

especially if she were a woman. The law guaranteed that a woman received property from their family, which, once she was married, would be managed by a man from another family. Therefore, forming a marriage entailed an intense process of negotiation and compromise among relatives who hoped for a 'good marriage', that is, a strategic union of families which served their social and material interests. A well-considered choice of partner was thus essential and that is exactly what could be thwarted by canon law's interpretation of marriage.

From excommunication to decapitation

Canon law made it possible for couples to conclude marriages informally out of public sight, which were called clandestine unions. If a couple exchanged words of consent in private and married clandestinely, no third party was able to confirm the existence of the marriage. One of the alleged spouses could easily deny having said 'Yes, I do', thereby leaving their partner with nothing more than the memory of their version of events. By the 1215 Fourth Lateran Council, ecclesiastical authorities issued new rules to deal with this issue. From now on, couples had to inform their parish priest and the bans had to be published before the wedding, enabling anyone to report any impediment to the marriage. If no impediments applied, the couple could continue their wedding in the presence of witnesses and with the blessing of a priest. All marriages that failed to fulfil one or more of these requirements were considered clandestine. Most clandestine marriages were people simply not following these precise rules, but some clandestine marriages followed an abduction and were meant to force a marriage not agreed upon by all parties that under normal circumstances would be involved in this decision.⁴⁸ Synodical statutes promulgated by the bishop of Cambrai around 1240 state that priests had to forbid their parishioners to marry clandestinely and would be suspended and excommunicated if they failed to fulfil this task. The spouses themselves too would be excommunicated if they married clandestinely by exchanging words of present consent or if they 'after clandestine affiancing know each other carnally'.⁴⁹ Moreover, those witnessing a clandestine marriage formation should inform the bishop or

48 On clandestine marriage and the meanings of this term in the Middle Ages, see Avignon, 'Marché matrimonial clandestin'.

49 Donahue, *Law, Marriage, and Society*, 387.

his official within fifteen days on pain of excommunication.⁵⁰ In addition, these statutes remarkably include that the exchange of future consent, thus the betrothal, should be celebrated publicly. This betrothal or mutual promise of marriage was considered binding and could only be made undone by the bishop in the Low Countries. Other Cambrai synodical statutes include that the betrothal should be contracted in the presence of the parish priest and witnesses in a public space. If, however, the exchange of promises had happened privately, the couple had eight days to repeat their words of future consent in the appropriate, public manner. Although ecclesiastical authorities thus condemned clandestine marriages after abduction, they did not invalidate them, leading to frustration among lay families.

Consequently, secular laws and statutes on marriage and abduction emerged as a counterreaction to canon law's *solus consensus* doctrine. Powerful families, frustrated that canon law denied them control over their children's marriage, pushed secular authorities to come up with legislation that would protect their interests. When using the term 'secular authorities' to indicate lay society's response to the ecclesiastical model of marriage, it is important to be aware that these authorities did not react in the same ways everywhere in Europe, nor were the legal definitions of abduction universal in European law. There were substantial regional variations.⁵¹ In the southern Low Countries, cities enjoyed a high degree of political power and independence. Therefore, there were not only laws at the county and local levels emanating from feudal jurisdictions, but also city regulations on marriage in this region, which was not the case in late medieval England, for example. Still, even within the Low Countries, differences between cities and even between urban and rural authorities occurred. What the secular laws in the Low Countries had in common, however, was the fact that they did not directly address the necessity of parental consent for marriage, but instead targeted cases of *schaec*, the Middle Dutch term for abductions with marital intent. By criminalizing abduction, which often preceded a marriage against the desires of relatives, secular authorities could indirectly challenge the doctrine of *solus consensus* without poaching on the church's preserve.

Secular authorities in several cities in the southern Low Countries promulgated laws on abduction to deal with marriage's social consequences (Table 1). Central to this study are three ducal charters intended for the

50 Donahue, 387–88; Vleeschouwers-Van Melkebeek, 'Classical Canon Law on Marriage', 17.

51 Korpiola, *Regional Variations*; Donahue, *Law, Marriage, and Society*, 598–632.

entire Duchy of Brabant,⁵² several charters promulgated for Leuven⁵³ and Ghent⁵⁴ specifically, and two charters for the districts called Land van Waas⁵⁵ and Vier Ambachten⁵⁶ near the city of Ghent. These local charters were promulgated either by the city aldermen, the duke, or the count. For Ghent, there are five charters dated between 1190 and 1438, while only one charter for Land van Waas (1241) and one for Vier Ambachten (1242) survive. Furthermore, there are three Leuven ordinances on abduction and marriage dated between 1364 and 1406. I have not found any urban charters for Antwerp, besides one reference to an article on abduction in a 1514 charter from Charles V, in a contemporary collection of brief copies of urban ordinances.⁵⁷ All of these legal texts impose penalties on abductors, their accomplices and abductees. While the penalties for abductors and their accomplices vary from fines to capital punishment, the legal stipulations either say nothing about the abductee or demand that she lose her property and inheritance rights.

Table 1 Penalties for abductors, accomplices, and abductees according to ducal, comital and urban legal ordinances against abduction in the late medieval Low Countries.

LEUVEN		Abductor	Accomplice	Abductee
1364	ducal	execution	/	disinheritance
1396	urban	pilgrimage Cyprus	pilgrimage Cyprus	/
1406	urban	/	/	/

52 1356: ‘De Blijde Inkomst’, ed. Van Bragt; 1406: City Archives Leuven (CAL), Oud Archief (OA), no. 1335, art. 16; 1427: CAL, OA, no. 1254, art. 25. Later, other joyeus entry charters were promulgated but they do not contain any new stipulations on abduction. For a concise overview and analysis of the Brabantine joyeus entry charters’ content, see the appendix in Vrancken, *De Blijde Inkomsten*, 347–56.

53 1364: ‘Cl: Ordonnance du duc de Brabant,’ ed. Willems, 605; 1396: CAL, OA, no. 1258, fol. 16rv; 1406: CAL, OA, no. 1258, fol. 17rv. This text does not issue any new stipulations but states that Leuven saw a rise in abductions and indecent marriages. It repeats that abductions should always be punished.

54 1191: ‘1. Mathilde’, ed. Prevenier, II, 1–16, spec. 13; 1218: ‘VII. Ordonnance des échevins’, ed. Gheldolf, I, 398–401 ; 13 c. Keure ou statut octroyé par la comtesse Marguerite’, ed. Gheldolf, I, 405; 1297: ‘XXIII. Grande charte des Gantois, ed. Gheldolf, I, 426–485, spec. 450–51; 1438 (urban); 1438 (ducal): ‘LXXI. Peines contre le rapt et le viol’, ed. Gheldolf, I, 623–25.

55 ‘De keuren van het Land van Waas 1241–1454’, 344–50.

56 ‘De keure van de Vier Ambachten’, 89–176.

57 CAA, O, no. 1646, fol. 8r.

GHENT	Abductor	Accomplice	Abductee
1191	<i>comital</i>	execution	/
1218	<i>urban</i>	execution	cutting off nose
1258	<i>comital</i>	fine/banishment	/
1297	<i>comital</i>	banishment	cutting off nose/ banishment
1438	<i>urban</i>	/	/
1438	<i>ducal</i>	execution	/

LAND WAAS	Abductor	Accomplice	Abductee
1241	<i>comital</i>	execution/fine	/

VIER AMBACHT.	Abductor	Accomplice	Abductee
1242	<i>comital</i>	execution/banishment /fine	/
			disinheritance

BRABANT	Abductor	Accomplice	Abductee
1356	<i>ducal</i>	execution	/
1406	<i>ducal</i>	execution	/
1427	<i>ducal</i>	execution	execution
			disinheritance

Most of these legal charters stipulated the death penalty for abductors. Some specify that this should happen by decapitation with a sword, a common way of executing male criminals in the late medieval Low Countries.⁵⁸ By demanding execution, lawmakers placed the crime of abduction within the category of the most severe crimes, a category that also included murder and rape. The charter of Vier Ambachten demanded the death penalty for crimes ‘of one of the *six causae*’.⁵⁹ Under these six crimes fell murder, theft, arson, rape/coerced abduction, trespass at night, and breach of peace settlements. The article on violent abduction included rape, because it had one clause on rape/violent abduction but a second one on consensual abduction. Other texts also include rape in their provisions on abduction. In the Middle Ages, there was a close connection between the crimes of rape and abduction. Abductors often committed both rape and kidnapping together, perhaps as

58 Caenegem, *Geschiedenis van het strafrecht*, 157–61.

59 The Latin legal text labels these crimes as the *six causae*, while the accounts from the bailiff of Vier Ambachten refer to law by stating that the crime under scrutiny *est un des six causes selonc la keure de pays*. See for example: SAB, CC, no. 14116, fol. 98r (September 1457–January 1458).

a conscious strategy to pressure the women to agree to marry them. Loss of virginity affected the abductee's honour and reputation, which narrowed her chances of attracting a suitable partner. She might consequently agree more easily to a marriage with her attacker. Sexual intercourse was also associated with contracting marriage since it sealed a marriage through words of present consent. English legal texts and records from judicial practice consistently used the terms *raptus* or *rapere*, umbrella terms encompassing rape, violent abduction, elopement, and adultery.⁶⁰ This makes it difficult for historians to determine whether the crime was forced sex just for its own sake, or as part of a violent strategy to achieve marriage.⁶¹ Although the terms *raptus* and *rapere* occur in some Low Countries texts too, the distinction between rape and abduction can often be discerned in legal texts and judicial records, since these were generally written in the vernacular, which used the specific term *schaec* for abductions with marital intent and *vrouwencracht* for cases of rape.

Besides the death penalty, several charters awarded banishment, forced pilgrimage, or payment of a fine (see Table 1). While the harsher punishments seem to have targeted violent abductions (which included rape), the other penalties seem intended for consensual abductions settled by marriage. However, the line between these two types of abduction is blurry and implicit rather than explicit in many texts, as will be shown below. The Leuven town ordinance (1396) stated that all abductors had to make a forced pilgrimage to Cyprus, the furthest possible destination. Once they arrived in Cyprus, they were to remain there for one year. They were to bring back an official charter from the local authorities proving that they had reached the place of pilgrimage. The goal of this penalty was to defuse the situation at home by sending the troublemaker away, thereby preventing vengeful actions and facilitating peace. Forced pilgrimages were commonly issued by Low Countries' secular authorities for all types of offenses.⁶² Some legal texts also prescribe temporary banishment from the County of Flanders for those who facilitated, arranged, or failed to report an abduction. The 1297 text issued by Guy, Count of Flanders, for example, specifies either cutting off the nose or banishment from Flanders for as long as the aldermen deemed necessary for offenders, including those who encouraged the woman to go away with the man. The two Ghent legal texts composed in 1438 state

60 Cesco, 'Rape and Raptus'.

61 Dunn, *Stolen Women*, 22.

62 About this practice in the late medieval Low Countries, see Van Herwaarden, *Opgelegde bedevaarten*; Rousseaux, 'Le pèlerinage judiciaire'.

that if the abductee did not file a complaint herself, the city should initiate an *ex officio* procedure. This clause shows the frustration authorities and wealthy families were feeling about abduction. It also demonstrates that late medieval urban society revolved entirely around conflict management.⁶³ These measures were meant to discourage those who were considering abduction: the penalties were severe, even for accomplices, and banishment and pilgrimage served to ameliorate the post-abduction situation and allow the peace to be restored.

Disinheritance was a well-known penalty for abductees or girls marrying without consulting their relatives. This penalty occurred in many late medieval laws and statutes.⁶⁴ In the Low Countries too, both Flemish and Brabantine laws contained stipulations on disinheritance and confiscation of property (Table 1). The ducal charters for the Duchy of Brabant, for example, state that the abductee should lose her *have ende erve*, her property and her inheritance.⁶⁵ Still, these stipulations are remarkable because they are completely at odds with the Low Countries' 'gender blind inheritance custom', as Shennan Hutton has called it.⁶⁶ Law guaranteed that women received property, but choosing the wrong spouse deprived them of that right. Although this penalty of disinheritance occurred in several late medieval legal texts, for example, in Leuven and Brussels, it is never described in as much detail as in Ghent texts. Also, there seems to be a significant difference between the Ghent and Brabantine texts. The Ghent texts always contain the stipulation 'she will lose her property as if she were dead', which meant that the abductee's belongings would be transferred to her lawful heirs. In the Brabantine ducal texts, however, the right to confiscate the abductee's property belonged to the duke: 'then we would have her property and her inheritance for as long as she lived, and after she died, her property and her inheritance would go where it was supposed to go'.⁶⁷ The abductee's property would be transferred to her heirs only after she died. A legal text issued by the duke of Brabant for Brussels (1375) stated explicitly that from this point forward the duke would confiscate only half of the abductee's property. Myriam Greilsammer has hypothesised that this stipulation was the result of protest by citizens who lost their property either to the abductor

63 Jussen, 'Peculiarities of the Amicable Settlement'.

64 Korpiola, *Between Betrothal and Bedding*, 169; Dunn, *Stolen Women*, 15, 105, 117; Matter-Bacon, *Städtische Ehepaare*, 52–53.

65 *De Blijde Inkomst*, ed. Van Bragt; SAL, OA, no. 1335, art. 16; Joyeus Entry Antoon van Brabant, 18 December 1406; no. 1254, art. 25; Joyeus Entry Filips van Saint-pol, 23 May 1427.

66 Hutton, *Women and Economic Activities*, 30.

67 CAL, OA, no. 1254, art. 25 (1427).

or the duke, a possible but unsubstantiated explanation.⁶⁸ Historians have repeated frequently that disinheritance was rarely applied and that the majority of the families decided to reconcile instead, an argument that will be examined in Chapters 3 and 4.⁶⁹

What classes of women were targeted by these legal texts and at what stages in their life cycles? Most texts do not specify any markers relating to life cycle. The ducal charters for Brabant only differentiate between women and minors ('underaged children'). It is noteworthy that these children could be girls or boys. The age difference is important because according to custom, minor children were still under their parents' authority and those parents had to consent for the minor to marry. A few texts, however, do specify the abductee's position in the life cycle. The 1438 ducal charter for Ghent held that the abduction of 'young girls, women, widow and others' was a criminal act.⁷⁰ Wielant, the jurist quoted above, specifically described abductees as virgins or honourable widows.⁷¹ The focus on young marriageable women is logical, and the explicit inclusion of widows is not surprising. After all, widows were often attractive as marriage partners because of their considerable property. Prevenier's examination of the abduction of a sixty-year-old wealthy widow from Hulst, near Ghent, by a servant exemplifies this phenomenon well.⁷² In addition to life cycle, some texts refer to the abductee's social status. Historiography generally maintains that abductions occurred more in noble and wealthy non-noble circles than in lower social groups.⁷³ While a few of the early texts in Ghent target the abduction of elite women especially, the 1396 Leuven town ordinance quoted above defined an abductee as 'every woman, lady, or noble woman', which identified women from various social groups as possible abductees.⁷⁴ Some Brabantine texts indicated that women from different social groups could be abductees by defining the abductee as *wijf*, which simply means 'woman', or *vrouwe* or *joffrouwe*, which were words for women of standing.⁷⁵ The inclusion of not only noble women but also of women with a more modest background in these legal texts suggests

68 Greilsammer, 'Raps de séduction', 68.

69 Cesco, 'Rape and Raptus', 694–96; Dean, 'A Regional Cluster?', 149; Danneel, *Weduwen en wezen*, 116; Mogorović Crljenko, 'The Abduction of Women'; Dunn, *Stolen Women*, 117.

70 *Aucune pucelle, femme vesve ou autre* in 'LXXI. Peines contre le rapt', *Coutumes*, 623.

71 Wielant, *Corte instructie*, ed. Monbally, cap. 60.

72 Prevenier, 'Vrouwenroof'.

73 Goldberg, *Communal Discord*, 175.

74 CAL, OA, no. 1258, fol. 16rv.

75 CAL, OA, no. 1335, art. 16 and CAL, OA, no. 1258, fol. 16rv: 'wif, vrouwe ofte joffrouwe'.

that also among the urban middling groups, there was a fear of careless marriage-making.

Age and consent as legal parameters

Most legal texts differentiated between different ‘types’ of abduction, not only between violent abduction and consensual seduction but also between the abduction of minors and that of adults. These ‘types’ of abduction were ranked as distinct judicial categories with different legal consequences. All the joyous entry texts of the dukes of Brabant and Burgundy contain separate treatments in their articles on abduction: one about children and one about adult women. The 1406 charter stated that ‘if someone abducts or leads away a child, either a boy or a girl, he will lose his property and his life’. Regarding adult women, it reads: ‘if a woman or lady is abducted who cried out, or if we find out that it happened against her will [...] the man who perpetrated the abduction will lose his life and his property’.⁷⁶ These stipulations show clearly that the abductee’s age and consent mattered.

To begin with, the abduction of a minor was always a criminal act, even if the child followed her or his abductor by choice. Young girls were still under the authority of their parents or guardians, who, as discussed earlier, held the right to consent to minors’ marriages. In this case, the decisive factor was not the abductee’s consent but her parents’ or guardians’ consent—and specifically the lack thereof. In contrast, the abduction of adult women was only considered a criminal act if the abductee was taken violently against her will. The abductee’s outcry was proof that she was taken by surprise and, therefore the case was a nonconsensual abduction. Various court records in fact highlight the evidentiary value of the abductee’s loud verbal protest in the judgment of whether she had consented.⁷⁷ If no one could testify that the adult woman had cried out for help, and if she stated that she had followed her abductor willingly, the abductor could not be punished according to law. In the Low Countries, adult women were considered fully legally capable, and as such they could—in theory—marry whomever they wanted.⁷⁸ The problem was, however, that there was no definitive age to distinguish minor from adult. As discussed earlier, the age of majority

⁷⁶ CAL, OA, no. 1236, fol. 39r–43v.

⁷⁷ Buntinx, *Verkrachting en hulpgeroep*.

⁷⁸ About single women and their position in the Low Countries, see Schmidt, Devos, and Blondé, ‘Single and the City’, 15–19; Hutton, *Women and Economic Activities*, 90.