

This is an Open Access document downloaded from ORCA, Cardiff University's institutional repository:<https://orca.cardiff.ac.uk/id/eprint/77697/>

This is the author's version of a work that was submitted to / accepted for publication.

Citation for final published version:

Kane, Bronach 2015. Courtship, childbearing and gender in Late Medieval England. *Fruhneuzeit-Info* 26 , pp. 14-23.

Publishers page:

Please note:

Changes made as a result of publishing processes such as copy-editing, formatting and page numbers may not be reflected in this version. For the definitive version of this publication, please refer to the published source. You are advised to consult the publisher's version if you wish to cite this paper.

This version is being made available in accordance with publisher policies. See <http://orca.cf.ac.uk/policies.html> for usage policies. Copyright and moral rights for publications made available in ORCA are retained by the copyright holders.



Courtship, Childbearing & Gender in Late Medieval England

BY BRONACH KANE (CARDIFF)

Introduction

A perennial problem in the field of medieval social and women's history is the extent of premarital sex and childbearing and its relationship to marriage in English local communities before and after the onset of plague in the mid-fourteenth century.¹ A number of studies, particularly for the sixteenth century onwards, have associated premarital pregnancy with marriage, interpreting conception before formal union as proof of fertility and preparation for family life.² Courtship was often the context in which pregnancy and childbearing occurred, but children were also born to those in a broad range of relationships that overlapped and interacted with marriage, concubinage and singleness. In local communities, more variegated bonds existed where moral concerns about extramarital sexual behaviour receded or were mitigated. On the subject of children in marriage suits more generally, Helmholz notes that "their existence and their interests played no apparent part in normal matrimonial litigation".³ Discourses on pregnancy and parenthood, however, were central to the courtship narratives that female parties and their witnesses related in the church courts.

Illegitimacy under the common law has received more attention than pre-marital pregnancy from the perspective of canon law and more specifically in the context of the parish. Numbers of illegitimate and premarital births in manorial communities are difficult to discern, however, due to the variability and paucity of prosecution. By the mid-fourteenth century manorial fines such as *leyrwite* and *childwite*, for fornication and illegitimate childbearing respectively, were increasingly scarce.⁴ Extant records of fines reflect seigneurial attempts to control female sexuality which fluctuated depending on economic circumstance, rather than the extent or meaning of premarital pregnancy in manorial society.⁵ The Church investigated sexual and moral

crimes via a comparable system of court prosecutions as well as through private proceedings. The first type were *ex officio* proceedings that concerned the Church through its regulatory role in sexual and moral matters. The second was instance litigation in which the courts adjudicated between private litigants on a range of issues including marriage. The seminal work of L.R. Poos explores the local networks of rumour that underpinned sexual insult in *ex officio* cases, while his study of citations for adultery and fornication reveal the role of the Church in monitoring sexual behaviour and marriage.⁶ In a recent important study, Philippa Maddern addressed ecclesiastical involvement in ensuring support for the illegitimate children of poor women.⁷ Works such as these illuminate the rich seams of evidence for sexual activity and childbearing in later medieval communities, but either focus on *ex officio* cases or on child support. Poos notes that the influence of canon law in the everyday lives of the laity was most marked in *ex officio* cases that represented the Church's regulatory function.⁸ Social control was perhaps more overt in this fora, but the laconic format of these citations obscures the broader context in which these relationships occurred. The field of action was more extensive in instance cases, since complex stories and identities could be articulated in depositions which recorded witness statements. Despite the value of *ex officio* cases for exploring courtship and the marital bond, private suits provided parties and witnesses with greater opportunities to develop narrative and subject positions. This article thus uses instance litigation to address a notable lacuna in understandings of sexuality and courtship through a study of childbearing and marriage at the level of the parish. In particular, it analyses the gendered implications of discourses on courtship and pregnancy relating to the affective spaces between sexual liaisons and formal marriage.

Childbearing & Courtship in Canon Law

Evidence from matrimonial suits initiated in the church courts reveals the contexts in which pregnancy and parenthood intersected with canon law on marriage. The interests of the local church courts in sexual and marital issues differed from the motivations of manorial authorities, but convictions from the former jurisdiction could support citations in the latter where pregnancy or childbirth was not evident.⁹ Jurisdiction over issues of marriage and sexuality, however, formed only one aspect of ecclesiastical authority in the everyday lives of the laity. Cases in which the Church adjudicated included disputes over church rights and tithes, as well as suits that concerned laypeople more directly, such as defamation and the matrimonial matters which provide the focus of this study. This policing impulse extended beyond the detection of fornication and other sexual crimes to include the monitoring of marital irregularities more generally. Local jurisdictions thus sought to identify temporary sexual relationships and discourage cohabitation, replacing these informal bonds with solemnised unions. Court citations that initially concerned sexual crimes could occasionally transform into private matrimonial suits. Although compulsion underpinned the operation of the courts in this area, both *ex officio* and instance proceedings inquired into the sexual and domestic lives of parishioners, dealing with similar concerns from different angles. Local residents could exercise agency in *ex officio* citations, for example, by reporting individuals and events to ecclesiastical authorities. These cases reflected local attitudes towards the sexual and residential habits of others as much as the policing activities of the Church.¹⁰ Similar modes of communication and networks of knowledge supported the evidence of deponents on marriage and sexual behaviour in private suits, while these cases also incorporated the interests of ecclesiastical authorities.

Disputes about marriage represented a large amount of ecclesiastical business in the medieval English courts. For example, a third of the cases that were initiated in the courts of Canterbury during the late fourteenth century were suits concerning marriage.¹¹ The most extensive records of instance litigation for this period survive from the thirteenth-century courts of Canterbury, with a larger number of suits relating to the diocese of York and the Northern Province for the

fourteenth and fifteenth centuries.¹² Cases to enforce marriage contracts outnumbered other types of matrimonial suits. Another set of cases concerned the barriers to marriage, such as consanguinity and affinity, impotence, non-age, and pre-contract, through which annulments from the initial bond could be secured. Suits of this kind comprised only a small proportion of marriage disputes since many more invalid unions were dissolved by mutual agreement outside the courts.¹³ Although the ecclesiastical courts could also approve spousal separation *a mensa et thoro*, couples were granted only the right to live apart and not the ability to remarry. Marriage litigation tends to represent exceptional cases where recourse was sought from the courts rather than through arbitration or mutual agreement to separate on informal terms. The presence of gender-related patterns, and more particularly the narratives, images and motifs that embodied gendered attitudes, however, provide a crucial lens through which to explore perceptions of courtship and childbearing in the context of the church courts. Donahue notes, for instance, that “marriage litigation in the court of York in the fourteenth century was an activity that women initiated”, a trend that was sustained in suits from the fifteenth century though with less of a gendered disparity.¹⁴ In essence, female plaintiffs were more prevalent than male acting parties, particularly in earlier matrimonial suits and in litigation related to the enforcement of marriage contracts.

A variety of influences and interests were represented in evidence of this kind. As well as the perspectives of parties, witnesses and legal advisers, these records reflect cultural assumptions drawn from canon law and everyday life. Moralistic discourses shaped normative perceptions of women’s virtue, with sexual purity forming the cornerstone of ideal lay femininity. Civic and Church authorities often interpreted female sexuality as disruptive and disorderly, and single mothers and sexually active single women could often face punitive treatment.¹⁵ P.J.P. Goldberg recently observed that the extent of misogyny in the church courts was limited to particular points of canon law – in its application, the courts were relatively impartial towards the gender of parties and deponents. Lay attitudes towards female litigants and deponents, and women’s speech in general, were rather more hostile and socially restrictive, particularly within peasant communities.¹⁶ In social practice, courtship and marriage were regarded as more valuable for non-elite women and the female

peasantry, since women's virtue was associated with sexual purity and embedded in networks of exchange. Gendered tropes and images of courtship relating to men and women appeared in ballads, poems and sermons, although these were framed in different terms and represented a range of cultural dynamics. Popular ballads and lyrics aligned female sexuality and courtship practices with material gain, reflecting the attitudes of male authors as much as gender-related socio-economic patterns that placed non-elite women at greater risk of poverty.¹⁷ Female litigants and deponents thus operated within misogynistic discourses that were established and exerted considerable ideological force. In matrimonial suits, however, as with other types of litigation, the ability to testify allowed female parties and witnesses to exercise discursive agency.¹⁸ For example, sexual and reproductive discourses that were initially misogynistic in meaning were not uniformly aligned with gender expectations that equated femininity with sexual virtue. Narratives, motifs and images concerning courtship and childbearing could be appropriated and deployed in other contexts with different connotations. In a similar vein, male parties and deponents could rely on cultural scripts that associated unmarried manhood with promiscuity and domestic insecurity.¹⁹ In matrimonial cases more broadly, the language of courtship also intersected with discourses on love and the commitment to marry. Emotional attachment was demonstrated or denied in complex narratives that incorporated and exploited notions of stability, love, passion and desire.²⁰ In this sense, the discursive construction of legal arguments and depositions reveals aspects of the operation of gendered subjectivities in non-elite culture.

The existence of children had little formal influence on the outcome of marriage suits since canon law focused on the key elements that made a valid union, namely words of consent and consummation. Pregnancy and the presence of offspring, however, could be used as proof of consummation in cases where marriages were alleged, but evidence of intercourse was needed. Other forms of proof could underpin claims of marriage when relationships were well-established, such as "common fame" of the marriage, coresidence over many years, and having children together. In a number of suits, these elements were still not enough to secure a judgement in favour of a marriage.²¹ Childbearing could also support claims that sex had occurred when conditional contracts were made *sub pena nubendi*. Cases

of this kind centred on couples cited on suspicion of fornication who were then instructed to abjure each other and form a conditional contract before Church authorities.²² Any sexual intercourse that followed validated the marriage immediately, while pregnancy and childbirth acted as explicitly embodied proof of the couple's lapse. Married women were regarded as knowledgeable about sex under canon law, and were appointed in instance and *ex officio* cases where the female body was inspected for virginity.²³ Maternity within marriage, however, was situated within sexual taxonomies that assessed childbearing using moral dichotomies of purity/corruption and conjugality/promiscuity. In 1432, for instance, a panel of married women witnesses in York detected signs of pregnancy and childbirth in the body of the female plaintiff during a suit for annulment on the basis of her husband's alleged impotence.²⁴ Female expertise in this case derived from personal experiences of licit pregnancy that allowed the plaintiff's body to be interpreted as proof of her own corruption and her husband's virility.

Childbearing within marriage offered young women a morally defensible context for sexual activity that produced pregnancy. Procreation was one of the primary purposes of marriage according to canonists and theologians, though the avoidance of fornication and the virtues of marital love were also accorded value.²⁵ Consummation of a union was the final stage in its formalisation, yet the existence of children rarely influenced judgements in matrimonial suits. The practical significance of intercourse in marriage, however, meant that spousal impotence could form a primary impediment in cases of annulment. The majority of these suits related to male impotence, partly because of the difficulties in diagnosing female reproductive maladies. Female plaintiffs adopted the subject position of the fertile young wife whose transition towards maternity was impeded because of her husband's impotence. Claims that the female party desired children allowed female parties to surpass their existing role as wife, using canon law on marriage to gain agency and have unions annulled. Discourses on marriage and its consummation intersected with the language of fertility and child-bearing in these cases. A fifteenth-century precedent book from York recorded a matrimonial dispute in which Agnes de North claimed that John Wilson's impotence prevented the consummation of their union.²⁶ The main purpose of Agnes's case was to establish proof of her husband's incapacity, however

her proctor not only detailed John's impotence, but also emphasised Agnes's youth and her strong desire to have children. In addition, it was alleged that John's inability to render the conjugal debt placed Agnes in grave danger of adultery. The desire for motherhood articulated in these suits was framed within clerical discourses that interpreted marriage as primarily intended for procreation. Both arguments appealed to canon legal perceptions of marriage and its purpose: to produce legitimate children and to avoid fornication. In the context of the church courts, the language of pregnancy and fertility reinforced clerical perceptions of the purpose of marriage and the practical and symbolic function of married women. This kind of legal argument could incorporate the interests and concerns of young married women, generating perspectives on marital intimacy and maternity that also represented lay female attitudes towards marriage and motherhood. This language could accommodate multiple subject positions associated with married women of childbearing age, including those experiencing unhappiness in their marriages or more localised sexual dissatisfaction. Female plaintiffs in these cases could deploy multivalent discourses of childbearing to gain agency and a degree of control over their marital situation.

Courtship & Childbearing in Practice

The Church discouraged sexual activity before marriage, yet a number of marital relationships were prohibited and open to annulment even when formalised as valid contracts and accompanied by the birth of a child. One such impediment was the barrier of consanguinity and affinity which, after the Fourth Lateran Council of 1215, forbade unions between kin and affines related within four degrees of kinship.²⁷ In 1462, a marriage dispute arose in the church courts of York between Isabel, daughter of Henry Yonge, and Robert Keighley, a couple who had married almost two decades earlier despite their close kinship which elicited considerable opposition from Robert's father.²⁸ While the pair were related within forbidden degrees, a sexual relationship developed, during the course of which Isabel became pregnant. The marriage was accompanied by the publication of banns, a requirement of canon law that bound those present to reveal any

known impediments to the union.²⁹ Although several deponents outlined the couple's kinship which they described as well-known in the community, they claimed that Isabel's pregnancy prevented them from reporting their kinship prior to the ceremony. The practicalities of impending parenthood were cast as outweighing the spiritual danger of marriage within degrees of kinship. One witness told the court of objections raised by Robert's father on his death-bed, along with his insistence that the pair's kinship should be reported at "an opportune time". The pregnancy itself was depicted as the reason for the marriage, while the language of judgement and conscience was used to justify its dissolution. The annulment was sought twenty years later, suggesting that the narrative of pregnancy outweighing kinship was used to dissolve an unhappy marriage or, alternatively, that the pair genuinely associated their kinship with their failure to "flourish or live together in good fortune" as Robert's father had warned.³⁰ The construction of their legal argument suggests that social expectations compelled the couple to wed, rather than the relationship representing a case where marriage would have taken place regardless or where it depended on proof of fertility. Couples could choose to marry after their relationship had produced children for more pragmatic reasons than the encouragement of local Church authorities. In 1200, for instance, a suit concerning the validity of a marriage reached the court of Canterbury in relation to an inheritance case in the king's court. Witnesses on behalf of Agnes Parage testified on her marriage six years before to Arnold de Thorley whose death resulted in a dispute between Agnes and Arnold's brother over his landed property. The couple were involved in an established sexual relationship for some years prior to their union. According to one deponent, Arnold did not want his family present at the ceremony, due to their hatred for Agnes, although he "had held [Agnes] for a long time, and had children from her".³¹ The couple's relationship appears to have been one of long-term concubinage, perhaps during Arnold's marriage to his first wife, without Agnes and Arnold living together. Certain groups of men were particularly prone to forming sexual relationships that might not lead to marriage. In cases of illegitimate birth, Maddern demonstrated that many fathers in late medieval England were unable to marry the mothers of their children, mainly due to their own clerical or married status.³² Agnes's witnesses told the court that

Arnold instructed his servants to treat her as his wife, implying a transition in her status from an earlier, more informal, position upon their marriage. While deponents did not mention an earlier ceremony, the pair may have married already without the presence of a priest since unions were not always solemnized publicly in churches, a situation that the Fourth Lateran Council of 1215 and other legislation sought to resolve.³³ From actions that were brought in the king's court, Arnold appeared to have children from a previous marriage, one of whom was identified as his legitimate heir. Although the Church regarded children born outside wedlock as legitimate once their parents married, under common law these offspring remained illegitimate and were unable to inherit.³⁴ Yet the legitimacy of their children and the years of their birth were not the central concerns of this suit, nor were the pair's children named as legitimate heirs in the related suits in the king's court. The case focused on the validity of their marriage in relation to a grant of a third part of Arnold's lands to Agnes, most likely her widow's dower, which his brother challenged.³⁵ Several deponents emphasized Arnold's grant of dower at the church door, suggesting that the marriage was formed at least in part to guarantee Agnes's rights in her widowhood. To an extent a pragmatic and legal decision, the marriage also depended on a long shared history during which affective bonds had developed and strengthened. Witnesses described how Arnold had honoured Agnes and held her dear after the pair married, while others told how they lived together as a conjugal couple until his death. Cases such as this demonstrate the complexity of social practice concerning childbearing and marriage when compared to the strictures of canon law.

Beyond the normative confines of marriage, sexual relationships were not solely intended to lead to marriage even when pregnancies occurred. The presence of children outside the marital bond was not uncommon in the medieval parish. In 1355, for example, witnesses in one marriage case explained the position of another deponent, Maud Katersouth, described as a poor woman, without any means of support for herself or her son.³⁶ The child's father was still alive and in contact with his son, although the relationship with Maud had broken down and the couple lived apart. While ample evidence survives to demonstrate the prevalence of long-standing sexual relationships among the laity, Church authorities were able to compel couples

to marry. Poos identified a number of *ex officio* citations for fornication which detected couples engaged in courtship after a sexual relationship had developed but prior to their marriage. Church authorities either instructed the couple to abjure each other, or set a date by which they were required to marry.³⁷

The prevalence of citations for illicit sex, coupled with cultural tropes that interpreted sexual relationships as fornication, meant that marriage contracts could be difficult to prove even in cases where children were born. In 1347, Alice Pleyneys and Simon, son of Thomas Piers, appeared before the dean and chapter of Lincoln for fornication and irregularities related to their alleged marriage.³⁸ Alice told the court how the pair had exchanged the customary vows, to which Simon added "you are permitted to know me carnally". The pair's relationship was framed in the language of conjugality which was bound intimately to their sexual activity. The court noted that, according to Alice, "Simon knew her carnally often, over a long period, and [the relationship] produced a child".³⁹ The explicit association of marital sex and the couple's vows sought to transform their bond from an unstable sexual liaison into a valid marriage, despite its lack of formal solemnisation. In this regard, the birth of the couple's child was depicted as occurring within a union that Alice regarded as licit and permanent. The dean and chapter favoured Alice's interpretation of their relationship, and ordered the couple to solemnise their marriage in the parish church.

Sexual relationships that were relatively established did not always end in marriage even when children were acknowledged. Although many sexual liaisons were characterised by informality or were temporary in nature, other non-marital relationships could be long-standing despite the existence of children. In a late thirteenth-century marriage case from Canterbury, the legitimacy of Robert Dyne was examined in relation to an inheritance dispute with his younger half-brother.⁴⁰ Cases concerning bastardy in relation to the inheritance of property usually began in the royal courts, entering the ecclesiastical courts when inquiries into the validity of marriages were needed. Children were regarded as legitimate by the Church as soon as parents wed, even when they were born before the marriage and the union had not been solemnized according to canon law. During the inquiry, forty male witnesses testified on their knowledge of the relationship between Robert Dyne's parents, providing

evidence that focused on whether his mother was his father's concubine. Deponents endorsed the couple's marriage, but much of the testimony concentrated on distinctions between wives and concubines, which were established through the tautological rationale that married women were treated as such under the law. In terms of cohabitation, childbearing and childrearing, both concubinage and marriage could manifest themselves in comparable domestic practices. A similar process of identification was evident in a mid-fourteenth-century case from York, in which Robert de Harwod claimed that he "never heard tell of any marriage [between the couple] ... but only of concubinage".⁴¹ The resemblance between the markers of marriage and concubinage prevented their conclusive categorisation and made their elision possible.

Narratives of Childbearing & Courtship

Couples whose relationships had already produced children occasionally cohabited but were not necessarily engaged in courtship that would lead to marriage. Cultural expectations associated with courtship and childbearing provided the moral framework for legal arguments and testimony, alongside the influence of gendered models of behaviour and the weight of canon law. In 1392, for instance, a suit was initiated between Margaret Hobbedoghter and William Beveridge, a couple whose relationship had already attracted the interest of ecclesiastical authorities in the East Riding of Yorkshire.⁴² The pair had lived together in the parish of Skipsea for several years, during which time two children were born, but Margaret and William had not married in formal terms. Following the birth of their second child, Margaret and William were compelled to exchange conditional vows *sub pena nubendi* in the parish church of Skipsea before the dean and chapter of Holderness. A valid marriage would therefore exist if the couple had sex with each other again. Deponents in other matrimonial suits provided first person testimony of sex between the parties, but in this case John Selow, godfather to one of Margaret and William's children, testified that the couple had cohabited for a period both before and after the abjuration, which he knew from many visits to their home. John's relationship with Margaret and William connoted an everyday familiarity with the couple's domestic life in which

he occupied a position of intimacy and trust. This, in turn, imbued his evidence with greater authority. Testimony from a godparent underscored the moral obligations owed to the child by their kin, in stark contrast to the absence of the child's alleged father. While John was godfather to one of the couple's children, he also formed part of Margaret's support network, invoking bonds that opposing witnesses cast as prejudicial to his impartiality. Other deponents claimed that John Selow colluded with Margaret on the nature of his evidence, before intimidating neighbours who supported William in the case. The testimony from Margaret's deponents, however, underlined the longevity and established nature of their relationship, including their cohabitation and offspring, which their contract *sub pena nubendi* merely confirmed. The practices associated with marriage and childbearing thus operated as a substitute for evidence of sexual contact.

Legal narratives that centred on sexual relations and marriage incorporated recognisable patterns and images whose meanings rendered various kinds of sexual behaviour explicable. The language of promiscuity could be utilised more precisely in suits where pregnancy and issues of paternity accompanied narratives of courtship. In 1269, Johanna de Clapton brought suit against Richard de Bosco in the consistory court of Salisbury to have their relationship confirmed as a marriage.⁴³ The couple had been lovers over a period of several years, to which several deponents attested and the pair themselves agreed. Several years previously, Johanna and Richard had abjured each other *sub pena nubendi* before the archdeacon of Berkshire, meaning that any further sexual intercourse would confirm their marriage. In the instance suit, however, Richard claimed that he had no intention of marrying Johanna, despite her argument that she and Richard had sex after their abjuration which her deponents said they had witnessed in person. As part of Richard's defence, witnesses not only denied that the encounter occurred, but also alleged a previous sexual relationship with another woman, Matilda Goderhele, who was related to Johanna in the third degree of consanguinity. Richard's liaison with Matilda created an impediment of affinity if their relationship could be proved. The argument for both parties focused on the construction of their sexuality, in particular their attitudes towards premarital sex and multiple sexual partners. The female witnesses who testified on Johanna's behalf provided detailed evidence on the couple's alleged sexual relationship

after their abjuration in the court. Johanna's apparent promiscuity was emphasised in the testimony of Petronilla, wife of Richard Syward, who told the court that Johanna was also accused of sexual relations with a servant from a neighbouring village.⁴⁴ In a number of marriage suits, the illicit and temporary nature of relationships was underscored by the spatial location of sexual activity, usually outside the household in sites that were regarded as suspicious. Johanna's witnesses used the language of secrecy and concealment to describe her encounter with Richard which they claimed had occurred in a field following an evening of ale at a neighbour's house. While Johanna's deponents emphasised her sexual promiscuity, this perception was used to frame her legal claim of consummation. The language of illicit sexual activity was thus exploited in an attempt to formalise her relationship with the father of her child.

A comparable discourse appeared in testimony from Richard's witnesses who told how Richard had also had sex with Johanna's kinswoman, Matilda Goderhele, an encounter that similarly occurred in a field ten years earlier. Communication between deponents outside the court in the form of gossip and rumour presumably allowed details of legal strategies to circulate via social networks. The second set of accounts were integral to the representation of Richard as a young man who was involved in a series of transient relationships outside the bonds of marriage. Illicit liaisons with both women implied that these encounters took place within a limited context of sexual desire rather than the broader setting of courtship and the expectation of marriage. The transitory nature of sexual relationships for young men in particular was emphasised in popular ballads and lyrics that circulated among the laity. In one early Middle English pastourelle, "In a fryht as Y con fare fremede", the character of the maiden initially rejects the sexual advances of her suitor with the prediction that his affections would wander once he had satisfied his desire: "Have ye or wyl, ye waxeth unwraste; Afterward, or thonke be thynne".⁴⁵ This depiction chimed with the warnings of churchmen that male passion could wane after sexual encounters as many promiscuous young men promised marriage only in order to initiate sex.⁴⁶ The prevalence of this stereotype, however, meant that male defendants could render different kinds of sexual relationships indistinguishable from one another in legal narratives.

Childbearing was central to the narrative construction

of sexual and marital relationships, although the existence of children served primarily as evidence of sex and retained little significance under canon law. In the suit between Johanna de Clopton and Richard de Bosco, both Johanna and her kinswoman, Matilda, became pregnant during their involvement with Richard, whom they identified as the father. Though he failed to recognize his child with Johanna, his paternity was established through an inquisition of sworn women of the neighbourhood who testified to the common knowledge of his fatherhood in the local community. Richard's witnesses, conversely, claimed that he acknowledged his offspring with Matilda, supporting and clothing the child as his own. The treatment of his alleged paternity emphasised that he did recognise and support his children, not only implying that another man fathered Johanna's child but also undermining her claims of sex. The possibility that a relationship could end in pregnancy and sexual shame for women rather than marriage was a recurrent motif. Several lyrics and poems such as "The Serving Maid's Holiday" satirised the sexual desires of a young female servant whose dalliances led to her pregnancy. Similarly, in the pastourelle "In a fryht as Y con fare fremede", the character of the maiden considers the consequences of a brief sexual liaison with a persistent suitor: "Thenne miht I hongren on heowe, In uch an hyrd ben hated ant forhaht, Ant ben ycyred from alle that Y kneowe, Ant bede clevyen ther Y hade claht".⁴⁷ While the maiden only imagines her dishonour in general terms, her anxieties associate extramarital pregnancy with shame and a lack of support for single motherhood.

Narratives of commitment and love intersected with canon law on marriage as deponents attempted to emphasise the emotional authenticity of parties exchanging vows. Statements of love mattered little in legal terms, but the concept of intention was central to the evaluation of actions from a theological perspective and under canon law.⁴⁸ The sexual nature of many premarital relationships meant that the intentions of couples who claimed to have married could be contrasted with those of opposing parties. This kind of comparison was particularly significant in cases where the defendant claimed that the union was invalid due to a prior contract of marriage. The language associated with courtship was thus imbued with emotions that drew on cultural expectations of behaviour during courtship. In this context, pregnancy and the existence of children might only signify a previous

sexual relationship and not consent to marriage. For example, a number of suits to enforce contracts were judged unproven despite the birth of offspring within the relationship.⁴⁹ Yet the discursive overlap between concubinage and extended courtship were emphasised through the intentions and actions of young male suitors. Domestic stability over long periods of time, as well as the presence of children, were used to rehabilitate female virtue and reputation in this liminal area. In 1453, deponents in a case from the church courts of York testified in a multi-party suit that Agnes Vavasour initiated against William Warthill, following a long-standing sexual relationship of several years.⁵⁰ Witnesses who deposed on William's behalf told the court of his recent marriage to Joan Kirkby during which the couple exchanged words of present consent before family and friends. Two deponents reported on William's earlier and more established relationship with Agnes Vavasour, the other female plaintiff in the case. These witnesses claimed that several years before, while they laboured with William in the fields, they had questioned him on why he had not married Agnes whom he had held as his concubine for a long time. Another witness, William Mathew, challenged William Warthill more directly, asking why he did not care to marry Agnes since he had held her for so long from her virginity and had thus prevented her lawful marriage. Although William said that he wished to formalise their union and would marry her shortly, he also commented that he wished to consider the matter further. After the men confronted William, the couple had a child together, and Agnes was pregnant once more while the dispute ran in court. The relationship had many of the markings of a marriage, yet the deponents admitted that no marriage contract could be proved between the pair. While William's hesitance and desire to deliberate further signalled his inconstancy, the couple's relationship was depicted as more established than mere concubinage. The birth of children was significant, yet greater emphasis was placed upon Agnes's conduct, which was marked by a monogamous commitment from her virginity to a bond that she viewed as stable and a precursor to their eventual marriage.

While the reluctance to commit to marriage was a masculine trait in lyrics and sermons, the emotions of young women could also shift, with waning passions leading to the end of relationships even when children had been born. In a case from Canterbury, the alleged

wife informed the court that "the things she said with her mouth were not in her heart", though the relationship had already produced a child.⁵¹ The union was thus depicted as the product of poor judgement and fickleness rather than indicative of a passionate sexual relationship that failed to develop into a successful marriage. This argument allowed her to circumvent the issue of sexual desire and fornication, while also undercutting her initial consent to the union. The language of love and commitment was used to characterise annulment of the marriage as morally right and based on her conscience, casting the relationship as ill-advised rather than temporary and thus immoral in nature.

Conclusion

The gendered associations of courtship practices in late medieval England produced a range of subject positions that could be adapted within legal narratives to accommodate circumstances surrounding the birth of children. Young women could appropriate and reconfigure cultural models that were hostile to female sexualities in order to advance claims of marriage over the fathers of their children. Cases of contracts formed *sub pena nubendi* provided female plaintiffs with greater levels of agency through discourses on passion, illicit sex and its spatial location. Instead of tarnishing women's sexual reputations, these narratives could be used to fulfil the requirements of canon law after the couple had already appeared before the courts accused of fornication. In the context of canon law on marriage, childbearing had little influence on the outcome of matrimonial suits and often served only to demonstrate that a couple had sex after their abjuration. In broader social practice, however, the birth of children mattered in representations of relationships in which women's sexual activities occurred in the context of courtship from which marriage was expected to follow. Cohabitation and domestic stability were used to connote the established nature of these bonds while underscoring the affective attachments between couples, particularly from the perspective of female plaintiffs.

Male defendants could similarly adopt specific subject positions as justification for their actions, adapting elements of stereotypical masculine conduct to represent their circumstances. The motif of male promiscuity

and reticence to form marriages with sexual partners offered young men a discursive structure for their legal arguments. Sexual relationships marked by degrees of permanence, despite the absence of a marriage bond, could be depicted as transient encounters that chimed with stereotypes of male behaviour and related cultural anxieties. These ties were reconfigured in legal narratives aimed at undercutting the affective bonds and domestic familiarity that developed between couples during periods of cohabitation and child-rearing. These patterns privileged the narrative position of men in these disputes, at least in official terms. Models and discourses could be used in ways that offered justification for premarital sex and pregnancy, but this involved situating lay approaches to marriage and courtship in legal frameworks that were imbued with moral assumptions about gendered behaviour. The appropriation and adaptation of discourses on premarital sex and maternity, however, indicates that in social practice more flexible models of femininity and masculinity pertained.

Annotations

- 1 I would like to thank the journal editors and Dr Simon Sandall for reading and commenting on an earlier version of this article.
- 2 Barbara A. Hanawalt: *The Ties that Bound: Peasant Families in Medieval England*, Oxford: Oxford University Press 1996, p. 196.
- 3 Richard H. Helmholz: *Abjuration Sub Pena Nubendi in the Church Courts of Medieval England*, in: *Jurist* 32 (1972), pp. 80–90, p. 82.
- 4 For a discussion of these terms and their uses, see Judith M. Bennett: *Writing Fornication: Medieval Leyrwite and its Historians*, in: *Transactions of the Royal Historical Society* 13 (2003), pp. 131–62.
- 5 *Ibid.*, pp. 150–51.
- 6 L.R. Poos: *The Heavy-Handed Marriage Counsellor: Regulating Marriage in Some Later-Medieval English Local Ecclesiastical-Court Jurisdictions*, in: *The American Journal of Legal History* 39/3 (1995), pp. 291–309; L.R. Poos: *Sex, Lies and the Church Courts of Pre-Reformation England*, in: *Journal of Interdisciplinary History* 25/4 (1995), pp. 585–607. For important explorations of the wider contexts of courtship and marriage in the ecclesiastical courts of York and London respectively, see P.J.P. Goldberg: *Women, Work and Life Cycle in a Medieval Economy. Women in York and Yorkshire, c.1300–1520*, Oxford: Oxford University Press 1992; and Shannon McSheffrey: *Marriage, Sex and Civic Culture in Late Medieval London*, Philadelphia: University of Pennsylvania Press 2006.
- 7 Philippa C. Maddern: “Oppressed by Utter Poverty”: *Survival Strategies for Single Mothers and their Children in Late Medieval England*, in: Anne M. Scott (ed.): *Experiences of Poverty in Late Medieval and Early Modern England and France*, Farnham: Ashgate 2012, pp. 41–62.
- 8 Poos: *Heavy-Handed Marriage Counsellor* (note 6), p. 292.
- 9 Bennett: *Writing Fornication* (note 4), p. 147, fn. 63.
- 10 Poos: *Heavy-Handed Marriage Counsellor* (note 6), p. 309.
- 11 James Brundage: *Law, Sex and Christian Society in Medieval Europe*, Chicago: University of Chicago Press 1987, p. 509.
- 12 Richard H. Helmholz: *Marriage Litigation in Medieval England*, Cambridge: Cambridge University Press 1974, p. 12.
- 13 *Ibid.*, p. 75.
- 14 Charles Donahue, Jr.: *Law, Marriage and Society in the Later Middle Ages. Arguments about Marriage from Five Courts*, Cambridge: Cambridge University Press 2008, p. 77.
- 15 Cordelia Beattie: *Medieval Single Women. The Politics of Social Classification in Late Medieval England*, Oxford: Oxford University Press 2007, pp. 39–61; Ruth Mazo Karras: *Sex and the Singlewoman*, in: Judith M. Bennett/Amy M. Froide (eds.): *Singlewomen in the European Past, 1250–1800*, Philadelphia: University of Pennsylvania Press 1999, pp. 127–45.
- 16 P.J.P. Goldberg: *Gender and Matrimonial Litigation in the Church Courts in the Later Middle Ages: The Evidence of the Court of York*, in: *Gender & History* 19/1 (2007), pp. 46–47.
- 17 Bennett: *Writing Fornication* (note 4), pp. 156–58.
- 18 For the concept of discursive agency, see Judith Butler: *Excitable Speech: A Politics of the Performative*, New York: Routledge 1997, pp. 139–40.
- 19 Bronach Kane: *Reading Emotion and Gender in the Later Medieval English Church Courts*, in: *Frühneuzeit-Info* 23/1–2 (2012), pp. 53–63, p. 58; see also P.J.P. Goldberg: *Masters and Men in Later Medieval England*, in: Dawn M. Hadley (ed.): *Masculinity in Medieval Europe*, London: Longman 1999, pp. 56–70.
- 20 Kane: *Reading Emotion and Gender* (note 19), p. 57.
- 21 Helmholz: *Marriage Litigation* (note 12), p. 46.
- 22 Helmholz: *Abjuration Sub Pena Nubendi* (note 3), pp. 80–90.
- 23 Jacqueline Murray: *On the Origins and Role of ‘Wise Women’ in Causes for Annulment on the Grounds of Male Impotence*, in: *Journal of Medieval History* 16 (1990), pp. 235–249.
- 24 Borthwick Institute for Archives (hereafter B.I.), CP.F. 175; Bronach Kane: *Impotence and Virginity in the Late*

- Medieval Ecclesiastical Court of York (= Borthwick Papers 114), 2008.
- 25 Brundage: *Law, Sex and Christian Society* (note 11), p. 197.
- 26 Brotherton Library, University of Leeds, MS Dep. 1980/1.355, fol. 54^v–55^v.
- 27 Brundage: *Law, Sex and Christian Society* (note 11), p. 416.
- 28 B.I. CP.F. 202.
- 29 Helmholz: *Marriage Litigation* (note 12), p. 108.
- 30 B.I. CP.F. 202. “nuncquam vigeunt nec simul fortunaliter stabunt propter consanguinitatem inter eos”. The English translation follows Helmholz: *Marriage Litigation* (note 12), p. 80.
- 31 Canterbury Cathedral Archives (hereafter CCA), E.S. Roll 205 and 342. Richard de Thorley: “idem Ernaldus ante desponsationem diu tenuerat ita ut ex ea liberos suscepisset”.
- 32 For an analysis of this sample, see Maddern: “Oppressed by Utter Poverty” (note 7), p. 47.
- 33 For these groups, often termed “juries of matrons”, in an early modern legal context, see Laura Gowing: *Common Bodies. Women, Touch and Power in Seventeenth-Century England*, New Haven: Yale University Press 2003, pp. 43–47.
- 34 Richard H. Helmholz: *Bastardy Litigation in Medieval England*, in: *American Journal of Legal History* 13 (1969), pp. 360–83.
- 35 *Select Cases from the Ecclesiastical Courts of the Province of Canterbury* (ed.): N. Adams and J. Donahue, Selden Society, 95 (1981), p. 18, fn. 2.
- 36 B.I., CP.E. 82.
- 37 Poos: *Heavy-Handed Marriage Counsellor* (note 6), p. 297.
- 38 L.R. Poos (ed.): *Lower Ecclesiastical Jurisdiction in Late-Medieval England: The Courts of the Dean and Chapter of Lincoln, 1336–1349, and the Deanery of Wisbech, 1458–1484*, Oxford: Oxford University Press 2001, p. 226.
- 39 *Ibid.*, p. 226. “ita quod permittas me totum carnaliter comiseri”; “Quodque postea longo intervallo idem Simon ipsam Aliciam carnaliter cognovit sepius et unam prolem suscitavit”.
- 40 CCA, E.S. Rolls 80, 184, 230 and 231.
- 41 B.I., CP.E. 82. The English translation follows P.J.P. Goldberg (ed.): *Women in England, c.1275–1525*, Manchester: Manchester University Press 1995, p. 159.
- 42 B.I., CP.E. 202.
- 43 CCA, E.S. Roll 310.
- 44 CCA, E.S. Roll 310. Petronilla uxor Ricardi Syward: “Requisita si mulier esset diffamata de aliquo alio dicit quod sic de Elia tunc temporis serviente de Avinton”.
- 45 “In a fryht as Y con fare fremede”, in: Susanna Greer Fein (ed.), with David Raybin and Jan Ziolkowski: *The Complete Harley 2253 Manuscript, Vol. 2*, Kalamazoo: Medieval Institute Publications 2014, lines 17–18.
- 46 Bennett: *Writing Fornication* (note 4), pp. 146–47.
- 47 “In a fryht as Y con fare fremede” (note 45), lines 33–36. For a useful discussion of premarital childbearing in lyrics and ballads, see Neil Cartlidge: “Alas, I Go with Chylde”: *Representations of Extra-Marital Pregnancy in the Middle English Lyric*, in: *English Studies* 79 (1998), pp. 395–414.
- 48 For a treatment of ‘intention’ in relation to marriage and marital sex, see Ian Wei: *Intellectual Culture in Medieval Paris: Theologians and the University, c. 1100–1330*, Cambridge: Cambridge University Press 2013, pp. 266–67.
- 49 Helmholz: *Marriage Litigation* (note 12), p. 132.
- 50 B.I., CP.F. 191.
- 51 CCA, Y 1.1. f. 9r; for a brief discussion of this case, see Helmholz: *Marriage Litigation* (note 12), p. 61.

□