

# Marriage Symbolism and the Papal Penitentiary

**Professor David d'Avray**, *Professor of History at University College London, has been studying aspects of medieval marriage for some years. Below, he describes two cases that illustrate the close connection between marriage symbolism and law in the Middle Ages.*

In the later Middle Ages a special office developed at the papal court to deal with absolution from ecclesiastical censures and dispensations reserved to the pope. This was the Papal Penitentiary. Its medieval archive takes the form of volumes of registers, which survive from the fifteenth century, though only fragmentarily until the pontificate of Pius II (1464–1471). These registers are a mass of historical answers in search of intelligent questions, and scholars are still in the process of thinking how the material can be most intelligently used. The registers were made available in the Vatican Archive relatively recently. Though administered by the Vatican Archive they are still in the custody of the *Penitenzieria apostolica*, some distance away. One still needs a special permission to see them, but I for one was treated with great courtesy and helpfulness. So I owe a debt of thanks to the Regens of the Penitentiary and his staff, as also to the British Academy, whose Small Research Grants programme supported my work on the Penitentiary Registers.

In fact a high proportion of the researchers working in the reading room of the Vatican Archive these days are busy with Penitentiary volumes: a tribute to their interest and importance. Scandinavian researchers in particular have thrown themselves into the work. For countries like Finland, late medieval sources are rare: the Penitentiary registers vastly increase the absolute quantity of surviving documentation. The Finnish material is bulky as late medieval Finnish material goes, but entries relating to German speaking lands are more numerous by orders of magnitude. A team lead by Ludwig Schmugge has set the benchmark for Penitentiary research, calendaring and analysing material on an impressive scale. A similar project for England has just got under way. There remains much room for the application of thought to the data. The temptation is to pick out colourful stories about this or that crime or misdemeanour. In fact such stories make up a tiny part of the material. Most of the registers are taken up with routine business (dispensations predominate). Nor are the stories necessarily interesting for serious history, just because they have human interest. In fact, of course, they do often have much to tell us about wider religious and social history. However, background knowledge must be supplied to bring out these implications. Here are two examples, from Spain.

## Constance of Padilla

The first is recorded for 1499, when Alexander VI was pope. The eye-catching history of high politics and public scandals can distract from the normalities of religious administration, itself

made up of many tiny events such as this. Constance of Padilla got married. However, the nobleman she worked for then compelled her to enter a convent. There was clearly a story here, though we are not told it. Perhaps she married someone from the nobleman's household, without permission. In this pre-Tridentine period a simple exchange of consent in the present tense was enough to make a marriage. If a couple each said 'I marry you', they were married. That made it hard to stop a marriage, however undesirable. We can only guess. We do know that the convent was of the obscure Conceptionist order. She had not consummated her marriage: one assumes that the couple had been prevented from living with each other as soon as their marriage became known. She could not bear life in the convent and ran away, but in the meantime her husband had remarried and consummated this second union. In her request to the Penitentiary it is implied that he would be prepared to come back to her if his second union were annulled. The case was committed to judges delegate on the spot: to the Vicar General of the Order of St. Clare for the province of Spain and to an Archdeacon of the diocese (Pen.Ap.48, 1499).

There are layers of meaning behind this story. The matter of consummation is highly significant. If one partner entered a religious order before consummation, the marriage could be dissolved. That was the upshot of a decision by Pope Alexander III in the late twelfth century (CIC, x.3.32.2). The twelfth century had also seen a definitive decision that consent alone made a marriage. By the end of the century there was a synthesis: consent in words of the present tense brought a true marriage into being, but consummation made it an absolutely indissoluble marriage. Behind this synthesis lies symbolism. Only a consummated marriage perfectly represented the marriage of Christ and the Church. Medieval marriage symbolism went far beyond mystical writing and piety. It was involved with law and thus with social practice: for by the twelfth century the validity of marriage was firmly within the competence of ecclesiastical law. The case of Constance of Padilla presupposes these much earlier developments.

Her marriage had not been consummated, she had entered an order, and her husband had then consummated another marriage. By the rules just outlined, this second marriage of his would have been valid and indissoluble: but for one thing. If her 'conversion' to the religious life had not been free, it was not valid; if it was not valid, it did not dissolve her marriage; and if her marriage was not dissolved, her husband's second union had

no validity, consummated or not. That was why the local delegates were told to find out whether she had really entered the convent under compulsion. If that part of her story turned out to be untrue, the ‘non-consummation’ rule would apply and her case could go nowhere.

A rigorous legal logic governs the case. Its deep roots in religious symbolism are not obvious at a surface reading. We need to trace them to make sense of the case. Conversely, the case shows how marriage symbolism could interact with real-life situations.

### ‘Five-wife Francis’

The case of ‘five-wife Francis’ in 1526 (Pen. Ap. 75 fo. 298<sup>r</sup>) also takes one back to marriage symbolism. It is less colourful than it sounds. Francis was only a serial widower: he had never been married to more than one woman at a time. At least four of his wives had predeceased him. In the eyes of the medieval Church there was nothing wrong with remarriage after the death of one’s spouse. There was no limit on the number of times. So what was the problem with Francis Scola, from Gerona?

It was that he was a cleric who had married more than once. Now, clerics could get married if they were only in minor orders. The celibacy rule applied to priests, deacons, and subdeacons, but that left a large class of clerics about whom (incidentally) historians do not know nearly enough. We do know that they could get married quite legitimately, provided that they did not hold a benefice – and that they married only once and to someone who had never been married. (To be precise, the wife must never have consummated a previous marriage.) Francis Scola was thus well over the line. Not only had he married five times, but two of his wives had been widows. He asked the Penitentiary for a dispensation to retain his clerical status. Such dispensations may have been out of the question until around this time.

As with the case of Constance of Padilla, there is religious symbolism beneath the legal surface here. Second and indeed multiple marriages were morally unexceptionable if there was no living spouse, but they were not, so to say, symbolically acceptable. To marry a widow, or to marry more than once, spoiled the ‘one to one’ structure of the comparison with Christ and the Church. The analogy was seriously impaired. It was inappropriate for a cleric to keep his status after entering into a marriage without the right symbolic structure. The same principle prevented a man who had been widowed twice from entering the priesthood. The starting point was a remark of St Paul, but the rationale was an aesthetic theology of marriage symbolism with implications for law, and thus society. This style of thought was not confined to the early Middle Ages or to the twelfth century with its so-called symbolist mentality. Hard-headed thirteenth-century legal brains like Innocent III, Sinibaldo Fieschi (Pope Innocent IV, but a major canon law commentator in his spare time), and Hostiensis built it into their thinking. The ‘bigamy’ rule could make a big difference, as a case from the English Gaol Delivery Rolls illustrates. In 1320 a man

called John of Worcester was hanged. He had robbed some important people, including the Chancellor of the Exchequer and the Bishop of Bath and Wells. If convicted, death was the inevitable penalty for his felonies. However, he nearly escaped it. He was a cleric, and as such exempt from royal criminal jurisdiction. Church courts had no death penalty. Unfortunately for him, he had married a widow (a woman called Alice whose



*A marriage ceremony, MS Lat. th. b. 4, fol. 151v detail. Reproduced by kind permission of the Bodleian Library, University of Oxford.*

husband had died in the Tower of London.) After a jury had sworn to his ‘bigamy’ he had no chance of beating the rap through clerical privilege. Francis of Scola was not trying to avoid the secular courts so far as we know. His request for a dispensation alludes to ‘privileges, graces, concessions and permissions which clerics married only once and to a virgin enjoy’. The formula needs more investigation but implies that clerical status made a lot of difference to social position.

In both these cases we can see how marriage symbolism made a practical legal difference. There is nothing less mystical than the style and character of a Penitentiary register, but below the surface of some decisions lies a deeply-rooted marriage symbolism. In turn, these sources show how the symbolism interacted with ordinary lives.

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