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Charles Donahue, Jr., *Law, Marriage, and Society in the Later Middle Ages*. Cambridge and New York: Cambridge University Press, 2007. xix + 672 pp. Notes, bibliography and index. \$140.00 U.S. (cl). ISBN 978-0-521-87728-2.

Review by Laurent Mayali, University of California, Berkeley.

Tracing the impact of legal rules on social practices such as the composition of family, the formation of marriage and the regulation of sexual conduct remains one of the most discussed topics for medieval scholarship. In this comprehensive and well-documented study, Charles Donahue Jr. makes a definitive contribution to our understanding of these complex issues. Following R. Helmholz's and M. Sheehan's pioneering studies, Donahue provides a comparative history of marriage, both as legal institution and social practice, during the last two centuries of the Middle Ages.[1] This rather large volume presents the fruits of more than thirty years of research. The book does not consist of a juxtaposition of revised versions of papers already published. It definitely stands out as an original contribution, the result of an extensive knowledge of medieval courts and their daunting mass of judicial decisions that were often unevenly collected.

Why was marriage so important? From the medieval Church's point of view, marriage played a central function in the government of the Christian people that should conform to the representation of the divine model. In this regard, the significance of canon law reached beyond traditional boundaries that defined respective spheres of temporal and spiritual powers. By the turn of the thirteenth century, ecclesiastical courts were at the center of medieval society. Judges heard and decided an impressive number of cases that virtually encompassed all the aspects of daily life. Donahue builds his rigorous demonstration on quantitative analysis of the records of five medieval ecclesiastical courts in England, Northern France and part of what is now Belgium. The historical importance of these records lies in what they tell us about marriage practice, sexual promiscuity and social relations in rural as well as urban settings. However, as noted by the author, the correct interpretation of these legal sources requires us to be aware of the problematic relationship between legal forms and social facts.

Unsurprisingly this caveat reflects Donahue's approach both as a lawyer and as an historian. He reminds us that legal classification often follows its own logic. It thus shapes our own perception of the original proceedings and distorts the representation of social reality in a process that would trouble the historian. In such cases, it is tempting for the jurist to reconstruct the legal argumentation that could explain the litigants' claims. But one must not attribute to a medieval jurist the reasoning of a modern lawyer while endowing his arguments with an illusory coherence. Partly as a response to this challenge, Donahue contends that a quantitative approach can provide the necessary distance while allowing for a thorough and comparative analysis of canonical issues and matrimonial patterns that were considered by the litigants or suggested by their lawyers. For this purpose, statistical analysis of the diverse court cases sheds new light on complex litigations. However, to the author's credit, Donahue does not let numbers and diagrams obscure the complicated personal stories that make up the substance of the cases. The dryness of the statistics is opportunely tempered with vivid depictions of the legal proceedings in a handful of representative cases that illustrate the different models of

formation of marriage as presented to the judge. Further comparison, more limited in scope, with other ecclesiastical jurisdictions in Italy and Southern France, provides additional points of reference.

The volume is divided into twelve chapters of varying length. In the first chapter, Donahue presents the rules as they were originally stated in a series of decretals and legal commentaries starting in the middle of the twelfth century. The complexity of the directives that regulated the formation of marriage made it difficult for litigants as well as for judges to scrupulously conform to canonical regulations that developed over a period of several centuries. The vigorous expansion of this complex legislation grew out of a handful of principles that were no longer challenged by the last centuries of the Middle Ages. By the beginning of the thirteenth century, canonists such as Tancred and Raymond of Peñafort compiled well known treatises on marriage. They cemented the foundations of a long-lasting canonical model. Donahue places particular emphasis upon the role of Pope Alexander III at the origin of this century-long legislative process. Alexander asserted the canons of the Church's position in a series of decisive opinions that firmly grounded the doctrine of marriage. More specifically, Donahue identifies four essential elements of Christian marriage: monogamy, indissolubility, prohibition of consanguinity and affinity, and the confirmation of the sacramental nature of the union formed by freely exchanged consent. These principles served as guidelines for the cases reported in court records but they do not capture the very diverse circumstances at the origin of each case.

Variations from these doctrinal building blocks were readily entertained by the judges, the litigants, their families and their lawyers. To illustrate his point, Donahue presents four English cases that exemplify the issues raised by the applications of the Church's doctrine. These four stories offer a definite insight into the complex litigations where judges and lawyers attempted to fit various allegations into the existing legal mold. In each dispute, the point of discord lies in the precise characterization of the respective attitudes of plaintiffs and defendants and the words that they exchanged. Because of the consensual nature of marriage, promises, declarations and ways of behaving were of particular significance for sorting out the true intentions of the litigants. In each one of these cases, we find, as Donahue rightly points out, that litigation patterns follow a pre-established legal argumentation that shape in turn the presentation of the claims and the description of the facts. The two main lines of legal dispute concern the wording of promises and the exchange of consent for present or future marriages.

The three following chapters are dedicated to an examination of cases decided by the ecclesiastical court of York. Here Donahue distinguishes as the law as stated from the law as applied. This assumed distinction proves to be problematic when applied to medieval canon law. The dual nature of canonical norms that combine both spiritual and secular concerns infuse them with an authority that often transcends the stated/applied dichotomy. Donahue is quick to acknowledge the ambiguity of this distinction. He carefully sorts out the variations in the interpretation of the rules that denote individual circumstances in relation to specific cases. In most cases, the initial claims reflect an understanding of existing rules that might not always be corrected nor embraced by the judge. In this regard, we may question the relevance of deliberate deviances from the stated canonical rule as understood by all the parties. Corrupt allegations and litigation strategies were framed in response to a series of legal requirements that dominated the disputes but did not necessarily affect their eventual resolution. Strict interpretation of a canon or a decretal could be nuanced by local customs sanctioned by synodal statutes, social practices or the court's own understanding of the case.

In this regard, York is an interesting diocese. The second largest in England, it comprised a large number of parishes both in rural and urban areas. Besides its significance as ecclesiastical seat, the city was also an important governmental center. The extensive court records cover a period spanning two centuries from 1301 to 1499, with the bulk of the cases dating from 1380-1440. Out of a total of 570 cases heard by the Archbishop's court, 215 have to do with marriage issues. The records of the cases are unusually well documented. They offer a range of information on the status and character of the parties,

the nature of the dispute and the legal arguments. As shown by quantitative analysis, the cases brought to the attention of the judges reflect a diversity of patterns between the fourteenth and fifteenth centuries that does not conform, as Donahue points out, to medieval marriage stereotypes. The author remarks also that the emergence of distinct trends does not reflect a significant difference between rural and urban societies. In addition, although parental involvement is higher in rural cases, families' role in the formation of matrimonial alliances appears to be minimal in most of the cases brought to court. This does not necessarily reflect a growing individual freedom in the decision to marry but might simply show that family arranged marriages were less likely to come to the attention of the court unless they were part of a broader quarrel between two family groups. Moreover, large urban centers attracted a population of migrants who resettled outside their original community. This social transplantation would result often in the loosening or even the severance of traditional family ties. It might also explain why in some cases women were able to stand for themselves and attain a rare degree of independence that anticipates later social changes.

By contrast, the diocese of Ely, the object of chapter six, comprised few parishes (including Cambridge) in a mostly rural environment. However, despite its relatively small size, Ely's court heard an unusually large number of cases that were recorded within a short period of seven years from 1374 to 1381. Out of the more than three thousand entries in the judicial register, Donahue identifies more than two hundred records dealing specifically with the formation of marriage. The Ely court acted both as an arbiter between the parties and an enforcer of religious discipline. Although the documentation is less detailed, the litigation patterns do not vary significantly from those of York. Ely's court register confirms the trends observed in York. The records complete the picture outlined in the preceding chapters. Donahue points out that Ely's court played a more active role in the enforcement of rules such as consanguinity and affinity and in encouraging the solemnization of marriage.

On the other side of the Channel, in fourteenth century Paris, ecclesiastical courts were burdened with a string of more varied cases. The study of the registers and the relatively few recorded sentences in matrimonial litigations compiled between November 1384 and September 1387 reveals a different type of court than in York and Ely. Here, in one of the most populous cities in Northern Europe, the huge caseload of the bishop's court reflects the diversity and the complexity of disputes that were brought to its attention. The contrast is striking when we consider the cases involving delictual liability and breach of contractual obligations. Marriage litigations cover broadly the categories identified in York and Ely but the few similarities between the three courts do not counterbalance the larger differences in marriage patterns. Parisian litigants seem to argue mostly over the binding force of future promises.

Donahue contends that the limited number of judgments dealing with the *sponsalia de presenti* might be explained by the threat of excommunication imposed by synodal statutes in such cases. Given the fact that Parisian ecclesiastical judges were willing to enforce future promises, the parties were advised by their lawyers to opt for this safer procedure while avoiding the Church's more severe sanction. Donahue's observation makes sense despite the need to impute to a medieval court lawyer the kind of legal reasoning that would be expected of his contemporary colleagues. The threat of excommunication in clandestine marriages must indeed have acted as a powerful disincentive to seek satisfaction in the resolution of a marital dispute on the basis of a previous exchange of *verba de presenti*. Financial considerations might also have played a role: the cost of the decisory oath would have been substantial for some litigants, but probably limited when considered in the financial outcome of the marriage. In such cases, the full consequences of oath taking might have acted as a deterrent.

The large diocese of Cambrai covered a vast territory comprised of more than a thousand parishes spread over parts of Northern France and modern Belgium, including the city of Brussels where a second official was established in 1448. In Cambrai as in Paris, the bishop's court heard a great variety of cases. The records point to some local distinctiveness without major deviations from the litigation patterns already encountered for the same period in the other courts. Written with care and rhetorical

flourishes revealing the classical legal training of the compiler, the registers of sentences covered, with some gaps, the period between 1438 and 1453. The majority of cases deal with presumptive marriages. This trend seems to reflect, as Donahue observes, a conscious effort from the Cambrai officials to regulate sexual behaviors that placed young women in potentially disadvantageous situations. The wronged women who were not wed by their seducer were often compensated by the court according to the policy of “*Aut nubere aut dotare*” that was often applied by courts across France.

It is difficult on the basis of the registered cases to draw general conclusions about the social practices of the population but the occurrence of such cases tends to show that this problem was recurrent. The register for the Brussels court covers a slightly different period from 1448 to 1459, beginning with the institution of an official from the Cambrai court. An examination of its sentences confirms the trend observed in Cambrai with, however, some discrepancies due to the larger number of cases dealing with abductions and sexual offenses that may point to a stronger emphasis placed on the protection of the family interests over individuals. On the one hand, it is problematical to explain this discrepancy with institutional causes resulting from the interaction between secular and religious jurisdictions. On the other hand, it seems that the Brussels ecclesiastical judges took it upon themselves to strictly enforce marriage laws, policing any form of premarital promiscuity or illicit intercourse.

In the following two chapters, Donahue revisits in more details two main questions that remain constant in the procedure of the different courts. On the one hand, the rate of divorce and separation cases stayed relatively constant. The different rules governing marital property account for the disparity that is observed in the role of the courts in sanctioning the spouses' separation in England and on the continent. The reduced occurrence of incest cases constitutes a second intriguing trend common to all courts that had already been by noticed Helmholz and Sheehan. Canonical rules on prohibition of marriage between relatives were very clear. The church's strong position on incestuous alliances as a result of consanguinity or affinity was often reaffirmed. It was well documented in numerous doctrinal treatises. The courts' decisions not to prosecute such cases reveal a practice that echoes the social concerns at the center of relatively closely knit communities where endogamy and kinship limited matrimonial options. But despite these social constraints, it seems that a majority of people tried, whenever possible, to abide by the prohibition and seek a spouse outside the family circle.

In the twelfth and last chapter, the author expands the geographical scope of his comparative study to ecclesiastical courts in the rest of England and Northern France as well as in Italy and Southern France. Evidence collected from previous studies suggests that the litigation patterns identified in York and Ely appear all across England and Northern France. But the generalization of the conclusions drawn from the study of these courts to Western Europe raises more questions. Canon law applied to the whole of Christendom. Ecclesiastical courts heard similar cases across Western Europe. Yet social practices, economic constraints and kinship structures, to name a few factors, introduced local variations in matrimonial alliances and family strategies. Although more study is required to confirm such dissimilarities, the marriage model presented in this study gives us the unique opportunity to compare, identify and interpret these local variations in light of a solid body of concrete references.

The impressive number of court cases collected for a period of two centuries in three different European countries makes it difficult for the reader to keep abreast of the mass of information offered in this book. But Donahue maintains a rigorous and methodical focus on the presentation and interpretation of his sources. It enables him to present his readers with a thoughtful and balanced judgment on medieval matrimonial practices. We agree with the author that marriage litigations are not the unique gauge for measuring the reality of social practices and their variations across a long period of time and in very diverse environments. However, Donahue's cautious and convincing conclusions shed a unique light on a much debated issue.

NOTES

[1] R. H. Hemholz, *Marriage Litigation in Medieval England* (Cambridge University Press: Cambridge, 1975) and Michael M. Sheehan, *Women, Marriage and Family in Medieval Christendom* (Western Michigan University Press: Kalamazoo, 1998).

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