Sex Crime Appeals at the Parlement of Paris, 1564-1655

by

Justine Semmens
BA, University of Calgary, 2001
MA, University of Calgary, 2003

A Dissertation Submitted in Partial Fulfillment
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Supervisory Committee

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Abstract

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This dissertation examines the intersection of the prosecution of criminal justice, sexual morality and the family at the parlement of Paris, which was the highest court of appeal in France, during the height of its power and influence in the kingdom from 1564-1655. This dissertation argues that in its adjudication of the crimes of seduction, infanticide, adultery, and bigamy the parlement of Paris interpreted the law according to a paternal theory of state by prioritizing family integrity and patriarchal honour in its decisions. In so doing, it presents a unique synthesis of statute and published legal opinion with a systematic survey of judicial decisions, based on archival findings, relating to these sex crimes in early modern France. It concludes that these judicial decisions were ensconced in the concepts of family, the king's justice, and sovereignty, which were foundational to the interconnected theories of state and society in early modern France. The parlement tended to separate elite and modest appellants according to the socio-economic priorities of *lignage* and *ménage,* or the protection of the integrity of elite lineages and the stability of artisanal households within broader networks of family and community. Ultimately, this study exposes the expectations and values that gendered authority placed on men and women in early modern French society, reveals the ways that the most powerful judges in France interpreted the law according to these values, and unveils the narratives that women and men crafted when they confronted these expectations before these powerful

judges. In so doing, this dissertation sheds new light on the relationships between gender and the law, gender relations in state and society, and the lived experience of marriage in early modern France.

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Abbreviations and Annotations

AN	Archives nationales de France
ADS	Archives départementales de la Somme
AP	Archives de la Préfecture de Police de Paris

All in-text foreign terms have been italicized, apart from the words ‘parlement’ and ‘parlementaires’ which Anglo-American historians of France treat as English terms according to many style conventions.

All folio and signature references are to the recto unless otherwise noted.

All translations are my own unless otherwise stated.

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Dedication

For Nana and Da

Chapter 1: Introduction

> *La République est un droit gouvernement de plusieurs ménages, et de ce qui leur [est] commun, avec puissance souvereine…le roi commande aux sujets, le magistrat aux citoyens, le père aux enfants. Mais de tous ceux-là…il n'y en a pas un, à qui nature donne aucun pouvoir de commander et moins encore d'asservir autrui, hormis au père, qui est la vraie image du Grand Dieu Souverain, père universel de toute chose*.[1]

This dissertation examines the intersection of the prosecution of criminal justice, sexual morality and the family at the parlement of Paris, the highest and final sovereign court of appeal in France, during the height of its power and influence in the kingdom from the middle of the sixteenth to the middle of the seventeenth century. The concepts of family, the king's justice, and sovereignty were foundational to the interconnected theories of state and society in early modern France. The sixteenth-century jurist and humanist philosopher, Jean Bodin, opened his *Six livres de la République* with a definition of the republic as the "lawful government of many families" whom the inalienable and indivisible "sovereign power" governed "in common."[2] God who was the ultimate and universal source of this sovereignty, invested the king with the mystical authority to command his subjects in God's image as supreme father and judge.[3] The king, in turn, granted his sovereignty to the judges who commanded the subjects as citizens living under the law and to the father who commanded the subjects as his children in his household.[4]

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[1] Jean Bodin, *Les six livres de la République* (Paris: Jacques du Puys, 1581), Book I: 1, 29.
[2] Bodin, *Les six livres de la République*, I: 1.
[3] Bodin, *Les six livres de la République*, I: 1; Ernst Kantorowicz, *The King's Two Bodies: A Study in Medieval Political Theology* (Princeton: Princeton University Press, 1997), 97-106.
[4] Bodin, *Les six livres de la République* 1, 1, 29; Aurélie du Crest, *Modèle familial et pouvoir monarchique (XVIe – XVIIIe siècles)* (Aix and Marseille: Presses universitaires d'Aix-Marseille, 2002), 85-7, 102-113.

This image of the king of France as *pater patriae*, father to his homeland, was drawn from the mythical conception of Christian kingship that emerged during the Middle Ages.[5] In 1506, in the long shadow of the Hundred Years' War and in the midst of a succession crisis that threatened to re-fragment and significantly weaken French territorial sovereignty, the Estates General of Tours dubbed Louis XII the *père du peuple*, weaving this mythic image of kingship into proto-national French identity.[6] Bodin consolidated these principles into his mythical-political definition of sovereignty in 1576, a moment in time when the memory of the massacres of Saint-Bartholomew's Day remained fresh and in which the rise of the Holy League threatened to renew the religious and dynastic divisions of civil war.[7] Once the ascendance of the House of Bourbon to the throne finally settled the Valois succession crisis and delivered peace between warring religious factions, Henri IV deliberately elicited this paternal metaphor as he asserted his rightful inheritance of the throne and tried to patch the kingdom back together.[8] Paternal monarchy was born out of an era of intermittent and turbulent political crisis. The good governance of the family became an essential task of royal justice amid these crises.

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[5] Kantorowicz, *The King's Two Bodies*, 97-106, 192.

[6] Du Crest, *Modèle familiale*, 351; Pascale Thibault, "Louis XII, de l'Imperator au père du peuple: Iconographie du règne et de sa mémoire," *Nouvelle Revue du Seizième Siècle* 13, 1 (1995): 29-56; Martin Gosman, "Official Statements and Propaganda in the Estates General of France (1484-1615)," in *Selling and Rejecting Politics in Early Modern Europe*, ed. Martin Gosman and Joop W. Koopmans (Leuven and Paris: Peeters, 2007), 36-7; Kantorowicz, *The King's Two Bodies,* 218-222.

[7] Edward Andrew, "Jean Bodin on Sovereignty," *Republic of Letters: A Journal for the Study of Knowledge, Politics, and the Arts* 2, 2 (June 2011): 75-84; Du Crest, *Modèle familiale*, 351; Barbara Diefendorf, *Beneath the Cross: Catholics and Huguenots in Sixteenth Century Paris* (New York and Oxford: Oxford University Press, 1991)*;* Mack Holt, *The French Wars of Religion, 1562-1629* (Cambridge: Cambridge University Press, 1995), 76-98, 104-111.

[8] Penny Roberts, "Royal Authority and Justice During the French Religious Wars," *Past & Present* 184 (Aug 2004): 3-32; Annette Finley-Croswhite, "Henry IV and the Diseased Body Politic," in *Princes and Princely Culture: 1450-1650.* ed. M. Gosman, A. MacDonald, and A. Vanderjagt, Vol. 1 (Leiden and Boston: Brill, 2003), 131-146; Eric Nelson, "Royal Authority and the Pursuit of a Lasting Religious Settlement: Henri IV and the Emergence of the Bourbon Monarchy," in *Politics and Religion in Early Bourbon France*. ed. Alison Forrestal and Eric Nelson (London: Palgrave Macmillan, 2009), 107-131; Diane Margolf, *Religion and Royal Justice in early modern France: The Paris Chambre de l'Edit, 1598-1665*. Sixteenth Century Essays and Studies 67 (Kirksville: Truman State University, 2003), 100.

This identification of royal sovereignty with paternal authority invoked the family as a powerful analogy for the state.[9] The relationship between the king as *pater patriae* of the republic and the *res publica* as a body of many families was symbiotic: The king's majesty was responsible for protecting the inalienable and indivisible sovereignty of the kingdom, while the stability of the kingdom as a social body of "many families" protected the political body, and thus the sovereignty, of the king. This sacred relationship guaranteed the freedom of the people and protected them from tyranny.[10] The protection of the kingdom depended, therefore, in no small part, on the stability and integrity of the family and the bonds of marriage that shaped it in the present and conserved it for the future.[11] The temporal prosecution of sex crimes in France emerged amid broader European trends that included the entrenchment of patriarchalism, religious and moral reformation, and the formation of the judicial state.[12] The specifically French

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[9] Margolf, *Religion and Royal Justice*, 100; Roderick Philips, "The Family and Ideology in Eighteenth-Century France," *Proceedings of the Annual Meeting of the Western Society for French History,* 16 (1989): 361-369.

[10] J.H. Shennan, *The Parlement of Paris,* 2nd ed. (Phoenix Mill: Sutton, 1998), 151-2, 173, 190, 220.

[11] Margolf, *Religion and Royal Justice*, 103; Natalie Davis, "Ghosts, Kin and Progeny," "Ghosts, Kin and Progeny," in *Daedalus* 106:2 (1977): 87-114; Robert Wheaton, "Affinity and Descent in Seventeenth-Century Bordeaux," in *Family and Sexuality in French History*, ed. Robert Wheaton and Tamara Haraven (Philadelphia: University of Pennsylvania Press, 1980), esp. 121-130.

[12] Lyndal Roper, *Holy Household: Women and Morals in Reformation Augsburg* (Oxford: Oxford University Press, 1989); Ulinka Rublack, *The Crimes of Women in Early Modern* Germany (Oxford: Clarendon, 1999); Joel Harrington, *Reordering Marriage and Society in Reformation Germany* (Cambridge: Cambridge University Press, 1995); Ulrike Strasser, *State of Virginity: Gender, Religion, and Politics in an Early Modern Catholic State* (Ann Arbor: University of Michigan Press, 2007); Marie Boes, *Crime and Punishment in Early Modern Germany: Courts and Adjudicatory Practices in Frankfurt am Main, 1562-1692* (Aldershot: Ashgate, 2003); Manon Van der Heijden, *Women and Crime in Early Modern Holland.* Trans. David McKay (Leiden and Boston: Brill, 2016); Guido Ruggiero, *Boundaries of Eros: Sex Crime and Sexuality in Renaissance Venice* (New York and Oxford: Oxford University Press, 1985); Jana Byars, *Informal Marriages in Early Modern Venice* (New York: Routledge, 2019); Alexandra Shepherd, *Meanings of Manhood in Early Modern England* (Oxford: Oxford University Press, 2003); Alexandra Shepherd, "From Anxious Patriarchs to Refined Gentleman? Manhood in Britain, circa 1500-1700." *Journal of British Studies,* 2, 44 (April 2005): 281-295; Joanne Bailey, *Unquiet Lives: marriage and marriage Breakdown in England, 1600-1800*. Cambridge: Cambridge University Press, 2003); Mark Breitenberg, *Anxious Masculinity in Early Modern England* (Cambridge: Cambridge University Press, 1996); Garthine Walker, "Expanding the boundaries of Female Honour in Early Modern England," *Transactions of the Royal Society*, 6 (1996): 235-45; Merry Elizabeth Perry, *Gender and Disorder in Early Modern Seville* (Princeton: Princeton University Press, 1990); Scott Taylor, *Honor and Violence in Golden*

doctrine that fused family and sovereignty[13] was crystalized into royal law with the establishment of statutes that criminalized premarital pregnancy and legal reforms that laicized the crimes of raptus, adultery, and bigamy.[14] When men and women failed to live up to the codes that protected family integrity and conserved patriarchal honour, the apparatus of the king's justice was activated to correct the wrong and repair the harm.[15]

My central argument in this dissertation is that in its adjudication of sex crimes in the sixteenth and seventeenth century, the parlement of Paris interpreted the law according to this paternal state theory by prioritizing family integrity and patriarchal honour in its decisions. In so doing the parlement tended to separate elite and modest appellants according to the socio-economic priorities of *lignage* and *ménage*, or the

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Age Spain (New Haven: Yale University Press, 2008); Jodi Bilinkoff, *The Avila of Saint Teresa: Religious Reform in a Sixteenth-Century City* (Ithaca: Cornell University Press, 1989).

[13] Julie Hardwick, *Practice of Patriarchy: Gender and the Politics of Household Authority in Early Modern France* (University Park: The Pennsylvania State University Press, 1998); Barbara Diefendorf, *Paris City Councillors in the Sixteenth Century: The Politics of Patrimony* (Princeton: Princeton University Press, 1983); Sarah Hanley, "Engendering the State: Family Formation and State Building in Early Modern France," *French Historical Studies* 16, 1 (Spring 1989): 4-27; "Family and State in Early Modern France: The Marriage Pact," in *Connecting Spheres: Women in the Western World, 1500 to the present*, (New York: Palgrave, 1987); Jeffrey Merrick, "Fathers and Kings: Patriarchalism and Absolutism in Eighteenth-Century French Politics," *Studies on Voltaire and the Eighteenth Century* 308 (1993): 281-303.

[14] Sara McDougall, "The Transformation of Adultery in France at the End of the Middle Ages," *Law and History Review* 32, 3 (August 2014): 491-524; Sarah Hanley, "The Jurisprudence of the Arrêts: Marital Union, Civil Society, and State Formation in France, 1550-1650," *Law and History Review* 21, 1 (Spring 2003): 1-40; Sarah Hanley, "Engendering the State: Family Formation and State Building in Early Modern France," *French Historical Studies* 16, 1 (1989): 4-27; Sarah Hanley, "A Juridical Formula for State Sovereignty: The French Marital Law Compact, 1550-1650," in *Le seconde ordre. L'idéal nobiliaire: hommage à Ellery Schalk,* ed. Chantal Grell and Arnaud Ramière de Fontanier (Paris: Presses universitaires de Paris-Sorbonne, 1999), 189-97; James Farr, *Authority and Sexuality in early modern Burgundy* (Oxford: Oxford University Press, 1995); Régine Beauthier, *La répression de l'adultère en France du XVIe siècle au XVIIIe siècle* (Brussels: Story-Scientia, 1990) ; Yves-Marie Bercé and Alfred Soman, *La justice royale et le parlement de Paris (XIVe-XVIIe siècle)* (Geneva: Library Droz, 1995); Benoît Garnot, *Histoire des bigames: criminels ou naïfs?* (Paris: Nouveau Monde, 2015); Véronique Demars-Sion, "Un episode peu connu de l'histoire du rapt de séduction: l'utilisation de la législation royale au profit des femmes déshonorées dans le jurisprudence du XVIIe siècle," *Revue de science criminelle et de droit pénal comparé* 4 (Oct-Dec 1998): 713-751.

[15] Margolf, *Religion and Royal Justice,* 104-9.

protection of the integrity of elite lineages and the stability of artisanal households within broader networks of family and community.[16]

Patriarchalism was a double-edged sword and parlementaires had a nuanced view of women.[17] It its most pristine form, it privileged elite male lineages and paternalistic authority over subaltern men and the dependent interests of women.[18] Patriarchalism also emphasized the responsibility of men to govern the women living in their households.[19] The failure of men of more modest rank to effectively govern their women left them vulnerable to criticism. In emphasizing these priorities, the judges of the parlement were suspicious of men who failed to live up to the high standards of patriarchal masculinity and were quite willing to make an example of them when they broke the law while judging women according to their social connectedness to patriarchal honour and ties to

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[16] See Hardwick, *Practice of Patriarchy;* Margolf, *Religion and Royal Justice*, 103; James Farr, *Hands of Honor: Artisans and their World in Dijon, 1550-1650* (Ithaca: Cornell University Press, 1988)*;* Janine Lanza, *From Wives to Widows in Early Modern Paris: Gender, Economy, and Law* (Aldershot: Ashgate, 2007); Barbara Diefendorf, *Paris City Councillors in the Sixteenth Century: The Politics of Patrimony* (Princeton: Princeton University Press, 1983); Robert Descimon, "The Birth of the Nobility of the Robe: Dignity versus Privilege in the Parlement of Paris, 1500-1700," in *Changing Identities in Early Modern France*, ed. Michael Wolfe (Durham: Duke University Press, 1997), 95-123; Jean-Louis Flandrin, *Families in Former Times: Kinship, Household, and Sexuality* (New York: Cambridge University Press, 1979).

[17] Lyndan Warner, *The Ideas of Man and Woman in the Renaissance: Print, Rhetoric, and Law* (Aldershot: Ashgate, 2011); Una McIlvenna, *Scandal and Reputation at the Court of Catherine de Medici* (New York: Routledge, 2016); Danielle Haase-Dubosc, "Des vertueux faits de femmes (1610-1660)," in *De la violence et des femmes*, ed. Cécile Dauphin and Arlette Farge (Paris: Michel Aubin, 1997), 53-72; Robert Descimon, "La fortune des Parisiennes: l'exercice féminin de la transmission (XVI^{e}-XVII^{e} siècles)," in *La Famiglia nell'economia Europea secc. XIII-XVIII*, ed. Simonetta Cavaciocchi (Florence: Firenze University Press, 2009).

[18] Robert Muchembled and James Farr have emphasized this understanding of patriarchical authority in their examination of Parisian and Dijonais parlementary *arrêts.* Robert Muchembled, *Passions de femmes au temps de la reine Margot, 1553-1615* (Paris: Editions du Seuil, 2003); Farr, *Authority and Sexuality.*

[19] Sara Matthews-Grieco, *Cuckoldry, Impotence and Adultery in Europe (15th – 17th century)* (New York and London: Routledge, 2014); Elizabeth Foyster, *Manhood in Early Modern England: Honour, Sex and Marriage* (New York and London: Routledge, 2014); Androniki Dialeti, "From Women's Oppression to Male Anxiety: The concept of 'Patriarchy' in the Historiography of Early Modern Europe," in *Gender in Late Medieval and Early Modern Europe*, ed. Marianna G. Muravyeva and Raisa Maria Toivo (New York and London: Routledge, 2014), 19-36. On the relationship between the legal imbecility of women and patriarchalism see Dorothea Nolde, *Gattenmord: Macht und Gewalt in der frühneuzeitlichen Ehe* (Köln: Böhlau, 2003); Dorothea Nolde, "The Language of Violence: Symbolic Body Parts in Marital Conflicts in Early Modern France," in *Violence in Europe: Historical and Contemporary Perspectives*, ed. Sophie Body-Gendrot and Pieter Spierenburg (New York: Springer, 2008), 141-159.

lineage and household. Consequently, the judges responded with incredulity to women who lacked access to these important social resources.

The Parlement of Paris: A historiographical sketch

This dissertation also contributes to broader historiographical conversations about the role that reasonable doubt, procedural controls, and judicial restraint in sentencing played in the parlementary appeal process in the sixteenth and seventeenth centuries. In 1975, Michel Foucault famously cast the early modern justice system – at the centre of which stood the parlement of Paris – as the merciless and grotesque foil to the more subtle psychological violence of the modern carceral system.[20] Foucault's conclusions about the sixteenth and seventeenth-century judicial pleasure for violence relied heavily on the thesis proposed by Adhémar Esmein, the nineteenth-century critic of the *ancien régime*, that the early modern justice system depended on the tyranny of secrecy, fear, and arbitrary proof to function.[21] Esmein, however, viewed the history of early modern criminal justice through the post-Revolutionary lens of the Third Republic, which consciously juxtaposed the liberty of the republic against the tyranny of absolute monarchy.[22] Moreover, his conclusions depended mainly on the evidence provided by the strict language of royal edicts, ordinances and printed *recueils de justice* – jurisprudential

[20] Michel Foucault, *Discipline and Punish: The Birth of the Prison.* trans. Alan Sheridan, 2nd ed. (New York: Vintage, 1995), 3-72.
[21] Adhémar Esmein, *Histoire de la procédure criminelle en France et spécialement de la procédure inquisitoire, depuis le XIIe siècle jusqu'à nos jours* (Paris: Larose et Forcel, 1882), 131-174, 260-83.
[22] Esmein, *Histoire de la procédure criminelle en France,* 131-174, 260-83; Alfred Soman, "La justice criminelle aux XVIe-XVIIe siècles: le parlement de Paris et les sièges subalternes," in *Actes du 107e Congrès national des Sociétés savantes (Brest, 1982),* Vol. 2 (Paris: Bibliothèque nationale, 1984), 15-52; Alfred Soman, "Deviance and Criminal Justice in Western Europe, 1300-1800: An Essay in Structure," *Criminal Justice History* 1 (1980): 3-28.

compendiums and mainly eighteenth-century procedural commentaries – which leave inadequate room for appreciating nuances of early modern royal justice.[23]

More recent archival studies have considerably nuanced our understanding of criminal justice at the parlement. For instance, Yvonne Bongert's pioneering work in the parlementary fonds at the *archives nationales* revealed the shortcomings of Esmein's reliance on these heavily curated sources for our understanding of the judicial application of justice, which, she concluded, relied on the legal philosophy that punishment must be both just and proportionate to the crime and the certainty of guilt.[24] Also drawing attention to the limitations of these sources, Alfred Soman observed that legal and jurisprudential compendiums, in particular, represented a series of rulings that jurisconsults had curated and repeated that skew scholarly appreciation for the evolving nature of parlementary precedents and its impact on early modern jurisprudence.[25] Bongert and Soman belonged to a new generation of historians, emerging mainly in the 1970s, who went to the parlementary fonds at the national and departmental archives of France to examine the unpublished records produced by the machinery of royal justice. This new school of parlementary historians refuted the older thesis about the ruthlessness of early modern French justice by producing a more nuanced picture of the sovereign

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[23] Sara Beam, "Violence and Justice in Europe: Punishment, Torture and Execution," in *The Cambridge World History of Violence,* ed. Robert Antony, Stuart Carroll, and Caroline Dodds Pennock (Cambridge: Cambridge University Press, 2020), 389-407.
[24] Yvonne Bongert, "Le juste et l'utile dans la docrtine pénale de l'Ancien Régime," *Archives de la philosophie du droit* 27 (1982): 291-347.
[25] Soman, "La justice criminelle aux XVIe-XVIIe siècles," 16-17; Alfred Soman, "Criminal jurisprudence in Ancien Régime France: The Parlement of Paris in the Sixteenth and Seventeenth Centuries," in *Crime and Criminal Justice in Europe and Canada,* ed. Louis Knafla (Calgary and Waterloo: Calgary Institute for the Humanities and University of Waterloo Press, 1981), 43-76; Alfred Soman, "La justice criminelle. Vitrine de la monarchie française," *Bibliothèque de l'école des chartes* 153, 2 (1995): 291-304.

courts.[26] Parlementaires, they concluded, prioritized the evolution of judicial precedents over a more scrupulous reliance on the text of royal edicts and ordinances to form their definitive rulings, which frequently emphasized clemency and restraint through the mitigation of harsh sentencing over bloodthirsty spectacle.[27]

Louis-Bernard Mer, for example, was able to show that during the twilight of the *ancien régime,* Enlightenment ideals about justice and punishment resulted in judicial temperance relative to the maximum punishments permitted in statute.[28] Bernard Schnapper, on the other hand, was able to show that that a shift toward leniency relative to the maximum punishment permitted under the law emerged very early in judicial practice at the parlement of Paris, becoming a fundamental aspect of definitive judicial decisions following the formal expansion and regulation of the parlementary appeal process established by the Ordinance of Villers-Côtterets in 1539.[29]

As scholars branched out to closely examine the repression of specific categories of 'enormous' crime at French parlements, they discovered that procedural controls

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[26] Yvonne Bongert, *Histoire du droit pénal -Cours de doctorat,* 2nd ed. (Paris: Panthéon-Assas, 2012); Bernard Schnapper, "La répression pénale au XVIe, l'exemple de Bordeaux, 1510-1565," in *Droit pénal et société méridionale* (1972): 1-54; Bernard Schnapper, "La Justice criminelle rendue par le parlement de Paris sous le règne de François Ier," *Revue historique de droit français et étranger* 52, 2 (April-June 1974): 252-284; Bernard Schnapper, "Les peines arbitraires du XIIIe au XVIIIe siècle (doctrines savantes et usages français)," *Tijdschrift voor Rechtsgescheidenis/Legal History Review* 42, 1-2 (1974): 91-112; Louis-Bernard Mer, "Réflexions sur la jurisprudence criminelle du Parlement de Bretagne pour la seconde moitié du XVIIIe siècle," in *Droit privé et institutions régionales: études historiques offertes à Jean Yver* (Rouen: Lecerf, 1976), 505-30; Alfred Soman, "Les pBorocès de sorcellerie au Parlement de Paris (1565-1640)," *Annales: Economies, Sociétés, Civilisations* 23 (1977): 780-814; Soman, "The Parlement of Paris and the Great Witch Hunt (1565-1640)," *The Sixteenth Century Journal* 9, 2 (1978): 32-44; Soman, "La justice criminelle aux XVIe-XVIIe siècles," 15-52.

[27] Soman, "La justice criminelle aux XVIe-XVIIe siècles," 15-52; Soman, "La justice criminelle vitrine de la monarchie," 291-304; Schnapper, "La répression pénale," ;1-54 Schnapper, "Justice criminelle rendue par le parlement de Paris sous le règne de François Ier," 262-284; Mer, "Réflexions sur la jurisprudence criminelle du Parlement de Bretagne," 505-30.

[28] Mer, "Réflexions sur la jurisprudence criminelle," 505-30.

[29] Schnapper, "La justice criminelle rendue par le parlement de Paris sous le règne de François Ier," 252-284; Raymond Mentzer, *Heresy Proceedings in Languedoc, 1500-1560* (Philadelphia: Transactions of the American Philosophical Society, 1984), 104.

encouraged similar patterns of mitigation and judicial restraint which sometimes followed a period of intense prosecution and punishment.[30] Raymond Mentzer's study of heresy trials in Languedoc, for example, discovered that while the parlement of Toulouse was composed mainly of staunchly Catholic judges, and although executions and other severe punishments like forced labour and solitary confinement did occur, the philosophical culture of judicial restraint in the face of uncertainty resulted in the commutation of lower court death sentences on appeal much of the time.[31] In his survey of heresy (classified as Protestant sedition in the prosecution at the parlement of Paris and seven other provincial parlements) William Monter concluded that following the first few decades of intense and often lethal prosecution in the 1520s and 1530s, both the volume of appeals and severity of definitive punishments had declined by the time Calvinism became a serious religious and political force in France on the eve of the first civil war. Although some parlementaires had become sympathetic to the Protestant cause by the 1550s, the overall decline in death sentences were ultimately the result of appeal procedures that led to judicial moderation.[32]

Soman's examination of witchcraft prosecution, which overturned Robert Mandrou's thesis that the parlement of Paris participated in the kind of judicial witch hunts seen in Lorraine, the Holy Roman Empire, and Scotland, noted a significant gap between the harsh sentencing instructions often recommended by lower courts and the mitigated definitive sentences pronounced on final appeal – a gap, he suggests, which

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[30] Enormous crimes, *cas énormes*, refer to crimes prosecuted by public authorities rather than private plaintiffs which broke serious religious and/or moral taboos. In the sixteenth and seventeenth centuries these included *lèse majesté*, heresy, sacrilege, blasphemy, infanticide, spousal murder, fratricide, and patricide. See William Monter, *Judging the French Reformation: Heresy Trials by Sixteenth-Century Parlements* (Cambridge: Harvard University Press, 1999), 10-13.
[31] Mentzer, *Heresy Proceedings*, 104-7.
[32] Monter, *Judging the French Reformation*.

demonstrated not the skepticism of the judges with regard to witchcraft but judicial commitment to procedure, the high standards of evidence, and the belief that the parlement played an important role in maintaining the public order against political and religious fanaticism.[33] While Soman questions the extent to which there was a "witch craze," he believes instead that there was an "infanticide craze" fuelled in part by the aggressive prosecution and punishment of single mothers charged with neonatal murder under new legislation introduced in 1556 that relaxed evidentiary standards of proof.[34]

My research offers a modification of Soman's thesis. I argue that while women convicted of infanticide represented the biggest cohort of female appellants between the middle of the sixteenth and the middle of the seventeenth century, higher standards of certainty of proof first introduced in the 1580s encouraged the parlement to begin commuting death penalty sentences to non-lethal forms of punishment much earlier than Soman has estimated.[35] Parlementaires approached their examination of proof through the lens of reasonable doubt.[36] Though afflictive punishment and retributive justice were important features of the early modern French justice system, the parlement relied on procedural controls and emphasized the mitigation of punishment and sometimes even

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[33] Soman, "Les procès de sorcellerie," 790-814; Soman, "The Parlement of Paris and the Great Witch Hunt," 31-44; Soman, "The Anatomy of an Infanticide Trial: The case of Marie-Jeanne Bartonnet (1742)," in *Changing Identities in early Modern France*, ed. Michael Wolfe (Durham and London: Duke University Press, 1997), 248-272. Jonathan Dewald noted similar findings at the parlement of Rouen in the late sixteenth and early seventeenth century. Jonathan Dewald, *The Magistrates of the Parlement of Normandy in the Sixteenth Century* (Berkeley: University of California Press, 1980), 17-18. Normandy also experienced a brief witch panic in 1669. Robert Mandrou, *Magistrats et sorciers en France au XVIIe siècle. Une analyse de psychologie historique* (Paris: Plon, 1968), 439-58.

[34] Soman, "Anatomy of an Infanticide Trial," 248-52.

[35] See Chapter Three.

[36] Yvonne Bongert, "Le '*pro modo probationum*': intime conviction avant la lettre," *Revue historique de droit français et étranger* 78, 1 (Jan-Mar 2000): 13-39.

clemency in its jurisprudence. My work thus extends some of the insights found in the study of heresy and witchcraft to the study of sex crime.

The procedural evolution of the Parlement of Paris

In order to understand the role that the parlement of Paris played in the prosecution and appeals process regarding sex crimes in the sixteenth and seventeenth century it is necessary to consider how it first became an appeals body. The parlement was established around 1239.[37] Its basic procedure, based on trial by ordeal, gave way in 1345 to the Roman-Canon legal system inflected with what Louis de Carbonnières describes as a self-conscious '*gallicanisme'* which applied customary law in the northern part of its jurisdiction and Roman law in the south.[38] The process and system of personnel set in place in the thirteenth and fourteenth century evolved into six permanent chambers that included the *Grande Chambre,* or the court of sessions composed of seventy-five *présidents à mortier,* the *Chambre de la Tournelle,* or criminal chamber, which rotated twelve *présidents* including the *premier président,* or chief justice, from the *Grande Chambre* every six months, and the subordinate chambers of *Enquêtes* and *Requêtes*.[39] As the kingdom expanded other parlements with similar appeal functions were established in the provinces.[40] The Parisian parlement remained *primer inter pares.*

[37] Travelling with the king's court, the parlement began confirming royal edicts and hearing appeals on behalf of the *curia regis* in 1254. By 1278, the parlement had permanently situated itself in Paris. Shennan, *The Parlement of Paris*, 14-15.
[38] Louis de Carbonnières, *La procédure devant la chambre criminelle du Parlement de Paris au XIVe siècle* (Paris: Honoré Champion, 2004), XXI-XXIII; Tyler Lange, *The First French Reformation: Church Reform and the Origins of the Old Regime* (Cambridge: Cambridge University Press, 2014).
[39] Parlementary magistracy became permanent and venal in 1497. In 1644, parlementaires achieved nobility of the first degree. See Descimon, "The Birth of the Nobility of the Robe," 95-123.
[40] As the kingdom expanded, the king occasionally sent out *Grand Jours*, or itinerant judicial councils, to remote territory. Some of these mobile courts eventually became permanent judicial fixtures that evolved into independent parlements, beginning in 1420 at Toulouse. The parlement at Dijon was absorbed into the

The emergence of the parlement as a broadly accessible court of final appeal on the eve of the sixteenth century was a significant moment of state formation for the kingdom.[41] Of upmost importance to the present study, the parlement used its power to arbitrate justice in order to articulate its independence and to assert its role in the maintenance of sovereignty. As the "mystical" legislative and judicial body "representing the person of the king," the parlement came to understand itself as the mediator between the king's justice and his subjects, the champion of conciliarist Catholicism, and the arbiter of public order.[42] The parlement interpreted this role as a constitutional responsibility that obligated it to conserve the authority of the king's sovereignty while simultaneously limiting royal absolutism which it formally articulated in its 1489 remonstrance to Charles VIII, describing itself as the "sovereign justice of France" and the "true throne, authority, magnificence and majesty of the king himself."[43] By the

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kingdom in 1480 and the parlements at Rouen and Rennes were then established in 1515 and 1553, respectively. On *Grand Jours,* see Malcolm Greenshields, *An Economy of Violence in Early Modern France: Crime and Justice in the Haute Auvergne, 1587-1664* (University Park: Pennsylvania State University Press, 1994).

[41] Jean-Marie Carbasse, *Introduction historique au droit pénal* (Paris: Presses universitaires de France, 1990), 108; Claude Gauvard, "La justice pénale du roi de France à la fin du Moyen Age," in *Le pénale dans tous ses Etats. Justice, Etats et sociétés en Europe (XIIe-XXe siècles),* ed. Xavier Rousseaux and René Lévy (Brussels: Presses de l'Université Saint-Louis, 1997), 81-112; Soman, "La justice criminelle, vitrine de la monarchie." A court of first instance for noble defendants, the Paris parlement's appeal function matured in the middle of the fourteenth century as the appeal court of choice for clerical appellants who favoured the court's clear procedure, written record-keeping, and use of precedential jurisprudence, over ecclesiastical tribunals in interlocutory appeals involving violent crime and theft and to help settle conflicts between ecclesiastical jurisdictions. By the beginning of the fifteenth century, the parlement regularly heard appeals from noble and clerical defendants but had also started to receive appeals on final verdicts from royal courts of first instance and even seigneurial courts. Carbonnières, *La procédure,* 44-60, 325-356; Shennan, 172-3; Lange, *First French Reformation,* 39-59.

[42] "un corps mystique meslé de gens ecclésiastique et lais…representans la personne du roy." The remonstrance of 1489, quoted from Edouard Maugis, *Histoire du parlement de Paris de l'avènement des rois Valois à la mort d'Henri IV,* vol.1, (Paris: Librairie des Archives Nationales et de la Société de l'Ecole des Chartes, 1916), 374-5.

[43] The remonstrance of 1489 claimed that the parlement was "la souveraine justice du royaume de France, le vray siège, autorité, magnificence et majesté du roy." quoted from Edouard Maugis, *Histoire du Parlement de Paris,* Vol.1, 374-7. See also Kantorowicz, *The King's Two Bodies,* 220-1; and Nany Lyman Roelker, *One King, One Faith: The Parlement of Paris and the Religious Reformations of the Sixteenth Century* (Berkeley, Los Angeles, and London: University of California Press, 1996), 59-70, 76-7. On the tension, sometimes theatrical, that the parlement's self-styled role caused with the monarchy see also

middle of the sixteenth century, the parlement had come to specifically interpret this position as a statutory duty to guard the king's sovereignty by defending the liberties of the Gallican Church against both Ultramontane and Protestant fanaticism and to protect the liberties of the king's subjects from despotism and tyranny.[44] In the realm of criminal justice, more specifically, this constitutional stance was expressed through the arbitrary power of the judges to interpret the law and its power to respond with rigour or with clemency.

In 1565, *Premier Président* Christophe de Thou remarked that "the court of sessions" was "not only a place of protection but also of refuge, the king's port and safe harbour for all of his people and those from foreign nations."[45] Although De Thou expressed these lofty reassurances to the Prince de Condé, whose experience of justice was very different from the humbler subjects who came before the bench, the basic sentiment that parlementary justice offered not only punishment but also the opportunity for asylum was essential to the concept of the appeal, which as Soman concludes, "became" the "cornerstone of criminal justice in France" in the sixteenth century.[46] Although there were certain mechanisms in place to seek clemency, remission, cross-jurisdictional appeal, pardon, or, very occasionally, retrial at the Old Bailey in England, the three royal chanceries of Spain, regional ducal courts in Italian city states and the

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Sylvie Daubresse, "Les requêtes d'opposition devant le parlement de Paris: deux études de cas (1519-1523)," in *La prise de décision en France (1525-1559),* ed. Roseline Claerr and Olivier Poncet (Paris: Publications de L'Ecole nationale des chartes, 2008), 109-122; Christopher Stocker, "The Politics of the Parlement of Paris, 1525," *French Historical Studies* 8, 2 (Autumn, 1973): 191-212; Roberts, "Royal Authority," 4; Shennan, *The Parlement of Paris*, 188-9, 197-200.

[44] Monter, *Judging the French Reformation*; Lange, *The First French Reformation*; Roelker, *One King, One Faith*; Holt, *The French Wars of Religion,* 8-49; Diefendorf, *Beneath the Cross,* 58.

[45] "La cour de ceans a esté austrefoys non seullement *patrocincium sed refugium, portus et perfugium regum omnioum populorum et exterarum nationum*." AN X^{1A} 1613, 11 May, 1565; Soman, "La justice criminelle, vitrine de la monarchie," 294, n.8.

[46] Soman, "La justice criminelle," 295.

Imperial Aulic Council of the Holy Roman Empire, France was the only jurisdiction in Europe that had both the mechanisms in place for automatic and nearly universally accessible high court appeal and broad geographical jurisdiction.[47]

This appeal function operated in tandem with procedural controls that, as Christiane Plessix-Buisset argues in her examination of the parlement of Rennes in Brittany, enshrined the right of the accused to a defense, regardless of the humility of his or her station and notwithstanding the authority of judges to apply the law with rigour or with clemency.[48] Furthermore, French subjects, regardless of station, showed a remarkable adeptness at navigating the complex and expensive legal system, both as criminal defendants and plaintiffs in the seigneurial and royal courts of first instance but also in ecclesiastical courts, in civil litigation, and through unofficial channels offered by infra-judicial custom and tradition.[49] The decision of men and women to resort to criminal justice was a careful and intentional choice made because these other channels offered insufficient restitution or retribution.

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[47] Soman, "Anatomy of an Infanticide," 251-2; Ulrike Muessig, "Superior Courts in Early Modern France, England, and the Holy Roman Empire," in *Judges and Judging in the History of the Common Law and Civil Law: From Antiquity to Modern Times*, ed. P. Brand and J. Getzler (Cambridge: Cambridge University Press, 2012), 209-233; Leopold Auer, "The Role of the Imperial Aulic Council in the Constitutional Structure of the Holy Roman Empire," in *The Holy Roman Empire, 1495-1806*, ed. R. J. W. Evans (New York and Oxford: Oxford University Press, 2011), 63-75; Harrington, *Reordering Marriage and Society*, 132-3, 257-62; Dana Rabin, *Identity, Crime and Legal Responsibility in Eighteenth-Century England* (New York and London: Palgrave Macmillan, 2004), 1-21; J. H. Baker, "Criminal Courts and Procedure at Common Law, 1550-1800," in *Crime in England 1550-1800*, J. S. Cockburn (ed.) (London: Routledge, 1977), 15-49; Renato Barahona, *Sex Crimes, Honour, and the Law in Early Modern Spain: Vizcaya, 1528-1735* (Toronto: University of Toronto Press, 2003), 169-172; Guido Rugierro, *Violence in Early Renaissance Venice* (New Brunswick, NJ: Rutgers University Press, 1980), 18-40; Tommasso Astarita, *Village Justice: Community, Family, and Popular Culture in Early Modern Justice* (Baltimore, MD: Johns Hopkins University Press, 1990).

[48] Christiane Plessix-Buisset, *Le criminel devant ses juges en Bretagne aux XVIe-XVIIe siècles* (Paris: Maloine, 1988), 508-9.

[49] Plessix-Buisset, *Le criminel devant ses juges*, 508-9; Benoît Garnot, "Justice, infrajustice, parajustice et extra justice dans la France d'Ancien Régime," *Crime, Histoire & Sociétés/ Crime, History & Societies* 4, 1 (2000): 103-120; Alfred Soman, "L'infra-justice à Paris d'après les archives notariales," *Histoire, économie & société*, 1, 3 (1982): 369-375; Julie Hardwick, *Family Business: Litigation and the Political Economies of Daily Life in Early Modern France* (New York and Oxford: Oxford University Press, 2009), 57-60.

French subjects accessed formal justice, both criminal and civil, through a complex network of rural seigneurial courts and urban, royal bailiwicks, also known as *bailliages*, throughout much of the northern part of the kingdom and *sénéchaussées* in the south which oversaw smaller courts like *prévôtés* and *châtellenies*.[50] By the end of the *ancien régime,* France had around 30,000 *seigneuries*, a small portion of which had the right of *haute justice,* which granted them the authority to try both criminal and civil cases and to set up gallows in their territories.[51] Royal bailiwicks, which the Edict of Crémieu established as the main unit of justice in 1536, numbered 443 by the end of the eighteenth century and oversaw approximately 1,500 smaller jurisdictions.[52]

Criminal proceedings represented a fraction of court traffic in local courts during the early modern period. Zoe Schneider estimates, for example, that criminal proceedings in local courts in late seventeenth-century Normandy accounted for less than 15% of bailiwick traffic in comparison to civil litigation, which accounted for the lion's share of court proceedings.[53] Hervé Piant has suggested that criminal proceedings may have accounted for as little as five percent of all court activity at royal *bailliages* and *sénéchaussées*.[54] The relative paucity of intact local criminal registers from the mid-sixteenth to the mid-seventeenth century that remain extant make it difficult to understand precisely what percentage of criminal trials eventually wound up at the

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[50] Hervé Piant, *Une justice ordinaire: justice civile et criminelle dans la prévôté royale de Vaucouleurs sous l'Ancien Régime* (Rennes: Presses Universitaires de Rennes, 2006), 51.
[51] Fabrice Mauclair, "La Justice dans les campagnes françaises à la fin de l'ancien régime: Un Nouveau regard sur les tribunaux seigneuriaux du XVIIIe siècle," in *Justice et sociétés rurale du XVIe siècle à nos jours,* ed. Frédéric Chauvaud (Rennes: Presses Universitaires de Rennes, 2011), 125-135.
[52] These included *prévôtés, châtellenies,* and *seignuries* with a *haut justicier.* See Mauclair, "La Justice dans les campagnes françaises," 128; Zoe Schneider, Zoe. *The King's Bench: Bailiwick Magistrates and Local Governance in Normandy, 1670-1740.* Cambridge: Cambridge University Press, 2008, 25.
[53] Zoe Schneider, *The King's Bench,* 192.
[54] Piant, "Des procès innombrables. Éléments méthodiques pour une histoire de la justice civile d'Ancien Régime," *Histoire & Mesure* 22, 2 (2007): 14.

parlement. Furthermore, the distinction between criminal and civil processes at *bailliages* and *sénéchaussées* was sometimes murky, especially when plaintiffs brought a complaint to the bailiwick directly. My examination of council registers from the *hôtel de ville* of Amiens from 1562 to 1590, for example, reveals that the city council determined whether to treat complaints as a civil matter that could be resolved locally or if it had to be referred to the *lieutenant criminel*.[55] Most infractions, which involved petty crime, public disturbances, or debt, were either dismissed for lack of evidence or resolved by small financial penalties or an admonishment from the judges to behave better in the future and the levy of a fine for the cost of the imprisonment.[56] My survey of prison *écrous*, or receipts of prisoners taken into custody, from the Parisian faubourg *bailliages* of Saint-Germain-des-Prés from 1565 to 1579[57] and from 1650 to 1651[58] and Saint-Lazare from 1610 to 1612[59] and 1631 to 1639[60] reveal that, on average, fewer than 10% of registered prisoners received sentences that were significant enough to trigger an appeal to the parlement.[61] Thus only *the most serious offences* were ultimately adjudicated at the parlement. The volume of appeals for sexual offences that the parlement heard, therefore, are a direct indication of their gravity, the desire of men and

[55] ADS FF 720 – FF 805.
[56] See also Susan Broomhall, "Poverty, Gender and Incarceration in Sixteenth-Century Paris," *French History*, 18, 1 (2004): 1-24.
[57] Archives nationales (AN) Z^2 3395. See also Michèle Bibminet-Privat, *Ecrous de la justice de Saint-Germain-des-Prés au XVIe siècle: Inventaire analytique des registres Z2 3393, 3318, 3394, 3395 (années 1537 à 1579)* (Paris: Archives nationales, 1995).
[58] AN Z^2 3396.
[59] AN Z^2 3695.
[60] AN Z^2 3696.
[61] For example, of the 541 prisoners registered at the Saint-Lazare gaol between 1631 and 1639, only 21 men and women were sent to the Conciergerie to await appeal for serious sentences ranging from flogging and banishment to execution or for judicial torture. AN Z^2 3696.

women to see these crimes prosecuted, and the desire of lower court judges to see these crimes punished.

In spite of representing only a fraction of all court traffic, criminal justice, with the parlement as its pole star, played an outsized role in the justice system because it represented the most direct and extravagant demonstration of the king's majesty through his coercive power to repress and punish the misbehaviour of his subjects in the name of restoring order and maintaining civil peace.[62] The relative clemency or rigour with which the royal judiciary applied punishment to the guilty teaches us about how the judiciary, who meted out the king's justice, ever mindful of their duty to protect sovereignty while safeguarding against tyranny, measured harm and blame and how the judges measured the outrage of wrongdoing against the demands of tangible certainty.[63] Criminal justice in the *ancien régime* also relied on the willingness of a broad section of society to participate in the system -- from the readiness of men and women to survey and denounce crime and to then act as plaintiffs and witnesses in court to the inclination of local courts to investigate and prosecute crime.[64] The criminal archives reveal just how judges measured damage and calculated punishment and restitution, and what values and expectations men and women confronting the justice system prioritized.

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[62] Claude Gauvard, "La Justice pénale du roi," 81-11; Soman, "Justice criminelle, la vitrine de la monarchie"; Schneider, *The King's Bench,* 191-3.
[63] Claude Gauvard, "La justice pénale du roi," 81-11; Soman, "Justice criminelle, la vitrine de la monarchie"; Yvonne Bongert, "Le '*pro modo probationum*': intime conviction avant la lettre? *Revue historique de droit français et étranger,* 78, 1 (Jan-Mar 2000): 13-39; Lisa Silverman, *Tortured Subjects: Pain, Truth, and the Body in Early Modern France* (Chicago: University of Chicago Press, 2001), 66-67; Kristin Bourassa, "Reconfiguring Queen Truth in Paris," in *Textual and Visual Representations of Power and Justice in Medieval France,* ed. Rosalind Brown-Grant, Anne D. Hedeman, and Bernard Ribémont (Farnham, UK and Burlington VT: Ashgate, 2015), 91-93.
[64] Schneider, *The King's Bench*, 4.

From home bailiwick to the parlement's criminal chamber

Like other convicted criminals, sex crime appellants appeared at the parlement at the end of a long journey through the machine of early modern criminal justice. The ordinance of Villers-Cotterets (1539) enshrined automatic parlementary appeal to all sentences or judgements for judicial torture rendered in criminal causes.[65] After defendants were found guilty and sentenced to afflictive punishment at his or her home bailiwick, sergeants appointed by the court accompanied the convict to processing at the prisons at the Conciergerie, which served as the main holding cells for the parlement, to await summons to the *Tournelle,* or criminal chambre, in the *palais de justice*. The *procureur général,* or crown prosecutor, could also act as the plaintiff when the parlement was the court of first instance or in appeals claiming abuse of jurisdiction (*appel comme d'abus*) or when the crown felt that the court of first of instance had responded with too much leniency (*appel a minima*), such as was sometimes the case with male bigamy appeals. On the day of summons, usually after less than a month, but sometimes up to half a year after entering the Conciergerie, the prisoner was brought to the chambers for final interrogation where they would respond to the plaintiff's statement, which the judges had already received either in person or in writing. This

[65] Art. 163, Isambert, *Recueil général des anciennes lois,* vol. 12, 633-4; Esmein, *La procédure criminelle,* 153. In 1544, Francis I refined this broad right of appeal to only include judgements for torture or sentences of "afflictive punishment" such as civil or natural death, mutilation, banishment, or hard labour. Esmein, *La procédure criminelle,* 153. Until the early sixteenth century, convicted criminals had to apply for a direct parlementary appeal *omissio medio* or wind their way through the judicial hierarchy, with no guarantee that the appeal would be heard. The edict of Crémieu (1536) streamlined the criminal appeal process by authorizing defendants who had been sentenced to flogging or capital punishment to appeal sentences to superior bailiwicks, and eventually the parlement, as long as they expressed their desire to appeal in front of the judge immediately after the verdict had been read. Art. 22, Isambert, *Recueil général des anciennes lois françaises,* vol. 12 *(*Paris: Belin-Leprieur, 1821-1833), 508; Esmein, *La procédure criminelle*, 153. See also Gauvard, "La Justice pénale du roi," 81-112; Carbonnières, *La procédure devant la chambre criminelle,* 64-8.

study relies heavily on the Conciergerie prison registers and written interrogation records that this process produced.

Once the judges rendered their decision, the prisoner would return to the chamber to hear the verdict. Full acquittals, where proof of innocence was incontrovertible, were rare. More commonly, if the judges opted to release the prisoner, he or she was 'put out of the court' (*mis hors de la cour*), not quite an acquittal, but also not a guilty verdict, or, if the judges believed he or she was probably guilty but lacked sufficient evidence to convict, the prisoner was sent home under the recognizance of the court to await possible summons should proof materialize. If the judges rendered a verdict of definitive guilt, sentencing was usually carried out swiftly.

Sex crime and the criminal archives

My examination of appeals at the parlement of Paris focuses on the period between 1564 and 1655 during the zenith of the court's power and influence in the kingdom.[66] My basic findings are built upon a methodical survey of approximately 8,280 *écrous* from the Conciergerie. These *écrous* are incredibly useful. The Conciergerie *greffier*, or prison registrar, recorded the place of the court of first instance, the prisoner's name, the date of registration, the charge, the name or at least the station or title of the plaintiff, and the recommended punishment. The *greffier* also recorded the prisoner's vital statistics. For women, this information included her marital status, sometimes her age, her or her father's hometown, and sometimes the name and occupation of her father

[66] The parlement became more submissive to the Crown in the wake of reforms introduced by Louis XIV in response to the Fronde (1648-1653). See A. Lloyd Moote, *The Revolt of the Judges: The Parlement of Paris and the Fronde 1643-1652* (Princeton: Princeton University Press, 1971); Albert N. Hamscher, *The Parlement of Paris after the Fronde, 1653-1673* (Pittsburgh: University of Pittsburgh Press, 1976).

or husband. For men, this information included his or his father's hometown and often his occupation or title. The *greffier* updated each *écrou* with the date of the appeal hearing and details of the *arrêt,* or the final verdict and sentence, including, on occasion, follow-up notations if there were any. These notations ranged from a note that the prisoner had died or fallen ill, that he or she had later submitted a letter of remission to the king, or that the prisoner had arranged a private settlement with the plaintiff that the judges were willing to accept in lieu of the punishment announced in the definitive sentence, such a smaller financial amend or the solemnization of a disputed marriage contract.[67]

I recorded basic gender, crime, and punishment statistics for every appellant registered in the Conciergerie *écrous* for three months of every two years over the 91-year span of the study, rotating quarters to ensure that I captured as realistic a representation of prisoner statistics. These statistics formed my control series against which I compared a more detailed analysis of family crime. I recorded the full details of the 860 *écrous* that pertained to crimes related to sexual activity, the family, or procreation for six months of every second year over the survey period, including the charge, name, station, court of first instance, plaintiff, initial punishment, and *arrêt,* or final judgement. Although my study concentrates on 510 appeals for *rapt,* infanticide, adultery, and bigamy, I also recorded details for every person accused of rape (*viol*), fornication and debauchery, *macquellerage* (procurement), incest, sodomy, family violence such as physical assault of a parent, spousal murder, fratricide, or patricide, and every female appellant accused of murder, theft or larceny.[68]

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[67] Here we see an example of the murky lines between criminal and civil justice, official justice and infrajustice.

[68] This more detailed survey examined 928 *écrous*. Categorized by crime this survey included 55 *rapts de séduction*, 51 rapes or violent abductions (*viol, violèment, rapt de violence*), 269 infanticides (*homicide de*

Écrous provide a reliable index to the *plumitifs du Conseil*, or the record of the final interrogation of the plaintiff, witnesses if they were present, and the defendant's response before the chamber closed to render its final decision. The *plumitifs*, or scribbles as the term aptly translates into English -- the paleography being notoriously vexatious to transcribe -- provide incredibly rich detail about crime that was committed, the people involved, and the circumstances that led them to the *Tournelle*. The clerk recorded a transcription of the examiner's questions and the responses provided by the person he was interrogating, always in standard French, even though some subjects likely spoke in regional dialects, and usually recorded the interrogation in the third person, although very important statements were recorded as direct quotes in the first person. This was the most important part of the appellant's journey through the criminal justice system as the judges determined their verdict largely on the basis of the responses given by the plaintiff, defendant, and witnesses. The confrontation could instill either certainty or reasonable doubt of guilt in the judges, which had a direct impact on the sentence they delivered. France was the *only* jurisdiction in continental Europe that enshrined both the automatic right of appeal to a supreme court and summoned the accused to the chambers *in person* when the judges reviewed the case and pronounced their verdict.[69]

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son, *avortement,* and *recel de grossesse*), 146 adulterers, 40 bigamists, 41 spousal murders, 105 fornication and sexual procurement (*paillardise* unrelated to adultery, *macquellerage, luxures*, *mauvaise vie*), 20 incests, 11 sodomites, 22 women accused of the murder of a non-family member, and 168 women accused of theft (*vol* and *larcin*). Seventy-nine women were accused of committing theft with a male accomplice, 38 of whom judges presumed to be lover-accomplices. Remaining male accomplices were husbands, brothers, sons, or fathers.

[69] Soman, "Anatomy of an Infanticide Trial," 250; Soman, "La justice criminelle, vitrine de la monarchie." In England, though the accused typically had no right to appeal, the English common law enshrined the right of the accused to face his or her accuser, to be judged by a jury, and to be present during sentencing. Baker, "Crime, Courts, and Criminal Procedure," *Crime in England*; Beattie, *Crime and Courts.*

Crimes related to sexual misconduct, procreation, or marriage constituted about 9% of all sampled criminal appeals at the parlement of Paris between 1564 and 1655.[70] Prior to the sixteenth century, *rapt*, adultery, and bigamy were mainly the province of the ecclesiastical courts until the parlement began to claim primary jurisdiction over these crimes in the first half of the sixteenth century.[71] This seminal shift in competence was part of a broader project of Gallican legal reform through the concentration of royal judicial power in areas pertaining to religion and morality formerly under the province of the Church.[72] The decision of royal jurists to use sex crime as the vehicle for this jurisdictional change was critical for the articulation of the patriarchal theory of state that evolved in the sixteenth and seventeenth centuries. The Parlement was an enthusiastic partner in this project, even though the judges sometimes resisted the wholesale adoption of the secular tenets offered in reformed legislation.

This shift is the focus of the next chapter, which delves into parlementary jurisprudence following the criminalization of clandestine marriage as *rapt de séduction* in the Ordinance of Blois of 1579. This chapter questions with Sarah Hanley's thesis that the Parlement of Paris of the sixteenth and seventeenth consciously rejected canon law in the adjudication of clandestine marriages in the early sixteenth century.[73] Instead, synthesizing the work of Anne Teillard-Lefebvre and Véronqiue Demars-Sion, I show that parlementary jurisprudence on clandestine marriage shared important continuities with French canon law and that parlementaires approached the Blois marriage articles

[70] The sample of écrous includes 738 crimes related to sexual misconduct, procreation, or marriage.
[71] Sara McDougall, "The Transformation of Adultery in France at the End of the Middle Ages*," Law and History Review* Vol. 32, 3 (August 2014): 491-524.
[72] Lange, *The First Reformation*; Monter, *Judging the French Reformation.*
[73] Hanley, "Engendering the State"; Hanley, "The Jurisprudence of the Arrêts"; Hanley, "A Juridical Formula for State Sovereignty"; Hanley, "The Monarchic State."

with considerable nuance.[74] Both the ways that families made use of criminal statute outlawing clandestine marriage and the response of the parlement to appeals depended on the social rank of the families bringing the appeal to the court. I show the importance of relational taxonomy in the parlement's application of its maxim to protect *linage* and *ménage* in its interpretation of *rapt de séduction,* which relied not only on royal statute but also on an understanding of the canon law on marriage to resolve. Members of the élite, such as members of the haute bourgeoisie and robe nobles generally sought to separate clandestine couples and to seek financial compensation from the offenders. Appeals that involved families from among the ranks of artisans, journeymen, merchants, and skilled labourers generally involved the accusation of a father that his daughter had been deserted in pregnancy by a young man following a fraudulent proposal. Rather than seeking the separation of the couple, the father of the defrauded bride usually sought the recognition of the marriage and guarantees of financial support and legitimatization for his grandchild. Modest ranking women and their families made use of royal justice to seek monetary compensation and criminal sanctions for fraudulent proposals, the species of which were determined by the social status of the deponents (who were either from among the élite ranks of the robe nobility and bourgeoisie or the middling ranks of master craftsmen and journeymen). Whereas appeals from among these lower ranking families usually involved a child, none of the appeals that involved élite families did. This

[74] Véronique Demars-Sion, *Femmes séduites et abandonnées au 18e siècle. L'exemple du Cambrésis* (Lille: L'espace Juridique, 1991); Véronique Demars-Sion, "Un épisode peu connu de l'histoire du rapt de séduction: l'utilisation de la législation royale au profit des femmes déshonorées dans le jurisprudence du XVIIe siècle," *Revue de science criminelle et de droit pénal comparé* 4 (Oct-Dec 1998): 713-751; Anne Lefebvre-Teillard, *Autour de l'enfant: Du droit canonique et romain médiéval au Code Civil de 1804* (Leiden: Brill, 2008); Lefebvre-Teillard, "Marriage in France from the Sixteenth to the Eighteenth Century: Political and Juridical Aspects," in *Marriage in Europe, 1400-1800*, ed. Silvana Seidel Menchi (Toronto: University of Toronto Press, 2016), 261-293.

suggests that families used the criminal courts in ways that were unique to their status and rank and demonstrates the parlement's willingness to consider the legality of a clandestine betrothal when it benefited the family.

Chapter Three exposes the perils that faced women of lower social and economic status who lacked the financial and social resources to either legitimize their infants or seek the financial support to raise them. Infanticide (*homicide de son enfant* in French statute) that resulted from illicit and clandestine pregnancies represented an axiomatic crime that jurisdictions across the continent scrutinized and punished aggressively. Alfred Soman compared the prosecution of infanticide in the sixteenth and seventeenth centuries to a witch hunt in which judges allowed their judgements to be manipulated by moral panic rather than proof or evidence.[75] I examine and ultimately challenge this classic thesis. In so doing, I advance the argument instead that while royal justice did rigorously prosecute clandestine neonaticides, the practice cannot be compared to a witch hunt. By the two last decades of the sixteenth century, judges had begun mitigating death sentences for the crime when they were not absolutely certain of guilt. I propose this shift responded to changing standards of proof that Yvonne Bongert has previously suggested emerged in the late seventeenth century.[76] This conclusion has ramifications not only for our comprehension of the prosecution of infanticide at the parlement, but also reveals important understandings about how the parlement may have approached questions of proof and evidence and the role that doubt played in parlementary arbitration that merit further study.

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[75]Soman, "The Parlement of Paris and the Great Witch Hunt"; Soman, "Anatomy of an Infanticide Trial."
[76] Bongert, "Le *pro modo probationum*,"13-39.

Examining the prosecution of women's adultery, the fourth chapter challenges assumptions that come to us from the *recueils* that the parlement prosecuted women's adultery with special vigour and that it generally punished the women it found guilty with extraordinary measures that included execution or secular incarceration in convents as prototypical punishments. Changes in prosecution patterns for adultery that began in the late fifteenth century, and which became formally recognized by royal jurists in the early sixteenth century, rendered adultery a crime which became the exclusive domain of husbands to accuse their wives. During this process of criminalization, adultery shifted from an offense imagined mainly as a sin to a form of theft wherein a wife's chastity was as repository for masculine honour and patrilineal descent. I argue that the very focus on the damage that adultery incurred to male honour made it more difficult for men to see their wives formally prosecuted and punished. I dispute some of the hypotheses suggested by Régine Beauthier, Agnès Walch, and Sara McDougall that the parlement promoted the intense prosecution and punishment of adultery in the sixteenth and seventeenth centuries.[77] Instead, I show that the parlement practiced more leniency toward adulterous wives than previously recognized, that popular tropes about cuckolded husbands and the significant legal costs of indictment and trial made men reluctant to accuse their wives of adultery at the criminal courts and that royal judges held ambivalent views about men who pursued their wives in the criminal courts.

Finally, the last two chapters examine the response of the parlement of Paris to adulterous and bigamous men. Surprisingly, in contrast to the relative leniency that the parlement practiced towards adulterous wives, we can observe the comparatively more

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[77] Beauthier, *La répression de l'adultère*; Agnès Walch, *Histoire de l'adultère (XVIe-XIXe siècle)* (Paris: Perrin, 2009); McDougall, "The Transformation of Adultery," 491-524.

violent punishment of men who committed adultery with other men's wives and who committed bigamy, a crime that jurists argued defrauded innocent women into adultery. In fact, men comprised ninety-nine percent of the bigamy appellants and represented forty-three percent of all sampled adultery appellants who appeared at the parlement of Paris. Most of these men faced harsh justice in comparison to women accused of similar crimes. Building upon the contributions of Benoît Garnot and Sara McDougall's work on the history of bigamy and Régine Beauthier's brief examination of male adultery, I synthesize themes explored in previous chapters to conclude that judges understood both crimes as belonging to a continuum of fraud and seduction, a set of distinctly masculine modus operandi, which virtually negated women's legal culpability.[78] Thus, male bigamists were punished for seducing women into fraudulent marriages: a scenario that simply did not exist where the few female bigamists were concerned.

I hypothesize the importance of the legal theory of seduction based on observations that early modern *arrêtistes* describe bigamy as a form of seduction. Although true bigamy continued to be a form of blasphemy and sacrilege, punishment formulae did not usually emphasize this aspect of the crime (indeed, most bigamy appeals did not involve two properly solemnized marriages), suggesting that the seduction and fraud itself merited harsh punishment even when a veritable religious crime was not evident. When determining guilt, judges adhered to similar canon legal definitions of elopements and clandestine betrothals that they applied in seduction trials which offered men the chance to either marry the girl he had jilted or to recognize his paternity of her

[78] Benoît Garnot, *Histoire des bigames: criminels ou naïfs?* (Paris: Nouveau Monde, 2015); Sara McDougall, *Bigamy and Christian Identity in Late Medieval Champagne* (Philadelphia: University of Pennsylvania Press, 2012); Beauthier, *La répression de l'adultère*.

child and to provide financial support. A similar logic allowed married men and their wives to successfully convince the judges that male interlopers had committed *adultère par force* (adultery by force, akin to rape) to which the wife did not/could not legally consent and thus for which she could not be punished. The parlement was not only willing to convict and punish men who had brandished a weapon but was also willing to consider guilty men (and women innocent) who had seduced other men's wives with gifts, wine, and even money.

Ultimately, I conclude that there was a symbiotic relationship between men's honour and women's virtue which regulated sexuality, helped to shape the contours of guilt and shame, and mediated gendered authority in ways that sometimes rewarded women and punished men. Throughout this dissertation we can see how considerations of patrimonial lineage and household governance as well as the relational taxonomy of both plaintiffs and defendants not only impacted the outcome of appeal trials, but actually helped to shape and define the notions of guilt and criminality. While social and gender stratifications were essential organizing features of all early modern European cultures, the role played by these strata and their relationship to the maintenance of the order of the household and consequently the kingdom of France is vital to the understanding the place of the parlement of Paris in early modern French society.

Chapter 2: Consent, Canon Law, and *Rapt de Séduction*

On a crisp fall day in late September of 1582, sergeants of the Châtelet in Paris escorted a young clerk named Claude Touart on a wooden cart from the Conciergerie prisons across the river Seine to the Place de Grève for his execution.[1] Earlier that day, the parlement had confirmed the death sentence that the *Prévôt* of Paris had issued for Touart's seduction and clandestine marriage to Artuse Bailly. Artuse was the daughter of Guillaume Bailly, the extremely wealthy and powerful President of the *Chambre des Comptes* and chancellor in the court of the Duke of Anjou and Alençon. Bailly was also Touart's employer. Although Touart came from a relatively respectable family in the south of France, the secret marriage and Artuse's subsequent defloration and pregnancy had disrupted her father's eager dynastic plans.

The Bailly family accused Touart of committing *rapt de séduction* when he promised to marry the young Artuse, a specific offence that royal legislators had recently classified as a capital crime as part of a set of broad and sweeping legal reforms emerging from the meeting of the Estates General in 1576.[2] Articles 40 to 44 of the Ordinance of Blois, as it is most commonly known, reinvigorated and specified earlier legislation passed by royal edict in 1556 and a royal decree in 1560 which prohibited minor children, defined as any child under the age of 25, from contracting marriages without the explicit consent of their parents or legal guardians. The ordinance classified these elopements as

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[1] Pierre de l'Estoile, *Mémoires-Journaux*: *Journal de Henri III, 1581-1586* vol.2 (Paris: Librairie des Bibliophiles, 1875), 85-6.

[2] De l'Estoile, *Journal de Henri III*, 84-7; "Ordonnance rendue sur les plaintes et doléances des états-généraux assemblés à Blois en novembre 1576, relativement à la police générale du royaume," art. 40-44, in Isambert, *Recueil général des anciennes lois françaises*, vol. 14 (Paris: Belin-Leprieur, 1829), 391-2; Sylvie Daubresse, "The Parlement of Paris and the Ordinances of Blois (1579)," *French History* 23, 4 (December 2009): 446-66.

rapt de séduction, a form of abduction for the purposes of marriage or defloration, which was punishable by death.[3]

According to the contemporary memoirist, Pierre de l'Estoile, who recorded his impressions of the events that came to pass that day, Artuse Bailly's "kin and allies" had cynically invoked the ordinance in order to "expiate the shame brought to their family" by the supposedly unequal match and Artuse's subsequent pregnancy.[4] The son of a "petty Châtelet commissioner who was used to eking out his life and his dinner in Paris," Guillaume Bailly and his wife, who was "the daughter of a very mediocre merchant," had managed to increase their family's status and wealth astronomically during their lifetimes.[5] Bailly's "mediocre" fortunes shifted dramatically when, as a young soldier fighting in the Italian wars in 1545, he received a small military honour from Francis I at the royal army camp in Piedmont.[6] Four years later, Henri II conferred on him the office of *Président de Chambre des Comptes*, which set the stage for the purchase of subsequent honours as Councillor of State in 1569 and the honorific title of Parlementary councillor in 1573.[7] The marriage of Artuse to a nobleman would have secured the family's fortunes

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[3] "Ordonnance générale rendue sur les plaintes, doléances et remonstrances des états assemblés à Orléans, janvier 1560" art. 111, in Isambert, Decrusy, Armet, *Recueil général des anciennes lois françaises depuis l'an 429, jusqu'à la Révolution de 1789*, vol. 14, 91; "Edit contre les mariages clandestins," Isambert, Decrusy, Armet, *Recueil général des anciennes lois françaises depuis l'an 429, jusqu'a la Révolution de 1789*, vol. 13 (Paris: Belin-Leprieur, 1828), 469-71; "Ordonnance rendue sur les plaintes et doléances des états-généraux assemblés à Blois en novembre 1576, relativement à la police générale du royaume," art. 40-44, in Isambert, *Recueil général des anciennes lois* françaises, vol. 14, 391-2.

[4] "Aussi, avoit la Cour condamné à mort ledit Touart, à la poursuitte des parens et alliés de la fille, pour expier la honte faite à leur famille." De l'Estoile, *Journal de Henri III*, 85.

[5] "…on sçait que la mere de la fille étoit fille d'une bien médiocre marchand, et le pere fils d'un petit commissaire du châtelet qu'on avoit vû mandier sa vie et son repas à Paris." De l'Estoile, *Journal de Henri III*, 86; Barbara Diefendorf, *Paris City Councillors in the Sixteenth Century: The Politics of Patrimony* (Princeton: Princeton University Press, 1983), 165-6, 300.

[6] Gilles André La Roque, *Traité de la noblesse* (Rouen: Pierre Boucher, 1735), 71.

[7] La Roque, *Traité de la noblesse*, 71; Henri de Curzon, "Les infortunés amours d'Artuse Bailly," in *Mémoires de la société de l'histoire de Paris et de l'Ile-de-France*, vol. 13 (Paris: H. Champion, 1886), 261-4.

and garnered them a permanent place among the kingdom's most wealthy and elite office holders.[8] Artuse's secret marriage to her father's servant, therefore, threatened her once remarkable prospects for a marriage that would have been an enormously and strategically advantageous to her family.[9] The legislation embedded in the ordinance that criminalized clandestine marriage as *rapt de séduction* provided strategic tools to high ranking families like hers to dissolve unwelcome marriages between their children – who were important dynastic and economic resources – and to remove unwanted sexual partners and spouses who threatened carefully laid plans.

As Touart mounted the steps of the scaffold that day, people yelled and jeered at the constables and the other officials who were on hand to carry out the parlement's sentence. The hangman fixed the noose around Touart's neck and the priest prepared him for death.[10] Suddenly, a group of Touart's friends, who had disguised themselves in the crowd, jumped forward, and yelling, "To the rescue!" they "brandished swords, daggers and pistols and started an uproar." In the ensuing fracas, a woman, whom some people later believed to be the wet nurse of the daughter that Artuse would eventually bear, climbed the scaffold stairs and cut the rope from the gallows.[11] Having successfully

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[8] See for example, Robert Descimon, "The Birth of the Nobility of the Robe: Dignity versus Privilege in the Parlement of Paris, 1500-1700," in *Changing Identities in Early Modern France* ed. Michael Wolfe (Durham: Duke University Press, 1997), 95-123; Robert Descimon, "La fortune des Parisiennes: l'exercise féminin de la transmission, XVI^{e}-XVII^{e} siècles," in *La Famiglia nell'economia Europea secc. XIII-XVIII* ed. Simonetta Cavaciocchi (Florence: Firenze University Press, 2009), 619-634; James Collins, *Classes, Estates and Orders in Early Modern Brittany* (Cambridge and New York: Cambridge University Press, 1994), 88; Diefendorf, *Paris City Councillors,* 202-3.

[9] On the social and legal consequences of marriages between women of superior social status to more modest men see Gayle Brunelle, "Dangerous Liaisons: Mésalliance and Early Modern French Noblewomen," *French Historical Studies*, 19, 1 (Spring 1995): 75-103.

[10] On the ritual and spectacle of public execution in early modern Paris see Paul Friedland, *Seeing Justice Done: The Age of Spectacular Capital Punishment in France* (Oxford: Oxford University Press, 2012), 117-139.

[11] Jacques-Auguste de Thou, *Histoire universelle de Jacque-Auguste de Thou depuis 1543 jusqu'en 1607* vol. 8 (London, 1724), 728.

whipped the crowd into a frenzy, "most of the people joined [the friends] and [together] they charged on the sergeants of the Châtelet, the…archers, and other watchmen" in order to "hold a strong hand to justice." With two royal "sergeants killed, and many others hurt" they "finally saved the poor Touart" as he escaped to safety.[12] "Such was the voice of the people," de l'Estoile remarked, "which drove them to sedition and the rescue of a criminal." While he dismissed the crowd as "ignorant and simple," the "truth" he concluded, is that "this judgement was iniquitous and found so by all sensible men."[13]

Both these "sensible men" and the "ignorant and simple" crowd understood that what Claude Touart and Artuse Bailly had "was a true and legitimate marriage contracted between them, even before [the] carnal copulation" that had produced their daughter.[14] This was a true marriage, De l'Estoile insisted, because "joined by honest affection…each of them maintained that they had married by mutual consent." This position, which was common knowledge to both the rabble and to the legally trained parlementaire De l'Estoile,[15] was supported by four hundred years of Canon law: a promise freely exchanged in 'mutual affection' and 'mutual consent', followed by consummation, created a binding and indissoluble marriage that no unhappy parent had

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[12] Claude Touart's death sentence and his dramatic scaffold rescue became infamous all over Europe. It was the subject of several poems in France and Spain and, some historians have argued, served as Shakespeare's inspiration for the plot to *Measure for Measure* in which the young Claudio is almost put to death for his secret betrothal to Isabella. See Curzon, "Les infortunés amours d'Artuse Bailly," 262-5; and Georges Lambin, *Voyages de Shakespeare en France et en Italie* (Geneva: Droz, 1962), 112-117.

[13] "Et telle estoit la voix de tout le peuple, ce qui le poussa à la sédition et à la recousse du criminel…au dire d'une populasse ignorante et légère, la vérité est toutefois que ce jugement estoit inique et trouvé tel de tous hommes de discours et d'esprit." De l'Estoile, *Journal de Henri III,* 85-6.

[14] "c'estoit un vrai et légitime mariage contracté entre eux mesme avant la copulation charnelle." De l'Estoile, *Journal de Henri III,* 85.

[15] A parlementary officer, Pierre de l'Estoile studied law at the University of Bourges and belonged to a prominent legal family. Tom Hamilton, *Pierre de l'Estoile and His World in the Wars of Religion* (Oxford and New York: Oxford University Press, 2017), 74; Nancy Lyman Roelker, *One King, One Faith: The Parlement of Paris and the Religious Reformations of the Sixteenth Century* (Berkeley: University of California Press, 1996), 38.

the right to dissolve.[16] The Ordinance of Blois and the parlement's decision to apply the full sanctions established in the statute against Touart seemed to flout these long-held cultural and religious traditions and ecclesiastical laws.[17]

The parlement's decision to execute Touart also stands out from the lion's share of parlementary judgements involving *rapt de séduction.* In addition to this botched execution, the parlement only condemned three other men to die for *rapt de séduction*.[18] Instead, the parlement generally refrained from violent punishment, preferring instead to mete out financial justice based on the class and status of the litigants. *Rapt* cases that involved the seduction of women like Artuse Bailly, who belonged to wealthy and elite families, usually resulted in the invalidation of the betrothal and large pecuniary rewards to compensate their families for damaged honour and the lost value on the marriage market that resulted from presumed defloration.[19]

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[16] James Brundage, "Concubinage and Marriage in Medieval Canon law," *Journal of Medieval History* 1 (1975), 5, 8-9; Brundage, "Marriage and Sexuality in the Decretals of Alexander III," in *Miscellanea Rolando Bandinelli Papa Alessandro III* ed. Filippo Liotta (Sienna: Accademia senese degli intronati, 1986), 59-83; Charles Donahue, "The Canon Law on the Formation of Marriage," 145; Irven M. Resnick, "Marriage in Medieval Culture: Consent Theory and the case of Joseph and Mary," *Church History*, 69, 2 (June 2000): 350-371.

[17] Claude Touart lived in hiding until Henri IV granted him remission when he ascended to the throne in 1589. De Thou, *Histoire universelle,* vol. 8, 729.

[18] In her response to an earlier version of this chapter which I presented as a conference paper to the Society for French Historical Studies in Los Angeles in 2012 on some of my preliminary findings on *rapt de séductions* appeals at the parlement of Paris, Sarah Hanley confirmed that she found only one parlementary judgement that confirmed the death sentence for *rapt de séduction.*

[19] Jean-François Fournel, *Traité de la séduction considérée dans l'ordre judiciaire* (Paris: Demonville, 1781), 304-5, 331-3, 338; Danielle Haase-Dubosc, *Ravie et enlevée. De l'enlèvement des femmes comme stratégie matrimoniale au XVIIe siècle* (Paris: Albin Michel, 1999), 104; James Farr, *Authority and Sexuality in Early Modern Burgundy* (Oxford: Oxford University Press, 1995), 99; Sarah Hanley, "Engendering the State: Family Formation and State Building in Early Modern France," *French Historical Studies* 16, 1 (1989), 4, 15; Gabriel Delâge, *Enlèvements, rapts et séductions en Angoumois. 17e et 18e siècles* (Angoulême: Sepluchre, 1994), 186, 263; Stéphanie Gaudillat Cautela, "Questions de mot. Le 'viol' au XVIe siècle, un crime contre les femmes?" *Clio. Femmes, Genre, Histoire* 24 (2006): 1-14; Michel Porret, "Rapt de séduction: la jeune fille mal gardée," *Sur la scene du crime: Pratique pénale, enquête et expertises judiciaires à Genève (XVIIIe-XIXe siècle)* (Montréal: Presses de l'Université de Montréal, 2008), 80-1; Sonia Verhnes Rappaz, "'Rapt' et 'séduction', poursuite d'un crime moral et sexuel à Genève au XVIe siècle," in *Rapts. Réalités et imaginaure du Moyen Age aux Lumières* eds. Gabriele Vickermann-Ribémont and Myriam White-Le Goff (Paris: Classiques Garnier, 2014), 87.

In the sixteenth century, the monarchy, together with the mutually beneficial support of the urban elite, who comprised the judiciary and the officers of the political bureaucracy, marshalled the royal courts in service of the establishment of a paternalistic moral order which concentrated authority and justice in the *patria potestas* represented at once by the king and, on a microcosmic level, the *pater familias.*[20] Marriage and the control of marriage by the *pater familias* or his proxy was a central feature of this organizing principle.[21] This relationship between paternalistic values and the control of marriage was not unique to France. Most other Western European jurisdictions which saw the concentration and concretization of monarchical or civic paternalism, such as Renaissance Italian city states, early modern Spain, Calvinist Geneva, both Protestant and Catholic jurisdictions in the Holy Roman Empire like Augsburg and Bavaria, and eventually England, also prioritized the control of marriage and parental consent by both state and family authorities.[22] The Francophone region of northern Europe was

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[20] Aurélie du Crest, *Modèle familial et pouvoir monarchique (XVIe-XVIIIe siècles)* (Aix and Marseille: Presses universitaires d'Aix-Marseille, 2002), 120-142.

[21] Du Crest, *Modèle familial et pouvoir monarchique,*120-136. Hanley, "Engendering the State," 4-27; Hanley, "Family and State in Early Modern France: The Marriage Pact," in *Connecting Spheres: Women in the Western World, 1500 to the present* , eds. Marilyn J. Boxer and Jean H. Quartert (New York: Palgrave, 1987); Hanley, "The Jurisprudence of the Arrêts: Marital Union, Civil Society, and State Formation in France, 1550-1650," *Law and History Review* 21, 1 (Spring 2003): 1-40; Hanley, "A Juridical Formula for State Sovereignty: The French Marital Law Compact, 1550-1650," in *Le seconde ordre. L'idéal nobiliaire: hommage à Ellery Schalk,* ed. Chantal Grell and Arnaud Ramière de Fontanier (Paris: Presses universitaires de Paris-Sorbonne, 1999), 189-97; Farr, *Authority and Sexuality*; Christopher Corley, "Gender, Kin, and Guardianship in Early Modern Burgundy," in *Family, Gender, and Law in Early Modern France,* ed. Suzanne Desan and Jeffrey Merrick (University Park: Pennsylvania State University Press, 2009), 183-222.

[22]Lyndal Roper, *Holy Household: Women and Morals in Reformation Augsburg* (Oxford: Oxford University Press, 1989); Ulrike Strasser, *State of Virginity: Gender, Religion, and Politics in an Early Modern Catholic State* (Ann Arbor: University of Michigan Press, 2007); Susanna Burghartz, "Tales of Seduction, Tales of Violence: Argumentative Strategies before the Basel Marriage Court," *German History* 17, 1 (1999): 41-56; Sonia Vernhes Rappaz, "'Rapt' et 'séduction', poursuite d'un crime moral et sexuel à Genève au XVIe siècle," in *Rapts: réalités et imaginaire du Moyen Age aux Lumières* ed. Gabriele Vickerman-Ribémont and Myriam White-Le Goff (Paris: Classiques Garnier, 2014), 87-103; Michel Porret, *Sur la scène du crime Pratique pénale, enquête et expertises judiciaires à Genève (VXIIIe-XIXe siècle)* (Montréal: Presses de l'Université de Montréal, 2008), 75-89.

exceptional, however, in its long-standing ecclesiastical and, later, temporal legislative opposition to clandestine marriage, a pattern which Carole Avignon traces to the twelfth century and which Sylvie Joye contends began to set this region apart as early as the Carolingian era.[23] As the parlement consolidated its sovereign power in the fifteenth and sixteenth centuries, the court wielded its appeal structure to serve and protect these paternalistic values by emphasizing the role that marriage played in the maintenance of social hierarchy and the moral order. In sum, the parlement's systematization of clandestine marriage as a form of criminal seduction set France apart from its neighbours.

In a series of essays published between 1989 and 2003,[24] Sarah Hanley developed the influential thesis[25] that the Ordinance of Blois, as part of the Roman legal reformation at the royal courts, represented a sudden cleavage from the past which led to the desacralization and secularization of marriage in the sixteenth and seventeenth centuries.[26] Hanley asserts that the pattern of parlementary jurisprudence that emerged in

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[23] Carole Avignon sees these trends emerge in high medieval Northern France (especially Normandy, Chartres, Troyes, and Paris) and the Francophone borderlands in the regions of modern-day Belgium and Switzerland. Carole Avignon, "Les couples clandestins devant la justice d'Eglise: Réflexions sur la normalisation matrimoniale judiciaire dans la France du Nord-Ouest à la fin du Moyen Age," in *Couples en justice IVe-XIXe siècle*, ed. Claude Gauvard and Allessandro Stella (Paris: Publications de la Sorbonne, 2013), 77-98; Sylvie Joye, "Le ravisseur et la femme ravie au haut Moyen Age: Un couple devant la justice?" in *Couples en justice IVe-XIXe siècle* (Paris: Publications de la Sorbonne, 2013), 20-40; Sylvie Joye, *La femme ravie. Le mariage par rapt dans les sociétés occidentales du haut Moyen Age* (Turnhout: Brepols, 2012).

[24] Hanley, "Engendering the State,4-27; Sarah Hanley, "The Monarchic State in Early Modern France: Marital Regime Government and Male Right," in *Politics, Ideology, and the Law in Early Modern Europe: Essays in Honor of J.H.M Salmon*, ed. Adrianna Bakos (Rochester: University of Rochester Press, 1994), 107-126. This essay comes close to ceding some ground to the influence of Canon law in the formation of sixteenth and seventeenth century secular juridical and legislative responses to clandestine marriage and marriage formation; Hanley, "The Jurisprudence of the Arrêts,"1-40.

[25] Several studies rely on Sarah Hanley's analysis to interpret the impact of statutory changes in French law on the adjudication of matrimonial crime in the sixteenth and seventeenth century. See for example, Sara McDougall, "The Transformation of Adultery in France at the End of the Middle Ages*," Law and History Review* 32, 3 (August 2014): 491-524; Farr, *Authority and Sexuality*; Charlotte Christensen-Nugues, "Parental Consent and Freedom of Choice: The Debate on Clandestinity and Parental Consent at the Council of Trent (1543-1563)," *Sixteenth Century Journal*, 45, 1 (Spring 2014): 51-72.

[26] The thesis, first described by Keith Thomas and John Bossy, that religious and legal reform in the sixteenth century led to the desacralization and secularization of early modern state and society is the

the middle of the sixteenth century put forth a new "national legal theme" which incorporated Gallicised interpretations of Roman law and "impugned outright Canon law rubrics on marriage,"[27] leading to an abrupt rupture with the past.[28] Led by the legal innovations of the *premier président* Gilles le Maistre in the 1540s, Hanley argues, the new legal regime rejected these tenets of Canon law and replaced them with secular statute that criminalized and voided clandestine unions as aberrant from parental authority. Based on the strength of two specific appeals heard by the court in 1541 and 1556, respectively, the parlement linked parental will to the definition of consent found in Roman law, and consolidated the efforts of the parlement, which were already underway, to remove marital affairs from the purview of the Church courts to the authority of secular courts, effectively rendering marriage a civil institution.[29] This jurisprudence culminated with the Ordinance of Blois, which ultimately led to Claude Touart's botched execution. According to Hanley's thesis, Canon law, and thus French ecclesiastical jurisprudence, took a permissive view of clandestine marriage which sat in distinct opposition to the prohibitionary ethos of parlementary legal philosophy.[30] Thus, she

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subject of significant revision. See Jeffrey K. Hadden, "Toward Desacralizing Secularization Theory," *Social Forces* 65, 3 (March 1987): 587-611; and Andrew Gow "Secularism: A 'work in progress' or an ideological obfuscation?", Landsdowne Lecture, University of Victoria, February 2016; Keith Thomas, *Religion and the Decline of Magic: Studies in Popular Beliefs in Sixteenth and Seventeenth Century England* (New York: Scribner, 1971); and John Bossy, *Christianity in the West, 1400-1700* (Oxford: Oxford University Press, 1985).

[27] Hanley, "'The Jurisprudence of the Arrêts'," 6. Hanley's thesis builds especially upon the work of Léon Duguit, but also relies on the work of Georges Pacilly and Mark Cummings on the evolution of *rapt de séduction* at the parlement de Paris. See Georges Pacilly, "Contribution à l'histoire de la théorie du rapt de séduction: Etude de jurisprudence," *Revue d'histoire du droit* 13 (1934): 306-318; Léon Duguit, *Etude historique sur le rapt de séduction* (Paris: Larose et Forcel, 1886), 1-43; and Mark Cummings, "Elopement, Family, and the Courts: The Crime of *Rapt* in Early Modern France," *Proceedings of the Fourth Annual Meeting of the Western Society for French History* (1976): 118-125.

[28] Hanley, "Engendering the State,"4-27; Hanley, "The Monarchic State,"107-126. Hanley, "'The Jurisprudence of the Arrêts'"1-40.

[29] Hanley, "The Jurisprudence of the Arrêts," 7-8.

[30]Hanley, "The Jurisprudence of the Arrêts," 6.

concluded, with the stroke of a pen the parlement had set aside Canon law and abruptly separated sixteenth century legal practice at the royal courts of France from their fifteenth century antecedents.

Hanley's contention that French jurists effectively rejected Canon law in order to secularize the institution of marriage has been drastically overstated. Rather, this period of substantial legal reformation involved both continuity and change. While transferring the authority to judge clandestine marriage into the temporal courts was indeed new, French ecclesiastical legists had long resisted classical, ultramontane Canon law in favour of stricter controls on marital consent. By classifying *rapt de séduction* as a capital crime, the Ordinance of Blois assured the competence of the temporal courts to adjudicate matters of clandestine marriage. Additionally, parlementary jurisprudence pursuant to the Ordinance of Blois did indeed give parental consent prominence of place in determining the legitimacy of betrothals. Together, jurisprudence and legislation accomplished this by privileging the authority of the royal courts to rule on those matters of marriage that touched upon *rapt.* However, *contrary* to Hanley's conclusion that French jurists veered dramatically away from Canon law, the parlement of the sixteenth and early seventeenth century did *not* reject it and did *not* deploy the ordinance with the sole intention of propping up a temporal marital regime.

Instead of applying the Blois marriage articles to systematically dissolve all clandestine marriages, the parlement prioritized the dynastic concerns of elite families by invoking criminal seduction as a justification to separate some clandestine couples while simultaneously drawing upon Canon law to encourage the solemnization of other betrothals by seduction, usually between couples of more modest rank. In so doing, the

parlement rarely observed the strict terms of the Blois marriage articles but deployed this legislation in a way that was meant to conserve the moral order and the domestic stability that protected the integrity of both family and kingdom.[31] The parlement did this by applying a formula of financial and social compensation that honoured the twin socio-political doctrines of *lignage* and *ménage* which underpinned the family-state compact.

Drawing upon Tyler Lange's work grounding the parlement's theorization of sovereignty in a commitment to fifteenth- and sixteenth-century conciliarist interpretations of *both* Canon and Roman law,[32] I argue that parlementary jurisprudence emphasized and affirmed important aspects of Canon law and French ecclesiastical precedents, which viewed clandestine marriage with suspicion, and grappled with the competing priorities of parental and couple consent. Medievalists have long been aware of these legal debates and the more rigid position that medieval *Officialités*, or church courts, took in these matters in comparison to their English and Continental neighbours.[33] Sarah Hanley's conclusions rest in large part on the glossing over of this part of the story by artificially separating ecclesiastical and civil interests in relation to clandestine marriage and parental consent in France and strategically ignoring the substantial body of *arrêts* to which the parlement actually applied Canon law and canon legal conventions.

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[31] Du Crest, *Modèle familial et pouvoir monarchial,* 143-179. For a summary of the importance of *lignage* and *ménage* to early modern French conceptions of paternalism and monarchical sovereignty, see Diane Margolf, *Religion and Royal Justice in Early Modern France: The Paris Chambre de l'Edit, 1598-1665* (Kirksville: Truman State University Press, 2003), 99-48. See also Chapter One.

[32] Tyler Lange, "Droit Canon et droit français à travers l'activité du Parlement de Paris à l'époque des Réformes," *Revue historique de droit françois et étranger* 91, 2 (2013): 243-261; Tyler Lange, *The First French Reformation: Church Reform and the Origins of the Old Regime* (Cambridge: Cambridge University Press, 2014).

[33] See for example, Léon Pommeray, *L'officialité archidiaconale de Paris aux XVe – XVIe siècles. Sa composition et sa compétence criminelle.* Paris: Sirey, 1933); Charles Donahue, "The Canon Law on the Formation of Marriage and Social Practice in the Later Middle Ages," *Journal of Family Histor,y* 8, 2 (1983): 144-158; and Sara McDougall, *Bigamy and Christian Identity in Mate Medieval Champagne* (Philadelphia: University of Pennsylvania Press, 2012).

My argument builds upon the work of Véronique Demars-Sion, who describes what she calls "a false paradox" between principles of Canon law and early modern parlementary jurisprudence. Concentrating primarily on mid-seventeenth and eighteenth-century judgements, Demars-Sion identifies a tension between the "official" application of the Ordinance of Blois and the "unofficial" use of the Blois marriage articles to develop a practical jurisprudence that "flagrantly defied" the statute to force seducers to either marry or pay the dowries of the women they seduced.[34] I argue that we can begin to see this standard develop among the same generation of parlementaires who promulgated the Ordinance of Blois. I conclude that the parlement never intended to use Blois as a tool to systematically dissolve clandestine marriages and that that it never took a stance of firm opposition to the Canon law of marriage. In fact, in the face of parlementary disobedience to Blois, the king was forced to censure the parlement to observe the firm legislative prohibitions and punishments laid out in the Ordinance of Blois in 1580, 1606, 1629, and 1639 – but to little effect.[35]

The first part of this chapter traces and contextualizes the dilemma of clandestine marriage within French ecclesiastical and temporal law from the inception of the Canon law on marriage to the eve of Blois. Ecclesiastical jurists in medieval France disputed the

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[34] Véronique Demars-Sion, "Un épisode peu connu de l'histoire du rapt de séduction: l'utilisation de la législation royale au profit des femmes déshonorées dans la jurisprudence du XVIIe siècle," *Revue de science criminelle et de droit pénal comparé,* 4 (Oct-Dec 1998): 713-751; Véronique Demars-Sion, *Femmes séduites et abandonnées au 18e siècle. L'exemple du Cambrésis* (Lille: L'espace Juridique, 1991), 68-83.

[35] Jules Basdevant, *Des rapports de l'église et d'état dans la législation du mariage du concile de Trente au Code Civile* (Paris: Larose et Forcel, 1900), 67-69, and 137; Anne Lefebvre-Teillard, *Autour de l'enfant: Du droit canonique et romain médiéval au Code Civil de 1804* (Leiden: Brill, 2008), 42. The Declaration of 1639, for example "specifically enjoined…the judges to punish the guilty with the penalty of death without possibility of moderation" prohibited men from "avoiding the noose through the (posterior) consent of she whom he had suborned." Charles Fevret, *Traité de l'abus et du vray sujet des appellations qualifiés de ce nom d'abus* (Dijon: Pierre Palliot, 1653), 87. James Farr speculates that Louis XIII was "seeking to arrest the drift toward leniency" of Burgundian parlementaires' *rapt* adjudications. Farr, *Authority and Sexuality,* 96-101.

principles of couple consent, which were part of classical Canon law and lay custom, because they permitted secretive betrothals that circumvented parental will and public scrutiny. Temporal justice and the Parisian parlement in particular began responding to this concern with the *support* of diocesan *Officialités* one hundred and fifty years before royal legists and jurists developed a coherent legislative and jurisprudential system to deal with clandestine marriage and *rapt de séduction* in the sixteenth century. By the middle of the sixteenth century, the parlement had positioned itself to deploy its sovereignty and power to arbitrate and centralize justice more effectively than any other judicial body in the kingdom.

The second part of the chapter demonstrates the striking continuity to this earlier context by showing that the parlement used the Ordinance of Blois to separate and punish seducers in only a fraction of the seduction appeals it received from 1579 to the middle of the seventeenth century. Sixteenth-century parlementaires consistently applied canonical standards to their deliberations on *rapt de séduction* and clandestine marriage. I draw especially from Anne Lefebvre-Teillard's work at *officialité* archives from Paris, Toulouse, and Rouen, outlining late fifteenth- to late sixteenth-century ecclesiastical jurisprudence which developed a compensation formula based on the Canon law of marriage and social responsibility forcing men who promised marriage to women in exchange for sexual intercourse either to solemnize their vows or to pay tripartite financial compensation that providing a dowry, maternity care, and parental support.[36]

Royal legists and jurists crystallized these canon legal interpretations of clandestine marriage and consent, which ecclesiastical jurists referred to as *raptus*

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[36] Anne Lefebvre-Teillard, *Autour de l'enfant: Du droit canonique et romain médiéval au Code Civil de 1804* (Leiden: Brill, 2008), 30-50.

seductionis, into the Ordinance of Blois as the Gallicised *rapt de séduction*.[37] Articles 40 to 44 of the Ordinance of Blois and subsequent amendments to these statutes published in 1629 and 1639 defined consent as the prerogative of the families and empowered the royal courts to adjudicate its abuses according to this definition. The parlement employed its function as an appellate court to affirm its jurisdictional supremacy in France by ruling that it had the competence to try matters of marriage that applied to the Ordinance of Blois and the contractual elements of matrimony.[38] However, as Benoît Garnot has observed, the ordinances of Blois *did not* automatically nullify clandestine marriages between statutory minors, but left parlementaires the option to sentence guilty ravishers to death *or* marriage.[39] Only by royal ordinance in 1629, repeated by royal declaration in 1639, did the law classify rapt as a diriment impediment to marriage that rendered all unions formed through rapt as invalid.[40] Even in the wake of these early seventeenth-century legislative modifications, the parlement continued to recognize the contractual validity of some of the clandestine marriages referred to the court as *rapt* as late as the 1650s. The parlement *never* viewed the Ordinance of Blois as a tool to systematically denounce clandestine marriage.

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[37] Hostiensis, *Summa aurea*, Book 5, (Venice: Melchior Seffae, 1570), 416; See also James Brundage, "Rape and Seduction in Medieval Canon law," in *Sexual Practices and the Medieval Churches*, ed. Vern L. Bullough and James Brundage (Buffalo: Prometheus, 1982), 141-149, 147; and Alexandre-Guillaume Chotin, *De crimine raptus secundum jus romanum, hodiernum et canonicum* (Ghent: Catterman-Dieu, 1825), 15.

[38] Pierre Bardet, *Recueil d'arrests du parlement de Paris* vol. 2 (Paris: Jerosme Bobin, 1690), 325-328; Anne Lefebvre-Teillard, "Marriage in France from the Sixteenth to the Eighteenth Century: Political and Juridical Aspects," in *Marriage in Europe, 1400-1800*, ed. Silvana Seidel Menchi (Toronto: University of Toronto Press, 2016), 266-270; Benoît Garnot, "Une approche juridique et judiciaire du rapt dans la France du XVIIIe siècle," in *Rapts: réalités et imaginaire du Moyen Age aux Lumières*, ed. Gabriele Vickerman-Ribémont and Myriam White-Le Goff (Paris: Classiques Garnier, 2014), 167.

[39] Garnot, "Une approche juridique et judiciaire du rapt," 167.

[40] Garnot, "Une approche juridique," 169-70; Isambert et al., *Recueil général des anciennes lois françaises*, vol. 16, 23; Lefebvre-Teillard, "Marriage in France," 267; Duguit, *Étude historique sur le rapt de séduction*.

Rather than rely on the Ordinance of Blois to systematically separate couples, royal jurists strategically deployed the concept of *seduction*, which they resurrected from medieval Canon law, to help women's families master the outcomes that best suited them socially and financially.[41] While women and their families could appeal to ecclesiastical courts to resolve marriage,[42] the definition of seduction as a crime for secular justice provided them with the opportunity to take advantage of the persuasive power of the threat of physical punishment and the unlimited power of the secular courts to administer financial reparations and compensation to seek outcomes that were not possible in the ecclesiastical courts. This meant that elite families had the liberty to approach seduction in two ways: either as an unwelcome clandestine marriage that breached parental consent, which gave them the power to sue for annulment and economically appropriate financial reparations; or, when the marriage suited the social and financial aims of the family, the family could seek to have the contractual validity of the marriage confirmed. On the other hand, the legal doctrine of seduction defined in the Blois also provided opportunities for families of more modest social status and financial means, such as those belonging to the urban artisan and journeymen classes, to seek recourse to the criminal courts when a failed betrothal left a daughter pregnant and deserted. Again, rather than abandoning

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[41] Robert Descimon has also observed that the parlement in the seventeenth century sometimes applied statute and precedents strategically in order to benefit women financially and socially in civil inheritance litigation. Similarly, Elizabeth Dudrow points out that the parlement had an "extremely narrow definition" of rapt, choosing instead to define seductions convicted by the lower courts under the Ordinance of Blois as defloration or broken promises in order to resolve the immediate financial or social crisis facing the young plaintiffs before them. These theses complicate an earlier thesis proposed by Hanley that women had to act in opposition to the patriarchal alliance between the parlement and the monarchy from the late sixteenth century. Descimon, "La fortune des Parisiennes," 619-634; Elizabeth Ann Dudrow, "Women and Legal Transmission of Lineage in Absolutist France," (PhD diss) (Berkeley: University of California, 1996), 2, 9-67; Hanley, "Engendering the State," 4-27.

[42] In her survey of Archidiaconal court of Paris at the turn of the sixteenth century, Anne Lefebvre-Teillard found that suits testing the contractual validity of clandestine marriages comprised 60 percent of all matrimonial cases. See Anne Lefebvre-Teillard, *Les officialités à la vieille du concile de Trente* (Paris: Pichon et Durand-Auzias, 1973), 147-63; and Lefebvre-Teillard, "Marriage in France," 269, n. 31.

Canon law, the parlement appealed to ecclesiastical standards first to discern whether the clandestine marriage in question constituted a canonically legitimate betrothal. Second, the parlement applied canon legal principles of marital affection and a compensation rubric modelled after Canon law to its sentencing formulae.[43] Ultimately, the parlement recognized that by affirming its authority to interpret Canon law, it confirmed its position of legal supremacy within the kingdom. Families recognized that the royal courts were a useful tool for household and family management.

Historians have rightly noted that this law had vitally important implications for the evolving relationship between the Church, the monarchy, and the parlement of Paris.[44] Through the instruments of legislation and the arbitrary power of the parlement, the crown established control over the problem of clandestine marriage and parental authority, which had vexed temporal and ecclesiastical authorities in France for nearly four hundred years. In the centuries prior to the Ordinances of Blois, rather than working in opposition or at cross purposes, as the secularization thesis seems to imply, the French episcopacy and the crown had worked toward a common goal together against more permissive ultramontane interpretations of Canon law to suppress clandestine marriage and to support the authority of parents to choose marriage partners for their children. Legists and jurists of the sixteenth century emerged from this tradition to use their expanding authority to develop a solution to the problem using not only the mechanism of Royal law, but also the tools of Canon law. Ultimately, the parlement deployed Royal

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[43] Lefebvre-Teillard, *Autour de l'enfant,* 31-50; Lefebvre-Teillard, "Marriage in France," 71-282; Demars-Sion, *Femmes séduites*.

[44] See for example, Farr, *Authority and Sexuality,* 33-35; Garnot, "Une approche juridique," 165; Hanley, "The Jurisprudence of the *Arrêts*"; Hanley, "The Monarchic State"; Du Crest, *Modèle familiale et pouvoir monarchique,* 125; Margolf, *Religion and Royal Justice,* 99-110; Lefebvre-Teillard, "Marriage in France," 261-93; Julie Doyon, "De la clandestinité à la fausseté': la fraude matrimoniale à Paris," *Dix-Septième Siècle* 39, 1 (2007): 419-20.

law and Canon legal practice as a twin apparatus that informed its judgements on clandestine marriage to support the interweaving socio-political doctrines of *lignage* and *ménage* which represented the court's central mission in the consideration of matters touching upon marriage and the family. Marriage could make or break a family. The parlement was sensitive to this social truth.

Part 1: Consent and Canon law before the Ordinance of Blois

A shortcoming of early modern scholarship on the crime of seduction is the almost exclusive focus on sixteenth-century legislation, considering it in isolation from the medieval canon legal and temporal precedents with which judges and lawmakers were closely engaged. In order to make sense of the adjudication of *rapt de séduction* at the Parisian parlement in the sixteenth century, we must first situate it within these medieval contexts. Sixteenth-century law and jurisprudence on seduction was shaped in part by a centuries-old legal debate between classical Canon law and French ecclesiastical jurists who attempted to balance the religious priorities of personal consent and the sacramental nature of marriage with the equally important civil priorities of family honour and parental authority.

The problem of consent and clandestine marriage was an old one. Marriage was both a private vow and a public act. In sacred terms, marriage formation required the free exchange of indissoluble vows which required the personal consent of both parties. In secular terms, marriage formation was a civil contract that joined a couple's family and property which required the consent of the family who shared a stake in the contract. Ecclesiastical authorities, which had held primary jurisdiction over marriage from at least

the tenth century, attempted to balance these priorities while maintaining the primacy of the sacred character of matrimony. The primacy of the sacred exchange of vows in marriage formation made it relatively easy for couples to marry each other informally, making the betrothal difficult to disprove in the event of personal or family conflict or disagreement. The tension between sacred personal consent and temporal family approval meant that couples sometimes married informally in order to evade family pressure.[45]

For classical Canon law, it was theologically vital to resolve these tensions without disrupting the core tenets of personal consent. On one hand, early canonists determined that Christian matrimony ought to resemble the marriage between Joseph and the Virgin Mary, which was never consummated, but was based instead on mutual affection and the free exchange of vows.[46] On the other hand, as a vehicle for Christian procreation and physical affection, marriage also provided hamartiologically-sound boundaries for fornication. These canonists also determined that marriage partners committed a form of perjury, invalidating the marriage, when they exchanged vows they had no intention of upholding or when they were forced by parents or other authorities to exchange vows.[47] Thus, as marriage began to take on the features of sacramentality in

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[45] Charles Donahue, "The Policy of Alexander the Third's Consent Theory of Marriage," in *Proceedings of the Fourth International Congress of Medieval Canon law*, 5 (1976): 270-279; Donahue, "The Canon Law on the Formation of Marriage," 144-158; A. J. Finch, "Parental Authority and the Problem of Clandestine Marriage in the Later Middle Ages," *Law and History Review* 8, 2 (Fall 1990): 189-204.

[46]Penny Gold, "The Marriage of Mary and Joseph in the Twelfth-Century Ideology of Marriage," in *Sexual Practices and the Medieval Church,* ed. Vern Bullough and James Brundage (Buffalo: Prometheus, 1982), 102-17; John Noonan, "Marital Affection in the Canonists," *Studia Gratiana* 12 (1967): 481-509.

[47] Emily Corran, *Lying and Perjury on Medieval Practical Thought: A Study in the History of Casuistry* (Oxford: Oxford University Press, 2018), 120, 140-1; Richard Helmholz, *The Spirit of Classical Canon law,* 2nd ed. (Athens, GA: University of Georgia Press, 2010), 238-240. On marriage in France prior to its Christian reformation in the twelfth and thirteenth centuries, see Jean Gaudemet, *Le mariage en occident: les mœurs et le droit,* (Paris: Cerf, 1987); and Georges Duby, *The Knight, the Lady, and the Priest*: *The Making of Modern Marriage in Medieval France,* trans. Barbara Bray, (Chicago: University of Chicago Press, 1983).

the high Middle Ages, ecclesiastical standards emerged which required both mutual volition and the ability to freely consent, but which also marked sexual intercourse with important ceremonial significance to marriage formation.[48]

With these principles in mind, Pope Alexander III promulgated three rules on marriage formation. The first rule stipulated that couples formed canonically valid marriages through:

> Present consent ("I take thee as wife/husband"), freely given by a man and a woman capable of marriage, made a valid marriage during the joint lives of the contracting parties, except in the most unusual of circumstances.[49]

Marital affection alongside freely given consent that prohibited forceful or violent coercion by either a future spouse or parents and guardians became central features of the sacred quality of marriage.[50] The second and third rules took a juridical stance on marriage but echoed the need for spousal volition and marital affection. The second and third rules indicated that couples formed canonically valid marriages through:

> [Rule two:] Future consent ("I promise to take thee as wife/ husband"), freely given by a man and a woman capable of marriage, made a marriage, if that consent was followed by sexual intercourse between the parties.
>
> [Rule three:] Any Christian man was capable of marrying any Christian woman, if both were over the minimum age of consent

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[48] François Lebrun, *La famille en Occident du XVIe au XVIIIe siècle: Le prêtre, le prince et la famille* (Paris: Armand Colin, 1986), 34-35.
[49] Donahue, "The Canon Law on the Formation of Marriage," 145; and Resnick, "Marriage in Medieval Culture," 350-371.
[50] This emphasis on the effectiveness of present consent (*matrimonium per verba de presenti*) confirmed the validity of the union formed between Joseph and the Virgin for whom 'marital affection', not consummation, was the legally binding factor. James Brundage, "Concubinage and Marriage in Medieval Canon law," *Journal of Medieval History*, 1 (1975): 2-3, and 7; Brundage, *Law, Sex, and Christian Society in Medieval Europe* (Chicago: University of Chicago Press, 1987), 331-341; James Noonan, "Power to Choose," *Viator* 4 (1973): 421-6; and Raymonde Deschamps, *Le consentement des futurs conjoints au mariage: Sa conception et les cas de nullité en droit civil français et en droit canonique moderne*, (PhD Diss.) (Université de Rennes, 1944), 14-15.

> (seven in the case of future consent; fourteen for the man and twelve for the woman in the case of present consent), if neither had been previously married to someone else who was still living, if neither was in major orders or had previously taken a solemn vow of chastity, and if the parties were not too closely related to each other.[51]

These rules introduced the concept of 'clandestine marriage' and resulted in three immediate problems. First, the private, verbal, and binding nature of vows expressed either in the present or in the future followed by intercourse left couples unable to remarry or vulnerable to bigamy if the first relationship failed and either party wished to marry a new partner, sometimes years later.[52] Second, the Alexandrian decrees permitted people to marry in secret in order to avoid family pressures.[53] Once a couple had consummated an exchange of promises with sexual intercourse, the Alexandrian decrees asserted that the marriage was canonically sound and indissoluble.[54] These ecclesiastical standards came up against earlier, traditional Salic and Gallo-Romanic protections extended to a father (or other guardian) for the right to choose his child's spouse.[55]

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[51] Donahue, "The Canon Law on the Formation of Marriage," 145.

[52] James Brundage, *Law, Sex, and Christian Society in Medieval Europe*, 405-407; Beatrice Gottlieb, "The Meaning of Clandestine Marriage," in Robert Wheaton and Tamara K. Hareven (eds), *Family and Sexuality in French History*, (Philadelphia: University of Pennsylvania Press, 1980), 65-66; McDougall, *Bigamy and Christian Identity;* Donahue, "Canon Law on the Formation of Marriage," 144-185; Michael Sheehan, "The Formation and Stability of Marriage in Fourteenth-Century England: Evidence of an Ely Register," *Mediaeval Studies,* 33 (1971): 249-250 and 261-3; Martin Ingram, "Spousals and litigation in the English Ecclesiastical Courts, c. 1340-1640," in *Marriage and Society: Studies in the Social History of Marriage,* ed. R. B. Outhwaite (London: Europe Press, 1981); Conor McCarthy, *Marriage in Medieval England: Law, Literature, and Practice* (Woodridge, UK: Boydell, 2004), 19-50; and Jean-Luc Dufresne, "Les Comportements amoureux d'après le registre de l'officialité de Cerisy," *Bulletin philologique et historique (jusqu'à 1610) du comité des travaux historiques et scientifiques*, (1973): 134.

[53] Charles Donahue, "The Policy of Alexander the Third's Consent Theory of Marriage."

[54] Finch, "Parental Authority and the Problem of Clandestine Marriage," 189-204.

[55] Juan de Churruca, "Le sacrement de mariage dans l'Eglise paléochrétienne," in *Mariage et sexualité au Moyen Age: Accord ou crise?, ed.* Michel Rouche (Paris: Presses de l'Université de Paris-Sorbonne, 2000), 109-121; Suzanne Fonay Wemple, *Women in Frankish Society: Marriage and the Cloister, 500-900* (Philadelphia: University of Pennsylvania Press, 1981), 31-33; Duby, *The Knight, the Lady and the Priest,* 72, 128; Gottlieb, "The Meaning of Clandestine Marriage," 74, fn 5; Judith Evans-Grubbs, "Marrying and its documentation in later Roman Law," in *To Have and To Hold: Marrying and its documentation in Western Christendom, 400-1600,* eds. Philip L. Reynolds and John Witte (Cambridge: Cambridge University Press, 2007), 55-58; Michael J. Hoeflich and Jasonne H. Grabher, "The Establishment of Normative Legal Texts: The beginning of the *Ius Commune*," in *The History of Medieval Canon law in the*

Marriage, though a solemn religious act and private union between two people, was also a matter of public concern because it triggered a complicated matrix of property and inheritance laws and customs. Land-holding families, in particular, keenly felt this alienation from their rights to craft alliances and to control the passage of moveable and immovable property from one generation to the other.[56] In his *Decretum,* Gratian attempted to form a delicate compromise to this last problem, which defended the religious sanctity of mutual volition and marital affection at the heart of the exchange of vows, while recognizing the temporal needs of families to remain involved in the formation of marriage contracts for their children by asserting that "if the parents are not present and they do not consent, according to the law, there is no marriage."[57]

Canon 51 of the Fourth Lateran Council, convoked in 1215, codified Gratian's compromise into an explicit set of regulations that separated betrothal and blessing into two stages of the marriage process.[58] The first stage, in which couples became engaged by the exchange of a promise to marry in the future (*matrimonium per verba de futuro*), was to be followed by the publication of banns and an obligatory waiting period of a maximum of forty days before these vows could be solemnized by a priest in front of the Church (*in faciae ecclesiae*).[59] This two-stage process replaced the older practice in

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Classical Period, 1140-1234 eds. Wilfred Hartmann and Kenneth Pennington (Washington DC: The Catholic University of America Press, 2008), 1-21.

[56] Noonan, "The Power to Choose," 420; Donahue, "The Canon law on Marriage," 148.

[57] "Si parentes non interfuerint, et consensum non adhibuerint, secundum leges, nullum fiat matrimoniam." Juan de Torquemada, *Gratiani Decretorum,* 2, (Rome: Jeronimo Mainardi, 1727), 632-5, 640-642.

[58] Etienne Diebold, "L'application en France du Canon 51 Canon 51 Canon 51 du IVe concile du Latran d'après les anciens statuts synodaux," *L'Année Canonique* 2 (1953): 187-95; McDougall, *Bigamy and Christian Identity,* 13-14; Gottlieb, "The Meaning of Clandestine Marriage," 49.

[59] Here 'church' refers to both the building and Christian witnesses. Lefebvre-Teillard, *Les Officialités à la vieille du concile de Trente*, 153; Jean-Baptiste Molin and Protais Mutembe, *Le rituel de mariage en France du XIIe au XVIe siècle* (Paris: Beauchesne, 1973), 49-50; P. Daudet, *Etudes sur l'histoire de la juridiction matrimoniale* (Paris, 1941), 5.

which a couple could become married through the simple exchange of vows without voiding the primacy of mutual affection and the free consent of the couple.[60] The added requirement for the publication of banns and a public ceremony provided an opportunity not only to discover impediments of consanguinity or pre-contract, but also provided time for families to intervene or to draw up suitable marriage contracts.[61]

All forms of clandestine marriage occurred during the first step.[62] Most private betrothals probably went undisputed;[63] and because older custom held these to be true marriages, not all betrothals proceeded to the final stage of public solemnization.[64] Lateran IV was problematic, however, because it created a middle space between betrothal and solemnization. The binding nature of the betrothal meant, to the chagrin of some families, that couples could become engaged in secret, and once the marriage had been consummated, only an ecclesiastical court could dissolve the union. [65] Such betrothals opened the door to both family feuds and fraudulent promises.[66] As Sara McDougall so aptly concludes, Canon 51 "seemed to invite trouble."[67]

The tension between the canonicity of couple consent and the desire of parents to hold the power to regulate their children's marriages was widespread across Western Europe and became the focus of temporal legislation, which fostered strain between

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[60] Adhémar Esmein, *Le mariage en droit canonique*, vol 1. (Paris: L. Larose et Forcel, 1891), 63-189.
[61] Claude Gauvard, *"De grace especial": crime, état, et société en France à la fin du Moyen Age* (Paris : Publications de la Sorbonne, 1991), II: 578-9.
[62] Gottlieb, "The meaning of Clandestine Marriage," 49-83.
[63] Demars-Sion, *Femmes séduites*, 6-16; Molin and Mutembe, *Le rituel du mariage en France*, 50-52, 50-52, 70-75, 88-111, and 255-63; Edward Muir, *Ritual in Early Modern Europe*, 37-50; Marian Rothstein, "Clandestine Marriage and Amadis de Gaule: The Text, the World, and the Reader," *The Sixteenth Century Journal* 25, 4 (Winter 1994): 873-886.
[64] Donahue, *Law, Marriage, and Society*, 216.
[65] Finch, "Parental Authority and the Problem of Clandestine Marriage," 189-205; Donahue, "The Policy of Alexander the Third's Consent Theory," 262.
[66] Donahue, "Canon Law on the Formation of Marriage," 144-58; and Dufresne, "Les Comportements amoureux, » 131-56.
[67]McDougall, *Bigamy and Christian Identity*, 13.

ecclesiastical and temporal authorities. Secular authorities in Reconquista Spain, in some Italian city states such as Florence, Venice and Bologna, and pre-Reformation jurisdictions in Scandinavia responded with legislation that encouraged parents to intervene when they viewed their children's spousal choices with displeasure.[68] In medieval Sweden, secular legislation permitted parents to automatically disinherit their children if they married without parental consent. Temporal criminal jurisdictions in premodern Spain developed legislation which conflated defloration (*estrupo*) with seduction, though Spanish authorities did not connect abduction, seduction, and clandestine marriage as explicitly as the French eventually would.[69] In premodern Venice and Florence, with the support of secular legislation, patrician parents used coercion in the form of disinheritance and monastic claustration to force their children to drop unwanted romantic entanglements.[70] In fifteenth-century Bologna and Padua, secular lawmakers passed statute enabling families to disinherit children or alienate women from their dowries if they married without parental or clan consent. None of these jurisdictions developed the explicit legislative connection between seduction and clandestine marriage that France eventually would and only in France did medieval Catholic ecclesiastical

[68] Cecilia Cristellon, "Marriage and Consent in Pre-Tridentine Venice: Between Lay Conception and Ecclesiastical Conception, 1420-1545," *Sixteenth Century Journal*, 39, 2 (Summer 2008): 389-418; Cecilia Cristellon, *Marriage, the Church, and its Judges in Renaissance Venice, 1420-1545* (Cham: Palgrave Macmillan, 2017), 159-217; Mia Koriopla, "An Uneasy Harmony: Consummation and Parental Consent in Secular and Canon law in Medieval Scandinavia," in *Nordic Perspectives on Medieval Canon law,* ed. Mia Korpiola (Helsinki: Matthias Colonius, 1999), 125-150.
[69] See for example Martine Charageat, *La déliquance matrimoniale: Couples en conflit et justice en Aragon* (Paris: Editions de la Sorbonne, 2011), 128, 304; Renato Barahona, *Sex Crimes, Honour, and the Law in Early Modern Spain: Vizcaya, 1528-1735* (Toronto: University of Toronto Press, 2003), 41-58.
[70] Cristellon, "Marriage and Consent in Pre-Tridentine Venice," 389-418; Cristellon, *Marriage, the Church, and its Judges in Renaissance Venice,* 159-217; Daniela Hacke, *Women, Sex and Marriage in Early Modern Venice* (London: Routledge, 2004), 89-113.

authorities work so closely in tandem with secular government to aggressively regulate clandestine marriages in favour of parental consent.[71]

Ecclesiastical authorities in France, which operated under the scrutiny of noble families, had long viewed informal marriage formation with suspicion and had attempted to regulate clandestine betrothals from as early as the eleventh century. For example, one of the first ecclesiastical attempts to prohibit the exchange of marriage vows in private and without parental consent occurred at the provincial synod of Rouen in 1012.[72] Canon 51 of Lateran IV was itself partially modelled after statutes produced by the archdiocese of Paris in the late twelfth century that required of all marriages contracted within the archdiocese to be preceded by the publication of banns at least three times and the solemnization of vows in the present tense by a parish priest at the parish church.[73]

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[71] During the Catholic Reformation, these debates came to a head at the twenty-fifth session of the Council of Trent, where the French and Spanish delegations, with the support of less powerful sees such as Ypres fought hard in their ultimately failed attempt to write the need for parental consent explicitly into Canon law. In jurisdictions that adopted Protestantism, secular and religious authorities generally adopted stricter prohibitions against marriages and elopements that couples contracted without parental consent. Trevor Dean, "A Regional Cluster? Italian Secular Laws on Abduction, Forced and Clandestine Marriage (Fourteenth and Fifteenth Centuries)," in *Regional Variations in Matrimonial Law and Custom in Europe, 1150 – 1600*, ed. Mia Korpola (Leiden: Brill, 2011), 147-60. Raymond A. Mentzer, "The Reformed Churches of France and Medieval Canon law," in *Canon law in Protestant Lands*, ed. Richard H. Hemholz (Berlin: Duncker and Humblot, 1992), 165-186; Thomas Max Safley, "Canon law and Swiss Reform: Legal Theory and Practice in the Marital Courts of Zurich, Bern, Basel, and St. Gall," in Hemholz, *Canon law in Protestant Lands*, 187-202; John Witte, *Law and Protestantism: The Legal Teachings of the Lutheran Reformation*, (Cambridge: Cambridge University Press, 2002), 210-251; and Idem, *From Sacrament to Contract: Marriage, Religion, and Law in the Western Tradition*, 2nd ed. (Louisville: Westminster John Knox Press, 2012), 113-216; Joel F. Harrington, *Reordering Marriage and Society in Reformation Germany*, (Cambridge: Cambridge University Press, 1995), 169; Witte, *From Sacrament to Contract*, 160-2, 169-173. Jeffery Watt's monograph on the presentation of marriage before the consistory and matrimonial courts of Neuchâtel suggests that despite the adoption of secular marital law, many pre-Reformation practices persisted well into the seventeenth century, especially with regard the enforcement of marriage contracts and the persistence of breach of promise. See Jeffrey Watt, *The Making of Modern Marriage: Matrimonial Control and the Rise of Sentiment in Neuchâtel, 1550-1800.* (Ithaca: Cornell University Press, 1992), chap 2. On the impacts of the Protestant Reformation on parental authority and family composition and formation in the Holy Roman Empire, see Steven Ozment, *When Fathers Ruled: Family life in Reformation Europe*, (Cambridge: Harvard University Press, 1983), and Lyndal Roper's critical response, see *Holy Households.*

[72] Korbinian Ritzer, *Le mariage dans les églises chrétiennes du I^er^ au XI^ieme^ siècle*, (Paris: Cerf, 1970), 390-1; Molin and Mutembe, *Le rituel de mariage en France*, 31-2.

[73] Donahue, *Law, Marriage, and Society*, 33.

Lateran IV, however, had stopped short of the harsh sanction of excommunication that Parisian ecclesiastical authorities wrote into the archdiocesan statute, which angered the French bishops.[74] Provincial synods and local ecclesiastical authorities in Northern France responded more aggressively than neighbouring jurisdictions to the deficiencies that Canon 51 in Lateran IV produced regarding the moderation of irregular marriage. [75] In response to Lateran IV, in 1230 the bishop of Paris reissued the earlier statutes that threatened fines and excommunication if couples married in secret.[76] Following the Parisian model, during the thirteenth and fourteenth centuries, synods in Rouen, Troyes, Reims, Senlis, and Cambrai passed legislation that extended fines to priests who solemnized weddings in secret and confirmed threats of excommunication for couples who failed to publish banns and exchange present-tense vows *in facie ecclesiae* in their home parishes.[77]

French *officialités* used legislation to police irregular marriages with a force and vigour that outpaced the response of ecclesiastical courts in other jurisdictions. For example, Charles Donahue found that clandestine marital causes at *officialités* in Paris, Troyes, and the Norman bishopric of Cérisy were commonly treated as serious criminal matters and often brought to the court by parents who objected to the betrothal.[78] This

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[74] McDougall, *Bigamy and Christian Identity*, 13-14; Etienne Diebold, "L'application en France du Canon 51 Canon 51 Canon 51 du IVe du Latran d'après les anciens statuts synodaux," *L'Année Canonique* 2 (1953): 187-95.
[75] Diebold, "L'application en France du Canon 51 Canon 51 Canon 51 du IVe du Latran," 187-95; McDougall, *Bigamy and Christian Identity*, 13-14.
[76] Donahue, *Law, Marriage, and Society*, 33; Pommeray, *L'Officialité archideaconale de Paris,* 320.
[77]McDougall, *Bigamy and Christian Identity*, 14; Avignon, "L'église et les infractions au lien matrimonial: mariages clandestins et clandestinité. Théories, pratiques et discours, France du Nord-Ouest (XIIe-milieu XVIe siècle," (PhD diss) (Paris: Université de Paris-Est, 2008), 160-3; Thomas-Marie-Joseph Gousset, *Les actes de la province ecclésiastique de Reims,* Vol. 2, (Reims: L. Jacquet, 1843), 477-8, and 521.
[78] Donahue, *Law, Marriage, and Society*, 302-382; Donahue, "Canon Law on the Formation of Marriage," 148-52; Donahue, "'Clandestine' Marriage in the Later Middle Ages," 315-322.

treatment of clandestine marriage in Northern France was starkly different from English and other Continental jurisdictions which treated irregular marriage as a civil cause.[79]

Amid the strong legislative response from French diocesan officials to clandestine marriage the thirteenth-century French canonist,[80] Hostiensis introduced a novel canon legal response to clandestine marriage that directly presaged early sixteenth-century parlementary jurisprudence on *rapt de séduction*.[81] Hostiensis proposed that in addition to the diriment impediment of *raptus violentiae*, defined by Gratian as the abduction of a woman against her will, that Canon law ought to adopt a second category of *raptus,* based on Gratian's argument that parents had to both consent to and witness marriages in order to be legal, which he described as *raptus seductionis* – rapt by seduction.[82] *Raptus seductionis* distinguished sexual corruption in general (*stuprum*) from the sexual

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[79] Donahue, *Law, Marriage, and Society*, 302-382, and Donahue, "Canon Law on the Formation of Marriage," 148-52.

[80] Hostiensis (c.1200-1271) served as archdeacon of Paris. As a *doctor utriusque juris*, he taught Canon and Civil law at the University of Paris. He was eventually promoted to bishop of Sisteron and Archbishop of Embrun. He later retired to the Dominican monetary at Lyon 1270. See Kenneth Pennington, "Henricus de Sedusio (Hostiensis)," *Popes, Canonists and Texts* (Aldershot:Variorum, 1993), XVI, 1-5.

[81] Modifying the Classical Roman and Carolingian definition of *raptus violentiae* as a man's abduction of or fornication with another man's wife or daughter, Gratian had proposed in the twelfth century that *raptus* ought to be defined as the abduction or removal of a virgin from her family home for the purposes of fornication and marriage, *even when the virgin provided consent.* Marriage, therefore, was not possible between a ravished girl and her ravisher unless her parents provided consent after the fact. Still, confusingly, according to Gratian's definition, because a promise in the present tense as an expression of mutual volition had primacy, if a ravished woman and her ravisher had already exchanged vows of the present *prior* to the abduction, Gratian reasoned, the couple were legally married to one another because "one may not abduct one's own bride (*Non fit raptus propiae sponsae*)." Esmein, *Le mariage en droit canonique*, vol. 1, 392. Gratian's definition of *raptus* therefore existed in a legal limbo as both an impediment to marriage and, depending on whether a couple could convince an ecclesiastical court that they had an existing pre-contract prior to the abduction, *raptus* also provided the means to establish a valid union. Caroline Dunn describes this latter phenomenon as "fictitious abduction." See Caroline Dunn, *Stolen Women in Medieval England: Rape, Abduction and Adultery, 1100-1500* (Cambridge: Cambridge University Press, 2013), 119. Joye, "Le rapt de l'Antiquité tardive au haut Moyen Age," 19-34; Brundage, *Law, Sex, and Christian Society*, 209; Nancy Elizabeth Virtue, "Representations of Rape in Renaissance Novella," PhD diss. (Madison: University of Wisconsin, 1993), 42-47.

[82] *Gratiani Dectretorum*, 619-620; Guy du Rousseaud de la Combe, *Recueil de jurisprudence canonique et benéficiale*, (Paris: De Nully, 1748), 134; and Brundage, "Rape and Seduction in the Medieval Canon law," 147, 147 n77, and 147 n78. Much like the prosecution of *rapt* under French criminal law after 1579, though canonists agreed that bridal abduction was worthy of death, other forms of corporal and spiritual punishment such as exile and excommunication were used.

corruption of a virgin still under her father's control. According to Hostiensis, *raptus seductionis* "takes place when a man, through trickery, empty promises, or any other means of coercion causes a woman to *allow herself* to be led away freely and willingly" in secret and without parental consent.[83] Hostiensis considered betrothals arising from *raptus seductionis* null and called for the excommunication of the *raptor* and religious enclosure for the *rapta* unless the parents agreed to contract a marriage after the fact.[84] For Hostiensis, then, the principle of *seductio* removed the condition of prior consent that limited the definition of *raptus* as Gratian described it.

In 1273, a royal ordinance brought *raptus* into temporal jurisdiction.[85] The ordinance called for the execution of the raptor and the banishment of anyone aiding and abetting the couple to marry in secret.[86] The prosecution of *raptus* evolved alongside the regulation and centralization of the parlement of Paris. In the wake of the ordinance, the

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[83] Hostiensis, "De adulteriis et stupro et aliis crimnibus as incontinentiam pertinentibus et de nocturna pollutione," *Summa aurea*, Book 5, (Venice: Melchior Seffae, 1570), 416; See also Brundage, "Rape and Seduction in Medieval Canon law," 147; and Alexandre-Guillaume Chotin, *De crimine raptus secundum jus romanum, hodiernum et canonicum*, (Ghent: Catterman-Dieu, 1825), 15: 'Ille est qui locum obtinet quando quis arte, promissis, aut aliis quibusvis modis, coactione vacuis, facit ut femina se rapi lubens volensque sinat.'The substance of the crime rested on the perpetrator's frustration of his victim's free choice through deceitful arts and blandishments. See Kathryn Gravdal, "Law and literature in the French Middle Ages: rape law on trial in Le roman de Renart," *Romanic Review* 82, (January 1991): 1-24; and Kathryn Gravdal, *Ravishing Maidens: Writing Rape in Medieval French Literature and Law* (Philadelphia: University of Pennsylvania Press, 2011), 121.

[84] Hostiensis, *Summa Aurea*, vol. 5, 413.

[85] Isambert, et al., *Recueil général des anciennes lois françaises.* vol. 2, 650-1; *Les Coustumes générales de Senlis, renformé en 1539*, 2nd ed. (Paris: Pierre Lamy, 1643), 101; Jean-Marie Carbasse, *Histoire du droit pénal et de la justice criminelle* (Paris: Presses universitaires de France, 2000), 109. Murder and adultery were brought under the aegis of royal justice around the same time. James Collins, *The State in Early Modern France*, (Cambridge: Cambridge University Press, 1995), xxi, and 6-7; Bishop's courts still had jurisdiction to hear matters concerning *rapt*, *homicide*, and *adultère* when clerks and clergy were involved. See Lefebvre-Teillard, *Les officialités à la vieille du concile de Trente*, 45. Léon Pommeray found, however, that by the close of the fifteenth century, these matters were increasingly moved to royal courts. See Pommeray, *L'officialité archidiaconale de Paris.*

[86] "Ordinatum fuit per dominum Regem et eius consiliarios quod quotiescumque melleia, vel domorum fractio, raptus mulierum, vel aliud consimile maleficium Parisiis accideret, omnes vicini et alii qui hoc sciverint, statim exeant ad impediendum malum pro posse suo, et ad arrestandum et capiendum malefactores, quos si arrestare vel capere non potuerint, levent clamorem ad quem omnes qui illum audierint currere teneantur et hoc proclamabitur ad bannum, et transgressores et inobedientes pariter puniantur." Isambert et al., *Recueil général des anciennes lois françaises*, vol. 2, 650-1.

parlement mobilized Hostiensis' clarification on *raptus seductionis* almost immediately, condemning a man to three hundred *livres* in amends for removing a girl from her home in order to secretly elope even though she had consented to the betrothal.[87] Claude Gauvard's survey of remission letters in the fourteenth and fifteenth centuries also discovered that half of the supplicants found guilty of *raptus* claimed to have conspired with their erstwhile brides to marry in secret following a guardian's refusal to condone the marriage.[88] Similarly, among the twenty-five *raptus* appeals that Geneviève Ribordy found in her survey of parlementary *arrêts* between 1375 and 1453, she has classified about half as "rapts de séduction," which couples arranged together after their parents or guardians refused to consent to the marriage.[89] Much like the parlementary application of the Ordinance of Blois more than two hundred years later, the parlement rarely imposed execution on the men it found guilty, preferring instead to impose fines and, when guardians were able to come to a mutually beneficial contract, recommending that the couple have a priest solemnize the marriage at a church. [90]

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[87] Jean Papon, *Recueil d'arrests notables des cours souveraines de France* (Tournon: Claude Michel, 1595), 685.
[88] Gauvard, *De Grace especial*, 581, n 35.
[89] Geneviève Ribordy, "Mariage aristocratique et doctrine ecclésiastique: le témoignage du rapt au Parlement de Paris pendant la guerre de Cent ans," *Crime, Histoire et Sociétés* 1/2 (1998): 29-48. Civil and ecclessiastical jurisdictions in the borderlands near Northeastern France developed similar jurisprudence in the late fourteenth and fifteenth centuries that began to separate *rapt de séduction* as a form of clandestine marriage apart from *rapt de violence* or forced marriage or sexual relations. See Myriam Grielshammer, "Rapt de séduction et rapts violents en Flandre et en Brabant à la fin du Moyen Age," *Tijdschrift voor Rechtgeschiedenis* 56 (1988): 49-84; Myriam Grielshammer, *L'envers du tableau. Mariage et maternité en Flandre médiévale* (Paris: Armand Colin, 1990), 65-85.
[90] Royal jurists generally applied the Canonical age of sexual consent of twelve for girls and fourteen for boys as the statutory test for *raptus.* Donahue, *Law, Marriage, and Society*, 20-1; Jessica Goldberg, "The Legal Persona of the Child in Gratian's *Decretum*," *Bulletin of Medieval Canon law* 24 (2000), 49; Ribordy, "Mariage aristocratique et doctrine ecclésiastique," 29-48; Henriette Benenviste, "Les enlèvements: stratégies matrimoniales, discours juridiques et discours politique en France à la fin du Moyen Age," *Revue historique,* 283 (1990), 13-35; 38-48.

The virginity or marriageability of daughters was an important resource for the maintenance and transmission of family honour.[91] The legal presumption that *raptus* included defloration was not always tested in the courts, but became a symbolic function of assessing the damages of lost honour and future marriageability for the victim's family.[92] Henriette Beneviste found that lawyers pleading for raptors before the parlement between the fourteenth and fifteenth centuries often argued that the abduction had been a consensual plan to evade parental authority.[93] Civil law provided families with the option to refuse the raptor as their daughter's spouse on criminal grounds and to pursue him for financial damages; Canon law provided the option to view *raptus* as an impediment which parents could resolve with marriage if they provided consent after the fact. This application of the law drew from Hostiensis' clarification that *raptus* could also include seduction, which he defined as tricking, bribing, or coercing a woman into a betrothal. Much like the example of the Touart affair that opened this chapter, criminal trials for *raptus* in the temporal courts were initiated almost exclusively by elite families seeking major restitution for a planned kidnapping of a minor child for the purposes of a secret marriage.[94]

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[91] Claude Gauvard, *Couples en justice IVe-XIXe siècle*, 215-224.
[92] Ribordy, "Mariage aristocratique et doctrine ecclésiastique," 38-48.
[93] Benenviste, "Les enlèvements," 13-35.
[94] All the victims of *raptus* belonged to wealthy, noble families and most were orphaned, living under the guardianship of a tutor or extended family members. Geneviève Ribordy, *Faire les nopces: le mariage de la noblesse française, 1375-1475* (Toronto: Pontifical Institute of Medieval Studies, 2004), 20-23; Ribordy, "Mariage aristocratique et doctrine ecclesiastique," 38-48; Benenviste, "Les enlèvements," 13-35. Though the French statute did not specify that ravished women must belong to noble families, similar legislation in neighbouring Ghent specifically limited the definition of *raptus* to girls who belonged to noble and wealthy burgher families. The Ghent regulations imposed a fine and a term of banishment to men who seduced girls into marriage and permitted families to disinherit girls who allowed themselves to be seduced into clandestine marriage. Grielshammer, "Rapt de séduction et rapts violents en Flandre et en Brabant," 49-84; Grielshammer, *L'envers du tableau*, 65-85.

Ecclesiastical courts held concurrent jurisdiction to annul or validate clandestine marriages. In addition to determining the canonicity of betrothals by *raptus, officialités* were also tasked with ruling on other categories of clandestine marriage, such as *verba de futuro, carnali copula subsecuta,* which involved the exchange of false or fraudulent marriage promises followed by intercourse.[95] Such clandestine betrothals represented a serious risk to women because although these promises were legally binding, if a relationship broke down or a woman discovered that her fiancé had made a promise that he had no intention of keeping, her only recourse was to seek compensation, and possibly enforcement of the promise, at a diocesan court.[96] Once validated, the *official* could ask the couple to formally and publicly solemnize the marriage according to the Lateran IV marriage canon. Although *officials* had previously considered marriage to be the best outcome, Anne Lefebvre-Teillard and Véronique Demars-Sion have found that, beginning around the turn of the sixteenth century, ecclesiastical courts started to demand stricter standards of evidence for betrothal where diocesan judges had previously accepted a woman's verbal testimony as sufficient proof.[97]

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[95] Lefebvre-Teillard, *Autour de l'enfant*, 33-35; Lefebvre-Teillard, *Les officialités à la vieille du concile de Trente*, 50; Pommeray, *L'Officialité archidiaconale de Paris,* 332-5; Sheehan, *Marriage, Family, and Law in Medieval Europe,* 55.

[96] Although men could and did occasionally bring claims of marriage promises to the attention of their dioceses, women represented the majority of plaintiffs. Geneviève Ribordy, "Les fiançailles dans le rituel matrimonial de la noblesse française à la fin du Moyen Age: Tradition laïque ou création ecclésiastique?" *Revue historique* 4, 620 (2001): 885-911; Pommeray, *L'Officialité archidiaconale de Paris,* 332-5. Once properly tested by the ecclesiastical court by examining personal or witness depositions attesting to the promise and physical proof of intercourse such as a pregnancy or newborn child, the Official had the authority to deem the promise of marriage followed by intercourse as a canonically sound marriage contract according to the Alexandrian decrees. Lefebvre-Teillard, *Autour de l'enfant*, 33-5; Lefebvre-Teillard, *Les officialités*, 150.

[97] Lefebvre-Teillard, *Autour de l'enfant*, 33-7; Demars-Sion, *Femmes séduites*, 23-25. Though very rare, forced marriage was not entirely unheard of. Jean Papon describes one exception in 1548 in which the archidiaconal Official of Paris threatened to excommunicate a man if he refused either to seek a formal annulment or to solemnize his betrothal to a woman he had impregnated. Papon, *Recueil d'arrests*, 691.

As *officials* started to demand more proof of a valid betrothal before validating a marriage, they developed a system of financial compensation, previously reserved for victims of defloration and fornication, known as *duc vel dota* – to marry or dower.[98] This form of compensatory punishment required the man to marry the woman or to bestow a dowry upon the woman (*actio dotis*), to provide the funds for the woman's lying-in, post-partum recovery, and midwifery services (*actio provisionis*), if she was pregnant, and either to "take the child" by legally recognizing his paternity (and thus his financial responsibility) and bestowing it with his surname at baptism or to provide parental support for the child's basic nourishment (*actio capitionis vel susceptionis partu*s).[99] These patterns of proof and compensation eventually formed the basis of one of two bodies of parlementary jurisprudence on seduction. In the meantime, as the parlement continued to concentrate and consolidate its sovereign capacity, it began to question the legal validity of the Church's concurrent jurisdiction.[100]

Part 2: Clandestine marriage in the sixteenth century

On March 9, 1541, the parlement of Paris deliberated on a matrimonial dispute between Damoiselle Françoise de Lizian and a young nobleman named René d'Orvaulx. A few weeks earlier, Françoise's legal guardian and lawyer, Pierre de Tinteniac, had represented her in a complaint against René at the *sénéchal* of Angers for *raptus*, claiming he had attempted to seduce the wealthy young orphan into a secret betrothal.[101]

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[98] Lefebvre-Teillard, *Autour de l'enfant,* 34-40; Lefebvre-Teillard, "Marriage in France," 274-5; Demars-Sion, "Un épisode peu connu," 714-9; Esmein, *Le mariage en droit canonique*, vol. 1, 391-3.
[99] Lefebvre-Teillard, *Autour de l'enfant*, 34-7.
[100] Lange, "Droit Canon et droit français," 243-261; Lange, *The First French Reformation.*
[101] Gilles le Maistre, *Décisions notables de feu messire Gilles le Maistre*, vol. 5 (Paris: Jacques Kerver, 1572), 178-183.

René answered the charge by filing a counter claim against Françoise at the Official of Angers to have their marriage validated, alleging that eight days after his criminal conviction for *raptus*, Françoise had consented to the betrothal to spare his life, after which promise they consummated the marriage.[102] The parlement intervened on the grounds that the *official* had potentially abused its jurisdiction by agreeing to hear René's complaint following his criminal conviction. The question at hand related to which court held primary jurisdiction over the matter before it: should René Orvaulx be executed for *raptus* or would his life be spared because Françoise Lizian had provided her consent to marry after the fact?[103] The parlement ultimately determined that the temporal jurisdiction of the *sénéchaussée* of Angers held primary jurisdictional competence over the matter, convicted René of *raptus*, and dismissed his claim at the *officialité.*[104]

This important decision finally articulated the formal separation of *rapt de séduction* from the broader definition of the crime of *raptus* as a form of clandestine marriage that involved the co-conspiracy of a couple to become engaged without the approval of the bride's family. In his collection of important decisions, Gilles le Maistre, who served as *premier président* of the parlement from 1540 until his death in 1562,[105]

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[102] Le Maistre, *Décisions notables*, vol. 5, 178-7, 181-2.

[103] This case also belonged to a broader body of *appels comme d'abus* that came before the bench between the first quarter and middle of the sixteenth century, which parlementaires, with the support of the king, developed as a tactic to test and confirm the authority of the parlement to define a hierarchy of jurisdictional competencies that placed the parlement (and thus royal justice) at the apex.

[104] Frustratingly, Le Maistre does not specify whether the parlement ultimately decided to execute René Orvaulx or whether he merely cited execution as a legal device to justify temporal competence over the case.

[105] J. Hachez, *Etude sur les décisions notables de Gilles le Maistre, Président du Parlement de Paris au XVIe siècle* (Paris: Girard et Brière, 1905), 4; Gilles le Maistre has been described paradoxically as a pawn of the Guise and an ultramontanist by Nancy Roelker and as a devoted defender of Gallican liberties by Jotham Parsons. Sylvie Daubresse and Tyler Lange offer more nuanced descriptions of his judicial philosophy as one that adhered to 'Gallican conciliarism', which helps better to frame his critical assessment of the parlement's primary authority to comment on both Canon and Civil law. Nancy Lyman Roelker, *One King, One Faith: The Parlement of Paris and the Religious Reformations of the Sixteenth Century* (Berkeley and Los Angeles: University of California Press, 1996), 173-83, 221; Jotham Parsons,

provided an explanation for the parlement's decision.[106] In his explanation, Le Maistre pointed out that the criminal conviction for *raptus* preceded Orvaulx's suit at the *officialité* of Angers seeking to validate the consummated betrothal promise, leaving open the possibility that, had a betrothal been tested in the diocesan court prior to the criminal charge, the outcome of the parlement's jurisdictional decision might have been different.[107] The precise order of each claim in the temporal court first and the ecclesiastical court second played an important part in the decision.

Gilles Le Maistre was not the first jurist to formulate the relationship between *raptus* and clandestine marriage – these themes were the subject of both French ecclesiastical philosophy and parlementary jurisprudence dating back to at least the late fourteenth century. Furthermore, rather than "impugn" the Canon law on marriage as Sarah Hanley has argued, Le Maistre used this case to test the rules of consent laid out by Hostiensis in relation to Gratian and Alexander before him. [108] Le Maistre defined *rapt de séduction* as an impediment "even if the ravished girl or woman were consenting" because "the raptor will nonetheless be sentenced to capital punishment as the use of force and violence" or "seduction and subornation" because to "deceive her father and mother or relations" was a capital crime in France and countered the canonical requirement of the "free will" of both the bride and the groom.[109] This definition reflected

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The Church in the Republic: Gallicanism and Political Ideology in Renaissance France (Washington, DC: The Catholic University of America Press, 2004), 99; Sylvie Daubress, *Le parlement de Paris, ou la voix de la raison (1559-1589)* (Geneva: Droz, 2005), 456; Lange, *The First French Reformation,* 252.

[106] Le Maistre, *Décisions notables*, vol. 5, 179.

[107] Le Maistre, *Décisions notables*, vol. 5, 181-2. Hanley's reading of Le Maistre's commentary on the judgement suggests that the *appel comme d'abus* sought to remove the judicial process for *raptus* from the ecclesiastical official. This, quite clearly, was not the case.

[108] Hanley, "'The Jurisprudence of the Arrêts'," 6-7.

[109] "*Raptus cum rapta an rectè contrahant matrimonium*?...Il faut entendre que de droit civil *inter raptorem et raptam prohibetur matrimonium, ne videatur quadam vi contractum..quod oporteat matrimonia esse adeo libera, ut eis etiam jus canonicum stipulationes poenales...* et pour mesme raison les constitutions

Hostiensis' description of *raptus seductionis* as a man's use of "trickery, empty promises, or any other means of coercion," which "causes a woman to allow herself to be led away freely and willingly" in secret and without parental consent.[110] Le Maistre confirmed Hostiensis' articulation of *raptus seductionis,* but rejected Hostiensis' willingness to absolve the *raptor* of his crime if the *rapta*'s guardians contracted a marriage for her with the *raptor,* a position that later parlementaires would reverse even in the face of pressure from the crown.[111] Affirming the jurisdictional competence of the royal courts, Le Maistre asserted instead that "the Canon law [on marriage *inter raptorem et rapta*] is no longer maintained in France in this instance" because, as a capital crime in France, the *Official* could neither hear criminal processes for *raptus*[112] nor, he argued, could he validate an espousal following conviction in the temporal courts because "there is no marriage so good that it might break a noose."[113] However, parlementaires never took the position that *rapt de séduction* should be universally applied as a diriment impediment to marriage.

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canoniques defensoyent le mariage *inter raptorem et raptam…nam in concilio Aquisgrani raptorem cum rapta matrimonio jungi non posse propter praecendtem violentiam et diffensionem, quamuis consesus subsequeretur*...la prohibition du mariage *inter raptorem et raptam* soit la cause finale de la peine de mort indicte au rapteur par la loy civile...la loy civile dit par expres, qu'encores que la fille or femme ravie soit consentante, le rapteur sera neantmoins puny de peine capitale...Car la peine capitale qu'elle impose au rapteur est, pour la force et violence commise en la personne, ou pour le dol, seduction, et subornation de la fille seduite et subornee au desceu de ses pere et mere, ou parens qui sont autant ou plus offencez que la fille." Le Maistre, *Décisions notables,* vol. 5, 179-181.

[110] Le Maistre, *Décisions notables,* vol 5, 181, Hostiensis, *Summa aurea*, Book 5, 416.

[111] "hanc etiam opinionem tenuit Host[iensis] in summa de rapt[or] virg[ines] sed puella contragit matrimonium non deberi poenam." Le Maistre, *Décisions notables*, vol. 5, 180.

[112] Bishops could ordinarily claim jurisdiction over criminal proceedings for *raptus* which were brought against lay clerks and members of the clergy. In 1503, for example, the Archbishop of Paris successfully claimed concurrent jurisdiction to try a diocesan clerk named Jean Beaufils for *raptus* following the plaintiff's initial denunciation which she made to the Châtelet. Lefebvre-Teillard, *Les officialités*, 272.

[113] "Le droit canon n'est en c'est endroit gardé en France…quand il y a question sur le rapt devant le juge, lay premier, qu'entrer en la question du mariage par devant le juge d'Eglise…huict jours après le juge lay cognoissant du rapt, feist pendre et estrangler le mary *pro raptu…*la constitution canonique...n'a peu oster, ny remettre la peine capitale introduite par la loy civile contre le rapteur, et en ce cas l'on dit qu'il n'y a si bon mariage que l'on ne puisse rompre d'une corde." Le Maistre, *Décisions notables,* Vol. 5, 451, 456

The Orvaulx decision represented an important point of culmination (rather than revolution) of the French legal position that developed over the course of several centuries which questioned the legitimacy of clandestine marriage and supported as indispensable the role of parental authority.[114] Importantly, the parlement applied the Orvaulx ruling to justify the primary competence of the royal courts to judge *rapt* cases prior to matrimonial proceedings at *officialités.*[115] Ultimately, this decision paved the way for the explicit legislative tools that connected the crime of *rapt* and clandestine marriage as a form of seduction and protected the competence of the royal courts to render judgements according to these temporal laws. While Hanley concludes that parlementaires intended to leave Canon law behind, I would argue that while some individual parlementaires, such as the Toulousian judge and Calvinist, Jean de Coras,[116] certainly hoped to see the application of Canon law and its procedures and customs diminish, as a judicial body, the parlement of Paris continued to observe the Canon law on marriage even after temporal legislation provided the opportunity for the court to supress it. In 1576, for example, the parlement of Paris rendered a decision on an *appel*

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[114] The parlement reaffirmed the position that it defined clandestine marriage between minors as *rapt* in an *arrêt* delivered in February of 1549. Papon, *Recueil d'arrests*, 683.

[115] Papon, *Recueil d'arrests notables,* 683.

[116] Calvinist and Lutheran theologians and judges, who rejected the sacramentality of marriage, were unimpeded by Canon law and could thus apply the civil limits of parental consent without having to contend with the problem of mutual affection and volition. Coras replicated the position favoured by Calvinist legal doctrine on marriage proposed by Théodore de Bèze and Jean Calvin. Jean de Coras, *Des mariages clandestinement, et irreveremment contractes par les enfans de famille, au deceu, ou contre le fré, vouloir, et consentement de leurs Peres et Meres, petit discours et briéve résolucion* (Toulouse : Pierre du Puis, 1557), 2, 7; Jean Calvin, "De Matrimonio" in *Institutio Christianiane religionis* (Lausanne : François le Preux, 1576), 370v-371r. Raymond A. Mentzer, "The Reformed Churches of France and Medieval Canon law," in *Canon law in Protestant Lands,* ed. Richard H. Hemholz (Berlin: Duncker and Humblot, 1992), 165-186; Thomas Max Safley, "Canon law and Swiss Reform: Legal Theory and Practice in the Marital Courts of Zurich, Bern, Basel, and St. Gall," in Hemholz, *Canon law in Protestant Lands,* 187-202; John Witte, *Law and Protestantism: The Legal Teachings of the Lutheran Reformation,* (Cambridge: Cambridge University Press, 2002), 210-251; Witte, *From Sacrament to Contract: Marriage, Religion, and Law in the Western Tradition*, 2nd ed. (Louisville: Westminster John Knox Press, 2012), 113-216; and Harrington, Reordering Marriage and Society in Reformation Germany, 93-100, 160-2, 169.

comme d'abus wherein a girl from Soissons had been secretly married by a priest outside of her parish "to the disappointment of her guardian."[117] The guardian had brought the case simultaneously to a lay judge as *rapt* and to the Official of Soissons to have the clandestine marriage annulled. Both courts had agreed that the marriage was illegal. The parlement, however, determined that "the marriage must not be set aside" and that "the appellants should present themselves some day at the Official of Soissons" in order to have "their marriage solemnized by him" in their home parish as Canon law required.[118]

In the sixteenth century, at least, parlementaires did not have to have dismiss Canon law in order to recognize the primacy of monarchial justice in France. Referring back to the Orvaulx decision, ultimately, rather than diminish the importance of Canon law, this case was a chance for Le Maistre – who like many of his fellow parlementaires, held a *licencia in utroque juris* – to elegantly demonstrate his mastery of both laws in order to articulate both the French position on *rapt de séduction* and to demonstrate the primacy of royal justice.[119] In fact, forty percent of the councillors and judges who joined the parlement between 1530 and 1576 during the era when parlementaires were supposedly dispensing with Canon law had either received their legal education *in utroque juris*, were deacons, priests, abbots, or bishops, or had otherwise spent part of

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[117] "L'Official de Soissons avoit declaré un mariage clandestin, fait sans publications de bans et celebré non en l'Eglise Parochiale des maries, mais de nuit, loin de leur demeure…mais par un Religieux, au descu du tuteur de la fille, contre les défenses tant du Juge Laïc que d'Eglise." Georges Louet, *Recueil de plusieurs arrests notables du Parlement de Paris*, vol.2 (Paris: Michel Guignard and Claude Robustel, 1712), 117.
[118] "lequel Arrêt la Cour jugea…que le mariage ne devoit point cassé, néanmoins ordonna que les appellans se presenteroient à certain jour à l'Official de Soissons pour être par lui pourvu à la solemnisation du mariage." Louet, *Recueil de plusieurs arrests*, 117.
[119] See Lange, *First French Reformation*; J. H. Shennan, *The Parlement of Paris*, 2nd ed. (Phoenix Mill: Sutton, 1998) 192-6, 201-2, 206; Marie Houllemare, "Rélations formelles, rélations informelles entre le roi et le parlement de Paris sous François Ier et Henri II," in *La Prise de décision en France (1525-1559): rechercher sur la réalité du pouvoir royal ou princier à la Renaissance* eds. Roseline Claerr and Olivier Poncet (Paris: Ecole nationale des chartes, 2008), 103; Una McIlvena, *Scandal and Reputation at the Court of Catherine de Medici* (London: Routledge, 2016), 60-100.

their legal careers either working for *officialités* or in sacred office throughout the kingdom.[120] These men were not hostile to ecclesiastical law but knew exactly how to manage and deploy it in order to support the sovereignty of the court to defend what they saw as the kingdom's best interests. This legal dexterity helped to define the parlement, and its judges, as the preeminent arbiter of all branches of justice in France.[121]

During this important formative phase of the official French position in the first half of the sixteenth century, the parlement and ecclesiastical officers generally worked toward the common goal of controlling clandestine marriage.[122] Around the same time that the parlement ruled on the Orvaulx appeal, bishops in northern France renewed and strengthened diocesan prohibitions against clandestine marriages. The bishop of Paris and former parlementary councillor, Etienne Poncher, reaffirmed ecclesiastical prohibitions against non-publicized marriages in a synodal statute in 1515.[123] Two successive bishops of Autun, Jacques Hurault de Cheverny and Philibert de Courgengouch, in 1544 and 1553 respectively, prohibited priests from celebrating marriages between non-parishioners.[124] In 1550, Charles de Lorraine, the Cardinal Archbishop of Reims, successfully spurred the Provincial Synod of Cambrai to strengthen prohibitions against

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[120] Using Edouard Maugis' prosopography of the parlement of Paris, I conducted a random sample of 121 parlementaires for whom Maugis provided relevant biographical information to determine their legal training and/or career origins. Based on this information, I determined that 49 of these parlementaires had received either a *licencia* or *doctor in utroque juris*, were described as deacons, priests, or bishops, or had spent some of their legal career working for an ecclesiastical court. See Edouard Maugis, *Histoire du Parlement de Paris: de l'avènement des rois Valois à la mort d'Henri IV,* vol. 3 (Paris: Auguste Picard, 1916), 148-245.

[121] Lange, *First French Reformation*, 70-5; J. Hachez, *Etude sur les décisions notables de Gilles le Maistre, Président du Parlement de Paris au XVIe siècle* (Paris: Girard et Brière, 1905), 26, 69-76; Parsons, *The Church in the Republic*,146

[122] Demars-Sion, *Femmes séduites*, 17-18, 23-24; Lefebvre-Teillard, *Autour de l'Enfant,* 31.

[123] Lefebvre-Teillard, *Les Officialités à la vieille du concile de Trente*, 165, fn 79.

[124] Farr, *Authority and Sexuality*, 93.

clandestine marriage by threatening with excommunication any priests caught solemnizing a secret elopement.[125]

Later, as head of the French delegation at the Council of Trent,[126] the Cardinal, alongside his Spanish counterpart, spearheaded the ultimately unsuccessful campaign to eliminate clandestine marriage by formally legislating requirements for pre-betrothal parental consent and by raising the age of statutory consent above twelve and fourteen for girls and boys, respectively.[127] Under pressure from the French, the Council offered the *Tametsi* decree as a compromise.[128] *Tametsi* determined that marriage was legally valid only once a priest had acknowledged the consent of parents in the case of marriages between minor children, refused to recognize the exchange of promises followed by copulation as a valid espousal, required the presence of two or three witnesses, and only if the nuptial benediction occurred in the parish where the couple's families resided.[129] The compromise, however, was limited. The canonical age of consent remained unchanged; while the Council agreed to *promote* parental involvement, it refused to mandate it and dismissed as illegal any attempts by local officials to invalidate marriages based singularly on the absence of parental consent.[130] Although it was a subject of

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[125] Gousset, *Les actes de la province ecclésiastique de Reims,* Vol. 3, 73-4.
[126] The French refused to attend the General Council until the Cardinal arrived at the twenty-fourth session in 1562. Alain Tallon, *La France et le Concile de Trente (1518-1563)* (Rome: Ecole Française de Rome, 1997), 367; John O'Malley, *Trent: What Happened at the Council* (Cambridge: Harvard University Press, 2013), 129-36.
[127] Tallon, *La France et le Concile de Trente,* 679-85.
[128] James Brundage, *Law, Sex, and Christian Society in Medieval Europe,* (Chicago: University of Chicago Press, 1987), 562-567; Witte, *From Sacrament to Contract*, 106-111; and Jean Bernhard, "Le décret *Tametsi* du concile de Trente: Triomphe du consensualisme matrimoniale ou institution de la forme solennele du mariage?" *Revue de Droit Canonique,* Vol 30 (1980): 209-34; O'Malley, *Trent*, 226-264.
[129] *Sacrosanctum Concilium Tridentunum Additis Declarationibus Cardinalium* (Augsburg: Matthius Reiger and Sons, 1766), 394; O'Malley, *Trent*, 226-264.
[130] *Sacrosanctum Concilium Tridentunum,* 393-395.

debate that divided the parlement,[131] the Crown did not accept the Canons and Decrees of the Council of Trent until 1615.[132] The decision to send the French delegation to Trent was motivated in part by an important test on the limits of previous interventions by the French episcopacy and the royal courts to create reliable obstructions to clandestine marriages.[133]

Part II: *Rapt de séduction* and royal legislation in the sixteenth century

In 1556, Henri II offered his daughter, Diane de France, in marriage to François Montmorency, the *maréchal* of France.[134] François' father, the powerful and influential Anne de Montmorency, eagerly accepted the proposal. Negotiations were immediately stalled, however, when Jeanne de Hallevin, the daughter of the *comte de Piennes,* came

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[131] The *premier président,* Christophe de Thou, objected wholesale to the adoption the Tridentine decrees into law in France on the grounds that the decrees endangered both the fragile peace realized by the Edict of Ambroise and Gallican liberties of the Crown to govern ecclesiastical affairs. Some *présidents à mortier*, such as Antoine Séguier, were willing to accept the Tridentine decrees, with some small modifications that protected the king's authority in non-doctrinal matters. Henri III would briefly revive the debate in the 1579, but he abandoned the notion that the crown would accept the decrees in the face of De Thou's continuing objections and the support of the Estates General. The delicate political atmosphere during the civil wars continued to impact the parlement's decision to avoid the promulgation of the Tridentine decrees when Henri III renewed his desire to see the decrees approved again in 1588. See Daubresse, *Le parlement de Paris*, 117-223; Tallon, *Le concile de Trente,* 86.

[132] The French episcopacy immediately set to operating the Tridentine decrees in their individual dioceses and voted to ratify the disciplinary and liturgical decrees at the national assembly of Melun in 1579; however, the decrees were not solemnly received into the national church (thus becoming canonically binding) with the support of the crown until the General Assembly of the Clergy in 1615. See O'Malley, *Trent*, 251. Jean Bernhard, "Le décret *Tametsi* du concile de Trente"; Thomas I. Crimando, "Two Views of the Council of Trent," *The Sixteenth Century Journal* 19, 2 (Summer 1988): 169-186; The Spanish delegation was also dissatisfied with the terms of *tametsi*, though the King of Spain tasked the Spanish episcopacy with the immediate incorporation of the Tridentine decrees into ecclesiastical law and practice. Spanish bishops were especially concerned about the failure of *tametsi* to solve the problems created by Lateran IV which first, did not satisfactorily resolve the problem of parental consent, and second, still left women vulnerable to defloration and pregnancy on the basis of false promises of marriage. Jutta Sperling, "marriage at the time of the Council of Trent (1560-1570): clandestine marriages, kinship prohibitions, and dowry exchange," *Journal of Early Modern History*. 8, 1-2 (2004): 67-108; Ashley Parham, "The Implementation of the Council of Trent: The Provincial Councils of Granada and Toledo, 1565-1566," PhD diss. (Oxford: University of Oxford, 2020), 3, 73-74; 86-7.

[133] Tallon, *La France et le Concile de Trente*, 681-3; Crimando, "Two Views," 180-1; Diefendorf, *Paris City Councillors,* 163.

[134] I have used the old date format here.

forward to disclose that she and François had already exchanged "a spoken engagement of affection" and through "their words…he took her as his wife and she responded that she took him as her husband."[135] The king called a court of inquiry, led by the parlementary judge, Pierre Séguier and the Cardinal de Lorraine, to test the legitimacy of the proposal.[136] Much to the king's chagrin, the court ultimately determined that the engagement was legitimate: Jeanne was nineteen and François was in his mid-twenties, which made them legally eligible to contract an engagement; the engagement itself fulfilled the requirements of both the Alexandrian decrees and Canon 51 of the fourth Lateran council as a canonically valid promise. The engagement had to be annulled. The couple swore that they had not consummated the marriage so it was possible that the engagement *could* be annulled. The court sent François de Montmorency to Rome to apply for the annulment, which the Pope quickly denied because the betrothal fulfilled all the standards established by Canon law as valid and indissoluble.[137]

The king immediately responded with a royal edict that "disinherited and excluded from succession" any girls under the age of 25 and any boys under the age of 30 who chose to "contract clandestine marriages against the will, desire, and consent and without the knowledge of their mothers and fathers, tutors, or guardians."[138] In the face of such a threat, François immediately avowed that "he had made a promise of marriage to

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[135] "un engagement d'affection et de parole de la part du Mareschal avec Jeanne de Hallevin…leurs propos furent qu'il la prenoit à femme et elle répondit qu'elle le prenoit à mary." Michel de Castelnau, *Les mémoires de Messire de Castelnau* vol. 2 (Brussels: Jean Leonard, 1731), 387 ; Guy du Rousseau de la Combe, *Recueil de jurisprudence canonique et bénéficiale* (Paris: Desaint, 1771), 127.
[136] Castelnau, *Les mémoires de Messire de Castelnau,* 386; Rothstein, "Clandestine Marriage and Amadis de Gaule: 881; Marian Rothstein, *Reading in the Renaissance: Amadis de Gaule and the Lessons of Memory*, 132.
[137] De Thou, *Histoire universelle,* vol. 3, 183-4; Rothstein, *Reading in the Renaissance,* 132; Rothstein, "Clandestine Marriages," 882; McIlvenna, *Scandal and Reputation,* 89.
[138] Edict of 1556, Isambert, et al, *Recueil général des anciennes lois françaises,* vol. 13, 469-71.

Mademoiselle de Peinne," but only "on the condition that the *Connétable* his father would consent to it."[139] The court of inquest declared the promise null and François finally married the king's daughter. This edict provided the legislative tools to increase the civil age of consent dramatically to conform more closely to the age when the majority of couples entered into marriage and provided families with the means to enforce their authority to consent by civil means through disinheritance. This increased statutory age limit for legal consent along with the evolving connection between *rapt*, seduction, and clandestine marriage was formally drafted into royal law for the first time in 1560 in the ordinances that emerged from the Estates General of Orléans.[140]

Motivated by the eventual failure of the French delegation at Trent in 1563, Estates General, which convened at Blois in 1576, combined the edict of 1556 and the Orléans article on rapt to propose fresh legislation that maintained the high statutory age limits set in 1556 and, for the first time, expanded the definition of *rapt* to include the victimization of boys as well as girls. The Estates General also established that all marriages would require the publication of banns on three separate feast days in the home parishes of the affianced couple and the presence of four witnesses to observe the

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[139] "Après la promulgation de cette loi, François de Montmorenci avoua qu'il avoit fait une promesse de mariage à Madamoiselle de Pienne, mais à condition que le Connétable son pere y consentiroit. Cette promesse étant déclarée nulle, il épousa Diane fille naturelle du Roi." De Thou, *Histoire universelle*, vol. 3, 184.

[140] I found only one appeal that seems to stem from a conviction for *rapt* under the Ordinance of Orléans. In 1569, the parlement condemned Pierre Lurac to perpetual galley labour and "his wife (*sa femme*) Marie Veurnon to two years of penitentiary religious encolsure "for marrying each other against the wishes of her father and mother. "pour leur mariez oultre le gré de son pere et mere)." AP A^B 3, November 1569, fol. 111. Art. 111 of the Ordinance of Orléans reads: "ils ont fait fait séquestrer des filles, et icelles épousé ou fait épouser, contre le gré et vouloir des pères , mères et parens, tuteurs ou curateurs, chose digne de punition exemplaire; enjoignons à tous juges procéder extraordinairement et comme crime de rapt, contre les impétrans et ceux qui s'aideront…" Isambert et al., *Recueil général des anciennes lois françaises*, vol. 14, 91; Danielle Haase-Dubosc, *Ravie et enlevée*, 26-7; Letinier, "La création de nouveaux empêchements de mariage," 125; Amandine Duvillet, "Du péché à l'ordre civil, les unions hors mariage au regard du droit (XVI-XX siècle) PhD diss. (Dijon: University of Burgundy, 2011), 48

solemnization of vows by the parish priest *in facie ecclesiae.*[141] The Blois marriage articles set the age of consent for all fiancés at twenty-five, but imposed tougher restrictions on children from elite families (*enfans de famille*) by removing the minimum age of consent to marry without the approval of the closest living relative.[142] The ordinances renewed older death penalty legislation for the crime of *raptus*, adding the stipulation that anyone found guilty of *rapt*, which could include priests who agreed to perform illegal weddings, would be executed "without hope of grace or pardon," which ensured that the royal courts could continue to justify primary competence over all aspects related to the crime of *rapt.*[143] The Ordinance of Blois provided the parlement with the legislative tools to permanently eradicate clandestine marriage. The court never took full advantage of this legislation, however.

Ultimately, the parlement used the Ordinance of Blois to regulate marriage formation but applied the legislation as a tool to both affirm clandestine betrothals as well as to invalidate them. As a result, two distinct bodies of jurisprudence emerged from the Blois marriage articles aimed at deploying the ordinance as a mechanism to either

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[141] Diefendorf, *Paris City Councillors,* 164; Art. 40, Isambert et al., *Recueil général des anciennes lois françoises*, vol. 14, 391.

[142] Art. 40, Isambert et al., *Recueil général des anciennes lois françoises*, vol. 14, 391. Widows over the age of 25 had the right to choose a second spouse. Louis XIII reversed this stance in 1639, bringing even widowed children under family control. Isambert et al., *Recueil général des anciennes lois françaises*, vol. 16, 23.

[143] Art. 42 : "Et néanmoins voulons que ceux qui se trouveront avoir suborné fils ou fille mineurs de vingt-cinq ans, sous prétexte de mariage ou autre couleur, sans le gré, sçû vouloir ou consentement exprès des pères, mères et des tuteurs, soient punis de mort, sans espérance de grace et pardon." Isambert et al., *Recueil général des anciennes lois françoises,* vol. 14, 392. These penalties would be extended to any priest who agreed to solemnize a clandestine marriage involving a minor and any notary who agreed to write a secret marriage contract would be subjected to corporal punishment. art. 44, Isambert et al., *Recueil général des anciennes lois françoises,* vol. 14, 392. Few priests, however, were ever convicted in the criminal chambre for performing secret marriages. Nicolas Regney is the only priest who appeared in my survey of *écrous* on appeal for aiding a *rapt* under the article 42. The parlement released him into the custody of his Official for ecclesiastical censure. (AP A^B 24, 24 April 1619, fol. 26). In the case of orphaned children, legal guardians required the consent of the closest family members to legally contract a minor marriage on behalf of their ward. See art. 43, Isambert et al., *Recueil général des anciennes lois françoises,* vol. 14, 392.

separate or endorse the clandestine betrothals the court was asked to arbitrate.[144] The first body of jurisprudence applied the official intent of the Blois marriage articles to *rapt* appeals in order to void marriages and separate the couples whose marriage promises and sexual relationships harmed the strategic dynastic intentions of mainly elite families. This body of cases represents a minority of appeals – only 35% – that the parlement adjudicated between 1579 and 1655.[145] All of the appeals that resulted in the court-ordered dissolution of the engagement, involved the seduction of the children of the elite families. According to Benoît Garnot's reading of the Ordinance of Blois, temporal legislation had the power to dissolve the civil contract but, with the criminal conviction in hand, the family still had to seek a formal annulment from the Church if the couple continued to assert their status as husband and wife and if the marriage had been solemnized according to ecclesiastical convention.[146]

Although the Blois marriage articles specifically mandated execution for *rapt de séduction,* a punishment which lower courts recommended almost half of the time, the parlement applied the death penalty with caution, ordering the execution of fewer than 5% of the *rapt de séduction* appellants in my sample who appeared at the court between 1579 and 1655.[147] The judges reserved execution as an extraordinary punishment for socially inferior defendants such as servants or other household clients who, like Claude

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[144] Demars-Sion, *Femmes séduites,* 78-83.
[145] According to the survey of Conciergerie *écrous,* the parlement executed two men out of 52 appeals for seduction between 1579 and 1655. The parlement invalidated betrothal contracts and ordered the separation of 16 other couples.
[146] This would be according to Lateran IV before 1615 and the Tridentine decrees after 1615. This theory has not yet been tested in the archives. Garnot, "Une approche juridique et judiciaire du rapt," 167.
[147] According to the sample of *arrêts,* the parlement received 52 appeals from defendants who were convicted of seduction under the marriage articles of the Ordinance of Blois. The parlement ordered the execution of only two convicts.

Touart, had seduced the daughters of very wealthy, elite men.[148] For example, the parlement ordered the execution of Anthoyne Arnaud, who was a lackey from Poitou who ravished his *chevalier'*s daughter in 1581.[149] In 1624, when the parlement confirmed the death sentence of Claude du Moines, who had seduced the daughter of his master, the Sieur de Boislandes, the judges added the additional punishment of *amende honourable* to the sentence, ordering Du Moines to "carry a torch of wax weighing two pounds in his hands" in the style of a traitor.[150] The parlement sentenced the surgeon Gabriel Robin to die in 1641 for luring the daughter of the Sieur de Cramoifel while he was under contract to the family.[151] In each case, by dishonouring the daughters of these elite men, the seducers had breached class boundaries that were meant to be impenetrable and which they could not possibly hope to rectify either through marriage or financial reparations.[152]

Sometimes, when the clandestine betrothal caused severe damage to the daughter's marriageability but did not breach strict social hierarchies, the parlement opted to commute execution while retaining some form of corporal punishment or banishment.

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[148] In his examination of *rapt* at the parlement of Dijon, James Farr observed a slightly higher rate of execution and galley service in the sixteenth and seventeenth centuries than Sarah Hanley, Elizabeth Dudrow, or I have at the parlement of Paris. The demographic features of Burgundian litigants were very similar to those living within the resort of the Parisian parlement. Differences in the nomenclature of parlementary *écrous* in use in each of these jurisdictions might provide a clue. From a very early stage, Parisian *greffiers* distinguished between *rapt et séduction* and *rapt et violence*, the former becoming associated in the wake of jurisprudence and statute with clandestine marriage and the latter increasingly associated with *viol* or rape that carried no pretentions of betrothal. See James Farr, "Parlementaires and the Paradox of Power: Sovereignty and Jurisprudence in Rapt Cases in Early Modern Burgundy," *European History Quarterly* 25, 3 (July 1995): 325-51.

[149] AP A^B 7, 30 March 1581, fol. 29.

[150] "Ledit du moine condamné a faire amende honorable nud en chemise tenant en les mains une torche du cire ardente du poidz de deux livres…"AP A^B 27, 15 December, 1624, fol. 9; On the use of *amende honorable* in crimes of marriage see McDougall, "The Transformation of Adultery," 505 and also chapter 4 of this dissertation. On the ritual of *amende honorable* see Paul Friedland, *Seeing Justice Done: The Age of Spectacular Capital Punishment in France* (Oxford: Oxford University Press, 2012), 97; and Michel Foucault, *Discipline and Punish: The Birth of the Prison,* Trans., Alan Sheridan (New York: Vintage, 1977), 3.

[151] AP A^B 35, 8 February 1641, fol. 57.

[152] Demars-Sion, "Une approche peu connue," 739; Diefendorf, *Paris City Councillors*, 300-1.

In 1641 the parlement commuted Jacques de Bocques' hanging to 3000 *livres* in "reparations and civil justice" and banishment from France for nine months – just long enough for the widow of the Sieur de Courbauton to manage her daughter's pregnancy without her lover's interference.[153] Two years later, in 1643, the parlement similarly commuted the beheading of Jean Georges, the Seigneur du Fargis, to perpetual banishment from the kingdom of France for the seduction of the daughter of Armand St-Ange, who served on Cardinal Mazarin's vice-regal council.[154] The parlement only opted to physically punish 15% of convicted raptors.[155] Drastic punishments were rare.

Instead of imposing execution or even corporal punishment, the parlement preferred to offer financial restitution to the elite families who sought to dissolve the clandestine marriages of their minor children. Financial damages for *rapt de séduction* averaged about 3000 *livres parisis*, though penalties ranged from as little as 108 *livres* paid by the surgeon, Pierre Phillippe, to a relatively humble royal prosecutor named Martin le Moyne for the seduction of his daughter[156] to the exorbitant fine of 16,000 *livres* in civil interests and damages that the parlement ordered Charles Boullon to pay to the family of Mademoiselle Marguerite Lottin, who was the ward of Vincent Philippe, a king's councillor and auditor at the *chambre des comptes*.[157] Even though money could not restore lost virginity or erase the scandal, financial awards could compensate families for their loss of honour and, as Farr notes, theoretically provided extra resources to entice another family into a more beneficial match for their disgraced daughter.[158]

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[153] AP A^B 35, 5 January 1641, fol. 44.
[154] AP A^B 21, 21 June 1643, fol. 15.
[155] According to the survey of *écrous*, the parlement condemned 7out of 52 seducers to corporal punishment or banishment.
[156] AP A^B 23, 27 November 1617, fol. 82.
[157] AP A^B 40, 20 May 1650, fol. 32.
[158] Farr, *Authority and Sexuality*, 102-3.

The parlement was also willing to dissolve clandestine betrothals between mature *enfants de famille* if dissolution protected dynastic integrity and supported family and household stability. When the Sieur de Buzardière accused Damoiselle Antoinette de Longueval of *rapt de séduction* for marrying his thirty-year old son, Audard de Climchamp, in front of a priest in 1615, the parlement declared the marriage invalidly contracted even though Audard was technically old enough to marry on his own.[159] Similarly, in 1633 the parlement invalidated the marriage between Paul Gueroust, who was the "older than thirty-three" year old son of the comptroller general of finances of Paris, and Marie Coutillier, "a girl of ill repute," which the couple had solemnized without banns at the Faubourg Parish of Saint Laurent.[160] For reasons that are not entirely clear, these *rapts* of mature children mainly involved plaintiffs who aimed to protect sons, rather than daughters, from an unwelcome or inopportune clandestine union. It would be reasonable to postulate that the early age of marriage for women from high status families made opportunities to ravish mature daughters rarer than sons.[161] In addition, the risks of reputational damage that promiscuity posed to elite, still-fertile widows who might still form a second advantageous marriage also likely meant that families kept a closer eye on them. Finally, as Danielle Haase-Dubosc and Sylvie Joye

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[159] Louet, *Recueil de plusieurs arrests notables,* vol. 2, 114.
[160] "fille de mauvaise vie." Louet, *Recueil de plusieurs arrests notables,* vol. 2, 115.
[161] The mean age of first marriage of high-status women ranged from 18 to 19. Women from low and moderate status families were generally older at the time of their first marriages, around 25 to 27 years old. See Barbara Diefendorf, *Paris City Councillors in the Sixteenth-Century: The Politics of Patrimony* (Princeton: Princeton University Press, 1983), 180; Susan Broomhall, *Women and the Book Trade in Sixteenth-Century France,* 2nd ed. (Abingdon and New York: Routledge, 2018), 84; Lawrence Stone, "Marriage among the English Nobility in the 16th and 17th Centuries," *Comparative Studies in Society and History* 3, 2 (Jan 1961): 182-206, 184; Julie Hardwick, *The Practice of Patriarchy: Gender and the Politics of Household Authority in Early Modern France* (University Park: The Pennsylvania State Press, 1998), 58; James Collins, "The Economic Role of Women in Seventeenth-Century France," *French Historical Studies* 16, 2 (Autumn 1989): 436-470 .

have speculated, the social and financial harm that an unwelcome clandestine marriage potentially represented to high status families meant that many families may have preferred to deploy private tactics to resolve betrothals that met the legal standards of *rapt de séduction*. If the number of criminal trials for *rapt* represented only a portion of clandestine marriages among the elite, then the number of plaintiffs specifically seeking criminal sanctions for the dissolution of clandestine marriage contracts for mature daughters would represent only a fraction of these trials for the reasons I stated above.[162]

Overall, ravished and suborned men represented a very small portion of seduction plaintiffs: fewer than 8% of seduction appeals involved a male victim.[163] Because judges were less willing to believe that a man could be tricked into marriage and perhaps because seduction did not generally cause the same social harm to men as it did women, judges were reluctant to punish or even convict female defendants.[164] For example, when the notorious Marie Boissonet, known as *La Fourbette* (the Deceiver), appealed her sentence of five years banishment for seducing the son of the *maréchal* of Paris into marriage, the parlement declared the elopement invalid, but released her without charge.[165] Similarly, the parlement sent Suzanne Buzillet home without punishment instead of upholding the banishment and twelve *livre* fine that the *bailliage* of Sainte-Geneviève had imposed on her for attempting to lure Jean de Masgue, the son of the Sieur de Franpalais into a secret marriage.[166] The parlement also crafted rulings that explicitly protected the female defendant from financial harm, to the detriment of the

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[162] Haase-Dubosc, *Ravie et enlevée*, 32; Joye, "Le ravisseur et la femme ravie," 26.
[163] According to the survey of *écrous*, 4 out of 52 seduction appeals involved the seduction of a man into a fraudulent marriage.
[164] I explore this theme in more detail in chapter 5.
[165] AP A^B 35, 26 March 1641, fol. 74.
[166] AP A^B 40, 20 May 1650, fol. 32.

male plaintiff or his parents. For example, in 1655, the parlement condemned the father of a young soldier, who was the plaintiff in his son's *rapt,* to pay his son's seductrix 3000 *livres parisis,* to be safeguarded and administered by a notable Parisian bourgeois, in order to take care of the baby boy that had resulted from the secret elopement.[167]

The judges sometimes opted to protect the sexual honour of the female defendant by invoking the Alexandrian decrees in order to confirm the contractual validity of verbal betrothals even in the face of the objections of the fiancé's family. For example, in 1667, when André Meuble and Marie Deschamps eloped and fled together to the distant colony of Québec, the parlement declared their marriage valid in spite of André's legal minority and his parents continuing objections to the union.[168] In her examination of the *rapt de séduction* of men, Danielle Haase-Dubosc found royal judges frequently opted to validate such marriages well into the late seventeenth century if the son continued to maintain his consent to the betrothal, even in the face of strong opposition from his family.[169] Jurists knew that secret or fraudulent marriages did not cause men and their families the same amount of financial, moral, or reputational harm as women. Furthermore, the judges connected seduction with a sexual aggression and lust they attributed to men. Consequently, they had trouble believing that women were capable of this kind of seduction. Because seduction brought very tangible consequences of lost sexual honour and pregnancy to women and their families, it was viewed as a crime that men perpetrated against women.

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[167] Louet, *Recueil de pluesieurs arrests notables du parlement de Paris,* 118.
[168] Both André and Marie's parents remained in Paris and appeared on behalf of their respective children. Louet, *Recueil de pluesieurs arrests notables du parlement de Paris,* 119.
[169] Danielle Haase-Dubosc, "De l'engouement littéraire pour thématique de l'enlèvement au XVIIe siècle en général et pour l'enlèvement des hommes en particulier," in *Rapts. Réalités et imaginaire du Moyen Age aux Lumières,* eds. Gabriele Vickermann-Ribémont and Myriam White-Le Goff (Paris: Classiques Garnier, 2014), 143-154, 159-60.

For the parlement, the social and economic status of litigants influenced the relative benefits and costs of separation to family and household integrity.[170] If the judges generally favoured the separation of clandestine couples from elite families, they encouraged marriage between low and moderate status clandestine couples. For this reason, rather than applying the Blois marriage articles as a tool to invalidate clandestine marriage, the second body of jurisprudence applied the parlement's sovereign authority to use the articles as a juridical device to force men to take legal responsibility for the women they had defrauded into sexual intercourse by false or fraudulent promises. Marriage was, by design of the court, often the best outcome for the defendant.

For their part, modest families, who composed more than half of the seduction plaintiffs captured in this body of jurisprudence, understood the law well enough to know that they could rely on the Blois marriage articles as a tool to resolve the clandestine betrothals of their daughters to men who had otherwise refused to honour or solemnize their promises.[171] Véronique Demars-Sion and Anne Lefebvre-Teillard have both suggested that the growing conservatism of *officials* toward recognizing marriage promises in the first half of the sixteenth century led to a 'crisis' of illegitimacy that left women in precarious relationships pregnant with few tangible options to resolve their predicament.[172] In response to this crisis, in 1556, around the same time that the king was trying to press for the Montmorency annulment, royal legislators crafted a law, usually known as the February edict, which forced women to declare all pregnancies to a

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[170] James Farr noted a similar pattern at the parlement of Dijon. See Farr, *Authority and Sexuality*, 99-110.
[171] Charles Donahue and Carole Avignon argue that a culture of legal acumen among the medieval laity about marriage law was common and deployed strategically to achieve desired results. Families carried this knowledge into the halls of criminal justice in the sixteenth and seventeenth century. See Donahue, "The Canon Law on the Formation of Marriage," 144-158; Avignon, "Les couples clandestins," 94-97.
[172] Demars-Sion, *Femmes séduites*, 18, and 503; Lefebvre-Teillard, *Autour de l'enfant*, 42-3.

qualified authority.[173] Targeting single women, lawmakers intended the legislation to accomplish two objectives.[174] First, when making a pregnancy declaration, a woman named the father of her baby, which established an opportunity to transfer financial responsibility for mother and child from civil authorities to the father, whom, the statute presumed, had seduced the woman into pre-marital sex.[175] Second, the statute presumed that any woman who had refused to declare her pregnancy had intentionally concealed it in order to hide a sexual encounter that she knew was sinful.[176] I will discuss women in this second category in more detail later. As Julie Hardwick has recently observed in reference to civil paternity suits from late seventeenth- and eighteenth-century Lyon, women from the first category could take advantage of the opportunity to seek financial support from the father or to cajole him into fulfilling his marriage promises.[177] In some cases, women and their families chose to cite the Ordinance of Blois in order to bring the clandestine relationship to the courts as a criminal matter, possibly because the presumed father of the baby was particularly obstinate; the woman was under age; the woman's family wanted to seek extraordinary damages; or when the woman's family felt certain

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[173] Isambert et al., *Recueil des anciennes lois françaises,* vol. 13, 472.
[174] Marie-Claude Phan, "Les déclarations de grossesse en France (XVIe-XVIII siècles)," *Revue d'histoire moderne et contemporaine* 22, 1 (1975): 61-88.
[175] Phan, "Les déclarations de grossesse," 61-88; Julie Hardwick, *Sex in an Old Regime City: young workers and intimacy in France, 1660-1789* (Oxford University Press, 2020), 78-110; Julie Hardwick, "Policing Paternity: historicizing masculinity and sexuality in early modern France," *European Review of History: Revue Européenne d'Histoire* 22, 4 (August 2015): 643-657.
[176]If the baby died, the law presumed that the concealment was proof of premeditated infanticide. See the next chapter for a close analysis of the impact of the February edict on the adjudication of infanticide. See also Phan, "Les déclarations de grossesse," 61-88; Alfred Soman, "The Anatomy of an Infanticide Trial: The case of Marie-Jeanne Bartonnet (1742)," in *Changing Identities in early Modern France,* ed. Michael Wolfe (Durham and London: Duke University Press, 1997), 248-272; Soman, "The Parlement of Paris and the Great Witch Hunt (1564-1640)," *Sixteenth Century Journal* 9, 2 (July 1978): 30-44; and Soman, "Les procès de sorcellerie au parlement de Paris (1565-1640)" *Annales* 32, 4 (1977): 790-814.
[177] Hardwick, *Sex in an Old Regime City*, 78-109; Hardwick, "Policing Paternity,"643-657.

that they could convince a judge of a legitimate betrothal. Royal judges responded favourably to this use of the Ordinance.

The judges resolved these appeals in two ways: they could pressure men through implicit measures that made marriage a more attractive option, or they could explicitly present seduction defendants with the option to marry the women they had seduced or face financial, and sometimes, physical punishment. The parlement used financial sanctions, and sometimes threats of banishment or corporal punishment, to pressure one third of this cohort of seduction defendants to marry the women they had seduced without explicitly crafting marriage into the sentence.[178] For example, in November of 1617, Pierre Philippes, a surgeon, submitted an appeal for his sentence to flogging and perpetual banishment from his home *seigneurie* of Yemille-en-Beausse in Anjou for the *rapt* of the unnamed daughter of a crown prosecutor named Martin Le Moyne.[179] On January 2 of the following year, the parlement issued a verdict of guilt and sentenced Pierre to three years' banishment from Yemille and Paris and imposed 552 *livres parisis* in damages and interests to be paid to Le Moyne and an additional 12 *livres* in fines to feed the prisoners of the Conciergerie. Four days later, Pierre married Le Moyne's daughter and was released from the Conciergerie, his banishment commuted, owing only the small fine of 12 *livres parisis*.[180] Negotiating a marriage resolved the social disgrace that Martin Le Moyne and his daughter faced and allowed Pierre to be released from the Conciergerie without having to first come up with a large sum of money.

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[178] According to the survey of écrous, the court agreed to set definitive sentences of financial or physical punishment for *rapt de séduction* aside in favour of marriage for 11 seduction defendants.
[179] AP A^B 23, 27 November 1621, fol. 82.
[180] AP A^B 23, 27 November 1621, fol. 82; AN X^{2A} 979, 2 January 1618.

Parlementaires could justify the application of this jurisprudence to men convicted under the Ordinance of Blois by relying on the broad definition of seduction supplied by Canon law. Hostiensis, we remember, defined *raptus seductionis* as a man's use of "trickery, empty promises, or any other means of coercion" which caused a "woman to allow herself to be led away freely and willingly."[181] In 1561, the Toulousian parlementaire Jean de Coras drew from this definition of *rapt de séduction* almost verbatim when he argued that "a woman is ravished not only when she is violated, and transduced from one place to another, by force, but also when she is seduced and suborned by tricks, finesses, bait, and false persuasions."[182] Such a description not only accounted for marriage against the wishes or foreknowledge of parents and/or guardians, but implicitly invited the inclusion of false promises and defloration.

This pattern of prosecution was endemic to the parlementary framework of *rapt de séduction.* In 1581, only three years after Blois became law, the parlement ruled that Louys Quarant was guilty of *rapt de séduction* and offered him the choice to marry the eighteen-year-old Catherine Cauvette instead of paying her father, Jehan, 2000 *livres parisis* compensation for her dowry. Louys married Catherine, much as the parlement must have expected.[183] Although the previous scholarship of Véronique Demars-Sion and Elizabeth Dudrow has placed the emergence of this jurisprudence somewhere in the middle of the seventeenth century, my examination of *écrous* reveals that the Quarant decision was far from unique for the sixteenth and early seventeenth centuries.[184] More

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[181] Hostiensis, *Summa aurea*, Book 5, 416.
[182] "Car une femme est ravie, non seulement quand elle est violentée, et transduicte d'un lieu à un autre, par force, mais aussi quand elle est séduicte et subornée par ruses, finesses, appastz et faulses persuasions." Jean de Coras, *Arrests mémorables du Parlement de Tolose* (Lyon, 1561), 98.
[183] AP A^B 7, 10 April 1581, fol. 28.
[184] See Demars-Sion, "Un épisode peu connu," 714-16; Dudrow, "Women and Legal Transmission," 16-17, 373.

than half of the *rapt* appeals that the parlement heard in the first two decades of sessions following the registration of the Ordinance of Blois resulted in marriage *inter raptorem et raptam*, in direct contravention of the language of the statute.[185] By 1615, around the time that the Council of Trent was officially recognized by the Catholic Church in France, to the middle of the seventeenth century, the parlement resolved most seduction appeals – 69% of the cases sampled – with the choice to publicly solemnize the marriage.[186] Two thirds of these decisions resulted in formal solemnization.[187]

The parlement's interpretation of Canon and Civil law favoured the interests of the judges to prioritize family honour and household integrity. As a result, the parlement did not encourage marriages between couples of vastly uneven social stations. For example, in 1653, the parlement ordered Isaac Plouet, who was a journeyman hat maker, to make a declaration promising not "to frequent" the daughter of the Parisian merchant Jacques de Borne. The court ordered Plouet to pay Jacques 5 *livres parisis* in damages and interests, a dowry of 8 *livres parisis* (an extremely modest sum),[188] a labour provision of 40 *livres parisis*, and 2 *livres* per year to cover the necessities of his child.[189] The parlement was careful to set reparations that were financially manageable when uneven

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[185] Sixty percent of the *rapt de séduction* appeals that the parlement received between 1579 and 1615 resulted in marriage.
[186] The parlement provided marriage as an explicit or implicit resolution to 29 of the 42 seduction appeals sampled between 1615 and 1655. Parlementary sentences encouraged marriage for almost 65% (36 out of 52) of the couples named in the seduction appeals that the court heard between 1579 and 1655.
[187] 22 of the 36 parlementary verdicts which forced, coerced, or encouraged marriage resulted in the solemnization of vows between the man and the woman he had seduced.
[188] Dowries for the poor, for example, ranged between about 5 and 40 *livres*. Skilled artisans and merchants expected to provide dowries that ranged from about 250 *livres* to about 500 livres, and sometimes much more. See Julie Hardwick, *Family Business: Litigation and the Political Economies of Daily Life in Early Modern France* (Oxford: Oxford University Press, 2009), 30 and 63; and Allan Tulchin, "Low Dowries, Absent Parents: Marrying for Love in an Early Modern French Town," *Sixteenth Century Journal* 44, 3 (Fall 2013): 713-738.
[189] AP A^B 42, 5 June 1653, fol. 41.

social status made marriage an unpalatable outcome for the judges and for the bride's family. Thus, most litigating families in *duc vel dota* suits shared relatively even ranks.

More often, however, honouring the priorities of family honour and household integrity meant that the parlement kept couples together. Sometimes the judges forced men to publicly solemnize marriages with the women they had seduced. The *arrêtiste* and parlementary lawyer, Georges Loüet, recalled a case he pled in 1629 in which his client, Master Jacques Jarretaud, appeared at the parlement to appeal his young ward's conviction for the *rapt de séduction* of the daughter of Pierre Roux after they were caught contracting a secret marriage with a notary – a scenario which the Ordinance of Blois explicitly forbade.[190] The parlement upheld the *rapt* conviction but, instead of ruling the marriage invalidly contracted and ordering the separation of the couple, the judges ruled to dismiss Loüet's client from the court and commanded the couple to " take themselves to the bishop of their diocese in order to have solemnized by him the marriage that had been contracted and celebrated clandestinely."[191] Very rarely, the parlement threatened men with execution unless they married their victim in order to restore her sexual honour.[192] In 1638, Gilles Desprez appeared at the parlement for raping (*viol*) and

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[190] Louet, *Recueil de plusieurs arrests notables,* vol. 2, 117-8; Art. 44, Isambert et al., *Recueil général des anciennes lois françaises*, vol. 14, 392.

[191] "La Cour, conformément aux conclusions de sieur Avocat General Bignon, sur l'accusation de rapt, mit les parties hors de Cour et de procés, et neanmoins ordonna, que les intimez se retireroient par devers l'Evêque Diocesain, pour être par lui pourvû à la solemnisation du mariage, qui avoit été contracté et celebré clandestinement." Louet, *Recueil de plusieurs arrests notables du parlement de Paris,* vol. 2, 117-8.

[192] Jean Gaudemet, *Mariage en Occident,* 321-322. Although lower courts sometimes sentenced men convicted under the Ordinance of Blois to forced marriage, the parlement rarely upheld this punishment option on appeal, choosing instead to censure lower courts which tried to apply it as an abuse of their inferior jurisdiction. The eighteenth-century Claude de Ferrière observed that "cette alternative étant une dérogation aux ordonnances royaux qui ont été faites à ce sujet, elle ne peut accorder que par les cours souvereines." Claude de Ferrière, *Dictionnaire de droit et de pratique,* Vol. 2 (Paris: Regnard et Demonville, 1771), 497. See also Demars-Sion, "Un episode peu connu," 725; and Dudrow, "Women and the Transmission of Lineage," 45-54.

impregnating Marguerite Bribaut, who had recently turned 25.[193] Gilles denied that he had 'abused' or "impregnated the said Bribaut" and that he knew her to be a woman of poor morals whose "bad life" he could "prove" to the judges.[194] Marguerite focussed her response to Gilles' denials and aspersions on her good character and her belief that she had contracted a canonically valid betrothal. Marguerite argued that she was the "daughter of a good vinegrower" and that she had sex with Gilles for the first time one Sunday during Pentecost two years ago after he had promised to marry her and had given her a ring as a marriage gift.[195] The parlement not only accepted Marguerite's verbal testimony, but also determined that because she and Gilles had exchanged verbal promises before they had consummated their engagement, the betrothal was contractually sound. The parlement ordered Gilles to marry Marguerite on pain of execution by hanging.[196] The couple married at the Conciergerie chapel five days after the appeal hearing.[197] Marguerite's honour was restored, and her child was legitimate. The parlement's decision relied wholly on the Canon legal definition of betrothal outlined by the Fourth Lateran Council despite the clear admonitions of the Blois articles, recently renewed by Louis XIII in the controversial Code Michau of 1629, explicitly prohibiting just the kind of clandestine marriage that Marguerite Bribaut claimed to have contracted with Gilles Desprez.[198]

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[193] AP A^B 33, 13 October 1638.
[194] "Qu'il ny avoit abuse…ny engrosse ladite Bribaut…qu'il demontrera sa mauvaise vie." AN X^{2A} 1004, 5 December 1638.
[195] "Qu'elle estoit fille de bon vigneron…qu'il scait bien qu'il luy donna un anneau et qu'il y a deux ans qu'il la connu… qu'il luy donna un don de mariage et luy donna ledit anneau." AN X^{2A} 1004, 5 December 1638.
[196] "Ledit Desprez condamne a mort ou espouser…" AP A^B 33, 13 October 1638.
[197] AP A^B 33, 13 October 1638.
[198] Art. 169, *Code Michau* in Isambert et al., *Recueil général des anciennes lois françaises*, vol. 16, 273; Haase-Dubosc, *Ravie et Enlevée*, 26; On the failure of the king to convince the parlement to register the

Although forced marriage was rare, the parlement more routinely applied financial pressure on men to persuade them to marry the women they had seduced by invoking the ecclesiastical sentencing formula of *duc vel dota.*[199] Gallicised in parlementary *écrous* as *dotter ou espouser* (to dower or marry), parlementaires imposed upon convicted seducers the choice to marry their victims or to provide financial reparations based on the Canon legal formula of *actio dotis* (to dower), and if the woman was pregnant, the *actio provisionis* (to provision for labour, also called the *gésine*,[200] usually fixed at between about 24 and 80 *livres parisis*), and the *actio captionis vel susceptionis partus* (to recognize paternity).[201] For example, in 1643, the parlement sentenced Gilbert Gabart to marry Marguerite Godard or provide her with a dowry of 800 *livres parisis*, to compensate her with 96 *livres* for her labour provisions, to recognize paternity of his son, and to "feed him and raise him in the fear of God and the Catholic religion" and to arrange for him "to learn a trade in order for him to earn a good living."[202] Similarly, in 1649, the parlement ordered Nicollas de Lorne, a "cabaret boy" from Sainte-Geneviève du Mont in Paris, to pay Louise Notte 80 *livres* "to help her marry," 24 *livres parisis* to "help pay the fees for her labour and once she has delivered, to claim the child" and to pay the Ursulines of Sainte-Genevieve 6 *livres* to educate the

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entire Code, see Lauriane Kadlec, "Le droit d'enregistrement des Cours souveraines sous Louis XIII," *Revue historique de droit français et étranger* 1 (Jan-Mar 2008): 39-68.

[199] The parlement explicitly ordered 22 men in the sample to marry or dower their victims.

[200] The *gésine* covered sheltering costs two weeks before labour and the first two weeks post partum. Pommeray, *L'officialité archidiaconale de Paris*, 395; Lefebvre-Teillard, *Autour de l'enfant,* 36-7*;* Dudrow, "Women and the Legal Transmission of Lineage," 37.

[201] Anne Lefebvre-Teillard, "Approche historique d'un grand concept juridique: filiation," *Sartoriana* 20 (2007): 128-9; Lefebvre-Teillard, *Autour de l'enfant,* 34-40; Lefebvre-Teillard, "Marriage in France," 274-5;

[202] "Ledit Gabart est condamné en 96 livres parisis de provision et de dotter 800 livres parisis vers ladite Godard… prendra son enfan desquel elle est accouchée et de faire nourrir et monter en crainte de Dieu et religion catholique et apostolique rommaine et luy faire apprendre mestier pour gagner tres bien sa vie." AP A^B 38, 3 September 1643, fol. 56v.

child.[203] Nicollas married Louise at the Conciergerie chapel and was released from prison.

Although the parlement pressed fewer elite men to marry the women they had seduced, they were not immune to pressure when the plaintiff's family favored marriage to a simple financial settlement or when the seducer would not or could not produce the funds to settle the debt owed for the amends. In January of 1650, the *lieutenant criminel* of Amiens convicted Louis de La Gotterie, the Sieur de Cauchy, of ravishing Marie Chocquel, the daughter of Damoiselle Marguerite Cozette.[204] The judge in Amiens gave Louis the choice to have his head cut off and to have his assets seized after death in order to provide 6000 *livres tournois* compensation to Marguerite or to marry Marie within three days.[205] Louis appealed the verdict. His mother, Barbe de Fau, filed a counter claim of *rapt* against Marie and her mother. The parlement immediately dismissed Barbe's claim and upheld Louis' conviction.[206] The judges awarded Marguerite 4800 *livres parisis* in civil reparations for Marie's dowry, a roughly equivalent sum proposed by the judge at Amiens,[207] "if he preferred not to marry the said Damoiselle Chocquel" and also fined Louis 80 *livres parisis* "to feed the prisoners of the Conciergerie."[208] Following the parlement's ruling, Louis himself remained a prisoner at the Conciergerie for eight more

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[203] "Nicollas de Lorne Garcon Cabarettoir demeurant a Ste Genevieve du Mont…80 livres interest civil ou marier Louise Notte, fille, pour ayder a la marier et 24 livres parisis pour ayder a faire son fraict de sa couche et quand elle sera accoucher prendre l'enfant et oué ledit de Lorne condamne en 6 livres parisis damande envers Ursulines de Ste Genevieve." AP A^B 39, 26 June 1649.
[204] AP A^B 39, 31 January 1650, fol. 179v.
[205] AP A^B 39, 31 January 1650, fol. 179v; Jean du Fresne, *Journal des audiences du parlement depuis l'année mil six cent vingt-trois jusques en mil six cent cinquante-sept. Avec les Arrests intervenus en icelles* (Paris: Gervais Alliot et Gilles Alliot, 1665), 562-3.
[206] Du Fresne, *Journal des audiences*, 562.
[207] Dudrow, "Women and the Legal Transmission of Lineage," 48-9.
[208] "4000 livres parisis de reparations civille sy mieux nayme espouser ladite Damoiselle Choquel…et 80 livres pour l'alimentation des prisonniers de la Conciergerie." AP A^B 39, 31 January 1650, fol. 179v.

months. Importantly, the parlement neglected, we should presume intentionally, to rule on the validity of the marriage. Failing to come up with the money he owed, the court released him from his debt and finally set him free from prison only once he agreed to marry Marie in the Conciergerie chapel.[209]

Even though financial reparations – the dowry chief among them – provided the parlement with an instrument to apply pressure on seduction defendants to marry the women they had seduced, the parlement remained keenly aware that the value of a woman's dowry also signalled her social status. Thus, much like financial reparations awarded in appeals that resulted in the separation of clandestine couples, the specific value of dowries ranged broadly and depended upon the social and economic station of the bride's family. In 1630, when Jehan Vaugoneau, who was a humble labourer from Montigny sur Cracy, appealed his sentence of *amende honorable* and banishment for the *rapt* of Marie, the daughter of Antoine du Chemin, who was also a labourer, the parlement threatened to banish Jehan and ordered him to pay Antoine 5 *livres* in damages and interests for his daughter's dowry or to marry her. Five *livres* proved pressure enough for Jehan. The court released him from custody after he married Marie at the Conciergerie chapel.[210]

By contrast, in 1655, Henry Chenu appeared at the parlement to appeal his death sentence for the *rapt* of Anne Le Roux, whose father, Nicolas, was a wealthy farmer and merchant from Tremblay, located in the distant outskirts of Paris.[211] The parlement sentenced Henry, who was the *lieutenant de la justice* of Tremblay, to marry Anne or to

[209] AP A^B 39, 31 January 1650, fol. 179v.
[210] AP A^B 30, 18 Nov 1630, fol. 50.
[211] A^B 43, 7 June 1655, fol. 83v

provide her with a dowry of 6000 *livres tournois*, as well as an annual pension of 200 *livres parisis* to Louise, Anne and Henry's infant daughter, for her "nourishment, provision, and education."[212] The parlement had imposed a dowry that was two or three times the value of a typical dowry of the daughter of a moderately prestigious man.[213] Although Henry continued to deny that he had promised to marry Anne, he succumbed to the financial pressure the judges placed on him and married Anne the same day that the parlement issued its definitive sentence.[214]

Like Marguarite Bribaut's claim that she had exchanged promises and gifts with Gilles Desprez, Anne le Roux' successful claim of seduction rested in part on her claim that she had exchanged verbal promises prior to having repeated intercourse with Henry Chenu. Although Henry denied that he had ever promised to marry her, Anne deposed to the judges that he had promised marriage and had told her he "would never love another" woman.[215]

Even after the promulgation of Louis XIII's Royal Declaration of 1639 on the formalities of marriage and the crime of *rapt*, which specifically sanctioned only written promises as contractually sound betrothals and expressly prohibited the subsequent consent of "ravished persons" or "their fathers, mothers, tutors and curators" of any age or condition, the parlement continued to accept women's testimony about verbal

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[212] A^B 43, 7 June 1655, fol. 83v; AN X^{2A} 1019 10 June 1655.
[213] Julie Hardwick, for example, concludes that dowries for the daughters of independent craftsmen, who owned their own workshop, and the loosely defined category of the merchant in the mid-two late seventeenth century ranged from about 1200 to 2000 *livres tournois* (about 1120 to 1600 *livres parisis*). These figures show a substanial increase from the value of dowries that Allan Tulchin discovered in mid-sixteenth century Nîmes, where dowries for girls from moderately prestigious families ranged from about 250 to 900 *livres tournois* (200 to 720 *livres parisis*). See Hardwick, *Family Business*, 63; Hardwick, *The Practice of Patriarchy*, 58-9; Tulchin, "Low Dowries, Absent Parents," 717.
[214] AP A^B 43, 7 June 1655, fol. 83v; AN X^{2A} 1019 10 June 1655.
[215] "Qu'il luy promis mariage…qu'il l'a dit qu'il n'ameyroit jamais aulcune autre…." AN X^{2A} 1019 10 June 1655.

promises of marriage prior to becoming pregnant as adequate proof of seduction and continued to encourage the public solemnization of vows.[216] For example, in 1643, Jean Billard, who was the *lieutenant criminel* of Moulins, accused the squire, Gilbert Seguin, of ravishing his eighteen-year-old daughter, Marie.[217] Marie testified that "the said Seguin had abused her" after he had given her "*belles promesses de mariage"* and subsequently refused to formalize their vows.[218] The parlement found Gilbert guilty of *rapt* and released him from the Conciergerie the day after his appeal hearing when he agreed to marry Marie and invest her with a dowry of 800 *livres parisis*.[219] Similarly, in 1649, Jacques Chautier appealed his sentence of death or marriage for the *rapt* of Marie Galen, telling the court that "he had not promised marriage."[220] Marie countered Jacques' denial, urging instead that "the said Chautier promised marriage to her during Lent and she let him go into her bedroom" and that "he abused her three or four times since the first time."[221] Jacques lost his appeal. The parlement sentenced him to "take the child" and pay Marie 400 *livres* in dowry and provisions unless he solemnized his marriage.[222] The canonicity of verbal promises clearly shaped the parlement's response to seduction.

Honour, chastity, and consent

The jurisconsult Claude le Brun de la Rochette defined *rapt* as a crime "committed by one who is heated up by the infamous and burning debauchery toward the

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[216] Isambert et al., *Recueil général des anciennes lois françaises,* vol. 17, 520-524.
[217] AP A^B 37, 3 September 1643, fol. 56v.
[218] "Qu'il luy a abuse…qu'il a fait des belles promesses de mariage." AN X^{2A} 1008, 30 September 1643.
[219] AP A^B 37, 3 September 1643, fol. 56v
[220] "Qu'il n'avoit fait promesse de mariage…"AN X^{2A} 1014, 4 January 1649.
[221] "Ledit Chautier luy a promis mariage a la careme…qu'elle luy lasse aller en sa chambre…qu'il l'a abuse 3 ou 4 fois depuis la premiere fois." AN X^{2A} 1014, 4 January 1649.
[222] AN X^{2A} 1014, 4 January 1649.

person of a virgin, married woman, nun, or honest-living widow" whom he takes either by force or affection.[223] This definition framed seduction as a crime of unchecked masculine sexual desire.[224] Implicit in the definition are also assumptions about the good moral character of the victim. For women to see men successfully convicted of seduction, the court had to accept their testimony as reliable proof of verbal betrothal. In order to be credible, seduction plaintiffs had to convince parlementaires that they were chaste, honourable women before they had been deceived or abused into intercourse through false or fraudulent promises of marriage. Women's honour lay in their chastity, yet it was this chastity that had been besmirched by false blandishments and empty promises. Jurists would not even consider convicting a man of seduction if they believed the woman lacked the vital outward signs of sexual honour, which hinged on prior virginity or sexual abstinence if they were widowed. The matter turned upon consent and the desire to marry. The woman had to convince the judges that she had been tricked into providing physical consent through false or fraudulent promises of marriage. Reputation, which was a vital measure of honour, was publicly negotiated, represented, and rehearsed, and was an important indicator of virtue and honesty for judges to assess.[225]

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[223] Force did not always involve physical violence but could also include forms of seduction that included false promises, false affection, trickery, bribery, and deception. See for example, Jean Papon, *Trias judiciel du second notaire de Jean Papon, conseiller du roy et lieutenant general au bailliage de Forestz.* 2nd ed. (Lyon: Jean de Tournes, 1580), 453. Chapter 4 investigates the very broad range of sexual encounters that jurists were willing to accept as "force." Rapt est "commis par celuy qui est eschauffé de l'infame et bruslante paillardise, en la personne de la vierge, femme mariée, nonain, ou vefue vivant honnestement, laquelle par force et violence il comprime, et cognoit charnellement. L'autre, lors qu'il ravit et enleve de son habitation ordinaire la femme, ou fille qu'il affectionne, la soustrayant à ses parens, tuteurs, ou curateurs: crime toujours puny du dernier supplice et confiscation des biens." Claude Le Brun de la Rochette, *Le procès civil, divisé en trois livres* (Lyon: Jacques Roussin, 1605), 38; Garnot, "Une approche juridique et judiciaire du rapt," 165.

[224]Hardwick, "Policing Paternity," 643-657; Hardwick, *Sex in an Old Regime City,* 78-109.

[225] See Malcolm Greenshields, *An Economy of Violence in Early Modern France: Crime and Justice in the Haute Auvergne, 1587-1664* (Philadelphia: Pennsylvania State University Press, 1994), 108; Stuart Carroll, *Blood and Violence in Early Modern France* (Oxford: Oxford University Press, 2006), 49; and James Farr,

Since these women could not rely on their virginity as proof of virtue, the sponsorship of a woman's father or his widow, or an appointed guardian who held a respected position as a petty nobleman, bourgeois, merchant, or guildsman who publicly staked his or her honour on the plaintiff's innocence provided the judges with reliable guarantees of her chastity and thus the authenticity of her statement.

Seduction appellants tried, unsuccessfully, to defend themselves by impugning the honour and chastity of the plaintiff.[226] The Blois marriage articles conflated sexual consent with the rights of male guardianship and determined harm as a measure of violated family honour. When their personal virtue was the subject of interrogation, women could thus draw upon this patriarchal logic as proof of their good character.[227] Successful plaintiffs usually had respectable parents or guardians to stipulate for them (even when they were over the age of consent) and women knew these relationships were important to the judges. In his verbal confrontation, Gilles Desprez suggested that Marguerite Bribaut had loose morals and that he could "prove her bad life" to the judges.[228] With her widowed mother as stipulant, Marguerite relied on her social position as the "daughter of a good vinegrower" to counter Gilles' claim. [229] Françoise Brillon, who successfully accused Nicolas Mauger of seducing her through false promises of

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Hands of Honor: Artisans and Their World in Dijon, 1550-1650 (Ithaca: Cornell University Press, 1988), 177-82.

[226] Hardwick, "Policing Paternity," 643.

[227] Dubosc, *Ravie et enlevée*, 22-59; Hardwick, *Sex in an Old Regime City*, 106. Julie Hardwick notes that fathers were often well aware that their daughters had long-lasting sexual relationships long before their daughters became pregnant. However, judges accepted chastity as a topos from fathers and other guardians they deemed honourable. Hardwick, "Policing Paternity," 648.

[228] "Qu'il ny avoit abuse…ny engrosse ladite Bribaut…qu'il demontrera sa mauvaise vie." AN X^{2A} 1004, 5 December 1638.

[229] "Qu'elle estoit fille de bon vigneron…qu'il scoit bien qu'il luy donna un anneau et qu'il y a deux ans qu'il la connu… qu'il luy donna un don de mariage et luy donna ledit anneau." AN X^{2A} 1004, 5 December 1638.

marriage in 1609, told the judges that when Nicolas "knew her" for the first time he promised that "he would marry her" and that her mother, the widow Bottin, had the "belief that she was a good girl."[230] The parlement awarded Françoise with a dowry and labour provision. For women, convincing the court that they had been seduced by promises of marriage was critical to receiving the social and financial reparations that they needed to restore their honour following intercourse as well as ensuring that they had the help they needed to raise a child who was either legitimate or, at the very least, had the minimal status accorded through publicly recognized paternity.[231] The parent or guardian who acted as stipulant for seduction plaintiffs thus also served as a moral guarantor.

Women described marriage promises, assignations of love, and the exchange of gifts as events that preceded intercourse, and even provided judges with information about where or when the first encounter took place. Women rarely provided specific details about whether they had provided physical consent. The legal framework of *rapt de séduction* obscured the role that sexual violence might have played in many of these clandestine relationships.[232] In fact, in the wake of Blois, appeals for "*rapt et violence*" virtually disappeared, subsumed, as Haase-Dubosc rightly suggests, into *rapt de séduction* so that jurists observed "no distinction at all."[233] The death penalty appeal of Pierre de Belly, a journeyman carter, who was accused of "having forced and abused" the

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[230] "Que ledit Mauger approcha la fille pour la cognue…qu'il luy dit qu'il espouseroit…la veuve Bottin sa mere avoit la croyance quelle est fille de bien." AN X^{2A} 971, 12 May 1609.
[231]Matthew Gerber, *Bastards: Politics, Family, and Law in Early Modern France* (Oxford: Oxford University Press, 2012), 10, 21-47.
[232] Malcolm Greenshields, "Women, Violence, and Criminal Justice in Early Modern Haute Auverge," *Canadian Journal of History* 22 (August 1987): 175-194; Cautela, "Questions de mot."; JillianSlaight, "Resisting seduction,"56-7; Georges Vigarello, *A History of Rape: Sexual Violence in France from the 16th to the 20th Century.* Trans. Jean Birrell (Cambridge: Polity, 2001), 9-35.
[233] Haase-Dubosc, *Ravie et enlevée*, 117.

"daughter of a Parisian merchant bourgeois" serves as a singular example of physical violence in *rapt de séduction* appeals.[234] Early modern jurists and litigants had specific expectations of seduction narratives and seemed to accept that sexual interactions could turn violent without questioning whether the woman had consented to the intercourse. In her examination of late sixteenth-century comedy, for example, Madeleine Kern found that in plays involving a girl's secret plot to run away with a paramour, while rape itself rarely featured in plot lines, early modern audiences expected scenes depicting the moments before ravishment to include signs of surprise and violence as ways to signal the sexual innocence of the woman.[235] On one hand, these obfuscations also spoke to the theoretical subversion of the woman's physical consent to her father's will in the legal framing of *rapt de séduction*, especially among elite families, which expressly defined parental consent as the superior form of consent.[236] A certain amount of violence was probably expected of seduction, but was not the most important feature of the sexual encounter.

Seduction was a specific narrative construction that, unlike other sexual offences, protected the woman from taking full legal responsibility for illicit sexual encounters.[237] Specifically framing sexual relationships through the legal narrative of seduction provided women with better real-world outcomes than the alternative legal framework of rape.[238] In rape trials, judges were circumspect about believing women when they could

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[234] "l'accuse d'avoir force et abuse sa fille." AN X^{2A} 964 23 October 1602; AP A^{B} 16, 17v, Septembre 1602.
[235] Madeleine Kern, *Corps et morale entre geste et parole: la représentation de la séduction dans la comédie humaniste française de la Renaissance, 1552-1612* (Geneva: Slatkine, 2009), 135-148, 160-1, 182, 268.
[236] Cautela, "Questions de mot."
[237] Lefebvre-Teillard, *Autour de l'enfant,* 31; Vigarello, *The History of Rape,* 47-9. Chapter 4 of this dissertation examines this theory in more detail.
[238] On early modern French justice and legal narrative see Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and their Tellers in Sixteenth-Century France* (Stanford: Stanford University Press, 1987).

provide no witnesses or had no other physical evidence that they had resisted the assault.[239] Conventional wisdom held that a man could not rape a woman "without her voluntary or forced consent" and that women surrendered in the final moments because "violence whets their appetites."[240] Sexual violence was more difficult for female plaintiffs to prove than seduction because seduced women did not have to prove to the court that they had resisted.[241] Even when a court of first instance found a man guilty of rape, chances were reasonable that the parlement would decide not to convict or would commute more serious punishments like galley service to less severe penalties like whipping, short terms of banishment, or small fines. The parlement dismissed or commuted more serious sentences for a third of all appeals for rape and sexual assault, whereas the court levied strict financial and/or physical punishment on more than 95% of all seduction appellants.[242] A comparison of the ratio of appeals for sexual violence and seduction over time suggests, in fact, that while the number of seduction appeals steadily grew, the number of appeals for *viol* and *rapt de violence* declined dramatically. In the first 45 years of my survey, between 1564 and 1610, the parlement received only 11 seduction appeals and 44 appeals for *viol,* and *violement.*[243] During the second half, between 1611 and 1655, the parlement received 41 seduction appeals and only 15 appeals

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[239] Slaight, "Resisting seduction"; Cautela, "Questions de mot"; Vigarello, *The History of Rape*, 40-45.
[240] Vincent Tagereau (1611), quoted from Cautela, "Questions de mot," 65-6; Pierre de Bourdeille Brantôme, *Ouevres complètes de Pierre de Bourdeille de Branthôme.* Vol. 11 (Paris: Librairie Plon, 1891), 324. See also, Slaight, "Resisting Seduction," 54.
[241]Julius Ruff, *Violence in Early Modern Europe* 1500-1800 (Cambridge: Cambridge University Press, 2001) 141-145. Slaight, "Resisting seduction," 54.
[242] In the survey of *écrous,* the parlement dismissed or released without punishment 12 out of 51 sexual violence appellants surveyed and commuted more serious punishments to 'lenient' forms of corporal punishment or small fines for 5 appellants. The parlement dismissed only 2 seduction appellants.
[243] Although not explicitly defined as rape, I have decided to include appeals brought by men to the parlement for *Violement* committed against *filles* and *femmes* as crimes that were probably sexually violent in nature. See Cautela, "Questions de mot."

for sexual violence. The ratios virtually reversed themselves. We cannot know if the decline in appeals of violent sexual crimes was the result of fewer accusations, fewer convictions at courts of first instance, or a combination both. The shifting nature of appeals at the parlement of Paris does suggest, however, that women and their families probably understood at some level that seduction narratives offered them a more consistent and useful legal device to retrieve and restore damaged sexual honour than accusations of rape.[244] This knowledge may have shaped the way that women and their families sought justice.

Punishments for sexual violence were less predictable than punishments for seduction and did not provide the same financial guarantees to women. For one thing, parlementaires did not generally associate *viol* with marriage or marriage strategies. The parlement's sentence of forced marriage for Gilles Desprez was unique. While the parlement demonstrated a willingness to convict and sometimes severely punish men for rape with execution and galley labour, the judges did not impose the same financial reparations on men and did not recommend or encourage marriage as often.[245]

Marriage was sometimes simply an impossible outcome. For example, the parlement sentenced Jehan Brannier, who was a married man, to hang for raping a girl in 1595.[246] Charles Thuillier, who was a priest from Amiens, was condemned to perpetual galley labour and fined 1200 *livres parisis* "to dower" the daughter of Charles le Clerc whom he was convicted of raping (*viol*) in 1649.[247] This award was exceptionally high.

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[244] Jillian Slaight makes a similar argument for the eighteenth century. See Slaight, "Resisting Seduction," 54-64.
[245] In my sample of *écrous*, the parlement received 51 appellants for *rapt de violence*, *violement* towards *femmes* or *filles*, and *viol*. The parlement executed 22 and consigned 13 to the galleys.
[246] AN X^{2A} 958, 25 Jan 1595.
[247] AP A^{B} 39, 21 June 1649.

Parlementaires preferred to subject rapists to physical punishment and generally awarded women with much smaller financial reparations if anything at all. In 1635, the parlement condemned Jehan Tourner to five years banishment and a small dowry of 48 *livres parisis* for "violently beating and raping" a girl.[248] Jacques Rousseau was fined 200 *sols*, (worth about10 *livres*) and released.[249] Sometimes the parlement did not issue any financial reparations at all. In 1584, Rhes Bourlaulx, a Parisian furniture merchant, was sentenced to five years galley labour for raping "a girl" and in 1581, the tailor Estienne Galle was whipped and banished from his hometown of Saumur for eight years for violating a girl yet to be married.[250] If women and their families could possibly construe an illicit sexual encounter as a seduction, this must have been a more attractive choice than accusing a man of rape.

The paradoxical relationship between women's chastity as both the source of credibility and the subject of criminal damages made the judges dubious when they found a woman's sexual honour questionable. Judges therefore tasked themselves with distinguishing between the women who had been genuinely seduced and those who had succumbed to debauchery.[251] As we have already seen, the parlement credited the verbal testimony of seduction plaintiffs whom the judges believed to have been chaste and honourable before they were tricked or defrauded into intercourse. The presence of an honourable parent or guardian provided reasonable surety that she was telling the truth, and they were able to provide retroactive consent. Women without such resources had

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[248] "Il a este battu viollement et violé une fille." AN X^{2A} 998, 8 March 1635.
[249] AP A^{B} 7, 7 February 1581, fol. 3.
[250] AP A^{B} 8 June 1584, 186v; AP A^{B} 7 Sep 1581 fol. 81.
[251] Demars-Sion, *Femmes séduites,* 24-5; Slaight observes that eighteenth-century jurists similarly "concluded that the task of the judges was to distinguish between women who were genuinely seduced and those who had abandoned themselves voluntarily." See Slaight, "Resisting seduction," 63.

more difficulty accessing justice. A rare example of a seduction appeal that the parlement dismissed provides some insight on the stringent expectations that jurists expected of successful seduction plaintiffs. In 1636, Anne Miloy accused Jean Gay of "seduction under promise of marriage."[252] The couple appeared as respondents in a *appel comme d'abus* brought to the parlement by her supposed fiancé, Jean Gay, following her accusation against him to the Archdiocese of Paris that he had become "familiar with her a promise of marriage that he refused to solemnize and fulfill."[253] Anne's lawyer at the parlement, François Montholon, emphasized the rusticity, simplicity, and illiteracy of the couple.[254] Incapable of producing a written marriage contract, Montholon argued that the "familiarities" and "caresses" which the couple voluntarily and affectionately exchanged ought to constitute proof of a valid marriage promise.[255] Such a strategy had certainly worked for Françoise Brillon, Marie Billard, Marie Galen, and many others who, unlike Anne Miloy, benefitted from the status and/or legal representation of honourable and/or at least moderately wealthy family members. Jean's lawyer, Le Noir, responded that he had made no such promises to Anne and intimated that Anne was the fraud, that Jean barely even knew her and that if the trial were permitted to proceed, "no one will be without peril of being married to someone they do not like or even know."[256] Omer

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[252] "Anne Miloy dit, que Jean Gay l'a séduite sous promesse de mariage." *Encyclopédie de jurisprudence, ou dictionnaire complet, universel, raisonne historique et politique de jurisprudence civile, criminelle, canonique et bénéficiale,* vol. 5 (Brussels: J.L de Boubers, 1779), 305.

[253] "elle exposa que Jean Gay avoit eu habitude avec elle sous promesse de mariage, qu'il refusoit de solemniser et accomplir." Pierre Bardet, *Recueil d'arrêts du Parlement de Paris,* Vol. 1 (Avignon: Pierre-Jean Roberty, 1773), 232.

[254] Bardet, *Recueil d'arrêts du Parlement de Paris,* Vol. 1, 232; Illiteracy in this case refers to their inability to decipher or sign their names on a marriage contract. On expectations of literacy among poor women in the mid-seventeenth century, see Elizabeth Rapley, *The Dévotes: Women and Church in Seventeenth-Century France* (Montreal and Kingston: McGill-Queen's University Press, 1990), 160-162.

[255] Bardet, *Recueil d'arrêts du Parlement de Paris,* Vol. 1, 232.

[256] "Il n'y a personne qui ne soit en peril d'être mariée avec une autre qu'elle n'aimera ou même qu'elle ne connoîtra pas." Bardet, *Recueil d'arrêts du Parlement de Paris,* Vol. 1, 232.

Talon, who was the royal prosecutor, argued that the archdiocese of Paris had abused its jurisdiction because it did not have the authority to try men for *rapt.*[257] He then shifted his focus to Anne, urging the court not to convict Jean because doing so would damage Jean's liberty to freely choose his own wife and that Anne's allegations of *carnaliter corporalis* were unfounded because it was "unreasonable that a girl who copped to her own turpitude should wind up better off than a chaste and virtuous girl."[258] Talon understood that in order to cast doubt on the existence of an unfulfilled marriage promise, his task was to cast aspersions on Anne's moral character, thus making the notion of seduction impossible. It worked. Although Talon recommended that the court issue a small fine to Jean to compensate Anne, the parlement released him with an order only to pay for his voluntary trial expenses. [259] Anne was sent home to Meudon without a dowry and without a husband and was held in suspicion for alleging seduction as a tactic to cover up her own promiscuity.

The high rate of conviction for seduction at the parlement combined with the high standard of moral probity that the court required of seduction plaintiffs suggests that many courts of first instance may have vetted plaintiffs who could not draw upon the positive reputational credit of family by opting to acquit. These cases would thus not have filtered up to the parlement for appeal, unless through some procedural error such as we observed of Anne Miloy's accusation against Jean Gay. One seventeenth-century jurist from the *sénéchausée* of Angoulême complained that poor women got themselves

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[257] "L'église ne condamna jamais à mort, ni civile ni naturelle. Ils ne peuvent non-plus connoitre d'un crime de rapt…" Bardet, *Recueil d'arrêts du Parlement de Paris,* Vol. 1, 233.
[258] "L'allegation de copule n'est pas fort considérable; n'étant pas raisonable qu'une fille qui allegue sa turpitude, soit de meilleure condition qu'une fille chaste et vertueuse." Bardet, *Recueil d'arrêts du Parlement de Paris,* Vol. 1, 233.
[259] Bardet, *Recueil d'arrêts du Parlement de Paris,* Vol. 1, 233.

pregnant so men "would marry them" and "put" them at their "ease."[260] Women who could not benefit from the support or sponsorship of honourable family were more likely to become the object of suspicion.

Women who lacked the protection of a good reputation were more likely to appear at the parlement as defendants for the sexual misdemeanour of debauchery rather than as seduction plaintiffs. In 1645, Catherine Mauton was convicted of debauchery and whipped because she had given herself over to a "carnal life" and gotten herself pregnant "in order to have a marriage."[261] Sometimes men were even able to convince the judges that women had tricked them into marriage in order to hide another liaison. In 1617, the bailliage of Noyon convicted Pasquette Le Hours of adultery on the strength of her husband's suspicion that she had passed off the son with whom she was pregnant at the time of their wedding eight years earlier as his rather than as the illegitimate fruit of her debauchery with the child's real father, a priest.[262] The parlement convicted Pasquette. Although the judges sentenced her only to make a public declaration promising to behave better in the future and to avoid all future contact with the priest, her conviction created an opportunity for her husband to disinherit the son whom he did not believe was his.[263] By contrast, in 1589, Pierre de Monchy, who was a lace-maker from Amiens, justified punching the widow Marie Prévost, with the apparent endorsement of onlookers, because

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[260] "Il la marieroit et la mettroit à son aise." Gabriel Delâge, *Enlèvements, rapts et séductions en Angoumois (17 et 18e siècle)* (Paris: Bruno Sepulchre, 1994), 126.
[261] "pour avoir ung mariage…sa vie charnelle a eu ung enfan." AN X^{2A} 1010, 17 Feb 1645. The parlement received at least 150 appeals for *paillardise*, or debauchery, committed by unmarried women between 1579 and 1655. I have extrapolated this figure as an estimate. The survey of *écrous* included 37 appeals for "paillardise" committed by women described as *filles à marier* and *veuves* from 1579 and 1655. I recorded six months of *érous* every two years of *écrous* between 1564 and 1655.
[262] AN X^{2A} 979, 21 May 1617.
[263] This punishment formula for adultery is unsurprising, especially as the alleged adultery occurred before Pasquette's marriage was solemnized. On the prosecution of women for adultery see chapter three.

at the last Saint-Martin's day market she had called his wife "a wicked whore" who had "gotten herself pregnant in order to get a husband."[264] In contrast to Pasquette le Hours or the father of Catherine Mauton's baby, Pierre de Monchy actively defended his wife's reputation and protected her from legal and social harm.

Some pregnant women without strong family networks to support them and who could not possibly convince the father to marry her – e.g., because he was a priest, because he was married, or because he simply refused – had few tangible options. In 1584, Nicole Fleury conceived a child with a tailor who had "promised to marry her." The tailor refused to follow through with the promise and left her with 24 *livres* to pay for her labour provision. Nicole kept the pregnancy a secret, possibly because she could see no way out of her predicament. [265] The baby died shortly after it was born. Nicole had broken the law when she kept the pregnancy a secret; now that the baby was dead, she risked criminal prosecution and possible execution for infanticide. Whether the baby died naturally or by her hands, Nicole knew that her only option was to conceal and dispose of the corpse. When Nicole was ultimately discovered, she was arraigned to the Châtelet for prosecution. During her trial, Nicole's defense that she believed herself to be betrothed at combined with her description of her desperate attempts to "make the baby move" confounded the judges who referred her to the parlement for judicial torture. The parlement ultimately dropped the charges and released her. As the next chapter will show, Nicole Fleury was one of more than a thousand women who appeared before the parlement on suspicion of infanticide between 1564 and 1655.

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[264] "la demanderesse auroyt grandement injurye icceluy deffendeur et sa femme, appellant icelle femme…vilayne, putain…et qu'elle avoit grosse pour avoyr un mary." ADS FF801, 27 May 1589.
[265] AN X^{2A} 953, 12 May 1585.

Chapter 3: *Homicide de son enfant*

In February of 1635 Marguerite Chivier, the unmarried daughter of Jehanne Roy and Romain Chivier, an eighty-year-old labourer from the town of Robotz in the Somme Valley, was convicted of infanticide at the *bailliage prévôtal d'Abbeville* and sentenced to die.[1] Her elderly parents, who had also been convicted for conspiracy to murder Marguerite's illegitimate child, were condemned to watch their daughter's execution. As if this was not punishment enough, they were also ordered to pay a fine of five *livres parisis*, an extortionate sum for a day labourer, and to be banished from their home in Robotz for three years.[2] When the *bailliage* decision was appealed to the Parlement of Paris, the magistrates determined that Chivier was guilty of infanticide, described in the *arrêt* as *homicide de son enfant*, but that the evidence was insufficient to warrant execution. Marguerite admitted that she had not declared her pregnancy to anyone, which under French law left her vulnerable to an infanticide conviction. As we will see, a constellation of legislation promulgated in the last half of the sixteenth century rendered single woman who kept their pregnancies secret highly suspect and liable to criminal prosecution for concealment and possible infanticide. Her secret pregnancy notwithstanding, Marguerite swore she had not hurt the infant in any way. Her father

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[1] AP A^B 27, 21 February, 1635, fol. 46v. The *bailliage* sentenced Marguerite to be stripped down to a shift, and, with a torch in one hand and a noose draped around her neck, led barefoot to the Cathedral of St. Vulfran to beg the forgiveness of God and King Louis XIII for her sins before being escorted to the place of execution to be hanged. Once dead, her body was to be burnt until the ashes blew away into the wind.

[2] Five *livres parisis*, though high for a family of poor means (generally earning 20 *livres* a year or less), paid for their prison upkeep and court costs. As restitution, this represented a relatively small amount. For example, Perrine Sensu, a young woman still living at home in Saint-Germain-des-Prés, was convicted of stealing a measure of fabric (*toille*) from Claude Beaujean. Perrine was ordered to pay 25 *livres tournois* (about 20 *livres parisis*) in restitution to Beaujean and her husband. (AP A^B 27, 21 February, 1625, fol. 46v).

supported Marguerite's testimony that she had not told her parents about the pregnancy.[3] Her mother, Jehanne, testified that her daughter had called to her moments after the baby was born, its tiny body "dead and white." Stillborn, the infant could not be revived.[4] Surprisingly, given the emphasis of the current historiography that stresses the harsh prosecution of infanticide in France, the Parlement of Paris suspended Marguerite's death sentence and ordered her instead to be scourged and flogged at the crossroads of Robotz. The parlement abolished her parents' banishment and reduced their fine to only one *livre*. A month later, Marguerite, Jehanne, and Romain received letters of remission on account of their extreme poverty.[5]

Between 1564 and 1655, almost 300 other women who received death sentences for infanticide from their local courts went on to receive mitigated judgements from the parlement.[6] Still, historians have tended to emphasize the number of guilty verdicts and death sentences that the Parlement confirmed during the sixteenth and seventeenth

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[3] AN X^{2A} 990, 20 March 1635. "quelle n'a fait violence a ung enfan, quelle ne luy fait aulcun mal…quelle n'avoit declara sa grossesse."Romain Chivier deposed that "il n'a scu de la grossesse de sa fille et n'a eu trouve ung enfan…et ne scoit si sa fille luy a fait mal a l'ung enfant."

[4] AN X^{2A} 990, 20 March 1635. "quelle n'a scu la grossesse de ladite fille et en avoit un enfan auparavant qui la apelle apres son acouchee et que ca fille luy dict quelle estoit acoucher d'un enfan mort…l'enfant mort et blanc quy luy dict que la falloit faire de tout d'abord."

[5] AP AB 32, Fev 1635, fol. 84. Natalie Zemon Davis' work on remission letters from the middle of the sixteenth century reveal the virtual absence of requests for infanticide pardons. Davis found only three issued by the Crown between 1562 and 1580. This absence is striking in contrast to Sara McDougall's and Claude Gauvard's findings from the previous two centuries which found remissions were readily granted when requested, especially to the women who had assisted in the conspiracy. See Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth-Century France* (Stanford: Stanford University Press, 1987), 85; Sara McDougall, "Pardoning Infanticide in Late Medieval France," *Law and History Review* (2021): 1-25; and Claude Gauvard, *'De grace especial': crime, état, et société en France à la fin du Moyen Age*. vol 2. (Paris: Publications de la Sorbonne, 1991), 95.

[6] In my sample, the parlement mitigated 68 death sentences for infanticide. I collected samples of Conciergerie écrous for units of six months every other year between 1564, when records become extant to 1655. By extrapolation, the parlement mitigated approximately 272 death sentences between 1564 and 1655. All prisoners who came to Paris to appeal the verdicts they had received from lower courts were first remanded into the prisons at the Conciergerie. The prison bailiff kept a receipt (*écrou*) on the demographic information, charge, lower court verdict, and final verdict of the parlement for every prisoner housed at the parlement.

centuries. This perspective has been influenced in particular by the work of Alfred Soman, who has compared the prosecution of infanticide to a prolonged witch hunt in which judges did not require compelling evidence to confirm guilt and aggressively executed women for neonatal murder.[7] This assessment is inaccurate because it ignores the approximately 140 non-capital verdicts appealed to the parlement and the hundreds of death sentences that the parlement overturned.[8] Instead, I suggest that we should expand our focus in order to examine the significant volume of appeals to the parlement that resulted in mitigated sentences. I draw heavily upon the insights of Yvonne Bongert who shows that by the eighteenth century, jurists refused to uphold death sentences when evidence did not support full proof. Known to jurisconsults as *pro modo probationum,* this legal doctrine maintained that the severity of punishment must match the certainty provided by the evidence. Grounding her work in the legal philosophy of mostly eighteenth-century jurists, Bongert's work and the work of other historians on the prosecution of infanticide in France implicitly assumes Soman's thesis from the 1970s and 1990s that judges in the sixteenth and early seventeenth centuries were engaged in a quasi-witch hunt.[9] I argue instead that the principle of requiring full proof in infanticide

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[7] Alfred Soman. "The Anatomy of an Infanticide Trial: The case of Marie-Jeanne Bartonnet (1742)," in *Changing Identities in early Modern France*, ed. Michael Wolfe (Durham and London: Duke University Press, 1997), 248-272; Alfred Soman, "Les procès de sorcellerie au parlement de Paris (1565-1640)" *Annales*. 32, no. 4 (1977): 790-814; Alfred Soman, "The Parlement of Paris and the Great Witch Hunt (1564-1640)," *Sixteenth Century Journal* 9, 2 (July 1978): 30-44.

[8] My sample includes 36 non-capital-sentence appeals for infanticide. The parlement increased one sentence of corporal punishment to execution.

[9] The historiography of infanticide prosecution in France focuses primarily on the process of decriminalization of the crime in the late eighteenth century. Yvonne Bongert, " Le *pro modo probationum* : intime conviction avant la lettre? " *Revue d'histoire du droit français et étranger* 78, 1 (jan-mar 2000):13-39. See for example, Daniella Tinkova, "Protéger ou punir? Les voies de la décriminalisation de l'infanticide en France et dans le domaine des Habsbourg (XVIIIe-XIXe siècles)," *Crime, Histoires et Sociétés* 9, no. 2 (2005): 43-72; Stéphane Minvielle, "Marie Bonfils, une veuve accusée d'infanticide dans le bordelais de la fin du XVIIe siècle," *Dix-septième siècle* 62, 4 (2010): 623-643. Tracey Rizzo, "Between Dishonour and Death: infanticides in the *Causes célèbres* of eighteenth-century France," *Women's History Review* 13, 1 (2004): 5-21. In a piece that is at odds with his stance on the prosecution of infanticide,

trials was already in use in the sixteenth century, during the period when the criminal prosecution of *homicide de son enfant* was most aggressive.

Was there an 'infanticide craze'?

Infanticide and abandonment were common means by which families coped with unwanted children in premodern European society, though historians do not agree on the longitudinal frequency of the practice.[10] War and economic stagnation at the beginning of the sixteenth century helped to create the conditions of geographic dislocation, surplus labour, and competitive marriage markets[11] that resulted in an increase in illegitimate

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Soman himself challenges the views that Enlightenment and Republican jurists passed down to modern historians in the late eighteenth and early nineteenth century that sixteenth- and seventeenth-century parlements in France generally practiced arbitrary and vicious justice on the populace. See Alfred Soman, "Criminal jurisprudence in Ancien Régime France: The Parlement of Paris in the Sixteenth and Seventeenth Centuries,"*Crime and Criminal Justice in Europe and Canada*, ed. Louis Knafla (Calgary and Waterloo: Calgary Institute for the Humanities and University of Waterloo Press, 1981), 43-76.

[10] Yves-Marie Brissaud concludes that infanticide in the Middle Ages was widely practiced, though infrequently pursued by legal authorities. John Boswell disagrees. He argues that child abandonment was common, especially during periods of economic contraction and among the poor but concludes that infanticide was not a common contraceptive strategy. For late medieval France, Claude Gauvard suggests that infanticide was both relatively common and, though it was judged by royal justice as a crime, judicial and crown authorities treated it with leniency. In late medieval England, on the other hand, Barbara Hanawalt and Richard Helmholz argue that infanticide was relatively uncommon during periods of economic growth. Yves-Marie Brissaud, "Infanticide à la fin du moyen âge, ses motivations psychologiques et sa répression." *Revue historique de droit Français et étranger*. 50, no. 2 (1972): 229-56; John Boswell, *The Kindness of Strangers: The Abandonment of Children in Western from Late Antiquity to the Renaissance* (Chicago: University of Chicago Press, 1988), 397-411; Barbara Hanawalt, *Crime and Conflict in English Communities, 1300-1348* (Cambridge: Harvard University Press, 1979), 154-6; and Richard H. Helmholz, "Infanticide in the Province of Canterbury during the Fifteenth Century," *History of Childhood Quarterly* 2, 3 (Winter 1975), 384; Claude Gauvard, *'De Grace especial'*, vol. 2, 95; Richard Trexler, "Infanticide in Florence: New sources and first results," *History of Childhood Quarterly*, 1 (1973):100-116; David Kertzer, *Sacrificed for Honor: Italian infant abandonment and the politics of reproductive control.* (Boston: Beacon, 1993), 23-83.

[11] R. J. Knecht, *Renaissance Warrior and Patron: The Reign of Francis I* (Cambridge: Cambridge University Press, 1994), 356; Bronislaw Geremek, *The Margins of Society in Late Medieval Paris* (Cambridge: Cambridge University Press, 1987), 242–43; Claude Gauvard, "*De grace especial": crime, état et société en France à la fin du Moyen Age* (Paris: Publications de la Sorbonne, 1991), 935; Nicole Gonthier, *La châtiment du crime au Moyen Age XIIe–XVIe* (Rennes: Presses universitaires de Rennes, 1998), 162, 205, 222; Claude Gauvard, "Fear of Crime in Late Medieval France," in *Medieval Crime and Social Control*, eds. Barbara A. Hanawalt and David Wallace (Minneapolis: University of Minnesota Press, 1999); Marcel Lachiver, "Fécondité légitime et contraception dans la région Parisienne," *Annales de Démographie Historique* (1973) : 383-401 ; Boswell, *The Kindness of Strangers,* 17-19; Hanawalt, *Crime and Conflict in English Communities*, 154-6; Jacques Rossiaud, *Medieval Prostitution.*

births and a concomitant increase in the use of neonaticide as a contraceptive strategy among unmarried and never-married women.[12]

Broader social and economic challenges in the early sixteenth century, coupled with religious tensions and godly reform movements, contributed to a sense of urgency which resulted in a constellation of legislative responses by civic and royal authorities.[13] First, the parlement de Paris issued an *arrêt* in 1547 in hopes of addressing the problem of abandonment. Emulating a command in the *Coutume de Beauvaisis* which stipulated that "the [local] *seigneur* must purchase them food such that they can be fed…lest children die from a lack of food," the *arrêt* of 1547 compelled *seigneurs* and *haute-justiciers* to feed abandoned, exposed, and illegitimate foundlings found in their jurisdictions. [14] This ordinance was reissued again by *arrêt* of the court on August 3,

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Trans. Lydia Cochrane (Oxford: Blackwell, 1995), 189; James Farr, "Consumers, Commerce, and the Craftsmen of Dijon: The Changing Social and Economic Structure of a Provincial Capital, 1450-1750," in*Cities and Social Change in Early Modern France* ed. Philip Benedict (London: Unwin Hyman, 1989), 134-173. Farr, *Authority and Sexuality*, 124-156.

[12] Matthew Dean Gerber, *The End of Bastardy: Illegitimacy in France from the Reformation through the Revolution* (Berkeley: University of California Press, 2004), 218-245; Soman, "The Anatomy of an Infanticide Trial," 249-52; Joel Harrington, *The Unwanted Child: The Fate of Foundlings, Orphans, and Juvenile Criminals in Early Modern Germany* (Chicago and London: University of Chicago Press, 2009), 52-57, 277-302; Margaret Brannan Lewis, *Infanticide and Abortion in Early Modern Germany* (London and New York: Routledge, 2016), 49-82.

[13] Farr, *Authority and Sexuality*, 124-156; This sense of urgency extended beyond the borders of France. In Germany, for example, Ulinka Rublack and Margaret Brannan Lewis also detected an increase in the prosecution and violent punishment of unmarried infanticides that they relate to increased moralism and economic anxiety. Ulinka Rublack, *The Crimes of Women in Early Modern Germany.* (Oxford: Clarendon, 1999), 161-165, 191-2; Brannan Lewis, *Infanticide and Abortion in Early Modern Germany*, 17, 49-82. Despite the remission that the Chivier family received, infanticide was virtually irremissible in the sixteenth and seventeenth centuries. This represents a dramatic shift from fourteenth- and fifteenth-century practice. See Natalie Z. Davis, *Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth-Century France* (Stanford: Stanford University Press, 1987), 77-110; Michel Nassiet, "Lettres de pardon du roi de France (1487-1789)," *Criminocorpus* (2017); Michel Nassiet and Aude Musin, "Requérir le pouvoir: L'exercice de la rémission et la construction étatique (France, Pays Bas)," *Revue historique* 1, 661 (2012): 3-26.

[14] Beaumanoir, *Coutume Beauvaisis,* Chap XVII quoted from Denys D'Aussy, *L'Assistance publique avant la Révolution,* (1888), 551: *A tex gens se ils nont rien, li sire les doit faire pourchassier tant qu'ils puissent être nourris… que li enfans ne muirent pas par défaut de nourriture;* D'Aussy, *L'Assistance publique*, 552; and M. Merlin, *Répertoire universel et raisonné de Jurisprudence*, Vol. 11 (Brussels: H. Tarlier, 1826).

1552, and was confirmed by *arrêt* in 1554 and 1556.[15] These measures, however, did not address the corollary problems of illegitimacy and neonaticide.

Aware of a perceived crisis, Henri II published a royal edict in February of 1556 that distinguished neonatal murder from other species of homicide. Also referred to as the *déclaration de la grossesse obligatoire* or *l'édit contre le recel de grossesse,* the February edict demanded that all pregnant women were obligated to make a declaration to another person of their pregnancy and to give birth in front of a witness.[16] Targeting clandestine pregnancies, the edict presumed women guilty of a new kind of murder legislators named *homicide de son enfant.* According to the legislation, if women failed to declare their pregnancies, miscarried, gave birth to a stillborn child, or suffered the loss of a newborn baby in secret and deprived the baby of baptism and Christian burial, royal courts had sufficient proof of motive and opportunity to find them guilty of infanticide and to sentence them to death. Lacking other sources of proof such as a murder weapon or the circumstantial evidence provided by witnesses, this secrecy and deprivation provided sufficient evidence to prove that the mother had foreknowledge and intent to kill the child whom she conceived in sin and fornication.[17]

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[15] D'Aussy, *L'Assistance publique*, 552; and M. Merlin, *Répertoire universel et raisonné de jurisprudence*, Vol. 11 (Brussels: H. Tarlier, 1826).

[16] Rather than requiring a witness to murder, Henri II's February edict combined concealment of pregnancy and the concealment of childbirth (conditions that resulted in the absence of witnesses at the time of neonatal death) as positive evidence of premeditated murder. This edict was modelled after articles 35, 36, and 130-135 of the *Carolina*, which similarly criminalized the concealment of pregnancy and childbirth. The February edict does not specify the boundaries delineating infanticide and homicide, whereas the *Carolina* specifically mentions that legislation applies to women who continue to lactate and whose babies have died or who are suspected to have disposed of a child following clandestine labour. See Isambert, *Recueil des anciennes lois françaises depuis l'an 420 jusqu'à la Révolution de 1789* (Paris: Belin-Leprieur, 1828), vol. XIII, 472; and Yvonne Bongert, "L'infanticide au siècle des Lumières," *Revue historique de droit français et étranger.* 57, 1 (March 1979), 248.

[17] "Edit de février 1556," Isambert, Jourdan, Decrusy, *Recueil général des anciennes lois françaises depuis l'an 420 jusqu'à la révolution de 1789,* vol. 13 (Paris: Belin-Leprieur, 1821-1833), 471-3.

Finally, the Provost of Paris enacted correlated legislation in 1560 that regulated the profession of midwifery with the intent to enlist midwives in the surveillance of expectant mothers. These regulations required that midwives be enrolled on the local bailiff's register and that each midwifery apprentice be certified by the local medical superintendent. All pregnant women were required to report their pregnancies to a registered midwife, and a midwife was required to witness the birth of her baby. Midwives, in turn, were responsible for alerting local magistrates to illegitimate pregnancies.[18]

This body of legislation, the quick response of royal courts to prosecute, and the apparent willingness of the populace to denounce women under the terms of the February edict suggest that people believed they were in the midst of a crisis of infant abandonment and infanticide.[19] The February edict complained that too many judges in the past had been persuaded by mothers pleading that "shame of declaring their vice" had prevented them from alerting anyone of pregnancies that later resulted in a stillbirth, "emerging from their bellies dead, and without any appearance or hope of life."[20] So

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[18] Gélis, *Sage-femme ou le médicin,* 47; Rolande Graves, *Born to Procreate: Women and Childbirth in France from the Middle Ages to the Eighteenth Century* (New York: Peter Lang, 2001); Broomhall, *Women's Medical Work*, 36-7; Laurence Brockliss and Colin Jones, *The Medical World of Early Modern France* (Oxford: Oxford University Press, 1997), 263-5; Mary Lindeman, *Medicine and Society in Early Modern Europe,* 2nd ed (Cambridge: Cambridge University Press, 2010), 125-7*;* Richard L. Petrelli, "The regulation of French midwifery during the Ancien Régime," *Journal of the History of Medicine* (1971): 282.

[19] Peter Spierenburg, *A History of Murder: Personal Violence in Europe from the Middle Ages to the Present* (Cambridge: Polity, 2008), 118-119; Soman, "The Anatomy of an Infanticide Trial," 248-272; Soman " Les procès de sorcellerie," 790-814; Soman, "The Parlement of Paris and the Great Witch Hunt, 30-44; Etienne van der Walle, "Motivations and Technology in the Decline of French Fertility," in *Family and Sexuality in French History*, eds. Robert Wheaton and Tamara K. Haraven (Philadelphia: University of Pennsylvania Press, 1980), 147; Margaret Brannan Lewis, *Infanticide and Abortion in Early Modern Germany,* 9, 49-82; Rublack, *The Crimes of Women*, 161-5;

[20] "De quoy estant prévenues et accusées par devant nos juges, s'excusent, disant avoir en honte de déclarer leur vice, et que leurs enfants sont sortis de leur ventres morts, et sans aucune apparence ou espérance de vie." Isambert et al, *Recueil général,* t. 13, 472.

many judges were being swayed by these lies that these women "fell back into sin, reoffended, and committed the same and similar crimes again."[21] Legists imagined that neonaticide was a crime premeditated at the moment of conception.[22] In the words of Julie Doyon, this '*occultation criminelle*' – the secrecy of the illicit sex and the depravity of premeditated murder – threatened the social order because the conspiracy made the crime difficult to prove yet destabilized the *bon repos* of the family and the state.[23]

From its promulgation in 1556 until the parlement rescinded it in 1791, this legislation provided the legal apparatus to round up and convict more than two thousand women of newborn murder.[24] The parlement executed approximately half of them, while sentencing the other half to mitigated sentences in the form of corporal punishment, banishment, and fines. During the most intense period of prosecution between 1564 and approximately 1610, the parlement upheld executions for approximately two thirds of the capital appeals it received. As a result, following Alfred Soman who first identified the

[21] "[elles] sont les prisons le plus souventes ouvertes, qui a esté et est cause de les faire retomber, récidiver et commettre tels et semblables délits," Isambert et al, *Recueil général,* t. 13, 472. Sixteenth-century legists reviled '*clandestinité*' because it defiled the good government of families, households, and ultimately the state. Julie Doyon, "Des secrets de famille aux archives de l'effraction : violences intra-familiales et ordre au XVIIIe siècle. " in *La violence et le judicaire: Du moyen âge à nos jours, perceptions, pratiques,* ed. Antoine Follain (Rennes : Presses Universitaires de Rennes, 2008), 209-222.

[22] Marie-Claude Phan, "Les déclarations de grossesse en France (XVIe-XVIIIe siècle)" *Revue d'Histoire moderne et contemporaine*. 22, vol. 1 (1975), 76-7.

[23] Doyon, "Des secrets de famille aux archives de l'effraction," 210.

[24] Based on my own examination of Conciergerie *écrous*, upon which Soman also based his findings, together with Daniela Tinkova's exhaustive tabulation of infanticide appeals in the eighteenth century, it seems reasonable to extrapolate that a very liberal estimate (the numbers are almost certainly lower as I have overestimated convictions for years outside of my own sample and Tinkova) of total *arraignments* for appeal at the parlement between 1564 and 1791 is no more than 2200. My sample of arrêts reveals 269 women prosecuted for infanticide and abortion between 1564 and 1655. The parlement executed 165 of them. I collected data for all crimes involving women recorded in the *écrous de Justice* located at the *Archives de la Préfecture de Police de* Paris for units of six months every two years between 1564, when records begin, and 1655. An extrapolation of my data would conclude that no more than approximately 1100 women in total were convicted of *homicide de son enfant* within the *ressort* of the Parlement during this time. Daniella Tinkova's examination of infanticide in the eighteenth century concludes that 726 women appealed infanticide convictions between 1700 and 1791 when the edict was revoked. The parlement executed 204. (Tinkova, "Protéger ou punir?" 49).

high level of executions at the Parlement of Paris, most historians characterize infanticide prosecutions as aggressive, fanatical and vindictive.[25] Yet it is important not only to recognize that this most violent period of prosecution was relatively short-lived but also that, even at its height, many women accused of having murdered their infants received mitigated sentences.

Marguerite Chivier's last-minute reprieve from the scaffold represents another pattern that has been obscured from historians' view by the insistent focus on the executed. Despite the aim of the edict to render secret pregnancy a clear and convincing sign of murder, defendants after 1556 were able to plea that their children had been stillborn or that they made efforts to revive it or baptise it in hopes that it clung to life. This strategy of defense was most effective when a witness, usually the defendant's mother because she was present at the birth, was willing to corroborate these facts.

Alfred Soman remains the only historian to look closely at the prosecution of *homicide de son enfant* at the Parlement of Paris.[26] Originally setting out to test the

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[25] Soman, "Anatomy of an infanticide trial," 248-272; Soman, "Les procès de sorcellerie," 790-814; Soman, "Sorcellerie, justice criminelle et société dans la France moderne," 177-217; Soman, "The Parlement of Paris and the Great Witch Hunt (1564-1640)," 30-44.

[26] Prior to Soman, Jean-Louis Flandrin examined infanticide within broader trends of family size and contraception in the Ancien Régime. In his brief analysis of the edict, he rightly situates the unmarried and widowed periparturient and postpartum women for *homicide de son enfant* within the constraining economic and conditions and subsequent hardening morality of the sixteenth and seventeenth century. Marie-Claude Phan published an essay investigating the decline of the *déclaration de grossesse obligatoire* in the eighteenth century. Her work does not examine the rate or patterns of the prosecution of *homicide de son enfant* resulting from the edict. See Jean-Louis Flandrin, "L'attitude à l'égard du petit enfant et les conduited sexuelles dans la civilisation occidentale : structures anciennes et évolution, " *Annales de démographie historique.* (1973) : 143-210 and Marie-Claude Phan, " Les déclarations de grossesse en France (XVIe-XVIII siècles) " *Revue d'histoire moderne et contemporaine* 22, 1 (1975) : 61-88. More recently, Robert Muchembled conducted an exhaustive study of infanticide and homicide convictions at the parlement de Paris from 1574 to 1604. Jurists, he argues, targeted mainly unmarried men and women whom the state deemed to be excessively disorderly and detached from the community. Examining the prosecution of these crimes through the lens of the monopolization of violence as statecraft, Muchembled likened the judicial process to a quasi-genocide of the young, unmarried and uncivilized. Robert Muchembled, "Fils de Caïn, enfants de Médée. Homicide et infanticide devant le parlement de Paris (1574-1604)," *Annales.* 62, 5 (2007): 1063-1094.

prevalence of witch hunts in Northern France, Soman's principal studies on the topic conclude that infanticide, specifically the murder of newborns by unmarried women, was for sixteenth and seventeenth-century jurists the true *crimen exceptum* – an exceptional crime that was not subject to regular judicial procedures or standards of proof.[27] He demonstrates that although the sheer number of appeals for witchcraft and *homicide de son enfant* were roughly equal, the parlement upheld far more convictions and death sentences for infanticide between 1560 and 1640 than they ever confirmed for *sorcellerie.* Soman's research was ground-breaking because it overturned historiography that presumed France had experienced witch-hunts like those of neighbouring jurisdictions in Switzerland and southwest Germany, in which a large majority of women charged with witchcraft were ultimately burnt at the stake.[28] Whereas the parlement refused to uphold many witchcraft convictions, Soman stated that most death sentences issued by lower courts for infanticide were upheld. His conclusion – that is, that the parlement had treated infanticide like a *crimen exceptum* and executed women outside of the established rules of justice – is however incorrect. Soman's rhetorical device is powerful, but infanticide prosecution at the parlement fell short of a 'craze'. As we will

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[27] Soman, "Parlement of Paris and the Great Witch Hunts," Sixteenth *Century Journal* 9, 2 (July 1978): 32; Soman, "Les procès de sorcellerie," 799-800; Soman, "Anatomy of an infanticide trial," 250. On *crimen exceptum* see Edward M. Peters, "'Crimen exceptum': The History of an Idea," in Kenneth Pennington (ed), *Proceedings of the Tenth International Congress of Medieval Canon Law: Syracuse, New York, 13-18 August 1996* (Vatican City: Città del Vaticano, 2001), 137-194; Elliott P. Currie, "Crimes without criminals: witchcraft and its control in Renaissance Europe," *Law and Society Review* 3:1 (1968): 7-32; Christina Larner, "Crimen Exceptum? The Crime of Witchcraft in Europe," in *Crime and the Law: The Social History of Crime in Western Europe since 1500* eds. V. A. C. Gatrell, Bruce Lenman, and Geoffrey Parker (London: Europa, 1980), 49-75.

[28] See for example, Robert Mandrou, *Magistrats et sorciers en France au XVIIe siècle. Une analyse de psychologie historique* (Paris: Plon, 1968); Maurice Caveing, "La fin des bûchers de sorcellerie: une révolution mentale, " *Raison présente* 10 (1969) : 83-99 ; P. Vilette, *La sorcellerie dans la Nord de la France du milieu du XVe siècle à la fin du XVIIIe siècle* (Lille : Facultés Catholiques, 1956).

see, the parlementaires required clear proof that women deliberately harmed their infants in order to justify a death sentence.

If Soman focuses on the harshness of parlementaire justice, Yvonne Bongert takes a very different approach that takes into account the many women accused of infanticide who survived their encounter with the courts. In her work on the patterns of prosecution of infanticide and murder at the parlement de Paris, Yvonne Bongert discusses at length how jurists in the eighteenth century modified sentencing practices by applying the concept of judicial restraint when incomplete evidence left a shadow of doubt in the minds of the judges.[29] Crimes such as infanticide, fornication and debauchery, and adultery were particularly susceptible to the application of this doctrine because these crimes were committed in private. As a result, they were difficult to prove. In principle, *pro modo probationum* functioned in instances when judges did not apply torture as a means to get a confession of guilt from the accused. Scholars have generally linked the rise of *pro modo probationum* in France with the decline of judicial torture in the eighteenth century.[30] Bongert herself assumes that the use of judicial restraint increased

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[29] Yvonne Bongert, "Le *pro modo probationum*: intime conviction avant la lettre ? " *Revue d'histoire du droit français et étranger* 78, 1 (jan-mar 2000): 15-20.

[30] Bongert,"Le *pro modo probationum,"* 15-20; Langbein, *Torture and the Law of Proof*, 51; Paringault, "De l'ordonnance criminelle de 1670," 294-5. *Pro modo probationum* is not the primary focus of historians' work on infanticide in the eighteenth century. In their studies on the process of the decriminalizaton of infanticide in the late seventeenth and eighteenth centuries, for example, Stéphane Minvielle and Tracey Rizzo point to the development of the notion of mental anguish and temporary insanity that defence counsels successfully argued in favour of their clients' exoneration in eighteenth-century trials. See Stéphane Minvielle, "Marie Bonfils, une veuve accusée d'infanticide dans le bordelais de la fin du XVIIe siècle," *Dix-septième siècle* 62, 4 (2010): 623-643. Tracey Rizzo, "Between Dishonour and Death: infanticides in the *Causes célèbres* of eighteenth-century France," *Women's History Review* 13, 1 (2004): 5-21. Lauren Dale, in a recent master's thesis from Keele University in the UK attempts to draw a link between the marital status of infanticide defendants and pleas of insanity. Dale concludes that in medieval England, married women successfully employed the defense of *non compos mentis* when they stood trial for killing their children, a stratagem that unmarried women did not use. Dale's thesis, however, does not distinguish between neonaticide (as a form of family size control or contraception) and child murder that resulted from mistreatment or abuse. See Lauren Dale, "Delictum vel Peccatum? An examination of legal cases: Prosecuting abortion and infanticide in medieval England," MA thesis (Keele University, 2017).

in the eighteenth century. Like Soman, she characterizes the late sixteenth century as dominated by the violent and vengeful punishment of women convicted of infanticide. My evidence shows, however, that judicial restraint resembling an adherence to the maxim of *pro modo probationum* was already evident in the late sixteenth century.

Though infanticide was prosecuted aggressively,[31] Alfred Soman's estimation has exaggerated the number of women executed for the crime within the *ressort* of the parlement de Paris. Soman offers an estimate of nearly 3,000 appeals and approximately 1,800 executions for *homicide de son enfant* between 1564 (when Conciergerie *écrous* become extant) and 1791 (when the February edict was ultimately repealed). According to Soman, the death sentences of over 65% of women appearing before the parlement were upheld. [32] Based on my own data samples and the comprehensive data for the eighteenth century compiled by Daniela Tinkova, a more reasonable estimate is that 2,200 women appeared before the Parlement of Paris and no more than 1,100, or 50 percent of appellants were executed between the promulgation of the edict and its eventual repeal, far fewer that the 1,800 executions that Soman estimates.[33]

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[31] Between 1564 and 1655, *homicide de son enfant* represented the second most frequent category of criminal conviction appealed by women at the parlement de Paris. More women, approximately 293, appealed to the parlement to overturn convictions for *vol* and *larcin* during the sample period. While figures for *vol* and *larcin* exceeded *homicide de son enfant* in volume (293 vs. 269), the parlement executed fewer than 10% (28 of 293) of *laronesses* who came before the bench. This contrasts to the approximately 60% of infanticides that the parlement condemned to death over this time. *Homicide de son enfant* represents 76% of all homicides that women appealed at the parlement. Of the 85 women appealing *homicide* or *assassinat*, the parlement executed 31, or 36%.

[32] Soman, "Anatomy of an infanticide trial," 249. Soman estimated 1,500 executions during the period he termed the 'infanticide craze' that spanned the years 1564 and 1690. Soman, "Sorcellerie," 177-217.

[33] Based on my own examination of Conciergerie *écrous*, upon which Soman also based his findings, together with Daniella Tinkova's exhaustive tabulation of infanticide appeals in the eighteenth century, it seems reasonable to extrapolate that a very liberal estimate (the numbers are almost certainly lower as I have overestimated convictions for years outside of my own sample and Tinkova) of total *arraignments* for appeal at the parlement between 1564 and 1791 is no more than 2200. My sample of *arrêts* reveals 269 women prosecuted for infanticide and abortion between 1564 and 1655. The parlement executed 165 of them. I collected data for all crimes involving women recorded in the *écrous de Justice* located at the *Archives de la Préfecture de Police de Paris* for units of six months every two years between 1564, when records begin, and 1655. An extrapolation of my data would conclude that no more than approximately

My evidence supports Soman's conclusion that the parlement executed approximately two thirds of convicted infanticides, but this percentage is only valid during a relatively short period between 1564 and about 1580. After this date, the rate of executions declined gradually and significantly over time. The application of doubt when proof was insufficient to warrant execution, following the initial panic of the 1560s and 1570s, emerges in the record most forcefully after 1580 and effectively guides infanticide judgements by the beginning of the seventeenth century. This pattern suggests that judges were not engaged in a prolonged 'witch hunt' of the kind Soman suggested. Following James Sharpe's comparison of executions for witchcraft and infanticide in early modern England, this early phase of trials at the parlement might be better described as a 'wave' immediately following the promulgation of the February edict that began to subside.[34] While royal courts at the level of the *seigneurie* and *bailliage* were constrained by the exact language of law, *parlementaires* possessed the privilege to arbitrate and create precedent which developed into a pattern of mitigated sentences that developed slowly over time.

There are a few explanations for the disparity between Soman's estimate and the data presented here. First, it is possible from the volume of executions Soman cites and his description of infanticide as "the killing of a child," that he may have conflated indictments for *homicide de son enfant* as it was defined under the February edict with

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1100 women in total were convicted of *homicide de son enfant* within the *ressort* of the parlement during this time. Daniella Tinkova's examination of infanticide in the eighteenth century concludes that 726 women appealed infanticide convictions between 1700 and 1791 when the edict was revoked. The parlement executed 204. (Daniella Tinkova, "Protéger ou punir? Les voies de la décriminalisation de l'infanticide en France et dans le domaine des Habsbourg (XVIIIe-XIXe siècles," *Crime, Histoires et Sociétés* 9, 2 (2005): 49).

[34] J.A. Sharpe, *Crime in Seventeenth-Century England: A County Study* (Cambridge: Cambridge University Press and Maison des Sciences de l'Homme, 1983), 61, 137-8.

child murder, sometimes committed by parents against babies and older children and sometimes committed against babies and older children by people other than a parent.[35] Though both were certainly treated as serious and despicable crimes, they were, in fact, distinct not only in presumptions of motive, but also in judicial procedure. My investigation of *arrêts* and *écrous* suggest that approximately 76 women in my sample were convicted of non-neonatal child murder (not always their own children).[36] Furthermore, his figures may have included women indicted for abandonment, a crime which écrous usually describe as a form of concealment (*receler de sa grossesse*), but which was prosecuted far more leniently than intentional neonaticide.[37] Combining both kinds of murder incorrectly inflates the total number of women prosecuted and executed under the edict against clandestine pregnancies.

Second, Soman's chief quantitative study on infanticide compares the prosecution of the crime at the Parlement of Paris to the prosecution of witchcraft. In this study, he focuses on several sample data sets which corresponded to periods of religious violence and civil war, and then surmises, reasonably enough, that witchcraft accusations increased during periods of violence and religious hysteria.[38] The greatest number of convictions and executions for infanticide correspond to the decades which saw the most intense periods of the French Wars of Religion. Any extrapolation of infanticide appeals at the Parlement of Paris focusing on this period would return inflated results. Instead, my

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[35] On the distinctions between neonaticide and other forms of child murder, see Randolph Roth, "Homicide in Early Modern England 1549-1800: The need for a quantitative analysis," *Crime, histoire et sociétés* 5, 2 (2001): 33-67.

[36] Ragonde Chevalier, for example, was executed for "strangling a little girl named Jehanne Marie" that was not her own. "quelle a estrangle une petite fille nommee Jehanne Marie." AN X2^{A} 982, 15 January, 1620.

[37] 19 women in my sample appeared at the parlement for exposing their newborns.

[38] Soman, "Anatomy of an Infanticide Trial," 251; Soman, "Les procès de sorcellerie," 790-814; Soman, "The Parlement of Paris and the Great Witch Hunt," 30-44.

analysis shows that the volume of infanticide appellants peaked in the 1580s and started to decline precipitously after the first decade of the seventeenth century.[39]

Demanding that "all women" declare their pregnancies and give birth in front of a witness, the February edict did not specifically target single women for indictment.[40] But, pregnancy and motherhood for never-married women and widows was quite different from the experience of married women. Across Western Europe, economic precarity and taboos against illegitimacy made unmarried women more likely to feel they needed to hide a pregnancy that might draw unwanted attention from the households and communities in which they lived and made them more vulnerable to denunciation than married women.[41] Consequently, the majority of women brought to the parlement for infanticide were unmarried.[42] Ultimately, social anxieties about the moral and economic consequences of promiscuity coincided with the social upheavals of religious reformation, war, and economic contraction and insecurity that disrupted traditional social bonds and networks. These anxieties converged to produce heightened sensitivities to the sexual behaviour of unwed women that manifested in a keener appetite

[39] The period between 1564 and 1610 produced the greatest volume of appeals for *homicide de son enfant* and the greatest proportion of executions. During this period, 159 women in my sample came before 1610 at the bench whereas 110 appeared between 1611 and 1655.
[40] "toutes femmes." Isambert, et al., *Recueil des anciennes lois françaises depuis l'an 420 jusqu'à la Révolution de 1789* (Paris: Belin-Leprieur, 1828), vol. XIII, 472.
[41] Laura Gowing, *Common Bodies: Women, Touch and Power in Seventeenth-century England* (New Haven and London: Yale University Press, 2003), 151, 194; Samantha Williams, *Unmarried Motherhood in the Metropolis, 1700-1850: Pregnancy, the Poor Law and Provision (*London: Palgrave, 2018), 79-109; Brannan Lewis, *Infanticide and Abortion*, 7.
[42] Of the 269 women in my sample, 173 were *filles à marier*, 32 were married women, and 64 were widows. Married women comprised not only the smallest number of infanticides to appear before the parlement, but with around 43% of convicted wives executed, the parlement returned capital sentences on the smallest proportion of women compared to unmarried women.

to prosecute them for attempting to hide their sinful and profligate behaviour from the community.[43]

While authorities had already been alert to a crisis of illegitimacy prior to the French Wars of Religion, the combination of circumstances that accompanied the outbreak of civil war in 1562 likely intensified the surveillance and prosecution of the illicit sexuality with which the crime of infanticide was intimately associated.[44] Motivated by both religious moralism[45] and perceptions that prostitution and illicit sex were becoming a civic problem, city authorities across Northern France responded to fears that "filles impudiques" and "femmes dissolutes" endangered the moral order by instigating regulations to punish and expel them.[46] We can find evidence of these

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[43] Though he does not provide a comprehensive analysis of the causes of the 'infanticide craze', Alfred Soman hypothesized that reformation mentalities provided the source of social anxieties in the sixteenth and seventeenth centuries about the volume of illegitimate newborns who were murdered by mothers trying to conceal their sin. More recently, Cathy McClive has concluded that economic and demographic concerns had a greater impact on the promulgation and enthusiastic application of the February edict. See Soman, "Anatomy of an infanticide trial," 249-50; Soman, "Sorcellerie," 208; Cathy McClive, *Menstruation and Procreation in Early Modern France.* (New York: Routledge, 2016), 152-164.

[44] In southern Germany, Ulinka Rublack notes that in the wake of the *Carolina's* conflation of concealment and neonatal death with infanticide, judicial authorities responded immediately by aggressively prosecuting women for the crime. Execution did not become the most common form of punishment (with rates as high as 50%) until judicial practice was both more systematized and responsive to the moral pressures induced by the hardships of the Thirty Years War and economic contraction in the seventeenth century. Rublack, *The Crimes of Women*, 164-5.

[45] Mark Greengrass, "Hidden Transcripts: Secret Histories and Personal Testimonies of Religious Violence in the French Wars of Religion," in *The Massacre in History* eds. Mark Levene and Penny Roberts (Oxford: Berghahn, 1999), 72; Dewald, "Social Groups and Cultural Practices," 27-61; Crouzet, *Les guerriers de Dieu*, in passim.

[46] The city of Amiens tried to expel "femmes dissolutes" along with beggars, "jureurs et blasphémateurs" in 1579. ADS FF17, 4 April 1579, fol. 4; FF17, 10 October, 1579, fol. 8v), Paris did the same in January of 1592, adding a series of incrementally punitive sanctions as infractions mounted that ranged from a fine of one écu to slitting the tongue. (*Arrest de la cour contre les blasphemaeurs et jureurs contre ceux qui n'observent les jours de la feste, ense,ble avec les femmes et filles impudiques* (Paris: Robert Nivelle, 1592). *Advis et exhortation à Messeigneurs du Conseil d'Estat contre les blasphémateurs et ceux qui seront trouvés en adultère et paillardise.* (Paris: Binet, 1589); *Ordonnance du Roy, et de monsieur le Prevost de Paris contre les jureurs, blasphemateurs, et autres* (1594). In the 1570s, the Lyonnais échevin, Claude de Rubys, blamed protestant women from the city for bringing disease back with them from the garrisons stationed outside of Lyon. Justine Semmens, "Plague, Propaganda and Prophetic Violence in Sixteenth-Century Lyon," in *Aspects of Violence in Renaissance Europe*, ed. Jonathan Davies (Aldershot: Ashgate, 2013), 83-106; Elizabeth C. Tingle, *Authority and Society in Nantes during the French Wars of Religion, 1558-1598* (Manchester and New York: University of Manchester Press, 2006), 123, 191.

heightened sensitivities to illicit sex in the Conciergerie *écrous*.[47] The parlement processed the highest volume of men and women who appealed the crimes of adultery, procurement (*macquellerage*) and forms of debauchery (*paillardise, luxures, mauvaise vie*) during the period between 1564 and 1600. For example, 319 men and women in the sample appealed these crimes of sexual misconduct between 1564 and 1655. The parlement received 75%[48] of these appeals between 1564 and the turn of the seventeenth century.[49] Conciergerie *écrous* tell us that communities in Northern France perceived men as a greater threat to 'respectable' women during a span of time that correlates to the most acute period of warfare and violence of the Wars of Religion.[50] Royal courts prosecuted more men for the crimes of bigamy and rape (*viol*) during the time spanning the 1560s and 1580s than any other period studied over the course of the survey.[51] The women involved in these indictments represented primarily the daughters and wives of journeymen, artisans, and merchants – a group that was *very* distinct from the women whom the authorities prosecuted for infanticide. These poor and servant women in urban

[47] All prisoners who came to Paris to appeal the verdicts they had received from lower courts were first remanded into the prisons at the Conciergerie. The prison bailiff kept a receipt (*écrou*) on the demographic information, charge, lower court verdict, and final verdict of the parlement for every prisoner housed at the parlement.

[48] 238 out of 319.

[49] In the sample of *écrous*, between 1564 and 1587, the parlement processed 170 people (70 men; 100 women) for the crimes of adultery, bigamy, *paillardise, luxures, mauvaise vie,* and *macquellerage.* Between 1588 and 1610, it processed 68 people (23 men; 45 women) for these crimes; between 1611 and 1633, it processed 69 people (38 men; 31 women); and between 1634 and 1655, it processed 35 people (12 men; 23 women).

[50] Jonathan Dewald suggests that during periods of economic flux and demographic movement, such as cities in Northern France experienced during the sixteenth century, the number of gang rapes increased. For example, in late fifteenth-century Dijon, he estimates that about half of young men in Dijon had participated in a gang rape. Jonathan Dewald, "Social Groups and Cultural Practices," in *Renaissance and Reformation France: 1500-1648* ed. Mack Holt (Oxford and New York: Oxford University Press, 2002), 44.

[51] In the sample of écrous, between 1564 and 1655, the parlement processed 64 men for *viol* and 32 men for bigamy. The parlement received 47% (30/64) of the *viols* appeals and 69% (22/32) of the bigamy appeals between 1564 and 1587.

regions of the kingdom were at greater risk of illegitimate or solitary pregnancies; once discovering they were pregnant following sexual assault,[52] desertion, relationship breakdown, or a fraudulent betrothal, they often lacked the social credit or financial resources to seek restitution.[53] Concealment was the only reasonable option to available to them.[54]

Infanticide prosecution of *filles à marier* and domestic servants

More than two thirds[55] of the women appealing conviction for killing their newborns were unmarried, most of them without obvious kinship connections close at hand.[56] Though conclusive data is elusive,[57] indirect evidence suggests that a significant

[52] Galenic models of sexual reproduction popular in the sixteenth and seventeenth centuries made it very difficult to prove that pregnancy resulted from forced sex and sexual assault. Women whose sexual reputations were already at risk faced even greater obstacles. Danielle Jacquart and Claude de Thomasset, *Sexualité et savoir médicale au Moyen-Age* (Paris: Presses Universitaires de France, 1985), 88; Thomas Laqueur, *Making Sex: Body and Gender from the Greeks to Freud* (Harvard: Harvard University Press, 1990), 66, 161.

[53] Most rape and sexual assault went unreported. Georges Vigarello, for example, demonstrates that servant women who had been sexually assaulted had virtually no legal recourse available to them to seek restitution. Instead, their sexual behaviour was scrutinized for signs of lubricity and promiscuity. See Georges Vigarello, *A History of Rape: Sexual violence in France from the 16th century to the 20th century* (Cambridge and Malden: Polity, 2001), 9-23.

[54] See for example, Boes, *Crime and Punishment in Early Modern Germany*, 165-182.

[55] The écrous described 173 of 269 infanticide appellants as *filles à marier*.

[56] The *écrous* from the Conciergerie reveal that very few single women who appeared before the Tournelle for infanticide were described as someone's daughter. The omission of paternal information indicates that they lacked the representation of a male householder. Furthermore, many infanticides arraigned at courts of first instance in large cities such as Tours, Troyes, Reims, Paris, La Rochelle, or Lyon were native of other smaller centres, towns, and villages that were sometimes far away. What kin networks they did have were out of reach to access.

[57] It is important to note that women's crafts and occupations were not always immediately apparent from parlementary records. Conciergerie *écrous* do not always provide the labour status of women registered at the prison awaiting parlementary appeal. Some *écrous* indicate their status as household servants (*servantes domestiques*) and some *arrêts* record testimony involving mistresses when *écrous* failed to mention their household status. Far more commonly in Conciergerie *écrous*, however, a woman's occupation as domestic servant was recorded when she had been convicted of theft and less often when she had been convicted of primarily sexual crimes such as fornication. This discrepancy may bepartly because occupation in instances of theft and larceny contributed to the gravity of the crime and sentencing formulae. Besides relatively rare times that defendants are identified as prostitutes; occupation was usually less important to record keepers than marital status. Merry Weisner suggests that approximately one in twelve people living in France between the 1550s and the 1650s were domestic servants, about two thirds of whom

share of the women executed for *homicide de son enfant* in the sixteenth and seventeenth centuries were domestic servants and other subordinates.[58] Furthermore, 68% of the women in the sample who were executed for infanticide were unmarried.[59] While there was a steady decline in the number of widows and married women coming before the bench to appeal their verdicts over the course of the century (always the lowest proportion of infanticide appellants), the total number of appellants who had never been married remained relatively consistent, declining only slightly over time.[60] An unwed woman who found herself pregnant faced a particular set of impossible choices: if she sought the help of a midwife, she risked certain dismissal from service and even criminal

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were unmarried women. See Merry E. Wiesner, *Early Modern Europe, 1450-1789.* 2nd ed. (Cambridge: Cambridge University Press, 2013), 228.

[58] See Soman, "Anatomy of an infanticide trial," 250. Domestic servants represented a large portion of convicted infanticides in England and the Holy Roman Empire. See Francus, "Monstrous Mothers, 140; Malcolmson, Infanticide in the Eighteenth Century," 201-3; Rublack, *Crimes of Women,* 163-4; Boes, *Crime and Punishment in Early Modern Germany,* 158-9; Schulte, "Kindersmörderinnen auf dem Lande," 113-147. Women did certainly work in occupations other besides domestic service. Evidence from the *minutier centrale* reveals that women, besides entering the medical profession as midwives, began entering into apprenticeships as seamstresses and needle workers in the mid-seventeenth century. Even before this shift to professionalization, however, women trained informally for wage labour. See for example, Antoinette Fleury, *Documents du minutier central concernant les peintres, les sculpteurs et les graveurs au 17e siècle (1600-1650)* (Paris : Imprimerie nationale, 1969); James R. Farr, *The Work of France: Labor and Culture in Early Modern Times, 1350-1800* (Lanham, MD: Rowman and Littlefield, 2008), 98-99; and Natalie Zemon Davis, "Women in the Crafts in Sixteenth-Century Lyon," in *Women and Work in Preindustrial Europe,* ed. Barbara Hanawalt (Bloomington: Indiana University Press, 1986), 169. Royal authorities were generally less concerned with women's occupational identities than with their marital status. I have not come across a single parlementary *écrou* or *arrêt* describing single or even married *defendresses* for any crime by occupation besides as domestic servant or prostitute. By contrast, more than half of male *defendeurs* are described by occupation in Conciergerie *écrous*. Even in these cases, the women's marital status was recorded as a vital statistic rather than their occupation. Bailliage and civic authorities were more likely to categorize women by occupation. Seventeenth-century *écrous* from the prisons of St-Lazare and St-Germain-des-Prés do occasionally describe *defendresses* as *marchandes*, *servantes domestiques*, or *putains/ filles de joie*, and very occasionally by their father's occupation or status. Council records from the city of Amiens describe civil suits brought between female fish mongers.

[59] 110 out of 165 of the women in the sample who were executed were *filles à marier*.

[60] Dividing the ninety-year survey into four sets of decades, one observes the highest rate of execution in the decades before the late 1580s (56 out of 80 women arraigned between 1564 and 1587) compared to the last segment between 1634 and 1655 (39 of 69 women were executed). This latter proportion of executions to arraignments is roughly equivalent to other jurisdictions in Northern Europe, in which all jurisdictions returned both higher volumes of prosecutions and death sentences for infanticide than England or Italy. See Rublack, *Crimes of Women;* Brannan Lewis, *Abortion and Infanticide;* Van der Heijden, *Women and Crime in Early Modern Holland;* Sharpe, *Crime in Seventeenth Century England*; Ferraro, *Nefarious Crimes.*

prosecution for fornication; if she concealed the pregnancy, she gambled that no one would find out about it. [61] For some women, the high stakes of the latter choice must have seemed worth it because the shame and financial risks of detection could be ruinous.

Unmarried and other economically precarious women had the motivation to hide illicit pregnancies from public view. Renée Rat, a *fille à marier*, or girl yet unmarried, from Chastellvaux, was convicted and executed in the late winter of 1585 for having thrown the corpse of her newborn into the water after having concealed her pregnancy and delivered in secret.[62] Similarly, Médarde Montagne was accused of throwing her baby in the Seine.[63] The circumstances that proved Rat's and Montagne's guilt to the magistrates hearing her appeal fulfilled the terms of secrecy that confirmed guilt according to the terms of the February edict: secret pregnancy, secret birth, deprivation of baptism and Christian burial.

Even when their sexual partners had promised to marry them, poor women did not have sufficient social or economic security to become mothers.[64] Promises of marriage could be very fragile, as demonstrated in the previous chapter.[65] Some of the women

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[61] Soman, "Anatomy of an Infanticide,"; Robert Malcolmson, "Infanticide in the Eighteenth Century," in *Crime in England, 1500-1700* ed. J.S. Cockburn (Princeton: Princeton University Press, 1994), 202; Marilyn Francus, "Monstrous Mothers, Monstrous Societies: Infanticide and the Rule of Law in Restoration and Eighteenth-Century England," *Eighteenth-Century Life* 21, 2 (May 1997), 134; Boes, *Crime and Punishment in Early Modern Germany*, 158-9; Regina Schulte, "Kindersmörderinnen auf dem Lande," in *Emotionen und materielle Interessen: Sozialanthropologische und Historische Beiträge zur Familienforschung* eds. Hans Medick and David Warren Sabean (Göttingen: Vandenhoeck & Ruprecht, 1984), 113-147.

[62] "qu'elle estoit grosse…quelle jesta l'enfan dans leau." AP A^B 9, 21 February, 1585, fol. 43v; AN X^{2A} 953 23 February, 1585.

[63] AN X^{2A} 968, 13 March, 1606.

[64] In South German infanticide depositions, Ulinka Rublack found that women often agreed to intercourse with the understanding that they would marry the man. She also found that infanticides were relatively mature, on average about 25 years of age, and that they had entered into a relationship with a man who was of a similar age and social rank. See Rublack, *The Crimes of Women in Early Modern Germany*, 164.

[65] Frandrin, *Familles*, 180; Julie Hardwick, *Family Business: Litigation and the Political Economies of Daily Life in Early Modern France*. Oxford: Oxford University Press, 2009), 95-6. Daniela Hacke, *Women, Sex and Marriage in Early Modern Venice*, 2nd ed. (Abingdon: Routledge, 2016), esp, ch. 3, 4, and 5. Ulinka Rublack and Maria Boes note that judicial authorities in Germany seemed aware that male servants

convicted of infanticide in the sixteenth and seventeenth century hid their pregnancies following a failed espousal. In 1645, Perette Thoivin chose to conceal her pregnancy after her erstwhile fiancé abandoned her.[66] Most single women who found themselves pregnant were servants, many of whom had been duped into sexual intercourse following a false espousal, a conclusion shared by Nancy Locklin's survey of eighteenth-century *declarations de grossesses*.[67] The parlement executed Edmée Gentour, a servant who appeared before the court in the summer of 1583 for suffocating the newborn son she had following a failed betrothal with a labourer named Jehan Servinet. Gentour accused Servinet of being a '*faulx homme'* for failing to recognize their betrothal, for which the parlement banished him five years. For his part, Servinet claimed no knowledge of her pregnancy and refused to corroborate Gentour's claim that her son was born alive, but in feeble health.[68] Pregnancies that resulted from sexual relationships that involved failed or fraudulent espousals or other socially unavailable men in the household, such as apprentices, other servants, masters, or members of the clergy, needed to be terminated in

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rarely married other servants in the household they had impregnated. Boes seems to assume that male servants had a choice in the matter, concluding that in most infanticide cases judges and prosecutors did not enquire whether the defendant had been spurned by a fraudulent promise of marriage. Whether servants were free to marry, or whether women living and working in households as servants had consented to intercourse with either a master or another servant are different questions entirely. Boes' detailed trial and deposition records give no indication that interrogators were concerned with ascertaining either the legal capacity to marry (to learn if standing affiancements or indenturement prohibited marriage, for example), or if the defendant had consented. Boes' study of Frankfurt am Main also reveals only one paternity suit adjudicated by the same council responsible for criminal proceedings that demanded not only financial support, but also physical involvement in the upbringing of the child. Unmarried women in other European contexts also used the courts to seek child support, though perhaps with less frequency than in the French context. Maria Boes' judicial study of Frankfurt am Main only detected one such case between 1562 and 1692, a Burgher's daughter, who in 1662 sought not only financial support from her child's father, but also insisted that he actively rear the child. See Rublack, *The Crimes of Women in Early Modern Germany*, 164; and Boes, *Crime and Punishment in Early Modern Germany*, 136-7, 165-75.

[66] AN $X2^A$ 1010, 11 March, 1645.

[67] Nancy Locklin, *Women's Work and Identity in Eighteenth-century Brittany* (Aldershot: Ashgate, 1988), 137-8.

[68] "quelle acouchee d'un fils et l'a eu este malade… Qu'il n'en est venu a l'acouchee… [il] ne scait si la femme estoit grossesse au lict." AN X^{2A} 951, 13 July, 1583.

such a way as not to interrupt employment.[69] The age of the defendant was not always included in the documents consulted here, but when it was, most of the women were between 22 and 25 – just at the age when they were likely to be living away from home and in search of a good husband and an honourable social position as someone's wife.[70] As a result, it may have been easy for young men to convince these women that premarital sex would cement a promise to wed. The previous chapter explores the impact that supportive parents with financial means had for women who pursued the fathers of their children following an abandoned betrothal. In the absence of effective contraception or abortion, for women who lacked these vital social networks, concealment was the only feasible strategy to avoid social, and consequently, economic ruin.[71]

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[69] Harrington, *Unwanted* Child, 33; Amanda Flather, *Gender and Space in Early Modern England* (Woodbridge: Suffolk, 2007), 50; Malcolmson, 202-3; Brannan-Lewis, *Infanticide and Abortion,* 30 and 57; Schulte, "Kindersmörderinnen auf dem Lande"; Rublack, *Crimes of Women*, 164, 189-90.

[70] Julie Hardwick, "In Search of a 'Remedy': Young Women, Their Intimate Partners, and the Challenge of Fertility in Early Modern France," in *The Youth of Early Modern Women* eds. Esther Cohen and Margaret Reeves (Amsterdam: Amsterdam University Press, 2018), 315-331; Allan Tulchin, "Low Dowries, Absent Partners: Marrying for Love in an Early Modern French Town," *The Sixteenth Century Journal* 44, 3 (Fall 2013): 724; Hacke, *Women, Sex and Marriage,* 187-8.

[71]Historians debate the motivations of neonaticide. They often describe the shame of illegitimate pregnancy as a primary motivation to conceal and then terminate illegitimate offspring. See for example, Anne-Marie Kilday, *Women and Violent Crime in Enlightenment Scotland,* (Woodbridge: Boydell, 2007), 71-8; Julius R. Ruff, *Violence in Early Modern Europe, 1500-1800,* (Cambridge: Cambridge University Press, 2001), 149-51. Other pressures also likely motivated women to calculate the risks of bringing an illegitimate child into the world as greater than the risks inherent to concealment. Commenting on the impact of the Scottish Concealment Act, Deborah Symonds argues that instead of being motivated from shame, these unmarried, impoverished women "saw themselves as separate, as individuals within a community that could punish, but could not help them." See Deborah Symonds, *Weep Not for Me: Women, Ballads and Infanticide in Early Modern Scotland.* (University Park: Pennsylvania State University Press, 1997), 70. Manon van der Heijden's work on infanticide in early modern Leiden and Rotterdam echoes Symond's conclusion that "women who killed their children…were in such dire straits that they saw no other means of escape." See Manon Van der Heijden, *Women and Crime in Early Modern Holland.* Trans. David McKay (Leiden and Boston: Brill, 2016), 50-51. The economic costs of illegitimate pregnancy, the source of shame and loss of standing probably weighed more significantly in women's decision to terminate pregnancies and neonatal offspring. Rublack has suggested that rather than being mortified by shame and loss of status, women sometimes came across as angry and indignant that their lovers had abandoned them to the social and economic burden of single motherhood. See Rublack, *Crimes of Women*, 189-90, 195. Maria Boes and Regina Schulte suggest that domestic servants felt neither shame nor loss of honour for having been exposed as fornicators and single mothers because they belonged to the lowest rung of society. Infanticide was an economic decision. See Maria Boes, *Crime and Punishment in Early Modern Germany,* 158-9; and Schulte, "Kindersmörderinnen auf dem Lande," 113-147.

Men were rarely prosecuted alongside women for infanticide even though evidence suggests that they were sometimes involved in conspiracies to hide a pregnancy or were nearby at the birth.[72] For example, the parlement executed Thienette Elangueres, a twenty-two year old woman called a '*pauvre paysanne'*, for beating her newborn to death in 1643 after giving birth on her uncle's table.[73] She testified that she "had done nothing bad" to her baby, but that the husband of her mistress (possibly the father) had "beaten it and taken it from her." Refuting this claim, he responded instead that "the devil had tempted her to kill her fruit."[74] Neither the uncle in whose house the crime took place nor the husband whom she accused of being the murderer were subject to further investigation by the parlement. The *arrêt* does not even name them.[75]

Infanticide was almost exclusively prosecuted as a female crime and judges seemed to be willing to believe men when they pled ignorance of a secret pregnancy or childbirth. Perhaps men were rarely charged because childbirth in the sixteenth and seventeenth centuries was a process that, as Laura Gowing has summarized, "took place

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[72] We have already seen that Jehanne Bournon had the help of her daughter's father to leave their baby in a cemetery. AN X^{2A} 951, 22 May, 1583. On men's involvement in abortion and infanticide see, John Christopolous, "Nonelite Male Perspectives on Procured Abortion, Rome circa 1600," *I Tatti Studies in the Italian Renaissance* 17, 1 (2014): 155-74*;* Ruggiero, *Binding Passions*, 61-2; Rublack, "The Public Body: Policing Abortion in Early Modern Germany," in *Gender Relations in German History: Power, Agency and Experience from the Sixteenth to the Twentieth Century,* eds. Lynn Abrams and Elizabeth Harvey (Durham: Duke University Press, 1997), 57-80.

[73] AN $X2^{A}$ 1008, 29 January, 1643. Several studies confirm perceptions that the majority of infanticides were economically disadvantaged women, primarily domestic servants, but also the daughters of peasants and laborers. See for example, Soman, "Anatomy of an infanticide trial"; Benoit Garnot, "La perception des déliquants en France du XIVe au XIXe siècle," *Revue historique* 396, 600 (1996), 356 ; Robert Muchembled, " Fils de Caïn, enfants de Médée: Homicide et infanticide devant le parlement de Paris (1575-1604)," *Annales: Histoire, Sciences Sociales* 62, 5 (2007): 1063-1094.

[74] "quelle ne luy a fait aulcun mal et que celluy qui luy a fait de l'enfan le battu et baille de bien ayant porté l'enfan…Que Il avoit avoue que le diable la tenté de tuer son fruit." AN $X2^{A}$ 1008, 29 January, 1643.

[75] James Farr noticed a similar trend in Burgundian trials. A third of the infanticide appeals received by the parlement of Dijon between 1582 and 1730 included a male co-conspirator. None of these men were executed even though the parlement of Dijon returned executed 47 of 58 women appealing capital convictions from lower courts. See James Farr, *Authority and Sexuality in Early Modern Burgundy (1550-1730)* (New York and Oxford: Oxford University Press, 1995), 132.

in a female world of ritual and secrecy."[76] *Accouchement* was a "private but communal event" practiced among women.[77] Most women who concealed their pregnancies attempted to labour in total secrecy; however, when they had benefit of an accomplice, popular wisdom taught that the accomplice was a woman. Estienne Sauvé, the father of Marguerite Sauvé was never charged as a co-conspirator in his daughter's infanticide trial, even though his wife was indicted along with his daughter.[78] Perhaps Sauvé was not involved in attempts to conceal the labour. Perhaps the notion that labour was a domain of women made it nonsensical for the bailiff to indict him. Romain Chivier, whose exoneration opened this chapter, was the only man I came across who stood as co-conspirator for the infanticide of his grandchild.[79] Maybe Sauvé and Chivier were truly ignorant of their daughters' pregnancies? Or maybe they understood that their daughters had a better chance of survival if they pled ignorance?

On the other hand, Jehan Servinet may have lied when he claimed ignorance of Edmée Gentour's pregnancy.[80] If Gentour believed they were betrothed, why would she hide the pregnancy from him? We know from parlementary arrêts that men sometimes played a central role in conspiracies to hide illicit pregnancies. Jehanne Bournon had the help of the baby's father, Pierre Flouront, to take her newborn daughter to a cemetery,

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[76] Laura Gowing, "Secret Births and Infanticide in Seventeenth Century England," *Past and Present* 156 (1997): 87. The description of private and highly gender dimorphic space contrasts slightly with German cultural practices of childbirth noted by Ulinka Rublack, which while protecting the lying-in chamber as a feminine space protected from patriarchal surveillance and control, integrated the husband as an important protector, helper, and celebrant. Ulinka Rublack, "Childbirth and the female body in early modern Germany," *Past and Present* 150 (Feb 1996): p.84-110.
[77] Gowing, "Secret births,"; See also Linda Pollock, "Childbearing and female bonding in early modern England," *Social History* 22, 2 (October 1997): 286-306.
[78] AN X^{2A} 951, 23 July, 1583.
[79] AP A^{B} 32, February 1635, fol. 84.
[80] AN X^{2A} 951, 13 July, 1583.

where she was left to die. [81] In a trial discussed later in the chapter, Catherine Bonniot confessed that she told no one about her pregnancy except Michel Masson, the father of her illegitimate baby. Masson even eventually confessed to dealing the fatal blow that killed their child.[82] In other words, popular wisdom may have been at odds with reality. Though historians like Laura Gowing have emphasized the gender exclusivity of early modern pregnancy culture and childbirth, more recent scholarship suggests that men were often involved in the procurement of medical expertise as well as efforts to conceal an unwanted pregnancy – especially when they were the sexual partners of these women.[83] Julie Hardwick found evidence that the fathers of illegitimate children were often deeply involved both in conspiracies to hide pregnancies and the procurement of abortions.[84] Similarly, based on evidence from eighteenth-century English child-murder depositions, Dana Rabin argues that fathers were involved in conspiracies to conceal pregnancies and helped to perform infanticides more commonly than most historians assume. These observations confirm Yves-Marie Brissaud's hypothesis that men participated in violence against their illegitimate newborns. It stands to reason that men who would not or could not reasonably claim an unwanted child likely participated in conspiracies to conceal illegitimate pregnancies.[85]

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[81] AN X^{2A} 951, 22 May, 1583. Abandoning infants in graveyards was a common enough practice that the obstetrical oath for Parisian midwives included a promise to help identify babies found in the Cemetery of the Innocents. See, Broomhall, *Women's Medical Work*, 35.
[82] AN X^{2A} 962, 4 May, 1600.
[83] See Gowing, *Common bodies*; Christopolous, "Nonelite male perspectives," 155-74. Josephine Billingham, *Infanticide in Tudor and Stuart England* (Amsterdam: Amsterdam University Press, 2019).
[84] Hardwick, "Policing Paternity," 643-57.
[85] See Brissaud, "Infanticide,"; Dana Rabin, "Beyond Lewd Women and Wanton Wenches': Infanticide and Child-Murder in the Late Eighteenth Century," in *Writing British Infanticide: Child-Murder, Gender, and Print, 1722-1859.* ed. Jennifer Thorn (Newark: University of Delaware Press, 2003), 45-69; and Hardwick, "Policing Paternity," 650-1.

Social taboos against extramarital sex, which intensified during the Catholic and Protestant reformations, made it difficult or impossible to reach out to more empowered members of the household or to other authorities such as parish curés or even midwives for help.[86] Brissaud hypothesized that female servants were sometimes coerced by the servants who had impregnated them to kill their newborns, a phenomenon that Ulinka Rublack confirmed for southern Germany.[87] In other cases, women were impregnated following illicit liaisons, whether consensual or coerced, with their employers. For example, Michelle Gaudry claimed that she concealed her pregnancy from her mistress because the father of her stillborn baby was a "gentilhomme."[88] Because the father was possibly the husband of her mistress or another elite man from the household's broader social network, Gaudry did not consider either her mistress or the father of the baby to be potential allies.[89]

Women with the support of a male guardian had social and economic advantages that convicted infanticides lacked when they were accused of having murdered their infants. In addition to having the social support to seek compensation from the men who impregnated them, women who were backed up by their fathers also had a better chance of tackling suspicions that they had given birth in secret. In 1584, Marq de Savoie launched a civil suit at the *Hôtel de Ville* of Amiens against Jacqueline de Ruelle because

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[86] J-L. Flandrin, *Familles: parenté, maison, sexualité dans l'ancienne société.* (Paris: Hachette, 1976), 177-8; James Farr, *Hands of honor: artisans and their world in Dijon, 1550-1650;* Lyndal Roper, *The Holy Household: Women and Morals in Reformation Augsburg* (Oxford: Clarendon, 1991); Robert S. Duplessis, *Transitions to Capitalism in Early Modern Europe* (Cambridge: Cambridge University Press, 1997); Ulrike Strasser, *State of Virginity: Gender, Religion, and Politics in an Early Modern Catholic State*. (Ann Arbour: University of Michigan Press, 2004).

[87] Brissaud, "Infanticide"; Rublack, *The Crimes of Women in Early Modern Germany*, 164.

[88] AN X^{2A} 990, 12 January, 1627.

[89] In her examination of infanticide prosecution in seventeenth-century England, Laura Gowing concludes that mistresses were "ambivalent and equivocal figures" who "were as likely to threaten as to help pregnant servants." Gowing, "Secret Births," 104.

she had had accused his daughter of committing *homicide de son enfant* and living a *vie impudique.* The accusation proceeded so far that the *lieutenant criminel* had become involved, though it is not clear from the *écrou* if the matter had proceeded as far as a trial by the time that Savoie registered his civil suit in his daughter's defense. Even if he had not been instrumental in the dismissal of the charges that Jacqueline de Ruelle had brought against her, at the very least he helped to manage the social costs that accompanied such a serious accusation.[90] Women of modest means required the financial support and social credit of a father or husband to manage the damage that scandals threatened to their reputations.

Householders may have felt pressure to protect the moral reputation of their families in order to maintain their social credit. Fear of shame and loss of honour for members of households of higher status played a role in the enthusiastic denunciation of servants and other unmarried women suspected of hiding an illicit pregnancy. The precarious nature of honour compelled masters and mistresses to closer surveillance of the sexual habits of servants living and working in their households.[91] In the English context, neighbours often performed their own physical examinations of unwed women suspected of having committed infanticide even before midwives and physicians had had a chance to arrive on the scene. Though most of these accusations resulting from vigilante physical exams never proceeded to trial for lack of compelling evidence, Mark Jackson proposes that such hypervigilance was the result of powerful unease about

[90] ADS FF 772, 19 January, 1584. fol. 154.
[91] Soman, "The Anatomy of an Infanticide Trial," 248-9; Rublack, *Crimes of Women,* 181; R.W. Malcolmson, "Infanticide in the Eighteenth-Century," in J. S. Cockburn, *Crime in England, 1550-1800,* (Princeton: Princeton University Press, 1977), 202-3.

illegitimacy and unwed motherhood tied fundamentally to social and economic insecurity.[92]

Shifting principles of household patriarchy in the wake of economic contraction and religious reformation in the sixteenth century made socially superior men less willing to accept responsibility for the illegitimate children they fathered among women working in the household when the family had little to gain from protecting or providing financial compensation for the pregnant servant.[93] Jean-Louis Flandrin observed a shift in family compositions over the early modern period that distinguished household members from one another in more firmly demarcated social and economic boundaries. Whereas in the previous century, when bourgeois and well-off peasants who impregnated servants living in the household had once provided support for these women and their children in some way, by the middle of the sixteenth century and beyond this practice was in decline. Instead, fear of scandal and shame associated with Reformation morality, which could have serious economic consequences, prompted masters to turn their pregnant servants out onto the doorstep.[94] Thus, the application of the February edict by jurists encouraged

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[92]Mark Jackson, *New-Born Child Murder: Women, Illegitimacy and the Courts in Eighteenth-Century England.* (Manchester and New York: Manchester University Press, 1996), 3-4, 17, 30-37; and Gowing, "Secret Births," 89.

[93] Referring to the Genevan context, Sara Beam has recently suggested that elite families and judicial authorities, who counted themselves among the elite, chose to ignore the possibility that a parturient servant may have gotten rid of an unwanted neonate when the authorities understood that the servant could provide useful service as a wetnurse. There is a possibility that some servants in France performed the same service in exchange for the protection of the family, although there is no direct evidence in parlementary records since these women would likely have been protected from prosecution. See Sara Beam, "Turning a Blind Eye: Infanticide and Missing Babies in Seventeenth-Century Geneva," *Law and History Review* (2020): 1-22.

[94] Flandrin emphasizes the pressures of Reformation morality on families who chose to turn out rather than provide for unmarried women impregnated by men in the household. Flandrin, *Familles,* 177-8. Subsequent work by historians has demonstrated that the moral probity demanded by Reformation and Catholic Reformation-era religious ethics was intimately tied to the maintenance of social credit required for economic stability and advancement among householding families of the skilled, artisanal classes and lower bourgeoisie. See Farr, *Hands of Honor: Artisans and Their World in Dijon, 1550-1650;* Roper, *The Holy Household;* Duplessis, *Transitions to Capitalism*; Strasser, *State of Virginity.*

the sentencing of servant women and consequently might have inadvertently encouraged women who previously sought support for their children to instead hide the pregnancy and commit infanticide.

Royal justice conserved household honour by refusing to permit servants and other socially-marginal women to threaten the superficial illusion of household chastity that the husbands and wives who employed them required to maintain *bon ménage*.[95] Commenting on the limits that royal justice should place on the paternal responsibilities invoked by *déclarations* of pregnancy to local magistrates, the jurist Jean Papon recommended that the courts should reject accusations of paternity from domestic servants and concubines who implicated their masters.[96] Echoing Papon's recommendation, Claude le Brun de la Rochette urged that "pregnant domestic servants and concubines are crooked if they accuse the master" of impregnating them.[97] According to Fournel, magistrates were obligated to view such accusations with suspicion because too often servants named their masters, duping them into taking financial responsibility for "the pleasures of a groomsman or kitchen boy."[98]

Focusing on the illicit nature of the sexual act itself, prosecutors and judges did not consider whether these sexual liaisons within households were consensual. Though genuinely affectionate relationships between master and servant may have existed,[99]

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[95] Ulrike Strasser observed that while women's honour was stored in and measured by their chastity, male honour and social credit also shifted over the course of the Catholic Reformation in Munich from one which was sometimes bolstered by a profligate sexual reputation to one which could more easily be damaged by indecorous promiscuity. See Strasser, *State of Virginity*, 89-90.
[96] Jean Papon, *Recueil des arretz*, 22.
[97] "la servante domestique et la concubine enceintes sont creues si elles accusent le maistre." Claude le Brun de la Rochette, *Les Procès civil et criminel*. Vol. 1 (Lyon: Jacques Roussin, 1605), 19.
[98] "*les plaisirs d'un palefrenier ou d'un marmiton."* Jean François Fournel, *Traité de la séduction, considérée dans l'ordre judicaire* (Paris: Demonville, 1781), 133.
[99] Tim Meldrum describes "quasi-uxorious relationships" between servant women and unmarried employers in England in the late sixteenth and early seventeenth centuries. Meldrum also reports on the

many of these liaisons were probably coerced. For example, Marguerite Inglot, a servant living in the house of a solicitor in Rennes, was raped repeatedly by her master's son after he confiscated her bedroom door key.[100] Susan Broomhall's examination of notarial records in Paris points to the volume of women who sought financial support or marriage after becoming pregnant. She posits that, in addition to seeking reparations for pregnancies resulting from fraudulent proposals, many of the plaintiffs had been raped.[101] Among these, a significant number of women were domestic servants.[102]

This stance left women impregnated by violent or maritally unavailable men without legitimate options to proceed with motherhood. It rendered the process of declaration even more economically hazardous because in doing so they risked dismissal. The choice to conceal rather than seek financial support or marriage from the men who had impregnated them suggests that they did not believe this was an option. This decision simultaneously protected householders from risk, while subtly encouraging them to expel pregnant servants from their service. This confluence of competing priorities resulted in the high volume of secret pregnancies and secret births that led to the expansive number

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relative frequency with which servants and other subordinate women in households were drawn into illicit sexual relations with male superiors on the false promise of marriage or long-term domestic security. Affectionate relationships that resulted in the marriage of master and servant was the focus of some comedic literature in late seventeenth century France, though such tales, rather than report on reality, were meant to be received as pornographic stories or cheeky subversions of hierarchy among the salon-going classes. See Tim Meldrum, *Domestic Service and Gender, 1660-1750: Life and work in the London household* (New York: Routledge, 2014), 111; Allison P. Coudert, "From the Clitoris to the Breast: The Eclipse of the Female Libido in Early Modern Art, Literature, and Philosophy," in *Sexuality in the Middle Ages and Early Modern Times: New Approaches to a Fundamental Cultural-Historical and Literary-Anthropological Theme,* ed. Albrecht Classen (Berlin and New York: Walter de Gruyter, 2008), 857-8.

[100] Locklin, *Women's Work and Identity in Eighteenth-Century Britanny*, 137.

[101] Miranda Chaytor found that many infanticide cases in her survey of the crime in seventeenth-century England were connected to pregnancies that resulted from rape. Miranda Chaytor, "Husband(ry): Narratives of Rape in the Seventeenth Century," *Gender & History* (7,3 (November 1995): 378, 401 fn.3.

[102] Susan Broomhall, "Le prix d'amour: les négociations nées de relations sexuelles et de grossesses illégitimes à Paris au début du XVIe siècle," in Cathy McClive and Nicole Pellegrin, *Femmes en fleurs, femmes en corps: Sang, santé, sexualité, du Moyen Age aux Lumières* (Saint-Etienne: Publications de l'université de Saint-Estienne, 2010), 223-247.

of prosecutions for infanticide under the February edict. Householders hoping to protect their economic security and social credit helped to create conditions that left few tangible options for the most socially subordinate and economically insecure women living in their households and parishes.

Pro modo probationum

Not every appeal that came before the bench fulfilled the conditions of the edict so neatly. Although upwards of two-thirds of the single women who appealed death sentences for *homicide de son enfant* were executed, significant numbers of women escaped hanging because they managed to instill in the judges with sufficient doubt of their guilt to warrant lenience. In my sample, the parlement commuted the death sentences of 25 women to flogging and perpetual banishment, a lenient sentence reserved for prisoners that otherwise faced death.[103] Banishment from the *ressort* of the parlement prohibited people from returning to Paris or to their native *bailliage* (or both) and fell short of maximal exile which forced convicts entirely out of the kingdom of France (a relatively rare punishment usually reserved for men convicted of particularly heinous sexual crimes, political crime or terrible blasphemy). One convicted infanticide received this punishment for every four women the parlement executed. The February edict concentrated on secrecy – an absence of evidence – to prove guilt. The parlement mitigated another 43 death-sentence appeals in my sample to lesser forms of corporal punishment and banishment.

[103] Perpetual banishment was part of a punishment formula jurists described as *omnia citra mortem* (everything except death) to mitigate the death penalty when a crime satisfied the call for execution, but proof fell short. Jousse, *Traité de la justice criminelle,* vol 2, 528; Soman, "Anatomy of an Infanticide," 264.

Regulations imposed on midwives were meant to operate in tandem with the February edict because it was assumed that women would declare their pregnancy to a midwife. Nevertheless, the 1556 edict did not specify the form that such a declaration of pregnancy had to take, to whom it had to be made, or who had to witness the birth to constitute an authentic witness of the event. None of these conditions were clarified in statute, which allowed the parlement to interpret the legitimacy of other kinds of witnesses when they believed these witnesses had social merit. Motivated in part by developments in late Ancien Régime jurisprudence, this problem ultimately led eighteenth-century legists to argue that the edict had overstepped reasonable powers and had been applied too unevenly to resemble universal justice.[104] Long before this legislative climax, parlementary judges of the seventeenth century hesitated to execute women when these ill-defined conditions obscured certainty of premeditated murder.

Legislators intended the February edict to close a loophole which permitted women to plead they had delivered a stillborn child in order to see their murder charges dismissed. Prior to the legislation, women escaped punishment for killing their infants by claiming their babies had been born "without semblance of life" [*sans aucune apparence de vie*] or "had exited dead from her belly" [*étoient sortis morts de leur ventre*]. [105] Criminalizing concealment as evidence of intent to murder was meant to remove this device. Despite the intent of the edict, however, *parlementaires* remained open to accepting testimony from women who claimed that their babies had emerged from their bellies appearing to be dead, as long as they had a witness to confirm they had taken

[104] Phan, "Les déclarations de grossesse en France", 78.
[105] *Œuvres posthumes de maistre Louis D'Hericourt, avocat au parlement, contenant ses memoires sur des questions de droit criminel*, Vol 2 (Paris: Desaint et Saillant, 1759), 479-81.

measures to revive their newborns. Despite the clear wording of the edict that established guilt for premeditated murder on the basis of concealment, whether the baby had been born dead or alive, judges remained reluctant to execute women who advanced an argument that they had given birth to a stillborn or had attempted to revive the baby, even when they had failed to report the pregnancy to officials or through a registered midwife. Judges were more difficult to convince when the circumstances looked too suspicious, such as Jeanne Biblaux, whom the parlement executed after "she threw her [dead] baby in a privy (an unwelcome place)."[106] Similarly, the parlement executed Henriette Tuboef because the infant's body, which had been stabbed twice with a knife, had been recovered from a makeshift grave in the woods.[107] Guided by the principle of *pro modo probationum*, the parlement practiced restraint when women offered this formula in their depositions, especially when they had the support of a corroborating witness.

Women who were suspicious that a neighbour had given birth in secret or killed her baby were often the source of infanticide accusations.[108] Women also played a vital and cooperative role in convincing judges to mitigate their sentences.[109] In 1583, Marguerite Sauvé, a *fille à marier* and her mother, Jehanne Drouet, were arraigned together for conspiring to murder Marguerite's illegitimate child. Like most infanticide cases involving an accomplice, both parties were women, even though Jehanne Drouet had a husband living. The Parlement was ultimately left unconvinced that Marguerite and

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[106] "quelle jeta son enfant dans un mal endroit." AN X^{2A} 979, 9 May, 1617.
[107] AN X^{2A} 995, 1 April, 1632.
[108] For example, the initial accusation that ultimately led to Marguerite Chevalier's trial and execution originated from "harangues des femmes" in the neighbourhood. AN $X2^{A}$ 955, 27 February, 1587.
[109] For Frankfurt, Maria Boes notes that female family members often took an active role in refuting the suspicions of neighours that a sister or daughter had given birth in secret and disposed of the baby. See Maria Boes, *Crime and Punishment in Early Modern Germany: Courts and Adjudicatory Practices in Frankfurt am Main, 1562-1692.* (Aldershot: Ashgate, 2013), 158-9.

her mother had intentionally killed the baby. Jehanne deposed that her daughter was "*mallade*," insinuating an illness related to the stillbirth of her baby. Marguerite and Jehanne testified that when the baby seemed like it was dead, Marguerite measured out a portion of wine to feed her son in an attempt to revive him.[110] Ultimately, they were unable to revive the child. The parlement sentenced Marguerite to be flogged and fined 24 *livres Parisis*; her mother was sentenced to attend the punishment as retribution for having conspired to conceal the birth. A note in the summary of the arrêt referred to Marguerite's sickness during her imprisonment at the Conciergerie, adding further credibility to the story.[111]

On rare occasions, mistresses provided supportive testimony that helped their servants to receive favourable appeal outcomes.[112] In an effort to avoid scandal as well as the loss of a good worker, mistresses often figured as the primary conspirator in the process of concealment and disposal of stillborn or living infants born to their servants.[113] As a result, mistresses had to tread carefully when they provided testimony in their servants' infanticide trials. Denise Piradeau, a twenty-two year-old servant living in La Motte la Mer near Blois, gave birth to a dead son the day after Christmas in 1624.[114] Piradeau told the parlement that she had taken to her room the night before, believing that she was sick.[115] Her mistress, Damoiselle Aubry, testified that "she did not discern that the baby was alive," that the baby "was born dead" and that Piradeau "had done nothing

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[110] "quelle son enfan a este semble mort…quand elle a verse a son fils mesure du vin ensuivante boit à sondit enfant vivant." AN X^{2A} 951, July 23, 1583.
[111] AP A^{B} 8, June 1583, fol. 46.
[112] More often, such as was the case with Michelle Gaudry, servants tried to hide their pregnancies from their mistresses. AN X^{2A} 988, 31, January 1625.
[113] Gowing, "Secret Births," 104.
[114] "le lendemain de Noel." AN X^{2A} 988 31, January 1625; AP A^{B} 27, 16 January, 1625, fol. 22.
[115] "elle fust dit a la maistresse quelle estoit malade et ayant voulu en sa chambre." AN X^{2A} 988, 31 January, 1625.

bad."[116] Damoiselle Aubry's decision to corroborate Piradeau's story may have impacted the parlement's decision to commute her execution. Piradeau was flogged through the main crossroads of the streets of Paris (other convicted defendants were often returned to their own bailiwick) wearing the noose symbolically around their necks. She was subsequently exiled beyond the boundaries of the Parlement, and fined eight *livres parisis* for the care of the prisoners of the Conciergerie.[117] Supportive depositions and testaments of good character from masters and mistresses provided servants with powerful tools of persuasion before early modern courts. Where servants lacked social credit, their masters sometimes could lend theirs successfully.[118] In the evaluation of evidence the parlement also valued honour. Corroborating witnesses such as Jehanne Drouet were married women. Judging from the title, "Damoiselle" ascribed to her in the *plumitif*, D'Aubry was a high-status wife. The status of supportive deponents helped them to claim authority over the feminine spaces of the household and the moral power of honest women.[119] These capacities legitimated them as credible witnesses and provided a well of credit upon which the discredited women under their authority could draw.

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[116] "Quelle na point discerne que l'enfant n'estoit vivant…il est venu mort…elle n'a fait aulcun mal." AN X^{2A} 988, 31 January, 1625.
[117] AP A^{B} 27, 16 January, 1625, fol. 22.
[118] Andrea McKenzie, "His Barbarous Usages, Her Evil Tongue: Character and Class in Trials for Spouse Murder at the Old Bailey, 1674-1790," *American Journal of Legal History* 57, 3 (September 2017): 354-384; Ilana Krausman Ben-Amos, *The Culture of Giving: Informal Support and Gift-Exchange in Early Modern England* (Cambridge: University of Cambridge Press, 2008), 60-61. On paternalism in master/servant relationships in France, see Cissie Fairchilds, "Masters and Servants in Eighteenth Century Toulouse," *Journal of Social History* 12, 3 (Spring 1979): 368-393.
[119] Gowing, "Common Bodies,"; Hardwick, *The Practice of Patriarchy*, 77-108; Roland Mousnier, *The Institutions of France Under the Absolute Monarchy, 1598-1789: Society and State*, trans. Arthur Goldhammer (Chicago : University of Chicago Press, 1979), 84-91; Lyndal Roper, *The Holy Household: Women and Morals in Reformation Augsburg* (Oxford: OUP, 1989); Mary Elizabeth Perry, *Gender and Disorder in Early Modern Seville* (Princeton: Princeton University Press, 1990), 53-74; Garthine Walker, "Expanding the boundaries of Female Honour in Early Modern England," *Transactions of the Royal Society* 6 (1996): 235-45.

For women who never told anyone else about their pregnancy, either because they intentionally kept it a secret,[120] or because they had passed through their pregnancy in a state of denial, they must have aproached labour in a state of panic and terror.[121] Others may have been genuinely unaware they were pregnant. Denise Piradeau, Marguerite Sauvé, and Marguerite Chivier claimed that they had not willingly concealed their pregnancies, because they mistook the symptoms of pregnancy and even childbirth as sickness rather than parturiency. Unmarried women who had no other children could sometimes represent themselves as ignorant to support a claim that they had been unaware of their pregnancy. Joel Harrington argues that women who had not experienced puberty and adolescence around a mother or close female relative with knowledge of contraception and reproduction, such as young women whose mothers had died when they were very young or who had been put into service as juveniles, may not have received very basic education not only on how to prevent a pregnancy, but even how to detect one. It is also possible, he argues, that young servants facing the life-altering reality of an unwanted pregnancy deceived themselves into not recognizing the signs of pregnancy.[122]

Women may have mistaken pregnancy for other obstetric conditions that caused amenorrhea and the formation of growths or swelling.[123] Laurence Brockliss and Colin

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[120] For the German context, for example, Maria Boes, Regina Schulte, Ulinka Rublack suggest that some servants calculated the risks of criminal indictment against the disastrous economic consequences of discovery. See Boes, *Crime and Punishment in Early Modern Germany,* 158-9; Schulte, "Kindersmörderinnen auf dem Lande," 113-147; Rublack, *Crimes of Women*, 189-90.
[121] Brannan Lewis, *Infanticide and Abortion in Early Modern Germany,* 169; Charlotte Pichot, "Le refus des naissances illégitimes dans le Centre et le Poitou," in *Bâtards et bâtardises dans l'Europe médiévale et moderne* ed. Carole Avignon (Rennes: Presses Universitaires de Rennes, 2016), 193-206; Van der Heijden, *Women and Crime in Early Modern Holland*, 60-61.
[122] Harrington, *Unwanted Child*, 35-6.
[123] Rublack, *Crimes of Women in Early Modern Germany,* 174-179.

Jones suggest that early modern people were likely far more tolerant of medical ailments that caused significant disruptions to bodily systems.[124] Müller suggests that it took only one generation of interrupted knowledge inheritance to lose the skills and know-how to prevent unwanted pregnancy. Signs of pregnancy were sometimes ambiguous and disputed. In her analysis of concealment and infanticide trials in seventeenth-century England, Laura Gowing proposes that pregnant women "marshalled a variety of explanations for their swelling bellies and breasts, for moments of pain and sickness." These explanations for their changing bodies did not necessarily indicate subterfuge on the parts of women aiming to hide their condition. Both "within and outside the female world of gynaecological experience and knowledge, pregnancy was very often a disputed condition whose signs could be guessed, contradicted, watched or ignored, and which made the bodies of certain women open to various kinds of public scrutiny and inspection."[125] On the other hand, Cathy McClive has suggested that class and status impacted the ways in which women interpreted irregular menstruation. A married woman of high rank was likely to interpret amenorrhea as a possible sign of pregnancy and seek professional attention straight away. Women who were unmarried or poor probably observed their bodies less carefully in hopes that menstruation would return before coming to the difficult decision to declare their pregnancy to local officials, to figure out how to absorb the costs of *accouchement,* or to make the decision the hide the pregnancy.[126] Popular conceptions of the secrets women's pregnant bodies possessed,

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[124] Laurence Brockliss and Colin Jones, *The Medical World of Early Modern France*. Oxford: Clarendon Press, 1997.
[125] Gowing, "Secret Births," 90.
[126] Cathy McClive, *Menstruation and Procreation in Early Modern France* (New York and London: Routledge, 2010), 164.

along with the corroboration of a mother, may have helped to convince magistrates that women had proceeded through an entire pregnancy and even entered into labour without being entirely aware of the realities of their condition.[127]

Women did not always require a sympathetic witness to escape execution. The mother's treatment of the baby *in extremis*, even the treatment of the corpse post-mortem sometimes persuaded judges to respond with clemency. For example, the parlement reduced Claude Voutolin's death sentence to whipping after she convinced the court that she "had had a living child that she baptized" *in extremis* before he passed away.[128] Jehanne Bournon appeared at the parlement in 1583 for leaving her newborn daughter to die in a cemetery. Bournon claimed the baby had been stillborn and that she left her in the cemetery to inter her. The parlement commuted Bournon's death sentence to flogging and five years' banishment.[129] Judges were willing to consider circumstantial proof that women had taken measures toward the spiritual care of their infants born dead or *in extremis*.

The desire to be a mother could also sometimes convince judges to respond with leniency. Marie Voisin, a twenty-eight-year-old widow, faced the death penalty for infanticide with a man known as Bouton. They were both sentenced to corporal punishment for their adultery, the relationship having been consummated prior to the end of her *deuil*. Voisin had argued that her husband, who had been dead for approximately

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[127] P. Renée Baernstein and John Christopoulos, "Interpreting the Body in Early Modern Italy: Pregnancy, Abortion and Adulthood," *Past and Present* 223, 1 (May 2014): 41-75; Susan Broomhall, "Women's Little Secrets': Defining the Boundaries of Reproductive Knowledge in Sixteenth-Century France," *Social History of Medicine*, 15, 1 (2002): 1-15; Cathy McClive, "The Hidden Truths of the Belly: The Uncertainties of Pregnancy in Early Modern Europe," *Social History of Medicine*, 15, 2 (2002): 209-27; McTavish, *Childbirth.*

[128] "Quelle avoit eu un enfant vif quelle baptisa." AN X^{2A} 995, 22 June, 1632.

[129] "Fille a exposé son enfant… son enfant estoit mort, quelle l'a fait enterree."AN X^{2A} 951, 22 May, 1583.

four months, was the father of the child, that the child had 'fallen from her belly' [*tomba de son ventre*] with a knot around his throat. Marie argued that she had already given birth to five other children during her marriage. Each had died and she had desired her late husband's child.[130] Marie's successful plea resembled a pattern of acquittals that the parlementary lawyer Louis D'Hericourt observed of the early eighteenth-century application of *pro modo probationum.* Among these acquittals, women argued that pregnancies they alleged had resulted in stillbirth were not clandestine, but were known to the father of the baby who had abandoned the mother and child in a false promise of marriage, his bigamous fraud, or in the case of widowhood, because he had died before the child was born.[131] Women could sometimes compel the parlement to consider their innocence when they could prove that they wanted the baby or had taken post-partem precautions for its spiritual welfare.

The role of midwives

Midwives played an ambivalent role in women's trials.[132] Their expertise could exonerate women or help to condemn them.[133] Medical testimony had the power to trump other forms of physical evidence and to provide the judges with the certainty they required to proceed with the death penalty. The parlement executed Joanne Colas, a *fille* convicted of *homicide de son enfant* by the seigneurial court of the Comte de Soissons

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[130] AN X2[A] 985, May 31, 1622.
[131] *Œuvres posthumes de maistre Louis D'Hericourt, avocat au parlement, contenant ses memoires sur des questions de droit civil*. Vol 2 (Paris: Desaint et Saillant, 1759), 479.
[132] On the ambiguity of midwives in the broader European context see Broomhall, *Women's Medical Work,* 35-8. Hacke, *Women, Sex, and Marriage*, 157-8
[133]Susan Broomhall, *Women's Medical Work in Early Modern France,* 36-7; Soman, "The Anatomy of an infanticide trial," 254-262; Mary Nagle Wessling, *Medicine and Government in Early Modern Wurttemberg* (Ann Arbor: Univserity of Michigan Press, 1988), 162; Daniela Hacke, *Women, Sex and Marriage in Early Modern Venice* (Aldershot: Ashgate, 2004), 158-9.

(held at Chinon), on the strength of medical testimony and possibly in absence of a corpse because the judgement made no mention of one. The seigneurial court had originally sentenced Colas to flogging and banishment.[134] Testimony brought against her declared that "she was corrupted,"[135] the result of a medical exam. The testimony went on further to assert that "she had given birth to a child a year and three months ago."[136] More recently, she had had another child on October 7 after having hidden her pregnancy and without declaring her *accouchement*. Convinced that she had killed the child, the deponent alleged that "she [Joanne] had every means to know" that she was pregnant. This implies that she may have argued that she had given birth to a child and had no idea she was pregnant (a common enough claim). The midwife who testified on behalf of Nicole Rimbert cast her declarations of innocence into doubt. Rimbert, a mother of three other children who had all been baptised, argued that she had made no effort to conceal her last pregnancy in 1616 and had told multiple people about it, including Marie Gaudin, a midwife who had helped to deliver ten other infants. Gaudin claimed that she came upon the child after it had been born dead and "found it with a cord around the neck," which provided the parlement proof of strangulation.[137] Unlike successful appellants, Gaudin did not offer the court her opinion that Rimbert had "done nothing wrong." The parlement upheld Nicole's verdict of guilt and executed her under suspicion that she had strangled the baby.[138]

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[134] "Ladite Colas renvoyée pour estre pendue et estranglée…sera supplicé en la place publique dudit Chasteau Chinon." AP A^B 27, 22 December, 1624, fol. 13; AN X^{2A} 988, 10 January 1625.
[135] quelle est corrompue…' AN X^{2A} 988, 10 January,1625. Whether this indicated the loss of her virginity, recent childbirth, or the presence of a sexually transmitted disease is unclear.
[136] "il y a un an et 3 mois quelle est accouchee d'enfant." AN X^{2A} 988, 10 January, 1625.
[137] "elle n'a point de celer sa grossesse…qu'il n'estoit vivant…qu'il avoit une corde a trouvé le col."
[138] AN X^{2A} 951, 979, 30 December, 1616.

Although midwives swore to treat all women, rich and poor, oaths in Paris and Tours also empowered them to refuse care to any woman concealing the paternity of her fetus so that local authorities could pursue the father for support.[139] These final provisions put unwed mothers in a double bind. Any woman attempting to protect her reputation or employment by avoiding a registered midwife in favour of another family member or unregistered midwife, whose practice was now illegal, exposed herself to potential criminal charges for infanticide if the baby was stillborn, miscarried, or died shortly after birth. If she did consult a registered midwife, she risked public exposure from the *prévôté,* which was charged with pursuing fathers for support, so long as he was not her employer.[140] Magistrates eventually began to relent on these latter requirements. Following an *arrêt* of March 1637, the parlement of Rennes permitted women to make formal declaration of pregnancy to a midwife without naming the father of the fetus.[141]

Midwives were also seen as potential collaborators.[142] Around the time that the February edict mandated the compulsory declaration of pregnancy and childbirth, legislators began to tighten surveillance of midwifery by policing its practitioners more closely.[143] Beginning around 1550, statutes emanating from the provost of Paris and

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[139] Broomhall, *Women's Medical Work*, 34-7; James Farr, *The Work of France: Labor and Culture in Early Modern Times, 1350-1800* (Lanham, Maryland: Rowman and Litlefield, 2008), 176; and Wickersheimer, *La Médicine*, 148-157.

[140] Wickersheimer, *La Médicine*, 152. This legislation governing *declarations de grossesse* also effectively presumed a role for lay courts to pursue marital fraud as a criminal act. This shift may help to account for the increasing use of lay courts to pursue breach of promise and abandonment. See the previous chapter

[141] Du Fail, *Mémoires de plus notables et solemnels arrêts du Parlement de Bretagne*, 1185; and Phan, " Les déclarations de grossesse en France, " 171-2.

[142] Broomhall, *Women's Medical Work*, 36-7; Brannan Lewis, *Infanticide and Abortion in Early Modern Germany*, 25, 117-19.

[143] Graves, *Born to Procreat*e; Broomhall, *Women's Medical Work*, 36-7; Laurence Brockliss and Colin Jones, *The Medical World of Early Modern France* (Oxford: Oxford University Press, 1997), 263-5; Mary Lindeman, *Medicine and Society in Early Modern Europe*, 2nd ed. (Cambridge: Cambridge University Press, 2010), 125-7*;* Richard L. Petrelli, "The regulation of French midwifery during the Ancien Régime," *Journal of the History of Medicine* (1971): 282. The Republic of Venice passed similar legislation in 1560 requiring midwives to keep track of and report every birth to the local sacristan within one day of the

eventually the crown required that midwives performing medical exams in order to testify in a court on matters of virginity, fertility, or infant health had to be attended by physician or master surgeon, though the parlement continued to receive testimony from unaccompanied midwives well into the seventeenth century.[144] In 1560, the *prévôté* of Paris, in cooperation with the corporation of midwives, instituted new regulations that required registered midwives to receive a certificate of morality and undergo an oral examination by a panel composed of a doctor, two experienced midwives, and two master surgeons. Collectively, these measures aimed not only to standardize and professionalize the occupation but, most notably, bound midwives to help search out possible infanticides. The midwife's oath bound her to reveal the identity of anyone practicing midwifery illegally, signified that she understood she would receive the death penalty for procuring abortions, authorized her to perform baptisms on infants born *in extremis*, and required her to report illegitimate pregnancies to the *lieutenant criminel*.[145] All Parisian midwives were compelled to register on the *role des sages-femmes*, which the Châtelet maintained.[146] The *prévôté* issued ordinances in 1587, 1595, and again in 1600 compelling midwives to register with the Châtelet, suggesting that women still

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labour. Failure to do so resulted in severe punishment. In her examination of parochial morality in early modern Venice, Daniela Hacke attributes this interest in the surveillance among officials to Tridentine era religious reformation which sought to regulate and standardize baptismal practices and obtain better control of children born out of wedlock. See Daniela Hacke, *Women, Sex and Marriage in Early Modern Venice* (New York: Routledge, 2017), ch 8.

[144] Ernest Wickersheimer, *La Médecine et les médecins à l'époque de la Renaissance* (Geneva: Slatkine, 1970), 196.

[145] Lianne McTavish, *Childbirth and the Display of Authority in Early Modern France* (Aldershot: Ashgate, 2005), 84-5; Jacques Gélis, *La Sage-femme ou La Médicin.* (Paris: Fayard, 1988), 40-55; Graves, *Born to Procreate,* 65-66, 73-75. Consistent with earlier and rural models of good midwifery, *sage-femmes* and *matrones* were judged by their moral qualities. Midwives promised to police one another and to signal amongst each other "those who followed a bad lifestyle, receive, train, or engage bad company." See *Statuts er reiglemens ordonnez pour toutes les Matrones ou Saiges femmes de la ville* (1587); Wickersheimer, *La Médicine*, 151; Susan Broomhall, *Women's Medical Work in Early Modern France* (Manchester: Manchester University Press, 2004), 31.

[146] Wickersheimer, *La Médicine*, 152.

practiced obstetrics in secret and that there was a healthy clientele who remained interested in their clandestine services. Finally in 1600, the Châtelet published the role of midwives in order to encourage stricter policing of these guidelines. Together, these regulations were meant to make it more difficult for midwives to operate in secret, to perform abortions, or to help women abandon or kill children they could not keep.

The sheer volume of young women who appeared alone before the parlement for infanticide and the general paucity of midwives arraigned as the conspirators of infanticidal mother suggests that many unmarried women were successfully discouraged from seeking help and perhaps that some midwives continued to work in secret with some success.[147] Julie Hardwick has found that most 'declarations' were initiated by women who were interested in using the civil courts to pursue men for financial support rather than at the behest of vigilant midwives policing the neighbourhood.[148] In my sample *écrous*, the parlement received only one appeal from a midwife accused of helping to dispose of a baby. Estiennette Roger a *'*so-called midwife' [*'pretendue sage-femme'*] was convicted of exposing a child she had delivered in Le Temple. The parlement maintained her conviction but commuted her death sentence to flogging and "forever prohibited [her] from practicing as a midwife."[149]

Most midwives evaded detection and were only caught in exceptional circumstances. For example, the parlement executed the Parisian midwife Marie Le Roux in 1660 for the double murder of married woman Mademoiselle de Guerchy and her fetus

[147] Gowing, "Secret Births."
[148] Hardwick, "Policing Paternity," 650.
[149] AP A^B 25, 28 April, 1621, fol. 77v. Samuel S. Thomas, "Early Modern Midwifery: Splitting the profession, connecting the history," *Journal of Social History,* 43, 1 (Fall 2009): 115-138.

following Le Roux's botched administration of herbal abortifacients.[150] In 1668, the city of Dijon fined the widow Dalos, who was also a legitimate midwife, five *livres* for failing to declare the pregnancy of one such client to the *mairie.* Dalos appealed the decision to the Burgundian parlement, which found the verdict in her favour. Fascinatingly, the final judgement explained that the legal "indiscretion" of the midwife was necessary in order to encourage girls to seek the care of midwives when it was time for them to deliver for the conservation of their honour.[151] Procuress of abortions and first line of defense against illegitimacy: such was the ambivalent role of midwives in the repression of infanticide.

Motherhood and married status as a defense

Mademoiselle de Guerchy mentioned above is one of a small cohort of married women who we know sought abortion or resorted to infanticide to relieve themselves of an unwanted child. In her case, of course, we learn about her because her attempt to terminate her pregnancy ended tragically for her. While the February edict did not exclude married women from the obligation to declare their pregnancies and give birth in front of a witness, married women rarely appeared at the Tournelle to appeal a conviction for infanticide. Only 32 of the 269 women who appealed their convictions for *homicide*

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[150] Leigh Whaley, *Women and the Practice of Medical Care in Early Modern Europe, 1400-1800* (Basingstoke and New York: Palgrave-MacMillan, 2011), 92-3. Julie Hardwick describes an instance in which the father of an illicit fetus procured an abortifacient from a surgeon in Lyon. Hardwick suggests that such "practices counter our usual narratives that managing early-modern fertility was a female matter, perhaps brokered by wives." See Hardwick, "Policing Paternity," 650.

[151] "le magistrat ne pouvoit obliger les matrônes d'aller lui déclarer les filles qu'elles avoient accouchées. ...La raison de cette décision, suivant l'arrêtiste, est que l'indiscrétion d'une femme dont le secours est nécessaire, pourroit porter les filles à se délivrer elle-mêmes, afin de conserver leur honneur." Joseph Nicolas Guyot, *Répertoire universel et raisonné de jurisprudence civile, criminelle, canonique et bénéficiale. Ouvrage de plusieurs jurisconsultes.* Vol. 28 (Paris: Panckoucke and Dupuis, 1779), 422.

de son enfant at the parlement were married. Whereas the execution rate of the far more numerous cohorts of unmarried women was, at times, as high as 65 percent, the parlement only executed 14 married women – fewer than half of the appellants it received. Whether this is because the authorities did not detect them or chose not to prosecute them is not clear. We do know that married women whose infants died sometimes aroused suspicion, but the authorities did not always treat these suspicions with the same degree of scrutiny as they did when a single woman gave birth. For example, Marguerite Grosler complained to the bailiff at the *bailliage de St-Lazare* that she had witnessed Nicole Martin "carrying a dead infant" (*elle avoit a porte ung enfant mort*) through the Faubourg with Marie Caille, whom the *écrou* identified as Martin's wet nurse. Though Grosler believed the incident to be suspicious, the matter never proceeded beyond the *bailliage*.[152] It is hard to believe that authorities would have dismissed a similar episode had Martin been an unmarried servant or that she would have had the courage to walk brazenly alongside the wet nurse who carried her dead baby in her arms.

The married women who appeared before the parlement for *homicide de son enfant* were generally the focus of allegations of infidelity. The secrecy with which these women approached their childbed, and the stillbirths or neonatal deaths that followed, confirmed for husbands and neighbours these suspicions. The trial of Catherine Bonniot and her lover, Michel Masson, helps to demonstrate the extraordinary circumstances that brought married women to the parlement as accused infanticides.[153] Bonniot, the wife of Jehan Morin, appeared before the parlement in the spring of 1600 following her conviction at Surgères for conspiring with her presumed lover Masson to kill their

[152] Registres d'écrous de la justice du bailliage de St-Lazare, AN Z^2 3696, 26 February, 1635.
[153] AP A^B 14 April 1600, fol. 137v; AN X^{2A} 962, 4 May, 1600.

illegitimate infant. Importantly, the accusation of neonatal murder had come from Bonniot's husband.[154] Under torture, Bonniot confessed to carrying her lover's child, to telling no one but Masson of her pregnancy and eventually going into labour "toute seule."[155] Asked whether Bonniot "had given birth to a dead infant" Masson confessed that "she had a child who was his offspring," that he "took a hammer" and "gave the baby a hard smack" with it.[156] Later on, Bonniot's husband "found it in the marsh."[157] From launching the denunciation to retrieving the mutilated body of the baby, he was an instrumental component for the conviction of Bonniot and her lover. The parlement condemned Bonniot to hang. Even though the father Masson confessed to dealing the fatal blow, the parlement sentenced him to nine years galley slavery.

Most wives and widows convicted of infanticide were also suspected of adultery. Though adultery was often suggested as a motive to kill a baby, in cases such as that of Marie Voisin, who was suspected of killing her lover's baby a few short months after her husband's death, these women were rarely convicted of adultery as well as infanticide.[158] This observation alone is interesting since early modern courts did not typically shy away from piling up indictments on especially notorious or wicked criminals. Did *procureurs* not typically see the need to seek a conviction for infanticide *and* adultery, since the former returned so many capital convictions? This calculus may be supported by an execution rate of seven of every ten convicted and unmarried infanticides but does not account for married or recently widowed women, among whom fewer than two of every

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[154] Regarding the arraignment of Michel Masson, the *arrêt* records that he stood accused "pres la requete du mari qu'il a faict à un enfan." AN X^{2A} 962, 4 May, 1600.
[155] "quelle le dict à Masson…quelle n'a revelé sa grossesse à personne " AN X^{2A} 962, 4 May, 1600.
[156] "si elle avoit accouché d'un enfant…quelle a ung enfant qui est son fruict…il print un marteau…et donna ung coup lourd." AN X^{2A} 962, 4 May, 1600.
[157] "son mari Morin le trouva au marais. "AN X^{2A} 962, 4 May, 1600.
[158] See the next two chapters for a close examination of adultery prosecution at the parlement.

ten were put to death. Why would prosecutors not have been more interested in seeking ancillary convictions of adultery? Surely this would have added grist to the mill and returned a greater number of convictions and executions? One reason, which will be explored further in the next chapter, may point to the social price that husbands paid when their wives were publicly denounced as adulteresses. The edict of 1556 reduced the burden of proof to convict, needing only evidence of concealment (easily obtained by finding no record of declaration with a registered midwife or bailiff) and a corpse to justify indictment. Adultery required more evidence, such as the testimony of multiple witnesses or the finding of the wife and her lover *in flagrante delicto*. If adultery could not be successfully proven, it may have jeopardized the success of the infanticide indictment to return a guilty verdict.

The relatively low number of married women convicted in France under the terms of the February edict for infanticide suggests that French authorities practiced tolerance, or at least a willful blindness to the practice among married couples. Sarah Blaffer Hrdy suggests that infanticide is commonly practiced in communities without access to reliable birth control, such as the societies of Western Europe in the sixteenth and seventeenth centuries.[159] It is reasonable to suspect that married parents, at least occasionally, practiced infanticide as means of birth control.[160] Claude Gauvard hypothesizes that late medieval royal justice practiced lenience toward married women suspected of

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[159] Sarah Blaffer Hrdy, *Mother Nature: A History of Mothers, Infants and Natural Selection* (New York: Pantheon, 1999), 315.

[160] Barbara Hanawalt, Richard Helmholtz and Keith Wrightson have suggested that both premarital infanticide and infanticide by married couples to control family size was uncommon in Western Europe until the economic contractions beginning in the late fifteenth century began to exert pressure on the prosperity of economic labour and caused financial strain that made single motherhood more precarious. See Barbara Hanawalt, *Crime and Conflict in English Communities,1300-1348* (Cambridge: Harvard University Press, 1979), 154-6; and Richard H. Helmholz, "Infanticide in the Province of Canterbury during the Fifteenth Century," *History of Childhood Quarterly* 2, 3 (Winter 1975), 384.

infanticide.[161] In jurisdictions outside of France, such as in Italy, both neighbours and judicial authorities regarded the neonaticide of surplus children by married couples with relative tolerance.[162] It was an infant's illegitimacy that made its death suspicious.[163] It is probable that French authorities had little appetite to apply the rigour of the February edict to couples who practiced infanticide as a means of controlling family size. The motivations for this practice among married couples may have been regarded as quite different from the motivations the authors of the February edict imagined for concealment by unmarried women – namely the obliteration of the fruits of illicit fornication.

Pregnancy and childbirth among married women, by its very nature, did not require the secrecy that taboos against single motherhood demanded of unmarried women; married women also had access to a deeper well of collaborators than did unmarried women, especially servants.[164] Women like Madame de Guerchy had access to a midwife who was willing to help her terminate an unwanted pregnancy. Nicole Martin had the help of a wet nurse and the social credit to withstand the suspicions of a neighbour. Willing midwives helped some married women to terminate a pregnancy, hasten the death of a newborn, or to abandon it for someone else to find if it was unwanted.[165]

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[161] Gauvard, *De Grace especial.*
[162] Trexler, "Infanticide in Florence," 100-116; Hanlon, "L'infanticidio dei coppie sposati nella Toscana rurale," 452-498 (English translation of this essay was kindly supplied by Dr. Hanlon); Kertzer, *Sacrificed for Honor,* 23-83. In the case of Hanlon's work in particular, he shows that couples timed infanticide of surplus babies in order to specifically advantage recently born male children in times of dearth, demonstrating that infanticide was an important feature of family planning (Hanlon, "L'infanticido di coppie sposate," 476-7.
[163] Brannan Lewis, *Infanticide and Abortion,* 7.
[164] Gowing, "Secret Births and Infanticide," 87.
[165] In southern Germany, midwives also helped married women to terminate pregnancies and aid in the neonaticide of unwanted newborns, much to the chagrin of local authorities. See Brannan Lewis,

In addition to infanticide, married women, with the benefit of ample social and financial resources, had multiple abandonment strategies available to them to dispose of babies they could not keep. In June of 1570, Jehenne Houllon, the wife of Jehan Guillebert, a sergeant in Amiens, brought a civil suit against her neighbour, Thoinette Cocquelet, for spreading rumours that she "had had a baby before marrying and she [Thoinette] knew well where he was being fed [by a *nourrice*]."[166] The single and married women who could afford the initial cost could send their children to wet nurse either with the intention of eventually reclaiming them if the child survived or of abandoning them. Though this option cost women money, this solution removed children that they could not care for out of the home. The practice allowed women a better chance to retain their honour if the matter remained a secret and provided the future opportunity to enter into a more favourable marriage than keeping the child would have afforded. [167]

Exposure and abandonment provided women with another alternative to ridding themselves of an unwanted child that the authorities did not punish with the same regularity or severity as neonaticide.[168] Parlementaires measured the outcome of clandestine pregnancies and punished premature death according to what they concluded

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Infanticide and Abortion in Early Modern Germany, 23, 61, 77, 116-7. See also Sarah Hanley, "Engendering the State: Family Formation and State Building in Early Modern France," *French Historical Studies* 16 (1989): 4-27. Leigh Whaley, *Women and the Practice of Medical Care in Early Modern Europe, 1400-1800* (New York: Palgrave, 2011), 92-3. Midwives were often associated with abandonment and the smuggling of newborn infants in the premodern world. See Boswell, *The Kindness of Strangers*, 110-111, 460. Broomhall, *Women's Medical Work*, 35.

[166] ADS FF 737, 12 June, 1570, fol. 39. "qu'elle prouveroyt fort bien que ladicte Houllen avoyt eu ung enfant auparavant estre mariée et qu'elle scait bien le lieu ou il a esté nourry. "

[167] John Boswell, *The Kindness of Strangers: The Abandonment of Children in Western Europe from Late Antiquity to the Renaissance* (Chicago: University of Chicago Press, 1988), 420-422; and Lloyd Demause, "The evolution of childhood," in *Child Welfare: Historical Perspectives*, ed. Nick Frost (Abingdon: Routledge, 2005), 52-55.

[168] James Farr contends jurists treated accidental death by abandonment as infanticide at the Parlement of Dijon. The practice at the Parlement of Paris was quite distinct from Farr's observations in Burgundy. James Farr, *Authority and Sexuality in Early Modern Burgundy (1550-1730)* (Oxford: Oxford University Press, 1995), 126.

was the mother's intent.[169] In my sample, only nineteen women appeared before the parlement for causing the death of a newborn child by abandonment or exposure.

By the beginning of the seventeenth century, exposure appeared even less frequently before the parlement and only when the child had died. Estienette Bertot, a widow from Losges was flogged *nud* (in nothing but her chemise) in the streets of Paris for exposing her newborn baby.[170] However, while the ritual of public flogging in the nude provided an opportunity to publicly shame Estienette for abandoning her baby, the choice of parlementaires to order this punishment take place in Paris rather than in her own community before neighbours implies a certain leniency. Marguerite Fauchée from Châlons, also a widow, received the carcan,[171] and *amende honorable* in 1634 for the death of her child from exposure.[172] It is important to note that she was convicted of *avoir exposé son enfant* rather than *homicide de son enfant*, suggesting that prosecutors and jurists interpreted death from exposure as an unpremeditated form of manslaughter that was less severe a crime than infanticide.

Magistrates found child abandonment was more tolerable than child murder because the act did not expressly involve the pre-meditated death of the infant.[173] When local bailliages did return convictions with severe penalties, the parlement tended not to

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[169] Richard Trexler found that Italian parents, to assuage guilt, commonly left small tokens with abandoned infants in order to provide the infant with some small belonging or to provide the means to identify the child in a usually fictitious plan to reclaim the child in the future. See Trexler, "The Foundlings of Florence, 1395-1455," in *Dependence in Context in Renaissance Florence* (Binghamton, N.Y.: Medieval and Renaissance Texts and Studies, 1994), 250.
[170] AP A^B 10, February 1587, fol. 18v.
[171] The carcan was a form of public punishment where a prisoner was fastened by an iron collar to a structure resembling a pillory for a period. See Rebecca E. Kingston, "Criminal Justice in Eighteenth-Century Bordeau, 1715-24," in *Crime, Punishment, and Reform in Europe,* ed. Louis Knafla, vol. 18 (Westport CT, and London: Praeger, 2003), 31, fn. 29.
[172] AP A^B 32, August 1634, fol. 22.
[173] Gerber, *Bastards;* Boswell, *The Kindness of Strangers, 43*-45.

uphold them, even upon confirmation of guilt. For example, Estiennette Le Faure, was initially sentenced at Montargis to twenty-five hours in the carcan followed by three years of banishment for letting her baby die of exposure. Though the parlement confirmed her guilt, she was released on guarantee into her brother's custody.[174] Parlementaires did not attribute the baby's death to premeditated murder. They must have believed that Estienette Le Faure's intentions were to leave the baby alive for someone else to find. Similarly, Jeanne Clouot, the wife of a tailor, was accused by her fellow '*habitants*' in the parish of La Val of *exposition*, saw her sentence to whipping and banishment commuted to a fine of sixty *livres parisis*.[175] Madeleine Joly, a Lyonnaise *fille à marier*, was sentenced at the *sénéchaussée* of Lyon to *amende honorable*, flogging, and banishment for concealment and exposure. The parlement returned a guilty verdict, but effectively dismissed her punishment by reducing her sentence to three years' banishment from Paris, which allowed her to return to Lyon.[176]

Despairing of finding somewhere safe to place an unwanted child, perhaps, women sometimes placed their babies at the doorsteps of the most powerful households they could find.[177] In the autumn of 1576, a Parisian widow named Claude Montognan left the baby she was unable to care for quite literally at the footstep of the state when she left her baby at the door of the *premier président* of the parlement de Paris, Christophle de Thou.[178] That same autumn, Perette Demente, a *fille à marier* living in Paris was

[174] AP A^B 39, 2 January, 1649, fol. 14v.
[175] AP A^B 27, 20 mars, 1626, fol. 258.
[176] AP A^B 25, 15 November, 1620, fol. 6v.
[177] See Laura Gowing, "Giving Birth at the Magistrate's Gate: Single Mothers in the Early Modern City," in *Women, Identities and Communities in Early Modern Europe* eds. Stephanie Tarbin and Susan Broomhall (Aldershot: Ashgate, 2008), 137-152.
[178] AP A^B 5 November 1576, fol. 146.

whipped for laying her child at the door of a parlementary lawyer.[179] Unfortunately, it is impossible to deduce what sort of relationship Claude Montognan or Perette Demente had with these households, whether the father of the child resided within, or if they had been employed in the household, understood the legal obligations of *hauts-justiciers* to feed abandoned children, or whether they simply sought the most powerful households they knew of to seek help for their children.[180] The parlement released them both following corporal punishment.

Ultimately, within the doctrines of *pro modo probationum* and the longue durée of jurisprudence, parlementaires grappled with the threats posed by infanticide to the basic order and social fabric of France. With presumptions of unbaptised infants suffocated in order to conceal the paired depravities of fornication and murder, infanticide represented the ultimate tragedy of failed *ménage*. Infanticide was the wicked outcome of illegitimate sexuality. In some respects, the women who died on the scaffold had been found guilty not only of killing their newborn babies, but also of lacking the kinship connections that might have saved their lives – at the very least, a mother's deposition introduced sufficient doubt so as to convince the judges to exercise a certain measure of restraint in sentencing. Women of more fortunate circumstances may have had family able to press a betrothal suit that assured for the basic support of the mother and child, which obviated the need to conceal a pregnancy or do away with a newborn.

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[179] AP A^B 5 October 1576, fol. 138v.

[180] These obligations are discussed earlier in the chapter. According to arrêts from 1547, 1552, 1554, and 1556, *seigneurs* and *hauts-justiciers* had legal obligations to feed abandoned, exposed, and illegitimate foundlings recovered within their jurisdictions. See D'Aussy, *L'Assistance publique*, 552; and Merlin, *Répertoire universel*, Vol. 11.

Though parlementaires practiced a certain restraint in the presence of doubt, the volume of women who appealed convictions of neo-natal murder must have led jurists and the broader society around them to believe that they were in the midst of a crisis. The pattern of unmarried, widowed, and adulterous women targeted in legislation and prosecuted must have demonstrated to jurists the dangers of illegitimate sexual behaviour. These crimes offended Christian moral doctrines, which were certainly entrenched and policed according to the religious values of religious reform. Perhaps just as importantly, these sins destabilized the social order by producing mothers without a household and children without a name. In a society rocked by dynastic civil war and deepening economic uncertainty, these threats would have been taken seriously. The next two chapters will focus on the treatment, respectively, of the crimes of fornication and adultery by female perpetrators, and adultery and bigamy among by men. As we shall see, unlike infanticide, which was treated as a crime perpetrated exclusively by women, the parlement responded very differently to crimes against marriage.

Chapter 4: Adulterous Wives, Anxious Husbands

In 1584, Claude Louvet contracted his daughter, Catherine, in marriage to Guillaume Sanguin, who would eventually purchase an impressive office in the service of the *trésorier de l'écurie du roy*. Catherine brought a dowry of three thousand écus and five hundred livres to the marriage. Sadly, marital bliss was elusive from the start. Guillaume left Paris for Blois to take up his new post in 1588. Upon his return home two years later, he found his wife pregnant with the child of a man named Poncé. In order to avoid scandal, the daughter that resulted from the affair was baptized under the surname of a day labourer named Jean Damours and a household servant acted as the fictive mother. The matter dealt with, Guillaume returned to Blois.[1] According to Guillaume, Catherine immediately returned to her "lustfulness," calling her lover back to share her bed in his absence.[2] Despite this blatantly outrageous behaviour, Guillaume waited seven more years to formerly accuse Catherine of adultery. In his denunciation, he alleged that "during his absence she had turned his house into a bordello."[3] Dismayed by his wife's behaviour, Guillaume complained that when he was home, he kept to himself in a separate bedroom and refused to eat or drink with her, a decision he would later argue

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[1] Bardet explains that "*cette fille estant decedée, on ne parle point de cette lubricité.*" It is unclear whether this death is a legal euphemism, refers to the story that couple told in public to explain the sudden end of Catherine's pregnancy with no child to show for it, or if the infant had actually died. Whatever the case, we can catch a glimpse of ways that people of means dealt with illicit pregnancies. At no point does Bardet even hint at the possibility that Catherine should have been charged with concealment. In his suit for separation from her Guillaume attempts to discredit Catherine by accusing her *'laisser mourir leurs enfants'* on account of her "*peu de soin*." Again, there is no hint that the lieutenant *criminel* was provoked to investigate Catherine for the possibility of infanticide. See Bardet, *Recueil d'arrests du parlement de Paris* (Paris: Anthoine Besoigne, 1690), 82-3.

[2] "sa lubricité." Bardet, *Recueils d'arrests*, 82.

[3] Bardet, *Recueil d'arrets,* 83. "pendant son absence elle avoit fair un bordel de sa maison." AN X^{2A} 981, 18 July, 1619.

amounted to the effective termination of his marriage. However, during their years of alleged estrangement, prior to Catherine's final conviction, they had a number of children together, which Guillaume acknowledged as his own.[4] Guillaume claimed that they lived this way for years until "being unable to support this life any longer," he finally denounced her behaviour to the authorities. Catherine was convicted of adultery in 1597.[5] She was neither executed, nor incarcerated in a convent nor banished, punishments that the historical scholarship on adultery in early modern France suggests were both common and axiomatic. The court did award Guillaume his wife's substantial dowry, which was his right according to the law. He later won a separation suit against her, liberating himself from any fiduciary responsibilities he owed to her as her husband. Catherine's father eventually recovered her dowry in another civil suit brought against Guillaume on account of her loss of spousal support. The unhappy couple remained separated until Guillaume's death in 1619.

Guillaume died nearly broke. Disappointed at the paltry value of his estate, his executors resurrected his initial claim to seize Catherine's dowry on the grounds that she was a convicted adulteress. Representing their sister, Catherine's brothers launched a remarkable defense and counter suit for lost spousal support at the parlement. They argued unsuccessfully that the statute of limitations had passed on the matter of Catherine's indictment. The court permitted the matter to proceed to trial, but eventually ruled that damages were owed to no one on the grounds that Catherine had seen her

[4] None seem to have survived infancy. We know this because Guillaume invoked their deaths to cast aspersions on Catherine's character, accusing her of "letting their children die" on account of her "carelessness." Bardet, *Recueils d'arrests*, 83. "sa femme par son peu de soin avoit laissé mourir leurs enfants."

[5] "que Sanguin ne pouvant plus supporter cette vie…" Bardet, *Recueils d'arrests*, 83.

dowry returned and that, upon its reinstatement, Guillaume had not benefitted financially from the separation.[6]

Fascinatingly, Catherine's brothers successfully denounced Guillaume as the real degenerate, asserting that despite his sworn knowledge of Catherine's brazen dalliances, he had continued to have sex with her for several years. In doing so, Guillaume, having "corrupted and seduced his wife," had in fact "made *himself* guilty of adultery."[7] They convinced the parlement that Guillaume had launched his accusation not in the name of the "honour of his marriage," but for "profit."[8] Guillaume's decision to pursue his wife was all the more shameful because adultery was "such an abominable crime."[9] Catherine had won.

This case is a microcosm of sixteenth- and seventeenth-century prosecution and sentencing patterns for women accused of adultery at the parlement de Paris. These patterns contradict much of the traditional historiography on the prosecution of adultery in early modern France. First, the parlement did not punish Catherine with violence or monastic enclosure as historians have come to expect: the parlement was sufficiently convinced of Catherine's guilt in 1597 to rule in Guillaume's favour, but it refrained from sentencing her to severe physical punishment.[10] Although the parlement punished some

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[6] Bardet, *Recueils d'arrests*, 83.
[7] "Il corrompu et seduit sa femme…se rendroit luy mesme coupable de l'adultere." The emphasis is mine. Bardet, *Recueils d'arrests*, 83.
[8] '*honneur de son mariage'*. Bardet, *Recueils d'arrests*, 82-5.
[9] "*un crime si abominable"* Bardet, *Recueil d'arrests*, 84.
[10] Régine Beauthier, *La répression de l'adultère en France du XVIe siècle au XVIIIe siècle* (Brussels: Story-Scientia, 1990); Agnès Walch, *Histoire de l'adultère (XVIe-XIXe siècle)* (Paris: Perrin, 2009), esp. chapter 2 and 3; Agnès Walch Mension-Rigau, *De l'alcove à la basoche. Adultère en France du XVIe au XIXe siècle.* PhD diss. (Paris : Université de Paris-Sorbonne, 2007), 95-6; Sara McDougall, "The Transformation of Adultery in France at the End of the Middle Ages*," Law and History Review* 32, 3 (August 2014): 491-524; Michel Nassiet, "La sanction de l'adultère féminin au XVIe siècle: l'alignement d'une norme sociale sur le droit," in *Valeurs et justice: écarts et proximités entre société et monde judiciaire du Moyen Age au XVIIIe siècle*, eds. Bruno Lemesle and Michel Nassiet (Rennes: Presses Universitaires de Rennes, 2011), 129-139; Rossiaud, *Medieval Prostitution*, 45; Jocelyne Leblois-Happe,

women severely, the vast majority of women received mitigated sentences. Second, Guillaume's dogged pursuit of his wife ruined him. The process of the trial and prosecution of adulterous wives was expensive for husbands, and the guilty verdicts and harsh punishments they often sought were not guaranteed, despite statute that supported the aggressive criminal prosecution by men of their unfaithful wives. Third, rather than respond sympathetically to the challenge of Catherine's infidelity to Guillaume's honour, the parlement was instead suspicious of Guillaume, convinced that he himself shared some of the blame for her behaviour.[11] The magistrates believed it was possible that Guillaume had a greedy desire for vengeance that guided his decision to seek religious confinement and the alienation of his wife from her dowry. In basic terms, he was not an honourable man.

Adultery was a very serious moral and criminal offense. Roman legal statute combined with the self-declared jurisdictional supremacy of royal courts adopted around the turn of the sixteenth century regarding marital crimes focussed the criminal prosecution of adultery on married women and their lovers to the virtual exclusion of unfaithful husbands. As a result of these changes, which prescribed harsh penalties for adulterous wives and no penalties for adulterous husbands, legal and social historians of

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"Les sanctions des femmes criminelles: Y-a-t-il une spécificité féminine de la peine?" in *Figures de femmes criminelles de l'Antiquité à nos jours,* ed. Myriam Tsikounas (Paris: Editions de la Sorbonne, 2010), 182; Daumas, *Au bonheur des mâles,* 84-5. Sarah Hanley, "The Monarchic State in Early Modern France: Marital Regime Government and Male Right," in *Politics, Ideology, and the Law in Early Modern Europe: Essays in Honor of J.H.M. Salmon*, ed. Adrianna E. Bakos (Rochester, NY: University of Rochester Press, 1994), 121-2.

[11] Una McIlvenna, who examines the role that parlementaires played in the defamation of élite women connected to the court of Catherine de Médicis, and Sara Matthews Greico, who examines popular broadsheets in seventeenth-century Paris, are beginning to shed more light on the notion of husband's moral culpability for their wives' infidelity in early modern France. See Una McIlvenna, *Scandal and Reputation at the Court of Catherine de Medici* (London and New York: Routledge, 2016), esp 38-45; and Sara Matthews-Greico, "Picart's Browbeaten Husbands," in *Cuckoldry, Impotence and Adultery in Europe (15th to 17th century),* (London and New York: Routledge, 2014), 249-290.

France have identified the sixteenth and seventeenth centuries as a particularly brutal and repressive period for the prosecution of women for adultery in the royal courts. In her comparison of the early sixteenth-century temporal process with late medieval ecclesiastical trials, Sara McDougall concludes that the exclusive criminalization of married women's adultery and the application of intensified models of punishment found in Roman law introduced a new era of criminal sanction and repression of women's marital infidelity that marked a drastic and abrupt shift from medieval ecclesiastical models.[12] New punishment models included a supposed tolerance for the honour killing of wives and their lovers, judicial execution, and secular incarceration in religious houses accompanied by corporal punishment and financial ruination.[13] This attention to jurisdictional change, however has placed too much emphasis on the comparative severity of punishment allowed by secular law and has assumed that, spurred by the repressive attitudes of French justice, parlementary judges enthusiastically supported husbands in their desire to see their unfaithful wives harshly disciplined. In contrast, mainly concentrating her study of adultery on the late seventeenth century onwards,

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[12] Sara McDougall, "The Transformation of Adultery in France at the End of the Middle Ages," *Law and History Review* 32, 3 (August 2014): 491-524. Though McDougall challenges Claude Gauvard's thesis that adultery was primarily a female crime in the middle ages, she does not problematize Gauvard's untested presumption about the brutality of sixteenth-century justice toward adulterous women. See Sara McDougall, "The Opposite of the Double Standard: Gender, Marriage, and Adultery Prosecution in Late Medieval France," *Journal of the History of Sexuality* 23, 2 (May 2014): 206-25; Claude Gauvard, "Entre justice et vengeance: le meurtre de Guillaume de Flavy et l'honneur des nobles dans le royaume de France au milieu du XVe siècle," in *Guerre, pouvoir et nobless au Moyen Age: Mélanges en l'honneur de Philippe Contamine*, eds. Jacques Paviot and Jacques Verger (Paris: Press de l'Université de Paris-Sorbonne, 2000), 296; Claude Gauvard, *"De grace especial," Crime, Etat et Société en France à la fin du Moyen Age* (Paris: Publications de la Sorbonne, 1991), vol. 1, 317-9.

[13] McDougall, "The Transformation of Adultery," 491-524. In particular, Michel Nassiet and Robert Muchembled emphasize judicial tolerance for honour killing and execution, respectively. Michel Nassiet, "La sanction de l'adultère féminin au XVIe siècle: l'alignement d'une norme sociale sur le droit." in Bruno Lemesle and Michel Nassiet (ed), *Valeurs et justice: écarts et proximités entre société et monde judiciaire du Moyen Age au XVIIIe siècle* (Rennes: Presses Universitaires de Rennes, 2011), 129-139; Robert Muchembled, "Quand l'adultère était puni de mort en France (fin du XVIe siècle)," in ed. Eric Wenzel, *Le peuple, le crime et la justice* (Dijon: Editions Universitaires de Dijon, 2017), 67-82; Muchmebled, *Passion des femmes de la Reine Margot, 1553-1615* (Paris: Seuil, 2003), 158-66.

Agnès Walch points out that despite the clear gender imbalance in *ancien régime* statute that favoured the rights of the husband, neither spouse really came out ahead when a man sought criminal sanctions for his wife's infidelity because of the vindictive process of denunciation and prosecution.[14] Régine Beauthier and to a lesser extent, Walch, have placed a comparative emphasis on the harshness of early modern justice that is similar to McDougall's, this time contrasting the prosecution of adultery in the early modern period to the tolerance of the crime by late eighteenth- and nineteenth-century jurists relative to previous centuries.[15] Like McDougall, Beauthier and Walch both emphasize the use of religious confinement to punish women – a punishment which waned in the eighteenth century – though their focus on mainly élite litigants has produced a skewed understanding of the judicial repression of the crime among the general population.[16] None of these studies focus specifically on the sixteenth and seventeenth centuries, though their authors depend greatly on their impressions of judicial attitudes towards adultery at this time in order to develop their comparative analysis of French justice during the centuries directly before and directly after this period. Beauthier's work, in particular, relies heavily on the evolution of judicial attitudes to adultery that jurisconsults published in legal compendiums, known as *recueils*, which do not accurately reflect the tensions between legal discourse and legal practice of the sixteenth and seventeenth centuries.[17] She concludes that magistrates believed that women's marital infidelity merited the strong example of public prosecution.[18] This statement

[14] Walch, *Histoire de l'adultère*, 17-19,
[15] Beauthier, *La répression de l'adultère*; Walch, *Histoire de l'adultère;* Walch Mension-Rigau, *De l'alcove à la basoche*, 95-6.
[16] Beauthier, *La répression de l'adultère*; Walch, *Histoire de l'adultère.*
[17] Beauthier, *La répression de l'adultère.*
[18] Beauthier, *La répression de l'adultère.*

seems to have been true of the middle of the sixteenth century, but less so for the late sixteenth and seventeenth centuries. More accurate is Walch's conclusion that magistrates believed that punishment should be discrete and measured, a practice she observed of the late seventeenth century, which I contend we can begin to trace much earlier from at least the late 1590s.[19] Though jurisdictional changes in the prosecution of adultery did result in the introduction of harsher penalties in statute, the intensity of prosecution and the ferocity of judicial findings in the sixteenth and early seventeenth centuries have been overstated. Moreover, we see echoes, especially in the seventeenth century, of the suspicions that jurists held toward husbands and the lenient attitude that inflected the judgements they pronounced on adulterous wives.[20]

Though adultery was serious, its prosecution in early modern France was not monolithic. This chapter will argue that judicial attitudes towards women's adultery were more complex than the current tendency to focus on repression suggests. Judges valued family integrity and imposed the severest penalties in only in the most exceptional of circumstances.[21] Moreover, we can observe that by the close of the sixteenth century, they regarded husbands who denounced their wives with suspicion. Husbands, in turn, faced serious financial and social hurdles that made the prosecution of their wives less and less attractive for them over time. Between the 1560s and the late 1580s, the parlement received a small, but significant handful of adultery appeals from women

[19] Walch, *Histoire de l'adultère,* 17-19.
[20] Daumas, *Au bonheur des mâles*, 98; Walch, *Histoire de l'adultère*, 115-132, 196-207.
[21] Such circumstances include the religious enclosure of mainly élite women (the chapter will also show that the parlement did not enclose every élite woman it convicted of adultery), the enclosure of women convicted of adultery with a priest, and the execution of women who killed their husbands in an adulterous plot.

every year.[22] This momentum abruptly shifted after important legislative changes in 1595. At this time, responding to frustration by jurists that husbands who used the royal courts as a tool for vengeance were causing unnecessary financial strain on the justice system, the parlement began to strictly enforce the fiduciary responsibilities of husbands to their jailed and enclosed wives. These changes made the gamble to prosecute too financially perilous to husbands, especially if they were of moderate means. Accompanying the proscriptive financial expectations the parlement placed on husbands, the intensity of suspicion with which parlementaires regarded men made the prospect of seeking a criminal indictment against an adulterous wife increasingly unattractive to men. These circumstances, which made judges leery of severe penalties and denunciation unattractive to husbands, diminished the number of prosecutions and resulted in a relaxation of punishment so profound that the crime was nearly absent at the parlement by the 1650s.

Defining the crime of adultery

The prosecution of adultery varied widely across Western Europe and over time and varied from place to place. Beginning in the high middle ages, as monogamy underwent a process of sacramentalization and marriage became theoretically indissoluble, marital infidelity gradually shifted from a private sin to a public offense.[23] Separated from other forms of fornication, ecclesiastical and temporal authorities

[22] My sample of *écrous* collected data for 82 appeals from women who were accused of adultery. The parlement received 52 of these before 1595.
[23] Georges Duby, *Medieval Marriage: Two Models from Twelfth-Century France*, trans. Elory Forster (Baltimore: John Hopkins University Press, 1978), 20; James Brundage, *Law, Sex, and Christian Society in Medieval Europe* (Chicago: University of Chicago Press, 1987), 197-99; Caroline Dunn, *Stolen Women in Medieval England: Rape, Abduction, and Adultery, 1100-1500* (Cambridge: Cambridge University Press, 2013), 121.

enhanced the surveillance and public punishment of adultery.[24] Prosecution of unfaithful spouses varied depending on the ways that authorities prioritized the need to expiate the sin of adultery from the community versus the need to protect the social and economic integrity of households.[25] Generally speaking, jurisdictions that interpreted the expiation of sin as the primary duty of the court tended to prosecute an equal volume of husbands and wives for adultery.[26] For example, during the most heightened period of the Calvinist and Lutheran moral reformations in mid-sixteenth-century Geneva and Frankfurt, husbands faced more frequent and more violent sanctions for adultery than did wives.[27] Whereas punishment of women for adultery was generally relaxed in the temporal and ecclesiastical courts of late medieval France, by contrast high moral standards for men

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[24] James Brundage, "Sex and Canon Law," *Handbook of Medieval Sexuality,* eds. Vern Bullough and James Brundage (New York: Garland, 1996), 33-50; Jean-Luc Dufresne, "Les comportements amoureux d'après le registre de Cerisy," *Bulletin philologique et historique* (1973): 131-53.

[25] Sara Beam, "Gender and the Prosecution of Adultery in Geneva, 1550-1700," in *Women's Criminality: Patterns and Variations in Europe, 1600-1914,* eds. Manon van der Heijden, S.T.D. Muurling, and Marion Pluskota (Cambridge: University of Cambridge Press, 2020), 91-94; Guido Ruggiero, *The Boundaries of Eros: Sex Crime and Sexuality in Renaissance Venice* (New York and Oxford: Oxford University Press, 1985), 48.

[26] These jurisdictions included renaissance mid-sixteenth-century Geneva and Frankfurt, and late-Tudor England. See Beam, "Gender and the Prosecution of Adultery in Geneva," 94; Maria R. Boes, *Crime and Punishment in Early Modern Germany: Courts and Adjudicatory Practices in Frankfurt am Main, 1562-1696* (Farnham: Ashgate, 2013); Ulinka Rublack, *The Crimes of Women in Early Modern Germany* (Oxford: Clarendon, 1999), 218-222; Ruggiero, *The Boundaries of Eros*, 44-69; Martin Ingram, *Church Courts, Sex and Marriage in England, 1570-1640* (Cambridge: Cambridge University Press, 1987), 51; Barbara Kreps, "The Paradox of Women: The Legal Position of Early Modern Wives and Thomas Dekker's 'The Honest Whore'," *ELH* 69, 1 (Spring 2002): 91-2.

[27] McDougall, "The Opposite of a Double Standard," 204-25; Beam, "Gender and the Prosecution of Adultery in Geneva," 94; Boes, *Crime and Punishment in early modern Germany*, 261; Jeannette Kamp has observed that early modern civic courts in Frankfurt prosecuted men for adultery. See Kemp, "Female crime and household control in early modern Frankfurt am Main," *The History of the Family*, 21, 4 (2016): 537. Though launching criminal proceedings against a husband was next to impossible in France for wives in the sixteenth and seventeenth centuries, women had other legal channels through which to pursue notoriously irresponsible and unfaithful husbands. For instance, women could sue their husbands for adultery, but men usually risked little more than a moderate fine. See Isabelle Parésys, *Aux marges du royaume: justice et société en Picardie sous François Ier* (Paris: Editions de la Sorbonne, 1998), 231–32, 95. Early modern parlements also punished men very rigorously for marital infidelity when it threatened stable household governance. While adulterous husbands did not risk indictment for the crime of adultery when they were unfaithful to their wives, the courts prosecuted and rigorously punished men as bigamists when they abandoned their wives in favour of arrangements that resembled concubinage. The next chapter will explore these in closer detail.

meant that ecclesiastical and temporal authorities punished husbands more severely for infidelity, because men's infidelity endangered their sacred duty to lead the family.[28]

The process of the criminalization of adultery intensified through much of Western Europe in the sixteenth century amid religious reformation and broader trends in the systemization of temporal justice.[29] As jurisdictions throughout Western Europe started to emphasize the continuity of household stability around which the honour of the *pater familias* constellated, they tended to reinterpret the marital infidelity of wives as a greater social threat because it endangered the patrilineal integrity of families.[30] As a result of these shifting priorities, legal reforms and judicial practice regarding the criminal prosecution and punishment of adultery changed to focus more exclusively on women and their lovers to the near or total exclusion of husbands.[31] In these jurisdictions,

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[28] Echoing the work of Claude Gauvard and Sara McDougall on the prosecution of adultery in Northern France during the Middle Ages, Leah Otis-Cour makes an especially intriguing observation about Southern France, arguing that while the prosecution and punishment of female adulterers became less severe, the surveillance of male adulterers increased and punishments were enhanced. These judicial treatments of infidelity challenge previous historiography, the work of Jacques Rossiaud in particular, which emphasizes the highly gendered prosecution of the crime, which constellated around the adulterous wife. Sara McDougall's study of late medieval adultery prosecutions in Northern France reveals, in fact, that ecclesiastical courts were very willing to punish adulterous men, even to the extent that convicted men sometimes faced harsher sanction than women did. See Otis-Cour, " De jure novo, " 347-8, 352-3; McDougall, "The Transformation of Adultery, 495-8; Sara McDougall, " Fictions and Lies: Accusations of Spousal Homicide and Adultery in France, " in *Imagining Early Modern Histories*, eds. Elizabeth Ketner and Allison Kavey (New York: Routledge, 2016), 216-37; Jean-Marie Carbasse, *Histoire du droit pénal et de la justice criminelle* (Paris: PUF, 2006); Jacques Rossiaud, *Medieval Prostitution*, trans. Lydia G. Cochrane (Oxford and Cambridge: Blackwell, 1988), 45.

[29] McDougall, "The transformation of Adultery," 495-8; Gauvard *"De grace especial"* vol. 1, 317-9; Boes, *Crime and Punishment in early modern Germany*, 261; Kemp, "Female crime and household control,"

[30] Other jurisdictional territories that prioritized 'family integrity' over the expiation of sin included late-sixteenth- and seventeenth-century Geneva, the renaissance city states of Italy, Hapsburg Spain, and interregnum and later-Stuart England. See Beam, "Gender and the Prosecution of Adultery," 94; Eva Cantarella, "Homicides of Honour: The Development of Italian Adultery Law over Two Millennia," in *The Family in Italy from Antiquity to the Present,* eds. David I. Kertzer and Richard P. Saller (New Haven: Yale University Press, 1991), 229-44; Ruggiero, *Boundaries of Eros,* 44-69; Scott K. Taylor, *Honour and Violence in Golden Age Spain* (New Haven: Yale University Press, 2008), 198; Beauthier, *La répression de l'adultère en France*; Otis-Cour, "De jure novo," 349; J. A. Sharpe, *Crime in Early Modern England, 1550-1750* (London: Longman, 1984), 92; Kreps, "The Paradox of Women," 91-2.

[31] Spiritually, husbands and wives were equally culpable for their infidelity. Louis Charondas le Caron, *Réponses et décisions du droit françois confirmées par des arrests des cours souveraines de ce royaume et autres* (Paris: Pierre L'Huillier, 1637), 345-7; Beauthier, *La repression de l'adultère*, 30.

such as the royal courts of Northern France after the beginning of the sixteenth century, fifteenth-century Italian city states, Stuart England, and the Hapsburg kingdom of Spain, legists and jurists interpreted adultery primarily as a crime against family property.[32] Reflecting these general patterns, statutory changes in France at the beginning of the sixteenth century favoured the criminal prosecution of wives and their lovers while exempting husbands from criminal prosecution and punishment for the crime of adultery.[33] Nevertheless, this judicial focus on women did not necessarily result in severe punishments for most adulterous wives. In contrast with the current historiography of adultery in France, which portrays criminal justice punishing adulterous women with violence, we will see that judges reserved the most severe forms of punishment for women who were involved in an adulterous conspiracy to murder their husbands. Other severe forms of punishment like dispossession of women's dowries and monastic incarceration were generally reserved for the extremely wealthy or for those women whose affairs were exceptionally scandalous. The parlement imposed mitigated sentences of minor corporal punishment on half and dismissed almost a quarter of the appeals it received because the cases lacked sufficient evidence to warrant conviction or punishment.

This tension between the discourse of adultery as a crime of women and the actual practice of its prosecution comes down to statutory and jurisdictional change around the

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[32] Beauthier, *La répression de l'adultère en France*; McDougall, "Transforming adultery," 349; Ruggiero, *Boundaries of Eros*, 44-69; Gigliola di Renzo Villata, "From 'forbidden' conjugal love to infidelity. Adultery in Italian *Summae Confessorum* (14th-16th century)," *Italian Review of Legal History* 1, 2(2015): 1-44; Scott K. Taylor, *Honour and Violence in Golden Age Spain* (New Haven: Yale University Press, 2008), 198; J. A. Sharpe, *Crime in Early Modern England, 1550-1750* (London: Longman, 1984), 92; Kreps, "The Paradox of Women," 91-2.

[33] The next chapter will demonstrate the comparatively harsher repression and punishment of male adultery accomplices and married men whom the parlement convicted of bigamy.

turn of the sixteenth century. Two related processes changed the ways that adultery was prosecuted in the sixteenth century. French jurists began to use Roman law as a tool to regulate and centralize royal jurisprudence. At the same time, jurists began to imagine the patriarchal household as the central organizational currency of the state and families, in turn, used these centralizing forces to accumulate wealth and status.[34] During this process of transition the prosecution of adultery shifted from a mainly penitential matter for ecclesiastical courts to resolve, in which both husbands and wives faced legal sanctions, to a criminal matter, in which royal courts focused their prosecution of adultery exclusively on wives and their lovers.[35] Under this new legal and family regime, the adultery of wives was a more serious offence than that of husbands because women were legally tied to their husbands' family.[36] Jurists like Muyart de Vouglans described the adultery of wives as a special form of theft in which they gave "strangers" (*parents et héritiés étrangers*) the goods that rightfully belonged to their husband's lineages and charged their husbands with the responsibility to feed and educate children that may not have even been their own.[37] Consequently, the marital infidelity of women frustrated the

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[34] McIlvenna, *Scandal and Reputation,* 9; Julie Hardwick, *Practice of Patriarchy: Gender and the Politics of Household Authority in Early Modern France* (University Park: Pennsylvania State University Press, 1998), xi-xii and 52; Sarah Hanley, "Engendering the State: Family Formation and State Building in Early Modern France," *French Historical Studies* 16, 1 (Spring 1989): 4-27; Hanley, "The Monarchic State in Early Modern France," 107-126; Sarah Hanley, "Family and State in Early Modern France: The Marriage Pact," in *Connecting Spheres: Women in the Western World, 1500 to the Present,* eds. Marilyn J. Boxer and Jean H. Quartaert (Oxford: Oxford University Press, 1987), 53-64; Jeffrey Merrick, "Fathers and Kings: Patriarchalism and Absolutism in Eighteenth-Century French Politics," *Studies on Voltaire and the Eighteenth Century* 308 (1993): 281-2.

[35] McDougall, "The Transformation of Adultery," 493-494.

[36] Beam, "Gender and the Prosecution of Adultery," 94.

[37] Muyart de Vouglans, *Les lois criminelles de France,* 221; Jacqueline David, "Le remariage de la femme 'authentiquée'" *Revue historique de droit français et étranger* 81, 3 (July-September 2003): 327-343, 329. Most Western European jurisdictions also judged that when a woman ran off with another man, she violated her husband's property rights, including the clothing on her back, which she took with her when she ran. See for example, Jana Byars, *Informal Marriages in Early Modern Venice* (New York: Routledge, 2019), 22-31; Beam, "Gender and the Prosecution of Adultery," 94; Ruggiero, *Boundaries of Eros,* 45-8; Rublack, *Crimes of Women, 218-22*; Beauthier, *La répression de l'adultère en France, 280-3; Watt, Making of Modern Marriage,* 131-2.

accumulation and control of wealth and the passage of property through carefully managed patrilineal lines of descent.[38]

Killing women for honour?

Royal jurists theorized that the right to punish with violence proved their competence over competing ecclesiastical courts to prosecute crimes like adultery.[39] The parlement de Paris treated adultery as a serious crime, but the brutality of the parlement's responses to the women whose convictions it upheld and the lenience with which it treated their husbands has been vastly overstated. While some parlementary jurisconsults, such as Jean Papon and Claude le Brun de la Rochette emphasized the use of the death penalty, monastic incarceration (called *authentiquée sed hodie*), and even private execution to punish adultery in their published recueils,[40] a survey of individual *arrêts*

[38] André Burguière and François LeBrun, *La famille en occident du XVIe au XVIIIe siècle. Le prêtre, le prince et la famille.* (Paris: Armand Colin, 1986), 43; Hanley, "The Family, the State, and the Law, 289-332; Hanley, "Engendering the State"; Sara Matthews-Greico. *Cuckoldry, Impotence and Adultery in Europe (15th to 17th Century)* (London and New York: Routledge, 2014), 12; Laura Gowing, "Gender and the Language of Insult in Early Modern London," *History Workshop Journal*, 35 (1993), 3; David M. Turner, *Fashioning Adultery: Gender, Sex and Civility in England, 1660-1740* (Cambridge: Cambridge University Press, 2004), 13. In both late medieval and early modern contexts, other jurisdictions that privileged the threat that adultery posed to patrilineal descent over the communitarian spectre of sin also saw the uneven prosecution of wives for marital infidelity. See *Boundaries of Eros*, 45-8; Rublack, *Crimes of Women*, 218-22; Beauthier, *La répression de l'adultère,* 280-3*;* Jeffrey Watt, *The Making of Modern Marriage: Matrimonial Control and the Rise of Sentiment in Neuchâtel, 1550-1800* (Ithaca: Cornell University Press, 1992), 131-2.

[39] Le Maistre, *Les œuvres*, 519-522. Statute permitting physical punishment for adultery effectively secured royal domain over the conviction and punishment of the crime. This pattern is familiar because royal legists used a similar strategy by rationalizing the prosecution of *rapt de séduction* and false promise as capital crimes. Once rendered the responsibility of secular justice to prosecute, families could claim far greater financial damages than they could have reasonably expected from *officialités.* The secular prosecution of adultery provided the same rewards.

[40] M. La Faye, *Recueil des arrests notables des cours souveraines de France* (Paris: Robert Fouët, 1621), 1273; Papon, *Recueil d'arrestz,* 463-465; Le Brun de la Rochette, *Le procès criminal*, 12; Jousse, *Traité de la justice criminelle*, 215. The Flemish jurist, Josse de Damhoudere repeated these observations about France. See Damhoudere, *La pratique et enchiridion*, 129-30, 183.

demonstrates these were exceptional punishments – a fact that other contemporary jurists like Pierre Bardet and Jean-François Fournel also observed.[41]

We can see these contradictions played out in judicial responses to the honour killing of adulterous wives, a practice that received implicit support in law, but which in practice judges tended to condemn. According to the *Lex Julia de adulteriis* and the Justinian Code, which were subsections of Roman law, jilted husbands could execute their wives and lovers discovered in the act of adultery and face more lenient forms of punishment than other varieties of homicide might otherwise have incurred.[42] Citing the *Lex Julia de adulteriis,* Papon argued that a man's discovery of his wife *in flagrante delicto* provided aggravating circumstances to justify moderated sentences for spousal murder. Referencing an *arrêt* from 1562, Papon emphasized that the matter still had to proceed to trial and that once found guilty and sentenced to death, the husband "must nonetheless obtain remission."[43] Given the seriousness of adultery, parlements throughout France confirmed relatively few executions or religious confinements for women convicted of the crime.[44] This apparent incongruence between the significance of

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[41] Pierre Bardet, *Recueil d'arrests du Parlement de Paris*, vol 1 (Paris: Augustin Besoigne, 1690), 213. Fournel concedes that the Parlement de Paris was the first of the sovereign courts within the kingdom to reserve authentication in favour of more lenient sentences for most adultery convictions. Jean-François Fournel, *Traité de l'adultère consideré dans l'ordre judicaire* (Paris: Jean-François Bastien, 1778), 311-12.

[42] R. Howard Bloch, *Medieval French Literature and Law* (Berkeley: University of California Press, *1977),* 53-5. These rights of the husband notwithstanding in the *Lex julia adulteriis* were by no means taken at face value by medieval and early modern legists in France or in other European jurisdictions that favoured the sole right of the husband to denounce his wife for adultery. See for example, Villata, "From 'Forbidden' Conjugal Love to Infidelity," 19-20.

[43] La Faye, *Recueil des arrests,* 1273. Examples of remissions for spousal murder are scattered and rare. I have found evidence for only three remissions that the king granted to men convicted within the resort of the Paris parlement for the honour killing of his wife over the entire century and a half between 1500 and 1650: In 1523, the royal chancellery remitted the capital sentence of Mathurin Duviel of Boulogne-la-Grasse for the murder of his wife on the merit that he had discovered her in the bushes – where others might have discovered her had he not happened upon the lovers first – in flagrant delicto with a *curé.* (Parésys, *Aux marges du royaume,* 84, 84 fn 96, 117). See the example from 1562 provided by Jean Papon, and the example of René Villequier, whom I discuss in more detail below.

[44] The parlement of Paris executed 8 and enclosed only 7 of the 82 women in the sample who appealed adultery convictions in the survey of *écrous*. Similarly, the parlements of Bordeaux and Rennes confined

the crime and the frequency and severity of its prosecution led Michel Nassiet to hypothesize that few women survived their husbands' discovery of adultery because men frequently resorted to honour killing and knew they could get away with it.[45] In his sample of approximately 800 letters which were registered by the Chancellery of Brittany between 1515 and 1574, however, only two of the eleven submissions from men who had committed uxoricide claimed adultery as their motivation.[46] According to Nassiet's own research data, instances of men seeking pardon for the murders of their adulterous wives were so rare it is difficult to understand how he rationalizes his conclusions. Even if men *did* kill their wives in a passionate rage for discovering them *in flagrante delicto*, they must have known well enough that the Crown would not look sympathetically on them because they rarely used this excuse when seeking a remission of grace from the king.[47]

Once convicted, few men could expect a royal pardon. The successful remission of René Villequier's death sentence for the murder of his adulterous wife, Françoise de la Marck in 1577, is the exception that proves the rule since a number of elements set it apart from other spousal murders.[48] First, Villequier was Henri III's chief confidante, a

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only a fraction of the female adultery appellants it received, despite describing this as the main penalty for convicted adultresses. Nassiet, "La sanction de l'adultère féminin au XVIe siècle," 129-139; and Bernard Schnapper, *Voies nouvelles en histoire du droit: La justice, la famille, la répression pénale (XVIe – XXIe siècle)*(Paris: Publications universitaires de France, 1991), 60.

[45] Nassiet, "La sanction de l'adultère," 129-139.

[46] Nassiet, "La sanction de l'adultère," 132. From his examination of provincial letters of remission from other regions of Northern France, Nassiet concludes that men had stopped invoking honour as a justification for violence beginning around 1620. This change was a direct result, he argues, of "the weakening of kinship relations" and "the sexual freedom of spouses." See Michel Nassiet *La violence, une histoire sociale. France XVIe-XVIIIe siècles* (Seysell: Champ Vallon, 2011), 319-24.

[47] Peter Arnade and Walter Prevenier's survey of remission letters from the Burgundian lowlands in the fifteenth century suggest that Ducal pardons for men who killed their wives' lovers were obtainable, but they make no mention of men successfully being pardoned for killing their wives. See Peter Arnade and Walter Prevenier, *Honor, Vengeance, and Social Trouble: Pardon Letters in the Burgundian Low Countries* (Ithaca: Cornell University Press, 2015), 96-100.

[48] Una McIlvenna, *Scandal and Reputation at the Court of Catherine de Medici* (London and New York: Routledge, 2016), 2, 41-43; Pierre de l'Estoile, *Mémoires-Journaux: Journal de Henri III, 1574-1589* (Paris: Librairie des Bibliophiles, 1869), 204-5.

knight of the order of the King, and captain of the palace guard at Poitiers.[49] The intimacy of his friendship with the king set him apart from other men.[50] Second, the adulterous couple and the circumstances leading up to La Marck's murder were far from ordinary. In his *Mémoires-journaux*, Pierre de l'Estoile suggested that rumours circulated around the court and the halls of justice that Villequier had intercepted a plot between his wife, pregnant with illegitimate twins, and her lover, Barbizi, a "handsome young man," who had rather notoriously married the wealthy widow of the former Master of Requests, to poison their respective spouses in order that they might marry each other.[51] Finally, Françoise de la Marck's murder, which de l'Estoile described as "cruel" and "strange," was shrouded in further scandal and mystery by rumours that Villequier believed he had "a secret commandment or the tacit consent of the king" to commit the murder because Henri III "used to hate her."[52] Adding to the operatic elements of the story, de l'Estoile suggested that Villequier had, at one time, pimped his wife out to the king who had subsequently been turned off by her habit of spreading nasty rumours about him at court. Of course, it is impossible to parse rumour from fact in this case, but it *is* apparent that this was no run of the mill crime of adultery and passion. It was a major court scandal.[53] The only other remission for spousal murder that I have come across between 1564 and 1655 was granted to a woman.[54]

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[49] de l'Estoile, *Journal de Henri III*, 204.
[50] Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth-century France* (Stanford: Stanford University Press, 1987), 96.
[51] de l'Estoile, *Journal de Henri III*, 204-5.
[52] "Ce meurtre fust trouvé cruel…et estrange…Mais l'yssue et la facilité de la grâce et remission qu'en obstinst Villequier sans aucune difficulté firent croire qu'il y avoit, en ce fait, un secret commandement ou tacit consentement du Roy, qui hayoit ceste femme." De l'Estoile, *Journal de Henri III*, 205.
[53] McIlvenna, *Scandal and Reputation*, 42-4.
[54] In 1649, Louis XIV remitted the death sentence of Geneviève Giroulx, who was accused of killing her husband, Louis Maugest. AP A^B 39, 19 April, 1649, fol. 28v.

Honour killing was rare and judicial or royal tolerance for it rarer still.[55] Even though statute provided an avenue for the relaxed punishment of husbands who lethally punished their wives, evidence suggests instead that the practice was not widely condoned.[56] Records from the parlement of Paris confirm that neither judicial leniency nor remission were guaranteed outcomes in cases of honour killing.[57] Seigneurial and bailliage courts convicted and generally executed men who had killed their wives.[58] Of

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[55] Garnot, *Une histoire du crime passionnel.* The relative intolerance of honour killing in the early modern period demonstrates continuity with late medieval attitudes to the practice. See McDougall, "Fictions and lies," 226-7; Otis-Cour, "De jure novo," 360-66; Claude Gauvard, "Le meurtre de l'epouse en France à la fin du Moyen Age: le mari, la femme, l'amant et l'oison," in *Retour aux sources. Textes, etudes et documents d'histoire medievale offerts a Michel Parisse*, ed. Sylvain Gouguenheim, Michel Goullet, and Odile Kammerer (Paris: Picard, 2004), 490-91.

[56] Benoit Garnot has rejected this thesis, suggesting that cultural responses to honour killing were consistently too negative for us to conclude that the practice was widely condoned or even grudgingly accepted as a husband's right. Benoît Garnot, *Une histoire du crime passionnel: Mythe et archives* (Paris: Belin, 2014). *Canards criminels,* for example, generally condemned the honour killing of adulterous wives. See Sara Beam, "Les canards criminels et les limites de la violence dans la France de la première modernité," *Histoire, économie, et société* 2 (2011): 21 and Inès Ben Zaid, "La figure du méchant dans les nouvelles françaises du XVIe siècle" *Analyses. Revues des littératures Franco-Canadienne et Québécoise.* 12, 2 (Spring 2017), 93-5. As states started to organize early modern systems of justice, they tolerated private forms of violent justice less, which frustrated the intention of the state to monopolize the administration of justice and violence. Policing in late fifteenth- and sixteenth-century Italy, which presented a very different model of statecraft from Northern Europe, local jurisdictions seem to have been more tolerant of private justice as a reasonable means to excoriate the damaged honour that adultery inflicted upon husbands and fathers. Adultery, along with other "female" crimes, moreover, represented a minute proportion of sixteenth- and seventeenth-century criminal prosecutions in some Italian communities. See for example, Julius R. Ruff, *Violence in Early Modern Europe, 1500-1800.* (Cambridge: Cambridge University Press, 2001), *73-116;* Stuart Carroll provides a useful discussion of this process, though his thesis relies mainly on prohibitions against duelling. See Carroll, *Blood and Violence in Early Modern France.* (Oxford: Oxford University Press, 2006); Thomas V. Cohen, "A Daughter-killing, Rome 1563-66," in Trevor Dean and K.J.P. Lowe, *Murder in Renaissance Italy* (Cambridge: Cambridge University Press, 2017), 63-79; Trevor Dean, *Crime and Justice in Late Medieval Italy* (Cambridge: Cambridge University Press, 2009), 68-9; Sara Rubin Blanshei, *Violence and Justice in Bologna: 1250-1700* (London: Rowman and Littlefield, 2018), xviii.

[57] Damhoudere, *La pratique et enchiridion*, 183. Julie Hardwick's work provides an understanding of early modern standards of excessive spousal punishment by husbands. Husbands maintained nearly absolute authority to correct and punish. See Hardwick, *Family Business: Litigation and the Political Economies of Daily Life in Early Modern France* (Oxford: Oxford University Press, 2009), 23. Men were not permitted, however, to murder their wives without expecting to answer to royal justice. See La Faye, *Recueil des arrests,* 1273.

[58] Judicial reluctance to justify this sort of spousal murder was not restricted to French courts. Remission letters and trial depositions from seventeenth-century Iberia suggest that royal courts were reluctant to accept the protection of honour or passion as reasonable justifications to murder wives surprised *in flagrante.* Iberian judges regarded husbands with doubt who claimed they had murdered their wives for honour and executed them when courts determined that pre-existing acrimony or vendetta had motivated men to kill. In the Holy Roman Empire, the 1532 *Constitutio Criminalis* directed courts to punish

the nineteen men in my sample of *écrous* who appealed death sentences for murdering their wives, six received mitigated sentences, a significantly higher proportion of executions compared to general male homicide and a ratio of execution that was roughly equivalent to sentences that women received for killing their husbands.[59] Dorothea Nolde found that while men occasionally cited their wives' adultery as a exculpatory motive for their murder, this tactic usually backfired with parlementary judges, who were more likely to execute these men than respond sympathetically.[60]

The parlement beheaded the Sieur de Bellantière of Poitou in May of 1579 for the vengeful murder of his wife and her lover, a crime he had committed "upon certain assurance" of "her fornication."[61] Pierre Bardet tells us that royal judges were often reluctant to believe that men had killed their wives or their lovers in a passionate outburst of violated honour, believing rather, that they used the claim of damaged honour to cover

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adulterers publicly, but did not sanction the private vengeance of husbands. English law neither condoned nor justified spousal homicides that were motivated by adultery. Juries only viewed men's petitions for clemency favorably when they could become convinced that the murder *in flagrante* was the outcome of self-defense rather than the result of passionate anger or revenged honour. See Scott Taylor, *Honor and Violence in Golden Age Spain* (New Haven: Yale University Press, 2008), 197-8; Allyson M. Poska, *Women and Authority in Early Modern Spain: The Peasants of Galicia.* (Oxford: Oxford University Press, 2005), 108-10; Darlene Abreu-Ferreira, *Women, Crime, and Forgiveness in Early Modern Portugal* (Burlington: Ashgate, 2015), 119-120; Joel Harrington, *Reordering Marriage and Society in Reformation Germany* (Cambridge: Cambridge University Press, 1995), 228; Krista Ketterling, "No Greater Provocation? Adultery and the Mitigation of Murder in English Law," *Law and History Review,* 34.1 (2016): 205; T.A. Green, *Verdict According to Conscience: Perspectives on the English Criminal Trial Jury, 1200-1800* (Chicago: University of Chicago Press, 1985), 42-3; Sara M. Butler, *The Language of Abuse in Later Medieval England* (Brill: Leiden, 2007), 98-103.

[59] Four of these men to receive mitigated sentences appeared at the parlement in the 1630s and 1640s, when women received similarly lenient sentences for spousal murder. This ratio of male and female spousal murderers to receive capital punishment was also virtually identical: 13 out of 19 men died versus 15 out of 22 women. In the 1570s, for example, the parlement executed about 35% of men convicted of general homicide. Executions started to decline toward the middle of the seventeenth century, so that by 1650 the parlement executed about a quarter of convicted murderers. Execution rates for spousal homicide declined at a much slower pace.

[60] Dorothea Nolde's examination of parlementary appeals for spousal murder between 1580 and 1620, she observed that judges became increasingly intolerant of uxoricide. Dorothea Nolde, Gattenmord, *Macht un Gewalt in der frühneuzeitlichen Ehe* (Köln: Böhlau, 2002), 148-9, 402.

[61] La Faye, *Recueil des arrests,* 1273; Pierre de l'Estoile *Journal de Henri III,* 314-5.

up more ignoble motives. Parlementaires assumed instead that "adultery was often taken [by them] as a pretense to revenge and kill…with impunity."[62] Bardet elucidated that the husband's right to kill the lovers had a contemporary legal interpretation that did not imply the privilege to murder, but rather that the horror of discovery elicited such passion that "it is presumed that husbands will repudiate their wives without delay."[63] According to Bardet, parlementaires applied the law to distinguish legitimate denunciations from specious accusations; that is, those which occurred straight away from those which reported a transgression some significant time after it had happened, such as in the case that opened this chapter.

Roman law on adultery provided magistrates with the statutory power to execute women for marital infidelity;[64] however, the court exercised this authority only when the circumstances of the liaison intensified the moral damages of the crime such as consanguine incest and spousal murder.[65] For example, the parlement confirmed the death sentence of Martine Prudhomme, who helped her lover to murder her husband and her father with a "sword and dagger."[66] Recording the trial in his *recueil*, the parlementary jurisconsult Pierre Bardet sensationalized the horror of the murder scene with his own embellishment that Martine's lover, Liméron, "filled with the blood of her husband the same bed that he had often defiled with his infamous filth."[67]

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[62] Bardet, *Recueil d'arrests du Parlement de Paris*, 213.
[63] "Praesumitur ut maritus uxorem sine mora dimittat." Bardet, *Recueil d'arrests,* 213.
[64] Bloch, *Medieval French Literature and Law*, 54-5; Davis, *Fiction in the Archives*, 95.
[65]The parlement executed 9 of the 82 adulterous women in the sample of *écrous* who appealed to the court. Five of these women were also convicted of murdering their husbands and the parlement also found two women guilty for incest. The parlement executed 9 of the 82 adulterous women in the sample of *écrous* who appealed to the court. Five of these women were also convicted of murdering their husbands, and the parlement also found two women guilty for incest
[66] "épée et poignard." AN X^{2A} 980, 4 December, 1618.
[67] "[il] se jette sur Emard, l'assassine, & remplit de son sang le mesme lit qu'il avoit si souvent souïllé de ses infames ordures." Bardet, *Recueil d'arrests*, 56-8. In addition to executing them both, the parlement

In the 90-year span of my survey of parlementary appeals, only two women, Jehanne Masson and Claude Baroche, were hanged for adultery without the aggravating circumstances of spousal murder or incest to justify their executions. Both of these deaths occurred during the moral panic and political chaos that ignited Paris during the crisis of the Holy League between 1589 and 1592, when most of the officers of the parlement had fled Paris.[68] Jehanne Masson appeared before the parlement twice in the early months of 1591, the first time for theft and larceny, for which the parlement sentenced her to "whipping with a switch" in her underclothes.[69] About a month later, Masson returned, this time having been convicted of multiple charges of lechery and adultery.[70] This time, the parlement executed her. The parlement's decision to execute Masson had as much to do with what appeared to be her unrepentant recidivism than the mere fact of illegal sexual behavior. Claude Baroche had the exceptional misfortune of arriving at the Conciergerie in the middle of November of 1591, when Barnabé Brisson, the chief justice of the parlement and two other *politique* magistrates were seized from the Palais de Justice and lynched in the Place de Grève by the *Ligueur* Jean Bussy-Leclerc.[71] Both Claude and Jehanne were victims of exceptionally bad timing that created the specific circumstances which impacted their extraordinary sentences

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vacated Martine's portion of her father's inheritance and transferred it to her sister, Marie. Bardet, *Recueil d'arrests*, 56-8. AN X^{2A} 980, 4 December, 1618. In another example, 1602, the parlement hanged and burned a woman from Vitry-aux-Loges, near Orléans, for adultery and the poisoning of her husband at the instigation of her lover, the local *curé.* AP A^{B} 16, 12 September, 1602; See also Arlette Lebigre, *La justice du roi: La vie judicaire de l'ancienne France* (Brussels: Editions Complexe, 1995), 278.

[68] Nancy Lyman Roelker, *One King, One Faith: The Parlement of Paris and the Religious Reformations of the Sixteenth Century* (Berkeley and Los Angeles: University of California Press, 1996), 385-441. Mack Holt, *The French Wars of Religion, 1562-1629* (Cambridge: University of Cambridge, 1995), 121-152; Robert Knecht, *The French Wars of Religion 1559-1598,* 3rd ed. (London and New York: Routledge, 2010), 70-79.

[69] "fustigee nue au verges," AP A^{B} 11, February 1591, fol. 49v.

[70] "plusieurs luxures et adulteres," AP A^{B} 11, March 1591, fol. 62.

[71] AP A^{B} 11, November 1591, fol. 70v; Roelker, *One King, One Faith*, 390-91; Holt, *The French Wars of Religion*, 137-9.

Authentication or mitigation?

The right to execute was a legal fiction of Roman law that provided jurists with an alternative to the more humane option to sentence women to *Authentiquée Sed hodie*, a form of religious confinement, which effectively resulted in the 'civil death' of a condemned criminal.[72] Sixteenth-century jurists resurrected the practice of authentication and concentrated its application mainly on adulteresses.[73] *Authentiquée* imposed two years of religious seclusion on wives. The husbands also won the right to absorb the assets that she brought to the marriage through her dowry. If the husband chose to reconcile with his wife after that time, the law permitted her to return home. If he did not, she faced lifetime incarceration without hope of formal monastic profession. According to statute, *amende honorable*, scourging, galley service, or execution awaited the lover when courts delivered this verdict and sentencing formula.[74] The conviction of Marie

[72] For example, the parlement mitigated the death sentence the royal courts at Caulmur issued against Françoise Guerin to authentication and the alienation of her assets. AP A^B 14, August 1600, fol. 193v; AN X^{2A} 962, 6 September, 1600. Citing the 'frailty of the female sex', Claude Le Brun de la Rochette explained that parlements across the kingdom abandoned the practice of execution in favour of penitential enclosure. See Le Brun de la Rochette, *Le Procès criminel*, I:30: "la peine de mort, decernee par les loix civiles contre les adulteres, a este adoucie avec le temps par aucuns Parlements de ce Royaume, pour le regard de la femme, en consideration de la fragilité de son sexe. Car apres qu'elle a esté accusée par le mary, et convaincre du crime, elle est ordinairement condamnée à estre battue de verges une ou plusieurs fois, et apres recluse dans un monastere, pour y vivre en habit de seculiere, deux ou plusieurs années"; Jocelyne Leblois-Happe, "Les sanctions des femmes criminelles: Y-a-t-il une spécificité féminine de la peine?" in *Figures de femmes criminelles de l'Antiquité à nos jours,* ed. Myriam Tsikounas (Paris: Editions de la Sorbonne, 2010), 182; Carbasse, *Histoire du droit pénal,* 45; Daumas, *Au bonheur des mâles,* 84-5. Beauthier summarizes the use non-voluntary religious enclosure as a *de facto* form of 'civil death'. Beauthier, *La répression de l'adultère*, 170-5 and Hanley, "The Monarchic State in Early Modern France," 121-2. Sixteenth- and seventeenth-century jurists often justified mitigated sentences for women because of their 'frailty' and 'legal imbecility.' For example, see the introduction to *De la violence et des femmes,* eds. Céline Dauphin and Arlette Farge (Paris: Michel Albin, 1997), 11-19.

[73] In the survey of *écrous*, the parlement mitigated the execution of one murderer, a merchant named François Haste, to incarceration in a monastery for five years. AP A^B 13, February 1630.

[74] Fournel, *Traité de l'adultère,* 307-313; Maurice Daumas, *Au bonheur des mâles: Adultère et cocuage à la Renaissance, 1400-1650* (Paris: Armand Colin, 2007), 85. In her comparative study of late medieval and early modern disciplinary uses of religious enclosure, Sara McDougall has highlighted the punitive severity

Quatrelivres on December 23, 1522 provided parlementaires with an important precedent for the application of this punishment.[75] The parlement sentenced her to flogging, stripped of her dowry and civil assets, and proposed to seclude her in a convent for a period of two years until such time as her husband might choose to either reclaim her or leave her enclosed for the remainder of her life.[76] Sara McDougall has used this case to delineate the secularization of religious codes of punishment for adultery and hypothesizes that religious confinement represented not only a shift in models of criminal sanction for adultery [77] (which it does), but that it also became a common penalty (which it never was). In the end, Marie, whose sentence supposedly represents the axiomatic penalty for adultery in sixteenth century France, was never actually enclosed: François I ultimately remitted her sentence.[78]

Despite the assumptions of historians that parlements commonly resorted to the religious confinement of adulterous women, a closer look at Conciergerie *écrous* and parlementary judgements suggest that judges only rarely employed this method of punishment. For example, the parlement confined Edmée Bottin for two years in a reformed convent only after she had been convicted *twice* of adultery by the parlement.[79]

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of *authentiquée*, a practice that medieval courts seem to have been reserved as a punishment for spousal murder rather than adultery. McDougall, "The Transformation of Adultery," 12-3.

[75] Papon, *Recueil d'arrestz*, 463; Damhoudere, *La pratique et enchiridion*, 129-30; 183; M. La Faye, *Recueil des arrests notables des cours souveraines de France.* (Paris: Robert Fouët, 1621), 1273; Le Brun de la Rochette, *Le procès criminal*, 12; Jousse, *Traité de la justice criminelle*, 215. See also Beauthier, *La repression de l'adultère,* 158; McDougall, "Transforming Adultery," 491.

[76] Papon, *Recueil d'arrestz*, 463; Beauthier, *La repression de l'adultère,* 158; McDougall, "Transforming Adultery," 491.

[77] McDougall, "The Transformation of Adultery," 12-3.

[78] Davis, *Fiction in the* Archives52 and 87; Barbara Diefendorf, *Paris City Councillors in the Sixteenth Century: The Politics of Patrimony* (Princeton: Princeton University Press, 1983), 172-3. Despite the remission of her sentence, the remainder of Marie's life was an unhappy one, beset by legal and financial trouble instigated by her husband's family. See McDougall, "The Transformation of Adultery," 522-3.

[79] The parlement convicted Bottin in 1625 and again in 1637. Régine Beauthier uses Bottin's case as an example of the harsh repression of adulterous women but seems unaware of her previous conviction. AP A^B 27, 9 January, 1625; AN X^{2A} 259, 5 October, 1637; Beauthier, *La répression de l'adultère*, 294

The parlement only confirmed one third of the authentication sentences that lower courts recommended.[80] Thus, based on my sampling of the *écrous,* between 1564 and 1655, the parlement agreed to enclose only 10% of the women who appealed their adultery convictions to the court.[81] An extrapolation of these figures suggests that the parlement sentenced no more than thirty-five or forty women to enclosure in a span of nearly one hundred years. Instead, the parlement mitigated the sentences – or sometimes even dismissed the case entirely – for the remaining 70% of appeals it received. Both the number of appeals and the relative severity of punishment diminished over time.[82] We know this phenomenon was not unique to the Parisian parlement. At Bordeaux, for example, the parlement rejected lower court sentences of authentication in three of every five cases it adjudicated, favouring flogging to the grimmer penalties of enclosure or banishment.[83] The harsh penalty of authentication began falling out of favour almost as soon as it began.

In practice, religious confinement was expensive and impractical to administer. Authentication demanded the cooperation of the host convent.[84] Confinement was costly. Convents therefore expected to receive financial rewards for the burden of housing convicted adulteresses. Sometimes they even took part in fraud to guarantee conviction if

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[80] In the sample of *écrous*, lower courts recommended the religious confinement of 22 adulteresses. The parlement received 14 of these appeals before 1610 and confirmed six of them. The parlement received 8 of these appeals after 1610 and confirmed only 2. In addition, the parlement mitigated two lower court death sentences to religious confinement.

[81] The parlement enclosed 8 out of 82 adulteresses in the sample of *écrous*.

[82] The parlement received the lion's share of appeals – 90% of them – before 1610. Whereas the parlement released only 13% of female adultery appellants either without charge or without punishment before 1590, the proportion of adulteresses that it released after 1590 doubled.

[83] Schnapper, *Voies nouvelles en histoire du droit,* 60; Daumas, *Au Bonheur des mâles*, 86.

[84] Especially after the Council of Trent had reaffirmed the imposition of strict enclosure, convent walls were not particularly porous to the profane world. The institutional acrobatics that permitted the installation of a married woman who was neither a novitiate nor a widow were complex and expensive. Elizabeth Rapley, *The Dévotes: Women and Church in Seventeenth-Century France* (Montréal and Kingston: McGill-Queen's University Press, 1990), 10-41.

the fees for enclosure were attractive enough. In 1684, Louis Semite a *marchand épicier* from Paris, allegedly bribed the abbess of the convent of Notre Dame de Paris to take his wife, Gabrielle Perreau (who he claimed was pregnant by a wealthy banker) into her custody as a penitent while awaiting her appeal.[85] Once Perreau's case was before the parlement for consideration, the abbess supported Semite's allegations about his wife's immorality (despite her possible knowledge that he was the father of his wife's fetus) in order to retain her and the fees she collected from Semite. Semite seized Perreau's dowry and Perreau spent the rest of her life in *habit régulier* at the convent of Notre Dame.[86] If Perreau had come from humbler origins, this arrangement would have been totally out of the question. When the court did apply the sentence of authentication, it usually reserved the punishment for élite women.

Adultery was expensive for husbands to prosecute. Legislation demanded that men pay for their wives' trials and prison upkeep, either out of their own funds or out of their wives' dowries.[87] Once their wives were enclosed, husbands had the legal obligation to provide them with a pension, either from their own income or from the dowry.[88] This burden became fundamentally more onerous after 1595. By *arrêt* on September 30, 1595, the parlement fixed the minimum cost for a wife's upkeep during her period of enclosure

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[85] Sarah Hanley, "Women in the Body Politic of Early Modern France," in *Proceedings of the Annual Meeting of the Western Society for French History*, 16 (1988): 409-410; Charles Arrault, *Factum ou requeste de Marie Gabrielle Perreau*, (1693); Vezin, *Factum or requeste de Louis Semite* (1693).
[86] Hanley, "Women in the Body Politic of Early Modern France," 409-410; Arrault, *Factum ou requeste de Marie Gabrielle Perreau*, (1693); Vezin, *Factum or requeste de Louis Semite* (1693).
[87] By arrêt of Parlement de Paris (March 17, 1536), see Papon *Recueil des arrestz*, 24:6:2; Pierre Jacques Brillon, *Dictionnaire des arrests, jurisprudence universelle des parlemens de France*, vol 1 (Paris: Charles Osmont, 1711), 57: "Mary accusant sa femme d'adultere, doit fournir aux frais de sa dépense et de sa nourriture, ou permettre la vente de sa dot..."
[88] Papon, *Recueil des arretz;* Le Brun de la Rochette, *Le procès criminel*, I:30: "apres qu'elle a esté accusée par le mary, et convaincre du crime, elle est ordinairement condamnée à estre battue de verges une ou plusieurs fois, et apres recluse dans un monastere, pour y vivre en habit de seculiere, deux ou plusieurs années…sa dot au surplus demeurant confisquée au mary, sauf que si on luy adjuge quelque pension sur ses biens, pour l'ayder à nourrir."

at 5 *sols* per day.[89] About 65% of the adultery appeals that the parlement of Paris processed between the mid-sixteenth and mid-seventeenth century were received before 1595. When parlements began imposing minimum fees for husbands seeking religious incarceration for their wives, the volume of appeals dropped dramatically, suggesting either that fewer men sought criminal sanctions against their wives or that they sought less aggressive penalties because the costs for enclosure were now too expensive.[90]

At approximately 90 *livres parisis* per annum, the costs of enclosure to husbands of humble means were prohibitive. In many cases, this annual fee may have approximated the entire annual salary of some skilled labourers. Among the artisanal classes, the costs of annual incarceration represented as much as the full value of an average dowry in some communities.[91] Using up a wife's entire dowry to subsidise her seclusion virtually precluded any of the economic advantages of seeking the costlier avenue of an adultery indictment over a simpler path such as accusing her of *paillardise* or even privately negotiating financial damages between husband and lover. Even for merchants and bourgeoisie, two years of religious confinement at the fixed cost of 5 *sols* per day ate significantly into the dowry that husbands had legal right to seize upon successful conviction. Add to this the loss of the economic contribution provided to the household by the wife's labour during her absence and it becomes fairly clear that

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[89] Le Brun de la Rochette, *Le procès criminel,* I:13.
[90] In the sample, the parlement received 82 appeals from women convicted of adultery. Fifty-two women appeared before 1595. Thirty women appealed sentences for this crime after 1595. The volume of appeals steadily declined after this turning point. Whereas 9 women appeared at the parlement between 1611 and 1633, only 2 women in the sample appealed convictions for adultery between 1634 and 1655.
[91] See Henri Sée, *Economic and Social Conditions in France During the Eighteenth Century,* trans. Edwin H. Zeydel (Kitchener: Batoche, 2004), 20, and Frederick M. Irvine, "From Renaissance City to Ancien Régime Capital: Montpellier, c. 1500-c. 1600," in *Cities and Social Change in Early Modern France.* 2nd ed., ed. Philip Benedict (New York: Routledge, 1992), 117.

criminal prosecution for adultery was not always the most attractive option for men who knew or suspected that their wives had been unfaithful.[92]

Even men who belonged to the ranks of the urban elite might find pursuing their wives for adultery to be financially ruinous. Pierre Guybert, an échevin in the city of La Rochelle, accused his wife, Perrette Therevin, of infidelity in 1595. Following the parlement's verdict, Pierre immediately ran into problems seeing her sentence of *authentiquée* executed; since his home bailiwick of La Rochelle was a Protestant stronghold, it had no convents willing or able to take his wife into enclosure. Perrette remained in custody at the Conciergerie in Paris for the following decade while the costs of her imprisonment mounted. By 1604, Pierre had stopped paying her prison fees. She languished in the Conciergerie until 1609, when the parlement eventually dismissed charges, restored what little was left of her dowry, and released her. Pierre ultimately wound up in prison for the immense debt he had incurred from the initial trial, the parlementary appeal and the costs of her long incarceration.[93] In 1644, a parlementary *arrêt* ultimately reinforced the pecuniary responsibilities of the "husband and his heirs" to arrange for the "lifetime pension" of any convicted adulteress condemned to religious seclusion.[94] While jurisconsults like Papon and Dahoumdère emphasized the use of enclosure to chastise a wife's infidelity, many husbands were reluctant to seek such a punishment because of the significant cost required bring the matter to trial and to provide for their wives' subsistence. As the case above suggests, parlements were

[92] On the essential contribution of women to the economic integrity of middling households see Hardwick, *Practice of Patriarchy*, 93-107.
[93] Walch, *Histoire de l'adultère,* 46.
[94] Georges Louet, *Recueil de plusieurs arrests notables du Parlement de Paris pris des Memoires de Monsieur Maître Georges Louet* (Paris: Michel Guignard and Claude Robustel, 1712), 68.

reluctant to sentence women to *authentiquée* because of the financial risk the Crown faced if the husband absconded from his financial duty to the court or to the convent.

Religious confinement, therefore, was only available as an option to the most élite men married to the wealthiest women.[95] These husbands had honour and resources to spare in the pursuit of a conviction of a wife, and usually her lover alongside her, who in turn had sufficient assets to make the publicity of the trial financially rewarding enough to pursue. In the late winter of 1625, Marie Drouin, Damoiselle du Mama, the wife of Jehan Henenons, was convicted along with her lover, Monsieur Pierre Champenois, *procureur fiscal* de la Fauche en Bassigny. Damoiselle Marie, who was then 48 years old, had been married to Jehan for twenty-eight years when he accused her of being a '*putain publique*' after finding her in the bed of the twenty-nine year-old Pierre.[96] According to her husband's version of events, upon his surprise discovery of Marie and Pierre lying together, she grabbed her lover's knife and threatened to kill Jehan with it.[97] The combination of this alleged threat of violence and, probably, the added scandal of Jehan's much younger age, convinced the parlement that the case merited a serious response.[98] The parlement condemned Marie to penitential enclosure for a one year and permitted Jehan to seize her dowry. Pierre Champenois was ordered to pay 500 *livres* in amends to

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[95] Taylor notes a similar pattern for Iberian prosecutions of adultery. See Taylor, *Honor and Violence*, 197-200, 224.

[96] Sexual relations between younger men and older women and between a man of subservient status to a woman were especially taboo. See Natalie Zemon Davis, "The Reasons of Misrule," *Society and Culture in Early Modern France* (Stanford: Stanford University Press, 1975), 97-123; Daumas, *Au bonheur des mâles*, ch.4.

[97] "il la trouva dans le lit avec dudit Champenois et quelle la voulu de porter de grand cousteau pour le tuer."AN X^{2A} 987, 10 March, 1625.

[98] The parlement assumed that most women who killed their husbands did so out of a misguided allegiance to an adulterous affair with another man. See Nolde, *Gattenmord,* 396. Furthermore, sexual relations between younger men and older women and between a man of subservient status to a woman were especially taboo. See Davis, "The Reasons of Misrule," 97-123; Daumas, *Au bonheur des mâles*, ch.4.

Jehan and another 100 livres in compensation to the court.[99] For some husbands, the pleasure of locking an unfaithful wife up in a convent probably paled in comparison to the rewards awaiting them in those cases where their wives' lovers had ample resources to extract as financial retribution.

These financial incentives that rewarded husbands who won a successful verdict against their wealthy wives or wealthy lovers made the parlement suspicious of the motives that stirred men's supposed desire for justice. Sometime during the summer of 1605, Jacques Rugaulx returned home to Pontoise, following a year-long absence to find that his wife, Charlotte Aubignan, had given birth to a baby daughter that he believed was not his own. For her part, Aubignan asserted that she had been pregnant when he left and that she, as well as the other two daughters they had had together during their five years of marriage, were indeed his. A year later, Rugaulx filed civil and criminal claims against Aubignan seeking one thousand livres and seventeen sous in financial reparations in addition to separation of goods for her infidelity.[100] The lower court at Pontoise awarded him only 24 livres and condemned Aubignan to perform the *amende honorable* and to be banished from the bailiwick for one year. Charlotte appealed this sentence to the parlement. Clearly suspicious of Rugaulx's financial motives, the parlement questioned Aubignan as to why her husband had let an entire year pass before formally accusing her of adultery, to which she answered that she believed he wanted to be released from his debts and he saw her wealth as the key.[101] The court found Aubignan guilty, the age of the child convincing them that she could not be Rugaulx's daughter. The judges

[99] AP A^B 27, 11 February, 1625, fol. 40v; AN X^{2A} 987, 10 March, 1625.
[100] AN X^{2A} 968, 25 October 1606; AP A^B 18, October 1606, fol. 36.
[101] "pourquoy son mary ne la passe a l'adultere hier, et qu'a eu accusé u an d'apres… elle vouloit bailla des debtes." AN X^{2A} 968, 25 October 1606.

condemned her to the humiliation of performing the *amende honorable* in front of her husband and declared her youngest daughter an adulterine bastard.[102] He could enjoy the pleasure of his wife's humiliation, and the parlement's decision to label the baby an 'adulterine' permitted Rugaulx to ignore the child in his will.[103] Rugaulx's victory, however, was limited. The parlement's ruling was impacted by the time it took Rugaulx to eventually denounce Aubignan – a delay it found suspicious. The parlement *did not* award Rugaulx with the thousand livres and seventeen sous he was after; moreover, it *did not* agree to alienate his wife's dowry, it *did not* banish her from Pontoise, and it did not permit him to repudiate her through formal separation. Aubignan remained Rugaulx's problem.

Rugaulx's qualified victory was not guaranteed in the long term. Men sometimes faced litigation from the children they had disinherited by reason of adultery. For example, Joachim Cognot refused to accept his daughter, Marie, who was born in 1599, calculating that his absence from home coincided with the beginning of his wife's pregnancy. He managed to successfully disinherit Marie as the "adulterine bastard" of his wife's affair. Nevertheless, in 1638, when Marie Cognot was a mature woman, she successfully pursued a civil claim against Joachim to recognize her as his legitimate

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[102] The parlement reserved this drastic ruling, which damaged the child's future chances of success, for instances when they were certain *beyond doubt* that the child was the result of an adulterous affair. The example above of Damoiselle Antoinette Le Camas demonstrates that the judges withheld the application of this censorious title when they were not absolutely certain.

[103] "elle est ajoindre sa gardienne et adulterine cy apres publiquement fere amende honorable devant son mary." AN X^{2A} 968, 25 October, 1606. Jurists only permitted men to disinherit such children if the evidence to support their illegitimate paternity was irrefutable. French custom held that adulterine bastards could not inherit through either patrilineal or matrilineal lines of succession. The ruling secured Aubignan's wealth as the source for the basic support owed to her daughter. Aubignan had few options available regarding her daughter's chances of accessing any inherited wealth through Rugaulx, the natural father of the girl, if he came forward or through her own fortune. Parlementary rulings on two separate civil appeals heard in 1563 and 1579, respectively, determined that children whose parents were not free to marry could only access the most basic of financial support from their natural parents. See Matthew Gerber, *Bastards: Politics, Family, and Law in Early Modern France* (Oxford: Oxford University Press, 2012), 7-8, 65-6.

daughter.[104] After nearly forty years, Joachim lost the victory he believed he had claimed. As other examples I have already discussed have shown, litigation that followed a successful conviction for adultery could drag on for years. Men had no way of predicting whether their decision to denounce their wife or reject her offspring would come back to bite them. It ruined Pierre Guybert and haunted Guillaume Sanguin even in death.[105]

When authentication or pecuniary awards were financially unfeasible for husbands, they sometimes sought banishment as a less expensive, but equally punitive, alternative. The parlement was also squeamish about applying this punishment to adulterous wives, reserving it for the most exceptional of circumstances. In particular, parlementaires were sensitive to women's affairs with members of the clergy. In 1607, Guillaume Chastelans won his conviction against his wife, Etiennette Guitard, for adultery and fornication with a friar. The court sentenced her to perform the *amende honorable* and banished her for one year from Paris.[106] When a man's wife became a prostitute and then audaciously the concubine of a priest or abbot, the parlement also responded with force.[107] In July of that same year, the parlement convicted Catherine Chauslee of Tours of several acts of fornication and adultery. Catherine's husband, Jehan Beauroy claimed that he had abandoned her more than a year before for her bad morals.

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[105] *Recueils d'arrests*, 82-3; Walch, *Histoire de l'adultère,* 46.
[106] AN X2A 969, 30 April 1607.
[107] The fornication of a married woman with a religious was an especially serious crime. This taboo is borne out by the severity of the punishment Estienette Guitard and Catherine Chauslée received in comparison to non-married women who fornicated with the clergy, such as Denise Pictou, who was found guilty of being a "putain" who let herself become pregnant by "un prebstre." She did not deny knowing that he was "un homme d'eglise," confirming that she understood they were not free to marry and that their intercourse could not be misconstrued as an afiancement. Though the parlement found her guilty, it only sentenced her to flogging. AN X^{2A} 981, 19 March, 1619.

She eventually became an itinerant "whore…working from town to town."[108] Catherine ultimately settled down in an abbey as the paid concubine of the abbot, though she contended that she had actually paid the abbot 50 livres to be sheltered there.[109] The parlement found Catherine guilty, though her dowry could not reasonably cover the lower court at Tours' sentence of perpetual religious confinement. It changed her sentence to flogging "around the city with the noose around her neck [after which she was] banished from the kingdom in perpetuity."[110] These crimes violated specific social and sexual codes whose transgression threatened not only the husband's honour but also were particularly offensive to the social and religious order. [111]

Just as the previous chapter forcefully demonstrated, however, parlementaires required a high standard of proof in order to condemn appellants to severe penalties. Because of its secrecy, even when the judges believed that a woman was very likely guilty of adultery,[112] they required strong proof of guilt in order to prescribe serious punishments.[113] In order to guarantee the return of a guilty verdict and a hefty sentence to match it, a husband had to persuade the parlement that a wife's baby was not his, his wife had cohabitated with an illicit partner, or he had discovered her in the act of infidelity with another man. Anything less resulted in a mitigated sentence that must have rendered

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[108] "Qu'elle est une putain…travaillant de ville en ville…qu'elle a este avec un religieux…qu'elle [dit qu'] il lui prit en charge a l'abbaye." AN X^{2A} 969, 9 August, 1607.
[109] AP A^{B} 18, July 1607, fol. 156v; AN X^{2A} 969, 9 August, 1607.
[110] AN X^{2A} 969, 9 August, 1607: "Arrest fustige lad chauslee avec la corde au col en cette ville [et] bannie du Royaume a perpetuité."
[111] Cindy-Sarah Dumortier, "Du prêtre concubinaire au curé volage (XVII^{e} – XVIII^{e} siècle, diocèse de Cambrai," *Revue du Nord* 399, 1 (2013): 57-69; Rosie Simon-Sandras*, Les curés à la fin de l'Ancien Régime* (Paris: PUF, 1988), 42-45.
[112] As the next chapter will show, for parlementaires, the formulation of sentencing criteria was rendered more complicated by the belief that the male partner in an illicit relationship carried the higher burden of guilt.
[113] Julie Doyon, "De la clandestinité à la 'fausseté:' la fraude matrimoniale à Paris," *Dix-Huitième siècle* 39, 1 (2007): 415-30.

the financial investment and public infamy of a trial virtually worthless.[114] Such must have been the case for Daniel Daure who attempted to enclose his wife, Damoiselle Antoinette Le Camas, in order to get hold of her dowry and rebuke the child he claimed was not his own. In the late winter of 1607, Daniel Daure complained to the bailiff of Sainte Geneviève prison in Paris that Antoinette had given birth to a daughter that he did not believe was his.[115] The lower court judge found Antoinette guilty and sentenced to her to authentication and the confiscation of her dowry. She appealed this sentence to the parlement. Daniel deposed to the parlement that "he had discovered her living dissolutely" and knew "he was not capable" of being the father of her infant daughter because "the marriage was not consummated."[116] Antoinette refuted this claim, responding that she knew very well that he was her true husband and the father of her daughter.[117] Daniel failed to convince the parlement that the child was not his.[118] It dismissed the charges of adultery and forced him to recognize Antoinette's daughter as his legitimate child and rightful heir.

When Magdelene Bresson appeared at the parlement in the summer of 1584, she successfully turned the tables on her husband, asserting in her testimony that a man, not named in the trial summary, "had taken advantage of her."[119] Although she "was a good woman and [her husband's] wife for sixteen years," for this her husband "wanted to

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[114] The previous chapter demonstrates that parlementaires were far more reluctant than many lower courts to exert maximal punishment on crimes without very persuasive evidence.
[115] AN X^{2A} 969, 7 March, 1607.
[116] "qu'il n'estoit capable que le mariage n'estoit consommé ni accomply…Qu'il avoit la suivante de mauvais train." AN X^{2A} 969, 7 March, 1607.
[117] "Elle falloit scavoir s'il estoit son mari… Quelle a dict quoi comme n'a pouvoit trouver des autres dommages… que l'enfant estoit des œuvres de son mary." AN X^{2A} 969, 7 March, 1607.
[118] Cathy McClive, *Menstruation and Procreation in Early Modern France* (Burlington: Ashgate, 2015), 180.
[119] "[un] homme ayant abusé d'elle…." AN X^{2A} 951, 10 July, 1584

divorce her."[120] Bresson essentially admitted to having intercourse with another man, proof enough to warrant conviction, which the parlement confirmed in its judgement. Her testimony, on the other hand, compelled the parlement to nuance her sentence because she introduced two mitigating factors in her testimony: first she claimed a long-standing status as a good wife, presumably referring to a marriage that had heretofore been absent of scandal. It is possible that she convinced the court to take her good reputation into consideration. Noël du Fail recorded a similar instance from 1565 in which the parlement of Rennes was persuaded to dismiss a defamation case on the basis of the defendant's good reputation;[121] second, Bresson's use of the verb "abuser" to describe the liaison suggested both that the intercourse had not been consensual and referred to the legal definition of adultery as the "abuse of a married woman" by another man used by jurisconsults like Jean Papon.[122] This technical language subtly, but importantly, emphasized the greater share of responsibility that illicit partners carried when they slept with another man's wife. Furthermore, in letting slip that her husband had threatened to sue her for separation of goods, criminal sanctions must have seemed unnecessary from the perspective of the parlement. In the end, the parlement did not sentence Bresson to any kind of punishment at all, but only admonished her "de bien vivre," to live well.[123]

The sentencing patterns of the parlement in the seventeenth century clearly suggest that the judges often endorsed the tactic that husbands seek private financial settlements rather than harsh criminal penalties at the royal courts. We see this in the

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[120] "elle est une femme de bien et son espouse de xvi ans… il la fera de divorcer." AN X^{2A} 951, 10 July, 1584.
[121] Noël du Fail, *Memoires des plus notables et solomnels arrets du parlement de Bretagne* (Rennes: Jean Vatar, 1654), 669.
[122] Papon, *Trias judicial*, 452.
[123] AN X^{2A} 951, 10 July, 1584.

parlement's decision *not* to sentence Le Camas, Aubignan, and Bresson when their husbands had already taken or planned to take other civil measures to seek compensation for their wives' adultery. Moreover, the parlement had learned its lesson from men like Pierre Guybert, who could not afford to support his wife's imprisonment.[124] Whereas sixteenth-century parlements released ten women without any punishment, after 1600, the parlement returned more than half of the women who appealed adultery convictions to their husbands.[125] Four of these women appealed authentication sentences given to them by the lower courts. In 1626, the Châtelet condemned Anne Gautier to authentication for her affair with a man named appropriately named Damours. Without pronouncing a final judgement, the parlement sent her home to her husband, M. Embry, with the admonishment that she was "forbidden from frequenting the said Damours in Paris."[126] The parlement made a similar pronouncement when it sent Anthoinette Lambert home to her husband with strict prohibitions against her seeing her alleged lover, the coffin maker, François Rousseau.[127] It made no sense to encourage men to clog up the royal courts or worse yet, open them to the financial risk for what parlementaires increasingly saw as domestic squabbles that were better suited to tempered domestic solutions.

Honour, shame, and infrajudicial strategies

Adultery was humiliating and its criminal prosecution was prohibitively expensive for most men. When the parlement sentenced the Sieur de Ballentière to death

[124] Walch, *Histoire de l'adultère,* 46.
[125] The parlement returned 17 of 30 adulteresses to their husbands after 1595.
[126] "Ladite Gautier a alla se retirer avec son mary et se deffenser de frequenter ledit Damours a Paris." AP A^B 27, 16 July, 1626, fol. 326.
[127] AP A^B 23, 23 September, 1617, fol. 57.

for killing his wife, in outrage he lashed out at the judges, telling them that "they were only making him die because he would not suffer being a cuckold like all of them."[128] On the scaffold, he refused to wear a blindfold.[129] Totally unrepentant, his honour was worth his execution. The humiliation of cuckoldry also raised questions about whether the husband was not only incapable of controlling his wife but also of physically satisfying her.[130] Ironically, perhaps, by identifying wives as the only spouse criminally responsible for infidelity, early modern jurists manufactured the 'cuckold' as a social category that was unique to husbands.[131] Observing the early modern French fascination with cuckoldry (a cultural obsession that Maurice Daumas describes as a 'phobia'), Catherine Pulling remarks that "[i]t takes a husband and a seducer, working together, to make a cuckold…abuser and victim or virile seducer and passive abject dupe."[132] Because of the common trope of the adulterous wife found in *canards* and religious mythology,[133] husbands experienced shame and suspicion both among neighbours and business associates, and also in the eyes of justice, when they denounced their spouses.

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[128] "Quand on lui prononça son arrest, il dist tout haut que tous ses juges estoient coqus…et qu'ils ne le faisoient mourir que pour ce qu'il ne vouloit souffrir d'estre coqu comme eux." De l'Estoile, *Journal de Henri III*, 314.
[129] De l'Estoile, *Journal de Henri III* 314-5.
[130] Gerber, *Bastards*, 7-8; Bailey, *Ties that bind*, 143; Bernard Capp, "Separate Domains? Women and Authority in Early Modern England," in *The Experience of Authority in Early Modern England,* eds. P.Griffiths, A. Fox, ad S. Hindle (Basingstoke: St. Martin's Press, 1996), 133. David Turner, "Nothing So Secret but Shall be Revealed: The Scandalous Life of Robert Foulkes," in *English Masculinities, 1660-1800,* eds. Tim Hitchcock and Michele Cohen (London and New York: Addison Wesley Longman, 1999), 41-50.
[131] Maurice Daumas, "Les rites festifs du myth du cocuage à la Renaissance," *Cahiers de la Méditerranée,* 77 (2009): 112-3.
[132] Catherine Marie Pulling, *Situating the self: Cuckoldry in early modern French literature.* PhD Diss. (Minneapolis: University of Minnesota, 2007), 7; Maurice Daumas, "La sexualité dans les traités sur le marriage en France, XVIe-XVIIe siècles," *Revue d'histoire moderne et contemporaine,* 51, 1 (2004): 26.
[133] Nolde, *Gatenmord*; Daumas, "Les rites festifs"; Silvia Liebel, *Les médées modernes: la cruauté féminine d'après les canards imprimés: 1574-1651* (Rennes: Presses Universitaires de Rennes, 2013), ch. 4.

A wife's adultery brought shame upon a household because it victimized men by robbing them of their honour, but also because cuckoldry was a self-inflicted wound that made men an object of pity and scorn, regardless of whether they denounced or seemed to tolerate the behaviour.[134] Sara Matthews-Grieco's analysis of satirical engravings distributed in Paris in the wake of the political crisis of the Fronde shows that criticism of the cuckold and the adulteress did not only play on postlapsarian clichés of womankind's fallen state, but also on the cuckold as a failed patriarch whose impotence, poor economy, jealousy, or inattentiveness drove his wife into the arms of another man.[135] The very act of a husband's denunciation of his wife for adultery effectively confirmed for neighbours and business associates that he was a cuckold. Unpopular men faced the added suspicion from neighbours that the denunciation represented a dishonest attempt to repudiate a wife they no longer had the honour or financial wherewithal to support.[136]

Criminal prosecution for adultery declined in the seventeenth century not only in France, but also later in the century in Spain, England, and the Netherlands, where legists also identified wives and their lovers as the only legal target of prosecution. As in France, however, while criminal justice in these jurisdictions emphasized the integrity of the family and household honour, similar fixations on the mastery and control of the *pater familias* on the household made the process of denunciation embarrassing to husbands.

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[134] Daumas, *Au bonheur des males*, 95-7; Taylor, "Nothing So Secret," 191; Laura Gowing, *Common Bodies: Women, Touch and Power in Seventeenth-century England* (New Haven and London: Yale University Press, 2003), 192; Laura Gowing, *Domestic Dangers: Women, Words, and Sex in Early Modern London* (Oxford: Clarendon, 1998); Susan Dwyer Amussen, "The Part of a Christian man: the Cultural Politics of Manhood in Early Modern England," in *Political Culture and Cultural Politics in Early Modern England*, eds. Susan D. Amussen and Mark A. Kishlansky (Manchester and New York: Manchester University Press, 1995), 225.

[135] Matthews-Greico, "Picart's Browbeaten Husbands," 249-290.

[136] Matthews-Greico, "Picart's Browbeaten Husbands," 249-290; Aline Rousselle, *Porneia: de la maîtrise du corps à la privation sensorielle* (Paris: Presses Universitaires de France, 1983), 105.

These conditions discouraged men from seeking the publicity of a criminal trial. As a result, some men found infrajudicial means to recover their damaged honour without sacrificing their public dignity.[137] In the Province of Holland during the latter half of the seventeenth century, for example, private settlements of pecuniary amends negotiated between husbands and lovers were so popular that provincial authorities had to step in an attempt to redirect these matters back to the criminal courts for public prosecution.[138] These private settlements spared husbands and their rivals the cost and public humiliation of a trial, permitted them to negotiate satisfactory financial compensation for the offense, and enriched the bailiffs who agreed to the look the other way. When authorities finally outlawed the disposal of court proceedings in favour of private settlement in 1677, criminal prosecutions actually declined. The law was reversed two years later.[139]

In France, most men (and their families) likely echoed this desire for anonymity, preferring to manage infidelity privately. These infrajudicial processes protected them and their families from public notoriety and saved them some of the unwelcome legal costs associated with criminal litigation. Men of limited means encountered several barriers to accusing their wives of adultery before criminal justice.[140] These included the

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[137] See for example, Beauthier, *Repression de l'adultère;* Walch, *Histoire de l'adultère;* Daumas, *Au bonheur des mâles*; Taylor, *Honor and Violence,* 197-200; Bailey, *Ties that Bind*, 141-2; Turner, "Representations of Adultery," 221-3; Mary E. Fissell, *Vernacular Bodies: The Politics of Reproduction in Early Modern England* (Oxford: Oxford University Press, 2004), 215-222. Following Laura Gowing and Frances Dolan's observations on the criminalities of women, Fissell concludes that English tropes of cuckoldry coincided with the political crisis of patriarchy of the 1620s and 1630s, see Fissell, 196-243.
[138] For a small bribe, city bailiffs in Amsterdam agreed to omit the names of adultery litigants in court registers and to permit them to settle out of court. Manon van der Heijden, *Women and Crime in Early Modern Holland,* trans. David McKay (Leiden and Boston: Brill, 2016), 36-7.
[139] Van der Heijden, *Women and Crime in Early Modern Holland*, 36-7.
[140] Jurisconsults recognized that financial barriers made denunciation challenging for cuckolded men. Jousse, *Traité de la justice*, 7-8; Le Brun de la Rochette, *Procès civil et criminel*, 26-7; Griet Vermeesch, "Reflections on the relative accessibility of law courts in early modern Europe," *Crime, histoire et sociétés,* vol. 19, no. 2 (2015): 70; J. A. Carey, *Judicial Reform in France before the Revolution of 1789.* (Boston: Harvard University Press, 1981), 10-18. The decline of adultery prosecution at courts or royal justice in the seventeenth century may relate to the paucity of financial aids available to deponents in royal courts (which

legal costs and economic loss to the household associated with trial, enclosure, or exile, the high standard of proof that virtually required flagrant delict of the lovers, and the shame of cuckoldry.

While men from among the *menu peuple* could not hope to afford to enclose an adulterous wife in a convent or criminally prosecute her, they could employ forms of civil justice which were less expensive and easier to navigate.[141] In 1692, Pierre Handemont, for example, after accusing his wife, Françoise Fromartin, of having slept with several other men as a prostitute during their marriage, managed to have her committed to the city poorhouse for a month as punishment. Pierre regretted his decision to remove Françoise from his home. Ten days after her committal, Pierre appealed to the court to have his wife returned to him.[142] Perhaps the burden of Françoise' absence outweighed Pierre's anger at her infidelity.

Men privately repudiated their wives, sparing themselves the additional costs and the added spectacle of a public trial. Pierre de l'Estoile records such an incident in his *mémoires-journaux*. According to de l'Estoile, in the early winter of 1608, a "young demoiselle" from among his kin had for a long time been the focus of rumours that she had cuckolded her husband with a common butcher. Notwithstanding "all the submissions, pleas, and admonitions" that the family made in her defense, her husband

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differed from access to ecclesiastical justice), whose officers measured their financial compensation as a merit of the venality of their office. See for example, James Brundage, "Legal Aid for the Poor and the Professionalization of Law in the Middle Ages," *The Journal of Legal History,* 9, 2 (1988): 159-179 and Vermeesch, "Reflections," 69-71.

[141] Hardwick, *Family Business*, 65; Alfred Soman, "L'infra-justice à Paris d'après les archives notariales," *Histoire, économie et société,* 1, 3 (1982): 369-375.

[142] Julie Hardwick, *Family Business,* 80. Similarly, a man who had his wife enclosed in Regensburg in 1405 asked for her return because the burden of absence outweighed his anger at her infidelity. See Otis-Cour, "De Jure Novo," 354, n. 28.

returned her to her mother.[143] From de l'Estoile's description of the matter, it sounds as though the young woman had a certain amount of notoriety, which her family obviously rejected as gossip. Nonetheless, rather than prosecute her through formal channels, her husband returned her to her natal family. Unfortunately, de l'Estoile did not furnish the details of any financial settlements negotiated by the two families. It is most likely that they reached a civil or private settlement. Civil litigation and private contractual settlements were very popular modes for obtaining financial compensation and negotiating reconciliation between disputing parties.[144] This tactic helped men to achieve the financial compensation that the parlement might or might not award them without making their wife's infidelity a source of notorious gossip while helping men to avoid the costs of the criminal trial, which included funding their wives' imprisonment.

Thus, most men seem to have resorted to criminal justice only when compelled by a desire for vengeance or monetary compensation. Agnès Walch concludes that men usually resorted to formal accusations of adultery following years of significant marital strife that exceeded the immediate problem of infidelity dealt with in criminal charges.[145] Jurists, on the other hand, tended to favour the reconciliation of couples whose strife brought them to the parlement. Papon contended that husbands ought to reconcile with their *convicted* wives or to seek mitigated sentences for them provided they had applied

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[143] Pierre de l'Estoile *Mémoires-Journaux*, vol. 9 (Paris: Librairie des Bibliophiles, 1881), 173: "Une jeune damoiselle, de nos parantes, aiant le bruit de long-temps de faire porter les cornes à son mari, fust, en ce mois, par lui rendue à sa mère, nonobstant toutes soubmissions, prières et remonstrances qu'on lui fist au contraire, disant à sa mère qu'elle se contentast qu'il lui donnoit la vie et qu'il y avoit procédé par la voie la plus douce, estant bien adverti de son mauvais gouvernement, vie infame et lubrique, et de la paillardise qu'elle commetoit ordinairement aven un toreau bannier d'Evesque, qui ne void goutte et ne peult ouvrir les yeux qu'à l'impudicité et vilanie."

[144] Michael Breen speculates that private litigation outweighed the volume of criminal cases heard by Old Regime seigneurial courts by a factor of as many as 15 to 1. See Breen, "Law, Society, and the State in Early Modern France." *The Journal of Modern History,* 83, 2 (June 2011), 354.

[145] Walch, *Histoire de l'adultère*, 40-44

to the court prior to the delivery of the verdict, implying that an ultimately harmonious resolution was still an ideal outcome.[146] In general, parlement found the impositions of full statutory sanctions impractical and counterproductive.[147] Men found the process of denunciation humiliating and expensive.

In his retrospective on courtly life, Pierre de Bourdeille judged that "husbands abusing their wives are very punishable" because "husbands, not governing themselves modestly with their wives in their [marriage] bed as they must, fornicate with them as concubines."[148] A husband's honour was also his wife's virtue. Reflecting on the evolution of mentalities in the eighteenth century, Maurice Daumas asserts that "the trial and enclosure had become more scandalous than the adultery itself."[149] In the preceding century, wives may have been the only spousal partner capable of criminal indictment for adultery; however, husbands did not necessarily escape the social costs of the crime. Men had to calculate the social and economic costs of denunciation against the merits of the outcome. Indictment was worthwhile if the husband stood to gain financially from the indictment by gaining access to his wife's dowry or the lovers' assets through pecuniary amends, or by gaining the release of fiduciary responsibilities to her. In the face of limited financial gain, it was only worth pursuing one's wife if the crime was so notorious that failure to denounce her publicly was more damaging than remaining silent.

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[146] Papon, *Recueil d'arrestz,* 468.
[147] Walch, *Histoire de l'adultère*, 17-19. The willingness of the parlement to adjudicate espousal suits arising from breach of promise and its tendency to rule in favour of marriage or dowry and child support reflect this sensitivity to crafting and maintaining households.
[148] Brantôme, *Vies des dames gallantes* 33-4: "*Les marys abusants de leurs femmes sont fort punissables, comme j'ay ouy dire a de grands docteurs, que les marys, ne se gouvernants avec leurs femmes modestement dans leur lict comme ils doivent, paillardent avec ells comme avec concubines, n'estant le marriage introduit que pour la necessité et procreation, et non pour le plaisir desordonné et paillardise*."
[149] Daumas, *Au bonheur des mâles*, 98.

The Protestant moralist Pierre de la Primaudaye linked *paillardise* to the feminization of the kingdom and, while he directed his invective against Catholic rulers, he tapped into prevailing anxieties about the fragility of the social order under the governance of a weakened and emasculated ruler.[150] The strict penalties recommended by the affirmation of Roman legal responses to adultery intended to assert the centrality of household patriarchy. In practice, these statutes also reveal the tenuous hold with which husbands grasped the rhetorical foundations of this power. Women's marital infidelity suggested that their husbands had failed to establish rightful dominion over the household.[151] It unmanned husbands whose lack of prowess and inability to manage household affairs had driven their wives into the arms of more capable men.[152] Men were responsible for maintaining control of the *bon mesnagement* of the household. Adultery was a tangible measure of their failure. As the next chapter will show, the parlement did not demonstrate leniency toward men who failed to pilot their households with the integrity that was expected of the *pater familias*. The parlement de Paris vigorously punished men both as cuckolding interlopers and dishonest spouses for betraying the sanctity of marriage, their obligations to their households, or their duty to their lineages.

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[150] Primaudaye, *Academie françoise,* 116-117.

[151] Men provided the example of honour for their wives to emulate and follow. For example, a vignette in the *Heptaméron* tells the story of an unhappy wife who justifies her infidelity by blaming her husband's lack of affection and respect and even suggests that his infidelity was more shameful than her own because he possessed superior maturity and life experience and thus answered to a higher standard of honour than she. In the end, she is exposed as fickle and immature, more or less the wife he deserved. By contrast, another tale examines the delightful subterfuge that an honourable woman married to an honourable man planned in order to thwart and expose the unwanted advances of a dishonourable, would-be cuckold. Good husbands produced good wives. See Marguerite de Navarre, *The Heptaméron*. VIII, XXVII.

[152] Matthews-Greico, "Picart's Browbeaten Husbands, 249-290; Elizabeth A. Foyster, *Manhood in Early Modern England: Honour, Sex and Marriage* (New York and London: Routledge, 1999), 78-9.

Chapter 5: Punishing Men for Adultery

In May of 1551, the parlement executed the servant of a Parisian barkeep for adultery with his master's wife. According to the *arrêtiste,* Jean Papon, who examined the parlement's decision in his collection of *arrests notables,* the servant had recently become enamored with his master's wife – a woman whom Papon eagerly tells us already had a dishonourable reputation. One evening, having become drunk on too much wine, she "revealed herself up to the thighs" and a little later showed off "her throat and nipples." Spurred on and "heated up" by the sight of his mistress' body, the servant decided that he "wanted to get to know her." Later that evening, while she slept off the wine, he had intercourse with her. Still not satisfied, he had sex with her again. This time she woke up, hearing the sound of her husband's arrival back home from his evening out. She cried out and complained about the servant's behaviour. He fled the house. Hearing the clamour, neighbours chased him down and eventually caught him at the Pont aux Meusniers, which stretched between the right bank of the Seine and the Île de la Cité.[1] After being arrested, the servant eventually confessed to everything. The parlement sentenced him to hang for adultery, *despite* the protestations of his master and mistress "who wanted to save his life [and their reputations] by declaring that they had not

[1] "Un serviteur de Cabaret voyant sa maistresse, autrement suspecte de son honneur, avoir bien beu pour un soir…l'une fois aupres de feu, [elle] se descouvrant iusques aux cuisses, l'autre fois la gorge et tetins, de tels esperons le ieune homme sollicité et eschauffe se mit en volonté de la cognoistre: ce qu'il executa, lors qu'il la vit endormie au lict et d'une et premiere fois non content, voulant redoubler fut descouvert par le resveil de sa maistresse oyant le bruit de son mari, qui estoit à la porte venany de la ville…elle crie et se plaint du serviteur qui est suivy et prins au pont aux Meusniers et mis en prison." Jean Papon, *Recueil d'arrestz notables des cours souveraines de France* (Lyon: Jean de Tournes, 1556), 465-6.

denounced him."[2] Because her husband refused to denounce her, the barkeep's wife eluded prosecution entirely. Besides, Papon tells us, the wife could not be found legally culpable, in part because she was asleep when the assault took place, but also because her husband had left her alone in the house with a male servant in spite of her scandalous reputation.[3] Papon's recollection of the predatory servant and reluctant, irresponsible husband provides valuable insight into the sexual politics that shaped both the judicial reasoning and the response that some husbands had to their wives' illicit sexual contact with other men. The husband had tried to avoid the publicity of a trial that would expose the scandal that gripped his household, the matter going to trial only because the husband ultimately could not keep the matter a secret. Finally, judicial reasoning held that the wife was not responsible for the sexual encounter, in part because her absent husband had not protected her. It was the husband's job to safeguard the chastity of his wife and manage the integrity of his household. Notions of legal consent, which men provided or prohibited, were integral to the sixteenth-century prosecution of men for adultery.[4] The husbands who denounced a solitary male defendant for adultery made a careful and specific choice to guard their wives from prosecution. This choice helped them to recuperate the honour lost to their wives' illicit sexual encounters with other men while allowing them to avoid the onerous social and financial costs associated with the denunciation of their wives.

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[2] "Enquis et ouy sur sa confession du tout est condamné par arrest de Paris, donné en May 1551 à estre pendu…ses maistre et maistresse, qui lui vouloient sauver la vie, pour declairer qu'ilz ne se plaignoient point." Papon, *Recueil d'arrestz*, 466.
[3] Papon, *Recueil d'arrestz*, 466.
[4] For a detailed discussion of legal consent in early modern French criminal and civil law, see Chapter Two. See also Stéphanie Gaudillat Cautela, "Questions de mot. Le "viol" au XVIe siècle, un crime contre les femmes?" *Clio. Femmes, genre, histoire* 24 (2006): 59-74; Stéphanie Gaudillat Cautela, " Le 'viol' au XVIe siècle. Entre théories et pratiques," in *Normes juridiques et pratiques judiciaires du Moyen Age à l'époque contemporaine,* ed. Benoît Garnot (Dijon: Editions Universitaires de Dijon, 2007), 102-111.

Papon's evocative telling of the story was clearly meant to entertain and scandalize as well as to educate future jurists on legal precedents.[5] More importantly for our purposes, however, the outcome of this case challenges traditional historiography on the prosecution of adultery in sixteenth-century France. Historical scholarship has tended to emphasize the aggressive punishment of adulterous women by the royal courts of France while underplaying the prosecution of their accomplices,[6] generally focusing on the mitigated sentences that some male illicit sexual partners received as a foil to the demonstrated hostility of the courts towards toward adulterous women.[7] The prosecution of adulterous men is something of a scholarly blind spot, obscuring both the rate of prosecution of men for adultery and the harsh penalties that the parlement imposed on these men – penalties in many cases that were more severe than those imposed on adulterous women.

Adulterous men who were convicted as the illicit sexual partners of married women represented nearly half of all adultery appeals.[8] Moreover, the parlement did not practice the same leniency toward adulterous men that it practiced toward adulterous wives. Whereas the parlement executed or enclosed about thirteen percent of the women who appealed their adultery convictions to the court, it sent thirty-seven percent of men

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[5] On parlementaires as a source of gossip and scandalous news see Una McIlvenna, *Scandal and Reputation at the Court of Catherine de Medici* (New York: Routledge, 2016), 1-34, 61-101.

[6] For example, Sara McDougall relegates accomplices to one sentence which observes that the male partners of adulterous women received much harsher sentences in the sixteenth century than they typically had in previous centuries. See Sara McDougall, "The Transformation of Adultery in France at the End of the Middle Ages*," Law and History Review*, vol. 32, 3 (August 2014), 496.

[7] See for example, Agnès Walch, *Histoire de l'adultère (XVIe-XIXe siècle)* (Paris: Perrin, 2009), 74; Régine Beauthier, *La répression de l'adultère en France du XVIe siècle au XVIIIe siècle* (Brussels: Story-Scientia, 1990), 177.

[8] Men represented 44% of all adultery appeals. The sample of *écrous* included 63 men and 82 women to comprise a total of 145 adultery appellants.

either to hang or to the galleys.[9] Furthermore, three quarters of male adultery appellants appeared at the parlement alone;[10] husbands and the courts placed sole legal responsibility on these men whom they accused of seducing, bribing, or physically forcing the innocent wives into sexual intercourse. Judicial tolerance for this strategy of husbands to protect their wives from prosecution by placing full criminal responsibility for the illicit encounter on the husband's sexual rival lasted from at least the middle of the sixteenth century until 1625, when a lover's successful countersuit created important legal precedents that made it more challenging for men to shield their wives from prosecution.[11] Contrary to the hypothesis put forth by most scholars who examine the prosecution of adultery in early modern France, the reception of Roman law in the sixteenth century did not exclusively focus on the punishment of married women; rather, these legislative and jurisprudential changes focused the eyes of the courts on their lovers.

These observations are surprising in light of the emphasis that historical scholarship has placed on the prosecution of women in early modern France. While historians have been correct to observe that the adultery of husbands was effectively decriminalized in the sixteenth century, they have relied too heavily on this shift in jurisprudence to construct a picture of adultery prosecution in France that was sexually dichotomous in nature. Not only did the parlement prefer to concentrate more severe and more violent punishments on the illicit sexual partners of married women, husbands were

[9] The sample *écrous* included the executions of 2 women and 9 men, the enclosure of 8 women (*authentiquee sed hodie* that originally mitigated the death penalty, but which became part of a sentence formula specific to adulterous women), and sentenced 14 men to galley labour (often, but not always a mitigation of the death penalty).
[10] 48 out of the 63 adultery appellants sampled appeared alone.
[11] Pierre Bardet, *Recueil d'arrests du Parlement de Paris*, vol. 1 (Paris: Augustin Besoigne, 1690), 213.

sometimes able to persuade the court that their wives were not culpable because they had been seduced, bribed or physically forced into the sexual encounter. Importantly, the majority of male adultery appellants at the parlement were the social equals of the husbands who accused them, which contradicts conventional assumptions that most adulterous lovers were socially inferior to the husbands who accused them.[12] These illicit sexual partners of married women therefore deserve closer attention.

Questioning the double standard

Around the turn of the sixteenth century, royal jurists began to construe adultery as primarily a property crime that damaged patriarchal honour and disrupted carefully managed lines of patrilineal descent.[13] Whereas late medieval ecclesiastical and temporal courts received denunciations from women and prosecuted and even severely punished

[12] Jean-Marie Carbasse, *Histoire du droit pénal et de la justice criminelle,* 2nd ed. (Paris: Presses Universitaires de France, 2006), 345; Beauthier, *Répression de l'adultère*, 70-1, 174-177; Walch, *Histoire de l'adultère*, 74-5.

[13] Pierre-François Muyart de Vouglans, *Lois criminelles de France, dans leur ordre naturel*, (Paris: Merigot, Crapart, Morin, 1780), 221; McIlvenna, *Scandal and Reputation,* 9; Julie Hardwick, *Practice of Patriarchy: Gender and the Politics of Household Authority in Early Modern France* (University Park: Pennsylvania State University Press, 1998), xi-xii and 52; Sarah Hanley, "Engendering the State: Family Formation and State Building in Early Modern France," *French Historical Studies* 16, 1 (Spring 1989): 4-27; Sarah Hanley, "The Monarchic State in Early Modern France: Marital Regime Government and Male Right," in *Politics, Ideology, and the Law in Early Modern Europe*, ed. Adrianna Bakos (Rochester: University of Rochester Press, 1994), 107-126; Sarah Hanley, "Family and State in Early Modern France: The Marriage Pact," in, *Connecting Spheres: Women in the Western World, 1500 to the Present*, eds. Marilyn J. Boxer and Jean H. Quataert (Oxford: Oxford University Press, 1987), 53-64; Jeffrey Merrick, "Fathers and Kings: Patriarchalism and Absolutism in Eighteenth-Century French Politics," *Studies on Voltaire and the Eighteenth Century* 308 (1993): 281-2; McDougall, "The Transformation of Adultery," 493-494; Beam, "Gender and the Prosecution of Adultery in Geneva, 1550-1700," in, *Women's Criminality: Patterns and Variations in Europe, 1600-1914,* eds. Manon van der Heijden, S.T.D. Muurling, and Marion Pluskota (Cambridge: University of Cambridge Press, 2020), 94; Guido Ruggiero, *Boundaries of Eros: Sex Crime and Sexuality in Renaissance Venice* (New York and Oxford: Oxford University Press, 1985), 45-8; Ulinka Rublack, *The Crimes of Women in Early Modern Germany.* (Oxford: Clarendon, 1999), 218-22; Beauthier, *La répression de l'adultère en France,* 280-3; Jeffrey Watt, *The Making of Modern Marriage: Matrimonial Control and the Rise of Sentiment in Neuchâtel, 1550-1800* (Ithaca: Cornell University Press, 1992), 131-2. See also the previous chapter.

their adulterous husbands, this new legal regime effectively decriminalized the marital infidelity of husbands.[14] Thus, even though husbands and wives remained equally spiritually culpable for their infidelity, sixteenth-century parlementary interpretations of Roman law technically reclassified the adultery of wives and their lovers as capital crimes.[15] Though the court rarely imposed extreme punishment upon women whose adultery convictions it upheld, according to the parlement, this reclassification, which purported to reactivate Justinian law codes, removed the prosecution of adultery entirely from ecclesiastical competence because only temporal judges had the authority to apply the death penalty.[16]

Following these early sixteenth-century statutory and precedential changes at the parlement which moved the prosecution of adultery from the competence of the ecclesiastical to the royal courts, statutory exclusions introduced in sixteenth-century parlementary interpretations of Roman law restricted women's legal capacities to denounce their husbands for adultery in the temporal courts.[17] Citing the supremacy of

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[14] See Leah Otis-Cour, "'*De jure novo*': Dealing with Adultery in the Fifteenth-Century Toulousain Author(s)," 84, 2 *Speculum* (April 2009), 347-8, 352-3; McDougall, "The Transformation of Adultery," 495-8; Sara McDougall, "Fictions and Lies: Accusations of Spousal Homicide and Adultery in France," in *Imagining Early Modern Histories*, eds. Elizabeth Ketner and Allison Kavey (New York: Routledge, 2016), 216-37.

[15] Gilles Le Maistre, *Les œuvres de feu messire Gilles Le Maistre, chevalier et Premier President en la Cour de Parlement de Paris*, ed. Claud Bernard (Paris: Michel Bobin, 1653), 519-522; M. La Faye, *Recueil des arrests notables des cours souveraines de France* (Paris: Robert Fouët, 1621), 1273; Papon, *Recueil d'arrestz,* 463-465; Claude Le Brun de la Rochette, *Les Procès civil et criminel divisé en trois livres* (Lyon: Jacques Roussin, 1605), 12; Daniel Jousse, *Traité de la justice criminelle de France*. (Paris: Debure, 1771), 215.

[16] Bardet, *Recueil d'arrests,* 213. Fournel concedes that the Parlement de Paris was the first of the sovereign courts within the kingdom to reserve authentication in favour of more lenient sentences for most adultery convictions. Jean-François Fournel, *Traité de l'adultère consideré dans l'ordre judiciaire* (Paris: Jean-François Bastien, 1778), 311-12.

[17] See also Papon, *Recueil d'arrestz*, 463; Josse de Damhoudere, *La pratique et enchiridion des causes criminelles* (Louvain: Jehan Bathen, 1555), 129-30; 183; La Faye, *Recueil des arrests notables*, 1273; Le Brun de la Rochette, *Le procès criminal*, 12; Jousse, *Traité de la justice criminelle,* 215; Muyart de Vouglans, *Les lois criminelles de France*, 22 ; Beauthier, *La répression de l'adultère en France*, 26-30; McDougall, "The Transformation of Adultery, 491-524; Maurice Daumas, *Au bonheur des mâles: Adultère et cocuage à la Renaissance, 1400-1650* (Paris: Armand Colin, 2007), 77-82; Walch, *Histoire de*

the husband as head of the household as an important justification, secular jurisconsults maintained the legal inequality between adulterous husbands and wives.[18] French statute and jurisprudence published from the sixteenth century onwards concentrated on the inequality of the marital infidelity of husbands and wives before the law, which rendered adultery as a crime committed by women against their husbands.[19]

Though women previously had recourse to the courts for their husbands' infidelity, by the first decades of the sixteenth century, women had therefore all but lost their legal rights to pursue their husbands for adultery in either branch of justice.[20] The parlement confirmed this stance on adultery in 1538 when it received an application for *appel comme d'abus* from a man alleging the jurisdictional abuse of the Official of Amiens for summoning him on charges of adultery. Reflecting on the judgement, Gilles le Maistre, *premier président* of the parlement at the time of the decision, pronounced that indeed "an ecclesiastical judge" lacked the competence to summon "a married layman" for sexual offenses that merited pecuniary and/or physical punishment. Furthermore, according to his reading of fourteenth-century precedents, Le Maistre concluded that "bishops and archdeacons" no longer had the authority to summon "laymen before their officials in matters of adultery or fornication with other than their

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l'adultère; Agnès Walch Mension-Rigau, *De l'alcove à la basoche. Adultère en France du XVIe au XIXe siècle*, PhD diss. (Paris: Université de Paris-Sorbonne, 2007).

[18] Jean Papon, *Trias judiciel du second notaire de Jean Papon, conseiller du roy et lieutenant general au bailliage de Forestz,* 2nd ed. (Lyon: Jean de Tournes, 1580), 451-453.

[19] See previous chapter. See also Muyart de Vouglans, *Les lois criminelles de France,* 221; Le Brun de la Rochette, *Le Procès criminel*, vol 1, 12, 30; Papon, *Recueil d'arrestz*, 463; La Faye, *Recueil des arrests notables des cours souveraines de France*, 1273; Jousse, *Traité de la justice criminelle*, 215; Beauthier, *La répression de l'adultère en France*; McDougall, "The Transformation of Adultery," 349.

[20] Sara McDougall, "The Opposite of the Double Standard: Gender, Marriage, and Adultery Prosecution in Late Medieval France," *Journal of the History of Sexuality* 23, 2 (2014): 206-225; McDougall, "The Transformation of Adultery," 491-524; Otis-Cour, "De jure novo," 347-392.

wives."[21] After this point, the parlement kept close watch for any adultery denunciations that women attempted to bring to the ecclesiastical courts against their unfaithful husbands and labelled them as abuses of jurisdiction, going so far as to punish officials who agreed to receive women as adultery plaintiffs. For example, when in 1606 the parlement overturned the conviction of an adulterous husband at the Diocese of Poitiers, the parlement condemned the Official of Poitiers to the humiliation of public penance.[22] The prosecution of adultery was the sole responsibility of the temporal courts.

Furthermore, the compliance of the temporal courts with this shift against the recognition of the criminal responsibility of men for their marital infidelity was almost immediate. I have found evidence of only three criminal indictments for husbands accused of their own marital infidelity in the sixteenth century and none in the seventeenth.[23] In the winter of 1522, the city council of Amiens condemned a man to perform the *amende honorable*, wherein he was forced to carry a candle to the convent of Sainte-Claire, with a placard attached to his stomach with the word "adulterer" written on it.[24] The exceptional prosecution of this case speaks to the particular sensitivities of the Hôtel de Ville in 1522, a year which, Isabelle Paresys argues, city *échevins* recognized as

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[21] "L'Arrest des ribaux mariez…par lesquels fut defendu ausdits Evesques et Archdiacres d'Amiens, de plus faire citer les gens lais par devant leurs Officiaux en matiere d'adultere ou fornication avec autres que leurs femmes." Le Maistre, *Œuvres,* 521. Tyler Lange, "Droit canon et droit français à travers l'activité du Parlement de Paris à l'époque des réformes," *Revue de droit français et étranger,* 91, 2 (April-June 2013), 243-261.

[22] Pierre-Jacques Brillon, *Dictionnaire des arrests, jurisprudence universelle des parlemens de France,* (Paris: Charles Osmont, 1711), 86.

[23] These were perhaps the last vestiges of earlier jurisprudence that punished adultery mainly as a sin. See for example, See McDougall, "The Opposite of a Double Standard," 204-25; Beam, "Gender and the Prosecution of Adultery in Geneva," 94; Maria R. Boes, *Crime and Punishment in early modern Germany: courts and adjudicatory practices in Frankfurt am Main, 1562-1696* (Farnham: Ashgate, 2013); Rublack, *The Crimes of Women,* 218-222; Barbara Kreps. "The Paradox of Women: The Legal Position of Early Modern Wives and Thomas Dekker's 'The Honest Whore'," *ELH* 69, 1 (Spring 2002) 91-2.

[24] Isabelle Parésys, *Aux marges du royaume: violence, justice et société en Picardie sous François Ier* (Paris: Publications de la Sorbonne, 1998), 268.

a time of "cosmic disorder" in which the wrath of God punished sin in the populace through the devastating confluence of war, plague, and a famine brought by successive years of crop failure. Thirty percent of criminal prosecutions at Amiens in the first half of the decade concerned the punishment of sin and moral delinquency, a rate of prosecution that was twice as high as in previous and subsequent decades. More than half of all these prosecutions occurred in 1522 and 1523.[25]

Women with the financial resources had some limited means to seek separations from abusive or chronically negligent husbands. For example, women could sometimes claim they were the victims of aggravated adultery when the infidelity of the husband was so spectacularly scandalous and damaging to the integrity of the household as to garner the serious attention of the royal courts. [26] For example, in 1543, a wealthy Parisian "damoiselle" managed to bring a successful complaint against her husband who had brazenly kept "a trollop in the house for five or six years."[27] The wife alleged that in addition to frequent physical abuse from her husband, she lived in fear "of being poisoned by the trollop," and for these reasons and so many more she found it impossible to keep her husband's company. The parlement granted her request for separation, returned the principal sum of her dowry,[28] and ordered that she receive two-hundred

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[25] Parésys, *Aux marges du royaume*, 265-8.

[26] Aggravated adultery included the cohabitation of the husband's concubine in the family home or the financial endangerment of legitimate children. For example, Françoise Laradière successfully sued her husband for separation of bed and hearth after she convinced the court he had fathered several illegitimate children. Women ran away from physically and economically abusive marriages. See Hardwick, *Family Business,* 183-221; Sara M. Butler, "Runaway Wives: Husband Desertion in Medieval England," *Journal of Social History* (Winter 2006): 337-59. After a few years of unhappy marriage to François Gardiner, Judic Sallic declared to her neighbours and her parish priest that she was leaving him. She lived alone until he died and remarried shortly after Gardiner died. See, Hardwick, *Family Business,* 20-1.

[27] "son mari entretient vne paillarde en leur maison depuis cinq ou six ans." Papon, *Recueil d'arrestz,* 465. See also McDougall, "The Transformation of Adultery," 513-4.

[28] Permitting her to remove her dowry from the household capital, a successful suit could financially ruin her husband. See Julie Hardwick, "Seeking Separations: Gender, Marriages, and Household Economies in

livres parisis in lieu of the pension that her husband had once gifted his mistress. The parlement issued a summons to her husband, under threat of banishment and asset forfeiture, to stand trial at the Châtelet for the "incontinence of his life."[29] Gilles le Vassol, a Protestant tanner from Orléans who was whipped with a cane in 1564 for having sex with his servant, Marie de Romans, was one of the last adulterous husbands the parlement convicted and punished in the sixteenth century.[30] No other men appeared at the parlement to appeal a conviction for their own marital infidelity.

It is with good reason, then, that most historical scholarship on the subject of adultery prosecution in Northern France in the sixteenth and seventeenth centuries has emphasized this tremendous shift in the treatment of adultery to the temporal courts.[31] While most scholarship has interrogated the patterns of prosecution and punishment of adulterous women in the royal courts of France, historians have directed a much smaller

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Early Modern France," *French Historical Studies* 21, 1 (Winter, 1998), 175; and Hanley, "Engendering the State, 24.

[29] "Son mari entretient vne paillarde en leur maison depuis cinq ou six ans, au conspect, presence, & disdain de ladite Dameoiselle sa femme, & pour lui complaire, il ha souuent battu, & mal traité sadite femme, qui est journellement en doute d'estre empoissonnee de la paillarde, & pour raisons elle declaire à la Court & afferme, que iamais elle ne conuersa en la compagnie de son mari…La Court par son arrest, interina la requeste de la Dameoiselle…et ordonna qu'elle seroit commise en puissance d'une Dame de Paris vieille & honneste…Et que le gentilhomme viendroit en personne, & à faute de prins au corps, ou adiourné à trois briefz iours, à peine de banissmenet, & saisie de son bien, pour lui estre fait sur sadite vie incontinente." Papon, *Recueil d'arrestz*, 465. Unfortunately, Papon indicated neither the Châtelet's verdict nor any sentence that it may have issued against the husband.

[30] The parlement ordered Marie de Romans to be whipped and banished for one year. AP A^B 1, January 1564, fol. 78v. Between 1562 and 1567, the bailliage and prévôté of Orléans fell under Calvinist control. This case reflects Huguenot prosecutorial patterns observed in other Calvinist-majority regions of Francophone Europe in the 1550s and 1560s, such as Geneva in which the authorities targeted adulterous husbands as well as wives for prosecution. See Beam, "Gender and the Prosecution of Adultery in Geneva," 99-100. In regions which punished adultery mainly as a sin and which permitted women to denounce their husbands, such as in the ecclesiastical courts of Southern Germany during the Reformation or in Northern France in the later Middle Ages, men were often accused of having adulterous relationships with subservient women who were often unmarried. See Mack Holt, *The French Wars of Religion, 1562-1629* (Cambridge: Cambridge University Press, 1995), 52-55; McDougall, "The Opposite of a Double Standard," 217; Joel F. Harrington, *Reordering Marriage and Society in Reformation Germany* (Cambridge: Cambridge University Press, 1995), 227-8.

[31] McDougall, "The Transformation of Adultery," 494; Walch, *Histoire de l'adultère* , 74, 117, 233; Beauthier, *La répression de l'adultère en France.*

portion of their attention to the investigation of the prosecution of the illicit sexual partners of married women. Sara McDougall has noted, for example, that as royal law shifted focus to the prosecution of adulterous women, the temporal courts subjected their male lovers to concomitantly harsher penalties than in the earlier legal climate that punished the adulterous behaviour of both spouses.[32] Régine Beauthier, Jean-Marie Carbasse and Agnès Walch have emphasized that while the parlement imposed the death penalty on some lover-accomplices in the middle of the sixteenth century, jurists generally reserved execution for male partners only when the circumstances of the sexual liaison were extraordinary-- such as when the adulterous partners were domestic servants and women belonging to the same elite households.[33] Judges viewed such liaisons as seditious contraventions of the family hierarchy which had the potential to be existentially threatening to husbands.[34] The survey of *écrous* confirms these general trends. Each of the nine men in the survey of *écrous* condemned to die or to perpetual

[32] McDougall, "The Transformation of adultery," 494, 496.
[33] Jean-Marie Carbasse, *Histoire du droit pénal et de la justice criminelle*, 2nd ed. (Paris: Presses Universitaires de France, 2006), 345; Beauthier, *Répression de l'adultère*, 174-6; Walch, *Histoire de l'adultère*, 74-5.
[34] The affair of a man's wife with a subordinate man was a common subject of French, English and German murder pamphlets in these sexual liaisons eventually resulted in plots to devise the violent murder of their husbands. This was a common trope held to be true by many Western European jurists and drove parlementary understandings about the motives that led women to commit spousal murder. See for example, Matteo Bandel "Discours d'une très grande cruaté commise par une dameoiselle nommée Anne de Buringel laquelle a faict empoisonner son mari, son père, sa soeur, ses deux petits neveux quelle avait de la mort d'une gentilhomme qui s'en est ensuivie, le tout pour la paillardise," in *Dix-huict histoires tragiques* (Lyon: Benoist Rigaud, 1583), 260-270; Dorothea Nolde, *Gattenmord: Macht und Gewalt in der frühneuzeitlichen Ehe* (Köln: Böhlau, 2003), 19-64; Frances Dolan, *Dangerous Familiars: Representations of Domestic Crime in England, 1550-1700* (Ithaca: Cornell University Press, 1994); Frances Dolan, "Home-Rebels and House Traitors: Murderous Wives in Early Modern England," *Yale Journal of Law and the Humanities* 4.1 (1992): 2-31; Mary Lindemann, "Narratives of Dismembering Women in Northern Germany, 1600-1800," in *Women and Death: Representations of Female Victims and Perpetrators in German Culture, 1500-2000* eds. Helen Fronius and Anna Linton (Rochester: Camden, 2008), 76-92; Garthine Walker, *Crime, Gender and Social Order in Early Modern England* (Cambridge: Cambridge University Press, 2003), 138-141; Joy Wiltenburg, *Crime and Culture in Early Modern Germany*, (Charlottesville: University of Virginia Press, 2013), 125-150; Beam, "Gender and the Prosecution of Adultery in Geneva," 93.

galley service by the parlement for committing adultery with a married woman was described as a 'servant domestique' or 'lacquais.'[35] Far more commonly, the men convicted of committing adultery with married women received corporal punishment ranging from fines to whipping and banishment or short galley labour sentences,[36] a trend which Walch and Beauthier also observed.[37]

Importantly, however, based largely on the observation of the adulterous women the parlement condemned to religious enclosure and on the emphasis placed on the punishment of adulterous women by the *arrêtistes,* historians have surmised that the royal courts punished adulterous women more severely than their lover-accomplices. For example, emphasizing adultery trials that resulted in authentication, Beauthier concludes that while the courts usually resorted to authentication as a merciful replacement for the death penalty, women's accomplices "could be condemned to a relatively lenient punishment" which was an "illustration" of the "institutionalization of an inequality of treatment between men and women."[38] This statement is a vast oversimplification of punishment trends. First, we already know from the previous chapter that authentication

[35] On very rare and exceptional occasions, the parlement ordered the execution of the elite lovers of adulterous women. In his *Histoire universelle,* Jacques-Auguste de Thou commented on the shocking execution by Protestant reformers of Henri des Landes, the Sieur du Moulins at Orléans in 1563 for committing adultery with the wife of Jean Godin, the lieutenant du prévôt des maréchaux Blois, while he was at war. The trial and execution of the Sieur des Landes and Godarde, the wife of Jean Godin occurred during the siege of Orléans in the spring of 1563, at the outset of the first war of religion. Puygreffier, the presiding judge described by de Thou as a Huguenot radical, refused to allow the couple to appeal their sentence, in spite of the protestations of the local nobility. Jacques-Auguste de Thou, *Histoire universelle de Jacque-Auguste de Thou depuis 1543 jusqu'en 1607,* vol. 4 (London, 1734), 531-2.
[36] Of the 63 adulterous men sampled in the survey of *écrous*, the parlement ordered 14% (9/63) of men to hang, 22% (14/63) of men to the galleys for periods of time that ranges from one year to life, 44% (28/63) of men to other forms of punishment usually composed of a combination of corporal punishment and banishment. The parlement ordered 19% (12/63) of men to pay fines and sometimes *amende honorable* instead of more violent forms of punishment. All but one of these men belonged to the elite social and economic strata of the *haute bourgeoisie*, robe noble, and merchant classes.
[37] Walch, *Histoire de l'adultère,* 74.
[38] Beauthier, *Répression de l'adultère*, 177.

was a relatively rare form of punishment that parlementaires and husbands alike reserved for wealthy women. The parlement condemned fewer than ten percent of the adulterous women who appealed to the court in the sixteenth and seventeenth centuries to authentication. Second, the parlement often returned women to their husbands without punishment.[39] Third, when men and women appealed their adultery convictions together, the lover-accomplice was usually the defendant to receive the harsher sentence, even when the sexual partners shared relatively equal social standing. For example, in 1567 the parlement overturned Anthoinette Symon's adultery conviction and released her into the custody of her husband, a Parisian roast meat seller, yet condemned her lover, a baker named Nicolas Ysabel, to *amende honorable* and to be whipped at the stocks before he was sent off to the galleys for nine years.[40] Similarly, in 1576, the parlement commuted the death sentences handed down to Marie Richardeau and her lover Claude Randon by the *bailliage* of La Rochelle, sentencing Marie instead to one month's house arrest and Claude to nine years on the galleys.[41] Even when considering affairs between married women and their household servants, where the parlement was more apt to apply the death penalty to the male partner, the judges exercised considerable leniency toward the women. The parlement opted to reunite Jehanne Ruelle with her husband, Lauren Meault, following her conviction for adultery with Lauren's servant in 1602. The court sentenced the servant, Michel Fichet, to perform *amende honorable* in front of Notre-Dame de Reims, then to carry his candle while wearing a noose around his neck to his master's house where he was to be whipped and then sent away to the galleys for the rest of his life.[42] Rather than support

[39] See previous chapter.
[40] AP A^B 2, August 1567, fol. 167v.
[41] AP A^B 5, November 1576, fol. 148.
[42] AP A^B 16, September 1602, fol. 269.

the older hypothesis that the parlement concentrated harsh punishments on adulterous wives, the survey of *Conciergerie écrous* and *plumitifs de conseil* suggests that the opposite appears to be true – parlementaires placed the greater share of blame on male accomplices rather than the adulterous women themselves and sentenced each party accordingly.

Among the nineteen adulterous couples who appealed their convictions to the parlement together, the parlement imposed harsher sentencing on the adulterous wife in only one case: in 1620, the parlement sentenced Nicole de la Voiprise, a recent widow from Pontoise, to perform *amende honorable* and to be whipped in the crossroads of Paris before being banished from both the capital and her hometown for her adultery with the Parisian clothier, Louis Moirier. The court ordered Louis to pay a fine of four *livres parisis* to the estate of Nicole's late husband, Simon Camus.[43] In other words, Nicole had no husband with whom to reconcile. In sharp contrast, when the parlement provided its ruling on the adultery of Marie Deschamps and Nicolas D'aurons in 1585, the court upheld Nicolas' sentence to perform *amende honorable* and added the considerable fine of three thousand *livres* to his sentence. The judges commuted Marie's sentence of authentication and sent her home to reconcile with her husband.[44] The parlement developed very different sentencing formulae for adulterous women and adulterous men.

The variety in sentencing patterns for adulterous men and women is striking. For example, in 1564 the parlement condemned Jehan de la Rue, a master painter, to perpetual galley labour for his adultery with Jehanne Gouget, whom the parlement returned to her husband, a Parisian vintner, after he agreed to reconcile with her.[45] Even

[43] AP A^B 24, May 1620, fol. 15v.
[44] AP A^B 9, May 1585, fol. 76.
[45] AP A^B 1, September 1564, fol. 194.

when husbands refused to reconcile with their wives, male accomplices generally received significantly harsher punishment. In 1613, Anthoinette Meliand ran away from her husband with her lover, Jehan de Bonnesset. The illicit couple was apprehended in Bellac, more than two hundred kilometres away from Anthoinette's home in La Marche. The parlement sentenced Antoinette to perform *amende honorable* and to banishment for three years from La Manche after her husband, Léonard Raliers, repudiated her. The parlement ordered the execution of Jehan.[46] This sentencing discrepancy remained relatively consistent over time, suggesting that when adulterous partners were arraigned together, jurists tended to assign the greater share of the responsibility to the male accomplice rather than the adulterous wife. Moreover, this juridical stance was not an anomaly of the Parisian parlement: the parlement at Dijon enshrined harsher sentencing standards for lover-accomplices into law in 1603 when the court published a judgement stipulating that "the wife can be returned to her husband without punishment" even if the lover-accomplice was "condemned to hang."[47] If this practice extended into the provinces, then it suggests that there was some measure of general judicial consensus across the kingdom that male partners deserved more punishment.

There are several reasons judges likely took this position. First, when men believed that their wives had been unfaithful to them, Roman law generally forced them to denounce both the wife and her lover,[48] even if the husband wanted to leave his wife out of the formal criminal proceedings to save face or to save money. The parlement

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[46] AP A^B 21, April 1613, fol. 112.
[47] Job Bouvot, *Nouveau recueil des arrests de Bourgogne, où sont contenues diverses notables questions de droict, tant coustumier que Romain decidees par jugements et arrests de la Cour Souvereaine du Parlement de Dijon,* vol. 2 (Geneva: Jacob Stoer, 1628), 18.
[48] Pierre Bardet, *Recueil d'arrests du Parlement de Paris*,vol. 1 (Paris: Augustin Besoigne, 1690), 213.

required husbands to pay for their wives' trial, pre-trial incarceration, and provide for her basic needs during religious confinement if he wished to see her authenticated.[49] Second, we know from the previous chapter that the parlement encouraged husbands and wives to reconcile and left this decision up to the husband who could welcome her home or repudiate her.[50] Third, we also know that men found the publicity of cuckoldry shameful and socially damaging.[51] Husbands must have used their prerogative to champion the court to release their wives back into their own custody upon conviction in order to reserve public sentencing for the lover.[52] In jurisdictions that permitted accusations from third parties, husbands sometimes publicly defended their wives as virtuous. In Geneva in 1578, for example, the bourgeois François Revilliod, wrote to the Petit Conseil (where the majority of criminal matters were heard) to discredit the witnesses who testified against his wife and to defend her honour and virtue.[53] Seeing that only the lover-accomplice was punished saved money and may have allowed the husband to recover some of his honour by directing public infamy towards his sexual rival and away from the embarrassment the liaison had brought to his own household.

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[49] Brillon, *Dictionnaire des arrests,* vol. 1, 57; Papon, *Recueil des arretz*; Le Brun de la Rochette, *Le procès criminel*, vol. 1, 30; Walch, *Histoire de l'adultère*, 17-19.
[50] Papon, *Recueil d'arrestz,* 468; Fournel, *Traité de l'adultère,* 307-313; Daumas, *Au bonheur des mâles,* 85.
[51] See previous chapter. See also Daumas, *Au Bonheur des males*, 95-7; David Turner, "'Nothing is so secret but shall be revealed': the scandalous life of Robert Foulkes," in *English Masculinities, 1660-1800* eds. Tim Hitchcock and Michelle Cohen (London: Routledge, 1999), 191; Laura Gowing, *Common Bodies: Women, Touch and Power in Seventeenth-century England* (New Haven and London: Yale University Press, 2003), 192; Laura Gowing, *Domestic Dangers: Women, Words, and Sex in early modern London* (Oxford: Clarendon, 1998); Susan Dwyer Amussen, "The part of a Christian man: the cultural politics of manhood in early modern England," in *Political Culture and Cultural Politics in Early Modern England* eds. Susan D. Amussen and Mark A. Kishlansky (Manchester and New York: Manchester University Press, 1995), 225.
[52] In sixteenth century Geneva, men occasionally moved their wives out of town before bringing charges of adultery against their lovers alone. Beam, "Gender and the Prosecution of Adultery in Geneva," 101.
[53] See Beam, "Gender and the Prosecution of Adultery in Geneva," 106.

Most importantly, the parlement accepted that accomplices bore more legal responsibility for adulterous encounters than the wives themselves.[54] If Roman law held that adultery was chiefly a crime against the property and lineage of the husband, then the parlement must also have recognized that the male interloper who damaged his wife's chastity and potentially disrupted his lineage bore the lion's share of criminal responsibility. In fact, Papon described adultery as a crime committed "by the *abuse of a married woman by a man*, married or unmarried," which brings "infamy to honour and lust upon chastity."[55] In other words, men *seduced* married women into adultery. This violation of honour and chastity, Papon continued, "extends from the married woman who in the sight, knowledge, and patience of her husband exists in a state of debauchery" if "he was deceived" by her.[56] Women shared some of the legal responsibility when they were fully complicit in the affair – it was the husband's decision to see her punished by the courts or not. However, Papon continued, when "there is force, the woman cannot be accused."[57]

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[54] There is a certain amount of continuity between the practice of the late medieval ecclesiastical judiciary and the parlement in the sixteenth and seventeenth centuries. In adultery trials involving married women in late medieval France and the Low Countries, ecclesiastical courts emphasized the moral responsibility and thus the punishment of the illicit partner over that of the woman. McDougall, "The opposite of a double standard," 222; Otis-Cour, "*De jure novo,*" 368-81; Marianne Naessens, "The View of Judicial Authorities on the Role of Women in Late Medieval Urban Society," in *The Texture of Society: Medieval Women in the Southern Low Countries*, eds. Ellen E. Kittel and Mary A. Suydan (New York: Palgrave Macmillan, 2004), 67.

[55] "ce crime [de l'adultère] se commet proprement en abusant d'une femme mariee par homme marié, ou non marié…et lors…sera privilegee l'infamie sur l'honneur, et la luxure sur la chasteté." Papon, *Trias judiciel*, 453. Emphasis added.

[56] "Cela s'etend de la femme mariee, qui au veu, sceu, et patience de son mari fait estat de paillarder : car si c'estoit au desceu du mari, qui s'en voulust, apres l'avoir sceu, ressentir, sera recevable de luy l'accusation d'adultere." Papon, *Trias judiciel*, 453.

[57] "…lors qu'il y a de la force, la femme ne peut estre accusee." Papon, *Trias judiciel*, 453.

Seduction, force, and sexual consent

Husbands employed the legal exception of "force" in order to seek justice for the sexual misuse of their wives without holding them criminally responsible. While some illicit sexual interactions certainly read like modern notions of sexual assault, many cases demonstrate a much broader interpretation of "force" that included seduction and bribery. For example, in the winter of 1602, François Tixerant, a married journeyman tailor from Picardy now living in Paris, appeared at the chambers of the Tournelle to appeal his sentence of *amende honorable* and perpetual galley labour handed to him by the Châtelet. Guilty of adultery, Tixerant had been accused of bribing the wife of a Parisian baker surnamed Bobinaux, for the sum of thirty-six *sous*.[58] At the parlementary hearing, the judges learned that Bobinaux "neither punished nor accused" his wife of any crime, accusing Tixerant alone of "adultery" for her "seduction."[59] Bobinaux made the seduction a matter for neighbourhood conversation when he accosted Tixerant at the home of Estienne Malet and hit him with a rolling pin in anger "for the ravishment of his wife."[60] The parlement condemned Tixerant to public whipping and perpetual banishment from Paris.[61] Through his decision to implicate only François Tixerant, Bobinaux crafted a narrative of sexual aggression for the royal courts, rendering his wife a victim rather than a willing participant in apparent prostitution, and replacing his own embarrassing role as cuckold with the far more valiant job as defender of his wife's misused chastity.

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[58] "Qu'il a dict qui'il avoit promis xxxvi sous a lad femme." AN X^{2A} 965, 9 January, 1603.
[59] "pris aux mains de goelleur pour ceste seduction… Il ny l'a puni ny l'accusé." AN X^{2A} 965, 9 January, 1603.
[60] "Qu'il a eu un coup de rouleau a frappé pour cette rapture de sadite femme." AN X^{2A} 965, 9 January, 1603.
[61] AN X^{2A} 965, 9 January, 1603.

Jurists and legists distinguished several categories of '*force*' or '*viollement d'honneur*' that always implied coercion to disobey the will of male guardians, but which did not always imply physical over-powering or violence. These categories were delineated according to the marital and social status of the woman involved.[62] Sixteenth-century French law defined illicit, coercive sex with a married woman as *adultère* and sometimes more precisely as *adultère par force.*[63] Sixteenth-century jurists justified seduction as a valid interpretation of *adultère par force* by using the definition of force provided by the Italian jurist, Julius Clarus, who argued that "the wife bears the lesser share of guilt when the adultery results from the giving of gifts from a man who through these gifts bears the greater burden of responsibility."[64] *Adultère par force* could indicate that violence in the form of physical force had taken place; however, the hermeneutics that conflated sexual consent with the rights of male guardianship permitted jurists to define other forms of fraud, seduction, or persuasion as a subtle form of violence.[65] In cases of *adultère par force*, therefore, the potential violence of a sexual encounter was

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[62] Le Maistre, *Œuvres*, 370-374; Brillon, *Dictionnaire de jurisprudence et des arrêts*, vol. 3, 117, 242; Jousse, *Traité de la justice criminelle*, vol. 3, 707-739.

[63] Sixteenth-century French jurists defined illicit, coercive sex with an unwed, marriageable virgin as *rapt*, illicit, coercive sex with a married woman as *adultère*, and illicit, coercive sex with a widow or unmarried woman who was not a virgin as *stupre*. Papon, *Trias judiciel*, 453; Louis Charondas Le Caron, *Responses ou decisions du droit françois confirmees par arrests des cours souveraines de ce royaume et autres* (Paris: Nicolas Fosse, 1605), 346; Le Brun de la Rochette, *Les Procès civil et criminel, vol. 2*, 12; 115-11; Brillon, *Dictionnaire de jurisprudence et des arrêts*, vol. 3, 242; Cautela, "Questions de mot," 60; Georges Vigarello, *A History of Rape: Sexual violence in France from the 16th century to the 20th century*. Trans. Jean Burrell (Oxford: Polity, 2001), 45-7.

[64] "Hoc sed servaretur in practica scilicet quod mulier muneibus allecta poenam adulterii evirare: "nec quod adulterans, qui dona dedit veniret puniendus poena adulterii per vim commissi nam ut omnes sciunt fere semer in huiusmodi dictum esse potius subtile." Julius Clarus, *Opera Omnia Sive Practica Civilis atque Criminalis* (Lyon: Horatio Boissat and Georges Remeus, 1661), 9, n72. See also Jousse, *Traité de la justice criminelle de France*, vol. 3, 229. Clarus provided parlementaires with an important synthesis of roman legal doctrine. See Bernard Schnapper, *Voies nouvelles en histoires de droit: la justice, la famille, la répression pénale, XVIe-XXe siècles* (Paris: Presses Universitaires de France, 1991), 54; and Christian Chêne, *L'Enseignement du droit français en pays de droit écrit (1679-1793)* (Geneva: Droz, 1982), 271, 273-4.

[65] "nec quod adulterans, qui dona dedit veniret puniendus poena adulterii per vim commissi nam ut omnes sciunt fere semer in huiusmodi dictum esse potius subtile" Clarus, *Opera Omnia*, 9, n72.

secondary to the illicit nature of the encounter itself. Instead, 'violence' helped jurists to determine, along with other indications of persuasion or coercion, whether the wife shared culpability for the adultery that had taken place. This understanding of 'force' dovetailed quite nicely with the legal definition of adultery as a crime that men perpetrated against the honour of other men. Amid cultural anxieties about the social disgrace of cuckoldry, 'force' provided husbands with a legal mechanism to seek public justice that redirected blame away from the household.[66]

Parlementaires certainly defined 'force,' like its modern equivalent of sexual assault, as a man's use of physical strength or violence to overtake a woman for sexual purposes; however, early modern jurists also defined *force* within the broader categories of *seduction*, which was not dependent upon physical violence or aggression, to prove that a woman had been persuaded into sexual intercourse without the consent of her closest male guardian.[67] Seduction ruined the chastity, innocence, and honour of the victim, which in turn injured the honour and patriarchal authority of the victim's husband, father, or other usually male guardians.[68] The potential physical violence of the

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[66] Beauthier, *La répression de l'adultère*, 30; 133-135; Laetitia Dion, *Histoires de mariage: Le mariage dans la fiction narrative française (1515-1559)* (Paris: Classiques Garnier, 2017), 268-285; Daumas, *Au bonheur des mâles*, 95-7, 255-6; Maurice Daumas, "La sexualité dans les traités sur le mariage en France, XVIe-XVIIe siècles," *Revue d'histoire moderne et contemporaine* 51, 1 (2004), 26; Catherine Marie Pulling, *Situating the self: Cuckoldry in early modern French literature.* PhD Diss. (Minneapolis: University of Minnesota, 2007), 7; Robert Muchembled, *Passions de femmes au temps de la reine Margot (1553-1615)* (Paris: Editions du Seuil, 2003), 66.

[67] See, for example, Jean Gerbais, *Traité du Pouvoir de l'Eglise et des princes sur les empeschemens du mariage* (Paris: Maurice Villery, 1698), 516-518; Danielle Haase-Dubosc, *Ravie et enlevée: de l'enlèvement des femmes commes stratégie matrimoniale au XVII siècle* (Paris: Michel Albin, 1999), 7, 28-38, 117-118; Jillian Slaight, "Resisting Seduction and Seductive Resistance: Courtroom Conflicts Over Consent in the Late Eighteenth Century," *Journal of the Western Society for French History* 42 (2014): 54-64; For an extensive discussion of legal definitions and application of seduction in early modern French law see Chapter Two.

[68] Papon, *Trias judiciel*, 453; Louis Charondas Le Caron, *Responses ou decisions du droit françois confirmees par arrests des cours souveraines de ce royaume et autres* (Paris: Nicolas Fosse, 1605), 346; Le Brun de la Rochette, *Les Procès civil et criminel,* vol. 2, 12; Danielle Haase-Dubosc, *Ravie et enlevée,* Paris: Michel Albin, 1999), 115-119; Cautela, "Questions de mot," 60; Vigarello, *A History of Rape*, 45-7; Daumas, *Au bonheur des mâles*, 95-7; McDougall, "The Transformation of Adultery."

encounter was thus secondary to, though not entirely separate from, the moral violence that seduction caused to honour.[69] Thus both a physical attack and persuasion could be construed as seduction, and both were understood as a form of violence.[70]

If, as the injured party in adultery, a husband had the right to determine if his wife had willingly deceived his trust, he also had the power to target blame strategically toward or away from her. In 1607, the parlement received the joint appeals of Anne Bourdon and Jehan Chastre who had been convicted of committing adultery together following the denunciation by Bourdon's husband.[71] Despite Bourdon's insistence that Chastre had threatened her with a dagger, the parlement maintained her conviction and sentenced them both to whipping "for their indecency."[72] Similarly, Françoise Charpentier, the recent widow of Jacques Martin, and Estienne Bertrand were both convicted of adultery together at the Châtelet in 1602 in spite of Charpentier's protestations that Bertrand had wielded "a vile dagger" to force her, a "Christian woman" to have sex with him.[73] The parlement upheld Bertrand's conviction and dismissed

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[69] Papon, *Recueil d'arrestz;* Le Brun de la Rochette, *Les procez civil et criminel;* Claude Henrys, *Œuvres de M. Claude Henrys, conseiller du roi et son premier avocat au bailliage et siége présidial de Forès contenant son recueil d'arrests,* 5th ed., vol. 3, (Paris: Michel Brunet, 1738), 741; Charondas le Caron, *Réponses et décisions du droit françois,* 345-7; Michel Porret, "Rapt de séduction: la jeune fille mal gardée, in *Sur la scène du crime. Pratique pénale, enquête et expertises judiciaires à Genève (VXIIIe-XIXe siècle)* (Montreal: Presses de l'Université de Montréal, 2008), 75-89; Sharon P. Johnson, "Glissements discursifs et rhétoriques: des récits de viol dans le conte de fées, la jurisprudence et les canards sanglants de l'Ancien Régime," in *Canards, occasionnels, éphémères: information" et infralittérature en France à l'aube des temps modernes (1800-1850), actes du colloque organisé à l'Université de Rouen en septembre 2018,* eds. Silvia Liebel and Jean-Claude Arnould (Rouen: CÉRÉdI, 2019), 1-11; Slaight, "Resisting Seduction," 54-64; Vigarello, *Histoire du viol*, 48; See also Chapter Two of this dissertation.

[70] Haase-Dubosc, *Ravie et enlevée,* 7, 117, 147; Johnson, "Glissements discursifs, " 2-3; Slaight, "Resisting Seduction," 56-7.

[71] The name of Anne Bourdon's husband does not appear in the *arrêt.* AN X^{2A}, 22 February, 1607.

[72] "qu'il a porté un poignard…Arr. Pour l'impudicité les fustiges devant son custode." AN X^{2A}, 22 February, 1607.

[73] "Qu'elle estoit une femme chrestienne…qu'il avoit un meschant poignard." AN X^{2A} 965, 18 January, 1603; AP A^{B} 16, October 1602, fol. 33v.

Charpentier and transferred her to the Hôtel de Dieu on account of her poor condition.[74] Husbands or their legal representatives directed the criminal investigation toward the party they held responsible for the adultery; violence alone, however, was not considered proof of a woman's innocence if she did not have her husband's support.

By contrast, only a week prior to Françoise Charpentier's appeal hearing, Jeanne Cailleau entirely avoided criminal prosecution for adultery because her husband chose to prosecute Fergeau Gaulthier alone for their sexual encounter. The parlement mandated Gaulthier to pay Cailleau's husband twenty-seven *livres* in pecuniary amends and condemned him to perpetual galley servitude for forcefully seducing her into an illicit sexual relationship.[75] Similarly, in 1585 the parlement condemned Esmé Moreau to perpetual galley servitude for "forcing Jeanne Tureau, the wife of a laborer" to have sex with him.[76] Even more compellingly, in 1589, Jehan Prevost justified the murder of his wife's lover by pointing to the criminal intent of the seducer. Hearing a rumour that a man had seduced his wife with a glass of wine, Prevost ran home to confront the interloper. In front of his neighbours who had gathered to watch the spectacle, he "got all fired up" and yelled, "You raped my wife!" as he killed the man who had "ravished" and "seduced" his wife with wine in order "to have his way with her."[77] As in the case of

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[74] AP A^B 16, October 1602, fol. 33v. Unfortunately neither the *écrou* nor the *arrêt* specify why she was in poor health. We might reasonably speculate that the executors of Charpentier's late husband had used the adultery conviction at the Châtelet to alienate her access to her dowry, shelter, or other assets. Of course, we have no way to confirm this and cannot know if the parlement's ruling resulted in the reinstatement of any assets that she may have lost.

[75] AN X^{2A} 965, 15 February, 1607.

[76] "qu'il a forcé Jeanne Tureau femme d'un laboreur." AN X^{2A} 953, 11 April, 1585. Moreau had a reputation as a serial offender that might have influenced the parlement's sentencing. During his hearing he was also asked about rumours that he forced two other unmarried women, Jehanne Colin and Marguerite Reignault, to have sex with him.

[77] "il dist qu'il donna du vin à boire a sa femme puis qu'il se mis a ses avantages…retourna courant dans sa maison… fort troublé de ceste rapture et seduction…devant ses voisins il print d'estre allumé et luy tua en disant tu as violé ma femme." AN X^{2A} 956, 22 February, 1589.

Bobinaux's attack on François Tixerant for seducing his wife with money, Jehan Prevost's wife, to whom he attributed "no fault," remained safe from Prevost's violence.[78] Prevost interpreted his wife's seduction with wine as rape. Neither Prevost nor parlementary officials demanded that she stand trial for adultery. Though the parlement had no choice but to convict him of the murder he committed in front of his neighbours, Prevost's compelling story of horror and outraged loss of control convinced Henri III to grant him a remission from execution (an outcome the court may have predicted).[79] Jehan Prevost was set free to return to his wife.

Most of the men convicted of *adultère par force* were the social equals of the men who accused them. Like their accusers, most of these adulterous men were journeymen, skilled artisans, or master guildsmen and at least half of them were themselves married. Unlike the mainly wealthy married men who accused wives with rich dowries, and whose consent was presumed and remained unquestioned, these husbands of more modest backgrounds had far less to gain and more to lose from indicting a wife for adultery. A similar moral economy of honour and shame that encouraged some husbands to avoid formal avenues of justice when they suspected their wives of adultery also compelled other men to pursue charges of *adultère par force* against their sexual rivals. These men shared networks of competing social rivalries and solidarities, all of which revolved

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[78] "aulcun faulx a sa femme." AN X^{2A} 956, 22 February, 1589.

[79] AN X^{2A} 956, 22 February 1589. It was important for supplicants seeking the king's grace to demonstrate how their tortured states of mind and "hot anger" compelled them to act out of passion, rather than premeditation and control. Contrary to Michel Nassiet's thesis that royal authorities were tolerant of spousal murder for reason of adultery, Jehan Prevost's decision to seek revenge for his wife's honour may have contributed to his successful remission. See Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth-Century France* (Stanford: Stanford University Press, 1987), 37-8; Michel Nassiet, "La sanction de l'adultère féminin au XVIe siècle: l'alignement d'une norme sociale sur le droit," in *Valeurs et justice: écarts et proximités entre société et monde judiciaire du Moyen Age au XVIIIe siècle,* eds. Bruno Lemesle and Michel Nassiet (Rennes: Presses Universitaires de Rennes, 2011), 129-139.

around honour. Honour, as James Farr notes, served as "society's measure of social standing in the hierarchy," and "measured worth within ranks."[80] Honour had cohesive and constructive value to early modern French society; it also incited competition and rivalry.[81] Operating on the reciprocal principles of social status and personal virtue, damaged honour not only harmed one's self-esteem, but also threatened the social credit required to function or prosper in the community.[82]

When Prevost marched home to confront his wife's seducer, a group of neighbours followed him there. Similarly, in front of his neighbours, Bobinaux confronted the man who had paid his wife for sex. When the Parisian barkeep stumbled home to find his servant having intercourse with his sleeping wife, neighbours pursued the servant into the streets to drag him before the bailiff. These illicit sexual encounters were public knowledge. They must have been the subject of neighbourhood gossip, which had the potential to damage the honour and social credit of the husbands embroiled at the centre of them as men who let their wives drink excessively and who let other men take sexual advantage of their wives.[83] The publicity of the adulterous encounter would have forced men to take legal action. Gossip was a powerful social tool. If neighbours understood that a man's wife had had sexual intercourse with another man, the repercussions in a cultural environment that judged cuckolded men as weak and

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[80] James Farr, *Hands of Honor: Artisans and their World in Dijon, 1550-1650* (Ithaca: Cornell University Press, 1988), 177.
[81] Gregory Hanlon, *Confession and Community in Seventeenth-Century France: Catholic and Protestant Coexistence in Aquitaine* (Philadelphia: University of Pennsylvania Press, 1993), 73-4, 224.
[82] Farr, *Hands of Honor,* 177-181; Hanlon, *Confession and* Community, 224.
[83] On the social dangers of cuckoldry see the previous chapter. See also Pulling, *Situating the Self,* 7; Maurice Daumas, "La sexualité dans les traités sur le marriage en France, XVIe-XVIIe siècles," *Revue d'histoire moderne et contemporaine,* 51, 1 (2004): 26.

untrustworthy must have been profound.[84] Husbands, therefore, had to respond to the sexual encounter very deliberately. It is probable, then, that men even may have attempted to take control of the situation by choreographing a bold confrontation in front of neighbours.[85] Prevost must have known that a group of neighbours had followed him home to watch him kill his sexual rival. Bobinaux waited to confront François Tixerant at the home of his neighbour, Estienne Malet. Others tried to keep the encounter secret, such as the barkeep who wanted to avoid the publicity of a trial. When forced to depose, he protected his wife from prosecution. For the most part, these adulterers and their accusers were social as well as sexual rivals. In fact, the barkeep stands out as one of the few men who (reluctantly) accused a servant of *adultère par force.*

Whether the discovery of neighbours was orchestrated or accidental, the sexual encounter was, on some level, public knowledge and could be weaponized to affirm or destroy a husband's honour and social credit. If the husband either welcomed his wife home or went to the authorities to accuse the interloper of force, he took control of the narrative. Men mobilized *adultère par force* as an instrument of justice that focused blame away from their wives toward the interlopers who had compromised the sexual honour of both spouses. This tactic conserved the innocence of the wife, which in turn

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[84] See for example, Nicholas Hammond, *Gossip, Sexuality and Scandal in France (1610-1715)* (Bern: Peter Lang, 2011), 5-50; Suzannah Lipscombe "Crossing Boundaries: Women's Gossip, Insults and Violence in Sixteenth-Century France," *French History*, 25, 4 (2011), 408-426; Gowing, *Domestic Dangers*, 59-63, 109, 117-120; David Turner, *Fashioning Adultery: Gender, Sex and Civility in England 1660-1740* (Cambridge: Cambridge University Press, 2004), 99-100.

[85] Men and women had the social wherewithal to take advantage of the watchful eyes of neighbours and the power of gossip to construct narratives of blame and victimhood. For example, women knew to showcase their disheveled hair and clothes following an episode of spousal battery in order to garner the support of witnesses. See Julie Hardwick, "Early Modern Perspectives on the Long History of Domestic Violence: The Case of Seventeenth-Century France," *The Journal of Modern History* 78 (March 2006): 14, 34.

restored the husband's honour. He was not a cuckold because both he and his wife were victims of a crime.

In 1625, the parlement abruptly shifted its stance on the permissibility of husbands to invoke the seduction or rape of their wives as a legal tool to shield them from prosecution. In the early summer of that year, the parlement received an appeal from a law student living in Angers who had been convicted of committing *adultère par force* with the wife of a sergeant while he was a tenant living in the couple's home. According to the sergeant, the student had ingratiated himself to the wife over the previous several months by presenting her with gifts. Then one evening when they were home alone together, while "holding a dagger to her throat" the student "raped" her "with great violence."[86] The husband charged the young man with adultery and the matter proceeded to trial, where the *prévôté* court found him guilty and condemned him to death, with his assets to be seized and given to the sergeant as pecuniary amends for the abuse of his wife. During the appeal, Claude Pinette, the student's defense counsel, challenged the validity of the legal concept of *adultère par force* by arguing that "rape" and "adultery" were two discrete and contradictory crimes that could not exist simultaneously. Roman law, Pinette argued, commanded that "it is necessary to accuse and punish the wife as well as he who has committed adultery with her;" the "adulterous wife" is "always punished, albeit less severely."[87] In other words, the law forbade husbands to denounce only the lover and not the wife. Furthermore, Pinette asserted, the husband had no legal

[86] "L'appellant n'est pas accusé de simple adultere, mais d'un viol commis en la personne de la femme de l'Intimé avec grande violence, les armes en main, le poignard sous la gorge." Bardet, *Receuil d'arrests*, vol. 1, 213.
[87] "Il faut accuser et faire punir la femme aussi bien que celuy qui a commis l'adultere avec elle… la femme adultere…est toujours punie, quoy que moins griévement." Bardet, *Receuil d'arrests*, vol. 1, 213.

grounds to accuse his wife of adultery because he had refused to repudiate her. This decision would have been impossible if he really had the justification to invoke his right to accuse his wife and her lover of adultery because his "sadness" would have been too "great" to stand keeping her around.[88] On the other hand, Pinette continued, the husband could not charge the student with rape because the wife "confessed to having received some presents from this young man, whom *she* rather seduced and corrupted."[89] Thus the charges were entirely spurious, a ruse that the husband had cooked up to swindle this poor young man out of his life and his money in order to enrich himself.[90] The parlement dismissed the case and, declaring the husband's accusation inadmissible, fined him eight *livres parisis* for the cost of the trial.[91] The parlement heard a few scattered *adultère par force* appeals after 1625, but the use of this legal tactic generally fell out of use.[92]

Conditions remained this way for the rest of the *Ancien Régime.* According to Daniel Jousse, the great eighteenth-century jurist, the "seduction" of a man's wife "through gifts is *no longer* a motive that excuses the wife from adultery."[93] The reasons for this abrupt about-face at the parlement in 1625 are unclear. We know that when it came to men's accusation of their adulterous wives, parlementaires generally viewed the

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[88] "il retient sa femme en sa maison…cette douleur estant si forte et si juste, qu'elle ne peut permettre à un mary de retenir et aimer celle qui l'a tellement offensé." Bardet, *Receuil d'arrests*, vol. 1, 213.
[89] "que ce n'est pas un viol, qu'il n'y a pas meme preuve de l'adultere sinon que la femme a confessé d'avoir reçû quelques presens de ce jeune homme, lequel elle a plutost seduit et corrompu." Bardet, *Receuil d'arrests*, vol. 1, 214. My emphasis.
[90] "que c'est une calomnie faite à l'Appellant par l'Intimé a dessein de tirer de l'argent et de la vie de luy." Bardet, *Receuil d'arrests*, vol. 1, 213.
[91] Bardet, *Receuil d'arrests*, vol. 1, 214.
[92] The parlement received an appeal in 1639 from a vintner from a faubourg near the city of Estampes named Gervais Moulin who was accused of adultery by Sebastian Charalier and his wife. The parlement forced Moulin to perform *amende honourable* and banished him from Paris (not Estampes) for three years. AP A^B 33, 22 August, 1639, fol. 215v.
[93] "la séduction par des présents, n'est pas non plus un motif qui excuse la femme d'adultère." Jousse, *Traité de la justice criminelle de France*, vol. 3, 229.

motives of the husband with suspicion.[94] Perhaps this suspicion made parlementaires more susceptible to doubt when it came to the matter of *adultère par force* as well. It is also possible that the close relationship between *séduction* as an instrument of clandestine marriage and legal consent which evolved in the sixteenth century made the separation of adultery and rape or seduction seem more natural by the time that seventeenth-century jurists ruled that *adultère par force* was no longer a legally acceptable defence. The timing of the decline in *adultère par force* appeals at the parlement mirrored, approximately, the period when the parlement received the greatest concentration of *rapt de séduction* appeals.[95] Whatever the case, the 1625 decision formally separated *viol* from *adultère* and effectively removed *séduction* as an element of the violence required to prove *force.*[96] This separation of rape from adultery did not result in new avenues of justice for women or their husbands. Even though married women had always represented a much smaller cohort of victims of the formal crime of 'viol' at the parlement in comparison to *filles à marier*, the number of men who appealed convictions for the rape of married women after the first quarter of the seventeenth century declined to almost zero.[97]

The husbands who denounced a solitary male defendant for adultery made a careful and specific choice to guard their wives from prosecution. This choice helped them to recuperate the honour lost to their wives' illicit – often non-consensual – sexual

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[94] See previous chapter.
[95] See Chapter Two.
[96] Cautela, "Questions de mot," 59-74; Cautela, "Le 'viol' au XVIe siècle," 102-111.
[97] Seventy eight men in the sample of *écrous* appealed convictions for 'viol' or 'viollement' against women, which generally contain an element of forced sexual intercourse. Only eight of the victims described in the *écrous* were married. By contrast, the parlement received 44 appeals for *adultère par force* during this time. Whereas the parlement received appeals from men convicted of sexually assaulting *filles à marier* over the entire period contained within the study, the parlement received its last appeal for the assault of a married woman in 1616.

encounter with another man while allowing them to avoid the onerous social and financial costs associated with the denunciation of the wife. Each and every one of these men was described as the primary sexual aggressor who had used persuasion, coercion, or physical force to solicit or force a married woman into sexual intercourse. It is important to look at the complexity of actual prosecution patterns rather than to rely on outdated tropes of female adultery.

Chapter 6: Bigamy: Sacrilege or Seduction?

In the summer of 1602, Marie Culot went to the official at the diocese of St-Florentin, located in the distant outskirts of Troyes, to complain to the church court that Jacques Marchant, the man she believed to be her fiancé, had walked away from his legal obligations to her, leaving her alone to care for their young son. Perhaps catching wind of the betrothal case before the ecclesiastical official in Saint-Florentin, Marguerite Tuillier, another woman who also claimed to be the spouse of Jacques Marchant, denounced him to the local châtelainerie for taking a second wife.[1] Marchant thus stood accused by two different women of two different marital crimes in two different courts. One matter stood before the official; the other matter before the temporal court. A jurisdictional battle ensued. The lieutenant ordinaire of the châtelainerie of Saint-Florentin filed an *appel comme d'abus* against the *officialité*, claiming that Tuilier's denunciation rendered Culot's complaint a criminal matter that needed to proceed to the temporal *bailliage* at Troyes.[2] Subsequently, that autumn, the parlement summoned Marchant to appear at the criminal court of the Parisian parlement. Tuillier's revelation had catapulted Culot's rather unremarkable complaint that she was a victim of false promise into the stratospheric realm of parlementary justice. He now potentially stood accused of bigamy, or having willfully and deceitfully, with adulterous intent, entered into a disputed second marriage while his first wife still lived.[3] Matters had just become infinitely more complicated for Jacques Marchant.

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[1] AN X^{2A} 965, 20 January, 1603.
[2] AN X^{2A} 965, 3 January, 1603.
[3] "le crime de celui qui épouse une seconde femme pendant que la première est encore vivante" that resulted from a mixture of adulterous intent, profanation, and fraud. Pierre-François Muyart de Vouglans,

Marchant waited in the Conciergerie prisons for a month until his first court appearance in late November. During this first hearing, the parlement reviewed Culot's deposition to the official where she claimed that Marchant "did not want to continue his marriage and [wanted] to abrogate his promise" to her.[4] The parlement needed to determine whether Marchant's supposed promise to Culot represented a legally binding espousal. The judges determined that that Culot's claim merited further investigation. Legislation introduced in the middle of the sixteenth century and confirmed by the Ordinance of Blois of 1579 made it difficult under French civil law to contract legally binding clandestine marriages.[5] Technically speaking, Marchant should have been

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Institutes au droit criminel ou principes généraux sur ces matières suivant le droit civil, canonique et la jurisprudence du royaume avec un Traité particulier du crime (Paris, 1757), 225. See also Carbasse, *Histoire du droit pénal et de la justice criminelle*, 2nd ed. (Paris: Publications Universitaires de France, 2006), 343; Le Brun de la Rochette, *Les Procès civil et criminel divisé en trois livres* (Lyon: Jacques Roussin, 1605), II: 35; Pierre Descombes, *Receuil tiré des procédures civiles faites en l'Officialité de Paris es autres officialités du royaume*, (Paris, s.p., 1705), 601-2; In canon legal trial procedure, the term *bigamia*, or *bigamie* in French, generally referred to clerical marriage. Canon law also described several definitions for non-clerical bigamy. These included pre-contract bigamy - breaking an engagement to marry another or clerical marriage (both fell under the rubric of *bigamia similitudinaria*), constructive bigamy - marrying someone already bound to another by intercourse (*bigamia interpretiva*), remarriage after the death of a spouse or dissolution of a marriage (*bigamia succesiva*), and marital bigamy – simultaneous wives (*bigamia simultanea*). See James Brundage, *Law, Sex, and Christian Society in Medieval Europe* (Chicago: University of Chicago Press, 1987), 252, 477; Léon Pommeray, *L'Officialité archidiaconale de Paris aux XVe –AN XVIe siècles. Sa composition et sa compétence criminelle* (Paris : Sirey, 1933), 351-58; Anne Lefebvre-Teillard, *Les Officialités à la vieille du concile de Trente* (Paris: Pichon et Durand-Auzias, 1973), 112. Both *bigamia similitudinaria* and *bigamia interpretiva* remained under ecclesiastical domain unless offspring complicated matters of legitimacy and inheritance, in which case royal authorities empowered civil courts to resolve. See Pierre Descombes, *Recueil tiré des procédures* 601-2; Jean Papon, *Trias judiciel du second notaire de Jean Papon, conseiller du roy et lieutenant general au bailliage de Forestz* 2nd ed. (Lyon: Jean de Tournes, 1580), 602-603.

[4] "Qu'il y a 5 ans que ladite Culot a dict qu'elle estoit grosse de son fruit et qu'il ne point la marier ; qu'il fist la oultrage d'elle, qu'il ne voula continuer son épousaille et abroger la sponsee que ladite Culot est intentee." The gallicisation of the Latin term 'sponsa' suggests that the parlement had access to testimony recorded and interpreted by the diocesan official. It seems unlikely like that Culot, who went five years without the beneficial intervention of a father or other legal representative with the resources to pursue Marchant through civil or criminal means, would also have had the extensive knowledge required to use canon legal jargon. X^{2A} 964, 22 November 1602; AP A^{B} 16 October 1602, fol. 37.

[5] The *Edit contre les mariages clandestins* (1556) permitted parents to disinherit minor children who contracted clandestine marriages without parental consent and article 111 of the *ordinance d'Orléans* (1560) assimilated non-parentally-authorized marriages by minor children under the broader umbrella of *rapt.* Articles 40-44 of the *ordinance of Blois* (confirmed in 1579) confirmed *Orléans* and declared *rapt de séduction* an unremissable capital offense and clarified that the Crown would consider clandestine all marriages of minor children which were contracted without parental consent *and* would only consider valid

protected by the legal requirements to publish banns of marriage and to exchange vows in front of a priest and multiple witnesses.[6] However, as we have already seen in Chapter Two, when litigants came from non-elite social origins of the artisanal and skilled labouring classes, the parlement tended to favour canon legal interpretations of verbal espousals by forcing a man to make good on his promises by either marrying the girl at church or by providing financial restitution to her in the form of a dowry and/or support for the child he had fathered. Thus, rather than hiding behind the protection of the ordinance, the promise was Marchant's to disprove. Marchant appeared at the Tournelle five more times over the next two months as the parlement tried to sort out the relationships he had with Culot and Tuillier and what ramifications the finding of the court would have on Marchant's punishment.

The transcript of the interrogation is a confusing assortment of conflicting depositions – one reason, perhaps, that the court recalled Marchant so many times before rendering its final decision. It also signals for historians the complicated task parlementaires faced when trying to assess the degree of the bigamist's crime: was he really married to the first wife? Was he guilty of veritable sacrilege? Was he guilty of *rapt* or simple fraud and seduction? Depending upon the sexual innocence of the duped wife and her social status, how deeply wounded was her family's honour by the deceitful seduction into a state of adultery?[7] In the case of Jacques Marchant, the narrative that the

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those marriages which had been publicised by banns in the home parishes of each betrothed party, solemnized in front of at least two witnesses by a priest *in primae facia ecclessiae* followed by the celebration of mass.

[6] See articles 40-44 of the *Ordonnance de Blois* in Isambert, Dieussy, Jourdan et al., *Recueil général des anciennes lois françaises, depuis l'an 420 jusqu'à la Révolution de 1789* (Paris: Belin, 1821-1833), 14: 391-2.

[7] The parlement was also confused, but ultimately settled on a verdict of resounding guilt for the crime of bigamy. We can see this process develop through the scribal annotations in the margins of the *plumitifs* over the course of the two months that Marchant's appeal was before the court, which escalated from the

parlement ultimately believed went something like this.[8] The prosecutor at Troyes argued that Tuillier was Marchant's wife both in the eyes of the Church and according to civil contract.[9] They had a fifteen year old son together and she had been his wife since 1587.[10] Marchant attempted to cast aspersions on her character by telling the court that she was not a virgin when they married because they had only become engaged when she told him she was pregnant.[11] Then, at some point in 1597, Marchant's marriage to Tuillier had broken down and they stopped living together. Marchant claimed that Tuillier had left him; the prosecutor maintained Tuillier's version of events that she had not left her husband, but instead that he had refused to feed her. Eventually, Marchant found himself in St-Florentin, where he met Culot. They became engaged. A few months after their engagement, Culot had told him she was pregnant with his child. Refusing to formalize their betrothal in front of a priest (perhaps because Marchant knew he could not legally marry Culot or because he feared that solemnization might lead to discovery), they lived in a permanent state of engagement while "she remained in faith to marry him" one day in supposed ignorance of his previous marriage.[12]

For the judges, Marchant's marriage to Tuillier established a pattern of defloration and abandonment that must have made Culot's story all the more believable. Finally, once Culot's child was born, she went to the official of Saint-Florentin, having given up on her hopes that he would make good on his promise to make the child legitimate, to

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relatively benign '*abus de cause de mariage'*, to 'GP' (perpetual galley labour) and eventually to '+ en appel' (death on appeal).

[8] AN X^{2A} 964, 22 November 1602; AN X^{2A} 964, 2 December,1602; "ouÿ 4"AN X^{2A} 964, 2 December, 1602; AN X^{2A} 965, 4 January, 1603; "ouÿ 5"AN X^{2A} 965, 4 January, 1603;AN X^{2A} 965, 20 January1603.

[9] "Qu'il a dit que ladite Marguerite Tuillier estoit sa femme dont a civil." AN X^{2A} 964, 2 December, 1602.

[10] AN X^{2A} 964, 2 December, 1602.

[11] "si la femme est grosse il l'espousera."AN X^{2A} 964, 2 December, 1602.

[12] "que Culot est avec son mary y a 5 ans et c'était a demeurer a foy pour espouser."AN X^{2A} 965, 20 January, 1603.

give their child his name and to obtain the support he owed as a husband and father. By approaching the diocese for help, she wanted him "to swear to his good will" and hoped the official would formally recognize their betrothal and validate the marriage.[13] The parlement determined that, being under no misapprehension that his first wife was dead, Marchant had intentionally committed adultery with Culot with the full knowledge that he now had two living wives – even though his second marriage was never formally solemnized.[14] On January 21, 1603, Jacques Marchant, the husband of Marguerite Tuillier, was executed at the Place de Grève in Paris for bigamy, fraud, and seducing Marie Culot into adultery.[15] A victim of his seduction, Marie Culot was not named as a collaborator in Marchant's crimes, a judicial consideration that she shared with almost all the other women whose husbands appeared at the parlement as convicted bigamists.[16]

The trial and execution of Jacques Marchant provides a snapshot that fits into a larger pattern of the prosecution of these crimes. In contrast to the emphasis placed on the

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[13] "La fille en prit appeler devant l'official pour fere estre des fiançailles et que de jurer avec son bon gré."AN X^{2A} 964, 22 November, 1602.

[14] "qu'il luy avait espouser 2 epouses luy cognoistre."AN X^{2A} 965, 4 January, 1603; AN X^{2A} 965, 20 January, 1603. Fascinatingly, the parlement's decision seems to have rested almost entirely on the testimony provided by both women against Jacques Marchant's pattern of dishonourable behaviour. The parlement did not summon either woman to depose, but instead the court made use of the testimony collected from Culot and Tuillier by the diocese of St-Florentin and the Châtellanerie for the *bailliage* of Troyes, respectively.

[15]AN X^{2A} 965, 20 January, 1603.

[16] Marie Culot received no formal censure from the parlement, and the parlement did not label her child an adulterine bastard. Adulterine bastards had no right to support. Parlementary rulings on two separate civil appeals heard in 1563 and 1579 respectively, however, determined that children whose parents were not free to marry could access very basic financial support from their natural parents. (See Matthew Gerber, *Bastards: Politics, Family, and Law in Early Modern France* (Oxford: Oxford University Press, 2012), 7-8, 65-6). However, because she was the victim of seduction and marital fraud, the parlement left the possibility open for Culot to seek legitimization for her child. Citing the Martin Guerre affair at the Parlement of Toulouse, the parlement of Paris generally took the position that the children of women who falsely believed themselves to be legally married by cause of their husbands' fraud ought to be legitimated. See for example, Jean de Coras, *Arrest memorable du parlement de Tolose, contenant une histoire prodigieuse, de nostre temps, avec cent belles et doctes annotations* (Paris: 1565), 15-16; Claude Le Brun de la Rochette, *Les Procès civil et criminel* I: 34-5; Georges Loüet, *Recueil d'aucuns notables arrests donnez en la cour de parlement de Paris* (Paris: Rocolet et Guignard, 1644), 533-34; and Noël du Fail, *Mémoires des plus notables et solemnels arrests du Parlement de Brétagne* (Paris: Jean Vatar, 1654), 745.

prosecution of women for sexual crimes in early modern France, men comprised ninety-nine percent of the bigamy appellants who appeared at the parlement de Paris between 1564 and 1655.[17] Most of these men faced harsh justice in comparison to their putative wives or the small number of bigamous women with multiple husbands who appeared at the parlement over the same period. Like Marchant, most male bigamists appeared at the parlement as solitary defendants, the women associated with them usually being described as their victims rather than their accomplices.

Though a serious spiritual crime that was prosecuted vigorously by the ecclesiastical courts in the later Middle Ages, the repression of bigamy in France intensified in the sixteenth century as temporal courts took over the prosecution of the crime.[18] France was not alone in this shift. The intensified desire of both the ecclesiastical and temporal authorities across Western Europe to regulate marriage more rigorously in the sixteenth century resulted in the stricter enforcement of sanctions against the practice of bigamy. The temporalization of many religious and sexual crimes, which were once strictly policed by ecclesiastical tribunals who had specific mandates not to shed blood, meant that secular justice could respond to

[17] The sample of *écrous* included 40 bigamists, 36 of whom were male, 4 of whom were female.
[18] Sara McDougall, *Bigamy and Christian Identity in Late Medieval Champagne* (Philadelphia: University of Pennsylvania Press, 2012), 134, 138-141. Although marriage in all pre-reformation Catholic jurisdictions in Europe was indissoluble, Sara McDougall argues that the ecclesiastical courts in Northern France prosecuted bigamy more rigorously than many of their jurisdictional neighbours scattered throughout England, Germany, and Spain. See also McDougall, *Bigamy and Christian Identity*, 34-41; Sara McDougall, "Bigamy: a Male Crime in Medieval Europe?" *Gender and History*, vol. 22, 2 (August 2010): 430-446; Sara McDougall, "The Punishment of Bigamy in Late-Medieval Troyes," *Imago Temporis. Medium Aevum* III (2009): 189-204. For instance, bishop's courts in pre-Reformation Regensberg permitted couples to remain married following the desertion in the first marriage of one of the spouses without conclusive evidence of widowhood. Christina Deutsch, *Ehegerichtsbarkeit im Bistum Regensburg (1480-1538)* (Köln: Böhlau, 2005), 296-8; Ruth Mazo Karras, *Unmarriages: Women, Men, and Sexual Unions* (Philadelphia: University of Pennsylvania Press, 2012), 202.

bigamy with more violence.[19] Searching for an explanation for the increased surveillance and violent punishment of bigamy in the sixteenth and seventeenth centuries, Benoît Garnot points to the 'reformation of morals' and the regulation of marriage across Western Europe, which intensified the surveillance of clandestine marriages.[20] The organized mobilization in the late fifteenth century of ecclesiastical justice for the Crown in Spain and Portugal and the temporalization of criminal justice in France, Sweden, the Holy Roman Empire, and England from the late fifteenth to the early seventeenth century permitted these jurisdictions to punish all crime with corporal punishment, ranging from galley labour to execution and often more routinely across larger swathes of territory.[21] The Council of Trent, likewise, issued

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[19] Benoît Garnot, *Histoire des bigames: criminels ou naïfs?* (Paris: Nouveau Monde, 2015); Holy Roman, Swedish, and English law reclassified bigamy as a capital crime in the sixteenth and early seventeenth centuries, however, executions were very rare. See, Joel Harrington, *Reordering Marriage and Society in Reformation Germany,* (Cambridge: Cambridge University Press, 1995), 261-2, 261, n. 179; Mia Korpiola, "Marriage in Sweden 1400-1700: Formalism, Collectivism, and Control," in *Marriage in Europe: 1400-1800, ed.* Silvana Deidel Menchi (Toronto: University of Toronto Press, 2016), 237-8; Bernard Capp, "Bigamous Marriage in Early Modern England," *The Historical Journal*, 52, 3 (2009): 537-556.

[20] Garnot, *Histoire des bigames*, 180; Sarah Hanley, "Engendering the State: Family Formation and State Building in Early Modern France," *French Historical Studies* 16, 1 (Spring 1989): 4-27; Bernard Schnapper, *Voies nouvelles en histoire du droit. La justice, la famille, la répression pénale (xvie-xxe siècle)* (Paris: Publications universitaires de France, 1991), 164; Julie Doyon, "De la clandestinité à la fausseté": la fraude matrimoniale à Paris," *Dix-Huitième siècle* 39, 1 (2007): 415-430; Ulrike Strasser, *State of Virginity: Gender, Religion, and Politics in an Early Modern Catholic State* (Ann Arbor: University of Michigan Press, 2004), 27-56, esp 50-51; Harrington, *Reordering Marriage*, 180-196 and 215-224; Martin Ingram, *Carnal Knowledge: Regulating Sex in England, 1470-1600* (Cambridge: Cambridge University Press, 2017), esp 16-18 and 417-23; Martin Ingram, "The Reformation of Manners in Early Modern England," in *The Experience of Authority in Early Modern England,* eds. Paul Griffiths, Adam Fox and Steve Hindle (London: Palgrave, 1996), 57-64; and Korpiola, "Rethinking Incest and Heinous Sexual Crime," 102-117.

[21] See Alyson Poska, "When Bigamy was the Charge," in Mary E. Giles, *Women in the Inquisition: Spain and the New World* (Baltimore: Johns Hopkins University Press, 1999), 191-193; Richard Boyer, *Lives of the Bigamists: Marriage, Family, and Community in Colonial Mexico,* 2nd ed. (Albuquerque: University of New Mexico Press, 2001), 35; Mary Elizabeth Perry, *Gender and Disorder in Early Modern Seville* (Princeton: Princeton University Press, 1990), 69-70; Michael C. Meyer, William Sherman, and Susan Deeds, *The Course of Mexican History* (Oxford: Oxford University Press, 1987), 199; William Monter, *Frontiers of Heresy: the Spanish Inquisition from the Basque Lands to Sicily* (Cambridge: Cambridge University Press, 1990), 34, 84, and 184; Jean-Pierre Dedieu, "Le modèle sexuel: la défense du mariage chrétien," in *L'inquisition espagnole, XVe-XIXe siècle,* ed. Bartolomé Bennassar (Paris: Hachette, 1979), 306-9; and Merry Wiesner-Hanks, *Christianity and Sexuality in the Early Modern World: Regulating Desire, Reforming Practice* (London and New York: Routledge, 2000), 162. On temporalization of justice in the sixteenth century, see Monter, *Frontiers of Heresy*, 29-54, 68-70; J.A. Sharpe, *Crime in Early Modern England 1550-1750.* 2nd ed. (New York: Longman, 1999), 271; Michael Braddick, "State

strong condemnations of the practice, warning that convicted bigamists would be subjected to anathema (akin to excommunication and banishment) and determined "even [to] call upon the aid of the secular arm" for help in the administration of appropriate justice.[22]

The royal courts of France, however, consistently responded to bigamy with more violence than most other parts of Western Europe, despite legislation in most of these other jurisdictions that also defined bigamy as a capital offense. McDougall first identified this prosecutorial rigour as a cultural idiocrasy that originated in the ecclesiastical courts of Northern France in the late Middle Ages; diocesan officials and the laity alike prized Christian monogamy in ways that stood out from their neighbours in adjacent jurisdictions.[23] Taking up McDougall's thesis, Benoît Garnot argues that beginning in the sixteenth century, swept up by what he calls "une acculturation militante" regarding marriage, the response of royal judges to bigamy was particularly harsh because, on top of the existence of the two prior conditions of moral reformation and the temporalization and systematization of justice in France, the crown also took a particularly strict position on the regulation of marriage. The marital regime, he argues, inexorably connected Christian marriage to the emerging absolutist state, which

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Formation and Social Change in Early Modern England: A Problem Stated and Approaches Suggested," *Social History* 16, 1 (Jan., 1991): 1-17; Michael Breen, "Law, Society, and the State in Early Modern France," *The Journal of Modern History* 83, 2 (June 2011): 346-386; Harrington, *Re-ordering Marriage*, 261-2, 261, n. 179; Korpiola, "Marriage in Sweden," 237-8; Capp, "Bigamous Marriage," 537-556; and Mia Korpiola, *Between Betrothal and Bedding: Marriage Formation in Sweden, c.1200-1610* (Leiden and Boston: Brill, 2009), 213-23.

[22] "…licere christianis plures simul habere uxores, et hoc nulla lege esse prohibitum: anathema sit…quid facto opus sit, statuere, et saecularis etiam brachii auxilium pro quieta ac debita supradictorum omnimum executione…" *Acta genuina SS. oecumenici Concilii Tridenti*, vol. 2 (Munich: Breithopf and Härtel, 1874), 335 and 386. See also Carmen Nocentelli, *The Making of Early Modern Identity* (Philadelphia: University of Pennsylvania Press, 2013), 98-100.

[23] McDougall, *Bigamy and Christian Identity*, 3.

transformed bigamy from a religious crime into a form of veritable treason.[24] For proof, Garnot points specifically to a correlation between a trend of stiffening penalties for bigamy and the criminalization of clandestine marriage under articles forty to forty-four of the *Ordonnonce de Blois* (1579) as a sign of the Gallican commitment to firm, even violent attempts to police marriage.[25]

Garnot's thesis is compelling. The royal courts of France did respond to bigamy with more violence than temporal and ecclesiastical courts in many other neighbouring jurisdictions. Between 1564 and 1655, the parlement de Paris received at least one hundred forty appeals from convicted bigamists. During this time the parlement sentenced slightly more than seventy percent of all the men who appealed bigamy convictions to execution or multi-year galley labour sentences.[26] By comparison, in Spain and New Spain, investigations into bigamists comprised between ten and eighteen percent of all inquisitorial tribunals; however despite a decree by Philip II in 1562 that all bigamists be sent to the galleys, only a handful of bigamists ever were.[27] Execution for

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[24] Garnot, *Histoire des bigames*, 188-89.

[25] Garnot, *Histoire des bigames,* 12 13, 50-54, 184-189; Garnot does not gesture toward the antecedent jurisprudence that ultimately led to the precision of *rapt de séduction* as a capital offense in the *ordinance of Blois.* See Sarah Hanley, "The Jurisprudence of the Arrêts: Marital Union, Civil Society, and State Formation in France, 1550-1650." *Law and History Review* 21, 1 (Spring 2003): 1-40; see also chapter 1.

[26] According to the sample of *écrous*, the parlement executed 10 out of 36 bigamous men sampled and sentenced 12 to galley labour. By extrapolation, these figures suggest that the parlement confirmed at least forty executions and sentenced approximately fifty other men to galley labour. These findings correlate with the estimates that Garnot provides, which he draws from the archival work of Alfred Soman between 1564 and 1588 and Robert Muchembled between 1601 and 1603. See Garnot, *Histoire des bigames*, 183; Alfred Soman, "Les procès de sorcellerie au parlement de Paris (1565-1640) *Annales*. 32, 4 (1977): 793; Robert Muchembled, "Fils de Caïn, enfants de Médée: Homicide et infanticide devant le parlement de Paris (1575-1604)." *Annales: Histoire, Sciences Sociales,* 62, 5 (2007): 1074; Muchembled, "Quand l'adultère était puni de mort en France, Quand l'adultère était puni de mort en France (fin du XVIe siècle)" in *Le peuple, le crime et la justice: Mélanges offerts en l'honneur du professeur Benoît Garnot,* ed. Eric Wenzel, (Dijon: Editions Universitaires de Dijon, 2017), 67-85.

[27] Dedieu, "Le modèle sexuel," 309; Poska, "When Bigamy was the Charge," 191-193; Boyer, *Lives of the Bigamists*, 35; Garnot, *Histoire des bigames,* 180; Perry, *Gender and Disorder in Early Modern Seville,* 69-70; Meyer et al., *The Course of Mexican History,* 199; Monter, *Frontiers of Heresy*, 34, 84, and 184; Dedieu, "Le modèle sexuel," 306-9; and Wiesner-Hanks, *Christianity and Sexuality in the Early Modern World,* 162.

bigamy was exceptionally rare in Germany, even though the *Carolina* (1532) redefined the spiritual crime as a capital offense.[28] In England, the 1604 Polygamy Act reclassified bigamy as a capital felony, though full enforcement of this statute was generally reserved for the most brazen offenders.[29] France stood out as the jurisdiction with the most violent response to bigamy during the sixteenth and seventeenth centuries.

Severe prosecution standards for bigamy in France, however, cannot be explained entirely by a militant defence of marriage. Other jurisdictions in Western Europe also tenaciously regulated clandestine marriage.[30] At the Council of Trent, for example, as regional legates haggled over the doctrinal language that they would eventually shape into the *Tametsi* decrees, the French and Spanish delegations presented a united front against other bishops to push for stricter language governing the right of children to marry without parental consent.[31] These legates represented shared interests of their respective crowns to uphold what Sarah Hanley observed of France as the 'family-state

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[28] Joel Harrington, for example, found only two men executed for bigamy in Southern Germany in the sixteenth century, anomalies, he suggests, that prove the rule. Harrington, *Reordering Marriage*, 261-2, 261, n. 179. According to Rodolphe Reuss, at Strassbourg, one bigamist, Cunon Clauss, had his eyes gouged out in 1520 by order of the magistrate. Reuss concedes that this was an unusually grisly sentence. More commonly, men were whipped. Harrington found that heavy fines, whipping, and in especially serious cases, banishment were far more common punishments than execution or maiming. Rodolphe Reuss, *La justice criminelle et la police des mœurs à Strasbourg au XVIe et au XVIIe siècle* (Strasbourg: Treuttel et Würtz, 1885), 212.

[29] Although several hundred people (mostly men) were prosecuted under the Act before it was reclassified as a non-capital felony in 1828, only a small handful of convicted bigamists were hanged, as the offence remained "clergyable" – that is, effectively eligible for a loophole which commuted the capital sentence; see Capp, "Bigamous Marriages," 537-556. See also John Witte Jr., "Prosecuting Polygamy in Early Modern England," in *Texts and Contents in Legal History: Essays in Honor of Charles Donahue*, eds. John Witte Jr., Sara McDougall, and Anna du Robilant (Berkeley: The Robins Collection, 2016), 429-448. See Lawrence Stone, *The Family, Sex and Marriage in England, 1500-1800* (London: Longmans, 1977), *40;* Sharpe, *Crime in Seventeenth-Century England*, 67-9; Ingram, *Church Courts, Sex and Marriage in England*, 180; R.B. Outhwaite, *Clandestine Marriage in England, 1500-1850* (London: Hambledon, 1995), 56.

[30] Harrington, *Reordering Marriage*, 95.

[31] Jutta Sperling, "Marriage at the Time of the Council of Trent (1560-70): Clandestine Marriages, Kinship Prohibitions, and Dowry Exchange in European Comparison," *Journal of Early Modern History* 8, 102 (2004): 75-6

compact', an exact turn of phrase that Aurelio Espinosa has used more recently to describe the collaboration between the Crown of Castille and its leading families to control marriage formation among the children of the elite.[32] Religious and temporal courts in Bavaria enthusiastically applied the *tametsi* decrees to regulate and prohibit the clandestine marriages which the authorities found undesirable, and Protestant regions of Germany practiced a similar approach of letting family and state interests supersede the individual consent of betrothed couples.[33] On the other hand, despite sporadic attempts to control or moderate it, clandestine marriage was not finally outlawed in England, the only other region in Europe that occasionally executed bigamists, until 1753, more than one hundred years after royal assent brought the Polygamy Act into law.[34] A militant response to marriage does not provide the main justification to the repression of bigamy in France.

Besides resorting to execution and galley service more frequently than other jurisdictions, France also stood out from the rest of Europe in the near exclusion of bigamous women from criminal prosecution and criminal sanctions. Women accounted for fewer than eight percent of bigamy appellants at the parlement of Paris. None of the women included in the sample of *écrous* received serious punishment. The dearth of bigamous wives who appealed to the parlement and the lenience of sentences that were imposed on the few women who did appear at the parlement are demonstrably different from other jurisdictions in Western Europe. In England, for example, where royal courts

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[32] Hanley, "Engendering the State," 4-27; and Sarah Hanley, "Family and State in Early Modern France: The Marital Law Compact," in *Connecting Spheres: Women in the Western World,* 2nd ed., eds. Marilyn Boxer and Jean Quataert (Oxford: Oxford University Press, 2000); Aurelio Espinosa, "Early Modern State Formation, Patriarchal Families, and Marriage in Absolutist Spain: The Elopement of Manrique de Lara and Luisa de Acuña Y Portugal," *Journal of Family History* 32, 1 (January 2007): 3-20, esp. 4.
[33] Strasser, *State of Virginity*, 28, 33-55; Harrington, *Reordering marriage,* 28-30, 91-98.
[34] Outhwaite, *Clandestine Marriage in England,* 1-18, 87-98.

prosecuted fewer bigamous wives than bigamous husbands, both Bernard Capp and James Sharpe nonetheless have observed that the women who did face prosecution were punished more harshly than men.[35] Similarly, Ulinka Rublack found that "many women" were beheaded or banished forever for bigamy in Southern Germany – an observation that is almost the opposite of Joel Harrington's findings about the extreme rarity of the execution of bigamous men.[36] Both Capp and Rublack agree that sexual double standards contributed to the comparatively harsh sentences that bigamous women received in England and Germany.[37] In Spain, where bigamous women put on trial were also outnumbered by men, the Inquisition still imposed severe punishment on this small cohort of bigamous women because Inquisitors were more easily convinced that women had committed fraud.[38] The French judicial response to bigamy was unique in Western Europe. Perhaps the ordinance of Blois provides a clue about why the kingdom's response to bigamy was so different from its neighbours.

What set the ordinance of Blois, and the antecedent jurisprudence that led to it, apart from other legal frameworks for the prohibition and control of irregular marriage, was its classification of the clandestine betrothal and consummation of the marriages of legal minors as a violation of sexual consent via *rapt de séduction*. This is where Garnot's suggestion to connect the repression of bigamy in France to the ordinance of Blois is most compelling. The legal theory of *rapt de séduction*, as I have already shown in Chapter Two, permitted parents or other guardians (who represented the injured party

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[35] Capp, "Bigamous Marriage," 554-555; Sharpe, *Crime in Seventeenth-Century England*, 67.
[36] Ulinka Rublack, *The Crimes of Women in Early Modern Germany* (Oxford: Clarendon, 1999), 14 and 91; Harrington, *Reordering Marriage*, 261-2, 261, n.179.
[37] In the English context, women were also at a disadvantage because, unlike men, until 1691 they could not claim benefit of clergy. In any case Capp maintains that "women suffered…from a pervasive double standard." Capp, "Bigamous Marriage," 554-555; Rublack, *Crimes of Women*, 91.
[38] Poska, "When Bigamy was the Charge," 204-6.

in the criminal matter) to pursue their son's or, more often, their daughter's, clandestinely contracted spouse as a sexual aggressor; this interpretation of ravishment effectively conflated clandestine marriage with rape, establishing the wounded honour and the scorned will of the injured families – two concepts that were indivisible – as the principal harm.[39] Most importantly, the legal theory that resulted in the articles concerning *rapt de séduction* in the ordinance of Blois collapsed the sexual consent of individuals into the authority of their guardians and rendered the social fracture of parental consent into a form of symbolic violence that eclipsed the potential physical violence that may have accompanied defloration or certain 'seductions'.[40] *Rapt de séduction* did not rely at all on proving the presence or absence of sexual consent of the minor child in question; it left open the possibility for parents to construe all forms of sexual contact as non-consensual; this, as one historian notes, made "seductive persuasion a perversion…more serious than violence, an act of treason."[41]

For judges at the parlement de Paris, the crimes of ravishment, bigamy, and adultery were intimately connected. According to the jurisconsult Daniel Jousse, "besides profaning the Sacrament of Marriage," bigamy "is always connected to a continuous adultery" and "it is a species of rapt," only made "all the more vexing" because it is difficult to detect.[42] This relationship between seduction and consent had a profound

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[39] Haase-Dubosc, *Ravie et enlevée: De l'enlèvement des femmes comme stratégie matrimoniale au XVIIe siècle* (Paris : Michel Albin, 1999), 26, 75-78; Hanley, "Engendering the State," 4-27.
[40] On the symbolic violence of *raptus* in early modern French legal philosophy see chapter 1. See also Haase-Dubosc, *Ravie et enlevée*, 7-8, 84-87, 117-8, 229; Georges Vigarello, *A History of Rape: Sexual violence in France from the 16th century to the 20th century*. Trans. Jean Burrell (Oxford: Polity, 2001), 47-49, 52-54.
[41] Vigarello, *History of Rape*, 54. See also Haase-Dubosc, *Ravie et enlevée*, 24-32; Stéphanie Gaudillat Cautela, "Questions de mot. Le "viol" au XVIe siècle, un crime contre les femmes? " *Clio. Femmes, genre, histoire* 24 (2006): 59-74.
[42] "puisqu'outre la profanation du Sacrement de Mariage, il est toujours joint à un adultère continuel…c'est une espece de rapt d'autant plus d'angereux, qu'il est difficile de s'en défendre, sur-tout si la fille est

impact on the way that judges understood bigamous marriages in the sixteenth and seventeenth centuries. Moreover, as I will show later in the chapter, the relationship between seduction and consent also affected the way that the parlement adjudicated appeals from men accused of adultery with a married woman.

A crime of sacrilege?

As representatives of justice in an ostensibly Roman Catholic kingdom, premodern royal and ecclesiastical courts alike understood that marriage was a sacrament and thus indissoluble.[43] If royal or ecclesiastical authorities judged the marriage valid, only death could separate spouses from each other. Thus, when spouses became estranged and lived apart for years, even decades, they were not free to marry another person.[44] If a spouse left home, never returned, and was presumed to be dead, canon legal conventions required that the husband or wife left behind had to produce a certificate of

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mineure, et sans parens. " Daniel Jousse, *Traité de la justice criminelle de France*, vol. 4 (Paris: Debure, 1771), 51. According to Muyart de Vouglans, bigamy was "le crime de celui qui épouse une seconde femme pendant que la première est encore vivante" that resulted from a mixture of adulterous intent, profanation, and fraud. Pierre-François Muyart de Vuglans, *Lois criminelles de France, dans leur ordre nataurel*, (Paris: Merigot, Crapart, Morin, 1780), 225. See also Jean-Marie Carbasse, *Histoire du droit pénal*, 343.

[43] On principle, French Calvinist consistories permitted divorce for the same "hard fault" cases of adultery and desertion, however, as early as 1559, the Paris national synod forbade clerical judges from issuing divorces or permitting remarriage unless first permitted by "the Authority of Civil Magistrates." Even though Calvinist doctrine did not hold marriage as a sacrament, couples were not free to dissolve their own marriages. Huguenots who self-divorced or received counterfeit divorces and remarried were not immune to bigamy prosecution. Calvinist jurisdictions in Francophone Europe punished bigamy severely. In Geneva, Calvinist consistories permitted very limited divorce on grounds of adultery or malicious desertion and subsequent remarriage. See Diane Margolf, *Religion and Royal Justice in Early Modern France: The Paris Chambre de l'Edit, 1598-1655* (Kirksville: Truman State University Press, 2003), 108-9; Robert M. Kingdon, *Adultery and divorce in Calvin's Geneva* (Cambridge: Harvard University Press, 1995), 20-25, 128-135; John Witte Jr. "The Marital Covenant in Calvin's Geneva," *Political Theology* 19, 4 (2018): 282-299; and du Fail, *Mémoires des plus notables et solemnels arrests du Parlement de Brétagne*, 1184-85.

[44] When marriages broke down, husbands and wives could seek formal separations through the courts. For reasons such as the development of informal arrangements, spousal abandonment or financial barriers that restricted access to the courts, couples did not follow the route of formal separation. Remarriage while one spouse remained alive remained illegal. See Julie Hardwick, *Family Business: Litigation and the Political Economies of Daily Life in Early Modern France*. (Oxford: Oxford University Press, 2009), 4-5, 25-7.

viduity, or widowhood, which attested, on the strength of at least one witness, to the death of the other spouse.[45] Even with this 'proof' of widowhood, a subsequent marriage was rendered null *ipso facto* if the presumed-to-be-dead spouse turned up alive, regardless of how much time had passed.[46] Such was the case for the presumptive widow, Marie de la Tour. In 1630, de la Tour's husband, Jean Maillard, left Paris to fight as a mercenary in the Thirty Years War. De la Tour eventually found a new partner, Pierre Thibault, Sieur de la Bossière. In 1646, de la Tour tracked down her husband's commanding officer who issued a (possibly fraudulent) death certificate and after thirteen years of cohabitation, the couple finally married. Then in 1670, forty years after his disappearance, after hearing a false rumour of de la Tour's death, Jean Maillard, now an old man, returned to Paris to claim the considerable sixty-thousand livres fortune she had inherited from the now defunct Sieur de la Bossière. The parlement ruled the second marriage null and deprived de la Tour of most of her inherited fortune in spite of the civil and canonical legality of the marriage as it was contracted in 1646.[47] The first marriage was permanent; ultimately, no amount of time, distance, or even the legal presumption of widowhood could invalidate its permanence.

Strict taboos helped to govern legislative and judicial responses to multiple marriage. Canonists described bigamy, the crime of taking a second spouse while the first

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[45] Bartholémy-Josèphe Bretonnier, *Oeuvres de M. Claude Henrys, conseiller du Roi et son premier Avocat au Bailliage et Siége Présidial de Forez contenant son recueil d'arrests,* 5 vols. (Paris: Les Libraires Associés, 1771), 589*;* Papon, *Recueil d'arrestz notables des cours souvereaines de France,* 7th ed. (Tournon: Claude Michel, 1605), 1262-3; J.A. Serieux, *Traité des contrats de mariage.* 4th ed., vol. 2 (Paris: Prault, 1772), 5, 51.

[46] Adhémar Esmein, *Le mariage en droit canonique,* vol. 2 (Paris: L. Larose et Forcel, 1891), 267-9; Jean Gaudemet, *Le mariage en occident: les mœurs et le droit* (Paris: Cerf, 1987), 200, n. 4.

[47] Jean-Baptiste Denisart, *Collection de décisions nouvelles et de notions relatives à la jurisprudence actuelle.* vol. 1 (Paris: Charles Varicourt, 1771), 256. Agnès Walch, *Histoire de l'adultère (XVIe-XIXe siècle)* (Paris: Perrin, 2009), 27-34.

one still lived, as a sacrilege so evil that it could only be compared to Cain's murder of Abel.[48] Men and women who knowingly broke these rules breached deeply held values about the sacramentality of marriage. Even though rules against remarriage applied evenly to men and women, judges responded most vehemently to the bigamy of husbands.[49] In Sara McDougall's examination of bigamy in late medieval France, where this more severe reaction to bigamous men had its historical roots, she found that ecclesiastical courts prosecuted two bigamous men for every bigamous woman and sentenced men to significantly harsher penalties than women.[50] These gendered discrepancies in bigamy prosecution became starker in the sixteenth century as women came to represent less than eight percent of bigamy appellants who appeared at the parlement.[51] Over the course of the sixteenth and seventeenth centuries, even as royal courts used Roman law to effectively decriminalize the adultery of husbands, rather than scale back the intensity with which bigamous men were punished, royal judges harnessed their power to inflict pain by condemning bigamous husbands to die or serve out brutal sentences in the king's galleys.

The first execution by order of the parlement de Paris for bigamy took place on April 17, 1535 when the parlement condemned a man named Chambou as a heretic for

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[48] Brundage, *Law, Sex, and Christian Society*, 252, 477; Carbasse, *Histoire du droit pénal*, 343.
[49] Bretonnier, *Œuvres de M. Claude Henrys*, vol. 4, 550. Muyart de Vuglans, *Institutes*, 484; Garnot, *Histoire des bigames*, 189.
[50] McDougall, *Bigamy and Christian Identity*, 72.
[51] In the sample of *écrous*, women accounted for only three out of the forty bigamous spouses who appealed to the parlement. For example, even though Jean Maillard and Marie de la Tour never contacted each other directly, letters exchanged over the years between Maillard and his brother suggested that husband and wife understood that the other was alive and well. Nevertheless, the parlement did not convicted Marie de la Tour of either adultery or bigamy in spite of the thirteen years she spent as Pierre Thibault's concubine before their marriage. Even though Jean Maillard and Marie de la Tour never contacted each other directly, letters exchanged over the years between Maillard and his brother suggested that husband and wife understood that the other was alive and well. Nevertheless, the parlement did not convicted Marie de la Tour of either adultery or bigamy in spite of the thirteen years she spent as Pierre Thibault's concubine before their marriage. Walch, *Histoire de l'adultère,* 30

the sacrilege of "wickedly abusing the sacrament of marriage" by having two living wives.[52] Royal jurists described bigamy as "violation" and a "profanation of the sacrament of marriage," borrowing heavily from ecclesiastical connotations of bigamy as a crime punished for its sin.[53] By punishing bigamy in the same manner as heresy, sacrilege, or blasphemy, church courts in Northern France signalled their view of bigamy as a very serious religious crime that damaged the social body of the Church.[54] Church tribunals described bigamy as a "vilification of the state of matrimony," and bigamists, officials warned, showed "contempt for the Church Militant" by "deceiving her"; they deprived their wives of their conjugal debt and "damnably" incurred perjury.[55]

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[52] "Quia male videtur sentire de sacramento Matrimonii." Pierre Jacques Brillon. *Dictionnaire des arrests, jurisprudence universelle des parlemens de France*, vol. 1 (Paris: Charles Osmont, 1711), 928 ; and *Code matrimonial ou recueil complet de toutes les loix canoniques et civiles de France, des dispositions des Conciles, des Capitulaires, Ordonnances, Édits et Déclarations; et des Arrêts et Reglemens de tous les Parlemens et Tribunaux Souverains, rangés par ordre alphabétique, sur les Questions de Mariage*, vol. 1. (Paris: Herissant, 1778), 278. This execution took place at the nexus between a period of aggressive heresy prosecution at the parlement and the period during which the parlement was also in the process of temporalizing matrimonial crimes. It is not clear from either Brillon or the *Code matrimonial*, which mention the Chambon affair, whether he was a Protestant who refused to recognize the sacramentality of marriage and took a second wife following the breakdown of his first marriage or whether he was a Catholic who knowingly committed an execrable blasphemy by entering into a second marriage while his first wife still lived. The parlement de Paris targeted suspected and sworn Protestants as well as Catholics for blasphemy and sacrilege, however the label of "heretical blasphemy" or "sacramentarian blasphemy" usually connoted Protestant heresies. The Inquisition in Spain theorized judicial competence over the investigation and punishment of bigamy by linking the practice of divorce and remarriage to Lutheran and Calvinist heresy. Monter, *Judging the French Reformation*, 4, 68-69, 74- 87; and Allyson Poska, "When Bigamy was the charge," 191.

William Monter does not include Chambou in his appendix of heresy executions ordered by parlements in France between 1523 and 1560. This absence might indicate an omission on Dr. Monter's part because he did not classify Chambou as a Protestant heretic, which comprises the focus of his book, Chambou could have been missed, or this absence might indicate that the Chambou appeal was either not classified by the parlement of 1535 as heresy or that the trial is itself apocryphal. Nonetheless, jurisconsults cited the trial to confirm that the parlement had the legal justification to hear bigamy appeals and to sentence men to death for the crime. See William Monter, *Judging the French Reformation: Heresy Trials by Sixteenth-Century Parlements.* (Cambridge: Harvard University Press, 1999).

[53] Le Brun de la Rochette, *Les procès civil et criminel*, vol. 2, 35; Jousse, *Traité de la justice criminelle*, vol. 4, 51.

[54] McDougall, *Bigamy and Christian Identity*, 130.

[55] McDougall, *Bigamy and Christian Identity*, 130. Canonists and ecclesiastical officials treated bigamy like a form of sacrilege. For example, Gratian compared bigamy to the sacrilege of fratricide, recommending that bigamists face punishment that was ten times as harsh as fratricides. Brundage, *Law, Sex, and Christian Society*, 252, 477; Carbasse, *Histoire du droit pénal*, 343. Sara McDougall points out, for example, that in Troyes, bigamy was punished in a fashion that mimicked blasphemy and heresy in the

When proof existed that a bigamous marriage had been formally solemnized, the royal courts in sixteenth- and seventeenth-century France continued to punish bigamy as a religious crime. For instance, in February of 1641, the parlement sentenced a vintner named Jean Ruellé to die "in reparation for having abused the Sacrament of Marriage."[56] In 1628, Ruellé left his hometown and his wife somewhere in Champagne and settled in Rueil, near Paris. Two years later in 1630, once becoming acquainted with his new neighbours and proclaiming himself a widower, a priest solemnized Ruellé's second marriage to a woman named Livet (also called Liverton by some jurisconsults) at their local parish church in Rueil.[57] Twelve years after he deserted his first marriage, Ruellé was hanged at the Place de Grève in Paris, his dead body to be left there for twenty-four hours and then hung upon a gibbet to rot; the treatment of his corpse was a public and gruesome punishment for the execrable sacrilege and blasphemy of his crime.[58]

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severity of punishment. McDougall, *Bigamy and Christian Identity*, 131-132. In Spain and New Spain, the Inquisition punished bigamy as a heresy. See Poska, "When Bigamy was the Charge," 191-193; Boyer, *Lives of the Bigamists,* 35. Glanville Williams argues that in England, the Stuart Polygamy Act of 1604 framed bigamy as a form of blasphemy that insulted God. See Williams, "Bigamy and the Third Marriage," *The Modern Law Review* 13, 4 (October 1950): 424.

[56] *Arrest de la cour de parlement portant reglement sur les mariages des hommes et femmes vefues ; avec injonction aux curez de l'observer, sur peine d'en estre responsable* (Paris: Antoine Estienne, 1642), 5.

[57] "auroit esté condamné estre pendu et estranglé à une potence, qui pour cet effet seroit dressée en la place de Greve de cette ville, son corps mort y demeurer vingt-quatre heures, puis porté au gibet. " The parlement later summoned the priest who married Ruellé before the prosecutor general to face an investigation for failing to properly ensure that both parties were free to marry before solemnizing their vows, though there is no evidence to suggest he was punished by temporal justice. : [cette court a] ordonné que le Prestre qui a celebré le Mariage dudit Ruellé avec ladite Livet en mil cens trente deux en Eglise dudit Rueil, sera adjourné à comparoir en personne en icelle à certain jour. " *Arrest de la cour de parlement portant reglement sur les mariages des hommes et femmes vefues*, 4-5.

[58] "[P]our reparation d'avoir abusé du Sacrement de Mariage, et espousé deux femmes vivantes...auroit esté condamné estre pendu et estranglé à une potence, qui pour cet effet seroit dressée en la place de Greve de cette ville, son corps mort y demeurer vingt-quatre heures, puis porté au gibet." *Arrest de la cour de parlement portant reglement sur les mariages des hommes et femmes vefues*, 3-5. On the punishment of bigamy as a form of sacrilege and blasphemy, see McDougall, *Bigamy and Christian Identity,* 130-131; Garnot, *Histoire des bigames*, 180-1; Carbasse, *Histoire du droit pénal*, 343; Stuart Carroll sums up the post-mortem punishment of the body for heinous and socially polluting crimes very succinctly: "the body, in death as in life, was not simply integral to an individual human being, but was a socially defined entity, signifying status in a hierarchical society. Felons were not simply put to death; their bodies were subject to dishonour and degradation." Stuart Carroll, *Blood and Violence in Early Modern France* (Oxford: Oxford University Press, 2006), 19. On the symbolic judicial and extra-judicial punishment of the sacrilegious or

Though there is certainly some evidence that parlementaires issued harsh penalties to bigamous men because they set the crime apart from other marital crimes as a sacrilege that required especially severe justice, this is not the only explanation for the rigour with which the parlement prosecuted the crime in the sixteenth and seventeenth centuries. According to the sample series, in terms of sheer numbers, the period of most intense bigamy prosecution at the parlement between 1564 and 1590 - when two-thirds of all appellants appeared at the court - broadly coincides with both the most aggressive period of the prosecution of sexual and religious crimes like infanticide, adultery, and (mainly Protestant) heresy, blasphemy, and sacrilege.[59] Due in part to the shifting political culture in France at the end of the civil wars combined with a less acute sense of immediate moral danger and due in part to important procedural changes, the number of trials and the severity of punishment for religious and sexual crimes that the parlement arbitrated started to decline in the 1590s.[60] The volume of bigamy appeals declined at the same time.

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heretical bodies in early modern France see also Monter, *Judging the French Reformation,* 234; Natalie Zemon Davis, "The Rites of Violence: Religious Riot in Sixteenth-Century France," *Past and Present* 59 (May, 1973): 51-91; Barbara Diefendorf, *Beneath the Cross: Catholics and Huguenots in Sixteenth-Century Paris* (New York and Oxford: Oxford University Press, 1991), 97-99, 103; David Nash, "Analyzing the History of Religious Crime. Models of 'Passive" and "Active" Blasphemy since the Medieval Period," *Journal of Social History* 41, 1 (Fall, 2007): 5-29; Michel Foucault, *Discipline and Punish: The Birth of the Prison,* Alan Sheridan (trans) 2nd ed. (New York: Vintage, 1995), 44-46.

[59] William Monter only counted a dozen executions for heresy in total at the parlement after 1560. Monter, *Judging the French Reformation,* 222-243. Even though the Catholic fight against Protestant "heresy" was briefly reignited in the months leading up to the siege of La Rochelle, the Catholic majority in France, including the parlement, "no longer perceived" the Huguenots "as the demons and pollutants of Catholic culture they had once been." Mack Holt, *The French Wars of Religion, 1562 – 1629* (Cambridge: Cambridge University Press, 1995), 188. A series of prosecution waves for Protestant heresy, sacrilege and blasphemy at the parlement during the last half of the sixteenth century. There is no evidence to suggest that royal courts targeted Protestant men in particular for bigamy prosecution or for particularly harsh sentencing in comparison to Catholic men. It is probable that some of the men who appeared at the parlement were Protestant, though none of the *arrêts* that I have reviewed identify their religious affiliations.

[60] According to the sample of Conciergerie *écrous*, heresy, sacrilege, and blasphemy appeals to the parlement virtually stopped with the ascension and conversion of Henri IV and subsequent decriminalization of Protestantism following the Edict of Nantes.

Though it is tempting to draw a causal relationship between the prosecution of religious crimes and bigamy, this common trajectory may have been partially coincidental. Even though the specific procedural or political circumstances that impacted the volume of appeals or the severity of punishment for these other religious or sexual crimes coincided with the decline in bigamy appeals at the parlement, a strong causal correlation between the decline in bigamy appeals is not clear. A comparison of punishment rituals for bigamy and crimes of heresy, blasphemy, or sacrilege ordered by the parlement suggests an early divergence in the treatment of bigamists and prisoners punished for blasphemy, heresy, sacrilege or sedition by royal judges at both the kingdom's *bailliages* and *sénéchaussées* as well as the parlement de Paris. Though parlementaires usually responded to bigamous men with violent punishment, the specific description of Jean Ruellé's crime as sacrilege and the desecration of his dead body set his trial and execution apart from many of the other bigamy appeals that the parlement arbitrated in the last half of the sixteenth and the first half of the seventeenth century. Examining the use of *amende honorable,* or other extraordinary punishments like the post-mortem desecration of the bodies of executed criminals provides one (albeit imperfect) means for us to compare the treatment of convicted bigamists to criminals who were convicted of heinous religious crimes.

The parlement frequently ordered criminals found guilty of sacrilege, heresy, blasphemy, or sedition to perform the *amende honorable,* a form of ritual shaming and public expiation that required criminals to hold a candle, wear a noose symbolically draped around the neck, and to beg forgiveness of "God, the king, and the law."[61]

[61] "L'amende honorable est une peine qui emporte infamie et à laquelle on condamne ordinairement les séditieux, les sacrilèges, les faussaires, les usuriers publics, et les banqueroutiers frauduleux." Denisart,

William Monter found that between 1544 and 1559, the parlement issued instructions for slightly more than seventy percent of convicted heretics to perform the *amende honorable* either alone or in addition to physical punishment.[62] Following the general pardon of heretics that François II issued in 1560, the parlement continued to make occasional use of *amende honorable* to punish crimes that breached serious religious as well as social boundaries.[63] For example, in 1617 the parlement ordered the journeyman book binder Noel Lochon to perform the *amende honorable,* wearing the noose around his neck while processing through the main streets of Paris, before he was banished from the city for committing blasphemy and theft.[64] Also in 1617, Philippes Voisin was ordered to perform *amende honorable* before beginning his banishment from the kingdom for *lèse majesté,* and Claude de Moines, the personal attendant to the Sieur de Boislandes, performed *amende honorable* on his way to execution for raping his master's daughter.[65] The comparative frequency with which the parlement issued sentencing instructions for convicted bigamists to perform the *amende honorable* might provide one tool to investigate how closely the court associated bigamy with blasphemy, sacrilege, or other heresies.

More specific to the crime of bigamy itself, in a few other scattered cases, the judges sentenced convicted bigamists to have *quenouilles,* or spinning distaffs that

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Collection de décisions nouvelles et notions relatives à la jurisprudence actuelle, 81. Monter, *Judging the French Reformation,* 186-88; James Farr, 'Honor, Law, and Sovereignty: The Meaning of the Amende Honorable in Early Modern France," *Actae Historiae* 8, 1 (2000): 129-38; and Hélène Fernandez-Lacôte, *Les procès du cardinal de Richelieu: droit, grâce et politique sous Louis le Juste* (Seyssel: Champ Vallon, 2010), 177, 258.

[62] Monter counted 484 heresy appeals at the parlement de Paris between 1544 and 1559. The parlement issued sentences for 345 prisoners to perform the *amende honorable*. See Monter, *Judging the French Reformation*, Table 6, p. 187.

[63] Monter, *Judging the French Reformation*, 212.

[64] AP A^B 23, 22 September, 1617, fol. 56v.

[65] AP A^B 23, 1 October, 1617, fol. 60v.

represented wifely work, attached to their bodies – one for each wife – to wear during their public punishment.[66] Judges reserved this specific formula for certain cases of sacrilege. For example, in 1602, the parlement ordered the executioner to affix three distaffs to the Parisian laborer, Rogier Hoyau, before he was hanged "for having abused the Sacrament of Marriage and having wed three living women [and] assuming a new name."[67] The parlement de Rennes condemned Nicollas Souvan to wear two distaffs at his execution in 1597 because he published a false name on his wedding banns in order to dupe both his second wife and the priest who solemnized their fake marriage.[68] This practice was also exceptionally rare.

While lower courts continued to intermittently combine *amende honorable* or other signs of sacrilege with other punishments – such as the death penalty, galley labour, or life-long banishment – to discipline bigamous men during the last half of the sixteenth century, the parlement was reluctant to impose this punishment on convicted bigamists. Among the dozen men in the sample series whom lower courts sentenced to perform the public *amende*, the parlement confirmed only one sentence. In 1567, the parlement sentenced Marc Richard, whose occupation the Conciergerie bailiff described as a 'plunderer', to public whipping and performance of the *amende honorable* for having two

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[66] Muyart de Vouglans, *Les lois criminelles,* 65*;* Carbasse, *Histoire du droit pénal,* 344; Joseph-Nicolas Guyot, *Répertoire universel et raisonné de jurisprudence civile, criminelle, canonique et bénéficiale.* vol. 6 (Paris: J.D. Dorez, 1776), 114-116; Pascal Bastien, *L'exécution publique à Paris au XVIIIe siècle* (Seyssel: Champ Vallon, 2006), 112.

[67] "Roger Hoyau, Laboreur, pour avoir abusé du Sacrement de Mariage et avoir épousé trois femmes vivantes en mesme temps, supposant son nom, condamné par Sentence du Prevost de Paris à estre pendu et estranglé, ayant trois quenouilles à ses costez, par Arrest du unziéme May 1602. Confirmé," Jean de la Martinière Pinson, *La Connestablie at maréchaussée de France ou recueil de tous les édits, déclarations, et arrests* (Paris: Rocolet, 1661), 1012.

[68] Louis-Bernard Le Mer, "Réflexions sur la jurisprudence criminelle du parlement de Bretagne pour la seconde moitié du XVIIIe siècle," *Droit privé et institutions régionales* (Paris: Presses Universitaires de France, 1976), 507, n. 6.

wives.[69] The parlement removed this punishment in the remainder of their final decisions, a practice that they did not repeat for the sacrilege, blasphemy, heresy, or seditions appeals that the court arbitrated during the last half of the sixteenth and the first half of the seventeenth century. For example, in 1564, the *sénéchaussée* of Fontenay le Comte sentenced the bigamist Mathurin Mollet to *amende honorable* while he wore a mitre, usually associated with penitent heretics, and to perform the *amende honorable* before joining the king's galleys.[70] The parlement confirmed Mollet's sentence to forced labour, but removed the religious ritual from his punishment.[71] By the turn of the seventeenth century, probably because of pressure exerted on them by the parlement, this practice had also generally fallen out of favour with the lower courts.[72] Nicolas Corrier, a domestic servant from Lyon who was convicted in 1602 of marrying four different women, was the last man to appeal a sentence that included *amende honorable*. Lacking sufficient evidence that he had exchanged promises with any of the women he had supposedly married, the parlement released him and issued orders to gather more information.[73]

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[69] AP A^{B} 2, January 1567, fol. 31.

[70] Witches burned at Arras in 1460, for example, wore mitres to their executions. Andrew Gow, Robert Desjardins and François Pageau (eds and trans), *The Arras Witch Treatises: Johannes Tinctor's Investices contres la secte de vauderie and the Recollectio casus, status et condicionis Valdensium ydolatratarum by the Anonymous of Arras (1460)* (University Park: Pennsylvania State University Press, 2016), 6 and 13; Henry Charles Lea, *The History of the Inquisition of the Middle Ages*, vol. 3 (New York: Harper, 1887), 504, 521-2, 528. See also John Beusterein, "The Celebratory Conical Hat in *La Celestina*," in *Crime and Punishment in the Middle Ages and Early Modern Age,* eds. Albrecht Classen and Connie Scarborough (Berlin and Boston: Walter de Gruyter, 2012), 403-15.

[71] AP A^{B} 1, September 1564, fol. 193.

[72] The latest use of *amende honorable* as part of a punishment formula for a convicted bigamist is 1607 and was located outside of the ressort of the Paris parlement. In this instance, the bailiwick of Malétroit in Brittany sentenced a bigamist to hang after performing *amende honorable* for leaving his pregnant wife behind to "maliciously" (*malitieusement*) wed another woman. The parlement of Rennes mitigated the sentence to perpetual galley service. Christiane Plessix-Buisset, *Le criminel devant ses juges en Bretagne aux 16e et 17 siècles* (Paris: Editions Maloine, 1988), 63-4.

[73] AP A^{B} 16, December 1602, fol. 57. On "sera plus amplement informé." See Jousse, *Traité de la justice criminelle,* vol. 2, 585-7.

The judges of the parlement and, consequently, the lower court judges who served them, were less willing to punish bigamous men as blasphemers, but not less willing to punish them by hanging or the hard labour of the galleys. Concomitant with this shift in punishment formula was also a decline in the number of men who appeared at the parlement to appeal the crime of bigamy. This confluence of changing punishment rituals and declining parlementary appeals, however, does not necessarily indicate that royal judges treated bigamy with lessening severity in the seventeenth century. Without access to a broad swathe of lower court records to consult, it is difficult to ascertain whether this ebb in bigamy appeals at the parlement in the seventeenth century represented an overall decline in prosecution more generally, or if denunciations continued at the level of local *bailliages* and *sénéchaussées* and lower courts stopped issuing as many serious penalties against bigamists after 1600. Unlike adultery, French statute never stipulated specific sentencing criteria for the punishment of bigamy; this theoretically provided more sentencing freedom to lower courts.[74] Evidence from the parlement suggests that in the seventeenth century, when bigamy appeals declined precipitously, the lower courts did not issue particularly lenient sentences to convicted bigamists. We know this because parlementary appellants continued to appeal sentences of death and forced labour well into the middle of the seventeenth century. The parlement remained quite willing to confirm the severe penalties that the lower courts recommended, suggesting that the parlement did not apply pressure on the lower courts to stop harsh sentencing practices, either. Instead, despite a decline in the absolute numbers of men appealing bigamy convictions to the parlement, the proportion of men sentenced to death or serious terms of

[74] Papon, *Recueil d'arrestz notables*, 463-68 ; Denisart, *Collection de décisions nouvelles,* vol. 1, 255; Jousse, *Traité de la justice criminelle,* vol. 4, 52.

galley labour remained steady at about seventy percent of all appellants throughout the period considered in the sample series. The parlement continued to execute bigamous men well into the 1650s and possibly beyond and used galley slavery as a punishment until the late eighteenth century.[75] In fact, over time, murderers were the only class of criminal more likely than bigamists to be sentenced to execution or the galleys.[76] As the volume of bigamy appellants declined, the severe penalties that the parlement issued against men who continued to appear remained constant. The decline in appeals, therefore, does not indicate the lessening gravity of the crime or lagging enforcement. Instead, it is possible that shifting definitions of valid marriage made bigamy more complex to prosecute and thus more difficult to convict.

Here we come back to the declining use of *amende honorable* in the punishment formulae of parlementary sentences for convicted bigamists. Parlementaires ceased forcing bigamous men to perform the ritual of *amende honorable* because they were no longer completely convinced that the second marriage legitimately constituted a specific abuse of the sacrament – not because the crime of bigamy itself was no longer a sacrilegious crime. Amid more stringent definitions of what constituted canonically valid marriages by the Council of Trent and the classification of certain forms of clandestine

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[75] According to Brillon, an *arrêt* pronounced on January 22, 1658 established galley slavery as the maximum penalty for bigamy. Brillon, *Dictionnaire des arrests*, 928; Carbasse, *Histoire du droit pénal*, 238-241, and 343-4; Mer, "Réflexions sur la jurisprudence criminelle du Parlement de Bretagne, 507. This decisive penalty potentially contradicts Daniel Jousse's observations in the late eighteenth century that "in France, we have not established in Law any specific penalty against bigamists. Sometimes this crime is punished by death." Jousse, *Traité de la justice criminelle*, vol. 4, 52. The parlement of Rennes similarly pronounced that galley slavery would replace execution as the maximum punishment for bigamy by *arrêt* on February 19, 1601. However Breton parlementaires continued to apply the death penalty to convicted bigamists after this point, sentencing at least two men to die in 1608 and 1640. Le Mer, "Réflexions sur la jurisprudence criminelle," 507, and 507, fn 6.

[76] Among 159 convicted murderers who appealed to the parlement, the parlement sentenced 75 or 47% of men to die and sent 57 or 36% to the galleys. The remaining 17% of murder appellants received more lenient sentences of corporal punishment and/or banishment.

marriage as a capital crime by the ordinance of Blois,[77] parlementaires – and consequently the lower court judges who served them – were becoming less certain that these men had committed a veritable sacrilege when they took a second wife if the second marriage was not publicly solemnized. Nevertheless, even in the face of this doubt, the continued use of the harsh punishments reflects the judges' perception of bigamy as a serious crime. The proportion of prisoners who received execution or sentences of hard labour remained stable; while royal judges were not as certain that these men had committed the sacrilege of a double marriage, they were certain that these men had committed fraud in order to seduce innocent women into adultery – a crime for which statute sanctioned royal judges to issue the death penalty.

Seduction, Consent, and Adultery

The late seventeenth-century parlementary lawyer, Pierre Jacques Brillon, complained that French jurists should be more like their Swiss counterparts, who skinned bigamous husbands alive and sliced them in two so that each wife could share equal halves of the corpse. Brillon quipped that like the real mother in the Judgement of Solomon, the "real" wife would surely make herself known to the judges.[78] According to his apocryphal account of the severity of Swiss justice,[79] rather than release the husband to the "true" wife once she had revealed herself, the judges in the Confederacy being

[77] Garnot, *Histoire des bigames*, 180; Hanley, "Engendering the State," 4-27; Schnapper, *Voies nouvelles en histoire du droit,* 164; Doyon, "De la clandestinité à la "fausseté," 415-430.
[78] "Quand deux femmes reclament un mari, on le divise en deux, c'est-à-dire, on l'écorche, pour en donner moitié à l'une, moitié à l'autre: cette sévérité imite la sagesse du judement de Salomon, qui, pour connoître la veritable et fausse mere, affects une condamnation cruelle à laquelle il étoit certain que la veritable mere ne consentireoit pas." Brillon. *Dictionnaire des arrests,* vol. 1, 928.
[79] I have found no reference in other published *recueils* or secondary literature of this practice in early modern Swiss criminal justice.

"unmoved" by pity, proceeded with this particularly cruel and painful form of execution.[80] Brillon mused that "there would be less bigamy if French judges were as harsh as the Swiss."[81] French justice was too lenient.

More importantly for our purposes, this cynical proposal also reveals the frustration that Brillon encountered, a sentiment that his parlementary colleagues likely shared, when attempting to arbitrate bigamy appeals meant to untangle the complex matrix of early modern French matrimonial law. When it came time to determine the relative severity of punishment, the judges tasked themselves to discover whether either of the marriages was legally valid and whether the wives had valid reason to believe they were legally married. If the first marriage was valid, then it was easier for the judges to determine that the husband had committed bigamy when he contracted the second marriage. In this case, the circumstances of the second marriage, whether it was solemnized by a priest, like Jean Ruellé had done, or was the result of a fraudulent promise of marriage, like Jacques Marchant had made, usually justified execution or long galley labour sentences to the judges. Thus when bigamy appeals offered incontrovertible evidence of fraud and premeditated malice to the parlement, justice was unmitigatingly harsh.[82] For example, the parlement executed Estienne Lelarge for killing his first wife to avoid public discovery of his bigamous second marriage, and it sentenced Jehan Robillard to perpetual hard labour for taking two wives and changing his name to conceal his premeditated fraud.[83] In most cases, however, the maze of promises and vows, deceit

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[80] "Il n'en seroit pas de même chez les Suisses, la denegration d'être la veritable femme, n'exciteroit point pitié des Juges." Brillon, *Dictionnaire des arrests*, vol. 1, 928.
[81] "Il y auroit moins de Bigame, si les Juges de France étoient aussi sevère que en Suisse…" Brillon, *Dictionnaire des arrests*, vol. 1, 928.
[82] *Arrest de la cour de parlement portant reglement sur les mariages des hommes et femmes vefues*; Berroyer, *Recueil d'arrests du Parlement de Paris*, vol. 2, 291-3.
[83] AP A^B 8, April 1583, fol. 8; AN X^{2A} 951, 18 April, 1583; AP A^B 23, 11 Oct, 1617, fol. 64.

and fraud was more difficult to untangle. If the first marriage was invalid or unsolemnized, the bigamous status of the second marriage was more challenging to determine and punishment required careful nuance. Either way, executing the husband or consigning him to the hard labour of the galleys removed the economic security to which both wives believed they were entitled. The judgement was never completely satisfying yet required the wisdom of Solomon to navigate.

These legal complexities were in part the result of the canon and royal legal reform in the last half of the sixteenth century, which comprehensively shifted the definition of lawfully contracted marriages. The publication of the *tametsi* decrees of the Council of Trent in 1563 mandated that in order for marriages to be considered canonically valid,[84] couples were required to exchange vows *in prima facie ecclesia* in front of at least three witnesses – one of them being a priest from the parish where the couple had become promised. Furthermore, *tametsi* required that all priests keep written records of the marriages they had performed.[85] The French crown rejected the *tametsi* decrees for not going far enough to outlaw clandestine marriage.[86] In response to *tametsi*,

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[84] Although the *Tametsi* decrees theoretically outlawed clandestine marriage, canon law did not classify clandestinity as an impediment and required instead that ecclesiastical officials test the validity of clandestine marriages on a case-by-case marriage and only if the matter was brought before them. Until the *ordonnance de Blois*, the parlement treated clandestine marriages on a similar case-by-case basis when it reviewed clandestine marriage appeals it received for arbitration from *appels comme d'abus.* Georges Louet, *Recueil d'aucuns notables arrests*, vol. 2, 117. See also Barbara Diefendorf, *Paris City Councillors in the Sixteenth-Century: The Politics of Patrimony* (Princeton: Princeton University Press, 1983), 164. On the validity of clandestine marriages after *Tametsi* see John O'Malley, *Trent: What Happened at the Council* (Harvard: Harvard University Press, 2013), 226-228; and Jean Berhard, "Le décret *Tametsi* du Concile de Trente: Triomphe du consensualisme matrimonial ou institution de la forme solomnelle du mariage?" *Revue de Droit Canonique*, 30 (1980): 209-234.

[85] *Acta genuina SS. oecumenici Concilii Tridenti*, vol. 2 (Munich: Breithopf and Härtel, 1874), 389. On the provisions of *Tametsi* and the validity of matrimonial vows see, James Brundage, *Law, Sex, and Christian Society*, 564-565; Esmein, *Le mariage en droit canonique*, 310-14. For a comprehensive discussion of the *Tametsi* decree in the context of marriage formation in early modern France, see chapter 1 of this dissertation.

[86] See Chapter Two. The French delegate, Charles de Guise, Cardinal of Lorraine railed against the council for failing to make clandestinity an impediment: "Si quis dixerit, propter ecclessiam non potuisse constituere impedimenta matrimonii: anathema sit." *Concilii Tridentii*, vol. 2, 391. However, in spite of the

the ordinance of Blois extended these ecclesiastical regulations against clandestine marriage to first invalidate and ultimately criminalize marriages that were contracted by men under thirty and women under twenty-five without the consent of parents or guardians.[87] The *Code Michaud* (1629) reiterated the language of Blois, and Louis XIII's *déclaration* of 1639 extended the statutory invalidity of clandestine marriages to individuals of any age who married without the consent of parents or guardians. On the face of things, this body of matrimonial legislation threw into question the potential validity of either the first or second marriage that bigamous spouses contracted, and parish registers provided the proof. James Brundage speculates that in the decades following the publication of the *tametsi* decrees, prosecutions for bigamy diminished as ecclesiastical officials began administering these stricter standards to their definition of the crime.[88] In fact, the French delegate at Trent, Charles de Guise, Cardinal of Lorraine, cited bigamy specifically as one of the spiritual crimes that stricter standards against clandestine marriage would help the Church to police.[89] It stands to reason then that the standards of validity imposed by royal law in France, which were stricter still than the

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Crown's refusal to promulgate most of the Tridentine decrees, until the *ordonnance de Blois,* the parlement treated clandestine marriages on a similar case-by-case basis when it reviewed clandestine marriage appeals it received for arbitration from *appels comme d'abus.* In 1576, it overturned the nullification of one such union originally issued by the Official of Soissons. Louët, *Recueil d'aucuns notables arrests*, vol. 2, 117; See also Diefendorf, *Paris City Councillors*, 164; On the validity of clandestine marriages after *Tametsi* see Charles Donahue, Jr. "The Legal Background: European Marriage Law from the Sixteenth to the Nineteenth Century," in *Marriage in Europe, 1400-1800,* ed. Silvana Seidel Menchi (Toronto: University of Toronto Press, 2016), 33-60, on France in particular, see p.37; John O'Malley, *Trent: What Happened at the Council* (Harvard: Harvard University Press, 2013), 226-228. On the illegality of clandestine marriages that were nonetheless valid, see Jean Berhard, "Le décret *Tametsi du Concile de Trente: Triomphe du consensualisme matrimonial ou institution de la forme solomnelle du mariage?" Revue de Droit Canonique*, 30 (1980): 209-234.

[87] Hanley, "Engendering the State," 4-27.

[88] Brundage, *Law, Sex, and Christian Society,* 564-5.

[89] *Concilii Tridenti* vol. 2, 391; Jutta Sperling, "Marriage at the Time of the Council of Trent (1560-70): Clandestine Marriages, Kinship Prohibitions, and Dowry Exchange in European Comparison," *Journal of Early Modern History* 8, 102 (2004): 75.

Tridentine decrees, had an impact on the way that royal judges tested bigamy in the courts. The criminal intent behind the deception remained serious and punishable, but the proof that a veritable sacrilege had taken place was more difficult to prove.

The trial of Jacques Parque helps to illustrate the challenges that royal judges had in determining whether satisfactory proof of bigamy existed even when sufficient evidence of marital fraud existed. In the summer of 1634 Demoiselle Anne de la Motte, a young woman from a good family living in the faubourg of Saint-Germain-des-Prés on the outskirts of Paris, married Jacques Parque, the son of a successful notary at the Châtelet. The couple married in public with the consent of both their fathers. The marriage proved to be rocky from the start: Jacques deserted Anne six or seven months after the wedding, leaving town without a trace and with Anne's four thousand *livres* dowry in hand. Sometime later, Anne learned that Jacques had left Paris to join another woman he had secretly married in Cognac under the pseudonym Charles des Marets in the months before his marriage to Anne. His marriage to Anne had been a fraud, cooked up in part to steal her dowry so that he could set up his new life with his first bride. [90]

Understandably furious, Anne and her father complained to the *prévôt* of Paris. The *prévôt* charged Jacques with "having tricked and deceived" Anne and "already having another wife, he [thus] was unable to validly contract a second marriage, [yet] nevertheless having wanted to do so, he had committed a sacrilege, and was consequently worthy of death."[91] In an attempt to stop the proceedings against his son, Jacques' father,

[90] Berroyer, *Recueil d'arrests du Parlement de Paris,* vol. 2, 291-3.
[91] "Jacques Parque sous le nom emprunté de Charles des Marets, l'avoit trompée et deçûë, qu'ayant déjà une autre femme il n'avoit pû contracter valablement un second mariage; que néanmoins l'ayant voulu faire il avoit commis un Sacrilege, et par-conséquent étoit digne de mort." Berroyer, *Recueil d'arrests du Parlement de Paris,* 291.

Jean Parque, filed an appeal at the parlement, applying the statute found in the ordinance of Blois to argue that his son, who was not yet twenty-five, was too young to legally contract a marriage. Rather than apply the ordinance to invalidate his son's first truly clandestine marriage in Cognac – possibly because his age had already voided that marriage or perhaps because his son's use of a fraudulent identity made his innocence in the matter too difficult to sell, the senior Parque argued that his son was the victim of *rapt de séduction* at the hands of the second wife, Anne de la Motte, and her family. The marriage was thus invalid, he argued, and if there was no marriage then there was no sacrilege either.[92] The parlement ultimately rejected the appeal on the grounds that Jacques' age did not protect him from prosecution for a crime of which he "was doubly guilty" because of the multiple layers of deception and fraud involved. Rather than sentence him, which the parlement was empowered to do,[93] it returned Jacques Parque to the Châtelet in order to stand trial not for bigamy, but "for having seduced and corrupted" Anne de la Motte.[94] With both marriages annulled, Jacques Parques became a notary at the Châtelet like his father and eventually married the widow, Catherine Cothereau.[95]

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[92] "parce que s'il y a Rapt, il ne peut y avoir mariage, s'il n'y a point de mariage, il n'y a par-consequent point de Sacrilege." Beroyyer, *Recueil d'arrests du Parlement de Paris*, 292.

[93] According to royal declaration pronounced on April 28, 1565, the parlement could not try in the first instance any case arising in the Ile-de-France that would not be subject to appeal. The declaration set as a monetary threshold for lawsuits of five-hundred livres or less. The parlement retained the authority to try cases in the first instance which fell under the category of public crimes or monetary suits in excess of five-hundred livres. Isambert, et al. *Recueil général des anciennes lois françaises*, vol. 14, 179-182. See also Sylvie Daubresse, *Le parlement de Paris, ou La voix de la raison: (1559-1589)* (Geneva: Droz, 2005), 256.

[94] "pour avoir seduit et corrompu une fille." Berroyer, *Recueil d'arrests du Parlement*, 292. Jean Parque's efforts to employ the *ordonnance* to obfuscate the facts of the marriages must have sufficiently convinced the Châtelet judges to release Jacques from custody because he never returned to the parlement to appeal any subsequent conviction or punishment; or perhaps Jean Parques had the foresight in the face of his loss at the parlement to negotiate a private settlement with Anne's family.

[95] Catherine Cothereau died in 1645. On the marriage and her death, see Philippe de Renusson, *Traité de la communauté de biens entre l'homme et la femme conjoints par mariages.* 2nd ed. (Paris: Compagnie des libraires, 1723), 675-6. On the lineage of Parque family, notaries from 1565 to the early eighteenth century, see Marie-Françoise Limon, *Les notaires au Châtelet de Paris sous la règne de Louis XIV (étude institutionnelle et sociale)* (Toulouse: Presses Universitaires du Mirail, 1992), 212-236.

Because of the family's status, the parlement elected not to fine Jean Parque the costs of the appeal.[96]

Royal and canon law obscured the legally and sacramentally binding nature of clandestine marriages, enabling men to persuade the judges that they had not committed blasphemy, even if they remained guilty of fraud or adultery. Since many bigamous marriages involved at least one clandestine betrothal, this obfuscation created a legal riddle for judges. When it was successful, this tactic usually spared men the death penalty or perpetual galley labour. For example, in 1609, Simon Fouret argued that he was not married to two women because he "had not taken a vow and had not made an engagement, nor a promise of marriage" to Isabel Engourvault, who claimed to be his first wife.[97] Isabel deposed that "she thus judged herself as the wife of the said Fouret and begged him to return to her" because fifteen years earlier in Bayeux "he had promised marriage faith to her."[98] Fouret pointed out to the judges that "they did not have marriage banns" and were therefore not legally married.[99] Unlike cases that involved two indisputably solemnized marriages, the parlement responded equivocally. The parlement convicted Fouret and declared Engourvault his legal wife but commuted his perpetual galley sentence to a shorter term of five years.[100]

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[96] It is probable too that Jacques' position within one of the preeminent notarial families helped him to avoid the more serious consequences that humbler men faced in similarly ambiguous circumstances.
[97] "S'il conjoint aux deux femmes…que non …il n'a point son vœu ny mise a este fiançailles, ny promis mariage." AN X^{2A} 981, 6 May 1609
[98] "Ladite Engourgvault dite qu'elle a este mariee ya xvi n'a eu pas d'enfant…il avoit promis la foy de mariage… …qu'elle s'est ainsi juger la femme audit fouret et quelle le prie d'y aller." AN X^{2A} 981, 6 May 1609.
[99] "qu'il a une femme…qu'il a dict qu'ils n'ayent point bans de mariage. "AN X^{2A} 981, 6 May 1609.
[100] "Fouret aux galeres cinq ans et ladite Engourvault est sa femme a la sentence."AN X^{2A} 981, 6 May 1609.

Parlementaires also measured the relative sexual innocence and wifely chastity of the women deceived into fraudulent marriages when they calculated sentencing measures for bigamous husbands. Although the royal courts indicted and punished exceptionally few women for bigamy, if bigamous husbands could convince the parlement that one or both of their wives had corrupted their sexual honour, the judges were willing to moderate the severity of punishment. In 1602, Danielle de la Chappe denounced her husband, Pierre Barré, to the *Grand Châtelet* when, she claimed, three years after he had promised himself to her and had begun to cohabitate with her, his first wife, Catherine Sauver, turned up, having, until recently, presumed that he was dead.[101] Danielle deposed that when Pierre took her as his wife, "she had been a virgin and had not known if the first wife was living."[102] Pierre alleged a very different story. First, he presented the usual defence of men accused of bigamy, that "he was not her (Danielle's) true husband" because "he had no engagement and that likewise he had not completed marriage banns."[103] He further discredited her story by claiming that Danielle "had frequented" another man named Jacques Promet, alleging either that she herself had a precontract with another man[104] or that she was herself an adulterer.[105] The parlement commuted his sentence of perpetual galley labour to five years' galley service.[106] The parlement did not

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[101] "Qu'il a epouze deux femmes et que la premiere femme est vivante." AN X^{2A} 965, 30 January, 1603. AN X^{2A} 965, 16 November, 1602; "Il y a 3 ans qu'il epouza Danielle de la Chappe a Villiers pres Maintenon... "Il demeura a Villiers pretendant ladite femme comme sa femme. La premiere espouse Catherine Sauver…qu'elle ne se trouve que le mary vit encore…et qu'il l'a quitta." AN X^{2A} 965, 30 January,1603.

[102] "qu'elle avoit été fille et ne scait si la premiere femme estoit vivante." AN X^{2A} 965, 16 November, 1602.

[103] "il a dit qu'il n'a point eu de fiançailles et de meme qu'il n'a pas verifié les bans de mariage." AN X^{2A} 965, 16 November 1602.

[104] Given how often women claimed to the parlement that they had had sexual intercourse with men once they had promised to marry, the judges may have assumed that a pre-existing engagement to another man meant that Danielle was sexually active with him.

[105] "ladite Danielle de la Chappe l'estoit frequente ledit nomme Jacques Promet." AN X^{2A} 965, 30 January 1603.

[106] AP A^{B} 16, November1602, fol. 42.

pursue Danielle for her potentially adulterous or bigamous relationship with Jacques Promet.

Ultimately, the judges had little doubt that most accused bigamists were guilty of fraud and adultery even if they had not always formally contracted multiple marriages that were otherwise legally sound. The judges trusted that these wives believed they were honorably married women. Nicolas Corrier, a domestic servant from Lyon appealing his sentence of *amende honorable,* whipping and banishment for the crime of having four living wives ('epouze trois femmes et estre marier'), was the only man in the sample who was released without a verdict on the basis of insufficient evidence to convict ('*sera plus amplement informé'*). [107] Instead, the nuance for the judges was to determine *just how far* the men had gone in deceiving the women into believing their sham marriage was either a canonically valid marriage or a clandestine betrothal. Either way they had committed a crime. The legal ambiguities that beset clandestine marriages made the process of weighing the evidence and setting the punishment complex for the parlement, even if the judges returned guilty verdicts on nearly every appeal.

The treatment of bigamous marriages as a form of fraudulent elopement or breach of promise protected second wives from criminal prosecution. Moreover, the treatment of the second marriage as a fraudulent elopement provided some women with a certain measure of security if the parlement believed that they had been seduced into the adulterous union. For example, in 1583, the parlement issued an *appel a minima* against the relatively lenient sentence of *amende honorable* and one year's banishment the Parisian Faubourg of Saint Martin issued against Charles de la Barré for entering into

[107] AP A^B 16, December 1602, fol. 57.

what amounted to a state of concubinage with a woman named Quarante following his estrangement from Anne Duplessis, his wife of seventeen years.[108] Even though Quarante could produce no proof that Barré had publicized his apparent promises of marriage to her, she nonetheless established her relative victimization because she believed that she had "lived as his wife for one year… and had been gravely deceived [by him]."[109] The parlement upheld the guilty verdict and sentenced Barré to a more severe punishment of nine year's galley labour in addition to providing for Quarante's basic needs.[110]

Financial support was not automatically awarded to the wives of bigamous men. Some first wives might have weighed the possibilities of reuniting with their husbands. When the parlement commuted the death sentence of Laurens Theuille, a Lyonnais nailsmith, to whipping and perpetual banishment, his first wife had the option to follow him.[111] As unpalatable as it may have been to follow an estranged husband into exile, most women, whether they were the first or a subsequent wife, did not have this immediate option. The parlement ordered the execution of some men. The serial bigamist Lois Leguieres, who was executed at the Place de Grève in 1579, left four presumptive widows behind.[112] If the parlement did not execute a convicted bigamist, it usually ordered him to serve multi-year galley sentences, which made it impossible for men who relied on their labour to take ongoing financial responsibility for their wives. Sometimes the parlement forced men to forfeit their assets. For example, Claude Gallet, a weaver from Lyon who was sentenced to the galleys for five years and banished from the

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[108] AN X^{2A} 951, 23 May, 1583; AP A^{B} 8, May 23, 1583, fol. 23.
[109] "Quarante a vecu comme sa femme depuis ung an…étant de lui fortement deceu. " AN X^{2A} 951, 23 May, 1583.
[110] "arrest des galleres neuf ans… de l'alimentation de la deuxieme femme." AN X^{2A} 951, 23 May, 1583.
[111] AP A^{B} 6, August 1579, fol. 192.
[112] AP A^{B} 6, September 1579, fol. 204.

sénéchaussée, forfeited his assets to the court following conviction.[113] Though the judgement does not specify the final destination of his assets once they were forfeited to the court, the parlement's general position on the fiduciary responsibilities of men towards their wives suggests that it is reasonably likely that a certain portion was reserved for his first wife. Once their marriage had been validated, second wives generally had no such fiduciary protection.[114] Whereas women who had been duped into a false promise of marriage could seek the legal enforcement of the engagement by obtaining the help of the temporal courts, women – especially from the ranks of the non-elite -- generally had little to gain from the denouncing of their husbands to the secular authorities if the first wife remained absent from their lives; once convicted, a bigamous husband who was sentenced to the galleys or sentenced to die could no longer provide the instrumental financial support the second wife needed for herself and her children. Similarly, whereas a sense of revenge, outrage, or desire to seek justice might certainly have motivated some first wives to denounce husbands who had abandoned them to form a new family, errant husbands of modest or even moderate means were better positioned to provide financial support to the first family if they remained alive and capable of working and earning an income.

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[113] "Ledit Gallet est condamné aux galeres cinq ans et demandement banny du sénéchaussée du lionnais et de ceste ville, prevoste et vicomte de Paris pour un ans…la cour de prendront ses biens. " AP A^B 27, 29 January, 1625, fol. 31.

[114] The question of whether women whose marriages had been invalidated because of bigamy retained the legal privileges of married women was in fact tested and refuted as the position of the parlement de Rennes in 1667 when Demoiselle Betrande Thomas attempted unsuccessfully to negotiate a loan on behalf of her bigamous husband who was serving a galley sentence for his crime. Demoiselle Thomas, who was apprehended in Paris, was briefly imprisoned for fraud and indebtedness by the parlement de Paris. See Paul Devolant, *Recueil d'arrests rendus au parlement de Bretagne sur plusieurs questions celebres* (Rennes: Pierre-André Garnier, 1722), 206-8.

If there were any assets to recover, some first wives and certainly the majority of second wives had to sue their husbands or their husbands' estates for such support in subsequent civil claims, which was a process that favoured women with the necessary social and financial wherewithal. Non-criminal matters were probably easier for women to navigate. The parlement permitted ecclesiastical officials to dissolve childless and accidentally bigamous marriages that resulted from mistakenly issued certificates of viduity or *licencia nubendi* because these cases represented straightforward matters regarding the sacramentality of a particular union.[115] In such cases, following the annulment, men and women could visit a notary to separate and disperse financial assets.[116]

When the necessary documentation was missing or either wife claimed that she was the victim of abandonment, fraud, or some other deception, the matter automatically proceeded to the royal courts for criminal process, which made the matter of recovering assets establishing support vastly more complicated. French parlements did not guarantee rights to financial support for women whose bigamous marriages had been dissolved by criminal procedure.[117] Julie Hardwick estimates that during the last half of the seventeenth century relatively straightforward marital separation suits cost couples

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[115] Descombes, *Recueil tiré des procédures*, 601.

[116] Pierre Descombes reported on one such annulment trial overseen by the Official of Paris in 1672 of Jean-Baptiste and Marie in 1672. Descombes, *Recueil tiré des procédures* 601-2.

[117] The children of bigamous marriages potentially fared better. When the bigamous couple had children, the parlement expected that officials would send the matter to the royal courts to settle. The children of bigamous marriages fared slightly better than their mothers. Following the legitimatization of the daughter of Bertrand de Rols in 1560, the parlement de Paris was willing to legitimatize and restore the maternal inheritance rights of the children who were born to invalidated bigamous marriages. For example, in 1644, the parlement issued an *appel comme d'abus* against the Official of Boulogne for delegitimizing two children born to a bigamous marriage. The parlement subsequently legitimized the children and restored their place in the maternal succession of goods. Descombes, *Recueil tiré des procédures*, 602; Papon, *Recueil d'arrests notables*, 695.

around 50 to 60 *livres,* which represented approximately two weeks wages for master artisans. Suits for separation of goods and some form of modest financial support following the invalidation of a bigamous marriage may have borne similar costs. Women from families of modest means had to take a calculated financial risk that they could access their erstwhile husband's assets following his conviction and sentencing and after his first wife had received her share.[118]

Bigamy as a male crime

Unlike the punishments the parlement imposed on bigamous men, none of the bigamous women in the sample of *écrous* who appeared at the parlement received particularly harsh sentences – if they received court-ordered punishment at all.[119] Whereas 70% of the male bigamy appellants who appeared at the parlement received the severe sentences of death or the galleys, the parlement responded to the small group of bigamous wives with comparative leniency. For example, the parlement banished Anne D'Auturier from Paris for three years in 1564 – a punishment the court could not have believed would cause her very much harm since she lived more than one hundred kilometers away in the parish of Saint-Fergeau near Orléans.[120] The parlement dismissed the two other bigamous women in the sample without any punishment at all. In 1565, Symonne Aubigny's first husband, the salt merchant, Alexandre Theraud complained to the Châtelet that, "living in adultery" ('vivante en adultere') she had taken a second

[118] See Hardwick, *Family Business,* 64-5.
[119] According to material from Alfred Soman's unpublished survey of Conciergerie *écrous* from 1564 to 1588, one bigamous woman was hanged. This punishment was exceptional. See Natalie Zemon Davis, "On the Lame," *American Historical Review* 93, 3 (June 1988): 594-5, n.88.
[120] AP A^B 1, September 1564, fol. 176.

husband in his absence during his five-year absence from Paris.[121] Having taken a second husband without significant proof that the first one was dead, the Châtelet thought to make an example of Aubigny by sentencing her to perform *amende honorable,* to be whipped and then banished from the city. Instead, failing to see proof of conscious malfeasance – possibly because Theraud had left her alone for quite some time – the parlement dismissed the charges and ordered her to return to her lawful husband without further punishment.[122] Similarly, the parlement released Jehanne Antoine in 1583 without forcing her to perform the sentence of *amende honorable* issued to her by the Châtelet.[123]

This pattern of general leniency toward the punishment of bigamous women was repeated across the kingdom. I have found only one reference to a serious penalty imposed on a bigamous woman by another French parlement. According to the parlementary advocate Bartholémy-Joseph Bretonnier, in 1591 the parlement of Bordeaux sentenced a bigamous woman to perform *amende honorable* and to the whipping of her while she wore a sign on her forehead that read "adulterous woman with two living husbands." She was subsequently enclosed in a convent for repentant women for two years. According to Bretonnier, the fact that after "only three and a half years" of her first husband's absence, she "was married publicly upon some rumour that her husband was dead," was a flimsy argument that justified the parlement of Bordeaux's unusually harsh punishment.[124]

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[121] "qu'elle avoit deux maris vivant." AN X^{2A} 929, 13 February, 1565; AP A^{B} 1, January 1564, fol. 81; Unfortunately, my photographic record of her declaration during her hearing has been damaged.
[122] AN X^{2A} 929, 13 February, 1565; AP A^{B} 1, January 1564, fol. 81.
[123] AN X^{2A} 953, 21 February, 1583.
[124] "une femme, don't le mari étoit absent il y avoit trois ans et demi seulement, s'étant remariée publiquement sur quelque bruit que son mari étoit mort, lequel néanmoins seroit revenu; par arrêt du parlement de Bordeaux, du 14 août 1591, elle fut condamnée à faire amende honorable et au fouet, portant un écriteau au front qui cpntenoit ces mots: femme adultere qui a épousé deux maris vivans, et de plus fut

This disparity in the apparent gravity of the crime of bigamy committed by wives and by husbands extended to judicial responses to the mistaken belief that certain circumstances legally entitled men and women to remarry when they knew their first spouse still lived. In 1581, an unnamed Parisian woman married another man after her first husband was sentenced to perpetual galley labour for committing theft. To everyone's surprise, he returned thirty years later in 1611 and, finding his wife had moved on without him, he complained to the Lieutenant-Criminel de Robe-Court at the Châtelet about the remarriage and pressed criminal charges of adultery and bigamy against her. At trial, the wife argued to the robe-court that she had believed her first marriage to be annulled by virtue of her first husband's "civil death."[125] Nonetheless, the Châtelet found her guilty, but condemned her only to return to her first husband without imposing further punishment.[126] By contrast, the parlement of Rennes sentenced a formerly Huguenot parlementary prosecutor to ten years' galley service (a mitigation of the death penalty, the *arrêtiste* Noël du Fail insisted, which the judges extended to the man as a courtesy because of his high station) who remarried with the permission of the archdiocese of Rennes (and his first wife) following his reconversion to Catholicism under the presumption that his first Calvinist marriage was void in canon law.[127] Both the wife of the former galley

condamnée à demeurer dans un couvent de repentie." Bretonnier, *Œuvres de M. Claude Henrys,* vol. 4, 551.

[125] Bretonnier, *Œuvres de M. Claude Henrys*, vol. 4, 493.

[126] Bretonnier, *Œuvres de M. Claude Henrys*, vol. 4, 551; Charles Fevret, *Traitté de l'abus et du vrai sujet des appellations qualifiées du nom d'abus au roy,* vol. 1 (Dijon: Pierre Palliot, 1653), 493.

[127] "La Cour ne suit toujours telles moderations de peines, car si ce sont vagabonds ou gens de vile condition, elle passse à la rigueur de l'Arrest rapporté par l'Autheur. Voyez M. Coras..." Fail, *Mémoires des plus notables et solemnels arrests du Parlement de Brétagne*. 1184-85. Given strict rules issued by the national Calvinist synod in 1559 policing divorce and remarriage within the kingdom of France, it is unlikely that the consistory of Rennes issued the couple a divorce on the grounds that the husband had converted to Catholicism. See Margolf, *Religion and Royal Justice,* 108-9.

prisoner and the husband of the Huguenot woman remarried under the mistaken belief that they were legally entitled to do so, yet only the husband was formally punished. Put differently, the parlementary judges only found the bigamous husband to be criminally responsible for his action.

Judges placed a greater burden of responsibility on bigamous men than either their first or subsequent wives. Sixteenth-century jurists believed that husbands had a sacred duty to protect women in "their weakness and infirmity."[128] Reflecting this reasoning, Claude Le Brun de la Rochette asserted that bigamy arose from a man's "premeditated malice…in order to trick and deceive the simplicity of a girl or woman into marriage in a place where his real marriage is unknown," to take advantage of a woman's comparative "moral weakness and simplicity."[129] The jurist Jean Pinson de la Martinière argued that the law should subject bigamous women to less severe penalties in recognition that the female sex was "quite naturally subject to fragility and change."[130] It was partly the steadfast belief in this infirmity, Natalie Zemon Davis argues, that led the judges at the parlement of Toulouse in 1560 to reluctantly accept the version of events offered to them by the bigamous Bertrande de Rols.[131] In 1548, De Rols' husband, Martin Guerre, fled their village of Artigat to escape from legal trouble and deserted her and their young son. Some years later, a man named Arnaud

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[128] Coras, *Arrest memorable,* 3; Le Brun de la Rochette, *Les procès civil et criminel*, II: 35; See also McDougall, *Bigamy and Christian Identity,* 73-4*;* Garnot, *Histoire des bigames,* 189.

[129] "Mais ce faict est bien esloigné de bigamie, qui par malice pourpensee, recelant qui'il soit marié, pour tromper et deceoiur la simplicité d'une fille, ou femme, en lieu où son vray mariage est incogneu…la punition d'un si meschant acte, ne pouvant estre moindre que de la mort." Le Brun de la Rochette, *Les Procès civil et criminel,* 35

[130] "la condamnation de la femme qui avoit esté trouvée en adultere, comme n'approuuant pas la dureté de la constitution ancienne & Mosaïque, & ne voulut point qu'elle fust lapidée par ses accusateurs, le sexe estant fort narutellement sujet à la fragilité au changement." Pinson, *La Connestablie,* 1002.

[131] Davis, *The Return of Martin Guerre,* 109-110; Davis, "On the Lame," 594-595. See also Robert Finlay, "The Refashioning of Martin Guerre," *American Historical Review,* 93, 3 (June 1988): 552-571.

du Tilh appeared in town, posing as Martin Guerre, the missing husband of Bertrande de Rols. The couple lived together as man and wife for four years until the true identity of De Rols' husband was finally revealed. The judges at the parlement of Toulouse ultimately executed Arnaud du Tilh for imposture, sacrilege, and adultery and returned Bertrande de Rols to her first husband, Martin Guerre.[132]

A belief in women's feebleness alone, however, does not explain the paucity of female bigamy appellants at the parlement.[133] Legal infirmity confirmed women's subservience to husbands by law and custom (*imbecillitas sexus*) and sometimes resulted in the mitigation of women's sentences (*infirmitas sexus*) when they had male collaborators,[134] but it did not excuse women entirely from facing criminal sanctions for the crimes they committed, nor did it translate into easy penalties when judges believed the crime was especially grave.[135] For example, the parlement ordered Nicole Mignon to be burned alive at the Place de Grève in 1600 for conspiring to poison Henri IV.[136] Judges did not only impose extremely severe penalties on the most

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[132] Davis, *The Return of Martin Guerre*, 109-110.

[133] In the bishop's court of Troyes, Sara McDougall suggests that legal "infirmity" led ecclesiastical judges to treat bigamous women as "weak and foolish," but concludes that "infirmitas sexus" did not completely explain the gendered dimorphism of penalties that the courts gave to convicted bigamists. McDougall, *Bigamy and Christian Identity*, 73-74.

[134] For example, the parlement imposed lighter sentences on most female thieves than it imposed on male thieves, especially when judges believed they had acted with a male accomplice. In addition, when mitigating the death penalty, royal jurists never imposed galley slavery on woman because of their inferior strength. See Garnot, *Histoire des bigames,* 180; McDougall, *Bigamy and Christian Identity*, 74; Davis, "On the Lame," 595.

[135] Louët, *Recueuil de plusieurs notables arrests,* 276; McDougall, *Bigamy and Christian Identity*, 74; Domna Stanton, *The Dymanics of Gender in Early Modern France: Women Writ, Women Writing* (Abingdon: Routledge, 2017), 18; Yan Thomas, "The Division of the Sexes in Roman Law," in *A History of Women in the West: from Ancient Goddesses to Christian Saints,* vol. 1, eds. Georges Duby, Michelle Perrot, and Pauline Schmott Pantel (Cambridge: Harvard University Press, 1992), 83; Cécile Dauphin and Arlette Farge (eds), *De la violence et des femmes* (Paris: Albin Michel, 1997); Suzanne Dixon, "Infirmitas Sexus: Womanly Weakness in Roman Law," *Tijdschrift voor Rechtsgeschiedenis/ Legal History Review* 52 (1984): 343-71; Thomas Kuehn, *Family and Gender in Renaissance Italy, 1300-1600* (Cambridge: Cambridge University Press, 2017), 64.

[136] AP A^B 14, 2 June, 1600, fol. 164; Pierre de l'Estoile, *Mémoires-Journaux de Pierre de l'Estoile, Journal de Henri IV* (Paris: Librairie des Bibliophiles, 1881), 376.

extraordinary of female criminals. The significant proportion of infanticides that the parlement put to death in the sixteenth and seventeenth century demonstrates that the parlement was certainly willing to impose harsh sentences upon women in spite of their supposed frailty. Furthermore, we know from infanticide trials that royal judges generally overlooked men as possible accomplices, which demonstrates that judges believed that some women were capable of conceiving, planning and executing heinous crime. The relative criminal impunity of bigamous wives in comparison to bigamous husbands, therefore, was not just a matter of judicial reasoning about women's fragility, stupidity or silliness.

Instead, this relative impunity must have had more to do with the nature of the crime itself as it related specifically to men and women. By abandoning his wife, a husband failed in his duty to manage his household and invited the cuckold to take his place. The trial of Arnaud du Tilh at the parlement of Toulouse provides us with some valuable insight. Following the confirmation of Arnaud du Tilh's guilt and his definitive death sentence, the parlement had to make decisions about what to do with Bertrande de Rols, who had lived in adultery as the *imposture's* wife for four years. The judges briefly considered whether they should also charge her for adultery – after all, *she* was the member of the illicit partnership who already had a spouse.[137] Once reunited with her true husband, before all the judges and the sizable public gathered to watch the hearing, Bertrande de Rols "trembling like a leaf shaking in the wind, her face all awash in tears" cried out that she was guilty of her crimes not only because of her "imprudence" but because she had been "overcome by the seductions…and ruses

[137] Davis, "On the Lame," 579, 595-6.

of the said du Tilh."[138] Following a heated discussion the court made the decision not to press charges against her and demanded de Rols "to ask pardon of her husband," Martin Guerre, and subsequently ordered the couple to agree "to forget their injuries and to accept reconciliation in holiness."[139] Commenting on the decision, the Premier Président of the parlement of Toulouse, Jean de Mansencal, confirmed that De Rols was not entirely free of guilt for the adulterous part she played in her own deception, but also berated her husband, Guerre, for deserting his wife twelve years earlier and even considered holding him criminally responsible for the abandonment.[140] The jurist Estienne Pasquier, who was a young Parisian lawyer at the time of the trial in 1560, even commented that Martin Guerre deserved the same punishment as Arnaud du Tilh because "by his absence he had been [the] cause of the wrongdoing."[141] Rather than being wholly to blame for her adulterous marriage to Arnaud du Tilh, Bertrande de Rols was a victim not only of the imposter's seductions and ruses, but also of Martin Guerre's abandonment.

It is reasonable to hypothesize that other royal judges came to similar conclusions when they assessed the relative guilt of bigamous women and their worthiness for punishment. Men left women home alone for all sorts of reasons. They left home to fight in war, to seek employment, to trade, to serve out a sentence, or to

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[138] "On fait apres venir ladite de Rolz, laquelle soudain apres avoir jetté les yeux sur ledit nouveau venu (Martin Guerre), toute esplorée, et tremblante comme la feuille agitée des vens, ayant sa face toute baignee de larmes, accourut l'embrasser luy demandant pardon de la faute, que par imprudence, et surmontee des seductions, impostures, et cautelles dudit du Tilh, elle auoit commise." Coras, *Arrest memorable du parlement de Tolose,* 51; see also Davis, "On the Lame," 595.
[139] Guillaume Le Seuer, *Admiranda Historia* (1561) quoted from Davis, "On the Lame," 595. Translation provided by Professor Davis.
[140] Davis, *The Return of Martin Guerre,* 90, 116.
[141] Estienne Pasquier, *Les Recherches de la France* (Paris, 1643), 571-72, quoted from Davis, "On the Lame," 579. Translation provided by Professor Davis.

avoid trouble.[142] As Sara McDougall argues for late medieval Troyes, instead of simply seeing a bigamous woman as weak and foolish, royal judges must have framed women's bigamous marriages as the imperfect solution to the social and economic consequences of abandonment.[143] Moreover, when husbands left and never returned, they left their wives vulnerable to "the seductions and ruses" of other men. Consequently, the sanctions that judges imposed on them were insignificant in comparison to the sanctions that the judges imposed on bigamous men.

Just as royal judges mistrusted the financial motives of some men who accused their wives of adultery, royal judges also reasoned that men had more to gain by entering into a fraudulent second marriage than women did.[144] While taking a second husband following desertion certainly offered some women much needed financial stability, the cost borne to a woman or her family of supplying the second husband with a dowry represented a real financial obstacle to remarriage.[145] This financial disincentive for a

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[142] Stephen Willm, "De la bigamie en droit criminel," (PhD diss) (Faculté de Droit de Bordeaux, 1898), 50; McDougall, *Bigamy and Christian Identity,* 108; Davis, *The Return of Martin Guerre,* 24-27, 42-50; James Farr, *The Work of France: Labor and Culture in Early Modern Times, 1300-1800* (Plymouth: Rowman and Littlefield, 2008), 49-77; and Holt, *The French Wars of Religion,* 213.

[143] McDougall, *Bigamy and Christian Identity*, 94.

[144] Jurists and legists were also skeptical about the motives that men had to marry widows and the disruption that such a marriage could have on the patrimonial legacy of the first husband. A royal edict passed by François II in 1560 restricted access to the assets that widows inherited from their first husbands by limiting the portion of that wealth that they could share with their new husbands, reserving the assets instead to be willed upon the widow's death to her children from the first marriage. The assumption was that men might otherwise seduce widows into marriage in order to steal the rightful patrimony from the first husbands' heirs. "Edit sur les cedones noces et sur les donations y relatives," Isambert, et al., *Recueil général des anciennes lois françaises,* vol. 14, 36-7; Pierre Dupin, *Traité des peines des secondes nôces* (Paris: Denis Mouchet and Durand, 1743), 55-56. On canon legal taboos about marrying widows see J.A. Brundage, "Widows and remarriage: moral conflicts and their resolution in classical canon law," in *Wife and Widow in Medieval England,* ed. S.S. Walker *(*Ann Arbor: University of Michigan Press, 1993), 17-31; James Brundage, "The Merry Widow's Serious Sister: Remarriage in Classical Canon Law," *Matrons and Medieval Women in Medieval Society,* ed. Robert Edwards and Vickie Ziegler (Rochester: Boydell and Brewer, 1996), 33-48.

[145] Garnot, *Histoire des bigames*, 189; Alfred Soman, "Les procès de sorcellerie au parlement de Paris (1565-1640) "*Annales*. 32, 4 (1977): 799. Widows faced other financial disincentives to remarriage such as taking over a successful workshop as a craftsman's widow, finding attractive the honour of being a well-esteemed man's widow, or finding other paid work that allowed women to live more independently without

woman to falsely claim she was a widow and to remarry could not have been lost on royal judges who spent so much of their time adjudicating matrimonial and patrimonial causes. Conversely, these same conditions justified for judges their suspicion and cynicism that men carelessly married widows or took second wives themselves in search of financial payoff.[146] For example, when Jacques Parque deserted his wife Anne de la Motte in 1635 to return to a woman he had secretly married under a pseudonym the previous year he also absconded with her impressive four thousand *livre* dowry.[147] For a man, marrying more than one woman meant that he might have been able to enrich himself by getting access to more than one dowry.[148] In other words, royal judges believed that most women committed bigamy by accident when they mistakenly believed themselves to be widows or because they had been seduced into the crime. In either case, parlementaires did not perceive nefarious intent. Men on the other hand, abandoned wives and seduced innocent women into adultery by making them believe they were married in the eyes of God and the King.

In 1605, Claude le Brun de la Rochette warned that "the sacrament of marriage is violated by the bigamist's abuse which renders one of his wives a perpetual adulteress," a crime rendered "all the more odious as it ruptures forever the vow of chastity."[149] As social subordinates, women relied on their husbands to prize and guard their sexual

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a husband. See for example, Janine Lanza, *From Wives to Widows in Early Modern Paris: Gender, Economy, and Law* (Burlington and Aldershot: Ashgate, 2007), 156-60; and Maurice Garden, *Lyon et les lyonnais aux XVIIIe siècle* (Lyon: Belles Lettres, 1970), 90-92.

[146] Religious authorities were also ambivalent toward widow remarriage. See Brundage, "Widows and Remarriage," 17-31.

[147] "Jacques Parque sous le nom emprunté de Charles des Marets, l'avoit trompée et deçûë, qu'ayant déjà une autre femme il n'avoit pû contracter valablement un second mariage; que néanmoins l'ayant voulu faire il avoit commis un Sacrilege, et par-consequent étoit digne de mort." Berroyer, *Recueil d'arrests du Parlement de Paris,* vol. 2, 291.

[148] Garnot, *Histoire des bigames*, 189; Soman, "Les procès de sorcellerie," 799.

[149] Papon, *Recueil des arrestz*, 467. Le Brun de la Rochette, *Les Procès civil et criminel,* vol. 2, 35.

honour, the linchpin that demonstrated good household management and protected patrilineal lines of descent. Women were worthless without it. Bigamy frustrated these priorities and destroyed women's sexual capital. The vigorous punishment of bigamy in France was not only a matter of the militancy of judicial culture to control marriage; the parlement de Paris in the sixteenth and seventeenth century specifically framed bigamy as an especially pernicious and blasphemous form of seduction.

Chapter 7: Conclusion

Les mariages se font au Ciel, et se consomment en la terre …en mariage il trompe qui peut.[1]

This dissertation has addressed several important gaps in the scholarship of the legal and social history of France. It presents a unique synthesis of statute and published legal opinion with a systematic survey of judicial decisions across a range of marriage and sex crime appeals that the criminal chamber of the Parlement of Paris heard between 1564 and 1655. It exposes the expectations and values that gendered authority placed on men and women in early modern French society, reveals the ways that the most powerful judges in France interpreted the law according to these values, and unveils the narratives that women and men crafted when they confronted these expectations before these powerful judges. In so doing, this dissertation sheds new light on the relationships between gender and the law, gender relations in state and society, and the lived experience of marriage and men and women's sexual relationships in early modern France.

Marriage in early modern France operated as the fundamental nexus between the family and the state, public order and private life, sexual honour and social status, woman and man, parent and child.[2] Marriage also delineated the boundaries between authority and subordination, social belonging and social exclusion.[3] This vision of marriage placed

[1] Antoine Loysel, *Institutes Coutumières d'Antoine Loysel,* vol. 1, (Paris: Durand, 1846), 145, 184.
[2] Joel Harrington, *Reordering Marriage and Society in Reformation Germany* (Cambridge: Cambridge University Press, 1995), 273.
[3] James Farr, *Hands of Honor: Artisans and their World in Dijon, 1550-1650* (Ithaca: Cornell University Press, 1988).

the authority of fathers and husbands at the centre of the family. Women served these priorities as good wives and daughters by demonstrating their sexual and reproductive virtues. Historians have emphasized the ways that patriarchal authority granted men the right to govern their households and gave them the responsibility to manage their patrimonial lineages.[4]

These priorities led to significant legal reform in the sixteenth century. Legists both refined medieval Roman law and introduced a series of secular statutes that privileged temporal justice and prioritized family integrity and male honour. This project of legal reform specifically criminalized all sexual misconduct that threatened these priorities. The law thus gave fathers the authority to determine sexual consent for their daughters, and husbands for their wives, and reformulated the abuse of this consent as a public crime. By contrast, the law stripped daughters of marital choice and discarded the reciprocal legal duties of marital fidelity formerly enshrined in ecclesiastical law. These changes ultimately merged masculine honour, good household governance, and family integrity as principles integral to the functioning of state and society. However, as Julie Hardwick concludes, the "gendering of authority entailed boundaries and obligations as well as rights and responsibilities, for different communities, and, ultimately, for the

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[4] Diane Margolf, *Religion and Royal Justice in Early Modern France: The Paris Chambre de l'Edit, 1598-1665*. Sixteenth Century Essays and Studies 67 (Kirksville: Truman State University, 2003); Robert Wheaton, "Affinity and Decent in Seventeenth-Century Bordeaux," in *Family and Sexuality in French History*, ed. Robert Wheaton and Tamara Haraven (Philadelphia: University of Pennsylvania Press, 1980); Julie Hardwick, *The Practice of Patriarchy: Gender and the Politics of Authority in Early Modern France* (University Park: Pennsylvania State University Press, 1998)*;* Margolf, *Religion and Royal Justice*, 103; Julie Hardwick, *Family Business: Litigation and the Political Economies of Daily Life in Early Modern France* (Oxford: Oxford University Press, 2009); Janine Lanza, *From Wives to Widows in Early Modern Paris: Gender, Economy, and Law* (Aldershot: Ashgate, 2007); Barbara Diefendorf, *Paris City Councillors in the Sixteenth Century: The Politics of Patrimony* (Princeton: Princeton University Press, 1983); Robert Descimon, "The Birth of the Nobility of the Robe: Dignity versus Privilege in the Parlement of Paris, 1500-1700," in *Changing Identities in Early Modern France,* ed. Michael Wolfe (Durham: Duke University Press, 1997), 95-123; James Farr, *Authority and Sexuality in early modern Burgundy* (Oxford: Oxford University Press, 1995); Farr, *Hands of Honor.*

crown."[5] In other words, this model of authority did not result in a simple dichotomy between the rulers and the ruled.

Scholars have emphasized the influence of patriarchalism on changing statute, pointing to the law as a means of understanding gender relations in the sixteenth and seventeenth centuries.[6] This study refutes the observation of some scholars that patriarchalism inclined the judges to apply these legal reforms as a tool of wholesale female repression. As Robert Descimon muses, early modern misogyny "was only too real" buts its consequences were neither uniquely punitive to women nor uniquely rewarding to men.[7] Valuable distinctions existed between the discourse of the law in statute and the practice of the law in parlementary jurisprudence. Importantly, this distinction between discourse and practice adds to our understanding of the early modern French legal system by showing how parlementary magistrates relied on principles of reasonable doubt almost as much as they relied on statute and precedents to form judicial opinions – a theme that this study emphasized most specifically in relation to the evolving jurisprudence on infanticide but which also helped to shape the judges' responses to seduction, adultery, and bigamy as well. This distinction also reveals the

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[5] Hardwick, *Practice of Patriarchy,* x.

[6] Farr, *Authority and Sexuality;* Sarah Hanley, "Engendering the State: Family Formation and State Building in Early Modern France," *French Historical Studies* Vol 16, 1 (Spring 1989): 4-27; Sarah Hanley, "Family and State in Early Modern France: The Marriage Pact," in *Connecting Spheres: Women in the Western World, 1500 to the present,* eds. Marilyn J. Boxer and Jean H. Quartert (New York: Palgrave, 1987), 19-63; Sarah Hanley, "A Juridical Formula for State Sovereignty: The French Marital Law Compact, 1550-1650," in *Le seconde ordre. L'idéal nobiliaire: hommage à Ellery Schalk,* ed. Chantal Grell and Arnaud Ramière de Fontanier (Paris: Presses universitaires de Paris-Sorbonne, 1999), 189-97; Sarah Hanley, "The Jurisprudence of the Arrêts: Marital Union, Civil Society, and State Formation in France, 1550-1650." *Law and History Review* 21, 1 (Spring 2003): 1-40; Sara McDougall, "The Transformation of Adultery in France at the End of the Middle Ages," *Law and History Review* 32, 3 (August 2014): 491-524; Régine Beauthier, *La répression de l'adultère en France du XVIe siècle au XVIIIe siècle* (Brussels: Story-Scientia, 1990); Agnès Walch, *Histoire de l'adultère (XVIe-XIXe siècle)* (Paris: Perrin, 2009).

[7] Robert Descimon, "La fortune des Parisiennes: l'exercise féminin de la transmission (XVI^{e}-XVII^{e} siècles)," in *La Famiglia nell'economia Europea secc. XIII-XVIII*, ed. Simonetta Cavaciocchi (Florence: Firenze University Press, 2009), 619-34.

important tensions that existed between the ideals of patriarchal authority and its lived experience in early modern France. The judges valued family integrity and good household management and sometimes interpreted these priorities in surprising ways that benefited female defendants.

Patriarchalism set high standards for men's self-governance and men's governance of the subordinate members of their households and measured women's honour according to their sexual virtue. There was a symbiotic relationship between men's honour and women's sexual virtue. This symbiosis meant that men relied on the virtue of their wives and daughters to support their honour, while women relied on the honour of a supportive husband or father to sustain their virtue. When this symbiosis broke down, men and women faced serious repercussions. Moreover, the specific contours of the relationship between men's honour and women's virtue were also shaped by class and status. As a result, the class and status of plaintiffs, defendants, and witnesses helped the judges to measure harm and culpability and to ration punishment and restitution. Parlementary magistrates responded to the harm against the honour of high-status men and women differently than men and women of more modest status. The judges were apprehensive about men of modest status and were quite willing to hold them accountable when they believed a man's lack of honour had led a wife astray or when a man had deceived an innocent woman into fornication and adultery by seductive tricks and promises. Conversely, men's authority over the sexual consent of the women under their control sometimes meant that women of modest status were not always held accountable for their actions in the ways that historians have expected them to be under the tenets of patriarchalism enshrined in law. Moreover, over time, the judges became

increasingly suspicious of the financial incentives that motivated elite men to accuse their wives of being unfaithful. The suspicion about a man's motives and his masculinity that this unbalance could trigger, both in the courts and his community, meant that he had to take the very tangible social and economic impact of exposing his household to sexual scandal into consideration before involving the criminal courts to resolve adultery. It also meant that the trustworthiness of women whom the judges deemed honest was more valuable to the outcome of seduction or bigamy appeals than the word of men against whom the judges already bore some circumstantial prejudice.

This symbiosis was also a powerful source of credibility for the women who encountered criminal justice. The judges had specific expectations about what constituted either innocent or illegal sexual behaviour. These too were framed by male honour and female virtue which was portioned by class and status. Innocent behaviour was defined by the right of male consent because this act was *always* supported or excused by an honourable family member such as a father in the case of rapt by seduction or a husband in the case of forced adultery. Illegal sexual behaviour was generally characterized by the absence or refusal of a husband's or father's protection, as was the case for women accused of adultery, female plaintiffs whose claims of seduction the court deemed specious, or unmarried women accused of infanticide. Yet the symbiosis between honour and virtue also meant that these categories were not always black and white. A husband's honour was impugned when the judges doubted his ability to govern his household and thus did not always hold his adulterous wife fully accountable for her actions. The priorities of family integrity and good household management that rested at the heart of the relationship between virtue and honour also compelled the judges to promote

reconciliation between men and their unfaithful wives. Honour and virtue were powerful tools and precarious liabilities.

Men and women encountered criminal justice at moments of great personal turmoil and interpersonal conflict. This means, of course, that it is unlikely that the men and women whose stories are recorded in the criminal archives represented the normative experiences of marriage and parenthood of their contemporaries. Instead, their stories reveal what could happen when things fell apart. When these men and women confronted the Parlement, whether as plaintiffs, defendants, or witnesses, they wanted to convince the judges that they were normal, law abiding, and respectable subjects. It was up to the judges to decide whether their claims were credible or suspicious. In this way we see the conventional standards of sex, marriage, and family were reflected in their antonymic images of failure, loss, and deceit. The interaction between the people and their judges therefore lets us glimpse at the values, expectations, and contradictions that shaped early modern French society.

An important strength of this study is the broad range of sex crimes it considers because this allows us to have a more comprehensive understanding of prosecution and punishment patterns. However, this broad-ranging approach has placed a limit on the span of time this study could reasonably consider. The time period of this study ends just as changing dynamics between the crown and the Parlement in the full wake of the Fronde, the personal rule of Louis XIV, and the promulgation of the *code criminel* of 1670 shifted the legal and cultural landscape once again. A future project that continues the examination of these crimes from the 1660s to the Revolution would surely be a fruitful complement to this study. Scholarship on the history of the late seventeenth and

eighteenth centuries points to diverging trajectories for the prosecution of adultery and infanticide, for example, which saw the hardening of attitudes towards women's infidelity and the decriminalization of concealment, may reflect evolving notions about patriarchalism, the family, and state craft.[8] Additionally, although legal reform between the 1530s and 1570s significantly curtailed the competence of the ecclesiastical courts, tantalizing evidence of the sporadic use of *appels comme d'abus* by the Parlement for adultery, bigamy, and breach of promise into at least the first two decades seventeenth century suggests that a parallel study of sixteenth and seventeenth century *officialités* might yield unanticipated and important results. Although intact series for ecclesiastical courts in the sixteenth and seventeenth centuries the likes of which we have for the Parlement have not survived, a composite study of several *officialités* throughout the jurisdiction of the Parlement and beyond to the provinces is certainly feasible.

The jurisconsult Antoine Loysel offered these maxims on the problem of matrimony: "Marriages are made in heaven and consummated on earth…in marriage one who can deceive, will do so."[9] Marriage existed in tension with its ideal form – crafted in heaven – and its far-from-perfect worldly representation – fashioned by Man.[10] It was a sacrament and a civil contract; an oath of fidelity that left men and women vulnerable to deception. Marriage was both an ideal and an expression of human imperfection, an asset

[8] Julie Hardwick, *Sex in an Old Regime City: Young Workers and Intimacy in France, 1660-1789* (Oxford and New York: Oxford University Press, 2020); Nina Kushner, *The Rules of Adultery: Mapping Sexual Culture in Eighteenth-Century France*, forthcoming; Leslie Tuttle, *Conceiving the Old Regime. Pronatalism and the Politics of Reproduction in Early Modern France* (Oxford: Oxford University Press, 2010); Walch, *Histoire de l'adultère*; Véronique Demars-Sion, *Femmes séduites et abandonnées au 18e siècle. L'exemple du Cambrésis* (Lille: L'espace Juridique, 1991).
[9] "Les mariages se font au Ciel, et se consomment en la terre…en mariage il trompe qui peut." Antoine Loysel, *Institutes Coutumières d'Antoine Loysel,* vol. 1, (Paris: Durand, 1846), 145 and 184.
[10] Warner, *The Ideas of Man and Women in Renaissance France*.

and a liability. The Parlement of Paris was a critical locus for the negotiation of these contradictions.

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