

LAWS IN PRACTICE

THE EYRE COURTS

YOUNG MARGERY LE FEVER was living with her father, Peter, and enjoyed a rather uneventful, even if boring, childhood.¹ However, on the day, Margery was at Alice Marbarne's house, when two men—Thomas de la Forde and Richard, son of Benedict—saw her alone and took this opportunity to rape young Margery, one after the other. Thomas raped Margery first. This was little Margery's first sexual experience. After the assault, Margery alerted the authorities and demanded her day in court. Ten years later, the day finally came. Young Margery described the force that Thomas used to rape her and how he caused her to bleed. The twelve male jurors, all of whom were from the same community as Thomas and Margery, agreed that Thomas did rape Margery. But the jurors told the court that Margery was not a virgin at the time of the rape ten years ago. Perhaps they debated amongst themselves the seriousness of non-virginal rape and whether Margery could prove that she was indeed a virgin back then. In the end, the jurors sent the signal that Margery's (alleged) non-virginal rape wasn't that big of a deal. They ordered Thomas to pay a half mark and ordered Margery to forgive Richard.

Margery's 1274 case is indicative of the continual EC insistence on virginal rape despite the statutory laws' explicit mention of maidens and matrons' rights to legal recourse. Studying the written laws of *raptus* in comparison to the laws in practice allows historians to get a better sense of how they worked in real life situations and to appreciate the complexity of applying case law. Although the laws progressively eclipsed women's place as victims of rape and/or abduction in favour of their male kin, as they increasingly tried to erode women's rights to appeal, women continued to bring appeals forward. 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 tokens of "proof" required to

1 TNA, JUST1/540 m19.

2 Goodich, "Introduction," in *Voices from the Bench*, 1.

make a successful appeal and, in turn, allows us to consider what this tells us about rape and consent in the EC. There are inconsistencies between the laws in theory (as written) and the laws in practice which demonstrate, as Gwen Seabourne states, “a ‘realistic’ view of law.”³ I am not claiming that this schism between the laws in theory and practice was problematic for medieval criminal courts, but rather that the application of *raptus* laws was broader in interpretation than one may assume if only reading the laws in isolation from case records. 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.

The following case records were selected based on access, temporality, and information. I accessed cases through both a research trip to TNA and the online AALT website. I searched for cases that fit within the timeframe of the court of the general eyre based on plea roll survival, dating from approximately 1194 to 1348. Lastly, cases were sorted through the information they provided. I began by looking for *raptus* cases, and then I filtered these cases using the auxiliary words *concubuit* (to lie with sexually),⁴ *carniliter* (by physical intercourse, sexually),⁵ *virginitatem* (virginity),⁶ *deflorare* (to deflower (sexually), ravish),⁷ and *sanguinem* (blood),⁸ to determine those that were likely rape cases. I started looking for *raptus* cases in the plea rolls from all available extant records on AALT during the reign of King John. I found fifty-three *raptus* cases, and, of them, only five were unambiguous rape cases, characterized by the auxiliary words discussed above. These five cases come from Cornwall and Lancashire. During the reign of Henry III, I searched every available AALT JUST1 record in counties Bedfordshire, Berkshire, Buckinghamshire, Cambridgeshire, Cornwall, Derbyshire, Devon, Dorset, and Durham from 1216 to 1248. This resulted in forty-three *raptus* cases, of which fourteen included the previously mentioned auxiliary words to determine that they were rape cases. For cases under the legal ages of Westminster I and II, I re-examined the cases found by Harold Schneebeck. During Westminster I (1275–1285) Schneebeck claimed to have found thirty-seven rape

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

4 DMLBS, “concumbere,” article 1a.

5 DMLBS, “carniliter,” article 2a.

6 DMLBS, “virginitas,” article 1a.

7 DMLBS, “deflorare,” article 1b.

8 DMLBS, “sanguis,” article 1a.

cases in the JUST1 records. However, upon a close reading of these cases, Schneebeck translated *raptus* as “rape” without any further consideration, and, as such, I have found that there are only twenty-one unambiguous rape cases during this ten-year period. These cases come from Cornwall, Cumberland, Devon, Dorset, Essex, Hampshire, Kent, Lincolnshire, Nottinghamshire, Sommerset, Sussex, Wiltshire, and Yorkshire. During the age of Westminster II, I searched available JUST1 records from 1285 to 1348 (the date of the last known eyre) in counties covered in the previous legal ages. I found forty-five *raptus* cases resulting in twenty-one rape cases. They come from Bedfordshire, Cumberland, Dorset, Lancashire, London, Norfolk, Suffolk, Sussex, and Yorkshire. In total, I studied 179 *raptus* cases (sixty-six during the legal age of *Glanvill*, thirty-one during *Bracton*, thirty-seven during Westminster I, and forty-five during Westminster II), of which only sixty-one are explicitly rape cases. These cases span the years 1201 to 1330 and come from twenty-two counties in both the northern and southern eyre circuits.

This chapter examines the tokens of proof that were used to substantiate a woman’s accusation of rape. What language is included in the appeals and indictments to make a successful case and what inferences can scholars make about contemporaneous understandings of rape and (non-)consent from that language? The individual records of women and young girls who experienced extreme bodily harm and violation allow historians to consider the structural processes of medieval England for determining rape and (non-)consent which sustained a cultural toleration of sexual violence. These records are written by men, consumed by men, and made for the all-male legal profession. But they do represent a reality, a lived experience of trauma which was recorded and which we can revisit. As the elusive Banksy once noted, “they say you die twice. One time when you stop breathing and a second time, a bit later on, when somebody says your name for the last time.”⁹

***Glanvill*-Era Cases, 1201–1227**

While *Glanvill* states that *raptus* is the forcible rape of a woman, the plea rolls are sparse, with minimal extra information provided and little use of the previously-mentioned auxiliary words. As such, I begin my analysis with cases that only stated *raptus* in the plea roll, and then I examined the few cases that are unambiguous rape cases. Even though *Glanvill* defines *raptus* as what we now understand to be rape, I leave the translation as *raptus* for

9 “Banksy Quotes,” *Urban Artists Association*.

cases that do not include any of the auxiliary words. I translate *raptus* as “rape” only for the cases that do include the use of the auxiliary words which make it clear that rape, not abduction, is the crime under consideration.

Looking at all available JUST1 records on AALT during the legal age of *Glanvill*, I found sixty-six cases of *raptus* dating from 1201 to 1227, which is just seven years after the earliest extant EC plea roll of 1194. As far as the extant records allow us to speculate, these early cases occurred within the first decade of the circuits of the eyre. Of the sixty-six *raptus* cases identified, all of them were brought to court by a woman’s appeal; only one was successful in obtaining a conviction, while eleven ended in concord, three resulted in outlawry, two in outright acquittal, and forty-nine in failed appeals. Of the fifty-one cases that resulted in acquittals and failed appeals, forty-one women were deemed culpable for false appeal, equating to 80.39% of all acquittals and failed appeals. Meaning, out of the entire sixty-six *raptus* cases, women were deemed culpable 62.12% of the time. Seven of the sixty-six cases list multiple men as acting in *forcia* and *auxilio*, as accessories to the crime.¹⁰ This indicates that approximately 10.61% of the cases were not lone-*raptus* cases, but rather groups of men were involved and named in the women’s appeals.¹¹

Three of the seven cases of group *raptus* occur in the Buckinghamshire eyre of 1227.¹² An unmarried woman named Mabel appealed Thomas of *raptus* and named two other men, Walter and Henry, as acting *de forcia*, as accessories to the crime.¹³ Mabel did not come to pursue her appeal, but “after Mabel comes and withdraws [her appeal] ... and she herself is in custody, afterwards Thomas comes ... [he is] quit.”¹⁴ In another case of group *raptus* Matilda appealed Simon of *raptus* and Alexander of *forcia*.¹⁵ Matilda did not come to pursue her appeal and was placed in mercy. Although in all seven of the group *raptus* cases only one man is accused of *raptus*, we should not read these as lone rapes and/or abductions because other people are accused of aiding in the crime in some capacity. Even though we do not know

10 TNA, JUST1/1 m4d (2 cases); JUST1/479 m8; JUST1/479 m1d; JUST1/54 m15; JUST1/54 m16d; JUST1/54 m18d.

11 The number of cases increases if abduction cases (with no mention of *raptus*) are included. But here, I am only including cases which mention *raptus*.

12 TNA, JUST1/54 m15, m16d, m18d.

13 TNA, JUST1/54 m15. Translations of all cases are my own unless stated otherwise.

14 TNA, JUST1/54 m15: “post venit Mabel et retraxit ... et ispam custodiam post venit Thomas ... quietus.”

15 TNA, JUST1/54 m16d.

in what capacity these other individuals acted, we should be cognizant of the fact that they are accused of a crime. These “other people” (in these cases, men) are usually ignored by *raptus* scholars, largely due to the limitation of the archival material. However, we ought to acknowledge the frequency in which *raptus* is happening in groups so that we may better understand group sexual violence in the medieval past.¹⁶

When looking at rape cases specifically—those that include the previously mentioned auxiliary words or phrases—there are only five cases during this legal age. Three come from the 1201 Cornwall eyre and two from the 1202 Lincolnshire eyre.¹⁷ Malot Craue appealed Robert, son of Godfried, of rape in 1201.¹⁸ Robert came to defend himself, but the brief (less than two lines long) record plainly states: “it is testified that he thus raped [*rapuit*] her and that she was seen bleeding [*sanguinolenta*].”¹⁹ Despite the physical injury she endured, the jurors concluded that *concordati sunt*, “they are in concord,” because “he has taken her as his wife.”²⁰ Here we see *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. In the same plea roll, there is another rape appeal ending in matrimony: that of Lucy Balland, who appealed Stephen Hokor of having “laid with her with force” and made her bleed.²¹ The record states that “they are in concord” through marriage. In the same 1201 Cornwall eyre, Marina appealed Roger de Bond of raping her virginity, “and it was testified that she was covered with blood.”²² Roger defended himself, but the margin inscription *custoditur* implies that he was placed in custody as Marina was not imprisoned for false appeal. Of the three Cornwall rape appeals, all of them mention blood, one mentions virginity, and two ended in marriage, suggesting that rape was at times an acceptable precursor to matrimony.

16 For more of my discussion on this topic, see Cooper “‘Let’s Bring the Boys In’”; Cooper, “Re-Reading Medieval English Cases of *Raptus*.”

17 TNA, JUST1/1171 m3 (2 cases), m4; TNA, JUST1/479 m7, m1d.

18 TNA, JUST1/1171 m3; *Select Pleas of the Crown*, vol. 1, p. 3.

19 *Select Pleas of the Crown*, vol. 1, p. 3; TNA, JUST1/1171 m3: “testatum fuit ipse eam ita rapuit et quod visa fuit sanguinolenta.”

20 TNA, JUST1/1171 m3: “cepit eam sponsam.”

21 TNA, JUST1/1171 m4: “concubuit vi.”

22 TNA, JUST1/1171 m3: “Marina ... appellat Roger de Bond de Rapo quod ipse eam pro abstulit virginitatem suam ... testatum est quod ipsa fuit sanguinolenta”; DMLBS, “sanguinolentus,” article 1a.

We are not always told the nature of the concord. For example, in the 1202 Lancashire eyre, a young woman named Jueta appealed a man named William of rape, and she was described as bleeding.²³ The record then simply states that Jueta and William are in concord, and William is in mercy. The exact nature of the concord is left unrecorded, as is typical in the plea rolls. The fifth rape case found also ended in concord, as Levina appealed Simon of raping her virginity, but “they are in concord,” and Simon was ordered to make payment for the “violation.”²⁴

These five rape appeals demonstrate that the women’s appeals were legal constructions of expected tokens of proof of a crime. They all mention blood and/or virginity. The inclusion of “she was seen bleeding” is the expected evidence of a rape as stated by *Glanvill*, and, consequently, it is likely that these were not the actual words spoken by the women. The inclusion of physical injury subscribes to *Glanvill*’s expectations of what rape should look like. Since not all cases that mention blood include virginity (nor do all virginal rapes mention blood), we can speculate that the blood here is physical injury and not necessarily virginal blood. We can infer from this that appeals without physical injury were not as likely to make it to the EC, which allows us to speculate that blood was indicative of non-consent.

Throughout the *Glanvill* age, women and young girls were captured for false or failed appeal in 62.12% of the *raptus* cases (forty-one out of sixty-six), demonstrating the harsh consequences of having an appeal fail. I have found only one likely conviction during the *Glanvill* age: that of Marina’s appeal of virginal rape against Roger, discussed above.²⁵ This likely conviction of Roger does not prescribe the felony punishments mandated by *Glanvill*. The lack of felony convictions I have found are consistent with John Bellamy’s findings: of the thirteen appeals made during the 1221 Gloucestershire eyre, there were zero convictions.²⁶ The *fama*, or reputation, of both the accused man and the complainant woman likely persuaded the EC, as did the expectations of “what rape should look like.” During the *Glanvill* age, when rape was evident by the bleeding body of the woman (as demonstrated by the cases above), the EC opted for concord most of the time.²⁷ *Glanvill*-era

23 TNA, JUST1/479 m1d: “de rapo ... concubuit cum ea ... sanguinolenta.”

24 TNA, JUST1/479 m7: “Levina ... appellat Simon ... de rapo ... quod ipse abstulit ei virginitatem suam ... Concordati sunt ... infracta”; DMLBS, “infractus,” article 4a.

25 TNA, JUST1/1171 m3.

26 Bellamy, *The Criminal Trial in Later Medieval England*, 178.

27 It is impossible to make any meaningful statistical analysis with only five cases.

plea rolls emphasize the physical injury and bleeding body as the signs of proof that a rape occurred, and that the woman did not consent. Here, the physicality of non-consent was paramount.

Bracton-Era Cases, 1232–1274

Bracton outlines some of the harshest punishments for convicted rapists: the loss of eyes and genital mutilation. Despite these severe punishments, courts continued to prosecute rape by trial jury, meaning that members of the same county of the accused were responsible for determining his guilt. There might have been reluctance among jurors to punish their fellow neighbours with such severe mutilations. Even *Bracton* encourages caution in the application of capital punishment when a felony was committed, stating “punishments are rather to be mitigated than increased.” Indeed, corporal punishment was a mitigated sentence compared to capital punishment.²⁸ Those who were most likely to be convicted of a felony were either caught during the crime, known criminals, or foreigners unknown to the jurors.²⁹ Since jurors tended to know the accused, it was unlikely that the full punitive measures outlined in *Bracton* would be prescribed to convicted rapists. To date, there is only one single case known during the age of *Bracton* in which the prescribed punishment of facial and genital mutilation was completed. This very obscure case, from 1222, is referenced by *Bracton*. It seems peculiar and suspicious that *Bracton* has recorded this single instance of the punishment, and it should likely not be read at face value.

Frequently appeals would fail if women brought the appeals forward improperly—that is, non-appearance in court, failing to show their wounds to the coroner, or failing to raise the hue and cry immediately after the attack. Rape appeals were weakened by lapsed time before the accusation, as it might have indicated a woman’s malicious intent. A victim of rape had to demonstrate physical evidence of non-consent, and if there was an attack on her reputation or moral character, the case could still fail. As with the previous legal age, out-of-court settlements and concord were typical methods

However, of the five rape cases, four ended in concord, two of those explicitly mention marriage. The use of concord for rape cases in the *Glanvill*-age is consistent with *raptus* cases generally: of the sixty-six *raptus* cases found, eleven ended in concord (equating to 16.66% of the cases).

28 *Bracton*, vol. 2, p. 299, l. 16. See Kamali, *Felony and the Guilty Mind in Medieval England*, 274–78.

29 Bellamy, *Crime and Public Order*, 160.

used to settle rape appeals. 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.

Out of the thirty-one EC *raptus* cases examined here during the age of *Bracton*, there are only fourteen unambiguous rape cases (those that include the auxiliary words mentioned above) and there are zero convictions for the felony of rape (even though under *Bracton* rape was a felony). The numerous 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.³⁰ For the *raptus* appeals that did not fail, the courts would seek to settle most often with an amercement. Three of the thirty-one *raptus* cases end in concord, equating to 9.68%. This is below the concord rate in the previous legal age of *Glanvill* (16.66%). The 77.27% acquittal and failed appeal rate during *Glanvill* is similar to the 70.97% acquittal and failed appeal rate during *Bracton*.³¹

Bracton placed such emphasis on the rape of virgins that it also acted as a deterrent to the prosecution of rape of non-virgins. During the 1244 Devon eyre, there was a case where the woman's appeal was dropped because she was a widow and the plea roll states explicitly that "a woman can only appeal about the rape of her virginity and the death of her husband in her arms."³² This strict interpretation of *Bracton* resulted in the failed appeal of the complainant and the acquittal of the defendant, as the jury found him *non est culpabilis*. 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 [*concu-buit*] with her." However, this was deemed irrelevant to the legal prosecution since she was not a virgin, and thus her appeal failed.

Of the explicit rape cases, Margery's case mentioned in the opening of this chapter is exemplary in demonstrating the court's—specifically the trial jurors—unwillingness to send their neighbour—a convicted rapist—to receive mutilation. During the 1274 Middlesex eyre, a young girl named Margery, daughter of Peter le Fever, appealed two men, Thomas de la Forde and Richard son of Benedict "of raping her virginity against the peace."³³

30 Of the thirty-one *raptus* cases, seventeen (54.84%) resulted in a failed appeal.

31 Of the thirty-one *raptus* cases under *Bracton's* age, five ended in outright acquittals and seventeen resulted in failed appeals.

32 TNA, JUST1/175 m44d: "appellum de virginitate sua rapta et viro suo in brachia sua occiso."

33 TNA, JUST1/540 m19: "de raptu virginitatis sue contra pacem."

This was a group rape. Margery made the appeal (*Margeria appellat*), stating that ten years prior to the trial, in 1265, “Thomas himself came ... to the house of Alice Marbarne ... and both raped her [Margery] with force and made her bleed.”³⁴ Thomas was also present, as the record states that “the aforementioned Thomas asks the judge about his own appeal.” Thomas challenged Margery’s appeal, and the twelve jurors stated, “that when the aforementioned Thomas violated her against her will, it was, they said, when she was not a virgin at that time.”³⁵ The jurors’ verdict allowed for the prosecution of rape but not the rape of a virgin. The record is vague in stating “afterwards, the aforementioned Thomas satisfied the aforementioned Margery, and he made a fine with the lord King for half a mark.”³⁶ Despite Margery le Fever’s failed appeal, there is no record that she was imprisoned for false appeal. The second man accused, Richard, was brought to court for rape, which was *promulgat* (made known), leaving little ambiguity that this was a group rape and that the community perceptions (the court of public opinion) of the event mattered to the judicial rulings. *Bracton* mentions that multiple men can be accused of *forcia*, which *Bracton* states can involve holding the woman down, raping her, or aiding the primary culprit. In most records, we do not get such explicit detail about the nature of the involvement of the other men, but here Margery accused both Richard and Thomas of rape. Thomas is accused of having raped her virginity, while Richard is accused of raping her, presumably after Thomas. However, the record ends with “therefore the woman’s peace is granted to him.”³⁷ Margery le Fever’s case is exemplary to what I have found with all cases that went to trial during the *Bracton* era: despite being found culpable, rapists were never convicted of felony rape. Rather, these cases are settled through concord or amercement. Critically, this case demonstrates the bodily injury expected of women and how that injury was legally secondary to the loss of virginity. I am not aware of a case where the “legal women” inspected the body for corruption or virginity years after the crime occurred. Speculatively, Margery’s *fama*—her presumed sexual reputation—could have been used against her in her appeal. This case demonstrates that jurors would mitigate the felony

34 TNA, JUST1/540 m19: “ipse venit ... ad domum Ahlae Mabarne ... et facit eam sanguineolentam et vi eam rapuit.”

35 TNA, JUST1/540 m19: “quod predictus Thomas violavit eam contra voluntatem suam set dicunt quod non fuit virgo tunc temporis.”

36 TNA, JUST1/540 m19: “Postea predictus Thomas satisfecit predictae Margerie et finem fecit cum domino Rege per dimidiam marcam.”

37 TNA, JUST1/540 m19: “ideo conceditur ei femina pax.”

by claiming that the woman was not a virgin, but they would still allow her to appeal the rape of a non-virgin, which was a lesser offence (in this case, treated as a trespass).

The importance placed upon loss of virginity seems to have permeated other felony charges, as it was intentionally included in appeals where the virginal status of the woman did not legally matter. This is evident in an attempted rape of a thirteen-year-old girl, Emma, daughter of Richard Toky, recorded in the Bedfordshire coroners' rolls.³⁸ On May 24, 1270, Emma was gathering wood when "Walter Gargolf of Stanford came, carrying a bow and a small sheaf of arrows, took hold of Emma and tried to throw her to the ground and deflower her."³⁹ Emma raised the hue and cry, demonstrating her verbal and mental non-consent. Her father, Richard, came charging over, but "Walter immediately shot an arrow at him, striking him," and Walter ultimately killed Richard. The attempted virginal rape of Emma did not necessarily matter to the legal proceedings of felony homicide, and yet it was included in the coroners' rolls. Presumably, *Bracton's* indignation of the rape of virgins supported this legal narrative where Walter's murder of Richard was compounded with felonious intent by the attempted deflowerment of Emma.

Bracton's prioritization of virginal rape may have been used by jurors to dismiss charges where loss of virginity could not be proven while also allowing for the mitigated conviction of non-virginal rape. I have found only two convictions where concord is not mentioned. The first comes from the 1248 Berkshire eyre, where Margery claimed that Nicholas, son of Geoffrey de Whatecumber, raped her of her virginity.⁴⁰ Despite being placed in *miseri-cordia* (mercy) for her failed appeal, Nicholas was fined for the assault. The second case ending with a conviction is that of Heloise, a wife and thus, presumably, not a virgin.⁴¹ In the 1232 Buckinghamshire eyre, Heloise appealed two men, Hugh and Alexander, who came to her house, where Hugh "with force laid [*concubuit*] with her against the peace,"⁴² and Alexander *fuit in forcia*, "was an accessory to the crime." Alexander did not come to court to mount a defence. However, Hugh did attempt to exonerate himself, but the

38 TNA, JUST2/1 m1d. Translated from Hunnisett, ed., *Bedfordshire Coroners' Rolls*, vol. 41, pp. 27–28; see Hanawalt, "Whose Story Was This?," 137.

39 Translated by Hunnisett, ed., *Bedfordshire Coroners' Rolls*, vol. 41, pp. 27–28.

40 TNA, JUST1/38 m33: "rapuit ei virginitatem suam contra pacem."

41 TNA, JUST1/62 m5.

42 TNA, JUST1/62 m5: "vi concubuit cum ea contra pacem."

jurors concluded that Hugh “with force had laid with her ... and therefore Hugh is in custody.”⁴³ Notably, this is another group rape case, as Alexander was named as explicitly aiding Hugh in the rape in some capacity. Alexander’s involvement must have been culpable enough for him to want to flee the criminal proceedings instead of proving his innocence.

There are two other group rape cases within the same 1232 Buckinghamshire eyre plea roll: those of Cecilia and Julianna.⁴⁴ Cecilia appealed two men of raping her virginity, but she retracted her appeal and was deemed culpable for false appeal.⁴⁵ Juliana, daughter of William le Hare, also appealed two men, Richard and Stephen, of raping her virginity.⁴⁶ As with the case of Cecilia, the plea roll for Juliana names one man (Richard) who is accused of *raptus* and another man (Stephen) who is accused of *forcia*. The case of Juliana is unique in describing how Stephen aided Richard in the rape by stating that “he pulled her into a certain cellar and closed the door on her,” at which point Richard presumably raped her.⁴⁷ Juliana is then described as a pauper in the plea roll, indicating that she is poor. Richard, the primary offender, fled and was placed in outlawry while Stephen appeared in court and was found not culpable. The jurors concluded that Richard “did not violently rape Juliana of her virginity.” Juliana was to be placed in custody for false appeal.

As with the previous legal age, women could be deemed guilty of false appeal. Of the sixty-six *Glanvill*-era *raptus* cases, 62.12% recorded that the woman was to be captured for a failed appeal. During *Bracton*, 38.71% of the thirty-one *raptus* cases indicate that the woman was to be imprisoned for false appeal. The large threat of going to prison for a failed appeal would have inevitably influenced the reluctance of women and girls in bringing rape accusations forward. In the 1238 Devon eyre, a young girl—presumably unmarried based on the inclusion of *filia*—named Agnes appealed a man named Amalric.⁴⁸ Agnes claimed that Amalric came to her house at night “and raped her and with force, [he] laid with her, and he raped her

43 TNA, JUST1/62 m5: “vi concubuit cum ea ... et ideo Hugo custoditur.”

44 Discussed further in Cooper, “Re-Reading Medieval English Cases of *Raptus*.”

45 TNA, JUST1/62 m3d: “abstulit ei virginitatem suam.”

46 TNA, JUST1/62 m5d.

47 TNA, JUST1/62 m5d: “traxit eam quoddam cellarium et firmavit hostium super eam.” Thank you to Sara Butler for helping me with this translation.

48 TNA, JUST1/174 m40.

virginity.”⁴⁹ Amalric came and defended himself. We are not told what he stated but simply *ven[it] et defendit totu[m]*—that “he comes and defends all.” Whatever he said must have been convincing, as the jury concluded that “he is not culpable, therefore he is quit, and Agnes is committed to Gaol for false appeal, [but] she is a pauper.”⁵⁰ Perhaps it was Agnes’s lack of physical injuries or her reputation that belittled her appeal. It is possible that her pauper status worked against her in court, as Amalric (who is not mentioned as being a pauper) may have had a stronger social network to aid in his acquittal. Like the case of young Juliana above, both Agnes and Juliana allegedly experienced virginal rape by men who may have been above their own socio-economic class, and both young women were deemed culpable for their own failed appeals. The statistics indicate that these experiences were not unique, and it was statistically probable (54.64%) that women would be found guilty of false appeal during *Bracton* and *Glanvill*.⁵¹

The records only tell us the pauper status of the individual if they were liable to pay a fine, so we cannot know for sure if the acquitted men were paupers since the record did not need to indicate their status. Nonetheless, it is notable how frequently women and girls of pauper status are recorded in the plea rolls as victims of sexual violence. The cases of Agnes v. Amalric and Juliana v. Richard and Stephen demonstrate this, as does the rape case of Matilda, daughter of Robert, who in the 1241 Berkshire eyre appealed William of acting “with force, he laid with her and deflowered her.”⁵² William defended himself, and the jury concluded that “the aforementioned William is not culpable therefore he himself ... is quit and Matilda is a pauper.”⁵³ Matilda was seized for false appeal, but the record’s inclusion of her pauper status is indicative of the fact that she received mercy. In the same 1241 Berkshire eyre, an unmarried woman named Alice made an appeal of virginal rape against Nicholas, who claimed that he did not “deflower her” and

49 TNA, JUST1/174 m40: “et ipsam rapuit et vi concubuit cum ea et rapuit ei virginitatem.”

50 TNA, JUST1/174 m40: “non est culpabilis ideo quietus et Agnes committitur Gaole pro falso appello pauper est.”

51 This represents twelve *Bracton*-era *raptus* cases and forty-one *Glanvill raptus* cases combined where women were captured. Out of the thirty-one *Bracton raptus* cases and the sixty-six *Glanvill raptus* cases (totaling ninety-seven cases), fifty-three women were ordered to be arrested equating to 54.64% of the *raptus* cases.

52 TNA, JUST1/37 m31d: “vi concubuit cum ea defloravit eam.”

53 TNA, JUST1/37 m31d: “predictus Williamus non est culpabilis ideo ipse ... quietus et Matilda pauper est.”

that they are in concord. The jury concluded that Nicholas “is not culpable,” that “they are in concord,” and, thus, “he is quit.” Alice was to be imprisoned for false appeal, but she was pardoned and in mercy because she was a pauper.⁵⁴ Likely, all these women (Agnes, Juliana, Matilda, and Alice) would have experienced additional pressures in court due to their pauper status. *Bracton* was built on a legal tradition, as stated in *Glanvill*, which viewed rape accusations made by women of lower social standing than the accused men as suspicious and perhaps malicious in nature. These cases suggest, as Ruth Mazo Karras argues, that rape was not only a “gender privilege” but also a “class privilege,” meaning that sexual violence against women “was an expression of power not just over women but over a subordinate class.”⁵⁵ Carris Harris’s analysis of rape in pastourelles provides further understandings on the “multiple disadvantages” and “structural inequalities” that certain economically and socially disadvantaged women and girls faced when bringing forward accusations of rape by elite-status men.⁵⁶ The weaponization of rape as a class and gender privilege could have impacted the criminal courts because these men may have been of higher socio-economic standing than the women and young girls they allegedly raped, which enabled them the privilege of believability in court.

In the 1238 Devon eyre, Margaret, daughter of William de Lawheie, appealed Arnald, the deacon of Soumonton of *rapo*.⁵⁷ The record states that Arnald “stole [*abstulit*] her away to his home,” but “the jury said he did not rape [*non rapuit*] her and that a long time before he had slept [*concubuit*] with her and that she did not anymore, and that she did not give her consent and so he took her by force [*cepit eam vi*] and slept [*concubuit*] with her.” In this case, we can explore multiple axes of privilege and oppression through gender, age disparity, and social class. In Amanda McVitty’s study of treason as a gendered crime, she found that male testimony—the public voice of men—held “enormous value as both moral sooth and legal proof” to such a degree that “men’s words remained integral to their social embodiment as true men.”⁵⁸ *Bracton* states that the defendant can simply claim that sexual consent was given and that was (according to the treatise) legitimate

54 TNA, JUST1/37 m34d.

55 Karras, *Doing Unto Others*, 177.

56 Harris, *Obscene Pedagogies*, 108, 118.

57 TNA, JUST1/174 m32d. Thank you Sara Butler for helping with this case translation.

58 McVitty, *Treason and Masculinity in Medieval England*, 12.

grounds for an acquittal. Medieval English criminal courts may have viewed capital punishment as an inappropriate punishment for rape (based on the lack of felony convictions). Additionally, they likely had legitimate grounds to mitigate felony appeals to trespass suits due to insufficient evidence. But there is also the possibility that the criminal courts were founded on the believability of male testimony and the trepidation of female credibility in rape cases where there was minimal bodily injury.

Of the fourteen rape cases found during the *Bracton* age, five resulted in failed appeals,⁵⁹ three acquittals,⁶⁰ three concords,⁶¹ two convictions,⁶² and one was moved to church courts.⁶³ Of the fourteen appeals, ten of them mention a loss of virginity and just one mentions blood, once again indicating that blood in plea rolls of rape cases likely indicates physical injuries due to resistance and not necessarily a loss of virginity. Overall, both the *Glanvill* and *Bracton* legal ages have spotty records of rape appeals with incomplete information, sparse recording, and few details. All the convictions were mitigated to a trespass. The EC were evidently reluctant to prosecute rape as a felony, as doing so would ensure the convicted man's mutilation. Although the sources explicitly state legitimate excuses for dismissing a case, the implication from these sources makes it appear that the harsh punitive measures prescribed in *Bracton* resulted in jurors' unwillingness to convict.

Westminster I-Era Cases, 1275–1285

Westminster I claims that any woman can appeal *raptus*, including maidens and wives, but when looking at the plea rolls during this legal age, the issue of the woman's virginity repeatedly became the primary focus of rape trials. 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. Conviction rates depended largely on the severity of the bodily harm, tangible proof of physical resistance and non-consent, the virginal status of the woman, her reputation in general, and the socio-economic status of both the woman and the accused man.

⁵⁹ TNA, JUST1/62 m3, m3d; JUST1/175 m44d; JUST1/540 m18; JUST1/696 m7.

⁶⁰ TNA, JUST1/62 m5d; JUST1/174 m40; JUST1/37 m31d.

⁶¹ TNA, JUST1/540 m19, m22d; JUST1/37 m34d.

⁶² TNA, JUST1/62 m5; JUST1/38 m33.

⁶³ TNA, JUST1/174 m32d.

Of the twenty-one rape cases during Westminster I, six resulted in failed appeals,⁶⁴ six ended in convictions,⁶⁵ four in outlawry,⁶⁶ three acquittals,⁶⁷ and two concords.⁶⁸ The rape cases (like the *raptus* cases generally) are relatively evenly split, with ten coming by appeal and eleven by indictment. One of the cases settled by concord was that of Juliana Pekenot, from the 1279 Surrey eyre.⁶⁹ 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. Elias Pekenot de Dontofold raped Juliana, the daughter of Horselou, and “he had both laid with her by force and raped her virginity.”⁷⁰ The record states “after, for that reason, he himself was arrested,” the reason seemingly being the loss of virginity. The record continues: “afterwards the aforementioned Elias came and pleads that he promised himself to the aforementioned Juliana before he had laid with her and Juliana came, this same [thing] she testifies, for this reason from here [from now on] they are quit.”⁷¹ 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, the latter licit sex. When both the man and woman claimed marriage, there was a hypothetical legal “erasure” of rape. The record 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. 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

64 TNA, JUST1/112 m13d; JUST1/242 m93d; JUST1/497 m48d; JUST1/789 m29; JUST1/1078 m60; JUST1/1005 m142.

65 TNA, JUST1/186 m39d; JUST1/369 m31, m7d (3 cases); JUST1/759 m28.

66 TNA, JUST1/207 m48 (2 cases); JUST1/789 m11, m21d.

67 TNA, JUST1/133 m25; JUST1/669 m8d; JUST1/789 m3.

68 TNA, JUST1/877 m61d; JUST1/921 m14.

69 TNA, JUST1/877 m61d.

70 TNA, JUST1/877 m61d: “Elyas Pekenot de Dontofold rapuit Julianam filiam Horseloule et vi concubuit cum ea et rapuit virginitem suam.”

71 TNA, JUST1/877 m61d: “postea venit predictus Elias et dicit quod ipse affedauit predictam Juliam antequam concubuit cum ea et Juliana venit et hoc idem testatur iodeo inde Queti.”

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

The other indictment to be settled out of court was recorded in the 1279 Sussex eyre.⁷² The jury presented William Page, who worked as a miller, and alleged that “he raped Alice de Kyngesmannesdouuter with force [he] laid with her and raped [her] of her virginity.”⁷³ The record states 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 “and she herself did not come to prosecute her own appeal.”⁷⁴ The record further states “therefore he [William] was arrested and [many of his people prosecuted with him] in paying the fine.”⁷⁵ The terms of the *concordati* are not stated. Despite Alice’s failed appeal, the king still indicted William, as the eyre roll states “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.”⁷⁶ William ended up fleeing from the indictment and was consequently placed in exigent and outlawed.

The only indictment to be dropped altogether was because the woman’s virginity was in question. During the 1285 Essex eyre, the jury presented “Adam de Bassingborn who raped [*rapuit*] Rose, daughter of John Hervy ... with force and against her will.”⁷⁷ The sheriff then testified that Adam could not be found, at which point the justice asked “if he had raped her of her virginity,” and the jurors responded “no, because he often had sexual intercourse with her.”⁷⁸ There is no indication as to what happened afterwards, but since Adam was not placed in exigent or declared an outlaw, nor was he considered guilty or acquitted, it seems that the indictment was not pur-

72 TNA, JUST1/921 m14.

73 TNA, JUST1/921 m14: “Juratorians presentant quod Williamus Page molen-dinarus ... rapuit Alice de Kyngesmannesdouuter vi concubuit cum ea et rapuit virginitatem suam.”

74 TNA, JUST1/921 m14: “postea testatum est per rotolus coronatoris quod predicta Alicia appellavit predictum Willielmum in Comitatu ... et ipsa non venit ad prosequendum appellum suum.”

75 TNA, JUST1/921 m14: “ideo capitur et pluris sui de prosequendus in mia [misericordia].”

76 TNA, JUST1/921 m14: “et juratores requisti si culpabilis sit de predicto facto dicunt quod sit et quod concordati sunt. Ideo predictus Willielmus capitur.”

77 TNA, JUST1/242 m93d: “vi et contra voluntatem suam.”

78 TNA, JUST1/242 m93d: “si rapuit ipsam de virginitatem suam dicunt quod non ... sepius concubisset cum ea.”

sued. Rose's presumed past sexual history with Adam was grounds for the indictment to be dropped regardless of whether she was raped or not. This brief record (just over three lines long) offers an insight into how the sexual reputation of the woman influenced criminal court proceedings. Alleged past consensual sex was legally justifiable grounds to dismiss an alleged rape.

Of the six rape cases ending in conviction, five were secured through indictment and one through an appeal. John Coleman and Robert Edward were indicted at the 1279 Kent eyre for "leading a certain woman" (*quondam mulierem*) into "their boat across the Thames at Gravesend toward Essex."⁷⁹ The indictment states that John and Robert "detained her with them for one night and with force they laid with her."⁸⁰ The plural use of *concubuerunt* makes it clear that both men were accused of using force to sleep with the unnamed woman, leaving little speculation that this was a group rape. The jurors said that they are culpable and to be arrested. However, after the verdict both men paid a fine of five marks (one mark was approximately thirteen shillings, four pence), and the case was closed. The very next case on the same membrane is the indictment of Cok Benekin who was arrested because "by force he had laid with a certain other woman," not the same unnamed woman in the previous case.⁸¹ The jury found him culpable, but after their verdict, Cok paid twenty shillings (one pound) and was released. Neither of these convictions resulted in the statutory punishment of two-years imprisonment, nor do they prescribe to the felony punitive measures of loss of life and member. Perhaps it is because the women involved were unknown to the jurors. There is also the possibility that forced sexual intercourse coming to court through indictment, regardless of virginal status, was not actually considered a felony under Westminster I. Another indictment case leading to a conviction is that of John Hardyng, who seized (*cepit*) Joan, daughter of Bernard de Bydecomb, and "with force [he] laid with her, therefore he is captured."⁸² John defended himself, but the jury found him culpable, "therefore he is committed to gaol and have the punishment of the statute."⁸³ Presumably two years, but we cannot be sure.

79 This section of the case only is translated by Schneebeck, "The Law of Felony in Medieval England," 448.

80 TNA, JUST1/369 m7d: "ipsam secum per unam noctem detinuerunt et cum ea vi concubuerunt."

81 TNA, JUST1/369 m7d: "vi concubisset cum quadam alia muliere."

82 TNA, JUST1/186 m39d: "et vi concubuit cum ea ideo ipse capitur."

83 TNA, JUST1/186 m39d: "Ideo ipse committatur gayole et habeat penam statuti etc."

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 1279 Kent eyre demonstrates. William Atte-hacche “raped Cecilia, daughter of Gilbert Bradegate, he [William] both laid with her by force and raped her of her virginity.”⁸⁴ William defended himself, stating that “he did not rape the aforementioned Cecilia.” The twelve jurors concluded that “the aforementioned William with force laid with her and against her will he raped her of her virginity.”⁸⁵ The verdict includes: “therefore he is committed to gaol and in custody for three years as per the statute.”⁸⁶ 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. The prison sentence could be dropped altogether in favour of amercement.⁸⁷ The courts in practice, however, appear to be loosely interpreting the punitive measures by issuing William a three-year prison sentence.

The conviction of William Atte-hacche was likely aided by Cecilia’s loss of virginity. Even though 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 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 rape of minors and virginal rape were more likely to secure a conviction than non-virginal rape or women of marital age. In the 1280–1281 Hampshire eyre, Walter Peke was accused of having raped Meynda *etatem novem annorum* (when she was only nine years old).⁸⁸ The indictment includes a standardized defence from the accused: “Walter came and said that he did not rape the aforementioned Meynda against her will.”⁸⁹

84 TNA, JUST1/369 m31: “rapuit Ceciliam, filiam Gilberto de Bradegate et vi concubuit cum ea et rapuit virginitatem suam.”

85 TNA, JUST1/369 m31: “predictus Williamus concubuit cum ea et contra volentatem suam rapuit eius virginitatem.”

86 TNA, JUST1/369 m31: “ideo committitur gaole et custodiatur per iii: annos per statutum.”

87 TNA, JUST1/369 m7d (2 cases); JUST1/ 648 m17.

88 This case is recorded verbatim in two eyre rolls: TNA, JUST1/784 m17d and the JUST1/789 m11. Both are part of the Hampshire eyre circuit. See Crook, *Records of the General Eyre*, 161.

89 TNA, JUST1/784 m17d and JUST1/789 m11: “venit et dicit quod non rapuit predictam Meyndam contra voluntatem suam.”

However, the record states that the twelve trial jurors said that Walter “with force raped” Meynda when she was only nine years old, “taking her virginity against her will.”⁹⁰ The significance of 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 Walter to gaol and to “the punishment of the statute, that is to say, two years.”⁹¹ The reference to Westminster I reiterates the severity of the crime, as Westminster I explicitly prohibited the rape of minors, regardless of their consent, and Meynda certainly was a minor at the time of the rape. There is one other indictment leading to a conviction which involved the rape of a child. During the 1280 Sommerset eyre, Robert Pertenent was arrested for raping the virginity of Isabella de Mertok.⁹² The record states that “the aforementioned Isabella was seen in court, and she is estimated to be about the age of nine years.”⁹³ Robert was returned to gaol “for two years according to the statute.” In these two cases, the minority of their age, as well as the loss of virginity, worked to ensure convictions through indictment. It is also clear that, despite the historiographical debate about the meaning of *raptus* in Westminster I, the statute was being applied to rape cases in the EC.

Three appeals of rape went to trial,⁹⁴ with two resulting in the acquittal of the accused and the ordered imprisonment of the women, but both women received mercy because of their pauper status.⁹⁵ The earliest is recorded in the 1278 Cumberland eyre, where Juliana, daughter of John, appealed Thomas, son of Robert, who “comes wickedly and in felony, and in premeditated assault, and he seized her and laid her on the ground, and with force he laid with her and raped her virginity from her.”⁹⁶ The plea roll indicates that Juliana believed this was a premeditated assault, which added to the felonious nature of the crime, as Elizabeth Papp Kamali explains

90 TNA, JUST1/784 m17d and JUST1/789 m11: “predictus Walter vi rapuit predictam Meyndam ... de virginitate sua contra voluntatem suam.”

91 TNA, JUST1/784 m17d and JUST1/789 m11: “Ideo predictus Walterus committatur Gaole et habeat penam statuti scilicet duos annos.”

92 TNA, JUST1/759 m28: “rapuit ... virginitatem.”

93 TNA, JUST1/759 m28: “et predicta Isabella visa fuit in curia et estimatur de etate novem annorum.”

94 TNA, JUST1/133 m25; JUST1/369 m7d; JUST1/669 m8d.

95 TNA, JUST1/133 m25; JUST1/669 m8d.

96 TNA, JUST1/133 m25: “idem Thomas venit nequitur et in feloniam et insultu praemeditare et ipsa cepit et prostravit ad terram et vi concubuit cum ea et rapuit ab ea virginitatem suam.”

that medieval English trial jurors considered if the accused demonstrated intention in planning the attack beforehand.⁹⁷ Thomas came and defended himself, and the jurors said that “the aforementioned Thomas is hence not culpable therefore he is henceforth quit.”⁹⁸ The jury concluded that “the aforementioned Juliana is committed to gaol for false appeal,” but “she is pardoned because she [is a] pauper.”⁹⁹

The second failed appeal, from the 1281 Nottinghamshire eyre, gives more information, as William, son of Hugh de Codrington, acted “in felony” when he both “seized” (*cepit*) and “laid with” (*concubuit*) Eden, daughter of Ingraham Frend de Eyleston, and *ipsam fecit sanguinolentam* (made her bleed).¹⁰⁰ The rape and abduction, as well as the inclusion of physical injuries and bodily harm done to Eden, add to the fulfilment of her resistance, proof of her non-consent, and the embodiment of the legal identity of the “true victim.” However, William was found not culpable, and Eden was placed in custody *pro falso appello* (for false appeal), but “afterwards she is pardoned for [she is a] pauper.” 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), the absence of deflowerment in the latter case, and their pauper status (despite being a form of mercy) probably worked against their appeals and believability in court. Ironically, their pauper status likely contributed to suspicion about their accusations (as suggested by *Glanvill* and *Bracton*) and ensured that they were saved from imprisonment.

Pauper status worked paradoxically as both a credibility disadvantage and a means to obtain mercy. For example, during the 1281 Wiltshire eyre, Matilda la Pyk appealed Adam Poleyn of “raping her virginity and robbery ... [but] she did not come nor pursue her appeal therefore she is captured, and her pledges are in amercement.”¹⁰¹ However, the plea roll states that Matilda could not “find pledges for faith for she [is a] pauper.” At this point, Matilda retracts her appeal, and because her and Adam were not in concord, the appeal fails, and Adam is quit. Matilda la Pyk’s pauper status was explicitly connected to her inability to secure sureties in court, reinforcing the impor-

97 Kamali, *Felony and the Guilty Mind in Medieval England*, 52.

98 TNA, JUST1/133 m25: “predictus Thomas non est inde culpabilis ideo inde quietus.”

99 TNA, JUST1/133 m25: “predicta Juliana committatur gaole pro falso appello, perdonat qua pauper.”

100 TNA, JUST1/669 m8d.

101 TNA, JUST1/1005 m142: “de virginitatem sua rapta ... non venit ... ideo ipsam capitur...in mia [misericordia] ... non invenit plegios pro fidem pro pauper.”

tance of community networks of support in medieval England's criminal courts. While pauper status could save one from imprisonment, it could also indicate a lack of social networks and sureties in court.

On the other hand, a member of the clergy evaded criminal court trials once benefit of the clergy was established. During the 1280–1281 Hampshire eyre, Matilda appealed Ralph, a clergyman, of raping her virginity.¹⁰² The record states that he “struck her down on the ground and with force he laid with her and raped her of her virginity.”¹⁰³ Matilda did not pursue her appeal and was “committed to gaol for false appeal.” The jury said that they suspected Ralph was guilty, and therefore he was handed over to the church courts, even though Matilda's appeal technically failed.

Cases could be quit or mitigated due to technicalities, as is evident in the failed appeal of Eden in the 1281 Lincolnshire eyre.¹⁰⁴ Eden appealed Simon, son of Hugh, of rape. She appeared in court and claimed that “Simon wickedly and in felony came with force and laid with her and raped her of her virginity.”¹⁰⁵ Simon was in court and defended himself by stating “she does not say in what year, nor at what time, he himself ought to have committed the aforesaid felony.”¹⁰⁶ The jurors concluded that he was not culpable and was quit while Eden “is committed to gaol for false appeal.” Even in extreme cases, a technicality could quash an appeal. In the 1279 Yorkshire eyre, Agnes, daughter of John del Hithe, appealed Gilbert, son of William, alleging that “with force he laid with her and took from her, her virginity and made her bleed.”¹⁰⁷ She then appealed Gilbert, son of John, of using force. Both Gilberts came to court and noted that Agnes failed to say what hour this alleged rape occurred. Agnes was arrested for false appeal, and the men were acquitted at the king's suit. The reasons for the acquittals seem minor in comparison to the severity of the alleged crimes. Notably, both women (Eden and Agnes) were imprisoned for this technicality in failing to mention the exact year, day, or hour of the rape. Sixteen of the thirty-seven *raptus*

102 TNA, JUST1/789 m29.

103 TNA, JUST1/789 m29: “Et ipsam ad tarram prostravit et cum ipsa vi concubuit et rapuit eius virginitatem.”

104 TNA, JUST1/497 m48d.

105 TNA, JUST1/497 m48d: “Pridictus Simmon nequitur et in feloniam venit et vi concubuit cum ea et rapuit ab ea virginitatem suam.”

106 TNA, JUST1/497 m48d: “non dicit quo anno nec quo hora ipsem debuit predictam feloniam.”

107 TNA, JUST1/1078 m60: “vi concubuit cum ea et abstulit ab ea virginitatem suam et fecit eam sanguinolentam.”

cases resulted in the women's (and young girls) arrest, equating to 43.24% of the cases. Of the twenty-one Westminster I-era rape cases, eight included the ordered arrest of the women, equating to 38.01%. Despite the higher conviction rates during Westminster I, there was still a serious threat of imprisonment for the women bringing rape appeals forward.

The courts interpreted Westminster I broadly, as seen in the conviction through indictment resulting in three-years of imprisonment. Similarly, the only conviction from an appeal sheds light on the courts' mentality, as 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. In the 1279 Kent eyre, Emma, daughter of Christine, appealed Hugh, son of Henry de Alkyndoun, of rape.¹⁰⁸ Emma claimed that Hugh "laid with her with force, and raped her of her virginity," but Hugh defended himself, stating that "this is not the manner," or that this is not the way that the rape occurred.¹⁰⁹ The jury found Hugh "culpable" of rape. However, the record also states 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."¹¹⁰ The inclusion of her non-virginal status makes no sense, as Westminster I claims that the *ravie* of virgins and non-virgins is treated as equal. The case of Emma indicates that the courts in practice had latitude and continued to interpret the rape of virgins as entirely different—and more severe—than the rape of non-virgins when made through an appeal.

The law in practice was influenced by the social milieu of trial jurors as well as community morals, which idealized the virginal maiden. The 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 serious than the rape of non-virgins, but they were still hesitant to convict men of raping virgins through appeal. Emma's trial record strongly implies that the EC interpreted Westminster I as being applicable to both the appeal of rape of non-virgins and the indictment of the rape of virgins (as with the case of Cecilia above), whereas the *Bracton*-era punitive mutilation could still be prescribed to men convicted of virginal rape through appeal only. This strongly indicates that despite what the stat-

108 TNA, JUST1/369 m7d.

109 TNA, JUST1/369 m7d: "vi concubuit cum ea et rapuit ei virginitatem suam ... non est mode."

110 TNA, JUST1/369 m7d: "Emma tunc non fuit virgo Ideo custodiatur in prisona per duos annos secundum novum statutum."

ute of Westminster I claims, the jurors and justices of the eyre continued to interpret the rape of virgins as a felony, which was punishable by mutilation if made by an appeal, whereas indictments were treating it as trespasses, even if the woman lost her virginity.

The case of Agatha de Trebernech highlights the use of the marriage clause under Westminster I. During the 1284 Cornwall eyre, David de Trebernech was indicted after he had been appealed previously by Agatha de Trebernech of raping her virginity, but she subsequently “withdrew her own appeal.”¹¹¹ Even though Agatha had agreed to marry David (quashing her appeal), David was now “requested” for an indictment. It was concluded that David “had laid with her freely,” and this had been against the will of Agatha.¹¹² Agatha’s consent to marry her alleged rapist, David, nullified her appeal, but he was still indicted for a trespass because he laid with her before the marriage took place, and it was believed to have been against her will. This marriage clause may have resulted in “marital misery,”¹¹³ as the marriage appears to have been a means of settlement more than a couple’s elopement.

As with the previous legal ages, group sexual violence was a relatively common occurrence during Westminster I, with 18.92% of the *raptus* cases naming multiple offenders. This is higher than the age of *Glanvill* (10.61%) and nearly identical to *Bracton* (16.13%). Group rape—as with lone rape—could be mitigated if the victim was not a virgin. For example, during the 1280–1281 Hampshire eyre, Alice appealed Robert, William, and another Robert of rape and robbery, but she did not pursue her appeal and was arrested.¹¹⁴ The three men appeared in court and were acquitted of the robbery charge, but “the jurors said that they raped her [Alice] and with force they laid with her, but she was not a virgin,” and they were acquitted.¹¹⁵ The plural *rapuerunt* and *concuberunt* make it clear that all three men were accused of raping Alice. However, her lack of virginity resulted in their acquittal.

111 TNA, JUST1/112 m13d: “retraxit se de appello.”

112 TNA, JUST1/112 m13d: “concubuit cum ea sponte ... mulieri suo contra voluntatem suam.”

113 Butler, *Language of Abuse*, 97.

114 TNA, JUST1/789 m3.

115 TNA, JUST1/789 m3: “non sunt culpabiles de aliqua roberia sed dicunt quod eam rapuerunt et vi cum ea concuberunt sed non fuit virgo.”

Regardless of the statute's broad approach to *raptus*, in practice the issue of virginity was clearly still influencing court decisions. Of the twenty-one rape cases, seventeen mention a loss of virginity or inquire about the virginal status of the woman. Cases describe violence, women and girls being thrown to the ground, and bleeding as evidence of their non-consent. The physicality of non-consent and the expectation of physical resistance were used as the tokens of proof to substantiate the accusations of rape, while previous sexual history and non-virginal status were used to belittle rape charges. Despite how the statute was written, when applied to rape cases, the interpretation and implementation was heavily dependent upon contemporaneous morals and social attitudes towards rape victims and female sexuality.

Westminster II-Era Cases, 1285–1330

Even though Westminster II made *raptus* a felony—regardless of whether the trial was initiated through an appeal or an indictment—of the six convictions I found (five indictments and one appeal), none of them resulted in felony punitive measures. There was, as Thomas Green argues, 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 rather than the public criminal courts.¹¹⁶ Successful convictions largely depended on the social and virginal status of the woman. Indictments and appeals were rare unless the woman claimed to have been raped of her virginity. Consequently, the EC during the long legal age of Westminster II were, in practice, reluctant to convict men of felony rape regardless of whether the woman was a virgin or not. The social attitudes towards rape most likely conflicted with the written law, as the lack of felony convictions suggest that jurors did not think the punishment of death fit the crime of rape. Amercements and two-year imprisonment were frequently the choice of penalty, harking back to the earlier punishments of Westminster I.

Of the twenty-one rape cases under study here, seven resulted in acquittals,¹¹⁷ six in convictions,¹¹⁸ four failed appeals,¹¹⁹ three in outlawry,¹²⁰

116 Green, “Societal Concepts of Criminal Liability,” 675.

117 TNA, JUST1/137 m7d, m14d; JUST1/213 m34, m49; JUST1/547A m66d; JUST1/579 m13; JUST1/1098 m76/7.

118 TNA, JUST1/18 m4d; JUST1/137 m2, m6, m8, m6d; JUST1/328 m6.

119 TNA, JUST1/413 m1, m13d; JUST1/579 m32d; JUST1/924 m60d.

120 TNA, JUST1/26 m28, m37d; JUST1/833 m33d.

and one was moved to church courts.¹²¹ As with the previous legal age, there is a relatively even split of eleven rape appeals and ten indictments. Four indictment convictions came from the same 1292–1293 Cumberland eyre. The first indictment is of Alan, who “with force he laid with her [Christiana] and took away her virginity and made her bleed.”¹²² Christiana did not pursue an appeal within the forty days as “sustained by the first statute of the lord king,” and even though Westminster I was repealed in 1285—seven years prior to this indictment—the EC referenced the forty-day limitation as still applicable to a woman’s appeal of rape. The jury concluded that Alan “is culpable” and is sentenced to “two years in the form of the statute.”¹²³ Christiana is fulfilling all the necessary tokens of victimhood dating back to *Glanvill*: she was a virgin and was seen bleeding because of her rape. Her physical non-consent was evident to the men of law. Although virginity was irrelevant to felony prosecution under Westminster II, the indictment of the rape of a virgin amounted to two years imprisonment, as mandated by the former Statute of Westminster I. It appears that, much like Westminster I, the appeal of virginal rape and the indictment of virginal rape were seen to deduce different punitive measures.

Another failed appeal leading to a successful indictment is that of Juliana, daughter of Hugh Galt, who appealed Robert Crastan of rape and William of force and aid.¹²⁴ She did not pursue her appeal, so she was captured, and her father was placed in gaol. Robert defended himself at the king’s suit and was found culpable. However, the jurors claimed that the rape occurred in 1279, prior to the implementation of Westminster II, and therefore Robert was sentenced to prison for two years as maintained by the former statute of Westminster I. Robert was able to pay a fine of 5 shillings to ensure his release. The punitive imprisonment of two years and amercement leaves little ambiguity that this indictment was seen as a trespass. Similarly, in the same Cumberland eyre, Alice, daughter of Thomas, appealed John, son of Robert, of rape, as well as three other men of force and aid.¹²⁵ Alice did not pursue her appeal and was consequently seized, and her sureties were placed in mercy. At the king’s suit, the jury “testify that the aforementioned

121 TNA, JUST1/833 m33d.

122 TNA, JUST1/137 m2: “vi concubuit cum ea et abstulit ab ea virginitatem suam et fecit sanguiolentam.”

123 TNA, JUST1/137 m2: “est culpabilis ... duorum annorum in forma statuti.”

124 TNA, JUST1/137 m6.

125 TNA, JUST1/137 m8.

John, son of Robert, raped the previously mentioned Alice's virginity with force, and he laid with her with force ... therefore he is arrested."¹²⁶ The rape allegedly occurred in 1283, allowing for the application of Westminster I punishments during the legal age of Westminster II. John was to be imprisoned but was able to pay a fine for his release. The emphasis on force and loss of virginity are reminiscent of *Bracton*-era attitudes despite the indifference to deflowerment in Westminster II. Much like today in certain legal jurisdictions (such as Canada or the US), the time of the crime determined the punishment, as the statutory penalties of Westminster I could be applied retroactively during the age of Westminster II. Notably, even these convictions were not prescribed the full punitive measures of Westminster I, as amercement was used to negate imprisonment.

Another conviction through indictment is that of Walter, son of David de Carlaton, Walter, son of Annfeys, Hugh Rast, Adam, son of Thomas, and Simon le Pestur, who all "seized Emma daughter of John ... and with force they led her away ... and took her to the house of David le Carpentur and the aforementioned Walter [son of David] laid with her with force."¹²⁷ The primary offender, Walter, came to the king's suit to defend himself and the jurors said that he was culpable of raping Emma, "but they said that after the fact she consented [*consensit*] and the aforementioned Walter married her."¹²⁸ Usually a concord through matrimony quashed any criminal charges, but it was determined that this marriage "was against her will and therefore he is in custody."¹²⁹ Walter had to pay a fine of 40*d*. This case demonstrates the fluidity of the criminal courts' application of statutory law. Westminster II clause A2 clearly states that if a man *ravist* any woman (married, lady, damsel, or other) with force—even if she consents afterwards—he was still liable for a felony charge at the king's indictment. But here, Emma's marriage to Walter worked to mitigate the severity of the rape in court, regardless of the statute. Emma's mental and verbal consent to marriage after the rape can be interpreted as coercive consent, as the jurors agreed that Walter did

126 TNA, JUST1/137 m8: "testanter quod predictus Johnes filius Robert rapuit virginitatem vi predicta Alicam et vi cum ea concubuit ... ideo capitur eos."

127 TNA, JUST1/137 m6d: "ceperunt ... Emmam filiam Johnus de Soureby et eam vi abduxerunt ... domum David le Carvpentur et eam ... predictus Walterus vi concubuit cum ipsa. Ideo predicti ... capitur."

128 TNA, JUST1/137 m6d: "sed dicunt quod ipsa ex post facto consensit et predictus Walterus ipsam disposavit."

129 TNA, JUST1/137 m6d: "Et qua hoc fecit contra voluntatem suam ideo ipse custoditur."

rape Emma prior to her consent to matrimony and that this marriage “was against her will.” Regardless, the marriage clause was upheld, an amercement was made, and the crime of rape was settled.

The final conviction through indictment comes from the 1307 Bedfordshire eyre, where William de Drayton was indicted for having “with force oppressed Avis, daughter of John le Chapman, he had laid with her against her will and against the peace.”¹³⁰ Found guilty, William came and paid the small fine of one-half mark.

The five indictment convictions (those of Alan, Robert, John, Walter, and William) demonstrate that the criminal courts were clearly still interpreting Westminster I trespass punishment as applicable to rape indictments under Westminster II, regardless of the virginal status of the woman. A number of these indictment convictions came by way of abetted appeals, and as was typical of other failed appeals (not just rape), these usually led to indictment convictions of a trespass. Notably, three of the five indictment convictions involved groups of men. These include the cases of Juliana, Alice, and Emma. Of the twenty-one rape cases during Westminster II examined here, five of them involve multiple men accused of aiding the crime in some capacity, equating to 23.81% of the cases. Although such a small case-study pool makes statistics problematic, this hints at the relative frequency at which collective sexual violence was occurring amongst groups of men in high medieval England.

Men who flee from the courts were suspected of culpability and considered outlaws. The failed appeal of Margery, daughter of Andrew del Hyl, against Stephen for raping her virginity demonstrates the likelihood of the accused’s outlawry resulting in the woman’s release from prison.¹³¹ Margery failed to pursue her appeal in the 1286 Suffolk eyre, and she was arrested. However, at the king’s suit, the jurors “said the aforementioned Stephen is culpable,” but “he does not come, and he takes himself away ... therefore he is exigent and outlawed.” The margin inscription of *cap[itur]* and in *m[isericordia]* for Margery’s arrest is crossed out and above it is *ex[igitur] et vtl[agitur]*, indicating that Stephen’s outlawry and suspected culpability led to the release of Margery. During the “revival” of the eyre in 1330, there is the indictment of Hugh de Potton, who “feloniously raped Johanna, daughter of Adam Scot, at the age of ten, against her will, and he deflowered

130 TNA, JUST1/18 m4d: “vi oppressit Auicia filia Johannis le Chapman eam concubuit contra voluntatem suam et contra pacem.”

131 TNA, JUST1/833 m33d.

her.”¹³² The courts ordered for his arrest, but the sheriff testified that Hugh could not be found because he fled. The jury likely suspected Hugh was culpable and thus placed him in outlawry to try and force him to answer the charges. Missing defendants were challenging,¹³³ as were women’s appeals that lacked physical injury, abduction, and a loss of virginity. For example, Goditha, daughter of Richard, appealed Henry de Wymerley of violently raping her virginity in the 1292 Lancashire eyre, but the appeal failed because Goditha allegedly gave birth nearly three years prior to the alleged rape, and thus her virginity was already gone.¹³⁴

Appeals that made it to trial did pose significant risks to both the complainant (if her appeal was deemed to be false) and defendant (if convicted). In the 1288 Dorset eyre, 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 “wickedly seized the aforementioned Alice, and he struck [her] down and with force he laid with the very Alice ... against her will he raped [her] virginity with force.”¹³⁵ Stephen came and defended himself, claiming that “he did not commit any felony to her,” stating that “he did not rape her of her virginity,” and that “he laid with her with her consent.”¹³⁶ Stephen claimed that the sex was “not against her will,” and the jury ruled that Alice had done this “with voluntary consent,” and Stephen “laid with her and not against her will.”¹³⁷ The court concluded that “the aforementioned Alice is committed to gaol for false appeal.” Of the twenty-one rape cases, women were seized for false or failed appeals 38.01% of the time (eight out of twenty-one). In a “he said/ she said” trial, Alice brought a strong case forward to appeal Stephen. She claimed to have endured a violent attack and a loss of virginity. Presumably, the force used against her resulted in physical proof of non-consent. Yet, Stephen’s claim that the sexual intercourse with

132 TNA, JUST1/26 m28: “Felonice rapuit Johaman filia Ade Scot etatus decem annorum contra voluntatem ipsum Johannem et eam defloravit.”

133 Sara Butler notes that “nearly 72 percent of criminal perpetrators in medieval England fled; because there were no police forces, they were never tried.” See “Getting Medieval on Steven Pinker,” 33.

134 TNA, JUST1/413 m1.

135 TNA, JUST1/213 m34: “predictam Alicam nequiter cepit et prostravit et vi concubuit cum ipsa ... contra voluntatem et rapuit ab ea vi virginitatem suam.”

136 TNA, JUST1/213 m34: “non aliquam feloniam ei fecit ... nec virginitatem suam rapuit ... concubuit cum ipsa de voluntati.”

137 TNA, JUST1/213 m34: “spontanea voluntate ... concubuit cum ipsa et non contra voluntatem suam.”

Alice was done under the pretenses of consent must have seemed believable to the jurors. 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. Here, the alleged mental and verbal consent of Alice, as stated by Stephen, was used to acquit Stephen, regardless of any physical proof of non-consent of Alice. The duality of mental and physical (non-)consent aided in Stephen's acquittal and Alice's imprisonment.

The second appeal that went to trial, also from the 1288 Dorset eyre, is nearly identical: Alice, daughter of William le Brewer, appealed Adam le Traverner of rape.¹³⁸ Alice le Brewer accused Adam: "against her will he wickedly and in felony seized and placed her in the house of the Adam in the same village and with force he laid with her and he took away from her, her virginity."¹³⁹ The jury ruled that Adam "is not culpable of the aforementioned rape" because "the same Adam had laid with her, with the consent of Alice herself," and therefore it was "not against her will."¹⁴⁰ The record ends with "the aforementioned Alice is being committed to gaol for false appeal." However, "afterwards she is pardoned for ... she is a pauper."¹⁴¹

The standardization in record keeping and use of consistent legal terminology in the eyre rolls was formulizing during the age of Westminster II. Both cases from the Dorset eyre include the adverb *nequiter* (wickedly) repeatedly throughout the women's appeals. This reinforced the felonious nature of the crime, as *nequiter* made it clear to the trial jury that the accused were deliberate in their actions.¹⁴² Both appeals 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 laid with her and against her will, [he] raped her of her virginity). This nearly identical phrase underlines the continued importance of the loss of virginity and use of force in a rape conviction. The fact that these appeals

138 TNA, JUST1/213 m49.

139 TNA, JUST1/213 m49: "contra voluntatem suam nequiter et in feloniam cepit et positam in dimum ipsius Adem in eadem villa et vi cum ipsa concubuit et virginitatem suam ab ea abstulit."

140 TNA, JUST1/213 m49: "non est culpabilis de predicto rapo qua dicunt quod idem Adam de voluntate ipsius Aliae concubuit cum ipsa ... non contra voluntatem suam."

141 TNA, JUST1/213 m49: "Et predicta Alice comitatur gaolae pro falso appello etc. Postea perdonatur pro ... quia pauper."

142 Kamali, *Felony and the Guilty Mind in Medieval England*, 60.

are so similar suggests that they are not the actual words spoken by either woman. The appeals were summarized 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—she was pardoned from imprisonment because she was poor—also highlights the socio-economic class aspect of legal trials. Despite being saved from prison because of her pauper status, there is a strong potential that her pauper status worked against her in the actual court proceedings in her inability to secure a conviction. She may have been viewed negatively by the “good honest” men who made up the trial jury. Poverty was viewed as indicative of poor moral judgement¹⁴³ 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 with criminal proceedings, as Barbara Hanawalt describes, convictions “depended upon the condition in society of the victimized woman.”¹⁴⁴ The conflicting consent models—physical and mental—are evident in the cases of both Alices. Both women claimed to have endured violence and thus physical proof of their non-consent, and both women allegedly gave mental consent. The duality of mental and physical (non-)consent resulted in the acquittals of the accused and the ordered imprisonment of the women.

During the 1292–1293 Cumberland eyre, there is another failed appeal which includes all the standard phrases mentioned above, but it is more explicit in the physical bodily injury that the woman endured. Juliana de Burtholm appealed David de Kingeschalesof, alleging that “in premeditated assault he seized her, and he struck her down on the ground, and with force he laid with her and took away her virginity, and he made her bleed.”¹⁴⁵ Once more, the conflation of abduction and rape is identical to the two appeals of the Alices above, as is the loss of virginity. Juliana’s physically injury—presumably occurring when she was forcefully struck to the ground—is indicative of her resistance and non-consent. David defended himself by claiming that “the previously mentioned Julian is the wife of Walter,” and she did not say this in her appeal, and she failed to mention exactly where

143 Kane, *Popular Memory and Gender in Medieval England*, 62.

144 Hanawalt, *Crime and Conflict*, 105.

145 TNA, JUST1/137 m14d: “in assaltu praemeditato cepit eam et prostravit ad terram et vi cum ea concubuit et abstulit ab ea virginitatem suam et eam fecit sanguinolentam.”

she was bleeding. This suggests that “blood” was not obviously related to a loss of virginity, but rather some other physical injury occurred because of physical resistance to the rape. The emphasis on virginity, bodily injury, and her husband, Walter, is counter to the Statute of Westminster II’s claim of maidens and wives’ right to appeal. Despite her physical bodily proof of non-consent, David eventually put himself before the jury, who found him “in no way culpable.” Once again, the status of “victim” went from the woman to the accused, as the courts ruled that “the previously mentioned Juliana is committed to Gaol for false appeal.” In theory, Juliana fulfilled all 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. Westminster II’s stated capital punishment via appeals may have continued to contribute to the reluctance of trial jurors to convict men of rape despite the victim’s fulfilment of the legal criteria of the crime.

A fourth rape appeal that went to trial comes from the 1287 Hertfordshire eyre.¹⁴⁶ Agnes, daughter of John de Enovere, appealed Hugh, son of Thomas le Tenur, “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 Hugh “discovered her in a certain field called Wylleber in the village of Hitchen and with force, and against the peace of the lord King, he raped her of her virginity.”¹⁴⁷ Hugh was present and pleaded his defence in court. Throughout the trial it was revealed that Hugh “seized her and [she] having been bruised, he carried [her] and with force he wished to lay with her.”¹⁴⁸ The plea roll states in detail the violent beating that Hugh gave Agnes in the attempt to rape her, as Hugh “squeezed her so violently that blood flowed from the middle of her face and nose.”¹⁴⁹ It was recorded that Agnes was a child at the time of the attack in 1283—*minoris etatis*, or “of minor age”—as “at that time she was not yet seven years old.”¹⁵⁰ The jury found that Hugh

146 TNA, JUST1/328 m6.

147 TNA, JUST1/328 m6: “invenit ipsam Agnes in quodam campo qui vocatur Wyllober in villa de Huthe et vi et contra pacem domino Regis rapuit virginitatem suam.”

148 TNA, JUST1/328 m6: “ipsam cepit et adtritam provexit et vi cum ipsa concubisset voluit.”

149 TNA, JUST1/328 m6: “et ipsam ita vehementer strinxit quod sanguis per medium os et nares ipsius Agnetis.”

150 TNA, JUST1/328 m6: “Agnes eo quod non extitit tunc temporis etatis septem annorum.”

“was not himself able to rape her of her virginity, but he let himself in as far as he was able and treated her worthlessly.”¹⁵¹ The jurors concluded that Hugh was to be placed in custody until he made satisfaction (*satisfecit*), or payment, to the king and to Agnes. The jurors downgraded the entire felony to a trespass because the attempted rape of Agnes did not result in a loss of virginity. Even though in the attempt to rape a child Hugh violently assaulted Agnes, the courts deemed the actions a non-felony. The courts seemly placed high value on full penetration and completed rape, even in the case of minors. In the attempt to stop the rape, young Agnes fought off Hugh’s violent attack, and thus, like virgin martyrs, this young girl preserved her virginity at the expense of her physical body. Agnes’s physical proof of non-consent was evident through her extreme bodily injuries. Agnes’s injuries ensured her victim status, but the preservation of her virginity worked against her in the criminal 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.

One exemplary case of failure due to a technicality is that of Joan, daughter of Eustace le Seler of London, recorded in the 1321 London eyre roll among many other manuscripts.¹⁵² This case was recorded in England’s highest court rolls, the King’s Bench Rex rolls.¹⁵³ According to Barbara Hanwalt, the 1321 London eyre roll was “entered in a jail delivery session held in 1321 and records an appeal she [Joan] made to the coroner on 6 February 1321, almost a year after the event.”¹⁵⁴ The appeal made to the coroner states that Joan “makes her own appeal towards Raymond de Lymogus of rape.”¹⁵⁵ The record uniquely but critically states that the appeal is *in hec*

151 TNA, JUST1/328 m6: “virginitatem ipsius rapere non potuit set in quantum potuit se inde intromisit et ipsam viliter tractavit.”

152 TNA, JUST1/547A m66d; London, BL, MS Harley 453, fol. 34; London, BL, MS Addit. 25029, fol. 106v; Cambridge, Harvard Law School Library, MS Dunn 41, fol. 66r; Cambridge, Harvard Law School Library, MS Dunn 51, fol. 86v; Dublin, Trinity College Dublin, MS E. 5. 11, p. 162; Cambridge, Cambridge University Library, MS Gg. vi. 7, fol. 113v; London, BL, MS Harley 1807, fol. 387v; London, BL, MS Harley 5146, fol. 95f; Cambridge, Cambridge Pembroke College, MS 271, fol. 77v; Oxford, Bodleian Library, MS Rawl. D. 506, fol. 5v; Oxford, Bodleian Library, MS Tanner 450, fol. 378r. See Barabara Hanawalt’s article devoted to this case, “Whose Story Was This?” 124–41.

153 TNA, KB 27/240 m104d, Rex 1; KB 27/242, m1 and m154.

154 Hanawalt, “Whose Story Was This?” 128–29.

155 TNA, JUST1/547A m66d: “fecit appellum suum versus Reyuumdumn de Lymogos de Raptus.”

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 by raping her “against her will and against the peace.”¹⁵⁶ The use of *corps* and *volunte* ensures that this was against Joan’s mental and physical consent. According to Joan, Raymond raped her of her virginity when she was only twelve years old. This was not only against the peace of the king but also “Raymond’s actions went against her own dignity.”¹⁵⁷ The record states *Et hoc optulit prout*—that this was exactly the appeal that Joan presented. Raymond appeared in court, and “he defended elegantly the whole of the rape and felony.”¹⁵⁸ The record repeatedly states that these were the exact words spoken by Joan—“and in this way she tells her own appeal to the crown Justice.”¹⁵⁹ This is important to the failure of the appeal, as Joan was now deemed an accessory to the crime of rape because she changed the previously mentioned day in question from what she stated in her appeal to the coroner.¹⁶⁰ Since Joan 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 “Joan not able to proclaim this”—that is that Raymond raped her of her virginity when she was twelve years old. Raymond was released “without day,” but Joan, however, was placed in custody “for her previously mentioned false appeal.”¹⁶¹ She was going to be sent to the gaol, but “she is pardoned because she is below [legal] age.”¹⁶² Raymond was later indicted at the king’s suit, where, under the confirmation of the seal, the jurors acquitted him. The indictment record states that “at the suit of the king of rape and felonies the aforementioned Raymond is ascertained of the previously mentioned [crimes],” and he was acquitted.¹⁶³ This ends

156 TNA, JUST1/547A m66d: “eu conutre sa volunte et en countre la pees.”

157 TNA, JUST1/547A m66d: “et dignitatem suam.”

158 TNA, JUST1/547A m66d: “mundus defendit ominem raptum et feloniam”; Lewis and Short, *A Latin Dictionary*, “Mundus, a, um, adj.” article 1.

159 TNA, JUST1/547A m66d: “Et modo in appello suo quod narrat coram Justic[iam].”

160 TNA, JUST1/547A m66d: “se forciam raptam per predicem diem ... variatonem.”

161 TNA, JUST1/547A m66d: “pro falso appello suo predicto custodiatur.”

162 TNA, JUST1/547A m66d: “set pardonatur quia infra eatatem.”

163 TNA, JUST1/547A m66d: “predicto compertum est quod idem Reymunndus ad sectam Regis de raptu et feloniam predictus.”

the plea roll of Joan's alleged rape, her failed appeal, and the indictment of Raymond. The technicality seems minor to the overall crime of a rape of a minor. The record explicitly calls Joan an accomplice to her own rape (*forciam*), thus labelling her, at the age of twelve, with the legal identity of the blame-worthy and culpable woman.

The same case, recorded in the Rex rolls of the King's Bench, is much more detailed. Joan made her appeal, stating "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."¹⁶⁴ 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 plea roll. The Rex roll continues: "he abducted [her] indeed into the room of the Raymond ... and in that very place he threw away her [Joan] to the ground, and against her will he feloniously laid [with her]."¹⁶⁵ The physical force Raymond used to dominate Joan is highlighted in her appeal to ensure that she fulfils the identity of the "true victim" by resisting the attack. The record indulges in graphic detail that "he completely raped [her] of her virginity against the peace."¹⁶⁶ According to the Rex roll, Raymond appeared in court "and pleaded that he is a clergyman and that he is not able to be governed [judged] thenceforth without his own people" about this matter.¹⁶⁷ Raymond was attempting to claim benefit of the clergy in an effort 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.¹⁶⁸ Raymond was proclaimed a *liber*—a "free man"—and Joan was ordered to pay back any damages that he incurred because of her appeal.¹⁶⁹ This is an extraordinary case including the rape, abduction, and loss of virginity of a

164 TNA, KB 27/240 m104d Rex 1: "domini predicti Eustastini vi et armis et contra volentatem ipsius Johanne cepit ipsam Johaniam per manum suam sinistram."

165 TNA, KB 27/240 m104d Rex 1: "abduxit namque ad cameram ipsius Reymondi ... et ipsam ibidem ad terram projecit et secum contra volentatem suam concubuit felonice."

166 TNA, KB 27/240 m104d Rex 1: "et ipsam de virginitate sua penitus rapuit contra pacem."

167 TNA, KB 27/240 m104d Rex 1: "et dicit quod clericus est quod non potest inde sine ordinariis suis."

168 TNA, KB 27/240 m104d Rex 1: "Raymundus in nullo est calpabilis de raptu et feloniam predictus."

169 TNA, KB 27/240 m104d Rex 1: "predicta Johanna sufficiat ad dampna."

minor as well as the accused man claiming clerical status, resulting in the young girl sentenced to prison but saved by her minority age. Finally, she was forced to compensate the defendant for damages.

The case of Sir Hugh, from the 1293–1294 Yorkshire and Northumberland eyre, demonstrates the EC reluctance to grant men the benefit of the clergy.¹⁷⁰ Hugh, son of Henry, was indicted for the rape of a young girl (*rapuit quamdam puellam*),¹⁷¹ named specifically in the eyre roll as Matilda, daughter of Ingrede.¹⁷² The record states that Hugh was in the village of Ingelton “with two of his servants” (*garcionibus*), named Henry Dent and Thomas son of William, when “Hugh saw the aforementioned Matilda standing in the door of the aforementioned Ingrede’s house,” and he told his servants, Henry and Thomas, “to seize and lead away Matilda to his manor house.” The plea roll states that “against Matilda’s will they seized her and dragged her by the arms outside her mother’s house and they led her to the manor-house of Hugh himself, in the same town.”¹⁷³ Presumably Ingrede was aware of the attack against her daughter, as “immediately she raised the hue and cry before them.” Hugh allegedly “detained her [Matilda] and laid with her, but they [the jurors] said that Matilda first assented to the will of Hugh himself, before he had laid with her.”¹⁷⁴ Despite Matilda’s alleged consent after the abduction, but before the rape, Hugh was still placed in custody because “he seized and led her away against her will.” The temporality and duality of (non-)consent is important here. Matilda’s initial physical non-consent is evident by the inclusion of *traxerunt* (they dragged her). Matilda’s subsequent verbal and mental agreement—her *assensit* to the will of Hugh—are carefully described as not agreeing with her own will but with his *voluntati*. This can thus be interpreted as indicative of Matilda’s initial physical non-consent and subsequent coercive mental consent as an act of survival.

170 TNA, JUST1/1098 m76/77; London, LI, MS Misc. 87, fols. 35–43; London, BL, MS Addit. 31826, fols. 206v–207r; transcribed by Horwood, ed., *Year Books of the Reign of Edward the First*, 529–32.

171 Horwood, ed., *Year Books of the Reign of Edward the First*, 529.

172 TNA, JUST1/1098 m76/77. The following transcription is taken from both TNA, JUST1/1098 m76/77 and BL, MS Addit. 31826, fols. 206v–207r.

173 TNA, JUST1/1098 m76/77: “Matillidem ceperunt contra voluntatem suam et traxerunt per brachia extra domum matris sue et eam duxerunt usque manerium ipsius Hugonis in eadem villata.”

174 TNA, JUST1/1098 m76/77: “Et predictus Hugo eam ibidem detinuit et concubuit cum ea set dicunt quod predicta Matillida assensit prius voluntati ipsius Hugonis antequam concubuit cum ea.”

In the eyre plea roll, Hugh was fined and released, but in the *Year Book* and British Library manuscript, there is much more detail, as Hugh was accused to have “knew her carnally against her will.”¹⁷⁵ Hugh was denied counsel, and he allegedly said to the justice, “Lord, I ask you, am I able to have counsel lest I will be seized in the court of the King for lack of counsel.”¹⁷⁶ After he is refused counsel, Hugh claimed: “I am a clergyman and I ought not to respond without my ordinary.” The justice responded: “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.”¹⁷⁷ Hugh responded that “she herself was a virgin when I betrothed her.” The justice claimed “that this immediately ought to be known,” and that “twelve honourable men who lead in virtue of the oath” must determine “if she was a widow when Sir Hugh came together with her.”¹⁷⁸ Hugh objected 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. Hugh also claimed, “that I am a knight and thus I ought not to be judged unless it be my own peers,” meaning other knights.¹⁷⁹ The actions taken by Hugh show a high level of legal awareness and knowledge of the right to a fair trial jury that is made up of peers and individuals who were not on the presenting jury. The justice calls in knights (*nominabantur milites*), but Hugh does not plead (*non consentio*), at which point the justice warned him, “if you wish 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.’”¹⁸⁰ Hugh once again refuses the trial jurors, as they are the same men who accused him of rape.

175 Horwood, ed., *Year Books of the Reign of Edward the First*, 529; BL, MS Addit. 31826, fols. 206v–207r: “et eam congnovit carnaliter contra suam voluntatem.”

176 BL, MS Addit. 31826, fols. 206v–207r: “sed non quod consules eum ... Domine, rogo vos quod possum habere consilium ne subripiar in curia Regis pro defectu consilii.”

177 BL, MS Addit. 31826, fols. 206v–207r: “ego sum clericus, et non debeo respondere sine ordinariis meis ... 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.”

178 BL, MS Addit. 31826, fols. 206v–207r: “honoravit duodecim qui dixerunt in virtute sacramenti ... ipsa fuit vidua quando dominus Hugo contraxit cum ea.”

179 BL, MS Addit. 31826, fols. 206v–207r: “ego sum miles, et non debeo judicari nisi per meos pares.”

180 BL, MS Addit. 31826, fols. 206v–207r: “si vos velitis legem comunem refutare,

He then asks that the charges be read out to him, but the justice 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 justice tells Hugh: “if you know why they ought to be removed, you say [these reasons] by voice, or in writing.”¹⁸¹ This is troubling for Hugh, and the judge refuses to read out the charges to him, claiming that he ought to read them himself. Hugh admits, “I do not know how to read, [and] I beg for my own counsel” (*nescio legere peto consilium meum*). The justice says that Hugh ought to be able to read if he is a member of the clergy, and again Hugh states: “I do not know how to read.”¹⁸² The justice exclaims: “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.”¹⁸³ The record claims that Hugh stood there quietly, not responding (*setit in pace quasi confusus*), and the justice felt bad for his confusion (*non sitis stupefacti*) and thus allowed a member of the court to read the charges of rape to Hugh, and he claimed that “he did not rape” her. The twelve jurors stated that it was not Hugh himself, but rather the “men of lord Hugh that raped her with force.”¹⁸⁴ The justice asks for clarification, to ensure that the men were not acting with Hugh’s consent.¹⁸⁵ The jurors responded no, Hugh’s consent was not given, and the justice asked to confirm if the men *cognoerunt ne eam carnaliter* (knew the woman carnally), and the jurors responded that this was true. This was clearly a group rape, as the plural *homines* (men) is used. The servants of Hugh “knew her carnally.”¹⁸⁶ In the end, the court ruled that Hugh was to be acquitted of all charges.

vos portabitis peonam inde ordinatam, scilicet, ‘uno die manducabitis et alio die bibebitis; et die quo bibitis non manducabitis, et e contra.’”

181 BL, MS Addit. 31826, fols. 206v–207r: “si sciatis aliquod dicere quare removeri debent, dicatis unica voce sive in scripto.”

182 BL, MS Addit. 31826, fols. 206v–207r: “non, quia debent proponi per os vestrum ... ego nescio legere.”

183 BL, MS Addit. 31826, fols. 206v–207r: “Quomodo est hoc, quod vos voluistis iuvasse vos per privilegium clericale, et modo nescitis legere calumpnias vestras.”

184 BL, MS Addit. 31826, fols. 206v–207r: “nos dicimus quod ipsa rapiebatur vi per homines domini Hugonis.”

185 BL, MS Addit. 31826, fols. 206v–207r: “fuit ne Hugo consentiens ad factum vel non.”

186 For another case of a servant accused of *raptus*, see TNA, JUST1/579 m32d. For a discussion on male-bonding through rape see Armstrong-Partida, “Precarious Manhood,” 125–75; Hanawalt, “Women Before the Law,” 185; Hanawalt, *Crime and Conflict*, 109; Rossiaud, *Medieval Prostitution*, 20–22.

The case of Sir Hugh is remarkable for numerous reasons, including his elite status and the legal right to be tried by one's peers. As a knight, Hugh refused to be tried by an ordinary jury, so the justice agreed and brought in other knights to sit on the jury. This legal right adds to the social and community implications of criminal trials. 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. The high degree of legal knowledge in non-legal professionals (such as Hugh) is evident from this case record, as the demand for a fair trial was repeatedly requested.¹⁸⁷ This illuminates a growing legal awareness among the laity and perhaps a shared knowledge amongst men on how to avoid a rape appeal. The actions of Hugh's men did not make him accountable for their felonies. 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. The duality of mental and physical (non-)consent was described as working at different times in this case. Matilda initially resisted the rape, provided physical proof of non-consent, and then likely felt intimidated into acquiescing, as the records alleges that she then agreed, thus providing mental consent.

Within the *Year Book of the Kent Eyre of 1313–1314* is the exceptional case of Alice who appealed John of raping her virginity.¹⁸⁸ John defended himself unsuccessfully and was found guilty of felony rape. The record states that under the statute of Westminster II, Alice was given the opportunity to "tear out John's eyes and cut off his testicles, as he was a married man."¹⁸⁹ The record ends with the statement that if John was single, then "the judgment would have been that he should marry her or suffer that penance."¹⁹⁰ This case is significant in that the record is regurgitating earlier *Bracton*-era punishment during the legal age of Westminster II. Even though this case is an outlier, it demonstrates the EC continued interpretation of physical mutilation as punishment, which could be negated by the woman's hand in

187 This was not necessarily unique. See Neville, "Common Knowledge of the Common Law in Later Medieval England," 461–78.

188 Maitland, Harcourt, and Bolland, eds., *Year Books of Edward II*, 134–35. I have personally consulted both the British Library and Lincoln's Inn Library *Year Books* and compared it with the Maitland et al. transcription. BL, MS Addit. 32086, fols. 65v–66r; London, LI, MS *Year Book of the Time of Edward 1*, fol. 46r.

189 *Year Books of Edward II*, 134–35: "qe le fait fust fait auaunt le statut ... il eust este agarde de ele eust creue les oyls Johan e cope ses botons pour ceo qil fust marie."

190 *Year Books of Edward II*, 134–35: "mes si ele fust seingle le juggement serreyt qil la esposast ou qil eust cele penance."

marriage. This unique case implies that the criminal courts viewed rape as a crime of bodily urges, as the “hot lust” of men—which was initiated by sights of beautiful women—led to rape. The assumed corporality of the crime lay with both the rapist and the victim.

Concluding Thoughts

Out of the 179 *raptus* cases, and when only looking at the sixty-one rape cases, I have found fifteen failed appeals, fifteen convictions, thirteen acquittals, nine concords, seven outlawries, and two that were moved to church courts. Of the sixty-one rape cases, 40.98% of women and girls were to be imprisoned *pro false appello*, although not all of them had to serve time.¹⁹¹ There are zero felony convictions. However, it is important to acknowledge how even in failed appeals there may have been victories for the wronged woman through the securing of settlements. In rape accusations with little bodily injury, jurors were warned that the accusations could be made in malice, and, as such, any doubt in the accusations aided in the accused’s release. Overall, these rape cases suggest a reluctance to convict men of felony rape—perhaps because they were indeed innocent, but also because of the severity of the punishment, with the worst being physical mutilation and execution. The case studies illuminate the numerous socio-cultural conditions that influenced the proceedings, such as the physical proof of resistance to the alleged rape and the schism between the statutes’ indifferences to virginity and the EC persistence on a loss of virginity to secure a trespass conviction.

Bleeding, bruising, loss of virginity, and physical force are repeatedly emphasized in the plea rolls, indicating that the woman was indeed victimized. The inclusion of physical force and blood was more than legal rhetoric; it was signifying that this was indeed a crime against the woman’s will, as she tried to physically resist the rape, and she can “prove” it by her bodily injury. Importantly, several of the cases examined throughout this chapter show a recognition of the duality of mental and physical (non-)consent and an attempt to harmonize these conflicting consent models into a clear verdict for each case. While the trial records hint at the two models of (non-) consent, contemporaneous medical texts discuss the consent of the flesh of rape victims explicitly.

191 This number represents a total of twenty-five (out of sixty-one) women: nine from *Bracton*; eight from Westminster I; eight from Westminster II. When looking at the 179 *raptus* cases, this figure increases to eight-five women equating 47.48% of *raptus* cases: *Glanvill* (41), *Bracton* (12), Westminster I (16), Westminster II (16).

