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Rape in Medieval England: A Legal History, 1272-1307

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By

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Advisor: Stephen D. White, Ph.D., Harvard University, 1972

An abstract of
A thesis submitted to the Faculty of the Graduate School of Emory University in partial fulfillment of the requirements for the degree of
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Abstract

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By Stephanie Brown

This thesis explores the legal history of rape prosecutions in thirteenth and fourteenth century England. Section I explicates the apparent paradox between chapter 34 of the Statute of Westminster II's classification of rape as the most serious type of crime known to English law and the numerous difficulties that women faced when prosecuting men for rape under its stipulations. Section II shows that Edward was partially responsible for chapter 34 of Westminster II's failure to facilitate royal court prosecutions because Edward never intended to protect his female citizens through rape legislation. Thus, royal judges were able to disregard Edward's rape laws and acquit rapists with impunity. Section III establishes that Edward was also partially responsible for Westminster II's inability to prevent local court jurors from ignoring the stipulations of chapter 34 because Edward did not enact safeguards to thwart jurors' attempts to discriminate against rape victims. Section IV demonstrates that because of misogynistic cultural influences, thirteenth and fourteenth century local court jurors discriminated against rape victims. Section V explains how male jurors assembled procedural barriers such as virginity tests and rigorous pre-trial processes as a way of deterring rape victims from appealing the men who raped them and destroying the cases of women who tried to prosecute men for rape. Hence, local court jurors were also responsible for the difficulties that women faced when attempting to prosecute men for rape. Section VI shows that male jurors deterred women from appealing men of rape and dismissed rape cases by citing plaintiffs' occupations or reputations to convict plaintiffs of false appeal. Finally, this thesis concludes that jurors' treatment of female plaintiffs provides a lens through which the position of women in medieval English society can be understood. Moreover, this thesis argues that men discriminated against rape victims because many men were resistant to the anomalous idea that women could prosecute men for rape. Thus, when Edward I granted women the right to do so, men systematically eliminated women's abilities to appeal men of rape by actively subjugating women in rape prosecutions.

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CONTENTS

INTRODUCTION

In the year 1248, an English peasant named Margery de la Hulle accused Nicolas Whatcomb of "raping her virginity" against the king's peace. Although the judge and jurors from her local court did not dispute the occurrence of forced sexual intercourse, the presiding judge declared that Margery would be taken into custody for false appeal because "When he [Nicolas] allegedly did this deed she did not raise the hue and cry and like-wise that she did not come into the next county [court]…So it is adjudged that her appeal [contains] nothing by which Nicholas should be put to law [in the form of a trial]."[1] The outcome of Margery's attempt to prosecute the man who raped her was typical of 49 percent of rape cases throughout medieval England from 1208-1321.[2] During this period, in the vast majority of rape cases that did not result in false appeal arrests, the courts acquitted the assailant.[3] In the years prior to the reign of Edward I (1272-1307), rape laws existed only as subjective procedural traditions in which judges

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[1] *Roll and Writ File of the Berkshire Eyre*, 1248, Selden Society, ed. M.T. Clanchy (London: Selden Society, 1973), 317. The term "…come into the next county" means that Margery de la Hulle did not report the crime in the county where she was raped, only in the county where she resided. Also, the term "false appeal arrests" is common to medieval prosecutions. Rates of false appeal arrests are important tools for analysis of rape prosecutions because they were not always based in substantive law. Victims who prosecuted men for rape could be arrested for false appeal on the basis of procedural technicalities. False appeal arrests rarely signified that a plaintiff's accusation against her rapist was false. Instead, false appeal arrests often represented errors in minute, procedural details. Also, Margery de Hulle's appeal is listed as case #787 of this source.

[2] John Marshall Carter, *Rape in Medieval England: An Historical and Sociological Study* (Lanham: University Press of America, 1985), 127.

[3] Barbara A. Hanawalt, *'Of Good and Ill Repute': Gender and Social Control in Medieval England* (New York: Oxford University Press, 1998), 131-132; Barbara A. Hanawalt, *Crime and Conflict in English Communities: 1300-1348* (Cambridge: Harvard University Press, 1979), 104-110. From 1202-1276, 142 rape cases appeared in 20 Eyre ("Eyre" is a common type of local county court that existed during the twelfth, thirteenth and fourteenth centuries) records, 86.96 percent of appellants that stood trial for rape were acquitted. From 1300 until 1348, 89.7 percent of appellants who stood trial were acquitted. Accused rapists who were not acquitted were convicted.

and juries decided cases based on their individual beliefs instead of matters of law. Moreover, the courts allowed the prosecution of men for rape only by women who lost their virginity or sworn chastity as a result of forced sexual intercourse. In 1285, however, a Parliament of Edward I's changed the definition and legality of rape in chapter 34 of the Statute of Westminster II by providing,

> That if a Man from henceforth do ravish a Woman, married, Maid or other, where she did not consent, neither before nor after, he shall have Judgment of Life and of Member. And likewise where a Man ravisheth a Woman, married Lady, Damosel, or other, with Force, although she consent after, he shall have such Judgment, as before is said, if he be attained at the King's Suit, and there the King shall have the Suit.[4]

Since the husband or father of a female victim of a crime customarily represented her in prosecutions, Westminster II's provision that women could independently prosecute men for rape was an exception to English law. Furthermore, by allowing women to prosecute men for rape by means of a procedure known as an "appeal" and increasing the severity of the punishment for convicted rapists from imprisonment to execution, the King's government seemed to be recognizing a woman's right to not be forced to engage in unwanted sexual acts. Finally, because the statute treated rape as a serious crime, it seemingly indicated that King Edward, his advisors and members of Parliament regarded

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[4] *13 Edw. I Stat. Westm. Sec. c. 31-34*, in Hein Online, http://www.heinonline.org/HOL/Page?handle=hein.engrep/realm0001&men_hide=false&men_tab=citnav&collection=engrep&page=87 (accessed March 22, 2009). When referring to the parties who enacted Westminster II, the terms "Parliament" and "Edward I" are interchangeable. During this period, kings were members of Parliament. Thus, they contributed to the statutes that Parliament enacted. These terms are also interchangeable because Parliament could not enact a statute unless the king formally assented. Therefore, Edward personally ratified every law, including chapter 34 of the Statute of Westminster II during his reign.

rape as a disgraceful act, a very serious offense that ought to be prosecuted, and one that merited severe punishment.

Nevertheless, Westminster II's provisions did not actually facilitate rape prosecutions or constitute a means of deterring men from committing rape. In the years following the statute's ratification, court records reveal that rapists had little to fear in the royal and local courts partly because judges presiding over rape cases and the juries that heard them usually acquitted defendants.[5] Moreover, rape victims were consistently unsuccessful when prosecuting rape cases because the courts often arrested them for "false" appeal on account of their failure to comply with procedural requirements. Furthermore, court records show that the royal and local courts never sentenced convicted rapists to the penalties prescribed by Westminster II.[6] Since women knew that in practice, jurors and judges would not actually apply the new rape laws, many rape victims were evidently reluctant or unwilling to appeal the men who raped them.[7] Because factors such as acquittal rates, false appeal arrest rates and severity of punishment indirectly reveal the effectiveness and therefore the ability of a statute to deter criminals, they suggest that Westminster II did not prevent men from committing

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[5] During thirteenth and fourteenth century, in England, most rape cases were brought by what is referred to as "appeal." Technically, rape cases could also be brought by presentment. Since the vast majority of rape prosecutions during this period resulted from rape victims' appeals, this thesis focuses on cases of appeal. In this type of accusation, the accuser was referred to as the "appellor" and the accused was deemed the "appellee." For the sake of consistency and to avoid confusion, the terms "appellor" and "appellee" will be respectively replaced with "plaintiff" and "defendant."

[6] 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), 152.

[7] Ruth Kittel, "Rape in thirteenth-century England: a study of the common law courts," in *Women and the Law: a Social Historical Perspective*, ed. D. Kelly Weisberg (Cambridge: Schenkman, 1982), 108-110.

rape. Although in theory, Westminster II increased the severity of punishments for rape, women were commonly unable to seek protection under its laws.

Many historians have therefore concluded that although Westminster II's rape laws were intended to halt the growing incidence of rape and facilitate prosecutions, they were evidently inadequate. However, my thesis contests the view that the King and his Parliament enacted new rape laws for the purpose of punishing rape more severely and thereby providing more effective deterrent to the felony of rape. Instead, it offers a new way of explaining why, in practice, the Statute of Westminster II did not result in higher convictions for rape in the royal and local courts. Although historians have proven that the statute did not achieve these ends, they have disagreed on the reasons for its inability to do so. Historians such as Ruth Kittel claim that the rape laws included in Westminster II were unable to ensure that rape victims could convict their rapists simply because local court jurors were blinded by a strong social pressure to limit women's right to self-representation and therefore refused to implement the new rape laws. Throughout her argument, Kittel establishes that rape victims were reluctant to bring appeals before local court jurors by citing the existence of many alternatives to prosecution such as out-of-court settlements and marriage arrangements. She also cites the low conviction rates and light sentencing of rapists to demonstrate the serious obstacles that rape victims faced when they made "appeals" against their assailants in the local courts.[8]

Other historians such as J.B. Post, reject Kittel's way of explaining the ineffectiveness of Westminster II to facilitate rape prosecutions and deter men from raping women by arguing that Edward had chapter 34 enacted to enable the royal court to

[8] Kittel, "Rape in thirteenth-century," 106-108.

defend the interests of male heads of families.[9] In chapter 34, Parliament noted that the royal court could prosecute men for rape even if the woman consented after the act. If applied in a certain manner, the royal court could reference this stipulation to dissolve elopements that could harm the financial and social interests of family patriarchs. Therefore, Post claims that the new rape laws were never designed to prevent rape or protect women's right to prosecute rapists. Thus, Post argues that the royal government was responsible for women's inability to apply the new rape laws to their prosecutions.[10]

My thesis however, argues that Edward's purposes for supporting the enactment of Westminster II and social pressure to restrict women's legal rights were inter-related. Furthermore, the combination of the two sources ensured that many rape victims would be unable to convict their rapists. Although Post and Kittel blame different parties for the problems that women faced when attempting to prosecute rapists under Westminster II, both of their arguments are valid. However, the outcome of Parliament's enactment of chapter 34 of Westminster II cannot be understood without considering the complexities of each claim. In order to understand the reasons for Westminster II's practical failure, I consider the nature of prosecutions prior to Parliament's enactment of the rape laws, analyze the text of Westminster II's provisions, and examine the details of rape victims' legal experiences. Ultimately, this investigation reveals that Kittel's and Post's arguments are complimentary, but not mutually exclusive, because local court jurors were able to disregard the new rape laws only *because* Edward did not have the Statute of

[9] Kittel, "Rape in thirteenth century," 108-111.

[10] Post, "Ravishment of Women," 160.

Westminster II enacted with the purpose of guaranteeing that rape victims could convict their rapists through prosecutions by appeal. Moreover, local court jurors had the same lack of interest in the plight of rape victims as royal court judges, Edward, and members of Parliament. Therefore, the English people did not enact and interpret the new rape laws as an attempt to clarify and confirm the right of rape victims independently to prosecute and convict their rapists. Instead, they ignored Westminster II's stipulations and continued to implement procedural processes that originated in the years prior to its enactment.

In order to identify the reasons why the English people ignored Westminster II's stipulations, this thesis examines broader societal attitudes that apparently shaped both Edward's legislation and the interpretation of rape laws by judges and jurors. Therefore, this thesis focuses on the period from Edward's coronation in 1272 to the end of his reign in 1307. However, I give some consideration to the years before 1272 in order to compare the effectiveness of previous rape laws to those of Westminster II. Section I reviews the history of English rape laws from 1154 to 1285. In addition to providing a comprehensive background of English theorists' and kings' attitudes towards rape, this section proves that Westminster II's classification of rape as a felony and severe punishment for convicted rapists neither protected women nor deterred potential rapists. Section II elucidates the reasons for Edward's support of a statute that theoretically, but not practically protected women. In this portion of the thesis, I show that Edward encouraged the enactment of the rape laws of Westminster II to gain public support and achieve his goal of centralizing the English court system. Section III extends the discussion by analyzing rape prosecutions in the local court. Here, I explain how the

behaviors of local court jurors and Justices of the Peace were inherently tied to Edward's purposes for ratifying chapter 34 of Westminster II. I show that because Edward did not pass rape laws with the purpose of facilitating prosecutions, he failed to provide safeguards to ensure that rape victims could convict their rapists. I also argue that he enacted Westminster II under a legal system that did not have the means to integrate the local courts into an organized bureaucracy. In section IV, I argue that local court jurors exploited the weaknesses of the rape laws of Westminster II to express their prejudices towards women. Sections V and VI consider the way in which jurors and Justices of the Peace undermined rape victims' cases and acquitted defendants who were almost certainly guilty of rape. These two sections clarify the usefulness of rape prosecutions as a lens through which the position of women in medieval English society can be understood. I argue that ultimately, men acted against the interests of rape victims who brought appeals because they were unwilling to embrace the anomalous idea that women should prosecute their own cases. I therefore conclude that Edward's lack of concern for the legal experience of rape victims when he secured the enactment of the rape laws of Westminster II was responsible for the inability of women to prosecute rape successfully in the local and royal courts. More importantly, I establish that royal court judges' and local court juries' treatments of rape cases suggests that many English men demonstrated their resistance to the concept that women could autonomously prosecute men by actively subjugating women in rape prosecutions.

I

Before the causes of the problems associated with Westminster II can be discussed, the development of English rape law must be understood. An analysis of the transformation of rape laws (procedural and substantive) from the twelfth until the fourteenth century reveals that Edward's legislation should have eliminated the many hardships that women faced when prosecuting the men who raped them because it classified rape as a felonious crime and prescribed the death penalty for convicted rapists. Moreover, Westminster II's serious attitude towards rape implied that members of English society were interested in protecting women and facilitating prosecutions. A comparison of court records from before and after its enactment however, shows that the new rape laws resulted in increased acquittal rates of accused rapists and light punishment of convicted rapists. Once the paradoxical relationship between increasingly more stringent rape laws and decreased opportunities for women to convict men of rape is demonstrated, the reasons for the failure of Westminster II to guarantee that rape victims could convict their rapists and prevent rape can be illuminated and comprehended.

Henry II was the first English king (1154-1189) to unify the way that the local courts prosecuted criminal cases. Prior to Henry II's reign, the procedural approaches of the local courts were highly subjective and often differed among courts. One reason for the disunity of the local courts was because litigants bombarded secular judges with appeals for crimes that had previously been brought to the ecclesiastical courts. Many victims of crimes customarily chose to prosecute their assailants in the ecclesiastical

courts. At the beginning of Henry II's reign, however, England experienced a substantial increase in litigants, especially rape victims, who chose to prosecute their cases in the secular instead of ecclesiastical courts. In response to the subjective nature of the secular courts' handling of cases that would have previously been brought to the ecclesiastical courts, Henry II felt compelled to formalize and reorganize the local court system.[11] Thus, he introduced the concept of juries of presentment as an official method of initiating criminal prosecutions. Members of juries of presentment were composed of townspeople who had the power to accuse people of crimes and initiate prosecutions. Henry II defined the role of presentment jurors by declaring that jurors were responsible for accusing criminals, deciding verdicts and obtaining information. Henry II's creation of juries of presentment however, did not eliminate an older tradition of prosecution in which injured parties (or their representatives) could initiate trials by making "appeals" before trial juries. Victims of crimes could therefore personally prosecute their cases in the event that a jury of presentment did not accuse their assailants. Thus, regardless of which method of prosecution was employed, Henry II's formalization of the court system guaranteed that victims of crimes could have their cases heard before a jury. By the conclusion of his kingship, Henry II had unified the court system and instituted a basic procedural approach for criminal prosecutions.

Although Henry II organized and reformed criminal prosecutions, rape victims usually experienced many difficulties when prosecuting the men who raped them. In theory, juries of presentment could have prosecuted men for rape. According to court

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[11] Sir Frederick Pollack and Frederic William Maitland, *The History of English Law Before the Time of Edward I*, 2nd ed. (Cambridge: University Press, 1952), 1:131.

records from the reign of Henry II and his successors, however, a jury of presentment never indicted a man for rape. In practice therefore, Henry II's creation of juries of presentment did not alter the previous tradition of appeal as a rape victim's primary and sole means of prosecuting her rapist. In c.1188, an unknown author described the way that local court judges and jurors interpreted rape victims' appeals in his treatise, *Tracatus de Legibus et Consuetudinibus Regni Angliae tempore Regis Henrici Secundi* (commonly referred to as *Glanvill*). The author of *Glanvill* stated that the courts treated rape as a capital offence that was under the sole jurisdiction of the secular courts. He also described the application of the uniform nature of Henry II's procedural precedent to rape prosecutions by stating that the courts required that rape victims relay their experiences and present bloodstained or torn clothing that they wore directly prior to their rapes to trustworthy men before they could prosecute.[12]

Glanvill also noted that although the courts did not usually allow a woman to make an appeal without a representative, rape victims were allowed to appeal the men of rape.[13] The idea that women could independently prosecute men for rape often hindered

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[12] Ranulf Glanvill, *The Treatise on the Laws and Customs of the Realm of England Commonly Called Glanvill*, ed. and trans. G. D. G. Hall (Oxford: Clarendon Press, 1993), 3, quoted in Carter, *Rape in Medieval England*, 35; *Treatise*, in the Oxford English Dictionary, http://dictionary.oed.com/cgi/entry/50256967?query_type=word&queryword=treatise&first=1&max_to_show=10&sort_type=alpha&result_place=1&search_id=1XvB-M8mmkL-15686&hilite=50256967 (accessed March 24th, 2009). According to this database, a treatise is defined as a "descriptive treatment, description or account (of something)". Therefore, this treatise was a documentation of how the courts operated and a recording of relevant laws. This treatise does not state how law ought to be carried out. Rather, it describes how key players applied societal beliefs and Henry II's procedural precedent to law. This treatise is commonly referred to as Glanvill. Hence, I will refer to it as such in the rest of the thesis. This definition of treatise also applies to the following discussion which is of a treatise that historians refer to as *Bracton.*

[13] In this case, the term "representative" refers to a rape victim's husband or father (if she was unmarried).

victims' abilities to convict their rapists. Because the courts expected women to communicate their experience to trustworthy men and jurors, rape victims were obligated to convey their shame and embarrassment to numerous people. In addition to the effect that the public nature of this process had on women's viability in the marriage market, an issue that is discussed in section V, many women had difficulty completing such a rigorous and lengthy procedure without the help or support of their husbands or fathers. Thus, women faced many obstacles when attempting to prosecute their rapists during Henry II's reign.

In the years prior to Parliament's enactment of Westminster II, Henry III (Edward's predecessor), did not significantly develop Henry II's procedures for criminal prosecutions. During Henry III's reign however, English jurist Henry de Bracton expanded on the gradual development of *Glavill*'s discussion of female prosecutors in a treatise entitled *De legibus et consuetudinibus Angliae* (commonly referred to as *Bracton*).[14] Bracton commenced his treatise by identifying the legal rights of individuals. He stated that "persons" (*personae)* should be considered first, of all issues in the law because all rights were derived from them.[15] Then, he divided *personae* into three distinct groups: "Mankind may also be classified in another way: male, female or hermaphrodite. Women differ from men in many respects, for their position is inferior to

[14] Although the exact date of Bracton's treatise is unknown, many historians have concluded that it was written c. 1235.

[15] Henry de Bracton, *Bracton on the Law and Customs of England*, trans. Samuel E. Thorne and ed. George E. Woodbine (Cambridge: The Belknap Press of Harvard University Press), 2:29. Hereafter this treatise will be cited as *Bracton*.

that of men."[16] Later in his treatise, Bracton defined women's legal standing by categorizing women as members of the *sub virga* group. He stated that female members of the *sub virga* group lived under the legal guardianship of their husbands. Therefore, a woman could only be defined as *persona* if she was married. If a woman was unmarried, English law would not recognize her as a *persona*. Since married women only existed under the legal control of their husbands and unmarried women did not have legal standing, *sub virga* status implied that all types of women had significantly less legal independence than men.[17]

In his section on rape law, Bracton noted that women's *sub virga* status did not apply to rape victims' prosecutions. Although the courts rarely entitled women to bring criminal charges before secular courts, Bracton stated that English law afforded rape victims the right to prosecute their rapists without representatives. Since women did not customarily have the right to prosecute cases, the idea that women could appeal their rapists was an anomalous exception to English law. Bracton however, stated that rape victims had to meet several requirements before they could prosecute their rapists. In order to be classified as a victim of rape, the plaintiff's virginity or sworn chastity must have been lost during a forced sexual encounter.[18] Bracton also reported that local court judges required that rape victims complete six pre-trial steps before prosecuting their rapists. Specifically, he stated that rape victims must raise the hue and cry, go to the

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[16] Bracton, *Bracton on the Law*, 2:31.

[17] Bracton, *Bracton on the Law*, 2:36, quoted in Christopher Cannon, "The Rights of Medieval English Women: Crime and the Issue of Representation," in *Medieval Crime and Social Control*, ed. Barbara A. Hanawalt and David Wallace (Minneapolis: University of Minnesota Press, 1990), 158.

[18] Bracton, *Bracton on the Law*, 2:403-415, quoted in Post, "Ravishment of Women," 151.

neighboring townships and relate the details of their experience to men of good repute, explain the circumstances of the crime to the hundred reeve, the king's sergeant, the coroners and the sheriff, make appeals at the first county court, have their appeals copied verbatim on the coroners' rolls, and at the general eyre.[19] In cases when a rape victim successfully completed Bracton's steps and the courts convicted her attacker, Bracton declared that the convict would be sentenced to blinding and castration unless his victim agreed to marry him.[20]

Even though *Bracton* was the first legal treatise to comprehensively identify the necessary elements of rape prosecutions, its description of the pre-trial process during Henry III's reign indicates that rape victims faced continued difficulties when attempting to prosecute the men who raped them. By requiring that women complete several demanding and complicated tasks before their trials took place, the secular courts forced rape victims to conclusively prove that they had been raped. In contrast to the significant burden of proof that the courts placed on rape victims, *Bracton* stated that the courts did not require that an accused rapist build a case to invalidate his accuser's testimony. Because the courts did not match the strength of rape victims' testimonies against those of their rapists, the procedures that Bracton described in his legal treatise placed an unprecedented amount of responsibility on rape victims. Therefore, many victims were reluctant to bring their cases to the courts.[21] Although *Bracton* stated that the courts

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[19] Bracton, Bracton *on the Law,* 2:415 quoted in Carter, *Rape in Medieval England,* 95. Carter contributes to Bracton's work by summarizing the pre-trial process into a six-step procedure.

[20] Bracton, *Bracton on the Law,* 2:414-415, quoted in Post, "Ravishment of Women," 151.

[21] The notion that *Bracton's* pre-trial steps deterred rape victims from prosecuting their rapists is extensively discussed in Section V.

interpreted rape as a capital offense, the burden that they placed on female prosecutors demonstrates that during Henry III's kingship, English law was not particularly concerned with facilitating prosecutions and deterring men from committing rape. The courts' high expectations of rape victims moreover, contributed to the numerous obstacles that women faced when prosecuting the men who raped them.

Following Henry III's reign, King Edward I ratified rape laws which seemingly remedied the hardships that rape victims faced when prosecuting men for rape. Unlike his predecessors, Edward codified rape laws through the enactment of legislation. Moreover, he attempted to improve the disorganized status of the local courts by reforming the local court system. Prior to Edward's coronation, English kings customarily sent royal judges from the central courts on circuits to groups of counties to preside over local court criminal prosecutions. By the late thirteenth century however, the rate of litigation increased and the courts became overloaded with cases. Since itinerant judges could not be present at every trial, the traditional circuit system collapsed. In response to these problems, Edward appointed local 'Justices of the Peace' in each county to preside independently over criminal cases when itinerant judges were not present.[22] Since royal judges did not constantly oversee local prosecutions, Edward instituted written laws to maintain central influence over local law enforcement. In order to maintain royal power over the local courts, Edward enacted an unprecedented amount of legislation.

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[22] Trevor Dean, *Crime in Medieval Europe: 1200-1550* (London: Pearson Education Limited, 2001), 7.

In terms of rape laws, Edward's Parliament attempted to translate Bracton's treatise into statutory law under the guise of providing increased legal protection to rape victims. In 1275, Edward ratified the Statute of Westminster I. Within chapter 13 of Westminster I, he defined rape as a crime of trespass against virgins and non-virgins. The statute moreover, declared that the king would prosecute cases when rape victims did not complete their prosecutions within forty days. If a rapist was convicted in either the royal or local courts, he was to be sentenced to two years of imprisonment. Thus Edward's classification of rape as a crime of trespass converted it into an act that was less serious than a felony.[23]

In 1285, a Parliament of Edward's altered Westminster I's classification and punishment of rape by enacting the Statute of Westminster II. Chapter 34 of Westminster II stated that the courts should treat a sexual encounter as rape if the assailant forced the victim to engage in sexual intercourse even if she consented after the act. Furthermore, if a rape victim consented to her assailant's advances after intercourse had occurred, the statute declared that the king should prosecute the case in the royal court.[24] Thus, Edward apparently eliminated two factors that contributed to the difficulties that many rape victims faced when attempting to prosecute their rapists. First, Edward revised Bracton's definition of rape by allowing virgins and non-virgins who were forced into

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[23] *3 Edw. I Stat. Westm. Prim. c.9- 13*, in Hein Online, http://www.heinonline.org/HOL/Page?handle=hein.engrep/realm0001&id=1&size=2&collection=engrep&index=engrep/realm (accessed March 22, 2009). See Appendix for full text of chapter 13 of The Statute of Westminster I.

[24] Carter, *Rape in Medieval England,* 36-40. See Appendix for full text of chapter 34 of the Statute of Westminster II. Also, all citations of the "new rape laws" are references to the rape laws of Westminster II.

unwanted sexual encounters to prosecute men, thereby extending the right of self-representation in rape prosecutions to all women. Secondly, Edward remedied Westminster I's problematic classification of rape as a "quasi-criminal" crime by classifying it as a capital offense.

Because the Statute of Westminster II defined rape as a felony, it technically equated rape with other serious crimes such as theft and homicide. In practice however, the courts continued to treat rape as a crime that was less serious than a felony. The new rape laws therefore did not to remedy the inadequacies of the courts' handling of rape cases. Instead, the courts' faulty application of the stipulations of Westminster II led to increased barriers and deterrents to women seeking to convict the men who raped them.[25] Thorough comparisons of court records before and after Edward's reign verify the problematic nature of the rape laws of Westminster II.

The failure of the rape laws of the Statute of Westminster II to facilitate prosecutions is evidenced by the plight of numerous rape victims who decided against appealing their rapists. Since many medieval rapes involved an abuse of trust or authority by male figures, women often felt that they were not in a position to charge their rapists in the courts.[26] Before Parliament's enactment of Westminster II, courts records indicate a disproportion between the number of appeals for rape and other felonies. While crimes such as homicide made up 25 percent of all recorded felony prosecutions, rape accounted

[25] Dean, *Crime in Medieval Europe*, 82-84.

[26] Dean, *Crime in Medieval Europe*, 85-86.

for only 2 percent.[27] When Westminster II explicitly elevated rape to a capital offense, the number of rape appeals decreased to 0.2 percent of all felonies.[28] Although the statistics might initially convey that the decrease in rape appeals resulted from the deterrent effect of Westminster II's severe punishment of convicted rapists, court records show that judges never actually sentenced rapists to the death penalty. As will be expounded in sections IV, V and VI, further analysis reveals that the low number of rape appeals resulted from women's discomfort with prosecuting rapists under the new laws.

In the few instances when women chose to appeal the men who raped them, judges usually stifled victims' prosecutions by discontinuing cases and/or acquitting defendants. Although Westminster II should have remedied this problem, court records show that before and after its enactment, rape victims were usually unable to convict men of rape. According to historian John Marshall Carter's analysis of local court records from varying towns and cities between 1218 and 1276, the local courts acquitted 76 percent of accused rapists.[29] In the years following the ratification of Westminster II, records reveal that the local courts acquitted an even higher percentage of accused rapists. Historian Barbara Hanawalt's examination of eight counties' court records from 1300 until 1348 reveals that the local courts acquitted 89.7 percent of defendants in rape cases. This statistic indicates that the acquittal rate increased by 13.7 percent in the years

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[27] J.G. Bellamy, *The Criminal Trial in Later Medieval England: Felony before the Courts from Edward I to the Sixteenth Century* (Toronto: University of Toronto Press Inc., 1998), 169. Although rape was not a felony before 1285, the author counted rape as a felony. Therefore, he implies that if rape had been a felony, it would have only counted for only two percent of all felonies.

[28] Hanawalt, *Of Good and Ill Repute*, 132. This statistic came from Hanawalt's survey from eight counties from 1300.1348.

[29] Carter, John M. "Rape and medieval English society: the evidence of Yorkshire, Wiltshire, and London, 1218-76," *Comitatus* 13 (1982): 45.

following the ratification of Westminster II.[30] Furthermore, according to the Statute of Westminster II, the royal court had a responsibility to continue a rape victim's prosecution in the event that the local courts arrested her for false appeal or she failed to attend her rapists' trial. Before Edward's reign, the local courts consistently prosecuted discontinued rape cases.[31] In the years following the enactment of Westminster II however, the royal court occasionally refused to prosecute cases that were discontinued by plaintiffs thereby increasing opportunities for rapists to be acquitted without standing trial. In the cases that the royal court actually prosecuted, judges acquitted 84 percent of accused rapists.[32] Because local and royal prosecutions produced extremely low conviction rates, rapists had little to fear when entering the courtroom. Therefore, Westminster II did not adequately deter potential rapists. Moreover, the royal and local courts' frequent abandonment of cases evidences Westminster II's inability to facilitate prosecutions. Because the courts often arrested plaintiffs for false appeal, failed to prosecute cases that Westminster II assigned to them, and excessively acquitted accused rapists, rape victims encountered numerous barriers when attempting to prosecute men for rape.[33]

In addition to low conviction rates, the royal and local courts' light punishment of convicted rapists also elucidates Westminster II's failure to deter potential rapists. Prior

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[30] Barbara A. Hanawalt, *Crime and Conflict,* 59. Hanawalt did not calculate the difference in acquittal rates before and after Westminster II. The author of this thesis calculated this percentage by comparing John Marshall Carter and Barbara Hanawalt's statistics.

[31] Carter, "Rape in Medieval England," 97.

[32] Kittel, "Rape in thirteenth-century," 108.

[33] In sections III, IV, V and VI, I prove that false appeal arrests, acquittals and discontinuation of cases usually resulted from technical, not substantive issues. Therefore, in these instances, judges disregarded the possibility that the plaintiff's testimony was truthful.

to 1275, Bracton stated that rape (which only applied to cases in which the assailant forced intercourse on a virgin) ought to be punishable by loss of life or blinding. In 1285, the Statute of Westminster II confirmed Bracton's punishment for rape by declaring that convicted rapists should be punished with execution.[34] Although *Bracton* and Westminster II prescribed harsh punishments for rape, the courts consistently sentenced convicted rapists to lighter penalties. Despite a solitary incident in 1222, English court records do not report a single instance of a rape conviction with a sentence of mutilation before or after the enactment of Westminster II. Instead of sentencing convicted rapists to the prescribed punishment, the courts usually forced them to pay a low monetary fine to the king and/or victim or encouraged the victim to marry her rapist. In the next sections, the reasons why jurors failed to implement the punishments set forth in Westminster II's rape laws will be explicated. [35] In the cases that rape victims prosecuted during the years before and after the enactment of Westminster II, the harshest punishment that the courts sentenced a convicted rapist to was imprisonment. Furthermore, judges only prescribed a short length of imprisonment (less than two years) to the small minority of convicted rapists who received this punishment.[36] By disregarding the penalty that Westminster II set for convicted rapists, the royal and local courts ignored the new rape laws' categorization of rape as a felony. Instead, they treated rape as a minor offense. Thus, the courts showed that they would not harshly punish men for committing rape.

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[34] Carter, *Rape in Medieval England,* 38-40.

[35] Post, "Ravishment of Women," 152.

[36] Kittel, "Rape in thirteenth-century," 108. This is important because the Statute of Westminster II called for 2 years imprisonment.

II

By all appearances, it would seem that changing rape into a felony and thus increasing the severity of its punishment signified an effort on Edward's part legally to protect to his subjects. As a result of his modification of English rape laws, Edward's legislation should have secured harsh punishments for convicted rapists, facilitated prosecutions and presented a deterrent to potential rapists. However, as previously discussed, the rape laws of Westminster II did not accomplish these objectives. Scholars such a J.B. Post have utilized a one-dimensional approach to identify the reasons for jurors and judges' failures to apply the provisions of Westminster II to rape prosecutions. Post validly claims that Edward's ratification of Westminster II does not necessarily imply that Edward was concerned with the emotional and physical injuries that resulted from rape. Instead, Post states that Edward passed Westminster II with the purpose of enabling the royal court to lower the rate of elopement, thereby limiting the financial and social harm that unacceptable suitors inflicted on familial patriarchs. Post argues that Edward enacted the forty-day clause of chapter 34 so that the royal court could prosecute cases of elopement under the new rape laws by claiming that it could prosecute men for rape even when the woman consented after the sexual act occurred.[37] However, in order comprehensively to discuss the problems associated with Edward's rape laws, a multi-dimensional method of explaining his purposes for passing legislation must be adopted. An analysis of the text of Westminster II reveals that although Edward did ratify chapter 34 to limit elopement, his reasons for doing so were multifaceted. An exploration of

[37] The way that the royal court could manipulate the forty-day clause to prevent elopement is further explained on page 32.

Edward's tangible and intangible purposes for enacting Westminster II proves that he endorsed chapter 34 for reasons that were more complex than simply limiting elopement. Although chapter 34 did allow the royal court to limit elopements, Edward actually ratified chapter 34 to slowly achieve his goal of unifying the English court system. Moreover, Edward could not unify the court system without gaining the respect and support of his male subjects. Thus, he also enacted chapter 34 because it made him appear as if he was concerned primarily with protecting his male subjects from the physical, financial and social problems that resulted from rape.[38]

According to *Bracton,* kings were supposed to defend the peace of the people, prevent rapacity and oppression, and do justice impartially and mercifully. At Edward's coronation, he built upon the traditional oath of kings by swearing to preserve the rights of the crown.[39] By adding this statement to his oath, Edward publicly emphasized his commitment to serve as a law-loving king. The content of his oath moreover, proves that he was not solely interested in possessing and carrying out the expected qualities of kings. He was also deeply aware of the importance of the public's judgment of his actions. Unlike Edward's predecessor, Henry III, who was criticized by the English people for his extreme feebleness, Edward sought to gain the respect and admiration of his subjects and demonstrate that he was a strong king.[40] Edward's purposes for proving himself as a great king however, ran deeper than his desire to set himself apart from his predecessor. Ultimately, he could not accomplish his goals for the future of England

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[38] The specific problems that resulted from rape will be discussed throughout this chapter.

[39] Michael Prestwich, *Edward I* (London: Methuen London Limited, 1988), 90-91.

[40] L.F. Salzman, *Edward I* (London: Constable & Company Ltd., 1968), 199.

without the trust of his subjects. Prior to Edward's reign, the central government did not have a substantial amount of control over the English legal system. When Edward began his kingship, he was passionate about centralizing and reforming the courts. Edward therefore sought to create a uniform body of law that could grow and develop over time. In order to accomplish this goal, he created a system of substantive law and defined the rights and duties of subordinate courts. Nevertheless, if the English people viewed Edward as a weak king, the other members of Parliament would not be receptive to his desire to transform the legal system. Thus, Edward could not control legislation unless he proved that his primary concern was the protection of his subjects.[41]

To gain public support, Edward enacted statutes that made him appear as if he was fulfilling the aforementioned duties of kings. In order to assume power over lawmaking, Edward became influential in the legislation process. By encouraging the enactment of certain statutes, the process of legal uniformity progressed at a slow pace. Instead of shocking his subjects with an immediate overhaul of the legal system, Edward gradually altered English law. He was therefore able to avoid the opposition that inevitably would have resulted from premature action while simultaneously centralizing England's legal system.[42] Specifically, Edward's statutes on criminal law appeared to

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[41] Edward Jenks, *Edward Plantagenet: The English Justinian* (New York: G.P. Putnam's Sons, 1901), 201-218; Salzman, *Edward I*, 195. Edward I's motives for instituting a uniform system of law are a subject of debate. Historians such as Edward Jenks argue that the king wanted a strong central court so that he could have a monopoly on the competitive and profitable business of judicature. According to Jenks' logic, Edward I wanted to gain more revenue by removing jurisdiction over certain cases from the canonical courts. However, Jenks also claims that Edward I wanted to gain more control to prevent local courts from submitting to corruption. Also, historian L.F. Salzman claims that Edward I centralized the court system to establish supremacy over nobles.

[42] Jenks, *Edward Plantagenet*, 218.

provide protection to his weak and innocent subjects.[43] By increasing the severity of punishments for convicted felons, Edward was able to convince the English people that he believed that deterring potential criminals and aiding those who were injured as a result of crimes was of the utmost importance.

In addition to the effect of his legislation on pubic opinion, the statutes themselves gave Edward control over England's legal system. Edward's main instrument of legal change was the enactment of statutes because they produced constant and long-standing laws. In seventeenth century English jurist Sir Edward Coke's discussion of the mention of "establishments" in the introduction to Westminster I, he describes Edward's purposes for ratifying statutes,

> Statutes made in the raigne of this king may be styled by the name of establishments, because they are more constant, standing and durable laws, then have been made ever since; so as King Edward I, who…may well be called our Justinian.[44]

By creating eternal laws, Edward unified all of his subjects under the same codification. Edward moreover, used Parliament to restructure England's method of lawmaking in a manner that allowed him to position himself as chief legislator.

Although Edward passed legislation to gain the support of his subjects and centralize the legal system, the complexities of his legislation reveal that he was

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[43]Nathan Isaacs, "The Statutes of Edward: Their Relation to Finance and Administration," Michigan Law Review 19, no. 8 (June 1921): 813, http://www.jstor.org/stable/1277374?&Search=yes&term=Isaacs&term=I&term=Edward&list=hide&searchUri=%2Faction%2FdoBasicSearch%3FQuery%3DIsaacs%2BEdward%2BI%26gw%3Djtx%26prq%3DIsacs%2BEdward%2BI%26Search%3DSearch%26hp%3D25%26wc%3Don&item=2&ttl=4016&returnArticleService=showArticle (accessed January 20th, 2009).

[44] Sir Edward Coke, *Institutes of the Laws in England* (Buffalo, W.S. Hein Co., 1986), 156, quoted in Isaacs, "The Statutes of Edward," 804.

concerned with presenting the appearance that he advocated for the justice of his subjects under English law. However, he was uninterested in actually protecting his female citizens. As discussed in section I, although chapter 34 of the Statute of Westminster II seemingly protected rape victims' right to convict their rapists, its provisions did not effectively eliminate the pre-existing barriers that women faced when attempting to prosecute men for rape. A thorough analysis of Westminster II's forty-day clause and phraseology confirms that Edward enacted the new rape laws to centralize the court system and appear to be a protector of his male subjects' interests but not to actually facilitate prosecutions or deter rapists.

The intricacies of the forty-day clause in chapter 34 of Westminster II prove that Edward enacted statutes to increase public support of his policies. As previously discussed, Edward enacted the Statute of Westminster I in 1275. According to Westminster I, the royal court would prosecute rape cases if the victim did not complete her suit within forty days. Ten years later, he passed the Statute of Westminster II, which confirmed the forty-day clause and declared that the royal court would also prosecute cases where a woman consented to a forced sexual encounter after it had occurred.[45]

Edward was able to control the occurrence of feuds between families involved in local court disputes by adding the forty-day clause to chapter 34 of Westminster II. Even though rape victims were physically and emotionally injured by their rapists, victims' families often felt that they were also injured parties. Since medieval English women typically lived under the authority of their parents or husbands, their guardians viewed

[45] Post, "Ravishment of Women," 150. See appendix for full text of chapter 34 of the Statute of Westminster II.

them as property. Therefore, when a woman was raped, her father or husband usually felt that the rapist had unlawfully damaged his property.[46] In many cases, rape victims' husbands or fathers would physically or verbally threaten their daughters' or wives' rapists. Consequently, victims' families' threats would commonly provoke rapists into delivering aggressive responses, thereby engaging both parties in a feud.[47] Since the local courts took a great deal of time to prosecute accused rapists, feuds often escalated to highly aggressive levels.[48] By implementing the forty-day clause, Edward gave the royal court the opportunity to control the amount of time that the local courts could spend on rape prosecutions. Edward's ability to transfer local court cases to the royal court after forty days ensured fast and spontaneous legal action thereby limiting the intensification of feuds.[49] Also, the forty-day clause granted Edward the power to remedy what he believed was a disorganized legal tradition. As a result, Edward appeared as a strong ruler who was committed to ensuring that rape victims could convict the men who raped them. By granting the royal court the right to prosecute rape cases, Edward was able to seem as if he was personally interested in the welfare of rape victims' families. Furthermore, the forty-day clause probably had an effect on the opinions of men who were not associated with rape cases because it allowed Edward publicly to convey that he

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[46] When virgins were the victims, the authority was the victims' fathers. In rape of married women, the husband was the guardian.

[47] Dean, *Crime in Medieval Europe,* 84.

[48] Pollack and Maitland, *The History of English,* 2: 490.

[49] Pollack and Maitland, *The History of English,* 2:587. Also, let this be noted for the rest of the thesis: this paper refers to the king, Edward I as the individual who "delivered verdicts" with regard to his motivations to enact the Statute of Westminster II. Although Edward I did not personally reach verdicts for rape cases, he called on his justice to do this. We can say that Edward I, as the king, came to the verdicts because the king's justices were considered an extension of his personal beliefs. According to F.W. Maitland, Edward I's justices were obedient servants of his will.

was committed to bringing justice to his male subjects. Without the support of his male subjects, Edward would not have appeared to be a strong king and therefore would not have been able to control parliament. Even though the protection of women was not in itself a major concern of the English people, men were concerned with the physical effects of potential feuds that resulted from rapes. Thus, by acting as if he were personally interested in securing the conviction of rapists, Edward showed his male subjects that he intended to protect their interests. Thus, through chapter 34, Edward was able to gain the public support that he needed to continue his reformation and unification of England's legal system. Through his enactment of the forty day clause, Edward therefore appeared as if he was fulfilling the "duties of kings."

The forty-day clause also allowed Edward to gain public support because it enabled the royal court to limit competition among the local courts. During the thirteenth and fourteenth centuries, local court judges had strong incentive to hear cases because they derived much of their income from fees paid by litigants. Since plaintiffs chose the local court where their cases would be prosecuted, judges often exhibited pro-plaintiff biases to lure litigants to their courtrooms. In order to compete for litigation fees, the surrounding local courts frequently responded by reaching a disproportional number of verdicts in favor of plaintiffs. Parliament therefore attempted to solve the problem of competition among local courts by enacting legislation that constrained the development of excessively pro-plaintiff verdicts.[50] By enacting the forty-day clause, the royal court

[50]Daniel Klerman, "Jurisdiction Competition and the Evolution of the Common Law: An Hypothesis," in *Boundaries of the Law: Geography, Gender and Jurisdiction in Medieval and Early Modern Europe* ed. Anthony Musson (Burlington: Ashgate Publishing Company, 2005), 150-159.

was able to acquit the defendants in many of the rape cases that it prosecuted. Thus, the royal court could single-handedly counter the local courts' pro-plaintiff bias. Although the local courts had not previously expressed a pro-plaintiff bias in rape prosecutions, the new rape laws gave the royal court the ability to lower the number of guilty verdicts in overall crimes. As a result, Edward appeared as if he was deeply interested in eliminating corruption in the local courts. In addition to presenting himself as a just ruler, he was able to show his male subjects that he was personally concerned with eliminating the problems that resulted from the local courts' pro-plaintiff biases thereby proving himself as a great king. By presenting himself as a righteous ruler, he was able to gain the trust of his people.

Edward was also able to employ the forty-day clause to gain central control over rape prosecutions. By including the forty-day clause in the new rape laws, the local courts became subjected to the will of the royal court. Although local courts did not have to relinquish rape cases until forty days had passed, the statute provided a connection between the royal and local courts. Prior to 1285, the regularity of royal court judges who passed through district courts steadily decreased.[51] Therefore, the local courts were not usually forced to explain their behavior to a higher court. Through the rape laws of Westminster II however, Edward was able to forge a permanent association between the two courts thereby, establishing royal authority over local court rape prosecutions.

Although the forty-day clause allowed Edward to increase his control over the local courts and express his apparent interest in eliminating the problems that resulted

[51] Dean, *Crime in Medieval Europe*, 13.

from rape by acting as if he was personally concerned with preventing the feuds that resulted from rape, the royal court did not practically apply this sentiment to the cases that it was supposed to prosecute. The text of Westminster II provided rape victims with the promise of continued prosecution of their rapists when the local courts took more than forty days to prosecute their cases. In actuality, royal court judges rarely convicted men for rape. As mentioned in section I, in 84 percent of rape prosecutions that were brought to the royal court, judges acquitted defendants. Royal judges also abandoned many cases that the forty-day clause required that they prosecute.[52] If Edward had been concerned with the practical effectiveness of Westminster II, he would have either ensured that royal judges adhered to its tenets or included provisions that prevented judges from disregarding their responsibilities. Royal judges' discontinuation of many rape cases and acquittal of the vast majority of accused rapists therefore demonstrates that Edward did not ratify the new rape laws with the purpose of ensuring that rape victims could convict men of rape.

In the few cases when the royal court delivered guilty verdicts to rapists moreover, royal judges never sentenced rapists to the punishments prescribed by Westminster II. Instead, judges usually required that rapists pay an arbitrary monetary fine to the Crown and rape victim. In some cases when royal judges delivered guilty verdicts, Edward substituted freedom for punishment by selling pardons to convicted rapists.[53] Thus, Edward was able to utilize the forty-day clause to gain income. Further,

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[52] Kittel, "Rape in thirteenth-century," 108.

[53] Post, "Ravishment of Women," 155.

the royal court's light sentencing of convicted rapists and Edward's willingness to accept pardons eliminated Westminster II's deterrent effect. Since men knew that rape cases which were prosecuted by the royal court would probably result in light penalties, Edward's legislation did not discourage them from committing rape. The ability of royal judges to frequently pardon and lightly sentence rapists shows that Edward was unconcerned with facilitating rape prosecutions and therefore was uninterested in ensuring that the forty-day clause practically eliminated the feuds that resulted from rapes.

The royal court's treatment of rape victims in the cases that it prosecuted under chapter 34 of Westminster II further demonstrates Edward's purposes for passing the new rape laws. According to chapter 12 of the Statute of Westminster II, when plaintiffs' cases resulted in acquittals, the courts would charge the plaintiff with "false appeal." As a punishment for false appeal, chapter 12 stated that plaintiffs should be sentenced to one year of imprisonment and payment of damages to the defendant and king. The statute also declared that people who committed false appeal would be penalized because false appellors had an obligation to compensate the defendant for the infamy that they had brought upon an innocent person. Although this stipulation was not included in Westminster II's rape law chapter, the royal courts applied its punishments to all criminal cases, including rape.[54]

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[54] *13 Edw. I Stat. Westm. Sec. c.11-14*, in Hein Online, http://www.heinonline.org/HOL/Page?handle=hein.engrep/realm0001&id=1&size=2&collection=engrep&index=engrep/realm (accessed March 22nd, 2009). See Appendix for full text of chapter 12 of the Statutes of Westminster I. Chapter 12 of Westminster II was not the "rape law chapter" as previously referred to. This is a different chapter from Westminster II which included laws that were to be applied to all cases, including rape.

Initially, Edward enacted chapter 12 to punish plaintiffs from bringing malicious appeals to the courts.[55] This clause however, was problematic in rape cases that were prosecuted by the royal court under the forty-day clause. Since the royal court excessively acquitted accused rapists based on technical, but not substantive matters, judges sentenced many rape victims to imprisonment and payment of monetary fines. The notion that rape victims could be punished for their own rapes signifies Westminster II's failure to facilitate rape prosecutions. Furthermore, the risk of punishment serves as one explanation for the relatively low number of rape appeals in the English courts. Because the royal court could punish rape victims whose rapists were acquitted, many victims felt deterred from appealing rapists. In addition to the highly unlikely possibility that victims would be able to convict their rapists, they faced the risk of imprisonment and mandatory payment of fines.[56] Many women therefore probably refrained from appealing their rapists in the courts. Edward moreover, was able to profit from acquittals. Since the royal judges acquitted a higher percentage of plaintiffs in rape cases than other felonies, Edward received a substantial amount of monetary compensation for false appeals from rape prosecutions. Thus, by allowing judges to apply chapter 12 to the rape cases that the forty-day clause afforded to the royal court, Edward was able to gain income. Furthermore, the courts arrested many rape victims on account of technical mistakes that were unrelated to the truth of the crime.[57]

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[55] Pollack and Maitland, *The History of English,* 2:539.

[56] Refer back to section I for rape prosecution statistics for clarification.

[57] A discussion of false appeal arrests that were based on technical matters can be found in section V.

The physical time constraints of the forty-day clause also hindered rape victims' ability to convict their rapists. Although the forty-day clause made Edward appear as if he were interested in protecting male heads of families' by securing fair trials for his female subjects, its application in the royal court had the opposite effect. During the thirteenth and fourteenth centuries, England did not have an organized and efficient road system. Defendants and plaintiffs therefore needed a lengthy period of time to travel from their homes to the courthouses. Litigants also could not appoint their attorneys until they appeared in court.[58] Consequently, a rape victim could only discuss her case with her attorney between the time that she arrived at the courtroom and before the start of her rapist's trial. Thus, the courts were not necessarily at fault for allowing lengthy pre-trial periods. In actuality, long pre-trial periods were important elements of a fair trial. By restricting the amount of time that the local courts could spend on rape prosecutions, Edward did not give litigants the freedom to utilize England's local courts before he passed their cases onto the royal court. Although Edward was able to gain control over the subordinate courts by implementing the forty-day clause, he limited rape victims' ability to conduct the lengthy trials that were essential to ensuring that rape victims could convict their rapists in their local courts. Thus, his laws presented problems for his male subjects who advocated for the prevention of feuds.

Edward's purposes for enacting the Statute of Westminster II are also revealed by the phraseology of chapter 34. During Edward's reign, male heads of families were becoming increasingly concerned with the problems that arose from elopement.

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[58] Pollack and Maitland, *The History of English*, 2:591-592.

Thirteenth century English fathers customarily arranged their daughters' marriages. Since fathers controlled marriage agreements, they viewed their daughters' fate as family property.[59] In many cases when a woman wanted to marry a man of whom her family disapproved, the couple would elope and marry without familial consent. By eloping, women could bypass their fathers' claims to their marriage choices. The possibility that women could choose their own husbands however, threatened the financial and social interests of family patriarchs. Because men considered non-virgins to be unviable marriage prospects however, fathers often felt compelled to protect their daughters' futures' by accepting marriages that resulted from elopements. Hence, if a woman eloped with a man from a lower social class, her father would often feel obligated to let an unacceptable suitor into his family and provide him access to his daughter's inheritance.[60] Besides the problematic nature of social class differences in cases of elopement, families often felt dishonored by men who eloped with their daughters. As a result, brides' families often engaged in feuds with their husbands' families.[61] Thus, one reason why Edward enacted Westminster II was probably to protect the financial interests of family patriarchs from unacceptable suitors and to prevent aggressive feuds.

The Statute of Westminster II's felony clause made the rape of a woman a capital offense even if she consented 'afterwards'. In cases when a woman eloped with a man of a lower social class, as previously mentioned, the woman's father felt compelled to allow the marriage to occur because he knew that his daughter would have difficulty finding a

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[59] Dean, *Crime in Medieval Europe,* 83.

[60] Bellamy, *The Criminal Trial,* 166.

[61] Pollack and Maitland, *The History of English,* 2:490.

husband as a non-virgin. The forty-day clause, however, stated that even if a woman consented to a sexual act after the act occurred, the royal court could prosecute her husband for rape. Thus, if a woman eloped with a man from a lower social class, her father could pressure her to dissolve her marriage by claiming that her husband had raped her. Edward therefore provided male heads of families with a way to eliminate the problems that resulted from unacceptable marriages without tarnishing their daughters' reputations.

According to historian J.B. Post, the 'afterwards' clause served to accomplish three other objectives. First, the statute limited proof of intention to rape to established fact. Second, it allowed the royal court to prosecute rape cases after forty days even if the plaintiff eventually consented to the act. Third, the forty-day clause allowed the royal court to dissolve unacceptable marriages. Prior to the enactment of Westminster II, cases that involved marriage issues were under the jurisdiction of the ecclesiastical courts. In the ecclesiastical courts, judges often discouraged the dissolution of marriages. Westminster II therefore, gave the royal courts jurisdiction over cases of elopement and the ability to encourage the dissolution of unacceptable marriages.[62] Post however, does not identify the public effect of Edward's efforts to limit elopement. By taking control of the problems associated with elopement, Edward probably gained the support of many of his male subjects. Since Westminster II allowed the royal court to intervene in cases of elopement, Edward was able to show his male subjects that he was interested in

[62] Post, "The Ravishment of Women," 158.

preventing the financial, physical and social damages that often resulted from elopements.

Even though the new rape laws indicated that Edward had a stake in preventing elopement, the effect of the use of the word 'afterwards' in matters of consent in rape cases proves that he was unconcerned with employing the new rape laws to facilitate prosecutions or deter men from committing rape. By all appearances, Westminster II successfully eliminated the court's encouragement of marriages between rapists and their victims. Although the new rape laws thwarted ecclesiastical courts efforts to pressure rape victims to marry their rapists, the secular courts continued to persuade litigants to marry. Because the royal court prosecuted cases when the plaintiff consented to the act 'afterwards,' elopements between men and women from different social classes could be terminated. This practice however, was not extended to cases when litigants were from similar social classes. [63]

Furthermore, by incorporating cases of elopement into rape law, Edward diminished rape to the less serious act of unacceptable marriage. By transforming the law of rape into one of abduction and elopement, Edward diminished the legal severity of rape. Moreover, Westminster II's transfer of the courts' focus to the families instead of plaintiffs led royal court judges to disregard the plight of rape victims. Because the emotional and physical experience of rape victims was not the courts' main concern, judges did not treat rapists as felons. Consequently, women who were sexually assaulted probably refrained from appealing their attackers because they believed that the courts would not recognize the severity of their injuries. It is also likely that many rape victims

[63] Kittel, "Rape in thirteenth-century," 105.

decided against appealing their rapists because victims knew that the courts would not view their experiences as worthy of the loss of their attackers' lives, as per the punishment prescribed by Westminster II.

Through Westminster II's rape laws, Edward was able accomplish his objectives by presenting himself as a ruler who was interested in protecting the interests of his male subjects through efficient and harsh punishment of sexual abusers. Also, chapter 34's 'afterwards' clause made Edward appear as if he was deeply concerned with the financial, physical and social fate of his male subjects. Since Westminster II allowed the courts to prosecute cases in which the defendant consented afterwards, Edward was able to prove that he was committed to protecting male heads of families from the dangers associated with elopement. Meanwhile, the text of the rape laws of Westminster II allowed Edward to control rape prosecutions and forge a strong connection with the local courts thereby granting himself the ability to centralize the English court system. In the royal court's practical application of the rape laws of Westminster II however, judges did not fully implement its tenets. Thus, Edward accomplished his purposes at the cost of facilitated prosecutions for rape victims and prevention of rape. Even though chapter 34 of Westminster II seemingly protected English women and therefore protected the interests of Edward's male subjects, the royal court's practical application of its rape laws reveals that it was not designed to prevent rape or enforce rape victims' right to convict their rapists.

III

In the years prior to Edward's coronation, local court judges allowed jurors to reach verdicts that were based on personal opinions instead of substantive matters of law.[64] Westminster II however, implicitly stated that in rape cases, jurors should derive their verdicts solely from the facts of crimes. It read, "if a Man from henceforth do ravish a Woman, married, Maid, or other, where she did not consent, neither before nor after, he shall have Judgment of Life and of Member."[65] By clearly identifying the illegal and felonious aspects of rape, Westminster II provided jurors with guidelines that they were supposed to follow when deciding whether or not to convict men of rape. Furthermore, Westminster II's definition of rape should have compelled jurors to refer to statutory law when reaching verdicts. Kittel proves, however, that in rape cases, local court jurors continued to cite their impressions of plaintiffs' reputations when they acquitted defendants. Although Kittel's claim is valid, her argument is incomplete because it does not identify the ways that jurors bypassed Westminster II's laws. This section shows that jurors were able to ignore Westminster II's rape laws only *because* Edward did not ensure that trained professionals perform authoritative checks on jurors' behavior in prosecutions of all types of crimes. An examination of this cause-and-effect relationship further explicates and confirms Post's claim that Edward was responsible for the inadequacies of Westminster II. This also reveals the complimentary elements of

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[64] Dean, *Crime in Medieval Europe,* 12.

[65] *13 I Stat. Westm. C. 31-34,* Hein Online. For full text of chapter 34 of the Statute of Westminster II, see the appendix to the thesis.

Post's and Kittel's arguments. More importantly, this section firmly establishes that jurors consciously *chose* to capitalize on the inherent weaknesses of Westminster II.

As previously discussed, Edward allowed professionally trained 'Justices of the Peace' to hold regular court sessions and prosecute cases without the presence of royal judges.[66] In practice, however, Justices of the Peace usually neglected their responsibilities to monitor jurors' behavior and oversee jurors' verdict rendering processes.[67] Hence, Justices of the Peace were often unaware of the facts of cases or strength of plaintiffs' testimonies.[68] Consequently, jurors' deliverance of gender-biased verdicts went unquestioned by higher authorities.

Because Justices of the Peace did not require that jurors adhere to statutory law, Justices of the Peace enabled jurors to consider the opinions of other men before reaching verdicts. In prosecutions of felonies, after a local court selected the jury members for a criminal case, the Justice of the Peace gave jurors at least two weeks to inquire about the facts of the alleged crime. During this pre-trial period, jurors also became familiar with previous cases that were similar to the one that the court had assigned to them. Because jurors were knowledgeable about the details and precedents of the case before the trial, Justices of the Peace treated them as witnesses. Although jurors were not firsthand witnesses, the results of their inquiries were supposed to represent the accounts of individuals who were present when the crime occurred. The classification of jurors as witnesses in all types of cases, however, was problematic because jurors' interpretations

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[66] Dean, *Crime in Medieval England,* 7.

[67] Pollack and Maitland, *The History of English,* 2:655-659.

[68] Dean, *Crime in Medieval Europe,* 11.

of the facts of crimes were based on hearsay. Since jurors based their judgment of the "truth" of a case on other men's versions of events, their decision-making processes were vulnerable to the influence of biased and unsubstantiated reports.[69]

Although the influence of hearsay on jurors' interpretations of the facts of crimes negatively affected many types of prosecutions, rape trials were particularly susceptible to the problems that arose from the tradition of jurors acting as witnesses. While Westminster II clearly defined the illegality of rape, its laws failed to protect rape victims' appeals from the influence of false information. Since Westminster II did not limit the role that hearsay played in the pre-trial process, rape victims' cases could be destroyed by the opinions of other individuals.[70] Because medieval English men typically believed that rape victims either manipulated their assailants into raping them or secretly desired to be raped, unconfirmed reports regarding the truth of rape cases usually favored defendants.[71] Even though Westminster II seemingly facilitated prosecutions by confirming rape victims' right to appeal the men who raped them, Edward's failure to prevent jurors from basing their decisions on hearsay, which was usually damaging to rape victims' appeals, almost certainly ensured that in rape prosecutions, local court jurors would not solely consider the true facts of cases.

Rape victims' attempts to convict the men who raped them were also hindered by the courts' requirement that jurors reach unanimous verdicts. During the thirteenth and

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[69] Pollack and Maitland, *The History of English,* 2:647.

[70] Specific ways in which men tarnished women's reputations are discussed in Section VI.

[71] Carter, *Rape in Medieval England,* 155-156. Section V conclusively proves that most thirteenth century English men discriminated against women. Moreover, it shows that English men's prejudices towards women took on a uniquely biased interpretation of rape victims' motives and desires.

fourteenth centuries, verdicts were considered "proof" of the occurrence of a crime because litigants entered trials under the agreement they would be bound by the jury's decision. Since the verdict signified the final step to proving conclusively whether or not a defendant was guilty, it represented the "opinion of the country." Thus, the role of the jury was to agree on a communal verdict that adequately spoke for the entire nation. In order to arrive at a verdict that people would view as collective and unquestionably accurate, the courts encouraged jurors to reach unanimous decisions. Although unanimity was easily produced, the pressure that Justices of the Peace put on jurors to reach accordant decisions often resulted in verdicts that were not derived from factual evidence. Because the courts had the right to punish jurors who dissented from the rest of the jury, jurors often felt pressured to assent to majority opinion. If the majority of jurors wanted to acquit a defendant and one juror advocated for conviction, the Justice of the Peace could dismiss the lone juror from the case. If a lone juror refused to agree with the other jurors' decision, the Justice of the Peace could also order the lone jurors to pay a monetary fine to the court. Thus, jurors who agreed with the majority of their fellow jury members could refer to the punishments for disagreeing with the rest of the jury to silence dissenting jurors. Many jurors therefore abandoned their commitment to discovering the true facts of crimes and altered their decisions.[72]

Because jurors often felt obligated to assent to the opinions of the other members of the jury, they considered local expectations when deciding cases.[73] Prosecutions of

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[72] Pollack and Maitland, *The History of English,* 2:624-627.

[73] Dean, *Crime in Medieval Europe,* 11-12.

crimes that were gender specific were particularly vulnerable to the subjective nature of jurors' verdict rendering processes. Primarily, jurors considered the genders of the plaintiffs and defendants when reaching their verdicts.[74] In all rape cases, women were the plaintiffs and men were the defendants. As will be discussed in section IV, most male jurors believed that women should not be entitled to prosecute men for rape.[75] Since the majority of men possessed this opinion, juries could silence the voices of jurors who wanted to rely on true facts when deciding rape cases.[76]

Since Westminster II did not include provisions to prevent the problems associated with unanimous verdicts in all types of cases, it could not sufficiently protect plaintiffs from the biased attitudes of male jurors.[77] Westminster II's failure to prevent jurors from filtering their discriminatory attitudes towards women through their verdicts probably deterred many rape victims from appealing their rapists. Because women knew that jurors could rely on personal prejudices instead of statutory law when deciding cases, many rape victims were probably reluctant to prosecute the men who raped them. Thus, in order to facilitate rape prosecutions and prevent rape, Edward would have had to enact legislation that restricted jurors' opportunities to reach biased verdicts.

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[74] Dean, *Crime in Medieval Europe*, 12-13.

[75] Kittel, "Rape in thirteenth-century," 101-102. Ruth Kittel proves that local court jurors acquitted rapists because they wanted to silence women's right to represent themselves in rape prosecutions. Section IV explains why men were resistant to the idea that women could prosecute the men who raped them. Sections V and VI demonstrate the ways that jurors discriminated against rape victims. These sections also confirm and expand Kittel's argument.

[76] For the rest of the thesis, the term "jury corruption" refers to jurors' disregard for statutes and rendering of verdicts that were not grounded in the facts of crimes.

[77] The notion that most men discriminated against women is further explained in section IV.

Because Edward did not include provisions to prevent the problems that resulted from unanimous verdicts and the absence of authoritative checks on jurors' decisions, he was unable to thwart local court jurors' attempts to convey their prejudices towards women through rape prosecutions. Since the rape laws of Westminster II did not restrict jurors from filtering their prejudices towards women through their verdict rendering processes, rape victims usually were unable to secure judgments that were based on factual matters of law. Consequently, in order to prosecute their rapists, victims had to subject themselves to the discriminatory nature of collective verdicts and gender-biased jurors. Because women were aware of the dangers of facing jurors who had the power to ignore statutory law, many rape victims probably believed that prosecuting their rapists would have been a futile endeavor.[78] This mindset might explain the alarmingly low number of rape victims who appealed their rapists in the local courts. Local court jurors were partially responsible for the ineffectiveness of Westminster II's rape laws because they chose to disregard Westminster II's definition of rape and replace it with their own versions of procedural law. If Edward had included safeguards to ensure that local court jurors would rely on statutory law when deciding rape cases, however, he could have restricted jurors from acquitting rapists and deterring victims from appealing the men who raped them. Because Edward essentially allowed local courts jurors to disregard statutory law, he was also responsible for Westminster II's inability to facilitate prosecutions and prevent rape.

[78] Here, women faced "dangers" when prosecuting rapists. If the jurors acquitted the defendant, the plaintiff could be arrested for false appeal.

IV

Throughout Kittel's argument, she cites outcomes of rape prosecutions such as low conviction rates, high false appeal arrest rates, and high acquittal rates to prove that men were unwilling to accept the idea that women could independently prosecute men for rape.[79] Kittel, however, does not address the broader societal attitudes that motivated jurors to discriminate against rape victims. This section identifies the complex reasons for jurors' exploitation of the weaknesses of Westminster II. In addition to confirming and expanding Kittel's claim, this discussion identifies the complex and devastating results of Edward's lack of concern for the facilitation of prosecutions and prevention of rape. Even though Edward was able to protect some families' patriarchs' financial, social and physical interests by ratifying the forty-day and 'afterwards' clauses, local jurors refused to implement Edward's rape laws in local court prosecutions because chapter 34 also stated that women could prosecute men for rape. As this section establishes, men were unwilling to embrace the idea that women could convict men of rape. Thus, regardless of Edward's contributions to his male subjects through his enactment of the forty-day and 'afterwards' clauses, many local court jurors refused to adhere to Edward's laws when they decided rape cases.

During the thirteenth and fourteenth centuries, the Christian Church's misogynistic interpretation of the story of Adam and Eve taught English men that women were lustful, evil, manipulative and sinful creatures. According to the Old Testament, when God produced Adam (the first human), he charged him with the task of watching

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[79] Kittel, "Rape in thirteenth-century," 101-111.

over a garden. God told Adam that he could eat from anything in the garden except fruit from the Tree of Knowledge. Adam realized that he needed help overseeing the garden, but he could not find a suitable helper among the other animals. Thus, God caused Eve to spring from Adam's rib. While Adam and Eve were working in the garden, a serpent tempted Eve to eat an apple from the Tree of Knowledge. Then, Eve convinced Adam to eat the fruit as well. When God learned that Adam and Eve had broken his command, he sentenced them to hard labor, banishment from the garden and painful childbirth.[80]

Although Adam and Eve ate from the Tree of Knowledge, the Christian Church promulgated the belief that men should blame Eve for Adam's sin. Since Eve ate the apple, the Church characterized her as the prototype for female defiance. Because Eve tempted Adam to eat the apple, the Church also portrayed her as a manipulative temptress who led innocent men into folly. Because God banished Adam and Eve from the garden, the Church depicted Eve as a symbol of sin and destruction. Many English men therefore reasoned that they should associate all females with Eve's image. Since men felt that all women represented Eve, they believed that women were perpetually on the verge of repeating Eve's sinful behavior. Because God cursed Eve with painful childbirth, the Church also characterized women as the representation of everything that was vile and corruptible. As a result of the Church's widespread influence in Europe, most English men believed that women possessed numerous sinful attributes such as vanity, pride, greed, promiscuity, gluttony, drunkenness, bad temper and fickleness to men. Men

[80] 9 Gen. 1.1-31, 2.1-24, 3.1-24 (Augmented Third Edition).

therefore grew to resent women for women's apparent vices.[81] This is well exemplified in *The Vices of Women*, an early thirteenth century poem in which the poet explicitly blames his feelings of unhappiness on his wife's negative characteristics.[82] Throughout Europe, the Church also spread the belief that Adam represented all men. For this reason, many English men believed that God had authorized them to subjugate women.[83]

The Church's negative portrayal of the female race influenced men actively to subjugate women in many aspects of English life. In the workplace, men prohibited women from acquiring positions in public office. Men also forbid women from securing jobs that gave women authority over male employees.[84] In household matters, most men believed that women were inferior beings whose sole purpose was to serve their husbands. Men therefore expected married women to exhibit extreme and often unreciprocated loyalty to their husbands.[85] According to medieval writer Menagier, a woman's loyalty to her husband was supposed to be comparable to that of a dog to its

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[81] Angela Jane Weisl, " 'Quiting' Eve: Violence against Women in the Canterbury Tales," in *Violence against Women in Medieval Texts,* ed. Anna Roberts (Gainesville: University Press of Florida, 1998), 115-121.

[82] Gloria K. Fiero et al., *Three Medieval Views of Women: La Contenance des Fames, Le Bien des Fames and Le Blasme des Fames* (New Haven: Yale University Press, 1989) 121-131.

[83] Weisl, " 'Quiting' Eve," 115.

[84] Shulamith Shahar, *The Fourth Estate: A History of Women in the Middle Ages* (New York: Methuen & Co., 1983), 3.

[85] In addition to the discussion that follows this sentence, I say "unreciprocated" loyalty because members of English society did not expect men to always be faithful to their husbands. Although adultery was not widely accepted by any means, the Church allowed prostitution to exist in England. It was not unusual for married men to visit brothels. The role of prostitution in English society will be discussed and substantiated in section VI as part of an analysis of the legal standing of prostitutes who were also rape victims.

master.[86] Throughout England, men expected women to express loyalty to their husbands by displaying a type of femininity known as "active docility." The doctrine of active docility held that married women were supposed to take active roles in completing their household duties while remaining subservient to their husbands. Women accepted their inferior position because, regardless of their objections to the inequalities of marriage, they could not survive without their husbands' incomes. Since men prohibited women from building careers and obtaining prestigious jobs, men's salaries were the primary sources of income. Similar to Eve, women therefore became entrenched in, "the secondary nature of woman's position in her role of wife and helpmeet."[87] Furthermore, men often sought to preserve women's inferior status by physically abusing their wives. According to historian Angela Jane Weisl, many men believed that by violently attacking women, they could single-handedly retaliate against Eve's sinful behavior.[88]

The Christian Church's, and therefore many English men's negative characterization of women, caused the development of a social hierarchy in which women belonged to a separate and inferior order. The secular courts extended this hierarchy to the legal system by prohibiting women from independently prosecuting almost every type of crime. According to Italian canonist Bernard of Parma, the courts generally forbid women from prosecuting cases because, "A woman…should not have [jurisdictional] power...because she is not made in the image of God; rather man is the

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[86] Shahar, *The Fourth Estate*, 73.

[87] Kim M. Phillips, *Medieval Maidens: Young women and gender in England, 1270-1540* (Manchester: Manchester University Press, 2003), 13.

[88] Weisl, " 'Quitng' Eve," 115-137.

image and glory of God and woman ought to be subject to man and, as it were, like his servant, since the man is the head of the woman and not the other way around."[89] This explains why, as discussed in section I, a woman had to be represented by the man who held authority over her when prosecuting a man for a crime against her.[90]

Because the courts usually prohibited women from autonomously representing themselves in prosecutions, the idea that women could appeal their rapists was an anomalous exception to English law. As mentioned in section I, despite women's unique ability to represent themselves under the rape laws of Westminster II, jurors were resistant to the novel idea that rape victims could prosecute the men who raped them. Jurors generally interpreted the experience of rape victims through the Church's depiction of Eve. Since most men believed that all women possessed Eve's characteristics, and all rape victims were women, men concluded that all rape victims, like Eve, were manipulative, lustful, sinful and evil. Most jurors therefore assumed that rape accusations usually resulted from the plaintiff's sexual manipulation of the defendant. Since many men believed that women could tempt rapists into indulging in seemingly unwanted sexual encounters, jurors probably felt that rapists were not entirely devoid of moral value. Many jurors consequently believed that although Westminster II stated that rape was a felony, plaintiffs were not innocent victims.[91] Hence, in rape cases,

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[89] Alexander Andrée, *Glossa ordinaria,* 1:33, quoted in James A. Brundage, *Sex, Law and Marriage in the Middle Ages* (Brookfield, Vermont: Ashgate Publishing Company, 1993), VI 66. Although Bernard of Parma was a canonist from Italy, James Brundage's article applies Bernard of Parma's statement of the beliefs of English men.

[90] Kittel, "Rape in thirteenth-century," 102.

[91] Weisl, " 'Quiting' Eve," 115-121. Here, Eve's "qualities" refers to the Church's characterization of Eve as discussed at the beginning of this section.

jurors often refused to treat defendants as felons and plaintiffs as victims of felonies. During the late thirteenth century, many theologians such as Thomas Aquinas and Alexander of Hales confirmed men's interpretation of the severity of rape by declaring that rape was the least atrocious of all sexual activities. According to these theologians, every sexual act fell into a hierarchical system that was divided by degree of sinfulness. The worst offenses, which consisted sexual acts that involved human beings and members of other species, belonged to the "ratione generic" category. Following "ratione generic" were "ratione sexus" acts. Sexual behavior from this category involved "unnatural" practices such as homosexuality. The least sinful type of sexual behavior was referred to as "ratione modi" which included sexual interaction by reason of the *manner* of sexual intercourse such as rape.[92] As discussed in section III, because Westminster II was unable to prevent jurors from filtering their prejudicial attitudes through their decisions, jurors often ignored the fact that Westminster II classified rape as a felony. Since many men thought that rape victims were willing participants in their rapes, jurors often treated raped women as victims of petty crimes.

An analysis of Chrétien de Troyes' *Lancelot* further illustrates how male jurors who were influenced by the Church's portrayal of women interpreted the motivations behind women's accusations of rape.[93] Early in the story, a valiant knight named

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[92] Mia Korpiola, "Rethinking Incest and Heinous Sexual Crime: Changing Boundaries of Secular and Ecclesiastical Jurisdiction in Late Medieval Sweden," in *Boundaries of the Law: Geography, Gender and Jurisdiction in Medieval and Early Modern Europe*, ed. Anthony Musson (Burlington: Ashgate Publishing Company, 2005), 106-107.

[93] Although *Lancelot* is not being used to support the claims in this thesis, analyzing its plot serves as a method of explaining the way that men viewed the experiences of rape victims. Because *Lancelot's* damsel displays the qualities that the Christian Church attributed to all women, her characterization is

Lancelot embarks on an arduous mission to find Queen Guinevere, who has been abducted. When Lancelot becomes tired and ready for sleep, he encounters a damsel who offers him lodging for the night. However, the damsel informs Lancelot that she will only let him stay at her house if he has sexual intercourse with her. Although Lancelot loves Queen Guinevere, he is in need of shelter and reluctantly accepts the damsel's proposal. The next day, the damsel uses her powers of temptation to manipulate him into spending another night at her home. In order to accomplish her goal, she approaches another knight and instructs him to come to her room at a specific time. Then, she finds Lancelot and informs him that he must arrive at her room at a time shortly thereafter. Before the other knight arrives, she deliberately creates a sexually tempting scene by decorating her room with pots of red and white wine, gilded-silver drinking cups, candles, and two beautifully embroidered towels. When he enters the damsel's room, the beautiful scene arouses him. Since he can longer resist the damsel's temptation, he initiates a sexual encounter with her. At that moment, Lancelot walks into the room and witnesses the knight attempting to engage in sexual intercourse with the damsel. When the damsel recognizes that Lancelot has entered the room, she tells him that the knight is attempting to rape her. Lancelot chivalrously responds by banishing the alleged rapist. Following the altercation, the damsel claims that the attempted rape has made her fear the prospect of sleeping alone. Finally, the damsel's plan successfully culminates in

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relevant to this discussion and was probably similar to men's interpretation of rape victims' motives. Moreover, this story serves as a model, but not an example, through which the complex way that men viewed rape victims can be more easily understood.

Lancelot's agreement to spend another night with her. She however, eventually dismisses Lancelot because he refuses to become intimate with her. [94]

Although Troyes did not explicitly extend the damsel's traits to all English women, he suggests as much. In *Lancelot,* similar to the Church's interpretation of Adam and Eve, a manipulative female character lures an innocent man into sexual folly. The damsel's behavior therefore illustrates many English men's belief that women were inherently evil and manipulative creatures. Through the damsel's actions, she displays qualities of greed, vanity, pride and promiscuity. The damsel therefore possesses the characteristics that were attributed to all medieval European women in *The Vices of Women*. Thus, Troyes' damsel was not an exceptionally sinful female character. Instead, she represented and exemplified the Church's and English men's impression of the nature of all women. Hence, the damsel's behavior further demonstrates how men believed that women channeled their evil qualities towards luring men into sexual encounters and maliciously accusing them of rape.

Members of English society reinforced, supplemented and expanded the Church's portrayal of women and therefore rape victims by encouraging young boys to interpret rape as a heroic act. The misogynistic plots and characters of medieval English academic texts influenced thirteenth and fourteenth century English schoolboys' understandings of rape. According to historian Marjorie Curry Woods, medieval English schools provided young boys with three basic readers, *Liber Catonianis* by Statius, *Ars amatoria* by Ovid

[94] Chrétien de Troyes: Arthurian Romances, 207-295.

and *Pamphilus* by an anonymous author.[95] *Liber Cantonianis*, which teachers used as a basic reader for their young male students, contained stories of "heroic rape." In the story *Achilleid*, which is featured in *Liber Cantonianis*, Statius depicts the main character, Achilles, as a young boy who wants to become a hero. In the beginning of the story, Achilles is hiding out in women's clothing so that he does not have to fight in the Trojan War. As the war continues, Achilles expresses that he is growing increasingly ashamed of his questionable gender, "How long wilt thou conceal the wound that galls thy heart, nor even in love—for shame!—prove thy own manhood!"[96] In the next scene, Achilles violently rapes a woman named Deidamia. Following the rape, Achilles convinces Deidamia that his actions were valiant because he gave her a child. Then, he claims that she had participated in a valiant act and therefore concludes that she was not a victim of abuse. According to Woods, the author intended for the rape scene to signify Achilles' transformation from a boy to a Trojan War hero.[97] Since medieval English men read *Achilleid* as young boys, they probably identified with Achilles' desire to begin his transformation into manhood. Because teachers did not discuss the plot of basic readers with their students, young boys probably thought that rape was a justifiable way of becoming a man.[98] Because teachers did not provide their students with moral judgments

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[95] Marjorie Curry Woods, "Rape and the Pedagogical Rhetoric of Sexual Violence," ed. Rita Copeland, *Criticism and Dissent in the Middle Ages* (Cambridge: Cambridge University Press, 1996) 56.

[96] Statius *Achilleid* 1:397-674, quoted in Woods, "Rape and the Pedagogical," 61.

[97] "Woods, Rape and the Pedagogical," 61-62.

[98] Wood, "Rape and the Pedagogical," 64-65. Teachers primarily referred to basic readers to teach the meaning of words and phrases and rules of grammar to their students. Woods supports this notion by analyzing the notes in the marginal glosses of these texts.

of the content of basic readers, young schoolboys presumably believed that rape was a valiant act that did not cause harm to the victim.

The second basic reader, Ovid's *Ars amatoria*, also influenced medieval English schoolboys' attitudes towards rape.[99] In *Ars amatoria*, Ovid states that Deidamia secretly wanted Achilles to rape her. Ovid also confirms that Achilles transformed into a man only because he raped Deidamia. The implications of Ovid's justification of rape were two-fold. First, he reinforced Statius' validation of rape. Secondly, the plot of *Ars amatoria* encourages boys to commit rape by declaring that women secretly desire seemingly unwanted sexual acts. "It's all right to use force—force of that sort goes down well with/ The girls: what in fact they'd love to yield/ They'd rather have stolen. Rough seduction/ Delights them."[100] Thus, Ovid provided the minds of young, impressionable English boys with a comprehensive justification and encouragement of rape.

In the third basic reader, *Pamphilus*, an unknown author expands on Ovid's interpretation of rape. In this text, an average boy named Pamphilus fears that he might be unfit to rape a woman. Venus therefore advises him with the following words,

> If you get the chance, woo her with gentle violence./ What you scarcely hoped for soon she will offer herself./ Modesty now and then may keep her from admitting desire;/what she most desires to have she denies most strongly/ thinking it better to lose her virginity by force/ than to say, 'Do with me what you will.[101]

Venus' recommendations to Pamphilus probably influenced young boys' interpretations of rape. Just like heroes, Venus claims that regular boys can transform into men by

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[99] Woods, "Rape and the Pedagogical," 58.

[100] Ovid *Ars amatoria* 1: 698-701, quoted in Woods, "Rape and the Pedagogical," 62.

[101] *Pamphilus* lines 109-114, quoted in Woods, "Rape and the Pedagogical," 63.

raping women. Furthermore, the poem supports *Ars Amatoria's* declaration that women secretly want to be raped.

Because the plots of *Liber Cantonianus, Ars Amatoria and Pamphilus* showed that rape victims secretly desired to participate in seemingly unwanted sexual encounters, and boys could become men by raping women, young boys, who eventually served as jurors, probably concluded that rapists did not deserve to be convicted of felonies or sentenced to death. This mindset might help explain the local courts' high acquittal rate of accused rapists. The influence of academic texts on jurors' attitudes towards rape victims also probably deterred women from appealing their rapists. Since many male jurors felt that rapists' actions were not inherently criminal, jurors entered courtroom under the assumption that rapists should not be treated as felons. Because rape victims knew that jurors would not treat them as victims of serious crimes, rape victims probably refrained from bringing their cases to the courts.

As a result of the Christian Church's characterization of women and basic readers' influences on thirteenth and fourteenth century men's interpretations of rape, many jurors believed that rape victims possessed the qualities of Eve and therefore reasoned that women falsely accused men of rape and tempted men into initiating sexual encounters. Many jurors therefore believed that a woman who accused a man of rape falsely appealed the defendant, tempted him into raping her or secretly desired to be raped. Thus, even though Edward was able to appear as if he was interested in protecting the financial, social and physical interests of male heads of families by ratifying the forty-day and 'afterwards' clauses, he would have had to provide safeguards to prevent jurors from relying on their prejudices against women to reach verdicts in local court rape trials

if he wanted to enable rape victims to convict the men who raped them. Because Edward did not include these safeguards in his rape laws, he enabled prejudiced male jurors to obstruct rape victims' attempts to convict their rapists.

V

Although Westminster II's rape laws should have protected and confirmed the right of any woman to appeal a man of rape, local court jurors were able to silence female plaintiffs by exploiting Westminster II's weaknesses. Because Justices of the Peace did not monitor jurors' verdict rendering processes, jurors were able to prevent rape victims from convicting their rapists and dismantle the deterrent effect of Westminster II with impunity. During the pre-trial procedures, local court jurors accomplished their objectives by citing technical flaws on rape victims' parts to convict plaintiffs of false appeal and acquit rapists. In the majority of false appeal arrests, local court jurors convicted plaintiffs of false appeal regardless of the defendant's guilt or innocence.[102] Jurors therefore set aside statutory law and replaced it with their own procedural rules. This section describes how thirteenth and fourteenth century jurors' treated rape victims in the years after the enactment of Westminster II. In doing so, it also confirms that jurors were committed to undermining rape victims' appeals and therefore Edward's laws could not have been effective unless he had ensured that Justices of the Peace oversaw jurors' verdict rendering processes. Furthermore, it elucidates the numerous barriers that rape victims faced when attempting to prosecute the men who raped them.

In all rape cases, the local courts required that rape victims complete a rigorous pre-trial process before prosecuting their assailants. According to *Bracton*, in order correctly to appeal a man of rape, victims had to raise the hue and cry, go to the neighboring townships and communicate their experiences to "men of good repute," the

[102] Carter, *Rape in Medieval England*, 94-96.

hundred reeve, the king's sergeant, the coroners, and the sheriff, make an appeal at the first county court, have it copied verbatim on the coroner's rolls, and repeated in the courtroom. In cases where rape victims did not properly complete the pre-trial steps, juries usually convicted them of false appeal and transferred their cases to the royal court. Thus, jurors could convict female plaintiffs of false appeal without ascertaining whether or not the plaintiff was raped. As mentioned in section I, when the local court transferred rape cases to the royal court, judges almost always acquitted defendants or abandoned cases. Local court jurors therefore essentially acquitted rapists when they convicted rape victims of false appeal. Also, as previously discussed, when juries acquitted a defendant, they adhered to chapter 12 of Westminster II by convicting the plaintiff of false appeal. Therefore, in most rape cases, if a defendant was acquitted, then the plaintiff was convicted of false appeal, and if the plaintiff was convicted of false appeal, the defendant was acquitted.[103] Hence, all rape victims ran the risk of being arrested and having their cases discontinued when they brought their cases to a local court.

Rape victims commonly failed to complete the pre-trial process for reasons unrelated to whether or not they were raped. Jurors often cited victims' failure to complete the pre-trial steps to the degree of perfection that the local courts demanded when jurors convicted rape victims of false appeal. Since the courts required that women begin the pre-trial steps immediately after their rapes, victims were forced to concern themselves with minor procedural issues immediately following traumatic and

[103] Because of this fact, the rest of the thesis refers to acquittal and false appeal arrests as two actions that occurred together. For example the thesis will speak of jurors as "convicting rape victims of false appeal and thereby acquitting rapists."

emotionally disturbing experiences.[104] Compounded by the difficulties associated with reciting two identical testimonies, victims probably had trouble focusing on flawlessly completing highly technical steps in the hours after their rapes. Thus, the difficulties of perfectly completing the pre-trial steps might account for the high number of abandoned cases and acquittals.

Many rape victims also failed to complete the pre-trial process because they were uncomfortable with the public nature of certain procedural tasks which jurors required that victims complete. As discussed in section IV, many men believed that women who appealed men for rape falsely appealed the defendant, tempted him into raping her or secretly desired to be raped. Thus, men often shamed women who appealed men of rape and made victims feel embarrassed for pressing their cases. Because the Christian Church promulgated the belief that women who were not virgins were "sinners," public knowledge of a rape victim's lost virginity also weakened her viability in the marriage market and tarnished her reputation. The nature of the pre-trial process was therefore inherently problematic for rape victims. Since the local courts required that rape victims relate their experience to numerous men, the process of appealing men of rape was lengthy and public.[105]

The public nature of the pre-trial process might account for many rape victims' failure properly to communicate the details of their experiences to the proper authorities. Because many women were uncomfortable with making the loss of their virginity public

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[104] Carter, *Rape in Medieval England*, 95-97.

[105] Carter, *Rape in Medieval England*, 94-95. Also, in this section of his book, Carter provides an example of a case in which a women named Joan was arrested for this reason in Kent Eyre in 131.

knowledge, victims were probably reluctant to provide the hundred reeve, king's sergeant, coroners, and sheriff with every detail of their experiences. Since jurors convicted plaintiffs who did not relay the details of their rapes to the proper authorities of false appeal, rape victims who felt uncomfortable with publicly revealing their experiences were often arrested. The problems associated with reputation and marriage prospects that resulted from public knowledge of a woman's rape might also account for the low number of rape appeals. Many rape victims probably decided against appealing their rapists because they knew that the courts could arrest them even if they were actually raped by the men whom they accused.

In addition to explaining the low number of rape appeals, the public nature of local court proceedings reveals the failure of Westminster II to deter men from committing rape. Because local court jurors frequently dismissed rape victims' cases on account of technical, but not substantive issues, rapists had little to fear in local court prosecutions. Instead of adhering to Westminster II's definition of rape, which was based on factual matters of law, jurors adhered to their own versions of procedural law. The fact that local court jurors employed their procedural laws to convict rape victims of false appeal also demonstrates that jurors consciously disregarded the facts of rape victims' experiences.

Local court jurors also required that women pass a "virginity test" before prosecuting men for rape. In order to appeal rapists, victims had to complete the following exam,

> For he may except against it that suit was not adequately made as in other appeals, (or), that he did not deprive her of her maidenhood since she is still a virgin. In that case let the truth be ascertained by

> an examination of her body, made by four law-abiding women sworn to tell the truth as to whether she is a virgin or defiled. If they say that she is a virgin, the appellee will depart quit of the appeal and the woman be placed in custody.[106]

In theory, the virginity test could have either strengthened or weakened the claims of plaintiffs or defendants. In actuality however, it rarely strengthened plaintiffs' cases. Plaintiffs could utilize the test to prove that they were no longer virgins and therefore claim that intercourse had occurred. Nevertheless, passing the test did not confirm that that a plaintiff had lost her virginity from intercourse with the defendant. The virginity test moreover, did not reveal that a sexual encounter was non-consensual. From the defendant's standpoint, the virginity test could only strengthen his argument and possibly weaken that of the plaintiff. If the women who administered the virginity test claimed that the plaintiff was a virgin, the jury would convict the plaintiff of false appeal and acquit the defendant. If the examiners reported that the plaintiff was a virgin, the defendant had excellent evidentiary support for a counter claim.

The fact that local jurors used virginity tests to convict rape victims of false appeal expounds the position of thirteenth and fourteenth century women in English society. In addition to the emotional and physical injuries that resulted from rape and the shame and embarrassment associated with the lengthy pre-trial process, local court jurors worsened rape victims' experiences by expecting victims to endure invasive and humiliating examinations before victims could prosecute the men who raped them. Local court jurors, moreover, obliged women who wanted to prosecute men for rape to submit

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[106] Bracton, *Bracton on the Law*, 2:414.

to a test that could destroy women's reputations and weaken women's appeals. Thus, the courts compelled victims to consent to examinations that could only build up the case of victims' rapists and potentially result in false appeal arrests.[107]

As discussed in section III, because Westminster II did not ensure that Justices of the Peace would monitor jurors' verdict rendering processes, jurors were able to act with impunity. Because Edward did not prevent Justices of the Peace from abandoning their duties, jurors were able to compel rape victims to complete highly subjective tasks. Although Edward's support of the enactment of Westminster II seemingly indicates that the English people were concerned with preventing rape and facilitating prosecutions, local courts jurors' replacement of Westminster II's rape laws with procedural rules that allowed them to acquit rapists for reasons that were unrelated to whether or not the victims' claims were true, establishes that many English men did not believe that women should be entitled to prosecute men for rape.

[107] Kittel, "Rape in thirteenth-century," 104.

VI

In the minority of rape appeals, women successfully completed the pre-trial steps and passed virginity tests. Historian Trevor Dean divides these women into three groups, permitteds (prostitutes), vulnerables (servants, concubines and widows) and respectables (virgins and wives).[108] Although Dean derives this hierarchy from Claude Gauvard's argument that men raped vulnerables and respectables to assimilate women into prostitution, the differentiation is used here to describe the three ways that jurors characterized rape victims. Because the factors that jurors based their decisions on depended on the group to which rape victims belonged, this section independently discusses each group. In every group, however, jurors cited flaws in the characters or occupations of each type of rape victim to acquit defendants and convict rape victims of false appeal. This section establishes how jurors' interpretations of each type of rape victim show that all women, even those who belonged to the respectable group, faced many obstacles when attempting to prosecute the men who raped them. It also further demonstrates that unless Edward had passed legislation to prevent jurors from disregarding his rape laws, jurors would not have considered Westminster II's definition of rape when deciding cases. Furthermore, it offers an explanation for the courts' high acquittal rate and high false appeal arrest rate in rape prosecutions. Most importantly, the way that jurors discriminated against each type of rape victim further establishes that

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[108] Claude Gauvard, *"De Grace especial" : crime, état et société en France à la fin du Moyen Age,* (Paris: Publications de la Sorbonne, 1991), 333-339, quoted in Dean, *Crime in Medieval Europe,* 86. These social categories are taken from Gauvard's argument. Here I use the term "sexual identity" in a medieval, not modern sense. Each class represents the sexual definition of the victim because it characterized their sexual nature outside of the experience of forced intercourse. The point here is to show that jurors judged rape victims by their sexual identities instead of the forced sexual intercourse for which they were prosecuting their rapists.

many men actively subjugated female rape victims because they were unwilling to accept the anomalous idea that women could prosecute men for rape.

Jurors prohibited all rape victims who worked as prostitutes (the only members of the permitted class) from prosecuting the men who raped them. Although many men raped prostitutes, the courts forbade prostitutes from prosecuting their rapists. According to local court jurors, prostitutes did not have legal standing because prostitutes were "sinners." Furthermore, an act of prostitution in a woman's past or present carried with it an implication of consent in all sexual encounters. Rapists could therefore destroy their victims' cases by accusing their victims of previously working as prostitutes. Thus, even if a rapist had not personally paid his victim for sexual favors, he could claim that she had once worked as a prostitute. In these instances, jurors usually acquitted the defendants and convicted the plaintiffs of false appeal.[109]

Many rape victims whose rapists accused them of prostitution worked as prostitutes for reasons that did not indicate that they were "sinners." Many young women who accepted payment for sexual favors did not do so out of their own free will. In many cases, women forced their young daughters to work as prostitutes.[110] When young prostitutes accused men of rape, local court jurors rarely considered the reasons why

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[109] Ruth Mazo Karras, *Common Women: Prostitution and Sexuality in Medieval England* (Oxford: Oxford University Press, 1996), 61-65. Refer to this book for more information on the prostitution industry in thirteenth and fourteenth century England. In her book, Karras discusses the legality of prostitution, how women became prostitutes and the sex trade. This book could further the discussions of rape victims who worked as prostitutes by elucidating the reasons why women became prostitutes. Many women were prostitutes because they were kidnapped and bought and sold as sex slaves or desperately needed income. Moreover, Karras states that the distinction between occasional and full-time prostitutes was often blurred. Some women only worked as prostitutes only one time. In the courts however, jurors would categorize them as prostitutes and dismiss their cases.

[110] Carolyn Dinshaw, "Rivalry, Rape and Manhood: Gower and Chaucer," in *Violence against Women in Medieval Texts,* ed. Anna Roberts (Gainesville: University Press of Florida, 1998), 147-149.

victims became prostitutes when they acquitted defendants and convicted plaintiffs of false appeal. In exceptional cases when rape victims whose rapists accused them of working as prostitutes were under the age of twelve, jurors did not dismiss the victims' cases. Since men who raped underage prostitutes paid the owners of the victims' brothels for services, however, the courts would not allow rape victims prosecute their actual rapists. Instead, the courts would allow underage rape victims (under the representation of their legal guardians) to prosecute their bawds for rape. Jurors therefore never treated men who sexually assaulted prostitutes as rapists.[111]

Jurors contradicted Westminster II's definition of rape as the ravishment of a "Women married, maid or other" by refusing to allow prostitutes to prosecute men for rape.[112] Although prostitutes who were forcibly sexually assaulted fell into Westminster II's definition of rape, jurors acquitted rapists on account of victims' occupations. By only allowing certain women who were sexually assaulted to prosecute men for rape, local court jurors replaced Westminster II's rape laws with procedural laws that opposed those of Westminster II. Thus, jurors consciously chose to dismiss the cases of certain rape victims. Jurors' frequent acquittal of rapists who accused their victims of working as prostitutes might also account for the local courts' high acquittal rates.

The fact that the local courts prohibited prostitutes from prosecuting their rapists also had a devastating effect on the legal experiences of rape victims who belonged to the vulnerable and respectable groups. Because prostitution was a regulated industry, rapists

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[111] Karras, *Common Women*, 63.

[112] Hein Online, http://www.heinonline.org. See Appendix for full text of chapter 34 of the Statute of Westminster II.

often claimed that their accusers were paid prostitutes. Since prostitutes could not prosecute men for rape, rapists often avoided conviction by falsely accusing their victims of accepting compensations for sexual favors. In the many cases in which rapists falsely accused their victims of prostitution, juries acquitted the rapists and convicted the victims of false appeal.[113] Although the distinction between women who worked as prostitutes and those who did not was probably blurred in some instances, it is likely that many rapists falsely accused their victims of working as prostitutes to thwart their victims' efforts to convict them of rape.[114]

The dangers that women associated with false accusations of prostitution probably deterred many rape victims from prosecuting their rapists. Rape victims were likely to decide against prosecuting their rapists because victims' reputations could be tarnished by false accusations of prostitution. As previously discussed, unmarried women who were not virgins were usually met with great difficulties when trying to secure marriage prospects. Because most women needed men's income to financially survive, many rape victims were probably unwilling to enter a courtroom where their rapists could limit their marriage prospects by claiming that they were non-virginal prostitutes. Many rape victims moreover, probably refrained from prosecuting their rapists because they knew that jurors could convict them of false appeal if their rapists accused them of working as prostitutes. Thus, the fact that local court jurors disregarded Westminster II's definition of rape as the ravishment of any woman and replaced it with procedural rules that

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[114] Karras, *Common Women*, 101.

allowed jurors to acquit rapists on account of victims' occupations, might also explain the low number of rape appeals that were brought to the local courts.

The legal experiences of rape victims whose rapists accused them of belonging to the permitted class also elucidates the way that medieval English men actively subjugated women. By dismissing the cases of alleged prostitutes, jurors were able to depict women as guilty of Eve's sins of lust, greed, and sexual deviance. Furthermore, jurors and rapists were able to relegate virginal or married women to the status of prostitutes thereby actively demoting women to a group that was not respected by members of English society. More importantly, by disregarding Westminster II's rape laws and using accusations of prostitution to destroy rape victims' appeals, male jurors were able systematically to abolish the right of rape victims to prosecute their rapists.

In addition to prostitutes, rape victims who worked as servants (members of the vulnerable category) also faced many obstacles when attempting to convict their rapists. During the thirteenth and fourteenth centuries, local court jurors did not treat servants as human beings who could seek legal redress for injuries. Thus, the courts prohibited servants who were not represented by their masters to make appeals. Instead, jurors treated servants' masters as owners who could accuse men who attacked their servants of damaging their property. While Westminster II stated that the courts should allow any woman who was ravished to appeal her attacker of rape, jurors did not allow servants who were ravished to prosecute their rapists without representation. Thus, when a master raped his servant, he was never convicted of rape. Since masters were obviously unwilling to accuse themselves of rape, servants who were raped by their masters had to continue working for their rapists and could not seek redress for their emotional and

physical injuries. In instances when servants were raped by men who were not their masters, masters could reap financial rewards. As mentioned in section I, the local courts usually replaced the prescribed punishment of death for convicted rapists with a monetary fine to be paid to the plaintiff. Because masters were the legal guardians of their servants, they were entitled to all monetary fines that resulted from prosecutions of men who raped their servants.[115]

Similar to the cases of rape victims from the permitted group, local court jurors circumvented the rape laws of Westminster II to insert their prejudices into verdicts of cases of servant rape. By doing so, the local courts allowed masters to rape their servants with impunity. Jurors' lack of concern for the protection of servants exemplifies men's unwillingness to embrace the idea that women were worthy of legal rights. Although the local courts could have utilized the new rape laws to prevent masters from raping servants and abolish the tradition of masters receiving monetary fines for the rape of their servants, jurors chose to allow these practices to continue. By consciously disregarding statutory law and continuing to implement their versions of procedural law, members of local court juries actively prohibited servants from exercising their right to prosecute men for rape. Local courts jurors' refusal to thwart these practices also proves that men were uninterested in preventing rape. Instead of establishing the deterrent effect that could have resulted from strict implementation of the Edward's rape laws, jurors chose to institute procedural rules that restricted victims' opportunities to prosecute their rapists.

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[115] Helen Jewell, *Women in Medieval England* (Manchester: Manchester University Press, 1996), 29.

If a rape victim from the respectable class was fortunate enough to complete the pre-trial process without being arrested for false appeal or relegated to the permitted class, she still faced many barriers. Since the respectable category was composed of married women and virgins, most rape victims from this group had favorable reputations prior to their rapes. It would therefore seem as if they would be able to convict their rapists. In many instances, however, jurors discriminated against rape victims who belonged to the respectable group also. One of the most common cases in which married female rape victims could not successfully convict their rapists was when the assailants were their husbands. In numerous instances of marital rape, husbands utilized the legal conditions of marriage as proof of their innocence. Although Westminster II stated that the rape of any woman was a felonious crime which was punishable by death, local court jurors adhered to the terminology of medieval canonists who argued that a woman eternally consented to intercourse with her husband when she married him. Local courts jurors therefore operated under the assumption that married women did not have the right to refuse their husbands' sexual advances. Thus, jurors did not categorize men who forcibly sexually assaulted their wives as rapists.[116]

In addition to accounting for the high acquittal rates of rape cases, the courts' dismissal of victims of marital rape further explicates the position of women in medieval English society. Despite Westminster II's definition of rape as the ravishment of any woman, men accepted medieval canonists' interpretations of marital rape. Local court jurors' legalization of marital rape, moreover, epitomizes the inferior position of women.

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[116] Brundage, *Sex, Law and Marriage,* VIII 71.

First, it demonstrates that men viewed women as property instead of human beings who should be protected under English law. Secondly, jurors' treatment of victims of marital rape further establishes that many English men believed that God had authorized men actively to subjugate women. Even though jurors could theoretically cite parallels between prostitutes and the biblical Eve, married women were respectable members of English society. Despite the fact that married women were not particularly contemptible, jurors consciously chose to disregard Westminster II's definition of rape thereby intentionally eliminating the right of some rape victims to prosecute the men who raped them.

In local court rape prosecutions, jurors also cited instances of pregnancy as grounds for convicting rape victims who belonged to the respectable group of false appeal. When a rapist impregnated his victim, the victim was usually unable to prosecute her assailant for rape. The courts immediately dismissed this type of case because most English men believed that a woman could not get pregnant unless she genuinely desired the sexual encounter which led to her pregnancy. [117] According to historian Shulamith Shahar, jurors proposed a scientific argument to support this notion by claiming that "women produced semen which accumulated in the womb. In order for her to conceive, this seed must be ejaculated, and its ejaculation which led to conception, was an indication that she had reached a sexual climax."[118]

Similar to the Church's characterization of Eve, Troyes's damsel, *Achilleid's* Achilles and Ovid's *Ars* Amatoria, local courts jurors' treatment of pregnant rape victims

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[117] Shahar, *The Fourth Estate,* 16-17.

[118] Shahar, *The Fourth Estate,* 71.

suggests that many men believed that women secretly desired to engage in seemingly unwanted sexual encounters. The fact that jurors assumed that rape victims who became pregnant secretly consented to their rapists' sexual advances demonstrates that men believed that all women had a propensity to tempt men into initiating sexual encounters and falsely accuse men of committing rape. Thus, by dismissing rapes that resulted in pregnancies, jurors showed that they agreed with the Christian Church's interpretation of the story of Adam and Eve. When jurors acquitted pregnant victims' rapists, jurors were able to attach the negative qualities of Eve to female rape victims. Furthermore, jurors were able to use this claim as a method of disregarding Westminster II's declaration that rape victims were entitled to prosecute their rapists.

Many jurors justified the rape of virginal members of the respectable group by claiming that instances of forced sexual intercourse signified mutual love between plaintiffs and defendants. Many medieval canonists believed that sexual feelings were provoked by an exceedingly strong human drive. The "rape motivated by love" defense is exemplified by Edward III's alleged rape of the Countess of Salisbury. According to historian Antonia Gransden, Edward III visited the castle of the first Earl of Salisbury, William Montagu, during a campaign against the Scots. During his visit, Edward III fell in love with the Countess of Salisbury and arranged a grand tournament in London to which he demanded the Earl of Salisbury's attendance. Following the tournament, Edward III entered the Earl's castle and allegedly raped the Countess. Although the truth

of the Countess of Salisbury's story is debatable, its circumstances were commonplace in medieval England.[119]

Cases such as the "Countess of Salisbury's rape" exemplify men's socialization of rape by presenting rape as an expression of a kind of pain that signified mutual love. According to many jurors, the motivations of rapists in cases of "love rape" were justifiable because, as previously discussed, members of English society believed that women deliberately created romantic settings to tempt men into sexual encounters.[120] Even though court records cannot prove that jurors acquitted men who claimed to love their victims, this behavior is highly probable. As previously mentioned, jurors were able to disregard the new rape laws and implement contradictory procedural rules with impunity. Men, moreover, did not usually sympathize with rape victims and often blamed plaintiffs for their own rapes. Thus, "love rape" served as a method of justifying rape and therefore probably influenced jurors' decisions.

The obstacles that rape victims faced when attempting to prosecute the men who raped them provides a lens through which the position of thirteenth and fourteenth century women in English society can be understood. In terms of substantive law, Westminster II should have facilitated rape prosecutions in the local courts. If a rape victim successfully completed the rigorous and nearly impossible pre-trial process, however, she still faced many barriers to prosecuting her rapist. Regardless of which social category rape victims fell into, they all ran the risk of losing their cases and being

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[119] Antonia Gransden, "The Alleged Rape by Edward III of the Countess of Salisbury," *The English Historical Review*, 87 (1972): 333-344.

[120] Gransden, "The Alleged Rape by Edward III," 334.

arrested for false appeal because jurors based verdicts on rape victims' alleged occupations and reputations instead of statutory law. In addition to explaining the low number of rape appeals, high acquittal rates and high false appeal arrest rates, the legal problems that many rape victims faced reveals the nature of women's position in comparison to that of men. By adhering to the text of Westminster II, jurors could have single-handedly abolished many practices that resulted from men's sexual abuse of women. Jurors, however, consciously chose to discount the new rape laws and reinforce the idea that women were inferior to men. More importantly, by disregarding Westminster II's rape laws, local court jurors were able to channel their desires actively to subjugate women by eliminating women's right to prosecute men for rape.

CONCLUSION

Because Edward enacted the rape laws of Westminster II with the purpose of centralizing the court system and appearing as if he advocated for the protection of his subjects, he did not ensure that rape victims would be able to apply his statutes when attempting to convict their rapists. Since many royal judges were uninterested in conclusively proving whether or not a woman's accusation of rape was truthful, they carelessly acquitted defendants and discontinued cases. Although Edward was seemingly concerned with facilitating prosecutions and preventing rape, the ability of royal court judges to ignore Edward's rape laws demonstrates that Edward's purposes for enacting chapter 34 of Westminster II were never to provide rape victims with the right to convict the men who raped them or deter potential rapists from sexually assaulting women.

Since Edward failed to enact provisions to prevent local court jury corruption, local court jurors were able to disregard the stipulations of Westminster II's rape laws. Local court jurors exploited these weaknesses by implementing procedural rules that contradicted those of Westminster II. Through their procedural rules, jurors were able to base their verdicts on technical issues or victims' reputations instead of whether or not plaintiffs were actually raped. Moreover, in contrast to Westminster II's serious attitude towards rape, local courts jurors treated cases of forced sexual intercourse as petty crimes. More importantly, the local courts jurors' actions show that men's prejudices towards women were not limited to religious interpretations of the nature of women and the prohibition of women from obtaining prestigious jobs. Instead, the local courts jurors' refusals to apply the new rape laws reveals that many English men believed that

God had charged them with the task of subjugating women in *all* aspects of life. By contradicting a statute that confirmed women's right to prosecute men for rape, male jurors actively eliminated women's opportunities to be protected by England's legal system.

Overall, the behavior of royal judges and local court jurors indicates that English men believed that rape victims should not have the right independently to prosecute and convict their rapists, and rape was not a serious crime. The failure of many English men to adhere to Westminster II's stipulations reveals deep truths about the position of women in thirteenth and fourteenth century English society. Since local court jurors rarely allowed rape victims to convict the men who raped them, women *lived* at the mercy of men. Although women could technically appeal men for rape, women's fates in rape cases were ultimately controlled by male jurors' who adhered to gender-biased manipulations of English law. Thus, jurors could destroy a rape victim's life by sentencing her to imprisonment for false appeal on grounds that were unrelated to whether or not she was raped. Because the courts did not protect rape victims, men could commit rape with impunity. Rapists therefore also determined the fates of women's lives. As a result of raping a woman, a rapist could single-handedly control his victim's marriage prospects and reputation. Local courts jurors' refusals to adhere to the stipulations of the new rape laws therefore reveal that men strove actively to abolish women's opportunities to exist as human beings who were not exclusively under the control of their male guardians.

My thesis' findings contribute to the historiography of the lives of medieval English women by exploring the broader societal attitudes that influenced jurors'

behavior. In most studies of the lives of women in medieval English society, historians validly claim that men treated women as inferior beings. These studies, however, often fail to identify the devastating effects of existing as an inferior member of medieval English society on women's lives. In studies of medieval rape, historians have identified that Westminster II's rape laws were unable to prevent rape or facilitate prosecutions. These historians, though, have not identified the reasons for the apparent paradox between Westminster II's serious attitude towards rape and the vast majority of rape victims' inability to convict the men who raped them. By focusing on the sources of this discrepancy, my thesis shows that jurors obligated women to endure many horrible experiences because many men wanted to ensure that women remained inferior members of English society. Hence, male jurors forced rape victims to undergo emotionally and physically disturbing examinations and pre-trial formalities before victims were able to prosecute their rapists. In many cases, after going through horribly shameful and public pre-trial processes, jurors acquitted rapists and convicted rape victims of false appeal on account of rape victims' alleged reputations and occupations. In the few instances when rape victims were able successfully to complete the pre-trial processes, jurors often exacerbated the pain of victims' rapes by tarnishing victims' reputations and dismissing victims' cases. Thus, jurors treated the personal and private injuries of rape victims as a public spectacle in which local townspeople could witness men actively subjugating female members of the human race.

APPENDIX

The Statute of Westminster I, c. 13

AND the King prohibiteh that none do ravish, nor take away by force, any Maiden within Age, neither by her own consent, nor without; nor any Wife or Maiden of full Age, nor any other Woman, against her Will; and if any do, at his Suit that will sue within Forty Days, the King shall to common right; and if none commence suit within Forty Days, the King shall fine at the King's pleasure; and if they have not whereof, they shall be punished by longer imprisonment, according to the Trespass requirith.[121]

The Statute of Westminster II, c. 12

FORASMUCH as many, through Malice intending to grieve other, do procure false Appeals to be made of Homicides and other Felonies by Appellors, having nothing to satisfy the King for their false Appeal, nor to the Parties appealed for their Damages, It is ordained, That when any, being appealed of Felony surmised upon him, doth acquit himself in the King s Court in due Manner, either at the Suit of the Appellor, or of our Lord the King, the Justices, before whom the Appeal shall be heard and determined, shall punish the Appellor by a Year's Imprisonment, and the Appellors shall nevertheless restore to the Parties appealed their Damages, according to the Discretion of the Justices, having respect to the Imprisonment or Arrestment that the Party appealed hath sustained by reason of such Appeals, and to the Infamy that they have incurred by the Imprisonment or otherwise, and shall nevertheless make a grievous Fine unto the King. And if peradventure such Appelor be not able to recompense the Damages, it shall be inquired by whose Abetment or Malice the Appeal was commenced, if the Party appealed desire it ; and if it be found by the same Inquest, that any Man is Abettor through Malice, at the Suit of the Party appealed he shall be distrained by a judicial Writ to come before the Justices ; and if he be lawfully convict of such malicious Abetment, he shall be punished by Imprisonment and Restitution of Damages, as before is said of the Appellor. And from henceforth in Appeal of the Death of a Man there shall no Essoin lie for the Appellor, in whatsoever Court the Appeal shall hap to be determined.[122]

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[121] *3 Edw. I. Stat. Westm. Prim. c. 9-13*, in Hein Online, http://www.heinonline.org/HOL/Page?collection=engrep&handle=hein.engrep/realm0001&type=Image&id=255 (accessed March 24th, 2009).

[122] *13 Edw. I. Stat. Westm. Sec. c. 11-14*, in Hein Online, http://www.heinonline.org/HOL/Page?collection=engrep&handle=hein.engrep/realm0001&type=Image&id=255 (accessed March 24th, 2009).

The Statute of Westminster II, c. 34

IT is Provided, That if a Man from henceforth do ravish a Woman, married, Maid, or other, where she did not consent, neither before nor after, he shall have Judgment of Life and of Member. And likewise where a Man ravisheth a Woman, married Lady, Damosel, or other, with Force, although she consent after, he shall have such Judgment as before is said, if he be attained at the King's Suit, and there the King shall have the Suit.[123]

[123] *13 Edw. I. Stat. Westm. sec. c. 31-34*, in Hein Online, http://www.heinonline.org/HOL/Page?collection=engrep&handle=hein.engrep/realm0001&type=Image&id=255 (accessed March 24th, 2009).

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