Fame and the Making of Marriage in Northwest England, 1560-1640

Jennifer McNabb
Western Illinois University

Because England did not enact a comprehensive reform of its medieval marital law until Lord Hardwicke's Act in 1753, it was possible to construct a binding marriage outside the authority of the Church of England during the Tudor and Stuart periods. Marriages created by the exchange of present-tense consent, even if they failed to follow the church's suggested rules concerning time and place, its emphasis on clerical presence, and its stress on publicity (through three readings of the banns or the procurement of a marriage license), were considered spiritually legitimate throughout the eight decades prior to the civil wars. An examination of church court records from the diocese of Chester reveals that people in northwest England formed such "irregular marriages," although with declining frequency, into the 1640s, long after matrimonial contract litigation had all but disappeared in other regions of the country. Evidence suggests, though, that the types of people who made these irregular unions and the means by which they did so changed significantly over time, as the practice of child marriage finally receded in the northwest and as irregular matrimonial contracts ceased to be an effective means of making marriage for those below the level of the elites.

The summer of 1615 was a busy one for Jane Drinkwater, a resident of the parish of Runcorn in the northwest county of Cheshire.[1] Three men courted her with the intent of marriage, and

[1]The details of Jane's courtships can be found in two bulky case files in the Cheshire Record Office, Cause Papers of the Consistory Court of Chester

while that kind of attention may not itself have been particularly unusual, the fact that Jane appears to have contracted marriage with two of them in the space of four months certainly was. John Cheshire was her preferred suitor early in the summer, but her enthusiasm for him waned as the result of persistent rumors that he and other members of his family were dissolute wastrels who had acquired considerable debt. By late August Jane's interest had settled on Robert Harvey, with whom she exchanged present-tense marital vows: "Here I Jane doe freelie, faithfullie, and hartelie give unto thee Robert Harvey my harte, my hand, and my faith and troth, neither will I marie anie other butt thee soe longe as we shall both live, and here I take thee for my espoused and lawfull husband, and thereto I give and plight thee my troth."[2] The giving of a gold ring, which Jane wore on "the fourth finger of her left hand," followed, and then, according to allegations, the couple retired to a private chamber for "the space of one, two, or three howres where they did ratifie, confirme, and consumate the matrimonie by carnall copulac[i]on." Three days later, the pair broke a piece of gold valued at £1 2s. Each tied one half of the coin to a ribbon for the purpose of wearing around the arm

(hereafter CRO EDC 5), 1615, no. 11, and 1616, no. 35. The primary source documents from the CRO discussed in this article were accessed on microfilm as part of the Center for British and Irish Studies collection in Norlin Library at the University of Colorado at Boulder. The evidence presented in Jane's two files will be used throughout the article as a case study of matrimonial practices in northwest England.

[2]The spelling in quotations from manuscript materials and older printed texts has not been modernized, save the rendering of the "thorn" character as "th," the elimination of italics that distract from meaning, the modernization of u/v and i/j, and the spelling out of abbreviations. Punctuation and capitalization have been adjusted when necessary, however, to clarify the meaning of primary source passages. While variant spellings of names have been retained when quoting from a document, all first names in the textual analysis have been rendered in a standard, modernized form using Patrick Hanks and Flavia Hodges, *A Dictionary of First Names* (Oxford: Oxford UP, 2003). The version of an individual's last name most commonly used in the source has been used in the text to refer to that person.

afterward as a public, visual marker of the seriousness of their commitment. Jane revealed her opinion concerning the legitimacy of her new matrimonial contract by telling relatives that "she had donne that day what shee coulde never undue while she lyved."

But undo it she did. Within days, evidence surfaced that she had actually exchanged present-tense marital vows with John Cheshire in May but kept the marriage secret because of concerns exhibited by some of her friends about John's character. That earlier matrimonial contract had, like the one with Robert in August, taken place in a private setting in the presence of a minister. When Jane learned that rumors of John's financial difficulties had been greatly exaggerated, she decided that he was the one she wanted for her husband and attempted to distance herself from Robert Harvey. What followed was a long, acrimonious battle in the Consistory Court of Chester, one of the ecclesiastical courts of the diocese of Chester, to determine to whom Jane actually was married. Witness testimony and other court documents called attention to everything from the precise words used to construct each matrimonial contract to the moral character of each officiating minister in the attempt to ascertain which match constituted a legitimate marital union.

The records of Jane Drinkwater's matrimonial adventures, while somewhat extraordinary in their complexity and detail, provide a helpful point of entry for an investigation of northwest England's matrimonial culture during the eight decades prior to the civil wars. Like Jane and her two suitors, many residents used the Consistory Court of Chester to uphold or refute marital unions formed outside the supervision and setting of the church. Jane's litigation highlights the irregularities of setting and circumstance that could accompany the exchange of vows in the northwest as well as some of the verbal and visual markers that helped to construct an air of legitimacy around unions formed by irregular means (her talk of the impossibility of breaching matrimonial contracts, her acceptance of a wedding ring, the breaking of money between the couple and its subsequent public display, and allegations of the commencement of sexual relations, for

example).[3] Long after people in other areas of the country discontinued the practices of child marriage and spousals, those living in the northwest persisted in constructing marriage according to standards other than those propagated by the Elizabethan and early Stuart church, a circumstance that points to the maintenance of a distinct regional culture of matrimony in the northwest.[4]

[3]In the discussion that follows, the term "irregular marriage" signifies unions lacking some component of the church's formula for making marriage and emphasizing instead the exchange of matrimonial consent through present-tense vows. "Handfasting" or "trothplighting" generally refers to an exchange of vows without the supervisory presence of a minister; spousals, which failed to meet the church's requirements for place, time, or procedure, also were irregular and came to be identified as clandestine because they did not fulfill the church's ideals concerning matrimonial publicity.

[4]Numerous works discussing marriage and its formation in early modern England inform the discussion of marriage included in the opening sections of this article. See Ralph Houlbrooke, *Church Courts and the People during the English Reformation, 1520-1570* (Oxford: Oxford UP, 1979); Houlbrooke, "The Making of Marriage in Mid-Tudor England: Evidence from Records of Matrimonial Contract Litigation," *Journal of Family History*, 10 (1985), 339-52; Martin Ingram, "Spousals Litigation in the English Ecclesiastical Courts c. 1350-c. 1640," in *Marriage and Society: Studies in the Social History of Marriage*, ed. R. B. Outhwaite (New York: St. Martin's Press, 1981), 35-57; Ingram, "The Reform of Popular Culture? Sex and Marriage in Early Modern England," in *Popular Culture in Seventeenth-Century England*, ed. Barry Reay (New York: St. Martin's Press, 1985), 129-65; Ingram, *Church Courts, Sex and Marriage in England, 1570-1640* (Cambridge: Cambridge UP, 1987); Peter Rushton, "Property, Power and Family Networks: The Problem of Disputed Marriage in Early Modern England," *Journal of Family History*, 11 (1986), 205-19; Eric Carlson, *Marriage and the English Reformation* (Oxford: Blackwell, 1994); R. B. Outhwaite, *Clandestine Marriage in England, 1500-1850* (London: Hambledon, 1995); David Cressy, *Birth, Marriage, and Death: Ritual, Religion, and the Life-Cycle in Tudor and Stuart England* (Oxford: Oxford UP, 1997); Diana O'Hara, *Courtship and Constraint: Rethinking the Making of Marriage in Tudor England* (Manchester: Manchester University Press, 2000); Christine Peters, "Gender, Sacrament and Ritual: The Making and Meaning of Marriage in Late Medieval and Early Modern England," *Past and Present*, 169 (2000), 63-96. Additional studies on early modern marriage consulted include Beatrice Gottlieb, "The Meaning of Clandestine Marriage," in

The later decades under investigation here, however, were a time of considerable redefinition of matrimonial theory and practice in northwest England. The percentage contributed by matrimonial causes to the consistory court's total business declined steadily, and the flood of matrimonial contract litigation in the early decades examined here subsided to a minor trickle by the eve of the civil wars. Litigation from the later decades was seldom instigated by the former child spouses or non-elites found in earlier suits but was instead almost exclusively the preserve of men and women of considerable wealth and elevated status and widows. The kinds of rituals and symbols that served to legitimate irregular unions changed accordingly. The process by which couples established a popular recognition or "common fame" of marriage became more complex and regularized over time, as new means of evaluating marital formation and its propriety gained prominence. Proving a matrimonial contract required later litigants to conform to a set of standards and expectations absent from earlier suits, meaning that the concept of marital fame itself shifted to accommodate changing circumstances.

THE COURT AND ITS RECORDS

This essay draws on all of the extant records of the archdeaconry of Chester's Consistory Court for the first and sixth years of each of the eight decades between 1560 and 1640, a

Family and Sexuality in French History, ed. Robert Wheaton and Tamara K. Hareven (Philadelphia: University of Pennsylvania Press, 1980), 49-83; Thomas Max Safley, *Let No Man Put Asunder: The Control of Marriage in the German Southwest: A Comparative Study, 1550-1600* (Kirksville, MO: Sixteenth Century Journal Publishers, 1984); Jeffrey R. Watt, *The Making of Modern Marriage: Matrimonial Control and the Rise of Sentiment in Neuchâtel, 1550-1800* (Ithaca: Cornell UP, 1992); and Watt, "The Impact of the Reformation and Counter-Reformation," in *Family Life in Early Modern Times, 1500-1789*, ed. David I. Kertzer and Marzio Barbagli (New Haven: Yale UP, 2001), 125-54.

sample of nearly 1,000 suits.[5] The archdeaconry of Chester, which included Cheshire itself, the southern half of Lancashire, and parishes in several Welsh counties, together with the archdeaconry of Richmond comprised the diocese of Chester, a relatively new ecclesiastical jurisdiction during the decades under investigation.[6] The new diocese, one of six established by Henry VIII in 1541, was created in part to help shore up royal authority in the Palatinate of Chester, a formerly semi-autonomous territory that was being successfully integrated into the national polity for the first time during the Tudor period. Despite the government's attempt to strengthen its ties with the northwest and to ensure greater conformity with the political, economic, and cultural

[5]CRO EDC 5, 1560-1653. These papers are organized by specific years and file numbers. The total number of suits from the collection considered in the sample years is 982, and that sample is used as the basis for the statistical information provided in this article. Additional qualitative information on the matrimonial ideals and practices in the diocese of Chester has been drawn from the Deposition Books of the Consistory Court of Chester, 1554-74 (hereafter CRO EDC 2/6, 2/7, 2/8, or 2/9); 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); and the small handful of suits dated after 1640 in the CRO EDC 5 collection.

[6]The material in this paragraph is derived from the following sources: John Addy, *Sin and Society in the Seventeenth Century* (London: Routledge, 1989); Christopher Haigh, *Reformation and Resistance in Tudor Lancashire* (London: Cambridge UP, 1975); C. B. Philips and J. H. Smith, *Lancashire and Cheshire from AD 1540* (London: Longman, 1994); *A History of the County of Chester*, vol. 3, ed. B. E. Harris, Victoria History of the Counties of England (Oxford: For the Institute of Historical Research by Oxford UP, 1980); Garthine Melissa Walker, "Crime, Gender and the Social Order in Early Modern Cheshire" (PhD diss., Liverpool University, 1994); Tim Thorton, *Cheshire and the Tudor State 1480-1560* (Woodbridge: Boydell Press, 2000); Thorton, "Local Equity Jurisdictions in the Territories of the English Crown: The Palatinate of Chester, 1450-1540," in *Courts, Counties, and the Capital in the Later Middle Ages*, ed. Diana E. S. Dunn (New York: St. Martin's, 1996), 27-52; Joan Beck, *Tudor Cheshire* (Chester: Chester Community Council, 1969); and Steve Hindle, "Aspects of the Relationship of the State and Local Society in Early Modern England: With Special Reference to Cheshire, c. 1590-1630" (PhD diss., University of Cambridge, 1992).

standards of the rest of the country, the diocese had a reputation for recusancy and religious deviance during the later Tudor and early Stuart periods.

Evidence suggests that religious non-conformity was actually just part of a larger cultural fracture between the northwest and other regions of the country. The relative geographic isolation and social stability of the northwest, in combination with its customary political and economic autonomy, seem to have allowed for the flourishing of distinctive cultural values and practices. Indeed, Cheshire residents frequently spoke of the rights and privileges of the palatinate as setting them apart from the rest of the country. Individuals called before the central courts at Westminster, for example, argued that they were not bound to answer charges in courts outside of Cheshire thanks both to the customs of their county and to Cheshire's possession of its own Exchequer.[7] One bold litigant in a defamation suit heard before the Consistory Court of Chester stated that not even the Archbishop of Canterbury, the clergyman with the greatest authority in England, had the right to rule in a suit involving residents of Cheshire, saying that only judgments "w[i]thin the doores of Chester" were legally binding.[8]

[7]Because the palatinate had its own Exchequer, its residents were not bound to process initiated in the central Courts of Chancery, Exchequer, or Requests, a right they asserted forcefully on the occasions they were named as parties to litigation in those courts. Thomas Becket of Middlewich, Cheshire answered a Chancery bill against him in 1572 by voicing a common sentiment concerning jurisdiction: "No inhabitant within the saied countie palentyne of Chester ought to be compelled by any wryte or p[ro]ces to appear or aunswere any matter or cause out of the same countie palentyne" (National Archives, Public Record Office, Court of Chancery, C2/ELIZ/B7/27).

[8]In 1620 Edmund Hardy allegedly reported to an acquaintance that John Culcheth had two wives, despite the fact that Culcheth had secured a divorce from the Archbishop of Canterbury to end his first marriage. Hardy claimed that the divorce was "nothing" because it had not been granted within the palatinate, adding that Culcheth's "children w[hi]ch he had by the gentlewoman he then lived w[i]th could not inherritt his lande" because his previous divorce was improper. See CRO EDC 5 1620, no. 28.

The records used for this study provide us with an important glimpse into the concerns and values of early modern men and women in northwest England. The Cause Papers of the Consistory Court of Chester are typically in the form of instance suits, private litigation instigated by residents within the court's jurisdiction. A complete case file for one of these suits could consist of an array of documentation including a libel, lists of interrogatories on behalf of both litigants, witness depositions, personal responsions from the parties at suit, the sentence of the court, and a bill of costs. Most files are far more fragmentary, often due to the halting of litigation in a pre-judgment stage or to the ravages of time. These instance suits indicate that a variety of issues prompted residents to invest the time and resources necessary to pursue litigation. Unfortunately, the records do pose a number of interpretive challenges. Because the files seldom contain sentences, it is impossible to determine whether the church court was attempting to modify regional culture with its judgments. And although office suits instigated by the court became more frequent in the seventeenth century, it is still very difficult to gauge the degree to which the court and its agents succeeded in altering religious and cultural policy and practice in the northwest. Perhaps most problematic from an analytic standpoint is the fact that the records of the court consist of a series of competing, subjective narratives offered for specific purposes.[9] Even if witnesses altered

[9]Historians have described in great detail the difficulties facing a scholar who studies court documents, especially those dealing with fractured relationships. For some of the more eloquent discussions of both the caveats of and the strategies for using such records, see Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth-Century France* (Stanford: Stanford UP, 1987); Thomas Kuehn, "Reading Microhistory: The Example of *Giovanni and Lusanna*," *Journal of Modern History*, 61 (1989), 512-34; Laura Gowing, "Gender and the Language of Insult in Early Modern London," *History Workshop Journal*, 35 (1993): 1-21; Gowing, "Language, Power and the Law: Women's Slander Litigation in Early Modern London," in *Women, Crime and the Courts in Early Modern England*, edited by Jennifer Kermode and Garthine Walker (Chapel Hill: University of North Carolina Press, 1994), 26-47; Gowing, "Women, Status and the Popular Culture of Dishonour,"

or fabricated their testimony in the hopes of potential gain, however, that evidence is still useful in revealing contemporary attitudes and values; social and cultural norms shaped the stories witnesses told. Commonalities in these narratives reveal patterns that uncover the kinds of matrimonial circumstances that possessed cultural plausibility and viability in the northwest.

An examination of the court's business during the last four decades of the sixteenth century and the first four decades of the seventeenth indicates an active court that served as a forum for a variety of disputes, including those involving the formation of marital unions. The records of suits heard by the court increased dramatically during these years, although some of the increase may be the result of a better survival rate for later material: extant case files from the early 1570s average 26 per year; by the early 1600s, that number rises to nearly 74, and by the early 1630s, to 105. The most common types of litigation were causes concerning marriage, defamation suits, tithe disputes, and conflicts over pews and other religious spaces, often involving questions of social status and wealth. The relative importance of these issues changed over time, however. Litigation involving marriage was the subject of a long but fairly steady decline: it constituted 63 percent of the court's business in 1565, 24 percent in 1585, 12 percent in 1615, and just 5 percent in 1635.[10] A qualitative study of these suits gives important evidence as to the northwest's prolonged maintenance of

Transactions of the Royal Historical Society, Sixth Series, 6 (1996), 225-34; and O'Hara, *Courtship and Constraint*, 10-16.

[10]Defamation suits experienced periods of both growth and decline, accounting for 21 percent of the court's business in 1565, 24 percent in 1585, and a whopping 48 percent in 1615, before falling back to 26 percent in 1635. Tithe disputes experienced the most dramatic and sustained rise, from under 1 percent in 1565 to 27 percent in 1635. Litigation concerning religious spaces was exceedingly rare until the final decades of the study; in 1635 15 percent of the court's business concerned violations of space. The percentages for specified years do not total 100 due to incomplete or damaged records that cannot be categorized, or records that do not fit the four categories selected here for study.

distinctive cultural standards concerning marriage. It also indicates important shifts in the age and status of those who pursued contract litigation and the signs used by local communities to establish matrimonial validity.

IRREGULAR UNIONS IN THE NORTHWEST: DEFINITIONS AND CIRCUMSTANCES

Matrimonial litigation indicates that residents of the northwest could have a very different vision of matrimony than the one prescribed by the Protestant Church of England. During Elizabeth's reign the church sought to regularize the construction of marriage by transforming it from a process that did not require church solemnization into a single, identifiable and legitimating act under the church's control. It called for a ceremony between partners over the canonical ages of consent (twelve for girls and fourteen for boys), performed by a minister in the local parish church after three readings of the banns or the procurement of a license from ecclesiastical authorities. The latter two procedures were designed to publicize the match and thus help ensure its legitimacy by giving those with knowledge of impropriety or impediments a chance to halt the formalization of the union. Despite the church's stress on this new set of matrimonial procedures, it failed to revoke medieval laws that sanctioned irregular marriage.[11] Many scholars have pointed to the decline in matrimonial contract litigation in southern regions of the country as evidence of popular rejection of irregular marriage and popular acceptance of the church's new matrimonial standards.[12]

[11]For a concise discussion of England's failure to reform marital law in the sixteenth century, see Eric Carlson, "Marriage Reform and the Elizabethan High Commission" *Sixteenth Century Journal*, 21 (1990): 437-51. For a brief history of the English legal position concerning the making of marriage, see Outhwaite, *Clandestine Marriage*, 1-17.

[12]Houlbrooke, *Church Courts and the People*; Houlbrooke, "The Making of Marriage," 339-52; Ingram, *Church Courts, Sex and Marriage*; Ingram, "Spousals Litigation," 35-57; Ingram, "Reform of Popular Culture,"

Sixteenth-century suits from the northwest, however, suggest that residents exploited the church's failure to reform marital law by continuing to form irregular marriages that were culturally legitimized by a popular emphasis on marital consent rather than church solemnization.[13]

Several historians have suggested that the decline of spousals in early modern England was in part the result of the practice's various economic limitations. Spousals did not confer the material benefits of marriage unless they were followed by solemnization; for example, a woman could not claim her jointure unless she had been married in a church ceremony.[14] Christine Peters identifies the development of an increasingly money-based economy as another key contributor to the decline of spousals.[15] When payments of monetary portions began to replace the customary transfer of goods to brides in the presence of friends and family, an important function of spousals, the public display and evaluation of marital goods, ceased. Also influential in changing the economic ramifications of spousals according to Peters was the

129-65; and Cressy, *Birth, Marriage, and Death*. Outhwaite cautions against equating a decline in contract litigation with the elimination of clandestinity as a problem in early modern England. See *Clandestine Marriage*, 41.

[13]This is discussed at greater length in Jennifer McNabb, "Ceremony versus Consent: Courtship, Illegitimacy, and Reputation in Northwest England, 1560-1610," *Sixteenth Century Journal*, 37 (2006): 59-81.

[14]Outhwaite, *Clandestine Marriage*, 5. For a contemporary discussion of the differences between the spiritual and legal benefits of marriage, see Henry Swinburne, *A Treatise of Spousals, or Matrimonial Contracts* (London: S. Roycroft, 1686; repr., New York: Garland, 1985), 15, 108. Citations are to the Garland facsimile edition, vol. 3 of the series, *Marriage, Sex, and the Family in England, 1660-1800*, ed. Randolph Trumbach.

[15]For the discussion that follows, see Christine Peters, "Single Women in Early Modern England," *Continuity and Change*, 12 (1997), 325-45, "Gender, Sacrament and Ritual," 63-96, and *Women in Early Modern Britain, 1450-1640* (Basingstoke: Palgrave Macmillan, 2004), 7-44.

growing trend of endowing daughters with their portions on the basis of age rather than the achievement of marriage. This practice had the ability to change the symbolic female economic autonomy that accompanied spousals into the real thing:

> For many such women the temporary independence between handfasting and church wedding could become real economic independence between the ages of majority and of marriage[16]

Although the evidence from the Consistory Court of Chester does not clearly reveal the degree to which these circumstances affected the practice of irregular marriage in the northwest, economic considerations may help to explain the changing face of litigants in matrimonial causes before the court. In the 1560s, 1570s, and 1580s, suits seeking marital dissolution on the grounds of the impediment of age comprised a significant portion of the court's matrimonial litigation.[17] These child marriages were arranged to cement alliances between families of substantial material means and social status, and young people faced considerable pressure to ratify such matches when they attained the age of majority.[18] Because they were canonically invalid, however, such unions, which often included sizable bonds of security to guarantee continued commitment, could seriously jeopardize family resources. If the underage spouses could overcome family resistance to renounce their marriages, these

[16]Peters, *Women in Early Modern Britain*, 20.

[17]For a collection of depositions in suits involving the marriage of children under the age of consent, see Furnivall, *Child-Marriages,* 1-55.

[18]Although unions between children under the age of consent had ceased to be a part of the cultural landscape of marriage in most areas of England by the middle of the sixteenth century, they remained a vital means of securing family status and resources in the northwest into the late sixteenth century. See Ingram, *Church Courts, Sex and Marriage*, 128-29, for a summary of the position regarding the decline of child marriages in early modern England.

carefully plotted relationships could lead to lengthy and costly litigation.[19] The precipitous decline in suits involving those under the age of consent after the 1590s suggests that elites in the northwest considered the benefits of child marriage to be outweighed by its potential problems, a development that put the northwest in line with other areas of the country in relegating the practice into disuse.[20]

Although it is sometimes difficult to ascertain the precise occupation and status of litigants in matrimonial contract litigation, the period between 1560 and 1640 appears to have witnessed significant changes in the socio-economic profile of disputants over the age of consent in the northwest. In addition to allegations of child marriage, the first half of the period contained numerous suits filed by those who do not appear to have been of elite status.[21] Records identify litigant Roger Bibbye as a "travailer bie the seas" in 1565, Richard Woolfall as a draper in 1575, and James Bannister as a haberdasher in 1595, for example; according to a suit from 1561, Katherine Strete canceled plans to go into service

[19]Examples of such litigation can be found in CRO EDC 2/8, fols. 303r-5r, 325r-27r, 336v, CRO EDC 2/9, pp. 9-12, p. 153, and CRO EDC 5 1586, no. 46.

[20]In addition to the relatively small handful of suits after 1566 discussed by Furnivall in his collection, Addy identifies only thirty more child marriage suits for the whole of the seventeenth century. See Furnivall, *Child-Marriages*, xxi-xxxix (in which he also provides examples of child marriage before 1561), and Addy, *Sin and Society*, 165. One must also acknowledge the possibility that litigation concerning child marriages declined because elite families became more successful at frustrating the attempts at dissolution made by individuals who had been married under the age of consent.

[21]Unfortunately, it is not possible to be as precise as one would wish about the status of litigants in contract suits. Unlike records in defamation suits, contract litigation does not identify respondants and deponents by occupation, only by age and parish of residence. Conclusions about status and occupation are drawn from details provided by the court documents. What is most clear is the fact that suits from the earlier decades do not discuss the wealth and status of litigants in the degree of detail that is a key feature of later litigation.

with a grocer in order to contract marriage, litigation from 1563 identifies Anne Yate as a "victualler," and Joanne Whitworth, a litigant from 1598, was employed as a spinster after her irregular marriage.[22] By the second decade of the seventeenth-century, though, the majority of the litigants were people of economic means whose relative status and credit were carefully examined by interrogatories and extensively debated by deponents. The fact that witnesses estimated the worth of Jane Drinkwater, whose story opened this article, to be between £200 and £700 no doubt contributed to the energy expended by her two would-be husbands to prove their claims of marital legitimacy. The decline of non-elites as litigants indicates that economic changes may have been taking their toll on the practice of spousals in the northwest. Couples of limited material means could no doubt ill afford to ignore the legal and economic drawbacks of irregular marriage, and wider adoption of the means of making marriage encouraged by the church and recognized by common law could account for the reduction in the number of spousals before the courts involving laborers and other non-elites.[23]

A rise in the number of widows involved in breach of contract suits accompanied the proliferation of litigants of means in the later decades of this study. The evidence provided by these suits reflects an attitude of concern about the use of irregular marriage as a means of trapping a young man or woman with a sizable inheritance into an unsuitable union or taking advantage of an economically independent but vulnerable widow with false promises of marriage. When Radcliff Kelsall sued Catherine

[22]In order of appearance in the text above: Furnivall, *Child-Marriages*, 67, CRO EDC 5 1575, no. 29, 1595, no. 8, Furnivall, *Child-Marriages*, 57, 185, and CRO EDC 5 1598, no 20.

[23]Although they did not deny the validity of irregular marriage, the Canons of 1604 did attempt to regularize marriage as formed under the church's authority, and a greater adherence to those canons may also have played a role in reducing the number of matrimonial contract suits before the court in the seventeenth century. See Addy, *Sin and Society*, 162.

Fallows for breach of contract in 1641, interrogatories invited witnesses to comment extensively on the relative wealth and status of each party and to offer an opinion as to whether one party would gain decisively from the match.[24] Radcliff was a gentleman's son who received a pension of £3 6s. 8d. per year, and Catherine was the daughter of a deceased husbandman whose inheritance was estimated by witnesses to be between £140 and £180. While Radcliff's supporters noted that his status was higher than Catherine's, witnesses called her behalf worried that Radcliff had sought "to inveagle and intice" Catherine, who was not yet seventeen, into marriage for his economic gain. Widows, too, could be targeted by those seeking economic advantages. In 1635 widow Elizabeth Fazakerly attempted to prove her suitor, Lawrence Mather, guilty of a breach of contract by reporting that he "did sell div[er]s good[es] and thing[es] w[hi]ch were hers" and "did carry himself . . . as thoughe hee had bene & were husband of the said Elizabeth."[25] Authorities and residents increasingly considered the privacy and secrecy that accompanied an exchange of vows outside the church's authority worthy of comment and censure, at least in part because of the abuses that the practice could generate.[26]

Throughout the period illuminated by the selected suits, words of matrimony were the single most powerful determinant of marital validity among partners over the age of consent. According to the church's own rules, consent as voiced through the

[24]CRO EDC 5 1641, no. 13.

[25]CRO EDC 5 1635, no. 23.

[26]It even incurred negative attention in non-matrimonial litigation. When Francis Sands of Hawkshead, Lancashire stood accused of defaming and threatening to assault Francis Magson in 1640, included among the accusations of his improprieties was a charge that Francis was "unlaw[fu]lly and clandestinely married without banes thrice published or license law[fu]lly obtayned, incurringe thereby the danger of the lawes in that behalfe p[ro]vided." CRO EDC 5 1640, no. 12.

exchange of present-tense vows created a spiritually legitimate marriage, even if the union lacked legality under common law until a church ceremony was completed. For this reason, almost every libel examined includes a recital of the vows exchanged by the litigants, and nearly every case file with depositions contains some witness testimony concerning the matrimonial language used by the parties at suit. This testimony reveals the popular opinion that an exchange of vows made a man and woman "husband and wife before God," regardless of the circumstances and setting of the event. This theory is reinforced by evidence from a variety of suits in which residents of the northwest correctly claimed that irregular unions had the power to disrupt subsequent courtship activities and even to overthrow later, more formal expressions of consent. Richard Lowe promised to marry Jane Walkden in the late 1550s and had a child with her but later married another woman, prompting a deponent in Jane's breach of contract suit in 1561 to declare that "all the cuntrie were offendid with hit [the second match]" and causing the court to uphold the first match.[27]

What does change over time, however, is the opinion that the expression of marital consent through language alone created a *complete* matrimonial contract. Suits from the first decades under consideration suggest that while certain parties intended a church ceremony to follow present-tense expressions of consent, others considered the occasion of the vows to be sufficient in creating a finalized union. By the time Charles Nuttall of Bury claimed in a suit from 1623 that "publique marriage is but a ceremonie of the church" and that a contract was a valid marriage in the eyes of God by virtue of the fact that "Josephe and Marie were contracted or betrothed before they were married," the idea that church solemnization was unnecessary to the completion of marriage had largely evaporated.[28] More typical were expressions of the need

[27]Furnivall, *Child-Marriages*, 57. Additional examples of the damage that rumors of a contract could do can be found in CRO EDC 2/8, fol. 335r, EDC 5 1595, no. 26, and EDC 5 1605, no. 18.

[28]CRO EDC 5 1623, no. 14.

for finalizing or ratifying a contract with a subsequent church ceremony. Although Robert Harvey sued Jane Drinkwater to uphold the contract they made in 1615 and argued that their vows created sufficient grounds for advancing his claim that Jane was his wife, he had told friends of his intentions to "perfect" their contract when "fitter opportunity" presented itself.[29] After more than six months of promises to marry and the exchange of vows, John Buckeley and Ellen Chawner made plans for a church wedding, recognizing that "their s[ai]d marriage should be p[re]sently solemnized."[30]

Although residents of the northwest continued to contract marriage in spaces not sanctioned by the church throughout the decades under investigation, sites considered suitable for vows changed. In the 1560s, 1570s, and 1580s, couples pronounced marital vows in various recreational and occupational areas including outdoor spaces, drinking establishments, private residences, and work areas like salt houses.[31] This evidence accords well with the fact that those decades witnessed the greatest number of non-elite litigants. Over time, the propensity for making marriages in public houses and places of employment waned, but private houses remained popular sites for contracting matrimony. These occasions could be relatively spontaneous and informal or be preceded by months of planning and attended by numerous friends and family. In 1582 brothers Robert and Richard Wilson acted as witnesses to an impromptu matrimonial contract between Margaret Younge and Richard Williamson in a private house in Chester.[32] The matrimonial contract of Elizabeth

[29]CRO EDC 5 1615, no. 11.

[30]CRO EDC 5 1635, no. 92.

[31]See, for example, Furnivall, 64, 70, 140 (outdoor vows), CRO EDC 2/6, fols. 13v-14v (vows in an alehouse), CRO EDC 2/8, fols. 99v-100v, 111v-12r, 131r-33r, 139v (vows in a salt house). The most popular locus for contracting irregular marriage was a private residence.

[32]CRO EDC 5 1582, no. 5.

Richardson alias Locker and Edward Brocke in 1595, by contrast, was created after three months of securing family support for the union, took place in the bride's father's house, and was attended by a number of the couple's friends and relatives.[33] In later suits involving parties with considerable resources, private rather than public places appeared common as the site of contracts. Jane Drinkwater's two matrimonial contracts in 1615 took place in a kiln and a stable with none present but an officiating minister; Radcliff Kelsall reportedly exchanged vows with Catherine Fallows in a private chamber in 1641, and Anne Wilding, widow, and Geoffrey Croxton recited the present-tense words of marriage while Geoffrey was in his sickbed late one evening in 1643.[34]

Irregular marriages from the later Elizabethan and early Stuart periods increasingly included the services of a minister, indicating that residents came to believe a clergyman necessary to the creation of a legitimate matrimonial contract. Suits alleging private trothplights taking place on the way home from market or at midnight on the heath largely disappear from the records and are replaced by evidence that indicates the growing importance matrimonial order and propriety. Witness testimony reflects the practical and symbolic advantages of the presence of an officiating minister: a minister who followed the ceremony contained in the *Book of Common Prayer* helped to create the impression that a marriage was "done orderlye," even if it had been constructed in clear violation of church regulations.[35] In complicated litigation, like that involving Jane Drinkwater and her two reputed husbands, the moral quality of one's officiating minister could even be used in judging marital legitimacy. Interrogatories on behalf of both

[33]CRO EDC 5 1595, no. 67.

[34]CRO EDC 5 1615, no. 11, 1616, no. 35, 1641, no. 13, 1653, no. 2. The final suit appears to be labeled inaccurately, as the testimony refers repeatedly to "this p[re]sent yeare 1643."

[35]For example, CRO EDC 5 1590, no. 53 discusses the legitimizing influence of a minister on a contract formed in an alehouse.

grooms asked witnesses to comment at length on the clerical practices and lifestyles of their rival's preferred clergyman. In the war of reputations that followed, one minister was depicted as a worldly, scheming man of God who both cheated a member of his flock out of an inheritance and sought to make money from his skills as a marriage negotiator, and the other, as a man of loose sexual morality who had cohabited for several years with a woman who was not his wife.

Presiding over clandestine marriage was, of course, a punishable offense. A suit from 1630 against John Davenport, clerk, for conducting spousals summarizes the official position against a minister's involvement in irregular marriage:

> accordinge to the Cannons & Constitutions of the Church of England, noe minister is to celebrate matrimony betweene any p[er]sons w[i]thout licence or banns askinge nor soe licenced at unseasonable tyme or in a private house, but in the church or chappell where at least one of the p[ar]tys doe dwell & … the minister so offending shalbe censured accordinge to the same Cannons & Constitutions.[36]

Suspension was the result of a negative judgment against a minister accused of presiding over spousals, and the risk of censure may have prompted clerics to participate in irregular marriages only if they could be adequately compensated in the event of presentment.[37] Interrogatories suggest that Robert Dobbs, the minister who presided over the exchange of vows between Jane Drinkwater and John Cheshire, had been promised an undisclosed sum for "his paines" and assured that he would be "harmlesse from the peanaltie of the lawe & from all trouble that he should incurr by the solemnizing of the said marriage"; William King, the

[36]CRO EDC 5 1630, no. 75.

[37]See Addy, *Sin and Society*, 162, and Outhwaite, *Clandestine Marriage*, 6-7. For a discussion of seventeenth-century suits involving the collection of fees for presiding over spousals, see Addy, *Sin and Society*, 178-9.

minister who presided over the spousals between Jane and Robert Harvey, apparently expected to receive £100 for his troubles.[38] Such sums and promises were obviously well beyond the capacity of ordinary laborers, which may further explain why they cease to appear as litigants in breach of contract suits in the seventeenth century.

Certain procedures required by the church were increasingly recognized as necessary for contracting marriage in the northwest. Although deponents in the early suits seemed to be aware that reading the banns and/or securing a marriage license constituted part of the church's formula for making marriage, neither requirement was apparently considered a vital part of the popular equation of marriage.[39] Later suits, however, put increasing emphasis on the kind of formalization church-sanctioned approval for marriage could create. Charles Nuttall obtained a marriage license from "the judge of this courte" to help convince his espoused wife Dorothy of his intent to solemnize their marriage in 1623, and when John Buckeley and Ellen Chawner of Prescott were finalizing plans for a church ceremony that would ratify their earlier exchange of vows in 1633, John went through the effort of procuring a second license from the court because he feared the first "to bee out of date."[40] In 1641 James Kelsall "did rashly and p[er]nitiously" swear before a judge of the court that friends and family of his brother, Radcliff, and Radcliff's intended

[38]CRO EDC 5 1615, no. 11, 1616, no.35.

[39]For example, when Philip Mainwaring and Jane Serjant contracted marriage in 1587 in a private house before the curate of Newton Chapel, a deponent noted that the marriage had been created "in order," except for its setting and the fact that "the banes nott asked iij tymes" (Furnivall, *Child-Marriages*, 140). Comments like this in other records indicate that witnesses understood banns and licenses to be part of the formula for making marriage but that their absence did not automatically render an exchange of vows deficient or disorderly.

[40]CRO EDC 5 1623, no. 14, 1635, no. 92.

bride, Catherine Fallowes, supported a solemnization of marriage between the couple in order to procure a license.[41] By lying to the judge about the acceptance of the match, James was able to manipulate the court into sanctioning a marriage to which Catherine's family vigorously objected.

Those living within the court's jurisdiction placed considerable emphasis on marital fame, but of a different type than that specified by the church. The audience of church-solemnized weddings had a relatively limited role as witnesses; those present at a ceremony of marriage had little power to pass subsequent personal judgment on the union's legitimacy. A union formed outside the church, however, could require members of the local community to decide whether the marriage was proper, even years after its creation. If former child brides and grooms, for example, appeared to assent to the vows they took in childhood after they reached the age of maturity, their actions could create a popular perception of marital legitimacy among their neighbors.[42] Common fame of marriage, the wider community's recognition of marital consent between couples, was established through the reports of witnesses to present-tense vows, who were able to describe the setting, audience, and words of the participants at great length when called upon to do so by ecclesiastical authorities. It was also created by other means that changed over time. During the early decades under investigation, couples exchanged a variety of personal items, from handkerchiefs and stockings to rings and money, to demonstrate an increasing level of commitment.[43]

[41]CRO EDC 5 1641, no. 13.

[42]Testimony in a suit from 1561 between John Bridge and Elizabeth Ramsbotham nicely summarizes the close scrutiny of child marriages by members of the community: "this deponent, beynge ther neybour, did never here word spoken, or token sent, betwixe them, or any suche familiaritie betwixe them, wherbie he might *judge* that they usid them self as man and wief, or ever ratified the mariage" (the emphasis is mine). Furnivall, *Child-Marriages*, 9.

[43]See McNabb, "Ceremony versus Consent," 73-75, for a more detailed discussion of gifts and their legal and cultural significance in the northwest.

These gifts held so much significance on the marital market that the records describe several instances in which those dissenting from marriage went to considerable lengths to return unwanted offerings.[44]

The words, gestures, and actions described in the sixteenth-century contract litigation were culturally important because their acceptance by the community as proper helped to create the outward appearance of marriage. Acting like spouses through displays of affection, cohabitation, and performing duties commonly attributed to husbands and wives all helped to establish a commonly held perception of marital validity.[45] Common fame of marriage is one of the threads that connects nearly all accounts of spousals in the records of the 1560s, 1570s, and 1580s. Fame, whether described as the "vooice" or "report of the cuntry" or as a couple being "reputed & taken" as man and wife, received commentary in most suits as a chief factor in determining marital propriety.[46] Because Anne Yate and George Johnson were "reputid and taken for man and wife amonge their neighboures" and because "the parrish thought they were man and wife before

[44]See, for example, Furnivall, *Child-Marriages*, 57, and CRO EDC 5 1605, no. 10. According to the latter suit, John Hargreaves participated in an assault on Margaret Walker in his attempt to return money which she had given him "to gett better holde on him." For a discussion of the strategies of giving tokens in courtship, see O'Hara, *Courtship and Constraint*, 72-77.

[45]Because Anne Helyn took care of Richard Bunburie's household (CRO EDC 5 1570, no. 24), and because William Wright performed tasks for Isabel Dawson that "belong to a husband" (CRO EDC 5 1595, no. 45), both couples were commonly regarded as married, even though their relationships lacked church solemnization.

[46]That language comes from Furnivall, *Child-Marriages*, 24, 13, and 67, respectively.

God," for example, they spent their nights together in the same house without being presented for fornication.[47]

Although gifts and the performance of actions that constituted spousal behavior continued to receive attention in later suits, such signs of marriage were accompanied as well by reports of more formalized rituals of exchange and reciprocity, which were apparently gaining cultural significance. While courting men and women gave gifts of money with regularity in the sixteenth century, the practice of breaking a coin between elite partners following marital vows was unique to the seventeenth-century suits examined. A broken coin, one half of which each party had stewardship of, helped to represent the binding, contractual nature of the matrimonial relationship. In his study of the records of the diocese of Chester in the seventeenth century, Addy notes that a failure to ratify a marriage after the breaking of a coin was grounds for a breach of contract suit in the consistory court, adding that such suits usually resulted in a successful judgment for the

[47]Furnivall, *Child-Marriages*, 58. Popular tolerance for the commencement of sexual relations following the exchange of vows appears to have changed over time. Peters argues that "the practice of spousals was not necessarily a license for premarital sex" and cites Swinburne's treatise on spousals for evidence that the cohabitation which often followed spousals did not always include a sexual relationship (*Women in Early Modern Britain*, 20). The regionality of norms concerning sexual relationships, especially with regard to spousals or impending church marriage, is discussed in Richard Adair, *Courtship, Illegitimacy and Marriage in Early Modern England* (Manchester: Manchester UP, 1996). The evidence from the northwest indicates that sexual relations did follow spousals with some frequency. Twenty-seven percent of the trothplight suits in Furnivall's collection, for example, include evidence of the birth of a child to the alleged spouses. Talk about sexual behavior contained in defamation suits provides an alternative source of information about social and cultural norms, and these suits indicate that the birth of children to couples whose marriages had not been completed by church solemnization was increasingly viewed as a transgression of communal values, although the acceptance of sexual relationships often seems to be determined by the credit of the individuals involved.

plaintiff.[48] The growing number of suits in the northwest that included testimony concerning broken coins may indicate adaptation to new cultural and ecclesiastical standards concerning the circumstances of matrimony. The ritual of breaking a coin became infused with so much significance that the possession of a piece of a broken coin required detailed explanations to the court. Reports in 1641 that Catherine Fallowes and Radcliff Kelsall voluntarily broke a coin together as a testament of their commitment to marriage competed with testimony of an alleged struggle between Catherine and Radcliff that came to a conclusion when "the sayd groate fell downe upon the ground and brake into two peeces."[49]

What these later suits often lack, though, is discussion of *common* fame of marriage. They contain a good deal of specific witness testimony on words and rituals, but seldom are deponents asked to comment at length as to whether the alleged spouses were commonly taken as husband and wife in the opinion of the broader community. Testimony from someone who was "an eye and an eare witnes" to the circumstances of the contract apparently came to possess greater weight than judgments concerning a marriage's common fame.[50]

CONCLUSIONS

This examination of matrimonial contract suits indicates that both marriage and common fame were unstable constructs in the northwest region of early modern England. Making marriage outside the bounds of church authority was possible throughout the

[48]Addy, *Sin and Society*, 169. For additional comment concerning broken coins in seventeenth-century courtship, see Lawrence Stone, *Uncertain Unions: Marriage in England, 1660-1753* (Oxford: Oxford UP, 1992), 19.

[49]CRO EDC 1641, no. 13.

[50]That language comes from CRO EDC 5 1615, no. 11. Broader evaluations about marital legitimacy do not entirely disappear from later court documents, but they appear with far less frequency than in the early suits.

eight decades before the civil wars, but the means by which people did so underwent significant alteration. While present-tense words of matrimony remained the key component of irregular marriage, other signs of marriage became more elaborate and sophisticated over time, perhaps as a result of the fact that the types of people involved in later contract litigation had the material means to complete the processes that would give their matches the greatest appearance of validity. The competing narratives that make up contract litigation began to change as well, incorporating evidence of these new matrimonial practices and ideals into accounts of ruptured relationships. The earlier importance of common fame was supplanted over time by an emphasis on eyewitness testimony that spoke to the completion of new actions and speeches thought to create legitimate matrimonial contracts. As the result of these changes in the definitions and practices of matrimony, privacy replaced common fame as a regular feature of fractured matches in the northwest.

Jennifer McNabb received her Ph.D. in 2003 from the University of Colorado at Boulder and is now Assistant Professor of History at Western Illinois University, specializing in early modern Europe and the history of England. Her emphasis is social history, and current research interests include courtship, marriage, bastardy, the family, and credit in sixteenth- and seventeenth-century England. Her article, "Ceremony versus Consent: Courtship, Illegitimacy, and Reputation in Northwest England, 1560-1610" recently appeared in the Sixteenth Century Journal*. She is continuing work on a book-length study of regional, comparative study of courtship, marriage, and the family in northwest England, 1540-1640. She is also the Reviews Editor for* Quidditas*,*