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Bigamy: A Male Crime in Medieval Europe?

From its origins, Christian doctrine defined marriage as an exclusive and indissoluble commitment binding one man and one woman together for life. On the model of Adam and Eve, whose union God had blessed in the Garden of Eden, man and wife were “two in one flesh.”¹ Such an understanding of marriage required lifelong conjugal fidelity, with no allowance for marriage to multiple spouses, and no possibility for divorce with any right to remarry.

The Christian understanding of marriage also insisted upon a radical redefinition of the rights and obligations of married men and women.² This new definition was based on principles at the same time hierarchical and egalitarian. A husband governed his wife but she nevertheless stood as his equal in other ways. A husband was the “head” of his wife, the head of household, and created in God’s image.³ However, as medieval

¹ Genesis 2:24. “Wherefore a man shall leave father and mother, and shall cleave to his wife: and they shall be two in one flesh.” All Biblical quotations taken from the Douay-Rheims Bible unless otherwise specified. See also Laurent Mayali, “ ‘Duo erunt in carne una’ and the Medieval Canonists” in *Iuris Historia: Liber amicorum Gero Dolezalek*. Vincenzo Colli and Emmanuele Conte, eds. (Berkeley, CA: The Robbins Collection, 2008) 161-176.

² Charles J. Reid, *Power Over the Body, Equality in the Family: Rights and Domestic Relations in Medieval Canon Law*, Grand Rapids, MI: Eerdmans, 2004.

³ According to most medieval theologians, all human beings were created in God’s image, but women, in their embodiment as women, were not. For a discussion of this and the ways in which some medieval religious women responded to this idea, see E. Ann Matter “The Undebated Debate: Gender and the Image of God in Medieval Theology” in *Gender in Debate from the Early Middle Ages to the Renaissance*, Thelma S. Fenster and Clare A. Leeds, eds. The New Middle Ages. (New York: Palgrave, 2002) 41-55.

theologians would explain - returning, as so often in their writings on marriage, to the Garden of Eden - God had drawn Eve not from Adam's head or foot but from Adam's rib, his side, a sign that the two were considered equal partners in God's plan, with the man and women side by side in their union.⁴

This concept of equality strongly influenced medieval Christian teachings on marriage, particularly conjugal fidelity. Each spouse owed the other exclusive sexual privileges, described as ownership of each other's bodies.⁵ In particular, marriage was meant to have a strict equality in terms of what is significantly referred to as the marital debt.⁶ A husband had exclusive sexual rights to his wife, upon demand, and she too had equally exclusive rights to her husband.⁷ This debt implied a duty to sleep with a spouse whenever asked, in almost any circumstances.⁸

⁴ Saint Paul: 1 Corinthians 11:3 "man is the head of woman," Ephesians 5:22 "a husband is the head of his wife," Thomas Aquinas, *Summa theologica*, 1, Q.92 Article 3. Whether the woman was fittingly made from the rib of man? On the contrary, It is written (Genesis 2:22): "God built the rib, which He took from Adam, into a woman." I answer that, It was right for the woman to be made from a rib of man. First, to signify the social union of man and woman, for the woman should neither "use authority over man," and so she was not made from his head; nor was it right for her to be subject to man's contempt as his slave, and so she was not made from his feet. Secondly, for the sacramental signification; for from the side of Christ sleeping on the Cross the Sacraments flowed--namely, blood and water--on which the Church was established.

⁵ Saint Paul: 1 Corinthians 7:3-4: "7:3 Let the husband render the debt to his wife, and the wife also in like manner to the husband. 7:4 The wife hath not power of her own body, but the husband. And in like manner the husband also hath not power of his own body, but the wife."

⁶ Reid, *Power*, 99, 103-105, 115-116; Elizabeth M. Makowski, "The Conjugal Debt and Medieval Canon Law" *Journal of Medieval History* 3 (1977): 99, 100-101; James Brundage, *Law, Sex, and Christian Society in Medieval Europe*, (Chicago: University of Chicago Press, 1996) 242: "The marital debt was one area in which Gratian not only conceded by absolutely insisted that men and women enjoyed equal rights before the law. The wife had every bit as much right to demand sexual dues from her husband as he did from her. This parity in respect to the conjugal debt was Gratian's most emphatic venture in the direction of a doctrine of equality between the sexes."

⁷ The Hebrew Bible also discusses the conjugal duties owed a wife. In this tradition, however, multiple wives were allowed, but one spouse could not be neglected or treated worse than the other: Exodus 21: 11 "If he take him another wife, her food, her raiment, and her conjugal rights, shall he not diminish." *Hebrew English Mishneh Torah*. This requirement has a good deal in common with Islam, which allowed as many as four wives as long as they were treated equally.

⁸ James Brundage, "Implied Consent to Intercourse" and John W. Baldwin, "Consent and the Marital Debt: Five Discourses in Northern France around 1200" both in *Consent and Coercion to Sex and Marriage in Ancient and Medieval Societies*, Angeliki E. Laiou, ed. (Washington, D.C.: Dumbarton Oaks, 1993) 245-256, 257-270.

Further, Christian marriage had to be monogamous, once more following the example of Adam and Eve. Polygamy, to be sure, was not unknown to the Judeo-Christian tradition. The Patriarchs of the Old Testament had often taken many wives, and concubines.⁹ Nevertheless, according to Christian doctrine, polygamy had only been allowed to the Biblical patriarchs because of a special dispensation to “increase and multiply” God’s chosen people the Jews. Such behavior was no longer necessary or appropriate with the arrival of Christ, which brought a new order on earth, and new rules for marriage.¹⁰

Therefore, once a Christian marriage had taken place, the bond was both indissoluble and exclusive. Neither divorce nor repudiation of an unwanted or missing spouse was possible. Nor was extramarital sex permissible. Acts of adultery constituted an unacceptable violation of the exclusive bond between husband and wife.

⁹ The classic examples given throughout the Middle Ages are Abraham, Jacob, David, and Solomon (and the list broadened well beyond to include Biblical figures not usually counted among the patriarchs). This tradition did not always distinguish among wives and concubines, as was the case with Abraham, treating all of these polygamous unions as varied efforts on the part of the Patriarchs to increase and multiple or as acts best understood symbolically, such as the marriages of Jacob to Leah and Rachel. For example, Justin Martyr explained Jacob’s marriage to Leah and Rachel, for example, prefigured the Old and New Testaments. Weak-eyed Leah stood in for the blind Jews, while the beloved Rachel was the spouse who signified the Church. *St. Justin Martyr: Dialogue With Typho*, Thomas B. Falls, trans. (Washington: The Catholic University of America Press, 2003), Chapter 134.

¹⁰ Here, to offer one of countless examples, is the interpretation of the polygamy of the patriarchs by Pope Innocent III as found in X 4.24.8 (translation my own): “We have read that the patriarchs and other just men before the law and after the law had many wives in common, there does not appear to be anything against this in the Gospels nor in the legal precepts, and the pagans are not subject to the discipline of the canons instituted afterwards, just as is set out: It seems that now following their own rites they licitly contract with many, these lawful joinings are not dissolved by the water of Holy Baptism, and so, following the example of the patriarchs, those pagans converted to the Christian faith shall enjoy a plurality of wives. But this seems incompatible and contrary to Christian Faith, where from the beginning one rib was turned into one woman, and it was testified in divine Scripture that because of this a man shall leave his father and mother, and cleave to his wife, and they shall be two in one flesh. It did not say, “three or more” but “two” nor did it say “shall cleave to wives,” but “to wife.” ... You did not ask about these things, but we wish that you and others be instructed about them. And so that truth may prevail over falsehood, without any hesitation we state: that it was never in any way lawful for anyone to have several wives at once, unless it was conceded by divine revelation, which was sometimes custom, and even at other times appropriate, just as Jacob was excused from lying, the Isrealites from theft, and Samson from murder, so the patriarchs and other just men, who are read to have had several wives at once, are excused from adultery...”

All these rules, according to Christian doctrine, applied equally to both husbands and wives. Both husbands and wives were forbidden to commit adultery. Neither husband nor wife could take an additional spouse with a first spouse lived.

Such at least was the doctrinal theory of Christian matrimony. Nevertheless, this egalitarian understanding of marriage emerged in cultural environments heavily imbued with double standards and explicitly different requirements and rules for men and for women. The various cultures into which Christianity spread treated a husband's sexual and marital activities quite differently from those of a wife. In these cultures, the many things forbidden to wives were allowed, or at least tolerated, in husbands. These traditions were thus in real tension with Christian theology, which insisted that both husbands and wives were equally forbidden to violate a marriage bond by adultery or bigamy. Gender equality was inevitably far from attainable.

Indeed, the annals of crime do not reveal either adultery or bigamy to be gender-neutral for pre-modern Europe. In particular, adultery has often been understood as a female crime, regardless of whether or not the law defined it as such.¹¹ However problematic this concept may be, and I have certain problems with it,¹² there can hardly be any doubt that adultery met with a double standard in law, prosecution, and popular perception of the crime. Extramarital activity, when involving a wife, seems to have

¹¹ In Roman law adultery was a crime that only a married woman (as opposed to a married man) could commit. Her sexual partner, however, might be severely punished as well. Jane F. Gardner, *Women in Roman Law and Society*, (Indiana: Indiana University Press, 1991): 127-131; J.A.C. Thomas, "Lex Julia de adulteriis coercendis," in *Études offertes à J. Macqueron*, (Aix-en-Provence, 1970). 637-644.

¹² Even with the important scholarship on adultery in the Middle Ages produced by Carol Lansing, Leah Otis-Cour, and many others, there is a great deal more that remains to be explained and better understood. First, the traditional punishment for a wife suspected of adultery of confinement in a monastery deserves further examination. Second, defining adultery as a female crime, as Leah Otis-Cour has recently demonstrated (see following note), is an extremely limited picture of what seems to have been a far wider range of behavior. In the Middle Ages, while the participation of a married woman in extramarital sex seems much more likely to have excited some sort of judicial or extrajudicial response than extramarital sex involving a married man, judicial punishment seems to have been inflicted more often and more harshly upon the men who were the partners to these women's adultery not upon the women themselves.

provoked a sort of cultural horror that extramarital activity involving a married man did not. A wife's extramarital activity set off different cultural signals, and required a very different cultural response, than did extramarital activity engaged in by a husband. Such gender bias is generally well known, and has been identified in many times and places, including, of course, the European Middle Ages.¹³

Much less-well known, and indeed almost wholly unexplored, is the gendered nature of the crime of bigamy. The crime of being married to more than one living person at once might seem the sort of offence that medieval society might have found just as reprehensible, if not more reprehensible, when committed by a wife as by a husband. However, in the Later Middle Ages, while extramarital sex involving a wife seemed to call for criminal prosecution and punishment,¹⁴ it was the bigamy committed by a husband - and not by a wife - that provoked criminal investigations. Does this mean that women did not marry themselves to more than one living person at once? Not at all. As we will see, women certainly did commit acts that could have been prosecuted as bigamy. However, the crime of bigamy was perceived as a deeply gendered crime, a male crime. The narrative of this crime casts men as villains and women as victims.

Indeed, to a remarkable extent, bigamy was the converse of adultery. The double standard that condemned acts of adultery involving married women reversed when it came to bigamy, focusing instead on husbands. The aim of this article is to describe and explain this striking pattern.

¹³ Leah Otis-Cour, "Lo peccat de la carn: la répression des délits sexuels à Pamiers à la fin du Moyen Âge," *Studi de storia del diritto*, (Milan, 1996) 335-366; Carol Lombard, "Gender and Civic Authority: Sexual Control in a Medieval Italian Town" *Journal of Social History* 31 (1997) 33-59; Roberta Frank "Marriage in Twelfth- and Thirteenth-Century Iceland," *Viator* 4 (1973) 473-484; 479.

¹⁴ Leah Otis-Cour, "De jure novo: Dealing with Adultery in the Fifteenth-Century Toulousain." *Speculum*, (April 2009) 84:2, 347-392, this article offers a compelling argument in favor of a more gender-neutral attitude towards adultery in the Later Middle Ages, one that increasingly also held husbands to account, and one that called for reconciliation instead of prosecution and punishment.

The article will consist of three parts. First, we will review the legal and theological condemnations of bigamy, with special attention to gender. While this article is concerned primarily with the Later Middle Ages, early legislation offers important examples of the fundamental gender biases that influenced not only this early law but also much subsequent legislation. As I will argue, this early legislation had tremendous impact on subsequent understanding of bigamy and on legal practice, and it is important to review it. Second, turning from legal theory to practice I will assess what we know of legal practice concerning bigamy prosecution in the Later Middle Ages, focusing on Northeastern France. Finally, I will ask why bigamy was gendered in the Middle Ages in such a way as to condemn male bigamy and excuse or at least attempt to ignore female bigamy.

Before we can approach the role of gender in bigamy, we must first examine the act of bigamy itself. What I mean by using the term, above all in the context of the Middle Ages, requires some explanation.

“Bigamy” is a term usually used in the modern world to describe either a man who lives with two wives or a traveling-salesman type, with a wife in each of the different towns he travels to. We also might think of a man who had abandoned his wife some years before and remarried without first applying for divorce from the first wife. Finally, we might describe as a bigamist a woman whose husband has disappeared and who remarries without knowing for certain if her husband is dead or alive (and without first filing for divorce), the “Enoch Arden situation” on the model of the wife of Enoch

Arden in Tennyson's poem.¹⁵ All of these forms of remarriage are illegal in much of the modern west, if only rarely the subject of criminal prosecution.¹⁶

In the Middle Ages, among Christians, the same rules for lawful marital practice and the same ban on criminal bigamy applied. But these Christians recognized in addition other sorts of "bigamy." Indeed, the term bigamy, "bigamia" was usually used in the Middle Ages to describe not criminals but widows and especially widowers who remarried following the death of a first spouse. Calling such persons bigamists was not to accuse them of a crime but rather to define their status in medieval society.

Men who wished to become priests, or to rise in the ecclesiastical hierarchy above the rank of subdeacon had to meet a high standard of purity. Among other requirements, if they had been married previously, it could only have been once, to one woman "unius uxoris vir" (the husband of one wife).¹⁷ That woman herself had to have been unmarried prior to her marriage. If she was a widow at the time of her marriage, her second husband

¹⁵ The "Enoch Arden defence" would usually excuse a spouse from criminal prosecution for bigamy. For more on the "Enoch Arden Doctrine" or "Enoch Arden Statutes" see: Samuel Adams, "Two Score and Three of Enoch Ardens," *Journal of Family Law* 5 (1965): 159-169; Charles Feit, "The Enoch Arden: A Problem in Family Life" *Brooklyn Law Review* 6 (1937).

¹⁶ For examples of bigamy prosecution in nineteenth and early twentieth-century America, see Lawrence M. Friedman, "Crimes of Mobility" *Stanford Law Review* 43:3 (Feb., 1991): 637-658; Beverly Schwartzberg, "Lots of Them Did That": Desertion, Bigamy, and Marital Fluidity in Late-Nineteenth-Century America." *Journal of Social History* 37:3 (Spring 2004) 573-600; and *idem* "Grass Widows, Barbarians, and Bigamists: Fluid Marriage in Late Nineteenth-Century America" (University of California, Santa Barbara, 2001); for a sense of how American society at that time viewed bigamy and especially polygamy see Sarah Barringer Gordon, *The Mormon Question: Polygamy and Constitutional Conflict in Nineteenth-Century America*. (Chapel Hill: University of North Carolina Press, 2002). For a study on modern, western perceptions of bigamy (and polygamy), see Mélanie Méthot, "Bigamists Meet Polygamists: Confronting the popular image of bigamists in Canadian society" *The History of the Family* 12 (2007) 169-177.

¹⁷ The key biblical texts used in Christian law and theology to define bigamous status are: Leviticus 21:13-14 and Ezechiel 44; Timothy 3:2; Titus 1: 5-7; an example of a medieval interpretation is found here: Peter Damian, Letter 28 to Hermit Leo of Sitria, in *Die Briefe des Petris Damiani*, K. Reindel, ed. *Momumenta Germaniae Historica: Die Briefe der deutschen Kaiserzeit* 1:4 (Munich, 1983) 248-78; X 1. 21. 5. There does not seem to have been any comparable distinction in status for women. As far as I know, formerly married women could easily advance as high as abbess. The only limitations on who might be abbess depended on a person's status as legitimate. Men, who could rise to higher ecclesiastical heights than women, were the only ones whose prior marital activity might bar their progress. Women were already excluded from ordination by their gender.

became a “bigamist.” Any man whose prior marital history similarly failed to meet this high standard was considered a bigamist and permanently excluded from ecclesiastical advancement.¹⁸ This rule tells us a great deal about the profound importance of the idea of marriage as an exclusive and binding monogamous union in the medieval west.

We see the same insistence on the importance of monogamous and indissoluble marriage accorded to the marriages of the laity. All sorts of remarriage, criminal or not, faced sanctions in ecclesiastical and secular law, as well as in popular morality. Priests were ordered not to offer a special benediction called the nuptial blessing for marriages contracted by a widow or a widower.¹⁹ The nuptials of a widow or widower might be disrupted by riotous charivari.²⁰ Finally, widows who remarried often faced some legal hardships.²¹ What all of this meant was that any sort of second marriage was potentially suspect.

¹⁸ Significantly, the status of “bigamist” also limited a cleric’s recourse to ecclesiastical justice. “Bigamous” clerics could not claim benefit of clergy and were thus left to the harsher justice of a secular court. David d’Avray, *Medieval Marriage: Symbolism and Society*, (Oxford: Oxford University Press, 2005) 131-138; Stephan Kuttner, “Pope Lucius III and the Bigamous Archbishop of Palermo” in *The History of Ideas and Doctrines of Canon Law in the Middle Ages 7* (London: 1980) 409-453; J. Vergier-Boimond, “Bigamie (l’irrégularité de)” in R. Naz, ed. *Dictionnaire de droit canonique*, 2 (Paris, 1937) 853-888. Second Council of Lyons, 1274, C. 16. “Putting an end to an old debate by the present declaration, we declare that bigamists are deprived of any clerical privilege and are to be handed over to the control of the secular law, any contrary custom notwithstanding. We also forbid bigamists under pain of anathema to wear the tonsure or clerical dress.” Norman P. Tanner, ed. and trans. *Decrees of the Ecumenical Councils*, v.1 (Washington D.C.: Georgetown University Press, 1990) 311.

¹⁹ G Mollat, “La bénédiction des secondes noces” *Etudes d’histoire de droit canonique dédiées a Gabriel Le Bras*, 2 vols. (Paris: Sirey, 1965), 2:1337-39; James Brundage, “The Merry Widow’s Serious Sister: Remarriage in Classical Canon Law” in *Wife and Widow in Medieval England*, Sue Sheridan Walker, ed. (Ann Arbor: University of Michigan Press, 1993) 23-48.

²⁰ These carnivalesque popular rituals, typically involved a procession of rowdy singers and hecklers “serenading” a bride and groom, often on their wedding night. While previously understood as the punishment for a widowed older man marrying a young bride, the charivari has recently been interpreted as a response to remarriage of all sorts. See: C. Karnoouh, “Le charivari ou l’hypothèse de la monogamie,” in *Le charivari*. Actes de la table ronde organisée par l’EHESS et le CNRS. Paris, 1977, J. Le Goff, J.C. Shmitt (Paris-The Hague, 1981) 38; Claude Gauvard, *‘De grace especial’: Crime état et société*, (Paris: Publications du Sorbonne, 1991) 591.

²¹ Patricia Skinner, “The Widow’s Options in Medieval Southern Italy,” in *Widowhood in Medieval and Early Modern Europe*, ed. S. Cavallo and L. Warner (London, Longman, 1999); Barbara A. Hanawalt, ed., *Women and Work in Pre-Industrial Europe* (Bloomington: Indiana University Press, 1986); Barbara A. Hanawalt, “Remarriage as an Option for Urban and Rural Widows in Late Medieval England,” in *Wife and*

The sheer variety and range of behaviors that were considered bigamous complicates any discussion of the crime of bigamy for the Middle Ages. As James Brundage explains: “The law concerning second marriages was considerably confused by the conventional habit of using the same term, bigamy, to refer indifferently to simultaneous marriage to two spouses and to remarriage following the death of an earlier spouse.” The thirteenth-century canonist Hostiensis made some effort at resolving this ambiguity by distinguishing between “true” bigamy (two at once) and “interpretive” bigamy (remarriage after death or divorce).²² Whatever they may have called it, canonists and theologians unanimously rejected as completely illegal what Hostiensis described as true bigamy.²³

In order to bring some clarity to this discussion, this article will make a distinction between two kinds of criminal bigamy.²⁴ This crime of bigamy, “true bigamy,” can be understood as having taking two main forms, overt and covert. The article will describe as “overt” bigamy the form of bigamy committed by a person marries two spouses at once for the purpose of maintaining and cohabiting with both, all in one house or in two separate households, on the model of polygamous Muslim or Jewish families.²⁵ “Covert” bigamy will be used to describe the bigamy committed by a married person whose spouse

Widow in Medieval England, ed. Sue Sheridan Walker (Ann Arbor: University of Michigan Press, 1993), 141-64; Martha C. Howell, *The Marriage Exchange: Property, Social Place, and Gender in Cities of the Low Countries, 1300-1550* (Chicago: University of Chicago Press, 1998), 109-122, 146, 151-52, 171-172; André Rosambert, *La veuve en droit canonique jusqu'au xiv^e siècle* (Paris, 1923) 145; Christiane Klaipisch-Zuber *Women, Family, and Ritual in Renaissance Italy*, (Chicago: University of Chicago Press, 1985) 125.

²² Hostiensis, *Summa aurea*, lib. 1 tit. *De bigamis* §3, fol. 40va-b. Hostiensis describes here six different kinds of bigamy.

²³ Brundage, *Law*, 478.

²⁴ Lawrence Friedman, in his “Crimes of Mobility” has a typology of bigamists that distinguishes between swindlers on the one hand and restless and faithless husbands on the other. Unfortunately, the nature of the fifteenth-century court records used for this study do not allow access to the motivations of the bigamists examined here. We can assume that they were for the most part restless and faithless husbands, but certainly a few could have been swindlers as well.

²⁵ The canon law of marriage required monogamous and indissoluble marriage only of Christians, presumably leaving any polygamous Muslim and Jewish families unmolested, at least in that regard.

is absent, but still alive, and who nevertheless takes a new spouse. Covert bigamy might be practiced by an abandoned wife, a deserting husband, or by spouses who had separated informally due to mutual discontent. Covert bigamists did not seek to maintain two households at once. For these bigamists their first marriages had ended *de facto*, though not *de jure*, as their first spouses still lived.²⁶

The medieval Christian understanding of marriage condemned both overt and covert bigamy. Any such doubling of the marital bond, undertaken overtly or covertly, was considered a fundamental violation of the sacrament of marriage. Regardless of the absence or presence of a spouse, a married person could never remarry. In principle, both overt and covert acts of bigamy were crimes.

Nevertheless, in practice, the bigamists prosecuted in medieval, Christian Europe were only accused of covert - rather than overt - bigamy. While some men managed to contract marriage with a third woman while already having married two other living spouses, no man, to our knowledge, was prosecuted for cohabitating with two or three wives. The bigamists prosecuted in the Middle Ages moved from one marriage to another in a sort of serial monogamy.

It is important to mention another chief factor in the medieval, Christian prosecutions of bigamy as sin and crime. Christian law and theology focused heavily on the will of the actor. Indeed, intention or belief was always one of the most important determinants of a sin or a crime in canon law.²⁷ For bigamy to be a criminal act, it had to be undertaken knowingly. A bigamist had to know that a first spouse lived, or at least lack proof of death, for the act of remarriage to be criminal. This meant that unintentional

²⁶ Occasionally errant spouses did make their way back home to a first spouse, usually having severed relations with the second, sometimes by choice and sometimes after prosecution for bigamy.

²⁷ Stephan Kuttner, *Kanonistische Schuldlehre*, (Rome: Vatican, 1935) see especially 299-333.

bigamy was treated as innocent. A spouse who believed, or better still had proof, of widowed status and remarried, was held blameless as long as he or she acted out of ignorance and renounced the bigamous marriage, even if this belief or evidence subsequently proved false. As we will see, much of the interpretation of what made an act of remarriage a crime - in law, in legal practice, and in daily life - was often heavily gendered.

1. Bigamy in the Pre-Modern Western Legal Tradition

Let us now turn to the treatment of bigamy in pre-modern legal texts. The four most important lessons that we can glean from the legal tradition on bigamy and its relationship to gender are as follows. First of all, the earliest law, both secular legislation and ecclesiastical doctrine (that is; Roman law, Germanic codes, papal decrees, theological treatises, and the decrees of early church councils) all expressed a predominant concern with the regulation of male bigamy. Men who married more than one woman served as the chief intended targets of these various efforts dating from Late Antiquity (if not before) up to the eleventh century.

Second, alongside this body of law that aimed at restraining male bigamy, we find a concern over remarriage and bigamy voiced primarily as a question of how to handle the wife of an absent husband. Should she be permitted to remarry, and if so, in what circumstances? Should she be prevented from remarriage? Should she be punished for bigamy if she has remarried and her first husband returns and claims her as his wife?

Third, as questions on how to handle the wives of missing men persisted into the Middle Ages, there was a shift of major importance in the canon law of proof. Up through the late-twelfth century, the issue of wrongdoing was treated as a matter of faith

and belief. If a wife with an absent husband remarried, and claimed that she believed her first husband had died, she was held blameless. Even if her first husband lived and returned home, she was without fault and not to be punished as long as she returned to him. With the development of an increasingly sophisticated legal system, however, canon lawyers came to rely more on legal principles of proof than on what a wife said that she believed. Beginning in the final decades of the twelfth-century we find new rules. The wife of an absent husband should not proceed to contract a new marriage without first obtaining proof that her first husband had died. This requirement of proof, which was incorporated in synodal statutes issued throughout medieval Christian Europe, applied not only to wives, but also to husbands. Both a presumed widow and presumed widower had to prove that a prior spouse had died before marrying again.

This requirement of proof was obviously a product of the burgeoning medieval law, which has been the subject of intense study for decades.²⁸ Nevertheless, it is important to recognize that it had a significant impact outside the narrow limits of the law of evidence. The new proof requirements imposed upon those who wished to marry inevitably altered the dynamic of the prosecution of bigamy on the basis of the *intent* of the parties. In practice the new requirement allowed ecclesiastical courts direct access to evidence of intent on the part of some accused bigamists. The requirement of written or testimonial proof as a bar to matrimony created a check to subsequent marriage for those who hoped to enter into bigamous unions. If such persons resorted to the use of false witnesses and fraudulent documents to “prove” a spouse’s death in order to remarry, their

²⁸ See Jean-Philippe Lévy, *La Hiérarchie des preuves dans le droit savant au Moyen Âge depuis la Renaissance du droit romain jusqu’à la fin du XIVe siècle* (Paris: Librairie de Recueils Sirey, 1939); John H. Langbein, *Torture and the Law of Proof: Europe and England in the Ancien Regime* (Chicago: University of Chicago Press, 2006).

behavior revealed criminal intent. Those men and women found guilty of such acts of fraud lost any chance of pleading ignorance or negligence in their act of remarriage. The introduction of this requirement of proof meant that the courts could now interpret an act of bigamy as willful much more easily than had previously been the case, when spouses had been permitted to remarry based on a good-faith belief and without as extensive an investigation prior to a second marriage.

Fourth and finally, from the thirteenth century on we find both secular and ecclesiastical laws recommending specific punishments for bigamy. While jurisdiction was often in dispute, the ecclesiastical courts seem most often to have won out, at least, that is, until the sixteenth century. The ecclesiastical laws, calling for public humiliation and flogging, are the laws that we will see applied in practice in the Middle Ages. Such are the four major issues governing the legal position taken on bigamy with respect to gender. What follows is my evidence for these claims.

Until the Later Middle Ages, we have no surviving records of bigamy trials. Often a papal decree or imperial Roman edict describes what may well have been an actual trial, but to witness the actual prosecution and punishment of a bigamist we must await the fourteenth and fifteenth centuries.

Nevertheless, if direct evidence of prosecution of bigamy dates only to the Later Middle Ages, we can reconstruct a legal and theological tradition of opposition to bigamy that is much older.²⁹ Greco-Roman tradition firmly endorsed monogamous marriage,

²⁹ There are also some spurious stories about bigamy, invented for unknown purposes in one case, and for a more obvious case in another. The fifth century Emperor Valentinian was thought to be a polygamist for much of the Middle Ages and well into the sixteenth century. It was believed that he changed to laws to allow for his own polygamy, and acted upon this change. This story is quite untrue, but was nevertheless widely believed to be true for some time, and by great and many scholars. As Edward Gibbon observes:

generally regarding polygamy as a barbaric practice.³⁰ Palestine at the time of Jesus' birth was a part of the Hellenistic Oikumene, in which serial monogamy was the dominant norm of marriage practice. Marriages were usually monogamous, but far from indissoluble. Death, divorce, or disappearance all might sever marriage ties, and newly separated spouses were generally free to remarry. In this environment, Jews had also largely abandoned polygamous practices, showing a growing inclination towards serial monogamy.³¹ Thus the Greco-Roman tradition of serial monogamy, which allowed divorce but frowned upon polygamous marriage, had also encouraged a Jewish trend towards serial monogamy. All of these cultures treated marriage as a dissoluble union. The Christian ideal of monogamy was thus compatible with the marriage practices of these other cultures, but Christian indissolubility came into sharp conflict with the practices of divorce and remarriage.

Out of the many ancient legal tradition, Roman law is especially important for our purposes in this article because subsequent Christian legal thought valued it so highly. How Romans thought about bigamy was of great interest and study in pre-modern Europe, if also largely reinterpreted to suit Christian and contemporary secular needs. As a result what follows is a shameless conflation of times and attitudes, the vast range of the centuries of thought that came to be received by later generations as Roman law.

“Socrates (l. iv. c. 31) is the only original witness of this foolish story, so repugnant to the laws and manners of the Romans, that it scarcely deserved the formal and elaborate dissertation of M. Bonamy, (Mem. de l'Academie, tom. xxx. p. 394-405.).” Gibbon, *Decline and Fall of the Roman Empire*, Vol. 2, Chapter 25, Part 7, note 155. http://www.sacred-texts.com/cla/gibbon/02/daf02054.htm#fn_1504
See also Luigi Sandirocco, “Binae nuptiae et bina sponsalia.” *Studia et documenta historiae et iuris*, 70 (2004) 167-186.

³⁰ Sandirocco, “Binae,” 165-216; Eduardo Volterra, “Per la storia del reato di bigamia in diritto romano” in *Studi di Umberto Ratti* (Liman: A Guiffre, 1934) 425-29.

³¹ Anthony Tomasino, *Judiasm Before Jesus*, (InterVarsity Press, 2003) 228.

Surveying these various sources from Late Antiquity into the Middle Ages and beyond, we find that western legal and theological works on bigamy maintain an interest in two major issues. The character of both these issues is usually, if not always, gendered. One is on the subject of the spouse of a missing person, usually a wife whose husband has gone away to war and has not returned. These texts ask what rights she would or would not have to remarry in his absence. In the second category, we find not an abandoned wife but a bad husband, a man who willfully abandons his wife, neglecting his duties to her, and takes a new wife, deceiving her and depriving her of a true and lawful and sacramental marriage.

To begin with Roman imperial legislation, we find laws menacing those who contract marriages bigamously with *infamia*, that is, degradation in status and deprivation of certain rights normally held by Roman citizens.³² Those laws barred all Roman citizens, in gender-neutral terms, from bigamous marriages, and from contracting bigamous marriages on the behalf of someone else, as a *pater familias* might contract on the behalf of a child, on pain of infamy.

Other laws, however, were not gender neutral. The Emperors Valerian and Gallienus issued the following ruling in 258 (C 9.9.18): “official disgrace (*infamia*) undoubtedly attends a man who has two wives. In this matter we considered not just the enforcements of the law forbidding our citizens to contract multiple marriages, but their mental intent. Nevertheless, in the case of the man who sought to marry you by pretending to be unmarried when he had another wife in a province, a lawful accuser may

³² Inst. 1. 10. 6.; Dig. 3. 2. 1; Dig. 40. 2. 15.

Dig. 3.2.1 *Iulianus libro primo ad edictum Praetoris verba dicunt*: “*infamia notatur ... quive suo nomine non iussu eius in cuius potestate esset, eiusve nomine quem quamve in potestate haberet bina sponsalia binasve nuptias in eodem tempore constitutas habuerit.*”

also charge him with criminal debauchery (*stuprum*) from which you are insulated because you thought yourself to be a wife.”³³

This law, evidently written in answer to the request of a woman whose aspiring husband was already married another woman before her, assured her that she was blameless, but that her would-be husband should be prosecuted for *stuprum*.

As for wives who committed bigamy, we have decision from the jurist Papinian arguing that a wife who pretended her husband had died in order to remarry should be punished as an adulteress.³⁴ Men, of course, could not be prosecuted as adulterers in Roman law, as the Roman understanding of adultery focused exclusively on extramarital sexual activity involving wives. Wives and husbands were also not treated alike when it came to bigamy. Husbands risked degradation and prosecution for *stuprum*, wives risked prosecution for adultery.

Most Roman law, however, was concerned with male, rather than female, bigamy. In the sixth century Code issued by the Emperor Justinian, we find in book five “de incestis et inutilibus nuptiis” a decree of the late third century Emperors Diocletian and Maximian. The decree forbade all of their subjects, not just Romans, to marry polygamously. No men, as it explicitly says, may have two wives. No mention is made of a wife taking multiple husbands.³⁵

As for the wife of a man who was taken captive or disappeared, her marriage technically ended with her husband’s captivity. A captive might hope to become free and

³³ Bruce Frier and Thomas McGinn, *A Casebook on Roman Family Law* (Oxford University Press, 2003) 38.

³⁴ Luigi Sandirocco, “Binae” 166; Corbett, *The Roman Law of Marriage* (Oxford: Oxford University Press, 1930) 143. Gardner, *Women*, 91-3.

³⁵ Codex Justinianus, 5.5.2, 11 December 285: Neminem qui sub ditione sit Romani nominis, binas uxores habere posse, vulgo patet: cum etiam in edicto praetoris hujusmodi viri indamian notati sint: quamrem competens iudex inultam esse non patietur.

regain his citizenship and some of his rights, but the restoration of his marriage was not guaranteed to him.³⁶ A wife had to consent anew to marry a husband taken captive and restored to her. This legal tradition would be rejected in Christian canon law, but it may well have had some role in forming the attitude of tolerance that would often appear in canonical treatments of women who remarried in the absence of their husbands.

Turning to ecclesiastical sources, we find vigorous condemnations of bigamy from the Church Fathers. Tertullian, Jerome, Ambrose, and Augustine, however their views otherwise diverged, all shared some measure of horror at the idea that Christian marriage might include more than one living spouse at a time.³⁷ Even remarriage for a widow or widower provoked a shudder. All four were to a greater or lesser degree at best reluctant advocates of the Pauline rule that permitted widows and widowers to remarry.³⁸

Early church councils, dating from the third century, also declaimed against the taking of multiple spouses. One of the earliest councils prohibited first of all married clergy but also married laymen from additional wives, and also from taking concubines.³⁹

³⁶ D 49.15.14.1 Non, ut pater filium, ita uxorem maritus iure postliminii recipit: sed consensu redintegratur matrimonium.

³⁷ Tertullian stands at the most extreme in favor of monogamy and disfavor for all other kinds of marriage; Jerome is firm in favor of either virginal and permanent chastity or at least chaste widowhood; Augustine is willing to concede much more goodness to marriage and even to remarriage, but agrees that a widow does better not to remarry. For examples see: Tertullian, *Exhortation to Chastity* Chapter 5. Ante-Nicene Fathers vol. 4. *Fathers of the Third Century: Tertullian*, Part Fourth. Rev. S. Thewall, trans. See also *Tertullian: Treatises on Marriage and Remarriage*, T.C. Lawler, Walter J. Burghardt, and William P. Le Saint, eds., William P. Le Saint, trans. (The Newman Press, 1951), 51; PL 2: 920A-B.

Jerome, *Contra Jovianum*, Book 1: 46 and Letter 123 “To Ageruchia” in *Jerome: Letters and Select Works*, W.H. Fremantle, G. Lewis, and W.G. Martley, trans. Select Library of the Nicene and Post-Nicene Fathers of the Christian Church. Second Series. Philip Schaff and Henry Wace, eds. Vol. 6 (Grand Rapids, MI: Eerdmans, 1892) 230-232. Augustine, *De Bono coniugali* and *De Bono viduitatis*, Latin editions: PL 40.

³⁸ 1. Corinthians 7-9 “Now to the unmarried and the widows I say: It is good for them to stay unmarried, as I am. But if they cannot control themselves, they should marry, for it is better to marry than to burn with passion.”

³⁹ Collection of 84 canons “arabiques” attributed to the council of Nicea 24. “Nemo debet duas uxores simul ducere, nec uxori suae alteram mulier propter voluptatem & desiderium carnis subintroducere, projiciendo se in periculum peccandi, versando cum pluribus ad concupiscentiam nec ad semen suscipiendum, sicut Deus ordinavit: & qui hoc fecerit, si fuerit sacerdos, prohibeatur ministerio sacrificandi & communione fidelium quo useque ejiciat domo secundam & debet retinere primam. Idem judicium est de

Married men could have neither more than one wife nor a concubine in addition to a wife. Noticeable here once more is the absence of any stricture on female marital practice. Nothing is said about wives having more than one husband or having a male concubine in addition to her husband. In the ninth century we find the same condemnation of (only) male bigamy, and of men taking both a wife and a concubine.⁴⁰ This does not imply, of course, that early church councils condoned female bigamy. It suggests only that these councils perceived male bigamy as of greater concern.

As for women and their marriage practices, instruction on how to handle female bigamy is found in a letter of Pope Leo I. Writing in the second half of the fifth century, Leo I explained that a woman who remarried thinking her husband had died should be compelled, on penalty of excommunication, to return to her first husband. If she willingly returned to her first husband, however, she was to be considered blameless and should not in any way be punished. Thinking a husband had died, or being compelled by necessity to remarry as a husband had been taken captive or disappeared, was sufficient to absolve a woman, as long as she rejoined her first husband upon his return.⁴¹ As we will see, this attitude would change considerably in the course of the Middle Ages.

laicis.” Canon 24, Concilii Nicaeni Versio Arabica. Hardouin, *Acta conciliorum et epistolae decretales ac constitutiones summorum pontificum*, 1 (Paris: Ex Typographia Regia, 1714) 467; First council of Toledo c. 17: “Si quis habens uxorem fidelis, concubinam habeat, non communicet. Qui non habeat uxorem, & pro uxore concubinam habet, a communione non repellatur, tantum ut unius mulieris aut uxoris, aut concubina, ut ei placuerit conjunctione contentus. Alias vivens abjiciatur, donec definat & ad paenitentiam revertatur.” *Concilios visigóticos e hispano-romanos*. José Vives and Tomás Marín Martínez, eds. (Barcelona: Consejo Superior de Investigaciones Científicas, Instituto Enrique Flórez, 1963) 573.

⁴⁰ Pope Eugenius III, canon 38 of the Council of Rome (814): “Nulli liceat uno tempore duas habere uxores, uxorem-ve & concubinam: quia cum domni non sit lucrum, anima sit detrimentum. Nam sicut Christus castam observat ecclesiam, ita vir castum debet habere conjugium.” *Catholic Church Councils*, Mansi et al., eds. 14 (Paris: H. Welter, 1901-27) 1009.

⁴¹ C. 34. 1. “Utraque questio terminatur auctoritate Leonis Papae, qui scribens Nicetae Aquilegensi Episcopo [epist. LXXVII. c. 1. et sequentibus] ait: C. I. Que alii nupserit, putans uirum suum mortuum esse, illo redeunte ad priorem redire cogatur. Cum per bellicam cladem, et per grauissimos hostilitatis incursus ita quedam dicatis diuisa esse coniugia, ut, abductis in captiuitatem uiris, feminae eorum remanserint destitutae, que uiros proprios interemptos putarent, aut ab iniqua dominatione numquam

In sum, from Late Antiquity into the Early Middle Ages, the earliest prohibitions on contracting marriage to two living spouses are almost exclusively concerned with male behavior. The few sources that comment on female bigamy stick to the question of what to do about the wives of absent or missing men. Roman imperial legislation, early church councils, and papal letters all forbade men the taking of more than one wife at once. Husbands, these texts stipulate, must not marry more than one woman. Why is this so? Why husbands and not wives?

We find an answer to this discrepancy in social practice, where we discover a good deal of evidence that explains this evident gender bias. Roman customs insisted upon monogamous marriage generally, to be sure. However, the Romans had within their empire a good number of polygamists, and these peoples were surely among the targets of the legislation issued by Diocletian and Maximinian.⁴² Additionally, despite Tacitus'

crederent liberandos, et in aliorum coniugium sollicitudine cogente transierunt; cumque, statu rerum auxiliante Domino in meliora conuerso, nonnulli eorum, qui putabantur perisse, remearunt: merito karitas tua uidetur ambigere, quid de mulieribus, que aliis sunt iunctae uiris, a nobis debeat ordinari. Sed quia nouimus scriptum, quod a Domino iungitur mulier uiro, et iterum agnouimus preceptum, ut quod Dominus iunxit homo non separet, necesse est, ut legitimarum federa nuptiarum redintegrandam credamus, et remotis his, que hostilitas intulit, unicuique, quod legitime intulit, reformetur, omnique studio procurandum est, ut recipiat unusquisque quod proprium est. §. 1. Nec tam culpabilis iudicetur et tamquam alieni iuris peruasor habeatur, qui personam eius mariti, qui iam non esse estimabatur, assumpsit. Sic enim multa, que ad eos, qui in captiuitatem ducti sunt, pertinebant, in ius alienum transire potuerunt, et tamen plenae iusticiae est, ut eisdem reuersis propria reformentur. Quod si in mancipiis, uel in agris, aut etiam in domibus, ac possessionibus recte seruatur, quanto magis in coniugatorum redintegratione faciendum est? ut quod clade bellica turbatum est pacis remedio reformetur. Et ideo, si uiri post longam captiuitatem reuersi ita in dilectione suarum coniugum perseuerant, ut eas cupiant redire in suum consortium, omittendum est, et inculpabile iudicandum est quod necessitas intulit, et restituendum quod fides poscit. Et infra: [c. 4.] §. 2. Sin autem aliquae mulieres ita posteriorum uirorum amore sunt captae, ut maluerint his coherere, quam ad legitimum transire consortium, merito sunt notandae, ita ut ecclesiastica communione priuentur, que de re excusabili contaminationem criminis elegerunt, ostendentes, sibimet pro sua incontinentia placuisse quod iusta remissio poterat expiare. Redeant ergo in suum statum uoluntaria redintegratione coniugia, neque ullo modo ad opprobrium malae uoluntatis trahatur quod condicio necessitatis extorsit, quia, sicut hae mulieres, que reuerti ad uiros suos noluerint, inopiae sunt habendae: ita illae que in affectum ex Deo initum redeunt, merito sunt laudandae."

⁴² "While monogamy was the rule in the west, polygamy was or had been practiced in Thrace, Lybia, Armenia, Syria, and perhaps Palestine and Egypt..." *Annotated Justinian Code*, second edition. Fred H. Blume, Timothy Kearley, ed. Book 5.5. found at: <http://uwacadweb.uwyo.edu/blume&justinian/Code%20Revisions/Book5rev%20copy/Book%205-5rev.pdf>

praise for the monogamous Germans he purportedly had observed,⁴³ late antiquity saw the influx of new “Germanic” peoples. These diverse peoples included what seems to have been a mostly-monogamous general populace, but also powerful men who maintained several wives and concubines.

In short, the pressing social problem of polygamy was a problem with male, and not female, behavior. Early Medieval ecclesiastical officials and Christian political leaders wrote in a world where polygamy - and not ever polyandry - was in active practice.⁴⁴ With both powerful less-than ideally Christianized kings and nobles keeping multiple wives, and also with Muslim, Jewish, and other cultural groups endorsing or at least permitting men the keeping of more than one wife, we can understand why male bigamy may have been an overriding concern in early medieval Christian law and theology. Women could not have openly practiced bigamy in this time and place. If they did so covertly, in the absence of a first spouse, this still may have seemed less problematic than the overtly polygamous practices of men, whose behavior would have seemed blatantly unchristian.

The social practice of open polygamy, however, would not persist unchange in the Middle Ages. By the end of the ninth century open polygamy lost out in favor of ostensibly monogamous marriage. The Merovingian kings and nobles were the last group

⁴³ Tacitus, *Germania*, 18, See for example, *The Germania*, D. R. Stuart, ed. (New York, 1916).

⁴⁴ The first reference I have found to the reportedly polygynous women of Medes is in Jean de Coras' account of the trial of the imposter Arnaud de Tilh, *Arrest Memorable du Parlement de Tolose* (Lyon: Barthelemi Vincent, 1596) 107: Annotation 96: “Pretexte de mariage, estoit il veritablement, car de legitime conionction, viuant Martin Guerre, n'en y pouuoit auoir par plusieurs raisons, desquelles en y a deux principales. La premiere, qu'une femme ne peut auoir deux maries, voire n'est croyable qu'elle les desire, ou san fut au pays des Medes, ou les femmes sont nourriers a telle opinion, qu'il ne leur peut a dernire chose plus heureuse, ni honorable, que d'auoir chacune plusieurs maris: voire d'en auoir moins de cinq leur semble estre cose comme ignominieuse, calamiteuse et miserable...”

of “Christians” known to openly practice polygamy in Western Europe.⁴⁵ Their successors to power, the Carolingians, conformed at least outwardly to Christian marriage norms by making broad and often blatantly abusive exploitation of the canon law of marriage, which included a number of prohibitions on whom one could lawfully marry.⁴⁶ Creative interpretation and application of these rules allowed powerful men and women to practice a sort of serial monogamy in marriage, setting aside one spouse in favor of another.⁴⁷ None of this, moreover, excluded sexual profligacy outside of marriage. Adulterous relationships of all kinds continued alongside these theoretically monogamous marriage practices. Such was the model of Christian behavior among nobles and royalty well into the High Middle Ages. Even in the thirteenth century and beyond nobles and royalty continued to exploit the canon law of marriage to gain annulments of their marriages, but they operated within an increasingly restricted range of opportunity. Meanwhile, open polygamy remained in practice only in Muslim and Jewish communities of Western Europe. Even among Ashkenazi Jewish communities, arguably influenced by their Christian neighbors, polygamy was banned in the mid-twelfth century.⁴⁸ As for the medieval western Church, united under a Roman pope with increasingly powers and with an ostensibly celibate clergy, monogamous and

⁴⁵ Regine Le Jan, *Famille et pouvoir dans le monde franc (VIIe-Xe siècle): essai d'anthropologie sociale* (Paris: 1995); Suzanne Wemple, *Women in Frankish Society: Marriage and the Cloister, 500-800*. The Middle Ages (Philadelphia: University of Pennsylvania Press, 1985); Brundage, *Law*, 124-175.

⁴⁶ Wemple, *Women*, 88-96.

⁴⁷ Martin Aurell, *Les Noces du Comte: mariage et pouvoir en Catalogne (783-1213)* (Paris: Publications de la Sorbonne, 1995); Christof Rolker, “Kings, Bishops and Incest: Extension and Subversion of the Ecclesiastical Marriage Jurisdiction Around 1100” *Discipline and Diversity*, Studies in Church history 43 (Rochester, N.Y.: Boydell and Brewer. 2007) 159-168; Constance Bouchard, “Consanguinity and noble marriages in the tenth and eleventh century.” *Speculum* 56 (1981) 268-287.

⁴⁸ Avraham Grossman, *Pious and Rebellious: Jewish Women in Medieval Europe*, Jonathan Chipman, trans. (Hanover, N.H: Brandeis University Press, 2004) 68-88.

indissoluble marriage took a central role in ecclesiology and a dominant role in law, theology, and even in daily life.

Interestingly, once all Christians, even men, had to give up open bigamy or polygamy, the laws prohibiting bigamy begin to take a gender-neutral tone, condemning both male and female offenders. However, even as the law became tougher on women bigamists, as we will see in the third second of this article, prosecution remained largely a male affair.

The period of 1000-1500 saw considerable change in marriage laws and in practice, with law and social norms adopting a strict interpretation of both monogamous and indissoluble marriage. The historical background and circumstance in which these rules emerged requires some explanation.

The series of efforts at transforming western Christendom that would come to be known as the Gregorian Reform arrived at the level of the papacy with the support of Emperor Henry III (1017-1056). With the backing of this secular leader, the reformers insisted on a separation of clergy from worldly influence and practices.⁴⁹ They rejected secular involvement in appointments to clerical office, and asserted that the Church had exclusive jurisdiction over the clergy and sacraments, including marriage. They also launched a program of improving the morals of the Christian community as a whole. The newly powerful and centralized Church attained unprecedented political and institutional strength to muster in its efforts to regulate marriage.⁵⁰ The reformed Church also gained in intellectual strength: the increased study and systemization of law, canon law as well as Roman law, and the study of theology would shape the doctrine both conceptually and

⁴⁹ Kathleen Cushing, *Reform and the Papacy in the Eleventh Century: Spirituality and Social Change* (Manchester: Manchester University Press, 2005).

⁵⁰ Gabriel Le Bras, "La doctrine du mariage" in *Dictionnaire de Théologie Catholique* (Paris, 1927) 9:2123.

in practice. All this led to much higher expectations for compliance and sanctions for non-compliance.

In particular, the reformers showed considerable concern over multiple marriage, both in theory and law as well as in practice. Working these teachings out led reformers to the analysis of questions of some legal subtlety. For example, according to Church doctrine, a widow could remarry without fear of prosecution. But who counted as a widow? Here the canonists would eventually settle on a lawyerly answer. A widow was a woman who could provide proof that her husband had died. Without such proof, however, those married already to a living spouse, a spouse not proven to be dead, could not enter into any other marriages. The bonds of matrimony could only be dissolved by death.

Throughout this period canonists did not hesitate to condemn bigamy, recommending punishment and declaring in all cases where a first marriage had been made that the first marriage was valid and the second invalid.⁵¹ Synodal statutes repeated these prohibitions in discussions of the impediment of prior bond.⁵² No Christian could

⁵¹ X 4.1.19, X 4.1.22, X 4.4.1. All three receive careful interpretation from Hostiensis in his *Lectura*. See also his *Summa aurea*, where Hostiensis discussed assigning seven years penance to a person who knowingly married someone engaged to another. *Summa Hostiensis* (Turin: Bottega d'Erasmus, 1963) 1300. Lib. iv tit. de sponsa duorum. § 7 “Contraheutes bina sponsalia quam penam patiantur. C. Item qui scienter ducit desponsatam alteri poenitentiam vii annorum agere debet ieiunando.”

⁵² For example, the statutes of Langres: Bibliothèque Sainte Geneviève ms. OE 739 *Statuta synodalia Langres, Cardinalis Barensis* (1404) f.15r: “Trecesimo octavo. Ligamen quo quis alteri est iam per matrimonium ligatus vel per sponsalia impedit matrimonium. Si quidem ligatus uxore vivente non potest aliam ducere alias adulterium committit. Et hoc etiam in antiqua lege erat quo quis nisi per revelationem dei aut instinctu spiritus sancti sicut in patriarchis non poterat duas uxores eodem tempore habere. Potest tamen alter coniugum ante carnalem copulam ad religionem transire: et alter coniugum remanere liber. Potest quoque vir propter fornicationem per iudicium ecclesie dimittere uxorem scilicet quo ad cohabitationem et debitum coniugale: sed aliam ducere non potest ea vivente. Post mortem vero alterius coniugis alter nubere potest etiam infra tempus luctus sine pena infamie. Ligatus autem per sponsalia tamen si contrahat matrimonium per verba de presenti cum illo peccat quod est matrimonium clandestinum: ut supra dictum est: sed tamen tenet matrimonium.”

be permitted two living spouses. The only remaining question was how to handle those Christians who violated the legal requirement of monogamous and indissoluble marriage.

However men who married more than one woman were to be handled - and this changed somewhat over time and place from excommunication to a variety of ever-more harsh punishments - there was also the question of how to handle abandoned wives. We begin our survey with the great canonist, or canonists,⁵³ Gratian, whose twelfth-century Concordance known as Gratian's *Decretum*, would retain full legal force in the Catholic Church until the twentieth century. The texts included in the *Decretum* offered forgiveness to a wife who had erred as long as she returned to her first husband, citing among others the letter of Pope Leo I we examined above.⁵⁴ This treatment, however, left unresolved how long an abandoned wife ought to wait before remarriage and what might constitute an acceptable reason to assume that her spouse had died.

This gap provided ample space for subsequent interpretations of the laws. Pope Alexander III (1159-81) decided that a wife or husband could remarry after ten years with no news of a missing spouse, but his ruling was far from definitive.⁵⁵ At the close of the twelfth century the popes interpreted the laws more strictly. Amid preparations for the Third Crusade, Pope Lucius III (1181-1185) writing ostensibly "to all Christians held in captivity by Saracens" but speaking to the wives left behind at home, argued that a wife should not remarry without knowing for certain of her spouse's death, and indeed nor should a husband.⁵⁶

⁵³ Anders Winroth, *The Making of Gratian's Decretum* (Cambridge, Cambridge University Press, 2000).

⁵⁴ See above, note 40.

⁵⁵ Walther Holtzmann, *Decretales ineditae saeculi 12*, Stanley Chodorow and Charles Duggan, eds. *Monumenta iuris canonici* 4 (1982) 55 no. 32. Cited in Brundage, *Law*, 374.

⁵⁶ X 4.21.2. Lucius III. "Universis Christianis in captivitate Sarracenorum positus. Dominus ac redemptor noster (*Et infra:*) Sane, super matrimoniis, quae quidam ex vobis nondum habita obeuntis coniugis certitudine contraxerunt, id vobis *auctoritate apostolica* respondemus, ut nullus *ex vobis* amodo ad

However, concerning the marriages that some of you have contracted for yourselves, having obtained no certainty of your spouses' death, we respond to you with apostolic authority: Henceforth none of you shall presume to enter into a second marriage, until you know with complete certainty that your spouse has passed on from this life. If any man or woman has not complied with this and has doubts concerning the death of [*his or her*] spouse [*he or she*] should not deny the debt when it is asked for by the one they married, they should know that they should not ask for it themselves. But if after this it is established that the first spouse is alive, that one must unquestionably abandon the adulterous and illicit embraces and return to the first spouse.

This was the decision of Lucius III. For him, a spouse required full certitude to remarry.

If they had remarried nonetheless and did not know the status of a first spouse, they should remain married and give their second spouse the right of the marital debt whenever requested, but ought not ask for it themselves.

Pope Clement III (1187-1191) had a different answer. Responding to the petitions of women who had waited more than seven years, Clement ordered them to wait until they could provide proof of death however long it may take:⁵⁷

You have asked us before in our presence what should be done by you concerning the women of your diocese, who, with their husbands absent because of captivity or pilgrimage, for more than seven years they have been waiting, neither certain of the life or death of their spouses, despite having sought out solicitously to gather such information, and because of their youth or the weakness of the flesh, they could not remain continent and sought to unite with others in marriage. Since the Apostle says: "The

secundas nuptias migrare praesumat, donec ei *firma certitudine* constet, quod ab hac vita migraverit coniux eius. Si vero aliquis vel aliqua id hactenus non servavit, et de morte prioris coniugis adhuc sibi existimat dubitandum: ei, quae sibi nupsit, debitum non deneget postulanti, quod a se tamen noverit nullatenus exigendum. Quodsi post hoc de prioris coniugis vita constiterit, relictis adulterinis *illicitisque* complexibus ad priorem *sine dubio* coniugem revertatur."

⁵⁷ X 4.1.19 Uxor, non certificata de morte viri, contrahere non potest, quamvis ignoret, quid sit de marito, qui longo tempore abfuit. Clemens III. Caesaraugustensi Episcopo. In praesentia nostra *positus a nobis* quaesivisti, quid agendum *tibi* sit de quibusdam mulieribus in tua diocesi constitutis, quae, *quum* viros suos causa captivitatis vel peregrinationis absentes iam ultra septennium praestolatae fuerint, nec certificari possunt de vita vel morte ipsorum, licet super hoc sollicitudinem adhibuerint diligentem, et pro iuvenili aetate seu fragilitate carnis nequeunt continere, petentes aliis matrimonio copulari. *Quum autem dicat Apostolus: 'Mulier, tam diu alligata est viro, quam diu vir eius vivit,'* Consultationi ergo tuae taliter respondemus, quod, quantocumque annorum numero ita remaeant, viventibus viris suis non possunt ad aliorum constorum canonice convolare, nec tu eas auctoritate ecclesiae permittas contrahere, donec certum nuncium recipiant de morte virorum. [*Dat. Laterani.*]

wife is bound to the husband as long as her husband is alive” Considering this we reply thus to your question: That, no matter how many years the situation endures, with living husbands they cannot be canonically permitted to contract a new marriage, nor may you permit them to contract by your ecclesiastical authority, until they receive certain news of the death of their husbands.

With Clement we have passed from a call for certitude before remarriage to a requirement of proof.

Raymond of Peñafort, the great canonist and compiler of the *Liber Extra*, as fundamental a text to Catholic canon law as Gratian’s *Decretum*, provided further commentary on the subject of remarriage in his “Summa” on marriage. As Raymond explained, a wife could not remarry without “good reason” to think her husband had died. “Regardless of her youth,” if her husband had gone to fight the Saracens or in some faraway place, she could not remarry unless she was certain he had died. This certainty required, for Raymond, the oath of the missing man’s commander, or of his friends who knew that he had died.⁵⁸

Interestingly, this certainty seems to have been something different than the “complete certainty” required by Lucius III examined above. Indeed, Raymond did not include the phrase “complete certainty” in his edition of the *Liber Extra*.⁵⁹ Instead of

⁵⁸ Peñafort, *Extra de secundis nuptiis*, “Dominus ac Redemptor X 4.21.2: 4. Again, suppose the husband has gone in the army against the Saracens or to a faraway region and he does not return, nor is it known whether he is living or dead. What should his wife do? Say that regardless of her youth she cannot contract unless she is certain of the death of her husband. Peñafort. *Extra de sponsalibus*, “In praesentia” X 4.1.19 But how will that be resolved? I reply: by an oath of one under whom he fought or even of friends who knew well of his death. She can marry immediately after such an oath. Peñafort: *Extra de secundis nuptiis* “Super illa” X 4.21.4”

⁵⁹ X 4.21.2. In Raymond’s edition the text would have read: “Dominus ac redemptor noster. Sane, super matrimoniis, quae quidam ex vobis nondum habita obeuntis coniugis certitudine contraxerunt, id vobis respondemus, ut nullus amodo ad secundas nuptias migrare praesumat, donec ei constet, quod ab hac vita migraverit coniux eius. Si vero aliquis vel aliqua id hactenus non servavit, et de morte prioris coniugis adhuc sibi existimat dubitandum: ei, quae sibi nupsit, debitum non deneget postulanti, quod a se tamen noverit nullatenus exigendum. Quodsi post hoc de prioris coniugis vita constiterit, relictis adulterinis complexibus ad priorem coniugem revertatur.”

“complete certainty” we have a requirement of testimonial proof. This, then, was how the marital designs of men and women with absent spouses ought to be handled henceforth.

Hostiensis, perhaps the most celebrated canonist of the thirteenth century, offered a practical, flexible, and compassionate interpretation of the laws, arguing that a reasonable presumption of the death of a first husband was all that should be required for a second marriage, which arrived when it was generally believed that the first husband had perished.⁶⁰ In other writings, however, he warned strongly against remarriage without sufficient cause to presume an absent spouse had died.⁶¹

Not only canon law but also secular law mobilized against these offenders, at least in issuing legislation. At this time, both secular and ecclesiastical law is issued in more gender-neutral terms than we have seen previously. Also, this is the first time we see explicit, and harsh, punishment beyond excommunication, penance, or *infamia*.

The municipal laws of Bologna threatened bigamists with heavy fines,⁶² as did thirteenth-century Venetian law.⁶³ The *Siete Partitas* of Alfonso X of Castile, issued in 1265, menaced both male and female bigamists with banishment to an island for five

⁶⁰ Hostiensis, *Summa aurea* 4.5.6, tit. de sponsa duorum (Lyon 1537; r.p. Aalen 1962) fol. 203 ra: “Non ergo requiritur probatio, sed verisimilis presumptio...vel dic quid refert utrum presens velit matrimonium accusare et canonicum probare impedimentum et tunc sufficit verisimilis presumptio puta fama communis sine testibus, et sic loquitur proximus. § vel velit contrahere simpliciter contra matrimonium nihil opponens et tunc requiritur probatio certi nuncii coram episcopo facta ... sed quod prius dixi verius est, nam et unicus testis non probationem sed presumptionem inducit ...”

⁶¹ Hostiensis, *Lectura* to X 4.1.19 (Venezia 1581; r.p. Torino 1965) pt. 4, f. 6.

⁶² Brundage, *Law*, 478: Bologna Statuti (1288) 4:33, ed. Fasoli and Sella 1:197; Ferrara, Statuta (1287) 4.55, ed. Montorsi, 271.

⁶³ In Pregadi 1288. Capta fuit pars in majori consilio, quia nonnullae mulieres decipiuntur saepissime, & maxime a forensibus, dicentibus se non habere uxores vivas, cum eas habeant : quod pro Dei reverentia & honore modo non erat aequaliter tolerandum. Honesta fuit prohibitione sancitum quod aliquis tam civis & habitator, quam forensis habens uxorem vivam, non audeat nec praesumat contrahere mtrimonium cum aliqua ex districtu Venetiarum, & contra facientes ad praemissa restituere muliere deceptae omnia, quae occasione dicti matrimonii habuisset ab eadem, omnimode compellantur. Et insuper tantum de suo solvere febeat quantum habuerit ab uxore praedicta. Cuius poenae medietas dari debeat dictae muliere & de alia medietate tertium sit dominorum de nocte, & aliud tertium sit custodum qui ceperint eum, & aliud tertium sit accusatoris, si per ejus accusationem veritas sciatur, & teneatur de credentia. Si vero a muliere non habuerit aliquid pro re promissa, cadat in poenam leg. 100. Jean-Pierre Gilbert, *Tradition* vol. 2 (Paris, 1725) 449.

years and the loss of some property.⁶⁴ Fourteenth-century royal laws of Portugal threatened bigamists with execution, if royal mercy did not mitigate the sentence.⁶⁵ By the fifteenth century, in many parts of Western Europe, municipal and royal legislation increasingly threatened bigamists with execution, although we have no evidence such a penalty was ever carried out.⁶⁶

Ecclesiastical law was less harsh than the secular law in its threats of punishment, but probably more likely to carry out the threat. To give two examples of local legislation from the thirteenth century, the synodal statutes of Chateau-Gontier in 1235,⁶⁷ and of

⁶⁴ *Siete Partidas*, Robert I. Burns, ed., Samuel Parsons Scott, trans. 2 (Philadelphia: University of Pennsylvania Press, 2001) 1419-1420: “Men who knowingly marry a second time while their first wives are living, commit manifest wickedness, and women do the same thing when aware that their first husband are living. ... And, for the reason that from such marriages against God arise many sins and injuries, and losses and great dishonor happen to those that are deceived in this way, who believing that they are marrying well and faithfully according to the decrees of the Holy Church, contract matrimony with persons with whom they afterwards live in sin, and when they think they are quietly settled and have children, the first wife or husband comes and causes a dissolution of the marriage; and for this reason many women remain objects of contempt or disgrace and are forever unfortunate, and men become abandoned in various ways: therefore we order that anyone who knowingly contracts matrimony in any of the ways we mentioned in this law shall be banished to some island for the term of five years, and shall lose whatever property he possessed in the place where he contracted the marriage, and it shall belong to his sons or grandson, if he has any. If he has no children or grandchildren, half the property shall belong to the party who was deceived and the other half to the royal treasury, and if both parties were cognizant that either was married, and knowingly married him or her, then both shall be banished to some island, and the property of the one who has no children or grandchildren shall be forfeited to the royal treasury.”

⁶⁵ Isabel M.R. Mendes Drumond Braga, “Para o estudo da bigamia em Portugal no século XV,” *Os Reinos ibéricos na Idade Média: Livro de homenagem ao professor doutor Humberto Carlos Baquero Moreno*, Luís Adão da Fonseca, Luís Carlos Amaral and Maria Fernanda Ferreira Santos. (2003), 2:519-527; 522. All of the cases described in this article involved a sentence commuted to some years of banishment (and *infamia*) instead of execution. The few female bigamists were punished by fines instead of banishment.

⁶⁶ For example, royal Swedish law threatened bigamists with decapitation for men and burying alive or stoning for a woman. Mia Korpiola, “An Uneasy Harmony: Consummation and Parental Consent in Secular and Canon Law in Medieval Scandinavia,” in *Nordic Perspectives On Canon Law*, Mia Korpiola, ed. (Sarijärvi: Publications of Matthias Calonius Society II, 1999), 125-150; note 25 on page 130: *Maunu Eerikinpojan kaupunginlaki*, Abraham Kollanius, trans., Martti Rapola, ed., 1926, Högmålsbalken IV, Helsinki: Suomalaisen Kirjallisuuden Seuran toimituksia 82, 1926, 214; *Kuningas Kristoferin maanlaki 1442*. Martti Ulkuniemi, trans. Törkeitten asiain kaari 5, Vaasa: Suomalaisen Kirjallisuuden Seuran toimituksia 340, 1978, 132-133.

⁶⁷ “Statimus quod singulis diebus dominicis in parrochialibus inhibeat ecclesiis per sacerdotes, ne quis binas nuptias vel bina sponsalia eodem tempore praesumat contrahere, & expressim adjiciant, quod si contra aliquis fecerit, infames ipso facto effecti, a testimonies & aliis legitimis actibus excludantur, firmiter injungentes quod si reperiantur talia perpetrasse, nominatim denunciarentur infames & in scala ponantur, & praeterea publice fustigentur, nisi pecuniariter poenam illam redimant arbitrio & judicio judicantis. Quae poena fabricate minoris ecclesiae public conferatur, partibus consanguineis & eadem poena subdendis,

Tours issued in 1236,⁶⁸ both evoked the kinds of rules aimed at protecting marriage as established in the decretals, deeming infamous those who took two or more concurrent spouses. Drawing on a decision from the *Digest* (3.2.1) and repeated in the decretal “Nuper” of Innocent III (X 1.21.4), this legislation repeated the condemnation of double espousals or nuptials, condemning an offender who knowingly contracted twice concurrently to exposure on the ladder of the scaffold and flogging or to the payment of a fine. This form of punishment, used to humiliate as well as to set an example, would become the classic instrument for punishing bigamy and other infamous crimes well into the Early Modern period.⁶⁹

Having thus surveyed the laws that might have been inflicted upon bigamists, we turn now to legal practice in the Later Middle Ages, to the earliest surviving sources that record the prosecution and punishment of bigamists.

quoarum consilio talia perpetrare fuerint, cui poenae volentes, & censemus eum qui scienter alterius conjugatam traxit, subjacere.” Jean-Pierre Gilbert, *Tradition*, Vol. 2 (Paris, 1725) 448.

⁶⁸ Joseph Avril, *Les conciles de la province de Tours* (XIIIe-XV siècles). Sources d’Histoire Médiévale publiées par l’Institut de Recherche et d’Histoire des Textes (Paris: CNRS, 1987) 162: 10. “De hiis qui binas nuptias contrahunt. Statuimus quod singulis diebus dominicis in parrochialibus ecclesiis inhibeatur per sacerdotes, ne quis binas nuptias vel bina sponsalia eodem tempore presumat contrahere et expressim adjiciant quod si contra aliqui fecerint, infames ipso facto effecti, a testimoniis et aliis legitimis actibus excludantur, firmiter injungentes quod si contra aliqui fecerint, infames ipso facto effecti, a testimoniis et aliis legitimis actibus excludantur, firmiter injungentes quod si qui reperiantur talia perpetrasse, nominatim denuntientur infames et in scala ponantur; postea publice fustigentur, nisi pecunialiter penam illam redimant arbitrio et judicio judicantis, que pena fabricae majoris ecclesie publice conferatur, parentibus et consanguineis et aliis eidem pene subdendis, quorum consilio talia fuerint perpetrata, cui pene subjacere censemus eum qui scienter duxerit alterius conjugatam.”

⁶⁹ Public punishment for bigamy on a ladder of a scaffold, or on the scaffold itself, would remain a common feature of bigamy punishments throughout the premodern period in Western Europe. *Histoire d’Abbeville et du comte de Ponthieu jusqu’en 1789*, Francois Cesar Louandre, troisième édition, tome deuxième (Abbeville, Chez Aug. Alexandre, Libraire-Éditeur, 1884) 268: La bigamie fut considerée, la plupart du temps, comme un cas de conscience plutot que comme un delit social, et les magistrats municipaux laisserent aux ecclesiastiques le soin de la punir; cependant on trouve au XVIe siecle un individu condamné pour ce crime a etre mitre, mis au Pilori, et banni a toujours sous peine de etre battu au cul d’une charrette. *Comtes des Argentiers*, 1498.

There are notable differences in various regions and kingdoms. In England, or at least in Canterbury and York we find instead of the scaffold the practice of whipping offenders three times around the church and around the market: “pro comsissis uterque fustigetur ter circa ecclesiam et semel circa mercatum” AI 1347 Episcopi Rofensis 925. *Registrum Hamonis Hethe, Diocesis Roffensis* v.2 Charles Johnson, ed. (Oxford: Oxford University Press, 1948) 33.

2. Bigamy in Legal Practice

The crime of bigamy occupies a somewhat hazy place in our current recollection of the medieval European past. To date, only a handful of articles have directly addressed the topic.⁷⁰ Its prosecution in Europe and European colonies of the sixteenth-seventeenth, and eighteenth centuries is a far better known story with many more statistics to draw upon. We begin to find evidence of prosecution, however, in the fourteenth and fifteenth centuries, and it is my contention that these earlier cases, even though we know so little about them, offer an essential introduction to the practice of regulating marriage practice and attempting to prevent and to punish bigamy. Indeed, the circumstances and motivations of the medieval regulation offer valuable lessons for understanding later efforts at regulation, both political and popular.

The significance of the crime of bigamy in the Later Middle Ages does not emerge by virtue of statistics. We cannot point to hundreds of cases of bigamy prosecution to demonstrate the importance of this crime in late-medieval society, as one could easily do with the crime of infanticide in France in the second half of the sixteenth century.⁷¹

What I have found, however, suggests that bigamy was a crime of considerable importance in the Middle Ages, above all, perhaps, in the later Middle Ages. This importance, however, emerges not quantitatively but qualitatively. It is also my contention that this importance cannot be understood by studying legal sources in

⁷⁰ Philippa Maddern, "Moving Households: Geographical Mobility and Serial Monogamy in England, 1350-1500," *Parergon* 24.2 (2007): 69-92; Marie-Ange Tricarico Valazza, "L'officialité de Genève et quelques cas de bigamie à la fin du Moyen Age: l'empêchement de lien," *Zeitschrift für schweizerische Kirchengeschichte*. vol. 89 (1995) p. 99-118; Mendes Drumond Braga, "Para," 2:519-527.

⁷¹ Alfred Soman, "Anatomy of an Infanticide Trial: The Case of Marie-Jeanne Bartonnet (1742)" in Michael Wolfe, ed. *Changing Identities in Early Modern France* (Durham: Duke University Press, 1997) 248-272.

isolation, but must instead be situated in the context of late-medieval theology, culture, and social practice.

This was the approach I used in my thesis. As I studied the fifteenth-century sources, a striking gender difference emerged. The prosecution of bigamy appeared to involve something more than an overwhelming predominance of male offenders. The records also revealed that a considerable number of women seemed to have been up to something that greatly resembled bigamy, but did not result in the same criminal punishment inflicted upon male bigamists.

The prosecution of bigamists in late-medieval Europe seems to have taken place largely in ecclesiastical courts,⁷² typically the court of a bishop's delegated judicial

⁷² According to Estrella Figuras Valles, until the sixteenth century bigamy was handled by secular officials in Spain. *Pervirtiendo el orden del santo matrimonio*, (Universidad de Barcelona, 2003) 83. This account, however, does not match that of Henry Charles Lea, which describes ecclesiastical prosecution in Saragossa as early as 1486 and again in 1488. *A History of the Inquisition of Spain*, v. 4 (New York: The Macmillan Company, 1907) 316-327. It seems clear that bigamy was prosecuted by secular courts in Portugal, we do not know if ecclesiastical courts also took part in their own bigamy prosecutions. See: Braga, "Para," *passim*. Some Italian city-states prosecuted bigamy in their secular courts, if not unchallenged. In Bologna the secular court largely successfully claimed jurisdiction, but ecclesiastical courts hotly contested this claim in a handful of cases. The bishop's vicar did succeed in claiming one complex case in 1448, but for two other cases the cardinal legal decided that: "the secular judge, by both common law and the municipal law of Bologna, can punish adulterers and bigamists, and that the *podesta* preceded the ecclesiastical judge in prosecuting, and consequently should not be prevented from exercising his office." *Marriage in Italy, 1300-1650*. Trevor Dean, K.J. P. Lowe (Cambridge: Cambridge University Press, 1998) 99; see further 85-87, 95-102. Meanwhile, Cecilia Cristellon has found bigamy prosecutions in ecclesiastical courts in Venice: see Cristellon. "Charitas versus eros: Il matrimonio, la Chiesa e i suoi giudici nella Venezia del Rinascimento (1420-1545)," Ph.D. thesis, European University Institute, 2005. In the sixteenth and seventeenth century in Venice and the Friuli, and much to the evident dislike of inquisitors, the crime of bigamy was judged primarily by secular courts and only sporadically by inquisitorial courts. See E. William Monter and John Tedeschi, "Toward a Statistical Profile of the Italian Inquisitions, Sixteenth to Eighteenth Centuries" in *The Inquisition in Early Modern Europe: Studies on Sources and Methods*. Gustav Henningsen and John Tedeschi, eds. (DeKalb, Illinois: Northern Illinois University Press, 1986) 136, 144-145 for charts detailing prosecutions in Venice and the Friuli. They cite Paul Grendler, *The Roman Inquisition and the Venetian Press, 1540-1605* (Princeton, 1977) 209-211, who counted at least a dozen jurisdictional disputes over the question of bigamy between 1590 and 1625. In the Friuli, for example, only one case, occurring in 1579, was tried before the Holy Office between 1557 and 1595. See Luigi De Biasio and Maria Rosa Facile, *1000 Processi dell'Inquisizione in Friuli dal 1648 al 1798* (Udine, 1976) 24.

official, known as officialities.⁷³ Officialities were charged, according to tradition, with the policing of offences involving clerics, morals, or sacraments, and also offences committed in sacred spaces.⁷⁴ These courts determined if a legitimate marriage existed or not. They also established if a man or woman was free or not free to remarry.⁷⁵ Those Christians who set out to marry but were prevented from going ahead because of suspicions of a prior, existing marriage, would have to go to these courts to seek permission to marry.⁷⁶

Beginning in the early thirteenth century, continental courts made use of an official called the promoter, an office of inquisitorial procedure in ecclesiastical proceedings.⁷⁷ Acting as a kind of public prosecutor, the promoter was charged with seeking out illegal practices, which he then brought to the attention of the judge. The court thus acted against suspected offenders *ex officio*; that is, with the promoter presenting the case on behalf of the court.

⁷³ Paul Fournier, *Les Officialités au moyen âge*. (Paris: E. Plon et cie, 1880); Anne Lefebvre-Teillard, *Les Officialités à la veille du Trente* (Paris: Librairie Générale de Droit et Jurisprudence, 1973).

⁷⁴ Lefebvre-Teillard, *Officialités*, 90. The two great sources for medieval canonical judicial procedure and competence are: Tancred of Bologna (c. 1185 – 1230/1236), *Ordo iudiciarius*, ed. Friedrich Bergmann, in *Pilii, Tancredi, Gratie, Libri de iudiciorum ordine* (1842, repr. Aalen: Scientia Verlag, 1965), 87–316; and William Durand (c. 1230-1296), *Speculum iudiciale* (Basel 1574; repr. Aalen: Scientia, 1975).

⁷⁵ At this level in the ecclesiastical hierarchy, a marriage was most often either recognized as valid or annulled. The power to grant a dispensation to stay married in spite of an impediment was reserved to the pope, who frequently delegated this power to his legates and even occasionally to some bishops in remote provinces.

⁷⁶ As Ludwig Schmugge has shown, they sometimes even had to petition the papal penitentiary to establish freedom to marry. The Penitentiary might then instruct a local officiality to investigate the case. Schmugge, *Ehen*, 108-118.

⁷⁷ Jane Sayers, *Innocent III* (London and New York: Longman, 1994) 161-2; James Brundage, *Medieval Canon Law* (London: Longman, 1995) 147-150.

Also, by the thirteenth century for Northern France,⁷⁸ and for much of England,⁷⁹ though evidently not yet for Italy,⁸⁰ most synodal statutes required some sort of written or oral proof of the death of a spouse before a newcomer or a presumed widow or widower could remarry. In the fifteenth-century diocese of Troyes, which was the subject of my dissertation, I have demonstrated that these laws were at least to some extent enforced.⁸¹ This means that men and perhaps especially women, who might previously have been able to remarry in suspect circumstances without having to deal with any demands for proof, were now in violation of the law.

The earliest complete surviving register of synodal statutes for the diocese of Troyes, statutes promulgated by the bishop in council with local clerics, dates to 1374.⁸² We find in this collection a number of statutes that deal with the regulation of marriage in

⁷⁸ *Répertoire des statuts synodaux des diocèses de l'ancienne France du XIIIe à la fin du XVIIIe siècle*, André Artonne, Louis Guizard et Odette Pontal (Paris: CNRS, 1969).

⁷⁹ F.M. Powicke and C.R. Cheney, eds. *Councils and Synods with other Documents Relating to the English Church*, vol. 2, (Oxford: Clarendon Press, 1964): In the Salisbury statutes of 1219, Statute 84 ordered that if the principals seeking to contract marriage were unknown to a priest, he was not to marry them unless he could establish their freedom to marry. 3 Worcester 24 offered a similar ban on marrying persons from outside the parish without proof: “Nec extranea persona, de qua per denunciationem constare non potest an legitima sit ad contrahendum matrimonium...” 302. Coventry II required much the same: “Item, precipimus ne aliquis extraneus admittatur in aliqua parochia ad contrahendum matrimonium, nisi prius facto scrutinio si alias uxoratus est” 212. A statute from 3 Worcester 24 offered a more precise accounting of how to establish the status of outsiders. “A letter from the prelate in whose jurisdiction the stranger had lived was to inform the bishop, archdeacon, or their official of his freedom to marry.” Similarly, I York 24 ordered a careful examination and that the results be communicated by letter from the foreigner’s parish priest. 2 London 47 added that the prelates in question should know the foreigner in question. “priusquam habeat litteras testimoniales a prelatibus suis qui eorum notitiam habent” 644. Wells 12 addressed how the prelate of the home parish was to determine the marital status of the outsider hoping to marry in a new place. The parish priest was to have banns read in the hometown of the stranger and the results of these proclamations were to be communicated to the bishop or to his official or archdeacon. The same regulation was published in Carlyle 1, 2, and 3; York 12; and, essentially, in 2 Exeter 7; a summary of this legislation is provided in: R.H. Helmholz, *Marriage Litigation in Medieval England* (Cambridge: Cambridge University Press, 1974), 148-149.

⁸⁰ Cecilia Cristellon, “L’ufficio del giudice: Mediazione, inquisizione, confessione nei processi matrimoniali veneziani (1420-1532),” *Rivista Storica Italiana* 3 (2003): 879-883; 855 and n.14; *idem*, “Marriage and Consent in Pre-Trentine Venice: Between Law Conception and Ecclesiastical Conception, 1420-1545” *Sixteenth century Journal* 39/2 (2008) 390-418; 399.

⁸¹ Sara McDougall “Bigamy in late-medieval France” Ph.D. thesis, (Yale University, 2009), Chapters 4-6.

⁸² *Répertoire des statuts synodaux des diocèses de l'ancienne France du XIIIe à la fin du XVIIIe siècle*, André Artonne, Louis Guizard et Odette Pontal (Paris: CNRS, 1969).

the diocese. Notably, all men and women not native to the diocese who wished to marry “in facie ecclesie,” at the doors of a church and with the blessing of a priest, had to provide written proof attesting to their freedom and fitness to marry, meaning that they were not already married to anyone else, nor otherwise unfit for marriage.⁸³ In addition, any man or woman native to the diocese and married to a spouse who had been absent from the diocese had to provide proof of the absent spouse’s death before contracting another marriage.⁸⁴

We do not know how long these statutes sat on the books, unapplied, but my research demonstrates that by the fifteenth century these rules were actively applied in the diocese. On a number of occasions, men and women who wished to marry, and whose marital history was suspect or unknown, either provided written proof or witness testimony or were prosecuted for their failure to do so. The records also reveal a number of other ways that people attempted to circumvent these rules. Some offered to swear oaths attesting to their status as widowers,⁸⁵ others provided forged or fraudulent letters,⁸⁶ or false witnesses.⁸⁷ Couples also left the diocese in search of a priest who would marry

⁸³ Locus VIII “Inhibemus etiam curatis ne, episcopo inconsulto, et sine licentia ipsius, vel ejus officialis, aliquos de extra diocesim Trecentem admittant ad Benedictionem Nuptialem: aut ad requestam seu rogatum exemptorum; nec extradiocesanis aut exemptis scribant, vel dent licentiam ut suos parochianos ad Benedictionem Nuptialem admittant, sed in illo casu officiali nostro scribant pro dicta Benedictione nubentium facienda; et dictus officialis noster dictis extradiocesanis, ex exemptis scribet prout fuerit scribendum.” Abbé Charles Lalore, *Ancienne et nouvelle discipline du diocèse de Troyes jusqu’en 1788. II Statuts synodaux et Ordonnances épiscopales*. (Troyes: 1882) 2:70.

⁸⁴ Locus X. “Nullus sacerdos presumat mulierem cujus vir est absens, alteri viro matrimonialiter copulare, donec de morte viri, per testes idoneos, certissime sibi constet. Et illud observandum est circa virum, cujus uxor est absens.” Lalore, *Ancienne Discipline* 2:71.

⁸⁵ Archives Départementales de l’Aube Série G [hereafter G...] G4171f17v. [21 July 1425]; G4171f85rv [29 May 1454].

⁸⁶ G4171f82v-83r. [1453].

⁸⁷ G4172f11v. [5 April 1427] “...de facto cum de jure non posses dicta Coleta vivente, matrimonium contraxisti cum Johenneta relicta defuncti Ramon de dictam Praevia [Preize], licet dicta Coleta non fuisset mortua atque de morte ipsiusque Coleta non fuisses sufficienter informatus quamvis, ut asseris, aliqui falso testes dixerunt eandem Coletam diem suum clausisse extremum...”; G4171f6r-6v [1423] “...nec feris diligentem inquisitionem de vita vel morte et statu ipsius Ysabellis [Ysabelle] quamvis, ut asseris, aliqui falso tibi dixerint et sumserint eandem Ysabellim diem summum clausisse extremum.”

them without such formalities.⁸⁸ A number of aspiring brides and bridegrooms bribed priests to bless their marriage both in and outside of the diocese of Troyes.⁸⁹

We know of these behaviors because the perpetrators were subsequently prosecuted, or because a witness testified to such behavior having taken place. We have records of priests paying fines for blessing marriages without announcing the banns and prior investigation of the background of a couple.⁹⁰ We have records of men and women paying fines for remarrying without providing proof of the status of an absent spouse.⁹¹ Finally, we have records of a number of men, and very few women, prosecuted for knowingly contracting a bigamous marriage.

Here is an example:

In the year of Our Lord 1449, the day Saturday after the nativity of John [the Baptist] just past, sentence was brought in the presence of Master Stephen Graphin, Nicholas Joffroy, Nicolas Huyart, Theodore de Baussi and Jean Breton and many others. In the Name of the Lord Amen. Since you by your confession Guillaume Pomier cleric of the vicinity of Glauchfontaine near Chatillon in the diocese of Besançon, born there, and under our jurisdiction, our court in which law is brought about, that was by other means made known to us and stated that twenty-five years ago or so you contracted marriage, in facie ecclesie with solemnities, with Jacqueline the daughter of Jean Nuelle at the village called Valoreille near the aforementioned Chatillon, and had a child by her. But then at around the time of the feast of Saint Michael in 1447 with the said Jacqueline, your wife, living, in the said village of Valoreille, you left her, on the pretext that she had sinned against the law of marriage by committing adultery, as you were told by others. And afterwards, namely around the time after the feast of the nativity of the Lord just past, at Longeville in the diocese of Troyes, unmindful of your salvation and instigated by the devil you contracted marriage, in fact as not possible in law, with Jeanette the widow of the deceased Odin Boutart, with your aforesaid legitimate wife

⁸⁸ Donahue, Law, 580.

⁸⁹ G4171f82v-83r. [1453]. Bartholomew Bouvier, facing difficulties in getting permission to marry in Troyes, traveled to Sens and bribed a chaplain with wine and cheese to forge letters attesting to the death of Bartholomew's first wife. Unsuccessful a second time, Bartholomew took his intended bride to Auxerre and bribed a second chaplain with a gold écu to marry the couple.

⁹⁰ G246f4r, G4172f125r, G4172f131v, G4174f23.

⁹¹ G4172f104r, G4171f40v, G4273f64v, G4173f91v, G4171f94v, G4172f154r, G4172f130r, G4174f7r, G4174f12r.

still living, about whose death you had in no way been informed, and from that time up to the time of Saturday after the feast of the Discovery of the Holy Cross just past you persisted in perjury and adultery with this Jeanette, to the damnation of your soul. Since therefore these crimes have been committed before the body public, and so that such crimes do not remain unpunished indeed they are by public censure to be punished so that an example is made for others and the punishment of one will instill fear into many, we, the official of Troyes, sitting before the tribunal, having God alone before our eyes and invoking zealously the name of Christ, condemn you in these writings, by this our definitive sentence, which we pass with counsel of learned men, to the *scala* for one Sunday or holy day at the doors of the church of Troyes, and remand you to the prison of the reverend father and lord in Christ, the lord bishop of Troyes, for six months and there in the bread of pain and water of sorrow to lament your sins and not commit further such crimes...⁹²

Analysis of four registers from the fifteenth-century diocese of Troyes reveals twenty such cases, in which nineteen men and one woman were prosecuted and punished for bigamy. The one woman was prosecuted alongside her equally bigamous first

⁹² G4171f68r. [28 June 1449]: “G4171f68r. [28 June 1449] Anno domini mille CCCC xlix die Sabbati post Nativitatem Johannis lata fuit presens sententia presentibus Magistro Stephano Grapini, Nicholas Joffroy, Nicholas Huyardi, Th. de Baussi, et Johannis Britonis et pluribus aliis. In Nomine Domini amen. Quia tam per confessionem tui Guillemni Pomier clerici de loco de Glauchefontaine prope Castellionem [Orgeans-Blanchefontaine and Chatillon, Doubs] Bisuntinus [Besançon] diocesis oriundi subditi et justicabilis nostri coram nobis in jure factam quod aliis nobis constitit atque constat te matrimonium sunt viginti quinque anni vel circiter [elapsi] cum Jacota filia Johannis Nuelle apud villam dictam Valerailles [Valoreille, Doubs] prope dictam Castellionem in facie ecclesie solemniter contraxisse et ex ea prolem habuisse. Sed circiter festum Beati Michaelis anni domini millesimo quadragesimo xlvii dictam Jacotam uxorem tuam in dicta villa de Valerailles viventem dimisisti occasione accepta quod ipsam in legem matrimonii adulterando peccaverat prout ab aliquibus audiveras. Et postmodum videlicet circiter et post festum Nativitatis Domini ultimo praeteritum apud Longavillam [Longeville] Trecensis diocesis cum Johanneta relicta defunctis Odinus Boutart in memoriam tue salutis instigante dyabolo matrimonium de facto, cum de jure non posses, contraxisti vivente praedicta tua legitima uxor de cuius morte nullatenus informatus fueras, ac ab illo tunc cum ipsa Johanneta usque ad diem Sabbati post festum Inventionis Sanctae Crucis ultimo praeteritum adulterando et periurium committendo in tue anime dampnabile praeiudicium permansisti cum igitur rei publice interesset ne talia delicta remaneat impunita quoniam publica sunt animadversione puniendi ut aliis cedat in exemplum et pena unius sit metus multorum: nos Officialis Trecensis pro tribunali sedentes et solum deum pre oculis habentes Christi nomine praemissis invocato per hanc nostram sententiam diffinitivam quam de peritorum consilio ferimus in hiis scriptis te condemnamus ad scalandum fore semel quadam die dominica aut solemnes ante valvas Trecensis ecclesie necnon ad remanendi in carceribus Reverendi in Christo patris ac domini domini Trecensis episcopi per sex menses ut ibi in pane doloris et aqua tristitiae peccata tua defleas et talia amplius non committas gratia domini Reverendi in omnibus semper salva.”

husband. The couple had agreed to separate and then each took a new spouse.⁹³ The husband, like all of the other men found guilty of bigamy, was sentenced to spend one day on the ladder of the scaffold before the cathedral of Troyes in addition to six months imprisonment. His wife, spared the scaffold, was to be imprisoned for a year.

One might initially hesitate to draw many conclusions from such a small dataset. Nevertheless, some conclusions are warranted. First, it seems fair to assume that bigamy prosecutions were not a frequent occurrence in late-medieval France. None of the officiality records that scholars have studied thus far reveal more than a handful of bigamy proceedings in any one diocese. Second, we can assume that men were prosecuted more often than women for bigamy.

There are a number of other assumptions, however, that would be unwarranted. In particular, it would be incorrect to assume based on this information that women did not commit bigamy. Absence of prosecution is never evidence of absence of a particular form of conduct. What we do know is that men were prosecuted for bigamy more often than women. While we do not know a great deal about prosecution, we certainly know more about it than we do about practice.

There are twenty bigamy prosecutions found in the surviving fifteenth-century registers of the diocese of Troyes. In what context should we understand such processes? They invite comparison to, first of all, bigamy prosecutions in other dioceses. We can point to similar proceedings from fifteenth- and early sixteenth-century Paris,⁹⁴

⁹³ G4171f63v. (1448) Jean and Perette had decided to separate informally, he moving to Lorraine and she to the diocese of Laon. They subsequently each committed bigamy with second would-be spouses, and were then somehow brought together to judgment in Troyes.

⁹⁴ Donahue, *Law* at: 289-290, 371-375; see also his forthcoming "Ex officio cases at Paris" in *Mélanges Anne Lefebvre* (expected publication 2010); Léon Pommeray, *L'officialité archidiaconale de Paris aux xve-xvie siècles* (Paris: Sirey, 1933). 356-368.

Châlons,⁹⁵ Senlis,⁹⁶ Rouen,⁹⁷ Malines,⁹⁸ Cambrai,⁹⁹ Bourges,¹⁰⁰ Brussels,¹⁰¹ and Pamiers.¹⁰² In almost all of these other bigamy proceedings, the exception being one woman in Paris¹⁰³ and one in Cambrai,¹⁰⁴ the offender is male. Additionally, these courts on the whole treated these women with more leniency than male offenders.¹⁰⁵

⁹⁵ The town and département formerly called Châlons-sur-Marne are now known as Châlons-en-Champagne, the diocese is known simply as Châlons. Véronique Beaulande found six bigamy cases in a Châlons register dated 1493-1494. See her “Rompre le lien conjugal en Champagne à la fin du moyen âge” in *Répudiation, séparation, divorce dans l’Occident médiévale*, Recherches Valenciennes 25 (Le Mont-Huy: Presses Universitaires de Valenciennes, 2007) 211-213.

⁹⁶ A. Hardel, “Suicide et polygamie” *Mémoires par académie nationale des sciences arts et belles-lettres de Caen*, académie nationale des sciences arts et belles lettres de Caen, 1883 v. 12; 431-438.

On August 22 1478 the officiality of Senlis prosecuted Michaud Dupar, porter of the monastery of Saint-Vincent, accused of having been married to three women at once.

⁹⁷ Inventaire sommaire des Archives Départementales de la Seine Maritime, l’Officialité de Rouen G256 (1439-40).

⁹⁸ L. Th. Maes, “Les délits de moeurs dans le droit pénal coutumier de Malines,” *Revue du Nord* 30 (1948) 5-25.

⁹⁹ *Registres de Sentences de l’officialité de Cambrai* (1438-1453) Cyriel Vleeschouwers and Monique Vleeschouwers-van Melkebeek, eds., (Brussels: Ministère de la Justice, 1998): 567-568.

¹⁰⁰ Lefebvre-Teillard “Règle et réalité: Les nullités de mariage à la fin du Moyen Âge,” *Revue de droit canonique*, 32 (1982): 145-55; 149.

¹⁰¹ *Liber sentenciarum van de Officialiteit van Brussel, 1448-1459*, ed. Cyriel Vleeschouwers and Monique van Melkebeek. Verzameling van de oude rechtspraak in België, 7th ser., 2 vols. (Brussels, 1982-3) 241, 667.

¹⁰² Otis-Cour, *Lo peccat*, 355.

¹⁰³ Donahue, *Law*, 372, see below note 104.

¹⁰⁴ Donahue, *Law*, 556: note 195. “In *Office c Wyet et Paiebien* (13.vii.42), no. 280, the judge imposes a quite dramatic corporal penance on the woman for bigamy.”

¹⁰⁵ For example, Donahue, *Law*, 372: “On 28 March 1387, the [Paris] court declared the marriage contracted *de facto* and not *de iure* between Pierre Regis and Marion Grante Enpaille on 15 January 1387 to be null ‘considering that the first husband of the woman, called Janson le Natier, is still living.’ Pierre was given license to contract elsewhere, and Marion was ‘kept as a prisoner.’ This is the most severe penalty that we find in this group of cases, and it is the only marriage case that we have found in which a woman is put in the bishop’s prison.” We know very little about the prosecution of bigamy in England, but English ecclesiastical courts on the whole can be generally described as more lenient and less aggressive than the courts in Northern France or Belgium (See Donahue, *Law*, passim). We can make a related comparison by reference to studies that describe the prosecution of wives who abandoned their husbands. We find women violating their marriage vows in various ways, but no prosecutions for bigamy in the manner found with male bigamists in France. See Sara Butler “Runaway Wives: Husband Desertion in Medieval England,” *Journal of Social History* (Winter 2006): 337-359. Butler analyzed 121 cases of husband desertion from medieval England. Many of these women were menaced with excommunication and imprisonment if they did not return to their husbands. Butler suggests that a good number of these “runaway wives” remarried, and she observes that five out of seventeen proceedings against runaway wives recorded in an act book from 1468-74 involved accusations of both husband desertion and illegal remarriage. Butler does not explain what happened to these women, however, and we have no information on the prosecutions of male bigamists for comparison. Existing scholarship on England implies that we can assume a more gentle handling of both male and female bigamists than in Northern France or Belgium.

Second, we can set the prosecution of these twenty bigamists of Troyes in the context of other court actions in Troyes involving double engagements or marriages. Throughout the fifteenth-century, from 1412 to 1468, the Troyes officiality acted in eighty cases involving alleged double marriages, double engagements, a combination of one and the other, and various attempts to remarry either without providing proof of a spouse's death or on the grounds of false proof or a false oath.

The registers of the diocese of Troyes do not only teach us that men were prosecuted and punished for bigamy more often than women. Casting a broader net, and incorporating into our analysis these sixty additional cases, we find behavior that seems quite similar to bigamy, but that was handled quite differently by the court. The cases cataloged here involved eighty men and women punished for participation in seventy-four engagements and marriages. Excluding the four priests who allegedly blessed these illegal contracts, 49 men 31 women were accused of contracting marriages and engagements illegally. The behaviors involve all manner of combinations of concurrent engagements and marriages. The punishments range from a pound of wax to a year's imprisonment and three days of exposure on the ladder.

Examining the group as a whole, and continuing to exclude the priests, males outnumber female offenders 49 to 31. Males are the offenders 61% of the time, and females 39%. This is not a drastic difference on its face. The quantitative difference is slight, but a significant qualitative difference emerges on further examination.

To demonstrate this qualitative difference, we begin with nine cases of double engagements. Five women and four men were prosecuted and fined for contracting an engagement despite being already engaged. Thirteen cases involved various combinations

of engaged persons marrying bigamously and married persons getting engaged bigamously. Two women and eleven men were so prosecuted. Thirteen more cases involved engagements or marriages planned by men and women already married, who had not proven that their first spouses had died before moving on to the next union. Three women, six men, and four couples were prosecuted for this offence. In fifteen cases, thirteen women and two men were prosecuted for the crime of “contracting with two.” This highly ambiguous accusation - ambiguous at least to us - could refer to either engagements or marriages or a mix of both, and our sources do not provide any further information.¹⁰⁶ Finally, three women and one couple were prosecuted for contracting two concurrent marriages. In all of these cases the alleged bigamists were fined, not subject to the harsh punishments levied against the nineteen men and one woman convicted of willful acts of bigamy.

It is when we examine the punishments imposed in these cases that the qualitative difference in the treatment of men and women emerges more clearly. Men outnumber women in punishments for every type of concurrent union investigated by this court, except those defined as least offensive and punished most leniently. Men were not only given larger fines, but were imprisoned and subject to public humiliation far more often than women.¹⁰⁷ Additionally, in four of the cases men and women both were punished for their participation in a bigamous contract. Out of these four, in three instances it was the

¹⁰⁶ One example: G4172f111r [6 February, 1432] “Mercurii post purificationem Marie. Johanneta relicta defuncti Colini Perugot emendavit quod contraxit cum duobus et tax. ad xx s.”

¹⁰⁷ These results are not particularly far afield from my analysis of sexual offences in “The Prosecution of Sex in Late-Medieval Troyes” in *Sexuality in the Middle Ages and Early Modern Times* Albrecht Classen, ed. (Berlin and New York: De Gruyter, 2008) 691-714. As shown in that article men as a group were prosecuted slightly more often than women for sexual offences (310 women, 373 men, 683 total individual citations).

woman who actually contracted two concurrent unions, the man is fined as complicit spouse in his would-be wife's bigamy.¹⁰⁸

Of those sentenced to prison and to exposure on the ladder of the scaffold, all nineteen were male. Of those imprisoned, usually for an indeterminate time, nine were male and two were female. Of those ordered to pay a fine ranging from a pound of wax to a gold *écu*, twenty were male and thirty female. Thus it was only when the punishment was a relatively small fine that women outnumber men in these records.

This breakdown by punishment and gender shows men clustered at the high end of the spectrum, with the harshest punishments, and women at the low end, mostly paying fines. Does this range of punishment correlate with the severity of the alleged offences?

In fact, it is far from clear that these punishments fit the crimes. That is to say, there is an awful lot of what looks like bigamy in these eighty cases, but it is the male offenders who bear the brunt of the court's attention. As for female offenders, a handful of them were accused of contracting marriage with two men, but were not punished by public exposure. Only one woman was sentenced to a year in prison for this offence, the others were at worst assigned fines.

¹⁰⁸ G4172f135r (1441); G4173f91v (1455), G4171f94v, G4174f23v (1456); G4174f7, 10v, 23v (1456). In all these cases a man and a woman were fined together for their potentially bigamous unions: three engagements and one marriage made with the status of a prior spouse uncertain. In one case it was the man who had a prior bond and nonetheless contracted an engagement "desponsavit." He and his would-be fiancée were fined 40 *sous* apiece. In the other three cases, it was the woman who had a potentially living husband. The couple who had contracted an engagement by words of the future tense (something like: "I will get engaged to you") "sponsalia de futuro in ecclesie" were fined 20 *sous* each. The couple who had contracted marriage "in ecclesie" was originally fined 40 *sous* each, but this sum, probably in light of their financial circumstances or some other mitigating factor, was reduced to 20 *sous* each. The last couple, who had contracted (engagement or marriage, we do not know which, but probably a marriage) "de futuro in ecclesie" were temporarily detained in prison and fined an *ecu* each. It seems something more serious was alleged in this case than in the others.

I submit that when it came to bigamy, this court treated women more leniently, defining their crimes as something less than a full and willful act of bigamy, and excusing them from the harsh punishment they inflicted upon men. That they did not make a public example of any female bigamists seems of great importance, above all in considering the meaning of such punishment. That they did not make public example of these women implies that they were not chiefly concerned with the restraint of female acts of bigamy. What they sought most actively to prevent and punish was bigamy committed by men.

Before examining why this may have been, we can look also to other case studies of bigamy, and compare the findings from Troyes to a select few other times and places. Here we find a wealth of both broad statistical data and richly detailed individual cases.

3. Bigamy as Male in Comparative Perspective

Where else are these patterns in bigamy prosecution found? First, a similar pattern of prosecution, and a definite preference for punishing men and excusing women is found in Renaissance Florence. As Daniela Lombardi explains, when it came to prosecuting bigamy in fifteenth- and sixteenth century Florence: “The culpability for the crime was attributed, almost in every case, to the male partner. The sentences of proceedings for bigamy, preserved in the criminal registers of the ecclesiastical court, confirm this. Bigamy is a masculine crime...one proceeding instigated against a female bigamist (in 1587) was concluded [*only*] with the annulment of the second marriage she had contracted.”¹⁰⁹ In late-medieval Troyes and in Renaissance Florence - which is to say, at

¹⁰⁹ Daniela Lombardi, *Matrimoni di Antico Regime* (Bologna: Il Mulino, 2001), 83. “La responsabilità del reato era attribuita, anche in questo caso, al partner maschile. Le sentenze dei processi per bigamia, conservati nel fondo criminale del foro ecclesiastico, lo confermano. La bigamia è un reato maschile, ... Un solo processo intentato contro una donna bigama (ma siamo nel 1587) si concluse semplicemente con l’annullamento del secondo matrimonio da lei contratto.”

about the same time in two very different places - when it came to bigamy men were villains and women were victims.

Second, we can turn to the Spanish, Italian and New World Inquisitorial records. Many scholars working on these Inquisitions and other judicial sources note a stark difference in the number of men and women prosecuted for bigamy. The statistical analyses included in a collection of essays covering the Spanish, Italian, and Portuguese inquisitions consistently observe that men vastly outnumber women, but do not offer exact numbers.¹¹⁰

A few other studies, however offer more detailed analysis of gendered difference. André Fernandez, in his study of sexual offences prosecuted by the Inquisition in sixteenth and seventeenth century Aragon, observes that 20% of those prosecuted for bigamy were female, and 80% male.¹¹¹ Fernandez notes further that “it was customary that the punishment inflicted on women should be less severe than that inflicted on men.”¹¹² Some women, if they confessed “spontaneously” were simply excused. At worst, women were whipped and either banished or sentenced to serve in a hospital or convent for some years.¹¹³ Men, meanwhile, were sentenced to the galleys for five to ten years, a virtual death sentence.

Alison Poska, examining the prosecution of female bigamists in sixteenth-century Galicia, found that: “Bigamy was the third most prosecuted crime between 1560 and 1700, constituting 11.3 percent of the total number of cases, exceeded only by

¹¹⁰ *The Inquisition in Early Modern Europe: Studies on Sources and Methods*, Gustav Henningsen and John Tedeschi, eds. (De Kalb: Northern Illinois University Press, 1986).

¹¹¹ André Fernandez, “The Repression of Sexual Behavior by the Aragonese Inquisition between 1560 and 1700.” *Journal of the History of Sexuality*, Vol. 7, no 4 (April 1997) 469-501; 487.

¹¹² Fernandez, “Repression” 488.

¹¹³ Fernandez, “Repression” 488.

prosecutions for heretical propositions (35.5%) and Judaizing (20.5%)¹¹⁴ As Poska writes: “For reasons that historians do not yet understand, men dominated the ranks of people brought before the Inquisition in nearly all changes, bigamy included. In Galicia men outnumbered women more than five to one (86.2% men and only 15.2% women).”¹¹⁵ Examining the cases of the twenty-three women suspected of bigamy, eleven of those women were found guilty, six of whom were publicly whipped and presumably exiled for three to five years. As Poska notes, however:

The most striking aspect of these trials is that, unlike their male counterparts, many more women accused of bigamy returned home to their second husbands and resumed their married lives. Of the twenty-three women examined here, only half were found guilty. Based on Jaime Conteras’s analysis of all the bigamy trials brought before the Gallegan tribunal, nearly all the accused men were found guilty. At least 85 percent of male bigamists were sentenced to the galleys, and an additional number were found guilty but not sent to the galleys because of their age, social status, or other concerns. Women may have been found guilty less often because inquisitors either sympathized with their plights or excused their behavior based on traditional ecclesiastical notions of the inferiority of women.¹¹⁶

Inquisition records from Portugal and Brazil reveal the same remarkably consistent gender breakdown, in this case 81% male and 19% female (458 men to 107 women).¹¹⁷

Moving from quantitative study to qualitative, we learn that statistical analyses and detailed case studies both reveal a general reluctance to treat female bigamists as equally culpable as men. This is notably true of one of the most famous cases from Early Modern European social history, the story recounted in Natalie Zemon Davis’ *Return of*

¹¹⁴ Allyson S. Poska, “When Bigamy is the Charge: Gallegan Women and the Holy Office,” in *Women in the Inquisition. Spain and the New World*. Mary Giles, ed. Baltimore: Johns Hopkins University Press, 1998, 189-205; 193.

¹¹⁵ Poska “When” 203.

¹¹⁶ Poska “When” 203.

¹¹⁷ Isabel M.R. Memdes Drumond Braga, *A Bigamia em Portugal na Época Moderna* (Lisbon: Hugin, 2003) 93.

Martin Guerre.¹¹⁸ This work describes the disappearance and return of Martin Guerre and the trial of Arnold Tilh, the imposter who took his places as the supposed Martin and supposed husband of Bertrande de Rols, Martin's wife. Davis' famous interpretation of the case focuses on the wife. Davis argues that Bertrande could not have been the dupe of an imposter who posed as her husband, but instead that Bertrande had decided to take a chance at life with Arnold, not only allowing him to pose as her husband but actively helping him achieve the imposture.

As for the Parlement of Toulouse, which passed final judgment on the imposter in 1560, they also considered the question of how to handle Bertrande, who had accepted an imposter as her husband. The court debated if Bertrande should in some way be held accountable, or even prosecuted as an adulteress. Their discussion reflects the gendered treatment we have so often found in this article. As one of the judges, Jean de Coras, later wrote in his account of the trial, Bertrande was excused as innocent because of "the weakness of her sex, easily deceived by the trickery and finesse of men." Such weak and susceptible vessels as women, Coras wrote, are those "to whom the law does not presume intention to do wrong."¹¹⁹

This tradition of excusing female behavior on the grounds of weakness and incapacity certainly must play a considerable role in the exclusion of women from criminal bigamy proceedings, and a mitigation of their punishment when prosecuted.

¹¹⁸ Natalie Davis, *The Return of Martin Guerre* (Cambridge: Harvard University Press, 1988).

¹¹⁹ Jean de Coras, *Arrest memorable du Parlement de Tolose* (1561) 108, Annotation 98: "Mais au contraire, pour l'excuse de ladite de Rolz vient premierement en consideration, la foiblesse de son sexe, facile à estre deceu, par l'astuce, calidité et finesse des hommes, & auquel la loy, facilement ne presume point dolou intention aucune de mal faire."; Natalie Davis, "On the Lame" AHR Forum: The Return of Martin Guerre. *American Historical Review* 93 (Jun. 1988) 572-603; 594.

Indeed, as Davis observes: “A similar mitigation of female responsibility emerges in decisions by the Parlement of Paris in cases of bigamy.”¹²⁰ Alfred Soman found for 1572-1585 seventy male bigamists who appealed their convictions to the Paris Parlement, and for 1564-1588, twelve women. Of the seventy men “between a third and half were condemned to death” almost all of the other men were sentenced to row in the galleys for some years, or to be whipped, or often both. As for the twelve women, four were released, seven were whipped and banished, and one was hanged.¹²¹ This shows both fewer prosecutions of female bigamists and more lenient punishment for most of these women. We find, as Davis concludes, “a grid of judicial practice where women involved in imposture and bigamy (and in other crimes as well, apart from infanticide and witchcraft) were punished less seriously than their male collaborators.”¹²² This is surely right, but it is important to observe that women’s offences were not always treated more leniently. Crimes such as adultery or infanticide drew a very different response.

Turning to a final example, we find bigamy to be a male crime in a more distant time and place.¹²³ In her study of bigamy in the Northern Alberta Judicial District, 1886-1969, Mélanie Méthot observed that while a general perception of bigamy associated the crime with male offenders, the courts nevertheless prosecuted a considerable number of

¹²⁰ Davis, “Lame” 591.

¹²¹ Davis, “Lame” 594-595.

¹²² Davis, “Lame” 595.

¹²³ Bigamy in Victorian England also appears to have been largely a male crime, but seems to have received a starkly different social response than in all other times and places considered in this article. According to Ginger Frost, bigamy was largely tolerated in working-class communities of Victorian England, as long as no wife was being deceived about the other. This suggests a considerable difference in social mores and in perceptions of marriage. Ginger Frost “Bigamy and Cohabitation in Victorian England” *Journal of Family History* 22:3 (1997) 286-306.

female offenders (52 men and 23 women).¹²⁴ Méthot argues that these courts treated female bigamists differently and much more leniently than male bigamists. Thirteen of these women's sentences were suspended. Only four women served time in Edmonton (20%) while nearly two-thirds of men convicted were imprisoned for one day to three years.¹²⁵

In another striking parallel with the findings for late-medieval Troyes summarized above, Méthot finds that the men who married female bigamists were sometimes prosecuted, but not the wives of male bigamists.¹²⁶ “Not only did men receive harsher sentences and more often, but when the courts prosecuted a woman for having two husbands, it generally also charged the second husband.” and further “None of the wives of bigamists were charged with knowing that their alleged husband was already married, even if in some cases it appeared that they knew about the first wife.”¹²⁷

Can we find in Méthot's work any explanation for the gender bias she finds, and for the older expressions of this bias examined throughout this article? Just as Lombardi, Davis, and Poska concluded that the gendered perception of women as weak greatly influenced the prosecution of bigamy, Méthot also found that social expectations guided prosecutions in their focus on male behavior to the exclusion of female bigamists. “The laws being socially constructed, it is no surprise that most of the prosecuted cases dealt with male bigamists. Society expected husbands, not the pure and virtuous wives, to

¹²⁴ Mélanie Méthot, “Bigamy in the Northern Alberta Judicial District, 1885-1969: A Socially Constructed Crime that Failed to Impose Gender Barriers.” *Journal of Family History*, Vol. 31, No. 3 (1 July 2006) 257-266.

¹²⁵ *Ibid.*, 262-263.

¹²⁶ see above, note 107.

¹²⁷ Méthot, “Bigamy” 262.

undermine the sacred institution of marriage.”¹²⁸ Turning to cultural sources, Méthot found a strong inclination to forgive women while blaming men.

Quoting Méthot once more: “Newspapers often depicted [*women*] as victims, while they portrayed men bigamists as villains. Headlines such as ‘Woman Deserted by Her Husband at Edson Married Another Man’ contrasts with ‘Sister of Agnes Wilson Recognizes Photograph of the King of Bigamists’ and ‘Gets Jail Term for Non-Support.’”¹²⁹ Such cultural expressions of sympathy for abandoned wives, and such disdain for male bigamists, can be found as well in Premodern European sources.¹³⁰ Women and their attorneys in the cases from nineteenth-century Northern Alberta, much as with sixteenth-century women described in Natalie Davis’ *Pardon Tales*,¹³¹ drew upon social norms in constructing their defense. Their first husbands had mistreated and abandoned them. Indeed “What were these poor creatures to do?”¹³²

In offering another explanation, Méthot convincingly argues that these laws, like seduction laws, “existed primarily to protect women and the family unit.”¹³³ Society needed to protect wives and the family unit, not husbands: “In the minds of judges, bigamy was clearly a male crime which threatened simultaneously the fundamental institutions of marriage and family.”¹³⁴

Méthot concludes her article by arguing that while the law seems devoid of gender bias, section 309 of the Northern Alberta Criminal Code demonstrated that in the mind of legal thinkers, men and women “were not capable” of the same offence. I submit

¹²⁸ Ibid, “Bigamy” 260.

¹²⁹ Méthot, “Bigamy” 260.

¹³⁰ Sara McDougall, “Bigamy” 79-119.

¹³¹ Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth-Century France* (Stanford, Stanford University Press, 1990).

¹³² Méthot, “Bigamy” 260.

¹³³ Méthot, “Bigamy” 259.

¹³⁴ Méthot, “Bigamy” 259.

that in late-medieval Northern France, in Renaissance Florence, in Early Modern France, and in Spain, when it came to bigamy, men and women were not equally *culpable* in committing the same offence.

4. Conclusion

Gender played - and plays - an important role in defining crime and criminals. Crimes themselves have gendered characteristics. Some crimes are further defined by marital status. An unmarried woman was the quintessential culprit in pre-modern European infanticide cases.¹³⁵ A married woman was the defining feature for most adultery proceedings.¹³⁶

Bigamy too was a gendered offence. There are two primary ways in which married Christians could violate the requirement of indissoluble and monogamous matrimony: adultery and bigamy. Of the two, adultery seems to have been regarded with greater horror when it involved a married woman, while bigamy was regarded with greater horror when it involved a married man.

When a married woman committed bigamy, the social and legal response was quite different. The behavior of married men and married women, their roles in sex and in marriage, triggered different responses in the Middle Ages. Sex involving a married woman had repercussions in ways that sex involving a married man typically did not. Marriage involving a man already married to a living spouse had repercussions in ways that marriage involving a woman already married to a living spouse did not. Gender

¹³⁵ Y-B Brissaud, "L'infanticide a la fin du moyen age, ses motivations psychologiques et sa repression" *Revue historique de droit francais et etranger* 50 (1962) 229-56; R.H. Helmholtz "Infanticide in the Province of Canterbury during the Fifteenth Century." *History of Childhood Quarterly* 1:3 (1975): 379-90.

¹³⁶ As also suggested above, this does not mean, however, that the married woman was necessarily the subject of the adultery prosecution. Her male partner, married or not, might be the target of prosecution as often if not more often than the married woman herself. What made adultery matter as a crime was the act involving a married woman, but this played out in complicated ways in judicial prosecution.

mattered but status also mattered. Male or female, married or unmarried, all these factors contributed towards different kinds of meaning for otherwise similar acts, some clearly criminal enough to require some sort of prosecution and punishment, others not.

Why were women treated differently, by medieval courts and society? Part of the answer is given by Jean de Coras in the case of Martin Guerre. Women were treated as different because they were considered to be different. Different and not equal, but with a few advantages when it came to criminal prosecutions. Women's general perceived incompetence, feminine *fragilitas*, made many things a great deal more difficult for women than men, but also absolved women from culpability in a number of matters. Medieval society, otherwise relatively hard on women, seemed strikingly prepared to forgive and forget when a woman flirted with bigamy.

In contrast, men held different positions in society and were held to a different standard of behavior. A man could be head of household as well as sexual or marital predator, seeking out unwitting female partners to trap in a sham marriage, a marriage made invalid by bigamy. A man, in committing bigamy, violated his responsibilities towards his first wife and abused the (ostensible) trust of the second bride he deceived.

For a woman to commit bigamy, however, had different social, cultural, and economic consequences. If her husband disappeared and she was left in precarious social and financial straits, even her husband's own family might wish to see her remarried and provided for.¹³⁷ The limitations medieval society imposed upon female behavior thus cast

¹³⁷ For a likely example see: Brenda Bolton and Constance M. Rousseau, "Palmerius of Picciati: Innocent III meets his 'Martin Guerre'" in *Proceedings of the Tenth International Congress of Medieval Canon Law 1996*. Kenneth Pennington, Stanley Chodorow and Keith Kendall, eds. Monumenta Iuris Canonici, Series C: Subsidia, 11 (Vatican City, 2001) 361-385.

women as victims but was also as a result somewhat inclined to recognize them as such and to forgive their efforts to seek shelter and support.

There are also deep issues involving respectability and the place of women within medieval society. A woman who committed adultery violated social norms and dishonored herself and her family. By contrast, a woman who remarried, even without her husband's family's support, in some ways chose a more respectable path than an abandoned wife who remained alone. Medieval society may well have preferred to see a woman enter into a potentially bigamous marriage rather than remain free, unattached, a likely candidate for prostitution, or for concubinage with a parish priest, or at any event for sexual license and general license to act outside the circle of familial rights and obligations. For a woman to commit bigamy was for a woman to seek family, home, male headship. All these things medieval society might forgive its women.

There is finally a fourth aspect to male bigamy that may well have influenced the harsh response it received when exposed to public view. Female bigamy had no known counterpart in the world of medieval Christian imagination. Male bigamy brought to mind things Jewish and Mohammedan, things unchristian. Christian identity seemed to require male monogamous marriage. Female bigamy, with no known pagan or otherwise unchristian tradition to compare it to, was unthinkable, and best not thought about. This was true in antiquity, and remained true into the Early Modern period.

In the pre-modern European conception of the crime of bigamy, nearly regardless of the sex of the perpetrator, men were villains and women were victims. Women did commit bigamy in medieval and Early Modern Europe, they were just far more likely to get away with it than men. The biases in late-antique and early medieval law prepared

late-medieval Europe for this attitude, but in the end it is the Christian understanding of men and women as different, with different rights and obligations, that most clearly explains this difference in prosecution.