Learned Men and Skilful Matrons: Medical Expertise and the Forensics of Rape in the Middle Ages

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Rape is a crime perpetrated by the use of one body upon another. It is fundamentally a corporeal crime. This remains true whether its motive is primarily sexual, or an exercise of power, or both. Insofar as bodies are concerned, ideas of the body, its function, and its integrity figure prominently in modern rape discourse. Bodily examination, DNA tests, and other medical expertise play a crucial role in the investigation of a crime where often there is no outwardly visual sign of loss or damage, where frequently one testimony stands against the other, and where there are often no direct witnesses. In this context, English scholars frequently cite Sir Matthew Hale (1609–1676), the “most quoted authority on the law of rape” in England, who addressed it as “an accusation easily to be made and hard to be proved, and harder to be defended by the party accused, tho‘ never so innocent.” However, one sees the peculiar twist that makes Hale’s apprehension differ from modern approaches to the crime: it is not so much the protection of possible rape victims but the anxiety over false accusation that he problematizes. And indeed, at the end of this chapter, one may rightfully suspect that this is a powerful concern in many medieval juridical considerations as well.

This chapter will tackle two basic questions: first, which medical ideas (in terms of gynecology, anatomy, or physiology) did medieval law connect with the crime of rape, and second, what role did medical professionals play in the theoretical conceptualization as well as the actual juridical prosecution of rape? This chapter approaches these two questions in three steps. First, it argues that only by the invention of a conception of rape that puts consent at the heart of the crime did medical expertise become theoretically relevant.

as a means of proof. This fundamentally new conceptual framework brought about new uncertainties about the presence or absence of a consenting will. To demonstrate this fundamental difference this chapter contrasts normative texts from the early and later medieval periods, and discusses the issues of terminology that complicate investigations of medieval rape laws. Second, this chapter sketches the place of both learned and practical medical experts in medieval legal culture, highlighting their relevance to the theory and practice of rape jurisdiction. In doing so, it locates a gap between “learned men” and “skilful matrons.” While the latter frequently appear in both normative texts and juridical records, the place of the former needs further study. This will be done in a third step. Ultimately, by pulling these strings together this chapter addresses whether the expertise of female practitioners was not so much a general practice in rape jurisdiction, as often suggested, but rather limited to two specific sorts of cases, namely those involving the loss of virginity and those involving children.

The “Invention” of Rape in the Twelfth Century

The term *raptus*, which still lives on in the English *rape*, derives from the verb *rapere* (to steal away something). Indeed, the earlier Roman law of *raptus* almost exclusively focused on the taking away, as in carrying off, of a woman and the harm done to her guardian. The term *stuprum*, in contrast, signified various forms of pollution through illicit sexual acts, which in single cases could also include rape. The *Lex Iulia de adulteriis*, an act of Augustus that was frequently cited by the jurists of the later Middle Ages and early modern period, figures as one of the prominent loci for the compounding of rape and extramarital intercourse. But only with the legislation of Justinian in the earlier sixth century was the definition of *raptus* extended to sexual crimes against unmarried women. This terminology makes it hard to identify the traces of

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3 Fabio Botta, “*Per vim inferre*”: Studi su stuprum violento e raptus nel diritto romano e bizantino (Cagliari: Edizioni AV, 2004).


5 Theodor Mommsen et al., eds., *Corpus Iuris Civilis* (Berlin: Weidmanns, 1877), v. 2, p. 378 (Cod. 9.8.1): “de raptu virginum.”