

Conclusion

For decades, historians have been debating the extent to which the tension between the church's 'consensualist' approach of marriage and custom's emphasis on family strategy affected how people got married and how societies dealt with marriage and partner choice in the late Middle Ages. Many have argued that the impact of this tension has been overstated; it was a theoretical divide that only rarely emerged and by no means entailed a 'crisis' of marriage.¹ Literary, legal and administrative records of the Low Countries, however, abound with narratives of partner choice conflicts in which the consent of the partners or their families is at the core. Indeed, recorded cases of abduction with marital intent, as well as normative discourses exuding a deeply entrenched social anxiety concerning unconventional marriages, seem to have been remarkably more prominent in the Low Countries than elsewhere in late medieval Europe.

This book hopes to carry forward historians' understanding of how the particular legal regime applied to women, young people and their families in dealing with marriage-making in fifteenth-century Brabant and Flanders, while at the same time contributing to more general questions about women, marriage and the law in late medieval Europe. In the Low Countries, laws governing the deeply ingrained practice of strategic marriage were widely promulgated, becoming stricter over the course of the late medieval period. Families worked hard to educate their children about the importance of marriage. Some parents and relatives feared their daughters, or even their sons, widowed mothers and nieces, would marry without their consent. This need for control is strongly evident in law and legal practice of the secular age of consent, which made it illegal for people to marry whom they chose until they were well into their twenties. The high age of emancipation, in combination with the punishment of consensual marriages without familial approval, indicates that marriage was even more strictly supervised in the Low Countries than elsewhere.² This intense criminalization of abductions

¹ McSheffrey, 'I Will Never Have None against My Father's Will'; McDougall, *Bigamy and Christian Identity*, 2;

² With Italy as an exception; see Dean, 'A Regional Cluster'; Dean, 'Fathers and Daughters'.

with marital intent can be explained by two factors. First of all, the Low Countries' gender-blind inheritance custom increased families' involvement in their children's life choices.³ Historians of the Low Countries have mostly pointed towards the emancipatory effects of these laws of inheritance: children, regardless of age or sex, had access to property, which gave them the ability to build their own lives and make decisions more independently from authoritarian family structures.⁴ For children from wealthy upper and middling groups in the cities, however, there seems to have been another effect that has been neglected in historical scholarship. Young people's marriages caused property shifts, and since each child took property with them when marrying as an advance on their inheritance, a poor choice of spouse could endanger the size and value of the family patrimony. This led to the paradoxical situation of women receiving remarkably extensive inheritance rights only to have many other limits placed on them in a desperate effort to control whom daughters married.

Moreover, the great power of cities, which were governed by elites, and in Ghent and Leuven by merchants and artisans, and inhabited by large groups of propertied families, further contributed to the criminalization of abductions with marital intent. These middling groups were part of the city government that promulgated severe law texts and statutes to frighten those who wanted to flout social conventions regarding marriage-making. Moreover, there is evidence that even the ducal and comital charters against abduction came into being upon the explicit request of these social groups. Secular law thus, again paradoxically, both granted women inheritance rights and limited their freedom to do things seen as against the family interest. The knee-deep involvement of these families organizing their children's marriages and settling abductions to which they were party becomes apparent in every chapter of this book. Marriage was so important, and potentially involved multiple property shifts with different effects on many people, that the competing interests made it difficult for families to form a united front. Indeed, in spite of scholars' fascination with the idea of daughters using abduction and clandestine marriage to become 'protagonists of their own destiny', this study shows that these young women were not the only parties involved who might benefit from (consensual) abduction.⁵ Abductions and clandestine marriages should first and foremost be considered in the context of family feuds, as they were practised by kin

³ Hutton, *Women and Economic Activities*, 30.

⁴ See for example: Kittel and Suydam eds, *The texture of society*.

⁵ Titone, 'The Right to Consent', 141.

groups rather than individuals. Even the abductee's relatives were regularly involved, turning to abduction to push through the candidate for marriage they preferred against resistance from other family members. This study thus strengthens the idea that kin were very much involved in marriage decisions even among the middling societal groups.⁶ Rather than marking the importance of free partner choice, abduction testifies to marriage's strategic nature, as evidenced by relatives' involvement in every step. This fact applies to marriage across late medieval Europe but is particularly true for the Low Countries cities examined here, where these middling groups' families were powerful, socially and culturally highly significant and involved in law-making and the justice system.

Despite the enormous role of relatives in marriage-making and the importance of property and economic motives, the abductee's consent was important, as the many contentious discussions about its presence or absence in the court material illustrate. This study thus disagrees with the widespread argument that authorities defined violence by assessing whether the family's rights were attacked, not by considering the woman's consent.⁷ The records swarm with examples in which the abductee's consent made a difference: such consent allowed the abductor to settle the offence amicably, motivated the bailiff not to take some cases to court in spite of parental opposition, and even led to the acquittal of abductors who had seized away women of age. However, this legal notion of consent did not necessarily correspond with social understandings of the concept. As I argued in Chapter 3, women sometimes consented to their abductions because of social conventions regarding honour and property, not because they wanted to defy their families and marry a partner of their choice. This does not mean that abduction was never practised by couples who wanted to marry against their families' wishes, but it does indicate that abductions that were reported as consensual could in fact have been cases in which the abductee acted in very constrained circumstances and was coerced into marriage by relatives and/or abductor(s), or was pressured by societal values. That is, she consented to that which she would not have wanted under normal circumstances. In doing so, however, we must not automatically victimise the woman and turn her into someone who was pushed or forced by her family in accepting an initially unwanted marriage. For the woman in question too, a marriage with her attacker could be the preferable option. The standards of behaviour for young women from wealthy families that

6 De Moor and Van Zanden, 'Girl Power', 11–12.

7 Greilsammer, 'Rapts de séduction', 83; Dean, *Crime in Medieval Europe*, 85.

were visible and present in the city were high, so we must consider the possibility that abduction victims themselves were 'agreeing' to marry 'against their will' in order to meet those standards and avoid the potential shame or loss of future opportunities that might face them. Marriage to the abductor could well be seen as the best option available post-abduction.

Consent was rather crudely considered; the abductee's consent was made up of a range of decisions made over time. Records revealed many shades of consent on the spectrum between enthusiastic willingness and combative resistance. Notably, medieval people were aware of this, as they described some abductions as 'partly with or against her will', others as cases in which the abductee was 'satisfied' after she had initially been taken against her will, and still others as cases in which she had changed her mind about the elopement after being pressured by relatives to distance herself from her abductor. A dichotomous characterisation of the phenomenon as either a violent abduction of wealthy heiresses or elopement by young people to circumvent parental interference simply fails to represent the diversity of abduction experiences or grasp the nuances of the social context. The parties involved could change their minds over the course of events for many reasons. The final sentences studied thus are not sufficient to inform us about the parties' initial intentions. Whether abduction was used by women with any frequency as a tool to choose their own spouses is a pressing question in historiography related to abductees' agency. However, as Gwen Seabourne has noted, this question cannot be answered given the legal records' complex relationships with the events they recount.⁸ The statements about consent and coercion reportedly made by the abductees do not *per se* give us access to the voices of these women as legal narratives do not represent the real voice of the litigant but are instead the result of many voices, ranging from the litigant, attorneys, clerks, and relatives to social expectations and legal conventions. Moreover, narratives in court records were carefully constructed around the desired legal outcomes, and therefore should not be taken at face value. This predetermined outcome determined the litigant's legal argumentation, which in the case of abduction and marriage was often built around consent or coercion. The records do reveal that the idea of consensual, even love-inspired abductions and elopements was well-known: it appears in pleas, defences and in some abductees' declarations of consent, as well as in contemporary literature.

An abductee could indeed face heavy pressure, since the abductor and his relatives did their best to get her to marry him and attest to her consent,

⁸ Seabourne, *Imprisoning Medieval Women*, 160–61.

while her relatives tried to convince her to press charges or, out of concern for their honour, started negotiations with the abductor's kin to discuss marriage. The question here is whether the abductee had any room to manoeuvre and whether she could make her own choices in a situation in which so many parties pursued their own interests. Throughout this study, we encountered abductees pressing charges against their abductors, fighting their own relatives in court, marrying a second partner to avoid the enforcement of an abduction marriage, or vice versa, entering into a presumptive abduction marriage to annul a previous betrothal. All these actions, attributed to the abductee in the records, could have been influenced or forced by others, but it would be unreasonable to assume that the abductees themselves never had a voice. Abduction and its consequences deeply impacted these women's personal lives and futures. Portraying them as completely passive is as much an oversimplification as portraying them as rebels challenging social and familial norms. Dividing all abductions into cases in which women either lacked or exercised agency does no justice to the diverse and complex experiences these women had in the diverse and complex situations they encountered. This understanding stems from outdated historiographical assessments of these women as 'pawns', 'instruments' or mere 'objects'.⁹ Danneel previously showed that despite the intense involvement of relatives in marriage-making in Ghent, the consent of the individual to be married was still a social reality that was taken into account, whereas McSheffrey remarked that individuals and their relatives could have pursued the same goals and taken into account each other's wishes and interests.¹⁰ My records confirm this option of cooperation and show women using the law to obtain the best possible outcome given the circumstances, such as Johanna van Saemslacht, who defended herself alone in court against her relatives, or Amelkin Jacops, who managed to get rid of her abductor-husband after over ten years of lawsuits against him.

The degree of legal knowledge displayed by abductors, abductees and their relatives is remarkable. This appears, first, in legal narratives employed in court. Plaintiffs and defendants referred to specific stipulations in law texts to prove their cases, cleverly undermined points made by the counterparties or carefully portrayed themselves as honourable daughters or loving, peaceful husbands, thereby responding to contemporary views on gender

⁹ Dumolyn, 'Patriarchaal patrimonialisme', 3, 13. See discussion of McNamara, 'Women and Power' in Staples, *Daughters of London*, 7; Fosi and Visceglia, 'Marriage and Politics', 214, 224.

¹⁰ Danneel, *Weduwen en wezen*, 180; McSheffrey, 'I Will Never Have None Ayenst My Faders Will', 154.

and honour. However, in secular courts as in consistory courts, the attorneys involved were trained in law and spoke on behalf of those whom they represented. These strategic narratives do probably represent the training these men received rather than the litigants' legal knowledge.¹¹ Some inclusions nevertheless suggest a close involvement of the litigants in the process of trial, namely the vernacular words of consent in the Latin ecclesiastical court records of Liège. It has been argued that such statements record litigants' voices, although here too these people were possibly coached on what to say in court.¹² Nevertheless, people probably had a good understanding of what abduction entailed. After all, abduction trials were undoubtedly witnessed and talked about in the community: records inform us about the gossiping and fuss some abductions caused in the neighbourhood, and bailiffs and promotores were active in the community, examining alleged offences by conducting interviews and gathering evidence.¹³ The line between law and society was permeable.

In addition, I have argued that apart from legal narratives, there are other indicators showing people's legal sophistication, namely the arrangements and decisions made out of court in anticipation of a trial. People's legal awareness especially shows in their efforts to have the abduction followed by an official statement of the abductee's consent as soon as possible, preferably right after the removal of the abductee from one place to another and before the contraction of marriage. This was important both to avoid charges of rape or violent abduction and to lend legitimacy to the marriage. The prevalence of this practice shows people's knowledge of both secular laws on abduction and canon law on consent. This legal awareness is also evident in the three-party cases in the consistory court records, in which second alliances, preferably contracted in a private place or even in another diocese, were consciously entered into to diminish the chance of previous alliances being enforced.

Abduction, although discouraged by the severest laws and associated with the disruption of families, patrimony and communities, was managed through sophisticated negotiation processes rather than hard sanctions. There was no general model of punishing or settling these disputes, as different dioceses, slightly different customs and interpretations thereof, different judges, different families and individuals and even different

¹¹ Bailey, 'Voices in Court'.

¹² Goldberg, 'Echoes, Whispers, Ventroliquisms', 34–37.

¹³ Research on trials' publicity in the Low Countries is scarce, but criminal trials in Antwerp were always conducted publicly, see Meewis, *De Vierschaar*, 71.

socio-political situations led to different outcomes. Consequently, abduction settlements have to be considered on a case-by-case basis. Nevertheless, a few basic patterns can be detected. First of all, abductions registered in the secular criminal records do not occur evenly throughout time but in clusters. This could result from waves of increased or decreased alertness to the phenomenon. For example, a sharp rise in abduction figures in the 1480s in the city of Ghent may reflect the power struggle between the city and the count, during which the former increasingly became stronger and fiercely demonstrated this power by exercising its right to govern, to adjudicate disputes and to sentence its citizens independently. Abduction was not always a primary concern for authorities, but they kept an eye open and intervened when they felt they should. A few abductors were executed, their heads placed visibly on stakes and their bodies on wheels to remind all citizens of the severe possible penalties. Although some cases were resolved with cruel exemplary punishments, judges also explored extenuating circumstances and compromise. In their verdicts, they considered the interests of all parties and their willingness to pacify and reconcile. The goal was to restore peace as efficiently as possible.

This tendency to look for compromise brings me to a second pattern: the distinction between consistory courts and secular courts. This was more subtle than is often assumed in historiography. Consent was not defined in the same way in canon law and secular law: for example, the age at which a person could consent differed. What was illegal according to a secular judge could have been perfectly fine according to an episcopal judge. Nevertheless, both church and secular court records contain examples in which the contradiction between a violent abduction and the subsequent consensual marriage is striking and seems to have been broadly accepted. Even in consistory courts, abduction marriages in which 'consent' was far from an enthusiastic 'Yes, I do' were validated, and episcopal judges sometimes forced women who claimed coercion to join their spouses and respect their contested marital union. Brussels judges regularly punished women for marrying against their families' wishes, which is noteworthy since parental consent was not a requirement according to canon law, and this tendency cannot be detected in any of the other consistory courts examined here. Secular records contain many examples of abductions against the will of relatives being punished, but at the same time, these show that an abductee's consent is regularly referenced to legitimise the decision not to prosecute or even to acquit the abductors of all charges. Both secular and ecclesiastical courts show examples of the courts finding for the spouses or the families. Moreover, the records reveal that speaking about these

two stereotypical sides distorts the historical reality, since, as noted above, many abductions were issues between and even within families rather than between a family and a disobedient daughter or son. Rather than revealing an ideological distinction between church and state, the high stakes involved in marriage-making in the Low Countries led parents, lay elites and also ecclesiastical elites to work in various ways to try to prevent, limit and punish marriages made without the consent of all parties.

In sum, the narratives that can be found in many of the Low Countries' records seem to reveal a 'crisis' of marriage at first sight, as they contain stereotypical stories that exploit the opposition between love and property, between intimacy and strategy, between the individual and the family. Yet this study's close reading of the reports of over 650 cases of abduction with marital intent in a diverse range of sources shows clearly that framing these cases in terms of agency or suppression falls short. Abductions for the purpose of marriage should above all be interpreted as collective enterprises and complex struggles for power and influence between many different parties, all of whom benefited from a particular outcome and went to great lengths to achieve it. In that jumble, distinguishing between the role and intent of the abducted woman and that of the other parties is an impossible task. Rather than a struggle between a head of the household and those subjected to their authority, abduction and partner choice should be perceived as a process of negotiation in which different parties with changing dynamics determined the outcome. In this process, the abducted woman was an essential player, given that her consent was crucial in determining the settlement. Consent was fundamental to marriage formation, and therefore the agency of those whose consent was needed was expected and required. Although people did not debate the general meaning of this concept back then as they do today, they were aware of the dangers its central position in marriage law entailed and of the slippery line between consent and coercion.

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