

## RAPE AND CONSENT IN MEDIEVAL ENGLAND

A YOUNG, POOR girl named Juliana le Hare was raped by a man named Richard.<sup>1</sup> Despite being poor, unmarried, and still living in her father's modest home, young Juliana demanded to have her day in court. She told the authorities that Richard violently, with force, raped her of her virginity. But Richard did not act alone. Juliana explained to the court that another man, Stephen, helped Richard. Juliana said that it was Stephen, not Richard, who forcibly grabbed her against her will, pulled her into a dark cellar, and closed the door on her. There was no way out of the cellar. Juliana was stuck. She was alone, and there was nothing she could do when Richard came in and raped her. Speculatively, Richard heard rumours that Juliana launched a formal appeal of rape against him, and instead of pleading his innocence, Richard fled from the authorities. Perhaps this was a victory for Juliana; she may have known that the chances of securing a full felony conviction were minimal, so Richard fleeing into outlawry may have given her some satisfaction. Or perhaps Juliana was angry and upset that Richard fled; maybe Richard's evading of criminal prosecution made Juliana determined to still bring a case forward against Stephen. Despite following the expected legal processes, such as notifying the authorities in due time and appearing in court when scheduled, the jurors did not believe young Juliana. The jurors, who were all local men from Juliana's community, said that Stephen was not guilty, and that Richard didn't even rape Juliana of her virginity. Perhaps the jurors debated whether Juliana was a virgin at the time or if she *actually* consented to the alleged rape. Perhaps they discussed her past sexual history, and maybe they judged her poor socio-economic status as grounds for someone who might lie about these sorts of things.<sup>2</sup> Either way, Juliana was probably devastated by the court's decision, but it got worse. She was deemed to have essentially wasted the court's time and, in the end, it was only Juliana who was to be imprisoned for false appeal.

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1 TNA, JUST1/62 m5d.

2 Carissa Harris explains how in Chaucer's texts "poor women, because of their material disadvantage, bear the brunt of societal judgement against women who are 'dishonest' 'of hir bod[ies].'" See *Obscene Pedagogies*, 34.

The case of Juliana—which comes to us from the 1232 Buckinghamshire eyre—is not remarkable or unique. Rather, its unexceptional status is indicative of the larger trend that this book examines, which is mainly how people in medieval England viewed rape and consent. In this book I consider what cultural ideologies of medieval England promoted a “rape culture”; that is, what societal beliefs contributed to victim-blaming stereotypes and common rape myths, such as the application of pressure to change a “no” into a “yes”? I know that using the term “rape culture” immediately makes some readers skeptical, but its historicity is important to acknowledge.<sup>3</sup> To help answer this question, this book looks at a wide range of source material including laws, legal and medical treatises, trial records, hagiography, conduct literature, and popular Middle English Romance (MER). This book focuses on the representations of rape and (non-)consent in England from the twelfth to the fourteenth century through a social historical analysis of legal and literary sources. Unlike previous research, this book does not seek to examine the legal history of rape, nor is it a book on the literary studies of rape narratives. Rather, this book looks at the social, legal, and literary representations of rape and (non-)consent. I aim to show how these different sources have commonalities and how, by viewing them together, we can observe the reoccurring themes of the physicality of (non-)consent, the duality of mental and physical (non-)consent, and the expectations of resistance. Here, the research reveals new aspects of medieval English rape culture. Together, I argue that the cumulative impact of these various sources is that medieval English culture was characterized by a common belief that the minds and bodies of both rape victims and, similarly, rapists could operate independently of one another, which ensured the legal and social requirement of resistance to prove non-consent. This duality of mental and physical (non-) consent perpetuated a hesitancy to believe women’s accusations of rape.

Scholars have explored medieval histories of rape and sexual assault for decades and, more recently, scholarship has addressed the limitations of binary distinctions between rape and consensual sex.<sup>4</sup> This book builds on the foundational work of previous legal scholars—particularly Kim Phillips’s emphasis on the medieval English interpretation of rape as “the assaulted body” and Patricia Orr’s study of wounding and rape in the legal treatises

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**3** Harris, *Obscene Pedagogies*, 1–25, 114.

**4** For an overview of the historiography, see Piercy, *Resistance to Love*, 4–32. See also Gavey, *Just Sex?*, 1–14. For consent studies in medieval scholarship, see Harris and Somerset, eds., “Colloquium: Historicizing Consent,” 268–367. See also Lett, “Women Victims of Sexual Assault and Rape,” 45–70.

of *Glanvill* and *Bracton*.<sup>5</sup> This book considers how non-legal sources complicate or reinforce Phillips's and Orr's findings. While Phillips argues that "consent is of only peripheral interest"<sup>6</sup> to the legal treatise known as *Bracton*, I offer alternative sources and interpretations to suggest that (non-) consent was actually central to the common and legal understandings of rape and sexual violence, including within *Bracton*. As Orr notes, the crime of rape was a crime of violence, but what does this violence represent?<sup>7</sup> As discussed throughout this book, the inclusion of physical force and blood was more than legal or hagiographic rhetoric; it was indicative of that what had occurred was, indeed, a crime against the woman's will, as she tried to physically resist the rape and can "prove" it by her bodily injury. However, the belief that the body could act against the will of the mind significantly complicated this requirement of physical "proof" of non-consent.

There is no single definition of the Latin legal term *raptus*. It does not perfectly map onto our modern understandings of the crime of rape, and its exact meaning has been debated by scholars for decades.<sup>8</sup> *Raptus* is

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5 Orr, "Men's Theory and Women's Reality," 121–62; Phillips, "Written on the Body," 125–44.

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

7 Orr, "Men's Theory and Women's Reality," 131, 140.

8 For example: Brown, "*Inaudito exemplo*," 21–34; Cannon, "*Raptus* in the Chaumpaigne Release and a Newly Discovered Document Concerning the Life of Geoffrey Chaucer," 74–94; Dunn, *Stolen Women in Medieval England*, 10–14; Dunn, "The Language of Ravishment in Medieval England," 79–116; Edwards, "Beyond *Raptus*," 1–8; Gravdal, *Ravishing Maidens*, 4–9; Gravdal, "Camouflaging Rape," 361–73; Hanawalt, "Whose Story Was This?," 126; Harvey, *The Fires of Lust*, 187–201; Hawkes, "Female Consent in Rape and Ravishment in Later Medieval England," 47–53; Histed, "Medieval Rape," 743–69; Kelly, "Meanings and Uses of *Raptus* in Chaucer's Time," 101–65; Kelly, "Statute of Rapes and Alleged Ravishers of Wives," 361–419; Musson, "Crossing Boundaries," 84–101; Orr, "Men's Theory and Women's Reality," 121–62; Plucknett, *Legislation of Edward I*, 114–16; Pollock and Maitland, *The History of the English Law before the Time of Edward I*, vol. 2, pp. 490–92; Post, "Ravishment of Women and the Statutes of Westminster," 150–64; Post, "Sir Thomas West and the Statute of Rapes, 1382," 24–30; Robertson and Rose, "Introduction," in *Representing Rape in Medieval and Early Modern Literature*, 1–20; Seabourne, "Rape and Law in Medieval Western Europe," 342–57; Seabourne, *Imprisoning Medieval Women*, 91–96; Walker, "Common Law Juries and Feudal Marriage Customs in Medieval England," 705–18. For a close linguistic interpretation of *raptus*, or *rapuit et abduxit*, see Dunn, "The Language of Ravishment," 87–89; Dunn, *Stolen Women*, 17–19, 24. Dunn provides an example from the gaol delivery rolls (1375–1376) where *raptus* was used in a case of theft (TNA, JUST3/165A m6d). For an overview of sexual laws in Europe more generally, see Brundage, *Law, Sex and Christian Society*. The legal

defined as the “(act of) snatching away” or “taking away (property),” and subsequently came to be understood as “abduction (of a woman, usually) accompanied by sexual assault or coercion), rape.”<sup>9</sup> Originating from Roman law, *raptus* (which Brundage defines as “carrying off by force”) was primarily “the abduction of a woman against the will of the person under whose authority she lived,” and it did not necessarily indicate coitus.<sup>10</sup> As the Middle Ages progressed, *raptus* became synonymous with abduction and/or sexual violence, which has led Caroline Dunn to claim that that *raptus* is “one of the most ambiguous legal terms in medieval England.”<sup>11</sup> However, the legal sources are explicit in that rape is a crime that can only be committed by a man onto a woman. In medieval England, it was legally impossible for a man to be the victim of rape.<sup>12</sup>

In trial records and court proceedings of rape cases, there are complex layers of power relations: victim and perpetrator; woman and man; complainant and defendant; complainant and judge; the individual and the court system. Gender is intrinsically a part of these power relations, and consent is inherently about power.<sup>13</sup> Women were excluded from medieval English

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understanding of *raptus* was recently broadened to include employee procurement. This was brought to light by Euan Roger and Sebastian Sobceki’s archival discovery on the Geoffrey Chaucer and Cecily Champaigne case. See Roger and Sobceki, “Geoffrey Chaucer, Cecily Champaigne, and the Statute of Laborers,” 407–37. For a discussion on the use of “legal fiction” in elopement cases disguised as ravishment cases, see Musson, “Crossing Boundaries,” 92–93; Pope and McSheffrey, “Ravishment, Legal Narratives, and Chivalric Culture in Fifteenth-Century England,” 818–36.

**9** DMLBS, “*raptus*,” articles 1–3.

**10** Brundage, “Rape and Seduction in the Medieval Canon Law,” 141.

**11** For an overview of this change in meaning, see Brundage, *Law, Sex and Christian Society*. For medieval England specifically see Dunn, “The Language of Ravishment,” 80; Pollock and Maitland, *The History of the English Law*, vol. 2, p. 490.

**12** For a discussion on male-victim rape cases made through sodomy charges, see Harvey, *The Fires of Lust*, 197–200. In theory, married women could only make two felony appeals, that of rape and the murder of their husbands, but women made up about one-third of all appeals in thirteenth-century England appealing crimes such as homicide, theft, and assault. See Klerman, “Women Prosecutors in Thirteenth-Century England,” 287–88.

**13** While “woman” is used as the default to describe medieval victims of rape in this book, because medieval sources require a female victim and male perpetrator, this research is grounded in gender theory’s rejection of biological essentialism and instead places masculinities and femininities as part of a social construct that can be occupied by any sexed bodies. The complexities of gender identity as being performed, often unconsciously, is assumed throughout this research. Judith Butler’s explanation that gender only gains social meaning when understood within the

juries and, consequently, there is a fundamental gendered component of male judgement and gaze in the medieval English criminal courts.<sup>14</sup> Upon hearing an accusation of rape, the presenting jurors had to decide whether to bring the private appeal to the officials. One can speculate that once an accusation of felony was made, “the rumors and suspicions that circulated” in the community “became the governing perceptions of the truth of the matter,” leading to a “complex process of community judgement” before any case was brought to the courts.<sup>15</sup> The exclusive selection of local men to serve as jurors—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 social judgements. It is important to recognize the immense number of social hurdles that women like young Juliana le Hare overcame to even get to trial.

James Brundage suggests that theologians defined rape based on four conditions: violence, abduction, sexual intercourse, and non-consent of one individual. But what did the condition of non-consent entail?<sup>16</sup> While Brundage notes that violence could range from wounding and physical assault to “moderate force” used to intimidate someone into acquiescing, this leads one to question how theologians perceived the legitimacy of such coercive consent. Unlike the secular criminal courts, “strenuous resistance” was not necessary to prove non-consent in the eyes of theologians/canonists, as “active combat by the victim was not something that they expected” but rather, according to Brundage, raising the hue and cry were acceptable grounds to prove non-consent.<sup>17</sup> Building on this analysis of the centrality of

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cultural context of a given society grounds the following research by exploring how medieval English culture perceived normative masculinity and femininity. See Butler, *Gender Trouble*, 180; Butler, *Undoing Gender*, 20. For a discussion on contextualizing consent based on power dynamics, see Akard and Raw, “Global Response,” 363.

**14** For an overview on jury selection see Bellamy, *Crime and Public Order*, 121–22; Butler, *The Language of Abuse*, 6, 96, 105; Butler, *Forensic Medicine*; Green, *Verdict According to Conscience*, 11, 15; Musson, *Medieval Law in Context*, 91, 110–17. See also *Glanvill*, book 13, chaps. 3–7.

**15** Green, *Verdict According to Conscience*, 16–17.

**16** Brundage, “Rape and Seduction in the Medieval Canon Law,” 143. For analyses on the overrepresentation of clergymen as defendants in *raptus* cases see Dunn, *Stolen Women*, 181–83; Gravdal, *Ravishing Maidens*, 212–13; Musson, *Medieval Law in Context*, 100. Contrary, Robin Storey suggests that clergymen were maliciously accused of rape to ensure they maintained their vow of celibacy in “Malicious Indictments of Clergy in the Fifteenth Century,” 221–40.

**17** Brundage, “Rape and Seduction in the Medieval Canon Law,” 144.

verbal non-consent (as indicative of mental non-consent) through the hue and cry, this book examines the role of mental non-consent, the so-called steadfast will, and its alleged internal fight with the consent of the flesh of the violated woman.

The notion of moral elevation through surviving rape is contrary to hagiography where female saints are willing to sacrifice their life to escape rape.<sup>18</sup> Since the virgin martyrs are obviously virgins when they are martyred, rape is always threatened in hagiography and never completed, or, as Howard Bloch, bluntly states, “the only real virgin—that is, the only true virgin—is a dead virgin.”<sup>19</sup> This Christ-like bodily sacrifice was, as Suzanne Edwards argues, all dependent on preserving the chastity of the mind, which required constant mental non-consent during the rape. Stretching Edwards’ analysis further, I consider how the weakness of the flesh believed to be biologically inherent in female anatomy seemingly overpowers the mental non-consent. In turn, I interrogate what power this conceptualization held outside theological debates.

To develop this analysis, I turn to literary sources and their representations of rape and consent. Scholars have established the common trope of rape in romance, and the legal realities of trial by oath and trial by ordeal in romance have already been recognized.<sup>20</sup> However, what has yet to be fully 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. This research is indebted to the work of literary scholars who have emphasized the limitations of legal sources and, as Samantha Katz Seal argues, made clear the need to consider “legacies of misogyny and sexual violence” in medieval literature.<sup>21</sup> Carissa Harris’s foundational research on the use of obscenity in premodern English and Scottish literature to teach

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**18** Edwards, *The Afterlives of Rape*, 2, 45.

**19** Bloch, *Medieval Misogyny and the Invention of Western Romantic Love*, 108.

**20** For example: Baechle, Harris, and Strakhov, “Reassessing the Pastourelle”; Butler, *Language of Abuse*; Cooper, *The English Romance in Time*; Dinshaw, *Chaucer’s Sexual Poetics*; Duby, *The Knight, the Lady and the Priest*; Edwards, *The Afterlives of Rape*; Gravdal, *Ravishing Maidens*; Higgins and Silver, eds., *Rape and Representation*; Hopkins, Rouse, and Rushton, eds., *Sexual Culture in the Literature of Medieval Britain*; Kaeuper, *Chivalry and Violence*; Menuge, ed., *Medieval Women and the Law*; Putter and Gilbert, eds., *The Spirit of Medieval English Popular Romance*; Robertson and Rose, eds., *Representing Rape in Medieval and Early Modern Literature*; Saunders, *Rape and Ravishment*; Wolfthal, *Images of Rape*.

**21** Seal, “Whose Chaucer?,” 487. See also Piercy, *Resistance to Love*, 6–7. For a discussion on “the limitations of legal frameworks,” see Franklin et al., eds., *Consent*.

“felawe masculinity”—and, particularly, to recognize survival speech in pastourelles—informs the present research, especially as we are still living with many of these seemingly *medieval* ideologies when it comes to rape and consent.<sup>22</sup> Building on this research, I examine a wide range of source material which I argue contribute to sustaining conflicting ideologies around mental and physical (non-)consent.

By combining the analysis of romance narratives with legal histories, this research allows for a flourishing opportunity to study societal anxieties “largely invisible from more conventional historical records.”<sup>23</sup> In this way, these sources become mirrors—however distorted they may be—reflecting a relatable experience to the audiences.<sup>24</sup> As scholars have noted, medieval literature was a platform for discussion and debate about the realities of rape.<sup>25</sup> 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, legal influences, and realities intruding into the fictional which are of primary concern here. In alignment with the legal texts, this book will further argue that romances were beyond fanciful entertainment or hagiographic rhetoric, but rather they had the capacity to be legally instructive. As will become evident in the following chapters, romance is reflecting a reality but does not necessarily intend to be realistic.

There are, of course, limitations to a heterosexual lens of study, 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. I am cognizant of the fact that the source material—which defines rape as a crime committed by a man onto a woman—carries with it an assumption of heteronormativity, and this does not reflect the realities of sexuality and sexual violence of the medieval past. In an attempt to combat this, I follow queer theorists’ critiques of heteronormativity. Here, rape is not viewed as the product of “toxic masculinity” but as a product of hegemonic masculinity and femininity—an act which is not outside the cultural bounds of acceptability but firmly entrenched within them.<sup>26</sup> This critique of

**22** Harris, *Obscene Pedagogies*, 10.

**23** Goldberg, “Introduction,” in *Medieval Women and the Law*, x.

**24** For a discussion on the relationship between romance and reality, see Galloway, *Medieval Literature and Culture*, 82; Harris, “Pastourelle Fictionalities,” 239–42; Piercy, *Resistance to Love*, 14–30.

**25** Harris, “Pastourelle Fictionalities”; Kaeuper, *Chivalry and Violence*, 35; Raw, “Readers Then and Now,” 313.

**26** Connell, *Masculinities*, 77. For more on queer theory, see Gavey, *Just Sex?*, 1–14.

normative cultural practices enables us to consider medieval England's cultural toleration of sexual violence.<sup>27</sup> 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."<sup>28</sup> These cultural ideologies make rape appear tolerable, perhaps even inevitable, and they are largely unquestioned cultural markers that are upheld by larger cultural structures, such as laws and gender norms. Through my analysis of this medieval evidence, I acknowledge what we now define as traits of a rape culture in the modern era are also evident in the Middle Ages.<sup>29</sup>

As Harris states, "neither rape nor consensual sex follows a single paradigm."<sup>30</sup> As such, the sources are at times contradictory, which is often unsettling for historians. I am okay with the conflict; I am at ease with this ambiguity because I believe that the ambiguity of sexual (non-)consent is emblematic of larger contemporaneous cultural beliefs about women's sexuality. I want to explore these contradictions; I want to pause in the uncertainty and consider how medieval thinkers—theologians, writers, and readers—sought to harmonize conflicting ideologies around mental and physical (non-)consent and, in turn, consider how these conflicts enabled victim-blaming ideologies. Sadly, this is not a new topic. The longevity of victim-blaming can be traced back to the high and late Middle Ages.<sup>31</sup> Medi-

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**27** See Akard, "Unequal Power and Sexual Consent," 288; Harris, "On Servant Women, Rape Culture, and Endurance," 475–83; Harris, *Obscene Pedagogies*; Seal, "Whose Chaucer?," 487; Piercy, *Resistance to Love*, 15; Schwebel, "Chaucer and the Fantasy of Retroactive Consent," 338; Torres and McNamara, "Female Consent and Affective Resistance in Romance," 44.

**28** Nicholls, *Dismantling Rape Culture*, 9–10, 26. See also Brownmiller, *Against our Will*, 391. For an overview of rape myths, see Payne et al., "Rape Myth Acceptance," 27–68.

**29** For a discussion on "the toxicity of normative masculinity" see Mardorossian, *Framing the Rape Victim*, 10–28. For an analysis of the current "cultural coupling" of sex and violence, see Fraser and Seymour, *Understanding Violence and Abuse*, 19–23, 74, 87.

**30** Harris, *Obscene Pedagogies*, 105, 123.

**31** I am not saying that victim-blaming began in the Middle Ages. See Brundage, *Law, Sex and Christian Society*, 55–174. For a discussion on victim-blaming as a part of "invulnerability theory" see Canadian Resource Center for Victims of Crime, *Victim Blaming*, 3. For an analysis of victim-blaming ideologies, see Grubb and Turner, "Attribution of Blame in Rape Cases," 443–52. For a discussion on the positive correlation between physical injury and victim-blaming, see Andrews et al., "Gender, Social Support, and PTSD in Victims of Violent Crime," 422.

eval English jurors, defendants, and authors belittled accusations made by rape survivors with questions which are all too familiar to us today: What was she doing there alone? Was she drinking? Was she asking for it? Did she enjoy the assault? The common tropes include fears of false rape accusations, the binary construction of the “true rape victim” and the blame-worthy woman, and the perceived defence that the survivor’s body can enjoy the sexual assault. While this research is firmly focused on the medieval past, comparisons to modern culture are inescapable (dare I say necessary) and will be discussed in the final chapter.

Modern understandings that consensual sex does not necessarily mean ethical, mutually agreed upon sexual contact enables scholars to explore the multivalent understandings of rape and (non-)consent in the medieval past.<sup>32</sup> Heeding Sarah Baechle’s advice, this book takes a structural approach to the source material in order to gain a deeper understanding of the “cultural scripts that foster violation,” that enable victim-blaming mentalities, and that support the assumed verisimilitude of rape mythologies to better understand medieval English cultural beliefs around notions of rape and consent.<sup>33</sup> Louise Sylvester’s work on feminine passivity requiring the performance of reluctance—the so-called “token no”—allows for the understanding that certain cultural markers around expected gendered behaviour may have not only contributed to a hesitancy to believe rape survivors but also perhaps contributed to the frequency at which seduction could apparently lead to rape.<sup>34</sup> This eroticization of the reluctant lady, which works to enhance the male desire to turn rejection into submission, has been noted by various scholars. Simultaneously, scholars have challenged the “token no” to develop a perspective on such vocal non-consent as more than performative reluctance.<sup>35</sup> Instead of viewing a woman’s change of a “no” to a “yes” as flip-pant or formulaic, Alice Raw reminds us that “coerced consent” can be an act

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**32** Recent scholarship in the field of historical consent has emphasized the inadequacies of a “consent only” framework that ignores the limitations of freely given consent. However, as Harris, Piercy, and others have noted, consent is discussed in the source material and thus we ought to consider its “linguistic ‘historicity.’” See Piercy, *Resistance to Love*, 4–8; Harris, *Obscene Pedagogies*, 34; Harris and Somerset, eds., “Colloquium: Historicizing Consent,” 268–367.

**33** Baechle, “Speaking Survival,” 468.

**34** Sylvester, *Medieval Romance and the Construction of Heterosexuality*, 2, 30–39, 41.

**35** Harris, “Pastourelle Fictionalities,” 240; Moss, “#NotAllMen,” 295; Piercy, *Resistance to Love*, 31; Seal, “Chasing the Consent of Alice Chaucer,” 277; Torres and McNamara, “Female Consent and Affective Resistance in Romance,” 34–49.

of survival.<sup>36</sup> As Suzanne Edwards states, “consent is thus the switch-point between misogyny’s carrot and stick” in that if the woman gives her consent, she will escape violence, and if she withholds her consent, she will “suffer harm.”<sup>37</sup> Contextualizing consent within the power dynamics and cultural norms of medieval England is thus paramount to reading past the “token no” and viewing reluctance and acquiescence as a form of endurance.<sup>38</sup> I agree with the scholarly critiques of Sylvester’s “token no” in that saying “no” is not just a performance of reluctance or a performance of ideal femininity. This book is grounded in the understanding that “no” is verbal non-consent, and sometimes saying nothing at all is indicative of mental non-consent. I understand the consequences of saying “no” and how quickly a “seduction” can turn physically violent.

Throughout this book I use the term “identity,” and it is important to remember that women “were active in negotiating and creating their own identities alongside commonly recognized stereotypes and norms of gender expectations.”<sup>39</sup> I consider how both real and fictional women were assumed to be innocent, guilty, or a reluctance accomplice in their own rapes, and how these *legal identities* were constructed, upheld, and usurped. I use the term “identity” to consider the legal caricatures placed on women while acknowledging that they were not necessarily performing these “identities.” This is largely due to the nature of the archives as produced by and for the king’s court. I can only view the courts’ rendition of events and how the judges or jurors viewed these individuals as guilty or victimized. I consider how ideal masculinity and femininity influenced the legal rhetoric of rape cases and potentially disadvantaged women appealing rape.<sup>40</sup> The symbolic representations of “woman” in rape narratives as either Mary or Eve, pure or corrupted, innocent or guilty are binaries consistent in the laws themselves, the

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**36** Raw, “Readers Then and Now,” 307–14. See also Akard and Raw, “Global Response,” 363–67.

**37** Edwards, “Consent and Misogyny,” 335.

**38** For a discussion on the contextualization of consent see Akard and Raw, “Global Response,” 363–67. For an examination of (non-)consent in Chaucer, see Baechle, “Speaking Survival,” 463–74. For an analysis of “endurance,” particularly around the role of servant women, see Harris, “On Servant Women, Rape Culture, and Endurance,” 475–83.

**39** Kane and Williamson, “Introduction,” 16.

**40** My methodology is similar to Amanda McVitty’s in her analysis of treason and masculinity, in that gendered identities in felony trials were connected to broader cultural understandings of “manhood” and “womanhood.” See McVitty, *Treason and Masculinity in Medieval England*, 5.

trial records, medical texts, conduct literature, hagiography, and the literary sources of popular MER. These symbolic representations are both explicitly mentioned and implicitly hinted at in the primary sources' discussions of rape victims. Here, I argue that the duality of mental and physical (non-) consent was sustained by the cultural symbols employed in rape narratives wherein a woman as either Mary or Eve, pure or polluted, virgin or temptress, innocent or guilty. Importantly, power allows space for resistance, and, indeed, there are resistance narratives in the primary sources discussed.

## Sources and Structure

This book is divided into two primary fields of study: medieval English laws and popular MER. First discussed in turn, these will be brought together at the end of this book for a discussion which will ultimately show that the polarity of mental and physical (non-)consent enabled the cultural space for belittling a woman's accusations of rape and thus ensured the necessity of physical resistance to prove her non-consent. In this analysis, I am building on the extensive EC archival research completed by Harold Schneebeck and Barbara Hanawalt while including new cases, new translations, and shifting my lens of focus away from statistical analysis and instead looking at the use of language—blood, injury, virginity, pollution, corruption—to describe the alleged victims and perpetrators.<sup>41</sup> I recognize that applying statistical findings of medieval court records is a speculative endeavour; not all crimes make it to authorities, not all authorities follow up on criminal accusations, and records get lost or purposefully destroyed. Studying legal records can frustrate historians, as verdicts are frequently left unmentioned or concord was made out of court, and thus there are inevitable gaps in the records themselves.<sup>42</sup> Just like today, many instances of rape in the Middle Ages were never reported to authorities. We cannot know whether women chose not to appeal because of the financial penalty they would endure if their appeal failed, the potential for a damaged reputation or blame being placed on them, or the fact that convictions were rare, and the prosecution process seemed pointless.<sup>43</sup>

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**41** Hanawalt, "The Female Felon in Fourteenth-Century England," 253–68; Hanawalt, *Crime and Conflict*; Hanawalt, "Women Before the Law," 165–96; Schneebeck, "The Law of Felony in Medieval England," vol. 2.

**42** For a discussion on the issues of using medieval trial records for statistical data see Butler, "Getting Medieval on Steven Pinker," 29–40.

**43** For a statistical analysis of conviction rates see Bellamy, *Crime and Public Order*, 158; Carter, *Rape in Medieval England*, 108; Groot, "The Crime of Rape," 329;

I draw on 179 *raptus* cases, which includes sixty-one rape cases in the court of the general eyre, from 1201 to 1330, as well as records from the King's Bench, coroners' rolls, goal delivery rolls, calendar of close and patent rolls. Furthermore, I explore the meaning of *raptus* in the legal treatises *Glanvill*, *Bracton*, *Britton*, *Mirror of Justices*, *Placita Corone*, and *Fleta*, as well as in the legal statutes of Westminster I, II, and the Statute of Rapes. Together, with these legal sources, I explore representations of rape and (non-)consent in medical and ecclesiastical treatises, such as those by William of Conches, Augustine, and Gratian alongside hagiography, conduct literature, and MER to weave together a social historical prospective of rape and (non-)consent in medieval England. By looking at a wide range of sources and how they interpreted rape, consent, and the "causes" of rape, we can see connections, reoccurring themes, and "textual hauntings."<sup>44</sup> I do not offer a singular, definitive, definition of medieval English interpretations of consent, as it was indeed a "flexible concept."<sup>45</sup> However, it is clear that consent, assent, and will mattered to legal, ecclesiastical, medical, and literary authors in the medieval period. When we consider the propinquity between these varying sources, we can gain a comprehensive—albeit often contradictory—appreciation for the reoccurring theme of the duality of mental and physical (non-)consent.

Looking at legal and literary sources together, seeing how they reinforce certain tropes, and recognizing how they conflict with one another offers scholars the vantage point by which to see "how medieval ideas about consent were far more complex, dynamic, and nuanced than we typically acknowledge."<sup>46</sup> Medievalist have long debated the meaning of "consent," and Gwen Seabourne cautions against historical speculation, as the legal terms used for consent "are nowhere defined."<sup>47</sup> While recognizing the "slip-

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Hanawalt, *Crime and Conflict*, 59; Hanawalt, "Women Before the Law," 186; Kittel, "Rape in Thirteenth-Century England," 106–10; Schneebeck, "The Law of Felony in Medieval England," 219n120. For discussions on the limitations of legal records see Davis, *Fiction in the Archives*.

**44** Following Piercy, I am not suggesting that these are "direct lines of influence" but rather they offer "implications for understanding contemporaneous views." Piercy, *Resistance to Love*, 7–8. Like Harris's use of "linkages," I am not arguing causality between source material, but rather the "notion of 'partial connection'" between the sources. Harris, *Obscene Pedagogies*, 9.

**45** Piercy, *Resistance to Love*, 12–13.

**46** Harris and Somerset, "Introduction," 270–71.

**47** Seabourne, *Imprisoning Medieval Women*, 153. See also Youngs, "Reading Ravishment," 56.

periness” of defining consent in medieval England, the various sources show a persistent attempt to classify (non-)consent and to harmonize conflicting notions of mental and physical consent. In short, “medieval people were curious about consent.”<sup>48</sup> This research contributes to the ongoing discussion concerning the way that (non-)consent was viewed through physical injury, not separate from it, which led to a legal and social expectation of resistance to rape. However, I contend that the “legible flesh”<sup>49</sup> was seemingly insufficient, as medical, ecclesiastical, and literary texts argue for a more nuanced interpretation of mental and physical (non-)consent. The two conflicting consent models enabled the theoretical space for a cultural hesitancy to believe women’s accusations of rape, as the body and mind could seemingly operate independently of one another. The blurriness between physical and mental (non-)consent appears throughout the source material covered in the remaining chapters, and this blurriness allowed for the weaponization of (non-)consent against victim-survivors.<sup>50</sup>

I follow the structure presented in Sara Ahmed’s *Willful Subjects*, offering “threads of arguments that are woven together and tied up somewhat loosely” and considering how “echoes and repetitions” of mental and physical (non-)consent reappear in the primary sources.<sup>51</sup> As will be discussed at length in the next chapter, medieval English laws generally defined rape as when a man overpowers a woman with force, leading to her “corruption.” In this overview of England’s *raptus* laws from *Glanvill* to the Statute of Rapes, I provide close readings of the legal texts to offer new interpretations about the physicality of non-consent in the criminal courts. The next chapter moves from the secular to the sacred and explores ecclesiastical perspectives. Rape was technically the only sexual crime not to be tried in church courts. However, canon texts offer nuanced perspectives of mental non-consent to rape versus the physicality of non-consent which were paramount in the secular criminal courts. This analysis will demonstrate that men of law (secular and ecclesiastic) were highly interested in debating the possibility of mental and physical (non-)consent of rape victims. With the background of legal understandings (both secular and ecclesiastical) around rape and consent,

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**48** Akard and Raw, “Global Response,” 363, 365.

**49** Phillips, “The Breasts of Virgins,” 1.

**50** For more on male-authored texts and their use of “weaponized consent” see Akard and Raw, “Global Response,” 363–67. Despite modern usage of “survivors” of sexual assault, I use the term “victim” throughout the remainder of the book as it more accurately reflects medieval mentalities towards rape.

**51** Ahmed, *Willful Subjects*, 19.

Chapter Three examines new translations of rape cases from the EC. These trial records allow for exploration of the criminal courts' interpretations of relevant laws and demonstrate the existence of a schism between the laws in theory—that is how they were written—and the laws in practice—that is how they were applied in presented cases. Here I offer new, literal translations of the primary sources which may at times appear jarring and unsettling to modern readers, but I aim to reproduce as accurately as possible the meaning of the sources. Such “realistic” interpretation of *raptus* laws, as Gwen Seabourne states,<sup>52</sup> allows scholars to consider the broad applications of the laws and how they reinforce certain tropes not explicitly stated within the prevailing legal doctrine. Even though at times the application of the laws appears to be incongruent with the laws themselves, they were not necessarily seen as incompatible with the legal statutes. The third chapter will demonstrate that the courts continually exploited the lack of physical injury and virginity to question the (non-)consent of the woman and downgrade the offence. This analysis will focus on the language around blood, force, corruption, and virginity within the court records which legitimized the duality of physical and mental (non-)consent within the EC.

Chapter Four provides the crucial analysis of the physicality of (non-) consent as operating independently and, at times, in contradiction of mental non-consent. Here, medical assumptions about conception and the consequences of pregnancy occurring from rape are discussed as providing the scientific framework supporting the legal system. This chapter explores the bodily victimization of both rapists and rape victims, and I consider the relationship between rape, irrationality, and monstrosity. I offer three legal identities that women could have when appealing rape: 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).

The following two chapters combine MER with the previous analyses of legal and ecclesiastic texts. By looking at how narratives of rape and sexual violence are represented in select romances, these chapters present inferences about medieval English popular opinions and cultural norms surrounding sexual violence. This is a difficult task, in that the “relation of fiction and reality in Middle English romance is notoriously difficult to assess ... romance

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**52** Seabourne, *Women in the Medieval Common Law*, 6–7.

straddles the actual and the fantastical.”<sup>53</sup> However, this task is crucial as romance demonstrates the legal ambiguities of mental and physical (non-) consent and thus offers a platform to consider the larger cultural ideologies of rape and consent. Chapters Five and Six provide close readings and new interpretations of scenes of sexual violence in *Sir Orfeo*, *Amis and Amiloun*, *Sir Degare*, *Sir Gowther*, and *Le Bone Florence of Rome*. These texts were selected for their broad representations of sexual violence, (non-)consent, and rape which enable us to examine how the threat of rape, and the rapeable body,<sup>54</sup> were integral to cultural interpretations of licit or illicit sex. These chapters will demonstrate how popular romances have striking consistencies in their representations of the legal responsibilities of women to resist 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.

The final chapter draws these threads of diverse sets of evidence together, to emphasize how medieval English legal, literary, medical, and ecclesiastical sources viewed consent and non-consent to rape based on the belief that the mind and body of both rape victims and rapists could function in contradiction to one another. This ensured a legal and social expectation of resistance to prove non-consent. This chapter also more specifically examines the cultural expectations of masculinity and femininity which allowed for the persistent threat of rape, as discussed above. Finally, this chapter considers the long-lasting impacts of these medieval conceptualizations.

Overall, this research provides new insights into medieval cultural understandings of sexual consent and the duality of mental and physical (non-)consent. This research deconstructs the legal identities of women in the medieval English criminal courts, which continue to be upheld in modern Western courts. By weaving these threads of diverse sources together, I contribute to the conversation about medieval England’s rape culture and the cultural ideologies around consent of the flesh which allowed for, or even encouraged, sexual violence against women.

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**53** Saunders, “A Matter of Consent,” 105.

**54** I use the term “rapeable” based on the framework provided by Andreasen, “‘Rapeable’ and ‘Unrapeable’ Women,” 102–13.

