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DIFFICULT UNIONS: MARITAL CASES BEFORE THE CONSISTORIAL COURT OF POZNAŃ AT THE BEGINNING OF THE FIFTEENTH CENTURY*

Abstract: The utilization of consistorial sources is a research postulate that has been voiced repeatedly over the years. These materials comprise a compact volume of data that are both organized serially and mass-produced, while the fact that they touch upon a wealth of topics and thus have considerable cognitive value for interdisciplinary studies cannot be overestimated. Magdalena Biniaś-Szkopek's book is a pioneering study and, at the same time, a successful attempt at making comprehensive use of the nine oldest registers of the consistorial court of Poznań. The ledgers cover the years 1404–26 and contain entries devoted to 'marital issues' in the broadest meaning of the term, with particular consideration being given to the complex position of women who took part in proceedings before mediaeval ecclesiastical courts.

Key words: Mediaeval consistorial court, matrimony, woman.

Consistorial sources and their (under)utilization should weigh heavily on the conscience of Polish mediaeval studies. Despite numerous and repeated research postulates, this body of documentation continues to remain almost completely outside the realm of scientific analysis, even though it comprises a compact volume of material that is both organized serially and mass-produced. At the same time, the fact that it touches upon a wealth of topics and thus has considerable cognitive value for interdisciplinary studies cannot be overestimated.¹ Bolesław Ulanowski's classic edition, although it contains only selected data, some of it of

* A review of Magdalena Biniaś-Szkopek's *Małżonkowie przed sądem biskupiego oficjała poznańskiego w pierwszej ćwierci XV wieku*, Poznań: Wydawnictwo Wydziału Historii UAM [Institute of History of the Adam Mickiewicz University], 2019, 293 pp., Publikacje Instytutu Historii, vol. 179.

¹ See Izabela Skierska, 'Źródła do badań praktyk religijnych w średniowiecznej Polsce: akta sądów kościelnych i kapituł', *Archiwa, Biblioteki i Muzea Kościelne*, 87, 2007, pp. 175–95.

non-consistorial origin; the monograph *Praktyka w sprawach małżeńskich*, written under its influence; the later *Acta officii consistorialis Leopoliensis*; the collection of files of the consistorial court of Cracow published in the series *Cracovia artificum*; the most recent works devoted to the consistorial court of Kalisz and elaborated following the discovery of consistorial documents in Gniezno; and various editions of texts of court oaths — all these works, created over more than one century, are testament to the appeal of court documentation.² Paradoxically, however, these very same comprehensive publications, which rescued this genre of sources from oblivion and facilitated its integration into modern scholarly usage, have by their sheer magnitude overwhelmed successive generations of historians and successfully discouraged them from continuing archival studies. And yet today, we may be observing a specific breakthrough, which seems to be occurring not only in Polish but also in international research.³

Magdalena Biniaś-Szkopek has utilized consistorial sources as the basis for her monograph entitled *Małżonkowie przed sądem biskupiego oficjała poznańskiego w pierwszej ćwierci XV wieku*. The author's choice of source base was influenced by her awareness of this research neglect, which is referred to in her introduction (p. 12), and — as she says — by her belief that 'consistorial registers [...] are indeed an inexhaustible source, brimming with information about the various spheres of life of all social classes' (p. 11). Furthermore, they are the earliest chronologized and, perhaps, the first mass-generated source that allows us to 'hear' the voices of women, who formed the majority of plaintiffs in proceedings (p. 12), as has been demonstrated in a separate work for the diocese

² *Acta capitulorum nec non iudiciorum ecclesiasticorum selecta*, ed. Bolesław Ulanowski, 3 vols, Cracow, 1894–1908; *Acta officii consistorialis Leopoliensis antiquissima*, ed. Wilhelm Rolny, 2 vols, Lwów, 1927–1930; *Cracovia artificum 1300*, ed. Jan Ptaśnik, Cracow, 1917; *Cracovia artificum 1501–1550*, ed. Jan Ptaśnik, Cracow, 1936–1948; *Cracovia artificum. Supplementa: Teksty źródłowe do dziejów kultury i sztuki z archiwaliów kurialnych i kapitulnych 1410–1412 oraz 1421–1424*, ed. Bolesław Przybyszewski, Wrocław, 1985; *Wielkopolskie rotty sądowe XIV–XV wieku*, ed. Henryk Kowalewicz and Władysław Kuraszkiewicz, 5 vols, Poznań, Wrocław and Warsaw, 1959–81, vol. 1: *Roty poznańskie*, 1959; Adam Kozak, 'Kilka scen z życia późnośredniowiecznego miasta: Pleszewianie przed sądem konsystorza kaliskiego w latach 1480–1486', *Rocznik Pleszewski*, 14, 2014, pp. 243–55; Adam Kozak and Jakub Łukaszewski, 'Osieczna i jej mieszkańcy w świetle najstarszych ksiąg konsystorza poznańskiego (1404–1425)', *Rocznik Leszczyński*, 15, 2015, pp. 65–67; Adam Kozak and Jakub Łukaszewski, 'Dokumentacja konsystorska z XV i początku XVI wieku odkryta w katedrze gnieźnieńskiej', *RH*, 83, 2017, pp. 203–27; *Księgi konsystorza kaliskiego 1504–1540 (wersja robocza)*, ed. Arkadiusz Borek et al., <https://atlasfontium.pl/?page_id=2317%2F> [accessed 17.08.2021].

³ Foreign projects have been mentioned by the authors of *Księgi konsystorza kaliskiego 1504–1540 (wersja robocza)*, <https://atlasfontium.pl/?page_id=2317%2F> [accessed 17.08.2021].

of Cracow by B. Ulanowski, referred to above, and also by Władysław Abraham.⁴ It should be added that these court documents depict the lives of the lower classes in their social contexts, that is, in intimate, private relations, which are usually under-represented in sources from the era. Thus, they concern the following groups of women: woman servants (the majority), cooks, stall-keepers and millers, while in the case of men — manservants (the majority), brewers, millers, tailors, cobblers and butchers (pp. 84–86). Interestingly, this very genre of sources has found particular recognition with postmodernist historical anthropology. Court sources, which according to Carlo Ginzburg are part of the ‘archives of repression’ and which he has compared to the notes of anthropologists,⁵ depict an intercultural dialogue, and through ‘cultural translation’, present a past culture from the ‘indigenous perspective’.⁶ One of the representatives of this current, Michael Kunze, is convinced that ‘Court documents have helped return to life, long-forgotten women and men. They speak about themselves, about their joys, fears and misfortunes’.⁷ It would be difficult not to reflect that this anthropologizing perception of court sources at once ennobles consistorial documents and determines the scope of their role in research.

Since consistorial documentation is focused primarily on the issue of marital affairs (p. 31), the author was fully justified in selecting this topic for analysis; importantly, her research serves to supplement B. Ulanowski’s edition, which, according to calculations made by Izabela Skierska, covers only 900 out of 48,000 entries from the files of the ecclesiastical courts of Greater Poland.⁸ Put simply, the author has made use of a practically pristine source and topical base. Thus, she has examined the nine oldest consistorial registers for Poznań (from among a total of eighty-seven), which with only a few exceptions cover the

⁴ Bolesław Ulanowski, *Praktyka w sprawach małżeńskich w sądach duchownych dyjecezyi krakowskiej w wieku XV*, Cracow, 1888, pp. 87–187, Archiwum Komisji Historycznej, vol. 5; Władysław Abraham, *Dziewosłęb: Studium z dziejów pierwotnego prawa małżeńskiego w Polsce*, Lwów, 1922, *Studia nad historią prawa polskiego*, vol. 8, 2, pp. 3–47; idem, *Zawarcie małżeństwa w pierwotnym prawie polskim*, Lwów, 1925.

⁵ Carlo Ginzburg, *Ser i robaki*, transl. into Polish by Radosław Kłos, Warsaw, 1989, p. 18; idem, ‘The Inquisitor as Anthropologist’, in idem, *Clues, Myths, and the Historical Method*, Baltimore, MD, 1989 (English translation), pp. 141–48; idem, ‘Witchcraft and Popular Piety: Notes on a Modenese Trial of 1519’, in idem, *Clues, Myths*, pp. 1–15, and see also: idem, *Hexensabbat: Entzifferung einer nächtlichen Geschichte*, transl. into German by Martina Kempter, Berlin, 1990. See: Ewa Domańska, *Mikrohistorie*, Poznań, 2005, p. 77.

⁶ See Domańska, *Mikrohistorie*, p. 71; Piotr Nowak, ‘Dialog i monolog w strategii prowadzenia badań’, *Res Historica*, 2, 1998, pp. 25–39.

⁷ See Domańska, *Mikrohistorie*, pp. 71–73.

⁸ Skierska, ‘Źródła do badań praktyk religijnych’, p. 179.

years 1404–26 and comprise 3,400 pages of manuscripts pertaining to 550 marital court cases (pp. 16–17). This, therefore, is a vast body of source materials that have been utilized in Polish historiography for the first time to such an extent.

The work comprises three parts, the first of which presents a broad historical introduction to the institution of consistorial courts in Europe and Poland and outlines their competence in marital cases. In contrast, the second and third utilize consistorial data to discuss the issue of the promise of marriage and impediments to marriage — the two matters of most significant importance in terms of their legal effects. In the second part ('On the subject of the promise of marriage'), the author comments on the Church's attempts to regularize traditional customs concerning fulfilment of the assurance of matrimony, which dated back to pagan times. This was because consistorial courts were the addressees of actions brought mainly by women and resulted from a lack of uniform standards governing promises of wedlock that would lead to the conclusion of legally binding unions. The issue here does not concern only marriage by kidnapping, persons living together under one roof, or formal contracts entered into with the consent of parents, but rather states of affairs and assurances that were unofficial or private and the existence of which would have been hard to prove, such as promises made in secrecy from family members or couples living together in a sexual relationship without being married. This placed such unions on the border between common-law marriage and marriage, thus making them open to challenge and moralizing critique, condemnation and penalization by the Church. The author notes that the diversity of these forms or states of affairs was unlimited, while the awareness of those participating therein differed (p. 156).

Consistorial materials present marital customs at the meeting point, as it were, of these two continuously different worlds, between the dynamic element of male-female relations in daily life, which was founded on a traditional, archaic moral base, and the Church's attempts at regularization and control, which were accompanied by the requirement to proclaim banns and confirm each marital contract '*in facie Ecclesiae*'. Additionally, the Church strove to arrive at a legal definition of matrimony that would negate conventional free unions, namely ones that the Church considered as being secret or of the nature of common-law marriage. Such cultural disharmony resulted in repeated actions being brought by former partners with the intent of placing obstacles on the road to the conclusion of fresh unions by women and charges made by the latter for the destruction of chastity or deprivation of vir-

ginity against male partners who — despite engaging in physical intercourse — had failed to keep promises of marriage.

In other words, the second part of the work presents the fundamental problem of the phenomenon — the legal and customary foundation, the confrontation of the concept and definition of matrimony functioning in traditional culture with the legal and moral vision of the Church, and the lengthy and not entirely successful attempts at Christianizing old customs. The author correctly sees secret marriages, common-law marriages, and the lay rite as the primary causes of problems before consistorial courts. Marriages concluded according to the traditional rite were challenged under ecclesiastical law and Christian morality. This led to repeated questions as to what constitutes marriage and how its existence can be proved or disproved. The issue remains open as to the relation between legal motives and the moral teachings of the Church. Upon reading the consistorial documents, we see that practice was clearly inconsistent; for example, as the author points out, adultery — prohibited by the Decalogue (the '*gubernacula vitae hominis*' for the faithful) and punishable by excommunication.⁹ was not cited to challenge the validity of marriages; rather, it justified the adjudication of a correction of behaviour, of penance and remorse, consisting of the offender's referral to confession and the amicable settlement of the conflict (p. 241). Therefore, it would seem that canon lawyers placed major emphasis on the permanence of matrimony, considering it the primary good.

It is only in the third part of the work, however, which contains a panorama of the most frequently occurring cases, namely those concerning impediments to marriage, that the author presents the institution of matrimony as reflected in daily life and in confrontation with the two worlds discussed above. This part of the work shows the scale of the problem faced by ecclesiastical judges. The traditional marriage vow was given in the presence of intermediaries in the matter of marriage (matchmakers) or a closed family circle, under the veil of privacy, which led to numerous

⁹ Robert J. Bast, *Honor Your Fathers: Catechisms and the Emergence of a Patriarchal Ideology in Germany, c. 1400–1600*, Leiden, 1997, *Studies in Medieval and Reformation Thought*, vol. 71; idem, 'From Two Kingdoms to Two Tables: The Ten Commandments and the Christian Magistrate', *Archiv für Reformationsgeschichte*, 89, 1998, pp. 79–95; idem, 'The Ten Commandments and Pastoral Care in Late-Medieval and Early Modern Europe: An Inquiry into Expectations and Outcomes', in *The Ten Commandments in Medieval and Early Modern Culture*, ed. Youri Desplenter, Jürgen Pieters and Walter Melion, Leiden and Boston, MA, 2017, pp. 90–112, *Intersections: Interdisciplinary Studies in Early Modern Culture*, vol. 52; Lesley Smith, *The Ten Commandments: Interpreting the Bible in the Medieval World*, Leiden, 2014, *Studies in the History of Christian Traditions*, vol. 175.

problems with proving the validity of unions. Even the brief and verbal form of the traditional marital vow, passed down from generation to generation, most assuredly did not have a uniform wording (the author cites the well-known description of the traditional ceremony of betrothal from 1423, with a simple verbal form of the vow, which was known already to B. Ulanowski (p. 208), and another from the same year, however omitting to add the pertinent Latin quotation (p. 211)). The old elaborate ceremony, considered by anthropologists as one of the 'rites of passage', was divided into *zdawiny* (during which the bride's guardians passed her to the care of her husband), *zmówiny* (a prenuptial agreement between the parents of the couple), and *pokładziny* (which consisted in the newly-weds going to bed and engaging in sexual intercourse in the presence of witnesses), and was supplemented with various advance payments (which in turn were confirmed by the *litkup* — a solemn feast or repast intended to strengthen and guarantee the inviolability of the marital contract), symbolic gestures, marriage gifts, and other ritual practices. This rite is only weakly reflected in consistorial sources, although Władysław Abraham has attempted its recreation.¹⁰ We do not know the earliest wording of the original Polish marriage vow that caused many interpretational problems before consistorial tribunals. In court writings, it was hidden under the more general phrases of '*verbo de praesenti*' (p. 117) or '*per verba procis consueta*', or, as was noted by the consistorial court of Cracow in 1475, under the elaborate Latin expression '*Ego Mathias recipio te Annam in hospitem meam...*'.¹¹ What is necessary, therefore, is an analysis of the rich liturgical ecclesiastical sources,¹²

¹⁰ Abraham, *Dziewosłób*, p. 44; idem, *Zawarcie małżeństwa*, pp. 305–06; Rene van Gennep, *Obrzędy przejścia*, Warsaw, 2006 (Polish translation), pp. 127–50; Przemysław R. Dąbkowski, *Litkup: Studium z prawa polskiego*, Lwów, 1906, Archiwum Naukowe, section 1, vol. 3, booklet 2.

¹¹ Abraham, *Zawarcie małżeństwa*, p. 306; Ulanowski, *Praktyka w sprawach małżeńskich*, no. 181, p. 76.

¹² The source base is brought together by specific entries, among others: 'Ehe', in *Lexikon des Mittelalters*, ed. Robert Auty et al., 9 vols, München and Zürich, 1980–98, vol. 3, 1986, cols 1616–49; 'Ehe', in *Die Religion in Geschichte und Gegenwart: Handwörterbuch für Theologie und Religionswissenschaft*, ed. Kurt Galling, 7 vols, Tübingen, 1957–65, vol. 2, 1958, cols 314–34, and Adolph Franz, *Die kirchlichen Benediktionen im Mittelalter*, 2 vols, Freiburg im Breisgau, 1909, vol. 2, pp. 176–86; Willy Lüdtke, 'Ordines ad faciendam sponsalia: Eine textkritische Untersuchung', in *Festgabe für Prof. D. Dr. Richard Haupt, Provinzialkonservator der Provinz Schleswig-Holstein, Geh. Regierungsrat: zu seinem 75. Geburtstage 6. Oktober 1921 dargebracht von seinen Freunden*, ed. [Harry Schmidt], Kiel, 1922, pp. 95–128, which contains a comparative analysis of forms; editions of various forms of marital benedictions were collected by Edmond Martene, *De antiquis Ecclesiae ritibus libri quatuor*, 3 vols, Rouen, 1700–02, [vol. 2], 1700, lib. I, cap. 9, a. 5, pp. 614–63, while as regards the liturgy in Poland: Wacław Schenk, *Liturgia sakramentów świętych*, 2 vols, Lublin, 1962–64, vol. 2, 1964, pp. 131–44; *Leksykon liturgii*, ed. Bogusław Nadolski, Poznań, 2006, pp. 1350–70.

folklore¹³ and pastoral writings of the *'de virtutibus et vitiis'* variety, which, while less studied in Polish historiography, have for years been the subject of detailed research and cataloguing in European and mainly American medieval studies.¹⁴ The comment concerning the availability and recommended utilization of a broader body of sources is also applicable to the present work (p. 106). The extensive corpus of mediaeval ecclesiastical publications referred to above is known under the collective term *'pastoralia'*, a descriptor initially proposed by Leonard E. Boyle and after that used by Joseph Goering.¹⁵ Boyle was the first to elaborate a definition of the genre: *'pastoralia is a very broad concept, which in its most expansive meaning covers the entirety of handbooks, aids and techniques, from the decisions of bishops to mnemotechnic lists of the seven cardinal sins, that would make a priest better prepared to understand his office, teach his people, and administer sacraments [...] in order to deepen their faith and*

¹³ Cf. for example: *Kultura ludowa Wielkopolski*, 3 vols, ed. Jerzy Burszta, Poznań, 1960–67, vol. 3, 1967, p. 129; *Atlas języka i kultury ludowej Wielkopolski*, 11 vols, ed. Zenon Sobierajski, Wrocław and Poznań, 1979–2005, vol. 7: *Kultura społeczna, folklor obrzędowy i muzyczno-taneczny*. 2 parts, 1992; Dorota Simonides, *Od kolebki do grobu: Śląskie wierzenia, zwyczaje i obrzędy rodzinne w XIX wieku*, Opole, 1988, pp. 80–110; Małgorzata Maj, *Ludowe obrzędy weselne w Polsce: Materiały bibliograficzne*, Wrocław, 1980.

¹⁴ Morton W. Bloomfield et al., *Incipits of Latin Works on the Virtues and Vices, 1100–1500 A.D.*, Cambridge, MA, 1979; Richard Newhauser and István P. Bejczy, *A Supplement to Morton W. Bloomfield et al. Incipits of Latin Works on the Virtues and Vices 1100–1500 A.D.*, Turnhout, 2008, *Instrumenta patristica et mediaevalia*, vol. 50; Richard Newhauser, *A Catalogue of Latin Texts with Material on the Vices and Virtues in Manuscripts in Hungary*, Wiesbaden, 1996, *Gratia: Bamberger Schriften zur Renaissanceforschung*, vol. 29. Regarding the history of the genre, see Richard Newhauser, *The Treatise on Vices and Virtues in Latin and the Vernacular*, Turnhout, 1993, pp. 21–54, *Typologie des sources du Moyen Âge occidental*, ed. Léopold Genicot, vol. 68.; Jiří Kejř, *Summae confessorum a jiná dila pro foro interno v rukopisech českých a moravských knihoven*, Prague, 2003, *Studie o rukopisech*. Monographia, vol. 8, *Středověké kanonické právo v rukopisech České republiky*, vol. 1; Joseph Goering, 'The Internal Forum and the Literature of Penance and Confession', in *The History of Medieval Canon Law in the Classical Period, 1140–1234: from Gratian to the Decretals of Pope Gregory IX*, ed. Wilfried Hartmann and Kenneth Pennington, Washington, 2008, pp. 379–428; Andrew Reeves, 'Teaching the Creed and Articles of Faith in England: 1215–1281', in *A Companion to Pastoral Care in the Late Middle Ages (1200–1500)*, ed. Ronald James Stansbury, Leiden and Boston, MA, 2010, pp. 41–72, *Brill's Companions to the Christian Tradition*, vol. 22; idem, 'Education and religious instruction', in *The Routledge History of Medieval Christianity 1050–1500*, ed. Robert N. Swanson, New York, 2015, pp. 103–15; idem, '"The Care of Souls is the Art of Arts": Preaching, Confession and Catechesis in the Middle Ages', *Religion Compass*, 7, 2013, 9, pp. 372–84.

¹⁵ Joseph Goering, 'Pastoralia: The Popular Literature of the Care of Souls', in *Medieval Latin: An Introduction and Bibliographical Guide*, ed. Frank Anthony C. Mantello and Arthur George Rigg, Washington, DC, 1999, pp. 670–77; idem, 'Leonard E. Boyle and the Invention of Pastoralia', in *A Companion to Pastoral Care*, pp. 7–20.

the piety of their behaviour'.¹⁶ Whereas Goering distinguished thirteen topical issues — 'The Creeds, The Lord's Prayer, God's Gifts, Virtues, Vices, Sacraments, The Ten Commandments, Works of Mercy, The Reward of the Just and Pains of the Wicked, The Errors of the People, and The Things to be Avoided (vitanda) and to be Done (agenda)' — to which he subordinated individual genres of pastoral writings.¹⁷

Returning to the problem of the validity of marriages in consistorial sources, we should observe that it was the role of the official to determine which oath was binding and confirmed the first legal union. In most instances, therefore, the issue of bigamy made its appearance not through design but due to the aforementioned vague definition of marriage and the excessive weakness of the Church, which was unable to establish the requisite legal awareness and discipline. It is difficult, however, to accept that the sole tool which lay at its disposal in the post-Lateran period (after 1215) was exhorting the faithful to proclaim banns (p. 167).¹⁸ Triple banns, which were introduced in the Polish lands upon the instruction of the papal legate Jacob by the Wrocław Statutes of 1248, were no more than an expedient, an attempt at removing matrimony from the traditional system of private contracts and subjecting decisions concerning entry into marriage to Church control and public verification in order to disclose possible impediments, all the more so as lawyers could not agree whether the coital or the consensual theory best described the formation of marriage (p. 99 and subsequent, 183).¹⁹ Banns were announced during the *exhortatio*, that is the part of the memorial speech which followed the sermon or sometimes replaced it altogether; it comprised the *wypominki* (a form of supplicatory prayer for the deceased, consisting in the reading out of their names), prayer lectures, announcements of Church holidays and fast days, the announcement of banns, and the general confession (Confiteor).²⁰ If

¹⁶ Goering, 'Leonard E. Boyle and the Invention of *Pastoralia*', pp. 17–18.

¹⁷ Leonard E. Boyle, *Pastoral Care: Clerical Education and Canon Law, 1200–1400*, London, 1981; Goering, 'Pastoralia', pp. 673–74.

¹⁸ The following edition is suggested here: *Constitutiones Concilii quarti Lateranensis una cum commentariis glossatorum*, ed. Antonio Garcia y Garcia, Città del Vaticano, 1981, Monumenta Iuris Canonici, ser. A: Corpus Glossatorum, vol. 2. See David L. d'Avray, *Medieval Marriage: Symbolism and Society*, New York, 2005, pp. 131–56.

¹⁹ *Statuta synodalia dioecesana sanctae Ecclesiae Wratislaviensis edidit...*, 2nd edn, ed. Mortimer de Montbach, Wrocław, 1855, par. 17, p. 320, which also contains the Latin form of the wedding ceremony.

²⁰ Jan Fijałek, 'Zaręczyny i ogłoszenie zapowiedzi w Polsce średniowiecznej. (Ze studiów nad średniowiecznym ustawodawstwem synodalnym biskupów polskich)', *Gazeta Kościelna*, 1, 1893, 31–32, pp. 268–69, 286–88; Paweł Szczaniecki, *Służba Boża w dawnej Polsce: Studia o mszy św. (Seria 1)*, Poznań and Lublin, 1962, p. 84; Krzysztof Bracha and Mariusz Leńczuk, *Słowo — pismo — sacrum: Cztery studia z dziejów kultury religijnej w Polsce późnego*

M. Biniś-Szkopek is suggesting that cases of bigamy did reach consistorial courts because plaintiffs were aware of legal impediments and even of the committal of sins, then, contrary to the author's cautious approach, we may surmise that they acquired such awareness through pastoral contacts. Obviously, the most popular method of mass education was preaching. Below are two pulpitical examples, the first of which is quoted from a consistorial source. In 1475, one Jakub Sójcicz from Duplice insulted a certain Wawrzyniec (Laurencius), the parish priest of Złakowo, who had reprimanded him from the pulpit to live a righteous life with his wife Lina, whom he had previously expelled from his house. Out of revenge, Jakub '*voce sonora proclamavit: domine, confundis me, si es de mea uxore necessarius, queras tibi eam, ecce me expellis de agro et de bonis et propter te oportet me recedere, scias, quod pro hoc tecum acturus*'.²¹ The second concerns intimate aspects of male-female relations discussed against the sensitive backdrop of traditionally accepted views as to the inherent weakness of feminine nature that made women more prone to sin than men. Contrary opinions met with disapproval and, not infrequently, rebounded on the preachers themselves. When during one of his sermons, which was given before a respectable female audience, the Czech preacher John Szczekna (Štěkna) dared state that women were less adulterous than men, he was roundly decried by the *szlachta* and threatened in writing that unless he recanted his statement, he would be forced to leave the kingdom.²² Common-law marriages, adultery and all other marital sins where the regular object of condemnation in catechesis focused on teaching the basic truths of the faith, as is evidenced by extant fifteenth-century manuscripts, the so-called '*Tabulae fidei christianae*', functioned as rudimentary texts for religious education.²³ These covered a dozen or so catechetical segments, first

średniowiecza, Warsaw, 2020, p. 36, *Studia Staropolskie*. Series Nova, vol. 49; Bernhard Kummer, 'Braut', in *Handwörterbuch des deutschen Aberglaubens*, 10 vols, ed. Hanns Bächtold-Stäubli, Berlin and Leipzig, 1927–42, repr. Berlin and New York, 1987–, vol. 1, 1987, cols 1522–36; 'Betrothals', in *Women and Gender in Medieval Europe: An Encyclopedia*, ed. Margaret Schaus, New York, 2006, pp. 71–72, for further literature on the subject.

²¹ *Acta capitulorum*, vol. 2, 1902, no. 915, pp. 442–43. See Adam Krawiec, *Seksualność w średniowiecznej Polsce*, Poznań, 2000, pp. 109–10; Krzysztof Bracha, 'Żywy odbiór kazań w Polsce późnego średniowiecza. Kilka przykładów źródłowych', in *Historia. Memoria. Scriptum: Księga pamiątkowa z okazji osiemdziesięciolecia urodzin Profesora Edwarda Potkowskiego*, ed. Jacek Krochmal, Warsaw, 2016, pp. 199–210.

²² '*mulier adulterii commissio crimine ipsa minus peccaret, quam vir similiter delinquens et per consequens minoribus digna suppliciiis censeretur*', *Formularz Jerzego, pisarza grodzkiego krakowskiego ok. 1399–1415*, ed. Karol Górski, Toruń, 1950, no. 4, p. 5. See Bracha, 'Żywy odbiór kazań', p. 207.

²³ See Jerzy Wolny, 'Z dziejów katechezy', in *Dzieje teologii katolickiej w Polsce*, ed. Marian Rechowicz, 3 vols, Lublin, 1974–77, vol. 1: *Średniowiecze*, 1974, pp. 203–04.

and foremost the Decalogue, which at the time was neither translated into Polish nor lectured on in sermons, and an accompanying comprehensive index of sins.²⁴ The latter was recalled during the ‘general confession’, which formed part of the exhortatio as mentioned above.²⁵ The catalogue of sins was used primarily by preachers and confessors. In preaching, two dates of the liturgical calendar were considered optimal for marital teaching: the period ‘*post octavas Epiphaniae, quia tunc primo licet nubere*’, when readings were made from the pericope on the Wedding at Cana (*‘Nuptiae factae sunt’*, J 2:1–11), and Lent. The first of these Church holidays opens the period approved and prescribed by the Church for the conclusion of marriages and the holding of weddings,²⁶ during which the Church would loosen the discipline and limi-

²⁴ Wiesław Wydra, *Polskie dekalogi średniowieczne*, Warsaw, 1973, *Silva medii et recentioris aevi*, vol. 2, ed. Juliusz Nowak-Dłużewski; idem, ‘Średniowieczne polskie dekalogi i modlitwy codzienne z rękopisów i inkunabułów Jasnogórskiej Biblioteki OO. Paulinów’, *Slavia Occidentalis*, 59, 2002, pp. 183–98; Krzysztof Bracha, ‘The Ten Commandments in Preaching in Late Medieval Poland: “Sermo de praeceptis” from Ms. 3022 at the National Library in Warsaw’, in *The Ten Commandments in Medieval and Early Modern Culture*, pp. 173–95; idem, ‘Commentaries on the Decalogue in the late Middle Ages: Between Method and Catechesis: Poland in the European Context: Research State and Perspectives’, in *Glossae — Scholia — Commentarii: Studies on Commenting Texts in Antiquity and Middle Ages*, ed. Mieczysław Mejor, Katarzyna Jażdżewska and Anna Zajchowska, Frankfurt am Main, 2014, pp. 177–94, *Warsaw Studies in Classical Literature and Culture*, vol. 2; Morton W. Bloomfield, ‘The Origin of the Concept of the Seven Cardinal Sins’, *Harvard Theological Review*, 34, 1941, pp. 121–28; idem, *The Seven Deadly Sins: An Introduction to the History of Religious Concept*, Michigan, MI, 1952; Carla Casagrande and Silvana Vecchio, *Histoire des péchés capitaux au Moyen Âge*, Paris, 2009; eadem, ‘Péché’, in *Dictionnaire raisonné de l’Occident médiéval*, ed. Jacques Le Goff and Jean-Claude Schmitt, Paris, 1999, pp. 868–81; Carla Casagrande, ‘La moltiplicazione dei peccati: I cataloghi dei peccati nella letteratura pastorale dei secoli XIII–XV’, in *La peste nera: dati di una realtà ed elementi di una interpretazione: Atti del XXX Convegno storico internazionale, Todi 10–13 ottobre 1993*, Spoleto, 1994, pp. 253–84; Newhauser, *The Treatise on Vices*, pp. 180–202, and in iconography: Jana Grollová and Daniela Rywíková, *Militia est vita hominis: Sedm smrtelných hříchů a sedm skutků milosrdenství v literárních a vizuálních pramenach českého středověku*, Ostrava, 2013.

²⁵ Bracha and Leńczuk, *Słowo — pismo — sacrum*, p. 39, 48–55.

²⁶ See: Nicole Bériou and David L. d’Avray, ‘Henry of Provins O.P.’s Comparison of the Dominican and Franciscan Orders with the “Order” of Matrimony’, in *Modern Questions About Medieval Sermons: Essays on Marriage, Death, History and Sanctity*, ed. Nicole Bériou and David L. d’Avray, Spoleto, 1994, pp. 71–75, *Società Internazionale per lo studio del Medioevo Latino. Biblioteca de Medioevo Latino*, vol. 11; Nicole Bériou and David L. d’Avray, ‘The Image of the Ideal Husband in Thirteenth Century France’, in *Modern Questions About Medieval Sermons*, pp. 31–69; David L. d’Avray and Martin Tausche, ‘Marriage Sermons in “Ad Status” Collections of the Central Middle Ages’, in *Modern Questions About Medieval Sermons*, pp. 77–134; David L. d’Avray, ‘The Gospel of the Marriage Feast of Cana and Marriage Preaching in France’, in *Modern Questions About Medieval Sermons*, pp. 135–53; idem, *Medieval Marriage Sermons: Mass*

tations of the 'forbidden times'. These norms, based on the fundamental condition of engaging in the physical act exclusively for the purpose of procreation, prohibited intercourse during the forbidden times: on Church holidays and fast days, in holy places, due to the lustful and provocative stance of one's wife, during pregnancy, before parturition, while breast-feeding, and during menstruation. For, as it was explained at the time, the couple would not experience any pleasure from copulating during the forbidden times, while children then conceived would be visited by the devil and be born sick.²⁷ Jan Długosz's account of the abduction of one Krystyna, the wife of the knight Mścisław of Bużenin, by King Bolesław Szczodry (the Generous), whom the king supposedly raped and made his concubine, is clearly in line with these beliefs. Długosz explained that numerous physical and mental incapacities would blight progeny born of rape.²⁸

The reception of these norms in social practice is of course, difficult to gauge. However, it is worth citing the findings of one researcher who argued that at least in some municipalities observed an actual decrease in the number of marriages concluded and of children conceived during the forbidden times (in December and March, that is during Advent and Lent was observed). She attributes this fact to catechesis being more effective in cities than in rural areas.²⁹ It is interesting to note that the problem of the forbidden times was not touched upon in the consistorial materials utilized in the reviewed work.

Communication in a Culture without Print, Oxford and New York, 2001, pp. 1–2; idem, *Medieval Marriage: Symbolism and Society*, pp. 58–73 and subsequent editions, pp. 208–87; Paweł T. Dobrowolski, 'Society and Family in the Mirror of Late Medieval Preaching: The Case of Vincent Ferrer', *Studia Mediewistyczne*, 27, 1990, 2, pp. 75–93; Krzysztof Skwirczyński, 'Vademecum historii średniowiecznej seksualności', *PH*, 98, 2007, 3, pp. 437–43. Johannes B. Schneyer, *Repertorium der lateinischen Sermones des Mittelalters für die Zeit von 1350–1500, nach der Vorarbeit von Johannes B. Schneyer*, ed. Ludwig Hödl and Wendelin Knoch, Münster, 2001 (CD-Rom), notes sermons with this pericope (T12) for the 1st, 2nd, 3rd, 4th and 5th Sundays following Epiphany Day. See: Aristide Serra, *Le nozze di Cana (Gv 2,1–12): Incidenze cristologico-mariane del primo 'segno' di Gesù*, Padua, 2009, Bibliotheca Berica. In *Domina nostra*, vol. 11.

²⁷ See d'Avray and Tausche, 'Marriage Sermons', p. 126; d'Avray, 'The Gospel of the Marriage Feast', pp. 136–37, and, for a more detailed presentation, Krzysztof Bracha, *Nauczanie kaznodziejskie w Polsce późnego średniowiecza: 'Sermones dominicales et festuales' z tzw. kolekcji Piotra z Miłostawia*, Kielce, 2007, p. 243, which contains statements by other mediaeval authors and a list of fixed dates of forbidden times.

²⁸ Jan Długosz, *Vita Sanctissimi Stanislai Cracoviensis Episcopi*, in *Joannis Długossii senioris canonici Cracoviensis Opera*, ed. Ignacy Polkowski and Żegota Pauli, Cracow, 1887, pp. 1–181 (p. 27), *Joannis Długossii senioris canonici Cracoviensis Opera omnia*, ed. Aleksander Przezdziecki, vol. 1. See Krawiec, *Seksualność w średniowiecznej Polsce*, p. 106.

²⁹ Christine Klapisch-Zuber, 'Kobieta i rodzina', in *Człowiek średniowiecza*, ed. Jacques Le Goff, Warsaw and Gdańsk 1996, pp. 353–87 (p. 374).

Extant fifteenth-century manuscripts contain poems on marriage that were readily quoted by preachers: ‘Nye wybyeray yvnochv...’ and ‘Poradzay szye yvnochv...’; these reflect traditional marital teachings and guidance.³⁰ In fifteenth-century Poland, sermons with a lecture on the word *swadźba* (used to describe the old Polish (Slavic) form of the wedding ceremony), which were devoted to marital ethics and attributed to Łukasz (Lucas) of Wielki Koźmin, were very popular.³¹ In a Dominican homily from the fifteenth century, the predicant cites the following Polish-German proverb while providing instruction on marriage: ‘*Man vnd weyp ist eyn leyp, dwye dusszy a yedno czalo*’. Moralizers also elaborated a list of the most frequent marital sins. This had the form of a separate *tractatulus* or penitential note, ‘*Peccata matrimoniales*’, and was intended as a pastoral aid. The text of the note was composed in the second half of the fourteenth century and was popularized throughout Europe. We know of fifty-eight manuscript copies, some of which were written in Polish.³² Marriage was also an ever-present in penitential treatises and accompanying minor writings, as well as in pastoral texts of the *virtutes et vitia* genre.³³

A similar basis may be discerned in another example cited by the author, this concerning the impediment of consanguinity and ‘the degree of genealogical awareness’ of witnesses — even if their understanding did not always extend to such an excellent grasp of the nuances of propinquity and concomitant legal impediments to marriage as that displayed by a peasant expert on family genealogy in a case from 1485 (p. 217). That the subject in question did appear in homilies is attested to by a manuscript from the first half of the fifteenth century, which contains a collection of sermons attributed to Anthony of Parma and assorted minor pastoral writings presenting, among others, a simple pattern of kinships that was most probably used by clergymen to provide instruction to the faithful.³⁴

³⁰ Bracha, *Nauczanie kaznodziejskie*, p. 47.

³¹ Ibid., p. 253; Krzysztof Bracha, ‘Kazanie na I Niedzielę Adwentu jako wprowadzenie do Postylli Super evangelia dominicalia Łukasza z Wielkiego Koźmina’, in *Kaznodziejstwo średniowieczne: Polska na tle Europy: Teksty — atrybucje — audytorium*, ed. Krzysztof Bracha with the co-operation of Andrzej Dąbrówka, Warsaw, 2014, pp. 33–48, *Colloquia Mediaevalia Praedicatoria*, vol. 1.

³² Ewelina Kaczor, ‘Peccata matrimoniales: Wykroczenia przeciw moralności małżeńskiej w świetle “Noty penitencjalnej” z rękopisu Biblioteki Wyższego Seminarium Duchownego w Kielcach z XV w.’, *Rocznik Muzeum Narodowego w Kielcach*, 30, 2015, pp. 104–13.

³³ Josef G. Ziegler, *Die Ehelehre der Pönitentialsommen von 1200–1350: Eine Untersuchung zur Geschichte der Moral- und Pastoraltheologie*, Regensburg, 1956; Newhauser, *The Treatise on Vices*, p. 33.

³⁴ [Schemat pokrewieństw], MS. Biblioteka Wyższego Seminarium Duchownego Kielce, 42/24. See Leszek Dziedziec and Krzysztof Bracha, ‘Katalog’, in *Średniowieczne skarby Kielc: Rękopiśmienne księgi dawnej Biblioteki kolegiaty kieleckiej*, Kielce, 2019, pp. 31–75 (p. 68).

The Church's command to engage in sexual intercourse solely for the purpose of procreation implied a sensitivity to further problems: abortion, contraception, and also infertility or coldness in marriage, especially when the latter did not seem to have any apparent cause. Her perusal of consistorial documents has allowed the author to obtain a wealth of material that will prove valuable to those researching medieval marital ethics and magical practices and sorcery. Let us recall that according to one of the concepts describing the origins of witch-hunting in Europe, the primary cause was conflicts with folk healers-cum-midwives, who were accused of causing infertility or performing abortions and thereby lowering the birth rate.³⁵ Consistorial materials show that such charges were the object of manipulations. However, the author brings to light only three similar instances attesting to the subjectivity of the stance towards sorcery and its penalization. In any case, a problem worthy of closer and separate analysis is that of the circumstances which led people to think that the sudden occurrence of impotence in a union could be attributed to demonic forces, an issue that the author has signalled with some cognitive retraction (p. 188 and Table 3.2, pp. 191–98).

Can we perhaps conjecture that husbandly impotence was actually invoked by the victims of wife-beating, who wanted to free themselves from their tormentors by bringing about the invalidation of their union? We know from elsewhere that physical violence was accepted even by the moralizers mentioned above. This was a dark and sometimes tragic aspect of the principle of male domination, which was firmly grounded in Christian anthropogeny. Approved by law and custom, men's control over women was strengthened by existing opinions on procreation, which were additionally supported by the leading authorities. And if the female factor was recognized thereby as the formal element that determined the physical appearance of the new being, this was an apparent reference to the views of Thomas Aquinas, according to whom '*femina est mas occasionatus*' and '*sexus masculinus est nobilior quam sexus femineus*'.³⁶ Women were given

³⁵ Gunnar Heinsohn and Otto Steiger, *Die Vernichtung der weisen Frauen: Beiträge zur Theorie und Geschichte von Be/völkerung und Kindheit*, Herebestein, 1985; Claude Lecouteux, 'Hagazussa — Striga — Hexe', *Etudes germaniques*, 38, 1983, pp. 161–78; Annemarie Kinzelbach, 'Konstruktion und Konkretes Handeln: Heilkundige Frauen im oberdeutschen Raum, 1450–1700', *Historische Anthropologie*, 7, 1999, 2, pp. 165–90; Catherine Rider, *Magic and Impotence in the Middle Ages*, New York, 2006, pp. 186–205.

³⁶ Albert Mitterer, 'Mann und Weib nach dem biologischen Weltbild des hl. Thomas und dem der Gegenwart', *Zeitschrift für katholische Theologie*, 57, 1933, pp. 491–556; Wilhelm Isnard Frank, 'Femina est mas occasionatus: Deutung und Folgerung bei Thomas von Aquin', in *Der Hexenhammer: Entstehung und Umfeld des Malleus maleficarum von 1487*, ed. Peter Segl, Cologne and Vienna, 1988, pp. 151–75; Bénédet Bujo,

a role designated by the concept of 'status subiectionis'.³⁷ Thus, a Polish preacher from the second half of the fifteenth century reiterated that '*mulier creata est propter virum, sed non vir propter uxorem*'.³⁸ This found reflection, among others, in wedding customs. A certain German author noted that upon entering the house of the groom, the bride would touch the doorstep and cry out '*Ich griff uber das ubertur, min krieg gang allwegen fur*' in order to gain superiority in the union, whereupon the husband would at once respond to defend his primary position in the family: '*Ich griff an die wenden, ich biege dir dinen rucken und die lenden*'.³⁹

The moralizers themselves were ambivalent when it came to expressing views on the use of physical violence. As a matter of fact, they did counsel reprimanding wives physically, although simultaneously cautioning husbands to do so gently and nobly, and reproaching men who beat their wives without cause and with excessive cruelty.⁴⁰ It is interesting to observe the extent to which consistorial materials correspond with mediaeval moralizing; for example, in a verdict from 1426, the judge stressed that a man was not allowed to beat a woman... inordinately (p. 212). In other words, the official did not altogether prohibit acts of violence against a female partner. In another case, dated 1423, which concerned a wife who had run away from her husband because, as her plenipotentiary explained, he had been beating her, the judge nonetheless decided that she should return to her spouse (p. 213). Brutality could also lead to physical retaliation if we accept as true the explanations of a cer-

Moralautonomie und Normenfindung bei Thomas von Aquin: Unter Einbeziehung der neutestamentlichen Kommentare, Paderborn, 1979, pp. 163–72, Veröffentlichungen des Grabmann-Institutes zur Erforschung der mittelalterlichen Theologie und Philosophie, Neue Folge, 1979, vol. 29; Alcuin Blamires, 'Women and Preaching in Medieval Orthodoxy, Heresy and Saints' Lives', *Viator*, 26, 1995, pp. 135–52; Thomas M. Izbicki, 'Pyres of Vanities: Mendicant Preaching on the Vanity of Women and Its Lay Audience', in *De Ore Domini: Preacher and Word in the Middle Ages*, ed. Thomas L. Amos, Eugene A. Green and Beverly M. Kienzle, Kalamazoo, MI, 1989, pp. 211–34; Helga Schüppert, 'Frauenbild und Frauenaltag in der Predigtliteratur', in *Frau und spätmittelalterlicher Alltag*, Vienna: Verlag der Österreichischen Akademie der Wissenschaften, 1986, pp. 103–56, Sitzungsberichte der philosophisch-historische Klasse, vol. 473; Larissa Taylor, *Soldiers of Christ: Preaching in Late Medieval and Reformation France*, New York and Oxford, 1992, pp. 156–58.

³⁷ Erik Kooper, 'Loving the Unequal Equal: Medieval Theologians and Marital Affection', in *The Olde Daunce: Love, Friendships, Sex and Marriage in the Medieval World*, ed. Robert R. Edwards and Stephen Spector, Albany, 1991, pp. 44–56; Bast, *Honor Your Fathers*, pp. 66–78.

³⁸ Bracha, *Nauczanie kaznodziejskie*, p. 248 (Piotr of Miłosław, *Sermo: Dominica infra oct. Epiphaniarum*, MS. Biblioteka Narodowa, Warsaw, 3021 II, fol. 54va).

³⁹ Johannes Herolt, *Liber discipuli de eruditione christifidelium*, quoted in *Der Bilder-catechismus des fünfzehnten Jahrhunderts und catechetischen Hauptstücke in dieser Zeit bis auf Luther*, ed. Johannes Geffcken, Leipzig, 1855, pp. 54–55.

⁴⁰ Bracha, *Nauczanie kaznodziejskie*, p. 256.

tain woman who stated that she had tried to poison her husband ‘because he beat her frequently’ (p. 224). This is confirmed by the author’s conclusion that established cases of wife-beatings, which accounted for 7 per cent of those she analysed, ‘never resulted in the invalidation of a marriage or the separation of spouses’ (p. 240). A similar determination was made regarding adultery (p. 241), mentioned above, which was condemned with a vengeance by moralizers, albeit they viewed women as being somewhat more to blame.

The custom of marriage by abduction, attributed to an ancient tradition continued in mediaeval times, eludes unequivocal assessment. The Church condemned the practice with particular severity under the provisions of Roman law, for it viewed it as an infringement of parental authority and the authority of guardianship. Already in 1391, one of the court oaths in Poznań stated that ‘Matthias had seduced a woman from her home’.⁴¹ The author adds, quite rightly, that abductions could have taken place, among others, with the consent of the maidens involved, and also that the ‘principle of freedom of consent’ was interpreted differently depending on one’s social status (p. 202).

To recapitulate: we have been given a cognitively valuable monograph that — as M. Biniaś-Szkopek has herself stressed — presents the strong and independent position of women who sought help from Church courts, and which may lead to a review of, and in any case to a debate about the validity of existing opinions on the status of women in Polish society in the late Middle Ages (pp. 158, 239–40).

We can only hope that the project initiated by the author will be continued and supplemented in accordance with the recommendations presented above, this through the juxtaposition of legal practice with pastoralia (sources by their nature postulative) and a more conclusive determination of the relations existing between scattered liturgical sources, with the objective of bringing the world of ‘norms’ together with that of ‘life’.⁴² Furthermore, since the author herself has put forward such a research postulate (p. 248), we should, in light of her obvious predisposition, encourage her to carry through with its implementation.

(Translated by Maciej Zakrzewski)
(Proofreading Jan Czarniecki)

⁴¹ *Wielkopolskie rotty sądowe XIV–XV wieku*, vol. 1, p. 65, no. 124.

⁴² Cf. the latest editions: *Pontyfikał plocki z XII wieku*, ed. Antoni Podleś, Płock, 1986, p. 86, 175–76, and the most recent edition: *Pontificale Plocense I*, vol. 2: *Textus et in linguam Polonam translatio*, ed. Leszek Misiarczyk, transl. Jerzy Wojtczak-Szyszkowski, Pelplin, 2020; *Pontyfikał Erazma Ciołka*, ed. Szymon Fedorowicz, Cracow, 2019, pp. 279–80, *Monumenta Sacra Polonorum*, vol. 5.

Summary

The utilization of consistorial sources is a research postulate that has been voiced repeatedly over the years. This body of documentation continues to remain almost completely outside the realm of scientific analysis, even though it comprises a compact volume of archival material that is both organized serially and mass-produced. At the same time, the fact that it touches upon a wealth of topics and thus has considerable cognitive value for interdisciplinary research cannot be overestimated. Interestingly, this very genre of sources has found particular recognition with post-modernist historical anthropology. Court sources, which are considered as forming part of the 'archives of repression' and resemble the notes of anthropologists, depict an intercultural dialogue. Through 'cultural translation', it is possible to present a past culture from the 'indigenous perspective'. Magdalena Biniaś-Szkopek's study is a pioneering attempt at utilizing a virtually pristine source and topical base. The author has examined the nine oldest consistorial registers for Poznań (from among a total of eighty-seven), which with only a few exceptions cover the years 1404–26 and comprise 3,400 pages of manuscripts pertaining to 550 marital court cases. This vast body of source materials has been utilized in Polish historiography for the first time to such an extent. The author has given us a cognitively valuable monograph which presents the independent and strong position of women who sought help from Church courts, and which may lead to a review, and in any case, to a discussion on the validity of existing opinions on the status of women in Polish society in the late Middle Ages.

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