MEDIEVAL PROSTITUTION IN SECULAR LAW

MEDIEVAL PROSTITUION IN SECULAR LAW:

THE SEX TRADE IN MEDIVAL LONDON, PARIS AND TOULOUSE

By:

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A Thesis

Submitted to the School of Graduate Studies

in Partial Fulfillment of the Requirements

for the Degree

Master of Arts

McMaster University

MASTER OF ARTS (2001) McMaster University
(History) Hamilton, Ontario

TITLE: Medieval Prostitution in Secular Law: The Sex Trade in Late Medieval London, Paris, and Toulouse

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NUMBER OF PAGES: v, 128

Abstract

This thesis focuses on the sex trade in three late medieval cities, London, Paris and Toulouse, in an attempt to determine why prostitution became a municipal institution in Toulouse but not in either of the other cities. The examination and comparison of medieval law codes and traditions in the various regions involved in the study appear to be a new angle for research on the topic of medieval prostitution. The main conclusion drawn from this study is that the legal traditions of the regions in question affected how the governments dealt with prostitution, and that the main difference lay in whether the main legal tradition was Roman or Germanic in nature.

Acknowledgements

I would like to express my thanks to my supervisor, Dr. Bernice Kaczynski, as well as Dr. Madeleine Jeay for their extensive assistance with this project.

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Introduction: A Historiographic Survey

This historiographic essay is an attempt to examine and analyze a variety of works on sexuality, gender, and prostitution in the Middle Ages. These studies have covered an assortment of viewpoints and hypotheses. The most compelling works are those that are open to more than one ideology and utilize a number of different sources. In some cases, authors who subscribe to a strictly Marxist or feminist perspective seem to limit their conclusions to those that fit into their larger ideology. As well, those authors who utilize a single source, or limited sources, can draw conclusions that are limited in scope. One challenge for the reader is therefore to make certain that such works are read in the proper context.

This task is made even more challenging by the fact that the records for the Middle Ages are limited in scope for nearly all geographical locations. Because of this, my own research has focused on secular records, specifically the national and municipal regulations for England and France, and more particularly London, Paris and Toulouse. This decision was made when it became obvious that church court records for London before the sixteenth century were nonexistent. My conclusions can not be taken as an overall picture of either country,

conclusions can not be taken as an overall picture of either country, since the church courts were important in dealing with accusations of prostitution. In addition, each of these cities had a specific legal and social tradition and are unlikely to be representative of outlying areas. Within these constraints, I have attempted to provide as broad a study as possible by studying not only the medieval legislation from each area, but the legal traditions that shaped the attitudes and laws of the time. This has led to an examination of Roman and Germanic law, as well as a study of the Common Law of England. I have also touched on the attitudes of the Church and canon law, since although the records of church courts were not widely available for me to study, the views of the Church had an impact on secular law traditions. Canon and secular law affected one another as the two traditions came into contact with one another, much as Roman and Germanic law influenced each other. Taken all together, these various legal traditions can give us a picture of how prostitution was viewed and why municipal authorities in some areas supported the trade more than in others in certain periods.

As prostitution is one expression of sexuality, it is impossible to examine it without also looking at works on sexuality in a more general context. For the medieval period, most discussions of sexuality involve the attitudes of Church authorities. They also provide insight into gender roles and relations, both in the ideal and in reality. This allows a

modern reader to gain more of a sense of how attitudes towards sexuality and prostitution developed during the Middle Ages.

James Brundage is one of the widely accepted authorities on the topic of sex and sexuality in canon law and medieval theology. His wide-ranging studies on the subject cover an extensive time period stretching from ancient Greece and Rome through to the Reformation. In his book Law, Sex and Christian Society in Medieval Europe, Brundage studied the evolution of Christian teachings on sex and sexual morality in order to show how "the system of sexual control in a world we have half-forgotten (ancient and medieval) has shaped the one in which we live."[1] One of his main points is that medieval thought on the sinfulness of sex was based not on the teachings of Jesus but on the philosophy of Classical Greece and Rome. He states that there are a few passages in the Gospels that could be taken to indicate that Jesus believed celibacy was best, but then goes on to show how it was other writers, especially Paul, who expanded on the idea and made it into a Christian ideal. Brundage states that Paul considered illicit sex almost as serious as murder[2] and indicates that other early Christian writers, especially Augustine, continued the tradition of considering sex to be bad and sinful. He attributes this ascetic attitude to the fact that most of them had been monks or hermits at some point in their lives. This view of the

medieval and early Christian theologians has been challenged more recently by authors such as Pierre Payer.

In his book The Bridling of Desire: Views of Sex in the Later Middle Ages, Payer offers a synthesis of major medieval theological thought on the role of sex in the human experience. He has examined many works of well-known medieval theologians, as well as lesser-known works such as pastoral handbooks. Payer sees the overriding theme to all of these works as the belief that "a chasm existed between the way our human sexual make-up was meant to be in the original order of creation and the way it is now because of the Fall and its inherited consequences . . ."[3] He does not believe that the men whose writing he examined for this study thought that sexual relations were necessarily evil. God commanded mankind to increase and multiply, which was only possible through sexual relations between men and women. Payer states, "[i]t is unlikely that the medieval masters believed God had commanded an objective evil."[4] Instead, the consensus among these learned men seemed to be that the negative aspects of sexuality were brought about by Original Sin and the fall of mankind. Therefore, they generally held that while coitus was necessary, and the pleasure it aroused was a way to ensure that the species would be preserved, it was the moral duty of those involved to act as nature, and God, intended. This meant that in addition to restrictions on the form of sexual intercourse, such as when, how and with whom a

person could have sexual relations, men and women should make every attempt to maintain control of reason and not give in to the immodest desires that sexual activity could arouse. This would allow intercourse, even after the Fall, to be as close to God's intentions as sinful humans could manage. Payer's synthesis of positive, or at least not overly negative, thought on sexual relations offers a contrast to other works on the theology of sex in the Middle Ages.

Roberto Gonzalez-Casanovas used an interesting method for his article "Gender Models in Alfonso X's *Siete partidas*: The Sexual Politics of 'Nature' and 'Society'". He chose to read the law code as a form of literature, and concluded that it was not necessarily meant for the enforcement of behaviours or to set out punishments for misdeeds, but instead functioned as a model for what society should be. He says:

> The Wise King's vernacular legal code, which was never enforced during his lifetime, in effect functioned as a utopian mirror for society; in it, all the various estates and conditions of human life are discussed and related to a patriarchal scheme of order, hierarchy and harmony that is equally based on Graeco-Roman and Judaeo-Christian codes of justice.[5]

This is an interesting approach based in the study of discourse. While there are certainly merits to this method, it falls outside the scope of the study I am attempting here.

Carol Kazmierczak Manzione's article, "Sex in Tudor London: Abusing Their Bodies With Each Other", examines a period outside the scope of this study, but it helps to provide context for the earlier period. This paper is an examination of changes in the authorities responsible for dealing with sexual offences in Tudor London. In previous periods, it had been the municipal courts (if it was deemed a disturbance of the peace or otherwise came to the attention of the authorities), or the ecclesiastical courts (if it came to their attention and was deemed a moral offence). However, in the sixteenth century the royal hospitals (Bridewell and Christ's Hospital) came to be responsible for the policing of sexual misconduct. Manzione offers several explanations for this change, including the population increase in London and the changing attitudes towards the poor from being all deserving of pity and charity, to being divided into the categories of 'deserving' and 'undeserving'.[6] While authorities were apparently still concerned with preserving social order, they also seemed to become increasingly concerned with the issue of illegitimate children, and it was this that the hospitals were given authority to stamp out. This is a contrast that other authors have also noticed, and some, such as Leah Otis, have postulated that there was a definite shift towards increased concern with morality at the end of the Middle Ages.

These works on sexuality raise various issues and questions that relate to prostitution as well. Works that deal more specifically with prostitution raise a series of different questions. Were prostitutes marginalized, or were they an accepted or respected part of society? What were the reasons behind the different types of legislation regulating prostitution in various times and places? How were pimps and procurers treated by the authorities, and what were the reasons for it? The following section is an attempt to summarize and analyze the questions and answers raised in some of the leading works on the topic.

There have been numerous models presented by historians to illustrate the place occupied by prostitutes within medieval society in various cultures. Were they marginalized, either by economics or public morality? Or were they an accepted, even respected, part of their society? In their survey of prostitution through history, Vern and Bonnie Bullough concluded that prostitutes were indeed marginal. They state that a prostitute's social status was so low "that she was not even required to obey the law since she was beneath the law's contempt."[7] Despite this, they also note, many medieval theologians believed that prostitution was necessary, citing an argument put forth by Thomas Aquinas that compared the sex trade to a sewer.[8] There is definitely evidence to support the view that prostitutes were marginalized, but it is not the only possible interpretation.

Bronislaw Geremek, when examining prostitution in medieval Paris, agreed that women who participated in the trade to any degree were marginalized. This view arises out of his neo-Marxist and sociological perspectives. The focus of his ground-breaking 1971 book The Margins of Society in late Medieval Paris is social class, and specifically the 'marginal' class made up of those who did not fit into other classes. This includes vagabonds, criminals, and other 'refugees' from diverse social groups, including prostitutes. It is not entirely clear from Geremek's writing how much women who practised prostitution in any form were considered marginals by their contemporaries. Geremek suggests that prostitution was one trade among many, albeit a shameful one, and that there was some type of 'guild' organization among the prostitutes in Paris during the late medieval period. While he rejects the image of prostitution as a fully-fledged commercial guild, he does allow for the possibility that there was a form of organization analogous to a religious confraternity among the prostitutes.[9] This is an interesting theory, but one which does not seem to have been borne out by more recent research on the topic.

The concept of respectability or marginality is not a major factor in Ruth Mazo Karras' book, Common Women: Prostitution and Sexuality in Medieval England. Instead, she focuses on the idea that any woman could be considered a 'whore' if the circumstances of her life allowed for

it. One of the major conditions that would allow for this designation, according to Karras, was if the woman did not live under the control of a man, such as her father, husband, master, or guardian.[10] She points out, however, that urban governments "criminalized or regulated whores without ever defining precisely what the term meant. Whoredom was a status rather than a specific set of behaviours."[11] Because of this women could be marginalized whether they were prostitutes or not, but it is not clear whether this marginal status came about because they were selling their bodies or because of other factors that caused their neighbours to dislike them. Karras provides several examples of women who were part of the trade and who were nevertheless valued and respected members of their communities. She also questions whether women accused of whoredom had a different moral code from those who brought them to the attention of the authorities, but in the end she concludes that "the line between a respectable woman and a whore was a vague one."[12] In this study, Karras uses the specific example of prostitution as a way to understand attitudes towards women in general. This is an approach that falls within the feminist spectrum, and provides some interesting theories and methods of understanding the medieval period.

In her essay, "Sex, Money and Prostitution in Medieval English Culture", Karras continues her feminist examination of the place of

prostitution in society. The essay is focused more on literary sources and on trying to define exactly what prostitution was to the common person in late medieval England, although her conclusions here are similar to those found in Common Women. Karras states

> The recognition of the existence of commercial prostitutes, whose sin, however, was formally defined as their promiscuity rather than their selling of their bodies, allowed the conflation of all deviant feminine sexuality with venality and the assimilation of all disorderly women with prostitutes.[13]

She also says that "[f]ear of women's venality led to the notion that no women could be trusted; they were all out to deceive for money. Prostitutes represented something that men distrusted in all women."[14] Here, she is tying together distrust of monetary exchange and distrust of women's sexuality in the figure of the prostitute, and she is again suggesting that due to these fears most women who were independent or overtly sexual were seen as problematic in late medieval England.

Leah Lydia Otis, in her book Prostitution in Medieval Society: The History of an Urban Institution in Languedoc, offers an interesting view on the place of prostitutes in society. Otis compares prostitutes to Jews, stating that "[l]ike the Jews, prostitutes defied the teachings of the Church, yet were tolerated because of the importance of their services in an urban society."[15] With this statement, she is rejecting the idea that prostitutes were true marginals, as Geremek suggested, as well as the

idea that they were so well-integrated into society that they could be considered a professional guild. This view also points to her acceptance of the idea that prostitution was tolerated as a form of both social utility and urban business. There is no suggestion here, as in Karras' work, that women were being exploited by the misogynist authorities of medieval Languedoc; Otis focuses on the institution of the municipal brothel itself rather than what it suggests about the society in which it was found.

J. Rossiaud walks the middle ground on the issue of the respectability or marginality of prostitutes in medieval French society. He does not see them as a truly accepted part of society, despite the fact that the trade was tolerated by authorities. The reasons he sees for this are generally moral, and this theory is borne out by his research into the consequences of rape for women. He states that the victim more often than not lost her good name and reputation, even if there were neighbours who could vouch that she was an unwilling participant, and thus "violence was often a prelude to forced prostitution or procuration..."[16] This hypothesis is a result of Rossiaud's research into the behaviour of young men in late medieval Dijon, and is therefore linked with his theories on why prostitution was legalized in that time and place.

Another contentious issue when looking at medieval prostitution is the role of legislation in defining the social role and place of prostitutes. There are nearly as many forms of legislation on this issue as there are towns and cities in Europe, although there are certain common themes, and this has led to a great deal of confusion. From examining mainly the records of the Paris Châtelet, as well as royal ordinances over the course of the thirteenth through the fifteenth centuries, Geremek concludes that legislation at various times tried first to expel 'common women' from Paris altogether (repression), and then limit the spaces in which they could live or work (toleration). He suggests that the second trend shows that the first was unenforceable. Bullough comes to a similar conclusion.[17] This is indeed one possible explanation of the changing legislation over the period, however, it is not the only one.

In examining canon law with regard to sexuality, James Brundage offers another explanation. He states that "[e]laboration, growth and concern with enforcing the sexual norms... went hand in hand with development, growth, and maturation of the ecclesiastical courts during the twelfth and thirteenth centuries."[18] Brundage examines the writings of canon lawyers and theologians from antiquity through the fourteenth century in his book Law, Sex and Christian Society in Medieval Europe. From this extensive evidence he concludes that the Church's attitude towards prostitution was that it was inevitable, but that this did not

excuse the sinfulness of the women who chose to sell their bodies, no matter what the reasons for it. Due to the perceived inevitability of prostitution, these men, according to Brundage, showed little desire to penalize prostitutes severely. Instead they focused on reform, at least until the fourteenth century when prostitution came to be seen as a form of public utility on the continent. Brundage does not offer much in the way of an explanation as to why this change occurred, but many other authors have examined precisely this question, notably Otis and Rossiaud.

Rossiaud's theory of municipal brothels is based on demographics and social order. He holds the belief that the municipal governments believed that public brothels were necessary for the preservation of social order due to the late age of marriage for most men, and the fact that women who were marriageable were seen as 'untouchable'. He discusses what appear to have been roving bands of youths (over 18 but still unmarried) who raped women who were not safely within the bounds of social scripts, such as old maids, widows, married women whose husbands were away, and occasionally, young unmarried women of the poorer classes. These events may have served as an induction into the adult world of men or as a denial of the social order.[19] However, they were also a threat to social order, and therefore city officials and heads of households went looking for other outlets for the sexual frustrations of

these young men. The municipal brothel served as just such an outlet. The usual customers of the brothels, according to Rossiaud, were the young men of the town, journeymen or burghers' sons, who were seen as "bons jeunes fils".[20] He attributes this attitude of tolerance to the need to preserve social order, but also to changing morality within the Church and a general relaxation in social mores towards the end of the Middle Ages. Other authors, including Otis, have debated these conclusions, and have come up with some theories of their own.

Otis offers some interesting insights into her own methodology and provides some pointers for other historians who are attempting to research medieval prostitution. For example, she makes a point of outlining the potential pitfalls of the sources, and makes clear that the apparent ambiguity of medieval documents on prostitution and sexuality can be explained by a careful examination of which authorities created which documents, and in which time periods. Otis explains the changing legislation in terms of prevalent attitudes towards prostitution. To begin with, she says that "[t]he social phenomenon of prostitution, impossible outside the context of flourishing commerce, became once again an object of reflexion and regulation only when a new urban society began to evolve out of the rural, feudal legacy of the Frankish world."[21] And in this new urban world, the documents municipal authorities turned to were Roman. Therefore, they adopted the Roman

attitude towards prostitution, one of uneasy tolerance. At first, there were attempts to separate 'honest' and 'immoral' citizens by keeping prostitutes outside of city walls. However, as time went by, public attitudes changed.

Otis explains this change by stating, "[t]he creation of official red-light districts in the late thirteenth and early fourteenth centuries was a conscious innovation on the part of certain municipal authorities in that period and can be seen as the logical culmination of the gradual transformation, in the public mind, of prostitution from a private concern or natural phenomenon to a social matter requiring public intervention and supervision."[22] Therefore, Otis incorporates the common idea that authorization of prostitution was done in an attempt to control the trade and therefore preserve public order. She states, "[m]unicipal prostitutes were the (albeit sometimes mistrusted) defenders of public order only so long as simple fornication was considered inevitable because it was 'natural'; once the possibility of a profoundly reformed society became a conceivable alternative in the public mind, the role played by the brothel in the maintenance of public order was called into question. . ."[23]. Otis offers several explanations for the fifteenth and sixteenth century changes that led to the abolition of municipal brothels, such as: the spread of venereal disease; the Reformation and subsequent rise of Protestantism and the Jesuits; the growing repression of crime; and the

deterioration of the legal status of women in France; none of which she seems to find truly satisfactory. She rejects the demographic theory presented by Rossiaud, and offers instead the hypothesis that the period of institutionalized prostitution corresponded with a period in which women found it easier to marry, which led to a shortage of prostitutes [24] in an era when 'simple fornication' was considered a normal and necessary part of a young man's life and therefore there was a demand for the services of prostitutes. According to this theory, once marriage again became more difficult, and women were forced by economic necessity to turn to prostitution, municipal brothels and official recruitment strategies were no longer necessary.

England never had the same wide-spread acceptance of regulated brothels that France and other continental countries experienced, although there were a few places where brothels were tolerated, notably Southwark. Because of this fact, Karras' examination of England touches only briefly on the issue. English authorities appear to have fallen mostly into the abolitionist or repressionist camps, although Karras notes that the punishments prescribed for whores in the legislation were not necessarily carried out in practice. There were cases of women accused of being whores being made to wear a striped hood and carry a staff through the streets, or being put in the thews for a period of time, or even being banished, but these punishments were not

applied universally or consistently. With regard to the brothels, or 'stews', of Southwark, Karras examines the regulations set in place for them, and concludes that while some were doubtless meant to protect the prostitutes who worked there, and others to protect the customers they served, these regulations were generally designed "to make women sexually available to men while keeping them under tight control."[25] It is sometimes difficult to determine from any sources what the authors of the documents were thinking, but it is distinctly possible that Karras' interpretation is correct.

There has also been a great deal of debate over legislation restricting the clothing that could be worn by prostitutes, or specifying clothing or symbols that prostitutes must wear. Geremek believes that these regulations were intended to separate respectable women from "common women" and protect the respectable ones from unwanted advances. This is a view that has been widely circulated, including in the writings of Leah Otis,[26] although some historians have recently begun offering alternate explanations for the phenomenon. Geremek also offers the hypothesis that perhaps the legislation was put in place and enforced for the enrichment of Parisian sergeants, who could confiscate "inappropriate" (or too rich) clothing from women, and could sometimes be overzealous.[27] This hypothesis doubtless arises out of Geremek's Marxist viewpoint, and would mean that the middle class

sergeants were taking advantage of the marginalized, lower class prostitutes.

Karras is one historian who strongly disagrees with the popular theory of clothing regulations existing to protect 'honest' women. Instead, she states that "[t]he initial purpose of the restrictions on whores' clothing was not to protect respectable women from harassment by distinguishing them from whores but to force women to dress according to degree."[28] This is an extension of her thesis that the regulation of prostitutes was extended tocreate controls on all women, and the conclusion she draws here is based on her idea that any woman in the period could be considered a "whore" if she was not under the control of a man.

Prostitutes were not the only sex-trade workers who were included in various forms of medieval legislation. Pimps, bawds, and procurers were, in fact, dealt with more often and more severely than the prostitutes. Historians have offered several theories for this phenomenon, including morality, concern for public order, and a desire to control the trade.

In Geremek's examination of the role of pimps and procurers, and how they were treated by the law, he says that male pimps and their prostitutes could be bonded by affection, or even be married.[29] In many cases, the role of the pimp was to control the women, protect them, and

recruit them (sometimes by lying about the nature of the work being offered). Geremek states that pimps and procurers of any type were punished severely by the law, a view that seems to be supported by legal and legislative sources from across Europe during the medieval period. Geremek offers several theories for this, although he differentiates between *houliers* or pimps, the male companions of many prostitutes, and bawds or procuresses, the women who served as go-betweens. The pimps were distrusted because many of them appear to have been criminals in their own right. While some did exercise their own trades,[30] others simply lived off the fruits of their companion's labour. Procuresses, on the other hand, were generally older women who were accused of spreading "moral contagion and scandal."[31] Geremek states that these women were punished severely not because of their role in prostitution, but because of the influence they could have on women of good family.[32] He also attributes the aversion to bawds to their age, stating "[t]he ugliness of their involvement in prostitution was no longer softened by their beauty, or charm or the licence afforded to youth."[33] Social order, in this account, seems to be as important, or perhaps more important, than public morality.

Karras believes that while many women who became prostitutes may indeed have been victims of circumstance or of dishonest bawds or pimps, for others prostitution was simply a stage in the life cycle. The

sources she studied seem to show that authorities were biased towards the view of prostitutes as victims of forced recruitment,[34] mainly because they were unduly concerned with protecting the virtue of young, "honest", women. Thus, Karras offers a moral interpretation of regulations on pimping, procuring, and bawdry. Her interpretation also touches on concern for preserving public order.

During the period of licensed brothels in Languedoc, Leah Otis believes, persecution of bawds, pimps, and procurers was intended to protect the "official" brothel and those who worked there. She states, "[p]rocurers were regarded as fomentors of disorders and trouble and also as illicit competitors to the system of institutionalized prostitution. The condemnation of the procurer was the obverse of the legitimization of the official municipal brothel keeper."[35] Thus municipalities were attempting not only to preserve public order, but also to protect their economic investment in the town brothel. This interpretation seems to hold some validity due to the concerns of the municipalities surrounding the brothels as presented by Otis, which generally included selling the rights to the brothel every year for as much money as possible.

There is much that is still missing from our picture of prostitution in the later Middle Ages. The medieval sources are silent on many questions that historians have raised, and in other cases are simply incomplete. One question that has been raised, but not fully examined

or answered in any work I have yet come across, is why prostitution became a municipal institution in many places on the continent, notably southern France, but not in others.

Some readers will probably question whether the toleration of prostitution in specific areas of England, such as Southwark, as well as in certain areas of Paris and other cities, is really any different from the municipally authorized brothels that developed in other regions, notably the south of France. My argument is based on the idea that there was indeed a distinction between the two practices. On the one hand, authorities first tried to eliminate prostitution from the cities, and when that did not succeed, they grudgingly permitted the trade to continue within certain restrictions. On the other hand, in cities and towns such as Toulouse, authorities tried to ban prostitutes and their trade but eventually created institutions - municipally owned brothels - that not only controlled but promoted the sex trade. The difference, then, comes down to one between toleration and promotion. This differentiation was the central argument in Henry Ansgar Kelly's article on the brothels of Southwark. He analyzes the discussion by Cardinal Cajetan of a passage written by Thomas Aquinas, saying that "Cajetan warns that care must be taken lest permission become participation."[36] Kelly then sets out to discuss how involved Church and other authorities were in the brothels of Southwark and concludes that they were not, as some have claimed,

the landlords of bordellos or stewhouses. The question Kelly was examining is one aspect of the question I have undertaken to answer. How involved with prostitution were the municipal authorities of London, Paris and Toulouse? In those areas where there was significant involvement, why did it occur?

I believe that the answers to these questions have a great deal to do with the legal traditions of different countries, the various forms of government that were emerging, and the types of legislation that developed as a result of these factors. France was slowly becoming a centralized government in the period I am examining, and a great deal of legislation was produced in Paris that was meant to be enforced over the whole nation. Both Otis and Rossiaud noted this in their studies. However, regional traditions persisted. England, by contrast, had become centralized much earlier, and the monarchy was already restrained from absolute power. England's law code, the Common Law, was developed by the king and his courts under the fiction of being based on ancient tradition, and said little or nothing on the issue of prostitution. Therefore, while church and secular authorities in both countries generally held the same moral opinion of the trade, regional and municipal traditions could differ. And it was these regional traditions more than royal legislation that appear to have influenced the

practical treatment of prostitutes and the sex trade across the continent during the Middle Ages.

Notes for Introduction

1. James Brundage, Law, Sex and Christian Society in Medieval Europe (Chicago, 1987), p. 9.

2. Brundage, Law, Sex and Christian Society, p. 60.

3. Pierre Payer, The Bridling of Desire: Views of Sex in the Later Middle Ages (Toronto, 1993), p. 7.

4. Payer, The Bridling, p. 8.

5. Roberto Gonzalez-Casanovas, "Gender Models in Alfonso X's *Siete partidas*: The Sexual Politics of 'Nature' and 'Society'," in Desire and Discipline: Sex and Sexuality in the Premodern West, ed. Jacqueline Murray and Konrad Eisenbichler (Toronto, 1996) p. 43.

6. Carol Kazmierczak Manzione, "Sex in Tudor London: Abusing Their Bodies With Each Other," in Desire and Discipline: Sex and Sexuality in the Premodern West, ed. Jacqueline Murray and Konrad Eisenbichler (Toronto, 1996) p. 88.

7. Vern and Bonnie Bullough, Women and Prostitution: A Social History (New York, 1987), p. 120.

8. Bullough, Women and Prostitution, p. 120. "if the sewer were removed, the palace would be filled with pollution; similarly if prostitution were removed, the world would be filled with 'sodomy' and other crimes."

9. Bronislaw Geremek, The Margins of Society in Late Medieval Paris, trans. by Jean Birrell (Cambridge, 1987), p. 241.

10. Ruth Mazo Karras, Common Women: Prostitution and Sexuality in Medieval England (Oxford, 1996), p. 3.

11. Karras, Common Women, p. 88.

12. Karras, Common Women, p. 14.

13. Ruth Mazo Karras, "Sex, Money, and Prostitution in Medieval English Culture," in Desire and Discipline: Sex and Sexuality in the

Premodern West, ed. Jacqueline Murray and Konrad Eisenbichler (Toronto, 1996), p. 201.

14. Karras, "Sex", p. 210.

15. Leah Lydia Otis, Prostitution in Medieval Society: The History of an Urban Institution in Languedoc (Chicago, 1985), p. 69.

16. Jacques Rossiaud, Medieval Prostitution, translated by Lydia G. Cochrane (New York, 1988), p. 30.

17. Bullough, Women and Prostitution, p. 124.

18. James A. Brundage, "Playing by the Rules: Sexual Behaviour and Legal Norms in Medieval Europe," in Desire and Discipline: Sex and Sexuality in the Premodern West, ed. Jacqueline Murray and Konrad Eisenbichler (Toronto, 1996), p. 25.

19. Rossiaud, Medieval Prostitution, p. 21 - 22.

20. Rossiaud, Medieval Prostitution, p. 39.

21. Otis, Prostitution, p. 14.

22. Otis, Prostitution, p. 25.

23. Otis, Prostitution, p. 110.

24. Otis, Prostitution, p. 102.

25. Karras, Common Women, p. 41.

26. Otis, Prostitution, also suggests that these regulations may have been intended as a form of protection for the prostitutes

27. Geremek, The Margins, p. 223.

28. Karras, Common Women, p. 21.

29. Geremek, The Margins, p. 231.

30. Geremek, The Margins, p. 230.

31. Geremek, The Margins, p. 234.

32. Geremek, The Margins, p. 234.

33. Geremek, The Margins, p. 235.

34. Karras, Common Women, p. 57.

35. Otis, Prostitution, p. 91.

36. Henry Ansgar Kelly, "Bishop, Prioress and Bawd in the Stews of Southwark," Speculum. 75 (2000), p. 349.

Chapter One: The Sex Trade in the Late Middle Ages

Although prostitution has been called "the world's oldest profession", there have been different interpretations of what prostitution was and what place it should have in society, depending on the culture in question. In order to understand the regulations that were put into place to deal with prostitutes and their trade in medieval England and France, it is important to have an understanding of what the legislators were trying to regulate. Who were these prostitutes? What acts constituted prostitution? What actions made a person a procurer, pimp, or bawd? What was the definition of a house of ill fame? Who were the customers? While some aspects of the sex trade are similar, many of these terms had different definitions in the thirteenth, fourteenth, and fifteenth centuries than they do today.

Various historians have offered their interpretations of the answers to these questions. There appear to have been many different types of women who were involved in prostitution, depending on the time and place in which they lived. Bronislaw Geremek found evidence of a range of types of prostitutes in late fourteenth and fifteenth century Paris, from women who were full-time, professional prostitutes, to women who prostituted themselves occasionally to supplement their income from

other trades such as spinner or servant. Part of the distinction between these women was where they worked and lived. Geremek found a variety of terms used in the sources to describe these women, from the generic descriptives *filles (or femmes) de vie* or *filles (or femmes) de joie*, to the pejoratives *ribaud* and *putain.*[1] According to Geremek, these different terms were used synonymously and did not indicate in themselves the variety found in the women who participated in the trade. In English, prostitutes were often referred to as common women or whores, while in Latin the usual term was *meretrix* or *meretrix publica.* Leah Otis found a large variety of terms for women sex workers in Languedoc, which appeared to vary according to the particular era being studied. For example, she found that in the thirteenth and early fourteenth centuries, prostitutes were often described with deprecating adjectives such as trifling and vulgar women, or in Occitanian, *avols femnas.* Later in the fourteenth century, in the period of authorized brothels, she found that they were most often referred to with neutral terms such as *mulieres publices, femnas publicas, las femnas, las filhas,* or *bona filha.* Each of these terms can be translated as simply "public women". Later on, once municipal brothels were beginning to close and French started to become the official language of Languedoc, French terms replaced the Occitanian ones. These terms - for example *cantonnières, paillards, femmes lubriques, femmes dissolues,* or *filles perdues* - were generally pejorative

in nature and contain an element of moral judgment. Otis links the change in the tenor of the terms to the rise and fall of the official brothel and the subsequent rise and fall of the place of prostitution in public life.[2] Studies of similar vocabulary changes in other areas over a period of time have yet to be conducted, and unless sources are studied in the original language, comparisons are therefore impossible.

Because of the variety of behaviours that led authorities to classify women by these terms, several authors have suggested that the best English term to use in translation is "whore" because it has the broadest definition, encompassing not only prostitutes but promiscuous women, which fits most closely with how medieval authorities saw women who may have been involved with the sex trade.[3] The variety of terms used in medieval documents describe a spectrum of behaviours, and the same word might be used for women who behaved in quite different manners. At the same time, women who took money or gifts in return for sexual acts or favours could be called by several different terms, even in a similar time and place. It is this extensive and sometimes confusing vocabulary that readers must try to decode when studying the history of prostitution.

There appears to be some debate over whether prostitutes, speaking in broad generalizations, worked in the towns where they were born. Rossiaud found that in Dijon, the majority (two-thirds) of

prostitutes did indeed come from the city or its immediate surroundings,[4] although he also states that a higher proportion of "foreign" prostitutes could be found in the authorized municipal brothel.[5] This coincides with Otis' conclusion that many medieval prostitutes preferred to practice their trade outside of the town or village of their birth. This statement is based on several lists of names of inhabitants from a Toulouse brothel, where one of the women needed no other distinction than to be nicknamed "La Toulousane". The fact that she, alone among the thirty women on the list, was identified as being from Toulouse seems to suggest that this was rare.[6] The question that Otis does not even speculate on is why these women chose to practice prostitution away from their home towns. Karras also notes that many prostitutes in English towns were "foreigners". She suggests that this was because young women who migrated in search of work were vulnerable to recruitment due to their lack of kin and shaky economic situation.[7] Historians can speculate that the choice to work as a prostitute away from home was made so that these women would not be shamed in front of family, or would not cause shame to their families. There is also the possibility that these women were lured away from their home towns with promises of good jobs in the city. However, these are only theories that the records do not contain sufficient evidence to support fully.

Many of the women who practised prostitution were young and single. Those women who lived or worked in official brothels were often prohibited from having a specific romantic and sexual partner or husband. Ruth Karras' comments on the reasons behind these regulations are intriguing. She states:

> The purpose may appear to have been to protect her from a pimp who would attempt to take her income, though a measure to protect the prostitute would hardly have punished her so severely. Its true function was rather to control her choices about her own sexuality. . . In effect, once she had become public, a woman could have no private life, no say in who her sex partner was to be; she was common property to be shared according to men's wishes, not her own.[8]

Otis, by contrast, suggests that prohibitions against women residing in continental brothels having procurers or "beloved men" were in an attempt to maintain order within the brothel.[9] However, not all prostitutes were young or single. Evidence suggests that some women who were married still practised the trade, possibly with their husband serving as a pimp or procurer, while others married in order to escape from it. There are other scenarios in the documents as well, such as married women running off with lovers, or widows being kidnapped, and ending in up careers as prostitutes.[10] Karras suggests that the level of acceptance women who worked as prostitutes received depended on the attitude towards prostitution among their peers and neighbours. She cites several cases of women who, despite repeated charges of

fornication, adultery, and bawdry, stayed in the same region their entire lives and could clear their names by obtaining the required number of compurgators for court. Karras states that this shows that they were well-established in the community, even if they were not necessarily respected by the authorities.[11] These women may have been the exceptions rather than the rule, but their life stories do indicate that prostitutes were not universally abhorred.

Another question that is often raised is whether or not women in the late Middle Ages turned to prostitution out of poverty, or if there were other factors involved. Rossiaud found that the majority of the women in the records of Dijon turned to prostitution either because of poverty, or because they were forced to by relatives or as a consequence of rape. He states that just fifteen percent of women said they were in the trade by choice, although he does admit that the data is dependent on how the prostitutes presented themselves in official records.[12] These women may have lied about the circumstances of their lives in order to make themselves look better. When examining the reasons that women turned to prostitution, Vern Bullough concluded that

> [t]he only mitigating situation for the medieval lawyer was that in which a girl had been forced into prostitution by her parents or someone who had legal control over her actions. In such a situation the prostitute herself was not accountable for her action; those who forced her into a life of sin bore the guilt.[13]

There is also ample evidence, from various areas of Europe, to suggest that prostitution could be a lucrative trade for a woman. The strongest evidence for this comes from wills. Otis found several examples of women whose wills indicated middle-class origins, and cites the case of Katharine Friande, a prostitute who complained that if the consuls of Toulouse did not reduce the price of the farm for the brothel, she might be obliged to pawn her jewels.[14] Karras offers another interpretation. She suggests that women turned to prostitution as a trade because there were few other opportunities for women to earn a living, and certainly few as lucrative as prostitution could be. Rossiaud supports this assertion when he describes the fees Dijon prostitutes at the Grande Maison could bring in, stating that for each customer a woman could earn "a sum equivalent to what a woman could earn in half a day's work in the vineyards".[15] While this was not likely true for all prostitutes, the trade was lucrative enough that some women, at least, chose it over or in conjunction with a more reputable one.

What was it that these women did to be classed as prostitutes? This is a more difficult question to answer, because of the broad definitions for fornication, whoredom, bawdry, and other terms used to describe the sex trade. It is sometimes difficult to identify from court records women who may have worked as prostitutes, because they are not charged with being common women, but instead face multiple

charges of fornication or adultery. Living in one of the public brothels was certainly enough for a woman to be considered common or public. Accepting cash or payment in kind for sexual favours was another factor that could lead to designation as a common woman. However, as Karras points out, there were other factors that could lead to suspicion of a woman's morals, especially if she was single and engaging in a trade of her own. Furthermore, the monetary exchange was not necessarily the most important aspect of the interaction. In some cases, a woman could be considered a common woman or a whore if she was seen as promiscuous.[16] Thus some women who were classed as whores by their peers or by the law in the late Middle Ages did not practice prostitution as it is understood in the twenty-first century.

Another element in medieval ideas of prostitution is that it was a female crime by definition. This can be seen in the vocabulary used to describe participants in the sex trade, as well as by a unique case discovered by Ruth Mazo Karras and David Lorenzo Boyd in the manuscript of the London Plea and Memoranda Rolls. This entry details the testimony of John Rykener (also known as Eleanor), who was found having sex with John Britby in a London street in December, 1394, while dressed in women's clothing. When questioned, Britby confessed that he thought Rykener was a woman, and approached him as such with a proposition. Rykener admitted to dressing as a woman and working as a

prostitute. He was apparently taught the trade by a certain Anna, and was convinced by a woman named Elizabeth Brouderer[17] to begin cross-dressing. He confessed to having sex for money with multiple men while dressed as a woman, as well as having sex with several women while dressed as a man.[18] The case of John Rykener also illustrates many other issues relating to sexuality in the premodern world, but what is important here is the lack of charges against him. He was not charged with either prostitution or sodomy, and there is no further record of the case. It is possible charges were brought before London church courts, but that is impossible to determine since no records from the period survive. Municipal authorities were apparently unsure of what to do with the case, referring to Rykener with both male and female pronouns. He was undeniably a man in biological terms, but his behaviour made him feminine. However, because he was male, he did not fit into the medieval category of prostitute or whore, which Boyd and Karras define as "first and foremost a sinful woman, although probably one who happened to take money for her sin."[19] As a result, Rykener was questioned and let go. London authorities could not find a category in which he fit, and therefore no charges against him could be laid.

Procurers, bawds, and pimps are also broadly defined categories. Most often, they are accused of either providing space for prostitutes to practice their trade, or arranging for a prostitute to meet a client. There

are other terms used, depending on the location and local dialect, but for the most part they are used synonymously. In Languedoc, Leah Otis found that the term *lenocinium* was generally used to describe procuring or brothel keeping, although its meaning and therefore its significance was ambiguous. She states that "[o]nly in the case of the corruption of an honest woman was it considered to be a matter of high justice."[20] However, she also found that those who operated outside the system of authorized or official brothels were often punished severely for their offences. Rossiaud paints a picture of Dijon and its environs where the female procuresses worked very nearly as part of the system, while the male pimps were more casual. Either could be responsible for recruiting young girls into the profession. He also found evidence that the officers in charge of regulating and registering prostitutes were sometimes a part of the trade, calling one "little more than a pimp".[21] Male companions of prostitutes, whatever they were called, were frequently seen as criminals and many may indeed have had no other trade with which to support themselves. However, it was generally the women, the bawds and procuresses, who were mistrusted the most. In some cases this may have been due to their age. Procuring was one route that older prostitutes could take when they were no longer attractive enough to their clients to make a living by selling their bodies. As well, these women were thought to have a greater influence on women of "good

family", perhaps because a woman, even a stranger, would have easier access to other women and be trusted more readily than a strange man. It is also true that in many cases, women were just as involved in the recruitment of women to prostitution as men were. Karras offers several examples of young women tricked or persuaded into going with brothel keepers by women of their acquaintance. There are also examples in all of these secondary sources of women or men providing young girls not for prostitution, but to be raped. In many of these cases, as both Karras and Rossiaud suggest, these women may well have ended up in a life of prostitution.[22] A woman who had been raped could be seen as sullied, and her value on the marriage market could drop. She could also, if she was married, be abandoned by her husband.[23] Once a woman's reputation was damaged, either by rape or by dishonourable conduct on her part, it was very difficult if not impossible for her to regain it.

The importance of bawds, pimps and procurers in the sex trade of the late medieval period is underscored by the fact that they were often punished more severely for their actions than women accused of prostitution. Many historians suggest that prostitution was seen as necessary for the maintenance of social order. Therefore, the women who sold themselves were doing an unpleasant civic duty. Those who preyed upon the weak and vulnerable, on the other hand, were a threat to social order because they could prey on the wives and daughters of

respectable citizens almost as easily as on less respectable women. As well, anyone who did not have a stable craft or trade affiliation seems to have been suspect, and in some cases this may have led to the association of prostitutes and their companions with criminals. In other cases, either the prostitute or her pimp, lover, fiancé, or companion were in fact criminals, and therefore a definite threat to social order in the towns and cities where they were found.

The physical space where prostitution was practised in the late Middle Ages was nearly as variable as the women involved. There appears to have been a certain amount of social stratification amongst the prostitutes, indicated in part by where they were able to live and work. In Paris, Geremek found that women who were professional prostitutes could live on the streets assigned to them, which consisted of "small houses with adjacent small gardens, sometimes of mean huts or cabins which they rented."[24] This picture of the physical space of prostitution is echoed in other studies. Otis found that over time, many towns in Languedoc shifted from an entire street devoted to prostitutes to one single house. The exceptions to this were Avignon and Arles, which maintained a street that contained small houses and gardens,[25] similar to the description Geremek gives for Paris. Otis also provides a description of the typical layout of the municipal brothels. These buildings usually consisted of one large common room with several

smaller bedrooms, and they frequently included a garden or windows overlooking gardens.[26] They were sometimes privately owned, but most often were owned by the municipalities, who sold the rights to run the brothel (called the farm) at a yearly auction to the highest bidder. The women who worked in the red light districts or authorized municipal brothels were often of middling wealth in the spectrum of the sex trade, because they could afford to pay rent or room and board. Some of these women were wealthy enough to buy or rent homes in better areas as well. A few exceptional prostitutes had enough money that they were able to purchase the farm for the municipal brothels in Languedocian towns.

As well as these authorized brothels, many towns were home to illicit ones. Geremek noted that prostitutes in Paris were officially obliged to leave the brothels at dusk and not to practice the trade in their homes.[27] These prohibitions were frequently broken, however, and women were known to open shops in their homes as a cover for illicit prostitution.[28] Geremek suggests that these women were higher in the social ranking because they could afford their own homes. Otis found that in Languedoc regulations were quite different. She notes that "[i]n many brothels the public women were virtually cloistered," and draws comparisons between the brothels and orders of nuns. The women living in the brothel at Toulouse were, like nuns, required to eat, drink, and

sleep in the brothel unless otherwise excused, although they were allowed to attend Mass on Sundays.[29] Another similarity was the presence of an abbess or abbot, who was in charge of the other prostitutes. Originally the abbess seems to have been one of the prostitutes, but as the system of authorized brothels developed this was more often the owner of the farm, or in some cases, his female partner. There appears to have been some debate over whether it was moral for a man to occupy the role of abbot.[30] Otis does not make distinctions of rank between official or illicit prostitutes, other than to say that illicit brothels were generally persecuted by town officials while the authorized ones were not. In England, casual or illicit arrangements were far more common due to the rarity of any type of official brothel. Unofficial or illicit brothels ranged from houses or inns where couples could rent a room for a few hours, to bathhouses, to the homes of prostitutes where they practised the trade illegally.[31] Any building where men and women who were not married could meet for carnal relations could, under these terms, be considered a brothel or a house of ill fame.

In addition to those women who owned or rented their own homes, and perhaps had a settled room on one of the streets set aside for prostitution, there were women who plied their trade in the streets, gardens, fields, inns, taverns, bath houses and even churches of Paris and other towns. Geremek sees these women as the lowest rank of sex

trade workers. They certainly would have been among the poorest, and women working in such conditions seem to have frequently been migratory, following merchant trains, fairs, or armies in their search for customers. Other women were migratory because they had to seek out new residences as they were fined and expelled from one town or ward after another.[32] Some women who walked the streets may not have been migratory, but instead casual sex workers who held down another trade as their main occupation or who depended on prostitution for income only when need arose.

There seems to have been a steady pool of potential customers for women who wished to work as prostitutes either casually or on a more permanent basis. Almost universally, authorized brothels forbade entrance to married men, Jewish men, and clerics due to the moral concerns involved over adultery, "racial" purity, and celibacy. There is ample evidence that despite the restrictions, men in these social categories were frequent customers of prostitutes. Karras suggests that the social distinctions between prostitutes were more based on their customers than their place of operation;[33] however, the two are undoubtedly related as a higher class of customer would require a higher class of location, or perhaps more discretion. Among the lower scale of customers, and perhaps the most numerous, were apprentices and servants who were likely to be single and also likely to be unable to

marry due to their financial situation. Other common categories of customers were clergymen, who were vowed to celibacy, and foreign merchants, who were frequently away from their wives and families. Clerics were subject to punishment, both secular and canon, for their breach of their vows of celibacy. As Karras notes, "from the point of view of the temporal authorities, who were busy prosecuting the clergy for adultery and fornication with the wives and daughters of the burghers, prostitutes were by far the better alternative."[34] Authorities often seem to have ignored clerical visits to prostitutes unless they were indiscreet. There is another aspect of the relations between clergymen and prostitutes. As noted by Dyan Elliott in her book Fallen Bodies, some of the women referred to as "prostitutes" in the retinues of clergymen may in fact have been clerical wives or concubines whose official existence was prohibited after the Gregorian reforms of the twelfth century.[35] Confusion over the status of these women persisted into the late medieval period - were they prostitutes with a clerical clientele, or concubines? According to the officials who recorded their existence, they were prostitutes who catered specifically to priests. Other prostitutes catered to specific segments of the potential client base as well, which would have affected both their financial situation and their social status, depending on the literal or figurative "class" of their clientele.

Despite the variance in the definitions of prostitution and related activities in the Middle Ages, there are certain common aspects that are quite different from the twenty-first century, as well as some that are similar. Understanding the role of the sex trade in medieval society depends on an understanding of what the definitions were. Once we have a sense of how the people of the late Middle Ages saw prostitution, we can begin to understand the legislation that was produced in an effort to regulate it. The next several chapters will explore this legislation in the context of canon law and the legal traditions of England and France.

Notes for Chapter One

1. Geremek, The Margins, p. 215-216.

2. Otis, Prostitution, p. 50.

3. See specifically Karras, Common Women, p. 11.

4. Rossiaud, Medieval Prostitution, p. 32.

5. Rossiaud, Medieval Prostitution, p. 34.

6. Otis, Prostitution, p. 64.

7. Karras, Common Women, p. 56.

8. Karras, Common Women, p. 40.

9. Otis, Prostitution, p. 85.

10. Rossiaud, Medieval Prostitution, p. 33.

11. Karras, Common Women, p. 66-68.

12. Rossiaud, Medieval Prostitution, p. 32.

13. Bullough, Women and Prostitution, p. 120.

14. Otis, Prostitution, p. 65.

15. Rossiaud, Medieval Prostitution, p. 34.

16. Karras, "Sex", p. 201.

17. David Lorenzo Boyd and Ruth Mazo Karras, "`Ut cum muliere': A Male Transvestite Prostitute in Fourteenth Century London," in Premodern Sexualities, ed. Louise Fradenburg and Carla Freccero (London, 1996), p. 114. In note 22, Boyd and Karras discuss how this may be the same woman as Elizabeth Moryng, convicted of bawdry in London in 1385.

18. Boyd, "`Ut cum muliere'", p. 111-112

19. Boyd, "`Ut cum muliere'", p. 105

20. Otis, Prostitution, p. 89.

21. Rossiaud, Medieval Prostitution, p. 30.

22. Karras, Common Women, p. 61 and Rossiaud, Medieval, p. 29-30.

23. Rossiaud, Medieval Prostitution, p. 29.

24. Geremek, The Margins, p. 216.

25. Otis, Prostitution, p. 51.

26. Otis, Prostitution, p. 52.

27. Geremek, The Margins, p. 217.

28. Geremek, The Margins, p. 218.

29. Otis, Prostitution, p. 83.

30. Otis, Prostitution, p. 60-61

31. Karras, Common Women, p. 72-3, talks about these venues in England, but the same seems to have been true elsewhere as well.

32. Karras, Common Women, p. 71.

33. Karras, Common Women, p. 76-77.

34. Karras, Common Women, p. 77.

35. Dyan Elliott, Fallen Bodies: Pollution, Sexuality and Demonology in the Middle Ages (Philadelphia, 1999), p. 83.

Chapter Two: Prostitution and Medieval Canon Law

It is impossible to study the world of the medieval sex trade without examining, at least in passing, the role of canon law in regulating the trade and sex in general. By the later Middle Ages, church courts were firmly established as the venue for determining what acts constituted sexual sins and crimes, and then doling out punishments for those who went beyond the bounds of what the Church considered appropriate. The questions we must examine, therefore, are what the medieval Church held to be appropriate sexual behaviour and how this affected prostitution. There has been some debate over this issue in recent years as historians uncover lesser-known Church writers. There have also been re-evaluations of widely known canonists and theologians, and some writings traditionally attributed to them are being questioned anew. What can be said with certainty is that the ideas which contributed to the development of Christian attitudes towards sexuality were drawn from a variety of sources over a long time span. These sources included the Bible, classical philosophers and writers, Germanic tradition, and early Christian writers. James Brundage expressed this diversity in the introduction to his signature book, Law, Sex and Christian Society in Medieval Europe when he wrote:

> Christian sexual morality is a complex assemblage of pagan and Jewish purity regulations, linked with primitive beliefs about the relationship between sex and the holy, joined to Stoic teachings about sexual ethics, and bound together by a patchwork of doctrinal theories largely invented in the fourth and fifth centuries.[1]

The concepts and attitudes from these various sources were extended, expanded and modified by theologians and writers of canon law, and eventually became not only the law of the Church in medieval Europe but were incorporated into various secular law codes as well.

In the past twenty years, the established authority on European canon law from the birth of Christianity through to the Reformation has been Brundage. In his extensive studies of Christian views on sex and sexuality, Brundage spent several chapters discussing the pre-Christian origins of the attitudes of various medieval canonists. He begins with the philosophers of ancient Greece. These men, specifically Plato and Aristotle, transmitted their ideas of morality to medieval Christendom along with their ideas of cosmology, rhetoric and ethics, and this heritage included their thoughts on sexual morality. Plato was ambiguous in his treatment of sex and love, sometimes seeing sex as positive and beneficial to mankind, and at other times presenting it as a distraction. Aristotle presented sex as an irrational desire that corrupted men and made them little better than animals. His ideal of love transcended the physical and became purely spiritual and rational.[2] These ideas

surfaced again later in the writings of medieval canonists and theologians, providing a basis for the treatment of sexual relations and sexual pleasure in canon law.

Pierre Payer agrees with the importance of Aristotle on medieval discussions of sexuality. However, he holds a different view on the exact contributions of Greek philosophy. Payer states that Aristotle's influence "was significant in providing conceptual tools to fashion the medieval understanding and to give clarity, precision, and consistency to a traditional biblical and patristic language inappropriate to the language of the schools."[3] According to this view, Aristotle provided the essential framework for medieval Christian discussions of sexual morality, but did not contribute significantly to the content of the discussion. Brundage argues that Aristotle contributed a great deal more than tools or frameworks and was, in fact, a major contributor to the content of the discussions.

An even more important Greek influence on the early Church and therefore all the theology that followed was the philosophy of the Stoics. Brundage says that these men believed that sensation was not rational and that therefore the pursuit of pleasure in and of itself was a sign of poor judgment. Sexual relations, as a source of pleasure, were therefore not healthy to pursue immoderately. As well, sexual relations belonged to the lower appetites, and were thus to be controlled by the rational

man. Chastity, in this view of things, was the highest state that could be attained.[4] "Sexual love, then, was an inferior and potentially dangerous kind of love, a shallow surrogate for the intellectualized love that Stoics esteemed."[5] The importance of Stoic teachings lies partly in their similarity to the teachings of Saint Paul. Both shared negative views towards sexual pleasure, although Paul was not a Stoic and did not follow all of their doctrines. For example, the Stoics held that sex in itself was neutral, but Paul loathed it and considered it an evil.[6] However, the influence was there and Paul was a major influence on later Christian beliefs.

Payer's discussion of the Stoic contribution to medieval discussions of sexual morality is much more positive than that presented by Brundage. He focuses on the influence of Stoic writers on discussions of the virtue of temperance, with a particular emphasis on Cicero. According to Payer, Cicero's writings discussed temperance in broad terms, stating that all appetites should be restrained or reined in. Sexual inclinations received no greater emphasis than other appetites. Cicero defined temperance as "[t]he firm and moderate domination of reason over lust and other improper impulses of the mind."[7] The use of the term "lust" here is not limited to sexual connotations; lust referred instead to any immoderate desire. However, medieval readers such as Augustine seemed to understand it strictly in terms of sexual appetites.[8]

Even then, views of sexual temperance were not entirely negative. The very term "temperance" supported restraint, not necessarily abstention, in sexual matters. Due to his research, Payer argues that the Stoic contribution to medieval understandings of sexuality and sexual morality was more positive than Brundage believed.

Another view of the Stoics links their ideas about sex to those of late classical writers, who believed that sex could diminish a man's virility and that the thoughts and feelings of the parents at the time of conception could influence the character of the child. As a result of this, decorum and restraint were called for during sexual intercourse. The Stoics also linked private behaviour, such as sex, to public behaviour; a man who was immoderate in the bedroom would thus be more likely to be immoderate in his public life as well.[9] In his book The Body and Society, Peter Brown goes on to say "Pagan and Christian alike, the upper classes of the Roman Empire in its last centuries lived by codes of sexual restraint and public decorum that they liked to think of as continuous with the virile austerity of archaic Rome. Sexual tolerance was out of place in the public realm."[10] Brown also notes that these codes of behaviour were a matter of choice and that it was generally the upper classes who made any attempt to follow them. These codes, however, helped to lay the foundations of later Christian sexual morality.

Another major influence on Christian morality was the Bible, and specifically the New Testament. The problem with using the Scriptures as a source for sexual morality is that in all the reports of what Jesus said, he does not mention sex or sexual relations except in the context of divorce and remarriage. In this, Jesus was generally following the practices of the Jewish culture that gave birth to Christianity and expected that his followers would be living within that culture. Brundage found that ancient Judaism did not treat sex between two unmarried persons as a sin.[11] He does discuss the ancient Hebrew belief that sex led to a pollution that required cleansing, and how Christians came to believe that because of this the genitals themselves were unclean.[12] However, passages from the New Testament that mention sex are ambiguous, which led ultimately to difficulties of interpretation. As a result, writers such as Saint Paul attempted to provide answers to the questions raised by various Christian communities. Brundage believed that sometimes these writers and preachers, especially Paul, were working under the assumption that the end of the world was near and therefore true disciples of Christ should be concerned with their salvation and not such worldly things as sexual relations, family or marriage. However, Paul also held that sex could be good so long as it was within marriage, and could even be an aid to salvation. Sex outside of marriage was condemned in strong terms by Saint Paul, as well as

other sexual crimes such as homosexuality and masturbation.[13] Brown offers several explanations for this. First of all, much of what Paul wrote was based on the fact that he wanted to save Israel by bringing in Pagans. He then expected them to follow the codes of conduct set out in Judeo-Christian tradition. The Gentiles, in Paul's view, were sinful and he looked upon them with contempt and disgust.[14] Paul believed that the human body, especially that of a young male, should be a "temple of the Holy Spirit". He also believed that sexual intercourse led to a joining of spirits that was intended to only occur in marriage. Sex outside of marriage, therefore, could lead to a pollution of the temple, especially if the young man were to have sexual relations with a prostitute. [15] According to Brown, many of Paul's writings were based on codes of sexual behaviour taken from Jewish practices within marriage. He was also attempting to keep his followers from renouncing marriage altogether for a life of celibacy. Brown says:

> By this essentially negative, even alarmist strategy, Paul left a fatal legacy to future ages. An argument against abandoning sexual intercourse within marriage and in favour of allowing the younger generation to continue to have children slid into an attitude that viewed marriage itself as no more than a defence against desire.[16]

Paul's intent, therefore, may not have been nearly as negative as later authors believed. Many of these later writers and theologians agreed with what they saw in Paul's writings, although there were frequent debates. This obviously had an influence on Christian views of

prostitution, since the prostitute and her clients were operating outside of the sanctioned field of marital sex. As a result, the prostitute by her very trade was a sinner in the Christian view.

Individual communities of early Christians were influenced not only by local customs, ancient traditions, and the Scriptures, but by other cults that were competing with them for followers. One of the most successful of the early rival cults was Gnosticism, and Brundage states that a great deal of early Christian theology was written as a reaction to Gnostic ideas. Christianity and Gnosticism exerted a great deal of influence on one another because of this interaction, and many Gnostic ideas were transferred to Christianity. Brundage's partner on several projects, Vern Bullough, concurs with this assessment of the importance of Gnosticism. He states that "in the long run, its [the Christian Church's] attitudes toward sex seem to have been more influenced by the ascetic Gnostics than the more earthly Jews."[17] Due in part to this ascetic influence, chastity and celibacy became the ideal for many Christians, and while it was acknowledged that sexual relations were necessary for procreation, those who chose to marry were seen as morally lesser creatures than those who could maintain a celibate lifestyle.

Brown believes that the diversity of early Christian communities and related cults that sprang up around the new religion led to the

development of strict codes of sexual conduct. These codes provided the common ground for the various groups when they came together, as well as providing common ground for the diverse members of a single group.[18] He also says that while the Gnostics held celibacy to be the ideal, they did not actually expect every person to be able to attain that ideal. The Gnostics claimed that the redeemed had overcome sexual desire but they did not hold everyone to the same standard.[19] In this view, there is no moral judgement of those who chose to marry, simply an acceptance of the fact that not everyone was meant to be among the celibate elite. He also states that another cult, the Manicheans, had much the same belief – "The total cessation of desire was possible for the few."[20] Celibacy, according to this view, was not intended to be the universal ideal as it came to be in the Middle Ages; rather it was meant to be a potential open to those who wished to seek it.

Both Brundage and Bullough argue that the Manicheans had a large impact on Christianity due to the fact that Saint Augustine was influenced by their ideas and passed them along to later Christian writers. Brundage says that the Manicheans believed sexual intercourse was wrong, sinful, and in fact "chained the soul to Satan and denied its rapid progress into the Kingdom of Light", which was the highest state a human could attain.[21] According to Brundage, Augustine was never able to refrain from sex as the Manicheans and some Christians demanded,

and as a result he adopted a life of celibacy and an attitude of intolerance towards sex. He came to believe that sexual desire was "the most foul and unclean of human wickednesses, the most pervasive manifestation of man's disobedience to God's designs."[22] This belief, which was also held by other Christians, arose partly from the fact that sexual desire seemed not to be fully under the control of the human will. Because of this, it could not be predicted, was very difficult to control, and therefore became equated with sinfulness and evil.

Payer paints a different picture of how Augustine's ideas and the "traditional doctrine" of sexual morality were formed. By "traditional doctrine", Payer means the belief that sexual intercourse was excused by legitimate marriage so long as the union was "done in the proper manner".[23] This vague doctrine raises a number of questions, and Payer argues that the person responsible for formulating answers to them was Augustine. He describes the process of this formulation of ideas by stating that "St. Augustine worked out its [the traditional doctrine's] most significant elaboration in the heat of battles, first with the Manichees, who wanted to damn sex and the flesh, and later with the Pelagians, who denied (at least in the eyes of Augustine) the disabling effects of the Fall and original sin."[24] Instead of agreeing with Manichean views of sexual morality, Payer sees Augustine as fighting against them to establish the "proper" or "correct" Christian interpretations of the

issues. While Augustine has often been painted as wholly negative in his views towards sex and sexuality, Payer states that he "in fact can be seen as successfully challenging and ultimately silencing views that tended to deny the natural goodness of gender differentiation and sexual intercourse."[25] This suggests that Augustine's attitudes towards sexual matters were not nearly as negative as many authors, Brundage and Bullough included, have suggested. Despite these various and conflicting arguments, St. Augustine's ideas were extremely influential in discussions of sexual morality and other areas of theology and canon law through to the modern era.

Brundage states that despite Augustine's negative attitudes towards sex and sexual desire, he held that prostitution was a necessary evil and should be tolerated to prevent greater evils. This helped to shape Christian treatment of prostitutes in centuries to follow.[26] However, as Kelly argues in his study of the brothels of Southwark, this idea was not Augustine's, as many medieval authors believed. Instead, in his treatise On Order, Augustine attributed it to Trygetius, one of his ex-students.[27] Whatever the exact origin of this idea, it became common throughout the Middle Ages and influenced not only Church law but secular law codes as well.

Another major influence on both canon and secular law codes was Roman law, and this was an influence that led to some conflict.

Brundage states that the Christian perception of sex and prostitution as sins is in direct contrast with the views of both classical and Imperial Rome. He found that Roman writings on sex were frequently dispassionate and matter-of-fact.[28] Sexual relations were a part of life to Romans and not something to dwell upon. Prostitution, while not a good trade by any means, was not despised to the same degree by the Romans as it was by the Hebrews and early Christians. Brundage discusses the classical Roman tradition of established, licensed prostitutes, living in brothels and paying fees to the magistrates. These women were frequently slaves or the spoils of war. Even those women who were unlicensed prostitutes were accepted as a part of society, although they had a poorer reputation than those who were regulated.[29] Brundage argues that one of the reasons that the sexual activities of prostitutes were accepted in Roman society was that prostitutes were by definition not respectable women and thus they were never subject to the same expectations as proper maidens or matrons. Many of them were marginalized from the beginning due to their status as slaves, freedwomen, or foreigners.[30] This relaxed attitude towards sex and tolerance for prostitution caused moral problems for medieval Christian canonists when they began studying Roman law and attempted to apply it to their own society because many early Christian writers either saw sexual relations as bad, or as something that could be good only in

limited circumstances. The toleration of prostitution as a "necessary evil" may have been an attempt to reconcile Roman attitudes with Christian sexual morality.

Discussions of sexual morality in the late Middle Ages often centred around the offence of fornication, a category of sin or crime which did not exist in Roman law. The exact definition of fornication was a topic of furious debate through the entire history of the Christian church. According to Brundage, early patristic writers defined fornication as any sexual relations outside of marriage, which, though common, was a grave moral failing.[31] Gratian defined it as illicit coitus practised with anyone other than a legitimate wife, but especially with a harlot, widow, or concubine. Other canonists expanded this to mean any kind of illicit intercourse, even excessive intercourse between husband and wife, and still others extended the definition of fornication to matters outside of sex, referring to "spiritual fornication" in the sense of superstition, heresy, or witchcraft.[32] Payer agrees with the definition of fornication as sexual intercourse taking place outside of the bonds of marriage, but denies that this came about due to condemnation of sexual pleasure.[33] His study shows that fornication was condemned because sexual relations could only be excused by the "goods of marriage", which included offspring or procreation, sexual fidelity to one's partner, and the inseparability or indissolubility of the partnership. He states,

"Intercourse was said to be excused by the goods of marriage, not in the sense that intercourse in and of itself was considered evil, but that it *would* be evil unless marked by the right circumstances that are constituted by the goods of marriage."[34] Despite this official doctrine, many common people in the late Middle Ages did not believe that "simple fornication", or sexual relations between two unmarried people, was a sin. Payer argues that this fact shows how the Church was not the only force at work in defining sexual morality in the medieval period.[35] Commonly held beliefs also had an effect, and in some cases could be more influential than the doctrines of the Church. This can also be seen in the struggles of the Church to define and control legitimate marriages and to forbid the marriage of priests.

The relation of fornication to prostitution is easy to see. Anyone involved in the actual acts of prostitution was fornicating since the prostitute and her clients were not married and their sexual relations were therefore not legitimized by the marriage bond. Despite the Church's intolerance of fornication as a sin, in practice, those guilty of fornication were not generally punished severely. Brundage found that the most common punishment for fornicators in Church courts was a relatively light fine.[36] Some canonists held that fornication was both a sin and a crime, and fornicators should be required to confess their sin and do penance, then be publicly punished.[37] Brundage also argues

that as canon law became more complex and more established in the thirteenth and early fourteenth centuries, fornication became the most common sin or crime that appeared in Church courts. Thomas Aquinas believed fornication was a sin because it was prohibited by natural law, as was any sex act outside of marriage. Due partly to this attitude, lawmakers of the late thirteenth century tried to implement the ban on fornication more completely by establishing new procedures. Parishioners were encouraged to report their neighbours, and clergymen were charged with reporting fornicators to their rural deans. Brundage argues that more and more people were being brought before Church courts on charges of fornication as a result of these new procedures, and in response the Church tended to treat these cases lightly as a way to get through them all.[38] Richard Wunderli argues that Church courts treated cases of "natural lust" leniently because it was so easy for charges to be brought against someone in the first place. He states that the canon law procedure of prosecution by reputation or *fama* resulted in an overload of cases in Church courts. "Canon law had decreed that a person could be accused by ill fame alone; and a person's ill fame - largely a creation of gossip, rumors, and the good and ill will of his neighbors - took on the garb of a prosecutor."[39] In response, Church courts used compurgation or oath-swearing for procedure, which resulted in a large percentage of cases being dismissed since most people

could find six or even twelve people who would swear that they were of good character. Wunderli believes that these facts led to a disillusionment with Church courts towards the end of the Middle Ages and into the early modern period.[40] These various arguments may explain why men who had relations with prostitutes were frequently left unpunished, despite the fact that Christian morality and Christian law decreed that such relations were wrong.

Adultery was much a much more serious crime than prostitution or fornication, as well as easier to define. It was simply defined as sexual relations with someone other than one's spouse. While medieval canonists drew upon Roman tradition for their definition and punishments for adultery, there were several significant differences. According to Bullough, in Roman law adultery was the crime only of a married woman. Married men who had sexual relations with women other than their wives were not considered to have committed adultery. According to the medieval canonists, however, adultery was a crime for both sexes equally. Whether it was the wife or the husband who had intercourse with someone else did not matter; either one was guilty.[41] Traditionally the punishment for adultery could be extreme. Bullough states that both Roman and Germanic tradition held that the husband of an adulterous wife had the right to avenge himself by killing both his wife and the man she betrayed him with, and the Church struggled to modify

this tradition to make it consistent with Christian morals against murder. He argues that canon law substituted heavy fines and public humiliation for homicide, and continued the tradition that the wronged spouse must not appear to condone the adulterous behaviour. As a result, adultery was just cause for the innocent party to separate from their spouse, although it was not required or encouraged. Instead, according to Bullough, canonists hoped that the guilty spouse would do penance and that the couple would maintain their relationship.[42] In theory, men were at least as culpable of adultery as women, if not more so because they were expected to be role models as the head of the household. In practice, women still tended to be treated far more harshly than men if they were found guilty of adultery. This continued to be the case through the Middle Ages and well beyond. This seems to be one reason that in cases related to prostitution it is not adultery charges that are brought up. The lack of adultery charges in connection with prostitution may also reflect the ideal that married men did not visit brothels or stews. In many cases, a man known to be married was prohibited from entering a brothel. The degree to which these prohibitions were successful can not be known, but it is unlikely that any authority was capable of policing the situation closely enough to entirely prevent married men or non-Christians from frequenting houses of ill-fame.

Despite the generally negative attitude of the medieval Church towards sex outside of marriage and prostitution as an institution, the individual women who participated in the trade were generally treated leniently by Church courts. According to Brundage, this was due mainly to two beliefs: first, that prostitution prevented greater sins in society; and second, that female prostitutes were only acting as their weaker, more sexual natures, dictated. The main debates among theologians and canonists about prostitution had more to do with whether the Church could accept money earned from prostitution as tithes or alms and whether prostitutes should be allowed to attend church services than with punishing the women for their trade. It was generally accepted that prostitutes had the right to their earnings, no matter how morally contemptible the way in which they made the money, but that the money was tainted. The other thread of debate in medieval Christian writings dealing with prostitution had to do with the idea of saving prostitutes from their life of sin. Brundage and Bullough both argue that it was considered one of the highest forms of charity for a man to marry a truly repentant prostitute. There were also religious or quasi-religious houses established for women who wished to ease their way back into society. This tradition began with Justinian, who took an active interest in protecting prostitutes and established the Convent of Repentance in Constantinople in the early sixth century. Brundage found that not

every woman who found herself "saved" from a life of prostitution was happy. He cites Procopius, who recorded that some of the women were so unhappy with their forced conversion from whores to nuns that they leapt to their deaths from the convent walls.[43] He also states that later canonists continued to believe that prostitutes were simply weak women awaiting salvation, either through marriage or redemption via religious orders. Part of this pattern of thought and behaviour arose out of the conflict between pagan Roman and medieval Christian attitudes towards prostitution. The Romans had tolerated the practice, which caused a great deal of distress to twelfth-century canonists who looked to Roman law for inspiration in creating a more comprehensive system of Church law, since Christianity condemned prostitution. The resulting interest in reforming prostitutes led to the development of cults dedicated to prostitute saints, most notably Mary Magdalen. Bullough's findings on the topic are similar to Brundage's. He found that in 1227, Pope Gregory IX established the Order of Saint Mary Magdalene, known as the "White Ladies" because of their white habits. This order was dedicated to reforming prostitutes and giving them a place to begin a new life. Canonists generally encouraged whores who wished to repent to enter into such religious houses, although they recognized the difficulties this could pose.[44] He also discusses the other avenue to reform for a prostitute, which was marriage, although acknowledging that there was

debate over whether this should be allowed. He found that in some cases, a prostitute might be required to obtain a special dispensation before being allowed to marry. In others, she could marry so long as she gave up her life of prostitution and did public penance. Once married, if the woman returned to the sex trade she could be put away, and the man who married a prostitute could face sanctions and be barred from certain offices within the Church.[45] Thus while prostitutes were certainly seen as sinful by medieval canonists, they were also seen as women in need of help. This belief influenced the treatment of prostitutes in canon law and also had an impact on the way they were dealt with in secular courts.

Overall, then, sexual morality was defined in the most part by theology and canon law, although popular tradition also had an impact. As a result of the variety of influences on canon law, treatment of prostitution was frequently ambiguous. While prostitutes were seen as sinners because they operated outside of acceptable sexual morality, which restricted sexual relations to married couples, they were also treated as weak women in need of assistance. These beliefs imbued canon law and affected how Church courts charged and prosecuted those women who were involved in the sex trade. They also laid the moral framework for secular law codes on the national and municipal level.

Notes for Chapter Two

1. Brundage, Law, Sex and Christian Society, p. 3.

2. Brundage, Law, Sex and Christian Society, p. 16 - 17.

3. Payer, The Bridling, p. 13.

4. Brundage, Law, Sex and Christian Society, p. 18 - 21.

5. Brundage, Law, Sex and Christian Society, p. 21.

6. Brundage, Law, Sex and Christian Society, p. 21.

7. Payer, The Bridling, p. 135.

8. Payer, The Bridling, p. 135.

9. Peter Brown, The Body and Society: Men, Women and Sexual Renunciation in Early Christianity (New York: 1988), p. 19 – 21.

10. Brown, The Body, p. 22.

11. Brundage, Law, Sex and Christian Society, p. 58.

12. Brundage, Law, Sex and Christian Society, p. 81.

13. Brundage, Law, Sex and Christian Society, p. 60 - 61.

14. Brown, The Body, p. 44 – 51.

15. Brown, The Body, p. 51.

16. Brown, The Body, p. 55.

17. Vern L. Bullough and James Brundage, Sexual Practices and the Medieval Church (Buffalo: 1982), p. 7.

18. Brown, The Body, p. 60.

19. Brown, The Body, p. 119.

20. Brown, The Body, p. 201.

21. Bullough Sexual Practices, p. 10.

22. Brundage, Law, Sex and Christian Society, p. 80.

23. Payer, The Bridling, p. 4.

24. Payer, The Bridling, p. 5.

25. Payer, The Bridling, p. 24.

26. Brundage, Law, Sex and Christian Society, p. 106.

27. Kelly, "Bishop, Prioress and Bawd", p. 343.

28. Brundage, Law, Sex and Christian Society, p. 22.

29. Brundage, Law, Sex and Christian Society, p. 25.

30. Brundage, Law, Sex and Christian Society, p. 44 - 45.

31. Brundage, Law, Sex and Christian Society, p. 103.

32. Bullough Sexual Practices, p. 130.

33. Payer, The Bridling, p. 7

34. Payer, The Bridling, p. 81.

35. Payer, The Bridling, p. 182.

36. Bullough Sexual Practices, p. 132.

37. Brundage, Law, Sex and Christian Society, p. 205.

38. Brundage, Law, Sex and Christian Society, p. 459 - 460.

39. Richard M. Wunderli, London Church Courts on the Eve of the Reformation, (Cambridge, Mass, 1981), p. 40.

40. Wunderli, London Church Courts, p. 93 - 95.

41. Bullough Sexual Practices, p. 131.

42. Bullough Sexual Practices, p. 133.

43. Brundage, Law, Sex and Christian Society, p. 121.

44. Bullough Sexual Practices, p. 157.

45. Bullough Sexual Practices, p. 159.

Chapter Three: National and Regional Law Traditions of Medieval Europe

European law traditions developed in a variety of ways, depending in part on the political structure, ethnic heritage, and language of the region. Some areas based their legal codes on Roman law traditions, either the Corpus Iuris Civilis of Justinian or remnants of earlier Imperial codes, while others relied upon the traditions of the various Germanic tribes that swept across the Roman Empire. England and France, for example, developed very different legal systems despite the many links between the two countries. England developed a national law code, known as the English Common Law, very early on, while France developed a fragmented, regional, feudal system that endured until the Napoleonic codes of the early nineteenth century. In those areas where Roman law codes had significant impact on secular law, brothels and prostitution seem to have been tolerated to a greater extent than in those areas where Germanic traditions were most influential. This can be seen not only in the national or regional law codes, but in the municipal regulations that evolved.

England developed a law tradition different from anywhere else in Europe. What came to be known as the English Common Law has been

called a product of the twelfth century. G.D.G. Hall, in his introduction to The treatise on the laws and customs of the realm of England commonly called Glanvill, defined the Common Law as "the settled law of the king's court, common to all free men in the sense that it is available to them in civil causes if they will have it, and applicable against them in serious criminal causes whether they like it or not."[1] It was primarily "'a collection of processes for settling common disputes."[2] This common law tradition was affected by Anglo-Saxon and Norman laws and customs, such as the office of sheriff, the institution of the jury, and the writ.[3] English feudal law had the same origins as that on the continent, but diverged from it as time went by. As well, canon law and Roman law had little influence on the common law.[4] It developed in different directions from law codes in other countries, mainly because England was unified under a single monarch much earlier than any other European nation. This process began with the late Anglo-Saxons while they were facing the threat of constant Norse attacks. After 1066, the Norman kings, as conquerors of England, could dispose of the land as they wished, thus establishing the precedent that the king was the lord over every piece of land in England and laying the foundations for the growth of royal bureaucracy and law.[5] England was not divided by feudal disputes like many other countries in Europe, specifically France. This strong royal power could use its equally strong court system "to create the uniform

law of the king's courts by resorting to the fiction of the immemorial custom of the realm. . ."[6] In other words, the English monarchs and their royal courts created what came to be known as the Common Law. The main creative force behind this new legal tradition was the Court of Common Pleas, one branch of the king's court or *curia regis*, between the thirteenth and sixteenth centuries.[7] In addition, beginning with Henry II and continuing well past the end of the Middle Ages, English monarchs issued ordinances, writs and regulations that established both law and procedure for the whole country. These ordinances, however, do not deal with sexual sins or crimes, and make no mention of prostitution. Instead they are concerned primarily with felonies and matters of property, inheritance, and feudal rights. Sexual sins were left to the Church courts, and the regulation of prostitution to municipal or manorial authorities. This is shown by the lack of cases dealing with sexual crimes in the records of the Eyres, or royal court sessions, of the thirteenth century. In the record of the London Eyre of 1276, for example, there are a total of three cases which mention prostitutes or prostitution, and in all three cases it is simply as a side note or description of the persons involved in murder, a crime that was certainly within the jurisdiction of the royal courts. [8] The prostitutes were only involved as potential suspects or as witnesses to the crimes. Other collections of royal court cases from England also contain no cases

relating to sexual crimes aside from adultery and how it might affect inheritance, while the various compilations of English Common Law do not mention sexual crimes at all.[9] The obvious conclusion to draw from this evidence is that English secular law, at a national level, was not concerned with sexuality in the late medieval period, unlike the situation in France.

The legal tradition in France was much more varied than that of England. Until the enactment of the *Code civil* in 1804, France had no centralized legal code or system of law like the English Common Law. Instead, there were over sixty separate areas of customary law, each with its own regulations.[10] There were considerable variations between these regional customs, with the greatest differences occurring between the southern provinces and those in the north, with the dividing line being the Loire river. In the south, the area known as *pays du droit écrit*, the law customs were based on Roman law and written formula. This was an area where Roman civilization had taken deep root during the Empire. The most common form of Roman law used in this region was the Visigothic code, the Lex Romana Visigothorum, which had been put into written form in the sixth century and which was largely based on the Theodosian Code of the mid fifth century, rather than on Justinian's Corpus Iuris Civilis. Justinian's master work of law was often too complex for the largely agricultural society that emerged in the early

medieval period in France.[11] There was also a strong emphasis on local custom, which was a mix of Roman and Germanic. In fact, custom was the first avenue for law, with the written code filling in where custom had no laws that fit.[12] In the north, the area known as *pays des coutumes*, law customs were based more on Germanic and oral traditions as well as feudal law. Roman law in the north never achieved the status of a general subsidiary source to custom as it had in the south, although some terminology and concepts did cross over.[13] The law traditions in these regions were so different that the Parlement of Paris developed separate courts to deal with cases from the southern provinces.[14] As well, French law until the Revolution in 1789 was seigneurial in nature, granting widespread privileges to lay and ecclesiastical lords. This was one of the major impediments to the development of a centralized code of law in France. Due to the independence of these seigneurs and the juridical rights granted to them, the authority of the king of France was frequently not recognized in large parts of the country until the end of the Hundred Years' War.[15] As a result, the ability of the king and his royal courts to create legislation was limited. The *parlements* had no legislative power even though they were the highest court in the land.[16] At the same time, the role of the kings was "not to create law, but to formulate existing customs and to administer justice within the framework of tradition."[17] Despite these limitations, the monarchs of

France attempted to establish their authority over the whole country, although it was not until the sixteenth century that royal legislation became accepted and applied universally in France.[18] In terms of dealing with prostitution, there were several regulations originating from French kings from the late thirteenth century through to the middle of the fifteenth century. While we must question the effectiveness of those ordinances which were intended to be applied to the whole of France, it is obvious that the French monarchs were attempting to regulate the sex trade for a variety of reasons. This is something which the monarchy in England never did. The kings of France may have been trying to create a uniform system of law for the nation, or they may have been trying to fill in the gaps that existed within the various customs. The majority of the royal legislation, however, was intended to support regional custom, which supports the picture of a fragmented legal system in France.

The earliest recorded royal legislation in France with regard to prostitution is repressive in nature. Louis IX attempted to regulate prostitution for the whole nation on two separate occasions. First, he decreed in 1254 that all prostitutes and all those making their living from prostitution be classed as outlaws. Tradition has it that he became concerned about prostitutes in Paris after one sat next to the Queen at church and received the Queen's blessing in the form of a kiss.[19] The second connection between Saint Louis and prostitution occurred in

1269 when the king wrote a letter to his regent, outlining what was to be done in the country while he was away on Crusade. One of the clauses pertains to prostitution, and orders that all common women are to be removed from the cities "and other places" of France.[20] The letter appears to be aimed at maintaining social order while the king and a large percentage of the fighting men were away from home, as it mentions not only prostitutes but "other scoundrels" and criminals.[21] This is in keeping with Louis IX's reputation as "Saint-Louis", a very pious king. With this edict, he was also attempting to establish a measure of control over his whole nation, which had been fragmented as a result of the Frankish tradition of splitting the inheritance between all the sons. This attempt to unify France under a pious, moral legal umbrella did not succeed, as later legislation shows. All further royal ordinances dealing with prostitution are regional in nature, dealing mostly with Paris and Toulouse, and they reflect the regional traditions of these two cities.

There are several French ordinances dealing specifically with Paris. In 1368, Charles V wrote to the Paris authorities and decreed that landlords in a particular street in Paris (unfortunately unspecified) were to be prosecuted for renting to prostitutes, and if any *femmes de mauvaise vie* were found living there, they too could be fined and prosecuted.[22] These regulations were repeated by Charles VI in 1381. In

a letter to the *prévôt de Paris*, or royal representative in Paris, the king reminds him of the 1269 ordinance that orders prostitutes to be expelled from the fields and cities, and also makes clear that any resident or citizen of Paris found renting to a prostitute would be fined a year's rent on the house.[23] In both of these regulations, the king is reminding royal and municipal officials, as well as the citizens of Paris, of the traditions of the city and lending royal authority to them. In 1424, while Paris was under the rule of the English, King Henry ordained that prostitutes should be prohibited from living in the streets near the Church of Saint-Mery, in the area known as Bailliehoe.[24] The English rulers of Paris and environs in the fifteenth century maintained many French institutions simply because it was easier than importing English ones, but there were differences. The tone of this document is much more repressive than the rest of the French legislation, most likely because of the different traditions in the two countries. It was also a change from tradition, since Bailliehoe was one of the traditionally acceptable areas for prostitutes to live and work. The contrast is especially strong when you consider that in same year as Henry's proclamation, French claimant to the throne Charles VII took the prostitutes of Toulouse under his protection. These documents depict a tradition of dealing with prostitution that appears to mirror the situation in London, which will be dealt with in greater detail in the next chapter, although with royal authority behind it.

The authority of the king in Paris is shown further by the fact that one body responsible for policing prostitution in the capital was the Parlement de Paris. The Parlement originated as the King's Court under the Capetien kings. Originally ruling over only the royal demense, the Parlement came to have control over more of France as parts of the country were brought more securely under the king's hand. When provincial parlements were created in the fifteenth century, such as in Toulouse, they were considered to be extensions of the court in Paris.[26] The jurisdiction of the Parlement de Paris was nearly unlimited, and they concerned themselves with a wide variety of cases dealing with issues such as treason, rape, murder, breaches of the king's peace, prohibiting or preventing private wars, fabrication of false coins, inheritance, wills, orphans, the poor, merchants, and the university. Cases dealing with any other issues arrived before the court of the Parlement only as a result of an appeal from a lower court.[27] Another responsibility of the Parlement was to oversee the officials who were in charge of various regions of the royal demense, that is, the baillis and seneschals, as well as the *prévôt de Paris*. These positions were similar to the English office of Sheriff. The *prévôt de Paris* was watched even more closely than others, in fact, because of the importance of his position and the responsibilities he held, such as policing Paris and overseeing the court and prison of the Châtelet.[28] The role of the Parlement in dealing with

issues relating to prostitution is shown in cases such as one that occurred in 1406, where a mother was persecuted by the *procureur général* of the Parlement for forcing her daughter into prostitution and then living off the money the girl brought in.[29] Despite this example, however, there is little in other records of the Parlement that indicate any responsibility for the court in prosecuting prostitutes.[30] It seems as if this responsibility fell more upon the *prévôt de Paris* and the officers of the Châtelet than upon the *parlement.*

The legal tradition of Toulouse and the surrounding area contained much more Roman influence than either Paris, in the north of France, or that of England. This could be due to the ineffectiveness of French kings to control all of the lands that were nominally in their sphere of influence, or to the breakdown of centralized government after the reign of Charlemagne. In Toulouse there appears to have been a feudal society, although royal authority was extremely limited. In fact, during the tenth and eleventh centuries, the family unit was far more important in governing the city than any central authority.[31] These conclusions are drawn mainly from evidence relating to ownership of land, although the same holds true for other areas of law as well. With no outside authority, Toulouse developed as an independent city and thus seems to have maintained many of the traditions that had existed there since its days as an outpost of the Roman Empire, including the right of

prostitutes to maintain a brothel. In the thirteenth century, the city came under the control of the French monarchy. Despite this, the traditions of the city and its surrounding province were maintained.

As a result, the legislation relating to Toulouse presents a rather different picture from that in Paris. While once again the kings are simply upholding the traditions of the city, these traditions appear to have been quite different. This is illustrated both by the 1389 regulation on the clothing of prostitutes as well as the 1424 regulation whereby the prostitutes came under the king's protection. In 1389, the king wrote to the authorities in Toulouse in response to a complaint by the prostitutes of the city about what they were required to wear in order to identify themselves as *filles de joie.* The women were required to wear white bonnets and ribbons to mark their profession, which, they complained, did not allow them to dress as they chose.[32] The king's response to this complaint was to ordain that the women wear whatever colour and fabric they chose, so long as one sleeve of their dress was of a different colour or fabric.[32] This ordinance was intended to replace the earlier legislation of the city of Toulouse, but it was not a significant change, and the fact that the women were required to identify themselves by a specific mark suggests that the sex trade was not only well-established in Toulouse, but an integral part of the city. In 1424, the year that the English king, Henry, forbade Parisian prostitutes from living in areas

formerly allowed to them, the French king, Charles VII, passed a law in which he took prostitutes in Toulouse under his protection as a result of an attack on the prostitutes and their brothel. The king ordered the authorities of Toulouse to protect the prostitutes in his name or suffer the consequences.[33] The ordinance is couched in terms that suggest the king was providing justice for the prostitutes, which was his role, but the fact that he was protecting their traditional right to maintain a brothel within the city is quite different from the situation in Paris. Toulouse, situated in the *pays du droit écrit*, had a legal tradition that differed from Paris, located in the *pays des coutumes*, as well as London.

The legal traditions of regions and nations were the framework within which smaller governmental units functioned, and as such they had an impact on the legal traditions and practices of the municipalities they governed. In order to examine what this impact was, and how it affected the regulation of prostitution, we turn next to the municipal organization for the areas studied, and the records and legislation produced by municipal authorities.

Notes for Chapter Three

1. G.D.G. Hall, The treatise on the laws and customs of the realm of England commonly called Glanvill (London, 1965), p. xi.

2. Alan Harding, A Social History of English Law (Harmondsworth, Middlesex, England, 1966), p. 57.

3. Harding, A Social History, p. 27.

4. O.F. Robinson and others, An Introduction to European Legal History (Abingdon, England, 1985), p. 208 - 209.

5. Theodore F. T. Pucknett, A Concise History of the Common Law, 5th ed., (London, 1956), p. 13.

6. René David and Henry P. de Vries. The French Legal System: An Introduction to Civil Law Systems (New York, 1958), p. 10.

7. Robinson, An Introduction, p. 235.

8. Martin Weinbaum (editor), The London Eyre of 1276 (London, 1976), p. 34, 38, 49.

9, Specifically Paul A. Brand (editor), The Earliest English Law Reports (London, 1996) and R.C. van Canegan (editor), English Lawsuits from William I to Richard I (London, 1990 - 91).

10. Bernard Ruden. A Source-Book on French Law , 3rd ed. (Oxford, 1991), p. 1.

11. Robinson, An Introduction, p. 13.

12. Robinson, An Introduction, p. 190 - 191.

13. Robinson, An Introduction, p. 192.

14. Felix Aubert, Histoire du Parlement de Paris: De l'Origine a François 1e, 1250 - 1515 (Paris, 1894), p. 6 - 7.

15. David, The French Legal System, p. 9.

16. David, The French Legal System, p. 10.

17. David, The French Legal System, p. 12.

18. David, The French Legal System, p. 10.

19. Bullough, Sexual Practices, p. 177.

20. Jourdan and others, Recueil Général des Anciennes Lois Françaises depuis l'an 420 jusqu'a la révolution de 1789 (Paris,1822 - 1833), volume 1, p. 347. The Latin reads: "Caeterum notoria et manifesta prostibula, quae fidelem populum sua feoditate maculant, et plures protrahunt in perditionis interitum, penitus exterminari praecipimus, tam in villis, quam extra. . ."

21. Jourdan, Recueil Général, v. 1, p. 347. The Latin reads "ab aliis flagitiis, et flagitiosi hominibus, ac malefactoribus publicus, terram nostram plenius expurgari."

22. Jourdan, Recueil Général, v. 5, p. 320. The letter is not printed in its entirety, so we are left with only the editor's description of it.

23. Jourdan, Recueil Général, v. 6, p. 559-560.

24. Jourdan, Recueil Général, v. 8, p. 684-686.

25. Aubert, Histoire du Parlement, p. 268 - 269.

26. Aubert, Histoire du Parlement, p. 265 - 266.

27. Aubert, Histoire du Parlement, p. 290 - 291.

28. Aubert, Histoire du Parlement, p. 163.

29. Suzanne Clemencet and Michel François, Lettres reçues et envoyées par le Parlement de Paris, 1376 - 1596, Paris: Imprimerie Nationale, 1961, and Actes du Parlement de Paris, deuxième série, contain no documents relating to prostitution in any way.

30. Robinson, An Introduction, p. 32 - 34.

31. Jourdan, Recueil Général, v. 6, p. 686. The letter reads ". . . il ont souffert et soustenu plusieurs injures, vituperes et dommages, seuffrent

et soustiennent de jour en jour, et ne se pevent pour ce vestir ni asseynier a leur plaisir, pour cause de certains chaperons et cordons blans. . ."

32. Jourdan, Recueil Général, v. 6, p. 686.

33. Jourdan, Recueil Général, v. 8, p. 696-697.

Chapter Four: Municipal Law in London, Paris and Toulouse

Whatever the national or regional traditions that existed around and above them, medieval cities jealously guarded their independence from royal power. As a result, the legal traditions of these cities could vary from those at the national level. Municipal administrations had markedly different duties and responsibilities from the king and his courts, as their legislation shows. In England, this divided responsibility is evident from the large number of municipal ordinances from London that have been preserved in the City's records. In France, it is evident from the relative lack of municipal records and the contrasting number of royal ordinances and other records from the royal administration.

Since the regulation of prostitution was left to the municipalities in England, it is to the legal records of London that we must turn in order to obtain a picture of how the trade was regulated in the capital. The city of London had an ancient charter from the king granting rights and privileges that municipal authorities were sworn to uphold. While this charter allowed the city to be self-governing, it was still under the control of the monarchy and could have chartered rights revoked in times of crisis. The form of municipal government had been set early in the medieval period. Responsibility for creating and enforcing municipal law

was in the hands of the Mayor, the Sheriffs, and the Aldermen of each ward. These officials were elected yearly by a gathering of wealthy and respected male citizens of the City, and they guarded the powers granted to them in the Charter of the City of London carefully. They also protected the rights of citizens of London, such as the right to be tried before the courts of the City rather than before the king's courts for minor matters. There were three different secular courts within London, as well as several Church courts, and their jurisdictions often overlapped. The secular courts were the Husting, which was an ancient court that had existed at least as early as the tenth century and heard all sorts of pleas except for pleas of the Crown, but met only on Monday and Tuesday; the Sheriffs Court, which dealt with minor cases, usually involving infractions of City Law; and the Mayor's Court, which emerged in the thirteenth century in conjunction with disputes involving foreign merchants who could not wait for the regular meetings of the Husting.[1] As time went on, the Husting came to hear mainly pleas involving land and rents. This left cases involving commercial debts and disturbing of the peace of the City, as well as other matters, to the Mayor's Court. Some of the records from each of these courts have been preserved in a single series of the original records of the Mayor's Court, as well as the Letter-Books for the City of London, which also include other documents

of interest, including the majority of the legislation with respect to prostitution.

The picture of municipal attitudes to prostitution that emerges from these various records is that London municipal authorities did not tolerate prostitution within the city itself. This becomes clear due to the repeated ordinances forbidding prostitutes from residing within London. The first of these appeared in the 1276 Assizes of the City of London: "Also that no whore of a brothel be resident within the walls of the City."[2] Other regulations followed. In 1393, the City passed a regulation that forbade "common harlots" from living in London or its suburbs. These women were to stay within those areas assigned to them: the stews of Bankside, Southwark; and Cock's Lane (or Cokkeslane), Smithfield.[3] What is interesting about the 1393 ordinance is that neither of the two locations lay within the bounds of London municipal authority. The Bankside area of Southwark was the responsibility of the Bishop of Winchester and his courts, and Cock's Lane lay just outside of the city walls.[4] London authorities may well have been trying to pass responsibility for regulating the sex trade on to another jurisdiction. In 1417, there were two further regulations relating to prostitutes and other undesirables. One forbade anyone within the City of London from keeping a stew, or bath-house, other than for their private use.[5] This was because bath-houses were frequent haunts of prostitutes, and had a

reputation as places where lewd and immoral acts were likely to take place. The language of this ordinance makes clear that its purpose was dual: first, to protect public order and prevent the robberies, murders, and other crimes that were frequently associated with prostitutes; and second, to please God and restore the moral order of the City. There is also a provision whereby one of the Aldermen gave to the City the use of his tenements in Surrey for public stews.[6] Once again, prostitutes were banished from London and given another location in which they might practice their trade. The second regulation from 1417 forbade any landlord in London or its suburbs from having as a tenant any person, male or female, who was known to be "of evil and vicious life".[7] Any landlord caught renting to such a person forfeited the rent paid by the tenant to the City. This regulation was aimed at preventing those who developed a bad reputation in one ward or neighbourhood from simply picking up and moving to another ward, as appears to have been common practice.[8] The Mayor and Aldermen of London appear to have been getting stricter and more specific in their attempts to root out prostitution within the City as time went by.

London authorities also took a stand against pimps, bawds, whoremongers, and others who exploited prostitutes for profit. In two separate ordinances printed in Riley's edition of Liber Albus, both without dates, measures against bawds, procuresses and prostitutes

themselves are set out. The first states that any person of "evil and wicked life" presented at the Wardmotes of each ward should be imprisoned by the Alderman of that ward until their names were cleared.[9] The second goes into much more detail, both of the crimes and of the punishments. A man found to be a common whoremonger or bawd was to have his head and beard shaved except for a two-inch fringe, then be marched through the streets to the pillory with minstrels as accompaniment, and remain in the pillory for a full day. On a second offence, the punishment was to be repeated, with the addition of ten days in prison. On a third conviction, the punishment was to be repeated again and then the man was banished from the city. Women convicted of bawdry were subject to the same punishment. Prostitutes or "common courtesans" were to be paraded through the streets of London wearing a striped hood and carrying a white wand. They marched from the prison at Aldgate to the thews, where the woman's crime was to be announced, and then on to Cokkeslane, where the woman was to thenceforth make her residence. On a second offence, she was to remain in the thews for a certain time before continuing on. On a third offence, she was to be banished from the city.[10] It is unfortunate that these ordinances have no dates, as it would be far easier to place them in context if they were dated. However, the dates could have been omitted at any point in the compilation of this source. Originally, the

Liber Albus was compiled in the fifteenth century from a variety of other sources, including the Letter-books and various court records. The purpose of the compilers appears to have been to bring some order to the documents by arranging them thematically, rather than chronologically. These fifteenth-century authors may not have included the dates of some of the documents they transcribed in the original compilation, or Riley himself may have omitted them when he published his nineteenth-century translation. It seems likely, however, that the document outlining detailed punishments for bawds, pimps, procurers and prostitutes was originally created at some point prior to 1385. Evidence for this comes from the case of Elizabeth Moryng, who was charged in 1385 with being a common procuress and condemned to stand for an hour in the thews and then forswear the city.[11] This punishment closely matches that set out in the document from Liber Albus and strongly suggests that the legislation predated the case. There are no records of earlier convictions of Elizabeth Moryng, which is not surprising considering that none of the records are complete, although she may be the same woman as Elizabeth Brouderer, mentioned by John Rykener in his 1394 interview with London authorities.[12] If the two women are indeed one and the same, it would suggest that she was known to the authorities and that her 1385 conviction was not her first, which would

make the punishments given her fit more closely with those laid out in the legislation.

As a result of the various policies banning prostitutes and other sex trade workers from London proper, the Bankside region of Southwark developed as a notorious refuge for them. This area has been studied fairly extensively due to the fact that it was the one major enclave of tolerated brothels in England. Management of the Southwark stews was the responsibility of the estate staff of the liberty of the Bishop of Winchester, which had unique privileges in England, confirmed by Edward IV.[13] The brothels of Southwark were regulated according to a collection of regulations known as a customary. These regulations covered every aspect of brothel management. Stewholders were required to close on holidays and were not permitted to have the prostitutes boarding in the brothels. They were also not permitted to sell ale or food on the premises. As well, there were regular searches made to ensure that no woman was being kept in a brothel against her will. No woman who had taken religious vows or who was married was to be received in the stews. A prostitute was also prohibited from physically drawing a man into any stew, and if she was ill she was to be put out.[14] The punishment for breaking any of these regulations was a fine, a system which seems to have functioned more as a way to licence brothel-keepers and prostitutes than actually punish them. The system benefited not

only the stew-holders but their customers, who most often came from London, as well as the coffers of the Bishop of Winchester. It was also of benefit to the city of London who did not want brothels within the municipal limits. Despite this, London authorities still had to deal with prostitutes.

The regulations with regards to the clothing of prostitutes, variously referred to as common women and women of bad repute, span the fourteenth century. The repeated injunctions against women dressing higher than their social class warranted suggest that the regulations were not as effective as the authorities would have liked. The earliest document[15] is an ordinance forbidding any woman who was not entitled to wear a furred cape to have a fur-lined hood. One translation interprets the original Norman French as saying they could not wear a hood "furred with other than lambskin or rabbit-fur", while the other interprets it as saying they could not have hoods with any fur at all.[16] Both translations of the document make clear that women of lower classes, such as "brewsters, nurses, other servants, and women of disreputable character",[17] had been wearing furred hoods more suitable to women of a higher social standing and that it was no longer to be tolerated. A similar ordinance was passed in 1351, stating "let every such common lewd woman. . . go openly with a hood of cloth of ray, single, and with vestments neither trimmed with fur nor yet lined with

lining, and without any manner of relief; that so all folks, natives and strangers, may have knowledge of what rank they are. . ."[18] The injunction was repeated in 1382, most likely because the earlier ones were being ignored or were otherwise ineffective, although it could also have been part of the trend for new mayors to issue general ordinances of municipal law. These are the regulations that Karras cites as evidence for her argument that restrictions on women's clothing were part of an overall attempt to extend controls to all women.[19] While many of these regulations were similar to those implemented in other areas, it is clear that in London the regulations and the punishments for infractions were of municipal origin.

It is difficult to determine from existing records how universally these various municipal regulations were applied. Between 1276 and 1393, there are several cases recorded of punishments implemented for prostitutes or those who allowed them as tenants or otherwise "harboured"' them. However it seems unlikely that the handful of cases to be found in surviving records covers all of those who were prosecuted for infractions relating to the sex trade in the period. Some of them may have been brought up in Church courts instead of the municipal courts, although there are no records remaining from the Church courts of London in this period by which to verify this. It is very likely that the records simply have not survived. There are several cases where

prostitutes were called before the Mayor and Aldermen for living within the City in defiance of the 1276 Assizes. In the first, dating from 1298, the reason for the summons is not specifically stated although it can be surmised from the language used to describe them. Cristina de Gravesend and "other common prostitutes" were summoned before the Mayor and Aldermen of the City, and they apparently resisted the summons which resulted in another trial for trespass against the sergeant.[20] In the second case, dated in 1311, the reasons behind the appearance of Margaret de Hontyngdone, Marion de Honytone and Henry le Beste in court and their subsequent imprisonment were explicitly stated - they were of questionable morals and known for consorting with evildoers.[21] The names of those involved in these cases do not appear in later surviving records, but we can not necessarily assume that they continued to behave in an acceptable manner after their run-in with the municipal authorities. They may have, or they may have been reprimanded again with no surviving records. Any one of them may also have moved on to another location and continued to participate in the sex trade there, where they may have appeared in court records at some point.

Those who associated with prostitutes, or allowed them to live within the City in defiance of municipal laws, were also punished. In 1298, Ralph le Chapeleyn was presented to the Alderman of the Ward of

Allgate or Alegate because he "knowingly harboured loose women against repeated warnings" and when the case went to trial he was found guilty and put in mercy. Two years later he was again presented for the same offence and his arrest was ordered, although there is no record of a further trial.[22] This appears to be a case of an illegal brothel within the city limits, and if Ralph was indeed arrested and perhaps imprisoned it may have been the only way to stop him. As mentioned above, however, it is also possible that he simply moved on to another location or that further records of his activities are no longer available. In 1338 there was a similar case when a cordwainer named Robert de Stratford was found guilty of harbouring several prostitutes and ordered to pay a fine.[23] There are several other recorded cases where the defendant was imprisoned either until they could raise the fine, or until they could find sureties for their good behaviour, such as William de Dalton, who was imprisoned for two months in 1338 after being found guilty of keeping a house of ill-fame.[24] There were also many others who were presented to the authorities in their Ward by fellow residents as men and women of suspect morals, along with nightwalkers, gamblers, rabble-rousers and others who disturbed the peace of their neighbourhood. Those whose names were presented in this manner may have gone before one of the courts in London but there is no surviving record of trials for them. This process appears similar to the canon law procedure of accusation by

reputation, or *fama*.[25] What emerges from these cases and presentment lists is that honest citizens of London feared, perhaps rightly, that violence and crime would accompany prostitution if they allowed sex workers to gain a foothold in the better areas of the City.

This also appears to have been a fear of the authorities and citizens of Paris, although there seems to have been more debate over whose responsibility it was to deal with the situation. While there was a certain amount of confusion and overlap in jurisdiction in London, the jurisdiction of Paris, like the rest of France, was severely divided. Unlike nearly every other city in medieval Europe, Paris never had a charter of customs or privileges granted to the city by the king.[26] This may have been because the city was within the royal demense, the only portion of France to remain continually under the control of the monarch from the time of the Carolingians. Instead of a charter, the city was given into the hands of the *prévôt de Paris*, a royal representative similar to an English sheriff, and certain privileges were granted to specific groups such as the merchants who controlled trade along the Seine, or *les marchands de l'eau*. Led by the *prévôt des marchands de l'eau* (with the "de l'eau" being dropped from his title as time passed) and the *échevins* or aldermen, this body eventually came to represent the bourgeois population of Paris and was granted jurisdiction over matters relating to trade. Around 1260 the corporation developed into the municipality.[27] The officers of the

municipality were nominally elected by the Parisian elite but were frequently acclaimed by a small group among the leading bourgeoisie.[28] As a result of these unusual origins, the municipal government of Paris never achieved the power of their counterparts in London. Their jurisdiction was generally restricted to matters of commerce, and then only in specific instances. The regulation of the trades was the province of the *prévôt de Paris* and his officers. Instead of one strong municipal government, there were seventeen different religious bodies who had judicial rights within the capital,[29] as well as the royal council, the Parlement, the *prévôt de Paris* and the Châtelet, and the municipality in the form of the *Parloir des Bourgeois*, led by the *prévôt des marchands* and the *échevins*. Each of these bodies guarded its sector of power jealously against the attempted encroachments of the others. There were frequent debates over which court had jurisdiction over a particular case or type of case, although for the most part these disputes appear to have been resolved amicably, at least at first. During the early years of the Parloir des Bourgeois, or municipal court, the *prévôt de Paris* and the *échevins* were considered by other authorities in the city as the official keepers of the Custom of Paris, although by the early fourteenth century the Châtelet was beginning to take over this role, setting the stage for conflict between the two bodies. Although the Parlement generally respected the jurisdiction of the Parloir des Bourgeois, as time went on

the officers of the Châtelet did not.[30] This reflects a general conflict between the representatives of the king and those of the city. The end result of these overlapping and conflicting authorities was that there was some degree of confusion over which body had authority over which matter, and which areas of the city. Despite this confusion, all of the various authorities tended to agree when it came to prostitution.

The tradition of intolerance of prostitution in Paris dates back to the twelfth century and Louis IX's attempts to banish prostitutes from every city in France. Even at this early date, however, it appears that the attempt was unsuccessful. As a result, prostitutes were assigned certain streets on which they could live, and they were ordered only to practice their trade at certain times. Royal legislation from later periods makes clear that this tradition continued at least through to the end of the medieval period.[31] In 1446 there was a proclamation made throughout Paris that attempted to undo the damage done by the Ambroise de Loré, the *prévôt de Paris,* who had just died. De Loré was reputed to be a lecherous man, and was held responsible by at least some citizens of the time for the increased number of common women in the city . "He always protected loose women, of whom through his laxity Paris had far too many, and got himself a very bad reputation with everyone because it was almost impossible for the law to correct the prostitutes in Paris, since he always protected them and their bawds."[32] wrote the

anonymous *Bourgeois de Paris*. The 1446 proclamation contained restrictions on what prostitutes should wear, forbidding them from wearing silver belts, squirrel or miniver on their dresses, and turned-back collars. It was also proclaimed that prostitutes "must all go and live in the appointed brothels as they used to in the past."[33] Undoubtedly this meant the areas of Bailliehoe and Glatigny, which were the designated red-light districts of the city. The anonymous author of the Journal does not record whether this proclamation was of royal origin, or if it came from local or municipal authorities. It does follow the pattern already established in London, however, and also continues to support the precedent of tradition in Paris.

With all of the confusion of jurisdiction in Paris, it is extremely difficult to determine who was responsible for policing prostitutes and bringing to trial those that disregarded the laws. The situation is not helped by the fact that many early Parisian municipal records were destroyed by a fire at the Hôtel de Ville in 1871.[34] However, outside of such public places as fountains, gates and docks, which were policed by the *prévôt des marchands* and his officers, the responsibility for policing Paris fell to the *prévôt de Paris*.[35] As a result, one would expect to find cases relating to prostitution among the records of the Châtelet, but they do not exist. Cases from the Châtelet records which mention prostitution do so only as a side note, much like cases from the royal

courts in England. The officials of the Châtelet were not concerned with the professions of the women they were prosecuting; rather they were concerned with whether or not they were practising sorcery and consorting with demons.[36] Despite the similarities in legislation between London and Paris, there were extreme differences in the ways the legislation was applied. These differences, however, were not as great as the legislative differences between either of the national capitals and the city of Toulouse.

In terms of municipal organization, Toulouse, like London, had a charter which had been granted to the city by the counts of Toulouse in the twelfth century. Included among these rights was the right to self-government by a body of elected consuls. These consuls or *capitouls* maintained after 1283 a court where they judged both civil and criminal matters.[37] They were the undisputed masters of the city, and were the equals of any prince or count. In 1444 when the Parlement of Toulouse was formed, the *capitouls* were all granted noble titles. During the late medieval period, royal officials did not have a great deal of power or control in the city. Some historians believe that this is due to the general lack of nobility in the region after the massacres of the Albigensian crusade and the Cathars. As a result of this, the city was sometimes known as "la République toulousaine", a title that suggests the independence of the city and its administrators.[38] This is in direct

contrast to Paris and is very different even from London, which while independent was still under the control of British kings who could suspend the city's right to self-government in crisis situations.

Prostitution was tolerated in Toulouse from time immemorial, according to royal legislation. This tolerance appears to have begun with Roman traditions and continued until the beginning of the sixteenth century. While the kings of medieval France attempted to control the prostitutes of Paris, in Toulouse it was the responsibility of the municipal government. Roman custom in the late republic and early empire had created two classes of prostitutes, licensed and unlicensed. The former category were required to live and work in a brothel, register with the magistrates and pay a special tax. The latter were streetwalkers, and considered more dangerous than those who were licensed.[39] Even the later Roman Empire was tolerant of prostitution, as shown by Constantine's designation of a red-light district in Constantinople. The tradition of the municipal brothel in Toulouse likely has its origins in this period, even if municipal authorities did not tolerate prostitution within the city walls during the entire medieval period let alone support a municipally-operated brothel.

The Lex Romana Visigothorum, which was the basis of legal codes in the south of France, was the sole Germanic law code to touch on prostitution, likely because of its heavy Roman influence. The

punishments prescribed within it were severe. A free woman could receive three hundred lashes if convicted of harlotry on a first offence. On a second offence, she would be lashed again and given to a poor man as his wife on the condition that she never walk the streets again. These punishments did not apply to slaves or captives.[40] The fact that prostitution was tolerated to any degree by the authorities of Toulouse clearly shows that custom, based on the customs of Rome, had more influence than the written laws of the Visigoths.

In the twelfth and early thirteenth century, there is some evidence that residents of Toulouse wished to get rid of the prostitutes who lived among them and that city authorities were willing to enforce this type of regulation.[41] In 1201, the consuls of Toulouse confirmed an "ancient public constitution" that prohibited prostitutes from living within the city walls and allowed inhabitants to take action against them if the municipal authorities were too slow or refused to act.[42] However, prostitutes were permitted to live and work outside the city walls, and by the end of the thirteenth century there was a recognized brothel operating openly in the heart of the city.[43] Sometime between 1363 and 1372 Toulouse acquired its municipal brothel, as shown by municipal records of farms rented out to various citizens.[44] Mundy explains the apparent discrepancies between these various facts by saying "However liberal the permission given to women to busy themselves in this

occupation [prostitution] was, it is obvious that they were not well considered."[45] Thus the attitudes of the public and even the authorities of Toulouse did not appear significantly different from those in other areas, although tradition allowed a different application of laws against prostitution. It is possible that this "tradition" was not a Roman remnant but was instead created by late medieval authorities in order to support their establishment of a brothel in the later period. This draws comparisons to how the English Common Law was created by English monarchs to support their own political and moral motivations. Even if this is the case, however, the tradition had a historical basis in the customs of the late Roman Empire, which the municipal authorities undoubtedly mined to provide support for their own legislation. Evidence for this supposition comes from the medieval legislators' use of the term *meretrix publica*, which was clearly based on the Roman term *meretrix*, although with *publica* added to make explicitly clear that the term referred to a professional prostitute and not a private, if promiscuous, woman.[46] While other regions also made use of Roman law, in the south of France and in Toulouse specifically, Roman tradition seems to have been more important than the laws which influenced other legal codes.

The early modern period brought changes to Toulouse, as it did to other cities. In 1527 the *capitouls* restricted prostitutes to one house,

the Château Vert, and then shut that down as well thirty years later.[47] This change has been attributed to many different factors, including an increase in morality due to the Reformation, demographic changes, or the disruption of life due to constant warfare. Regardless of the reason for this change, for a period of several centuries, tradition allowed for the maintenance of a municipal brothel in the City of Toulouse.

Early municipal documents from Toulouse did not provide punishments for procurers and in fact did not mention the trade at all, in contrast to areas in the north of France. By the fifteenth century, however, procurers were being punished by officials in Toulouse and elsewhere in Languedoc. Leah Otis states that this change was due in great part to royal initiative,[48] which may well be true and fits with the growing power of the king and his courts in the fifteenth century. This also coincides with the rise in importance of the municipal brothel in Toulouse. Otis states that "[t]he correlation between the establishment of municipal brothels and the condemnation of procuring is unmistakable."[49] Cases showing how these regulations were applied are unfortunately scanty, and in fact the legislation itself is not to be found except in brief mentions in other sources. Otis lists punishments for procurers in her book, including running the town, banishment, beating, and being placed in the pillory or thews.[50] Illicit brothels and their proprietors were also prosecuted in similar ways.[51] These punishments

are not much different from those outlined for London. Whether Otis' theory about why procurers were suddenly being prosecuted in Toulouse and Languedoc during the fifteenth century is correct or not, it is clear that there were similarities as well as differences between the legislation of prostitution and the sex trade in Toulouse, Paris and London. The similarities can be explained by the common moral grounding of Christian theology and the common problems of municipal administration; the differences can be explained by the different legal traditions that overshadowed, underpinned and influenced municipal law.

Notes for Chapter Four

1. A.H. Thomas, Calendar of Early Mayor's Court Rolls, preserved among the archives of the Corporation of the City of London at the Guildhall, A.D. 1298-1307 (Cambridge, 1924), p. xii - xvi.

2. Reginald R. Sharpe. Calendar of Letter-books preserved among the Archives of the Corporation of the City of London at the Guildhall (London, 1899-1912), volume 1 (Letter-book A), p. 218.

3. H.T. Riley. Memorials of London and London Life in the 13th, 14th, and 15th Centuries (London, 1868), p. 535; also mentioned in Sharpe, Calendar of Letter-books, vol. 8 (H), p. 402.

4. J. B. Post, "A fifteenth-century customary of the Southwark stews", Journal of the Society of Archivists, 1977 (7), p. 418.

5. Riley, Memorials, p. 648; also Sharpe, Calendar of Letter-books, vol. 9 (I), p. 178.

6. Riley, Memorials, p. 648.

7. Riley, Memorials, p. 650; also Sharpe, Calendar of Letter-books, vol. 9 (I), p. 178.

8. Karras, Common Women, p. 71, talks about this behaviour.

9. H.T. Riley, Liber Albus: The White Book of the City of London, (London, 1861), p. 394.

10. Riley, Liber Albus, p. 394 - 395.

11. Sharpe, Calendar of Letter-books, vol. 8 (H), p. 271.

12. See Chapter One for details on Rykener's case.

13. Post, "A fifteenth-century customary", p. 419.

14. Post, "A fifteenth-century customary", pp. 423 - 427.

15. There is no date given in Sharpe's collection; Riley, Memorials, p. 20, suggests 1281 as the date for this document.

16. Riley, Memorials, p. 20, gives the first translation. The second is from Sharpe, Calendar of Letter-books, vol. 1 (A), p. 220.

17. Sharpe, Calendar of Letter-books, vol. 1 (A), p. 220.

18. Riley, Memorials, p. 267. This ordinance also appears in Sharpe, Calendar of Letter-books, vol. 6 (F), p. 241.

19. Karras, Common Women, p. 21.

20. Thomas, Calendar of Early Mayor's Court Rolls, p. 14.

21. Riley, Memorials, p. 89. "the said Margaret had been before driven out from the Ward aforesaid as a common strumpet, and had afterwards harboured men of bad repute. . ." She and her companions were released once they had sworn they would behave themselves in future and had obtained sureties for their good behaviour.

22. Thomas, Calendar of Early Mayor's Court Rolls, p. 24 and p. 74.

23. A.H. Thomas, Calendar of plea and memoranda rolls preserved among the archives of the Corporation of the city of London at the Guildhall (Cambridge, 1926), volume 1, p. 173.

24. Thomas, Calendar of plea and memoranda rolls, p. 167.

25. See Chapter Two for a discussion of this procedure.

26. Janet Shirley, A Parisian Journal: 1405-1449, translated from the anonymous Journal d'un Bourgeois de Paris, (Oxford: 1968), p. 8.

27. Georges Huisman, La Juridiction de la Municipalité Parisienne de Saint Louis a Charles VII (Paris: 1912), p. 21

28. Guy Llewelyn Thompson, Paris and its People Under English Rule: The Anglo-Burgundian Regime, 1420-1436 (Oxford: 1991), p. 54.

29. Thompson, Paris and its People, p. 50.

30. Huisman, La Juridiction, pp. 191 - 206.

31. 1368 and 1381. See Chapter Three for details.

32. Shirley, A Parisian Journal, p. 363.

33. Shirley, A Parisian Journal, p. 363.

34. Huisman, La Juridiction, p. iii.

35. Huisman, La Juridiction, p. 480 - 482.

36. H. Duples-Agier. Registre Criminel du Châtelet de Paris (Paris: 1861-4), vol. 1 p. 327 - 363 and vol. 2 p. 280 - 343. The cases deal with Margot de la Barre and Marion La Droituriere, accused of being witches, and Jehenne de Brigue, accused of consorting with devils and of being a seeress (divine).

37. Adolphe Tardif, La Procedure Civile et Criminelle aux XIIIe et XIVe Siècles, (Paris, 1885; reprinted Darmstadt, Germany, 1974), p. 14.

38. Robert A. Schneider, Public Life in Toulouse 1463 - 1789: From Municipal Republic to Cosmopolitan City (Ithaca, 1989), p. 14 - 16.

39. Brundage, Law, Sex and Christian Society, p. 25.

40. Brundage, Law, Sex and Christian Society, p. 133.

41. John Hine Mundy, Men and Women at Toulouse in the Age of the Cathars (Toronto, 1990), p. 66.

42. Ernest Roschach, Ville de Toulouse: Inventaire des archives communales antérieures a 1790, Toulouse: Imprimerie et Librairie Edouard Privat, 1891, p. 7.

43. Otis, Prostitution, p. 28.

44. Otis, Prostitution, p. 31.

45. Mundy, Men and Women, p. 69.

46. Otis, Prostitution, p. 16.

47. Scheider, Public Life in Toulouse, p. 64.
48. Otis, Prostitution, p. 90-91.

49. Otis, Prostitution, p. 91.

50. Otis, Prostitution, p. 91.

51. Otis, Prostitution, p. 97.

Conclusion

The study of medieval prostitution is a study in contradictions. This is clearly shown by an examination of the varied legislation in place across England and France in the late medieval period, from 1250 to 1450. Despite the moral condemnation of the sex trade, spurred by Church ideas of sexual morality, prostitutes and their trade were frequently tolerated by every judicial body during the period in question. Other participants in the sex trade, such as pimps, bawds and procurers, were generally treated with much less toleration for a variety of reasons, including the fact that they were generally believed to be taking advantage of innocent, morally upright girls and young women. These general statements show the main similarities between the various legislative and judicial bodies when dealing with prostitution, but there were also differences. The main contrast dealt with in the scope of this paper is why some areas, such as Toulouse, developed and maintained a municipally operated brothel, while others, such as London and Paris, created independent districts where prostitutes could live and work. The answer appears to lie in the legal traditions of the various regions.

Canon law in late medieval Europe generally condemned prostitution as a trade but treated individual prostitutes leniently, as

women who were in need of saving from their life of sin. This set the tone for secular legislation, which was more likely to be concerned about prostitutes and other sex trade workers in terms of the threat they posed to social order rather than in terms of their lax morality. While canon law attempted to be universal there were some differences in how the courts were administered depending on location. Unfortunately the records for Church courts during the later Middle Ages are not available for London, and as a result they have not played a major part in my study.

National legal codes for England and France were much more varied than canon law traditions in the late medieval period. In England, the English Common Law was well established by 1300, but had nothing to say on the issue of prostitution. This is due to its focus on feudal traditions, mainly relating to property and inheritance, rather than moral issues, which were left to the Church. The regulation of prostitution was left to municipal or manorial governments, which resulted in a number of ordinances regarding prostitution from the Mayor and Aldermen of London. In France, by contrast, there was no national law code until well past the Middle Ages. As a result the legal situation was much more complex. Regional traditions were generally much more important than legislation created by the king. Those royal proclamations that deal with prostitution in France generally support the traditions of various regions

such as Paris and Toulouse. There was no proclamation or legislation in France that was meant to apply to the treatment of prostitution in the whole country; even those that purport to do exactly that, such as the regulations of Louis IX, were meant to apply only to those areas that were actually under the control of the king. The region of Toulouse only came under this royal control in the thirteenth century and only over a period of years were the kings able to establish their full authority in the area. Even then, the traditions of the region were frequently considered more important than any legislation from the king. This is a partial explanation of why the regulation of prostitution in Paris and Toulouse developed in different directions during the late medieval period.

Another aspect of the explanation lies in the contrast between Roman and Germanic law traditions. The laws of the region of Paris, which were the laws of the French kings, were primarily based on Germanic traditions. The same is true of England. In both cases, Roman forms were adopted as a result of the influence of canon law and the rediscovery of the Corpus Iuris Civilis, but the basis of the codes remained Germanic. In Toulouse, the primary legal code was the Lex Romana Visigothorum - a Germanic code that had much more Roman influence in it than those used in England or northern France. There was also a strong Roman influence in the area due to its origins as an outpost of the Roman Empire. It was as a result of these influences that

Toulouse developed its very different methods of dealing with prostitution. During the period of my study, the City of Toulouse maintained and operated a public brothel for which they sold the operating rights every year. The operation of this brothel was based upon and supported by traditions which dated back to the Roman Empire. Evidence for this assertion can be found in a number of places, notably the legislation originating with the kings of France. This legislation clearly shows that the public brothel in Toulouse was a long-standing institution by the fifteenth century, at least in the eyes of public officials. While evidence shows that Toulouse did not, as some historians have claimed, maintain a public brothel throughout the Middle Ages, there is also evidence to suggest that the fourteenth and fifteenth century "tradition" of the brothel did have its source in earlier traditions from the Roman Empire. It was because of these traditions and customs, as well as political and economic expediency in the fourteenth and fifteenth centuries, that the city of Toulouse operated and maintained a brothel in the late Middle Ages, while cities such as Paris and London did not. Despite the similarities of legislation in these three cities, there was a fundamental break between Toulouse on the one hand, and Paris and London on the other. This break comes down to a difference between tolerating prostitution, such as in the red-light districts of Southwark

and Cock's Lane in London or Glatigny and Baillehoe in Paris, and promoting it, as in the municipal brothels of Toulouse.

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