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# Medieval Concepts of Adultery

VERN L. BULLOUGH

Medieval society based its response to adultery on Germanic and Roman law codes, but was in fact more liberal than either. Unlike its predecessors, medieval canon and secular law recognized the responsibility of both parties, rather than of just the woman, in the offense. St. Thomas Aquinas argued that it was a breach of trust. (CMA)

Though medieval concepts about adultery derived from German, Roman and biblical sources, the latter two ultimately proved more influential in the official ideology. All three sources reflected traditional male-oriented attitudes although the Christian scriptures modified this somewhat. As J. A. MacCulloch explained in a 1928 article in the *Encyclopedia of Religion and Ethics*, woman was early conceived of as belonging to man, and so any interference with her would outrage 'man's instinctive sense of property, and would at once arouse jealousy.' McCulloch went on to claim that most early laws looked upon adultery as simply a violation of property rights and as such were only applicable to women (122–26). While condemnation of female adultery is not a universal in all societies, women who engaged in extra marital relationships certainly have usually received greater condemnation than men. A major exception is in those societies where husbands arranged extramarital liaisons.<sup>1</sup>

## GERMANIC TRADITION

The earliest description of Germanic practices on adultery comes from the Roman historian Tacitus who sought to glorify the purity and stability of the German family as compared to the Roman. Tacitus clearly emphasized the double standard applied to women, recounting the humiliating penalties given to adulterous wives while adulterous husbands were free to have a wide range of sexual relations providing it was not with someone else's wife. Tacitus reported that usually the husband shaved off his adulterous wife's hair, stripped her in the presence of her kinsmen, thrust her from his house, and flogged her through the village (Tacitus 19). Some women were executed

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as a punishment for their adulterous activities, and their bodies were tossed naked and with their shaven heads into a peat bog (for a description of an actual archaeological find, see Todd 30–31). In fact, these early Germanic tribes, as a group, inflicted almost savage penalties on the adulterous female, and the man involved with her was also cruelly punished if he was identified or caught (see Chadwick Hawkes and Wells 118–22).<sup>2</sup>

Germanic customs were committed to writing and codification, mostly in the sixth and seventh centuries CE.<sup>3</sup> Originally, German law was individual rather than territorial, and only as the Germans moved into the Roman Empire in greater and greater numbers did this begin to change. Women were not so much persons in the developing Germanic law codes as they were property. Female chastity and virtue had property value and women were, to put it simply, the property of their menfolk. They were always under the protection of some male: father, brother, son, or other near male relatives. Inevitably, perhaps, the sexually-related activity most frequently mentioned in the law codes is wifely adultery, although it is more a crime of property than of sex. The husband in most cases retained the right to kill his wife and her accomplices outright if he caught them in the act (Brissaud 136). A husband remained free to fornicate providing he did not violate another male's property rights. Female virtue had property value not only to a husband, but to a brother, a father, or a male guardian, any one of which was allowed to impose physical punishment on a trespasser in carnal intimacy with a female relative without fear of retribution.<sup>4</sup>

#### ROMAN TRADITION

Roman tradition also regarded women as property. In fact, the history of women in Rome officially began with the rape of the Sabine women, when the Romans killed the Sabine men and seized their women to take as wives. Shortly after this, Romulus gave a lecture on the sanctity of the marriage tradition and emphasized that, in the new state, women should always be faithful to their husbands. The importance of the virtuous wife is best illustrated by the legend of the rape of Lucretia, an act committed by the son of the last of the Etruscan kings. Lucretia had not fought her rapist (who was related to her) because if she did he said he would kill her and announce that he had found her in an adulterous relationship with another man. Rather than being killed as an adulteress, she submitted to the rape, and when her rapist had departed, she summoned her husband. After informing him of what had happened to her, she took her own life because she had disgraced him (see Livy 57–60).

Married men could have all the extramarital sex they desired; adultery only existed for them when they were involved with a married women. A legendary law of Romulus cited by Dionysius of Halicarnassus in the first century allegedly provided for the death penalty for the adulteress. Although both individuals could be killed if caught *in flagrante delicto* (Dionysius 2:25).<sup>5</sup>

As the Roman Empire grew in size, repression of adultery is said to have become less rigorous, but any such laxity was remedied by the Emperor Augustus with the passage, in 17 CE, of the *Lex Julia de adulteriis coercendis*. This stipulated that a father was allowed to kill his adulterous daughter and her paramour when caught in the act in his or her husband's house; a husband could in certain cases also kill the adulterer, but not his wife. The normal penalty for adultery was banishment of both guilty partners to different areas of the empire, the confiscation of parts of the property of the male, and the loss of half of the woman's dowry. Officially, there was no death penalty. The husband of an adulterous wife, however, was obliged to seek a divorce immediately after finding out about her conduct, or else he would be punished as a procurer. A special criminal court (*quaestio*) was instituted for cases of adultery, and it was presided over by a praetor. Dio Cassius, who was a praetor at the end of the second century CE, related that in his first term of office there were about 2,000 suits pending for adultery (Dio Cassius 76.16). The law was primarily directed against women, and the accusation of adultery had initially to be made by the husband or the wife's father within sixty days after the divorce; after this time, it could be made within four months by anyone, on the grounds that adultery was an offense against morality. Slaves were allowed to be tortured in order to gain a confession if they were believed to be involved, even as involuntary witnesses, and adultery committed by a concubine was treated as that of a married woman.

The penalties of the *Lex Julia* were made more severe by the Christian emperors. Constantine introduced the death penalty, and Justinian not only confirmed it but restored the husband's right to slay his adulterous wife. On the other hand, he restricted the right to make a charge against the adulterous persons to relatives.<sup>6</sup>

#### BIBLICAL REFERENCES

In the Jewish tradition, extramarital intercourse was not a crime per se for men either biblical or later Jewish law, although extramarital intercourse of the wife was. Some biblical scholars had held that this singling out of women was a reaction to the sacred prostitution associated with goddess cults in Phoenicia and Syria and elsewhere in the ancient world (Albright

75–76 and *passim*). Quite clearly, however, it also had economic aspects, since the wife, or an engaged woman for whom the bride price had already been paid, was considered the husband's possession. Adultery therefore constituted a violation of his exclusive right to her while his extramarital sexual actions did not violate her property rights (Exod. 20.17; Lev. 29.10; Deut. 5.21; 22–29). Obviously, however, a man who had sexual relations with someone else's wife violated another man's property and therefore committed adultery.

Discussion of adultery appears at least nineteen times in the Old Testament.<sup>7</sup> Even to be found alone with an unidentified male was sufficient reason to receive the death penalty, as the story of Susannah would indicate.<sup>8</sup> Standard punishment was stoning. Christian scriptures are also much concerned with adultery. The term is used some twenty-six times and always, according to my reading, in the literal sense of marital infidelity. Jesus extended the meaning of adultery to include thoughts as well as actions, by stating that 'whoever looks on a woman to lust after her already committed adultery with her in his heart' (Matt. 5.27–28). Two other important modifications were made in the Christian scriptures. The first indicated that the adulteress should not be stoned but forgiven for her wrong doing (John 8.9), and the second emphasized the notion that divorce did not end the marriage bond (Matt. 19.5–6). This meant that, if those who divorced remarried, they would be living in adultery (Mark 10.11–12). On this last point, however, there is scriptural disagreement, since Luke (16.18) only labels remarriage on the part of the woman as adultery, while Matthew (5.32, 19.9) seems to allow divorce in the case of adultery, and therefore justification for remarriage. This division might well reflect some of the contradictory Jewish interpretations of the same period since followers of Rabbi Shammai held that divorce could be obtained only in the case of some serious misconduct, such as adultery, on the part of the wife, whereas those males who followed Rabbi Hillel's interpretation were free to divorce a wife for any conduct which displeased them.

#### THE MEDIEVAL EXPERIENCE

Christian writers attempted to establish a conformity in these conflicting attitudes. In terms of sexual philosophy, however, Christian interpretation was heavily influenced by the ascetic beliefs of the stoics and the hostility to sex expressed by the Manichaeans. These ideas were carried over into the Christian tradition by the Church Fathers, particularly St. Augustine, who thought the best and most ideal life was one of complete chastity. Recognizing,

however, that Jesus himself had sanctioned marriage, Augustine accepted marriage as justified when the purpose was procreation (see Bullough, *Sexual Variance*, 159–201). Monogamous marriage was regarded as the only situation in which a Christian society ought to countenance sexual activity of any kind. Extramarital sex was an activity that the Church attempted to suppress and punish whenever possible.

Communicating this message was not easy. One way to do so was through the penitential literature. A married man caught in adultery with a neighbor's wife or daughter not only had to do penance for a year but forego intercourse with his own wife during that period (McNeil and Gamer 102–05, sec. 2 nos. 1–2; Beiler 112–17). This provision is not found in later penitentials, although there is a statement in the penitential of Theodore that a man who has discovered his wife to be guilty of adultery is to refrain from sexual relations with her during her penance, and if he does not, he himself is to do penance for two years (see Payer 22–23).

Many of the provisions seem to be addressed more to men than to women, and they cover the cases of adultery with another person's wife or virgin daughter, or even with his own female slave. If, through his adulterous conduct, a man begot a child by a female slave, he was to set her free and do penance for an entire year on bread and water, and though he was not to have further intercourse with his slave-concubine, he could have intercourse with his wife. If a man engaged in intercourse with the wife of another, and this resulted in the birth of a child, monetary restitution had to be made to the offended husband; if it was with a widow or virgin, compensation was to be made to her family (Payer 22–23).

The concept of sexual activity as sin inherent in Augustinian Christianity gave the Church officials a means of interfering with the sexual practices of their parishioners. Unapproved sexual activity became one of the three capital sins, along with idolatry—that is, reversion to paganism—and homicide. Since sex is essentially a private matter, any secular legislation could be concerned only with the more flagrant and notorious cases, but this was not the case with Church authorities. Confession allowed the priest to probe for activities that otherwise might not have been reported. Penance, in fact, came to be regarded as a healing medicine for the soul, and the priest, following the example of the physician, felt it essential to have his 'patients' describe their symptoms and their diseases, probing ever deeper into what he felt were the festering sores of sinful activity. Those who had committed any of these sexual sins were to be excluded from the community of the faithful and from the fellowship of the Church. They could only be restored by submitting to a strict regime of public penance for a predetermined length of time.

## CANON LAW

Increasingly, the penitentials became more detailed about forbidden sexual activities and, when conflicting and even contradictory views developed, Church authorities turned to Roman law as a guide on which to build a new Christian tradition and, through this process, canon law (Church law) developed. One of the problems the Christian legal commentators faced was that for all its elaborate treatment of adultery, Roman law had never really defined what constituted such an offense, and this ambiguity continued in the penitentials. The medieval canonists took on this task of definition and did so primarily in terms of the violation of the marriage bed. Adultery was defined as sexual relations with a married person other than one's own spouse. Even the consent of the other party's spouse was not adequate to alter the nature of the crime. Mitigating circumstances did not change the character of the offense, although they might lessen its seriousness. At the same time, commentators utilizing scriptural concepts enlarged the concept of adultery by including any sort of sexual lust, including excessive desire for intercourse with one's own wife, intercourse with someone else's fiancée, or coitus between a priest and his spiritual daughter. Certain kinds of marriage were also treated as adulterous unions. A marriage contracted for a wrongful purpose or an illicit or clandestine marriage fell into this category, as did the remarriage of separated persons during the lifetimes of their spouses. There was an 'out,' however, since a person had to be conscious of the nature of his or her own action in order to be guilty of adultery, and in fact most of the canonists held that an element of malice was essential to the crime of adultery. Thus, sexual intercourse with a married person when accomplished by force was considered adulterous only for the party employing force (see Brundage, 'Adultery' 131).

One important difference between Roman law and canon law was the elimination of the double standard. Adultery was a sin whether it was committed by a married woman or a married man and both sexes were equally punishable for adulterous acts. Some canonists even seemed to imply that adultery committed by a married man was more serious than that committed by a woman since the man, as the head of the household, was expected to exceed the woman in virtue.

The canonists also rejected in principle what had been written into later Roman law, namely the right of the injured husband to avenge himself by slaying the adulterer and his unfaithful wife. Even if the couple were caught *in flagrante delicto*, killing was not to be allowed. Medieval civil law, however, did not adopt this prohibition and continued to tolerate private homicide

in adultery cases, perhaps because the type of probing allowed in canon law was not allowed in civil. Even in civil law, perhaps because of the influence of ecclesiastical law, a number of lesser punishments developed including the assessment of a fine (often a heavy one) and some form of public humiliation, such as the traditional German one of shaving the head and whipping. It was not permissible in canon or civil law for a spouse to condone adultery, and a husband who did so could be classified as a pimp. Adultery was also grounds for divorce, according to canon law, and in fact the only reason for which the canon lawyers were prepared to countenance judicial separation of married persons. An adulterous husband, however, was not allowed to divorce an adulterous wife, and vice versa. Only the non-adulterous spouse had the right of divorce. Those separated from their spouses on the grounds of adultery of the spouse were restrained from remarrying during the lifetime of the first spouse. Divorce or separation, however, was not required, and the hope was that the guilty party would do penance and the marriage continue. Until penance was performed, the spouses were not to have sexual relations with each other (see Brundage, 'Adultery' and *Law*).

#### NON-LEGAL DISCUSSION

Adultery was also the subject of discussion by a variety of commentators, including the author of the *Prose Salernitan Questions*, who explained that when the female and male sperm come together in an adulterous relationship, the influence of the male was predominant since the *spiritus* [breath] of the father proceeds from a greater strength of will and greater mental powers (Lawn 22). This seems to imply that the resulting offspring would either be male or in any case would resemble the father, thereby making the sin forever known. However, if the adulterous woman thought intensely about her husband during her adulterous affair, this might lead the child to resemble her husband and thus prevent someone from suspecting her extramarital activities.

There was also a belief that adulterous intercourse gave more intense pleasure than regular marital intercourse and, as a result, the heart contracted and the individual was struck dumb: where the couple had been bold before, the congealing of spirits made them more pusillanimous. Thus, before engaging in adulterous coitus, a male was not afraid to go after the wife of another man; after the act, however, because of the debilitation that he suffered, he became afraid and ran away (Jacquart and Thomasset 82). Adultery was not the worst evil that a man could commit. Though it did surpass fornication, it was itself overshadowed by incest, and incest in turn was exceeded by those things done contrary to



nature, as when a man wishes to use a member or an orifice of his wife not conceded for this (Noonan 174).

Sometimes, the need for sexual satisfaction, coupled with the fear of committing adultery, led women to engage in masturbation, something that some writers equated with sodomy. The writer of *Brevarium Practicum* claimed that Italian wives whose husbands were away on long journeys, fearful of committing adultery lest they become pregnant or otherwise be found out, utilized a number of accessories to masturbate, thereby engaging in a sin worse than adultery (Jacquart and Thomasset 153).

Perhaps the way to conclude this brief introduction to adultery is to look at St. Thomas Aquinas's humane and, to my mind, sophisticated explanation of why adultery was not proper Christian behavior. For Aquinas, the real problem with adultery was that it constituted a serious moral offense against the good of the conjugal community, since it entailed the breaking of the mutual trust on which the matrimonial bond was based. Thus, adultery added to the evil of simple fornication, because it was an act of injustice against the aggrieved spouse. Ultimately, also, it was an act of irreligion, at least in those cases where the marriage had been solemnized by the sacrament of matrimony. Ultimately, for Aquinas, adultery was a violation of both justice and of socioreligious obligations, and this applied equally to men and women (Aquinas Q 154).

In practice, however, if Dante is any example, adultery was looked upon with considerable hostility even by the lay person. Those who were guilty of adultery occupied the second of Dante's nine levels of Hell, and he placed many famous adulterers there. Included among the famous was the not-so-famous Paolo and Francesca, a couple who lived and died in the thirteenth century. Francesca, wife of Gianciotto de Rimini, fell in love with her handsome, married brother-in-law Paolo, and the two entered into an adulterous relationship. Gianciotto became aware of the affair, and subsequently plotted to catch them in the act. When he did so, he became outraged and killed them: old traditions died hard. According to Dante, because of their sins their souls were doomed to be tossed about by the winds with hellish storms whirling and smiting them for all eternity. He regarded this fate as a fitting punishment since in life they were seen as having been pushed and pulled by the winds of passion and death (v.31).<sup>9</sup>

In spite of the compassion and understanding shown by St. Thomas, adultery aroused strong feelings in the Middle Ages. Fortunately, the probing permitted to the confessor was not allowed in the secular law courts, where actual exposure remained all important. This made it more difficult to detect

since most of those engaged in adultery took steps to avoid being found out. The confessor who heard the confession and imposed punishment was not supposed to tell and was supposed to work for the preservation of the marriage, a task probably made easier by the celibacy imposed on those who divorced.

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## NOTES

- 1 George P. Murdock examined 148 societies, past and present, on which he felt adequate data were available. Only in five of the societies was adultery freely allowed; another nineteen societies conditionally permitted it, and four more disapproved of it but did not strictly forbid it. He qualified this, however, by stating that such figures applied only to sex relations with an unrelated or distantly related person (265), since many societies permitted extramarital relations with certain affinal relatives under at least some circumstances. In some groups, men bartered their wives among themselves as a sign of friendship; others considered it a private matter, and some societies condemned adultery of both husbands and wives.
- 2 St. Boniface, for example, in a letter (no. 73) to King Aethelbald of Mercia (746–47) described how the Saxons on the continent executed an adultress's partner (see Boniface 150). I am indebted to Wemple (12) for this reference and several others.
- 3 The texts of most of these early laws have been published in the *Monumenta Germaniae historica, leges*; for Anglo-Saxon laws, see Thorpe.
- 4 See, for example, the Laws of King Alfred, cap. 42, where it stipulates that a man who finds another man with his daughter, sister, mother, or other female relative is given the right to deal with the intruder (Thorpe 40); see also the discussion in Wemple 41–42.
- 5 For references later than Dionysius of Halicarnasus, see Aulus Gellius 10.23 and Valerius Maximus VI, 1.23; for other discussion see Bullough, Shelton and Slavin, 65–82.
- 6 There is a discussion of the Lex Julia in *Digest* 48.5 of *Corpus Juris Civilis*; for Justinian's action, see *Corpus Juris Civiis, Novel* 134.10.
- 7 There are more references in Hartdegen, but many of the references deal not with husbands and wives but with the entire Hebrew nation which as a 'chosen people' had violated their contract with Jahweh.
- 8 This story does not appear in most Bibles because it is regarded as part of the

- apocrypha. In some versions it is listed as Dan. 13.19–43. The apocryphal version can be found in Komroff 245–48. The story of Susannah is also not included in the standard versions of the Jewish scriptures (see, for example, *Holy Scriptures*).
- 9 The information about the real life Francesca and Paolo is found in Singleton's discussion of adultery in his translation of *Inferno*, 84–94.

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