Evidence of Public Voice and Fame in the London Consistory Court, c. 1486-1494

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Authorization to Submit Thesis

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Abstract

Witness depositions from marriage litigation cases in the medieval London Consistory Court frequently reference public voice and fame, by which witnesses asserted that the facts to which they testified—usually the existence of a marriage—were public knowledge in their parish. Witnesses also referred to the ill fame of opposing witnesses, using their poor reputations to discredit their testimony. Fame has been discussed only briefly in previous studies, and scholars differ on whether it had legal value. I argue that it did. Although the London Consistory was an ecclesiastical court, marriage was a social as well as a religious event and the public knowledge of the community was legitimate evidence. Fame was also a recognized legal concept frequently used in other situations. Finally, fame was presented as evidence in a substantial majority of London Consistory cases, often carefully and in detail, which indicates that it had legal value.

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Introduction

In October 1491, Elizabeth Brown sued Laurence Gilis in the London Consistory, a court of the Bishop of London, in an attempt to force him to honor a marriage contract with her. Elizabeth and her legal representative, Nicholas Trap, brought William Alston and John Waldron as witnesses to testify that they had witnessed Laurence and Elizabeth exchanging marriage vows the previous August. Alston also testified that Laurence had given Elizabeth a sum of money "as to his wife" and that "public voice and fame circulated and circulate" in their parish of St. Botulph without Aldgate that they were husband and wife. A third witness, Margaret Smyth, testified that Laurence had given Elizabeth two shillings upon the marriage. She also claimed that she had heard Laurence say he and Elizabeth "were agreed" upon their marriage, but that his family did not approve, so he believed their contract would not take effect. In response, Laurence brought a series of witnesses to provide colorful statements that Margaret Smyth was "of ill fame and was commonly held, said, and reputed" to be a prostitute and had been evicted from London parishes for it at least five times, that Alston was "of ill fame, a vagabond and an adulterer," and that Waldron was a man "of great poverty and ill fame" known to publicly manage houses of prostitutes and to live with a woman not his wife.[1] Laurence had a counter-suit pending against him by Marion Lauson, who also provided evidence that he had married her. Since these accusations could be made against Elizabeth's witnesses, she was likely of low social standing. It seems that Laurence and his

[1] *Elizabeth Brown & Marion Lauson c. Laurence Gilis,* London Metropolitan Archives, MS DL/C/A/001/MS09065: 1r-3v, 85r-86v, 89r-93r, 99v-104r, 105v-107r, 110v-111r; Shannon McSheffrey, *Consistory: Testimony in the Late Medieval London Consistory Court*, 2009–, http://consistory.cohds.ca/obj.php? action=view&object=case&id=61&expand=actors&case_%20results_ format= full. Accessed March 27, 2017.

representatives were making an attempt to discredit her, whether her claims were true or not, and free him for a more socially acceptable marriage with Marion Lauson.

Brown c. Gilis includes a striking number of appeals to "fame" in the witness statements. In the late medieval period, a couple formed a valid marriage by verbally exchanging consent to marry in words similar to "I take you as my husband/wife." Both secular and ecclesiastical authorities ruled that marriages should take place in a public ceremony following appropriate publicity, but only the exchange of consent was actually required to form a valid marriage. Consequently, couples could marry without publicity or even the presence of a priest. Most marriage litigation revolved around determining the existence or non-existence of a marriage, and therefore hinged on determining whether an exchange of consent had taken place. Marriage was under the jurisdiction of the Roman Catholic Church, and most litigation took place in ecclesiastical courts. The most compelling evidence was eyewitness testimony to the exchange, but other circumstantial evidence might commonly be brought, including evidence of fame. Fame was frequently mentioned in marriage cases before the London Consistory, and referred to one of two related things. One was public voice and fame (*publica vox et fama*), by which the witness asserted that the facts he or she testified to—usually a marriage or betrothal—were public knowledge in their parish. The second was good fame or ill fame (*bone fame* or *male fame*), by which they testified to the public reputation of an individual, usually in order to discredit that individual's witness testimony.

As I will explore further in Chapter Two, fame has been discussed only briefly in the major studies of marriage litigation in English ecclesiastical court records, such as the works of Michael M. Sheehan, R.H. Helmholz, Martin Ingram, Charles Donahue, and Shannon

McSheffrey.[2] Some scholars, such as Ingram, argue that circumstantial evidence of common fame had no legal value and was not considered by judges, who treated eyewitness evidence as the only thing that really mattered.[3] Others, including Donahue and Helmholz, point out that some canon lawyers acknowledged the importance of strong circumstantial evidence or public fame and that judges might consider circumstantial evidence in a supplementary role, although it could not take the place of eyewitness evidence.[4]

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[2] Study of medieval marriage litigation records from the English ecclesiastical courts has been underway since the late 1960s, most notably in the work of the scholars listed here. Sheehan published his seminal work ("The Formation and Stability of Marriage in Fourteenth-Century England: Evidence of an Ely Register") in 1971. In addition to providing one of the first detailed analyses of actual court records, as opposed to the theoretical canon law of marriage, Sheehan also identified what have proven to be several major themes in medieval marriage litigation: the centrality of the exchange of consent to litigation, the ease of contracting marriage, and the internal contradiction between the church's preference that marriages be public and its obligation to uphold marriages made in clandestine circumstances. See Michael M. Sheehan, "The Formation and Stability of Marriage in Fourteenth-Century England: Evidence of an Ely Register," in *Marriage Family, and Law in Medieval Europe: Collected Studies*, edited by James K. Farge (Toronto: University of Toronto Press, 1996). Originally published as Michael M. Sheehan, "The Formation and Stability of Marriage in Fourteenth-Century England: Evidence of an Ely Register," *Medieval Studies* 33 no. 1 (1971): 228-263.

In his classic work *Marriage Litigation in Medieval England* (Cambridge: Cambridge University Press, 1975), Helmholz made a detailed study of litigation records from courts throughout England, analyzing how well the canon law of marriage was enforced in practice. He concluded that in general canon law was effectively and consistently applied, and therefore was had a definite effect on the daily lives of ordinary people. Much of Helmholz's work on ecclesiastical court records is incorporated in his *The Canon Law and Ecclesiastical Jurisdiction from 597 to the 1640's* (Oxford: Oxford University Press, 2004), part of the Oxford History of English Law.

Martin Ingram's often-cited article "Spousals Litigation in England 1350-1640" in *Marriage and Society: Studies in the Social History of Marriage* (London: Europa Publications Limited, 1981) contributed little new material, but is a helpful concise survey of medieval marriage litigation.

Charles Donahue Jr., *Law, Marriage and Society in the Later Middle Ages: Arguments About Marriage in Five Courts* (Cambridge: Cambridge University Press, 2007), is a monumental comparative study of medieval marriage litigation in the courts of York, Ely, Paris, Brussels, and Cambrai. His study is heavily based on numerical analysis of the records, in which he quantifies details such as the most common stories told in court and the relative success rates of male and female plaintiffs.

Shannon McSheffrey has used the London Consistory records as part of her exploration of marriage and sexual relationships in London in the second half of the fifteenth century. She argues that regulating marriage was an important part of civic and political duty in late medieval London, as an extension of patriarchal culture in the public sphere. Consequently, studying how people made and influenced marriages and sexual relationships casts light not only on marriage itself, but on much broader civic and political culture. See Shannon McSheffrey, *Marriage, Sex, and Civic Culture in Late Medieval London* (Philadelphia: University of Pennsylvania Press, 2006).

[3] Ingram, "Spousals Litigation," 46.

[4] Donahue, *Law, Marriage and Society*, 164; Helmholz, *Canon Law and Ecclesiastical Jurisdiction*, 524.

My research focuses on the witness depositions from marriage litigation cases of the London Consistory Court between the years of 1486 and 1494. The period is dictated by the availability of the documents, as these are the years covered by one of two existing books of records from the London Consistory. [5] Based on these records, I argue that circumstantial evidence of fame was, in fact, of legal value. I have several reasons for this. First, marriage functioned not only as a religious bond, but also as a social and economic one. It was a sacrament of the Church, but it was also a primary means of social alliance and property transfer. Relationships in late medieval London did not develop privately in any modern sense, but were public matters subject to influence and observation, as McSheffrey has argued. They were therefore regulated as "issues of public, and not just private, import." [6] Consequently, most legitimate marriages would have been common knowledge in the community—the objects of public voice and fame—which helps to explain why fame might be considered legitimate supporting evidence in court. Chapter One surveys the canon law and social context of marriage in the late medieval period to develop this argument.

Second, I argue that the demonstrated legal role of common fame in other situations confirms its significance in the London Consistory proceedings. Medieval jurists were divided over how much credence should be given to circumstantial evidence in court, but a significant number of writers held that fame should be considered as evidence, especially in cases where not enough eyewitness evidence was available to reach a decision. Fame was also used in some cases as the basis for *ex officio* proceedings, which were cases initiated by the court

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[5] These documents have been made available online in both the original Latin and in English translation at *Consistory: Testimony of the Late Medieval London Consistory Court* (http://consistory.cohds.ca/) an online project of Dr. Shannon McSheffrey of Concordia University.

[6] McSheffrey, *Marriage, Sex, and Civic Culture,* 14, 191. McSheffrey argues that the modern distinction between public life and private life was developed during the Enlightenment and is anachronistic to the fifteenth century.

itself rather than by a suit from an independent plaintiff. Fame—common knowledge—of an offense functioned as probable cause to initiate an investigation in *ex officio* cases.

Personal reputation, another manifestation of fame, was also critically important in late medieval London.[7] In medieval society, having a bad reputation was more than just a social disability; it concretely affected one's legal and social standing. People went to great effort to preserve their reputations. The courts likely would have taken cognizance of something so important to litigants by considering the good or ill fame of the witnesses. Chapter Two touches on the judicial process of ecclesiastical courts such as the London Consistory and on the legal implications of public reputation. I also examine the legal debate among medieval jurists on the proper use of circumstantial evidence, including fame, and on the use of fame to initiate *ex officio* proceedings.

Third, I argue that the sheer volume of evidence of common fame that was presented to the London Consistory demonstrates its value. As I will explore in Chapter Three, appeals to fame appear in the records of over 88% of marriage litigation cases before the court. Even though most mentions are brief, this is a strikingly high number. The evidence usually suggests that the plaintiff alleged the existence of common fame as part of the libel, which was the initial statement of what they intended to prove in court. The verdicts from the London Consistory have unfortunately not survived along with the witness statements, which makes it impossible to concretely determine whether there was a correlation between strong

[7] For general discussion of fame in society, I have relied especially on the work of Barbara Hanawalt, *Of Good and Ill Repute* (Oxford: Oxford University Press, 1998) and the collected essays in Thelma Fenster and Daniel Smail, eds., *Fama: The Politics of Talk and Reputation in Medieval Europe* (Ithaca: Cornell University Press, 2003). McSheffrey, *Marriage, Sex, and Civic Culture,* also discusses the importance of reputation in medieval London society, while Guido Ruggiero, *Binding Passions* (Oxford: Oxford University Press, 1993) discusses fame in his analysis of Renaissance Italy.

circumstantial evidence and greater likelihood of success. However, since evidence of fame appears so often, it seems likely that it had some legal value. Chapter Three presents my analysis of fame as it appears in the London Consistory records. I conclude by discussing some representative cases in detail.

I do not wish to suggest that fame was necessarily central evidence in marriage litigation, or even decisive evidence in uncertain cases. Fame could not replace eyewitness testimony; it could only confirm it or create legal presumptions that lowered the burden of proof.[8] It is also impossible to quantify how much legal effect it had, since the verdicts of the London Consistory cases have not survived. Nonetheless, to ignore the role of fame is to miss something about the nature of late medieval society and of marriage litigation within it. The courts dealt not just with legal abstractions, but with real people who lived public lives in tightly-knit communities, for whom public knowledge was an important and legitimating force.

[8] Fenster and Smail, 30.

Chapter 1: Medieval Marriage

Marriage had become established as a sacrament of the Roman Catholic Church by the twelfth century. The Church came to define what formed valid marriages and to regulate them, primarily through ecclesiastical courts. According to the Church's definition, a marriage was created simply by a verbal exchange in the present tense between a man and a woman (e.g., "I take you as my wife/husband"), or alternatively by a verbal exchange of consent in the future tense (e.g., "I will take you as my wife/husband") followed by consummation.[9] The emphasis on consent meant that valid marriages could be contracted without a public ceremony, parental consent, or even the presence of a priest. Consequently, clandestine or secret marriages were still technically valid, although they were strongly discouraged. Christian marriage was also indissoluble, except in specific limited cases such as impotence or incest. Incest was defined by the Church's laws on consanguinity and affinity.[10] Much of the marriage litigation in the London Consistory (and elsewhere) therefore hinged on determining whether a valid exchange of consent had taken place.

Though regulated by the Church, marriage was a central event in secular life as well. Marriages in late medieval London were public, social acts in which the community had a stake, and they could be influenced or even controlled by family, friends, or employers.[11]

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[9] Donahue, *Law, Marriage and Society,* 16; Helmholz, *Marriage Litigation,* 26; Pollock and Maitland, 368.

[10] Consanguinity was relationship by blood, while affinity was relationship incurred through marriage or the spiritual connection between godparent and godchild. Starting in the fifth and sixth centuries the early medieval church attempted to enforce a ban on marriage to relatives, eventually up to the seventh degree (sixth cousins), but this proved impractical and was reduced to the fourth degree (third cousins) at the Fourth Lateran Council in 1215. See Christopher Brooke, *The Medieval Idea of Marriage* (Oxford: Oxford University Press, 1989), 134-137; Helmholz, *Canon Law and Ecclesiastical Jurisdiction,* 541; Conor McCarthy, *Marriage in Medieval England: Law, Literature, and Practice* (Woodbridge: The Boydell Press, 2004), 34-35; Frederick Pollock and Frederic Maitland, *The History of English Law Before the Time of Edward I* 2nd ed. Vol. 2 (Reprint, Cambridge: Cambridge University Press, 1968), 386-389.

[11] McSheffrey, *Marriage, Sex, and Civic Culture,* 87.

They were also important in the transfer of wealth and property, especially in wealthy families. The public nature of marriage made it the object of extensive public talk and public knowledge, or common fame. In this chapter I will survey both canon law and social contexts to argue that common knowledge was an integral part of marriage to the extent that common fame was useful in court as circumstantial evidence.

Marriage in Theology

The canon law of marriage still current during the late fifteenth century had been established during a period of Church reform in the twelfth century. As part of this reform, the Church came to consider marriage a sacrament and to debate its purpose and definition. [12] It also worked to extend the jurisdiction of ecclesiastical courts over marriage litigation. Pope Alexander III (1159-81) confirmed that a contract of marriage was made either by the exchange of consent in the present tense (*verba de presenti*), or by an exchange consent in the future tense (*verba de futuro*) followed by consummation. Present consent was given by a statement similar to "I take you as my wife/husband" and future consent by one similar to "I promise to take you as my wife/husband."[13] People might also marry by exchanging consent conditional upon some factor such as the approval of parents or employers, in a statement similar to "I take you as my wife/husband provided that my parents give their consent." A conditional agreement became a binding marriage as soon as the conditions were met,

[12] Prior to the twelfth century, marriage was a secular event regulated by the family and owing much of its form to Roman and Germanic custom. For discussion of pre-Christian marriage and its influence on later Christian forms, see James A. Brundage *Law, Sex, and Christian Society in Medieval Europe* (Chicago: The University of Chicago Press, 1987)*;* McCarthy, *Marriage in Medieval England,* 8-14.

[13]Donahue, *Law, Marriage and Society,* 16; Helmholz, *Marriage Litigation*, 26; Pollock and Maitland, 368.

although adding impossible or inappropriate conditions created legal tangles that delighted canon lawyers.[14] Alexander III also decreed that any Christian man and woman could marry by an exchange of consent as long as they were of age, did not have a spouse currently living, had not taken holy orders or vows that precluded marriage, and were not barred from marriage by the laws on incest.[15]

Alexander III's definition of marriage helped resolve a debate among twelfth century canonists over whether consummation was necessary for a marriage to be valid.[16] Canonists had struggled to understand exactly when and how the sacrament occurred, for both practical and theological reasons. The debate was most clearly defined in the writing of the influential canonists Gratian (mid-twelfth century) and Peter Lombard (c. 1095-1160). Gratian represented the views of Bolognese canonists and Lombard, the Bishop of Paris, those of French canonists.[17] Gratian argued in his *Decretum* (c. 1140) that marriage was a process that began with betrothal—an exchange of future consent—and ended in the act of consummation. Both acts, verbal consent and consummation, were thus required to create a binding marriage.[18] Peter Lombard presented the opposite view in his *Sentences*: marriage was created in a single moment by the exchange of consent in the present tense. He clearly distinguished

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[14] See Helmholz, *Canon Law and Ecclesiastical Jurisdiction,* 533-543; Frederik Pederson, "Marriage Contracts and the Church Courts of Fourteenth-Century England," in *To Have and To Hold: Marrying and its Documentation in Western Christendom, 400-1600,* ed. Philip L. Reynolds and John Witte, Jr. (Cambridge: Cambridge University Press, 2007): 290.

[15] Charles Donahue Jr., "The Canon Law on the Formation of Marriage," *Journal of Family History* 8, no.2 (June 1983):144.

[16] For general discussion of this debate see Brooke, 130-131; Brundage, *Law, Sex, and Christian Society*, 235-39, 264-65; McCarthy, *Marriage in Medieval England*, 21-25; Reynolds, "Marrying and Its Documentation in Pre-Modern Europe," 7-11.

[17] The city of Bologna in northern Italy was an important legal center in the Middle Ages due to the prestigious law school associated with the University of Bologna.

[18] "Betrothal begins marriage, sexual union completes it. Therefore between a betrothed man and a betrothed woman there is marriage, but begun; between those who have had intercourse, marriage is established." Gratian, *Decretum,* in *Love, Sex and Marriage in the Middle Ages: A Sourcebook,* Conor McCarthy, ed. (London: Routledge, 2004), 61.

between an unbinding betrothal and a binding marriage.[19] Marriage was not a process and consummation was not required for validity.[20] Alexander III resolved the debate, ruling that marriage could be created either by an exchange of present consent or by an exchange of future consent plus consummation.[21] While he did not invalidate Gratian's process of marriage, the critical part of Alexander's decision was to uphold the idea that marriage could be created by consent alone. He supported Lombard's distinction between marriage and betrothal and his claim that valid marriages did not require consummation. While some canonists continued to debate the issue, the church was committed to the idea that marriage was based on consent and nothing else was strictly required.

During the reform period that began in the twelfth century, the Church also began to make greater efforts to enforce the principle that marriage was indissoluble. The doctrine of indissolubility had not been widely followed, even though it dated back to the fifth century

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[19] "But the efficient cause of marriage is consent, not any consent, but expressed in words; not concerning the future, but in the present tense…saying 'I accept you as my husband and I you as my wife,' makes marriage." (Peter Lombard, *Sentences*, in *Love, Sex and Marriage in the Middle Ages: A Sourcebook*, Conor McCarthy, ed., 63.

[20] Thomas M. Finn, "Sex and Marriage in the Sentences of Peter Lombard," *Theological Studies* 72 no. 1 (2001): 54-58. According to Gratian and the Bolognese school, it was consummation that made the sacrament rather than consent. For Peter Lombard and the French School, consent created the sacrament rather than consummation. Both views presented theological and practical problems. For example, Bolognese canonists struggled to distinguish marriage from concubinage and to resolve the theological problem of how the unconsummated marriage of Joseph and Mary, the parents of Christ, could have been a true sacrament. French canonists struggle to explain how a union created only by words could fully symbolized the union of Christ and the church, who became "one flesh." For detailed discussion of the theological development surrounding marriage see also Philip Reynolds, *How Marriage Became a Sacrament: The Sacramental Theology of Marriage from its Medieval Origins to the Council of Trent* (Cambridge: Cambridge University Press, 2016).

[21] Defining Alexander III's views is complicated because they emerge from his decisions on individual legal cases rather than from any broad definition of marriage. Brundage and McCarthy consider the culmination of Alexander's theory of marriage to be his decretal *Veniens ad nos,* which likely dates to the 1170s. A man had contracted marriage with two women, with the first in future tense (a betrothal) and the second in present tense, and Bishop John of Norwich asked Alexander to rule on which was legally his wife. Alexander instructed the bishop to inquire if the man had had intercourse with the first woman before contracting with the second; if so, consummation had completed the future tense contract and she was his wife. If not, he was married to the second woman, since the present tense contract took effect immediately and superseded the betrothal. The final result of the case is unfortunately unknown. See Brundage, *Law, Sex, and Christian Society,* 334; McCarthy, *Marriage in Medieval England,* 23-24. The decretal is also reproduced and discussed in Pollock and Maitland, 371-372.

writings of Augustine of Hippo. Augustine had symbolically equated marriage with Christ's indissoluble union with the church. The doctrine was taken up by Alexander III, who ruled that consummated marriages between baptized couples could not be dissolved.[22] Unconsummated marriages could be annulled under certain limited circumstances or end automatically if the couple chose to take religious vows.[23] Judicial separations might be granted for adultery, cruelty, and heresy, but these did not justify the actual dissolution of a marriage.[24]

Monogamy was also critically important to Christian marriage. [25] The doctrines of indissolubility and monogamy influenced the patterns we see in medieval marriage litigation in several ways. Most obviously, divorce and separation cases were rare, since there were few legitimate grounds for them. Additionally, these doctrines underlie some of the many competing marriages that appeared in court—cases in which two women claimed to be married to the same man or two men to the same woman. People might try to escape from unwanted but formally indissoluble marriages by simply leaving their spouses and bigamously remarrying, or by trying to prove that the marriage was invalid to begin with

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[22] David D'Avray, *Medieval Marriage: Symbolism and Society* (Oxford: Oxford University Press, 2005), 203.

[23] Brundage *Law, Sex, and Christian Society*, 334; Reynolds, 12. It was much debated what circumstances justified the dissolution of an unconsummated marriage, but Alexander's rulings included impotence, precontract, and mutual agreement to take religious vows before consummation. According to D'Avray, 168, 198, the theological argument underpinning this was that an unconsummated marriage was symbolically equivalent only to "the union of God with the just soul," and could potentially be altered or replaced with a higher union by joining a religious order. A consummated marriage, on the other hand, was symbolically equivalent to "the union of Christ and the Church" and was therefore indissoluble, since considering an alternative to that unbreakable union constituted heresy.

[24] Barbara Hanawalt, *The Ties That Bound: Peasant Families in Medieval England* (Oxford: Oxford University Press, 1986), 210-211.

[25] Monogamy had been central to Christian marriage since the early Church. According to the church fathers, marriages were supposed to imitate the monogamous marriages of Adam and Eve and the symbolic marriage of Christ and the Church. Marrying more than once was akin to taking more than one God. Sara McDougal, *Bigamy and Christian Identity in Late Medieval Champagne* (Philadelphia: University of Pennsylvania Press, 2012), 19-20.

because they had made a previous contract. They might also contract unpublicized marriages in the present tense to extricate themselves from previous betrothals.[26] Any of these situations could result in cases with competing marriages.

While Alexander's definition of marriage appeared to be fairly simple, the appearance was deceptive. Courts and canon lawyers endlessly debated whether consent given in words that did not exactly match the accepted formulas still constituted binding marriages.[27] The definition of marriage as an exchange of consent also meant that nothing else—such as a public marriage ceremony, approval of parents, a dowry, or even the presence of a priest—was required to create a binding marriage. Marriage was the only sacrament that did not require the action of a priest to administer it; it was administered by the couple to each other.[28] This could allow couples to marry freely without the undue influence of others, which created tension between the Church and parents seeking control over their children's marriages. Some historians have argued that Alexander III's marriage theory was a deliberate attempt to increase individual choice in marriage at the expense of families and feudal lords, while others have seen this as an accidental consequence of the Church's decision to focus for theological reasons on consent rather than consummation. [29] Still another view is that the

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[26] Brundage, *Law, Sex, and Christian Society*, 498.

[27] Helmholz, *Canon Law and Ecclesiastical Jurisdiction,* 525.

[28] It is worth noting that the canon law of marriage has been associated not only with upholding personal choice, but with sexual equality between men and women. Canon law taught that the penalties for sexual offenses should be equally applied to both men and women and that husbands and wives equally owed each other the "conjugal debt," or having sexual relations whenever their spouse asked for it. This was taken so seriously that married people were forbidden to go on crusade or take religious vows without the consent of their spouse, since it would interfere with their ability to pay the conjugal debt. Brundage sees these attitudes as early indications of recognition of sexual equality and the legitimacy of female sexuality. See Brundage, "Sexual Equality in Medieval Canon Law," in *Medieval Women and the Sources of Medieval History,* edited by Joel T. Rosenthal (Athens, Georgia: University of Georgia Press, 1990), 66-72.

[29] See Brundage, *Law, Sex, and Christian Society,* 333; Donahue, *Law, Marriage, and Society,* xi. Canon law commentators regularly emphasized the importance of free consent of the individuals to a marriage, without undue influence of family members (Brundage, *Law, Sex, and Christian Society,* 275), although McCarthy notes that church's emphasis on freedom of consent was somewhat undermined by its willingness to

definition of marriage was deliberately left broad and vague to accommodate the wide variation in marriage customs still prevalent in Europe during the eleventh and twelfth centuries, when being too strict would have invalidated an excessive number of marriages.[30]

Whatever the reasons for it, Alexander's definition of marriage created the problem that marriages could be celebrated privately or even secretly, a common feature in most marriage litigation.[31] By defining marriage as consent, Alexander committed the Church to upholding the validity of clandestine marriages.[32] This was problematic, however, since clandestine contracts could make it easier for people to commit bigamy or incest in violation of Church doctrine. Remarrying while a spouse was still alive was deeply unacceptable to the church, given the centrality of monogamy and indissolubility in marriage doctrine.[33] Secret marriages were also undesirable for a number of other reasons. Secular authorities wanted marriages to be public knowledge for legal and testamentary reasons; for example, a secular court might not uphold a woman's right to her dower if she had not been publicly endowed at the church door.[34] Ecclesiastical authorities wanted the sacrament of marriage to be celebrated with the appropriate dignity of a public ceremony and a blessing, rather than rushed through in a clandestine exchange of consent. For the individuals themselves, an unpublicized

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force fornicators to marry and by popular attitudes that continued to support family and feudal oversight of marriage (McCarthy, *Marriage in Medieval England*, 50).

[30] See Pollock and Maitland, 370.

[31] Helmholz, *Canon Law and Ecclesiastical Jurisdiction*, 524-25; Swanson, 169.

[32] Brundage, *Law, Sex, and Christian Society*, 335-336; D'Avray, 126-127.

[33] McDougal, 2, 10-12. McDougal argues that the main problem with medieval marriage in the eyes of the Church was not incest or clandestine marriage *per se*, but bigamy. Although incest was much discussed in canon law, there was little litigation about it, whereas cases of bigamy and competing marriages were very common. She argues that this was the primary motivation of the Council of Trent when it chose to require publicity and the presence of a priest at marriages, since secret marriages made it much easier to make a second bigamous marriage later.

[34] Pollock and Maitland, 374-375. A dower was a part (usually a third) of the husband's property guaranteed to the wife for her support if she was left a widow.

exchange of vows could allow one party to enter into marriage for the purpose of sexual or financial exploitation of the other party and then deny it whenever convenient.[35]

Throughout the Middle Ages, the Church tried to resolve these tensions by repeated attempts to discourage clandestine marriages.[36] A series of statues passed by English Church councils ordered that marriages should be preceded by the publication of banns and should be conducted *in facie ecclesiae*,[37] ideally in a public exchange of vows at the door of a church followed by a blessing from a priest.[38] Banns were public announcements that a couple intended to marry, repeated at their parish churches on three separate occasions—the length of time that had to elapse between announcements varied according to local custom. Banns were made obligatory for the entire Church at the Fourth Lateran Council in 1215.[39] The object was to discourage clandestine marriages, especially marriages that would be invalid on account of consanguinity or of a previous marriage by one of the parties. Repeated announcements were

[35] Donahue, "The Canon Law on the Formation of Marriage," 146; Ingram, "Spousals Litigation," 39, 45, 47; McDougal, 13.

[36] Historians offer different definitions of exactly what constituted a clandestine marriage. McSheffrey mentions that while omitting banns was the most serious, omitting any step in the marriage process, including public exchange of vows, would constituted a clandestine marriage. McCarthy also notes that a clandestine marriage could mean different things; for instance, that the couple married without witnesses, that they married in presence of priest but without procuring banns, or that they married in a secret location. For others, including Reynolds, it is solely the omission of banns that defined clandestine marriage. Goldberg distinguishes between private informal contracts with few or no witnesses and private formal contracts that were witnessed by family and sometimes clergy. He classifies them both as clandestine, since they were not *in facie ecclesia*, but notes that family contracts were much more likely to stand up in court. See Goldberg, *Women, Work, and Life Cycle in a Medieval Economy* (Oxford: Clarendon Press, 1992), 236-237; McCarthy, M*arriage in Medieval England*, 30; McSheffrey, *Marriage, Sex, and Civic Culture*, 31; Reynolds, "Marrying and its Documentation," 25.

[37] Literally, "in the face of the church.'

[38]Helmholz, *Canon Law and Ecclesiastical Jurisdiction*, 523; Sheehan, 137, 145, 154; Pollock and Maitland, 369-370; Richard M. Wunderli, *London Church Courts and Society on the Eve of the Reformation* (Cambridge, Massachusetts: The Medieval Academy of America, 1981), 118.

[39] Reynolds, "Marrying and its Documentation," 25.

intended to give time and opportunity for anyone with knowledge of such impediments to raise an objection.[40]

In theory, then, a marriage took place in three steps: an exchange of consent constituting a betrothal (although if made in the present tense it was technically binding); the publication of banns; and public solemnization *in facie ecclesiae*.[41] Couples were liable to penance if they made clandestine marriages, as were priests who celebrated marriages without seeing that the banns were properly proclaimed.[42] In spite of the laws discouraging clandestine marriages, however, many marriage contracts were not made in *facie ecclesia.*[43] Helmholz observes that most marriage litigation cases involved couples who had allegedly formed a contract through the exchange of consent before solemnization in a church and without the publication of banns.[44] McSheffrey has analyzed the places in which marriages brought before the London Consistory had taken place, and concludes that the single most common location was the house of the woman's parents, preferably in public areas of the house such as halls or shops. It also commonly took place in the home of the woman's employer if she were a servant, or in her own house if she were a widow or owned property.[45] Numerous contracts were also made in drinking houses.[46] This situation was by no means

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[40] Brundage, *Law, Sex, and Christian Society*, 502; Hanawalt, *The Ties that Bound,* 198; Sheehan, 145-146, 151.

[41] McSheffrey, *Marriage, Sex, and Civic Culture*, 28-29.

[42] Andrew J. Finch, "Parental Authority and the Problem of Clandestine Marriage in the Later Middle Ages" *Law and History Review* 7 (1989): 190; Helmholz, *Marriage Litigation*, 27. As Maitland put it, "still the formless, the unblessed, marriage is a marriage" (Pollock and Maitland, 371). This remained the case until Alexander III's theory was replaced by a decree of the Council of Trent in 1563, which required banns and the presence of a priest and witnesses to create a binding marriage, consequently invalidating clandestine marriages. In England, where ruling of Trent did not apply, similar regulations were not enforced until the passage of Lord Hardwicke's Marriage Act in 1753. See Brooke, 139; Reynolds, "Marrying and its Documentation," 17.

[43] Wunderli, 118.

[44] Helmholz, *Canon Law and Ecclesiastical Jurisdiction,* 523.

[45] Shannon McSheffrey, "Place, Space, and Situation: Public and Private in the Making of Marriage in Late-Medieval London," *Speculum* 79, no. 4 (October 2004): 973-74.

[46] *Ibid,* 980.

unique to London. Helmholz comments that of forty-one marriages described by witnesses in depositions in the court of Canterbury between 1411 and 1420, only three were contracted in churches; the remaining thirty-eight were made elsewhere in private places.[47] He also remarks that in Canterbury and York depositions "we hear of marriages contracted under an ash tree, in a bed, in a garden, in a storehouse, in a field…at a blacksmith's shop, near a hedge, in a kitchen…at a tavern, even the King's Highway."[48]

Historians debate whether or not marriages appeared in court specifically because they were contracted in clandestine circumstances. Brundage comments that some couples married clandestinely to circumvent the oppositions of parents or employers, or so they could separate if the marriage was not successful.[49] Ingram agrees that clandestine marriages were often "related to the evasion of social pressures," especially opposition from family.[50] Marriages entered into under these circumstances might be more likely to become objects of litigation than ones made under more favorable conditions. However, McSheffrey argues that the fact that marriages were contracted in domestic spaces does not necessarily mean that they were intended to be secret or private.[51] Rather, the exchange of consent prior to public solemnization was common in general, and litigation resulted when one party didn't want to continue to solemnization.[52] She suggests that the three step process of betrothal, banns, and solemnization had changed in fifteenth century London only in that betrothal had been replaced by exchanges of present consent prior to the solemnization. These exchanges of consent were not necessarily just secret marriages. While some marriages were purposely

[47] Helmholz, *Marriage Litigation,* 28.
[48] *Ibid,* 29.
[49] Brundage, *Law, Sex, and Christian Society,* 501.
[50] Ingram, "Spousals Litigation," 56.
[51] McSheffrey, "Place, Space, and Situation," 989.
[52] *Ibid,* 971.

undertaken in near secrecy, in many cases couples probably intended to have their marriages solemnized at a church at a future date.[53] It is therefore a debated question whether marriage litigation often dealt with clandestine contracts because those cases were intrinsically more likely to land in court, or were simply common in court because they were common generally.

The canon law of marriage influenced the types of cases found in the London Consistory. In England, most marriage litigation cases dealt with whether a valid exchange of present consent had taken place in relatively private circumstances.[54] In some courts, marriage cases would be prosecuted *ex officio*, by the courts themselves rather than by plaintiffs.[55] However, the vast majority of medieval marriage litigation involved a plaintiff suing to prove or enforce a marriage contract. As noted previously, medieval litigation usually involved enforcing a marriage rather than divorce or annulment, in a trend opposite to that seen in the modern day. The case could be one of simple contracts, whether two people had in fact exchanged valid consent; multiple contracts, in which a party was alleged to have entered into multiple contracts and the court was required to judge which was valid; or conditional contracts, when a party had entered into marriage under some condition and if so whether it was valid.[56] These patterns reflect the Church's concern with consent, bigamy, and indissolubility.

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[53] Helmholz, *Marriage Litigation,* 30.

[54] Litigation patterns might be different in other countries such as France. The reasons for this are unclear; for discussion see Donahue, *Law, Marriage, and Society*, 598-622.

[55] L. R. Poos, "The Heavy-Handed Marriage Counsellor: Regulating Marriage in Some Later-Medieval English Local Ecclesiastical-Court Jurisdictions," *The American Journal of Legal History* 39, no. 3 (July, 1995):291-292.

[56] Helmholz, *Canon Law and Ecclesiastical Jurisdiction,* 527-534.

Marriage in Society

Marriage litigation was also affected by the secular aspects of marriage. While marriages were formally created by individuals exchanging consent, this exchange did not take place in a social vacuum. A central economic and social event, marriage was usually a process that involved family and friends at every step, from courtship and dowry negotiations, to spreading publicity about the marriage through social exchange, to finalization in a public ceremony.[57] Into the fifteenth century, regardless of what the church taught, there was still strong feeling among the laity that children should not marry without their parents' permission.[58]

Secular aspects of marriage coexisted with spiritual ones, and they were sometimes in tension with each other. Such tension was most pronounced at the beginning of the twelfth century period of church reform. In 1978, Georges Duby argued that two distinct and antagonistic models of marriage existed in northern France during the twelfth century: a lay model followed by the royal family and high aristocracy, and an ecclesiastical model promoted by the church. The lay model focused on the preservation of family property; as such, it was characterized by arranged marriages, permissibility of divorce, and "a strong tendency towards endogamy,"[59] that is, marriage between cousins to unite inheritances. The ecclesiastical model, on the other hand, promoted marriage by individual consent, indissolubility, and strict exogamy, that is, marriage outside the family group as expressed in regulation on consanguinity and affinity. Duby hypothesized that the church gradually

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[57] Reynolds, "Marrying and Its Documentation," 5.

[58] Brundage, *Law, Sex, and Christian Society*, 498, 502.

[59] Georges Duby, *Medieval Marriage: Two Models from Twelfth-Century France*, Translated by Elborg Forster (Baltimore: The Johns Hopkins University Press, 1978), 7-8.

extended its influence over marriage until the thirteenth century, when the ecclesiastical model became dominant through a process of compromise. The lay aristocracy acknowledged the authority of the church over marriage and the church relaxed its regulations on exogamy, becoming generous its grants of annulments and of dispensations for endogamous marriages.[60]

Property and parental consent remained important in marriage long after this compromise, however. Marriage was a critical economic event, one of the key occasions for transferring property within and between families. To be sure, affection between the couple was important, but it was not all that was considered; people looked for suitable partners of similar, or advantageous, social and economic standing.[61] Dowry (wealth brought to the marriage by the bride) and dower (property guaranteed to the bride by the groom for her support if he left her a widow) were two of the most critically important means of wealth transfer in late medieval London. Dower and dowry could comprise land, rents, goods, cash, or some combination thereof.[62] A marriage in a London merchant's family might bring a dowry that provided an influx of cash for the family business; for a working class family, a marriage meant another worker joined the family's economic unit, possibly bringing greater economic stability.[63]

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[60] *ibid*, 17, 72. Duby's model is often referenced and discussed; see Brooke, 120-127; Brundage, *Law, Sex, and Christian Society*, 194; D'Avray, 14-15; McCarthy, *Marriage in Medieval England*, 5; Reynolds, "Marrying and its Documentation," 15-16. The consensus seems to be that the model is useful for thinking about how the church extended its control over marriage and the challenges it faced in doing so, although the theory of two completely opposite forces is necessarily too simple to capture the complexity of the true relationship between church and secular models.

[61] Barbara Hanawalt, *The Wealth of Wives* (Oxford: Oxford University Press, 2007),71-72.

[62] *ibid*, 50-51; Barbara Hanawalt, *Growing up in Medieval London: The Experience of Childhood in History* (Oxford: Oxford University Press, 1993), 212-213.

[63] Hanawalt, *The Wealth of Wives*, 70.

Disputes regarding property transfer associated with marriage were generally litigated in secular courts, as disputes about the validity of marriage were litigated in ecclesiastical courts. The laws and customs that governed dower and property transfers are beyond our scope here.[64] Suffice to say that marriages might have a great deal of family involvement and follow protracted financial negotiations, especially in wealthy families where large sums of money or valuable property were involved.[65] Evidence for this exists in the form of limited number of written contracts of marriage, although these were not common in England and are only occasionally referenced in ecclesiastical court records.[66] These were secular contracts, often made by parents on behalf of their children, that detailed gifts, dowers, and land that would transferred to the couple on the occasion of the marriage.[67] They were separate and additional to the spiritual contract made in the spoken exchange of consent between the couple. Secular written contracts reflect the influence of families, especially fathers, upon marriages, while spiritual contracts were between the couple themselves.[68] While they have survived in limited numbers, these contracts are interesting because they demonstrate the co-existence of the secular and spiritual aspects of marriage. While few written contracts remain,

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[64] For discussion see McCarthy, chapter 2, "Marriage and Property." Robert Palmer, "Contexts of Marriage in Medieval England" *Speculum* 59 no. 1 (January 1984) analyzes examples of thirteenth century property litigation related to marriage that came before the King's Court. It provides interesting examples the complex legal transactions that might attend marriages, especially among those with property.

[65] This was also true even among peasant families, who took great care in marriages that affected their modest wealth and land holdings. See Hanawalt, *The Ties That Bound*, 198-199.

[66] Helmholz, "Marriage Contracts in Medieval England," in *To Have and To Hold: Marrying and its Documentation in Western Christendom, 400-1600,* ed. Philip L. Reynolds and John Witte, Jr. (Cambridge: Cambridge University Press, 2007): 263; Pederson, "Marriage Contracts," 314. Pederson concludes that the courts relied so much on oral testimony about the oral marriage contract that written documents were rarely introduced as supporting evidence even when available.

[67] Helmholz, "Marriage Contracts in Medieval England," 269.

[68] *ibid*, 273-74.

they give a sense of what was addressed in the oral marriage and dowry negotiations that must have taken place frequently.[69]

Most marriages in late medieval London were very much public and social events rather than private events between the individuals. They took place in a social context and were observed and influenced by parents, friends, neighbors, employers, and civic leaders. While some couples exchanged consent in relative secrecy, most people did not marry without the involvement and often consent of parents, employers, or other influential friends.[70] These people helped identify potential marriage partners, arranged meetings or conveyed gifts between the couple, and helped gauge a potential partner's interest. They helped conduct dowry negotiations and, should worst come to worst, assisted with litigation. It was a common occurrence for employers to help arrange suitable marriages for their servants and apprentices, who they had both the duty to protect and assist and the privilege of preventing from marrying until their term of service had expired.[71]

In practice, therefore, the level of individual choice in marriage varied in spite of the Church's emphasis on consent. Unsurprisingly, children of wealthy or aristocratic families, especially daughters, tended to marry earlier and have less freedom of choice in their partner than children of middle-class families. On the other hand, members of the lower and middle classes might be limited in their ability to marry by financial constraints and being bound by

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[69] The written secular marriage contracts discussed by both Helmholz and Pederson are all associated with people of high social rank who would have had substantial property and interests to safeguard. The urban dwellers litigating in the London Consistory apparently had less; at least, no evidence of written contracts has survived. What is of interest is Pederson's conclusion that the separation between the secular and spiritual aspects of marriage was not hard and fast; he concludes that they no longer support Duby's model of mutual antagonism. Pederson, "Marriage Contracts," 315.

[70] McSheffrey defines friends as people on whom a person "might rely for advice and advancement, especially in important matters such as marriage or career," generally older people who might or might not be relatives. McSheffrey, *Marriage, Sex, and Civic Culture*, 78-79.

[71] Hanawalt, *The Wealth of Wives*, 70, 72; McSheffrey, *Marriage, Sex, and Civic Culture*, 84.

apprenticeship or servanthood.[72] Apprentices in late medieval London often could not marry without permission until they had completed their apprenticeship, not a trivial restriction considering that apprenticeships could last ten years and young men might not emerge from them until their mid-twenties.[73] The London Consistory provides many examples of marriage made conditionally on the permission of parents, suggesting that many people of all classes, especially women, refrained from contracting marriage without permission from parents or employers. Friends and relatives could work to prevent as well as advance marriages, often by threats of withholding financial support,[74] since it was difficult in practical terms for a marriage to take place if the couple did not have sufficient property to support itself.[75] In extreme cases, McSheffrey argues, litigation served as an extension of parental control, citing several cases in which a woman's own relatives testified against her in court to enforce their own wishes about her marriage.[76]

Influence on marriages extended even beyond family and friends. Regulating marriage and sexual relationships was an important part of the civic duty of London elites to uphold order.[77] For example, the Mayor and aldermen of London were responsible for the marriages of "orphans of the city," the children of deceased male citizens of the London.[78] They exercised parental supervision and protection in place of the father.[79] Civic officials and city inquests also reported and investigated fornication, adultery, and other sexual misconduct.

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[72] Hanawalt, *Growing up in Medieval London,* 205-206; Ralph A. Houlbrooke, *The English Family: 1450-1700* (London: Longman, 1984), 70-72. For example, though focusing on a slightly later period than ours, Houlbrooke notes that apprentices or male servants might marry much older widows for financial gain.

[73] Hanawalt, *Growing up in Medieval London,* 203, 210.

[74] McSheffrey, *Marriage, Sex, and Civic Culture,* 94.

[75] McCarthy, *Marriage in Medieval England,* 51.

[76] McSheffrey, *Marriage, Sex, and Civic Culture,* 119.

[77] *ibid*, 13-14

[78] Citizenship was held by only 3000-3500 London residents, mostly men. *ibid,* 10.

[79] *ibid*, 106-108.

The city punished these offences or referred them to ecclesiastical courts.[80] In these and other ways, the city itself regulated behavior.

The close involvement of the community is even more understandable when we consider that London, while sizable in the Middle Ages, was not a large city by modern standards. Hanawalt estimates the population of London at somewhere around 50,000 in 1485, immediately before the London Consistory cases, although it should be noted that the Consistory drew litigants from surrounding areas as well as from the city itself. McSheffrey agrees, offering an estimate of 40,000-50,000 residents in late medieval London. People in medieval London were also part of smaller communities formed by their wards and parishes.[81] London had twenty-five wards, bureaucratic units overseen by alderman and peacekeeping officials. Parishes were smaller still; there were around 107 parish churches in London.[82] Therefore, when a Londoner before the Consistory asserted that common fame of a marriage circulated in a parish, he referred to a community with an average size of fewer than 470 people, possibly much smaller.

Public fame—common knowledge—circulated about marriages because they were important public events in which many people had a stake.[83] The public nature of the marriage process supported the legal assumption that a proper marriage would be common knowledge, and that the voice of common fame would provide circumstantial evidence worth having in court. Litigants introduced evidence of fame to demonstrate that a marriage had

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[80] *ibid*, 152, 157-158. McShefffrey considers the secular and ecclesiastical jurisdictions over these offenses to have been complimentary, although not completely clear.

[81] Hanawalt, *Growing up in Medieval London,* 24 and note 4; McSheffrey, *Marriage, Sex, and Civic Culture*, 9.

[82] Hanawalt, *Growing up in Medieval London,* 30.

[83] McSheffrey, *Marriage, Sex, and Civic Culture,* 31, 41.

taken place, and also sometimes that it had been made with appropriate publicity as encouraged by the Church and by secular authorities.

The church courts were attempting to rule on the spiritual validity of marriages, but they had to rely on essentially secular circumstantial evidence for marriage. If marriage had been strictly a spiritual act between individuals, common fame, or common knowledge of the marriage, might not have been relevant. Since it was also essentially a communal act in which the community had a stake, however, common fame was legitimate evidence worthy of consideration. It offered additional support to litigants trying to support or disprove evidence of the spiritual contract.

Chapter 2: Judicial Process

Ecclesiastical courts in the later Middle Ages followed a sophisticated legal procedure based on Roman Law, engaging with a vast body of legal thought and commentary by canon lawyers. While some canonists argued against admitting circumstantial evidence like common fame, others argued that it should be admitted, especially in cases where there was no better evidence available. In practice, fame was regularly used in certain types of cases, notably fornication, adultery, and paternity suits. It was especially important in cases prosecuted *ex officio,* by the initiative of the court itself rather than an independent plaintiff. I begin this chapter with a survey of the judicial process used by courts like the London Consistory and continue with a discussion of the role of fame in canon law. Based on the demonstrated use of fame in court, I argue that there was a firm legal basis for it to be considered in the London Consistory.

The Ecclesiastical Court System

The medieval Church had a vast judicial system made up of courts at a variety of administrative levels. Archdeacons and deans or their delegates presided over lower courts, while bishops and archbishops had charge of higher ones. [84] At the highest level, the pope himself and his judicial delegates heard litigation from anyone who could afford to travel to Rome to put their case.[85] The Church and the ecclesiastical courts claimed jurisdiction over a

[84] Brundage, *Medieval Canon Law,* 122; Pederson, "Marriage Contracts," 288.

[85] See Brundage, *Medieval Canon Law,* 123-128, for a discussion of the papal judicial system. The pope exercised "both original and appellate jurisdictions" over all of Christendom, a position central to the development of papal authority.

wide range of offences and immoral behaviors. The justification was that these behaviors threated the prospect of salvation, not only for the people who performed them, but for the surrounding community into which they threatened to spread.[86] The Church consequently claimed the right to regulate these behaviors as an intrinsic part of its work toward promoting salvation.

Church courts thus had jurisdiction over issues surrounding marriage and sexual sins, including fornication, adultery, and prostitution.[87] Lower courts were more likely to hear cases of fornication and adultery—none appear in the London Consistory records—while bishops' consistory courts were more likely to hear marriage cases.[88] As noted previously, the most common type of marriage case brought was a suit to enforce a marriage contract.[89] In addition to simple exchanges of consent, a docket might also include conditional contracts and competing contracts, in which two different people claimed to be married to the same third person and the court had to judge which marriage (if either) was valid. There were a limited number of separation cases based on precontract, consanguinity or affinity, coercion, impotence, and other matters.[90]

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[86] Brundage, *Medieval Canon Law,* 71. Legal jurisdiction in medieval England was divided between ecclesiastical and secular courts. Criminal and property cases were generally heard in secular courts, while the church regulated things such as sexual offenses, defamation, the execution of wills, breach of faith, and petty debt. See R.N. Swanson, *Church and Society in Late Medieval England* (Oxford: Blackwell, 1989), 145-147, 167-174 for discussion of the shared jurisdiction. Jurisdiction over whether marriage had taken place had been held by the church since the twelfth century, enshrined in Glanvill. Pollock and Maitland, 367.

[87] Brundage, *Medieval Canon Law,* 72, 75. An exception to this was that lay courts had jurisdiction over property cases affected by marriage, such as inheritance or failure to provide a promised dowry or dower. See also Hanawalt, *The Wealth of Wives*, 79-80. Palmer, "Contexts of Marriage in Medieval England" provides interesting discussion of complex marriage-related property cases that appeared before the king's court.

[88] Lower courts investigated large numbers of cases of fornication and adultery. They generally responded by assigning penance, ordering guilty couples to abjure each other's company, or pressuring them to legalize the relationship by contracting marriage. Pederson, "Marriage Contracts," 288.

[89] Helmholz, *Marriage Litigation,* 25.

[90] *ibid*, Chapter III.

The London Consistory Court was the highest court of the Bishop of London. It heard cases brought by residents of London and surrounding counties related to marriage, divorce, clerical discipline, defamation and, less commonly, oath breaking and testamentary dispositions. The bishop did not personally hear cases in any of his courts; examinations and judgments were delegated to professional officials.[91] The Consistory Court followed a set procedure, described below, which emphasized the private interrogation of witnesses. Verdicts were issued based on the testimony in recorded witness depositions. Bringing a case in the Consistory also required filing formal documents and objections, so the parties in the case generally employed the services of professional proctors to represent them in court.[92] The workings of the court were consequently relatively slow, expensive, and "highly professional."[93]

Legal Procedure

The higher medieval ecclesiastical courts followed a sophisticated system of canon law, which like the law and theology of marriage, was greatly expanded during the twelfth and thirteenth centuries. It originated from a combination of early church laws—such as

[91] Wunderli, 7. See also Brundage, "Medieval Canon Law, 121-122. Brundage notes that following the twelfth century, many bishops increasingly delegated their judicial responsibilities to trained, professional judges, since the number of cases and the increasingly complex nature of canon law made it impossible for bishops to judge all cases personally in addition to their other duties. The judicial delegate, titled the "official-principal," presided over the consistory court and its associated bureaucracy of clerks, bailiffs, and assistant judges.

[92] Wunderli, 10.

[93] *ibid*, 10, 41. This contrasted with the Bishop's second and lower Commissary Court, where cases were argued orally in open court. The parties were usually self-represented and the most common form of evidence was compurgation, a process by which the accuser or defendant would others to swear that they believed their statements. The Consistory generally heard instance (civil) cases, such as these regarding marriage, while the Commissary Court at this period heard more office (criminal) cases. Around the turn of the sixteenth century, the Commissary Court began to hear more marriage litigation than the Consistory, but in the late fifteenth century, marriage cases were still most often heard in the higher court.

Church Fathers, decrees of church councils, and decisions by popes—and Roman law as it had survived in the *Corpus Iuris Civilis,* the compilation of Roman Law made under the Emperor Justinian.[94] Prior to the twelfth century, Europeans tended to rely on irrational modes of legal proof, particularly trials by ordeal.[95] Common forms were ordeal by water (the defendant was thrown into a body of water and was innocent if he sank), by heat (the defendant lifted an object from boiling water or carried a piece of heated iron; he was innocent if the burns healed cleanly), or trial by combat.[96] The focus of this type of evidence was upon obtaining divine justice rather than evaluating facts.[97] Ordeals gradually disappeared in Western Europe, to be replaced in various courts by trial by jury, witness examination, and documentary evidence.[98] This was facilitated through the revival of Roman law, which was incorporated by ecclesiastical courts. Ordeals were effectively ended following 1215, when the Fourth Lateran Council forbade priests to participate in them. The decision rendered ordeals no longer viable, since priests had played a central role in invoking divine justice to decide the case.[99]

By the later Middle Ages, then, higher ecclesiastical courts operated under complex, rationally based canon law.[100] Litigants were usually represented in court by professional

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[94] Hunt Janin, *Medieval Justice* (Jefferson, North Carolina: McFarland & Company, Inc., 2004), 28, 31, 33.

[95] R.C. Van Caenegem, *Legal History: A European Perspective* (London: The Hambledon Press, 1991), 73.

[96] H. L. Ho, "The Legitimacy of Medieval Proof," *Journal of Law and Religion* 19, no.2 (2003-2004): 261; Janin, 14-17.

[97] Ho, 260; Janin, 13.

[98] Van Caenegem, 82, 104-108.

[99] Finbarr McAuley, "Canon Law and the End of the Ordeal" *Oxford Journal of Legal Studies* 26 no. 3 (2006): 473-474

[100] For what follows see Brundage, "Medieval Canon Law," 129-134; G.R Evans, *Law and Theology in the Middle Ages* (London: Routledge, 2002), 91-104; Helmholz, *Marriage Litigation,* 112-140. Helmholz focuses on procedure as observed through the litigation records of English courts, while Brundage and Evans focus on procedure as presented in canon law texts, resulting in minor differences.

proctors, although they probably often attended court in person anyway.[101] Proctors were professional legal representatives attached to the Consistory courts, who were hired by a majority of litigants to act for them in court by presenting witnesses and evidence. Some English courts also had professional advocates, who argued the case before the judge once all the evidence had been introduced. In courts without advocates, it seems likely proctors fulfilled both functions. At least in theory, these lawyers were sworn only to represent litigants they believed had legitimate cases and to withdraw from representing their clients during the case if they found out otherwise.[102]

Written documents were central to the ecclesiastical court procedure, as Helmholz has commented.[103] When a case was brought in an ecclesiastical court, a written citation was issued summoning the defendants into court, usually by the court registrar.[104] This was followed by the preparation of a written libel, a document that outlined all of the plaintiff's claims. In some locations, a libel was merely a brief document that outlined the names of the plaintiff and defendant and the primary issue of the case. It would be supplemented by other documents laying out the charges in greater detail. However, later medieval English courts used an expanded document known as an articulated libel. The articulated libel combined the functions of an ordinary libel and the supporting documents and presented a series of points claimed by the plaintiff, outlined in some detail, to which witnesses would respond.[105] It is this type of libel that was used in the London Consistory by the late fifteenth century.

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[101] Pederson, "Marriage Contracts," 288.

[102] Helmholz, *Marriage Litigation* 149-154; Brundage, *Medieval Canon Law,* 64.

[103] Helmholz, *Canon Law and Ecclesiastical Jurisdiction,* 215. If the defendant failed to appear after three citations (about 30 days), he might be ruled contumacious and an interim verdict give against him, which would become permanent if he failed to appear within a year. Brundage, 129-130.

[104] Helmholz, *Canon Law and Ecclesiastical Jurisdiction,* 318.

[105] *ibid*, 321-323.

Unfortunately, the London Consistory libels have not survived, but their contents can often be partially inferred from witness statements, since the witnesses were asked to respond to each point of the libel individually. For example, three witness depositions in *John Brocher c. Joan Cardiff* include the following statements: 1)"To the sixth interrogatory, he says that the fame is the common voice of the people, and it began to circulate amongst the greater part of his neighbors immediately after the contract as he deposed above, and it took its origin from the issuing of the banns." 2)"To the sixth interrogatory, he says that from the time of the issuing of the banns between John and Joan, public voice and fame circulated concerning those things that he has deposed above amongst the greater part of his neighbors, and the fame is the common voice of the people." 3)"To the sixth interrogatory, she says that the fame is the common voice of the people and that it began to circulate from the feast of Easter or at most the time of the issuing of banns between them among the greater part of the neighbors and inhabitants of the parish." From this, we can conclude that the "sixth interrogatory," or the sixth major claim on the libel, was basically what the witnesses stated: that the marriage was and had been common knowledge throughout the community at least since the banns had been read, if not longer.[106]

Once the libel was presented to the defendant, he or she was given time to decide how to answer and to present exceptions to the statements in the libel if desired. A defendant could raise either peremptory or dilatory exceptions. A peremptory exception challenged a basic legal or factual element in the charges, and if the judge accepted it the case would be dismissed. A dilatory objection claimed that there was a procedural error in the plaintiff's

[106] See London Metropolitan Archives, MS DL/C/A/001/MS09065: 22r-24r; McSheffrey. *Consistory,* http://consistory.cohds.ca/obj.php?object=case& action=view&id=20&expand=cases& case_results _format=full. Accessed March 27, 2017.

case, and if the judge accepted it the problem would have to be ruled upon before the case would proceed. Dilatory objections were frequently used to delay the case.[107]

If the case went on, the plaintiff was responsible for providing evidence sufficient to prove his or her claims.[108] Canonists were clear that the burden of proof rested with the plaintiff. In broader canon law, evidence could include confession, physical or written evidence, compurgation, or inquests.[109] In England, however, by far the most common type of evidence was the eyewitness testimony. Other types of evidence were not entirely absent; the Consistory records include some depositions by defendants that might constitute confession. There is also at least one case that apparently involved the invocation of an inquest, a knowledgeable group of people summoned by a judge to help determine some question.[110] In *Alice Barbour c. William Barbour*, Alice apparently sued for divorce from her husband on the grounds of impotence, one of the few reasons for separation recognized by canon law. The deposition book includes statements by four women from the ages of 42 to 50, who had physically examined Barbour and testified that he was impotent due to injuries received during a fire.[111] Nonetheless, circumstances like these were rare compared to eyewitness testimony. Witnesses were produced by the plaintiff or the defendant and examined privately by officers of the court in a convenient location; any expenses incurred by witnesses were paid by the parties who produced them.[112] Their depositions were recorded in deposition

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[107] See Brundage, *Medieval Canon Law,* 130-131; Evans, 99.

[108] Evans, 97, 99.

[109] Helmholz, *Canon Law and Ecclesiastical Jurisdiction,* 328.

[110] *ibid*, 337.

[111] *Alice Barbour c. William Barbour*, LMA, MS DL/C/0206: [loose folio]; McSheffrey, *Consistory,* http://consistory.cohds.ca/obj.php?object=case&action=view&id=122&expand=cases&case_results_format=full Accessed March 27, 2017.

[112] Helmholz, *Marriage Litigation,* 128; Pederson, "Marriage Contracts," 288. Helmholz considers this to be a weak feature of the process of ecclesiastical courts because the opposing party, and frequently the judge himself, had no opportunity to examine the witnesses in person. Questions from the opposing party had to be submitted in writing ahead of time, and witnesses' responses were also passed on to the judge in writing.

books, which are the records that have survived from the London Consistory Court in this period.

In the interviews conducted for the London Consistory Court, the witnesses were apparently asked to say what they knew regarding each of the points enumerated in the libel. If they had no knowledge regarding certain points, that was also recorded. The amount of extra detail recorded by the scribes varied considerably; some statements contained detailed accounts of the witnesses' age, trade, parish or street of residence, their relationships to the parties in the case, or how long they been acquainted with them. Others contain only brief responses to the points of the libel.[113] It is likely that the statements that have come down to us were formally organized and written up afterwards from notes taken during witness examinations.[114]

After the depositions were taken, they were submitted to the judge, who would make them public and send copies to the parties in the case. Objections could be raised against the admission of the depositions on a variety of grounds, but Helmholz concludes that "In England, normal usage was to…admit depositions from a wide range of persons and for the judge then to consider the objections against them in assessing the probative force of the evidence they gave."[115] Following this, depositions and evidence were submitted to the judge, perhaps followed by brief oral arguments from the proctors on each side of the case.[116] The judge then named a day for the parties to hear him issue a formal sentence. He reached a decision based

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[113] Helmholz, *Marriage Litigation,* 131-134. A variety of evidence was accepted and it rested with the judge to decide what was relevant.

[114] *ibid*, 20.

[115] Helmholz, *Canon Law and Ecclesiastical Jurisdiction,* 340.

[116] Helmholz, *Marriage Litigation,* 129, says that the judge proceeded solely on the basis of written depositions. In contrast, Brundage, *Medieval Canon Law,* 133, says that the judge heard brief oral arguments, and Evans, 100-101, similarly discusses sources that describe oral debates before the court.

on the written witness depositions, often not hearing any testimony personally.[117] This is one of the reasons for Helmholz's comment on the "centrality of documents" referred to previously. In cases before the London Consistory, the number of depositions could range from a single statement by the defendant up to twenty-five statements in the unusually complex case of *Elizabeth Brown c. Laurence Gilis*, and might include multiple examinations of some witnesses. As mentioned previously, the sentences have unfortunately not survived from the London Consistory Court, so it is unknown how the cases were decided except in those rare instances when information is available about the litigants from other sources.

Since witness statements were so central to litigation, it is worth asking how accurate they tended to be. Charles Donahue warns of the dangers of taking plaintiff statements and witness depositions too much at face value. Based on his study of records of marriage cases heard in the courts of Canterbury and York, he warns that, especially by the late Middle Ages, people seemed to be very familiar with what was required to form a valid marriage, and therefore knew what they would have to say in evidence in order to produce the desired results in court. Therefore, there was no guarantee of truthfulness by witnesses. Indeed, he surmises that evidence was regularly falsified or slanted, occasionally with the collusion or indifference of court officials.[118] He also suggests that given the limited grounds recognized by canon law for the legal separation of a married couple, untruthful claims of previous marriages were used as a method of achieving otherwise impossible separations. This might be achieved either through outright perjury regarding the existence of a precontract or through

[117] Helmholz, *Marriage Litigation*, 129
[118] Donahue, *Law, Marriage and Society*, 50, 55-56.

self-deception, such as a belief by one of the spouses that since their marriage was breaking down, it must be because it was invalid to begin with.[119]

At least some of the same situations prevailed in the court of London. Standard exchanges of consent—as opposed to conditional ones—are described consistently across the statements of Consistory witnesses. A representative example appears in *Elizabeth Brown c. Laurence Gilis,* discussed previously. William Alston testified that he heard the couple contracting marriage: "Then Laurence said to her, 'Give me your hand. I Laurence take you Elizabeth to my wedded wife, to have and to hold, and thereto I plight thee my troth,' and they unclasped hands. Then Elizabeth similarly responded and said to Laurence, 'I Elizabeth take thee Laurence to my husband, and thereto I plight thee my troth.'" Witnesses in a majority of marriage litigation described very similar exchanges of vows.

Similar cases aimed at achieving separations also likely appeared, as is suggested, for example, in McSheffrey's research on the lives of Richard Turnaunt and his wife Joan Stokton. Joan ostensibly sued for a separation from Richard in the London Consistory Court in 1469 on the grounds that she had contracted a previous marriage. [120] It was a straightforward and uncontested case, with two witnesses to a marriage contract between Joan and one John Colyn fifteen years prior to her marriage to Richard. In fact, McSheffrey hypothesizes that the first marriage had never taken place and the case was simply a means of obtaining a legal separation, possibly initiated by Richard without Joan's involvement.[121] Cases were not always as they seem; parents, guardians, or the other spouse might be the ones

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[119] i*bid*, 60-61.

[120] Shannon McSheffrey, "Detective Fiction in the Archives: Court Records and the Uses of Law in Late Medieval England," *History Workshop Journal* 65 (Spring 2008):67.

[121] *ibid*, 69-70.

initiating or acting in a case rather than the actual plaintiff or defendant named. In extreme situations, a court case could also be a tool for parents or guardians to attempt to enforce their will upon their children by having an imprudent marriage ruled invalid or applying pressure to make an acceptable one.[122] It is also worth noting that the cases that appeared in litigation were by their nature exceptional; they may present an overly negative view of medieval marriage, since they are the marriages that in some sense failed. Many, if not most, medieval marriages were reasonably happy and successful.[123] Nonetheless, in another article McSheffrey argues that "Naturally some witnesses lied or stretched the truth, but this does not necessarily diminish the value of the evidence their testimony provides; in many ways the plausible lie…is one of the most revealing kinds of sources we have about the expectations and practices of the past."[124] To be sure, depositions cannot be taken entirely on their face value, but "plausible" evidence can nonetheless shed light on medieval practices.

My discussion presents the general outlines of an ideal court procedure, but it should not be assumed that all marriage cases were so adjudicated. There were exceptions to most rules of procedure. In general, church courts adhered to the canon law of marriage and the writings of canonists were relevant to actual problems that arose in court, but as Donahue notes, the courts often failed to enforce the principle of indissolubility and were willing to compromise with social realities.[125] Helmholz concludes that ecclesiastical courts were efficient, flexible, and reasonably free from corruption, and consequently effective in settling disputes. While sometimes ecclesiastical courts are associated with very slow and often-

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[122] McSheffrey, *Marriage, Sex, and Civic Culture,* 119.

[123] For example, Hanawalt analyzes the fourteenth and fifteenth century letters of the Stonors and Celys (London merchant families) and the more positive view of courtship and marriage that emerges from them. See Hanawalt, *The Wealth of Wives,* 82-94.

[124] McSheffrey, "Place, Space, and Situation," 963.

[125] Donahue, *Law, Marriage and Society,* 50, 55-56; Helmholz, *Marriage Litigation,* 187-189.

delayed proceedings, in general marriage cases seem to have been heard reasonably quickly and efficiently. He speculates that marriage cases, in which the parties were acting to resolve personal situations and often determine their freedom to marry, did not offer the motivation for continual delay seen in something like a debt case.[126] However, it is important to note that litigation in courts like the London Consistory was a complex and expensive process. Therefore, it to some degree favored the wealthy and those with friends who had connections and experience that could assist them.[127] Powerful friends might help even someone with a relatively weak case proceed further along in the process than they would be otherwise.[128] In the end, the courts were dealing with real, complex disputes, not following precise guidelines to the letter.[129]

Common Fame in Law

Fame (*Fama*) in the medieval sense had multiple aspects: it included public talk and rumor, public knowledge, and the public reputation of individuals. Its role in determining reputation was particularly important, as fame could establish a person's standing within the community.[130] Common fame was more frequently presented in the London Consistory, however, as public knowledge. Fenster and Smail suggest that medieval fame can be understood as a "general impression" about a person or a situation that was manifested in and inseparable from public talk.[131] Although it may seem surprising today, fame was legally important in

[126] Helmholz, *Marriage Litigation,* 116-117, 187-189.
[127] McSheffrey, *Marriage, Sex, and Civic Culture,* 111.
[128] *ibid*, 113.
[129] Helmholz, *Marriage Litigation,* 112-113.
[130] Fenster and Smail, 2-4.
[131] *ibid*, 3.

secular law, especially in continental Europe.[132] It was distinct from hearsay, which had no legal force, because fame represented a collective opinion of the community and therefore was considered more reliable.[133]

It may seem odd to the modern reader that "general impressions" and "public talk" were legally significant, but it should be remembered that late medieval Europe was still in many respects an oral society. M.T. Clanchy argues that although basic literacy and use of documents as records greatly expanded during the twelfth and thirteenth centuries, oral culture remained predominant, among many until the mass literacy efforts of the nineteenth century. He also notes that medieval people did not necessarily share the modern idea that written records are more trustworthy than human memory. During the twelfth and thirteenth centuries, and likely afterwards, oral witnesses remained preferable in court to the evidence of written documents, since forgery was widespread.[134]

Common Fame as Reputation

Ill fame, in the sense of having a bad reputation, was more than a social disability: it had significant legal and economic consequences throughout Europe. In Renaissance Florence, being of good fame was a legal status resulting from "trustworthiness, good name, and honor,"[135] the possession of which gave individuals standing to hold certain public offices and give testimony in court. A similar situation existed in French customary law in the high Middle

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[132] *ibid*.

[133] Chris Wickham, "*Fama* and the Law in Twelfth-Century Tuscany," in *Fama: The Politics of Talk and Reputation* eds. Thelma Fenster and Daniel Lord Smail (Ithaca, New York: Cornell University Press, 2003), 16-17, 19.

[134] M.T. Clanchy, *From Memory to Written Record* (Cambridge, Massachusetts: Harvard University Press, 1979), 211, 220-221, 230-231, 263.

[135] Thomas Kuehn, "*Fama* as a Legal Status in Renaissance Florence," in *Fama: The Politics of Talk and Reputation in Medieval Europe,* 31.

Ages. The loss of *bonne renomee* (good reputation) through dishonest behavior, especially through a criminal conviction, could prevent someone from acting as a custodian for a minor, bringing a lawsuit, or testifying in court.[136] Fame also appeared in the Visigothic codes used in medieval Spain, in which *infamia* (infamy) was a legal category that prevented members from testifying in court. The argument was that witnesses previously proven to be dishonest or immoral were likely to impede justice by offering false testimony and reducing the dignity of legal proceedings. The concept of "infamous" people who were legally disadvantaged is partially traceable to the law of the Roman Empire, which designated certain people as *infames* who could not vote, hold office, join the army, testify in court, or make wills. *Infames* included certain criminals, the immoral, and members of professions such as prostitutes, undertakers, gladiators, and others. Shared Roman heritage offers an explanation for the legal similarities in France, Spain, and Florence, and also suggests why infamy did not take hold as an official legal category in England.[137]

Guido Ruggiero has noted that fame in late sixteenth century Italy was constantly developed through gossip, and that "what was often labeled idle words, in an environment so finely attuned to reputation, actually was a potent form of power."[138] An example appears in a legal case involving a young Venetian woman named Elena Cumano. Elena and her family had tried to force Gian Battista Faceno to honor his broken promise to marry her through a variety of means, from legal appeals to witchcraft. Investigators at once suspected that Lucretia Marescalio, a middle-aged local woman, had abetted Elena in witchcraft—mostly because

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[136] F.R.P. Akehurst, "Good Name, Reputation, and Notoriety in French Customary Law," in *Fama: The Politics of Talk and Reputation in Medieval Europe,* 79-81.

[137] Jeffrey A. Bowman, "Infamy and Proof in Medieval Spain," in *Fama: The Politics of Talk and Reputation in Medieval Europe,* 96-99.

[138] Ruggiero, 60.

Lucretia had public fame of being a witch. A sizeable group of witnesses testified to examples of Lucretia's suspicious behavior, including harming children and causing people who had offended her to become ill.[139] Although the investigators eventually concluded that there was not enough evidence to prosecute Lucretia, Ruggiero finds it significant that she was involved in the case in the first place only because of her reputation, which made her "a watched woman."[140] The case demonstrates how views of a witness or a litigant could be colored by how they were previously viewed by the community.

To be sure, fame was not a defined legal category in medieval England in the same way that it was in continental Europe, but it was still significant. Reputation was very important in any medieval oral society and affected people's chances in life in a variety of ways, including their likelihood of success in court.[141] In her study of the effects of "ill repute" in fourteenth century England, Hanawalt suggests that being of good repute within the community meant (and still means) following normal social behavior, while being off ill repute meant someone had "committed a violation of accepted standards of social interaction."[142] Ill repute could come from anything that was perceived to disrupt the proper social order, such as writing insulting doggerel about the monarch or local leaders.[143]

Ill fame also attached to members of certain professions. Prostitutes and owners of bawdy houses were some of the most obvious persons of ill repute. It is not coincidental that

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[139] *ibid*, 72-74.
[140] *ibid*, 79, 87.
[141] Hanawalt, *Of Good and Ill Repute*, ix, 10. Hanawalt's discussion of crime patterns in fourteenth century rural England is removed from fifteenth century London, but several interesting conclusions emerge. People with a past record of violent or disreputable acts—ill fame—were more likely to be convicted when tried for serious crimes than those of good reputation. Strangers were also vulnerable in the courts because they could not demonstrate good reputation.
[142] *ibid*, 1, 14.
[143] *ibid*, 13.

Elizabeth Brown's witnesses in *Brown c. Gilis,* with which I opened, were accused of being in these professions. The most obvious means of reinforcing ill repute were public ceremonies in which these people were singled out by having their heads shaven and serving time in the pillory.[144] According to the *Liber Albus*,[145] people named by their communities as prostitutes and bawds were to be imprisoned by the city aldermen and investigated. Those found guilty of procurement were promptly punished by having their heads shaven and being pilloried for an amount of time that was at the discretion of the Mayor and aldermen. Repeat offences were to be punished the same way, with the addition of ten days of imprisonment for a second offence and eviction from the city for a third offence. Prostitutes were to be similarly punished, being paraded through the streets and pilloried while dressed in a striped hood and carrying a white wand. They had their hair cut and were evicted for a third offence.[146] Though not specified in the witness depositions, it is very possible that some public ceremony of this nature had accompanied the eviction of Margaret Smyth, the witness in *Brown c. Gilis,* from one or more London wards. Ill fame was not always so obvious however; determining who was of good and ill reputation was a complex and subtle process.[147] Ill fame could attach to people of all social classes, but was more associated with the marginal and the poor, as when opposing witnesses in *Brown c. Gilis* described Waldron in one breath as "of great poverty and ill fame."

The Consistory records themselves also show the importance of reputation for late medieval Londoners. For example, in the 1475 Consistory case *Agnes Wellys c. William Rote,*

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[144] *ibid,* 24-28. These punishments might also be applied for other offenses, such as dishonest business transactions. They also served as warnings to others to obey the laws of the city.

[145] The *Liber Albus,* or "white book," was a collection of regulations for the City of London compiled in 1419. It included sections on the appropriate punishments for prostitutes and bawds, and it seems likely that similar punishments were still being used in the later fifteenth century.

[146] *Liber Albus,* 394-395.

[147] Hanawalt, *Of Good and Ill Repute,* 1.

William claimed he had been forced to marry Agnes because her father had threatened him. Wielding a knife, John Wellys had threatened William with both physical violence and with embarrassing him by bringing him before the mayor and aldermen of London on an unspecified criminal charge. In her analysis of the case, McSheffrey notes that for William this second threat "ranked high enough to be mentioned in the same breath as the danger to his life"[148] because of the importance of avoiding public embarrassment and keeping his reputation.

Common Fame as Public Knowledge

Common fame as public knowledge is often discussed together with other circumstantial evidence, such as evidence of an exchange of gifts between the couple, because the two play a similar role in creating legal presumptions. Evidence that there was common fame that the couple had married and evidence that they had exchanged rings as married people normally did were both circumstantial evidence that the marriage had taken place.

A few authors consider the importance of this evidence to have been negligible. For example, in a brief mention of circumstantial evidence of this type, Ingram claims that its "evidential power was slight and was generally so regarded by the courts."[149] McSheffrey does not directly comment on its value, but does state that "without two admissible witnesses, the church courts could not enforce any contract of marriage,"[150] which could mean that no evidence other than that of eyewitnesses to the contract was of value. This argument is based on one school of thought among medieval canon lawyers that two witnesses to an event were needed to prove the case.[151]

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[148] McSheffrey, *Marriage, Sex, and Civic Culture,* 3.
[149] Ingram, "Spousals Litigation," 46.
[150] McSheffrey, *Marriage, Sex and Civic Culture,* 25.
[151] Donahue, *Law, Marriage, and Society,* 164; Evans, 150.

In their brief discussions of circumstantial evidence, however, Helmholz and Donahue argue that the issue was much more complicated. Helmholz notes that while circumstantial evidence was not strictly relevant to the validity of a marriage, it might "shed light on the central question of whether a man and woman had given their present consent to take each other as husband and wife."[152] While they did not provide conclusive evidence, circumstances that normally accompanied a marriage created a legal presumption of intention to marry.[153] Some canon lawyers held that the gift of a ring by a man to a women, or one party referring to the other as their spouse when speaking to others, created a presumption of marriage.[154] Similar reasoning applied to common fame. Although common fame alone was insufficient to prove a case,[155] Donahue notes that some canonists would allow proof by a single unimpeachable witness supported by circumstantial evidence or strong public fame.[156] He also mentions that "Under standard rules of proof, one witness plus *fama* can make up a full proof."[157] The basis of this was legal presumption that "what was widely believed by men of credit was likely to be true."[158] The laws of presumption were used in canon law in many cases in which there was no better proof.[159] For example, public fame was routinely considered as evidence in cases such as paternity suits, for which no genuinely conclusive evidence was available prior to the twentieth century. It might also figure in fornication and adultery cases, which by their nature involved secrecy and could be difficult to prove. [160]

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[152] Helmholz, *Canon Law and Ecclesiastical Jurisdiction,* 524.
[153] *ibid*, 530.
[154] Brundage, *Law, Sex, and Christion Society,* 502
[155] Helmholz, *Canon Law and Ecclesiastical Jurisdiction,* 328.
[156] Donahue, *Law, Marriage and Society,* 164.
[157] *ibid*, 117.
[158] Helmholz, *Canon Law and Ecclesiastical Jurisdiction,* 331.
[159] Helmholz, *Canon Law and Ecclesiastical Jurisdiction,* 331.
[160] *ibid*, 560; L.R. Poos, "Sex, Lies, and the Church Courts of Pre-Reformation England," *The Journal of Interdisciplinary History* 25 no. 4 (Spring 1995): 585-586.

Circumstantial evidence was a consistent feature in marriage litigation across England.[161] It appeared regularly, for example, in the libels and depositions of the York and Ely Consistory courts as well as in London. Sheehan noted that many couples defending their marriage contracts before the Ely Consistory claimed that there was public voice and fame of the contracts. He mentions in passing that the court "itself admitted the cogency" of public voice and fame, based on his observations of how often it appeared.[162] Litigants also presented evidence of fame in the York Consistory; Donahue mentions in many of his example cases that evidence of fame was brought, without giving further analysis of its efficacy beyond the comments cited above. That it appeared so often, however, makes it unlikely that the courts completely ignored it.[163]

Differing opinions on circumstantial among modern historians appears to reflect differing opinions among medieval canon lawyers who wrote on the laws of proof. These contradictions emerged out of one of the important legal developments in thirteenth century criminal law: an expansion in the laws of proof. The expansion followed the end of the ordeal and the development of *inquisito* process under Pope Innocent III (1198-1215), discussed further below.[164] Prior to this, jurists had not given credence to circumstantial evidence: they required the testimony of two eyewitnesses for a full proof. Cases in which no eyewitness evidence was available would be referred to divine judgement through ordeal.[165] Without that

[161] Ingram, "Spousals Litigation," 46.

[162] Sheehan, 61.

[163] At least in some courts, introducing extra circumstantial evidence could have added to the time and cost of litigation. According to a statute from 1311 concerning the consistory court of York, court officials were not to be paid more than 12d. per witness examined—but if the articles were excessively long, they were allowed to charge an extra 1d. for every twelve lines. See Pederson, "Marriage Contract," 314 and note 54.

[164] Richard M. Fraher, "Conviction According to Conscience: The Medieval Jurists' Debate Concerning Judicial Discretion and the Law of Proof," *Law and History Review* 7 (1989): 25.

[165] *ibid*, 24.

option, jurists began to debate the law of proof, especially how to better use circumstantial evidence.

Some participants in the debate were willing to admit circumstantial evidence as supplementary proof. One of these was the jurist Thomas de Piperata, whose thirteenth century treatise the *Tractatus de fama* was dedicated entirely to the analysis of *fama* and its use as evidence.[166] According to Richard Fraher, Thomas defined *fama* as "something that the people of any city, town, camp, village, or district commonly believe, asserting it in words or speech, but that they do not hold as certain and true or manifest."[167] The existence of *fama* could be demonstrated either by witness testimony or by knowledge of the judge. In civil cases, *fama* could not take the place of eyewitness evidence in proving facts, but it could confirm them. Fame could tip the scales one way or the other in the eyes of the judge. Fraher finds a variety of opinion among other jurists and canonists about the role of circumstantial evidence, especially in how much discretion the judge should have in accepting it.[168] His main conclusion is that the rule of two eyewitnesses, while important, "did not exercise the kind of absolute hegemony that legal historians have attributed to it."[169]

Fame was particularly important and widely used in *ex officio* cases. *Ex officio* investigations were initiated by ecclesiastical court themselves with the intent of getting to the truth more quickly and handling notorious cases that required attention even if an individual

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[166] *ibid*, 33.
[167] *ibid*, 33-34.
[168] *ibid*, 44, 57. For example, while Thomas argued that the standards of proof should be lowered to admit supporting circumstantial evidence, the Bolognese jurist Albertus Gandinus countered that it should not, except in very clear cases in which the defendant would be punished by fines rather than capital punishment. There was also debate on how much discretion judges should have in accepting circumstantial evidence. In essence, Fraher's article describes a familiar legal debate between the need to effectively obtain convictions on strong circumstantial evidence and the need to uphold due process and its very limited rules of proof in order to reign in arbitrary action by judges.
[169] *ibid*, 62.

accuser was not forthcoming.[170] The theoretical basis for *ex officio* proceedings was developed under Pope Innocent III, who initiated a procedure called *inquisitio*, intended to allow judges to proceed against notorious criminals who could not be ignored without scandal.[171] The accused was to be told of the accusations and witnesses and allowed to defend himself. The process initiated extensive debate among canon lawyers over what constituted "notoriety," a concept closely related to fame, and how it was to be proven.[172]

Ecclesiastical courts could hear cases touching on marriage *ex officio* as well as in instance cases. They sometimes initiated *ex officio* investigations of suspect marriages, in which a couple was living together but might not be married, or their marriage might not have been properly solemnized.[173] They might also deal with other *ex officio* cases in which marriage was a peripheral factor.[174] L.R. Poos suggests that many *ex officio* marriage cases represent action on the part of both the church and the community to address the most "persistent or offensive" problems between couples within the community.[175] In *ex officio*

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[170] Evans, 130. According to Brundage and Evans, in an *ex officio* investigation the judge (or his assistants) initiated the case, investigated, and sought witnesses themselves, acting "in effect, as prosecutor as well as judge" (Evans, 130). The potential for abuse is obvious, but the practice did offer greater efficiency in many cases. Helmholz, by contrast, believes that *ex officio* proceedings in the marriage cases he studied cannot be considered an entirely separate category of action from instance cases. He describes *ex officio* actions as disciplinary acts that, once raised, proceeded very similarly to instance litigation; in fact, it frequently became instance litigation by one party taking up the case. He claims that the judge did not conduct an independent investigation and the practice was much less open to abuse that it at first appears. See Brundage, *Medieval Canon Law,* 148-149; Evans, 130-133; Helmholz, *Marriage Litigation,* 70-72.

[171] Brundage, *Medieval Canon Law,* 144-147; Evans, 132; Laura Ilkins Stern, "Public Fame in the Fifteenth Century," *The American Journal of Legal History* 44 no. 2 (April 2000): 203. Brundage also discusses the similar but lesser used procedure *per notorium,* in which judges could bring abbreviated judicial proceedings to bear against defendants who were widely believed to have obviously committed a crime.

[172] Evans, 132-133.

[173] Fraher, 33; Poos, "The Heavy-Handed Marriage Counsellor," 294-296.

[174] See Poos, "The Heavy-Handed Marriage Counsellor." Poos considers marriage-related *ex officio* cases from several English courts from the fourteenth to the sixteenth centuries, including doubtful or clandestine marriages, fornication in which the accused defended themselves by claiming to be married, spousal abuse or separation, alimony, and orders to abjure the company of people because of fornication or related issues. In "Sex, Lies, and the Church Courts of Reformation England," Poos further considers defamation cases related to sexual activity.

[175] Poos, "The Heavy-Handed Marriage Counsellor," 308.

proceedings, common fame served a similar function as the concept of 'probable cause' in modern criminal law or of a presentment jury in the common law, of identifying people who should be brought to trial.[176] Helmholz notes that in *ex officio* actions, public fame "could legitimately take the place of an accuser" in court.[177]

Ex officio proceedings in marriage cases were frequently undertaken in the Consistory Court of Ely between 1374-1382, as Sheehan found in his study of the court, although it is unclear why that particular court was so proactive.[178] The court investigated clandestine marriages and potentially adulterous relationships. Couples were summoned before the court to account for their relationships; if they claimed to be married they were ordered to complete the formalities such as banns or solemnization, and if they were not, they were pressured to marry or separate.[179] The way court officials knew to bring many these cases was because of common fame about the relationships.[180] Donahue also observed the pattern in his own study of Ely records. Over half of marriage cases were either completely prosecuted as office cases or began as *ex officio* cases before transitioning into instance cases prosecuted by individuals.[181] He notes that "The citations were sometimes said to have been issued as a result of *publica fama*" and in other cases might have been reported by neighbors. Poos has argued that fame created a presumption of guilt in these cases and that they represent the community taking action to enforce acceptable sexual behavior.[182] Again, as he notes, the

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[176] Brundage, *Medieval Canon Law,* 148; Helmholz, *Canon Law and Ecclesiastical Jurisdiction,* 609.

[177] Helmholz, *Canon Law and Ecclesiastical Jurisdiction,* 607-608. See also Brundage, *Medieval Canon Law,* 148. Helmholz distinguishes between the Roman inquisition, the criminal procedure that operated on the continent, in which officials conducted complete investigations and not uncommonly resorted to torture, and the modified form of inquisitorial procedure used by English ecclesiastical courts.

[178] Sheehan, 65-67.

[179] *ibid*, 65.

[180] *ibid*, 60, 65.

[181] Donahue, 227.

[182] Poos, "Heavy-Handed Marriage Counsellor," 308.

common formula in court records about "public voice and fame" was more than a mere formula.[183] Public voice and fame was clearly sufficient reason for the Ely court to initiate a case.

While the Ely Consistory clearly had different litigation patterns than the London Consistory, it offers an example of the seriousness with which public voice and fame were considered. In the London Consistory during our period twelve *ex officio* cases appear, only one of which concerned marriage. The others related mostly to clerical discipline and tithing, with one case each related to testamentary proceedings and accidental death.[184] Nonetheless, fame appeared regularly in marriage litigation before the London Consistory, as I will explore in the next chapter.

[183] Poos, "Sex, Lies, and the Church Courts," 585-586.

[184] McSheffrey, *Consistory*, http://consistory.cohds.ca/obj.php?object=case&action=list&expand=cases&f=1&type=&sdate=&edate=&party=112&party_name=&deponent=&deponent_name=&num=25&search=Search. Accessed March 27, 2017.

Chapter 3: Evidence of the London Consistory

References to public voice and fame and to the ill fame of individuals appeared regularly in the records of the London Consistory. As I have discussed above, witnesses referred to public voice and fame (*publica vox et fama*) to assert that the facts to which they testified were public knowledge in their parish. This was by far the most common type of fame invoked. Witnesses also referenced good fame or ill fame (*bone fame* and *male fame*), to testify to the public reputation of an individual. Most commonly, ill fame was invoked to discredit the testimony of an opposing witness.

In this chapter I examine and categorize the ways that fame was mentioned in the depositions. Fame appears in the records of over 88% of marriage litigation cases. Sometimes the descriptions are short and formulaic, but others are presented carefully and in detail. The evidence usually suggests the plaintiff claimed that common fame existed as part of the libel. Male witnesses were more likely to testify about fame than female witnesses, which reinforces the public nature of marriage given the greater association of men with the public sphere in medieval London. I concluded by examining some representative cases in detail to provide examples of the use and importance of common fame and other circumstantial evidence.

Fame in Witness Depositions

The records of the London Consistory Court yield sixty-three marriage cases from the period of 1486-1494, the dates of one of the two surviving deposition books.[185] I have left two out of this study because they are sufficiently different from the rest to be poor candidates for comparison. Unlike the vast majority of the cases, which deal with the existence or non-existence of the marriage, *William Newport c. Isabel Newport* and *Alice Barbour c. William Barbour* deal with marital separation. While interesting in themselves, they are sufficiently different from the others to warrant their exclusion.[186]

We are then left with sixty-one marriage cases to consider. The documentation for these cases is made up of 273 distinct witness statements by 251 separate witnesses. Of these witnesses, a substantial majority were men—193 out of 251, or about 77%. Fifty-eight witnesses, or about 23%, were female.[187] This pattern is especially striking when compared to

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[185] These cases have been made available online in both the original Latin and English translation through the Consistory Database (http://consistory.cohds.ca/), an online project of Shannon McSheffrey and the University of Concordia, Montreal.

[186] *William Newport c. Isabel Newport* is likely a petition for divorce *a mensa et thoro* on the grounds of cruelty; William brought several witnesses to testify that Isabel often quarreled with him and threatened him, and that it had escalated multiple times into physical violence, including an incident where she attacked him with a knife (London Metropolitan Archives, MS DL/C/A/001/MS09065: 79v, 95r-97v, 112rv; McSheffrey, *Consistory*, http://consistory.cohds.ca/obj.php?object=case&action=view&id=56&expand=cases&case_results_format=*full*). Divorce *a mensa et thoro*, literally "from bed and board," was a judicial separation that could be granted for cruelty, adultery, or heresy. It allowed couples to live separately, but did not actually dissolve their marriage or allow them to marry elsewhere.

Alice Barbour c. William Barbour was likely a suit for divorce *a vinculo* on the grounds of impotence. The witnesses were a jury of mature women who had physically examined William Barbour and testified that they believed him to be impotent due to injuries received during a fire (London Metropolitan Archives, MS DL/C/0206: [loose folio]; McSheffrey, *Consistory*, http://consistory.cohds.ca/obj.php?object=case&action=view&id=122&expand=cases&case_results_format=full*)*.Divorce *a vinculo* was an annulment that declared that a marriage had never existed in the first place because of an impediment such as consanguinity or impotence. Couples granted divorce *a vinculo* could remarry. For additional information on divorce *a mensa et thoro* and divorce *a vinculo*, see Helmholz, *Canon Law and Ecclesiastical Jurisdiction*, 540-556.

[187] J.P.J. Goldberg has found a similar statistical pattern in a sample of fourteenth and fifteenth century marriage cases from the York Consistory. He found that male witnesses outnumbered female witnesses by about three to one. Additionally, a large majority of the female witnesses appeared for female litigants, and female witnesses were much more likely to appear in cases where the litigants were urban residents than when they were from surrounding rural areas. Goldberg concludes that litigants felt that testimony of women carried less

the percentages of male and female plaintiffs. Of the sixty-one cases, twenty-three, or about 38%, had female plaintiffs, while thirty-six, or about 59%, had male plaintiffs (The court prosecuted one case *ex officio*, and in another the gender of the plaintiff is unknown due to incomplete records). These figures are summarized in Table 3.1. It is worth noting that the percentage of male witnesses was higher than the percentage of male plaintiffs (77% versus 59%), suggesting that men were disproportionately relied upon as witnesses. Since men in medieval London moved in the public sphere more than women did, this likely correlates with the public nature of marriage and marriage litigation. It may also indicate that the testimony of men was considered more authoritative.

Plaintiffs	Number	Percentage	**Witnesses**	Number	Percentage
Male	36	59%	Male	193	77%
Female	23	37.7%	Female	58	23%
Ex officio	1	1.63%	-	-	-
Unknown	1	1.63%	-	-	-
Total	**61**	**100%**	**Total**	**251**	**100%**

Table 3.1: Percentages of Male and Female Plaintiffs and Witnesses

Fame was mentioned in fifty-four of our sixty-one cases, or slightly more than 88%; it appears in 186 individual depositions, or just over 68% of the 273 total statements. Of the statements that mention fame, 152, or about 82%, were made by men, and thirty-four, or about 18%, were made by women. Therefore, the rate at which men testified to the existence

weight than that of men, an opinion that was apparently especially prevalent in rural society. See Goldberg, "Gender and Matrimonial Litigation in the Church Courts in the Later Middle Ages: The Evidence of the Court of York," *Gender & History* 19 no. 1 (April 2007): 45-47.

or non-existence of public fame was slightly higher than the rate at which they testified overall (82% versus 77%), suggesting that they were slightly more likely to be asked about public fame than women were. Furthermore, of the thirty-four statements mentioning fame made by women, seventeen (50%) of them were the statements of female defendants, who were attached to the case as a matter of necessity. Of the 152 made by men, only twenty (13%) were statements by the defendant. Consequently, we see that only 50% of women who mentioned fame did so as outside witnesses. At the same time, 87% of the male witnesses who mentioned fame fit this description. See Table 3.2 for a summary. Once again, men testified independently about fame at a slightly higher rate (87% vs. 82%) than they testified about fame overall, suggesting that independent evidence of fame was more like to come from men than from women. Perhaps male witnesses were also considered to have better knowledge of the collective opinion of the community, or simply to better represent it.

Witnesses Referencing Fame	**Number**	**Percentage**
Male		
Defendant	20	13%
Independent Witness	132	87%
Total:	**152**	**100%**
Female		
Defendant	17	50%
Independent Witness	17	50%
Total:	**34**	**100%**

Table 3.2: References to Fame by Male and Female Witnesses

The 186 statements can be categorized according to the different ways in which they mention fame. I have here divided them into five categories: statements in which the witness denied any knowledge of fame; brief admissions or denials of fame by the defendant; slightly longer references to the existence of fame, which are the most common way fame was mentioned; still longer references that offered more detail; and statements that mentioned the "ill fame" or "good fame" of an individual instead of or in addition to common fame. The results are summarized in Table 3.3 (page 53).

No Knowledge of Fame

In twenty of the depositions (just under 11% of those that reference fame), fame is mentioned in the form of a statement that the witness did not know anything about it. The statements are similar to "To the fifth article, he says that the things he deposed above are true, and concerning the fame he knows nothing, as he says."[188] This statement concluded the testimony of Robert Adcok, the only witness for the plaintiff in *Alice Parker c. Richard Tenwinter*. It is his response to the fifth article, or claim, in the plaintiff's libel. Although the inability of witnesses to testify to fame did not necessarily mean that the case was weak overall, in the instance it reflected the weakness of Alice's case. Richard Tedwinter, the

[188] *Alice Parker c. Richard Tenwinter*, London Metropolitan Archives, MS DL/C/A/001/MS09065B: 2r-2v; McSheffrey, *Consistory*, http://consistory.cohds.ca/obj.php?object=case&action=view&id=30&expand =cases& case_results_format=full. Accessed March 27, 2017.

Other examples of statements that the witness had no knowledge of fame are, "To the sixth article, he says that what he said above is true, and that concerning fame he has nothing to testify regarding its contents" and "Concerning the fame and the other things brought up in the libel, he knows nothing, as he says." See *John Kendall c. Isabel Willy*, London Metropolitan Archives, MS DL/C/A/001/MS09065: 108v-109r, 110r, 113r-114r; McSheffrey, *Consistory,* http://consistory.cohds.ca/obj.php?object=case&action=view&id=67& expand=cases &case_results_format=full, Accessed March 27, 2017; *William Halley c. Agnes Wellis*, London Metropolitan Archives, MS DL/C/A/001/MS09065B: 3v-4r, 5v-6v; McSheffrey, *Consistory*, http://consistory.cohds.ca/obj.php? object=case&actionview&id=31&expand=cases&case_results_format=full, Accessed March 27, 2017.

Category	**Example Phrase**	**Number of Statements**	**Percentage**
No Knowledge of Fame	"Concerning the fame he knows nothing"	20	11%
Admission or Denial by Defendant	"He denies fame"/ "He admits the fame"	23	12%
Standard Testimony		106	57%
Without specifics	"public voice and fame circulated and circulate about it in the parish of X"	*72*	*39%*
With specifics	"public voice and fame circulated in the parish of X that they were man and wife"	*34*	*18%*
Detailed Testimony	Gives additional detail or testifies to fame more than once.	24	13%
Ill Fame/Good Fame		13	7%
Appears alone	"She is a woman of better fame"	*1*	*0.5%*
Appears with standard testimony	"X is of ill fame and public voice and fame circulated and circulate regarding it"	*12*	*6.5%*
	Total:	**186**	**100%**

Table 3.3: References to Fame by Category

defendant, testified that Alice had asked if he would marry her, to which he had responded, "I will wed you as well as I can" (I w wedde you as wel as I can"), meaning that he would have a sexual relationship with her. They had an ongoing relationship afterwards. Possibly Richard was a servant forbidden to contract without his master's permission, or otherwise unable to marry. Robert Adcok, Alice's only witness, could only testify that he had overheard a similar conversation between Richard and Alice, and was not even aware of fame. It seems highly unlikely that Alice was able to prove her case.

Admission or Denial by Defendant

Twenty-three of the depositions (just over 12% of the ones that mentioned fame) include a brief admission or denial of fame by a defendant in a case, usually at the end of their depositions. An example appears the statement by the defendant in *Alice [unknown] c. John Remyngton:* "To the sixth article, he believes what is believed and does not believe what is not believed, and he does not believe the fame."[189] The statement concludes Remyngton's testimony that Alice had come to his bed and he had slept with her several times; apparently, he was claiming that was as far as the relationship had gone and he had never contracted marriage with her. Since the libel has not survived and there are no other witness statements to help indicate what he was responding to in each article, it is impossible to know for sure what he was denying fame of, but it was most likely fame of marriage. He could not well have been denying that there was public knowledge of their sexual relationship, since his statement also says that each of the three times Alice came to his bed he was sharing it with another man, naming all three of them—a particularly striking example of the lack of privacy

[189] *Alice [unknown] c. John Remyngton*, London Metropolitan Archives, MS DL/C/A/001/MS09065, 171v; McSheffrey, *Consistory*, http://consistory.cohds.ca/obj.php?object=deposition&action=view&id=391&expand=cases. Accessed March 27, 2017.

associated with relationships.[190] Another example of a defendant's testimony about fame appears in *Joan Say c. Richard Stacy;* Richard testified that he had been coerced into marrying Joan by her father and another man, for unspecified reasons, and that banns about the marriage had been issued twice without his knowledge. He admitted the contents of several unspecified positions, and the statement concludes, "To the ninth and tenth positions, he believes what is believed, and admits the fame."[191] Richard was admitting that there had been an exchange of consent and that there was fame of the marriage, while presumably claiming that the court should invalidate it because he had acted under coercion.

Standard Testimony

Fame was most often mentioned in what I refer to as a "standard" form. This is exemplified by statements such as, "To the sixth article, he says that what he said above is true, and that public voice and fame circulated and circulate about it in the parish of Sawbridgeworth."[192] This phrase ended the statement of Thomas Wryght, a witness in *John Brode c. Maude Purfote,* following his testimony that he had witnessed a future contract between John and Maude. Statements like this one reinforced a witness's previous testimony of observing a contract—or anything else—by claiming that it was public knowledge in one or more parishes and sometimes in the surrounding areas. Seventy-two out of 186 references to fame, or just under 39%, were of this type.

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[190] Sharing a bed with another man was common because of cramped quarters, and does not suggest that Remyngton was also engaged in same-sex relationships.

[191] *Joan Say c. Richard Stacy*, London Metropolitan Archives, MS DL/C/A/001/MS09065, 221v-222r; McSheffrey, *Consistory*, http://consistory.cohds.ca/obj.php?object=deposition&action=view&id=486 &expand=cases. Accessed March 27, 2017.

[192] *John Brode c. Maude Purfote*, London Metropolitan Archives, MS DL/C/A/001/MS09065: 211r-212r; McSheffrey, *Conistory*, http://consistory.cohds.ca/obj.php?object=case&action=view&id=113& expand=cases case_results_format=full. Accessed March 27, 2017.

Thirty-four additional references, or around 18%, were of this standard form, but included either illustrative detail or more specific reference to what exactly was common knowledge in the parish. In *Christian Hilles c. Robert Padley,* John Merden ended his testimony about witnessing a contract between Christian and Robert with the statement "To the sixth and seventh articles, he says that the things he said above are true and that public voice and fame circulated in the town of Stanford amongst the greater part of the parishioners that Robert would take Christian as his wife."[193] Similarly, in *William Hawkyns c. Margaret Heed*, William Flete testified that "To the fourth and fifth articles, he says that the things he said above are true, and that public voice and fame circulated and circulate in the parish of St. Sepulchre that they were man and wife and that they had contracted marriage together." The defendant's father, Henry Heed, also a witness for the plaintiff, agreed that "To the fourth and fifth articles, he says that their contents are true and that voice and fame circulated and circulate in the parish that Margaret and William were and are husband and wife."[194]

Detailed Testimony

Twenty-four witness statements (just under 13%) do not fit into the previous categories, generally because they placed greater emphasis on fame. These include statements that particularly emphasized fame, statements that mentioned fame more than once, and statements that used unusual wording. An example of the first can be found in *Laurence Wyberd & John Austen c. Maude Gyll.* Laurence's father, John Wyberd, testified to

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[193] *Christian Hilles c. Robert Padley,* London Metropolitan Archives, MS DL/C/A/001/MS09065: 72v-74r; McSheffrey, *Consistory,* http://consistory.cohds.ca/obj.php?action=view&object=case&id=50&expand =actors&case_results_format=full. Accessed March 27, 2017.

[194] *William Hawkyns c. Margaret Heed*, London Metropolitan Archives, MS DL/C/A/001/MS09065B: 11v-12v, 13r-15r; McSheffrey, *Consistory*, http://consistory.cohds.ca/obj.php?object=case&action=view&id=34& expand=cases&case_results_format=full. Accessed March 27, 2017.

witnessing a conditional contract between his son and Maude and claimed, "what he said above is true, public, notorious, manifest, and famous, and confessed by Maude herself, and public voice and fame circulated and circulated concerning it since long before this suit was moved, both in the city of London and in the parishes of North Weald and Epping."[195] Similarly in *John Jenyn c. Alice Seton & John Grose*, William Avenyll testified that he had witnessed a contract between John Jenyn and Alice and "that the things he said above are true and that public voice and fame concerning them circulated and circulate in Baddow, Maldon, and in the parishes of St. Dunstan of the city of London and other neighbouring parishes," but goes on to add that "he says that the fame is the common voice of the people and that it had its origin from what the parties said and did."[196] An example of unusual wording can be found in *Herbert Rowland c. Elizabeth Croft & Margaret Hordley*: "To the fifth part, he says that what he said above is true, but he doubts the fame except as it came to the ears of the judge."[197] It is unclear exactly what the witness, Adrian Warmyngton, meant by this. I have also included here two statements similar to "they lived together as man and wife in this witness`s house…and as such they were said, taken, and reputed," which appeared in *Thomas Walker c. Katherine Williamson.*[198] While these do not used the word fame, the statement that a couple was taken and reputed to be married conveys similar information.

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[195] *Laurence Wyberd & John Austen c. Maude Gyll*, London Metropolitan Archives, MS DL/C/A/001/MS09065: 3v-5v, 249v-251r; McSheffrey, *Consistory*, http://consistory.cohds.ca/obj.php?object =case&action=view&id=63 &expand=cases&case_results_format=full. Accessed March 27, 2017.

[196] *John Jenyn c. Alice Seton & John Grose*, London Metropolitan Archives, MS DL/C/A/001/MS09065: 60rv, 46r, 66v, 71rv, 78v-79r; McSheffrey, *Consistory*, http://consistory.cohds.ca/ obj.php?object case&action =view&id=32&expand=cases&case_results_format=full. Accessed March 27, 2017.

[197] *Herbert Rowland c. Elizabeth Croft & Margaret Hordley*, London Metropolitan Archives, MS DL/C/A/001/MS09065: 181v-182r, 188r-189v, 195v-196r, 197r-198v, 199v, 202v-203r; McSheffrey, *Consistory*, http://consistory.cohds.ca/obj.php?object=case&action=view&id=94&expand=cases&case_ results_format=full. Accessed March 27, 2017.

[198] *Thomas Walker c. Katherine Williamson*, London Metropolitan Archives, MS DL/C/A/001/MS09065: 77r-78r*;* McSheffrey, *Consistory*, http://consistory.cohds.ca/obj.php?object=case& action=view&id=53&expand =cases&case_results_format=full. Accessed March 27, 2017.

Ill Fame

Finally, thirteen statements (about 7% of those referencing fame) mention the good fame or ill fame of an individual, either instead of or in addition to common fame about events. One statement mentioned only good fame, while twelve both commented on ill fame and gave standard testimony about common fame. Examples are plentiful in *Elizabeth Brown & Marion Lauson c. Laurence Gilis*, the case with which I opened. One witness mentioned only personal fame, commenting that "he would rather that Marion gained victory [rather than Elizabeth], if she [Marion] has the right, because she is the woman of better opinion and fame," while ten witnesses mentioned both kinds of fame. John Harries, for example, gave a statement intended to discredit Elizabeth's witness Margaret Smith, testifying that "at that time Margaret was of ill fame and was commonly held, said, and reputed in that parish as an adulteress and prostitute." Harries continued with detailed evidence about Margaret's eviction (on three separate occasions) from the London ward in which he served as beadle, as well as from at least two others, because of her career as a prostitute, concluding that "what he said above is true, and that public voice and fame circulated and circulate about it in the said wards and other said places."[199]

Common Fame and Gifts

Fame often appeared in marriage litigation alongside other circumstantial evidence, especially evidence that the couple had exchanged gifts. The gifts referred to here are not formal dowries or endowments of the bride, but small, relatively intimate gifts such as rings,

[199] *Elizabeth Brown & Marion Lauson c. Laurence Gilis*, http://consistory.cohds.ca/obj.php?object =case& action=view&id=61&expand=cases&case_results_format=full. Accessed March 27, 2017.

ornaments, embroidered purses, religious icons, pieces of cloth, and small sums of money. It seems to have been common for courting couples to exchange such tokens as signs of their regard for each other.[200] Couples also exchanged marriage tokens that commemorated the actual marriage contract; again, rings and gloves were especially common.[201] By referencing exchanges of gifts, litigants tried to invoke the idea that doing things commonly associated with marriage created a legal presumption of a contract. A straightforward example of gift exchange appears a 1469 Consistory case, in which William Multon testified to witnessing an exchange of present consent between John Colyn and Joan Stockton. Following the actual exchange, Multon stated that John handed Joan a red velvet purse, saying "This purse I give to you as my wife," to which Joan responded by saying "And I accept this purse from you as from my husband."[202] Gifts were in no way required for a marriage to be legally binding; still, an exchange of gifts, especially rings, was clearly common enough to be at least considered as evidence, and to present evidence worth denying by the opposing party.

Evidence of common fame and gifts appears in *John Tailour c. Agnes Fry*, in statements made on 27 June 1487. Tailour was apparently trying to enforce a marriage with Fry. As well as denying that she had exchanged consent, in her defendant statement Fry emphasized that while she had been offered a gold ring as a gift from Tailour, she had not accepted it. She also testified that Tailour had taken rings from her purse by force. Both of these statements were in response to the third item in the libel charge, in which Tailour likely claimed that he and Fry had exchanged rings as part of his evidence that they were married. Richard Maket and Robert Brightmay, two of Tailour's witnesses, testified to common fame

[200] Hanawalt, *The Wealth of Wives*, 76.
[201] Goldberg, *Women, Work, and Lifecycle*, 238-239.
[202] McSheffrey, "Place, Space and Situation," 963-64.

that Tailour and Fry would be married among residents of the parish of Prittlewell in Essex, where both the parties and witnesses in the case lived.[203]

Evidence regarding public fame and the exchange of gifts may have been particularly important to Tailour because his case was otherwise weak. Fry was a widow, who following the death of her husband had been solicited in marriage by Tailour both in person and through the friends who appeared as his witnesses. She had told him she did not wish to remarry, but had promised to give him a final response on the anniversary of her husband's death. According to her own statement, on that day she had refused to marry him. She also testified that at some point prior to this, Robert Swete had given her a ring from Tailour, but she refused to accept it. Conversely, Tailour brought Swete and Brightmay to testify that Fry had finally said, "I will have him or I will never have none" ("I wyl have hym or I wel nevir have non,") and had given permission for her "words to be publicly declared," following which Tailour had thanked her and kissed her. Swete said he had heard "no other words of marriage." Maket could testify only that during the previous Lent he had multiple times heard Fry say that "if she could convert herself to him [Tailour] she would have him as her husband," and that he had heard she had said in the presence of Swete that she would marry John and none other.

Did a statement like the one Fry was alleged to have made constitute present consent? Helmholz comments that debating whether statements like "I will marry no one else but thee," similar to the words used in this case, constituted consent provided an "intellectual feast" for

[203] *John Tailour c. Agnes Fry*, LMA, MS DL/C/A/001/MS09065: 20r-22r; McSheffrey, *Consistory* http://consistory.cohds.ca/obj.php?object=case&action=view&id=19&expand=cases&case_results_format=full. Accessed March 27, 2017.

canon lawyers and commentators.[204] They did not come to a definitive conclusion. The evidence seems particularly thin in this case however, since no one testified that Tailour pledged anything to Fry, so the words spoken could hardly be considered an exchange. Indeed, the testimony against Fry is notably weak, and the case was apparently ruled in Fry's favor. According to notes on the case transcription, she left a will upon her death in 1502 indicating that she owned property in both Putney and Prittlewell. She died still under the name of Agnes Fry, suggesting that she had not remarried. A wealthy woman, she represented a good catch, and it seems likely that Tailour was trying to establish a marriage with doubtful evidence for reasons of financial gain. He was unsuccessful; in this case, testimony to an exchange of gifts backfired on the plaintiff by opening him to a counter-accusation of theft.

Common fame and the exchange of gifts also appear prominently in the case of *Agnes Whitingdon c. John Ely*, heard on 29 January 1487.[205] Agnes was a servant in the house of "a certain Hawkyn." According to Ely's defendant statement, Hawkyn had repeatedly urged him to marry her. Ely, a wealthy widower, stated he had been unwilling to commit himself without knowing how much she would bring as a dowry; as a result, he had made a conditional promise to marry her if she could bring him a dowry of 5 marks by the Feast of All Hallows (November 1) of the previous year. His testimony was contradicted by John and Joan Robert and by John Cok, who appeared as witnesses for the plaintiff to testify that Ely had exchanged present consent with Agnes in the Roberts's house around September 29, 1486.

[204] Helmholz, *Canon Law and Ecclesiastical Jurisdiction,* 525.

[205] *Agnes Whitingdon c. John Ely*, LMA, MS DL/C/A/001/MS09065: 10r-12r; McShefrey, *Consistory* http://consistory.cohds.ca/obj.php?object=case&action=view&id=4&expand=cases&case_results_format=full. Accessed March 27, 2017.

Considerable amounts of the evidence, however, had to do with peripheral issues of gifts and common fame. Ely found it necessary to say he had lent Agnes a set of coral rosary beads, the implication being that he had not intended them as a wedding gift, as well as to deny fame of being married to her. John Robert testified that Ely had shown Robert, Joan, and Agnes his former wife's clothes and spoke of having Agnes wear them, even indicating which Agnes would "wear on the first day of the nuptials." Joan Robert also testified that Ely had given Agnes a ring and a gift of cloth and that he had said, referring to Agnes, that he didn't want his wife carrying buckets to the Thames. Joan Robert and Cok also testified to the circulation of common fame of the marriage in the parish of St. Margaret Moses in London.

A fourth and final witness for the plaintiff, one Robert Harries, could testify only that he "had heard it said by many people, especially John Robert and his wife, that John [Ely] and Agnes had contracted marriage together" and that public fame "circulated and circulates" in the parish of St. Margaret that they were married. His testimony is a particularly good example of the importance of public fame as evidence in the Consistory Court, and that it was something the court apparently took seriously. It is the only evidence Harries could provide—he did not claim to have been present for the actual exchange of vows—yet he was still worth bringing as a witness and having his deposition recorded in some detail.

It is difficult to say in this case whether the additional evidence was presented only because Agnes's case was weak. On the one hand, she had three witnesses to the contract to testify for her. They were also of reasonable social standing—Roberts and Cok were both literate, which was moderately unusual among Consistory witnesses, and they were identified respectively as a cheesemonger and a linen draper. Harries himself was illiterate and his occupation was not recorded. They supported her firmly; Roberts, in particular, was willing to

help her bring a case and give detailed evidence against a man he said he had known for twenty years. On the other hand, Agnes herself was apparently a servant; her parents were not resident in London, so she was probably one of the many young women who came to the city to find employment as domestic servants. Her employer was concerned for her welfare and seems to have acted as a surrogate parent, by one report trying to find her a good marriage and by another demanding from Ely what his intentions were towards her. Ely, on the other hand, was a widower and apparently well off. John and Joan Roberts describe the furniture and clothing in his house, among them beds, bedding, and several gowns, including a blue one. Given the probable difference in social standing and Ely's stated concern over a dowry and not wanting his wife to perform menial functions, it might have seemed doubtful to the court that he would have married her. In this case, gifts and common fame might have been valuable additional evidence, as well as putting pressure on the defendant.

Robert Warde c. Joan Qualley also offers examples of the use of both gifts and common fame as evidence. Warde, an ostler in the employ of John and Eleanor Kemp, sued Qualley in November 1491 when she published banns announcing an upcoming marriage with William Dichard, claiming that she had previously contracted with him.[206] The Kemps both testified that Warde and Qualley had exchanged consent at their house in Islington on a Sunday in October. Eleanor Kemp testified in detail to an exchange of gifts following the marriage: "And immediately afterwards Robert gave her a gold ring, in the name of marriage as it appeared to this witness, and Joan gratefully accepted the ring and still keeps it with her, and also Joan gave Robert a silver groat, with a happy face as it appeared to this witness,

[206] *Robert Warde c. Joan Qualley*, LMA, MS DL/C/A/001/MS09065: 6r-8r, 93v-94v, 98rv; McSheffrey, *Consistory*, http://consistory.cohds.ca/obj.php?object=case&action=view&id=62&expand=cases&case_results_ format=full. Accessed March 27, 2017.

which groat Robert gratefully accepted." John Knap agreed with his wife on all points, and was at pains to emphasize that Joan and Robert were "commonly said, taken, had, named, and reputed, openly, publicly, and notoriously, for betrothed persons" in their own and in surrounding parishes. Thomas Martyr and Robert Holden, members of Joan's household, testified respectively to having commonly heard of the marriage and to the exchange of ring and gifts. While flatly denying the marriage, Qualley herself was unable to deny that gifts had been exchanged; she testified that she still had a ring Robert had given her, but that she had not received it in marriage. Her own defense witnesses testified only that the Kemps were hostile to Qualley and were trying to advance Warde's position in life. In this case Warde had the required two witnesses, but their testimony may have been compromised by the attempt of the defense witnesses to show bias. The testimony about the ring, which Qualley still had, was probably important circumstantial evidence to his case.

As all three of these cases illustrate, testimony regarding gifts and common fame appeared prominently in witness depositions in the London Consistory. It was given as corroborative detail in the statements of witnesses to a marriage contract, but also by additional witnesses who did not claim to have been present at the exchange of consent. In the absence of verdicts, it is difficult to say exactly how much influence this evidence had on the court's decisions, but it seems clear that it was something it was willing to consider.

Alibi

Fame could be introduced to support facts other than the existence of a marriage or betrothal. An uncommon example is the case of *Henry Kyrkeby c. Eleanor Roberts,* in which Eleanor's defense consisted of detailed alibi evidence. Through her witnesses, she attempted

to prove that she could not have contracted marriage with Kyrkeby because she had been elsewhere at the time when the contract was supposed to have taken place.[207] Henry Kyrkeby brought suit against Roberts in October 1489. He had witnesses to a present contract between them on the Feast of the Purification (February 2) of that year at "a crossroads in the parish of Hornchurch, at the four elms." John at Wode testified that he had been approached in the previous year by Henry's older brother John Kyrkeby, who asked if he knew of a prospective wife for Henry. John at Wode suggested Eleanor, who was then working for a Thomas Turke of Hornchurch. On the feast of the Circumcision (January 2) they went to see her, and according to his detailed evidence, they met her going out to milk the cows. He advised her to marry a man who could help her recover her inheritance, and said that if she would be guided by him he would provide her with one. She accordingly agreed to meet them and Henry on February 2. On that day, at Wode, John and Henry Kyrkeby, and a man named William Baker, invited by John Kyrkeby, came to the crossroads. At Wode testified that he then brought Eleanor there, and that she and Henry Kyrkeby had exchanged present consent. William Baker and John Kyrkeby corroborated at Wode's evidence. The three witnesses claimed that Eleanor had left for the town of Corringham following the meeting to take employment with a man living there.

Eleanor Roberts brought counter-witnesses from Corringham, who testified that she had in fact arrived on February 1 and had been seen there in the house of John Whitypoll daily for the following week, and therefore could not have been present in Hornchurch on February 2. Their evidence was also detailed. Andrew Edward, employed at a house on the

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[207] *Henry Kyrkeby c. Eleanor Roberts*, LMA, MS DL/C/A/001/MS09065: 61r, 62v-63v, 67r-69r; McSheffrey, *Consistory*, http://consistory.cohds.ca/obj.php?object=case&action=view&id=55&expand =cases&case _results_format=full. Accessed March 27, 2017.

outskirts of Corringham, testified that Eleanor had appeared at the house at 6 p.m. on the eve of the Feast of the Purification (February 1) to ask for directions to Whitypoll's house. His brother had guided her to the house, and Andrew had seen her there the next day at 8 a.m., at 11 a.m., and again in the afternoon on his way to Vespers. He also testified to public voice and fame that Eleanor had been in Whitypoll's house "for the whole day" on the Feast of the Purification. Whitypoll himself also testified to Eleanor's arrival on February 1. She had told him she was there to seek service because her employer in Hornchurch had not paid her an adequate wage. He further testified that she had stayed in his house for the following week and he had seen her in the evenings and in the mornings, and that fame circulated of what he said. He said that he had known Eleanor for eight years, although it is unclear whether they were relatives. Edmund Brethnam, Whitypoll's next door neighbor, and John Anton, another resident of Corringham, also testified to having seen Eleanor multiple times on the Feast of the Purification and to the public fame of her presence. According to Brethnam, he had seen her at 7 a.m. and 11 a.m. Anton had seen her at 8 a.m. and 11 a.m. The times seem almost suspiciously calculated to preclude any possibility that she had been elsewhere at 10 a.m.

Eleanor's defense was entirely based on alibi evidence. Although Brethnam also stated that he had been a witness to a marriage between Eleanor and John Baker, a miller in Corringham, the other contract did not form part of her defense. Instead, it was entirely predicated on having been physically present elsewhere at the time of the contract. Common fame was here invoked to prove where Eleanor was living, rather than directly to prove or disprove the existence of a marriage. McSheffrey's notes to the document indicate that Hornchurch and Corringham were likely 12 miles apart by road, so if Roberts' witnesses were convincing, their evidence should have been adequate for her successful defense.

Common Fame as Personal Reputation

Ill fame about a person, as opposed to common fame about a marriage or an event, is specifically referenced in only two marriage cases before the London Consistory. One was *Brown c. Gilis,* which I have already discussed. The second was *William Yewle & Thomas Grey c. Katherine Garyngton,* which began in November, 1493.[208] This was also a complex case; it appears that an attempt was being made to discredit William Yewle's claim that Katherine had married him and to establish her marriage to Thomas Grey, who was supported by Katherine's father. Katherine appears to have been about eighteen at the time of the case. Margery Kyrkeby and Ellen Gravely gave detailed evidence about a future contract between William and Katherine in Margery's house on June 2, 1493. Ellen testified that Katherine had asked her to arrange a meeting with William, and that she had done so. They met in Margery's parlour shortly after noon. After some discussion, according to Margery, "Katherine said to William these words…'William, will ye have me to your wife?' And he responded in English, 'Yea, by the mass, and all other women to forsake.' And she responded, 'I will the same.'" Ellen gave very similar testimony, adding that she had afterwards reproached Katherine on her frivolity and commented, "It is a feeble one will fall at the first stroke." The couple had afterwards exchanged gifts. William gave Katherine a silver gilt heart "as a sign of marriage" after the contract. A few days later, he sent her a stomacher[209] and she sent back a piece of alabaster carved in the shape of a book. Ellen testified that fame of the marriage circulated within the parish, while Margery said she knew nothing of the fame except what Ellen had told her.

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[208] *William Yewle & Thomas Grey c. Katherine Garyngton,* LMA, MS DL/C/A/001/MS09065: 167r-168v, 179rv, 180v-181r, 191v-194r, 196v-197r; McSheffrey, *Consistory,* http://consistory.cohds.ca/obj.php?object =case& action=view&id=87&expand=cases&case_results_format=full. Accessed March 27, 2017.

[209] A stomacher is a decorative article of women's clothing worn beneath the laces of a dress.

Much of the other testimony in the case was aimed at undercutting Margery and Ellen. Robert Elys, Katherine's father, and Master Thomas Lowe, vicar of Braintree, testified to hearsay that William had sent Katherine a gift of a stomacher by way of her brother, but she had returned it. They also testified that they knew nothing of any fame of the marriage. Through their evidence, the two attempted to counter the circumstantial evidence of William's marriage to Katherine by placing all the action in sending gifts on his side, and denying that she had received gifts or that her connections were aware of the marriage.

Two months later, William Gurney and Richard Twety offered additional evidence that directly attacked Ellen and Margery's credibility. They testified that in October, shortly before the start of the case, William and two other men had entered an alehouse to speak with Ellen Gravely and ask her if she knew of any contract between William and Katherine, and she had sworn that she did not. Presumably these men were connections of Katherine's family and were trying to find out what they would be up against in court. Twety had been in the alehouse and overheard the conversation. They both also testified that Ellen and Margery were women of ill fame according to the public fame of their parish; Gurney added that he knew this about Ellen because she had told him she had become pregnant while unmarried. Twety stated that Ellen was "a woman of ill fame, damaged opinion, and dishonest conversation, and she was and is commonly said, held and reputed as a woman of ill fame," while Margery was "a woman of ill fame and light condition and would perjure herself for little, and as such was and is commonly said, held, and reputed."[210] The two attempted to use Ellen and Margery's reputations for dishonesty and immorality to discredit their evidence. Finally, in March and May, Robert Howlett, William Gurney, and Robert Elys testified that

[210] i*bid.*

Katherine and Thomas Grey had married in August or September and that public voice and fame circulated about the marriage.

A future contract not followed by consummation, as William's contract with Katherine seems to have been, would have been made irrelevant by a later present contract between Katherine and Thomas Grey. It is interesting, therefore, that evidence of Katherine's marriage to Grey was the last thing to be introduced by a period of several months. Instead, Katherine (or more likely her father) tried to negate the circumstantial evidence against her and then launched a personal attack on Yewle's witnesses. Perhaps preserving Katherine's reputation required disproving the contract with William, not just replacing it, and this was best accomplished by invoked evidence of perjury and ill fame of the witnesses to the marriage.

Although the words "ill fame" are not specifically used, very similar tactics appear in *Alice Billingham c. John Wellis* (1488), where much of the evidence consisted of personal attacks on the opposing witnesses. Alice Billingham was attempting to prove that John Wellis had married her in February 1486. Seven witnesses testified for her, but only one, Agnes Weston, claimed to have witnessed the actual exchange of consent. Richard and Beatrice Thompson, the witnesses for Wellis, not only denied that the marriage had taken place on the occasion named, but testified that Weston was very poor, unreliable, accustomed to be seen drunk by members of the parish, and known to be a liar. Conversely, much of the evidence by

Billingham's secondary witnesses seems to be an attempt to prove that Beatrice Thompson was deeply biased in favor of Wellis and that her evidence was suspect.[211]

The first witness statements are dated March 26, 1488. Most of the testimony entered references a period during Lent two years earlier. Alice Billingham was living in the house of Richard and Beatrice Thompson for unspecified reasons, and John Wellis was in the Thompsons' employ. According to Agnes Weston, between 1 p.m. and 2 p.m. on the day before St. Valentine's Day she was visiting Alice Billingham in the hall of the Thompsons' house, where they were eating bread and a chicken and drinking ale. Beatrice Thompson and John Wellis were also present. Wellis said that because of the day he had come to choose Alice as his wife and his valentine forever, and they had clasped hands and exchanged present consent. Alice's other initial witnesses were two other women, Agnes Bullok and Constance Stilman, who testified to two separate occasions when Beatrice had said she had made a marriage between Alice and John Wellis, but regretted it, and had said "and I shall bring it as far backwards as ever I brought it forward."

Beatrice Thompson herself, in a first statement taken on March 28, 1488, said that around Easter two years previously she had urged Wellis to marry Alice Billingham and had given him a gift from her, and he had said he might do so. She testified nothing about the contract, implying that it had never occurred. Wellis himself responded on April 18 that he had spoken to Alice about eight times in the past two years and that he did not believe what was claimed in the libel, which would seem to be a denial of any marriage. Two months later, on June 12, Beatrice Thompson gave evidence again, along with her husband Richard, as

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[211] *Alice Billingham c. John Wellis*, LMA , MS DL/C/A/001/MS09065B: 7r-9r, 10r-11r, 15r-15v; McSheffrey, *Consistory*, http://consistory.cohds.ca/obj.php?object=case&action=view&id=33& expand=cases&case _results_format=full. Accessed March 27, 2017.

witnesses for the defendant. Richard Thompson asserted that Agnes Weston was poor, had few goods with which to support herself, and was "accustomed to get drunk with a cup of ale." He also claimed to have been present on that afternoon before Valentine's Day two years ago, and testified that Alice had asked John to marry her, but he had been unwilling and no marriage had taken place. Beatrice Thompson seconded her husband, adding that Agnes Weston was a woman of "loose tongue and a great liar and that she was accustomed often to say one thing and affirm it by oath and immediately afterward deny what she had just said."

Alice then introduced additional circumstantial witnesses on June 17. One Thomas Thompson testified that two years ago, Beatrice, Alice, and John Wellis had been drinking together in an inn at the Sign of the Bells, and afterwards Beatrice had said that she trusted John Wellis would marry Alice. Thompson's master, Henry Stevens, confirmed that Thompson had mentioned the incident to him at the time. Robert Wild and William Cole, servants of Alice's brother Robert Billingham, testified that Beatrice had made a similar statement to them and that there was public fame of the marriage.

The case is an example of a double attempt to gain a legal advantage by discrediting a witness for the opposite side. Alice's initial presentation of her case was very weak: she had only one witness to the actual contract, rather than the two that were preferred to prove the contract in an ecclesiastical court. The others could testify only to comments by Beatrice Thompson, who looms larger in this case than either of the parties themselves. It might have been adequate for the Thompsons simply to testify that the marriage had not occurred, but they also made a pointed personal attack on Weston's reputation, especially by testifying that she was poor and had been known to lie under oath. The obvious implication was that because of her poverty, she had allowed herself to be bribed to lie. Billingham's witnesses were

probably an attempt to conversely discredit Beatrice, by saying that she had changed her story about the occurrence of the marriage, or even to imply that her attempt to "bring the marriage back" through her influence on Wellis was the reason he was denying it and that it was necessary to bring it to trial in the first place. The evidence was still weak however; they could only say that at one point Beatrice had wanted and expected the marriage to occur, not that it actually had. It seems likely that the attack on Weston was more effective evidence, and that Alice Billingham brought a weak case overall.

The attempt to discredit Weston is a more obvious example of what I discussed earlier in *Warde c. Qualley*, in which Qualley's defense witnesses tried to prove the bias of the witnesses to the supposed marriage, claiming that they had publicly upbraided her and were hostile to her while favoring Robert Warde. The same maneuver appears in *Brown c. Gilis*, the first case considered, in which the defendant's witnesses tried to discredit the witnesses for the plaintiff by proving their ill fame as a prostitute, and adulterer, and a serial keeper of bawdy houses. In all of these cases, we see the importance of common fame before the London Consistory Court.

Conclusion

Medieval marriage was a complex institution that encompassed both religious and secular aspects. The Church defined marriage as an exchange of consent, deliberately or otherwise emphasizing personal choice in the selection of a spouse at the expense of familial and community oversight. The Church upheld many clandestine marriages at the same time that both ecclesiastical and secular authorities strongly discouraged them. Nonetheless, marriage remained a significant public and social event. It was central to social alliances and to the transfer of property, and families and broader communities were deeply invested in marriages. Most marriages were made after extensive publicity and with the involvement of others; those that were not were suspect and potentially impossible to prove in court. Consequently, litigants introduced and denied evidence of fame in marriage cases, because common knowledge of the marriage was legitimate supporting evidence that it had been properly entered into with appropriate publicity.

Personal reputation was also deeply important and had significant legal and social implications in the Middle Ages. A person's fame, or reputation, significantly affected how they were perceived, so introducing evidence of an opposing witnesses' ill fame was an effective method of discrediting them in court. This could be done by associating them with the professions of prostitution and brothel keeping, or with other immoral behavior.

We have also seen that fame was a used and recognized legal concept by the late Middle Ages. Both canon and secular lawyers began to debate the proper role of circumstantial evidence after the ordeal ceased to be a viable method for reaching legal verdicts in the thirteenth century. A significant body of thought, as presented in Thomas de

Piperata's *Tractus de fama*, advocated the use of fame as supporting evidence, especially in cases where eyewitness evidence was insufficient. Helmholz and Poos have found that fame was used as evidence when prosecuting sexually related offences such as fornication, adultery, and paternity suits. It is a short step from these cases to marriage litigation. Fame was also widely used as probable cause for ecclesiastical courts to initiate *ex officio* investigations into marriages and sexual offenses. While this occurred more frequently on the continent, it also took place in England, as the records of the Ely Consistory demonstrate especially well. Given the body of legal thought and usage, using evidence of fame would have had a legal basis for effective use in the London Consistory.

Evidence of fame was clearly common in the London Consistory records, appearing at least once in over 88% of marriage litigation cases. Some cases employed it many times. While sometimes the evidence consists merely of a brief assertion or denial of fame that could be interpreted as simply legal formula, in many other cases it is detailed and carefully presented. As examination of sample cases has shown, witnesses testified again and again to the existence, origins, or details of public voice and fame. The form of the evidence makes it clear that an assertion of fame was a standard part of the libel, in which the plaintiff presented the charges they expected to prove. This also indicates its importance, considering the centrality of the libel and the witness statements that responded to them in the judge's ruling on the case. Litigants also brought witnesses specifically to make energetic attacks on the personal fame and reputation of opposing witnesses. The sheer amount of this evidence and the care sometimes clearly taken to introduce it reinforces its legal value.

I see at least two directions to expand this research in the future. One is to examine the use of fame in marriage litigation in other consistory courts to determine if it was a local or a

general practice. It would especially valuable to examine more complete records, such as those surviving from the York Consistory, to look for the presence or absence of correlation between evidence of fame and success rate. Another is to explore the records of the London Consistory itself in cases other than marriage litigation. It would be instructive to see how its prevalence in marriage cases compared to, for instance, cases of breach of faith, clerical discipline, or defamation, which most clearly explores the significance of an individual's good and ill fame. Exploration into the cases would give further insight into the value of this evidence and what it can tell us about the society of late medieval London.

I will close by briefly considering what the use of fame as evidence tells us about the broader social circumstances of late medieval London. To do so, I return to McSheffrey's discussion of the lack of distinction between public and private in the Middle Ages.[212] As she notes, since Philippe Ariés and Georges Duby published *A History of Private Life* in 1985, scholars have come to question the sharp distinction they drew between private life and public life. McSheffrey argues that the modern concepts of right to privacy and division between public and private were inventions of the Enlightenment and are anachronistic to the Middle Ages. The use of evidence of fame in marriage litigation offers further support for this conclusion. Its importance indicates the high level of interconnection and lack of distinction between public and private in medieval society compared to the modern day. Public knowledge and public reputation were valuable evidence when people knew about their friends and neighbors' personal affairs because they were, in fact, not personal.

[212] McSheffrey, *Marriage, Sex, and Civic Culture,* 190-194.

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