here achieves admirably. The structure of the book and the approach adopted ensure that the topic is manageable and dealt with in a coherent logical manner. While it is not always possible to agree with the author's conclusions that much is to be expected. Where the author is very susceptible to criticism, however, is the fact that despite some trenchant criticism of the Court's jurisprudence, aspects of which are rightly considered to be incoherent and inconsistent, she fails to discuss what alternatives the Court had or the inadequacies of the Court's jurisprudence through the lens of her opening theoretical framework. This would have ensured that the opening analysis was utilised and provided a sounder basis for later discussion. Perhaps this is something that can be addressed in a later edition.

The real strength of this book lies, however, not in the analyses and critique that are presented but in the fact that although it is no longer difficult to find well written books which deal generally with the Convention, as the series editor notes, books which deal with one particular provision of the Convention are still a rarity. Although the standard texts which deal with the Convention, such as Harris *et al.*, and Van Dijk and Van Hoof, on the whole, deal magnificently with the Convention provisions in the space available, the explosion in Convention jurisprudence makes it increasingly difficult to feel that each provision and all its different facets are being adequately analysed and dealt with. This book, which is the first in a series by Oxford University Press dealing with specific provisions of the Convention is, therefore, a very welcome addition to the literature. The extensive bibliography, reference to the *travaux préparatoires* and exhaustive referral to Commission and Court decisions will ensure that this is compulsory reading for anyone who wishes significantly to further their knowledge of Article 9 beyond the treatment in the above mentioned textbooks. Despite the niggles noted above, overall this is a well written, enjoyable and thought-provoking read. It is to be hoped that the subsequent titles in this series maintain the standards which have been set by Dr. Evans.

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MARRIAGE DISPUTES IN MEDIEVAL ENGLAND by FREDERIK PEDERSEN, Hambledon Press, 2000, vii-xi + 235pp (hardback £25), ISBN 1 85285 198 8

A student of modern family law would be excused for thinking that the jurisdiction of the ecclesiastical courts mattered little, such has been the predominance of the secular courts in this area since 1857. In this study of the Church courts of the province of York mainly during the 14th century, Frederik Pedersen demonstrates just how much things have changed. Not only were medieval marriage disputes resolved by ecclesiastical courts, the legal rules governing marriage appear to have permeated through all strata of medieval society and to have influenced the marital behaviour of much of the population.

Pedersen begins his study with a brief and useful introduction to medieval marriage. The outstanding feature of the medieval ecclesiastical law of marriage was its informality. The appropriate exchange of words was sufficient for the parties uttering them to be married, subject to each having the requisite capacity. The presence of a priest, or the soleminisation of the proceedings in a church, were not necessary, although they were clearly relevant as evidence of a marriage. This simplicity, however, carried two difficulties. The first was that the type of words used by the parties mattered a great deal, as ecclesiastical law made a distinction between statements of intent to marry immediately ('*verba de presenti*') and promises to marry in the future

('*verba de futuro*'). Although both types of promise had the potential to create legal relations, the latter was in effect a condition precedent (or perhaps subsequent) which only became enforceable if the condition was complied with. Hence it is not surprising to find arguments over the precise effect of the words used by the parties. The second difficulty of the informality of marriage was that there were a very limited number of ways of resolving any disputes. Although the legal effect of the words used could be challenged, the parties could themselves and through their witnesses simply deny that the words were ever spoken or claim that they were spoken in a different form. To a modern lawyer, this appears to be little short of a recipe for chaos, but, as Pedersen demonstrates, the system appeared to work reasonably well and with the active participation of the community at large.

The bulk of Pedersen's analysis is based on his study of the cause papers in the Church courts of the province of York in the 14th century. The jurisdiction of the archbishop was exercised by three courts: the consistory court, the court of the exchequer, and the archbishop's court of audience. To someone schooled in the structure of later ecclesiastical courts, the picture presented is somewhat messy. In particular, the function of the later Chancery Court of York does not appear to be mirrored in the earlier structure. Pedersen notes that there was no system of appeal within the York courts, but the consistory court exercised some appellate jurisdiction over peculiars. It is not clear what happened to appeals from the other diocesan jurisdictions within the province: in later times they would have gone to the Chancery Court in York, but it seems they went to Rome. Pedersen also uses the term *Curia Eboracensis*, but it is not entirely clear whether this term refers to the consistory court or to the church courts in York more generally. Perhaps this is a lawyer's hankering for order, but a little more on the hierarchy of the courts would have been helpful in understanding the overall structure of courts in York.

One of the main strands of Pedersen's thesis is that the medieval ecclesiastical law of marriage was both well known and considered acceptable by the laity. The former argument is supported by an analysis of the cause papers, the most extensive of which relate to a long running dispute between Simon Munkton and Agnes Huntington, a complicated case, ostensibly on the validity of a marriage but in reality about property held by Agnes. Witnesses in the case demonstrate, as far as the cause papers reveal, a good working knowledge of the rules of marriage. However, as Pedersen also shows, many litigants in Church courts were legally represented by legally-trained proctors and advocates. It is thus possible, perhaps likely, that witnesses were given some instruction as to the legal significance of what they were about to say. The extent of such 'coaching' is impossible to ascertain, but in an enlightening chapter Pedersen finds examples of the use and abuse of the courts where attempts were made to stretch the law to the limit 'by members of the laity who had a good knowledge of the law, or indeed, by clerics whose judgment appears to have been clouded by a sympathy for one of the parties or by too strong a conviction about the facts of a case' (at p 139). Whilst it may be accepted that some of these uses and abuses were thought up without the intervention of lawyers, it seems plausible that many more were the result of acting upon the considered advice of those most familiar with the system. Indeed, if the complicated series of events in *Huntington c Munkton* owe anything to the knowledge of the individual litigants, those litigants were considerably more familiar with court procedure than their modern successors!

Whatever the position regarding lay knowledge of ecclesiastical law, Pedersen produces evidence that recourse to the courts may have been a last resort. In some cases it appears that local or family tribunals had attempted to resolve the dispute between the parties; in *Huntington c Munkton* the first scene of the saga was a meeting

between various of the parties, in the presence of three clerics, to attempt to settle whether Alice Huntington had in fact married another party. The formality of these procedures varied; in *Huntington c Munkton* it appears quasi-judicial whilst in another case cited by Pedersen, *Lambhird c Sanderson*, the 'tribunal' was little more than a somewhat crude attempt by Sanderson's family to show he was not impotent as alleged by his wife. It is clear, however, that the laity did not run to the Church courts at the first sign of trouble. This may reflect a belief that informal dispute resolution was preferable to court proceedings, but, as Pedersen points out in one of the final chapters, there were also clear institutional limitations on who was able to use the courts.

Pedersen engages in an understandably cautious, but nonetheless illuminating, analysis of the social status of those who used the courts. Although access was in theory available to all, only one member of his lowest socio-economic group brought a claim. In another case the defendant was alleged to be unfree, only for it to be proved to the contrary in court. Pedersen argues that this cannot be explained because of the cost of litigation, as it was not beyond the reach of most potential litigants and in any event special rules allowed for paupers to receive assistance and representation. Whatever the reasons for the absence of such persons from the records, they did not apply to women. Two-thirds of matrimonial cause papers were initiated by women, two-thirds of whom were successful. Whatever the status and sex of litigants, they tended to live in locations where there were reasonable road links to York. In an age where roads were few and of poor quality, this is an important fact, particularly as the courts exercised jurisdiction over a relatively large geographical area. In short, Pedersen is careful to note the limitations of his sources, and his criticism of those who have used the cause papers to support general theories relating to marriage laws, and the role of marriage in society more generally, is convincing.

There is much of interest in this enjoyable book. It is generally well written, although some of the footnote references are incomplete (eg pp 137, 143). Although specialist historians of the period may be qualified to contradict the use of the sources, for this legally trained reviewer two themes stand out as worthy of comment. First, although the applicable legal principles appear relatively certain, their application to concrete cases was productive of great uncertainty. This is clear not only from the difference between words *verba de presenti* and *verba de futuro* but also in the fluid notion of 'marital affection', which, it appears, was necessary for a valid marriage but was used in very different ways by witnesses.

Secondly, whilst there is much that might be familiar to a 21st-century lawyer, there is also that which would shock those versed in the universality and immutability of human rights. Where the issue was whether a man was impotent, the Church courts had the power to order the man to be examined *per aspectum corporis*. The aim of this investigation 'was to attempt to arouse sexually the man', which, in the report of one case, involved stroking the 'said member'. Some authors have suggested that the women who performed such examinations were prostitutes, something that Pedersen denies. Such a procedure would undoubtedly breach any number of Articles of the European Convention of Human Rights. But in an age of imperfect knowledge the Church courts ordered this invasive procedure to be carried out, no doubt satisfied that it accorded with the rights of the examinee as decreed by a higher authority. Despite whatever private reservations there may have been, this example tellingly illustrates Pedersen's thesis that the law administered by the Church courts was well received by the laity. No set of laws can receive higher praise.

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