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2013

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Citation for published version (APA):

Christensen-Nugues, C. (2013). *Force, Fear, and Consent to Marriage: Disputed Marriage Cases in Late Medieval England and France*. Abstract from 48th International Congress on Medieval Studies.

Total number of authors:

1

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Force, Fear, and Consent to Marriage Disputed Marriage Cases in Late Medieval England and France

In the last half of the twelfth century, the rule that a marriage could be declared invalid if the consent had been given through force or fear was established in canon law. This ruling was a natural consequence of the insistence on free consent as the only requirement for a valid marriage. It did, however, entail a number of both practical and theoretical problems. It could be difficult to prove force and fear within the family, but also to define what should count as sufficient force and fear to invalidate a marriage. In Roman law, the fictional figure of the "constant man" (*constans vir*) was used to determine different degrees of coercion. The constant man standard was however difficult to use in marriage cases that often involved very young people, dependent on those most likely to use force and fear against them. Already in the thirteenth century canonists and theologians, such as for example Hostiensis, Raymond of Penyafort, and Thomas of Chobham, acknowledged the particular difficulties to assess force and fear in marriage cases where the parties were economically, socially and even emotionally dependent on those most likely to use force and fear against them (i.e. parents/guardians).

Despite the efforts of several leading canonists and theologians, no clear rule emerged as to how the impediment of force and fear should be applied. Much was left to the discretion of the individual judge: "a judge will judge what the quality of the fear is according to the differences of persons and places, and will judge the marriage to be something or nothing."¹ In this context it is not astonishing that the application of the impediment of force and fear could vary significantly, from country to country, from region to region, and even from court to court.

This paper investigates how the impediment of force and fear was interpreted and applied in the ecclesiastical courts of York (1301-1399), Paris (1384-1387), and Troyes (1455-1499). The material is analyzed from four different angles: Frequency of cases, who was making the claim, what kind of force that is alleged, and, finally, who is alleged to have exercised the coercion. The numerical analysis includes both cases when force and fear appear as the chief argument against the validity of a marriage or a betrothal and when it appears combined with other impediments (such as pre-contract or nonage). Mostly the judges referred to the constant man (or, as the case may be, constant woman) standard when assessing force and fear, but what was understood to fall under this category could vary significantly. Often we do not have any information about the exact nature of the force, but when we have it ranges from threats of death or extreme violence to economic sanctions (threats to lose whole or parts of an inheritance) or statements that the person had always been unwilling and was seen weeping before the ceremony. There are also some indications that the courts used different standards depending on the age and gender of the claimants. Young girls, typically, were considered easier to scare than grown men. The age, gender, and social status of the person alleged to have used coercion, and his/her relationship to the claimant could also play a role. Threats from a father was frequently considered more coercive than those of a female relative and the interference of local lords more damning than that of family and close relatives.

There were significant differences, both in frequency and type of cases, in the three courts analyzed. They reveal different social practices that also, necessarily, influenced the courts. The judges did not live completely cut off from the society that surrounded them. However, the courts were neither simple reflections of social practices, nor did the judges simply follow the common opinion. The courts followed principles that could, and sometimes did, go against prevailing norms and attitudes in the surrounding society.

1 Raymond of Penyafort, *Summa de matrimonio*, Tit. IX