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**CHURCH, STATE, AND FAMILY IN JOHN CALVIN'S GENEVA:  
Domestic Disputes and Sex Crimes in Geneva's Consistory and  
Council**

John Witte, Jr.<sup>1</sup>

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<sup>1</sup> This article represents work in progress on a multi-volume project with Robert M. Kingdon, *Sex, Marriage and Family in John Calvin's Geneva* published by Wm. B. Eerdmans Publishing Company. The

## Abstract

*Both church and state in sixteenth-century Protestant Geneva helped to resolve local disputes, particularly over issues of sex, marriage, and family which dominated the proceedings during John Calvin's tenure from 1541 to 1564. The Genevan Consistory, comprised of pastors and political officials, was a preliminary hearings court with power to summon and examine witnesses and documents, and to issue spiritual sanctions from admonition to excommunication in an effort to reconcile disputants, reform delinquents, and restore legal and moral order in the city. But the Consistory left it to the Genevan City Council to prosecute serious offenses and offenders, and to issue legal orders respecting divorce, inheritance, marital property, child custody, and other legal issues. This Article sketches this new collaborative regime of dispute resolution, and then analyzes several illustrative cases from the Consistory records.*

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first volume, subtitled *Courtship, Engagement and Marriage* (Grand Rapids, MI 2005) is in print; the second volume, subtitled *The Christian Household*, will soon go to press, though Professor Kingdon has passed away in the interim. I wish to thank Dr. Thomas A. Lambert for his expert commentary and criticisms on the material in this chapter, and Mr. M. Wallace McDonald for his diligent research and excellent translations of the Consistory cases in the Genevan archives sampled in the fourth section of this article.

I shall be using the following standard abbreviations throughout: CO - *Ioannis Calvini opera quae supersunt omnia*, ed. W. Baum, E. Cunitz, and E. Reuss, 59 vols., *Corpus Reformatorum* series, vols. 29-87 (Brunswick: 1863-1900); RC -- Robert M. Kingdon et al. eds. *Registres du Consistoire de Genève au Temps de Calvin*, 21 vols. (Geneva: 1996- ); R. Conseil -- *Les Registres du Conseil de Genève*, ed. Emile Rivoire and Victor van Berchem, 13 vols. (Geneva: 1900-1940); SD -- *Les sources du droit du canton de Genève*, ed. Emile Rivoire and Victor van Berchem, 4 vols. (Aarau: 1927-1935).

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## 1. Introduction

John Calvin (1509-1564), the Protestant Reformer of Geneva, transformed the Western theology and law of sex, marriage, and family life. Building on a generation of Protestant reforms elsewhere in northern Europe, Calvin constructed a comprehensive new theology and jurisprudence that made marital formation and dissolution, children's nurture and welfare, family cohesion and support, and sexual sin and crime essential concerns for both church and state. Working with other jurists and theologians, Calvin drew the church and state of Geneva into a creative new alliance to govern domestic life in Protestant Geneva. Together, church and state authorities outlawed monasticism and mandatory clerical celibacy, and encouraged marriage for all fit adults. They set clear guidelines for courtship and engagement. They mandated parental consent, peer witness, church consecration, and state registration for valid marriage formation. They radically reconfigured weddings and wedding feasts. They reformed marital property and inheritance, marital consent and impediments. They created new rights and duties for wives within the bedroom and for children within the household. They streamlined the grounds and procedures for annulment. They introduced fault-based divorce for both husbands and wives on grounds of adultery and desertion. They encouraged the remarriage of divorcées and widow(er)s. They punished rape, fornication, prostitution, sodomy, and other sexual felonies with startling new severity. They put firm new restrictions on dancing, sumptuousness, ribaldry, and obscenity. They put new stock in catechesis and education, and created new schools, curricula, and teaching aids. They provided new sanctuary to illegitimate, abandoned, and abused children. They created new protections for abused wives and impoverished widows. Many of these reforms of sixteenth-century Geneva were echoed and elaborated in numerous Protestant

communities, on both sides of the Atlantic, and a good number of these reforms found their way into our modern civil law and common law traditions of Protestant lands.<sup>2</sup>

What made this Calvinist reformation of sex, marriage, and family life so resolute and resilient was that it was a top-to-bottom reformulation of ideas and institutions, theology and law, learning and living. Calvin and his coreligionists set out their theological reforms in hundreds of sermons, commentaries, and systematic writings that were echoed and elaborated by a whole army of Reformed preachers and theologians in succeeding decades. They set out their pastoral advice in thousands of letters and pamphlets that ultimately catalyzed a whole industry of Protestant household manuals. And they set out their legal reforms in hundreds of new statutes that gave rise to thousands of new cases.

Adjudication of these cases was left both to the Genevan city council and to an important new institution created by Calvin, called the Consistory. The Consistory acted at once as a hearings court, as a compulsory counseling service, a mediator and reconciliation commission, and as an educational institution. It penetrated life in almost all of its variety in sixteenth-century Geneva. Some of the Consistory's work was remarkably officious – intruding on the intimacies of bed and board with unusual alacrity. Some of its work was also remarkably solicitous – catering to the needs of the innocent, needy, and abused with unusual efficiency.

The registers of the Consistory's deliberations from 1541 to 1564, when John Calvin was active in Geneva, comprise 21 thick volumes in total. Until recently, these

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<sup>2</sup> This is the thesis of Witte and Kingdon, *Sex, Marriage and Family in John Calvin's Geneva*.

volumes were largely unbroken and unused, owing to the almost indecipherable penmanship and shorthand style of the consistory notaries in this period. Happily, Genevan authority, Robert M. Kingdon and a team of specialist students whom he trained over the past thirty years, have transcribed these invaluable sources into more readable French, albeit still archaic and studded with peculiar local terms. The volumes are now beginning to come out in critical modern French editions and the first two volumes are now in English translation as well.

Well over half of all the hundreds of cases heard by the Consistory each year concerned issues of sex, marriage and family. Adultery and fornication, disputed engagements and weddings, and family quarrels were by far the most common such cases. But intricate and tender issues concerning incest, polygamy, rape, sodomy, buggery, prostitution, voyeurism, public bathing, abortion, child neglect, child abuse, baptismal disputes, education disputes, wife abuse, mistreatment of maids, family poverty, embezzlement of family property, sickness, divorce, marital property disputes, inheritance, and others all crowded onto the Consistory's docket as well. Some of these cases were very intricate; a few required intense evidentiary investigation and legal disputation that could go on for years.

Calvin sat as one of the two dozen judges on the Consistory, and he sometimes dominated its proceedings, particularly in hard cases that required the advanced legal learning that he had. The Consistory provided Calvin with a laboratory to test and refine many of his theological ideas. It was one thing for Calvin, the theologian, to insist that marriages should be publicly celebrated with parental consent. It was quite another to decide whether a secretly married couple with a brand new child should be separated and their child thereby illegitimated and reduced to a public ward. It was one thing to thunder loudly from the pulpit that adulterers of all sorts should be stoned in accordance with the Bible. It was quite another to decide whether an engaged couple caught in heavy foreplay in their own bedroom on the eve of their wedding should be executed. It was one thing to declare anathema on interreligious marriages. It was quite another thing to deal with the hundreds of desperate new emigrants who poured into Geneva with spouses of various confessions on their arms. It was one thing for Calvin to say that married couples must live together at all costs, save in cases of adultery or desertion. It was quite another to insist on such reconciliation when a battered wife,

already bent and lame from her husband's repeated savageries, stood before him with newly blackened eyes.

It was on the Consistory bench that Calvin was forced to integrate theory and practice, theology and law, principle and precept, rule and equity. Some of these Consistory cases forced him to rethink and refine his prior theological positions on sex, marriage, and family. Other cases sent him scurrying back to his Bible and his books in search of new edification. Still other cases drew him back to the rules and procedures of the Roman civil law, Roman Catholic canon law, Talmudic jurisprudence, and local urban law for more edification. This Consistory experience certainly made some parts of Geneva's reformation of sex, marriage and family life messier, more volatile, more difficult to follow at points. But it also made his reformation more realistic, rigorous, and resilient.

This chapter samples some of the new Genevan domestic relations law on the books and in action in Calvin's day. Part 2 summarizes the new structures of church and state. Part 3 analyzes the shifting patterns of Consistory cases. Part 4 analyzes a few sample cases involving disputed engagements, petitions for annulment and divorce, and the sexual crimes of fornication, adultery, incest, and polygamy.

## **2. Councils and Consistory**

The Protestant Reformation in Geneva began as a revolution in government, law, and religion. On May 21, 1536, two months before Calvin first arrived in Geneva, the city authorities issued a statute renouncing the Catholic Church and its canon law in

favor of “the holy Evangelical Law and Word of God.”<sup>3</sup> A prince-bishop who had been sovereign in both the political and religious realms was forced to leave. So were most of the members of his entourage, including a number of canon lawyers who staffed the bishop's court. It was called the court of the *official* and was responsible, among other things, for resolving problems involving marriage and family throughout the diocese. So was an officer called the *vidomne* who superintended the administration of justice, arresting people and enforcing laws on sexual immorality and crime between sundown and sunrise (during daylight hours this fell to officers of the commune), and arranging for punishment of those found guilty.

The government that remained after the expulsion of the bishop's court and officials was a hierarchy of councils and the committees and officials dependent on those councils. These councils had already been given some powers by earlier bishops to govern the city internally, to maintain public order, to control sexual morals and, since 1364, to judge some criminal cases.<sup>4</sup> But after 1536, the city councils had to take steps to fill the vacuum created by the expulsion of the bishop and his entourage, which they accomplished by realigning the power and procedures of some of the councils as well as creating the Consistory.

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<sup>3</sup> SD, vol. 2, item 701.

<sup>4</sup> See the numerous statutes on sexual morals passed by the Genevan Councils from 1481-1536 in SD, vol. 2, items 290, 294, 297, 300, 302, 345, 373, 398, 405, 420, 147, 485, 496, 510, 524, 562, 580.

**The Councils.** Four main councils operated in the city after the reformation. First, and most basic was the General Council. In theory, it consisted of all the adult male residents of the community over the age of twenty. In practice, only two privileged groups of residents, the citizens and the bourgeois, were active in this government. The General Council met at least once a year, in February, to elect officers of the government for the coming year, to supervise the elections of the members of the smaller Councils, and to ratify particularly important laws, like the Reformation Ordinance of 1536. Second, the Council of Two Hundred was a smaller body that had been created a decade before in imitation of a similar body in Protestant Bern. This Council met occasionally to handle special cases, to ratify laws, and to handle appeals from people convicted of crimes by the Small Council who felt that its sentence had been too harsh. Third, the Council of Sixty was an older institution, which had earlier been a Council of Fifty. It also met to handle special cases, especially those that involved relations with foreign governments. The members of the Council of Sixty were also members of the Council of Two Hundred.

The fourth council, called the Small Council, however, that was the most powerful legislative, executive, and judicial authority of Geneva after the Reformation. Its responsibilities were defined in some detail in the 1543 Ordinances on Offices and Officers that Calvin helped to draft.<sup>5</sup> The Small Council was made up of twenty-five leading Genevan citizens. It met at least three times a week. Its presiding officers were four men called syndics, arranged in order of seniority in government service. They represented the government in announcements to the general public and, often but not

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<sup>5</sup> SD vol. 2, item 807; printed in part in CO 10/1:121-127.



invariably, in negotiations with foreign powers. They also supervised the criminal justice system, including the prosecution and punishment of sex crimes. One of syndics also signed the banns of marriage of a newly engaged couple, which banns would be pronounced in the local church. New syndics were elected every year for a term of only one year from among members of the Small Council. The remaining members of the Small Council were normally reelected every year.

A number of officers and standing committees reported to the Small Council whose members were also chosen in the annual elections. These officers and committees had responsibilities for duties like maintaining the city's accounts, maintaining the city's grain supply, arranging for the watch that guarded the city's walls, and handling legal cases in both civil and criminal arenas. One important such officer was the *lieutenant*, who assumed many of the powers that had traditionally been exercised by the bishop's *vidomne*.<sup>6</sup> The court of the lieutenant rendered summary justice, with no written record and no right of appeal, for small civil cases involving sums of five florins or less. Larger civil cases were resolved in formal trials with lawyers, written records, and the right of appeal to a special court of appeals appointed annually by the Small Council. Minor criminal infractions were handled directly in the streets by the lieutenant (or by officers of the Small Council). Many of these infractions were regulatory offenses or misdemeanors, such as being outside after nine at night without a candle, or failing to attend sermon. In these cases the officers would order people to

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<sup>6</sup> His role was redefined in the Edict on the Lieutenant (Nov. 11, 1542), SD, vol. 2, item 803.

pay a small fine on the spot, of which the officers took a cut, based on a variety of edicts issued over the years by the Council. In cases alleging more serious criminal offenses or when an individual had repeatedly committed minor infractions, there would be formal legal proceedings supervised by the lieutenant in consultation with the Small Council. The lieutenant would oversee the gathering of evidence and would conduct interrogations with members of the Council present. The lieutenant, however, would play no role in rendering a verdict or imposing a sentence in these criminal cases. That was left to the syndics, the city's chief executives, in consultation with a quorum of the Small Council.

The Small Council was, in part, a key legislative body, with power to draft or commission new statutes, which were then ratified by the other councils. Most of the important legislation on sex, marriage and family life came through this body, and all the major new statutes on point in the 1540s to 1560s were drafted or shaped by Calvin and other Protestant reformers. The most comprehensive such measure was the Marriage Ordinance drafted by Calvin in 1545, and revised in 1546 and again in 1561.<sup>7</sup> It included detailed rules about engagements, marriage, weddings, marital property,

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<sup>7</sup> CO 10/1:93-124. The 1561 draft adds a brief preamble, repeating most of the language that now appears in the 1541 *Ecclesiastical Ordinances*: "After the publication of the customary banns, let the marriage be celebrated and blessed in the church when the parties decide, either on Sunday or working days, provided that this is at the beginning of the sermon. And as for refraining from this, it would be proper to refrain only on the day when Communion is celebrated, in honor of the sacrament. Concerning differences in matrimonial cases, because this is not a spiritual matter but rather concerns politics, it will remain under the Council. Nevertheless we have decided to leave to the Consistory the duty of hearing the parties in order to report their opinion to the Council, which will base its judgment on this. And let proper ordinances be drafted to be followed henceforward." CO 10:105.

household relations, spousal care and responsibilities, impotence, abuse, adultery, desertion, separation, and divorce. Another essential text was the Marriage Liturgy that Calvin first prepared in 1542 and expanded in 1545; its provisions were amplified by a series of discrete rules and regulations passed by the Small Council over the next three decades.<sup>8</sup> Several statutes governed the baptism and care of children by parents and godparents, and their catechesis and formal education.<sup>9</sup> A long series of statutes, distilled in 1560 and 1566, governed public and private sexual morality – adultery, fornication, prostitution, public bathing, dressing, dancing, parties, dissolute songs, sumptuousness, and much more.<sup>10</sup> Still other statutes, distilled in a comprehensive edict of 1568, governed the economic arrangements of marriage and family life – betrothal gifts, dower, dowry, trusts, wills, legacies, inheritance, probate, and related issues of marital and family property.<sup>11</sup>

**The Consistory.** The Small Council was ultimately responsible to implement and enforce this new legislation, and to adjudicate disputes and to prosecute crimes based upon these statutes. But the Small Council shared much of this work with a new institution called the Consistory. Calvin created this institution in the Ecclesiastical

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<sup>8</sup> The 1545 Marriage Liturgy is reproduced in CO 6:203-208. The editions of 1542, 1545, 1547, 1558, 1559, 1562, 1563, and 1566 are the same, except for small variations of wording. The preamble appears first in the 1545 edition.

<sup>9</sup> CO 10/1:49-50.

<sup>10</sup> SD, vol. 3, items 992, 1065.

<sup>11</sup> SD, vol. 3, item 1081.

Ordinances that he drafted for Geneva in 1541, and it was one of the institutions that he insisted on having in place to implement the new Protestant reforms of the city.

The Consistory was made up of about two dozen men. Its presiding officer was one of the four syndics of the year. Its members sat on two benches. On one sat all the ordained pastors of Geneva and occasionally those from the villages attached to it, headed by Calvin as their moderator. On the other bench sat twelve lay commissioners, called "elders," who were elected for this duty in the February elections every year. The elders were chosen so as to represent the three governing Councils: two from the Small Council and ten from the Council of Two Hundred, with four of those ten also members of the Council of Sixty and/or General Council. The Consistory also had two additional officers, to expedite its business. One was a secretary, always a registered notary, who took minutes of each of its meetings, creating the consistory register. The other was an *officier* or summoner, who with the lieutenant of the city faced the often difficult task of bringing before the Consistory people it wanted to question. The elders, the secretary, and the summoner were all paid small sums of money for attending meetings of the Consistory. The Consistory met once a week, on Thursdays, in sessions that before long stretched out for several hours.

Cases came before the Consistory in a variety of ways. Sometimes they came on the initiative of an individual who sought relief. A jilted fiancée who wanted to have her engagement contract enforced or her dowry returned. A man who claimed his wife was cheating on him and wanted a divorce. A woman who limped into court with blackened eyes and broken teeth asking for protection from her abusive husband. A child whose parents threatened to disinherit him unless he married a woman he did not want. A poor person who was felt unjustly banned from the local hospital and wanted a bed. A businessman who felt his partner had embezzled his funds. A renter whose landlord refused to fix the window.

Other cases began on the initiative of the lieutenant or other government official, a pastor, or a concerned citizen. Sometimes they alerted the Consistory to a serious need like poverty, sickness, unemployment, loneliness, or neglect that required pastoral intervention or material assistance. More often, the complaint was about some moral irregularity – non-attendance or disruptiveness at worship services, failure to pay tithes, suspicion of polygamy, concubinage, or prostitution, public drunkenness, mixed public bathing, non-marital cohabitation, wild or blasphemous songs, obscene speech, plays,

or publications, a raucous party or wedding feast featuring dancing and debauchery. Occasionally more serious offenses like rape, battery, sodomy, kidnapping, mayhem, torture, or homicide were also reported, though most of these cases went directly to the Small Council. In all of these cases, the Consistory served more as a grand jury and preliminary hearings court. The Consistory had wide subpoena to summon and investigate parties, witnesses, and documents.

Each person who appeared or was subpoenaed before the Consistory was identified, informed of the reason he or she was there, and then asked questions by members of the Consistory. Parties generally were not allowed to bring along a lawyer or another adviser, but had to handle questions entirely on their own. Sometimes they would submit affidavits, petitions, contracts, certificates, or other documents for the Consistory's review. The Consistory would often question the parties about these documents, and summon witnesses to validate their authenticity. The Consistory also had wide subpoena power to compel witnesses to appear to shed greater light on the case. The Consistory would then reach a decision. The most common decision, especially in the early years of the Reformation, was simply to administer a scolding, an "admonition" or a "remonstrance" as it was called. The person administering this scolding was usually Calvin or another minister who sat on the Consistory bench.

In cases involving several people, the Consistory often tried to effect reconciliation and to resolve the dispute without a formal trial. In these cases it acted more as a compulsory counseling or mediation service. In hearing a divorce petition, for example, the Consistory usually tried to bring a couple back together again rather than immediately granting the petition. Ceremonies of reconciliation were often staged before the Consistory, although if the problem had achieved general notoriety, a public ceremony of reconciliation might be held in a parish church, accompanying a regular service of worship. The Consistory could also order individuals to perform a "public reparation." People so sentenced had to appear at a main Sunday worship service, get down on their knees, confess the errors of their ways, and beg for forgiveness. This punishment was initially used to punish women convicted of adultery who were visibly pregnant and for that reason could not be sent to jail. Later it came to be applied most

frequently to people who, while living in a Catholic area, had renounced their faith in order to avoid punishment.<sup>12</sup>

If the Consistory found an individual to be guilty of particularly offensive behavior or to be particularly stubborn in resisting correction or reconciliation, it could ban that party from receiving “communion” or the “Lord’s Supper” (terms Protestants used to describe the Eucharist), a sacrament which was now held only four times per year. The ban from communion was a far more serious punishment then than it is now. People saw it as preventing them from receiving a sacrament that was a sign of God’s grace and formerly, in Catholic times, a necessity for receiving ultimate salvation. It was also a social humiliation that could interrupt normal social routines and business. Banned parties could not act as godparents, an important honor at that time. Nor could they get married. Sometimes they were also excluded from poor relief and access to the city hospital.<sup>13</sup>

If parties made no attempt to rehabilitate themselves and be readmitted to communion, the Consistory could, as the Ecclesiastical Ordinances put it, have them “separated from the Church and denounced to the Council.” This was, in effect, the power of excommunication, though it was rarely called such in the 1540s and even more rarely used. The use of the term, let alone the practice, of excommunication by the Genevan Consistory was particularly controversial. It reminded too many Genevans

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<sup>12</sup> Thomas A. Lambert, “Preaching, Praying, and Policing in Sixteenth-Century Geneva” (Ph.D. Diss. Wisconsin, 1998), 264ff.

<sup>13</sup> Ibid., 255-263; Christian Grosse, *L’excommunication de Philibert Berthelier. Histoire d’un conflit d’identité aux premier temps de la Réforme genevoise, 1547-1555* (Geneva: 1995), 47ff.

of the previous Catholic authorities who had often used excommunication in a variety of ways that were sometimes not even religious -- to enforce the payment of debts, for example. Most early Protestant regimes, including those created by Lutherans, Zwinglians, and Anglicans, refused to give their churches a general power of excommunication, only a power of the ban from communion. In Geneva a group of local leaders called "the children of Geneva" strenuously resisted the idea that the church should reserve to itself the power to excommunicate. They insisted they should at least be able to appeal over the heads of the Consistory to the Small Council to revise or lift a sentence of excommunication. In a number of celebrated cases, Calvin and the other ministers flatly refused to permit an appeal from a Consistory decision. As ministers they would simply not offer communion to an excommunicated sinner. Tension over this issue became more and more intense, until it provoked riots in the city in 1555. Those sympathetic to Calvin and the other ministers ultimately prevailed. Others involved in the riots were brutally punished, all of them removed from political offices, several of them put to death, many more banished from the city.

A crucial new weapon won in this political battle was the Consistory's unequivocal power to enforce its spiritual discipline by using either the ban (temporary preclusion from communion) or excommunication (exclusion from the church altogether, which often also entailed banishment from the city as well). This was confirmed by an important statute of 1560 that urged the use of admonition and simple bans in routine

cases, and the use of excommunication in serious cases.<sup>14</sup> The ban became a more regularly used tool of discipline thereafter. Excommunication, however, was still only rarely ordered. A study of Consistory cases from 1560-1564 shows that the Consistory banned nearly 40 persons for every one it excommunicated.<sup>15</sup>

The Consistory had no further spiritual powers – and no formal legal power. If it decided that a case needed further investigation and further punishment, it had to refer it to the Small Council. In this respect, the Consistory often acted as a kind of preliminary hearings court, something like a grand jury in Anglo-American law. We often find that on the Monday following a Thursday Consistory session, there would be on the Small Council's docket a number of cases referred from the Consistory. On occasion the Small Council might dismiss a charge as frivolous. More often, however, it would proceed with its usual methods of investigating a case. If the case seemed minor, it might be handled immediately by the Council. If it seemed serious, the lieutenant of the city, might take the accused into custody and place him or her in the city's prison. This prison had earlier been the palace of the prince-bishop, but now it had been adapted for different purposes. It contained a number of holding cells for people awaiting trial. It also contained a large torture chamber. It did not house any long-term prisoners. Imprisonment for long periods of time was simply not a punishment used in sixteenth-century Geneva. Even people sentenced to life in prison as the result of a criminal trial were usually released within a few months, often paroled to the custody of relatives. Most prison sentences lasted for only a few days.

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<sup>14</sup> SD, vol. 3, item 986.

<sup>15</sup> Grosse, *L'excommunication*, 47ff.



Following an arrest, the lieutenant and his assistants, called *auditeurs*, would arrange for a series of cross examinations of the accused. A fairly long list of related charges would be drawn up and written down, and the accused would be expected to answer them before a panel made up of people usually drawn from the Small Council. There would often be several "repetitions" in which the same questions were put to the accused again, sometimes in the presence of a different panel of Council members. This is the legal method called the inquisitorial process, which was commonly used in Europe at this time.<sup>16</sup> If the accused turned out to be stubborn or contradictory, and if the charges were really serious, the authorities were then allowed to administer torture when asking questions. Before that happened, however, a jurisconsult was called in to examine the dossier and to decide whether there was probable cause to believe that a crime had been committed and that the crime was serious enough to warrant such extreme methods. It was regarded as always preferable to have the accused confess the crime. Only a confession was regarded as really sure evidence that a crime had been committed. A confession extracted under torture, furthermore, could be retracted after torture was over, if the accused then claimed it had been a false confession.

In complicated cases, the Small Council would often refer issues back to the Consistory for further fact-finding, investigation of witnesses, or advice on novel questions that were not addressed at all or clearly enough in the statutes. The

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<sup>16</sup> John H. Langbein, *Torture and the Law of Proof: Europe and England in the ancien régime* (Chicago: 1977); id., *Prosecuting Crime in the Renaissance: England, Germany, and France* (Cambridge, Mass.: 1974).

Consistory would then make recommendations of whether or how to proceed, which the Small Council would take under advisement. If an issue was particularly complex or pressing, or if the Consistory decided that the Small Council was not proceeding properly, they would send a representative to the next Council meeting to put their recommendations or press their case. John Calvin was the one often tapped to represent the Consistory's interest before the Council in these cases. On occasion, Calvin showed up at Council's meetings on his initiative, sometimes to press the Council to enact clearer rules to address an issue heard by the Consistory, sometimes to urge equity in a given case that the Consistory had removed to the Council. He was sometimes accommodated, sometimes rebuffed.

Once a trial dossier had been completed, and the full slate of Consistorial recommendations collected, the Small Council would render a final judgment. On some minor matters, the Council's judgment would be to send the case back to the Consistory to impose spiritual sanctions alone. On most matters that had been referred to them, however, the Council would impose civil and/or criminal orders or sanctions as well. This could be an order for quarrelling parties to post their banns and get married within a designated period of time. Or it could be a declaration that an engagement or marriage was to be annulled because of a proved impediment, or a couple was to be divorced because of the desertion or adultery of one of the parties. Or it could involve the payment of damages, the restitution of property, or the specific performance of the terms of a contract.

Where the case involved criminal conduct (as well), the verdict of guilty would be written out, posted, and read aloud in the public square by one of the town criers, or by a syndic if it were a capital case. Verdicts in a number of different kinds of cases could be appealed to the Council of Two Hundred, but not to a court outside of Geneva. Criminal punishments could involve ceremonies of public shaming, monetary fines, mutilation, banishment, short terms in prison on "bread and water," and, to a degree we would find appalling, capital punishment by a town executioner hired by the city for the purpose. There were a number of rather gruesome ways in which capital punishment

was administered. Traitors might be beheaded, thieves hanged, notorious adulteresses drowned, heretics or witches burned.<sup>17</sup>

### **3. Patterns of Consistory Cases on Sex, Marriage and Family Life**

The Consistory did not limit itself to cases involving sex, marriage, and family life. In its early years, it spent a good deal of time trying to root out surviving Catholic religious practices. In later years it spent some time in trying to root out sharp business practices and disrespect for the leaders of government and church. But a clear majority of the Consistory's cases involved issues of sex, marriage, and family life.

The Consistory handled a good many cases of sexual deviation, which before the Reformation had been handled by city courts. If the sexual deviation was found to be minor, it was normally resolved by admonition or reparation, or referred to the Small Council for minor punishment. The normal punishment for premarital fornication, for example, was a short prison sentence of three to six days on bread and water. If the sexual deviation was major, such as adultery or prostitution, it was normally referred to the Small Council for a full investigation and trial. Cases of notorious and repeated

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<sup>17</sup> For fuller description of how these institutions operated in adultery and divorce cases, see Robert M. Kingdon, *Adultery and Divorce in Calvin's Geneva* (Cambridge, Mass.: 1995); see further William Monter, *Calvin's Geneva* (New York: 1967); id., *Studies in Genevan Government (1536-1605)* (Geneva: 1964); William G. Naphy, *Calvin and the Consolidation of the Genevan Reformation* (Louisville, Ky.: 2003).

adultery could be punished with death sentences. So could cases of rape, especially of children. So could cases of bestiality or sodomy. These more serious cases of sexual crime, however, rarely passed before the Consistory. They were almost always referred directly to the Small Council for criminal prosecution.<sup>18</sup>

The Consistory also handled a good many cases involving marital formation, maintenance, and dissolution, cases which before the Reformation had been handled by the bishop's *official* court. Many of these cases were breach of promise cases, in which one party alleged and the other denied a promise of engagement or marriage. That would often require a hearing in which witnesses would be summoned, very often including the parents of the presumptive couple, to find out what had really happened. Some of these cases also involved pleas to dissolve an engagement or marriage. Before the Reformation a plea of that kind could lead to an annulment or to a permanent separation from bed and board. It could never lead to a divorce in the modern sense. With the Reformation, divorce in this modern sense could and did occur, although fairly rarely, with a subsequent right to remarry, at least for the innocent party. Both the Consistory and the Small Council, however, tried first to reconcile the parties. A great deal of the Consistory's time, indeed, was involved in trying to secure reconciliations, between married couples, between parents and estranged children, and between neighbors and business partners.

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<sup>18</sup> See Kingdon, *Adultery and Divorce*; Cornelia Seeger, *Nullité de mariage divorce et séparation de corps a Genève, au temps de Calvin: Fondements doctrinaux, loi et jurisprudence* (Lausanne: 1989); William G. Naphy, *Sex Crimes From Renaissance to Enlightenment* (Stroud, Gloucestershire/Charleston, S.C.: 2002).

In general, the Consistory and the Council agreed in trying to maintain a single style of domestic life for everyone in Geneva, usually the style of a family group consisting of a husband and wife, dependent children, and almost always young servants, living together in harmony in a single household. Sometimes the household would be extended by adding elderly (grand)parents, a needy single aunt or uncle, or an orphaned or illegitimate nephew, niece, or cousin who needed guardianship.

Several alternative styles of life were actively discouraged. Most obviously, the lifestyle of celibacy, so highly valued for clerics and monastics within the Roman Catholic communion before the Reformation and since, was repudiated. It was felt to be unnatural, even impossible for most people. Church leaders and laymen alike were expected to marry and raise families. The Consistory would summon a single man, usually one who had gotten into trouble for fornication, and ask him why he wasn't married. They would also help the man, or summon a matchmaker to find him an appropriate wife if he couldn't do it by himself.

Another style of life that was repudiated was promiscuity – whether casual sex, ongoing fornication, mixed bathing that often led to sex, pre- or non-marital sex or cohabitation, and more. Before the Reformation, promiscuity was regarded as inevitable, a necessary evil. Geneva, like most cities of the period, permitted and regulated prostitution as a way of controlling and channeling the charged libidos of its citizenry. Prostitution was regarded as a necessary service, especially for the visiting merchants who came to the large fairs twice a year for which the city had been famous in the fourteenth and fifteenth centuries. After the Reformation, prostitution was abolished. A few professional prostitutes were treated fairly gently, told to move on to another community, even offered small sums of money to cover their travel expenses. Married women who played the prostitute, however, were treated very harshly. A number of them were put to death by drowning. Even women forgiven by their husbands could be treated harshly. This was a lifestyle Geneva wanted to eradicate completely.

We can get a good sense of the volume of cases on sex, marriage, and family life, and of the patterns of litigation in the Consistory by contrasting the full case records from three sample years of 1546, 1552, and 1557. These three sample years were key

moments in the Reformation in Geneva. 1546 was the year the new Marriage Ordinance was first available to the Consistory, and they began implementing its provisions. 1552 was the year when the Consistory and Calvin's leadership of the Reformation altogether were being actively challenged, and Geneva was changing dramatically with the influx of French émigrés. 1557 was a year when Calvin and his allies were at the height of their power, having gained among other things the power of excommunication.

Tables 1-3 summarize the main categories of cases on sex, marriage, and family, and their disposition by the Consistory in these three sample years. The categories of cases listed in these Tables are largely self-evident. But a word about a few of these categories, and the boundaries between them, might be helpful. "Fornication and Adultery" was a very expansive sexual offense in Reformation Geneva. It involved voluntary sexual intercourse or other intimate contact between any parties who were unmarried to each other – whether single, engaged, or married to another. Even loose circumstantial evidence of sexual impropriety between couples could lead to charges of fornication, and thus the cases were quite numerous each year. "Other Sexual Immorality" was conduct that fell short of sexual or intimate touching or interaction, but might well be a means to that end – mixed bathing, dancing, seduction, use of obscene words or pictures, frequenting ribald plays, dissolute gestures or conduct, wearing provocative clothes, and the like. "Rape/Sexual Assault" was involuntary sexual contact, including forced sexual intercourse. Most such cases went directly to the Council for criminal prosecution, but occasionally the Consistory encountered these cases, particularly in instances of disputed engagements where the fiancée cried foul. "Spouse and Family Quarrels" were verbal disputes between husband and wife or between parents and children over all manner of minor issues. Where those disputes involved allegations of fornication, adultery, or sexual immorality, I put them in those categories, rather than in the category of quarrels. Where those disputes were over engagements or when they ripened into allegations of wife abuse or petitions for divorce, we again put them into those categories. "Disputed Engagements" often turned on whether parties had properly promised marriage, or had done so without parental consent or witnesses, or while drunk, or with stipulated conditions that were illegal. A few cases involved disputes about the publication of banns or about what to do when one party to the engagement deserted the other. Several cases also raised questions what to do about parties who had been engaged or married elsewhere, and

were now seeking marriage to another in Geneva; those cases were sometimes referred to the Council for prosecution for polygamy as well.

**Table 1**

**1546 Cases on Sex, Marriage, and Family**

Subject Matter	No. of Cases	Resolved by Admonition	Banned Comm'n	Removed to Council
Fornication/Adultery	94	29	4	47
Other Sexual Immorality	23	11		6
Rape/Sexual Assault	1	0		1
Disputed Engagements	20	5	1	15
Spouse/Family Quarrels	66	39		18
Abortion	1	0		1
Baptism Disputes	3	2		1
Child Abuse or Mistreatment	5	3		1
Schooling Disputes	1	0		0
Disobeying Parents	1	1		
Wife Beating	1	1		0
Divorce	6	0		6
Totals	182	91	5	96
Total: All Cases in 1547	309			

**Table 2**

**1552 cases on Sex, Marriage, and Family**

Subject Matter	No. of Cases	Resolved by Admonition	Banned Comm'n	Removed to Council
Fornication/Adultery	94	22	19	55
Desertion	8	4	2	4
Other Sexual Immorality	37	26	2	6
Rape/Sexual Assault	2			1
Disputed Engagements	38	7	2	22
Interreligious Marriage	2		2	
Spouse/Family Quarrels	89	54	9	22
Abortion	0			
Baptism Disputes	2	2		
Child Mistreatment	1			
Schooling Disputes	1			
Disobeying Parents	0			
Wife Beating	3	3		
Divorce	15			9
Totals	253	118	36	119
Total: All Cases in 1552	390			



**Table 3****1557 cases on Sex, Marriage, and Family**

Subject Matter	No.of Cases	Resolved by Admonition	Banned Comm'n	Removed to Council	Excommu-nicated
Fornication/Adultery	97	22	46	60	5
Desertion	16	7	4	8	1
Other Sexual Immorality	43	16	15	14	2
Rape/Sexual Assault	1		1	1	
Disputed Engagements	43	15	4	26	1
Interreligious Marriage	6	3	2	3	
Spouse/Family Quarrels	83	48	28	23	
Abortion					
Baptism Disputes	7	3	3	3	
Child/Maid Mistreatment	9	6	2	2	
Schooling Disputes	3	2	1	1	
Disobeying Parents	3		3	2	
Wife Beating	19	9	5	7	1
Divorce	13	2		8	
Totals	323	133	114	158	10

Total: All Cases in 1557	566				
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Several patterns will be evident as you look across these three annual case profiles. First, in each year, roughly 60% of the Consistory’s entire case load was devoted to issues of sex, marriage, and family. But the volume of cases on these issues nearly doubled in a decade – from 182 cases in 1546 to 323 in 1557. This reflected, in part, the growing population of Geneva. But it also reflected the growing aggressiveness of the Consistory in governing Genevan domestic life.

Second, the severity of spiritual punishments increased in later years. In 1546, by far the most common remedy was an admonition for the parties to do better, and a good number of cases ended even short of admonition.<sup>19</sup> Only in very serious cases, involving adultery or involving fornication coupled with other offenses, were parties banned temporarily from communion. The ban was used only rarely in 1546 -- only 5 times in the 182 cases on sex, marriage, and family. The ban became a much more frequent punishment in later years – used 36 times in 1552, 114 times in 1557, with proportionate decreases in the uses of admonition.

Third, the Consistory rarely ordered excommunication in the sex, marriage, and family cases of 1557, even though this was a hard-earned new weapon in their arsenal

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<sup>19</sup> In several instances, the case is declared “continued” or open, but the record reveals no further disposition. Some of this could be a function of a sloppy notary; in most instances, we need to assume that the parties resolved their dispute themselves, or had it resolved for them outside of the formal Consistory hearing.

of spiritual sanctions. Only in 10 of the 323 cases that came before it in 1557 did the Consistory recommend to the Council that a party be banished from the city for a serious offense. This might have had the effect of excommunication, but it was not so ordered by the Consistory itself. The Consistory seemed content to make much heavier use of the ban, which at least left a *locus poenitentiae*, a possibility for repentance and reconciliation. Indeed, in several cases, the 1557 Consistory heard cases from parties who had been banned for prior sexual offenses and now sought (and were almost always granted) re-communication.

Fourth, roughly half the cases in each of our three sample years were resolved in the Consistory by use of spiritual sanctions. The remaining half of the cases was removed to the Council for further legal or criminal disposition. This might at first appear counterintuitive, especially since the Council passed increasingly stern criminal laws against adultery, fornication, sexual immorality, wife beating, and the like in the 1550s. But, as noted, the Consistory in this same period also imposed increasingly stern spiritual sanctions, making heavier use of the ban and occasional banishment to drive home their earnest of stamping out sexual deviations and familial discord. Parties who repented after being banned, or forced to do public reparations, were often spared criminal sanctions for their offense.

Fifth, while the absolute number of cases of adultery, fornication, sexual immorality, and family disputes remained relatively steady across our three sample years, the relative numbers of such cases dropped (given the growing population of the city and the increasing numbers of consistory cases). This was in part because the authorities' growing rebuke of such conduct was evidently beginning to have an effect. It was also because the Consistory was in more active pursuit of other cases of sex, marriage, and family – particularly wife abuse, which was subject to increasingly firm sanctions in later years, as well as divorce on grounds of desertion as well as adultery.

#### **4. Sample Cases**

From the thousands of sex, marriage, and family cases in the Consistory and Small Council registers from 1546 to 1564, let me select a few cases that illustrate the range of issues, the seriousness with which the Consistory and Council took these

cases, and their interacting roles in disposing of them. The cases also illustrate nicely the balance of strict enforcement and equitable application of the new statutes.

**Disputed Engagements.** A large volume of cases involved disputed engagements or marriages, where one party wanted out or where the parents or authorities wanted to break up the match because of the presence of an impediment (lack of consent, infancy, incest, precontract, coercion or trickery, mental or sexual incapacity) or other impropriety (wide disparity in age, difference in religion, or failure to procure parental consent).

The 1545/6 case of Pierre Jacquemo and Claude Conte featured a typical simple dispute over consent.<sup>20</sup> Pierre had proposed marriage to a widow named Claude in the company of Claude's mother and others, and had given her an engagement gift. Claude had returned the gift immediately and declined his proposal. When Pierre persisted in his overture, Claude threatened to kick him in the stomach (or lower) and stormed out of the room. Claude's mother said to Pierre: "Take charge of her; she is leaving my side now." Pierre took this to mean that Claude's mother consented to the engagement. So he persisted in his overture, to the point of requesting the Consistory to order Claude to marry him. The Consistory summoned Claude and inquired closely about what she had said and intended. She remained adamant about her refusal to marry Pierre and insisted that she had never once consented to the marriage. The Consistory wanted to know if she was now pregnant by Pierre. This would have cast doubt on her claim to persistent refusal of his advances, perhaps even subjected her to

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<sup>20</sup> RC II, 1v, 4v, 5.

an order for a shotgun wedding. Claude denied her pregnancy as well, and insisted that she had been chaste since her husband had died three years earlier. The Consistory was not so sure. They sent the case to the Council, with a warning to Claude that she should “protect the fruit of her womb” rather than seek an abortion. The Council, too, suspected her to be pregnant but concluded there was no basis for finding an engagement contract and thus released her.

The Consistory became doubly zealous in their protection of a party’s right to annul an engagement when they suspected foul play. In a 1547 case, for example, the Consistory learned that Pierre Metzatz had, already two years before, become engaged to a ten-year old girl in another town.<sup>21</sup> Pierre had forced the girl’s mother to give her consent to the engagement. Even worse, he was now threatening to take the child away to a Catholic territory. This was “scandalous,” said the Consistory. They called upon the mother to testify. She confirmed that Pierre had not only threatened her but in fact had “beaten her villainously” in order to extract her consent to her daughter’s engagement. Yet, the mother said she was willing to accept Pierre as her “son” if he promised to live by the Word of God. The mother was not just being pious and charitable. Pierre had evidently signed a contract to pay the costs of the girl’s apprenticeship and maintenance in exchange for her later hand in marriage. With no mention in the record of any father, it was likely that this was a single mother, divorcee, or widow, doing the best she could to support her child.

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<sup>21</sup> RC III, 124, 128.

Pierre intimated that he would be happy to cancel the engagement contract -- and, by implication, his contract to pay the girl's maintenance and support expenses as well. The Consistory would hear none of it. No doubt still scandalized by the evidence of Pierre's belligerence and his threat to take the girl to a Catholic home, the Consistory insisted on full performance of both the engagement contract and the maintenance contract. At the same time, they reserved the girl's right to rescind the engagement contract when she reached the age of consent, which they stipulated to fourteen years old in this case. The Consistory thereby made Pierre the victim of his own hard bargaining. Pierre had forced the mother into accepting what was, in effect, an installment contract to marry a virgin. The Consistory converted this into a mandatory child support contract with no guarantee of a bride in return. Indeed, there is no record that Pierre and the girl were ever married upon her reaching the age of consent.

Some disputed engagements turned on marital property questions. In a 1546 case, Jehan de Ladissiez and Mya had become properly engaged before witnesses.<sup>22</sup> Mya had promised Jehan a dowry of money to be paid in installments. But, because she had not been able to collect money owed to her, she had substituted various household items and tools for her first dowry installment. Jehan had accepted the goods, but evidently wanted his dowry money as well and threatened to break off the engagement. Mya promised to try to fulfill her dowry demands. That was good enough for the Consistory to remand the case to the Council, with a recommendation that marriage be required. The Council ordered the couple to marry.

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<sup>22</sup> RC II, 38, 40.

A 1552 case of leading citizen, Philibert Bertellier, reports Calvin's action in a disputed engagement case that included dowry issues.<sup>23</sup> Bertellier had earlier been engaged to a woman, whose brother-in-law had promised to pay an ample dowry of money and clothing. Bertellier had broken off the relationship. He then appeared before the Council to explain why, and to request the Council's approval for him to proceed with a new marriage. Calvin represented the Consistory at the Council hearing. The Council decided that witnesses should be heard, and the new marriage be allowed only if and after Bertellier's prior engagement or marriage was properly dissolved. The Council has no further record of the case. But ten days later, Calvin haled Bertellier before the Consistory. Calvin ordered him to confess his faults and to explain why he had broken off his prior relationship, which one witness declared to be an actual marriage for which an ample dowry had been paid to him. Bertellier said nothing. The Consistory decided to send Calvin back to the Council to testify about the illegality of Bertellier's breakup, and its serious implications for restitution of the dowry to the woman and her family. While nothing survives of Calvin's testimony, a week later, the Council sent a tart order to the Consistory to stop interfering with Bertellier's plans for new marriage. A chastened Consistory sent another minister to apologize to the Council. Calvin could not have been happy.

Some disputes involved parties who had made back-to-back engagements. In these cases, the authorities would generally uphold the first engagement contract. If the

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<sup>23</sup> RC VII, 51-8.

first engagement contract was somehow imperfectly formed or subject to a legitimate condition that had been breached, however, the Consistory would annul that first engagement contract and uphold the second. A good example is the 1557 case of Philiberte Chapuis and her two fiancés, Anthoine and Pierre.<sup>24</sup> Philiberte was first engaged to Anthoine. Four months later, she became engaged to Pierre. A distraught Anthoine appeared before the Consistory seeking to annul Philiberte's second engagement, and to have her compelled to marry him. Philiberte's defense was that she and Anthoine had made their contract in secret and that Anthoine had failed to make any engagement gift or give her a ring. Moreover, she argued that her aunt, who was also her guardian, had not consented to this match, and indeed feared that Philiberte and Anthoine were second cousins who could not marry in any event because of incest laws. Accordingly, her aunt had found Pierre as a substitute whom Philiberte was happy to marry.

There was enough contradiction in the testimonies of Philiberte and her aunt to give the Consistory some pause. They sent the two women and Philiberte's two purported fiancés to the Council to sort out the testimony. The Council eventually imprisoned Philiberte briefly, apparently for perjuring herself concerning the whereabouts of her parents. But the Council also dissolved her first engagement with Anthoine since it was contracted secretly -- without witnesses or parental consent. They ordered Philiberte to marry Pierre instead. It was the secrecy of her first engagement to Anthoine that was fatal in the Council's judgment. The other two allegations in Philiberte's defense against Anthoine would not have been sufficient.

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<sup>24</sup> RC XII, 48v, 52-52v, 60, 62



Failure of dowry was not a ground for annulment of engagements in Geneva. And, as second cousins, the parties were too distantly related to make out an impediment of incest under the new Genevan law.

The Consistory came down harder on parties who compounded their sequential engagements with other crimes like incest or pre-marital adultery. In a 1561 case, for example, Claude Plantain had become engaged to a woman named Jeanne who was a ward of Maurice and Françoise Gaillard.<sup>25</sup> The Gaillards, as guardians, had consented to this union. Claude, however, grew disenchanted with Jeanne. Without seeking annulment of his first engagement to Jeanne, Claude became engaged to Jeanne's older sister, also named Claude. This sister Claude was also a ward of the Gaillards, and they encouraged this engagement when after the young man Claude had rejected their younger ward Jeanne. This seemed to be incest piled upon polygamy, and the Consistory sent Claude to the Council for close investigation. Claude did not help his cause by disappearing for a year. When the authorities came upon him a year later, they came down hard. The Consistory summoned a battery of witnesses against him. Despite their conflicting testimony, the Consistory thought this case was sufficiently serious to send Claude, his two purported fiancées, and their guardians to the Council.

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<sup>25</sup> RC XVII, 94; XVIII, 70, 73v.

The Council ordered all five parties involved, including Claude who was a Genevan citizen, banished from the city and ordered them not to return on pain of whipping.<sup>26</sup>

In a 1557 case, Claude Gra became engaged to Pierre Chavellier.<sup>27</sup> Sometime thereafter, Pierre had sex with a woman outside of Geneva yielding an illegitimate child. Claude complained of his pre-marital adultery to the Consistory, and said further that she feared that Pierre may have become engaged to his lover as well. Pierre denied any new engagement, but admitted to fathering the illegitimate child. In fact, he testified that he had hired his former lover to nurse the child and paid her a rather handsome settlement to raise the child without him. Pierre produced a notarized contract of settlement with the woman as well as an affidavit from the local vicar. The Consistory must have thought that Pierre was simply trying to buy his way out of his trouble and to keep his philandering quiet from all parties, including his new fiancée Claude. The Consistory came down rather hard on him, as well as on the notary who had notarized his settlement contract. They sent Calvin himself to the Council, where he successfully had both Pierre and his fiancée Claude banished from the city. Pierre's banishment is understandable: premarital adultery and duplicity were both serious offenses. Why Claude was banished is less clear, unless the Consistory judged that she was in on the scheme, or that her engagement to Pierre remained intact, and she was thus required to follow him.

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<sup>26</sup> This judgment of the Council is as reported by Naphy, *Sex Crimes*, 48. I have not been able to find this judgment in the Council record.

<sup>27</sup> RC XII, 115, 119.

In a few other such cases, a fiancé forgave his fiancée's premarital adultery, instead of seeking annulment, and later accepted the illegitimate child and supported it. A good example is the 1547 case of Pierre Buttin and his fiancée Clauda.<sup>28</sup> Either just before or just after her engagement, Clauda had fornicated with one Mammard de l'Homme, and became pregnant. Mammard was himself already engaged to another woman as well. Clauda first sought to break up Mammard's engagement so that he would marry her and support their child. When that proved futile, Clauda made her way back to Pierre, and sought to marry him quickly. The couple forgot to post their banns, however, and the minister at the church wedding refused to marry them. In the course of the Consistory's investigation into her conduct, Pierre learned that Clauda had fornicated with Mammard and now carried his child. Pierre testified that he wanted to marry her anyway. Mammard's fiancée had since married him. After recommending that the Council punish Clauda and Mammard for their fornication, the Consistory ordered that the marriage of Clauda and Pierre could go forward.

**Delayed Weddings, Premarital Sex, and Polygamy.** As these cases illustrate, the Genevan authorities regarded an engagement as a serious contract much like a marriage contract. Parties were expected to announce their pending nuptials by posting banns in the city and the church, and be married within six weeks. Premarital sex with one's fiancé(e) was an act of fornication, punishable by short imprisonment on both sides and by public confession if the woman became pregnant. Sex with a third party in

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<sup>28</sup> RC III, 10, 20, 27, 50, 83

breach of one's engagement was an act of adultery that could lead to severe spiritual and criminal sanctions, and annulment of the engagement. Marriage to a third party after engagement to another was an act of polygamy, which was a *prima facie* capital crime.

Many cases involved delayed weddings, with or without premarital sex. In a 1546 case, for example, the Consistory summoned Monsieur Pernodi on charges that he had delayed his wedding by some four months for no evident reason.<sup>29</sup> This was a "scandal" that "mocked God," the Consistory announced. They sent Pernodi to the Council for punishment for his contempt, and they ordered him to marry his fiancée within a week. The following year, the Consistory charged François Chappuys and his fiancée for delaying their wedding for two months -- an infraction made worse by their intermittent cohabitation.<sup>30</sup> The couple was publicly admonished for their sin "so that others may be warned not to behave so." Thereafter, the Consistory declared, "we will marry them."

The Consistory sometimes relaxed this six-week engagement rule if a legitimate condition caused the delay. In a 1546 case, for example, they charged the widow Symon and her fiancé with delaying their wedding for months, even while they slept together when he was in town.<sup>31</sup> The widow confessed immediately to the fornication, but justified their protracted engagement on grounds that her fiancé was trying to get his property in order so that he could move to Geneva and settle down with her properly.

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<sup>29</sup> RC II, 75, 87.

<sup>30</sup> RC III, 121.

<sup>31</sup> RC II, 87.

The Consistory accepted this testimony without further investigation. They ordered her and her fiancé to desist from further fornication, but neither punished the couple for their sin nor ordered them to get married quickly. The Consistory was normally not nearly so tolerant of premarital fornication. Perhaps they took pity on Symon because she was a widow, and was so contrite and candid in her testimony.

Not all cases involving premarital sex and delayed weddings proved so simple, as can be seen in a tangled and tawdry case that went on for more than a year in 1555 and 1556 and involved not only premarital sex and pregnancy, but also suspected polygamy.<sup>32</sup> The case began before the Small Council. A father named Denis Potier testified that he had earlier proposed the marriage of his daughter Marthe to a young man named Ameyd Varo who was courting her. Ameyd had refused the marriage. Shortly thereafter Denis had approved Marthe's marriage to a second man, Andre Dumonet. After her wedding night, Marthe was found to be already pregnant; she gave birth to a healthy son within six months of the wedding. Her former lover Ameyd, not her husband Andre, turned out to be the father. Ameyd had revealed as much in several secret love letters he had sent to Marthe, which her husband Andre had discovered after learning of Marthe's pregnancy on their wedding night. When the Council confronted him with these letters, Ameyd pled guilty to charges of fornication, and the Council imprisoned and fined him.

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<sup>32</sup> RC X, 59v, 61-62, 80, 81, 85v, 88v; RC XI, 3-3v, 29, 50v, 91.

These same love letters suggested to the Council that Ameyd and Marthe might well have been engaged to be married as well. Ameyd denied any such engagement, and testified that he had already been engaged to another woman in Antwerp, and was in fact trying to annul that engagement. This testimony only compounded Ameyd's problem, for now the Council suspected both parties of polygamy – Marthe for marrying Andre after her engagement to Ameyd, Ameyd for engaging Marthe after his engagement to the woman in Antwerp. The Council sent the whole case to the Consistory for closer fact-finding.

Summoned before the Consistory, Marthe testified that Ameyd had indeed promised to marry her. That was why she had yielded to his sexual advances and had kept his secret love letters, despite the risk of being found out. She further testified that when Ameyd spurned her she “wanted to die.” When she found out she was pregnant, she sought medical advice on how to abort the child. When her efforts at abortion failed, she quickly married André apparently under some pressure from her father.

In his defense before the Consistory, Ameyd again insisted that he had made no such engagement promise to Marthe, for he was already engaged to a woman in Antwerp. He was trying to have that engagement annulled for lack of parental consent, but had to date not been successful. He loved Marthe more than the Antwerp woman but could not and would not promise to marry her until he had broken off this prior engagement. He further testified that he had tried to explain all this to Marthe's father Denis, but Denis would not see him.

When summoned to testify, Denis at first denied Ameyd's whole story as a self-serving cover-up and angrily denounced Ameyd before the Consistory. The Consistory had little reason to trust Denis's credibility, however. They had just heard Marthe's testimony that Denis had pressured her into marrying Andre quickly, and likely suspected that he was trying to cover up her fornication and find support for her illegitimate son. Moreover, the Consistory discovered that Denis had also just carried his new baby grandson to baptism, and in a further attempt to cover up the illegitimacy had him registered in the baptismal registry as the son of Andre, Marthe's new husband,

rather than son of the real father Ameyd.<sup>33</sup> Andre, it turned out, had not consented to any of this, and indeed now wanted out of his marriage to Marthe altogether.

The case bounced back and forth between the Consistory and the Council for the next half year. The Council investigated Ameyd and Marthe under oath several times and imprisoned Ameyd for a time because of his recalcitrance and perjury. It became quite clear to the authorities that Marthe had married Andre while believing that she was already engaged to Ameyd. The Consistory sent Calvin himself to the Council to impress on them the gravity of her offense. The Council ultimately fined her heavily, dissolved her marriage with Andre, and barred her from marriage to anyone else, consigning her to effective “widowhood.” The Consistory banned her from communion admitting her only a half year later when she did another full confession. Calvin later sought the Council’s permission to allow her to remarry after a further time of repentance.

It also became quite clear to the authorities that Ameyd did not believe himself engaged to Marthe because of his engagement to the Antwerp woman. This was apparently ample mitigation in their mind. The Council fined him, too, but barred him from marriage for only a year to “consider his conscience.” They also determined that his engagement to the woman in Antwerp was no longer binding. The Consistory

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<sup>33</sup> For a report on this case, and the implications of this false baptismal registration, see Karen E. Spierling, *Infant Baptism in Reformation Geneva: The Shaping of a Community, 1536-1564* (Aldershot, England and Burlington, VT: 2005), 169ff.

banned him from communion as well, and readmitted him several months later when he did full confession for his sins.

Most cases of engagement to one party followed by marriage to another were not nearly so complicated.<sup>34</sup> What this case illustrates is how seriously the Consistory and Council took this offense. Especially notable was their emphasis on the *intent* to commit polygamy, rather than the proof of polygamy. It was because Marthe *believed* she was already engaged to Ameyd when she married Andre that she was punished so severely for her polygamy. But the legality of both her contracts was suspect. Her engagement contract to Ameyd was never proved to exist, even if she intended or believed its existence. Her marriage contract to Andre was vulnerable to attack on two fronts: Marthe was not fully *compos mentis* when she entered that marriage contract, and her father had evidently coerced her into this marriage as part of the cover up. Such a marriage might well have been annulled if attacked directly on grounds of lack of consent by Marthe.

Moreover, Marthe's punishment of forced permanent widowhood was a rather harsh sentence. She was now forced to be a single mother of an illegitimate child. The child's father, Ameyd, was ready and willing to marry her and support the child, and after a year of forced bachelorhood would be able to do so. Perhaps it was this reality that prompted Calvin to go back to the Council to have Marthe's sentence of forced widowhood reduced.

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<sup>34</sup> See other examples in Seeger, *Nullité de mariage divorce et separation*, 348-352.



**Seduction and Rape.** A large number of cases that started as disputed contract or non-marital pregnancy cases involved seduction, fraudulent promises to marriage, and sometimes outright rape. In these cases, the Consistory and Council worked hard to determine the facts, administered stiff punishment against abusers, but tried to ensure that the pregnant woman or a new child born of these involuntary unions was supported.

In a 1547 case of seduction, for example, the Consistory summoned an unmarried maid named Ayma Portier to explain her pregnancy.<sup>35</sup> She testified that her master's brother, Roland, had promised to marry her and they had then had sexual intercourse. The Consistory admonished Ayma for her fornication, and sent her to the Council for punishment. But their real interest was to find Roland to compel him to marry her if it proved true that they were engaged. Roland was not to be found. He had evidently moved to the Bern region. The Consistory sent the case to the Council who ordered that Roland be "properly punished" for his fornication and compelled to marry Ayma if he returned. In the meantime, Council ordered Ayma's master, who was brother of Roland, to take care of the new mother and child.

Where the seduction was part of a more serious crime, however, the authorities seemed more bent on punishing the criminals. The 1557 case of Jacquema Quay and Claude Genod is a good case in point. Claude had promised to marry Jacquema and had given her an engagement gift. The couple had then fornicated rather freely

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<sup>35</sup> RC III, 148, 178, 181.

thereafter. Jacquema was now six months pregnant. The Consistory banned the couple from communion, and sent them to the Council, who ordered them imprisoned for their fornication. Claude apparently continued to visit the heavily pregnant Jacquema, and also left support money for her at the home where she was staying. On further investigation, the Consistory discovered that at least two other pregnant women were staying at the same home. Their boyfriends, too, continued to come by and to leave support money for them. The Consistory must have now suspected that the house was, in fact, a brothel, and that the money Claude was tendering was not for Jacquema's support, but for sexual services rendered. The Consistory sent the case immediately to the Council, who came down hard. They ordered Jacquema and the operators and other occupants of the home permanently banished, on pain of whipping if they returned. Claude was temporarily banished as well, though he was later permitted to return, suggesting that he had no obligation to marry Jacquema.

Sometimes single pregnant women were victims of rape, as was evident in a 1552 case of a young maid named Michee Morard.<sup>36</sup> Michee's master Hudry Rojod had raped her, and she was now pregnant. He gave her some fine clothing and a good deal of money – whether for her support or her silence is not clear. He also promised to find her a husband since he himself was already married. Rojod sought to arrange her marriage to an eligible man, but that match evidently did not transpire. In an attempt to cover up the affair, Rojod's wife urged Michee to abort the child or to bring it to her on birth to be killed. A neighbor, who knew of the affair, urged Michee to carry the child to term and seek charitable support for its upbringing. When this whole scandalous affair

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<sup>36</sup> RC XII, 19v, 26, 29v-30.

came to their attention, the Consistory moved swiftly to punish the perpetrators. They questioned Rojod's wife closely. Though she denied any wrongdoing, she was banned from communion and sent to the Council who imprisoned her. Both Michee and the neighbor woman were temporarily banned from Communion as well, evidently for failing to notify the authorities of this scandal. Michee was briefly imprisoned as well, for reasons not explained in the record. But the authorities saved their harshest punishment for Rojod, particularly when they learned he had earlier done the same thing to another maid. He was imprisoned for twelve days, heavily fined, and ordered to pay for the costs of Michee's child birth and convalescence, and further ordered to pay for the child's maintenance as well as continued support for Michee thereafter.

**Sexual Dysfunction and Divorce.** The Consistory and Council dealt with several cases of sexual dysfunction and dissolved both engagements and marriages when they found indisputable evidence of this impediment. Issues of sexual dysfunction were more commonly raised in cases of adultery and divorce. It was a common defense in adultery cases for the philandering husband or wife to plead that their spouse's repeated sexual spurning had driven them to test another's bed. In a few cases, this defense to adultery was raised to a counterclaim that the spouses had never consummated their marriage, and the sexually healthy spouse had been forced to resort to sex with a third party. This raised three nice legal questions: (1) whether the non-consummated union was, in fact, a marriage; (2) whether the party's philandering was simple fornication (which was less serious) or adultery (which was far more serious); and (3) whether the dispute should be resolved by annulment or divorce, which had dramatically different implications for the party's rights to marital property, child custody, and remarriage.

An excellent example of these legal niceties was raised in an intricate case involving Girard and Janon Favre.<sup>37</sup> Janon was a rather spirited soul who spent a good bit of time in the Consistory docket answering various charges of sin and crime. She was first summoned on charges that she had defamed a minister in Russin and also quarreled with her mother. During this hearing, Janon also came to be questioned whether she had fornicated with her cousin-german, Pierre, who lived outside of Geneva. She denied any fornication with Pierre. Indeed, she claimed that she had enjoyed no sex whatsoever, including with her husband Girard.

This latter claim piqued the Consistory's interest. They called several witnesses, including Girard's parents and servants, to investigate this charge. They sent several subpoenas to Girard. When he finally appeared, Girard protested that he and Janon had indeed had sex several times. Janon persisted in her claim that their marriage was never consummated, and testified further that Girard had told her that he would never have sex with her. Girard eventually conceded this. The Consistory ordered them to live "decently" as husband and wife. Calvin, the notary reports, "gave them strong remonstrances," no doubt about their respective marital duties.

A month later, the couple was called before the Consistory again to investigate whether they had sexual intercourse in the interim. No, was the answer, though they testified that they still loved each other. They were banned from communion, and told to try again. Janon was further instructed to avoid Pierre, her cousin-german.

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<sup>37</sup> RC II, 7v, 10, 12v, 13, 21, 97v; RC III, 146, 157, 161, 175, 189.

More than a year later, the Consistory summoned the couple again. They now charged Janon anew with fornicating with Pierre as well as with beating her husband Girard. Girard protested that he and Janon had, in the interim, had sexual intercourse, and that there was no truth to the rumors of her fornication with Pierre. Janon denied the fornication, too, as well as the charge of beating Girard. An exasperated Consistory sent the case to the Council for appropriate criminal punishment.

Nine months later, the Consistory summoned Janon yet again, now charging that she had not only renewed her affair with her cousin Pierre but had produced an illegitimate child. When Janon again denied the affair, the Consistory sent the case to the Council for criminal investigation and punishment. The Council imprisoned Janon, and she and her husband were closely investigated, perhaps using torture which was not uncommon in such cases.<sup>38</sup> The Council found that Girard and Janon had never had “carnal company” with each other, but that Janon had enjoyed ample such company with her cousin-german Pierre who had been married throughout the affair. The Council found further that Janon had given birth to Pierre’s illegitimate child, but the child had since died.

In the Council’s judgment, these facts easily supported a case for “divorce” -- though it treated this more as an annulment than a divorce. The Council’s stated grounds for the divorce was not Janon’s betrayal of Girard but rather her “adultery with her cousin [Pierre] Gento who is married.” Noting that Girard and Janon “have been

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<sup>38</sup> See Kingdon, *Adultery and Divorce*,, 25-26, 84-88, 120-138.

married for ten years without having each other's company," Janon was given permission to remarry after the divorce and after serving the criminal punishment for her adultery. She would have faced a far grimmer fate, perhaps execution, had this been a typical case of divorce on account of her repeated adultery and illegitimate pregnancy.

What makes the case peculiar, however, is that Girard, too, was given permission to remarry. This was not consistent with a judgment that he had permanent sexual dysfunction. The Consistory and Council may have determined that Girard had sexual problems only with Janon, not in general.

Most cases were not nearly so complicated, nor so trying of the Consistory's patience.<sup>39</sup> In a more typical case in 1547, Martin Favre sought to divorce his wife Antoine for her adultery.<sup>40</sup> Antoine countered that she and Martin had never had sexual relations. Perhaps fearing a replay of the protracted Girard and Janon Favre case, the Consistory sent this case immediately to the Council. There Martin testified that his wife left him after a month and slept around. Antoine admitted her desertion and adultery, but insisted that Martin "lacked the powers of a man." The Council showed little sympathy. They granted Martin a divorce and the right to remarry. They barred Antoine from any fornication or remarriage on pain of whipping. While the divorce was still pending, Antoine was found in hot pursuit of another man with whom she had already fornicated. The authorities lost what little sympathy they had left for her. They now not only barred her from remarriage but banished her from the city altogether.

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<sup>39</sup> See examples in Seeger, *Nullité de mariage divorce et separation*, 353-355.

<sup>40</sup> RC III, 187, 206.

**Incest Cases.** As this last case indicates, incest was a serious crime in Geneva. When committed intentionally, it could lead to execution.<sup>41</sup> Most cases of flagrant and intentional incest went directly to the Council for criminal investigation and prosecution. The Consistory, however, heard a number of cases where incest was suspected, or where it was discovered in the context of investigating other conduct. Where they came upon incest, the Consistory would make findings of fact and issue spiritual sanctions and then remove the cases to the Council.

In a 1547 case, for example, the Consistory wanted to know whether Claude Mychallet had slept with his daughter-in-law rather than with his wife.<sup>42</sup> The Consistory questioned Claude, his wife, and a young girl who stayed in their house, about his whereabouts and intentions. Claude admitted that he and his wife had quarreled, and that he had left and slept at his daughter-in-law's house. But he swore that he stayed with her only because she was very ill at the time; he volunteered to be tortured to prove

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<sup>41</sup> A 1566 statute on fornication and adultery reflected this: "Fornication involving incest will be punished by death, in accordance with its severity and heinousness. We define incest as intercourse between persons whose marriage is flatly prohibited by the law of God and of nature." SD, vol. 3, item no. 1065. See scattered examples of incest cases in Naphy, *Sex Crimes*, 139-156; William E. Monter, "Crime and Punishment in Calvin's Geneva, 1562," *Archiv für Reformationsgeschichte* 64 (1973): 281; Bernard Lescaze, "Crimes et Crimenels à Genève en 1572," in *Pour une Histoire Qualitative. Etudes offertes à Sven Stelling-Michaud*, ed. Bernard Lescaze (Geneva: 1975), 45-71.

<sup>42</sup> RC III, 130-31.

his innocence of any fornication. The Consistory was satisfied with his explanation, and the parties were reconciled.

In a 1556 case, a widow named Anthoine Chappuys was confronted with evidence that she had slept with her nephew Michel, who had helped her a great deal after her husband had passed away.<sup>43</sup> Initially, Anthoine claimed that Michel had slept at her house only while he was sick. When pressed, Anthoine admitted that Michel did stay at her house regularly, along with other children, but she did not sleep with him or do anything wrong. The Consistory gave them stern admonitions about the scandal their conduct caused, and left the case at that.

In more serious cases of suspected incest, the Consistory removed cases to the Council. In a 1556 case, the Consistory charged André Duploy with incestuous fornication with his aunt, Janne Court, in the Catholic city of Avignon.<sup>44</sup> André was already under suspicion of being a papist and frequenting Mass; Janne was suspected of being a “whore.” Janne admitted that André had stayed with her, but denied any fornication. She did not help her cause, however, by then testifying that she had been forced to have oral sex with another man. That prompted the Consistory to ask André whether he had sought to have oral sex with her. André denied any such thought, let alone act. The Consistory was not so sure. They ordered the couple to stop sleeping together, and sent them to the Council who fined and imprisoned them.

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<sup>43</sup> RC XI, 70v, 75

<sup>44</sup> RC XII, 68-68v.



The following year, the Consistory heard a troubling case involving Michel Pointeau's incestuous pursuits of his sister-in-law, Claudine.<sup>45</sup> Michel had begun soliciting Claudine already before his wedding to Claudine's sister. Claudine, then, was still a minor. The solicitation continued thereafter, even after Claudine had grown up and was married. One time, Michel had fondled her. Both Michel's wife and another sister-in-law testified both to Michel's philandering and to various blasphemies he had committed. Michel defended himself by saying that it was Claudine who was doing all the flirting. Nonsense, the Consistory judged. They banned Michel from communion, and recommended that the Council banish "such riff-raff" from the city, presumably after granting his wife a divorce.

A more difficult question of incest for the Consistory turned on whether parties had committed adultery, rather than fornication, before their marriage. Sex between a single man and a single woman was fornication. The parties were free to marry after they had served their criminal sentences. Indeed, they could be compelled to get married if the woman was now pregnant. Sex with a married man or woman, however, was adultery. The man and woman were not free to marry under any circumstances, even after their respective spouses had died or divorced them, and even if the woman was impregnated by her adulterous paramour. For the adulterous sex had created an impediment of affinity between these two parties. Any further sex between them, let alone marriage, was a form of incest. The nice evidentiary question for the Consistory

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<sup>45</sup> RC XII, 99v.

to answer was precisely when the parties had their first sexual encounter. If one or both of them still had a spouse at the time, their sexual dalliance not only exposed them to severe sanctions, but also led to the automatic annulment of their engagement or marriage.

The seriousness of this distinction can be seen in the 1546 case involving the remarriage of a former priest Don Legier Joli and a woman Jacqueme of Etaux.<sup>46</sup> Don Legier's first wife died under suspicious circumstances. Scarcely two weeks later, Don Legier and Jacqueme were engaged to be married. Jacqueme was reportedly pregnant. The Consistory wanted to know whether the parties had sexual intercourse before Don Legier's wife had died. Despite ample testimony against them, the parties denied any sexual impropriety, and Jacqueme denied her pregnancy. A month later, the Council prosecuted the couple for adultery, but unsuccessfully.

The couple did not help their cause by moving in together shortly thereafter and drawing anew the attention of the authorities. Jacqueme was now obviously pregnant, and was far enough along in her pregnancy to make the timing of her conception newly suspicious. Having caught the couple in one lie, the Consistory wanted to know whether they had lied about the prior adultery as well. The couple still denied any impropriety. The Consistory court was not convinced. They sent the case to the Council with a recommendation that the party's engagement be annulled. The Consistory was concerned that to do otherwise "would be a scandal and open the door

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<sup>46</sup> RC II, 77-78, 84v, 86v.

for many to kill their wives” in order to marry their lovers. The Council ordered the annulment.

Jacqueme’s father, no doubt distraught about the ill plight that faced his now pregnant daughter, pleaded with the Council to reconsider the annulment and allow the couple to marry. The Council stood by its order. Though adulterous incest had not been formally proved, the parties’ conduct was simply too suspicious to allow their marriage to go forward.

Another case from 1546-1547 illustrates the lengths to which the Consistory went to discover the couple’s exact sexual history and consequent relationship.<sup>47</sup> This case involved Claudine, a recent widow, and a young man Ameyd de Leamon of Gy. The case was made the more interesting because the leading interrogator on the clerical bench in this case, Pastor Henri de la Mare, was the brother-in-law of Ameyd de Leamon, one of the parties to the case. Rather than recuse himself out of conflict of interest, Henri stayed on. He seemed intent to break up the match by casting aspersions on the widow Claudine evidently with an eye to giving pause to his brother-in-law Ameyd. In three separate hearings in 1546, Henri and the Consistory inquired closely about allegations of the couple’s fornication with each other and Claudine’s adultery and fornication with several others. Sundry witnesses were called to testify, including Pastor Henri himself who alleged that Claudine had committed adultery with several men during her husband’s lifetime. The evidence, while voluminous, was

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<sup>47</sup> RC II, 37, 38v, 91v; RC III, 56, 66, 70.

insufficient to convict the parties. They were ordered to remain apart, and their case was dismissed.

Six months later, Claudine was back before the Consistory now alleging that Ameyd had promised to marry her. She produced an engagement ring as evidence. Ameyd denied their engagement. The Consistory sent the troublesome couple to the Council for investigation. Under pressure, perhaps torture, the couple confessed to their prior fornication. But they differed on the essential question of timing. Claudine admitted to their fornication after she had become a widow. Ameyd alleged that they had fornicated together much longer, even while she was still married. Ameyd may have been giving a true confession. But this new information was also a convenient means for him to escape marrying Claudine. If it found mere fornication, the Consistory might compel the parties to marry. If it found prior adultery between them, however, their engagement would be annulled, no matter what Claudine said. This was the dilemma that the Consistory tried to sort out. No final judgment on the propriety of their engagement survives. But the couple did not get married, as we shall see in a moment.

The more typical question put to the Consistory was not whether a pending marriage would be incestuous, but what to do with an existing marriage when one party committed incestuous adultery. This type of incest was at issue in a protracted 1551-2 divorce case involving, *inter alia*, our familiar couple Claudine and Ameyd.<sup>48</sup> After her engagement to Ameyd had fallen through, Claudine had married one, François du

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<sup>48</sup> RC VI, 81-82, VII, 46, 51, 69, 78, 82, 86. Calvin was absent from the sessions on January 7 and September 8, 1552 (*ibid.*, VI, 82; VII, 78).

Freney. Sometime thereafter, she had resumed her affair with Ameyd. Their affair had produced at least one illegitimate child. Claudine was now again pregnant, apparently also by Ameyd. Both parties had been reprimanded repeatedly by the Consistory and the Council for their ongoing affair. Claudine and her husband François had separated.

Upon learning of this new pregnancy, François filed for divorce. The Consistory sought to reconcile the parties. Both parties objected, particularly François who regarded Claudine's habitual philandering as unforgivable. But when a demur Claudine promised to reform herself and submit to her husband's authority, the Consistory seemed to be moving toward an order of reconciliation -- despite François's continued loud protests that he was entitled to a divorce because of her adultery.

The Consistory's talk of reconciliation ended quickly, however, when Claudine charged François with incest. Two years before, she alleged, François had slept with his sister. She had witnesses to prove it. The Consistory called the witnesses, and they gave ample circumstantial evidence to corroborate her story. François vehemently denied the charges of incest as a slanderous plot by "this wicked woman." The Consistory was not so sure. They recommended that the Council grant François's petition for divorce. But they also recommended the Council to investigate the allegations of François's incest, and to punish him for causing such scandal.

The issue of post-marital incest again faced the Consistory in the 1556-7 case of Jeanne and Jacques Marcellin.<sup>49</sup> Jeanne had committed adultery with her husband's brother, Claude. She was indicted before the Council for adultery and incest. On June 1, 1556, she confessed fully. The Council ordered her to kneel in the Council chamber to beg for God's mercy and justice. She obliged. Though her incest was a capital crime, the Council chose to banish her from Geneva and ordered her not to return, on pain of whipping.

Jeanne's husband, Jaques, forgave her the incest, and petitioned the Council to allow her to return to Geneva to live with him. On August 20, 1556, the Council submitted his petition to the Consistory. The Consistory rejected the petition for return, given the gravity of her offense of incest. While forgiveness of sins and reconciliation of estranged couples were high values, they could not overcome the scandal of allowing an incestuous party to return less than three months after conviction. If Jaques had so much pity on his wife, the Consistory concluded, he could go visit her, or join her in exile. Four days later, Calvin and a Consistory colleague appeared before the Council to urge this decision. The Council agreed.

Less than a year later, Jeanne petitioned the Consistory directly for the right to return. The Consistory directed her to the Council. She petitioned the Council the following week, accompanying her plea with another full confession of her fault. The Council rejected her "because of the enormity of the deed" of incest, and because she had already been granted great leniency in being merely banished instead of executed.

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<sup>49</sup> RC XII, 55v, 72.

She sent yet another petition to the Council. The Council now referred her case to the Consistory. Calvin and his colleagues on the Consistory had clearly had enough of these tiresome petitions. Jeanne had been spared execution. She lived in the nearby town of Cologny that had a Reformed church. Her husband was free to move there or to visit her. For the Consistory, that was the end of the matter. They asked the Council to instruct the parties that if the case came up again, the husband would be banished as well. No further petitions came forth.

## **5. Summary and Conclusions**

Just as some of the late medieval canon law of marriage and the family lived on in Protestant Geneva, so some of the city's late medieval government lived on, albeit in amply truncated and revised form. The prince-bishop of Geneva and his courts and officials were banished. But the four city councils that had, under the bishop's supervision, governed parts of secular life and sexual morality continued to operate. After the Reformation, the councils' powers and responsibilities, particularly those of the Small Council and the four syndics, were amply increased, as they assumed the spiritual jurisdiction of the departed bishop. This included the bishop's former jurisdiction over marriage and family life. On these subjects, the councils issued a steady stream of new statutes throughout the Reformation era, statutes that Calvin and other ministers sometimes helped to draft.

The Small Council adjudicated cases that arose under these statutes in cooperation with the Consistory. The Consistory was a new institution created by John Calvin in the 1541 Ecclesiastical Ordinances. It was a hybrid of spiritual and civil authority. It consisted of two benches, one of ministers including Calvin, the other of elders or magistrates, including a syndic who served as the Consistory's moderator. The Consistory held only spiritual power. It could order only confessions, admonition, reparations, bans from communion, and (after 1555) excommunication from the church. The Consistory had original jurisdiction over most issues of sex, marriage, and family life, save serious sexual crimes that were generally sent directly to the Small Council for criminal prosecution. The Consistory investigated cases, collected evidence, interviewed witnesses, and sought to resolve disputes. If the cases could be resolved by spiritual sanctions, the cases ended in the Consistory, as roughly half of them did. If

the cases required civil remedies like the award of damages, the restitution of property, or orders of specific performance, annulment, or divorce, the Consistory removed the case to the Council for disposition, often making specific recommendations of legal action that the Council generally heeded. Cases were also removed to the Council if they involved contemptuous or contumacious witnesses, if they required criminal investigation under oath or using torture, or if the parties' conduct was serious enough to require criminal sanctions like fines, flogging, imprisonment, banishment, or execution.

Calvin eventually grounded this new alliance of church and state in the governance of marriage and family questions in his theory of "the uses of the law."<sup>50</sup> Like other Protestant reformers of the day, Calvin believed that the moral laws of God, and the laws of the church and state that elaborate them, provide no pathway to salvation. Salvation comes through faith and grace, not by works and the law, said

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<sup>50</sup> Calvin first developed his theory of the uses of the law already in his *Ioannis Calvini Institutio Religionis Christianae* (Basel, 1536), CO 1:1, translated as John Calvin, *Institution of the Christian Religion*, trans. Ford Lewis Battles (Atlanta, 1975), chap. 1.33. His fullest elaboration came in his 1559 edition of the *Institutes*. There he distinguished a "civil use of the moral law" (that yielded civil morality through coercion), a "theological use" (condemning persons in their sin to repent), and an "educational use" (teaching those who have repented spiritual morality). See John Calvin, *Institutes of the Christian Religion*, ed. John T. McNeill, trans. Ford Lewis Battles (Philadelphia, 1960), 2.7.6-13. The fullest exposition of the doctrine before 1559 came in his *Sermons on Deuteronomy* of the mid-1550s, where Calvin was interpreting the Jewish laws of marriage, divorce, polygamy, adultery, and the like. See, e.g., *Serm. Deut. 5:18, 21; 21:15-17; 22:25-30; 24:1-4*, in CO \_\_\_\_\_. Here, Calvin generally distinguished only the civil use and educational use (he called it "spiritual" use), touching lightly on the "theological use" only in *Serm. Deut. 5:21*. My discussion here, therefore, distinguishes only the first two uses.



Calvin. Nonetheless, from God's point of view, the law continues to be useful in this earthly life -- to have "uses." God uses both its basic norms known to all persons, and its more refined norms known only to believers through the Bible to govern and guide humanity.

On the one hand, said Calvin, the law has a "civil use" of defining for all persons what is absolutely necessary to maintain a modicum of civil and domestic order. In this sense, God uses the law "as a halter to check the raging and otherwise limitlessly ranging lusts of the flesh.... Hindered by fright or shame, sinners dare neither execute what they have conceived in their minds, nor openly breathe forth the rage of their lust."<sup>51</sup> The moral law thus imposes upon them a "constrained and coerced righteousness," a "civil morality."<sup>52</sup> "[E]ven the pagans," therefore, have always recognized the natural duties of sexual restraint, heterosexual monogamy, marital fidelity, procreation of children, bondage to kin, and the like, which are essential to sexual morality and the survival of marriage and the family.<sup>53</sup>

On the other hand, the law when properly understood and applied by Christian authorities has a "spiritual use" of defining for believers what is aspirationally needed to attain a measure of holiness or sanctification. Even the most devout saints, Calvin wrote, still need the law "to learn more thoroughly ... the Lord's will [and] to be aroused

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<sup>51</sup> Institutes (1559), 2.7.10. See also Serm. Deut 24:1-4.

<sup>52</sup> Ibid. See also Institutes (1559), 4.20.3.

<sup>53</sup> Ibid., 2.8.6-10; Serm. Deut. 5:18, 21, 21:15-17.

to obedience."<sup>54</sup> In this sense, the law teaches them not only the "civil righteousness" that is common to non-believers, but also the "spiritual righteousness" that is becoming of believers. The law not only coerces them against violence and violation, but also cultivates in them charity and love. It not only punishes harmful acts of adultery and fornication, but also prohibits evil thoughts of passion and lust.<sup>55</sup> It not only instructs them by its letter but inspires them by its spirit.

The law of sex, marriage and family life thus gives rise to two tracks of marital norms -- civil norms, which are common to all persons, and spiritual norms, which are distinctly Christian. This law, in turn, gives rise to two tracks of marital morality -- a simple "morality of duty" demanded of all persons regardless of their faith, and a higher "morality of aspiration" demanded of believers in order to reflect their faith.<sup>56</sup>

This two-track system of marital morality corresponded roughly to the division of marital responsibility between church and state in Reformation Geneva. It was the church's responsibility to teach aspirational spiritual norms for marriage and family life. It was the state's responsibility to enforce mandatory civil norms. This division of responsibility fit rather neatly into the procedural divisions between the Consistory and the Small Council. In marriage and family cases, the Consistory would first call parties to their higher spiritual duties, backing their recommendations with (threats of) spiritual

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<sup>54</sup> Institutes (1559), 2. 7.12.

<sup>55</sup> Ibid., 2.8.6.

<sup>56</sup> The terms are from Lon L. Fuller, *The Morality of Law*, rev. ed. (New Haven, Conn.: 1964). Calvin spoke of "civil morality" versus "spiritual morality." See Institutes (1559), 2.7.10; 4.20.3; Serm. Deut. 21:15-17.

discipline. If such spiritual counsel failed, the parties were referred to the Small Council to compel them, using civil and criminal sanctions, to honor at least their basic civil duties for marriage.

*John Witte, Jr. is Jonas Robitscher Professor of Law, Alonzo L. McDonald Distinguished Service Professor, and Director of the Center for the Study of Law and Religion at Emory University in Atlanta. [jwitte@law.emory.edu](mailto:jwitte@law.emory.edu)*