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“SCANDLE IS HEAUED SUNNE”*

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I. “Scandle is heaued sunne”

Thus the author of the early thirteenth-century *Ancrene Wisse* describes scandal—anything done or said so as to incite others to sin—as a capital fault. His contemporary, Thomas of Chobham, concludes his *Summa Confessorum* with a section on the sin of scandal—a great sin, he says, which few confess. As an example of the gravity of scandal, Thomas cites a hypothetical fornicating priest, who sins twice: once in the act and again in scandalizing his parishioners, who might be tempted to follow his example. Thomas’s work was intended for the use of priests hearing confession; clearly, clergy of all ranks would have been expected to be familiar with the church’s doctrine on all important points of theology, including scandal. How was this particular teaching interpreted on the practical level, and what were its implications for the relationships of ordinary men and women? This paper will look at both the theory and the practice of scandal as sin, in an

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effort to see how it functioned in medieval England. It will draw upon some cases of wife abuse in bishops' registers from around 1300 to see the way in which this important form of scandal, real or threatened, worked to control behaviour—in this case particularly within marriage.

II. Theory: theological history of the concept of scandal as sin

Clearly medieval people did not define scandal quite as twentieth-century people do. Where we might think of scandal as malicious gossip, medieval definitions adhered more closely to the Greek root of the word, *skandalon*, which means "a trap, or a snare for an enemy." The medieval Latin *scandalum* means "cause of offence or stumbling" (OED s.v. "scandal"), a meaning that has far greater social and spiritual implications than the modern one bears. When we say we are scandalized we often mean nothing more than that we are shocked; when medieval clerics used the word they understood that people scandalized by shocking behaviour were literally imperilled by it. While scandal might mean only a shock to sensibility, and while by the end of the Middle Ages connotations of slander and defamation had also become attached to it,¹ the original meaning of the word still lay at the heart of its medieval definition.

The first source for scandal in medieval thought is, naturally enough, the Bible. Translation from the Vulgate often obscures its presence, because "scandalum" tends to become "offense," which can carry a similar meaning in Latin, but loses its strength in English. In both testaments the word occurs in its literal sense of "stumbling-block." For example, in the Douai Bible Isaiah has: "And he (the Lord) shall be a sanctification to you: but for a stone of stumbling [*lapidem offensionis*] and for a rock of offence [*petram scandalum*] to the two houses of Israel" (Is. 8:14). And the psalmist says: "Much peace have they that love thy law: and to them there is no stumbling block [*non est illis scandalum*]" (Ps. 118:165). In its use in these Old Testament examples, scandal is nothing more than an obstacle: there is not yet any attachment to particular kinds of stumbling blocks.

In the New Testament, some of the better-known passages include Christ's words to Peter: "Go behind me Satan: thou art a scandal unto me";² and his dictum on adultery:

You have heard that it was said to them of old: "Thou shalt not commit adultery." But I say to you, that whosoever shall look on a woman to lust after her hath already committed adultery with her in his heart. And if thy right eye scandalize thee, pluck it out and cast it from thee. For it is expedient

for thee that one of thy members should perish, rather than that thy whole body go into hell. [And if thy right hand offend thee, cut it off and cast it from thee . . .]³ (Matt. 5:27–30)

Every reference, particularly in the New Testament, reinforces the Christian obligation not only not to sin, but not to cause others to fall either — setting up a mutual responsibility for spiritual health among the community of Christians. In this sense, scandal is the opposite of charity.⁴

Early Christian theologians generally adhered to the “stumbling-block” sense of scandal. Most often, they discuss scandal in the context of biblical exegesis. The Fathers used the concept in straightforward ways; for example, Jerome reminds the virtuous Marcella that a widow’s duty is to remain a widow, and that a simple life is not offensive. “Women who paint their cheeks with rouge and are covered with powder and so disfigured by excessive whiteness that they look like idols” (Wright 162, 163)⁵ scandalize a Christian’s eyes. The Fathers abhorred shocking behaviour as scandalous, and as dangerous to the sinner and to the community. When we turn to the later period, which is our focus here, we find increasingly sophisticated interpretations.

By Abelard’s time (1079–1142), the sin of scandal had become attached often, but not exclusively, to sexual sins. It is clear that for him, a sin performed in public so as to have the potential of corrupting others is more serious than the same sin committed privately:

[W]hatever can redound to the common ruin or public detriment should be punished with greater correction, and what causes greater wrong deserves among us a heavier penalty, and the greater the scandal with men the greater the punishment which it incurs among men, even though a lighter fault has preceded it. (Luscombe 43)

This is about not only the individual’s sin, but more importantly the public welfare. “Therefore,” Abelard continues, “we often punish the smallest sins with the largest penalties, not so much considering with the fairness of justice what fault went before, as thinking with the wisdom of foresight how much trouble can arise if they are punished lightly” (Luscombe 45).

Nearly a century and a half later, Thomas Aquinas in his *Summa Theologiae* includes a whole section on scandal, which covers the definition of the sin, its seriousness, its relationship to holy men, and its punishments, and which represents a refinement of the theology of scandal. Noting that Jerome says that one who scandalizes is one who “by deed or word shall

occasion another's fall" (see *ST*, 2a2ae. 34-46),⁶ he says that an obstacle placed in another's spiritual path is a true definition of scandal.

Going further, Aquinas says that scandal does not require a sinful act, merely the appearance of one:

Though [to sit at meat in the idol's temple] is not sinful in itself when done with no evil intention, still, because it looks like an act of venerating the idol, it might occasion another's fall. . . . Scandal then is described as something *less right* so as to embrace both real sins and whatever has the appearance of sin.⁷

Scandal may be divided into active and passive varieties, depending on the intention of the sinner or the nature of the sin. It is worth quoting this whole passage:

A man's word or deed may be the cause of another's sin in two ways, directly or indirectly. Directly when he intends his evil words or deeds to lead the other into sin, or even if he does not intend it, when the act itself of its very nature is conducive to sin. An example would be when he publicly commits a sin or does something that appears to be a sin. In such cases he would properly be giving the occasion of another's fall. We call this *active scandal*.

A man's word or deed may be the cause of another's sin indirectly when, without his intention and with nothing in what he does to warrant it, the other through some evil disposition of his own is led into sin, for instance, into envy of the first man's blessings. In that case he who does the right thing does not, as far as he is concerned, afford the occasion of sin, but it is the other who takes the occasion. . . . Now this is passive scandal without active scandal, since the man who for his own part acts rightly, does not give the occasion of the fall the other suffers.⁸

Theological ideas about scandal were reflected in canon law, the *corpus* of papal edicts, conciliar canons, and diocesan statutes. The most widely influential work is Gratian's *Decretum*. Here are found nearly four dozen mentions of scandal,⁹ although many of these are scriptural quotations or simply passing references. Some canons, however, deal directly with the dangers of scandal. Here we find Gratian showing, like many other clerical authorities, much concern about the morals of priests. He has this to say: Those in sacred orders "discovered or publicly taken in perjury, theft, and fornication and other such sins," should be punished according to the canons, "because it is a scandal to the people of God for such persons to be placed over them" (Gratian, D. 50.34).¹⁰ When public ill-fame is not present, an accused person should be allowed to purge himself, to avoid scandal (C. 6.5.2).¹¹ A priest who is merely believed by the people to have committed

evil deeds that cannot be proven is to be suspended until he has made satisfaction, lest the faithful be scandalized by him (C. 2.5.13).¹²

Not only priests but bishops too, in the carrying out of their work, need to avoid scandalizing the people: "if ever in carrying out his ministry, anything is to be received [as a gift or payment] from his subjects or brothers, this most especially should be done carefully, lest anyone be scandalized or burdened" (C. 10.3.7).¹³

In speaking of penance, Gratian says a penitent should confess devoutly to a priest,

because it does him good not only in receiving health, but also as an example to others; such as if his sin is not only burdensome in its evil, but also a scandal to others, it seems . . . to be useful to the church that he neither reject nor refuse to do penance before many, or before the whole congregation. (DP 1.85)¹⁴

Diocesan statutes concern themselves with practical matters, often dealing with the behaviour of clerics. Here we can begin to see concern about scandal in tangible situations. In the earliest surviving statutes, those of Archbishop of Canterbury Stephen Langton, which were promulgated just before the Fourth Lateran Council, we find priests forbidden to keep concubines, a practice from which scandal arises (Powicke and Cheney II 25.)¹⁵ Failure to comply resulted in deprivation.

From a synod in Worcester in 1240, the statutes of which were to be disseminated to all parish priests (see Goering and Taylor 576–77), we have a statute on pride, particularly with regard to clerical dress. Bishop Walter Cantilupe says that clerics should not dress in red or green garments and that they should be decently tonsured. Modesty of appearance is particularly important in front of prelates and clerical assemblies: "Let unbeneficed clerics whose tonsures are inadequate be admitted neither to superior orders nor to a benefice, until such time as they exhibit a suitable tonsure, [so] that they seem to have made amends for the scandal as time passes" (Powicke and Cheney 307).¹⁶

With the development of the *cura animarum* — the priest's job as confessor, educator, and all-round spiritual physician — beginning even before the Fourth Lateran Council in 1215, and continuing long after it, came the burgeoning of pastoral literature including the voluminous genre of confessors' manuals. These guides to aid priests in hearing the confessions of their flock ranged from the large and heavy *Summae* to small and portable handbooks.

The great *Summa Confessorum* of Thomas of Chobham, with which we began, fits here. Thomas, writing in about 1215, gives us a detailed

explication of the sin of scandal, breaking the offence down into active and passive forms, a distinction that was to be followed some generations later by Thomas Aquinas, whose example of the priest who sins twice in fornication because of the scandal of his act was cited above. Someone moved to follow his example is scandalized, but this person's sin is passive scandal, since it results from the sin of another. For Thomas of Chobham, the fact of its being committed in front of others is essential to the sin of scandal. "It is serious and difficult to assign a worthy penance for the sin of scandal," he says,

since it hardly happens that anyone sins in any sin who does not scandalize others through that sin. And often the lord is more offended by the publication of the sin than by the work of sin itself, as it is read in Jeremiah: They publish their sin like Sodom; they publish them and do not hide it. [Is. III,9]. For whoever sins in secret kills only his own soul, and perhaps offends no one but God. But he who sins in public kills his own soul and through scandal the souls of others, and maybe offends the whole church. Whence it is proper for him to satisfy much more who sins publicly, and much greater is the penance to be assigned than if he had sinned in private. Whence the Wise One says: if not chaste, then careful. (Broomfield 570-71)¹⁷

"And always greater penance should be assigned according to the increase of scandal" (571).¹⁸

When scandal was defined as a sin, it was absorbed into the penitential system, where it lay especially behind the question *ubi* in confessors' manuals. Penitents were to be quizzed about their sins, using some form of "what, where, why, how much, with whom, how, when, how often" (Goering and Payer 33).¹⁹ Thirteenth-century confessors' manuals incorporated the idea that public sin was much more serious than private sin, stating like this anonymous Dominican, who echoes Thomas in about 1220, that a person "sins more in public than in secret, because she or he corrupts others with their evil example" (Goering and Payer 33/137-38)²⁰ or, in other words, that she or he scandalizes others.

III. Practice: disciplining the sin of scandal

Clearly, priests with the care of souls participated in this concern for scandal caused by public sins. When some of those priests attained the exalted rank of bishop, they could exercise this participation over a much wider jurisdiction than that of the simple parish priest. We can see this in operation in their registers. Naturally, since the registers reflect the work of individuals,

the importance given to scandal varies, but we can still see a general worry about innocent or weak Christians being corrupted by the sins of others.

Nowhere is this more true than when the sins are those of persons in religion themselves. Bishops' registers abound with examples of monastic and clerical scandal, far too numerous to discuss here, except to note that episcopal concern about the scandalous behaviour of those who should be the most above suspicion is clearly motivated by concern over both the public image of the church and the health of the souls of lay Christians.

Some of those lay Christians also found themselves facing the discipline of the bishop. There are countless cases of adultery and fornication, for which the usual punishment was public whipping. There are also cases dealing with marital problems. For example, the register of Roger Martival, Bishop of Salisbury 1315-1330, records the case of Alexander de Hoo and his wife Margery, who appeared before him in his court of audience in November 1316. Margery "and others" charged that Alexander had beaten her inhumanely and deprived her of food and drink, as well as disposing of both their common goods and her own dowry to a third person, John Schobenhanger, which deeds were public and notorious. Alexander denied the charges and added that his wife had denied him conjugal rights, but Margery insisted that he had beaten her severely enough to break a bone. The bishop ordered the parties to attempt a reconciliation, which failed. We do not learn how the case was concluded, but while it was under consideration, Margery was allotted two shillings a week alimony from their common goods, a sum which indicates that the Alexander was a man of some substance (Owen 5, 7, 10-15).²¹

Even higher courts than those of bishops could deal with such cases. In October of 1297, Archbishop Robert Winchelsey sent a mandate to the dean of Shoreham to cite Walter de la Mare to appear before the Archbishop on charges of having deserted his lawful wife Katherine, the mother of his many children, and depriving her of her dowry and possessions, as well as the conjugal debt; all to the cost of his salvation and scandal to many. "These things," says Winchelsey, "threaten great danger to souls," so Walter must appear personally before the Primate. In the year before, Richard Peyfrer had appeared before Winchelsey accused of diverse excesses and sins, including treating his wife Johanna inhumanely and committing adultery and incest with other women. Johanna had appeared personally and petitioned for a hearing. The archbishop had ordered Richard to make regular money payments to his wife (£10 a year), and also to return her dresses and ornaments to her (Graham, fol. 224, 194-95; fols. 173^v-174, 45-47). Even

though the couple was separated, Richard still had access to Johanna for the purpose of exacting the conjugal debt.²²

While on visitation, the archbishop had also heard that a man identified only by his initials had beaten his wife Alice immoderately, wounding her several times, and had treated her dangerously, not ceasing for a single day, against the law of marriage. The dean of Westbere is instructed to cite the man to appear before the archbishop to answer for these things and also for perjury and contempt; the dean is also to prevent him on pain of excommunication from continuing to abuse his wife (Graham, fol. 184^v, 83-84).

These cases are interesting because they show the Primate of All England concerning himself with the plight of abused and abandoned wives. How did these cases come to Winchelsey's attention?

The bishop, and we remember that Winchelsey was not only archbishop of his province, but also bishop of his diocese, *did* preside over matrimonial cases; most typically these dealt with the legality of particular unions. But if we assume that cases of wife abuse and maintenance were included in the category of matrimonial cases, then what are we to make of the case, in a ruridecanal court in the diocese of Worcester in 1300, of Thomas Louchard, who "treated his wife badly with a stick," and appeared and confessed, and was assigned the penance of being beaten in the public square (*forum*); or that of wife-beater Walter of Fornham, in the archdiocese of Sudbury, who promised to reform and had his sentence remitted by the archdeacon's official? (Pearson 74; Gransden 67).²³ It is unlikely that ordinary wife assault was a crime that was often sent to the bishop; for the bishop to hear such a case there must have been complicating factors. I will argue that in some times and places, the determining factor was the degree of scandal caused by particular behaviours.

Normally assaults against women (or anyone else except clerics) were not among those cases reserved to the bishop, although it is exceedingly difficult to propose strict rules for this. Lists of reserved cases usually included sins such as homicide, adultery, assault of clerics or parents, sodomy, arson, simony, deflowering of virgins (see Goering and Payer 40/270-41/275).²⁴ Once again, Thomas of Chobham provides us with some clues about what, for one writer and his followers at least, determined which cases found their way to the bishop's court.

Thomas's list of reserved cases includes adultery, incest, false witness, broken faith (*fides lesa*), poisoning, witchcraft (*sortilegium*), rapine, arson, and sometimes homicide if it is manifest and notorious. When the sin of

avarice is made publicly known through usury or simony, those guilty are also to be sent to the bishop. For Thomas, a crucial ingredient here is public notoriety: quoting the canon, he says: "Let he who sins publicly do penance publicly."²⁵

Others make the same distinction. John of Kent, for example, says that when a church or cemetery has been defiled by sexual sin, it may be rededicated or reconciled by a priest if the sin was hidden, but that a bishop is required to perform this ritual if the sin was done publicly (John of Kent, fols. 118^r-130).²⁶

Thomas provides the fullest explication. "When a sin is made public and manifest to all," he says,

the sin is double, since God is offended by this sin, and the church is offended by the scandal and infamy. So he who sins publicly should satisfy God whom he offends, and the church which he likewise offends, that the whole church might see his penance, which might not be done unless he is sent to [the bishop]. (Broomfield 213)²⁷

In addition to the serious sins listed above, the practice was also for simple priests to send incorrigible sinners to the bishop or the bishop's penitentiary whatever their sin. Thomas says:

[I]f you have some incorrigible parishioner who has lain in some sin for many years and confesses it every year, you should send him to the bishop, like a doctor who for many years should cure a sick person and does whatever he knows how for him and nothing works, should send him to another doctor. Likewise when the priest has done whatever he can for his parishioner for many years and the parishioner does not reform, he should say to him: brother, out of my ignorance or my sins, or perhaps from your circumstances (*exigentibus*), I cannot cure you; go to the superior and take his advice. And if he is unwilling to go, let the priest go to the bishop and show him everything, that the bishop might add advice about such a parishioner. (217)²⁸

This is echoed in statutes issued by Peter des Roches for the diocese of Winchester in 1224: "If someone has been repeating a secret sin for many years, . . . let the priest, who has been unable to cure him all this time, take him to a better doctor, that is, to our penitentiary or to us, for curing without scandal" (Powicke and Cheney 133).²⁹ So it is possible that a habitual wife-beater could be sent to the bishop in this way. The case of Alexander de Hoo and his wife Margery, called in Martival's register "a case of correction," might be one such case.

Cases in ecclesiastical courts were normally divided into "instance" cases, brought by one party suing another (loosely analogous to modern civil cases),

and *ex officio* cases (more like modern criminal cases), where offenders were cited by churchwardens or other prominent persons³⁰ to appear before the bishop or his officials. Because of the fragmentary nature of many registers, we sometimes do not know the origin of cases; cases where women claimed non-support were probably instance cases (which involved some expense for the complainant), but the same might not be true for abuse cases, which caused a scandal to the community. Cases that came to the bishop's attention while he was making a visitation, like that of the wife-beater to be cited by the Dean of Westbere (above, p. 78), were cited to his court as *ex officio* cases. Alexander de Hoo, for example, might have been cited to the bishop's court by an inferior cleric, he might have been charged by Margery in an instance case, or he could have been cited *ex officio* on account of the public fame of his ill-treatment and neglect of his wife.³¹ The register tells us only that his wife *and others* cited him for cruelty (Owen, ed., 5). Perhaps those "others" were friends or relations, enlisted to help Margery in her cause against her husband.

L.R. Poos points out that medieval villagers had multiple roles, including "kin and neighbours, co-parishioners, officers and co-suitors at local courts" (604). "Officers" here could well include those men responsible for reporting wrongdoers to the authorities. Certainly those whose behaviour was scandalous and notorious in a way that violated community standards could easily come to the attention of the officials of the bishop's court.³² In this way the people of villages and towns contributed to the church's control of behaviour.

Archbishop Winchelsey says that the man who beats his wife acts against the law of marriage, and he must treat her with proper marital affection. The failure of Walter de la Mare to support his wife was a scandal and a danger to souls. Clearly the expectations were that marriage partners ought to be fond of one another and that deserted wives were entitled to maintenance. Contravention of these expectations was, since medieval intimate relationships were much more public than are modern ones,³³ scandalous.

Mutual affection had been part of medieval notions of marriage for centuries by Winchelsey's day,³⁴ and indeed by the late twelfth century authorities considered it "essential to the matrimonial union" (Brundage 274). Pope Alexander III had actually ruled that in ordering estranged spouses to be reunited, the bishop (or other representative of the church) "was 'to compel' the delinquent husband 'to return to his wife and to treat her with marital affection'" (Noonan 501).³⁵ For some, including Huguccio, marital

affection between unmarried partners made the difference between fornication and *de facto* marriage (Brundage 297–98).

In the case of Alexander and Margery de Hoo, an important part of Margery's case was her claim that her husband's brutality was "public and notorious," so there could be no denying of it (Owen 11).³⁶ Assault and other forms of cruelty are signals, manifest to the whole community, of the failure of marital affection. Brundage tells us that "[b]y about 1300, *saevitia* [cruelty] had emerged as a common cause for canonical separation" (Brundage 455).³⁷ The cruelty had to be significant to warrant a separation: real physical harm had to be demonstrated.³⁸ What we have in these cases are examples of the formation of this custom. The spouses in both Martival's and Winchelsey's registers were separated, although one couple was still expected to sleep together. In one case, we are told of a failed attempt at reconciliation. Clearly these relationships had disintegrated, and the prelates recognized this. The public notoriety, indeed scandal, of these cases demanded quick resolution in the form of injunctions about proper treatment and provisions for alimony.

IV. Conclusion

Just as the whole community would be aware of marital breakdown, so were such resolutions a sign to the whole community that infractions of the rules about marriage would not be tolerated. As the sins, particularly here of the husbands, were scandalously public, so the satisfaction for those sins, decreed in the courts of the bishops, could hardly be kept secret. Failure to comply with the accepted norms of marital affection and responsibility would thus entail public embarrassment for these husbands, as surely as public whipping must have done for adulterers: "Let the one who sins publicly do penance publicly." Such cases could not fail to be exemplary. This kind of public shaming would tend to bolster clerical control over lay behaviour.

But there is more going on here than simple clerical control. Members of the lay community often had an influence on the cases that were brought to the attention of ecclesiastical courts, so clerical control might well be counter-balanced by the influence of prominent laypeople. And with the possibility that some women, at least some women of means, might be able to call on male friends or relatives to use the theology of scandal to work for them in the forum of the ecclesiastical courts, we have an indication that it was possible for some to be themselves agents of that control.³⁹ Emphasizing the scandal of infractions of conjugal law was indeed a tool of clerical control. But in

the case of Bishop Martival's and Archbishop Winchelsey's wife-batterers, it was a tool that women could occasionally use to their advantage.

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NOTES

¹ See Domino Du Cange, *Glossarium* s.v. "scandalizare," and the *New Catholic Encyclopedia*, vol. XII s.v. "scandal."

² Matt. 16:23. Unless otherwise noted, Latin quotations are from the *Biblia Sacra iuxta Vulgatam Clementinam*; English ones from the Douai Bible.

³ The Douai Bible omits the last verse, "Si dextra manus . . .," which I have here supplied from the King James Version.

⁴ *The Encyclopedic Dictionary of Religion* (1979) defines scandal thus: "the sin, contrary to charity, of occasioning another person's spiritual harm or ruin." The *New Catholic Encyclopedia* adds: "It is not necessary that sin be committed in consequence of [scandal]; it is enough that the evil act or word provide incitement to wrongdoing, and it is precisely in this that the sin of scandal consists."

⁵ "Illae Christianos oculos potius scandalizent, quae purpurisso et quibusdam fucis ora oculos que depingunt, quarum facies gypseae et nimio candore deformes idola mentiuntur."

⁶ "Quando legimus, Quicumque scandalizaverit, hoc intelligimus, Qui dicto vel facto occasionem ruinae dederit." Quoted in *Summa Theologiae*, v. 35, 2a2ae. 34-46, trans. Heath, 2a2ae, Qu. 43, art. 1, pp. 110 (Latin) and 111 (English). This discussion of Aquinas depends upon this whole section of the *Summa*.

⁷ "Quamvis enim hoc secundum se non sit peccatum, si aliquis hoc non corrupta intentione faciat; tamen quia habet quamdam speciem vel similitudinem venerationis idoli, potest alteri praebere occasionem ruinae." ST 2a2ae. 43, 1, 110/111.

⁸ "Ad quartum dicendum quod dictum vel factum alterius potest esse alteri causa peccandi dupliciter: uno modo, per se; alio modo, per accidens. Per se quidem, quando aliquis suo malo verbo vel facto intendit alium ad peccandum inducere: vel, etiam si ipse hoc non intendat, ipsum factum est tale, quod de sui ratione habet ut sit inductivum ad peccandum, puta quod aliquis publice facit peccatum vel quod habet similitudinem peccati. Et tunc ille qui huiusmodi actum facit proprie dat occasionem ruinae: unde vocatur scandalum activum.

"Per accidem autem aliquod verbum vel factum unius est alteri causa peccandi, quando etiam praeter intentionem operantes, et praeter conditionem operis, aliquis male dispositus ex huiusmodi opere inducitur ad peccandum: puta cum aliquis invidet bonis aliorum. Et tunc ille qui facit huiusmodi actum rectum non dat occasionem, quantum in se est, sed alius sumit occasionem . . . et ideo hoc est scandalum passivum sine activo: quia ille qui recte agit, quantum est de se, non dat occasionem ruinae quam alter patitur." ST, 2a2ae, Qu. 43, art. 1, pp. 112-113.

⁹ See Reuter and Silagi.

¹⁰ "De his vero visum nobis est scribendum esse, qui sacros ordines habent et ante vel post ordinationem contaminatos in capitalibus criminibus se esse profitentur. In quidem, ut mihi videtur, hec distancia esse debet, ut hi, qui deprehensi vel capti fuerint publice

in periurio, furto atque fornicatione et ceteris huiusmodi criminibus, secundum sacrorum canonum instituta a proprio gradu decident, quia scandalum est populo Dei tales personas superpositas habere."

11 "quando reum publica fama non vexat. Tunc enim auctoritate eiusdem Gregorii propter scandalum removendum famam suam reum purgare oportet."

12 "Presbiter si a plebe sibi commissa mala opinione infamatus fuerit, et episcopus legitimis testibus adprobare non potuerit, suspendatur usque ad dignam satisfactionem, ne populus fidelium in eo scandalum patiatur." This is adopted from the *Decretum* of Burchard of Worms, Liber II, Cap. 184: "Si quis presbyter a plebe sibi commissa mala opinione infamatus fuerit, et episcopus legitimis testibus approbare non potuerit, suspendatur ab officio presbyter usque ad dignam satisfactionem, ne populus fidelium in eo scandalum patiatur." PL 140, col. 656.

13 "si quando eis ad peragendum ministerium suum a subditis aut a fratribus aliquid accipiendum est, hoc summpere observare debent, ne quem scandalizet aut gravent."

14 "quod non solum ipsi prosit ad recipiendam salutem sed etiam caeteris ad exemplum, ut si peccatum eius non solum in gravi eius malo, set etiam in tanto scandalo aliorum est, atque hoc expedire utilitate ecclesiae videtur antistiti, in noticia multorum, vel coram totius plebis multitudinem agere poenitentiam non recuset, nec resistat."

15 "Nec in domibus propriis vel alienis publice concubinas, unde scandalum oriatur, tenere presumant, set eas a se prorsus expellant et longius faciant amoveri, nisi velint simul officio et beneficiis suis contra hoc agendo privari."

16 "Clerici vero non beneficiati qui reprehensibiles fuerint in tonsura nec ad superiores ordines nec ad beneficium admittantur, quousque per tantum tempus tonsuram gesserint competentem quod videantur preteriti temporis scandalum redemisse."

17 "Pro peccato autem scandali grave est et difficile condignum iniungere poenitentiam, quia vic contingit quod aliquis peccat aliquo peccato quin scandalizet alios per illud peccatum. Et sepe magis offenditur dominus per publicationem peccati quam per ipsum peccati opus, ut in Ieremia legitur: *publicaverunt peccata sua sicut Sodoma; publicaverunt et non absconderunt.* [Is. 3:9] Qui enim peccat in occulto non occidit nisi suam animam propriam, et forte non offendit nisi solum deum. Qui autem peccat in publico occidit animam suam et per scandalum animas aliorum, et forte totam offendit ecclesiam. Unde multo magis eum oportet satisfacere qui peccat publice et multo maior est poenitentia iniungenda quam si peccasset in privato. Unde dicit Sapiens: si non caste, tamen caute." On the reference to the Wise One, a footnote says "Non inveni."

18 "Et semper secundum augmentum scandali debet maior poenitentia ei iniungi."

19 "Quid, ubi, quare, quantum, quis, quomodo, quando . . . quotiens."

20 "Magis enim peccat is publicum quam si occultum, quia si manifestum alios tunc suo pravo exemplo corrumpit."

21 Another such case in Martival's register (which does not, however, include a claim by the wife that the husband's behaviour is public and notorious), is that of Sir Alan Plokenet and his wife Sybil, who claimed that her husband had cast her off and was failing to support her. The bishop issued an order that she was to be paid 50s. weekly (Sir Alan's wealth was reckoned at £1000 per annum). The case was moved to the Court of Arches, the Archbishop of Canterbury's appeal court. (Owen, ed. *The Register of Roger Martival*, Vol. IV, pp. 52-57; 74-76; 89-91.)

22 This was not unusual. Citing Raymond of Peñafort (*Summa de poenitentia* 4.2.11, p. 517), Dyan Elliott says that "if the adulterous husband exacts the debt, the wife is still bound to render until the case has been tried before an ecclesiastical court. On the

other hand, were the wronged wife to exact, she would probably be guilty of a mortal sin" (148-49).

23 "Thomas Louchard male tractat uxorem suam et h[oc] per virgam. Vir comparet et fatetur et fustigatur in forma communi semel per forum. Recessit." This case is found in the rural deanery of Thedwestrey in the archdiocese of Sudbury, Norwich diocese in the late thirteenth century: "Walterus de Fornham . . . male tractat uxorem suam ipsam verberando."

24 *Si facit incestum, defloret, aut homicida,
Sacrilagus, patrum percussor, vel sodomita,
Pontificem querat papam si miserit ignem,
Clerici percussor fuerit quoque vel symonia.*

25 Broomfield notes that "This principle was established by the Carolingian reaction in its favour, Anciaux [P. Anciaux, *La théologie du sacrement de pénitence au XIII^e siècle* (Louvain, 1949)] pp. 44, 45. Cf. c. 1 Comp. i, v. 33 (c. 1, x, v. 38)." Thomas of Chobham, *Summa*, p. 13, n.2.

26 "Dicunt eciam quidam ecclesiam dedicandam uel reconciliandum esse post hoc peccatum, si occultum est, a sacerdote, si publicum, ab episcopo."

27 "Quando enim peccatum publicatur et manifestum est omnibus, duplex est ibi offensa, quia offenditur deus per ipsum peccatum, et offenditur ecclesia per scandalum et per infamiam. Et ideo ille qui publice peccat debet satisfacere deo quem offendit, et debet satisfacere ecclesie quam similiter offendit, ut videat tota ecclesia eius penitentiam, quod fieri non posset nisi mitteretur ad superiorem."

28 "si habeas aliquem parochianum incorrigibilem qui per multos annos iacuit in aliquo crimine et singulis annis confitetur illud, debes mittere eum ad episcopum ad similitudinem medici qui per multos annos debuit curare aliquem egrotum et fecit ei quicquid scivit facere et nihil profecit debet eum mittere ad alium medicum. Similiter cum sacerdos fecerit parochiano suo quicquid facere potuit per multos annos et ille parochianus in nullo emendatur, debet ei dicere: frater, ex ignorantia mea vel peccatis meis, vel forte tuis exigentibus, non possum te curare: vade ad superiorem et eius utere consilio. Et si ipse ire recusaverit, eat ipse sacerdos ad episcopum et ostendat ei omnia, ut ipse episcopus apponat consilium circa talem parochianum."

29 "Si quis multis annis ad vomitum rediens crimen iteraverit occultum, sacerdos, qui eum tot annis curare non potuit, ad maiorem medicum, id est ad nos vel penitentiarium nostrum, eum ducat sine scandalo curandum." The last clause might read: "take him without scandal for curing."

30 It is often not clear with whom presentments to ecclesiastical courts originated. See Wunderli 31-33; and Poos 587.

31 Poos points out that "many ostensibly *ex officio* actions" resulted from "complaints to officials by victims or other interested parties" (587).

32 See Wunderli 31-33.

33 I realize that the relatively public or private nature of medieval life is a vexed question. In response to those who would argue that family life was more private than is commonly believed, I would say that even if life were lived behind truly closed doors, the importance given to reputation and appearance forces many aspects of life out into the public arena.

34 For a useful discussion of *maritalis affectio* see Sheehan 262-77.

35 "ad uxorem redeat et eam maritali affectione pertrahat," *Decretales, Corpus juris canonici*, 4.1.9. This admonition endured beyond the Reformation: Thomas Safley cites cases from the second half of the sixteenth century in the civil court in Constance where husbands are exhorted "to live amicably" with their wives (118).

36 "que omnia et singula adeo dixit publica esse et notoria quod nulla poterant tergiversacione celari."

37 Brundage refers to Helmholz, *Marriage Litigation in Medieval England*, 100–01. The whole of this section on divorce *a mensa et thoro*, especially for cruelty, in Helmholz, pp. 100–06, is relevant. I can find no reference to "by 1300"; the cases cited by Helmholz are late fourteenth and early fifteenth century.

38 Helmholz cites the following case: "Margaret Neffeld of York, in a contested action of 1395–96, produced witnesses to show that her husband had once attacked her with a knife, forcing her to flee into the street 'wailing and in tears'. Another time he had set upon her with a dagger, wounding her in the arm and breaking one of her bones 'vulgariter nuncupatum le Spelbon'. Margaret's husband disputed the petition. Whatever he had done, he claimed, was reasonable, honest, for a licit cause, and solely for the purpose of 'reducing her from errors'. The court held that no cause for divorce had been made out. Subject to a reasonable *cautio* to guarantee fair treatment, the couple were compelled to live together" (105). Helmholz's reference is York C.P.E. 221 (1395–96).

39 The idea of women as agents in the courts is one shared by Poos, who says of women in the context of defamation: "Women were not passive victims but active players, seizing upon the discourse available to them and turning it against others" (606).

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