

THE PUNISHMENT OF BIGAMY IN LATE-MEDIEVAL TROYES

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ABSTRACT

This article examines the punishment of bigamy in the late-medieval diocese of Troyes. By studying this punishment in the context of all punishments handed down by the episcopal court, this article seeks out the meaning of the punishment of bigamy, and the meaning of bigamy itself in this time and place. The ecclesiastical judges of Troyes perceived the crime of bigamy as an attack on the very nature of sacramental marriage. The punishment for bigamy resembled that of heresy, or an offence on the level of a priest who committed homicide. Bigamy was also considered a “public crime” committed not only against the abandoned spouse and the new, deceived, spouse, but also against the Church and the body public.

KEY WORDS

Bigamy, Punishment, Marriage, Fifteenth-century, France.

CAPITALIA VERBA

Digamia, Punitio, Matrimonium, Nuptiae, Quindecium saeculum, Gallia.

According to canon law, for a Christian to contract marriage to more than one living spouse at once is illegal, a crime we would call bigamy.¹ This article addresses the punishment of that crime in the fifteenth-century diocese of Troyes, in Northeastern France. As I will argue, the bishop's court in Troyes regarded multiple marriage as a particularly serious crime, an offence committed not only against the sacrament of marriage, but against Christianity itself, a crime comparable in some respects to heresy. The use of public punishment and imprisonment against those found guilty of this violation of marriage law aligned the crime of bigamy with offences such as heresy and the worst crimes committed by clerics against their avowed commitment to religious life.

To make my argument, I will examine and interpret punishments handed down by the bishop's court of Troyes. By treating these punishments as a kind of official language, I will ask what the crime of bigamy meant in the context of ecclesiastical justice.

Punishment sends messages, and can indeed constitute a kind of official language. By choosing to inflict a particular punishment, a court makes a statement about the nature and severity of a given crime. The goal of this article is to reconstruct the statements the ecclesiastical court of Troyes aimed to make through its punishment of bigamy.

The idea that punishment conveys meaning is of course familiar to readers of Michel Foucault.² However, admirers of Foucault may be tempted to ascribe a coarse and brute meaning to punishment, as a blunt tool of state power. The meanings of punishment are far richer and more refined, communicating important distinctions in the perceived significance and severity of crimes. The task of the historian is to try to understand the language used by the court, and to parse the message a punishment was intended to convey.

Before we can examine the punishment of bigamy, some explanation of bigamy itself is required. I must first explain what I mean by the term "bigamy." Those readers familiar with medieval canon law might reasonably take issue with my use of this word to describe multiple concurrent marriages.

There was such a thing as bigamy, *bigamia*, in medieval canonical writings, but *bigamia* was no crime. Instead, bigamy was a term used to define the status of clerics. Those clerics who had married more than once in succession, or had married a widow or non-virgin, could not subsequently become priests. These clerics were called bigamous, not because they had committed a crime, but because their multiple, successive marriages rendered them ineligible to advance in clerical orders.

In the Middle Ages there was no word for men and women who had contracted multiple concurrent marriages. Indeed, such a thing, as the canonist Raymond of

1. 433-420 of the "Code pénal" of France. See also Carbasse, Jean-Marie. *Histoire du droit pénal et de la justice criminelle*. Paris: Presses Universitaires de France, 2006: 343-344.

2. Foucault, Michel. *Surveiller et punir*. Paris: Gallimard, 1975.

Peñaforte explained, was impossible, a legal impossibility.³ Christian marriage was defined by its monogamy and indissolubility. No Christian could ever be validly married to more than one living spouse at a time.

Nonetheless, it may not come as a surprise to learn that many men and women did indeed contract two concurrent marriages to two living spouses, in fact, if not in law. Now such an action, if done willfully, was a crime. This crime, at least, had a name: *binae nuptiae*. Those who contracted two concurrent engagements were similarly guilty of a lesser offence, *bina sponsalia*.

This crime was defined by the making of two concurrent marriage vows. It was a crime for which sexual and domiciliary arrangements had limited bearing. Those readers familiar with bigamy or polygamy in the context of Muslim or Latter Day Saints Sects in Texas and elsewhere in the United States, and nineteenth-century Mormon or sixteenth-century Anabaptists, may have certain expectations for medieval, Christian bigamy and polygamy. One might assume that medieval, Christian bigamy was equally about maintaining multiple spouses concurrently, both contractually and physically.

However, this is not what we find in medieval western Christian sources. The bigamists studied here did not want, as far as we can tell, to be married to more than one spouse at a time. What they wanted, and could not have, was a new marriage regardless of their current marital status. Their desires, however, carried no weight with the episcopal court of Troyes. The point, from the perspective of the court, was that a Christian could not be married to more than one person at once. Acting as if one could do so was a crime, and a deeply important one. The point in these prosecutions of bigamists was not sexual and domestic arrangements, but the kinds of vows one could lawfully make, and the kind of vows that were fraudulent.

The court's attitude towards bigamy thus had a different emphasis than what we might expect. Modern readers tend to think of bigamy as a sexual arrangement or a domestic arrangement. One might think, for example, of tabloid stories of plural sexual partners or the household complexities of multiple wives cohabiting with one man, or a man traveling constantly back and forth between the households of a number of wives. The court of Troyes would not have approved of such behavior to be sure. The prosecutions, however, reveal a focus on something other than sex. Instead, we find the court aggressively pursuing a number of men and women who remarried despite being already married to a living spouse, a living spouse perhaps absent or missing, but presumed to be alive. The making of fraudulent, bigamous marriage vows was the crime that met with strict punishment.

This point deserves some emphasis, since modern scholars have produced such a large literature focusing on sex and sexual offences in the Middle Ages.⁴ Readers

3. *Large vero et improprie dicitur bigamus, qui eodem tempore duas habet uxores, licet cum altera non possit matrimonium, nisi de facto* (Pennafort, Raymundi de. *Summa ad manuscriptorum fidem recognita et emendata, sacrorumque canonum*. Liber III, Titulo III [De Bigamis], D 34 c.5; C 31q.1c.10; X 4.19.4 [Verona: Ex Typographia Seminarii, Apud Augustinum Carattonium, 1744: 240]).

4. Classen, Albrecht, ed. *Sexuality in the Middle Ages and Early Modern Times: New Approaches to a Fundamental Cultural-Historical and Literary-Anthropological Theme*. Berlin-New York: Walter de Gruyter, 2008;



familiar with that literature might be tempted to suppose that these prosecutions focused on the crime of illicit sex, or on taking multiple sexual partners. However, these prosecutions were concerned above all not with sex but with marriage vows. Consummation of a marriage was important, and the adultery of sexual relations in a so-called illegal marriage was a crime, but the crime that resulted in the imprisonment and public punishment which we will examine in what follows, was the crime of making concurrent marriage vows.

How, then, was this crime prosecuted or punished? Prior to the Later Middle Ages, we have almost no evidence for the prosecution and punishment of bigamy. We do not even have much evidence of legislation ordering such court action. One exception is found in Canon 8 of the Council of Tours of 1236. Drawing on a decision from the *Digest* repeated in the decretal "Nuper" of Innocent III, this canon condemned those who knowingly contracted two concurrent engagements or marriages. The condemned bigamist was to be punished by flogging and exposure on the *scala*.⁵

This *scala*, or *échelle*, was the ladder on a scaffold; usually located in front of a cathedral or in a market square. As a tool of punishment and symbol of authority, the "ladder" was used by ecclesiastical as well as secular courts with powers of *haute justice*.⁶

We arrive with some difficulty, however, at an idea of exactly what this edifice looked like or how precisely it worked. It seems most likely that the man or woman subject to the punishment was placed, it seems, on or in between the rungs of the ladder.⁷ This, at least, is how medieval illuminators and sculptors would depict the *scala* as found by Barbara Morel in her survey of depictions of punishment from

Harper, April; Proctor, Caroline. *Medieval Sexuality: a casebook*. New York: Routledge, 2008; Ribémont, Bernard. *Sexe et amour au Moyen Âge*. Paris: Klincksieck, 2007; Hancke, Gwendoline. *L'amour la sexualité et l'Inquisition: les expressions de l'amour dans les registres d'Inquisition (XIIIe-XIVe siècles)*. Cahors: Louve, 2007; *Comportamenti e immaginario della sessualità nell'alto Medioevo: 31 marzo-5 aprile 2005*. Spoleto: Fondazione Centro italiano di studi sull'alto Medioevo, 2006; Karras, Ruth. *Sexuality in Medieval Europe: Doing Unto Others*. Philadelphia: University of Pennsylvania Press, 2005.

5. *Les Conciles de la province de Tours = Concilia provinciae Turonensis, saec. 13-15*, ed. Joseph Avril. Paris: Centre National de Recherche Scientifique, 1987: 162: 10. *De hiis qui binas nuptias contrahunt. Statuimus quod singulis diebus dominicis in parochialibus ecclesiis inhibeat per sacerdotes, ne quis binas nuptias vel bina sponsalia eodem tempore presumat contrahere et expressim adjiciant quod si contra aliqui fecerint, infames ipso facto effecti, a testimoniis et aliis legitimis actibus excludantur, firmiter injungentes quod si contra aliqui fecerint, infames ipso facto effecti, a testimoniis et aliis legitimis actibus excludantur, firmiter injungentes quod si qui reperiantur talia perpetrasse, nominatum denuntientur infames et in scala ponantur; postea publice fustigentur, nisi pecunialiter penam illam redimant arbitrio et iudicio iudicantis, que pena fabrice majoris ecclesie publice conferatur, parentibus et consanguineis et aliis eidem pene subdendis, quorum consilio talia fuerint perpetrata, cui pene subiacere censemus eum qui scienter duxerit alterius conjugatam.*

6. Tanon, Célestin Louis. *Histoire des justices des anciennes églises et communautés monastiques de Paris*. Paris: L. Larose et Forcel, 1883: 41-43; Lefebvre-Teillard, Anne. *Les Officialités à la veille du Trente*. Paris: Librairie Generale de Droit et Jurisprudence, 1973: 85.

7. Morel, Barbara. *Une Iconographie de la répression judiciaire*. Paris: Éditions du comité des travaux historiques et scientifiques, 2007: 101-102, 105-106, 108.

medieval France.⁸ A related tool of public punishment, the pillory: *pilori* or *carcan*, was also a symbol of justice, located in front of a cathedral or in a market square.⁹ To be placed upon any of these structures was a deeply humiliating and shameful punishment for a culprit and for his or her family.¹⁰

We find mention of these *échelles* in use by officialities across Northern France and in Cambrai, usually to punish bigamy, but also for a variety of other offences such as brigandage and perjury. Indeed, the *Établissements de Saint Louis* features the *scala* as a classic punishment for false testimony.¹¹ Examining hundreds of judicial manuscripts and other related texts, Barbara Morel has found several images of men and women punished for false testimony by exposure on these ladders.¹²

How much evidence can we find of the application of this punishment as practiced in ecclesiastical courts against bigamists? Scattered bigamy prosecutions have been identified in fourteenth- and fifteenth-century case records from officialities in England, Italy, Northern France, Germany, and the Low Countries. Bigamy cases from England, late medieval Portugal, and Geneva have each been the subject of an article.¹³ These articles, however, focus on matters other than the prosecution or punishment of bigamy.¹⁴ However widespread, the judicial consequences of such

8. Morel's images of *échelles* are consistently this ladder up to a raised platform. We find, however, other descriptions of *échelles* from the eighteenth century that also included a stocks or pillory. Tanon, in his *Histoire des justices des anciennes églises*, citing one Abbé Lebeuf, offers an idea of what the échelle of the Abbey of Chelles consisted of, page 42: "Elle était détachée de tout édifice, et très élevée, et les échelons étaient en forme d'escaliers. Dans le haut, se trouvait une plate forme, au-dessus de laquelle étaient dressées deux planches, maintenues, sans doute, dans les rainures de deux montants en bois. Ces deux planches, disposées verticalement entre les montants, et mobiles à la façon d'une trappe, étaient échanrées dans le milieu et sur les côtés. On plaçait la tête et les mains du condamné dans les échancrements de la planche inférieure, et on rabattait la planche supérieure, dans les ouvertures. Certaines échelles avaient un double système de planches, pour exposer à la fois, la tête, les mains et les pieds du condamné."

9. Morel, Barbara. *Une Iconographie...*: 106.

10. Morel, Barbara. *Une Iconographie...*: 101-102.

11. *Établissements de Saint Louis*, ed. Paul Viollet. Paris: Renouard, 1881-1886: Book 1, Chapter 8.

12. Morel, Barbara. *Une Iconographie...*: 102-105. The first of Morel's images of the "échelle" is taken from an edition of the *Établissements de Saint Louis* from Paris, 1273: Montpellier, BIU ms 395, f.5. The second example is also from an *Établissements* from the same time period: Paris, BnF ms nouv. Acq. Fr. 4578, f.41. Her final example is from the transept of the south portal St. Etienne of Notre-Dame de Paris.

13. Maddern, Philippa. "Moving Households: Geographical Mobility and Serial Monogamy in England, 1350-1500." *Parergon*, 24/2 (2007): 69-92; Tricarico Valazza, Marie-Ange. "L'officialité de Genève et quelques cas de bigamie à la fin du moyen âge: l'empêchement de lien." *Zeitschrift für schweizerische Kirchengeschichte*, 89 (1995): 99-118; Braga, Isabel Maria Ribeiro Mendes, Drumond. "Para o estudo da bigamia em Portugal no século XV," *Os Reinos ibéricos na Idade Média: Livro de homenagem ao professor doutor Humberto Carlos Baquero Moreno*, Luís Adão da Fonseca, Luís Carlos Amaral, Maria Fernanda Ferreira Santos, eds. Porto: Civilização, 2003: II, 519-527.

14. For example Philippa Maddern's article on England seeks our behavior, and does not examine punishment. Maddern studies "serial monogamy" as practiced by large number of men and women who abandoned their spouses, moved to a new place, and married a second time. Maddern argues that "self-divorce" followed by remarriage must have been a widespread consequence of marital breakdown in late medieval English society. Helmholz, Richard. *Marriage Litigation in Medieval England*. Cambridge: Cambridge University Press, 1974 (Holmes Beach: Wm.W. Gaunt, 1986): 59; Maddern, Philippa. "Moving Households"...: 69-70. Maddern's focus on marital breakdown offers a different emphasis than



behavior, however, beyond fines and nullification of the illegal second marriages, are not made known to us.

The punishment of bigamous offenders emerges from other studies, notably the work of Léon Pommeray, Anne Lefebvre-Teillard, Charles Donahue, and Monique Vleeschouwers Van Melkebeek. Punishments, where noted by these scholars, generally included payment of a fine, public exposure on the ladder of the scaffold, or imprisonment. Indeed, the sources these scholars examined in addressing this question, mainly the records of the Paris archidiaconal court and a few other Northern French and Burgundian dioceses, offer important examples of these punishments.

Among these scholars, Anne Lefebvre-Teillard has given her attention to the significance of the punishments inflicted for bigamy. She identifies exposure on the ladder of the scaffold as the typical punishment for bigamy.¹⁵ Bigamy, she suggested, was punished in this way as a species of perjury. This, indeed, is the only previous attempt to my knowledge to explain why bigamists were so punished.

Lefebvre-Teillard's description of bigamy is certainly suggestive, but much more remains to be said. To develop a fuller understanding, the surviving records of the fifteenth-century diocese of Troyes offer an invaluable resource. The records from Paris and the Burgundian Low Countries recount a number of bigamy prosecutions and punishments. *The records from Paris are more numerous on this subject than those from the Low Countries, and may contain at least as many bigamy cases as Troyes.* The Parisian cases, however, are not usually as rich or detailed as those from Troyes.¹⁶ Additionally, the Troyes records contain the punishments of many non-bigamous serious offenders, such as clerical murderers and thieves, arsonists, and heretics. Neither the courts of the Low Countries nor the archidiaconal officialities in Paris seem to have prosecuted these non-bigamous serious offenders, as found in Troyes. The records of Troyes thus permit us to address this topic in newfound detail and in context. By parsing out the different punishments inflicted on various forms of bigamy, we can glean important insight into how the court perceived the crime.

In the course of the fifteenth century, the officiality of Troyes prosecuted eighty men and women on suspicion of bigamous engagements and marriages. Sixty percent of these offenders were accused and convicted of minor infractions of marriage law. Meanwhile, twenty of those men and women were convicted of bigamy, of

the larger trend in scholarship on officialities of the last thirty years, which presents officialities as a site for marriage formation, rather than its dissolution. See, for example, the work of Charles Donahue, Richard Helmholz, L. R. Poos, Shannon McSheffrey, and Andrew Finch. On nullity cases, see Lefebvre-Teillard, Anne. "Règle et réalité: Les nullités de mariage à la fin du Moyen Âge." *Revue de droit canonique*, 32 (1982): 145-55; and Vleeschouwers-Van Melkebeek, Monique. "Marital Breakdown Before the Consistory Courts of Brussels, Cambrai and Tournai: Judicial Separation *a mensa et thoro*." *Tijdschrift voor Rechtsgeschiedenis*, 72 (2004): 81-89; Vleeschouwers-Van Melkebeek, Monique. "Self-Divorce in Fifteenth-Century Flanders: The Consistory Court Accounts of the Diocese of Tournai." *Tijdschrift voor Rechtsgeschiedenis* 68 (2000): 83-98.

15. Lefebvre-Teillard, Anne. *Les Officialités...*: 82.

16. Ruth Karras has found roughly twenty allegations of bigamy in the fifteenth and sixteenth century records of the Paris archdeacon's officiality. My thanks to Professor Karras for sharing her digital images of the cases with me.

willfully contracting two concurrent marriages. Not all acts of bigamy were equal in the eyes of judicial officials, who made significant distinctions in punishing different types of plural marriage and engagement. Only those found to have willfully contracted a second marriage while a first spouse lived were given the full punishment. Nor were men and women equal: officials punished men more often and more harshly than women.

To understand the significance of these punishments, we must first briefly review the full range of penalties a medieval officiality could have imposed. Punishment is a kind of language, though admittedly one with a limited vocabulary. We must familiarize ourselves with this vocabulary if we hope to understand its meaning.

Ecclesiastical officials could not spill blood, and thus could not directly punish by mutilation or execution, as practiced in secular courts.¹⁷ Barred from these forms of punishment, the Troyes officiality made use of fines, imprisonment, and public exposure, and also, if extremely rarely, banishment, and penitential pilgrimages.

Ordering an offender to pay a fine was the most frequent punishment imposed by the officiality of Troyes, as with all officialities in late-medieval Europe.¹⁸ Such, indeed, was the punishment allotted to those men and women found guilty of fornication, adultery, concubinage, non-lethal violence, defamation, and a wide variety of other offences. Far less often, men and women convicted of serious crimes were sentenced to other forms of punishment.¹⁹

The punishment of execution was carried out not directly by ecclesiastical courts, but indirectly by "the secular arm." Such was the fate of one woman burned at the stake for persisting in idolatry.²⁰ This woman, one Jeanne, claimed to worship a god she called "Rex Paradisi", a deity living in her hip who would save humanity. She also claimed that despite twenty years of marriage and seven children, she was still a virgin. Her refusal to recant these beliefs resulted in her remission to the secular arm, and burning at the stake. While an inquisitor of heretical depravity was delegated to the city and diocese of Troyes, and oversaw alongside the official a number of heresy cases, this woman was the only suspected heretic to be burned by the court.²¹ Other accused heretics did not share her fate.

17. Havet, Julien. "L'Hérésie et le bras seculier au moyen âge jusqu'au XIII siècle". *Bibliothèque de l'École des Chartres*, 41 (1880): 488-517, 570-670.

18. Lefebvre-Teillard, Anne. *Les Officialités...*: 84. See also on the Savoy region: Lehmann, Prisca. *La répression des délits sexuels dans les Etats savoyards*. Lausanne: Université de Lausanne, 2006.

19. Public penance usually consisted of a procession into church on a Sunday or feast day. The offender stood in the procession bareheaded and carrying a lit candle, which he or she would later offer the priest. As for imprisonment, terms of confinement in the bishop's prison ranged from one month to perpetual. 20. G4171f143. See also Walravens, Christelle. *L'officialité épiscopale de Troyes à la fin du Moyen Âge (1390-1500)*: École des Chartes (Positions des theses soutenues par les élèves pour obtenir le diplôme d'archive-paléographe), 1995: 110, and a transcription of the case in her appendix, n° 47.

21. Torture, applied not as a form of punishment but to extract information, was threatened and used extremely rarely by the Troyes court. We find mention of torture in a case of a cleric accused of homicide, and the threat of torture used against an accused rapist. In the vast majority of cases, however, torture played no role at all. See Walravens, Christelle. *L'officialité épiscopale de Troyes...*: 98; Lefebvre-Teillard, Anne. *Les Officialités...*: 83.



The officiality of Troyes applied the punishment of banishment infrequently. We know of only two examples, both priests.²² In 1426, the first priest gave out unconsecrated hosts to his parishioners while celebrating mass. This priest was suspended from the priesthood and banished in perpetuity from the diocese, on penalty of excommunication and suspicion of heresy. At around the same time, another priest was banished from the diocese for a year on penalty of two years imprisonment and 40 *livres tournois*. The punishment of pilgrimage was equally rare. In one example, Etienne Moreau, a deacon of Bray-sur-Seine in the diocese of Sens, was initially sentenced to two years in prison for repeated theft from churches. His sentence was commuted to a pilgrimage to Santiago de Compostella.²³

Leaving aside these more exceptional punishments, the three most important types of punishment made use of by the officiality of Troyes were fines, imprisonment, and exposure on the ladder of the scaffold. It is these latter two punishments that the officiality imposed upon convicted bigamists, among other serious offenders.

In the Middle Ages, prisons were generally made use of not so much to punish as to detain, or as a preventative measure.²⁴ Indeed, following Roman Law tradition, imprisonment for the purpose of punishment was technically illegal.²⁵ Practice, however, above all in ecclesiastical justice, deviated from this theoretical position. On the whole, custodial imprisonment, the detention of a suspect while awaiting a trial, was a far more common usage than punitive imprisonment, punishment after a conviction. Even so, ecclesiastical prisons were used both to detain and to punish.

Ecclesiastical officials punished some offenders with public humiliation as well.

A few words about public punishment in general are required to introduce the subject. At its origins in Late Antiquity, public penance was a ritualized exclusion from the Church and from Christian society. Scholars once described a transformation in penitential practice in the twelfth century from public to private, from the external, public forum to the internal forum, the soul, conscience, and confession.²⁶ However, as Mary Mansfield has shown, public humiliation in various forms remained an extremely important mode of punishment for religious offences in the thirteenth

22. Archives Départementales de l'Aube (ADA) G-4171, f. 24v; G-4172, f. 20v, see also Walravens, Christelle. *L'officialité épiscopale de Troyes...*: 111.

23. ADA G-4171, f. 35v, 36v.

24. Grand, Roger. "La prison et la notion d'emprisonnement dans l'ancien droit". *Revue Historique de droit français et étranger*, 19-20 (1940-1941): 58-87; Pugh, Ralph B. *Imprisonment in Medieval England*. Cambridge: Cambridge University Press, 1968; Vincent-Cassy, Mireille. "Prison et châtements à la fin du moyen âge", *Les Marginaux et les exclus dans l'histoire*. Paris: Université Paris 7, 1979: 262-274; Gonthier, Nicole. "Prisons et prisonniers à Lyon aux XI^e et X^e siècles". *Mémoires de la Société pour l'histoire du Droit et des Institutions anciens pays bourguignons, comtois, et romands*, 39 (1982): 15-30.

25. Geltner, Guy. "Medieval Prisons: Marginality at the City Center, 1250-1400". Princeton: Princeton University (PhD dissertation), 2006: 76. See also Geltner, Guy. *The Medieval Prison: A Social History*. Princeton: Princeton University Press, 2008.

26. See for example Vogel, Cyrille. *Le Pêcheur et la pénitence au moyen âge*. Paris: Éditions du Cerf, 1969.

century and long afterwards.²⁷ At the hands of ecclesiastical judges, public penance and public punishment intertwined. Public sins, causing public offence, such as adultery or incest, required public punishment.

When a crime was considered serious enough by the ecclesiastical officials in Troyes, or when it fell into the corresponding categories of offence, criminals were punished by a combination of both confinement and public punishment.²⁸ The convicted bigamists of Troyes fall within this category.

What, then, was the significance of the use of the combined punishments of exposure on the ladder of the scaffold and imprisonment? What does the application of these forms of punishment say about how the court perceived the crime of bigamy? If we take together all of the offences punished by imprisonment and the *scala*, and examine the context and meaning of these punishments, can we learn what it meant for bigamy to be so punished?

Let us turn to a register of sentences from Troyes covering the period 1423-1472, a register encompassing some 1,600 entries. Read quantitatively, the register is concerned mainly with violence or sexual offences. Qualitatively, we find a handful of major concerns, which stand out because of the severity of punishments and the stringent language of the sentences. Indeed, these cases stand out in every way, taking up from one side of a page to a handful of folios, as opposed to the thousands of brief entries of only a few lines. This register recounts the judgments passed by a number of officials, named by three bishops in turn. Dividing the cases up by these episcopates, we find three main waves of prosecution.

Cases from A. D. de l'Aube G4171 resulting in exposure on the ladder and imprisonment:

**Bishop: Etienne de Giverny (d. 1426). Year
and folio crime/status time on scala and in prison**

1423 f6r	Vagabond friar, performed mass	1 day, 1 year
1423 f6v	Bigamist	1 day, 6 months
1423 f7r	Bigamist	1 day, 6 months
1424 f11r	Bigamist	2 days, 6 months
1425 f17v	Bigamist	1 day, 3 months

27. Mansfield, Mary. *The Humiliation of Sinners: Public Penance in Thirteenth-Century France*. Ithaca-New York: Cornell University Press, 1995.

28. Given, James. *Inquisition and Medieval Society: Power, Discipline, and Resistance in Languedoc*. Ithaca and New York: Cornell University Press, 1997: 70.



Bishop: Jean Leguise (1426 d. 1450)

1442 f35v	Deacon, theft from churches, repeat offender	2 years
1443 f38v	Bigamist	1 day, 1 month
1445 f46v	2 priests, libelous heresies	2 years
1445 f51v	Marshal, blasphemy	36-1/2 months
1446 f54r	Cleric, violent attack on officiality notary	1 year
1447 f59v	Midwife, baptized a stillborn baby	1 month
1447 f60r	Bigamist	1 day, 3 months
1448 f63r	Bigamist	1 day, 6 months
Same	Bigamist (female)	1 year
1448 f64v	Cleric, brigandage	1 day, 6 months
1448 f65v	Cleric, theft	1 year
1448 f66r	Cleric, homicide	3 days, perpetual
1448 f66v	Layman, blasphemy	1 day
1448 f66v	Cleric, theft	6 months
1449 f68	Bigamist	1 day, 6 months

Bishop: Louis Raguier (1450-1483)

1453 f82v	Bigamist	2 days, 6 months
1453 f83v	Cleric, perjury and theft	3 days, 6 months
Same	Accomplice, perjury and theft	3 days, 6 months
1454 f85r	Bigamist	3 days, 6 months
1457 f95r	Cleric, perjury, forgery, and theft	3 days, perpetual
1457 f96v	Cleric, brigandage	3 days, 7 years
1457 f98v	Bigamist	2 days, 6 months
1457 f99r	Priest, theft	3 years
1458 f106	Bigamist	2 days, 6 months

1460 f113	Cleric, brigandage, theft	3 days, perpetual
1462 f120	Bigamist	3 days, 1 year
1462 f122	Sorcery	Perpetual
1463 f124v	Bigamy	2 days, 1 year
1463 f125	Bigamy	2 days, 6 months
1462 f127	Cleric, arson	Perpetual
1463 f130	Cleric, homicide	3 days, perpetual
1464 f133	Bigamist	3 days, 1 year
1464 f134	Cleric, violence, theft, perjury	3 days, 3 years
1464 f135	Cleric, homicide	3 days, 7 years
1465 f136v	Cleric, homicide (1466 f142v laywoman burned for heresy)	3 days, 10 years
1467 f147	Cleric, words against the faith	3 days, 7 years
1468 f149	Bigamist	3 days, 1 year
1468 f150	Perjurer, testified a woman's husband had died	1 day, 6 months
	Accomplice	1 day 6 months

The first group of punishments was passed down in the final years of the episcopate of Etienne de Giverny. His official punished five men with a combination of imprisonment and exposure on the ladder. Four of these men were accused of bigamy, of having married despite being already married to a living spouse. The fifth was a renegade friar who had abandoned his monastery without permission and performed mass despite not being ordained a priest. These prosecutions all took place in 1424 and 1425.

The next wave of heavy-handed judgments came in the 1440s, during the episcopate of Jean Leguise, from 1442-1449. Sixteen people, that is; fourteen men and two women, or eight male clerics and eight men and women of the laity, were sentenced to the ladder or prison or both. The crime in five of these cases was bigamy. As for the remaining eleven men and women, their crimes included heresy, blasphemy, perjury, brigandage, homicide, and theft. Clerics were responsible for the perjury, brigandage, homicide, and theft, as well as some of the heresy and blasphemy.

Finally, from 1453-1468, twenty-four men, thirteen of them members of the clergy, were punished on the ladder, in prison, or both. It was also at this time that one woman was burned at the stake for heresy. To return to the twenty-four men,



nine were bigamists. Two men, convicted of giving false testimony, were punished with imprisonment and the *scala* for falsely swearing that they had witnessed a man's death, so that his so-called widow could marry one of them. That is to say, these two men were so punished for helping a woman to commit bigamy. They are the only laymen punished with both imprisonment and the *scala* for anything other than bigamy, and even their crime is to have facilitated bigamy by their false testimony. Interestingly, and this is a point I will return to, we have no record of this woman herself ever facing prosecution. As for the remaining thirteen men, they were punished for brigandage, murder, theft, and sorcery. All but the "sorcerer" were clerics.

Out of all of these forty-five sentences in this register, only one man was sentenced to the *scala* with no accompanying imprisonment. Convicted for blasphemy in 1448, he was sentenced to one day on the *scala*. His case may be exceptional in another regard; he seems to be the same man as one who was punished in 1443 for bigamy.²⁹

With all these sentences taken as a whole, out of forty-five total cases we have eighteen cases of bigamy, equaling 40 %. The remaining twenty-seven included clergymen and laymen and -women. All of these men and women were sentenced to either imprisonment or the *scala* or both. The crimes included murder, brigandage, theft, blasphemy, heresy, bigamy, and false testimony in abetting bigamy. With these findings we see that the punishment of imprisonment and the *scala* was applied to serious crimes committed by clergy and the laity alike.

We see as well three critical points that I want to emphasize: first, that the laity were generally only punished with either imprisonment or the ladder or both for crimes related to bigamy, blasphemy, and heresy. If we examine only those cases involving both imprisonment and the ladder, the results are still more significant. Turning to the thirty-two cases in which offenders, all male, were sentenced to both prison and the *scala*, seventeen (53%) were bigamists. Two of the remaining offenders, as already noted, were so punished because they had testified on the behalf of a woman wishing to be considered a widow, given testimony that a living man, her husband, had died. The remaining thirteen men so punished were members of the clergy.

All this leads to a significant conclusion: the combined punishment of imprisonment and the *scala* was a tool of punishment used by the officiality specifically to punish lay bigamists and the more felonious of clergymen. Looking only to the laity, prison was used against bigamists, blasphemers, and heretics; the *scala* was used against bigamists, perjurers, and one blasphemer. The combination of both was used only against bigamists, perjurers, and felonious clerics.

Second, and most importantly, we should also note what is missing. Other marital and sexual crimes do not appear. Bigamy is clearly in another category of behavior; it is the only offence involving sex or marriage that was punished so severely. The

29. His sentence that time was one day on the *scala* and six months imprisonment. See ADA G-4171, f. 38v.

few mentions of incestuous relationships prosecuted by the officiality of Troyes did not result in these kinds of punishments, nor did adultery.³⁰

Be that as it may, what also stands out in these findings is how few women were so punished. Only two women were sentenced to a term of imprisonment. One was a midwife who had baptized a stillborn baby. She was sentenced to a month's imprisonment and a penitential procession. For the other, a year's imprisonment was her punishment for bigamy. Like the first woman, she is not sentenced to public exposure on the ladder. No woman was, for any crime. I do not know if we can attribute this to some sort of delicacy on the part of the court. Certainly they allowed an unrepentant and unfortunate female heretic to be exposed and burned.

However, a real gender bias that excused women may be evident. A number of women suspected of bigamy appeared before the court. We know only that they were fined. With the exception of one woman, they do not seem to have ended up in prison or ever on the *scala*. Female bigamists in Troyes had a far easier time of it than their male counterparts. While it is possible that women committed bigamy less often than men, we know they committed bigamy sometimes, and we know they were not punished as these men were. Why this was so is indeed a difficult question to answer, a question I address in my dissertation.³¹

Let us return to the punishments. What is most revealing is the finding that members of the laity were sent to both the prison and to the *scala* for bigamy, and almost exclusively for bigamy. Beginning with the use of imprisonment alone, these sentences constitute an important exception to a general rule on whom one finds punished with ecclesiastical imprisonment. On the whole, one finds only clerics or heretics serving terms in the bishop's prison. That bigamists in Troyes, and perhaps in other places as well, were being treated like clergy, or like heretics, may well be indicative of what the crime of bigamy meant in this time and place.

Moreover, if we can risk so strict a translation of the language of punishment, the two-part *scala* and imprisonment punishment for bigamists matches most closely and consistently not the punishment for heretics or blasphemers, but the punishment of clergy who had seriously violated their orders.

In addition to murder, these delinquent clergy had committed a number of serious crimes. One had fought hard on the side of the Burgundians, and stole, raped, and killed when not otherwise employed. Another, a priest, had given out unconsecrated hosts to his parishioners. This kind of behavior may well be what the officiality considered most similar to bigamy in its categorizations of crimes.

30. Not all courts, however, stuck to the same vocabulary in punishment. In the interest of full disclosure, I should mention that two cases of incest from the officiality of Brussels involved punishment on the *scala*: one involved a man accused of incest with his daughter, the other involved a woman accused of sleeping with a number of men all related to each other. Neither the man nor the woman, however, was also punished by imprisonment, and nothing like this appears in the registers for Troyes.

31. McDougall, Sara. *Bigamy in Late-Medieval France*. New Haven: Yale University (PhD. Dissertation), 2009: 206-212.



Certainly it is only these clergy and bigamists in Troyes who we find most often both on the *scala* and in prison. Their crimes were offences against the sacraments of clerical orders and of matrimony. They were also crimes against the Church and the community. These crimes fell under the category of "public" offences. For these kinds of crimes, imprisonment was insufficient punishment.

As Bronislaw Geremek explained, imprisonment did not fully meet medieval requirements for vengeance. "Nor did it satisfy the demand for an ostentatious punishment; prison was too discreet."³² Such crimes seemed to call for public punishment, to set an example to others and to humiliate the culprit and their families. As we have seen, when dealing with certain egregious offences and offenders, the court of Troyes met this evident need by use of the *scala*.

Moreover, when administering public punishment in fifteenth-century Troyes, the officiality invoked a centrally important concept in medieval legal thought on crime, the idea of public crimes. Such concepts are found in the sentences passed against bigamists by the Troyes officiality. To quote a stock phrase from these records: "Since therefore these crimes have been committed before the body public, and so that such crimes do not remain unpunished, indeed, they are to be punished by public censure so that an example is made for others and the punishment for one will instill fear into many people."³³

As Richard Fraher argues, public interest was a central principle for regulation of crime in the Middle Ages.³⁴ When first invoked in the twelfth and thirteenth centuries by Innocent III and other reforming ecclesiastics, the concept of public crimes was intended for use in the prosecution of clerics suspected of concubinage, heretics, and usurers. At least by the later Middle Ages, however, bigamists would also come to be prosecuted as notorious, and with public punishment.³⁵ Indeed, the sentences passed by the Troyes officiality against bigamists include the phrase: *Ne crimina remaneant impunita*. With the use of such terminology, we see the legal context in which the Troyes officiality considered bigamy cases, and their conscious-

32. Geremek, Bronislaw. *The Margins of Society in Late Medieval Paris*, trans. Jean Birrell. Cambridge: Cambridge University Press, 1987: 17.

33. ADA G4171f68r. [28 June 1449]:...cum igitur rei publice intersit ne talia delicta remaneat impunita quinyimo publica sunt animadversione punienda ut aliis cedat in exemplum et pena unius sit metus multorum...

34. Fraher, Richard. "The Theoretical Justification for the New Criminal Law of the High Middle Ages: 'Rei Publicae Interest, Ne Crimina Remaneant Impunita'". *University of Illinois Law Review*, 577 (1984): 587. In the early years of Innocent III's papacy, the papal chancery produced an important decretal, "*Inauditum*," arguing that it was in the public interest that crimes not go unpunished. The application of this legal terminology to canonical treatment of crimes and punishments was further established in 1210 with Tancred of Bologna's treatise on criminal law. Fraher, Richard M. "The Theoretical Justification for the New Criminal Law of the High Middle Ages" ...: 577-595; Pennington, Ken. "Innocent III and the *Ius commune*," *Grundlagen des Rechts: Festschrift für Peter Landau zum 65. Geburtstag (Rechts- und Staatswissenschaftliche Veröffentlichungen der Görres-Gesellschaft, NF 91)*, Richard Helmholz, Paul Mikat, Jörg Müller, Michael Stolleis, eds. Paderborn: Verlag Ferdinand Schöningh, 2000: 349-366. Hostiensis would also write at length on this principle in his *Summa aurea* (Fraher, Richard. "The Theoretical Justification" ...: 582-584).

35. For more on public punishment of heretics see especially Arnold, Joh. *Inquisition and Power*. Philadelphia: University of Pennsylvania Press, 2001: 58-63.

ness of a mandate to combat activity that violated Church laws and morals in their diocese. Public crimes, an offence to the body public, merited public punishment. Bigamy fell under this umbrella of public crime.

As mentioned in introducing this topic, Anne Lefebvre-Teillard has argued that bigamists were punished with the *scala* because of their perjury.³⁶ However, as this article has shown, we can push our reading of the meaning behind this punishment further. Bigamy was perceived as a fraud, one often facilitated by perjury, but it was also a fraud that threatened the sacrament of marriage, and Christian identity itself. To be sure, the way in which the officiality of Troyes punished bigamy is not sufficient justification for this claim. Further evidence is needed, evidence which I offer in my dissertation.³⁷

To conclude, as we have seen, in ecclesiastical hands, the *scala* was used not only to punish false testimony, but also blasphemy, heresy, and serious violations of the sacrament of orders by clerics. Not only perjury was so punished. Bigamists were punished in ways similar to perjurers, but also to heretics, to blaspheming or felonious clergy. Exposure on the ladder by an officiality, then, symbolically linked bigamy to three crimes: perjury, heresy, and violation of a sacrament.³⁸

Bigamists in the late-medieval diocese of Troyes were not banished, sent on penitential pilgrimage, or executed. Instead, punishment for bigamy arrived in the form of imprisonment and exposure on the public *scala* in front of the cathedral in Troyes.

This was a form of punishment rich with meaning. To be punished in this way implied that a layperson had committed a kind of heresy, or committed an offence on the level of a priest who deserved to be defrocked. Such a person had also com-

36. Lefebvre-Teillard, Anne. *Les Officialité ...*: 82.

37. McDougall, Sara. *Bigamy in Late-Medieval France...*

38. Public punishment for bigamy on a ladder of a scaffold, or on the scaffold itself, would remain a common feature of bigamy punishments throughout the premodern period in Western Europe. In the Middle Ages bigamy was mostly left to ecclesiastics to punish. Louandre, François Cesar. *Histoire d'Abbeville et du comte de Ponthieu jusqu'en 1789*. Abbeville: Chez Aug. Alexandre, Libraire-Éditeur, 1884: II, 268: La bigamie fut considérée, la plupart du temps, comme un cas de conscience plutôt que comme un délit social, et les magistrats municipaux laisserent aux ecclésiastiques le soin de la punir; cependant on trouve au XVe siècle un individu condamné pour ce crime à être mière, mis au Pilori, et banni à toujours sous peine d'être battu au cul d'une charrette. *Comtes des Argentiers*, année 1498.

In the sixteenth century, with the increasing severity of punishment generally, we find sentences of galley service, executions, and banishment passed against bigamists. In later centuries the punishment became less severe once more, with bigamists publicly humiliated and whipped on the scaffold: d'Albioussé, Lionel. "De la suppression du crime de bigamie." *Annales de la Société littéraire, scientifique et artistique d'Apt*, 1 (1863-1864 [1865]): 234-239; 235: "Bigamie était aussi puni du dernier supplice, ainsi que le constatent plusieurs arrêts de Parlements rendus dans le 16 et 17 siècle. Plus tard on se montra moins sévère. La peine de ce crime fut pour les hommes les galères, et pour les femmes le bannissement à temps ou à perpétuité, les uns et les autres étaient préalablement exposés au carcan ou au pilori un jour de marche, les hommes avec deux quenouilles, et les femmes avec deux chapeaux, portant chacun devant et derrière des écriteaux qui marquaient le titre de leur condamnation. (Damhouderius, Iodocus. *Practica rerum criminalium*: Antverpiae, Apud Ioannem Bellerum: Farinacius quest. 141 n 39, cap. 89 n. 123; Muyart de Vouglans, Pierre-François. *Les lois criminelles de France dans leur ordre naturel*. Paris: Mériogot le jeune, 1783: 225).



mitted a “public crime” not only against the abandoned spouse and the new, deceived, spouse, but also against the Church and the body public. The sources are not free of ambiguity, and their meanings are by no means always clear. Nevertheless, understanding what we can of these punishments is essential for forming an understanding of the meaning of bigamy as perceived, prosecuted and punished by late-medieval Church officials.

