

## Papacy, Monarchy and Marriage, 860-1600

**Review Number:** 1922

**Publish date:** Thursday, 21 April, 2016

**Author:** David d'Avray

**ISBN:** 9781107062535

**Date of Publication:** 2015

**Price:** £65.00

**Pages:** 370pp.

**Publisher:** Cambridge University Press

**Publisher url:** <http://www.cambridge.org/gb/academic/subjects/history/european-history-1000-1450/papacy-monarchy-and-marriage-8601600>

**Place of Publication:** Cambridge

**Reviewer:** Sara M. Butler

King Henry VIII's quarrel with the papacy over the annulment of his almost 24-year marriage to Catherine of Aragon is familiar to both popular and historical audiences. What is less well known is that papal interference in royal marriages dates as far back as the Carolingian era, although the tools popes used to defend the indissolubility of marriage evolved over time. As Henry discovered, annulment on the grounds of incest, especially when the church had already granted a dispensation on this matter, held little weight with the Roman pontiff in the 16th century. Not so in the ninth century. When King Lothar II sued for an annulment from his wife Theutberga on charges of incest (and curiously also the somewhat contradictory allegations of sterility and abortion, as well as sodomy, and becoming a nun), his skilled advisers exploited the confusion over forbidden degrees of relationship in order to secure Lothar a divorce. Admittedly, obtaining papal approval was not easy: in the process Pope Nicholas I excommunicated Lothar, Theutberga was ordered to undergo the ordeal of water, the couple had to reunite briefly twice, and it was under another pope altogether that the two were finally granted an annulment. Nevertheless, Lothar and Theutberga's divorce set an important precedent that allowed a handful of medieval royal couples to escape the bonds of marriage. This eminently useful book explains what happened between the time of Lothar and Henry in terms of canon law, annulments, papal intervention and incest laws in order to make Henry's request in the early 16th century not only untenable, but also antiquated.

'Legal formality', as D'Avray calls it, is the simple answer to the question 'what happened'. Over the course of the 12th- and 13th-centuries, canon law metamorphosed into a highly formalized system of law, with judge-led inquisitions, and substantial evidentiary requirements. In terms of marriage, the lawyer-pope Innocent III hammered the final nails in the coffin of dissolubility by tackling the issue of forbidden degrees. Prior to Innocent's Fourth Lateran Council in 1215, the church enforced a prohibition on marriage within seven degrees, such that marriage to a sixth cousin was unfeasible. Yet, what D'Avray has discovered is that the broad scope of the ban, especially when those bonds extended beyond blood also to sponsorship (godparentage) and affinity (sexual relationship), laid it open to royal manipulation. Forging a genealogy became a popular route to annul a marriage in favor of a more fruitful political alliance. Determined to crack down on royal abuses of the sacrament of marriage, Innocent narrowed the prohibited degrees to four, at the same time as he insisted on publication of the banns three Sundays in a row before the wedding. These

innovations, along with the stiffer evidentiary requirements, effectively brought an end to both forged genealogies and annulments of royal marriages.

Under Innocent's successors, we see a requisite loosening of constraints. While the inflexibility of Lateran IV's legislation foiled abuse, it also sometimes prevented good alliances from taking place, that is, alliances that the pope supported. Thus, although the rate of annulments declined, papal dispensations surged with a renewed vigor. Papal dispensations exist to mitigate the rigidity of the law. They are exceptions to the law awarded only at the pope's discretion. From the time of Pope Innocent IV (*r.* 1243–54), papal dispensations were widely available to anyone in the pope's good graces who asked. As D'Avray establishes vividly in the 'documents' section of this book, the pope commonly granted dispensations to marry couples too closely related. The reasons he cited for doing so were far from legalistic in nature. Indeed, the 'soft rationality' he applied ranged from papal plenitude of power, special treatment for those of elite status, a 'thank you' for past services, the need to keep the peace, or in return for crusading support. Yet, keeping in line with the legal formality of the era, the pope's lawyers crafted such ironclad documents that the only way out of a marriage initiated by a papal dispensation was death. This is precisely the problem Henry VIII faced when he sued for an annulment on the grounds of incest. Catherine's short-lived and unconsummated union to Henry's older brother Arthur led the two of them to apply for a dispensation before they married. Therefore, even if Catherine's nephew had not been the Holy Roman Emperor, exerting powerful influence over the Holy See, the pope could not have justified granting an annulment without making a mockery of the entire canon law of marriage.

Organized into 19 short chapters, D'Avray lays out the context and analytical tools for his argument in the first four chapters. The fulcrum upon which D'Avray's analysis pivots is drawn from the work of intellectual historian Quentin Skinner. 'Skinner's theorem' is as follows:

If a ruler's authority depends on the assent of a set or sets of subordinates, it is a rational choice to try to do only what can be legitimated in their eyes, and to refrain from doing what cannot be justified to them, however much one might want to exceed those limits (p. 26).

To put this in more concrete terms, a pope's actions are constrained by the need to appear reasonable in the eyes of the clerical elite. Pope Clement VII denied Henry VIII an annulment, in part, because it would have diminished his integrity and standing within the church. Henry failed to recognize that by the 16th century no pope could legitimate his demand. When it comes to marriage, the pope's scope for political maneuvering was severely limited. The indissolubility of marriage was non-negotiable. Marriage symbolizes Christ's sacred relationship with the human church – clearly, an indissoluble and monogamous union. Thus, granting an annulment that could not be substantiated by canon law was not an option. Incest laws, however, were a man-made creation intended to form new family bonds, rather than merely replicate existing ones. The number four was symbolic: canon 50 of Lateran IV explains that the four degrees mirror the four humors. Thus, if a pope needed to stage-manage the laws of marriage for the benefit of a political alliance, incest laws provided fertile ground. And yet, Henry was stymied here once again because he had already exploited this provision in order to initiate his marriage to Catherine. The legal formality of his dispensation made his marriage binding.

Chapters five to 15 provide a narrative of the changes over time, detailing how the law worked by scrutinizing a wide variety of requests for royal annulments or dispensations and their outcomes. For example, in a chapter on 'biological kinship', D'Avray takes his reader on a European tour, juxtaposing the marriages of Jaume II of Aragon and Isabella of Castile, Henry III of England and Jeanne of Ponthieu, and Charles IV of France and Blanche of Burgundy. In a chapter on 'pre-puberty marriage', he contrasts the dissolutions of Constanza daughter of Juan Manuel and Alfonso XI of Castile with that of Blanca of Castile and Pedro I of Portugal, as well as Ladislao of Durazzo and Costanza Chiaramonte. Here, D'Avray must be commended for his extraordinary facility with languages, including French, German, Italian, Latin, Portuguese, and Spanish, which allowed him to develop a remarkably broad scope for his research.

Accordingly, his analysis of royal marriages encompasses an impressive array of individuals. While most have heard of Henry VIII, or even Philip II 'Augustus', few will be familiar with Premysl Otakar I of Bohemia, László IV of Hungary, Barbara of Brandenburg, or Valdemar of Sweden. This 'big picture' perspective of royal marriage helps D'Avray to make the point that after Pope Innocent III the only royal couples who received an annulment did so because they could justify it by canon law. D'Avray's observation is a necessary counter to the 'optical illusion' (p. 193) that kings could get out of marriages whenever they wished. The comprehensive nature of D'Avray's project also surprisingly underscores that Henry VIII's marital history was more normal than one might think. D'Avray offers a multitude of lurid, scandal-ridden tales of adultery, vengeance, murder, and even pirates (pp. 140–1) that leave the distinct impression that if Henry VIII had lived in Iberia or Hungary his marital history would not appear at all out of the ordinary.

Chapters 16 to 19 offer an overall analysis and a list of his conclusions. The final section of the work contains a collection of 37 dispensations, both in Latin and in translation, annotated to highlight the formal legal rationality, as well as the pope's justification for why he chose to grant or deny the dispensation. Here, it is critical to note that D'Avray sees this book as the 'analytical counterpart of its sister volume' (p. ix) [\*Dissolving Royal Marriages, 860-1600\* \[2\]](#), abbreviated as *DRM*, also published by Cambridge in 2014. The earlier volume showcased the primary source material in translation relating to many of the annulments and marriage disputes he discusses and references in *Papacy, Monarchy and Marriage*. The documentary translations alone are a *tour de force*. Seeing the pope's rationale for granting, or rejecting, a request for a dispensation offers a much better understanding of the dynamics at play. For example, when King Philip of France and Navarre requested an annulment for underage marriage in 1318 before the parties had even reached the age of puberty, the pope's denial builds an unassailable case. He makes it clear that his hands are tied: 'we did not want to undertake a matter which is, as just explained, so unprecedented, so unheard of and contrary to natural law, lest we might seem to extend the plenitude of power beyond what is appropriate and customary' (p. 307). This masterful language lends substantial weight to Skinner's theorem as D'Avray applies it in his book; but it also provides a powerful illustration of medieval diplomacy and the place of the pope in European politics with limitless potential for classroom use.

Despite the book's relevance and utility, it is hard to imagine that many will find *Papacy, Monarchy and Marriage* an enjoyable read. The inaccessibility of the writing is a formidable obstacle that I suspect will deter all but the most dedicated of scholars. Writing in a stilted, laborious, and diagnostic manner more appropriate to his anthropological leaning than to his chosen field of history, D'Avray assumes a learned audience. References to theories or conclusions drawn by other scholars in the field, without any accompanying instruction, only serve to alienate a general audience. Two examples will demonstrate my point. D'Avray casually refers to Georges Duby's 'ingenious' explanation for the political agenda behind Philip II Augustus's decision to divorce his wife Ingeborg (p. 22). Of course, to find out what that agenda was one will have to read Duby. Similarly, D'Avray affirms that he is using the 'applied Diplomatic method' established by Heinrich Fichteneau in his 'classic study' (p. 221). Once again, please see the 1957 book in German for a discussion of what that method entails.

More important still, from the very beginning of the book, D'Avray discourages the notion that this is a 'stand-alone' publication by describing it as a 'sister volume' to his earlier work. His footnotes hint at just how much is missing from the analysis in this book: '[f]or the scholarly underpinnings of this chapter, see *DRM* ...' (p. 145, *n.* 1); or '[b]ackground, bibliography and documents in *DRM* ...' (p. 183, *n.*5). His preface indicates that this book is a product of the conceptual tools D'Avray developed for his *Rationalities in History* and *Medieval Religious Rationalities*, and his footnotes repeatedly cite his own publications for more information.<sup>(1)</sup> Certainly, there is nothing wrong with building on one's own work over the course of a career; indeed, life-long learning should be the goal of every academic. However, an author should not presume that his readers is acquainted with that entire corpus. This book offers the impression that it is directed towards a small group of canon law scholars who are intimately familiar with D'Avray's earlier works.

D'Avray's frequent offhand remarks about fellow scholars are jarring and for that reason alone deserve comment. He fawns over scholars he admires: Quentin Skinner is 'brilliant' (p. x); so, too, is R. H. Helmholz (p. 76, n. 53), and Hans Eberhard Mayer (p. 182, n. 4); Charles Donahue, Jr., is 'great' (p. 170); Alain Boureau is 'particularly original' (p. 5, n. 4); his own doctoral students are 'first-rate' (Catherine Rider, p. 122) and 'brilliant' (Stephen Rhys Davies, p. 95, n. 6). The lavish praise only makes his belittling of other scholars more unnerving. H. T. Sturcken is clearly 'no specialist in medieval marriage law' (p. 154, n. 1); Georges Duby's work 'falls far below minimum scholarly requirements' (p. 62, n. 54); Ivan Ermakoff is a 'sociologist moonlighting in medieval history and resting weight on the not entirely solid foundations of Georges Duby's publications' (p. 69, n.17). Concerning my own work, he writes that I confuse 'high-school break-ups and official divorces' (p. 33, n. 18). Thankfully, the most unprofessional asides he leaves anonymous. Explaining that even some 'well-known scholars' confuse dispensations and annulments, he writes, 'I will not name and shame the great scholar who did so recently in a famous literary journal.' (p. 173, n.104). D'Avray's categorization of scholars into 'great' and 'not-great', as well as his dismissive attitude to those in the latter category, is very off-putting, and may diminish his readership even further.

Regardless, together with *DRM*, D'Avray's *Papacy, Monarchy and Marriage* is the first comprehensive analysis of royal marriages and their dissolution and consequently has much to offer. In particular, for those whose knowledge of marriage laws is limited to the experience of Henry VIII, this book provides an opportunity to put Henry into historical perspective, and understand why Pope Clement VII risked offending the great Defender of the Church by repudiating his urgent and repeated requests for an annulment.

## Notes

1. D. L. D'Avray, *Medieval Religious Rationalities: A Weberian Analysis* (Cambridge, 2010); *Rationalities in History: A Weberian Essay in Comparison* (Cambridge, 2010).[Back to \(1\)](#)

---

**Source URL:** <https://reviews.history.ac.uk/review/1922>

## Links

- [1] <https://reviews.history.ac.uk/item/155921>  
[2] <http://www.history.ac.uk/reviews/review/1806>