CHAPTER 6

Taking a Woman with Force: Rape and Abduction

Introduction

The medieval legal understanding of rape had its basis in the Roman legal concept *raptus*. The term *raptus* originally meant abducting a woman against her guardian’s will, and a completed intercourse was not a necessary legal requisite for the crime. The offence consisted in the act of stealing away the woman from her parents, guardian, or husband. In the Middle Ages the term *raptus* could mean both rape and abduction, and while many legal systems differentiated between the two crimes, they were still considered as parts of a fluid continuum. This conflation of the two criminal acts can be seen also in Swedish medieval law. The requisites for the two crimes vary and have been interpreted differently in different legal systems. James Brundage shows that for Gratian, *raptus* meant either abduction of a girl without her parents’ consent or intercourse with her against her will. The crime could thus be seen as directed against either her or her family. Violence was a necessary component in *raptus*, but the violence could be directed at the victim or her family. Gratian’s followers and interpreters focused upon the degrees of force used. In order for the crime to be considered rape, the victim had to protest or resist. Again, the violence could be directed at the woman, her parents, or her family; this would not change the definition of the crime. Furthermore, canon law considered rape a very serious crime, an *enormis delicta*, which merited a far harsher punishment than any other sexual offence.

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In English common law the distinction between the two crimes became blurred over time.\(^5\) Carolyn Dunn notes a conflation between abduction and rape in legal practice after the Westminster Statutes from 1275–85.\(^6\) Kim M. Phillips separates English medieval legal practice into three chronological stages which she refers to as: “the bleeding body,” “the deflowered body,” and “the abducted body.” The names represent the different aspects that were emphasised in rape prosecutions. The victim’s physical injuries were stressed in the first phase. In the second stage the prosecutors underlined that she had lost her virginity. In the third stage, the emphasis was upon the fact that she had been abducted.\(^7\) Whether or not the chronology is accurate, these stages underline important aspects of how rape and abduction were interpreted.\(^8\) The first phase emphasised the woman’s own physical injuries and bodily harm, while the other two stages focused more strongly upon the loss of property value for a man. The importance of deflowering centred upon the woman’s loss of value on the marriage market, while the abduction phase seems to regard her as an object and pays less attention to what had actually happened to her.

Research on Nordic medieval legislation has raised the question of whether there were differences between abduction and rape. Lizzie Carlsson partly separates the two crimes and regards abduction as the act when a man, without the consent of the guardian, kidnaps a woman with the purpose of making her his wife. In Carlsson’s view, rape is also a case of abduction, but where the man did not want to keep the woman as his wife.\(^9\) In this interpretation, the woman’s consent is entirely unimportant in either case. More recently, Karin Hassan Jansson has argued that Swedish medieval rape legislation must be understood as a way to protect male property. The sexuality of their wives and daughters had a value for men, a value that was lost if the women were raped. She notes that many scholars claim that a more modern view, which considers rape a crime against a woman’s right to autonomy and bodily integrity, then

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6 Dunn, Stolen Women in Medieval England, 29.
8 In a later article Kim M. Phillips reevaluates her earlier work and writes that although she would step back from a clear chronology of changing perceptions the main points are valid. Kim M. Phillips, “Four Virgins’ Tales: Sex and Power in Medieval Law,” in Medieval Virginities, ed. Anke Bernau, Ruth Evans and Sarah Salih (Toronto: University of Toronto Press, 2003), 97, footnote 17. Dunn, Stolen Women in Medieval England, 58–59.
9 Carlsson, ‘Jag giver dig min dotter,’ 32.