Marriage Litigation in the Western Church, 1215–1517

From the establishment of a coherent doctrine on sacramental marriage to the eve of the Reformation, late medieval church courts were used for marriage cases in a variety of ways. Ranging widely across Western Europe, including the Upper and Lower Rhine regions, England, Italy, Catalonia, and Castile, this study explores the stark discrepancies in practice between the North of Europe and the South. Wolfgang P. Müller draws attention to the existence of public penitential proceedings in the North and their absence in the South, and explains the difference in demand, as well as highlighting variations in how individuals obtained written documentation of their marital status. Integrating legal and theological perspectives on marriage with late medieval social history, Müller addresses critical questions around the relationship between the Church and medieval marriage, and what this reveals about both institutions.

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Acknowledgments

Historians generally assume that late medieval church courts applied their law with the help of Romano-canonical procedure (or *ordo iudiciarius*), a complex system of checks and balances foreshadowing the modern mechanisms of “due process”. This differs from my own understanding of the sources. Especially in connection with the laity, I argue that ecclesiastical judges resorted to the ordo only by way of exception. The greatest number of cases took on a penitential format, featuring proof like hearsay and spontaneous allegations that fell below the threshold of admissible evidence as defined by jurisprudence. Against common opinion, I also find that contemporaries referred to the forum of conscience as comprising beyond secret and sacramental confession the sphere of public penance as well. The documentation speaks of things as “occult” for being hidden from sight, but also when they were visible and did not warrant judicial sentencing.

The present book forms a sequel to my study on *The Criminalization of Abortion in the West*, published by Cornell University Press in 2012. The two volumes respectively treat the criminal and civil sides of ecclesiastical court activity in the Middle Ages. Completion of the second part depended on the most favorable circumstances and an exceptional degree of institutional support. The original impulse came from the M4Human Program of the Gerda Henkel Foundation granting me a Marie Curie Research Fellowship for 2013 and 2014. It was generously endorsed by Fordham University, which prolonged my leave of absence to the spring of 2015 and offered a Faculty Fellowship for the academic year of 2017/2018. As a result, I was freed from teaching duties for seven out of nineteen semesters between finishing *The Criminalization* in the summer of 2011 and the final submission of this manuscript at the end of 2020.

Although scholarly writing can be an isolating experience, it does not prosper in isolation and without the assistance and encouragement of others. To avoid inadvertent omission, I limit my expression of gratitude to three instances. One person I have in mind is Susanne Lepsius from the University of Munich, who gracefully accepted the role of adviser during
my time as Marie Curie Fellow in Germany. I repeatedly shared with her my inchoate thoughts on this book project, and while listening to me with all her interdisciplinary endurance and training as a lawyer, I imagine she must have asked herself more than once: “Will historians ever get it?” The challenges of communication across the divide between academic compartments, medieval and modern, or law and history, are indeed formidable, calling attention, secondly, to my undergraduate and graduate audiences at Fordham over the past twenty years. They never let go as I searched for appropriate words to describe the operations of medieval church law. If my explanations still demand greater clarity, it is not because of the students, who always insisted on improvement.

Lastly, I wish to mention Nick Paul, one of my co-medievalists in the History Department at Fordham. When Cornell University decided under threats of litigation to pull my Criminalization of Abortion from the shelves, he immediately confronted the Press in vigorous protest, to the point that Cornell relented and produced a (slightly revised) paperback version in 2017. Not enough, Nick has acted as my liaison with publishers regardless of whether questions of academic freedom were at stake. Someone may be inclined to downplay his role by saying that he simply did what people do for their younger colleagues. The problem is that I am his senior by many years. Thanks again, Nick!