

Chapter 7

BROTHERS AND THEIR WIVES

AN INTERESTING PROBLEM, although not well documented in the available sources, is the question of relations between brothers and women entering the family through marriage. The way the relations between brothers and sisters-in-law are seen by scholars is determined largely by information from legal sources originating under the influence of the Church and focused on a fight against relationships regarded as incestuous. This category included marriages (and all sexual relationships) between a man and his brother's wife (or better widow). Canon law regulations forbidding such relationships, including relationships between a man and his brother's widow as well as marriage to a woman who had earlier had sexual intercourse with the brother of her prospective husband, were incorporated into royal legislation quite early, at the beginning of the eighth century; until the end of the ninth century they regularly appeared in synodal statutes from the entire territory of the Carolingian realm. Scholars studying the problem of incest usually focus on the analysis of normative sources, and mainly on the question about the reasons the marriage ban encompassed such a wide circle of blood relatives and relatives by marriage. Little is known about the practice of such relationships and what is known is in the form of indirect information. Given the vast literature presenting the ideological and religious aspects of early medieval anti-incest legislation,¹ I will offer only some remarks concerning the relations among brothers here.

As we read hagiographical sources from the seventh, eighth, and ninth centuries, we might become confused: they seem to point to the existence and, significantly, customary acceptance of the levirate, that is the practice of men marrying their brothers' widows. Such references appear in the *vitae* of St. Kilian² and St. Corbinian (by Arbeo of Freising, from the second half of the eighth century).³ The hagiographers described the persecution suffered by the saints when they spoke against the incestuous marriages between brothers and their sisters-in-law. The biographer of St. Kilian even mentioned that men marrying their brothers' widows was an ancient custom among the pagan Franks. The marriage of Duke Grimoald of Bavaria (d. 725) to his brother's widow, described by Bishop Arbeo shortly after the saint's death, seems to indicate

1 See, e.g., Ubl, *Inzestverbot und Gesetzgebung*; De Jong, "To the Limits of Kinship"; De Jong, "An Unresolved Riddle," 124, and the discussion 125–140. On the bans on marrying brothers' widows see Santinelli, *Des femmes éplorées?*, 265ff.

2 *Passio Kiliani*, 725; Meeder, "Boniface and the Irish Heresy," refers to this example as an argument making the existence of the levirate among the Franks before the adoption of Christianity more likely.

3 *Vita Corbiniani episcopi*, 580–81; Wood, *The Missionary Life*, 150–58.

that such cases were accepted also after the adoption of Christianity, at least among the ruling elites. A reference to men marrying their brothers' widows also appears in an eighth-century *vita* of St. Wynnebald. The author of the work, Hugeburc of Heidenheim, when describing the corruption spreading among the people of Bavaria, mentioned the levirate alongside such pagan practices as idolatry, necromancy, or fortune-telling.⁴ A *vita* of St. Mainulf of Bodeken (near Paderborn), written down quite late, in the eleventh century, but on the basis of an ninth-century account, mentions the story of ignoble behaviour of the saint's paternal uncle, who after the death of Mainulf's father raped his widowed mother who was refusing to marry him.⁵ The figure of the saint's mother, a Christian widow wishing to devote herself to pious deeds after the death of her husband, was confronted here with the figure of the saint's pagan uncle acting on satanic prompting. References to marrying widows of brothers thus come from various parts of the Carolingian realm and from sources not linked to each other, originating over the course of a long period between the early eighth and late ninth century. It is not known, however, to what extent the examples of such marriages described in the *vitae* cited above confirm an existing practice and to what extent they are a literary construct used by the authors as a topical anti-model, essential to the logic of the hagiographical narrative and contrasted with the ideal of Christian marriage.

The synodal constitution of 745 features a fragment suggesting caution when trying to find, in sources originating under the influence of the Church's teachings, some evidence confirming the customary, pre-Christian acceptance of marriages between men and their brothers' widows.⁶ During this synod, the bishops discussed the case of an Irish monk, Clemens, who was active in Gaul in the 730s and 740s. Apart from many other erroneous teachings, he also dared to preach that a man could marry his brother's widow, if he wanted to. The bishops condemned this assertion, seeing in it a fatal influence of Judaism. The source of the controversy is easy to pinpoint: the contradiction was to be found in the text of Scripture itself. While the Book of Deuteronomy (we need to bear in mind the significance of this biblical text as a source of law for early medieval theologians) even orders a man to marry his brother's widow, if the widow is childless (Deut. 25:5–6), the Book of Leviticus contains a ban on such marriages (Lev. 18:16; 21:20). The polemics over how to interpret these contradictory commandments had been going on almost from the beginning of Christianity; it is enough to mention, for example, Tertullian's opinions and his treatise *On Monogamy* from ca. 207,⁷ and were to last for centuries to come. In the ninth century, the most detailed argument against

⁴ *Vita Wynnebaldi*, in *Vitae Willibaldi et Wynnebaldi*, 111.

⁵ *Ex Sigewardi Vita S. Mainulfi*, 414; Honselmann, "Zur Vita Mainulfi"; Honselmann, "Die älteste Vita Meinolfi."

⁶ MGH LL Concilia 2/1, no. 5, pp. 40, 43. On Clemens's heresy, see Meeder, "Boniface and the Irish Heresy."

⁷ Tertullianus, "De monogamia," chap. 7.

marriages between men and their brothers' wives was provided by Hrabanus Maurus in a letter to the *chorepiscopus* Reginbald from ca. 842.⁸

Clemens's case shows that determined actions against men marrying their brothers' widows on the part of the clergy and rulers trying to implement the Church's teachings on marriage law may just as well have been associated with a fight against unorthodox teachings and the social acceptance of such relationships. Acceptance of marriages between in-laws (if there was such acceptance) did not always have to stem from the existence of a pre-Christian custom, but may have resulted from part of the clergy interpreting the text of Scripture in a manner different from the one shared by a majority of the hierarchy. Given such an uncertainty, we must limit ourselves to a general conclusion that in this period all sexual contacts between a man and women who were in a relationship with his brother were viewed by the Church as incestuous, and that their existence was seen as an absolute impediment to legitimate marriage. The ban was expanded to include cases of pre-marital intercourse with a brother's future wife.⁹

However, sometimes breaking the ban may have been partly justified in the eyes of rigorists. There are traces in normative sources suggesting that the Church's ban of sexual contacts between in-laws clashed with some unknown, older customs, allowing, in exceptional circumstances, sexual relations between a man and his brother's wife—and during the woman's husband's lifetime at that. An example is a situation described in a canon of the synod held in Tribur in 895. The bishops gathered at the synod decided what to do if a man could committed adultery with the wife of his brother, who could not fulfil his marital duties. This canon is known from at least three quite different versions.¹⁰ However, all of them agree that the intercourse between the man and his brother's wife happened when the brother was incapable of performing his procreative role. The emphasis put on this fact is significant—all the more so that two versions contain additional information that the woman conceived a child as a result of maintaining a

⁸ MGH Epp. *Epistolae Karolini aevi*, 3, no. 30, pp. 450–52.

⁹ Already a decree promulgated at the synod of Compiègne (a. 757) largely to explain the doubts concerning the impediment of kinship and the rules that should be observed by a Christian couple, includes permission to send the wife away, if it turns out that she had sexual contacts with her husband's brother before marriage, MGH LL *Capitularia regum Francorum*, 1, no. 15, chap. 11, p. 38. There is an interesting justification of this law: the legislator announced that a man could remarry, because his fiancée was not a virgin and not because she was guilty of incest. If the situation were to be repeated in the case of another wife, the marriage was to remain valid, because the man, too, was no longer chaste (*virgo*). This is significant, given the divergence in the teachings of the Church Fathers, emphasizing the spiritual nature of the bond between spouses: here if the text of the source were to be treated literally, the argument is primarily the spouses' physical chastity or lack thereof. In ninth-century synodal legislation canons defining the impediment of kinship in the case of a man deciding to marry a woman who had had sexual intercourses with his brother appear regularly. The source of these regulations lies in the early Christian synodal legislation, primarily decisions of the councils of Neocaesarea of 314–325 (chap. 2) and of Elvira of 306 (chap. 61).

¹⁰ MGH LL *Concilia* 5, no. 39, *Versio Vulgata*, chap. 41, pp. 363–64; *Versio Catalaunensis*, chap. 12, p. 374; *Versio Diessensis-Coloniensis*, chap. 19, p. 382.

forbidden relationship with her husband's brother. The sense of the regulation could be explained at least in two ways: either it was believed that a woman whose husband was incapable or unwilling to fulfil his marital duties was simply easily available to his brother, and that her pregnancy was a visible sign of her adultery (but why is it that this appears only in this single regulation concerning incest?),¹¹ or for some other reason such a case (the husband's incapability and the resulting relationship between his wife and his brother) required special treatment from the legislator. Significantly, although bishops interpreted such a forbidden deed as a sign of diabolic action, they did show considerable understanding of the sinners on account of the latter's weakness and lack of awareness, and allowed them to remarry after a suitable period of penance. Perhaps behind this law there was some customary practice whereby a brother could in such a case act as a substitute for his brother in fulfilling the latter's marital duties and ensure biological continuity for the family? Analogies could be found in many cultures, including European cultures; at this point it should be limited to asking a question which must remain unanswered.

Although there is no source evidence providing an insight into the practice of everyday relations between brothers and their brothers' wives, the synodal legislation from the late eighth century does feature regulations that are so detailed and go so much beyond the formulas known from older sources that it may be suspected that they were introduced in response to specific cases seen in family relations and were becoming a cause for concern among the clergy. The group includes a canon from the synodal constitutions promulgated in Friuli in 791. The bishops gathered at the synod presided over by Paulinus of Aquileia and categorically condemned marriages between partners with a considerable age difference, especially cases when one of the partners was too young to consummate the marriage. On such occasions the spouses' families resorted to outrageous deeds putting their souls and the souls of the newlyweds in risk of damnation: the spouses who were too young were replaced in the conjugal act by their closest relatives—the father or brother of the groom, and the sister-in-law or mother of the bride, if the newly married girl was still physically immature. This was considered to be an adulterous and incestuous practice, and was vehemently condemned.¹²

11 This is how we might interpret, e.g., the canon of the 757 Synod of Compiègne, which originated over a century earlier, MGH LL *Capitularia regum Francorum*, 1, no. 15, chap. 12, p. 38.

12 MGH LL *Concilia* 2/1, no. 21, chap. 9, p. 192: "Illud praeterea per omnia praecaventis prohibere decrevimus, ut nullus praesumat ante annos pubertatis, id est infra aetatem, puerum vel puellam in matrimonium sociare nec in dissimili aetate, sed coaetaneos sibique consentientes. Multas sepius ex huiusmodi nuptiali contractu ruinas animarum factas audivimus et tales fornicationes perpetratas, quales nec inter gentes; ita plane ut, cum contingit puerum adultum esse et puellam parvulam et e contrario, si puella matura aetatis et puer sit tenere, et per virum cognata et oculus deprehendantur adulterae et per puellam frater vel pater pueri tanti peccati flagitio pereant inretiti. Unde qui haec prohibita de cetero usurpare praesumpserit ab omni ecclesiastico consortio sit alienus, sed nec a publicis sit immunis iudiciis"; this synodal decision also found its way into one of the most important law collections of the Carolingian era, which originated around 855 in Italy: Blankenb. manuscript 130, from the Herzog August Bibliothek in Wolfenbüttel. On the manuscript see Mordek, *Bibliotheca capitularium*, 920–43).

As in the earlier examples from normative sources, this one, too, causes many problems with its interpretation, resulting primarily from our lack of knowledge of the context in which the regulation originated. It is difficult to say how common the phenomenon described by the bishops was. Although the author of the source wrote that such cases were frequent, we need to approach this declaration with caution. Yet even when taking into account these limitations, it is worth devoting some time to the canon, because it contains information that is important to the present analysis.

That marriage in the early Middle Ages was above all a pact between two kin groups is a truism requiring no comment. However, behind this general observation we find complex content. This group interest is usually equated with matters relating to the flow of property between the families, and with a strategy of building a network of connections and alliances strengthening the position of the future spouses' families entering into the pact. However, in the synodal decision under discussion the controversy surrounds the biological dimension of marriage: members of the kin group making decisions about the procreative assets of the spouses. The text suggests that the fulfilment of the basic conjugal function was not regarded as a matter for the individuals entering into the marriage, but as an obligation for the entire family group. An underage spouse could (and, from the point of view of both families, should) be replaced by the nearest adult relative. This substitution must have been justified also by the belief in the biological identity of the closest relatives: they were a kind of substitute, an "other self" for each other. Thus the progeny of such a relationship would be regarded by the relatives as legitimate, born of the same blood though not necessarily conceived by the spouses.

Such a substitutive understanding of the relations among relatives is well known to anthropologists. The concept of biological community was analyzed in detail by the advocates of the structural-functional theories, who considered it key to maintaining the stability of the social system in traditional societies. However, they rarely referred in their observations to Western European societies. Yet, if the interpretation proposed here is correct, a similar way of seeing the situation between relatives was present also in Europe undergoing Christianization in the early Middle Ages. The disappearance of such an understanding of kinship would be linked not so much to a collapse of social structures, but to cultural transformations occurring under the influence of the Church and the spread of a model of marriage as a spiritual bond uniting individuals. This sheds light on the nature of the bond among brothers, although on the basis of such fragmentary and unclear sources it is obviously impossible to draw any far-reaching conclusions.¹³

13 Obviously, it is also possible to formulate a different hypothesis: that we are dealing in this case with a hidden form of polygyny in which another woman was introduced into the household on the pretext that she had married an underage man from the family. However, the synodal resolution refers to both men and women fulfilling the sexual duties of a spouse, replacing a child incapable of fulfilling them. Given what we know about the situation of women in the family it is hard to assume that a woman could have had an intercourse with the husband of a close underage female relative without the consent of her own husband or male legal guardians, for whom this was a matter of honour.

Brothers played an important role in matchmaking primarily as intermediaries and advisers of the prospective husband. Their social position was also a weighty argument in negotiations preceding the agreement with the fiancée's family. However, sources of the period tell us little about the details of this aspect of fraternal relations. The few references suggest that brothers took part in resolving the most difficult marital conflicts. An extreme example here is the just mentioned story of the marriage of Boso and Engeltrude, shocking the elites of the Frankish kingdom more or less at the same time as the case of Lothar II and his wife Teutberga (in any case the *dramatis personae* were closely related: Boso was Teutberga's brother).¹⁴ Betrayed by his wife and ridiculed, Boso demanded that his unfaithful wife return into his custody, but she, safe in the protection of her relatives, kept refusing, justifying her decision by, among others, a fear of bloody revenge on the part of Boso's brother Hubert (Hucbert).¹⁵ We can assume that many of the later hostile actions taken by Hubert against Lothar II, a relative of his faithless sister-in-law and his faithless brother-in-law (he was, after all, the husband of Teutberga, sister of Boso and Hubert) can be interpreted as retaliation for defiling the family honour.

On the other hand, a brother's wife could appear as a mediator in conflicts between brothers or when brothers for some reason shied away from fulfilling their mutual obligations. This situation is hard to pinpoint in the sources for an obvious reason: it did not usually produce any sources. A conflict was going on within the family and the parties must have tried to come to some sort of understanding without much publicity. An exceptional case here is the role played by Empress Angilberga, the wife of Louis II, in 869. At that time her brother-in-law, Lothar II, sought his elder brother's support in his efforts to have his marriage to Theutberga annulled and end the excommunication imposed on him by Nicholas I.¹⁶ As Hincmar of Reims wrote in the *Annals of St. Bertin*, Lothar, unable to elicit help from his brother, who explained his avoidance to meet him by citing an invasion of Saracens on the southern border of his realm or by other duties, did win Angilberga's favour.¹⁷ According to Hincmar, she managed to bring about a meeting between Lothar and Pope Hadrian II at Monte Cassino. As I have said, the case is unique, because it concerned high politics and an extremely delicate game involving not just the two brothers but also their paternal uncles, the most powerful aristocratic families and, last but not least, the pope. Angilberga's mediation enabled Louis to get out of trouble. The ruler clearly had no intention of damaging his relations with the pope (in any case, soon after the death of Lothar II it was Hadrian II who, on behalf of the emperor, would plead with Charles the Bald and Louis the German for the return of Louis II's share in his brother's inheritance). At the same time, Louis II could not refuse outright to help

14 The political background and family ties of Boso and Engeltrude are discussed by Bougard, "En marge du divorce"; see also Stone, "Bound from either side."

15 This is mentioned in Hincmar of Reims, *De divortio Lotharii regis*, 231–22, 244.

16 Heidecker, *The Divorce of Lothar II*.

17 *Annales Bertiniani*, 99–100.

his brother, despite moral doubts surrounding his conduct. Thus the very influential empress (*consors regni*, as the sources called her¹⁸) played two roles: she represented her husband as the emperor and ruler of Italy, and at the same time she sought to resolve her brother-in-law's case amicably, as befitted a loyal sister-in-law.

The sources tell us more about the relations between a man and his brother's widow. There are several reasons for that. Death in a group of brothers had far-reaching consequences, associated not just with the need to regulate property matters but also, perhaps above all, with a redefinition of the power structure within the family. The process was often accompanied by tensions, which are obviously more source-inspiring than the peaceful co-existence of relatives. After the death of a man, his widow and underage sons usually had to be cared for by his brothers. The widow had a right to choose and could decide to return to her family home, to be taken care of by her father or brother, but under the customary law this meant a separation from her children, especially from her sons, who were to be brought up among their father's relatives. It is therefore quite likely that in most cases the widow, unless she decided to marry again, remained formally in the care of her late husband's brother or brothers. The diplomatic sources show that this ideal order was sometimes disrupted, and conflicts between the deceased's brother and his widow, especially conflicts over property, were by no means rare. This must have stemmed mainly from the spread of a testamentary practice whereby the widow was granted the right of use of the property or was made the executor of her husband's last will with the right to dispose of his estate. The sources demonstrate that among the members of the closest family, in the ninth century the testator's brothers and widows often acted as executors of his last will. This led to tensions, although there were also cases when the wife and her brother-in-law worked together harmoniously.

The image that appears on the basis of the diplomatic sources can be summarized in a few points. First of all, a fraternal relationship is above all a relationship of collaboration. The brothers act as partners in property transactions, make joint decisions about the temporal and eternal interests of their family group. Evidence of mutual conflicts is rare and usually not direct. It can therefore be inferred that one had to resolve disputes within the family, without transferring them to royal courts or engaging persons outside the circle of relatives as mediators. From our point of view, what is important is the fact that the diplomatic sources confirm that brothers fulfilled almost all their obligations incumbent on them in accordance with the norms of customary law. This applies both to property rights, that is, to respecting the principle of equal land distribution (which is the common way of inheritance) and to other possible obligations. The obligation of taking revenge for his brother's injury and to support his brother, who was in a life-threatening situation as a result of the crime committed, comes to the fore. The solidarity of the

18 On this term see Delogu, "Consors regni"; and polemically La Rocca, "Consors regni: a Problem of Gender?"

family, as well as the sharing of the threat, is visible in both diplomatic and narrative sources. This can be easily explained: where armed violence was involved, the rulers and clergy had to intervene. From the point of view of the clergy, the spiral of revenge was a dangerous *scandalum* that threatened not only the salvation of individuals but also to the entire community of believers. From the point of view of rulers, the moral aspect was influenced by obvious temporal considerations, i.e. the risk of local armed conflicts. There are many references to the implementation of the right to retaliation; this is proof of the presence of this phenomenon in social life, and the acceptance of this form of restoring an honorable balance between family groups.

The basic divisions in the fraternal group also remained permanent: above all, the division resulting from the age according to which the minors remained in the care of their older brother after the death of their father. There are no clear traces of the influence of the Christian teaching about the firstborn as the chosen one from among the brethren and as the most privileged in the diplomatic sources, although, in particular in the last wills or testaments, there is a tendency to allocate the most valuable part of the heritage (especially in symbolic terms) to the eldest son. What is clearly visible, however, is the fulfillment by the brothers of their obligations regarding the prayer commemoration of their deceased brothers. References to allocating funds for pious works for the salvation of a deceased brother usually accompany sources about the inheritance of property, but not always and not exclusively. There are many testimonies of appointing brothers as executors of the last wills, without a clear indication that they are also to inherit property. In addition to the customary commitments to assist one another in an emergency on earth, the brothers also make a commitment to support each other on the way to eternal life.

Relationships between siblings from consecutive marriages remain relatively poorly documented, but there is a tendency to distinguish between these groups, and there are also indirect traces of tensions between them, often arising with the participation of their mothers. Unfortunately, our sources rarely tell us something about the difficult problem of children from relationships with slaves and children born out of wedlock. Very little can be said about the mutual relations between siblings of different status. Here we can try to capture the echo of the change that took place under the influence of the Church, which delegitimized the actual polygamy acceptable among the elites. However, we are largely reduced to the sphere of hypotheses and *ex silentio* inference. One thing can certainly be said: in the ninth century, children from non-marital relationships appear in diplomatic sources sporadically only and are not mentioned among the rightful heirs. The customary rules, registered in the mid-seventh century, requiring them to be given a part of their paternal inheritance, were apparently no longer respected in the ninth century. The relationship that exists between the children of such unions and the siblings born in marriage is still recognized by their father, but the fate of illegitimate brothers becomes dependent on the mercy of their rightful brothers.

An interesting problem is the relationship between men and their brothers' wives. Traces in the sources of the levirate are very uncertain and it is impossible to formulate unambiguous conclusions on their basis. Nevertheless, the problem shows the links

between the functioning of the “small family,” that is the marital couple and its children, and fraternal relations. Uncle–nephew relations can also be considered in similar categories. In my opinion, this deserves particular attention in future studies, as one of the most important factors for the stability of family groups and the implementation of their collective political strategies.

This account appears to be ambivalent. However, it cannot be considered as an intergenerational conflict. The rhythm of the functioning of the early medieval family, with successive marriages and a considerable age difference between children, means that uncles and nephews often belonged to the same generation. Conflicts, if they arose, probably resulted mainly from competition for property, as in the case of disputes between brothers. However, the problem of the uncle–nephew relationship requires thorough research material that falls outside the period covered in this book. It seems that this is one of those accounts that is underestimated in research on the family.

Summing up, it can be stated that the documentary sources confirm the continuity of norms and patterns of conduct rooted in tradition and written down in laws concerning relations between brothers and sisters from full-fledged marriages. What we observe to be changing is the elimination of the relics of non-monogamous marriage that were inconsistent with the teaching of the Church and the limitation of the circle of heirs to children born from unions recognized by the clergy as legitimate. In this regard, the property interests of fraternal groups connected by the closest kinship relationship, were consistent with the precepts of religion, and this can explain their relatively quick reception. Where custom painfully collided with the rules dictated by religion, as in the case of revenge, the process of elaborating new solutions was much slower.

