

## How Marriage Became One of the Sacraments: The Sacramental Theology of Marriage from its Medieval Origins to the Council of Trent

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I imagine that in recent years John Witte, the series editor of the *Cambridge Studies in Law and Christianity*, frequently crossed paths with the author of the monograph under review here. Both of them work as faculty at Emory University in Atlanta and are senior members of Emory's *Center for the Study of Law and Religion*, with Witte serving as its current director. Close professional ties are further suggested by the extravagant size of Philip Reynold's new book which at almost 1100 printed pages speaks not only to his unflinching determination as a writer, but also to that of a press ready to accept his ponderous manuscript for publication.

What persists in the outcome is Reynolds' sincere worry about the stamina of his readers. He acknowledges right from the start that he would not expect many of them 'to read a book composed on this scale sequentially from cover to cover' (p. xxvii). To facilitate their lot, he further chose to include an elaborate table of contents (pp. vii–xvii) that accommodates no less than 20 chapters and about 100 suitably descriptive subtitles. Additionally, his opening chapter provides 'an overview of the entire study (pp. xxvii–xxviii)', featuring the essence of his argument on what still amounts to a total of 98 pages.

*How Marriage Became One of the Sacraments* is indeed the central question pursued by Reynolds. Along with theology as a branch of higher learning in the Western Church, sacramental doctrine began to form in the early 12th century and attained mature articulation around the time of Thomas Aquinas who died in 1274. Reynolds admits (p. xxvi) that it was in his original plans to write a study on this 'classical' period in the elaboration of the Christian marriage formula alone. His realization, however, that the first generation of theologians soon after 1100 introduced an entirely new understanding of Saint Augustine's teachings on the matter persuaded him to extend the investigation all the way back to the original statements of relevant authors and texts from Antiquity forward (chapters 2–6, pp. 99–243). He also noticed that the period of high scholasticism represented by towering figures like Thomas Aquinas did not offer a convenient place to end the book. Theologians continued to generate original thought and refinement long thereafter and certainly did not furnish any clear-cut break in the doctrinal development prior to the formulation of *Tametsi*, the

famous reform decree on marriage issued by the Catholic Church at the Council of Trent in 1563 (chapters 17–20, pp. 725–982).

The rise of a single and coherent theory of sacramental marriage at the hands of 12th-century theologians and canon lawyers (chapters 7–11, pp. 244–458) together with the establishment of classical church doctrine through the thirteenth century (chapters 12–16, pp. 459–724) constitutes the core of Reynolds' analysis. It takes his readers across relatively familiar ground and devotes much space to works and intellectuals readily expected to have shaped the consensus on marriage as a sacrament in the late medieval Western Church. Reynolds himself does not characterize his own contribution as particularly novel and prefers to consider it a useful synthesis and work of reference, with the added virtue of exhibiting his own 'fresh' reading of the original evidence instead of a mere reiteration of findings from the multilingual and widely scattered secondary literature. If he 'wanted to do more than that' (p. xxv), it was to identify with greater accuracy just who among medieval thinkers brought new elements to the scholastic debate and what it was that historically prompted them to do so.

Scholastic reflection ultimately established that the process of contracting sacramental marriage was comprised of several elements including a 'future' promise or the definitive 'present' consent between one eligible man and woman to marry each other, and the successive carnal consummation of their mutual commitment. Since the first sacramental bond had united Adam and Eve as early as in Paradise, moreover, theologians had to develop a rationale that would confer some of the sacramental blessings inherent in the institution to all of humanity and not merely the baptized. They also had to devise arguments in favor of something that would set Christian marriages apart from pagan ones and make the former worthier in God's eyes. In due course, biblical exegesis led to the conclusion that absolute indissolubility could only reside in unions between two believers, reaching an almost perfect degree in those who had exchanged proper matrimonial vows while never attaining absolute perfection until intercourse had ensued between the partners. Theological finesse again abounded with regard to questions about the way in which matrimony differed from the remaining six sacraments, about how divine grace reached the newlyweds, and what exactly it consisted of.

For many observers then as well as today, however, the most startling component of scholastic sacramental doctrine was the insistence on free consent between the spouses as the sole requisite for marriage contracts to acquire validity. Neither a public ceremony, nor the presence of a priest, of relatives, or of witnesses was necessary to create permanent matrimonial obligations and secure approval from the ecclesiastical hierarchy. As a result, so-called clandestine marriages, contracted without publicity and sufficient testimony proliferated and quickly provoked prohibition from church as well as lay legislators. All the same, the rule establishing binding force 'by consent alone (*solo consensu*)' stood firm from its formulation in the 1100s to the promulgation of *Tametsi* in 1563, enduring for the astonishing length of 400 years. 'Medieval clerics, canonists, and theologians did not celebrate the possibility of marrying clandestinely', Reynolds writes in his concluding section, although 'they reluctantly accepted that there was no way to make them invalid' (pp. 981–2).

The unending issue of clandestinity, deeply embedded in the late medieval construct of sacramental marriage, affords Reynolds with an ideal opportunity to make good on his inaugural promise and expound why the scholastic experts would have 'argued as they did, for they often used forms of argument that would convince few if any today' (p. xxv). In order to uncover socio-historical causes such as the ones behind the peculiar theological choice of sole consent as the cornerstone of canonical marriage, Reynold laces his treatment with brief forays into the wider historical context and asked what tangible influences can be discerned beyond the narrow discourse of contemporary academics. In so doing and venturing outside his own primary expertise as a medievalist theologian and intellectual historian, he relinquishes the 'fresh' and direct consultation of the primary material on display elsewhere in his book and relies with greater regularity on works of secondary literature written in the English language.

The historians of medieval canon law cited by Reynolds generally agree on certain normative and political

circumstances that supposedly informed 12th-century normative thought during the build-up of sacramental doctrine. In Reynolds' words, for example, 'the inclusion of marriage among the sacraments presupposed that the church had exclusive legal competence as regards both legislation and jurisdiction over the essential matters of marriage' (p. 36). His assessment is in line with the widely held historiographical belief that church courts had managed to secure 'exclusive jurisdiction over marriage around 1100' (pp. 38–9), and prepared the ground for theologians to conceive of the institution as something that already possessed universality for Christians similar to the other sacraments. In effect, modern scholarship on England and Northern France quite unanimously delineates a historical setting in which both theory and practice had no one except ecclesiastical judges adjudicate whether or not marital claims were legally valid. To cite Ruth Mazo Karras (1), domestic partnerships outside of wedlock as defined by the priesthood could only feature as 'unmarriages' at the time.

Absent from the bibliography of the book, however, is the increasing number of studies investigating matrimonial litigation in other places, such as the works on judicial practice in the Northern Italian city-states by Silvana Seidel-Menchi and Cecilia Cristellon.(2) Beginning in the late 1990s, these authors have challenged the purported centrality of church law for the laity, citing rich archival evidence to argue that Italian marriages figured largely as privately notarized agreements, which left little room for spouses to consent freely and escape the heavy-handed brokerage and omnipresence of friends and family. In similar vein, Trevor Dean has shown that for centuries Italian city statutes criminalized persons who married without parental consent.(3) As late as in 1500, surprisingly few litigants took their matrimonial complaints to the bishop's vicar who ordinarily would have been in charge according to the canonical norms. Lay indifference was further reinforced by the slowness or outright passivity ecclesiastical officials demonstrated far and wide, from England to Sicily and Portugal to Poland, when it came to prosecuting public allegations concerned even with the most notorious breaches of sacramental standards. During the heyday of Thomas Aquinas in the 1260s, moreover, the royal Castilian laws of the *Siete partidas* (4.14) perpetuated the *barragania*, a form of civil marriage that explicitly permitted consensual splits or divorce in the modern sense of the word.(4) Writing on the eve of the Tridentine Council, the leading Spanish jurist, Gregorio Lopez (who died in 1560), continued to stress the plain impossibility of reconciling the lawfulness of the *barragania* with the matrimonial parameters set by the Roman Church.(5) As a result, ecclesiastical jurisdiction over legitimate sexual unions may have been aspirational rather than fully established in the 1100s and for many years thereafter.

When lastly, in 1563, the decree *Tametsi* transformed sacramental marriage from an event centered on the contracting couple to one hinging on the presence of the parish priest (and two additional witnesses) at the moment consent was exchanged, a revolutionary turnaround had occurred that contemporary observers as well as modern scholars have struggled to understand in historical terms. None of the proponents of the new rule, Reynolds intriguingly states in his final remarks, was able to 'explain why invalidation was more expedient in the sixteenth century than hitherto' (p. 982) and at any time following the development of sacramental theory in the 1100s.(6) The social history of what induced early scholasticism to embrace, say, clandestinity, thus remains unwritten notwithstanding the considerable achievement of Reynold's book. For the first time, it offers Anglophone and global readerships a magisterial and comprehensive guide to Western theological reflection on a subject that is captured so adequately in the title.

## Notes

1. Ruth Mazo Karras, *Unmarriages. Women, Men, and Sexual Unions in the Middle Ages* (Philadelphia, PA, 2012).[Back to \(1\)](#)
2. Silvana Seidel-Menchi, 'I processi matrimoniali come fonte storica', in *Coniughi nemici. La separazione in Italia dal XII al XVII secolo*, ed. Silvana Seidel-Menchi and Diego Quaglioni (Bologna, 2000) pp. 15–94; Cecilia Cristellon, *La carità e l'eros. Il matrimonio, la Chiesa, i suoi giudici nella Venezia del Rinascimento (1420–1545)* (Bologna, 2010); now available in English as *Marriage, the Church and Its Judges in Renaissance Venice 1420–1545* (London, 2017).[Back to \(2\)](#)
3. Trevor Dean, 'A regional cluster? Italian secular laws on abduction, forced and clandestine marriage

(fourteenth and fifteenth centuries)', in *Regional Variations in Matrimonial Law and Custom in Europe, 1150–1600*, ed. Mia Korpiola (Leiden, 2011), pp. 147–59.[Back to \(3\)](#)

4. *Las Siete Partidas*, 4.14, trans. Samuel Parsons Scott, ed. Robert I. Burns S.J. (Philadelphia, PA, 2001).[Back to \(4\)](#)
5. *Las Siete Partidas*, 4.14.2, 'Una sola', in *Las siete partidas del sabio Rey Don Alonso el Nono*, ed. Gregorio Lopez de Tovar (7 vols; Valladolid, 1587–98), vol. 4, fol. 41rb (no. 15): 'In order to create a licit concubinage, several things are required by the civil law, because concubinage cannot exist in any way according to canon law for it is contrary to the precept of the Ten Commandments: "Do not commit adultery" (my translation from the Latin)'.[Back to \(5\)](#)
6. I am presently writing a monograph entitled 'Marriage litigation in the Western Church, 1215–1517', in which I intend to address this question.[Back to \(16\)](#)

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