

**LICIT AND ILLICIT SEXUALITY IN MEDIEVAL IBERIA: A SURVEY
OF *LAS SIETE PARTIDAS***

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In Partial Fulfillment

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by

Shangching Cheng Huitzacua

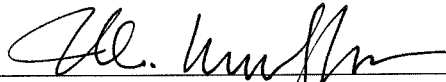
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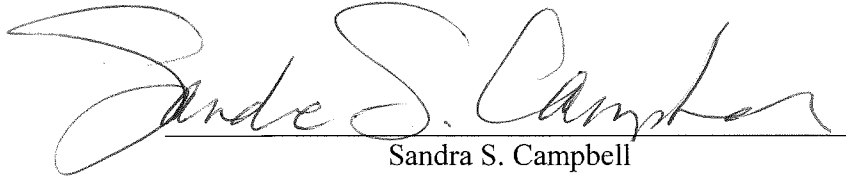
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Licit and Illicit Sexuality in Medieval Iberia: A Survey of *Las Siete Partidas*



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DEDICATION

To My Family.

ABSTRACT OF THE THESIS

Licit and Illicit Sexuality in Medieval Iberia: A Survey of
Las Siete Partidas

by

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This thesis examines *Las Siete Partidas*, a thirteenth-century Castilian legal code of laws, including on marriage and illicit sexual behaviors. Within the scope of medieval marital studies, there are few academic works focused on medieval Iberia in English. This study on the regulation of licit and illicit sexual conduct will analyze the embedded social expectations and stereotypes placed on both sexes. To establish a working definition of this social construct, a pan-European survey of contemporary theological studies on medieval sexuality and marital theories will place the Castilian law into perspective. This definition will be applied to *Las Siete Partidas* to establish the congruency of the Castilian laws versus other regions of the Medieval Europe. This thesis finds that licit and illicit sexuality shared a symbiotic relationship, where the licit served as a foundation to formulate the illicit. While the Castilian outlook on marriage and illicit sexuality were similar to practices in western Europe, regional variations could be detected in Castilian jurists' synthesis of marital dogma and the particular needs of the community. *Las Siete Partidas* can thus be seen as the product of a vibrant cultural exchange and an interpretation between the clergy and the laity that challenged the stereotypical image of a culturally stagnant Middle Ages.

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CHAPTER 1

INTRODUCTION

Due to Iberia's multiethnic population, the medieval Iberian Christian authorities were concerned with the issue of sexuality, which is reflected in their legal codes and literature. The notion of sexuality was shaped by the dominant Christian society's values with some influence from religious and ethnic groups, such as Jews, Muslims, and Arabs. Evaluating their laws can shed light on how individuals conceived gender and sexuality, since these laws epitomize normative social conduct. An analysis of the thirteenth-century Castilian legal compendium *Las Siete Partidas* makes it possible to understand the socially and legally accepted sexual behaviors. The objective of this thesis is to examine the correlation between regulations on family and marriage in *Las Siete Partidas* and the predominant medieval European concept of sexuality by examining the fourth and seventh parts of the Castilian legal code. In addition to *Las Siete Partidas*, modern scholarship on licit and illicit sexual behaviors is consulted to contextualize that legal code. Given the multiethnic population in medieval Iberia, moreover, a parallelism in Christian, Islamic, and Jewish jurisprudence regarding licit and illicit sexual behaviors is revealed. This thesis is limited to the perspectives of Christian jurists and secular authority on matters of licit and illicit sexuality. Although Islamic and Jewish perspectives on this same issue merit exploring, it is not within the scope of this thesis to delve into further comparative study.

Background on the legal code, *Las Siete Partidas*, is needed before engaging in an in-depth examination of its marital and sexual regulations. *Las Siete Partidas* is unusual even in the Iberian context, since it is a medieval legal compendium composed in Castilian rather than in Latin. As such, it reflects the political ambition and emerging proto-nationalistic spirit of the King of Castile, Alfonso X (r. 1252-1284). This code was not an original work because it was compiled by a group of jurists who envisioned a Castilian legal code modeled after

Roman law.¹ Although originally composed nearly a century earlier, this law code was not officially promulgated until 1398 CE due to resistance from local nobles, who saw the code as an infringement on their feudal rights granted by *fueros*, agreements that defined the roles of the nobles relative to the monarchy and protected their feudal privileges.² Even after it was officially promulgated, the code essentially remained a reference source for legal scholars and magistrates since it was never enforced.³

The compilers of *Las Siete Partidas* likely meant to project an idealized image of society by arranging laws to govern human relations in proper orders and hierarchies. Roberto González-Casanova has argued that the Castilian jurists who compiled it arranged the laws in an order that emulated a human body. In the fourth *partida*, laws focused on matrimonial and social relations were placed in the middle of the code and resembled the heart's position in the human body.⁴ Based on González-Casanova's analysis, it could be speculated that the legal scholars considered matrimony and familial relations to be central in maintaining social harmony. This image of social harmony may reflect King Alfonso X's conception of the ideal Castilian society.

A pan-European survey on the social perception of marriage and sexuality serves as a comparison to the Iberian case study. When juxtaposed with European perceptions, Iberia is similar to Europe regarding sexual behaviors. In order to understand marriage in the Middle Ages, it is necessary to see how legal scholars and theologians demarcated illicit and licit sexual activity. Natalie Zemon Davis claims that in medieval Europe the notion of marriage reflected developments "in religious concepts and liturgy, in perceptions of the sacred and profane, in the relations of laity and clergy, and in the nature of power and the social order."⁵

¹ Marie R. Madden, *Political Theory and Law in Medieval Spain* (New York: Fordham University Press, 1930), 67-68.

² Robin Winks and Teofilo F. Ruiz, *Medieval Europe and the World: From Late Antiquity to Modernity, 400-1500* (New York: Oxford University Press, 2005), 194; Max Radin and Madaline W. Nichols, "Las Siete Partidas," *California Law Review* 20, no. 3 (1932): 261.

³ Madden, *Political Theory*, 70.

⁴ Roberto J. González-Casanova, "Gender Models in Alfonso X's *Siete Partidas*: The Sexual Politics of 'Nature' and 'Society'," in *Desire and Discipline: Sex and Sexuality in the Premodern West*, eds. Jacqueline Murray and Konrad Eisenbichler (Toronto: University of Toronto Press, 1996), 45.

⁵ Natalie Zemon Davis' introduction in Georges Duby, *The Knight, the Lady, and the Priest: The Making of Modern Marriage in Medieval France*, trans. Barbara Bray (New York: Pantheon Books, 1983), vii.

In Davis's perspective, marriage could be seen as a conflation of lay and clerical cultural exchanges, as well as a vantage point to understand medieval society and culture.

This chapter summarizes some of the primary motifs that recur in modern scholarship about the medieval European understanding of marital unions and sexuality and is divided into two major sections. The first section begins with a general survey of the meaning of marriage in twelfth- and thirteenth-century Europe from both lay and ecclesiastical perspectives, focusing mainly on France and England. Male and female sexuality will be addressed as well, since marriage was one of the chief means by which medieval theorists demarcated licit and illicit sexual behaviors. The chapter then shifts focus to the second section and examines equivalent ideas of marriage and sexuality in medieval Iberia around the same period, and briefly compares differences in Christian and Muslim conceptions of marriage. Based on this analysis, discourses on marriage can be seen as a continuous dialogue between the clergy and laity, a dialogue that exhibited cultural vitality and innovation.

THE COMPLEXITY OF MEDIEVAL CONCEPTIONS OF SEXUALITY

Before discussing marriage, it is necessary to examine how medieval sexuality was conceptualized. Ruth Mazo Karras has conducted a broad survey to demonstrate that sexuality as a topic was a valid approach to the study of medieval society, emphasizing that sexuality was a cultural product and reflective of an epoch. She asserts that modern distinctions between sex, gender, and sexuality did not exist in the Middle Ages. The inseparability of these elements can be seen in the example of same-sex erotic desire.⁶ Persons in contemporary societies might assume that a woman could have sexual desire for another woman, whereas those who lived in the Middle Ages would have interpreted this same desire as male behavior.⁷ Karras adds that sexuality was perceived in terms of an active/passive dichotomy in medieval European societies, instead of a homosexual/heterosexual dichotomy, as might be the case in the West today. This construct subsequently dictated proper behaviors for both men and women: Masculinity was associated with being

⁶ Ruth Mazo Karras, *Sexuality in Medieval Europe: Doing Unto Others* (New York: Routledge, 2005), 6.

⁷ *Ibid.*, 6.

active, while femininity was equated with being passive. Transgressing the boundary of this dichotomy would equate to over-stepping one's gender role and was considered socially subversive. This dichotomy was fundamental to the structure of medieval society.

An individual's sexuality was inclusive of both sexual and social identities. Karras reasons that the status difference between the laity and clergy could explain and contribute to the asymmetrical depiction of male and female sexuality. Women posed both real and imaginary threats to the clergy's social standing, a standing which the clergy occupied due in part to their voluntarily celibate status. The clergy partly derived their spiritual superiority from sexual abstinence. In order to maintain the clergy's superiority, a copulating laity was required.⁸ Karras' argument elucidates medieval theologians' suspicion of any lay religious movement that aimed to emulate the clerics' lives, since that would obscure the distinction between the two classes.

Women's virginity is another example where sexuality intersected with social identity. Karras points out that women's virginity was synonymous with familial honor, since women's sexual transgression negatively affected the head of the household or their spouses.⁹ In a sense, female sexuality reflected a collective rather than an individual identity, since defiling a woman was not considered an offense against her body, but an open challenge to the authority of the men associated with her.¹⁰ One notable exception to this collective identity was women who did not fit into the three socially prescribed statuses for women in medieval Europe: virgins, married women, and widows. It was difficult for the medieval mind to comprehend women's social position outside the context of men's control. As a result, these women usually fell into the gray area between socially acceptable and unacceptable.

The active/passive paradigm discussed earlier also rationalizes the tolerant view of male sexuality dominant in medieval Europe. Even though women were perceived to be more lustful and seductive, men were characterized as the ones who initiated sexual acts, at

⁸ Ibid., 45, 118-119.

⁹ Ibid., 87.

¹⁰ Ibid., 28-29, 99.

times with predatory intent.¹¹ Karras explains that images of a lustful woman with a sexually aggressive man did not fit with the active/passive construct because both behaviors appeared active. It was socially beneficial for women to rein in their desires inasmuch as their actions affected them both individually and collectively, while men's sexual exploration was condoned as long as the social order was not disrupted.¹² Communicating their desires, women suggested but did not initiate the act, which could still be construed as passive. Men responded to the seductive suggestion with physical initiative, as befitting their socially prescribed active roles.

Karras' analysis reveals the centrality of the active/passive paradigm in terms of shaping men and women's identities, their behaviors, and their expression of desire. Her discussion also imparts a parameter within which medieval European sexuality was defined.

THE DEBATE ON MARRIAGE MODELS OF LAITY AND CLERGY

In his monograph titled *The Knight, the Lady, and the Priest*, Georges Duby investigates the fluctuation of marital practices as the laity and the clergy made concessions to one another on the notion of marriage. The theologians' model stressed monogamy, exogamy, and the indissolubility of marriage after consummation, while the lay model emphasized alliance building and the perpetuation of the blood lineage.¹³ The conflict of these two models stemmed from the nobility's wish to dismiss wives who were slow in producing heirs, which contradicted the principle of indissolubility after consummation. Furthermore, marital debate manifested as a power struggle between the laity and the clergy because the clergy strove to assert their influence in lay life by dictating the formation of marriage. Duby's account of King Louis VII of France and his divorce from Eleanor of Aquitaine illustrates clerical influence on the lay understanding of marriage. King Louis exercised the Church's marital teaching to his advantage, claiming that his union with Eleanor was incestuous based on the principle of consanguinity, in order to divorce his wife

¹¹ Ibid., 121-122.

¹² Ibid., 122-123.

¹³ Duby, *The Knight*, 31, 48-49, 283.

who had failed to produce a male heir in a timely manner.¹⁴ In Duby's narrative, it is apparent that the nobles manipulated the Church's teaching to legitimize and achieve their goals. The nobles' necessity of manipulating the Church's doctrine shows that the clergy had successfully inculcated elements into the lay mentality of what they deemed to be a proper Christian marriage. However, according to Duby, this reinterpretation of marriage only applied to privileged social classes. For upper class laity, patrimony and property transaction were of foremost importance in matrimony. These values carried lesser weight in the lower classes, and Duby opines that patrimony occupied a less prominent role for peasants and slaves, who "mate[d] and [did] not marry."¹⁵ Though the marriages of the lower class appeared insignificant in Duby's study, they still carried the same weight as upper class marriage in the ecclesiastical perspective, which even without a formal union considered mutual consent to be the essence of marriage.

Duby reiterates the correlation between the construct of sexuality and contemporary social practices throughout his work. He reflects on how primogeniture, the practice in which only the oldest son could inherit his father's properties and marry, structured both marital arrangements amongst nobilities, and to some extent, shaped the conceptualization of male and female sexuality. This practice led to the creation of a large pool of single men who remained perpetually unmarried "youth," and this in turn allowed them to pursue sexual conquests with greater liberty. In fact, male sexual prowess was often portrayed as an object of admiration as long as the conquests were socially equivalent, according to Duby's evaluation of an account regarding the Counts of Guines.¹⁶ The implication is that among aristocratic men, sexual excesses were not punished and played a role as part of the male identity.¹⁷ In theory, married men were not entitled to the same latitude, since they already had socially condoned sexual outlets. The punishment for marital indiscretion, however, was lenient, such as ten days of fasting.¹⁸ When primogeniture was eliminated during the thirteenth century, the status of "youth" was transformed from a permanent to a transient

¹⁴ Ibid., 190.

¹⁵ Ibid., 19.

¹⁶ Ibid., 261.

¹⁷ Ibid.

¹⁸ Ibid., 67.

stage in a man's life. Consequently, this change in social practices propelled marriage to become a rite of passage for both men and women.¹⁹

Duby expresses similar views on female sexuality where women were characterized as weak-minded and easily led by their innate sexual nature, yet familial honor depended upon their virtue.²⁰ In examining the Counts of Guines' familial history, Duby observes that "the girls were kept shut up and watched over 'as was right' until they were married."²¹ The same belief resonated in a sermon that he assesses, where the preacher argued that single women posed a clear danger to both families and the social order by instigating marital transgression with their overpowering sexual urges.²² Duby shows in these sources that women were required to be closely guarded to prohibit them from committing wrong doings perpetrated by their libido. Women had to be married, since the marital union contained and controlled women's strong sexual drives.

Duby's account shows that despite the differences between the lay and church models of marriage, the clerics' conception of "Christian marriage" became ingrained in lay mentality, which is exemplified by nobles utilizing clerically established marital doctrines to achieve their goals. The confrontation between lay and clerical models of marriages also propelled clergymen to refine their ideas of Christian marriage. Duby's study illustrates the asymmetrical characterization in male and female sexuality that translated into social expectations for men and women. This characterization resonates with Karras' active/passive construct where one's sexual status established proper behaviors.

SEXUAL EQUALITY IN MEDIEVAL MARRIAGE

Duby portrays lay marriage as an arrangement where women had limited participation since men played a more formative role for the purpose of alliance. In contrast, John Baldwin, a scholar on medieval French aristocratic life and politics, argues that the idea of gender equality was embedded within the clerical model of marriage. By examining a variety of sources composed by lay and ecclesiastic authors, ranging from medical treatises

¹⁹ Ibid., 225.

²⁰ Ibid., 47, 73.

²¹ Ibid., 256.

²² Ibid., 73.

to *fabliaux*, Baldwin offers a more textured and comprehensive view on medieval European sexuality and marriage.

Baldwin claims that egalitarianism in marriage can be examined from the perspectives of marital sex and procreation. Marriage fostered conjugal debt between spouses, which is a mutual sexual obligation between spouses to satisfy respective sexual demands. This bond was strong enough to supersede the abstinence ban on religious holidays.²³ A similar construct of sexual equality could be traced in medieval procreation theory, the two-seed theory. Medieval European physicians believed that each spouse contributed one seed to form the fetus. Similarly, according to Baldwin's explanation, conception was impossible unless two consensual individuals achieved sexual climax simultaneously at the time of seed emission.²⁴

Several points can be deduced about marriage that were not explicitly articulated by the clergy. Though theologians did not consider coitus as the essence of marriage, they recognized the importance of it, which in turn implied that sex was an exclusive bonding agent to married couples. The two-seed theory not only stated parallel parental contribution to the formation of the fetus, but also accentuated the centrality of consent in marriage. Despite the asymmetrical views on male and female sexuality, a sense of egalitarianism was embedded in the very notion of conjugal debt and procreation.

In spite of the inferred marital equality discussed previously, a degree of sexual asymmetry still existed in both male and female sexuality according to the sources that Baldwin consults. He interprets that medical texts characterized women as having stronger sexual desires and experiencing more sexual intensity than men. This depiction permeated through vernacular literature, such as in Ovid's *Ars amatoria*, where men and women's yearning were characterized differently.²⁵ Women's sexual insatiability could upset the balance of conjugal debt, and as Baldwin declares, "When the symmetry of sexual relations is destroyed by the imbalance of female desire . . . the dominance of the man must replace

²³ John W. Baldwin, "Consent and Marital Debt: Five Discourses in Northern France around 1200," in *Consent and Coercion to Sex and Marriage in Ancient and Medieval Societies*, ed. Angeliki E. Laiou (Washington, DC: Dumbarton Oaks, 1993), 260-261.

²⁴ *Ibid.*, 262.

²⁵ *Ibid.*, 266-267.

mutual consent and restore the equilibrium.”²⁶ This reveals that the proper power structure in marriage is where men dominated the relationship due to their socially conceived rationality. When women’s irrationality overcame the balance, it was the male duty to take hold of the relationship, which balanced the equality embedded in conjugal debt.

Baldwin’s account reveals a seemingly contradictory image of medieval European marriage. On the one hand, marriage was an egalitarian institution where both male and female consent was equally valid and both spouses reserved the right to be sexually satisfied. On the other hand, men still had ultimate control in marriage because women’s strong sexual yearning overpowered their rationality. Baldwin’s paradoxical analysis of gender roles in marriage is congruent with Karras’ active/passive paradigm, given that the active role and male dominance are synonymous. These scholars illustrate that male and female sexuality was relatively uniform because the Clergy’s doctrine of gender roles percolated to various levels of medieval society.

HOW CHURCH TEACHINGS PERMEATED AND INFLUENCED LAY SOCIETY

Both Duby and Baldwin’s accounts focus on the nobility’s marriage and their sexual mores. In a relevant article, a historian of theological and cultural ideas on marriage and sexuality, Jacqueline Murray, concentrates on the effects of the consensual theory on the middle to lower strata of the laity. The popularization of the consensual theory in England, Murray argues, was encouraged and disseminated by pastoral manuals that were composed by clerics. These manuals were intended as basic theological guides for parish priests and would shed light on common practices that were not mentioned in texts composed by religious elites.²⁷ One of the examples that Murray uses was John of Kent’s observation on the prevalence of force in betrothal. He strongly urged that force should be kept to a minimum, unless the union could achieve a greater social good that exceeded the impact of coercion.²⁸ Though clergymen emphasized the significance of individual consent in marriage,

²⁶ Ibid., 268.

²⁷ Jacqueline Murray, “Individualism and Consensual Marriage: Some Evidence from Medieval England,” in *Women, Marriage, and Family in Medieval Christendom: Essays in Memory of Michael M. Sheehan, C.S.B.*, eds. Constance M. Rousseau and Joel T. Rosenthal (Kalamazoo: Medieval Institute Publications, 1998), 129.

²⁸ Ibid., 131.

marriage remained as a familial affair to the laity. Murray notes that instead of reiterating the consent theory, John of Kent taciturnly yielded to common practice, which could be construed as the clergymen's efforts to harness the loyalty of the populace.

The unintentional repercussions of the consensual theory also illuminate marital practices on the popular level. Murray points out that a fourteenth-century manual recorded several remedies that were meant to minimize the backlash of the consensual theory. The author of the manual attempted to both assert clerical presence in marriage and transform a private matter into a public affair. To achieve these goals, the author advised to punish parish priests who blessed clandestine unions, and encouraged clergy members to officiate the ceremony.²⁹ As a result, the clergymen sought conciliation between actual practices and theological expectations to effectively edify their flocks. Murray's account shows the steady clerical efforts in establishing their presence in lay life. Simultaneously, the laity processed these principles and their interpretations of these marital doctrines, thus creating a continuous dialogue between clerics and the populace that exemplified medieval cultural vitality.

It can be speculated that that these manuals aimed to polish the logistics of marriage, instead of encapsulating the meaning of it. From Murray's narrative, it is evident that the populace embraced a clerical model of marriage, which signified that all marital affairs fell under ecclesiastical jurisdiction. As Murray concludes, neither the clergy nor the head of the household gained complete control of marriage since the populace adopted strategies that were advantageous to their situations.³⁰ Despite this outcome, it is clear that theologians successfully disseminated the marital ideal they upheld at the popular level and asserted their influences in the way families were formed. The variations of marital principles could be viewed as cultural fluidity that existed within different levels of churchmen. At the pastoral level, the goal was to not only indoctrinate fundamental Christian marital principles, but also to render these principles into something compatible to their flock's rationale. Through this process, Christian influence slowly but steadily trickled down to the laity.

²⁹ Ibid., 140-141.

³⁰ Ibid., 146.

DEBATES ON MARRIAGE IN THE CLERICAL COMMUNITY

Irven Resnick presents the debate on marital theories within the clerical community and analyzes how this contention questioned the validity of Joseph and Mary's marriage, one that was considered as an ideal union in Christianity. Resnick identifies the two factors that motivated medieval theologians to develop a uniform definition of marriage: eradication of clerical marriage and control of lay life. The dividing point of the debate was whether consent or coitus constituted marriage. As evident in Duby and Resnick's accounts, the consensual model was antagonistic to the nobility's common practices, where parental authority played a pivotal role rather than individual consent.³¹ The same model also legitimized Joseph and Mary's marriage, given their mutual consent to wed, even though their marriage was not sexually consummated according to medieval European belief.

Resnick points out that the fallacies of the consensual model stemmed from the immaterial nature of mutual consent; people could end undesirable marriages by claiming the absence of consent, thus posing a threat to the principle of indissolubility.³² The historian also indicates that the consensual model undermined the significance of sexual union, which was paramount in the lay concept of marriage.³³ The coital theory mended the consensual theory's shortcomings by characterizing consummation as the quintessence of marriage because coitus provided "empirical evidence" for the existence of the union.³⁴ Joseph and Mary's marriage would be invalidated in light of coital theory for they did not consummate the union. Their illegitimate marriage would create a debacle in Christian theology. Debilitating effects aside, a possible reason that explained clerical reluctance in accepting coital theory could be the obvious lay influence in the model; adoption of this theory would symbolize concession to lay practices. Conjugal theory was considered a compromising approach to maintain theoretical balance between consensual and coital theories, without adulterating the Christian foundation. This model of marriage was composed of both consent and consummation, and since Joseph and Mary's marriage had one of the elements, it

³¹ Irven M. Resnick, "Marriage in Medieval Culture: Consent Theory and the Case of Joseph and Mary," *Church History* 69, no. 2 (2000): 352.

³² *Ibid.*, 360-361.

³³ *Ibid.*, 353.

³⁴ *Ibid.*, 359.

remained valid. Resnick construes this intermediary stance as a revelation of the shifting nature of marital theories, and as an effort to accommodate social reality.

Resnick's article also explains the understanding of female sexuality during the Middle Ages. He observes that medieval European theologians devised scientific methods to attest the existence of consummation, since it was believed that some women knew how to fabricate virginity through means of medicine, insinuating that women were prone to trickery and were by nature deceptive.³⁵ This typified image of medieval European female sexuality coincides with a prevailing assumption of the conniving nature of women that rendered them unreliable, hence justified the need for verification of their claimed virginal state. A corollary to this understanding substantiated women's subjugation to men, given that men were more rational in comparison, and such general gender expectations extended to marital relations. Resnick's study reveals how the clerical community arrived at an applicable and practical marriage model for the populace, without sacrificing religious integrity. Medieval European theologians bifurcated marriage into consent and coitus, rather than definitively deciding which element constituted it. With their marriage model that consent alone comprised a valid marriage and intercourse rendered the espousal indissoluble, theologians both appeased the populace and safeguarded theology.

POPE ALEXANDER III'S EFFORTS TO HARMONIZE THE DIFFERENT MODELS OF MARRIAGE

The reciprocating nature of the marital debate between the clergy and laity is also central in an article focusing on Pope Alexander III's harmonization of contradictions in marital principles. Contrary to clergymen's abhorrence of coitus, the Pope identified the capacity of marital sex in his rulings. James Brundage presents a case of impotence where Pope Alexander argued that marriage was not intact when either consent or coitus was lacking. Marriage was in full vigor when two elements were combined, and this reasoning warranted the papal ruling that a marriage was null due to the impossibility of marital sex.³⁶ Pope Alexander's ruling stressed the importance of marital sex, and how it fostered an

³⁵ Ibid., 363.

³⁶ James A. Brundage, "Marriage and Sexuality in the Decretals of Pope Alexander III," in *Sex, Law, and Marriage in the Middle Ages*, ed. James A. Brundage (Hampshire, England: Variorum, 1993), 70.

indissoluble bond between married couples. To further determine the altering quality of intercourse to marriage, Brundage cites an instance of a couple with social disparity. When the husband was unaware of his wife's servile status, he could separate from her if the marriage was unconsummated; however, if the marriage had already been consummated, separation was not permitted since the intercourse strengthened the relationship and created a bond of indissolubility.³⁷ From these two examples it can be concluded that Pope Alexander was pragmatic in embracing the importance of intercourse in lay context, while maintaining the theological consistency in marital teachings.

Even though coitus was significant in lay marriage, the Pope did not utilize it as an encompassing rule for all cases. Brundage explains that in cases such as bigamy, Pope Alexander opined that consent superseded consummation for the reason that one could not consummate the second marriage simply for the purpose of annulling the first one.³⁸ In the theologians' reasoning the exchange of present consent (for example, the words "I am taking you to be my wife") held the same legal validity as consummation; therefore, any subsequent marital agreement would be invalid.³⁹ Based on Brundage's presentation, it is evident that though consent was an oral promise, the words carried the same legal substance as actions. Marriages that were bound by either carnal relation or consent were equal in the Church's perspective. The uttered words changed the nature of the relationship and transformed two individuals into husband and wife, and this could not be separated except under certain extraordinary circumstances.

The overall sense gathered from Pope Alexander's rulings was the papal efforts in maintaining the balance between coitus and consent. The Pope protected the principle of indissolubility and set a parameter with rulings on exceptional cases that established precedence for future clergymen. His conciliatory stance can be interpreted as an endeavor to anchor the laity's loyalty and narrow the ideological differences held by theologians and the populace. Alexander's pragmatism in the application of marriage principles showed the resilience and flexibility of Christianity.

³⁷ Ibid., 75.

³⁸ Ibid., 81.

³⁹ Ibid., 73.

HOW THE STUDY OF ILLICIT SEXUAL BEHAVIOR ILLUMINATES AN UNDERSTANDING OF MARRIAGE AND SEXUALITY

Any extramarital sexual behaviors were considered illicit in medieval Europe. Examining illicit sexual conduct can contribute to the understanding of sexuality since licit and illicit sexuality are two sides of the same coin, and medieval theologians and jurists understood illicit sexual behaviors from the licit ones. In *Ravishing Maidens*, Kathryn Gravdal explores the nuances and meaning of rape by juxtaposing vernacular literature and court transcripts to show how these two different types of sources exhibit similar understandings on the subject.⁴⁰ She points out that there is no word in the medieval lexicon that corresponded to the idea of forced coitus; the term that had the closest meaning, *raptus*, connoted marriage by abduction, in which forced intercourse was not necessarily involved. Gravdal shows how the issues of rape and marriage were intricately meshed by explaining that in the medieval legal mentality, *raptus* was a crime against another man's property because the abductor challenged the head of the household's authority by snatching the woman away without his permission, thus committing a theft against another man.⁴¹ Marriage was one of the condoned solutions to remedy abduction because it functioned as a social rite that "allowed women to be shared out peacefully among men"⁴²; *raptus* disrupted and bypassed such distribution that could lead to family feuds.

Several plausible conclusions may be deduced from Gravdal's reasoning. *Raptus* stood as a stark contradiction to the essence of marriage, in that force in lieu of mutual consent catalyzed the union. Preservation of social orders was one of the motives that propelled theologians to sacrifice the very model they championed, and their acquiescence created a legal vacuum allowing couples who did not have parental permission to stage a false abduction. The legal void also accentuated the social importance of marriage in medieval culture, due to its function in maintaining social stability. Most importantly, this option

⁴⁰ Kathryn Gravdal, *Ravishing Maidens: Writing Rape in Medieval French Literature and Law* (Philadelphia: University of Pennsylvania Press, 1991), 1, 15-16, 20.

⁴¹ *Ibid.*, 6.

⁴² *Ibid.*, 8.

insinuated that marital union was regarded as a panacea that rectified illicit sexual behaviors, and it further accentuated that marriage was designated as a default status for laity.

This discourse on rape also sheds light on the nature of female sexuality. Gravdal illustrates how gradual changes in the lexicon of rape transformed the nature of the offense, as well as transferred responsibility from men to women. The author charts the changes that *ravir*, the Old French term for rape, had undergone from abducting a woman for forced intercourse to coerced coitus associated with sexual joy.⁴³ The new meaning implied that women were responsible for their victimized state because they might have instigated the incident and enjoyed the ravishment.⁴⁴ In one sense, women were the victims of their sexuality, based on the stereotypical portrayal of lustful and sexually insatiable women. Alluding to the previous discussion on the correlation between desires and sexuality, women were seduced because of their passivity. In the context of rape, women might have succumbed to their seductive and lustful nature to provoke their perpetrators. In other words, both men and women acted according to their sexuality. The criminality of men was mitigated by the removal of abduction in the lexicon of rape.

The connection between rape and male sexuality can be identified from the perspective of sexual adventure. Previous discussions on medieval male sexuality have shown that men's sexual exploration was tolerated more than women's, and, in fact, men's virility was seen as an integral part of their sexuality. Gravdal examines young clerics' sexual transgressions in court records and interprets rape as a form of sexual passage that was accepted by the community in the Middle Ages, which was exhibited in the willingness of the fathers of these young clerics to pay fines for the rape charges.⁴⁵ It can be speculated that the relatively light penalty placed on these young clerics was relational to their membership in the clerical community, given that clergymen were also judges on these cases. Additionally, these young clerics were of noble upbringing and it seemed that they have carried over the need to prove male prowess from their former secular lives into their religious ones. Karras' construct also helps to explicate the general acceptance of men's

⁴³ Ibid., 4.

⁴⁴ Ibid., 5.

⁴⁵ Ibid., 125.

sexual exploits because the actions could be construed as active and virile. Since men acted in accord with social expectations, the gravity of their transgression was mitigated. The above analysis of the medieval understanding of rape manifests how both socially constructed sexuality and licit sexuality contributed to defining illicit sexual behaviors; hence, the licit and illicit sexuality shared a symbiotic relation.

ILLICIT SEXUAL BEHAVIORS IN CASES OF RUNAWAY WIVES

Sara Butler, a social historian who focuses on the power relationship in marriage, discusses many illicit sexual transgressions that were embedded in issues of runaway wives in late medieval England. A sense of fluidity is also revealed in the ecclesiastical court's rulings, implying the flexibility of the clergy while applying theoretical principles to actual marital disputes, as well as the nebulous quality of illicit sexuality. The author observes that some medieval women ran away from their less than satisfactory marital unions and abandoned their husbands, in view of the difficulty in filing for divorces and remarriage. Noting clergymen's persistence in bringing these women to court, Butler concluded that husband desertion was considered serious.⁴⁶ Interestingly, most of these women were charged with ravishment, which was often associated with rape, but in the context of these cases, the term connoted the removal of husbands' properties. The accomplice of these women would also be accused of ravishment regardless of gender.⁴⁷ The accusation demonstrated that the term ravishment was highly contextual in that it exhibited a multitude of meanings. Due to the wide array of meanings, ravishment became nebulous in nature, which incidentally mitigated violence against women. The punishment of the accomplice could be explained by subjugation of women to men. Helping women to escape from the male authority's control was equivalent to impeding the man's authority.

A common allegation brought against these runaway women was adultery. In cases where the accomplice was a man, the wife would be charged with both ravishment and adultery. Butler points out that in the cases she has examined, adultery was characterized as a

⁴⁶ Sara M. Butler, "Runaway Wives: Husband Desertion in Medieval England," *Journal of Social History* 40, no. 2 (2006): 341.

⁴⁷ *Ibid.*, 338, 342.

woman's offense based on the reporting of an adulterous relationship that usually involved a married woman. Theoretically, both men and women were punishable by law if committing adultery; however, a stigma was attached when a married woman had an affair more so than a married man. In medieval reasoning, more social consequence engendered from an adulteress than an adulterer, due to a possible paternity dispute, while paternity would be certain if men committed the same offense. In addition, the stigma could be related to the construct of female sexuality. Another common allegation that Butler identifies is the deserted husbands' claim that their wives behaved irrationally and left without reason.⁴⁸ As formerly established, medieval society deemed women unreasonable and mentally feeble by nature. Due to their weak mental faculty, women could not control their strong sexual urges which could lead to marital transgressions. Women could be scapegoats in unsatisfactory unions when these two social assumptions conflated. In one sense, these wronged husbands utilized their wives' intrinsic fallacy to explain the desertion because the act itself implied that the husbands lost control over their wives in some ways. Given that men ought to dominate in marriage, desertion challenged such established male authority.

The issue of runaway wives also provides another perspective on male sexuality. Butler speculates that impotence was one plausible reason that wives would abandon their husbands. Though impotence served as a legitimate ground for annulment and divorce, Butler speculates that women chose to run away because of the association between impotence and male sexuality. The author succinctly states that it was potentially dangerous for women to bring an impotence suit because it questioned a man's virility.⁴⁹ Both socially and sexually, men occupied the position of dominance in the medieval conceptualization of marriage; therefore, an impotence suit declared the inadequacy of male power and diminished dominance. In some sense, impotence toppled the established social hierarchy in marriage because the charge questioned the sexual prowess of a man, the source of his power and identity.

The previous discussion on female sexuality shows that medieval women were victimized by their socially constructed sexuality. Butler examines a case which illustrates

⁴⁸ Ibid., 347-348.

⁴⁹ Ibid., 347.

how these social assumptions of women could also exonerate them of illicit sexual accusations. A woman was accused of both husband desertion and being another man's kept woman, with whom she begot a child. Due to the absence of punishment in the court transcript, Butler speculates that the second fruitful union might have absolved the woman's wrongdoing.⁵⁰ The fact that the woman had a child with her alleged abductor showed her maternal volition, which would not have been actualized if she had stayed with the impotent spouse. This case illuminates the importance of motherhood in the Middle Ages, and how it served as the shielding argument for this woman's adultery. This case also indicates that the clerical court did not strictly adhere to the marital theology, but actively interpreted these principles to fit real situations. This flexibility in ruling also conveyed nuances in the characterization of sexuality.

SEXUALITY IN THE IBERIAN CONTEXT

After establishing a general European survey, this chapter now changes focus to Iberia. Various scholars have argued that Iberia serves as a curious case study because of its ethnic and cultural plurality, showing that Iberian sexuality exhibited different qualities than its European counterparts. Due to the presence of ethnic others, both sexuality and marital constructs in Iberia would serve as a good comparison to the pan-European model, given that the Christian community constantly interacted with other groups. To achieve and maintain political and sexual hegemony, Christian authors in Iberia diminished the sexual prowess of other groups in an attempt to maintain the political and sexual status quo. The issues of sexuality were often manifested in a variety of ethno-religious interactions, such as interreligious violence, which, in turn, revealed the boundary of licit and illicit in the broader scheme. From that standpoint, sexuality reflected social volatility and convention.

Islamic Concepts of Marriage and Sexuality

Manuela Marín's article presents an ideal image of marriage and proper female conduct from the perspective of Andalusian writers.⁵¹ This perspective attributed similarities

⁵⁰ Ibid.

⁵¹ Deducing from the context of Marín's article, the author uses the term "al-Andalus" and "Andalusian" to signify southernmost part of Spain that was governed by Muslims.

to Islamic and Christian constructs of both male and female sexuality, even though the two communities held opposite views on marriage and celibacy at the theorists' level. Contrasting with the prohibitive attitude in Christian penitential, the Islamic theorists' frankness in sexual matters revealed the importance of marriage in Islamic culture. Marín presents a tenth-century compilation that covered different aspects of conjugal intimacy, from detailed instruction regarding intercourse to prohibitive positions.⁵² The mention of conjugal intimacy and the positive value of marriage signify that ideally sexual activities were confined within the bond of marriage, and that intimacy was considered normal within married life. By setting the parameter on the sexual acts of a married couple, Islamic theorists not only clearly delimited the border between licit and illicit, but they also asserted their authority to regulate couple's intimate life. Marín observes that the chapter headings in Ibn Habib's text read like an instruction manual that set guidelines to regulate conjugal intimacy. The extensive discussion on the subject indicates the importance of marriage in Islamic culture, even as it suggests that all sexual activities were ideally confined to marriage.

Similar to that of Christian tradition, Marín claims that female sexuality posed vexing concerns in the Andalusian mentality. The Islamic construction of female sexuality contained two seemingly opposite elements. Women were both virtuous and dangerous in that they were defined by their marital status and their insatiable libido.⁵³ Marín points out that the fear of women's sexual urges can be seen in the Muslim authority's attempt to limit the frequency of intercourse and in the justification of veiling. The rationale behind the latter was that women's mental faculty was so weak that it might be overpowered by their strong sexual drive. The mere exchange of a glance could excite sexual desires.⁵⁴ Marín reasons that the same restrictive convention does not apply equally to all women. For instance, female slaves were not held to the same standards as women of higher social standing because they often did not have male relatives to dishonor. This condition would change once they entered the domestic realm bearing their master's children.⁵⁵

⁵² Manuela Marín, "Marriage and Sexuality in Al-Andalus," in *Marriage and Sexuality in Medieval and Early Modern Iberia*, ed. Eukene Lacarra Lanz (London: Routledge, 2002), 6-7.

⁵³ Ibid., 9.

⁵⁴ Ibid., 9, 12.

⁵⁵ Ibid., 13.

Both Christian and Muslim communities alike felt the need to restrain women's sexuality due to women's innate weakness, though both communities had divergent views on marriage and the ideal of a perfect woman. It can be said that once a woman crossed the threshold of domestic life, she would be under societal scrutiny. This type of life could be both circumscribing and liberating to Muslim women. Interestingly, the liberating factor was not presented in the Christian counterpart in the secondary scholarship examined thus far, which could be explained by the fact that most primary sources pertained to nobility rather than commoners. Unions that involved great social disparity were usually presented as concubinage, which will be addressed later in the chapter. The above discussion shows parallels and differences in the Christian and Islamic understanding of marriages. Similarly, in these two cultures women's conduct was contingent on men's honor in the upper echelon; women from lower classes might not be as closely suppressed.

The rhetoric for Islamic male sexuality was comparatively straightforward. Similar to the Christian outlook of men, Muslim men had other sexual outlets besides marriage, and they were responsible for regulating their wives' sexuality because women were perceived as emotionally and mentally feeble.⁵⁶ Nonetheless, although polygamy was sanctioned in Islamic society, Muslim men who engaged in extramarital affairs were severely punished.⁵⁷ Marín illustrates this attitude with an example of a Muslim father, who purchased a slave girl to accompany his son on a long journey. The purpose of the slave girl was to help the young man "abstain from the illicit"; in other words, to prevent dalliance with prostitutes or any women outside of marriage.⁵⁸ It is interesting to note how the differences in marital arrangements affected perspectives on illicit sexual behaviors. For Christians, monogamy in either form of marriage or concubinage in a way justified men's infidelity, given punishment on extramarital relationship was lenient. In contrast, Muslim men had all the socially sanctioned outlets within marital bounds, thus marital infidelity was punished. It can also be concluded that marriage functioned as a social controlling mechanism for both men and women. Islamic theorists approached the issue of sexuality with an open attitude and

⁵⁶ Ibid., 7.

⁵⁷ Ibid., 16.

⁵⁸ Ibid., 8.

enumerated various scenarios in couples' intimate life. In doing so, the Muslim scholars prescribed the outer limit of the licit behaviors, and by setting a clear parameter an obtainable standard could then be imposed on the practitioners.

Interreligious Dialogue on Sexuality through Means of Literature

The pluralistic ethno-religious coexistence accentuated concerns of interfaith sexual encounters in medieval Iberia. In her monograph titled *Women, Jews, and Muslims in the Texts of Reconquest Castile*, Louise Mirrer investigates the symbiosis of majority and minority sexuality and mutual influences.⁵⁹ The author argues that interreligious conflict in medieval Iberia was not limited to personal encounters, but also projected in literary work. She reveals the complexity of marriage and the sexuality of minority men and women in her analysis of *Reconquista* literature.

For medieval women, widowhood could be a time of opportunity to assert their independence because they were no longer under the control of men. Theologians had divided views on this period. On the one hand, they encouraged widows to remain chaste and dedicate their lives to religion; on the other hand, they feared that widows might act aberrantly without men's guidance, given women's natural instincts. Thus, clergymen opined that widows, especially young and beautiful ones, should marry for the sake of ensuring the proper social order.⁶⁰ Mirrer's analysis uncovers theologians' uncertainty of women's trustworthiness, which reflected the common medieval perception of women. Though theologians depicted women's sexuality negatively, they still believed in women's spiritual potential should they remain chaste, emulating the Virgin Mary. Instead of presenting a flat image, Mirrer's study shows a nuanced view of women: that they were capable of achieving a lofty spiritual position without being controlled by men. More importantly, this portrayal suggests that it was possible for women to rise above the stereotypical depiction and be independent to exercise their individuality.

⁵⁹ Louise Mirrer, *Women, Jews and Muslims in the Texts of Reconquest Castile* (Ann Arbor: University of Michigan Press, 1996), 5.

⁶⁰ *Ibid.*, 121.

Different from previously examined sources, Mirrer's study sheds light on minority female sexuality through the eyes of male Christian authors, whose purpose was to justify and maintain Christian hegemony. One of the tales that Mirrer analyzes involves a Muslim king giving his virgin sister to console a Christian nobleman. She reasons that similar to Christian values, unmarried Muslim women were under their male kin's control and that their virginity contained social importance, which explicates the princess's worthiness as an offering.⁶¹ In this context, the princess's body became the site of male power contention; that the princess's body was "conquered" by a Christian symbolized Christian dominance over Muslim territories. The Muslim king's offer reflected the "Christian's desire for the total possession of Spain."⁶²

The derogatory portrayal of Jewish women indirectly strengthened the discourse of Christian dominance. Mirrer describes a Jewess who was rescued by the Virgin Mary at the moment of execution by her coreligionist, possibly for miscegenation charges. The Jewess was not only converted to Christianity, but also transformed from a harlot to a chaste woman.⁶³ Mirrer's analysis discloses that Christians perceived Jewish women as sexually loose and that Jewish men could not control them. Christianity played an intriguing role in this tale in that it saved the Jewess despite the Jews betrayal of Christ, as well as cleansing her vile qualities. The underlying message conveys the spiritual superiority of Christianity over Judaism that justified Christian dominance over Iberia.

Christian authors equally scrutinized minority male sexuality. While stereotyping minority women's sexuality, Christian male authors also scrutinized minority men's sexuality. Mirrer explains that in *Reconquista* literature, specific speech patterns and demeanors were associated with each gender. Men were characterized as aggressive and assertive; women were typified as helpless, meek, and using polite speech.⁶⁴ The Muslim king was portrayed as weak and effeminate because he showed clemency to his Christian enemy. In Christian writers' perception it was unacceptable for a king, the power pinnacle of

⁶¹ Ibid., 17-18.

⁶² Ibid., 22.

⁶³ Ibid., 32, 39-41.

⁶⁴ Ibid., 13.

a community, to be amicable to his enemy, let alone offering his own sister for marriage.⁶⁵ The Muslim king's inability to antagonize his Christian enemy reflected the inaptness of the entire Muslim community to politically dominate Iberia. Mirrer observes a similar weakness in Jewish male identity from their professions in *Cantar de mio Cid*. The ballad presented Jewish men's femininity vis-à-vis Christian's masculinity through depiction of their professions; while Christian men undertook military endeavors in reclaiming Muslim territories, Jewish men earned their living through usury. The contrast implicated an unmanly quality in Jewish men, and insinuated their disqualification in political dominance.⁶⁶

In one sense, *Reconquista* literature was similar to propaganda, by its tendency to justify Christian hegemony in Iberia through deprecating minority others. From the derogatory views of the ballad, one notices that the right to political ascension was interconnected with the idea of sexuality; in other words, the triumphant group's hallmark was the demonstration of masculinity. If one accepted the active/passive paradigm articulated by Karras, it could be argued that because the feminine qualities existed in minority men, they were meant to be dominated by their Christian counterparts. From this perspective, it is evident that characterization of sexuality was not limited to Christian identity, but also influenced communal interactions of the three ethnic groups.

How Violence Contributes to Interreligious Miscegenation

When examining interactions of minority groups in medieval Iberian society, historians adopt polarized stances on the nature of coexistence. Some scholars romanticize the Iberian experience as harmonious, while others argue that it is a persecuting society in the making. Instead of pursuing the extreme, David Nirenberg argues that violence acted as a stabilizing factor that sustained the coexistence, since "violence drew its meaning from coexistence, not in opposition to it."⁶⁷ His analysis on interreligious violence also exposes the complexity of Iberian sexuality. Due to the degree of integration in Iberian society,

⁶⁵ Ibid., 23, 50, 58-59.

⁶⁶ Ibid., 70-71.

⁶⁷ David Nirenberg, *Communities of Violence: Persecution of Minorities in the Middle Ages* (Princeton: Princeton University Press, 1998), 245.

interacting with other religious minorities was inevitable. Therefore, it is interesting to see how all three communities actively marshal sexual boundaries to prevent religious outsiders from comingling; boundaries established by respective communities overlapped and reinforced mutually.⁶⁸ Nirenberg points out that interreligious social gaiety became threatening when a Christian prostitute was involved because sexual boundaries were at stake. Though in theory prostitutes were common women who could be accessed by all men, in an interreligious situation, Christian prostitutes could only receive their coreligionists.⁶⁹ This seemingly stringent rule stemmed from the concept that sexual intercourse created a degree of affinity for both participants' social networks; thus, when Christian prostitutes engaged in sexual interactions with Muslims or Jews, it would not only be considered deviant, but it would also comingle blood of all three communities.⁷⁰ In this context, women's bodies became the site of contestation that was equated with the entire community's integrity.

Just as women's honor reflected on their families, the integrity of Christian prostitutes' clientele defined boundary. It is intriguing that a great deal of social responsibility was placed on women, yet they were socially deemed feeble minded. This oxymoronic expectation justified the control imposed upon women in general. It is particularly interesting that Christian authorities expected prostitutes to safeguard the delicate ethno-religious boundary especially when they were defined as promiscuous and morally loose. This fact implies that their vile social image did not exonerate them from scrutiny; they were held to some of the same standard as other women despite their profession. In spite of this strict boundary setting, Nirenberg mentions that very few offenders were convicted of such transgression because miscegenation accusations against Jews and Muslims often appeared as subsidiary in a full-fledged confrontation. The cause of the conflict might not be relevant to sexual boundary crossing; however, the violation of Christian women could be utilized as the motivation in defending faith.⁷¹

⁶⁸ Ibid., 138.

⁶⁹ Ibid., 131-132.

⁷⁰ Ibid., 155.

⁷¹ Ibid., 160-161.

It is apparent that Iberians used interreligious sexuality as leverage to accentuate their legal claims. Nirenberg reiterates throughout the monograph that because of the symbiosis between violence and coexistence, violation of interfaith sexual boundaries catalyzed violent episodes in an already combustible environment. It could be possible that the detriment of interreligious sexual encounters might not preoccupy the Iberian mindset, given that violence fueled entirely by miscegenation appears to be exceptional in Nirenberg's account.⁷² The hefty punishment could suffice to deter people from committing the crime, rather than the fear of ethnic adulteration.

The Fluidity Between Licit and Illicit Sexual Conducts

Eukene Lacarra Lanz's intriguing article argues that the boundary that demarcates licit and illicit sexuality is volatile because it is subject to changing elements such as gender expectation, morality, and social labeling.⁷³ Though the temporal focus of Lacarra Lanz's article falls on the fifteenth and sixteenth centuries, useful motifs can still be extracted to enhance the understanding of marriage and sexuality in the context of *Las Siete Partidas*.

Concubinage became a viable option when two individuals could not contract a formal marriage. Lacarra Lanz argues that theologians and lawmakers were willing to accept any form of relationship that resembled marriage for the purpose of maintaining social stability and reining in sexuality. By examining a declaration of cohabitation, Lacarra Lanz points out such relationships mimicked marriage in that one condition listed in the contract required the woman to "keep the chastity a wife owes her husband."⁷⁴ In addition, this arrangement was similar to marriage in its contractual nature. The author points out that the prevalence of the practice explained theologians' tacit acceptance, since betrothed couples in Iberia often cohabited after betrothal, without formalizing the union.⁷⁵ Many clerics were conscious of the populace's matrimonial practices, and attempted to incorporate some lay

⁷² Ibid., 164-165.

⁷³ Eukene Lacarra Lanz, "Changing Boundaries of Licit and Illicit Unions: Concubinage and Prostitution," in *Marriage and Sexuality in Medieval and Early Modern Spain*, ed. Eukene Lacarra Lanz (London: Routledge, 2002), 166.

⁷⁴ Ibid., 159.

⁷⁵ Ibid., 162.

practices into marital doctrines; thus, theologians' tolerance toward concubinage can be interpreted as a form of accommodation to their practitioners. On the pragmatic level, the acceptance of concubinage showed that the prerequisite for both the theological and secular authorities to control sexuality involved knowing the sexual affiliation of the populace; hence, instead of overlooking a common practice, it would be advantageous for the authority to adopt a more inclusive than exclusive approach in defining licit sexuality.

Conceptualization of male sexuality correlated to toleration of concubinage. Interestingly, as Lacarra Lanz points out, a fifteenth-century bishop contended that extramarital sexual outlets must exist because of men's lust, which is juxtaposed with Karras' argument on how male clergy members judged female sexuality more harshly than male sexuality.⁷⁶ The bishop's viewpoint befits the context of the presence of a copulating laity. The accommodating stance of clergymen on certain marital practices was their effort to shape marital principles into a tangible set of rules for the laity. After all, it would be moot to have marriage regulations that were entirely aberrant from actual practices. The bishop's statement also reveals that fundamentally, clergymen realized the difference that set them apart from their practitioners; hence, strategically it would be ideal to contain and regulate excess sexual energy in the form of a marriage-like relationship, despite the moral and legal ambiguity.

Both prostitution and concubinage place female sexuality in another perspective. The existence of morally dubious institutions both safeguarded and endangered women. Lacarra Lanz observes that Iberian theologians tended to view women in a dichotomy of good and bad. She explains that well-reputed and debauched women essentially shared a symbiotic relation because honorable women were only virtuous when being compared to dishonorable women, who were lustful, corrupt, and deceitful. Correspondingly, dishonest women could practice their profession only because they could do what good women could not.⁷⁷ Given the interdependent nature of these two categories, it was conceptually challenging for theologians to think positively of women, which explains Lacarra Lanz's conclusion on the misogynistic rhetoric engendered by the dichotomy. This construct elucidates the tolerance

⁷⁶ Ibid., 163.

⁷⁷ Ibid., 169.

on concubinage and prostitution, despite the fact that both practices were morally and legally dubious, as well as illuminates the interlocking nature between sexuality and sexual acts. Ultimately the aim of regulating sexuality was to preserve the social order.

CONCLUSION

The analysis in this chapter shows how marriage differed among various sectors of the population. While the ecclesiastic perspective portrayed marriage as a union of two consensual individuals, the nobility viewed marriage as the transaction of alliance building and procreation of progeny. For the populace from the lower strata, marriage simply involved two persons' desire to cohabit, and to separate when such desire ceased. The intertwining nature of sexuality and marriage not only determined the division of duties and role for both spouses, but also embedded social expectations of men and women. The discussion on marriage and sexuality also defied the assumption of a stagnant medieval society to some extent. As Duby suggests, neither clerical nor lay model triumphed; the two models meshed over time.⁷⁸ To ensure the practicality and enforceability of the marital doctrines, it was imperative for the theologians to comprehend marriage in a lay context. Conversely, Christian influence in lay marital practices was undeniable, since the consensual theory permeated even to the lower social strata. The overall uniformity from a variety of sources signifies exchanges and influences between different spheres of society, from which may be concluded that the two seemingly opposing models were symbiotic and integrated during the twelfth and thirteenth centuries.

⁷⁸ Duby, 283-284.

CHAPTER 2

THE POWER OF “I DO”: LICIT SEXUAL BEHAVIORS

Laws regarding marriage and social relations were categorized under the fourth part of *Las Siete Partidas*. Roberto González-Casanovas interprets the fourth part as structurally occupying the center of the entire legal code, which is comparable to a person's heart; this allegorically conveys the importance of marriage and related matters in medieval Iberia.⁷⁹ Though in essence *Las Siete Partidas* was a civil code, due to the overlapping nature of various legal systems in medieval Europe, traces of canon laws could be discerned in this legal compendium. To a certain extent the code conformed to marital principles articulated by the clerical community, but it simultaneously exhibited some regional differences, as well as reflecting Iberian jurists' efforts in reconciling social ideals and reality. As a result, *Las Siete Partidas* demonstrated vitality and vigor in medieval culture.

This chapter juxtaposes the ecclesiastical understandings of marriage from Chapter 1 and marital formation in *Las Siete Partidas* in order to reveal mutual influences and exchanges between the clerics and the populace. It is worth mentioning that *partida* four not only entails laws regarding betrothal and marriage, but also includes discourse on concubinage and clandestine marriage. Discussion of the latter two topics demonstrates the length that medieval jurists and theologians would go in order to maintain the social order, despite the moral and legal ambiguity that these two practices embodied.

BETROTHAL

In the medieval European context, marriage was subdivided into two stages—betrothal and wedding. According to *Las Siete Partidas*, a betrothal “is a promise which persons make orally when they desire to marry.”⁸⁰ The nature of betrothal varied based on

⁷⁹ González-Casanovas, “Gender Models,” 45.

⁸⁰ Robert I. Burns, ed., *Family, Commerce, and the Sea, Volume 4: The Worlds of Women and Merchants of Las Siete Partidas*, trans. Samuel Parsons Scott (Philadelphia: University of Pennsylvania Press, 2001). Laws

the types of consent that a couple exchanged, present or future. Present consent, “I take you as my wife,” contracted marriage immediately; future consent, “I will take you as my wife,” was considered as a betrothal. What is even more interesting is that future consent would formalize marriage when sexual intercourse took place, which coincided with Pope Alexander III’s ruling on the transformational quality of coitus.⁸¹ The type and nature of consent demonstrated the effects of oral words and time, since present consent catalyzed an oral promise into social reality, which also signified one’s status change from single to married, whereas future consent constituted an engagement, predicated a marital union in the future.

The law further elaborated on ways to contract a betrothal, such as the exchange of tokens that symbolized the fostering of such relationships, or the expression of reciprocal agreement for matrimonial union in the future. One detail that set apart a present betrothal from a future one was the presence of the ring. Men and women could either voice their intentions to marry each other, or the man could put a ring on the woman’s finger.⁸²

The jurists emphasized the power of spoken words when discussing the concepts of present and future consent. According to Brian Stock, textual evidence might not carry as much weight as communication in the form of speech and gesture in an oral-aural culture.⁸³ Consequently, “The meaning of each word is ratified in a succession of concrete situations . . . all of which combines to particularize both its specific denotation and its accepted connotative usage.”⁸⁴ In other words, it is the combination of gesture and the meaning of words that renders culturally significant communication. In the context of betrothal, the contract was an oral promise in lieu of a written agreement, but equally compelling. The capacity of consent was particularly telling in that Iberian legal specialists recognized the validity of the marriage of people who were deaf or mute. The jurists articulated that as long

from *Las Siete Partidas* mentioned in the subsequent chapters will be cited in the order of *partida*, title, and law. Burns, *Family, Commerce and the Sea*, IV, I, I.

⁸¹ Brundage, “Marriage and Sexuality in the Decretals,” 67.

⁸² Burns, *Family, Commerce and the Sea*, IV, I, II.

⁸³ Brian Stock, *The Implication of Literacy: Written Language and Models of Interpretation in the Eleventh and Twelfth Centuries* (Princeton: Princeton University Press, 1983), 15.

⁸⁴ *Ibid.*, 15.

as gestures of consent were expressed, the union was as valid as the one contracted by speech.⁸⁵

Parental, familial, and cleric involvement was absent in the regulation of the betrothal, since the law emphasized the binding of two consensual hearts and echoed many of the theologians' constructs of marriage that were discussed in Chapter 1. Consent was crucial, to the extent that parents could not betroth their daughter unless she was present. Any promise of betrothal made by the parents during the absence of the daughter would be invalid.⁸⁶ The parents, particularly the father, only had power to arrange marriages for their children when the children gave parents their explicit consent and subsequently agreed to the betrothal. Should the identity of the future bride not be named and the father had more than one daughter, he then possessed the authority to choose which daughter would be wed. The father would not be obligated to offer another daughter, should the potential groom refuse to marry the selected bride.⁸⁷ The rationale for this particular law was based on the notion that marriage essentially concerned two consensual individuals, and the presence of the involved parties was required. The parents' only recourse was to disinherit their daughters should the daughters refuse potential marriage partners.

To a certain extent the law limited parental authority in deciding their children's marriage, and upheld individual liberty in deciding one's future marriage partner. The only legally sanctioned opportunity when parents could be involved was when children gave consent to their parents to serve as their proxy.⁸⁸ This regulation paralleled Pope Alexander III's effort to free marriage from familial control, and placed the ultimate power in the hands of the future married couple. In James Brundage's interpretation, the papal reform on the subject of betrothal combined matrimonial regulation and sentimental values conveyed by the courtly love that elevated marriage to a more personal relationship.⁸⁹ Though church authorities had limited involvement in betrothal, they reserved the right to compel betrothed

⁸⁵ Burns, *Family, Commerce and the Sea*, IV, II, V.

⁸⁶ Ibid., IV, I, X.

⁸⁷ Ibid., IV, I, XI.

⁸⁸ Ibid., IV, I, X.

⁸⁹ James A. Brundage, *Law, Sex, and Christian Society in Medieval Europe* (Chicago: The Chicago University Press, 1990), 332-333.

couples to complete their marriage, should they intend to evade the marriage.⁹⁰ As previously noted, theologians championed the consensual model, which led to deemphasizing the formality of the engagement process and provided a counterpoint to parental authority. Since theologians held a liberal view on spousal selection, they simultaneously bore the social responsibility to hasten the completion of the marital cycle. By dictating the proper way to contract a martial union and having the power to compel the completion of the matrimony, the clerical community had indirect control over the formation of the family, the basic building block of society.

The subsequent laws, however, implied that Iberians in the Middle Ages often equated betrothal with marriage. Eukene Lacarra Lanz observes that it was the norm for a medieval Iberian couple to cohabit without having a formal wedding ceremony.⁹¹ In this event, the couple was considered married in the eyes of the law, with the assumption that the couple had engaged in sexual intercourse. To avoid possible confusion, Iberian jurists disambiguated types of betrothal that constituted marriage, and ones that did not. If there were conditions attached to the betrothal, such as “I will take you as my wife, if my father consents,” then it would not be considered a marriage until the condition was fulfilled.⁹² Betrothal contracted between two minors did not constitute a marriage until both parties reached the age of twelve for females and fourteen for males, and neither party expressed opposition to the marriage arrangement.⁹³ The law identified evidence of consent as when two parties began to live together, received gifts from each other, or visited each other’s houses frequently.⁹⁴ In the jurists’ views, the moment when betrothal became marriage was defined by the intention of two people to share their lives together. If a cohabiting couple separated and remarried, they were guilty of bigamy.⁹⁵ Judging from the explication of the law, Iberian jurists accepted the clergymen’s theory on consent, which substantiated marriage.

⁹⁰ Burns, *Family, Commerce and the Sea*, IV I, VII.

⁹¹ Lacarra Lanz, “Changing Boundaries,” 162.

⁹² Burns, *Family, Commerce and the Sea*, IV I, III.

⁹³ Ibid., IV, I, VI.

⁹⁴ Ibid., IV, I, III.

⁹⁵ Lacarra Lanz, “Changing Boundaries,” 162.

MARRIAGE

Matrimony as defined by *Las Siete Partidas* overlaps with the meaning of present consent and betrothal. Matrimony was understood as a union between husband and wife who intended to live together while being faithful to each other. The etymology of the word matrimony conveyed both the meaning of marriage and an embedded gender expectation because the term was derived from *matris munis*, a Latin term that signified “the duty of a mother.”⁹⁶ The jurists explained the definition by pointing out that women endured more hardship than men because a woman “suffers great inconvenience while pregnant, as well as severe pains when she brings them forth and they are to be born.” Therefore, despite men’s contribution in procreation, marriage was characterized as matrimony instead of patrimony.⁹⁷ The definition of matrimony also indicated that maternal duties marked the beginning of womanhood, since the law stated that the purpose of marriage was “to have children and increase the race of men.”⁹⁸ Thus far, the definition of marriage centered on women and their prescribed duties within the marital bound, which were to bear and bring up children. Marriage was also an event that transformed a maiden into a woman. This outlook on marriage was characterized by historian González-Casanovas as “a negative reflection upon the burdensome role played by woman in the sexual process of reproduction and familial office of child rearing.” Indeed, although women seemed to be the focal point in the issue of matrimony, men dictated the roles that women ought to play.⁹⁹ Interestingly, men were not included in the definition, which suggested that marriage alters men’s lives to a lesser extent than women.

Besides procreation, women also contributed to men’s salvation, given that another purpose of marriage was “to protect [men] from the sin of fornication,”¹⁰⁰ that is, to avoid adultery. This particular clause refers to the concept of conjugal debt. According to Karras, the fulfillment of such debt prevented subversive sexual behaviors. Moreover, Karras explains that even though both spouses reserved the right to demand the debt, the husbands

⁹⁶ Burns, *Family, Commerce and the Sea*, IV, II, II.

⁹⁷ Ibid.

⁹⁸ Ibid., IV, II, III.

⁹⁹ González-Casanovas, “Gender Models,” 47.

¹⁰⁰ Burns, *Family, Commerce and the Sea*, IV, II, IV.

should pay the debt even when their wives did not explicitly demand it, under the assumption that women were passive.¹⁰¹ Baldwin argues that the notion of conjugal debt was a display of gender egalitarianism. To add more nuances to the understanding of this concept, Karras borrows Dyan Elliott's interpretation and concludes that the control of marital sex was symbolically devolved to the husband's hands.¹⁰²

Medieval Iberian jurists shared consensus with other contemporary canonists in the four merits of marriage, namely, to have children, to pay the marital debt, to avoid fornication, and to satisfy lust or the desire for pleasure.¹⁰³ Marriage legitimized sexual intercourse, which was otherwise sinful and illicit, for the purpose of fulfilling the spousal sexual obligation or to have children.¹⁰⁴ The inclusion of procreation as one of the merits of marriage signified the importance of coitus in the marital relationship, which was further emphasized by the legal sanction of remarriage or entering religious life, in the event of an unconsummated union.¹⁰⁵ The importance of progeny and marital intercourse highlighted by *Las Siete Partidas* poses a contrast to the discussion of the coital/consensual debate in the clerical community, from the previous chapter. The fact that intercourse was listed as one of the purposes for marriage indicates that both jurists and theologians realized that the function of marriage was to continue family lines, and that intercourse transformed a relationship to an indissoluble bond, as demonstrated by the counterexample of unconsummated marriage. In observation of these laws, the jurists attempted to reconcile the gap between theology and actual practice by combining the essence of both aims. Their efforts rendered religious dogma into feasible legal stipulations.

Another listed purpose of marriage was to prevent the occurrence of extramarital sexual transgression, for the jurists stated: "The flesh is triumphant, and desire exists, and it is considered better to unite with one who is married than to commit fornication

¹⁰¹ Ruth Mazo Karras, "Sexuality in the Middle Ages," in *The Medieval World*, eds. Peter Linehan and Janet L. Nelson (London: Routledge, 2001), 289.

¹⁰² *Ibid.*, 290.

¹⁰³ Pierre J. Payer, *The Bridling of Desire: Views of Sex in the Later Middle Ages* (Toronto: University of Toronto Press, 1993), 62.

¹⁰⁴ Burns, *Family, Commerce and the Sea*, IV, II, IX.

¹⁰⁵ *Ibid.*, IV, II, I.

elsewhere.”¹⁰⁶ Some medieval canonists argued that married couples were considered adulterous if they were overly affectionate, but Iberian jurists seemed to hold an opposite stance on the same matter. They allowed men to use aphrodisiacs on their wives, since sex within the marital bound engendered less debilitating consequences than when it occurred out of marital context.¹⁰⁷ The law explicitly pointed out that the laity should use marital sex as an outlet for sexual desires, though various religious treatises stressed that marital sex was only meant for procreation and satisfaction of conjugal debt.¹⁰⁸ Whether lay or clerical, the goal of these marital regulations was to provide a parameter to contain sexuality and detect any illicit activities that trespass the set boundary. As well, the goal was to maintain the social order by setting out a legitimate position on family formation and procreation.

Las Siete Partidas was in essence a conglomeration of the consensual/coital debate in the clerical community outlined in Irven’s article.¹⁰⁹ In the above discussion, the Iberian jurists accentuated the importance of progeny in marriage, while simultaneously affirming that “consent alone, with the desire to marry, constitutes matrimony between a man and a woman.”¹¹⁰ Iberian jurists composed their view on marriage by using the consent theory as the basis for the definition of marriage, but also added details to the definition that were specific to Castile. The law explained that though consent alone validated marriage, the persons who uttered the words must genuinely wish to marry. Should a person speak those words in jest, the jurists ruled that the marriage would be invalid.¹¹¹ In the rendering of the law, it can be speculated that this law might have been prompted by actual cases. Iberian jurists augmented the dimension of marriage by adding the element of human will, recognizing the human capacity to err; in other words, unless the intention and the uttered words were solemn, the nuptial would not be formalized. By adding genuine will as another essential ingredient to marriage, the jurists’ precautionary measures attempted to avoid

¹⁰⁶ Ibid., IV, II, IX.

¹⁰⁷ Ibid.

¹⁰⁸ James A. Brundage, “Carnal Delight: Canonistic Theories of Sexuality,” in *Sex, Law and Marriage in the Middle Ages* (Hampshire, England: Variorum, 1993), 367.

¹⁰⁹ Resnick, “Marriage in Medieval Culture,” 351-354.

¹¹⁰ Burns, *Family, Commerce and the Sea*, IV, II, V.

¹¹¹ Ibid.

unintentional marriages, given that marital unions became easy to contract and difficult to dissolve. Additionally, the jurists highlighted the emotional element of a marital union; therefore, it was elevated from a mere procreative relationship to a spiritually enriched one. By deeming genuine will as a prerequisite for a valid marriage, the jurists interpreted the consent theory with an Iberian perspective and tailored a Church doctrine into something befitting their society.

Though mutual consent and free will were abstract concepts, the force of both elements cemented a marital bond that was theoretically indissoluble. Iberian jurists demonstrated their point by claiming that the union remained intact even if the partner committed apostasy, adultery, or became physically disabled.¹¹² The jurists explained that even if one spouse was plagued by leprosy, the most feared disease in the Middle Ages, the healthy spouse had to comply with requests made by the affected spouse including sexual intercourse, but a separate bedroom could be maintained.¹¹³ As Chapter 1 illustrates, intercourse created an indissoluble bond and “a mutual obligation of continuing sexual service sprang into being. Thenceforth each spouse was bound to render sexual service to the other upon demand.”¹¹⁴ This marital affection was expected to continue through sickness and health, based on the mutual consent and coitus between spouses that rendered the nuptial indissoluble.

The Iberian jurists emphasized the open and public nature of marriage and explained that it had to be public in order to prove its lawfulness.¹¹⁵ Their intention coincided with Stock’s argument on the function of the public ceremony in a primarily oral-aural society. The ceremony, gestures, and rituals all confirmed the uttered words.¹¹⁶

¹¹² Ibid., IV, II, VII.

¹¹³ Ibid.

¹¹⁴ James A. Brundage, “Implied Consent to Intercourse,” in *Consent and Coercion to Sex and Marriage in Ancient and Medieval Societies*, ed. Angeliki E. Laiou (Washington, DC: Dumbarton Oaks, 1993), 249.

¹¹⁵ Burns, *Family, Commerce and the Sea*, IV, II, V.

¹¹⁶ Stock, *The Implication of Literacy*, 15.

CLANDESTINE MARRIAGE

When a couple contracted their union in secrecy, the relationship was not only hard to prove, the progeny from this relationship would be questioned for their legitimacy. Both theologians and the secular government considered clandestine marriage as problematic because the existence of the union could not be verified. As Beatrice Gottlieb notes, the prerequisite for both religious and secular authorities to regulate and monitor the populace's sexuality was to identify the laity's sexual liaison through marriage.¹¹⁷ Clandestine unions impeded the surveillance attempt by the authorities, and thus posed a threat to the social order and stability.

To set the parameter for clandestine marriage, legal scholars identified three types of secretive unions. The first was a marriage without public witnesses, which led to an unverifiable union. The second was when the bride had not obtained parental approval or dowries from the parents, despite a public ceremony. The third was when a couple obstructed the public attempt to investigate possible marital impediments.¹¹⁸ The definition that the jurists crafted showed that clandestine marriage was not limited to unions that were contracted in private, but also included any efforts that evaded the public from scrutinizing the nature of the union. Interestingly, Iberian jurists did not discuss the illegitimacy of clandestine marriage, based on the fact that it would not be an issue until the couple sought separation. Provided that the existence of the marriage could not be proven, church authorities would not be able to compel one spouse to return to the abandoned one.¹¹⁹ The absence of discourse on the illegitimacy of clandestine marriage indicated the legal scholars' equivocal view on the practice since the union itself still largely complied with the consent theory, but lacked the confirmation from the parents or the public.

As presented by both Murray and Brundage's articles in Chapter 1, the consent theory had created an ideal environment for secretive unions, since the model both undermined parental authority in deciding marriage partners and placed decision making power in the

¹¹⁷ Beatrice Gottlieb, "The Meaning of Clandestine Marriage," in *Family and Sexuality in French History*, eds. Robert Wheaton and Tamara K. Hareven (Philadelphia: University of Pennsylvania Press, 1980), 51.

¹¹⁸ Burns, *Family, Commerce and the Sea*, IV, III, I.

¹¹⁹ *Ibid.*, IV, III, II.

hands of the involved parties.¹²⁰ The unintentional effect from this model was the possible evasion of the authority's scrutiny of marriage. From the discourse of secretive unions, some legal discrepancy could be observed indicating that the jurists adhered to consensual theory in their legal work. To reiterate, a union would be considered clandestine without parental approval, but when alluding to prior discussion on betrothal, the law stated that parents could not betroth their daughters unless the parents were given deliberate consent or were in their presence. In this context, the law reflected the spirit of the consensual model in that individual consent was respected. The jurists seemed to argue the opposite in regulations regarding clandestine unions. The discrepancy perceived in the law could be explained by the gap between theological dogma and secular law. The jurists' intention was to harmonize church teaching and social expectation by allowing individuals to choose their partners, simultaneously requiring them to obtain parental blessing.

Clandestine marriage was outlawed on the ground of possible dissolution disputes. The law reasoned, "If disagreement arises between the husband and the wife, so that one of them is not willing to live with the other, although the marriage was genuine, as stated above, the church could not employ compulsion against the one who wished to leave the other."¹²¹ The involvement of the public served as proof of the existence of the union, whereas the essence of clandestine marriage could not be proven because it was concealed from the public. Theoretically a clandestine marriage was no any less authentic than a public one, but when both parties sought dissolution, the church court would have difficulty adjudicating the existence of a clandestine marriage. In addition, clandestine marriage also infringed upon the clergymen's sole right in conferring sacraments. If everyone married secretly, then a couple would confer the sacraments upon themselves, which directly weakened ecclesiastical authority. Theologians therefore did not openly encourage such practice. *Las Siete Partidas* also elaborated on the penalties for anyone who contracted a clandestine marriage. For the offenders who later sought separation due to irreconcilable differences, not only their marriage would be rendered invalid, but their children would also be considered illegitimate. An exception to this penalty was if one party was ignorant of the consequences of contracting

¹²⁰ Brundage, "Marriage and Sexuality in the Decretals," 67; Murray, "Individualism and Consensual Marriage," 140-141.

¹²¹ Burns, *Family, Commerce and the Sea*, IV, III, I.

marriage in secret, then their children would remain legitimate.¹²² This penalty also revealed the significance of social legitimacy in Iberian society. In the Middle Ages legitimacy served as an individual's social identification. Being illegitimate implied that one's parents had not contracted marriage in a lawful way.¹²³ The social consequences of being an illegitimate man were that he could not inherit properties, honors, and offices from his father and grandfather, nor serve in a high official position. The law only specified consequences for illegitimate men.¹²⁴ The paramount importance of social legitimacy could be further observed in the various terms for illegitimate children in *Las Siete Partidas*, born under different circumstances. For instance, *manzeres* referred to the children of prostitutes, and *spurii* connoted children of concubines.¹²⁵ Anthropologists believe that the issues that are important to a social group are reflected in language. The linguistic nuances between different terms are not always readily apparent to outside observers.¹²⁶ Designating different terms for various types of illegitimate children is apparent because of the multiethnic social composition in medieval Castile. Legitimacy in the Iberian context, intertwined with ethnic identification, elucidated the seriousness of clandestine marriage in Iberia.

Iberian jurists adopted a stern stance to discourage people from deviating from socially acceptable behaviors. The rendering of the laws, however, seemed to contradict the consent theory. The dilemma was that on the one hand consent constituted marriage, and even if consent were exchanged in secrecy, the union would still be valid. On the other hand, if everyone contracted marriages clandestinely, then social order as a whole would be endangered and the power of both ecclesiastic and secular authorities would be impeded. Thus the law was meant to achieve the balance between religious teaching and the preservation of authority and social order. *Las Siete Partidas* actually designated a section that addressed this type of living arrangement. The next section examines the topic of

¹²² Ibid., IV, III, III.

¹²³ Ibid., IV, XV, II.

¹²⁴ Ibid., IV, XV, III.

¹²⁵ Ibid., IV, XV, I.

¹²⁶ Marc J. Swartz and David K. Jordan, *Culture: The Anthropological Perspective* (New York: John Wiley & Sons, 1980), 262.

concubinage, a relationship that resembled marriage but with a greater level of social scrutiny and without full legal vigor.

CONCUBINAGE

In the Middle Ages, concubinage was considered a quasi-marriage because the relationship was relatively stable and two people sustained somewhat exclusive sexual relations.¹²⁷ On both linguistic and legal grounds, concubinage possessed a nebulous nature. As Karras points out, the term “concubine” in the Middle Ages had several inferences. The term could vary from one’s girlfriend, to a woman one slept with, to one’s potential marriage partner.¹²⁸ The multiple definitions of concubinage in the Middle Ages were inherited from the antiquities. Ancient Jewish law did not distinguish between wife and concubine, and the Bible used both terms interchangeably. The vagueness in ancient sources on concubinage posed a challenge to medieval theologians and jurists who utilized these laws as sources to formulate laws and regulations.¹²⁹

Iberian jurists shared a similarly ambiguous outlook on concubinage, which they expressed in the preamble of the concubinage section. The law declared that the Church forbade Christians to keep concubines but that, nonetheless, the ancients allowed certain individuals to maintain concubines without being penalized. The rationale behind this exception was that “[it is] less wicked to have one than to have many, and in order that the children born of them might be more certain.”¹³⁰ This statement again implies the jurists’ intention to control sexuality through concubinage. The law attempted to limit one concubine to each man, and the purpose of this restriction was that the relationship would resemble marriage and abide by the principle of monogamy. The Iberian legal scholars’ aim was also to ensure a certain degree of social legitimacy as previously discussed in the section on clandestine marriage. If the jurists completely outlawed the practice of concubinage, then any sexual liaisons that were not marriage would be illegitimate. The laws became more inclusive

¹²⁷ James A. Brundage, “Concubinage and Marriage in Medieval Canon Law,” in *Sexual Practices and the Medieval Church*, eds. Vern L. Bullough and James A. Brundage (Buffalo: Prometheus Books, 1982), 80.

¹²⁸ Karras, *Sexuality in Medieval Europe*, 100.

¹²⁹ Brundage, “Concubinage and Marriage,” 81.

¹³⁰ Burns, *Family, Commerce and the Sea*, IV, XIV, preamble.

and enforceable when they stated which practices were permitted. The regulation also conveyed a sense of conciliation. Although the concept of concubinage might not be entirely congruent with Christian teaching, the practice still maintained a social balance due to the permanent nature of the relationship. Given that it resembled marriage, the practice was both legally and socially supported. As scholar Heath Dillard observes, in medieval Iberia, concubines and concubinage functioned as alternatives to wives and marriage. In fact, a concubine could partake of wifely duties, such as repaying her partner's debt and receiving the legal consequence thereof.¹³¹

An arresting aspect of the law was that only certain men were allowed to take concubines. The restriction was set that a man could keep a concubine, as long as he did not hold office, did not belong to a religious order, and was not married.¹³² The law also defined women who were "qualified" to be concubines. According to the law, any woman could be a concubine, regardless of birth and status. In the description of the law, slaves, emancipated slaves, and prostitutes could all be kept as concubines. The language for concubinage was not very different from the laws that dictated who may marry. One of the notable dissimilarities was reflected in the term used to describe the women who were concubines. The law explained that the Iberian word for concubine, *barragana*, was a composite of the Arabic word *barran* meaning outside and the Catalan word *gana* meaning to gain. Together, the term signified "something earned outside the rules of the church."¹³³ While it is unclear where jurists acquired the additional meaning that was not included in the etymology of *barragana*, what is apparent is the negative connotation of the practice reflected by the term. The terminology implies that the concubine was outside of the socially acceptable marital construct. In addition, it suggests that women in this arrangement had something to gain besides companionship, given that any woman could be a concubine, even a prostitute. This latter fact could help explain the dubious nature of the practice. Recalling Lacarra Lanz's article, concubines often were mistaken for prostitutes.¹³⁴ Though the properties of

¹³¹ Heath Dillard, *Daughters of the Reconquest* (Cambridge: Cambridge University Press, 1984), 127-128.

¹³² Burns, *Family, Commerce and the Sea*, IV, XIV, II.

¹³³ Ibid., IV, XIV, I.

¹³⁴ Lacarra Lanz, "Changing Boundaries," 158.

concubinage shared similarities with marriage, as the terminology and social reality revealed, it occupied an “in-between” position in that marriage was the only sanctioned union.

In reality, not all women could be concubines. For example, one might not have a concubine who was under the age of twelve, a virgin, or a widow with a good reputation.¹³⁵ There are several explanations for these prohibitions. Iberian jurists believed that before individuals reached a certain age, their intellectual capacity was incapable of making sound decisions.¹³⁶ As Karras’ work shows, virgins and widows occupied unique places in Christian theology and society.¹³⁷ These two stages in a woman’s life embodied special religious meaning in terms of salvation, as well as social meaning. In the context of the law, virgins and widows could not be concubines, regardless of their social standing.

Another limitation on concubinage was placed on men of eminent social status. When they selected concubines, they could not choose any women who were servile in origin, had bad reputations, or engaged in questionable professions. These women included former and present slaves, clowns, tavern keepers, hucksters, procuresses, or the daughters of these categories of women. The jurists attempted to prevent such relationships from happening by imposing harsh punishments and by proclaiming any children begotten by the relationship illegitimate.¹³⁸ Though this law pertained to concubinage, the jurists’ mentality was still focused on marriage. As Duby explains in his work, one of the reasons why kings and nobles were careful in wife selection was because future progeny would be the embodiment of the blood and merits of both parents, as well as ancestors from both sides.¹³⁹ In other words, the mother’s pedigree was equally as important as the father’s. This rule also reveals the medieval concept of misalliance. Duby claims that marriage as a concept was only valid when properties were involved.¹⁴⁰ In this perspective, it can be interpreted that concubinage was an alternative to marriage for those from the lower social strata, who had little property

¹³⁵ Burns, *Family, Commerce and the Sea*, IV, XIV, II.

¹³⁶ Ibid., IV, I, VI.

¹³⁷ Karras, “Sexuality in the Middle Ages,” 29.

¹³⁸ Burns, *Family, Commerce and the Sea*, IV, XIV, III.

¹³⁹ Duby, *The Knight*, 48-49.

¹⁴⁰ Ibid., 19.

to pass on. Moreover, concubinage was also a way for socially eminent men to maintain a lover without being overtly scandalous.

On the surface, concubinage appears as an open-ended informal practice, and Iberian legalists attempted to control and regulate it by setting up procedures for taking a concubine. A man needed to announce his intention of taking a certain woman as his concubine in the presence of reliable men. If he did not follow this procedure, people could mistake his concubine for his wife.¹⁴¹ Though the law implied that the procedure was to demarcate a concubine from a wife, in some sense this public effort was similar to that of a marriage ceremony, which reflected the fact that concubinage and marriage shared a similar nature. As Lacarra Lanz's work shows, concubinage contracts usually involved establishing common economic means, as well as inheritance for future children.¹⁴² In this respect, the notarial declaration both officiated the relationship, and offered some economic protection to women that emulated the dowries in a marriage. In the way they outlined the procedures, the jurists attempted to prevent any relationship from becoming secretive, even though the practice itself was morally and legally ambiguous. The law operated on the assumption that as long as it was codified, it would be and could be regulated. In essence, the procedure emulated how marriage was contracted, thus it can be understood as jurists' taciturn conciliation to a common social practice. This procedure also coincided with the contracts that Lacarra Lanz analyzes at the beginning of her article. That public declaration made the intention and nature of the relationship clear, so concubines were set apart from common women or prostitutes. As Lacarra Lanz points out, the definition of a licit and illicit relationship was tenuous because it was contingent on a changing social definition, which led to the shifting nature of concubinage. Such ambiguity provided minimum protection to women.¹⁴³

Concubinage was essentially a common law marriage that involved two people who wanted to maintain a domestic and faithful relation to each other. In addition, the practice itself provided a half step to marriage for those who were unable to contract a formal marriage. Though the practice might not be congruent with Christian morality, it nonetheless

¹⁴¹ Burns, *Family, Commerce and the Sea*, IV, XIV, II.

¹⁴² Lacarra Lanz, "Changing Boundaries," 163.

¹⁴³ *Ibid.*, 166.

contained sexual desire and kept social order in check, and, in spirit, coincided with the concept of monogamy.

CONCLUSION

Although *Las Siete Partidas* was a civil law, the marital principles the theologians articulated influenced how Iberian laws were compiled. Moreover, the ecclesiastical and secular cultures in the Middle Ages were not mutually exclusive. It would be misleading however to assume that Iberian jurists accepted the Church's stipulation wholeheartedly. The jurists interpreted the principles upheld by the clerical community and added details specific to their social setting in order to better accommodate the needs of Iberian society. One may conclude that medieval jurists did not passively inherit legal traditions from previous eras. Instead, they actively processed their heritage and added novel elements to produce a legal culture that reflected their own. The definition of marriage was not characterized by how the relationship was manifested, but by the willingness of both parties to be involved in it. The issues of clandestine marriage and concubinage especially illustrate the importance of consent. Though these two practices occupied an ambiguous place in society, they were condoned partly because they were formed by mutual consent. Regardless of how informal both practices were in comparison to marriage, they still enforced a certain degree of control over people's sexuality and private lives. Ultimately, both the ecclesiastics and the secular government strove to achieve the orderliness of society.

CHAPTER 3

THE NO'S: ILLICIT SEXUAL BEHAVIORS

As stated in the previous chapter, both licit and illicit sexuality shared a symbiotic relationship since laws against illicit acts were largely based on the understanding of the licit ones. The secular government's vested interest in controlling illicit sexual conduct was to protect matrimony. The populace could be dissuaded from contracting a proper marriage when extramarital opportunities remained viable and unpunished. The conceptualization of marriage shaped the characterization of subversive behaviors to a large extent, and the enmeshment of the two may be seen in the laws regarding adultery. In turn, the punishment and procedures for adultery cases served as the basis for the punishment and procedures for other illicit sexual transgressions. It is noteworthy that Iberian jurists placed adultery after fraud and perceived illicit sexual behaviors as criminal offenses, along with homicide, larceny, and other violence against persons. Illicit sexual behaviors might have taken place in the private realm, yet their occurrence could destabilize social foundations, thus warranting public attention and punishment.

It is necessary to bear in mind that the populace might not share the same sentiment on sexual transgression as the authorities. Karras reminds us that the laws reflected the perspective of the ruling elites and the expectation as to how their subjects should act; they did not reveal actual practices. Some laws in the code might not have been enforced by the authorities to the same degree depending on the location and time.¹⁴⁴ Despite these obstacles, regulations on illicit sexuality in *Las Siete Partidas* can serve as a window to people's private lives, which is not available in other sources.

ADULTERY

The paramount significance of adultery to medieval Castilian society is evident in both the classifications by the law and the extensive discussion devoted to it in the law; the

¹⁴⁴ Karras, *Sexuality in Medieval Europe*, 88.

discussion of it occupies both the fourth and seventh sections of the law code. In multiethnic Iberia, adultery could be threatening to social structure because the issue of legitimacy and legal status intertwined with one's ethnic background.¹⁴⁵ Adultery was divided into two types: carnal and spiritual. Carnal adultery signified being unfaithful to one's spouse; spiritual adultery meant conversion from Christianity to Judaism or Islam. The gravity of spiritual adultery can be understood in the metaphor of the Christian community as an extended family. David Nirenberg explicates that since marriage was the common hub that connected all Christians to God, interfaith marriage was forbidden because both Jews and Muslims were not part of the Christian kin group.¹⁴⁶ Additionally, Christian women were brides of Christ by the ritual of baptism; hence, their bodies were regarded as an extension of the Christian community.¹⁴⁷ Interreligious carnal relations were frowned upon; however, converting to a less superior religion and changing one's spiritual perspective were equivalent to being unfaithful to Christ. The gravity of spiritual adultery superseded the carnal one, thus the jurists deemed that an offender of spiritual adultery could not accuse a spouse who committed the carnal type.¹⁴⁸

The implied equality in conjugal debt or mutual sexual obligation between spouses signified that both spouses were entitled to the same punishment when adultery was committed.¹⁴⁹ In the theologians' perspective, men's adultery was more serious than women's, based on the belief that men as the heads of household should be more virtuous and rational than their wives.¹⁵⁰ If one partner has committed adultery, however, the innocent partner could refuse the payment until the guilty party had done penance.¹⁵¹ In the context of secular laws, adultery was predominantly treated as a woman's crime. This is not to say that

¹⁴⁵ Gwendolyn Barnes-Karol and Nicholas Spadaccini, "Sexuality, Marriage, and Power in Medieval and Early Modern Iberia," in *Marriage and Sexuality in Medieval and Early Modern Iberia*, ed. Eukene Lacarra Lanz (London: Routledge, 2002), 237.

¹⁴⁶ David Nirenberg, "Conversion, Sex, and Segregation: Jews and Christians in Medieval Spain," *American Historical Review* 17, no. 4 (2002): 1069.

¹⁴⁷ *Ibid.*, 1068-1071.

¹⁴⁸ Burns, *Family, Commerce and the Sea*, IV, IX, VIII.

¹⁴⁹ Brundage, *Law, Sex, and Christian Society*, 247.

¹⁵⁰ James A. Brundage, "Adultery and Fornication: A Study in Legal Theology," in *Sexual Practices and the Medieval Church*, eds. Vern L. Bullough and James A. Brundage (Buffalo: Prometheus Book, 1982), 132.

¹⁵¹ Brundage, *Law, Sex, and Christian Society*, 360.

women were the only offenders, but their wrongdoings were considered more nefarious than those of men who committed the same offence.¹⁵² The Castilian jurists explained that an adulterous husband did not cause dishonor or injury to the wife, but an unfaithful wife could obscure lineage and paternity if she was pregnant as the result of infidelity.¹⁵³ The possible consequences of the act were dire. Karras explains that the seriousness of adultery to an inheritance-based society was due to nebulous paternity. This issue was further magnified when eleventh- and twelfth- century theologians emphasized the indissolubility of marriage. Noblemen no longer had the option to remarry by repudiating adulterous wives when the paternity of children was in question.¹⁵⁴

Las Siete Partidas also mentioned two other behaviors that were considered adulterous: bigamy and running away from one's spouse. Castilian jurists defined bigamy as double betrothal or remarriage while the first spouse was alive. Recalling from Chapter 2, jurists characterized present time betrothal as marriage, thus when one was knowingly betrothed to two women, it was considered bigamy. Though couples were allowed to divorce on the grounds of carnal or spiritual adultery or the spouse's wish to enter a religious order, it did not mean that remarriage was permitted for all divorced couples. Divorce separated the will that was embodied in the initial consent to wed, but it did not dissolve the bond fostered by coitus.¹⁵⁵ By this logic, an attempt to marry while a former spouse was still alive was considered a bigamous offense.

The jurists mentioned very briefly the issue of runaway wives. Women risked losing all dowries and properties when they escaped from their homes against their husbands' will.¹⁵⁶ The jurists did not note penalties for anyone who aided the woman's escape, or elaborate whether there was an exception to the rule, which implied that women ought to seek proper channels when they wanted to end the marriage. The legal scholars implied that

¹⁵² Karras, *Sexuality in Medieval Europe*, 88.

¹⁵³ Robert I. Burns, ed., *Underworlds, Volume 5: The Dead, the Criminal, and the Marginalized of Las Siete Partidas*, trans. Samuel Parsons Scott (Philadelphia: University of Pennsylvania Press, 2001), VII, XVII, I.

¹⁵⁴ Karras, *Sexuality in Medieval Europe*, 89.

¹⁵⁵ Burns, *Family, Commerce and the Sea*, IV, X, I; IV, X, II.

¹⁵⁶ Burns, *Underworlds*, VII, XVII, XV.

women were subjugated to their husbands' authority and that marriage, unlike conjugal debt, was hierarchical in nature. Running away from home could be interpreted as a challenge to authority, hence the punishment was justified. The Castilian jurists' ruling was similar to the penalties that runaway wives faced in late medieval England. Butler describes that the clerical court demanded the runaway wives to return in order to ascertain the cause of escape; otherwise, they would face excommunication or imprisonment as penalties.¹⁵⁷

Las Siete Partidas established an elaborate and complex process on who could bring forth adulterous charges. From the statute of limitation, the social importance of adultery in Castilian society can be perceived. To prevent the marriage from becoming a communal scandal, only the husband or male relatives of a married woman might bring an adultery suit against her, when the adulterous affair occurred.¹⁵⁸ In fact, an adultery case could be raised after separation or the death of the husband. The husband had sixty days after separation to accuse his former spouse, and after four months of separation, anyone from the public could bring the suit against her. After the death of the husband, the public still had six months to accuse her; however, if no one brought up the suit after the specified period, she could not be accused after that point. It should be noted that if the accusers could not prove the adultery allegation, they would suffer the same penalty as the adulteress if the transgression could be proven.¹⁵⁹ In the discussion on accusation periods, one can see a glimpse of the overlapping judicial systems of the secular and ecclesiastic courts. The jurists pointed out that for a marriage that was not terminated by church decrees or the death of the husband, the statute of limitation for bringing up an adultery case in a secular court was five years after the offense.¹⁶⁰ Since adultery was punishable by death, and only the secular government could exercise corporal punishment, an overlap of both church and secular courts became more evident in cases of adultery, which indicated the coexistence of multiple legal systems in medieval Europe.

¹⁵⁷ Butler, "Runaway Wives," 340-341.

¹⁵⁸ Burns, *Underworlds*, VII, XVII, II.

¹⁵⁹ Ibid., VII, XVII, III.

¹⁶⁰ Ibid., VII, XVII, IV.

In the same section, the jurists also listed a number of legitimate defenses for the accused. If the husband procured his own wife, the wife could not be accused of adultery since the situation could be understood as the husband permitting the adultery. The husband, instead of the wife, would be punished.¹⁶¹ Though the wronged husband could repudiate and bring adulterous charges against his wife, should he drop the charges at any time, his right to accuse became null and void. Jurists also cautioned that conjugal duty between spouses should be suspended until the adultery charges were cleared. Should the wronged husband receive his wife before the charges were clear, it would be construed as having pardoned her and thus he could not bring a case against her.¹⁶² Jurists interpreted conjugal debt in this context as a mutual duty that was shared between two faithful spouses. Given that adultery betrayed trust between the two, the wronged party was not obliged to repay the debt. In the case when the wronged husband still performed the conjugal duty, it was assumed that the marriage had reverted back to normal, and the husband could not accuse his wife of the transgression. Though adultery was conceived of as a woman's crime, the jurists tried to maintain a balance between jurisprudence and ideology.

Given the gravity of adultery and its effects on the community, the jurists stipulated preemptive measures for husbands to take when they suspected possible adulterous behavior from their wives. The law granted the husband the right to warn his wife's potential paramour three times in writing, which forbade the lover from coming close to his house and his wife. Furthermore, the law also permitted the husband to kill the paramour, should he see the same man with his wife in a private area after the warning. If the lover was found in public, the husband could request authorities to arrest him with the presence of three witnesses.¹⁶³ The law enabled the husband to declare his authority and control over his wife; from this law, it can be interpreted that the jurists believed that adultery could be prevented. It also defined the husband's sphere of authority. In the private sphere he had control over his wife, and had the right to kill his wife's suspected paramour after proper warning, while in public he had to call upon the authority of the law. This law also incorporated the

¹⁶¹ Ibid., VII, XVII, VII.

¹⁶² Ibid., VII, XVII, VIII.

¹⁶³ Ibid., VII, XVII, XII.

active/passive dichotomy embedded in the medieval understanding of sexuality. This dichotomy essentially equated masculinity to active, and femininity to passive. Based on this conceptualization, men were understood to assume a more active role than women, and therefore men were under suspicion of instigating the adulterous affair. The arresting point of this law was that there was no discussion of what would happen to the wife. It could be speculated that she was possibly exonerated by her innate weakness associated with her sexuality.

The law expected the husband to accuse his wife in adultery cases; in fact, he would be seen as guilty if the wife continued with her adulterous behavior and the husband did not press charges. The husband was given the choice of either forgiving or prosecuting his wife. If the husband wanted to seek justice, he would need to have his case heard in front of a secular judge, since the church court could not carry out corporal punishment. Though only the spouse could bring forth annulment due to adultery, a woman who continuously engaged in adultery could be accused by her nearest male relatives and the public, if her husband renounced his right.¹⁶⁴ When a cuckold remained silent about his wife's adultery, he could not bring an annulment suit against his wife.¹⁶⁵ The jurists may have construed the silence as taciturn consent, since the husband was expected to take action regarding his wife's infidelity. Given the correlation between women's behavior and family honor, in addition to their role in continuing the bloodline, adultery was deemed as deception to both matrimony and society. A combination of these warrants justified the public nature of adultery, albeit the adultery occurred in private.

Although the public was given the right to prosecute adulteresses, the husband reserved the right to pardon his wife. As previously mentioned, the husband would be guilty if he chose not to press charges when his wife continued her adulterous affair.¹⁶⁶ Should the wife admit to her wrongdoing and did penance, not only would the husband be exonerated for not accusing her, but they might also live together and resume conjugal duty. In fact, the law provided the husband an extended period to ponder whether or not he wanted to pardon

¹⁶⁴ Burns, *Family, Commerce and the Sea*, IV, IX, II.

¹⁶⁵ Ibid., IV, IX, VI.

¹⁶⁶ Ibid., IV, IX, II.

his wife. He might forgive her after their separation, or even after her punishment had been carried out.¹⁶⁷ In either scenario, they could resume their conjugal duty and all gifts and dowries would be restituted to the wife. In practice, Lacarra Lanz acknowledges that some wronged husbands did pardon their adulterous wives. The husband needed to compose a letter that declared his forgiveness and that he would protect her from any future lawsuits for her infidelity.¹⁶⁸ The letter memorialized the pardon, in case the husband later changed his mind. It also showed that though adultery was conceptualized as a heinous crime against society and male authority, there were still husbands who were willing to forgive their wives' transgression for sentimental reasons.

Some contrast to the preemptive measures can be seen in laws regarding when a husband caught his wife in an adulterous act. When there was concrete evidence, the husband could kill the paramour without advanced notice if he was socially inferior to the husband. The husband was required to inform authorities of the adulterous act and to bring up the suit properly in court when the lover was of higher social status.¹⁶⁹ Though the law stated that the husband might kill the paramour, he could not do so with impunity. His punishment varied depending on the social status of the man whom he killed. If he killed a socially eminent man, he would be subject to perpetual labor on royal works. If the man whom he killed were equal or lower in rank, the husband would suffer from temporary banishment.¹⁷⁰ In situations where social status disparity was involved, the penalties generally varied along the line of social classes. This overall structure became the template for other sexual transgressions that will be addressed later in the chapter.

One curious element that stands out from reading laws on adultery in *Las Siete Partidas* is the jurists' reiteration on how both husbands and wives should be judged alike in adultery cases. This embedded sense of equality is seen in the fact that the husband could not accuse his wife of adultery when he made the same mistake.¹⁷¹ Though the definition of

¹⁶⁷ Ibid., IV IX, II; Burns, *Underworlds*, VII, XVIII, XV.

¹⁶⁸ Lacarra Lanz, "Changing Boundaries," 165.

¹⁶⁹ Burns, *Underworlds*, VII, XVII, XIII.

¹⁷⁰ Ibid., VII, XVII, XV.

¹⁷¹ Ibid., VII, XVII, IX.

adultery emphasized the violation of men's rights,¹⁷² and women could not bring an adultery case against their husbands, some sense of equality was embedded in certain defenses that jurists identified. If a man was granted a divorce based on his wife's infidelity, but later had sex with another woman, the former wife might demand the return of the husband. The jurists argued that since the husband committed the same wrongdoing as the wife, the decree should be renounced and the clergy should compel him to return to his wife.¹⁷³ In this sense, men could not commit adultery with impunity. Castilian jurists' judicial aberrance from the prevalent belief of adultery as a woman's transgression could be construed as their reinterpretation of the Church's marital dogmas and general cultural trends into an Iberian specific product. The jurists did not entirely accept the theological culture that had evolved but sought to understand it from their culturally specific perspective.

The standard penalty for a male adulterer was death, while an adulteress would be publicly scourged then sent to a convent.¹⁷⁴ The disparity in punishment between the two sexes may be understood in light of male and female sexuality. Medieval European society deemed men to be more rational than women; therefore, they were penalized more severely.

compared to women. From the discussion on sexuality in Chapter 1, men were characterized as more active than women. This social perception implied that men might initiate the adulterous relationship, and it can be inferred that women were most likely led into an extramarital relationship. The law went so far as to exonerate women from an adultery accusation when they mistook other men as their spouses and had sexual relations with them.¹⁷⁵ As Murray analyzes, the characterization of sexuality was so engrained in the medieval mentality that it can be detected in the laws. She reasons that women's impunity was rooted in their lustful nature and passivity; therefore, they could not distinguish their

¹⁷² Jacqueline Murray, "Gendered Souls in Sexed Bodies: The Male Construction of Female Sexuality in some Medieval Confessors' Manuals," in *Handling Sin: Confession in the Middle Ages*, eds. Peter Biller and A. J. Minnis (New York: York Medieval Press, 1998), 86.

¹⁷³ Burns, *Family, Commerce and the Sea*, IV, X, VI.

¹⁷⁴ Burns, *Underworlds*, VII, XVII, XV.

¹⁷⁵ Burns, *Family, Commerce and the Sea*, IV, IX, VII.

husbands from other men.¹⁷⁶ In other words, their socially perceived weakness had exculpated them of their transgressions.

The discussion on adultery revealed how Castilian jurists combined both ecclesiastic and secular legal perspectives in *Las Siete Partidas*. They believed that adultery caused more injury to the husband than the wife with respect to reputation and possible social consequences. Nonetheless, the jurists formulated penalties based on the construct of male and female sexuality, which was similar to the beliefs of the canon laws. Their eclectic efforts conveyed the percolation of the cleric culture to the lay level and a practical interpretation of the marital dogma. The thorough analysis on this subject also shows its importance to Castilian society. Since marriages could be contracted with simple consent and rendered indissoluble thereafter, Brundage suggests the canonists probably deemed adultery as the only acceptable cause to legally separate a couple.¹⁷⁷ One can speculate that ultimately the jurists strove to keep marriage intact when possible given that the principle of indissolubility was the basis of Christian marriage. This intention also explicates the elaborate process involved in adultery suits, and the harsh penalty for these offenses.

INCEST

Jurists listed incest as a marital impediment in *Las Siete Partidas*. Besides having intercourse with one's female blood relatives, the law stated that if one had coitus with an affinal relative within four degrees, spiritual or adopted relatives, or women of a religious order, it would be considered incest.¹⁷⁸ Theologians opined that consanguinity and affinity posed marital impediments for several reasons. For example, since relatives were raised together, a sense of familial obligation and not amorous feeling between the opposite sexes should be fostered. The jurists pointed out that if the law did not forbid consanguinity, individuals might raise children who would potentially marry each other. Lastly, jurists feared that marriage between close relatives would cause strife within a family, and that marriage would serve the purpose of expanding wealth and property.¹⁷⁹

¹⁷⁶ Murray, "Gendered Souls in Sexed Bodies," 86.

¹⁷⁷ Brundage, "Adultery and Fornication," 133.

¹⁷⁸ Burns, *Family, Commerce and the Sea*, IV II, XIII; Burns, *Underworlds*, VII, XVIII, I.

¹⁷⁹ Burns, *Family, Commerce and the Sea*, IV, IV, preamble.

The reasons that jurists used against marriage between close relatives were the same attributes in the marriages of nobility and unions that focused on alliance building. Jurists wanted to discourage individuals from contracting marriages that were contrary to consensual theory. As for affinity, the law reflected the notion that sexual intercourse not only created an indissoluble bond between spouses, but also created a network of family members from both sides.

There were three exceptions to the law of incest: for persons of young age, Muslims and Jews, and for socially eminent persons. The clergy could grant young offenders permission to marry, even when the union was incestuous. Unlike other married couples, they might not have intercourse unless the wife requested it.¹⁸⁰ This exception was intriguing in that it might have been influenced by the concept of female sexuality. Medieval European theologians and popular perception alike regarded women with strong sexual urges as being irrational. Combining these two characteristics, women could create potential social problems when their sexual desires were not addressed. Out of this concern, jurists dictated that even with the stigma of incest, the couple should be allowed to satisfy the conjugal debt. The same law also indicated that the man in an incestuous union could not remarry after the death of his wife, unless he was too young in age to remain abstinent.¹⁸¹

Muslims and Jews were another exception to the Christian ban of consanguinity. The jurists pointed out that as long as they had married according to their law, Muslims and Jews did not need to annul their marriage should they choose to convert to Christianity. This exception was made out of consideration for the converts' lifestyles, in addition to promoting Christianity as an accommodating religion.¹⁸² In a way, the jurists recognized the conversion potential and attempted to smooth out the transition to a new religion for the new converts. This effort and acceptance can be construed as flexibility within Christianity for the purpose of harnessing the loyalty of the converts as well as the jurists' practical take on religious dogma.

¹⁸⁰ Ibid., IV, II, XIII.

¹⁸¹ Ibid.

¹⁸² Ibid., IV, IV, VI.

The jurists asserted that incestuous unions contracted by men of social eminence could be authorized by papal dispensation.¹⁸³ The grounds for papal dispensation were not clarified by the Castilian scholars, but this exception signified that law was constantly being reinterpreted. These exceptional cases expanded Christian marital dogma, as demonstrated by Brundage's article on Pope Alexander III's decretals, which illustrated that the laws and theories were subject to constant interpretation.

Similar to adultery, incest was depicted as a public crime; hence, anyone could report it to a district court or a magistrate.¹⁸⁴ Castilian legal scholars further divided offenders by the acts they committed and their social rank. For one known to be married or who had had sex with his female relative, both parties would be punished as adulterers, but the penalties differed with offender's social status.¹⁸⁵ For an offender with high social status, he would lose his rank and any public office he may hold, followed by banishment to an island. His properties would be distributed to his legitimate children, and if he did not have any posterity, the royal treasury would confiscate all of his properties. For men of less distinguished backgrounds, they would be shamed publicly by being scourged and banished for life.¹⁸⁶

Regulations on incest illuminate clerical involvement in shaping lay marriage. As Gravdal notes, to fortify the understanding on incest and consanguinity, medieval popular literature utilized incest motifs demonstrating the evil of endogamy. Though the main perpetrators of the tales often went unpunished, the motifs accentuated the basic marital principles that Christian marriage consisted of and publicized the significance of confession and contrition.¹⁸⁷ The jurists implied the need to examine consanguinity and affinity when they discussed the issue of clandestine marriage.¹⁸⁸ In a way, the clergy imposed marital doctrines on marriage by closely monitoring how it was contracted. Laws on incest showed

¹⁸³ Burns, *Underworlds*, VII, XVIII, III.

¹⁸⁴ *Ibid.*, VII, XVIII, II.

¹⁸⁵ *Ibid.*

¹⁸⁶ *Ibid.*, VII, XVIII, III.

¹⁸⁷ Kathryn Gravdal, "Confessing Incests: Legal Erasures and Literary Celebration in Medieval France," *Comparative Literature Studies* 32, no. 2 (1995): 283-284.

¹⁸⁸ Burns, *Family, Commerce and the Sea*, IV, III, II.

the jurists' balance by their insistence on marrying outside of one's immediate circle, and their understanding of humanity.

IMPOTENCE

In Chapter 1, the consensual model that the clergy supported was shown to be almost the opposite of the coital model that most laity embraced. In the section dealing with impotence in *Las Siete Partidas*, jurists' reconciliation of popular practice and marital dogma was apparent in the laws. Impotence was a marital impediment that could lead to the dissolution of marriage. It was defined as inability to engage in intercourse due to physical deformity.¹⁸⁹ The jurists further differentiated temporary and permanent impotence. They stated that temporary impotence could be seen in underage children, which explained why they could not be betrothed and married until they reached the age of maturity. Permanent impotence referred to men and women who were naturally frigid. The Church could annul the marriage in the case of permanent impotence if either spouse requested it, and the unaffected spouse could remarry.¹⁹⁰ The jurists commented that the dissolution of marriage due to impotence or emasculation suggested the inability to fulfill conjugal duties, which in turn implied that coitus was an essential element in lay marriage. Nonetheless, if emasculation occurred after marriage or was present at the time betrothal had been contracted, the marriage would remain valid.¹⁹¹

The discovery process for impotence that occurred after marriage involved additional steps. After either spouse brought on the accusation, the judge would appoint a three-year cohabiting period, during which both spouses were sworn to engage in coitus. If the couple still could not have sex after this period, both spouses had to be examined by reliable physicians to confirm that intercourse was indeed impossible. In addition, both spouses needed to take an oath that they had put in their best endeavors in fulfilling their conjugal duty, along with a group of seven honorable witnesses to allege to the couple's truthfulness. The couple would then be separated and could remarry if desired.¹⁹² It was interesting that

¹⁸⁹ Ibid., IV, II, XVI.

¹⁹⁰ Ibid., IV, VIII, II.

¹⁹¹ Ibid., IV, VIII, IV.

¹⁹² Ibid., IV, VIII, V.

the three-year cohabiting period was not granted to all plaintiffs of impotency suits. Jurists specifically mentioned that if a man married a woman who was not a virgin, and she brought an impotency suit against her husband long after they married, she would not be given the three-year probationary period nor would she be heard. If she complained about the situation immediately, then the procedure remained the same.¹⁹³ A possible explanation for this scenario could be that since the woman was sexually experienced, she should have known whether or not her husband was impotent. When she delayed the complaint, she might be suspected of adultery.

The three-year cohabiting period could be interpreted as the jurists' strategy in preventing the laity from using impotence as grounds for separation. The period allowed the couple to find out whether they were sexually compatible. The jurists' discussion on impotence also curiously fell along the gender line. While men could be temporarily impotent due to bewitchment, women's sexual dysfunction fell on either natural frigidity or incompatibility. When a woman separated from her first husband due to impotence and then was able to have sexual relations with her second husband, she ought to return to her former spouse because the jurists believed that if she had given more time to her first husband, she would have been able to engage in intercourse with him. The exception to this rule was if there was an anatomic difference between the two men.¹⁹⁴ For men, jurists allowed the possibility that the wife could have bewitched him thus causing his impotence.¹⁹⁵ Thus the interpretation that impotence diminished a man's virility and affected his masculinity owing to women's socially perceived conniving nature, which could have played a part in their husband's sexual dysfunction.

Both husband and wife could bring an impotence suit in the form of a written or oral statement before a church court judge. The plaintiffs could either disclose their identities or remain anonymous. The jurists laid out the details that needed to be included in the

¹⁹³ Ibid., IV, VIII, VI.

¹⁹⁴ Ibid., IV, VIII, III.

¹⁹⁵ Ibid., IV, VIII, VII.

statement; namely, the reason for separation and permission to remarry. Jurists strongly advised women to include the desire to be mothers on the petition.¹⁹⁶

The petition process reveals several interesting points. Alluding to Butler's discussion on runaway wives in Chapter 1, one of the most common reasons for a woman to run away was her husband's impotence. Butler emphasizes that many women resorted to escape rather than bring up a formal suit because the inquiry would question men's masculinity and authority.¹⁹⁷ The jurists emphasized that the plaintiff could remain anonymous to avoid the possible repercussion from questioning the husband's masculinity and authority by accusing him of being impotent. The desire to become a mother rendered the petition more cogent in jurists' perspective because compelling her to stay with her impotent husband would be equivalent to depriving her of the right to be a mother—an integral part of a woman's gender role. In fact, Butler's article illustrates that maternal duty exonerated a woman from an impotency/adultery case.¹⁹⁸ Laws on impotence further affirmed that despite theologians' emphasis on consent being the signature element in a marriage, the jurists recognized the importance of intercourse for the laity. By allowing the populace to dissolve marriage on the ground of impotence, jurists attempted to prevent healthy spouses from committing adultery and to limit sexual activities within the marital bound.

SEDUCTION/ABDUCTION

Medieval jurist Gratian defined *raptus* as either abducting a woman without parental consent or having intercourse with her against her will.¹⁹⁹ *Las Siete Partidas* devoted two sections that encapsulated this definition of *raptus*, under the titles of seduction and abduction. Seduction occurred when men deceived honorable women for the purpose of having sexual intercourse.²⁰⁰ The law named three different types of female victims: nuns, virgins, and widows, as well as explaining why violating any of them deserved to be punished. Nuns renounced their mundane desires and devoted their lives to honor God;

¹⁹⁶ Ibid., IV, IX, X.

¹⁹⁷ Butler, "Runaway Wives," 347.

¹⁹⁸ Ibid., 347.

¹⁹⁹ Brundage, *Law, Sex, and Christian Society*, 249.

²⁰⁰ Burns, *Underworlds*, VII, XIX, I.

violating them was an indirect insult to God. Sexual encroachment would taint the good reputation of any virgins or widows, as well as their households. The jurists specifically pointed out that those men were especially guilty who enticed their female guests or the womenfolk of their friends.²⁰¹ The seducer allured the woman without the consent of the head of household and therefore challenged the very system that intended to shield women from harm.

The process of bringing charges against seducers was identical to incest. Again, seduction was a public offense, meaning anyone could bring the case against the offenders. The punishment, however, varied depending on the offender's social status. An offender with a high social distinction would face having property confiscated by the royal treasury. An offender of low social rank would be publicly lashed and banished to an island for five years. The death penalty for seduction cases was reserved for slaves or household servants; they would be burned alive.²⁰²

Abduction was defined as seduction with coercion, which coincided with the modern concept of rape. The law explicated two reasons why abduction was offensive. First, the act clearly violated women who had dedicated their lives to serve God or live honorably. Second, and probably the more importantly, abduction directly offended the relatives and household of these women, where the law insinuated that women were the property of the household.²⁰³ Though the jurists described the offense as grave, the penalties did not necessarily reflect this attitude. While socially distinguished offenders suffered from monetary losses and possibly social indignity, offenders from lower social strata received physical punishment. Boundary transgression could be a plausible explanation for the differences in penalty. The death penalty for slaves and servants who crossed the line to seduce women from the upper class served as a social example, since such transgressions upset the existing social order. For the socially eminent, since the transgression was either within their class or socially downward, they merely suffered monetary losses. For abduction, the woman's relatives could bring charges against the abductor. If relatives were

²⁰¹ Ibid., VII, XIX, I.

²⁰² Ibid., VII, XIX, II.

²⁰³ Ibid., VII, XX, I.

unwilling, then anyone from the public could do so.²⁰⁴ Though seduction and abduction were only separated by the element of force, the punishment for both varied. Abduction was not only punishable by death, but the properties of abductors were also subject to be redistributed to their female victims.

Another alternative to standard punishment was the possibility of the abductors marrying their victims. Distribution of the abductor's properties depended upon the existence of parental consent. If the parents of the female victim refused the marital arrangement, they would receive the abductor's property after the dowries had been deducted. Should the parents consent to the marriage, the remainder of the properties would go to the royal treasury.²⁰⁵ In the case of a nun, the abductor's properties would go to the convent where the abductee resided, since she had renounced her earthly goods. Jurists identified the situation where a man forcefully carried away his betrothed whom he had promised to marry in the future as an act of abduction, despite the relationship between the abductor and his victim. Though the theologians emphasized individual consent as the defining point in a marital union, parental consent still remained in effect. It can be speculated that even if the daughter agreed to the marriage, the abductor must make reparation given that he intruded on the father's authority by snatching his daughter. Karras succinctly writes that rape was punished not because of the sexual act, but because it tainted the female victim's familial honor. She adds: "The women's consent may be irrelevant; the lack of the family's consent becomes central."²⁰⁶ Though women were the victims, they occupied a limited legal space in the discussion of both seduction and abduction. Since marriage was to cure the disruptive social effects that abduction entailed, even if the female victim's parents consented, the abductor still needed to repay society. The condition of parental consent also revealed the law's efforts in harmonizing canonical regulations and popular practice.

The idea of *raptus* poses a conceptual conundrum for several reasons. Gravdal reports that *raptus* could be a part of the rite of passage pursued by young noblemen.²⁰⁷ In this

²⁰⁴ Ibid., VII, XX, II.

²⁰⁵ Ibid., VII, XX, III.

²⁰⁶ Karras, *Sexuality in Medieval Europe*, 128.

²⁰⁷ Gravdal, *Ravishing Maidens*, 125.

context, these young men's manhood was achieved through means of violence. Although the laws construed both seduction and abduction as grave offenses against society, one of the penalties for the offenders was to marry their victims, with their consent. The solution conveyed contradicting messages about marriage and ultimately blurred the boundaries between marriage and sexual violence. If abduction could be a prequel to marriage, then the boundary between free consent and force became nebulous.

One element that stands out regarding abduction and seduction is that women of ill repute, such as prostitutes, were not protected by law. In fact, violence against them might not even be considered as such, due to these women's profession. The jurists endorsed that seduction as a crime was only applicable to honorable women, but not to prostitutes due to their dishonorable lifestyle.²⁰⁸ In this context, Castilian jurists implied that forced *coitus* was conceptually incompatible with prostitutes because they expressed their sexuality publicly and did not fit in the social paradigm assigned to women. Since prostitutes existed outside of the legal system, male perpetrators would be exonerated.

From the summary on the penalties of seduction and abduction, it can be deduced that consent was the element that set the two offenses apart. In seduction, though the victims were deceived, they still consented. Abduction directly violated not only the body of the victims but also their will to consent, thus it warranted more severe punishment than seduction. In some extreme jurisprudence, authorities and theologians alike believed that women authored their own victimized state because they could have resisted their perpetrators more fiercely.²⁰⁹ The jurists did not address the rape of married women in either seduction or abduction; however, they articulated that married women were not culpable for adultery, should they be sexually violated.²¹⁰ Similar to laws on adultery, the jurists tried to ensure that matrimony remained intact. This intention could be seen in allowing the abductors to marry their victims. It should also be noted that women outside of marriage did not receive the same protection from the laws. From this prospective, it is apt to conclude that it was marriage the jurists tried to protect, not women.

²⁰⁸ Burns, *Underworlds*, VII, XIX, II

²⁰⁹ Brundage, *Law, Sex, and Christian Society*, 107.

²¹⁰ Burns, *Family, Commerce and the Sea*, IV, IX, VII.

SODOMY

Discussion of sodomy was extremely brief in *Las Siete Partidas*; the offense was mapped out in only two laws. The law defined sodomy as a man having intercourse with another man, which was considered contrary to nature and customs. Sodomy was discouraged because this offense engendered a bad reputation, gave rise to many evils, as well as to divine wrath. The same law cautioned that an offense on the individual level could cost society as a whole, since God “sends hunger, pestilence, tempests, and innumerable other evils on the country where they are committed.”²¹¹ Sodomy cases shared similarities with both licit and illicit sexual behaviors. Like other sexual offenses, sodomy cases could be brought to a district judge by anyone from the public. Similar to marriage, where coercion invalidated the relationship, the forced party in a sodomy case could be exonerated. In addition, underage offenders usually were exculpated because the jurists believed that one did not have the mental maturity to understand the seriousness of the offense.²¹² The leniency extended to the coerced passive party could be interpreted as an encouragement to them to come forth and disclose the active participant of the acts.²¹³ The same law took a sudden turn to the discussion of bestiality. It dictated that anyone who had intercourse with an animal would be executed. The jurists conceived that the victimized animal needed to be slaughtered in order to erase the effects of the traumatic event.²¹⁴

It was obvious that the law did not describe the crime in detail. In fact, even the definition of the crime remained elusive. It seemed that the law inferred that sodomy only included male homosexual activities and bestiality. In the medieval context, sodomy generally meant “sins against nature.”²¹⁵ Brundage states that the term “nature” required further elaboration, since what was considered “natural” in the Middle Ages suggested the practices of the majority, regardless of whether such assumptions were correct. As a consequence, theologians and the authorities concluded that only intercourse in the

²¹¹ Burns, *Underworlds*, VII, XXI, I.

²¹² Ibid., VII, XXI, II.

²¹³ Richard C. Trexler, *Sex and Conquest: Gendered Violence, Political Order, and the European Conquest of the Americas* (Ithaca: Cornell University Press, 1995), 45.

²¹⁴ Burns, *Underworlds*, VII, XXI, II.

²¹⁵ Karras, *Sexuality in Medieval Europe*, 134.

“missionary style” was acceptable for married couples; other styles were deemed morally dubious. Sodomy, therefore, was an umbrella term that included a range of sexual deviances and remained nebulous in the medieval context.

The brief and elusive description of sodomy could be explained by several factors. First was the medieval conceptual construct of sexuality. Karras clarifies that in medieval Europe, a man was defined by the role he performed, not by his sexual preference, since a homosexual identity did not exist. She notes that a man who committed pederasty or active sodomy did not disclose his sexual preference or undermine his masculinity. Moreover, when the passive party received the action, his behavior did not disclose his preference for men, rather his inclination to take the role of a woman.²¹⁶ Since homosexuality did not exist as a sexual preference in the Middle Ages, Karras concludes that sodomy remained as an unmentionable sin and vague in various textual descriptions. Since it was believed that everyone, not just one particular group, could succumb to this sin, the jurists and theologians alike feared that detailed descriptions of sodomitical acts could lure people into sins.²¹⁷

Similar to the abduction/seduction section, women were almost absent from the discussion of sodomy. The law regarding bestiality dictated that every man and woman who committed the crime should be executed, but in the section regarding sodomy, the Castilian jurists used the universal term “men.” The void did not mean that a homoerotic relationship between women did not exist. On the contrary, many scholars show that love affairs between women in Medieval Europe were underreported. In her investigation of a female sodomy case in late thirteenth-century Bologna, Carol Lansing observes that despite a formal inquest, the female suspect was merely fined, which was lenient compared to the death penalty that male sodomites received.²¹⁸ What Lansing finds extraordinary in this case is that laymen brought this inquest and they understood female homoerotic desire within a phallic framework, where penetration was needed. In other words, love affairs between women

²¹⁶ Ibid., 129.

²¹⁷ Ibid., 138.

²¹⁸ Carol Lansing, “Donna con Donna?: A 1295 Inquest into Female Sodomy,” in *Studies in Medieval and Renaissance History: Sexuality and Culture in Medieval and Renaissance Europe*, ed. Philip M. Sorgel (New York: AMS Press, 2005), 109, 112-113.

merely mimicked heterosexual intercourse.²¹⁹ Edith Benkov's work shows similar parallelism. Benkov elucidates that the problematic nature of female homoerotic relations in the medieval European mindset was revealed in the works of theologians, such as Hincmar of Rheims and Peter Damian, who framed the issue of sodomy in terms of the male. Hincmar believed female genitals were unfit for same-sex relations, and Damian perceived sodomy as a male vice.²²⁰ In the binary construct of sexuality, female homoerotic relations appeared puzzling due to the lack of penetration. Benkov cites several court cases of women's same-sex relationships and concludes that such relationships would become criminal and punishable by death only if they become phallic. In one case where a woman fashioned a dildo and used it while having intercourse with other women, the female offender asserted herself as a man. This was interpreted as transgressing the socially prescribed gender line, and thus she was sentenced to drowning.²²¹ From Benkov's account, the effects of the binary construct of sexuality could be seen in how a crime was understood, and how laws were derived and implemented.

In the context of *Las Siete Partidas*, Castilian jurists spoke of sodomy as subversive, but in fact some contemporary historians argue that the practice of sodomy inadvertently reinforced the idea of a patriarchal society. In his article, Cristian Berco advances an argument that although sodomy seemed to deviate from the very construct of patriarchy, the practice itself reinforced and supported the idea of a patriarchal society. He reasons that the penetrative role carried out by an active partner in sodomy displayed ultimate virility because he subjugated another man. In turn, sodomy set the hierarchical tone among men and fortified the patriarchal order, which devalued femininity and associated femaleness to weakness.²²² Borrowing the framework of Berco's analysis, it can be construed that in the context of *Las Siete Partidas* jurists perceived sodomy as a male crime, and because the practice was not procreative, if it were allowed it would threatened both the future and the

²¹⁹ Ibid., 115.

²²⁰ Edith Benkov, "The Erased Lesbian: Sodomy and the Legal Tradition in Medieval Europe," in *Same Sex Love and Desire among Women in the Middle Ages*, eds. Francesca C. Sautman and Pamela Sheingorm (New York: Palgrave, 2001), 105, 107.

²²¹ Ibid., 115-116.

²²² Cristian Berco, "Producing Patriarchy: Male Sodomy and Gender in Early Modern Spain," *Journal of the History of Sexuality* 17, no. 3 (2008): 357-358.

moral structure of a society. Since the idea of sexual domination was engrained in medieval European society, it was not pertinent for jurists and theologians to punish female sodomy due to the passive nature of the relationship.

PROCUREMENT

There were few laws in *Las Siete Partidas* that directly pertained to prostitutes. Instead, a section was entirely devoted to procurers. The law identified five different types of procurer: first, men who profited from the earnings of prostitutes who lived in the brothel; second, men who kept free women in their house and gained profit by “pimping” them; third, men who kept female captives and forced them to sell their flesh; fourth, men who brokered their own wives; fifth, men who, while not acting as agents, provided a place for any fornication to take place and obtaining profit from making the arrangements.²²³ One element that all five types had in common was the presence of coercion. The law used language such as “deceive” and “entice,” to emphasize that these women were lured into the profession. That being said, one should not ignore the procuress, who expressed her agency through the exploitation of other women for gains. Although the law did not designate punishment specifically for procuresses, they faced the same legal consequences as the procurers.²²⁴

Besides leading women into sin, the procurers’ activities might intersect with the Crown’s involvement and interest in prostitution. Beginning in the early fourteenth century, municipal governments in various parts of Iberia took an active interest in regulating prostitution by establishing red-light districts and building high walls to confine and label public women within the community.²²⁵ Regulations on prostitutes also enabled the municipal authority to gain economically by imposing taxes on their earnings, which in turn led to punishing procurers who made profits by brokering prostitutes who worked in brothels. The procurers not only violated the protection that brothels intended to offer to these public women, but they also impeded royal income. Morally speaking, the high wall also served to physically segregate honorable women from prostitutes. Lacarra Lanz argues that honorable

²²³ Burns, *Underworlds*, VII, XXII, I.

²²⁴ Ibid., VII, XXII, II.

²²⁵ Eukene Lacarra Lanz, “Legal and Clandestine Prostitution in Medieval Spain,” *Bulletin of Hispanic Studies* 79, no. 3 (2002): 268.

women needed to be steered away from the examples set by prostitutes, due to their innate lustful nature.²²⁶ Referring to the discussion of concubinage in Chapter 2, honorable and dishonorable women shared a symbiotic relationship, in that honorable women were virtuous only because of the existence of the dishonorable ones. In this light, prostitutes became a necessary evil.

The detailed categorization of different types of procurers reflected the importance of avoiding the crime to society. According to the jurists, the procurers' vice led good women astray, brought disgrace to their families, and made existing prostitutes worse than they already were. Procurers' transgressions were public in nature because of the social unrest they could cause; hence, anyone could bring a suit against them.²²⁷ Jurists intended to curb this crime by imposing harsh sentences on offenders, of either banishment or death. The procurers who took their prostitutes' earnings would be dislodged from the town along with the prostitutes. The law did not pursue the possibility of procurers and prostitutes setting up business elsewhere after they were dislodged, or returning to the town after a period of time. For those who knowingly rented out their properties to be brothels, their properties would be confiscated by the authorities, and they would be fined ten pounds of gold. The property owners provided the space for licentious activities and encouraged moral debauchery, so they were punished despite their indirect involvement. The death penalty was reserved for men who prostituted their wives or any women of good reputation, as well as procurers who enticed either free or enslaved women to be prostitutes.²²⁸ Men who pandered any good women upset the balance of marriage market distribution, thus they deserved a harsh penalty. More importantly, the procurers provided alternative sexual opportunities other than marriage that were not only subversive, but could also trouble marital unions and discourage the contracting of marriage. Another warrant for the harsh punishment was familial honor. When a well-reputed woman became a prostitute, whether or not driven by coercion, her honor, as well as her family's, would be tainted.

²²⁶ Ibid., 267.

²²⁷ Burns, *Underworlds*, VII, XXII, I.

²²⁸ Ibid., VII, XXII, II.

The law dictated how the procurers should provide restitution for the women whom they victimized. The reparation varied by the female victims' social status. Enslaved women would be emancipated, while free women would be given dowries and bestowed in marriage at the expense of the accused procurers.²²⁹ The procurers faced the death penalty when they refused to comply or lacked financial resources for the arrangement. The procurers were responsible for the future of these wronged women because they coerced them into prostitution. *Las Siete Partidas* did not specify how the procurers should arrange marriages for these women, or explain to which status these women should be reinstated. The laws, however, provided a form of financial shelter for these women by compelling procurers to provide substantial monetary reparation. Though these women were victims of coercion, they would still be labeled as prostitutes by society. As Lacarra Lanz points out, public knowledge was the element that set apart women who entered prostitution voluntarily or by coercion.²³⁰

In sum, the law intended to punish procurers' behaviors and the ramifications thereof; nonetheless, the mentioning of prostitutes is almost entirely absent from *Las Siete Partidas*. It can be argued that women's passivity exonerated their vices, but also framed them as passive victims in the language of the law. It should be noted that the same exoneration was also extended to women who were driven to prostitution by some other cause other than force. In the jurists' perception, procurers' harsh penalties were grounded in how they made extramarital sexual services available.²³¹ It was probable that the jurists conceived procurers as the origin of the vice, so if the law could regulate them, then the problem of prostitution could be mitigated. The lack of punishment for prostitutes in *Las Siete Partidas* was not unique to the Iberian setting. Lansing's observation on the Italian civic authority's attempt to regulate prostitution during the fourteenth century shows parallel legal similarities that focused punishment on procurers and landlords, instead of prostitutes.²³² Fundamentally, these regulations were not meant to regulate prostitutes, but to restore social balance by eliminating the prevalence of concupiscence.

²²⁹ Ibid., VII, XXII, II.

²³⁰ Lacarra Lanz, "Changing Boundaries," 173.

²³¹ James A. Brundage, "Prostitution in the Medieval Canon Law," *Signs* 1, no. 4 (1976): 835.

²³² Carol Lansing, "Gender and Civic Authority: Sexual Control in a Medieval Italian Town," *Journal of Society History* 31, no. 1 (1997): 39.

The monarchy's economic interest and involvement in prostitution also led to sexual exploitation of Muslim women. Mark Meyerson points out Muslim women must purchase licenses from the royal authority in order to practice prostitution; unlicensed prostitutes faced the punishment of enslavement. He adds that the Muslim *qadis*, or judges, could not sentence adulteresses to corporal punishment, so offenders would be forced to become slaves to the local nobility or the king. These women often ended up working at brothels.²³³ The law reflected the gender and religious asymmetry that was ingrained in the Iberian social construct. In a case where a Christian man and Muslim woman were sexually involved, the man would not be penalized while the woman was subject to the punishment of fornication or adultery under Islamic laws, unless she was a licensed prostitute. In the reverse situation, regardless of a Christian woman's profession and sexual status, the Muslim man would be put to death. To a certain extent, as Meyerson summarizes, the law protected Christian women by stipulating harsh punishment for both Muslim and Jewish men who trespassed religious boundaries, and supported Christian men's sexual excursions indirectly victimizing women of minority groups.²³⁴

INTERRELIGIOUS SEXUAL BEHAVIORS AND MARRIAGE

As with other regulations on illicit sexual behaviors, the purpose of the laws was not to physically segregate different ethnic groups, but to maintain Christian social and religious hegemony in medieval Iberia. Interreligious marriage was listed in *Las Siete Partidas* as a marital impediment. However, the marriage would be permitted if the wife converted to Christianity before marriage.²³⁵ The intriguing part of the law was that it did not name the possibility of a Christian woman marrying a non-Christian man. A speculation on the omission would be that since women were subjugated to men, it would be logical to the medieval mind for the woman to convert, and not the man. In that case, Christian women would then convert to either Judaism or Islam, which was considered spiritual adultery in the Christian context.

²³³ Mark Meyerson, "Prostitution of Muslim Women in the Kingdom of Valencia: Religious and Sexual Discrimination in a Medieval Plural Society," in *The Medieval Mediterranean: Cross-Cultural Contacts*, eds. Marilyn J. Chiat and Kathryn L. Reyerson (St. Cloud: North Star Press of St. Cloud, 1988), 88-89.

²³⁴ Ibid., 88.

²³⁵ Burns, *Family, Commerce and the Sea*, IV, II, XV.

The law also named interreligious marriage as grounds for divorce. A Muslim or Jew who converted to Christianity might marry someone else without permission when his wife who did not convert to Christianity showed contempt toward Christianity. The new convert must explain to a group of reliable witnesses his marital impediment and convey his desire to leave his wife.²³⁶ The Castilian jurists explained in a later part why a non-Christian marriage could be dissolved and spouses could remarry. Christian marriage was affirmed by the element of consent, which the jurists labeled as affirmation. Once the couple consummated the marriage, the relationship was deemed completed and indissoluble. This affirmation was lacking in non-Christian marriages.²³⁷ As discussed in Chapter 2, present-time consent rendered a betrothal into marriage, unless one spouse entered a religious order; coitus only reinforced the union.²³⁸ Since affirmation was lacking in a non-Christian marriage, couples could remarry, while in the Christian context, spouses might not remarry even after they separated.

Since interreligious marriage was banned, it is logical that interreligious miscegenation was punishable by law. Jews would be put to death if they lived with and had intercourse with Christian women, regardless of their profession or sexual status: a virgin, a married woman, a widow, or a prostitute. The women would suffer the same penalty as the men. Jurists merely mentioned that the ban was based on the idea that all Christian women were the brides of Christ through baptism.²³⁹ As discussed in the section on adultery, Nirenberg suggests that because all Christian women were Jesus' ritual brides, their bodies were an extension of His sovereignty and community; hence, this made interreligious intercourse sacrilegious.²⁴⁰ Nirenberg also cautions that the existence of laws against miscegenation did not suggest any epidemic of such sexual liaisons. Prior to 1391, there was relatively low social anxiety associated with Christian women involved in interfaith relationships; however, 1391 marked the heightened outbreak of violence against Jewish communities in the Iberian Peninsula and the beginning of the mass conversion of Jews to

²³⁶ Ibid., IV, X, III.

²³⁷ Ibid., IV, X, IV; IV, X, V.

²³⁸ Ibid., IV, I, I.

²³⁹ Burns, *Underworlds*, VII, XXIV, IX.

²⁴⁰ Nirenberg, "Conversion, Sex, and Segregation," 1068-1071.

Christianity. These occurrences were fueled by successive waves of plague during the fourteenth century, which was perceived as a sign of disorder in Christian society, and in turn reinterpreted in the context of interfaith sexual encounters.²⁴¹ As Nirenberg suggests, the inclusion of miscegenation laws could be understood in the context of the possibility of sexual advances, engendered by close social interactions.²⁴² Though Jews were allowed to practice their religion and to live under Christian sovereignty, several laws made them the visible social others. Jews and Christians could not share meals or bathe together, and Jews were not permitted to employ Christian men and women as servants. Christians were under the same obligation not to invite any Jew to their houses, and they were not able to take any prescription made by Jewish physicians.²⁴³ The lawmakers intended to eradicate any social interactions that might lead to sexual advances. In an integrated society where these different religious groups lived in close proximity, however, complete deterrence of interreligious sexual liaisons was nearly impossible. Especially given the plethora of Christian and Muslim prostitutes throughout Iberia, the chances for interreligious sexual activities to occur was heightened exponentially.²⁴⁴ In reality, kings such as Alfonso X employed Jewish physicians. The discrepancy between regulation and social reality implied the acknowledgement of the minority presence in Iberian society. Ideologically, Jews ought to be kept as social others, but the population in Iberia was so diverse that these social and religious others became an integral part of the Iberian society.

Interestingly, a hierarchy of penalties existed in Christian-Muslim sexual encounters that was absent in Christian-Jewish ones. In Christian-Jewish liaisons both male and female offenders suffered the death penalty, while in a Christian-Muslim sexual transgression, a woman's penalty depended on her sexual status and profession. A male Muslim offender would be put to death if he had intercourse with a Christian woman who was a virgin, widow, or wife. The only exception was if his sexual partner were a prostitute, in which case he would be publicly scourged for the first offense, and put to death only for a repeat offence.

²⁴¹ Ibid., 1076-1077.

²⁴² Ibid., 1071.

²⁴³ Burns, *Underworlds*, VII, XXIV, VIII.

²⁴⁴ Meyerson, "Prostitution of Muslim Women," 88.

In general, Christian women were given two chances. Virgins, widows, and prostitutes would lose all properties or be publicly shamed after their first offense. For the second offense, they would be sentenced to death. If the women were married, their husbands would decide their fates.²⁴⁵ The punishment of interreligious sexual relations between a Muslim man and a Christian woman revealed several salient points. A Muslim man's transgression was partly mitigated when he had sex with a prostitute. This leniency could be explained by the low moral standard applied to prostitutes, due to their public expression of sexuality. Curiously, Christian virgins, widows, and prostitutes were given second chances when they had intercourse with Muslim men, whereas second chances did not exist when the male offender was a Jew. This difference might be better understood from Robert I. Burns' theory on how these two religious communities were perceived by Christians in Castilian society. While the acceptance of Jews was based on the Scripture, tolerance of Muslims was drawn from surrender treaties.²⁴⁶ Despite constant interactions between Christians and Muslims, moreover, Muslims still posed actual political and military threats to kingdoms in Iberia.²⁴⁷ With Burns' analysis in mind, it could be speculated that Christian authorities might have articulated punishments based on the different perceptions associated with Jews and Muslims. Since Jews were similar to Christians, both offenders were penalized as Christians in adultery cases. Given the religious and military tension between Muslims and Christians, though, Christian authorities seemed to give second chances to Christian female offenders. These laws could also serve an admonishing purpose to discourage members from these religious communities from engaging in intimate acts, since in reality, the death penalty on minority men was rarely implemented. According to both Meyerson and Jonathan Ray, both Muslims and Jews found it more advantageous to pay the fine instead of going through litigation, even with only circumstantial evidence.²⁴⁸

From the above discussion on interreligious illicit sexual behaviors, two tentative conclusions can be made. On an immediate level, regulations on interreligious sexual

²⁴⁵ Burns, *Underworlds*, VII, XXV, X.

²⁴⁶ In introduction to *Partida VII*, Burns, *Underworlds*, xxxiii.

²⁴⁷ *Ibid.*, xxxvi.

²⁴⁸ Meyerson, "Prostitution of Muslim Women," 88; Jonathan S. Ray, *The Sephardic Frontier: The Reconquista and the Jewish Community in Medieval Iberia* (Ithaca: Cornell University Press, 2006), 166.

conducts were motivated by the sheer presence and the social proximity of religious others. Interactions among these three religious communities occurred frequently to the extent that they heightened a sense of self-awareness within each community. Such sentiment also prompted the effort to control possible sexual encounters with religious groups other than one's own, for exchanging intimate social interactions implied a blurring of the boundaries. This sense of self-preservation on a communal level was also reflected in codified rules on religious minorities. As Burns suggests, *Las Siete Partidas* was meant to govern Christian subjects, but it included laws that pertained to Jews and Muslims.²⁴⁹ The law functioned as a mechanism that both included and excluded these religious others. The fact that *Las Siete Partidas* contained rules for both groups indicated that the Castilian authority regarded them as an integral part of the society. On a larger scale, these regulations did not target Jews and Muslims because of their otherness; instead, they were meant to maintain a general social order and hierarchy. Even for Christians, a sexual liaison between a male servant and his mistress would be forbidden.²⁵⁰ Though both parties could be Christians, the sexual liaison was considered a transgression because it stepped out of the expected social behaviors prescribed to each social echelon. Should interreligious sexual liaisons or marriage be legally permitted, the self-identity of each religious group would fade. In other words, these laws could be seen as the Christian authority's efforts in maintaining its status quo, as well as the balance of society.

²⁴⁹ Burns, *Underworlds*, xxxvi.

²⁵⁰ Ray, *The Sephardic Frontier*, 165.

CHAPTER 4

CONCLUSION

Las Siete Partidas reveals the significance of the marital institution in the eyes of the jurists. The first component of marriage, betrothal, consisted of mutual consent between two individuals; in fact, according to the laws, present betrothal was equivalent to marriage. In other words, the Iberian jurists had incorporated the consensual theory formulated by theologians into the legal system. The jurists, however, did not overlook the role of intercourse in the lay marital context. In cases of future betrothal, once couples engaged in intercourse the relationship was immediately transformed into marriage.²⁵¹ The duality of consent and coitus assimilated by Iberian jurists into *Las Siete Partidas* coincided with Duby's assessment on the marriage revolution in the twelfth century: the confrontation between theologians and the nobles on marriage eventually harmonized and fused into one.²⁵² It is worth mentioning that this formulation of betrothal emphasized individual liberty and deterred parental involvement. The only condition within which the parents could have a say was when their children gave them explicit permission.²⁵³ The absence of parental authority in marital affairs indirectly increased clerical involvement in lay marriage, in that clerics reserved the right to compel couples to marry if they had been engaged for a long time.²⁵⁴ The clergy's profound influence on lay marriage can be perceived in the laws on betrothal, through which the clergy also assumed greater responsibility for the completion of the union. From this perspective, marriage in medieval Europe was dictated and shaped by celibate theologians.

While betrothal was intended for a couple to express mutual consent to share a common life, marriage transformed that consent into a publicly recognizable social reality. In

²⁵¹ Burns, *Family, Commerce and the Sea*, IV, I, II.

²⁵² Duby, *The Knight*, 283-284.

²⁵³ Burns, *Family, Commerce and the Sea*, IV, I, XI.

²⁵⁴ *Ibid.*, IV, I, VII.

the jurists' opinion, marriage had several functions, namely, procreation, protecting men from fornication, and fulfilling the conjugal debt.²⁵⁵ From these functions, it can be deduced that marriage was meant to contain sexual desires within the bond of marriage, given that intercourse outside of the marital bond was considered illicit and sinful.²⁵⁶ Though some theologians believed excessive passion between spouses was equivalent to adultery, Iberian jurists refuted this belief by allowing couples to use sexual enhancement within the marital bond, since marital sex was less debilitating than extramarital sexual behaviors.²⁵⁷ Iberian jurists' concession to the laity's outlook on marriage should not be interpreted as deviation from the clerical concept of marriage; they simply reached a middle ground by synthesizing both Church teaching and lay practices. The inherent danger in alienating the laity was far greater than incorporating components from the laity's worldview. Iberian jurists' rather liberal view on marital sex also correlated with the relative ease in contracting a marriage and difficulty in dissolving one. The jurists allowed the laity to do more within marriage, but simultaneously, intercourse transformed abstract concepts such as free will and mutual consent into an indissoluble reality.

Although clandestine marriage and concubinage were considered quasi-marriage and bore a degree of social stigma, Iberian jurists were willing to accept these types of arrangements due to their similarity to a proper marriage. This acceptance demonstrates the pivotal role of marriage in Iberian society. The consensual model in fact harbored an environment for clandestine marriage because the very definition of the model consisted of a simple exchange of consent, effectively contracting a marital union. The purpose of marriage was meant to regulate family formation and sexuality. Therefore, when marriages were contracted in secret, detrimental social consequences occurred because then the authorities would not be able to enforce the rules that they had established to monitor the sexuality of the populace. Even though by the very definition of consensual theory consent from both individuals validated marriage, Iberian jurists emphasized the public nature of marriage out

²⁵⁵ Ibid., IV, II, IV; IV, II, IX.

²⁵⁶ Ibid., IV, II, IX.

²⁵⁷ Ibid.

of concern for incest and social harmony.²⁵⁸ In their discussion of the laws on marriage, Iberian jurists specified that parents had no influence over their children's marriage, but they seemed to refute their own statement by stating that marriage needed parental blessing in order for it not to be clandestine.²⁵⁹ Throughout their discussion, the jurists did not insinuate that clandestine marriages were invalid; often the problem of clandestine marriage arose only when a couple sought dissolution. The discrepancy in jurists' attitudes could be interpreted as their efforts in harmonizing the differences in church teachings and secular laws, for if the laws did not take the general need into consideration, they would be ineffective and unenforceable.

Concubinage occupied the gray area in jurists' perception because the term concubine had a variety of implications. The term could mean a man's potential spouse, girlfriend, or a woman he slept with.²⁶⁰ To further place this practice in an obscure light, almost all women could be concubines, except minors, virgins, and chaste widows.²⁶¹ Despite all the moral challenges embodied by concubinage, the jurists were still willing to accept and provide legal support to the practice: it provided a stable sexual outlet similar to a full marriage. By legitimizing practices that were similar to marriage, jurists took a more inclusive approach in monitoring sexuality; otherwise, any extramarital sexual liaison would be illegitimate.

In the discussion of laws against illicit sexual behaviors, one can see how Iberian jurists understood the meaning of sexual deviations in the context of marriage. This observation is especially apparent in laws regarding adultery. Given its considerable effect on the community, the jurists stipulated both preemptive measures against adultery and an elaborate and complex process in pressing adultery charges. The jurists intended that the process and penalties would protect the integrity of marriage and maintain social order by exhausting all possibilities before granting a divorce. While the jurists stipulated harsh penalties for offenders, they also strove to maintain the balance between religious teaching and justice. This effort could be observed in the possible defenses that an accused party was

²⁵⁸ Ibid., IV, III, I.

²⁵⁹ Ibid., IV, I, X; IV, III, I.

²⁶⁰ Karras, *Sexuality in Medieval Europe*, 100.

²⁶¹ Burns, *Family, Commerce and the Sea*, IV, XIV, II.

entitled to, instead of depending on the pervasive assumption that adultery was primarily a woman's crime. The importance of adultery could also be perceived in how punishment for adultery established the basis for punishment of other sexual transgressions.

Regulations on incest correlated to marriage in aspects of consanguinity. A common objective in noble marriage was to build and reinforce the familial alliance, which was the direct opposite of the consensual theory. It is arresting that incest regulations included affinity, which was created by sexual intercourse. This fact proved that intercourse not only fostered an indissoluble bond between spouses, but also created a network of family members from both spouses. Theologians seemed to exclude familial involvement in contracting marriage, but fundamentally the formation of marriage had the family at heart, given that familial relations derived from the marital affair of two individuals.

The discussion on impotence also sheds light on the strictness of marital principles. Marriage was an embodiment of individual freedom, but it was also utilitarian in nature. When a couple could not perform sexually, this difficulty constituted a legitimate ground for annulment. Even though theologians consistently downplayed the role of coitus, they in essence recognized the significance of carnal relations for the laity. Nonetheless, as with adultery the process to prove impotence was lengthy, which showed the jurists' intention to defend the principle of indissolubility. In this light, theologians strove to maintain the balance between dogma and social practices.

The sections on seduction and abduction also revealed how Iberian jurists wrestled to reconcile sexual violence and matrimony. While realizing the offense of the transgression, jurists obscured the boundaries between marriage and illicit sexual behaviors by condoning abductors marrying their victims. In this sense violence could be a precursor to marriage. Because of the inherent social danger of seduction and abduction, jurists believed that marriage would be a remedy. By designating marriage as a solution to sexual transgressions, jurists deemed marriage not only as a container of human lust, but also as a panacea for sexual misbehaviors. The jurists' tactic disclosed the importance of marriage and that they viewed the institution as protecting the proper order of society.

Although sodomy appeared as the opposite of matrimony, the two shared some similarities in the discussion of the laws. For example, the presence of force could exonerate a guilty party in a sodomy case as coercion could invalidate a marriage. Even within the

discussion of illicit sexual behaviors, jurists still incorporated the defining elements of licit behavior, which indirectly enforced the licit behaviors. In addition, some scholars pointed out that sodomitical behaviors in fact fortified the very concept of a patriarchal society in the respect of ultimate male dominance, but simultaneously devalued femininity.²⁶² Though sodomy was regarded as a debilitating behavior, it incidentally reinforced the very social structure of medieval Europe. The illusive description of sodomy in laws also elucidated jurists' concern on this particular transgression, since sodomy was not prone to any sector of the population. In other words, anyone had the potential to commit sodomy, hence explaining the gravity of the offense.

The connection between procurement and marriage was not immediately apparent; the transgression warranted punishment because it upset the distribution of women on the marriage market. In addition, the procurers offered viable sexual opportunities that should exist within the bond of matrimony, which could sway the populace from contracting legitimate unions. The paradoxical part was that though procurement was considered a grave transgression, the invested interest of the monarchy in prostitution led to victimization of Muslim women. This measure gave leeway to Christian men's sexual dalliance and shielded Christian women from Jewish and Muslim men.²⁶³ In this sense, prostitution became a necessary evil.

Laws governing interreligious marriage and sexual liaisons were relatively few considering Iberia's multiethnic context. In fact, interreligious marriage was deemed as grounds for divorce with the possibility of remarriage, especially when the unconverted spouse showed disrespect toward Christianity. The rationale behind possible remarriage was based on the lack of mutual consent in non-Christian marriages.²⁶⁴ Jurists insinuated that Christian marriages were superior to the non-Christian ones, an insinuation that inferred such superiority could also justify Christian dominance and hegemony in medieval Iberia. The ban on interfaith sexual liaisons could be explained by the desire to maintain the integrity of the Christian religion, and this effort was manifested in body politics. Since it was believed in

²⁶² Berco, "Producing Patriarchy," 357-358.

²⁶³ Meyerson, "Prostitution of Muslim Women," 88.

²⁶⁴ Burns, *Family, Commerce and the Sea*, IV, X, III-V.

medieval Europe that coitus formed affinity and that women's bodies were an extension of the Christian community, interfaith coitus adulterated communal purity. To prevent such a possibility, Christian jurists drafted regulations forbidding interfaith social interactions, such as sharing a meal or a bath.²⁶⁵ In reality, to completely eradicate interreligious interactions was nearly impossible, given the extent of integration between the three religious groups. The purpose of the laws, therefore, was to preserve and reinforce the self-awareness of each religious group, as well as to maintain social order and hierarchy.

The examination of *Las Siete Partidas* also reveals concepts of male and female sexuality. Disparity in the legal treatment between men and women was especially prominent in laws regarding illicit sexuality. In the discussion of adultery, men primarily reserved the right to accuse, since the consequence of an adulterous affair was far more detrimental to men, given that obscure paternity could threaten an inheritance-based society.²⁶⁶ The husbands also reserved the right to act when they were suspicious of their wives' potential adultery by warning or possibly killing the paramours.²⁶⁷ This legal sanction betrays women's subjugation to men in marriage, as well as men's right to defend their reputation and marriage. Though adultery was characterized as women's transgression, adulterers received harsher punishment than adulteresses because men were socially perceived as more rational.²⁶⁸ In regard to sexuality, men were believed to be more active than women, hence, it could be interpreted that they were more likely to initiate the adulterous affairs, while women remained as the passive recipients.

On the issue of impotence, while acknowledging both the husband and wife's rights in filing an impotence suit to dissolve marriage, the jurists allowed for women's involvement in their husbands' impotence. Women who had been married previously occupied an especially precarious position when they delayed reporting their husbands' sexual dysfunction. Given their sexual experience, it was believed that these women ought to know immediately whether their spouse was impotent.²⁶⁹ The underlying assumption was that

²⁶⁵ Burns, *Underworlds*, VII, XXIV, VIII.

²⁶⁶ Ibid., VII, XVII, I; Karras, *Sexuality in Medieval Europe*, 88.

²⁶⁷ Burns, *Underworlds*, VII, XVII, XII.

²⁶⁸ Ibid., VII, XVII, XV.

²⁶⁹ Burns, *Family, Commerce and the Sea*, IV, VIII, VI.

women were more carnal in nature and were socially perceived as conniving; therefore, they might contribute to or falsify their husband's dysfunction. Some scholars show that though women could legally file impotence suits against their husbands, some women chose to run away, risking losing all of their dowries because these suits questioned their husbands' masculinity.²⁷⁰ Women had the right to leave their impotent husbands by law, but because of the emasculating inference of an impotence suit, women resorted to escape instead of exercising their legal rights.

The laws in *Las Siete Partidas* did not treat all women equally. For example, in seduction and abduction cases, charges were brought against men who violated virgins, nuns, and widows; prostitutes were not included. The reason behind the exclusion was that prostitutes were common women who displayed their sexuality publicly. Additionally, prostitutes did not fit into the social paradigm assigned to women in medieval Europe. Another salient observation on laws regarding seduction/abduction was that jurists did not include sexual violation of married women. Though married women were not culpable for adultery if they were not violated, there was no mention of punishment for their perpetrators.²⁷¹ Given jurists' priority in protecting matrimony, it is understandable that they did not address this issue, since no marriage was ruined. In light of this, it can be seen that jurists formulated laws on illicit sexual behaviors based on the understanding of the licit ones, and the main objective was to preserve marriage intact.

Another aspect of the laws that ignored women was sodomy. Both Lansing and Benkov assert that women's homoerotic desire was not penalized unless their transgression mimicked male penetration.²⁷² These scholars' observation reveals how a phallic understanding of intercourse colored the view of female homoerotic desire. More importantly, these female offenders were punished not for their sexual acts but for crossing the gender line.

Gender asymmetry was prominent in *Las Siete Partidas*, but some laws conveyed a sense of equality. The foundation of consensual theory was consent, and the laws did not

²⁷⁰ Butler, "Runaway Wives," 347.

²⁷¹ Burns, *Family, Commerce and the Sea*, IV IX, VII.

²⁷² Benkov, "The Erased Lesbian," 115-116; Lansing, "Donna con Donna," 115.

differentiate men's consent from women's. One of the hallmarks of medieval European marriage was the conjugal debt, which required both spouses to fulfill each other's sexual desires, even in extreme situations, such as if one of the spouses was plagued by leprosy.²⁷³ Though marriage by and large was a hierarchical relationship, where a husband controlled his wife, it had some embedded equality in the aspect of desire. Even in adultery, where gender asymmetry was the most prominent, the jurists wrote that husband and wife should be judged alike when both spouses committed the same wrongdoing.²⁷⁴ Men could not commit adultery without impunity and divorce only remained in effect when the innocent party stayed within the bound of the laws; otherwise, the clerics reserved the right to compel the reunion of formerly separated spouses.

Another area where men and women received the same treatment was in procurement. Both procurers and procuresses were punishable by death due to the direct challenge procurement posed to matrimony. The penalty for a procuress revealed a salient point that though women were socially perceived as mentally feeble in medieval Europe, their inherent weakness did not exonerate their transgression, given the gravity and social consequences procurement would bring forth. Another tentative interpretation on the harsh punishment is that the procuress assumed an active, thus masculine role, and profited by prostituting other women. The procuresses were punished for the nature of their behaviors.

Differences were not limited to gender, but also appeared in social status and ethno-religious groups. Disparity in social status mainly concentrated on the punishment of illicit sexual behaviors. For instance, a husband's punishment differed depending on the social standing of his wife's possible paramour.²⁷⁵ In incest laws, punishment varied by offenders' social statuses. While offenders from a higher social class would lose their ranking, offenders of a lower social stature would be shamed publicly and faced life banishment.²⁷⁶ In fact, offenders of prominent social standing could seek papal dispensation when they contracted incestuous unions. This exception conveyed jurists' awareness of the nobility's view of

²⁷³ Brundage, "Implied Consent to Intercourse," 249; Karras, *Sexuality in Medieval Europe*, 289.

²⁷⁴ Burns, *Family, Commerce and the Sea*, IV X, VI.

²⁷⁵ Ibid., *Underworlds*, VII, XVII, XV.

²⁷⁶ Ibid., VII, XVIII, III.

marriage, which encouraged endogamy instead of exogamy.²⁷⁷ It could be speculated that exceptions were made case-by-case, and these exceptions quantified the contestation between nobles and theologians. The fact that members of the lay upper class needed to seek theologians' approval on their private matters signified that the church had gained a foothold in controlling lay life. It is rather interesting that marriage was a venue for celibate clergy to be involved and control the laity; in other words, theologians incorporated Christian morality and outlook into marital principles. By conforming to how theologians expected marriage to be contracted, the laity had yielded to the control of the clergy.

Punishment according to class is also reflected in the discussion of seduction penalties. Upper class offenders would lose their properties and lower class offenders often paid with manual labor or cutting their ties with the community. However, this rule does not apply for all transgressions. For offenses that were more heinous, such as abduction and adultery, such variance was less likely to exist.

Las Siete Partidas included laws that pertained to Muslims and Jews and demonstrated a mixture of tolerance, accommodation, and a certain sense of exclusion. Muslims and Jews were allowed to practice their religions in the Christian realm of Castile. However, the jurists also pointed out that during the feast days of both minorities, Christians should avoid going out to prevent possible religious clashes.²⁷⁸ Jurists excluded both religious minorities from Christian regulations on incest. As long as Muslims and Jews contracted marriages according to their laws, they did not need to annul their marriage when converting to Christianity.²⁷⁹ The latitude that jurists displayed was meant to accommodate new converts' lifestyles. This conciliation can be construed as Christian flexibility within a multiethnic setting. Such tolerance was not extended to all situations. Iberian jurists stipulated harsh punishment for miscegenation. Nonetheless, Jews and Muslims were not penalized equally. It was punishable by death when a Jewish man had intercourse with a Christian woman, regardless of her sexual status and her profession. In contrast, a Muslim

²⁷⁷ Ibid., VII, XVIII, III.

²⁷⁸ Ibid., VII, XXIV, II; VII, XXV, I.

²⁷⁹ Burns, *Family, Commerce and the Sea*, IV, IV, VI.

male offender's culpability was directly correlated to Christian women's status.²⁸⁰ In fact, a Christian virgin, widow, or prostitute would be given a second chance when she had a sexual liaison with a Muslim man. This difference in penalty could be explained by the reception of Judaism and Islam in medieval Iberia. Because Muslims remained as viable political and military foes, Christian women received a second chance when committing sexual transgression with Muslims. But at the same time, Christian scriptural acceptance of the Jews rendered offenses with Jews similar to ones committed with Christians, so that Christian women would receive a serious penalty when having intercourse with Jewish men.

In general, marital regulations presented in *Las Siete Partidas* compare broadly with pan-European beliefs, but the law code still presented nuances that were different from the general European practices. The arresting point was that Iberian jurists added minor details that reflected the unique quality of their law code. For instance, while discussing consent in a marriage, jurists cautioned that these words must be uttered solemnly, and not in jest.²⁸¹ This example demonstrates how Iberian jurists recognized the human capacity to err, as well as strove to prevent contraction of unwanted marriages. Jurists' efforts could be seen as an interpretation of the church's teaching. Instead of accepting these dogmas in their entirety, Iberian jurists tailored the teaching to fit the needs of Iberian society. Another prominent difference between *Las Siete Partidas* and other medieval European law code was the Iberian jurists' emphasis on how men and women should be judged equally when both parties made the same mistake; they would be on equal legal footing. This equality was similar to the same fairness in conjugal debt, where both spouses had the obligation to fulfill each other sexually. In some ways, Iberian jurists tried to maintain the balance between justice and theological principles. It also appeared that in terms of sexuality, women were viewed as less rational and more lustful than men; however, when men made mistakes that conflicted with social expectations, they would not remain unpunished.

The analysis of *Las Siete Partidas* also shows that even though marital principles were formulated by celibate clergy, theologians and jurists alike strove to harmonize the differences between doctrines and actual practices. It can be said that laws on licit and illicit

²⁸⁰ Burns, *Underworlds*, VII, XXV, X.

²⁸¹ Burns, *Family, Commerce and the Sea*, IV, II, V.

sexuality in *Las Siete Partidas* are evidence of such synthesis. Iberian jurists by and large accepted the fundamental marital principles that the Church attempted to inculcate, but the jurists also enriched these principles by incorporating details that were particular to Iberian marital practices. In addition, the laws also embedded logic derived from the pervasive social perception of male and female sexuality that was common in medieval Europe. It was evident that cultural production was not limited to high-level theologians, but occurred at all levels. This dialogue between the clergy and the laity contributed to both the stability and novelty of medieval European culture.

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