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KINSHIP CALCULATION AND
MEDIEVAL MARRIAGE

by

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CONSANGUINITAS ET IUS SANGUINIS:
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Consanguinity, or blood-relatedness, was one of the most important criteria which determined the formation of marriage in the medieval era. Unfortunately, there is no comprehensive study in English which describes the development of consanguinity prohibitions and which explains fully the types of kinship calculation used as a part of the restrictions which developed. In order to fill this void, my goal in this thesis has been to offer a well-researched, comprehensive study of this topic.

I have examined the studies completed by other researchers and combined any pertinent information from those sources with my own research on medieval attitudes and policies regarding marriage. I have also attempted to provide kinship calculation charts which are easily understood and which can serve as an aid to the understanding of actual medieval consanguinity charts from manuscripts.

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CHAPTER I

INTRODUCTION AND DEFINITION

Consanguinity, or "the law of the blood," was perhaps
the most important criteria which determined the formation
of marriage in the medieval era (AD 476-1450). Initially
this was primarily true for the aristocratic segment of
society, but as the medieval Church became increasingly
more powerful, and its influence ever more widespread, the
lower classes, too, came to be governed and restricted by
the notions that surrounded the issue of how closely
related people could be in order to enter into marriage.
Numerous methods of calculating degrees of relationship
emerged, and endless debates ensued in order to determine
how far any prohibitions ought to extend.

Additionally, answers had to be provided for questions
regarding whether the restrictions should apply only to
blood-relatives, to affines, or also to those with whom one
was spiritually related, i.e., through baptismal sponsor-
ship. As controversies gained momentum and a level of
almost total absurdity was attained, the medieval Church
was forced to reassess and to redefine its regulations
regarding consanguinity and marriage in regard not only to
any spiritual import involved, but also to what effect the

far-reaching restrictions were having on society as a whole.

What is consanguinity? At its most basic, it can be defined as "the kinship relation created by the existence of close blood ties"[1] as the result of the descent of one from the other or from a common ancestor/predecessor. "It is a natural bond arising . . . from a union of blood."[2] In turn, there are various components used to determine the degree of consanguinity.

The first is the stock (root, trunk, truncus, stirps or stips), which is the common ancestor. This component or classification first became particularly important in the writings of the canonical authors of the second half of the twelfth century.[3]

The second is the line. This is the series or line of persons who descend from a common ancestor. This factor or component can be subdivided into the direct line and the collateral line. The direct line, referred to as lineal consanguinity, is that blood relationship that exists among persons directly descended one from the other, i.e., grandfather, father, son. If the relationship is calculated or considered from a common ancestor to a person, the direct line is said to be descending; if it is considered from the party to a common ancestor, the direct line is ascending. The collateral line, which is sometimes referred to as the transverse, indirect or oblique line,

represents that blood relationship that exists among persons who have an ancestor in common, but who are not descended directly one from the other, i.e., uncle - niece. This classification appears to have been a basic component throughout the Medieval era in attempting to determine kinship.

The last component, or factor, is the degree (gradus or step). This represents the measurement of distance between related persons in the same line. In the direct line the number of degrees is equal to the number of generations or persons, not counting the common ancestor. In the equal collateral line the number of degrees is equal to the number of generations or persons on one side of the line, not counting the common ancestor. However, in the unequal collateral line the number of degrees is equal to the number of generations or persons, not counting the common ancestor, on the <u>longer</u> side, although during much of the medieval era this determination was made according to the <u>shorter</u> side. This component, too, became particularly important in the second half of the twelfth century.[4]

Consanguinity does NOT depend on "legitimate" marriage for its existence, but on common blood or blood ties. If the bond results from lawful wedlock, it is termed legitimate consanguinity, while if the bond arises from an "illicit" relationship (outside of marriage), that type of consanguinity is classified as illegitimate.

And indeed, the whole issue of consanguinity in the medieval era occurred as part of the development of the larger institution of marriage. This development or transformation was strongly influenced by the medieval Church whose doctrines, in turn, were partially affected by the development and modification of kinship and clan(ship) structures that first developed early in man's history, independent of the Church's influence. These structures were often affected by the social and/or economic scenario of society, as well as by notions such as personal vengeance, loyalty, and fealty, all of which had far-reaching implications in the medieval era itself in determining kinship notions and ties. Factors also contributing to the development or metamorphosis of the definition of kinship groups include: (a) "More elaborate stratification" of society in general,[5] (b) attitudes toward women, (c) changes in production, (d) notions of honor, (e) matrimonial alliance strategies, and (6) ideas about the nature of the conjugal couple.[6]

Among these factors, too, there were variations between societies and even between various strata of one society. However, a very basic outline for the development of kinship structures in medieval Europe might be described as follows: In Germanic society, from which medieval Europe adopted some notions of kinship, there were typically bilateral cognate structures, i.e., kinship was

traced through both mother and father. With the influence of the early Church and ideas of feudalism, emphasis was on the male members of society (agnate structures). The effect or purpose of such emphasis was the stabilization of a society torn apart by the collapse of the Roman Empire. When the influence of the medieval Church became increasingly more powerful, greater stress was laid on the individual and/or conjugal couple; here there was a ". . . shift from consanguinity to conjugality as a central principle of social relationships. . ."[7] although consanguinity prohibitions still played a major role in determining who could marry. Interestingly, even though the conjugal pair and the individual were emphasized, the Church seemed to have the stabilization of society as a whole as its purpose - under its own direction, of course, not under the direction of the family. Eventually the development of inter-personal relationships (vs inter-groups bonds) led to the emergence of "modern" notions; there was a further move toward the independence of the individual, and ultimately, the conjugal couple.[8]

This developmental cycle demonstrates a movement away from the solidarity of kin groups and the control of the family and its ultimate influence over the course of society, i.e., movement away from ". . .the maintenance of internal solidarity";[9] it is also indicative of movement from a Mediterranean, oriental model of marriage based on

Roman law, biblical law and the laws of Ancient Greece and Egypt to a new European, occidental model.[10]

It is difficult, however, to attempt to define all the reasons for the shift in emphases and perspectives regarding kinship groupings and the relationships that functioned within those groups and that underwent quite profound changes in medieval Europe. And indeed, too often in regard to the study of such processes, there has been a tendency to "disregard the wider human perspective, that of world history and human culture,"[11] and to place "too much credence on the restricted evidence of particular documentary sources and upon vague analytic concepts of an all-embracing kind. For these changes have been long-term, difficult to measure, and, in some respects, very un-even."[12]

Consequently, it is not the purpose of this thesis to scrutinize any single variable or group of variables in order to delineate how it could have impacted the development of consanguinity prohibitions that emerged; rather, this study is intended to describe the problem, to analyze the research which has been completed in this area, and then to offer the reader as concise and complete a synopsis as possible. The main emphasis will be the issue of consanguinity, although a brief discussion of the related issues of affinity and spiritual relationship will be included. It should also be noted that the discussion of

consanguinity prohibitions in this study is restricted to those developments and that legislation which primarily affected the nobility. What little can be said about the lower strata of society is that the medieval Church found it almost impossible to apply its marriage restrictions to, and to impose its requirement of exogamy on, the peasantry due to the lack of documentation in regard to their kinship ties. Interestingly, it has been suggested by Murstein that nobles actually encouraged endogamy, for "inbreeding assured them that all the offspring resulting from the marriage would come under the lord's domain."[13] Any explicit, enforceable marital restrictions for the peasant- ry, too, were imposed on them by the nobility; the decline of feudalism, however, helped to gradually shift such control to the Church. Some studies of manorial records, such as those by David Herlihy, have shed evidence concern- ing peasant families and their customs. This, in turn, has led to some speculation regarding their marriage patterns. Those theories and suppositions, however, as previously stated, are not the focus of this paper. Lastly, it should be emphasized that this study is limited to Western Europe and the medieval Roman Catholic Church in regard to kinship notions and marriage.

CHAPTER II

FACTORS AND PROBLEMS INVOLVED IN THE DEVELOPMENT
OF CONSANGUINITY RESTRICTIONS

During the time period when ecclesiastics were first
developing the theory that marriage possessed a sacral
nature (8th-12th centuries), a policy toward consanguinity
and its implications for marriage restrictions was also
beginning to take form. To some degree this was necessary
in order to uphold the Church's ongoing policy of the
prohibition against incest. Determining how, when and why
this prohibition originated presents a problem however.
Various theories as to what the incest taboo accomplishes
and therefore, perhaps, why the taboo was instituted in the
first place include: the widening of social relations; the
prevention of confusion (of relationships); the halt of
conflict within the family; and the prevention of inbreed-
ing. But, these do not necessarily explain why the actual
taboo originated, why the Church adopted it as part of its
doctrine, or why it has continued down to the modern age.

Robin Fox's discussion of the incest problem brings to
light various possibilities predicated on theories of the
life of early man. Here, again, instead of making anything
clearer, the theories become even more complex for we have
speculations about incest, in turn, being based upon

speculations about early man. That is not to say that Fox's discussion is without relevance, for certain areas and topics of study must, unfortunately, be predicated on other than concrete bases. Perhaps his most interesting argument revolves around the difference between the natural instinct of animals other than man vs. the acquired instincts of man:

> One of man's most important features is his relatively unspecialized nature - his freedom from the domination of particular instincts. Now while this gives him great advantages it robs him of the sureness that comes from being directed by instincts. To replace this instinctive sureness, man developed the self-inhibitory mechanism of conscience. The group - the society - is the unit of human survival, and for the group to survive it must ensure that its members obey those customs and rules that time has shown to be advantageous to survival. In animals, this is ensured by the development of suitable instincts: in man it is the capacity to inhibit personal desires in favour of group rules that operate to the same ends. This capacity is lodged in the central nervous system and enables men to inhibit their own drives and to be conditioned to accept learned rules. Guilt (however mild) is the means of reminding them that they are breaking the rules. How does this tie up with incest? Well, if the natural selection theory is correct, over many thousands - even hundreds of thousands - of years, only those groups survived that instituted the incest taboo. Thus, there must have been groups in which the members were susceptible to conditioning in the sphere of sexual and aggressive behaviour to a quite remarkable degree. Sex is a human drive of high intensity and yet . . . of high malleability. It is capable of being worked on extensively by the self-inhibitory mechanisms of conscience, perhaps because it is so strong that the nervous system goes into an inhibitory reaction against it. Aggression is a similar human propensity. Now, the groups which survived must have been groups of individuals with high aggressive-sexual drives if they were

> to survive and propagate. These drives were nevertheless checkable by strong inhibitory mechanisms and the internal sanctions of guilt and remorse. Only thus could the sexual drive towards the other family members, and the aggressiveness of the young males towards the older have been contained. . . and it is a physiological fact that cortical control of sexual activity distinguishes the higher apes and Man from other animals.[14]

The early and medieval Church may have recognized this pronounced aspect of human nature and its potential malleability as well. If man's nature leaned toward sanctions against incest, it certainly would seem to lend reinforcement to the Church's own attitude toward the need for the establishment of "out-marriage patterns," that is, marriage between partners who do not belong to the same closely-knit and closely-related group. This attitude is articulated in the early Church by Augustine who believes in extending "the multiplying links of kinship."[15] This is accomplished by marriage outside one's immediate kinship group, with the result being the establishment of social harmony over a greater spectrum of persons as their family ties, interests, concerns and ventures become inter-related and connected.[16]

As a result of both this posture of the Church and the incest prohibitions generally accepted by the populace, many Christians, both past and present,

> recognized the central prohibitions as preimminent instances of those intuitions about right and wrong which God has implanted in men without explicit understanding of their reasons

and before any experience of their results is
possible. The good results which have actually
followed are the consequences of obedience to
these good intuitions. To Christians, again, if
the persistence of these taboos is due to their
fitting those who observe them to survive, that
is part of God's ordering of human history.[17]

In the early years of the twelfth century when the scholi-

asts attempted to reconcile classical teachings, nature and

faith, medievals certainly would have recognized such a

view as part of the system of natural law which is based on

the idea that

Human laws may change, indeed, they must change
in order to remain appropriate to different times
and places. But the flux of human laws does not
diminish. . . certitude that constant principles
of justice exist; for, above the changing laws of
man stands the law of nature which remains
constant because anchored in God's own constant
nature."[18]

In fact, Gratian himself stated, "Natural law has primacy

in all things, both in time and in dignity. For it began

with the beginning of the rational creature and does not

vary with time. It stands immutable."[19]

However, this does not explain why people living in

the earliest eras recorded in the Bible were not made aware

of, and subject to, the prohibitions against incest which

would later be applicable to mankind. Augustine had very

simply dismissed the differences, saying that what was a

necessity in earlier times was no longer such and therefore

had been made damnable.[20]

What then WERE Medieval theologians to think regarding

the issue of consanguinity and biblical foundations on which to base their restrictions? The new Testament is silent on the subject. In the Old Testament, Genesis implies that brother-sister marriages occurred between the children of Adam and Eve (Gen. 5:4), as well as did brother-sister marriages and marriages between first cousins by Noah's descendants in the aftermath of the great flood (Gen. 10). Marriage between half-siblings was also permitted as is evidenced by the references in the Old Testament to the marriage of Abraham and Sarah (Genesis), and to the story of Amnon and Tamar (I Samuel). Other incestuous marriages considered normal at that time were those between uncle and niece, and between nephew and aunt. Most generally, too, these marriages occurred patrilineal-ly; that is, marriages were made with a brother's rela-tives. There is no evidence in the Bible of father-daughter marriages, but there is the story of Lot and his daughters having had sexual relations together (Gen. 30-38), which had to be contended with. Interestingly, though, "what is significant in this story - aside from the highly exceptional circumstances - is that there is in it no expression at all of disapproval. Irregular as the union was, it served a commendable purpose, the propagation of the race. . . ."[21]

Of course, there is no way of knowing whether these incidences actually occurred or if the stories' implica-

tions have been properly understood. Also, "one has. . .
to take into account that folk belief is willing to
countenance and to accept as historical reality events,
deeds, and features which would not be tolerated in actual
life,"[22] and if nothing else, the Old Testament does indeed
represent the accumulated folk tradition of the Hebrew
people, perhaps exaggerated by time and the oral tradition,
but perhaps not. What we must assume, however, is that
stories or legends of this kind normally have some basis in
fact and since we have no sources to contradict what is
recorded, we must accept and examine the evidence at hand.
Prohibitions against incest would later be recorded in the
Bible in the book of Leviticus (Chapter 18), which would
serve as one of the authorities toward which medieval
theologians would turn in order to determine what prohibi-
tions the Church should incorporate into its doctrine. The
specific restrictions listed (or implied via analogy) in
Leviticus can be summarized as follows:

1. By reason of consanguinity, a man may not have
sexual intercourse with his mother, daughter, sister, half-
sister, granddaughter and/or aunt.

2. By reason of affinity, a man may not have sexual
intercourse with his mother-in-law, daughter-in-law, step-
mother, step-daughter, brother's wife, wife's sister, aunt
by marriage, uncle's wife, grandmother-in-law and/or step-
granddaughter.

The penalties for those ignoring these prohibitions are given in chapter 20 of Leviticus:

> Verse 17:   "If any man takes his sister, a daughter of his father or a daughter of his mother, and sees her nakedness, and she sees his nakedness, it is a shameful thing, and they shall be cut off in the sight of the children of their people; he has uncovered his sister's nakedness, he shall bear his iniquity."[23]

> Verse 19:   "You shall not uncover the nakedness of your mother's sister or of your father's sister, for that is to make naked one's near kin; they shall bear their iniquity."[24]

Regardless of why the Church and its followers accepted the philosophy of the prohibitions already in place, by the medieval period the ideas against incest had already been entrenched deeply within the consciousness of man and carried along with it moral implications. Because one of the medieval Church's main aims seemed to be to awaken a high sense of morality within mankind through obedience to God, anything that had the taint of immorality, like incest, may have taken on even more hideous proportions in the Church's eyes. Of course then, there would be even more reason to continue, and later to intensify, the prohibitions already set in place. The seriousness with which medievals viewed the necessity for the prohibitions is evidenced by the descriptions ascribed to a consanguineous union: (a) it was "one of the evils which foretold the apocalypse,"[25] (b) it displayed "a loss of religion and growth of wickedness,"[26] and (c) it was "a

detestable crime."[27]

Defining and enforcing any prohibitions, as well as bringing marriage under the legal control of the Church, however, would prove to be a difficult and arduous task. Initially the Church did not try to exert actual legal control over marriage, basically because it had no legal rights over a ceremony that was governed by lay courts. However, by the eleventh and twelfth centuries, there came more and more interference by the Church into marriage. This was largely due to the development of a cohesive body of canon law, intact with a system of appeals and decretals. This strengthened the Church's judicial legitimacy and helped to solidify its claim as the protectorate of marriage. The idea of marriage as a sacrament was also picking up momentum, and the Church was becoming more aggressive in how it responded to those who ignored its inculcations. One response was excommunication, not only of the noble involved but also of his subjects. Along with this came the development of consanguinity rules, which carried stipulations regarding the legitimacy of children, and by extension, could affect the actual survival of a lineage. These rules

> were not put forward as motivated by any biological concern that near-relatives might produce monsters, in the fashion of nineteenth-century laws on incest. Their purpose, as presented by Augustine in The City of God was to overcome family narrowness, to expand the dominion of love. By reason of them, he said, marriage was

"a seedbed of charity" for the heavenly city,[28] an idea which was reinforced by Peter Damian (eleventh century) who theorized that

> . . . as the (human) race was extended and the bonds of relationship grew weaker, the flames of love, deprived, as it were, of its kindling, grew cold as the result of human depravity. There- fore, to restore the flickering fire of mutual love, the contract of marriage was thereupon introduced. . . where the power of blood rela- tionship which drew the captive it had taken fails, the grappling-hook of marriage is at once at hand to retrieve the fugitive.[29]

However, formulating an orthodox policy toward what consanguinity restrictions should be instituted and why the restrictions then sanctioned should exist proved to be a bit of a problem.

The fluctuations in policy and its interpretation, as well as the meting out of penalties once consanguinity restrictions were somewhat in place, demonstrate that difficulties were a long time in being resolved. This is evidenced by the legislation of synods and councils as well as by papal decretals which are well documented by Charles Edward Smith; he describes the variation of response in regard to those having married within the prohibited degrees, the most noteworthy perhaps being the following:

1. The Synod of Apaon (517) declared marriage between first cousins prohibited, but determined that marriages contracted before this declaration would not need to be dissolved.[30]

2.   The Trullan Synod of 692 forbade incestuous unions, and threatened seven years of excommunication for those who transgressed the law.[31]

3.   The Synod of Compiègne (756 or 758) agreed not to dissolve marriages in the fourth degree, but marriages of the third degree had to be nullified. Also, if there existed a couple related in the third degree, and if one of the partners died, the surviving spouse was forbidden to remarry.[32]

4.   The Synod of London (1102) declared null any marriage contracted within the seventh degree, and anyone who even knew of an incestuous union (but was not a party to it) and did not share this information with ecclesiastical authorities was also guilty of the charge of incest.[33]

5.   Nicholas I (858-67) declared that those who married within the prohibited degrees did so "in the manner of beasts" and ought to be shunned; additionally, all illicit marriages should be dissolved, and continence was to be observed by these parties after such dissolution. Interestingly, however, if one of the parties died, the surviving partner was allowed to remarry if s/he simply did not have the resolve to remain continent.[34] Nicholas also attempted to formulate a scale of penance in relation to the severity of the transgression when kinship prohibitions were ignored; the closer the degree of kinship, the more serious the transgression. His plan of penance included:

> If the incest were committed with an aunt, cousin, grandchild, or grandparent, or if certain degrees of affinity were disregarded, both guilty parties were liable to the following punishment: In the first year they were banned from the Church and were to subsist on bread, water, and salt, except on Sundays and feast days. During the second year the restrictions on church attendance were removed, and the penitents were allowed wine and meat on Sundays and feast days. During the third and fourth years the repentant sinners were required to abstain from either wine or meat regularly, but on Sundays and holy days they might indulge in both. From then on until the tenth year the penitents observed three fasts per year and were forbidden to carry and use arms except against pagans. During this period no new marital alliances could be contracted by the offending parties. For those who had been in incestuous relations with mother, sister, or daughter, the penalties were much more severe; thus, seven years of fasting on a diet of bread and water were prescribed, to be followed by observation of three fasts annually for twenty-one years.[35]

In initially formulating an actual set policy which the synods listed above then later attempted to interpret, Church theologians looked to the Old Testament, which provided a biblical basis upon which to formulate the groundwork for prohibitions. But, the "why" of the matter was probably first formally addressed during the Middle Ages by Thomas Aquinas in his <u>Summa Theologica</u> in which he postulated a number of possible objections (to consanguineous marriages) which stood apart from the biblical prohibitions:

1. "Incest" is objectionable because of the "natural and instinctive" feelings of honor towards our parents and close kin.

2. Because of the very availability of such partners, intercourse between them would lead to lust, to over-indulgence.

3. Such unions would "prevent people widening their circle of friends."

4. To add sexuality to the natural affection between kin would be to encourage libidinousness.[36]

This last objection was elaborated upon much later by Montaigne (1532-92) who stated, (that) in a consanguineous marriage,

> there is a danger that the affection that one has for . . . a woman may be immoderate; for if marital affection exists there entire and perfect, as it should do, and one overburdens this further with the affection that one owes to one's kinsfolk, there is no doubt that this addition will transport such a husband beyond the bounds of reason,[37]

certainly something the Church could not tolerate partly owing to its support and incorporation into its own doctrine of the Stoic mandate that reason ought to rise above all sensual experience and emotions.

CHAPTER III

FORMAL METHODS OF CALCULATING KINSHIP
AND DETERMINING CONSANGUINITY

Many sources employ a general discussion of the formulation of more or less official methods of calculating kinship and setting consanguinity limits, implying that the Church at first favored the practice of Roman civil law in forbidding marriages closer than four degrees and that this meant that aunts, uncles, nephews and nieces could not marry, but first cousins could.[38] However, this is misleading, for some of the particulars of Roman law are disputable, primarily due to the vagueness of records concerning the laws and the ways in which they were enforced. What has been revealed by scholars who have reviewed the evidence at hand does suggest that the Roman law, in fact, specified, that marriage was never allowed between ascendant and descendent (the direct line of relationship), regardless of the degree of remoteness of relationship. This rule applied whether the relationship was a natural one, i.e., via blood, or by adoption. In regard to the latter, Corbett states, "emancipation has no effect on this prohibition even where the relation is purely adoptive and where, accordingly, no bond of cognation survives the act of liberation from potestas. . . ."[39]

There are indications, however, that this prohibition was sometimes meliorated when an adoptee had initially been taken in as a slave. Justinian, for example, allowed the marriage between an emancipated slave and former master, but only if the slave had not enjoyed the same position and role in the household as that of an actual daughter. A collateral relationship (those sharing a common ancestor) as the result of adoption, however, was not subject to the same restriction. As long as emancipation from potestas had been obtained by the formerly enslaved person, the parties were free to marry.

The marriage between collaterals, however, seems to have been subject to various stages of evolution in its development and any restrictions were applicable whether the relationship was a de facto (i.e., blood) relationship or one created by the bond of marriage, ex justis nuptiis.-[40] According to Corbett, ancient Roman law forbade marriage between collaterals up to and including the sixth degree (the sixth degree would represent marriage between second cousins), a claim seemingly substantiated by the fragment of Livy (59 BC-AD 17) which read: "P. Celius patricius primus adversus veterem morem intra septimum cognationis gradum duxit uxorem"[41] (In opposition to the old custom, P. Celius of the nobility first took a wife within the seventh degree of relationship).

By the end of the Republic (BC 26), marriages between

first cousins (fourth degree) were relatively common, and

> a further step was taken when Claudius married
> his brother's daughter Agrippina. Gaius states
> that after this precedent the law, while it
> allowed marriage with a brother's daughter,
> forbade it with a sister's daughter or with an
> aunt. But this union of relatives in the 3rd
> degree was made a capital crime by Constantius
> and Constans.[42]

In turn, Theodosius the Great (c. AD 379-95) made marriage between first cousins illegal, but this law was reversed again in AD 405. Eventually the prevailing view provided that collaterals could marry "provided neither was related in the first degree to the common ancestor,"[43] i.e., brothers and sisters.

If and when parties married within the prohibited degrees, their union was declared null and incestuous. The accompanying penalty meted out varied according to whether a man or woman was being punished (punishment differed); the time period (i.e. Republic: BC 753-BC 26, or Empire: BC 27-476 AD); or whether the prohibition ignored was the result of a civil law (jus civile vs jus gentium).

Regarding actual execution of the sentence handed down in such cases,

> The punishment for incest appears at one time to
> have been the hurling of the offender from the
> Tarpeian Rock. It was a familiar school-contro-
> versy in the first century of the Empire whether
> a woman who survived the fall should be thrown
> down again. . . .[44]

The death penalty by other means was also exacted, although sometimes the punishment was set at deportation or forfei-

ture of property. Later, under the laws formulated by Justinian (life: 483-565; emp.: 527-65): (a) no marriages were allowed in the direct line; and (b) the prohibition in the collateral line extended to and included the third degree. This meant that neither uncle and niece, nor aunt and nephew, could marry; however, cousins could marry.

These fluctuations of policy probably added to the Church's own uncertainty and wavering restrictions regarding consanguinity and marriage since the Church partially looked to Roman law for guidance and reinforcement. In fact, the Church did initially favor and follow the example of Roman civil law in formulating the bases of its consanguinity rules, with the method of computation used at that time being that depicted in Figure 1.

THE ROMAN METHOD

Grandfather 2
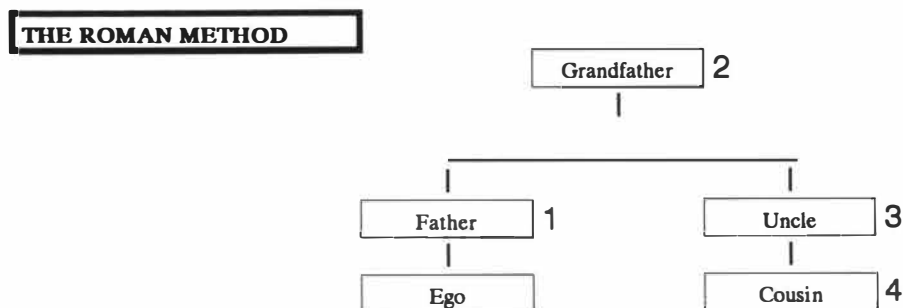
Father 1   Uncle 3

Ego   Cousin 4

Figure 1. The Calculation of Kinship According to the Roman Method.

This method of determining relationship based its calculations on acts of generation; that is, one calculated his relationship to another under this method by counting

the number of degrees back to a common ancestor (called an ascent of degrees) and then counting the number of degrees back down to the relative in question (called a descent of degrees); for example, in determining the degre of related-ness of my cousin to me, I would ascend to my father (first degree), and then to my grandfather (the second degree), who is our common ancestor. I would then descend one step to my uncle (the third degree of relatedness to me), and then another to my cousin, who is related to me in the fourth degree. The adoption of this method of calculation was to be the beginning of endless debates and shifts in policy during the Middle Ages regarding what were true and acceptable consanguinity restrictions. One main problem stemmed from the fact that both Roman law and the early Church based kinship prohibitions for the purpose of marriage on restrictions used for determining the rights of inheritance:

> Roman law had reckoned seven degrees of kinship for the purpose of inheritance, a system which was linked by formalized analogy - a literate specialty, though not one confined to that mode - to the creation of the world in seven days (Isidore Etymologiae). It was this particular range that the Church eventually incorporated into its prohibited degrees, in effect one could no longer marry anyone from whom one could have formerly inherited, i.e., kinsfolk.[45]

Confusion between inheritance and marriage rules and procedures became even more pronounced when laws were adopted in England and in parts of France and Germany which

specified that property could only be inherited by those determined by (lines of) consanguinity,[46] NOT by persons named in any last will or testament:

> Elsewhere, the possibility of intestacy further increased the necessity for accurate determination of consanguinity, because intricate legal questions could arise when a property owner died without surviving children. A wide variety of local custom determined precisely which relative would acquire such property by succession; consanguinity merely set the outside boundaries.[47]

Additionally, two practices predominated: lineal descendants inhierited (i.e., to the exclusion of collateral descendants); and/or males inherited (to the exclusion of females).[48]

Further, in defining its policy on how in fact the calculation of degrees should take place, the Church had to deal with many popular notions and customs that were already in place; that is, differences in values and emphases were developing within and between the lay and ecclesiastical realms of society. In turn, each sector developed its own code of marriage and attitudes toward consanguinity. Georges Duby asserts that both models or codes shared some common goals and perspectives among which the most important were. Both viewed the household and the couple who formed its nucleus as the basic cell or element of (lay) society. Both condemned abduction and adultery. Both viewed procreation as the purpose of marriage. And both viewed the marriage ceremony "as the sole means of

establishing the legitimate character of the union and as a means of control."[49]

The element of control in the two models, however, was formulated with different goals in mind. In the lay model the protection or control of the patrimony (inheritance) became of utmost importance. For this reason endogamy (marriage within the kin group) was encouraged, although marriage within the same house or between those very closely related was discouraged. As a consequence, strict consanguinity restrictions were simply not the norm, and ". . . the notion of incest came to lose all rigor beyond the third degree of kinship."[50] It is also interesting to note that within this lay model repudiation of wives was accepted, as was remarriage for widowers, and sexual activity outside of marriage (at least for men) - again, as long as it did not in any way affect the economic stability of the family unit or compromise inheritance rights.

It is not surprising that the ecclesiastical model would differ in certain of its perspectives concerning marriage since the Church's goal was not to insure the protection of the family's patrimony, but rather to insure the salvation of individual souls. This, the Church believed, could be accomplished in large part by the control of sexual activity between individuals. If they could not discourage someone's sexuality, which was considered ". . . the principal means by which the Devil

secured his hold on the creation,"[51] then at least they would control it. This was accomplished by the insistence on monogamy (including no remarriage by widows or widowers) and exogamy (marriage outside the kin group), the latter entailing the extension of consanguinity prohibitions far beyond what was deemed necessary by lay society. In addition, the Church became embroiled in the perplexing question of whether marriage between first cousins should be forbidden; this became one issue around which the Church came to base many of its incest restrictions.

The Levitical code had not prohibited such (cousin) marriages in its implicit examples listed therein, and so the Church's objections to cousin marriages could not have been based on biblical sources. There is the possibility, however, that the Church may have looked to the general dictate in Chapter 18 (of Leviticus) as the basis upon which to build its own interpretations (Verse 6: "None of you shall approach any one near of kin to him to uncover their nakedness"). Of course, ecclesiastics simply may have been aware of the physical effects on children resulting from marriages that represented blood ties too closely related, for St. Ambrose defended the Church's prohibitions, declaring that marriages, "if not forbidden by Mosaic Law are prohibited by the law of nature."[52] This is justified by the notion that, "since the natural law is the rational creature's participation in the eternal law

and is embedded in man's very nature, it is the fundamental law on which all other laws depend."[53]

A prohibition against cousin marriages in civil law became definitive by AD 428, but at that time Church dignitaries, such as Augustine, did not consider such unions forbidden in terms of ecclesiastical or divine/natural standards and laws:

> It is generally admitted that the impediment of consanguinity is founded on the natural law and that the first degree of the direct line is an impediment. Here, however, the unanimity of opinion ceases and the further extent of the invalidating force of the natural law is the subject of great controversy.[54]

Gradually, however, a change in consensus toward more encompassing prohibitions in degree started to emerge as a result of Imperial legislation and the decrees of Councils. Besides the continual debates concerning marriage between cousins, the other two main issues at that time upon which opinion differed were whether marriage should be prohibited (1) with a niece and/or (2) with a deceased wife's sister.[55] Examples of judicial action exacted concerning these issues include the Council of Agde (506) at which the Church ruled that marriages between both first and second cousins should be prohibited, in addition to those within the fourth degree which were already forbidden.[56] Pope Gregory I (540-604) endorsed the idea that it was the seventh degree which was the closest relationship to be permissible in marriage.[57] Later, in the seventh century,

the Penitential of Theodore stated that second cousins could marry; first cousins could not marry, but if such a marriage had already taken place the marriage could be continued; marriages closer than the fourth degree, however, were still prohibited and anyone in such a marital union had to separate from his/her spouse.[58] Confusion and controversy ensued as a result of these and other similar rulings, and a general consensus toward a rigidity in restrictions also gained impetus. This momentum peaked when the number of forbidden degrees definitively increased from four to seven, and the method of calculating degrees changed and was computed as shown in Figure 2.

THE GERMANIC (Or Medieval) METHOD

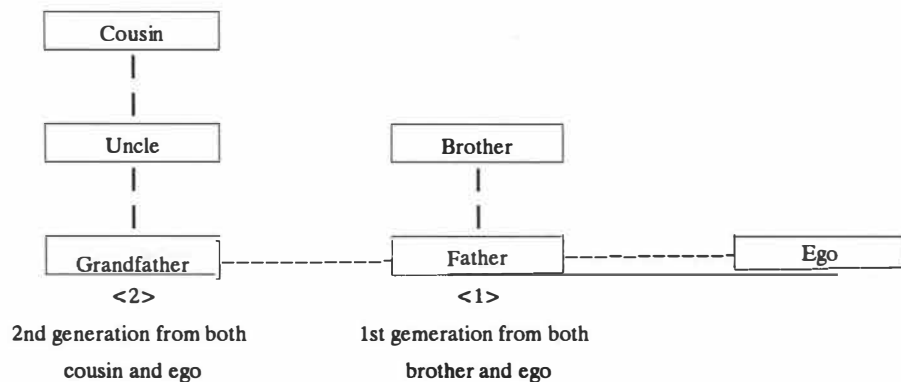| Cousin |
Uncle		Brother
Grandfather |----------| Father |----------| Ego
<2>		<1>
2nd generation from both cousin and ego		1st gemeration from both brother and ego

Figure 2.   The Calculation of Kinship According to the
            Germanic Method.

This represents the germanic method of calculating degrees and is sometimes referred to as tracing descendants in the "collateral line."[59]   It is a system of calculation

". . . based upon the unity of the sibling group, the members of which were related in the first degree."[60] Now, rather than counting up from one spouse to the common ancestor and down to the other, one computed degrees by counting generations back ONLY to the common ancestor.

Some scholars, such as Wahl, assert that the Church's shift to this method of calculating kinship may have occurred as early as AD 600, this hypothesis being founded on a response of Pope Gregory I (AD 590-604) to St. Augustine, bishop of Canterbury.[61] However, others, such as Esmein, propose that,

> Le calcul par générations apparaît bien dans deux pièces attribuées au pape Grégoire I; mais elles sont très probablement apocryphes. Mais, au viii siècle, l'Église compte certainement par généra-tions à la manière germanique.[62]

> [The calculation by generations appeared in two sources attributed to Pope Gregory I, but they are very probably apocryphal. But, in the 8th century, the Church certainly computed relation-ship by generations, via the germanic method.]

Regardless of which of these suppositions is correct, to say simply that the Church changed its mode of calculation to the germanic method glosses over the fact that this change was not definitive. Controversies raged over the particulars of this new policy, and even as late as 1022 the Synod of Seligenstadt clearly specified that the method of computation was in no way absolutely fixed in regard to its details and accompanying issues.[63]

One such issue was how many degrees or grades there

were to each generation. While some people supported the
idea that there were two degrees to each generation because
of the agnate and cognate lines, which would cut in half
the severity of the Church's prohibitions, certain influen-
tial personages such as Pope Alexander II (AD 1061-73),

> pointed out that the system was all very well for
> application to inheritances, but since marriages
> involved two persons, it was eminently fitting
> that in the canon law two persons should consti-
> tute one degree."[64]

Pope Alexander III (AD 1159-81) reinforced his predeces-
sor's point by drawing attention to analogies such as: (a)
amo, amas and amat are not three words, but three parts of
the same word; and (b) in the Trinity, three persons
constitute one essence.[65]

Another problem surrounded determining who constituted
the first degree - was it the original couple, the sons and
daughters, the grandchildren, or someone else altogether?
Further, what degree of relationship pertained to those
unequally distant from a common ancestor?

With regard to the number of degrees and the method of
calculating them, some stability came with the reforms of
Pope Nicholas II (AD 1058-61) during the eleventh century.
At that time the Church's authority in marital matters was
reasserted, and the number of prohibited degrees was
generally set at seven. This meant that prohibitions were
in place up to, but did not include, the seventh degree, a
a policy that perhaps drew its inspiration from the popular

belief that relationships could not be traced beyond the sixth degree. In other words, "Kinship was dissipated after the sixth degree, but marriage gathered up the scattered threads, and the cycle began anew,"[66] a belief which Smith reports Peter Lombard endorsed. Others theorize that endorsing the use of the seventh degree as the outside limit in determining consanguinity restrictions was tied to the belief in the creation of the world in seven days.[67] John of Orleans, however, declared that the limit of the sixth degree (technically "up to the seventh degree, non inclusive") in kinship in regard to marriage prohibitions was selected because there were no names for any relatives beyond the sixth degree, and so relationship could not be traced beyond that point![68]

Regardless, however, the method itself was to limit severely the number of persons eligible to be marriage partners, for "the number of unions considered incestuous increased exponentially; for every increase of one forbidden degree, the number of ancestors a potential couple might share more than doubled."[69] In other words, the seventh degree of the germanic (or canonical) method corresponded to the thirteenth or fourteenth of the Roman one.

Two questions at this point arise: (1) Why did the Church feel it necessary to increase the impediments to marriage? and (2) Why did the Church elect to adopt the

germanic method of calculation over the Roman method?

In regard to the first question, some scholars, such as Goody, offer the somewhat cynical opinion that:

> The Church's extension of exogamy, together with its opposition to polygamy, concubinage, and divorce-remarriage, constituted a deliberate strategy designed to limit the aristocracy's ability to produce heirs so that its estates might more easily fall into the hands of the church through bequest.[70]

David Herlihy, however, submits that the increase may merely have been part of the Church's wish "to prevent rich and powerful males from collecting or retaining more than their share of women."[71] The truth is that there seems to be no adequate evidence or documentation to support either hypothesis.

Frances and Joseph Gies, however, offer the possibility that this occurred as the result of "a convergence of religious ideology and royal self-interest."[72] They formulate their hypothesis based on the work of the English missionary St. Boniface (c. 672-754), who was papal legate to the Frankish Church, and whom they term "the author of the extension of degrees of kinship."[73] Boniface wished to weaken the power and solidarity of the Frankish nobles, their influence having been increased and reinforced through the networks they had established via close marriages. Pepin (751-68) endorsed Boniface's plan since he feared the power of the nobles as a very real threat to his own consolidation of alliances, military strength and

royal power. The result was a change in Frankish law that extended consanguinity restrictions to seven degrees (from four), a move endorsed by the pope and then adopted by the Church at large.

In regard to the second question, various theories have been posited to explain why the Church elected to endorse the more stringent germanic method of calculation. Some scholars theorize that this occurred simply because it provided an alternative to the Roman method which Church officials viewed as a typical example of "Roman laxity."[74] Additionally, adoption of the Roman method was viewed by the Church as a type of acquiescence to secular jurisdiction and law which was based on Roman jurisprudence.[75] Continued use of the Roman method, too, evidently reflected and reinforced ". . . the attachment of the nobility to the legend of Troy and their putative descent from the milites of Julius Caesar."[76] Some modern scholars, such as Goody, who here presents a less cynical view than earlier, are less critical when assessing why the Church sought to distance itself from the Roman method, stating that the search for a new method of calculation simply, "was an attempt to reduce the conflict between noble and commoner, between Church and people, between civil and ecclesiastical law, as well as among the scholiasts themselves."[77]

But why the germanic method of calculation? Constance Bouchard offers the hypothesis that "germanic concepts of

family relationships may have been the chief factor,"[78] but does not offer clarification or details. Peter Damian (eleventh century), however, claims that endorsement of the germanic method gains its legitimacy from scriptural authority. He chastised those who supported the use of the less restrictive Roman method, claiming,

> . . . that in the process of introducing the filth of incest under the title of marriage, you are attempting to defile the stainless chastity of the Church. The vanity of worldly wisdom should blush and stop spreading the nettles of error in the pastureland of the Church. . . ."[79]

This notion gained increasing support and, in fact, Pope Alexander II (1061-73), initiated the official shift to the germanic method of calculation in the eleventh century largely as the result of Peter Damian's influence. Peter himself was deeply distressed by the moral laxity of mankind and was particularly concerned with marriage and related issues. He was especially horrified with the whole idea of the sexual act. Accordingly, one of the major themes of his writings was the need for a reform of sexual mores. He not only underscored the dangers of sexual temptation, but in fact believed that all sexual inter-course was sinful whether it occurred within the marital state or not. Evolving from this notion was Peter's ideas concerning the medieval controversy over whether marriage depended for its validity upon sexual relations or not. Peter said that such a notion was ridiculous. Consent, he

believed, was the foundation of the marital contract; consummation was merely an affirmation of that consent. Equally of concern to Peter, however, was the problem of consanguineous marriages, which he addressed in his celebrated letter #19, De Parentelae Gradibus (Concerning the Degrees of Kinship/Relationship), composed early in 1046.

In this letter he specifies that the controversy over the method of calculating kinship concerns only those related collaterally since marriage in the direct line is always forbidden. He starts his argument by supporting the belief which had been endorsed by Justinian in his Institutes that "among those who are bound by the law of inheritance there exists no right to marry."[80] He then explains that his own support of the germanic method is based on his belief "that generations which proceed from a person in both directions must be counted only once."[81] He justifies this position via the claim that,

> Indeed, divine law never counts twice those offspring that come from one progenitor in the family by different lines. But even though many descendants issue in various directions, if they are to be considered together, they are to be included in a single generation.[82]

His argument partially derives from his belief that there is some significance to the Old Testament's use of the singular "generation" vs. "generations" (plural) in some scriptural passages; for example, he explains,

> Of blessed Job, moreover, we read that "he saw
> his sons and his sons' sons to the fourth genera-
> tion." Now since Scripture does not say that Job
> saw his son's sons, that is, a single line
> descending from one progenitor, but his sons'
> sons and that while he yet lived, all of them
> reached not to four generations but in the
> singular, to the fourth generation; it is per-
> fectly clear that, by the authority of the Word
> of God the generations which derive from brothers
> are not to be divided but are counted as one.[83]

As a result, brothers, who are considered as being related
in the second degree in the Roman method are related in the
first degree according to the germanic, as illustrated in
Figure 3.

THE ROMAN METHOD

Answering the Question: In What Degree is My Brother (Son #2) Related to Me (Son #1)?

| Father |
= 1st degree of relationsip
to son #1 (& son #2)
|

| Son #1 | | Son #2 |
= "0" degree   = 2nd degree
of relationship   of relationship
Me = Ego   to Son #1 (me)

THE GERMANIC METHOD

Answering the Question: In What Degree is My Brother (Son #2) Related to Me (Son #1)?

| Father |
= common ancestor
|

| Son #1 | | Son #2 | = 1 generation
                                                = 1st degree of relationship

Figure 3. Calculation of the Degree of Relatedness Between
My Brother and Me According to the Roman and
Germanic Methods.

Accordingly, cousins, related in the fourth degree in the Roman method fall within the second degree in the germanic, as demonstrated in Figures 4 and 5.

| THE ROMAN METHOD | Used to answer what relationship the Daughter of Son #1 is to the Son of Son #2 (i.e., In What Degree are Cousins Related?) |

| Father |

This is the 2nd Degree of Relationship
since this is the Grandfather

| Son #1 | | Son #2 |

This is the 1st Degree of Relationship
since this is the Daughter's Father

This is the 3rd Degree of Relationship
since this is the Uncle

| Daughter of Son #1 | | Son of Son #2 |

*Start counting here: = "0" Degree

This is the 4th Degree of Relationship
since this is the Cousin

Figure 4. Calculation of the Degree of Relatedness Between Cousins According to the Roman Method.

An individual, then, in determining in what degree s/he is related to his/her cousin under the germanic method, counts back the number of generations to their common ancestor.

There are situations, however, where tracing relationships back to the common ancestor results in unequal lines, such as when calculating in what degree an individual is related to an uncle. Here, the two lines under the germanic method would be calculated as illustrated in Figure 6.

THE GERMANIC METHOD Used to answer what relationship the Daughter of Son #1
is to the Son of Son #2 (i.e., In What Degree are Cousins Related?)

| Father |
= common ancestor

| Son #1 | | Son #2 |

= 1 generation
= 1st degree of relationship
to each other since they count
back only 1 generation to
their common ancestor

| Daughter of Son #1 | --><-- | Son of Son #2 |

Cousins

= 1 generation
= 2nd degree of relationship
to each other since they count
back 2 generations to their
common ancestor

OR

"0" Degree   **1st Degree**   **2nd Degree**

O --------- O --------- O

Individual #1   Individual #1's Father

(Ego)   (This is NOT the Common Ancestor)

Individual #1's Grandfather

This IS the Common Ancestor:

He is Individual #1's Grandfather AND

Individual #2's (Cousin to Individual #1) Grandfather

Therefore, cousins are related in the 2nd Degree

since they must count back TWO generations to their common ancestor
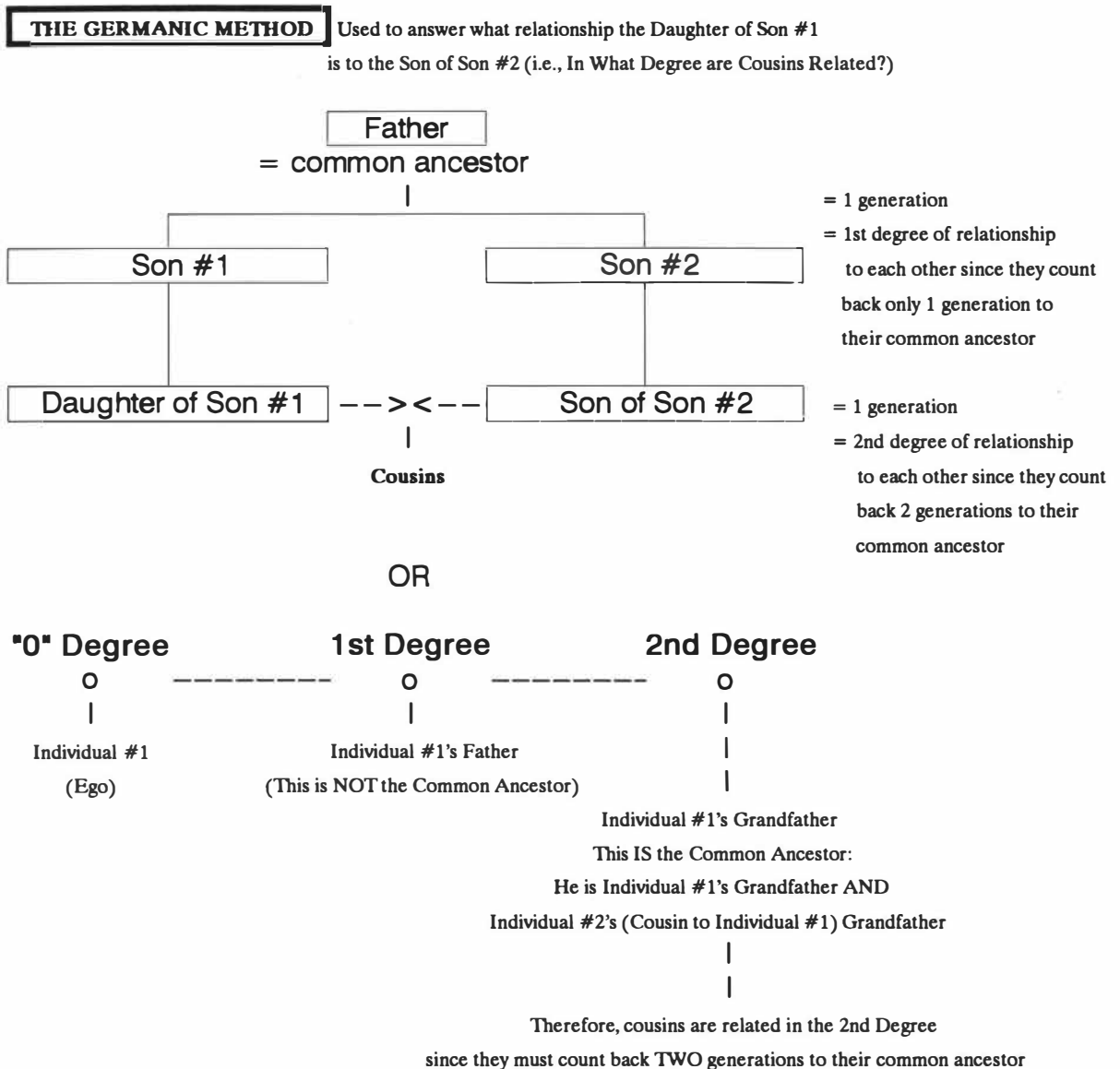
Figure 5. Calculation of the Degree of Relatedness Between
Cousins According to the Germanic Method.

In this case the people are to be considered, says
Damian, as being related by the SHORTER line, i.e., the
smaller number of degree: the first degree in this case.
This means that as far as marriage, ". . . although one may

THE GERMANIC METHOD

"0" Degree   **1st Degree**   **2nd Degree**

O ————— O ————— O

| | |

Individual #1   Individual #1's Father

(Ego)   (This is NOT the Common Ancestor)

Individual #1's Grandfather

THE COMMON ANCESTOR

"0" Degree   **1st Degree**

O ————— O

| |

Individual #1's Uncle

Individual #1's Uncle's Father

(Individual #1's Grandfather)
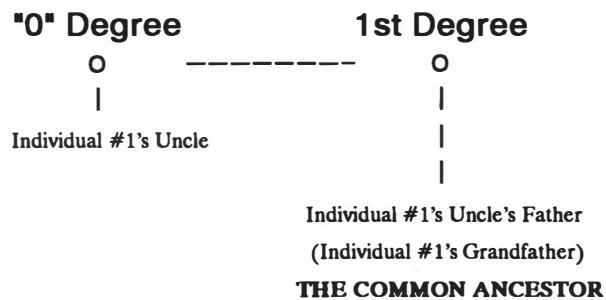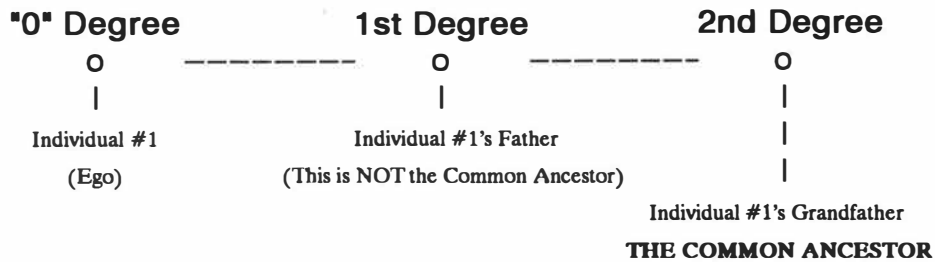
THE COMMON ANCESTOR

Figure 6. The Degree of Relatedness Involving Unequal
Lines According to the Germanic Method.

himself exceed the limits of relationship, he does not seem
to be free to marry her who is still bound by the degree-
count in her own line."[84]

Peter is less specific regarding how far the prohibi-
tions should extend, his ambiguity, perhaps, resulting from
his endorsement of the somewhat unspecific dictum "that so
long as the line of blood relationship is known, or is
remembered, no one may presume to take a wife from his own
relationship."[85] At one place in his <u>De Parentelae Grad-
ibus</u> he does imply that consanguinity extends to/ends at

the sixth degree, declaring that:

> . . . since earthly time evolves through six ages
> and the life of man is also so bound, the very
> force of nature provides that familial love
> asserts itself up to the sixth degree of kinship
> and gives forth, as it were, an odor of an innate
> association among them.[86]

Later he concedes that some learned men believe that it is

the seventh generation or degree which is to be observed.[87]

He, himself, however, prefers an even more cautious

approach when contemplating marriage, wishing to avoid any

hint of incest:

> Wherefore, in contracting marriage whoever wishes
> completely to avoid the seventh generation, must,
> I think, at the same time count nine persons on
> both sides: the eight namely who constitute the
> seven generations, and the ninth, the person who
> is to be married.[88]

He does modify this position in a later letter (Letter

#36), written about 1050. He concedes in that letter that

he had felt compelled to scrutinize his earlier beliefs due

to accusations by laymen that his views had "cruel and

inhuman rigidity."[89] Based on the authority of the holy

fathers, he believed that he had found grounds for believ-

ing that "there are as many persons as there are genera-

tions,"[90] vs. his earlier belief that "father and son are

not two, but one generation and one degree. After these,

however, there are certainly as many degrees as there are

persons."[91] This, in effect, did not change the actual

method of calculation or even significantly reduce the

number of those one was still forbidden to marry. Peter

ends his Letter #36 with the exhortation to the archbishop
to whom he had written the letter, "burn the midnight oil
as you consider this question"[92] of consanguinity and how
it should be calculated.

And indeed, it appears that many canonists continued
to do just that as controversies continued. Jack Goody
reports that many new questions were brought to light in
the latter part of the twelfth century when canonical
authors started to distinguish between "truncus" (or
"stips"), and "gradus" (trunk and degree).[93] The idea of
an "ipse" as introduced much earlier by Isidore was also
rediscovered and various opinions were offered in analyzing
what this "ipse" referred to. There were also many
theories regarding how to interpret the three stemmata
included in the manuscripts of Isidore's Etymologies.
These stemmata, or genealogical trees were of three
different kinds: one of concentric circles, "qui semblait
faire large place à la fraternelle"[94] ("which seemed
broadly to represent fraternal kinship") according to
Champeaux, but which may be, more than anything else,
simply a graphic representation of the relationships which
Isidore defines in his text; one which exclusively utilized
Roman computation; and one which established between one's
father and uncle a degree (of distance) and which Champeaux
believes suggests the germanic method of kinship,[95] but
which, instead, may be only a variation of the Roman method

of calculation in which any relative of the "ipse's" direct line is considered as being in the same degree as his/her immediate offspring, instead of establishing a degree between them.

Here the problem of definition started anew: What individual or individuals constituted the trunk and/or the "ipse?" Should it be the grandfather, father, brothers and sisters as a group, the married couple, or the individual? And is the "ipse" the departure point in calculating the degrees of relationship? Further, were the words "trunk" and "ipse" interchangeable?

In regard to the notion of the trunk, it was generally recognized, depending on which mode of kinship calculation one endorsed, that this was comprised of: a group of siblings, based on the notion of fraternal or germanic kinship; the married couple, based on the notion of matrimonial or canonical kinship; and/or the individual (and his/her potential descendants), based on the notion of individual kinship (later also to be categorized as "canonical")

Champeaux, in his article "Jus Sanguinis," attempts to detail these modes of calculation. However, since his purpose appears to be to prove what he feels is the overwhelming influence of fraternal computation on other methods which emerged while denying that the notion of fraternal kinship is specifically germanic in origin, his

information is somewhat limited in scope. He starts his
discussion with affirmation of the fact that all the
canonists, regardless of which method they endorsed, viewed
the trunk as the starting point of kinship and as an entity
always opposed to degree and containing an "identical
group."[96]

Fraternal kinship (sometimes referred to as germanic
kinship), however, appears to be the oldest of these
methods of calculation. Champeaux later declares in
another article, "La 'Prima Stemma' d'Isidore," that this
method is as old or perhaps older than the Roman method.[97]
He traces back to Burchard's Decretum (eleventh century)
recognition of the fraternal method of calculation, which
supports the notion that brother and sister are part of the
same trunk, with actual kinship computation starting with
the children of brothers and sisters. He posits the
belief, however, that this idea was not invented by
Burchard; instead, he claims, this portion of Burchard's
work is an interpolation of a passage from Isidore, which
was passed on in a somewhat meliorated form in the Panormia
of Ives of Chartres, and then incorporated into the
Decretum of Gratien (c. 1, cause xxxv, qu. v.).[98]

Champeaux, himself, fully accepts the credibility and
legitimacy of the notion of kinship based on fraternal
computation, for he believes:

Il ne faut pas reflechir longtemps pour voir

qu'au point de vue du sang les freres et soeurs
constituent les parents par excellence. Ils sont
beaucoup plus parents entre eux qu'ils ne le sont
de leur pere et de leur mere pris separement, car
ceux-ci (en admettant un calcul par moitie) n'ont
chacun que la moitie du sang de leurs enfants,
alors que les freres et soeurs ont la totalite du
meme sang. De tous les parents possibles ce sont
eux qui repondent le mieux a la notion du
truncus qui repose. . . sur l'identite du
sang.[99]

[It does not take long to see that according to
this point of view of the blood, brothers and
sisters constitute "parents par excellence."
There exists between them a much stronger notion
of "parents" than that which exists between their
father and their mother because, taken separate-
ly, the parents have only, in allowing calcula-
tion by half, half of the blood of their children
while brothers and sisters have the totality of
the same blood. Of all the possible types of
kinship, this is the one which corresponds best
to the notion of a trunk and which relies on. .
. the identity of the blood.]

Further, says Champeaux, "La parenté se développe en
collatérale, elle n'existe véritablement que chez des
contemporains"[100] ("This kinship develops collaterally and
only truly exists with contemporaries"). It is based on
the notion of equivalence or parity of the blood, i.e., the
communality of blood, and supports the notion that "seuls
sont complètement parents ceux qui ont une identité
complète ou une parité égale de sang" ("only those who have
complete similarity or equal parity of the blood are full
or true relatives").[101] It is this group which forms the
trunk (of brothers). The trunk of brothers, however, may
consist of great-uncles, uncles, or brothers; according to
Champeaux, however, in the early Middle Ages this group was

largely confined to those best able to defend, represent and maintain a family's wealth, interests, property and influence, and this would not have included the elderly, women or children.[102]

Champeaux states that Burchard and other canonists firmly endorsed the fraternal method of kinship,[103] evidently accepting its bona-fide legitimacy as explained by Champeaux above. However, they complemented it with the more canonical calculation of kinship referred to as matrimonial kinship. This consolidation of methods was necessary because the fraternal method was evidently more fully utilized by the general populace, although the aristocracy tended, however grudgingly, to follow the dictates of the Church, which endorsed the notions intrinsic to matrimonial kinship and which were aimed at bringing marriage under the Church's direct and unopposed control. This stood in opposition to fraternal kinship, which tended to put more emphasis on family control of property and personal values. However, the influence of the Church continued to increase as family predominance faded as the result of social and economic transformation; the disintegration of the extended family and the advent of the idea of a small (more nuclear) family; new ideas of marriage based on individual consent;[104] and new ideas of individual property.

Compromise with the fraternal method of calculation

became increasingly one-sided as the Church continued to flex its influence in transforming marriage into an institution. Thus, the notions of matrimonial kinship started to overshadow and somewhat eliminate the older fraternal method, a move, claims Champeaux, which was deliberate.[105] Matrimonial kinship emphasized the idea of the "unitas carnis," the unity of the flesh established by legitimate marriage, which, said the Church, was representative of the indissoluble union, the same type of "unitas carnis" between Christ and His Church. Further, this type of kinship ". . . tended to stress the direct line of descent, eliminating collaterals. . . ."[106] It emphasized the notion of the nuclear family and profoundly affected notions of heredity (i.e., inheritance went to children, not collaterals), of the responsibility of debts, of the protection of the family, and in calculation of kinship.[107]

This appeared to be in direct opposition to the principles and purpose of fraternal calculation, although, in essence, matrimonial kinship utilized some of the same notions as fraternal kinship. It, too, was concerned with the idea of a trunk as the departure point for calculating relationship and based its legitimacy on the idea of parity of the blood.

In fact, claims Champeaux, "Le parenté fraternelle est donc à la base de la parenté matrimoniale qui a pris modèle sur elle"[108] ("Fraternal relationship is. . . the basis and

model of matrimonial kinship"). This is so, he asserts, because matrimonial kinship supposes a FRATERNITY between spouses and engenders another FRATERNITY between them and their children.[109] Further, matrimonial kinship is the realization of a fiction derived from a fact borne from fraternal kinship; that is, the _unitas carnis_ in matrimonial kinship of the spouses is a unity of flesh _realized_ by marriage vs. the _real_ unity of flesh which _exists through nature_ between brothers and sisters, as is recognized in fraternal calculation.[110]

The basic principle of matrimonial kinship itself is simple: the couple forms the trunk or stips and is the point of departure in the calculation of kinship. The couple, however, constitutes only the original composition of the trunk, which can increase if there are children: "Les enfants deviennent par le sang frères et soeurs de leurs propres parents" ("Children become, through their blood, brothers and sisters of their own parents").[111] This does not seem to explain, however, whether in the calculation of degrees children were considered as being at the first degree, i.e., if the trunk includes the parents and children in only a purely abstract way, or whether they were included in the trunk as the departure point for calculating degrees. The problem appeared to be that, in essence, matrimonial kinship endorses, or is based on, "une sorte de représentation limitée à un seul degré"[112] ("A

sort of representation limited to a single degree"), and which, ". . . ne peut exister q'entre les parents et les enfants nés du mariage et non par rapport aux petits-enfants issus d'un autre mariage"[113] ("Can only exist between parents and the children born of the marriage, and not in relation to grandchildren issued from another marriage").

It was, "trop courte pour permettre d'établir une véritable ligne directe ascendante ou descendante et trop instable et trop modelée sur le hasard des evénements pour se prêter à une construction juridique d'ensemble"[114] ("too short to permit the establishment of a real direct line, ascending or descending, and too unstable and too dependent on the hazard of events to lend itself to a general legal construction"). Although canonical, it seemed more practical for the purpose of establishing succession, "mais non pour le calcul de la parenté qui exigeait nécessaire-ment l'établissement d'un degré entre le père et le fils"[115] ("but not for the calculation of kinship in which necessarily existed the establishment of a degree between father and son").

The shortcoming(s) of matrimonial kinship, coupled with increasing emphasis on the individual and his/her position and rights in both secular and religious society, led the way for the identification of the "ipse" of Isidore with the individual ("Ipse" will be replaced with the word

"trunk" in the thirteenth century[116]). The ipse or trunk
is now the individual from which one seeks kinship.
However, it "est le point de départ du calcul n'est plus,
à lui seul, l'origine de la parenté. Il n'est l'origine
que pour ses descendants. . ."[117] ("is no longer the origin
of kinship for oneself; rather, it is the origin only for
one's descendants"). And it is this which sets this method
of calculation apart from fraternal and matrimonial
kinship: ". . . le point de départ du calcul et l'origine
de la parenté ne sot plus les mêmes"[118] ("the point of
departure of calculation and the origin of kinship are no
longer the same"). It is now possible to separate a father
and his children by degree, and brother from brother as
well. This, in turn, facilitated the creation of an
ascending and descending direct line as well as an ascend-
ing and descending collateral line.[119]

Kinship is still calculated by generations, and
although for all practical purposes this system became the
standard to follow in calculating kinship, changes still
occurred, and some variations in procedure continued. One
important issue was how to deal with unequal degrees from
a common ancestor for a potential marital couple. Initial-
ly, as pointed out earlier, the closer degree was that
which determined if a potential union would be considered
licit. However, a shift in Church policy occurred, or at
least started to emerge according to Esmein, by the twelfth

century[120] at the same time as the construction of the
arbores consanguinitatis.

This shift was simply movement toward endorsement of
the idea that it was the more remote degree, rather than
the closer, which determined the validity of a potential
union; and Charles Edward-Smith states that this change was
definitive by the year 1280.[121] The transition itself was
based on the idea that "parties, being related to each
other through a common ancestor, cannot be more closely
related one to the other than they are to the common
ancestor."[122] And from this would develop the axiom
"Remotior gradus trahit ad se propinquiorem"[123] ("The more
remote degree draws to itself [or absorbs] the shorter/clo-
ser degree").

Also of concern to the Church was the issue of how far
the consanguinity prohibitions should extend. The increas-
ing severity of the prohibitions throughout the Middle Ages
had always posed a particular problem for the nobility
since they sought to intermarry as much as possible in
order to maximize power, allegiances and wealth. But, very
rapidly, due to the prohibition of marriages within seven
degrees, many noble lineages soon became too closely
related to continue to marry as they had in the past. To
what extent the nobility actually heeded the Church's
admonitions is open to interpretation however. There seems
to be some evidence that couples ignored their blood-

relationship at the time of their marriage, only later to bring to light their relationship in order to seek a divorce. This was particularly true in instances where a wife had failed to produce an heir, or in situations where a decisive turn in political and/or military considerations had taken place. This practice was fairly common in France but not as widespread in England. There the stability of marriages, although not necessarily fidelity within them, appears to have been the norm. For those (nobles) who did wish to proceed with a divorce, regardless of the reason for doing so, the charge of consanguinity was often their only option since during the ninth-twelfth centuries divorce was disappearing, with the only grounds for such an action being the discovery of a previously unknown blood-relationship between marriage partners. Of course, this was technically an annulment instead of a divorce, for in the eyes of the Church the marriage had never been valid. Annulment WOULD gradually start to be discouraged by ecclesiastics as

> social custom and the common law made inheri-
> tance, and the whole ethos of family and house-
> hold, depend more precisely than hitherto on
> legitimate marriage; and the Church. . . finally
> decided that incest was of less consequence than
> broken marriages, adultery or divorce."[124]

The practice of suddenly discovering blood-relationships was not universal however, and evidence seems to indicate that most people followed the stipulations set forth by the

Church and that, generally, nobles almost never married anyone related within more than six degrees, the sixth degree of a relationship sometimes known and ignored because of the desirability of the marriage, but sometimes truly not realized. Also, however, the nobility were often able to seek and to obtain papal dispensation for marriage between persons related in any but the closest degrees of kinship/consanguinity.[125]

Further, in order to safeguard against marriage within the prohibited degrees, many families started to construct ancestor lists, or family trees. This was strongly recommended by the Church as early as the tenth century (AD 948) at which time the Synod of Ingelheim suggested that all Christians heed this advice. These lists served as authoritative sources which (noble) couples could consult in order to determine if their marriages would be approved by the Church, and

> That nobles should draw up such a SCRIPTA GENEAL-OGIA to have it approved - Ingelheim may have been endorsing a practice that was already common, not suggesting a new one - indicates strongly that consanguinity was not a matter of indifference to the medieval nobility."[126]

The situation, however, was even more complex because prohibitions applied not only to those related by blood, but also to those related by marriage (referred to as affines) as well as to those related via baptism, i.e., godparenthood (referred to as spiritual kin). Additional-

ly, ". . . the prohibitions on marriage to affines applied not only to the kin of one's spouse but to anyone with whom one had had sexual intercourse."[127]

What options then were left to the nobility in their strategies to align themselves in influential, promising marriages? Evidently kings still attempted to find royal wives for themselves, and most often they preferred to marry the daughters of other kings. They also sought such marriages for their sons. Of course this often meant searching for partners from areas that were geographically distant from their own, such as Byzantium and Russia. Regarding their daughters, kings settled for less prestigious marriages; often these daughters married members of the lesser nobility, such as counts or dukes. Evidence exists to suggest that by the twelfth century a few nobles started to ignore some of the prohibitions of consanguinity. They were not happy because marriage into socially inferior classes was starting to weaken the monopoly of power that they had enjoyed in the past. This problem was addressed by the Church at the fourth Lateran Council in 1215 at which time the Church reduced the prohibited degree to the fourth, the number four being selected partially because not only were there four humors (fluids) in the body, but also four elements in the world.[128] This new limitation in degrees implies that theologians attempted to link this reduction with what they understood as pre-

cepts/principles of natural law. This of course, would have been necessary, since, "restrictions would not be liberalized on grounds of practicality, for this would have implied that marriage was a contract at the disposition of men to alter as he saw fit."[129]

Regarding later reductions in the prohibitions by the Church, Goody reports that, ". . . this was reduced to the second degree for Indians of South American origin in 1537, for Blacks in 1897, and then for the world at large in 1917."[130] Similar reductions in impediments in regard to affinity and spiritual relationship were exacted as well, which will be described shortly.

Before briefly discussing those issues, however, two other modes of consanguinity/kinship calculation reported as a part of the research in the field warrant discussion. The first is considered Anglo-Saxon in its classification and is often referred to as "calculation by articulations" or "calculation according to the knee" (Note: "knee" appears in original texts as geniculum in Latin or cnēow in Old English). Charles-Edwards, who has one of the most detailed modern studies on the subject, refers to this particular method as "a metaphorical method of depicting degrees of kinship."[131] He implies that this method of calculation may have been used as early as the sixth century, but that in regard to surviving texts/manuscripts it was in one of Aethelred's laws, which prohibits marriage

within a certain degree of kinship, which first shows or explains how the metaphor/method was employed. According to his analysis of that text, Charles-Edwards explains that marriage was prohibited within the kindred illustrated in Figure 7.
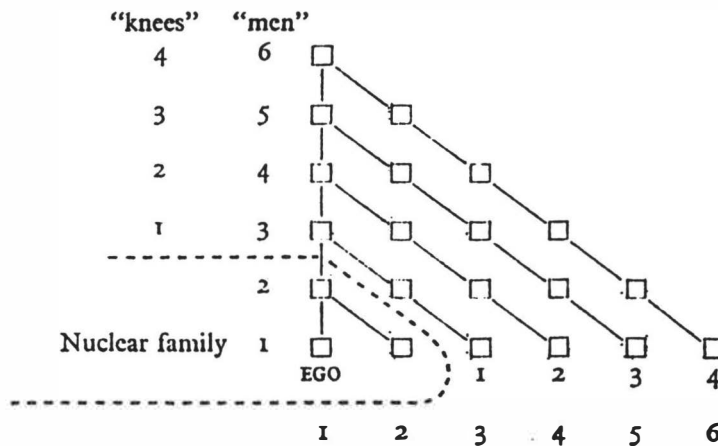

Figure 7. Calculation of Kinship According to the Knee.

He does not specify, however, whether this chart is his own rendering, whether it is one which appeared in an early manuscript, or whether it is simply based on schemata found in early sources. Regardless, the following may be said regarding the method of calculation depicted above:

1. The nuclear family is set apart from the rest of the kindred because in Anglo-Saxon laws and customs, there was a careful distinction made between the kindred of the immediate, nuclear family and the kindred as a whole; other contemporary germanic law systems even distinguished

between the nuclear family, blood-feud kindred and kindred concerned with land and inheritance.

2. The "knees" seem roughly comparable with generations outside of the nuclear family, or more in keeping with the spirit of the name of this method of calculation, they can be referred to as the "joints in the kindred connecting a man with his collateral kin."[132]

3. The limit of six men is depicted because Aethelred's law, in part, reads: "Let it not happen that a Christian man should marry his own kin in the degree of kinship of six men, this is within the fourth knee,"[133] i.e., marriage with a fourth cousin is not allowed.

4. According to Charles-Edwards, the wording of the law does not enable a determination of whether the kindred being considered is agnatic or cognatic,[134] and the law also prohibits marriage "with certain affines," although his diagram does not show prohibited affines.[135]

5. The limit of the prohibited degrees being set at the fourth knee may be related to early (before the seventh century) limitations set when referring to the definition of the lineage - the lineage being considered four-generational, although Charles-Edwards reports that during the seventh century, a three-generational lineage became the fundamental group of kinship[136]

Not surprisingly, this method of calculating kinship was also utilized in determining appropriate compensation

in regard both to inheritance and blood feud payments. Its interpretation and applicability, however, in the later texts and law codes which would refer to this system (of kinship) was not necessarily consistent; Charles-Edwards notes that this was so particularly in the Wer, the second code of Edmund, dating from the tenth or early eleventh century, and in the Leges Henrici Primi of the early twelfth century.[137]

The other method often cited, though poorly detailed in description in modern studies, is that referred to as "computation by the head." Jack Goody associates this method with the germanic calculus during the thirteenth century.[138] In this mode of calculation the head represents "the common ascendent, the shoulder the brother and sister, the elbow first cousins, and so on down to the nails, which stood for the seventh degree, at which point, as in Roman law, kinship stopped."[139]

However, this kinship method may have been an outgrowth, or perhaps even simply a continuation of earlier similar practices. Esmein, as a matter of fact, describes an almost parallel method to that "of the head," which he attributes to "les peuplades germaniques"[140] (the germanic tribes), who "dans le calcul de la parenté, ont pris pour point de repère les articulations de la partie supèrieure du corps humain"[141] ("in the calculation of kinship were in the habit of using as landmarks [i.e., reference points]

the joints of the upper part of the human body"). He goes

on to explain that each joint corresponds to a degree of

kinship:

> La tête avec le cou représentait l'auteur commun;
> les epaules figuraient ceux qui étaient issus de
> lui, ses enfants, frères entre eux, formant le
> premier degré, parce qu'ils représentaient la
> premiere génération; on passait ensuite aux
> coudes, représentant la génération suivante et le
> second degré, puis aux poignets, puis, succes-
> sivement, à chacune des articulations d'un des
> doigts de la main autres que le pouce. Là se
> terminait la prenté.[142]

> [The head, with the neck, represented the common
> ancestor; the shoulders those who descended/is-
> sued from him, that is his children; and brothers
> formed between them the first degree because they
> constitute the first generation; one passed then
> to the elbows, which represented the next genera-
> tion and thus the second degree; then to the
> wrists and successively to each of the joints of
> the fingers of the hand other than the thumb.
> There kinship terminated.]

However, he clearly states that he believes that this

method "found a voice again" in the eleventh century in

Peter Damian's De Gradibus Parentelae.[143] Certainly then,

more research of original documents is warranted to

determine how the earlier renditions of using the human

body as the schemata within which to classify kinship is

related to later versions, and to determine if there are

any manuscript illuminations which graphically depict this

intriguing method.

CHAPTER IV

SOME BRIEF COMMENTS ON THE RELATED
ISSUE OF AFFINITY

Other restrictions regarding who could or could not be
marriage partners arose due to the concept of affinity,
and, although the main focus of this paper is consanguinity
and the development of its methods of calculating relation-
ship, a few comments on affinity are being included to
demonstrate that consanguinity was closely related to, and
developed much along the same lines as, affinity.

"Affinity" refers to the types of relationship that
consist of persons who are not blood-related. It can be
classified into three categories.

Affinity proper is the first category. It is a type
of affinity in which the relatives of each partner of a
marriage are brought into the kindred of the other and so
are also subject to prohibited degrees in regard to
marriage(s) between relatives. The Biblical verse which
helped to engender this whole concept and the controversy
which then ensued was evidently Genesis 2:24 - "Therefore
a man leaves his father and mother and cleaves to his wife,
and they become one flesh."[144] For medieval theologians,
this implied that the relatives of the married couple had
become as mysteriously united, spiritually, as the spouses

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themselves and, therefore, should be subject to consanguin-
ity restrictions as well. A husband and wife are not
considered as affines (one to the other), but, rather, are
the source upon which affinity and any restrictions are
based. Examples of affines in the first degree of the
direct line include father-in-law, mother-in-law, and step-
parents, while examples of those in the second degree of
the direct line are wife or husband's grandfather and
spouse or grandmother and spouse. The first degree of the
collateral line includes brother-in-law, and sister-in-law,
and the second degree, husband or wife's first cousin.

As with consanguinity, the Church looked toward both
Roman and Mosaic law in order to determine its own ideas
regarding this issue. Again, it was Leviticus 18 in which
were listed the Hebrew prohibitions in regard to affinity;
that is, a man was forbidden to marry his step-mother,
daughter-in-law, step-daughter, daughter of step-son,
daughter of step-daughter, mother-in-law, step-sister, wife
of paternal uncle, brother's wife (except in the case where
the brother died without heirs), and/or sister of wife.
Reciprocally, these laws were intended to apply to a woman
as well. Penalties for ignoring these prohibitions
included death, the declaration of children from such
unions as illegitimate, and/or removal from the community
and brotherhood of the Hebrew people. Two New Testament
passages also mentioned instances of rebuke as the result

of affinity and thus seemed to reinforce the prohibitions previously recorded in the Old Testament. The first was Matthew 14: 3-4, in which Herod Antipas married his brother's wife Herodias and was condemned for doing so (and for which he was also considered as being guilty of adultery), and the other was I Corinthians 5:1 which records the marriage of a man to his step-mother, which was considered sinful.

The Mosaic Law, of which all these instances are examples, specified that affinity established by a marriage did not cease at the death of one spouse, or if the two partners divorced. Additionally, affinity did not depend for its existence upon the consummation of a marriage, but rather was considered as having existed from the time of a couple's official engagement.

Roman law based its notions of affinity on marriage, whether consummated or not. In the direct line, it was forbidden to marry one's mother-in-law, father-in-law, daughter-in-law, brother-in-law, step-parent, step-daughter, and/or step-brother. Persons related by affinity in the collateral line were not forbidden to marry in early Roman law. However, in AD 355 the sons of Constantine declared it unlawful for a man to marry either his brother's widow or two sisters successively. Later, in 415, a law was passed prohibiting a woman from marrying her sister's widower.[145]

Borrowing from both of these traditions, the Church seemed content, until the fourth century, to function within the parameters set therein. At that time ecclesiastical legislation started to clarify the Church's position and to add to its list of affinity restrictions.

As the Church gradually established its own identity, it also increased its affinity prohibitions in regard to marriage up to the seventh degree, the first recorded instance of this extension being from the Synod of London in 1125.[146] Relationships stemming from affinity were calculated in the same manner as consanguinity.[147] Trees of affinity were also constructed and included as a part of manuscripts.

Examples of penalties meted out for transgressing the emerging affinity rules included excommunication, years of penance, abstention from communion, and dissolution of the offending marriage with no chance of remarriage to another unless one or both of the parties was truly ignorant of their affinity at the time of their marriage.

From the eighth century, the Church also declared that it was not marriage which established affinity between persons but rather sexual intercourse, whether licit or illicit. This view apparently first became a part of the tradition of the Frankish Church and then gradually was adopted by the Roman Church as a whole.[148] Henry reports that there were those, however, such as St. Thomas Aquinas,

who maintained that it was not sexual intercourse, but rather marriage, which engendered affinity.[149]

During the eleventh century, the situation became even more complex with the introduction of the notion of different classes of affinity proper. According to Smith, this was, however, "apparently not maintained by the official legislative organs of the Church, but was rather a result of the deductions of the canonists."[150]

Regardless, the first class was considered that which has just been described. It was that type of affinity arising as the result of sexual intercourse; a man's relatives were related to his wife in the same degree, and vice versa.

The second class was indicative of the belief that affinity begot affinity. Anyone who married a person's relative related to him by affinity, was then also related to him. In this type of affinity, too, "a man could become related to the affines of a widow whom he married and vice versa."[151]

This second class of affinity begot the third class, which dictates that if, for example, a man is related to another man via the second class of affinity and, after the second man's wife dies, he remarries, this new wife is related to the first man via the third type or class of affinity. These classes of affinity are demonstrated in Figure 8.

Marriages within the third degree of the second class of affinity were invalid. And, marriages within the second degree of the third class of affinity were prohibited.
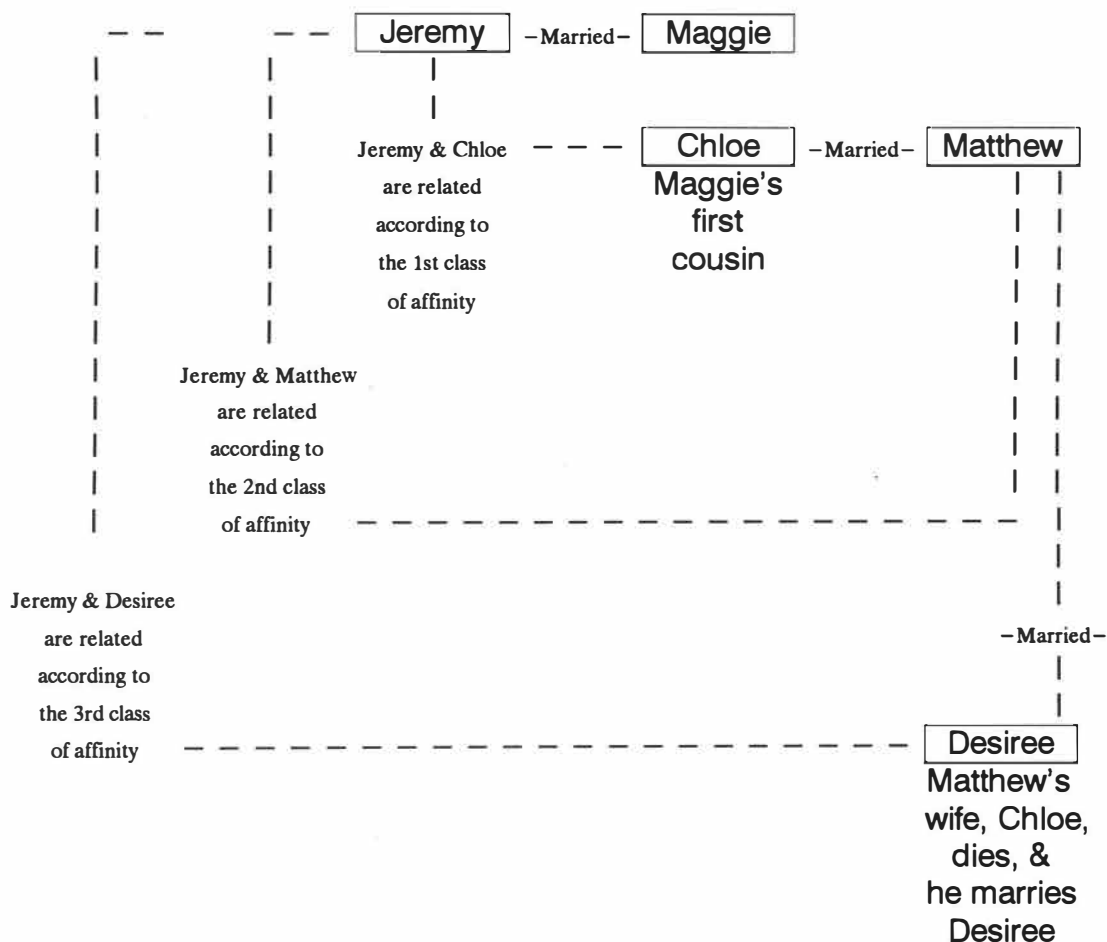

Figure 8. The First, Second and Third Classes of Affinity Proper.

A fourth class of affinity was also observed, although it was considered by some as closely related to the second type.[152] It was referred to as the prohibition of the "soboles ex secundis nuptiis" and involved the prohibition

of marriage between the children of a woman's second marriage and the (blood) relatives of the deceased spouse of the first marriage.

The Fourth Lateran Council (1215) determined that affinity does not beget affinity ("affinitas non parit affinitatem"). It abolished the second, third and fourth classes of affinity and restricted marriage up to and including the fourth degree (in the collateral line) in regard to the first class of affinity regardless of whether the union that gave form to any specific instance of affinity was licit or illicit. The Council of Trent (1563) would later limit illicit affinity to the second degree in the collateral line.

The second main category of affinity, that of Public Honesty (or quasi-affinity or public propriety), is a complex subject in itself, and so only the basics of the issue will be presented here. This type of affinity derives, or is given form, from the betrothal of a couple. A previous betrothal between two parties prevents the relatives of either from marrying the other party. It probably became the basis for marital impediments because of its close relationship to marriage; that is, it is considered the prelude to marriage; but, further, for many medievals, betrothal was more than this. This consent was the actual initial stage of marriage, which Gallagher reports Gratian claimed is then perfected through sexual

intercourse after the actual marriage ceremony.[153] This view, not surprisingly, enjoyed both support and criticism; for example, Benedict I (574-78) upheld the view that a couple did not represent the unitas carnis unless their relationship had been consummated. Gregory I, in turn, was opposed to this view, believing that it was betrothal which engendered the unitas carnis. This was then overturned by Benedict VI (972-74) who opposed the idea that betrothal signified the beginning of kinship.[154]

The Church as a whole concerned itself with the lawfulness of this type of affinity, drawing whatever analogies possible with marriage. It was also concerned with what was deemed proper for society, hence one of its names, "public propriety."[155]

As with consanguinity and many other issues, the Church naturally looked to Roman law in considering its own posture toward this type of affinity. And indeed, in Roman law, betrothal was regarded as a verbal contract, bona-fide in nature. It was a relationship that was governed by specific rules, laws and expectations, and which, in turn, gave rise to certain marriage impediments.

All in all, there did not seem to be much of a unanimity of opinion on this issue, although Smith asserts that at least among the canonists, there existed a great deal of support for the idea that marriage to a party previously engaged to a relative really ought to be

avoided.[156] Gallagher reports, also, that there seemed to be a general consensus that the impediments should not reach beyond the fourth degree, as evidenced by the second General Council of Lyons in 1274 and by the writings of Bernard of Pavia (twelfth century) and Panormitanus (late fourteenth century).[157]

Spiritual relationship, or spiritual affinity, is the third category of affinity. It results from sponsoring a child at baptism or confirmation. Accordingly, the spiritual relatedness which is believed to be engendered gives rise to certain marriage prohibitions.

In regard to the development of marriage impediments arising from this type of affinity, Joseph Lynch believes,

> the silence of the western Latin sources prior to 700 on a link between baptismal sponsorship and marriage reflects a social reality: in the fifth, sixth and seventh centuries, the Latin West knew no marital impediment arising out of baptismal sponsorship[158]

although certainly the social and familial type responsibilities issuing from such a relationship existed and were widely recognized. What happened after the seventh century, however, is somewhat under dispute, for there is no concrete evidence of why or when the prohibitions first surfaced. Leviticus 18 served as the authority to which all turned for reference and guidance in regard to what should be considered incestuous, but widely varied interpretations of the text abounded. Was spiritual kinship

clearly defined in Leviticus?

Many scholars, such as Lynch, believe that the prohibitions originated in the Christian East. The first explicit reference to such a prohibition dates from AD 530 at which time Justinian declared that a man might marry his ward, but only if he had not felt fatherly affection for her; at the same time, Justinian declared that a marriage between god-parent and god-child was insidious, but ". . . modern scholars have generally assumed that Justinian was not inventing the taboo, which probably had an undocumented prehistory in popular attitudes and customs."[159]

The first western ecclesiastical legislation in regard to this issue is from a decretal of Deusdedit (615-18), which declared that if a man had been a god-parent to a child, he could not join his natural child with this spiritual child.[160] Under Justinian II the Council of Trullo (691-92) formulated a new prohibition. Now a sponsor was forbidden to marry the natural parent of the child s/he had sponsored. Later, in the early eighth century, any prohibitions applying to a sponsor were extended to apply as well to the sponsor's son, the baptizer, and the baptizer's son.

By the eighth century, the Christian West would share most of the views of the East concerning spiritual kin especially in regard to the prohibition of marriages between god-parent and god-child as well as between co-

parents - that is, a married couple could not co-sponsor the same child in baptism. Neither could a child's god-parent marry one of the natural parents of the sponsored child.

Some variations in opinion continued due to differences in interpretation regarding how the concept of spiritual-relatedness was to be understood, i.e., did spiritual kinship really signify anything beyond the notion that all are spiritually related through Christ? Differences in interpretation existed among various ethnic groups as well; for example, Lynch reports that in many areas typically germanic in orientation, the sexual taboos associated with spiritual kinship faced some opposition, even though the idea of god-parenthood and all the social and spiritual responsibilities it implied were firmly rooted; in fact, his research regarding Anglo-Saxon England has yielded no specific, concrete legislation, ecclesiastical or civil, that prohibited marriage between spiritual kin.[161]

In general, there is no evidence that spiritual relationship was subject to prohibitions up to the seventh degree as was the case with the first category of affinity and consanguinity. Rather, Smith reports,

> there are some instances of enforcement of these provisions, but their rigor was considerably mitigated by relaxation in the form of papal dispensations.[162]

Delineating the course of any variation of procedure,

however, would involve a lengthy study in itself. As with the other forms of affinity discussed here, only the basics have been presented in order to illustrate the fact that consanguinity restrictions affected many more relationships than those which existed within the marriage union.

CHAPTER V

CONCLUSION

In the Middle Ages, several inter-related factors contributed to the confusion regarding consanguinity. One of the most significant was that of language and transmission problems. Variations inevitably existed among manuscript copies of the same text, sometimes due simply to scribal error. It was possible for the omission of a word or the transposition of letters to lead to controversy over the intended meaning of a passage. Then, too, there were problems involving the interpretation of diagrams such as consanguinity charts; in attempting to present what was considered a clarified version of a particular consanguinity chart, basic tenets were sometimes unintentionally modified in other manuscripts, leading to an entirely different analysis of the principles of the original chart. Excellent examples of such different versions of one of Isidore's stemmata, as a matter of fact, are presented in Champeaux's article, "La parenté fraternelle et la 'prima stemma' d'Isidore," and it is interesting to note the exclusion of the "ipse" of Isidore in what appear to be Ives of Chartres' representations of two of the same charts.[163]

The mechanics of language presented other problems. Many of the manuscripts dealing with the issue of consanguinity were written in Latin, a language which during the medieval era was undergoing profound changes, with multiple variations appearing in its syntax and semantics due to such factors as differences in geographical area, educational level of writers, purpose of the text, and/or the intended audience. Dominique Barthélemy also wisely notes: "The medieval vocabulary made distinctions that we no longer make, but at the same time it conflated notions that we consider distinct."[164] Thus, what we consider misunderstanding by medieval people may be due, instead, to our own misinterpretation of the available data.

Variation in interpretation may also have resulted from the fact that several types of Church writers were involved in writing and offering opinions on consanguinity, i.e., canonists, theologians, and the writers of the great decretums. Theories and opinions offered and recorded by such writers were not necessarily incorporated into canon law, although the views put forth by them may have been widely known and circulated as such. Occasionally, too, there were reversals of policy of previously accepted opinions/laws which then could cause confusion and add to the fire of controversy.

Lastly, it is important to note that the history of the development of consanguinity prohibitions in the Middle

Ages need not be viewed as "a painful chapter in the
Church's history" as Korbinian Ritzer believes.[165] Rather,
it reflects the misunderstandings that can arise when
perceptions differ along religious, legal, and/or ethnic
lines as a sense of identity is sought in the formation of
a social institution such as marriage. This inevitably
involves the establishment of power and control; and,
indeed, much has been written about the medieval Church's
struggle to maintain control over marriage and consanguini-
ty, and questions have been raised regarding what inten-
tions were behind the prohibitions set. Was the Church's
intention the salvation of souls by discouraging marriage
and sexuality, as claimed? Or was it a ploy to disfran-
chise the family in regard to the inheritance of land and
wealth?

Speculations abound, but no definitive proof can be
offered in defining the Church's intentions, although
excellent studies such as those by Goody, Duby and Herlihy
have been undertaken in order to offer possible theories.
The case simply may be, of course, that mistakes were made,
despite all good intentions by the Church. After all,
marriage and any regulations that were developing concern-
ing it were an integral part of the complex situation
within which the Church found itself, particularly in the
twelfth century, for any prohibitions formulated would have
political, social, economic, and religious consequences.

On the religious front, Church theologians and canonists were attempting to establish marriage as one of the sacraments, a move which had naturally developed out of the long-standing notion that the union between husband and wife represented the relationship between Christ and His Church. The need to declare that marriage was indeed a sacrament, however, was also deeply entwined with the issue of celibacy which the Church was attempting to emphatically impose on all levels of its clerical hierarchy. With such an endorsement of celibacy, the Church needed to make sure that it did not denegrate marriage in the process. A solution was the establishment of marriage as a sacrament. This, in turn, implied the need for regulation. But how strict should any regulations be? The Church needed to determine not only any penance system to enforce but also how to deal with the severity of any consanguinity prohibitions it might impose. Certainly celibacy was regarded as the ideal state, but marriage did result in the procreation of children who would become future members of Christ's Church, and so marriage could not be too greatly discouraged. Treading a middle path, then, became difficult, and it is not surprising that controversy and confusion resulted.

Economically it was possible that consanguinity prohibitions could provide for a wider distribution of wealth, since such prohibitions naturally required marriage

outside one's immediate family and close relatives. This seemed to nicely complement the Church's belief in the need for charity among all persons and the development of a wider network of Christian brotherhood, a social ideal toward which the Church endeavored. But was that really the Church's intention?

There has been speculation by some scholars that the Church's goal was not to distribute wealth more evenly, but rather to shift the location of that wealth from well-to-do aristocratic families to the Church itself by gaining control of inheritances as marriages between desirable partners became increasingly more difficult and thus the number of potential heirs decreased. Again, here the situation becomes complex. Was the Church interested in increasing and consolidating its wealth as the result of selfish motives, i.e. the need to control society? Or was it simply attempting to increase its resources for the sake of charity; that is, the Church was socially responsible for providing not only for the poor but also for those such as widows and the unmarried who often entered monasteries and/or nunneries, which the Church needed to maintain as well.

Politically, consanguinity prohibitions were important because marriages could no longer be made purely on the basis of what was expedient in order to forge new alliances that were politically or militarily advantageous. Theoret-

ically this could provide for less consolidation of power, and subsequently, again, wealth; and this was certainly something the Church would view positively. But, of course, there were other far-reaching social and economic implications of such restrictions since the future of nations, and subsequently the welfare of its inhabitants, could hinge on the successful union of two households through marriage. The Church was not blind to this, and occasionally approved marriages within the prohibited degrees if it would contribute to a cessation of hostilities or lead to greater social stability.

Political considerations were, at times, affected by consanguinity restrictions in regard to succession as well. This was due to the fact, as reported earlier, that the systems of kinship used to determine inheritance rights often were confused with, and/or sometimes identical to, those used to determine eligible marriage partners. This was particularly important in regard to whether succession might pass to an uncle, or to a son; this often depended on which kinship system was being utilized to determine the outcome, whether collaterals or those in the direct line were given precedence, and/or whether it was ascendents or descendents who were viewed as having the greater right. Consistency, here, did not seem to be the rule, for Champeaux reports,

Les jurisconsultes du Moyen âge ont été des

éclectiques, ilts avaient en main trois systèmes
de parenté et ils ont utilisé soit l'un, soit
l'autre, suivant l'intérêt pratique présenté et
les résultats donnés.[166]

[The jurisconsults of the Middle Ages were
eclectic; they had on hand three systems of
kinship and they utilized either one, or the
other, according to the present practical inter-
est and the results which would be produced.]

All of these examples demonstrate the complexity and far-
reaching implications and effects that consanguinity
prohibitions were having in the Middle Ages as ideas about
marriage were being restructured and redefined according to
the medieval Church's notions about what was best for the
good of society. It is not surprising, therefore, that the
vastness of this complexity should have resulted in such a
proliferation of confusion regarding the interpretation and
application of consanguinity prohibitions. However, as
Joseph Lynch wisely points out,

It is one thing to describe what happened as a
result of the increasing complexity of marriage
law, but it is quite another to demonstrate that
the Church intended such results or even under-
stood the cause and effect relationship that
apparently increased its power and wealth.[167]

Accordingly, such complexity has hampered my efforts in
determining and restricting the content of this thesis.
Initially I had hoped to incorporate a detailed study of
medieval consanguinity charts, but I have discovered that
an extensive study of the texts which accompany such charts
will have to be undertaken in order to properly analyze
what is being reflected in some of the charts I have

examined, for variation in calculation and in the construction of trees of consanguinity evidently continued to exist even after the fourth Lateran Council of 1215 established much continuity of policy regarding kinship calculation procedures.

What I have presented, minus a detailed study of consanguinity charts, is an introductory study of consanguinity and the methods used in calculating kinship that other readers can use as a basis for more detailed studies of the various facets of, or issues related to, consanguinity.

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