Gleaning Social History through Law:

 A Reconstruction of Gender Dynamics, Sexual Practices

 and Perversions in Medieval Armenia as Informed

 by [Medieval Armenian] Legal Sources

 by

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**Introduction**

The discipline of sexuality studies has been and still remains largely understudied by the Armenian academia. There are a number of reasons to account for this – lack of primary sources, the unwelcoming posture of prudishness and self-importance the academia assumes, the alleged irrelevance of the perspective research – none of which seem reasonable enough to justify a circumvention of a field of study as illustrative and revelatory as sexuality is. “Very little has been written about gender and sexuality within Armenian studies, indicating that these frameworks have been resisted in the field” (Shirinian, 2018), writes Tamar Shirinian, an Armenian teaching in the United States, in her review essay on a workshop titled “Gender and Sexuality in Armenian Studies” held in 2018. The mere fact that no such statement can be found in local academic literature and that a Diaspora Armenian should point this out reinstates the shortage and need of proper academic research on the topic.

As a pragmatic researcher, I prefer to study that which will, in the long run, have practical potential. At this point in my research, when the substantial work has already been done, my most immediate aim is to serve to my Armenian reader their past on a silver plate. This objective has its reasons; when it comes to sexuality, the Armenian society of today, the younger generation included, seems to run on an extraordinarily well-crafted formula of deliberate blindness to anything implicative of corporeality and sexual freedom. The past is, therefore glorified for Christian abstinence and purity, and the present is modeled after the past, reiterates and perpetuates it. To this testifies the ever-growing argumentative power of “tradition”, which is essentially the nation’s faithfulness to its past. My paper’s profound exploration of Armenia’s sexuality aims to shed light on the past we so confidently rely on in shaping our present. I want to show to my reader that the innocence they find in their past is misplaced, that history too has its blind spots and that this nation’s past is far more sexually charged and perverse than it is believed to be. This sort of a defense mechanism functional on a national level does not linger unexplained. As the conflict between the pre-Christian secular law and Christian canonic law reflects, the pains and passions of the pagan-to-Christian transition Armenia went through in early Middle Ages were nothing but an attempt at the demonization of its frivolous pagan past and the dogmatization of the present Christian norms and values. My study is, in core, a broadly-stated glance back at the remnants of pagan licentiousness and hedonism carefully lurking under the uptight dogmatism of the Armenia of the Middle Ages.

A perfect illustration of this statement would be a legal clause included in Dawit Alavkavordi’s 11th century *Penitential* which speaks of the act of non-consensual fornication between the hostess of the house and her younger maids and mentions the use of an “alien subject called *zupay* (Turkish) as a penile simulator. The level of detail and graphicality of this clause could have been derived from exclusively real-life occurrences accumulated and passed on from within the confessionals onto scholars like Dawit. The multiplicity of similar laws found in medieval Armenian legal documents attests to the fact - an implication upon which I built my thesis – that the law that strived to regulate sexuality was informed by it directly, via its most real and immediate form of sexuality’s social practice. This implication allows me to construct the argument, also central to my thesis, that the law also clearly reflects sub-aspects of sexuality crucial to social history such as gender dynamics in and outside marriage, the institution of marriage itself and its mechanics as well as social inclusion and/or exclusion of various minorities.

As an emerging scholar, I am tempted to find answers, conjure up theories, identify patterns. But I cannot pass out on the initial embellishment a topic this understudied needs to gain a degree of validity in the scholarly eye of the local scene. It has been my long-standing impression, ever since the years I was taught history in school, that study of history in Armenia and of Armenia is stripped off of any critical-analytical layer. The take on history in school curriculum is factual at its best – we have always known the what without ever been encouraged to wonder about the how let alone the why. It is my observation that Armenian historical studies lack demonstrative force – a sad reality that is both the cause and the effect of the exclusion of the social layer in historical analysis. But if this faulty approach can yet be deemed as a structural fault, what is to be said of intentional disregard of social realities of the past lest they should threaten its received, conventional and convenient social perception. Sadly, even in historical fiction, where one would expect to find a softer, more intimate and individualized take into the societies of the past, all on finds is patriotic undertones, heroization and national eulogies.

The most painful of the effects of such distorted representation of the past is that it is taught and hammered in into the present. Students and the general public (with no scholarly background that would have taken them slightly astray from the commercial, popular image of the past) read historical novels such as *King Pap, Gevork Marzpetuni or Samvel*, the veterans of high school literature curriculum, which help construct an initial image of the earlier Armenian societies that is thereafter never challenged either by the teachers or by complementary literature. These accounts will never tell us of the common practice of incest in the royal dynasty in early Medieval Armenia, of the countless harems Armenian kings kept on the side, of the sexual debauchery and volatility of the post-pagan Armenian society and of all the offences of sexual nature so big in numbers that they necessitated the emergence of an entire penitential to regulate the sexual behavior of the common folk and didactic letters by religious leaders urging the public to come to senses. In this way an orderly, patriotic and religiously righteous model of a nation is introduced and never challenged, stable on its way to shaping what I dare to call convenient history where the present taps into for model answers and practices thereby perpetuating ossified taboos and demonizing historically alien behaviors.

The metaphor of my study’s objective is a confrontation with the undiscovered and neglected sexual past embedded in law, the most immediate and first-hand window into everyday life. I want to achieve the society’s gradual owning up to its past which will hopefully lead to a relaxation of a centuries-long posture of righteousness and to a sanctioning of practices we antagonized because we falsely believed they were foreign to us. It is my aim to cause a reverse in the national reasoning so that “we shouldn’t because we never did” become “we can because we have”. It is my objective to cause great discomfort and dissonance, a state of impossibility to deny historical facts as unbecoming as they may be. This will hopefully create an opening into a more tolerant projection of the past onto the present – a philosophy of life this nation is in great need of.

**Literature Review**

Since my research is based predominantly on primary sources, I would like to briefly address their overarching theme before proceeding to the discussion of complementary academic research. The materials examined span a total of 3 centuries, the earliest document dating back to the 11th century renown for the genre of penitential writings implemented by the church as a regulatory and punitive system. It must be established that legislation as we know it today entered into force, in Medieval Armenia that is, not earlier than the time the first “Datastanagirk” by Mkhitar Gosh was composed in the 13th century. Earlier attempts at regulating public and private lives were either initiated and maintained by secular law written by the ruling dynasty or, later on, by the canonical law put together by the church in the form of penitentials. The point of tension between these two presents the most substantial bit, I might dare say the core of my analysis. It was during this confrontation that the “lawbook of traditions” (Hovhannisyan, 1976), as Hovhannisyan puts it in his book *Family and Matrimonial Law in early feudalist Armenia* lost firm ground under its feet, was shaken to the core, both in logicality and morality of its regulatory system, and was swept off this unsteady ground, forced to integrate drastic change in the perception of the moral and the immoral as dictated by the Christian canon and to question the reasonableness behind certain status-afforded freedoms which would, by the measure of canonical law, border with downright sinfulness and sacrilege.

The beauty of law, in whatever form it comes, is that while it is the most honest and transparent window into private or individual culture, in comparison with its predecessors and successors, it broadens its outlook from private to public and ultimately national culture. In the final frame, we face all the frustrations, inconveniences and protests that bound a nation throughout ten centuries reflected in a list of dryly composed clauses. This final frame is where I am marching towards, to stand facing a millennial tale of a nation’s confrontation with and denial of its own sexuality. This truth holds for the present as well, so much so that the subject is tabooed even on the discursive level, evidenced by meager, if any academic address to the topic and public shaming of the initiation of discussion on the subject. Those who are pensive on the problem, are cornered and afraid – a proof of this to be found in the cover design of a newly published volume titled “Sexuality in Armenian Texts”. The designer has intentionally split the word “sexuality” and placed one half of it on the back cover of the book in a way that would require an eye either extremely meticulous or already familiar with the book in order to spot it among others. This extreme caution, and the choice of the word “fragile” by one of the co-authors of the book to describe its subject, speaks of the state of intimidation and public pressure even and especially the slightly more progressive and curious members of the academia find themselves in.

Thus, a subject so ardently avoided and consequently largely underresearched, renders the investigation into the sexuality of Medieval Armenia both promising and obscure. It is therefore impossible to base my study on or cite previous examples of similar research done on this topic in the Armenian context, with the exception of one article found in the above-cited volume which is a rather general overview of the church’s and its canonical lawbooks’ regulatory power over the sexuality of the public. The article consults some of the primary sources in my list and presents a descriptive - informative evaluation of the matter (Khalatyan, 2019). The lack of local literature forces me to look for models and methodic approaches in foreign literature on foreign cultures and history. The American academia is impressively ample with studies of medieval sexuality in the context of disciplines as dissimilar as medicine, canonical religious texts, literature and law. An excellent example of such research is Classen’s volume “Sexuality in the Middle Ages and early modern times: new approaches to a fundamental cultural-historical and literary-anthropological theme” where he dwells on the subject of sexuality under the canonic Christian law and explores the regulation of the personal lives of Medieval Norman clerics and their carefully hidden, dangerous and therefore legally addressed sexual lives “lurking under the guise of religious righteousness” (Classen, 2008).

The volume also contains a chapter discussing the “the cultural significance of sexuality in the middle ages, the renaissance, and beyond” (Classen, 2008) and the study thereof, which I believe will be of immense help to me in laying down the basis of reasons and objectives of my research in the introduction. Marriage, a large and inclusive hypotheme in my research, was one of the very few, if not singular institutions that sanctioned expressions of corporeality, hence of sexuality, at a time of rigorous religious regulation. Marriage and matrimonial sexuality have been and remain of focal significance in the Armenian reality, both past and present, in that it has been continuously shaping the “unwritten lawbook of traditions” of the Armenian nation as Hovhannisyan puts in in his book “Family and Matrimonial Law in early feudalist Armenia” where he covers the laws pertaining to marital life of Armenians from the Hellenistic era (regulated by Greco-Roman legal tradition) up until late Middle Ages. The book provides an overview of all the legal disciplines to have been enforced on intra and extra-marital relationships and the shifts they have caused in the gender hierarchy within the Armenian family. The book cites primary sources and examples of studies which would have been impossible to find without profound archival work.

Thanks to Hovhannisyan, I currently have at my disposal invaluable academic sources such as Bastamyants’ book “Marriage as regulated by the Armenian Canonical Law”, Samuelyan’s volume “Marriage by abduction and purchase”, and Ghladjean’s book “Ancient Armenian Law, Family Law”. These volumes will allow me to identify, by way of comparison, instances of progress and regression in the family dynamics entailed by the adoption of Christianity and forced disowning of pagan norms. An illustrative example would be Hovhannisyan’s claim on Christianity’s equalizing force when it comes to the rights women had once stepping into marital life. To my biggest surprise, the newly emerging biblically informed canonical law, as opposed to the secular law adhered to in times of monarchic rule, “strived to abolish the extreme inequality between men and women in marriage in terms of property ownership and freedom to divorce and aimed at taming the lechery of the elite that was tolerated in secular law” (Hovhannisyan,1976).

I would be guilty of unilaterality by limiting the consideration of matrimonial sexuality in the Armenian historical context exclusively, and therefore turned to foreign discourse on the subject and came across Karras’s book “Sexuality in Medieval Europe: doing unto others” that includes chapters such as “Sex and the Middle Ages”, “The sexuality of chastity”, “Sex and marriage”, “Women outside of marriage”, “Men outside of marriage” with the entire research focusing on the institution of marriage as “the central point of departure and return, a territory that folds, unfolds and controls patterns of sexual behavior in all diversity” (Karras, 2017). Marriage is of focal significance in the Armenian culture, in that it shaped the “unwritten lawbook of traditions” of the Armenian nation as Hovhannisyan puts in in his book “Family and Matrimonial Law in early feudalist Armenia” where he covers the laws pertaining to marital life of Armenians from the Hellenistic era (regulated by Greco-Roman legal tradition) up until late Middle Ages.

Pierre J. Payer’s book “Sex and Penitentials”, an accidental yet indispensable find, let me in on an incredibly effective methodology and structure implementable in research on sexuality with a legal derivative. A mix of chronological and thematic categorization, his approach enabled me to address the historical premises of the documents examined and the theoretical implications thereof as well as allocate due analysis to every possible sub-theme in the broad category of canonically regulated medieval sexuality. Of peculiar significance is his thorough handling of instances of sexually transgressive behavior collected from more than a dozen penitentials dating back to 8th to 11th century. A cross-examination of categories of perversion across documents of the same genre as my primary source paves way for building metatextual causal relationships that would help determine possible grounds for such frequent occurrence of sexual transgressions in times of intense adherence to Christian doctrines, which had long been normalized. Since the research with identical focus conducted on Medieval Europe specifically sets out to determine the historical context of these perversions, the reasons behind them and the impact that outlasted them, I believe the coincidence of the time frames would help me determine the pedigree of these deviations in the Armenian reality.

Given that my research also incorporates a theoretical part supported by two lawbooks compiled in the 12th to 13th centuries considerably different in format, scope and implementation from the genre of penitentials, I was in need of a similar research examining contemporary samples of legal thought. This need was well exhausted by James A. Brundage’s book “Law, Sex and Christian society in Medieval Europe”, where he, as opposed to earlier cited sources, brings into discussion matrimonial law and its trajectory of evolvement and reformation through three centuries. He looks at the regulation of marital ties and conflict in both canonic and secular legal sources and how the theoretical approach was altered to catch up with the changes in societal structure and governing methods.

**Research question/ Title**

*Gleaning Social History through Law: A Reconstruction of Gender Dynamics, Sexual Practices and Perversions in Medieval Armenia as Informed by [Medieval Armenian] Legal Sources*

As the title of my capstone suggests, my objective is to reconstruct the sexual infrastructure of the Medieval Armenian society with separate focus on three major metanarratives shaped and informed by sexuality and its regulation - Gender Dynamics, Sexual Practices and Sexual Perversions.

Sub-questions:

* *How did regulations of intra and extra-marital sexual activity shape the wider discourse of gender dynamics in the Medieval Armenian society?*

The study of time-specific laws is revelatory in terms of societal norms. Laws pertaining to and regulating matrimony and family life are of special significance in the scope and context of my study in that, in addition to unearthing certain practical truths about day-to-day family life, they also reflect the gender hierarchy as well as permitted extent of sexual activity within as well as outside the traditional Armenian family.

* *Which were the social groups and minorities whose sexuality was taken under special supervision and control. Which were the tools serving to this end? What did such specified targeting result in?*

If we consider the primary legal sources as a combined inventory of societal-sexual dynamics in Medieval Armenia, an interesting pattern sketches itself out. Most of the laws concerning sexual demeanor target specific groups within the whole of the society and condemningly so. The pattern runs through minority groups such as non-heterosexuals, women, clerics and perverts (pedophiles, those practicing incest, zoophiles and transvestites). Such atomized targeting of sexually active groups within the society enables labeling and marginalization on the discursive level of the law which is then transported into the practical, real-life dimension, thereby complying to the theory of enfreakment discussed by Foucault, which, he claimed, made it easier for higher authorities to sideline the said minorities from received social life and taboo their existence (Foucault, 1990).

* *What kind of change did the legal method of regulation undergo in terms of its breadth, formulation, delivery and implementation as the church reform of in the 12th brought about the renewal of canonic law?*

By the mid-11th century the tension between feudal government and church authorities enhanced due to the disruption churchmen believed was caused by the involvement of ecclesiastical institutions into the affairs of feudal government and the society. This resulted in the formulation of a body of reformers who believed in the need of renewal of canon law and introduction of church courts where civil issues would be tackled. The proposed system would require a comprehensible, renewed body of enforceable law which emphasized the new jurisdictional claims reformers presented to the canonic tribunals. The reform left its mark on the treatment of sexuality and marriage in the feudal society of the 12th and 13th centuries altering the entire theoretical basis of civil regulation.

**Methodology**

For the sake of clarity and better articulation of my objectives and research process, I will present my research methodology as a combination of eight steps or sub-sections and will provide a brief description on each. The steps are as follows:

1. Identification of the research method.

This is the most integral part of the process, since it informs the standards and structures guiding the research. After some digging into methodic literature, I have established that my research will be built upon the combination of four research methods - content analysis, doctrinal analysis, historical method and critical sociology. All four methods closely linked and, in a way, complement one another. Doctrinal analysis is almost always applied to research which deals with the analysis of legal texts, case studies and legislative norms, while content analysis is less generic and may be applied to any sort of text with the objective of eliciting a certain thesis out of it. In my case the matter of study pertains to the doctrinal method, the primary sources being predominantly of legislative nature, while the reading and interpretation of these texts in a less legal and more socio-historical context brings into play the historical method and critical sociology, both of which aim to extract the explanation of or insight into socio-historical phenomena.

1. Identification of the field of research.

Here I must pinpoint the exact field in the general discipline of social history and sociology in my case on which I want to build my research. I have managed to narrow it down to the field of sexuality studies in the socio-historical and canonical-legal contexts. It is important here to distinguish between simple historical analysis which would suggest the location of a historical element in its context and its further exploration in tune with the researcher’s aim. My objective is different. I have aimed to extract patterns tightly woven into general fabric of social history and guised into the legal format.

1. Working with primary sources

This constitutes the majority of the work– the logistical body of the research so to speak. I have consulted every primary legal document listed in the bibliography, looking for laws regulating the sexual demeanor of the Armenian public.

1. Immediately follows the next logical step of the categorization of the derived data, identification of patterns therein. My research question makes it clear that I will be shelving sexuality into the different areas of its manifestation – institutionalized sexuality in marriage and church (sanctioned), public sexuality or practical sexuality (secular) and sexual perversions (carnality and punishment). The raw data collected in step 3 will be sorted out to make it easier for me to identify commonalities and overlaps.
2. Consultation of foreign academic research on the topic to draw out a viable, standardized structure that best fits the field and type of my research. Here I have be careful not to engage in comparative analysis and will use the foreign literature as a structural and methodological guidebook. Most of the foreign sources listed in my bibliography are complete volumes, chaptered and categorized, with pre-tailored methodological approaches to each aspect of sexuality studies. I also attribute great value to the introductory chapters almost all of these books include, where the authors talk theory of sexuality studies and its historical and cultural relevance.
3. Identifying similarities between the theorized data derived from the primary sources and the theories presented in the academic research.

This step has not contributed to the paper textually but has been an essential part of my thought process. On my way to the last and most dense portion of my research, which is theory extraction, these sources have been indispensable in establishing standards to examine the logic behind the final theoretical wrapping of historical data and the nature and direction of the conclusions and answers they lead to. Let us call this intensive brainstorming that resulted in the formation of a viable and working theory.

1. Theorization of the derived data – extracting history out of legislation

Here lies the core of my research where the fruits of step 4 must be formulated into theory and presented through theoretical lenses to lend the research its academic relevance. This moves the discourse from the superficial level of mere categorization to that of actual analysis and conclusion-breaking. This is the section where my research question and its sub-questions are addressed and answered, where the general social theory on the sexual dynamics of medieval Armenia is extracted and crystallized.

 **The historico-cultrual significance of the research in the Armenian context**

I stated earlier that the Armenian academic community has not ventured to undertake research on the subject of sexuality mainly based on its tabooed nature. It is also my personal understanding that the potential of cultural and historical contribution of this subject is grossly undervalued or, perhaps, overseen to say the least. It is not without reason that research on sexuality, since its start in early 60’s, has been explored thoroughly by American and European scholars from perspectives as diverse as medical, religious, legal and literary texts as well as historical accounts, memoirs and correspondence samples all for the purpose of extrapolating the private and public perception of sexuality in the medieval period. Neither has this research been limited to the European continent: scholars from the Middle East have shown great interest in exploring the sexual past of their culture despite the relatively higher level of conservativeness of the Islamic culture[[1]](#footnote-1).

In his article titled *The cultural significance of sexuality In the middle ages , the renaissance and beyond*, Albrecht Classen argues for the necessity of research on sexuality in that it helps us “gain considerable insight into the complex structures of all human life , taking us deeper down to the fundamentals than most chronicles or official documents ever could” (Classen, 2008). Study of sexuality, he claims, helps gain insight into the erotic imagination, history of emotional response and mental history during a particular period of time thus offering a most immediate entry into the private lives of the medieval society. Another formulation of his, where he states that the study of sexuality helps us “grasp the power game between the genders” relates to one of the objectives of my study which is to write out the gender dynamics inside and outside of marriage. But an argument I most emphasize with, which also supports and, in a way, identifies with the case I make for my study, is his claim that “those who feel inclined to ignore sexuality as a fundamental force determining cultural development deliberately turn their backs on one of the strongest motivational factors in human existence”. I believe this is very much the stance the Armenian scholarly community has been favoring all this time and a stance I aim to reverse by all means possible. It is exactly this kind of deliberate blindness towards one’s own past that hinders change in one’s present, especially when cultural change and mentality shift are at play. In a culture operated by the force of tradition the past and the present run parallel on the continuum and are, sadly, mutually inclusive. This is a reality that informs the considerable deviation from the motive and the area of significance of my research as opposed to research conducted by the western academia.

It is not solely my aim, as Classen’s introduction suggests, to intrude the private chambers of the medieval Armenian and look for insight my findings can offer in regard with the public imagination and mentality of Medieval Armenia. It is my aim to put together a piece of demonstrative, implicit history that should be read and taught as part or parallel to the explicit, nominal history which is misleading at best. At this point the dissimilarity with Classen’s objective is clear. The western world does not suffer from retrograde sexuality, it is exempt from the oppressive power of tradition. Study of sexuality has relatively informative value for the western audience. In the Armenian context, the study of sexuality aims to and should have performative value and/or effect. The alleged righteousness of the past can, in this way, no longer serve as a haven for the outdated norms of the present, nor can it continue to shape the present by the power of its protruding virtuousness. How would it, if it never was been such? As Ruth Mazo Karras brilliantly puts it in her book *Sexuality in Medieval Europe: Doing Unto Others*  “to suggest that sexual identities, attitudes, and practices in the culture that gave us our legal systems and religious traditions were different teaches us that the way things are, or the way we imagine them to be, is not the “natural” way but historically contingent”( Karras, 2017).

**Sexuality and Marriage in Early-Medieval Legal Sources (Penitentials)**

After browsing through a number of books that specifically build around eliciting history of sexuality from legal and literary documents, I ended up sketching a different mental structure of this study, as adopted by the examples I had before me – chronologically coherent analysis with identification of period-specific genres and tendencies in the primary sources under examination. I will firstly examine the regulation of sexuality in Dawit Alavakavordi’s 11th century Penitential then conclude with two lawbooks written in 12th and 13th century by Mkhitar Gosh and Sempad the Constable respectively. The chronological method is particularly well illustrated in a book by James Brundage titled *Law, Sex, and Christian Society in Medieval Europe* where he outlines a general image of Medieval sexuality through looking at legal documents dating as early as the Roman Empire up till late Middle Ages.

The scope of my study centers around 11 to 13 centuries A.D, therefore particularly his chapter on “Law and Sex in Early Medieval Europe, Sixth to Eleventh Centuries” was methodically informative. Here he speaks of a new “genre of Christian moral literature that grew increasingly influential in shaping Catholic sexual doctrine from 6 to 11 centuries A.D”. The wording here indicates that these texts were considered literature in spite of the fact that they had corrective and practical legal application. Notwithstanding their legislative power and implementation, these documents were not yet considered as lawbooks but were merely morally directive instruments in the hands of the Church, delivered and imposed by its members for “sinners who wished to reconcile with God”. The non-categorization of penitentials as traditionally legal documents is accounted for by its ecclesiastic origin. The distinction between moral-corrective and legal texts is better illustrated by the distinction between canonic codes and secular law which makes it clear that it is by state interference that moral doctrines turn into legal ones. In the case of penitentials, even though they guided the priests in confessionals as to the prescribed punishments, they did not have a traditionally legal status and therefore applied to randomly specific cases and lacked the breadth of subsequent legal texts. It is this very lack of comprehensiveness that explains the fact that none of the books pertaining to the topic of penitentials makes use of legal terminology such as “dictum”, “law” or “statute” to name the “prohibitions” that comprise them. Instead words such as “prescriptions”, “limitations”, and “prohibitions” are used.

Another characteristic that distinguishes penitentials from traditional legal documents is the astonishing graphicality and the amount of detail put into the descriptions of banned practices and not only sexual ones. For these reasons and in spite of their widespread practical use, penitentials can be considered factually legal but theoretically moral-corrective documents. Their status as non-legal texts as well as the explanations behind it, as stated above, come in handy when arguing that the entire genre of penitentials owes its existence to real-life offences thereby reinstating their actual occurrence. This is the argument pushed by Pierre Payer in his book *Sex and the Penitentials* where he claims that “the most rational methodological position would seem to be that the specific sexual content of the penitentials is a reflection of actual behavior on a scale to warrant inclusion” (Payer, 1994). This is the *rational methodological position* and premises my entire thesis will be built upon. This is also the position which informs my research question as well as my use of the word “reconstruction” – an ambition to extract a historical model deriving from actual sexual practices. This ambition is further supported by Payer’s argument that “a body of canonical literature” that has been used to “transmit a comprehensive code of sexual behavior” over the span of more than four centuries could not have lingered on for that long if it had had a purely cautionary function prompted by “abstract legal concern” (Payer, 1994).

Near the end of the 12th century, the large body of early medieval penitentials was extended by a book of canons[[2]](#footnote-2) composed by Dawit Alavkavordi, an Armenian *vardaped* (highly educated archimandrite), who had been commissioned by a number of priests of the Armenian Church to compose a penitential book for the guidance of priests in their duty of imposing penance to confessors. As the translator of the Armenian original XX puts it the book served to “assemble a series of answers to a series of questions put to him concerning confession”. As additionally evidenced by the phrase *patahmcmc ekeloc i zgusut'iwn*“events which have come to one's attention” repeated in a number of canons as well as by the apparent specificity of the majority of canons, (e.g., cases of mothers falling on their children and smothering them to death or of children drowned while their father was getting drunk), and following Payer’s argument, the penitential was most likely based on real life offences. I will therefore extend this general argument to the canons regulating sexual behavior and work on the assumption that most if not all sexual offences mentioned in the code were based on actual cases if not on common practice thereby informing a relatively accurate image of medieval Armenian sexual life.

The method by which I will proceed the analysis of Dawit’s lawcode was put to shape after the consultation of Payer’s book where he explores the address to sexual practices in a body of penitentials composed in a span of ten centuries (550-1550 A.D.). Payer identifies 10 categories of offences of sexual nature, each of which includes at least one canon taken out of the discussed penitentials. The topics are as follows: Adultery; *Form (proper form of sexual intercourse); Abstinence;* Aphrodisiacs; *Fornication*; Incest; Homosexuality; Bestiality; Masturbation; *Pollution*. For the sake of clarity, I will, with slight modifications in delivery, address the categories that overlap with the sexual offences presented by Dawit, and will include additional paragraphs pertaining to the offences outside of the scope of the abovementioned themes.

**Intramarital sexuality and Adultery**

Dawit’s canons are not presented in any particular order or thematic grouping which makes it difficult to identify the regulations related to adultery. Neither can we resort to Latin to identify common etymology between the Armenian and the other penitentials originally written in Latin which make use of the same word-stems, since only a few of Dawit’s terms have Latin origins (see *fornication*). Dawit uses two biblical words to describe the act of sinful copulation “shnanal” and “pornkanal” the latter stemming from the Greek “πορνεία – "prostitution" later morphed into *fornicatus* and used in medieval penitentials to denote heterosexual intercourse between two unmarried people. “Shnanal” is borrowed from the Armenian translation of the Old Testament where it denoted illegal intercourse between two people at least one of which was married. The ambiguity increases with the fact that these two terms are used interchangeably and it is solely by context that we can assume (not even determine) whether the term indicates adultery or just sex outside marriage[[3]](#footnote-3).

It is my curious observation that despite separate titling of isolated sexual offences, the relatively more general category of adulterous relationships is carelessly scattered among paragraphs pertaining to other sexual offences and is mentioned as a side note to the main offence rather than a violation that one would expect to deserve an honorable mention with a designated place. For instance, in canon 50 titled “a paragraph on confession from the canons concerning various [matters of] atonement. a question” which is delegated to the regulation of sexual relations of virgins and to incestual relationships, only two lines are allotted to the discussion of adultery in between these two offences. The treatment of adultery and its punishment against virginal or incestual intercourse is rather undetailed. For instance, there is no fixed punishment for adultery committed between two married people, Dawit simply advises that the penance be “more severe” than that of unilateral adultery.

To illustrate the contrast – the offence of incest is allotted over half of a page detailing the degree of penance according to the type of familial relation between the offenders. A similar negligence to adultery is seen in the canon “on those who fornicate in a brothel” where Dawit’s use of the word “shnanal” is left unexplained and the context provides no clues as to the purpose of its use. One would expect a canon concerning an institution most hospitable to adulterous acts to categorize *adultery in a brothel* in order to at least establish a stricter penance in relation to simple acts of fornication of unmarried clientele. No other mention of contextually inferred adultery can be found in the lawbook, which, coupled with the interchangeable use of “shnanal” and “pornkanal” with no singling-out of adultery as a category and the absence of fixed and/or relatively strict penances, makes infidelity a rather overlooked part of illicit sexual behavior at the time.

There is duality of terminology in regard with intramarital sex as well. Dawit distinguishes between “merdzenal” and “shnanal” when discussing the sexual act and its variations inside marriage. “Merdzenal” (literal transition “to approach”) which is the biblical equivalent of the English “to lie with” is stripped of negative connotation and refers to the sexual act performed for the sole purpose of procreation. Interestingly, the use of the word “pornkanal (fornication) is also integrated into the sexual vocabulary of marriage, and, akin to the meaning it carries outside marriage as defined above and loyal to its biblical origins, it is used to denote any act of sexual nature between the spouses incited by carnal desire and aimed at its fulfillment. Here I must note a personal observation formed during a close reading of the canons where marital intercourse was denoted by “merdzenal” and thus did not carry the connotation of illicitness.

None of these canons explicitly prohibit intercourse outside of procreational purposes as is the case in the biblical context. In one of the canons one can encounter the following line: “If any in the course of coition with his wife perform sodomy, he is considered worse than [those who perform it with] men, for the satisfaction of his desire [need] was at hand.” Here we come across a case of desire-fueled intercourse not labeled as “fornication” and not followed by any penance. Combined with a separate canon prohibiting the “distraction of the seed of procreation” through *coitus interruptus*, leads to the conclusion that as long as penetrative sex was followed by internal ejaculation, to insure the fulfillment of its primary purpose, whether or not the act led to release of sexual desire was of secondary or no significance.

Similarly, in the canons prohibiting marital sex with a pregnant menstruating wife, the forbiddance is explained as follows: “The reason is as follows: all the deformities in the body of a child arise during coition whilst she is pregnant or menstruous”. There is no logically ensuing reference to carnality that would now replace the principal reason for intercourse given that pregnancy already excludes the procreational function of semen. This can be explained either as an irregularity to the common rule or an honest omission of the apparent. I am inclined towards the latter, in support of the hypothesis of the dual nature of marital sex which did not exclude the element of pleasure as an inevitable but tolerated byproduct. However, the absolute necessity of the procreative component and the prohibition of carnality in the event of its absence is ultimately evidenced by a canon titled “concerning those who during coition insert their tongue into the mouth”.

The lawbook forbids insertion of the tongue into the “mouth of the spouse” which, by definition is kissing, for the fear that it might lead the partners to “stoop to this unworthy deed to insert their fingers into each other's anus and into the woman's genital parts” also known as fingering. Apparently, the lawbook wants to ensure that anything of erotic nature besides plain penetration that does not guarantee insemination is eliminated from the act of coition. It is also made obvious, through this detailed description of elements of non-penetrative sex or foreplay, that, as Classen put it, “the more church laws and secular laws were issued to direct, control, channel, and determine the way how sexuality was practiced, the more the individual seems to have found ways to subterfuge those attempts; otherwise the penitential books would not have become increasingly detailed regarding the various types of alleged sexual misconduct” (Classen, 2008).

 There is also reference to cases of sterility or impotence of the spouses in which event their sexual life is subject to a stricter control since intercourse pursuing procreation is now out of the question. This circumstance seems to have conditioned a number of unusual sexual misdemeanors in tune with Classen’s postulation. One such canon “concerning sterile women” speaks of a practice of tacitly agreed adultery popularized by sterile women who “impute the cause [sterility] to the husband and go and fornicate with strangers”. Similarly, when it was somehow established that it is the woman who was sterile, the husbands would practice in-house prostitution and “on account of their poverty and adversity [would] negotiate with strangers as pimps for their wives.” These two canons illustrate skirting of the law at the expense of their nominally lawful status of marriage much alike taking advantage of their right to intercourse, sanctioned by marriage, to indulge in unprocreative erotic excesses. As stated above, such covert violation of the sanctity of marriage was punished twice as strictly as simple adultery. In the case of a husband prostituting his infertile wife, the penance is death by stoning.

Another canon under this category titled “concerning wives who incapacitate their husbands out of spite” deals with cases of artificially induced impotence through witchcraft and use of various potions. I find this canon of special interest in that it hints to the significance attributed to the male sexual potency - a curiosity which, in the eye of modern research, furnishes sexuality in the medieval society with a value so big that it's incapacitation had become a form of revenge. Finally, Dawit includes a canon “concerning those who are incapable of taking their wife’s virginity” – a regulation which we do not encounter in any of the contemporary penitentials discussed by Payer. The canon details that impotent men make use of their fingers or other objects to deflower their wives which the lawbook considers anathema (a formal ecclesiastic curse). This canon once again reinstates the exceptionality of penetrative intercourse as the singular canonic form of marital sex.

**Divorce and desertion**

The regulation of divorce and desertion (whose modern equivalent would be separation) carries less weight in the lawcode. These two categories are scattered throughout several canons but reflect a singular pattern where Dawit identifies instances wherein divorce or desertion is prohibited. To this must be added that several isolated cases represented from a delimitative rather than regulatory or procedural perspective, are as far as the lawcode goes in molding the civil aspect of what would later be called family law. This is to say that that the canons addressing divorce do not recognize or frame it as a practice followed by procedural legal mediation. Instead these canons are reduced it to specific instances upon the handling of which guidance was needed, basing the logic of consequent law enforcement on inductive grounds. Illustrative of this is the canon forbidding divorce or desertion prompted by differences in the social status of the spouses “who consider their wife or husband low-born”. Another equally localized canon forbids the husband to leave his “lunatic wife” labeling such a man a “wife-deserter”. The broadest of the canons referring to divorce and the only one sanctioning it is a canon dealing with the consequences of adultery. Here the code differentiates between overt and closeted adultery. In the case of the former a full warrant is given to divorce the unfaithful spouse and re-marry. In case of covert adultery, the husband is allowed to choose for or against divorce, so long as the public is unaware of the act of infidelity. This consideration seems to reveal a tacit complicity of the law and the scope of its punitiveness with the extent of public involvement and how it tackles the matters of reputation – a logic popular in the modern Armenian reality where a bad name carries a gravity equal to a criminal record.

Here I must point out that the wording of the canon “if a wife should sin openly” and the lack of reference to the husband cheating on any other canon, indicates a rather perception and handling of adultery and its legal consequences. This circumstance might suggest two realities one ensuing from the other: either male adultery was not frowned upon as strictly as female adultery, or male adultery was seldom the subject of confessionals. It would be reasonable to assume that the latter circumstance would sooner be caused by a milder public attitude towards male infidelity as both a result of and cause for its widespread practice, than by its infrequency. Whatever the case, it is made evident from the formulation and subject of these canons that divorce was not the preferred outcome of marital conflict and was avoided in the majority of cases. To this attests a canon “concerning the wife of a priest” which, in case of her infidelity, allows the priest to “retain his adulterous wife” in return for resigned priesthood. The provision of this alternative, given the disproportionality between the components of this barter, further augments the priority given to marriage over divorce. Finally, considering that none of these canons grant any agency or power of choice to the wife, it is rather clear that the right to divorce, in the singular instance where it was granted, belonged to the husband exclusively.

**Extramarital sexuality**

As has already been stated, it is only under marriage that any engagement in sexual activity was permitted. Any sexually implicative act committed outside of marriage was by default labeled “fornication” and required penance. In the canon on “confessions from the canons concerning various [matters of] atonement” Dawit devotes an entire paragraph to the sexuality of unmarried laymen. The opening statement, stating that “In the first place it is a canonical command to join a virgin with a virgin” sets the ground rule for sexual life before marriage – it should be nonexistent both for men and for women. In the case that laypersons do fornicate before marriage, the following regulations apply.

If two virgins fornicate before marriage, they should be married to one another. The code is strictly against joining a virgin with a non-virgin or a previously married layperson unless unavoidable necessity is in question. Evidently, when dealing with extramarital sexuality, the lawbook does not distinguish life before and after marriage, but instead equalizes them disallowing sexual activity even after the termination of marriage by the death of one of the spouses. I must comment that the category of extramarital sexuality introduces perhaps the only circumstance in which, by the power of this very equalization, discrimination based on gender is neutralized as far as the sexual freedoms of both sexes are concerned. Here I must speak of the venue where most of extramarital fornication took place and to which Dawit dedicates a page-long canon titled “concerning those who fornicate in a whore-house”. The canon naturally condemns those laypersons who attend brothels, regardless of their marital status, and engage in illicit sexual activities. I find this canon perfectly illustrative of two theories. Primarily, in accord with Classen’s theory this canon testifies to the social reality of active skirting of the law on sexual behavior by however means affordable. Evidently not all marriages took place between virgins and not everybody abstained from sex before marriage as religiously as the law required, so much so in fact, that these transgressions triggered institutionalization of prostitution on demand.

This brings me to the second point. I must begin by citing Payer’s thoughts, in original length, on the infrequent or no reference to prostitution in the examined earlier penitentials of the 10th century “the presence of prostitution in a society is a function of a degree of social organization and sophistication which simply was not present in the contexts in which the penitentials were written. That is, institutional prostitution was not a widespread social phenomenon in these contexts. In the more developed societies of the twelfth and thirteenth centuries the canon lawyers would give ample treatment to this subject” (Payer, 1994). Strange as it is that the level of social organization and sophistication of a society should be measured, among other things, by the degree of institutionalization of prostitution, the canon cited above not only exemplifies Payer’s theory but precedes its predictions by roughly half a century. I dare conclude that, as early as the first half of the 11th century, sexual transgressions in the Armenian society had already marked their territory on and taken roots within the social structural level.

If brothel’s catered to the needs of exclusively married and unmarried men, as the literal translation of the word “bozanots (whore-house) suggests, is it safe to assume that the female libido was as repressed and grossly underestimated during the times notorious for its lewd and lascivious sexual transgressiveness as it was later into the millennium? Here we must factor out the prostitutes themselves for the sexually active life they led was meant to pay the bills not quench their sexual desire. We must therefore shift from the public to the domestic realm where virtually all activity of unmarried women in the Armenian society was, and by the power of tradition continues to be limited to. In the canon “concerning those who during coition insert the tongue into the mouth” a paragraph is dedicated to an unnamed practice, popular among women, of “fabricating an alien instrument of some material, binding it around their loins and coupling with their companions like men”. It would have seemed more logical to list this canon under the category of lesbianism, were it not for choice of words in the original document. The words used for companion is “ynker” whose literal translation is “friend”. Additionally, when Dawit elaborates on the relations between the parties to this offence, he speaks of “servants and maids” thereby extending the scope of this type of intercourse with the modern-day strap-on from exclusively homosexual to possibly heterosexual dynamics.

What this speculation gives us is that confined as they were to the domestic environment surrounded but by their servants and maids, women came up with a formula for release of sexual energy even if it meant sodomizing their male and female servants and penetrating their maids. I find this canon a unique invaluable artifact from the medieval times in that it serves as a little domestic microcosm within the medieval world which perfectly illustrates the mechanics of sexual regulation of the world by which it is contained. This is to say that transgression of the law, as Payer postulates for medieval societies and Foucault for post-medieval times, was proportionate to the strictness of the measures of its enforcement as far as and especially when sexuality was in question.

**Incest**

The code regulates incestuous relationships in the scope of one canon dedicated almost entirely to the classification of the degree of penance dependent on how close or distant the status of relation was between the partners. It must be noted that Dawit places intercourse between blood-related family members and in-laws under the same canon which seems to indicate that incest was frowned upon not only to prevent inbreeding but also possible rivalry between the male members of the family. The canon establishes 4 degrees of penance and of proximity of relations accordingly. Incest between cousins is sentenced to the least amount of years in penance (9). This is followed by incest between a niece/nephew and their aunt (12). Next comes incest between siblings (20), under which category also fall those who fornicate with their daughter’s in law and sisters in law. Finally, the highest degree of penance (“all the days of his life”) is prescribed to those who fornicate with their mothers or step-mothers. I must highlight two irregularities (or perhaps a circumstantial regularities) within the categorization of relations. The wording suggests that the active agent or the committer of incest is always the male partner (“he who fornicates with”) and the passive, receiving end is the female partner. To this end, even though we encounter an instance of “one who fornicates with his aunt”, there is no mention of nieces fornicating with their uncles and, similarly, even though incest between mother and son is included, nothing is said of intercourse between father and daughter. Similarly, there is no mention of homosexual incest – a reality which again follows the already established logic of either unpopularity of the practice or its withholdment.

The fact that the woman complicit in incest should have been regarded as the passive end comes as no surprise given the patriarchal norms of the time. Yet, the fact that in a society where sons would fornicate with their own mothers, a similar relationship between father and daughter is left unaddressed makes room for speculation. It is, however, unclear whether this indicates absence of such cases altogether or that they went on unreported or unconfessed. An alternative assumption, given the age difference between mother and son as well as nephew and aunt, as well as a reference to fathers fornicating with their sons’ wives, is that engaging in sexual relationships with an older female in the family was the frequent practice among younger boys and that men with age, perhaps, opted for their daughters-in-law instead of their biological daughters.

One might be tempted to explain an address this big and elaborate to incestual relationships by the long-standing reality of the normalized societal reception of inter-familial marriages within royal dynasties of pre-feudal Armenia. Here, I abstain from the term “incest” since the agenda behind marriages between relatives was, as opposed to anything sexually implicative, rather to protect and extend the dynasty along and within its own bloodline avoiding external intervention which could later put the family under the risk of collapse or dethronement. This explanation is invalidated in the light of the detail to which the degrees of incest are traced. That is to say, the variation among the partners party to incest as well as, and more importantly, the absence of blood-relation among most of them indicates to only one reality – the domestic realm had become a catering ground for sexual relief, especially that of the men in the family. Disturbing as it may sound, the home would well have paramounted the brothel, except for the latter’s commercial worth and compensatory structure.

**Masturbation and Pollution**

There are is distinctly one canon referring directly to the act of masturbation, although the term itself is not used. If translated from the original, a canon dedicated entirely to masturbation is titled “concerning those who squeeze their organ in their hand”. One crucial thing to stress here is how the formulation of the canon disregards or excludes the sexual function or objective of masturbation. The first sentence reads “some, as per evil habit, rub their organ to let the semen flow”. The canon continues to establish penances for those “who repeat the act and keep it as a habit”. Whenever Dawit points to the incentives behind masturbation he reduces it to its purest physiological form aided and enhanced by extremely anatomical almost mechanical terming (squeeze, rub, flow). Onanism as a source of pleasure is left unrecognized and undenoted, relocating its punitiveness into the fact of wasting of the seed of procreation. Another canon where masturbation is addressed, albeit implicitly, deals with “dedication to priesthood” and establishes the qualifying criteria for priesthood. It is here that two references to mutual masturbation are made worded as adults “who ejaculate onto each other” and “who, while kissing each other or other women, lay hands onto each other causing ejaculation”. Evidently, it was common for two men to engage into mutual masturbation. What is unusual is that no reference to or comparison with homosexuality is made to establish the degree of penance and that no distinction is made between man-to-man masturbation and man-to-woman masturbation. A probable explanation to this would be the perception of onanism as a crime against procreation by the wasting of semen, which applies to both same-sex and heterosexual mutual masturbation.

The final regulation dealing with masturbation, still implicitly, discusses the tendency of certain men who perform masturbation by riding animals. This is by far the most unusual sexual practice I have encountered in the code and which is further embellished by virtue of the various forms of realization. Dawit speaks of those “who in a frenzy should curse his passion, mount a steed, give it its head and intentionally allow it to gallop in order to occasion the flow of seed from his body” and also of the other variety who prefer to “sit upon a beast of burden without a saddle as a result of which pollution occur by reason of deliberate movement of the body”. The use of the words “intentionally” and “deliberately” as well as a further reference to those “who make this act a habit” indicates that these men were well aware of the sexual function of this routine practice. That they should have found and maintained the sexual spin-off in an activity as frequently performed as horse-riding attests to the breadth of inventiveness and flight of imagination commonly regulated sexuality can give rise to.

Unsurprisingly, even in the case of self-inflicted pleasure, where gender dynamics in a society have less of a share, women are left out of the picture. On the premises that these canons were derived from actual confessions, the logical assumption to follow would be that either women did not masturbate or preferred to remain silent about it, while men openly confessed to onanism. This is not unusual given the moral expectations by which women were bound at the time thereby inclined towards a stricter self-regulation even inside the confessional. Should this have been the case, it still does not quite explain the absence of any cautionary mention of possible female masturbation and the penance thereof. This points to a possible if not definite underrepresentation and disregard of female sexuality as a reality on par with male sexual appetite. This point is reinforced with a sentence to be found under the same canon on masturbation addressed to the violator reading “"he shall be subject to the decree concerning evil-doers, for he who fornicates with himself is their associate." This line suggests that masturbation is not penalized for the sole reason of wasting the seed of procreation, it is also identified as fornication with the self and would, therefore, be logically pertaining to both sexes, which it does not. The only conclusion this leaves as with, again, is that whether due to rarity of cases or general silence on this matter, female onanism was pushed out of the picture even on the hypothetical level.

**Pollution**

When considering the topic of pollution, we must, as in the case of adultery, infer the use of the concept contextually. The Armenian original does not make use of the Latin root “pollutio” but instead provides multiple denotations such as “tatsanal” meaning to get wet or the Armenian equivalent for a wet dream, or simply states that there has been an involuntary flow of seed. Considering the cases discussed above, the penitential distinguished between voluntary and aided flow of seed categorized as masturbation and involuntary and unconscious flow of seed categorized as pollution. From the modern perspective this split makes little sense given the extent to which one is conscious of arousal or what leads thereto Viewed in the medieval context, this distinction could have been accounted for by two circumstances; men of the time had so little awareness of their own sexuality that experiences of pre-cum or premature ejaculation were viewed as things externally induced or incidental over which the confessor had little control to which attest phrases such as “by the act of the devil” or “involuntarily” when cases of pollution are referred to. Secondly, due to the belief in the lack of sexual self-awareness, a distinction was made between directly induced ejaculation through physical aid and contact with the genitalia and ejaculation prompted by non-physical factors. The split is very clear when we read into the cases denoted as pollution and the circumstances under which they occurred.

A canon dedicated to the regulation of the conduct of acting priests establishes, in astounding detail and abundance, the different instances of pollution and the relevant penance. The canon speaks of a number of cases incidental pollution which include pollution while lying in the same bed with his wife, pollution caused by the thought of his wife or another woman in sleep or awake with doubled penance, pollution or ejaculation while kissing his wife or a strange woman, pollution or ejaculation at the thought of his wife in church, ejaculation or pollution during performing a mass, and finally ejaculation or pollution caused by being enamored by another woman. The penances prescribed to each case are accurate down to the count of days with according changes as to the circumstances of the pollution. I must note that Dawit goes as far as to distinguish between “flow of seed” (see above as ejaculation) and “wetting oneself” (see above as pollution). In accord with the amount of semen exiting the body, the penance increases. The consideration of actual ejaculation as unintentional is quite puzzling viewed from the perspective of modern sexology, where uncontrolled ejaculation without stimulation is a symptom of an underlying disease as opposed to Dawit’s placement of the phenomenon under instances of the medieval equivalent of fantasizing which the penitential labels as “fornication in one’s mind” as is penanced equally to actual fornication.

The only reasonable explanation behind this division is the perception of semen as a sacrilegious pollutant, so much so that, should it be spilled inside the church, the tiles of the entire surface must be washed and scraped and be cleansed by a special dedicated mass. Consequently, the amount of semen exiting the body is directly proportional to the severity of the penance. Further reading shows that Dawit does, to a certain extent, demonstrate medical awareness and legal leniency in regard with cases of nocturnal pollution explaining them as “flow of superfluous seed at the fulfillment of its time; or as a result of labor and sickness.” These cases are considered “harmless” and pardonable. The final lines of the canon on “nocturnal pollution” read “if it [pollution] occurs many times, habitually and unconcernedly then his mind is polluted and his body is ill”. These lines show how, through intrusion into the mental dimension of the individual, the surveyance over their sexual activity and sexuality was exercised even on the metaphysical level to insure total control. This speaks to the Foucauldian theory of the confessionals as tools that enabled to eradicate anything with as little as abstract sexual potential, meaning filthy and ungodly thoughts, before they could have been materialized in real life (Foucault, 1990).

**Homosexuality, Sodomy and Bestiality.**

Surprisingly, the penitential’s address to homosexual practices is very implicit and unelaborated. It is however, unusual that Dawit should have used a lexical equivalent to the modern-day concept of homosexuality in a penitential of 12th century given that those examined by Payer do not have a separate denomination of same-sex relations. Tracing back the etymology of the word used to name homosexuals, “arvamol”, we learn that it is a compound noun with words “aru (male)” and “mol (mania, passion)” glued together. It is evident that the term referred solely to male-to-male same-sex relations, excluding, as was the tendency, the female side of the story. Perhaps lesbian relationships were fairly uncommon at the times, yet even when a direct mention is given of lesbian sex with a strap-on, the parties to the deed are compared to homosexuals in the gravity of their sin. The penitential’s address to homosexuality is limited to a canon “concerning homosexuality and bestiality” which only details the relevant penance applicable to homosexuality practiced in different age groups. Another transient mention of the term is to be found in a canon speaking of heterosexual fornication wherein a heterosexual act of anal intercourse is deemed more sinful than that performed in a same-sex relation. This canon coupled with another one that speaks of boys “who have, with or without sinful passion, kissed one another” with no reference to homosexuality, attests to the fact that as a homosexuality as a category incorporated same-sex relations of exclusively sexual nature, leaving out homosexual romantic orientation as something perhaps unknown or unreported at the time.

As far as the practice of sodomy is concerned, it is inferable from the contexts in which the word is used, that it refers solely to anal intercourse performed by a heterosexual couple since Dawit uses homosexuality as a substitute for sodomy when referring to anal intercourse between a woman and an infidel and yet a reverse substitution of sodomy for homosexuality is not encountered in any of the canons. Naturally, anal intercourse is admonished heavily, and yet it is unusual that, firstly Dawit should consider heterosexual sodomy less grave than homosexual sodomy and secondly that the woman is to carry a heavier penance than the man who performed anal intercourse with her for “it is she who has violated the sanctity of marriage and allowed for the seed of procreation to go to waste.” This is perhaps the only time when the woman is attributed an active status within heterosexual dynamics as the one with the capacity to stop the act from happening and yet the agency comes to bear an exclusively punitive meaning.

The practice of bestiality is also very briefly addressed in the canon cited above and seems to be more concerned about the fate of the animal who has been violated rather than the violator himself, to which testifies a page long elaboration on the do’s and dont’s of handling a violated animal. This section does, however, bring to light one rather unusual practice not to be encountered in any of the penitentials of the time, as concluded from the close reading of Payer’s study. Dawit dedicates an entire canon to “those who observe the coupling of animals” in which he speaks of people who have the habit of "binding a female animal and bringing the male to mount her” for either voyeuristic purposes or as an object of arousal, since Dawit speaks of “pollution at the sight of the coupling”. The reasonable account for this practice would perhaps be the agrarian structure of the medieval Armenian society, where the working class owned land and bred animals to feed themselves. Apparently, as such cohabitation was the norm, the sexually repressed peasant, or, if we trust Dawit, the priest and the monk as well, found sexual relief in engaging in intercourse or, more innocently and pardonably, in voyeurism with the cattle.

**Lawbooks of the 12th and 13th century and the evolution of law**

The examination and discussion of Dawit Alavkavordi’s Penitential of 11th century revealed that this compilation of canons virtually excludes the regulation of non-sexual elements of marriage. Divorce as such is touched upon very briefly and is regarded more as an inevitable outcome of adultery than a separate dimension of marital life in need of independent regulation. As postulated earlier, lines in the canons pertaining to matters of separation of divorce are scattered and situationally determined lacking an overarching legal reasoning and comprehensiveness. This is not unusual of the genre of penitentials, since, as we have determined, their structure itself was quite amorphous and case-based hence whatever predominance of regulated categories it featured was determined solely by the frequency of occurrence of the cases pertaining to a given category. As the discussion of the penitential demonstrated, canons regulating sexual behavior in and outside of marriage seized the scene. This scheme is notably reverted in the two legal documents compiled in the 12th and 13th centuries which stand out with an impressively drastic and quick evolution in the methods of structuring and thematization of public and private domains in need of legal regulation. Before I pass on to the discussion of these documents, I would like to establish an academic point of reference to help explain and locate on the historical continuum the alterations and developments encountered in these later lawbooks.

In his book *Law, Sex, and Christian Society in Medieval Europe* James A. Brundage identifies a turning point in the progression of legal reasoning into the early 12th century. The growing tension between feudalistic and ecclesiastic authorities, as championed by the church reform movement in Europe of the late 11th and early 12th centuries, necessitated a legal constant in the form of a structured juridical system to regulate conflict resolution in the West. The system was envisioned to consist of church courts what would function as legal platforms for the settlement of disputes “in any way affecting public or private morals, ecclesiastical institutions, or the administration of Church property” (Brundage, 2005). This initiative would require a comprehensible body of laws to enforce – a need which resulted in a multitude of canonical complications that encompassed the new legal ideology advocated by the reformers. Most if not all of these complications drew upon penitentials and church degrees and didactic addresses as well as some scraps of Roman law.

Brundage claims that what set the reformer’s outlook on the new societal regulation apart from the current regime was their moral rigorism which took control and restriction of sexual matters to a stricter level especially as far as the institution of marriage was concerned. The marital and sexual agenda of the reform was committed to “reorganize marriage among the laity” in that the reformers deemed it absolutely necessary to bring marriage under the exclusive control of the church and replace “customary marriage law with ecclesiastical law” (Brundage, 2005). It is at this point that the European and the Armenian legal models cross paths, notwithstanding the vast differences in the jurisdictional and court systems. All matters of matrimonial law, including but not limited to betrothal, marriage, divorce, were under the exclusive supervision of the Armenian church courts once the ecclesiastic authorities transitioned from self-regulatory penitential practice towards other-regulatory court jurisdiction. Much like the penitentials, the canonical writings generated their own genre of legal literature and instituted certain norms as to the creation, legalization, maintenance and dissolution of marriage. Brundage presents an exhaustive list of standards which matrimonial law built upon including the principles of indissolubility of marriage, of mutual consent to enter marriage and of monogamy. In my discussion of the two lawbooks compiled during this period, these standards, albeit European-born, are instrumental in defining the positioning of marriage in the legal landscape of the time and how, in certain ways, it reflected or imitated the evolutional trajectory of the legal body in medieval Europe.

The first lawbook to be examined dates back to 1184 was compiled by a learned monk Mkitar Gosh who embarked on the enterprise propelled by the need for a unified legal code which Armenians were in lack of at the time and so were compelled to turn to foreign sources and *infidel* courts for conflict settlement. The second legal document was compiled in 1265 by Sempad the Constable, a noble in the Cilician Kingdom of Armenia to serve as the official document for legal reference in the settlement of public, private and ecclesiastic disputes. Mkhitar’s lawbook itself was never put into official enforcement, Armenia being stateless until the Hetumian dynasty came to reign in Cilicia. Gosh envisaged his lawbook to be applicable for the near future when Armenia finds statehood again hence it carried merely a theoretical and slightly referential value at the time. It did serve its ultimate function as the basis for Sempad’s lawbook which drew extensively upon its analogue and differed only slightly in terms of structure and formulation.

Precisely for this reason the two sources do not merit separate examination, especially as far as matrimonial law is concerned, since the close reading of both texts confirms that laws[[4]](#footnote-4) pertaining to marital life in both sources differ only in their formulation. The one thing that should be addressed is the additional couple of laws complemented by Sempad that are not found in Gosh’s document. These should be regarded as fruits of the time and of the ideological alterations the perception of law underwent in a century’s time as postulated by Brundage in his analysis of the 13th century juridical trends. According to Brundage, the reformers, even more ardently than penitential authors, intended to limit marital sex and penalizing non-marital sexual activity as severely as possible. What this resulted in, as the primary sources confirm, is a considerable disregard for the formulation and inclusion of legal prescriptions directed at extramarital sexuality. Instead, the lawbooks of this period allotted centralized attention to the institution of marriage and to divorce particularly, or to the circumstances leading to it.

Paradoxically, however, as the legal grip of extramarital sexuality was tightened, matrimonial law started to feature a looser regulation. The earlier model of marriage promoted the concept that marriage is a lifelong commitment whereby divorce, separation and marriage were strictly frowned upon as also attested to by the limited address to divorce in the penitentials. During canonic reform of the early 12th century, even though primacy was given to the doctrine of indissolubility of marriage, the number of circumstances under which divorce was permitted grew considerably. This trend explains the apparent predominance of laws in the lawbooks of the time devoted solely to the regulation of grounds for divorce or separation as well as to peaceful settlement of marital conflict when possible. For this reason, I will focus exclusively on examples of divorce law in the two lawbooks cited above with the objective to identify any inconsistencies with the leading legal trends of the time.

**Treatment of divorce in the 12th and 13th century legal documents**

According to canonic legal theory of the 12th century, marriage could be legally dissolved on the following eight grounds: impotence, entry into religion, long-continued absence, intractable illness, serious crime, rape, fornication with a third party, or subsequently consummated marriage with another partner. As both Gosh and Sempad, alongside biblical canons, Dawit’s penitential and church-issued didactic letters, consulted also contemporary foreign legal sources, most of the theory of divorce found in both lawbooks reiterates the European canonic legal theory. That is to say the eight grounds for divorce listed above are to be found in the form of respective laws in both documents. For this reason, the discussion of apparent overlaps will yield little theoretical value and be merely of descriptive nature. To avoid this, I will be looking exclusively at the points of deviation between the European and the Armenian models. These assume the shape of additional grounds for divorce presented both by Gosh and Sempad which are not included in European canonic collections as the perceived norm.

The first rather unusual cause for divorce proposed by Gosh is mutual hatred between the husband and the wife. The subject of hatred is elaborated upon extensively as to the degree, cause and resolvability of hatred between the spouses. Gish writes that should the husband and wife hate each other without the reason of adultery and/or other wrongdoings, and cannot live in harmony with each other the law prescribes, after “much admonition and remonstrance”, that they be separated. Of peculiar interest is Gosh’s take on remarriage after hatred-initiated divorce. He prescribes that the spouse who “brought the affliction to the marriage”, meaning whether it was the wife or the husband that caused marital conflict, is denied the right to second marriage, while the spouse who was afflicted by the conflict is legally allowed to remarry. Additionally, Gosh extends this permission to both spouses, regardless of culpability, if either of them finds mercy to permit the other to remarry after divorce. I shall stress here, that nowhere in Brundage’s discussion of the standards of divorce and remarriage of the time did I encounter the element of spousal permission to remarriage. Such authority was ascribed to the church exclusively and remarriage was strictly admonished even in cases of death and/or adultery. This is the first instance, among others, that reveals a deeply tolerant and humanistic interpretation of canonic law by Gosh, subsequently adopted and perpetuated by Sempad, as the same law can be found in his lawbook as well. Another law based on similar premises prescribes divorce in the event of continuous violence inflicted upon the wife by the husband. The husband is obliged to divorce the wife and she may remarry as she sees fit. A slightly altered in wording but with similar implications is Sempad’s law concerning “an insane and vile husband” who is neglectful of his wife, disregards her needs and wants and does not take care of her as a husband should. Although the component of violence is not stressed in this law, it is safe to assume that if neglect and reluctance were reason enough for divorce, so would be any act of physical assault.

We also come across a rather strangely formulated law wherein Gosh allows the husband to divorce his wife and dismiss her from the house on the grounds that “he found in her unworthiness.” This law is drastically divergent from the central haven of legal reasoning on divorce at the time, which, as Brundage claims, commanded that mere dislike or disgust with the appearance, habits, or character of the marital partner did not furnish adequate grounds for separation” (Brundage, 2005). This principle also raises questions in regard with the above-discussed law allowing divorce on the ground of mutual hatred. Similarly, we find a bizarre law in Sempad’s lawbook which permits the husband to *release* his wife if she happens to be insensible and unkept to a point when she is no longer sufferable. The released wife is allowed to marry after the separation, yet the husband is bound to remain unmarried until the death of his wife. It must be noted, in regard with these two laws, that neither of the authors uses the term *divorce*, but makes use of words such as *release* or *dismiss* instead. Considering that in both cases the husband is disallowed to remarry, and that no court interference is mentioned, we can conclude that these laws speak of lawful unilaterally initiated separation rather than reciprocal divorce which would allow both parties to remarry. Whatever the legal positioning of the issue, we still cannot deny the relative leniency with which intramarital discordance is handled by the two Armenian lawmakers. In opposition to the core of canonic take on marriage, which disregards personal preference in favor of the persistence of the union, Sempad and Gosh make room for the psychological dimension of marriage even if such a stance implied compromise of certain biblically informed legal constants.

I would like to conclude this section with a law that I find of singular significance in that, although written almost a millennium ago, directly reflects todays societal expectations from what is perceived as an orderly and righteous marital model. Gosh writes that shall a husband find out, after the marriage has been consummated, that his wife was not a virgin prior to marriage, he has the right to divorce her and remarry for “she has brought dishonor to his house.” I must sadly highlight that not much has evolved since the 12th century, and up to this day, word of the mouth has it that wives get beaten, humiliated or driven out of the house if the husband’s family finds out their daughter-in-law was not a chaste before marriage. To avoid this, the more common practice is to do a background on the woman’s past relationships or, as last resort, perform a medical check on her to make sure her virginity is intact at the time of marriage. This is a point where Hovhannisyan’s concept of “the lawbook of tradition” becomes most relevant, as we see how a juridical standard, alongside admonition of extramarital sexuality, engraved into the legal reasoning of a society has persisted through ages by the sole power of tradition even though it has been eliminated from the legal dimension long ago.

**Conclusion and avenues for future research**

The parallel analysis of Dawit Alavakavordi’s *Penitential* and of Mkhitar Gosh’s and Sempad’s more legally grounded texts revealed a gradual shift in the subject of church’s and subsequently state’s fixation within the intimate dimension of the private life. As dictated by the genre of the penitentials with its atomized and scattered supervision of sexuality in the 11th century, Dawit’s text offers an unstructured and situational legal assistance. The lawbooks by Gosh and Sempad, however, in tune with the juridical mentality of the time, aim for a regulation of sexuality as either a lawful constituent of the institution of marriage or a marginalized alien practice outside of marriage. In other words, starting from 12th century onwards, the legal front adopted a model of sexuality metrics with marriage is its central unit of measurement, an axis of sorts. In the second part of my analysis I have tried to demonstrate this transition in legal reasoning by focusing on a component of matrimonial law most expanded on in the later lawbooks. Yet I must acknowledge that both Sempad’s and Gosh’s texts offer expansive space for further analysis into the non-marital aspects of sexuality discussed in slightly more clandestine manner than in Dawit’s Penitential and thus in need of a learned and meticulous eye to be identified. As first samples of solid legal thought, these two lawbooks have served as foundatial sources for every lawmaker thereafter. This is to indicate that the logic behind these laws has persisted through centuries and penetrated into the broader dimension of societal reasoning which, to the modern eye, may seem anachronistic and outdated at best. Hence, I believe it is through the dismantling and thorough sociological research of the legal and consequently societal treatment of sexuality through time that the convoluted and stubborn mentality of the modern-day Armenia may finally be understood, pardoned and hopefully reformed.

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2. The terms “canon” and “regulation” will hereafter refer to Dawit Alavkavordi’s regulations in the *Penitential*. [↑](#footnote-ref-2)
3. Here I consult the modern Armenian translation of the original source written in old Armenian, since the use of *fornication* and *adultery* in the English translation is quite random. [↑](#footnote-ref-3)
4. The term “law” will be used to refer to the legal prescriptions presented by Mkhitar Gosh and Sempad the Constable in their texts. [↑](#footnote-ref-4)