

descent into senility following a fall at his home. Apparently bowing to social pressures, but in reality to the coincidence of those social requirements with her own sense of her spiritual vocation, Margery returns to nurse the doubly incontinent John Kempe and cares for him until the end of his life. At the end, it is not a sense of wifely duty which has remained, but a realization that John Kempe, too, is a child of God and, in that sense, a worthy recipient of the maternal ministrations of His wife, the mother of the whole world.

Finally, it could be said that Margery's finest achievement is to transform the seemingly irrevocably restricting role of mother into something vocal, empowering and eventually utterly fulfilling. It is possibly Margery's instinctive awareness of the enormous dichotomy between the private female experience of motherhood and the public essentialist attitudes towards it, which creates an Irigarayan 'blind spot' in patriarchal discourse where Margery's seeming impotency as earthly mother can be acted out and transformed into something irresistibly and specifically her own.

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"ABOMINABLE MINGLING": FATHER-DAUGHTER INCEST AND THE LAW

In a recent article, Kathryn Gravdal makes use of an interdisciplinary methodology to re-examine the meaning of nuclear family incest in medieval literature. She suggests that looking at legal discourse (specifically, penitentials and canon law texts) "enables us to reread literary texts in a less literal, less linear, more complex way."¹ Gravdal comes to the interesting and plausible conclusion that "both legal and literary textual traditions conceal and reveal an anxiety about and an effort to keep women—as objects of marital exchange among men—in proper and controlled circulation."² However, the central point she uses to support that conclusion is highly questionable. "The forgiveness of the father in literature," she argues, "contrasted to the emphasis on the mother's punishment in mother-son incest stories, and read alongside the absence of the father in the penitentials, seems to suggest that paternal incest is perhaps not so serious a sin."³ Throughout her essay, Gravdal asserts that the father is "absent" from legal discourses about sexual abuse within the nuclear family, and thus it seems to her a "foregone conclusion that he is either incapable of or absolved from abusing his child."

But is this argument correct? Did medieval society really assume that fathers were “incapable” of abusing their daughters? Did the leaders of that society really see paternal incest as a minor failing that demanded little attention from the law? While Gravdal’s reading of incest in romance is intriguing, her assertion that it was “erased” from legal texts is unconvincing. For the penitentials were not, in fact, completely silent on the subject of father-daughter incest, and such abuses of children were certainly condemned in both canon and secular law.

While the seventh-century *Canons of Theodore* failed to mention father-daughter incest in its treatment of sexual relations within the nuclear family, other Anglo-Saxon penitentials did discuss it. The *Penitential of Egbert* listed a slightly lesser penalty for a man who had sex with his daughter or sister than for one who committed the same crime with his mother: twelve years compared to fifteen years.⁴ The *Penitential of Pseudo-Bede*, on the other hand, made the penalty the same for men who slept with their mothers and those who slept with their daughters or sisters: fifteen years of penance. In the same penitential, a mother who had sex with her young son was subject to only three years of penance.⁵ The fifteen-year penalty seems to have become something of a standard for father-daughter incest: it was picked up by at least two ninth-century penitentials from the continent: *Pseudo-Gregorius III* and *Pseudo-Theodore*.⁶ It should be noted that this was by no means a “light” sentence. In the *Pseudo-Gregorius*, for example, the murder of a cleric in minor orders produced a penance of only seven years, and the sin of sodomy only ten years.

Medieval canonists also condemned fathers who abused their daughters. Indeed, in some instances they seem to have followed the text of penitentials in their condemnations. The anonymous author of the tenth-century *Collection in Nine Books*, for example, includes in his handbook of church law the passage from the *Penitential of Pseudo-Gregorius* which called for a fifteen-year penalty for this crime.⁷ The Italian reformer Peter Damian alluded to father-daughter incest in a letter he wrote in 1061 on clerical celibacy. Peter was especially concerned with “spiritual” incest (that is, sex between a priest and a woman under his jurisdiction), but he underlined the seriousness of this crime by comparing it with ordinary incest:

Clearly, if a father incestuously seduces his daughter, he will be promptly excommunicated, forbidden communion, and either sent to prison or exiled. How much worse, therefore, should be your degradation, since you had no fear of perishing with your daughter, not indeed in the flesh, which would be bad enough, but rather with your spiritual daughter.⁸

Peter assumes that “carnal” incest will be harshly punished, with excommunication and either prison or exile. His source is not clear, but the most recent editor of his letters suggests a penitential.

Writing a few decades after Peter Damian, another reformer, Bonizo of Sutri, condemned father-daughter incest, in this case citing a canon which he attributed to the fifth-century Council of Chalcedon. However, the text in question does not come from Chalcedon, and seems likely to be derived from another penitential. In Bonizo's *Liber de vita christiana*, sex between a father and his daughter appears as the first item in a long enumeration of the various forms of incest. And again the penalty is severe:

This is incest or abominable mingling [nefaria comixtio]. And if someone gets involved in any of these evils which were summed up above—that is, a father with his daughter, or a son with his mother— let him, as incestuous or nefarious, be exiled for seven years beyond the boundaries of his land. And thereafter, defenseless all the days of his life, let him do penance with weeping and lamenting, and let him never receive communion unless in danger of death.⁹

Bonizo's *Liber de vita christiana* is an exception. Most medieval canon law collections do not deal so explicitly with father-daughter incest. Rather the subject tends to be subsumed within treatments of the general category of incest. Thus, in Gratian's *Decretum*, compiled around 1140 and destined to become the standard medieval textbook on canon law, a variety of texts are cited to prove that those related to one another within seven degrees should not engage in sexual relations.¹⁰ Gratian never explicitly states that fathers and daughters (or mothers and sons) should not sleep together. But he cites Isidore of Seville's definition of the degrees of kinship, which begins with the statement that "within the first degree are contained, in the superior line the father and mother, and in the inferior line the son and daughter."¹¹ There could be no doubt, then, that sexuality within the nuclear family was forbidden.

Most of this section (*Causa* 35) of the *Decretum* deals with the problem of consanguineous marriages, which Gravdal has dubbed "canonical" incest precisely because it receives so much attention in canon law. She correctly notes that much more attention is paid to consanguineous marriage than to sexual abuse within the immediate family in medieval canon law collections.¹² Yet this was not because father-daughter incest (or, for that matter, brother-sister or mother-son incest) was considered unlikely, unimportant, or easily pardonable. In order to understand this, one must know something about how collections like the *Decretum* were put together. Gratian's aim was not to create a comprehensive treatment of every subject that might conceivably be covered by the law of the Church. Rather, his goal was to "harmonize" the various decisions that had already been made by church councils and synods, and by individual popes and other authorities, over the preceding centuries. But those decisions were themselves far from comprehensive. Popes and councils addressed legal problems

in their decisions; they returned over and over again to particularly recalcitrant ones. On the other hand, matters that were clear-cut received very little attention. These priorities were reproduced in collections of canon law. Thus, the *Decretum* devotes a lot of space to knotty legal issues such as marriages between third cousins, or between two people who had served as godparents for the same child, or between people who didn't know they were related. It does not explicitly address father-daughter incest because it did not need to be addressed. Since no one defended or justified the practice, and since the perception seems to have been that it was uncommon, it presented no legal problem.

The fact remains, however, that written law codes were often silent on the subject of father-daughter incest. This was true not only of canon law, but of secular law as well. In fact, I have yet to find a single reference to this type of incest in any of the secular codes I have examined. (If anyone knows of such a reference, I would be most grateful to hear about it.) But how are we to interpret this silence? Is this really an "erasure"? Does it imply that incest went unpunished? I don't think we can draw such a conclusion. In some parts of Europe—for example, in England—the secular authorities apparently left jurisdiction over most sexual offenses, including incest, in the hands of the Church.¹³ Elsewhere, however, the secular courts meted out their own punishments for father-daughter incest—despite its absence from the surviving secular law codes. In 1457, for example, the court of the Avogadori in Venice found a goldworker guilty of deflowering his own daughter. He was condemned to ten years in jail, followed by perpetual exile on threat of beheading if he ever returned to the city.¹⁴ Likewise, in 1468 the court of the Forty (also in Venice) condemned an artisan named Giorgio Franciganas for raping his illegitimate daughter—a child of ten at the time. He was sentenced to two years in jail, again followed by perpetual banishment.¹⁵ Significantly, the penalty of exile imposed by the secular courts of the Avogadori and the Forty was precisely that proposed four centuries earlier by Peter Damian and Bonizo of Sutri. Does this suggest that canon law was guiding secular law in this matter? It is clear, in any case, that secular authorities took father-daughter incest very seriously indeed. Guido Ruggiero, the historian who uncovered the two Venetian cases, has noted that "incest, although seldom prosecuted, was the one type of fornication for which penalties were severe." For other types of fornication, Venetian courts normally imposed a penalty of a few months in jail and a small fine.¹⁶

Medieval authorities were probably reluctant to admit that fathers might have sex with their children. However, medieval lawyers and courts were able to recognize incest when it occurred. Moreover, unlike the authors of romance, lawyers were able to place the blame for this crime squarely where it belonged—on the shoulders of the abuser. In real life, it was the incestuous father, and not the daughter, who was subjected to penance, imprisonment, and exile. This is

very small comfort when we consider what the victims of sexual abuse must have suffered at the hands of their fathers and the rest of society during the Middle Ages, but it is perhaps better than none.

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1 Kathryn Gravdal, "Confessing Incests: Legal Erasures and Literary Celebrations in Medieval France," *Comparative Literature Studies* 32 (1995): 290.

2 Gravdal, "Confessing Incests," 291.

3 Gravdal, "Confessing Incests," 290.

4 *Penitential of Egbert*, IV, 2: 3 and 4, in H. Wasserschleben, *Die Bussordnungen der abendländischen Kirche* (Halle, 1851), 234.

5 *Penitential of Pseudo-Bede*, II, 2, Wasserschleben, *Die Bussordnungen*, 260.

6 *Penitential of Pseudo-Gregorius III*, V, 11, and *Penitential of Pseudo-Theodore*, V, 13-14, Wasserschleben, *Die Bussordnungen*, 540-41 and 584.

7 Pierre Payer, *Sex and the Penitentials: The Development of a Sexual Code*, 550-1150 (Toronto, 1984), 97.

8 Peter Damian, Letter 61 (1061), ed. Kurt Reindel, *Die Briefe des Petrus Damiani*, 4 vols. (Munich, 1983-93), 2:214-15; trans. Owen J. Blum, *The Letters of Peter Damian*, 3 vols. to date (Washington, DC, 1989-), 3:10.

9 Bonizo, *Liber de vita christiana*, IX, 27, ed. Ernst Perels (Berlin, 1930), p. 288. The editor points out the similarities between this text and that of a version of the *Penitential of Valicelli* (see Wasserschleben, *Die Bussordnungen*, 682).

10 Gratian, *Decretum*, Pt. 2, C. 35, Q. II and III, c. vii, xvi, xvii, xix, ed. Emil Friedberg, *Corpus iuris canonici*, 2 vols. (Leipzig, 1879), 1: 1265-68. After the Fourth Lateran Council of 1215, of course, the incest taboo was imposed only within four rather than seven degrees of kinship. Gratian's nuanced position on consanguineous marriage was novel for his time. See James Brundage, *Law, Sex, and Christian Society in Medieval Europe* (Chicago, 1987), pp. 242-43.

11 Gratian, *Decretum*, Pt. 2, C. 35, Q. V, c. vi, ed. Friedberg, 1: 1275.

12 Gravdal, "Confessing Incests," 280-81.

13 Frederick Pollock and Frederic William Maitland, *The History of English law before the Time of Edward I*, 2 vols. (2nd ed., Cambridge, 1898; rpt. 1968), 2: 543. The exception, of course, was rape, which was tried in secular courts.

14 Guido Ruggiero, *The Boundaries of Eros: Sex Crime and Sexuality in Renaissance Venice* (New York: Oxford University Press, 1985), 42.

15 Ruggiero, *Boundaries of Eros*, 107.

16 Ruggiero, *Boundaries of Eros*, p. 42; see also his Table 1 on page 20.