

‘LET HER BE TAKEN’
SEXUAL VIOLENCE IN MEDIEVAL ENGLAND

by

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ABSTRACT

Rape and its impact on medieval women, as conceived by society and the law, have yet to receive extensive treatment. By analyzing not only rape cases, but evolving laws and the impact of the Church on views of sexuality and marriage and thus its influence on attitudes towards rape, this study shows that women were much more than victims and society, or the courts, reacted accordingly. Covering the years 1200 to 1250, this thesis examines secular court cases taken from the general eyre records of Yorkshire, Gloucestershire, Lincolnshire, Warwickshire, Berkshire, Wiltshire, Worcestershire and Staffordshire. Cases taken from the King's Bench and canon courts, including Canterbury, also provide an illustration of the process of rape litigation. Legal treatises, both canon and secular, serve as the foundation for the procedures required in either court system and show that rape was a punishable offense.

However, society had difficulty viewing rape as a personal crime against a woman as opposed to a crime against her family and that is when it actually thought that sexual violence occurred. While still available to them, women used the rape laws to push their agendas and concerns onto the court – revenge, choice of marriage, justice. In court records, the heavy burden of proof and the high rate of dismissals support this conclusion. Women persevered through the inherent disadvantages presented by a patriarchal system and achieved a measure of control over their lives. This is evidenced by the nearly equal success and failure rates in the records examined; 33 percent ended in acquittal or dismissal, while 31 percent provided women with some closure. The passage of the Statutes of Westminster, by removing a woman's right to prosecute rape and marry the accused, also convincingly illustrated that women held a degree of power that was unacceptable to society.

I would like to dedicate this thesis to my mother, who always believed that education should be my number one priority. I would not have made it this far without her support and hard work.

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INTRODUCTION: SEXUAL VIOLENCE IN MEDIEVAL ENGLAND

Violence was a part of everyday life for most Europeans throughout the Middle Ages. It affected everyone, but the exact nature of the violence was often gender specific; victims of sexual violence are, and were, most often women. The patriarchal structure that existed during the Middle Ages served as the context within which all activity took place. Given this, it is important to understand how a society in the Middle Ages, in this case medieval England, dealt with the difficulties and ramifications of sexual violence. Medieval England, specifically the thirteenth century, serves as a focal point because there is significant evidence available in translation. Concrete indications of guilt or innocence and ascertaining the validity of the accusations or results is impossible; all that is left of these cases is what was recorded, which is, at best, sketchy. That does not mean, however, that one cannot learn from the record. It is possible to make inferences and deductions from the available resources that provide a wealth of information concerning the victims of sexual violence in medieval England.¹ Take, for instance, the following two cases.

“Maud daughter of Henry of Spennall appealed Henry son of Eullar’ of Shelfield of rape. Henry has not come and he was attached by Philip of Grafton and Roger of Shelfield, who are therefore in Mercy. Afterwards Henry came. Maud appealed him that in the peace of the lord king he raped her, and this she offers to prove against him as the court shall adjudge. Henry comes and denies the breaking of the king’s peace, the rape, and the whole word for word etc, and says that she appealed him for hatred and malice, since Henry her father, who was at the death of Robert de Bosco and fled for that death, was afterwards found in a wood with Maud and her sister, and when he was found he (the appealed) raised the cry and Henry fled, and there Maud and her sister were taken and led with 15 sheep to the house of William de Cantilupe, the sheriff, until John Durvassel replevied her. He puts himself upon the jury of the country therein. The 12 jurors and the 4 villages say that he is not guilty and that she is appealing him for the

¹ Reading against the grain, or between the lines, is best illustrated in Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth-Century France* (Stanford: Stanford University Press, 1987).

aforesaid grudge. Therefore he is quit therein and Maud is in mercy. She has nothing.”²

“Agnes of Westwode appealed Roger of Cheveral in the County of rape and the violation of her body etc., and now she comes and makes suit against him. Roger does not come and he was attached by Walter de la Hache of Chiverel and William of Williamton’, so they are in *mercy*. It is testified by the jurors that he is guilty and that he raped her. It is testified by the coroners that Roger confessed in the full County that he had raped her with violence. So it is held that Roger *be exacted and outlawed*. He was in the tithing of Great Cheveral, so it is in *mercy*. His chattels: 4s., whereon [etc.]”³

The two cases cited above are unique; first, comparatively speaking, they are detailed accounts; second, they illustrate the complexities of sexual violence charges. These women brought charges for the same crime, but for completely different reasons. In the first case, Maud apparently held a grudge and brought charges as a form of revenge. Although it is unusual to find this kind of background recorded, it was probably not an atypical reason for charges. While it is plausible that the assertion of revenge made by Henry was false, it is also equally possible that a rape actually occurred. The confession in the second case is remarkable, but Agnes got nothing other than the vindication of proving her charge. Given the circumstances (i.e. censure, lack of marriage prospects, prostitution, etc.) a woman faced after bringing an appeal of rape, having the accused rapist outlawed did little to remedy her situation.⁴ These cases also demonstrate the type of women bringing appeals. That the cases went before a public court indicates these women were not serfs, it also shows that they were not aristocrats, as their cases

² Doris Mary Parsons Stenton, ed., *Rolls of the Justices in Eyre: Being the Rolls of Pleas and Assizes for Gloucestershire, Warwickshire and Staffordshire, 1221-1222*, The Publications of the Selden Society; v. 59 (London: B. Quaritch, 1940), p. 340, case 751.

³ C. A. F. Meekings, ed., *Crown Pleas of the Wiltshire Eyre, 1249*, Wiltshire Record Society; v. 16 (Devizes: Wiltshire Archaeological and Natural History Society, 1961), p. 179, case 141.

⁴ Here, “appeal” is used in the sense of accuse, rather than to contest a conviction or ruling.

would go directly before the king. This means these women, and most of the women found in the court cases used were free but of the lower classes.⁵

This thesis examines the ways in which medieval English society viewed, responded to, and controlled sexual violence. It breaks new ground in that it makes extensive use of legal records and argues the Church played an integral role in the formation and enforcement of values towards sexual violence that empowered women against not only their attackers but also the men directing their lives. As one might suspect, evidence of sexual violence in the Middle Ages is difficult to come by. While court records, Church records, and other official documentation are plentiful, it takes time and patience to locate references to sexual violence. In addition, to read most documents from the Middle Ages means the reading of evidence written by men. Although men and women of the lower classes were both at the mercy of the clerk recording their statements and case accurately, this disparity is more pronounced for women. Unfortunately, therefore, anything a woman said concerning her attack did not make it into the court records if the male clerk did not deem it relevant. The same applies to Church records. Deconstructing the texts to get at underlying assumptions is a useful tool, one that many authors have employed when dealing with men writing about women and it has proved useful in this thesis.

One cannot simply look at rape in a vacuum, or even in terms of the woman, herself; indeed, some would argue that an act of rape, from ancient history to present day, has little, if anything, to do with the woman who is victim of the crime.⁶ Many experts, today, view rape as

⁵ For a detailed demographic breakdown of the women appealing rape and the men accused, see Chapter 5 in John Marshall Carter, *Rape in Medieval England: An Historical and Sociological Study* (Lanham: University Press of America, 1985).

⁶ See, for example, Zsuzsanna Adler, *Rape on Trial* (London: Kegan Paul, 1987), Carter, *Rape in Medieval England*, Susan Deacy, Karen F. Pierce, and K. W. Arafat, eds., *Rape in Antiquity*, Paperback ed. (London: The Classical

an issue of power and control, not only as the sexual violation of a woman.⁷ Feminist scholars, in particular, point this out in relation to male domination: rape is about subjection, abjection, and fantasy.⁸ In short, it is completely about the man who effaces the victim's individuality and humanity. One woman can serve just as well as the next in the eyes of the rapist, because his aim is power over another. During the Middle Ages, his ultimate purpose would most likely have been to harm a man from the woman's life, or more aptly put, in control of the woman's life. In a society such as medieval England where a woman's honor and virtue, or lack thereof, brought shame to the entire family, it was a very effective means of exacting revenge. Evidence of this is scarce in court records, but abounds in literary references. Given these obstacles, this thesis has integrated a wide variety of scholarly literature, and in many ways, it is an interdisciplinary study. While the focus is women's history, methodologies have been borrowed from social history, legal history, and religious history. The interrelation of these methodologies and theories make up the foundation of this study and enables it to seek an accurate view of sexual violence in the medieval England.

Methodologies

Anthropologist Claude Lévi-Strauss argued that ever since women were transferred between tribes, they have functioned as objects in the lives of men.⁹ In the Middle Ages, they strengthened family alliances, cemented treaties, and caused or ended wars. However, unlike studies that lament the fate of women and their horrible treatment by men, this study suggests

Press of Wales, 2002), Georges Vigarello, *A History of Rape: Sexual Violence in France From the 16th to the 20th Century* (Malden, MA: Polity Press, 2001).

⁷ Some proponents of this view include Adler, *Rape on Trial*, Jennifer Temkin, ed., *Rape and the Criminal Justice System* (Aldershot: Dartmouth, 1995), Sylvana Tomaselli and Roy Porter, *Rape: An Historical and Social Enquiry* (Oxford, UK: Blackwell, 1986).

⁸ See especially, Susan Brownmiller, *Against Our Will: Men, Women, and Rape*, 1st Ballantine Books ed. (New York: Fawcett Columbine, 1993).

⁹ Claude Lévi-Strauss, *The Elementary Structures of Kinship* (Boston: Beacon Press, 1971).

that women also used the system and the men in their lives, to their own advantage. If women's and social history has proven anything, it is that women of the past were far from powerless and that most men held less power than one might believe. Scholars who place women into a category of helpless victim do a great disservice to historical writing.

Women first came under the purview of legal historians in the late-nineteenth century with the rise of the suffragist movement and the passage of the Married Women's Property Acts in England. Modern questions concerning women's rights, both in terms of voting and holding property, led some historians to include women in their legal histories of England.¹⁰ However, these early histories were mostly positivist in nature and did not look at social aspects of women and the law. The rise of women's and social history enabled historians to rediscover women in other fields, in this case, legal history.¹¹

The most unfortunate thing about studying rape from this distance in time is the inability to gather the full the story. Studies that have been done often use statistical evidence to show that rape prosecutions were rarely successful.¹² Successful, as defined by these studies, usually meant the case ended with a guilty verdict, which occurred in perhaps one out of ten cases. Still, the convicted men were not given the full punishment as outlined by the law, but usually some monetary compensation was awarded to the woman or her family. In terms of these types of

¹⁰ See Frederick Pollock and Frederic William Maitland, *The History of English Law Before the Time of Edward I*, 2nd ed., vol. I (London: Cambridge, 1968). This was originally published in 1895.

¹¹ Economic histories involving women were published in the twenties and thirties, but were not classified as histories of women. These were often not well received until after the sixties. See, as an example, Alice Clark, *Working Life of Women in the Seventeenth Century*, New ed. (New York: Routledge, 1992).

¹² These studies will be discussed in more detail later, but include Ruth Kittel, "Rape in Thirteenth-Century England: A Study of the Common-Law Courts," in *Women and the Law: The Social Historical Perspective*, ed. D. Kelly Weisberg (Cambridge, MA.: Schenkman, 1982), Patricia Orr, "Men's Theory and Women's Reality: Rape Prosecutions in the English Royal Courts of Justice, 1194-1222," in *The Rusted Hauberk: Feudal Ideals of Order and Their Decline*, ed. Liam O. Purdon and Cindy L. Vitto (Gainesville: University Press of Florida, 1994).

scholarly endeavors, there are many ways to approach the complexities of the legal system and the people involved; a statistical analysis only tells one piece of the story.

The actual ordeal of appealing rape is another way to approach legal history. Many studies deal with the procedures involved in an appeal and information concerning trial stages.¹³ However, these usually fail to compare rape with any equivalent male on male crime, which other scholars have done. Studies of this nature rarely delve into reasons why women put themselves through this in the first place. Success, of course, is a subjective word, one that is not easily translated between value systems. A successful prosecution depends largely on the goals of the person bringing the charges. Some studies have suggested that women may not have brought charges of sexual violence to get a conviction, but rather monetary compensation or even marriage.¹⁴ All of this assumes that sexual violence occurred in the first place. Consent or lack thereof was a constant question, even to people of the Middle Ages. This study combines the use of statistical analysis with overviews of the two major court systems, a comprehensive look at medieval attitudes towards women, and an examination of women's goals and motivations behind appealing rape.

With the use of such qualitative words like 'success' and 'failure' it is important to note how they are defined in this study. This is where it is especially imperative to work within the medieval mindset because modern notions of what constitutes success, especially in regards to rape cases, do not apply. Death, outlawry, castration or other punishments entailed for felonies were not the sole measure of success. Women and their families took a much more pragmatic

¹³ One very good outline of the appeals process can be found in Kristi Gourlay, "Roses and Thorns: The Prosecution of Rape in the Middle Ages," *Medieval Life* 5 (1996).

¹⁴ See Ibid, Orr, "Men's Theory and Women's Reality.", J.B. Post, "Ravishment of Women and the Statutes of Westminster," in *Legal Records and the Historian*, ed. J.H. Baker (London: Royal Historical Society, 1978).

view of their situation. Therefore, a successful court case was any resulting in conviction, marriage, concord, or the remittance of monetary compensation. Cases classified as failures were only those resulting in acquittal or a not guilty verdict for the accused. All other cases, for lack of clarification, fall under “unknown outcome.”

That may very well be the biggest drawback to studies of the legal aspects of sexual violence. They have a tendency to forget that these were real people with agendas of their own and reasons beyond modern comprehension for acting the way they did. Still, using statistical data does have its advantages. By reducing sexual violence down to mere numbers, it becomes easier to compare and contrast it to other crimes, but removes the human element of the crimes being examined. This enables scholars, in a round about way, to establish the importance of sexual violence, the frequency in which it was brought to court and where it stood in terms of significance to the men involved in the process. While women could and did appeal rape, the judge, jurors, and officials were all men. Women might appear as witnesses, but this was also rare.

Secular courts were not the only avenue open to women when attempting to gain satisfaction for wrongs, the Catholic Church offered another way for women to gain justice. Yet, in the excellent studies done concerning the role of the Church and the evolution of rape laws, it becomes clear that the protection of women was not really at the heart of the Church’s concern, but rather the protection of the sanctity of marriage.¹⁵ This protection also included the rights of the parents, but more specifically, the father to say who his daughter will or will not marry. Secular courts had a rather annoying habit of ending an appeal in marriage, thus giving the man

¹⁵ Premier in this field is James A. Brundage. See James A. Brundage, "Rape and Marriage in Medieval Canon Law," *Revue de Droit Canonique* 28 (1978).

and woman involved much more control over their lives and the Church much less control. These marriages through the court might be because their parents did not approve of the match, or the man attempted to gain some sort of inheritance from the woman's family through her rape, although it was difficult to ascertain if she was truly abducted against her will in order to exact some kind of revenge on the father.¹⁶

If one looks carefully, a rather disturbing picture evolves. Nowhere in any of those scenarios is the concern directed towards the woman involved. In many respects, the Church was just acting out of anger that the secular courts would presume to take on matters of a more intimate nature. Historically, cases involving questions of virtue, virginity and marriage had always been answered by the Church.¹⁷ However, with the secular and the Church courts competing for authority in these matters, it gave women a double recourse for sexual violence. The women could see the procedures in both instances, as well as the outcomes and could decide in which court to bring their case. This allowed them much more freedom and the possibility of securing the goal they were after.

Another avenue explored by historians of religion has been the influence of canon law on secular law.¹⁸ The Church played a central role in community life and sought to regulate the morals and values of the vast majority of people. Church and state have clashed over the right to control both the government and society throughout history. It behooved the state to adapt its

¹⁶ While not religious in nature, J.B. Post looks into new laws regulating rape and abduction, which concern these very questions. See J.B. Post, "Sir Thomas West and the Statutes of Rape, 1382," in *Rape and the Criminal Justice System*, ed. Jennifer Temkin (Aldershot: Dartmouth, 1995).

¹⁷ For excellent studies that look at virtue, sexuality, and the Church see James A. Brundage, *Law, Sex, and Christian Society in Medieval Europe* (Chicago: University of Chicago Press, 1987), Vern L. Bullough and James A. Brundage, eds., *Sexual Practices & the Medieval Church* (Buffalo, N.Y.: Prometheus Books, 1982).

¹⁸ See James A. Brundage, "Implied Consent to Intercourse," in *Consent and Coercion to Sex and Marriage in Ancient and Medieval Societies*, ed. Angeliki E. Laiou (Washington, D.C.: Dumbarton Oaks Research Library and Collection, 1993).

laws to better reflect the Church's stance, especially if it wanted to retain control over certain crimes. However, simple fornication or lack of chastity remained under the domain of Church sanctions because these acts did not threaten the secular authority over the property or inheritance issues that came with marriage. This struggle and the inherent compromises that took place refined the definition of rape and enabled more women to bring charges against attackers.¹⁹

In another way of looking at rape, one can use the language employed in writing down the court transcripts, both from secular and Church courts, to ascertain certain things; first and foremost, the opinion of the writer. Looking at word choices and the information clerks included it is possible to ascertain whether they took the woman's story seriously. If the clerk or cleric put a great amount of detail into the woman's account and included many adjectives and emotions, one could claim that it was an especially heinous crime in the eyes of the writer. However, if he chose to record the account with very little descriptiveness, one could argue that he might have viewed it as ordinary or even false.²⁰ Although reading between the lines can be a bit tricky and, in the case of legal documents, subjective, it is a useful tool. Caution is required, though, because deconstructionism can be a slippery slope at times.

Whether post-structuralism, deconstruction, or the linguistic turn, searching for meaning in the texts of historical documents, either factual or fictional, offers historians a chance to

¹⁹ At first, in secular law, only virgins could be raped; eventually any woman, regardless of prior sexual contact could bring these charges.

²⁰ Excellent studies looking to deconstruct textual representations of rape include R. Howard Bloch, *Medieval French Literature and Law* (Berkeley: University of California Press, 1977), Kathryn Gravdal, *Ravishing Maidens: Writing Rape in Medieval French Literature and Law*, New Cultural Studies Series (Philadelphia: University of Pennsylvania Press, 1991), Ruth Mazo Karras, *Sexuality in Medieval Europe: Doing Unto Others* (New York: Routledge, 2005), Anna Roberts, ed., *Violence Against Women in Medieval Texts* (Gainesville: University Press of Florida, 1998), Elizabeth Ann Robertson and Christine M. Rose, eds., *Representing Rape in Medieval and Early Modern Literature* (New York: Palgrave, 2001), Corinne J. Saunders, *Rape and Ravishment in the Literature of Medieval England* (Suffolk, UK: D.S. Brewer, 2001).

understand a past society's values and constructs. Omissions in the texts can be just as or more important than what is present.²¹ The preceding assumptions draws on other theories that some might organize within the overall category of post-structuralist studies. For this thesis, these are not used as separate fields of study, but as theories that inform and guide the previously discussed historical methods. All of them, when used in an historical setting, use language as a tool for delving deeper into the minds, social context, or social construct of people in the past. They are particularly useful in "re-creating" the medieval value systems governing sexual violence.

The amount of evidence available lends itself to shorter treatments of sexual violence, however, the shifting laws and ideologies also account for the limited scope of most studies. Most writing on medieval rape focuses on the thirteenth century and later, when records were better kept and laws more codified. Full-length studies on medieval rape are rare, but they certainly exist.²² Ones that approach the subject through both legal and literary sources are more common, although scholars trained in language or literature, rather than history usually undertake these.²³ These wide-ranging and enlightening studies are essential in reaching a comprehensive understanding of sexual violence in Europe during the Middle Ages.

Historiography

Increased awareness of rape in the twentieth century led to an influx of studies concerned with its historical antecedents. Studies sought answers to questions of whether laws protected women; society considered it a serious offense; prosecutions succeeded; women suffered further

²¹ For more on this see, Michel-Rolph Trouillot, *Silencing the Past: Power and the Production of History* (Boston: Beacon Press, 1995).

²² See Carter, *Rape in Medieval England*, Guido Ruggiero, *The Boundaries of Eros: Sex Crime and Sexuality in Renaissance Venice*, *Studies in the History of Sexuality* (New York: Oxford University Press, 1985).

²³ See Gravdal, *Ravishing Maidens*, Saunders, *Rape and Ravishment*.

trauma from stigmatization. Most studies used statistical data, some attempted a comprehensive analysis of societal views of rape and its victims, and others offered comparative looks at closely related male-on-male crime. Very few endeavored to see the positive aspects that medieval laws afforded women. Still fewer examined the overall legal system and the impact the Church had on secular laws and viewpoints. Almost all come to the same conclusions: rape was underreported and prosecutions tended to fail. Studies focused on literature tend to ignore legal records and those focused on legal records overlook literature. There is yet to be an all-inclusive examination of rape, law, and literature, which, if completed, would provide the best answers to the above questions. All of the studies have merits and offer insights to the system that can only benefit those who come later.

John Marshall Carter's *Rape in Medieval England* is one of the few full-length studies available dealing with both rape and England.²⁴ Carter, covering the years 1208 to 1321, offers an in-depth look at sexual violence through legal treatises and court records; he uses the rolls of itinerant justices, coroners, and other documents. By taking a sociological approach, he attempts to show how society viewed rape, the attitudes toward women and the impact of rape upon society, and illustrate an important aspect of medieval sexuality. He does this by observing group behavior, or court cases, comparing group behavior (looking at several different areas of England) and examining the nature and development of the social strata. However, Carter continually places women in the role of a helpless victim, horribly re-victimized by court procedures.²⁵ Furthermore, he attributes the high number of cases in which women failed to

²⁴ Carter, *Rape in Medieval England*.

²⁵ *Ibid.*, p. 96.

prosecute solely to the shame and embarrassment the woman or her family felt.²⁶ Carter provides a useful statistical study with a decidedly singular focus. He never saw the sources as allowing women to assume a more empowering role in pursuing their cases nor does he ever truly question what women expected from the system when bringing their appeals.

As do most studies of medieval rape, Kristi Gourlay uses the medieval legal treatises of Glanvill and Bracton for her article, "Roses and Thorns: The Prosecution of Rape in the Middle Ages."²⁷ However, instead of examining the evolution of rape laws, Gourlay looks at the specific procedures required to prosecute rape around the thirteenth century. While short, her treatment gives a great overview of the law and its procedures. Gourlay also offers conclusions as to what rape laws and cases said about the status of women in the Middle Ages. Laws and courts were more concerned with protecting men from false accusations than obtaining justice for women. Very few cases resulted in a conviction and courts rarely applied proscribed punishments.²⁸ In fact, a woman convicted of a false accusation received a harsher punishment than a convicted rapist did. According to Gourlay, this shows that the protection of women was, contrary to the laws, not the top priority for most courts. However, felony appeals were difficult across the board. English law tended to concern itself more with preventing appeals out of malice (regardless of gender) rather than targeting women specifically.

Patricia Orr offers a more in-depth look at rape prosecutions in "Men's Theory and Women's Reality: Rape Prosecutions in the English Royal Courts of Justice, 1194-1222."²⁹ There, she presents a statistical analysis of 202 rape cases. She concludes that, while in theory

²⁶ Ibid., p. 120.

²⁷ Gourlay, "Roses and Thorns."

²⁸ Ibid.: p. 31.

²⁹ Orr, "Men's Theory and Women's Reality."

the law protected women, in reality conviction was rare and punishment was lenient. She theorizes that a good portion of women settled their cases out of court with a concord. To strengthen her argument, she compares the most closely related male-on-male crime, wounding. She further concludes that men had a higher rate of conviction, but amends that it was not substantially higher.³⁰ She shows that society and courts often viewed rape as a property crime; this idea becomes more plausible when one looks to the late thirteenth and early fourteenth century when women were no longer able to appeal rape and a male guardian took over the task.³¹

One more historically grounded study of rape is “Rape in Thirteenth-Century England,” by Ruth Kittel.³² In it, Kittel echoes many of the same conclusions already cited; theoretically, rape laws provided protection and harsh punishments, but rarely did that occur. However, her approach to the subject matter is unique. She divides her analysis of 142 rape cases into two categories: those in which women bring then drop the charges and those in which they continue the prosecution.³³ While she also discusses the use of concord and/or marriage as a means of resolving a rape trial, Kittel places little stock in the conclusions of others that forcing a marriage motivated women to appeal rape, although, she does concede the possibility of monetary compensation as a factor.³⁴ Although brief, her study provides an interesting look at the methods of evading a conviction and the heavy burden of proof placed on women.

Perhaps the most influential author dealing with rape and literature is Kathryn Gravdal. Her full-length study, *Ravishing Maidens*, examines the law and literature of medieval France in

³⁰ Ibid., p. 121.

³¹ Ibid., p. 150.

³² Kittel, "Rape in Thirteenth-Century England."

³³ Ibid., p. 107.

³⁴ Ibid., p. 108.

an attempt to ascertain the naturalization of the subordination of women.³⁵ However, Gravidal does not look at the laws in the strict sense of the protection afforded women and the punishments proscribed; rather she examines them in the same way she does the literature, as a text. Her study is neither a history of rape nor a statistical analysis of rape prosecutions. Gravidal is solely interested in the language used to construct and continue the subordination of women. Medieval writers achieve this, she hypothesizes, by glossing over sexual violence through an infusion of political or religious meaning.³⁶ Still, it offers a unique way of looking at the laws and literature, which can be applied to more empirical studies as a way of balancing deconstructionist history with Rankian-social history.

Another work in a similar vein is Corinne J. Saunders' *Rape and Ravishment in the Literature of Medieval England*, which looks at literature and plays in regards to sexual violence.³⁷ She has two purposes for her study; one is to show how medieval studies of rape can compare and help inform modern rape studies and the second is to examine how rape reflects ideas of gender and sexuality in medieval England. Saunders work is less deconstructionist than Gravidal's and at the same time still uses feminist analysis. She looks at the discourse of sexual violence and finds that women's power to consent and dissent was paramount. To Saunders, this proves that women were not merely puppets in a patriarchal society.³⁸ Her examination of the evolving laws concerning rape and actual rape trials serves to ground her theories in the societal attitudes of medieval England. Indeed, she finds fault in Gravidal's work specifically because

³⁵ Gravidal, *Ravishing Maidens*.

³⁶ In literature, this is known as a trope – defined as a turning away or displacement of the literal sense.

³⁷ Saunders, *Rape and Ravishment*.

³⁸ *Ibid.*, p. 21.

Gravdal focuses on the changing meanings and uses of ravishment and rape instead of properly historicizing her study through a blending of law and literature.³⁹

Howard Bloch also deserves mention here for his works dealing with the law, misogyny, and French literature: *French Literature and the Law* and *Misogyny, Misandry and Misanthropy*.⁴⁰ While neither deals expressly with sexual violence, each offers an important view of medieval literature. In the former, Bloch shows how the portrayal of law and justice in French literature was at once accurate, but also a representation reflecting social values. In the latter, he looks at how medieval misogynistic literature sought to reinforce gender division through the elevation of men and the subjugation of women. Although this thesis is not overly concerned with literature at this stage, these studies give an important societal view of laws and the justice system, which help contextualize the following assessment of sexual violence.

A brief sampling of court cases indicates that women may not have always been honest in their accusations. There is evidence that some women used the legal system to marry the men of their choice by accusing them of rape. When one looks at the legal system of the time, it is obvious that marriage was an acceptable solution to a rape case. When an actual rape took place, a woman marrying her attacker would not have been at all pleasant. At the same time, however, the woman had to agree to the marriage of her own free will, so ideally if a rape actually occurred, the woman did not have to marry to her rapist.

Based on all manner of evidence, it is easy to see that women were not just victims when it came to sexual violence. Within the boundaries afforded them by the patriarchal structure of society and the courts, women achieved a degree of autonomy concerning their pursuit of justice,

³⁹ Ibid., pp. 18-19.

⁴⁰ Bloch, *Medieval French Literature and Law*, R. Howard Bloch and Frances Ferguson, eds., *Misogyny, Misandry, and Misanthropy* (Berkeley: University of California Press, 1989).

vengeance, and marriage partners that was not present in England before the twelfth century. When society felt women had overstepped their bounds, it once again restricted their opportunities through the passages of the Statutes of Westminster and the Statute of Rape in the fourteenth century. However, the time in between, part of which is under review in this thesis, gave women the chance to affect their future, albeit in a reactive form of agency.

CHAPTER ONE: CRIMINAL COURTS IN MEDIEVAL ENGLAND

In order to fully understand the magnitude of the challenge women faced when bringing charges in front of a medieval court, secular or canon, it is necessary to know how the laws and court systems worked in the High Middle Ages (c. 1050-1300). This chapter provides a brief examination of the English Common Law, its basic structure, its development through the thirteenth century, and the actual workings of a felony appeal from its beginning to end. Specific attention to how women appealed rape and progressed through the system ends the discussion of the medieval justice system. Outlining the overall court structure and procedure shows that it was a complex and difficult system to work through, regardless of gender. Also evident is that the laws did not place an extra burden on women going through the system, but societal values did.

Medieval justice was a complex and evolving structure in England. Throughout the Middle Ages, there was a division between private and public justice, although private justice dominated in the early years. Prominent landholders held manor and honour courts to administer private justice among their tenants.⁴¹ In some cases, these lords also received rights of sake and soke and infangentheof; thus giving them the right to hear criminal cases (sake), extract suit from a larger population than their manor, i.e. the hundred (soke), and to try and execute thieves caught in the act (infangentheof).⁴² However, these instances of public jurisdiction based on land holding required a grant from the king and usually comprised less than half of all hundreds.

⁴¹ Alan Harding, *The Law Courts of Medieval England* (London: George Allen & Unwin, LTD, 1973), p. 33.

⁴² Sake and soke is a catchy phrase for a complex set of rights, public and private. Infangentheof falls outside of these rights, but pertains more to private justice rights given by the king. For more information on these concepts see J.H. Baker, *An Introduction to English Legal History* (London: Butterworths, 1990), Harding, *Law Courts of Medieval England*, p. 18, John Hudson, *The Formation of the English Common Law: Law and Society in England from the Norman Conquest to Magna Carta* (New York: Addison Wesley Longman, Ltd, 1996), Pollock and Maitland, *English Law Before Edward I*, R. C. van Caenegem, *The Birth of the English Common Law* (Cambridge, UK: University Press, 1973).

These grants were often tied to problem areas in the kingdom or areas where royal justice ventured infrequently.⁴³ These rights continued through the Norman Conquest (c. 1066) and into the thirteenth century, but the majority of lords only retained their private (civil) justice as the royal administration increasingly centralized the medieval justice system.

Criminal cases and civil cases pertaining to larger issues, i.e. outside of the manor lands, fell to the public justice system. The local form of legal recourse was the hundred, also known as a wapentake.⁴⁴ Above the hundred was the shire, or county. Shires usually consisted of several hundreds, but the number varied greatly depending on the size and geographic location of the shire. Independent towns held their own public courts, known as borough courts that could equal the hundred or shire depending on the size and importance of the town. The highest court belonged to the king. The *curia regis* could hear all cases, civil or criminal and could administer private or public justice; although, through the Middle Ages, it increasingly took on matters of public jurisdiction.⁴⁵ These various courts and their jurisdictions and functions receive detailed treatment below.

History of the English Courts

Little evidence remains of the Anglo-Saxon (c. 600-1066) justice system. During this time, England was slowly coming under the control of one king, but powerful landowners still held judicial authority. Therefore, both kings and lords heard cases concerning the breaking of the peace of the realm. There is evidence that the king sent officials to deal with royal business into the local level courts, thus indicating an increase in power and centralization.⁴⁶ Shires and

⁴³ Hudson, *Formation of English Common Law*, p. 38.

⁴⁴ *Ibid.*, p. 37.

⁴⁵ The *curia regis* not only acted as a public court, but also as the king's honour court. This study will only focus on its role as the former.

⁴⁶ Hudson, *Formation of English Common Law*, p. 31.

hundreds also played a key role in the Anglo-Saxon justice system, with shires meeting twice a year and hundreds meeting once a month to deal with cases.⁴⁷ Pressure brought to bear on the parties involved increased the likelihood of peaceful resolutions to conflict. Avoiding personal vendettas or blood feuds, which could interrupt the economic fortunes of the countryside, was of paramount importance. Later kings, such as Alfred (r. 871-899) and Cnut (r. 1016-1066), also issued law codes, although local custom invariably influenced the implementation of justice. All of these features served as a continuum through the turmoil of the Norman Conquest (c. 1066) and into the thirteenth century.

William I (r. 1066-1087) did not change much about the English system he inherited because he saw it was very effective.⁴⁸ More evidence exists concerning the Anglo-Norman (c. 1066-1154) period in English legal history, but working through the justice system was intricate and difficult. Written laws were not common and confusion abounded. The laws of Wessex and Mercia, along with the Danelaw worked as three separate systems and were another legacy from Anglo-Saxon days. Local custom once again dictated the implementation of law and differed in detail among the various counties in England. The status of the people involved also affected the outcome and possible success of a case and discrimination favored French over English litigants. Courts persisted at various levels and in differing capacities, including shire, hundred, borough, lords, and most importantly the king's court.⁴⁹

A noticeable influence of the Norman Conquest was the increased use of trial by battle. Before the conquest, it was very rare, although not unheard of, for English justice to employ

⁴⁷ Ibid., p. 34, 38.

⁴⁸ Harding, *Law Courts of Medieval England*, p. 32.

⁴⁹ Baker, *English Legal History*, pp. 14-15.

judicial combat; trials often included ordeals of hot iron or cold water, or juries.⁵⁰ Among the changes made during the years after the Norman Conquest was the separation of Church and secular courts.⁵¹ This not only ensured that the king's prerogative would remain top priority, but also that all fines collected would line the king's coffers as opposed to the Church's. There may also have been a more practical component; while a representative of God was necessary to sanctify trial by battle, they no longer had to impose the death penalty, something the Church frowned upon heavily.

While it was possible for the local levels of justice to manipulate the system to suit local ideals, the king was the ultimate source of all judicial action.⁵² Even as developments were occurring in the local courts, the *curia regis* was also undergoing some changes. It remained the highest court, but due to the nature of the king's possessions – including many territories in France – the king needed a permanent court to preside in England during his absences. During the period between the Norman Conquest and the reign of Henry II (r. 1154-1189), the kings of England varied in the amount of time spent outside of the kingdom. These changes would subsequently alter the landscape of medieval English justice.

During the reign of Henry I (r. 1100-1135), it is believed that the office of the Justiciar of England was created to fill this need of a permanent court.⁵³ Although linked with the Exchequer, this central justice system remained unified, rather than divided into departments and it did not control the lower courts. It was to this 'chief justice' position that both authors of the

⁵⁰ Pollock and Maitland, *English Law Before Edward I*, p. 149.

⁵¹ Harding, *Law Courts of Medieval England*, p. 44.

⁵² Henry de Bracton, *On the Laws and Customs of England*, trans. Samuel Edmund Thorne (Cambridge: Selden Society [by] the Belknap Press of Harvard University Press, 1968).

⁵³ H. G. Richardson and G. O. Sayles, *The Governance of Mediaeval England From the Conquest to Magna Carta* (Edinburgh: University Press, 1963).

major English legal treatises would be appointed. Rannulf Glanvill is credited with writing the first, *Treatise on the Laws and Customs of the Realm of England, Commonly called Glanvill* (c. 1180), and although the authorship has been questioned through the years, its importance cannot be underestimated.⁵⁴ Henry de Bracton wrote the other seminal work on the English legal system, *On the Laws and Customs of England* (c. 1250), which really boils down to a collection of laws, but served as a very influential casebook then and now.⁵⁵

Although debates continue over the exact role Henry II played in reforming the administration of justice, the reforms implemented during his reign redefined and greatly affected the landscape of justice in England for many years to come. The reigns of Henry I and Stephen (r. 1135-1154) saw a breakdown in royal justice, which Henry II's administration needed to reassert. Powerful men assumed royal authority in various regions of England, although "the very fact that lords who usurped royal rights sought to imitate royal actions helped to preserve judicial procedures."⁵⁶ These judicial procedures underwent systematic changes which, whether by design or not, created a structure based on regulation, bureaucracy, and routine.⁵⁷

The concept of Pleas of the Crown developed out of the Anglo-Norman system and included those crimes that pertained specifically to the king and the peace of the realm. While sometimes civil in nature, crimes covered under this category include murder, arson, highway robbery, premeditated assault, grand larceny, and rape.⁵⁸ The Assize of Clarendon (1166)

⁵⁴ Rannulf Glanvill, *The Treatise on the Laws and Customs of the Realm of England, Commonly Called Glanvill*, Medieval texts (London: Nelson, 1965).

⁵⁵ Bracton, *On the Laws and Customs of England*.

⁵⁶ Hudson, *Formation of English Common Law*, pp. 118-122.

⁵⁷ *Ibid.*, p. 142.

⁵⁸ *Ibid.*, p. 29.

enforced the idea that these Pleas of the Crown, otherwise known as felonies, fell under the jurisdiction of royally appointed justices who presided over one of three courts at the local level: the shire, the eyre, or gaol delivery.⁵⁹

The Assize of Clarendon was just one of many sessions and subsequent pronouncements concerning the changing nature of the justice system, the so-called Angevin reforms. These various constitutions, assizes, decrees, and instructions were the beginning of statute law in England. It is through these that procedures concerning land litigation changed, Pleas of the Crown fell solely under royal jurisdiction, the office of coroners developed fully and justices of the peace (gaol delivery) became a permanent policing force.⁶⁰

Another innovation, which increased the bureaucratic nature of justice, was the continued development of writs. Writs date at least to Anglo-Norman England in the form of the original writ, which a person needed to gain access to royal justice. In a greatly simplified overview, writs fell into three overall categories, with varying forms of action depending on the type of case (civil or criminal) and classification (i.e. land contestations, change of venue, wounding, etc.). By the middle of the thirteenth century, writs had set formulaic language from which one could not deviate.⁶¹

Writs of demand comprised the first category and these probably developed out of commands for justice by the king. Also known as a writ of right or a praecipe, these often dealt with continuing issues such as land disputes and demanded the presence of the accused in order

⁵⁹ Ibid., p. 130. Gaol, pronounce like jail, was the medieval equivalent of being held before trial. Assize means nothing more than session – it applies to the official recordings of any meeting with or on behalf of the king.

⁶⁰ Ibid., pp. 129, 131.

⁶¹ Baker, *English Legal History*, pp. 64-65.

to justify their actions.⁶² Writs of plaint, also called writs of wrong, made up the second category. These writs addressed deeds already past, events that nothing could reverse and they required the accused to explain why they had ‘done wrong.’ Subcategories included writs of pone, used during the late twelfth and early thirteenth centuries and writs of trespass, increasingly used during the late Middle Ages (c. 1300-1500) for everything from larceny to rape.⁶³ Finally, the last major category was judicial writs or the process “whereby persons are brought to justice and judgments enforced.”⁶⁴ Any of these writs could be used in conjunction with or instead of appealing a case at any level of the court system.

Courts in the Thirteenth Century

While Henry II’s administration wrought many changes, the basic structure of the judicial system remained very similar to that in Anglo-Saxon and Norman times. In terms of public justice, the hundred court continued to be the court of first resort for many. The expansion of royal justice increased the scope of shire courts, but the king’s court remained the highest in the land. Most noticeable of the changes was the introduction of the justices in eyre. The addition of gaol delivery and the augmented role of coroners served to supplement the existing system as well as increase the presence of royal justice at the local level.

The lowest court on the local level was the hundred. Originally, the hundred was an administrative area consisting of one hundred hides. Ideally, a hide was equal to the amount of land needed to support one family. Because of this method of dividing land, not all hundreds were the same size, acreage wise, but theoretically they would contain the same amount of male

⁶² Ibid., pp. 67, 71.

⁶³ Ibid., p. 67.

⁶⁴ Ibid., p. 76.

heads of houses: one hundred.⁶⁵ Around 1270, there existed 628 hundreds or wapentakes.⁶⁶ Custom, and later law, further divided these men into a tithing, or one-tenth of a hundred, which became a group before the law. These men swore an oath, also known as a frankpledge, to uphold the peace in their part of the hundred.⁶⁷ This meant that village members and local communities were heavily responsible for policing themselves. Continuing well into the Middle Ages, this idea of community policing and the responsibility that came with it can be found in numerous cases where higher courts fine juries from various hundreds and even entire counties for concealing crimes or earlier verdicts.⁶⁸

Under this changing system, the hundred courts were required to meet once every three weeks under the supervision of a hundred-reeve, or bailiff. Hundreds under the jurisdiction of a lord might have him preside over it, or he could appoint his own bailiff. At these regular sessions, which usually lasted a day, attendance was obligatory for all landed men inside the hundred. Known as suitors, they could number anywhere between twelve and eighty men. Cases heard included land disputes and petty crimes among residents of the hundred. The suitors acted as the judges, deciding which party's case held the most truth.⁶⁹ This system was the beginning of the grand jury. Also present at the hundred court were the coroners. These men acted as witnesses to the affects of crimes and recorded the full appeal made before the court.

Twice a year the sheriff (shire-reeve) would come to the hundred, an event known as the sheriff's tourn, to hear Pleas of the Crown and reaffirm the frankpledge. Juries, made up of a

⁶⁵ Harding, *Law Courts of Medieval England*, pp. 17-18.

⁶⁶ Hudson, *Formation of English Common Law*, p. 37.

⁶⁷ Baker, *English Legal History*, p. 8.

⁶⁸ See as an example Doris Mary Parsons Stenton, ed., *Rolls of the Justices in Eyre: Being the Rolls of Pleas and Assizes for Yorkshire in 3 Henry III, 1218-19*, The Publications of the Selden Society; v. 56 (London: B. Quaritch, 1937), p. 304, case 836.

⁶⁹ Hudson, *Formation of English Common Law*, pp. 38-40.

tithing of men (suitors), were charged with presenting to the sheriff all crimes committed in the hundred since the last time the court met. Juries of presentment, as they were known, assured the sheriff that local justice occurred honestly and enabled him to provide justice to victims of violent crime inside the hundred. At this point, victims could also appeal new crimes, but presentment was the much more common method of getting an appeal before the sheriff's tourn.⁷⁰

During the sheriff's visit, a grand jury – consisting of the defendant's peers – would convene and decide whether to bring an indictment. If they decided there was reason to believe guilt, the justices of the peace arrested and imprisoned the defendant in the gaol. The sheriff's tourn was not for passing judgment, but rather for gathering information. At this point, the accused waited until the next shire or general eyre for the chance to defend themselves against the charges.⁷¹ The accused secured release from the gaol by finding people to act as sureties; sureties achieved this by either paying a fine or attesting to his good character.⁷² Defendants who failed to find sureties usually stayed in the local gaol until the court heard his case.

Shire, or county, courts were another inheritance of the Anglo-Saxon period. Initially, shires were placed under the charge of ealdormen (regional lieutenants of the king), who later become known as earls, and a bishop. This ensured that both canon and secular law received attention in the same court, as the Church was very concerned with making sure secular laws were moral and just.⁷³ For example, Bishop Wulfstan introduced the idea of degrees of liability

⁷⁰ David Charles Douglas, ed., *English Historical Documents*, vol. II (London: Eyre & Spottiswoode, 1968), p. 851, 853.

⁷¹ Pollock and Maitland, *English Law Before Edward I*, p. 529.

⁷² Harding, *Law Courts of Medieval England*, pp. 72-73.

⁷³ *Ibid.*, p. 20.

(intent) based on Church penances.⁷⁴ Later chapters will explore this link between canon and secular law more fully, but the Church's influence on secular law is undeniable.

Shire courts really play the most important role for criminal trials at the local level during the late twelfth and early thirteenth centuries. By the mid-twelfth century, there was "increasing integration of the county into royal administration of justice."⁷⁵ The sheriff, a royal appointee, presided over the court sessions, which convened once a month. These monthly sessions were intermediate courts where people could appeal cases not previously appealed in the hundred courts. Also present were the coroners and suitors. In the case of shire courts, suitors numbered 150 or more and again only included land-holding men. Suitors in shire courts had the same function as those in the hundred.⁷⁶

Twice a year, the shire court held full sessions where all cases received judgment. Officials posted announcements for full sessions seven days in advance, while the court session usually only lasted one day. These courts held jurisdiction over the crown pleas and thus, were the only ones capable of outlawing a criminal.⁷⁷ Persistence was a necessary trait for anyone wishing to outlaw a felon as it took five successive full sessions to achieve one's goal; that was two and a half years! With the increasing centralization of royal justice and the subsequent appearance of justices in eyre and gaol delivery, shire-reeves began to lose jurisdiction over crown pleas. However, shire courts retained the exclusive right of outlawry.

While the *curia regis* remained the highest 'court' in England, the office of the Justiciar and the Exchequer started molding the new, fully centralized system. The Common Bench, a

⁷⁴ Dorothy Whitelock, "Wulfstan and the Laws of Cnut," *English Historical Review* (1948).

⁷⁵ Hudson, *Formation of English Common Law*, p. 37.

⁷⁶ *Ibid.*, p. 33, 37.

⁷⁷ Pollock and Maitland, *English Law Before Edward I*, p. 554.

permanent court set up by the king to hear pleas on his behalf sat at Westminster. This court ranked second in stature, although one could argue that it was only slightly below the newly created *coram rege*, which was the court that travelled with the king. The Common Bench, later known as the Court of Common Pleas, heard civil cases usually dealing with moveable property or land. Presided over by four or five judges, “the Common Pleas was the court which more than any other made the medieval common law.”⁷⁸ The *coram rege*, known as the Court of the King’s Bench when it finally settled at Westminster, heard all criminal cases, although it also functioned as a court of review for alleged errors in cases from the lower courts.⁷⁹

Before the Angevin reforms, kings occasionally sent out experienced judges from the *curia regis* to assist and supervise the local courts. This practice became permanent with the Assize of Clarendon.⁸⁰ These justices in eyre (*justiciarii in itinere*) systematically travelled throughout England listening to crown pleas from the shires and hundreds.⁸¹ Thus began the systematic visitation of all of England by these justices in eyre. The general eyre occurred frequently during its early tenure; Wiltshire had fourteen visits in twenty-six years.⁸² Articles in eyre, the writ authorizing and empowering the justices also charged the sheriff and bailiffs with ensuring the attendance of all parties with an interest in a case. Justices heard appeals and presentments, but also reviewed cases already heard in the local courts. Coroners presented their records and gaolers delivered their charges. The articles in eyre also commanded all people living within the shires and hundreds attend, although this was unlikely to occur.

⁷⁸ Baker, *English Legal History*, p. 46.

⁷⁹ *Ibid.*, p. 45, van Caenegem, *English Common Law*, p. 19.

⁸⁰ Doris Mary Parsons Stenton, *English Justice Between the Norman Conquest and the Great Charter, 1066-1215*, Memoirs of the American Philosophical Society; v. 60 (Philadelphia: American Philosophical Society, 1964), pp. 65-66.

⁸¹ Baker, *English Legal History*, p. 19, van Caenegem, *English Common Law*, p. 20.

⁸² Hudson, *Formation of English Common Law*, p. 123.

By the late twelfth century, justices in eyre often guided suitors in their decisions or simply made the decisions themselves. This “ensure[d] that royal custom was applied in the localities.”⁸³ General eyres, however, became less frequent during the latter half of the thirteenth century. Eventually statute limited its meetings to once every seven years, thus relegating them to mere information gathering sessions. Shires and hundreds formally reported to the king’s representatives all cases heard in those courts since the last visit.⁸⁴ This time delay might explain the number of cases where one or the other of the people involved died or went abroad.

This decline in general eyres also explains the shift in gaolers as mere keepers of the peace to justices of the peace. In its nascent form, gaol delivery involved a group of knights required to not only respond to the hue and cry, but also receive criminals appealed in lower courts and deliver them to the higher courts.⁸⁵ Essentially, they were an early form of state policing. As general eyres became increasingly sporadic, gaolers received special commissions to hear cases in between visits, thus creating the justices of gaol delivery.⁸⁶ Though not formally separated from the general eyre until the 1270s, justices of gaol delivery ended up trying and convicting most felons during the latter half of the thirteenth century.⁸⁷

Another enhancement to the court system, which also grew in importance, was the coroners. The beginnings of the office of coroner came from the Anglo-Norman position of the keeper of the crown pleas. Precursors to detectives, these keepers viewed wounds and investigated cases of unnatural death.⁸⁸ The actual coroners’ positions emerged, along with gaol

⁸³ Ibid., p. 151.

⁸⁴ Pollock and Maitland, *English Law Before Edward I*, p. 202.

⁸⁵ Hudson, *Formation of English Common Law*, p. 138.

⁸⁶ Baker, *English Legal History*, p. 20.

⁸⁷ Harding, *Law Courts of Medieval England*, p. 75.

⁸⁸ Hudson, *Formation of English Common Law*, p. 33.

delivery, from an 1194 articles in eyre that called for three knights and one cleric to act as ‘keepers of the crown pleas.’⁸⁹ Coroners inspected, measured, and recorded the details of any wounds inflicted during the commission of a crime, including rape. These inquests provided the necessary record when appealing a felony.⁹⁰

Coroners also had the distinction of recording, verbatim, the appeals made by individuals. These records from the hundred and the shire comprised the basis by which the case continued successfully to the full sessions or to a higher court, such as the *coram rege*.⁹¹ For any case, civil or criminal, both sides had to strictly adhere to the wording recorded in a writ or in previous sessions. The appellor stated the case in the higher court and then jurors compared this with the recorded statements; failure to match exactly resulted in dismissal of the case and/or penalties.⁹² Appellors who failed to appeal first in the hundred or shire courts also risked dismissal because they had not followed the proper legal procedures.

Felony Appeal – Beginning to End

Felony appeals came before the courts, at any level, in one of two ways: appeal or presentment. Glanvill outlined the procedure used in crown pleas, which included the proper formula required in the appeal and testimony before the courts. Also covered were the proper uses of essoins and the process of outlawry. Finally, the trial began. One of three judgments determined the appellee’s fate (battle, ordeal or jury), although some parties also opted for closure outside the system through mutual agreement, or concord.

⁸⁹ Ibid., p. 138.

⁹⁰ Harding, *Law Courts of Medieval England*, p. 74.

⁹¹ Pollock and Maitland, *English Law Before Edward I*, p. 529.

⁹² Harding, *Law Courts of Medieval England*, p. 78.

Regardless of how a case came before the courts, the first step was always to raise the hue and cry. This involved the victim, or a witness, running through the town or countryside where the crime took place to alert the people and authorities immediately following the crime. In some cases, the alleged perpetrators attempted to stop the hue and cry, perhaps to provide more time to escape the area. In one instance, William, in an appeal against Richard for robbery stated, “When...he [William] came and wished to go outside and to raise the hue and cry, he found Richard outside the door.”⁹³ In another case, the servant of the initial victim was allegedly attacked while “he was raising the shout and blowing the hue” by a friend of the original attackers.⁹⁴ Justices of the peace apprehended the criminal(s), if possible, and the coroners took preliminary statements. Victims then had to formally appeal their case during the next shire court session.

An appeal was an oral accusation of crime made by the victim, or in the case of murder by a relative. Appeals needed to include specific formulae and required exact repetition at all court sessions. Take for instance the case of Gerard, who learned this the hard way when his case against Stephen for wounding became null, “since before the coroners he alleged felony in his appeal and does not now.”⁹⁵ However, the king could continue the prosecution of a dismissed case, as long as the victim first initiated the appeal. Stephen discovered this when he was “suspected by the jurors of the wound and therefore ... taken into custody.”⁹⁶ In the appeal process, the appellee chose the method by which he wanted to prove his innocence, whether by battle, ordeal, or jury. An appellor could refuse battle if he was past the age of sixty, lame, or

⁹³ Stenton, ed., *Yorkshire Eyre*, pp. 307-308, case 843.

⁹⁴ *Ibid.*, pp. 268-272, case 727.

⁹⁵ *Ibid.*, p. 343, case 941.

⁹⁶ *Ibid.*

injured, and then the judges decided which ordeal the accused undertook. However, appeal was not the only method available for bringing a case before the courts. Juries of presentment dated back to Anglo-Saxon times, but with the installation of the eyre system became more commonly used to inform the court of wrongdoing.

Juries of presentment rarely were the first to present a case. During the sheriff's tourn and the general eyre, juries of presentment relayed cases previously appealed in the hundred or shire courts. These were usually in the form of answers in response to a writ produced by the judges or sheriff. Presentment as a means of first bringing a case before the court depended heavily on the overall notoriety of the crime or criminal involved. While acceptable during the Angevin reforms, criminal notoriety quickly ceased to be a valid reason for charging someone. Jurors who charged people with being an infamous malefactor or career thief usually found their cases dismissed because they failed to mention a specific crime.⁹⁷

The other role of juries of presentment involved providing an opinion on whether they trusted or suspected an accused person. Their opinion decided if the accused proceeded to a trial to prove their innocence. Not to be confused with judgment, this part of the presentment duties more closely resembled the indictment process, which formed later in English legal history. Indeed, as time passed juries of presentment became grand juries.⁹⁸ Appeal continued to be the method more commonly used on all levels.⁹⁹ However, the procedure for a felony case followed the same lines, regardless of how it came before the courts.

All cases followed specified formulae, which governed the original appeal as well as testimony and required the same information whether in writing or delivered orally. Details

⁹⁷ Baker, *English Legal History*, p. 577.

⁹⁸ *Ibid.*, p. 576.

⁹⁹ Hudson, *Formation of English Common Law*, p. 167.

varied from case to case, but the commonalities required something similar to this for the appellor: “A appeals B that in the peace of the lord king, wickedly and in felony (s)he [fill in the crime], and (s)he offers to prove this against him as the court shall adjudge.” The appellee also followed the formula, usually refuting the accusation with: “B comes and denies the peace of the lord king and the felony and the whole word for word as the court shall adjudge.” As many details of the case as the appellor could remember accompanied the description of the crime; for example, Walter accused Thomas of wounding “him under the eye” or Alan who claimed that Elias “wounded him with an arrow in the hip.”¹⁰⁰ Failure to continually follow this formula and the original appeal resulted in dismissal of the case.

Aside from forgetting the formulas, another problem was that trials could not proceed without the defendant. The accused had to be able to answer the charges for the procedure to continue; conviction in absentia did not occur, although juries would sometimes attest to the likely guilt of a defendant as reason for the appellor to continue their appeal. Most appellees received writs of mesne process, the principal one being the writ of attachment whereby one provided sureties (usually two) that supposedly guaranteed attendance. Other writs threatened confiscation of property and imprisonment for failure to comply.¹⁰¹ Three options were then available to the defendant: face their accuser, ignore the writ, or send an essoin. In the beginning, an essoin was an excuse for failure to attend. The deliverer, an essoiner, was usually someone close to the appellee who went before the court on his or her behalf to explain the absence. Only extreme illness constituted a valid explanation and prolonged nonappearance

¹⁰⁰ Stenton, ed., *Yorkshire Eyre*, pp. 228-229, case 581, pp. 231-232, case 590.

¹⁰¹ Baker, *English Legal History*, p. 76.

required verification by four knights.¹⁰² It was a risky but easy way to delay a case and the importance of essoin is evidenced by not only the large amount of space devoted to it by Glanvill, but also the Assize of Essoiners (c. 1170) issued by Henry II to regulate their conduct.¹⁰³

Failure to attend court or fleeing the area equaled an admission of guilt. This passive type of admission resulted in outlawry. For example, John appealed two men as accessories to a maiming and the court instructed him to “sue until those two ... are outlawed.”¹⁰⁴ This took the place of an actual judgment and resulted in no recompense for the crime committed. It was also not a simple process. The person appealing the crime had to do so at five successive full sessions of the shire court to outlaw someone.¹⁰⁵ At the fifth session, the outlawry occurred. This means that it would take upwards of two and half years for a final pronouncement. By definition, an outlaw was someone beyond the protection of law, but in the later Middle Ages being an outlaw was not even considered a nuisance and outlaws easily reversed their status.¹⁰⁶ These processes constituted only the beginnings of or substitution for actual procedures used to determine guilt or innocence.

At all levels, especially in the early years after the conquest, trial by battle dominated the methods of judgment. Anglo-Norman customs held that this was the best way to decide civil or criminal cases because the outcome reflected the will of God.¹⁰⁷ In its earliest forms, the defendant and plaintiff fought each other until one conceded defeat or died. The victor won the

¹⁰² Harding, *Law Courts of Medieval England*, pp. 61-62.

¹⁰³ Hudson, *Formation of English Common Law*, p. 132.

¹⁰⁴ Stenton, ed., *Yorkshire Eyre*, p. 303, case 831.

¹⁰⁵ Pollock and Maitland, *English Law Before Edward I*, p. 539.

¹⁰⁶ Baker, *English Legal History*, p. 77.

¹⁰⁷ Harding, *Law Courts of Medieval England*, p. 39.

case, whether that meant acquittal or a successful appeal. The loser suffered either the punishment of one convicted, death or loss of limb, or the penalties for bringing a false appeal.¹⁰⁸ While this was not always the way cases were settled, its predominance suggests one reason why women had such a difficult time going through the courts. In a trial by battle, the participants put their bodies and lives in jeopardy, thereby taking great risk upon themselves. Women could not participate, thus assuming no bodily risk. A woman who wanted trial by jury would be at a disadvantage because her burden of proof would be heavier than if she were male and therefore able to let God judge.

As the Angevin reforms took hold the trial by battle also began to fall by the wayside. This is not to say that it disappeared completely – it was still available until 1819 – but that trials decided by juries became a much more common and acceptable method of justice.¹⁰⁹ It was certainly still in use during the general eyre at Yorkshire (1218-1219) when Herbert appealed Nicholas of wounding and “it [was] adjudged that the duel be made between them.”¹¹⁰ Although, there is also evidence that judges disapproved of judicial combat as an avenue of justice and actively discouraged its use. Courts feared that its use encouraged stronger men to commit crimes against weaker men because they held the advantage in battle.¹¹¹ This shift in methods of trial could also explain why more women were willing, or able, to bring their cases before the English courts.

¹⁰⁸ Hudson, *Formation of English Common Law*, p. 175.

¹⁰⁹ Pollock and Maitland, *English Law Before Edward I*, pp. 150.

¹¹⁰ Stenton, ed., *Yorkshire Eyre*, pp. 227-228, case 579.

¹¹¹ Baker, *English Legal History*, p. 575.

While trial by battle fell into disfavor, offering proof of one's innocence through God's judgment remained an option until Fourth Lateran Council abolished the practice in 1215.¹¹² There were a myriad of variations, but most trials by ordeal fell into one of two categories: water or fire. Some deviations included pulling an object from boiling water, walking over red-hot coals or just putting a hand in hot water. The most common, however, were the ordeals by hot iron or cold water.

Ordeal by hot iron required the accused to hold onto an iron bar superheated from a fire. An official then bandaged the hand and a few days later (usually three) the same official inspected the wound. A wound showing signs of recovery proved one's innocence, thereby amercing the appellor for false appeal. However, a festering wound meant guilt and the subsequent punishment. Ordeal by cold water involved throwing the accused into water. Before this occurred a priest blessed the water and an official tied up the defendant. God would not receive someone guilty of a crime into His fold; therefore, if the accused floated he received the necessary punishment. However, if he sunk, God proved his innocence. Ideally, officials rescued the now innocent party from the water before drowning occurred.¹¹³

Questions arose, even then, about the legitimacy of trial by ordeal and the providence of God's justice. Officials were in a position to help justice if they felt sure of the defendant's innocence, although this was easier in ordeal by fire than water. Letting the iron cool before placing it in the hand or even misinterpreting the wound were just some ways in which an official could change the course of God's judgment.¹¹⁴ However, any concerns about

¹¹² Hudson, *Formation of English Common Law*, p. 179.

¹¹³ Baker, *English Legal History*, p. 5.

¹¹⁴ *Ibid.*, p. 6.

miscarriages of justice were silenced by the abolishment of the ordeal. Yet this presented a new problem for the justice system of how to prove the guilt or innocence of the accused.

The answer came gradually but encompassed the same method utilized to ascertain if a crime actually occurred – the jury. Defendants did not have to accept trial by jury, but they remained in the gaol until an alternate method presented itself or they finally acquiesced.¹¹⁵ Juries usually consisted of local, prominent men who sometimes acted in both juries of presentment and petty juries. Juries of presentment reported known crimes or criminals in the area, although victims could also appeal their cases directly.¹¹⁶ Petty juries sifted through the facts of cases and gave a verdict to the judge. For example, when Thomas appealed Robert of wounding, “the jurors [knew] Robert [was] guilty thereof and therefore let him be taken into custody.”¹¹⁷ On the local level especially, these men usually knew all the parties and circumstances involved in a case long before it came before the court.

As the role and use of petty juries expanded, members increasingly differed from those of the grand jury in order to give a more unbiased decision, although prior knowledge of the case continued to be a desired trait. Even shortly after the abolition of the ordeal, appellors and appellees alike attempted to prove their case “by the verdict of the village and the neighborhood.”¹¹⁸ Across the board, juries rarely imposed proscribed punishments for crimes. Based on court evidence, strangers to a community received a higher number of accusations and guilty verdicts more often than locals did – unless the local continually caused trouble. Locals brought before the court generally received lenient punishments compared to the expectations of

¹¹⁵ Ibid., p. 580.

¹¹⁶ Grand juries are discussed in detail on pages 30-31.

¹¹⁷ Stenton, ed., *Yorkshire Eyre*, pp. 235-236, case 603.

¹¹⁸ Ibid., pp. 257-258, case 692.

the law. While communities policed themselves, they were apparently hesitant to cause social unrest by imposing heavy sanctions on their own.¹¹⁹

Another way for communities to achieve their own brand of justice was to negotiate an agreement between the two parties. This agreement, called a concord, often occurred outside of court. Problems might arise later, though, if nothing was made official. Concords might entail any number of concessions to bring peace, including a return of stolen property, replacement of damaged goods, or payment for injuries incurred. In cases of rape, it included a marriage agreement. If the victim had entered the appeal already, they had three options: they could withdraw their appeal, put the concord before the courts, or simply stop coming to prosecute. All of these options came with penalties from the justice system, but “the ultimate threat of the appeal was doubtless a better bargaining factor” when attempting to obtain extra-legal justice.¹²⁰ While appellors and appellees faced fines, the benefit of informing the courts of a concord was that an official record of the agreement existed.

The third option in a concord situation, the cessation of prosecution, certainly might explain the number of cases found in the general eyres where the appellor failed to follow through. As it was the sole prerogative of the victim, never reporting a crime was not a punishable offense. However, beginning the appeal process and then stopping was. During the Angevin reforms, the crown asserted their authority in continuing pleas where the appellor failed to continue, but it was only in the late thirteenth and early fourteenth centuries that prosecutions for felonies could begin with the government. There is no ready explanation of why a person

¹¹⁹ Barbara Hanawalt discusses this idea of local discretion in relation to crimes and punishments in Barbara Hanawalt, *Of Good and Ill Repute: Gender and Social Control in Medieval England* (New York: Oxford University Press, 1998).

¹²⁰ Baker, *English Legal History*.

started an appeal and never finished; concord certainly fits, but it also might boil down to the long, complex and overwhelming system they faced. Perhaps they had raised the hue and cry, shown their wounds to the coroners, gone to the next county court and settled out of court. Alternatively, these men could have failed to repeat the same appeal at every session and stage. Maybe they felt they could not win in judicial combat. They might not trust their neighbors to deliver an accurate verdict or decided the court was not the best place to gain satisfaction. Such was the system that men had to deal with in order to obtain justice for perceived wrongs – complex and constantly changing.

Women Before the Courts

Any confusion that men felt at the complex system described above doubly applied to women, as they were not required to and usually did not attend the hundred or shire courts. Royal decree required all men to attend the hundred and shire courts held twice a year and landholding men, theoretically, attended all intermediate sessions as well.¹²¹ Later chapters will discuss cases in more detail, but as an overview, Bracton gives a good idea of what women were required to do to make their appeal:

She must go at once and while the deed is newly done, with the hue and cry, to the neighboring townships and there show the injury done to her to men of good repute, the blood and her clothing stained with blood, and her torn garments. And in the same way she ought to go to the reeve of the Hundred, the king's serjeant, the coroners, and the king's sheriff. And let her make her appeal at the first county court, unless she can at once make her complaint directly to the lord king or his justices, where she will be told to sue at the county court. Let her appeal be enrolled in the coroners' rolls, every word of the appeal, exactly as she makes it, and the year and day on which she makes it. A day will be given [her] at the coming of the justices, on which let her again put forward her appeal before them, in the same words as she made it in the county court from which she is not

¹²¹ Hudson, *Formation of English Common Law*, p. 39.

permitted to depart lest the appeal fail because of the variance, as is true in other appeals.¹²²

While it may be damaging to a woman's psyche to have to go through the above ordeal after a sexual assault, the procedure does not vary from that of other felony appeals. As Bracton notes, immediately after (or as soon as she is able, in cases of abduction) she was to raise the hue and cry. She must show evidence of the crime; Bracton specifically cites blood and torn clothing, but that does not mean it was necessarily restricted to that. After alerting the immediate authorities – 'men of good repute' – she was to take her case to the hundred court and present it to the sheriff there in order for the coroner to take her accounting. After this, she was required to pursue it at the county court. She needed to continue to show up every six months, repeating her charges verbatim in order to have a chance at obtaining justice. According to medieval English law during this period, the victim was responsible for reporting the crime. Only in the case of murder could someone else appeal and then the appellor had to be a relative of the victim. This is in direct contrast to later years, specifically the 1270s and the passing of the Statutes of Westminster, when men regained control of the appeal process.

The appeal of Rose against John for rape illustrates the process and the necessity to follow it very well. In the appeal, Rose asserted that John "raped her virginity so that the aforesaid Rose departed all bloody."¹²³ When Rose attempted to raise the hue and cry, "John took the aforesaid Rose and imprisoned her in a certain upper room in the aforesaid house, and there shut her up securely" where he kept her for almost two years.¹²⁴ Rose finally escaped, raised the hue and cry and began the appeal process "by writ of the lord king at the lord king's

¹²² Bracton, *On the Laws and Customs of England*, p. 243.

¹²³ G. O. Sayles, ed., *Select Cases in the Court of King's Bench Under Edward I*, vol. 1 (London: B. Quaritch, 1936), pp. 101-102, case 75.

¹²⁴ *Ibid.*

court.”¹²⁵ John responded by claiming his innocence and pointing out “that Rose did not name a definite day or a definite year or a definite place when he had raped her.”¹²⁶ The courts sided with John and threw Rose’s case out. However, in this case, the king decided to pursue the matter to its end and jurors convicted John of rape and fined him ten pounds.¹²⁷

The fine assessed went directly to the king, but Rose achieved a conclusion. It is difficult to say if Rose felt vindicated, but it shows that following the proper procedure was necessary. It may have been harder because she was a woman, but the process was not changed to make it so. Since women did not usually attend sessions of the court, it makes sense that they were not well versed in legal procedure and it seems reasonable to assume that male relatives or friends would have helped to guide her appeal. This certainly means that women were aware of what they were getting themselves into and did not make the decision lightly. Unfortunately, the ramifications of bringing an appeal might not have been going through a woman’s mind as she raised the initial hue and cry, which probably accounts for a portion of the women who were charged with a false appeal for failing to follow through with their complaint. Many questions arise concerning women who did continue their appeals. Understanding the goals of women who appealed rape helps scholars comprehend the medieval definition of justice and success. This knowledge also explains what caused them to stop midway, or even near the end, of the process. Before examining the court cases in depth, a closer study of Church courts and the Church’s influence on societal attitudes concerning sex and marriage is necessary.

¹²⁵ Ibid.

¹²⁶ Ibid.

¹²⁷ Ibid.

CHAPTER TWO: THE CATHOLIC CHURCH IN MEDIEVAL ENGLAND

To the benefit, and possibly dismay, of people living in the Middle Ages there was another system of justice (aside from the secular) to which they were subject. During the consolidation of ecclesiastical power which occurred in the late twelfth and early thirteenth centuries the “canon law courts claimed an exclusive jurisdiction over matters involving the sacraments (including marriage) and over matters involving sin (including sexual sin).”¹²⁸ Due to the nature of living conditions in the Middle Ages, sex was much more a public than private affair. Friends, neighbors, and family could attest to even the most intimate details of a person’s life. This could be advantageous when looking for witnesses to support a particular side in a case, but also detrimental if trying to hide something.

Not all sin, or even sexual sin, made it into Church courts, as it was subject to inquiry at many levels, both private and public. One can find evidence in manor courts of payments for the right to marry or fines for loss of virginity.¹²⁹ This is in direct contrast to the Church’s assertion that these belonged under their jurisdiction alone. These were most likely, though not always, confined to serfs, but it also depended on whether the ‘landlord’ was an ordained member of the Church. Confessors also had a hand in hearing and punishing offenses with public or private penance depending on the perceived severity of the sin. Finally, secular courts often competed with Church courts over cases, including rape, for which both courts heard appeals. Secular authorities clashed with the Church regarding control of property and inheritance rights, in which marriage played a crucial role.

¹²⁸ Sidney E. Berger, "Sex in the Literature of the Middle Ages: The Fabliaux," in *Sexual Practices & the Medieval Church*, ed. Vern L. Bullough and James A. Brundage (Buffalo, N.Y.: Prometheus Books, 1982), p. 87.

¹²⁹ Lawrence R. Poos and Lloyd Bonfield, eds., *Select Cases in Manorial Courts, 1250-1550: Property and Family Law*, Publications of the Selden Society; v. 114 (London: Selden Society, 1998).

The Norman Conquest is a good demarcation when looking at this system. During the early medieval period, a bishop acted as the arbitrator for all Church court cases. Shortly after assuming the throne, William I separated the secular and Church courts, forbidding ecclesiastical officials from hearing cases at the hundred court.¹³⁰ Local Church courts seem to have arisen to deal with the new caseload created by the dissolution of an ecclesiastical branch in the hundred court.¹³¹ Beginning in 1072, ecclesiastical courts heard cases, also known as ‘causes,’ in formally convened courts inside of Church buildings.¹³²

Court Structure

The ecclesiastical court system seems to have been a little easier to navigate than the secular courts, with only four levels, ascending in a hierarchical order. Local courts, called archidiaconal courts and presided over by an archdeacon, heard the majority of cases; these ranged from approving building alterations to censoring criminal behavior. Archidiaconal courts also received the name ‘Bawdy Courts’ due to the number of cases it heard that dealt with sex.¹³³ The next level was the diocesan court, presided over by a bishop. This would be the next stop in an appeal of a lower decision.¹³⁴ It could also be the first stop in an especially high profile case, although this usually was limited to notorious crimes, such as heresy, or those concerning wealthy participants.¹³⁵

The highest ecclesiastical courts in England were the archiepiscopal or provincial, courts permanently housed in Canterbury and York and overseen by one of the two archbishops in

¹³⁰ See page 14.

¹³¹ Colin R. Chapman, *Ecclesiastical Courts, Their Officials and Their Records*, 1st ed. (Dursley, UK: Lochin Publishing, 1992), p. 8.

¹³² As opposed to secular courts, where the cases were called appeals.

¹³³ Chapman, *Ecclesiastical Courts*, p. 61.

¹³⁴ For cases in the ecclesiastical courts only, appeal is used in the sense of protesting an earlier decision.

¹³⁵ Chapman, *Ecclesiastical Courts*, p. 17.

those seats. This would be the third stop in the appeal process, or the first in very important cases, usually stemming from the aristocracy. Before the Reformation occurred in England, the highest ecclesiastical court, and the last stop for appeals, was the papal court or curia.¹³⁶ Nobility could also bring their causes directly before the pope. While the designated official could preside over each of these courts, from the mid-twelfth century on it was more common to have a surrogate judge called an Official or Commissary. Surrogate judges had to meet rigid criteria in order to receive appointments and usually held their positions for life. These criteria included being a member of the holy orders, being over the age of twenty-five and being competent in canon law.¹³⁷

The procedure for bringing a cause before the court was very precise, much like that of secular court procedures. However, the actual process differed greatly between the two. First, an individual hired an advocate or proctor to act as a proxy throughout the suit – both parties were required to do this. Judges had to accept criminal suits in order for the cause to move forward. These causes, called office cases, could be brought to the attention of the judge in one of three ways: personally (by the advocate/proctor), through presentments, or by a third party, often called a promoter. Civil suits, known as instance cases, did not require acceptance by the judge, as they were ‘party versus party’ causes. Each cause, civil or criminal, could proceed in one of two ways: plenary or summary.¹³⁸

Plenary court procedure was conducted entirely through written records; no one, not even the advocate/proctor, had to attend the court. All civil suits, and criminal suits brought by a promoter, used this procedure. The first step consisted of issuing the court a written statement

¹³⁶ Ibid. After the Reformation this, of course, reverted to the *curia regis*.

¹³⁷ Ibid., p. 29.

¹³⁸ Ibid., pp. 43-44.

taken from the victim concerning the circumstances of the case and asking the judge for a citation. Once granted, the citation was sent to the defendant to inform them of the accusations, at which time their advocate/proctor would sign it to acknowledge receipt of the cause; this was the second stage. Failure to follow through with this could result in excommunication and/or arrest by secular authorities. In the third stage, the judge decided the time in which the cause would proceed, depending on the severity or complexity of the charges. All statements and evidence for both sides had to be submitted before the date the judge rendered their decision. In the last stage, the judge issued the sentence or pronouncement and had it disbursed to the appropriate parties.¹³⁹

Summary court procedure took place in an open court where all parties, by proxy of their advocate/proctor, had to attend. Criminal suits against the laity, usually concerning moral offenses, employed this process. The stages of a case followed that of the plenary procedure, but advocates/proctors presented and read all accusation and witness statements in the court. Courts did not ‘cross-examine’ witnesses, but just heard their statements. As in the secular courts, a victim who failed to prove their case could then be faulted, in this instance with a counter-suit for defamation. A notable difference between plenary and summary procedures lies in the sentencing aspect. Judges gave the pronouncement and punishment, when valid, in open court, but the written record does not reflect why or how the judge reached the conclusion they did; they delivered this orally and it was not often recorded.¹⁴⁰

Despite the relative ease with which someone could navigate the ecclesiastical court system, canon law was an entirely different situation from Common Law. Indeed, it may have

¹³⁹ Ibid., pp. 45-46.

¹⁴⁰ Ibid., pp. 47-48.

been due to the web of law that the Church required litigants to engage the services of advocates or proctors to see their cases through the system. Proctors were acceptable in seeing a case through; in fact, they needed to have a minimum of a bachelor's, or first degree, but were not as well versed in canon law. Still, proctors only required the current judge's permission to enter the court. However, courts usually desired an advocate. Advocates held Doctorate degrees and were required to obtain permission to enter the court from the Archbishop of Canterbury.¹⁴¹ Use of proctors was more common in the lower courts and rural areas, while advocates thrived in the larger cities especially the archbishops' seats. In either case, knowledge of the varied levels and degrees of canon law was necessary in order to successfully prosecute or defend a cause.

Canon Law

Canon law comprised the largest portion of ecclesiastical law and consisted of Roman ecclesiastical law, foreign canon law, and Legatine and Provincial constitutions.¹⁴² Roman ecclesiastical law was adapted from Roman civil law; foreign canon law dealt with the opinions of the Church Fathers (such as Augustine of Hippo, Jerome, St. Paul), Papal Bulls, and council decrees; legatine constitutions were laws passed by national synods and provincial constitutions were laws coming from provincial synods.¹⁴³ Through the years, any attempt to clarify disparities or codify these varying concepts failed. Canon law was evolving, though, and during the twelfth century, ecclesiastical minds such as Gratian attempted to elucidate, revise and

¹⁴¹ Ibid., p. 33.

¹⁴² Ecclesiastical law was made of four components – Civil Law, Canon Law, Common Law, and Statute Law. Only Civil and Canon were present in the thirteenth century as Common and Statute law did come about until after the sixteenth century.

¹⁴³ Chapman, *Ecclesiastical Courts*, pp. 5-6.

compile canonical decisions. Gratian's work, the *Decretum* (c. 1150), was and still is one of the fundamental components to understanding medieval canon law.¹⁴⁴

During the transition to more stable local governments after the fall of the Roman Empire, the Church staked its claim over the clergy and groups they deemed to be disadvantaged, such as widows, orphans, and travelers. As the most constant component of early medieval life, the Church took on the role of protector; this was especially important in areas heavily influenced by Germanic law, as it lacked protection for women against rape.¹⁴⁵ All rape laws derived from the Roman *raptus*, which, in its early embodiment, only applied to abduction without the consent of the guardian. Gratian's *Decretum* extended the meaning of *raptus* to include unlawful intercourse. Thus by the mid-twelfth century, *raptus* meant forced sex with the components of abduction and violence included.¹⁴⁶

Under Roman law, *raptus* was a property crime, stealing something that belonged to the male head of household. However, during the changes taking place in canon law over the twelfth century, it evolved into a personal crime. Canon lawyers built a hierarchy of sexual offenses, with seduction on the low end, adultery in middle and rape as the worst offense. For the medieval Church, the idea of consent was of utmost importance. Free consent to have sex outside of wedlock did not rank as a criminal offense, only a sin. On the other hand, promises made in exchange for sex were an offense, because the woman gave consent conditionally. This was most likely a condition of marriage, which may explain cases dismissed in secular courts

¹⁴⁴ Gratian's work, along with many other canon law texts can be found in Emil Albert Friedberg, *Corpus Iuris Canonici* (Leipzig: 1879).

¹⁴⁵ Brundage, "Rape and Marriage in Medieval Canon Law."

¹⁴⁶ Friedberg, *Corpus Iuris Canonici*.

based on prior sexual relations. Adultery ranked among the sexual offenses for its implications for the husband, but also due to the violation of the sanctity of marriage.¹⁴⁷

Furthermore, there was great debate among canon lawyers and canon law commentators about what constituted rape.¹⁴⁸ The most widespread version was that rape had four parts. First, there had to be a component of violence. Yet, the commentators never agreed as to what degree of violence was necessary. Common belief held that perpetrators needed only to employ moderate violence and that even a believable threat of violence against oneself or family was enough. A minority argued that no actual threat of violence was necessary – even intense pleading and pressure brought to bear constituted force. Second was the idea of consent. This was not actually a question of consent per se, but whether it was given freely, without threat of violence or other coercive methods. A woman who consented under duress could still appeal rape. Under canon law, a woman was not even required to actively resist (no torn clothing or bloody evidence needed as with secular cases), but only to cry out and say no. The idea of consent not only applied to the sex act, but also to the abduction, which was the third component. Abduction did not mean simply moving down a side alley or off the road into the adjoining field; it had to be the removal of the woman from one place to another place with the express purpose of hiding her and the deed. This particular part would certainly present a problem for women raped at home.¹⁴⁹ The last, and most defining, part of a rape charge was the actual act of

¹⁴⁷ Bullough and Brundage, eds., *Sexual Practices & the Medieval Church*. argue that both adultery and bigamy were treated harshly because of their property and public order implications.

¹⁴⁸ *Ibid.*, p. 143.

¹⁴⁹ There are recorded instances, outside of the range of this study, where women were assaulted in their homes, sometimes even in front of their husbands. In a case in Yorkshire, in 1363, John de Warter was accused of raping three women, one while her husband was home. Jurors acquitted John of all three crimes. See P. J. P. Goldberg, ed., *Women in England, c. 1275-1525: Documentary Sources* (Manchester: Manchester University Press, 1995), pp. 254-255.

intercourse. Canon lawyers were always tense about strict definitions of sex acts so most left this as some form of sexual congress between the rapist and victim.¹⁵⁰ It is unclear whether sexual congress referred only to actual penetration and ejaculation, or if oral sex or intimate touching was enough. Canon lawyers hesitated to give details of the specific acts, especially proscribed acts, involved in sex because they did not want to give the laity ideas concerning inappropriate behavior.

James Brundage asserts that modern notions and laws dealing with rape are a direct result of medieval canon lawyers.¹⁵¹ Brundage's evidence clearly showed the law, both ecclesiastical and secular, protected women when sexual violence occurred. However, he fails to address the success or application of these laws. His studies are just on the evolution of the language and laws in place. This lack of analysis is not a fault of his work, but a reminder that Brundage's interest lies in medieval sexuality and law as opposed to sexual violence and women. In fact, this lack of investigation could be because instances of rape cases coming before Church courts were rare. That does not mean they did not happen, but the records seem to be lost. Therefore, one should not question why there were so few rape cases but rather what the Church courts could do for a victimized woman.

From Sex to Marriage

Due to the nature of the Church's concern for and authority over the sex lives of medieval people, it seems apropos to discuss, albeit briefly, its views of sex and marriage, especially as it concerns consent. Corollary to this is the ranking of women based on sexual status and its impact on sex, marriage, and even rape. Indeed, it is impossible to separate medieval 'sexuality',

¹⁵⁰ Bullough and Brundage, eds., *Sexual Practices & the Medieval Church*, p. 144.

¹⁵¹ See Brundage, "Rape and Marriage in Medieval Canon Law." And Bullough and Brundage, eds., *Sexual Practices & the Medieval Church*.

as it were, from the Church's standpoint because of its power to define the sexual mores of medieval society.

James Brundage and Vern Bullough are certainly at the forefront of scholarly pursuits dealing with the Church and sex, having edited two highly important works. *Sexual Practices and the Medieval Church* offers a sweeping, though sometimes disjointed, look at a variety of issues including deviant sexual behavior, prostitution, rape, seduction and marriage, all as seen through the Church and canon law.¹⁵² While Brundage and Bullough authored most of the chapters, there are a few other contributions including Sidney Berger's treatment of sex in French literature and Helen Lemay's examination of sexuality in medical writings.¹⁵³ It is in this volume that Brundage and Bullough illustrate the affect of canon law on medieval society and even secular law.

Dealing first with the relative emphasis that the Church placed on issues of sex, one can see that while sex did not constitute a majority of canon law, it was certainly more prominent than in secular law. At least 10 percent of canon law deals with sex, as compared to 6 percent of civil law.¹⁵⁴ Canon law also stressed sexual crimes more: there was a five to one ratio of laws being more concerned with fornication and rape. Adultery and bigotry compared equally among the two, while the status of women also remained relatively balanced.¹⁵⁵ Here the division between Church and state was very clear, especially as it pertains to rapes ending in marriage. Because the secular laws dealt with issues of property transmitted by marriage, it subsequently

¹⁵² Bullough and Brundage, eds., *Sexual Practices & the Medieval Church*.

¹⁵³ See Berger, "Sex in the Literature of the Middle Ages: The Fabliaux.", Helen Rodnite Lemay, "Human Sexuality in Twelfth- Through Fifteenth-Century Scientific Writings," in *Sexual Practices & the Medieval Church*, ed. Vern L. Bullough and James A. Brundage (Buffalo, N.Y.: Prometheus Books, 1982).

¹⁵⁴ Bullough and Brundage, eds., *Sexual Practices & the Medieval Church*, p. 91.

¹⁵⁵ *Ibid.*, pp. 91-93.

removed this possibility as an ending to rape appeals. However, canon law focused on sex and marriage in terms of sin and consent in an attempt to regulate these issues along Church doctrine.

Brundage and Bullough's *Handbook of Medieval Sexuality* constitutes another of their forays into the exploration of sex, the Church and society in the Middle Ages.¹⁵⁶ This offers selections from a variety of other authors, most of whom are leaders in their respective fields of study. This includes Pierre Payer's work on sex in the penitentials, Joan Cadden's chapter on medical views of sexuality, Ruth Mazo Karras' study of medieval prostitution and even Laurie Finke and David Lampe's contributions concerning French and English literature.¹⁵⁷ While each chapter can stand on its own, the overall division of the work into three sections enhances its flow and illustrates the dichotomy of normal and deviant sexual behavior present in medieval society.

The easiest way to sum up the Church's views on sex would be this: all 'unnatural' sex was sinful. While not completely in agreement, there did seem to be a consensus regarding the definition of 'unnatural', although commentators varied in their degrees of description: any sex act that could and would not result in children was "a sin against nature."¹⁵⁸ Eventually issues like sodomy among males developed extremely negative connotations and secular law enacted harsh punishments, possibly due to perceived public and social order implications, whereas other

¹⁵⁶ Vern L. Bullough and James A. Brundage, eds., *Handbook of Medieval Sexuality* (New York: Garland Publishing, 1996).

¹⁵⁷ Laurie A. Finke, "Sexuality in Medieval French Literature: "Separés, on est Ensemble"," in *Handbook of Medieval Sexuality*, ed. Vern L. Bullough and James A. Brundage (New York: Garland Publishing, 1996), Ruth Mazo Karras, "Prostitution in Medieval Europe," in *Handbook of Medieval Sexuality*, ed. Vern L. Bullough and James A. Brundage (New York: Garland Publishing, 1996), David Lampe, "Sex Roles and the Role of Sex in Medieval English Literature," in *Handbook of Medieval Sexuality*, ed. Vern L. Bullough and James A. Brundage (New York: Garland Publishing, 1996), Pierre J. Payer, "Confession and the Study of Sex in the Middle Ages," in *Handbook of Medieval Sexuality*, ed. Vern L. Bullough and James A. Brundage (New York: Garland Publishing, 1996).

¹⁵⁸ Bullough and Brundage, eds., *Sexual Practices & the Medieval Church*, p. 55.

proscribed acts, such as masturbation, oral sex, and even anal sex between a man and a woman, received less emphasis in Church courts and no emphasis in secular courts.¹⁵⁹ Nonetheless, during the early and high Middle Ages all ‘unnatural’ sex acts were seen as somewhat equal sins, while the people committing them were not beyond redemption.

Even sex in marriage for the purpose of procreation was subject to regulations. The Church prohibited sex during Lent, Pentecost and Advent, as well as on Sundays, Wednesdays, Fridays, and Saturdays. Sex was restricted when a woman was menstruating, pregnant, and breast-feeding. While most these sought to protect the sanctity of holy days, the interdictions dealing with women specifically stemmed partly from the belief that women during these periods were unclean and partly to protect the health of the woman and child. Given all the proscriptions, less than half the calendar year remained open for couples to engage in marital intercourse. Only one quarter of the calendar year really counted because married couples were also not supposed to have sex during the day. Interdictions also existed on the locations approved, the one position (today’s missionary) allowed, and the degree of undress permitted (sex should never occur with couples completely naked).¹⁶⁰ Still this only reflects Church ideology, not reality. Much like secular law, the frequencies with which laws and admonishments appear for such behavior are indicative of their lack of effect.

Ruth Mazo Karras’ most recent work, *Sexuality in Medieval Europe*, echoes many of the sentiments laid down by Bullough and Brundage and follows a central argument – while

¹⁵⁹ This was one item on which commentators disagreed – some used sodomy to describe all ‘unnatural sex;’ others used it to denote anal sex, regardless of the gender of the partners; still others only equated it to sex among two men. For more detail see, Vern L. Bullough, "The Sin Against Nature and Homosexuality," in *Sexual Practices & the Medieval Church*, ed. Vern L. Bullough and James A. Brundage (Buffalo, N.Y.: Prometheus Books, 1982). For more on the social implications of male homosexuality, see Cynthia B. Herrup, *A House in Gross Disorder: Sex, Law, and the 2nd Earl of Castlehaven* (New York: Oxford University Press, 1999).

¹⁶⁰ Bullough and Brundage, eds., *Handbook of Medieval Sexuality*, pp. 35-36.

complicated and withstanding modern categorizations, medieval sexual relations were clearly delineated along active and passive roles, regardless of the gender of the people involved.¹⁶¹ Through the examination of literature, legal treatises, court records, Church ideology and medical treatises, Karras gives a comprehensive view of medieval sexuality in a succinct and readable format.

While sex certainly concerned the Church, it concentrated more fully on marriage. Gratian's *Decretum* coalesced concubinage and marriage, thus causing confusion over what constituted a valid marriage. Historically, concubinage consisted of a stable, often sexually exclusive relationship usually between members of disparate classes. This enabled a long-term relationship without the question of inheritance or property that ultimately accompanied marriage. While social status need not always play a role, after Gratian it usually did not. Gratian categorized concubinage as informal marriage, but a marriage nevertheless. However, it only became a marriage if the parties intended it to be a permanent union; without this intent, it became a simple case of fornication.¹⁶² All the same, proving intent was difficult and not always enough to win a cause.

Even fully sanctioned marriages caused debate over when the actual marriage became binding. Some commentators argued that the marriage ceremony was all that was needed to fully form a marriage. Others argued consent to the marriage was the same as consent to sex. Still, others asserted that ceremonies merely contracted marriage, while the sex ratified it.¹⁶³ Some even went so far as to claim that sexual relations, and even cohabitation, presumed consent

¹⁶¹ Karras, *Sexuality in Medieval Europe*.

¹⁶² Bullough and Brundage, eds., *Sexual Practices & the Medieval Church*, pp. 119-121.

¹⁶³ Friedberg, *Corpus Iuris Canonici*, Conor McCarthy, *Love, Sex and Marriage in the Middle Ages: A Sourcebook* (New York: Routledge, 2004), p. 62.

to marriage and future intercourse. Judges employed this idea when dealing with chronic fornicators. After two or three times of the same couple coming before the court, the couple participated in a marriage ceremony that only became a full and valid marriage if they had sex again.¹⁶⁴ Even couples not forced to do so sometimes entered into marriages contracted on this kind of future event. The couple exchanged vows in the future tense, which only became valid after consummation. These varying concepts of marriage do explain the concept that it was legally impossible for a husband to rape his wife. After consenting to sex, one could not withdraw that consent without the agreement of the other.

Intent, although not impossible, was certainly not the easiest thing to prove. The provincial court in Canterbury offers an example of a case where the woman succeeded in proving the marriage, although she had difficulty enforcing her rights. In a situation such as this, the close living conditions of the Middle Ages greatly affected the outcome of a case. Alice used the courts at least twice in her attempts to force John the Blacksmith to acknowledge their marriage and then continue the marriage. Witnesses testified to seeing them exchange vows, in the present tense, in a church, although a priest had not presided over it. Another “heard John calling her his wife, and he [the witness] saw them many times thereafter together in table and bed.”¹⁶⁵ As evidenced, Alice presented a very strong case based on witness testimony, but it did not seem to be enough to ensure John continued in the marriage. This confusion over what constituted a marriage, especially if the couple did not publicly or formally declare their vows, might explain some of the cases in secular courts that judges dismissed based on prior sexual

¹⁶⁴ McCarthy, *Love, Sex and Marriage in the Middle Ages: A Sourcebook*, p. 18.

¹⁶⁵ Norma Adams and Charles Donahue, eds., *Select Cases From the Ecclesiastical Courts of the Province of Canterbury, c. 1200-1301*, Publications of the Selden Society; v. 95 (London: Selden Society, 1981).

knowledge. In one, the man and woman lived together “with her consent” for over two years.¹⁶⁶ It is very possible that the woman in the aforementioned case attempted to claim informal marriage before the ecclesiastical courts and resorted to secular courts when that failed.

Consent to marriage and sex within marriage is a heavily studied topic. James A. Brundage’s “Implied Consent to Intercourse,” attempts to answer the question of whether or not one’s consent to marriage meant consent to sex.¹⁶⁷ He argues along the lines of Gratian that even if a woman consented to marriage, she did not implicitly consent to sex until the couple consummated the marriage. Only after that point did consent to sex become accepted and was applied using the idea of the marital debt (i.e. the sexual availability of one’s spouse). Marital, or conjugal, debt applied to both parties of the marriage, though. In theory, once consummated one spouse had the right to sexual access to the other whenever or wherever. Canon commentators held that withholding sex due to Church proscriptions constituted an even greater sin than engaging in the sex.¹⁶⁸ Valid withdrawal of consent could only occur if both parties agreed to remain celibate or enter the monastic life.¹⁶⁹ While Brundage does not examine issues of rape in this essay, it reaffirms the notion that husbands could not rape their wives, but also that confusion over marriage and consent accounted for at least some of the rape appeals in secular courts.

¹⁶⁶ Stenton, ed., *Gloucestershire Eyre*, pp. 410-411, case 966.

¹⁶⁷ Brundage, "Implied Consent to Intercourse."

¹⁶⁸ Karras, *Sexuality in Medieval Europe*, p. 75.

¹⁶⁹ Brundage, "Implied Consent to Intercourse," p. 255. These are most often referred to as chaste marriages, which caused its own set of problems for the Church that are beyond the scope of this study.

Taking a slightly different approach, and dealing with a different country, is John Baldwin's "Consent and the Marital Debt: Five Discourses in Northern France around 1200."¹⁷⁰ He examines five discourses taking place during the late twelfth and early thirteenth centuries and uses their agreement to argue that the idea of marital debt was universal throughout French society in the twelfth century. The discourses were among theologians, physicians, followers of Ovid, authors of courtly romances, and authors of the fabliaux.¹⁷¹ All of them felt that marital debt created gender equality in one area of the marriage, that both parties had to freely consent to sexual relations and both had to orgasm in order for conception to occur.¹⁷² While this may seem to compound a biological and a legal argument, Baldwin shows that for medieval France the biological idea that conception occurred only when it was consensual and enjoyable directly influenced the formation of laws. Beyond these implications, he does not examine issues of rape at all.

It seems interesting that the Church proscribed all sex outside of marriage as sinful, but strangely turned a blind eye towards prostitution. In fact, some ecclesiastical figures even owned brothels.¹⁷³ This is not to say that prostitution was never punished; records definitely abound of prostitutes brought before the courts. The Church tolerated prostitution for economic reasons and because prostitution was a necessary evil that provided a greater good. Due to the prohibitions on sex, especially outside of marriage, and the length of time before people did marry, male access to prostitutes cut down on fornication with respectable women and kept them

¹⁷⁰ John W. Baldwin, "Consent and the Marital Debt: Five Discourses in Northern France Around 1200," in *Consent and Coercion to Sex and Marriage in Ancient and Medieval Societies*, ed. Angeliki E. Laiou (Washington, D.C.: Dumbarton Oaks Research Library and Collection, 1993).

¹⁷¹ *Ibid.*, p. 259.

¹⁷² *Ibid.*, p. 262.

¹⁷³ Ruth Mazo Karras, *Common Women: Prostitution and Sexuality in Medieval England* (New York: Oxford University Press, 1996), p. 45.

safe from rape by sex-starved men.¹⁷⁴ In this field, Ruth Mazo Karras has published a few key works as well, including one full-length study on prostitution, *Common Women*, in which she argues that prostitution in medieval England linked feminine sexuality with sin and disease, thus affecting gender relations and justifying the control of all women.¹⁷⁵ The use of terms such as prostitute, whore, strumpet or “common woman” signified more than just a woman who engaged in sex for money. Karras uses the notion of “common women” not only to denote lower classes but also the mentality that these women were the shared property of all men. As Karras puts it, these terms could be applied to any woman not “safely under the dominion of any one man [such as a] husband, father, [or] master.”¹⁷⁶ She asserts that it became difficult for a previously unmarried woman to remain single and independent without running the risk of being labeled a whore or facing economic and societal pressures to become a prostitute.¹⁷⁷

The cultural process of marginalization also plays a role in her analysis. Again, any woman seen to be outside the sexual norm ran the risk of being labeled “available.” Manorial, ecclesiastical, leet, and town court records provide the base for the analysis of societal norms that Karras applies to prostitutes and women in general.¹⁷⁸ Her contention is that the creation and application of laws reflected societal values. Karras’ conclusions offer implications for the number of rape cases appealed and then abandoned; appealing rape could save the woman from harsh labels such as whore or prostitute. Theories on the reflective nature of laws gain solid evidence of truth when examining canon and secular law.

¹⁷⁴ Ibid., p. 6.

¹⁷⁵ Ibid., p. 3.

¹⁷⁶ Ibid., p. 3.

¹⁷⁷ Ibid., p. 3.

¹⁷⁸ Ibid., p. 13.

Personal or Property Crime?

During the early Middle Ages, the Church did not approve of the secular courts allowing victims to marry their rapists.¹⁷⁹ Early canon law relied heavily on Roman law, which saw this type of conclusion as an appropriation of the rights of the woman's father or guardian. In its tenuous years, the Church relied heavily on support from wealthy patrons and likely sought not to challenge their customs. However, as society fragmented after the fall of the Roman Empire, the Church steadily gained in power. This enabled the Church to play a much more assertive role in the issue of marriage. Once again, Gratian began the shift in attitude by incorporating Germanic custom, which allowed these types of unions.¹⁸⁰

The Church, in response to the changing stances of the secular courts, also revamped its definitions and regulations concerning sexual violence. Rather than condemning marriages resulting from court cases, it began to encourage them. These shifting views seem to correspond with a rise in fornication charges among the common populace. In court records from 1270 in Worcestershire, three women received fines for fornication, while the men with whom they transgressed are absent from the record.¹⁸¹ Another case concerns Norfolk in 1247 where again, a group of five women paid fines for losing their virginity.¹⁸² Although it takes two participants to lose one's virginity, no men were fined. While it is beyond the scope of the current study, it would be interesting to know how many women fined for losing their virginity had tried to appeal rape, or, conversely, how many women appealed rape in order to avoid the censure that came with consensual sex.

¹⁷⁹ Brundage, "Rape and Marriage in Medieval Canon Law."

¹⁸⁰ Bullough and Brundage, eds., *Sexual Practices & the Medieval Church*, p. 146.

¹⁸¹ P. E. H. Hair, *Before the Bawdy Court: Selections From Church Court and Other Records Relating to the Correction of Moral Offences in England, Scotland and New England, 1300-1800* (London: Elek, 1972), p. 40.

¹⁸² *Ibid.*, p. 144.

The major turning point during the Middle Ages, in terms of the secular and Church ideas of sexual violence, began during the late thirteenth century with passage of the Statutes of Westminster (c. 1275, 1285). After Westminster, it was no longer the sole prerogative of the woman to bring charges of rape. Women could still begin the appeal, but the right now extended to not only the men in her life, but the government as well. An example of this from the 1282 *Coram rege* rolls showed how Rose appealed the rape initially, but failed in her prosecution. The king continued the suit:

The jurors say on their oath that the aforesaid John de Clifford and the other unknown men took the aforesaid Rose wickedly and in felony and assault aforethought at the vill of Irchester in the county of Northampton and led her against her will to Middleton in the county of Oxford and there raped her virginity.¹⁸³

Not only does this case illustrate the king's privilege, but also shows that certain components of rape, namely abduction and force, continued in importance. Abduction and force were especially significant after Westminster because these elements assured skeptical minds that the rape occurred without the consent of the woman. Having the king pursue the appeal also meant monetary compensation from the case belonged to him. In the aforementioned case of Rose and John, the king received the ten pound fine imposed.¹⁸⁴ At this point, it did not matter if the woman or her family wished to pursue the case, agents of the king saw the case to a conclusion and the results of justice did little to benefit the victim. Another important change, which occurred after Westminster, was the protection of women of all sexual statuses.

During this period, the secular courts began to look at the motivations behind the accusation of rape – the tendency of cases to end in some kind of concord or marriage was high,

¹⁸³ Sayles, ed., *Coram Rege*, pp. 101-102, case 75.

¹⁸⁴ *Ibid.*

thus leading one to believe that there were ulterior reasons for accusing someone of rape. It becomes harder to find cases of sexual violence under an appeal of rape after the passage of Westminster, because many times, especially if it was the family bringing the charges, they filed writs of trespass; in other words, the father would file charges that something (or, here, someone) was stolen from him. This exhibits almost a full circle shift from Roman law wherein the woman was the property that a rapist stole. The type of wording definitely invokes the image of women and property, not necessarily woman as property but the means by which men obtained property. Fathers sought to protect not only their family name but also the inheritance and dowers of their daughters from unacceptable matches.

In a close examination of the law, J.B Post, in “Ravishment of Women and the Statutes of Westminster,” argues that the statutes complicated the prosecution of rape.¹⁸⁵ He examines the law texts of Bracton and Glanvill as well as court cases from the thirteenth century. He concludes that the statutes took the once straightforward laws against rape and turned them into laws against elopement and abduction marriages, thus making rape almost impossible to prosecute.¹⁸⁶ After Westminster I (1275), judges increasingly dismissed cases for trivial technicalities such as failing to mention by which door the rapist entered the home or “which member the rape of her virginity had ruptured.”¹⁸⁷ In one instance, according to the woman, the rape took place on a road between two towns, but the judge threw it out because she failed to specify a single town as the law required.¹⁸⁸ Post suggests that these dismissals stem from the

¹⁸⁵ Post, "Statutes of Westminster."

¹⁸⁶ *Ibid.*, p. 160.

¹⁸⁷ *Ibid.*, p. 155.

¹⁸⁸ *Ibid.*

judges' beliefs that women appealed cases maliciously, rather than to avenge a true crime.¹⁸⁹ Finally, Post explains that Westminster II (1285) took away a woman's right to consent after the fact; in other words she could no longer end a case through concord by marriage. Even if the woman consented later, her family and the king could prosecute the rapist/husband for the crime.

Post expands on this idea in "Sir Thomas West and the Statutes of Rape, 1382".¹⁹⁰ In this essay, he concludes that the shift of rape from being a crime against a woman to one against her family began with the Statutes of Westminster (I and II) and finished with the court case of Sir Thomas West. A prominent man of the late-fourteenth century, West had served England in the military and gained a fair amount of land, wealth and ambition in the process. A friend of the family, and social climber in his own respect, Nicholas Clifton kidnapped West's daughter Eleanor. Along with her person, Clifton also made off with seventy-five pounds worth of goods and horses. West failed in his attempt to prosecute as Clifton obtained a royal pardon and later married Eleanor; however, West did see the Statutes of Rape (c. 1382) passed through Parliament shortly thereafter.¹⁹¹ This statute caused the legal separation of the woman from her family if she consented to an unapproved match; she received no dowry, no inheritance and offspring, while legitimate, could not claim ancestry. West requested the retrospective enforcement of this statute, but again failed. Still, West's accomplishment was in place and enabled future generations to use the threat of disinheritance to keep women from trying to choose their own marriage partners. However, much like Brundage, Post is mostly interested in the evolution of law instead of its application.

¹⁸⁹ Ibid., p. 156.

¹⁹⁰ Post, "Sir Thomas West."

¹⁹¹ Ibid., pp. 178-179.

Given the way the Church permeated medieval life, it is little wonder that canon law not only shaped, but also responded to and reflected changes in society. Its influence is also evident in that both Glanvill and Bracton's notions of what constitute rape reflect ideas laid out in Gratian's *Decretum*. Numerous appellors use the four elements laid out by Gratian and his commentators to support the appeal. Theoretically, women could appeal rape in both secular and Church courts, although the records do not support the idea that women pursued rape in the former. The threat of punishment from the Church was not as severe as in secular courts, so this may explain why women pursued rape away from the Church. In addition, cases in Church courts did not offer the opportunity of a jury who might know the particulars of the case. A woman whose rape was common knowledge might expect better justice in the secular courts than the Church. Still, the Church's stance on rape, marriage and even sex clearly influenced secular courts and society, thus making the study of them a necessary component for any work on sexual violence.

The Church and secular authorities both sought control over marriage, with the latter concerned over issues of consent (free choice) and the former more interested in controlling the transmission of property. Lack of a straightforward definition of marriage caused confusion among the laity, but also might have led to an increased number of rape appeals and subsequent concords via marriage. Secular judges and society reacted to this assertion of free choice (perceived or real) by increasing the burden of proof placed on women and passing the Statutes of Westminster, which denied women the right to consent after the fact. After the importune marriage of his daughter, Sir Thomas West pushed through the Statutes of Rape, which did not impede on the Church's protection of consent to marriage, but rather circumscribed it by

ensuring the laity controlled inheritance rights. Women could again end cases in concords, but risked disinheritance if their families did not approve. However, women used the time when the Church and state disagreed over issues of marriage to assert a limited degree of autonomy over their futures.

CHAPTER THREE: BURDEN OF PROOF

The judicial system of the Middle Ages was not for the faint of heart nor for those lacking in conviction – and that just applies to the men who needed to right a wrong. Women were in an even more disadvantaged position and carried additional prejudices, which they had to surmount for a successful outcome. Women could appeal only two crimes, rape and murder. The latter pertained to instances when the death of a husband or child occurred in the woman's arms; all other types had to be appealed by a male. As for the former, statistically speaking, the odds of a woman's appeal ending in a conviction were low. However, this does not mean that women were unprotected by the law or that a case could not conclude in a satisfactory manner.

The thirteenth century offers very fruitful records and while laws continued to evolve, they were stable enough to provide an open avenue for women to appeal rape. Many studies offer a broad overview of rape in medieval England in a short span of pages. They focus on generalizations that, while accurate, still place women in the victim category. Along with a more focused period under review (1200-1250), this study sees women appealing rape as active agents in their life, even if they acted in a reactionary manner. It also differs in that it concludes that the mere application of felony status to rape shows that society viewed it as problematic crime, but that the instruments of justice and gender bias hindered women's attempts to appeal. Church and consequently societal views kept women in a subjugated position, not only circumscribing their efforts to control their lives but also placing women under weighty burdens of proof.

Procedure

Glanvill and Bracton's reclassification of rape shifted it, not only to a personal crime, but also to felony status during the thirteenth and fourteenth centuries. Glanvill puts rape in the same category as arson and homicide, all of which were punishable by death or dismemberment;

Glanvill reserved felony classification, however, for the rape of virgins.¹⁹² Bracton adds on to Glanvill's treatment by outlining the punishments proscribed based on the sexual status of the victim, much like monetary payments for other felonies followed the social status of the victim. The perceived level of a woman's sexual availability greatly influenced the outcome of her case as well. According to Bracton, rape of a virgin was the most heinous and should result in castration:

Punishment of this kind does not follow in the case of every woman, though she is forcibly ravished, but some other severe punishment does follow, according as she is married or a widow living a respectable life, a nun, or a matron, a recognized concubine, or a prostitute plying her trade without discrimination.¹⁹³

Aside from the question of whether or not a woman was protected under the rape laws, since the level of protection varied so that prostitutes were the least protected, a woman also had to follow all of the procedures set down for felonies in order to appeal her case.¹⁹⁴ All felony appeals, regardless of the gender of the appellor, had to follow the formulaic course of action. If a woman failed to do as proscribed, the case could be dismissed and she could be arrested for making a false appeal.¹⁹⁵ Immediately after her rape, a woman needed to raise the hue and cry and show evidence of her attack (this would take the form of bruising, blood, torn clothing and/or bloody undergarments) to reputable men of the town; this included the bailiff, the coroner, and the sheriff. These men heard her appeal, viewed and recorded wounds and searched for the malefactor(s). For all of these men, she would follow the same procedure and tell the same exact

¹⁹² Glanvill, *Glanvill*, p. 3.

¹⁹³ Bracton, *On the Laws and Customs of England*, p. 415.

¹⁹⁴ These procedures are outlined in detail on pages 29 to 38.

¹⁹⁵ Bracton, *On the Laws and Customs of England*, p. 394.

details: any variation in her story could result in a dismissal of the case at any level. After going through all of this, the woman would make her official appeal before the next county court.¹⁹⁶

Dismissal due to technical issues was also a risk that women had to take; the medieval justice system was highly formalized and any variation from that formula would lead to amercement or imprisonment. Given the nature of the court system, women would have been less likely to attend the courts regularly and therefore would be more susceptible to making mistakes. In one instance, a woman presented a strong case where she appealed a man for rape and three years of captivity. However, the defendant pointed out that she failed to specify the exact date on which the initial assault took place, thus resulting in the dismissal of the case.¹⁹⁷ In another case, Margery appealed Nicholas for a rape that took place four years earlier. While it may have taken a few years to go through the court systems, Margery lost her appeal because, as Nicholas pointed out, she failed to raise the hue and cry immediately after the alleged rape, nor, according to the coroner's rolls, had she appeared at the next county court.¹⁹⁸ In neither case was the court concerned with the actual rape merely that the woman failed to follow court procedure.

While women usually appear alone in these records, the damage inflicted by rape went beyond the woman, so some may have had help from a male relative in navigating the system and deciding whether to pursue an appeal. Aside from technical issues, the woman had to continue to appear before the courts until the case concluded. Cases in which the women failed to show abound in the court records. In two cases, the women went before three separate shire

¹⁹⁶ Ibid., p. 415, Glanvill, *Glanvill*, p. 175.

¹⁹⁷ Sayles, ed., *Coram Rege*, pp. 101-102, case 75.

¹⁹⁸ M. T. Clanchy, ed., *The Roll and Writ File of the Berkshire Eyre of 1248*, The Publications of the Selden Society; v. 90 (London: Selden Society, 1973), p. 317, case 787.

courts only to have their cases thrown out when they failed to appear at the general eyre.¹⁹⁹ This means that they pursued their cases for at least a year and half, and then stopped. Even women who pursued their cases to the end could find themselves in trouble for failing to appear at the general eyre:

Margery, daughter of Walter, appealed William de Cattesden', the hayward of the prior of Winchester, of rape. She does not come, so let her be taken and her pledges for prosecution are in mercy, namely Gilbert the tithingman of Wadhull' with his tithing. William was outlawed at Margery's suit and was harboured in the town of Bysupbiston', so it is in mercy. No chattels.²⁰⁰

Why would a woman do this? The woman may have been out of the area when the court convened or was unable to travel to the court location. This could be due to a religious pilgrimage, relocation, illness, or even lack of transportation. Another explanation could be that she was unaware she had to attend. This seems the most likely in the case cited above; having already gained outlaw status for the rapist, which would have taken two and half years at the least, the woman believed she was done, although one could attribute the failure to appear to a general lack of knowledge concerning court procedure as well. An additional cause could be the resolution of the case outside of the court system; the parties involved reached a concord or other agreement. Finally, death would certainly prohibit attendance, although if applicable, this is usually mentioned in the court record. As is evident, there are a myriad of reasons to explain away an absence, but which one applies to the cases above is impossible to ascertain.

Of the 108 cases looked at for this study, over 15 percent ended with a conviction; none of these convicted felons, however, were given the proscribed punishments of death or

¹⁹⁹ In both documented instances, the women failed to show at the higher court, thereby causing the dismissal. Stenton, ed., *Yorkshire Eyre*, pp. 247-248, case 653, p 284, case 769.

²⁰⁰ Meekings, ed., *Wiltshire Eyre*, pp. 201-202, case 273.

castration. Most were assessed monetary fines, a portion of which went to the court, and a few were outlawed. Almost 12 percent of cases ended by concord; this sometimes meant the rapist and victim married each other, or it could mean the parties reached a monetary settlement outside of court. Out of court settlements directly benefitted the victim and her family. Cases that ended with a dismissal of the charges comprised 33 percent of those studied; this could be due to an outright 'not guilty' verdict, a technicality, or even because the plaintiff failed to show up. Approximately 35 percent of cases do not contain enough information to classify them as convictions or acquittals. Most frequently, cases failed because women did not follow the case through. Along with cases that lack anything beyond 'A' appealed 'B' of rape, or provided information on the death of one of the parties, these cases offer no resolution. Finally, a small number of cases, less than 5 percent, clearly offer hope to the woman that her case was not a failure by instructing her to continue her appeal in the shire court or appeal in a different court. Resolutions for these cases are also absent from these particular court cases. This does not mean that they never reached the resolution stage just that further action failed to make it into the general eyre records used.

While these numbers may appear dismal, when compared with the figures for similar felony appeals brought by males, i.e. wounding or homicide, the conviction rate is actually about equal even though more men brought wounding appeals before the courts. Looking at Orr's study again, she compared wounding with rape and found that a comparable percentage of cases concluded successfully despite the disparity in the number of cases for each crime: wounding cases totaled sixty-eight, while rape cases totaled twenty-one, but each had around a 35 percent

success rate.²⁰¹ More wounding cases ended due to procedural errors and acquittals, while more women failed to continue suit.²⁰² However, Orr attributes the latter to a high number of out of court concords. Kittle compares rape with homicide and finds an equally low conviction rate: 8 percent for homicide and 6 percent for rape. Still, almost all homicide cases resulted in the full punishment, execution, while rape cases usually resulted in fines.²⁰³

Success

Appealing rape meant making public the ruination of the woman, the consequences of which went far beyond the act of sexual violence. It meant acknowledging the inability of the male head of the victim's household to protect the woman from such an act, and it meant damaging the future prospects for the woman and her family. The drawbacks to an appeal require an analysis of why women (and their families) went through the exasperating hardship that bringing an appeal entailed. Taking all cases considered a success, thirty-five with concords, convictions and continuances combined, women had almost as much chance of receiving a positive outcome, 31 percent compared with a 33 percent acquittal rate. The possibility of achieving one's goals was surely a compelling factor when deciding to appeal. Nevertheless, motivations for bringing an appeal certainly varied. Unfortunately, court cases offer only rare glimpse into these motivating factors, while the court and law systems eventually stressed the ideas of revenge and marriage more than others.

Perhaps some people brought charges of rape as a form of damage control. Given the size of most communities in the High Middle Ages, keeping a secret was next to impossible. Conceding that a woman was no longer a virgin through a rape trial avoided any complications if

²⁰¹ Orr, "Men's Theory and Women's Reality," p. 134.

²⁰² Ibid., p. 132.

²⁰³ Kittle, "Rape in Thirteenth-Century England," p. 110.

the woman was later married, and it offered the possibility of monetary compensation, which could increase the woman's chances of getting married. An appeal of rape might deflect accusations of prostitution, whoredom, or even fines for fornication. It might also shift blame in openly flagrant relationships from the woman to the man by condemning him for not following through on promises he made. In one such case from the Yorkshire eyre (1218-1219), Aldusa appealed Simon for the rape of her virginity. He countered that her suit was malicious because their relationship was consensual for over a year. The jurors testified, "that he took another to wife and for this reason she has appealed him."²⁰⁴ She might have had more luck bringing this type of case before the Church courts, assuming of course that she could prove Simon's previous intention of marrying her.²⁰⁵

Conversely, given that Simon was already married, Aldusa's motives were probably not to force a marriage agreement. However, there are enough cases which suggest that was indeed one of the purposes of appealing rape. A common conclusion to medieval rape trials was a concord or marriage agreement between the victim and the attacker. There were two possible reasons for this: the woman falsely appealed rape in order to marry a man or the woman faced an uncertain future after her attack and turned to one of the few options available, marriage to her attacker. This latter option also points to a possible motivation for rape, that of the man attempting to force a woman into an unwanted marriage. Again, of the cases examined in this study, almost 12 percent ended in concord; at least six of those thirteen cases definitively ended in marriage. There were also thirty-one cases in which not enough information was available to ascertain a conclusion. However, as Orr points out parties did not always reach a concord inside

²⁰⁴ Stenton, ed., *Yorkshire Eyre*, pp. 250-251, case 669.

²⁰⁵ See pages 52-53 for more information on marriage as defined by the Church.

of the court, nor inform the court at all. Orr takes the high frequency of women failing to follow through as evidence of a large number of cases settled out of court. Kittel certainly does not agree with this assessment, but Post makes a convincing argument. The enactment of Westminster I and II, removing the possibility of concord through marriage, “indicate[d] that accusation of rape was often used as a procedure for invoking shame at illicit defloration and it is arguable that some couples used the procedure to offset family objections to socially disparaging matches.”²⁰⁶ In two cases, the jurors attest to the rape, which indicates that although sexual violence occurred the women married their attackers. The rest could certainly fall under the category of a woman choosing her partner, or forcing a recalcitrant lover into formal marriage. In all thirteen cases, the women failed to continue their prosecution. Courts tended to see suits brought by women as malicious, but in the latter part of the thirteenth century it became more common for courts to throw out cases for inane technicalities, thus reinforcing the notion that the courts felt women had other agendas. Therefore, it is logical to conclude that some women brought charges of rape solely to entice or force a man into marriage. Moreover, some women did so to ensure their choice of husband against family objections of love matches that did nothing to improve a family’s circumstances.

Another motive behind appeals of rape is more malicious in nature – revenge. Maud’s case certainly constitutes an appeal made out of malice.²⁰⁷ The jurors in that case sided with Henry, the accused, after he explained that she only appealed him because she was angry that Henry captured her father (wanted for murder).²⁰⁸ Aldusa’s appeal could surely fall into this category as well. Other cases as well could be the result of a dissolved relationship. Both Edith

²⁰⁶ Post, "Statutes of Westminster," p. 153.

²⁰⁷ See page 1 for the case, quoted in its entirety.

²⁰⁸ Stenton, ed., *Gloucestershire Eyre*, pp. 340-341, case 751.

and Duze brought appeals against men with whom the jurors found they were already intimate.²⁰⁹ These women openly challenged the men they perceived as wronging them by bringing appeals against them.

However, some of these cases classified as revenge more readily fall into the category of desperation, a motivation that was no doubt a part of all the appeals of rape under consideration. Being able to appeal rape certainly opened up new avenues for women to pursue their agenda, but they still had to operate from a circumscribed position. Women cast aside from intimate relationships, as well as rape victims, faced bleak prospects. Censure by local society for being loose led many of these women into the only work available to them, prostitution.²¹⁰ The stigma of a lack of virginity reduced prospects of marriage and finally losing financial support, especially in the case of spurned lovers, put these women in dire economic situations. All, or any of these, caused women to seek redress through the system. With these appeals of rape, whether founded or not, women tried desperately to save their futures. Marrying their rapists theoretically ensured women economic support, as well as kept them from becoming prostitutes. Even out of court, monetary settlements could help a woman and her family offer a larger dowry that might entice prospective husbands to overlook her past.

One last motive for appealing rape was a desire for justice, to see their rapist punished. The crown increasingly frowned on private vendetta, so women took to the courts to demand recompense for their loss. Outright conviction occurred in sixteen cases. In one case, Emma appealed Gilbert of rape and while he denied the charges, the jurors felt she brought a reasonable

²⁰⁹ Meekings, ed., *Wiltshire Eyre*, p. 210, case 310, Stenton, ed., *Yorkshire Eyre*, pp. 216-217, case 545.

²¹⁰ Karras, "Prostitution in Medieval Europe," p. 252.

suit. He paid a fine of one mark.²¹¹ Emma's was one of six that resulted in fines, but in most of those, they only totaled half a mark. In these instances, the bulk of the fine went to the court to cover fees; the women received little if any of the fines assessed by the courts. Another five cases resulted in outlawry for the rapist, although when Agnes appealed Roger of rape she managed to have him outlawed and assessed a fine.²¹² Outlawry occurred in the shire courts and took five successive visits to the full session to achieve. Therefore, when the courts outlawed Roger for the rape of Amabel, it was at least two and half years after the crime took place.²¹³ Jurors found accused rapists guilty in four other cases, but charged no fines. In none of the cases ending in conviction did the rapists receive the proscribed punishments of castration or death. Many other studies echo this conclusion. Neither Kittel nor Orr nor Gourlay found instances of castration or mutilation in the cases they studied.²¹⁴ However, Carter reported two hangings because of successful prosecutions; however, these included other crimes such as robbery and murder, so it is unclear what exactly the hanging punished.²¹⁵ While the crown pursued two cases after women failed to follow through or lost on a technicality, it is difficult to view these as unmitigated successes for women because the monetary compensation belonged to the king.²¹⁶ Consequently, there was vindication in their suit, but no readily available consolation to the woman.

²¹¹ Stenton, ed., *Yorkshire Eyre*, pp. 373-374, case 1029.

²¹² Meekings, ed., *Wiltshire Eyre*, p. 179, case 141.

²¹³ Stenton, ed., *Yorkshire Eyre*, p. 354, case 978.

²¹⁴ Gourlay, "Roses and Thorns," p. 31, Kittel, "Rape in Thirteenth-Century England," p. 110, Orr, "Men's Theory and Women's Reality," p. 125.

²¹⁵ Carter, *Rape in Medieval England*, p. 125.

²¹⁶ See Clanchy, ed., *Berkshire Eyre*, p. 317, Sayles, ed., *Coram Rege*, pp. 101-102.

Failure

So why did so many cases fail? There were a number of reasons, although failure to follow the correct procedures or changing one's story was the most common. The sheer number of cases dismissed, regardless of the type of felony, surely emboldened criminals in their perpetration of crime, but also daunted the victims when bringing the appeal before the courts. Many cases rested on the ability of the victim to remember the minutiae of the crime. In one such case, the woman could not clearly identify which direction the door faced in the room where she alleged the rape took place.²¹⁷ Alice's case fell through when the court told her to appeal in a different shire court; the courts held her on a false appeal when she failed to do so.²¹⁸ Still, an additional case failed because the woman's story had changed from one court to the next. In the first, she had maintained that the appellee raped her; in the second, she said the accused had lain with her by force.²¹⁹ In medieval England, there was nothing similar between violently raping someone and forcefully laying them down. Jurors not only saw the distinction, but also felt that a story that changed was a false story. First, a woman needed to repeat continually that a sexual violation occurred. Lying with someone by force did not allege violation because it never referred to penetration. This changed the offense from a felony to something more akin to a misdemeanor. This is analogous to the wounding cases where the appeals failed because the men did not consistently allege a felony.²²⁰ This reclassified the wounding to a lesser offense, thus resulting in dismissal of the felony appeal. Second, the criminal justice system based its proceedings on the premise that only lies were difficult to

²¹⁷ As cited in Post, "Statutes of Westminster."

²¹⁸ Stenton, ed., *Yorkshire Eyre*, p. 275, case 740.

²¹⁹ As cited in Orr, "Men's Theory and Women's Reality," p. 128.

²²⁰ See page 30.

remember. Truthful appellors, regardless of gender, should not have a problem repeating the same story at each proceeding. Courts were extra vigilant against malicious appeals. In the medieval courts, deviation equaled fabrication.

Another reason for failure could be evidence that a grudge was behind the suit, rather than an actual rape. Thus, one of the motivating reasons for a rape appeal also led to its dismissal. Because of the nature of the medieval court system, neighbors judged cases concerning each other. The lack of privacy meant these same neighbors knew the intricacies of peoples' lives. As evidenced by the cases of Maud, Aldusa and the Church court case brought by Alice, people from the same village could attest to living and sleeping arrangements, and most certainly rancor between parties.²²¹ It is difficult to understand why these women went through the process knowing their grudge was familiar to the people deciding their cases. This could be the result of a couple of reasons. First, assuming the jurors' findings of a malicious appeal were true, these women or their families felt that putting the man through the appeal process might satisfy their need for vengeance. Second, using the same assumption, the men had actually raped the women and the women were attempting to salvage their reputations and futures. Nothing can attest to the veracity of a defense based on a malicious appeal, but the open nature of life in the Middle Ages lends credence to the notion that these jurors, people with possibly daily contact with the litigants, knew the intimate details of the man and woman involved.

In addition to all of the obstacles that the woman went through in order to appeal rape, the rape laws also offered men the means of avoiding conviction. One of the first ways, and

²²¹ Alice's case is discussed in detail on pages 53-54.

most common, was for the man to claim prior sexual knowledge. During this period, consent given once could not usually be retracted. Another way was to argue that the sex was consensual.²²² Consensual sex played a role in the dismissal in four cases. Duze appealed Rannulf of rape, but “the jurors [said] that he had her with her good will if he ever had her.”²²³ Not only did the jurors dismiss the case, but they did so without even confirming Duze and Rannulf’s possible relationship. In another, the jurors admitted that William, the accused, “lay with Edith but he did not violate her because she was already known to him.”²²⁴ Without witnesses, it was difficult to prove one way or another, which party was telling the truth, although males were afforded preference. It did not help that the Church continually portrayed women as naturally deceitful in their misogynistic writings.²²⁵ Men almost always believed a man over a woman. That women did appeal rape for reasons other than sexual violence further hindered the cause of women merely seeking redress for a real crime.

One of the most elemental ways to avoid a charge of rape rested in societal views concerning conception. Pregnancy was not something that a woman could hide easily from the courts given the length of time a case took to move through the system. However, men could not count on this event as a defense from the beginning, but had to wait to see if it occurred. Coming from ancient authorities such as Galen and Hippocrates, the medical theory claimed that both the man and the woman needed to feel pleasure and orgasm for conception to occur.²²⁶ Rape and the

²²² Bracton, *On the Laws and Customs of England*, p. 416.

²²³ Stenton, ed., *Yorkshire Eyre*, pp. 216-217, case 545.

²²⁴ Meekings, ed., *Wiltshire Eyre*, p. 210, case 310.

²²⁵ R. Howard Bloch, "Medieval Misogyny," in *Misogyny, Misandry, and Misanthropy*, ed. R. Howard Bloch and Frances Ferguson (Berkeley: University of California Press, 1989).

²²⁶ W.J. Whittaker, *The Mirror of Justices* (London: B. Quaritch, 1895), p. 103. For more on how sex and consequently conception was perceived see Thomas Walter Laqueur, *Making Sex: Body and Gender From the Greeks to Freud* (Cambridge, MA: Harvard University Press, 1990).

violence and terror associated with it seem to preclude a woman from feeling pleasure. Consequently, feeling pleasure was not synonymous with forced intercourse; therefore, a woman who had conceived had enjoyed the sex and thus she had consented to the act. The courts dismissed the suit of Joan because she and the accused, known only as E, had a child: “It was said that this is a wonderful thing, for that a child could not be engendered without the consent of both parties; so it was said that E was guilty of naught.”²²⁷ Not only did the child from an unwanted liaison burden a woman in this situation, she could face charges of false appeal and stigmatization throughout the community.

Many of these reasons for failing illustrate Bracton’s views of the sexual status of victims and either his influence on society or his ability to reflect societal values. A virginal woman fared much better in the courts than sexually active women. Of the five confirmed married women in the cases studied, only two ended with a successful outcome; in these cases, the parties reached a concord. Both of these women, however, were widows, which raised their status under Bracton’s hierarchy. Confirmed prostitutes could not even bring an appeal of rape in many places “since their status implied universal consent.”²²⁸ Due to this notion of being a “common woman”, the prostitute did not have the right to withhold consent, much as a married woman could not say no to her husband. However, she might at least be able to force payment from the “customer” for such an act.²²⁹

Unknown Outcome

Unfortunately, there is scant evidence to suggest what happened in the majority of rape cases brought before the courts. In almost 40 percent of the cases surveyed, no resolution made it

²²⁷ As cited in Gourlay, "Roses and Thorns," p. 30.

²²⁸ Karras, *Common Women*, p. 34.

²²⁹ For more on this see Ibid, Karras, "Prostitution in Medieval Europe."

on record. In eight cases, there simply was no information beyond the names of the appellor and appellee and that the appeal was for rape: “Rohesia appealed Thomas son of Siward of rape.”²³⁰ In another seven cases, one of the parties involved died with no decision as to the guilt or innocence of the accused provided. There were cases of acquittal even when the woman bringing the appeal had died, but those counted as finished cases. The five cases in which the court instructed the women to continue their appeal in a lower or different court do not provide a resolution in these records; therefore, it is unknown whether the women took the advice and were successful in their appeals. The majority of cases with unknown outcome result from a failure to follow through. If only the accused failed to show, the woman could continue her suit to outlawry. If only the appellor failed to show, the man could demand judgment. However, if both parties failed to show, the case became stagnant. Over half, twenty-three, of the cases with unknown outcomes fall into this category.

A typical case goes as follows: “Goda of Otley appealed William son of Odo of rape and has not followed it up. Therefore let her be taken.”²³¹ Goda made the initial appeal, it is unclear whether she followed all the proper procedures, but then did not appear in the county courts or the general eyre session. This resulted in the court finding Goda guilty of a false appeal and faced arrest or fines. The amount of information contained in the above case does not lead to many concrete conclusions. However, the number of cases that read almost exactly same constitute almost one-third of all cases surveyed and this leads one to believe that there was maneuvering going on behind the scenes. There were many reasons why a woman would begin the process of appeal only to let it drop, even with risk of imprisonment or fines. Among these

²³⁰ Stenton, ed., *Yorkshire Eyre*, p. 350, case 962.

²³¹ *Ibid.*, p. 259, case 697.

could be that it was a false appeal from the beginning. The issue of pregnancy might have been a factor; a woman begins the appeal process only to find she is pregnant and therefore decides not to follow up. Perhaps they had committed some technical error early in the process and were told that their suit would be dismissed if it continued. Other possibilities, as evidenced by a few other cases, could be that the woman had married another man, who did not want the case continued.²³² As mentioned earlier, a concord between the rapist and victim is another possible conclusion to these cases with little information. Even if the charges were true, in many instances a concord was the surest way to ensure a husband, which was usually necessary for a woman to have a solid future.²³³

As all court cases in this study come from general eyre records, it is almost impossible to know when these women stopped pursuing their cases. They could have never showed after the initial appeal in the hundred court, or stopped during shire court phase. Some cases might never have reached the appeal stage at all, but stopped after the initial recording by the coroners and sheriff. The point in time when women failed to follow through depends on what was happening out of court. If agreements were made sooner, than the appeal needed to go no further. In rare instances, such as Godith's appeal against Roger, there is more information. Apparently, Godith "sued at 3 shire courts and now has not come [to the general eyre]...Therefore, let her be taken."²³⁴ As shown here, many rape cases never made it past the shire courts. However, a few

²³² Doris Mary Parsons Stenton, ed., *Rolls of the Justices in Eyre: Being the Rolls of Pleas and Assizes for Lincolnshire, 1218-9 and Worcestershire, 1221*, The Publications of the Selden Society; v. 53 (London: B. Quaritch, 1934), pp. 579-580, case 1182.

²³³ Orr, "Men's Theory and Women's Reality," p. 138.

²³⁴ Stenton, ed., *Yorkshire Eyre*, pp. 247-248, case 653.

made it into the *coram rege* when the king took up the appeal after its dismissal in a lower court.²³⁵

Looking at rape from 1200-1250 in medieval England shows that both failure and success rates were relatively equal, while a lack of information leaves almost 40 percent with unknown outcomes. When compared with wounding or homicide, it is apparent that while women faced heavier disadvantages, they managed to persevere through the courts. What is missing from all of this evidence are the women's voices. Rare glimpses into motivating factors, back-stories, and behind the scenes negotiations still never provide the woman's perspective. Even without this, though, it is clear that women used the courts to gain justice, revenge, and even freedom of choice. The medieval court system was not one designed for ease of conviction, no matter the crime or the gender of the victim. Fear of malicious appeals, inclination of neighbors towards leniency, and an ingrained distrust of women contributed to low conviction rates, but did not seem to dampen a woman's desire to attempt to achieve her goals.

²³⁵ These cases were discussed on page 71.

CONCLUSION

In the study of women's history, it is quite common to find historians attributing the female sense of self to their social and "essential" character development. Women are analyzed in the context of their traditionally female domestic roles and the effect the implementation of such roles by patriarchal forces has on their duties and responsibilities. In the Middle Ages, however, jurisprudence helped establish the gender norms of the time and regulate acceptable behavior. A patriarchal structure existed as a context within which all activity took place. Although laws designed to protect women from sexual violence and exploitation existed throughout the Middle Ages, they were patriarchal in wording and this led to a gender bias in courts, rulings, and punishments that were often detrimental to women.

Medieval courts relied on formula and bureaucracy to function, leaving little leeway for mistakes in an appeal. Women and men fell victim to dismissal based on technical grounds. Before trial by battle waned for felony appeals women suffered great disadvantage; since they could not use their bodies to prove their case (i.e. fight), courts felt the accused took more risk, usually resulting in leniency or dismissal. After the abolishment of trial by ordeal, petty juries rose in prominence. This resulted in less of a judicial disadvantage for women, but their burden of proof was still high.

This higher level of proof reflected societal views of women and rape. While women needed protection, they still occupied an inferior position. Misogynistic views permeated all levels of society. Though the medieval English justice system sought to protect people from malicious appeals, no matter the gender of the appellant, women were seen as being especially deceitful. Men in the courts, whether as jurors or judges, continually questioned the motivations behind an appeal. When in doubt of the truth, and presented with a gender difference among the

participants in a case they tended to side with other men. However, when solid evidence existed, they would convict.

Ironically, the Church, in large part responsible for this less than flattering view of women, provided them with an alternate method of justice. Although women did not often use the Church courts for rape, cases do appear in which women sued to enforce informal marriages. Consent and intent to marriage were necessary components to its validity, but formal procedures were not. This probably influenced the number of people living together without the benefit of sanctified marriage and the number of cases in both secular and Church courts brought against previous lovers. Cases in secular courts where prior sexual knowledge was the grounds for acquittal may be the result of unsuccessful outcomes in Church courts. Proving or disproving consent played a major role in both court systems. The Church, with the help of Gratian's *Decretum*, created a rigid hierarchy of sexual crimes, which both Glanvill and Bracton later echoed in their legal treatises. The Church's interpretation of rape as the highest sexual offense helped influence the shift of rape from property to personal crime in secular laws. However, punishment of rape under secular law was much harsher than canon law.

That the punishments handed out do not correlate with those codified by law is in no way indicative of a tolerant attitude when it comes to rape. All crimes seem to reflect this reluctance to carry out heavy-handed punishment for infractions. Local society policed itself.²³⁶ Keeping the overall peace, even if it meant leniency or acquittal, served the greater good. Implementation of justice to suit local needs was a way to shape the impersonal nature of the system to suit societal customs. Even though legal treatises felt that loss of the offending member, in other

²³⁶ See Hanawalt, *Of Good and Ill Repute*.

words castration, to be the only fitting punishment for depriving a woman of her virginity, medieval men and possibly women did not share this attitude. Rape was horrible to be sure, but in a system where truth was rarely discovered perhaps a bit of caution was not untoward.

If separated into a simple win-lose dichotomy, 31 percent (thirty-four cases) resulted in a favorable outcome and 33 percent (thirty-six cases) did not.²³⁷ This leaves 36 percent (thirty-eight cases) with unknown results. With redefined notions of success and failure, it is simple to understand why women decided to bring an appeal before the courts. Mitigating the damage caused by a lack of virginity probably influenced some appeals. Forced dishonor was less severe than promiscuity and accusations of whoredom. Monetary compensation could also lessen the harm by padding the dowry of the victim, thus increasing the likelihood that suitors overlooked her 'soiled' status. Marriage to the accused would certainly take care of any concerns over future prospects. Indeed, it probably was not the most appealing solution to a medieval rape victim, but realistically speaking it solved many of her problems. There is evidence that some couples wishing to marry without parental consent or women who wished to persuade a man to keep marital promises used the appeal of rape as a means to achieve their goal. In some cases, women used the system as a means to exact revenge, either for a spurned relationship or for a wrong committed against their family.

Acquittals, while only comprising one-third of the cases studied, certainly seem central to understanding society's views, although to be fair, even comparable male-on-male crimes had low success rates. Taking its lead from the Church, secular opinion held that consent, once given, was always valid. Therefore, women with past sexual histories with the men they

²³⁷ These divisions follow the same ones outlined on page 67 with cases resulting in conviction, continuance or concord as successes and acquittals as failures.

appealed usually had their cases dismissed or saw them end in exoneration for the accused. Medical theories also worked against women by asserting conception only occurred when both parties had orgasms. Through deductive reasoning, a raped woman could not be pregnant and so if she was indeed with child the sex was consensual. Married women suffered from Bracton's views of the sexual status of the victim, thus making it harder to appeal rape successfully. Moreover, confirmed prostitutes could not even appeal rape because their status as "common women" negated the possibility of rape by extending their consent to all men.

Appeals brought by women for reasons other than rape only heightened the distrust of women's truthfulness. This and the high number of concords reached in and out of courts led society to clamp down on a woman's prerogative to press charges. Courts tended to treat rape as a property crime even when it fell under felony classification. The Statutes of Westminster and the Statutes of Rape, by shifting the right of appeal to a male guardian or the king, simply codified opinions already in place. Appeals of rape no longer served the woman's interest but her family's. In many instances, rape was no longer appealed as a felony, but through writs of trespass. All through a woman's ability to appeal on her own behalf the courts, the Church and thereby society placed obstacles in her path, condemned her, disbelieved her and generally relegated rape and its victim to second-class status.

Examining court cases is certainly one way to catch a glimpse into the heart of a society – what worries it; what makes it cry out in protest; what it holds most dear; and what does not matter to it at all. Still court records present unique problems, although not complete obstacles, to garnering information. The language is formulaic and third, usually uninterested, parties recorded it and often failed to explain the whys of a particular case. Even when looking at cases

of murder, only the bare minimum is recorded. There are, of course, exceptions to everything. Extremely titillating, or disturbing, cases may prompt the clerk to record more detail than usual, but the voices of the victims and the accused are buried under an every increasing bureaucracy.

Women and their families sought justice, vengeance, freedom and closure by appealing rape. Society, through its courts, provided a means of recourse, though not necessarily sympathy for their plight. Rapes occurred, but the inferior status of women inhibited severe punishment. Courts placed a heavy burden of proof on women, which put them in a disadvantaged position. This, combined with a seemingly natural prejudice against women, made for a very difficult and often unrewarding system. Forced to fight uphill battles through the system, women's measured success in finding justice and asserting control of their lives led to a shift in attitudes concerning the wronged party during the latter part of the thirteenth century. This reinforced society's views that rape, while done to a woman, was not about the woman.

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