Introduction

FREDERIK PEDERSEN

European society underwent fundamental changes during the millennium from 500 AD to 1500 AD. Ideas and practices of marriage differed in fundamental ways between the start and the end of the period. The Roman Empire and its successor states exhibited a multitude of kinship relations and household organizations, some based around a slave economy, others around polygamous marriages. Some allowed marriage partners to dissolve their marriages and others prohibited it. However, by 1500, throughout Europe, the basic family unit could be expected to be organized around a voluntary, monogamous, and lifelong conjugal unit, not only in Christian society, but also among Europe's Jews. This cultural unity stretched from the farthest north to the Mediterranean and beyond, and it was the result of a multitude of factors. Some developments were caused by changes in relations of production, some were stimulated by theological discussions, and still others came about because of political considerations as kings, nobility and prelates discussed, challenged and refined the institution of marriage and its consequences.

The interpretation of marriage in medieval Christian theology (which provided the ideological underpinnings of marriage legislation across Europe) differs profoundly from other cultures and religions in its insistence that marriage was not only a social, secular reality, but also a symbolic recreation of God's relationship with His Church. For medieval Christians, marriage became a reflection of Christ's union with the Church, and this interpretation provided the ideological foundations for marriage as exclusive, life-long, and indissoluble.[1] Although this interpretation of human sexuality meant that marriage was an integral part of Christianity from the

beginning, the Church only decisively took on marriage law during a relatively short period between the eleventh and early thirteenth centuries. It also created an enduring uniqueness in Christian marriage: no other culture has provided such strict boundaries around the exercise of human sexuality.Two popes, Alexander III (1139-1181) and Innocent III (1198-1216), were particularly influential in these developments, and theologians, such as Bernard of Clairvaux, integrated their understanding of human sexuality into Christian theology. They provided classic definitions of the institution of marriage.[2] These unique developments also meant that marriage fell under two jurisdictions: the spiritual side, i.e. those aspects of married life that affected a Christian soul's chances of salvation, which became the responsibility of the medieval *church* courts; and the secular aspects of the institution, for example, the regulation of property ownerwhip, the transfer of lands between the families of spouses or the enforcement of property agreements made as part of marriage negotiations, which became the responsibility of *secular* courts.

The medieval ideal of marriage developed out of the texts that formed the basis of the faith and were eventually ranked in a hierarchy of authorities. Carrying the greatest weight were the very few occasions when Christ spoke of marriage. His relative silence on the subject was taken to indicate that, unless he spoke against them, he agreed with the teachings found in the Old Testament on the subject and thus gave them his tacit agreement. But in his ministry, which was both innovative and contradictory, he differed from Jewish tradition in several crucial aspects. On the one hand, he emphasized the importance of love in marriage and made the institution's exclusive character explicit, while on the other hand, he seemed hostile to the institution of marriage itself.[3] Later medieval Christian writers were fond of emphasizing the sanctity of marriage and argued that Christ had bestowed his

special grace on the institution by beginning his ministry at the wedding in Cana.[4] Indeed, this text was the text for the second Sunday of the Epiphany and the standard text for a discussion of the nature and desirability of marriage throughout medieval Europe.[5] It also became a common *topos* of medieval sermons that God had created marriage in Paradise and had thus added his blessing to the institution.

Although Christ allowed divorce, he limited its availability to those situations where there was manifest adultery, and even then he appeared unwilling to allow the partners to re-marry.[6] In his teaching Christ thus differed from traditional Jewish law, which held that adultery should be punished by death. For Christ, an adulterer displayed a moral failing, not criminal behavior, and he used the example of the repentant prostitute as a metaphor for all repentant sinners who would be welcomed into Heaven ahead of those who merely observed the outward rules for proper behavior.[7] In a few cases, particularly according to the Gospel of Luke, Christ seemed to display an ambivalent attitude towards the institution of marriage. For example, in the parable of the invitation to the nuptial banquet, Christ mentions a new wife as an unacceptable excuse for not coming to the marriage feast, and later in the same chapter he appears to argue that no married person can truly follow him.[8]

Although the letters of St Paul actually predate the Gospels, they carried less (though still considerable) authority. His writings are much more concerned with sexual matters than are the Gospels, and, like those who wrote the gospels, St Paul had an ambivalent attitude to sexuality and marriage. In his profound unease with marriage, he continued the break with older Jewish law that he found in Christ's teaching. In the main, St Paul distinguished between four types of sexual sinners: prostitutes, "the soft ones" (those who use sex for pleasure), homosexual men and,

most important for our purposes, those who had sex outside of marriage.[9] St Paul reluctantly endorsed marriage, but he saw it as a solution of lesser worth. In his view, the best behavior for a Christian was not to have sex at all: “but if they cannot contain, let them marry, for it is better to marry than to be sorely troubled”.[10]

Despite his preference for sexual continence, St Paul devoted much attention to the institution of marriage. Continuing the Christian break with Jewish tradition, he advocated virginity as the ideal state, but acknowledged that marriage provided a legitimate outlet for sexual activity. For this reason he became a fierce critic of divorce, though he bowed to tradition and allowed it under certain, narrowly defined, circumstances. He also enjoined mixed-faith couples to remain together, because it was always possible that the Christian spouse might convert the unbeliever through example. However, he strictly forbade those who had divorced to seek, let alone marry, new partners.[11] His strongly monogamous philosophy, which he developed from the story of Christ’s encounter with the woman at the well in Samaria, even went so far as to enjoin widows and widowers not to remarry, an idea in stark contrast to old Jewish law.[12]

The three centuries that followed St Paul’s ministry were characterized by a series of individual writings and councils that intended to settle doctrinal questions and to establish the dogma of the Church. Some writers, such as Origen (*circa* 185-253), St John Chrysostom (*circa* 347-407) or the anonymous author of the *Gospel according to the Egyptians,* were influenced by Gnosticism, which argued that Adam and Eve had been without sexual temptation in the Garden of Eden, and some early writers were opposed to any expression of sexuality. With the Fall, sexual temptation was introduced into the world and, as long as there was sexual activity, there would also be death. A number of these writers proposed radical

solutions. For example, Origen's biographer, Eusebius of Caesarea, claimed that Origen castrated himself in a literal attempt to follow the words of Christ.[13] Whatever the truth of the matter, Origen was strongly misogynist: "There are some women, though not all of them, as we have noted, who are indiscriminate slaves to lust, like animals they rut without discretion".[14] Another early writer, Tertullian, was also explicit in his denunciation of women. Among his many writings we find a treatise to his wife exhorting her to live a celibate life and in another context he argued that intercourse drove out the Holy Spirit and deprived men of the benefit of divine counsel.[15] However, Tertullian and Origen were in a minority. The mainstream among Christian writers in the 2nd and 3rd centuries accepted the place of marriage in a Christian anthropology of salvation.[16] For example Ignatius of Antioch (d. 107?) recommended the church's direct involvement in the ritual of marriage, and Clement of Alexandria (ca. 150-200 AD) condemned those who spoke against marriage because they spoke against the teaching of the Gospels.[17]

During the reign of emperor Constantine (311-337), the Christian Church became increasingly tolerated, and by the time of Constantine's death it had become the majority religion in the Roman Empire and an integral part of its governmental structures. This transition from persecuted minority to dominant majority caused a major shift in the theological discussions of the Church and in its internal structures. Though most of the administrative changes were quickly put in place, the theological discussions continued until well after the fall of the Roman Empire itself. During this time of change and consolidation, the two most important Christian writers on the subject of marriage and sexuality were St Jerome (ca. 347-420) and St Augustine of Hippo (354-419). Both were passionate men who took leading roles in the Church's condemnation of heretical sects, in particular the followers of Pelagius, Jovinian and

Mani, but Jerome exhibited a more radical and consistent condemnation of sexuality. In his polemic against the Jovinians, Jerome maintained that sex and salvation were polar opposites, and he came dangerously close to condemning marriage outright. He argued that Christians should avoid sexual congress whenever possible and that not even marriage removed the filth and evil of sexual activity.[18] St. Jerome also assigned a score to the various categories of the faithful and granted 100 points to virgins, 60 to continent widows and only 30 to married women.[19] His extreme position was influenced by the followers of Jovinian (condemned as a heretic in 390, d. 405), who claimed that all moral failures were equally bad and therefore that the ascetic life (which Jerome, among others, practiced) did not have any particular benefit in leading Christians to salvation. For this reason the Jovinians drew no distinction between celibate monks and those who enjoyed sexual intercourse.[20]

Possibly the most influential writer on marriage and sexuality in this period was Augustine of Hippo. Like Jerome, Augustine was a passionate man and a passionate, albeit more moderate, debater. In his writings he reacted to events and his attitudes to marriage and sexuality varied with the circumstances and showed a marked duality. On the one hand, he saw marital sex as an integral and important part of Christian life, yet he exalted and praised the status of virginity beyond the status of marriage. His writings responded to those individuals or sects whose views he did not share, and he accepted neither discussion nor contradiction.[21] Indeed, his passionate nature often made him argue without regard to consistency, and he frequently contradicted himself. This was particularly evident in his treatment of marriage and sexuality. In *Contra Julianum* he found sexual desire to be a most foul and unclean human wickedness, a manifestation of man’s disobedience to God. Sex overwhelmed the senses and disarmed the will; the sudden and temporary loss of

self-control that is implicit in any sexual act made man irrational and demonstrated his sinful nature.[22] And yet in his *De bono conjugali* (“concerning the conjugal good”, often translated as “On the Good of Marriage”) he praised marriage, arguing that it was a desirable state that brought three major benefits for a couple. These three “goods of marriage” were a long undivided life together, offspring, and “the Sacrament”. The latter concept almost elevated marriage (and marital sex) to a religious duty.

The marital status of clergy caused much controversy in early Christianity. Where the sources allow us to investigate this issue, they suggest that the clergy were almost invariably married, at least until the time of the 4th-century Council of Elvira.[23] It was one of three councils, together with the Synod of Arles and the Synod of Ancyra (the latter two took place in 314), that first approached the character of general councils and prepared the way for the first ecumenical council. The date of the Council of Elvira is uncertain, but is believed to predate the Synods of Arles and Ancyra and to have taken place around 305-306. It took place in what is now (mainly) Andalucia in southern Spain and was attended by 19 bishops and 26 presbyters. Most of these came from the Roman province of *Hispania Baetica* and the synod agreed one of the first significant set of rules concerning order, discipline and conduct among the Christian community agreed to by the general Church. Deacons and laymen were also present, and almost half the synod’s decisions concerned sexuality and marriage. Among other things, the canons prohibited marriage and other intercourse with Jews, pagans, and heretics; and forbade all contact with idolatry and participation in pagan festivals and public games. The canons that dealt with Jewish-Christian interaction aimed to establish a separation between the two communities. Canon 15 prohibited marriage with pagans, while

Canon 16 prohibited marriage of Christians with Jews. Canon 78 threatened Christians who commit adultery with Jews with ostracism. Canon 49 forbade the blessing of Christian crops by Jews, and Canon 50 forbade the sharing of meals by Christians and Jews.[24] The Council regarded the clergy as a special class with particular privileges who acted under a more demanding moral standard and imposed heavier penalties for deviance, and, as a consequence, it drew a sharp distinction between sexual sins committed by clergy and laity.[25] It allowed fornicating bishops, priests and deacons to receive communion only on their death-beds, required the higher clergy to divorce their wives and forbade female servants to live with clergy (unless they were close blood-relatives).[26] There is little evidence that the Council of Elvira had any immediate practical effect, but the demand for clerical celibacy was to be a powerful rallying cry for the so-called Gregorian Reform movement almost eight centuries later. Rather than immediate reform, the Council of Elvira seems to have provided a programmatic statement of Christian sexual anthropology. Christian society was to be distinguished by a clerical elite, whose sexual abstinence marked them as morally superior to their weaker flock. The canons of the Council thus rejected sex as incompatible with the highest Christian standards, but implicitly they also acknowledged the central role sex played for the majority of Christians.[27]

Despite the development of a consistent theology of marriage in the writings of Jerome and Augustine, this did not develop into social reality until the rapid deployment of a systematic canon law that was a consequence of the eleventh-century Gregorian Reform movement. Instead, the most important change in western marriage practice in the period between the sixth and tenth centuries was a homogenization of family structures. In the Roman Empire, with its slave-based

economy that extended into the lands of what the Romans called “barbarians”, one could find a wide typology of family units. The households of rich Roman slave-owners could include hundreds of persons, among whom only a minority had the freedom to contract legal marriage. The households of a few powerful barbarian magnates could similarly have a high concentration of women.[28] Two developments worked together to even out this differentiation: the change from slavery to serfdom and the spread of the egalitarian ideology of Christ’s teaching as expounded in St Paul’s teachings, especially in the letters to the Galatians and to the Colossians.[29]

In contrast to the generally successful drive to encourage European household patterns to conform to Christian ideals and to enforce the right of every Christian to marry legally, local Church councils continued to accept divorce, despite the teachings concerning the indissolubility of marriage developed by Augustine and Jerome. The Council of Angers (453) permitted men to remarry, while the Council of Vannes (465) allowed divorce for both men and women in cases of proven adultery, as did the Council of Agde (506).[30] In the 7th century the archbishop of Canterbury, Theodore of Tarsus, limited divorce to five situations: adultery, the desire to enter religious orders, desertion for five years, the enslavement of one spouse, or the wife’s abduction and captivity.[31] The contemporary secular law codes of Æthelbert (ca. 602) provided detailed rules in the case of a wife who wished to divorce her husband for unspecified reasons; for example, she was entitled to half the marital property and all the children.[32] Comparable rules were in place in the Icelandic law-code *Grágás* as late as the 12th century, with the important difference that children were to follow the parent who came from the wealthier family.[33] Overall, the Church and lay society were in a period of transition and evidence regarding attitudes, when it can be found, is confused. The Church councils and secular laws

mentioned above allowed access to divorce, and yet several popes (and even Charlemagne himself) tried to put a stop to the practice through a string of decretals and imperial decrees. For example, at the Council of Friuli, which Charlemagne convened in the month of December, 800 AD, it was decided that adultery was not a permissible cause for divorce. This ruling was repeated by imperial decree in 802 and extended to cover the entire Carolingian Empire.[34] However, while Pope Zachary wrote to Pippin the Short in 747 to warn him of the consequences of allowing divorce of any kind, Zachary's successor, Stephen II, allowed *separation* (*divortium a mensa et thoro*), but not a divorce (*divortium a vincula*), in cases where one spouse contracted leprosy.[35]

The question of divorce and the indissolubility of marriage became a serious political issue in 857, when the Frankish king, Lothar II, tried to do what so many other rulers had done before and repudiate his queen, Theutberga. Though he could have continued the tradition by simply repudiating his wife, Lothar chose to accuse her of incest with her brother, thus providing a veneer of legality to his attempted divorce. Bishop Hincmar of Reims accepted that the king had a right to divorce, *if* the accusations were proven, but Pope Nicholas I (858-867) staunchly supported Theutberga.[36] In a series of highly emotive letters filled with rhetorical flourishes and biblical quotations, he harangued Lothar for his behavior, and though his motives for doing so may be questioned, his intervention in the case and his insistence that Lothar follow biblical precedence, raised the profile of the idea of indissoluble and monogamous marriage in western canon law.[37]

(Figure I.1)

Another important—but more indirect—development was provided by the mixed collection of real and forged papal decretals produced in Metz around the

850s, which are now known as the *False Decretals* or the *Pseudo-Isidorean Forgeries.*[38] The collection is famous primarily because it contains one of the most contentious and famous of all medieval forgeries, the so-called *Donation of Constantine*, in which the emperor Constantine was alleged to have granted Pope Sylvester I secular authority over all western Europe. Immense labor and erudition went into creating this corpus of texts, and the collection contains a mixture of forged papal letters and a wide range of genuine sources. The persuasiveness of the texts, the talent with which the forgers mixed genuine and false materials, and their linguistic and stylistic flair meant that the compilation was accepted as authoritative by a large proportion of later compilers of law until Lorenzo Valla finally proved the *Donation of Constantine* to be false in 1440.[39] The forgeries were compiled in order to strengthen the position of ordinary bishops against their metropolitan.[40] In the course of arguing this case, the forgers elaborated the idea that a bishop was *married* to his church. Their argument was simple, but effective: just as marriage between humans was supposed to be indissoluble, the relationship of the bishop to his see was indissoluble, because he was married to his church. Hence a metropolitan bishop did not have the power to dissolve the union between an ordinary bishop and his diocese. The immense popularity of the collection (some 87 complete manuscripts survive) meant that it was frequently mined for extracts and examples by later writers. Consequently the idea of the inviolability of marriage developed into one of the central ideas of the marriage law of the medieval western Church.[41]

The Latin west saw profound changes in social, economic and political life from the 10th to the 12th centuries. Demographic and social changes necessitated a wholesale re-evaluation of the church's attitudes; to politics in general, to the origins

of clerical superiority against the laity, and, as a concomitant, to marriage. The increased urbanization of Europe changed the demographic make-up of society. The end of the 13th century saw a much larger proportion of freemen, mainly concentrated in cities, and the increased social control inherent in urban living meant that the Church became increasingly aware of public scandal as a social problem. But the changes of the High Middle Ages were not caused just by changes in the physical world. At the beginning of the eleventh century, king (later Holy Roman Emperor) Henry of Germany attempted to discredit a rival faction in the German court by arguing that the marriage of one of their leading exponents was incestuous. Thus, political expediency and clerical learning combined to create a new definition of legitimate marriage.

By the beginning of the following century, the initially hostile interaction between Islam and the West, signalled by the call for a Crusade in 1095 and the consequent fall of Jerusalem to the crusaders, had made way for a second phase, which was characterized by an exchange of theological, philosophical and legal ideas. Two developments, the rediscovery of Aristotelian logic and the dialectical method, and the almost miraculous recovery of a single manuscript of the *Corpus iuris civilis*, compiled under the 6th-century eastern emperor Justinian—which had been unused and unknown in the West for almost six centuries— provided western canon law with a unique consistency and a new vibrancy that allowed the construction of a system of law based on both religious and scientific principles.[42] The manuscript of the *Corpus iuris civilis* was shared among a small, but hugely influential, group of legal scholars in Bologna, and their work brought about a sea-change in European jurisprudence.[43] These developments brought important changes in the practice of marriage. Before the eleventh century European marriage

could best be described as consisting of “successive polygamy”: rulers and aristocrats (and possibly the population at large) openly practiced polygamy—King Canute, for example, had a wife in each of his three kingdoms—but by the early thirteenth century the institution of marriage had come to conform to Augustine’s ideal of a life-long and monogamous union.

The time around 1000 AD is a turning point in the history of marriage: following studies by Jan Rüdiger and Karl von Ubl, David d’Avray argues that this rapid development of marriage law began with the marriage of Robert II of France with Bertha of Burgundy.[44] Pope Gregory V had this marriage condemned for its incestuous nature at the Council of Pavia in 997 and at the Synod in Rome in the following year. The future emperor Henry II had originally been marked for the priesthood and had received training and education in Regensburg and at the cathedral school of Hildesheim. He was present at the Synod in Rome, and, in 1003, the year after he secured his election as king of Germany in Mainz, he presided over an ecclesiastical synod and imperial assembly in Diedenhofen. Applying what modern historians have called the “canonical method” of calculating consanguinity, Henry condemned the recent marriage of Matilda of Swabia to duke Conrad of Carinthia, the son of duke Otto I, a member of the Salian dynasty. Matilda’s father, duke Herman II of Swabia, had vigorously opposed Henry’s ascent to the German throne in the previous year. Although it is tempting to argue that Henry had an obvious political agenda behind his argument that Conrad and Matilda’s marriage was consanguineous, Henry was also playing to recent concerns in the German Church which had debated how far incest prohibitions reached and changes in the methods by which to calculate them since Henry received his education..

Bishop Burchard of Worms (who, despite his epithet, had spent formative years in Mainz, a center of both canon law expertise and Jewish learning) became a key ally in Henry's policy, dramatically expanding the forbidden degrees for political purposes. Taking it for granted that Burchard was present at the Synod at Diedenhofen, Karl von Ubl argues that the interests of Burchard as a clerical reformer and Henry as political operator (and, most likely, also acting out of a clerical concern fostered by his training) combined to cement the dominance of the canonical method of calculating consanguinity. Burchard completed a collection of canon law which became known as the *decretum* around 1012. The work includes 1,785 canons, arranged in 20 books, drawing on a vast array of primary material dealing with a wide range of subjects: the clergy, the sacraments, fasting, perjury, magic and secular authority, to mention but a few. Burchard carefully selected and compiled canons from earlier collections, but also manipulated the texts he had chosen by changing their attribution to strengthen their authority. By doing so, he created a book of church law that was internally consistent, appeared to be based on indisputable authority, and that was easy to apply through logical extrapolation to new cases. In doing so, he proposed using a much more inclusive definition of consanguinity, and his text rapidly gained wide circulation.[45] Burchard's text enjoyed wide circulation, and about twenty years later, Peter Damian adapted Burchard's method of computing degrees of consanguinity and proposed the "canonical method".[46] This method was accepted by Pope Leo IX who included it among his decretal decisions.[47]

(Figure I.2)

Burchard's work was a compendium of church law that was internally consistent, appeared to be based on indisputable authority and built on principles

which were easy to apply to new cases through logical extrapolation.[48] It also introduced a much more inclusive definition of consanguinity, and the consequences of the extension of the prohibited degrees were far-reaching and perhaps a little un-expected: by making it more difficult to find a marriage partner Burchard opened up the possibility for the European nobility to use the rules of marriage to provide a legal justification for dissolving marriage for dynastic purposes. But his work also initiated a new phase in the relationship between ecclesiastical legislations and secular practice. Burchard's method of computation increased the laity's opportunities for obtaining legal annulments of their marriages, but it also solidified the Church's claim to hold jurisdiction over matrimonial matters. As a consequence, church courts saw an increased matrimonial case-load, and in the long run this meant that the laity became increasingly accustomed to seek the arbitration of the church when they felt the need to dissolve a marriage. This was particularly the case when it became clear to lay magnates that individual church courts did not apply the law with equal rigor and that this lack of consistency promoted the likelihood of receiving a favorable outcome to a request for a divorce.

It was not just Christians who discussed the place of marriage in society in Germany. The Jewish community of Mainz (where Burchard had spent the years before 999 as a canon at the collegiate church of St Victor before being made primate of that city) played an active part in this discussion. Like Christian society, Jewish society was divided over the question of polygamy. Jewish tradition tolerated polygamy.[49] Marriage law in the Bible and in the *Talmud* assumed that a man was entitled to take more than one wife. Although the *Talmud* fixed the maximum number of wives at four for a private citizen, and at 18 for a king, this rule seems to have described maximums allowed, and monogamy appears to have been the most

frequent status within Jewish society.[50] Nevertheless, the question of polygamy was debated among European Jews, and in the 11th century, rabbi Gershom Ben Judah of Mainz issued a *herem*, or prohibition on polygamy.[51] Rabbi Gershom's ban was probably simply a confirmation of existing practice: it was rare to find men with two, or more, wives. Although it was clearly influential, some modern scholars argue that polygamy continued to be practiced after his prohibition.[52] In Muslim countries, where polygamy was generally accepted by the dominant society, Jews were known to have adopted it and Rabbi Gershom's ban was never accepted as binding.[53]

Some scholars argue that the origin of the ban against polygamy was the result of Jewish communities interacting with Christian society as is evidenced by the fact that Franco-German rabbis during the Middle Ages developed new rules similar to Christian family law.[54] Indeed, unlike most of their brethren in Mediterranean countries, Franco-German Jews lived within a Christian environment where the Church and the teachers of canon law struggled to ensure the purity and the monogamous character of Christian marriage. It is not unlikely, therefore, that the surrounding Christian society may have had an influence on the rabbis, at least concerning their attitude towards polygamy. This influence is likely to have been particularly strong in Mainz, which was already an important center of learning, both Christian and Jewish.

Of crucial importance for this new vigor were two other developments that were initially unrelated to marriage law: the reform of the Church, begun by Pope Leo IX (1048 - 1054), which kick-started the reforms that scholars have since (mis-)named 'Gregorian'; and the dispute over the appointment of bishops known as "The Investiture Struggle". Although supported by emperor Henry III, Leo insisted on an election "by the clergy and the people of Rome", and with his popular mandate

quickly set about reforming the Church, whose prestige had been severely damaged by the excesses of his predecessors, in particular pope Benedict IX (r. 1032-1044, April-May 1045 and November 1047- July 1048).[55] Leo IX was an ardent reformer and, in contrast to his predecessors, he presided over synods not only in Italy but also in Cologne, Aachen, Reims and Mainz.[56] His reforms were aimed at eradicating the two main evils of the Church as he saw them: the buying and selling of ecclesiastical offices and married clergy. In this he was successful, not least because of the support of a group of talented lawyers and theologians, such as Humbertus de Silva Candida, Hildebrand (later Pope Gregory VII) and Peter Damian, who set about reforming European society "with an enthusiasm, audacity and zeal which even in the long history of the papacy had few, if any, parallels".[57] It was due to the influence of Peter Damian that the adapted Burchard's method of computation, the "canonical method", was accepted by Pope Leo IX who included it in his legislation.[58]

(Figure I.3)

Though the substance of the investiture conflict had little to do with marriage (except perhaps the symbolic association between secular marriage and the office of the bishop as it had been expounded in the Pseudo-Isidorean forgeries), both the empire and the papacy chose to settle their respective cases by appealing to the law. Each side saw their side of the struggle as a matter for the law and was absolutely convinced of the legal and moral superiority of its position. The proto-university of Bologna, with its high concentration of legal scholars, came to be of crucial importance in this, as it was sufficiently removed from the papacy to have the confidence of both sides in the conflict, and, as a consequence, could attract legal scholars sympathetic both to the papal and to the imperial cause.

An edition of Burchard's *Decretum* is known to have been in circulation in Rome around 1060, and this was followed sometime before 1076 by the *Collection in 74 Titles*; a collection by Anselm of Lucca; a collection by Cardinal Deusdedit, compiled between 1083 and 1086; and Bonizio de Sutri's *Liber de vita christiana* (ca. 1090).[59] Outstanding amongst these later publications, though, were the enormously comprehensive works attributed to Ivo of Chartres (ca. 1040-1115), the *Decretum*, the *Tripartita*, and the *Panormia*. Ivo was a prolific writer of letters and sermons, and, in contrast to early writers such as Augustine and Jerome, he tried to reconcile conflicting authorities within his collections of canon law. His works thus continued the scholarly tone of Burchard of Worms. The works were all produced in the period 1093-95 and must have required the help of collaborators.[60] Ivo's *Decretum* is an enormous work, including almost 4,000 canons divided into 17 parts. Much of the material is theological in character and gives the impression of being put together in a hurry, with little attention to organization. Ivo's main source was Burchard's *Decretum,* and he included the majority of Burchard's nearly 1,800 canons. It should not surprise anyone that Ivo's *Tripartita* consisted of three parts: Part I presented a mixture of 655 authentic and forged decretals from Pope Clement I (88-97 AD) to Pope Urban II (1088-1099); part II was a collection of 789 conciliar canons and patristic texts; and part III was an abbreviated version of Ivo's *Decretum.* The *Tripartita* was as disorganized as Ivo's *Decretum* had been, and, like the *Decretum,* it appears not to have been widely used.[61] If we had only these two works to go by, Ivo would have enjoyed a much more modest place in the ranks of canonists. His reputation, however, rests on his *Panormia*, which comprises a little over one thousand canons divided into 8 books. Nearly all of the material was taken from Ivo's *Decretum* (920 canons out of 1,038). For the remaining canons he relied on the

Collection in 74 Titles, his own parts I and II of the *Tripartita*, and on an unknown collection similar to one of the lesser-known Gregorian collections, which survives in one manuscript copy now in the British Library, the *Collectio Britannica*[62.]These books of ecclesiastical reform reflected the concerns and prejudices of their authors, condemning nearly all pleasures as sinful. They were hostile to any sexual activity, except that which took place within marriage; they allowed only for sexual activity within marriage and for the express and conscious intention of having children, were intent on limiting married partners' access to sex, and wanted to impose severe punishments on extramarital sex.[63] They also argued vehemently in favor of transferring jurisdiction over marriage to the Church and its legal institutions, and thus to replacing local marriage customs with a uniform European system of law.

The western reformers met little resistance to their ideas about including sexual transgressions under the law of the Church. Indeed, it seems that the majority of the laity embraced the reforms quickly, perhaps because ancient and localized jurisprudence no longer met its purpose. The reformers achieved great success very quickly, and, although there was no scarcity of conflict between royals and nobles on the one side, and the Church on the other, the latter emerged victorious in most of these cases. It is arguable that the Church's success was due to support from the lower ranks of society, whose conflicts did not register in the works of these reformers—the fact that there was a violent popular uprising in support of Gregorian reform demands in Denmark in 1123 bears witness to this.[64] The success of the reformers was in no small measure due to the systematization of the laws of the Church that was performed by a shadowy figure known as *Gratian of Bologna,* whose identity is currently the subject of much speculation. Within a generation of the publication of the *Concordia discordantium canonum* (also known as *Decretum*

Gratiani or simply *The Decretum)* it had become associated with the name Gratian, and a body of biographical material was built up by canonists working in Bologna.[65] Their main contention was that the *Concordia* was the work of a single man teaching in Bologna sometime in the early twelfth century. But following the publication of an article by Anders Winroth in 1997, and his book on the making of the *Decretum* from the same year, we can no longer be so sure.[66] All we can currently say is that a text appeared after 1140, had become popular around 1150, and that it exerted a huge influence over the teaching and study of canon law in the later half of the twelfth century. It combined the then recently (re)introduced dialectical method with a systematic exposition of the law of the Church, as inspired by the principles of Roman law. The text was assembled in such a way as to provide an elegant, convenient and persuasive exposition of the law of the Church. *Gratian's Decretum* revolutionized the study of canon law and gave it an intellectual coherence that it had not had before. Earlier collections—whether they aimed to be comprehensive like Burchard and Ivo, or were intended to reform the law like the *Collection in 74 Titles*—had produced a variety of contradictory opinions, from which lawyers, judges, and pastors could pick whatever suited their purposes, so long as they were content to ignore the rest. *Gratian's Decretum* was something new, and with its appearance we can begin to speak of canon law as a juristic science.[67] *Gratian's Decretum* did not look like any of the collections that had preceded it. However, the compiler(s) of the *Decretum Gratiani* was in no way an innovator when it came to finding his sources as he drew upon the existing collections available to him. His most important texts were the collections of Ivo, especially the *Decretum* and *Panormia.* He also used other collections, such as the works of Anselm of Lucca. The *Decretum Gratiani* was divided into three parts: part one, the *Distinctiones,* dealt with the

foundations, types and sources of law; part two consisted of 36 *Causae*, each outlining a legal problem, followed by a discussion of the individual parts of the problem broken down into constituent parts and each individual part examined for and against in accordance with the principles of Aristotelian logic; and part three dealt with liturgical matters, the ecclesiastical calendar and sacramental law. This last section was also divided into *Distinctiones*, but lacked any analytical text by Gratian (or the compilers of the *Decretum Gratiani*). The section comprising of *Causae* 27-36 is sometimes called the *Tractatus de matrimonio* because, apart from a long digression on penance in *causa* 33, it mainly deals with aspects of marriage. Gratians' treatment of marriage is contradictory and unwieldy, a feature which may have been caused by the editorial process. Historians of canon law are still trying to sort out this problem after Winroth's discovery of the existence of two editions of Gratian's text.[68] However, here we are concerned with the reception of the teaching of the Church, and for that reason it is acceptable to study *Gratian's decretum* in the form in which it was received for 800 years, rather than in the light of what we now know about its composition.[69] The *decretum* was a text intended for university teaching, and as such it paid little attention to the practicalities of its argument. Nowhere is that more noticeable than in its treatment of marriage, which is unwieldy and impractical. The *decretum* argued that marriage came into being as a two-stage process, consisting in a *matrimonium initiatum* (an exchange of vows) and a *matrimonium perfectum* consisting of the *commixtio sexuum*, most commonly translated as "sexual consummation.[70] Both steps were necessary to create a binding marriage.[71]

Such distinctions may have been useful for the classroom, but in a courtroom they were impossible to impose and potentially created innumerable problems

regarding inheritance. It was, therefore, left up to later popes to clarify the law, particularly Alexander III (1159-1181) and Innocent III (1198-1216). In numerous decisions made during the pontificates of these two men, the Church finally arrived at a definition of the exact time when a marriage became legally binding. When parties who were not previously married or related within carefully defined degrees of consanguinity or affinity made a vow to marry using words expressing present consent (“I marry you” rather than “I will marry you”) their marriage was created. Neither the presence of a priest, nor the presence of witnesses, was necessary. Although marriages might have been ‘illicit’—not conducted according to the rules of the Church—the marriage was still legal and therefore binding. The Church did recommend and command that the parties should publicly announce their intention to marry and that the marriage should be conducted publicly, but the absence of such outward signs did not invalidate the marriage itself. These new papal decisions were initially published in private collections (known as the *Quinque Compilationes Antiquae*) from around 1190, although these compilations were not authorized by the popes whose decisions they contained. Publishing an authoritative collection of the decisions was the last step towards the consolidation of the legal foundations of marriage in the medieval western church. This publication took place in the *Decretals of Gregory IX*, also known as the *Liber Extra,* in 1234.

The *Liber Extra* was compiled by the Spanish canonist, Raymond de Penafort. Before him no single, definitive collection had existed that covered all of the legislation issued since Gratian’s *Decretum.* Instead, canonists had to use the *quinque compilationes antiquae*, and, in practice, they often consulted other collections as well. By 1230, the reigning pope, Gregory IX (a nephew of Innocent III who was also trained in law) decided to ask his chaplain, Raymond de Penãfort, to

draw up a collection of canon law covering the period from the *Decretum* to Gregory's own pontificate. This Raymond did, and Gregory IX approved the collection in his bull of promulgation, *Rex pacificus* (dated 3 September 1234), and by sending the text to Bologna (and possibly also to Paris). Gregory's bull added one more element in that he ordered that only his collection should be used and studied, and with that marriage law in the medieval western church found its final form. It was to remain in force for the next three centuries, and was only superseded by the decisions of the Council of Trent (1545-1563).

(Figure I.4)

But it was not just jurists who were actively discussing marriage. Theologians were also wrestling with the meaning of the institution and their analyses would become an important factor in the acceptance of the new stricter marriage rules among the laity. For example, Hugh of St. Victor (c. 1096-1141) dealt with marriage in his treatise *On the Virginity of the Blessed Virgin Mary*. In a digression from his main theme—the nature of the chaste marriage between the Virgin Mary and Joseph—he discussed the basic goodness of marriage and embued it with a new dignity and emotional content that it had not enjoyed before. Marriage between ordinary people was the recreation of man's relation to God, and:

> By this agreement [Mary and Joseph] bound themselves with a voluntary bond. Henceforth and forever, each would be to the other as a same self in sincere love, all careful solicitude, every kindness of affection, in constant compassion, unflagging consolation, faithful devotedness. And this in such a way that each would assist the other as being their own self in every good or evil tiding, the companion and partner of consolation, thus proving that they

> are united in trial and tribulation ... Such are the good things of marriage and the happiness of the chaste society of those who love each other.

Hugh of St. Victor explained that a Christian marriage was to be based on love, the sharing of experience, the mutual solidarity of one partner towards the other, and “this fellowship is the basis of a happy marriage blessed by God”.[72] Hugh of St. Victor regarded all marriages as chaste whether the couple had sexual relations or not: what mattered to Hugh was that the sexual relations took place inside the marriage. Hugh’s contemporary, St Bernard of Clairvaux, took love in marriage as one of his central images in his sermons on the Canticle of Canticles. To Bernard, the sensuous language in the Canticle of Canticles described the ardent love of a husband for his wife, of the lover for the beloved, and, applying an allegorical interpretation, he saw the text as describing the love between Christ and his Church. Bernard of Clairvaux's equation of the love of husband and wife with the love between the lover and the beloved in the Canticle of Canticles is significant. The Canticle of Canticles mentions the wedding feast but does not dwell on the emotional content of marriage. Yet St. Bernard drew this Old Testament love poem into his scheme of salvation. St. Bernard could not imagine love outside marriage, and his equation of the love of Christ for his Church with the love of a married couple made the institution of marriage a central image in the theology of the Church. By implication, love-making outside marriage was not only adulterous but blasphemous. Adultery would break the union which was to be the mirror-image of the relation between the Redeemer and his Church. St. Bernard found no room in his sermons for St. Jerome's maxim “the too ardent lover of his wife is an adulterer”. On the contrary, the more passionately the marriage partners loved each other, the more

they recreated the love between God and man. Continuing this trend of using conjugal love as an essential metaphor and a tool for man to understand God's love, Richard of St. Victor (d.1173) described the institution in his treatise *On the Four Decrees of Passionate Love*. [73] He saw the human love of desire as the first step in salvation and a step towards the love of God. Love was the foundation of marriage, which Richard regarded as an honorable estate since it would lead to the spread of *caritas*.[74]

Many twelfth-century sermon writers saw marriage as an honorable estate, instituted by God in Paradise and sanctified by Christ at the wedding in Cana. For example, Alan of Lille saw marriage as a worthy estate capable of saving souls from the evils of the flesh. Marriage was based on mutual respect and the cruel or negligent husband was criticised for his behavior. Women were admonished to treat their husbands with the same affection with which their husbands treated them. Married life was based on shared experience and on the love of the couple for each other. Guibert de Tournai summarises this doctrine:

> ... this love ought to be formed in such a way that the motives for it is pure so that the husband and wife should not be joined in marriage for the sake of some temporal gain ,or a beautiful figure, or to gratify their lust ,but so that they may live together happily and decently, so that God may receive honour ,and the marriage yield fruit for the service of God.... For when they are equal, then they live in peace but when they have married for the sake of a dowry or something temporal they always quarrel. So if you want to get married, marry an equal.

Marriage was thus a desirable estate, albeit of a lesser salvific degree than virginity. Synodal legislation provided one means for the laity to become acquainted both with canon law rules of marriage and the church's teaching on the matter and sermons and theological texts provided another means for the laity to learn about the institution. As a consequence, when the medieval church encouraged Christians to marry and taught that the married state was an honorable state, it could expect that the laity had a reasonable level of knowledge of the canonical impediments to marriage among the laity had to be assumed, especially if marriage banns were to be effective in encouraging the laity to take action in identifying obstacles to proposed marriages as these obstacles had been identified by the fourth Lateran council (1215).

(Figure I.5)

The new legislation and the clarification of the church's desire to encourage the laity to marry did not create an overnight change. That required an institutional framework to apply (and sometimes teach) the details of the new legislation. Over the course of the thirteenth century the Church constructed the institutions that were necessary to enforce its ideology of marriage. Two elements, the development of ecclesiastical courts and a rapid development of legal procedure, combined with an educational program based on local churches across Europe spreading the word and educating the laity in the new rules which allowed men and women to establish their marriages without the consent of their parents, the presence of a priest, or even witnesses to the exchange of their vows, brought conformity among a lay population which eagerly embraced the new ideals.

Synodal legislation instructed the parish priest to teach their congregation the exact words that were to be used to contract marriage, and it is a measure of the

seriousness with which the Church viewed the education of the laity that, with French still being the language preferred by the English nobility, English legislation made sure that both English and French vows were to be recited to the congregation.[75] Although, as we have seen, there were many written texts which dealt with the honor of marriage, the laity probably received most of their knowledge of canon law from sermons and through the instruction of their parish priests or from their confessors. Sermons on the wedding in Cana, which were part of the liturgical year, and sermons aimed at the married and unmarried alike were specifically intended for the ears of a lay audience. They provide some insight into the attitudes to marriage that the Church wanted to encourage.[76] These sermons were mainly concerned with the estate of marriage and often commented on how one entered that condition. In England, from 1223 onwards (as in the rest of Europe) the local priest was required by synods to instruct his parishioners in the creed, the seven deadly sins, the sacraments of the church, and also about marriage.[77] This instruction was an efficient means of acquainting the laity with the rules for marriage. Without such instruction of the laity by a parish priest (or, sometime, a confessor) the church could not have expected reliable results from the publication of marriage banns.

The bishop's court dispensed the bishop's justice within its geographical boundaries of an archdiocese. These court and its personnel had a considerable level of expertise built up through legal practice and academic study. In addition there was an emphasis on tradition in the court which ensured that the cases were treated consistently. Regular courts with their own personnel and procedure developed rapidly. At the latest in 1270, possibly a decade or two before, the court of the diocese of Canterbury had developed as a distinct institution with its own body of records and its own personnel.[78] The diocese of York followed the same path at

roughly the same time and English ecclesiastical courts, both on diocesan and provincial level, soon recruited their members from among the graduates of the two English universities, Oxford and Cambridge, who provided training in both canon and civil law. The rest of Europe does not appear to have been so insular: most Scots avoided the English universities and went to Paris and Scandinavian prelates studied in Paris, Bologna, or in one of the other European universities. We even learn from the prologue to Saxo Grammaticus that Anders Sunesøn, the archbishop of Lund 1201-1228, may even have taught in Oxford.[79]

The Parisian masters had chosen to substitute a future/present distinction instead of Gratian's two stages of initiation and consummation as their way of reconciling the inconsistencies in the ancient texts. The focal point of any marriage case heard by an ecclesiastical court became the nature of the consent, i.e. whether it was a statement of an intent to marry *here and now*—which was known as a *verba de presenti*—or a promise to marry at *some time in the future*—which was known as a *verba de futuro*. The Parisian model argued that, to establish a legally binding marriage, it only took two people of opposite sexes, who were free to marry and who were not related within the forbidden degrees, who freely exchanged marriage vows expressing their consent to marry at once. Neither the family's consent nor the presence of witnesses or of a priest was required. If they had exchanged their vows *verba de futuro*, some subsequent act showing consent was necessary before the contract was binding; but, like marriages contracted *verba de presenti*, such marriages also created legally binding unions without the necessity of a priest or even of witnesses.[80]

The resulting process has appeared needlessly complex to some modern scholars: Frederic Maitland contemptuously dismissed the rules:

> Behind these intricate rules there is no deep policy, there is no deep religious feeling; they are the idle ingenuities of men who are amusing themselves by inventing a game of skill which is to be played with neatly drawn tables of affinity and doggerel hexameters.[81]

However, the decretists, popes, and decretalists provided a system of law that emphasised a number of central tenets of the Christian faith while maintaining the law as a workable entity. First of all, it provided for easy access to the married state for all (something that would have been inconceivable in the classical world where marriage was reserved for the noble classes). Secondly, it based itself on a logical set of rules, whose basic features could be comprehended easily by lay and cleric alike. Finally, from the end of the thirteenth century, the Church began to provide a viable system of enforcement which provided for the laity's need of a comprehensible system of justice. The laity and the clergy alike embraced this system enthusiastically. The rationale behind the system was based on the fact that Christ charged the Church with determining cases that caused conflict among Christians ,and in particular with cases that had a bearing on the salvation of the souls of his subjects.[82] For this purpose every diocese operated a system of courts to hear cases that fell under its jurisdiction, either because of the persons involved or because the matter was claimed under ecclesiastical jurisdiction because it touched on matters pertaining to the salvation of a Christian soul. The remarkable survival of medieval court records, primarily from England, demonstrates how the medieval laity recognized the courts' expertise, and litigants willingly—or indeed

enthusiastically—embraced the opportunity the Church courts offered to pursue their grievances and settle their disputes.

A remarkable rate of archival survival makes it easier to trace this development in England, but there is no reason to believe that similar developments did not happen in the rest of Europe.[83] In a seminal study, Richard Helmholz demonstrated that, from at least the time of the second council of Lyon (1274), which outlined the legal system of the Church and established a uniform system of courts across western Europe, the Church was able to deal with the problems that the relatively easy access to marriage might present.[84] Studies of local communities by Pedersen and Donahue have shown that marriage was not just a matter between individuals but an institution that was protected by the community.[85] The fact that lay people were legally able to marry meant that, if you were marrying of your own free will, that—in cases where you were not already married, that you were not too closely related, and that you were old enough to make the decision to marry—it would always be possible for a married couple to find members of the local community who would guarantee and testify to your marriage.

Taking our starting point in scripture we have traced the development of the idea of marriage in medieval Europe. The foundations of a new sacramental, monogamous, and exogamous form of marriage which was to be a defining feature of medieval Christian society were found in the teachings of Christ and St Paul. Further refinement of the Christian anthropology of sexuality was found in patristic writers, such as St Jerome and St Augustine who developed the idea that marriage was related to salvation and that it was the only permissible outlet for sexual activity.

Christian teachings were responsible for several key innovations, above all the unprecedented emphasis on marital affection and companionship. These ideas

were originally presented in stark contrast with practices found in the Old Testament and among heretical Christian sects, but, as time went on, conformity or non-conformity with Christian ideals, particularly concerning the need to seek a marriage partner outside a very loosely defined group of blood-relations and affines, came to be a well-used tool in political struggles both among the Franks and, later on, in the German empire. The movement towards conformity gained speed and penetration when, as a consequence of changes in crusading ideology, the Christian west rediscovered Aristotelian logic and Roman law during its renewed contacts with Islamic culture in the early twelfth century. The resulting dialogue between Jewish, Islamic and Christian culture turned medieval Europe into the meeting-place of various manifestations of jurisprudence, and interaction between these different legal systems and social practices had tangible consequences; thus, for example, it is arguable that the prohibition of polygamy among European Jews derived, at least in part, from a discussion with the surrounding Christian communities.

The consolidation of European marriage, with its unique emphasis on a monogamous, permanent union as the *locus* in which a legal heir to family property should be found, exhibits another crucial feature of European society: the division of society into a celibate elite among the priesthood and a less pure, but still powerful, secular ruling class. By the eleventh century, these two agreed to dispute their cases by means of legal arguments. In order for a legal argument to be persuasive, the ground rules of the discussion had to be agreed to by the people involved in disputation, and in the twelfth to the thirteenth century, the Church was winning the argument. In addition to its persuasive rhetoric, the Church was helped in no small way by the development of a formidable and very efficient legal system, which shared it ideology and the strict logic of an impressive system of law, and, if the

evidence of court records are anything to go by, the Church had not only succeeded in its attempts to impose a particular marriage ideology: it had managed to educate and indoctrinate the laity to such an extent that no matter where one might turn one would find someone who was not only familiar with the Church teaching on marriage, but also willing to enforce it, either through litigation, giving evidence or witnessing the marriage of others.

Notes

1. d'Avray 2005: 202–207.

2. Brundage 1987: 229–416.

3. E.g. In Matthew 11:37-38 ("he that loves father and mother more than me, is not worthy of me, and he who loves son or daughter more than me is not worthy of me.").

4. John 4:2-11.

5. d'Avray 2001: 71–119.

6. Matthew 19:7-9; Catchpole 1975.

7. Matthew 19:27-28; John 8:3-11; Matthew 21:31-33. Cf. Brundage 1987: 57.

8. Luke 14:20.

9. 1 Corinthians 6:9-10; 1 Timothy 1:10; 1 Thessallonians 4:3-7.

10. 1 Corinthians 7:9. This is how I read the Latin *Vulgate ("quod si non se continent nubant: melius est enim nubere quam uri*). The common English translation of this scriptural authority comes from the post-medieval *King James* translation of the Bible and transforms the Latin verb *uri*, which is in the passive voice, into the active English verb "burn".

11. 1 Corinthians 7:10-16.

12. John 4:7-20.

13. Chapter 8 in Eusebius 1965.

14. Origen 1857–1866 12: 192.

15. Tertullian 1954a: 373–374; Tertullian 1954b: 1030–1031.

16. Bugge 1975: 71; Fuchs 1983: 88–89.

17. Clement of Alexandria 1870: 378–379.

18. Jerome 1883 23: 229–230, 246, 249. Cf Delhaye 1953.

19. Herlihy 1987: 6.

20. Delhaye 1953: 67.

21. Brown 1969: 390–391.

22. Augustine of Hippo 1841b: 756, 773–774. Indeed, in this treatise Augustine digressed from his main argument to relate a scandalous story which illustrated his point: “As I was holding this work in my hands it was announced to us that a man of eighty-four years of age, who had lived religiously with a pious wife for close to twenty-five years, has bought himself a music girl for his pleasure” Augustine of Hippo 1841a: 713.

23. Laeuchli 1972: 61.

24. Dale 1882.

25. Laeuchli 1972: 64, 91.

26. Vives, Marín Martínez & Martínez Díaz 1963: Canons 18, 27, 65, and 33.

27. Brundage 1987: 79.

28. Herlihy 1985: 57–61.

29. “There is neither Jew nor Greek, there is neither bond nor free, there is neither male nor female: for ye are all one in Christ Jesus” (Galatians 3:28) and “[in the New Man] there is neither Greek nor Jew, circumcision nor uncircumcision, Barbarian, Scythian, bond nor free: but Christ is all, and in all” (Colossians 3:11). For a history of this development, see Sheehan 1988.

30. McNamara & Wemple 1977: 97–98, 100.

31. Stafford 1983: 80.

32. Leyser 1995: 45.

33. Pedersen 1999: 102.

34. McNamara & Wemple 1977: 104.

35. Gaudemet 1987: 129.

36. Gaudemet 1987: 126–127; d’Avray 2015: 48–79; d’Avray 2014: 11–42.

37. For two opposing views of Nicholas I’s motives, see Kottle 1983; Esmyol 2002.

38. Decretals are papal letters containing an answer from the pope when he had been appealed to or his advice had been sought on a matter of discipline.

39. For a translation of Valla’s seminal analysis, cf Valla 1440.

40. The best study of the Pseudo-Isidorian forgeries is Fuhrmann 1972–1973.

41. Engen 1982–1989; Brundage 1987: 171–173.

42. Moorhead 1994. For a still unsurpassed overview of the marriage law that developed, cf. Brundage 1987.

43. Pennington 1992; Silano 1982 6; Bellomo 1995.

44. Rüdiger 2015; Ubl 2008.

45. d'Avray 2015: 67–68. For a comprehensive study of the *decretum Burchardi,* see Austin 2009. Ubl characterised this collection as a "handbook for the incest campaign of emperor Henry II." Ubl 2008: 435.

46. d'Avray 2015: 67–68. For a comprehensive study of the *decretum Burchardi,* see Austin 2009.

47. d'Avray 2015: 69.

48. Ubl characterised this collection as a "handbook for the incest campaign of emperor Henry II," Ubl 2008: 435.

49. Vaux 1958: 35; Neufeld 1944; Lowy 1958.

50. Vaux 1958: 35.

51. Falk 1966: 1–3; Abrahams 1896: 129.

52. For example, Leopold Loew argues that the mere fact that it was necessary to proclaim a ban was proof that polygamy was still practised. Loew 1893.

53. Many documents in the *Cairo Genizah* deal with polygamy cf. Grossman 2004: 70.

54. Falk 1966: 1.

55. Ullmann 1972.

56. Ullmann 1972: 131.

57. Ullmann 1972: 130–131.

58. d'Avray 2015: 69.

59. Gilchrist 1980; Glanvell 1905; rpt. Aalen: Scientia Verlag, 1967: 37–54; Fournier & Le Bras 1931.

60. Rolker 2012.

61. Bonizo de Sutri 1930.

62. Martin Brett and Bruce Brasington are currently working on a scholarly edition of Ivo s *Panormia*. See *The Panormia Project* (2008), at https://ivo-of-chartres.github.io/index.html (accessed 21 December 2018).

63. Leclercq 1981: 13, 69.

64. Pedersen 2013.

65. Brundage 1987: 183.

66. For an outdated biography of Gratian reflecting the scholarship as it stood in 1909 see A. van Hove, *Johannes Gratian,* in *The catholic encyclopedia* 1907 vi (retrieved 21 December 2018 from http://www.newadvent.org/cathen/06730a.htm). This traditional account should be supplemented by Kuttner 1960. The re-evaluation of the evidence for Gratians biography began with Noonan 1979. See also Winroth 1997b and Winroth 1997a.

67. Brundage 1987: 229.

68. Winroth 1997b; Winroth 1997a.

69. In addition to the already mentioned works, see Winroth 2006.

70. The most comprehensive treatment of the problem of marriage in the *concordia discordantium canonum* is Alessandro 1971.

71. Alessandro 1971: 1.

72. Hugh of St Victor 1880: 860. Part of the translation is taken from Leclercq 1981: 26.

73. Richard of St Victor 1855: 176.

74. Leclercq 1981: 31. Richard of St. Victor warned against a too *passionate* love. But unlike many contemporaries he explained its dangers. Thus, his admonitions can be seen as the result of an insight into the anatomy of love.

75. Sheehan 1974: 445.

76. David d'Avray has contributed numerous studies to our understanding of marriage sermons. His insights from extensive reading of medieval sermons on marriage are now summarised in two volumes d'Avray 2001; d'Avray 2005.

77. The history of marriage as a sacrament is investigated in Reynolds 2016.

78. Adams & Donahue 1981: 27

79. Saxo Grammaticus 2005.

80. Dauvillier 1933: 17–39 and 76–139; Fransen 1971.

81. Pollock & Maitland 1895: 389.

82. Matthew 18:15. Innocent III's decretal *Novit* (X 2.1.13) from 1204 quotes this text to justify papal interference in the dispute between King Philip Augustus of France and King John of England, but its application is clearly universal. See also Acts 15, where the leaders of the early church congregated in Jerusalem to determine whether Christians were bound by the Mosaic law, a question that was first raised by the church in Antioch.

83. The two volumes published by a working group of American and European scholars demonstrates the preponderance of English material: Volume 1 dealt with "The Continent" Donahue 1989 and volume two dealt with England Donahue 1994.

84. Helmholz 1974.

85. Pedersen 2000; Donahue 2007.