

3. Consent In and Out of the Courtroom

Abstract

Whether the abductee could have been actively involved in planning and organising the envisioned marriage is subjected to intense scholarly debate. This chapter examines what the abductee's consent entailed, how it was defined legally and what her options were to use or deal with an abduction. The main argument is that the abductee's consent mattered and could impact the legal outcome. Although abductees clearly acted as legal agents, however, they generally had little room to manoeuvre as they experienced intense pressure from perpetrators, relatives and because of social views on honour and sex.

Keywords: consent, female agency, coercion, victimhood, legal strategy

After her abduction, Aleyde Vyssenaecks, daughter of the late Goerd Vyssenaecks, made the following statement before the Leuven aldermen: 'She went with Andries Hellinck, son of Steven Hellinck, by choice and willingly to enter into matrimony with him. All what Andries had done to her happened with her free and unprompted consent'.¹ Immediately following the declaration, there is an additional record, namely a financial contract between Aleyde and Andries. It states that the latter owed the former one hundred *rijders*, a significant sum of money. If Andries married Aleyde, the debt would be cancelled, but if he failed to do so, he had to pay her the entire sum.² While the statement seems to indicate that Aleyde eloped with Andries, the financial contract adds significant information revealing the difficult position of Aleyde. Although there is no further evidence, it is likely that in return for declaring her consent, which gave Andries a great legal

1 CAL, OA, no. 7752, fol. 79r (16 October 1458).

2 CAL, OA, no. 7752, fol. 79r (16 October 1458): 'Item dictus Andreas recognovit se debere predictae Aleyde centum rijders monete etcetera. Ad monicionem persolvendos tamquam assecutum eisdem. Cum conditione [...]'; similar contracts can be found in CAL, OA, no. 7752, fol. 131v, 125v, 173v.

benefit as will be discussed in this chapter, Aleyde needed a guarantee that she would be married to her abductor. Scholarship has already shown that if an abduction did not result in marriage, there was a risk of the woman's honour being tarnished and her virginity disputed. Therefore, women sometimes agreed to marry their abductors, even if they did not consent to go with them initially.³ Through this financial arrangement, Aleyde protected herself from this possible, unfavourable outcome. If Andries failed to take Aleyde as his wife, she would receive a significant amount of money which might serve as compensation for the loss of her virginity. Andries probably never had to pay the sum, because another unrelated contract from 1470 indicates that Andries and Aleyde did marry after the abduction and still lived together as husband and wife twelve years later.⁴

This fascinating case raises questions about the meaning and value of abducted women's consent. While marital and sexual consent have been studied extensively, consent in abduction cases has received less scrutiny. The canon law version of consent, that is, marital consent, is very clear; some pressure is allowed as long as it would not sway a 'constant man or woman'.⁵ Canon law used this stock phrase to delineate consent from coercion. The presence of marital consent was shown through speaking words of consent. The definition of sexual consent is not the same; it was presumed to exist if the woman did not demonstrably resist. The physical evidence of violence that showed that she had resisted the sexual act determined whether contemporaries viewed the event as coerced sex.⁶ When studying abductions, the distinctions among consenting to marry someone, consenting to be abducted, and consenting to have sex with someone have not been sufficiently considered. Historians have often equated consent in abduction cases to sexual consent. In her discussion of elopement, for example, Gwen Seabourne pointed out the medieval idea that pregnancy was evidence of female consent to show how medieval notions of consent differed from modern ones.⁷ Others tend to slip between marital consent and 'abduction consent', for lack of a better word.⁸ Abduction scholarship has thus lumped together different legal notions of consent.

3 Cesco, 'Female Abduction'.

4 This act is about the administration of Andries' estate and identifies Aleyde as Andries' widow, in CAL, Oa, no. 7363, fol. 247v (12 April 1470).

5 Brundage, *Medieval Canon Law*, 165–67.

6 Karras, *Sexuality*, 156–57.

7 Seabourne, *Imprisoning Medieval Women*, 153.

8 Greilsammer, 'Rapts de séduction'.

Rather than attempting to uncover the ‘reality’ of individual cases and trying to label each abduction as coerced or consensual, this chapter will first study how arguments on consent and coercion were constructed in legal records by parties involved and what their impact was. Afterwards, it examines how consent surrounding abduction was understood and what this teaches us about abductees’ ability to play an active role in their abduction and marriage. This chapter ends with a brief reflection on a few cases that shed light on life after abduction. It argues that, while the presence or absence of consent was crucial in legal practice and abducted women clearly could act as legal agents, evidence suggests that abductees nevertheless operated in very difficult circumstances.

Communicating consent and coercion

Late medieval legal texts on abduction tend to put forward three legal parameters: the woman’s age, her consent, and her relatives’ consent. As Chapter 1 shows, although twelfth-century laws still treated nonconsensual and consensual abductions as two separate offences, lawmakers increasingly conflated them in the more severe fourteenth- and fifteenth-century texts. These late medieval laws distinguished between the abduction of minors and the abduction of adults. Taking away minors against their parents’ or guardians’ wishes for marriage was always illegal, regardless of the minor’s consent. The abduction of adult consenting women, on the other hand, was not punishable since these women no longer fell under their family’s authority. As indicated already, most customary legal texts set the age of majority at twenty-five. For adult women, the matter of consent was thus key. Lawmakers specified two elements of proof to determine whether the abduction was coerced or consensual. Most texts consider the victim’s cry for help as proof of the abduction’s coerced character, an element also put forward in law texts against rape. One legal text, the 1396 Leuven charter, also mentions a second element, the consent declaration by the abducted woman before local officials.⁹ This element is more in line with canon law perceptions of marital consent being expressed by saying the correct words. These laws shaped the frame within which litigants constructed their arguments, while the judges referred to those elements when explaining their sentences.

9 See Chapter 1, page 63.