

legal regime that attributed the ability to own and manage property, on women's position in society.

This study examines over 650 cases of abduction recorded in different types of judicial records in the late medieval Low Countries. It will argue that abductions, rather than marking the importance of free partner choice, testified to marriage's strategic nature within complex social constellations in which concern for property was of utmost importance. By exploring a broad array of legal and administrative sources, it aims to bring nuance to the often-polarized debates on female agency in marriage and abduction and shed light on the ways in which diverse but coexisting perspectives on marriage-making in the late medieval Low Countries were negotiated in and out of the courtroom. The new evidence presented here will demonstrate that abductions should no longer be considered only as a semi-criminal offence (as many authors have done) but as a crucial social phenomenon in the history of marriage, one that provides an extremely revealing lens through which to examine both people's interaction with the law and women's social and legal position in Western Christian Europe. An examination of cases of abduction tells us that medieval marriage, rather than being characterized by ideologically different views of church versus 'state', a traditional but highly influential portrayal, instead represented a crystallization of a legal system that contained inherent conflicts. While church law had a remarkably strange insistence on the consent of parties, even those at a very young age, secular authorities, specifically in the Low Countries, tried to limit the influence of the consent requirements in church law even as they gave women uniquely extensive inheritance rights to the estates of a large number of family members. This book uncovers the history of that conflict and in doing so tells us about female agency, the role of secular and religious authorities, and the role of the family and the law in marriage-making.

Abduction, marriage, and consent

Most studies on abduction have been strongly influenced by the focus among Anglophone historians on the crime of *raptus*, an umbrella term that prevailed in late medieval English legal statutes and records and encompassed three (and in modern discourses distinct) offences: abduction, rape, and theft.¹² Consequently, the multivalence of *raptus* and the similarly ambiguous term 'ravishment' are at the core of English abduction scholarship, which

12 Dunn, *Stolen Women*, 19.

tends to focus on rape rather than marriage.¹³ For other European regions, the intertwining of rape and abduction was less of an issue as the categories were more distinct, both in contemporary descriptions and in modern literature.¹⁴ In the late medieval Low Countries, abduction meant taking a woman for the purpose of marrying her or being 'romantically' involved with her, with or without her consent. In reality, marital abductions did not always include the literal kidnapping of a woman by bringing her from one place to another. Her seizure should be interpreted more as the act of removing her from the control of her family by marrying her without their consent and sometimes also without the consent of the targeted woman herself.

Scholarship on abduction and marriage-making in late medieval continental Europe is scarce, as most studies only tackle the phenomenon in the early modern period, when abduction with matrimonial intent received more scrutiny as authorities increasingly criminalized this offense.¹⁵ That said, a few scholars have focussed on cases of abduction in the Low Countries, showing that the criminalization of unconventional marriages by secular authorities started in the late Middle Ages there. This early criminalization of consensual abductions with marital intent in the Low Countries is striking, especially because historians have repeatedly argued that women enjoyed strong social and legal positions in this region.¹⁶ Studying legal texts and records in Flanders and Brabant, Myriam Greilsammer has argued that it was precisely this beneficial position of women that caused them to want control over their marriages, leading to an increase in the number of *raptus de séduction* and the reaction of new, more severe legal texts. This explanation is unsatisfactory given historians' finding increasing penalization of marriages against the will of parents and family in regions where women did not have the same legal position, namely in various fourteenth- and fifteenth-century Italian cities. Moreover, Greilsammer does not support her argument with any statistics proving that the number of abductions with marital intent indeed increased throughout the late medieval period.¹⁷ Scholarship arguing

13 Donahue, *Law, Marriage, and Society*, 169; Goldberg, *Communal Discord*, 175; Seabourne, *Imprisoning Medieval Women*, 92.

14 Cesco, 'Rape and Raptus', 695; two studies on abduction in France in the High Middle Ages and the seventeenth century, for example, explicitly connect abduction to marriage, see Joye, *Le mariage par rapt*; Haase-Dubosc, *Ravie et enlevée*.

15 Haase-Dubosc, *Ravie et enlevée*, 20; Cesco, *Elopement and Kidnapping*; De Munck, 'Free Choice'; Vernhez Rappaz, 'Rapt et séduction'; Garnot, 'Une approche juridique'; Hage, *Eer tegen eer*.

16 Bousmar, 'Neither Oppression, Nor Radical Equality'; Bardyn, 'Women'.

17 Dean, 'Fathers and Daughters', 96–97; Dunn, *Stolen Women*, 117–18.

for the strong legal position of women in the Low Countries has thus yet to be reconciled with the remarkable presence of abductions with marital intent in this region's late medieval law and legal practice.

As I will explain in more detail, studies of the Low Countries typically frame specific cases of abduction as elopements in which women subverted traditional lines of patriarchal authority by willingly following their boyfriends into matrimony, in spite of any familial rejection.¹⁸ In doing so, these historians, as well as their counterparts working on other regions, have used the framework of agency, choice, and family authority to interpret and contextualize this fascinating phenomenon. Yet, while scholars studying abduction elsewhere have considered abduction as an exceptional phenomenon that only touched the lives of the aristocratic elites, where the stakes of marriage-making were highest, Walter Prevenier has shown that in the Low Countries abduction also occurred among the urban elites.¹⁹ Using Burgundian pardon letters to elaborate on several cases of abduction, Prevenier interpreted abductions that occurred within well-known aristocratic and artisan families in different cities as mechanisms by which kin groups strove for power and prestige.²⁰ Abduction in the Low Countries was thus not merely an aristocratic phenomenon, an argument this study will second and expand. In this highly urbanized region, the so-called middling sorts were demographically dominant and culturally, politically, and socially highly significant.²¹ In cities like Leuven, Brussels, Bruges, and especially Ghent, these working families let their voices be heard in politics in a way that is unique in late medieval Europe, including in legislation and enforcement of laws, a feature that has been insufficiently considered in current research into marriage-making in this region.²²

Scholarship on abduction in and outside of the Low Countries has been embedded into wider debates about premodern marriage-making and partner choice that have held a central place in the historiography for decades. Today, historians emphasize the way family strategy and the capacity of individuals to choose their own spouses were intertwined in the Middle Ages.²³ Medieval and early modern sources reveal, however, a tension between the two spheres, leading historians to continue trying

18 Rousseaux, 'Crime, Justice, and Society'; Strange, 'Femininities and Masculinities', 230.

19 Dunn, *Stolen Women*; Goldberg, *Communal Discord*.

20 Haemers, *De Gentse opstand (1449–1453)*, 19.

21 Dumolyn and Haemers, 'Let Each Man Carry on with His Trade'.

22 Boone, 'Een middeleeuwse metropool', 69.

23 McSheffrey, 'I Will Never Have None Ayents My Faders Will'.

to understand the social impact of contradicting yet coexisting views on marriage-making.²⁴ The abduction of Woyeken described above seems emblematic of that tension, since she married her abductor without, as far as we know, the consent of (a large share of) her family. Seen from this point of view, it would seem that Woyeken exercised free choice. Some scholars have pointed out that canon law's insistence on consent—the exchange of words of consent between partners in itself made marriage—permitted people in late medieval societies to treat marriages as personal, intimate affairs, and they could put the consent doctrine into practice by marrying persons of their choice or refusing marriages arranged for them.²⁵ For these scholars, abduction often serves as evidence of the importance of individual choice and even of love in premodern times.²⁶ But problematically, abduction can also be interpreted as a strategy men used to abuse women and enforce marriages beneficial to themselves. If the abductee consented to her abduction, these scholars have deemed it an elopement, while nonconsensual abductions have been interpreted as tactics used to pressure wealthy women into marriage in order to secure the men's climbs up the social ladder. Thus, abduction could have been both a tool of oppression and a sign of emancipation and self-determination. This ambiguity has raised the urgent question of abducted women's 'agency'.

By referring to consensual abductions as 'elopements', a term associated with secrecy and illegitimate love, an image emerges of abduction as a tool to put the church's doctrine regarding consensual marriage into practice and circumvent any familial interference. The historian James Brundage's influential work on marriage and sex in late medieval Europe greatly reinforced this elopement narrative. According to Brundage, consensual abductions were acts in which an 'importunate suitor eloped with his sweetheart against her father's wishes'.²⁷ Other scholars have endorsed this view and argued that the use of the term 'abduction' gives the false impression that women had no agency, while in fact, they may have been active accomplices who had planned/intended to marry their abductors,

24 Sheehan, 'Choice of Marriage Partner'; Chojnacki, 'The Power of Love'; Korpiola, 'An Act or a Process'; d'Avray, *Medieval Marriage*; Titone, 'The Right to Consent and Disciplined Dissent'.

25 Greilsammer, 'Raps de séduction'; Wieben, 'Unwilling Grooms'; Titone, 'The Right to Consent'; Arnade and Prevenier, *Honor, Vengeance, and Social Trouble*, 128–32; Pedersen, 'Playing the System'.

26 For example, Rolf Hage has recently argued that it was love which motivated most couples to marry via an abduction in the early modern Dutch Republic; see Hage, *Eer tegen eer*.

27 Brundage, *Law, Sex, and Christian Society*, 48.

perhaps for the same kind of political or financial reasons that motivated their husbands.²⁸ In her study on abductions in the early modern Venetian Republic, Valentina Cesco concludes that ‘women were at times fully involved in arranging their own “kidnapping”’, and marital abductions, therefore, included ‘instances of female agency’.²⁹ Other historians have taken this a step further and contended that love was a common motive for young people to marry via abduction and that abduction was the logical consequence of a generational conflict between young people who wished to exert their right to consent to marriage and their parents who wanted to protect their honour and patrimony.³⁰ Research on this particular phenomenon is thus bulging with appealing narratives of couples defying the odds and resisting patriarchal expectations.

Historians over the last two decades have criticized this narrative and taken a closer look at our understanding of consent and at the ubiquitous but sometimes unsubstantiated use of the term ‘agency’ by women’s and gender historians. Regarding consent, this evolution is paralleled by shifts in more theoretically informed scholarship on sexual consent in present-day societies. Until the 1990s, consent was largely perceived as an expression of willingness, characterized by a lack of perceptible resistance.³¹ Researchers working on marriage and abduction in the Middle Ages have often adopted similar definitions, tending to regard consensual abductions as stories about lovers eloping and running away together. Yet over the last twenty years, the equivalency of will and consent has been severely criticized by social scientists. There is currently an intense debate about the meaning of sexual consent in the fields of sociology, law, and psychology as a reaction to the frequent use of the term ‘consent’ without providing a definition, with critics denouncing researchers who often ‘assume a shared understanding of the term’ and mix up the concepts of will, agreement, and choice, which are related but not interchangeable.³² While most scholars today define consent as ‘agreeing to something’ rather than ‘wanting something’, the debate about the nature of this agreement continues.³³ The fog surrounding consent today

28 Jordan, ‘The “Abduction” of Ida of Boulogne’, 2.

29 Cesco, *Elopement and Kidnapping*, 178.

30 Prevenier, ‘Courtship’, 177.

31 Hickman and Muehlenhard, “By the Semi-Mystical Appearance of a Condom”, 259; Beres, ‘Rethinking the Concept of Consent’, 373.

32 Beres, ‘Rethinking the Concept of Consent’, 374; Beres, ““Spontaneous” Sexual Consent’, 92; about the inclusion of positive consent definitions in law and consent and coercion-based definitions of rape, see Dowds, ‘Towards a Contextual Definition of Rape’, 48.

33 Beres, ‘Rethinking the Concept of Consent’, 374–75.

further complicates the study of consent in the past. Did Woyeken Hagen's sworn affirmation of consent really mean that she enthusiastically longed to marry Symoen and consciously chose to be with him?

Influenced by these discussions, historians working on marriage and consent in late medieval England have scrutinized mentions of consent in the past, arguing that the line between consent and coercion may have been thinner than often assumed. It is not a coincidence that Anglophone historians are the frontrunners here, as premodern English literary and legal records use an extremely ambiguous terminology in which narratives of rape, love, coercion, and consent come together (*raptus* and *ravishment*; see above). Therefore, historians working with English material have dedicated more careful attention to the language used, taking into account that certain descriptions might have meant many different, even contradicting things.³⁴ James Menuge, for example, has argued that marital consent did not per se mean that men and women had free choice when selecting a spouse in late medieval English marriage cases.³⁵ Sara Butler, who examined force and fear as a legal impediment to a valid marriage in English consistory court records, has argued that the boundaries between consent and coercion were often blurry. Women were not granted many legal options for dealing with persistent suitors/abductors, which may have caused many of them to 'consent' to stay with coercive husbands.³⁶ Studying the confinement and abduction of women in late medieval England, Gwen Seabourne has argued that there was 'a whole spectrum between wholehearted agreement and active refusal, like reluctant agreement, passive acquiescence, resistance and consent' and critiqued those who systematically put 'abduction' in quotation marks as though to signal that the abduction was not forced, but a strategy to exercise free will in the face of parental opposition.³⁷ In a similar vein, Caroline Dunn wrote that 'the dichotomy between the abduction victim and active co-conspirator demonstrates both a post-enlightenment concern for individual choice and a feminist attraction to the perspective of the woman's experience'.³⁸ Hence, consent, free choice and love are distinct concepts and must not be conflated. These scholars have convincingly argued for treating these records and the stories they tell with suspicion and caution instead of jumping to conclusions.

34 Dunn, 'The Language of Ravishment'.

35 Menuge, 'Female Wards and Marriage', 154.

36 Butler, 'I Will Never Consent to Be Wedded with You!'

37 Seabourne, *Imprisoning Medieval Women*, 152–53.

38 Dunn, *Stolen Women*, 94.

When studying abduction, historians continue to categorize the cases they encounter as either abductions, which imply coercion, or elopements, which imply consent. In their recent book on Burgundian pardon letters, for example, Arnade and Prevenier discuss several abductions, attempting to categorize each case as either abduction or elopement.³⁹ Caroline Dunn dedicated one chapter to abductions and a separate one to elopements.⁴⁰ This tendency to categorize is justified, as late medieval law and judges also tended to distinguish between coerced and consensual abduction, the latter being referred to as *rapt de séduction* in French and *verleiding* (seduction) in Dutch. That is, just like many modern historians, late medieval judges saw these types of abduction as separate legal categories, as Chapter 1 will show. However, this label applied by judges reflected a legal rather than social distinction. Therefore, in trying to separate abductions from elopements, there lurks the risk of distortion in deciding whether or not specific cases were or were not elopements in which women played an active role and exercised 'agency'.⁴¹ By examining an abductee's 'agency', scholarship continues to portray abductions as tools for women to act independently in a patriarchal context.

During recent decades, however, this conception of 'agency' has been intensely interrogated. Agency is a dangerous term, as it slips in ideas of rebellion and resistance.⁴² Rather than framing women's actions as exceptional accomplishments in a society that impeded them on multiple levels, scholars have recently called for normalizing women's agency, as women did have structural opportunities and rights to act in premodern societies. In her article on women in the early modern period, for example, Allyson Poska introduces the useful term 'agentic gender expectations' to indicate that women could and were even expected to achieve things and exert power in early modern European societies.⁴³ Their actions should thus not always be framed as exceptional deeds or as reactions against highly oppressive patriarchal structures. This argument applies to this study too, as regarding marriage, late medieval societies expected women to be involved in marriage-making—at least to a certain extent. Canon law and church

39 See the titles of the abduction cases they discuss, 'The Abduction of Widow Anna Willemszoon', 'Abduction or Elopement?', and 'Elopement Cases' in Arnade and Prevenier, *Honor, Vengeance, and Social Trouble*, 146–62.

40 Dunn, *Stolen Women*, 82, 98.

41 Jordan, 'The "Abduction" of Ida of Boulogne', 1–3; McSheffrey and Pope, 'Ravishment, Legal Narratives, and Chivalric Culture', 826–27; Seabourne, *Imprisoning Medieval Women*, 148–49.

42 See for example Howell, 'The Problem of Women's Agency'.

43 Poska, 'The Case for Agentic Gender Norms'.

courts required the woman's spoken words of consent for a marriage to be considered valid, and some evidence indicates that in secular courts too, the opinions and decisions of girls were acknowledged and valued.⁴⁴ In discussing the use of the concept of agency, Cornelia Hughes rightly states that instead of using a language of rebellion, subversion, and self-determination, scholars have to study 'how power relations were negotiated'.⁴⁵ In the late medieval Low Countries, as this study will show, abducted women were acting as legal agents while at the same time operating in very constrained circumstances. Their consent mattered but could mean many different things. Their marriages were not unilaterally imposed upon them by a patriarchal authority figure, but the choice of spouse was a bargaining process involving intense debates in which various interests were weighed and negotiated. In short, this study aims to go beyond using agency as a 'concluding argument', as has often been done when tackling cases like that of Woyeken Hagen. Instead, as argued for by Lynn Thomas, this study examines the 'form, scale and scope' of women and individuals' ability to shape their marriage and abduction while at the same time attending to the ways in which familial, legal, and societal forces 'shaped their lives'.⁴⁶

Some scholars have tackled this debate with a different approach towards determining women's choices, looking at alternative ways in which abducted women could have played an active role, specifically through their appeals to justice. When the victim of a rape or abduction for marriage, a woman was granted the option to press charges. However, late medieval English lawmakers offered few such tools to women being pressured into marriage by aggressive suitors, as Butler and Dunn have argued.⁴⁷ Still, some female victims of abductors managed to prosecute and successfully convict their attackers. Historians have studied these pleas and shown how carefully they were constructed: female victims of rape and abduction framed what had happened in such a way that their narratives conformed with cultural notions of gender and power that were deeply rooted in late medieval culture. As Deborah Youngs has argued, 'a woman's agency, therefore, was present not so much in what she said had happened during the abduction, but in her actions that followed, specifically in the act of entering a plea and telling her story'.⁴⁸ In rape cases too, women and their attorneys were careful how they

44 Danneel, *Weduwen en wezen*, 180.

45 Hughes, 'Rethinking Agency', 827, 842–43.

46 Thomas, 'Historizing Agency', 325.

47 Butler, 'I Will Never Consent to Be Wedded with You!'; Dunn, *Stolen women*, 83.

48 Youngs, "She Hym Freshshely Folowed and Pursued", 81.

worded their allegations. Garthine Walker has shown that they preferred to focus on the aggression of their rapist towards them rather than on the actual sexual abuse, to avoid questions about the victim's complicity and sexual involvement.⁴⁹ In her study on late medieval Iberia, Marie Kelleher highlights this interesting paradox; women's litigation strategies reinforced gender stereotypes inherent to the patriarchal legal system.⁵⁰ According to Alexandra Shepard, this language of subordination used by women in court gave a 'double edge' to their agency.⁵¹ In this view, abducted women could thus have been victims and agents at the same time, using opportunities offered by the patriarchal system to their advantage.⁵²

The debate over an abductee's active involvement in an abduction marriage should therefore be conducted on different levels, dealing with questions both about free partner choice and about the possibilities and ways available for victims to tell their stories in court. Instead of focussing on whether one or more cases display women's agency and ability to choose their own spouses, it is more useful to investigate discourses on consent and control of marriage in relevant primary sources and to assess what they tell us about how late medieval people experienced marriage and abduction, why they had to exert, enforce, or escape control over partner choice, and what ideas circulated with regard to individual consent and family strategy regarding marriage-making in late medieval society.

Abduction marriage for all

This combination of sources (see below) sheds light on the lives of the upper and middling social groups in the urban societies of the fifteenth-century Low Countries. The upper groups or urban elites consisted of nobles, influential lineages of wealthy tradesmen, and landowners who traditionally held political power within the city. From the fourteenth century onwards, the nobility became increasingly urbanized, often making it impossible to distinguish between nobles and patricians, the traditional urban elites.⁵³ The

49 Walker, 'Rereading Rape', 7.

50 Kelleher, *The Measure of Women*, 13.

51 Shepard, 'Worthless Witnesses?', 719. See also Beattie, 'Women's Petitions to Medieval Chancery', 106 on how agency should not be defined as power. Several female litigants in Chancery petitioned because they could not afford bail or had no supporting network.

52 Bennett, 'Medieval Women', 148–49; Kelleher, 'Later Medieval Law', 139.

53 Dumolyn, 'Dominante klassen en elites', 94; Buylaert, *Eeuwen van ambitie*, 259–66; Damen, 'Patricians, Knights, or Nobles?', 176–77.