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# Review

## Sex With Guilt

James A. Brundage. *Law, Sex, and Christian Society in Medieval Europe*. Chicago: University of Chicago Press, 1987. Pp. xxiv, 674. \$45.00.

### Paul Freedman

Medieval law was an accretion of traditions from several sources. This is well known, for example, with regard to the historical development of English Common Law. Continental and church law of the Middle Ages was built on a foundation of Roman or Roman-inspired codes and practices and so tended to emphasize statute and authoritative executive statements more than did customary laws. In both its political government and legislation the medieval church was increasingly centralized. Nevertheless, even the church faced the task of reconciling diverse norms and precedents (Biblical, Patristic, Roman, Germanic) that reflected conflicting procedures and social expectations. One might expect medieval canon law relating to sexual behavior to have been straightforward and unyielding, but this is not the case. Because of the interaction of ethical and textual traditions, and the nature of medieval society (which was rather more exuberant than is commonly believed), the development of ecclesiastical regulation was slow and complex.

The Middle Ages was hardly unique in attempting to control the manifestations of sexual desire. All societies have both informal expectations and formal rules about sex and marriage. Where they differ, often radically, is in marking off aspects of sexual and domestic relations considered private and thus left to individual conscience or preference from those sub-

ject to legal enforcement. Lawmakers of the Middle Ages were surely more willing than those of modern Western societies to control marriage and sexual behavior, but as recent experience shows, the desire for regulation and its targets can change suddenly. Contemporary shifts in outlook and law with regard to abortion, or toward physical abuse of women by their husbands, demonstrate the changes possible in mapping the boundaries of social conformity.

The first part of *Law, Sex, and Christian Society* by James Brundage looks at the Greek, Roman, Biblical, and Germanic precepts that constituted the bequest of the ancient world to the Middle Ages. The center of attention in this book, however, is the period after 1000 and before the Reformation when church law was systematically codified and elaborated. Brundage tends to subsume the entire period under a rubric of sexual repressiveness, but his detailed survey of legal opinion shows that, despite an overall mistrust and depreciation of sexuality, there was no monolithic teaching even about such major issues as the sanctity of marriage, the celibacy of the clergy, or what sexual acts outside of marriage might be considered sinful.

During these centuries, through an increasingly structured legal order, some coherence was achieved in defining licit and illicit sexual alliances. Yet, despite prolific discussion among generations of highly trained jurists, fundamental questions were only slowly, if ever, resolved: What constituted a binding marriage? How should concubinage be defined and did it constitute a legally recognized relationship? How sinful was sexual pleasure per se?

What makes the Middle Ages unusual in its approach to sexual relations is not that its intellectual classes regarded sex with disdain or fear. Polities such as Calvin's Geneva or revolutionary China would also attempt radical reforms of sexual conduct. What particularly characterizes the medieval era, and what justifies an intensive disquisition on the canon law of the eleventh through fifteenth centuries, is the international enforcement apparatus established by the church at that time. A degree of legal and moral control was exerted across secular boundaries by an institution with little direct political authority. This was not merely a pastoral effort, although it is often impossible for an observer to separate canon law precisely from the rules governing the hearing of confessions. The ecclesiastical law had a more than admonitory power and the archives of Europe preserve innumerable records of church tribunals whose primary order of business was marriage litigation.

The jurisdiction of the church in sexual and marital cases was universally, if somewhat grudgingly, recognized by secular authorities. In cases involving violence (such as abduction or rape) or money (marital prestations, notably dowry), kings and municipalities might claim to resolve disputes, but the church exerted a considerable amount of power in defining

and supervising morality through legal scholarship and institutions. Nevertheless, the very power held by ecclesiastical authorities led to an internal conflict among social expectations, moral teachings, and the regulation of society. The scope of ecclesiastical jurisdiction meant that law and enforcement came up against the practices and attitudes of families, classes, and governments.

The effort at ordering and controlling was immense, and to describe its history is not an easy task, requiring as it does massive learning and patient sifting of texts. It should be emphasized that Brundage has performed an enormous service in revealing the complex theories of generations of lawyers whose works had a palpable influence on the course of human lives. He quite understandably concentrates his attention and considerable skill on the critical period 1140-1234, from the *Decretum* of Gratian to the promulgation of the first official collection of papal letters having the force of legal rulings, the *Decretales* issued by Pope Gregory IX. This "classic age" of canon law saw the appearance not only of these authoritative texts, but also the proliferation of academic commentary and debate originating from problems posed by their interpretation. Little of the energetic legal activity has ever been printed, and this makes the study of canon law exceptionally difficult. To find out what even a single canonist such as Huguccio considered problematic in analyzing fornication, bigamy, or adultery requires knowledge of the extensive manuscript sources in order to pick a path through the inevitable inconsistencies of non-uniform manuscript production to find the correct text. Brundage's effort in assembling his authorities is so great that it is not surprising that the project has taken twenty years to complete.

The resulting work is something more in the nature of a handbook than a sustained discussion. Chapters proceed chronologically and are then divided by subject. One therefore encounters the teachings of the early decretists (those who commented on Gratian) arranged around marital sex, dissolution of marriage, concubinage, non-marital sex, and procedure, with most of these sections further subdivided. Subsequent chapters on the early decretal collections and commentaries are similarly organized.<sup>1</sup> Reading the book for the first time, it will be difficult to follow the story of each sexual offense or marital question from one generation of scholarship to the next. Once familiar with the architecture of the work, however, it is possible to exploit its complexity.

To the extent that there is an interpretive scheme to this book, its force does not match the erudition assembled from the sources of law. In categorizing the large body of information he has assembled, Brundage deline-

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1. Thus in order to discern, for example, the changes in canonistic understanding of impotence in dissolving marriages one has to look at pp. 201-202, 290-292, 322, 339, 376-378, 413, 456-458, and 512 for the years 1000 to 1348.

ates three models of learned opinion concerning sexuality: an emphasis on the impurity of sexual desire which marriage channels in less harmful directions, a belief that reproduction confers a moral justification on the sexual act, thus elevating marriage to a place of moderate esteem, and an approval of intimacy whereby marriage becomes the preferred mode of life and a larger sphere of conjugal privacy is accepted. Brundage considers the first view typical of the late antique or early Christian period, while ascribing the growth of justification by procreation to the high Middle Ages. The third view, that of recognizing what has been called the "companionate marriage," has been a minority point of view in the Catholic tradition until recently.

Brundage considers the first overarching approach to be the foundation upon which all subsequent laws were built. According to Brundage, a fundamental Christian mistrust of concupiscence generated a consistent attempt to restrain and direct it. He dutifully avoids the facile assertion that the coming of Christianity blighted a happy pagan sensuality by allotting part of the blame to Stoicism, but holds the church, from the time of Paul until the present, responsible for a persistent denial of human "sexual expression" and needless condemnation of life-affirming intimacy.

There is no denying the evidence supporting a well-established Christian habit of regarding the flesh as obstinate but controllable, an outlook that did not hesitate to prescribe conduct in what are now considered matters of individual choice. Was this because a wrong turn was taken somewhere, because those who framed the issues were dour and warped? To make this assumption would be to oversimplify an earlier age and to posit a modern consensus that does not in fact exist. The twenty-year period in which *Law, Sex, and Christian Society* took shape has also witnessed upheaval in how we view the construction of sexual mores and social identity. Brundage at times appears like a visitor from another age, especially in his earnest confidence in the natural justice and perpetuation of what was once known as "the sexual revolution." There is a degree of charm in this, reminiscent of the effect a mildly rakish figure of the Regency might have offered in the serious England of the 1860's. The notion that what Brundage refers to as "recreational sex" or prostitution are joyful distractions (or at worst what used to be called "victimless crimes") exemplifies a certain *laissez-aller* when it comes to issues of exploitation, typification of gender, or social hegemony. Brundage is entitled to ignore current pieties, but his approach, anachronistic yet not quite up-to-date, influences the depiction of the past and stands in the way of understanding his own impressively marshalled evidence.

The "pastness" of the past, and its integrity, are diminished by examining it as a benighted collection of false assumptions, measured by the instruments of a supposedly objective modernity. Apart from the uncertainty surrounding the true nature of the contemporary opinions, this practice

creates a distorted and uneasy vision. It is not just the peculiar juxtapositions, such as references to the canonists' preference for "the missionary position," or a table of sexual decision-making according to the Irish penitentials which is entitled "Feeling Randy?" (p. 162). More questionable is the use of the modern belief that sexuality is a form of human expression to judge the canonists of the Middle Ages. The canon lawyers held ideas and assumptions about what were natural or licit sexual acts, but they did not regard sexuality in the quasi-therapeutic sense of psychological self-fulfillment that has held the stage in recent decades. Their desire for social control stemmed from something more than mere repressiveness of the sort often identified with the nineteenth century—from ideas concerning the flesh, sin, and social purpose.

Behind medieval legal discussions there lies a theology of the human body and a form of religious longing somewhat more alien than Brundage allows. Recent studies by Peter Brown and Elaine Pagels of late Antiquity and Caroline Bynum of the late Middle Ages reveal concepts of the body that are both more profound and more tormented than the prim, sanctimonious disapproval depicted by Brundage.<sup>2</sup> In a characteristically strange but telling metaphor, Peter Brown once likened the attitude of the Roman sage toward the stirrings of the flesh to the sounds of plumbing in a neighbor's apartment—noticeable but irrelevant.<sup>3</sup> On the other hand, for Christians of the Roman Empire and throughout the Middle Ages as well, the promptings of desire occurred in a more dramatic setting, within a body both corrupt and yet capable of physical sanctification beyond mere judicious restraint. Sexual longing was dangerous, searing, not simply irritating; virginity and marriage were regarded as aspects of a sacred order, not simply as bulwarks against licentiousness. That continence and self-mortification should be esteemed may be difficult now to admire, but for long centuries such ideas suffused more than merely learned opinion. The belief that physical suffering may be a way of approaching God, that the body, which will after all be resurrected, must be purified, is particularly hard for our age to share. Without some tacit acceptance of how such an opinion might prevail, however, the medieval period remains opaque and grotesque.

Although the unremarkable theme of this book is that the medieval church did not approve of human sexual instincts except in a carefully circumscribed manner, such a consistency of outlook is belied, or at least made more confusing, by a number of controversies within the "repress-

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2. Peter Brown, *The Body and Society: Men, Women and Sexual Renunciation in Early Christianity* (New York: Columbia University Press, 1988); Elaine Pagels, *Adam, Eve, and the Serpent* (New York: Random House, 1988); Caroline Walker Bynum, *Holy Feast and Holy Fast: The Religious Significance of Food to Medieval Women* (Berkeley: University of California Press, 1987).

3. Peter Brown, "The Philosopher and the Monk: Two Late Antique Options," a talk given at Columbia University, February 11, 1987.

sive" tradition. Is marriage a sacrament? Under what circumstances may it be dissolved? May the clergy marry? To understand how such basic issues could persist within a universally applicable body of law requires consideration of the sources of authority for canon law and the interpretive strategies of ecclesiastical jurists. What follows is an effort to underscore and suggest some of the implications of Brundage's meticulous research. This involves sketching the development of legal collections and enforcement apparatus within the church during the crucial period of the high Middle Ages, the eleventh through thirteenth centuries. In order to understand the medieval approach to regulating sexuality, it is necessary to appreciate the era's methods of scholarship and ways of establishing law.

Canon law in the Middle Ages showed a movement toward concentration of authority within the papacy to define and administer the law. At the same time, in a fashion shared with theological study, there developed a flourishing critical scholarship that subjected texts to a painstaking exegesis. The quintessence of the canonistic mentality may be represented by the careful commentaries of Pope Innocent IV (Sinobaldo de'Fieschi) on papal decretals, including his own rulings. In this instance the pope acted as both creator of authoritative decisions and interpreter of those decisions, revealing their further implications. By this time, the mid-thirteenth century, the exercise of papal power was preponderant over other sources of law. The pope had immense power to offer dispensation from normal expectations in individual cases and some ability to create new laws.

The growth of this centralized power of legal definition was concentrated in the most fruitful age of canonistic study, the late twelfth and early thirteenth centuries. Earlier compilations, such as those of Burchard of Worms and Ivo of Chartres, had relied on the collected precepts of the Bible, the writings of the Church Fathers, the decrees of ecclesiastical councils both ecumenical and provincial, and even certain secular laws. Papal letters ruling on litigation or prescribing conduct were acknowledged to possess legal force, and a large amount of purportedly early papal correspondence was absorbed through the Carolingian-era forgeries, notably the *Pseudo-Isidorian Decretals*. Papal letters were one legal source among many in Gratian's *Decretum* (c. 1140) as well. Gratian attempted systematically to assemble seemingly contradictory authorities and to show how they might be reconciled through logical discrimination. Gratian's title for his book was the *Concordance of Discordant Canons* and the reconciliation of apparent contradictions lay at the heart of the canonistic agenda during the classic age. In Gratian an essentially conservative understanding of law as the product of tradition co-existed with the typical twelfth-century confidence that reason could shape and clarify the wisdom of the past without excessively constraining it.

After Gratian, however, interpretive authority came to reside in a dia-

logue between the rulings of the Roman curia and the scholarship of the law faculties of European universities, especially Bologna. Between 1140 and 1234, canonists simultaneously pursued the elucidation of the *Decretum* and the organizing of papal letter collections. The effectiveness of the earlier variegated sources of law tended to yield before the papal power to define, promulgate, and override. Precedent gave way, as it were, to statute.

Because this was the church and not a secular institution, however, the enduring prestige of tradition was able to limit the effective imposition of power, even the sacred power of the pope whom Innocent III described as the Vicar of Christ and the executive of divine power.<sup>4</sup> To be sure, it was possible for long-established practice to be visibly changed. The Fourth Lateran Council in 1215 reduced the prohibited degrees of consanguinity to four from seven thus allowing marriage between those who were not third cousins or closer. This was acknowledged as a reform of a venerable but inconvenient practice. Yet the pope could not completely alter the law's rigors, although he possessed the power to waive its application in individual instances. The weight of perceived tradition was lessened but not eliminated by the political centralization in Rome and the rise of a new hermeneutic in Bologna.

The growth of canon law as a systematic science in some measure categorized licit and illicit forms of sexual behavior and defined the bonds of marriage. The church achieved preeminence over secular jurisdictions in regulating these matters. Impressive as the intellectual and jurisdictional edifice was, the force of tradition and the plurality of historical precedent limited the coercive power of the church and turned it in often unexpected directions. In particular, the analytical logic of distinction (the classification of sexual offenses or of licit marriages) affected the European monarchs, aristocracy, and personnel of the church itself more than it did the lower orders of society. What emerges from Brundage's treatment of the laws governing sexuality (more by implication than by direct statement) is a paradox of social control exerted on the strongest and least acquiescent members of medieval society.

The shaping of canonistic doctrine concerning marriage was especially challenging to the aristocracy in the context of its obsessions with lineage and property. As Georges Duby has shown, noble families desired not merely genealogical continuity but the preservation of hereditary property from excessive division.<sup>5</sup> In a society in which women could transmit

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4. "He [the pope] does not exercise the office of man, but of the true God on earth." On Innocent III and divine authority, see Kenneth Pennington, *Pope and Bishops: The Papal Monarchy in the Twelfth and Thirteenth Centuries* (Philadelphia: University of Pennsylvania Press, 1984), 13-42, especially p. 16.

5. Georges Duby, *Medieval Marriage: Two Models from Twelfth-Century France*, trans. Elborg Forster (Baltimore: Johns Hopkins University Press, 1978); idem, *The Knight, the Lady and the Priest: The Making of Modern Marriage in Medieval France*, trans. Barbara Bray (New York:



property but in which kinship on the male side (agnatic kinship) dominated, the interest of the comfortable classes lay in marrying within the extended family (endogamy). It also required making sure that parents controlled their children's choice of marriage partner, and that wives who seemed incapable of bearing male children be easily cast off. The medieval church defined and enforced rules against consanguinity that made marriage even of distant cousins impossible unless dispensation were granted. The ecclesiastical doctrine of marriage as dependent on consent alone, in place by the thirteenth century, made elopement and clandestine marriages possible, foregoing witnesses, clergy, or parental permission. Finally, the church tended to limit the ability of couples to separate and remarry to a very few possibilities (coercion of consent, previous valid marriage, consanguinity, inability to consummate a marriage).

The canon law of marriage crystallized in a fashion that constrained the family preservation practices and desires of the upper classes. Even where the movement in legal opinion seemed to favor relaxation (as in the reduction of the degrees of prohibited consanguinity), the result was to shrink loopholes such as the disingenuous "discovery" of consanguinity after marriage that had previously made possible a nullification petition. The unsuccessful effort of England's Henry VIII to divorce his first queen is merely a late and well-known example of the struggles occasioned by the position of the church regarding divorce and the limited effectiveness of consanguinity as a lever to achieve dissolution.

Even more antithetical to the outlook of the privileged orders was the complicated matter of what was considered a valid, indissoluble marriage. The increasing emphasis given to the consent of the parties weakened the force of the conventional assumption that parental consent and public ceremony were necessary, as well as modifying the common belief that consummation and cohabitation created a presumption of marriage. The exchange of vows between a couple might be either immediately conclusive, such as when they stated to each other that they were now married, or a promise for the future. Present consent, or future consent followed by intercourse, were held to establish an effective marital bond by canonists writing after the era of Gratian. A famous example of a clandestine and inappropriate marriage withstanding parental opposition appears in the fifteenth-century Paston correspondence. The marriage of Margery Paston to the family's bailiff Richard Calle took place without clergy or witnesses. The bishop of Norwich, an ally of the Pastons, attempted to discover some procedural flaw when he interrogated the couple, but he was compelled to adjudge the marriage valid because Margery and Richard had expressed their mutual consent using the proper words. Despite the

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Pantheon Books, 1983).

clandestine nature of the ceremony and the powerful influence of the elder Pastons, the misalliance stood.<sup>6</sup>

How is one to explain the elaboration of doctrines so opposed to the interests of the powerful? This question is among the most interesting implicit in *Law, Sex, and Christian Society*, but the answer can only be touched upon in the context of this review. The church, to be sure, was not all-powerful in compelling the obedience of the laity. Certain practices such as concubinage survived despite ecclesiastical censure, and one would certainly not wish to argue that sexual adventures beyond the small compass permitted by ecclesiastical norms were in any sense rare. The church was, nonetheless, fairly successful in compelling compliance to its court judgments and in imposing its interpretation of the rules governing licit sexual relations that involved the potential transmittal of property. Thus while it is easy to doubt the effectiveness of church sanctions against fornication, it is clear that where marriage was concerned, those who were so established in the social hierarchy as to desire public acceptance of marital alliances and separations were required to accept church jurisdiction.

The systemizing of law and the ability of the papacy to define and enforce it was in large measure the result of the eleventh-century reform movement that freed the church from local secular powers, increased papal centralization at the expense of independent episcopal authority, and battled the custom of clerical marriage. Brundage considers the reform movement as more important in the rise of sexual regulation than any supposed attempt to limit lay property concentration and increase church lands (a view identified especially with Jack Goody).<sup>7</sup>

If the challenge to the norms of lay society mounted by the church did not stem from competition for land, how did it arise? Here, I think, we have to take seriously the desire for intellectual consistency on the part of both lawyers and theologians of the eleventh to fourteenth centuries. The church was less acquiescent than it had been in the past to the casual dissolution of marriage bonds, while becoming increasingly relaxed about how marriage was accomplished. This outlook followed from the development of a definition of marriage as sacramental, and an emphasis on intent and consent. The enforcement of celibacy among the higher clergy also tended to identify marriage as the worthy and expected attribute of lay society. A consequence of the increasing separation between clerical and lay condition was to apply the historic ecclesiastical preference for complete sexual restraint more narrowly, focusing it on the clergy.

At the same time, the church, after the Gregorian Reform, undertook a more sustained intervention in the conduct of secular life. This included

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6. John Warrington, ed., *The Paston Letters*, 2 vols. in 1 (New York: E. P. Dutton, 1975), 2:65-69, 76-78. Brundage mentions this case on p. 500.

7. Goody's views are discussed by Brundage in a brief appendix, pp. 606-607.

the regularization of confession, the foundation of military orders (knights living in common according to vows), affiliation of lay men and women with religious orders, and expansion of a bureaucracy of courts and inquisitorial tribunals. Without becoming a condition of personal expectation in the modern sense, marriage in the high Middle Ages became identified with a virtuous fulfillment of lay status. The resistance encountered by married devout women such as Margery Kempe when they sought to dissolve their marital obligations in favor of celibacy and lead a life dedicated to religious devotion demonstrates a complexity in the mental and social ordering of society.<sup>8</sup>

In all these developments it is possible to see the church as a hectoring, interfering authority. Certainly the debates of decretists (p. 378) on whether or not a man who was allowed to dissolve his first marriage because of impotence but proved able to consummate a second marriage should return to his first wife (and then what if he remains incapable of sexual intercourse with his first wife?) seem to trespass outlandishly onto what is now considered personal, confessional, or therapeutic terrain. Yet one should not measure the past with the deceptive tools of an arbitrary idea of what is "naturally" healthy, psychologically balanced, or private. The Middle Ages, as Brundage points out in his conclusion, offer certain lessons on sexual regulation. These lessons, however, are not to be read simply as a cautionary tale against repression; rather they can be better understood as describing the variety of consequences following assumptions of the meaning of human embodiment.

The canonists were of a speculative but essentially practical turn of mind—lawyers, not philosophers. They did not engage in introspective evaluations of sexual temptation or the condition of the soul but were concerned rather with regulating social relations and ecclesiastical administration and preserving logical consistency. Nevertheless, they too operated in a partially examined context of dual condemnation and sanctification of the body, with all its instincts and power. Seeming anomalies, such as the canonists' insistence on the right of both husband and wife to receive sexual gratification upon demand, even if rendered at illicit times (the "marital debt"), become not just legal peculiarities but the exemplification of a series of assumptions concerning the human condition, in particular a backhanded acknowledgement of natural sexual desire. Brundage offers a thorough and authoritative guide to canonistic opinion, but the implications of the laws of sexual conduct for understanding the Middle Ages remain to be explored.

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8. B. A. Windeatt, trans., *The Book of Margery Kempe*, (Harmondsworth: Penguin Books, 1985).