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Force, Fear and Consent to Marriage

Theory and Practice in Late Medieval Europe

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In the last half of the twelfth century, canon law established the rule that a marriage could be declared invalid if the consent had been given through force or fear. 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, Raymundus of Penyaforte, 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).

In this article I investigate how the theoretical discussions concerning force and fear, from the early twelfth century and onwards, compares to the application of this impediment in actual court practice. By drawing on a number of examples from North Western Europe, I compare arguments used in court with definitions and explanations developed in canonistic literature, penitentials and theological treatises from the same period.