Rape and Sexual Abuse in Zurich—Empirical Findings

2.1 “Sexual Assault” and “Sexual Abuse”—Grey Areas in Medicine, Law and Theology

Roy Porter’s question whether rape has a historical meaning suggests that rape is a clearly defined object of study. Today the offense is precisely defined in law, though not identically in different jurisdictions.¹ For the early modern era and Sattelzeit we frequently encounter the term Nothzucht or the synonym Nothzwang, source terms that do not correspond to our current understanding of rape. In Prussia as in Rome, Nothzucht in the language of our sources can best be described as enforced “immorality”, in other words an extramarital sexual contact constituting an illegitimate and religiously amoral act.² The reason for the semantic difference between today’s language and that of the early modern sources lies in the conceptual grey areas of medicine, law and theology, characteristic of Zurich as of other places.

In the Ancien Régime in Zurich, reports by midwives and doctors were not appended to the court records, as was customary in early modern Bologna or Geneva.³ Sometimes the 19th-century records mention such reports and give extracts of their contents. Thus the medical assessment of sexualized violence is only occasionally tangible in the archive sources in Zurich. The few instances available to us reveal that doctors and midwives often reached the limits of their medical capacity when required to assess whether those they examined were victims of sexual offenses. The reports attempted to localize the reasons for physical pain, attributing “fever” and “state of excitation” to inner physical

¹ On the problem of international comparison at the judicial level cf. European Sourcebook (2010); McGlynn/Munro (2010).
lack of equilibrium, without relating these indicators unequivocally to a completed act of “sexual assault”\textsuperscript{4}.

There is no indication that the doctors and midwives asked those they examined how they felt. The findings are like anatomical inventories, trying as far as possible to avoid moral judgments. There are no references to the idea that, in the end, only a lustfully consenting woman would conceive. Similarly, there are no medical recommendations to the council on how “sexual assault” should be legally defined. In summary, we cannot derive a specific “sexual assault discourse” from the archive sources for Zurich.

Medical papers in Zurich on the problem of “sexual assault” seem to be lacking too,\textsuperscript{5} the doctors apparently seeing no reason to take up the topic.\textsuperscript{6} So within the medical field neither the archives nor the printed materials throw much light on the sexuality discourse. Nonetheless, a plausible though unproven conclusion may be drawn: if midwives and doctors in Zurich did not formulate their own ideas concerning the consequences of enforced sexual intercourse, they either accepted the medical discourses of their time, or at least they did not publicly challenge them. We may therefore assume that what we learn from other historical analyses of medical discourses in the early modern era and \textit{Sattelzeit} is also true of Zurich. Doctors and midwives there assumed that women were physically capable of resisting an indecent assault. In assessing \textit{Nothzucht}, physical injuries and consequences alone were medically relevant. Homosexual assaults were not taken into account, and the medical discourses show little interest in the problem of indecent assaults on children. From a medical perspective, children differed from adults only in that they were not yet sexually mature. No other criteria were introduced in connection with the problem of “sexual assault”.

The legal discourse for Zurich is clearer, although it seems that the jurists there did not take part in the written controversies of their German colleagues.\textsuperscript{7} Legal reports are lacking, and for the period up to codification of criminal law in 1835 only three mandates of varying content refer to offenses of sexual violence. The mandate of 1529 decreed that anyone who took a

\textsuperscript{4} Cf. on this Chapter 2.9.

\textsuperscript{5} This assessment is based entirely however on samples from Zurich writings. Whether doctors in Zurich made specific contributions to an understanding of sexuality has not yet been researched.

\textsuperscript{6} As more detailed historical analysis of the professions of surgeons and doctors in Zurich is lacking, more precise facts concerning the activity of these healers cannot be given.

\textsuperscript{7} Samples taken from judicial writings give no hint that jurists in Zurich dealt specifically with the problem of sexual offenses. This would need to be systematically investigated.