

# *Marrying Off Sons and Daughters: Attitudes towards the Consent of Parents and Guardians in Early Modern Sweden*

by

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## **Introduction**

Curate Samuel Josephi Lithovius<sup>1</sup> of Limingå (Liminka) in Ostrobothnia was one of the six representatives of the clergy of the diocese of Åbo (Turku) at the diet of Stockholm in 1647. At the diet, however, he was accused by his fellow clergymen of having performed an irregular solemnization (*på oordentligit wijs - - hadhe sammanwigdt*) at the manor of Åhrsta outside the city of Stockholm. By doing this, he had usurped the authority of another priest and ‘confirmed the madness (*galenskap*) and disorder with which the parties had commenced their marriage’ for a sum of money. By his actions, he had compromised the whole estate (*uppålagdt heela ministerio - - een elack notam*).<sup>2</sup>

The couple, Johan Mejer and Dordi, daughter of Jacob Skinnare, had married without the consent of the bride’s father, who was wholly against the union. The priest claimed that he had been told that the father had originally been against the marriage and attempted to force his daughter to wed another man. Lithovius further alleged that according to his information, Jacob Skinnare had later relented, agreeing to the match with Mejer even if refusing to attend the ceremony himself. Samuel Josephi Lithovius was obviously quite aware of the irregularity of the marriage, although he attempted to put the blame on the false information of some of his friends, who had persuaded him to perform the solemnities. It seems, nonetheless, that he had tried to prevaricate by ingenious means, namely by sending a message to Jacob Skinnare that his daughter Dordi was going to be married to Johan Mejer on the following evening and, if the father refused to consent, he ought to keep her at home. Thus, if Dordi Jacobsdotter remained at home, the priest would know that the father dissented and he need not perform the ceremony because of the bride’s absence. Contrariwise, as the bride was present, the priest deduced that the father had ‘completely consented to the business’ as he had let her attend despite the warning. As a result, Lithovius performed the wedding ceremony.<sup>3</sup>

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<sup>1</sup> According to Jouko Vahtola (‘Liminkalaisten historiaa’, in *Liminka 1477–1977*, ed. Seija Korte, Oulu, Limingan kunta ja seurakunta, 1977, 217, 223), Samuel Josephi Lithovius was curate of Limingå 1648–1651. His father Josephus Henrici Lithovius (or Limingius) had succeeded his father Henricus Laurentii Lithovius as vicar of Limingå 1615–1648. After Josephus’s death, one of his sons, three of whom became priests, succeeded him.

<sup>2</sup> Abrah. Ahlqvist, (ed.), *Bidrag till svenska kyrkans och riksdagarnes historia ur presteståndets archiv*, 1. häftet, Stockholm, 1835, 114–116.

<sup>3</sup> Ahlqvist, *Bidrag till svenska kyrkans och riksdagarnes historia* (note 2) 116.

Samuel Josephi Lithovius appeared suitably repentant and bemoaned tearfully (*medh gråtande tårar*) that he had been duped by the couple's deceitfulness. He confessed that he had committed a grave error and, begging for mercy, he asked to be pardoned. Moreover, he claimed that he had not asked for the money, but had been sent the sum of twelve *riksdaler* after he had lamented that he had been tricked. For performing the marriage ceremony of persons who were not his parishioners, without preceding banns, in a private house and without the proper marriage guardian's consent, the priest was suspended for a year from his office and he forfeited the money received for blessing the shameful union.<sup>4</sup> The illicit marriage was judged null and void, while the parties, 'who had committed a great scandal and scorned their parents against God's Commandment', had to perform public penance and ask for parental forgiveness in addition to the secular penalties.<sup>5</sup>

Obviously, even in pre-Reformation Sweden slightly more than a century previously, such a solution to a case like this would have been quite out of the question. The marriage doctrine of the Catholic church had made the free consent of the parties the focal point of marriage formation in medieval Europe. Parental consent, though an honest and recommendable custom, was redundant in canon law. So, what had happened during the century between the Swedish Reformation and the case at hand to turn the scenario upside-down?

First, I will take a look at the background of Swedish legal development in the course of the Middle Ages and follow it up to the post-Reformation period. Then, I will consider the impact of the Reformation and of the emerging class society on the role of parental consent to the marriage of children. In spite of no initial alteration in the attitudes as expressed in normative texts, stricter notions began to appear. Although the norms imposing obedience to parents and guardians applied to all, the nobility was in the forefront in demanding more severe penalties for unauthorized marriages. This is why their attitudes towards unauthorized marriages in particular will be exemplified through two cases. The first of these was the elopement of the cousins Magdalena (better known as Malin) [Svantesdotter] Sture and Erik [Gustavsson] Stenbock in 1573. The second example will be the clandestine marriage of Elisabet [Christiernsdotter] Oxenstierna to Conrad [Reinholdsson] von Yxkull in 1616.

Such stricter attitudes reached their height in the late 17<sup>th</sup> and early 18<sup>th</sup> century when even major sons and widows living under their parents' roof were reduced to minors under the

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<sup>4</sup> Luckily, the incident of performing the marriage between Johan Mejer and Dordi Jacobsdotter in Stockholm did not mean the end of the clerical career of Samuel Josephi as he remained curate of Limingå until 1651. In 1652 he became vicar of Ijo (Ii) and later a rural dean (*prost*) in Lapland (Lapinmaa). Lithovius died in 1659, Vahtola, 'Liminkalaisten historiaa' (note 1), 223.

<sup>5</sup> Ahlqvist, *Bidrag till svenska kyrkans och riksdagarnes historia* (note 2) 115-116.

authority of their guardian. Yet hand in hand with this patriarchal trend, legal means were introduced in order to protect children from malicious and unreasonable parents and guardians. Especially, the ecclesiastical attitudes had moved far from the original notion of the medieval church concerning freedom of marriage.

### **Upholding the Medieval Legacy: Initial Continuity of Norms in the Sixteenth Century**

Swedish medieval laws knew two types of guardianship. Minors – men under fifteen, women of all age, and the insane – had a legal guardian, *målsman*, who acted on their behalf in most legal matters. A woman was only free of guardianship when she had been widowed. In addition, an unmarried woman had a marriage guardian, *giftoman*, who had the right to give her away in marriage. Usually, these two institutions were combined so that the woman's closest male relative – provided he himself was of age – held both positions.<sup>6</sup>

In the course of the Middle Ages in Sweden, the traditional power of the woman's marriage guardian was eroded so that he had to take the canonical notions of the freedom of marriage into account. While originally the lack of the marriage guardian's consent may have resulted in the invalidity of the union, due to the church's growing influence, the woman had to be present at her betrothal, a legal act between the groom and the bride's marriage guardian. The latter played an important role even later in handing over the bride to the groom at the wedding. Later, due to the influence of canonical legal doctrine, the new legal institution developed: the trothplight emphasized the mutual exchange of the couple's consent.<sup>7</sup> Still, the role of the marriage guardian was upheld in several ways. For example, if someone assumed the guardian's right to perform the betrothal or the handing over of the bride at the wedding, he was punished with a high fine.<sup>8</sup>

As a counter reaction to canonical doctrine, daughters defying their parents' will either by marriage or fornication could be disinherited by virtue of Swedish secular legislation, whereas sons were awarded greater freedom of choice.<sup>9</sup> Nevertheless, the threat of disinheritance only applied to paternal and maternal inheritance, as the unruly woman could not be excluded from receiving other inheritances. If she had already received her inheritance lot,

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<sup>6</sup> E.g. Giftermålsbalken 1, 2-2:1, 6:1, 9, 21-22, Åke Holmbäck, Elias Wessén, (eds.), *Magnus Erikssons landslag i nusvensk tolkning*. Rättshistoriskt bibliotek, 6, Stockholm, Skrifter utgivna av Institutet för rättshistorisk forskning grundat av Gustav och Carin Olin, 1962, 39, 41, 43, 46. See also Mia Korpiola, *Between Betrothal and Bedding: The Making of Marriage in Sweden, ca. 1200–1610*, Vantaa, 2004, 211-213.

<sup>7</sup> Korpiola, *Between Betrothal* (note 6) 112-116, 136-141.

<sup>8</sup> E.g. Giftermålsbalken 2-2:2, Holmbäck-Wessén, *Magnus Erikssons landslag* (note 6) 39.

<sup>9</sup> E.g. Giftermålsbalken 3, Holmbäck-Wessén, *Magnus Erikssons landslag* (note 6) 40; Korpiola, *Between Betrothal* (note 6) 116-124.

there was no further risk in benefiting from the freedom of marriage as she could not be disinherited by a marriage guardian, who was not her father. Generally speaking, however, in secular society there was a tendency to presuppose that the consent of the parties themselves and that of their parents or marriage guardian was necessary.

In practice, however, the interests of the marriage guardian and the woman could be in conflict: the marriage guardian was often also her legal guardian managing her property for her and stood to inherit her if she died without legitimate children. This created tensions in the relationship: the marriage guardian lost the control of the woman's property when she married, and this could be a sufficient incentive not to arrange a match. As a rule, Swedish medieval laws – unlike many other Scandinavian laws – lacked active legal recourse for women, whose guardians refused to arrange a suitable union for them. Nor did Swedish women reach legal majority at a certain age as unmarried women remained under guardianship, regardless of their age. Here again Sweden would seem to differ from many other medieval European regions.<sup>10</sup> To sum up, secular Swedish medieval law had come to accept reluctantly that parental consent was not a precondition for valid marriage, but it discouraged any maidenly exercise of the power to choose in disregard of the authority of marriage guardians. Judging by the existing evidence, it seems likely that medieval Swedish women – or men for that matter – only seldom married before consulting close relatives, friends and patrons.

Protestantism is occasionally presented as an era 'when fathers ruled', connected to an increase of parental or paternal control. If this was not exactly a consequence of the Reformation, at least Protestantism 'bolstered - - efforts - - to control children's marriages'.<sup>11</sup> Nevertheless, the Reformation did not revolutionize the Swedish dualism of consent as it had developed during the Middle Ages: that both the consent of the parties themselves and especially that of the woman's parents or marriage guardian was required. However, the Reformation provided parents and guardians with less unwavering institutional support from the church for a more efficient control of the marriages of both sons and daughters.

For example, the *Articuli Ordinantiæ* of 1541 insisted that it was the king's wish that 'marriage take place according to the law, secular and ecclesiastical'. This meant that matrimony was not to take place without the consent of parents or closest relatives (*näste*

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<sup>10</sup> Korpiola, *Between Betrothal* (note 6) 124-127.

<sup>11</sup> E. g. Thomas Robisheaux, "Peasants and pastors: rural youth control and the Reformation in Hohenlohe, 1540-1680," *Social History*, 6, 1981, 282. For a critical view on the impact of the Reformation on parental control, see Joel Harrington, *Reordering marriage and society in Reformation Germany*, Cambridge, Cambridge University Press, 1997, e.g. 38-47, 169-171.

*Skyldemän*). This principle, the ordinance claimed, had its expression in church law and accepted ‘by the Emperor’ – probably a reference to Roman law.<sup>12</sup> Yet the Articles of Vadstena demonstrated the initial continuity of a more traditional ecclesiastical view better by insisting that nobody was to be forced into marriage, either by parents or others. The priest was not to solemnize the union unless both parties assented expressly.<sup>13</sup>

The Swedish Church Ordinance of 1571 provided a slightly more nuanced norm: children were to obey their parents, but children were not to be forced to marry against their wishes because of the freedom of marriage. Secret contracts, in which a young woman got engaged without informing her parents or her guardian (*målsman*), were not to be considered valid. (It was presumed, however, that consent would be given if the couple had had intercourse.<sup>14</sup>) The norm was motivated by referring to the Bible: according to God’s commandment, children were subjected to their parents in this and all other matters. Yet parents were not to proceed with violence and force in such affairs, because if someone was compelled to marry a person s/he neither loved nor liked, the union would not turn out well. Priests were counselled that if a person was unwilling to give his/her consent explicitly, or said ‘no’ to the priest’s question, he was not to join the couple in wedlock. Free and unforced consent belonged to marriage and even Rebecca was only given to Isaac after she had been asked and she had given her consent.<sup>15</sup> Likewise, the Swedish *Nova Ordinantia* (1575) forbade parents to abuse their powers and advised children to turn to the clergy, royal governors and town councils for assistance in such cases.<sup>16</sup> However, no clear remedies were introduced and this split attitude of the church towards consent blurred the message and left it unclear where the final right of veto lay.

Moreover, the evidence from the cathedral chapters from the 1590s does not indicate that daughters or sons who contracted a marriage without the consent of parents or guardians were systematically punished nor were their marriages annulled for failure to obey. Rather,

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<sup>12</sup> *Articuli Ordinantiæ* (1541), Otto Ahnfelt, (ed.), ‘Bidrag till Svenska kyrkans historia i sextonde århundradet’, *Lunds universitets års-skrift*, 31, 1895, 16-17.

<sup>13</sup> The Articles of Vadstena (1553), Ahnfelt, ‘Bidrag till Svenska kyrkans historia’ (note 12) 1

<sup>14</sup> The Synod of Växjö of 1679 (IV:13, Olof Wallquist, (ed.), *Ecclesiastique Samlingar*, 6–7, Linköping, 1794, 363) stipulated on this point that if intercourse had taken place, parents had to be persuaded to consent. (*År sän-gelag tilkommet, så måste Föräldrarne öfvertalas sit samtycke at gifva.*)

<sup>15</sup> Ordning om Ehtenskapet, Sven Kjöllnerström, (ed.), *Den svenska kyrkoordningen 1571 jämte studier kring tillkomst, innehåll och användning*, Lund, Håkan Ohlssons Förlag, 1971, 118-119. See also the circular of Bishop Nicolaus Stephani to the clergy of Växjö (1584), Herman Lundström, (ed.), *Undersökningar och akt-stycken: Bidrag till svenska kyrkans historia*, Upsala, 1898, 53.

<sup>16</sup> *Nova Ordinantia*, O. v. Feilitzten, (ed.), *Kyrko-Ordingen och Förslag dertill före 1686*, I, Handlingar rörande Sveriges historia, 2. serien, 2., Kongl. Riks-archivet, Stockholm, 1872, 481.

the chapters tried to mediate between the parties so that a reasonable outcome was reached.<sup>17</sup> The chapters seem to have considered whether the trothplight had been legitimately performed, i.e. in the presence of two witnesses and gifts given. A possible disparity of age, for example, if the woman was described old and the man a mere youth, as well as the birth of children after the promise of marriage was also taken into consideration. It would also seem likely that the descent and the property of the parties were considered in order to ascertain whether the objecting parent had reason to deny his assent. In this respect, the situation was fairly fluid and the ecclesiastical courts, if consulted, took the circumstances of the case into consideration.<sup>18</sup> Disinheritance of disobedient daughters by their parents was what could be expected, but this sanction did not apply to sons.

For England, it has been suggested that, in moving more determinedly against clandestine contracts, the church in fact also ‘strengthened the hand of parents’ wishing to control their children’s marriages.<sup>19</sup> This seems to have been the case also in Sweden: the 1571 Church Ordinance insisted on the presence of two witnesses and on the giving of gifts at the valid trothplight.<sup>20</sup> These formalities were considered relevant also in the practice of the chapters: even if the couple had had sexual intercourse, if one party denied the promise of marriage and the formalities had not been followed, the court would usually rule for the non-existence of a valid trothplight.<sup>21</sup> In this, the control of the clergy came to be an important factor.

### **Attitudes in Practice: The Elopement of Malin Sture and Erik Stenbock**

Yet, despite this relative equilibrium and the rather laconic normative texts, the attitudes could in reality be much more extreme. When Malin (Magdalena) [Svantesdotter] Sture (1539–1610) eloped with her first cousin, Erik [Gustavsson] Stenbock (1538–1602) from the castle of Hörningsholm on March 10, 1573, this caused great uproar in the country. Both belonged to Sweden’s highest nobility and were closely related to the royal family.<sup>22</sup> The

<sup>17</sup> Korpiola, *Between Betrothal* (note 6) 211-212.

<sup>18</sup> Korpiola, *Between Betrothal* (note 6) 211-213.

<sup>19</sup> Martin Ingram, *Church Courts, Sex and Marriage in England, 1570–1640*, Cambridge, Cambridge University Press, 1990, 210-212.

<sup>20</sup> Ordning om Ehtenskapet, Kjöllersström, *Den svenska kyrkoordningen 1571* (note 15) 126.

<sup>21</sup> Korpiola, *Between Betrothal* (note 6) 226-230.

<sup>22</sup> Erik’s sister Katarina [Gustavsdotter] Stenbock (1535–1621) was dowager queen of Sweden, the third and last wife of the late king Gustav I Vasa (r. 1521–1560). The mothers of Erik and Malin were sisters, and sisters also to late king Gustav’s second wife Margareta Leijonhufvud. This made both aunts to the reigning king Johan III and duke Karl. The Sture family were related to the Vasa dynasty, and count Svante [Stensson] Sture (1517–1567) had been one of the leading magnates of the country.

cousins had for some years tried to obtain a permission to marry, but the old archbishop Laurentius Petri had flatly refused to grant a dispensation for the marriage in the second degree of kinship. He had published a book against marriages in the forbidden degrees, which especially attacked cousin-marriages<sup>23</sup> and by his authority negated Erik Stenbock's attempts to gain support from other bishops by the written opinion of the theologians at Rostock in Germany.

Even if some members of the Sture and Stenbock families were sympathetic to the eloped couple, this attitude was certainly not shared by Malin Sture's widowed mother, countess Märta [Erikdotter] Leijonhufvud. When the elopement was discovered, she is reported to have fainted on the staircase.<sup>24</sup> Amidst her lamentations and tears she was able to send one of her daughters after the fugitives, her sons and sons-in-law being at the moment elsewhere. She also accused in harsh words Erik's sister Cecilia, who had been staying with them, of being an accomplice in the elopement, calling God's revenge upon her and her brother. Countess Märta took up her pen the next day after the elopement and poured out her heart in a letter to Johan Henriksson, secretary to her nephew king John (Johan) III.<sup>25</sup>

In the draft of his reply to his aunt, dated only three days after the elopement, king John expressed his great displeasure: Stenbock had violently and in an unchristian manner abducted the king's kinswoman, forgotten God Almighty and slighted the king as well as the law of Sweden.<sup>26</sup> The king considered the action an offence to himself and the whole family (*oss och vår heele slecht*). In addition, he pointed out that Stenbock ought to be punished even if there was no impediment of consanguinity between the couple because he had committed a serious crime by forcefully abducting her against the consent of her mother and all her relatives (*förwanther*).<sup>27</sup>

<sup>23</sup> Laurentius Petri, *Om förbudhen skylskap och swågerskap. Een liten vnderwijsning / Ther aff gott Christet folck och må haffua förwarning / at the icke byggia ächtenskap vthi förbodhna ledher*, Uppsala, 1572, passim.

<sup>24</sup> An eye-witness account of the events as related by Malin Sture's older sister Sigrid, written down by her niece Anna Banér in the early 17th century, and later printed and preserved in its printed form, Carl Magnus Stenbock, (ed.), *Malin Stures bortröfvande. Anno 1573 när Malin Sture bortfördes från Hörningholm. Sigrid Stures berättelse upptecknad af Anna Baner nu ånyo utgifven*, De hundra böckerna, 3, Stockholm, 1916. The story corresponds closely to other known facts of the affair and has been considered authentic and trustworthy by historians (Stenbock, *Malin Stures bortröfvande* xii-xiv.). Even though it may well be argued that in its details the account may be tainted by afterthoughts and hindsight, the narrative surely depicts near-contemporary attitudes and considerations relevant to the subject.

<sup>25</sup> Stenbock, *Malin Stures bortröfvande* (note 24) 14-18, 20.

<sup>26</sup> - - *förgätidt Gudh Alzmechtigh, och så ringe haffwer achtetd oss och Sweriges Lagh, och sigh så groffweligen ther medh förseedtt och förbruttidt*, 13.3.1573, king John III to the Countess of Västervik [Märta Leijonhufvud], Kungliga koncept etc., Johan III:s koncept, vol. 10, Riksarkivet (hereafter RA), Stockholm, Sweden.

<sup>27</sup> 13.3.1573, king John III to the Countess of Västervik, Kungliga koncept etc., Johan III:s koncept, vol. 10, RA; Stenbock, *Malin Stures bortröfvande* (note 24) 21.

A month later when he replied to a letter from count Per [Joakimsson] Brahe, his cousin<sup>28</sup> and Erik Stenbock's brother-in-law, king John was still not pacified. He stressed that Erik Stenbock's actions did not please him at all (*oss samme handell platt inthz behager*). According to the king, Stenbock had caused much public outcry by the affair among the populace of the Swedish realm. As for Malin Sture, she was by no means blameless as she had willingly let herself be abducted and 'against her lady mother's will abandoned her' (*emot sin frw moders wilie haffuer henne så öffuergiffuitt*). She had brought 'sorrow upon sorrow' to her already much grieved mother – reference to the murders of her husband and sons<sup>29</sup> – and this, thought the king, could endanger her mother's life and health. The king doubted the future happiness of such a union as there were present and future examples of the destinies of children who had so insulted their parents that these shouted for heavenly revenge over them (*roope hemd öffuer them i himmblen*). This was precisely what Malin's mother had already done too many times over her daughter, king John observed.<sup>30</sup>

The opinions expressed by king John's brother, duke Karl of Södermanland (1550–1611, future king Charles IX) in his letter to Erik Stenbock were only slightly more moderate. The twenty-three-year-old duke expressed no sympathies towards the elopement of his two older cousins, but stated instead that in his opinion Stenbock had not acted very well especially towards his (their) aunt lady Märta, who was much grieved by his actions. Duke Karl promised to do what he could in the affair and told Stenbock that he had already pleaded for him to his aunt and to all other parties. Nevertheless, he lectured his cousin that he, Karl, thought it ill considered that Stenbock defended himself and blamed his innocent aunt. Not only did such language little to pacify and reconcile, but it also caused her even more sorrow of which she had already had too much and 'embittered the actions Stenbock had taken against her'.<sup>31</sup>

In the case of Malin Sture and Erik Stenbock's elopement, it is easy to understand the wrath and consternation of her mother at the blatant disobedience of the daughter and the impudence of the nephew. But we shall see below that not only parents but also other guardians

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<sup>28</sup> Per Brahe, senior, was the son of Margareta Vasa (d. 1536), king Gustav I Vasa's sister, and Joakim Brahe (d. 1520), a member of the Council of the Realm, and therefore cousin to John III. In addition, he was married to Beata Stenbock, Erik Stenbock's sister (Gustaf Elgenstierna, *Den Introducerade adelns ättartavlor*, 1, Stockholm, Sveriges släktforskarförbund, 1998, 555).

<sup>29</sup> Count Svante [Stensson] Sture and his sons Nils and Erik had been murdered by king Erik XIV Vasa and his soldiers in a fit of madness in 1567. A third son, Admiral Sten [Svantesson] Sture had been killed in a sea battle against the Danes in 1565.

<sup>30</sup> 21.4.1573, king John III to Count Per [Brahe], Riksregistraturet, vol. 58 (1573) 21.4.–8.5.1573, RA; Stenbock, *Malin Stures bortröfvande* (note 24) 21.

<sup>31</sup> 16.4.1574, Duke Karl to Erik Gustavsson [Stenbock], Hertig Karls registratur, vol. 5 (1574–1575), RA.



expressed enraged feelings and furious protestations against the unauthorized marriages of their wards. Nor was parental resistance to their children's choice a matter, which alone concerned the nobility or the well off: the marriage of Johan Mejer and Dordi Jacobsdotter is a case in point. In addition, the cases dealt by the Swedish cathedral chapters mainly involved peasants, artisans, tradesmen and clerics. Under the relative calm of the norms on the surface, there was a growing undercurrent of stricter attitudes. Soon the development found expressions in prohibitions and sanctions.

### **Stricter Attitudes Gain Foothold in the Course of the 17<sup>th</sup> Century**

In the course of the first half of the 17<sup>th</sup> century unions that were unauthorized by parents or guardians could be annulled, regardless of consummation, solemnization and such factors. This change of practice is probably related to some ecclesiastical decision, the actual date of which I have not yet discovered. By the 1640s certainly – as the case discussed in the introductory paragraph indicates – the attitudes towards the consent of parents and guardians had definitely altered.

In a letter to his elder brother Axel in 1616, Gabriel [Gustavsson] Oxenstierna embarked on a discussion about the position of young women under guardianship. This issue was of particular concern in the Oxenstierna family, since the men of the older generation, their father Gustav, and their uncles Bengt, Erik and Christiern had all died in their forties within a few years of each other,<sup>32</sup> leaving nine, six, ten and five children respectively, most of whom were minors, under the guardianship of their uncle Johan [Gabrielsson] Oxenstierna, who for a period was the guardian of about twenty nephews and nieces. When he died in 1607, most of the nephews had reached majority, but several of his yet unmarried nieces were still under his guardianship and their brothers and cousins replaced the uncle as guardian.<sup>33</sup> Gabriel [Gustavsson] Oxenstierna observed that as in Swedish law a maiden was called *öffuermage*, she was not 'of her own jurisdiction' (*aff sin egin jurisdiction*) but *sub tutela aliorum*,<sup>34</sup> i.e. those, who were her lawful guardians according to law and acted in place of her parents. As an unmarried woman did not have the power to decide or act without her parents'

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<sup>32</sup> Bengt had died in 1591, Christiern in 1592, Erik in 1594 and Gustav in 1597.

<sup>33</sup> Wilhelm Tham, *Axel Oxenstierna. Hans ungdom och verksamhet intill år 1612*, Stockholm, 1935, 47-54; Nils Ahnlund, *Axel Oxenstierna intill Gustav Adolfs död*, P. A. Norstedt & Söders Förlag, Stockholm 1940, 36-39.

<sup>34</sup> The Oxenstierna brothers had studied philosophy, theology, history and politics at the universities of Rostock, Wittenberg and Jena from 1599 to 1603, and thereby both were acquainted with Swedish and Roman legal terminology, Tham, *Axel Oxenstierna* (note 33) 59-88; Ahnlund, *Axel Oxenstierna* (note 33) 39-46.

or guardian's consent in lesser matters, she had even less freedom in the weightiest and most important issues (*högsta - - och förnembsta saaker*) such as matrimony.<sup>35</sup>

The Reformation and the growing influence of Roman law fanned such sentiments and gave them authoritative support. In the early years of the 17<sup>th</sup> century, king Charles IX (r. 1599–1611) tried to reform the medieval laws of Sweden. His efforts failed because he lacked political support but the law proposals express the concerns of the period. The draft ascribed to him repeated that a maid, who fornicated before her marriage, forfeited her inheritance, but it went on to specify that this applied to fornication also after the lawful engagement: only after the solemnization could the maiden licitly yield to a man. The fines for such fornication were also substantially increased, and in extreme cases (socially unequal sexual relationship and marriage causing the parents shame) even capital punishment was possible.<sup>36</sup> An unmarried woman could be disobedient and 'not know what was best for her', i. e. if she refused the proposed match out of 'frivolity' (*löösachtigheet*). In such a case the well-wishing parents' 'advice' was weightier than the opinion of the willful daughter. If she refused to follow her parents' advice, they could disinherit her.<sup>37</sup> Even though her parents had died, she could forfeit the inheritance after her siblings or closest relatives if her marriage was a misalliance that brought them shame (*neesa*).<sup>38</sup>

The Rosengren Commission, consisting of lesser nobility and officials, was also prepared to uphold the medieval rule that women, who fornicated or married without parental consent, forfeited the parental inheritance. They added, however, that if the culprit was a noble maiden, she would lose the tax-exempt status of her lands.<sup>39</sup> In addition, the Commission would have permitted parents to disinherit children, who were 'averse towards father and mother and do not want to follow and obey their advice when they [the parents] teach and exhort them to [do] well and reform [their ways]'. This brought bad luck and other harm in the children's lives and caused the parents great sorrow and worry. Therefore, in order to discipline children, parents were given the power to disinherit children for several reasons, largely borrowed from Roman law. When a daughter refused a respectable marriage proposed by her parents and lead an immoral life, she could be disinherited, unless she was over

<sup>35</sup> 25.8.1616, Gabriel Gustavsson Oxenstierna to Axel Oxenstierna, *Rikskansleren Axel Oxenstiernas skrifter och brefvexling*, senare afd, 3:1. Kungliga Vitterhershistorie och antiqvitets-akademien, Stockholm, 1890, 23.

<sup>36</sup> 2-3, Giftermåla Balken, Carl den Niondes lagförslag, F. A. Dahlgren, (ed.), *Lagförslag i Carl den Niondes tid*, Handlingar rörande Sveriges historia, andra serien, 1, Stockholm, Riksarkivet, 1864, 119, 121.

<sup>37</sup> 2, Giftermåla Balken, Carl den Niondes lagförslag, Dahlgren, *Lagförslag* (note 36) 119.

<sup>38</sup> 3, Giftermåla Balken, Carl den Niondes lagförslag, Dahlgren, *Lagförslag* (note 36) 120.

<sup>39</sup> 3 Gifftomåla Balken, Det Rosengrenska lagförslaget, Dahlgren, *Lagförslag* (note 36) 304.

twenty-five years old, and her parents had neglected to marry her off even though she had received honest marriage proposals.<sup>40</sup>

Similar stricter attitudes are also clearly visible in synodal statutes. For instance, the statutes *Perbreves Commonitiones* by bishop Johannes Gezelius senior (bishop 1664–1690) of Åbo (Turku), lament that the chapter (*Dom-Capitlet*) had much trouble and work because of disputes and other frivolity linked to trothplights (*trolofningar*). This is why the clergy was told to educate their parishioners properly in all aspects related to the serious undertaking of engagements and matrimony.<sup>41</sup> This solemn seriousness in deciding such an important matter (*sluta et så högt verk*) involved praying for guidance from God and – somewhat more concretely – asking one’s parents, or alternatively those *in loco parentis*, but also one’s teachers and other benefactors, for advice. Likewise, the next steps towards marriage necessitated parental consent; namely, the parents or guardians were to be present when the couple went to see the priest in order to ask him to read the banns before trothplight. In addition, the parents or guardians should preferably attend the actual ceremony along with some honest men as witnesses.<sup>42</sup>

More efficient deterrents were deemed necessary as determined couples continued to defy the authority of parents and guardians. The nobility had long been in the forefront in insisting on stricter penalties.<sup>43</sup> In the privileges of the nobility, granted by king Gustav II Adolf in 1622, the first estate finally got a partial victory. A noble maiden was forbidden to contract matrimony without her guardian’s (*målssmann*) consent. If the father was dead, the guardian’s consent was to be supplemented with the assent of two paternal and maternal relatives. There was nothing particularly new about this, but it was a novelty that a maiden marrying a commoner would lose all her estates and property to her closest relatives to the extent that even her children lost their rights to the property. (Until then the maiden had been allowed to keep the land even though she lost the tax-exempt status.) If her husband was a nobleman, the couple forfeited the two-year rents of both their estates to the nearest hospital as a penalty and the lands stood as pledge for the paying of the sum. (To some extent, this might have reflected existing practice.) Moreover, the woman was to be excluded from all

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<sup>40</sup> 2, Erfda Balken, Det Rosengrenska lagförslaget, Dahlgren, *Lagförslag* (note 36) 320-321.

<sup>41</sup> *Perbreves Commonitiones* (1673), Wallquist, *Ecclesiastique Samlingar*, 6–7 (note 14) 315.

<sup>42</sup> *Perbreves Commonitiones* (1673), Wallquist *Ecclesiastique Samlingar*, 6–7 (note 14) 316.

<sup>43</sup> Heikki Ylikangas, *Suomalaisen Sven Leijonmarckin osuus vuoden 1734 lain naimiskaaren laadinnassa*. Historiallisia tutkimuksia 71, Helsinki, Suomen historiallinen seura, 1967, 116-120.

noble feasts like weddings or christenings and her rank was to be below that of all other married noblewomen.<sup>44</sup>

The royal statute of 1665 made it known that noblemen and noblewomen were contracting marriage illicitly and secretly without the consent of parents or guardians, and others liked to follow in the footsteps of famous cases. The statute declared that the crown wanted to preserve the 'lustre, honour and standing' of the nobility so that the estate would be kept 'pure and unblemished' (*reent och obesmittat*). This was at risk because some men tempted and seduced noble daughters and maidens to secret unions (*Copulation och bebindelse*), regardless of what God and secular law had commanded, and attempted to fulfill the ties by secret elopement (*bortförande*). This offended the respect and honour that was due parents, relatives and guardians according to God's command and natural order. It also caused vice and disorder in general and damaged and dishonoured, in particular the nobility, which was to exhibit exemplary virtues and proper life. Therefore, no nobleman was permitted to marry a noble maiden without the preceding consent of her parents, closest relatives, and marriage guardians. If such incidents occurred, the couple was not allowed to benefit from her property in any way even if she later obtained the necessary authorization to the match. All her paternal and maternal property would be managed by her closest relatives as her rightful guardians until her death after which it would revert to her children (*Barnen - - heemfalne*). While she lived, two thirds of the annual yield from the property would go to the House of the Nobility (*Ridderhuset*) and the remaining third to the nearest hospital for the benefit of paupers. If the clandestine husband was a commoner, he was to be exiled for life.<sup>45</sup>

Although this statute catered to the interests of the nobility, it was supplemented some days later by a general resolution. As the cooperation of unruly clerics helped couples contract clandestine marriages, a better control of the clergy was expected to remedy the situation. Consequently, mentioning the problem in connection with noble couples, the resolution on illicit solemnization especially targeted wayward clerics, who conducted secret wedding ceremonies. Such incidents created a 'great and common scandal in all who love virtues, good manners and order'. If a priest solemnized the union of a noble couple whose marriage took place without the permission and consent of the woman's guardian, the solemnization was

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<sup>44</sup> Summary of the 1622 privileges of the nobility: Johan Schmedeman, (ed.), *Kongl. Stadgar, Förordningar, Bref och Resolutioner 1528–1701*, Stockholm, 1706, 217. The privileges also enacted that the children of a nobleman who had married a commoner without royal permission, lost their right to his lands and to noble privileges. His lands were instead to go to his closest relatives.

<sup>45</sup> Royal statute on the unlawful marriages of the nobility (7.3.1665): Schmedeman, *Kongl. Stadgar* (note 44) 426–429.

null and void. The priest was to be defrocked, sentenced to a spell in gaol on bread and water and finally to perpetual banishment from the Swedish realm. Even though the needs of the nobility were again mentioned as the motivation for the norm, this resolution applied to all cases of clandestine matrimony.<sup>46</sup>

These sanctions were then incorporated and repeated in ecclesiastical norms. For example, the synod of Växjö warned that those couples who had been joined in marriage (*copuleras*) by defrocked priests would be punished along with the priest. The union was considered invalid, the couple forbidden to live together and they were to be cited to the chapter. If the solemnization took place in another congregation than their own, they and the priest were to be punished arbitrarily. If either or both parties were noble, the royal resolutions were to be applied.<sup>47</sup> The 1686 Church Law clinched the matter: minors or those under guardianship could not validly contract trothplight secretly by word or letter, as such unions could be invalidated. Apart from the guardian, two witnesses, one from both sides, had to be present for the trothplight to be valid.<sup>48</sup>

In reality, it had proven difficult to control especially chaplains of noblemen, military chaplains and criminal or runaway clerics. Moreover, the problems revolved much around Stockholm, because a large number of such unbeneficed clerics resided there temporarily.<sup>49</sup> Yet, determined noblemen found more or less willing assistance in priests. After Arvid Horn [af Åminne] (1631–1692) had failed to obtain dispensation and permission<sup>50</sup> for his marriage to his cousin Ingeborg Gyldenär (d. bef. 1680)<sup>51</sup> – a union strongly opposed by his ‘elderly’ (*ålderstigna*) father Mauritz Horn – he took matters in his own hands. At the end of February 1658, the news reached Åbo (Turku) that the cleric Olaus Stigaeus had married the couple. Later it was reported that Arvid Horn had thrown Stigaeus in his sleigh apparently against his

<sup>46</sup> Royal resolution on unauthorized solemnizations (10.3.1665), Schmedeman, *Kongl. Stadgar* (note 44) 436–437; Ylikangas, *Suomalaisen Sven Leijonmarckin osuus* (note 43) 118–120.

<sup>47</sup> IV:18-19, Synod of Växjö 1679, Wallquist *Ecclesiastique Samlingar*, 6–7 (note 14) 364-365.

<sup>48</sup> 15:10 Church Law of 1686, Lahja-Irene Hellemaa, Anja Jussila, Martti Parvio, (eds.), *Kircko-Laki Ja Ordningi 1686*, Suomalaisen kirjallisuuden seuran toimituksia, 444, Helsinki, Suomalaisen kirjallisuuden seura, 1986, 23.

<sup>49</sup> Nils Söderlind, ‘Lysningspraxis under 1600-talet’, *Kyrkohistorisk Årsskrift*, 66, 1966, 73-77.

<sup>50</sup> He had applied for a dispensation from the Consistory (chapter) of Åbo (Turku) on June 20, 1657, but he was referred to the king, *Consistorii ecclesiastici aboënsis protokoller* 1-2, Borgå, SKHS:n toimituksia 2-3, 1899-1902, 96.

<sup>51</sup> Ingeborg Gyldenär was the daughter of Elin or Helena [Arvidsdotter] Horn of Kanckas and Johan Gyldenär. Arvid Horn was therefore related to her through his mother, Ingeborg [Arvidsdotter] Horn of Kanckas, who was her maternal aunt. Ingeborg Gyldenär had been married to Antonius Creutzhammar in 1654, but was widowed in 1657, Gustaf Elgenstierna, *Den Introducerade adelns ättartavlor*, 3, Stockholm, Sveriges släktforskarförbund, 1998, 217, 673-674. She and Arvid Horn seem to have applied for a dispensation almost immediately after her husband’s death.

will and kept him confined in a house for eight days before the solemnization took place. All parties were cited to the consistory and the Court of Appeal of Åbo also dealt with the matter and wished to know whether Stigaeus was, in fact, defrocked or not. After some months it transpired that he had not been deposed even though he was unbeneficed and therefore – as the clerics put it – a *wagant*. Mauritz Horn was so upset that he had the couple evicted from their pews in the church and he also accused a local cleric of persuading (*suaderat*) his son to marry his kinswoman. Moreover, Horn maintained that he would never give his consent to the marriage.<sup>52</sup>

General exhortations not to be disobedient or averse to ones parents, teachers and those acting in place of parents went also hand in hand with the detailed provisions for the permission and participation of parents and guardians. The law proposals from the 1600s, from the reign of king Charles IX, included a drafted paragraph that would have caused contrary sons and daughters, who refused to remember God's commandment to obey their father and mother, to lose their inheritance.<sup>53</sup> The Swedish Lutheran church was prepared to use ecclesiastical discipline and penalties to punish disobedience. The local church council (*Kyrko-Rådet*) was to hear all such cases. If the unruliness was not too flagrant, the council was to admonish the guilty child with 'stern words and suitable castigation' (*hårda ord och tilbörlig näpst*) and threaten the culprit with a severe punishment (*hårdt vite*) in case of further offence. On the other hand, if the insubordination was grievous, the case was to be referred to secular justice like all recalcitrance towards the authorities. Parents were expressly exhorted not to be too indulgent towards their offspring. If children did not want to undergo deserved chastisement or tried to evade it, such conduct was to be exposed without delay before it became incorrigible so that disobedience could be guarded against. If parents or guardians were found to allow their children to behave badly, for example, indulge in immorality, swearing, fighting, pilfering or gambling, the parents were to be punished alongside the offenders.<sup>54</sup>

The position of guardians was also given detailed attention in the 1669 royal Ordinance of Guardians (*Förmyndare-Ordning*). The medieval laws had contained scarce references to the duties and rights of guardians and wards. In addition to this, the need for clearer and more detailed norms had been accentuated in the course of the 17<sup>th</sup> century by the endless, grinding wars of the Swedish great power, which was constantly increasing the

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<sup>52</sup> *Consistorii ecclesiastici aboënsis protokoller* I-II (note 50) 134, 162, 166-167, 172-173, 176-177, 250-251.

<sup>53</sup> Unnumbered, Kyrkio Balkar, Carl den Niondes lagförslag, Dahlgren, *Lagförslag* (note 36) 110.

<sup>54</sup> *Perbreves Commonitiones* (1673), Wallquist, *Ecclesiastique Samlingar*, 6-7 (note 14) 335.

number of noble widows and fatherless children. These circumstances necessitated more explicit regulation of the economic part of the mutual bond between guardian and ward, but also on the guardians' general duty to teach their charges the true Lutheran religion, educate them, and provide them with means of earning their living.<sup>55</sup> A minor was to show the greatest respect towards his/her guardian who acted in place of the father and conduct him/herself properly. Like a father, the guardian had the right to chastise his stubborn or recalcitrant ward, or denounce him/her to the law for punishment.<sup>56</sup> By this time both the Swedish church and secular society shared as well as upheld the patriarchal ideology like never before.

### **Nobility and Control in Practice: Elisabet Oxenstierna's Illicit Marriage**

Since the latter half of the 16<sup>th</sup> century, the nobility had been in the forefront in insisting on getting more effective means of limiting the damage made by unruly daughters and enamored heirs. Aristocratic families tried to prevent a dispersal of land and wealth, a problem exacerbated by the system of partible inheritance, by the arranged marriages of the younger generation. These served the family's strategies of power and wealth and prevented misalliances. In the course of the 16<sup>th</sup> century, the Swedish nobility tried to reduce the dangers, caused by seductions of noble maidens and unequal unions, by extending their privileges to penalize misalliances and unauthorized matrimony.<sup>57</sup> Noble families were not slow in voicing their complaints to the king when such unforeseen but objectionable marriages took place. The elopement of Malin Sture and Erik Stenbock has already been discussed in this connection. Theirs was a special case, however, because of the impediment of kinship in the second degree between them. In order to give voice to the concerns of the Swedish aristocracy in this new context, the attitudes of the nobility will be discussed at some length and in more detail through one particular case from 1616.

When Elisabet [Christiernsdotter] Oxenstierna (ca. 1584–1648) contracted secretly with Conrad [Reinholdsson] von Yxkull of Padenorm (ca. 1575–1622) at her manor of Steninge on August 15, 1616, she created a great scandal. Elisabet Oxenstierna had only a year previously returned to Sweden after more than fifteen years spent abroad as maid of honour to the exiled princess Anna Vasa in Poland. On her way back home she had met Yxkull, a Livonian officer and nobleman, with whom she had secretly got engaged. Secrecy

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<sup>55</sup> Förmyndare-Ordning 1669, Schmedeman, *Kongl. Stadgar* (note 44) 577-578.

<sup>56</sup> Förmyndare-Ordning 1669, Schmedeman, *Kongl. Stadgar* (note 44) 583.

<sup>57</sup> In general, see Korpiola, *Between Betrothal* (note 6) 214-217.

was necessary, as by the time of their wedding, Elisabet had surely understood that her kin considered Yxkull beneath her. Elisabet Oxenstierna was no spring chicken – she had probably passed thirty when she married – but she had inherited a substantial estate and belonged to perhaps the most important and politically influential family of the period.

The star of the Oxenstierna family was still ascending: Elisabet's cousin, Gabriel [Gustavsson] Oxenstierna was chancellor to the royal duke Johan of Östergötland and in 1617 he became Lord Chamberlain and a member of the Royal Council. Her other cousin baron Axel [Gustavsson] Oxenstierna was even more powerful: he had been appointed guardian to the minor king Gustav II Adolf and in the following year, in 1612, Chancellor of the Reign. Many other cousins held high offices of the Swedish realm. Though noble, the Livonian Yxkulls for their part had neither great fortunes nor political power, nor connections. In short, Elisabet Oxenstierna married only to please herself, as the union did not further her family's interests in any way. She also married beneath her station in a way that caused her family dishonour. Considering all this, it is hardly surprising that the clandestine match, once discovered, would cause great uproar among her family.

As Elisabet's parents<sup>58</sup> had died, her cousins and guardians immediately protested to king Gustav II Adolph. The letter from Gabriel [Gustavsson] Oxenstierna to his brother Axel, written after the news of the secret marriage had spread to the rest of the family, leaves no doubt about the objections of the cousins and their reasoning. Although he mentioned that the 'irregular and unlawful [marriage] process' depreciated the value of matrimony (*egtenskapsståndet*), his concerns were rather that the affair was an offence to the whole family, a bad example, and showed contempt for the authority of guardians. Gabriel Oxenstierna did not doubt his brother Axel's indignation and vexation by the affair, but he also mentioned the great dishonour and contempt that not only had fallen on himself and Axel but on both their '*familia*' as well.<sup>59</sup> Although Gabriel Oxenstierna's feathers had undoubtedly been ruffled by the incident, he dwelt more on its long-term consequences than on his offended pride and honour. He feared that if the family left the matter 'unmentioned and without any protests laid down' (*oomtalt och uthan all protestation nederlagt*), similar incidents would follow. If the family did not react, Elisabet's case – though not the first – would not be the last, as similar

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<sup>58</sup> Her parents were Christiern [Gabrielsson] Oxenstierna (1545–1592), councillor of the Realm, and Beata Gera (ca. 1553–after 1610).

<sup>59</sup> 25.8.1616, Gabriel [Gustavsson] Oxenstierna to Axel Oxenstierna, *Rikskansleren Axel Oxenstiernas skrifter och brevveling* 3:1 (note 35) 23.



cases could be expected and some such suits (*frierij*) were already underway in the family.<sup>60</sup> If the family let this case pass by without reaction, others would be encouraged to follow this example.<sup>61</sup> He was probably thinking of his unmarried female cousins and sisters still under guardianship. In addition, he feared that should such cases be left unpunished, children would be provoked to disobedience towards their parents and those under tutelage towards their guardians. Therefore, the honour and respect, which was due to parents and guardians, was ‘cut off’ (*affskurin*). All in all, such behavior like that of Elisabet damaged the position of the guardians (*förmyndare*) and relatives, who were and ought to be in the parents’ place (*i föräldrars staadh och stelle*) according to the law, and caused them greatest contempt. Therefore, the unlawful marriage ought to be suitably punished.<sup>62</sup>

Gabriel Oxenstierna obviously thought that his cousin Elisabet ought to be disinherited because of her unauthorized marriage – he refers to section 3 of the chapter on marriage in the 1442 law. He motivated this by arguing that guardians were in the parents’ place and that Elisabet had showed neither her guardians nor her entire kin (*sin hela slegt*) the necessary honour by asking them for their advice (*råd*) before she gave her ‘complete consent and yes’ (*fullkomligh[a] samptyckio och [ja]*) to the marriage. Even though nothing else could be done, Gabriel Oxenstierna argued, at least the couple was to be made to hesitate (*motte man likquäl göra dem tvehuxe*) so that others would restrain themselves (*motte haffua fördragh*) from following their example. Oxenstierna also considered the union illicit from the perspective that the marriage had ‘sinned - - against the proper process and order’ of the Church Ordinance of 1571 (*emott kyrckioordningens retta process och ordinantz handlat och peccerat*). The banns had not been read three times and nobody had been told of the intended marriage in advance, which was dishonest. In addition, the cleric performing the

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<sup>60</sup> It is uncertain what previous incident Gabriel [Gustavsson] Oxenstierna referred to. Ahnlund (*Axel Oxenstierna* (note 33) 167) has suggested that it was a reference to the liaison of their cousin Kerstin [Eriksdotter] Oxenstierna with her brothers’ tutor. This affair, though prenuptial, caused a great scandal and involved also Gabriel and Axel Oxenstierna’s father, Gustav [Gabrielsson], who was Kerstin’s marriage guardian after her father’s death. See also Tham, *Axel Oxenstierna* (note 33) 50-51. But then again it should be observed that Oxenstierna wrote the letter at the castle of Hörningsholm, which had been the scene of the famous elopement of Malin Sture and Erik Stenbock almost forty-five years previously. It is unknown what possible similar future matches might have been discussed in the family when the letter was written.

<sup>61</sup> 25.8.1616, Gabriel [Gustavsson] Oxenstierna to Axel Oxenstierna, *Rikskansleren Axel Oxenstiernas skrifter och brefvexling* 3:1 (note 35) 23.

<sup>62</sup> 25.8.1616, Gabriel [Gustavsson] Oxenstierna to Axel Oxenstierna, *Rikskansleren Axel Oxenstiernas skrifter och brefvexling* 3:1 (note 35) 23-24.

solemnization was no honest priest, but defrocked. As the cleric had even in this case acted against his duties and ecclesiastical norms, he was to be punished.<sup>63</sup>

The Oxenstierna family used their influence with the king, who issued a letter of citation to Conrad von Yxkull, in which he observed that Yxkull had joined himself with Elisabet Oxenstierna against the consent of her relatives and friends who had grievously complained to him and humbly asked for royal help and justice.<sup>64</sup> Yxkull was ‘strictly ordered’ (*biude strängieligen*) to appear immediately at the Court of Appeal in the king’s presence in order to satisfy Elisabet Oxenstierna’s relatives and to stay in Stockholm until the case had been resolved. Elisabet Oxenstierna, on the other hand, was to remain at her manor of Steninge instead of following her husband to town<sup>65</sup> in accordance with the accustomed practice in matrimonial cases involving the disputed validity of a marriage, namely that the couple were to live apart until the court had resolved the issue of validity. This was thought necessary partly to avoid interference from the alleged husband, relatives and others that could influence the woman’s free will, partly to avoid further sin in what could be an invalid and illegal union.<sup>66</sup>

Such principles had also been followed in the above-mentioned case of Malin Sture and Erik Stenbock. King John had insisted that Stenbock, immediately after receiving the king’s letter, depart either for Stockholm or for a certain manor belonging to his sister, queen dowager Katarina Stenbock, and stay there until Malin Sture came to the place designated by the king where the case could be heard and decided. The king justified this by saying that there would be no more slander, which could further ‘embitter the case’ (*handelen therigenom mhere måtte blifue för bittredh*). (By this, the king probably meant that the greater the scandal

<sup>63</sup> 25.8.1616, Gabriel [Gustavsson] Oxenstierna to Axel Oxenstierna, *Rikskansleren Axel Oxenstiernas skrifter och brefvexling* 3:1 (note 35) 23-24.

<sup>64</sup> No date, king Gustavus II Adolphus to Conrad Yxkull, Riksregistraturet, vol. 127 (1616), RA: ‘Citation effther Conrad Yxell, att begifwa sigh hijt medh dedh förste. Wij Gustaf Adolph etc. Befalle och stemme eder Conrad Yxell, att effter i Vihi förledne dager, hafwa låtet eder sammanfoga medh Elitzabett Oxenstierna, emoot hennes Slecht och förwanters Jaa och samtäckio, derföre de sigh hoos oss till ded högste beswäredt, och oss Vnderdånigheet om hielp och rätter besöcht hafwe. - -’

<sup>65</sup> No date, king Gustavus II Adolphus to Conrad Yxkull, Riksregistraturet, vol. 127 (1616), RA: ‘Derföre wele wij och biude strängieligen, att i nu strax så snart dethe Wårt brefs blifwer eder öfwerantwardat, begifwe eder medh denne vihskickade hijt, swarandes hennes slecht och förwanter till rätta, in för vår Konungliga Hofrätt - - Och sedan förhålle eder här i Stockholm, in till dess Saaken blifwer lagligen Vth Förd. J medler tijd skall Ellysabett Oxenstierna, förhålla sigh qwar på sin Gård Steninge, till dess saken blifwer slötin, och icke begifwe sigh hijt till Staden.’

<sup>66</sup> R. H. Helmholz, *Marriage Litigation in Medieval England*, Cambridge, Cambridge University Press, 1974, 170-172; Patricia Seed, *To Love, Honor, and Obey in Colonial Mexico. Conflicts over Marriage Choice, 1574-1821*, Stanford, California, California University Press, 1988, 78-80. For Swedish practice, see C. Silfverstolpe, (ed.), *Svenskt diplomatarium* III, Riksarkivet, Stockholm, 1887, 475. See also IV:18, Synod of Växjö (1679), Wallquist *Ecclesiastique Samlingar*, 6-7 (note 14) 364-365.

created by suggestions of immorality between the eloped couple, the more difficult the future reconciliation would be.) The king stressed that after receiving this letter Stenbock was neither to visit the place where Malin currently resided nor any other place where she might stay on her way to the place designated by the king. However, the king confirmed the safe conduct granted to Stenbock as he had previously always conducted himself properly (*tilbörligen*) and loyally towards the king and realm as well as and appropriately also towards the relatives (*föruandter*) and friends of Malin Sture. Should Stenbock disobey this royal letter, however, he would lose the safe conduct he had been granted and risk punishment because of his contempt and disobedience.<sup>67</sup>

The affair between Elisabet Oxenstierna and Conrad von Yxkull was finally resolved in September by a council consisting of the bishops of Uppsala, Strängnäs and Västerås, the professors of theology of the University of Uppsala and the chapter of Stockholm. Joachimus Zeilerus, the priest who had performed the ceremony, was perpetually defrocked and exiled. The solemnization was judged invalid by virtue of a motley assortment of authorities ranging from the Fourth Commandment, the Swedish Church Ordinance of 1571, the example of the saints (!) and the opinions of Martin Luther. A new solemnization was to be performed after the couple had lived apart for some time, been temporarily excluded from the congregation and the society of their relatives, for whose forgiveness the couple had to ask. The pecuniary penalties were substantial and, even though Yxkull had agreed to all the conditions, the actual amount seems to have shocked the couple. The king had fixed the fine to 3,000 *dalers* to be paid to charitable ends: the hospital in Uppsala and for poor students.<sup>68</sup> In his letter to Axel Oxenstierna, Conrad von Yxkull asked for the favor and friendship (*gunst wnd freundschaftt*) of the chancellor and Elisabet's relatives as the king had requested. But he lamented that the sum of 3,000 *dalers* was difficult to raise so quickly and asked that Oxenstierna help have the penalty mitigated.<sup>69</sup> Elisabet Oxenstierna also wrote to her cousin the chancellor in January 1617 asking for his intercession. She expressed her humble and sisterly thanks for all 'brotherly and fatherly' (*broderactiga och faderligha*) good deeds he had done for her, which she with 'all humility wanted to deserve' as long as she lived (*mädh al ödmiukhet uill förtiäna så länge iagh lefuer*). Then she mentioned the heavy penalty, which had been imposed on her

<sup>67</sup> 17.9.1573 king John III to Erik Gustavsson [Stenbock], 11 Kungliga koncept, etc. Johan III:s koncept, vol. 8, RA.

<sup>68</sup> Ahnlund, *Axel Oxenstierna intill Gustav Adolfs död* (note 33), 167-168; Söderlind, 'Lysningspraxis' (note 49) 74 n. 6.

<sup>69</sup> Without date, Conrad von Yxkull to Axel Oxenstierna, Axel Oxenstiernas brevväxling, RA.

and her husband and implored her cousin would not to turn his brotherly and ‘closely-related’ (*närskýlda*) heart against her. She went on to ask humbly that he mediate in the matter.<sup>70</sup>

Axel Oxenstierna seems, however, to have remained unmoved by these requests of reducing the fine. Indeed, that would have defeated the goal of using the case as a warning. The penalty seems to have been so high that the couple had difficulties in raising the necessary sum or paying it even in installments. A year later archbishop Petrus Kenicius of Uppsala, the priests and mayors of Uppsala lamented that the fine was still partly unpaid. The previous year Yxkull had paid the hospital of Stockholm 116 barrels of rye, which he said was all he could manage that year asking the representatives of the Uppsala hospital to be patient until the following year. This they had done, but now Yxkull had let them know that he could not deliver the corn unless they accepted it at three *dalers* a barrel. This seems to have been above the current price<sup>71</sup> and the representatives of the hospital had declined the offer. The letter asked chancellor Oxenstierna for help in getting the remainder paid as a stone house belonging to the hospital was in need of repair.<sup>72</sup> For their part, the Oxenstierna family seems to have been content. Gabriel [Bengtsson] Oxenstierna (1586–1656), another cousin, who had helped to repatriate Elisabet Oxenstierna from Poland, wished to God that this would be a warning to any person, who did not hesitate in bringing dishonour upon honest old families.<sup>73</sup> Soon legislation came to provide parents and guardians with better means of controlling the younger generation.

### **Expanding the Powers of Guardians for Minor Sons and Widows and Establishing Limitations to Parental Powers**

After the Reformation there was pressure to lift the age of consent, which in the medieval laws had been twelve for girls and fifteen for boys. In ecclesiastical writings and in practice, girls especially were not considered marriageable until some years later, around thirteen or fourteen.<sup>74</sup> In later 17<sup>th</sup> century ecclesiastical statutes also addressed the problem arising from parents arranging marriages for minors in order to obtain labour for their farm.

<sup>70</sup> 14.1.1617, Elisabet Oxenstierna to Axel Oxenstierna, Axel Oxenstiernas brevväxling, RA.

<sup>71</sup> In 1615 a barrel of grain cost two *daler*, Lars O. Lagerqvist, Ernst Nathorst-Böös, *Vad kostade det? Priser och löner från medeltiden till våra dagar*, Borås, LT:s förlag, 1984, 66.

<sup>72</sup> 16.12.1617, Petrus Kenicius, priests and mayors of Uppsala to Axel Oxenstierna, *Rikskansleren Axel Oxenstiernas skrifter och brefvexling*, senare afd, 12:1, Stockholm, Kungliga Vitterhershistorie och antiqvitetsakademien, 1930, 27.

<sup>73</sup> Ahnlund, *Axel Oxenstierna intill Gustav Adolfs död* (note 33), 168.

<sup>74</sup> E. g. Käsikiria Castesta ia muista Christikunnan Menoista (1549), Mikael Agricola, *Mikael Agricolan teokset*, Helsinki, WSOY, 1931, 17.

The statutes for the diocese of Åbo (Turku) stressed that the minimum age of consent was eighteen for boys and fourteen for girls. Parents were not to be allowed to hire farmhands or serving maids to work at their farms under promise of marriage to their young children once these reached majority – especially if the children were so young that it took several years before they were nubile. Generally speaking priests were always to ask conscientiously for the ‘mature, voluntary and complete yes and consent’ of principle parties (*Contrahenterne*).<sup>75</sup>

Since the later 16<sup>th</sup> century the Swedish nobility<sup>76</sup> had been actively campaigning for the king to confirm and expand their privileges to include levying penalties for misalliances and unauthorized marriages. A more effective control of sons was also on the agenda, for unlike women, who never came of age unless emancipated through marriage, a major son could contract validly without even informing his parents of this in advance. Although there are very few Swedish legal commentaries from the early 17<sup>th</sup> century, these would seem to indicate a changing perception concerning the duties of sons to obey their parents under the threat of being disinherited. Lawrence Stone has argued that among the English aristocracy parental pressure was heavier on daughters and eldest son than on younger sons.<sup>77</sup> In default of primogeniture proper this statement did not necessarily apply to early modern Sweden, even though the legal institution of entail (*fideicommissum*) was introduced in Sweden in the late 17<sup>th</sup> century.

Writing in 1608, Johan Skytte (1577–1645) argued that the law only allowed parents to disinherit daughters if these contracted without permission. In his popular commentary on the Swedish town law from 1621, Hans Olofsson, mayor of Linköping agreed, but added on the basis of Roman law that it would seem right and equal (*Rätt och likt*) that the father be allowed to disinherit his son if the latter married against the wishes of the father or mother and married into a family of dishonest profession such as the waste collector<sup>78</sup> or executioner (*ett öhrligt Embethe, som ähr Rackare eller bödels Embethe*). Similarly, disinheritance was

<sup>75</sup> Perbreves Commonitiones (1673), Wallquist *Ecclesiastique Samlingar*, 6–7 (note 14) 317. See also IV:5, Synod of Växjö 1679, Wallquist *Ecclesiastique Samlingar*, 6–7 (note 14) 361–362.

<sup>76</sup> I talk here – as elsewhere in this article – of the nobility as an estate and base my opinion of its interests largely on the privilege proposals made by the noble estate in the course of later 16<sup>th</sup> and early 17<sup>th</sup> century. This does not preclude discord within the nobility. For example, the Rosengren Commission would even have been prepared to grant more mature and sensible unmarried women the power to manage her inheritance, though with the advice and consent of her guardians, 1 Gifftomåla Balken, Det Rosengrenska lagförslaget, Dahlgren, *Lagförslag* (note 36) 302.

<sup>77</sup> Lawrence Stone, *The Family, Sex and Marriage in England 1500–1800*, London, Penguin Books, 1990, 182.

<sup>78</sup> The word used in the text is *Rackare*, which had several meanings. The *rackare* could clean latrines and the streets, act as the executioner’s assistant (bury corpses, flog convicts etc.), castrate or flay animals or dispose of their carcasses, see the Swedish *National Encyclopedia online* [http://www.ne.se/jsp/search/search.jsp?t\\_word=Rackare](http://www.ne.se/jsp/search/search.jsp?t_word=Rackare), cited 12.4.2005.

possible if a child beat up the parent or made an attempt on his/her life.<sup>79</sup> In 1630, the law professor Benedictus Crusius (d. 1633) of Uppsala thought that disinheriting a son might be allowed as the law did not expressly forbid it.<sup>80</sup> Later in the 1670s, the lawyers Johannes Loccenius (1598–1677) and Clas Rålamb (1622–1698), who both based much of their work on German and Roman legal literature, denied that the son had an unrestrained freedom of marriage.<sup>81</sup>

The 1669 Ordinance of Guardians bears witness to the trend of extending the minority of young men further – women, it must be remembered, remained under guardianship all their lives unless they were married. Young men reached majority at fifteen, and because of this, the Ordinance of Guardians lamented, even those many youths who were not competent (*beqwäm*) in managing themselves and their lands, could not be denied the right to do so. However, either parent was allowed to lengthen the period of guardianship by testamentary provision, which had to be respected and honoured. Ultimately, the court would decide such matters.<sup>82</sup>

In 1686, the campaign of the nobility finally bore fruit as the Church Law of 1686 made a point of submitting sons to parental control. As long as his parents were alive, the son had to ask for their opinion in advance.<sup>83</sup> If he had reached the legal age and could marry according to his own desire, he might still be forced to apologize to his parents for his disrespectful behavior. At least one case from the 1680s, when the Governor Gustav Duwall's son Johan Didrik Duwall wished to contract marriage (probably) with Lucretia von Wernstedt, suggests that such was the practice.<sup>84</sup> This corresponds to the practice earlier in the century as we have seen in the cases of Elisabet Oxenstierna and Conrad von Yxkull, and Johan Mejer and Dordi Jacobsdotter. The concern was also visible in the discussions and drafts of the Law Commission, active in the late 17<sup>th</sup> and early 18<sup>th</sup> century. A son, living in his parents' house and being under their authority, who had no other occupation, or who was

<sup>79</sup> Emil Wolff, (ed.), *Riksrådet Johan Skyttes kommentar till stadslagen*, Göteborg, 1905, 34 n. 2.

<sup>80</sup> Jan Eric Almquist, (ed.), *Johan Skyttes kommentar till den svenska stadsrätten 1608*, I, Skrifter utgivna av rättsgenetiska institutet vid Stockholms universitet, 4, Stockholm, 1962, 25; Jan Eric Almquist, (ed.), *Vår äldsta kommentar till landslagen: Juris professor B. Crusius' föreläsningar vid Uppsala universitet hösten 1630*, Uppsala universitets årsskrift, Juridik, 2, Uppsala, 1927, 27.

<sup>81</sup> Ylikangas, *Suomalaisen Sven Leijonmarckin osuus* (note 43) 57. On Rålamb and Loccenius as legal scholars, see Lars Björne, *Patrioter och institutionalister. Den nordiska rättsvetenskapens historia I. Rättshistoriskt bibliotek*, 52, Stockholm, Skrifter utgivna av Institutet för rättshistorisk forskning grundat av Gustav och Carin Olin, 1995, 26-30, 35-37.

<sup>82</sup> Förmyndare-Ordning 1669, Schmedeman, *Kongl. Stadgar* (note 44) 582-583.

<sup>83</sup> 15:6, Church Law of 1686, Hellemaa et al., *Kircko-Laki Ja Ordningi 1686* (note 48) 22.

<sup>84</sup> Riksarkivets ämnessamlingar 753:1, RA, Juridica I, Becchius-Palmcranz samlingar 17, Cap. 2:8, 89: 'Myndig Sohn som uthan föräldrars weeth, äktenskap wil ingåå, må ey eftermähler hindras, tilhålles doch hoos dem sin Brott afbedia för än bröllop hålles.' See also Ylikangas, *Suomalaisen Sven Leijonmarckin osuus* (note 43) 57-60.

not in the service of another person, could be disinherited for marrying against his parents' will. The same was proposed to apply also to sons who had their own source of livelihood and were no longer under 'the father's authority'.<sup>85</sup>

Attitudes towards the right of widows to marry freely were also changing. Since the Middle Ages, widows had been allowed to choose a new husband for themselves without running the risk of losing of their inheritance. This was also the opinion that still prevailed in the early 17<sup>th</sup> century: once they had been emancipated from their parents' power by marriage, they were free from guardianship even the death of their husbands.<sup>86</sup> One of the various drafts and proposals of the law commissions working in the 1680s and 1690s suggested that a widow be allowed to choose for herself. But if in her choice of marriage partner she brought 'special disgrace and shame to her father's house', she could be disinherited.<sup>87</sup> Another proposal lumped sons and widows living under their parents' roof together with unmarried daughters. If they were 'still in the parents' house and bread' and married against their parents' will to their annoyance and disrespect (*them till förtreet och sijdwyrdnad*), they were to lose a tenth of their present fortune to the poor in addition to being disinherited. If her/his parents were dead, s/he was to lose only a twentieth part of his/her property but risked losing a possible inheritance from the guardian if he was his/her closest relative.<sup>88</sup>

Later this attitude was expressed in the 1734 law code. Any maiden who married against her parents' will could be disinherited by them, but the same rule also affected widows and sons living under their parents' roofs and who thus owed them special respect and obedience. Nevertheless, the penalty of disinheritance was restricted to cases in which they married contrary to parental wishes either out of contempt or disrespect (*af föracht och sidvördnad*). The same applied if they married persons of bad reputation.<sup>89</sup> The lawyer David Nehrman (Ehrensträhle), writing in 1729, offered several legitimate reasons (*skiähl och lagliga orsaker*) for a guardian to veto a marriage. He gave as examples the situation in which the suitor could not provide for a wife, in which he had committed a serious misdeed (*grof ogierning*), in which the couple came from very different estates (*the äro af mycket olika*

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<sup>85</sup> E.g. Lagkommissionens förslag till Giftermålsbalk 1689, Wilhelm Sjögren, (ed.), *Föarbetena till Sveriges rikes lag 1686-1736*, 4, Upsala, 1902, 16.

<sup>86</sup> G 3, Almquist, *Vår äldsta kommentar till landslagen* (note 80) 27.

<sup>87</sup> E.g. Lagkommissionens förslag till Giftermålsbalk 1689, Sjögren, *Föarbetena* (note 85) 16.

<sup>88</sup> Lagkommissionens förslag till Giftermålsbalk 1690, Sjögren, *Föarbetena* (note 85) 45. On the discussions of the law commission on the issue of widows and sons, see Ylikangas, *Suomalaisen Sven Leijonmarckin osuus* (note 43) 83-96.

<sup>89</sup> G 6:1-2, *Sveriges Rikes Lag, Gillad och Antagen på Riksdagen Åhr 1734*, Rättshistoriskt bibliotek, 37, Stockholm, Skrifter utgivna av Institutet för rättshistorisk forskning grundat av Gustav och Carin Olin, 1984, 7-8.

*stånd*), or in which circumstances showed that the union would be unhappy.<sup>90</sup> Other marriage guardians could disinherit disobedient maids of acquired land and chattels only if these were their heiresses. If this was not the case, and if the guardian sued his ward as a result of the unauthorized marriage, the maiden forfeited a twentieth part of her acquired land and chattels to the poor as a penalty for her disobedience.<sup>91</sup>

While the powers of parents and guardians to prevent marriages were increased – especially in case of sons and widows - at the same time legal devices were construed to prevent malicious parental opposition and forced marriages. The tyrannical, selfish or greedy parent or guardian was a vision so unlike the benevolent and wise patriarch or matriarch that children had to have some neutral organ to whom they were able to submit the case for assessing whether or not ‘unpaternal malice’ prompted the parent(s) or marriage guardian to object to the match.<sup>92</sup>

The abortive draft of king Charles IX upheld the principle that parents or the closest relative married off sons and daughters, but went on to point out that if the proposed spouse did not bring shame (*ej hafue neese uthaf*) to the parents or closest relatives, and if the husband was able to maintain his wife ‘honestly’ in accordance with her rank (*gitter henne efter Stand sitt ährlighen födhe*), they could not prevent her/his marriage. They could only prevent marriage if the proposed spouse had made an attempt on the honour, life or property (*wälferd*) of the parents. The king would be the judge of this, and if the parents or guardian maliciously tried to hinder the marriage, the monarch could authorize it.<sup>93</sup> The contemporary Rosengren Commission also thought that no guardian (*målzman*) had the power to prevent a nubile maiden from marrying a man of the same (*wederlijke*) social standing because of any gain from her property he, the guardian, might lose. In such a case was proven she could contract a marriage with the advice and consent of other relatives without risking her inheritance.<sup>94</sup>

The privileges of the nobility (1622) provided an escape hatch for maidens, whose guardians unreasonably (*oskäligen*) refused their consent in that the king reserved the right to

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<sup>90</sup> II Capitel. Om Trolofning och Ächtenskap § 36, David Nehrman, *Inledning Til Then Swenska Iurisprudenciam Civilem*, Lund, 1729, 217.

<sup>91</sup> G 6:3, *Sveriges Rikes Lag* (note 89) 8 .

<sup>92</sup> Seed (*To Love, Honor, and Obey* (note 66) 40-46) describes attitudes condemning parental despotism and unjust interference that took e.g. expressions like threatening to kill the child if s/he contracted marriage with a certain person, actual physical violence amounting to attempted murder, various financial penalties, locking them up and keeping incommunicado.

<sup>93</sup> 1, Giftermåla Balken, Carl den Niondes lagförslag, Dahlgren, *Lagförslag* (note 36) 117.

<sup>94</sup> 3, Gifftomåla Balken, Det Rosengrenska lagförslaget, Dahlgren, *Lagförslag* (note 36) 305.



decide on cases he considered justly raised.<sup>95</sup> The royal statute of 1665, which had toughened up the punishments of unauthorized marriages of noblewomen, mentioned almost as an afterthought that if guardians or relatives unreasonably opposed a marriage that had been properly initiated and lawfully proceeded, the matter could be brought to the attention of the king, who had the power to authorize the union.<sup>96</sup> The church also considered its courts competent at investigating the reasons for parental opposition at least when marriage promises had already been made and the couple had had intercourse. If the reasons for such opposition were not considered to be weighty, the consistory would assume guardianship and authorize the marriage. In such a case, the church thought that the secular courts could not punish the principle parties for disobedience nor did parents have the power to disinherit their child.<sup>97</sup>

The attitudes of the clergy as expressed in their proposal (1682) for a Church Law tended to stress the necessity of double consent: that of the parents and children. It was right by nature (*rättmätigt*) that children asked their parents for advice regarding their marriage just as Samson did. Nevertheless, it was equally necessary that the parents ask their children about their intentions and will just as Rebecca's parents asked her before they gave their answer to the suit. The children could not be forced to marry.<sup>98</sup> Nor were parents and guardians to abuse their authority to postpone or hinder a lawful and honest marriage, thereby causing their children great damage and danger for the sake of their own advantage,<sup>99</sup> or other vain reasons. Children were to suffer such occurrences patiently and bring them to the attention of clergymen and other sensible people who should then try to reason away such disorder (*sådana oreda med fog och skiähl att förekomma*). Reconciliation was preferred, but if this did not help, the matter was to be submitted to the chapter (*Domb-Capitlet*), which after a careful examination of the case was to aid the party who suffered injury and injustice (*komma then paarten till hielp som meen och orätt lijder*). If even this did not help, the church was prepared to refer the case to secular justice.<sup>100</sup>

The nobility, in turn, wanted to remove such cases completely from ecclesiastical courts in order to 'prevent all disorder'. Matters such as the powers of parents, marriage

<sup>95</sup> Summary of the 1622 privileges of the nobility, Schmedeman, *Kongl. Stadgar* (note 44) 217.

<sup>96</sup> Royal statute on the unlawful marriages of the nobility (7.3.1665), Schmedeman, *Kongl. Stadgar* (note 44) 428-429.

<sup>97</sup> Synod of Uppsala 1678, *Svenska synodalakter efter 1500-talets ingång*: 1. serien, Uppsala ärkestift, ed. Herman Lundström. Skrifter utgifna af kyrkohistoriska föreningen, II:3, Uppsala, 1903-1908, 151.

<sup>98</sup> Prästerståndets förslag till kyrko-ordning 1682, O. v. Feilitzen, (ed.), *Kyrko-Ordingen och Förslag dertill före 1686*, III. Handlingar rörande Sveriges historia, 2. serien, Stockholm, Kongl. Riks-archivet, 1920, 83.

<sup>99</sup> According to Patricia Seed, *To Love, Honor, and Obey*, (note 66) 56-60 one third of all cases of unjust interference in Mexico 1574-1689 was motivated by greed on the part of the objecting party - for example, losing control of an unmarried person's property or losing a potential inheritance.

<sup>100</sup> Prästerståndets förslag till kyrko-ordning 1682, Feilitzen, *Kyrko-Ordingen och Förslag III* (note 98) 83.

guardians and other guardians in connection with engagements and marriages or the validity of secret and unlawful marriages were thereafter to be heard in secular courts. The nobility proposed that a son ask his parents for consent, but if he thought that their refusal was based on unreasonable (*obillig*) grounds, he could take the case to the Court of Appeal if he was noble. There the parents would have to state their reasons in secret, and if they were considered to be in the right, the son had to obey them. Sons of commoners could approach judges, rural deans (*Prosten*) or vicars, depending on where they lived, for a hearing. Such possibilities would also be open for maidens. The nobility also added that forced marriages were not allowed.<sup>101</sup>

The final version of the Church Law of 1686 seems to have been a compromise. The son could take the refusal of his parents to consent to his marriage plans to the ecclesiastical court where all possible means of reconciliation would be attempted. If the parents still persisted, the case was transferred to a secular court, where the parents were to state their reasons for objecting to the union. If these reasons were found to be acceptable, the son was to obey his parents. If the parental objection was considered to be unfounded, the marriage could proceed. As for maidens and daughters, the laws and privileges of Sweden were to be followed.<sup>102</sup> Moreover, a minor son was considered incapable of giving a valid promise of marriage without the consent of the parents or guardian even if he had seduced the maid in question.<sup>103</sup> If parents or guardians tried to force a person to marry against his or her will, the matter could also be taken first to the priest or other sensible people for mediation, then to the chapter and finally to the secular court which had the power to resolve the matter.<sup>104</sup>

Similar provisions were included in the 1734 law, according to which the consent of the marriage guardian was an absolute condition for a valid marriage unless he withheld his consent without good cause. In those circumstances, the case could be transferred to the secular courts, which had the powers of the legal guardian to give away the girl in marriage. If it was shown that the *giftoman* had been prompted in his objections by financial gain or other similar motives, he was liable to a fifty-*daler* fine and had to pay costs or damages. This rule, however, did not apply to situations in which the selfish marriage guardian was the parent.<sup>105</sup> The daughter could no longer escape parental control by fornicating following a promise of

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<sup>101</sup> Ridderskapets författade project till Kyrkeordningen ingiffvit anno 1685 d. 14 septemb., Feilitzen, *Kyrko-Ordningen och Förslag III* (note 98) 283, 286.

<sup>102</sup> 15:6, Church Law of 1686, Hellemaa et al., *Kircko-Laki Ja Ordningi 1686* (note 48) 22.

<sup>103</sup> 15:14, Church Law of 1686, Hellemaa et al., *Kircko-Laki Ja Ordningi 1686* (note 48) 23-24.

<sup>104</sup> 15:6 Church Law of 1686, Hellemaa et al., *Kircko-Laki Ja Ordningi 1686* (note 48) 22-23.

<sup>105</sup> G 6:4, *Sveriges Rikes Lag* (note 89) 8; Ylikangas, *Suomalaisen Sven Leijonmarckin osuus* (note 43) 100-104.

marriage, as marriage was not to be permitted between the couple unless the parents consented, or a judge had confirmed that there was good cause for the union.<sup>106</sup>

Neither the attitudes of the church nor those of the nobility condoned forced marriages. Both also agreed that children were permitted to have the reasonableness of the objections of their parents and guardians investigated by secular and ecclesiastical authorities. Finally in 1734, the freedom of marriage of sons and widows was restricted if these lived in the parental home under their parents' power. They, too, could be disinherited for disobedience. The era thus favoured parents heavily, but did not grant them unrestricted powers.

## Conclusions

It remains to sum up the development: in medieval Sweden, the church came to alter the traditional system by insisting on the consent of the principal parties to the marriage. The possibility to disinherit the daughter who married or fornicated without parental consent appeared in secular law as a reaction to this. Medieval Swedish law awarded a son more freedom to marry and he could not be disinherited for his choice. Swedish law also retained the privileged role of the marriage guardian in the marriage ceremonies and usurping his role was an offence resulting in financial penalties. In practice, probably few daughters or sons exploited fully the freedom of marriage, permitted by the church, but preferred to consult with family and friends.

After the Reformation the Swedish Lutheran church largely confirmed the late medieval practice. According to prevailing attitudes, children were to obey their parents, but these could not force their children to marry undesired partners. The ecclesiastical courts preferred to mediate between the parties and there was no consistent policy of annulling unions objected to by the parents. Parents were in a better position to influence their daughters as they had the power to disinherit them. Moreover, unmarried women did not reach legal majority at a certain age, but remained under guardianship until emancipated by marriage or death. Other marriage guardians could only expect pecuniary compensation for the usurping of their powers.

The attitudes towards unauthorized marriages seem to have undergone a change especially from the early 17<sup>th</sup> century onwards. There was a pressure to extend the option of disinheritance also to sons and widows especially those living under their parents' roofs. This

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<sup>106</sup> G 2:10, *Sveriges Rikes Lag* (note 89) 3.

trend is also perceptible in other countries, such as early modern Mexico.<sup>107</sup> Moreover, it became possible to have unauthorized marriages annulled altogether, partly due to an increasing emphasis on the formalities of valid trothplights and weddings. In addition, priests performing illicit solemnizations were severely penalized. Yet, even though the attitudes towards unauthorized marriages had become stricter and received support in legislation, some safety measures had to be established in order to prevent abuse by parents and guardians. The parties could take their case to ecclesiastical courts for attempts of reconciliation and then to the secular courts, which could authorize marriage if the reasons for resisting the union were not weighty enough.

The ecclesiastical and secular authorities of seventeenth-century Sweden were thus walking a tightrope between the strengthening patriarchal tendencies and the Lutheran orthodoxy of the early modern Swedish society on the one hand, and the respect for the tradition of the freedom of marriage on the other hand. In this sense, the law code of 1734 limited children's freedom of marriage more than before, while it extended the protective means against abuse of power. This was indeed a paradoxical development.

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<sup>107</sup> See Seed, *To Love, Honor, and Obey* (note 66) e.g. 129-135.

## Zusammenfassung

### *Verheiratung von Söhnen und Töchtern: Haltungen zur Zustimmung der Eltern und Vormunde im frühen modernen Schweden*

Dieser Artikel beschäftigt sich mit der Entwicklung von Haltungen und Normen mit Bezug auf die Rolle der Eltern und Mündel in den Ehwahlen von Kindern und Mündeln im frühen modernen Schweden. Der Artikel behauptet, dass diese Haltungen einer Veränderung unterzogen worden sind, und zwar insbesondere im Laufe des 17. Jahrhunderts.

Während des Mittelalters, hatte die katholische Kirche ihre Politik der Wahl in Schweden eingeführt. Dieser Begriff hatte das weltliche Gesetz so beeinflusst, dass die Zustimmung der Frau zu einer Heirat im Heiratsprozess berücksichtigt wurde. Die herkömmlich wichtige Rolle des Heiratsvormundes der Frau (*giftoman*) wurde im weltlichen Gesetz bewahrt und in der Praxis wurde die Zustimmung eine doppelte: sowohl die Zustimmung der Frau als die des Vormundes wurden benötigt. Das mittelalterliche Erbe blieb unmittelbar nach der Reformation mehr oder weniger intakt. Eine doppelte Zustimmung war erforderlich, obwohl eine Ehe ohne Zustimmung der Eltern nicht ungültig war. Töchter, die trotz dem Widerstand der Eltern heirateten, konnten enterbt werden, während Witwensöhne nicht enterbt werden konnten.

Die Haltungen, die im späten 16. Jahrhundert zum Ausdruck kommen, schlagen einen hohen moralischen Ton an, wenn es zur Diskussion über Paare, die in Nichtbeachtung der Genehmigung durch die Eltern entflohen sind: In diesem Zusammenhang wird die Flucht der Verwandten Erik Stenbock und Magdalene Sture ziemlich ausführlich diskutiert. Nichtsdestoweniger war die normative Grundlage auf der einen Seite, dass man den Eltern gehorchen musste, aber auf der anderen, dass sie nicht das Recht hatten, ihre Kinder zur Heirat zu zwingen. Der Adel verlangte unaufhörlich, dass Mesallianzen und unbefugte Ehen von Edelfrauen sträflich seien. Dies war eines der Symptome einer sich entwickelnden Klassengesellschaft im späten 16. und im 17. Jahrhundert. Der patriarchalische Trend wurde durch den schnell wachsenden Einfluss vom römischen Recht auf Fragen des bürgerlichen Rechtes im 17. Jahrhundert verstärkt. Der Adel war schließlich erfolgreich in seinen Forderungen auf strengere Strafen für ungleiche oder unbefugte Ehen. Ferner ergänzten die Möglichkeiten, Ehen ohne die Zustimmung der Eltern aufzulösen und den fungierenden Beamten zu bestrafen, die vorhandenen Mittel zur Kontrolle der jüngeren Generation. Adlige Vormunde waren dazu bereit, Frauen, welche die Zustimmung ihrer Familie nicht beachteten, als warnende Beispiele anzuführen: die Reaktionen auf die heimliche Heirat von Elisabeth Oxenstierna und Conrad von Yxkull beweisen das.

Dieses genügte aber nicht. Wenigstens im Adel herrschte immer mehr das Gefühl, dass Söhne und Witwen, welche bisher das Recht gehabt hatten, jeden beliebigen nach eigener Wahl zu heiraten, auch dazu verpflichtet seien, die Zustimmung ihrer Eltern und Mündel zur Heirat zu erlangen. Diese Vorstellung gilt besonders Söhnen und Witwen, welche von ihren Eltern und Mündeln nicht finanziell abhängig waren, oder aber im Elternhaus wohnten. Diese Haltungen fanden auch den Weg bis in die Gesetzgebung des späten 17. und frühen 18. Jahrhunderts. Aber während die patriarchalische Kontrolle immer strenger wurde, und Beschränkungen der Freiheit zur Heirat immer mehr Gruppen betrafen, wurden gerichtliche Behelfe zur Vorbeugung des väterlichen Despotismus eingeführt. Dem König und später den kirchlichen und weltlichen Gerichten wurde die Macht gegeben, eine Ehe anzuerkennen, wenn der Widerstand der Eltern oder des Mündels für böswillig und ungerecht befunden wurde. Die Tendenz zum Patriarchalismus erforderte die Konstruktion von Notausgängen zum Schutz von Mündeln und Kindern, und die Entwicklung ist somit als paradox zu betrachten.

Übersetzung Tom Rundqvist