or moist. 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 incompatible, they were necessarily and mutually working for the harmony of the mind and body. This was, in part, the rationale for regulated brothels in urban centres. The assumed cold and wet nature of females assured that the female body craved the hot male sperm, and, consequently, Galen’s medical theory supported ecclesiastical doctrine which considered females inherently more lustful than males. The congruency between medical knowledge, scientific logic, and theology worked to ensure that women who appealed rape were generally treated with suspicion.

Galenic theory influenced medical thought for centuries, as is evident in Lanfranc of Milan’s thirteenth-century treatise *Science of Chirurgie*.¹² Lanfranc was a popular surgeon in Paris, and his treatise influenced the medical field in Europe, having a particularly large influence in England and France. Lanfranc endorsed the “one-sex model,” claiming that the womb is an inverted penis, the ovaries are inverted testicles, and that both male and female bodies produce sperm during arousal which is necessary for procreation. In Middle English manuscripts, Lanfranc’s theory of conception is explained:

I will discuss the gestation 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 [*wirchynge*] and being acted upon together [*sof-*

11 Cadden, *Meanings of Sex Difference in the Middle Ages*, 21–23, 33–38.

12 London, BL, MS Addit. 12056, fols. 31r–43r (ca. 1420); Oxford, Bodleian Library, MS Ashmole 1396 (ca. 1380).

ferynge togedires], 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.¹³

Lanfranc's inclusion of eleventh-century Islamic scholar Ibn Sina, latinized as Avicenna, shows the wide scope (both temporally and spatially) of the acceptance of the two-seed theory of conception. 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,¹⁴ which suggests that learned men in the Muslim and Christian worlds restated the two-seed theory of conception as fact for centuries. This medical model of conception laid the foundation for the contemporaneous belief of the duality of mental and physical (non-)consent

Conception as Bodily Consent

Despite the theologians' nuanced interpretations of physical and mental (non-)consent to rape, the medieval EC consistently viewed women who endured rape as being either culpable or victimized. Looking at the treatises of *Glanvill* and *Bracton*, it is evident that men of law viewed rape victims in binaries: "true victims" could evoke sympathy from the courts, whereas "false victims" were viewed suspiciously by these powerful judicial men. These two identities were created and maintained throughout all five legal ages of *raptus* laws, from *Glanvill* to the Statute of Rapes, and, as we have seen, the EC upheld them in their rulings and sentencings. Believability of survivors resulting in convictions was seemingly dependent on women who endured the most brutal of attacks and who put up the greatest resistance as proven by bodily injury. I classify these individuals as representative of the "true victims" of rape. However, the schism between the consent of the flesh and the consent of the mind, as well as the belief that the mind and body could operate independently of one another, opened the figurative space for a third legal identity to emerge. When the female body *does things* that the female mind does not agree with, the courts viewed these unfortunate women in non-binary terms.

¹³ Fleischhacker, ed., *Lanfrank's Science of Chirurgie Part 1*, 21–22. Middle English text from London, BL, MS Addit. 12056, fols. 38v–39r. Translation is my own.

¹⁴ Jacquart and Thomasset, *Sexuality and Medicine in the Middle Ages*, 36–37. Jacquart and Thomasset make reference to Avicenna, *Canon*, trans. Gerard of Cremona, bk. 3, fen. 20, 1, chap. 1.

Although not explicitly stated in the secular laws, there was a third legal identity which held real legal repercussions. Within the binary of the “true versus false victim,” the third 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 canon law viewed a woman who did not put up enough resistance to her rape as “an accomplice, even if a reluctant one.”¹⁵ However, I argue that this concept more accurately describes how the courts viewed women who became pregnant because of their rape. Eyre rolls indicate that women and girls who did not resist their rape well enough were more than accomplices. They were culpable and could be sent to prison for false appeal. The third identity was constructed by the EC in practice and supported by medical assumptions of conception, despite the laws not mentioning it explicitly. That is, a woman who conceived because of her rape was considered neither entirely a true victim, nor entirely a scheming malicious woman. The polarity of mental and physical (non-)consent was considered by the courts to be apparent in these pregnant rape victims despite the written statutes’ indifference towards pregnancy through rape. With this in-between, middle category, the spectrum of legal identities that raped women could embody in the criminal courts of medieval England is complete.

The consequences of pregnancy from rape were not drawn from the legal statutes themselves but from various treatises by medical and legal professionals. Throughout the twelfth and thirteenth centuries, numerous authors of legal treatises wrote about the legal implications of pregnancy from rape, basing their beliefs on the accepted medical view of conception at that time. The late thirteenth-century legal treatise known as *Britton*¹⁶ was extremely popular in medieval English legal circles. The treatise claims to have been commissioned by King Edward I, and it is the first legal treatise in England not to be composed in the language of the church (Latin) but rather the language of the royal court (French). *Britton*’s novel inclusion of conception through rape is not evident in the contemporaneous Statutes of Westminster I or II. The treatise states explicitly what happens if a woman who is also pregnant appeals a man of rape:

15 Brundage, *Law, Sex and Christian Society*, 107.

16 An early manuscript of *Britton* (ca. 1305) is held at the British Library (BL, MS Harley 324, fol. 54). I have consulted this manuscript in person and compared it to the text edited and translated by Francis Morgan Nichols below.

With regard to an appeal of rape [*apel de rap*], our pleasure is, that every woman, whether virgin [*pucele*] or not, shall have a right to sue vengeance for the felony by appeal in the county court 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 [*conceyvre*] if she does not consent [*assente*].¹⁷

Britton leaves nothing ambiguous about the legal implications of pregnancy from rape by clearly equating pregnancy to the woman's physical 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* (ca. 1290s), which 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."¹⁸ Critically, the connection between physical bodily proof and non-consent is made explicit and the association with pregnancy as part of this bodily proof of consent is mentioned. *Mirror of Justices* claims that a woman lacking those markers of resistance or who is pregnant must have consented to the attack. This notion was reiterated in *Fleta* (ca. 1290), another popular treatise, which states *si autem conceperit hora in appello contenta* (if however, she conceived during the hour [the time of the crime] in which she is appealed) the appeal is dropped, because *eo quod sine assensu concipere non potuit* (she is not able to conceive without assenting).¹⁹ It is worth noting here that the text uses *assensu* (assent) and not *consensu* (consent) DMLBS defines *assensus* as denoting "agreement" or "complicity, [or] abetment," and *consensus* as "consent [or] agreement."²⁰ Despite the potential late fourteenth-century usage of "consent" to include acquiescence and silence, the two terms were

17 Nichols ed. and trans., *Britton*, vol. 1, chap. 24, par. 4, p. 114. Translation by Nichols.

18 Whittaker, ed. and trans, *The Mirror of Justices*, chap. 21, p. 103. The French transcription and translation are available in Whittaker's edited text. See also Kelly, "Statute of Rapes and Alleged Ravishers of Wives," 385.

19 Seldon, ed., *Fleta*, bk. 1, chap. 35, p. 54. I have compared Seldon's transcription to London, BL, Cotton MS Julius B VIII, fol. 24r. Translation is my own.

20 DMLBS, "assensus," articles 1a, 1b; "consensus," article 1a. In the verbal form: "assentarie," can mean "to flatter" (article 1a) or "to assent" (1b); "consentare" primarily means "to approve" (article 1a).

“near-synonyms.”²¹ As the laws and case studies suggest, the courts relied on determining non-consent through physical proof and a failure to raise the hue and cry. In modern understandings (such as in the US and Canada), consent involves both assent—that is agreement—and that assent must be given without “incapacity, deception, or coercion.”²² In this modern usage, assent can involve agreement to coitus as a form of acquiescence, as doing so may be the safer option. However, this is not considered freely given consent. In this modern context, assent does not mean consent “if the victim did not operate under sufficient freedom, capacity, and knowledge.”²³ In this reading, *Fleta’s* use of *assensu* could suggest that a woman’s assent to coitus was given (irrespective of circumstances) and made evident by the pregnancy. The corporality of assent legally outweighed any notions of mental non-consent to rape which could result in the dismissal of rape appeals.

The distinction between physical and mental (non-)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, such lack of physical injury becomes justification for the acquittal of the accused rapist. The congruency of opinion between three contemporaneous, popular, and influential legal treatises—*Britton*, *Mirror of Justices*, and *Fleta*—suggests that, despite the statutory laws of Westminster I and II not including conception as equivalent to consent, lawyers and judges were certainly discussing the possibility amongst themselves. 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.²⁴

I have found no records of pregnant women appealing rape in the EC plea rolls themselves. However, the *Year Book* from the 1312–1313 Kent eyre does include a failed appeal of a pregnant rape victim named Joan and

21 As in Wyclif’s discussion on consent to sin: “Oo maner of consent is, whanne a man is stille and tellip not” (ca. 1385). See *Oxford English Dictionary*, “consent, n.,” article 3a. See also Somerset, “Consent/Assent,” 27, 31.

22 Ferzan and Westen, “How to Think (Like a Lawyer) About Rape,” 763–65.

23 Ferzan and Westen, “How to Think (Like a Lawyer) About Rape,” 765.

24 Horwood, ed., *Year Book of King Edward I*, 520–21; Maitland, Harcourt, and Bolland, eds., *Year Books of Edward II*, 111; Schneebeck, “The Law of Felony in Medieval England,” 469–70. I have compared these transcriptions to London, BL, MS Addit. 32086, fol. 67r.

the subsequent indictment of the accused. The various records²⁵ state that Joan appealed a man by the name of W. of rape, but her appeal failed due to technicalities.²⁶ Because Joan did not specify the exact time and date of the rape, Joan was to be imprisoned for false appeal and W. was acquitted at her appeal.²⁷ However, W. was still indicted at the king's suit, at which time he was "put in irons."²⁸ There, W. was indicted for *ravistes la pucelage Johane* (raping the virginity of Joan). The records state that Joan was thirty years old at the time of the indictment and was "carrying a child in her arms."²⁹ The judge asked Joan who the father of the child was, and she confessed that it was W., the very man she was appealing of rape. The judge stated that "this was a wonderful thing,"³⁰ since "a child could not be begotten unless both were consenting parties."³¹ Despite the fact that the prevailing Statute of Westminster II made no mention of the implications of pregnancy from rape, it appears that the courts were entrenched in the contemporaneous medical belief of the two-seed theory of conception as purported by William of Conches, Lanfranc of Milan, and the treatises *Britton*, *Mirror of Justices*, *Fleta*, and *De secretis mulierum*. This medical belief had profound influence on the courts' interpretations of culpability in rape cases, as is evident in this case, since W. stated that he could not be "guilty of rape or of any other felony." The jurors agreed that W. was not culpable and ultimately acquitted him of all charges. Even though conception being equivalent to bodily con-

25 The case of Joan is recorded in three manuscripts: Oxford, Bodleian Library, MS Tanner 13, fols. 415–85; London, BL, MS Addit. 32086, fol. 67r; London, LI, MS Year Books, Edward I, A., fols. 35v–36r. I have personally studied both BL, MS Addit. 32086 and LI, MS Year Books, Edward I, A. and compared them to the transcriptions in both *Year Books*. They are all consistent in meaning but vary in spelling. All transcriptions are taken from LI, MS Year Books, Edward I, A., fols. 35–36, unless stated otherwise.

26 LI, MS Year Books, Edward I: "e demaunda de lappelour desicom ele en contant ne fit nul mencion de rap en contant, pur quei il demaunda jugement de son mavey conte."

27 LI, MS Year Books, Edward I: "si agarde la court qe Joan aille a la prisone pur son maveys counte ... W. quite de son appel qaunt a sa seute."

28 LI, MS Year Books, Edward I: "et respaigne a la seute le Roy vicomte mettez en fers."

29 LI, MS Year Books, Edward I: "si est ele de trent anz et porte un enfant parentre ses braz."

30 This dialogue is not included in Lincoln's Inn MS, but does appear in BL, MS Addit. 32086, fol. 67: "dit fust qe cest mervueille ... qe un enfant ne purr amie ester engendere sanz volunte de une part e dautre."

31 LI, MS Year Books, Edward I; BL, MS Addit. 32086, fol. 67: "engendere sanz la volunte de deux."

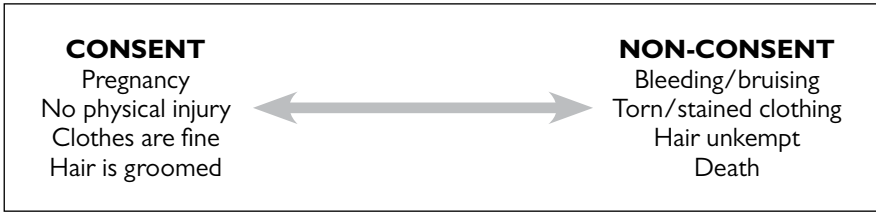


Diagram 1. The Physicality of (Non-)Consent.

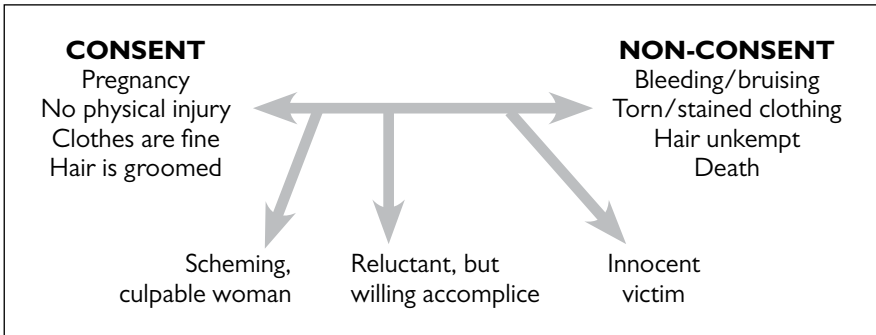


Diagram 2. The Spectrum of Constructed Legal Identities.

sent was not legally binding in medieval England’s *raptus* laws themselves, it evidently had legal impact. The courts constructed the legal framework which determined that Joan may have not mentally consented to the sexual intercourse but, regardless, her body consented, which was evident (to the courts) by her pregnancy.³² Joan was the reluctant but ultimately willing accomplice to her own rape, and therefore *W.* was not culpable.

The treatises (*Britton*, *Mirror of Justices*, and *Fleta*), as well as 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. Diagram 1 illustrates the physicality of (non-)consent using the prescribed visual proof which was required. The tokens of proof are gathered from EC records, legal treatises, manuscript illuminations, conduct literature, romance narratives, and statutory laws. Diagram 2 includes my proposed

³² Sara Butler discusses a case from 1465 Lancashire where Elizabeth Venor was raped and impregnated by John Worth. Elizabeth appealed John stating “... that her flesh was in a manner agreed, but ‘in her soul she never assented, that is, in all her entire will in her soul, so that she was not at ease.” Butler, *Divorce in Medieval England*, 61. See also Histed’s retelling of Lady Isobel Butler’s 1436 rape and pregnancy by William Pulle in “Medieval Rape,” 743–55.

spectrum of legal identities superimposed on the previous diagram of physical bodily proof of (non-)consent.

An individual's identity is a construction both in the (subconscious) performance and in the language used to describe them. Of course, these proposed identities were not necessarily how the women viewed themselves. Rather, women appealing rape in medieval English criminal courts were socially and linguistically prescribed certain "identities" which were interwoven with cultural notions of rape and (non-)consent. The bodily proof of (non-)consent to rape worked to create the legally constructed identities of women who went to court, and, consequently, their identity (and legal ruling) depended upon the degree of physical proof of the crime. The physicality of (non-)consent and the resulting legal identities are continually reinforced in the actual court documents, hagiography, and, as will be discussed in the following two chapters, secular romance narratives. The case of Joan from Kent shows the devastating repercussions for women who conceived during rape, as her case was automatically thrown out. Although Hiram Kümper correctly warns scholars that "the idea of pregnancy as generally obviating rape charges should not too readily be applied to the whole medieval period,"³³ the case of Joan demonstrates how the EC could—and at times did—interpret conception as consent of the flesh.

The nuanced interpretations of mental non-consent, as proposed in Augustine's *City of God*, are entirely neglected here, where the proof of rape was interpreted by an examination of the woman's physical body. It is important to note the devastating repercussions that such a literal body of proof had. If a woman consented to the rape in fear of her life and was thus compliant to the demands of the rapist because she had no physical injury, then she could be deemed culpable for her own rape in the king's courts. However, cases involving coercive consent or other non-violent means to ensure submission seem to have been easier to secure a conviction in civil—not felony—suits. This is highlighted by the 1292 Hereford case of Isabella Plomet. Isabella won a civil conviction against her dentist, Ralph de Worgan, for drugging and raping her.³⁴ Civil suit courts, like the ecclesiastical texts previously discussed, offer complex understandings of mental non-consent that appear more "modern" than those of *Glanvill* or Westminster II. Nonetheless, in the criminal courts of the eyre, the physicality of (non-)consent was king.

33 Kümper, "Learned Men and Skilful Matrons," 108.

34 This case was discovered by Seabourne, "Drugs, Deceit and Damage in Thirteenth-century Herefordshire," 255–76; see also, Harris, "Medieval Histories of Intoxication and Consent," 109–34.

The visible proof of the crime was used to determine innocence or guilt of the woman. 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. 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 implication of physical injury suggests a struggle between the individuals involved, and such struggle would not have likely occurred unless the woman was reluctant to comply with the assault. Thus, even though the laws only state physical injury, we can logically conclude that such injury was the consequence of resistance to the rape, as it denotes a physical altercation of some sort. 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.

Bodily Victimization

The inclusion of both male and female sperm for the gestation of the embryo was largely assumed as biological fact, although Aristotelian theory was still debated. This medieval medical thought was supplemented with ideas from leading scholars that lust and coitus were simultaneously sinful and necessary. Consequently, medical texts state that men needed sexual release for their health. This was further compounded with the common societal belief that sex work was “a necessary evil”³⁵ in medieval Europe to allow men sexual release or else they would become overwhelmed with their “hot lust,” as purported in *Bracton*. According to Ruth Mazo Karras, sex work was “a necessary outlet for masculine sex drives which, unrelieved would undermine the social order.”³⁶ The *Bracton*-era belief in over-active male libido was grounded in contemporaneous societal, medical, and scientific beliefs about male sexuality. Karras 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.”³⁷ This implicitly suggests that medieval Europeans believed that every man was a potential rapist if they did not have an “outlet”; that

35 Turner, “The Leper and the Prostitute,” 129.

36 Karras, *Common Women*, 5–7, 114–15.

37 Karras, *Common Women*, 6, 20.

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. 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. However, sex workers were traditionally blamed for seducing men into sexual temptation even though they were reluctantly deemed necessary for maintaining the greater social order.³⁸

This medieval medical belief in uncontrollable male sexuality, which necessitated the toleration of sex workers, ensures that men were the victims of their own bodies in a way that is remarkably similar to the legal identity of the rape victim who conceives. As previously discussed, *Bracton* is 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 are potential rapists, but it is within the power of "good" men to control these sexual impulses. 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. The rapists are, in this sense, more monstrous than human, much like a "wildman" attacking a lady.³⁹ As Augustine notes in *City of God*, monsters and monstrous humans are the opposite of an *animal rationale mortale* (a rational and mortal creature).⁴⁰ Here, the notions of rapists and wild beasts, or monsters, become conflated, as both are not in control of their own impulses.⁴¹

The body's ability to not only be the site of victimization for women (in the case of rape) but also be the cause of victimization (in the case of sexual urges) for both men and women was not treated equally. Medical thought victimized both men and women who were unable to control their sexual desires. However, men were largely pitied for their bodily victimization, and, as such, the women who were sex workers were condemned but not the men who used their services.⁴² Whereas the male body was viewed as needing moderate sexual release, the secular and ecclesiastical courts criminalized these very same sexual urges in women and rendered them inherently

38 Karras, *Common Women*, 48, 133.

39 As depicted in the fourteenth-century Taymouth Hours book cover image.

40 Augustine, *City of God*, ed. Henderson, bk. 16, chap. 8. See also, Verner, *The Epistemology of the Monstrous in the Middle Ages*, 2–4.

41 Further explored in *Sir Gowther* in Chapter 6.

42 Karras, *Common Women*, 20.

sinful. Gratian's *Decretum* describes sexual temptation as a form of sickness and claims that only weak individuals succumb to their lust.⁴³ Further, Gratian contributed to the popular belief that women were inherently more likely to fall victim to their sexual urges due to their lack of reason and will-power.⁴⁴ While both the male and female body could betray the reason of the mind, the societal tolerance for men's sexual freedom was not equally extended to women, and, moreover, it was legislated against.

The one-sex model of anatomy ensured that it was widely believed amongst 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. This effectively perpetuated the belief 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. 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 potential mental non-consent. Here, the mental non-consent is deemed irrelevant to the treatises, as they relied on the physical bodily consent in rape cases resulting in pregnancy.

In all, we see a cultural discourse that debated the possibility of mental and physical (non-)consent. Throughout the three previous chapters we have seen how the secular laws hint at the conflicting consent models, the ecclesiastical texts explicitly discuss the possibility of mental and physical (non-)consent, and how several EC trial records recognize the conflict of physical non-consent and mental consent. This short yet critical chapter has provided further, evidential proof of the medieval English belief that the consent of the flesh as evidenced by pregnancy could overpower mental non-consent of rape victims. This cultural conceptualization of rape, resistance, and mental and physical (non-)consent is further discussed in the popular literary genre of romance. As will be shown in the following two chapters, the popular entertainment of MER reiterates these same arguments in nearly identical fashion to the legal, medical, and ecclesiastical texts.

43 *Decretum*, C. 25, q. 1.

44 *Decretum*, C. 27, q. 1, cap. 4.