

Paolo Zacchia, *Quaestiones medico-legales*, “Consilium XXXIV”¹

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Argument:

Tried and imprisoned after a young woman accused him of rape, Stephanus Nocettus² ultimately escaped exile after both he revealed his truncated member and the virgin presumed to have been violated had unusually wide genitals and a dampness from a perpetual white flux. I therefore assert:

Summary:

1. A shortness of (his) member prevents a man from being able to penetrate so as to violate (a woman's) virginity.
 2. The signs of the violation of (a woman's) virginity are one and the same for both a violation committed by a virile member and (one) committed in some other manner.
 3. Virgins are raped without any enlargement of the genitals when they have dampness, as is the case right after menstruation.
 4. The redness observed in a young woman who has been raped disappears after 15 days at most, and why this is the case.
 5. A virgin can be undone without a dilation of the hymen, if the virile rod is thin, and the woman's vulva is wide and damp.
 6. When and how the disappearance of vaginal rugae occurs in a defiled³ virgin.
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1. The Fisc⁴ and its adherents have absolutely no basis on which to base their opinion concerning the evidence of the alleged violation of Maria Francisca Gismunda by Stephanus Nocettus. For neither are any signs of the aforementioned violation apparent or can be laid

¹ I base this translation on the original Latin text as published in Paolo Zacchia, *Quaestionum Medico-Legalium Tomus Tertius, quo continentur Consilia et Responsa LXXXV ad Materias Medico-Legales pertinentia* (Lyon: Anisson & Posuel, 1726). <<https://books.google.ca/books?id=GoQ-AAAACAAJ&printsec=frontcover&dq=Quaestiones+medico-legales&hl=en&sa=X&ved=0ahUKEwjDk9qIjdvOAhUBlh4KHfhVAUYQ6AEIJDAB#v=onepage&q=Quaestiones%20medico-legales&f=true>>

² I have decided to keep all names in their Latin form for the sake of clarity and consistency.

³ The participle expressed here, *construprata*, is almost certainly a corruption of *constuprata*, from *constupro*, *constuprare*, *constuprari*, *constupratum*, meaning to violate, ravish, debauch, or defile. This verb indeed fits the context of the current discussion well.

⁴ The Fisc was an arm of the Roman state that presided over financial matters. Over time it came to play a role in judicial matters, overseeing cases that might require the collection of fines and confiscation of goods for the state.

bare on the woman herself, nor is S. Nocettus himself fit to violate a virgin due to the constitution of his member.

In the first place, regarding the following, which considers Nocettus himself, it is abundantly clear that his member is thin, short, flaccid, and maimed. As a result of his shortness when erect, and with both the width of the allegedly raped woman's genitals and her perpetual dampness from a womanly flux, he was able to insert (himself) without any violation; there was no chance of this happening due to his brevity. He was thus unable to reach so as to break the union of those little pieces of tissue which constitute the sign of her virginity, a sign that is evident upon inspection. Nocettus was also not able to violate Maria Francisca due to the flaccidity of his member, while furthermore not having the natural vigor such an act requires. When the midwives themselves were questioned before the Fisc, everything they put on record was vain and fictitious. They actually claimed to know that there had been a violation committed by a flaccid, impotent member. Such testimony contains an incurable contrariety, because how is one with a tiny and flaccid member able to commit such a violation, raping a virgin who has a wide and very damp vessel, the signs (of which) appearing four months after the violation? The appearance (of these signs) remains shamefully in the shade. This is indeed altogether false and untrue.

In sum, Nocettus is not able to violate Maria Francisca due to the mutilation of his member, as well as its shortening. The latter came about many years ago when a distemper came about that made it necessary to cut short and cauterize it. What remains is thus a vestige of his original member which causes him lack of feeling (in it). He is also no longer able to gain an erection in any way, which, in the end, was not required (of him) at any of (his) examinations.

2. With respect to the above, the alleged rape of the woman is not possible, even if I assert that any signs of the alleged violation were found. But, no signs commonly associated with such a violation can be found, because there were no such signs in the first place. This is demonstrated in what follows.

For I abandon from the start that there are any of the usual signs of a violation, which are the same both for a violation committed by a virile member and one committed by the fingers of a woman herself or some other instrument, as lascivious young women are sometimes cleverly in the habit of doing. This entire school of physicians has been most accepting of the midwives' testimony alleging reckless falsehoods when they were questioned before the Fisc. While they want it to be recognized that signs indicate that the aforementioned Maria Francisca was deflowered by a virile member, and only a virile member, this is utterly false. It also goes against certain medical authorities, among whom in particular are: Joubert, lib. 5,

*error. popul.c.*⁵; Ambros(ius) Paraeus, *lib. de renuntiat*⁶; Augen, lib. 1, *Epista.c.*⁷; Fortunat Fidel *de relat. Med. Lib.c.*⁸; Codrone.c.11 *in Method. testis*⁹; Valles, de Sacr. Philosoph.c.25¹⁰ and in Jurisconsultos Cujac. *lib. 17. Observat.c.*¹¹; Sanchez *de Matrimon. lib. 17. disput.* 113.¹² n. 10 all of which I have mentioned with some others, such as lib. 4. *Quest. Medico Leg. tit. 1. q. 1. n. 14.* And yet these very midwives questioned before the Fisc deny this, according to around five interrogations by Felix Campanella.

3. Next, the signs of a violation that are being leveled by the midwives could indeed not be found on the said Maria Francisca. In the first place, it was presumed that four or five months had already passed after her violation. What they (the midwives) put on record regarding (Maria's) genitals must also be considered. This is not what is observed in women who have been violated, because physicians have elsewhere noted that when a woman has both wide and damp genitals, as the aforementioned Maria Francisca has, the genitals themselves are clearly wide and separated, therefore while certain virgins are deflowered without any enlargement of the vulva, this is certainly the case when they are deflowered right after menstruation, that is within one or two days. All of this has been observed well by Capivacc *loc.cit.*¹³ et a Severino Pinaeo, lib. 1. *de not. virgin.c.*¹⁴
4. What the midwives put on record concerning the observation of a certain redness in the vulva of Maria Francisca is completely spurious because a redness of this sort, that is a change in

⁵ The reference here is to Laurent Joubert's (1529-82) *Erreurs populaires*, which addresses popular misconceptions regarding both medicine and physicians that coursed through sixteenth-century French society. Joubert served as chancellor of the University of Montpellier before being appointed as the personal physician of Catherine de' Medici, the queen consort of France. He would also go on to become a physician at the court of no less than three kings of France.

⁶ Ambroise Paré's (1510-90) *Liber de renunciatione*. Paré was one of the most distinguished Renaissance physicians and surgeons, eventually serving four French kings. He made his name writing about his experiences as a battlefield surgeon. His surgical innovations, both on and off the battlefield lead some scholars to regard him as the father of modern surgery.

⁷ Horatius Augenius' or Orazio Augenio's (1527-1603) *Epistolarum et consultationum libri XXIV*. Augenio was a leading Italian authority on medicine during the Renaissance. He worked at numerous universities during his career, including those in Rome, Turin, and Padua. His most important scientific contributions were on the subjects of fever, plague prevention, and pregnancy.

⁸ Fortunatus Fidelis' or Fortunato Fedele's (1550-1630) *De relationibus medicorum libri quatuor* (1598). Scholars consider this Italian physician to be the first to practice modern forensic medicine, which he defined as "application of medical knowledge to legal questions." It was in fact on Fidelis' work that Zacchia's own builds.

⁹ Johannes Baptista Codronchius' or Giovanni Battista Codronchi's (1547 - 1628) *Methodus testificandi* (1597). An Italian physician and, following in Fidelis' footsteps, was one of the earliest to apply medical knowledge to legal questions.

¹⁰ Franciscus Vallesius' or Francisco Valles' (1524-1592) *De sacra philosophia* (1587). He was one of Spain's most celebrated Renaissance physicians, humanists, and writers.

¹¹ Jacobus Cujacius or Jacques Cujas (1522-1590) was a French jurist consult and classical scholar who specialized in Justinian's *Codex Iustinianus* or *Corpus Juris Civilis* (issued in three parts between 529 and 534).

¹² Thomae Sanchez's or Tomás Sánchez's (1550-1610) *Disputationes de sancti matrimonii sacramento* (1602). Sanchez was a Spanish Jesuit physician and casuist known for his intense piety and innocence.

¹³ Hieronymus Capivaccius or Girolamo Capivaccio (1523-89) was a physician and philosopher working in Padua, Italy.

¹⁴ Severinus Pinaeus' or Severine Pineau's *De virginitatis notis graviditate et partu* (1598). He was a physician and worked in Paris.

color, is observed in the first few days and no more than seven (after a rape), as all doctors acknowledge, not fifteen. The reason for this is that any marks made by the rapist, and also the convergence of blood at (the victim's) private area as the result of the violation suffered, disappear altogether before the abovementioned number of days have passed; in truth, even if the midwives were able to observe such redness in Maria Francisca it would have cleared up well before then (fifteen days). But if perhaps some redness was evident, it can occur from many other different things than rape. This redness in Maria Francisca cannot be seen at all, but what can be observed is her private parts are wide and very damp. Also, the rapist, when erect, commands, as I said, a short, thin, flaccid, and maimed member.

5. In truth, the petulance of the midwives cannot be at all tolerated without a burning anger, when they say that the vulva's opening was dilated, thus the woman in question appears to have been violated, but, at the same time, violated by a very thin and flaccid member. Indeed, as long as they aim exceedingly to satisfy with pretensions, the members of the Fisc will not see them as legitimate if everything they put on record is untrue and false. That is to say, if the member by which Maria Francisca was raped was thin and flaccid, it is not possible, as I have said, to commit that violation on such a wide, damp, and, dilated vulva; abandon any thought of such an assault. For, when the virile rod is thin and the opening of the hymen fairly large, it is possible for a virgin to be undone without a dilation of the hymen. (This is) given splendidly as evidence in Capivacc.⁵ *loc.cit.*¹⁵ et alii: what must be said in our case, when a woman has such a wide and damp vessel and an alleged rapist has a short, thin, flaccid rod (which is) incapable of arousal and erection? Indeed, these (assertions) are discordant, absurd, and untrue; how amazing it is that the Fisc permits them to be brought into court.

6. Finally, what they (the midwives) put on record concerning the disappearance of vaginal rugae, which they themselves say they had observed in the said Maria Francisca and had corroborated externally is very untrustworthy. For if something is able to cause the said vaginal rugae to disappear, then it would generally do the same to a perpetual flux of a woman, which Maria Francisca still has. Any such violation would be made by a virile member, but how in the world is it possible for vaginal rugae to disappear by means of a member so thin, short, flaccid, and mutilated in an uncommon way prior to (the man) having repeated sex? It is indeed not possible for this disappearance of vaginal rugae to occur, unless they are worn down with much violence by a vigorous and thick member and through the force of entering (a woman) many, many times. But now back to the testimony from the midwives themselves. The member by which that woman (Maria Francisca) was violated is thin and flaccid: it was therefore not possible for (this member) to traumatize said vaginal rugae to the point of complete disappearance; indeed, not even a trace of this happening has been observed. Therefore, let these most ignorant and reckless midwives indeed amend what

¹⁵ This is the same Hieronymus Capivaccius or Girolamo Capivaccio (1523-89) Zacchia mentioned near the end of his third argument.

they put on record. They hide themselves in all of this sheer nonsense, and none of it is able to demonstrate anything whatsoever against the alleged rapist.