“Talk of Marriage” in Northwest England: Continuity and Change in Matrimonial Litigation, 1560-1640

Jennifer McNabb
Western Illinois University

Follow this and additional works at: https://scholarsarchive.byu.edu/rmmra

Part of the Comparative Literature Commons, History Commons, Philosophy Commons, and the Renaissance Studies Commons

Recommended Citation
Available at: https://scholarsarchive.byu.edu/rmmra/vol31/iss1/10

This Article is brought to you for free and open access by the Journals at BYU ScholarsArchive. It has been accepted for inclusion in Quidditas by an authorized editor of BYU ScholarsArchive. For more information, please contact scholarsarchive@byu.edu, ellen_amatangelo@byu.edu.
“Talk of Marriage” in Northwest England:
Continuity and Change in Matrimonial Litigation, 1560-1640

Jennifer McNabb
Western Illinois University

This article suggests that the matrimonial culture of northwest England from 1560 to 1640 was marked by a complex range of strategies, values, and processes that emphasized matrimony as a performative process. While present-tense language of consent created, in the words of sixteenth-century lawyer Henry Swinburne, the “Substance and indissoluble knot of Matrimony,” people in the northwest consistently identified other words, actions, and attitudes that also communicated matrimonial intent. Litigation from the diocese of Chester’s two consistory courts features considerable “talk of marriage” by litigants and deponents and reveals an enduring emphasis in the northwest on public performance of matrimonial consent through cultural, social, and economic negotiations and exchanges. This evidence also suggests ways in which rival notions about matrimonial propriety began to alter the cultural framework through which people in the northwest interpreted marriage prior to the civil wars.

In A Treatise of Spousals, sixteenth-century lawyer Henry Swinburne sought to produce a convenient digest of law pertaining to

---

1 Research at the West Yorkshire Archives Service at Leeds (hereafter, WYAS Leeds) and the Borthwick Institute in York in 2007 was funded by a grant from Western Illinois University’s University Research Council, College of Arts and Sciences, and Department of History. I would like to express thanks to Jim Forse and Abby Lagemann, my fellow panelists in the “Continuity and Change in the Tudor North” session at the joint meeting of the Wooden O Symposium and Rocky Mountain Medieval and Renaissance Association meeting in August 2010, to the audience of the panel, and to the Executive Board of the RMMRA for their selection of this paper for the Delno C. West Award.

The phrase “talk of marriage” is one employed repeatedly by early modern litigants and witnesses in consistory court suits involving disputed matrimony from northwest England. It is employed in the records both as a descriptor of the negotiations of prospective spouses, kin, and friends that predated marital vows and as a more generic, catch-all phrase to describe discussions of matrimonial values and practices. See below for a discussion of the methodologies used to evaluate “talk of marriage” in this article.
the making of marriage.\textsuperscript{2} He opened his text by defining spousals as “a mutual Promise of future marriage” and then complicated that characterization through an extensive discussion of the complex relationship between spousals and matrimony in early modern English theory and practice.\textsuperscript{3} The fact that indissoluble marriage could be effected in a variety of ways in early modern England made Swinburne’s task of synthesizing erudite opinion with popular attitudes an especially challenging one.\textsuperscript{4} Although the Church of England sought to institutionalize its control over the making of marriage, the failure to reform English marriage law until 1753 meant that early modern matrimony continued to be governed by medieval canon law, a circumstance that offered prospective spouses extra-eccle-


\textsuperscript{3} Swinburne, \textit{Treatise of Spousals}, 1.

siastical means of creating legitimate marital unions. Swinburne noted, for example, that the reciprocation of matrimonial consent in present-tense language (*per verba de praesenti*) constituted “the end or execution of Marriage,” regardless of its publicity, location, witnesses, or clerical supervision. His text also acknowledged that spousals could feature objects and actions whose exchange or performance possessed the ability to transform matrimonial intent into “the very Substance” of marriage.

Swinburne’s text provides a detailed explication of the means by which “irregular marriages” lacking the direct oversight of the Church could be performed so as to be recognizable by witnesses as constituting a valid union. It thus serves as a testament to the fact that multiple meanings of and paths into marriage coexisted in early modern England. Another valuable source used by scholars to evaluate the form and function of early modern matrimony is litigation concerning disputed marriage filed in England’s network of church courts, administered by bishops and their agents. These

---


8 By “irregular marriage” I refer to those unions formed by means and circumstances other than those recommended by the church, enumerated in note 4 above.
consistory courts had jurisdiction over a range of spiritual matters, including marriage, during the sixteenth and seventeenth centuries and possessed power both to initiate process *ex officio* (from the office of the bishop) and to entertain litigation instigated by laypersons against one another (instance suits). This essay uses office and instance suits to explore continuity and change concerning the words, actions, and attitudes whose performance signified the making of marriage in early modern England.\(^9\) I argue that litigation from the consistory courts at Chester and Richmond reveals an enduring emphasis in northwest England on the public enactment of matrimonial consent through cultural, social, and economic negotiations and exchanges, even as rival notions about matrimonial propriety began to alter the “cultural frame” through which people interpreted the performance of marriage prior to the civil wars.\(^10\)

To investigate “talk of marriage” in the early modern northwest, I use libels, responsions, interrogatories, and depositions from approximately 180 matrimonial suits heard by the Consistory Court of Chester, the Consistory Court of Richmond, and the archiepiscopal court at York, which served as the court of appeals for both consistories, from 1560 to 1640.\(^11\) Marriages and their formation in

---

9. I thus subscribe to the assertion of cultural historians and new historicists that performative symbols work “not merely because of their metaphorical power but also by virtue of their position within a cultural frame.” Robert Darnton, “History and Anthropology,” in *idem, The Kiss of Lamourette: Reflections in Cultural History* (New York: Norton, 1990), 342. For an overview of recent trends in cultural history, see Karen Harvey, ed., *The Kiss in History* (Manchester: Manchester UP, 2005), especially the editor’s “Introduction,” 1-15.


11. For the Chester consistory, see Cheshire Record Office, *Deposition Books of the Consistory Court of Chester, 1554-1574* (hereafter, CRO EDC 2/6, 2/7, 2/8, or 2/9), consisting
the northwest were the subject of additional suits in the collections under consideration, but their records contain only formulaic, procedural documents and thus were not included in this sample. The suits examined here involved disputes concerning child marriages as well as those featuring spousals entered into by individuals who by virtue of age were deemed capable of expressing matrimonial assent. It can be argued that such materials are flawed because they represent fractured rather than “normal” matrimonial activities and because litigants and witnesses employed fictional elements in their narratives to bolster their legal claims. However, even if matrimonial litigation represents failed courtship and even if testimony of witness testimony and identified below by their folio or page references (following the style used in the individual deposition books), and Cause Papers of the Consistory Court of Chester, 1560-1653 (hereafter, CRO EDC 5), consisting of procedural papers (libels, responsions, interrogatories, depositions, articles, and sentences) and referenced below by year and file number. The cause paper materials for Richmond are found in the following record classes at WYAS Leeds: RD/AC/1 (Allegations, Articles or Libels), RD/AC/2 (Responsions), RD/AC/3 (Interrogatories), RD/AC/5 (Attestations and Depositions), RD/AC/6 (Further Articles or Exceptions), and RD/AC/7 (Sentences). See also WYAS Leeds RD/A class for the Act Books of the Consistory Court of Richmond. The appeals material for both courts is housed at the Borthwick Institute: Ecclesiastical Cause Papers at York: Files Transmitted on Appeal, 1500-1883 (hereafter, Borthwick Institute Trans CP). Only appeals files at York have been examined; matrimonial suits heard by the Consistory Court of York in its own diocesan jurisdiction have not been considered here. These archival sources are supplemented by Frederick J. Furnivall, ed., Child-Marriages, Divorces, and Ratifications, &c., in the Diocese of Chester, A.D. 1561-6 (London: Kegan Paul, Trench, Trübner, 1897), which includes transcriptions of both child marriage suits and matrimonial contract litigation, and the small handful of suits dated after 1640 in the CRO EDC 5 collection. One hundred thirty-two of the 179 total suits deal with irregular marriage between parties over the ages of consent, and 47 are child marriage suits. For “talk of marriage,” see note 1 above.

12 Swinburne’s treatise distinguishes between two distinct types of spousals related to the life-cycle, those contracted by children under the “ripe or lawful Age of Marriage” and those contracted by individuals who had reached the canonical ages of consent. See Treatise of Spousals, Chapters 6-8. For a discussion of the features and occasions of child marriage in the northwest, see the discussion below.

contains fictive elements, the fact remains that respondents and deponents told stories they believed to be persuasive and to have resonance with both popular practice and law; the rhetorical strategies they employed thus needed to be both plausible and recognizable to be effective. To provide a counterbalance to the purposefully constructed narratives in legal actions focusing on disputed matrimony, I have also surveyed more than 2,200 additional, non-matrimonial instance suits filed in Chester’s consistory for incidental “talk of marriage.”\textsuperscript{14} This litigation, stemming from defamation, pew and testamentary disputes, and controversies over tithe payments, represents an important and underutilized source for courtship and matrimony. It reveals that deponents in a range of legal actions, although ostensibly commenting on matters sometimes only tangentially related to matrimony, found ample occasion to communicate their ideas about the words, actions, and attitudes that signified marriage in the northwest.

Among the matrimonial suits filed in the consistories at Chester and Richmond with some regularity during the period under consideration were those concerning marriages initiated on behalf of children younger than the official age of consent. As Swinburne notes, the canonical impediment concerning age meant that child marriages contracted for those under the age of seven were invalid due to the parties’ inability to give mental or physical consent. Contracts made for children between the ages of seven and twelve (for girls) or fourteen (for boys) were binding in the same way that contracts made by future-tense language (\textit{per verba de futuro}) were; they became unbreakable as a consequence of sexual intercourse and an exchange of consent after the attainment of the age of maturity.\textsuperscript{15} The suits sampled for this article indicate that although the majority of the child marriage cases in the northwest were concentrated in the

\textsuperscript{14} To create a broad sample of the plentiful cause papers of the Consistory Court of Chester, I examined all the court’s business in the first and sixth years of each decade under investigation as well as the years 1571-79, 1591-94, 1611-19, and 1631-34 in the CRO EDC 5 collection. The total number of suits from the collection considered in the sample years is 2,251.

\textsuperscript{15} Swinburne, \textit{Treatise of Spousals}, Chapters 6-8.
1560s and 1570s, they continued with some frequency through the 1630s. Evidence for the continuance of child marriage is not only contained in contract litigation between child spouses, however; glimpses of more “successful” child marriages appear in other types of suits. For example, a cause from 1593 alleging the adultery of Marie Cragg includes the assertion of her husband, Richard Cragg, that he “was but tend[e]r of yeares by the p[er]swasion & p[ar]tly by the threatning[es] of his fath[e]r [when] he did intermarie w[i]th the said Marie.” According to witness testimony, the marriage was subsequently ratified by both parties, and the couple had two children. Had Marie’s later adultery not come to light, evidence of what was likely a child marriage that had, for a time at least, been found acceptable by both parties would not exist in the records. Clearly the strategies of Richard Cragg’s father had worked as he (and other fathers, mothers, kin, and guardians in the northwest, no doubt) intended: the marriage was validated without recourse to legal action when the children reached the ages of consent.

These suits concerning child marriage indicate that the issue of age could spark controversy on the occasion of a ruptured relationship, as age played a seminal role in determining the validity of expressed consent. When Robert Wainwright rejected his child marriage to Christiana Williamson and married Elizabeth Golborne instead, questions concerning age prompted diverse responses from deponents in the subsequent litigation filed on Christiana’s behalf in 16 __ For an overview of the canonical position of the church concerning the invalidity of child marriages, see Ralph Houlbrooke, *The English Family 1450-1700* (London: Longman, 1984), 68. For an assessment regarding regionalism and child marriages, see Ingram, *Church Courts, Sex, and Marriage*, 128-29. In her study of marriage and the Consistory Court of Chester from 1570 to 1670, Catherine Frances argues that the majority of suits involving the breakdown of relationships did not feature age or force, and she does not consider child marriage as a category in her analysis of matrimonial litigation (see “Making Marriages in Early Modern England,” 42). I contend that child marriage and disputes concerning age are important to an understanding of the matrimonial culture of the northwest. See Jennifer McNabb, “Ceremony Versus Consent: Courtship, Illegitimacy, and Reputation in Northwest England, 1560-1610,” *Sixteenth Century Journal 37*, no. 1 (2006): 59-81, and McNabb, “Fame and the Making of Marriage in Northwest England, 1560-1640,” *Quidditas, the Journal of the Rocky Mountain Medieval and Renaissance Association 26 & 27* (2005-2006): 9-33 for additional considerations of this issue.


17 See CRO EDC 5 1593, no. 9.
1637.\textsuperscript{18} While the deponents were universally agreed that Christiana was younger than the canonical age of consent at the time of the marriage in May 1634, Robert’s age was considerably more contested. According to some, he was at least fourteen years old and “of good judgem[en]t and disc[re]c[i]on”; others insisted that he was “about thirteene years of age & no more.” The discrepancy was of vital importance: if he had been fourteen at the time of the marriage ceremony, his words and actions on that occasion as well as during the time that followed had the power to bind him to Christiana. The debate intensified over charges that the parish register in Christleton had been tampered with; testimony revealed that two entries for Robert Wainwright existed in the record of baptisms, the first from October 1619 and another from January 1624.\textsuperscript{19} Witnesses weighed in on the veracity of the entries, plumbing their memories to offer testimony concerning other public and personal events contemporaneous to Robert’s birth. Thomas Johnes, for example, advocated for the earlier baptismal date of 1619 by recalling that two women in town “were with child when the said Elizabeth Wainwright, deceased, was with child of the said Robert Wainwright” and concluding that the women “had two daughters borne and christened the said yeare [1619] that the said Robert Wainwright was christened.”

Deponents and litigants from the northwest voiced the opinion that couples could display consent or dissent by both verbal and non-verbal means.\textsuperscript{20} Witnesses in child marriage suits focused in their responsions and attestations not on precise words spoken by or

\textsuperscript{18} CRO EDC 5 1637, nos. 13 and 14. For additional debates over age at marriage, see, for example, CRO EDC 5 1575, no. 23; 1613, no. 46; and 1616, no. 74.

\textsuperscript{19} The existence of these two entries further required deponents to affirm there was just one man named Wainwright in Christleton who had been married during the years under consideration, thereby negating the possibility of two married men registering the baptism of a legitimate son named Robert. The witnesses also attempted to weigh in on a debate over the age of Robert’s younger brother, Thomas. Some implied that the second entry for Robert was a clerical error, intended to record Thomas’s baptism instead.

\textsuperscript{20} According to the law, actions alone could not make spouses the same way words could, but the evidence from litigation suggests that witnesses believed actions could have powerful performative value. See R. H. Helmholtz, \textit{Marriage Litigation in Medieval England} (Cambridge: Cambridge UP, 1974), 27, for a discussion of performative words in medieval England.
on behalf of litigants who had been younger than the canonical ages of consent at the time of marriage; they emphasized instead expressions of a later refusal of assent as demonstrated by various verbal, visual, and economic markers. Those seeking to nullify child marriages and their supporters, for example, stress in their statements to the courts the absence of gifts, affection, sexual intercourse, and cohabitation independent of adult guardians subsequent to a church marriage ceremony and particularly after the spouses reached the canonical ages of maturity.

Testimony suggests that friends, neighbors, and kin both watched carefully for the performance of behaviors that could act to ratify a child marriage and took the opportunity to play their own roles in such performances as a means of acknowledging their acceptance of a match as valid. The *Williamson v Wainwright and Golborne* suit featured witness testimony from a range of observers: servants in the Williamson household, neighbors and acquaintances of all three parties and their parents, and several relatives of the litigants. In addition to commenting on the ages of Christiana and Robert at the time of their marriage, witnesses also discussed the couple’s subsequent cohabitation in the Williamson household and their signs of assent or dissent from the union as they grew to maturity. All were agreed that Robert resided in the Williamson household upon the conclusion of his marriage with Christiana, but consensus broke down over the particular circumstances of his treatment in the house of his child bride. Margaret Wright, who lived as servant in the household for fifteen months, affirmed that she had often seen the couple alone “both in the chamber where hee himself [Robert] laye and likewise in the chamber where she [Christiana] laye.” Supporters of Christiana’s cause, like Eleanor Newall, noted that Robert’s new father-in-law kept him “in good & handsome close

21 The typical formula in depositions from witnesses of child marriage ceremonies usually involved a simple identification of the parish church in which the ceremony took place followed by an assessment of the ages of the parties involved.

22 The discussion of this suit is drawn from CRO EDC 5 1637, nos. 13 and 14.
& apparell” and thoughtfully supervised his education; she testified that she had served as an audience to Richard Williamson’s repeated admonishments to Robert to be more devoted to his studies. John Maddock, by contrast, painted a picture of Robert’s ill treatment at his father-in-law’s hands, claiming that Robert had been forced to perform the role of servant in the Williamson household and that he stayed there only because he had “noe other place of refuge,” a justification Robert’s own response to the court echoes. Accounts of mealtimes further included assertions that Robert had been made to serve the family and guests on at least one occasion and that he normally ate with the servants, although his mother-in-law always served him meat before the others.

Swinburne’s text discusses the ways in which even small gestures between child spouses who had reached the age of maturity could serve as “Deeds” by which “the former Spousals are confirmed.”23 To “imbrace or kiss each other” signified consent to matrimony, as did “calling or naming each other Husband and Wife.”24 According to testimony, such “Deeds” appear to have had considerable cultural significance in the northwest. Anne Brodhurst, “one of the next neybores” of Helen and Thomas Gleave, testified in 1570 to hearing “Helen diverse tymes in familier talk…call [Thomas] husband and he hath called her wife.”25 In Jane Sworeton’s response from a suit filed in 1616, she denied having “sate vpon the knee” of Thomas Mosse of her “owne free will & accord” but confessed that she sometimes “washed & starched” Thomas’s “linens,” gestures other witnesses used to testify to her later assent to a marriage concluded when she was younger than twelve.26 Observations of similar “Deeds” also joined the more substantive testimony in Williamson c Wainwright and Golborne. Elizabeth Prince, for example, testified that “shee hath seene & obserued them [Robert

23 Swinburne, Treatise of Spousals, 21.
24 Ibid.
25 CRO EDC 2/8, fols. 325r-327r.
26 CRO EDC 5 1616, no. 14.
and Christiana] severall times kisse and imbrace one the other in a loueinge & kinde maner as man & wife ought to doe.”  

Witnesses in contract suits involving spousals between those of “ripe Age” also highlighted a variety of actions such as public affection, cohabitation, and sexual intercourse that served to signify the performance of spousal roles and to engender a popular perception of legitimacy among neighbors and kin, frequently identified in the records by the phrase “common fame.” Forty percent of the spousals suits, for example, include testimony alleging sexual intercourse between purported spouses, and one-fifth comment on their cohabitation. Just under one-sixth of the suits describe other displays of physical affection such as kissing. According to testimony from 1640, for example, John Brenand and Maria Wilson “kissed eich other” after Brenand’s promise of marriage, an act witnesses recognized as creating a binding contract. A number of the suits refer to a pattern of multiple gestures between alleged spouses, the collective weight of which allowed witnesses to note that the couples were “comonly reputed & taken for lawfull man & wife” by their family, friends, and neighbors. In 1593, for example, a deponent testified to hearing John Derwall refer to Ellen Taylor as “my wiefe” and recounted that on the morning of Christmas Eve 1592, John greeted Ellen with the phrase “Good morowe, wiefe,” to which she responded, “Good morowe, husband.”

27 CRO EDC 5 1637, no. 14.  
28 For a treatment of spousals and “common fame” in the Consistory Court of Chester’s jurisdiction, see McNabb, “Ceremony Versus Consent,” 55-81, and McNabb, “Fame and the Making of Marriage,” 9-33.  
29 Testimony concerning sexual intercourse was, of course, particularly important in suits alleging futuro vows, as intercourse could transform promises for future marriage into present consent. Such information was also a regular feature of suits alleging prae senti vows and promises to marry.  
30 See the essays in Harvey, The Kiss in History, passim, for an illuminating discussion of the need for an understanding of the history of gestures such as kissing.  
31 CRO EDC 5 1640, no. 23.  
32 This language comes from CRO EDC 5 1616, no. 14, but variations of this theme appear with regularity in the sources.  
33 CRO EDC 5, 1593, no. 52.
Swinburne notes that to “give and receive Gifts and Tokens either of them, to or from the other” helped to signal and establish consent between couples, a practice the litigation from the northwest affirms as a regular feature of matrimonial activities.\textsuperscript{34} Nearly forty percent of the matrimonial contract suits considered here discuss the exchange of objects between prospective spouses, and the items described range from wedding clothes and love letters to coins, aprons, and gloves. These articles were commented on at length by those who had been present at their exchange, carried gifts from one party to another, or knew of their existence through the confidences of giver or receiver. Witnesses frequently attached significance to gifts in material terms, including an assessment of the monetary value of tokens of affection in their testimony. The level of detail in deponents’ comments also indicates performative aspects of gift exchange; the giver initiated the performance by selecting and sending a token, the intended recipient then either accepted or refused the offering (and occasionally reciprocated with a gift of his or her own), and witnesses and go-betweens served as an audience and frequently as temporary custodians of objects in transit.\textsuperscript{35}

The records further indicate the emergence of certain patterns concerning the types of gifts employed in various stages of courtship. The commentary of litigants and deponents suggests that both men and women considered money an object suitable to express varying degrees of matrimonial interest. Mention of monetary gifts appears in suits with and without testimony of the exchange of matrimonial words between purported spouses; gifts of money also accompanied alleged “promises” to marry as well as future- and


present-tense vows. The practice of bending or breaking a coin between prospective spouses to signify assent to matrimony warrants particular attention, as it appears with regularity in the suits featuring gift-giving, perhaps because it symbolically communicated the sharing of affection and material resources initiated by marriage. Witnesses and litigants described occasions of bending or breaking a coin in rich detail, as when an unnamed witness carefully noted in 1617 that Alice Hulme kept “the one half” of the gold coin she broke with Gerrard Hey while he kept “the oth[er].”

Matrimonial intent was also represented by the exchange of personal keepsakes and household stuff. Examples range from the “hart of gold” given by Elizabeth Bird to Morgan Edmund in 1562 to the “c[er]ten juell[es] of sylver” Godfrey Walthew removed from his own neck and placed around the neck of Katherine Knowles after their exchange of vows as described in a suit from 1607. Witnesses noted in Williamson c Wainwright and Golborne that, in addition to the small sums of money Robert Wainwright gave Christiana Williamson, he once sent her “two penniworth of pairs [pears]” and “cakes”; on another occasion, she gave him “a pare of roses for his shooes.” To Elizabeth Golborne, the woman Robert subsequently married, he sent, “in token of his love and affection,” a pair of gloves, a silver whistle, and a silver “seale.”

No gift had greater symbolic power to effect marriage, though, than a ring, a fact Swinburne underscores in his treatise.

36 The phrase “promise of marriage” appears with some frequency in the records, but the degree of commitment it was intended to represent is unclear. It seems to be a term of considerable elasticity, used by witnesses to comment on relationships ranging from those that featured initial discussions of matrimony to those that indicated advanced negotiations concerning financial settlements and impending marriage.

37 CRO EDC 5, 1617, no. 20.

38 Furnivall, Child-Marriages, 187; CRO EDC 5 1587, no. 42.

39 CRO EDC 5 1637, no. 14.

40 He notes, for example, that future tense vows could be made binding when “the Man delivereth to the Woman a Ring, and doth put it on her fourth Finger.” Swinburne, Treatise of Spousals, 71. For a discussion of rings as material economic objects of exchange in early modern England, see Stephanie Chamberlain, “‘Rings and Things’ in Twelfth Night: Gift
Evidence from the northwest indicates popular subscription to the notion that the giving and receiving of a ring could serve as a powerful performance of consent to matrimony. In a personal response from 1621, for example, Thomas Orrell stressed that he did “never give vnto the pl[ain]t[	ext{iff}] [Margery Hollins]d] any gould ringe,” as other witnesses had testified, clearly understanding the power that particular object represented as confirmation of his ratification of a marriage.\textsuperscript{41} Just under half of the suits whose records included testimony concerning gifts featured rings, and the occasions of the giving almost without exception indicate an advanced stage of courtship involving an alleged uttering of matrimonial language in the present or future tense. For example, a suit from 1596 included testimony that James Bankes and Ellen Lucas “dyd pledge & giue ether to other there faith and trouth, and thereappon the said James putt a ringe appon the said Ellen’s ffinger” to mark the occasion of their matrimonial contract.\textsuperscript{42} Rings were also singled out in office suits filed on grounds of clandestinity; witnesses seeking to demonstrate the propriety of private marriages noted the use of rings, as prescribed in the marriage ceremony found in the Book of Common Prayer.\textsuperscript{43} A suit filed in 1579 noted that when Janet Braithwaite and Robert Cavnet spoke “certayne woord[es] of matrimonie” to each other, Robert gave Janet “a ryng of sylver,” and another from 1625 recounted that the curate of Wrexham married John Pickering and Elizabeth Page “according to the forme layde downe in the book of Com[m]on Prayer w[i]th the vse of a ringe and other ceremonies saveinge ban[n]es of m[at]r[im]onie were not published neyth[e]r anie lycense p[ro]cured.”\textsuperscript{44}

\textsuperscript{41} CRO EDC 5 1621, no. 14.
\textsuperscript{42} CRO EDC 5 1596, no. 42.
\textsuperscript{43} “Clandestine” refers essentially to a private marriage, often in domestic settings, that lacked the publicity of the banns or a marriage license.
\textsuperscript{44} WYAS RD/AC/2/34, and CRO EDC 5 1625, no. 47.
Nearly one-quarter of the suits describe economic arrangements between couples that publicized their commitment and allowed friends and kin to judge matrimonial legitimacy, and these suits demonstrate a considerable continuity across the decades examined. After Ralph Wood and Jane Cloughe exchanged consent to marry in 1572, witnesses reported that Ralph had “vsed other her necessarie good[es] about[es] the said Jane her house as familierlye as thoughe they had ben his owne.”\textsuperscript{45} Six decades later, witnesses reported that Richard Bradley approached “diu[er]s p[er]sons” indebted to Ellen Pemberton after the completion of their matrimonial contract and threatened to sue those who failed to make good on the “debt[es] w[hi]ch he said was due to his said wiefe Elen.”\textsuperscript{46}

Against the backdrop of elements of continuity in the performance of matrimony in the northwest, the records suggest change in the frequency with which disputes over the making of marriage came before the courts. Matrimonial litigation was the subject of a long but fairly steady decline in terms of its percentage of the Consistory Court of Chester’s business: it constituted over 60 percent of cause paper files that survive from 1565 but just 5 percent of those from 1635.\textsuperscript{47} An examination of the Consistory Court of Richmond’s act books suggests that the proportion of matrimonial suits before that court declined over time as well: a sample from the 1570s indicates that at least 12 percent of the court’s annual instance litigation involved matrimonial issues, while a sample from the 1620s indicates that 3 percent of the instance litigation per annum involved disputed

\textsuperscript{45} Borthwick Institute Trans CP 1573/3.

\textsuperscript{46} CRO EDC 5 1633, no. 60. The tangled relationship between Bradley and Pemberton is also the subject of 1634, nos. 62 and 128.

\textsuperscript{47} McNabb, “Fame and the Making of Marriage.” 17. The actual numbers of matrimonial suits remain relatively constant into the early seventeenth century; the dramatic increase in the numbers of defamation suits, tithe disputes, testamentary business, and conflicts over pews and other religious spaces, however, meant that these causes replaced matrimonial suits as the dominant types of instance litigation. As indicated below, however, these other types of suits yield valuable information on matrimonial culture in the northwest.
matrimony. While R. B. Outhwaite cautions against equating a decline in contract litigation with the elimination of irregular marriage, patterns of litigation in the northwest suggest certain alterations in matrimonial values and practices, perhaps connected to the growing integration of the northwest into the national polity and an acceptance of the need for a more formal entrance in marriage.

The sources indicate that people in the northwest were beginning to subscribe to the notion that the process of performing matrimony was less effective and appropriate at communicating consent than a single, public act sanctioned by the Church. This may have been the result of a refusal by the consistory courts to uphold irregular marriage, but unfortunately, the uneven survival of the courts’ judgments in the cause papers makes this difficult to ascertain. Few case files contain final sentences, and those that do often lack additional substantive documentation shedding light on the details of the dispute; the dearth of contextualizing information thus renders such final decisions unhelpful in gauging the courts’ stance on irregular marriage. Incidental talk of marriage in non-matrimonial litigation does, however, suggest a new desire for orderliness and formality in the making of marriage in the northwest. Beginning in the early 1600s, deponents asked to attest to their suitability as witnesses were questioned about the propriety of their own marriage ceremonies, discussions absent from the records of suits from previous decades. A defamation suit filed by Katherine Graddell against David, Margery, and Ellen Dobb in 1631, for example, required witnesses to provide testimony as to the occasion and duration of their marriages as well as the more usual information regarding their place of residence, their relationship to the litigants, and their financial worth.

48 The act books from Richmond are unfortunately defective and thus prohibit any definitive measure concerning the frequency of matrimonial contract disputes in the court’s business. The samples used here are found in WYAS Leeds RD/A/0/2, Act Book of the Consistory Court of Richmond, 1570-1573, and RD/A/7B, Act Book of the Consistory Court of Richmond, 1624-1628.


50 CRO EDC 5 1631, no. 34.
In response to the interrogatory about marriage in that suit, Hugh Francis of Chester responded “that he was married about a yeare and a halfe since, in St John’s Church, about nyne or ten of the clocke in the daie time by M[aste]r Lloyd curate there, beinge three times first asked in the s[ai]d church,” an account that doubtless met with the approval of the court as a result of the ceremony’s strict adherence to proper form. The implication contained in such questions and responses is that reliable and respectable witnesses were those who followed the Church’s prescribed methods of making marriage.

Defamation suits from the second half of the period under consideration also indicate an increasing intolerance of premarital pregnancy in the northwest. Bearing a child, when coupled with other words and gestures of matrimony, had, during the sixteenth century, served as a powerful signifier of matrimonial assent; during the seventeenth century, by contrast, numerous defamation suits were filed to combat charges the spouses had a child together before marriage. For example, in 1637 John Fletcher sued Elizabeth Marsh for defamation for reporting that his wife had borne their child four weeks before their marriage. Such evidence demonstrates that bearing a child prior to or shortly after a church wedding had become subject to some measure of disapproval from members


52 Such interrogatories were likely devised to cast doubt on the testimony provided by a witness whose marriage was considered suspect, although the responses provided do not always indicate which of the deponents was the true target of the question.

53 The records from the northwest courts indicate, for example, that the occasion of pregnancy might initiate an ex officio suit for fornication that resulted in the couple’s declaration of their impropriety at the solemnization of their subsequent marriage. See, for example, WYAS RD/A 3 B, Consistory Court of Richmond Act Book, 23 September - 14 December 1579, fol. 14v., involving an office case against John Walker and Jane Hutchenson of Grinton from 1579; they were required to admit their “fault” on the day their marriage was solemnized in the parish church of Grinton. An office suit against John Ayerigge and Agnes Etherington from 1585 includes the assertion from John that the pair had made a “contract between them selves and were desyrous to have bene married” before their child was born, a circumstance he claims had in fact transpired. See WYAS RD/A 4, Consistory Court of Richmond Act Book, 26 April 1585 - 29 July 1588, fol. 28v.

54 CRO EDC 5 1637, no. 104.
of a couple’s community, not a prompt for popular acceptance of the performance of matrimonial consent.

This essay suggests that the matrimonial culture of north-west England from 1560 to 1640 was marked by a complex range of strategies, values, and processes that emphasized matrimony as a process driven by the performance of matrimonial assent. While present-tense language of consent created the “Substance and indis-soluble knot of Matrimony,” people in the northwest talked consistently in various types of litigation of other words, actions, and attitudes that also communicated matrimonial intent.\(^{55}\) It is well documented that these alternate signifiers of matrimony eventually declined in importance in England, in part as a result of the Church’s growing success in inculcating an understanding of its rules for publicity and orderliness in marriage.\(^{56}\) The civil wars also brought in their wake an experiment with civil marriage and the suspension of the consistories, which eliminated a key legal forum for disputed matrimony.\(^{57}\) Additionally, the increasing efficiency of early modern bureaucracy and record-keeping concerning matrimony likely reduced the necessity of symbolic and real exchanges, gestures, and actions that had previously constituted the performative ritual of making marriage.\(^{58}\) A study of litigation heard by the ecclesiastical courts during the sixteenth and seventeenth centuries, however, serves as a reminder that matrimony, rather than being fixed and universal in its form and function, has a performative history, the investigation of which is necessary for a sophisticated and nuanced understanding of early modern English society and culture.


\(^{56}\) Some of this stems from the early modern “reformation of manners,” a subject about which the literature is substantial. For an overview as related to the history of gesture, see Harvey, *The Kiss in History*, passim.


\(^{58}\) See Keith Thomas, “Afterword,” in *The Kiss in History*, 198.
Jennifer McNabb, an Associate Professor of History at Western Illinois University, received her Ph.D. (2003) from the University of Colorado at Boulder. She won WIU’s College of Arts and Sciences Outstanding Faculty Award for Teaching in spring 2009 and the Provost’s Award of Excellence for Teaching in fall 2009. Current research projects include a comparative study of matrimony in sixteenth- and seventeenth-century England and an analysis of gift-giving strategies in early modern courtship. Her previous publications have appeared in Sixteenth Century Journal and Quidditas, and she was winner of the RMMRA’s Allen Breck Award in 2004. She currently serves as Texts and Teaching Editor for Quidditas and can be contacted at JL-Mcnabb@wiu.edu.