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# 1

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## MARRIAGE MAKING

### **Marriage in Theory and Law**

Medieval conceptions of marriage derived from three sources. The first of these was imperial Rome, whose law code became a major influence on medieval jurists, both lay and ecclesiastical. The later Roman Empire also provided the means by which the second body of influences, the Judaeo-Christian scriptures and the writings of the early fathers of the Church, could be transmitted to the Middle Ages. Finally, the customs of the Germanic barbarians provided the foundation on which the components of Roman law and Judaeo-Christian teaching could be assembled into a new and resilient conceptual structure, most of which is still with us today.

Some of what the later Roman Empire understood as marriage would have been familiar in the Middle Ages. Marriage was monogamous. The minimum age at which marriage could take place was 14 for boys and 12 for girls, and both parties had to give their free consent to the union. The wife brought a dowry to her husband, but unlike medieval practice, he had to account for his use of it and, in the event of the marriage's dissolution, she could claim it back in its entirety. Far more alien to the later Christian law of marriage, divorce could be had with relative ease at the instigation of either husband or wife.<sup>1</sup> Medieval and Roman attitudes also parted company over the question of sex. Generally speaking, Greek and Roman culture was relaxed on the subject, although the increasing influence of Stoic philosophy and Gnostic beliefs in the late Empire encouraged many of the elite to distrust sexual pleasure. But even the Stoics did not regard sex as evil in itself, merely something that had to be kept within certain bounds.

While moralists might teach that the sole purpose of marriage was the procreation of children, there was a growing body of opinion that valued love and companionship between husband and wife.<sup>2</sup>

A very different attitude is apparent among the early Christians.<sup>3</sup> The Judaic tradition held that the sexual act polluted those who engaged in it, making ritual purification necessary before participating in sacred rites, but it did make a virtue of fecundity, and was at ease with the thought that husband and wife might actually enjoy sexual intercourse. During its development from a Jewish sect to a religion in its own right, Christianity retained the Hebraic notion of sex as pollutant, and in addition absorbed the Stoics' and Gnostics' suspicion of sensual pleasure. Some of the Church fathers built these beliefs into an asceticism that verged on the condemnation of all sexual activity as sinful. Such a view threatened the very idea that marriage (as a formal relationship between male and female sexual partners) could be compatible with salvation, a position that represented a radical break with classical and Judaic culture.

The Old Testament presented ample evidence of Hebrew marriage customs, but some of these, such as polygyny (Solomon was reputed to have had 700 wives), were plainly unacceptable to the consensus of opinion in the late Empire. However, the union of Adam and Eve gave a clear affirmation of monogamous marriage: 'Accordingly a man forsakes his father and his mother and adheres to his wife, and they shall be two in one flesh.'<sup>4</sup> This text is quoted with approval by Christ, who also taught that marriage was indissoluble by divorce, but despite this and his presence and miracle-working at the wedding at Cana, Christ's few recorded pronouncements on the family suggest an opposition between discipleship and traditional family relations.<sup>5</sup> In Matthew Christ declares: 'Truly, I have come to separate a man from his father, a daughter from her mother, and a daughter-in-law from her mother-in-law; and a man shall find his enemies within his own household. He who loves his father or mother more than me is not worthy of me, and he who loves his son or daughter above me is not worthy of me.'<sup>6</sup>

Paul's teaching is more amenable, if still falling short of a wholehearted commendation of marriage and family life. Paul saw marriage as a legitimate means of relieving sexual desire, for which purpose husband and wife should render to each other the 'marital debt':

But to avoid fornication, every man should have his wife and every woman should have her husband. The husband should pay the [conjugal] debt to his wife, and likewise the wife to her husband. The wife does not have power over her own body, but the husband does; and likewise indeed the husband does not have power over his own body, but the wife does. Do not refuse one another except by agreement for a period, to give time for prayer, and return to each other again so Satan does not tempt you on account of your incontinence.

However, he also saw marriage as inferior to his own state of celibacy: 'I wish that all could be as I am, but everyone has his particular gift from God, some of one kind, others of another, truly. Moreover, I say to the unmarried and widows: it is good for them if they remain as I am; but if they cannot control themselves they should marry: better to marry than to burn.' More positive is the correspondence he claims between marriage and Christ's relationship with the Church: Christ is to his church what the husband is to his wife; just as Christ loves the faithful, and they in their turn must obey him, so must the husband cherish his wife and she must obey her husband.<sup>7</sup>

Paul's doctrine on the family does allow marriage and the procreation of children a place in the scheme of salvation, and while he expects the wife to be subservient to her husband, his instructions to the latter to 'love his wife as himself' places him on the 'liberal' wing of early Christian opinion. However, the Pauline doctrine of marriage was not embraced by some of the early Christian writers who came after him. Their deep-rooted distrust of sex led them to believe that even sex within marriage was in varying degrees sinful. Established Christian opinion until the Reformation was agreed that virginity was the purest state; if one's virginity had been lost, then celibacy was second best, conceived of either as agreed sexual abstinence between married partners or, more usually, as a state maintained when one was free of the bonds of marriage; a sexually active marriage came a definite third.

The question of how, if at all, the sexually active married couple could avoid sin was where Pauline and more extreme Christian opinion parted company. The most prominent among this latter group was St Jerome. 'I praise weddings', he wrote, 'I praise marriages, but because for me they produce virgins'.<sup>8</sup> Jerome's debt to the Stoics is clear in his declaration that the man who loves his wife too much is guilty of adultery, a direct quotation from the second-century Stoic, Sextus (and repeated as recently as 1980 by Pope John-Paul II).<sup>9</sup> Jerome's position

came close to asserting that, since sex was the expression of carnality and hence inherently evil, the procreation of children within marriage was incompatible with salvation.

Against this opinion stood St Augustine, the most influential of the church fathers. Augustine proposed that from Christian marriage flowed three positive results, or 'goods'. The three goods of marriage are offspring, fidelity and 'sacrament', or inseparability:

In fidelity the focus is on the exclusion of intercourse with another woman or man outside the marriage bond. In offspring the focus is on loving reception, kind nurture, and religious upbringing. In the sacrament the focus is on the inseparability of marriage, and [on the requirement] that a man or woman, if dismissed, does not join with another for the sake of offspring. This is the rule of marriage by which the fruitfulness of nature is crowned, or the depravity of incontinence is regulated.<sup>10</sup>

This formulation provided the bedrock for most medieval discussions of Christian marriage. In contrast to Jerome's emphasis on virginity, Augustine welcomes fruitfulness within a Christian family. He also sees marriage as having an important social function in binding together families, thereby increasing harmony within the Christian community.<sup>11</sup> Nevertheless, Augustine does not eschew the notion that marriage is a remedy for lust, a safety valve whereby extramarital fornication may be avoided. The superiority of total sexual abstinence remains unchallenged.

The Germanic barbarians had institutions of marriage that were not wholly alien to late Roman practice. Formal marriage involved three stages: betrothal, the settlement of property, and the delivery of the bride from her father's authority to her husband's. The Germans practised a system of 'reverse dowry', whereby the bride – or her family – received property from the groom's family, with only a token offering given to the groom. The bride also received a 'morning gift' after her wedding night. However, the Germans also practised polygyny: the Merovingian King Dagobert was reported to have had numerous wives and concubines, 'like Solomon'. Husbands could readily divorce their wives, but wives could not divorce their husbands. Another Germanic custom frowned upon by the Church was the informal marriage, which did not involve the transfer of property or of authority over the bride, but required only the consent of bride and groom; such 'free' marriages were the ancestors of the clandestine unions which so troubled the

medieval canon lawyers.<sup>12</sup>

While the Church never condemned the married state as incompatible with salvation, for centuries it was content to allow marriage to remain a largely civil affair, an arrangement made between the parties, regulated by secular authorities and contracted without the necessity of religious ceremony.<sup>13</sup> In England, the process whereby the Church developed its separate jurisdiction over marriage began with William I's edict of about 1072, designed to separate episcopal jurisdiction from that of the local secular courts, and reached its fulfilment in the Compromise of Avranches of 1172. During this 100 years the Church took over marriage jurisdiction from the Crown and other secular authorities, leaving the latter's competence in family matters largely restricted to questions of inheritance. The English experience was one of the earliest and most complete examples of a general phenomenon occurring throughout Christian Europe, whereby the Church assumed authority over marital questions.<sup>14</sup> Why did the Church want this jurisdiction, tainted as it was with carnality?

One answer is that the Church may have been reacting to what today might be called 'consumer demand': the laity increasingly wanted their unions blessed by the Church, and the necessity of deciding which unions were fit to be blessed inevitably dragged the Church into the regulation of marriage and family relations.<sup>15</sup> However, it was not drawn unwillingly into this area, but actively sought a greater role in the regulation of marriage. At this time the Church was fighting heretical movements whose common characteristic was the condemnation of the physical world, including human sexuality, as evil. As we have seen, there had long been a strong suspicion of all forms of sexual activity within orthodox Christianity, and this was a crucial factor in the Church's reluctance to involve itself with marriage, but now, in order to distance itself from the heretics' extreme views on carnality, the Church had to accommodate itself to marital sex. One consequence of this accommodation was the final acceptance, after much debate, of marriage as one of the Seven Sacraments. Its inclusion was controversial because it linked sex with the sacred, and it would be the only sacrament administered not by a priest, but by the laity: the bride and groom created the sacrament through their loving consent, following the example of Adam and Eve before the Fall.<sup>16</sup>

Perhaps, too, the Church's new-found interest in marriage was part of a campaign for the 'reformation of manners', an attempt to improve standards of behaviour and combat sin through closer surveillance and

control of everyday life. This campaign was not just aimed at the laity; during this same period the Church was attempting to suppress clerical marriage or concubinage. Since at least the fifth century there had been a generally relaxed attitude towards clerical cohabitation with partners as man and wife, but from the early eleventh century the leaders of the Church insisted on clerical celibacy. By the beginning of the thirteenth century, prohibition of marriage for those who had taken religious vows was generally accepted and enforced, even if actual celibacy for all clergy remained an unattainable ideal. George Duby has argued that, once the mechanisms had been established for the suppression of clerical concubinage, the Church found it a relatively easy step to extend its jurisdiction over lay marriages. This process has also been seen as part of the so-called 'Investiture Contest', the Church's great struggle to free itself from secular lordship, symbolized in English history by the fatal conflict between Henry II and Thomas Becket. The advantages won by the Church in this contest drew it into the entanglements of the secular world to an unprecedented degree, but this time largely on its own terms, through its panoply of courts exercising canon law, combined with continuing involvement in secular government, administration and politics.

The growth of clerical jurisdiction over marriage is therefore an integral part of the general intrusion of ecclesiastical power into lay society in the twelfth century.<sup>17</sup> But this is not simply a story of the Church snatching power from resistant lay authorities. While emperors, kings and princes fought bitterly over other rights, in the case of marriage jurisdiction the demarcation lines were drawn largely by a process of agreement. Duby has described the process as it occurred in northern France as a struggle between an ecclesiastical and a lay aristocratic model of marriage, with the latter being gradually worn down by a process of attrition.<sup>18</sup> However, some doubt has been cast on this interpretation. David Herlihy has questioned the existence of a competing aristocratic model of marriage, suggesting that what Duby took as an alternative system was, in fact, nothing more than a series of departures from the clerical 'model', to which all members of the elite at least paid lip service, and there seems a greater likelihood that prelates and nobles – drawn largely from the same class, after all – worked together to extend ecclesiastical control over the recalcitrant lower orders, recognizing a common interest in the use of religion and canon law as a form of social control.<sup>19</sup>

Effective jurisdiction must be based on an accepted body of laws,

and this had to be developed as the Church acquired its role as arbiter in marital disputes. One of the great achievements of the medieval Church was its formulation over a period of less than 200 years, and upon very sparse foundations, of a body of law and doctrine which is still deeply influential in western society. Before the twelfth century, the Church did not even have an agreed answer to the most basic question of what constitutes a valid marriage. Roman law and Germanic custom had long held the simple giving of consent between bride and groom as the essential act in the formation of a valid marriage, but this raised problems, since what could so easily be made might all too easily be denied or rescinded. In an effort to impose greater regularity over the couplings of the laity, the Church sought additional, or alternative, means of marking entry into a valid marriage. The main contender was the sexual act itself, combined with consent. However, Christians had a problem with this. Christ's mother had been a virgin at the time of his birth: Mary and Joseph had not, therefore, had sex. To accept sexual intercourse as a necessary constituent of a valid marriage meant that Jesus was the child of an unmarried mother, and this was obviously unacceptable. By the twelfth century, opinion had crystallized around the pronouncements of two contending theologians and canon lawyers, Gratian of Bologna, and Peter Lombard of Paris. Both accepted consent as a necessary precondition to a viable marriage, but whereas Peter Lombard saw consent alone as sufficient, Gratian believed that it had to be followed by sexual intercourse before a marriage could be created. Gratian lost the argument. After much discussion, Pope Alexander III (1159–81) adopted consent as the sole requirement for a valid marriage: the Church was forced to admit that it had no better answer to the problem than the Romans or Germanic barbarians, and resolved to live with the consequences. In England, this decision was promulgated in 1175 at the ecclesiastical Council of Westminster. Henceforth, marriage needed no more than the exchange of vows between man and woman; neither witnesses, priest, nor ceremony were required. There were two kinds of vows. By the exchange *per verba de presenti* the couple made themselves man and wife from the moment the words were spoken. Vows made *per verba de futuro* constituted a promise to marry at some point in the future. This promise was only binding if followed by sexual intercourse.<sup>20</sup>

The Church's adoption of consent as the sufficient constituent of a valid marriage has been regarded by Sheehan, among others, as a turning point in the history of western civilization, freeing individuals

from the control of fathers and lords, and making a vital contribution towards the emergence of the modern companionate marriage. As such, it might be possible to see the Church's adoption of consent not only as an attack on the secular powers, but also as inviting social anarchy, with binding unions being entered into without any effective regulation. This was not the case. Far from being an ecclesiastical imperative, the principle of marriage made by consent was more a reluctant concession which, having been made, was as far as possible ignored in favour of the admonition to obey one's lords and elders. The degree to which real freedom of choice in marriage was available is the subject of much debate.<sup>21</sup>

The giving of consent could only create a valid union if the couple were free to marry. There were six major categories of impediment to marriage. Naturally, forced marriages were void, but the definition of force was restricted to violence, actual or threatened, which a court would judge to be more than a reasonably stable individual could withstand, a qualification subject to infinite interpretation, and peaceful cohabitation for any period was counted as consent. Pre-contract is another obvious impediment: people could not marry if already married to a living spouse. A second, bigamous, marriage was not always entered into knowingly. According to a suit brought before the London diocesan court, John Paynaminuta had not seen his first wife for 11 years, and believing her to be dead married a second time. Then someone told him that he had seen his first wife alive and well in Bayeux; reluctantly, John decided that he had no choice but to separate from his second wife, who consequently brought the suit against him. The evidence of one witness would not have stood up in court, and so as far as the Church was concerned the second marriage could continue, but John seems to have been convinced of his first wife's survival and felt himself bound by conscience to renounce his second wife. Pre-contract, real or pretended, could wreck an established marriage. In York, two marriages of 19 and 12 years' standing were brought to an end when the wife of one spouse was able to prove a 21-year-old prior contract with the other husband. The Church could only attempt to enforce unions that could be proven in court. What of the individual who could prove the existence only of a second, bigamous, marriage because the first had been contracted by the exchange of vows without witnesses? The church court would have to order the second marriage to be respected, if the first could not be proved, and by so doing order the couple to live in sin. In such a case, clerical opinion tended to

recommend obeying one's conscience, and suffering the temporal consequences of disobeying the court, rather than imperilling one's soul.<sup>22</sup>

Parties to a marriage had to have reached the age of puberty, and in this the Church followed the Roman tradition, making valid marriage possible for boys of 14 and girls as young as 12. Children who had been promised in marriage between the ages of seven and the age of puberty had to give their consent when they reached the latter age or else the union could not proceed. Children younger than seven could not be promised in marriage. However, there was an exception allowed where such underage unions were made in order to bring about or maintain peace, with the obvious application to marriages made between ruling families for diplomatic reasons.<sup>23</sup> The prohibition of clerical marriage provided another impediment.

Nor could a valid marriage be contracted by two people related to each other within the prohibited degrees of kinship. The basic dictum was that one could not marry a person from whom one might hope to inherit, but beyond this mercifully simple rule of thumb the precise rules were a far more involved matter. The medieval Church followed Roman practice in counting seven degrees of kinship within which a prohibited blood relationship was held to obtain. To find the degree of relationship between ego and a first cousin, for example, the Romans counted up from ego to ego's parent and grandparent, and then down through ego's uncle to the cousin, giving four degrees of relationship. However, the Germanic tribes had a different means of counting degrees, and it was this method which the Church adopted. The consequences were dramatic, for the Germans counted generations, not acts of generation. To return to the previous example: ego's grandparent is the common ancestor of ego and ego's first cousin, and the 'Germanic' counting of generations begins with the grandparent's children; the parents of ego and the cousin are the first generation, and ego and the cousin themselves the second, meaning that ego and the first cousin are related in the second degree. In short, counting this way approximately doubled the number of individuals caught within the seven-degree net of kinship. And that was not all, for to relatives by blood, or consanguinity, were added relatives by marriage, or affinity, relatives created by the exchange of an unfulfilled promise to marry in the future (the impediment of 'public honesty'), and also those with whom one had a spiritual relationship, drawing in godparents and their kin. This system was given papal authority by

Nicholas II's encyclical of 1059 and reaffirmed in England by an ecclesiastical council of 1075. In the words of Professor Brooke, 'the extreme rules of consanguinity established in the eleventh century were at once a marvellous excuse for cynics and a sad burden on tender consciences.'<sup>24</sup> The average medieval villager could have found few if any available marriage partners from within his or her own village if the system had been strictly operated.<sup>25</sup> Professor Sheehan has suggested that, by 1200 at least, English lay and clerical opinion treated four degrees of kinship as the limit within which unions were incestuous. In any case, the seven-degree rule was not to last, and the Fourth Lateran Council of 1215 bowed to the inevitable and instituted four degrees as the limit of impediment by kinship.<sup>26</sup>

Even at four degrees, the net of kinship was spread wide, and provided a powerful inducement to marital exogamy, that is, to marriage beyond one's neighbourhood or, perhaps, socioeconomic rank. St Augustine would have approved, for he taught that one of the justifications for marriage was that by creating alliances between different families, it strengthened the bonds within Christian society. Indeed, Professor Herlihy has suggested that by adopting such widespread prohibitions, the Church was applying Augustinian teaching to reduce the levels of inter-familial violence that obtained in early-medieval society. The prohibition on marriage within seven or four degrees forced heads of families to establish links with potential rivals and increased the circulation of women between families, thereby reducing the incidence of abduction and rape.<sup>27</sup> St Augustine certainly influenced popes and canon lawyers, but other reasons have been suggested for the adoption of such drastic kinship laws.<sup>28</sup> The cynical argue that the broad prohibition provided a lucrative scam for the Church and a convenient means of *de facto* divorce for the wealthy, since with so many potential marriage partners falling within the prohibited degrees, dispensations to marry a relative would have to be bought, while an inconvenient marriage could readily be annulled on grounds of consanguinity, affinity or spirituality.<sup>29</sup> Sheehan, for one, was inclined towards a more charitable interpretation; that the Church was merely trying to adapt scriptural precepts, in particular the ban on incest contained in Leviticus, to the contemporary situation, but the extent of the prohibition suggests an ulterior motive.<sup>30</sup>

The most audacious explanation has come from Jack Goody. For him, this prohibition needs to be seen alongside the Church's ban on divorce, polygyny and the adoption of heirs, as well as its championing

of consent, all measures, he believes, designed to restrict the incidence of marriage and therefore the production of legitimate heirs, thereby hampering the ability of propertied families to pass on their wealth. The aim of this strategy was to divert property into the hands of the Church, at a time in the eleventh and twelfth centuries when the clerical estate was trying to assert itself against secular powers: lacking heirs, testators would bequeath their property to the Church for the good of their souls.<sup>31</sup> Goody's theory has proved controversial. There is no doubt that many of the measures he identifies would have had some effect on the production of heirs, but critics have countered that there is little, if any, evidence of the clergy's desire or ability to engineer this result and, in any case, the Church needed recruits from these same propertied families, so the attempt to restrict legitimate procreation would have been counterproductive. Goody's suggestion is also vulnerable to the same criticism levelled at Duby's theory of contending clerical and secular models of marriage, that such a fundamental and sustained conflict between what are essentially two components of the same elite class is highly unlikely.<sup>32</sup>

The Church held that marriage was instituted for the procreation of children, and so impotence or infertility was another impediment. This condition was often difficult to confirm with certainty. Couples had to wait for three years before a claim of impotency could be tested. For women, the test involved a physical examination to determine if the hymen had been broken, thereby helping to establish if procreation had been attempted. For men the examination was rather more involved. In the dioceses of York, Canterbury, and probably Ely, a group of seven 'honest women' was given this task. In York in 1433 one of these women gave the court a detailed description of the examination:

The same witness exposed her naked breasts, and with her hands warmed at the said fire, she held and rubbed the penis and testicles of the said John. And she embraced and frequently kissed the same John, and stirred him up in so far as she could to show his virility and potency, admonishing him that for shame he should then and there prove and render himself a man. And she says, examined and diligently questioned, that the whole time afore-said, the said penis was scarcely three inches long ... remaining without any increase or decrease.

The seven women then 'in one voice cursed him for presuming to marry any young woman, deluding her that he could well deserve and please

her.<sup>33</sup> The problems involved in proving impotence could lead to some embarrassing situations, and not only for the individual under inspection. A fourteenth-century case from the Ely episcopal register illustrates how the ecclesiastical court could find itself tied up in knots. After the marriage of John and Joan Poynant was annulled because of John's impotence Joan married another, and John managed to impregnate a woman whom he claimed to have been related to Joan's new husband. John, therefore, was not impotent after all, so his marriage with Joan was not void, but he claimed that his subsequent sexual adventure created a bar to the renewal of their marriage since it put the couple within the prohibited degrees of affinity through his lover's kinship with Joan's 'husband'; after two years, the bishop's court reached the decision that John and Joan should resume their marriage, irrespective of John's objection.<sup>34</sup>

There were other impediments, less frequently encountered. There were impediments of error – marrying the wrong person or marrying a villein in the belief that he or she was free – and the impediment of disparity of religion: marrying a heretic or nonbeliever. An adulterer could not marry his lover after his wife's death if he and his lover had known that he had been married and if they had either planned his wife's death or had planned to marry each other after her demise. While some of these categories suggest circumstances worthy of Jacobean domestic tragedy, the last might occur in cases where a couple entered into a marriage knowing – or subsequently discovering – a pre-contract, and the wife of the pre-contracted marriage died: if enforced, this rule would have prevented the couple from putting their union on a legitimate basis, and it seems that in such cases it was simply ignored.<sup>35</sup>

By the end of the twelfth century the canon law on marriage was comprehensive and sophisticated, probably more so than for any other subject within the Church's jurisdiction. In the realm of the Anglo-Norman kings matrimonial canon law was more systematically explicated and applied than anywhere else in western Christendom. The most intimate affairs of the laity were regularly scrutinized and judged by a clerical elite for whom direct experience of family life was supposed to be confined to memory and observation. The priest, as judge and confessor, now claimed to be the expert in marital relations. And yet the shadow of St Jerome, the urge to asceticism, still caused disquiet.

Throughout the Middle Ages, sainthood and family life were often

portrayed as being at loggerheads.<sup>36</sup> The most influential theologian of the later Middle Ages, St Thomas Aquinas, had to battle against his mother and brothers in order to join the Dominicans. They imprisoned him for two years, and sent a 'lusty girl' to tempt him down the primrose path – all to no avail, of course. St Bernard of Clairvaux's decision to take holy orders was likewise opposed by his brothers. The father of St Francis of Assisi tried to imprison his son to prevent him from adopting a life of holy poverty, but the young saint 'flew naked to the Lord and put on a hair shirt'.<sup>37</sup>

However, there were notable exceptions to this pattern, such as St Elizabeth of Hungary. She was 'compelled to enter the state of marriage in obedience to her father's order', but none the less: 'She consented to conjugal intercourse, not out of libidinous desire but out of respect for her father's command, and in order to procreate and raise children for the service of God.'<sup>38</sup> Her motivation was therefore very much in line with the Augustinian justification of marriage. There were also instances of saints contracting 'mystical marriages'. One of the most notable is that of the thirteenth-century St Hermann of Steinfeld, in whose visions Mary appeared as his wife.<sup>39</sup> The cult of the Virgin Mary as mother, which flourished from the central Middle Ages onwards, also supplied a powerful affirmation of the value of family life.<sup>40</sup> In the fifteenth century the cult of Mary the mother was joined by that of Joseph the husband, although he could not, of course, supply the exact symmetry of fatherhood, at least with regard to Jesus.<sup>41</sup>

The theory of marriage and notions of ideal family life held by the Church were not necessarily shared by the overwhelming majority of the laity. Duby's hypothesis of two antipathetic views of marriage existing in feudal France, one ecclesiastical and one aristocratic, has already been noticed. Whatever the merits of this model in an English context, there is little doubt that the medieval laity could think for themselves about marriage and family relations. Beneath the visible edifice of Church teaching and judgement, there existed a substratum of tradition, custom and individual practice that was not systematically recorded, and whose existence has to be inferred from a myriad of disparate scraps of evidence. These notions are revealed through their realization in action, often in conflict with the ecclesiastical authorities.

### **Age at First Marriage**

The average age at which first marriages are contracted is at the hub of an array of factors which are of central importance to the study both of the family and of the demographic profile of a given population. Age at first marriage may reflect the degree of control exercised over an individual's choice of partner since, by and large, the younger an individual, the less say they are likely to have in their marriage, because with age comes greater independence, both psychologically and materially. This in turn is likely to have an effect on the quality of married life, since partners who choose each other, and between whom there is no great disparity of age, are perhaps more likely to have a companionate marriage. Age at first marriage is partly determined by economic opportunities, assuming that couples tend only to marry if they are reasonably assured of their ability to support children. Thus the timing of marriage in medieval England was influenced by customary arrangements for the transmission of family assets from one generation to the next: were couples normally given a share of the family property, allowing them to set up independent households before the parents' death, or were they expected to live within a parental household, or did they have to wait until the parents' death or retirement before receiving enough property to allow them to set up a household, and how did these practices vary between elder and younger sons, sons and daughters, between urban and rural communities, and between rich and poor? Age at first marriage influenced the length of time heirs had to wait before inheriting, since the later the marriage, and hence the birth of children, in a couple's lifetime, the earlier their deaths will occur relative to their children's life-cycles. Finally, it has a crucial part to play in determining the demographic profile of a given community, since late marriage reduces the period within which the couple can produce children, and is therefore likely to place a brake on population growth.

In 1965 John Hajnal suggested that from the sixteenth century, north-west Europe conformed to what he termed the 'European marriage pattern'. This has three defining features: late age at first marriage (typically no younger than 26 for males, 23 for females), a small difference in ages between bride and groom, producing a 'companionate marriage', and a relatively large number of individuals (around 10 per cent) who never marry at all. Using studies of poll tax returns, some manorial court material, and the life-cycles of the well-

documented higher nobility, Hajnal concluded that medieval English society at all levels was characterized by a high incidence of early marriage, including child marriages, and that there was a broad balance between males and females allowing the potential for almost universal marriage among the laity.<sup>42</sup>

Hajnal's pioneering work had to rely on a relatively small number of studies and available sources. Since its appearance a great deal more work has been done on the sources he used, new sources have been found, and new methods of analysis have been developed. Inevitably, his model has not escaped unscathed. Some of the most important contributions to the debate have been made by Richard M. Smith. Revisiting the 1377 and 1381 poll tax evidence, and supplementing this with the analysis of further manorial court records and comparison with continental European studies and sixteenth-century evidence, Smith has concluded that Hajnal's 'European marriage pattern' is characteristic of most levels of English society from at least the 1370s.<sup>43</sup> His conclusions are borne out by detailed studies of particular later-medieval communities such as the Lincolnshire manors of Spalding Priory, the manor of Kibworth Harcourt, Coltishall in Norfolk, the parishes of central and north Essex, York and Yorkshire, and Coventry, which all show at least one of the characteristics of late and companionate marriage and relatively large numbers who never married.<sup>44</sup> In addition, a large sample of wills from the period 1430–80 shows that 24.2 per cent of male testators died unmarried.<sup>45</sup> There are two exceptions to this general picture. One is provided by the work of Zvi Razi on the manor of Halesowen in Worcestershire from the thirteenth to the fifteenth century; the other arises from a consideration of elite marriage patterns. Both appear to show low ages at first marriage, consonant with a 'non-European' marriage pattern.

Razi's analysis is based on the reconstitution of tenant families, made possible by the unusually good survival of the Halesowen court rolls. From this genealogical data, Razi argued that his families' average age of first marriage was in the early twenties before the Black Death, and dropped to the late teens after it, with a high incidence of marriage, putting the Halesowen community into Hajnal's 'non-European' category.<sup>46</sup> This claim has been criticized by Jeremy Goldberg, among others. Goldberg's objections are based on what he claims to be a number of crucial assumptions made by Razi which cannot be substantiated from the manorial court evidence. Among these is the presumed link between inheritance, marriage and parenthood, namely

that sons tended to enter their inheritance at the minimum legal age of 20, married at about the same time, and had their first child within a year. In addition, since the court rolls under-record those with little or no property, statistical models derived from them cannot be assumed to apply to the entire population of the manor.<sup>47</sup> Razi was actually aware of most of these methodological problems, and an element of educated guesswork is necessary in any attempt to model medieval populations and family structures. While Razi has since defended other aspects of his interpretation of the Halesowen evidence, criticisms of his treatment of age at first marriage do render Halesowen's exceptional character debatable.<sup>48</sup>

The second exception is perhaps more significant. Examples of early marriage among the gentry and nobility are not difficult to find. Mary, daughter and co-heiress of Humphrey de Bohun, Earl of Hereford, was married to Henry of Lancaster in 1380/1 when she was 11 years old at the most.<sup>49</sup> Richard, first-born son of Richard, Earl of Salisbury (d. 1460), who grew up to be Warwick the Kingmaker, was married at the age of eight; his two eldest sisters were also married as children.<sup>50</sup> Anne, the daughter and sole heiress of Sir Thomas Cobham of Sterborough in Surrey, was married to Edward Blount, second Lord Mountjoy, less than six months before his death in 1475 at the age of eight. Early marriage may have been something of a tradition in the Cobham family, for Lady Joan Cobham was first widowed in 1391 when she was but 12 years old. Her first husband, Robert Hemenhale, had apparently been knighted, and so there must have been a considerable disparity in their ages. A similar tradition of early marriage is evident in the fifteenth-century Plumpton, a gentry family of Yorkshire. Sir William Plumpton was married at the age of 12. He married his teenage son Robert to the six-year-old Elizabeth Clifford, and after Robert's death about four years later, a clause in the marriage contract came into force whereby Elizabeth would marry Sir William's younger son, William. The two infant daughters of this marriage Sir William promised in marriage after the death of their father in 1461. Examples of early marriage can also be found among the fifteenth-century Derbyshire gentry.<sup>51</sup> Canon law prohibited child marriage unless contracted as a means of peacemaking; this exception seems to have been interpreted with the utmost latitude in these and similar cases. Waiting until the parties were of canonical age could have its dangers. About 1154, Henry, Earl of Essex agreed with Geoffrey de Vere that his three-year-old daughter, Alice, should marry Geoffrey when she was 12, and delivered

her to his care. This delay proved fatal to their plans, for after her twelfth birthday Alice contracted a clandestine marriage with Geoffrey's middle-aged brother, Aubrey de Vere, Earl of Oxford.<sup>52</sup>

However, in the later Middle Ages at least, such early marriages were the exception, even among the elite. Among later medieval landed and urban elites, the average age at first marriage of the daughters was probably between 17 and 24; for male heirs apparent it was about 21, and for younger sons between 21 and 26.<sup>53</sup> The average age at first marriage for 49 knights and esquires who were members of parliament between 1386 and 1421 was 21.8.<sup>54</sup> A wider social cross-section made up of testators in fifteenth-century East Anglia probably married for the first time in their mid-twenties.<sup>55</sup> Taken together, these figures put propertied society on the borderline between Hajnal's 'European' and 'non-European' marriage patterns, but demonstrate conclusively that child marriages were not the norm.

Purely on the basis of family strategy, upper-rank parents should have tried to arrange matches for their daughters and eldest sons at the earliest possible opportunity. With the ever-present fear of early death hanging over them, it was wise to marry off the heir apparent quickly, thereby preventing control of his marriage from passing to the family's feudal lord in the event of his father dying before he had attained his majority, and increasing the likelihood that he would produce a son of his own and so preserve the family line for one further generation. Daughters who remained at home unmarried were a drain on resources and, in terms of family advancement, a wasting asset. The longer a daughter remained unmarried, the greater the likelihood of her being abducted, coerced or seduced into an unsuitable marriage.<sup>56</sup> It is likely that many abductions were in fact elopements, and even when not manifested in such extreme acts of disobedience, there was the danger that post-pubescent sons and daughters would follow the stirrings of their hearts rather than the guidance of their parents. As Sir John Oglander put it in the seventeenth century: 'Marry thy daughters betimes [early], lest they marry themselves.'<sup>57</sup> However, the fact that there were not more marriages of children and adolescents suggests that other factors were at play. Some parents may have held out until the ideal match came along. The expense of providing dowries may have forced others to leave some time between marrying off their daughters. There is even the possibility that personal inclination, if not full-blown love, was allowed its say.<sup>58</sup>

On the other hand, the marriage of younger sons was not a priority

for most landed parents. Many younger sons did not marry until they were into their late twenties, and some remained single. The nobility and gentry display a different pattern of marriage from those below them, and this can largely be explained by their greater wealth. With so much more at stake, and perhaps with a greater sense of lineage, the landed elite are likely to have arranged marriages at an earlier stage in the life-cycle, and to have left less to chance and personal choice, when compared with their social inferiors.<sup>59</sup>

The correlation between wealth and age at first marriage can also be detected lower down the socioeconomic hierarchy. Among the parishioners of later medieval Essex, for example, the incidence of marriage varied according to occupation and wealth. Those employed on the land tended to marry at an earlier age and to have had a greater chance of marrying overall than those involved in crafts and trade.<sup>60</sup> Those for whom wage labour constituted their main or sole income tended to marry late or not at all. Frequent movement in search of work and a precarious economic condition made marriage difficult, while most of those labourers who did marry were probably able to do so only after many years' saving to provide the basics of family life. Many were in this situation. Poos has calculated that 50 per cent of the post-Black Death Essex population were either totally or partially dependent on earning a wage.<sup>61</sup> Apprentices and household servants were usually unmarried, and so the widespread employment of young people in these occupations until their early to mid-twenties tended to raise the average age of first marriage. Demand for female servants was probably higher in towns, leading to a slightly higher proportion of females to males in urban populations, and a marginally later age at first marriage for urban women than their rural counterparts, perhaps early to mid-twenties in towns and late teens to early twenties in the country.<sup>62</sup>

### **Coercion and Freedom of Choice**

Accepting that most levels of society, in the later Middle Ages at least, conformed to Hajnal's 'European marriage pattern' increases the possibility that most couples had some say in the decision to marry and in the choice of partner. The Church attempted to maintain a balance between acknowledging freedom of consent and insisting on the right of parents and lords to have a say in the decision to marry. The Church's

teaching on consent was widely understood, but not always appreciated. In fifteenth-century Essex one father, John Corney, disapproving of his daughter Joanna's intended, was alleged to have announced, 'I love not the law, I will not let them.' Johanna persisted for a while in the face of opposition, but by the second reading of the banns the pressure had proved too much for her, and 'Johanna renounced [them], as is commonly said in that parish, at the instance of her father.'<sup>63</sup>

Goldberg has proposed that urban couples had more freedom from parental and seigneurial supervision over their courtship and marriage than their country cousins. Children who had entered service or apprenticeship in urban households had exchanged parental control for the supervision of master and mistress; the latter, Goldberg suggests, had less incentive to determine their charges' marital futures, since for most servants and apprentices marriage only came after the end of their term of service, and so their choice of partner had few material consequences for their erstwhile employers. In the countryside the young had fewer opportunities for employment outside the parental household, and for many the influence of their lord was inescapable, so freedom of choice would tend to have been restricted. However, within this general pattern there were variations between different farming areas, between the free and unfree, between different tenurial and inheritance regimes, and there were changes over time. For example, employment opportunities for young women – and hence the chance to escape close parental supervision – may have been greater in pastoral than in arable regions.<sup>64</sup>

Peasant families were usually involved in their children's marriages from an early stage. Most couples seem to have thought carefully about the decision to marry, and only took the plunge after discussion with parents, relatives and friends, which meant that the process, from the opening moves of courtship to solemnization, usually extended over a long period. Poos suggests that in Essex this applied even where little or no property was involved.<sup>65</sup> For most, parents, relatives and neighbours provided essential support during the difficult business of negotiating the marriage settlement, planning – and paying for – the wedding and setting up home afterwards.<sup>66</sup>

For many villein families, payment of the *merchet*, the fine owed to the lord for marrying a daughter, was an element in the costs of marriage-making. *Merchet* could be paid by the bride's father, by the bride or groom, or by another party, and records of who paid the fine have been used to suggest the balance between parental control and

children's independence. For example, on the estates of Ramsey Abbey in the fifteenth century, father and bride each paid in a third of the recorded merchets, with the bridegroom paying in a slightly smaller proportion, indicating, perhaps, a high degree of independence on the part of intending couples. Furthermore, over half of the merchet-paying brides bought general licences, allowing them to marry whomever and whenever they wished, and did so without apparent assistance from their family. Hanawalt interprets this evidence as indicating that these women were probably able to arrange their own marriages, and were able to do so because they had saved for this eventuality from their earnings as servants. However, these merchet payments are not likely to have been particularly burdensome in most cases – the typical range being between 3d. and 4s. – and so the extent to which their payment can be taken as proof of financial independence is debatable: in some cases, might the bride's payment of her merchet represent her contribution to the overall costs of her marriage, most of which were borne by her family?<sup>67</sup>

Peasant couples shared in the common expectation that their marriages would have parental blessing, but there were the inevitable clashes. A Yorkshire case from 1490 presents one rare instance of resistance to parental wishes. The news of Elena Couper's betrothal to a bitter enemy of her parents provoked this furious reaction from her mother, 'thou filth and harlot. Why, art thou handfast with John Wistow? When thy father knows he will ding thee and mischew thee.' When she was eventually confronted by her father – in the neutral territory of a friend's house, and only after her father had promised not to harm her – she would not relent: on her knees before him, she declared, 'Sir, that I have done I will perform if the law will suffer it for I will have him whosoever say nay to it. And I desire no more of your goods but your blessing.'<sup>68</sup> Significantly, even in the extremes of her defiance, Elena still sought her father's blessing, indicating how deeply ingrained was the desire for parental approval, however grudgingly given.

Most medieval families did not enjoy the responsibility of transmitting sizeable patrimonies to their posterity. In the vast majority of marriages, it has been argued, the alliances created with the in-laws' family were relatively insignificant to the parents of bride or groom.<sup>69</sup> In purely rational terms, it might be expected that those parents for whom their children's marital choices could have few consequences for the family's future prosperity (either because the family as a whole had no significant wealth or because the children in question were younger

sons who were not entitled to a significant proportion of the patrimony) would be content to let them make their own choices. But people do not behave simply on the basis of such rational calculations, now or in the Middle Ages. Personal likes and dislikes, the feeling that 'he isn't good enough for our daughter', and other judgements not based directly on strategies for the preservation and enhancement of wealth, surely had their part to play then as now. Elena Couper's plight may well have resulted from just such personal antipathy between her father and her intended. In a culture which placed such weight on parental consent, the temptation to use threats and coercion may have been too much for some disapproving parents, particularly if the recalcitrant child depended on a share of their property for the marriage settlement or to establish a new home. In any case, it would be wrong to assume that peasant families did not develop strategies for maintaining and enlarging their holdings, even if these consisted of only a few acres. Children still had to be provided for, and provision made for old age.<sup>70</sup>

There is an important difference between parental pressure and coercion. The former was generally accepted; when it tipped over into the latter, grounds were created for the annulment of the marriage. While the records of church courts suggest that this was a rare occurrence, there are cases of daughters being threatened with serious violence, imprisonment, cursing, or the loss of their inheritance if they did not agree to their parents' choice. In one instance, a woman alleged that her family arrived at the wedding armed with staves; in their defence, they claimed that they were only carrying these because they had used them to pole-vault across ditches on the way to the ceremony.<sup>71</sup>

The lengths to which some gentry parents would go are graphically illustrated by three fifteenth-century examples involving the Paston family of Norfolk.<sup>72</sup> Elizabeth Paston was nineteen years old when her mother, Agnes, and her brother, John, offered her as a possible bride to Stephen Scrope, a widower of about 50, and suffering from some unspecified physical deformity; this despite the clause in her father's will requesting that she be married to someone of comparable age. Scrope was enthusiastic, but Elizabeth less so; her reticence, apparently, prompted not by his age and appearance, but by doubts over his expectations as heir to his stepfather, the niggardly Sir John Fastolf. Soon, Elizabeth set her face against Agnes and John's plans for her marriage; or, possibly, having reconciled herself to the proposal, would not agree when Agnes and John changed their minds and rejected Scrope. In any case, Agnes Paston's response to her daughter's

disobedience was extreme. According to Elizabeth's cousin, Elizabeth Clere, Agnes had placed her daughter under close confinement, and 'she hath since Easter the most part been beaten once in the week or twice, and some times twice on a day, and her head broken in two or three places.' The shocked Elizabeth Clere urged that a new and mutually acceptable suitor be found without delay. The marriage did not take place. Nor did several other possible matches contemplated for Elizabeth Paston during the late 1440s and early 1450s. Finally, in 1458, the problem child found a suitable husband in the person of Robert Poynings, a Kentish esquire.

Just under a decade later, Elizabeth's niece, Margery, fell foul of her mother, Margaret, and brothers, by falling in love with Richard Calle, the Paston's land agent. The couple contracted a clandestine marriage by exchange of words of present consent. When the family heard of this they rushed to prevent any communication between the pair, and their separation may have lasted for over two years. Margery's brother John was adamant that the family would not be disparaged by such a shameful marriage with a mere servant. Of Richard Calle he said, 'he should never have my good will for to make my sister to sell candles and mustard in Framlingham.' However much the Pastons may have sought to conceal it, the fact remained that Margery and Richard claimed to have contracted a valid marriage, and so in 1469 the bishop of Norwich intervened to test this assertion, despite Margaret's best attempts to dissuade him. Margery appeared before him. According to Margaret's letter to her son, Sir John Paston, the bishop did his duty reluctantly. Before asking her what form of words she had used in her vow to Richard, he reminded her of

how she was born, what kin and friends that she had, and should have more if she were ruled and guided after them: and if she did not, what rebuke, and shame, and loss it should be to her, if she were not guided by them, and cause of forsaking of her for any good, or help, or comfort that she should have of them.

The bishop gave her every opportunity to deny that she had spoken binding words of present consent. To no avail: 'she rehearsed what she had said, and said, if those words made it not sure, she said boldly that she would make that sure before she went hence, for she said she thought in her conscience she was bound, whatsoever the words were'; 'These lewd words', wrote Margaret, 'grieveth me and her grandam as

much as all the remnant.' Next, the bishop interviewed Richard Calle, who confirmed that binding words had been spoken. In the face of such determination, the bishop was forced to rule that they were indeed married. Thereafter, Richard and Margery lived together as husband and wife. Margaret's reaction to her daughter's stand before the bishop was to order her servants to turn Margery away from her door. Margaret's account of this incident throws a good deal of light on elite attitudes towards the uneasy balance of freedom and control in the choice of spouse. The bishop, portrayed as sympathetic to the Pastons, took pains to remind Margery of what she would be sacrificing: his warning neatly encapsulates the network of family, friends and neighbours from whom those looking for a marriage partner were supposed to take advice, and whose support and protection would be sorely missed in later life. But ultimately, he had to respect the couple's right to choose. Having established beyond doubt that their marriage, while irregular, was still valid, he had no choice but to declare them husband and wife. Margaret, for all her vitriol, had to do the same. To Sir John's suggestion of forcing a 'divorce', her response was unequivocal: 'I charge you upon my blessing that ye do not, nor cause none other to do, that should offend God and your conscience, for if ye do, or cause for to be done, God will take vengeance thereupon, [and] ye should put yourself and others in great jeopardy.' For all their ruthlessness, for all the shame that they perceived this match to have brought them, and for all that they believed Calle to be the ruination of one of their own, the Pastons dared not break asunder those married in the sight of God. Richard Calle had known this, and offered it as a rare comfort in a letter he managed to smuggle to his wife during their enforced separation: 'four times in the year are they accursed that prevent matrimony ... God will of His rightwiseness help His servants that mean truly, and would live according to His laws.'<sup>73</sup>

Four years later a marriage was being negotiated between William Yelverton and Margery's sister Anne. But like her sister, Anne was too friendly with one of the Paston servants, John Pampyng, for her brothers' liking. Sir John warned his brother, 'I pray you beware that the old love of Pampyng renew not.' Determined not to have a virtual repeat of the sorry episode between Margery and Richard Calle, the Pastons dismissed Pampyng, and the marriage went ahead. These three cases show the strengths and limitations of consent. Once made, the vow of present consent had to be respected, but a ruthless family could make a nonsense of the doctrine of freedom of choice for all but the

strongest and most determined of its members.

At both the highest and the lowest levels of medieval society, paternal influence was accompanied by feudal authority. The marriages of villeins required their lord's consent, at least in theory, while before the thirteenth century the daughters and widows of vassals had to have their lord's permission before marrying – again, theoretically if not always in practice. In addition, the lord enjoyed the right to arrange the marriage of his vassal's underage heir. These rules stemmed from the basic notion of feudal society that the lord should be able to choose who was to be his vassal or tenant. By her marriage, the heiress to a fee or tenement could deliver it into the possession of a vassal or tenant who was unacceptable to her lord, who was therefore justified in intervening in her choice of partner. In addition, a lord might need to prevent the marriages of his tenants' daughters to partners who lived outside his manor, since this could result in a loss of labour both in the person of the daughter and also, potentially, in her offspring. After the Angevin legal reforms of the thirteenth century, lords could no longer intervene in the marriages of their vassals, with the crucial exception of the king. He retained this right over his immediate vassals, and so tenants-in-chief continued to make their marriages with at least the possibility of royal intervention, although this was probably uncommon. Henry I (1100–35) had promised in his coronation charter that while his barons were obliged to consult him over the marriages of their female relatives, he would not exact any payment from them in return, and would only intervene if they proposed marriage to one of his enemies. Sidney Painter found no instances of twelfth-century kings prohibiting the marriages of their tenants-in-chief. However, early in the following century King John (1199–1216) seized the dower property of at least one widow after she had refused to marry as he had directed, and obtaining the right to remain single or marry as one wished continued to be an expensive business for many widows and heiresses.<sup>74</sup>

The marriages of villein daughters and widows remained subject to seigneurial regulation. Before the mid-thirteenth century, the Church generally supported the lord's right to control the marriages of his serfs, but thereafter the emphasis changed to stressing the validity of serf marriage whether the lord's consent had been obtained or not, and the new thinking on this matter was swiftly disseminated throughout western Christendom.<sup>75</sup> While later medieval church courts would not countenance blatant seigneurial coercion in villein marriages, lords

were still left with potentially powerful means of influencing the marital choices of their unfree tenants. There has been much debate on the use lords made of *merchet* to determine unfree women's timing of marriage and choice of partner. In the 1970s Eleanor Searle argued that lords used *merchet* as a means of controlling peasant marriages in order to ensure that their new tenants were acceptable. This view has been challenged by Brand, Hyams and Faith. Brand and Hyams argue that after the thirteenth century at least, it was no longer acceptable for lords to intervene directly in their villein tenants' marital choices, and so *merchet* became nothing more than another tax on villein tenants, albeit one of the more irksome and resented, since its payment was regarded as the acid test of an individual's unfree status. Rosamond Faith agrees that *merchet* was not used coercively in later medieval manors, but sees its significance as being more symbolic than fiscal. *Merchet*, she argues, was levied even on poor cottagers in amounts so small as to have been hardly worth collecting if revenue was the point at issue, indicating that its function was to remind villein tenants of their servile status. While this may well have been a factor, and while lords would have had the ability to bully their tenants into or out of marriage if they had so wanted – not necessarily through the use of *merchet* – the majority of opinion tends to see *merchet*, in all but a few cases, as merely yet another feudal tax, levied according to the wealth of the bride or her family, and not used to manipulate marital choice.<sup>76</sup>

However, while the average *merchet* payment was relatively low, it could occasionally be manipulated to the point where disobedience was prohibitively expensive, or used quite simply as a punishment for some unrelated matter.<sup>77</sup> If lords did attempt to prevent their female tenants marrying outside the manor, their efforts were largely ineffective. For example, in the priory of Spalding's manors in the late thirteenth century fewer than half of the female villeins married within their manor. Similar patterns have been found in later medieval Cambridgeshire and on the bishop of Worcester's manors.<sup>78</sup>

Seigneurial influence could be exerted in other ways. Lords could be jealous of their right to be consulted on the marriages of their tenants. In one notorious case of about 1220, after one of his more prosperous tenants refused to consult with him about the marriage of his daughter, Henry de Vere broke into the man's house at night in search of the girl; her mother bundled her out of the window to escape from him, but he then broke into the family's barn and set it alight,

either by accident or design.<sup>79</sup> Before the fourteenth century, villein widows were often instructed to marry by their lords so that their household would be more able to supply the required labour and services, and while it is unlikely that they were often told whom they should marry, there are instances of rather heavy-handed seigneurial direction.<sup>80</sup> In 1289 one Cambridgeshire villein widow paid a fine of one shilling to buy time while she found a husband of her choosing rather than her lord's.<sup>81</sup> While a lord might select a spouse for a woman on his manor, she was free to reject him on payment of a fine. In other cases, lords stepped in to take the place of a deceased father by arranging the orphaned daughter's marriage. A lord could refuse to accept the husband of a female tenant, thereby preventing him from taking on her holding.<sup>82</sup> Lords might also put pressure on their male servile tenants to marry. On a thirteenth-century Cambridgeshire manor Thomas Robynes preferred to pay a fine rather than marry Agatha of Hales as ordered, while another villein was distrained because he would neither pay a fine nor take a wife.<sup>83</sup>

### **Marriage Strategies**

For the propertied classes, marriage was the prime means of advancing the interests of the family. A successful match could provide an alliance with a family which had influence with the king or the nobility, standing and power in the locality, social status, money and lands, and it was through marriage that the family name and patrimony were maintained. At this level, marriage could not be simply a matter of love.

For kings, marriages to wealthy heiresses sometimes provided the means of endowing their own families. Edward III, having handsomely endowed his eldest son, the Black Prince, with lands from the royal demesne, relied on marriage to provide for three of his remaining four sons: Lionel was married to Elizabeth, daughter and heiress of William, Earl of Ulster; John of Gaunt was married to Blanche, daughter and co-heiress of Henry de Grosmont, Duke of Lancaster; and Thomas of Woodstock was married to Eleanor, daughter and co-heiress of Humphrey de Bohun, Earl of Northampton, Hereford and Essex.<sup>84</sup> For Edward III, marriage solved the problem of how to provide for a large family. For Edward IV, the need to use marriage as a means of providing for a large family – acquired along with his wife, Elizabeth

Woodville – created problems. What seemed to contemporaries like the monopolization of the upper reaches of the marriage market by the King's Woodville in-laws after 1464 was an important factor in the alienation of the Earl of Warwick and Edward's own brother, the Duke of Clarence, with near fatal results for the Yorkist dynasty.<sup>85</sup>

As a means of enhancing family wealth and influence, marriage was a game of chance. The bride who brought only her dowry to a marriage could, by the right order of deaths among her relatives, turn overnight into a wealthy heiress; on the other hand, failure to produce an heir could result in an inheritance acquired through marriage being lost to the male line in the next generation. For Richard Neville, Earl of Warwick, the cards fell almost perfectly. His marriage in 1436 to Anne, daughter of Richard Beauchamp, Earl of Warwick, looked useful but, with Anne's father and brother still alive, hardly likely to propel Richard to the top of the magnate pile. The deaths of her father in 1439, her brother in 1446, and his daughter three years later, brought Richard the massive Beauchamp inheritance and with it, an earldom.<sup>86</sup>

Different strategies might be adopted depending on whether the child to be married was an eldest son, younger son or daughter. Eldest sons generally found brides of equal or higher rank than their own, while daughters and younger sons were usually married into families of lesser status. In this way, most noblemen had in-laws among the gentry, and marriage across the ranks made an important contribution to the cohesiveness of landed society. In most cases it accorded with sensible family strategy to marry off daughters: after the passing of the *maritagium* in land daughters need not carry with them parts of the family patrimony with their marriages, and the alliances thus made could prove useful. For younger sons it was a different matter since their brides would have a claim on a share of the family estates as jointure or dower. Consequently, the marriage of younger sons was not usually a priority, and this fact, combined with dubious prospects of inheriting much more than a fraction of their parents' wealth, left many of them facing an uncertain future.<sup>87</sup>

How was news of an available match disseminated? Family connections were probably the usual means, but contacts with business partners or with friends and colleagues in the law, in royal or civic office or within a lord's affinity might also play their part. For all the Church's restrictions on marriage with kith and kin, the convenience of repeated marriage between families with shared interests led many propertied families to create dense networks of relationship.<sup>88</sup> In the

Kent-Sussex Weald, the Guildfords married twice into the Pympe family of Nettlestead, near Maidstone, and three times into the Hautes of the Stour valley.<sup>89</sup> Merchants usually married the daughters or widows of other merchants with whom they did business. Such economic relationships were often accompanied by office-holding, and intermarriage within the urban governing class did much to enhance elite solidarities.<sup>90</sup> Business associates were also useful contacts within landed society. During the reign of Edward IV the Kentish gentleman Robert Brent married Joan, a widow, whose former father-in-law, John Crekyng, had numbered among his feoffees two of Robert's kinsmen, William and Roger Brent.<sup>91</sup> The Cinque Ports confederation in Kent, Sussex and Essex provides an example of how connections within local jurisdictions could provide marriage partners: by 1472 Thomas Hexstall, mayor of Dover, had married Jane, the widow, successively, of John Coppeldike, a wealthy bailiff of Winchelsea, and of Richard Cook, mayor of Sandwich; all three towns were Cinque Ports.<sup>92</sup>

The legal profession could provide another pool of potential spouses. The intensity of intermarriage among early Tudor lawyers did much to strengthen their sense of themselves as a professional community. Two striking examples of professional endogamy are provided by the families of Catesby and Roper. Justice John Catesby (d. 1487) married the daughter of an Exchequer clerk; his son and grandson married lawyers' daughters and a granddaughter married first the son of a prothonotary and then a judge of Common Pleas. John Roper, Henry VIII's attorney, married the daughter of a chief justice; Roper's two daughters married a baron of the Exchequer and a chief justice, and his eldest son, William, married Margaret, daughter of Sir Thomas More, briefly Henry VIII's chancellor. Exchequer connections appear to have facilitated the marriages of William Page, a teller of the Exchequer by 1509: his first wife was the daughter of a fellow teller, and his second was the daughter of Sir Humphrey Starkey, chief baron of the Exchequer.<sup>93</sup>

The royal household provided another forum for matchmaking. A number of Richard II's household and retinue were related by marriage, such as king's knight Thomas Clanvowe, husband of a damsel of the Queen's chamber. The Haute family were related to Queen Elizabeth Woodville, and were familiar figures at the courts of Edward IV and Henry VII. They married into their fellow courtier families of Guildford, Fogge and Roos.<sup>94</sup> While there may often have been other factors bringing couples together, the number of relatives by marriage within the royal household is highly suggestive.<sup>95</sup>

For the propertied classes, London became increasingly important as a clearing house for the latest information on potential spouses. The Pastons of Norfolk certainly found their visits to the city useful in this regard. In 1478 John Paston wrote to his mother:

I heard while I was in London where was a goodly young woman to marry, which was daughter to one Seff, a mercer, and she shall have £200 in money to her marriage, and 20 marks by year of land after the decease of a step mother of hers, which is upon 50 years of age; and ere I departed out of London, I spake with some of the maid's friends, and have gotten their good wills to have her married to my brother Edmund.<sup>96</sup>

The children of London merchants often provided suitable matches for gentry families. For the Londoners, marriage with a gentry family provided prestige and useful connections; for the gentry, it promised ready cash, a fact that prompted suspicions among some merchants that they were being milked by financially embarrassed gentlemen. While the nobility and the greater gentry might have considered a mercantile match below them, there were still plenty of interested fathers in the lower reaches of gentle society: in the fifteenth century, one-third of the wives of London aldermen came from landed families.<sup>97</sup>

Marriage negotiations among the propertied elites were on occasion businesslike to the point of callousness. In 1413 two Derbyshire gentry fathers drew up a marriage contract with a blank space where the bride's name should have been, since one of them had not yet decided which of his daughters he would marry off; another Derbyshire contract provided that the grandson of the one party would marry 'one of the daughters' of the other, suggesting that here too, the decision to ally the two families came first, and the personal feelings of the young people who would bring this about had hardly been considered.<sup>98</sup> On this evidence, one might suppose that the medieval gentry had never encountered Paul's injunction that the husband should 'love his wife as himself', but this may not have been the whole story.

In letters of the fifteenth-century gentry and merchants, protestations of love are surprisingly common amid the hardheaded discussions about the wealth and expectations of potential spouses. In his letters to his kinsman Sir Robert Plumpton, the lawyer Edward Plumpton praised the personal qualities of his intended bride, Agnes Drayate, a London widow, whom he described as 'goodly and beautiful, womanly and wise, as ever I knew any, none other dispraised: of good stock and worshipful

... She and I are agreed in our mind and all one', although a cynic might suspect that his fulsome words were in part designed to persuade Sir Robert to provide him with the additional 20 marks demanded for her jointure.<sup>99</sup> The Stonors legal advisor, Thomas Mull, neatly caught the balance between Cupid and Mammon in his question to William Stonor, the rather halfhearted wooer of Margery, the widow of a son of Lord Mountjoy:

I would know this of you: and the case were so that she would be agreeable to have you with £40 or 80 marks jointure, would your heart then love as ye have done before this season? ... But one thing I dare say in my conceit, that she on her part since your departure hath been vexed and troubled with the throws of love more fervently in her mind than ye have been since vexed with her sayings ... I know once for certain she loved you as a perfect lover, and that right late never better than the last season that she was in London ... whereas she may revolve at her liberty without controlling every thing that longeth to love's dance, though the flame of the fire of love may not break out so that it may be seen, yet the heat of love in itself is never the less, but rather hotter in itself.

Thomas Mull sees Margery's love afflicting her like a fever, from which she desires relief, 'as the man in the water desireth to be relieved from drowning in the peril of the sea', and he promises to show William how he may use her predicament to drive a better bargain!<sup>100</sup> Agnes Wydeslade, a wealthy, childless widow, was pursued, successfully, by Sir William Stonor, 'to whom her heart is set'.<sup>101</sup> In 1476 the wool merchant Thomas Betson was betrothed to Katherine Ryche, the daughter of Elizabeth Stonor. He wrote to her from Calais a love letter that often reads like the awkward solitudes of a rather distant uncle for his teenage niece, which is hardly surprising, since Katherine was no more than fourteen at the time. He urges her to 'be a good eater of your meat always, that you might wax and grow fast to be a woman', but adds, in more conventional lover's terms, 'for when I remember your favour and your sad [serious] loving dealing to me wards, for sooth ye make even very glad and joyous in my heart.'<sup>102</sup>

The Pastons could be ruthless players in the marriage game, but not all members of the family lacked a softer side to their character. The love letters between John Paston III and Margery Brews are famous early examples of the genre. In February 1477, while tough negotiations went on between their families, Margery sent two Valentines to her

lover and future husband:

And if ye command me to keep me true wherever I go,  
 Certainly I will do all my might you to love and never no more.  
 And if my friends say, that I do amiss,  
 They shall not me hinder so for to do,  
 Mine heart me bids evermore to love you  
 Truly over all earthly thing,  
 And if they be never so wroth,  
 I trust it shall be better in time coming.

But Margery shared with Thomas Mull an appreciation of the balance between sentiment and the economics of courtship: 'And I let you plainly understand that my father will no more money part withal in that behalf but £100 and 50 mark, which is right far from the accomplishment of your desire. Wherefore, if that ye could be content with that good, and my poor person, I would be the merriest maiden on Earth.'<sup>103</sup> These examples of sentiments exchanged between prospective spouses perhaps raise the suspicion that such expressions were to some degree convention, the expected accompaniments to the wheeling and dealing over dowry and jointure. Certainly, it is hard to imagine that love – as opposed to liking and the recognition of shared interests – often resulted from the brief and infrequent meetings that seem to have constituted courtship among many of the landed and mercantile classes.

### Marriage Settlements

For families with any kind of property to their name, the simple words of consent between bride and groom were accompanied by negotiations concerning the lands, rents, money or goods to be exchanged. Those who were marrying for the first time – and thus young and under the control of their elders – had these negotiations conducted on their behalf by parents or guardians. Widows might also look to a male relative to negotiate their next marriage. Settling these matters could involve long and complex negotiations, as Chaucer remarked of the marriage settlement between a knight and his intended:

I swear it were too long you to tarry,

If I you told of every script and bond,  
By which that she was feoffed in his land<sup>104</sup>

Dowry and dower – in the later Middle Ages supplemented by jointure – were the essential components of marriage settlements. The dowry – also known as the portion – was given by the father of the bride to the groom or his family, and was originally intended as a contribution towards the upkeep of the bride. Until the mid-thirteenth century this was generally land (*maritagium*), but thereafter it usually took the form of a money payment. The change from land to cash may probably be seen as a reflection of an increasingly commercialized society, where the propertied classes were becoming more used to handling cash transactions. Land given as dowry had the disadvantage that it would be lost to the family of the bride.<sup>105</sup>

The value of dowries varied considerably according to several factors, including the number of daughters for whom provision had to be made, and the relative standing of the two families. Potential sons-in-law of higher social status, political influence or greater wealth would command larger dowries; where the balance of advantage tipped in the daughter's favour less need be spent on enticement. In most cases, parents had to provide for what might be a considerable item of expenditure if their daughters were to find suitable matches. The average dowry given by baronial families between 1300 and 1500 was in excess of 100 marks. Dowries paid by fifteenth-century gentry usually amounted to between five and 11 times the annual rental value of the jointure promised to their daughters. In the fifteenth century a father with 800 marks to spend on a dowry could realistically hope to catch a son-in-law of knightly rank and a jointure worth £120 a year. But this was a vast sum to find. Not surprisingly, the payment of such large sums was usually made by instalments. From the late thirteenth century, marriage settlements regularly provided for the repayment of part of the dowry if the bride predeceased her husband without leaving children by him, since this left him free to contract another marriage with his 'market value' largely intact.

The second element in the father's provision for his daughter was the trousseau, or chamber. This was usually jewels, clothes and other personal belongings that the bride would take to her marriage, and which, while used by her, would become the property of her husband, since under common law all the bride's moveable goods, or chattels, became the groom's property after their marriage. However

burdensome such payments were, the wise father was loath to leave any of his daughters unwed. Each unmarried daughter was a lost opportunity, a wasting asset if not used to tap into networks, to consolidate holdings, to play the biological lottery that might, one day, through circumstances unforeseen at the time of marriage, transform her family's fortunes through the windfall of a rich inheritance.<sup>106</sup>

The other major part of the marriage settlement was intended to safeguard the position of the wife in the event of her being widowed. Under common law, any freehold land the wife held in her own right remained hers, but was under her husband's control, to revert to her in the event of her widowhood. But a woman who was not an heiress might face widowhood without any means of supporting herself, unless she could claim dower. Dower, that part of her husband's property which a widow would receive for her support after his death, was already well established when the Normans came. Before the Conquest, bridegrooms or their families had to indicate what provision they had made for the bride's widowhood before the marriage could proceed. The Anglo-Saxon widow had a life interest in her dower property: she could neither dispose of it during her lifetime nor bequeath it at her death, for at this point it reverted to the heirs of her deceased husband.<sup>107</sup>

There were two main categories of dower recognized by common law: 'nominated' (*dos nominata*) and 'reasonable' (*dos rationabilis*).<sup>108</sup> Nominated dower was allocated to the bride at the time of her marriage – at church door – and consisted of a specified – nominated – share of the property which the groom held at that moment. The property with which the bride was endowed was usually made up of land – but could alternatively or in addition consist of rents, goods or money. The property nominated as dower could not exceed one-third of all the property of which her husband was seized at the time of allocation, but there was no legal minimum share. The woman could take possession of her nominated dower immediately after being widowed.

Reasonable dower was created by the common law's assertion that all widows of men who held lands of free tenure were entitled to a reasonable share of all the lands which their husbands had held at any time during the marriage, and even embracing land granted away without the widow's permission. For the military tenures of knight service and serjeanty, this reasonable share was judged to be a third; for widows of tenants by socage, the share was often a half. Until the thirteenth century, property acquired after the marriage was excluded

from reasonable dower. This had obvious disadvantages for the widow if her husband's wealth increased significantly after their marriage, which it would do if he subsequently came into his inheritance. This problem was addressed by the 1217 revision of Magna Carta, which established that reasonable dower was henceforth to be assigned from all the property held at the time of the husband's death. With both nominated and reasonable dower the widow had only a life interest: on her death the dower property reverted back to her deceased husband's heirs.

Reasonable dower had superseded nominated dower at the latest by the beginning of the fourteenth century, and its triumph owed a good deal to lawyers' constructions of the clauses in Magna Carta concerning dower. A woman who accepted nominated dower at her marriage thereby barred her right to reasonable dower, and since nominated dower could amount to less than one-third of her husband's property, in some cases such acceptance would have been against her interests. This was particularly so after 1217, when, by accepting nominated dower, the bride could have been rejecting a greater share not only of her husband's existing property, but also of the much larger estate he might hold at his death. However, reasonable dower also had serious weaknesses from the widow's point of view. Apart from the difficulties of claiming dower from her husband's heirs, there were several ways in which the bride's expectation of a comfortable widowhood could be dashed. The husband's estates could be forfeited for treason – a not uncommon situation among the gentry and nobility in times of civil strife – he could predecease his father, and so never enter into his inheritance, or his father could disinherit him; in each case, his widow would have nothing from which to claim her dower.

The widow's interests faced an additional threat from a lawyer's stratagem that became practically ubiquitous among property holders during the later Middle Ages. For a variety of reasons, landholders often found it convenient to separate the common-law title to their land from the enjoyment of its profits and control over its disposition. They did this by means of the *enfeoffment to use*. An *enfeoffment to use* is a grant of land, a *feoffor* (or *cestui que use* in legal terminology) the person who grants it, and the *feoffee* the person to whom it is granted. The *enfeoffment to use* creates a trust, made up of a group of *feoffees* – trustees – who are granted the land on condition that the *feoffor* continues to enjoy the rents and other profits from that land, as well as control over its disposition. The trust is based on the legal fiction that

the property rightly belongs to the feoffees, not to the feoffor. Common law did not allow the free disposition of land after death, which made it technically impossible to bequeath land by will. The use could circumvent this prohibition. By the 1290s at the latest, landholders were employing the use to give themselves the power to dispose of their lands after their deaths to whomsoever they wished. Enfeoffment to use could also be employed to convey land during the holder's lifetime (*inter vivos* transactions), to change the tenure of land, and to escape dues and services owed to the feudal lord. Until a statute of 1377 it provided a refuge for debtors against their creditors, and only after a 1398 statute were lands held to the use of a convicted traitor forfeitable.<sup>109</sup>

Crucially for the widow, however, the use could cheat her out of her dower. Property which had been enfeoffed to the use of a prospective groom before marriage could not be claimed as reasonable dower, since as far as common law was concerned, the feoffor no longer held it at the time of the marriage. Such an eventuality could easily be avoided if the bride's father took the basic precautions, but what if her father-in-law enfeoffed all his lands to his use before his son inherited? The feoffees might be instructed to continue to hold them to the son's use after his father's death, so that while the son enjoyed the profits, he did not actually have a common-law title to the land. In theory then, a man who had vast estates, all held to his use, could be regarded by the common law as having nothing from which his widow could claim her dower.

The answer to this predicament came in the form of the jointure. This was an agreement – made between the families of bride and groom at the time of the marriage – by which the couple were granted property by the father of the groom which was to be held by them in joint survivorship, so that if the wife were widowed, the jointure would be held solely by her for her lifetime. After her death it would revert to her husband's heirs. Even if the son predeceased his father, the son's widow would still be entitled to her jointure. Unlike reasonable dower, which the woman did not already hold at the moment of her widowhood and had to claim from her husband's heir, she held her jointure with her husband during his lifetime and at his death she automatically became sole seized of it, without the need to sue a writ of dower against the heir. And, from 1388, jointure, unlike dower, could not be legally forfeited for the husband's treason. Jointure, by the fact that the widow had only a life interest, had the advantage for the groom's family that

land was prevented from passing out of the family permanently. While a second husband could not expect either himself or his heirs to inherit his wife's jointure lands, he could still enjoy the revenues which accrued from them while the marriage lasted. Hence, even widows whose main economic asset was only a jointure need not have had their attractiveness too badly tarnished in the eyes of prospective suitors.<sup>110</sup> Jointure became popular after 1285, when the Second Statute of Westminster's chapter *De donis conditionalibus* prevented a man from disposing of property he held by way of jointure.<sup>111</sup>

The various elements of a marriage settlement, dowry, trousseau, jointure and dower are present in the contract drawn up in 1429 between William Haute, an esquire in the Calais garrison and a widower, and Richard Woodville, lieutenant of Calais. By the terms of this document William agreed to marry Jane, Richard's daughter. He pledged lands to the annual value of £66 13s. 4d. as their jointure, and dower lands worth £40 per year, all to be chosen by Richard from among the Haute estates. For his part, Richard agreed to provide a dowry of £266 13s. 4d. to his prospective son-in-law, as well as his daughter's trousseau and jewels, and to meet the costs of the wedding. But there was a problem. Some of the property William had agreed to settle on Jane was not his to give, since he had previously entailed it on his daughter by his first wife. This daughter was his sole heiress, and herein lies the importance of the Woodville marriage to William's plans: he needed a son, or else his branch of the family would die out in the male line. The hapless girl could not perpetuate the family name, and so her interests had to be sacrificed. In the contract William agreed to disinherit her by whatever means he and Richard could devise, short of forcing her into a nunnery.<sup>112</sup>

But what of the case whereby a father disinherits his son, thereby leaving nothing from which the son's widow could claim dower? Such an eventuality might occur because the father remarries and provides the jointure for his second wife from property that had been earmarked for the son of his first marriage, or disinherits his first son in favour of a son by a second marriage. From at least the 1320s it was common for marriage settlements to include clauses preventing the father of the groom from harming his son's interests in this way. Such restrictive settlements grew more sophisticated as it was realized that the same device could be used to exempt certain properties from the eldest son's inheritance. For example, the father might wish to endow younger sons, or daughters, or to provide for religious benefactions.

Increasingly, such arrangements became part of the negotiations leading to a marriage settlement since they directly affected the bride's dower.<sup>113</sup>

By the end of the fifteenth century, such restricted settlements, concerned with dower, had been joined by the entailed use, concerned with jointure. This device was created by enfeoffing the property of the groom's father to his use and to the use of certain of his heirs, for example, his son and daughter-in-law, and after their deaths to the legitimate heir of their bodies – their eldest son, or daughters for want of surviving male offspring – and, perhaps, to a further generation of heirs. This device safeguarded the bride's jointure, but it had advantages for the groom's family as well: since the property was held by a group of feoffees who could co-opt new members and was therefore immortal, the crown was deprived of its feudal dues on the death of a tenant-in-chief. These were being insisted upon with greater vigour by Henry VII (1485–1509) and the entailed use may have owed something of its popularity from the 1480s to its facility as a means of avoiding 'death duties'. By the same token, lands enfeoffed to the use of the groom before his marriage would never be held by him according to common law, and so were not available for the widow's dower. Thus the entailed use, while guaranteeing jointure, also barred the widow from claiming her dower, and for this reason has been seen as a reaction against the generous provision for widows represented by the combination of jointure and dower.<sup>114</sup>

Villein marriage settlements displayed considerable variety, depending as they did on a combination of the custom of the manor and the will and ability of individuals to make their own arrangements. In 1312 a Derbyshire village bride brought to her marriage 20s. in cash, a cow (worth 10s.), a dress (worth one mark), and a promise by her father that he would build a house for the couple to the value of 40s. In 1289 an Oxfordshire father paid his daughter's merchet and gave chattels to the groom, who in return granted to his father-in-law the entire profit from his own land for four years, on condition that the latter kept his son-in-law and, at the end of the term, surrendered the holding intact and under crop. A Huntingdonshire father in the early fourteenth century promised to keep his son and daughter-in-law in his own house or in a house in his courtyard. In 1294 in Hertfordshire an underage boy was pledged to the daughter of a man with whom he went to live as his ward. On some manors a form of jointure settlement could be made. For example, in two early

fourteenth-century settlements made on the manors of St Alban's Abbey, the groom granted his tenement to the lord, who regranted it to the bride and groom to hold jointly in survivorship for the term of their lives, thereafter to remain to the groom's next heir, thereby allowing the wife to hold it during her widowhood, but without it passing out of the husband's family forever. Elsewhere, villeins relied on the custom of the manor, which guaranteed the widow a third, half or even the entirety of her husband's tenement for her life or until she remarried, as her freebench, while on some manors she would have had to relinquish a part of her dower when the son and heir reached his majority.<sup>115</sup>

The marriage settlement was reciprocal in that the two families exchanged property, either transferred more or less immediately, as dowry, or in the form of a promise of future support for the bride, in the shape of dower or jointure. Clearly, the bride was allowed certain rights, and received some benefit from the arrangement, but on balance, this was not a good deal for her. The dowry was technically a gift made by the father of the bride to his daughter, but she would never normally actually have possession of it since it would be transferred straight from her father to her husband at the time of their marriage. The character of the dowry as a straightforward gift from the father is also ambiguous, since in peasant and artisan families the daughter's own labour would have contributed significantly to the family resources from which this property was drawn, so that it was in part the wealth that she had helped to create that was being given to her husband. Also, in many instances the bride's dowry disqualified her from any further share in her natal family's property. Finally, whereas the husband, or his family, had the benefit of the dowry as soon as it was paid, the wife could only benefit from her dower or jointure if she outlived her husband, and this eventuality was by no means certain.<sup>116</sup>

### **The Ordering of Marriage**

The Church recognized three elements to the creation of a legitimate marriage: betrothal, the announcement of the intended marriage (the banns) and the blessing in church. This order of marriage was well established in England by the late thirteenth century.<sup>117</sup> Betrothal was an expression of the couple's intention to marry, generally made by

the exchange of a vow of future consent (*verba de futuro*), and was roughly analogous to modern engagement. The betrothal was supposed to take place in a suitable place – those betrothed in taverns were to be whipped three times around their parish church – and before reputable witnesses, preferably including a priest.

The second stage of marriage, the reading of banns, was designed to reduce the likelihood of bigamous or incestuous unions being solemnized in church. Before the church blessing the priest was required to make enquiries about the couple's freedom to marry, and to announce their intention of marrying through the reading of the banns, usually on the three consecutive Sundays leading up to the wedding day, and with a saint's day interposed between at least two of the Sundays. If the couple came from different parishes, the banns were to be read in both. Anyone who knew of any impediment to their marriage was obliged to bring this to the priest's attention, or else be in a state of sin and liable to punishment by the ecclesiastical courts.<sup>118</sup>

The third stage, the solemnization in church, consisted of the exchange of vows of present consent (*verba de presenti*) and the blessing of the union by a priest. The church service usually took place on a Sunday morning, when the maximum number of parishioners would have been present, and was held outside of the prohibited seasons of Lent (40 weekdays preceding Easter), Rogationtide (Monday to Wednesday before Ascension Day on the Thursday following Rogation Sunday, the fifth Sunday after Easter Day) and Advent (the four weeks preceding Christmas), which together amounted to about one-third of the year. In Halesowen, May and October seem to have been popular months in which to get married, marking, respectively, the stirrings of Spring and the security of harvest.<sup>119</sup>

The precise ritual surrounding these acts is given in English missals, such as those of Bury St Edmunds, York and Salisbury.<sup>120</sup> The marriage party was met at the church door by the priest, robed in alb and stole and carrying holy water. Here, standing inside the porch, the dower settlement was declared. The significance of the property settlement is suggested by the very name which medieval people gave to this ceremony, for 'wedding' comes from the word wed, meaning a pledge or promise, in this case a promise to provide dower. So important was this most pragmatic and secular aspect of the proceedings that it has come to signify the entire marriage ceremony.<sup>121</sup> The importance of the property settlement is also suggested by the next stage. Tokens of gold and silver, the ring and some pennies, were placed on a book or

shield. The pennies were distributed to the poor, while the ring and tokens would be given to the bride later in the service. Next, the priest required those present to declare any known impediment to the marriage. Then the bride was given away by her father or friends and received by the groom, taking her by the right hand. Vows of present consent were then exchanged. One fairly typical set of vows runs as follows:

*Man:* I take thee N. to my wedded wife, to have and to hold, from this day forward, for better for worse, for richer for poorer in sickness and in health, till death us depart, if holy church it will ordain, and thereto I plight my troth.

*Woman:* I take thee N. to my wedded husband, to have and to hold, from this day forward, for better for worse, for richer for poorer in sickness and in health, to be 'bonere and boxom', in bed and at board, till death us depart, if holy church it will ordain, and thereto I plight my troth.

There is no exact modern equivalent of the Middle English 'bonere and boxom', but in this context it carries connotations both of obedience and of being sexually available to her husband.<sup>122</sup> The ring was then blessed by the priest, who with the groom laid it on each of three fingers of the bride's right hand in honour of the Trinity, before the groom placed it on the third finger of her left hand – through this finger, it was believed, ran a vein that led directly to the heart, the seat of the affections.<sup>123</sup> As he did so, the groom said, 'With this ring I thee wed', and then gave her the gold and silver. According to some versions, the priest said to the groom as he handed this over, 'Lo! This gold and this silver is laid down in signifying that the woman shall have her dower, thy goods, if she abide after thy decease', while the groom said to the bride, 'And with this gold I thee honour'. In some versions, if the bride had been endowed with land, at this point she fell to her knees before her husband. Prayers and blessings followed, after which the marriage party proceeded into the church. Bride and groom prostrated themselves in the nave as more prayers were said over them. They then walked into the choir for the nuptial mass. After the Sanctus the couple prostrated themselves once again and four men placed over them the nuptial veil, also known as pall, or care-cloth. According to the thirteenth-century Bishop Grosseteste, before his time any children born before the marriage were placed under the veil, and by this act were regarded as having been legitimized. At the *Pax* they rose, the

groom received the kiss of peace from the priest and passed this on to his bride. The mass concluded with their communion. The priest's final duty was to bless the marriage bed.

The capacious porches of many later medieval churches are a reminder of their importance in the marriage ritual.<sup>124</sup> Significantly, the 'secular' elements of the marriage – the property settlement and exchange of vows – took place in the porch, while most of the sacred elements were reserved for the church interior, in two stages of intensifying sanctity, the first in the nave, the second in the choir, representing the elevation of the union from carnality to sacrament. Immediately after the church ceremony the two families usually returned to one of their homes for a celebratory feast. Inevitably, the combination of heightened emotions and the consumption of alcohol sometimes lead to fighting. In 1268 a fight at a wedding feast at Byram in Yorkshire resulted in many wounded and one fatality. In the case of peasant weddings, one of the lord's agents might attend the feast to remind those present of his right to regulate the marriages of his tenants.<sup>125</sup>

Common to betrothal, banns and blessing was the element of publicity. All three stages were supposed to take place in public, alerting the parish to the impending marriage and requiring anyone with knowledge of an impediment to come forward – even as the couple stood at the church door. These elaborate procedures indicate the scale of the problem of irregular unions. Such unions were either invalid, that is, not marriages at all in the eyes of God, or illicit, in the sense that they were binding unions but constituted in a state of sin. The crucial element in the creation of a valid, but not necessarily legitimate, union was the exchange of vows of present consent between a man and woman who were free to marry each other. The exchange would not constitute a valid union if, for example, the couple were related within the prohibited degrees of consanguinity and affinity, or if one or both was already married. If the couple were free to marry and had exchanged vows *de presenti*, the union was valid and binding (although without two independent witnesses it could not be enforced in a church court), but unless their vows had been made in public, before a priest, and preceded by banns and betrothal, their union was illicit, and as far as the Church was concerned, they languished in a state of sin until their marriage was solemnized in church. Vows could be exchanged anywhere: the location made no difference to their validity. For example, one Hull couple exchanged vows while milking a cow!<sup>126</sup>

The mere speaking of words was a perilously easy way to create a permanent, indissoluble union. At no point did canon law attempt to prescribe a precise formula for the vows, thereby leaving tremendous scope for confusion.<sup>127</sup> An example of the form of words that could lead to betrothal is provided by Chaucer's *The Reeve's Tale*. When the young student Aleyn bids farewell to Malyne, the miller's daughter, he tells her:

Evermore, wherever I walk or ride,  
I am thine own clerk, so have I sworn

Luckily for Aleyn, Malyne did not respond in like terms; had she done so, they would at that moment have become man and wife.<sup>128</sup> The difference between present and future consent could be perilously subtle. Most canon lawyers held that 'I will take you' constituted future consent, but 'I will have you' was a vow of present consent. In case their vows were found to have been of future, rather than present, consent, many suitors before the church courts alleged that sexual intercourse had followed, thereby making their *verba de futuro* a binding contract.<sup>129</sup> That the difference between present and future consent could be so easily misunderstood often had disastrous results. As Pollock and Maitland remarked: 'Of all people in the world, lovers are the least likely to distinguish precisely between the present and future tenses.'<sup>130</sup>

A further complication was presented by the conditional contract. One or both of the parties might make their vows conditional on securing the agreement of their parents. The Church had no objection in principle to this form of conditional contract – indeed, it encouraged couples to marry only with parental consent – but problems arose over the maximum length of time that could be allowed to elapse between vows and the expression of a conditional clause before the latter became invalid. In 1442 the church court at Rochester heard how John Sharp and Joan Broke entered into a marriage contract by *verba de presenti* in a field, but as John and his friends turned to go, Joan called after them, 'Listen, if my master and friends are willing to agree, I will assent to that contract.' John replied, 'You are too late in saying such things. You should have said that sooner.' But when Joan refused to solemnize the marriage and John sued her, the court upheld the condition. Some conditional clauses were deemed invalid because they were incapable of objective verification, such as 'I will take you as my wife if you conduct

yourself well', or, as in one Canterbury case, if the woman proved to be a good mother and skilled at brewing, baking and weaving. In both instances it might be argued that the condition could only be realized once the marriage had taken place, thereby making the conditional clause illogical, a similar objection being created by clauses to the effect that the man would only agree to marry if the woman did not commit adultery. Some of these conditional clauses are particularly interesting for what they reveal of one intending spouse's expectations of the other: in the above cases, the grooms wanted well-behaved, good mothers who could make a significant contribution to the household economy. Alice Burden's requirements – as alleged in a Rochester consistory court suit in 1443 – were more basic:

She confesses that she contracted marriage with him about four years previously, under this condition however, that he should be able to act with her as a man ought to with a woman. And afterwards within a fortnight, she tried him, and because he could not she dismissed him and contracted with Thomas Ricard.<sup>131</sup>

Some couples made their exchange of vows *per verba de presenti* and never proceeded to the next stage of a church wedding. They may have chosen a private exchange of vows of present consent because they knew that their union was incestuous or bigamous, or because their parents or feudal lords would prevent them having a legitimate, public marriage. Private marriages which were not designed to lead to a church solemnization may have been practised among some of the poorer members of society, who could not afford a proper church service and for whom, perhaps, the familiar domestic environment was more welcoming than the parish church.

The actual proportion of total marriages contracted without solemnization in church is impossible to determine. The likelihood is that church marriage became more popular at all levels during the later Middle Ages as the teachings of the Church were progressively internalized by lay society. However, it is clear from the records of church courts that the tradition of contracting marriages privately, outside of the church, remained strong until the end of our period, and easily coexisted with church marriage: the great majority of marital suits that came before the church courts concerned marriages that had been contracted outside of church. Clearly, as late as the fifteenth century, many of the laity persisted in the belief that marriages made

without benefit of clergy were not only valid – a point which the Church was forced to concede – but also perfectly acceptable. Whether this was a survival of earlier, perhaps even pre-Christian, traditions, or merely stubborn resistance to what was perceived as unnecessary clerical interference is impossible to say, but it seems that by its insistence that any marriage without benefit of clergy was sinful, the Church was seriously out of step with majority lay opinion. The Church's failure to find an alternative to mere consent as the necessary and sufficient constituent of the marriage contract had encouraged the survival of marriages without benefit of clergy, but the difficulty of proving the existence of such unions, combined with the Church's insistence that validly contracted marriages were indissoluble, opened the way to a multitude of misunderstandings, deceptions and wrecked lives, as well as giving many canon lawyers a good living.<sup>132</sup>

The ritual surrounding private exchanges of vows does indeed suggest the survival of a vibrant folk tradition of extra-ecclesiastical marriage. Elements of these rituals can be observed in the depositions before ecclesiastical courts: in 1372 a couple exchanged vows sitting on a bench in a York tannery, before kissing between a garland of flowers. Other folk rituals included the giving of rings and the clasping of hands; the latter was so widely practised that 'handfasting' became the common term for such unions.<sup>133</sup> Such marriages would have been regarded as legitimate by their communities, but not by the ecclesiastical authorities, who labelled all unions contracted outside church as 'clandestine'. So-called clandestine marriages need not have been a secret to anyone, including the parish priest. Before an ecclesiastical court in 1471 one Essex man deposed how he was among a group of witnesses

present in the dwelling-hall of Margery [Mylsent] in the parish of Great Holland ... and William Laykyn, standing, said to Margaret, also standing in the said hall near the doorway toward the highway ... 'Margaret, do you want to have me as your husband?', and she replied 'freely she wanted to have him as her husband, more than ever any woman loved any man ...'<sup>134</sup>

Other 'clandestine' marriages were attended by feasting and the wearing of 'Sunday best'.<sup>135</sup> Such communal celebrations of marriage, or handfastings, fall somewhere between the genuinely clandestine, private exchanges of vows, and the full church wedding. All three forms of marriage may have been contracted successively by some couples, beginning with the private words of consent and ending with the priest's

blessing in church. In the church courts, most of the suits to enforce marriages contracted outside of church were brought within two years of the exchange of vows, suggesting that the normal expectation was for the marriage to be solemnized within this period.<sup>136</sup> This was the advice of the reformer Miles Coverdale, who in 1541 recommended that, 'After the handfasting and making of the contract, the church going and wedding should not be deferred too long, lest the wicked sow his ungracious seed in the mean season.'<sup>137</sup> Furthermore, the church court evidence suggests that many private or communal marriages were contracted among those with property and a respected position in local society: the clothing and drink for one village handfasting was alleged to have cost £3 10s. 6d.<sup>138</sup> More surprising, perhaps, is the private exchange of vows made between Sir John Paston and Anne Haute, daughter of a Kentish gentry family. After Sir John had exchanged vows with Anne, his mother, Margaret, reminded him of the solemn nature of their espousal with these words:

And before God ye are as greatly bound to her as if ye were married, and therefore I charge you upon my blessing that ye be as true to her as if she were married unto you in all degrees.

Their vows seem merely to have been of future consent, but subsequent sexual relations between them turned this promise of marriage into the thing itself. Yet, for Margaret, while her son's union was as binding, it did not of itself amount to a full marriage, a view that would not have been shared by the Church. She was in no doubt that while this was a binding union before God, it was incomplete in the eyes of men.<sup>139</sup> Sir John Paston and his mother had intended his vow to be the first stage in the process that would end with the solemn blessing in church, but this did not happen. Soon, the couple's ardour cooled, or the families no longer wanted the marriage to stand, or both, and it became necessary to acquire a papal dispensation in order to have the union annulled (at one point, Sir John's agent in Rome asked for 1000 ducats in order to secure the dispensation). Did the papal dispensation wipe away all fears that a subsequent marriage would be bigamous, whatever mere mortals might say? Sir John never married – or never married again, to be precise – perhaps, in part at least, because this doubt played on his mind. Others had an even more elastic interpretation of the Church's rules, and believed that *verba de presenti* constituted betrothal rather than a full marriage. Indeed, many couples between exchange

of vows of present consent and solemnization referred to themselves as affianced – a relationship perhaps more formal than a modern engagement, but less binding than full marriage.<sup>140</sup>

Clandestine marriages – in the sense of any exchange of vows not performed at the church door – were a constant cause of concern for the ecclesiastical authorities. In the consistory court of the diocese of Ely (which was roughly coextensive with the county of Cambridgeshire) between 1374 and 1382, more than 80 per cent of all the marital cases before the bishop's consistory court related to clandestine marriages. A similar proportion has been found in the diocese of Rochester for 1347/8, and in the diocese of Canterbury between 1411 and 1420, 38 out of 41 marital suits concerned unions which had not been solemnized in church.<sup>141</sup> Clandestine marriages raised the spectre of bigamous unions. In the diocese of Ely between 1374 and 1382, 12 suits concerned objections to a proposed marriage raised after the proclamation of banns, and half of these were founded on accusations of pre-contract, and more than 40 per cent of all cases concerned bigamy. One individual was alleged to have contracted up to four bigamous marriages!<sup>142</sup> In his study of York consistory court cases, Donahue found that most of the fourteenth-century cases were brought by women, and that most of these were for the enforcement of a marriage contract. Men, he concluded, tended to bring suit when there was a clear economic advantage in enforcing a contract, and dropped suits more readily when the chances of success looked poor; women consequently lost more often than men, sued more often when the financial rewards were less clear, and were less likely to sue to dissolve a marriage. From this, he infers that women took marriage more seriously, or perhaps were more concerned to enforce contracts because most women believed that only marriage could offer them financial security and social status, while men had more options: 'A man could give a woman more by marrying her than she could give him.'<sup>143</sup>

The Church stressed the consequences for the spiritual health of those who entered into a sinful union through a clandestine marriage. These warnings did not necessarily fall on deaf ears. When William Gell boasted to his father of how he had lied before a church court in order to free himself from a clandestine marriage, the latter retorted, 'Son, may it never happen that you so rashly damn your soul. It will be less bad for you to put up with vexation and loathing in your life than after your death to be damnably tortured by the pains of Hell.'<sup>144</sup> For those undeterred, the ecclesiastical courts had a range of options at

their disposal. In Ely the consistory court was usually content to make the couple solemnize their union, but in Rochester some offenders were whipped three times around the parish church for contracting clandestine marriages. However, even in Ely harsh punishment was reserved for those couples who, aware of some impediment, married in a parish where both were strangers: this was regarded as a misuse of the sacrament of marriage, and offenders were excommunicated.<sup>145</sup>

As well as the measures available to ecclesiastical courts, the secular courts also acted to discourage clandestine marriages. Common law did not recognize clandestine marriages as creating rights to property and inheritance. Claims to dower and dowry would not be entertained without public solemnization in church, since it was held that only this gave sufficient publicity to the settlement in an age when many such arrangements might be made without written evidence. The children of an unsolemnized union were regarded as illegitimate under the common law, and so might be barred from inheriting their parents' property.<sup>146</sup> In the words of Eric Josef Carlson: 'While consent alone might form a bond in the eyes of God, it must always be viewed in the context of a person's inheritance, whether of paradise or of property.'<sup>147</sup>

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