

4. What Authorities Did to Help

Abstract

Chapter 4 examines the judicial settlement of abduction with matrimonial intent by looking at penalties issued by secular and ecclesiastical authorities. It contends that although abductions could certainly have serious legal consequences, most abductors got out relatively easily. Judges and especially bailiffs had some room to manoeuvre when promulgating penalties and they did not adopt uniform policies across the Low Countries or over the fifteenth century. People judged by these officials, however, also had space to interpret the law. Their interactions with the law reveal an impressive degree of legal knowledge.

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In Pamele, a town near Oudenaarde in Flanders, around 1438, Zeger Tristam abducted thirteen-year-old Catherine tsRijnlanders. The surviving plea describes it as a coerced abduction perpetrated with the help of several armed accomplices. After Catherine had been taken and forced to exchange promises of marriage, she went to the bailiff of Oudenaarde and some of the aldermen of Pamele to press charges against Zeger and his accomplices. The plea was successful, as the local authorities banished Zeger from Flanders for violent abduction. After this turbulent episode in her young life, Catherine moved on and married another man named Jan, identified as ‘the bastard of Wadripont’. Catherine and Jan did not follow canon procedure, but contracted a so-called presumptive marriage, a clandestine marriage not by words of present consent but through exchanging words of future consent, which constituted a betrothal, and having sexual intercourse afterwards.¹ The prosecutor of the consistory court of Cambrai diocese, referred to as the promotor, got wind of this case and summoned them. He also summoned Zeger, Catherine’s abductor, with whom she had exchanged marital promises

1 Vleeschouwers-Van Melkebeek, ‘Introduction’, *Le tribunal de l’officialité*, 39–40.

earlier. The judge of the Cambrai court annulled the betrothal of Catherine and Zeger for reasons of coercion and ordered Catherine and Jan to officially celebrate their clandestine marriage. All three parties had to make amends and pay for the promotor's legal costs.²

This case shows the actions of different authorities in the aftermath of an abduction. Brundage has argued that consistory courts held exclusive competence in all matters regarding marriage, family, and sexual behaviour, but many scholars have nuanced that thesis.³ While ecclesiastical and secular authorities did have separate areas of jurisdiction, respectively the validity of marriage and marriage's social and financial consequences, there could be overlap in practice.⁴ Abduction was particularly prone to overlapping jurisdictions because it raised issues regarding consent and coercion that concerned the church and property-related matters that fell under the purview of secular authorities. In the case above, the involvement of these authorities seems to have been complementary. Each authority knew its task and clearly defined its jurisdiction; the secular official punished the man for seizing a minor against her will, and the consistory court official dealt with the alleged marriage between abductor and abductee and the latter's marriage to another man.

Moreover, the case above shows legal procedures initiated by a private party and by the authorities. Catherine tsRijnlanders pressed charges against Zeger with local authorities, while the Cambrai prosecutor initiated a case against Catherine and the two men alleged to be involved with her. Both ecclesiastical and secular courts dealt with *ex officio* cases and private complaints. The line between lawsuits and penal cases was not rigid. Private parties often assisted promotors, and the bailiff, who acted as prosecutor in city courts, often initiated cases based on tips from individuals. Historians long ago moved away from the concept that justice was a top-down process between authorities and their citizens. Instead, historians look at the experiences of men and women interacting with the law and at the interplay between the courts and the societies in which they were embedded. Zeger was punished after Catherine spoke to the local authorities. It is significant, however, that Catherine did not appeal to the consistory court to annul her betrothal to her abductor, even though his use of force and fear was an impediment according to canon law. Instead, she followed another strategy

2 Vleeschouwers-Van Melkebeek, *Registres de sentences*, no. 64, 30 (15 November 1438).

3 Brundage, *Medieval canon law*, 72; Naessens, 'Sexuality in Court'; Smail, *The Consumption of Justice*, 41.

4 Reynolds, *How Marriage Became One of the Sacraments*, 35.

to avoid the enforcement of her betrothal to the abductor, the strategy of entering into a second alliance, a frequent tactic to escape previous partners and forced marriages, as this chapter will show. Deploying this strategy of contracting a second alliance suggests that Catherine had a good knowledge of the judicial system.

A common historiographical conclusion is that the focus on consent in consistory courts gave women and, by extension, young people stronger voices in choosing a spouse.⁵ Secular courts, especially local ones, consisted of the community's prominent men who favoured secular norms, property, and status over canon law principles.⁶ One problem with these conclusions is the underlying premise that there was a sharp contrast between what young people or individuals wanted and what their parents and families wanted. As shown in Chapter 2, many abductions were more complicated than a simple binary of individuals against the family. Moreover, scholars have softened the traditional argument that there was a competition between secular and ecclesiastical authorities over marriage.⁷ It was also possible for young people to bring lawsuits in city courts and win against older relatives, even in respectable elite families.⁸ On the opposite end, canonists did not intend that consent would entail free choice. Relatives could still influence spouses' actions in consistory courts.⁹ Because Catherine in the above case was so young, she may not have decided to contract a second marriage entirely by herself. Fearing that the authorities might acknowledge the marriage to her abductor, members of her family may have encouraged her to do so.

This chapter looks at authoritative bodies and how they dealt with cases of abduction. Analysis of the penalties authorities issued and the abduction marriages they enforced or dissolved clarifies views and policies in the late medieval Low Countries on abduction followed by subsequent marriage. This chapter starts by looking at secular jurisdictions and then examines the practical application of urban and comital/ducal legal texts. This is followed by an analysis of the consistory courts' actions on abduction,

5 For a brief discussion on this debate, see Beaulande-Barraud and Charageat, *Les officialités dans l'Europe*, 19–20.

6 The medieval household structure was mirrored by the organization of local communities; both were governed by a male head of the household/prominent male governors and structured on patriarchal lines of authority, see McSheffrey, *Marriage, Sex, and Civic Culture*, 13, 105–6, 137.

7 In 1977, Duby described the relation as follows: *L'histoire du mariage en Occident est l'histoire du conflit entre deux pouvoirs: le pouvoir profane et le pouvoir sacré*, in Duby, 'Le mariage', 18.

8 Delameillieure and Haemers, 'Recalcitrant Brides and Grooms', 163–65.

9 Butler, 'I will never consent to be wedded with you!'; Beaulande-Barraud and Charageat, *Les officialités dans l'Europe*, 20; for a discussion of the presence, success of, and prejudice against female litigants in English consistory courts, see Goldberg, 'Gender and Matrimonial Litigation', 43–46.

a comparison of the types of abduction cases in each court's registers, differences between these courts, and significant jurisdictional patterns. Analysis of the verdicts shows that judges had room to deal with abduction cases in different ways, meaning that they had some flexibility to apply abduction laws in a variety of ways depending on the specific circumstances. However, abductors, abductees, and their families were aware of the judges' latitude in interpretation and employed certain strategies, both in and out of court, to obtain the legal outcome they preferred.

Secular authorities: between repression and reconciliation

Secular authorities issued a variety of penalties for abduction, ranging from a fine of five pounds for consensual abduction in Vier Ambachten and Land van Waas to pilgrimages to Cyprus in Leuven and even execution by decapitation. Chapter 3 pointed out that the abductee's consent (what this constituted legally) could set the abductors free; bailiff's accounts and pardon letters mention consent often as an extenuating factor. Looking more deeply into authorities' punishments for abductions, either *ex officio* or based on private complaints, reveals the ambiguity of their approach. The severe, menacing language of the legislative texts gives way in practice to a more utilitarian attitude. Although they occasionally awarded severe punishments, the secular authorities settled many abductions amicably and waived penalties. Some abductors successfully applied for a state pardon.

Penalties for abductors, accomplices, and abductees

In the late Middle Ages, a trial proceeded by public prosecution.¹⁰ The bailiff initiated a case to be judged by the aldermen. A private complaint was preferable, but not required. The bailiff, a state official who represented the duke or count locally, had the power to charge suspects and force them to appear in court without a private complaint.¹¹ In Ghent, however, the bailiff never acquired this right. This city prided itself on its independence from sovereign authority and wanted to limit the influence of the count as much as possible.¹² The Ghent 1438 law, however, specifically stated

10 Maes, *Vijf eeuwen stedelijk strafrecht*, 93–107; Van Caenegem, *Geschiedenis van het strafprocesrecht*, 1–2.

11 See for example the *ex officio* case against Johanna Pypenpoys in Leuven, discussed in Chapter 2.

12 Van Rompaey, *Het grafelijk baljuwsambt*, 272–73.