Force and Fear as Impediment to Marriage. 
Attitudes, Norms and Legislation during the Middle Ages, the Reformation and the Counter Reformation

Charlotte Christensen-Nugues
Lund University, Dept. of History of ideas and sciences

1. Summary

The goal of the proposed project is to study the discussion surrounding force and fear as an impediment to marriage in pre-modernity, with special focus on the development and application of Canon Law, and the changes brought forth by the Reformation and Counter Reformation.

Forced marriages have been the matter of much debate lately. In 2004 the legislation concerning this kind of marriages was reinforced in Sweden (ÄktB, 5 kap. 5 §) but many asks for a still more vigorous and efficient legislation. There are also important problems as to how to apply the legislation, notably how to prove and define coercion within the family. These questions were also raised in the discussion preceding the decision (prop 2003/04:48).

The debate surrounding forced marriages is often considered a modern phenomenon, brought forth by cultural conflicts in a globalized world. Similar discussions can however be traced back as far as to pre-modernity. Already in the second half of the twelfth century, the rule that a marriage could be declared invalid if the consent had been given through force or fear was established in Canon Law. This ruling was a natural consequence of the insistence on free consent as the only requirement for a valid marriage. It did, however, entail a number of both practical and theoretical problems. It could be difficult to prove force and fear within the family, but also to define what should count as sufficient force and fear to render a marriage invalid. In Roman law, the fictional figure of the “constant man” was used to determine different degrees of coercion. The constant man standard was however difficult to use in marriage cases that often involved very young people, dependent on those most likely to use force and fear against them. Already in the thirteenth century canonists and theologians, such as for example Hostiensis, Raymundus of Penyafort, and Thomas of Chobham, acknowledged the particular difficulties to assess force and fear in marriage cases where the parties were economically, socially and even emotionally dependant on those most likely to use force and fear against them (i.e. parents/guardians).

During the reformation era the conception of marriage changed radically. One of the most important aspects of this change was the desacralisation of marriage in protestant countries. The legal influence of the family over its members was reinforced, especially in protestant countries, but a change of attitude is apparent also within Catholicism. At the same time the importance of the relationship between the spoues was emphasized.

2. Specific Goals

The overall goal of the proposed project is to study attitudes, norms and legislation surrounding the impediment of force and fear during the Middle Ages and in the period
directly following the Reformation and Counter reformation. The project will consider the theoretical framework (theory of consent, theory of coercion, filial duty versus freedom of choice, spiritual versus secular conception of marriage) and its practical implications (legislation and mode of application). Four principal areas of interrogation have been identified:

- To what principles did the legislators refer when defending the freedom of consent during the periods in question? (Implications of spiritual and secular approach to marriage)

- How did the legislation surrounding force and fear correspond to (or nor correspond to) attitudes and norms in lay society? What can the sources tell us about if and how the lay population understood it? What was the perceived relationship between the legislators and those concerned by the legislation?

- How were different degrees of force and fear assessed during the period? How and to what extent were the involved parties social and economic situation, and their relationship to those exercising the coercion, taken into account?

- How did the theoretical framework correspond to legislation, and how did the centrally established legislation correspond to actual practise in local courts?

3. Related Work and Research

3.1. The impediment of force and fear
The impediment of force and fear is perhaps one of the clearest expressions of the doctrine of free choice, and is to some extent treated in most classical works on marriage legislation in medieval Canon Law. Still valuable older accounts include Freisen (1888) and Esmein (1891). More specific accounts on the subject include Sangmeister (1932), Michael M. Sheehan, (1996) and James A. Brundage (1998). The most cited work on the subject is probably John T. Noonan Jr’s “Power to chose”(1973) where the author traces the foundation of the impediment of force and fear to the 11th Century decretals cited by Gratian. In an earlier text (1972) he studies the different definitions of the “constant man” in the context of force and fear. Charles Reids has in Power over the Body. Equality in the Family (2004) linked the study of the impediment of force and fear with his more general interest in the idea of subjective rights in medieval Canon Law.

Research on the freedom of consent in the period following the reformation movement can roughly be said to have followed two principal trends; survivance or radical change. Some authors have considered that the insistence of parental consent in post-reformation Europe amounted to an important ideological shift (Brady 1998) while others emphasizes the continuing influence of medieval Canon Law also in protestant countries (Helmholz 1990). Ozment has in a very influential book challenged the notion of the “tyranical” protestant family (Ozment 1983). There are references to the survivance and/or redefinition of the impediment of force and fear in the studies mentioned above, but more specific studies are lacking for the post-reformation era.
3.2 Swedish research
There is to my knowledge no Swedish study that more specifically addresses the impediment of force and fear. The most thorough investigation of the influence of Canon Law on marriage in medieval Sweden is Mia Korpiolas dissertation *Between betrothal and Bedding: The making of marriage in Sweden, ca. 1200-1610* (2004). The main focus of Korpiolas dissertation is the transition from ”traditional” marriage formation to the canonical model and there is not very much said about the impediment of force and fear.


3.3 Own previous research
The applicant, Charlotte Christensen-Nugues, is lecturer in the history of ideas and sciences at Lund University and has since 1996 studied the medieval conception of marriage, and more specifically the doctrine of free choice in medieval Canon Law. She was rewarded with the Johan Nordström and Sten Lindroth prize for the best thesis of the year in the history of ideas for her work on the consensualist doctrine in medieval canon law. Works directly related to the project includes “Mariage consenti et mariage contraint : L’Abjuration sub pena nubendi à l’officialité de Cerisy, 1314-1346” (*Médiévales* 2001), “Tvång och rädsla: Om äktenskapshinder i medeltida kanonisk rätt”, *Förbistringar och förklaringar: En festskrift till Anders Piltz* (2008) and ”Reverential fear and consent to marriage” (*Umeå* 2008). Charlotte Christensen-Nugues is since 2006 member of the network *Livshållningar: Idéer, Dygder och Värden i förmodern och tidigmodern tid*, financed by Riksbankens Jubileumsfond.

4. Project description

4.1. Overview
The project has two parts. The first part concerns the theoretical framework, i.e. the conception of marriage during the two studied periods and how it influenced attitudes to force and fear. Within the theoretical framework also lies the difficulties in defining force and fear, and the subsequent discussion on how the involved parties social and economic situation, their gender and relations to those exercising coercion, should be considered in relation to the freedom of consent. This discussion was initiated in the twelfth and thirteenth century by canonists like Hostiensis, Raymundus of Penyafort and Thomas of Chobham and reached its apotheosis in Tomas Sanchez analysis of reverential fear and its impact on the freedom of consent in *De Sancti Matrimonii Sacramento* from 1602.

The second part concerns the actual legislation and its application in three different regions, North-western France, Southern England and Sweden, during the late Middle Ages and the period directly following the Reformation and Counter Reformation. By comparing legal sources from these three regions the project will study regional variations and the impact of the Reformation movement in different religious, intellectual and cultural contexts.
From a purely theoretical point of view the legal situation was similar in the three regions during the Middle Ages. They were all part of Western Christendom and at least theoretically subject to Canon Law. Because of the scarcity of legal sources it is difficult to assess just how the marriage legislation was applied in Sweden, but at least theoretically the same rules concerning marriage formation, impediments to marriage and separation should apply in the same way in Sweden as in the rest of Europe. There were however space for regional variations. Even if the central principles should be respected, Canon law could be flexible and sensitive to local custom if there was no dogmatic issue involved (d’Avray 1998).

During the second period of our study, Reformation and Counter reformation, the situation differed significantly in the three regions. In France the catholic faith was ultimately retained, but the attitude towards freedom of consent and parental control changed, a change of attitude that is also apparent in Canon Law with the decree *Tametsi* rendering clandestine marriages invalid. England converted to Protestantism but retained large portions of the pre-Tridentine Canon law that was subsequently incorporated in English common law. Thus “clandestine marriages”, rendered invalid in catholic countries by the decree *Tametsi*, remained valid in England until 1753. In Sweden the Lutheran faith was adopted and with it the Lutheran conception of marriage and family.

### 4.2 Theoretical approaches

The Church presented a marriage model that was fundamentally opposed to social mores of the time (Duby 1981). The insistence on the free consent of the parties had enormous social implications, and was perhaps the most controversial part of the Church’s doctrine of marriage. The “Church’s doctrine effectively challenged the very foundation of the patriarchal family and the hierarchical structure that characterized medieval society” (Murray 1998). There are however diverging views as to the practical implications of the Canon law legislation on marriage, and as to the motives of the Church in promoting such a controversial conception of marriage. According to Jack Goody the marriage legislation in medieval Canon Law was principally a tool to further the economic and political interests of the Church (Goody 1983). James A. Brundage argues that the decreals of Alexander III above all mirrored an emerging consciousness of individual freedom and a new conception of marriage while John Noonan and Michael M. Sheehan gives the Church a more active part in this new consciousness (Brundage 1987, Noonan 1973, Sheehan 1996). Richard R. Helmholtz is more weary when it comes to the Church’s intentions to promote freedom to marriage, even if this without doubt was the result (Helmholz 1996). I would agree with this more cautious approach. An increased individual freedom may have been the result of the marriage legislation in medieval canon law but it was not its aim. The theoretical objective of Canon law was not to affirm individual rights of the layman but to help them on the thorny way to salvation. The application of Canon Law had however practical and concrete consequences that outreached this theological perspective.

The insistence of parental consent in post-reformation Europe is sometimes seen as a fundamental ideological shift in the Western conception of marriage (Brady 1998). The insistence on the role of Reformation in enforcing parental control can however be a bit simplistic. Demands for a greater parental control antedates the reformation movement, and more importantly, are not confined to protestant countries. In 1563 the decree *Tametsi* of the Tridentine council rendered clandestine unions invalid, and even if it did not explicitly demand parental consent, it rendered marriages against the wishes of the family extremely difficult, if not completely impossible. The protestant view on the matter is also very unclear. Luther clearly opposes forced marriages and describes them as invalid and “sources of
"mischief", but his insistence on parental consent and the duty of children to obey their parents led him to some ambivalence. This ambivalence is typical of Protestants writers of the period but the conflict between the notion of filial duty and the freedom of marriage is also apparent in contemporary catholic writings, as, for example in Tomas Sanchez De Sancti Matrimonii Sacramento.

The short discussion above serves to show that freedom of consent and the implications of force and fear were open to interpretation during the whole period. Any simplistic interpretation of an absolute freedom to contract marriage during the Middle Ages as opposed to absolute parental control after the Reformation must be measured and compared to contemporary evidence.

4.3 Methods and sources
The project will principally use three kinds of sources: Theoretical works on marriage, legislation and legal commentary, and local legal sources, as, for example, synodal statutes, court records and formularies.

The Canon Law legislation, as well as underlying theoretical works and subsequent commentary, are well documented, but the local source material for the medieval period is more problematic. Whereas there are ample sources as well for England as for Northern France there is very little left in Sweden. The only existing court material for the catholic era is the register of Bishop Hans Brask from the beginning of the sixteenth century. The recently published collection of Swedish cases in the registers of the Apostolic Penitentiary (Risberg, Salonen 2008) shows the influence of Canon Law, but there are no cases directly involving force and fear. There are some fragmentary evidence involving force and fear: for example the marital problems of Cecilia Sigurdadottir documented in Sverresagan and the case of a certain Niels of Slesvig that found its way into the decretals of Gregory IX (X 4.1.28). Synodal statutes can however give valuable information on the local application of Canon Law. Several Swedish synodal statutes have been published in Reuterdahl (1841) and in Gummerus (1902). Amongst unpublished statutes of particular interest for the project are Skara (1278-1317), Linköping (1339-1351) and the fifteenth century compilation by Nils Ragvaldson of all statutes from the archdiocese of Uppsala.

For the period after the reformation there is significant source material for all three regions. For Sweden they include the ordinances of the sixteenth century, the early protestant commentary on the medieval city law and the law of the realm (Skytte 1608 and Crucius 1630) as well as court material as for example the registers from the cathedral chapters of Uppsala (1593-1608), Västerås (1595-1603) and Stockholm (1595-).

4.4 Preliminary results
The applicant, Charlotte Christensen-Nugues, has published a preliminary study on the changing definitions of force and fear in the canonists from the twelfth and thirteenth Century (Chrisensen-Nugues 2008). She has also presented a paper on the notion of reverential fear in Tomas Sanchez De Sancti Matrimonii Sacramento (1602) and its impact on the freedom of choice at a conference on the cultural history of emotions in pre-modernity (Umeå, october 2008).
5. Relevance for the field

A study of the development and mode of application of the impediment of force and fear constitutes a privileged area to assess the impact of the theory of consent – and its limits. It also gives an opportunity to study the idea of coercion and how it was conceived of in different contexts. It gives valuable information on the relationships within the family, perhaps not so much what they “were” from a modern point of view, but rather how they were perceived by contemporary society. It concerns for example the conflict between the conception of filial duty and the idea of freedom of consent, the notion of reverential fear timor reverentialis (i.e. the natural respect and awe that a subject feels towards a superior, such as a child toward his/her parents) and it’s impact on the freedom of choice, and more generally, the situation of woman and those under age in the context of marital freedom.

The proposed study addresses two areas that are lacking in contemporary research. That is a comparison of how the impediment of force and fear was treated, applied and perceived before and after the Reformation movement in both catholic and protestant countries, and, more specifically, what the existing sources can tell us about how it was understood, applied and perceived in Sweden before and after the Reformation.

Focus of the research will be on the pre-modern period but the project will also relate to the modern debate. To that end we have started an informal collaboration with Eva Ryrstedt, Docent in Civil Law at Lund University, and specialist on Family Law. By relating to the modern debate we hope that the project will give a contribution towards a deeper understanding and more thoughtful discussion also of current issues.

The results of the proposed project will be published continuously in national as well as international venues.

7. References


Brady, Thomas A. Communities, Politics, and Reformation in Early Modern Europe, Studies in Medieval and Reformation Thought, 68. E. Brill, Leiden, Boston & Köln, 1998


Law, Sex and Christian Society in Medieval Europe, University of Chicago Press, 1987


"Tvång och rädsla: Om äktenskapshinder i medeltida kanonisk rätt”, Förbistringar och förklaringar. En festskrift till Anders Piltz, Lund 2008

"Reverential fear and consent to marriage” (Umeå 2008)

Duby, Georges, La femme, le chevalier et le prêtre, Paris 1981


Roman Canon Law in Reformation England, Cambridge 1990


Lennartsson, Malin, *I säng och säte, Relationer mellan män och kvinnor i 1600-talets Småland*, Lund 1999


"Power to choose", *Viator* 4 (1973)


Sangmeister, Joseph V., *Force and fear as precluding matrimonial consent: an historical synopsis and commentary*, Catholic university of America, 1932

