

Cambridge Studies in Law and Christianity



# How Marriage Became One of the Sacraments

PHILIP L. REYNOLDS



## HOW MARRIAGE BECAME ONE OF THE SACRAMENTS

Among the contributions of the medieval church to western culture was the idea that marriage was one of the seven sacraments, which defined the role of married folk in the church. Although the idea had ancient roots, this new way of regarding marriage raised many problems, to which scholastic theologians applied all their ingenuity. By the late Middle Ages, the doctrine was fully established in Christian thought and practice but not yet as dogma. In the sixteenth century, with the entire Catholic teaching on marriage and celibacy and its associated law and jurisdiction under attack by the Protestant reformers, the Council of Trent defined the doctrine as a dogma of faith for the first time but made major changes to it. Rather than focusing on a particular aspect of these intellectual and institutional developments, this book examines them in depth and in detail from their ancient precedents to the Council of Trent.

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THE SACRAMENTAL THEOLOGY OF MARRIAGE FROM  
ITS MEDIEVAL ORIGINS TO THE COUNCIL OF TRENT

PHILIP L. REYNOLDS



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The art of good lywyng [and] good deyng*, published by  
Antoine Vérard in Paris, 1503, from a copy held by the  
British Library. Image distributed by *Early English Books  
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without permission. *page* 85
- 2 Diagram of the spiritual journey of life: British Library Additional  
Manuscript 37049, ff. 72v–73r. 86
- 3 BL Add. MS 37049, detail. 88



## Abbreviations

abbr.	abbreviation, or abbreviated as
arg. 1c [etc.]	The first of the contrary arguments in a scholastic article. (Contrary arguments are those which appear in the second place, after the arguments for the initial thesis, regardless of which set represents the position that the author defends in his response.)
ASD	<i>Opera Omnia Desiderii Erasmi</i> . Amsterdam edition. Leiden, 1969–.
ADHLMMA	<i>Archives d'histoire doctrinale et littéraire du moyen âge</i>
BA	Bibliothèque Augustinienne, Oeuvres de Saint Augustin. Paris, 1949–
BMCL	<i>Bulletin of Medieval Canon Law</i>
BGPh(Th)MA	<i>Beiträge zur Geschichte der Philosophie (und Theologie) des Mittelalters</i>
Brev.	<i>Breviarium Alaricanum</i> , = <i>Lex Romana Visigothorum</i> , ed. Hänel (1848)
CCL	<i>Corpus Christianorum. Series latina</i>
CCM	<i>Corpus Christianorum. Continuatio medievalis</i>
CIC	<i>Corpus Iuris Canonici</i> , ed. E. Friedberg, 2 vols (Leipzig, 1881)
CJ	<i>Codex Iustinianus</i> [2nd ed. 534]
1 Comp. (etc.)	<i>Compilatio prima</i> (etc.), in <i>Quinque compilationes antiquae</i> , ed. E. Friedberg.
CSEL	<i>Corpus Scriptorum Ecclesiasticorum Latinorum</i>
CT	<i>Concilium Tridentinum: Diariorum, actorum, epistularum, tractatum nova collectio</i> , edidit Societas Goerresiana Promovendis inter Germanos Catholicos Litterarum Studiis (Friburgi Brisgoviae 1901–2001)
CTh	<i>Codex Theodosianus</i>
DDC	<i>Dictionnaire de droit canonique</i>

Dig.	<i>Digesta Iustiniani</i>
DS	Denzinger-Schönmetzer, <i>Enchiridion Symbolurum, Definitionum et Declarationum</i>
ed.	“edited by,” “edition,” or “editor,” as appropriate in context.
Esmein-	A. Esmein, <i>Le mariage en droit canonique</i> , 2nd edition, ed.
Genestal	R. Génestal and J. Dauvillier, 2 vols (Paris, 1929, 1935)
Gaius, <i>Instit.</i>	<i>Gai Institutiones iuris civilis comentarii quatuor Iustiniani Institutiones</i>
IPH 1 [etc.]	Patristic sentences of the <i>In primis hominibus</i> , as enumerated by Matecki
JL	Refers to the numeration of decretals in Jaffé-Loewenfeld, <i>Regesta pontificum romanorum ab condita ecclesia ad annum post Christum natum MCXCVIII</i> .
LB	<i>Desiderii Erasmi Roterodami Opera omnia</i> , ed. J. Leclerc (Leyden, 1703–1706)
Le Bras, “Mariage”	G. Le Bras, “Mariage. La doctrine du mariage chez les théologiens et les canonistes depuis l’an mille,” DDC 9.2, 2123–2317.
Lottin, PsM V LP 1 [etc.]	O. Lottin, <i>Psychologie et morale aux XII<sup>e</sup> et XIII<sup>e</sup> siècles</i> , vol. 5 <i>Sententiae</i> of the <i>Liber Pancrisis</i> enumerated according to MS British Library, Harley 3098. See Giraud, <i>Per verba magistri</i> , 503–51.
MGH	<i>Monumenta Germaniae Historica</i>
MWCh	Philip L. Reynolds, <i>Marriage in the Western Church</i> (Leiden, 1994)
Nov.	<i>Novellae Iustiniani</i>
Mansi	J.-D. Mansi (ed.), <i>Sacrorum Conciliorum Nova et Amplissima Collectio</i>
NE	<i>Nicomachean Ethics</i> (Aristotle)
NF 1 [etc.]	The enumeration of <i>sententiae</i> in Lottin, “Nouveaux fragments théologiques,” RThAM 11–14 (1939–1947)
Paulus, <i>Sent.</i>	<i>Sententiae Pauli</i>
PG	<i>Patrologia Graeca</i> , ed. J.-P. Migne
PL	<i>Patrologia Latina</i> , ed. J.-P. Migne
PM 1 [etc.]	The enumeration of <i>sententiae</i> in Lottin, PsM V
RDC	<i>Revue de droit canonique</i>
repr.	Reprinted, or reproduced
RThAM	<i>Recherches de théologie ancienne et médiévale</i>
RThPhM	<i>Recherches de théologie et philosophie médiévales</i>
s.c.	<i>sed contra</i>
SC	Sources Chrétiennes. Les Éditions du Cerf, Paris

SMA 1 [etc.]	<i>Sententiae Magistri A.: De matrimonio</i> , as enumerated in Reinhardt's edition
Tanner-Alberigo	<i>Decrees of the Ecumenical Councils</i> (London, 1990)
THTH	Philip L. Reynolds and John Witte, Jr. (eds), <i>To Have and to Hold</i> (Cambridge University Press, 2007)
un.	<i>unicus</i> (as in <i>articulus unicus, quaestio unica</i> , etc.)
WA	<i>D. Martin Luthers Werke: kritische Gesamtausgabe</i> [Weimarer Ausgabe], <i>Schriften</i> . Weimar, 1883–1948.
WH	Refers to the numeration of decretals in the <i>Walther-Holtzmann-Kartei</i> index.
X	<i>Liber extra</i> , = <i>Decretales Gregorii IX</i> . In Friedberg, <i>Corpus Iuris Canonici</i> , vol. 2
Citations	3:3/3 = vol. 3, p. 3 (or col. 3), line 3. Lines are enumerated from the top of the text on each page unless the edition provides its own enumeration.



## Preface and acknowledgments

This book is my contribution to a project on Sex, Marriage, and Family and the Religions of the Book, organized by the Center for the Study of Law and Religion (CSLR) at Emory University in Atlanta. The project ran from 2001 through 2007, with regular meetings among the senior fellows through 2003. I am very grateful to the late Don S. Browning and to John Witte, Jr., who co-directed the project, as well as to The Pew Charitable Trusts, which funded it.

I have endeavored to explain herein how marriage came to be regarded as one of the seven sacraments. It is well known that this doctrine, like the universities and much of due process in our courts of law, was one of the medieval church's contributions to western culture. It is equally well known that the doctrine was first defined as a dogma of faith at the Council of Trent in 1563, which defended it against the Protestant reformers. Its origins were in the early twelfth century, and the core of the doctrine was complete by the middle of the thirteenth. This history is well documented, although until now a minimal reading list covering it adequately would have to include literature of varying quality in several languages, most of it now showing its age. But this literature would tell us only who said what and when, what were the arguments and counterarguments, the rival theories, and so forth.

I realized even before I started writing the book in 2003 that it would have to be very long. I would have to revisit all the ground that had already been covered in the extensive secondary literature on the topic, amplifying, updating, and adding to it. But I wanted to do more than that: to take a broader, more distanced, and more searching view. I try to explain what was new when the doctrine emerged, and to distinguish that from what was received and traditional. I try to show *why* theologians, canonists, and other clerics argued as they did, for they often used forms of argument that would convince few if any today. What were their presuppositions? What difference did the doctrine make? Why did it matter? What was at stake?

Moreover, the doctrine was largely the work of scholastic theologians, no two of whom agreed about this or any other subject at every point. Their arguments and

counterarguments about marriage as a sacrament were extremely intricate. Only a small part of any theologian's treatment of marriage in a commentary on Peter Lombard's *Sentences* or in a *summa* of theology was devoted to the sacramentality of marriage, but the topic elicited enormous invention and ingenuity, partly because marriage did not fit the sacramental paradigm easily. In several salient respects, marriage did not *look* like a sacrament. Furthermore, scholastic theologians were intellectuals who thoroughly enjoyed their work and relished problems in need of solution. That a certain master had said one thing was often sufficient reason for another to say something different, especially when no established dogma was at stake and there was no risk of heresy. For example, the schoolmen assumed that each sacrament had an essence composed of form and matter. In the case of baptism, the form was the formula of blessing spoken by the minister, whereas the matter was the ritual ablution with water. But what were the matter and the form of marriage? The question was not dangerous. Any professional theologian could come up with plausible candidates and defend them adequately. There was no need to fear that marriage would be shown not to be a sacrament because it did not have an essence composed of form and matter. But extending the hylomorphic analysis from paradigmatic sacraments such as baptism and eucharist to marriage was a stretch. Theologians delighted in coming up with their own personal solutions to such problems.

The dimensions of the project expanded as I worked on it, largely because the chronological scope of project extended both backwards and forwards. I had originally planned to begin in the early twelfth century, when the doctrine originated, and to finish with Thomas Aquinas, in whose work it arguably reached its full development. But the origination of the doctrine involved a new reception of Augustine. Theologians during the early twelfth century gathered hitherto little used material from Augustine on marriage from florilegia, sometimes assembling it in ways that he could not have anticipated. I had intended to refer readers in this book to what I had written on marriage in Augustine in an earlier book,<sup>1</sup> but I found that I was not entirely satisfied with the earlier treatment, and I decided to make a fresh start. This book includes, therefore, three preliminary chapters on Augustine (*Chapters 2–4*), in which I try to establish what Augustine himself meant by what he said about marriage, as distinct from what twelfth-century theologians creatively made out of his statements and opinions on the topic. Again, the origins of the sacramental doctrine presupposed conceptions of marrying that differed from those prevailing in the early Middle Ages, and one needs to construe that emergence as part of an effort on the part of bishops and clerics to take control over how people married; to enforce the rules and regulations. Both of these considerations require attention to traditional structures and presuppositions: the nuptial process, marital consent, and consummation. Here, too, I had planned to refer to my earlier book but decided on reflection to make a fresh start, recounting the historical background of marital

<sup>1</sup> *Marriage in the Western Church* (Leiden, 1994).

consent and consummation, the ambiguities that these traditions presented to churchmen, and the competing solutions to such ambiguities that evolved during the late eleventh and the twelfth centuries (Chapters 5–7).

The study also extended forward to the sixteenth century. I could not find a natural boundary during the central Middle Ages. The theology of marriage continued to evolve through the fourteenth century. It is true that some famous theologians of that era, working in the ingenious but crabbed spirit of late-medieval scholasticism, were so preoccupied with narrowly philosophical and epistemological problems that they chose to ignore marriage and the other sacraments. At the same time, many fourteenth-century theologians ceased to cover the canonical rules and regulations of marriage, partly because there was little there that was problematic or controversial, and partly because the disciplines of theology and canon law had grown apart. Nevertheless, a few major theologians continued to provide new solutions to old problems in the sacramental theology of marriage. In particular, the objections of Durandus of Pourçain (d. 1334) to the sacramentality of marriage elicited new solutions and counterarguments (Section 14.8). Each new contribution sheds fresh light today on the preceding treatments. Although not much happened in the theology of marriage during the fifteenth century, I could not find any medieval end point that would have seemed more than arbitrary. Eventually, I realized that the first natural boundary was the Council of Trent. That, too, sheds new light on marriage in medieval scholastic theology and canon law during the previous centuries. To treat Trent adequately, however, I had to examine Protestant critique, the Catholic response to that critique during the first half of the sixteenth century, and the proceedings on marriage not only at Trent in 1563 but also at Bologna in 1547, where the council's deliberations on marriage began. The last four chapters of the book (Chapters 17–20) are devoted to these sixteenth-century developments.

There was another reason for the project's growth. Thoroughness breeds thoroughness. Subjects that I might have mentioned only *en passant* in a succinct study called for a full discussion in a study on this scale. For example, Vacarius's theory of marrying as a form of *traditio* (Section 7.5), while interesting from the perspective of legal theory, contributed little to the story of how marriage became a sacrament. In a brief study of that topic, therefore, I might have mentioned Vacarius's theory only in passing, as a historical curiosity. But that omission would have been inappropriate and even unforgivable when I cover much else extensively.

Realizing that I could not expect many interested readers to read a book composed on this scale sequentially from cover to cover, I endeavored to make it as accessible and as useful as possible by dividing and subdividing each chapter into numbered sections, which are identified in the table of contents. I include cross-references to these sections parenthetically in the main text.

Because the table of contents reveals the scope and organization of the book fully and clearly, an introductory chapter-by-chapter synopsis would have been redundant. Instead, the first chapter is an essay that provides the reader with an overview of

the entire study. I do not claim to have said everything worth saying on my subject – far from it – but I believe that I have provided a treatment that will serve as a point of reference for other related or more detailed studies, whether they are historical or theological.

A note on my policies of translation: English translations of patristic and medieval Latin texts are my own unless otherwise stated. I provide the Latin original for a passage that I have translated only if its wording is remarkable, problematic, or discussed in the main text, or if the source is not readily available in a printed edition. Many early printed editions of scholastic works that were virtually inaccessible twenty years ago are now readily available through online services such as Google Books and Hathi Trust Digital Library.

I have based English quotations of the Bible sometimes on the Douai-Rheims version but more often on the King James Bible. The former was a faithful, rather literal translation of the Vulgate. Although the translators and editors of the King James Bible consulted the Hebrew and Greek sources available to them, this was in effect a revised version of the Douai-Rheims, incorporating many of its idiomatic solutions (a debt that is rarely acknowledged). As a result, the King James Version remains remarkably close to the Vulgate. Moreover, like the works of William Shakespeare, it still has the advantage of cultural familiarity among English-speaking readers, for the influence of its phrases and idioms on our usage is pervasive. When quoting from the Douai-Rheims or King James version, however, I have sometimes modernized obsolete idioms that would have been pointlessly obscure or distracting to the modern reader. Moreover, I have modified these sources without notice to convey as closely as possible the sense of the Vulgate *as it was understood and interpreted by the authors whom I am discussing*. Quotations of the same verses of the Bible in English, therefore, are not always consistent throughout the book.

The section on Pedro Guerrero's treatise on clandestine marriage in [Chapter 20](#) has been published (with minor variations) in Troy L. Harris, *Studies in Canon Law and Common Law in Honor of R. H. Helmholz*, copyright 2015 by the Regents of the University of California, The Robbins Religious and Civil Law Collection, School of Law, University of California at Berkeley.

I am deeply grateful to Dr Line Cecilie Engh, who convened a workshop on medieval marriage symbolism at the Norwegian Institute in Rome in June, 2014, and summoned me to it. The meeting caused me to rethink and revise my treatment of marriage as sacred signifier in the first chapter. After working in the field for some thirty years, I still find the logic, argument, and semiotics of signs in the medieval theology of marriage both baffling and fascinating. The work of the Rome project that Line inaugurated is still unfolding.

I have received practical help and advice from many established scholars, graduate students, librarians, and archivists in the course of writing this book. They are too numerous to name, and a short list might offend those whom I failed to mention. I shall limit myself, therefore, to a few words of special thanks to three colleagues

who were personally involved in the project. I am very grateful to Severin Kitanov, who is now a professor of philosophy at Salem State University, and to Sarah Bogue. Severin, whom I first met while teaching in Helsinki, helped me with bibliographical research at an early stage of the project, when he was a visiting doctoral student at Emory University. Sarah, who is currently writing her dissertation on Hrosvit of Gandersheim at Emory, read all of the chapters in draft, alerting me to corrigenda and pointing out places where the sense was unclear. Finally, I must acknowledge a huge debt to my colleague John Witte, Jr., director of Emory's Center for the Study of Law and Religion, of which I am privileged to be a senior fellow. John not only encouraged me to write the book but also discouraged me from abandoning the project at moments when I was becoming daunted by its emerging scope. I am grateful to John, too, for his work as an intellectual leader at Emory University, where the CSLR under his direction fosters free and diverse but disciplined and informed inquiry into law and religion.



## Marriage as a sacrament

How did marriage come to be regarded as one of the sacraments? The doctrine was not defined as a dogma of faith until 1563, when the Council of Trent declared that marriage was properly one of the seven sacraments of the New Law and spelled out the implications of the dogma. Criticism of the doctrine by Luther and others had made it seem an indispensable pillar of Catholic teaching. Any narrative that follows the development of something over a long duration presupposes an end point – although the historian must try to regard each stage as if nothing came next, since at that time the future did not yet exist – and the end point for this monograph is the Council of Trent.

When did the doctrine emerge? By the sixteenth century, it was already well established in Catholic theology and practice. Tracing the development of the doctrine retrospectively, one reaches its origins during the first half of the twelfth century, and the trail peters out around 1100. The emergence involved two surges of constructive theology: one during the first half of the twelfth century, and another during the first half of the thirteenth. But belief that marriage was a holy estate, a Christian vocation, and a way of participating in the life of the church was ancient. What was new was the decision on the part of churchmen to account for that holiness by construing marriage as one of the sacraments of the New Law. This decision was not a sudden event but a complicated development of thought, practice, and imagination that took place over a period of more than a century.

Two major shifts in perspective resulted from that decision. First, marriage as a sacrament was primarily the transient act of marrying rather than the enduring condition of being married. Hitherto, theologians and moralists had focused on the married estate. But now, just as the sacrament of baptism was the rite that took place at the church font and not the resulting baptismal character, so the sacrament of marriage was the couple's exchange of mutual consent, which ideally took place in a church. Second, the doctrine entailed a new use of Scripture.

The “great sacrament” of Ephesians 5:32 became identified with marriage, which theologians now characterized as the “sacrament of Christ and the church.” Exegetes from the patristic period until the late eleventh century, on the contrary, had identified St Paul’s *sacramentum magnum* either with the union between Christ and the church or with Genesis 2:24, construed as a prophecy. St Paul’s discourse on marriage in Ephesians (Eph 5:22–33) became the chief biblical authority on the holiness of marriage in theology – albeit not in the nuptial liturgy, which remained untouched by theological developments for several more centuries. Use of this discourse to illuminate marriage was rare before 1100, as was the notion that literal, human marriage – the institution in reality rather than figurative marriage – should be interpreted as representing Christ’s union with the church. A handful of patristic and early-medieval texts comparing marriage to Christ’s union with the church and alluding obliquely to Ephesians 5:32 became crucial in theology and canon law during the central Middle Ages, when they were frequently quoted, misquoted, and analyzed. That use has tended to disguise the rarity of the comparison before 1100, when churchmen often regarded the church as the bride of Christ but rarely regarded literal, mundane marriage in that light.

### 1.1 THE DEVELOPMENT IN RETROSPECT

On March 3, 1547, at Session VII, the Council of Trent declared that there were seven sacraments of the New Law: baptism, confirmation, eucharist, penance, extreme unction, orders, and marriage (Section 18.2.1). The first of the canons on the sacraments in general anathematizes anyone who says that these were not all instituted by Jesus Christ, or that there are more or less than seven, or that any of them is not “truly and properly” (*vere et proprie*) a sacrament.<sup>1</sup> These sacraments are collectively necessary for salvation, for “faith in the divine promise” does not suffice. Each sacrament contains a grace that it signifies, conferring it *ex opere operato* on any recipient who puts no obstacle in its way.<sup>2</sup> The seven sacraments differ fundamentally from the sacraments of the Old Law, therefore, and not only in respect of ceremonies and external rituals.<sup>3</sup> Marriage was no exception.

The general dogma implied that the seven sacraments constituted a closed genus, of which each member was a species. Unlike good things, for example, or sacred signs, the sacraments were countable, and each member was fully

<sup>1</sup> Session VII (March 3, 1547), *Canones de sacramentis in genere*, canon 1 (Tanner-Alberigo 684).

<sup>2</sup> *Ibid.*, canons 4, 6, 8 (684, 685). To say that a sacrament confers grace *ex opere operato* was to say that the recipient would receive the grace by virtue of receiving the sacrament (rather than as a result of any personal work or effort or pre-existing grace), provided that he or she did not present an obstacle to grace, such as a wrong intention in receiving the sacrament or a mortal sin.

<sup>3</sup> *Ibid.*, canons 5 and 2.

individuated. Their number was fixed and rather small, like that of the primary colors. The historical category of sacraments of the New Law was coextensive with the ontological category of sacraments properly so called, or sacraments in the strictest sense. These shared a common essence, which could be predicated univocally of all seven sacraments. The common definition defined the genus, whereas each sacrament had its specific differences and other salient properties. Any theologically literate reader would have understood what that generic essence was. These were by definition sacred signs that conferred graces that they signified. In other words, they were efficacious sacred signs, or saving signs. Each sacrament conferred its own specific and unique grace, and all the sacramental graces flowed or ramified from the Passion of Jesus Christ (Plate 2). Together, they made up a complete system, providing all the sacramental graces that were necessary for salvation.

The council went on to publish specific doctrines on each of the seven sacraments in turn, treating them in the standard order (as listed earlier) and coming at last to marriage.<sup>4</sup> The decrees on the sacrament of marriage were published on November 11, 1563, at Session XXIV (Section 18.5). The first of several dogmatic canons on marriage confirmed the particular implications of the dogma of the sacraments in general. Marriage is not something “invented in the church by human beings,” as Luther claimed. Rather, it is “truly and properly [*vere et proprie*] one of the seven sacraments of the evangelical law,” it was instituted by Jesus Christ, and it confers grace.<sup>5</sup>

The preface to Trent’s decrees on marriage explains the role of this sacrament in the economy and history of salvation. Adam, inspired by the Holy Spirit, said: “This is now bone of my bones, and flesh of my flesh. For this reason a man shall leave his father and mother and shall cleave unto his wife, and they shall be two in one flesh” (Gen 2:23–24). Adam implied that marriage was an indissoluble bond. Jesus Christ was referring to Adam’s dictum when he said, “they are no longer two but one flesh,” adding: “What God has joined, therefore, let not man separate” (Matt 19:4–6, Mark 10:6–9). But marriage is also a sacrament of the New Law. Jesus Christ, who instituted and perfected the seven sacraments, merited through his Passion a grace that would perfect the natural love in marriage, confirm the indissolubility of the union, and sanctify the spouses (see Plates 2–3). St Paul implied all this when he said that husbands should love their wives as Christ loved the church (Eph 5:25), and that marriage was a great sacrament in Christ and the church (Eph 5:32). Through this grace, Christ raised

<sup>4</sup> Baptism and confirmation: Session VII (March 3, 1547). Eucharist: Session XIII (Oct. 11, 1551). Penance and extreme unction: Session XIV (Nov. 25, 1551). Orders: Session XXIII (July 15, 1563).

<sup>5</sup> Canon 1 (Tanner-Alberigo 754/25–27): “Si quis dixerit, matrimonium non esse vere et proprie unum ex septem legis evangelicae sacramentis, a Christo domino institutum, sed ab hominibus in ecclesia inventum, neque gratiam conferre: a[nathema] s[it].”

marriage above what it had been under the Old Law, so that it was henceforth one of the sacraments of the New Law, as “our holy fathers, the councils, and the universal tradition of the church have always taught.” But recently, the decree continues, diabolical errors have beset the church. The Protestant heretics have rejected the church’s teaching on this and other sacraments. “Introducing the freedom of the flesh under the pretext of the Gospel as is their wont,” the Protestants have “asserted in writing and in speech many things that are alien to the mind of the Catholic church and to custom proven since apostolic times, and not without doing great damage to Christ’s faithful.”<sup>6</sup> This last admonition alluded to the Protestant attack on priestly and institutionalized celibacy, but in the eyes of the prelates at Trent, as well as of the Protestants, the sacramentality of marriage and the superiority of celibacy went hand in hand and were aspects of a single ideology.

The canons did not identify the specific grace that the seventh sacrament conferred, but anyone familiar with Catholic theology of the period or with the proceedings at the council would have recognized this grace in the reference to Ephesians 5:25. Marriage chiefly signified the union between Christ and the church (Eph 5:32). In an obvious sense, the marriage of any couple was not the cause of that union. Nevertheless, the love between husband and wife could not sufficiently emulate the love between Christ and the church, as Ephesians 5:25 required, without grace. The dual citation of Ephesians 5:25 with 5:32 was an answer to the criticisms of Erasmus and Luther, who had pointed out that Ephesians 5:32 by itself was not proof that marriage was one of the sacraments. The prelates at Trent, like most sixteenth-century theologians, identified the sacramental grace of marriage with a supernatural, God-given enhancement of conjugal love that enabled the spouses to remain together until parted by death. This was the grace that “perfects that natural love” between the spouses. Christian spouses could not justly claim, therefore, that as mere human beings they were not strong enough to remain married for life.

The preface to Trent’s canons on marriage seemed to imply that orthodox Christians had always recognized marriage to be “truly and properly” one of the seven sacraments of the New Law, but everyone knew that that was not the case. Most of the prelates conceded that in Peter Lombard’s opinion marriage did *not* confer grace; and, according to the Lombard’s own premises, that denial implied in turn that marriage was not properly one of the sacraments of the New Law. Even from the perspective of sixteenth-century observers, therefore, whose sense of history was much weaker than ours, the doctrine was less than four centuries old. If the doctrine indeed went back to the apostolic era, it must have existed then only implicitly and obscurely, beyond the awareness of councils, clerics, and theologians. No general council or pope before Trent had declared as a matter

<sup>6</sup> Tanner-Alberigo 753–54.

of dogma that there were “truly and properly” seven grace-conferring sacraments or that marriage was a sacrament in that sense, although the prelates at Trent could cite a series of official statements that seemed to confirm the dogma.

Regarded in retrospect, Peter Lombard’s treatment of marriage was a definitive moment or milestone on the way to the doctrine defined at Trent (Section 11.4). One may look forwards from that vantage point to marriage in scholastic theology and eventually to marriage at the Council of Trent, and backwards to the Lombard’s sources and to the origins of the idea. Writing in the 1150s, the Lombard began the last of his four books of *Sentences* by explaining what the sacraments were in general and distinguishing the sacraments of the New Law from those of the Old. The sacraments of the New Law were “baptism, confirmation, the bread of benediction (that is, eucharist), penance, extreme unction, orders, and marriage.”<sup>7</sup> The Lombard did not say that these were the *only* sacraments of the New Law, but the composition of his treatise on the sacraments and its apparently comprehensive scope implied that there were no others. The list was still fairly new, for its first extant appearances date from the 1140s (Section 11.2). The Lombard listed the seven sacraments in what would become the standard order, and he went on to devote a treatise to each of the seven in turn. He took his material on marriage mainly from a few favorite sources written during the previous quarter of a century, chiefly Gratian, Walter of Mortagne, and Hugh of Saint-Victor. They had in turn drawn liberally on earlier twelfth-century sources, including florilegia. The Lombard harvested and compiled the results of an extraordinarily vibrant and creative period in sacramental theology, collecting and sorting his material on marriage in his usual manner, which was pedestrian but practical, serviceable, and astute: a marvelous tabulation of current thought.

The Lombard’s division of theological topics as well as what he said about them would become fundamental after his *Sentences* became the standard textbook of theology in the 1220s. The master who pioneered of this use of the work was Alexander of Hales, an English member of the theology faculty in Paris (Section 15.3.1). The textbook became the subject of countless commentaries.<sup>8</sup> Masters of theology were free to disagree with Peter Lombard – the Parisian masters published lists of his mistakes during the thirteenth century – but his *Sentences* established the agenda for theological studies until the sixteenth century. From the 1220s until the sixteenth century, therefore, discussion of the sacrament of marriage would always be located within the framework that Peter Lombard had established: a setting that raised as many questions as it solved.

Peter Lombard wrote more about marriage than about any of the other six sacraments. The number of *distinctiones* devoted to each sacrament in Book IV suffices as a rough guide, although these units are not equal in length, and the

<sup>7</sup> Peter Lombard, *Sent.* IV, 2.1.1 (239).

<sup>8</sup> P. W. Rosemann, *The Story of a Great Medieval Book* (Peterborough, Ontario, 2007).

division was the work not of Peter Lombard but, again, of Alexander of Hales.<sup>9</sup> Here is a conspectus of the treatment of the sacraments in Book IV, with the number of distinctions devoted to each sacrament in parentheses:

- Baptism: distinctions 2–6 (4.5)
- Confirmation: distinction 7 (1)
- Eucharist: distinctions 8–13 (6)
- Penance: distinctions 14–22 (9)
- Extreme unction: distinction 23 (1)
- Orders: distinctions 24–25 (2)
- Marriage: distinctions 26–42 (17)

This distribution does not mean that the Lombard found marriage to be more important or more interesting than the other sacraments, or that he considered it to be the most worthy, sacred, or sanctifying. Like most medieval theologians, he considered marriage to be the least of the sacraments in intrinsic worth albeit the greatest in what it signified. Marriage required so much space because of all the rules and regulations that it entailed, such as those regarding the impediments. Most of the Lombard's contributions to the sacramental theology of marriage occur in the first two distinctions on the topic, whereas the remaining distinctions are largely devoted to the canonical rules. Likewise, most of what medieval theologians wrote about marriage in commentaries on the *Sentences* and in *summas* of theology was devoted to the same rules and regulations. Discussion of them was largely independent of properly theological premises, such as those regarding the saving work of Christ. Following Peter Lombard's agenda, which had evolved during the first half of the twelfth century, most scholastic theologians from the thirteenth century throughout the Middle Ages treated marriage as the last of the seven sacraments, beginning their treatment with an account of its definition, purpose, sacred history, and sacramentality before proceeding to the canonical aspects.

Having listed the seven sacraments of the New Law, Peter Lombard divided them into three sorts: those which “fortify us with grace and virtue,” such as eucharist and orders; those which “offer a remedy against sin and confer helping grace,” such as baptism; and those which work *only* as remedy, such as marriage.<sup>10</sup> But he had already established that saving efficacy was what distinguished the sacraments of the New Law from those of the Old. A sacrament in the proper sense of the term was “a sign of the grace of God, and the appearance of an invisible grace, in such a way that it bears its image and is its cause.”<sup>11</sup> The sacrifices, offerings, and other rituals of

<sup>9</sup> Peter Lombard divided each book into a continuous series of chapters. Alexander of Hales seems to have been responsible for inserting the level of distinctions between books and chapters as an aid to teaching and commentary.

<sup>10</sup> *Sent.* IV, 2.1.1 (239–40).

<sup>11</sup> *Sent.* IV, 1.4.2 (233): “Sacramentum enim proprie dicitur, quod ita signum est gratiae Dei et invisibilis gratiae forma, ut ipsius imaginem gerat et causa existat.”

the Old Law were sacraments in a broader sense of the term, but they were not sacraments in the proper sense because they had no supernatural efficacy. They promised and signified the future advent of Jesus Christ and its graces, but they did not confer grace.<sup>12</sup>

Peter Lombard's assumption that marriage, unlike the other six sacraments of the New Law, was merely remedial and conferred no gift of grace was conventional and remained virtually unquestioned until around 1220. Until then, theologians accepted what I call the "preventive model" (Sections 11.5.3 and 15.1). They assumed that marriage obviated sin without bestowing any positive gift. Whereas the other sacraments reformed the soul, bestowing grace and virtue and cleansing the soul from guilt, marriage only prevented the subject from committing sexual sins, chiefly by providing a licit setting in which to satisfy compulsive sexual desire. Theologians were not concerned about the apparent inconsistency. Those who noticed it solved it by pointing out that marriage had not been *instituted* under the New Law but in Eden. Institution implied innovation. Jesus Christ did not institute marriage but rather gave his approval (*approbatio*) to it.<sup>13</sup> In what sense, then, was marriage one of the seven sacraments of the New Law? Not in the sense that it was a member of a physical or ontological genus, sharing the salient features of the common essence. But marriage was at least analogous to the other six sacraments in certain respects, and, above all, it belonged among them in a *functional* sense: as a member of a collection of things that fulfilled a certain instrumental role in the life of the church, and that together constituted a system.

For reasons that are not obvious, theologians moved away from the preventive model after around 1220, and by the middle of the thirteenth century the consensus of the profession was that marriage conferred sanctifying grace *ex opere operato* (Section 15.3). Alexander of Hales was a pivotal figure at the beginning of this development. Canonists hardly noticed the development and continued to rehearse the old assumptions until well into the fourteenth century. The theologians' contention that marriage conferred its own specific sanctifying grace *ex opere operato* was part of a broad effort to assimilate marriage to the sacramental paradigm by showing that it exemplified all the essential and salient features of the genus. As Trent would later put it, marriage was "truly and properly" one of the sacraments of the New Law.

For many years after the formation of that theological consensus – at least a century – questions about the full sacramentality of marriage and about whether marriage conferred grace *ex opere operato* remained technical matters that were of concern only to professional theologians. Canonists, bishops who had no formal training in theology (always the majority), and parish priests considered marriage to be a sacrament of the church without taking that premise to its logical conclusions or trying to defend it against objections. Pious lay folk presumably regarded marriage

<sup>12</sup> *Sent.* IV, 1.6 (235–36).

<sup>13</sup> For example, Peter of Poitiers, *Sent.* V, c. 14 (PL 211:1257D).

in the same light, for no one was instructing them differently. What mattered was that everyone understood the place of marriage in sacred history, in the hierarchical structure of the church, and in personal salvation, and that lay folk followed the rules and regulations of marrying. Bonaventure discussed the question of conjugal grace carefully in his commentary on Peter Lombard's *Sentences*,<sup>14</sup> composed in the 1250s (Section 15.3.4), but he did not raise it in the chapter on marriage in his *Breviloquium* (c. 1256), a compendium of theology that he wrote for his Franciscan students in Paris after completing his commentary.<sup>15</sup> Indeed, Bonaventure said nothing in the latter work about marriage that that could not have been written a century earlier, and nothing to show that marriage was a sacrament in the proper sense. Similarly, Guido of Monte Rochen said nothing about the sacramentality of marriage or about marriage as a means of sacramental grace in his handbook for parish clergy, composed in the 1330s. Guido explains at length how to marry, who can marry whom, and the impediments, but his explanation of the nature of marriage and its place in the Christian life is limited to a commonplace summary of the circumstances and reasons for its institution, the proper motives for marrying, and Augustine's three conjugal goods: faith, offspring, and indissolubility.<sup>16</sup>

There are early signs of change in the reaction against Peter John Olivi, O.F.M. (d. 1298). Olivi conceded that marriage was a sacrament in some sense, but he denied that it had full univocity (*plena univocatio*) with the other six sacraments, and he questioned whether marriage conferred sacramental grace. In 1283, a committee of Franciscan theologians commissioned by their Minister General to examine Olivi's orthodoxy found numerous serious errors in his work. Although his position on marriage was not among the issues that motivated this inquiry, it was the only one of his errors that the commission found to be potentially heretical. "Marriage is a sacrament of the New Law that confers grace," they countered. "To affirm the contrary is erroneous; to sustain the contrary is heretical; to doubt it is entirely forbidden" (Section 14.8.2). Nevertheless, another contrarian friar, Durandus of Pourçain, O.P. (d. 1334), could still claim with good reason that whether marriage conferred sanctifying grace was an open question, and not a settled dogma. Like Olivi, Durandus conceded that marriage was a sacrament in some sense while denying that it had full univocity with the sacraments of the New Law (Section 14.8.3). He cautiously declined to say whether or not marriage conferred grace, but he noted that the jurists held one position, and the theologians another (Section 15.3.8). Almost all "modern theologians" held that marriage conferred sanctifying grace *ex opere operato*, he conceded, but the jurists took the opposite position, which he tacitly favored:

The jurists — who know the text of the decrees and decretals by which the position of the Roman church is expressed, and who have expounded and glossed the

<sup>14</sup> Bonaventure, *II Sent.* 26.2.2 (4:667–69).      <sup>15</sup> Bonaventure, *Breviloquium* VI.13 (5:279–80).

<sup>16</sup> Guido of Monte Rochen, *Manipulus curatorum* 1.7.2 (Paris: 1501, fols 59r–72r).

canons and decretals, and some of whom have belonged to the College of Cardinals of the Holy Roman Church — hold that grace is not conferred in the sacrament of matrimony.<sup>17</sup>

Durandus was factually correct, but he erred if he implied that the jurists defended their negative position in the same way as the theologians defended their own affirmative position. The question of conjugal grace was still the preserve of professional theologians, and the canonists were still content to repeat what their predecessors had said about the matter during the twelfth and thirteenth centuries.

The question of conjugal grace appeared in a very different light in the sixteenth century, when Luther and his followers attacked the system of the seven sacraments and the entire medieval doctrine and canon law of marriage, along with the elaborate impediments and the preference for celibacy. In the minds of the prelates at Trent, therefore, the univocity of the seven sacraments and the full sacramentality of marriage were indispensable articles of faith. The critiques of Luther and Erasmus prompted them, as they had been prompting Catholic theologians since the 1520s, to propose new arguments and to revisit the basis of the doctrine in Scripture.

Sixteenth-century Catholic clerics and theologians insisted that the Bible had to be interpreted in light of tradition, especially of the official pronouncements of councils and popes. In their view, Luther's purported reliance on Scripture alone was arrogant and foolhardy. Thus, they appealed not only to the work of the most authoritative "scholastic doctors" of the central Middle Ages to defend the sacramentality of marriage, but also to a series of official declarations on the sacraments, especially to Pope Lucius III's *Ad abolendam* (1184), to the profession of faith that Pope Innocent III sent to the bishops of the Vaudois in 1208, to the *Profession of Faith of Michael Palaeologus* from the Second Council of Lyon, convened by Gregory X (1274), and, above all, to Pope Eugenius IV's *Bull of Union with the Armenians*, from the Council of Florence (1439). But none of these declarations about the sacraments in general and about marriage as a sacrament in particular amounted to a formal definition of a dogma, and none of them affirmed or even implied that marriage was a sacrament in the proper sense of the term. *Ad abolendam* anathematized heretics who held opinions "other than what the sacrosanct Roman church preaches and observes" regarding eucharist, baptism, penance, marriage, and "the other ecclesiastical sacraments."<sup>18</sup> The profession of faith that Pope Innocent III sent to the bishops of the Vaudois in 1208 was a standard of orthodoxy for the Waldensians. As well as emphasizing the insolubility of marriage and the right of widows to remarry, it required acceptance of the sacraments of baptism, confirmation, eucharist, penance, the anointing of the sick, and

<sup>17</sup> Durandus of Saint-Pourçain, *IV Sent.* 26.3, §6 (367v). Durandus describes the consensus among theologians at *ibid.*, §8.

<sup>18</sup> X 5.7.9, *Ad abolendam* (CIC 2:780–82).

marriage. (Priesthood, which was still not always counted among the sacraments at this time, is mentioned as a prerequisite for eucharist.)<sup>19</sup> *The Profession of Faith of Michael Palaeologus* (1274) was part of a summary of the Roman faith that Pope Clement IV had sent to Michael VIII, the emperor of Byzantium, in an effort to reunite the Roman and Byzantine branches of the church. It affirmed that “the Holy Roman church holds and teaches that there are seven ecclesiastical sacraments,” namely, baptism, confirmation, penance, eucharist, orders, marriage, and extreme unction (in that order).<sup>20</sup> This was the first formal enumeration of the seven sacraments in an official declaration. Pope Eugenius’ IV’s *Bull of Union with the Armenians*, issued at the Council of Florence in 1439, incorporated a summary of the doctrine of the sacraments adapted from an exposition of the articles of faith and the sacraments by Thomas Aquinas.<sup>21</sup> The summary followed the plan established by Peter Lombard, beginning with an account of the sacraments in general before expounding each of the seven in turn. It is remarkable that this bull presented the doctrine of the seven sacraments as something that the Armenians would have to accept if they wanted to belong to the Roman church, but the bull said nothing specific about the sacramentality of marriage in the section on this sacrament in particular. What would later be cited as proof that marriage was a sacrament in the proper sense was in the bull’s preliminary account of the sacraments in general. This affirms that whereas the sacraments of the Old Law only prefigured the grace that would be given through the Passion of Jesus Christ, the sacraments of the New Law not only signify but also contain and cause this grace, conferring it on those who receive the sacraments worthily. Furthermore, these sacraments result from the coming together of “things” (*res*), which serve as matter, and of words, which constitute the form, with “the person of a minister, who confers the sacrament with the intention of doing what the church does.” No sacrament is complete, the bull adds, unless all three components are present: word, element, and minister.<sup>22</sup> But this affirmation proved to be problematic. Because virtually all theologians conceded that the priestly blessing was not essential to marriage, they had to explain how in this respect the bull did not imply what it seemed to imply.

If one traces the development further back beyond Peter Lombard, one comes first to his immediate sources, especially Hugh of Saint-Victor (Chapter 10), Walter of Mortagne (Section 11.3), and Gratian (Section 6.4), and thence to the anonymous treatises composed of “sentences” (*sententiae*) during the first quarter of the twelfth century (Chapters 8 and 9). For want of a better term, I refer to the authors of this

<sup>19</sup> DS 794.   <sup>20</sup> *Profession of Faith of Michael Palaeologus*, DS 860.

<sup>21</sup> *Bulla unionis Armenorum*, Tanner-Alberigo 534–59. Thomas Aquinas, *De articulis fidei et ecclesiae sacramentis*, in *Opera omnia*, Leonine edition 42:245–57.

<sup>22</sup> Tanner-Alberigo 542/1–8: “Haec omnia sacramenta tribus perficiuntur, videlicet rebus tanquam materia, verbis tanquam forma, et persona ministri conferentis sacramentum cum intentione faciendi, quod facit ecclesia. Quorum si aliquod desit, non perficitur sacramentum.”

sentential literature, following the preamble to the *Liber Pancrisis*, as the *magistri moderni*. These largely anonymous scholars pursued theology by collecting and assembling florilegia of patristic and contemporaneous sentences, by making comparable statements of their own, and by composing treatises built up from such material. The *sententiae* (“judgments,” “theses”) were brief, notable, and more or less authoritative statements on specific topics, or answers to specific questions (Chapters 8 and 9). The *magistri moderni* not only assembled the rules and regulations of marriage into handy compendia but also prefaced this canonical material with theological reflections on the role of marriage in the life of the church and in God’s saving plan, and on merits of married life in comparison with their own, superior vocation of celibacy.

Most of the fresh material from which the *magistri moderni* constructed their theological accounts of marriage had come originally from Augustine, although they apparently gathered it not from Augustine’s own writings but from florilegia. The flowers that they picked were not fresh but already cut and dried. Among the chief remote sources were Augustine’s *De bono coniugali*, *De nuptiis et concupiscentia*, and *De Genesi ad litteram* (Chapter 8). Collections of Augustine’s writings on marriage and celibacy were copied in monastic *scriptoria* during the Middle Ages and held in monastic libraries, presumably as resources on the morality of these estates (Section 2.3), but there had been no attempt to use Augustine’s work on marriage constructively and systematically in theological writing since the Carolingian period, and no attempt to do so extensively and systematically since Augustine had left this world. Because Augustine’s writings, sayings, opinions, and ideas were fundamental to the medieval theology of marriage, I shall devote the following three chapters to them (Chapters 2–4).

Working in a period when speculation about the sacraments was flourishing, the *magistri moderni* applied the concepts, distinctions, and terminology of current sacramental theology to marriage. Unfettered by the larger context of what Augustine said about marriage, they used this material freely to meet current speculative and pastoral exigencies. The most seminal of the sentential treatises on marriage, known from its incipit as *Cum omnia sacramenta*, begins with a statement that would be repeated again and again throughout the twelfth and thirteenth centuries:

Whereas all the sacraments were instituted after sin and because of sin, marriage alone was also instituted before sin occurred, and not as remedy, like the others, but as a duty.<sup>23</sup>

The distinction between marrying in order to fulfill the duty to “increase and multiply” (*ad officium*) and marrying to receive remedial benefits of marriage (*ad remedium*) came from Augustine (Section 3.2). The statement presupposes

<sup>23</sup> *Cum omnia sacramenta* I, ed. F. P. Bliemetzrieder, *Anselms von Laon systematische Sentenzen*, BGPhMA 18.2–3 (Münster, 1919), 129/24–27: “Cum omnia sacramenta post peccatum et propter peccatum sumpserunt exordium, solum coniugii sacramentum ante peccatum etiam legitur institutum, non ad remedium, sicut cetera, sed ad officium.”

that the sacraments are numerable, so that one might name and count them, but the role of marriage among them is anomalous. As medicines of the spiritual life, the sacraments were instituted after sin had entered into the world. Marriage, too, is a remedy in that sense. But this sacrament was *also* instituted in the earthly Paradise, even before the first sin. Was it already a sacrament then? If so, in what sense?

## 1.2 HOLY MATRIMONY BEFORE 1100

Theologically informed discussions of marriage as a Christian institution are rare between Augustine and 1100. To understand how clerics regarded marriage during this long period, one has to rely largely on fragmentary and incidental evidence, such as the *ordines* of nuptial liturgies and the theological preambles to ostentatious dotal charters. The major exception to this long silence is the *De institutione laicali* by Jonas of Orléans (d. 841/842), bishop of Orléans from 818. Jonas wrote this work on the life and morals of the laity at the request of Matfrid, Count of Orléans. The chapters on marriage (II.1–16) are designed to show how married folk can live righteously and avoid the many pitfalls and dangers of their chosen estate, especially sins of impurity. Jonas establishes some theological foundations at the beginning of this section. In the early twelfth century, the author of the *Cum omnia sacramenta* (mentioned earlier) appropriates much of the material from this introduction to marriage.

When God created the world, Jonas begins, God saw that everything he had created was good (Gen 1:21). Jonas cites texts from the Old and the New Testaments to show that marriage was among the countless good things that God had created: Genesis 2:24, on the primordial union (“Therefore shall a man leave his father and his mother, and shall cleave unto his wife, and they shall be one flesh”); Matthew 19:4–6, on Jesus’ confirmation of the primordial union (“What God has joined together, let not man separate”); Genesis 1:27–28, on the primordial blessing and the precept of fecundity (“be fruitful and multiply”); Proverbs 19:14 (“a prudent wife is from the Lord”); 1 Corinthians 7:28 (“if a virgin marry, she has not sinned”); and Hebrews 13:4 (on the *thorus immaculatus*: the “bed undefiled”). But human beings are inclined to abuse the good things with which God has provided them, Jonas observes. The proper reason for marrying is to beget and raise children, whereas many men marry chiefly to satisfy their lust. Jonas provides a dossier of quotations from Augustine’s *De bono coniugali* and *De nuptiis et concupiscentia* – works that were rarely cited before the twelfth century – to corroborate and elaborate this point.

Augustine also said in a sermon, Jonas notes, that married life (*vita coniugalis*), as well as the celibate vocations, has its proper place in the body of Christ.<sup>24</sup> Jonas takes this to mean that marriage is one of the orders from which the church is

<sup>24</sup> Augustine, *Serm.* 354.4 (PL 39:1564–65).

constituted. Citing Ezekiel and Bede, he argues that there are “three orders and divisions of the faithful in the church”: the order of prelates (*ordo praepositorum*) or teachers (*doctorum*), the order of ascetics (*ordo abstinentium*), and the order of married folk (*ordo coniugatorum*). The three men who would be saved at the end according to Ezekiel’s prophecy – Noah, Daniel, and Job (Ezek 14:13–14, 19–20) – represent the three orders:

Through Noah the order of prelates [*praepositi*] is signified, through Daniel that of ascetics [*abstinentes*], and through Job the life of good married folk. Married folk, therefore, assisted by divine grace, should imitate according to their abilities the life and actions of this man of such probity, praised by the Lord for his holy virtues with so many and such great paeans, so that they may justly deserve to be admitted into his company [*collegium*]. For a *triclinium* is described as being in the house of the wedding [at Cana], which is the church of Christ, because there are undoubtedly three orders of the faithful in the church: that of teachers [*doctores*], that of ascetics, and that of married folk. The same three orders are distinguished elsewhere in the Gospel, where the life of ascetics [*continentes*] is signified by the two in bed, that of prelates by the two in the field, and that of married folk by the two at the mill.<sup>25</sup>

Jonas alludes here to the wedding at Cana (John 2:1–11), where Jesus performed the first of his miracles. John refers to the feast-master or chief steward as the *architriclinus* (John 2:8–9), and Jonas deduces from this detail that the feast took place in or at a *triclinium*. The term originally denoted the benches or couches that were arranged around three sides of a dining table, with the fourth side left open for the servers, although by extension it could denote the table or even the dining room. All that matters here is the prefix, *tri-*. There were three companies at the wedding feast, for these represent three orders in the church, which is the bride and the body of Christ.

Several divisions of the church into three orders circulated during the early Middle Ages, and scholars sometimes combined or conflated different versions. Patristic authors divided the faithful by their chosen sexual practices into consecrated virgins, consecrated widows, and married folk, in descending order of dignity and holiness.<sup>26</sup> Jerome interpreted the thirtyfold, sixtyfold, and hundredfold fruit in the parable of the sower (Matt 13:23, Mark 4:20) as the eternal rewards of marriage, consecrated widowhood, and consecrated virginity respectively.<sup>27</sup> Medieval theologians developed this theme of the three yields (*fructus*) to show that a single virtue, sometimes identified as chastity, was the basis all three vocations, which differed not in kind but only in degree (Section 14.8.2).

<sup>25</sup> Jonas of Orléans, *De institutione laicali* II.1 (SC 549:326/132–146).

<sup>26</sup> For example, Ambrose, *De viduis* 4.13 (PL 16:241D–242A).

<sup>27</sup> Jerome, *Adv. Iovinianum* I.3; II.19 (PL 23:212B–214A; 313C–314C). See also Jerome’s commentary on Matt 13:23 (CCL 77:105–06). Cf. Augustine, *De sancta virg.* 44(45); 45(46) (CSEL 41:289/11–14; 290/8–291/15). Augustine is cautious about this particular interpretation of the three yields. On medieval uses of the allegorical division, see M. Bernards, *Speculum Virginitatis* (Cologne, 1955), 40–51.

Jonas's interpretation of Ezekiel belongs to a tradition to which both Augustine and Bede contributed. According to Augustine, the three classes of Christians are continents (*continentes*), ministers (*rectores, praepositi*), and married folk (*coniugati*). The continents here are the celibates, or contemplatives. This version was based on Ezekiel's apocalyptic vision (Ezek 14:14–16), which Augustine interpreted in the light of an apocalyptic parable (Luke 17:34–36 and Matt 24:40–41). Daniel, Noah, and Job respectively typify the three classes of Christians, for these men are the only ones who will be saved in Ezekiel's vision. Noah's ark represents the church. Job's trials represent the mundane preoccupations of married folk. Augustine discovered a parallel typology, to which Jonas also alludes, in Matthew 24:40–41 and Luke 17:34–35. When the Son of Man returns, there will be two men working in a field, two persons asleep in bed, and two women grinding flour at a mill. From each pair, one will be saved and the other left behind. The persons asleep in bed stand for the contemplatives, according to Augustine; the men who cultivate the field for the ministers of the church; and the women at the mill for married folk. The women's subordinate gender shows that they represent the laity, and the grinding of the mill wheel represents the unending cycle of mundane preoccupations.<sup>28</sup> Augustine says that he cannot think of any other classes of Christians in the church besides these three.<sup>29</sup>

Bede's version, which Jonas also mentions, is an allegorical exegesis of the Temple of Solomon. The temple has three floors, with the narrowest at the top and the broadest at the bottom (1 Kgs 6:6). The arrangement of floors represents the hierarchical ordering of the church, according to Bede, and the breadth of each floor indicates both the character of the corresponding way of life and the relative number of those who follow it. At the top is the constrained life of the virgins (the religious), who have renounced marriage and worldly things to devote themselves to prayer, vigils, and psalmody. They anticipate the next life, where the blessed will neither marry nor be given in marriage but will be like the angels (Matt 22:30, Luke 20:35–36). At the middle level of the temple are the continents (*continentes*). At the ground level are the married folk. Their way of life is the broadest, for Christ does not ask them to sell their possessions and to give everything to the poor (Matt 19:21) but only to obey the commandments (Matt 19:17–20).<sup>30</sup>

<sup>28</sup> G. Folliet, "Les trois catégories de chrétiens: Étude de ce thème augustinien," in *Augustinus Magister* (Paris, 1954–1955) 2:631–44. Idem, "Les trois catégories de chrétiens. Survie d'un thème augustinien," *L'année théologique augustinienne* 14 (1954): 82–96. See also B. Kress, "Noah, Daniel and Job – The Three Righteous Men of Ezekiel 14.14 in Medieval Art," *Journal of the Warburg and Courthauld Institutes* 67 (2004): 259–67. On the variety of divisions, see G. Constable, "The Orders of Society," in *Three Studies in Medieval Religious and Social Thought* (Cambridge, 1955), 249–360; on the tripartite divisions in particular, see *ibid.*, 305–23.

<sup>29</sup> Augustine, *Quaest. Evang.* II.44.2 (CCL 44B:106/37–38).

<sup>30</sup> Bede, *De templo* I, 7.5 (CCL 119A:163). On Bede's allegorical exegesis of Solomon's temple, see T. J. Furry, *Allegorizing History* (Eugene, 1913), 47–50.

Bede's architectural image appealed to the Carolingian moralists, who liked to imagine the church as a great building, such as a palace or a cathedral.<sup>31</sup>

The identity of the two upper orders varied and was often unclear or only vaguely characterized in the Middle Ages, but married folk always populated the lowest of the three levels. Although they remained in the world rather than devoting their lives wholly to Christ or to the church, their order was integral to the whole. The edifice could not stand without them. Moreover, the model showed that marriage was the *only* way in which the laity could expect safely to achieve salvation. Belonging to one of the three classes was no guarantee of salvation, but there were no other orders from which some would be chosen at the end. Ivo of Chartres invoked the typology of Daniel, Noah, and Job in a letter to Louis VI, in which he commended the king for becoming betrothed to Adélaïde de Maurienne. Ivo was keen to see Louis safely married. Having seen a previous betrothal break down, Ivo feared that a breakup of this betrothal would divide both the nation and the church, for "every kingdom divided against itself is brought to desolation, and every city or house divided against itself shall not stand" (Matt 12:25). There are only three vocations (*professiones*) among those who "live well," Ivo explains: the ascetics (*continentes*), represented by Daniel; the ministers of the church, represented by Noah; and the married folk, represented by Job. "Whoever shall not be found in one of these vocations," Ivo warns, "will be judged an outlaw by the eternal tribunal and will not have his eternal inheritance."<sup>32</sup>

The *Enarrationes in Matthaëum*, a work sometimes ascribed to Anselm of Laon,<sup>33</sup> follows Augustine when commenting on Matthew 24:40–41, which the author correlates with the apocalyptic parable of Luke 17:34–36. The two persons in bed represent the *continentes* (i.e., the contemplatives, or ascetics), typified by Daniel; the two men cultivating the field represent the ministers of the church, typified by Noah; and the two women at the mill represent the married folk, typified by Job.<sup>34</sup> Commenting on the parable of the sower and the three yields, the author divides the church into contemplatives and actives and then subdivides actives into continents and married folk.<sup>35</sup>

As already noted, authors writing on marriage before 1100 rarely invoked the discourse on marriage from Ephesians (5:22–33) or noted that marriage signified

<sup>31</sup> Candidus of Fulda, *Opusculum de passione Domini* 18, PL 106:95B–96A. Christian of Stavelot, *Expositio in Matthaëum evangelistam* 42, PL 106:1414C–D. Smaragdus, *In collectiones epistolarum et evangeliorum de tempore et de sanctis, Dominica II post theophania, in Ioannem*, cap. 2, PL 102:88D–89A.

<sup>32</sup> Ivo of Chartres, *Epist.* 239 (PL 162:246C–247C). Ivo had opposed an earlier prospect in *Epist.* 209 (PL 162:214A–C). On the political background to *Epist.* 239, see J. Dufour, "Louis VI, Roi de France (1108–1137), à la lumière des actes royaux et des sources narratives," in *Académie des Inscriptions et Belles-Lettres. Comptes rendus des séances, April–June 1990* (Paris, 1990), 456–82, at 465.

<sup>33</sup> See A. M. Landgraf, *Introduction à l'histoire de la littérature théologique de la scolastique naissante*, ed. A.-M. Landry (Montréal, 1973), 71–72.

<sup>34</sup> *Enarrationes in Matthaëum* 24 (PL 162:1455C–1456C). <sup>35</sup> *Ibid.*, 13 (1370A–B).

the union between Christ and the church. The absence is not easy to explain. The passage would seem to be an obvious source at least for pastoral counsel on marriage, if not for theological reflection. Needless to say, rarely is not the same as never. There are a few notable exceptions, some of which became crucial in medieval debates about marriage. Jonas cited Ephesians 5:25 and 5:28–29 with Proverbs 5:18–19, Ecclesiastes 9:9, and 1 Peter 3:7 to show how husbands ought to love and cherish their wives as the “weaker vessel,”<sup>36</sup> but this was his only reference to the discourse. Moreover, he made no reference to the discourse in his theological introduction to holy matrimony (II.1), and he did not cite Ephesians 5:32 anywhere in the *De institutione laicali*. When authors prior to 1100 did invoke or allude to Ephesians 5:32 with reference to marriage, they assumed, as Augustine had done, that the “great sacrament” to which Paul referred was either the union between Christ and the church or Adam’s prophetic utterance (Gen 2:24).

To show that marriage was holy and divinely instituted, authors before 1100 turned chiefly to the creation of Adam and Eve and the primordial marriage, to Genesis 2:24, and to Jesus’ gloss on Genesis 2:24 in Matthew 19:6: “What God has joined together, let not man separate.” Weddings prompted churchmen to reflect not only on Eve’s formation from Adam’s rib but also on the creation of everything, as if the world began again ritually whenever spouses plighted their troth. Jonas of Orléans was typical in this respect. One finds the same emphasis in nuptial liturgies and other early-medieval texts witnessing or commemorating marriages. The association of the holiness of marriage with the primordial union endured throughout the Middle Ages. Protestants and Catholics during the sixteenth century were equally attached to it. It appealed more than Paul’s discourse on marriage in Ephesians did to the imagination of prelates and clerics who lacked formal education in theology.

The Book of Tobit was an ancillary resource. Not only is its treatment of marriage the most extensive in the Jewish scriptures, but it is unique in its emphasis on the importance of righteous observance, of prayer, and of the involvement of the Deity in marrying.<sup>37</sup> An archangel, Raphael, is the go-between who helps Tobias to marry his chosen bride, Sarah. Jerome’s Vulgate version of the book includes four prayers for nuptial blessings. The first is the prayer that Raguel recites when gives his daughter in marriage to Tobias. It contains the first known reference to the joining of right hands (*dextrarum iunctio*) as a wedding rite:

And taking the right hand of his daughter, he gave it into the right hand of Tobias, saying: The God of Abraham, and the God of Isaac, and the God of Jacob be with you, and may he join you together, and fulfill his blessing in you. (Tob 7:15)

<sup>36</sup> Jonas of Orléans, *De institutione laicali* II.5 (SC 549:362).

<sup>37</sup> K. Stevenson, *The Nuptial Blessing* (New York, 1983), 5–7. M. Searle and K. W. Stevenson, *Documents of the Marriage Liturgy* (Collegeville, 1992), 21–24. On marriage in the pre-Vulgate versions of Tobit, see G. D. Miller, *Marriage in the Book of Tobit* (Berlin, 2011). On the peculiarities of Jerome’s (Vulgate) version, see C. E. Moore’s commentary in *Tobit*, Anchor Bible (1996), 61–63.

The second prayer for blessing is said by Tobias on their wedding night to exorcize the demon that had killed her previous husbands. It weaves together a blessing, a commemoration of the primordial marriage (Gen 2:18–24), and a petition, in which Tobias affirms that his motivation is not lustful but pure and asks God to let them grow old together:

So they both arose, and both prayed earnestly together that health might be given them. And Tobias said: Lord God of our fathers, may the heavens and the earth, and the sea, and the fountains, and the rivers, and all thy creatures that are in them, bless thee. You made Adam of the slime of the earth and gave him Eve for a helper. And now, Lord, you know that not for fleshly lust do I take my sister to wife but only for the love of posterity, in which your name may be blessed for ever and ever. Sarah also said: Have mercy on us, O Lord, have mercy on us, and let us grow old both together in health. (Tob 8:6–9)

Another blessing is said by Raguel when he finds the spouses sleeping safely together (Tob 8:17–19) during the wedding night, and another by Gabelus at the wedding feast (9:9–11). These prayers, especially the first two, were sources of nuptial blessings in medieval nuptial liturgies, although the book was rarely cited to support the doctrine of marriage as a sacrament until the sixteenth century.

Most of the biblical quotations and allusions in nuptial *ordines* surviving from the sixth through eleventh centuries were from the Old Testament. There is little in the wording of these rites that would have seemed alien to Jewish couples. They refer to the creation of the world, the formation of Eve from Adam, and the primordial marriage; to the married patriarchs, especially Abraham, Isaac, and Jacob; to exemplary Old Testament women, especially Rachel, Rebecca, and Sarah; to some of the Psalms, especially Psalm 127 (128 in the Hebrew enumeration); and to the marriage of Tobias and Sarah. References to the conjugal debt of 1 Corinthians 7:3 and to the wedding at Cana (John 1:1–11) begin to appear in the eleventh century, the former to remind spouses of their duties, the latter because it was the perennial defense against anti-matrimonial heresies. References or allusions to the discourse on marriage in Ephesians 5 were rare in nuptial liturgies throughout the Middle Ages, as were lectionary readings from this source in the nuptial mass.<sup>38</sup>

The only reference to marriage as a sign of Christ and the church in the extant nuptial *ordines* of the early Middle Ages that I am aware of occurs in the *Hadrianum*, also known as the *Gregorian Sacramentary*, which Pope Hadrian I gave to Charlemagne in the late eighth century. Here, too, the setting is a commemoration of the primordial marriage. The minister beseeches God as the one who created the world, who made Adam in his own image, and who made Eve as his helper. What it pleased God to make into a single thing should never be divided into two. The minister

<sup>38</sup> J.-B. Molin and P. Mutembe, *Le rituel du mariage en France du XIIIe au XVIe siècle* (Paris, 1974), 276–78. On the lectionary readings, see Molin and Mutembe, *Le rituel du mariage*, 212–13, and Searle and Stevenson, *Documents of the Marriage Liturgy*, 273.

addresses God as the one who “consecrated conjugal union with such an excellent mystery that you prefigured the sacrament of Christ and the church in the compact of marriage.”<sup>39</sup> These words allude to Ephesians 5:32. Marriage is a mystery: it is significant, or pregnant with allegorical meaning. But here the “sacrament of Christ and the church” is not the couple’s marriage but Christ’s union with the church, as in Augustine’s interpretation.

The same themes populate the theological preambles to some ostentatious Frankish dotal charters. These charters belong to an enduring tradition stretching from Merovingian and Carolingian Gaul to eleventh-century France. Their primary function was to settle and to record the dowry that would pass from the suitor to his bride-to-be when they became man and wife,<sup>40</sup> but the charters were also a written record of the preceding betrothal and of the intention to conclude the marriage in due course, when the spouses would come together. Eleven of the dotal charters in Karl Zeumer’s collection of formulas,<sup>41</sup> ranging from the ninth through eleventh centuries, have a theological preamble, which expounds the place of marriage in God’s plan and the moral responsibilities and proper intentions of the spouses. Some of the sacred preambles are brief and formulaic, but others are complex, inventive, and learned. I have analyzed this material in detail elsewhere, and it suffices here to summarize some of my findings.<sup>42</sup>

As in the nuptial liturgies, references to the Old Testament predominate. Most of the sacred preambles begin with the creation of the world and the primordial marriage. Several recall that human procreation was the means to fill the places in Heaven left vacant by the fallen angels. They do not posit a new institution of marriage as a remedy against sin or as a sacrament of the New Law. Instead, they construe the forthcoming marriage as a seamless continuation of the primordial institution. Some of them cite Jesus’ confirmation that marriage, as recorded in Genesis, is the union of two in one flesh (Matt 19:5–6, Mark 10:7–9). They include counsel about morals and duties, some of it drawn from 1 Corinthians 7. The signifying of Christ and the church appears only in one of the later, more elaborate examples, which cites Ephesians 5:25 for its pastoral message: “Husbands, love your wives as Christ loves the Church.”<sup>43</sup> Ephesians 5:32 does not appear in any of these preambles.

The theological preamble to the splendid marriage charter that Holy Roman Emperor Otto II gave to his bride, Theophanu, in 972 develops similar reflections. This preamble may be divided into three sections, respectively on the creation of the world and the primordial marriage, on marriage in the Gospel, and on conjugal

<sup>39</sup> K. Ritzer, *Le mariage dans les églises chrétiennes du Ier au XIe siècle* (Paris, 1970), 427–28.

<sup>40</sup> In Latin, a *dos* – but the modern convention is to refer to a *dos ex marito* as a dowry, to distinguish it from the dowry that a bride brought to a marriage from her parents.

<sup>41</sup> *Formulae Merovingici et Karolini Aevi*, MGH Legum V, *Formulae* (Hanover, 1886).

<sup>42</sup> P. L. Reynolds, “Dotal Charters in the Frankish Tradition,” *THTH* 114–64.

<sup>43</sup> *Extrav.* I 9, in Zeumer, *Formulae*, p. 538, trans. in *THTH* 159.

ethics. The primordial discourse invokes God as the creator of all things and then recounts the creation of human beings as God's image and likeness, with dominion over all creatures (Gen 1:26). It explains that sexual procreation was God's way to fill the places left by the vainglorious fallen angels, and it recounts the forming of woman from Adam's side as man's helpmeet in procreation (Gen 2:18). The Gospel discourse recounts Christ's birth from the "immaculate womb of the virgin," it alludes to Christ's marriage to the church, it recalls the wedding at Cana, and it affirms Jesus' commandment (a gloss on Gen 2:24): "What therefore God has joined together, let not man separate" (Matt 19:6, Mark 10:9). The moral discourse commends the "undefiled bed" (*thorus immaculatus*) of Hebrews 13:4, it reminds the spouses that procreation rather than any base motives is the proper purpose of marriage, and it commends insoluble conjugal affection (*mutua et indissolubilis dilectio*). Only a theologian would recognize that the motif of the church as Christ's bride was dependent on Paul's discourse on marriage in Ephesians 5, for the author does not invoke Ephesians 5:32 or refer to marriage as a *sacramentum* or a *mysterium*:

To the same end, he, the Lord Jesus Christ himself, the author of both testaments, the mediator between God and human beings, arriving in human flesh, having come forth "like a bridegroom who has come forth from his bedchamber" [Ps 18:6] from the immaculate womb of the Virgin to join himself to the church, his bride — he chose to attend a marriage in order to sanctify it, to gladden it with the first of the miracles of his greatness when he turned water into wine, and to show that a marriage celebrated in accordance with the lawful norms is good and holy, and that he is its author. Moreover, he said in the Gospel, showing by his own edict that God made marriage, "What God has joined together, let not man separate."<sup>44</sup>

The allusion to Psalm 18:6 — "He has set his tabernacle in the sun, and he as a bridegroom coming out of his bride chamber has rejoiced as a strong man to run the way"<sup>45</sup> — echoes a gloss on this text by Augustine, who identifies the bridegroom with God and the bride with human nature, to which the Son of God united himself by coming forth.<sup>46</sup> The author might have found Augustine's gloss in any one of numerous Carolingian commentaries.

<sup>44</sup> In H. K. Schulze, *Die Heiratsurkunde der Kaiserin Theophanu* (Hannover, 2007), 90: "Ad hoc ipse utriusque testamenti institutor, mediator dei et hominum dominus Iesus Christus in humana carne adveniens, ipse ex immaculato virginis utero tamquam sponsus egressus de thalamo ad coniungendam sibi sponsam aeclesiam, ut ostenderet bonas et sanctas esse nuptias legitima institutione celebratas seque auctorem esse earum, ad eas venire et primo maiestatis suae miraculo eas laetificare, dum aquam vertit in vinum, voluit et sanctificare. Edicto denique proprio a deo factas esse nuptias ostendens in evangelio dicit: quod deus coniunxit, homo non sepatet." I am grateful to Prof. Eliza Garrison for bringing this charter to my attention.

<sup>45</sup> "Soli posuit tabernaculum in eis et ipse quasi sponsus procedens de thalamo suo exultavit ut fortis ad currendam viam."

<sup>46</sup> Cf. Augustine, *Enarr. in Ps.* 18.1.6 (CCL 38:102/5–8): "et ipse tamquam sponsus procedens de thalamo suo. et ipse procedens de utero uirginali, ubi deus naturae humanae tamquam sponsus sponsae copulatus est." The use of this source accounts for the odd duplication of

The same traits are apparent in the preambles to three dotal charters from northern Aquitaine on which Philippe Depreux has commented, which date from the late tenth through mid-eleventh century. All begin by invoking God as the almighty creator and go on to describe the primordial marriage. One (c. 975) notes how Jesus referred to the primordial marriage, saying, “What God has joined together, let man not separate” (Matt 19:6, Mark 10:9). Another (c. 990) recalls how God blessed the first couple, telling them to be fruitful and multiply (Gen 1:28), and how God commanded the man to leave his father and mother and cleave unto his wife (Gen 2:24). By the grace of the Holy Spirit, this text continues, “the prophets and patriarchs and perfect faithful men of the holy Church” have continued to fulfill that ancient commandment to this day. The latest of these examples, dated February 4, 1083, adds that Jesus confirmed the goodness of marriage at Cana, where he performed the first of his miracles (John 2:11).<sup>47</sup> Some preambles to dotal charters from the tenth and eleventh centuries – two for dukes of Normandy, the others preserved at Cluny – follow a similar pattern, weaving together texts from Scripture to recall creation, the primordial marriage, and the role of marriage in God’s plan.<sup>48</sup>

Clerics before 1100, then, to prove that marriage was a holy estate, looked first to the primordial marriage. Then, for confirmation, they looked to the marriage at Cana, where Jesus confirmed the holiness of marriage by performing the first of his miracles. They did not posit a new institution of marriage under the New Law or the Gospel. Instead, they considered Holy Matrimony to be primordial and perennial. They rarely invoked the discourse on marriage in Ephesians 5. Even after the doctrine of marriage as a sacrament had become established, clerics with no formal training in theology looked to the primordial marriage as their chief resource, appealing to it even as evidence that marriage was a sacrament, as Chaucer’s parson did:

This, as seith the book, is a ful greet sacrament. God maketh it, as I have seyde, in paradys, and wolde hymself be born in mariage. And for to halwen mariage he was at a weddyng, where as he turned water into wyne; which was the firste miracle that he wroughte in erthe bifore his disciples.<sup>49</sup>

It was easy for the Protestant reformers to set aside the relatively newfangled sacramental theology of marriage, with its dependence on Ephesians 5:22–33, and to revert to the old themes, which had been a mainstay of popular preaching and instruction for centuries.

the word *ipse* in the cited passage. See also Augustine, *Serm.* 192.3 (PL 38:1013) and *Serm.* 361.17 (PL 39:1608–09), where Augustine returns to the theme.

<sup>47</sup> P. Depreux “La dotation de l’épouse en Aquitaine septentrionale du IXe au XIIe siècle,” in F. Bougard et al., *Dots et douaires dans le haut moyen âge* (Rome, 2002), 219–44, at 241, 242, and 243 (nos 1, 2, and 4).

<sup>48</sup> L. Morelle, “Marriage and Diplomats: Five Dower Charters from the Regions of Laons and Soissons, 1163–1181,” *THH* 165–214, at 175–76.

<sup>49</sup> Chaucer, *The Parson’s Tale*, X.917.

## 1.3 THE SEVEN SACRAMENTS

Theologians before 1100 used the word *sacramentum* in several interrelated senses.<sup>50</sup> In the sense most pertinent to the development of twelfth-century sacramental theology, the sacraments were the ritual “mysteries,” or rites, of the church. Each rite involved some material stuff (*elementum*) that was humble in itself but pregnant with significance: water, oil or chrism, and bread and wine. Augustine had said that a sacrament resulted from the application of a *verbum* to an *elementum*.<sup>51</sup> The stuff became a sacrament when a priest invoked a prescribed verbal formula over it. These sacramental rites were associated with initiation into a cult. They were either means of initiation, such as baptism, or they were rites reserved for initiates, such as eucharist. Eucharist and baptism were the sacraments *par excellence*, therefore, but the model could be extended to ancillary features of those rites and even to independent rites *mutatis mutandis*. Isidore of Seville said the that sacraments were “baptism and chrism, body and blood.” Following Augustine, Isidore explains that a sacrament involves a ritual (*caelebratio*) in which the action (*res gesta*) signifies something that ought to be received in a holy way.<sup>52</sup> Isidore derived the word *sacramentum* both from *secretum* (“secret,” “hidden”) and from *sacer* (“sacred”), for “under the covering of corporeal things a divine power very secretly brings about the saving effect [*salus*].”<sup>53</sup> Isidore’s phrase “baptism and chrism” probably denoted two aspects of baptism rather than baptism and confirmation as separate sacraments (compare “body and blood”), but one cannot be sure. There would have been no point in insisting on a number.

The model outlined earlier, emphasizing ritual performance, verbal formulas, and material substances, endured throughout the Middle Ages. Theologians sometimes emphasized the stuff itself (e.g., water), which was said to contain grace, and sometimes the ritual action performed with the stuff (e.g., ablution with water). Twelfth-century theologians generally emphasized the stuff rather than ritual action, and thirteenth-century theologians generally emphasized the ritual action rather

<sup>50</sup> On the early development of sacramental theology and terminology, see J. de Ghellinck, “Un chapitre dans l’histoire de la définition des sacrements au XIIIe siècle,” in *Mélanges Mandonnet* (Paris, 1930), 2:79–96; D. Van den Eynde, *Les définitions des sacrements pendant la première période de la théologie scolastique (1050–1240)* (Rome, 1950); and B. Stock, *The Implications of Literacy* (Princeton, 1983), 254–59. For a succinct but detailed history of seven sacraments, see A. Lagarde, *The Latin Church in the Middle Ages* (New York, 1915), 32–82: not faultless, but still a superior account, notwithstanding more recent advances in the field.

<sup>51</sup> Augustine, *In Iohannis evangelium tractatus* 80.3 (CCL 36:529/4–7): “detrahe uerbum, et quid est aqua nisi aqua? accedit uerbum ad elementum, et fit sacramentum, etiam ipsum tamquam uisibile uerbum.”

<sup>52</sup> Cf. Augustine, *Epist.* 55, 2 (CSEL 34.2:170/11–13): “sacramentum est autem in aliqua celebratione, cum rei gestae commemoratio ita fit, ut aliquid etiam significare intellegatur, quod sancte accipiendum est.”

<sup>53</sup> Isidore, *Etymologies* VI.39–40.

than the stuff, but such emphasis was never exclusive. The inclusion of penance and marriage among the sacraments stretched the paradigm and raised difficult questions. These questions were the focus of much discussion and debate from around 1225, as theologians began to work out the implications of treating the seven as a univocal genus.

One should distinguish between *listing* and *enumerating*. Peter Lombard *listed* the sacraments, tacitly implying that the list was complete, closed, and countable, but he did not explicitly enumerate them. He did not say that there were seven or identify them by their ordinal numbers. The explicit enumeration of seven, with emphasis on the number, developed later, as the idea of the list as a matter of settled doctrine and practice took root.

It is misleading to ask how many sacraments were recognized in earlier periods, for no one was counting. Encyclopedias continue to tell us that Peter Damian (d. 1072) posited twelve sacraments, but the source is a treatise or sermon on the sacraments long known to have been the work of Nicholas of Clairvaux, Bernard's secretary, which was published under the name of Peter Damian in Migne's *Patrologia Latina*. Nicholas entered the community at Clairvaux around 1145, left it around 1152, and died after 1176. Writing in a florid, inflated style that verges on parody, Nicholas enumerates twelve sacraments: baptism, confirmation, the anointing of the sick, the consecration of a bishop, the anointing of a king, the dedication of a church, confession, the sacrament of canons, the sacrament of monks, the sacrament of hermits, the sacrament of nuns, and marriage. Nicholas explains that these correspond to the twelve crosses inscribed or placed around the walls of a church. They fall into two equal sets, for whereas the first six involve the "oil of unction," the rest do not. Eucharist is not among the twelve. Unlike Peter Lombard, Nicholas enumerates his sacraments. He insists the number, which he treats as significant, and he introduces each sacrament with its ordinal number: "The first is the sacrament of baptism," and so forth.<sup>54</sup> Some say that Cardinal Humbert of Silva-Candida (d. 1061) was the first to enumerate seven sacraments,<sup>55</sup> but this claim is misleading. Humbert refers to confirmation as the "seventh of the sacraments of regeneration." He does not name the seven, but they are not the sacraments of the New Law. Instead, they constitute a sequence

<sup>54</sup> PL 144:897C–902B. The text is identified here as Peter Damian, *Sermo LXIX, In dedicatione ecclesiae*. On the work's authorship, see J. J. Ryan, "Saint Peter Damiani and the Sermons of Nicholas of Clairvaux: A Clarification," *Mediaeval Studies* 9 (1947): 151–61; and J. Leclercq, *Recueil d'études sur saint Bernard et ses écrits*, vol. 1 (Rome, 1962), 47–82.

<sup>55</sup> H. Chadwick, "Ego Berengarius," *Journal of Theological Studies* 40.2 (1989): 414–45, at 422, says that Humbert "is the first to speak of seven sacraments." M. M. Adams, *Some Later Medieval Theories of the Eucharist* (Oxford, 2010), 46, citing Chadwick, says that Humbert "was the first to insist that the number of new-law sacraments is seven — baptism, confirmation, penance, eucharist, ordination, matrimony, and extreme unction." Humbert did not say what his seven sacraments of regeneration were, but he was probably referring to tasting consecrated salt, exsufflation, daubing the ears and nostrils with saliva, anointing the breast with holy oil, ablution with holy water, chrismation, and confirmation.

that begins with the pre-baptismal rite of the tasting of consecrated salt and terminates in confirmation. Humbert assumed that there were seven of them because the gift of the Holy Spirit, which was associated especially with confirmation, was also sevenfold.<sup>56</sup>

Peter Lombard relied chiefly on two sources for his sacramental theology: Hugh of Saint-Victor's *De sacramentis christianae fidei* (1130–1137) and the *Summa sententiarum* (1138–1141). The latter source, which was written by a certain Odo (probably Odo of Lucca), incorporates ideas and material from Hugh and used to be ascribed to him. Hugh neither lists nor enumerates the sacraments. It would be pointless to count them on his behalf, for his extraordinarily rich sacramental theology is fluid and many-layered (Section 10.2). His *De sacramentis* encompasses salvation history from beginning to end, in which sacraments of various sorts have cardinal roles. Hugh divides the sacraments diachronically into those of the natural law, of the written law, and of the age of grace. He also divides them synchronically into three functional classes: major sacraments, such as baptism and eucharist, which are necessary for salvation; minor sacraments, such as sprinkling with water and the distribution of ashes, which help to sanctify the soul but are not necessary for salvation; and preparatory sacraments, such as priestly vestments. Having mapped out the terrain that the sacraments inhabit, Hugh leaves the reader to decide to which class any given sacrament belongs. Hugh discusses the sacramentality of marriage at length, but this is a sacrament only in an exceptional, *sui generis* manner. Hugh does not try to integrate his theology of marriage as a sacrament into his general theory of the sacraments. Moreover, he posits *two* sacraments in marriage, that is, two respects in which marriage signifies holy things, only one of which presupposes sexual union (Sections 10.4 and 10.5). The section on the sacraments in Odo's *Summa sententiarum* begins with a discussion of the sacraments in general as well as of the sacraments and precepts of the Old Law. Odo then treats five sacraments of the New Law individually: baptism, confirmation, eucharist ("the sacrament of the altar"), penance, and the anointing of the sick. But Odo neither lists nor enumerates the sacraments.<sup>57</sup> There is no treatise on orders in the *Summa sententiarum*, although the author mentions the "sacrament of ordination" in passing.<sup>58</sup> Nor is there a treatise on the sacrament of marriage. To fill the latter gap, someone soon attached Walter of Mortagne's treatise on marriage (Section 11.3) to the *Summa sententiarum* as its final tractate. Walter's treatise is one of Peter Lombard's chief sources of material on marriage, especially regarding the rules and regulations and the ethical aspects.

<sup>56</sup> Humbert of Silva-Candida, *Adversus simoniacos* II.20, MGH *Libelli de Lite*, 1:163/32–36: "isti [symoniaci] catecismum, baptismum et perfectae christianitatis sigillum vendunt, scilicet a primo pabulo sacrați salis usque ad confirmationem per episcopum, quae est septima sacramentorum regenerationis secundum eundem septemplicem Spiritum ad remissionem omnium peccatorum."

<sup>57</sup> *Summa sententiarum* 4–6 (PL 176:117A ff.). <sup>58</sup> *Ibid.*, 4.15 (PL 176:145A).

The earliest authentic references to seven sacraments are in writings associated with a certain Master Simon, which date from the 1140s (Section 11.2). Unlike Peter Lombard, these authors did not present a list of sacraments as the basis of a systematic, sequential exposition of the entire system. They posited the seven in order to distinguish between two sorts of sacraments: common sacraments, which were received by all Christians and were individually necessary for salvation; and special sacraments, which were exclusive to a particular group were not individually necessary for salvation. The five common sacraments were baptism, confirmation, penance, eucharist, and extreme unction. The two special sacraments were marriage and orders. The authors tried to show that the five common sacraments comprised a complete system, in which each performed a necessary therapeutic or developmental function in the spiritual journey of life. Thirteenth-century theologians used the same technique with all seven, identifying each sacrament with a species of medication or with a phase in the spiritual life.<sup>59</sup>

There is no entirely satisfactory historical explanation as to why theologians settled on these seven. That there were *seven* of them seems to have been incidental, for Peter Lombard did not enumerate them, and there is no reason to attribute the choice of seven to numerological considerations. It is an odd list, and it generated many problems. The sacrament of ordination conferred a ministerial power that thirteenth-century theologians classified as *gratia gratis data*, not sanctifying grace. Neither penance nor marriage involved any material stuff. Nor did marriage require any prescribed verbal formula. Contrariwise, if marriage and penance could be accommodated, why were the solemn vows or consecration of religious not included? This anomaly vexed Peter John Olivi (Section 14.8.2).

The success of Peter Lombard's *Sentences* and the fact that it became the basis of systematic theology from around 1220 must have entrenched the list of seven, causing it to become routine and habitual. Indeed, André Lagarde attributed the success of the seven sacraments to this "fortuitous circumstance."<sup>60</sup> But to attribute a doctrine that was so enduring and successful to happenstance is an explanation of last resort. The list begins to make sense if one construes the sacraments as the remedies dispensed by the clergy as Christ's mediators to the laity. The sacraments were the chief therapeutic means in the clergy's care and cure of souls (*cura animarum*), as distinct from the duty of preaching and instruction.

The listing of seven sacraments went hand in hand with new emphasis on clerical authority and *cura animarum*, which was a sequel to the Gregorian Reform of the

<sup>59</sup> On the medical model, see Guy of Orchelles, *Tractatus de sacramentis* 1.2.3 (pp. 5–6); William of Auxerre, *Summa aurea* IV.4 (pp. 62–63); Bonaventure, *IV Sent.* 2.1.3 (4:53) and *Breviloquium* 6.3 (5:267b–268a). Thomas Aquinas, *Summa theologiae* III.55.1, resp. (2847), derives the sevenfold system from the premise, "Vita enim spiritualis conformitatem aliquam habet ad vitam corporalem."

<sup>60</sup> A. Lagarde, *The Latin Church in the Middle Ages* (New York, 1915), 34. Lagarde provides an excellent summary of the evolution of the seven sacraments.

eleventh century.<sup>61</sup> Social and political historians usually focus on the papal monarchy when they write about this social and institutional revolution, but the political advancement of the papacy was one of several convergent developments, which cannot be convincingly attributed to common cause. Nor can they be reduced to a single program of reform. Nevertheless, the broad movement fits the paradigm of church reform, although the term *reformare* with its cognates does not occur frequently or prominently in the writings of the period.<sup>62</sup> A reform, in this sense, presupposed that the church had become lax and corrupt by falling away from standards that it purportedly used to meet. The aim of reform was to restore the original order by radical, structural means, such as through changes in governance. Needless to say, the historian can recognize the salient characteristics of reform without sharing the ideology of its agents, advocates, and polemicists.

One aspect of this broad movement of reform was the segregation of the clergy as members of a distinct caste, who were distinguished from the laity most conspicuously by celibacy, and who were identified less as citizens of their local communities than as members of a universal, hierarchically organized corporation. Reforming churchmen and enthusiastic laypersons regarded simony (the marketing of *spiritualia*) and nicolaitism (marriage or concubinage among men in holy orders) as contaminating and enfeebling. Whatever the motives or advantages of this clericalism may have been, its success depended on the widespread but theologically questionable conviction among the laity that the mediation of the priesthood (*sacerdotium*) was vital for salvation, and that priests needed to be both pure and manly to perform this vital work.<sup>63</sup>

<sup>61</sup> The modern literature on the Gregorian Reform is vast, and even the term “Gregorian Reform” used to be hotly debated. For a broad but detailed account, see C. Morris, *The Papal Monarchy* (Oxford, 1989).

<sup>62</sup> W. L. North, J. Rubenstein, and J. D. Cotts, “The Experience of Reform: Three Perspectives,” in S. Murillo (ed.), *Haskins Society Journal* 10 (Woodbridge, 2002), 113–61. See also C. M. Bellitto, *Renewing Christianity* (New York, 2001), 48–63, on the Gregorian Reform precisely as reform.

<sup>63</sup> K. G. Cushing, *Reform and the Papacy in the Eleventh Century* (Manchester, 2005), 121–38, esp. 116. On Nicolaitism and clerical celibacy in the Gregorian Reform, see H. L. Parish, *Clerical Celibacy in the West* (Farnham, 2009), 87–122. On the ideology of clerical celibacy, see E. Dachowski, “*Tertius est optimus*: Marriage, Continence and Virginité in the Politics of Late Tenth- and Early Eleventh-Century Francia,” in M. Frassetto, *Medieval Purity and Piety* (New York, 1998), 117–29; H. E. J. Cowdrey, “Pope Gregory VII and the Chastity of the Clergy,” in Frassetto, *Medieval Purity and Piety*, 269–302; M. C. Miller, “Masculinity, Reform, and Clerical Culture: Narratives of Episcopal Holiness in the Gregorian Era,” *Church History* 72.1 (2003): 25–52; D. Elliott, “The Priest’s Wife: Female Erasure in the Gregorian Reform,” in Elliott, *Fallen Bodies* (Philadelphia, 1999), 81–106; and M. McLaughlin, *Sex, Gender, and Episcopal Authority in an Age of Reform, 1000–1122* (Cambridge, 2010), 31–36. On how the reform seemed to married clergy, see C. N. L. Brooke, “Gregorian Reform in Action: Clerical Marriage in England, 1050–1200,” *Cambridge Historical Journal* 12.1 (1956): 1–21; and J. D. Thibodeaux, “The Defense of Clerical Marriage: Religious Identity and Masculinity in the Writings of Anglo-Norman Clerics,” in P. H. Cullum and K. J. Lewis, *Religious Men and Masculine Identity in the Middle Ages* (Rochester, NY, 2013), 46–63.

Among the sequels to the reform was a new emphasis on the pastoral ministry of the clergy and on their duty of care toward the laity.<sup>64</sup> The dominant ecclesiology of the early Middle Ages presupposed a cultic model of Christian discipleship. Priests, monks, and nuns contributed to the community at large as the professional praying persons (*oratores*). The work that justified their existence was prayer and other good works, from the merits of which everyone would benefit, including those who were too entangled in their worldly status and obligations (the *bellatores*) or too busy working (the *labores*) to devote themselves to prayer. This model survived throughout the Middle Ages – monastic foundations would have been impossible without it – but clerics during the central Middle Ages began to emphasize in addition their pastoral role. They turned their faces, as it were, from the altar to the people. The emphasis on the pastoral ministry of the clergy to the laity is evident in the series of early Lateran Councils, which culminated on the Fourth Lateran Council of 1215 under Innocent III. The new emphasis also inspired the mendicant orders, especially the Dominicans and Franciscans. The *cura animarum*, which had originated in the culture of the early desert ascetics, appeared in this new pastoral setting as a professional duty of care.<sup>65</sup>

Peter Lombard introduced his treatise on the sacraments in Book IV of the *Sentences* by invoking the parable of the Good Samaritan, who is moved with compassion when he finds a wounded man abandoned by the roadside. Jesus says that the Samaritan, “going up to him, bound up his wounds, pouring on oil and wine” (Luke 10:34). The bandages, according to the Lombard, represent the sacraments:

For the Samaritan, going up to the wounded man, applied the sacraments as bandages [*sacramentorum alligamenta*] to care for him, because God instituted the sacraments as remedies against the wounds of original and actual sin (Luke 10:30–37).<sup>66</sup>

Four chief questions arise regarding these “remedies,” the Lombard continues: what a sacrament is, why each was instituted, what its composition is, and what the difference is between the sacraments of the Old Law and those of the New Law.<sup>67</sup>

<sup>64</sup> A. Vauchez, “Le tournant pastoral de l’Église en occident,” in *Histoire du christianisme des origines à nos jours*, t. V: *Apogée de la papauté et expansion de la Chrétienté (1054–1274)* (Paris, 1993), 737–66.

<sup>65</sup> N. Tanner, “Pastoral Care: The Fourth Lateran Council of 1215,” in G. R. Evans, *A History of Pastoral Care* (London, 2000), 112–25. L. E. Boyle, “St Thomas Aquinas and the Third Millennium,” in A. Duggan et al., *Omnia Disce* (Aldershot, 2005), 294–307.

<sup>66</sup> Peter Lombard, *Sent.* IV, 1.1.1 (231): “Samaritanus enim, vulnerato approprians, curationi eius sacramentorum alligamenta adhibuit; quia contra peccati originalis et actualis vulnera sacramentorum remedia Deus instituit.”

<sup>67</sup> *Ibid.*, 1.1.2. This opening passage is an expansion of *Summa sententiarum* IV.1 (PL 176:117A): “Contra peccata tam originalia quam actualia, de quibus jam diximus, inventa sunt sacramentorum remedia, de quibus haec tria consideranda sunt: quid sit sacramentum, quare institutum, et in quibus consistat.”

Peter Lombard was expanding a text that he found in the *Summa sententiarum*. Having discussed original and actual sin, the *Summa sententiarum* turns to the sacraments, which are the remedies to sin:

The sacraments were introduced as remedies against both original and actual sins, of which we have already spoken. Three things must be considered about these: What a sacrament is, why it was instituted, and in what it consists.<sup>68</sup>

Readers familiar with Augustine's allegorical interpretation of the parable would not miss the Lombard's allusion to the Good Samaritan, who used bandages to care for or to cure the wounded man (*curationi eius*).<sup>69</sup> The wounded man is Adam with all his descendants; the thugs who beat and rob him are Satan and his followers; and the Samaritan is Christ. The Lombard took the phrase *sacramentorum alligamenta* from his own gloss on Psalm 146:3, where the Psalmist praises God as the one who "heals the broken in heart and binds up their wounds." Peter Lombard explains in this commentary, following Augustine, that the "bandages of God" are the sacraments, with which God consoles us until we shall be restored to perfect health (*perfecta sanitas*). Only then will God remove them, just as physician removes the bandages once a broken limb has fully healed.<sup>70</sup>

The clergy took upon themselves this duty of care. Hugh of Saint-Victor likened the sacraments to phials of medicine, which priests as emissaries of the Great Physician conveyed to their sick patients (Section 10.2.2). The simile suited Hugh's notion of the sacraments as ritual applications of consecrated stuffs (*elementa*). Peter Lombard shifts attention to the minister, or *dispensator*, of the sacraments. Although penance did not fit the ancient paradigm easily because it involved no *elementum*, it was the priestly remedy *par excellence* in this new *cura animarum*. In no other respect was the laity as dependent on the priesthood for their salvation. The Fourth Lateran Council required the faithful of both sexes to receive eucharist and to confess at least once a year. The decree likens penance to a consultation with a professional physician:

Let the priest be discerning and cautious, so that in the manner of an expert physician he may pour wine and oil [Luke 10:34] over the wounds of the injured one, diligently inquiring into the circumstances of the sinner as well as of the sin, so that through

<sup>68</sup> *Summa sententiarum* 4.1 (PL 176117A): "Contra peccata tam originalia quam actualia, de quibus jam diximus, inventa sunt sacramentorum remedia, de quibus haec tria consideranda sunt: quid sit sacramentum, quare institutum, et in quibus consistat." Peter Lombard used material from Hugh of Saint-Victor, *De sacramentis* I.9.1 (PL 176:317B) and I.11.4 (PL 176:345A) to expand this agenda.

<sup>69</sup> See R. J. Teske, "The Good Samaritan (Lk 10:29–37) in Augustine's Exegesis," in F. Van Fleteren and J. C. Schnaubelt, *Augustine: Biblical Exegete* (New York, 2001), 347–57, esp. 351–54.

<sup>70</sup> Peter Lombard on Ps. 146:3 (PL 191:1274D). This gloss is from Augustine, *Enarr. in Ps. 146* (CCL 40:2127/6–9).

these he may understand prudently what counsel he ought to give him and what remedies to apply, using diverse treatments [*experimenta*] to heal the sick person.<sup>71</sup>

The confessor envisaged here was less a stern judge than a benign physician, who applied tangible remedies as well as giving advice. All the intended readers would have understood the allusion to the Good Samaritan in the reference to wine and oil, and theologically literate readers would have been reminded of Peter Lombard's preamble to the sacraments. The next canon concerns physicians of the body (*medici corporum*), who when called upon to treat persons with bodily ailments should advise them first to consult physicians of the soul (*medici animarum*). Bodily infirmities sometimes arise from sin and guilt, and patients may be cured more easily after their spiritual health (*salus spiritualis*) has been restored.<sup>72</sup>

#### 1.4 MARRIAGE AS ONE OF THE SACRAMENTS

The western church, in contrast to the eastern church,<sup>73</sup> did not treat marriage as an essentially ritual event, administered by a priest. Those who held the church in contempt by marrying without the blessing of a priest were sinful and impious, but their marriages were valid. No priest was needed to join the spouses together insolubly in matrimony. Instead, the spouses joined themselves. Most medieval theologians accepted this principle and tried to accommodate it in their accounts of how marriage was a sacrament.

In what sense, then, was marriage one of the sacraments? Albertus Magnus suggested that the church's legal control over marriage fulfilled the role of sacramental ministry.<sup>74</sup> The proposal would seem far-fetched if one regarded the sacraments primarily as rituals or consecrated stuffs (*elementa*), but it makes sense if one regards them primarily as church-dispensed therapy. Medieval theologians regarded marriage as a remedy to lust, and the essentials of marriage were wholly subject to ecclesiastical jurisdiction. In the marriage treatises of the early twelfth century, in Peter Lombard's *Sentences*, in commentaries on the *Sentences*, and in numerous other theological works that follow the ground plan of the

<sup>71</sup> *Concilium Lateranense IV*, canon 21 (Tanner-Alberigo 245/13–17). On how thirteenth-century theologians and pastors understood this duty of care, see N. Bériou, "La confession dans les écrits théologiques et pastoraux du XIII<sup>e</sup> siècle: médication de l'âme ou démarche judiciaire?" in *L'aveu* (Rome, 1986), 261–82.

<sup>72</sup> Canon 22 (Tanner-Alberigo 245/25–32).

<sup>73</sup> On the Byzantine tradition's gradual adoption of the nuptial blessing "first as a desirable, then an obligatory, factor in legalizing marriage," see J. Meyendorff, "Christian Marriage in Byzantium," *Dumbarton Oaks Papers* 44 (1990): 99–107, at 104–06. Novel 89 (893) by Emperor Leo VI (886–912) was crucial, for it required nuptial blessing by a priest as a necessary condition of a valid marriage among free persons. Priests both joined and separated (i.e., divorced) couples in the Byzantine tradition, whereas spouses joined themselves inseparably in the Roman tradition.

<sup>74</sup> Albertus Magnus, *De matrimonio* 1.2, ad 3 (Cologne edition, 26:156b): "ideo necesse est, quod quantum ad efficientia [matrimonium] dependeat a contrahentibus. Nihilominus instituta, secundum quae fit contractus, dependent a ministris ecclesiae."

*Sentences*, discussion of marriage as a sacrament is a prelude to the much longer treatment of the rules and regulations of marriage, which churchmen both codified and enforced.

The process by which marriage became one of the sacraments during the first half of the twelfth century seems natural and effortless and not at all forced when one reads the literature of the period. The theologians were probably not aware that they were innovating. The easiness of the transition was partly a result of vocabulary. Augustine had characterized the indissolubility of marriage as the “good of sacrament” (*bonum sacramenti*), and early twelfth-century theologians did not distinguish clearly between the good of the sacrament and the sacrament of marriage. (Early thirteenth-century theologians, on the contrary, noticed the distinction, regarding it as problematic, and discussed it extensively: see [Section 14.4](#).) Moreover, the term *sacramentum* could denote any sacred oath, including the marriage vows. Ivo of Chartres had referred to marrying as a sacrament in that sense ([Section 5.4.1](#), final paragraph). Marriage was also a sign of the union between Christ and the church, and the term “sacrament” in a very broad sense included any “sacred sign” (*sacrum signum*), or “sign of a sacred thing” (*signum sacrae rei*). Much of the talk of marriage as a sacrament during the first half of the twelfth century pertained to the signification of marriage and especially of consummation. Equally important was the place of marriage in salvation history, which in early twelfth-century theology was sacramental history. Positing any sacrament in the earthly Paradise was anomalous, but historical theology followed a narrative of Paradise, fall, atonement, and eternal bliss, and marriage belonged as naturally in that setting as any sacrament did. Augustine had traced the changing nature and function of marriage in relation to Paradise and fall, to the life of God’s people under the Old Law, and to the Gospel of Jesus Christ. Theologians during the first quarter of the twelfth century were familiar with use of the word *sacramentum* in the context of marriage, therefore, and they extended it by applying current notions of sacramentality to marriage. But they did so in an *ad hoc* manner to answer particular questions, without implying or presupposing any developed theory of marriage as one of the sacraments. That development began in the schools of Paris during the late twelfth century.

Insofar as medieval treatises on the sacrament of marriage had anything to say about the day-to-day task of being married, this was only at a very generalized, abstract level. These treatises do not provide pastoral illumination of the sort that a student in a modern seminary would expect to receive from a course entitled, “The Theology of Marriage.” One might argue that medieval theologians were too committed to vocational celibacy to pass beyond the threshold of the married estate, for marriage was the only one of the seven sacraments in which they did not directly participate as beneficiaries. But neither do treatises on the sacrament of baptism offer much pastoral counsel on the task of being a Christian. Two relevant points are worth making here, both regarding modes of discourse. First, the Middle Ages left no theologically informed accounts of married life: nothing comparable to the

theologically informed accounts of monastic life, such as William of Saint-Thierry's *Golden Epistle*. Second, the literatures related to confession and to preaching contain a rich hoard of material on the day-to-day task of married life, but these reflections were not informed by the theology of marriage as a sacrament, and they rarely invoked Scripture to illuminate marriage. Rüdiger Schnell has pointed out that there were in effect two "discourses" on marriage and gender in the Middle Ages: one in the *summas* and commentaries on the *Sentences*, and the other in sermons, *exempla*, and manuals for confessors. In the former discourse, man and woman are related as ruler and ruled, and their relationship is idealized and polarized. Such is the depiction of husband and wife in Ephesians 5 and in Augustine's theological writings on marriage. In the latter discourse, men and women compete and negotiate, and each sex sometimes masters the other. Wives are sometimes nagging and disobedient, but they may also use their wiles to mollify their husbands and to make them unwittingly into better, more righteous men.<sup>75</sup> Thomas of Chobham, who had studied arts and theology in Paris in the early thirteenth century before becoming subdeacon of Salisbury, advised confessors that women should "always be encouraged during penance to be preachers to their husbands, for no priest is as able to soften the heart of a man as his wife is."<sup>76</sup> There was nothing analogous in the church's relationship with Christ. Discussions of marriage as a sacrament of Christ and the church, therefore, belonged to the former discourse, which idealized gender and was detached from the complexities of everyday life.

If the point of the theology of marriage as a sacrament was not to provide the basis of pastoral counsel for married couples, what was its point? Three things above all, it seems to me. First, the abstract, idealized level on which theologians regarded the relationship of husband and wife was not negligible. Baptisms and weddings remain moving, meaningful events today even to observers who cannot articulate what these rites mean, and theologians have the task of giving shape to such intuitions. Second, the fact that marriage was a sacrament provided a rationale for the church's exclusive jurisdiction over the essentials of marriage. Third, the theology located marriage in salvation history, in the Christian life, and above all in the constitution of the church. Being married placed one squarely among secular Christians, for celibacy was the distinguishing trait of the spiritual elite, but marriage was more than a

<sup>75</sup> R. Schnell, "The Discourse on Marriage in the Middle Ages," *Speculum* 73 (1998): 771–86. On the construal of gender in confessional and homiletic literature, see also S. Farmer, "Persuasive Voices: Clerical Images of Medieval Wives," *Speculum* 61 (1986): 517–43; and R. M. Karras, "Gendered Sin and Misogyny in John of Bromyard's *Summa predicantium*," *Traditio* 47 (1992): 233–57. The following studies focus on sermons that emphasize the ideal conjugal relationship: N. Bériou and D. L. d'Avray, "The Image of the Ideal Husband in Thirteenth-Century France," in Bériou and d'Avray, *Modern Questions about Medieval Sermons* (Spoleto, 1994), 31–69; and D. L. d'Avray and M. Tausche, "Marriage Sermons in *Ad status* Collections of the Central Middle Ages," *ibid.*, 77–134.

<sup>76</sup> Thomas of Chobham, *Summa confessorum*, ed. Broomfield, 375/3–6.

secular vocation. As already noted, it was an order: a mode of participating in the life of the church.<sup>77</sup> It was inferior to the celibate and religious vocations, yet only in degree and not in kind. Inasmuch as one could distinguish between what was due to God and what was due to Caesar, marriage as a sacrament was something that one ought to “render unto God” (Matt 22:21). The inclusion of marriage among the seven sacraments was arguably not the only way in which those ends could have been achieved, but it was the most secure way, and it was the way most congruent with the new emphasis on the pastoral ministry of the clergy. It also excluded anti-matrimonial heresy, which had troubled mainstream clerics since the early centuries of Christianity and was the subject of special concern during the twelfth and thirteenth centuries.

As already noted, to regard marriage as one of the sacraments was to regard it in the first place not as an estate or as a way of life but as the transient event of marrying. This is perhaps today the least appreciated and most misunderstood feature of the medieval doctrine of marriage as a sacrament. Sacraments were typically *caelebrationes*: ritual performances or enactments. When theologians spoke of the sacrament of baptism, for example, they were referring primarily to a rite conducted at the font, and only indirectly to the enduring character or to membership of the church.<sup>78</sup> Again, the sacrament of penance was the act of confessing and receiving absolution, not the subsequent acts of penance. Insofar as marriage was construed as one of the sacraments, therefore, it was not the estate of marriage but the act of marrying. The only major medieval theologian who regarded marriage chiefly as an estate was Peter John Olivi, O. F. M. (d. 1298), and he doubted whether marriage was properly one of the seven sacraments. Martin Luther, too, preferred to regard marriage as an estate, and he utterly rejected the sacramental doctrine.

This particular implication of the doctrine was not clear at first, during the first half of the twelfth century. It was becoming clear in Peter Lombard, although he was still inconsistent. It was fully settled by 1200. Duns Scotus explained that whereas both the sacrament and the contract of marriage were things that existed only in the act of coming into being (*in fieri*), the marriage bond (*vinculum*) that resulted had enduring being (*esse permanens*).<sup>79</sup> Theologians who argued that sinful or false intentions would prevent the reception of marital grace were referring not to failings in the spouses’ married life, but to their intentions in marrying, on their wedding day.

<sup>77</sup> Cf. N. Bériou and D. L. d’Avray, “Henry of Provins, O.P.’s Comparison of the Dominican and Franciscan Orders with the ‘Order’ of Matrimony,” in Bériou and d’Avray, *Modern Questions about Medieval Sermons*, 71–75.

<sup>78</sup> Technically, the act at the font is the *sacramentum tantum*, whereas the enduring character is the *sacramentum et res*.

<sup>79</sup> Duns Scotus, *Reportatio Parisiensis*, IV Sent. 28.un. (*Opera omnia*, Vivès 24:383). See Section 14.1.

Some complications should be noted. First, scholastic theologians after 1250 identified marriage as *coniunctio* (“joining,” or “union”) with the continuing condition of being married, whereas they identified the sacrament of marriage chiefly with the event of getting married (Section 12.2.1.2). The term *coniunctio* was the basis of some classical definitions of marriage, and theologians recognized that what the classical jurists had defined was the married estate. Whereas the exchange of mutual consent was the efficient cause of marriage as union (*coniunctio*), therefore, it was the formal cause of the sacrament. (According to the schoolmen, efficient causes were extrinsic, whereas formal causes were intrinsic.) Second, theologians were never entirely consistent even about the temporal identity of the sacrament. Their vocabulary permitted ambiguity, for both *matrimonium* and *coniugium* could denote either the event or the state. (These two terms were coextensive and interchangeable during the Middle Ages, although they had different connotations. The former emphasized lawfulness and validity and invoked ideas of motherhood, whereas the latter emphasized the partnership of two persons who became in certain respects a single social unit.) The term *nuptiae* primarily denoted marrying or the wedding, but it was also used by extension to denote the state of being married. Thus, although theologians assumed by default that the sacrament of matrimony was the transient event of marrying, they attended instead to the state of being married when the context demanded it. Their identification of the sacrament with marrying broke down, for example, when they considered the Pauline Privilege (1 Cor 7:10–15), for in that case an existing but non-sacramental marriage between unbelievers automatically became a sacrament when one of them converted to Christianity and was baptized, without any new ceremony or plighting of troth. When theologians remarked on the correspondences between marriage and Christ’s union with the church, they were sometimes referring to features of marrying and sometimes to features of the married estate. Nevertheless, Robert Bellarmine (d. 1621) was the first major theologian to argue that the estate of marriage might itself be construed as the sacrament. From the premise that a sacrament was an outward sign of an inward mystery or grace, Bellarmine deduced that both the visible act of getting married and the visible condition of being married (rather than the interior bond, which was invisible) were aspects of the same sacrament.<sup>80</sup>

Although the focus on the act of marrying rather than on the estate of marriage determined the theological agenda, medieval theologians did not ignore married life entirely. The purpose of performing or receiving the sacrament of marriage was in its enduring effects, just as the purpose of being baptized was to be liberated from original sin and to be incorporated into the mystical body of Christ. But perhaps medieval theologians would have reflected more extensively and

<sup>80</sup> Robert Bellarmine, *Controversiarum de sacramento matrimonii liber*, contr. 2, c. 6 (*Opera omnia*, 5:57–59).

in greater depth on the theology of married life if they had been less preoccupied with the transient act of marrying.

### 1.5 ECCLESIASTICAL JURISDICTION

Inasmuch as marriage was a sacrament, it was necessarily subject exclusively to canon law and to the jurisdiction of ecclesiastical courts. Marriage became one of the sacraments during a period when the church was taking control of marriage. Kenneth Stevenson famously spoke of the church's "taking over" marriage during this period.<sup>81</sup> He was referring chiefly to new liturgical practices, but these were aspects of a wider development that was above all about law and jurisdiction. The phrase "taking control" is more apt than "taking over," however, for the church was not wresting control from a competing authority.

What was taking control? The church – but the term "church" is equivocal. Modern social and political historians often use the term "church" to denote a corporation populated by bishops, clergy, and religious. The church in this sense was separate by definition from the laity, and the two parts of medieval society are sometimes regarded today antagonistically, as if the church ruled through a form of oligarchy. In the minds of medieval theologians, on the contrary, the church was above all the mystical body of Christ, which included all Christians but was hierarchically organized. This holistic model has virtue even from a non-confessional, purely historical perspective, for the medieval church could not have existed without aristocratic patrons and popular piety. Medieval clerics and religious used the term *ecclesia* also in senses that fall somewhere between the two outlined earlier. For example, they regarded the church both as the bride of Christ and as a mother who cares for her young.<sup>82</sup> By an extension of those metaphors, clerics regarded the bishop as the *amicus sponsi* (cf. John 3:29), as an attendant of the bride (*paranymphus*), and even as the bridegroom of his diocese. Eleventh-century English clerics regarded the parish priest as the church's spouse.<sup>83</sup> Construed rather as Christ's bride than as his body, the church was a pastoral organization providing spiritual counsel and sacramental therapy to the laity.

There is something to be said for avoiding the equivocal word "church" in historical accounts of medieval religion and referring instead to bishops, to religious, to clergy, and so forth: terms that are more specific as well as more concrete. But the specificity comes with problems of its own, and I shall continue to use the term "church" sparingly in what follows, trusting that the context will resolve any ambiguities. The church that was taking control of marriage around the beginning

<sup>81</sup> Stevenson, *Nuptial Blessing*, 67. P. Biller, *The Measure of Multitude* (Oxford, 2000), 21–23, develops the wider implications of Stevenson's insight.

<sup>82</sup> McLaughlin, *Sex, Gender, and Episcopal Authority*, 123–59.

<sup>83</sup> M. McLaughlin, "The Church as Bride in Late Anglo-Saxon and Norman England," in M. Aurell, *Les stratégies matrimoniales (IXe–XIIIe siècle)* (Turnout, 2013), 257–66.

of the twelfth century was above all a legally constituted authority: an *oberkeit*. For the church was also a legally constituted authority. Today, we use the term “state” to refer to an authority of that sort, which includes all of us in principle yet embodies powers that only a few exercise, by virtue of their office.

The new regime is apparent in liturgical developments, especially in northern Europe. Marrying had been a largely secular or domestic affair even among the nobility during the post-Carolingian period. Although the evidence is sparse and its meaning disputable, it seems that the clergy’s role in solemnizing marriages had been limited to the *benedictio in thalamo*: the blessing of the bedchamber, of the bed, or of the newlyweds in the bedchamber.<sup>84</sup> A new way of marrying before the church (*in facie ecclesiae*) developed quickly in northern France and Anglo-Norman England during the early twelfth century.<sup>85</sup> This involved a preliminary, prenuptial betrothal rite conducted in the presence of the parish priest at the door or in the porch of a church. There, in the presence of the couple’s parents, family members, kinsfolk, and friends, the priest would interrogate the partners to ascertain that there were no impediments and that they freely consented to their union. The extant *ordines* for this pre-nuptial rite include features traditionally associated with betrothal contracts, such as the gift of a ring. After the partners had plighted their troth, the party would proceed into the sanctuary, where the priest would bless the now-married couple in a nuptial mass. Clerics encouraged couples to prepare for such weddings with prayers and vigils and by receiving eucharist. The earliest extant example of the new procedure is in a manuscript written at Bury St Edmunds between 1125 and 1135, by which time the procedure was probably already well established.<sup>86</sup>

Legal competence, or the power of law, embraces both legislative and jurisdictional authority. Legislative competence is the power to make laws. Jurisdiction is essentially the power to adjudicate (to judge cases), although it presupposes jurisprudence (the interpretation of laws), legal process, and enforcement. Medieval canon law did not formally recognize precedent, or case law (the binding consequences of adjudication), although legislation and jurisdiction merged in decretal law (the *ius novum*), since the pope was both supreme judge and supreme legislator. Modern historians tracing the development of the church’s legal competence over marriage and other matters regard jurisdiction as primary and legislation as a necessary support. Medieval theologians, preoccupied with the relation of human law to natural and divine law and with questions of teleology, well-being, and epistemology, regarded legislation as primary and mentioned enforcement only incidentally.

<sup>84</sup> Molin and Mutembe, *Le rituel de mariage*, 254–70, on the *benedictio in thalamo*.

<sup>85</sup> Molin and Mutembe, *Le rituel de mariage*, 30–47. Ritzer, *Le mariage*, 393–95. Stevenson, *Nuptial Blessing*, 68–71. C. N. L. Brooke, *The Medieval Idea of Marriage* (Oxford, 1989), 248–57.

<sup>86</sup> Molin and Mutembe, *Le rituel de mariage*, Ordo V, 289–91. Searle and Stevenson, *Documents of the Marriage Liturgy*, 148–55.

Most aspects of marriage that were subject to legal control fell into three categories: (1) essential matters pertaining to the formation and validity of marriage, to divorce, and to the intrinsic obligations of the bond of marriage; (2) consequent matters regarding property and wealth; and (3) sexual conduct that was not contained by lawful marriage, including simple fornication, adultery, rape, sodomy, and bestiality.<sup>87</sup> When historians attribute exclusive competence over marriage to the church during the central Middle Ages, they are referring chiefly to the first of those three categories. This embraces the validity and legitimacy of marriages, diriment impediments, prior contract (*impedimentum ligationis alteri*), clandestinity, the conjugal debt, the mutual obligations of cohabitation and marital affection, and divorce – including the dissolution of invalid marriages, the dissolution of valid but unconsummated marriages under special circumstances, and legal separation without the option of remarriage. In theory, church courts had exclusive competence over the validity of marriage, whereas secular courts had exclusive competence over the material consequences, but the demarcation was not always so clear in practice. In areas such as bastardy (the illegitimacy of offspring) and dowry (*dos*), ecclesiastical and secular jurisdictions did not always adjudicate according to the same rules, and there was nothing to prevent secular courts from applying their own criteria of legitimacy.<sup>88</sup> Moreover, church courts reserved the right to handle the property consequences of nullity and separation suits.<sup>89</sup> According to Tancred, “judgment regarding the dowry belongs to the ecclesiastical judge . . . because when a matrimonial case is initiated, the case of the dowry as an accessory to it is understood to have been initiated as well.”<sup>90</sup> Competence regarding the third category – contravention of conjugal and sexual norms – was blurred and mixed. The convergent interests of ecclesiastical and secular authorities in sexual crimes was especially important during the late-medieval and Reformation periods, when citizens, local communities, and their rulers throughout Europe were increasingly preoccupied with norms of sexual behavior, and when sexual license and deviance seemed to threaten the civic order and even to invite the wrath of God.<sup>91</sup>

<sup>87</sup> J. F. Harrington, *Reordering Marriage and Society in Reformation Germany* (Cambridge, 1995), 101–7. Harrington’s characterization of the first category as “validity disputes” is potentially misleading, for church courts could and did prosecute both instance cases (disputes brought to the court by the parties) and office cases (initiated by the court). Sometimes an office case originated in an instance case.

<sup>88</sup> See N. Adams and C. Donahue, *Select Cases from the Ecclesiastical Courts of the Province of Canterbury c.1200–1301* (London, 1981), introduction, 84, regarding English law.

<sup>89</sup> J. A. Brundage, *Law, Sex, and Christian Society in Medieval Europe* (Chicago, 1987), 479–80.

<sup>90</sup> Tancred, *Summa de matrimonio*, title 39 (ed. Wunderlich, p. 108). Raymond of Penyafort, *Summa de matrimonio*, title 25 (Rome, 1603, p. 581).

<sup>91</sup> Brundage, *Law, Sex, and Christian Society*, 319, 545–46. Harrington, *Reordering Marriage*, 27–38. Harrington, *ibid.*, 114–18, 122–24, 139–40, and 153–73, shows how *causae mixtae* and the preoccupation with sexual crimes in sixteenth-century Germany resulted in mixed but essentially civic tribunals such as the lay synods, in which regional clerics and leading laymen collaborated.

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. The church alone could determine whether or not a marriage was valid, even though everyone agreed that the Christian sacrament presupposed an essentially civil compact that was fundamental to political life everywhere.

Exclusive competence was also inclusive, for it extended to marriage as a secular, civic partnership. The church's competence to determine who was validly married and to regulate the marriage bond was as much a civil matter as it was a spiritual one. The church regulated marriage *in the political community, or in civil society*. The church had exclusive competence over marriage to the extent that it had the power to determine whether or not a marriage was valid even as regards its secular consequences, for marriage was in the first place a civic institution. Regardless of what penalties the church might use to enforce a judgment that a marriage was invalid, even including excommunication, the church had exclusive jurisdiction only to the extent that its judgment had civil consequences and was recognized by the secular authorities. Absent that recognition, ecclesiastical judgment was merely private and disciplinary. Jurisdictional competence was complex during the central Middle Ages, and the boundaries between ecclesiastical and secular legal competence were often unclear, but it is safe to say that by the twelfth century the church in northern Europe had something approximating to exclusive jurisdiction over the essentials of marriage in the manner outlined earlier, notwithstanding some exceptions regarding the secular consequences. If the medieval church declared that a couple's marriage was invalid, they were not married at all.

It had not always been so. Bishops and theologians during the patristic period had insisted on the difference between God's law and the secular law of marriage, which included the laws of the Christian emperors. The remarriage of divorcees was a crux. Augustine noted that Christians alone observed the *bonum sacramenti*, whereby persons who had divorced and remarried were committing adultery. Mosaic law and the law of the Gentiles (i.e., Roman civil law), on the contrary, permitted divorce and remarriage (Section 4.3).<sup>92</sup> Augustine remarked in a sermon that such forbidden remarriages were adulterous in the heavenly tribunal (*ius coeli*) but valid in the secular tribunal (*ius fori*).<sup>93</sup> Similarly, Jerome contrasted the laws of the Caesars regarding such marriages with the laws of Christ, and the jurisprudence of Papinian with that of "our Paul" (i.e., St Paul in contradistinction to the Roman jurist of the same name).<sup>94</sup> Ambrose said that such marriages were permitted inasmuch as human law (*lex humana*) did not prohibit them, but that divine law (*lex divina*)

<sup>92</sup> See especially Augustine, *De nupt. et conc.* 1.10(11) (CSEL 42:222–23), where Augustine contrasts the *lex huius saeculi* and the Mosaic law with the *lex evangelii* (223/9–17).

<sup>93</sup> Augustine, *Epist.* 392.2 (PL 39:1710): "Adulterina sunt ista conjugia, non jure fori, sed jure coeli."

<sup>94</sup> Jerome, *Epist.* 77 (Ad Oceanum), 3 (CSEL 55:39).

did prohibit them.<sup>95</sup> Gregory the Great made the same distinction when discussing whether a spouse had the unilateral right to enter the religious life, leaving the other in the world. Human law permitted such separation, Gregory argued, but divine law did not. The human law to which he referred was that of the emperor Justinian.<sup>96</sup> That said, although evidence regarding how bishops or synods attempted to enforce their ecclesiastical prohibitions during the patristic period is sparse, they presumably handled infractions by excommunication and reconciliation. Their actions would not have affected the status of the marriages in secular law.

The schema that Adhémar Esmein proposed in 1891 to describe the rise and fall of the church's exclusive jurisdiction over marriage is still widely accepted and cited by historians today, although it was based on a very narrow selection of evidence. Tracing the development of legal competence from Constantine through Carolingian Francia and medieval Europe to the Reformation and the early-modern period, Esmein posited three main periods.<sup>97</sup> During the first period, which extended from Constantine through the Carolingian era, secular authorities had exclusive competence over marriage, although they adopted features of church teaching in their own legislation. Churchmen insisted on the distinction between divine law and secular law, but their rule was "disciplinary" rather than legal, and excommunication was the strongest measure available to them. Esmein argues that the relation of secular to ecclesiastical power was essentially the same under the Carolingians as it had been under Constantine, although secular rulers and bishops collaborated even more closely. Esmein points out that even the pseudo-Isidorian forgeries and the false decretals of Benedict the Deacon, which make extreme claims for the power of bishops, never attributed general jurisdiction over marriage cases to the church.<sup>98</sup> During the second phase, the church enjoyed exclusive jurisdiction over the essentials of marriage. While conceding that it is difficult to determine when this regime arrived,<sup>99</sup> Esmein argues that it had become established in France and Italy by the middle of the tenth century. He attributes the development to the weak and fragmented authority of secular rulers. Finally, according to Esmein, the order reverted to something akin to that of the first phase during the Reformation and early-modern periods.

George Hayward Joyce presented a fuller and more satisfying account in *Christian Marriage* (first published in 1933), acknowledging his debt to Esmein.<sup>100</sup>

<sup>95</sup> Ambrose, in *Luc.* VIII, 5, on Luke 16:18 (PL 15:1767A): "Dimittis ergo uxorem quasi jure, sine crimine; et putas id tibi licere, quia lex humana non prohibet; sed divina prohibet. Qui hominibus obsequeris, Deum verere. Audi legem Domini, cui obsequuntur etiam qui leges ferunt: Quae Deus conjunxit, homo non sepatet."

<sup>96</sup> MWCh 138–41. <sup>97</sup> Esmein-Genestal, 1:1–66. <sup>98</sup> *Ibid.*, 25. <sup>99</sup> *Ibid.*, 27.

<sup>100</sup> G. H. Joyce, *Christian Marriage*, 2nd edition (London, 1948), 215–31. Joyce (216–17) is rightly cautious about the scope of the bishop's court (*judicium episcopale*, known in Justinian's *Code* as the *episcopalis audientia*) that emerged under Constantine as a means for Christians to settle their disputes within the community (cf. 1 Cor 6:1–7). It was largely (perhaps entirely) limited

During the Carolingian period, a litigant in a matrimonial case could opt to have the case “tried before the secular or the ecclesiastical court,” Joyce points out, and he or she was then bound by that choice.<sup>101</sup> The ecclesiastical courts in this setting were usually synods. Joyce questions whether the civil officials were always bound to enforce the decisions of ecclesiastical courts, but he argues that the secular courts grew weaker and the ecclesiastical courts stronger during the second half of the ninth century. By the end of the ninth century, the church in France and Germany “had acquired exclusive cognizance of matrimonial cases, and the secular power recognized the obligation of enforcing the sentence given in the bishop’s court.”<sup>102</sup> Joyce tacitly implies that the bishops were applying ecclesiastical law, but the capitularies of the Carolingian rulers generally complied with that law in any case. The two branches collaborated in enforcing a code that included the prohibition of remarriage after divorce, the prohibition of marriage to a woman already betrothed to another, and the impediments of consanguinity, affinity, and religious vows.<sup>103</sup>

Pierre Daudet proposed a less linear model of the development in two influential studies of ecclesiastical jurisdiction: one, which was his doctoral dissertation, on Carolingian France and Germany (1933), and the other on France from the tenth through twelfth centuries (1941).<sup>104</sup> Reforms and developments in canon law during the Carolingian period established that the church was more competent to adjudicate matrimonial cases than the state, but this advance was more theoretical than practical, Daudet argues. Carolingian church courts could adjudicate some matrimonial cases by the end of the ninth century, but secular courts still adjudicated most of them. In the tenth century, neither the secular nor the ecclesiastical authorities made much effort to control marriage and divorce among the nobility. Popes and bishops during the eleventh century pursued a determined and vigorous campaign to enforce the church’s rules on marriage and divorce, with little competition from secular authorities.<sup>105</sup>

The church had acquired effective and virtually unchallenged legal control over marriage by the beginning of the twelfth century. James Brundage argues that church courts “enjoyed their greatest success in securing exclusive jurisdiction . . .

to binding arbitration, and there is no reason to think that it applied a distinctive church law. The institution was an important milestone in the development of episcopal adjudication, since a single bishop rather than a synod acted as judge, but it had little if any role in the evolution of ecclesiastical competence over marriage. See MWCh 145–47; R. M. Frakes, *Contra Potentium Iniurias* (Munich, 2001), 195–229; and A. J. B. Sirks, “The episcopalis audientia in Late Antiquity,” *Droit et cultures* 65 (2013): 79–88.

<sup>101</sup> Joyce, *Christian Marriage*, 220. <sup>102</sup> *Ibid.*, 223.

<sup>103</sup> See K. Heidecker, *The Divorce of Lothar II* (Ithaca, 2010), 11–35, on the Carolingian reforms. Heidecker maintains that the “priestly blessing of the nuptials was made compulsory” (34), but in this respect he arguably exaggerates the realism of the *Pseudo-Isidorian* literature.

<sup>104</sup> P. Daudet, *Les origines carolingiennes de la compétence exclusive de l’église* (Paris, 1933). Daudet, *L’établissement de la compétence le l’église en matière de divorce et de consanguinité (France Xe–XIIe siècles)* (Paris, 1941).

<sup>105</sup> Daudet, *Les origines*, 172.

over marriage legislation” around 1100, when “even kings and great nobles ordinarily brought questions concerning the validity of their marriages to ecclesiastical authorities and were often prepared, however reluctantly, to abide by their decisions.”<sup>106</sup> This chronology inevitably highlights the work of Ivo, who was bishop of Chartres from 1090 until his death in 1116. He was the foremost authority on canon law of his day. Ivo’s letters show him using his hoard of canonical material creatively but impartially to solve the matrimonial cases and conundrums referred to him by laypersons as well as by fellow bishops (Section 5.4).

Many historians have construed the church’s achievement of exclusive competence over marriage during the central Middle Ages as the waxing of one ideology and the waning of another. George Duby famously proposed that a battle was played out between the proponents of two models of marriage, respectively ecclesiastical and aristocratic.<sup>107</sup> The aristocratic model favored insolubility and endogamy and was tolerant of concubinage, whereas the ecclesiastical model favored insolubility, exogamy, and monogamy. Duby’s approach has been fruitful and productive, but many historians have resisted it, and with good reason. David Herlihy and Christopher Brooke are representative of early criticisms. Herlihy complains that Duby uses the term “model” equivocally. The church’s model was prescriptive, a “set of rules or recommendations,” whereas the lay model was descriptive: a “generalized portrayal of actual behavior.” By treating the two models as comparable, Herlihy argues, Duby “clouds his analysis.”<sup>108</sup> Herlihy’s criticism would not be fatal if the noblemen were consistently pursuing an ideology, even if it remained implicit, but it would be fatal if the noblemen were only opportunistically pursuing their own self-interest, as seems to have been the case. Christopher Brooke objects that the notion of two dueling groups is unrealistic. If the two had fundamentally different ideologies of marriage, Brooke asks, how can one explain why “the lay aristocracy of Europe allowed the Church to take over almost completely the jurisdiction of the law of marriage”?<sup>109</sup> The trend in recent scholarship on medieval marriage has been to construe the waxing of ecclesiastical jurisdiction over marriage not as the victory of one model or one social group over another, but rather as the result of a complicated interplay of shared convictions, self-advancement, and opportunism.<sup>110</sup>

By the end of the eleventh century, the church’s competence over marriage was also beginning to extend to a broader spectrum of the laity. The population of the

<sup>106</sup> Brundage, *Law, Sex, and Christian Society*, 223.

<sup>107</sup> G. Duby, *Medieval Marriage: Two Models from Twelfth-Century France* (Baltimore, 1978). Duby pursued his two-model theory in *Le chevalier, la femme et le prêtre* (Paris, 1981) and other writings.

<sup>108</sup> D. Herlihy, “The Family and Religious Ideologies in Medieval Europe,” *Journal of Family History* 12 (1987): 3–17, at 7.

<sup>109</sup> Brooke, *Medieval Idea of Marriage*, 126.

<sup>110</sup> S. McDougall, “The Making of Marriage in Medieval France,” *Journal of Family History* 38.2 (2013): 103–21, rejects *all* explanations that posit conflicts and negotiations between clergy and aristocracy, including Duby’s. That may be going too far, but she makes an interesting case.

middle social strata – minor landowners, merchants, elite artisans, and so forth – was also growing. Some of the laypersons who feature in Ivo’s letters on matrimonial cases were from the nobility, but many were middling folk. Pope Hadrian IV ruled in his decretal *Dignum est*, issued in 1155, that unfree persons (*servi*) were free to marry without the consent of their lords, both because there was neither bond nor free in Jesus Christ (Gal 3:28) and because marriage was one of the sacraments, for no one had the right to prevent any Christian from having access to a sacrament (Section 11.6). How much access poor and unfree persons had to marriage litigation and to the protections of church law and jurisdiction during this period is debatable, but Hadrian’s decretal presupposed that the legal implications of counting marriage among the sacraments extended to everyone in reality, and not only in theory. According to Michael Sheehan, the “essential elements of the ideal of marriage had been rather successfully applied among the lower levels of society” by the end of the fourteenth century. Sheehan concludes that “the marital ideals and institutions, which were developed during the twelfth and early thirteenth centuries, were intended to assure that the new theory and practice would become the model for the populace at large.”<sup>111</sup>

The inclusion of marriage among the seven sacraments was not a necessary condition for the church’s exclusive jurisdiction, although it was a sufficient one. Canon law extended to many temporal matters. Nor is there any evidence that churchmen insisted on the sacramental doctrine as a way to assure their legal competence, as if they were staking their claim to a territory. G. H. Joyce argues that the church during the eleventh century “exercised jurisdiction . . . as an inherent prerogative consequent on her divinely-given authority over the sacraments,” but the flow of ideas was if anything in the opposite direction, at least when regarded from a merely historical perspective. The inclusion of marriage among the sacraments was fitting *because* marriage was subject in its essentials exclusively to canon law and to ecclesiastical jurisdiction. Nevertheless, the doctrine must have confirmed the church’s competence, putting it beyond debate.

## 1.6 CONCOMITANTS OF THE SACRAMENTAL DOCTRINE

The doctrine of marriage as a sacrament presupposed three other doctrines: that marriage was indissoluble; that the mutual consent of the spouses was by itself sufficient to establish a valid marriage; and that the diriment impediments of relationship extended far beyond naturally abhorrent, incestuous unions. The relationship of these doctrines to the sacramental theology of marriage is difficult to determine, but the four doctrines were inseparable aspects of a single ecclesiastical view or model of marriage.

<sup>111</sup> M. M. Sheehan, “Theory and Practice: Marriage of the Unfree and the Poor in Medieval Society,” in Sheehan, *Marriage, Family, and Law* (Toronto, 1996), 211–46, at 246.

## 1.6.1 Indissolubility

The doctrine of absolute indissolubility, precluding all possibility of valid remarriage, separated the western church from Roman law and jurisprudence, from Judaism and Islam, and even from Byzantine Christianity.<sup>112</sup> The doctrine gave rise in western canon law to the possibility of legal separation, or “divorce from board and bed” (*divortium a mensa et thoro*), for which there are few if any parallels in other legal systems.<sup>113</sup> Nevertheless, it was the least examined of all major, consequential Christian doctrines during the Middle Ages, perhaps in part because it fell somewhere between a conviction of reason and an article of faith. Scholastic theologians debated for the sake of argument whether Christ should have become incarnate and even whether God existed, but few of them debated or questioned whether Christian marriage was absolutely indissoluble. The doctrine was often a premise of arguments about marriage, but it was rarely a conclusion.

The principle of indissolubility imposed extraordinary pressure on the regulation of validity during the central Middle Ages. In marrying, couples embarked on a union from which they could escape only by dying. Because the church alone, in the guise of episcopal tribunals, could determine whether a marriage was valid and whether a prior union would or would not invalidate a subsequent one, rules and procedures for deciding such matters in litigation were vital, and until the twelfth century tradition and precedent were often unclear or inconsistent.

The medieval understanding of indissolubility was derived from Augustine’s. The manner in which Jesus condemned divorce in the synoptic gospels seemed to imply that spouses who had separated, even if one had divorced the other on permitted grounds, would commit adultery if they remarried. Augustine’s friendly debate with Pollentius showed him that his exegetical reasoning was faulty, but he never relinquished the premise (Section 2.2.3). This premise in turn implied, Augustine reasoned, that spouses who had separated or divorced were in some sense still married to each other. In what sense, he was unable to explain. He considered the matter to be a mystery that surpassed human understanding, although he noted that there were analogous bonds in baptism and ordination. Baptism established an insoluble “sacrament of faith,” indelibly marking the subject as a member of the church, and apostasy did not destroy that sacrament of faith. Instead, the sacrament remained and made the infidelity more sinful. In an analogous way, “something conjugal” remained in the spouse who divorced, causing a re-marriage to be adulterous (Section 4.3.1).

<sup>112</sup> On reformist attitudes to divorce-remarriage during the central Middle Ages, see McLaughlin, *Sex, Gender, and Episcopal Authority*, 43–47.

<sup>113</sup> J. Kamas, *The Separation of the Spouses with the Bond Remaining* (Rome, 1997), 31–118. G. Marchetto, *Il divorzio imperfetto. I giuristi medievali e la separazione dei coniugi* (Bologna, 2008), 21–231.

Spouses were normally bound to cohabit, to support each other, and to observe the conjugal debt until parted by death, therefore, but something of the bond remained and prevented them from remarrying even if they divorced or separated on valid grounds. Augustine called this feature of marriage the “good of sacrament” (*bonum sacramenti*). It was the third of three goods in which the value of marriage chiefly lay, the others being the goods of offspring (*bonum prolis*) and of faith (*bonum fidei*). The good of offspring was the begetting, nurturing, and educating of children, ideally as Christians who would worship the true God. The good of faith was primarily observance of the conjugal debt (1 Cor 7:3), although it also entailed fidelity in the modern sense. In Augustine’s view, the observance of the third good, insolubility, was what chiefly distinguished marriage among Christians from marriage under both Mosaic and Roman law. Only the church fully observed the *bonum sacramenti* and refused to permit remarriage after divorce as long as both spouses survived.

That said, what indissolubility meant in practical terms during Augustine’s day remains unclear. Christian bishops were not in a position then to determine that a marriage was invalid. The most severe penalty at their disposal was excommunication. One would expect bishops like Augustine to have refused to reconcile remarried divorcees with the church unless they agreed to separate or at least to practice continence, but there is little evidence that marginalized communities of legally remarried but permanently excommunicated divorcees troubled western dioceses during late antiquity.<sup>114</sup>

Medieval theologians and canonists inherited Augustine’s association of indissolubility with sanctity and with faith in Christ. Early twelfth-century theologians saw in the Pauline Privilege, by which an unbeliever who converts to Christianity may under certain circumstances divorce and to remarry within the faith, evidence that marriages between unbelievers were soluble, or at least less than fully insoluble (Section 9.5.2). But medieval theologians increasingly resisted that notion. It seemed to them that the law of indissolubility began not in the Gospel but when God joined the first couple as two in one flesh (Gen 2:24), for Jesus had reminded his hearers of that primordial law when he condemned divorce (Matt 19:4–6, Mark 10:6–9). Jesus did not imply that he was instituting anything new. Moses recognized divorce only to prevent worse things from happening, scholars reasoned, but it remained unlawful

<sup>114</sup> On divorce in early Christianity, see H. Crouzel, *L’Église primitive face au divorce du premier au cinquième siècle* (Paris, 1970); Crouzel, “Les Pères de l’Église ont-ils permis le remariage après séparation?” *Bulletin de littérature ecclésiastique* 70 (1969): 3–43; J. T. Noonan, “Novel 22,” in W. M. Bassett, *The Bond of Marriage* (Notre Dame, 1968), 41–90; J. Meyendorff, “Christian Marriage in Byzantium,” *Dumbarton Oaks Papers* 44 (1990): 99–107, at 101–2; and P. Blažek, “Divorce. Greek and Latin Patristics, and Orthodox Churches,” in *Encyclopedia of the Bible and its Reception* (Berlin, 1913), 6:1006–8. On the doctrinal history of indissolubility from the early church to Trent, see Joyce, *Christian Marriage*, 304–99; and A. Bevilacqua, “The History of the Indissolubility of Marriage,” *Proceedings of the Catholic Theological Society of America* 22 (1967): 253–308;

even then under divine law. Theologians noted that marriage according to the Roman jurist Modestinus was a “partnership for the entire life” (*consortium omnis vitae*).<sup>115</sup> Marriage was insoluble in principle, therefore, even under Roman law. Some theologians reasoned that marriage was insoluble or at least lifelong under the natural law because a permanent union was necessary to support parents’ responsibilities toward their offspring, although the force of this argument is unclear.<sup>116</sup>

Many theologians, nevertheless, reasoned that although marriage was an intrinsically lifelong and even insoluble union, Jesus had confirmed, strengthened, or fully realized that insolubility by raising marriage to the level of a sacrament of the New Law. This position seems to presuppose the difficult notion that indissolubility is capable of degrees. Some authors seem to have meant that conjugal grace made lifelong marriage enduring, removing the excuse of human fallibility, but this rationale was not well developed. Alexander of Hales was among the few theologians who developed a theological, even ontological rationale for indissolubility. In his view, the permanence of Christian marriage was based on the firm foundation of the baptismal character, which was in turn causally dependent on the Passion of Jesus Christ (Section 16.1).

### 1.6.2 Solus consensus

The principle that the consent of the spouses alone (*solus consensus*) was sufficient to establish a valid and indissoluble marriage emerged with the doctrine of marriage as a sacrament. The two ideas went together and seemed inseparable until the sixteenth century, when the Council of Trent severed them in the decree *Tametsi*. Modern scholars associate the *solus consensus* principle chiefly with Pope Alexander III (r. 1159–1181),<sup>117</sup> who insisted on its implications in his decretals, but early twelfth-century theologians already took the principle for granted and strove to accommodate it despite the judicial problems that it generated. They considered marriage to be a *coniunctio animorum*: a union of wills or intentions. The mutual consent of the spouses was constitutive of this union, and not only a necessary precondition, for only the spouses’ mutual consent could constitute a union of their wills.

The principle that consent alone was sufficient excluded several other things that could plausibly be and sometimes had been considered necessary for a valid marriage. For convenience, one may divide these excluded items into four overlapping categories: the consent of other parties, such as parents; contractual formalities, such as betrothal gifts, dowries, and documentation; publicity, witnesses, and

<sup>115</sup> *Dig.* 23.2.1

<sup>116</sup> L. Ryan, “The Indissolubility of Marriage in Natural Law: A Disputed Point in the Teaching of St. Thomas Aquinas,” *Irish Theological Quarterly* 30 (1963): 293–310, and 31 (1964): 62–77.

<sup>117</sup> C. Donahue, Jr., “The Policy of Alexander the Third’s Consent Theory of Marriage,” *Monumenta Iuris Canonici*, series C: Subsidia, vol. 5 (Vatican City, 1976), = *Proceedings of the Fourth International Congress of Canon Law*, ed. Stephan Kuttner, 251–81.

community involvement; and religious rites, such as the nuptial blessing and the priestly joining of right hands. Any or all of these things might be considered important, pious, fitting, or honorable, but according to the principle of *solus consensus* none was strictly necessary for a valid marriage. Nor could a marriage be annulled on the grounds that any such condition had not been satisfied. The principle of *solus consensus* was especially important in cases of prior contract. For example, if a man married one woman privately but then married a second woman publicly in a church ceremony, the second marriage was invalid because the man was already married. A church court would annul the second marriage if there was sufficient evidence that the first had taken place.

Discussion of *solus consensus* in medieval theology and canon law turned on a few endlessly repeated authorities. Some of these affirmed the principle, whereas others seemed to contradict it and required conciliation or solution. The most frequently cited contradictory authority during the Middle Ages and at the Council of Trent was a decretal that was ascribed to Pope Evaristus (d. c. 107), although in fact it was the work of a Carolingian forger. It existed in two versions: a longer version found among the church laws supposedly collected by Isidorus Mercator (Isidore the Merchant), and a truncated version included among the capitularies supposedly collected by Benedictus Levita (Benedict the Deacon). These collections belonged to a corpus of partly forged and partly authentic but spuriously elaborated legal texts produced in the archdiocese of Reims and completed by 837. The texts supported a conservative movement of reform, with emphasis especially on the authority of bishops.<sup>118</sup>

In the following translation of the text, the passage in italics is missing from Benedictus Levita's version,<sup>119</sup> but the two versions are otherwise the same:

... we have maintained as something preserved and handed down that a wife should be lawfully [*legitime*] joined to her husband, for, according to what we have received from the fathers and have found passed down by the holy apostles and their successors, a marriage is not lawful [*legitimum*] unless the wife is asked for from those who are deemed to have authority over her and custody of her, and she has been endowed and betrothed by her parents and kinsfolk and given away in accordance with the laws, and when her time has come she has been blessed, as is customary, by a priest with prayers and offerings in a priestly manner, and then, at the appropriate time, having been asked for in accordance with the laws, she is given away by her kinsfolk and solemnly taken, watched over and accompanied by

<sup>118</sup> On the pseudo-Isidorian corpus, see H. Fuhrmann, "The Pseudo-Isidorian Forgeries," in D. Jasper and H. Fuhrmann, *Papal Letters in the Early Middle Ages* (Washington D.C., 2001), 137–95; K. Zechiel-Eckes, "Auf Pseudoisidors Spur, oder: Versuch einen dichten Schleier zu lüften," in Wilfried Hartmann and Gerhard Schmitz, *Fortschritt durch Fälschungen?* (Hannover, 2001), 1–28; and E. Knibbs, "The Interpolated Hispana and the Origins of Pseudo-Isidore," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Kanonistische Abteilung* 99.1 (2013): 1–71.

<sup>119</sup> Benedictus Levita III.463 (PL 97:859C–D).

her paranymphs, and [the spouses] preserve their chastity and devote themselves to prayer for two or three days, so that good children may be generated from them and their conduct may be pleasing to the Lord, for in that way they will please the Lord and generate children that are not spurious but legitimate and capable of inheriting. *Accordingly, my dearest and deservedly illustrious sons, know that a marriage contracted thus, supported by the catholic faith, is lawful, whereas one presumptuously contracted in a different manner is not marriage but undoubtedly is rather adultery or cohabitation or promiscuity or fornication than lawful marriage, unless it is founded on their own will and supported by lawful vows.*<sup>120</sup>

The decretal requires the three chief formalities of marrying current among the landed elites during the early Middle Ages: the petition, whereby the suitor formally asked the woman's father, parents, or guardian for her hand in marriage; the dowry (*dos*), which came from the husband's side during this period, and which would normally involve a written contract completed before the wedding; and solemnization by a priest in a church ritual, with the blessing of the couple or of the bride alone. Whether the decretal implied that a marriage without these formalities was invalid is unclear, and this point was much debated during the Middle Ages. Much depends on how one interprets the term "lawful" (*legitimum*), for a marriage contracted in a manner that contravened the laws was not *ipso facto* invalid. It seems unlikely that anyone would have considered the presence of paranymphs (attendants of the bride) and observance of the Tobias Nights (Tob 8:1–3) to be conditions of validity. The final passage, which is missing from Benedict Levita's version, seems to insist that a marriage without the above formalities is invalid, but one might construe that as hyperbole. Moreover, the exceptive clause at the end – "unless it is founded on their own will and supported by lawful vows" – seems to undermine the preceding admonition and to reestablish the principle of *solus consensus*.

Most of the authorities and maxims that medieval scholars cited to defend the principle of *solus consensus* during the Middle Ages came directly or indirectly from a remarkable letter that Pope Nicholas I sent to Boris, the Khan of Bulgaria in 866

<sup>120</sup> PL 130:81B–C (or P. Hinschius, *Decretales Pseudo-Isidorianae et capitula Angilramni* [Leipzig, 1863], 87–88): "Similiter custoditum et traditum habemus, ut uxor legitime viro jungatur. Aliter enim legitimum, ut a Patribus accepimus, et a sanctis apostolis, eorumque successoribus traditum, invenimus, non fit conjugium, nisi ab his qui super ipsam feminam dominationem videntur habere, et a quibus custoditur, uxor petatur, et a parentibus aut propinquiorebus sponsetur, et legibus detur, et suo tempore sacerdotaliter, ut mos est, cum precibus et oblationibus a sacerdote benedicatur, et a paranymphis, ut consuetudo docet, custodita et sociata a proximis tempore congruo petita legibus detur, et solemniter accipiatur, et biduo vel triduo orationibus vacent et castitatem custodiant, ut bonae soboles generentur, et Domino in actibus suis placeant. Taliter enim et Domino placebunt, et filios non spurios, sed legitimos, atque haereditabiles generabunt. *Quapropter, filii charissimi, et merito illustres fide catholica suffragante, ita peracta legitima scitote esse conjugia. Aliter vero praesumpta non conjugia, sed aut adulteria, aut contubernia, aut supra, vel fornicationes potius quam legitima conjugia esse non dubitate, nisi voluntas propria suffragata fuerit et vota succurrerint legitima.*"

(Section 5.3). Nicholas described for Boris the nuptial process and the solemnities customarily observed in the west, but he noted that no solemnization was strictly necessary, as it was in the east, because formal weddings were expensive and many could not afford them. Consent alone was necessary. But Nicholas assumed, as the Roman jurists had done, that marriage required the consent not only of the spouses themselves but also of “those in whose power they are.” Sons and daughters who were still in the power of their fathers, parents, or legal guardians could not validly marry without their consent.

Marrying among the landed elites during the early Middle Ages was typically what I call “traditional marriage” (Sections 5.1, 5.3.1, and 5.3.2). The contract was between men from both sides, typically the suitor and his future father-in-law. The bride was rather an object of the contract than a party to it. Agnes Arnórsdóttir shows that the transition from traditional to canonical marriage, in which the union of the spouses’ will or intentions constituted their marriage, occurred rather quickly in Iceland during the fourteenth and early fifteenth centuries. The clasping or joining of hands took on a new function in Iceland under the influence of European canon law and ecclesiastical traditions. Formerly, the woman’s male guardian and her future husband or his father concluded the marriage contract by joining hands. This gesture of *handaband* was a common way of clinching property agreements in Iceland and elsewhere throughout the Middle Ages. But now the bride and bridegroom joined hands to confirm their contract, and the notion of *hjónaband* (the bond between husband and wife) appeared alongside that of *handaband* in the documents and tended to supplant it. At the same time, written property contracts recorded the agreement of the partners alone, whereas “earlier contracts had given equal weight to the consent of the parents and of the partners.”<sup>121</sup>

The role of consummation in the formation of a marriage was the subject of much inquiry and debate during the twelfth century. The canonical texts cited to establish the principle of *solus consensus* seemed to imply that a marriage was insoluble as soon as the spouses plighted their troth. Nevertheless, secular laws and customs, ecclesiastical precedents, hagiography, and commonsensical intuitions conspired to suggest that a marriage was not fixed (*ratum*) until it had been consummated in sexual intercourse. Clerics generally accepted that a newly married person could validly abandon his or her betrothed to enter the religious life before the union was consummated, leaving the other free to remarry, for the union with God trumped the union with another human being. (I refer to this right as the Privilege of Religion.) But that means of escape was no longer available after the marriage had been consummated. How did consummation affect cases of prior contract? Would a prior but unconsummated marriage to one person render a subsequent marriage to another null and void, even if the second marriage was consummated?

<sup>121</sup> A. A. Arnórsdóttir, “Marriage Contracts in Medieval Iceland,” *THTH* 360–89, at 375–80. The quotation is from p. 379.

Two solutions emerged during the first half of the twelfth century, one in the schools of northern France, and the other in Gratian and in the writings of Bolognese legal scholars who based their new discipline of canon law on Gratian's work. According to the French theory, a marriage was *ratum* and the spouses were insolubly united as soon as they exchanged mutual consent, but only if they agreed about the present (*de praesenti*), or in the present tense (Sections 5.5 and 7.3). An agreement to marry in the future (*de futuro*) was only a promise to marry, and a promise to do something could not be the same as actually doing it. A betrothal promise was binding, but if someone who had promised to marry one person with *de futuro* consent married a second person with *de praesenti* consent, the second contract trumped the first. According to the Bolognese theory, a betrothal (plighting of troth) created only an initiate marriage (*matrimonium initiatum*), which was incomplete and not yet fixed (*ratum*). Marriage was perfected (*consummatum*) in sexual intercourse (Sections 6.4 and 7.2). The tense of the contract was immaterial. But Gratian upheld the principle of *solus consensus* in his own way, for he regarded consummation as the means by which the spouses sealed their own mutual consent. No one else's consent, in his view, was necessary. Sexual intercourse by itself, without the preceding mutual consent of the spouses to marry, established relationships and impediments of affinity, but it did not establish a marriage.

The Bolognese model was more congruent with the prevailing view among medieval people that marrying was a process involving several stages (Section 7.3.3). In principle, the French theory implied that a *de praesenti* contract established a marriage all at once. As the *Summa Parisiensis* put it: "We say that marriage is at once initiated, consummated, and established [*ratum*] as soon as consent is expressed in words of the present tense."<sup>122</sup> But the notion that marrying evolved in stages, or what is sometimes known as processual marriage, was too deeply entrenched in custom to be eradicated.

By the end of the twelfth century, a hybrid doctrine had become established as the universal law of the church (Section 7.6). This doctrine incorporated the distinction between *de futuro* and *de praesenti* betrothals, but it recognized the role of sexual consummation in two ways. First, a *de futuro* betrothal automatically became a fixed, fully established marriage if the partners subsequently had sexual intercourse. This rule presumed that the subsequent act of coitus expressed *de praesenti* consent, although most theologians recognized that this was *only* a presumption and, indeed, little more than a legal fiction. Second, the Privilege of Religion automatically dissolved an unconsummated, *de praesenti* contract, whereas only the death of either spouse could separate a consummated marriage. In the ideal course of events, therefore, there would be at least three phases in the contracting of a marriage:

<sup>122</sup> *Summa Parisiensis* on C. 32 q. 5 c. 16 (ed. McLaughlin, p. 246): "Sed nos dicimus statim matrimonium esse initiatum consummatum et ratum ex quo fit consensus expressus per verba praesentis temporis si contrahentes in contrahendo legitima fuerint personae."

*matrimonium initiatum* (the *de futuro* betrothal), *matrimonium ratum* (the *de praesenti* betrothal), and *matrimonium ratum et consummatum*.<sup>123</sup>

The clergy's efforts to take control of marriage during the central Middle Ages presupposed that clerics would oversee the process, verify the contract, and make sure that there was no impediment. To the same end, it was important that spouses married publicly, and preferably before the church. One of the earliest canonical statements regarding publicity and solemnization is in the *Decretum* by Burchard of Worms, composed soon after 1000. It occurs in Book XIX, a penitential manual known as the *Corrector sive medicus*, which includes a series of "interrogations" that confessors should put to penitents, with the appropriate prescriptions. One interrogation concerns marriage. The priest should ask men whether they have married covertly, or without the ministry of a priest:

Have you taken a wife and have not performed the nuptials publicly, and you and your wife have not come to church and have not received the blessing from a priest, as it is written in the canons, and you have not endowed her with a dowry of whatever kind you are capable, whether it be land or moveable goods or gold or silver or serfs or animals, or whatever is within your means, so that she has been endowed at least with a shilling [*denarius*] or with something with the value of a shilling or with the value of a penny [*obolus*]? If you have not done so, you ought to do penance for three *quadragesimas* during ordinary days.<sup>124</sup>

Burchard requires formalities of three sorts here: publicity, solemnization in church (with the priestly blessing), and dotation. The canon presupposes that all these formalities went together, indicating that there were two recognized tracks to marriage: a formal track that was largely the preserve of the landed elite; and an informal track followed by everyone else, especially the poor. The description of the dowry is pro-forma, but Burchard goes out of his way to embrace persons of all means and classes. If the man cannot endow his bride with the wealth and real estate that were expected among the landed elite, he should at least give her some cash or something equivalent as a betrothal gift. If he cannot afford a shilling, he should give her a penny. But Burchard does not suggest that these requirements were necessary for validity.

As already noted, a new way of marrying before the church (*in facie ecclesiae*) emerged in northern France and Anglo-Norman England during the early twelfth century.<sup>125</sup> This involved a prenuptial rite conducted in the presence of the parish priest at the door or in the porch of a church, and it preceded the nuptial celebration in the sanctuary. It was in effect an ecclesiastically supervised betrothal, incorporating some of the elements and traditions that featured in betrothal

<sup>123</sup> On consummation and indissolubility in medieval thought, see J. A. Coriden, *The Indissolubility Added to Christian Marriage by Consummation* (Rome, 1961).

<sup>124</sup> Burchard of Worms, *Decretum* 19.5 (PL 140:958B–C).

<sup>125</sup> Molin and Mutembe, *Le rituel de mariage*, 30–47. Ritzer, *Le mariage*, 393–95. Stevenson, *Nuptial Blessing*, 68–71. Brooke, *Medieval Idea of Marriage*, 248–57.

contracts. It provided the parish priest with an opportunity to ascertain that the partners knew what they were doing, that they consented, and that no one present knew of any lawful impediment. There was still nothing to prevent a couple from marrying informally and privately, although they might need witnesses if the marriage became the subject of litigation.

The principle of *solus consensus* imposed a severe check on what bishops and clerics were trying to achieve in the regulation of marriage during the twelfth century. Hugh of Saint-Victor wrote the first extended account of the perils of clandestine marriage in the 1130s. Hugh noted that the problem could be solved if church weddings were required for validity, but he conceded (perhaps reluctantly or grudgingly) that the consensus of ecclesiastical opinion was against requiring solemnization (Section 10.6.1). Why clerics insisted on the principle of *solus consensus* and considered it to be indisputable remains a matter for speculation. Perhaps they were constrained by secular norms and expectations as well as by ecclesiastical precedents and traditions. Or perhaps people were so used to marrying in domestic settings, without the presence of a priest, that requiring solemnization would have greatly increased the number of couples living out of wedlock. Or perhaps by permitting couples to marry covertly, without their parents' consent, clerics were disrupting the traditional control of families and parents over their children's choice of partner, so that *solus consensus* was a wedge that helped the clergy to take control. Or perhaps by not requiring any formalities, the church was extending the reach of its control over marriage to everyone, even to the masses of anonymous poor and the unfree.

The Fourth Lateran Council of 1215 prohibited clandestine marriages, recognizing the problems associated with them (Section 12.1.2). Henceforth, parish priests were to observe the "special custom of certain places" whereby they announced the date of a forthcoming marriage in church, inviting anyone who knew of any lawful impediment to come forward meanwhile. This "special custom" was the reading of the banns, or *denunciationes*, which had emerged in Anglo-Norman parishes during the first half of the twelfth century. An "appropriate penance" would henceforth be imposed on persons who married clandestinely. Parish priests who participated in or were present at such unions or declined to forbid them were to be suspended from office for at least three years (Section 14.7).<sup>126</sup> But this law still did not render clandestine marriages null and void. The principle of *solus consensus* remained in force throughout the Middle Ages, and few theologians or canonists seriously questioned it. In their view, it was an unassailable matter of principle.

To understand what clandestinity entailed, one should keep in mind, again, that medieval people continued to regard marrying more as a process than as an event. There was nothing at all to prevent a couple from plighting their troth in the present tense in private or in a domestic setting but later having the banns read and their

<sup>126</sup> *Concilium Lateranense IV*, canon 51 (Tanner-Alberigo, 258). = X 4.3.3 (CIC 2:679–80).

union solemnized in church. Their marriage became indissoluble as soon as they plighted their troth. The delay was not in itself irregular or reprehensible, provided that they intended to solemnize their union in due course.<sup>127</sup>

The Council of Trent revisited the issue (Chapters 19–20). A substantive minority of the prelates maintained that the church ought not to overturn a principle that had been well established for centuries. Many opponents questioned whether the church could render clandestine marriages null and void without altering the essence of the sacrament, which almost all agreed was impossible. Nevertheless, the council finally ruled in the decree *Tametsi* at Session XXIV in 1563, despite the resolute objections of many prelates, that marriages not contracted in the presence of the parish priest and at least two other witnesses would in future be invalid. The council also required priests to solemnize and to bless marriages, joining the partners together, but not as a condition of validity (Sections 20.8 and 20.9).

It is difficult for the modern reader to grasp the attitude of theologians and other clerics during the central Middle Ages to solemnization and the priestly blessing. The minimum required for a valid marriage was not the same as what the spouses ought to do when they married. From a legal point of view, solemnization was not necessary to establish a valid and indissoluble marriage, and a prior unsolemnized union rendered a subsequent solemnized union invalid. Most theologians after Alexander of Hales agreed with him that the priestly blessing was a sacramental and not an integral part of the sacrament. Thomas Aquinas distinguished between the essence and the solemnities of marriage, maintaining that only the spouses' mutual consent was essential. But the essence of eucharist could have been performed in less than a minute in a barn. That was far less than a sacred mass, however, and to perform the bare essence alone would have been an act of impiety, even of sacrilege. Several major theologians, including Bonaventure, Albertus Magnus, and Thomas Aquinas, thought that a marriage enacted without the ministry and blessing of a priest did not fully realize its identity as a sacrament of the church. An unsolemnized trothplight in the present tense contained the essence of the sacrament, but it was morally incomplete. To fail to solemnize one's marriage, holding the church in contempt, was an act of gross impiety. It was a serious sin that might prevent the reception of conjugal grace. In the sixteenth century, Melchor Cano argued that a marriage contracted without the priestly blessing was merely contractual, and not a sacrament (Section 16.7.3). A dozen prelates at Trent held similar positions. But most theologians did not go as far as that, and a majority

<sup>127</sup> The contested marriage of Robert Middleton to Elizabeth Frothyngham, 1351, recorded in the York Cause Papers (CP E 79), is an excellent case in point. Having married in her family's private chapel with the assistance of a chaplain, they had the banns read for three successive Sundays before marrying publicly in the parish church of Frysmersk (a village on the Humber estuary that was subsequently inundated). The marriage came to court because of a claim against the husband of prior contract. See F. Pedersen, "Marriage Contracts and the Church Courts of Fourteenth-Century England," *THTH* 287–331, at 309–12 (analysis) and 320–31 (text).

of prelates at Trent resisted the theory. Nevertheless, many churchmen felt its attraction, and most regarded solemnization in church as the proper setting of the sacrament. Solemnization with the priestly blessing was not necessary in a causal sense, therefore, but it was required in a moral and practical sense, for that rite alone fully expressed the identity of marriage as one of the sacraments of the church. The priestly joining of right hands of the later Middle Ages had the same role in popular understanding. It was not canonically or theologically necessary, but without it how would one manifest the fact that God himself joined the spouses together in matrimony?

### 1.6.3 *The impediments of relationship*

The medieval church enforced impediments that extended far beyond the Leviticus code, although couples were sometimes dispensed from the more remote impediments.<sup>128</sup> As well as the impediments of consanguinity (blood relationship), there were those of affinity (acquired through coitus or marriage), of spiritual cognation (acquired through sponsoring a person's baptism), and of legal cognation (acquired through adoption). The basic aim of the systems of impediments was to keep relationships separate, so that no one could be both mother and sister of the same child, for example, or father and godfather of the same child.<sup>129</sup>

Until Lateran IV (1215), the impediment of consanguinity extended as far as the sixth degree, although dispensation from the impediment was possible from the fourth and subsequent degrees to avoid scandal.<sup>130</sup> There was no need to limit the range of consanguinity in the direct line, for few parents lived long enough even to see their great-grandchildren. It was necessary to limit the scope of lateral consanguinity, however, because all medieval persons had at least two ancestors in common, namely, Adam and Eve. The rule that consanguinity petered out at the sixth or seventh degree came originally from Roman law, although in that context it limited only rights of inheritance and not the capacity to marry.<sup>131</sup> Medieval scholars were familiar with Isidore's numerological explanation: that just as there are six ages of the world and six ages in the human life span, so consanguinity perishes after the sixth degree.<sup>132</sup>

<sup>128</sup> F. X. Wahl, *The Matrimonial Impediments of Consanguinity and Affinity* (Washington, D.C., 1934). S. Worby, *Law and Kinship in Thirteenth-Century England* (Woodbridge, 2010), 9–38.

<sup>129</sup> See S. Gudeman's studies of godparenthood and copaternity in Latin America: "Spiritual Relationships and Selecting a Godparent," *Man*, n.s. 10 (1975): 221–37; and Gudeman, "The *Compadrazgo* as a Reflection of the Natural and Spiritual Person," *Proceedings of the Royal Anthropological Institute of Great Britain and Ireland* 1971: 45–71.

<sup>130</sup> *Cum omnia sacramenta I*, BGPhMA 18.2–3 (Münster, 1919), 148/21–23: "Causa tamen communitatis ecclesie solet fieri dispensatio his qui sunt a quarto gradu supra."

<sup>131</sup> *Inst.* 3.5.5.

<sup>132</sup> Isidore, *Etymologies* IX.6.29. Ivo, *Decretum* IX.7 (= *Panormia* VII.74). SMA 213 (p. 235). *Cum omnia sacramenta I*, BGPhMA 18.2–3, 143/12–14. *Cum omnia sacramenta II*, ed. Bliemetzrieder, 282/174–175.

The method by which degrees of consanguinity were measured was even more restrictive than the number of degrees, for church courts used the ecclesiastical method of computation (*computatio canonica*). According to the measure used in Roman civil law (*computatio legalis*), the degree of relationship was equal to the number of intervening acts of begetting (*generationes*). For example, brother and sister were related in the second degree because two acts of generation separated them. But churchmen by the eleventh century were applying the so-called canonical computation, whereby one counted the successive generations of lateral kin. By this measurement, brother and sister were related only in the first degree.<sup>133</sup> These norms are traceable in church law to the ninth century. Their prominence in the eleventh century, such as in the work of Peter Damian, may plausibly be attributed not only to the advance of ecclesiastical jurisdiction over the essentials of marriage but also to the general mood of reform and to a new preoccupation with conjugal purity, which was a side effect of the preoccupation with clerical celibacy.

The purpose of this extraordinarily restrictive regime remains debatable. Jack Goody speculated that the aim was encourage the alienation of wealth to the church, for exogamy made it more difficult for kinsfolk to retain wealth within their group or their line,<sup>134</sup> but there is no evidence that medieval scholars and clerics saw the policy in that light. Duby's notion of competing "models" of marriage, respectively ecclesiastical and aristocratic, may seem promising, but it does not explain *why* churchmen wanted to extend the impediments of consanguinity so far. Moreover, members of the nobility seem to have been as keen on exogamy as bishops and scholars were, most of whom came from the upper social strata. As suggested earlier, Duby probably exaggerated the extent to which the two estates pursued opposing goals or were engaged in a "battle."<sup>135</sup>

Medieval theologians maintained that the reason for exogamy was to enhance peace by preventing interfamilial strife and extending the scope of familial charity (*caritas*). That rationale was apparently consistent with the practical sentiments of

<sup>133</sup> C. Rolker, "Two Models of Incest," in Andersen et al., *Law and Marriage in Medieval and Early Modern Times*, 139–59. Thomas Aquinas explains the difference between *computatio canonica* and *computatio legalis* succinctly in *IV Sent.* 40.1.2, resp. (Vivès 11:235): "Sed tamen diversa est ratio computandi gradus in diversis lineis" etc.

<sup>134</sup> J. Goody, *The Development of the Family and Marriage in Europe* (Cambridge, 1983). D. d'Avray, "Peter Damian, Consanguinity and Church Property," in L. Smith and B. Ward, *Intellectual Life in the Middle Ages* (London, 1992), 71–81, at 75–79. For critical retrospective reviews of Goody's theory, see J. Martin, "Zur Anthropologie von Heiratsregeln und Besitzübertragung. 10 Jahre nach den Goody-Thesen," *Historische Anthropologie* 1 (1993): 149–62; and M. Mitterauer, "Christianity and Endogamy," *Continuity and Change* 6.3 (1991): 293–333.

<sup>135</sup> C. B. Bouchard, "Consanguinity and Noble Marriages in the Tenth and Eleventh Centuries," *Speculum* 56.2 (1981): 268–87. Bouchard, *Those of My Blood: Creating Noble Families in Medieval Francia* (Philadelphia, 2001), 40–44. D'Avray "Peter Damian, Consanguinity, and Church Property," at 79–80. S. McDougall, "The Making of Marriage in Medieval France," *Journal of Family History* 38.2 (2013): 103–21.

the nobility. Churchmen found the basis of the rationale in Augustine.<sup>136</sup> Theologians and canonists did not assume that there was anything naturally problematic or abhorrent in unions that the Leviticus code did not prohibit. On the contrary, they attributed the more remote impediments entirely to positive law, celebrating the power of the church to make such laws. Exercising the same power, the Fourth Lateran Council of 1215 reduced the impediments of consanguinity to the fourth degree, explaining that the remote impediments had become counter-productive and noting that there was nothing wrong with altering human laws when circumstances changed.<sup>137</sup>

### 1.7 MARRIAGE AS THE SACRAMENT OF CHRIST AND THE CHURCH

Peter Lombard asks in one of his rubrics, “Of what thing [*res*] is marriage a sacrament.” Inasmuch as marriage is a sacrament, he replies, “it is both a sacred sign and a sign of a sacred thing, namely, of the union [*coniunctio*] of Christ and the church.” For proof, he cites Ephesians 5:31–32.<sup>138</sup> These claims were commonplace, and no medieval theologian questioned them even for the sake of argument. The notion that marriage was in the first place a sacrament of Christ and church depended on Paul’s discourse on marriage in Ephesians, and it became associated especially with Ephesians 5:32. Conversely, theologians identified the union (*coniunctio*) between Christ and the church as the *res* of this sacrament. Theologians posited other divine–human relationships as *res* of the sacrament as well. Some were particular aspects of the union between Christ and the church, such as the charity that brought and held them together. Others were separate but kindred unions or relationships, such as the personal union between the two natures of Christ, or the union of charity between God and a faithful soul. Sometimes theologians conceded that marriage *only* signified and did not cause the union between Christ and the church, distinguishing between that and the *res* that this sacrament both signified and caused. But the notion that marriage was a sacrament of Christ and church was the historical point of departure for the doctrine of marriage as a sacrament, and it was always fundamental.

What was the *sacramentum*–*res* relationship in general, and how was it instantiated in marriage? What relationship does the genitive idiom signify in phrases such as “sacrament of Christ and the church”? Clearly, this is not a possessive genitive,

<sup>136</sup> D’Avray “Peter Damian, Consanguinity, and Church Property,” at 71–75. M. H. Gelting. “Marriage, Peace and the Canonical Incest Prohibitions,” in M. Korpiola, *Nordic Perspectives on Medieval Canon Law* (Helsinki, 1999), 93–124. Rolker, “Two Models of Incest,” 143–45. Augustine, *De civitate Dei* XV.16 (CCL 48:476–79). Jonas of Orléans, *De institutione laicali* II.13 (SC 549:422–24).

<sup>137</sup> *Concilium Lateranense IV*, canon 50 (Tanner-Alberigo 1:257–58).

<sup>138</sup> Peter Lombard, *Sent.* IV, 26.5.6 (419): “Cuius rei sacramentum sit coniugium.” The rubrics were apparently original. See I. Brady, “The Rubrics of Peter Lombard’s Sentences.” *Pier Lombardo* 6 (1962): 5–25.

as in the phrase “sacrament of the church.” The schoolmen had a ready answer to the question, for a sacrament was by definition a sign of sacred thing (*signum sacrae rei*). The genitive idiom “sacrament of” denoted signification or, more specifically, figuration. Marriage was a sign or a figure of Christ and the church. But that answer was at best incomplete, as a careful reading of the ways in which the schoolmen invoked the *sacrament–res* relationship in discourse about marriage reveals. Like other features of the sacramental paradigm, the notion that sacraments were signs of sacred things or signs that caused what they signified did not fit marriage easily.

A sacrament was by definition a sacred sign (*sacrum signum*), or a sign of a sacred thing (*signum sacrae rei*). Augustine had proposed *sacrum signum* as a gloss or etymology of the word *sacramentum*, but twelfth-century theologians preferred their expanded version. Moreover, a sacrament in the proper sense conferred what it signified. But no couple’s marriage caused Christ to be united with the church, and the relationships that medieval theologians envisaged between this sacrament and its *res* were more than figurative. Whereas baptism was a figurative washing, and eucharist a figurative meal, the sacrament of marriage really was a marriage. Durandus of Saint-Pourçain focused on the last difference when he criticized the theologians’ doctrine of marriage as a sacrament (Section 14.8.3).

### 1.7.1 Sacrament, sign, and figure

Medieval scholars used the terms *signum* and *figura* to characterize the special relationship between marriage and Christ’s union with the church. Both terms had specific senses and connotations in medieval thought. Medieval scholars spoke of what a sign signified or what a figure figured as its *res*. I shall translate the word *res* here sometimes as “thing” and sometimes as “reality,” according to the context. To every sign there was a *res*, also known as its signified (*significatum*). But in some contexts the term *res* also denoted the referent as real rather than figurative. The link between the noun *res* and the adjective *realis* was obvious to anyone familiar with Latin, but it is impossible to capture in modern English.

Medieval scholars appropriated the theory of signs that Augustine had outlined in his *De doctrina Christiana*. A sign, according to Augustine, is a thing (*res*) that conveys an impression to the mind as well as presenting its own appearance to the senses.<sup>139</sup> All signs are also things, therefore, but not all things are signs.<sup>140</sup> The sensory impression is a vehicle conveying something to the mind that is not apparent to the senses. For example, visible smoke is a sign of unseen fire. The notion of appearance may be extended to include things that are manifest in some other easily accessible, quasi-tangible manner even if they are not literally

<sup>139</sup> Augustine, *De doctrina christiana* II.1(1) (CCL 32:32/5–7): “signum est enim res praeter speciem, quam ingerit sensibus, aliud aliquid ex se faciens in cogitationem venire.”

<sup>140</sup> Augustine, *De doctrina christiana* I.2(2) (CCL 32:7/12–14).

accessible to the senses. Again, although animals do not have minds, they respond to things in comparable ways. Augustine distinguishes in the *De doctrina Christiana* between natural signs (*signa naturalia*) and given signs (*signa data*).<sup>141</sup> Smoke is a natural sign of fire, for example, whereas spoken words are given signs of the thoughts that they express. Most interpreters and translators assume that Augustine's *signa data* are conventional signs, but what he says about them is not consistent with that assumption. The crux is the role of will or intention. A natural sign conveys knowledge of its source unintentionally. Fire, for example, does not emit smoke to communicate its presence. The *signa data*, on the contrary, are intentional, expressive signs: signs that a voluntary agent (or something analogous or comparable) puts forth to signify something. What distinguishes given from natural signs, according to Augustine, is a "will to signify" (*voluntas significandi*).<sup>142</sup> A smoke signal, for example, is a given sign, not a natural sign.

Peter Lombard introduces Augustine's distinction between *res* and *signum* at the beginning of the *Sentences*, for it provides him with a rough division of theological topics.<sup>143</sup> Augustine divided *res* into those which ought to be enjoyed (i.e., loved for their own sake), and those which ought to be used (i.e., sought for the sake of something else). Only God is the proper object of enjoyment, whereas all creatures should be used (in this technical sense) as means to that end. Sacred doctrine, therefore, treats God, created things, and sacraments, in that order: things that should be enjoyed (God), things that should be used (non-rational creatures) or that use things (rational creatures), and sacred signs. Among sacraments, the Lombard explains, some are only signs, whereas other are signs that justify and sanctify as well as signify:

Among these, some are used entirely to signify and not to justify, i.e., those which we use only for the sake of signifying something, such as some of the sacraments of the Old Law [*sacramenta legalia*], whereas there are others which not only signify but also confer something that helps inwardly, as do the sacraments of the New Law [*evangelica sacramenta*].<sup>144</sup>

Having discussed God and created things and the relations between them, therefore, the Lombard comes at last in Book IV to the "doctrine of signs." Sacraments are given signs (*signa data*), at least insofar as they have been instituted to signify something. Moreover, a sacrament is a sign that "bears a likeness of the thing [*res*] of which it is sign." In other words, sacraments signify through resemblance. Contrariwise, if there is no resemblance, as Augustine says, there is no sacrament in the proper sense of the term. Finally, a sacrament properly so called also causes what it signifies, for these sacraments "were instituted for the sake not only of

<sup>141</sup> *Ibid.*, II.1(2) (32–33).

<sup>142</sup> G. Manetti, *Theories of the Sign in Classical Antiquity* (Bloomington, 1993), 166.

<sup>143</sup> Peter Lombard, *Sent.* I, 1 (55–61). <sup>144</sup> *Sent.* I, 1.1.1 (55/12–15).

signifying but also of sanctifying.”<sup>145</sup> Through its divine institution, the sacrament not only resembles its *res* but also is a given sign of it.

Theologians also characterized the sacraments as figures (*figurae*). Sacraments in the proper sense caused the things of which they were figures, as Thomas Aquinas noted:

... the sacraments of the New Law are at once cause and signs. Hence, as is often said, they “effect what they figure” [*efficiunt quod figurant*]. From this is it clear that they satisfy the conditions of sacrament completely inasmuch as they are ordained to something sacred not only signs of it but also as causes of it.<sup>146</sup>

A *figura* by definition represents through resemblance. The term had three special connotations that conditioned how theologians used it in particular settings. First, it was term of art in exegesis and rhetoric. To say that X was a figure of Y was to say that X might be posited as a simile of Y, or said metaphorically of Y, or interpreted allegorically as Y. Marriage was a figure of Christ and the church in this sense, for the church was the bride of Christ (*sponsa Christi*). Marriage could be used as a simile to illustrate that union, the union could be spoken of figuratively as a marriage, and a marriage in Scripture could be interpreted allegorically as Christ’s union with the church. A figure of Y was not *really* Y, but it could be predicated of Y metaphorically. It was a shadow of the reality (*res*), an outward appearance of it, a way of imagining it. For example, the ablution that one observes in baptism is only a figure of the spiritual cleansing that is the point of the action. It is not even a real ablution. Second, the term *figura* meant “shape.” In this sense, *figura* was one of the four species of quality in Aristotle’s division of the categories. By extension, the term *figura* could denote a pattern, an arrangement, or a particular ordering of things. Both of these connotations converged on the idea of analogy: a comparison or equivalence of relations, such that A is to B as C is to D.<sup>147</sup> Third, the notion of figures and figuration belonged in the first place to the interpretation of Scripture. In patristic writing, the verb *figurare* usually meant “to prefigure.” The sacrifice of the Paschal Lamb (Exod 12), the bronze serpent (Num 21:8–9), and the rock that Moses struck (Exod 17:1–7), for example, were all said to “figure” the lifesaving Crucifixion of Jesus Christ.

Medieval theologians generally assumed that a sacrament was significant not only because of an analogy but also because it had been *instituted* to signify something sacred. Hugh of Saint-Victor captured this feature by distinguishing between

<sup>145</sup> *Sent.* IV, 1.4.1–2 (233). <sup>146</sup> Thomas Aquinas, *Summa theologiae* III.62.1, ad 1 (2822a).

<sup>147</sup> I use the term “analogy” here in the sense that Aristotle used it. For reasons that are not obvious, the scholastics used the term *analogia* chiefly to denote modes of name-sharing akin to Aristotle’s *pros hen* equivocation, although they recognized the older sense. Boethius coined the term *proportionalitas* to denote Aristotelian *analogia*. On *analogia* in Aristotle, see M.-D. Philippe, “*Analogon* and *analogia* in the Philosophy of Aristotle,” *The Thomist* 33 (1969): 1–74. On the origins of the scholastic analogy, see P. L. Reynolds, “Analogy of Names in Bonaventure,” *Mediaeval Studies* 65 (2003): 117–62, at 121–36.

representation and signification (Section 10.2.2).<sup>148</sup> Representation, according to Hugh, was a natural resemblance, such as that between the cleansing of dirt from the flesh with water and the cleansing of sin from the soul with the grace of baptism. Washing is to literal dirt on the skin as baptism is to the figurative dirt of sin on the soul. Hugh assumed that such representations were part of the created order of things. But signification required in addition an act of institution. For example, Jesus Christ had instituted baptism *as* a sign of spiritual cleansing. Later theologians were less explicit and less consistent on this point than Hugh was, but they generally assumed that God had instituted marriage as a sign of Christ and the church, and that the natural law alone could account for that signification.

### 1.7.2 *Figurative marriage*

Medieval exegetes were used to interpreting Scripture both literally and spiritually, both historically and mystically. Spiritual interpretation arose from the conviction that the incarnation of Jesus Christ fulfilled ancient prophecies and mysteries, from the effort to reconcile the Old and New Testaments, from meditative reflection on Scripture, and from the application of Scripture to daily life in preaching. Exegetes during the central Middle Ages assumed that the non-literal senses inhered primarily not in the text but in the historical events that the text described. For example, Scripture records that Moses struck a rock, causing water to gush and refresh God's people (Exod 17:1–7, Num 20:2–13). Following St Paul, medieval exegetes interpreted this narrative as an allegory of Christ on the Cross (1 Cor 10:4). In their view, the event itself, rather than the text in which it was recorded, was the primary vehicle of meaning. Moses' historical striking of the rock prefigured Christ on the Cross.

The scholastics adopted John Cassian's fourfold division of the senses of Scripture: the historical (or literal), the allegorical, the moral (or tropological), and the analogical. The allegorical sense referred to Christ and the church, the moral sense provided lessons about the Christian life that people should apply to themselves as individuals, and the anagogical sense referred to the next life. This fourfold division was important as a demonstration of a range of possibilities, but it remained largely theoretical, for exegetes rarely applied it systematically in biblical commentary or preaching. For most practical purposes, the twofold distinction between historical and spiritual interpretations sufficed.

The theory of the four senses of Scripture gave rise to the topos of the four species or kinds of marriage, although these species did not always correspond to the standard four senses. The topos seems to have originated in Cistercian monastic preaching during the twelfth century, the authors of which used the non-literal senses of marriage to illuminate the contemplative life of the monk. One of the four species is usually the literal, "carnal" marriage between a man and a woman, but the

<sup>148</sup> Hugh of Saint-Victor, *De sacramentis* I.9.2 (PL 176:317B–D).

identity of the other three species varies. Authors and preachers could freely construct and adapt the division to meet their particular ends and to show off their exegetical skills and their inventiveness.

Aelred of Rievaulx (d. 1167) used the topos in a sermon for the feast of the purification of the Blessed Virgin Mary. Although the topic of his sermon is love, Aelred explains, and although he has already spoken about marriage in an earlier sermon, he will first speak of marriage again, for love and marriage belong naturally together. Among men and women, love is the beginning, the middle, and the end of marrying (*nuptiae*). (Note that Aelred is referring here to the act of marrying, and not to the estate of marriage.) At first, their love is aroused through affection. Then their love is extended and drawn out through desire. They become betrothed, and their desire increases more and more in the expectation and the celebration of their marriage. Finally, love achieves its fruition through mutual consent, when they have plighted their troth and can enjoy each other's bodies by rendering the conjugal debt.<sup>149</sup> Turning "from carnal things to spiritual things," Aelred finds the same pattern in spiritual love. To that end, he posits "three kinds of marriage" (*tria genera nuptiarum*): one in which human nature has been married to the Word in Christ incarnate; another in which the church as bride has been married to Christ as her bridegroom; and another in which the perfected soul of the monk is married to the Word every day. In marriage of the first kind, the two natures of Christ, divine and human, come together in Mary's womb to be united in one Person. In marriage of the second kind, Christ figuratively "leaves his father and his mother and cleaves unto his wife so that they become two in one flesh" (Gen 2:24), for this dictum refers allegorically to Christ's incarnation and to his union with the church (Eph 5:32). In marriage of the third kind, "the rational creature, having contemned all things, cleaves unto his creator so that they are two in one spirit." The first marriage occurred in the Nativity, when "the Word was made flesh and dwelt among us" (John 1:14); the second occurred with the visit of the Magi and the Epiphany; the third occurs whenever "the soul, loving and ardent, comes at last to the embraces and kisses of the Savior." Spiritual love is "aroused through affection and drawn out through desire so that through consent it may deserve to enjoy [God]." In spiritual as well as in carnal life, therefore, love progresses from affection to desire to wholehearted enjoyment.<sup>150</sup>

Another Cistercian author, Isaac of Stella (d. c. 1169), developed the topos in a sermon for the first Sunday after the octave of Epiphany, when the gospel reading was John 2:1, on the wedding at Cana. Initially, Isaac posits three species of marriage, which comprise a temporal sequence of human development: the exterior union between male and female, from which a child is begotten; the interior union of

<sup>149</sup> The comparison is ironic. No medieval monk or cleric would have described the secular nuptial process so frankly in a sermon preached to laypersons. Instead, he would have admonished his hearers not to marry in order to satisfy lust.

<sup>150</sup> Aelred of Rievaulx, *Sermo 5 (In yppapanti Domini)*, 2–3 (CCM 2B:40–47, at 40–41).

body and soul in the one who is begotten; and the intimate, transcendent union between this human being and God. The first is a union of flesh and flesh, the second of flesh and spirit, and the third of spirit and spirit. But there is fourth species of marriage: the union between the Word and human nature, or between Christ and the church. This was the last of the unions to emerge historically, but it is what enables the individual to progress from the natural union of flesh and spirit to the supernatural union of spirit and spirit. There are in total four species of marriage, therefore: the union of flesh and flesh (literal marriage), the union of spirit and flesh (the anthropological union of soul and body), the personal union of the Word with human nature or with human kind, and the union between God and the human mind. Isaac correlates these species of union with the four senses of Scripture, albeit for reasons that are not entirely obvious. The first species is historical, the second moral, the third allegorical, and the last anagogical. Jesus partook only in the three non-literal species of marriage, for he never married literally. Nevertheless, he attended a carnal marriage at Cana, where he performed the first of his miracles. He confirmed by his presence there that carnal marriage is a special sign of the unions between God and human nature and between God and the human mind.<sup>151</sup>

Innocent III (r. 1198–1216) used the topos in a treatise on the four species of marrying.<sup>152</sup> He must have written this treatise either before he became pope or during the following year, for he refers to it in a sermon that he prepared for the first anniversary of his pontificate. Whereas Aelred and Isaac used the topos to illuminate monastic love, Innocent uses it to illuminate the Christian life in general and the church. The first species is the historical, carnal marriage between man and woman: the union of two in one flesh (Gen 2:24, Mark 10:8). The second species is the allegorical, sacramental marriage between Christ and the church: the union of two in one body (Rom 12:5). The third species is the tropological, spiritual marriage between God and the justified soul: the union of two in one spirit (1 Cor 6:17, 1 John 4:16). And the fourth species is the anagogical marriage between the Word and human nature: the union of two in one Person (John 1:14).<sup>153</sup>

Innocent expounds and elaborates the mystical marriages, especially the personal marriage between the Word and human nature, by exploring their parallels with literal marriage. To that end, he finds correspondences for every aspect of the nuptial process, from the preliminary negotiations and the impediments to the three conjugal goods, supporting each correspondence with quotations from Scripture. Some of these biblical texts already refer to marriage and must be interpreted allegorically or figuratively before they have the meaning that Innocent perceives in them. Among the features of carnal marriage for which Innocent finds

<sup>151</sup> Isaac of Stella, *Sermon 9*, 1–14 (SC 130:205–221, at 205–16).

<sup>152</sup> Innocent III, *De quadripartita specie nuptiarum*. I have used the working edition by C. M. Munk, *A Study of Pope Innocent III's Treatise, De quadripartita specie nuptiarum* (dissertation, University of Kansas, 1975), which is based on PL 217:921–68 and two manuscripts.

<sup>153</sup> II.1, pp. 4–6.

correspondences in the personal union of the Word and human nature are the betrothal (Heb 2:16, Gen 22:18, Gal 3:1), the betrothal oath (Ps 131:11, Luke 1:32, Isa 9:97), the bride's family (Rev 19:16, Ps 44:2), the man's betrothal gift, the bride's beauty, the fullness of time, the *paranymphus* (who is the angel Gabriel), the witnesses, the bedchamber (the Virgin's womb: see Ps 18:6), the ring (Exod 8:9, Luke 11:20, Isa 11:2–3), the bride's finery, the crown, the kiss (Song 1:1), the *traditio*, and the wedding feast.<sup>154</sup> Innocent shows that the ring represents the gift of the Holy Spirit, whereas the finger on which the ring is placed represents the Holy Spirit himself.<sup>155</sup> Although the bride's father gives her to the groom in carnal marriage, here the *traditio* occurs when the Word hands over human nature into the right hand of the Father, at which he sits (Heb 1:4).<sup>156</sup> In a few instances, the absence of any correspondence is significant. For example, there is nothing in the personal marriage between the Word and human nature corresponding to the dowry that a bride receives from her parents, since human effort and merit contribute nothing to this gracious union.<sup>157</sup>

Following Hugh of Saint-Victor and Peter Lombard, Innocent posits two unions in carnal marriage: the union of wills (*consensus animorum*) and the union of bodies (*commixtio corporum*). The latter is a great sacrament of Ephesians 5:32, but the former is a greater sacrament, for "it is the spirit that vivifies, whereas the flesh profits nothing" (John 6:64). These unions signify respectively the spiritual marriage between God and the justified soul and the sacramental marriage between Christ and the church.<sup>158</sup> Just as a man leaves his father and mother to be joined to his wife in carnal marriage (Gen 2:23–24), so God the Son took upon himself the form of a human servant (Phil 2:6–7), leaving the Father to become flesh and dwelling among us (John 1:14).<sup>159</sup> The mother whom Christ left in order to cleave unto the church was the Synagogue.<sup>160</sup> Just as a man first becomes betrothed to a woman and later takes her in marriage, an event known as the *traductio*, so Christ was first betrothed to the church through faith and later appeared in the flesh.<sup>161</sup> Just as literal marriage is soluble before consummation but insoluble after consummation, so the spiritual union between God and the soul is soluble, whereas the sacramental union between Christ and the church is insoluble.<sup>162</sup> Innocent proposed this double analogy in a letter to King Philip II of France regarding his contested marriage to Ingeborg (Section 14.3.1).

Innocent emphasizes that even the mystical marriages are not clandestine. The sacramental marriage between Christ and the church is not clandestine but solemnized and manifest to all believers (Ps 18:5–6, Ps 97:2, Matt 10:27, Matt 10:32, Mark 4:21, Mark 16:15, 16:20, Rom 10:10, Luke 9:26). Four witnesses were present at the

<sup>154</sup> II.4–24, pp. 7–15.      <sup>155</sup> II.17, p. 12.      <sup>156</sup> II.22, p. 14.

<sup>157</sup> II.8, p. 9. Nor is there a dowry in the unions between Christ and the church and between God and the soul: see II.53, pp. 38–39.

<sup>158</sup> II.30, pp. 20–21.      <sup>159</sup> II.34, pp. 23–24.      <sup>160</sup> II.35, p. 24.

<sup>161</sup> II.66, pp. 52–53.      <sup>162</sup> II.43, p. 30.

personal marriage between the Word and human nature: God the father, the Virgin Mary, the Holy Spirit, and the angel Gabriel. These correspond respectively to father, mother, priest, and *paranymphus* in literal marriage. Two of them were outwardly and visibly present, and two were inwardly and invisibly present. It is true that the spiritual marriage between God and the justified soul is contracted secretly (*in occulto*) inasmuch as “God justifies man without man” (John 3:8, 1 Cor 2:11), but even so there are three witnesses: Father, Son, and Holy Spirit.<sup>163</sup>

In the anniversary sermon, Innocent summarizes the fourfold division of marriage that he expounded in the treatise on the four species, situating himself as the friend of the bridegroom (*amicus sponsi*) in the sacramental marriage between Christ and the church (John 3:29). But because an ancient tradition regarded bishop and diocese as figuratively married to each other,<sup>164</sup> Innocent introduces a fifth species: the marriage between the pope and the universal church. Unlike the earlier treatise, the sermon is an exercise in political theology. Pursuing a partly allegorical, partly legal argument, Innocent derives the chief constitutional features of the papacy from the premise that the pope is the bridegroom of his church.<sup>165</sup>

In Florence during the thirteenth through sixteenth centuries, the ceremonies by which a newly appointed bishop took possession of his see included his marriage to the abbess of the city’s oldest Benedictine convent. This ritual, which like all Florentine weddings among the well-to-do was fully notarized, included a betrothal ceremony with a ring, the giving of a dowry and antenuptial gifts, and a wedding feast. The bishop slept overnight in the convent in a nuptial bed prepared by the nuns. The ritual would have been meaningless without the themes of mystical marriage in the background, but its meaning was more political than spiritual. It was a way to recognize and negotiate relationships of power and property.<sup>166</sup> Needless to say, this was a merely figurative wedding. The bishop did not really marry the abbess.

David d’Avray has edited and analyzed six sermons for the first Sunday after the octave of Epiphany by thirteenth-century Dominican and Franciscan preachers. Although written in Latin, these sermons on John 2:1 (the wedding at Cana) circulated in manuals used for preaching to the laity. Since Advent was among the forbidden seasons, d’Avray points out, when no one was permitted to marry, the friars would have preached these sermons when “marriage would be on many people’s mind while the backlog was being cleared, and a more attentive audience

<sup>163</sup> II.65, pp. 51–52. <sup>164</sup> McLaughlin, *Sex, Gender, and Episcopal Authority*, 56–61.

<sup>165</sup> For an introduction and summary, see *Pope Innocent III: Between God and Man*, trans. C. J. Vause and F. C. Gardiner (Washington, D.C., 2004), 28–32. See also J. Doran, “Innocent III and the Uses of Spiritual Marriage,” in F. Andrews et al., *Pope, Church and City* (Leiden, 2004), 101–14.

<sup>166</sup> S. T. Strocchia, “When the Bishop Married the Abbess,” *Gender and History* 19.2 (2007): 346–68. M. M. Miller, “Why the Bishop of Florence Had to Get Married,” *Speculum* 81.4 (2006): 1055–91. The practice is documented from 1286 to 1583.

might be expected than for many sermons.”<sup>167</sup> That being so, the amount of attention that the friars paid to the several species of mystical marriage is remarkable. The preachers expound the marriages of the two natures in the incarnation, of Christ with the church, and of Christ or God with the penitent soul or the convert to the religious life. Three of the sermons in d’Avray’s collection explicitly use the topos of the four species of marriage.<sup>168</sup> The preachers discuss literal marriage chiefly as a prelude to their expositions of mystical marriage. They affirm that literal marriage is good, they expound its benefits, and they highlight its pitfalls, but this moral counsel is conventional and unoriginal, whereas their treatment of the mystical species of marriage is ingenious and inventive. Moreover, the preachers do not apply their reflections on the mystical marriages to illuminate the qualities, norms, or regulations of literal marriage. It seems that their thinking about the literal marriage and their thinking about the mystical marriages, even that between Christ and the church, were disconnected and proceeded along independent lines, although at some level of consciousness the two themes must have been rooted in the same analogical imagination.

Figuration is not the same as exemplarity. Preachers and exegetes who used the topos of the four species of marriage focused on the figurative relationship. They posited the special resemblance between marriage and the divine–human relationships that it signified or figured chiefly to illuminate the latter. They did not do so to persuade their listeners and readers, except perhaps subliminally, that Christian marriage in reality, as a mundane human relationship among members of the church, had certain attributes because or inasmuch as it signified the divine–human relationships. The laity must have sensed intuitively that all these spiritual parallels dignified their own marriages and made them sacred, but the preachers rarely encouraged them to do so or showed them how to make the comparison or to draw its lessons.

### 1.7.3 *Ephesians 5:22–33 and its reception*

Theologians found their biblical support for the doctrine of marriage as a sacrament chiefly in the discourse on marriage in St Paul’s letter to the Ephesians (Eph 5:22–33).

#### 1.7.3.1 *Paul’s argument*

Ephesians 5:22–33 is the first part of a threefold household code, which runs from Ephesians 5:21 to 6:4.<sup>169</sup> Beginning with the premise that all members of the church

<sup>167</sup> D. d’Avray, *Medieval Marriage Sermons* (Oxford, 2001), 2.

<sup>168</sup> That is, those of Pierre de Saint-Benoît, O.F.M., Gérard de Mailly, O.P., and Guibert de Tournai, O.F.M.

<sup>169</sup> The following exposition of the text is very limited and designed only to fit the task in hand. I have tried to keep in mind medieval reception of the text without regarding it

should be “subject to one to another, in reverence of Christ,” Paul works out the implications of that premise for the relationships of wives toward their husbands and husbands toward their wives (Eph 5:22–33), of children toward their parents and parents toward their children (Eph 6:1–4), and finally of slaves toward their masters and masters toward their slaves (Eph 6:4–9). The closest biblical parallel is the household code of Colossians 3:18–4:1, which describes the same sequence of relationships.<sup>170</sup> What distinguishes the Ephesians code is its premise. Without trying to unsettle or to undermine the inequality in each pair of reciprocal relationships, Paul uses the principle that all Christians are subject to each other in Christ to mitigate the dominant relationship of ruler to ruled.

Paul pursues the implications of the premise further in his treatment of marriage than he does in the treatment of the other two relationships. He holds up the union between Christ and the church, which is both Christ’s bride and his body, as the model that Christian spouses should strive to emulate:

(22) Let women be subject to their husbands, as to the Lord, (23) because the husband is the head of the wife, as Christ is the head of the church. He is the savior of his body. (24) Therefore, as the church is subject to Christ, so also let the wives be to their husbands in all things. (25) Husbands, love your wives, as Christ also loved the church and delivered himself up for it, (26) that he might sanctify it, cleansing it by the laver of water in the word of life; (27) that he might present it to himself, a glorious church, not having spot or wrinkle or any such thing; but that it should be holy and without blemish. (28) So also ought men to love their wives as their own bodies. He that loves his wife loves himself. (28) That he might present it to himself, a glorious church, not having spot or wrinkle or any such thing; but that it should be holy and without blemish. (29) For no man ever hated his own flesh, but nourishes and cherishes it, as also Christ does the church: (30) Because we are members of his body, of his flesh and of his bones. (31) For this cause shall a man leave his father and mother, and shall cleave unto his wife, and they shall be two in one flesh [Gen 2:24]. (32) This is a great sacrament — but I am saying this in Christ and in the church. (33) Nevertheless, let every one of you in particular love his wife as himself, and let the wife revere her husband.<sup>171</sup>

That wives ought to obey their husbands was too obvious in Paul’s context to need any explanation, and Paul does not dwell on it or shed any new light on it. Instead, he focuses on how husbands ought to regard their wives. Although the husband is the dominant partner, he should cherish his wife as Christ cherished the church. Paul mingles counsel on married life with figurative images of betrothals and nuptials (Eph 5:26–27). “Husbands, love your wives, as Christ also loved the church

anachronistically. For detailed analysis informed by the discipline of biblical studies, see P. J. Sampley, *“And the Two Shall Become One Flesh”*: A Study of Traditions in *Ephesians* 5:21–33 (Cambridge, 1971); and G. W. Dawes, *The Body in Question: Metaphor and Meaning in the Interpretation of Ephesians 5:21–33* (Leiden, 1998).

<sup>170</sup> See also Tit 2:1–10 and 1 Pet 2:18–3:7. <sup>171</sup> Douai-Rheims version, slightly modified.

and delivered himself up for it” (Eph 5:25). Husbands should care for their wives and love them as if they were their own bodies, for the church is the body of Christ. To show how husband and wife are joined so closely that a man’s wife is like his own body, Paul cites Genesis 2:24: “For this cause shall a man leave his father and mother, and shall cleave to his wife, and they shall be two in one flesh” (Eph 5:31): the same primordial text that Jesus cited when he condemned the Jewish law on divorce and remarriage (Matt 19:5, Mark 10:7).

Genesis 2:24 reminds Paul of a different but closely related topic, and the thought prompts a brief digression. The quoted dictum was a “mystery” predicting Christ and the church: “This is a great sacrament — but I am saying this in Christ and in the church” (Eph 5:32). In the original Greek, Paul spoke of a great mystery: a veiled prefiguration of Jesus Christ that remained hidden during the time of the Old Law but become revealed with the advent of Christ (Eph 3:3). The term *mystērion* had apocalyptic connotations. Paul used it to refer to an unfolding of hidden things as the end approached.<sup>172</sup> Latin translators of the New Testament sometimes translated *mystērion* as *sacramentum* and sometimes transliterated it as *mysterium*. The choice was apparently arbitrary. In this case, as it happens, the usual choice was *sacramentum*, although Latin patristic authors sometimes used *mysterium* when alluding to the verse.

Finally, Paul returns from the great mystical marriage between Christ and the church to his main theme: the unions between individual men and women in the church: “Nevertheless, let every one of you in particular love his wife as himself, and let the wife revere her husband” (Eph 5:33).

The brief digression complicates the argument, but the discourse as whole presents Christ’s union with the church as the exemplar that Christian spouses should emulate in their own marriages. With the possible exception of a contested passage in Malachi,<sup>173</sup> the argument is unique in Scripture. The Jewish scriptures (the Christian Old Testament) often referred to God’s relationship or covenant with his people figuratively as a marriage.<sup>174</sup> In the same spirit, Paul tells the Corinthians that he has betrothed them to Christ, intending to present them to him as a chaste virgin (2 Cor 11:2). But in Ephesians 5:22–33, Paul reverses the import of the simile, using the mystical marriage morally to illuminate literal marriage. At the same time,

<sup>172</sup> B. Gladd, *Revealing the Mystery: The Use of Mystery in Daniel and Second Temple Judaism with Its Bearing on First Corinthians* (Berlin, 2008).

<sup>173</sup> Mal 2:13–16 presupposes that God’s covenant with Israel may be likened to a marriage but uses that analogy as a pretext to complain about the prevalence of divorce and miscegenation, which are symptoms of Israel’s failure to live up to the covenant. Several English translations have God saying, “I hate divorce” in Mal 2:16, but this reading was unknown before the sixteenth century, and it requires a conjectural emendation of the problematic Masoretic text. Most scholars today reject it.

<sup>174</sup> The covenant between God and his people is explicitly compared to a marriage in Ezek 16:8, Ezek 59–62, Ezek 16:60, Jer 31:32, and Hos 2:18. Other passages in which marriage is a figure of God’s relationship to his people include Jer 3:14, Jer 2:1–2, Hos 2, Isa 50:1, Isa 54:5, Isa 62:4–5.

the images of bride and groom and of betrothal and marrying supersede the Old Testament image of an already established albeit often fraught marriage, for Paul believes that he is living in the end times. “The time is short” (1 Cor 7:29), and “the fashion of this world passes away” (1 Cor 7:31).

Paul presents the union between Christ and his church as the normative exemplar, paradigm, or model to which the analogous human relationship ought to conform. It is normative in the sense that it establishes a moral obligation that can be fulfilled to a greater or lesser degree, ranging from abject failure to perfection, albeit a perfection to which fallen human beings can hardly aspire. No doubt those who succeed can do so only with the help of the indwelling Christ. Paul complicates that argument by embedding within it a brief reflection on Genesis 2:24 as a prophecy of Christ and the church. Because that text, whatever else it might mean, records the original institution of marriage, Ephesians 5:32 implies that marriage can be used figuratively as a way to understand Christ’s union with the church. But Paul assumes in the discourse as a whole that Christ’s union with the church is the normative exemplar that Christians ought to emulate in their marriages.

There is no general principle from which it follows that if F may be used figuratively to characterize R (figuration), then R is the exemplar of F (exemplarity). Figurative use includes metaphor, simile, and allegory. Thus, Christ’s union with the church may be spoken of as a marriage (metaphor), likened to a marriage (simile), or discovered through mystical interpretation of a biblical text about a marriage (allegory). Why did Paul assume that the relationship was also exemplary? A biblical scholar might seek Paul’s reasons in his notion of *mystērion*, or in his use of non-literal interpretation and *allegoria* (cf. Gal 4:24, 1 Cor 9:8–11, 1 Cor 10:4), or in the “somatic” dimension of his theology (e.g., 1 Cor 12:27). But the apparent reversal will seem intuitively right to someone for whom the figure is already more than figurative. In some sense, the church really was Christ’s body, in Paul’s view, and it really was his bride. This “non-metaphorical understanding of metaphors”<sup>175</sup> is among the most elusive and intractable features of Paul’s thought for the modern reader. Even medieval theologians did not fully share his sensibility, for they emphasized the distance between *figura* and *res* where Paul conflated them.

### 1.7.3.2 Patristic reception

In the minds of patristic theologians and exegetes, the most consequential feature of Paul’s discourse on marriage in Ephesians was the Christological digression (Eph

<sup>175</sup> I am alluding to Joseph Kitagawa’s phrase, “nonsymbolic understanding of symbols,” by which he characterized the inadequacy of the notion of symbols in the prevailing *Religionsgeschichte* of the mid-twentieth century, especially in the work of Eliade, to capture the function of symbols in the “monistic” worldview of traditional Japanese religion. See J. M. Kitagawa, *On Understanding Japanese Religion* (Princeton, 1987), 45–48.

5:31–32), which required them to construe Genesis 2:24 as a prophetic utterance. Paul showed that when Adam awoke from his “deep sleep” (*sopor*) and saw the first woman, he spoke not only literally, referring to marriage, but also figuratively and prophetically, referring to Christ and the church. Although the Hebrew word used here for Adam’s sleep, *tardemah*, could denote a prophetic trance, Jewish exegetes had no reason to regard it as anything more than a profound sleep. But the word was translated as *extasis* in the Septuagint and in some Old Latin variants (e.g., in Tertullian), a term that did suggest a prophetic trance, and Paul’s interpretation of the text in Ephesians 5:31–32 confirmed that interpretation. Jesus must have attributed Adam’s deep sleep to the creator because God was speaking through Adam, as Augustine explains:

Scripture itself bears witness that these were the words [Gen 2:23–24] of the first man, yet our Lord in the gospel declares that God said them [Matt 19:4–5]... so that we should understand from this that because of the ecstasy that he had just undergone, Adam was able to speak under divine inspiration as a prophet.<sup>176</sup>

Patristic exegetes, including John Chrysostom and Augustine, confirmed that construal by interpreting the manner in which Eve was formed from Adam’s side as an allegory of Christ and the church. Just as Adam fell into a deep sleep, and his wife was made from his own flesh and blood, so Christ died on the cross, and water and blood – tokens of baptism and eucharist – flowed from his side, completing the mystical marriage between Christ and the church, and prolonging the saving efficacy of the mystical marriage through the sacraments.<sup>177</sup>

Patristic exegetes did not equate the great sacrament (*sacramentum magnum*) of Ephesians 5:32 with Christian marriage, as western theologians will do after 1100. Instead, they assumed that Paul’s great sacrament was either Adam’s dictum in Genesis 2:24, construed as a figurative, prophetic description of the union between Christ and the church, or the union itself. Both interpretations occur in Augustine.<sup>178</sup> According to the latter interpretation, the marriage of any Christian couple was a *sacramentum minimum* (Eph 5:33): a figure of the great sacrament between Christ and the church. “Therefore, what is great in Christ and in the church,” Augustine explains, “is very small in each and every husband and wife, and yet it is a sacrament [i.e., a sacred sign] of an inseparable union.”<sup>179</sup>

Although Augustine never cited Ephesians 5:32 to illuminate Christian marriage, the verse probably had some influence on his use of the term *sacramentum* in

<sup>176</sup> Augustine, *De genesi ad litteram* IX.19 (CSEL 28.1:294/12–19). <sup>177</sup> MWCh 284.

<sup>178</sup> See MWCh xxv–xxvi, 282–97. Tertullian identified the great sacrament with Adam’s prophetic dictum. His interpretation depended on a textual variant in the *Vetus Latina: in Christum et ecclesiam* (in + accusative), rather than *in Christo et in ecclesia* (in + ablative), as in Augustine and the Vulgate. I now think that I exaggerated the importance of Eph 5:32 for Augustine’s view of marriage in MWCh. It was not so much that particular verse that influenced his thinking as the discourse as a whole (Eph 5:22–33) and Eph 5:25 in particular.

<sup>179</sup> Augustine, *De nupt. et conc.* I.21(23) (CSEL 42:236/22–24). Cf. Eph 5:33.

relation to marriage. Explaining why God permitted polygyny under the Old Law, even though it contravened the original institution of marriage as a union of two in one flesh, Augustine suggests that Old Testament polygyny was a sacrament of the union between Christ and the church in the present age, whereas the strict monogamy of the New Law is a sacrament of that union in the life to come. For whereas Christ is now gathering his followers from all the races, they will all be united with him in the life to come.<sup>180</sup> Augustine uses the term *sacramentum* here not to refer to the indissolubility or the insoluble bond of marriage, as he usually does, but to denote a prefiguration: a mystery in Paul's sense of the term.

Augustine cites Ephesians 5:25, not Ephesians 5:32, to prove that marriage is indissoluble, appropriating what Paul had presented as a normative exemplar but presenting it as a prescriptive exemplar. To propose an exemplar prescriptively is to use it to establish a rule distinguishing in a binary fashion between what is licit and what is illicit, with no continuum of compliance and no room for aspiration. This may be either a rule of behavior that can either be complied with or broken, or a rule determining whether or not a contract or institution is valid. Explaining in the *De nuptiis et concupiscentia* how marriage possesses the three benefits (*bona*) of marriage, faith, offspring, and sacrament, he finds the likely reason for the *bonum sacramenti* in the analogy between marriage and Christ's union with the church (Section 4.3). The term *sacramentum* in this context denotes the permanence of marriage, which Augustine considered to be the chief indicator of the special holiness of marriage "in the city of our God, in his holy mountain" (Ps 47:2). Whereas the Mosaic law and Roman civil law permit remarriage after divorce, Augustine observes, the church prohibits it. To corroborate his explanation, Augustine cites Ephesians 5:25: "Husbands, love your wives as Christ also loved the church." Christ loves the church in such a way that he will never permit himself to be separated from it. Just as there is never any divorce between Christ and the church, Augustine argues, so also must Christian spouses remain married for life, regardless of their circumstances.<sup>181</sup> Augustine was probably referring to the same analogy when he speculated in the earlier *De bono coniugali* that God established the *sacramentum* in order to make out of a merely human, fallible relationship "a sacrament of some greater reality [*res*]."<sup>182</sup> Whereas Paul was referring to the quality of conjugal love, Augustine applies his argument to indissolubility. One should remember that Augustine associated the *bonum sacramenti* with a special, highly spiritual form of conjugal love, which can survive despite infertility and even celibacy (Sections 4.1 and 4.2). Nevertheless, the absence of such love does not release a couple from their marriage. Augustine's use of the analogy, therefore, is more legalistic than Paul's, for he proposes the union between Christ the church more as a prescriptive than as a normative exemplar. For the most part,

<sup>180</sup> Augustine, *De b. coniug.* 18(21) (CSEL 41:214–15).

<sup>181</sup> Augustine, *De nupt. et conc.* I.10(11), 222–23. <sup>182</sup> Augustine *De b. coniug.* 7(7), 197/6–16.

medieval theologians followed Augustine, emphasizing the prescriptive implications of Paul's comparison and largely overlooking its normative implications.

### 1.7.3.3 *Reception after 1100*

Theologians of the central Middle Ages assumed that marriage was a sacrament inasmuch as it was a sign or a figure of Christ's union with the church. As Chaucer's parson put it, "This sacrement bitokneth the knyttyng togidre of Crist and of hooly chirche."<sup>183</sup> Medieval theologians discussing marriage focused on Ephesians 5:32, paying only cursory attention to its setting and identifying the *magnum sacramentum* with Christian marriage. They largely ignored Ephesians 5:33, therefore, which had become redundant. Augustine's sacrament *in* (i.e., between) Christ and the church became the medieval sacrament *of* (i.e., signifying) Christ and the church, and the verse became a convenient proof text for the sacramental doctrine.

Medieval scholars undoubtedly misinterpreted and wrongly applied the verse, as Erasmus rightly pointed out. Nevertheless, the notion that the entire sacramental doctrine resulted from a faulty interpretation of Ephesians 5:32 is absurd. Historically, the doctrine preceded and resulted in the interpretation. Moreover, theologians did not base their defense of the doctrine on this verse. In scholastic articles, they cited it as proof only in the preliminary dialectical arguments of an article or in a *sed contra*, and not in the corpus, or response, where the master expounded his own position. Through a form of metonymy, the verse came to stand for a complex web of arguments and associations. Erasmus understood this usage and continued to cite Ephesians 5:32 with reference to Christian marriage. Luther, moved by righteous indignation and polemical zeal, was blind to it.

Scholars of the central and late Middle Ages invoked Ephesians 5:32 in ways that narrowed and slanted and arguably distorted Paul's argument in two ways. First, whereas Paul had invoked the union of two in one flesh to explain how the husband should cherish his wife, medieval theologians identified the union narrowly with sexual consummation, construed as the means of clinching the indissoluble contract. In their minds, the union of two in one flesh was chiefly a legal entity, to be observed in litigation. Second, whereas Paul proposed the exemplar of Christ's union with the church normatively, to show how husband and wife should regard and treat each other, medieval scholars proposed it mainly in a prescriptive manner: not to show spouses what they should strive to achieve with Christ's help, but to show them what they could not escape from, however far from its exemplar their married life had strayed.

<sup>183</sup> Chaucer, *The Parson's Tale*, X.842.

1.7.4 *The sacramentum–res relation in argument*

Medieval scholars assumed that marriage was holy because it was a sign of something holy. To be sure, the values of *sacramentum* and *res* were not proportional. Alexander of Hales remarked that if the seven sacraments were ranked in order of the dignity of what they signified, marriage would come first. Marriage was always listed last, according to Alexander, because it was the least of the seven in sanctifying power (Sections 14.5 and 15.3.1.1).<sup>184</sup> Nevertheless, the signification gave value to the sign. Because marriage was a “sign of a sacred thing” (*signum sacrae rei*), it was *ipso facto* holy. Bruno the Carthusian (d. 1101) made this point in a gloss on Ephesians 5:32, although he did not equate the *sacramentum magnum* with marriage. (Nor did he consider marriage to be one of the sacraments. These were later developments.) According to Bruno, the sacrament to which Paul referred is Adam’s dictum in Genesis 2:24: “Wherefore a man shall leave father and mother, and shall cleave to his wife: and they shall be two in one flesh.” Christ figuratively left his father and mother to be united with his wife, Bruno explains, “to whom he betrothed himself with the ring of faith.” The father in this simile was God the Father, whom Christ left through taking on human nature, his mother was the Synagogue, and his new wife was the church:

Accordingly, “this,” i.e., that “a man shall leave his father,” etc., is “a great sacrament,” i.e., a sacrament of a great reality [*res*]. For the statement, “a man shall leave his father,” signifies that the Son of God left the Father when he who was invisible in his divine nature, like the Father, presented himself as visible under the appearance of slave [Phil 2:7]. He also left the mother who had nurtured him, i.e., the Synagogue, and cleaved unto his wife, i.e., the church, whom he betrothed to himself with the ring of faith [*annulus fidei*]. Now this, “I am saying,” is a sacrament. “But I am saying” that the reality of this sacrament exists “in Christ and in the church,” as has been said. Even if there were nothing else to recommend it, marriage would still deserve to be celebrated if only because of the dignity of the reality [*res*] of which it is a figure. But although the reality [*res*] of this sacrament is only “in Christ and the church” [Eph 5:32], and not in a man and a woman, “nevertheless, let every one of you in particular love his own wife” and not his neighbor’s wife “as himself, and let the wife” not only love but also “revere her husband” [Eph 5:33].<sup>185</sup>

Marriage is worthy of reverence, according to Bruno, *because* it is a sign of Christ and the church. All theologians after 1100 shared this conviction, even though they did not assume that the value of marriage was proportional to what it signified.

<sup>184</sup> Alexander of Hales, *Glossa in IV Sent.* 26.2a (445–46). See also Petrus Paludanus, *IV Sent.* 26.4.2 (141rb–va), discussed in Chapter 14, Section 14.8.4.

<sup>185</sup> Bruno, *Expositio in epistolas sancti Pauli*, in Eph 5:32 (PL 153:346D).

Theologians and canonists of the central Middle Ages used the premise that marriage was a sacrament of Christ and the church chiefly to explain why marriage was indissoluble and to account for or to illuminate the effect of sexual consummation on the marriage bond. The two topics were closely related. Because medieval people regarded marriage not as an all-or-nothing event but as a process, canonists asked at what point in that process the union became fixed (*ratum*), irrevocable, and immune to dissolution. According to one view, popular during the twelfth century, the first act of coitus after the plighting of troth confirmed the bond, making it irrevocable and putting it beyond exceptions.

One should distinguish here between proof and rationale. An *a priori* proof is also an explanation (what the scholastics called a *demonstratio propter quid*), but explanations are not always proofs. Theologians used the premise that marriage was a sacrament of Christ and the church not only to prove that this sacrament possessed a certain feature or property, but also to provide a rationale for attributes already established on other grounds. The two uses are often conflated in the modern literature on medieval marriage, and, to be fair, they are not always easy to distinguish in the medieval literature. The explicit, formal purpose of a posterior rationale was to explain why a certain feature belonged to marriage, or to show that it was fitting, or to shed light on it, or to corroborate it, but not to prove that marriage had a certain property. For example, when Augustine proposed that God had made marriage indissoluble so that it would be a figure of “some greater thing,” he did not posit this correspondence to establish that marriage was indissoluble but only to explain why God had caused marriage to be indissoluble. His only proof of the rule was the authority of Scripture: the fact that Jesus condemned remarriage after divorce as adultery. Although it is not always clear to which of the two categories an argument or explanation belongs, use of the premise to provide a posterior rationale for an already established thesis was much more common than its use as formal proof during the central and late Middle Ages.

Nevertheless, Thomas Aquinas used the premise in the *Summa contra Gentiles* to prove that marriage was monogamous and that it had the goods of faith (*bonum fidei*) and of sacrament (*bonum sacramenti*) (Section 16.6.1). In order to show that the Roman church’s doctrines on marriage were reasonable, Thomas arrived at them deductively, although some of his arguments are obviously less than demonstrative. Marriage as a sacrament of the church, Thomas argues, is a sacrament of Christ and the church.<sup>186</sup> Now, “a figure must correspond to what is signified.”<sup>187</sup> The signified is a “union of one [masculine] to one [female]” (*coniunctio unius ad unam*), for “One is my dove, my perfect one” (Song 6:8). Moreover, the two are united indivisibly. Christ himself said, “Lo, I am with you always, even unto the end

<sup>186</sup> Notice the two different uses of the genitive, respectively possessive and signifying.

<sup>187</sup> *Summa contra gentiles* IV.78 (Leonine 15:246/13–15): “Quia igitur per coniunctionem maris et feminae Christi et Ecclesiae coniunctio designatur, oportet quod figura significato respondeat.”

of the world” (Matt 28:20), and Paul said, “so shall we always be with the Lord” (1 Thess 4:17). Marriage, too, must a *coniunctio unius ad unam*, therefore: a union of one male to one female, and the spouses must be united indivisibly. It follows that marriage is monogamous and that it has the goods of faith and sacrament, Thomas argues. The indivisibility or inseparability of marriage is called *sacramentum* because it signifies the inseparability of Christ’s union with the church, for a sacrament by definition is a sign of something sacred.

Thomas uses signification and correspondence here to prove that marriage as a sacrament has certain features. He assumes that the salient features of the signifier correspond to the salient feature of the signified, as if one thing were a map of the other. This way of thinking was rooted in habits of biblical interpretation.

The logical core of Thomas’s argument is an analogical syllogism. Note that this logic *per se* does not commit Thomas to holding that marriage is indissoluble *because* it signifies Christ’s union with the church, or that marriage would be soluble if it were not a figure of that union. Analogical syllogisms have the following form:

A is to B as C is to D.

But the relation of C to D is R<sub>1</sub>.

Therefore, the relation to A to B is R<sub>2</sub>

(where the relations R<sub>1</sub> and R<sub>2</sub> are the same or at least equivalent).

Such syllogisms are common in medieval theology. Here are some typical examples: William of Auxerre uses an analogical syllogism to pose an objection to the Privilege of Religion, which entitles either spouse unilaterally to dissolve an unconsummated marriage by entering the religious life:

Again, marriage signifies the union of Christ and the church. But the union of Christ and the church is inseparable, for the Lord says in Matthew: “Lo, I am with you always, even unto the end of the world” (Matt 28:20). Therefore, marriage is indissoluble. Therefore, a marriage is not dissolved if one of the partners enters the religious life.<sup>188</sup>

Similarly, Bonaventure proposes the following argument to show that the soul is entirely present everywhere in the body, without any spatial distribution:

Augustine says that just as God is in the macrocosm, so the soul is in the microcosm. But God is in the macrocosm in such a manner that he is entire in any and every part of it. Therefore, the soul is present in that manner in the microcosm, that is, in the body.<sup>189</sup>

<sup>188</sup> William of Auxerre, *Summa aurea* IV.17.2.2 (387/69–73). This is an objection to a position that William upholds.

<sup>189</sup> Bonaventure, *IV Sent.* 8.2.un.3, arg. 1 (1:170a). Bonaventure is referring to the twelfth-century compilation *De spiritu et anima* (18, PL 40), which he ascribed to Augustine. The original source was Claudianus Mamertus. This is an argument for a position that Bonaventure upholds.

Again, Thomas Aquinas proposes the following argument to show that the intellect cannot exercise actual cognition without using phantasms (imaginary images):

... the Philosopher says in *De anima* III that phantasms are related to the intellect as colors are to vision. But corporeal vision cannot see anything without color. Therefore, our intellect cannot understand anything without a phantasm.<sup>190</sup>

As far as I am aware, no medieval logician codified the rules and constraints of such arguments, although they presuppose assumptions as to which features are salient, and they require tacit adjustments *mutatis mutandis*. For example, no schoolman would take the following argument seriously:

The soul is present in the microcosm as God is present in the macrocosm. But God is present in the macrocosm as its creator. Therefore, the soul is present in the body as its creator.

But the schoolmen rarely relied on analogical syllogisms to establish what they needed to prove. In a scholastic article, the form is more likely occur in the preliminary arguments than in the body of the article (i.e., in the corpus, or response). This is the case with the three examples cited earlier.

From a merely logical point of point of view, Thomas's syllogism in the *Summa contra gentiles* could have gone either way. On the basis of the same analogy, one might begin with the premise that Christ's union with the church has certain properties and conclude that marriage has the equivalent properties, or one might begin with the premise that marriage has certain properties and conclude that Christ's union with the church has the equivalent properties. In reality, though, the argument is bound to proceed from the signified to the signifier – from the union between Christ and the church to marriage – even though the signifier is better known and more apparent than the signifier. The reason is that Christ's union with the church, as St Paul made clear in Ephesians 5:25, is the exemplar that marriage is required to emulate.

Many, perhaps most, of the earliest references to marriage as a sacrament of Christ and the church pertain to the role of consummation in marriage (Sections 6.3 and 6.4). The topic was much debated during the first half of the twelfth century, partly for canonical and partly for moral and ideological reasons. Since marriage was a lifelong union, clerics exercising and expanding their control over the essentials of marriage had to know when a marriage became fixed (*ratum*), or fully established. For example, would a prior but unconsummated marriage render a subsequent consummated marriage invalid? Or would the second union trump the former? Most of the pertinent canonical texts implied that the spouses became indissolubly united as soon as they exchanged mutual consent, but customs, precedents,

<sup>190</sup> Thomas Aquinas, *I Sent.* 3.1.1, arg. 5 (ed. Mandonnet, 1:90). Thomas uses this argument to establish the premise of the main argument. Thomas accepts the premise, but the main argument is an objection to a position that he upholds: that created intellects can know God.

hagiography, deep-seated intuitions, and such secular traditions as the morning gift, seemed to imply that a marriage was incomplete or not fully formed until it was consummated in sexual intercourse (Section 6.1).

On a moral or ideological level, some twelfth-century theologians perceived a tension between the claim that marriage was holy and sacramental and the assumption that sexual intercourse was in some sense integral to it. All agreed that the Virgin Mary's betrothal never been consummated, but some, following Augustine, reasoned that Mary's union with Joseph was the most perfect marriage of all, and that Jesus was their legitimate child. Many theologians accepted Augustine's exegetical argument that Mary had taken a solemn but private vow of perpetual virginity even before she plighted her troth to Joseph. This way of thinking flourished with the rise of the cult of Blessed Virgin during the first half of the twelfth century.

A new dossier of texts purporting to show that marriage was not fully fixed (*ratum*) until it was consummated first appeared in the sentential literature during the first quarter of the twelfth century (Section 6.2). These proof texts provided French theologians, who were inclined to play down the role of sexual intercourse in marrying, with a convenient foil, for they could cite them dialectically to contradict the standard consensual proof texts.

The coital texts were ascribed to Pope Leo I and Augustine, but they were partly misquoted and partly spurious. The original source of the dossier was Pope Leo I's decretal, *Non omnis mulier*, which he addressed to Rusticus, the bishop of Narbonne (Section 6.2.1). Leo advised that a certain Christian man who had been cohabiting with a servile woman and had begotten children with her was free to marry another, free woman. (In the original source, the man was a cleric, but this incidental but inconvenient detail was lost in the canonical tradition.) The partnership between the free man and a servile woman, according to Leo, would not amount to marriage unless the man first emancipated her and married her publicly. Leo noted that his position was congruent with Roman law, but he based his argument on Paul's allegorical exegesis of Hagar and Sarah as types of the old covenant of servitude and the new covenant of freedom respectively (Gal 4:21–31). A Christian marriage should be understood on two levels, Leo argued. Besides the union of the sexes (*praeter sexuum coniunctionem*), it contained a sacrament of Christ and the church. Consequently, "there is no doubt that a woman in whom it is shown that there has been no nuptial mystery does not pertain to marriage." The words *sacramentum* and *mysterium* in Leo's argument allude to Ephesians 5:32.

Hincmar of Reims adapted Leo's argument to his own ends in 860, when he advised two archbishops how to conduct a tribunal on the scandalous case of Stephen, an Aquitainian nobleman (Section 6.2.2). Stephen had gone through the formalities of marrying but had refused to consummate his marriage, claiming that he had had sexual intercourse with a near relation of his bride before they married. As a result, intercourse with his wife would be incestuous. The girl's father referred the matter to a church council at Tusey. Hincmar adapted Leo's logic to shed light

on the role of sexual union in the formation of a marriage. According to Leo, “a woman in whom it is shown that there has been no nuptial mystery does not pertain to marriage.” In the same way, Hincmar argued, there was no “nuptial mystery” in a marriage that could not be consummated without incest, for it could never adequately represent Christ’s union with the church.

Hincmar’s letter was in turn the source of the early twelfth-century coital proof texts (Section 6.2.3), which supported the theory that marriage was not fully established (*ratum*) until it had been consummated through coitus. Leo is quoted as saying that without sexual intercourse (*praeter commixtionem sexuum*) marriage does not have in itself a sacrament of Christ and the church. (The insertion of the word *non* altered the meaning of *praeter*.) And Augustine is quoted as saying, “Marriage does not have in itself a sacrament of Christ and the church if sexual intercourse does not follow it.”

Hugh of Saint-Victor, writing in the 1130s, introduced another strand into the argument by proposing that sexual union altered the signification of a marriage. Hugh was chiefly interested in the moral and ideological aspects of the matter, and especially in the virginal marriage of Mary and Joseph, which he considered ideal. Hugh was appalled by the suggestion that Mary consented to have coitus with Joseph by marrying him, or even to observe the conjugal debt if Joseph demanded it. To show that Mary was a virgin mentally as well as carnally, Hugh argued that marriage *per se* was an essentially non-carnal union, which would have thrived in Mary’s case. The sexual dimension of marriage was a secondary, optional matter. Spouses could validly consent to marriage without consenting to sexual intercourse, as Mary must have done.

Hugh conceded that marriage could not be the “great sacrament” of Christ and the church without sexual union, for the spouses would not become two in one flesh (Eph 5:32). Nevertheless, he argued, the affective, essentially non-carnal union of marriage was a *greater* sacrament of the loving union between God and the soul (Sections 10.4 and 10.5):

Rightly, therefore, it is said: “a man shall leave father and mother, and shall cleave to his wife, and they shall be two in one flesh,” for in the fact that he cleaves to his wife there is a sacrament of the invisible partnership that is to be made in the spirit between God and the soul, whereas in the fact that the two are in one flesh there is a sacrament of the visible partnership that was made in the flesh between Christ and the church. That they “shall be two in one flesh” is a great sacrament in Christ and the church. But that they shall be two in one heart, in one love, is a greater sacrament in God and the soul.<sup>191</sup>

Note that Hugh still identifies the great sacrament of Ephesians 5:32 with Adam’s dictum (Gen 2:24), although he applies this significance to the marriages of Christians in his own day. But what makes one of these sacraments greater than

<sup>191</sup> Hugh of Saint-Victor, *De beatae Mariae virginitate*, ed. Sicard, 208/354–62.

the other cannot be the relative values of the things that are signified. Hugh cannot have thought that the union between Christ and the church was less worthy of admiration than the loving union between God and an individual soul. He may have meant that the former made the latter possible. Chiefly, though, Hugh reasoned that the non-carnal union of affection between man and wife was intrinsically far greater and more valuable than sexual union. Moreover, the resemblances between the two human unions and the corresponding divine things are not of the same kind or of the same order. The manner in which sexual union resembles Christ's union with the church cannot be the same as the manner in which conjugal affection resembles God's loving union with the soul. Christ's union with the church is not sexual union, although sexual union represents it figuratively. But the love that Hugh envisages between husband and wife and the love that he posits between God and the soul are qualitatively alike. Moreover, the former depends on the latter for its existence, for sublime conjugal love, as Hugh imagines it, is a manifestation of divine love.

Gratian of Bologna returned to the canonical question in his *Decretum*, first published around 1140 (Section 6.4). Gratian used the coital proof texts with other resources to show that a marriage was incomplete and, therefore, soluble at least in certain circumstances before it was consummated in sexual intercourse, for until then it was not in the fullest sense a sacrament of Christ and the church. Among the circumstances that dissolved an unconsummated union was a second, consummated marriage to another partner.

Peter Lombard rejected Gratian's argument and appropriated Hugh's theory, adapting it meets his own needs. The *res* that marriage signifies is Christ's union with the church, according to the Lombard, but Christ is united to the church in two ways: spiritually, through charity; and corporeally, through "conformity of nature" (i.e., by sharing human nature through the incarnation). Likewise, there is a sign (*figura*) of each of the divine unions in marriage. The spouses' mutual consent signifies the spiritual union (*copula spiritualis*) between Christ and the church, which results from charity. Subsequent sexual intercourse (*commixtio sexuum*) signifies another union between Christ and the church, which results from conformity in human nature:

**Of what thing is marriage a sacrament?** Since, therefore, marriage is a sacrament, it is both a sacred sign and a sign of a sacred thing, namely, of the union between Christ and the church, as the Apostle says. For it is written, he says, "a man shall leave his father and mother, and shall cleave unto his wife, and they shall be two in one flesh [Gen 2:24]. This is a great sacrament — but I am saying this in Christ and in the church" (Eph 5:31–32). For just as the union between spouses exists both as regards the consent of their wills and as regards the mixing together of their bodies, so the church is joined to Christ by will and by nature, because she wills the same as he does, and he took his outward form from human nature. The bride [the church] is joined to the bridegroom [Christ], therefore, both spiritually and corporeally, i.e.,

in charity and in the conformity of nature. There is a figure of both unions in marriage, for the consent of the spouses signifies the spiritual union of Christ and the church, which results from charity, whereas the mixing together of the sexes signifies the union that results from conformity of nature.<sup>192</sup>

Note that the two signifiers, consent and sexual intercourse, are aspects of marrying, and not of the state of being married, whereas the two signifieds are aspects of Christ's enduring union with the church. That said, twelfth-century theologians considered the church to be the bride of Christ rather than his wife, for the union was still emerging and would not be fully realized until the *eschaton*.

Canonists during the second half of the twelfth century adapted Hugh's theory to show why a valid but unconsummated marriage was soluble under certain circumstances, as Gratian had held, whereas a valid and consummated marriage could not be dissolved under any circumstances. They proposed that marriage signified a soluble union before consummation, and an insoluble union after consummation. Rufinus (fl. 1150–1191) used this rationale to explain the effects of consummation in Gratian's theory, and Huguccio (d. 1328) adapted it to accommodate the hybrid doctrine that had become established by the end of the twelfth century, which incorporated the distinction between *de futuro* and *de praesenti* betrothals (Section 11.6.3).

Pope Innocent III used this rationale, as already noted, to explain the effect of consummation in a letter that he sent to Philip II of France in 1208 regarding the king's contested marriage to Ingeborg:

... just as sexual intercourse signifies the union between the Word and human nature, because "the Word became flesh and dwelt among us" [John 1:14], so also the consent of wills may signify the charity between God and the just soul, since the person who cleaves to God is one spirit with him. Therefore, just as the bond of union between the Word and human nature cannot be separated, so also the conjugal bond between man and wife after they have been made one flesh through sexual intercourse cannot be separated as long as they are alive, whereas just as the tie of charity between God and the soul is often dissolved, so also can the conjugal connection be separated when the consent of their wills is all that exists between the spouses, because of what the Apostle says when he expounds the dictum of the first-created one, "they shall be two in one flesh" (Gen 2:24): "This, however, I say is a great sacrament in Christ and in the church" (Eph 5:32).<sup>193</sup>

But Innocent proposes this argument not as a proof but as a rationale. The only reason for allowing the Privilege of Religion, Innocent argues, is that "the examples of the saints and the statutes of the fathers" provide sufficient precedent. It would be

<sup>192</sup> Peter Lombard, *Sent.* IV, 26.1.1 (420).

<sup>193</sup> Pope Innocent III, *Regestum XI, Epist.* 177 (182), in *Die Register Innocenz' III*, vol. 11, ed. R. Bösel and H. Fillitz (Vienna, 2010), 286–93, at 287/24–288/2.

presumptuous, he concedes, to claim that the right could be established on the basis of Scripture alone.

Theologians had adopted this double analogy argument or rationale by 1200 (Section 14.3.1), and they continued to use it throughout the Middle Ages, but its popularity waned considerably during the thirteenth century. Ambrosius Catharinus refuted it in the sixteenth century (Section 18.3.1). The argument was circular, for the chief reason for maintaining that unconsummated marriage signified a soluble union and that consummated marriage signified an insoluble union was that unconsummated marriage was soluble, whereas consummated marriage was insoluble.

If the sacraments “effected what they figured,” did a couple’s marriage cause Christ’s union with church? Even before the causal paradigm became explicit, the *Cum omnia sacramenta* had argued that by marrying a couple entered into the order of *coniugati*, adopting one of the three chief ways of being members of the church:

The reality [*res*] of this sacrament is to become a member of Christ, for those who live legitimately in a legitimate marriage serve God through their marriage as well, and they are his members. Just as virgins through their virginity, and continents [*continentes*] through their continence, so good married persons [*coniugati*], through their legitimate union, are made members of Christ. Virgins occupy a certain supreme degree, continents a middle one, and married persons the lowest. These are the three men who alone, Scripture says, will be saved, namely, Daniel, Noah, and Job, that is, virgins, continents, and married persons.<sup>194</sup>

During the second quarter of the thirteenth century, on the contrary, theologians treated the special relationship between marriage and Christ’s union with the church as a problem, for no couple by marrying could cause Christ and the church to become united. The sacraments of the New Law effected what they signified; but marriage signified the union between Christ and church, which it did not cause; therefore, marriage was not a sacrament of the New Law. Albertus Magnus solved this objection by distinguishing between the contained and uncontained signifieds of the sacrament (*res contenta*, *res non contenta*). From the principle that the sacraments of the new law “effect what they figure,” Albert pointed out, it did not follow that these sacraments conferred *everything* that they signified. Conjugal grace was the *res contenta*, which the sacrament both signified and conferred, whereas the union between Christ and the church was a *res non contenta*. (One should keep in mind that the sacrament to which Albert referred was the transient act of marrying, not the state of being married.)

Most thirteenth- and fourteenth-century theologians adopted Albert’s solution to the objection. Although it separated the sacramentality of marriage from its foundation in the discourse on marriage in Ephesians 5:22–33, most theologians recognized that the grace of marriage had some special kinship with the union between Christ

<sup>194</sup> *Cum omnia sacramenta* I, 134/24–135/5. Cf. Jonas of Orléans, *De institutione laicali* II.1, ed. Dubreucq, SC 549, 326–30 (PL 106:169C–170C).