Sodomy and Criminal Justice in the Parlement of Paris, ca. 1540–ca. 1700

TOM HAMILTON
Durham University

During a series of interrogations in late 1588, the magistrates of the criminal chamber of the Parlement of Paris tried Alexandre Jouan on appeal from the subordinate court of the Châtelet in Paris for the "extraordinary crime" and the "sin" of "sodomy." Noël Biresse, who had been driving his cart outside Paris by the gate of Saint-Antoine, testified that he saw Jouan, a merchant who sold ashes, "lying with a baker in the ditch, on top of the man, with his shirt pulled off." At first Biresse "thought Jouan was with a wench, and he wanted to see what they were doing, but when they stood up he realized that it was a man who took a handful of grass to wipe himself down after he had been underneath this man [Jouan]." Under torture on the rack Jouan cried out, "Jesus, Mary, Saint Nicolas, my God, misericord!" and "I'm breaking, kill me!," but he continued to deny the charge of sodomy. Finally, the Parlement sent Jouan back to the Châtelet, from which he was to be released unless more information came to light that proved his guilt.[1]

Jouan's case demonstrates some of the intractable difficulties involved in prosecuting sodomy through the inquisitorial procedures of criminal justice in sixteenth- and seventeenth-century France. In Jouan's case, the

I would like to thank those who discussed aspects of this work in conferences and seminars held in Basel, Cambridge, Cardiff, Durham, Frankfurt am Main, Leeds, and Oxford, as well as Robin Briggs, Gary Ferguson, Alex Freer, Nick Hammond, Jeffrey Merrick, Nicole Reinhardt, Marc Schachter, Annette Timm, Lucy Whelan, the anonymous readers for the journal, and especially Alfred Soman. Any flaws that remain are my own. Research toward this article was funded by New College, Oxford, and by Trinity College, Cambridge.

[1] The documents concerning this case are Archives de la Préfecture de Police de Paris (hereafter APP) AB 10, 1588-08-30; Archives Nationales, Paris (hereafter AN) X2A 956, 1588-09-09, 1588-10-19, 1588-11-28; AN X2B 159, 1588-10-25; AN X2B 1130, 1588-12-07. The phrase "Remonstré qu'il est accusé d'un merveilleux crime de sodomie" appears in Jouan's interrogation under torture on 7 December. Jouan told the Parlement's criminal chamber on 9 September that he was "appellant de la question, accusé du peché de sodomie, duquel il est innocent."

Journal of the History of Sexuality, Vol. 29, no. 3, September 2020

DOI: 10.7560/JHS29301

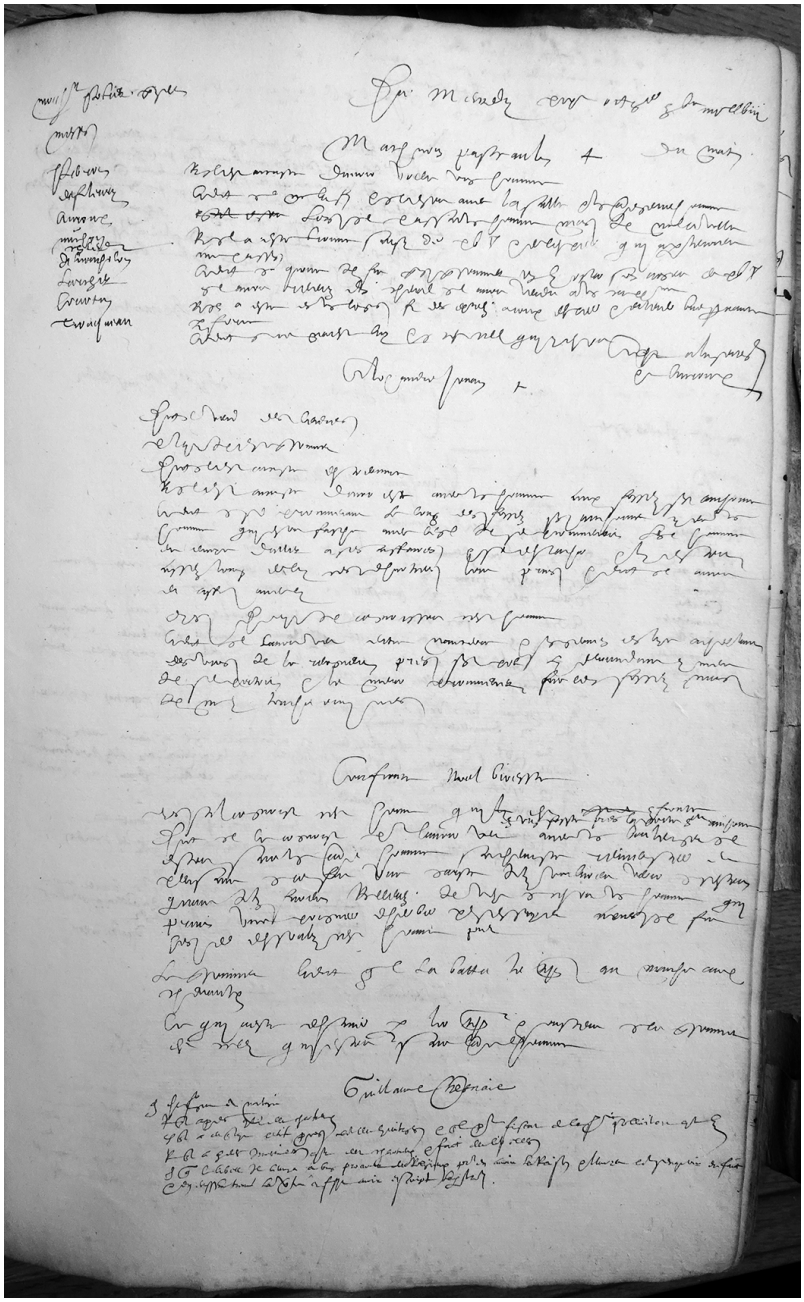

Figure 1. This image shows Alexandre Jouan's interrogation and confrontation with Noël Biresse in the criminal chamber of the Parlement. AN X2A 956, 1588-10-19.

witnesses had a poor view of the events they described and gave contradictory evidence to the court. Biresse saw Jouan and the baker "rolling around in the grass," with Jouan "on top of the man," but he admitted that he could not be certain from a distance. Instead, Jouan protested that "the two witnesses who testified saw them playing cards and dice" and that the baker was "a respectable man." Jouan also claimed that "his brother-in-law incited two carters to spy on him," which suggests that family enmity might have motivated the accusation. Another witness, Guillaume Le Juste, who used to lodge with the master baker Jean Baudet, could not be found. The case proved inconclusive, and the Parlement therefore declined to condemn Jouan to any further punishment beyond what he had already endured in prison. For both Parisian courts the evidence did not add up. On the rare occasions in sixteenth- and seventeenth-century France when criminal courts tried sodomy cases such as this, the crime proved almost prohibitively difficult to prosecute.

Historians who have written about the sexual acts labeled as sodomy in the criminal courts of sixteenth- and seventeenth-century France—most often sex acts between males or bestiality, but also the anal rape of women and public masturbation—have focused on the courts' official rhetoric and not on their judicial practice.[2] As a consequence, these historians have often seen the sixteenth and seventeenth centuries as a time when criminal courts continued the precedent set by the late medieval inquisition in punishing those convicted of sodomy by burning them alive.[3] No royal edict or ordinance issued in early modern France structured the prosecution of sodomy, and so jurists relied instead on a combination of case precedent and established principles of Roman and natural law.[4] The Emperor

[2] For a range of uses of the term "sodomy" in this period across Europe, see Thomas Betteridge, ed., *Sodomy in Early Modern Europe* (Manchester: Manchester University Press, 2002); and Kent Gerard and Gert Hekma, eds., *The Pursuit of Sodomy: Male Homosexuality in Renaissance and Enlightenment Europe* (New York: Routledge, 1989). I discuss this range of uses of the term in the records of the Parlement throughout the article, although its focus is on sodomy cases involving males.

[3] The classic interpretation is John Boswell, *Christianity, Social Tolerance, and Homosexuality: Gay People in Western Europe from the Beginning of the Christian Era to the Fourteenth Century* (Chicago: University of Chicago Press, 1980). Boswell's argument is now generally considered essentialist, as Mathew Kuefler argues in "Homoeroticism in Antiquity and the Middle Ages: Acts, Identities, Cultures. *Christianity, Social Tolerance, and Homosexuality: Gay People in Western Europe from the Beginning of the Christian Era to the Fourteenth Century*, by John Boswell," *American Historical Review* 123, no. 4 (2018): 1246–66. Nevertheless, Boswell's perspective has shaped the most comprehensive French works on this subject, which are based on printed and not archival sources. See, for example, Didier Godard, *Le goût de monsieur: L'homosexualité masculine au XVII^e siècle* (Montblanc: H&O Éditions, 2002); Guy Poirier, *L'homosexualité dans l'imaginaire de la Renaissance* (Paris: Honoré Champion, 1996); and Maurice Lever, *Les bûchers de Sodome: Histoire des "infâmes"* (Paris: Fayard, 1985).

[4] Yvonne Bongert, *Histoire du droit pénal: Cours de doctorat* (Paris: Panthéon Assas, 2012), 471–74.

Justinian's Institutes (4.18.4) stated that "the Lex Julia on adultery punishes with death . . . those who indulge in unspeakable lust with males," while the Old Testament (Leviticus 20:13) declared that "if a man also lie with mankind, as he lieth with a woman, both of them have committed an abomination: they shall surely be put to death; their blood shall be upon them."[5] Preachers and theologians, magistrates and jurists all developed these terms as they continued the late medieval denunciation of sodomy as an "unmentionable sin," one that "polluted" the body by giving way to "sexual indulgence" and that deserved exemplary punishment, just as God had burned down the cities of Sodom and Gomorrah.[6] The Parlement and its subordinate courts echoed these terms in their sentences and final judgements, which served as public statements announcing verdicts at the site of punishments. These documents typically denounced the "execrable sin" or "villainous sin" of "sodomy."[7] Only occasionally were they more expansive. For example, the death sentence issued by the criminal court at Saint-Germain-des-Prés against Cosimo Mayorana, confirmed by the Parlement, announced that he was condemned for "wickedly seducing, abusing, forcing, and corrupting three young boys."[8] The ambiguity of the terms associated with sodomy served the court well, as its magistrates typically did not wish to make explicit the details of the crime in question.[9] Researchers inspired by the work of Michel Foucault have critically analyzed this rhetoric in different contexts, demonstrating how "sodomy" was an "utterly confused category" that was invented by Christian theologians

[5] The most comprehensive discussion by an early modern French jurist is Daniel Jousse, *Traité de la justice criminelle de France*, 4 vols. (Paris: Debure père, 1771), iv, 118–24. Jousse's work is useful in presenting a summary of jurists' discussions in the sixteenth and seventeenth centuries. However, considering the evolving practice of the courts in the eighteenth century, Jousse's presentation was severely outdated in its time.

[6] For critical analysis of these and similar terms used to describe sodomy as a sin and a crime across Europe, see Harry Cocks, *Visions of Sodom: Religion, Homoerotic Desire, and the End of the World in England, c.1550–1850* (Chicago: University of Chicago Press, 2017); Helmut Puff, *Sodomy in Reformation Germany and Switzerland: 1400–1600* (Chicago: University of Chicago Press, 2003), 50–74; Michael Rocke, *Forbidden Friendships: Homosexuality and Male Culture in Renaissance Florence* (New York: Oxford University Press, 1996), 36–44, 204–5; and Alan Bray, *Homosexuality in Renaissance England*, 2nd ed. (New York: Columbia University Press, 1996), 13–32.

[7] AN X2B 176, 1596-08-08; AN X2A 165, 1606-02-21. On the language of the court's verdicts in bestiality cases, see Alfred Soman, "Pathologie historique: Le témoignage des procès de bestialité aux XVI^{e}–XVII^{e} siècles," in *Sorcellerie et justice criminelle: Le Parlement de Paris (16^{e}–18^{e} siècles)* (Aldershot: Ashgate, 1992), 154–55.

[8] AN X2A 254, 1636-01-17.

[9] The jurist and *avocat* in Lyon and Beaujolais, Claude Lebrun de La Rochette, explained that "this crime is so detestable that our laws do not dare to discuss it, unless covertly" (*Le procès criminel, divisé en deux livres* [Rouen: Pierre Calles, 1611], 43). For Jacques de La Guesle, *procureur général* in the Parlement of Paris, an appeal in a sodomy case concerned "a crime that cannot be cited by name" (AN X2A 1395, 1588-06-18).

and is not a synonym for the modern concept of "homosexuality."[10] Yet when discussing the crimes labeled as sodomy in terms of criminal justice, Foucault himself persisted in presenting seventeenth-century France as the era of "great confinement," during which an emerging absolutist state repressed deviants in a "correctional world."[11]

Despite the court's fierce public rhetoric on occasions when it announced that the penalty for sodomy was death, evidence from the criminal archives of the Parlement of Paris reveals that authorities in sixteenth- and seventeenth-century France were not engaged in any extensive or systematic prosecution of the crimes they labeled as sodomy. The Parlement was the largest secular court in early modern Europe, trying hundreds of criminal cases on appeal every year from subordinate courts across its vast jurisdiction, which covered over half of the French population, or around eight to ten million people in 1600.[12] Yet the Parlement tried on appeal only 131 cases of sodomy involving males in the years between 1540 and 1700, with most of the appeals occurring in the decades around 1600. Long before the decriminalization of sodomy by the Revolutionary Constituent Assembly in 1791, French courts had effectively ceased to prosecute it.[13] What was really unmentionable for the Parlement's magistrates in the sixteenth and seventeenth centuries was how they rarely prosecuted anybody for sodomy at all.

This article analyzes the entire corpus of sodomy cases involving males tried by the Parlement between 1540 and 1700, combining quantitative and qualitative approaches in order to explain the patterns and principles of the court's jurisprudence. It argues that the legal complexity involved in investigating sodomy made it prohibitively difficult for plaintiffs to instigate a prosecution. When sex between men took place out of sight, or when it was revealed to a priest during confession, who would stand as a witness? Who would finance the case? And who would risk a countersuit for false testimony, which could land the accuser with the same death penalty that the accused might have suffered? Unlike in eighteenth-century Paris, no organized police force pursued suspects or financed prosecutions.[14] Trials

[10] Mark D. Jordan, *The Invention of Sodomy in Christian Theology* (Chicago: University of Chicago Press, 1997); Michel Foucault, *The History of Sexuality, Volume 1, The Will to Knowledge*, trans. Robert Hurley (Harmondsworth: Penguin Books, 1990), 101.

[11] Michel Foucault, *History of Madness*, trans. Jonathan Murphy and Jean Khalfa, ed. Jean Khalfa (London: Routledge, 2006), 87–88.

[12] Alfred Soman, "La justice criminelle aux XVI^{e} et XVII^{e} siècles: Le Parlement de Paris et les sièges subalternes," in *Sorcellerie et justice criminelle*, 17.

[13] Michael Sibalis, "The Regulation of Male Homosexuality in Revolutionary and Napoleonic France, 1789–1815," in *Homosexuality in Modern France*, ed. Jeffrey Merrick and Bryant T. Ragan (Oxford: Oxford University Press, 1996), 82–83.

[14] For an overview of sodomy prosecutions in eighteenth-century Paris, see Jeffrey Merrick, ed., *Sodomites, Pederasts, and Tribades in Eighteenth-Century France: A Documentary History* (University Park: Pennsylvania State University Press, 2019); and Merrick, "Patterns and Concepts in the Sodomitical Subculture of Eighteenth-Century Paris," *Journal of Social History* 50, no. 2 (2016): 273–306.

therefore relied primarily on the initiative of plaintiffs, who began a case in conjunction with the public prosecutor, known as the *procureur du roi* in royal courts or *procureur fiscal* in seigneurial courts.[15] Precisely how cases came to court depended on complex local circumstances and remain a subject for further research. When cases did come to a criminal court, then they could not be guaranteed a successful conviction because of the difficulties involved in establishing sufficient proof.

These legal difficulties involved in investigating crimes such as sodomy have wider implications not only for the history of sex crimes in particular but also for the history of sexuality in general. Often the best sources available for studying nonelite sexuality are the records of criminal interrogations, during which courts asked people about the intimate details of their sexual lives. In order to interpret these records, however, it is essential to understand the legal terms that determined what was at stake in how the judges who conducted interrogations posed their questions and how those under interrogation framed their answers.[16] Analyzing the practice of criminal justice in sodomy cases therefore offers not only a means of understanding the jurisprudence of the Parlement through a crime that has been misrepresented in previous accounts but also an essential starting point for studying the history of sexuality in sixteenth- and seventeenth-century France because it allows historians to move beyond elite, printed discourse and approach people's accounts of sexuality in their daily lives.

The Jurisprudence of the Parlement of Paris

The Parlement's practice of criminal justice has often been misjudged by legal historians who have uncritically accepted the French Revolution's self-justifying denunciations of the court, along with the other institutions of the ancien régime, as corrupt, inefficient, and excessively punitive.[17] Foucault famously relied on the exceptional example of the brutal execution of Robert-François Damiens for attempted regicide on 28 March 1757 to stand for the justice of the Parlement as a whole, making no distinction between the public discourse of the law and its practice.[18] Following the fall

[15] Albert N. Hamscher, *The Royal Financial Administration and the Prosecution of Crime in France, 1670–1789* (Newark: University of Delaware Press, 2012), 8–10.

[16] The key statement of this issue remains Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth-Century France* (Stanford, CA: Stanford University Press, 1987), discussed in Alfred Soman, "Remission and Retribution in Sixteenth-Century France," *Criminal Justice History* 9 (1988): 231–39.

[17] Isser Woloch, *The New Regime: Transformations of the French Civic Order, 1789–1820s* (New York: W. W. Norton, 1994), 297–320.

[18] Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (London: Penguin Books, 1977), 3–69. In this aspect of his interpretation, Foucault was building on a republican tradition of French legal history best represented by Adhémar Esmein, *A History of Continental Criminal Procedure, with Special Reference to France*, trans. John Simpson (Boston: Little, Brown and Company, 1913).

of the ancien régime in 1789, the revolutionaries set about establishing a new judicial regime while making a great show of burning the Parlement's records to satisfy the Parisian crowd.[19] Yet they burned only a small number of papers and dispersed the majority of the Parlement's archives into storage across Paris. In 1847 these papers were deposited in the newly founded Archives Nationales in the Marais on the right bank of the Seine and classified as series X. The Parlement had preserved its archives in order to validate its judgments, retain an unbroken record of precedents, and explain its procedures for posterity. Serious fires in 1618, 1737, and 1776 damaged the Palais de Justice, where the court sat in the center of Paris on the Île de la Cité, but did not substantially damage its archives, kept primarily in the lower floors of the towers that housed the criminal chamber. Few historians have ever looked at the criminal archives of the Parlement of Paris to see whether the revolutionaries' interpretation was justified, and fewer still have been able to read the sometimes formidable handwriting of the documents.[20]

This is the context in which Alfred Soman began his research into the criminal archives of the Parlement of Paris in 1970.[21] Crucially, Soman discovered that the registers of incarceration (*registres d'écrou*) of the Conciergerie, the Parlement's jail in the Palais de Justice, list summary details of every prisoner who came to the Parlement on appeal, including their name, status, place of origin and appeal, and initial sentence, as well as a summary of their crime and the date of the definitive judgment (*arrêt*). These registers had been hidden during the Revolution, and they were discovered again in 1827 on what had by then become the property of the Préfecture de Police. As a result, these registers came to be stored in the Archives de la Préfecture de Police de Paris. No researcher before Soman had systematically linked the registers of incarceration with the main criminal archives of the Parlement. Locating the outline details of a case from the registers of incarceration enabled him to crack the notoriously difficult handwriting of the viva voce records of interrogations recorded in the registers of the criminal chamber and, in Robert Descimon's words, to "invent the historiography of the criminal archives of the Parlement of Paris."[22] As part of his wider interest in criminal justice in the Parlement, Soman also transcribed the complete set of sodomy cases that the court tried between 1540 and 1670, which

[19] Yves-Marie Bercé and Alfred Soman, "Les archives du Parlement dans l'histoire," *Bibliothèque de l'École des chartes* 153, no. 2 (1995): 255–56.

[20] An exception is the paleographer Charles Samarin, particularly his article "Cursives françaises des XV^{e}, XVI^{e} et XVII^{e} siècles," *Journal des savants,* July–September 1967, 129–53.

[21] Alfred Soman, "Sorcellerie, justice criminelle et société dans la France moderne (l'ego-histoire d'un Américain à Paris)," *Histoire, économie et société* 12, no. 2 (1993): 183, 185.

[22] Robert Descimon, review of Alfred Soman, *Sorcellerie et justice criminelle: Le Parlement de Paris (16^{e}–18^{e} siècles)*, *Annales. Histoire, Sciences Sociales* 51, no. 3 (1996): 678–80, here 678.

may be consulted as part of the Soman Collection at the Jacob Burns Law Library, George Washington University.[23] Thierry Kestemann continued the research into the period between 1670 and 1700 in a thesis supervised by Yves-Marie Bercé and Alfred Soman.[24] While this sample cannot compare in size to the major series of sodomy cases tried in fifteenth-century Florence, for example, it is the largest continuous sample of sodomy cases for any northern European criminal court in the early modern period.[25]

In order to provide an overview of the cases, figure 2 presents the total of 131 appeals by individuals in sodomy cases involving males tried by the Parlement of Paris between 1540 and 1700. This chart is based on a list of every case that Soman identified as concerning sodomy in the Conciergerie's registers of incarceration along with the Parlement's definitive judgment.[26] Figure 2, like all of the figures that follow, excludes cases of bestiality, discussed in a 1984 article by Soman, which the Parlement also labeled as sodomy. Bestiality cases represent a similar number of appeals before the Parlement to sodomy cases involving males, but they resulted in a higher proportion of confirmed death sentences, since these bestiality cases often concerned acts of public exhibitionism that were more likely to involve witnesses.[27] This count also excludes a small number of cases that alluded to but did not formally concern sodomy. The best-known case excluded in this way is the obscenity trial against the libertine poet Théophile de Viau in the 1620s. While the Parlement censored Théophile's self-proclaimed "dirty" (*sale*) poetry anthology, *Le Parnasse des poètes satiriques* (1622), in a trial that led to a public scandal, during which the Jesuit priest François de Garasse denounced Théophile as a "SODOMITE" in his treatise *La doctrine curieuse* (1623), this accusation served primarily to support the formal charge of irreligion. References to sexuality appeared more frequently in the witness interrogations gathered in this case than in the interrogations of Théophile himself.[28]

[23] My thanks to Jennie Meade and Karen Wahl for facilitating my research there. I have checked these transcriptions against the original archival documents for all of the interrogations discussed in this article. All translations from these records are my own. For references to this material, see Alfred Soman, "Les procès de sorcellerie au parlement de Paris (1565–1640)," in *Sorcellerie et justice criminelle*, 793, 797; and Soman, "Pathologie historique," 154–61. For Soman's interpretation of the practice of criminal justice in the Parlement, see the references to his work throughout this article.

[24] Thierry Kestemann, "Les procès de sodomie et de bestialité devant le Parlement de Paris (1670–1700)" (master's thesis, Université Paris–Sorbonne [Paris IV], 1998), which includes transcriptions of cases from pp. 99–109.

[25] On Florence, see Rocke, *Forbidden Friendships*. I discuss European comparisons below.

[26] A "master list" of sodomy cases is part of the Soman Collection at Jacob Burns Law Library, George Washington University. The count also includes seven additional cases of male homosexual sodomy from the 1540s identified by E. William Monter and communicated to Soman. I have excluded a small number of cases that do not contain sufficient information to identify the type of sodomy concerned.

[27] Soman, "Pathologie historique," 154–61.

[28] Adam Horsley, "Strategies of Accusation and Self-Defence at the Trial of Théophile de Viau (1623–25)," *Papers on French Seventeenth-Century Literature* 44, no. 85 (2016): 169, 173–74.

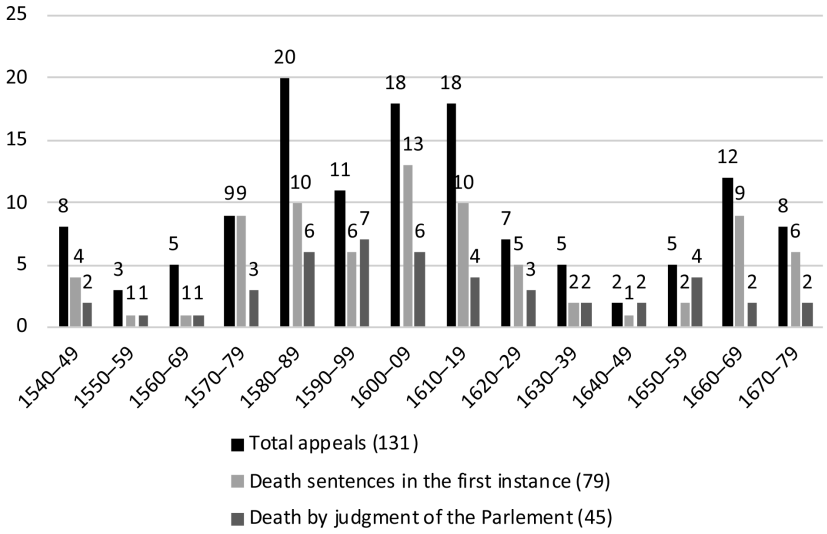

Figure 2. Individuals tried by the Parlement of Paris in sodomy cases involving males, 1540–1700.

Each year between 1540 and 1700, the criminal chamber in the Parlement tried between 300 and 800 individuals on appeal, and so the total across this period of 131 individuals tried on appeal in sodomy cases involving males represents a remarkably small proportion of the court's overall workload.[29] The chart shows an average of just over one case per year and a maximum of twenty cases per decade in the 1580s. This peak occurred in the final stages of the Wars of Religion, which might suggest a broader connection between the impact of the Reformation and the prosecution of moral crimes, not least since this period also saw a peak in appeals in witchcraft cases tried by the Parlement.[30] Yet there is no evidence of a direct connection between the civil wars and these sodomy cases, except in the case of the laborer Jean Martin, who protested in the criminal chamber that he had been "arrested because he belonged to the [Reformed] Religion" and that the charge of

[29] For an indication of the total workload of the Parlement's criminal chamber across this period, see the statistics presented in Hamscher, *The Royal Financial Administration*, 102–11; Robert Muchembled, "Fils de Caïn, enfants de Médée: Homicide et infanticide devant le Parlement de Paris (1575–1604)," *Annales. Histoire, Sciences Sociales* 62, no. 5 (2007): 1065–74; Christelle Libert, "Les appels au Parlement de Paris à la fin du XVI^{e} siècle: Crime et contrôle social dans la construction de l'état moderne" (master's thesis, Université Paris–Nord, 1995), 8, 31–47; Bercé and Soman, "Les archives du Parlement," 268–73.

[30] Alfred Soman, "La décriminalisation de la sorcellerie en France," in *Sorcellerie et justice criminelle*, 188–96, analyzes the chronology of appeals to the Parlement in witchcraft cases. Brian P. Levack, *The Witch Hunt in Early Modern Europe*, 3rd ed. (Harlow: Routledge, 2006), 109–33, evaluates possible correlations between the Reformation and witchcraft prosecutions.

sodomy had been fabricated because "they had nothing against me that would allow them to have me killed."[31]

The chronology of appeals in sodomy cases might be better understood in terms of the internal workings of the Parlement itself. First, the rising numbers of appeals in sodomy cases during the second half of the sixteenth century form part of the overall increase in appeals to the Parlement for criminal cases during the same period.[32] However, the absence of registers of incarceration before the late 1560s means that the low figures for appeals in sodomy cases in the 1540s and 1550s might not be entirely complete, since a count for those decades can only be based on the series of final judgments that the court began to keep systematically around this time.[33] It is also likely that some sodomy cases did not come to the Parlement on appeal from the court of the first instance, as they should have done for a crime facing the death penalty, since subordinate courts often resented the Parlement's intrusion into their jurisdiction.[34] These difficulties of record-keeping and jurisdiction should serve to make it clear that the statistics of appeals to the Parlement in sodomy cases reveal only the business of the court and not fluctuations in other forms of behavior that might have been considered criminal but did not lead to a prosecution.

More difficult to explain than the rise in appeals in sodomy cases to the Parlement in the sixteenth century is the decline in the number of appeals between the 1620s and 1650s, which comes at a time when the total number of appeals to the court in criminal cases was otherwise fairly stable.[35] This decline follows the moment around 1600 when the Parlement took steps to decriminalize witchcraft, which led to a major decline in the prosecution of that crime thereafter.[36] Based on this trend, one plausible hypothesis for explaining the decline in sodomy prosecutions is to consider that they were similar to witchcraft prosecutions in a specific way: not because the courts persecuted deviant others, since beyond rare, brief mentions of the devil there are no direct connections between these sodomy cases and witchcraft, but instead because both crimes were particularly difficult to prosecute due to a lack of sufficient proof.[37] Credible eyewitnesses could often be found in cases of homicide or theft, and they were not required in infanticide cases,

[31] AN X2A 937, 1571-09-11.

[32] Bercé and Soman, "Les archives du Parlement," 260–65.

[33] Alfred Soman, "Petit guide des recherches dans les archives criminelles du Parlement de Paris à l'époque moderne," *Histoire et archives* 12, no. 1 (2002): 75.

[34] Alfred Soman, "La justice criminelle, vitrine de la monarchie française," *Bibliothèque de l'École des chartes* 153, no. 2 (1995): 294–95. For an overview of printed legal sources that make rare mentions of additional cases in other *parlements* across France, see Bongert, *Histoire du droit pénal*, 471–74.

[35] Hamscher, *The Royal Financial Administration*, 103–8.

[36] Soman, "La décriminalisation," 196–203.

[37] The most significant example of a link between witchcraft and same-sex acts that might be identified as sodomy is the case of Claude de L'Espine, analyzed below.

which proceeded with a lower standard of proof.[38] Yet behavior linked to crimes of witchcraft and sodomy generally took place in secret and away from prying eyes. In witchcraft cases, officials in subordinate courts soon realized that the Parlement was likely to issue reduced judgments and overturn serious sentences that came to it on appeal, and this feedback loop worked to discourage subordinate courts from taking on costly prosecutions with little chance of success. Since the same acute problem of establishing proof of witchcraft applied as in sodomy cases, it is plausible that this legal factor alone explains the steady decline in sodomy prosecutions in the first half of the seventeenth century. A crucial difference between Parlement's jurisprudence in sodomy and witchcraft cases, however, is that there is no obvious abuse of justice among the sample of sodomy cases to compare with the scandalous witch hunt in the Champagne region in 1587 and 1588, which led the Parlement to take prompt action to suspend local officials and begin to decriminalize witchcraft across its jurisdiction.[39]

An unusual phenomenon within the sample of sodomy cases involving males, however, is the minor upturn in appeals in cases heard by the Parlement in the 1660s, which relates to a series of scandals focused on men who held positions of authority over young boys. In that decade the court heard twelve cases on appeal, half of which concerned either clerics or schoolmasters (see fig. 8), whereas over the past four decades it had heard no more than six each decade.[40] The Parlement tried the case of schoolmasters Urbain Rodès and Pierre Adveni in 1660 and later tried on appeal four other cases against priests or schoolmasters in this decade.[41] Further cases from Parisian courts involving schoolmasters came to the Parlement on appeal in the 1670s, including the cases of Jacques Cousturier and Mathieu Outin, who were, respectively, sentenced to service in the galleys in the Mediterranean and to be banished from Paris.[42] These cases demonstrate that, by the seventeenth century, only the most scandalous affairs came to the Parlement of Paris on appeal, and these rarely involved people from the lower ranks of the social hierarchy. The 1660s and 1670s appear exceptional when viewed in a long-term perspective. No cases for sodomy involving males came to the Parlement on appeal in the 1680s or 1690s, and the court tried only a few cases of bestiality in those years,

[38] Alfred Soman, "Anatomy of an Infanticide Trial: The Case of Marie-Jeanne Bartonnet (1742)," in *Changing Identities in Early Modern France*, ed. Michael Wolfe (Durham, NC: Duke University Press, 1997), 249–52.

[39] Soman, "La décriminalisation," 189–96.

[40] For an analysis of social status in sodomy cases involving men, see figures 7 and 8.

[41] The documents for the case of Rodès and Adveni are as follows: APP AB 47, 1660-04-20; AN X2A 315, 1660-02-21; AN X2B 1254, 1660-02-24; AN X2B 315, 1660-02-28; AN X2A 1025, 1660-04-20.

[42] The documents for the case of Jacques Cousturier are AN X2A 1035, 1670-01-23; AN X2B 1670-01-23. On Mathieu Outin's case, see AN X2A 1037, 1672-03-23; AN X2A 360, 1672-03-24.

making the overall pattern of decline following the first quarter of the century clear.[43]

Across this period a significant geographic shift took place in the origin of appeals (see figs. 3 and 4). In general, the appeals for sodomy cases were representative of the geography of appeals in the Parlement (whose large jurisdiction ranged from Calais in the north, to Lyon in the south, to La Rochelle in the west, and to Bassigny in the east), but Paris and Lyon are over represented in the statistics, and rural areas in Brie, the west, and the center of France, areas dominated by seigneurial rather than royal courts, are underrepresented.[44] Notably, Lyon provided the largest number of appeals in the sixteenth century (fifteen cases, thirteen of which were tried before 1600), while Paris sent the most appeals in the seventeenth century (forty-two cases, thirty-three of them after 1600). It might be expected that this trend could be explained by the large number of Italians living in Lyon, since Italians had a notorious reputation for sodomy throughout Europe. (In Italy it was said that the Neapolitans or the Spanish were the most notorious sodomites.)[45] Eleven Italians appear among the total of 131 men tried for sodomy by the Parlement. Yet only one of the cases from Lyon involved Italians, and even this case primarily concerned a Flemish painter. The interrogations recorded when this case came to Paris on appeal in 1587 are brief and allusive. Gabriel Hervé, a native of Antwerp working in Lyon, was accused of "committing the sin of sodomy" with Horatio Geminiani, a merchant from Lucca. In his defense, Hervé claimed that Geminiani only shared his bed because he was fleeing his own plague-infected house. Geminiani admitted to going to bed with Hervé but likewise "denied caressing him and knowing him carnally." Hervé also insisted that the sentence in Lyon was invalid because the judge there "wanted to punish the Italians."[46] Another Italian implicated in Hervé's case, Paolo Mini, a doctor from Florence, was accused of "kissing" Hervé. Yet Mini dismissed the allegation by insisting that he treated Hervé and that "when Hervé was ill, he kissed him on the head." Further, Mini was accused of sleeping with Hervé, but Mini claimed that "when he went to bed with Hervé he was clothed, and it only happened once." In its final judgment, the Parlement rejected their appeals and confirmed the death sentences for Hervé and Geminiani, while it banished Mini from the kingdom for nine years.[47] If sodomy allegations in France disproportionally affected Italians, who sometimes pleaded xenophobia

[43] Kestemann, "Les procès," 110–11.

[44] For an overview of the geography of appeals to the Parlement, see Bercé and Soman, "Les archives du Parlement," 267–70.

[45] Nicholas Hammond, *Gossip, Sexuality and Scandal in France (1610–1715)* (Oxford: Peter Lang, 2011), 84–85.

[46] Cosimo Mayorana made a similar claim when he defended himself by insisting that "people want to do harm to foreigners" (AN Z2 3459, 1635-10-18).

[47] APP AB 10, 1587-02-22; AN X2A 955, 1587-03-05, 1587-04-20; AN X2B 150, 1587-03-05, 1587-04-24.

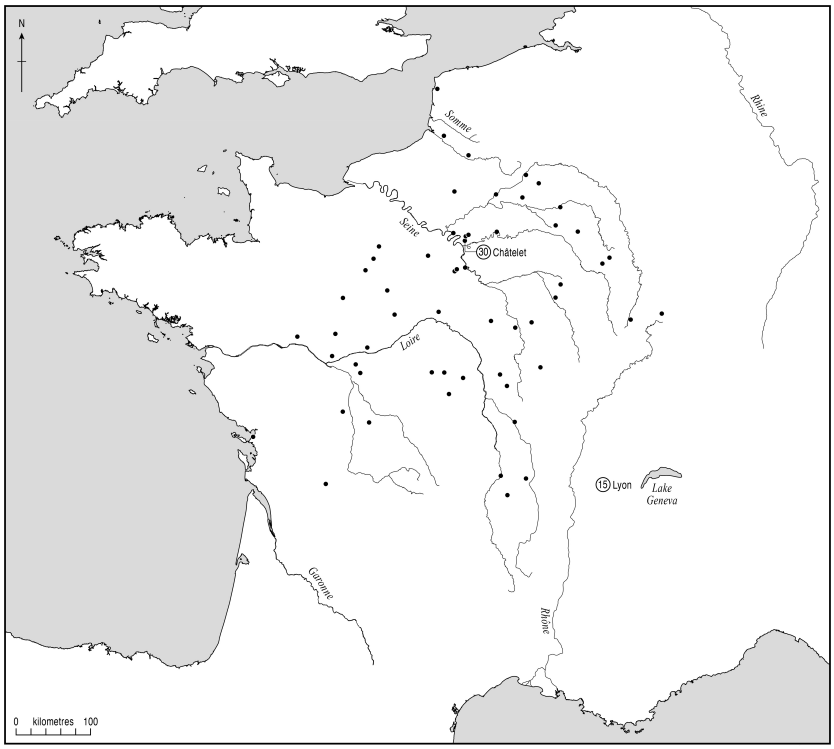

Figure 3. Geographic origin of appeals to the Parlement of Paris, 1540–1700, in sodomy cases involving males. Map by the Durham University Cartography Unit.

in their defense, nevertheless the small number of cases tried by the Parlement does not indicate any form of persecution against them related to sodomy, even in Lyon, where Italians had a significant presence.

The few cases in question make it difficult to give a clear explanation for why many cases from Lyon came on appeal to the Paris court in the sixteenth century. It is not surprising that Lyon, a major city in the jurisdiction of the Parlement, sent a large number of cases to Paris on appeal. Aside from four cases from La Rochelle (involving a total of seven men) and three cases from Tours, no other city in the entire jurisdiction of the court sent more than a couple of cases. Viewed in isolation, the fifteen sentences issued by Lyon courts suggest an especially punitive approach to prosecuting sodomy, since ten of these carried a death sentence in the first instance, of which the Parlement confirmed six. Nevertheless, this trend broadly conforms to the approach to sodomy cases taken in sixteenth-century criminal courts, as outlined in figure 2, and cannot therefore represent the practice of Lyon courts in general or across the whole period. It is also possible that further cases of sodomy tried in Lyon did not proceed to Paris on appeal, despite

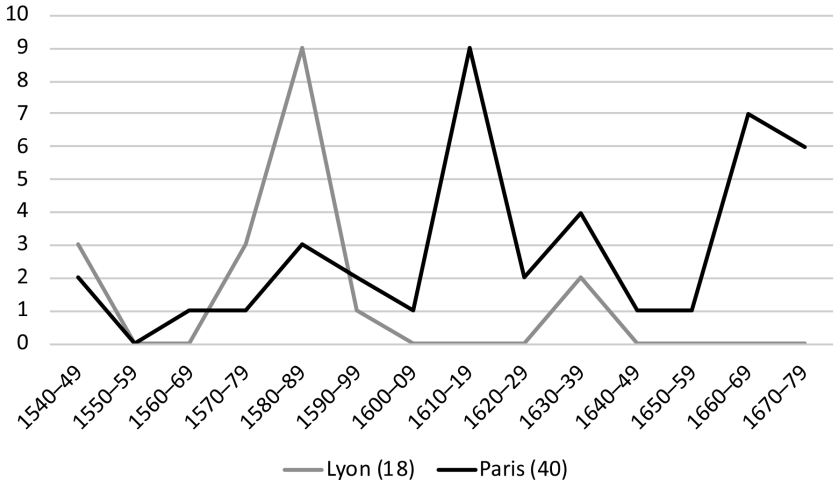

Figure 4. Individuals from all Lyon and Paris courts of the first instance appealing to the Parlement of Paris, 1540–1700, in sodomy cases involving males.

the already significant number of cases that did move between this major provincial city and the Parlement.

It is more straightforward to explain the number of appeals coming to Parisian courts from Lyon as a consequence of the close relationships between their respective officeholders.[48] The Châtelet sent to the Parlement the largest number of appeals in all criminal cases in most years during this period.[49] Some of the allegations of sodomy began within the Châtelet itself. Three sodomy cases include allegations that the accused made a homosexual advance toward other inmates in the Châtelet jail. In one of these cases, tried by the Parlement on appeal in 1676, the soldier Pierre Mercier denied the allegation, since he and another man "slept together on a hay bale with twenty people nearby and all the candles lit."[50] It is more difficult to explain the relative lack of appeals in sodomy cases from Parisian courts in the sixteenth century, before the Châtelet became the main source of appeals in the seventeenth century, but the loss of the Châtelet's archives for this period makes this subject impossible to investigate fully. In any case, it is clear that the Châtelet aligned fairly closely with the Parlement's jurisprudence in prosecuting sodomy, because

[48] On the cursus honorum that linked the Châtelet and the Parlement in the period with the highest number of appeals in sodomy cases, see Robert Descimon, "Élements pour une étude sociale des conseillers au Châtelet sous Henri IV (22 mars 1594–14 mai 1610)," in *Les officiers "moyens" à l'époque moderne: France, Angleterre, Espagne*, ed. Michel Cassan (Limoges: Presses universitaires de Limoges, 1998), 265.

[49] Hamscher, *The Royal Financial Administration*, 105; Bercé and Soman, "Les archives du Parlement," 270.

[50] AN X2A 989, 1626-05-07; AN X2A 994, 1631-03-12; AN X2A 1040, 1676-03-31.

eighteen of the thirty cases it sent to the Parlement on appeal carried death sentences, and the Parlement confirmed fourteen of these.[51]

Fulfilling their duty of oversight concerning subordinate courts, the magistrates of the Parlement often reduced the sentences for sodomy cases that came before its criminal chamber on appeal, particularly when the court judged the initial sentence excessively severe or based on insufficient proof. Most significantly, although 79 of the 131 cases of homosexual sodomy that came to the Parlement on appeal had resulted in a death sentence in the subordinate court, the Parlement's magistrates decided in favor of a death sentence in only 45 of them. The magistrates of the Parlement often announced in their verdicts that those convicted of sodomy would be "burned alive," but in practice they ordered the public executioner to strangle the condemned and set the body alight only after the person had died in order to guarantee the solemnity of the ritual and avoid disorderly proceedings on the scaffold.[52] Magistrates in the Parlement's criminal chamber instead made greater use than subordinate courts of an alternative punishment in sodomy cases such as banishment (ten sentences in the first instance and twenty-eight in the Parlement's final judgment, as shown in fig. 5) or the galleys (five sentences in the first instance and fifteen in the Parlement's final judgment). The Parlement's magistrates also made greater use than subordinate courts of whipping, incarceration, fines, and the *amende honorable*, which was a public penance. The Parlement often applied these additional penalties in combination with a punishment such as banishment, making it misleading to give statistics of their incidence across the full range of cases in the sample. Such punishments made sense for the magistrates, since these punishments could all be applied in cases where the magistrates could not obtain sufficient evidence from two credible eyewitnesses or a confession, either of which could have justified the death penalty in the jurisprudence of the court. In six cases tried on appeal throughout the period the Parlement increased the penalty recorded in the initial sentence and condemned the accused to death. These cases involved what was known as an *appel a minima*, meaning that the public prosecutor in the subordinate court had authorized an appeal to the Parlement with an explicit request for a more severe sentence. Notably, the Parlement issued a higher proportion of death sentences in sodomy cases than in trials for witchcraft: 45 out of 131 as opposed to 115 out of 1,123, or 34 percent in sodomy cases as opposed to 10 percent in witchcraft cases; but it is most important that there was an even smaller number of appeals and death sentences in total, which suggests a widespread reluctance to bring cases to court in the first instance.[53]

[51] Figure 4 shows appeals from all Parisian courts, including, for example, Sainte-Geneviève and Saint-Germain-des-Prés, but I am referring only to cases tried by the Châtelet itself here.

[52] Soman, "Sorcellerie," 197–201.

[53] Soman, "La décriminalisation," 189.

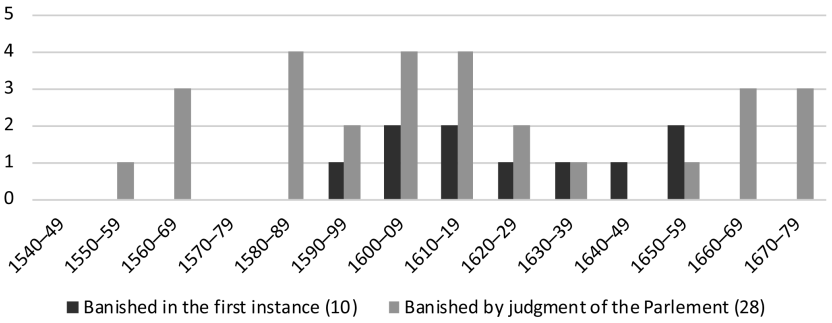

Figure 5. Banishment as a punishment in individuals' appeals to the Parlement of Paris, 1540–1700, in sodomy cases involving males.

Confessions came few and far between in sodomy cases tried by the Parlement. Often those who confessed in the court of the first instance later denied the allegation under interrogation by the Parlement on appeal, alleging procedural irregularities in the earlier interrogations such as the illegitimate use of torture. Many of the accused denied the charges outright, claimed to not understand its terms, or blamed witnesses who they claimed were corrupted by the prosecuting party or prejudiced against them out of enmity or spite. Others protested their good character and morals. Jean Gabriel insisted that "he had never thought of those sorts of villainies" and so appealed to the magistrates' disdain for acknowledging the details of what they called in this case a "great abomination."[54] So often did the accused resort to these standard denials that it is likely that prisoners shared advice in the Conciergerie while they awaited interrogation or that they relied on guidance from legal officials such as the advocates and solicitors who were sometimes employed in managing the cases of wealthy litigants. The uneven records of the interrogations—abundant in some cases, sparse in others—make it impossible to quantify defense strategies in any meaningful way, especially since some of the accused made more idiosyncratic defenses. Pierre Adveni, accused of abusing the young boys who slept in the dormitory he oversaw in the Parisian Hôpital de Bicêtre, claimed that "he did not believe it was a sin"; he might have been trying to blame his superior, Urbain Rodès, for setting a bad example, or he was perhaps displaying irreverent spite for the magistrates.[55] Another defendant, Antoine Martin, a solicitor for the Jesuits in Dauphiné who boasted that he hailed from "the best county in all of France" and when asked whether he was married replied colloquially, "Yes [*Ouyda*], more than sixty years," denied

[54] Bibliothèque nationale de France, manuscrits français (hereafter BnF MS fr.) 10951, fols. 13v–14r, 1609-11-24.

[55] AN X2B 1254, 1660-02-24.

the allegation of "abusing a young boy" and "putting his hand down the hose" of Pierre Benerre. As his interrogation continued, Martin resorted to increasingly bizarre defenses. "He said that he was carried by an angel into a wood, where he saw a unicorn and several other animals." Then "he said that he was carried away by his spirit and had a vision of the angel Gabriel on three occasions, including last night when the angel said he should warn his kin about the case." The Parlement's magistrates dismissed his wife's plea that the court take into account his "madness and folly," an outcome that perhaps reveals they believed his responses to be something of an act.[56]

Since confessions were rarely forthcoming, and direct eyewitness evidence of sexual encounters proved hard to elicit, early modern criminal courts that followed inquisitorial procedures sometimes had recourse to torture if they had sufficient indication that suggested it might turn a "half proof" into a "full proof," according to the terms of Roman law.[57] In the Parlement of Paris between 1540 and 1700, torture took place in forty sodomy cases involving males in a pattern that broadly followed the overall rise and fall of appeals across this period (see fig. 6). An example from La Rochelle of a case in which torture played a role demonstrates common problems with the witness evidence presented to the court, problems that interrogation under torture did little to resolve.[58] Witnesses from a tavern in this port city claimed to have seen "through the crack in the door" that the merchant Guillaume du Brois and the porter Henri Cochet were "pushing" on a bed, each having taken off their hose. This was weak evidence, based on an indirect view, and the accused denied it in their interrogations in the criminal chamber of the Parlement. Du Brois claimed that Cochet's hose only fell down because, "having drunk some wine, [Du Brois] pulled the cord of Cochet's purse, which made his hose fall down, but he picked them up again."[59] This was itself a risqué excuse that suggests by innuendo the very sexual act that Du Brois was denying, since purses in Renaissance iconography suggested a man's testicles, and the money they contained represented his semen, meaning that money spilling out of a purse could

[56] APP AB 27, 1625-05-01; AN X2A 988, 1625-05-12; AN X2A 223, 1625-05-12.

[57] For explanations of these legal principles, see Mirjan Damaška, *Evaluation of Evidence: Pre-modern and Modern Approaches* (Cambridge: Cambridge University Press, 2019), 69–79; and John H. Langbein, *Torture and the Law of Proof: Europe and England in the Ancien Régime* (Chicago: University of Chicago Press, 1977), 45–60.

[58] APP AB 17, 1604-08-01; AN X2A 967, 1604-11-24, 1604-11-26. The records for the interrogation under torture are missing.

[59] The terms recorded in the depositions are not entirely clear or consistent concerning this moment. On 24 November, Du Brois said that "apres avoir beu, luy tira le cordillon de sa bourse. Ses chausses tomberent et les releva." On 26 November, the magistrates pressed Cochet on this point when they told him that he said in an earlier interrogation in La Rochelle that "Broys luy porta la main a l'esguillette et luy feyt tomber le hault de chausse," to which Cochet replied that "il meyt la main sur la gibessiere, luy disant qu'il failloit qu'il payast."

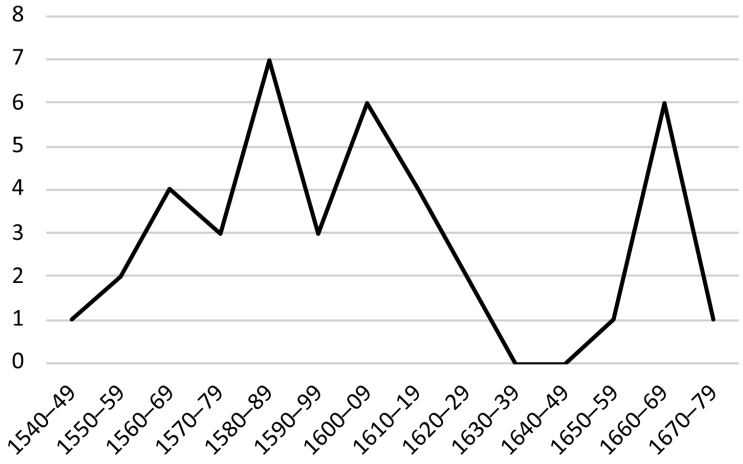

Figure 6. Use of torture against forty men appealing to the Parlement of Paris, 1540–1700, in sodomy cases involving males.

represent ejaculation.[60] Persistent denials led the court in La Rochelle to send the accused to Paris to undergo torture. Although the record of the interrogation under torture does not survive, Du Brois and Cochet apparently maintained their resolve and did not confess, since they were ultimately sent back to be released unless further information came to light that proved their guilt.

Material objects could also reinforce the magistrates' suspicion and could even lead to torture, but since these objects could only serve as circumstantial proof, they were not in themselves sufficient to justify a death sentence in any of these cases.[61] "Sullied" pairs of hose, shirts, or sheets gave the court evidence that the encounter in question had had a sexual dimension.[62] Surgeons' evidence proved more reliable, allowing the court to establish that penetration had occurred, while the absence of a surgeon's examination allowed the accused to defend themselves with greater assurance.[63] Even then, accused often attempted to deny charges that had been confirmed by a surgeon's report. Cosimo Mayorana tried to claim that even if the children he was alleged to have abused were found to have suffered anal injuries, these injuries might have been caused by "a bad constitution or corporal composition, or after going to the toilet," and so the surgeons' testimony

[60] Patricia Simons, *The Sex of Men in Premodern Europe: A Cultural History* (Cambridge: Cambridge University Press, 2011), 170–71.

[61] Damaška, *Evaluation of Evidence*, 31.

[62] See, for example, AN X2A 970, 1608-08-06; AN X2A 970, 1608-10-24.

[63] See, for example, AN X2A 962, 1599-11-15; AN Z2 3482, 1645-08-01.

could not prove that the children had been penetrated, let alone by him.[64] However compelling the material evidence seemed to be, it was sometimes challenged, and at most it could give grounds to proceed to torture.

Magistrates in the Parlement applied torture with relative restraint compared to officials in other European inquisitorial courts, and sodomy cases were no exception.[65] Among the twenty-five appeals that came to the Parlement with an initial sentence of torture in this period, four resulted in the death penalty. All four of those cases initially came to Paris as appeals made *a minima*, meaning that the *procureur du roi* in the subordinate court had recommended that a more severe penalty might be applied on appeal. This pattern suggests that the evidence against the accused in those cases had been strong before torture was applied.[66] And among the eleven further appeals that came to the Parlement with an initial sentence of death and had torture applied at some stage, none of them resulted in the death penalty in the final judgment. With only one exception, the records of the interrogations under torture that played a role in the four death sentences do not survive, and it is therefore impossible to tell whether torture was decisive in the court reaching its final judgment. Of the four surviving interrogations under torture for sodomy, Alexandre Jouan, Jean Mathieu, and Charles Bourgoing all denied the charges despite being put on the rack. The valet Bourgoing "cried out" and yet "said nothing" in response to the questions, and when put on the mattress to recover he retorted, "Do what you want with me."[67] The lace-maker Jean Mathieu maintained, "I would not know what else to say."[68] The priest Jean-Baptiste de Statio proved the exception. He denied the accusation of harming young boys under his charge, but when put on the rack "he swore" and then said "yes" when asked "if he did not commit several impurities" and whether "he touched the private parts" of the young boy under his charge. He later elaborated on this confession following the torture and confirmed it during his final interrogation in the criminal chamber. De Statio blamed his crime on "the devil, who tempted him," and his original sentence of nine years in the galleys was increased to the death penalty in the final judgment.[69]

All of these legal factors help to explain why the Parlement tried so few cases on appeal compared to the courts of southern Europe in this same period. Historians who have studied the criminal archives of Renaissance Italy have found both a larger number of sodomy cases than the Parlement

[64] AN Z2 3459, 1635-10-18.

[65] Soman, "La justice criminelle," 38–39.

[66] The final judgments, which give the relevant information about appeals, can be found in AN X2B 144, 1586-01-23 (Nicolas Dadon); AN X2B 186, 1598-12-19 (Adrien Lemot); AN X2A 962, 1599-11-15 (Annet Mayosse); and X2B 546, 1654-03-05 (Jean-Baptiste de Statio).

[67] AN X2B 1331, 1626-06-26.

[68] AN X2B 1330, 1587-11-21.

[69] AN X2B 1332, 1654-05-30.

tried on appeal and a different legal framework for judging them. Statutes and customary practice in cities such as Florence, Lucca, and Venice weighed the punishments for sodomy according to sex role, age, and past offenses, while Tuscan cities in particular often imposed financial rather than corporal penalties unless the case involved a serious repeat offender.[70] Lighter penalties, Italian cities hoped, would encourage denunciations. This strategy worked particularly effectively in Florence, where the Ufficiali di Notte (Night Officers) encouraged secret denunciations that would not raise suspicion concerning the person passing information to the court. This procedure helped to ensure that by the age of thirty, around one in two males in Florence had some dealing with the Night Officers as either a witness, the accused, or the accuser in an allegation of sodomy in the late fifteenth century, a number that increased to two in three males by the age of forty.[71] By contrast, the Tribunale Criminale del Governatore (Court of the Governor) in Rome did not apply the same gradated punishments as courts in other cities and tried a far smaller number of cases. Prosecutions in Rome prominently included instances of gang rape denounced by the victims' parents.[72] The jurisprudence of the Paris Parlement aligns more closely with the practice of criminal courts in England and the Holy Roman Empire, which also punished sodomy by death but where historians have found very few cases. Nevertheless, none of the courts in these regions are strictly comparable with the broad appellate jurisdiction of the Parlement.[73]

Overall, the legal difficulties posed by the inquisitorial procedures and appellate structure of French courts made it especially difficult to prosecute sodomy. When credible witness evidence or a confession was not forthcoming, and in a context in which magistrates feared for their souls if they applied the death sentence without sufficient proof,[74] the Parlement instead often imposed a complex range of punishments and frequently

[70] For evidence from Lucca, see Umberto Grassi, *L'offizio sopra l'onestà: Il controllo della sodomia nella Lucca del Cinquecento* (Milan: Mimesis, 2014), 41–42. On sodomy prosecutions in Venice, see Guido Ruggiero, *The Boundaries of Eros: Sex Crime and Sexuality in Renaissance Venice* (New York: Oxford University Press, 1985), 121–25, 128; and Gabriele Martini, *Il "vitio nefando" nella Venezia del Seicento: Aspetti sociali e repressione di giustizia* (Rome: Jouvence, 1988), 62. For evidence from Florence, see Rocke, *Forbidden Friendships*, 23–25, 51–54, 60–64, 237–42.

[71] Rocke, *Forbidden Friendships*, 115.

[72] For overviews of sodomy prosecutions in Rome, see Marina Baldassarri, *Bande giovanili e "vizio nefando": Violenza e sessualità nella Roma barocca* (Rome: Viella, 2005), 12–15, and especially 51–88 on youth gangs. For a case study of one notorious Roman trial and its European significance, see Gary Ferguson, *Same-Sex Marriage in Renaissance Rome: Sexuality, Identity, and Community in Early Modern Europe* (Ithaca, NY: Cornell University Press, 2016).

[73] For a discussion of practice in England, see Martin Ingram, *Carnal Knowledge: Regulating Sex in England, 1470–1600* (Cambridge: Cambridge University Press, 2017), 33–38; and Bray, *Homosexuality in Renaissance England*, 71–75. On the Holy Roman Empire, see Puff, *Sodomy in Reformation Germany and Switzerland*, 29–30, 183–89.

[74] Damaška, *Evaluation of Evidence*, 40.

revised sentences from subordinate courts. Because French courts lacked the structured sentences applied by Italian courts, the Parlement instead proceeded with discretion, issuing death sentences in 45 out of 131 cases despite the fierce public rhetoric of the courts that affirmed its commitment to prosecute sodomy with severe, exemplary justice.

Sexual Hierarchies and Judicial Discretion

The punishment for sodomy applied in sixteenth- and seventeenth-century France and stated most clearly in the Old Testament ("If a man also lie with mankind, as he lieth with a woman, both of them have committed an abomination: they shall surely be put to death; their blood shall be upon them" [Leviticus 20:13]) structured not only the jurisprudence of the Parlement of Paris but also the defense strategies of those whose cases came before the court on appeal. Because both people involved in same-sex activity risked death according to jurisprudence concerning sodomy practiced in France, in order to escape punishment the person in the passive role in the sex act typically insisted that they were the victim of sexual abuse, while they accused the person found performing the active role of being their abuser. This section explains how the magistrates who managed appeals in sodomy cases encountered difficulties in discerning not only whether an act of sodomy had occurred but also the character of the sexual encounter in question. Questions of force, consent, and both sexual and social hierarchies had significant consequences for the magistrates' deliberations over the final judgment.

Witnesses frequently cited a discrepancy in age and strength in a way that reinforced their claim to be the younger victim of an older man who had sexually abused them. Among the twenty-three sodomy cases tried before the Parlement of Paris where the ages of the persons in the passive position are recorded, six cases recorded them as age twenty and above, fourteen cases recorded them as between ten and twenty, and three cases recorded them as under the age of ten. In the 110 cases where the status of the person in the passive position is evoked but no age is given, 43 persons are described as "children," "young children," or "boys" (or "choirboys"), while other descriptions refer to social rank for which it is impossible to discern age, or they simply refer to "men" (three occurrences). Crucially, in no case in the entire sample is the person in the active sexual position clearly identified as being younger than the person in the passive position. Youth suggested weakness and supported the defensive strategies of those who presented themselves as being forced into sex.[75] Moreover, in the sixty-one cases when the age of those accused of being in the active sexual position

[75] These themes are particularly significant in the interrogations of Pierre de Logerie and the young men who traveled from Morigny to Paris to testify against him in the criminal chamber of the Parlement. See AN X2A 922, 1561-10-07.

is recorded, the majority of the accused are named as adults, reinforcing the point that the witnesses in sodomy cases presented the accused as an older man who committed sexual abuse: thirteen of the accused were between ten and twenty, sixteen were between twenty and thirty, seven were between thirty and forty, another seven were between forty and fifty, eight were between fifty and sixty, and ten were over sixty years of age. This is an admittedly incomplete picture, and the surviving evidence is not sufficiently detailed to give a systematic representation of the age hierarchy of sodomy cases in these years. Nevertheless, it is clear that the witnesses in sodomy cases involving males tried on appeal by the Parlement tended to invoke age hierarchies in discussing the sexual acts prosecuted as sodomy, and they did so in ways that reinforced the impression that these cases concerned older men who committed acts of sexual aggression against a minor. In this sense, sexual hierarchies shaped the terms of the allegations and defense strategies used in court because they structured the discussion around terms of force and submission. The person in the passive position who claimed they were forced into sex might hope to avoid punishment, while anyone who admitted to being a consenting passive partner risked the death penalty.

All of this evidence suggests that hierarchies of age and status had significant implications for the courtroom strategies of magistrates, witnesses, and defendants in sodomy cases tried on appeal by the Parlement of Paris. Statistical analysis of the social status of those accused of sodomy is a useful way to more precisely establish the meaning of those hierarchies.[76] It demonstrates that the accused were broadly representative of ancien régime society (see figs. 7 and 8). The evidence presented here significantly expands historians' focus beyond elite members of the royal court who have drawn the most attention from historians of homosexuality in France.[77] Sodomy cases involving artisans, laborers, merchants, and servants appear more frequently in the sixteenth century, when appeals in sodomy cases were more numerous from across the Parlement's jurisdiction. Clerics and schoolmasters predominate later in the 1650s, 1660s, and 1670s, when a smaller number of such appeals clustered around cases that generated some degree of public outrage. The sexual scandals that led to allegations of sodomy against the royal favorites at Henri III's court or the circle around Louis XIV's brother Philippe d'Orléans had nothing to do with the criminal justice of the Parlement and were instead tried in the court of opinion through escalating scandals that were driven by gossip, clandestine

[76] The evidence regarding the status of plaintiffs—*parties civiles*—is too uneven to permit statistical analysis and is only recorded in the final judgments of eleven cases, of which eight give their social status: two notables, one cleric, one schoolmaster, two bourgeois, two merchants (in the same case), and two widows (also in the same case).

[77] See Robert Oresko, "Homosexuality and the Court Elites of Early Modern France," *Journal of Homosexuality* 16, nos. 1-2 (1989): 110.

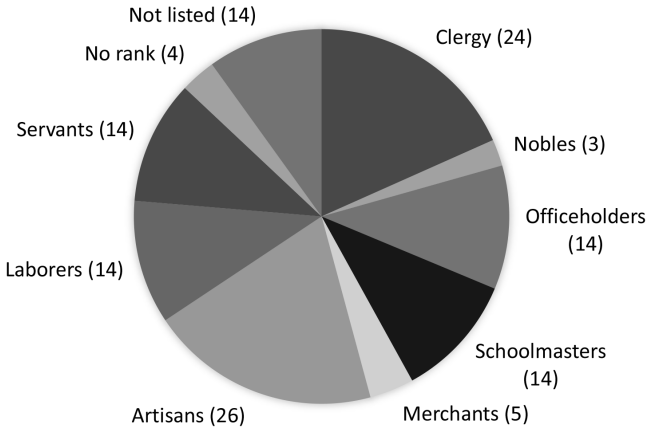

Figure 7. Social status of men accused of sodomy in the Parlement of Paris, 1540–1700.

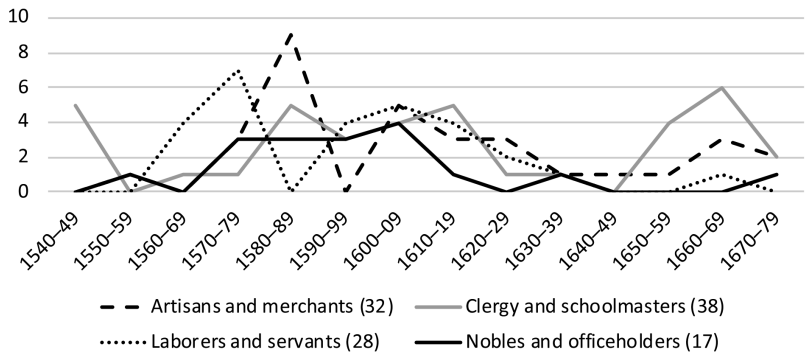

Figure 8. Social status of men accused of sodomy in the Parlement of Paris, 1540–1700, showing change over time.

publications, and sometimes vengeful memoirs, which literary scholars have studied in detail.[78]

Men who held positions of authority over children and young people, especially the clergy and schoolmasters, are overrepresented among

[78] On Henri III, see Katherine Crawford, *The Sexual Culture of the French Renaissance* (Cambridge: Cambridge University Press, 2010), 215–30; Gary Ferguson, *Queer (Re)Readings in the French Renaissance: Homosexuality, Gender, Culture* (Aldershot: Ashgate, 2008), 147–90. On Philippe d'Orléans, see Lewis Carl Seifert, *Manning the Margins: Masculinity and Writing in Seventeenth-Century France* (Ann Arbor: University of Michigan Press, 2009), 161–62; Joseph Harris, *Hidden Agendas: Cross-Dressing in 17th-Century France* (Tübingen: Gunter Narr Verlag, 2005), 58–59.

sodomy cases tried by the Parlement relative to their presence in ancien régime society. Because of their privileged status the clergy were tried by the bishops' ecclesiastical courts, known as *officialités*, although in cases deemed to constitute a public scandal, they were sometimes prosecuted by secular courts instead.[79] The relationship between secular and ecclesiastical jurisdictions demonstrates the common purpose shared between these institutions, a relationship exemplified by cases of sodomy that the terms of the Parlement's judgments defined as both a "sin" and a "crime." Yet the clerics' use of ecclesiastical courts demonstrates how they could use their privileged status to manipulate the judicial hierarchies of the ancien régime in order to evade serious punishment. Thirteen of the sodomy cases tried in the Parlement in the period covered by this article came on appeal from an *officialité*, although there were also other cases that involved an *officialité* at various stages, and in total there were twenty-four clerics among these cases who were accused in sodomy cases before the Parlement (17 percent of the accused). For these clerics, the relationship between secular and ecclesiastical justice might have been a matter of life and death. Each jurisdiction offered different procedures and structures of penalties, with the *officialité* capable of issuing financial penalties or depriving clerics of their ecclesiastical office. Clerics tried by an *officialité* could appeal to a court further up the ecclesiastical hierarchy in the procedure known as the *appel simple*, or they could appeal beyond the ecclesiastical hierarchy to a secular court such as a *parlement* through the procedure known as the *appel comme d'abus*. Clerics risked severe corporal or capital punishment only in secular courts, and so it is perhaps for this reason that among the full range of cases tried by the diocese of Beauvais at least, the *appel simple* was the much more common recourse.[80] Of the thirteen sodomy cases that had come from *officialité* courts and were then tried on appeal by the Parlement, four were given a death sentence at some stage of the appeal process, and all of these death sentences were then overturned in the Parlement.[81] These cases resulted in one verdict of service in the galleys and one of banishment, while the others were eventually released or sent back to the ecclesiastical court of the *officialité*. From this evidence, it seems that those cases that came to the Parlement on appeal from ecclesiastical justice avoided the more serious sentences that faced appellants from secular courts, a finding that implies some degree of protected status for clerics even within the secular system.

[79] James R. Farr, *Authority and Sexuality in Early Modern Burgundy, 1550–1730* (New York: Oxford University Press, 1995), 66.

[80] Kevin Saule, *Le curé au prétoire: La délinquance ecclésiastique face à l'officialité au XVII^e siècle* (Bayonne: Fondation Varenne, 2014), 425–69.

[81] For registers of incarceration that summarize key information about the cases, see APP AB 15, 1601-09-29 (Pierre Dupuys); APP AB 52, 1664-11-13 (Mathurin Douabain), APP AB 54, 1667-10-25 (René-Joseph d'Aubeterre); and APP AB 54, 1668-03-06 (Charles-Hugues Mathuras).

Clerics whose cases were tried in the secular courts could still mobilize their privileged status to achieve a favorable outcome. The complexity of the relationship between ecclesiastical and secular justice in this sense is best illustrated with the case of Louis Viau, a seventy-two-year-old canon accused of counterfeiting money, "a shameful way of life," and "the sin against nature" in the church of Notre-Dame in Loches. Viau's case was sent to the Parlement in August 1587 following a hearing that was brought before the Paris *officialité* at the request of the prior of Notre-Dame-de-Loches, Antoine Isoré, who acted as plaintiff. Viau claimed that Prior Isoré had plotted a false accusation against him, calling him "bugger" and "apostate." By May 1588 Viau was protesting to the Parlement about his treatment in the jail of the Conciergerie, where he had barely enough to live on and was threatened by the guards. In June 1588 he was transferred to the jail of For-l'Évêque in Paris. Prior Isoré had even appealed over the head of the Parlement to the king's privy council and obtained a judgment condemning Viau. But the case continued and was sent to the *officialité* in Sens, despite the Parlement's warning that this was "a way to make proceedings last forever and to consume the supplicant in legal fees." The case was eventually abandoned by the *officialité* of Sens in August 1589, since Viau had already spent more than two years in prison, and the plaintiff, Prior Isoré, had died.[82] Viau's case provides an extreme example of the litigiousness of early modern society, demonstrating how appellants were able to pursue their interests by means of extensive formal court procedures. He manipulated the rival jurisdictions of the Parlement and the *officialité* to avoid either a penal sentence (issued by the Parlement) or losing his clerical privileges (through a decision of the *officialité*), although the cost in legal fees and energy must have been immense for this elderly canon.

Choirmasters and schoolmasters in this period occupied positions of power that gave them the institutional means to cover up allegations of sexual abuse against them and to challenge their accusers.[83] A particularly scandalous case in 1586 involved the eleven-year-old boy Nicolas Tuault, whose parents overcame these institutional difficulties to bring a prosecution in the Châtelet against their son's teacher, Nicolas Dadon, a regent in the Collège du Cardinal Lemoine at the University of Paris.[84] Boys routinely slept two or four to a bed in Dadon's chamber. Dadon's servant, Florimond Havart, told the court that he knew Tuault went to sleep in Dadon's bed

[82] AN X2A 955, 1587-09-30; AN X2B 157, 1588-05-31; AN X2B 158, 1588-08-20; AN X2B 163, 1589-08-11.

[83] For comparable cases in northern and southern Europe in this period, see Karen Liebreich, *Fallen Order: Intrigue, Heresy, and Scandal in the Rome of Galileo and Caravaggio* (New York: Atlantic Books, 2004); Martin Ingram, "Child Sexual Abuse in Early Modern England," in *Negotiating Power in Early Modern Society: Order, Hierarchy, and Subordination in Britain and Ireland*, ed. M. J. Braddick and John Walter (Cambridge: Cambridge University Press, 2001).

[84] AN X2A 954, 1586-01-23, 1586-01-27, 1586-02-01; AN X2B 144, 1586-02-01.

"several times," although he "did not see" whether any abuse took place. The key accusations against Dadon focused on a period of a few days when Tuault fell ill. Tuault accused Dadon of luring him to sleep in his bed, where Dadon apparently anally penetrated Tuault. In the words reported by Tuault's fellow student Isaac Viel, "Monsieur Dadon did it to him [Tuault] from behind." Dadon's defense was that "several children had gone to bed with him, and he had never lapsed in this way," while Tuault had only "gone to bed with the servant," and this only "on the instruction of Tuault's uncle." According to Dadon, Tuault's uncle "spoke with the servant for two and a half hours to discuss it." Yet the surgeon's examination confirmed that Tuault had been "corrupted." This evidence, alongside the testimony of Tuault, the servant, and fellow students, proved conclusive for the Parlement. Its magistrates increased Dadon's sentence of torture issued by the Châtelet to a death sentence after the *procureur du roi* and the plaintiff requested that the sentence be increased in severity. In this case, the Parlement denied Dadon the chance to appeal to an ecclesiastical court. Perhaps in part because of Dadon's status and alleged chicanery—according to the diarist Pierre de L'Estoile, he had attempted to use his "many friends" among the Catholic League to escape the verdict—the case drew the attention of contemporary commentators.[85] The Parlement's judgment was also published in Jean Papon's collection of notable verdicts.[86] The case thereby had a significant legacy as a notable verdict against a sex abuser, one that confirmed the public understanding that the customary judgment for those condemned of sodomy was death, even if Dadon's punishment was actually exceptional.

Very few of the sodomy cases tried by the Parlement involved nobles. A significant exception is the complex case of Louis Bouchard, baron d'Aubeterre, who was entrapped by confidence tricksters, then arrested in flagrante by the archers of the Paris Châtelet in the Bois de Boulogne, and later banished from the kingdom.[87] Guillaume Elliot claimed he had met Aubeterre in the parish of Saint-Germain l'Auxerrois, where Aubeterre told him, "I can tell you the most pleasant story in the world," and that he had been to "Italy, Barbary, Spain, and other places." Elliot told the magistrates in the criminal chamber that he thought Aubeterre was Italian when Aubeterre asked him "if he would like to do it." Claude Crosnier, "who played tennis with gentlemen to win money," confirmed Elliot's story. Crosnier claimed that Aubeterre had solicited him for sex by offering him a purse of 500 ecus and assuring him that "he would never want for anything." After these initial encounters, Crosnier and Elliot laid a trap for the

[85] Pierre de L'Estoile, *Registre-journal du règne de Henri III*, ed. Madeleine Lazard and Gilbert Schrenck, 6 vols. (Geneva: Droz, 1992–2003), 5:174–75.

[86] Jean Papon, *Receuil d'arrests notables des cours souveraines de France* (Paris: Robert Fouet, 1621), 1258–59.

[87] APP AB 20, 1611-06-16; AN X2A 973, 1611-06-21; AN X2A 178, 1611-06-23.

baron d'Aubeterre. They arranged for Crosnier to meet Aubeterre in the Bois de Boulogne, on the outskirts of Paris, but when Aubeterre "took off his hose and went to put himself upon this young man [Crosnier]," the archers of the Paris Châtelet came out of the woods to apprehend Aubeterre, accompanied by Elliot, who was hiding with them. The archers "surprised the baron, who tried to pull up his hose, and said to Elliot, monsieur, can you save my life?" With the archers as eyewitnesses to the act, Crosnier and Elliot seemed to have prepared an incontrovertible case.

Yet Aubeterre disputed these facts and instigated a counter-prosecution for false allegations. In his testimony, Aubeterre explained how "a common bawd" (Elliot) had entrapped him in the church of Saint-Germain l'Auxerrois and offered to procure him "a beautiful woman" (who turned out to be Crosnier). The next day, when they met on a bridge, Elliot repeated the offer, adding, "Monsieur, if you like, I can make her dress as a man." When he defended his case, Aubeterre proclaimed his honor as a nobleman "known to many messieurs in the Court." Aubeterre also protested his vulnerability, arguing that his enemies "incited ten thousand lawsuits against him and one hundred death threats." Less convincingly, perhaps, Aubeterre claimed that he only went to the Bois de Boulogne "to rest in the shade" and not to meet Crosnier for sex. In this case, Aubeterre, Crosnier, and Elliot were all punished to different degrees, perhaps because of allegations of entrapment, or perhaps because the nature of the case against Aubeterre required Crosnier and Elliot to admit that they had proposed sexual relations with Aubeterre. Nevertheless, the verdicts were very different: Aubeterre's initial death sentence was reduced to nine years' banishment from the kingdom and a fine of 2,000 livres, and Crosnier's sentence of a year of banishment was reduced to a verbal chastisement alongside Elliot by the magistrates in the criminal chamber.[88] Although Crosnier and Elliot secured Aubeterre's conviction for sodomy by entrapping him before the Paris archers, they also implicated themselves in his affair. Their case reveals how bringing an allegation of sodomy raised an array of possible complications that otherwise made parties reluctant to pursue their disputes through the criminal justice system.

The two other nobles tried by the Parlement for sodomy had more success than Aubeterre in avoiding punishment. Charles Bourgoing, who served in the household of Charles de Gonzague, sieur de Mayenne, was condemned to death by the Paris Châtelet for forcing a page boy to have sex with him and having sex with other men in prison, but he appealed to the Parlement and ultimately was released unless further information came to light that proved his guilt. It is not clear from the surviving documents whether his patrons had any influence over the judgment, but Bourgoing told the court that Charles de Gonzague, sieur de Nevers and father to

[88] AN X2A 178, 1611-06-23. After the judgment Aubeterre arranged for his wife, Marie de Breche, to manage his affairs in his absence. See AN MC XXIX 163, 1611-07-02.

his master, "wanted to save him and came to defend his case in Paris."[89] Charles de Goulart, a minor nobleman from Étampes, appealed to the Parlement to reverse his sentence of torture for having forced his pages to have sex with him, but, like Gonzague, he was also released unless further information came to light that proved his guilt and was fined 200 livres.[90] It is a remarkable demonstration of the difficulty of prosecuting sodomy that, despite the nobility's reputation for sexual promiscuity, and regardless of the financial reward for a court if it secured a prosecution liable to produce a significant fine or the seizure of goods, the Parlement only tried one provincial baron and two squires who had appealed their sentences for sodomy.

If noblemen avoided formal allegations of sodomy because of their privileged status, sodomy cases tried by the Parlement seem to have hardly involved women at all either as victims or as accused. In some instances men were accused of crimes related to sodomy that concerned the sexual abuse of both boys and girls. Claude Guyot, a Parisian butcher, was condemned by the Parlement to nine years in the galleys after he was accused of "having committed several dirty acts with young girls and boys, near the Pont Neuf, on the water's edge."[91] A significant but rare case of the anal rape of a woman that involved allegations of sodomy is the complex trial of Jean de Grassy, who was accused of raping his servant Denise Louet. The final judgment in this case labeled the allegation as "the crime of sodomy," while the interrogations under torture made clear that "sodomy" in this instance referred to anal rape, since "he had carnal knowledge of her against nature" and had "corrupted her from behind."[92] In similar terms, the prostitute Jacqueline Trente was condemned to death by the Parlement in July 1548 "for having abused her body against nature with an Italian and also having given over to him another prostitute, whom he also abused." This sexual act is not defined in the case files, but in light of Grassy's case, it might be suggested that she too had been anally penetrated.[93]

Across early modern Europe, records describing criminal cases involving sexual acts between women are even scarcer than those between men.[94] The only lengthy case involving sexual acts between women in the Parlement's records of this period nevertheless demonstrates the same difficulties of

[89] AN X2A 989, 1626-06-19.

[90] APP AB 18, 1608-10-16; AN X2A 970, 1608-10-24; AN X2B 244, 1608-10-24.

[91] APP AP 53, 1666-10-23; AN X2A 1032, 1666-12-30; AN X2A 346, 1666-12-30.

[92] AN X2B 1330, 1603-03-03; AN X2A 156, 1603-03-08. The interrogations in this case can be found in AN X2B 1179, 1602-10-22 and 1602-12-19.

[93] AN X2A 104, 1548-07-21; AN X2A 908, 1548-07-21.

[94] For rare examples, see Valerie Traub, *The Renaissance of Lesbianism in Early Modern England* (Cambridge: Cambridge University Press, 2002), 44; Puff, *Sodomy in Reformation Germany and Switzerland*, 31–35. For a case study based on ecclesiastical records, see Judith C. Brown, *Immodest Acts: The Life of a Lesbian Nun in Renaissance Italy* (New York: Oxford University Press, 1986).

establishing sufficient proof as in sodomy cases involving men. The case of Claude de L'Espine, known as La Nonette, does not involve crimes strictly labeled as sodomy and the judgment concerns "witchcraft, disguising herself with men's clothes, and other notorious crimes mentioned in the case files."[95] The magistrates in the criminal chamber asked L'Espine "whether she had carnal knowledge of the devil," and she replied that "the only knowledge she has comes from God." Yet the suggestion of same-sex relations dominated the interrogations even if in the final judgment these suggestions seem to have formed part of the court's specific charge of witchcraft and general allegations of immorality. L'Espine arrived at the Parlement following an earlier incarceration in the Paris Châtelet, but the allegations against her concerned encounters in Arcueil, a few miles south of the Paris city walls. The seamstress Jeanne Grosse denied "having carnal commerce" (*not* committing sodomy) with L'Espine. Grosse instead accused L'Espine of "wearing men's clothes when she was begging for alms" and noted that "when she was teaching as a school mistress she was dressed as a man," which had caused such a scandal that "everyone wanted to see her." The witness Marie Boutin claimed that she saw L'Espine and a girl named Clermont "lying on top of one another" and "fooling around like men do." L'Espine denied going to bed with Clermont even though witnesses claimed they saw them engaging in "insalubrious games together" and that they had heard L'Espine exclaim, "If they only knew what we get up to." Instead, L'Espine said she had only once shared a bed with another woman, Pierrette Martin, but L'Espine denied the allegation of "playing with her as if she had been a man." During all of these encounters L'Espine's own husband was away at Charenton, and this apparently suggested to the witnesses and the magistrates that she acted without constraint. She had even allegedly given herself over to "an understanding with the devil." Her cross-dressing was cited as public evidence that she was transgressing established gender boundaries.[96] Yet the witnesses' testimony also suggested that women's responses to L'Espine's encounters in Arcueil drove the accusations against her. She had a "bad reputation" there for bringing women, from a seamstress to a wet nurse, into disrepute, and these women then had to defend themselves against accusations that they had shared L'Espine's bed. L'Espine's punishment was to be whipped in the courtyard of the Conciergerie and then banished from the jurisdiction of the Parlement. A bad reputation might have been enough to bring a case against L'Espine and to have her dismissed from her village, but it could not provide sufficient evidence to condemn her to death. Moreover, while same-sex relations between women might be condemned in court as

[95] APP AB 10, 1588-11-23; AN X2B 160, 1588-11-18, 1588-12-12; AN X2A 956, 1590-02-06; AN X2B 164, 1590-03-08.

[96] For further instances of cross-dressing in this period, see Sylvie Steinberg, *La confusion des sexes: Le travestissement de la Renaissance à la Révolution* (Paris: Fayard, 2001), 27–32.

immoral "carnal commerce," in this case the term did not serve as a direct synonym for sodomy.

What Justice Is This?

By the end of the seventeenth century, the number of sodomy cases tried on appeal by the Parlement dwindled to the extent that the court almost ceased judging sodomy cases altogether. How then could historians continue to insist for centuries that early modern justice was particularly severe in prosecuting sodomy? Responses to the affair of Jacques Chausson, who was known as Des Estangs and who was executed in Paris in December 1661, help to explain later misinterpretations of sodomy prosecution in the Parlement and its subordinate courts. This affair became the most notorious sodomy case tried by the Parlement in the seventeenth century. Its fame only grew into the eighteenth century because it solidified the reputation of the court as practicing a severe system of justice that targeted people on the margins of society and turned a blind eye to elite immorality. Chausson was tried first in the Paris Châtelet and then appealed to the Parlement. The magistrates in the Parlement's criminal chamber told him that he was accused of "impieties, prostituting young boys, and committing the sin of sodomy" by having sex with Jacques Paumier, who was known as Fabri. Chausson claimed in response that "only his friends came to see him," that he did not meddle in prostitution, and that "he did not sing impious songs." Paumier insisted that "he ate with de L'Estaing only once and slept with him one night," but when he was asked "whether he committed the sin of sodomy," he replied that "he does not know what that is." The record of Chausson's interrogation in the Parlement's criminal chamber is brief, yet the very brevity of the proceedings suggests that the court had little trouble reaching its decision on the basis of the case files compiled during the initial investigations in the Châtelet. The Parlement confirmed the death sentences given to Chausson and Paumier by the Châtelet in the first instance.[97]

The rather limited information provided in the records of these interrogations provides no explanation for the interest that Chausson's case would garner after the judgment. Investigations into the Chausson affair led, at least indirectly, to another sodomy prosecution by the Parlement in the 1660s. René Godefroy, a priest who had previously been tried for sodomy in 1652, was named in Chausson's case files, and in his second trial in 1667 he was condemned to nine years' galley service as a recidivist.[98] "Chausson" also became a byword for illicit sexual relations in late seventeenth-century Paris, enough to be mentioned in a sodomy case that

[97] APP AB 48, 1661-12-10; AN X2A 1027, 1661-12-29; AN X2B 324, 1661-12-29.

[98] APP AB 41, 1652-01-20; AN X2A 1017, 1652-02-01; AN X2A 291, 1652-02-03; AN Z1-0 132, 1666-06-19; AN X2A 1032, 1667-08-02.

was tried in the Châtelet in 1666 when a witness denounced the seventy-year-old Jean Perrin, known as Grisly, as a "sodomist," an "atheist," and one of "those whom they accused like the Chaussons." In this instance, the magistrates in the Parlement invoked Chausson's name in order to allege that Perrin was involved in the same activity of soliciting male prostitutes.[99] Most significantly, the poet Claude Le Petit made Chausson the subject of a sonnet that he claimed "immortalized" the "unfortunate Chausson" as a martyr for all of Le Petit's "friends" among his readers.[100] The Chausson affair became a subject of social satire, as well as a source of sexual titillation and admiration, one whose reputation would grow in the eighteenth century as critics of severe criminal justice, most notably Voltaire, cited it as an example of the excessive zeal of France's criminal courts.[101] Chausson's affair gained even more resonance for critics of royal justice because, in the same week as Chausson's execution, Louis XIV granted the Prince de Condé's alleged lover, Guillaume de Guitaut, the *cordon bleu* (blue ribbon) of the chivalric Ordre du Saint-Esprit (Order of the Holy Spirit). As a popular song performed on the Pont Neuf in Paris put it, "Great Gods! What justice is this? Chausson will perish in the flames, while Guitaut by the same vice has earned the *cordon bleu*."[102] Chausson's punishment made sense to eighteenth-century critics accustomed to denouncing an increasingly invasive form of criminal justice, especially in Paris. By the time Voltaire began to invoke Chausson's affair in a variety of literary works from the 1730s to the 1770s, the *lieutenance de police* had initiated a wide-ranging moral campaign that involved a serious investigation into sodomitical activity in Paris and broke decisively with the Parlement's jurisprudence by actively investigating cases rather than judging them on appeal from subordinate courts.[103]

Overall, the Chausson affair and its legacy demonstrate the central argument of this article, that the severe image of criminal justice presented by the Parlement to French subjects—of a court that hanged and burned sodomites as punishment for their apparently unmentionable crime—concealed the

[99] Jeffrey Merrick, "Chaussons in the Streets: Sodomy in Seventeenth-Century Paris," *Journal of the History of Sexuality* 15, no. 2 (2006): 175–76.

[100] Nicholas Hammond, *The Powers of Sound and Song in Early Modern Paris* (University Park: Pennsylvania State University Press, 2019), 114–15.

[101] Hammond, 123–24. A manuscript allegedly presenting Chausson's interrogation in the Châtelet—BnF MS fr. 10969, fols. 649–720, published in Ludovico Hernandez, *Les procès de sodomie aux XVI^e^, XVII^e^ et XVIII^e^ siècles: Publiés d'après les documents judiciaires conservés à la Bibliothèque nationale* (Paris, 1920), 60–86—is shown to be substantially inaccurate and reinterpreted as an eighteenth-century erotic fiction in Soman, "Pathologie historique," 149–53.

[102] BnF MS fr. 12638, "Chansonnier Maurepas," vol. 23, fol. 369, quoted and analyzed in Hammond, *The Powers of Sound and Song*, 93–168, gives a full account of the Chausson affair. The original words of the song are "Grands Dieux! Quelle est vôtre justice? / Chausson va périr par le feu; / Et Guitaut par le même vice / A mérité le Cordon bleu."

[103] Merrick, *Sodomites*, 7–130.

complex problems facing the court's jurisprudence in cases tried on appeal in its criminal chamber. The Parlement's jurisprudence was characterized by an acute sensitivity to the problems involved in establishing sufficient proof to condemn anyone to death for a crime as difficult to articulate as sodomy: credible eyewitnesses were scarce for acts that generally took place in secret, and witnesses were reluctant to come forward because they feared that they too could be charged with sodomy and receive a death sentence themselves. These difficulties played a major part in ensuring that only a small number of sodomy cases came to the Parlement on appeal from subordinate courts, because the complexity and risk involved in prosecuting sodomy made it prohibitively difficult to instigate a prosecution in the first instance. Only the most scandalous cases, often those tried as instances of the sexual abuse of children, came before a criminal court in the first instance and proceeded to the Parlement on appeal.

The legal difficulties involved in prosecuting sodomy also contribute to an analysis of the wider social and cultural significance of these records, which offer invaluable evidence about how nonelites discussed matters of sexuality. The court scribes during interrogations recorded how witnesses and the accused adapted their answers to fit the terms of the questions as posed by the magistrates, questions that were determined by the framework of customary, Roman, and natural law concerning sodomy that the court applied. Crucially, these legal terms framed interrogations as disputes over force and consent, since accusers so often set out to demonstrate that the accused had forced them into sex, while any suggestion of consent made them liable to being found complicit in the crime of sodomy. I hope that the analysis I have presented here will encourage future research into these and similar cases, and raise historians' sensitivity to the legal contexts in which the documents were produced and archived in the Parlement of Paris during the sixteenth and seventeenth centuries. The questions explored here continue to matter in the early twenty-first century at a time when debates over the definition, investigation, and prosecution of sexual crimes pose crucial problems to be tackled in both law and civil society.

About the Author

Tom Hamilton is assistant professor in early modern social and cultural history at Durham University. Previously he completed a DPhil at New College, University of Oxford, and held a research fellowship at Trinity College, University of Cambridge. He is the author of *Pierre de L'Estoile and His World in the Wars of Religion* (Oxford University Press, 2017), and his current research focuses on the role of criminal justice in the legal culture of the ancien régime in France.