

Telling the Truth about Sex in Late Medieval Paris

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Court records that record witness testimony are a rich source for attitudes if not for actual behavior; they provide first-person accounts from people who are otherwise silent in the medieval record. The problems in using them as sources have been much discussed.¹ The most basic problem has to do with the way the information was elicited and recorded. This is especially true with information about sex, which was often discussed in allusive and euphemistic, if not actually deceptive, ways. Historians of sexuality typically claim that we do not need to know who did what with or to whom; sexuality is the meaning that cultures place on bodies and on behaviors, constructed through language rather than a series of acts.² But knowing what the relationship is between discourse and experience is not irrelevant to analyzing the discourse.³

We may never be able to know whether a given person actually performed the acts to which s/he confessed, or of which s/he was convicted. However, the question of truth is not irrelevant. Scholars must read testimony with attention to the principles on the basis of which the court decided cases, and the constraints that impelled people to shape their stories in a particular way. All testimony cannot be true — it is often contradictory — and it is unlikely all to be false. A great deal of negotiation went on backstage and we cannot

1 The most detailed study of medieval church court records is Charles Donahue, Jr., *Law, Marriage, and Society in the Later Middle Ages: Arguments about Marriage in Five Courts* (New York: CUP, 2007), with abundant citations to previous scholarship. Versions of this paper were presented at the Legal History Workshop at the University of Minnesota, at Northwestern University, and at the University of Nottingham. I thank the audiences for their helpful comments, and in particular Tom Gallanis and Barbara Welke. This paper uses the same records as Chapter 4 of my book *Unmarriages: Men, Women, and Sexual Unions in the Middle Ages* (Philadelphia: University of Pennsylvania Press, 2012); some of the description of the source, and the narrative of several of the cases, are drawn from there, although the argument developed here does not appear in the book.

2 David Halperin, 'Is There a History of Sexuality?' *History and Theory*, 28 (1989): 257-74, is the classic statement of this approach. Not all historians of sexuality build so directly on Foucault or are quite so discourse-oriented; any issue of *Journal of the History of Sexuality* reveals quite a large range. It remains the case, though, that the prominence in the field of literary scholarship is an indication of the importance that discourse retains.

3 Of course, as Joan Scott suggests, 'lived experience' is not a fixed point that can be known. See 'The Evidence of Experience', in *Feminist Approaches to Theory and Methodology: An Interdisciplinary Reader*, ed. by Sharlene Hesse-Biber, Christina Gilmartin, and Robin Lydenberg (New York: OUP, 1999), pp. 79-99. Nevertheless historians who reject, or merely despair of, the possibility of knowing in some sense what 'actually' went on risk losing sight of how cultural structures were composed of, and affected, the lives of individuals. See Judith Bennett, *History Matters: Patriarchy and the Challenge of Feminism* (Philadelphia: University of Pennsylvania Press, 2007).

assume that the testimony in court as recorded reflected anyone's lived reality. And yet, even people who were relatively sophisticated about the law did not always craft their stories to obtain the best result, perhaps in part because they took the truth seriously.

Cases about sexual relations involve a particular gendered dimension as well. The vast majority of matrimonial and sexual cases in medieval church courts involve heterosexual acts, and therefore the two parties are a man and a woman. The stories women tell resemble each other, as do the stories men tell. How do we make the leap from gendered stories to gendered lives? Charles Donahue discusses the prevalent narrative pattern of the 'wronged woman', seduced and abandoned.⁴ Surely in some of these cases the man did promise the woman marriage and then backed out after they had sex. Surely in others there was no promise and the woman was trying to trap the man into marriage. And surely there is yet another group of cases in which the common pattern masked a complicated set of facts that we cannot begin to glimpse.

In many medieval church court cases both parties admit that sexual intercourse took place. The outcome hinges on the circumstances surrounding that intercourse — whether promises of marriage were exchanged, and the woman's sexual history. He-said/she-said disputes develop, as does a gray area, in which the two parties may have understood their words and actions in different ways. It is not difficult to imagine a case in which one party sincerely believes that the couple are legally married and the other does not, although wishful thinking may play a role. The church courts had a very detailed process to get at the facts of what happened, and court procedure, including especially the swearing of oaths, was designed to guarantee not only probity of reputation and a just result but the accuracy of specific facts. If we, five hundred years later, can't really 'know the truth' we can at least recognize the importance of truth in the proceedings.

Recent scholarship on medieval law (not just the church courts) has focused on how people manipulated the courts, how the narratives they presented in their testimony constructed a self or constructed the shape of the world around them. Rather than assuming, as we might once have done, that the common people were victimized by a court system that functioned mainly to police them, the tenor of recent scholarship has changed to show how people developed strategies to make use of the courts: as Dan Smail puts it, 'agents whose decisions to purchase the services of the court had a bearing on the development of judicial apparatus'.⁵ Treating medieval people, even common lay people, as independent agents is an important historiographical step. The legal system (or systems) was (were) not imposed on a passive people by a growing state or ecclesiastical structure

4 Donahue, *Law, Marriage, and Society*, p. 91 and *passim*.

5 Daniel Lord Smail, *The Consumption of Justice: Emotions, Publicity, and Legal Culture in Marseille, 1264-1423* (Ithaca, N. Y.: Cornell University Press, 2003), p. 16.

that served to enforce the interests of the powerful (or, in one version of this narrative, of the patriarchy). And yet, as with all welcome trends, it is possible for an understanding of the legal system as empowering to its consumers to go too far.

People did sometimes give testimony deliberately to construct a desired result, sometimes as a result of grudges; but we should not lose sight of the fact that many medieval people did, indeed, try to tell what they saw as the truth, and in particular that the giving of sworn testimony promoted this truth-telling although it was far from making it universal. A leading canon law scholar wrote in 1973 that the fact that future promises followed by intercourse created a binding marriage created 'first of all a windfall for girls in search of husbands', and court cases were brought by families 'finding that negotiations were dragging or the boy was escaping'.⁶ There is little basis for the assumption that all such cases were trumped up. As we shall see, there are cases where the parties directly contradict each other and we can only guess whom to believe. But we also see occasions on which people showed a respect for oaths and a reluctance to commit perjury — to place their hand on the Gospels and imperil their salvation — that indicates that they were not constructing their story purely in pursuit of their own interests. These cases allow us to speculate on how we may read back from the statements the ways in which people actually behaved and understood their world, particularly with regard to sex and marriage.

Church courts had jurisdiction over marriage cases in the Middle Ages. Promises of future marriage were supposed to be made before the local parish church, *in facie ecclesie*, followed by the proclamation of the banns, thus providing the publicity that the church required. However, in many instances promises were made privately by the parties, often in cooperation with their families. It was settled canon law since the time of Alexander III (1159-91) that promises of future marriage followed by sexual intercourse created a valid and unbreakable marriage, as did consent in the present tense with or without intercourse. Consent in the future tense created a bond that could be dissolved if not solemnized with present vows, or consummated. People in this latter situation were more than engaged in the modern sense, but less than permanently married.⁷ Since promises were just as valid if exchanged clandestinely (meaning not necessarily in secret, but not at the church with banns), disputes over their existence could easily emerge, and the stakes were high. If the woman had been deflowered, even if marital promises had not taken place, the woman might be entitled to a dowry and (if applicable) child support; here her reputation and sexual history, not just the alleged events, came into play.

6 Anne Lefebvre-Teillard, *Recherches sur les officialités à la veille du Concile de Trente* (Paris: Librairie générale de droit et de jurisprudence, 1973), pp. 174, 149.

7 Once again, Donahue, *Law, Marriage, and Society*, pp. 14-45, provides the most recent and complete account of the rules.

I draw here on the records of the criminal jurisdiction of the Archdeacon of Paris, which in other courts were called *ex officio* or office cases. Cases involving sexual and matrimonial offenses amount to about a quarter of the total cases in the criminal registers; the others have to do with management of church property, priests' defiance of authority in various ways, violence, and defamation. The criminal registers begin in 1483, and end in 1505 (re-starting again in 1515). The Archdeaconry of Paris, part of the diocese of Paris, included the portions of the city on the right bank of the Seine, and some of the suburban and rural areas between the Marne and the Oise.⁸ Several civil registers also survive for part of the period covered by the criminal registers, and this allows us to see how some of the criminal cases developed as a result of civil claims.⁹ The cases were heard in one court, and then recorded in one register or the other, or both, as appropriate, or sometimes inappropriately.¹⁰ Important for our purposes is that the criminal register, at least in contested cases, includes interrogatories that provide a great deal of information.

When a criminal accusation came to the court's attention the promotor was first supposed to conduct an investigation. If the Paris official made a written record of this investigation, it does not survive (nor do comparable records from other courts; we know about the procedure from treatises rather than documents of practice).¹¹ Although it is possible that the interrogations in the criminal register are part of such an investigation, they frequently imply or explicitly mention an *informatio* that preceded them. The defendant could then be cited, and most often just paid a fine (*emendavit*) without much else being recorded. We usually do not know what kind of contestation went on behind the scenes, or what the parties' motives were.

An example that demonstrates how complex could be the relationship between what went on in court and the back story emerges in a case from 1505, in which Marianne, daughter of the late Jean Pierre, brought a *causa matrimonialis et dotis*, a civil case for

8 The definitive work on this court and its activity is Léon Pommeray, *L'Officialité archidiaconale de Paris aux XVe-XVIIe siècles: sa composition et sa compétence criminelle* (Paris: Librairie du Recueil Sirey, 1933).

9 These are what Donahue calls 'instance/office' cases, which are initiated by one party but also involve the official himself as a party. Donahue does not include the Paris archdeacon's court as one of those he examines in *Law, Marriage, and Society*, although he uses the Paris episcopal court records from the fourteenth century.

10 See Donahue, *Law, Marriage, and Society*, p. 239, on the distinction or lack thereof between instance and office cases in England.

11 James Brundage, *Medieval Canon Law* (London: Longman, 1995) is a good basic account in English on procedures; see especially pp. 147-150 on inquisitorial procedures. See also Pommeray, *L'Officialité archidiaconale*, p. 129; Winfried Trusen, 'Der Inquisitionsprozeß: Seine historischen Grundlagen und frühen Formen', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Kanonistische Abteilung*, 74 (1988): 168-230, especially pp. 215-18.

breach of promise of marriage and also claiming dowry because of defloration, in the court of the Archdeacon of Paris against Simon de Grain.¹² As a result of this case Simon was interrogated on criminal charges, and the record survives.¹³ Simon had been married to someone else at the time of the claimed promises and defloration. As he testified, his wife, also named Marianne, had died of a fever four weeks previously. He had frequented Marianne la Pierresse for eighteen or nineteen years of his twenty-year marriage; a year ago he had married off the daughter she bore him.

Simon did not deny the relationship, and the case stands as evidence for the kinds of long-term relationships outside of marriage that could develop in a culture without divorce. Marianne la Pierresse could not have brought a civil (instance) case before the death of her partner's wife; she may have brought the suit now either because she saw the opportunity finally to have the legal status of a wife, or because she saw the opportunity for a cash settlement (as actually happened). She went about her action in the wrong way, however, if marriage was her goal. The valid and unbreakable marriage automatically created by a promise followed by sexual intercourse would not have applied to a promise made by a married person. Indeed, not only did that promise not create marriage, a promise of marriage between adulterers created the impediment of crime, a diriment impediment which invalidated any subsequent marriage between them.¹⁴ Had Marianne been manipulating the law in an effort to construct the most favorable story, she would have had to claim that they had not exchanged promises until after the death of his wife. She, however, apparently thought the long-standing nature of the relationship gave it some status.

Marianne's claim, in fact, may have been nourished by a grudge, as Dan Smail suggests was the case with many civil actions in Marseille, where people brought cases not to achieve the result that they were nominally claiming, but rather out of hatred or a desire for revenge.¹⁵ Marianne may have felt herself entitled to marriage and been bitterly disappointed that it was not forthcoming after the wife's death. Her claim of a promise during the lifetime of his wife could, then, have been malicious rather than naïve, intended to get her partner in trouble rather than snare him as a husband. Simon was asked to respond to a claim she had made during the investigation (which does not appear in the

12 On defloration cases see Donahue, *Law, Marriage, and Society*, pp. 351ff.

13 Paris, Archives Nationales, (hereafter simply AN) Z/10/9, fol. 224v ; Z/10/21, fols 394 r-v.

14 Donahue, *Law, Marriage, and Society*, p. 26. Donahue also cites (p. 350) a somewhat parallel case where a woman claims *sponsalia* during the lifetime of her first husband and the man admits intercourse but denies the contract; they pay a fine for concubinage (not adultery). Donahue suggests this is a 'strike suit' to declare that there were no promises and thus no impediment to their later marriage.

15 Smail, *Consumption of Justice*, p. 16 and passim.

register) that he made a pilgrimage to Santiago de Compostela to pray for his wife's death so he could marry his lover. Had the impediment of crime not already existed, attempting the death of his wife would have created it. It is not likely Marianne could have believed this claim would have strengthened her case; it may have been a result of anger at Simon. Simon denied seeking his wife's death but did not deny going to Compostela. The court fined him five *écus*, the largest amount for any of the more than 1600 sexual or matrimonial cases in the criminal registers, and also paid Marianne an unspecified amount in settlement. Ultimately we cannot know whether she brought the whole case simply to get back at Simon, but since she was at the same time incriminating herself, it was likely that she thought she could get something worthwhile out of it, as indeed she did.¹⁶ The size of the fine, much higher than fines for other married men keeping women on the side, probably means that the court thought there was something to Marianne's story, even if that something was not a legal marriage.¹⁷

The register does not record that either party in this case swore an oath. Oaths were powerful in medieval society. To swear a false oath put one's soul in jeopardy. Medieval sermons were full of stories of the horrible damnation of perjurers. Many different medieval legal systems relied on oaths to decide cases — compurgation, in which a party brought oath-helpers not to testify as to facts but to swear a general oath as to the character and truth of the party, was well established.¹⁸ The references in the Paris archdeacon's registers to statements being sworn are inconsistent. So much else is also inconsistent (whether the amounts of fines, or the results of cases, are given) that we cannot take the lack of reference to an oath as necessarily significant, except perhaps in cases where a party is said to have made a statement and then repeated it under oath. But some cases that do mention oaths do so in a way that tells us something about how medieval people perceived the truth.

One could prove one's case in several ways in a medieval ecclesiastical court. The plaintiff, in a civil (instance) case, or the prosecutor in a criminal case, could bring witnesses. If there were no witnesses, or not enough of them, s/he could 'defer the oath' to

16 Even if the civil claim ended in a settlement the criminal case could still be pursued. On the canon law on this issue in the twelfth and thirteenth centuries, see Daniel Klerman, 'Settlement and the Decline of Private Prosecution in Thirteenth-Century England', *Law and History Review*, 19 (2001): 1-66 (at pp. 47-49).

17 Adultery cases were reserved to the bishop, but cases involving married people without using the label 'adultery' appear not infrequently in the archdeacon's court.

18 Compurgation — where an accused purged him- or herself by bringing oath-helpers to support the oath of innocence — was not used in this court. On the law of compurgation see R. H. Helmholz, *The Ius Commune in England: Four Studies* (Oxford: OUP, 2001), pp. 80-134. For the role (perceived and actual) of the oath in the promotion of truth in another court system see James Oldham, 'Truth-Telling in the Eighteenth-Century English Courtroom', *Law and History Review*, 12 (1994): 102-07.

the defendant.¹⁹ This was called the decisory oath: it put the defendant in a position where he or she had the opportunity to clear him- or herself. If the defendant swore the oath, this generally decided the case. In essence, the person who deferred the oath was choosing to let the other party put his or her soul in jeopardy, and in return giving him or her the opportunity to decide the outcome.²⁰ What is unusual about these Paris cases is the referral (*refero* instead of *defero*) of the decisory oath by the defendant to the claimant or accuser, especially in defloration cases. This might not seem unusual in light of a contemporary legal system where the prosecution has the burden of proof, but it was unusual in the medieval context. Defloration cases were an exception because the defendant could not be expected to have certain knowledge of whether he was the accuser's first partner; however, as we shall see, the defendant referred the oath on issues other than this one, and it was presented as a voluntary though expected move.²¹ Defendants were also asked if they wished to refer to the sworn testimony of a witness, an acknowledgment that the testimony was probative unless the witness were somehow discredited.

These cases arose under a particular pattern of marriage. Some cases wound up in the criminal register because one party brought suit. By asking for enforcement of 'marital promises followed by sexual intercourse' (*promissiones matrimoniales carnalis copula subsecuta*) the plaintiff was confessing to a sexual offense, and the case became a criminal matter as well.²² The criminal registers for these twenty-two years include seventy-two cases of parties prosecuted for clandestine marriage and sixty-seven for 'carnal knowledge

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- 19 Lefebvre-Teillard, *Les officialités*, p. 57, noting that the defendant could refer the oath back to the plaintiff but that this is much rarer. Donahue, *Law, Marriage, and Society*, pp. 311-21.
- 20 Usually the text just says that one party 'refers to' (*refert*) the other, but sometimes, for example in the case of Luc Ardier accused of carnal knowledge with Roline la Cornete (who was actually married, although it was not called adultery), the defendant is asked if he would 'refer to her solemn oath'. AN, Z/1o/21, fol. 37r. For the use of the decisory oath in another jurisdiction see Christina Deutsch, *Ehegerichtsbarkeit im Bistum Regensburg (1480-1538)* (Köln: Böhlau, 2005), pp. 212-13.
- 21 Donahue, *Law, Marriage, and Society*, p. 352 and Donahue, *Texts and Commentaries*, p. 677 (continuation of the same book online) <=http://www.cambridge.org/us/download_file/202931>, for fourteenth-century examples from Paris; p. 467 for Cambrai.
- 22 Charles Donahue argued in 1983 and elaborated compellingly in his recent book that in France clandestine marriages were mainly in the future tense and were prosecuted criminally, as opposed to England where they were in the present tense and enforced by suits by one of the parties to enforce the marriage. Donahue, *Law, Marriage, and Society*, esp. pp. 598-632; the earlier work is 'The Canon Law on the Formation of Marriage and Social Practice in the Later Middle Ages', *Journal of Family History*, 8 (1983): 144-158. While Donahue is right that the many prosecutions of couples who were publicly betrothed (*affidationes* or future consent) but failed to solemnize (and either requested the court's permission to dissolve the betrothal or were fined for not doing so) may reflect people rejecting the alliances their families had made for them, many of the cases involving future promises made privately (*promissiones*) arose initially because of actions by one of the parties, not law enforcement, although the archdeacon's official got involved.

after promises', which legally amounted to clandestine marriage but was not labeled as such. In few of the cases recorded as 'carnal knowledge after promises' were the parties ordered to solemnize the marriage: in fifteen cases both were fined, in fifteen the man, in twenty-three the woman, and in fourteen neither.²³ Fifty-four of the sixty-seven cases of 'carnal knowledge after promises' are from the years where civil registers also survive, and seventeen of the fifty-four cases originated there.²⁴ In several of the cases, the court found that the parties were not married, but still fined one of them for carnal knowledge after promises (in one case, also fining the other for carnal knowledge only). Even when the complaint was not upheld, the person who brought it was fined for the behavior to which s/he confessed by bringing the claim. Rather than being considered perjured, the claimant was assumed to have been telling the truth according to conscience, and fined accordingly.²⁵

These cases of carnal knowledge after promises not labeled clandestine marriages, to the extent they were not false claims, may represent not betrothals arranged by the families but unions initiated by couples themselves, with no intention of solemnizing any time soon. Marriage was supposed to follow *affidationes* within forty days according to synodal decrees; these relationships sometimes went on for years. The couple did not move in together (often one or both were in service).²⁶ They were not married in the social sense, and yet they were so legally. This created the gray area in which there was room for

23 It is not clear why these cases were not labeled clandestine marriage while others were; it is possibly sloppy or inconsistent record-keeping. But especially where both parties were fined, it would be very surprising if the court did not find a marriage existed. The fines for carnal knowledge after promises ranges from ten *sous* to three *écus d'or*, and for clandestine marriage from four *sous* to three *écus d'or*, but the fines depended not only on the seriousness of the offense but also the wealth of the parties; the differences between the ones called clandestine marriage and the ones not so labeled are not statistically significant.

24 Jeanne, daughter of Gracian Texier, sued Pierre le Rohe in a matrimonial case, and was adjudged to be his wife. They were ordered to solemnize and also fined for carnal knowledge after promises. AN, Z/1o/7, fol. 29r and Z/1o/19, fol. 237v. This is the only case recorded in which people are fined for 'carnal knowledge after promises' after they are adjudged to be married.

25 Colette la Platrière, fined for carnal knowledge after promises, Jean Cleret only for carnal knowledge: AN, Z/1o/7, fol. 62r and Z/1o/19, fol. 264r; similarly Z/1o/8, fol. 29r and Z/1o/21, fol. 142r; Z/1o/9, fol. 36r and Z/1o/21, fol. 311r; Z/1o/9, fols 180v-181r and Z/1o/21, fol. 380r. In some cases the party who brought the claim was denied license to marry elsewhere, as well as fined for carnal knowledge after promises, even if the couple were judged not to be married. AN, Z/1o/8, fol. 203r and Z/1o/21, fol. 250v. For fourteenth-century examples in which only the defendant was given license to marry elsewhere, see Donahue, *Law, Marriage, and Society*, p. 348. In one unusual case, Marianne widow of Guillaume le Gru sued François le Gendre alleging matrimony; although they were declared not married and both given license to marry elsewhere, the defendant was fined for carnal knowledge after promises and the plaintiff was not. AN, Z/1o/8, fols 40r, 140v, 141r, 142v, and Z/1o/21, fol. 214r. For fourteenth-century fines (amends) for intercourse in cases determined not to be marriage, see Donahue, *Law, Marriage, and Society*, p. 349.

different views. Indeed, a number of the cases in which a criminal case resulted when (usually) a woman sued a man for breach of promise grew out of marriages allegedly arranged on the spur of the moment; this may not have been the modal way of forming a marriage but appears to have been common enough to make a plausible story. Many of these involve servants; it is not surprising that family would be less involved in marriage formation at a social level where property transactions were less important. In only around twenty percent of cases did the court determine that a marriage did exist, but in others no result survives and the parties may have reached an accord.²⁷

The fullest records in the criminal register tend to be in defloration cases, many of which grew out of matrimonial claims. Although we have no way of determining the truth of the matrimonial claims, marriages formed in this way were plausible and people might easily convince themselves that they existed. An example of how this might occur comes in the case of Colin Maillard, who testified that the (unnamed) woman he was with told him she would have sex with him only in the name of matrimony. He said he would not, but they did it anyway. She also claimed that he gave her marriage gifts; he admitted giving her gifts, but not in the name of marriage. He may, of course, have been lying outright — this is a he-said/she-said situation — but it is also possible that he had behaved in a deliberately ambiguous manner and that both parties believed they were telling the truth.²⁸

Because such exchanges of promises, accompanied by the gifts and handclasp or kiss that were customary signs of betrothal or marriage, were not necessarily witnessed (in some cases where they were, it seems to have been coincidental), and are presented as having been spontaneous, the line was very fine indeed between marriage and just sleeping

26 Donahue suggests that people in France tended to marry younger than in England and that their families were more involved, and that life-cycle service is unknown in the fourteenth-century Paris episcopal court records he examined. The archdeacon's court catered to a lower social level and does include many servants. See Ruth Mazo Karras, 'The Regulation of Sexuality in the Late Middle Ages: England and France', *Speculum: A Journal of Medieval Studies*, 86 (2011): 1010-1039.

27 Lefebvre-Teillard, *Les officialités*, p. 149. She suggests that many of these cases were brought by families, and points out that even when property was not an issue, rivalries between groups within a village also made marriages part of a family strategy.

28 AN, Z/1o/18, fol. 198bis; Z/1o/19, fol. 285r. This case is unusual because in addition to the entry in the civil register and the one in the criminal register, there is another on a loose sheet (which has previously been folded) that was inserted into a criminal register for a different year, but appears to be a rough copy of the interrogation of Maillard which was copied into the criminal register in a much neater hand. The hand in the rough copy is one of the sloppier ones in the register, and there are multiple crossings-out and insertions; the hand in the fair copy is very neat. The same or similar neat hands are found in most of the interrogations, whereas many of the entries other than interrogations are written in the register in the sloppier hand. This suggests how the register may have been compiled: much of the court business was recorded as it was carried out, but the interrogations were done separately and noted on separate slips, and copied into the register. The civil court entry is at AN, Z/1o/7, fol. 120v, with the woman's name omitted, although in later brief procedural entries it does appear.

together. Witnesses rarely report family members being present, and the promises are not described as taking place in the paternal home, as often happens in the cases Shannon McSheffrey has studied for London.²⁹ These unions were plausible as arranged by the parties themselves. Whether women were concocting promises to save their reputations or to trap men or men were denying them to escape their obligations, it is clear that to medieval people the story was possible.

Tassine la Martine in 1487 displayed a fairly unsophisticated understanding of the court system, but the case she brought illustrates the types of expectations people had of marriage formation. Tassine was questioned and asked why she had caused Mathieu Coquillen to be imprisoned.³⁰ She replied that it was because he had promised her marriage. Informed that this was not a sufficient accusation to warrant his imprisonment pending trial, she then claimed that he had deflowered her after the promise of matrimony. It may be that Tassine was a quick learner who changed her story, but she would have told the story previously when he was first put in prison, so it is more likely that the official was just reminding her to tell the whole story. Another woman, a neighbor, testified that she had heard Mathieu speak the words *je te prends en mariage* ('I take you in marriage') after Tassine refused otherwise to have sex with him. This was a present tense vow, which would have created binding matrimony even without intercourse. The fact that the witness reported this simple and legal form of words perhaps indicates that she knew what the law required.

Tassine claimed that Mathieu had come to her master's house at night to see her; she was not suggesting that they had been domestic partners. Although if her story were true this would have been a legal marriage, and the witness claimed words of marriage in the present tense, Tassine and other women in this situation treated it to some extent as an unfulfilled promise rather than a completed marriage. Though complete in the eyes of the law, it was not complete socially until they were living together as husband and wife.³¹

This case is particularly interesting procedurally because of the defendant's attitude towards the complainant's story. He refused to refer the oath to her as defendants in this

29 Shannon McSheffrey, *Marriage, Sex, and Civic Culture in Late Medieval London* (Philadelphia: University of Pennsylvania Press, 2006), p. 122. Of course, as Donahue, *Law, Marriage, and Society*, p. 186, points out, there may have been parties involved who do not appear in the record.

30 AN, Z/1o/18, fols 237-239r. The civil register does not survive for the period of this case; the record in the criminal register begins with Tassine's interrogation and does not indicate how the case came to the court's attention. Although Coquillen denied the claim, witnesses testified to the matrimonial promises.

31 The result of Tassine's case does not survive — the last we see of the case Mathieu had been out on bail and was back in jail — but another man paid a fine three and a half months later for slandering Tassine by saying he had known her carnally. AN, Z/1o/19, fol. 11v. He may have been recruited by Mathieu as a defense to the defloration claim.

situation often did.³² When asked whether he wanted to refer to Tassine, he said no, nor the neighbors, nor, and here the record switches to French, *ne a homme ne a femme vivant que a lui* ('no living man or woman other than himself'). Matthieu's refusal to refer the oath may not seem at first so strange — of course he would deny the allegations — but it was treated as unusual. Men in these cases repeatedly put themselves in the power of an opponent. A man denies all the facts, not just defloration, but nevertheless says he will refer the oath to the woman, who then places her hand on the Gospels and reiterates her accusation, and thereby proves her case. Obviously the man already knows what her position is. If he was going to accept it, why did he not do so in the first place, why deny it in his testimony? I suggest that he wished to deny it but was showing respect for the oath itself and for some idea of the truth. Matthieu, on the other hand, either did not have this respect, or expected Tassine to perjure herself.

In some instances, of course, the man referred the oath to the woman on an issue where she had knowledge and he did not. For example, Pierre Papelart, accused of deflowering Marguerite Boucher, admitted carnal knowledge over a period of three months, but referred the oath to her on the questions of whether he had deflowered her and whether her pregnancy was due to him. She swore to both, and he was ordered to pay her expenses during pregnancy and delivery.³³ In another case, Colin Jacquin of Frepillon denied deflowering Jeanne la Rousselle but referred the oath to her, and ended up condemned to prison 'on the bread of sorrow and the water of sadness' for six months. The punishment was so harsh because they were first cousins; she claimed that she had not known of the relationship, since she had newly arrived from Normandy, and she was fined an *écu d'or*, quite a high fine but reduced from what would have been higher 'because of her poverty, ignorance and simplicity'.³⁴

The case of Guillaume Godefroy suggests that the man's referral of the oath to the woman in a defloration case was normal and expected, even on a point on which he could have sworn. Guillaume, a married man, was accused of deflowering Marianne Patin, an eighteen-year-old orphan in his service. He denied having carnal knowledge of Marianne, but when the official asked him 'who did deflower her?' he first replied, 'Ask her', but

32 On his second interrogation he denied that he had ever been to Tassine's master's house at night.

33 AN, Z/1o/18, fols 39v, 40r, and Z/1o/6, fols 79v, 80v, 82v. His deferring the oath to her on this point also no doubt affected the outcome of the *causa dotis*, the civil suit demanding the dowry that a woman could claim from a man who deflowered her. No result survives in that matter, possibly because an out of court settlement was reached.

34 AN, Z/1o/18, fols 43r, 44v. The case does not state exactly what she swore to, and she was fined for frequenting and the pregnancy but not for allowing herself to be deflowered. He gave his age as nineteen and she as twenty.

refused to refer the oath to her. The judge asked her to swear anyway, and with her hand on the Gospel she said that it was Guillaume 'and she had never been known by another man'.³⁵ The fact that Marianne's words were specifically stated to be under oath may be significant, especially because it is stated twice: 'His Honor questioned her under oath, and she, by means of an oath while touching the holy gospels . . .'. Guillaume seems to have annoyed the judge, who took Marianne's oath even when Guillaume had not referred it. This did not end the case, however. The following day he was questioned again and denied ever having 'touched her dishonestly'. She then referred the oath to him on the matter of defloration, and he swore indeed, but not with his hand on the Gospels: 'he would give his soul to all the devils if he had done it'. This was certainly an oath, and could also be seen as putting his soul in jeopardy; but it was not a judicial oath, and he seems to have been reluctant to swear the latter, even though it put his case at risk.

The case of Jean Sarrasin and Denise Esperlant, with conflicting oaths, is in some ways the ultimate he-said/she-said case. It indicates the informal nature of the entry into marriage and also the somewhat conflicted attitude one party could have toward the truth-telling of the other.³⁶ Jean Sarrasin was a cart driver for Simon de Neufville, *Receptor* of Paris (a royal official).³⁷ Denise Esperlant also worked for Neufville and reported that Sarrasin first knew her carnally in the stables of Neufville's residence, where he slept. She swore that she was at that time a virgin. Sarrasin's first interrogation was equivocal: he claimed he did not know her carnally but that he did not remember whether he had ever kissed her. He declined to refer the oath to her on these issues because she had previously committed perjury against him (although he meant that she had falsely told their master and mistress that he had had sex with another one of the servants, which even if untrue was not technically perjury). The two were confronted with each other, and she repeated to his face that he both kissed and deflowered her, and that he gave her in the name of marriage a belt, which she displayed. He said that he did not know whether he had seen the belt before, but he did not give it to her.

The next day Sarrasin was interrogated 'after a solemn oath, touching the holy gospels' (a phrase found in few interrogations). He said that he was never alone in the stable with her, and never kissed her when they were alone, but may have done so when he

35 AN, Z/1o/18, fol. 200v. No result survives.

36 AN, Z/1o/19, fols 60v, 61v. She is called the daughter of Roland Esperlant, which according to Donahue (*Law, Marriage and Society*, p. 319) indicates she was under her father's control, but she was in service and the circumstances under which she claimed the marriage occurred did not include any family. In general fewer women were described as 'daughters' in these records than in those Donahue used, which may reflect different record-keeping practice a century later or the fact that more of the women in these cases were independent of their parents.

37 He was also a clerk in minor orders, who would have been permitted to marry.

was with several of the maids of the house and they were fooling around. (The record notes the French term he used: *riblerent*). Asked whether he ever put his hand on her breast or her genitals he said no. Asked whether he was ever alone with her in her room, he said he was there many times, but never alone. They agreed on some of the details — the date on which he was in her bedroom — but not why he was there. He said that he did not know whether she was pregnant, and ‘that some say that she is not pregnant, and she did this in order to entrap him by this means’ (and here the record slips into French).

Sarrasin’s claims ring false — for him not to remember whether he had kissed her, but to be certain that he had not done so in private, sounds self-serving. But although he may have been willing to equivocate rather than lie under oath, he was not willing to outright accuse her of lying. When he was interrogated again the following day, and was asked whether she was of good reputation, he said yes except that she was *bilingua* (what we would call two-faced) and *relata* (free and easy), and had a sharp tongue. Asked whether he was claiming that she would say something that was not true, however, he said he did not know. Even when he was accusing her of trying to trap him into a conviction on defloration charges, and impugning her reputation, he said that he knew the latter to be good; even when his sworn testimony contradicted hers, he would not come out and call her a loose woman, or accuse her of perjury in this case even though he (inaccurately) alleged she had committed it before.³⁸

That sexual intercourse took place in such a situation of proximity, two servants in the same house, is hardly surprising. That it would be thought plausible or likely that marital promises were exchanged in this situation, spontaneously, is perhaps slightly more so. If there were promises they were made in a very casual manner. The belt Denise claimed Jean gave her as a marital gift was not a particularly special one, presumably just what he was wearing at the time. Among this social level, people seem to have found it plausible that promises would be entered into fairly easily, without formalities. They knew enough about typical procedure to know that tokens were exchanged, but did not think it necessary to involve family. If Denise’s story were true it may be that she hoped informal promises would be followed later by solemnized marriage, but certainly not any time soon, and this may have been much more of a hope than a concrete expectation. And neither Jean Sarrasin nor any other defendant claimed lack of familial involvement as a factor that would make the charges any less plausible. Not all marriages were this informal of course; many do show family involvement. But many don’t, as indicated by the testimony of Pierre

38 Sarrasin was released from jail pending trial based on a letter from his employer who said that he needed him. A month later the judge declared that there were too many conflicting statements and the matter needed to be investigated further. Eventually the judge ordered Sarrasin to pay the expenses of childbirth, although Denise had to post bond that she would repay the money if he were eventually judged not to be the father. No further record exists, although the result may have been in the civil register that does not survive for this year.

Godart, who admitted betrothing a woman 'whose surname he does not know, and does not know who her parents are or what village she is from'.³⁹

Clément de Rennes and Paquette Hennelle were involved in a case with a similar fact pattern and a similar gray area. When Clément was asked whether he kissed Paquette, he said 'yes, but in play' (*ludendo*). The examiner apparently thought that a transparent excuse, because he asked if he also 'knew her carnally in play'.⁴⁰ Clément denied the carnal knowledge, however, and declined to refer the oath to her on this issue. Asked whether she was of good reputation, he replied that he had heard that some people thought that she was not, and that several men had gotten in a fight over her, but for himself, he did not see any ill in her. The examiner then asked, 'If you do not see any ill in her and know her to be of good reputation, why do you not want to defer to her conscience in the matter of the defloration?' Clément replied that he did not know what she would say but that he did not want to rely on her.⁴¹ Again, it is typical of this court, but apparently not others, that he would be asked to refer the oath back to the plaintiff not just on the defloration but also on the basic issue of carnal knowledge, even after denying the accusation. And indeed, despite his strenuous denials, he eventually did refer the oath to her and was condemned for a month on bread and water as penance for the defloration, in addition to putting up a hundred *livres* as bond for the resultant child. Another case in which the judge looked with suspicion at the defendant's refusal to refer to someone else's testimony, seeing it perhaps as fear of the truth, involved Denise de Hanny, who claimed matrimonial promises against Pascal de la Rue. Pascal denied the particular circumstances under which she claimed he had had carnal knowledge of her, and referred to (or rested on) the testimony of Jean Blondeau, whom Denise had named as a witness and who both agreed had been present on the occasion. On the question of marital promises, though, he declined to defer to Blondeau. The judge inquired why not on this point, when he did on others. Pascal could only repeat that he promised her nothing, but he later dropped his outright denial of marital promises, saying that 'if he promised her something he wanted to keep it'.⁴² Denise won her case and the two were adjudged to be married. Certainly the decision in her favor had much to do with the fact that Pascal dropped his denial, and this was not out of self-interest but perhaps respect for the truth. When Denise la Doynelle sued Yves Godignon for child support (and paid a fine for the criminal offense she thereby confessed), she may also have been showing respect for the truth. Although she said he had been unmarried during the four years that he maintained her, she did not claim marital promises.⁴³ That this particular man did not lie his

39 AN, Z/1o/19, fol. 104v.

40 For similar examples where men claimed to be joking, see Christina Deutsch, *Ehegerichtsbarkeit*, p. 217.

41 AN, Z/1o/19, fol. 104v.

42 AN, Z/1o/19, fols 30r-31v.

way out of his responsibilities or this particular woman did not lie her way into a marriage does not mean that no one did; but it cautions us that not all legal maneuvering was simply instrumental.

Another case involving paternity but not marital promises further indicates that medieval litigants did not assume that all testimony was strategic and were not prepared to make a blanket claim that all the other party's witnesses were lying or biased. Denise, a widow and servant of Jean Clerbourt, claimed that Pierre Cornet was the father of her child.⁴⁴ The witnesses were a twelve-year-old girl, a relative of her employer, with whom she shared a bed and who she claimed had been present when she and Cornet had had sex, and Thomassine, a laundress who often came to the house. Cornet admitted that he had been in the bed, but denied sexual intercourse. He declined to refer to the testimony of Thomassine or to the girl. The examiner asked him the grounds for this, and he did not take the opportunity to impugn Thomassine's reputation: he saw in her *ne bien ne mal*. He said, however, that the girl 'for an apple would say whatever Denise wanted her to'. He did not argue that Denise's entire claim was suborned; he could only impugn witnesses when he had some ground for it, indicating that he did have some respect for the truth, or at least the truthfulness of some witnesses. He was condemned to pay her expenses of childbirth, and an *écu d'or* as a fine.

When Nicolas Dyvot wished to impugn the reputation of Jeanne Couronne, who had accused him of forcibly deflowering her, he reported that she had a bad reputation which he had heard about from her master, Philippe de Bercemont, procurator in the Châtelet. He said that he would refer to Bercemont's testimony, and that Bercemont had heard about the bad behavior of their maid from his wife. When asked whether he wished to refer to the testimony of the wife, he replied, 'no, because woman is always changeable and unstable'. He agreed that 'she was a good woman and did not wish to say anything other than the truth', but when asked why then he did not want to refer to her, said 'because of the changeability of woman'.⁴⁵ Here was a man afraid of her testimony, but not willing to malign the character of a respectable woman (perhaps the wife of an acquaintance) in order to discredit it, and therefore falling back upon an old chestnut. The fact that he was a *magister* — a university master — is not, perhaps, coincidental.⁴⁶ But this general devaluation of women's testimony was very unusual, and quite against court practice. It

43 AN, Z/1o/18, fol. 163v.

44 AN, Z/1o/18, fol. 15v. The case appears only in the criminal register, although it is from a period when the civil one survives.

45 AN, Z/1o/19, fols 105r-107r.

46 Ruth Mazo Karras, 'Using Women to Think With in the Medieval University', in *Seeing and Knowing: Women and Learning in Medieval Europe 1200-1550*, ed. by Anneke B. Mulder-Bakker (Turnhout: Brepols, 2004), pp. 21-33, on misogynist thought at the University of Paris.

was likely the sign of a man who had to find some way other than perjury, or a perjury accusation, to escape the damning testimony. He also told a very different story of how the events had taken place.

Some false claims may have been brought in order to extort money. This was what Jean Basin claimed was going on when Jeanne la Soufflette claimed that he had deflowered her and promised her a dowry of a hundred *écus*. He denied ever having sex with her or offering her the hundred *écus*, but admitted that after he was cited, in order to avoid the scandal of appearing in court, he offered her other goods. He testified that he sent his friend Pierre Martin to her, who said, 'Do as I say, ask him for twenty *francs* and you will get two', and she answered, 'I will do no such thing, I will have more or I will have him investigated'. Martin then offered her a bed with covers worth ten *francs* and a silver belt weighing six ounces, and she said that this was sufficient if it would please her father. An agreement was drawn up by notaries of the Châtelet. Her father, however, did not accept the agreement, so she brought the suit.⁴⁷ In this situation each clearly knew the story to tell and pursued their own strategies, at least one of them clearly lying.

Men and women generally had different 'story patterns' to tell, as Charles Donahue has called them. Both illustrated their narratives with many details that give the impression they clearly remembered the scene, although they each reported it differently. More, perhaps, was at stake for the women: it was money and/or a lifetime commitment for both, but reputation for the woman more than for the man. Indeed, the way the woman's prior reputation is raised in the interrogation of witnesses and of the man whom she is accusing is significant: 'Is she a good girl? Is she of good reputation?' These questions are considered key to a case of defloration, or indeed of paternity, for if her sexual history is in question, the man's crime becomes merely one of carnal knowledge rather than the other more serious offenses. The man's reputation or sexual status, however, does not change the woman's offense, and therefore it is not called into question in the same way.

The way the men are in many of the cases unwilling to undercut the woman's reputation, however, even when it would strengthen their case to do so, does indicate something other than an adherence to a standard 'story pattern'. The willingness to refer the oath to the women also tells us that these informal, spontaneous betrothal/marriages were not figments of the women's imagination but rather part of the normal expectation of marriage formation in late medieval Paris. It is likely that in these situations of promises followed by intercourse, both men and women understood that the existence of a marriage was still a question open to a negotiation conducted in part in the church court. But it was not a negotiation that everyone was determined to win at all costs; some men took the

47 AN, Z/10/19, fol. 76r.

prospect of swearing an oath seriously and allowed themselves reluctantly to be claimed as husbands. We must beware of taking the argument too far: obviously many people did perjure themselves, and the prospect of swearing an oath did not always compel the truth. Nevertheless the oath was clearly not negligible in the minds of late-medieval Parisian litigants.