Ecclesiastical Courts, Marriage, and Sexuality in Late Medieval Europe

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Every year during the later Middle Ages in Latin Christendom, thousands – I think it is perfectly safe to say, as an order of magnitude, tens of thousands – of men and women found themselves before one kind of court or another because they were accused of illicit sexual activity, or because there was a question surrounding the validity of their marriages. Many of them – again, I think it is safe to say, the great majority – made their appearance in courts held under the auspices of the Church and were judged according to the content and process of Roman canon law. When we can see the record of what happened in court, redacted into scribal Latin, the results range from the maddeningly uninformative to the tantalizingly provocative.

Consider the following cases, all from the court of the Dean and Chapter of Lincoln in the second quarter of the fourteenth century.[1]

First case, from January 1337

Custance Petnale is charged with adultery with Thomas Walcot. The woman appeared, confessed, and abjured the sin. Ten floggings around the church are ordered. Afterward she bought off the sin for 6d. Not paid.

Beatrice Botulston is charged with fornication with Robert Frer. The woman appeared, confessed, and abjured the sin. Six floggings around the church are ordered. Afterward she bought off the sin for 6d. Not paid.

John son of Peter is charged with fornication with Maude daughter of Robert Gissebourn. They appeared, confessed, and say that they have contracted marriage. It was ordered that the vicar pub-

1. Since this paper was first written, the text of the Lincoln record has appeared in a scholarly edition in Poos, ed. 2001. The original Latin texts of the cases translated here appear in an Appendix to this paper, see below pp. 202-4.

lish the banns between them. A penance of three floggings around the church was ordered. Not paid.

Legia Frer is charged with fornication with Richard Frer. The woman appeared, confessed, and abjured the sin. A penance of six floggings around the church was ordered. Not paid.

Second case, from July 1341

Roger de Lissington is charged with adultery with Alice de Wadingham after having abjured the sin and suspect places under penalty of 20s. Both appeared and confessed that they had lain together in bed; but they deny sin. Both have to purge themselves [*by oath*] with the twelfth hand. And because they failed in their purging, they are declared convicted. Therefore they are condemned in the penalty [*i.e. of 20s.*].

Afterward he came to Lincoln and was absolved, and a penance was ordered for him to say six psalters in the parish church of Friesthorpe in a surplice and six privately and to pay the penalty incurred. Afterward the penalty, to wit 20s., is reduced to 40d. to be paid at Lincoln on the twentieth day after Christmas, under condition that if he thenceforth be convicted upon the sin or suspect places he should pay the remainder. Robert the parish priest and John the brother of the rector oblige themselves for the payment. Afterwards he paid 40d.[2]

Third case, from November 1347

Simon son of Thomas Piers of Wellingore and Alice Pleyneys are charged with fornication and with marriage contracted clandestinely, and also that the same Simon in the presence of Adam brother of this Alice, and Peter Sadeler, and Henry Rotur, in the barn of this Alice's mother, acknowledged to this Alice the aforesaid marriage contracted. Both appeared and they confess the sin. But the woman says that the said Simon contracted marriage with her by these words, 'I will marry you as soon as I am a man in

2. In fact, Roger de Lissington's appearance here is one small chapter of a longer story. It turned out after repeated citations with Alice that the issue in the court's eyes was, was his previous wife still alive? He claimed that she had gone abroad several years ago and that he later heard she had died; the court eventually accepted this story and his claim that he had subsequently married Alice, and no more was heard of him until his will was proved before the same court after he died during the Black Death: Poos 1995(a), pp. 295-6.

such a position that I can marry, so that you may let me know you carnally, and thereto I give my faith.' And that she, agreeing, said that it was pleasing to her, and thereto she gave the said Simon her faith. And that for a long time afterwards the same Simon often carnally knew the same Alice and begot one child. Wherefore she prays that the said Simon be adjudged husband to her. Which same suit and charge the said Simon denies, saying that what has been said is not true and what is sought ought not to be granted... [*Further hearing ordered at later date*].

This discussion originated as a paper at a conference dedicated to 'New Trends in Late Medieval Studies', which begs at least two questions: what is a 'new trend', and what is 'late medieval'? The latter may seem easy enough and I define it as roughly 1250-1520, but I also want to argue that with regard to my subject – the node of intersection between the ecclesiastical courts on the one hand, and marriage and sexuality on the other – it has some claim to coherence as a historical period in this respect. By the later thirteenth century, the major outlines of the canon law on marriage and sexuality, and indeed many of the more esoteric questions regarding these matters as well, had been mapped out by canonists; there was little beyond minor refinement in the positions that the formal law took. What seems to have altered more is the involvement of secular authorities in what can be called sex crimes. Particularly, it seems, in Italian urban communities, civic courts began vigorous prosecution of some kinds of offenses.[3] It was also distinctive of the period that many European cities harboured officially tolerated and even municipally licensed or operated prostitution.[4] Despite some jurisdictional realignments of this sort, this was a period of relative continuity as compared with the Romano-canonical legal revolution of the twelfth century or the upheavals that would come in the sixteenth century with the Protestant and Catholic Reformations.

As for 'new trends', I also want to argue that the past twenty years or so have witnessed a number of historiographical developments in the study of church courts and sex that qualify for the term. These include: the history of the canon law itself and

3. Ruggiero 1985.
4. Rossiaud 1988; Karras 1996(a).

the courts that dispensed it intersect in interesting ways with the recent historiography of sexuality, particularly in the wake of or in reaction to Foucault and his successors; developments in the social and cultural history of subaltern groups in Western Europe, in many respects heavily influenced by anthropological theory, and dealing with gender, community, gossip and rumour, 'popular religion' and social control; and finally some issues regarding the way one reads 'law' itself and the products of legal process.

Canon law and church courts

Both the canon law and the ecclesiastical courts of the later Middle Ages were largely a product of developments in the twelfth and thirteenth centuries. In Catholic Europe during that period, popes, commentators, and practitioners elaborated the Church's law into a formidable jurisprudential system with an immense theoretical apparatus. Obviously that law touched upon an immense range of issues apart from marriage and sexuality, and James Brundage's is the definitive work on the shaping of that jurisprudence, especially insofar as these subjects are concerned.[5] No doubt most historians of the period are familiar with that story, at least in outline. Most importantly, canonists elaborated a theory of marriage consisting of free consent between individuals: exchange of vows *per verba de presenti* between a man and a woman not too closely related to each other, of legal minimum age and otherwise capable of enunciating a solemn promise, and without prior attachments to someone else, was the basis for a valid marriage, even if done without solemnisation *in facie ecclesie*, though without such solemnisation the marriage was binding but clandestine and as such liable to spiritual correction. Much medieval ink was spilt by academic writers of the learned law in unravelling every hypothetical complicating factor that could arise to cloud the issue and delight the legal mind. Moreover, sex outside valid marriage was not just a sin to be dealt with by the 'internal forum' of the confessional and penance, but was also subject to the ecclesiastical courts' version of criminal proceedings (the 'external forum').

5. Brundage 1987, for much of what follows; see also Brundage 1995.

But if the Church's courts undertook to punish illicit sex, how would they discover it? It would be mistaken to presume that detection of illicit sexual liaisons necessarily rested upon the tangible evidence of an extramarital pregnancy or a bastard birth in all or even most cases. In one set of proceedings from the court of the Dean and Chapter of York during 1457-61, of 96 fornication cases, only 12 mention pregnancy, though it is probably reasonable to suppose some further, unknown number of cases in which pregnancy was not explicitly reported in the record but nonetheless formed the basis for the charge.[6] In the proceedings of the jurisdiction of the Dean and Chapter of Lincoln during 1339-49, an even smaller minority of fornication cases – 21 out of 578, or 3.6 per cent – mention pregnancy or childbirth.[7] And so, clearly, a different mode of information-gathering was necessary. From the Fourth Lateran Council (1215) onward (as Brundage has recently described), the Church employed a new inquisitorial process in its *ex officio* or 'criminal' proceedings: a judge could proceed by virtue of his office on the basis of common fame (*fama*), requiring those suspected of illicit acts to clear themselves by purgation, an oath of denial accompanied by

6. Borthwick Institute, York (hereafter BIY) D/C AB.1 fos. 138-60.

7. Lincolnshire Archives (hereafter LA) D&C A/2/24 fos. 25-83v; since this paper was written the present author's critical edition of the Lincoln record has appeared in Poos, ed. 2001.

In this record, unlike the York court book, many of the cases are repeat-offenses by the same couple, and so the total of 578 overstates the actual number of persons or couples brought before the court. But the present exercise is concerned with how individual acts came to the court's attention, so it seems more reasonable to count for this purpose citations rather than couples. In 8 of the 21 cases, pregnancy by an unnamed or unknown man formed the basis of the charge: e.g. one case in 1340 (fo. 37v) where *Johanna Elrik pregnans est & nescitur cum quo.* In the archdeaconry of Norwich during the sixteenth century, only about one-third of sexual delicts came before the commissary court explicitly as a result of pregnancy, though in other ecclesiastical jurisdictions in the late Tudor and early Stuart period the figures were higher: Houlbrooke 1979, p. 76. Higher estimates are made in Ingram 1987, p. 260, noting that from a number of English ecclesiastical jurisdictions during the later sixteenth and early seventeenth centuries, percentages of all fornication or incontinence presentments mentioning pregnancy ranged from 37 to 78 per cent. Cf. Wrightson and Levine 1979, p. 126: in the late-Tudor/early-Stuart Essex parish of Terling, 'bastardy was by far the commonest offence prosecuted by the churchwardens, followed by prosecutions for incontinency and adultery which did not involve pregnancy.'

corroborative oath of neighbours.[8] This stood in procedural though not substantive contrast to the other main type of proceeding before the ecclesiastical courts, the *ad instanciam* or 'litigation' category of case, in which a specific plaintiff brought sought against a specific defendant, as most notably in the case of matrimonial litigation in which putative partners resorted to church courts to resolve disputed marriages, enforce contracts, or (more rarely) dissolve unions.

Jurists and other learned commentators upon the canon and civil law, in their treatises dealing with proofs and evidence, described a variety of means of proving sexual delinquency. As one canonist put it, 'Because adultery and prohibited intercourse are usually committed secretly and in hiding, they are thus difficult to prove.'[9] Jurists described a spectrum of degrees of presumption, ranging from tangible evidence (such as a pregnancy outside wedlock, or where a wife became pregnant during her husband's absence), to observation of the sexual act itself, to various types of suspicious circumstances in which witnesses observed couples – were they lying together, or in a closed room, or naked, or with his hands on her breasts, and so on?[10] The formal dictates of the learned law thereby placed prime importance upon the weighing of circumstantial evidence rendered by servants, neighbours, and other witnesses. The cases that survive from later-medieval courts imply that information from observant third parties was of decisive significance in actual practice as well as in the jurists' opinions.

One of the most important 'new trends' in the study of medieval canon law has in fact been the turning of historians' gazes from jurists' commentaries to actual practice. That is to say: the past few decades have seen the beginning of serious scrutiny of court cases enshrined in the regular records of the church's jurisdictions, amongst others notably by Helmholz, Sheehan, Donahue, and Pedersen for England; Donahue, Lefebvre-Teillard, and Gottlieb for France; Vleeschouwers and Van Melkebeek for present-day Belgium; and Albert for three German dioceses.[11] The reason why

8. Brundage 1996.

9. Menochius 1617, Liber 5, Praesumptio xli (vol. ii, p. 666): *Cum clam & occulte committii soleant adulteria, & prohibiti concubitus, sintque ob id difficilis probationis...*

10. Menochius 1617, Liber 5, Praesumptio xli (vol. ii, pp. 666-8); Mascardus 1593, Conclusiones lvii-lix (vol. i, fos. 81r-83v). The author is grateful to Richard Helmholz for suggesting the importance of the learned law to this article's topic.

11. Helmholz 1974; Sheehan 1972; Donahue 1983; Lefebvre-Teillard 1973; Gottlieb

the traditional study of the learned law and synodal legislation has tended to overshadow study of case law is complex, and has a lot to do with sources. During the 1970s and 1980s, Professor Charles Donahue Jr organized an international team to search out and describe the surviving records of the church courts of pre-Tridentine Catholic Europe, and has recently published the results in two volumes.[12] The results are instructive: for many countries virtually nothing can be shown to have survived before 1500 and for others the idiosyncrasies of archives prevent more than a very preliminary survey of what may have survived (which, remarkably, seems to hold true especially for Italy, where the earliest regular ecclesiastical courts may have existed, and to a lesser extent Spain and the German territories). It is I hope not mere Anglocentrism that leads me to remark that the records of the English church courts seem to have survived in greater bulk than elsewhere. It also remains an open question whether this paucity of surviving material says more about subsequent destruction or the chronology of record-making and record-keeping; for it appears to be the case across much of Western Europe that the ecclesiastical courts, especially at the level below the diocese, lagged significantly behind secular government and law in the inception of regular curial record series, as Robert Swanson has recently shown in his survey of 'pragmatic literacy' and the late-medieval Roman church.[13]

The business of the ecclesiastical courts

Recent study of the records of the episcopal courts has done much to illuminate procedure and types of cases, and to render initial quantitative impressions of volumes of business. It is clear already that though they dispensed the same canon law and jurisprudence

1974; Vleeschouwers and Van Melkebeek 1982-3; Albert 1998. Pedersen 2000 appeared after this paper was written.

12. Donahue, ed. 1989 and 1994.

13. Swanson 1997, p. 164: 'The real efflorescence among the extant ecclesiastical archives ... post-dates the Black Death of 1348-9. That, however, is not a period of major innovations in types of record, merely a watershed in survival. Significant steps in creating an archival system had been taken between 1260 and 1330; that they are so incompletely recorded is regrettable, but is an unavoidable side-effect of their innovatory nature.'

throughout Catholic Europe, the courts of different places and times reveal some real differences in the types of cases that predominate, leaving open as for now the question of whether such differences in case patterns might really stand as surrogate measures for genuine differences in family culture from place to place or time to time, or alternatively simply reflect quasi-random jurisdictional idiosyncrasies. Most of this research has however concentrated upon the *ad instanciam* or litigation side of the church courts' business: understandably so, in that this judicial arena permits the legal historian to observe pleading and counter-pleading, jurisprudence, and even the circumstantial details of intimate exchanges that were recorded in deponents' testimony. The records of *ex officio* proceedings – into fornication and adultery, sabbath-breaking, defamation, even the very occasional case of witchcraft, along with usually less contentious matters such as proof of last wills and testaments and maintenance of church fabric and furnishings – by contrast appear to offer (as I once put it in an article) a superficially random glimpse into a moral underworld.

Moreover, the survival-rates of the local church courts which dealt more exclusively with *ex officio* business have clearly been much more dismal than those of episcopal tribunals. Any brief summary of the pattern of ecclesiastical courts in Europe by 1300 must be extremely generic: different dioceses developed different numbers and types of courts as a result of local custom and precedent, and adopted different terminologies for courts and their officers.[14] But it is possible to sketch an outline, and Donahue's survey confirms that the surviving records of Latin Christendom as a whole show this outline holds true to a reassuring degree across national boundaries.[15] The bishop held primary judicial authority within his diocese, and might exercise it in person in a court of audience. Increasingly over the thirteenth and fourteenth centuries, as business proliferated and a corps of academically trained, professionalised legal personnel became available, bishops deputed their authority over more routine matters to officers called Officials, or Commissaries, or Commissaries General, in one or more varieties of consistory court, either in a fixed central location, or

14. For generic descriptions, Swanson 1989; Owen 1975, esp. pp. 200-5. For important studies of particular dioceses, Woodcock 1952; Wunderli 1981.
15. Donahue, ed. 1989.

in periodic visitations through the diocese, or in both. Above the episcopal level there lay the provincial courts as venues of appeal and in some cases of first instance, and above them the *Curia Romana.*

Below the episcopal level there were a variety of lesser authorities. A diocese contained one or more territorial subdivisions called archdeaconries, and each archdeaconry in turn contained deaneries. Deans and archdeacons (by themselves or through their own Officials) had a variety of local functions which, in some times and places, included the authority to hold courts, in theory at least as deputies of their bishops. Moreover, there were many enclaves, exempt or 'peculiar' jurisdictions, typically in the possession of monastic houses, secular cathedral chapters or prebendary canons, or individuals, and each a jurisdictional oasis claiming independence from the bishop in whose diocese the territory of the peculiar was located.

It is a commonplace among historians who have written on the subject that whereas the existence of courts held by or for archdeacons, deans, and possessors of peculiars – 'lower ecclesiastical jurisdictions', as I call them in my recent study of two such courts[16] – can be demonstrated by the end of the thirteenth century in many places, the exact nature of their activities is much less clear, and much less easy about which to make generalisations. Direct evidence, in the form of surviving records of the proceedings of lower ecclesiastical jurisdiction, is exceptional before 1300 and still rare by the middle of the fifteenth century. In its absence, one must deduce the presence and proceedings of local jurisdictions largely from more elliptical mention of them in such sources as bishops' registers, or from the records of occasional clashes between secular law and the activities of the courts Christian.[17]

This is unfortunate, in part because it is demonstrable that the clientele appearing (willingly or unwillingly) in the proceedings of what I choose to call 'lower ecclesiastical jurisdiction' and especially in its *ex officio* proceedings were drawn from a much more humble slice of humanity than those who sued (and amongst other things paid for their lawyers) in the litigation of the bishops' courts. They

16. Poos, ed. 2001, from which some of this discussion has been derived.
17. Owen 1975, pp. 202-4; Hamilton Thompson 1943; Scammell 1971; Dunning 1967; Hyams 1985.

were, in fact, in most cases peasants in the Dean and Chapter of Lincoln from which I quoted earlier (as shown by cross-reference to tax lists and land records).[18] And so it was in these courts that canon law collided most frequently with the messy reality of ordinary men's and women's daily private lives. It also may be the case that these local tribunals seem to have been more flexible than the episcopal tribunals in eliding between the formally defined categories of business, as for example in our third case where an *ex officio* inquest into fornication and clandestine marriage turned into a determination of the validity of vows which, at least on some reading of the authorities, a local court such as this ought not to have had the competence to determine.

Church courts and sexuality

If scrutiny of this collision between formal law and subaltern life via the records of lower ecclesiastical courts is likely to be a fruitful and developing field in the near future, one would have to concede that the history of sexuality has already established itself. There is a long tradition of serious historical interest in marriage and sexuality, of course, but what marks the current scene seems to be competing models and, particularly with respect to the Middle Ages, no dominant one.[19] Debates surround the biological/psychological-deterministic and ahistorical versus the completely culturally specific and historically contingent understanding of sexuality, whereas the history of marriage has had to contend with mutual accommodation amongst emphases upon demographic, economic, and emotional/cultural factors. Particularly in the USA and in part a response to influences from cultural anthropological and literary theory, one especially dominant approach to understanding the history of sexuality has dealt simultaneously with an emphasis upon power and social control, and with dominant or competing discourses which seek to shape the very essence of what people will think and do – John Baldwin's book on the discourses of sex in France around 1200 being a particularly intriguing example of the latter.[20]

18. Poos, ed. 2001, pp. lxi-lxiii.
19. Some useful discussions of these points appear in Weeks 1989, and Murray 1996.
20. Baldwin 1994.

This has been a common approach to the current matter – church law and the humble laity. Indeed, a traditional approach emphasizes the imposition of a code of sexual conduct by church and/or other authority 'external' to humble lay society upon a largely supine, undifferentiated mass of common people. Such is implicit, at the least, in much of the very voluminous recent writing about the articulation of Christian codes of sexual conduct: first as a piece of theological or intellectual history with its own internal dynamic and agenda, then a centuries-long effort to reform an unregenerate laity, especially in connection with enforcing a model of Christian marriage, perhaps a fair characterisation of Jack Goody's arguments.[21] In this case the dominant discourse is of course canonical teaching, and the battleground is the contention to force compliance with prescriptive models of marriage and sexuality. Thus a number of historians have written about the spread of confessors' manuals, guides for parish priests, and a more morally activist *genre* of sermon (along with wider dissemination of model sermons), another distinctive product of this period's clerical writers in Western Europe generally, which increasingly sought to drive home normative rules. In fact, one mid-fourteenth-century English confessor's manual is distinctive in that it includes detailed rules for those who would hear the confessions of Officials and rural deans exercising ecclesiastical jurisdiction: in other words, those who presided in local church courts. Among the many questions that the manual directed the confessor ask the judge:

> ... did you ever prescribe for any accused person too burdensome a purgation and so, compelled by necessity, he redeemed his vexation by paying you money on this account? Item, did you cite or fix a term for any subject of yours, in order to oppress or harass him, in the farthermost bounds of your jurisdiction or in a place excessively removed from the place where the subject dwelled and thus he was worn out with labors and superfluous expenses...?

And so on through a list of extortionate or outrageous things that an ecclesiastical court judge might have on his penitential conscience.[22]

21. Goody 1983.
22. Haren 1998, p. 127.

There has been much debate amongst English social historians about the extent to which the peasantry had assimilated or even understood the canonical rules of marriage or constraints upon extramarital sex; or alternatively whether they understood them but chose at least passive opposition to them as a kind of subterranean competing model.[23] The evidence of the church courts by its nature emphasises the adversarial, of course. But one strand of the court's oversight of marriage was detection of couples who had embarked upon the initial stages of (what was in their eyes) a process of marriage not yet solemnised. In detecting couples for what initially appeared to be straightforward fornication the court uncovered some who had undertaken some form of commitment, however conscious, explicit, or binding they might have regarded it to have been, and thus caught them in a sexual twilight zone where sexual relations, perhaps even cohabitation, had commenced but no marriage existed according to canon law (three of the cases quoted briefly at the outset of this discussion arguably fall into this category). Undoubtedly this accounts for some of the *ex officio* cases in the local courts, but on the other hand there is little basis for arguing that such a scenario accounts for more than a small percentage of prosecutions for fornication, at least in the records I have worked with.[24]

If the adversarial model sketched here is one possible way of understanding what lay behind the court cases, another revolves around the dynamics of community networks. This model takes its departure (as I have argued elsewhere)[25] from desires by activist local elites at parish level to control disorder by using means made available to them by ambient legal institutions, in line with the remarkable vitality of the parish community during precisely this period in recent historians' depictions of it.[26] Simultaneously this model would seek to understand why and how individuals sought the sanction of courts, including the criminal side of the ecclesi-

23. Smith 1986; Karras 1996(b).

24. Poos 1995(a), p. 304, for some data: in two court records cited only about ten to fifteen per cent include anything that could be construed in the manner described here.

25. Poos 1995(b).

26. An important study of the parish in England which (unlike many of the type) gives serious comparative perspective to similar issues on the continent is Kümin 1996; for more general remarks for Europe at large, Bossy 1985.

astical courts, by way of networks of gossip, rumour, talebearing and backbiting that arose from multiplex and competitive aspects of parish life. Informing, rumour and occasionally lies about one another's sex lives not only fuelled the fires of the local *ex officio* courts, but also resulted in a steady traffic of defamation cases that (I argue) were the other side of the same coin, and with very marked gender differences (with women both being defamed and defaming other women more frequently for sexual matters, as opposed to the dishonesty, violence and other types of sexual crimes upon which men claimed to have been defamed).[27]

That brings us back to an earlier issue, which is, how did the courts find out about sexual offenses? The answer is generally hidden from the explicit record. In the English courts it was regular for the beginning of the record of each court session to include a list of churchwardens or parishioners – *inquisitores* they were often called – and cross-reference to contemporary secular court records from the same communities implies a strong degree of overlap: perhaps not surprisingly, both groups are predominantly from that well-known stratum of well-off parish A-families who tended to dominate local office.[28] On their own initiative, or acting more neutrally as a filter for the round of community information networks, or in response to particular information lodged by aggrieved parties or offended bystanders, they were undoubtedly the main link that transformed the *vox et fama* of the parish into formal initiation of charges in many cases.

Interested individuals – victims, outraged neighbours, or people with scores of their own to settle – demonstrably also helped to get *ex officio* cases initiated. The evidence for this must be sought in other legal arenas, when someone who had been punished in an ecclesiastical court then sued for damages in secular court against the person who, the plaintiff claimed, had maliciously caused the citation to ecclesiastical court in the first place. Examples are not plentiful but they can be found, in England mostly in manorial courts (and clearly amongst peasants). And so one finds occasional cases like the following, at Stainforth (Yorkshire, West Riding) in 1334:

27. Poos 1995(b).
28. Poos, ed. 2001, pp. lxi-lxiii.

> Let an inquisition come to determine whether Thomas son of Peter defamed Alice Daunce, calling her a whore, because of which Alice was summoned to answer before the ecclesiastical justices and she lost 2s. from that action.[29]

Or, at Abington (Cambridgeshire) in 1421:

> Sarra Salle put various articles before the Bishop of Ely's Official unjustly, and certified against John Dextere, Ralph Maundevyll and Mariota Mabbes, through which ... they lost money ... and the same Sarra is a common chatterer and scandalizer [*communis garulatrix & scandalizatrix*] ...[30]

Some cases of this sort reveal extortionate or coercive acts on the part of local clergy or others, rare glimpses of the social reality that lay behind the formal record of morals citations, as at Hatfield Chase (Yorkshire, West Riding) in 1327:

> John Brode sues Master John de Bernby, chaplain ... and charges that at a certain day at Hatfield [Bernby] caused [Brode] to be cited from Chapter to Chapter until [Brode] would make him a fine of 40s. ... [and Bernby replied] that he received no money from the said John except of his own good will ... And the said John Brode said that he gave that money not of his own good will but for fear of citation to court Christian ...[31]

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29. West Yorkshire Archives, Leeds (hereafter WYAL) DB205/7 (Hatfield Chase manor court, 19 October 1334): *Veniat inquisitio in proxima ad recognoscendum si Thomas filius Petri diffamavit Aliciam Daunce vocando ipsam meretricem ... per quod eadem Alicia summonita fuit ad respondendum coram judicibus ecclesiasticis & amisit ibidem ij s. ea actione ut ipsa dicit ...*
30. Cambridgeshire Record Office (hereafter CRO) 619/M5 (Abington manor court and leet, 17 May 1421): *Sarra Salle posuit diversa articula in officio Episcopi Eliensis iniuste & certificavit versus Johannem Dextere Radulphum Maundevyll & Mariotam Mabbes per quas certificationes & positiones ipsi perdiderunt denarios. Ideo in misericordia. Et quod eadem Sarra est communis garulatrix & scandalizatrix infra dominium domini.*
31. WYAL DB205/3 (Hatfield Chase manor court, 4 March 1327): *Johannes Brode queritur de domino Johanne de Bernby capellano de placito transgressionis & unde queritur quod ad certum diem apud Hettfeld fecit eum citari de capitulo ad capitulum quousque fecisset finem suum penes se de xl solidis de quibus solvit manibus xx s. pro bona pace habenda ad grave dampnum ipsius xx s. &c. Et dictus dominus Johannes venit & dicit quod nullum denarium de eodem Johanne recepit nisi de sua bona voluntate & per ordinationem fidedignorum in quibus predictus Johannes se posuit et hoc petit verificare. Et dictus Johannes Brod*

Or, at Oakington (Cambridgeshire) in 1295:

> Alice wife of Henry Attehil sues Roger Asseman and says that, because she would not pay him 12d., he accused her in Chapter at Oakington unjustly, because of which she lost her good status and good fame.[32]

Some cases in ecclesiastical courts also reveal clerical involvement in the spreading of sexual ill fame. An *ex officio* case heard at Canterbury in 1469 recorded:

> Sir Thomas Coke, parochial chaplain of St George's, Canterbury, is cited because he revealed the confession of Agnes [blank], his spiritual daughter, so that he called her the whore of Sir Sampson Panys.[33]

A case study: Agnes Hoghton vs John Bulcock

Next I want to indulge myself in that currently fashionable genre, the micro-narrative, from one case I have studied, because it illustrates some of these issues more vividly and also helps lead to the last point I want to make. The case in question was a lawsuit by one Agnes Hoghton against her husband, John Bulcock, which took place in the court of the peculiar jurisdiction held by the Abbey of Whalley in Lancashire.[34] On 8 July 1514 Agnes brought an

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dicit quod non de sua bona voluntate dedit dictum argentum sed propter timorem citationum ad curiam Christianitatis ...; ibid. (Hatfield Chase manor court, 29 April 1327), defendant puts himself in mercy for license of concord.

32. Cambridge University Library, Queens' College archives, box 3, roll 1 (Crowland Abbey estates manor court, 12 March 1295): *Alicia uxor Henrici Attehil queritur de Rogero Asseman & dicit quod pro eo quod non dedit ei xij d. accusavit ipsam in capitulo apud Hoketon iniuste quare amisit bonum statum & bonam famam ...*

33. Cathedral Archives and Library, Canterbury, Y.1.11 fo. 57v: *Dominus Thomas Coke capellanus parochialis Sancti Georgij Cant' notatur quod revelavit confessionem Agnetis [blank] filie sue spiritualis in tantum quod vocavit ipsam Agnetem meretricem domini Sampsonis Panys.*

34. The case appears in the court record of the peculiar jurisdiction of the Abbey of Whalley. The original record is Stonyhurst College MS A.I.4. A modern edition exists: Cooke, ed. 1901; the case appears on pp. 28-44 of this edition (the first entry is mis-dated in the printed edition). I have checked this edition against the

action of divorce *a mensa et thoro* against John, meaning that she was seeking a judicial decree of separation (without dissolving the marriage but permitting her to live apart from her husband). Her stated grounds for seeking a separation were two. First, she had never really consented to the marriage but had been forced into it by her 'friends' and by her uncle, John Hoghton, upon threat of losing her inheritance. She did admit that she had uttered in church the words of consent in the present tense – *verba de presenti* – that canon law stipulated as the grounds for a valid marriage; but canon law and its courts were prepared to consider annulling a marriage if coercion could be proven. Second (and this was really the proper grounds under ordinary circumstances for which divorce *a mensa et thoro* was likely to be granted), she claimed that John had physically abused her when she refused to have sex with him.

At the subsequent court session appointed for the hearing on 14 July, it turned out that Agnes had run away into Yorkshire. The court issued a citation to York demanding that she be found and returned. The Archbishop of York's Official duly sent a mandate to the diocesan clergy to that effect, and eventually the vicar of Normanton (about 40 miles away by straight line) replied that he had found Agnes. After her return to Whalley the trial proceeded, and on 30 August the court ordered her back to John. But barely more than two weeks later the court summoned the two again – an *ex officio* action this time – charging that according to 'public fame' they were living apart in violation of its previous verdict (and in violation of the canonical principle that married couples must live together and treat each other with marital affection).[35] Again Agnes responded that she had been coerced into marriage and that her husband had used violence against her.[36] This time she

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manuscript and made a few small corrections in the quotations that follow in this paper. The case was of sufficient interest to merit a few sentences by Victorian antiquaries: Raines, ed. 1878, p. 21 (though with some inaccuracies).

35. Stonyhurst College MS A.I.4 fo.21v: *Quia fama publica referente nostras nuper pervenit ad aures quod Johannes Bulcok & Agnes uxor sua jurisdictionis nostre contra decretum latum et lectum prout patet in Capitulo proximo precedenti separatim vivunt contra debitum morem ritum & ordinem matrimonij necnon tenorem formam & effectum decreti predicti ...*

36. Ibid.: ... *mulier respondit quod Causa legitima occasioque honesta subsunt eo quod ipsa per vim ordinationem et mediationem amicorum suorum duntaxat sine suo aliquali consensu eidem fuerat copulata in loco prelibato [fo.22] et quod ipsa nec tunc tempore sponsalium sive*

produced witnesses, and their testimony is the main point for my retelling the story.

The court record breaks off before another verdict was reached; it is unclear whether Agnes succeeded in her quest for a separation, though when John Bulcock died in 1539 Agnes claimed dower as his widow.[37] She herself died three years later, and her uncle John Hoghton a year after that.[38]

Agnes produced six deponents to support her allegations. The first, John Bannister, had married Agnes's widowed mother, probably signifying the reason why Agnes's uncle John appeared to have control of her inheritance. Bannister stated that he believed Agnes had never consented to John. He said

> that he [Bannister] was one of the go-betweens of the said John and Agnes [*unus inter pertractantes inter prefatos Johannem & Agnetem*] for the said marriage, along with Lawrence Towneley, Henry Towneley his son, and Nicholas Robinson, and that the said Lawrence urged the said Agnes toward the said marriage in the village of Colne in the garden of Nicholas Wilson, on the Monday eight days after last Easter [i.e. 24 April 1514]. Agnes then and there refused to consent. And piteously weeping in the presence of the said Lawrence, Henry, Nicholas and this deponent, she said that she would never consent to him. Interrogated further, he says that the said Agnes did not dare, because of fear, to confess her refusal to him, but she confessed to certain women who were known to her, namely Ann Smyth and various others ...[39]

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matrimonij nec umquam postea in eum consensit nec consentire intendebat <aut> intendit ... Dicit etiam quod nunquam concubuit cum predicto pretenso viro suo nisi coacta nec eam cognovit nisi preter voluntatem suam & penitus dissentientem renitentem & contradicentem ac per vim & verbera ad id coartatam...

37. Lancashire Record Office DDHCl 3/20 (manor court of Ightenhill, 1 May 1539).
38. Ecroyd, ed. 1900, pp. 108, 110.
39. Stonyhurst College MS A.I.4 fo. 22: ... *et dicit <quod> dictus Laurencius prefatam Agnetem solicitabat ad matrimonium predictum in villa de Colne in Gardino Nicholai Wylson die Lune proximo post Dominicam in Albis ultimo preterito que quidem Agnes adtunc & ibidem eidem consentire [fo.22v] penitus renuit & recusavit Et graviter lacrimando in presencia dicti Laurencij Henrici Nicholai & testis predicti publice dixit & asseruit se nolle umquam in eum consentire Interrogatus etiam dicit quod dicta Agnes non audebat ob metum se adire ad intimandum eidem dissensum suum sed intimavit dissensum suum certis mulieribus que illud sibi innotescebant, videlicet Anne Smythe & diversis alijs ...*

The second deponent, Nicholas Robinson, was married to Agnes's sister Isabel. He had a more vivid story to tell, because it was to his house that Agnes had fled about a month after her marriage. He said that John Hoghton had sent a messenger to her to tell her this:

> 'Agnes, y^{r} uncle Johne Hoghton wyllyth that ȝe dele wysly in this matier & take John Bulcok to yo^{r} husbonde ffor he is an onest man & a Ryche And if ȝe so do ȝe shal plese me & all your ffrendes and els ȝe can have no frendship of us And be ȝe sure that if ȝe do not he and other yo^{r} ffrendes wol so provide for you that ȝe shal not have suche landes as ȝe wene to have.'[40]

Immediately after the wedding Agnes had intimated to Robinson her intention of not staying with John:

> 'Brother Nicholas ȝe know that I am thus compelled by myne ffrendes to take this man to myne husbond which I never loved as ȝe wele know and in goode feythe I wol not tary w^{t} hym ...'[41]

And a month later she came to Robinson's house, saying

> 'Brother I am com to you And I ever told you that I never loved hym And now he hathe ȝeven me cause mor to hate hym than ever I did ffor he hathe grevously beten me.' And she showed him bruises and wounds on her arms and back. And he asked her why [John] beat her, and she said that it was because she did not want to have sex with him.[42]

Agnes's other four witnesses were all women, and all in various ways added to the portrayal of coercion and violence. Katherine Baxter recalled how Lawrence Towneley had said to Agnes:

40. Ibid. fo. 22v.

41. Ibid. fo. 23.

42. Ibid. Indented portion in English in the original, remainder translated from Latin: *& demonstravit sibi ictus & vulnera tam in brachijs quam super dorsum Et interrogabat eam de causa quare eam verberavit & illa dicebat quod pro eo quod illa noluit sibi consentire ad concubitum & actum atque usum carnis...*

> 'Thow art noght and a beggar wolte thow be And if thow forsakest this man take me never for thy ffrende but gett the[e] ffast ffro me & owt of myn howse ffor I wol be as moche thy ffo as I have be thyn ffrende.'[43]

And when Katherine went with other women to console Agnes she said to them:

> 'Alas Kateryn I am undone ffor myn ffrends wole neds compell me to have John Bulcok and by myn trouth I had lever dy then have hym ffor I never loved hym ne never wyl do And so I pray you ber me record hir after ffor I wol never tary with hym when I am wedded.'[44]

Alice Stevenson remembered how, soon after the wedding, she had greeted Agnes, calling her 'in the common manner, "Dame"', and Agnes replied:

> 'Alas Alison that ever thow shuld call me Dame ffor as I be saved he never was myn husbonde ffor I never consented unto him ne never shal do But Master Laurence Townley and other myn ffrends have compelled me to hym aȝenst myn wyll as knowethe God And but only for fer of losse of my land I wolde never be with hym an hour.'[45]

Finally, all the deponents concurred on one thing, a standard postscript to depositions in the ecclesiastical courts: they agreed that knowledge of these miserable circumstances had constituted 'public fame', that the facts were widely known in the parish and neighbourhood.[46]

Agnes's unhappy tale sounds almost too much the stereotype of the pre-companionate-marriage in the bad old days to be nonfiction: the evil uncle waving the threat of disinheritance before the unwilling victim of a purgatorial marriage-formation system. Uncle John was a gentleman of some local importance, enough so that he was the leader of one of the Lancashire contingents in the Pil-

43. Ibid. fo. 23v.

44. Ibid. fo. 24.

45. Ibid.: *Et dicit quod in vigilia Nativitatis Sancti Johannis Baptiste ultime elapse in Salutando eam vocavit more vulgari Dame ...*

46. E.g. ibid. fo. 23 [deposition of Nicholas Robinson]: *Interrogatus de ffama dicit quod ffama est publica...*

grimage of Grace.[47] John Bulcock was a decidedly less imposing figure: he appeared in the local documentation as an occasional juror and modest rent- and taxpayer in the years surrounding this lawsuit, making it unclear why Agnes's tormentors called him 'rich'.[48] Agnes's own parentage is uncertain, her father's identity unknown.[49] Despite the pathos of the circumstances, what may be more interesting for present purposes is the light the depositions throw onto the dissemination of knowledge about marriage-making and sexual abuse.

Conclusion

The words and phrases that crop up in the depositions of Agnes and John's case are echoed, albeit usually less vividly, in a multitude of other matrimonial cases from this place and time. The circle of 'go-betweens'[50] and amateur marriage brokers, many but not all male; the more loosely described group of 'friends', those who urged, counseled, or gave opinions when marriages were contemplated; the confiding with female companions and with relatives when things turned sour or even violent; and the term 'love' as a synonym for (at a minimum, and perhaps more than) willingness to consent: all these are recurrent features of depositions describing marriage negotiations in late-medieval litigation. They underscore that marriage was a process, drawing in the opinions and interjections of ranges of kin, friends, and neighbours with varying degrees of closeness to the principals and varying degrees of influence, whether for coercion or for more neutral persuasion

47. Haigh 1969, pp. 75, 81. Styled 'John Hoghton of Pendleton', he made frequent appearances in local arbitrations and land conveyances (references to follow); cf. Farrer and Brownbill, eds. 1966, pp. 392-4.
48. Farrer, tr. 1897-1913, vol. i, pp. 229, 233, 236, 245, 253, 257, 267, 271; vol. ii, pp. 378, 380, 385; Cooke, ed. 1901, pp. 73, 122, 142, 172, 175 (styled as 'John Bulcock of Wheatley and Haybooth').
49. She was possibly the daughter of John Hoghton's younger brother Henry, who is almost invisible in any records hitherto identified: Whitaker 1872, vol. ii, pp. 28-9.
50. In this sense negotiators or brokers (though obviously not always 'honest' brokers) rather than enablers (those who helped arrange the circumstances of marriage or sexual opportunism), as enshrined in the case study by Cohen and Cohen 1989.

and advice.[51] And they presuppose that information about the nature and vested interests of matrimonial intentions, the state of mind of those involved, and even the quality of married life, circulated amongst people along networks of acquaintance: in the case of Agnes, ranging from exchanges between 'friends' and 'go-betweens', to chance meetings in the street that provoked emotionally revealing responses, to laments of emotional distress and sexual abuse confided to (female) intimates. These lines of transmission, and whatever further dissemination by way of gossip, rumour, or tale-telling sped the information on its way, constituted – I suggest – a major part of what was encapsulated in the commonplace phrase, the 'common fame of the parish'.

I would reiterate that (as we saw earlier) the routine records of *ex officio* cases in ecclesiastical courts involving marriage and sexuality are usually not more than terse notations. This is one reason why the depositions rendered in *ad instanciam* cases, where they survive, are potentially such revealing narrative sources, and much deserving of study by social historians; but clearly as we have also seen the 'criminal' side of the jurisdiction is also rich in possibilities. It was precisely the Romano-canonical rules of procedure and proof – in church courts and also in parts of Europe where secular jurisdiction had adopted similar procedures – which has helped to preserve witness testimony as a byproduct of the inquisitorial process and which has furnished the wherewithal for studies of narrative and *mentalité* ranging from Montaillou to the work of Carlo Ginzburg to that of Natalie Zemon Davis.[52]

One other 'new trend' is in fact the recent emphasis, among both historians of the Middle Ages and those dealing with other periods, and scholars of contemporary law, upon law as narrative. This approach in the USA is heavily influenced by postmodernist literary criticism and amongst legal scholars by what has come to be known as 'critical legal studies'. It is epitomised for modern legal studies by a recent collection entitled *Law's stories*,[53] and has been applied in particular to American legal history with some in-

51. A point made forcefully with reference to marriage-related depositions from southern England by O'Hara 1991, and more recently by the same author in O'Hara 2000.

52. Le Roy Ladurie 1975; Ginzburg 1982 and 1985; Davis 1987.

53. Brooks and Gewirtz, eds. 1996.

triguing results.[54] Legal scholars writing in this tradition emphasise law as a normative system of power enshrined in words. They thus depict legal disputes as competing narratives in which contestants and the courts themselves (with implicit and explicit legal and jurisprudential assumptions embedded within them, and shaping but not always dictating the direction of resolution) seek to impose retrospective meaning upon complex circumstances, and the positions of respective sides in disputes as texts to be read for hidden codes, much in the way that I have tried to do with the case of Agnes and John. The depiction of late-medieval canonical teaching upon marriage, sexuality and family by recent writers on the subject has in fact, consciously or unconsciously, assimilated many of the assumptions of such an approach in testing that teaching as a 'discourse' of 'cultural construction'.[55] It is likely that the records of the ecclesiastical courts will be capable of furnishing much fodder for similar lines of questioning.

The medieval canon law and the courts that dispensed it thus do, I argue, represent an interesting intersection: between, on the one hand, a formidable formal system whose application comes into documentary focus precisely in our period but has yet to be uncovered in much detail, though as Donahue has shown the material is there, and on the other hand, what I have chosen to call the messy reality of private life.

Appendix: Selected cases

In the transcription <text>^{i} denotes interlineation in manuscript, <text>^{d} text struck through in manuscript.

1. Lincolnshire Archives D&C A/2/24 fo. 4v: Court at Scredington (Lincolnshire), 23 January 1337

Custance Petnale notatur super adulterio cum Thoma Walcot'. Mulier comparuit, fatebatur, abjuravit peccatum. Injuncta est sibi x fustigationes circa ecclesiam. Postea redemit peccatum pro <vj d.>^{i}. Non solvit.

54. Grossberg 1996, eds.
55. Taglia 1998; Elliott 1996.

nota / vj d.
Beatrix Botulston' notatur super fornicatione cum Roberto Frer'. Mulier comparuit, fatebatur, abjuravit peccatum. Injuncta est sibi penitencia fustigationes vj circa ecclesiam. Postea redemit peccatum pro <vj d.>[i]. Non solvit.

nota / xviij d.
Johannes filius Petri notatur super fornicatione cum Matilda filia Roberti Gissebourn'. Comparuerunt, fatebantur, dicunt quod matrimonium contraxerunt. Injunctum est vicario quod edat banna inter eosdem. Injuncta est penitencia utrique iij fustigationes circa ecclesiam. Non solvunt.

nota / vj d.
Legia Frer' notatur super fornicatione cum Ricardo Frer'. Mulier comparuit, fatebatur, abjuravit peccatum. Injuncta est sibi penitencia fustigationes vj circa ecclesiam. Non solvit.

2. Lincolnshire Archives D&C A/2/24 fo. 40: Court at Friesthorpe (Lincolnshire), 6 July 1341

Rogerus de Lissington' notatur super adulterio cum Alicia de Wadigham [*sic*] post abjurationem peccati et locorum suspectorum sub pena xx solidorum. Uterque comparuit, fatebatur se concubuisse in lecto. Negaverunt tamen peccatum. Habent uterque purgare se cum xij manu. Et quia defecerunt in purgatione pronunciati sunt pro convictis. <Ideo condempnati in pena.>[i] Decretum est eosdem fore vocandos ad diem et locum supradictos ad recipiendum penitenciam. Postea venit Linc' et fuit absolutus et injunctum est sibi penitencia ad dicendum vj psalteria in ecclesia parochiali de Fresthorp' in uno superpellicio et vj privatim et ad solvendum penam commissam. Postea pena predicta, videlicet xx solidorum, condonata fuit usque xl d. solvendos apud Linc' vicesima die post natalem sub conditione quod si de cetero convictus fuerit super peccato vel locis suspectis solveret residuum. Robertus presbiter parochialis et Johannes frater rectoris obligaverunt se pro solutionem faciendo. Postea solvit xl d.

3. Lincolnshire Archives D&C A/2/24 fo. 74v: Court at Wellingore (Lincolnshire), November 1347

Simon filius Thome Piers <de Wellehour'>[i] |
Alicia Pleyneys | – notantur super fornicatione et matrimonio clam contracto <necnon quod idem Simon coram Adam [*sic*] fratre huius Alicie et Petro Sadeler et Henrico Rotur in grangia matris <ipsius>[d] eiusdem Alicie eidem Alicie interoganti prefatum contractum matrimoniale recognovit>[i]. Uterque comparuit. Et fatentur delictum. Set mulier dicit quod dictus Simon contraxit cum ea matrimonium per hec verba, ducam te in uxorem quam citius ero homo in statu quod possum uxorem ducere, ita quod permittas me totum carnaliter comisseri, et ad hoc do tibi fidem meam. Quodque ipsa hec acceptans dixit quod sibi placuit et ad hoc prefato Simoni dedit fidem suam et ipsum voluit habere in virum. Quodque postea longo intervallo idem Simon ipsam Aliciam carnaliter cognovit sepius et unam prolem sussitavit. Unde petit dictum Simonem sibi adjudicari in virum. Quamquidem petitionem et libellum dictus Simon animo litem contestandi negavit, dicens narrata prout narrantur vera non esse et petita fieri non debere. Dedinde statim huic inde juratis de calumpnia de veritate dicenda per partes easdem prepositus parte dicte Alicie ad probandum contenta in petitione sua predicta <proximum>[i] diem juridicum post festum Sancti Mathie apostoli proximum futurum, dicto vero Simoni ad videndum testes et alia que dicta Alicia duxerit producenda ad probandum petitionem suam, et ulterius faciendum in causis quod fuerit justum, prefixit et assignavit.

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