

The Criminalization of Adultery in Roman Law

Deeming adultery a threat to both family integrity and social order, Roman politicians sought to promote a legal environment that would effectively regulate the offense. Lawmakers specifically defined adultery, which was part of a larger category of illicit sexual affairs, as a relationship between a married woman and a man who was not her husband. According to both social convention and early Roman law, the family was the principal institution responsible for regulating adultery through the identification, apprehension, and punishment of offenders. Nonetheless, the state played an increasingly important role, primarily by creating laws that outlined the rights of aggrieved kin and courts in which disagreements might be settled.

A significant legal development occurred when the first Roman emperor, Augustus Caesar, established the Julian Law on the Suppression of Adultery in 18 BCE. This law fundamentally altered the regulation of adultery by allowing any citizen—not just family members—to prosecute the offense. Augustus justified this measure by citing the negative impact of adultery on society as a whole, and families' recent lack of interest in punishing offending members. But the Julian Law, as I will argue, sparked more than a simple change in legal procedure. This paper will explore how the legislation helped to alter the way that adultery was conceptualized as a transgression. Given the newfound role of the general public in prosecuting the offense, it is useful to speak of a “criminalization” of adultery.

This criminalization, as I will show, had long-term effects. Three centuries later, the Emperor Constantine once again restricted the right of non-kin to prosecute for adultery, but still retained the institutional structure put in place by the Julian Law. This institutional structure kept adultery as a crime to be prosecuted by courts, even as the ability to prosecute offenses was restricted once more to kin. This paper will use Roman documents to explore the evolution of adultery as a “criminal” offense and to analyze how assumptions about moral standards, the divide between private and public (or lack thereof), and the regulatory role of social institutions helped shape the development of the Romano-Canonical legal tradition.

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Regulating the Sex Lives of Married Persons in Medieval Europe

As Christian doctrine developed in medieval, Western Europe, rules for the sexual conduct of married Christians included both prohibitions and requirements for lawful sexual activity. Canon law demanded that husbands and wives both have sexual relations only with each other. If prohibited from extramarital relationships, however, spouses were not only encouraged but required to have sex whenever a spouse asked for the rendering of what is known as the marital debt or duty.

Canon law condemned adultery and required the marital debt largely in gender-neutral terms. If some canonists and especially theologians considered female adultery a worse offence than male adultery, other canonists urged the contrary, arguing that men, as the responsible sex, should be held to higher standards. When addressing the marital debt, canonists presented this obligation in starkly equal terms. Gender played no role in the rules for how and when the debt should be rendered. However, this marital debt carried with it an obligation of cohabitation. Spouses had to reside together, ready to render the debt whenever needed. We might imagine that canonists burdened wives more often than husbands with the obligation to stay at home. This is a question that merits further study.

But what, in fact, was the impact of such rules upon Christian spouses of medieval Europe? For these teachings do not seem to have remained within the forum of confession and penance. Instead, ecclesiastical courts, especially the local courts administered by bishops, implemented these rules. How did ecclesiastical courts handle questions of adultery? How did they respond to the requests of spouses who demanded the return of an errant partner, a spouse who had absented his- or herself, or who in any case refused to render the requisite marital debt? To address these questions, this paper will look to the records of the bishop's judicial court in Northern France. Analysis of these records will shed new light on the role of the church in the regulation of married life, and sex inside and outside of marriage.

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Late Byzantine Views on Marital Relations and Ordination

Modern canonical and theological discussions of celibacy and married clergy often make reference to ancient laws of the Church governing the sexual life of clergy. Certain scholars believe that the early Church viewed participation in the Eucharist as incompatible with sexual relations between clergy and their lawful spouses. This study will present theological and canonical understandings shared by four important late Byzantine legal sources regarding the relationship between marriage and ordination. The four sources examined will be: *The Alphabetical Collection* of Matthew Blastares, and canonical commentaries of John Zonaras, Alexios Aristenos, and Theodore Balsamon.

The Alphabetical Collection (ca. 1335) was a popular nomokanon, a collection of civil and ecclesiastical law, which survives in a number of manuscripts. It was used extensively within the late Byzantine church and remains a standard Orthodox canonical reference. The commentaries of the jurists, John Zonaras (death after 1189), Alexios Aristenos (twelfth century), and Theodore Balsamon (c.1140 - c. 1195), covered the corpus of Byzantine canon law. Aristenos commented on a synopsis of the canons variously ascribed to the writers Symeon Metaphrastes or Symeon Logothete. This synopsis under the name of Symeon will also be examined. While the authors and works under consideration are separated by time and location, when treating marriage and clergy these sources have in view the same ecclesiastical legislation and reveal common outlooks, presuppositions, and concepts.

This study will present the framework of canonical legislation and opinion used in late Byzantine sources to deal with the problem of impurity and ritual defilement associated with marital relations. It will be argued that late Byzantine legal opinion, particularly canonical commentaries, distinguished two main types of ritual defilement, the first caused by a state of impurity resulting from the intention of the subject and the second through contact with an object or subject regarded as impure by nature. The consequences resulting from the late Byzantine resolution of problems associated with the impurity of marital relations will be discussed. Conclusions will be reached regarding the social ordering of individuals and the establishment of hierarchical relationships. The implications of this study go far beyond the narrow scope of canon law itself to shed light on the broader understanding of sexuality, women, clergy, and views of the sacred in Byzantine society.

Why prohibit donations between husband and wife in medieval Europe ?

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Between the end of the 11th century and the beginning of the 12th century, following the rediscovery of Roman law in the West, the first Bolognese commentators stuck to the Roman principle prohibiting gifts between spouses. Authors commented over and over again fragments of jurists Paul and Ulpian integrated into the Digest of Emperor Justinian: fears of despoliation between spouses, of negligence in the children's upbringing and of marriage becoming venal were the main reasons found par these jurists of the Classical Age.

Medieval canon law takes the subject of donations between spouses very seriously. Lawrence of Spain († 1248), in an extract of the Decret of Gratien, worries about donations of make-up and ointments, which are seen as lust-enhancing subtleties. In *Liber extra* (1234), a papal decree signed by Gregory IX took up the subject, confirming the opinions expressed by Paul and Ulpian by expressing hostility to such acts on the basis of public morality. Following the fourth council of Latran (1215), a new literary form appeared: confession – or casuistic – manuals. In these, the subject of gifts between spouses is closely assimilated to the question of sin, especially of lust.

Continental Europe's main common law shows similar spirit in that respect. Italian statutory laws, in conformity with the separatist spirit of Roman law, forbade them without distinction. They were outlawed in British law by *unitas carnis* which presides over conjugal relations. According to Jean Boutillier (1395), author of *La somme rurale*, a famous French interpreter of law, donations between spouses are generally a result of fear, complacency or lust.

The common theme between Roman or Canon law and different common laws is the upholding of a certain public morality and the control of couples as the mainstays of their respective families.