“Bigamists” in Bologna, 1350–1500

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Abstract

Bigamy trials in medieval secular courts were rare and rarely documented. Where they do survive, they raise interesting questions about the relation between penal law and social practice, about knowledge of church laws on the legitimate forms and processes of marriage, and about gendered aspects of how this crime was perceived, prosecuted and punished. The incomparable riches of the criminal court in Bologna supply a set of nearly thirty cases in the period 1350–1500 which allow these questions to be investigated.

At the end of August 1425, a noblewoman, Costanza da Cuzzano, the wife of Aron Araldini, found herself charged with adultery by the secular court in Bologna,¹ but hers was not a normal adulterous offence. It seems that Aron had left Bologna in 1413, travelling south to enter the military service of the king of Naples, but after just four years he was reported dead, mortally wounded in battle. Costanza went into mourning and wore widow’s dress for many months, and then, with her family’s support, in 1423 she agreed to remarry. She had been married to her new husband, Tommaso da Loiano, for under two years, when unexpectedly Aron reappeared in Bologna. That, at least, was her version of events; the outcome and what happened to her will be unfolded in the course of this article. Her story appeals to us today because of the obvious resonances with the micro-history of Bertrande de Rols and Martin Guerre;² and it is not the only such story of what we would today call “bigamous” women that echoes in this way.³

The aims of this paper are threefold: To explore the gender dimension of trials for “bigamy” in the light of fairly recent scholarship that has portrayed the offence as masculine; to apply the modern analytical concept of “forensic narrative” to these trials; and to comment on bigamy trials as an index of popular attitudes to and practices of marriage. The paper thus addresses three dimensions of judicial sources: action by the court (the prosecution), action in the court (the defence and the behaviour of witnesses), and the relation of the court to popular practice.⁴ So, between those who argue that judicial sources are just scribal formulae and lawyerly rhetoric and those who use them as depictions of reality, this paper takes a middle path: examining the nature of the rhetoric and its differential application, but also exploring the social situations as presented/re-presented in the

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courtroom. As Daniela Hacke has argued: “Despite the ‘biased’ character of legal documents, they still provide us with multi-vocal accounts of the lives of ordinary … husbands and wives in moments of conflict”.5

One word about the term “bigamy” at the start: this was not the medieval word for the crime (hence the quotation marks in my title: I shall leave them off from now on). Canon law did not recognise as valid any marriage ceremony while a first spouse was still living, and defined sexual relations outside a first marriage as either adultery or fornication and penalized them accordingly.6 The term bigamy was usually applied only to men who married twice consecutively, not to men with two wives simultaneously, or to men with wives who committed adultery, and the purpose of the term was to exclude such men from clerical ordination.7 Unusually, in one case in Bologna the defendant, who was not evidently a cleric, was described as a “bigamous man” (hominem bigamum) and that is as close as these documents come to modern usage.8 Instead, the legal sources used here refer to “de facto” or “fictive” marriages when narrating what we would call bigamy. One historian has preferred the phrase “unlicensed serial monogamy,” as medieval cases of this behaviour did not involve the simultaneous maintenance of two marriages,9 but while this has the advantage of precision, it has the disadvantage of wordiness: I shall use the term bigamy in this sense in what follows.

Bigamy trials in the secular courts of medieval Italy were not frequent. Michael Bratchel found a rare case in the Lucchese judicial archive.10 Another briefly appears among the trials of the Capitano del Popolo of Perugia.11 Two male bigamists figure in the list of nearly 250 prisoners held in jail in Milan in the later fifteenth century.12 And three accusations of bigamy occur in the fourteenth-century records of the veguer’s court in Cagliari, Sardinia.13 Yet even in the bishops’ courts examples are few.14 So the twenty-six cases examined here, for the period 1350–1500, drawn from the incomparable riches of the Bolognese criminal archive,15 represent an interesting and unusual cluster, which will allow some specific questions, arising from the historiography, to be addressed. This is not a sample from the hundreds of Bolognese trial registers, but a collection gathered over many years; any claim to completeness would need take account of the incompleteness of the records with their many losses and lacunae.16 This group of trials can be set against the background of prosecutions for a range of unlawful or irregular sexual unions, from concubinage and clandestine marriage, to abduction and rape.17

The activity of the podestà (chief judge) of Bologna and his subordinates, has left an abundant documentary record, now dispersed among various archival series, mostly reflecting different stages of investigation, trial and sentencing: the journals of investigations, maintained by the court notary and containing witness testimony and interrogations (vacchettini); the trial registers, which sequentially document each phase from initial denunciation, through citation and responses, to decision; the court’s “document repository” (carte di corredo) containing all the papers and parchments submitted to the court in the course of a trial; and the separate registers of sentences. Additional information comes from the decisions (provvigioni) and instructions (mandates) issued by the government of the city, in its various evolutions over this period of fifteen decades. In that period, Bologna, which was constitutionally part of the papal state in north and central Italy, experienced governments of almost all types: “tyrannical” rule by foreign overlords (the Visconti of Milan, twice), direct rule by the papacy and its representatives (cardinal legate or governor), republican rule under the banner of “liberty” by the local elite, and incipient local domination by the Bolognese family of the Bentivoglio. For much of the period, government consisted of a combination, often conflictual, of the papal governor and the civic councils of the Sixteen (XVI) and the Anziani (Elders), within a political evolution of shifting balance between external and internal personalities and forces – pope, elite, local leaders – and the growing dominance, not undisputed, of one family.18

Bologna’s secular laws on bigamy changed across the period, in line with similar laws in other Italian states.19 As with laws and penalties on other crimes against matrimony, they shifted from lighter financial penalties in the thirteenth century, as in Verona or Savona, to heavier financial
penalty accompanied by loss of dowry, as in Arezzo, Verona, Treviso and Camerino in the fourteenth century, and eventually to capital penalty, as in Genoa and Vicenza in the fifteenth.\textsuperscript{20} Bologna’s 1389 statutes, repeated in 1454, combined financial and capital penalties: the penalty for contracting a second marriage while the first spouse was still alive was to be 500 lire, but if the marriage were followed by consummation the penalty was to be death.

A challenging picture of bigamy trials in fifteenth-century France has recently been advanced by Sara McDougall in her article “Bigamy: a male crime in medieval Europe?” There she draws attention to gender biases in the ecclesiastical and secular laws on bigamy, and in prosecutions in the church court.\textsuperscript{21} As she says: “The [canon-law] discussion broadly broke down along gendered lines. One set of rules, which changed over time, addressed men who married more than one woman. Another addressed the question of how to handle the wife of a missing man.” By contrast, secular laws “threatened severe prosecution and punishment for male and female offenders alike,” with fines and banishment giving way to the death penalty in the fifteenth century, but with “no evidence such a penalty was ever carried out.” Moreover, “if any secular authorities outside of Portugal prosecuted bigamists before the sixteenth century, no records are known to have survived.” In fifteenth-century Troyes, France, almost all the ecclesiastical prosecutions and sentences for bigamy were against men, not women, with most of the men being migrants who presented themselves as widowers in Troyes and remarried. The men were “punished more often and more harshly” than the women: where convicted male bigamists were imprisoned and exposed on the ladder, the only female bigamist was merely imprisoned.\textsuperscript{22} There is a clear contrast here with adultery, which was increasingly a female crime in the later Middle Ages: outside marriage, men had mistresses, women committed adultery.\textsuperscript{23} Interpreting McDougall’s phrasing as an invitation to researchers in other parts of medieval Europe to discuss and compare findings, this article welcomes that invitation and will investigate whether and how far gender bias existed in bigamy prosecutions in the excellently documented city of Bologna. The paper starts with detailed discussion of the case of Costanza da Cuzzano, to draw out and to set a framework within which to analyse the other twenty-five trials from the Bolognese archive.

**Costanza and Aron**

Costanza was tried for adultery, as female bigamists were seen as adulteresses, but the indictment also included a more serious element. The charge against her was, first, that as a married woman she had since 1413 committed adultery with a Bolognese citizen, Tommaso da Loiano, living with him in a succession of houses in the city; but, second, that in September 1423 she had married Tommaso, by the exchange of words and the giving of a ring. She had thus transgressed both bodily and verbally.\textsuperscript{24} So began a trial that was to last for three weeks.

Costanza did not herself appear in court, but a notary did, Lorenzo Rossi, to conduct her defence.\textsuperscript{25} Rossi entered a twelve-point case narrating her life-story over the previous twelve years, a written statement shaped by legal expertise and therefore likely to present selected facts in a persuasive way, and to focus more on actions than on emotions.\textsuperscript{26} According to Rossi, her husband Aron Araldini had left Bologna in 1413, and had been continuously absent since then, entering the military service of the king of Naples and of one of the Sforza mercenary captains. Then, eight years ago, according to Rossi, Aron had been wounded in battle, a piercing sword-thrust, and had been carried ‘for dead’ (\textit{ut mortuus}) to a hospital in Manfredonia, some 500 km from Bologna. Everyone who had been with him said he had died. One of Aron’s friends, Antonello da Puglia, had come to Bologna and told many people, including Costanza, that he had seen Aron wounded and dead. This remained the “common opinion” in Bologna until April 1425, when Aron had unexpectedly returned. Even Aron admitted that he had been left for dead in Manfredonia, and declared dead by those who saw his wound. Costanza, her legal representative continued, had started to wear
“widow’s dress” five years ago and had done so for three years, until, with the presence and consent of her “friends, kinsmen and well-wishers,” she had publicly promised to accept Tommaso as her husband. At no time before marriage (the lawyer insisted) did they have sexual relations: if she spent time in Tommaso’s house, she was always accompanied by her mother or by a friend, and she slept with them not with him. When Costanza heard that Aron had returned, Rossi concluded, she left Tommaso’s house and went to live with a kinsman in the neighbouring city of Modena, and she had stayed in his house ever since.

The recent application of narrative analysis to court-room language, as suggested by socio-linguistics, rests on a recognition of the power of context to shape and reshape stories, so as to understand the ways that persuasively coherent narratives are constructed or disrupted in court. In this case, the indictment and Rossi’s defence submission present two very different versions of one woman’s personal history: in one, she conducts a long-term, public affair with her lover and has agency, acting with intent; in the other, she appears more as a passive and dutiful object, waiting for news of her husband’s death, donning mourning dress, being guided by her friends and kinsmen, being observed by a chaperone. The courtroom thus shaped the way that this conflict was represented, whether negatively or positively, guiltily or innocently. The versions of Costanza’s conduct conform to the concept of “character navigation” in forensic discourse, but whereas the prosecution narrative of adultery is simply based on the civic laws against both adultery and bigamy, the defence narrative draws more heavily, albeit not explicitly, on the canon law that allowed a woman to remarry if her husband “disappeared for a long period and his death was known with certainty.” Costanza’s notary was also clearly aware of the need for that death to be proved, through written evidence or oral testimony: hence the stress on oral report and fama. The concern with Costanza’s sexual purity – a chaperone, separate beds when she visited Tommaso – also mirrored similar concern in other trials for women on serious charges.

However, the gaps between the defence narrative and the experiences of women outside the courtroom are visible. The forensic characters seem distant from the actual plight of many widows, caught in fights between their families of birth and their families by marriage for control of their bodies and their properties. Though the defence narrative attempts to reinforce Costanza’s purity with an image of her in mourning dress, in practice, the “politics of black costume” were more ambiguous: black dress did not necessarily desexualize and could in fact empower women.

Both protagonists in this court case seem rather unusual, and their coupling seems strange. Costanza’s family, the da Cuzzano, had an infamous past history: in the later thirteenth century they conducted destructive feuds in Bolognese territory (the contado), and by 1320 had been “terrorizing the contado for years,” in a strategic zone near its south-eastern border, even joining with the city’s enemy, the marquis of Este, lord of Ferrara. The lord of Bologna in the 1330s-40s, Taddeo Pepoli, befriended them as a means of controlling other feudatories in the mountains, especially the da Panico, whom they were said to equal in tradition and ferocity. As a family they are last heard of in Bolognese public histories in the mid-fourteenth century: the death of Muzzarello da Cuzzano in 1345 was presented by the early-twentieth century historian Palmieri as part of the defeat of troublesome feudalism by the forces of bourgeois civilisation: “all the old feudal houses finished in misery and sorrows.” Costanza’s husband, Aron Araldini, on the other hand, came from a family with no long history within the Bolognese elite. Perhaps their union was an example of money marrying pedigree, not unknown in this period or any other. He did however have a personal history marked by brushes with the law. He had been prosecuted in 1407 for an assault with an accomplice on a banker: Aron had allegedly chased the banker with a sword, shouting “We’re going to cut off your legs” (“Nuy si ti tagliaremo le gambe”); but the case was halted by the bishop’s vicar-general on the grounds that Aron was a cleric (and his accomplice turned out to be a canon). Aron was not the first mercenary soldier to have a clerical past. In 1412, Aron appeared as a witness in a criminal case, and said that he was twenty years old, which if true would make him fifteen at the time of
his attempt at leg-lopping. And in 1426 Aron was discovered by the urban patrolmen gambling illegally and was fined 5 lire. Cleric, assailant, gambler, soldier, Aron displayed an instability of profession and a taste for risk that equalled his apparent indifference to matrimonial domesticity.

With Costanza contesting the indictment, witnesses were called to attest. Her attorney provided a list of fourteen defence witnesses, who were interviewed in mid-September. Though they spoke to many parts of Rossi’s defensive statement, these witnesses added significant detail on two key issues: how Costanza was informed of Aron’s death, and her pre-matrimonial sleeping arrangements when in Tommaso’s house. These key issues of when she knew of Aron’s survival and when she first had sexual relations with Tommaso were clearly dictated by the canon law on marriage. One witness said he had seen her with a letter from her uncle informing her of Aron’s death, and reported the same uncle’s angry words to Aron on his return for never sending word to his wife. On the second issue, a group of Tommaso da Loiano’s servants were at pains to confirm that he and Costanza did not sleep together before their marriage. It was these two key points that then became the centre of the case, as witnesses were heard on a series of counter-assertions produced by Aron: that he had still been in Bologna in 1417, leaving only in 1418 (thus shortening his period of absence); that he had sent word that he was alive, both oral and written, to Costanza four years previously (thus claiming that she knew); that Costanza had never worn mourning dress (because she knew he was not dead?), and had lived with Tommaso “as his wife” (wilful adultery, not excusable remarriage).

The judge was not convinced by Costanza’s defence, and he passed sentence of death by decapitation. Fortunately for her, this sentence was very promptly cancelled by order of the city government, the XVI, in mid-September, perhaps having regard to the wealth and prestige of Costanza’s family, or, more likely, to the political influence of her second husband. Moreover, her marriage to Tommaso da Loiano must at some point have been recognised (had Aron died?), for in 1447 she was mentioned as his widow (he was executed in 1440 for conspiring against the Bentivoglio), though some doubt evidently remained about the paternity of her son Antonio, who is described as Tommaso’s “putative” son. By that date she had married yet again, her third husband being a distinguished lawyer and member of the XVI, Ludovico Marescotti de’ Calvi. She died in 1450, at some point between April, when she made a will, and October, when Ludovico took possession of her estate, apparently consisting of lands at Savigno and Loiano.

Aron Araldini and Costanza da Cuzzano were no Martin Guerre and Bertrande de Rols, yet this court case exhibits some features of the exceptional – the young cleric-turned-soldier who abandoned his wife, and his reported death – with features of the ideal, the widow in mourning whose remarriage was dependent on family and friends. It shows how a woman with connections was able to deploy a skilful lawyer and to conduct her legal defence securely from outside Bolognese territory. It shows a woman resourcefully surviving a first marriage to a violent home-shirker, and a second marked by the scandal of a treasonous execution. It might be asked: How typical was any of this? What does this case, and the others, have to say about the alleged tension between official and informal marriages, or on the asserted familiarity of lay people with the canon law on marriage?

**Overview of the cases**

Costanza’s prosecution was only one of those mounted against twice-married women, along with those against bigamous men. Obviously with a collection of cases of this kind, numerical calculation cannot offer precision, but some features and trends are apparent. Most of the twenty-six cases were prosecuted against just one of the parties (nine women and thirteen men); in two further instances both the man and the woman were prosecuted, once together, once separately; and one other case took the form of an accusation against a man, his wife and her mother; making a total of thirteen women and sixteen men, numbers that do not suggest a strong gender bias. The majority of the
prosecutions were by inquisition (ex officio, judge-led trial) rather than accusation (by the injured party), and accusations seem rare after 1400: a sign both of the declining role of accusation in criminal procedure, and of the increasing public importance attached to this crime.\textsuperscript{49} Typically, the rhetoric of fourteenth-century accusations stressed the “shame” caused to the injured party (“dedechus et obbrobium”), whereas later inquisitions spoke of the “immense public damage and disgrace” (“maximum vituperium et dapnum rei publice”).\textsuperscript{50} The evolution of penalties mirrors this: setting aside the cases in which no decision is recorded, the penalty in the fourteenth century was more likely to be corporal or pecuniary, in the fifteenth a ban under penalty of decapitation (bans were imposed on contumacious offenders and the specified penalty was applied if they were captured). One woman was whipped (1351), two men and one woman were fined (1353, 1367), three women and two men were banned under penalty of beheading (1353, 1381, 1386, 1402, 1425), one man was actually beheaded (1437), another man was banned under a financial penalty (1485). Two cases were terminated on instruction to take no further action (1392, 1461), one was stopped by the bishop’s court (1451), three trials ran out of time (1392, 1395, 1485), and just one resulted in an acquittal (a man, 1351). One case lacked a conclusion of some sort, and is untraceable in other registers: a serious allegation that a man from Calci (Pisa), abandoned his first wife within a week of the wedding, came to Bolognese territory, eventually remarried, and then returned to Pisa to kill his first wife – an unusual scenario of bigamy begetting femicide.\textsuperscript{51}

The social profile of the defendants and accusers shows wide social representation: where these were residents of Bologna and its territory, the corpus of cases is heavily weighted to inhabitants and citizens of the city (16) rather than the countryside (8), and among the city-dwellers there was a range of ranks and occupations: a tailor, a medic, a baker’s son, the daughters of a goldsmith and a herbalist (aromatorius), and Costanza, a propertied lady of the noble class. These do not seem to be predominantly the young working class, as found among “informal divorcees” in sixteenth-century Verona.\textsuperscript{52} There was also a strong representation of non-Bolognese: men from Florence, Cremona, Ferrara, Rome, Pistoia and the Pisano, and women from Ferrara, Pisa, and Venice. So these were trials that arose more from behaviour in the city, across all social ranks barring the very poorest, and with a strong element arising from personal mobility. Indeed, male geographical mobility in search of work has been identified in various studies in various periods as a factor “fostering bigamous marriages” and the concentration of cases in large cities;\textsuperscript{53} but in Bologna it was not only the male offenders who were mobile.

In this collection of cases, there was hardly any correlation between gender and mode of prosecution, where that is clear: just over half of inquisitorial trials were against men (eight out of fourteen), and half of accusatorial trials were against women (four or five out of nine, depending on how the one case against mixed defendants is counted). However, the spread of cases across time did show some gender-correlation: most of the cases against men were before 1400, whereas cases against women were more evenly spread.\textsuperscript{54} This, combined with the rarity of accusatorial trials after 1400, suggests that the character of the crime (its definition, and the offence it caused) underwent some change between the fourteenth and the fifteenth century. It became more a matter of public concern, triggering judicial action through public clamour rather than through private allegation. It came to focus slightly less on male actors as the criminal participants. It more often led to threatened or actual decapitation.

Was there any corresponding evolution of the character of the prosecuted behaviour? The romantic and matrimonial scenarios narrated in the trial records exhibit a great variety. As Kim Siebenhüner has summarized, in her analysis of cases before the Roman Sant’Uffizio in the seventeenth century, men and women entered bigamous marriages for various reasons: estrangement due to the search for work, a belief that their consent to an earlier union had been forced, a presumption that their first spouse was deceased, affective needs, or family and social pressures.\textsuperscript{55} Not all documentation is as generous with context. In Bologna there is a clear division between tersely-worded, univocal
prosecutions and longer, more multivocal judicial contests. In simple cases, the suspects are charged with contracting matrimony de facto while having a living spouse, sometimes with the added detail of the giving of a ring, or the subsequent consummation and cohabitation, or procreation of children (thus, 1351, 1353, 1364, 1379, 1392, 1395, 1437, 1468, 1485). Little is said in these cases of motive, circumstances or background. The complex cases are more informative and tended to have lengthy judicial itinera. In the fourteenth century, they also present much more clearly as instances of “couples in conflict,” sometimes using the secular court as part of a strategy to pursue their own objectives. In the fifteenth century, with the decline of private accusation and the rise of public-interest trials, this dimension falls away, leaving suspects struggling to construct defences against judicial investigators: no longer trying to manipulate the court, they attempt to legitimate their actions. This group of longer cases may be schematically broken down into several narrative types. These are substantively different from the “story types” identified by Donahue in matrimonial litigation more generally in the church courts, which suggests either that bigamy had its own stories or that the secular court induced a different kind of narration. Donahue’s story types concerned couples who sought out ecclesiastical judgement to repair or dissolve marriages and presented relationships that had “gone awry” (collapse), gone “too far” (excess) or gone wrong (victimisation). By contrast, the types in the Bolognese cases are less focused on the quality of any broken relationship than on the parties’ knowledge and intent at the moment of committing a punishable offence. Context changed the stories: those appropriate to supplicants entreat ing for release or implementation of undertakings are not those of defendants anxious to avoid penalty.

Most of the defence statements in the Bolognese corpus make attempts to carve a space for legitimate action by the accused: either they did not know that their spouse was already married, or they had grounds to believe that a previous marriage had ended. A case that may show actors being aware of the rules and trying to follow or manipulate them arose in 1353: it pitted Jacopo Piccinino and his son Giovanni against another Giovanni, Maccafari, his wife Giovanna, and her mother Bonamica. This was an accusatory proceeding, in which Jacopo accused Giovanni Maccafari of marrying Giovanna knowing she was already married to his own son, accused Bonamica of arranging the marriage “like a pimp” (tangquam lena) and accused Giovanna of “letting herself be married de facto”. As in the trial of Costanza, the prosecution sought to portray the defendants as knowingly committing unlawful acts, while the defence sought to provide their legitimate motivations. Witnesses for the prosecution attested to the solemnization of the first marriage in church by the local priest and to the legitimate ages of the couple; on the other hand, the defence witnesses asserted that the first husband was under-age and impotent, and that Giovanna had licence to remarry from the bishop of neighbouring Modena because of the nullity of the first marriage. Both versions refer to external church authorities to construct their credibility: a contest between legitimacy and dispensation. However, a third version of events also emerged in the statements of the very witnesses for the prosecution: that after the first marriage, Bonamica had refused to release Giovanna to her husband, saying that he was impotent (had she heard that from her daughter?); that Bonamica had kept her at home for a year before her relatives (parentes) arranged her second marriage; that the priest almost refused to officiate because he knew of her first marriage; that Giovanna, after this second marriage, did go and stay with her first husband for a month, and then returned to her second husband. Against the clarity of the prosecution and defence stories, these witnesses, responding to direct questions about the sequence of events, threw up a cloud of inconsistencies through which can dimly be seen the actors trying to fit their actions to what they understood of the rules: Bonamica seeking to prevent consummation by keeping bride and groom apart, and aiming at a dissolution on grounds of impotence; oral reports that a bishop had licensed a second marriage, Bonamica in particular claiming that the couple had been “separated”; a priest in doubt but persuaded by talk of a license; Giovanna returning to her first husband, perhaps in the dawning awareness that she had committed a wrong, or perhaps to prove her mother’s claim that he was and remained
impotent.62 Mother, daughter, priest, all seen in retrospect as trying to prove a point. In the event, these inconsistencies were of no interest to the judge, and the case was resolved on three key points: the strength of attestations to the regularity of the first marriage, the weakness of attestations to the age of the first husband, and the questionable status of an undisclosed document deposited in court by the accused (presumably the alleged “licence”). In the end, Giovanna and her second husband admitted that they had “illegally” copulated, cohabited and contracted matrimony, and Bonamica confessed she had aided and abetted their “illicit copulation”. Fines of 100 lire all round.

Other trials contain variations on the theme of the abandoned spouse. The defendant’s belief that his or her first spouse was dead—Costanza’s defence—was advanced in the 1360s by a Bolognese citizen, Pietro Bonagucci, against the plea of Caterina, his first wife of eleven years: she alleged that he had contracted matrimony with a woman in Florence and kept her as his second, “fictive wife”. He confessed but claimed that he had married the Florentine woman believing Caterina to be dead and untraceable.63 He also stated that he had since made “peace” with Caterina—a formal procedure of pacification—and added this to his supplication that he be spared the death penalty, which he was, being fined instead. Was his belief in his wife’s death an excuse conveniently invented to cover what was in fact an informal divorce?64 A case from the 1460s illustrates that practice more definitely. This was an inquisition against Luca, a man from the village of Gesso.65 The charge was that he had married Bartolomea in 1452, with ring, words of present consent, and consummation, and had treated her as his wife for many years, but that in 1466 in another village he had contracted marriage with Caterina, with ring, witnesses, consummation and, eventually, a child. Luca confessed, but his defence was that his first wife had left him after three months, and had gone to live with her mother in the house of a man, Bertono, who then married her mother with the intention that Bartolomea marry his own son.66 In this case it does look as if parental, maternal, interference, however motivated, attempted to re-arrange the daughter’s marriage, interrupting the sequence of rites and practices that constituted marriage in lay eyes: a clear case of family marriage strategy insisting on self-divorce and colliding with legal rules on matrimony.67

A few years earlier, another woman called Caterina, a baker’s daughter married to a second-hand clothes-dealer, presented a story combining abandonment with deception and expert knowledge.68 She was indicted by inquisition in 1448 for contracting a second marriage to Peregrino from Ferrara “in order to commit adultery.” despite being married already to Bartolomeo in Bologna. Caterina alleged in her defence, first, that she had married Bartolomeo unaware that he was a professed friar and, second, that he had left her after three months. Five years later she took legal advice, she said, on whether she could remarry. At this point, the trial in the podestà’s court was halted by the bishop’s vicar-general, but it was restarted again in 1451, when it was incidentally noted that her second husband had also abandoned her. These proceedings too were stopped by the vicar-general, on the grounds that matrimonial cases belonged to the ecclesiastical court. However, he was over-ruled by the papal governor who recognised that the secular court also had jurisdiction under civic law. The podestà therefore proceeded to sentence (though what that sentence was is not recorded). But Caterina was a lucky, or plucky, woman. She escaped from jail the first time in 1448 by finding a way to drug the prison guard, and she escaped again in 1451 when a popular tumult broke open the jail.

Another case with an extended judicial iter came to the criminal court in 1395.69 It first appears in the record as an allegation of calumny. This was an accusation by a Bolognese resident, Donino, against a woman from Pisa, Galuccina, that she had submitted to a previous judge a false claim that she was his legitimate wife and that he had contracted a second marriage to a widow. This case had previously been to the bishop’s court (where the man lost), and appealed to the pope (where the woman lost), yet the woman had then managed to get the man arrested in Bologna. In his accusation he claimed that he had been forced to confess in order to recover his liberty and had then appealed to the pope’s judge-delegate who annulled his confession. The woman next
laid a complaint to the Bolognese criminal court (where she lost again): this was the false complaint investigated, inconclusively, by the judge in 1395. This is a reminder that behind some of these criminal cases in the secular court could lie years of contest and argument in other judicial fora – couples touring their conflicts around available courts in “judicial nomadism,” both parties seeking a court and a judge who would rule in their favour. These are the sort of cases that need to be viewed from the perspective of the actors, not the judge, as Massimo della Misericordia has underlined. Women could be resourceful and persistent in pursuing men who they thought had abandoned them: women “waging law” in Tim Stretton’s memorable phrase.

However, the converse could also occur, of victimized women showing resignation not tenacity. In a case from the 1460s, a medic, Antonio, was charged with taking a second wife while his first wife, Eugenia, was alive, and with then putting a spell on Eugenia. Eugenia testified: that Antonio had married her five years previously, with no one else present, her mother thinking that he was there to treat Eugenia, but instead they had sex. But, Eugenia said, she did not want to accuse Antonio, “because she loves him more than her soul.” The scenario was not unheard of: malpractice by a medic, exploiting his professional intimacy with a patient, and promising marriage in order to have sex, though here the girl’s unbroken attachment to him does seem unusual, and is a rare moment when love enters the judicial documents. Though this case was initiated as a judge-led inquisition, the assumed victim still believed that she could have some control over the proceedings by renouncing any intention to prosecute.

What do these cases tell us about expectations of marriage? The cases presented here fall with suspect neatness into gendered attitudes to marriage. That husbands could leave their wives, childless and news-less, suggests a high level of disregard on their part for domesticity and for formalized arrangements of emotional life and procreation. On the other hand, for a mother to prevent her daughter from cohabiting with her groom on grounds that he was impotent, suggests the importance of sexual satisfaction and child-bearing to mother and daughter. Whereas a man could remarry on the simple belief that his first wife was dead and untraceable, a tenacious wife could pursue her twice-marrying husband through court after court: some men might casually abandon their wives, but some wives were not to be casually abandoned. Conversely, abandoning husbands showed no hint of possessiveness and took up with other women, creating a new family. Abandoned wives seem more cautious, seeking legal advice or support from friends and family before remarrying.

These complex cases exhibit several aspects of rule-following and rule-breaking, though again, given the nature of the corpus, conclusions are necessarily suggestive. Both when cases came to court, and when people took their decisions, some people knew the rules on matrimony and how they could manipulate them, such as the rules of age and non-consummation, the rule on prolonged absence and the presumption of death. Defendants made claims about irregularities in the first marriage, about beliefs or reports of the death of a first spouse, about abandonment, and about legal advice or episcopal rulings in their favour. These constituted the repertoire of narrative reconstructions seen as likely to convince the judge (though mostly they earned mitigation not acquittal). Secondly, the trials show the potential for flexibility in match-making, with parents intervening to set aside or overlay existing marriages in order to realign their alliances. Thirdly, the control that complainants might still expect to exercise over judicial proceedings is evident – from Galuccina who was not giving up her quest to be recognised as Donino’s wife, to Caterina who did not want the criminal court even to start proceedings. Informal marriage and informal divorce thus coexisted with knowledge of the rules and with parental interference. The forensic presentation of the case of Costanza and Aron, with which this paper began, displays many of these features together: Aron’s apparent abandonment of his wife, the report of his death, the alleged informality of her relation with Tommaso (living with him “as his wife”), the role of Costanza’s family in her decision to remarry. That presentation certainly makes Costanza’s case unusual for its range of forensic narratives, but the same elements are found, singly not together, in other cases. Lastly, and importantly, these rare
Bolognese cases also show that the secular courts in Italy did prosecute bigamy, did prosecute women for it, and did punish those found guilty. Although some gender bias is apparent in punishments – the only execution was of a man – bigamy does not in general appear to be a male crime in late medieval Bologna, as women were prosecuted, condemned and punished in ways similar to men.

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Notes
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57. Charageat, La délinquance matrimoniale, §§ 11–12.

58. For the distinction, applied in a different context: Charageat, La délinquance matrimoniale, § 27.

59. Law, Marriage and Society, p. 672.

60. Inquisitiones, 175, reg. 2, fols 35–53.
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