

THE DUALITY OF MENTAL AND PHYSICAL (NON-)CONSENT

ECCLESIASTICAL PERSPECTIVES

AN UNMARRIED WOMAN named Margaret de Lawheie, who lived with her father, William, was expected to go to church regularly.¹ Perhaps she did not particularly enjoy going to church, whether it was because the Latin mass made no sense to her and it was boring, or perhaps because the local deacon creeped her out. Maybe she noticed that Arnald, the deacon, kept staring at her while she was in church. Arnald did notice the unmarried Margaret. He lusted over her, he thought about her, and, one day, he kidnapped and raped her. Margaret told the authorities that Arnald abducted her, kept her in his home, and raped her, but the jury did not believe her. They agreed that Arnald did forcibly abduct Margaret, and he did have sex with her, but the jurors claimed that Margaret and Arnald had a past sexual relationship. Maybe the jurors heard a rumour around town that Margert slept with the deacon a couple of years ago. The jurors agreed that Margert previously had a relationship with Arnald and that she now no longer wanted that relationship. So, the jurors claimed, Arnald took it upon himself to kidnap Margaret and have sex with her, but this was no crime. The all-male jury said that Margaret did not consent to sex with Arnald this time, but because she had consented to sleep with him in the past, this was not *really* rape.

The case of Margaret demonstrates the weaponization of past consensual relationships and the abuse of power by a member of the clergy. Shifting focus from the secular to the sacred, this chapter provides a more holistic understanding of the rape culture that existed in medieval England from the perspective of church doctrine. This includes an analysis of the ecclesiastical debates about the sanctity of rape survivors and the questionable legitimacy of suicide as defence against rape. This chapter further demonstrates the nuanced—and at times contradictory—interpretations of the duality of mental and physical (non-)consent within ecclesiastical texts. Despite discussions about mental non-consent in canon texts, there was an inherent paradox in ecclesiastical debates about women's expected resistance and acceptance of suffering.

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While secular courts were developing a systematic form of common law, the ecclesiastical courts were undergoing their own revisions of texts to try and make a unified and comprehensive canon law code. It is no coincidence that the foundational canon law treatise Gratian's *Decretum*, written by 1140, occurred around the same time as *Glanvill*. Although the *Decretum* was not officially confirmed by any pope, it was the accepted authoritative text on medieval canon law and was used in universities. The *Decretum* is divided into three sections. The first is *distinctiones*, regarding elections for ecclesiastical office, while the third section is dedicated to the sacraments. Part two, the *causae*, deals with criminal legal matters of both clerics and the laity. Each *causa* is subdivided into various questions which are further divided into various chapters, or answers. The following analysis explores Gratian's interpretations of *raptus* and how the works of Sts. Jerome and Augustine contributed to complex ecclesiastical perspectives on the possibility of consent of the flesh overpowering mental non-consent of rape victims.

Raptus in Canon Law

In *causa* thirty-six of the *Decretum*, Gratian discusses the various scenarios of rape and abduction leading to marriage, and it is here that he includes the use of *raptus* as meaning both forcible coitus and abduction. In the first question, Gratian asks, "Indeed, Isidore [of Seville] says, in book II of his *Etymologies* c. 33: What is *raptus*."² The answer is "*Raptus* is actually, having been said, illicit coitus [*illicitus coitus*], which is called after the verb *corrumpere* [to corrupt]; hence, whoever controls [*potitur*] [a woman] by *raptus* delights in illicit sexual intercourse [*stupro fruitur*]."³ The emphasis on possession, illicit coitus, and corruption is explicit. Gratian's inclusion of *corrumpendo* is strikingly similar to the inclusion of *corrupta* in *Glanvill* and *Bracton*. To Gratian, *raptus* is primarily a sexual crime which pollutes or corrupts the woman's pure body. However, in the next answer to question one, Gratian delivers another definition of *raptus*:

Therefore, since she was corrupted [*corrupta*] by illicit coitus [*illicito coitu*], and since she was in this way abducted [*abducta*], that is having been led from the home of [her] father, [and] because no action of her marriage had been [settled] before [the abduction and coitus], it cannot be denied that she should be called *rapta*.⁴

² *Decretum*, C. 36, q. 1, cap. 1, p. 1288. All *Decretum* translations are my own.

³ *Decretum*, C. 36, q. 1, cap. 1, p. 1288.

⁴ *Decretum*, C. 36, q. 1, cap. 2, pp. 1288–89.

The definition is now stricter. Instead of applying to any woman who endures illicit sexual intercourse, answer two of question one clarifies that it is strictly applied to young maidens who are abducted from their father's homes and suffer rape. The condition that the woman must be abducted from her father's home implies that Gratian's use of *raptus* was under the narrow interpretation of an unmarried daughter. The truly innocent victim is a young daughter who is not yet married or in her husband's home and is, therefore, most likely a virgin seized from her father's house.⁵ The crime is both against her and, equally, against her father, as the father is the victim of loss of valuable property through the seizure of his daughter's body and the loss of her virginity for the marriage market. Financial compensation for the lost marital value was made as satisfaction—the so-called “price of chastity” (*precium pudicitiae*)—between an accused rapist and the girl's father.⁶

While the use of violence in the definition of *raptus* is not explicit, the consequence of corruption is. *Corrumpere* is defined as primarily “to destroy, ruin, [or] waste,” although, it can also mean “injury.”⁷ With reference to *raptus*, *corrupta* can indicate someone who is “marred, corrupted,” or “mutilated,”⁸ and *corrupta* as a neuter plural noun refers to the specific “spoiled parts (of the body).”⁹ While the inclusion of violence in the canonical definition of *raptus* may initially seem to be a scholarly interpretation, violence is actually part of the definition of *corrupta*.¹⁰ Since the mutilated or spoiled body parts of the woman imply physical injury, it is reasonable to conclude that such mutilated body parts were a consequence of physical violence. Only if all four of these conditions are met (illicit sex, abduction, violence, and no pre-arranged betrothal) would Gratian then view the crime as *raptus*. Contrary to other crimes of sexual violence, Gratian claims that rape is measured by the visible violence used against the female victim or her legal guardian.¹¹ This legal necessity of violence was not (unlike in the

⁵ James Brundage notes that this was not unanimously accepted. See Brundage, “Rape and Seduction in the Medieval Canon Law,” 143.

⁶ *Decretum*, C. 36, q. 2, cap. 8, p. 1291.

⁷ Lewis and Short, *A Latin Dictionary*, “cor-rump (conrump), rui, ruptum,” articles 1, 2; DMLBS, “corrumpere,” article 1a: “to harm.”

⁸ Lewis and Short, *A Latin Dictionary*, “cor-rump (conrump), rui, ruptum,” articles 1a, 1b.

⁹ Lewis and Short, *A Latin Dictionary*, “cor-rump (conrump), rui, ruptum,” article 2b.

¹⁰ Gravdal claims that the *Decretum* includes four elements for *raptus*, See Gravdal, *Ravishing Maidens*, 8.

¹¹ *Decretum*, C. 36, q. 1, cap. 2–3, p. 1289.

secular courts) restricted to visible signs of violence and resistance on the woman's body. It also applied to her kin and any violence her family may have endured. This reiterates the familial impact of rape as stated in the secular laws, in that it is not only a violation of the woman's rights, but it is equally a violation of her family—primarily her father's—rights.

If a felon claimed to be a member of the church, then he fell under the "benefit of the clergy," and his case would be heard in the ecclesiastical courts. Gratian states, "if indeed, they are clerics, let them fall from [their] very own positions [in the church]."¹² This clause enables any man accused of *raptus* who is of clerical status exemption from a secular criminal trial. This was a favourable option for the accused, as the punishment for felons in the ecclesiastical courts was relatively soft compared to that of the secular courts. A loss of rank in the church, possible excommunication, penance, and amercement were the primary punitive measures which must have seemed favourable compared to possible (although highly unlikely) mutilation and death under the king's law. If, according to Gratian, he was *vero laici* (in truth a layman), the punishment was excommunication.¹³ The church acted as a sanctuary for criminals (not just rapists) who sought to avoid secular criminal trials: "but if he sought refuge in a church with the *rapta* [woman], by the privilege of the church he is deserving of impunity from death."¹⁴ The rapist and/or abductor "had to stay in the church continuously [for] forty days and forty nights," and "villagers guarded the church" to ensure that he did not attempt to flee.¹⁵ Only after the completion of the forty days and nights was the man able to leave without injury, at which point he was forced to leave England. If he did not promptly abjure, he could receive capital punishment.

In canon law, a lack of marital consummation could be grounds for an annulment, and, consequently, marital sex was an important element to a legal marriage. This consummation requirement theoretically enabled the validity of the *raptus* marriage clause, as consummation of the union was already established through the woman's appeal of rape, and the only other ingredient needed for a valid marriage was the freely given consent of the two individuals. This consent would (in theory) overcome the invalidity of marriage made by force in canon law. In 1200, Pope Innocent III explicitly allowed marriage by abduction or after rape if both parties gave voluntary

¹² *Decretum*, C. 36, q. 2, cap. 4, p. 1290.

¹³ *Decretum*, C. 36, q. 2, cap. 4, p. 1290.

¹⁴ *Decretum*, C. 36, q. 1, cap. 2, p. 1289.

¹⁵ Hanawalt, *Crime and Conflict*, 37.

consent to the marriage, but the woman's consent to marry her rapist could not be obtained by coercion or force. Alternatively, rape could be used to coerce a reluctant bride into matrimony by leveraging her decreased marriage market value. So, despite theologians' insistence on freely given consent to matrimony, rape could be weaponized to obtain coercive consent. Either way, rape was a viable means to secure a valid marriage in canon law. There was, however, a distinction between future and present consent. The intention to marry was simply a betrothal and was easily broken. Alternatively, present consent—said in the present tense (*I thee wed*)—constituted a legally binding marriage, as ordained in the ca.1160 decretals of Pope Alexander III. If a case includes future consent and then coitus resulting in the loss of virginity, the church courts deemed that the marriage was legally valid, and the future consent was transformed into present consent with carnal knowledge. Thus, if a woman agrees to marry a man in the future, and he then rapes her virginity, it is not legally defined as rape in church courts despite the brutality of the crime.

Ecclesiastical consent theory to marriage, in which only the freely given consent of the bride and bridegroom was necessary, conflicted with the necessity of non-consent in appealing rape. Here the issue of temporality is evident. According to Gratian, *raptus* requires non-consent at the time of the crime, but marriage requires consent at the time of the marital vow. Consequently, secular lawmakers were forced to accept scheming women who could claim a fictitious rape and/or abduction (apparently not consenting) and then, as allowed by the law, consent to marry the man after the "crime" was committed. The ecclesiastical demand to a valid marriage—one in which both the bride and bridegroom give free consent and consummate the union—made the fictitious claim of rape and/or abduction a viable avenue to marriage in both the ecclesiastical and the secular courts. Canon law suggests that however troubling the marriage clause in *raptus* may be in the secular world, there was no legal objection to it in the ecclesiastical realm.

In *causa* thirty-six, Gratian introduces the hypothetical scenario of a man who seduces a virginal maiden with gifts, lures her "without her father knowing" into his house where they have intercourse, and subsequently "in public calls [her] wife."¹⁶ Gratian asks in question one whether or not this is still considered *raptus* and, in question two, if the man is able to marry the girl if her father gives his consent? To question one, Gratian states *sit raptus*

16 *Decretum*, C. 36, p. 1288.

(it is *raptus*) because *raptus quoque est illicitus coitus* (for *raptus* is illicit coitus).¹⁷ However, Gratian clarifies the various forms of illicit coitus:

Therefore, since she was corrupted by illicit coitus [*illicito coitu sit corrupta*], and since she was in this way abducted [*abducta*], that is having been led from the home of [her] father, [and] because no action of her marriage had been [settled] before [the abduction and coitus], it cannot be denied that she should be called *rapta*. But not all [acts of] illicit coitus, nor of every illicit deflowering, is called *raptus*. *Fornicatio* [fornication] is one thing, *stuprum* another, *adulterium* [adultery] another, *incestus* [incest] another, [and] *raptus* another. §1. *Fornicatio*, seems to be any kind of illicit coitus, that is without [one's] legitimate wife, however it is especially understood [as illicit coitus] of widows, or prostitutes, or concubines. §2. *Stuprum*, however, is especially the illicit deflowering of a virgin [*virginum illicita defloratio*] when it appears both the maiden is corrupted with both of their consent [*utriusque voluntate virgo corrumpitur*] [and there is] no proceeding conjugal agreement, [her] father immediately after learning [about this] is not returning this wrongdoing to his heart... §5. *Raptus* is committed, when a girl is violently [*violenter*] led [*ducitur*] from the house of her father, so that she is corrupted and had [as his] wife [*ut corrupta in uxorem habeatur*], it will be undisputed that if the violence [*vis*] is brought to the girl only, or to the parents only, or to both; this is punished by death. But, if he sought refuge in a church with the woman [*rapta*], by the privilege of the church he is deserving immunity from death.¹⁸

Here we see the distinction between rape with the use of force and rape through seduction—with gifts and promises—as two distinct sexual acts. *Stuprum* is illicit sex with a virgin, but this is not considered rape because the man and woman agree to the sex. However, it is still viewed as “illicit” because the woman’s father did not agree and there was no prearranged marriage betrothal. In this definition of *raptus*, rape must be violent. This echoes the expectation of physical resistance to the rape, in that violence is used to restrain the victim because the victim will apparently not acquiesce. This in turn leads to bodily proof of non-consent. However, Gratian claims that the force used does not necessarily have to be against the woman herself, but it could be against her family and would still be considered *raptus*. This ensures that the woman and her family are both victims. To answer question two, if this is a lawful marriage, Gratian says it is not, for Gratian requires consent to be given before coitus. But in *causa* thirty-six question two, Gratian allows marriage between victim and rapist to occur only if the

¹⁷ *Decretum*, C. 36, q. 1 cap. 1, p. 1288.

¹⁸ *Decretum*, C. 36, q. 1 cap. 2, pp. 1288–89.

woman consents, her family consents, and the rapist repents to the church and does penance.¹⁹

Gratian's *Decretum* was the primary source for canon law curriculum in European universities until around 1230, when it was supplemented with the decretals of Pope Gregory IX known collectively as the *Liber extra*.²⁰ The *Decretals*, or papal letters, quickly became the main source of curriculum once they were published. In the influential *Liber extra*, Gregory IX explicitly made the marriage clause in *raptus* cases legally binding:

Even though it is said to be a question of rape [*raptus*] when nothing is done about nuptials beforehand, a man should not be called a rapist [*raptor*] who had the woman's assent [*mulieris assensum*] and who betrothed or married her before he knew her sexually [*quam cognoverit*], even though the parents might object and claim that he raped [*rapuisse*] her.²¹

Gregory IX's statement agrees with Gratian's, who stated previously that it cannot be called *raptus* if there was a prearranged betrothal. However, the *Liber extra* makes it much clearer that parental consent is irrelevant to the validity of a marriage. This marriage clause of the ecclesiastical courts—and the church's insistence on present consent as the prelude to a valid marriage—made the secular legal identity of the scheming woman all the more real. The fear of the conniving woman—one who arranges her own marriage through the appeal of *raptus* and is supported by the church's consent theory to marriage—was increasingly problematic to secular lawmakers and male kin throughout the twelfth and thirteenth centuries, as is evident by the continued statutory restrictions. Although the ecclesiastical courts held jurisdiction over the legality of a valid marriage—and the secular courts could not take that away—they could and did contravene it by taking away the woman's inheritance through the Statute of Rapes. Thus, by the late fourteenth century, a woman could obtain her own valid marriage through *raptus*, but the secular courts allowed her male kin to ensure that she was disinherited to protect the patrimony.

Gratian's definition of rape ensures that it excludes the ability to have marital rape, since the conjugal debt requires sexual consent. The marital debt was mentioned by St. Paul in I Corinthians 7:3–4, which states that upon marriage both a husband and wife share a "marital duty" to consent to intercourse. As stated in Genesis 2:24 (and reiterated in legal

¹⁹ *Decretum*, C. 36, q. 2, cap. 7, p. 1291.

²⁰ Brundage, "The Teaching and Study of Canon Law in the Law Schools," 110–11.

²¹ Translated by Kelly, "Statute of Rapes and Alleged Ravishers of Wives," 407.

treatises already discussed), upon marital vows and consummation, a man and woman are *duo in carne una* (two in one flesh). Bluntly, in secular and ecclesiastical courts, marital rape was a non-existent crime, as a single flesh could not rape itself. Furthermore, with the conjugal debt owed mutually by both spouses, there should be no refusal of intercourse between a husband and wife. Marriage had an immensely powerful transformative role in medieval English understandings of rape and consensual sex. The marriage clause within *raptus* laws was upheld in ecclesiastical texts as legally binding, transforming rape into consensual sex, and once enacted, rape between husband and wife could legally never occur. Despite Gratian's expectation of physical violence to define *raptus*, the woman's mental consent to choose to marry her rapist led to the legal erasure of the violent crime.

Consent of the Flesh-Mind Debate

The duality of mental and physical (non-)consent was heavily debated in ecclesiastical texts and undoubtedly would have been known by criminal court justices. The idea that the body of a rape victim could operate independently of the mind troubled the secular courts, but canon texts had little issue with the two theories of consent. Indeed, stories of virgin martyrs suggested a separation between the body and mind of the potential rape survivor, and these narratives were extremely powerful didactic tools. Part of the ecclesiastical campaign of controlling sexuality was indoctrination through saints' lives. As a popular literary genre, saints' lives (hagiography) were instrumental in idealizing certain attributes, behaviours, and gender roles which the listening and reading audiences were expected to learn from and imitate in the real world. Hagiography was a powerful tool to normalize virginal purity and venerate women and men who exercised extreme control over their bodies. When written or translated into the vernacular, hagiography had a unique synergistic relationship with social practices, being influenced by the social world and heavily influencing the construction of ideal masculinity and femininity. Female saints were frequently threatened with rape and sexual violence, and these narratives describe the physical sexual violence in more graphic detail than we find in secular romance or legal trial documents. According to ecclesiastical doctrine and traditional church rhetoric, the female body was the locus of sexual temptation. As all women were deemed the descendants of Eve, the female body needed to be controlled, and the church played a vital role in this social, community-based policing of female sexuality.

The medieval religious experience was heavily influenced by age and gender. The female life cycle shaped the expected behaviour of women, as maidens, wives, and mothers were given different role models to praise. The Virgin Mary—as the holy mother—and St. Margaret—as the patron saint of childbirth—primarily targeted women who entered marriage. Young maidens not yet married were targeted with the hagiographic tales of virgin martyrs, such as Sts. Lucy, Cecilia, and Katherine. Hagiography was extremely popular in the high Middle Ages, influencing not only the spiritual realm but also legal texts, as St. Lucy is referenced in Gratian's *Decretum* and thus directly guiding ecclesiastic legal thought. Archbishop of Genoa, Jacobus de Voragine, composed his *Golden Legend* around the 1260s and there are nearly a thousand extant copies “of the Latin text alone,” and “another five hundred or so” manuscripts in vernacular translations all over Europe.²² The popularity of saints' lives in England is evident by the fact that over two-hundred years after Jacobus's text was written, it was printed in English by William Caxton in 1483. The longevity of popularity of Jacobus's *Golden Legend* in England provides historians with the opportunity to explore the polarity of mental and physical non-consent of virgin martyrs. Jacobus tended to elaborate on the gruesome details of torture and titillation from his earlier source material, suggesting a fascination with the horrors of martyrdom to contemporaneous audiences.

Jacobus uses the same language to describe St. Lucy as the secular legal texts describe rape—that is she “possessed the beauty of virginity without trace of corruption.”²³ Once again, virginity is in opposition to corruption. Lucy dedicated herself to God, and, according to Jacobus, her betrothed was furious about her rejection and declared to the consul Paschasius that she was a Christian. Under interrogation, Lucy refused to submit to idol worship, and Paschasius claimed that she “talk[s] like a whore.” According to the *Legend*, Lucy refuted this insult by claiming that she “never have had anything to do with any seducers of the body or of the mind.” According to Jacobus, speaking as Lucy, the seduction of the mind is any temptation away from the Christian God, whereas the seduction of the body “are those who would have us put the pleasure of the flesh ahead of eternal joys.”²⁴ The language here is verbatim to medical texts, such as by William of Conches,²⁵ in

²² Duffy, “Introduction,” xii.

²³ *The Golden Legend*, 27.

²⁴ *The Golden Legend*, 27–28.

²⁵ Discussed at length in Chapter 4.

which the pleasure of the flesh leads to corruption. Paschasius proposes to take Lucy to a brothel, so that her “body will be defiled and [she] will lose the Holy Spirit.” In Jacobus’s *Golden Legend*, Lucy defiantly replies:

The body is not defiled ... unless the mind consents. If you have me ravished against my will, my chastity will be doubled and the crown will be mine. You will never be able to force my will. As for my body, here it is, ready for every torture. What are you waiting for?²⁶

Lucy explicitly states that her body cannot be truly corrupted or defiled so long as she maintains mental non-consent to the attack. Her mental non-consent throughout any rape ensures her chastity of the mind and soul. Paschasius then “invite[s] a crowd to take their pleasure” with Lucy, thus inviting a group rape “until she is dead.” However, when a group of men try to carry Lucy off, she could not be moved due to Holy intervention. After urinating on Lucy and pouring boiling oil over her, she eventually has her throat slit.²⁷

This hagiographic narrative invites several nuanced considerations about rape and consent that are seemingly absent from secular sources. This rendition of Lucy’s life clearly states that “the body is not defiled” so long as there is mental non-consent. The bodily “corruption” is thus not applicable to the mentally steadfast maiden, despite any rape that may occur. The judicial application of group rape as an acceptable punishment for a defiant Christian who upset a betrothed suitor is striking. Lucy’s bodily autonomy leads not only to her death but to her authorized group rape. Of course, the group rape never happens, as Lucy dies a virgin martyr, but we should read past the rhetoric and read the violence back into the text. In this re-reading, the judicial application of group rape as a punitive measure is like war tactics as expressed by Augustine of Hippo (discussed below), in that the victors of war may justly be entitled to rape the women of the newly conquered lands.

This analysis of Jacobus’s *Legend* of Saint Lucy may seem purely theoretical, but even Gratian references the virgin martyr in his *Decretum*. In *causa* thirty-two, question five, on loss of innocence, he states:

That purity [*pudicitia*] is not able to be taken by violence [*violenter*] is proven by many authorities. For it is a virtue of the soul [*virtus animi*], which cannot suffer violence [*violentiam non sentit*]. For force [*vis*] can be inflicted upon the body [*corpori*] but cannot be inflicted upon the soul [*non*

²⁶ *The Golden Legend*, 28.

²⁷ *The Golden Legend*, 29.

animo]. Therefore, even if the body is corrupted by violence [*corpus violenter corrumpatur*], if chastity of the mind [*pudicitia mentis*] is kept intact then one's chastity is doubled [*castitas duplicatur*]. Thus St. Lucy is reported to have said to Paschasius, "if you cause me to be violated [*violari*] against my will [*invitam*], my chastity [*castitas*] will be doubled, and you will bring me closer to salvation [the crown of a martyr]. For God judges my thoughts and intentions [*sensibus et voluntatibus*]."

Hence, Ambrose writes in book 5 *On Virgins*:

C. 1. Virginity of the soul [*virginitas mentis*] is better than virginity of the flesh [*quam carnis*].

It is more tolerable to have a virgin mind [*mentem virginem*] than a virgin flesh [*quam carnem*]. Both mental and physical virginity are good, if possible; if it is not possible, if we cannot be chaste [*casti*] unto man, let us at least be chaste unto God. §1. A virgin [*virgo*] can be prostituted [*prostitui*], but she cannot be an adulteress [*adulterari*]. Wherever there is a virgin of God, there is a temple of God. Indeed, brothels [*lupanaria*] do not bring chastity into disrepute, but chastity in a place removes all disgrace [*infamiam*].

C. 2. Flesh [*caro*] cannot be corrupted [*non corrumpitur*] by a mind [*mente*] that is not corrupted [*incorrupta*]. The same authority [Ambrose, speaking about] fallen virgins:

In reality, the flesh [*caro*] cannot be corrupted [*corrumpi*] unless the mind [*mens*] is corrupted [*corrupta*] first.

C. 3. A stranger's lust [*aliena libido*] pollutes [*polluit*] no one. Augustine, in *City of God* [book 1, chapter 18]:

Is she afraid that foreign lust [*aliena libido*] can pollute [*polluat*] someone? Lust will not pollute [*non polluet*], if it is another's lust, if however it pollutes, it is not another's [*non aliena*] lust. But because purity [*pudicitia*] is a virtue of the soul [*virtus animi*], and it has that power as a companion, by which it might choose to tolerate a given evil rather than to consent [*consentire*] to evil, moreover because no one who is noble in spirit and chaste has it in their power what may become of their flesh [*carne*], but only that she might assent with her mind [*annuat mente*] or refuse [*vel rennuat*]: I ask you, who in their right mind would think that they would be losing their purity [*pudicitiam*], if a desire [*libido*] that is not their own [*non sua*] is being exercised [*exerceatur*] and fulfilled with their restrained [*apprehensa*] or overwhelmed flesh [*oppressa carne*]?

C. 4. The same authority [Augustine, speaking on:]

When an intention of the soul endures, by which the body [*corpus*] has also merited sanctification, the violence [*violentia*] of another's lust [*libidinis alienae*] does not take away the sanctity of the body itself [*ipsi corpori*], which the steadfastness [*perseverantia*] of one's self-restraint [*continentia*]

preserves. Can it truly be the case, if a given woman whose mind has been corrupted [*mente corrupta*] and who has violated the vow that she gave to God, is going to her seducer [*deceptorem*] to be violated [*vicianda*], that we still call her holy with respect to her body [*corpore*] as she is going, when that sanctity of her soul, by which her body is sanctified, has been lost and destroyed? Let us dispense with this error and instead keep in mind that the sanctity of the body is lost even though the body itself remains untouched [*intacto*]. The same authority: §1. They will hold Lucretia, a noble and old Roman matron, up with great praises of purity. When in his lust, the violent son of the king Tarquinius had conquered her body, she exposed the crime of that most wicked young man to her husband Collatinus, and to her uncle Brutus, two most brave and illustrious men, and she bound them [by oath] to avenge her. Afterwards, disgusted [*aegra*] by the foul thing [*foedi*] that was done to her and not able to bear it [*inpatiens*], she killed herself. What are we saying? Is she an adulteress, or should she be declared chaste? This is not a hard question. A certain man speaking well and truthfully therefore said: “it is a marvel; there were two, and only one committed adultery.” Well said and most truly. For seeing in the mixing [*conmixtione*] of those two bodies, the most polluted desire [*inquinatissimam cupiditatem*] of the one and the chastest will [*castissimam voluntatem*] of the other, and understanding that it was not a matter of two bodies being joined, but two minds disagreeing [*animorum diversitate*]: “There were two,” he said, “and only one committed adultery.”

C. 14. Those who have been oppressed [*opprimuntur*] should not dare to compare themselves to uncorrupted [*incontaminatis*] virgins.

Those handmaids [*famulae*] of God, who by barbaric oppression [*oppressione barbarica*] have lost the integrity of their modesty, will be more praiseworthy for their humility [*humilitate*] and shame [*verecundia*], if they dare not compare themselves to undefiled [*incontaminatis*] virgins [*virginibus*]. For although all sin is begotten from the will, and an unwilling mind [*mens invita*] might not be polluted [*pollui*] by the corruption of the flesh [*corruptione carnis*], nevertheless it will be less to their detriment if they should grieve that they have lost even in the body that which they might not have lost in their soul.²⁸

This *causa* remarkably demonstrates a medieval distinction between consent of the flesh and consent of the mind. Maidens who survive rape but lose their virginity are still considered pure if they never mentally consented to the rape. Referencing St. Lucy enshrined in canon law that spiritual salvation was available to women who modelled their behaviour on the virgin

28 *Decretum*, C. 32, q. 5, cap. 1–4, 14, pp. 1132–33, 1136. Thank you, Jonathan Brent, for helping me with this translation.

martyrs. Through their suffering, women were able to emulate the martyrs in that they too endured violence, but they did not mentally consent and give into the sexual temptation. Although these hypothetical women are considered forever changed and not virginal, they retain, through their suffering, a martyr-like religious status. This mental non-consent to rape allowed medieval women to still be considered victims and worthy of eternal salvation, even if they endured sexual defilement. The survivors of rape are acknowledged in Gratian's *Decretum* as still worthy of God's love. The distinction between bodily and mental consent—as well as the explicit reference to St. Lucy—worked to provide an avenue to sanctity through rape and sexual assault. If suffering rape was an imitation of the virgin martyrs (as Gratian claims), then enduring rape was a means for women to achieve an elevated level of holiness. To achieve this special spiritual praise, the woman must never mentally consent to the rape in order to preserve her innocence of the mind.

Gratian clearly explains that women who survive rape occupy a privileged position of moral superiority. Other notable theologians, such as Thomas Aquinas, also supported this idea that rape was an avenue to spirituality. As Suzanne Edwards argues, this notion of moral elevation through surviving rape is contrary to hagiography where female saints are willing to sacrifice their life to escape rape.²⁹ That is to say that death is a more attractive option than enduring rape in saints' lives. The logic provided in the hagiography of virgin martyrs, such as St. Lucy, suggests that it is better to be martyred than it is to be raped. According to Edwards, this allows for the space in which rape survivors have endured something that is even more holy than death itself.³⁰ By losing one's virginity through rape, the woman has endured an event that even the female saints viewed as too great of a sacrifice to make. This was all dependent on the chastity of the mind being preserved, which required that the woman did not mentally consent at any time. However, theologians were hesitant to believe women who claimed mental non-consent, as they thought the weakness of the flesh could overpower the mental non-consent.³¹ This binary distinction between the body and mind of rape victims is reminiscent of *Bracton's* belief that rapists lose control of their rational mind through unrestrained "hot lust," and it is identical to secular lawmakers who also argued that the reluctant but willing

29 Edwards, *The Afterlives of Rape*.

30 Edwards, *The Afterlives of Rape*, 21–23.

31 Edwards, *The Afterlives of Rape*, 25.

accomplice to her own rape was a victim not of her rapist but of the desires of her own body.³²

Putting that aside, sanctity through rape was further troubled with the mental non-consent of the woman. Although her mental chastity was deemed crucial to Gratian, there was the opposite effect to canonists who viewed the mental non-consent as a reluctance of the woman to endure her suffering. Virgin martyrs endure their suffering willingly and, consequently, a woman who is raped and does not willingly endure it cannot be a martyr, as a true martyr consents to their suffering for the sake of faith.³³ Effectively, a woman cannot accept her rape and consent mentally (to ensure sanctity) because then she loses the chastity of the mind which is so critical to Thomas Aquinas and Gratian, among others. As Edwards notes, this is a no-win situation: if she consents, she is not of pure mind, and if she does not consent, she did not willingly accept her suffering.³⁴ Despite the paradoxical accounts of rape and divinity, hagiographical texts of threatened rape allow for the figurative space of rape leading to virtue, not shame. The importance here is the repeated emphasis in canon texts—whether through the *Decretum* or *Golden Legend*—that the rape victim's body and mind could act in opposition to one another. The repeated distinction between the bodily consent of the flesh and the mental (non-)consent of the woman clearly demonstrates that medieval scholars were concerned about the consequences of the duality of mental and physical (non-)consent of rape victims.

The cults of the virgin martyrs were intentionally used to appeal to young girls, instilling sexual purity and promoting the ideal virginal state. The young virginal maidens are continually described in sexualized language, but the explicit sexual act—rape—never occurs. The literate and non-literate audience members of female saints' lives were bombarded with not only literary texts of virgin martyrs but also images “on rood screens, stained glass windows, books and paintings,” which Kim Phillips states would have inevitably “had a deep effect on their imaginations and perceptions of femininity.”³⁵ It is important to note that saints' lives had a broad impact on social culture, as they were read aloud in church to listening audiences of diverse socio-economic backgrounds. Thus, these texts would pre-

32 For a discussion on *Bracton* see Chapter 1. For a discussion on the reluctant but willing accomplice, see Chapter 4.

33 Edwards, *The Afterlives of Rape*, 28–30.

34 Edwards, *The Afterlives of Rape*, 28.

35 Phillips, “Desiring Virgins,” 55.

sumably have been well known to many diverse women and girls as well as lawyers, judges, and jurors working within the king's courts.

What might readers take from these stories? Saints who denied the sexual advances of wicked men and died in defence of their virginity were offering audience members narratives of women's resilience and Christ-like determination. The extremely graphic and sexualized violence against virgin martyrs demonstrate to the audiences of women and girls that death is confirmation of resistance and ultimate bodily autonomy.³⁶ While hagiography theoretically allowed maidens to choose chastity over marriage, the narratives also demonstrate the very real dangers in asserting bodily autonomy against the desires of men, which could result in extreme violence and death. As part of a cultural tolerance of sexual violence, a woman's refusal of sex is used as justification for male violence.³⁷ Through their emulation of the virgin martyrs, women were integral in producing the cultural gender norms of femininity as much as men were in producing these texts to begin with. Women were not all passive participants in the patriarchy, but some supported, upheld, and even contributed to it.

The fifth-century teachings of St. Jerome explain how women's virginity was in constant danger of corruption. Jerome warns: "if you walk laden with gold, you must beware of a robber," and "although God can do all things, He cannot raise up a virgin after she has fallen ... He has no power to crown one who has been corrupted."³⁸ The use of "corruption" is identical to the secular laws and treatises previously discussed, and the multivalent definitions of corruption allow for the secular and sacred interpretations of defilement, pollution, violation, and harm. From the Late Roman period, ecclesiastical authorities warned women that virginity is both the ideal feminine state but also a state that invites sexual corruption and thus one's virginity is something to physically defend. If women cannot properly defend their saintly virginity, Jerome warns them that "it would have been better to have submitted to marriage with a man ... than to fall into the depths of hell while striving to attain the heights [of saints]."³⁹ The negative attitude towards marriage as the least evil of sexual sins if one must have sex was popular throughout the

36 For a discussion on Middle English hagiography, see Innes-Parker, "Sexual Violence and the Female Reader," 208–14.

37 For more on this concept see Harris, *Obscene Pedagogies*, 135.

38 Schulenburg, "The Heroics of Virginity," 32–33. Schulenburg makes reference to Jerome, *The Letters of St. Jerome*, trans. Charles Christopher Mierow, 135, 138.

39 Schulenburg, "The Heroics of Virginity," 33. Schulenburg makes reference to Jerome, *The Letters of St. Jerome*, 138–39.

medieval period and reinforced in secular romance, as virginal maidens save their pure bodies for their husbands. The writings of Jerome—among other so-called Church Fathers—laid the foundation for the later medieval *raptus* laws, in that virginity was worthy of physical protection. In part, this is evident in the harsher punishments for virginal rape as well as the legal expectation that women should defend themselves aggressively against their own rape. The legal expectation of resistance to prove physical non-consent in the secular courts and the conflicting recognition of the possibility of mental non-consent is, therefore, not confined to the secular world, but rather it is reinforced and supported by church rhetoric.

The close connection between ecclesiastical doctrine and *raptus* laws is further evident in church teachings of sacrificial mutilation to protect one's chastity and the legal expectation of physical bodily proof of resistance to rape in secular criminal courts. Stories of nuns mutilating their faces to protect their virginity from enemy soldiers appear in chronicles as an unfortunate consequence of war.⁴⁰ Here it is important to heed Brenda Silver and Lynn Higgins' call to re-read the rape as rape within narratives, especially in saints' lives, where it is too often displaced in favour of some greater moral truth, such as the religious oppression of Christians. Early Church Fathers once again helped in laying this foundation, as Jerome wrote in his *Commentary on Jonah*: "it is not lawful to commit suicide except when one's chastity is jeopardized."⁴¹ According to Jerome, if a woman cannot maintain physical and mental non-consent, then it is best if she just kills herself. Suicide in defence of virginity was further supported by Ambrose of Milan in his writing *Concerning Virgins*⁴² and Augustine of Hippo in *City of God*.

Augustine's *City of God* blurs the distinction between the rape, abduction, and marriage of the Sabine women by the Romans. By referring to *de raptu Sabinarum*, Augustine initially states that "without the consent of [the

40 Saunders, *Rape and Ravishment*, 139–41. Saunders makes reference to Roger of Wendover's *Chronica, sive Flores Historiarum*, which recounts the self-mutilation of the nuns of Collingham. See also Wolfthal, *Images of Rape*, 62–75.

41 Schulenburg, "The Heroics of Virginity," 34. Schulenburg makes reference to St. Jerome, *Commentariorum in Jonam Prophetam Liber Unus*, P. L. 25: 1129: "Unde et in persecutionibus non licet propria perire manu, absque eo ubi castitas periclitatur." Available at The Catholic Library Project, "Jerome, *Commentariorum in Jonam Prophetam Liber Unus*," bk. 1, vers. 12. See also Jerome's discussion on suicide in defence of virginity in *Against Jovinianus*, bk 1, chap. 41.

42 Schulenburg, "The Heroics of Virginity," 34. Schulenburg makes reference to St. Ambrose, *Concerning Virgins* in St. Ambrose, eds. Philip Schaff and Henry Wace, chap. 7, pp. 386–87.

women's] parents, but with force [the Sabine women] [are] taken away."⁴³ Augustine then leaves the figurative space for a just war when "in that case Mars might have helped his son in a struggle to avenge with arms the wrong done to him when alliance in marriage was refused, and to attain in this way the women that he had chosen."⁴⁴ Augustine even suggests that, in war, the booty rightfully belonging to the victors can include the women of the conquered land.⁴⁵ Furthermore, Augustine discusses the difficulties of proving mental non-consent to rape when, perhaps unwillingly, the woman's body may enjoy the rape:

But not only what concerns pain [*dolorem*], but also lust [*libidinem*] that can be inflicted on another's body [by force], whatever that deed might have been, although it does not thrust out modesty [*pudicitiam non excutit*] that is to be retained through the most steadfast mind, but [it] thrusts in shame [*incutit pudorem*], shame for fear that [it was done with the will [*voluntate*] of the mind] [*mentis*], which perhaps could not have taken place without some carnal pleasure [*carnis voluptate*].⁴⁶

Augustine implies that most rape victims will feel shame because they will have some physical pleasure from the assault. Yet Augustine is explicit in stating that *si autem animi bonum est* (if, however, goodness is of the soul), then *etiam oppresso corpore non amittitur* (it is not lost even by the oppressed body).⁴⁷ This *animi bonum*, good of the soul, appears in opposition to *pudorem*, the shame from the physical pleasure. Augustine concludes that through rape women can become more holy only if their mental state is non-consenting: "nor does the violent lust of another take away the purity of the very body [which] is maintained by the steadfastness of restraining one's passions and desires"⁴⁸

Augustine's writing was extremely controversial to later lawmakers, because in the criminal courts the bodily (non-)consent was considered paramount. Even if the mind did not consent, the woman was still culpable.

⁴³ Augustine, *City of God*, bk. 2, chap. 17, pp. 196–97. Translation my own.

⁴⁴ Augustine, *City of God*, bk. 2, chap. 17, pp. 198–99. Translation by McCracken.

⁴⁵ Augustine, *City of God*, bk. 2, chap. 17, pp. 198–99: "Aliquo enim fortasse iure bello iniuste negatas iuste victor auferret." Translated by McCracken: "For perhaps some law of war might have justified in taking away women who had been unjustly refused."

⁴⁶ Augustine, *City of God*, bk. 1, chap. 16, pp. 76–77.

⁴⁷ Augustine, *City of God*, bk. 1, chap. 18, pp. 80–81.

⁴⁸ Augustine, *City of God*, bk. 1, chap. 18, pp. 80–81.

Here, however, Augustine was expressing a sort of sympathy for women raped of their virginity and allowing them entrance into the heavenly kingdom so long as they maintained mental non-consent to the rape. Augustine describes the constructed legal identity of the reluctant-but-willing accomplice, for whom the physical pleasure derived from the rape could lead to consent even though they may have initially resisted. This dogma had devastating consequences in the legal trials of rape appeals, where men of law who knew the church teachings viewed women suspiciously as lustful creatures who may have physically enjoyed their rape despite their mental non-consent. Put simply, Augustine demonstrates the belief that there is a duality of mental and physical (non-)consent in rape victims, but the mental non-consent is unknowable to anyone other than the woman herself and the divine.⁴⁹

Concluding Thoughts

Theological debates about the sanctity or elevated holiness of rape survivors provides a nuanced interpretation of the differences between mental and physical (non-)consent which is only hinted at in the secular *raptus* laws. However, this theoretical debate had little impact on the church courts' interpretations of sexual crimes against women, as mental consent was necessary for willingly enduring one's suffering, but the same mental consent also equated corruption of the chastity of the mind. The no-win situation for rape survivors in church courts and doctrine is indicative of medieval England's conflicting societal attitudes towards rape survivors in general. Hagiographic texts, biblical stories, conduct literature, and canon law codes ensured that even though women may be threatened with sexual violence, they were expected to resist while remaining passive and subordinate. The conflicting expectations entangled women in difficult positions, as they brought suits of sexual violence forward. The church's views on women as descendants of Eve ensured that women claiming rape were potentially distrusted as being seductresses. This suggests that medieval English culture retained a distrust of women's rape accusations. In trying to rationalize the thought of women as inherently sexual—due to their anatomy and supported by church doctrine—canonists struggled with the concept of women being victims of sexual crimes. As Ellen Rooney claims, "if all femi-

49 This is tied to discussions around the rape of Lucretia. See Piercy, *Resistance to Love*, 12; Schwebel, "Chaucer and the Fantasy of Retroactive Consent," 389.

nine behaviour can be read as seductive, women cannot avoid complicity.”⁵⁰ Despite this hesitancy to believe rape survivors, some prominent members of the church believed that a woman’s mind and body could be in conflict during rape. The contradictory consent models were not confined to canon texts, rather permeating the sacred and secular realms.

50 Rooney, “Criticism and the Subject of Sexual Violence,” 1275.

