

or diocesan courts were church courts run by the bishop that dealt with a large share of marriage cases. Pardon letters dealing with people from different cities and villages in Flanders and Brabant are included too. This approach excludes the possibility of considering specific habits within a single diocese (or county/duchy) as the norm. This study also includes the districts of Land van Waas, Vier Ambachten, and Oudburg, located in the quarter of Ghent: an area that encompassed the city and some less urbanized districts surrounding it (see Map 3).<sup>65</sup> The records of these districts contain significant useful material and show that the rural vs. urban distinction is not as clear-cut as is often assumed; people from the countryside regularly appear in the urban records, the bailiffs of Antwerp and Leuven interfered in rural cases, and the line between those who lived in and out of the city was far from rigid.<sup>66</sup> This is especially visible in the phenomenon of abduction, which by definition entailed the movement of people from one place to another, often from the city to a surrounding village or vice versa.

## Sources

The fact that this study mainly uses court records to study the abductee's role and involvement is problematic. Several scholars have treated these records as direct evidence of people's understanding and experience of the events they report, thus considering these records as unique documents through which we can access almost directly the voices of ordinary people in past societies.<sup>67</sup> Although the words people said in court could have been reflected in these records, the direct equation of these legal narratives with the actual words spoken by people in court has been intensely criticized, most famously by Nathalie Zemon Davis' provocative 'Fiction

made. The 1434–1435 Liège consistory court register studied here (SAL, AD, no. 1), however, contains many cases including litigants from Leuven or villages surrounding Leuven. See Vleeschouwers-Van Melkebeek, 'Aspects du lien matrimonial', 45–46.

65 About these regions consisting of villages, small cities, and domains, see Blockmans, *De volksvertegenwoordiging in Vlaanderen*, 93, *passim*; Bastien, 'Tussen autonomie en centralisatie'.

66 Historians have hypothesized that patriarchal constraints affected rural societies more than urban ones, arguing that women had more economic agency and that marriages were more personal affairs in the city than in the countryside, Goldberg, *Women, Work, and Life Cycle*. However, recent research on the countryside shows that the ways in which families managed conflicts and dealt with marriage and property resembled urban societies more than is often assumed; see Hoppenbrouwers, *Village Community and Conflict*.

67 Le Roy Ladurie, *Montaillou*; Ginzburg, *The Cheese and the Worms*; Farge, *Le goût de l'archive*, 12–13; Bourin and Chevalier, 'Le comportement criminel', 246.

in the Archives'.<sup>68</sup> Litigants' alleged stories were mediated as they passed through attorneys, courts, judges, and scribes who moulded testimonies, pleas, and defences into a specific format when registering them. Moreover, plaintiffs were likely to know how to tell their stories, because of which one should question the 'truth' these narratives hold as strategic distortions of a social reality in which exaggerations and alterations served to present a plausible yet convincing argument. Despite these caveats, these records remain extremely useful since they were produced within a social context and thus shed light on norms and ideas prevalent in the society within which they were produced.<sup>69</sup>

Nevertheless, historians continue to struggle to understand the relationship between the 'stories' offered in these records and the 'truth'.<sup>70</sup> Frances Dolan has charged that although historians acknowledge these sources' constructed, even fictitious, character, they continue to simply ignore such concerns.<sup>71</sup> To meet this criticism, I have tried always to include indicators such as 'reportedly', 'according to the plea', or 'the record states that' when referring to examples or discussing specific cases. When addressing the social reality behind the legal narrative, this will always be clearly indicated. To deal with the complex nature of 'the legal record' and to surpass particularities inherent to specific types of legal records, this study will combine different source types, as has been recommended by Tim Stretton in his article on the advantages and challenges of this type of source.<sup>72</sup> By examining records of criminal justice as well as civil lawsuits and administrative records, along with contracts privately initiated and arranged by families, this study aims to reveal, at least to a certain extent, how legal records captured social reality and to understand that reality more fully.

Concerning conflicts that emerged from the tension between canon law and social views on marriage, jurisdiction in all cities under scrutiny was mainly shaped by three players: the city governors (called aldermen or *schepenen*), the local bailiff who acted as a representative of a duke or a count and was in charge of law enforcement, and the diocesan consistory courts

68 Davis, *Fiction in the Archives*.

69 Arnade and Prevenier, *Honor, Vengeance, and Social Trouble*, 15; Goldberg, 'Telling Tales in Court', 64; Stretton, 'Women, Legal Records, and the Problem of the Lawyer's Hand', 696.

70 For a recent overview of the challenges of reading women's voices in legal records, see Stretton, 'Women, Legal Records, and the Problem of the Lawyer's Hand'.

71 Dolan, *True Relations*, 113, 116. This critique was recently seconded, see Pedersen, 'Playing the System', 185.

72 Stretton, 'Women, Legal Records, and the Problem of the Lawyer's Hand', 694, 697.

which dealt with the validity of marriages. The secular records of criminal justice, namely the bailiffs' accounts and the books with the aldermen's final sentences, occupy a central place in this research and are complemented by the records of voluntary jurisdiction, pardon letters from the dukes of Burgundy, and consistory courts' records.

In cases of abduction in the cities under scrutiny, it was the city aldermen, selected from both elite families as well as the craft guilds, who issued legal texts and administered justice in the city. Their records contain final sentences in criminal cases and civil lawsuits in which they acted as judges. While detailed criminal proceedings have not been preserved, books containing the final verdicts of the aldermen are preserved in all three cities. Slightly different types of final verdicts thus have survived. The Ghent *Ballincbouc* (book of banishments) deals exclusively with sentences of banishment in the late fifteenth century (1472–1537), while the Leuven *Dbedevaertboeck* (book of pilgrimages) only covers the beginning of that century and particularly contains the names of offenders sentenced to a forced pilgrimage (1398–1422). The Antwerp *Vierschaar* book covers more of the century (1412–1515) and records a wider variety of sentences, albeit incompletely. These sentence books, which treat criminal cases, are supplemented by some detailed records of civil lawsuits (sometimes containing plaintiffs and defendants' legal argumentation), to be found within the aldermen's registers, a source type discussed below.

Although bailiffs did not have the authority to pronounce actual verdicts, they dealt with the practicalities of a lawsuit in the sense that they, as prosecutors, investigated offences and were the officials with whom one could file a complaint. The bailiff, called *schout* in Antwerp, *meijer* in Leuven, and *baljuw* in Ghent and the Ghent districts, had a pivotal role in urban justice, as he called the aldermen together and requested them to sentence suspects. Furthermore, he was responsible for apprehending criminals, gathering evidence so that cases could be tried, and supervising convicted offenders to ensure they complied with the sentences issued by the aldermen. The bailiff, however, did not have to pass every offence encountered on to the aldermen, and could instead decide to not press charges by making monetary settlements with the alleged offenders, called 'compositions', as we saw in the Woyeken Hagen case.<sup>73</sup> This practice was widespread, and bailiffs allowed suspects to buy their way out of prosecution by paying a

73 About this practice, see Van Rompaey, 'Het compositierecht in Vlaanderen'; Dupont, 'Le temps des compositions (II)'; Dupont, 'Le temps des compositions (I)'; Prims, *Rechterlijk Antwerpen in de middeleeuwen*.

composition for a variety of reasons: usually lack of legal evidence, because the parties involved had already made private peace settlements, or because this practice could be very profitable for the bailiff.<sup>74</sup> Bailiffs' accounts preserved today list the names of criminals punished and the income (via compositions) or costs of their cases (e.g., the wage paid to the hangman). Occasionally, bailiffs' accounts also include final sentences issued by the aldermen. These accounts cannot be taken at face value, since they framed what had happened in such a way that justified the bailiff's decision to settle through composition instead of in court. For the less urbanized districts within the quarter of Ghent, only bailiffs' accounts have been studied, since no sentence books for these regions have been preserved.

Abduction and partner choice conflicts can be found in another unique series of sources that have been preserved for the entire fifteenth century in Ghent, Leuven, and Antwerp.<sup>75</sup> In addition to promulgating ordinances and judging civil and criminal cases leading to the discovery of some civil lawsuits in these registers (above), the aldermen also fulfilled a notary function for both city residents and people from surrounding villages and smaller cities. Citizens could come to the aldermen board to register various kinds of private contracts and arrangements. In return for a small fee, the aldermen cast this information into a legally valid charter to which they attached their seal. The aldermen always noted a brief copy of each charter in their registers, leading to deeds which are referred to as records of 'voluntary jurisdiction'. Whereas the original charters have not survived the ravages of time, the aldermen registers of these charters have been preserved. These give historians unrivalled access to thousands and thousands of private arrangements, ranging from rent contracts and wills to neighbourly agreements and private settlements for all kinds of disputes. The registration of these matters by the aldermen ratified them and provided those involved with a legal guarantee.

Records of voluntary jurisdiction offer new information on abduction from a bottom-up perspective. Until now, abduction has been studied via court records and mostly (at least for the Low Countries) through final sentences and other records of legal settlements. Whereas these 'traditional' records inform us of the penalties for abductors and abductees and narrate the abduction story in a way that justifies the verdict, records of voluntary

<sup>74</sup> Unsurprisingly, this lucrative system paved the road to corruption; see Buylaert, 'Familiekwesties', 7; Prevenier, *Prinsen en poorters*, 98–99; Van Rompaey, 'Het compositierecht in Vlaanderen', 58–59.

<sup>75</sup> See Ceunen, *De Leuvense schepenbank* for more information on the Leuven aldermen registers.

jurisdiction help us to reflect upon decisions, arrangements, and initiatives enacted by the abductors, abductees, and their families themselves. These records thus allow us to study abduction more broadly, as a social phenomenon rather than simply a legal question. Records of voluntary jurisdiction shed light on a variety of arrangements regarding abduction, but most common are private arrangements between families after their children had married without consulting them, property arrangements made in case of a woman's abduction, and, most fascinatingly, declarations of consent made by abductees before the aldermen (see Chapter 3). In short, they tell us a great deal about the actions people and their families undertook outside of the courtroom.

Pardon letters are lengthy records that offer detailed descriptions of the offenses they deal with. During ceremonial city entrances by dukes or counts (referred to as 'joyous entries') and other festive occasions, or after receiving a petitioner's request, sovereign governors (i.e., a duke or count) could decide to officially pardon offenders for crimes they had committed. Every subject of a duke or count in the Low Countries had the right to request a pardon orally or via a written letter, as in many other European regions.<sup>76</sup> A scrutiny of the pardon letters regarding abduction granted by the Dukes of Burgundy alone is worthy of study. This study includes a small number of about thirty letters written between 1387 and 1501 and dealing with abductions for marriage in the County of Flanders and to a lesser extent the Duchy of Brabant.<sup>77</sup> These letters are a particularly challenging source because of their story-like and strategically constructed narratives.<sup>78</sup> Just as the bailiff had to explain why he allowed a composition in his accounts, these letters had to justify the duke or count's decision to grant a pardon, and thus were designed to raise some sort of sympathy for the pardoned offender. They thus sometimes played with the truth and so require a critical view, but should not be dismissed as fictional.<sup>79</sup> It is particularly interesting to see how patterns in the abduction stories within these letters can be matched with other records, such as the private contracts in the aldermen registers.

Finally, these secular records are complemented by consistory court records. In principle, secular judges dealt with the abduction preceding the

<sup>76</sup> Arnade and Prevenier, *Honor, Vengeance, and Social Trouble*, 6–13.

<sup>77</sup> These letters were kindly provided to me by Walter Prevenier, who has studied Low Countries' pardon letters extensively and is currently working on an edition of all of these letters involving abduction, rape and other sorts of violence against women. See *Pardon Letters from the Dukes of Burgundy*, ed. Prevenier, intr. by Arnade and Colwill (forthcoming).

<sup>78</sup> Davis, *Fiction in the Archives*, 15–25.

<sup>79</sup> Arnade and Prevenier, *Honor, Vengeance, and Social Trouble*, 13–18.

marriage, whereas episcopal judges judged the marriage contracted after an abduction.<sup>80</sup> The bishops exercised jurisdiction over various matters in their dioceses' courts, including a large share of matrimonial cases. The bishop was represented by the 'official', surrounded by a court consisting of legal specialists such as prosecutors (called 'promotors' in the records) and lawyers.<sup>81</sup> I include the records of the dioceses of Cambrai, Tournai, and Liège. In the diocese of Cambrai, two courts were installed, one in the city of Cambrai and one in the city of Brussels. The court in Brussels was founded in 1422 and from 1448 onwards operated on an equal and completely independent footing from the one in Cambrai.<sup>82</sup> The Brussels court was responsible for the northern archdeaconries of Brussels, Antwerp, and Brabant, while the Cambrai court dealt with cases from the southern archdeaconries (see dotted line on Map 2). For the fifteenth century, registers with final sentences from the Brussels court have been preserved for years between 1448 and 1459, and between 1438 and 1453 for the Cambrai court. They can be consulted via the editions by Vleeschouwers and Van Melkebeek, and have been extensively studied, albeit not with regard to abduction.<sup>83</sup> For the Liège court, only one fifteenth-century register (1434–35) has survived that contains not only final sentences but also pleas and defences, thus offering more detailed information on these cases.<sup>84</sup> Ghent was situated in the diocese of Tournai, but since only accounts and no sentences or legal proceedings have been preserved for this diocese's consistory court, its records are not as useful as the other consistory courts' records.<sup>85</sup>

In total, these different types of records yield accounts of over 650 abduction cases between 1381 and 1536. The book focuses on the fifteenth century, when Low Countries' cities were governed by elites as well as middling sorts, but includes some cases from the late fourteenth and early sixteenth centuries that were included in the series of sources studied. Whilst some

<sup>80</sup> These authorities' roles and scopes of competency form the subject of Chapter 4.

<sup>81</sup> Donahue, *Law, Marriage, and Society*, 33–34; Damoiseaux, 'L'officialité de Liège', 6–44.

<sup>82</sup> Vleeschouwers-Van Melkebeek, 'Bina matrimonia', 245–46.

<sup>83</sup> Find the edited registers in Vleeschouwers and Van Melkebeek, *Registres de sentences*; Vleeschouwers and Van Melkebeek, *Liber sentenciarum*. The following studies have made a thorough examination of these consistory courts' dealings with matrimonial cases, see Vleeschouwers-Van Melkebeek, 'Aspects du lien matrimonial'; Donahue, *Law, marriage, and society*; Vleeschouwers-Van Melkebeek, 'Marital breakdown'; Vleeschouwers-Van Melkebeek, 'Emotional Mobility and Gender in the Courtroom'; Van der Linden, 'Visis articulis promotoris'.

<sup>84</sup> SAL, AD, no. 1 (1434–35).

<sup>85</sup> These accounts of the court do include some references to cases of abduction; see the edition in Vleeschouwers-Van Melkebeek, *Comptus sigilliferi curie Tornacensis (1429–1481)*; Vleeschouwers-Van Melkebeek, *Comptus sigilliferi curie Tornacensis (1483–1531)*.

types of records have been examined thoroughly, such as bailiffs' accounts and sentence books, others could be accessed only partially through references to specific records in secondary literature or through search tools made available by different archives. When including quantitative overviews throughout this study, I mostly limit myself to the 420 cases found via the bailiff accounts and the sentence books between 1400 and 1536, since I have fully examined these series of sources and selected all relevant cases for this study. In addition, I have divided the 420 cases into 308 cases that seem to be clear examples of abductions and 112 cases that could alternatively have been cases of rape or abuse. The terminology used in the Low Countries records is more straightforward than the one used in medieval English records. While the Antwerp and Leuven cases were easy to label as either abduction or rape, the Ghent cases were more challenging. In Antwerp, eighty percent of the cases studied were abductions, while twenty percent could have been cases of rape or abduction. In Leuven, the ratio is eighty-eight percent vs. twelve percent. In Ghent and the Ghent districts, sixty-nine percent of the cases recorded in the bailiffs' accounts and sentence book were straightforward abduction cases while thirty-one percent could have also been cases of rape without matrimonial intent. The difference between Ghent (Flanders) and Antwerp and Leuven (Brabant) stems from the difference in the language used to record the offences, namely French and Middle Dutch. Middle Dutch had a specific term (*schaec*) to describe abductions with marital intent, while French records use more general and ambiguous terms.<sup>86</sup> While the legal terminology used in laws and statutes distinguished between rape (*vrouwencracht*) and abduction with marital intent (*schaec*) in the Low Countries, unlike in England were the legal categories themselves were ambiguous, the sources that record actual cases sometimes describe what had happened in a vague manner because of which it is impossible to be sure if the perpetrator intended to rape the victim or take her with him (and sometimes rape her) for the purpose of marriage. There are 112 of these cases with ambiguous language in the bailiffs' accounts and the sentence books.

## Structure

The first chapter will set the scene by outlining customary law's views on marriage-making and by examining the legal statutes and ordinances against abduction issued by secular authorities in the Low Countries. It

86 See detailed analysis in Delameillieure, 'They Call It Schaec in Flemish'.