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INCEST IN EARLY MEDIEVAL SOCIETY

The question of what persons and why can have sexual relations with each other and consequently, can contract marriage, is of basic importance for the functioning of every society, irrespective of time, place and the degree of the society's development. A precise definition of the social circle within which an individual was not allowed to look for a sexual partner was indispensable for the maintenance of social order and, symbolically, for the preservation of sacral order. A defiance of prohibitions in this sphere was regarded as a grave transgression of human and divine laws and always implied sanctions¹.

The definition of the degree of consanguinity and affinity which made marriage impossible was a question which was discussed with great interest in early medieval Europe. Christianity regarded incest² as a mortal sin on a par with murder, especially with patricide, matricide and homosexuality (it is worth recalling that the term "sodomy" was sometimes used also for incest). Three great traditions lay at the roots of the medieval doctrine of incest: the Roman tradition (through Roman law which was adopted by the early Christian Church, a tradition which was still alive in the territories of the Roman Empire where a population living according to a vulgarised Roman law survived), Judaic tradition (*Old Testament* principles regulating life in the family and the early Christian rules stemming from them, beginning with St. Paul's teachings), principles which were intertwined with each other in the laws of the early Church councils

¹ P. Bonte, *Introduction*, in: *Épouser au plus proche. Inceste, prohibitions et stratégies matrimoniales autour de la Méditerranée*, Paris 1994 (Civlisations et Sociétés, 89), pp. 7–27.

² By incest we mean all forms of sexual contacts between persons so related by kindred or affinity that for religious or legal reasons marriage cannot take place between them.

and in the writings of the Church Fathers, especially St. Augustine and St. Jerome, and finally the Germanic tradition, that is the set of customs regulating the life of the barbaric societies of the monarchies successively established on the ruins of the Western Empire.

In Roman law the view about the unions which should be regarded as incestuous changed as time went on. Generally speaking it can be said that the rule in force when the Roman Empire was nearing its end excluded marriages between persons related with each other in the fourth or a lower degree, that is, unions between first degree cousins, in other words between children of siblings, were regarded as incestuous, though there were some exceptions to this rule. Let us recall that the kinship-computing system in Roman law differed from the system binding in Jewish law and in Germanic tradition, for in Roman law kinship was computed by summing up all persons separating the potential partners from a common ancestor. In Judaic tradition, calculations were based on generations separating the potential partners from a common ancestor, which means that first cousins were thought to be related in the second degree, not in the fourth degree as they were in the Roman tradition. The *Pentateuch* (*Lev.* 18,6–18; 20,11–12; 19–21; *Deut.* 27,20; 27,22–23) also lists persons related by affinity, sexual intercourse with whom was regarded as incest. Germanic customary laws had a system of computing kinship similar to the Judaic system. In Germanic laws, too, the degree of kinship was calculated on the basis of generations separating each of the related persons from a common ancestor.

The coexistence of various legal systems in the early Middle Ages led to differences in the interpretation of the degree of consanguinity or affinity which precluded marriage, and consequently, to different decisions, depending on time and place. The principle of an equal treatment of kinship in the male and female lines was binding in all traditions and all traditions banned sexual relations between the nearest relatives in the direct and collateral lines. What aroused controversy was the extent of the prohibition. At first, the Church tended to accept the Roman computation which regarded kinship up to the fourth degree as a diriment impediment to marriage (this was the interpretation adopted by Hraban Maur as late as the middle of the 9th

century), but the prohibition was gradually extended. For a long time it was not clear which kinship-computation system (the Roman or the Germanic one) should be regarded as binding. After an animated discussion it was gradually established between the 9th and the 12th century that unions between persons related in the seventh degree of Germanic computation were incestuous, which meant that persons separated by seven generations from a common ancestor could not marry each other³. Between the 7th and the 9th century the ban was extended to cover also persons related by affinity, though in this respect interpretations differed.

Ecclesiastical laws also regarded related persons' sexual relations with the same partner as incestuous. In this context the most frequently mentioned were cases of two brothers having sexual relations with the same woman or of two sisters living with the same man (or cases of adultery committed by one of the spouses with a brother-in-law or a sister-in-law); sexual relations established by a father and his son with the same woman (and between a stepmother and her stepson or a father-in-law and his daughter-in-law are less frequently mentioned). Even when it turned out that the forbidden sexual intercourse occurred before marriage (for instance a brother married his brother's mistress), the marriage was regarded as incestuous and had to be dissolved. Admittedly, ignorance was treated as an extenuating circumstance but it did not release any side from the duty of penance. But synodal decrees permitted persons who acted in ignorance to contract a legal marriage⁴. The effects of the spouses' spiritual union and corporal unity continued to exist after the end of marriage (caused by the death of one of the spouses or by

³ For the development of views on incest before the fourth Lateran Council see: B. S i k o r s k i, *Kanoniczna przeszkoda pokrewieństwa naturalnego w rozwoju historycznym do IV Synodu Laterańskiego* (*The Natural Consanguinity Canonical Impediment to Marriage in Its Historical Development up to the Fourth Lateran Council*), Poznań 1959; see also J. Gaudemet, *Du droit romain tardif aux conciles mérovingiens: les condamnations de l'inceste*, "Zeitschrift der Savigny — Stiftung für Rechtsgeschichte. Kanonistische Abteilung", vol. CXIII, 1996, pp. 369–379; for various ways of calculating consanguinity see: E. C h a m p e a u x, "Jus sanguinis", *trois façons de calculer parenté au Moyen Age*, "Revue d'histoire du droit français et étranger", vol. XII, 1933, pp. 241–290.

⁴ See, for instance, the Council in Tribur, year 895, May 5th, *MGH, Capitularia regum Francorum*, vol. II, part 2, Hannoverae 1893, N^o 252, cap. 43, 44, 45a, pp. 238–239; *Canones extravagantes concilio Triburiensti addicti*, *ibidem*, cap. 4, p. 247; Capitulary of Teodulf of Orleans, *MGH, Capitula Epscoporum*, part 1, ed. P. B r o m m e r, Hannover 1984, part V, cap. 3, p. 161.

the annulment of the union owing to adultery or incest). The kinship links of one of the spouses were blood ties for the other. Sexual intercourse with one's wife's sister was tantamount to an intercourse with one's own relative and defiled the wife, for through the person of her husband with whom she constituted a corporal and spiritual unity, the wife, too, committed incest with her own sister. This principle lay at the root of the strict ban on all forms of levirate and sororate⁵.

In addition to incest, which resulted from kinship or affinity between the partners, sexual relations between persons who were in a spiritual relation established at the time of baptism were also inadmissible in the Christian world. The custom to nominate a child's godparents, both the godmother and the godfather, began to spread in the 8th century. This emphasised the analogy between the biological parents and the godparents. Not only were the godparents forbidden to contract marriage with their godchildren, but in the early Middle Ages the restrictions imposed on biological relatives were extended to persons related to godparents by blood or marriage. Sources show, however, that even among the clergy there were great divergences of views on the effects of spiritual affinity. For instance, in his letters written in ca 735 St. Boniface asked his friends learned in ecclesiastical law for the justification of Rome's declaration that a widow could not marry the godfather of her child. According to him, no canonical regulations explicitly forbade such unions. "I can in no way understand why in just this case spiritual kinship should make corporal cohabitation such a great sin, if we recognize that we who have been washed with the water of the holy baptism are the sons and daughters of Christ and the Church, and are all brothers and sisters in Christ"⁶. An echo of the polemics held by early Christian writers reverberates in St. Boniface's letter. Doubts about the effects of spiritual affinity were expressed

⁵ For an anthropological analysis of the reasons why Christianity put a taboo on levirate and sororate see: F. Héritier, *Two Sisters and Their Mother. The Anthropology of Incest*, New York 1999 (origin. *Les Deux sœurs et leur mère. Anthropologie de l'inceste*, 1994), esp. pp. 79 ff.

⁶ Boniface's letter to the Archbishop of Canterbury Nothelen, year 735, and Bishop Penthelm, *MGH. Epistolae*, vol. III: *Epistolae Merovingici et Karolini Aevi*, vol. I, Berolini 1892 (henceforward referred to as *MGH EE Mer. et Kar. Aevi* vol. I), pp. 283-284: *nullatenus intellegere possum, quare in uno loco spiritualis propinquitas in coniunctione carnalis copula tam grande peccatum sit, quando omnes in sacro baptismate Christi et ecclesiae filii et filiae, fratres et sorores esse conprobemur.*

throughout the 9th century. The doubts concerned such complex questions as, for instance, whether there was an impediment excluding marriage between a man and the widow of the godfather of the man's child from an earlier marriage, if the widow was not the child's godmother, or whether marriage with the daughter of one's own child's godmother was permissible⁷. The penitentials from the 9th–11th centuries envisaged an equally stern penance for cohabitation with one's godmother or goddaughter as for sexual relations with the biological mother or biological sister. The doubts were also reflected in one of the most important early medieval compilations of canon laws by R e g i n o of P r ü m (*De synodalibus causis et disciplinis ecclesiasticis*).

It is not clear why in the 8th and 9th centuries the Church used such a broad interpretation of the circle of persons who were forbidden to marry each other because of links of kinship or affinity. One can have serious doubts about the materialistic theory put forward by Jack Goody, who has depicted this as a plan devised by the Church which thought that by impeding marriage it would secure greater endowments for itself⁸. Goody has assumed that the clergy and the laymen constituted two separate social groups which were opposed to each other and had divergent interests. In fact, the clergymen co-created the financial and matrimonial family strategies of the groups from which they stemmed. It is therefore difficult to imagine that the Church should have established and implemented laws which took no account of the social environment in which it was acting.

On the other hand, attention has been drawn to the fact that the taboo on incest played an important role in social consciousness. As Mayke de Jong says, it was feared that incest could inflict sacral impurity on the individual who committed it, and through him, on the entire group. In de Jong's view this fear was also present among the societies of Germanic Europe which were then being Christianised, which means that the Church issued its injunctions to put in order, strengthen and extend the norms which had been accepted by society for a long time and which were thought to be of basic importance for the preservation of religious and moral order. It is no coincidence that in collections

⁷ Council in Tribur, year 895, cap. 47, 48, p. 240.

⁸ J. Goody, *The Development of the Family and Marriage in Europe*, Cambridge 1983.

of barbarian laws and conciliar statutes incest was mentioned together with the gravest offences against nature, such as homosexuality or the murder of a relative, and was compared to the behaviour of animals, which did not belong to the human world of culture⁹. The question remains why such strong resistance was put up to restrictions on endogamous unions and why they took such a long time to be accepted.

The most convincing seems to be the idea that this broad scope of impediments to marriage resulted from differences in the computation of kinship between the Roman Church (which used the Roman computation) and the local churches of the barbarian monarchies (which computed kinship in accordance with the customs of the Germanic peoples). In this context it is worth recalling the well known letter written by Pope Zacharias to Pippin, king of the Franks, in 747 in which the Pope, to solve the difficulties in this respect, ordered that kinship should be regarded as a bar to marriage "up to the point where it is recognized as kinship"¹⁰. The Franks, like other Germanic peoples, recognized kinship up to the sixth or seventh generation from a common ancestor¹¹. But they did so in order to determine inheritance rights and not to define the circle of persons who could not marry each other¹². In this respect misunderstandings existed until at least the 9th century when the Germanic computation was finally adopted in canon law.

How were the norms on incest enforced? Ecclesiastical law regarded incest as a mortal sin and inflicted the gravest penalties, including excommunication, on persons who committed it. From the 8th century, parallel with increased Church control over family life and the development of the Christian marriage doctrine, jurisdiction over incest was gradually taken over by bishops. They were obliged to examine all incest cases reported

⁹ M. de Jong, *To the limits of kinship: anti-incest legislation in the early medieval West (500–900)*, in: *From Sappho to de Sade. Moments in the history of sexuality*, vol. I, London 1989, text accessible on-line <http://theol.eldoc.ub.rug.nl/FILES/root/BremmerJN/1989/120/3jong.pdf> (14.02.2007), pp. 45 ff.

¹⁰ MGH *EE Mer. et Ka. Aevi*, vol. I, p. 485.

¹¹ See, for instance *Edictum Rothari*, year 643, ed. C. Azzara, S. Gasparri, in: *Le leggi dei Longobardi. Storia, memoria e diritto di un popolo germanico*, Milano 1992, cap. 153, p. 42: *Omnis parentilla usque in septimum geniculum nomeretur, ut parens parentil per gradum et parentillam heres succedat.*

¹² M. Rouche, *Des mariages païen au mariage chrétien, sacré et sacrament*, in: *Idem, Le choc des cultures. Romanté, Germanité, Chrétienté durant le Haut Moyen Age*, Paris 2003, pp. 263–282.

to them during their diocesan visits¹³. In synodal legislation persons guilty of incest, along with homosexuals and patricides, are mentioned as persons who should be under special surveillance by bishops during the time of penance. The men and women who lived in a sinful union were advised to part¹⁴, to withdraw from secular life and to spend a long period or even the rest of life in a monastery; their right of leaving the diocese was restricted¹⁵. In such cases penitentials envisaged from several to over a dozen years of penance (in accordance with the resolutions of early Christian synods 15 years of penance was envisaged for cohabitation with one's mother or sister, seven years for cohabitation with more remote relatives)¹⁶. Persons guilty of incest were strictly forbidden to re-marry. Departures from these principles were permissible only if during the sexual intercourse one of the partners was unaware of the existence of a canonical impediment. But even then it was the clergymen's duty to check whether this was true, either through an ordeal or by making the side concerned confirm his/her statement under oath¹⁷. The reason why the penance may have been alleviated was not so much the conviction that the accused were innocent as the wish to prevent successive, even graver, sins they might commit through lustfulness if they were for ever forbidden to contract marriage.

Parish priests were obliged to control whether the marriages in their parish were not between relatives and to bring about the

¹³ See for instance *Capitulare Aquitgranense*, year 801–813, *MGH, Capitularia*, N° 77, cap. 1, p. 170.

¹⁴ It is worth pointing out that as late as the first half of the 9th century, when the doctrine on incest was being formulated, the law ordered that couples related in the third or lower degree be separated; from the fourth degree only a life-long penance was to be imposed, see *Hattonis episcopi Basileensis capitula ecclesiastica*, year 807–823, N° 177, cap. 21, p. 365, see also *Decretum Vermerense*, year 758–768, *MGH, Capitularia regum Francorum*, vol. I, N° 16, cap. 1, p. 40.

¹⁵ Council in Mainz, year 813, *MGH, Concilia*, vol. II: *Concilia aevi Karolini*, vol. I, part 1, ed. A. Werminghoff, Hannoverae et Lipsiae 1906 (henceforward referred to as *MGH Concilia*, vol. I, part 1), cap. 53, p. 272; council in Tours, year 813, *MGH Concilia*, vol. I, part 1, N° 38, cap. 41, p. 292; capitulary of Isaac of Langres, *MGH, Capitula episcoporum*, vol. II, ed. R. Pokony, M. Stratmann, Hannover 1995 (*MGH, Capitula episc.*, vol. II), cap. V, VI, pp. 208–209; *Hlotharit, Hludowict et Karoli conventus apud Marsnam secundus*, *MGH, Capitularia regum Francorum*, vol. II, Hannover 1890, N° 205, cap. 5, p. 73; *Regino Prumiensis, De ecclesiasticis disciplinis*, in: *Patrologiae cursus completus. Series Latina*, ed. J. P. Migne, Paris 1844–1864, vol. CXXXII, col. 194B.

¹⁶ H. J. Schmitz, *Die Bussbücher und die Bussdisciplin der Kirche*, Mainz 1883.

¹⁷ *Hattonis capitula ecclesiastica*, N° 177, cap. 21, p. 365.

separation of the couples which had broken the ban¹⁸. But the bishops knew how difficult it was to implement conciliar decrees. Resistance was put up not only by believers but also by lower clergy who were closely linked to local communities, which made them shut their eyes to the offences of the sheep under their care¹⁹. Efforts were therefore made to shift some responsibility on laymen by imposing on them the duty of informing Church authorities of any breach of canonical prohibitions and of controlling whether the penance imposed on persons guilty of incest was really done²⁰. The contraction of marriage, though in accordance with customs it was outside the Church's direct control, had to take place in the presence of fully conscious witnesses who could testify that the bride and bridegroom were not related in a forbidden degree. Bishops simply recommended that the wedding ceremony should be put off until the parish priest and the local elders excluded the existence of canonical obstacles to marriage²¹. We do not know how these mechanisms of social control functioned, but they could not be very effective, especially in cases where the Church's injunctions did not agree with a deep-rooted custom.

In exacting the regulations of canon law concerning marriage the Church found support, at least formally, in secular authorities. Under the influence of canon law, regulations restricting the possibility of marriage between relatives appeared in royal legislations as early as the seventh century. Frankish, Lombard,

¹⁸ See, for instance, the resolutions of the Bavarian Council dated at 740–750, *Concillium Bajuvaricum*, *MGH Concilia*, vol. I, part 1, N° 7, cap. 12, p. 53: *Ut et nuptiae caveantur, ne inordinate neque inexaminate non fiant, neque quisquam audeat ante nubere, antequam presbitero suo adnuntiet et parentibus suis et vicinis, qui eorum possint examinare propinquitatem, et cum eorum fiat consilio et voluntate*: cf. capitulary of Herard of Tours, third quarter of 9th c., *MGH, Capitula episc.*, vol. II, cap. 14, pp. 130–131.

¹⁹ *Capitulare primum, mere ecclesiasticum* of Charlemagne, *MGH, Capitularia regum Francorum*, vol. I, N° 43, cap. 16, p. 122; capitulary of Isaac of Langres, cit., cap. II, p. 208: *De incestuosis, ut canonice examinetur et nec propter alicuius amicitiam quidam relaxentur, quidam vero constringantur*.

²⁰ Capitulary of Theodulf of Orleans, cit., part II, cap. 2, p. 154. At the council held in Pavia in 850 (*I capitolari italiani. Storia e dritto della dominazione carolingia in Italia*, ed. C. Azzaara, P. Moro, Roma 1998, N° 40 [228], cap. 6, p. 186) the bishops described how clergymen should survey individual families living in their parish: *oportet enim, ut plebium archipresbiteri per singulas villas unumquemque patrem familias conveniant, quatinus iam ipsi, quam omnes in eorum domibus commorantes, qui publice crimina perpetrarunt, publice penitent*.

²¹ Council in Forum Iulii, year 796/797, *MGH Concilia*, vol. I, part 1, N° 21, cap. 8, pp. 191–192.

Visigoth and Burgundian rulers ordered that persons who had committed this crime and had not done the penance required by canon law should have their property confiscated and be heavily fined; in case of insolvency, they were to become royal slaves. The offspring of incestuous unions were deprived of inheritance rights in favour of other relatives. Poor free persons, freedmen and slaves were flogged or punished in a humiliating manner. Recalcitrant persons who refused to do penance prescribed by canon law ran the risk of being locked in a dungeon for many years²². In the 9th century rulers claimed the right to interfere if they were not sure that a bishop's verdict was just²³; otherwise the bishops had the exclusive right to pass judgments in cases of incest, but they left the execution of verdicts in the hands of secular officials²⁴.

In this respect the execution of law encountered resistance not only from the families concerned but also from the royal agents. Secular officials, who frequently were linked by kinship or other connections with the accused persons, were reluctant to get involved. It was no coincidence that in accordance with conciliar legislation and the laws promulgated by rulers, officials who did not fulfil their duties when incest was discovered had to pay high fines, risked losing their post and could even be excommunicated²⁵. But these threats were not very effective. On the other hand, accusations of incest offered great possibilities of abuse of power to representatives of the royal authority. Louis

²² *Codices Euriciant leges ex lege Baluvariorum restitue*, MGH, *Leges nationum Germanicarum*, vol. I: *Leges Visigothorum*, ed. K. Zeumer, Hannover 1902, cap. 2, p. 28; *Leges Burgundionum. Liber constitutionum*, ed. L. R. von Sallis, MGH, *Leges nationum Germanicarum*, vol. II, part 1, Hannover 1892, cap. 36, p. 69; *Pactus legis salicæ*, ed. K. A. Eckhardt, Hannover 1962, MGH, *Leges nationum Germanicarum*, vol. IV, part 1, cap. 13, 11, pp. 62–63; *Childeberti II decreto*, year 596, MGH, *Capitularia regum Francorum*, vol. I, N° 7, cap. 2, p. 15 (Childebert envisaged death for cohabitation with one's mother-in-law, in accordance with *Lev.* 20,11); *Edictum Rothari*, cap. 185, p. 52; *Liutprandi leges*, in: *Le leggi del Longobardi*, cap. 32, 33, p. 146 (it is worth pointing out that when in 723 Liutprand extended the circle within which people could not marry each other, he referred to the pope's will, which was exceptional in Lombard legislation: this was probably dictated by fear of the resistance which might be put up against a provision incompatible with customs); see also the capitulary of bishop Isaac of Lagres, cit., part IV, cap. 1, p. 207.

²³ See, for instance, *Capitulare missorum generale* of Charlemagne, year 802, MGH, *Capitularia regum Francorum*, vol. I, N° 33, cap. 33, p. 97.

²⁴ Synod in Mainz, year 847, MGH, *Capitularia regum Francorum*, vol. II, N° 248, cap. 28, p. 183; *Epistola synodi Caristacensis ad Hludowicum regem Germaniae directa*, year 858, *ibidem*, N° 297, cap. 7, p. 432.

²⁵ *Ahtstulfi leges*, in: *Le leggi del Longobardi*, cap. 8, p. 252.

the Pious had to remind not only counts but also bishops that they had no right to take bribes from persons accused of incest under the pretext of a trial deposit, for such payment was not envisaged by canon law²⁶.

Unfortunately, practices of incest, like the majority of behaviours which violated legal norms and were punishable, are weakly reflected in sources. It is therefore the normative sources (especially synodal statutes and penitentials) that influence the picture of this phenomenon, and this leads to obvious distortions. It is difficult to determine whether the adopted norms were observed or were only wishful thinking on the part of legislators, and to what extent they reflected the social reality of those days. If information on incest appears in other early medieval sources, this is usually connected with a dispute over the validity of an existing marriage and in most cases the information refers to a ruling family.

There is no doubt that if the kinship or affinity was more remote than the first or second degree, the norms of religious and customary law differed²⁷. Although the sources are scant and ambiguous, we can cautiously assume that unions between relatives up to the third or fourth degree were thought to be inadmissible in Germanic societies; unions between first cousins were exceptional but they did occur and were accepted socially. These customs must have been taken into account by Pope Gregory the Great when he decided that the Angles, who were then being Christianised, could contract marriage even if they were related by the third or fourth degree of kinship²⁸. At a council held in Rome in 743 Pope Zacharias complained about the spread of such unions in Germany and Italy²⁹. Levirate and sororate were allowed until at least the 7th–8th centuries, a fact confirmed by Merovingian rulers' marriages (also the polygamous

²⁶ *Capitula e conciliis excerpta*, year 826, 827, *MGH, Capitularia regum Francorum*, vol. I, N° 154, cap. 7, pp. 313–313; cf. the capitulary of Herard of Tours, cit., cap. 42, p. 137.

²⁷ The incompatibility of the systems of values is stressed by G. Duby, *Le chevalier, la femme et le prêtre. Le mariage dans la France féodale*, Paris 1981.

²⁸ Gregory the Great's letter to Augustine, year 601, *MGH, Epistolae*, vol. II: *Gregorii I Papae registrum epistolarum*, vol. 2, ed. L. M. Hartmann, Berolini 1899, N° XI, 56, pp. 335–336.

²⁹ Synod in Rome, year 743, *MGH Concilia*, vol. I, part 1, N° 3, cap. 1, pp. 20–21.

ones)³⁰. As late as the middle of the 9th century the marriage between Judith, daughter of Charles the Bald, widow of king Aethelwulf, and the deceased king's son and successor Aethelbald was settled according to political reasons³¹. For the same reason Louis the German married Emma, sister of Judith, second wife of his father Louis the Pious, and became his own father's brother-in-law.

Practically nothing is known about incestuous links in nuclear families and among close relatives living in one household, although the bishop of Basel Hatto complained in the first half of the 9th century that *plura sunt quae de incesti crimen scribi poterant, sicut in matre et filia et noverca, et pene innumera quae menti ad scribendum non occurrunt*³². Sexual relations between close relatives in direct and collateral line were undoubtedly a taboo in social practice. To accuse a person of such a crime was a serious calumny; it was sometimes used for political purposes, also in royal families. The existence of such unnatural unions left visible traces in social imagination. It is not an accident that the motif of incest and of an incestuous descent of heroes often appears in the literature and art of the Middle Ages³³.

In the early Middle Ages the best known accusation of incest, fraught with serious consequences, was the scandal which shook the Carolingian monarchies in connection with the divorce of Lothar II, great grandson of Charlemagne. Lothar had unsuccessfully tried to annul his childless marriage with Theutberga in order to marry his concubine Waldrade. Faced with a determined resistance of the clergy headed by archbishop Hincmar of Rheims, Lothar resorted to more radical measures and accused

³⁰ When his wife Ingunda was still alive, Chlothaire I, under her influence, married her sister Aregunda; this was meant to raise the status of his sister-in-law; his son, Charibert, also married two sisters, Merofleda and Markovefa; Merovech married Brunhild, widow of his paternal uncle Sigibert, *MGH, Scriptores rerum Merovingicarum*, vol. I: *Gregori Turonensis Opera*, part 1: *Libri Historiarum X*, ed. B. Krusch, W. Levison, Hannover 1937-1951, lib. IV, cap. 3, cap. 26, lib. V, cap. 2.

³¹ P. Stafford, *Charles the Bald, Judith and England*, in: *Charles the Bald, Court and Kingdom*, ed. M. T. Gibson, J. L. Nelson, 2nd ed., Aldershot 1991, pp. 143-153.

³² *Hatonis captula ecclesiastica*, cap. 21, p. 365.

³³ See, for instance, E. Archibald, *Incest and Medieval Imagination*, Oxford 2001; F. Bisogni, *Il motivo dell'incesto dalle leggende alle raffigurazioni dei santi*, "Settimane di Studio del Centro Italiano per gli studi sull'Alto Medioevo", vol. LIII, 2006, pp. 1027-1042, tabl. I-XX.

his wife of a premarital incestuous union with her brother, Hubert. Theutberga's confessor, breaking the secrecy of confession, stated that Theutberga had confessed her guilt to him. Some members of the episcopate found that this was a sufficient reason to annul Lothar's marriage and sentence Theutberga to a lifelong penance in a monastery³⁴. The matter divided the clergy and led to a vehement political dispute; the result of the discussion which was then held was that the doctrine on the character of Christian marriage and its indissolubility was made more precise³⁵. Theutberga's case shows that even sexual practices with a kinsman which did not end in penetration could be recognized as incest, so that a virgin could also be accused of this crime³⁶, and in extreme cases the accusation could be acknowledged as an adequate reason for dissolving a marriage.

Traces of incestuous behaviours which, to a greater or smaller extent, were accepted socially can be found in conciliar acts. At a council held in Pavia in 850 the bishops examined the ways of combating cohabitation between fathers-in-law and daugh-

³⁴ *Annales Bertiniani*, ed. G. Waitz, MGH, *Scriptores rerum Germanicarum in usum scholarum*, vol. XVII, Hannoverae 1883, year 860: *Lotharius regnam suam Teutbergam inrevocabili odio habitam —, ut ipsa coram episcopis confiteretur, fratrem suum Hucbertum sibi sodomitico scelere commixtum; unde et poenitentiae continuo addicta est atque in monasterium retrusa; Reginonis abbatis Prumiensis Chronicon cum continuatione Treverensi*, ed. F. Kurze, MGH, *Scriptores rerum Germanicarum in usum scholarum*, Hannoverae 1890, year 864: *Conciltum Mettis convocant, regnam quasi canonice evocatam in medio statuunt, testes producant una cum scriptis, qui valde gravia crimina imponentes inter alia protestati sunt, quod eadem Thietbirga confessa fuisset, semetipsam fratris germani incestuoso concubitu esse pollutam. Continuo statuta patrum de incestuosis recitantur, et non solum a legitimo viro separatur, verum etiam omnis copula maritalis inhihetur, poenitentia iuxta modum culpae indicitur; Hinkmar von Reims, *De divortio Lotharii regis et Theutbergae reginae*, ed. L. Böhringer, MGH *Concilia*, vol. IV, *Supplementum 1*, Hannoverae 1992, *Interrogatio et responsio XII*, pp. 177-197. For more details about Lothar's divorce and his accusations of Theutberga see: S. Airrie, *Private Bodies and the Body Politic in the Divorce Case of Lothar II, "Past and Present"*, vol. CLXI, 1998, pp. 3-38.*

³⁵ P. Toubert, *La théorie du mariage chez les moralistes carolingiens*, "Settimana di Studio del Centro Italiano per gli studi sull'Alto Medioevo", vol. XXIV, 1977, pp. 233-282; J. Gaudemet, *Il matrimonio in Occidente*, Torino 1989 (orig. *Le marriage en Occident*, 1987) pp. 71-99.

³⁶ Hinkmar, *De divortio Hlotharii, Responsio XII*, p. 182: *de tali stupro, sicut ista femina reputatur, quasi frater suus cum ea inter femora, sicut solent masculi in masculos turpitudinem operari, potuerit concipere, et post abortum virgo valuerit permanere*. So Theutberga was also guilty of cohabitating with her brother in a homosexual way (*concubitus masculi sodomitico*), which meant a double transgression of the norm. In its laws the Church frequently put incest and homosexuality on an equal footing, presenting both as behaviours contrary to nature.

ters-in-law, a custom which was then spreading especially among peasants: *Inventi sunt multi et maxime de rusticis, qui adultas feminas sub parvulorum filiorum nomine in domibus suis introduxerunt, et postmodum ipsi soceri nurus suas adulterasse convicti sunt*³⁷. More than half a century earlier bishops gathered at a council in Forum Iulii were faced with a similar problem³⁸.

In order to prevent this sinful practice a ban was introduced on marriages between underage sons, not yet independent legally, and adult women. This regulation which was undoubtedly proclaimed in response to a concrete problem presented during a bishops' congress, gives us an insight into family relations and throws light on the situation of women. A minor could marry only if he had his father's permission and it was the father who remained the legal guardian of his son and of the son's newly-wed wife. In fact therefore the woman was under the rule of her father-in-law (that is, under his legal protection — *mund*) — who could also lay claim to her body.

A similar sexual exploitation of a woman under a man's legal protection occurred when a man married a widow and lived also with her daughter. It seems that such forms of concealed polygamy were not repressed, and since all partners belonged to one family group, they usually escaped clergymen's control, like nearly all kinds of sexual abuse in the family, also of underage members³⁹.

What was strongly condemned by ecclesiastical authorities was the cohabitation of two brothers with a woman who was married to one of them. Synodal decrees usually laconically

³⁷ *I capitulari Italici*, N° 40 (228), cap. 22, p. 198.

³⁸ Synod in Forum Iulii, year 796/797, *MGH Concilia*, vol. I, part 1, N° 21, cap. 8 p. 192: *Multas septius ex huiuscemodi nuptiali contractu ruinas animarum factas audivimus et tales fornicationes perpetratas, quales nec inter gentes; ita plane ut, cum contingit puerum aduatum esse et puellam parvulam et e contrario, si puella matura aetatis et puer sit tenere, et per vtrum cognata et socrus deprehendantur adulterae et per puellam frater vel pater pueri tanti peccati flagitio pereant inreitti; see also an identical prohibition declared by the king of the Lombards, Liutprand, in 731: *Liutprandi leges*, cap. 129, pp. 192-194.*

³⁹ The resolutions of the Council held in Pavia in 850 contain a decree which points to the struggle against prohibited sexual practices in families. In that decree the bishops instruct fathers not to delay marrying off their grown-up daughters for keeping them at home too long may bring dangerous results: *unde sepe contingit, ut in ipsa paterna domo corrumpantur. Fertur et de quibusdam, quod dictu quoque nefas est, ipsos parentes filiarum suarum corruptoribus conhibentiam praebere et naturam suarum lenones existere, I capitulari Italici*, N° 40 (228), cap. 9, p. 190. The source does not, however, say whether these sexual abuses were incestuous.

repeat the binding canon which forbade such relations and imposed penance on all sides. But some small items in normative sources can sometimes shed more light on the social significance of such practices. Among the resolutions of the council held in Tribur in 895 there is a provision which regulated procedure in cases when a man had committed adultery with the wife of his brother who had not been performing his marital duties. The bishops resolved that such couples should be separated and obliged to do penance. But since human beings were naturally sinful, the bishops were inclined to allow such persons to remarry after the penance⁴⁰. Sinners were allowed to contract a new marriage even if there was clear evidence of their guilt⁴¹.

What may have softened the provisions of canon law in this case was that the husband was declared unable to consummate marriage, that is to fulfil the procreative task which was the most important from the point of view of his relatives' interests. This may be a trace of the practice socially accepted in such specific situations. If for some reason one of the brothers turned out to be unable to implement the marital act, the other, in a way, replaced him, thus preventing the breakup of the union⁴². It is worth pointing out that in traditional Germanic marriages the sexual act was the condition and symbol of the validity of the marriage, as was illustrated by the ceremonial custom of handing "the morning gift" (*morgingab, morgengifa*) to the bride after the wedding night. Disclosure of the bridegroom's impotence or his refusal to live with his wife could not only lead to the breakup of

⁴⁰ Council in Tribur, cap. 41, p. 237: *Si quis legitimam duxerit uxorem et impendente quacunque domestica infirmitate uxorum opus non valens implere cum illa, frater vero eius suadente diabolo adamatus ab ipsa clanculum eam humillaverit et violatam reddiderit, omnimodo separentur, et a neutro ulterius eadem mulier contingatur. Igitur contugium, quod erat legitimum, fraterna commaculatione est pollutum, et quod erat licitum, illicitum est factum, ut Hieronimus ait: Mulier duorum fratrum non ascendat thorum: si autem ascendit, adulterium perpetrabit. Quia vero humana fragilitas proclivis est ad labendum, aliquo modo munitur ad standum. Idcirco episcopus considerata mentis eorum imbecillitate post poenitentiam sua institutione peractam, si se continere non possint, legitimo consoletur matrimonio, ne, dum sperantur ad alta sublevari, corruant in coenum; cf. the capitulary of Theodulf of Orleans, cit., part V, cap. 3, p. 161; the capitulary of Isaac of Langres, cit., part 3, cap. 1, p. 204.*

⁴¹ Council in Tribur, cit., cap. 41a, p. 237: *Vtr si duxerit uxorem et concubere cum ea non valens frater eius clanculo eam vitaverit et gravidam reddiderit, separentur. Considerata autem imbecillitate misericordia eis impertitur ad contugium tantum in Domino.*

⁴² Such behaviour is also known in other cultures, see: F. Hé r i t t e r, *Two Sisters*, pp. 166 ff.

the alliance concluded by the two families when the marriage was contracted; it also tarnished the honour of the men of both groups and could even result in a bloody revenge⁴³. In this case the conviction that the brothers were, in a way, identical biologically would have made it possible to avoid conflicts ruinous for social order, even though Christian theologies abhorred all forms of levirate. These differences in the understanding of the links between men related by kinship and their wives may have been the reason why the ban on marrying the widows of relatives was accepted so slowly and with resistance in Germanic societies.

The marriage of Stephen, count of Auvergne, described in Archbishop Hincmar's letter of 860 to bishops, shows how difficult was the situation of an individual who had to make two contradictory value systems compatible⁴⁴. In 857 Stephen, a king's vassal, got engaged to the daughter of Raymund, count of Toulouse. It came out, however, that a relative of the fiancée had been Stephen's mistress years before. The confessor whom Stephen asked for advice warned that if the wedding took place Stephen and his wife would commit the sin of incest. The hapless man had no way out. When he refused to marry the girl, he brought down the anger of Raymund and his powerful relatives

⁴³ In accordance with the 8th century legislation of Frankish kings, an unconsummated marriage was regarded as invalid: *Decretum Vermerlense*, year 757, cap. 17, p. 41: *Si qua mulier se reclamaverit, quod vir suus numquam cum ea mansisset, exeat inde ad crucem: et si verum fuerit separetur, et illa faciat quod vult*. How far-reaching were the consequences of a man not fulfilling his marital duty is illustrated in the Icelandic *Saga of Njal*. Since the marriage of Unn and Hrut was not consummated, the woman declared their divorce, which ridiculed her husband and led to a prolonged dispute over the dowry and finally even to a bloody conflict between the groups of relatives to which Unn and Hrut belonged. J. Byock, *Viking Age Iceland*, London 2001, pp. 15–21. In the early Middle Ages, the Church, under the influence of Germanic practice and Roman law, tended to recognise only consummated marriages as valid, J. A. Brundage, *Implied Consent to Intercourse*, in: *Consent and Coercion to Sex and Marriage in Ancient and Medieval Societies*, ed. A. E. Laitou, Washington 1993, pp. 245–256; Idem, *Law, Sex and Christian Society in Medieval Europe*, Chicago-London 1990, pp. 136 ff. For later disputes see: M. Michalski, *Coitus albo consensus, czyli co stanowi o ważności małżeństwa. Relacja z pewnej dyskusji z XI–XIII wieku (Coitus or Consensus, or What Makes a Marriage Valid. Report on a Discussion from the 11th–13th Centuries)*, in: *Nihil superfluum esse. Prace z dziejów średniowiecza ofiarowane Profesorowi J. Krzyżaniakowej*, ed. J. Strzelczyk, J. Dobosz, Poznań 2000, pp. 159–166.

⁴⁴ Hincmar's letter to bishops, year 860, MGH, *Eptistola Karolini aevi*, vol. VI: *Die Briefe des Erzbischofs Hinkmar von Reims*, part 1, ed. E. Perels, Berlin 1939, N^o 136, pp. 87–107.

on himself, and indirectly, also the king's disfavour. He is said to have confessed: "Under the pressure of both sides I could not break off the engagement nor did I dare to marry my fiancée so as not to add the discord with my seignior to the discord with Raymund and his noble relatives; I could either flee from the kingdom or perish if I wanted to stay on"⁴⁵. Faced with death, Stephen tried to defend himself, but he did not get the king's consent to leave the country; he avoided appearing before the court whenever the girl's relatives summoned him in order to force him to keep his promise. Finally he had to give in and marry the girl. But he did not consummate the marriage. The father-in-law, infuriated, sued him before the king and the bishops. But the bishops did not dare to pass a binding verdict and referred the matter to Archbishop Hincmar, an authority. The archbishop took advantage of the opportunity to express his view on the essence of Christian marriage, stating that the sexual act supplemented the spouses' spiritual union⁴⁶.

Why did this conflict assume such a violent form that it was even feared that Raymund's relatives would start riots during the debates of the council? Two equiponderant arguments clashed in the dispute between Stephen and Raymund. On the one hand, in order to save face and wash away the disgrace Stephen brought on them by his refusal, Raymund and his relatives tried to force him to consummate the marriage, irrespective of the obstacles; if he refused, they said they would take a bloody revenge on the culprit. In this specific interpretation of honour, the incest which the newly-weds would have committed did not count, compared with the loss in the symbolic capital which Raymund's family would have suffered by tolerating the existing state of affairs. On the other hand, the fear of committing a sin made it impossible for Stephen to solve the conflict amicably. And since Stephen was the king's vassal, the ruler himself became not only an arbiter but also a side in the dispute, and this could have had incalculable consequences for social order. This was a situation in which

⁴⁵ *Ibidem*, p. 89: *Propterea ex utraque parte constrictus nec frangere desponsalia potui nec eandem sponsam meam in coniugem ducere ausus fui, ne cum discordia senioris mei etiam ipsius Regimundi et nobilitum parentum eius accumularetur discordia et sic aut de regno funditus pellerer aut, si in regno manere vellem, occumberem.*

⁴⁶ J. Gaudemet, *Indissolubilité et consommation du mariage: l'apport de Hincmar de Reims*, "Revue du droit canonique", vol. XXX, 1980, pp. 28–40.

each side acted in harmony with a binding normative system, but the systems differed and were contradictory; to use the language of sociology, this was a classical example of normative antinomy. It was impossible to reach a compromise solution and at the same time to maintain cohesion between the system of values and the set of rules which determined the behaviour of both sides. The bishops gathered at the synod were fully aware of this dissonance and this is why they delayed taking an explicit stance on the matter.

* * *

What most interests a researcher of social history is the influence which ecclesiastical legislation exerted on the perception of consanguinity and affinity and consequently, on the definition of a person's identity, and whether changes in law influenced matrimonial strategy and if so, to what extent. Historians vary in their opinions on the consequences which the Church's extension of the group of persons forbidden to contract marriage with each other had in social practice.

Constance B. Bouchard⁴⁷ tends to believe that the Church bans were among the most important factors which led to changes in the rulers' way of choosing their spouses and in the transformation of the family structures of Frankish aristocracy between the 9th and the 11th centuries. In order to avoid accusations of incest, representatives of old aristocratic families, which for generations had been linked by a complex web of kinship and affinity, were more and more often forced to look for potential candidates for marriage among families of a lower status. This opened the way to social advance to persons from outside the elite. Bouchard is against the dominant theory that a turning point took place in ca 1000, as a result of which the old Carolingian relatives' aristocratic groups of a cognate structure were replaced by new agnate families which built their position and identity on the inheritance of land and dignities. According to Bouchard, there was no turning point, the appearance of new families was a natural consequence of changes in the matrimonial strategy of powerful lords who had to avoid the accusation of incest.

⁴⁷ C. B. Bouchard, *Consanguinity and Noble Marriages*, in: e a d e m, *Those of My Blood. Constructing Noble Families in Medieval Francia*, Philadelphia 2001, (1st ed. "Speculum", vol. LVI, 1981, pp. 268-287); e a d e m, *Strong of Body, Brave and Noble: Chivalry and Society in Medieval France*, New York 1998, pp. 90 ff.

But there are several weak points in this idea. The main problem is uncertainty about the genealogy of individual families in the period under review; only in a few cases do the sources make it possible to establish family links over a longer period than three–four generations. Bouchard on the one hand emphasises that the aristocracy had a well developed genealogical consciousness in the 9th and 10th centuries and avoided matrimonial unions up to the sixth generation, but on the other hand, when she reconstructs the genealogy of individual families, she sometimes ignores much closer kinship ties on the distaff side. She argues that these ties did not play an important role, were quickly forgotten and consequently, were not taken into account in choosing a candidate for marriage. However, she does not explain what grounds she has for saying that a certain kinship was simply “forgotten” while another was a conscious transgression of the norms of canon law. Nor is it clear what led to a far less rigorous observance of the principles referring to incest in the 12th century, although it was then that the Church established its doctrine on this question. Despite these reservations Bouchard was undoubtedly right in emphasising that the formation of the early medieval aristocracy’s genealogical consciousness was greatly influenced by the fact that in their family strategies the aristocrats had to take into account the restrictions imposed by the Church.

Most researchers are more moderate in evaluating the influence which the Church teachings on incest exerted on family policy. They stress that in the 10th and 11th centuries it is difficult to establish the genealogy of aristocratic families further back than three to four generations. They also point out that the surviving sources confirm that endogamous unions were widespread and that the main criterion in choosing candidates for marriage was whether they could help the family to reach its political and social aims. Contrary to Bouchard, Régine Le Jan⁴⁸ holds the view that the Church tightened its restrictions on incest in response to the changes which were taking place in the organisation of groups of relatives, the strengthening of the

⁴⁸ R. Le Jan, *Famille et pouvoir dans le monde franc (VII^e–X^e siècle). Essai d’anthropologie sociale*, Paris 1995, pp. 305–327; eadem, *La société du Haut Moyen Âge: VI^e–IX^e siècle*, Paris 2003, pp. 78 ff, 236 ff; see also A. Guerreau-Jalabert, *Prohibitions canoniques et stratégies matrimoniales dans l’aristocratie médiévale de la France du Nord*, in: *Épouser au plus proche*, pp. 293–321.

agnatic principle and the consequent increase in the importance of genealogical memory, which also meant the extension of the circle of persons regarded as relatives. She also points out that endogamous marriages helped to prevent the fragmentation of landed estates, which were the basis of the social status of families organized round privileged male lines (this is why preference was given to unions between cousins, usually of third–fifth degree). The alliances established between different families through marriage were of great importance for the stability of their positions. To be durable, alliances of this kind had to be renewed, that is, representatives of the two families' successive generations were expected to enter into wedlock. In these circumstances observance of canon law's injunctions concerning incest not only ran counter to the families' interests but could even endanger their integrity. As a result, it was unions up to at most the third degree of kinship that were regarded as incestuous in social practice, and the extension of restrictions did not have a strong influence on the choice of spouse, in any case not before the 11th century when, together with the progress of the reformatory movement, the Church increased its control over the family life of its believers. An analysis of sources from other parts of early medieval Europe, for instance the research carried out by Martin Aurell into the matrimonial policy of ducal families in Catalonia⁴⁹ or Laurent Feller's research devoted to Abruzzian society in Italy leads to similar conclusions⁵⁰.

Interesting testimonies to the conflict between practice and religious injunctions which were not in keeping with the believers' conditions of life also come from the other end of the Christian world. Because of the limited possibilities of choosing a partner of the right social position, endogamous marriages were unavoidable in Iceland's closed, isolated society. Unions between third-degree cousins were so frequent that even bishops treated them with indulgence, and marriages between even closer relatives

⁴⁹ M. Aurell, *Les noces du comte. Mariage et pouvoir en Catalogne (785–1213)*, Paris 1995, esp. pp. 41–52, 298–306. In this peripheral territory, the marriages contracted by members of a closed, narrow political elite, who were sometimes related even in the second degree (paternal uncle — his brother's daughter, second degree cousins) were one of the most important factors which consolidated ducal families and strengthened their power.

⁵⁰ L. Feller, *Les Abruzzes médiévales. Territoire, économie et société en Italie centrale du IX^e au XII^e siècle*, Roma 1998, (Collection de l'École française de Rome, 300).

were not exceptional. This did not change even when restrictions stemming from canon law were included in secular legislation. It seems that, as on the continent, kinship was used in these remote territories of the Christian world rather as a useful instrument for dissolving inconvenient marriages, than as an obstacle to be avoided in choosing the partner⁵¹.

As has been said above, it was the drive to restrict the fragmentation of family estates and to consolidate profitable alliances, in other words, to lessen the danger of losing the social position, that was a factor favouring endogamous marriages. As the Church increased control over the believers' matrimonial life, the risk of contracting an incestuous union had to be taken into account in matrimonial strategies, for the risks were great if a bar to marriage was revealed: in addition to the penalty imposed on the spouses by the Church, their children and grandchildren bore the consequences of the incestuous act. The property of the incestuous couple was transferred to more remote relatives and their children lost all rights: the parents' sin brought irreversible shame upon the offspring. It pushed the offspring into social non-existence.

Accusation of incest could be used as an effective way of pressure both by members of competing groups of relatives and rival parties and by family representatives who fought for access to heritage, in some cases lust for profit could weaken family solidarity. Imputation of incest became an effective instrument for combating political adversaries, as has been pointed out by Patrick Corbet, who has analyzed the use of regulations of canon law in the territory of the Holy Roman Empire (e.g. under Henry II the majority of the known cases of incest examined by bishops' courts concerned representatives of families which opposed the ruling dynasty)⁵². It is not an accident that we usually learn about marriages recognized as incestuous when their legality had become the subject of a public dispute. It is enough to recall the spectacular example when the marriage of the French king Robert II with Berta of Burgundy was annulled under papal pressure.

⁵¹ W. I. Miller, *Bloodtaking and Peacemaking. Feud, Law and Society in Saga Iceland*, Chicago-London 1996 (1st ed. 1990), pp. 145-147; J. Byock, *Viking Age Iceland*, p. 323.

⁵² *Ibidem*, *passim*.

It is also worth pointing out that the formulation of the doctrine on incest coincided with the final formulation and introduction of the principle that Christian marriage was indissoluble. Paradoxically, demonstration that a marriage was incestuous was ever more frequently becoming the only method of dissolving what should be indissoluble according to Church law. The method was all the more effective as an incestuous marriage had, without exceptions, to be recognized as invalid, and only a papal decision could change this. This categorical formulation of a canon law provision bound the hands of all, also clergymen, who may have tried to prevent the breakup of a marriage. Despite Church bans, the separated spouses usually contracted new marriages, which frequently were also incestuous from the point of view of canon law⁵³.

The statutes of the council held in Châlon-sur-Saône in 813 are an example of the believers' more or less conscious abuse of canon law. At the council the bishops condemned women who being easy-going or (what is more probable) in order to have their marriage annulled, presented their own children for confirmation. By sponsoring the confirmation, they established spiritual ties with their husbands, and these ties were analogous to those which linked biological parents with godparents, and this made marriage impossible⁵⁴. It is significant that in such cases the bishops ordered the women to do penance but categorically forbade them to leave their husbands⁵⁵.

The situation described in the synodal statute is similar to the anecdote known from *Liber Historiae Francorum* (dated at ca 727). It speaks of a trick used by Fredegunda to replace Audovera,

⁵³ The best known example is the case of Eleanor of Aquitaine whose marriage to Louis VII was dissolved under the pretext of too close relationship, after years of conjugal life and the birth of children, who *nota bene* did not lose their inheritance rights; it is worth recalling here that sources unfavourable to Eleanor accused her of incestuous relations with her paternal uncle, Raymond, duke of Antioch; this did not prevent Eleanor from marrying Henry of Plantagenet to whom she was even more closely related than to her first husband.

⁵⁴ *Decretum Compendiense*, year 757, MGH, *Capitularia regum Francorum*, vol. 1, cap. 15, p. 38.

⁵⁵ *Concillium Cabillonense*, MGH *Concilia*, vol. 1, part 1, N° 37, cap. 31, p. 279: *Dictum etiam nobis est quasdam feminas desidiose, quasdam vero fraudulententer, ut a viris suis separentur, proprios fillos coram episcopis ad confirmandum tenuisse. Unde nos dignum duximus, ut, si qua mulier filium suum desidiosa aut fraude aliqua coram episcopo ad confirmandum tenuerit, propter fallaciam suam paententiam agat, a viro tamen suo non separetur.*

the legal wife of the Merovingian king Chilperich. Fredegunda persuaded the queen to be the godmother of her own daughter and thus become a spiritual relative (*commater*) of her husband. The king, to avoid incest, had to send his wife away; Audovera and her tiny daughter, Childesinda were forced to take the veil. The bishop who baptised the baby was exiled⁵⁶. The story about Audovera's fatal mistake confirms that in the 7th and 8th centuries there were doubts about the interpretation of canon law not only among laymen (the queen was said to have committed a sin *per simplicitate suam*) but also among priests (the exiled bishop). The legal situation should have been both credible and understandable.

In this way accusation of incest was becoming an instrument for solving conflicts and problems which harmed the vital interests of individuals and families. These examples show that society can learn to re-interpret and make use of the norms imposed by religion which run counter to its needs. Although the Church authorities' growing repressiveness led to changes in spouse-choosing strategy, inducing men to be cautious and avoid marriages that were dangerous for family interests, legal rigidity sometimes brought effects which were discordant with the intentions of lawmakers. The purposely imprecise, deliberately extensive formulation fixing the limit of permissible kinship, *quoadusque series generationis recordari potest*⁵⁷, made it possible for individuals to think of an obstacle to the continuation of marriage at the right moment. On the whole, researchers agree that as the Church was assuming full jurisdiction in questions concerning marriage at the end of the 10th and the beginning of the 11th century, and the reform movement progressed, people began to pay ever more attention to canon law in choosing candidates for marriage⁵⁸. The adoption of the Christian principles of conduct, of the conceptions of sin and penance by societies, undoubtedly helped to strengthen the influence of Christian teachings on the

⁵⁶ *Liber historiae Francorum*, ed. B. Krusch, MGH, *Scriptores rerum Merovingicarum*, vol. II, Hannoverae 1888, cap. 31, pp. 292–293. Commentary: M. de Jong, *To the Limits of Kinship*.

⁵⁷ Council in Ingelheim, year 948, 7th June, MGH *Concilia*, vol. IV: *Die Konzilien Deutschlands und Reichsitaliens 916–1001*, part I: 916–961, ed. D. Hehl, Hannover 1987, N° 13, cap. 12, p. 162.

⁵⁸ P. Corbet, *Autour de Burchard de Worms, L'Église allemande et les Interdits de parenté (IX^e–XII^e siècle)*, Frankfurt-am-Main 2001, pp. 3–115.

shape and functioning of families. But throughout the period examined by us there was a deep impassable barrier between the injunctions on incest and social practice. The ambivalence in the perception of incest and in the use of provisions concerning it was one of the main reasons why in 1215 the degree of consanguinity excluding marriage was reduced to four generations and the degree of affinity to two–three generations.

(Translated by Jantna Dorosz)

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