6. Consent and coercion, force and fraud: marriages in Star Chamber*

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Many people now deem child, early and forced marriages to be violations of human rights, a significant change from centuries past. After long debate, recent United Nations General Assembly resolutions identified 'gender inequality' as a root cause of practices that usually count girls and women as their most direct victims, but which have many harmful outcomes for societies more generally, ranging from lower levels of education to higher levels of poverty and violence. As such, the sustainable development goals support a growing bureaucratic machinery premised on reducing the estimated 12 million child, early and forced marriages that still take place every year.[1] Early and forced marriages persist within some communities in Britain today, with community workers and women's rights activists struggling to have existing laws against these practices better enforced, against a backdrop of racist and post-imperial assumptions that paradoxically hinder their efforts.[2] While such marriage practices are sometimes assumed to be novel imports, community activists can try to have existing laws better enforced precisely because child, early and forced marriages are by no means new or foreign to the history of England and Wales.

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[1] See, e.g. <https://www.ohchr.org/EN/Issues/Women/WRGS/Pages/ChildMarriage.aspx> [accessed 7 Nov. 2020].

[2] See, e.g., A. Wilson, 'The forced marriage debate and the British state', *Race & Class,* xlix (2007), 25–38. On nineteenth-century discussions of the age of consent for sexual relations and on child marriage in their imperial contexts, see the recent collection of articles in the *Law and History Review,* xxxviii (2020), e.g., I. Pande, 'Vernacularizing justice: age of consent and a legal history of the British Empire', 267–79. For more recent debates on establishing a universal minimum age of marriage, tied to efforts to eradicate slavery, see A. Tambe, 'The moral hierarchies of age standards: the UN debates a common minimum marriage age, 1951–1962', *American Historical Review*, cxxv (2020), 451–9.

K. J. Kesselring, 'Consent and coercion, force and fraud: marriages in Star Chamber' in *Star Chamber Matters: An Early Modern Court and Its Records*, ed. K. Kesselring and N. Mears (London, 2021), pp. 97–114.

The balance between consent and coercion in the making of marriage continued to be reset well into the era in which modernity took shape. Individuals could be forced into marriages by would-be spouses or by their own parents. Medievalists have paid spousal abduction some attention, tracing both the Church's insistence upon the necessity of consent to create binding unions and the efforts of secular authorities to limit the seizing of wealthy brides.[3] Early modernists have attended rather less to the subject of marriage-by-capture, though, at least outside of Wales,[4] perhaps swayed by a sense that such marriages had become too rare to matter or by a belief that parents' accusations of their daughters' abductions masked collusive elopements. Indeed, in so far as early modernists have paid attention to forced marriage, they usually see the parents in the role of aggressor. But as Gwen Seabourne and Chanelle Delameillieure have argued for the late middle ages, the distinction between abduction and elopement can

[3] On medieval canon law re: consent, see J. A. Brundage, *Law, Sex, and Christian Society in Medieval Europe* (Chicago, 1987) and R. H. Helmholz, *Marriage Litigation in Medieval England* (Cambridge, Mass., 1974). For abduction, see, e.g., S. M. Butler, '"I will never consent to be wedded with you!": Coerced marriage in the courts of medieval England', *Canadian Journal of History,* xxxix (2004), 247–70; S. S. Walker, 'Common law juries and feudal marriage customs in medieval England: the pleas of ravishment', *University of Illinois Law Review*, iii (1984), 705–18 and 'Punishing convicted ravishers: statutory strictures and actual practice in thirteenth and fourteenth-century England', *Journal of Medieval History*, xiii (1987), 237–50; J. B. Post, 'Ravishment of women and the Statutes of Westminster,' in *Legal Records and the Historian*, ed. J. H. Baker (London, 1978), pp. 150–64 and 'Sir Thomas West and the Statute of Rapes, 1382', *Bulletin of the Institute of Historical Research,* liii (1980), 24–30; J. Goldberg, *Communal Discord, Child Abduction, and Rape in the Later Middle Ages* (New York, 2008); S. McSheffrey and J. Pope, 'Ravishment, legal narratives, and chivalric culture in fifteenth-century England', *Journal of British Studies*, xlviii (2009), 818–36; C. Dunn, *Stolen Women in Medieval England: Rape, Abduction, and Adultery, 1100–1500* (Cambridge, 2013); G. Seabourne, *Imprisoning Medieval Women: The Non-Judicial Confinement and Abduction of Women in England, c.1170–1509* (Farnham, 2011); C. Delameillieure, '"Partly with and partly against her will": female consent, elopement, and abduction in late medieval Brabant', *Journal of Family History,* xlii (2017), 351–68.

[4] G. Walker, '"Strange kind of stealing": abduction in early modern Wales', in *Women and Gender in Early Modern Wales*, ed. M. Roberts and S. Clarke (Cardiff, 2000), pp. 50–74, analysing 38 Welsh abduction cases heard in Star Chamber, 1558–1640. See also E. W. Ives, '"Agaynst taking awaye of women": the inception and operation of the Abduction Act of 1487', in *Wealth and Power in Tudor England*, ed. E. W. Ives, R. J. Knecht and J. J. Scarisbrick (London, 1978), pp. 21–45; B. Harris, 'Aristocratic women and the state in early Tudor England', in *State, Sovereigns and Society in Early Modern England*, ed. C. Carlton, et al. (Stroud, 1998), pp. 3–24. H. Brewer, *By Birth or Consent: Children, Law, and the Anglo-American Revolution in Authority* (Chapel Hill, 2005) pays the subject brief but illuminating attention in ch. 8. See, too, A. Capern, 'The heiress reconsidered: contexts for understanding the abduction of Arabella Alleyn', in *Women and the Land, 1500–1900*, ed. A. Capern, B. McDonagh and J. Aston (Woodbridge, 2019), pp. 100–26.

be difficult to draw and anachronistic as well: consent did not necessarily indicate free choice.[5] We may sometimes be too quick to see love lurking behind the fictions in the archives: violence remained not just a product of many marriages but also, at times, a factor in their formation.

This chapter examines one facet of that early modern story: the regulation of marriage in the court of Star Chamber. Most basically, it makes a case for adding Star Chamber to our list of courts that dealt with marriage and for adding marriage to our list of Star Chamber's areas of responsibility. It suggests that we ought to look beyond the church courts alone to understand the post-Reformation remaking of marriage and, indeed, to look beyond the regular common-law courts to trace the longer history of secular authorities' attempts to direct the trade in women in ways conducive to public order.[6] More substantially, it highlights evidence from Star Chamber of wide-ranging discussions of the nature and limits of consent in marriage formation: whose consent, given in what circumstances, sufficed to make a binding union? Star Chamber built upon precedents from both clerical and common-law histories of marriage regulation, then creating precedents of its own in turn. Suitors brought to the court all sorts of claims on behalf of themselves or their children, alleging the use of drink, drugs, enchantments and other deceits alongside the traditional narratives of force in trapping people into marriages. In a set of reported Star Chamber cases, the court's judges responded to some such complaints by extending notions of improperly secured marriage beyond the remit of medieval abduction statutes with their focus on property to include both boys and girls who were not heiresses, deeming any marriage of a minor without parental approval 'evil in itself'. The court also grappled with issues of consent and coercion in ways that extended beyond force to include fraud as well.

Star Chamber grew from medieval roots in the judicial capacities of the King's Council, acquiring clear institutional definition in the sixteenth century. Often depicted as a laudable element in the Tudor effort to 'tame the nobility', the court was nonetheless eventually attacked as having acted illegally, and was abolished by parliament in 1641. It operated somewhat outside the common law, without juries and with royal councillors as its judges. By the second half of the 1500s, its focus had shifted from civil to criminal causes, and its judges then included the justices of King's Bench and Common Pleas as well. In that later manifestation, it focused on charges of 'force and fraud' – a fact that made it an ideal venue for marriage cases.[7]

[5] Seabourne, *Imprisoning* and Delameillieure, 'Elopement and Abduction'.

[6] The first of these arguments is set out more fully in a book on divorce and separation being co-authored with Tim Stretton.

[7] For the court's innovations in respect to fraud, see T. G. Barnes, 'Star Chamber and

Indeed, marriage by 'sleight or force' was one of the few offences for which Star Chamber had explicit statutory authority to act.

In doing so, Star Chamber built upon a long history of interventions into forced marriages by both ecclesiastical and secular authorities. Throughout Europe, the medieval Church had countered Germanic practices of bridal abduction and aristocratic forced marriage with canon law that insisted upon the necessity of free consent. Then, as the theology of the spiritual and sacramental qualities of marriage developed, canonists decided (somewhat problematically) that consent and consent alone made a valid, binding union. Drawing upon Roman law and assessments of the age at which youths were able to take on the duties of marriage, canon law set the age of marriage at twelve for girls, fourteen for boys. While marriages could be arranged for younger children, they were voidable without consent subsequently given at that age. Church teaching allowed that marriages could be annulled based on claims that one party was not what they had been thought to be, that an 'error of person' or of 'condition' invalidated a union. Church courts also allowed annulments based on evidence of duress, though typically requiring 'force and fear' sufficient to sway a 'constant' man or woman.[8] As thin and hedged about as this consent might now seem, canonists had to fight doggedly for even this much in societies where bridal abduction and paternal arrangements had long prevailed.

The frequency of child marriages and of unions made without the consent of brides or grooms after centuries of such teaching is impossible to know, but in his study of matrimonial litigation in the consistory court of the archbishops of York, Charles Donahue found that 12% of cases in the fourteenth century and 16% of cases in the fifteenth alleged either forced or underage marriage, or both.[9] Such cases seem to have become less common over the sixteenth century, but with regional variations. The cause papers for the archbishopric of York include proceedings on 116 annulments and separations in the 1500s, of which forty-four were for nonage or force.[10] In his samples of records from the diocese of Norwich, Ralph Houlbrooke identified only three annulments for coercion or youth; Martin Ingram

the sophistication of the criminal law', *Criminal Law Review* (1977), 316–26 and H. Mares, 'Fraud and dishonesty in King's Bench and Star Chamber', *American Journal of Legal History*, lix (2019), 210–31.

[8] Helmholz, *Marriage Litigation*, p. 91.

[9] C. Donahue, Jr., 'Female plaintiffs in marriage cases in the court of York in the later middle ages', in *Wife and Widow in Medieval England*, ed. S. S. Walker (Ann Arbor, 1993), pp. 183–213, at pp. 187, 189.

[10] Searches on *Cause Papers in the Diocesan Courts of the Archbishopric of York*, comp. P. Hoskin, et al., <https://www.dhi.ac.uk/causepapers/> [accessed 5 May 2020] .

counted similarly low numbers in Chichester and Wiltshire.[11] Johanna Rickman, in contrast, found at least four or five annulments of child marriages each year in records that survive from Chester's church courts in the 1560s, comprising just over 50% of the courts' matrimonial business. While demographic studies suggest an average age of first marriage for both women and men in their twenties by the late sixteenth century if not sooner – part of a broader northwestern pattern of late marriage compared to early marriages elsewhere – child marriage had certainly not disappeared.[12]

English secular law, meanwhile, had sought to regulate forced marriage from concerns for order, status and property. It tied abduction and forced sexual intercourse closely together, with a statute making 'raptus' a felony in 1285.[13] 'Ravishment' could refer either to carrying a woman away for rape, as we understand it, or to abducting a person under someone else's guardianship with no implication of sexual violation.[14] It could apply to voluntary elopements without the guardians' consent as much as to forced marriage against a person's will. Both girls and boys could be forced into marriage, but the problem was particularly acute for young women, given the patriarchal provisions of coverture which gave husbands ownership or control over their wives' property. A measure in 1382 sought to deal with collusive abductions and to minimize the temptation to abduct an heiress and then compel her 'consent' to a union: thereafter, any such ostensibly consensual marriage following an abduction disabled the woman from inheriting, thus denying her wealth to her abductor-spouse.[15] (As one Tudor legal commentator later noted, this was a 'shrewd statute'. Until this time, a ravisher might hope for mercy from the woman ravished, persuading her to agree to the union, but thereafter she dared not be merciful, 'lest she be cruel to herself. Therefore now men look on fair gentlewomen, heirs, and

[11] R. Houlbrooke, *Church Courts and the People During the English Reformation* (Oxford, 1979), p. 73; M. Ingram, *Church Courts, Sex and Marriage in England, 1570–1640* (Cambridge, 1987), pp. 172–3.

[12] J. Rickman, '"He would never consent in his heart": child marriages in early modern England', *Journal of the History of Childhood and Youth*, vi (2013), 293–313, at p. 296. See also Brewer, *By Birth or Consent*, pp. 294–5, esp. fn. 7, for suggestions that the averages presented by demographers might be too high, given their exclusion of data suggesting marriages under the age of 15, shaped by modern norms of child sexuality and possibly by ideologically driven assumptions that England had not had a history of child marriage.

[13] This survey of medieval legislation follows Ives, Dunn and Seabourne, cited above.

[14] McSheffrey and Pope, 'Ravishment', p. 818.

[15] 6 Richard II, st. 1, c. 6. A subsequent measure addressed abductions followed by forced bonds to sign over wealth. 31 Henry VI, c. 9 (1453).

widows, as the cat looketh at a fish in the water: she would fain be dealing, but is loath to go wetshod'.[16])

As shrewd as the 1382 statute may have been, legislators eventually thought they needed more. Renewed attention came in 1487, early in Henry VII's reign, alongside acts against murder and aristocratic disorder. The 1487 abduction act made it a capital felony to take any maiden, wife or widow 'having substance … against her will unlawfully', noting that the resulting marriages worked to the 'disparagement of the said women and utter heaviness and discomfort of their friends'.[17] Unusually, the act treated accessories as principals and was, for a time, interpreted as making abduction of a woman of wealth a felony in itself, regardless of any subsequent forced marriage or intercourse. A judicial decision in 1557 lessened its force, however, by finding that abduction would only count as capital felony if accompanied by sex or marriage.[18]

Perhaps prompted by this judgement, in 1558 parliament passed a new law related to forced marriages, one that allowed abduction alone to be prosecuted either at common law upon indictment or in Star Chamber by bill of complaint. The act did not just fill a hole opened by the 1557 judicial decision, though. It also marked out new directions, perhaps in part responding to Reformation-era discussions about age of marriage and a desire to protect parental consent, discussions that led to secular encroachments on the church courts' marriage jurisdiction elsewhere.[19] The 1558 act did not deal with all women of substance but focused on young heiresses, on maidens under the age of sixteen who had wealth or claims upon it, who by force or 'sleight' were taken from their parent or guardian to their own disparagement, their parents' discomfort and the displeasure of God. According to the act, anyone who took from a father or other legal guardian an unmarried girl of means under the age of sixteen might be punished with two years' imprisonment or a fine assessed in Star Chamber. If the offender sexually assaulted or married the girl, a penalty of five years' imprisonment or a fine in Star Chamber applied, with half of the fine going to the injured parties. If a girl between the ages of twelve and sixteen 'consented' to such an unlawfully arranged union, her inheritance was to

[16] T. E., *Lawes Resolutions of Women's Rights* (London, 1632), p. 383.

[17] 3 Henry VII, c. 2.

[18] W. Dalison, *Les Reports des Diverse Special Cases* (London, 1689), p. 22.

[19] In 1557 (1556 o.s.) the French issued their first secular marital edict to extend parental control over children's marriages, up to ages 30 for men and 25 for women, partly in response to discussions at the Council of Trent. See S. Hanley, '"The jurisprudence of the arrêts: marital union, civil society, and state formation in France, 1550–1650', *Law and History Review*, xxi (2003), 1–40, at pp. 12–13.

pass to the person who would acquire it if she had died.[20] As Garthine Walker has noted, 'despite the Act's emphasis upon paternal authority, the distinction it drew between forced and consensual marriage meant that female consent was not elided'.[21] Like others, Walker also suggests that the Marian act weakened the earlier Henrician measure, in downgrading the crime from felony, but prosecutions could thereafter proceed under either statute. [22] The Marian measure was distinctive not just because it focused only on young maidens of substance and offered a punishment for abduction alone (though less than death), but also for extending beyond force to include 'flattering, trifling gifts, and false promises'.

Unusually, too, the Marian measure allowed prosecutions in the court of Star Chamber. And plaintiffs brought many tales of illegitimately secured marriages to the court. Some of these complaints seem as if they could have gone to the church courts instead, but perhaps hoping to shore up litigation being advanced elsewhere, appreciating the looser criteria for gaining a hearing in Star Chamber than in other courts, or being attracted by its alternative remedies, some plaintiffs turned here. The Elizabethan records include some such cases but as yet have no subject index, making a comprehensive survey prohibitively difficult.[23] But Thomas Barnes's index of the 8228 Jacobean files identifies nearly 100 suits that alleged abduction.[24] Bills came from every county in England and Wales save for Bedfordshire and Northumberland. Most of the Jacobean cases centred on the marriages of young women, but at least twenty-nine of the bills focused on the disputed marriages of young men. Most arose from the marriages of orphans and wards, a sign of their vulnerability as well as the lure of inheritances to potential spouses (and their worth to the guardians). Many of the marriages behind these cases appear to have arisen from elopements and may well have had the consent of both parties, but some seem to be just what the plaintiffs said: marriages secured through 'sleight or force'.

In many of the cases it appears that the young person did at least initially consent to the union that alarmed the guardian. The plaintiffs sometimes then picked up on the statutes' language of 'disparagement' to argue against

[20] 4&5 Philip and Mary, c. 8.

[21] Walker, 'Stealing', p. 52.

[22] Walker, 'Stealing', p. 53. See, too, 39 Elizabeth I, c. 9 (1597/8) which reiterated the 1487 statute and barred principals and accessories before the act from claiming benefit of clergy.

[23] But see forthcoming work from Chloë Ingersent, who is working through samples of the Elizabethan files.

[24] T. G. Barnes, *List and Index to the Proceedings in Star Chamber for the Reign of James I (1603–1625) in the Public Record Office, London, Class STAC 8* (3 vols., 1975), ii. 215–17, now supplemented by The National Archives of the UK's Discovery catalogue, thanks to work by Amanda Bevan, Megan Johnston, et al.

the propriety of the union, but most relied instead, or as well, on allegations of impediments to free consent.[25] Bills alleged various frauds, deceits or intoxicants had impaired the young person's ability to decide. One bill maintained that Nicholas Prideaux's would-be father-in-law had inveigled the young man's affections by giving him spending money, tobacco and sweetmeats, and also by 'excessive and immeasurable drinking of wine'. He had had the young man toast his companions with eight 'healths' in strong wine, 'far too much for any of his tender years'. Through 'overmuch carousing and drinking of wine forced upon him', Nicholas did not understand what he did when he took Elizabeth Carmynow in marriage. The next day he awoke to bewail his fate and said that rather than live with Elizabeth as his wife, 'he would be contented to live as a pilgrim all the residue of his days'.[26] One disappointed father maintained that his sixteen-year-old son had been lured into an improper marriage only after imbibing 'strange intoxicated drinks which produced a kind of frensy in his brain'.[27] Joan Cartwright's guardian alleged that the eleven-year-old had married Edward Holloway only after drinking 'a great quantity of hot waters and other strong and heady drink mingled with hot spices and other intoxicating powders'.[28] Some bills suggested that unnatural intoxicants had been used: one referred to 'enchanted potions and drinks', while another alleged that a suitor gave his intended 'certain rolls made of sugar and some other things therewith mixed and composed by enchantment or witchcraft or other unlawful or unhonest devise to make the said Elizabeth to love him'.[29]

Some parents argued that their children were too young to agree to a marriage, whatever the law might say about the age of consent. Hester Onslowe acknowledged that her daughter Mary had initially given herself willingly in marriage and that as a sixteen-year-old she was legally free to do so. But Hester emphasized several times Mary's 'very small stature and growth', called her a 'very simple girl and easily allured and drawn by reason of her childishness', and insisted that she was 'utterly unfit yet to contract' herself in such a way, let alone to a man of 'forty years, light and unthrifty'.[30] Frances Cresswell admitted that her daughter Frances was of legal age but

[25] For a brief discussion of the language of disparagement in these bills, see Kesselring, 'Disparaging marriage in early modern England', *Legal History Miscellany* <https://legalhistorymiscellany.com/2020/01/06/disparaging-marriage-in-early-modern-england/> [accessed 7 Nov. 2020].

[26] TNA, STAC 8/30/12.

[27] TNA, STAC 8/154/1

[28] TNA, STAC 8/88/17.

[29] TNA, STAC 8/122/12 and STAC 8/63/22. See also STAC 8/271/16 and STAC 8/88/13.

[30] TNA, STAC 8/224/27.

described her as 'Frances the infant' in every reference to her in the bill of complaint, noting that the thirteen-year-old was 'small of stature' and 'but a child in her knowledge and understanding'.[31]

Whatever one might think of the nature of the consent given in these cases, some of the bills went further in alleging unambiguously violent abductions and coerced unions, with the willing agreement of neither the guardian nor the party to the marriage. In 1590, for example, Alice Elkin and her husband William accused John Skynner of forcefully abducting Margaret Robinson, Alice's twelve-year-old daughter from a previous marriage. They claimed Skynner and his associates seized Margaret from church, brandishing daggers and boathooks as they forced her into a boat and breaking 'both her face and her knee' in the melee. Skynner then married Margaret, in a ceremony to which she 'never yielded any free consent other than through force, fear, constraint or by compulsion'.[32] In 1605, the fourteen-year-old Mary Dyer was reportedly seized by Thomas Wade and his family and kept by force for four or five days against her will. Someone in Thomas's family faked a summons to appear before the Gloucester church court on a charge of fornication with Thomas; they said that Mary would be committed to prison for harlotry, whipped throughout the streets of the city, and forced to stand at the cross of reformation in a white sheet during market time unless she married Thomas. When she still refused, they threatened to kill her.[33] A bill from 1623 complained that the eleven-year-old Joan Cartwright had been taken by force from her guardians, given various intoxicants, locked away, carried to the banks of the Severn with threats of being drowned, and finally beaten, bruised and wounded before acquiescing to her marriage.[34]

We cannot know, of course, whether these individual stories of violence – or of drunkenness, simplicity, or deception – are accurate reflections of events even as the plaintiffs saw them. Lately, scholars have shown much interest in reading bills and depositions as narratives, in part because of the difficulties in determining 'what really happened' in any given case. The impulse to step aside from facts to studying fiction-telling is particularly strong with Star Chamber materials, partly because claims of violence helped get cases heard by the court and are thus automatically suspect, and partly because the court's records of judgements have disappeared. But for a

[31] TNA, STAC 8/88/15.

[32] TNA, STAC 5/E4/2; STAC 5/E15/39; STAC 5/E12/1; STAC 5/13/8; STAC 5/E10/12. This case came to light thanks to the in-progress cataloguing efforts of Helen Good. In this case, the court decided for the plaintiff, as indicated in the fines list, E 159/399, see <http://www.uh.edu/waalt/index.php/SCF_1590> [accessed 7 Nov. 2020].

[33] TNA, STAC 8/59/29.

[34] TNA, STAC 8/88/17.

few cases, we can at least learn the outcome, thanks to lists of fines kept by the Exchequer, collections of brief working notes abstracted from the now lost order and decree books, and sometimes from more discursive reports that summarized the judges' statements for future reference. Examining the narrativity and multivocality of the case files is worthwhile, to be sure, but looking at cases for which we have judicial decisions and indications of which stories the judges found compelling can help us trace shifting legal norms around consent, force and fraud in the construction of marriages in a system based on precedent as well as statute and equity.

To be sure, simply knowing the judges' decisions does not tell us everything we might want to know. An Elizabethan case illustrates the difficulties. In 1560, Agnes Croply complained that Edward Bardwell and a few fellow servants had forcibly abducted her twelve-year-old niece and ward, Mary Page. The deaths of Mary's parents had left her the heir to lands with the yearly value of '20 marks or thereabouts' and in the keeping of her mother's widowed sister, Agnes. On the Thursday of Easter week, Bardwell and his companions seized Mary from a field where she was sewing and tending cattle with one of Agnes's daughters. The men did so, Agnes said, 'not only against the will of your said supplicant but also against the will of the said Mary'. According to Agnes, the men dragged a crying young girl through a hedge then put her, shamefully, astride a horse. After Mary jumped off, one of the men sat astride behind her, holding her close. Another of the men went beside with sword drawn. One of the field labourers approached the scene and tried to speak with Mary, but Bardwell reportedly insisted that she was his wife and thus could not speak with anyone if he forbade it. Deponents called on Agnes's behalf emphasized the 'force and strong hands', the girl's crying and striving, and the presence of unsheathed weapons. In response, Bardwell did not dispute having seized Mary. In his version of events, Agnes had previously welcomed him as a suitor for Mary's hand, but then he heard that a rival was about to marry the girl, so he simply acted first. He tried suggesting that Mary was a bit older than Agnes claimed and that he had her goodwill. In the end, though, the court deemed Bardwell's offence well within the Marian statute. He was imprisoned for two years, and strikingly, the court effectively voided the marriage: Mary was restored to her aunt.[35]

In such a case, the judges' verdict siding with the guardian does not necessarily mean that the plaintiff's story was wholly accurate and that the girl was forcibly abducted and married against her will. Mary Page was of marriageable age and might well have been fully consenting by the

[35] TNA, STAC 5/C80/25; STAC 5/C8/37; British Library, Lansdowne MS. 639, fo. 71.

standards of the day; the judges may have passed their verdict based on the impropriety of Bardwell marrying a ward without her guardian's consent. But the stories of violent, non-consensual unions seem at least as probable as the tales of youthful love and women's agency that we often privilege in such cases. And when we attend to the decisions, not just the narratives crafted in the pleadings and proofs, we see not only instances of an age-old problem but also new judicial responses and signs that judges as much as plaintiffs were broadening their notions of the impediments to proper consent. A few other, better-reported Jacobean cases give us more detail, and let us see Star Chamber taking a more interventionist role, responding to statute and to plaintiffs' complaints to expand beyond force to fraud and beyond propertied maidens to girls and boys more generally.

In 1604, Edward Dawes of St Bride's parish, London, reported to the court that Charles Sherman had lured away Dawes's only child, Martha. Dawes described himself as a man with leases and chattels to the value of some £100. He described Martha as being 'in the custody and under the government of your said subject … having accomplished twelve years of age and more, but under thirteen'. He said that Charles Sherman, a twenty-seven-year-old from Cambridge, was a gentleman by birth but otherwise a 'light and unthrifty person'. Charles's sister, Grace, had been a servant in the Dawes household on Fleet Street and had helped arrange meetings between Martha and Charles, including the fateful outing on 12 July when Charles took Martha to Cambridge to be married, without her parents' agreement and against their will. Edward Dawes implicitly acknowledged that Martha had gone freely and without force, but said she had been tricked by letters noting that the marriage would be conditional upon her parents' consent and soon after 'grievously repented herself'. The interrogatories posed by Dawes's counsel asked whether Charles had duped Martha with a forged letter and whether he had used any 'drug or enchantments [or] indirect means to cause the said Martha to love you or to yield unto you'? They asked Martha about Charles's courting, or grooming: did he not use 'light and toying behavior', praising her, singing 'bad songs', writing 'amorous flattering letters … depicting himself as greatly inflamed with your love'? Did he not call her 'the mirror of his mind' and promise to spend his blood for her? Did he not brag of the great marriages he could have had with maidens worth thousands of pounds, but yet whisper that he would take her for much less, given his deep love for her? Did he not call her mistress and himself her servant? Did he not take her drinking and feasting to establishments throughout London? Martha said that she was 'after a sort married (as she thinketh) in Trinity church in Cambridge' but maintained that she had not lain with Charles and did not think him to

be her lawful husband. Charles said simply that the person he continued to call his wife had shown him many signs of affection and that he had taken her away so abruptly merely because of an increase in sickness in London. In his petition to the court, Martha's father invoked both the Marian abduction act and a Henrician act against counterfeiting letters and tokens for fraudulent purposes. John Haywarde, a barrister who took notes on cases he observed in Star Chamber, devoted several pages to the hearing. He noted that ultimately, the court concluded that Sherman's deceits came within the terms of the Marian statute. They voided the marriage, returned Martha to her parents and sentenced Charles to a fine of £500 or five years' imprisonment.[36]

A set of cases a few years later had the privy councillors and judges once again examining the complexities of consent and coercion, but showing more concern for jurisdictional conflict with both the courts of common law and those of the church. Several reports address the cases, but the judges seem to have offered no clear resolution to the contending stories. William and Martha Hall of Rotherhithe, Surrey, complained in 1611 that Richard Baker had abducted from their care Martha's daughter, Jacomine Woodcock, a twenty-year-old widow who stood to inherit substantial properties upon her mother's death. Jacomine had entertained Richard Baker's suits for marriage, they said, but upon discovering how deeply in debt he was, she had cast him aside and made plans to marry a relative of her stepfather's, one John Hall. According to the Halls, Richard responded by having one of her household servants take Jacomine out on to the Thames one day, where he seized her and took her to East Tilbury and then on to Queensborough to be married. Richard Baker launched a countersuit, maintaining that the Halls had then kidnapped his wife from his lawful custody after the marriage and had conspired to take his life by having her file an indictment against him in the common-law courts under the Henrician abduction act. Baker also initiated a case before the ecclesiastical court of High Commission to assert the validity of the marriage. In this episode, it seems that whatever Jacomine's initial inclinations may have been, she eventually agreed to her marriage to Richard. The Star Chamber judges left the matter of the marriage's validity to the church courts. They debated whether the forcible taking away, or taking away by sleight, made the act a felony, whether or not the woman later consented – a discussion that allowed Lord Chancellor Egerton to attempt a thin joke about consent and women denying it after the fact. They commented, too, on the unusual nature of the Henrician

[36] TNA, STAC 8/114/14; J. Hawarde, *Les Reportes del Cases in Camera Stellata, 1593–1609*, ed. W. P. Baildon (London, 1894), pp. 259–61.

statute – the 'forceablist act ever made for felony' – in treating all accessories as principals, something otherwise only seen in treason cases. After two days of discussion, though, the judges finally refused to make a clear judgement on the matter, as doing so would effectively serve either to acquit or to condemn Baker for a hanging crime, something beyond their remit.[37]

While the privy councillors and judges in Star Chamber made no clear determination in the Woodcock case, a set of complaints in 1616 saw them more boldly establish new precedent, though still showing some care for jurisdictional limits.[38] John Brewton, a joiner living in St Olave's, Southwark, exhibited bills against Edward Morris, an embroiderer of London over forty years of age, charging him with having stolen away Brewton's twelve-year-old daughter Jane. Morris had taken her 'from the possession, custody or governance and against the will of the complainant', Brewton observed. According to his accusation, on 30 May, just days after Jane's twelfth birthday, Morris had one Joan Kippen, a former servant of the Brewtons, go to their home and ask Jane to walk with her to see a strange new ship from beyond the seas then at anchor in the Thames. Kippen and her husband then forced Jane to the Red Lion tavern in Ratcliffe, where Morris met them. The party travelled to Boxford, Purleigh and Kersey before finally finding a minister who would marry them, on 16 June. While Morris would claim that Jane married him willingly, several deponents affirmed that she had at one point dropped to her knees to implore her companions to let her go home, entreating them just to give her a horse to let her ride back to Southwark, and crying so hard that one worried she would harm herself. Some said that the Kippens threatened Jane that they would either ship her abroad or have her committed to prison unless she consented to the marriage. The consent, such as it was, seemed to come when Morris gave her gloves, a gold ring and a forged letter, purportedly from her parents, expressing their desire that she marry Morris. Deponents who spoke on Morris's behalf, in contrast, insisted that the twelve-year-old went 'merrily and freely' down the river and married Edward with her 'free consent and good liking'. Whether or not Jane had any such 'good liking', within weeks she turned to a justice of the peace who secured her return to her parents. Brewton took his complaint to Star Chamber, where Morris

[37] TNA, STAC 8/172/9 (*Hall* v *Baker*); STAC 8/67/8 (*Baker* v *Hall*); Brit. Libr., Lansdowne MS. 639, fos. 192r–193; Harvard Law School Library, MS. 149, fo. 103r; and the report of Sir Richard Hutton in 123 *English Reports* 1058. Egerton 'told a tale of a Welsh woman who complained that she was ravished and being asked whether it were by force and arms answered no force no harm'.

[38] For the Brewton cases, see TNA, STAC 8/68/17; STAC 8/68/16; Harvard Law School Library, MS. 149, fo. 117r; Folger Shakespeare Library, MS. X.d.337, fos. 17–24.

and his confederates offered as their chief defence the fact that Jane was neither heir nor ward, nor currently possessed of any wealth to speak of, and so was not covered by the statutes.

While Brewton awaited the hearing of this first complaint, Morris tried again. On Sunday, 1 December, Morris and his confederates waylaid Jane on her way to church. Purportedly with 'daggers drawn and pistols charged', they forced the girl into their waiting boat, threatened bystanders who tried to help and then rowed her away. Two watermen deposed that they had innocently been waiting at Queenhithe dock for a fare when Morris and his men leapt into their boat, having found their own to be taking on water. The watermen reported seeing one of the men carrying Jane under his arm, then throwing her into the boat. They affirmed that Jane did indeed 'cry out very pitifully' and insisted they had only participated as the men threatened to kill them, 'or worse'. Jane tried to leap out of the boat, they said, but her assailants held her down with such force that they almost suffocated her. Near St Towley's stairs, they saw Jane's mother, Joan, take a sculler and follow them, crying out the whole time for a faster boat, which she got at Tower Wharf. With the mother and others in hot pursuit, it seems that Morris gave up and abandoned Jane.

The case ultimately provoked much discussion in Star Chamber and beyond, and would later be cited as a precedent for the court's growing remit and for interventions that went beyond heiresses alone. First, the privy councillors and judges in Star Chamber wrestled with Morris's defence and demurrers: did Jane fit within the terms of the relevant statutes, not being an heiress? And if she did fit within the terms of the Henrician act, could Star Chamber pass a verdict that might later result in Morris's conviction in a common-law court on a capital felony charge? They referred the question to a full panel of the common-law judges who decided that as Jane was not an heiress and had no estates, the matter was not covered by the Henrician statute. But they all concurred that the matter might be tried in Star Chamber, either under the terms of the Marian act or as an evil in itself. They allowed that Star Chamber ought not to hear petty causes, but deemed this one '*magna in parvo*', a great matter within a small one. Henry Hobart, chief justice of the Common Pleas, insisted that 'every man hath power over his child, that whosoever taketh her away robs him'. The offence could be punished as a purposing to marry, for without the consent of the parents, it ought not to be considered a lawful marriage. The lord keeper maintained that 'children are the ends of men's labours and this is a growing offence, to be cut off in time'. The bishop of London agreed that marriage ought to be with the consent of the parents, and in this case, moreover, 'there could not be consensus, where there is not sense, she being

but a month above twelve years old; therefore she wants her rudder'. The archbishop of Canterbury noted that the French had decided that marriages without parental consent were automatically void, and observed that if the English parliament moved to make such marriages felonious, 'he would agree to it and agree with the most'. The Anglican canons of 1604 had required parental consent for the marriage of anyone under age twenty-one, but the lack of such consent merely made the marriage irregular, not void; a bill to require parental consent for a valid union had appeared in the 1604 parliament, but failed to pass.[39] Archbishop Abbot, it seems, would have been happy with something more. Ultimately, the judges left the question of the validity of the marriage itself to the church courts, but decided to fine and imprison Morris and his confederates.

Star Chamber reached a little further still in attempting to regulate marriage formation in a 1625 case in which the victim was a sick young man.[40] Alice Woodrow, the widow of a wealthy London mercer, brought a case against Dorothy Crispe, a widow of Great Shefford, Berkshire, Dorothy's daughter Eleanor and several confederates, charging them with the unlawful marriage of Eleanor with Alice's son, Thomas. Thomas's mother said that he had claims to an estate worth some £15,000, but had also been incapacitated by the falling sickness, or epilepsy. Alice had sent him to Dorothy Crispe, as she had a reputation for being able to cure this disease. But through enchantments, spells and the help of Thomas's manservant, Dorothy had enticed a young man without his wits to marry Eleanor. According to Alice, Thomas had previously resolved never to marry, 'for it appeared that he was bursten greatly in his body and disabled', but Dorothy had preyed upon his weakness with arguments that 'marriage was a good help to cure his grief'. Dorothy's defence included efforts to prove her bona fides as a respected healer who did not rely on spells, evidence of her family's relatively high status to show that the marriage would not have disparaged Thomas, and

[39] *The Anglican Canons, 1529–1947*, ed. G. Bray (Woodbridge, 1998), p. 401; *Commons Journals*, I, 184, 206, 229–34. R. B. Outhwaite, *Clandestine Marriage in England, 1500–1850* (London, 1995), pp. 9, 65, 68. For the French situation, see esp. the 1579 Ordinance of Blois, which extended the earlier edict of 1557 and was in turn extended by additional decrees through to 1639, when all marriages came to require parental consent, regardless of the ages of the parties; see Hanley, 'Jurisprudence of the arrêts'.

[40] For the *Woodrow* v *Crispe* case, see TNA, STAC 8/295/13; Folger Shakespeare Library, MS. V.B.70, fo. 36d; Durham University Library, MS. 329, fo.191; J. Rushworth, *Historical Collections of Private Passages of State* (8 vols., London, 1721), iii. 13, 40. Upon hearing of the marriage, Alice had called Thomas back to London. Eleanor had then sued in the ecclesiastical courts for maintenance. A case was also launched in the court of Wards that decided he was an 'idiot'. Alice's suit to Star Chamber was presumably prompted by an effort from Eleanor and Dorothy to lay claim to Thomas's estate upon his death.

claims that Thomas had appeared happy about the match. Poor Thomas had died before the case went to trial and thus could not be heard directly. Instead, deponents spent much time presenting various proofs either for or against Thomas's mental capacity to offer consent. Could he read and write? Did he not frequently play at cards? Did he not attend divine service regularly? Could he not 'deliver his mind in sensible terms' between his fits? Some deponents told sad tales of delusions or behaviour from Thomas in the midst of his attacks (such as his talk of commanding an army of thousands in Mesopotamia, taking tobacco with the king or being elected mayor of London); others insisted that he was still of right mind once the seizures passed and had shown signs of delight with his bride. The dispute here focused not on his age but his illness as a bar to forming consent, and on Dorothy's deceits.

The judges decided quickly that Thomas had not been capable of consent. According to one, Thomas 'was not possessor of himself'. More bluntly, according to another, 'he was burst in body, cracked in mind'. Dorothy Crispe had abused her power over a vulnerable young man in her care to secure his estate for her daughter. But had she broken the law? The judges observed that the case fit neither the Henrician nor Marian statutes on abduction, the first of which applied only to women and the latter only to girls under sixteen years of age. But, they concluded, 'such contriving marriage, be it a male or female or of what age soever is evil in itself at the common law and punishable in this court'. They invoked the precedent of the Brewton case and the claim then that 'children are the special goods of their parents'. They fined both Dorothy and Eleanor £500 each, along with smaller fines for some of their confederates, and ordered a sizeable fine for the minister who performed the marriage, 'for thrusting his sickle into another man's business'. Strikingly, too, they declared that 'all benefit of the marriage is taken away by this decree'. In other disputed cases, they had become careful to leave the question of the marriage's validity to the church courts. Here, perhaps because Thomas was already dead, they simply wiped it away.

Star Chamber judges thus made some effort not to tread upon the felony jurisdiction of the common-law courts, with their ability to impose sentences of death upon abductors, or upon the jurisdiction of the church courts, with their ability to annul a marriage as invalid. But between these two limits they opened up new territory in regulating marriage formation and establishing norms for consent free of both force and fraud, offering plaintiffs an additional venue in which to press their complaints. And while the statute that authorized their interventions had focused on young heiresses, echoing the longstanding common-law concern for the property

implications of marriage, the court leaned more towards the ecclesiastical courts in asserting a care for the marriages of all, including young men and women with no particular property of note. The evidence surveyed here should, at the least, make a case for turning to Star Chamber for our histories of marriage and for adding marriage to the list of Star Chamber's responsibilities. We see the privy councillors and justices who staffed the court wrestling with issues of consent and coercion, querying just whose consent, given in what circumstances, sufficed for a binding union and broadening coercion beyond force and fear alone to include fraud and deceit.

While these Star Chamber cases filled a gap between canon and common law, they also straddled the line between abductions by would-be spouses and parental force. Attending to them might thus let us bridge two historiographies on marriage. Some of the marriages at the core of these cases were not the coerced unions examined in histories of medieval abductions but clandestine matches of the sort historians of early modern marriage have long discussed. Some readers may have been asking if many of these cases might not be better seen in the frame of clandestine unions made without publicity and parental consent rather than that of child, early and forced marriage. (Some readers might also have recalled that shortly after Chief Justice Hobart spoke in support of a father's rights over his child to protect the twelve-year-old Jane Brewton from her abductor, the other chief justice consulted on that case, Sir Edward Coke, notoriously used the same argument to coerce his fifteen-year-old daughter Frances into a marriage she did not want.[41]) There is a long historiography, with highlights in work by Lawrence Stone and Alan Macfarlane, among others, that focused on the shifting balance between arranged versus free matches – parental control versus individual choice – with the latter valorized as a sign of liberal modernity, among other positive developments.[42] Force has not been absent from these discussions of marriage, but it is seen as coming from the parents, not the spouse. The Star Chamber evidence suggests that we need to allow that bridal abduction by husbands-to-be continued into

[41] See, e.g., J. Luthman, *Love, Madness, and Scandal: The Life of Frances Coke Villiers, Viscountess Purbeck* (Oxford, 2017), pp. 26–41.

[42] L. Stone, *The Family, Sex and Marriage in England, 1500–1800* (New York, 1977); A. Macfarlane, *The Origins of English Individualism: The Family, Property and Social Transition* (Oxford, 1978) and *Marriage and Love in England: Modes of Reproduction, 1300–1840* (Oxford, 1986). See also, e.g, Ingram, *Church Courts, Sex and Marriage*; R. B. Outhwaite, *Clandestine Marriage*; P. Rushton, 'Property, power, and family networks: the problem of disputed marriage in early modern England', *Journal of Family History*, xi (1986), 205–19; D. O'Hara, *Courtship and Constraint: Rethinking the Making of Marriage in Tudor England* (Manchester, 2002).

the early modern period.[43] And it also helps us see that unmarried women and unmarried men, and unmarried children and unmarried adults, had different interests – or sat at different fulcrums – in the balancing act between individual and family interests that has so dominated our discussions of consent and coercion in early modern marriage. If the individuals whose interests we centre are allowed sometimes to be women or children, that conflict sometimes looks different. We might pay more attention to how consent and coercion and the experiences of violence and freedom in marriage-making developed differentially according to age and to gender.

The post-Reformation remaking of marriage transpired very differently in England than elsewhere. England, notoriously, was the one place among all Protestant jurisdictions that did not come to allow divorce with remarriage. Its other distinction was the lack of change to the age of marriage and refusal to require parental consent to create binding marriages. Eventually, the short-lived marriage law of the Interregnum raised the ages to fourteen and sixteen for young women and men respectively and required parental consent for marriages by anyone under twenty-one years of age to be valid; the latter provision was only reenacted in 1753 with Lord Hardwicke's act.[44] The divergence around parental consent was even more striking than that in respect to divorce, given that even some Catholic countries made such changes. Eric Carlson looked at this 'dog that didn't bark' and concluded that no real calls were made for change in England; English marriage law worked, was well understood and accepted.[45] But we see in these Star Chamber cases evidence not just that some plaintiffs were unhappy with rules around consent as they stood, but some privy councillors and bishops, too. It is a history, then, that warrants revisiting, not least in being not yet past.

[43] On this point, see also Capern, 'Heiress'.

[44] *Acts and Ordinances of the Interregnum*, ed. C. H. Firth and R. S. Rait (London, 1911), pp. 715–18; 26 Geo. II, c. 33.

[45] E. Carlson, *Marriage and the English Reformation* (Oxford, 1994), pp. 96, 138, 141.