**Medieval Sex & Marriage**

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Recent legislation designed to change the nature of marriage have led to allegedly unprecedented situations – the Church at odds with government over marriage, attempts to change the ‘changeless’ nature of marriage, the assertion that ‘we all know what marriage is...’ Medievalists will doubtless have been less shocked by these developments than many commentators, as they will be well aware that the marriage laws have a long and deeply contested history. It might be helpful for readers of BBC History to quickly run through the early development of the nature of Christian marriage.

The early Christians lived in the Roman Empire and so under Roman Law. We know quite a lot about Roman laws of marriage thanks to the compilation of laws produced by the Emperor Justinian around 534. This collection of works included not just current legislation but an account of previous legislation as well. Roman marriage looks to us like a model of liberality - consent between the parties and the presence of *affectio maritalis* made you married, its absence dissolved that marriage. It has been said that ‘*being married (in Rome) was as much a matter of fact as a matter of law*’ but this is within the context of a very different understanding of family. The Roman *paterfamilias* was head of a family but not a part of it. The characteristic of *patria potestas* meant that a father held a continuing power over his children, regardless of marriage. So while marriage may have been ‘free’, it was far from free from parental control.

In the hierarchical state of Rome, status had to be preserved: slaves had no right to be married, freemen were forbidden from marrying ‘*harlots, actresses or other loose women’* Imperial officials were not allowed to marry women from the provinces in which they held office and there were restrictions based on partners’ blood relationship. Women under the age of 12 or over the age of 50 were not allowed to marry, although the latter were allowed to be concubines.

Roman marriage was strictly monogamous but divorce was a relatively straightforward matter, making serial monogamy a popular option. In 533 Justinian enacted a law allowing a man to divorce his wife if she procured an abortion, attempted marriage with another man or made a habit of bathing in the company of men other than her husband. He also allowed men to divorce in order to enter the monastic life.

The marriage laws as we see them in Justinian’s law codes paint a picture of strong family control over an essentially private affair. Christian emperors had increased restrictions, but there was little attempt by the State or Church to control marriage in the way in which we have since become familiar.

It was another 600 years before the next attempt to codify the existing rules and practices of Christendom. Gratian’s *Decretum* appeared about around 1140 and aimed to create harmony from the collection of discordant canons which made up Church law. The *Decretum* was enormous in its scope with almost 4000 excerpts from patristic writers, councils, papal letters and penitentials, and its analytical method included a *dicta*, Gratian’s own commentary.

An illustration of Gratian’s method can be seen by examining *Causa 27, questione 2* where Gratian considers what constitutes a legal marriage. He starts by quoting John Chrysostom and Pope Nicholas declaring that consent alone makes a marriage, using Mary and Joseph as an example. Gratian then introduces contrary views from Pope Leo and Augustine:

*Those who are not joined by sexual intercourse have not entered marriage. There is, I say, no doubt that a woman has not entered marriage, if there has been no sexual intercourse.*

After answering several other points Gratian arrives at a final definition of a valid Christian marriage (ante c35)

It must be understood that marriage is begun by betrothal and consummated by intercourse. Hence between the betrothed there is marriage, but only as to its beginning; between the joined, there is a ratified marriage.

Gratian’s answer to the contentious question of whether entering the religious life was a justification for ending a marriage was that it was not. Because of the importance he gives to Paul’s command on the ‘marital debt’, it is clear that one partner cannot walk away from the sexual side of marriage. However, a betrothed person of either sex can renege on their marriage vow and enter a monastery, since betrothal without consummation is not a *ratified* marriage.

That Gratian uses the concept of ‘marital debt’ may seem counter-intuitive given his strong support of clerical celibacy. However, it may be that this sexual imperative within marriage acted as a further discriminator between the clergy and laity, and that by commanding the laity to embrace sexual relations, the clergy were further elevated in status.

It follows from Gratian’s view of marriage formation that non-consummated marriages are incomplete, and so can be dissolved. Similarly, if one party proves impotent, consummation would not be possible so again, any marriage dissolved. His view of remarriage after the death of a spouse was that while it would be better for the surviving partners to live in continence, a remarriage was better than a lapse into fornication.

The importance of the *Decretum* was that it enabled a coherent, consistent and authoritative approach to canon law to be promulgated and used across Europe. For both secular and ecclesiastical rulers in the century which established the written word as the source of authority, law was a means to power. And lawyers – or rather canonists - were recruited to the papal curia in large numbers in the twelfth century, and such was their new standing, several popes emerged from their ranks.

Two of these ‘lawyer popes’ showed particular interest in further developing the marriage laws, Alexander III and Innocent III. Alexander was particularly concerned with freeing marriage from the influence of aristocratic families and sought to make marriage the truly free choice of the participants. His innovations caused marriage to be easier to contract, but harder to dissolve. In particular he rejected Gratian’s betrothal + consummation = ratified marriage in favour of Peter Lombard’s distinction between *de presenti* (present consent) and *de futuro* (future consent). This maintained that consent to marry was different from consent to intercourse; a promise to marry immediately was a binding marriage, while a promise to marry in the future required consummation to create indissoluble marriage. Such consent barred any other marriage so long as the parties lived. This allowed for a ‘chaste marriage’, a popular concept at that time, since even if never consummated a marriage remained valid.

Innocent III supported Alexander’s approach to marriage and enshrined his contributions to church law at the Fourth Lateran Council in 1215. Canon 50 from that one could not marry a third cousin or anyone who had slept with one, but anyone beyond that relationship was valid. However, the church was now determined to uphold this prohibition, and so for the first time the church forbade clandestine marriage (meaning a marriage which cannot be proved because of lack of witnesses, without any ceremony or lacking the publication of banns) insisting that all marriages should be ‘*announced publicly in the churches by priests during a suitable and fixed time, so that if legitimate impediments exist, they may be known.*’

Despite this robust language, clandestine marriages were not invalid and although marriage in a church conducted by a priest was encouraged, lack of ‘solemnity’ did not make a marriage invalid. Throughout the later Middle Ages, valid marriages continued to be held in kitchens, inns and fields.

These changes to the marriage laws are captured in the *Liber Extra*, promulgated in 1234 and subsumed in the *Codex Iuris Canonici* and remained the law of the church until 1917.

As a result of the work by Gratian, Innocent and Alexander, throughout the medieval period marriage was firmly located in Sacerdotium – it was the Church’s business not the state’s.

The importance the medieval church place on the sex act may seem counter-intuitive, but was essential in maintaining the divide between a celibate clergy in an asexual church and a sexually active laity in a sexualised secular society. The church’s continued support of lovers enacting *present consent* marriage, and to some extent by accepting the validity of clandestine marriages even though declaring them illegal, makes it clear that marriage has not always been simply a matter of dowry agreements between important families. It usually was, of course, but the church was prepared to intervene on behalf of young lovers against their more powerful relatives.