The Medieval Origins of Spousal Consent

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Abstract

This paper examines the medieval origins of spousal consent, the norm requiring that marriages be contracted willingly and free from pressure from third parties. We argue that this norm resulted from the Catholic Church's consolidation of legal authority over marriage in the 11th-12th centuries. Committed doctrinally to the belief that marriages could not be dissolved and that remarriage was therefore impermissible (i.e., marriage indissolubility), the Church was compelled to enforce high consent requirements to the formation of new unions. Using a simple theoretical model, we show that the Church's optimal level of spousal consent is higher when remarriage is not allowed. Higher consent requirements mitigate the negative effect of indissolubility on the number of marriages contracted. The development of a theory of spousal consent marked a sharp break from pre-Christian practice, which gave parents substantial control over the choice of spouse. It also contrasted with Eastern Orthodoxy and Protestantism, both of which permitted remarriage after divorce. Our analysis suggests that the Church's insistence on free consent was a necessary institutional complement to its unique stance on indissolubility, shaping marriage law and family structure in ways that reverberated throughout European history.

Keywords: Marriage Contracts, Family Economics, Law and Economics

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"Ascoltate e sentirete. Bisogna aver due testimoni ben lesti e ben d'accordo. Si va dal curato: il punto sta di chiapparlo all'improvviso, che non abbia tempo di scappare. L'uomo dice: signor curato, questa è mia moglie; la donna dice: signor curato, questo è mio marito. Bisogna che il curato senta, che i testimoni sentano; e il matrimonio è bell'e fatto, sacrosanto come se l'avesse fatto il papa."
Alessandro Manzoni, *I Promessi Sposi*

1 Introduction

Today, the idea that individuals can choose their own spouse is taken for granted in many developed societies. Economists, for example, routinely embed this principle into models of marriage markets, treating spousal consent as sufficient for the formation of valid unions. Yet from a historical perspective, this is a highly unusual norm. For example, Jewish, Roman, and Germanic legal traditions held that marriage could not be contracted without the authorization of other parties (most often the father). Parental consent continues to govern marriage formation in many developing regions of the world today. This contrast raises an important question: how did dispositive spousal consent emerge, and why did it spread?

We provide a novel explanation for the emergence of spousal consent in Medieval Europe. From a doctrinal perspective, the Catholic Church officially adopted the spousal consent model for marriage at the Council of Trent (1545-1563), although its key elements can be traced centuries prior. We argue that this legal development coincided with the ascent of the Catholic Church as the preeminent enforcer of family law across Western Europe in the 11th and 12th centuries. While the Church had always claimed that marriage was indissoluble – a binding contract until the death of one spouse – the emphasis on spousal consent in Canon Law only emerged once the Church asserted itself over secular rulers and their courts.The adoption of spousal consent mitigated the perverse effects that the rule of marriage indissolubility would have in a situation where spousal choice was influenced by a third party. The contractual features of spousal consent and marriage indissolubility go hand in hand, the latter bringing about the development of the former.

The Catholic Church's teaching about marriage has recently been linked to consequential changes in European history. In particular, Henrich et al. (2010) and Schulz et al. (2019) document that the longer a population is exposed to these policies – which they term the Church's "Marriage and Family Program" – the more individuals in that society exhibit WEIRD (Western, Educated, Industrial, Rich, and Democratic) psychological characteristics, which are themselves linked to positive economic and social outcomes. They argue that the mechanism for this change was the Church's enforced prohibition of cousin marriage in the medieval period, which virtually

prohibited couples from marrying if they had known common ancestors. Schulz (2022) expands on this evidence by showing that kin networks were replaced by more participatory institutions, such as medieval communes, as the share of cousin marriages in the population decreased.

One early proponent of the cousin marriage hypothesis, Goody (1983), argued that it was in the Church's financial interest to destroy the traditional European clan-based social order by banning the practice of marriage between close cousins and thereby increase its chances of acquiring their land.[1] Only if the greater division of property leads to more bequests to the Church, and if heritable estates were linked to cousin marriage, would there be an apriori reason to expect this outcome.[2] But as Shaw and Saller (1984) have argued, using data from the multi-volume *Prosopographia Imperii Romani* from pagan-era Rome, the protection of consolidated estates required marrying within the same class, rather than within one's family. Indeed, they find that cousin marriage was relatively rare in pre-Chrisitian Roman society, concluding that "the Christian ban on marriages within the sixth degree of kinship had little impact" (Shaw and Saller, 1984, p. 432).[3]

We contribute to this literature by offering an alternative interpretation of Church authorities' campaign against consanguineous or affinal marriages: ensuring free spousal consent. In traditional societies, parents exerted great influence over their children's choice of spouse, often compelling them to marry from within their own tightly-knit network. Blanket bans on marriages between affines and kin enabled the Church to protect spouses' free consent more effectively. It also helps explain why the prohibited degrees of consanguinity fluctuated over time – from the second to the sixth degree during the medieval period, for instance – as the threat of parental interference waxed and waned. The Church was using its prohibitions against cousin marriage to guarantee as much as possible that individuals entering an indissoluble marriage contract were doing so freely.[4]

To better illustrate the relationship between these contractual features of marriage, we develop a formal model in which potential spouses search, marry, and divorce under different sets of rules. In the model, a ban on divorce and remarriage causes people to flee marriage altogether. In equilibrium, courts (i.e., the Church), which we assume to be motivated by the goal of maximizing

[1] Schulz (2022) echoes this theory by stating that "[e]radicating lineages increased the likelihood that no heirs exist and that bequests would fall to the Church" (p. 2587).

[2] As Shaw and Saller (1984) points out: "In a discussion of patterns of property transmission, however, the vital question concerns not the legal rules, but customary behaviour: the Church would have been disrupting traditional lines of property only if kin endogamy had been common practice before its suppression by the Church in the late fourth century." (Shaw and Saller, 1984, p. 433).

[3] Recent studies of ancient DNA from pre-Christian Western Europe also find no evidence of consanguinity (Cassidy et al., 2025).

[4] Indeed, Berman (1983) argues that the medieval Church's attempts to verify the free consent of spouses birthed the whole field of contract law.

the net surplus from marriages in society, respond by increasing the consent requirements, which raise the expected quality of new unions, thus compensating (somewhat) for the negative effect of indissolubility on the number of unions formed in society.

We corroborate this theory in two ways. First, we show that the timing of the development of the doctrine of spousal consent by the Catholic Church coincided with its ascent to a role as the ultimate arbiter of all things marriage. Second, we provide a series of case studies of marriage laws in contexts in which the doctrine of what we dub unexceptive marriage indissolubility (i.e., the idea that valid marriages cannot be dissolved on any ground) did not bind courts. Our discussion shows that none of these societies, which include the pre-Christian Judea, Rome, and Germanic tribes, as well as Eastern Christianity and Reformation Europe, showcase the strong emphasis on spousal consent developed by the Catholic Church.

Much previous scholarship has investigated the effects of spousal consent on various societal outcomes. In *Democracy in America*, de Tocqueville (2012) wrote that "if democratic peoples grant women the right to choose their husbands freely, they are careful first to furnish their minds with the enlightenment and their wills with the strength that may be necessary for such a choice" (II: 227).[5] He contrasted the "deep, regular, and quiet affection" of American voluntary marriages with "the violent and capricious emotions" of European aristocratic arranges marriages (de Tocqueville, 2012, II: 227). More recently, Edlund and Lagerlöf (2006) argue that shifting from parental to individual consent in marriage effectively makes the bride the recipient of the bride-price (rather than her father) and generally redistributes resources "from old to young and from men to women" in a society (p. 304). The authors speculate that the Church in Europe helped society adopt such a norm of free consent. The literature on arranged marriage also supports the notion that these marriages are associated with an array of adverse outcomes (Huang et al., 2012, 2017; Du, 2023; Li et al., 2022; Anderson and Bidner, 2023).

We also contribute to the literature using economic tools to explain the development of religious doctrine (Ekelund Jr et al., 1992; Allen, 1995; Arruñada, 2009; Ferrero, 2011; Barro and McCleary, 2019; Piano and Piano, 2021). While we view the Catholic Church as constrained by the teaching that marriage is indissoluble, we trace the development of the doctrine of free spousal consent from a minority position in the early medieval period to its official doctrine by the time of the Council of Trent. The doctrinal views of marriage in Orthodox and Protestant religious traditions provide important counterfactual cases for our argument that dispositive spousal consent was adopted in response to the doctrinal constraint of marriage indissolubility.

Finally, our study contributes to the law and economics of marriage. Matouschek and Rasul

[5] de Tocqueville (2012) continues: "...whereas among aristocratic peoples the girls who furtively escape from paternal authority and fling themselves into the arms of a man whom they have not been granted either time to get to know or capacity to judge are without such guarantees" (II: 224-225).

(2008) and Dnes and Rowthorn (2002) view marriage as a long-term contract that functions as an important commitment device to protect the specific investments of each spouse. To make sense of the contemporary decline in marriage among non-homeowners, Lafortune and Low (2023) argue that marriage partners with access to collateral – such as owning a home – are more likely to make specific investments into marriage – such as one spouse forgoing her career to raise the children – because they are relatively less risky. Finally, Brinig and Crafton (1994), Allen (1990, 2005), Leeson and Pierson (2017), and Piano et al. (2024) all deal with the practical effects of changing marriage contractual terms. We contribute to these bodies of work by analyzing one specific contractual form of marriage that has historical significance: a marriage contract that is indissoluble and based upon the free consent of spouses.

2 The Historical Peculiarity of Indissoluble Marriage

For much of the medieval period, prevailing marriage practices in Western Europe were not much different from what they had been in pre-Christian societies. Parents married off their children at a relatively young age, often to relatives or members of their extended clan. Divorce was widespread, and it was often followed by remarriage (Duby, 1978). Concubinage and informal polygamous marriages were common, at least in some regions (Karras, 1990). While the Catholic Church had traditionally condemned these practices, these complaints had remained a dead letter. Priests and even bishops across Europe were themselves guilty of them.

These practices never fully disappeared from the face of the continent. However, they came under attack and would eventually exit the mainstream of society. In the 12th century, the Catholic Church had achieved hegemonic legal authority over marital matters following the Gregorian Reform and its success in the investiture controversy (Brundage, 2009). By this time, the Church's stance on marriage and divorce had crystallized into what Duby (1978) refers to as the 'ecclesiastical model.' This model is characterized by indissolubility, or the impermissibility of remarriage after divorce, strict exogamy, or the ban on marriage between close relatives, and spousal consent. This understanding of marriage soon came to dominate Western Europe, and would continue to do so for centuries (Duby, 1993, 1994; Brundage, 2009).[6]

The teaching that while spouses may not remarry except in the case of the death of either spouse, which we dub 'unexceptive indissolubility,'[7] to indicate that there are no exceptions to the

[6]Indeed, the same position remains central to canon law and Catholic teaching to this day (Brugger, 2017; Catholic Church, 2000)

[7]The opposite stance is known as exceptive indissolubility, which would grant the right of remarriage on various grounds, especially adultery.

rule,[8] had a long pedigree in Western Christianity (Brugger, 2017).[9] Similarly long-standing was the Church's condemnation of marriage between relatives (Schulz, 2022). The truly innovative aspect of the ecclesiastical model of marriage was thus its requirement that a union be the result of both spouses' free choice. Any interference with the choice of whether or whom to marry would prevent the formation of an indissoluble bond and would void any and all marriage vows.

The Council of Trent (1545-1563) affirmed this teaching in very strong terms. In Chapter IX (*Temporal lords, or magistrates, shall not attempt anything contrary to the liberty of marriage*) of its *Decree on the Reform of Marriage*,[10] the Council declared that

> Wherefore, since it is something singularly execrable to violate the freedom of matrimony, and equally execrable that injustice should come from those from whom justice is expected,the holy council commands all, of whatever rank, dignity and profession they may be, under penalty of anathema to be incurred *ipso facto*, that they do not in any manner whatever, directly or indirectly, compel their subjects or any others whomsoever in any way that will hinder them from contracting marriage freely.

By threatening the "penalty of anathema," the gravest form of excommunication in the Catholic Church, [11] for anyone who interfered with the free exercise of an individual's choice of spouse, the Council Fathers at Trent were emphasizing the centrality of spousal consent to the Catholic view of marriage.[12] Trent's emphasis on, and indeed its stance on the necessity of,

[8]The Catholic Church allows for two exceptions, though these only apply to marriages entered into by non-Christians. The first is the so-called Pauline exception, which allows one to divorce her husband (his wife) if one converts to Christianity and the husband (wife) leaves her (him) because of this conversion (1 Cor 7:12). The second exception is known as Petrine privilege and allows the Pope to dissolve a polygamous union, so as to permit a (newly converted) man to form a new (indissoluble union) with just one of his previous wives (Örsy, 1988, p. 214). Note that neither privilege applies to a baptized Christian in a Christian marriage.

[9]Notably, the Church's teaching on indissolubility never constituted a ban on separation (or, today, on civil divorce), but rather one on the ability to form additional unions. The Council of Trent's (Canon 8) allows separation "[for] many reasons" and permits "for a determinate or indeterminate period."

[10]Decrees were meant to serve as arguments supporting and elaborating upon the Council's canons (O'Malley, 2012).

[11]Excommunication was an earthly as well as a spiritual punishment, as an excommunicated person was cut off from the *civila jura*, including business relations, common meals, or social honors (*os, orare, vale, communio, mensa negatur*).

[12]Alongside the requirement of consent, the Council of Trent emphasized the necessity that marriage vows be exchanged publicly and in the attendance of a local priest (Twenty-Fourth Session, *Decree on the Reform of Marriage*, Chapter I). Public celebration was meant to address the phenomenon of clandestine marriages. Couples would exchange vows in secret and then begin married life, only for one of them to later deny that any vows had been exchanged in the first place, thus permitting one to abandon his or her spouse and form a new union. Clandestine marriages thus threatened both indissolubility and spousal consent. Clandestine marriages were often used to get around another Church prescription: The ban on marriage between relatives. It was in its efforts to limit kin marriage that the Fourth Lateran Council (1215) had first legislated against clandestine marriages and required public celebration (Fourth Lateran Council, Constitution 51, *Clandestine marriages forbidden*).

spousal consent is especially striking in light of the prevailing practices at the time and also those of pre-Christian societies across Europe and the Mediterranean.[13]

Marriage is viewed as the ideal in Judaism, and the Hebrew Bible includes a surprising number of discourses on marital love.[14] In the Rabbinical interpretations of biblical verses (the *Rabbah* series), a parable about spousal search is repeated multiple times:

> They tell the story of a Roman matron who asked a rabbi what God does with his days. The rabbi responded that God spends a third of each day bringing together couples for marriage. The Roman matron scoffed and said, "I can do that myself," and she took her male slaves and matched them off to her female slaves. The next morning there were a lot of angry people among her newly married slaves. Seeing this, she told the rabbi, "Now I understand why God has to spend a third of each day bringing together men and women for marriage" (Dorff, 2017, p. 19)

God does enlist some earthly help, as the Talmud states that it is a father's duty to select the spouses for his children. If the father has died or cannot fulfill this duty, it falls to the community – not the children themselves – to match its young people. The consent of the spouses themselves was not necessary: "The father's discretion, according to Rabbinic teaching, was unchecked. He could, if he chose [to], marry his daughter to 'one who is ugly or one who is afflicted with boils'" (Noonan, 1973, pp. 425-6). This practice has a biblical expression in the episode from Genesis in which Jacob marries Laban's daughters. Neither of the two marriages sees Jacob pursue the consent of Leah or Rachel. It is only with Laban, their father, that Jacob negotiates in order to get his assent (Levine, 2009, p. 103).[15]

Roman law during the classical period famously emphasized that "consent makes the marriage." This maxim, however, mattered little when it came to young Romans' choice of whom they would marry (Noonan, 1973, p. 426). Parental consent was considered necessary for sons and daughter alike to get married, even those who were legally emancipated (Reynolds, 1994, p. 22). A Roman girl would be "considered to have given her consent if she did not oppose the will of her *pater*" and could only refuse to get married to a man of her father's choosing if the groom was "morally disreputable" (Noonan, 1973, p. 426). Nor was paternal oversight limited to girls: "If a father made his son obey, the marriage stood" (Noonan, 1973, p. 426). The presumption that parental consent was necessary for marriage was so strong that still by the fifth century, Roman

[13] We focus here just on Jewish, Roman, and Germanic laws and practices given their large influence on the development of Chtristian theological and legal thought during the Church's formative centuries (Reynolds, 1994; Brundage and Eichbauer, 2022).

[14] See Genesis (2:23-25, *The Song of Songs*, or Proverbs 31:10-31, for example.

[15] According to the Talmud, the age of puberty is the legal age for contracting a valid marriage, which was assumed to be 13 for males and 12 for females. However, in ancient times, a father could legitimately marry off a prepubescent daughter, however, so long as she confirmed the marriage once she became of age.

law criminalized a man's taking of a woman "as his wife without the consent of her parents ... *even if the woman herself consented.*" Indeed, the law treated her as "partner in [the crime of her abduction]" (Reynolds, 1994, p. 102).

Among the Germanic people, Visigothic custom was that "[the choice of a girl's spouse] was vested primarily in the girl's father. If he died, it passed to her mother, and if the latter died or remarried it passed either to the girl's brothers or ... to the paternal uncles" (Reynolds, 1994, p. 88).[16] And among the Lombards, "a girl's father or brother may ... betroth her or give her in marriage to whomever they wish and at any age" (Reynolds, 1994, p. 95). Finally, whereas Jewish and Roman law always required that at least the parties' parents consent to the union, early Germanic law permitted marriage by capture (*Raubehe*) and by purchase (*Kaufehe*) (*Friedelehe*) (Brundage, 2009).

3 A Theory of Indissolubility and Consent Requirements

In this section, we develop a simple model of marriage indissolubility to guide the historical narrative to follow. We focus on the choices of two sets of actors: 1) individuals considering marriage, and 2) courts entrusted with the enforcement of marital arrangements. We assume that individuals maximize their expected utility while courts maximize the surplus generated by the marriages contracted by these individuals.

The model takes place over four periods. In the first period, courts set (binding) consent requirements for all marriages in their society, these requirements are measured by $\tau \in [0, 1]$. Think of τ as individuals' expected probability that they can marry the person on which their search landed, as opposed a person of their parents' choosing. In the second period, individuals must decide whether to enter the marriage market or remain celibate. If they opt for the latter, they enjoy a payoff of size $a_i \sim \mathcal{U}(0,\ A)$. In the third period, individuals perform some search $x_i \geq 0$ after which they are matched to a spouse j, where we assume that the cost of the search is quadratic for tractability, $c(x_i) = \frac{x_i^2}{2}$. Intuitively, τ increases i's benefits from searching a spouse during this period. In the fourth and last period, spouses enjoy the realized value of their marriage, which depends on whether they stayed married (M) or separated (D).

Let individual i's expected utility be given by $U_i = pM + (1-p)D$. M and D are the payoffs from remaining married and divorcing respectively, with $M > D$.[17] Finally, p is the probability

[16] Reynolds adds that in Visigothic legal codes "[r]references to a need for a *girl's* consent to her marriage ... are in the main conspicuous by their absence" (Reynolds, 1994, p. 88).

[17] We assume that $M > D$ and that these are constant across individuals. However, the model's implications would be the same if instead we assumed that $M_i \sim \mathcal{U}(0,\ M_{Max})$ and $D_i \sim \mathcal{U}(0,\ D_{Max})$ where $M_{Max} > D_{Max}$ and that everyone knows these distributions but not what value either variable will take for them in period 4.

that the marriage succeeds, in which case each individual enjoys payoff M:

$$p(x_i, x_j) = 1 - e^{-\tau(x_i + x_j)}$$

where all variables are defined as above. Intuitively, both a greater τ and a greater search x_i lead to a higher probability of marital success (Becker et al., 1977).

Each spouse selects the level of search x_i that solves the following maximization problem:

$$\max_{x_i} \; p(x_i, x_j) \cdot M + [1 - p(x_i, x_j)] \cdot D - \frac{x_i^2}{2}$$

which yields the following FOC:

$$\tau e^{-\tau(x_i + x_j)} \cdot (M - D) = x_i.$$

Assuming that all individuals are identical in every respect except for their respective value of a_i, they will all choose the same value of x_i. In this symmetric scenario, the following optimality condition holds: $\tau e^{-2\tau x^*} \cdot (M - D) = x^*$, which implicitly defines $x^*(\tau, M, D)$.[18]

Plugging x^* back into i's utility function, we can now characterize her choice between marriage and celibacy. i chooses marriage as long as

$$U_i = p(x^*) \cdot M + [1 - p(x^*)] \cdot D - \frac{x^{*2}}{2} > a_i.$$

Since a_i is uniformly distributed between 0 and A, the share of people who prefer marriage over celibacy will be the share of people for whom the expected utility of marriage is at least as large as that from celibacy, or $\frac{U_i}{A}$. For a population of size N, and imposing the matching constraint of two individuals per marriage, the number of marriages Γ is then given by multiplying the share of individuals who prefer to marry by the size of the population divided by two:

$$\Gamma = \frac{N}{2A}\left[p(x^*) \cdot M + [1 - p(x^*)] \cdot D - \frac{x^{*2}}{2}\right].$$

Courts wish to maximize the total net benefits generated by couples forming marriages, or

$$V = \Gamma(\tau) \cdot S(\tau) - c(\tau)$$

where $S(\tau) = 2[(1 - e^{-2\tau x^*}) \cdot M + e^{-2\tau x^*} \cdot D] - x^{2*}$ is surplus per marriage and $c(\tau)$ is the convex

[18] Note that if $M \leq D$, the individual performs no search at all and the probability of divorce is 1. This is because when marriage is less valuable than divorce even when spouses are matched perfectly, search never yields any positive marginal benefit.

cost of implementing consent between the two spouses. In order to ensure that $\tau*$ does not exceed unity, we assume that $c(\tau) = \frac{\theta}{(1-\tau)^z}$, with $\theta > 0$ and $z \geq 1$. The courts select the level fo τ that maximize V.

Since τ^* cannot be solved for analytically, we do so numerically. For example, assigning the following parameter values, $M = 8,\ D = 7,\ A = 12,\ N = 1000,\ \theta = 2$ and $z = 3$, courts select $\tau^* \approx 0.69$. Given this level of τ, approximately 61% of the population chooses married over celibate life, bringing about 306 marriages.

We can now identify the effect of the courts adopting a doctrine of unexceptive indissolubility, which constitutes a ban on remarriage though not one on separation per se. Formally, we characterize the adoption of unexceptive indissolubility by courts as a drop in the value of divorce (D) to 0. Intuitively, the inability to remarry after separation lowers the value of dissolving marriage.[19] If courts were to adopt this doctrine without adjusting the level of τ, the number of marriages would fall to 239, which in turn would affect the courts' payoff by lowering it by about 40%.[20] This outcome is due to the effect of the drop in D on i's expected marriage value. Individuals now face a much less appealing prospect if they enter what ends up being an unsuccessful marriage. Individuals may respond by increasing search in an attempt to push the expected value of marriage back some via p. But because the extra search is itself expensive, the net value of marriage falls. In equilibrium, more individuals choose celibacy over marriage.

The courts may respond to the negative effect of the ban on remarriage by adjusting the value of τ^*. For the same parameter values assumed above, a $D = 0$ yields an optimal value of the consent requirements of $\tau^* = 0.78$, meaning that courts adjust to being bound by unexceptive indissolubility by adjusting τ^* upward by approximately 14%. This adjustment compensates somewhat for the effect of $D = 0$ on individuals' choice to live a life of celibacy, as shown by the (small, at about 4%) jump back of the total number of marriages ($\Gamma = 246$) after courts increase τ^*.[21]

Table 1 provides the values of τ^* for $D = 7$ and $D = 0$ for different levels of θ to show how assumptions about the behavior of the courts' enforcement costs affect the size of the adjustment

[19] Assuming that the value of divorce drops to zero is an extreme simplification. However, the implications of the model are not affected by this assumption. Any $D < 7$ produces qualitatively identical results, though of course of smaller magnitude. Assuming $D = 0$ makes these qualitative effects larger and these more easily identifiable and also simplifies calculations.

[20] That indissolubility might lead to a decrease in the number of marriages was first hypothesized by Cohen (2002, p. 32). This result is consistent with evidence that prohibitions on alimony in some US states resulted in fewer marriages (Landes, 1978). In the context of our model, a ban on alimony would lower D and thus discourage some from entering marriage.

[21] Note however that the number of successful marriages goes up even as total unions formed fall. For the parameter values we have been assuming, for example, the share of marriages surviving divorce with $D = 7$ is just over 42% while with indissolubility the same figure is almost twice as large (≈82%). Thus, even as the total number of unions formed decreases, the total number of unions that survive divorce increases from 129 to 202.

to the adoption of the indissolubility doctrine as well as their effect on the equilibrium number of marriages.

Table 1: Optimal Consent (τ) and Equilibrium Number of Marriages (Γ)

θ	$D = 7$		$D = 0$	
	Optimal τ	Equilibrium Γ	Optimal τ	Equilibrium Γ
0.5	0.776	308	0.842	255
1.0	0.736	307	0.815	252
1.5	0.710	306	0.797	250
2.0	0.689	306	0.783	249
3.0	0.659	305	0.762	246

The implications of our model are straightforward. Starting from an equilibrium characterized by 1) relatively low levels of spousal consent and 2) the ability to divorce and remarry, the imposition of restrictions on exit reduces the overall number of marriages and, thus, the surplus they generate. The courts responsible for the enforcement of marriage contracts, which are also assumed to benefit from the surplus generated by these unions, would thus respond to a ban on divorce and remarriage by raising the consent requirements in order to increase the effectiveness of individuals' search for a spouse.

The model captures closely key features of the transformation of the marriage market in Latin Christianity during the medieval period. Pre-Christian societies in Western Europe (and, for much of the medieval period, nominally Christian ones also) treated spousal choice as largely the prerogative of families, rather than individuals. Eventually, the Church gained control of the formulation and enforcement of marriage law. For doctrinal reasons, however, the Church developed and enforced a teaching restricting the ability of spouses to dissolve their union and form new ones. According to our model, this doctrinal constraint would have prompted the Church to formulate and enforce a theory of strong spousal consent.

4 From Indissolubility to Spousal Consent

Our theoretical argument links the Catholic Church's adoption of a peculiarly strong view of spousal consent back to its commitment to the doctrine of unexceptive indissolubility, which ruled out all (legitimate) prospects of remarriage upon divorce. In what follows, we show that this hypothesis explains the when, where, and why of the development of the church's teaching on an individual's freedom to choose one's spouse. We do so by first establishing that, in the Latin West, the Church has been traditionally committed to the unexceptive view of indissolubility going

back at least to the 4th and 5th centuries. This commitment had been re-affirmed many times by the Catholic Church before it assumed legislative and juridical functions over issues related to marriage and divorce in the Late Middle Ages. It is only after effectively becoming the undisputed authority to govern the formation and dissolution of marital unions that the Church developed its teaching on spousal consent.

To anticipate the following historical narrative, we will argue that the *when* of the development of the Church's teaching on spousal consent coincided with its takeover of the enforcement of marriage law from secular authorities (i.e., the 12th and 13th centuries). The *where* is the region of exclusive jurisdiction of the Church over marital affairs (i.e., Western Europe). Together, the *when* and *where* point to the *why* of the Church's support for a person's freedom in the choice of one's spouse: The combination of a commitment to banning divorce and remarriage with the exercise of legal authority over marriage by the same institution.

4.1 Unexceptive Indissolubility in the Latin Church

4.1.1 Scripture on Divorce and Remarriage

Each of the three 'synoptic' Gospels reports Jesus addressing the nature of marriage and the permissibility of divorce. In Matthew's account of the Sermon on the Mount, Jesus instructs the crowd that, contrary to traditional Jewish practice, "every one who divorces his wife, except on the ground of unchastity, makes her an adulteress; and whoever marries a divorced woman commits adultery" (Mt 5:31).[22] Later in the same Gospel, the Evangelist recalls an interaction between Jesus and a group of Pharisees, in which the former claims that since upon marriage "[husband and wife] are no longer two but one," man may not "put [them] asunder." To the Pharisees' push-back that Moses himself had permitted divorce, Jesus replies that this was only because of the Israelites' "hardness of heart" and then reiterates the teaching from the Sermon on the Mount (Mt 19:1-9).

The same episode is recounted in Mark's Gospel. In response to the Pharisees' probing, Jesus explains that "from the beginning of creation, God made them male and female. For this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one flesh. So they are no longer two but one flesh." This unity cannot be dissolved by man's actions, so that "[w]hoever divorces his wife and marries another, commits adultery against her; and if she divorces her husband and marries another, she commits adultery" (Mk 10:2-12). Finally, a similar passage appears in Luke's Gospel. Here, Jesus claims for himself the ability to amend and contradict the law of Moses, soon after which he does just that by noting that "[e]very one who divorces his wife and marries another commits adultery, and he who marries a woman divorced

[22] All quotes from Sacred Scripture follow the Revised Standard Version Second Catholic Edition.

from her husband commits adultery" (Lk 16:18).

Except for the Gospels, Paul's Epistles provide the only other scriptural source on the permissibility of divorce and remarriage (Brundage, 2009, pp. 59-60). In his First Letter to the Corinthians, Paul first reiterates Jesus' teaching that "the wife should not separate from her husband... and that the husband should not divorce his wife" (1 Cor 7:10-11). He then goes on to discuss the permissibility of separation, which he grants conditional on a woman living a chaste life. In another passage, Paul also clarifies Jesus' words on the permissibility of remarriage. What makes remarriage adulterous is the indissolubility of marriage. Thus, a woman leaving her husband to live with another man commits adultery, but a woman whose husband has died is free to do so since the spouse's death terminated the bond created by their marriage (Rom 7:1-3).

4.2 Indissolubility in the Early Church

Early Christian authorities agreed that Jesus taught that marriage was no mere human institution and that, by entering it, bride and groom were inextricably bound to each other. However, the agreement ended there. Authorities differed on whether Jesus's teaching made room for any exception to the indissolubility of the marital bond. Some, like Augustine of Hippo, Jerome of Stridon, and John Chrysostom viewed remarriage as always impermissible (Brundage, 2009, pp. 95, 98), the 'unexceptive indissolubility' position. Others, like Tertullian and Basil of Caesarea,[23] took the 'exceptive' view. Marriage was generally indissoluble but divorce and remarriage were permitted in case of adultery, a position based on Matthew's version of Jesus' teaching, which contains the proviso "except on the ground of unchastity" (Mt 5:31) (Gallagher, 2019).

Possibly the earliest post-apostolic Christian writing to address the issues of divorce and remarriage is the *Shepherd of Hermas*, a second-century manuscript that some of the Church Fathers considered divinely inspired (Chapman, 1910).[24] The *Shepherd* includes an extended treatment of how husband should respond to his wife's adultery. If he leaves her, argues the author of the *Shepherd*, he should nonetheless refrain from marrying another "for the sake of her repentance."[25]

Jerome of Stridon and Augustine of Hippo are among the most influential Christian thinkers of Early Christianity. Their work had a lasting impact on the development of Western Christian thought on a wide-ranging set of issues (Hughes, 2021a,b).[26] Jerome's thoughts on marriage

[23](Bevilacqua, 1967, pp. 255-8) argues that Tertullian's position was more complex. In his view, Jesus allowed a spouse to divorce the other, but this could not be done with the intention to marry another. Indeed, Tertuallian's overall position was strongly in favor of indissolubility, which he saw as being binding even in the case of a spouse's death.

[24]The *Shepherd* consists of a series of visions as described by a member of the Church of Rome.

[25]As quoted in (Bevilacqua, 1967, p. 254).

[26]Jereome's Latin translation of the Bible, the Vulgate, is still the official version of the text in that language in the

emphasized that the requirement not to remarry binds husband and wife equally. Augustine provided perhaps the clearest early formulation of the doctrine of indissolubility. One scholar summarizes Augustine's position as follows: "There is no reason whatever that can justify either the husband or the wife to enter a second marriage after divorce" (Bevilacqua, 1967, p. 266). To Augustine separation is a practical possibility, and he interprets the exceptive clause in Matthew as permitting it. However, separation has no effect on the spiritual bond marriage involves, as it is of God's making, not Man's. Only death, when the Creator 'calls home' one of the two spouses, dissolves the bond.

The two Latin theologians' interpretation of Jesus' teachings on marriage and divorce proved exceptionally influential in the Christian West, "[persuading later generations of Christian thinkers in the West] that the presumed words of Christ in the Matthean exceptive clause warrant not a true dissolution of their marriage bur only a separation that leaves them still married to one another" (Mackin, 1984, p. 220).

On the opposite side of the argument, we find the Greek Church Father Basil of Caesarea, one of the 4th century's foremost Christian theologians. Alongside him is the unknown author of a commentary on Paul's Epistles, traditionally though wrongly believed to having been written in the mid-300s by Augustine's teacher, Ambrose of Milan. Greek tradition and modern scholars interpret Basil's writings on marriage and divorce (especially in his *Letter 188*) as not only permitting divorce and remarriage but indeed requiring that a husband leave an adulterous wife. While falling short of Basil's interpretation, Pseudo-Ambrose's formulation is a clear-cut endorsement of the validity of second marriages for victims of adultery. In his commentary on Paul's First Letter to the Corinthians, the anonymous author writes:

> Let not the husband put away his wife. We must supply the words "save for the cause of fornication." And therefore the Apostle does not add, and in the case of the woman: "but if he depart let him remain unmarried," for a man marry, if he has put away his offending wife; since the law does not bind his as does the woman, for 'the head of the woman is the man."[27]

One way to resolve the disagreement among Church Fathers, and clear up all interpretive ambiguity about the exceptive clause in Matthew, would have been for an ecumenical council to debate the matter and rule on it definitively. [28] There is no evidence that any of the first seven ecumenical councils, which w ere and are accepted as binding to both the Latin and the Greek

Catholic Church. Augustine's influence ranges from theology to biblical interpretation, from spiritual direction to clergy formation (Portaliè, 1907; Tornau, 2024; Jace and Piano, 2021).

[27] Quoted in Bevilacqua 1967, p. 263.

[28] 'General' or 'ecumenical' councils are "legally convened assemblies of ecclesiastical dignitaries and theological experts for the purpose of discussing and regulating matters of church doctrine and discipline" (Wilhelm, 1908).

Churches, ever addressed the issue. However, divorce and remarriage were discussed at assemblies of local churches. For example, in the early 5th century the Bishops of North Africa, meeting in Carthage, resolved that Christians could not remarry, without exception (Brundage, 2009, p. 95). In the East, several local Councils tackled the issue in the 4th century. All permitted remarriage after divorce (Mackin, 1984, pp. 182-183). The picture was drastically different in the West. Bevilacqua (1967) identifies at least 19 local or regional Church Councils and Synods in the Latin West that addressed marriage indissolubility from the early 4th to the early 11th century. Only two, the Western Councils of Verberies (AD 753) and Compiegne (AD 756), explicitly adopted the view that remarriage was ever permissible.

Even as most Western regional councils and, with a few exceptions (Mackin, 1984, p. 162), Latin theologians affirmed unexceptive indissolubility, practice often deviated from these pronouncements among lay people and even clergy. Remarried clergymen, especially bishops, were the cause of much scandal, and local Churches' efforts against remarriage were primarily focused on these cases (Brundage, 2009, pp. 97-8). Throughout most of the 8th century, across Western Europe, courts often granted divorces and recognized second marriages on various grounds (Brundage, 2009, p. 144). Yet, already by the end of the first millennium, in Western Europe the consensus favored unexceptive indissolubility (Olsen, 2001, 179).

4.2.1 Indissolubility in the Medieval Church

As the Latin West was undergoing a process of rationalization and systematization of Church law in the first two centuries of the second millennium, it reaffirmed the traditional perspective on the impermissibility of remarriage. This is best reflected in the writings and life of Ivo of Chartres (1040-1115). According to Ivo, the legal termination of marriage was permissible, although only for serious reasons, but divorce did not break the marriage bond and thus the divorced could not contract a second union (Brundage, 2009, pp. 174-5). Ivo's teaching was not mere intellectual speculation. He spent much of his time as bishop of Rome (and supporter of the Pope's primacy in France) attempting to enforce the Church's regulations on marriage against his country's noblemen (Duby, 1993). The Church's teachings on indissolubility irked many a European prince as it failed to recognize the permissibility of their second marriages, often the result of political necessity. Nevertheless, 12th century canon law, as formulated and developed by the likes of Gratian of Bologna and Peter Lombard, consistently reaffirmed Ivo's teaching. Gratian's endorsement and formulation of the unexceptive view were to serve as the foundation for the ecclesiastical law of marriage for the following several centuries (Winroth, 2009). Soon after Gratian's work on the topic, on the initiative of Pope Innocent III, the Fourth Vatican Council (1215) implicitly endorsed the unexceptive position and eliminated many of "[those] loopholes which had permitted not only

princes but also many lesser noblemen to get out of marriage" (d'Avray, 2005, p. 104).

Whatever disagreement remained among Late Medieval canonists and Church authorities in the West, as to the theological and legal dimensions of marriage, the impermissibility of remarriage had won the day. From then on, all debate focused on the identification of those conditions that bring about the indissoluble bond in the first place. If remarriage was permitted, it was because something prevented the original marriage from taking effect. For example, canonists envisioned the possibility that two spouses, upon learning that they are related by blood, could legitimately exit their marriage and enter new ones.[29] The key disagreement between canonists of different persuasions at this time was whether the marriage vows, in which bride and groom express their consent to the union, or the consummation of the marriage post-vows brought about indissolubility. As a consequence, some canonists (mostly associated with the University of Paris) believed that once vows had been made, spouses were bound perpetually, while others (mostly associated with the University of Bologna) would permit the couple to dissolve the union as long as they had not had intercourse (Brundage, 2009, p. 288). Eventually, the Church would land on the position that remarriage required a declaration of nullity (implying that a marriage was never actually contracted) while also permitting separation conditional on the Church's permission, which was to be granted on grounds that practically varied from one jurisdiction to another.

The indissolubility of the marriage bond had been the traditional teaching in the Latin West for a millennium (and a principle of canon law since the Late Middle Ages) when it was formally defined by the Catholic Church at the Council of Florence (1431-1449). According to the Council Fathers at Florence, as long as a marriage was "legitimately contracted," its bond is "perpetual" (Council of Florence, *Bull of Union with the Armenians*). This teaching was reasserted, in clearer and stronger form (Brugger, 2017), by the Council of Trent (1545-1563) just over a century later. Canon VII of Trent's Twenty-Fourth Section (*On the Sacrament of Matrimony*) reads as follows:

> If any one saith, that the Church has erred, in that she hath taught, and doth teach, in accordance with the evangelical and apostolical doctrine, that the bond of matrimony cannot be dissolved on account of the adultery of one of the married parties; and that both, or even the innocent one who gave not occasion to the adultery, cannot contract another marriage, during the life-time of the other; and, that he is guilty of adultery, who, having put away the adulteress, shall take another wife, as also she, who, having put away the adulterer, shall take another husband; let him be anathema.

The *Roman Catechism*, issued in Trent's immediate aftermath (1566) by Pope Pius V to facilitate the spread of the Council's teachings to the clergy, identified several benefits the Council

[29] While the Medieval canonists had not yet developed the notion, what they are identifying are instances of what modern canon law refers to as invalid marriages.

Fathers had considered when ruling on the indissolubility of marriage (Pius V, 1566, pp. 374-375):

> The first (beneficial consequence) is that men are given to understand that in entering Matrimony virtue and congeniality of disposition are to be preferred to wealth or beauty–a circumstance that cannot but prove of the very highest advantage to the interests of society at large. In the second place, if marriage could be dissolved by divorce, married persons would hardly ever be without causes of disunion...now that the faithful must remember that even though separated as to bed and board, they remain nonetheless bound by the bond of marriage with no hope of marrying another, they are by this very fact rendered less prone to strife and discord.

The history of the Western Church's thinking on indissolubility can be summarized thus. In the century immediately following the Apostolic age, disagreement reigned. Some authorities endorsed the adoption of absolute indissolubility while others made room for exceptions, mostly for cases of adultery. Throughout the Middle Ages, local councils mostly endorsed the former position, but the Church as a whole took no position. The canonists responsible for the rationalization and systematization of Catholic jurisprudence brought about a return to the unexceptive view, which finally crystallized in the 12th and 13th century. It was then elevated to official Church teaching at the Councils of Florence and then confirmed in this status at the Council of Trent.

4.3 Spousal Consent

4.3.1 The Early Church on Spousal Consent

There is no explicit discussion of the role of consent in the stipulation of marriages in the New Testament. It is not surprising then that early Christian authorities appear to have been less interested in this question than in that of indissolubility. Among those few Church Fathers who did address the issue directly, none seem to have found much wrong with heavy parental involvement in children's marital prospects, as was customary in both Jewish and Roman practice at the time (Noonan, 1973, pp. 423-5). In fact, they positively endorsed these traditional arrangements. Tertullian, the 2nd century Latin theologian, argued that the couple's and the respective fathers' consent both were necessary (Olsen, 2001, p. 158). Basil of Caesarea went so far as to propose that marriage was impossible without paternal authorization and thus that all unions lacking such authorization constituted fornication.[30]

[30]Letter 199:XLII of Basil of Caesarea Basil of Caesarea (1895b).

4.4 Spousal Consent in the Middle Ages

For most of the Middle Ages, the practice among Latin Christians followed pre-Christian custom (Duby, 1993, p. 170). Arranged marriages were the norm, with vows being exchanged between spouses before they had reached the age of reason (i.e., seven years old), and "incest was rife" (Duby, 1993, p. 172). And for the most part, Church authorities went with the flow (Duby, 1978, p. 20).

By the second half of the 11th century, ecclesial courts began to enforce the unexceptive view, often against the wishes of laypeople and especially those of the ruling class (Brundage, 2009, p. 188). Among the most influential proponents of the adoption of a legal standard that emphasized the spouses' consent over that of their parents was Ivo of Charters. Ivo argued that men and women should enjoy the "power of choice" when selecting their spouses, a sentiment endorsed by his contemporary, Pope Urban II (Noonan, 1973, p. 428). Parents could not bind their children to a union since only the bride's and groom's own vows formed an unbreakable marital bond. This theory had a radical implication: Not just male offspring but female ones also could refuse to marry the person handpicked for them by their parents (Duby, 1993, pp. 171-2).

The first systematic formulation of this 'ecclesiastical model' of marital consent (Duby, 1978) came only in the following century, thank to the work of Gratian, a professor of Canon Law at the University of Bologna. Gratian proposed that, as long as two individuals were eligible to marry,[31] and there were no other impediments to the liceity of their union,[32] then they could contract marriage by simply expressing mutual consent to the union. Gratian's model of marriage combined embodied "[an insistence] on freedom of choice in selecting marriage partners" (Brundage, 2009, p. 237). Any interference with one's freedom to pick one's spouse nullified the marriage. "A father's oath cannot compel a girl to marry one to whom she has never assented'" claimed the Bolognese jurist, adding that "no woman should be compelled to marry anyone except by her free will."[33]

These positions constituted "a frontal attack on one of the main buttresses of a society based on lineage: the right of the head of the family to dispose of its women"(Duby, 1993, p. 171). Predictably, Western Europe's elites did not bend to ecclesiastical supremacy in these matters without a fight (Duby, 1978, p. 20). Recall that Ivo of Chartes had himself been involved for decades in the conflict between the Church, which was asserting the power to regulate marriage, and the French nobility whose economic interest and prestige lied to a great extent in the power to

[31] That is, that they were of legal age, had not entered into a previous marriage, unless the other spouse had died, and had not made vows of celibacy (Brundage, 2009, p. 238).

[32] The spouses could not biologically or spiritually related within the prohibited degrees and both were to be Christians in good standing.

[33] Gratian as quoted in (Noonan, 1973, pp. 420-2).

control the spousal choices of their offspring (Duby, 1978, 1994).[34] Prohibition from interference with spousal choice encompassed not only attempts from one's family to arrange one's marriage, or instances of bridal kidnappings,[35] but even mere misapprehension. By vitiating spousal consent, such misapprehension could justify a finding of nullity and would allow both parties to contract a new marriage (Brundage, 2009, p. 243).

It is especially noteworthy that, unlike with indissolubility, Gratian had no scriptural and only few patristic and canonical precedents on which to ground his theory of consent. Indeed, he himself was compelled to admit several contrary perspectives to his own from among the Fathers and even papal decisions. All of these sources saw parental involvement not only permissible but even necessary. The only opinion he cites to boost his case is that of Augustine of Hippo (Noonan, 1973, pp. 420-22).

By the 12th century, the sufficiency of a couple's consent was achieving mainstream status and, thanks to Gratian's influence (Winroth, 2009), became entrenched in canon law (Olsen, 2001, p. 158). From this moment on, "[the Church] put the couple, the man and the woman, at the center of the stage, without any supporting cast to upstage them" (d'Avray, 2005, p. 127).

The timing of the Catholic Church's embrace of a strong standard of spousal consent coincided with a fundamental change in the relationship between secular rulers and the Catholic Church(Hughes, 2021b; Grzymała-Busse, 2023; Møller and Doucette, 2022). As part of the Gregorian Reform of the second half of the 11th century, the Church began to assert exclusive jurisdiction over the regulation of marriage matters: "All matrimonial problems had to be submitted to and resolved by the Church alone" (Duby, 1993, p. 162). By the turn of the 12th century, "the Church had secured virtual supremacy in the adjudication of issues relating to the formation of marriage and the separation, divorce, and remarriage of those whose marriages failed" (Brundage, 2009, p. 223). Before then, "the Church has no such monopoly," but now "questions about the validity of marriage were deemed to belong to the Church" (d'Avray, 2015, p. 93). To perform this new function, "a network of professionally administered Church courts spread all over Europe" (d'Avray, 2015, p. 103). For the following several centuries, the regulation of marital relationships became a primary concern of Europe's ecclesiastical courts (Gallagher, 2019).[36] Not even the princes of Europe could claim to be exempt from Rome's purview on marital matters (Duby, 1993).

Tasked with this new responsibility, ecclesiastical courts needed a way to identify whether the condition of spousal consent was met or not in any given case. This was no easy task. The absence of consent is not easy to spot. This is especially the case when courts claim that only

[34] Elite opposition to the Church's strong view of freedom in the choice os spouse did not die for centuries and was still in force during the deliberations of the Council of Trent in the 1560s (O'Malley, 2012, pp. 225-6).

[35] Abduction marriages were common among the Germanic people of Northern Europe (Olsen, 2001, p. 148).

[36] Unsurprisingly, according to Brundage (2009, pp. 510-3, 548) courts continued to grant divorcees the ability to remarry on some occasions, in blatant violation of Church teaching.

ex-ante consent, as expressed at the time of the exchanging of the marriage vows, and not ex-post consent, is binding. The Church needed to tackle the most common obstacle to consensual marriage in Medieval society (as it is in most other societies): parental control.

In the effort to ensure that parties were in fact willing to enter marriage, the Church began to legislate against parental involvement. The move met much resistance from the most powerful families of Western Europe, which valued parental involvement in their children's marriage prospects very heavily (Reynolds and Witte, 2007, p. 14). In many instances, the Church could not even rely on the (likely untrustworthy) testimony of the involved parties. It was simply too convenient for someone wishing to exit a marriage to claim, ex post, that they had not agreed to it willingly in the first place.

Catholic jurisprudence tackled this problem by ruling presumptively null all marriages in which the match between spouses was most likely to be the result of parental pressure, like unions involving minors or those involving kin. This approach had a massive informational advantage since courts needed only to establish whether either spouse was below legal age at the time of the exchanging of vows or if husband and wife were related, spiritually or by blood.[37] The experience of ecclesiastical courts dealing with marital matters during the Late Middle Ages reflects this state of affairs:

> The greater emphasis on consent in matrimonial law after Alexander III [d. 1181] meant that nullity cases increasingly centered on defects of consent resulting from force and fear, or because one party was under the minimum age for marriage, or as a result of incapacity to consent because of a previous valid marriage or religious vows (Brundage, 2009, p. 274).

The necessity and sufficiency of consent opened the door to fraudulent spousal attempts to nullify valid marriages. If one's testimony that they felt compelled to marry was enough to obtain the court's permission to exit the union and remarry, then the doctrine of indissolubility would have been little more than dead letter. Hence the Church's growing emphasis on public weddings during the Middle Ages. Already by the 12th century, the Church was requiring that marriages be contracted publicly, in front of a priest, and according to specific forms centering around the expression of consent by the parties while secret marriages were banned altogether (Brundage, 2009, p. 189).

[37] Traditionally, affines, that is, relatives not sharing the same blood, were also prevented from marrying each other (Burtsell, 1907).

5 Indissolubility & Consent: A Comparative Analysis

Our argument attributes the Catholic Church's adoption of a strong form of spousal consent to its stance on the impermissibility of remarriage after divorce. In Section 3, we show that the timing of this development coincides with the Church's ascension to preeminence in the enforcement of marital arrangements over the first two centuries of the second millennium. In this section, we provide additional evidence to corroborate our proposed explanation.

First, we show that pre-Christian societies, which as we discuss in Section 2 never embraced strong consent requirements and privileged parental control over the choice of spouse, were not bound by a doctrinal commitment to indissolubility. As our hypothesis would indicate, the more permissive stance on divorce and remarriage never compelled these societies to adopt a strong emphasis on spousal consent.

Second, we tackle the possibility that Christian beliefs more generally might be responsible for the development of the Catholic Church's teachings on both consent and indissolubility. We do so by leveraging the divergence between Greek/Eastern and Latin/Western Church Fathers and local Church councils in their doctrinal and disciplinary attitudes toward the permissibility of divorce. Recall that in the West there prevailed since the 4th century a tradition favoring unexceptive indissolubility, while in the East the exceptive view permitting divorce (originally just on grounds of adultery but over time for various reasons) was more popular. As we would expect, lacking a commitment to indissolubility, the Greek canonical tradition never developed a theory of spousal consent but rather continuously affirmed a view that favored parental interference, even as the Western Church was embracing an extreme form of freedom in one's choice of spouse.

Finally, we briefly investigate variation within Western Christianity. In the 16th and 17th centuries, influenced by Martin Luther's and John Calvin's rejection of the Catholic view on the sacramental nature of marriage, protest rulers in Western Europe adopted a more permissive stance on divorce and remarriage. Concurrently, they also reverted to requiring parental consent for marriage validity.

5.1 Divorce in Pre-Christian Societies

5.1.1 Jewish Law

According to Jewish custom, once the father's consent was secured, a marriage contract (*ketubah*) would be drawn up and signed before the wedding ceremony.[38] The Jewish marriage contract was enforceable in court and functioned similarly to a prenuptial agreement, outlining the promises

[38] According to the Talmud, the Pharisee Simeon ben Shetah (1st C. BCE) gave statutory recognition to the marriage contract(Levine, 2009).

and duties of each spouse as well as how property and children would be handled in the case of divorce.[39] According to Jewish law, only the husband could provide his wife with a bill of divorce (*get*), [40] and was free to do so on virtually any ground, a form of "no-fault" divorce ante-litteram.[41]

5.1.2 Roman Law

Because Roman law treated marriage as a purely private affair, either Gaius or Gaia could dissolve their bond pretty much at will: "Marriage was founded not so much on an initial, quasi-contractual agreement as on a continuous accord" (Reynolds, 1994, p. 35). As long as spouses shared common lodgings and displayed marital affection, they were considered married as far as the law was concerned. At the same time, as soon as either of the spouses wished to terminate the union, the marriage could just as easily and unilaterally be dissolved. This lack of impediments to exit is the reason why legal historians have argued that Roman marriage was rooted in the consent of the parties.

5.1.3 Germanic Law

Most Germanic law was customary and was seldom written down until the sixth century. Thus we have little direct knowledge of Germanic practices before this period, though these likely influenced the first written codes like the *Lex Visigothorum* of 506 and *Lex Gundobada* of 534 (Schuster, 1910, p. 229). The evidence suggests that Germanic custom took a liberal stance on divorce and remarriage, both of which were permitted, though by the time the custom was being codified Roman and especially Christian influence had encouraged the adoption of limits to the grounds on which spouses could dissolve their unions (Reynolds, 1994, pp. 99-100).

5.2 Divorce & Consent in Eastern Orthodoxy

We now offer evidence that stronger indissolubility standards correlated with greater emphasis on consent even within Medieval Christianity by contrasting the experience of the Latin West with that of the Greek or Byzantine East. What would, after the Great Schism of AD 1054, come to be known as the Eastern Orthodox Church adopted an alternative, more permissive, interpretation of Scriptural teaching on divorce and remarriage. Already by the 10th century, Byzantine practice

[39] Unlike modern prenups that are only popular with a small minority of relatively high-wealth spouses (Leeson and Pierson, 2016).

[40] This has caused practical problems for the modern state of Israel (Levmore and Gotlib, 2024).

[41] Notoriously, the Talmud teaches that a man can divorce his wife for burning his dinner. However, the specific provisions of the *ketubah* and complex rules regarding the bill of divorce likely prevented Jewish couples from taking divorce lightly in practice.

had diverged drastically from that of the West. Remarriage after divorce was a legal reality acknowledged and indeed enforced by the Greek Church.[42]

In Pagan times, Roman Law throughout the Empire put few restrictions on divorce and remarriage. Marital issues were treated as purely private affairs best left to couples and their families (Gallagher, 2019). The reforms of Emperor Constantine, a convert to Christianity, made divorce harder, effectively restricting it to cases of adultery and attempted murder (Brundage, 2009, p. 94). While Constantine's provisions remained in effect in the West, in the East Emperor Theodosius II embraced a laxer attitude in the early 5th century (Brundage, 2009, p. 93). The foundational text of Byzantine law on divorce and remarriage was Emperor Justinian's (482-565) *Corpus Juris Civilis*. This legal code permitted divorce on a variety of grounds. Wives could dismiss their husbands unilaterally for several reasons, including, though not limited to, "murder, treason, perjury" on top of adultery (Mackin, 1984, p. 104). A husband, in turn, could dismiss his wife for "plotting against his life ....; her adultery; her bathing with other men against his will" and even attending social events against his wishes (Mackin, 1984, p. 106). Eventually, Justinian's legislation went from being the law of the land to being accepted as a source of the Eastern Church's canonical tradition (Brugger, 2017, p. 42).

The Greek Church never expressed opposition to imperial law. Neither ecumenical nor regional councils in the East condemned this legal regime or those Christians who lived by it (Gallagher, 2019). This lack of push-back from the hierarchy was, at least in part, the result of an exegetical and theological tradition that interpreted the Gospel's teachings on divorce and remarriage as more permissive than was the case in the West. Among the most influential Eastern Fathers of the early centuries who ever wrote on these issues, few embraced unexceptive indissolubility,[43] and some, including Gregory of Nazianzus and especially Basil of Caesarea, clearly and forcefully endorsed the exceptive view (Mackin, 1984, pp. 146-152).

If it did not protest the law, and if it tolerated divorce and remarriage as a practical matter, for centuries the Byzantine Church refused to endorse second marriages. These marriages were not to be celebrated inside Churches or receive priestly blessings (Meyendorff, 2024, p. 197). However even that changed with the Emperor Leo VI's marriage reform of AD 912. From then on, the Greek Church was required to recognize as valid all civil unions, including second and even third marriages, that were deemed legitimate under imperial law (Meyendorff, 2024, p. 198).[44] Nor

[42]Eastern Orthodoxy was, and is, not cavalier about divorce and remarriage. Jesus' teachings, even if they envisioned exceptional circumstances, pointed to God's involvement in the creation of the marriage bond. Thus, Byzantine teaching and practice never treated divorce as a light matter (Meyendorff, 1990, 2024). Nevertheless, since the early Middle Ages, the general attitude towards the topic has been one of relatively greater permissibility.

[43]John Chrysostom, the fourth century theologian and Patriarch of Constantinople, is one notable exception(Mackin, 1984, p. 153). See also (Guroian, 2017, p. 94).

[44]Eastern bishops enjoyed greater autonomy in regulating the behavior of clergy. Men in their second marriages could not join the priesthood (Meyendorff, 2024, p. 197).

were these unions merely the result of divorces obtained on grounds of adultery. Already by the 9th century, Greek Canon Law permitted divorce on grounds of "madness and voluntary abortion" (Brugger, 2017, p. 44). Indeed, "the Orthodox Churches have never limited their practical approval of divorce and remarriage to adultery" (Brugger, 2017, p. 22).

The Church did successfully campaign Leo VI to limit the maximum number of licit lifetime marriages to just four and to restrict access to third unions to people under the age of forty (Meyendorff, 1990, p. 102). It also

> maintained, ... at least in principle, an essential distinction between the first and the following marriages: a special service was introduced for the latter, dissociated from the Eucharist and penitential in character. It was understood, therefore, that second and third marriages were not the norm, and as such were deficient sacramentally (Meyendorff, 2024, p. 198)

Even so, "[t]he possibility of divorce remained an integral part of Byzantine civil legislation at all times" (Meyendorff, 2024, p. 197). By the Late Middle Ages

> Greek canon law admitted divorce and remarriage for at least eighteen 'just causes,' including adultery, a spouse conspiring against the emperor or plotting to kill the other spouse; a wife dining or bathing or residing at another's house against her husband's consent; her attending a circus, theater, or arena without his knowledge; madness; a wife's voluntary abortion; premarital unchastity; a husband's unnatural vice; irksome cohabitation; apostasy from the Christian religion, etc. (Brugger, 2017, p. 45)

Thus, Eastern Christianity was less permissive than Pagan regimes. Yet, it was clearly more permissive than the Latin Church.

If the emergence of a strong theory of spousal consent was the necessary consequence of Christian morality and not, as we claim, the result of the combination of the Latin Church's commitment to unexceptive indissolubility and its ascendancy the sole regulator of marital affairs, we would expect the evolution of Greek thought on consent to have developed along similar lines. Alas, it did not. Though Greek canon law gave some weight to the consent of the spouses, for instance, declaring that unions between abductors and abductees were void (Meyendorff, 1990, p. 103), it also enshrined parental control.[45] In the Byzantine tradition "all that was necessary for the validity of a marriage was the consent of the parents" (Angold, 1995, p. 414).

Greek canon law's partiality to parental control over the choice of spouse was due in part to the influence of the writings of Basil of Caesarea. His letters, written in the 4th century, became

[45] Indeed, even the declarations against marriage by abduction were justified on the ground that it violated parental rights (Angold, 1995).

the source of several canons on marital relations. Specifically, in Canon 42, Basil expresses the view that

> Marriages entered into without the consent of those in authority are fornications. If the father, therefore, is alive, or the master, the contracting parties are by no means free from responsibility until the lords nod approval of their cohabitation. For then the affair receives the character of a marriage.

The same opinion was still the dominant one in the 12th century, as reflected by the writings of Theodore Balsamon, the greatest Greek canonist of his time. Balsamon endorsed Basil's position on the necessity of parental consent (Laiou, 1998, p. 140).

Thus, throughout the Middle Ages, it was customary for girls to be married out in their teens, often to men much older than them, chosen not by the girls themselves but by their families (McGuckin, 2017a, p. 124). In the late 9th century, the Byzantine legal code "made ... marriage contingent on the consents of the parents of the man as well [as those of the woman]"(Laiou, 1998, p. 122).

The divergence between Eastern and Western Christianity on divorce and remarriage as well as spousal consent is consistent with our explanation for the development of the Catholic Church's thinking on these matters. However, to interpret this as evidence in favor of our hypothesis, we must rule out the possibility that some other factor is driving the Eastern Church's attachment to exceptive indissolubility that is also preventing it from embracing spousal consent.

We propose two complementary hypotheses that account for the divergence in scriptural interpretations and, subsequently, marriage practices between the Church in the West and its counterpart in the East. The first explanation would point to the influence of indissolubility proponents like Augustine of Hippo in the former and of Fathers supporting the permissibility of remarriage, like Basil of Caesarea, in the latter. After all, both Augustine and Basil were held in high regard by their respective communities for their broader contributions to Christian thought and for their leadership in the Church.[46] According to this interpretation, the influence of these two Church Father in their respective regions had long-lasting effects on the latter's trajectories of doctrinal development and, consequently, on those of their canonical thought and practice.

An alternative explanation would emphasize that, since the Early Middle Ages, the Latin and Greek Churches operated within drastically different political constraints. In the East, one man ruled over a unified political entity, the empire. The Byzantine Emperor was keen on getting involved in Church affairs, including by elevating and removing Patriarchs and Bishops. In the Latin West, unity was the exception, political fragmentation the rule. With the fall of the Western

[46]For example, see Gallagher (2019) and Meyendorff (1990).

Empire, "the Latin church much less encumbered by imperial interference. Consequently, the Latin bishops had greater freedom to maintain fidelity to the teaching of scripture on marriage" (Brugger, 2017, p. 4).

One might propose that the same pressure from the Byzantine nobility might have caused the Eastern hierarchy to steer clear of questioning parental control over marital choices. If that were the case, then differences in the dependent and independent variables between East and West could both be attributed to the same third factor: The relative strength and centralization of the Byzantine state. It is true that, like their European counterparts, the Byzantine elites benefited from this practice, and for the same reasons. Unfortunately, we cannot observe the counterfactual of an Eastern hierarchy committed to exceptive indissolubility but freed from political pressure. The next best thing would be to observe the effect of Christian regimes dropping their commitment to unexceptive indissolubility and see if this is followed by an abandonment of strong requirements of spousal consent.

5.3 Divorce & Consent in Protestant Theology and Practice

Martin Luther (1483-1546), a former Augustinian monk and leader of the Protestant Reformation in German lands, rejected the Catholic Church's sacramental theology of marriage. In his view, marriage was a secular institution and thus the exclusive purview of the state. Moreover, lacking sacramental status, the marital bond could not have been indissoluble. Divorce was not to be encouraged or to be taken lightly, but Scripture permitted it as it did remarriage (Ozment and John Witte, 2017).[47] To this biblical justification for his teaching on marriage, Luther added a pastoral one, rooted in his own pessimistic view of human nature, which is not capable of bearing the responsibilities that the Church required – that of keeping one's vow (of marital fidelity, or priestly celibacy).[48] Luther was directly involved in the writing of new state family laws in Protestant lands. Though their deviation from Western canonical tradition was not radical, these new laws made allowance for divorce on a variety of grounds (Ozment and John Witte, 2017, p. 205). They also reintroduced the requirement of parental consent to marriage (Witte Jr and Hauk, 2017, p. 7).[49]

John Calvin (1509-1564) was the most prominent reformer of the French-speaking world.

[47] This was based off of Luther's reading of Ephesians 5:32 that the Greek *mysterion* does not mean *sacramentum* in Latin, as St. Jerome had translated it.

[48] Luther's conception of human nature was famously dark: "Conceived in sorrow and corruption, the child sins in his motherâs womb... He is a bad tree and cannot produce good fruit; a dunghill, and can only exhale foul odors. He is so thoroughly corrupted that it is absolutely impossible for him to produce good actions. Sin is his nature; he cannot help committing it. Man may do his best to be good, still his every action is unavoidably bad; he commits a sin as often as he draws his breath." (*Werke*, (Wittenberg Edition), Vol. III, p. 518.)

[49] However, Luther argued in his writings that one should have the right to appeal one's parents' decision to a secular (rather than a church) authority (Ozment and John Witte, 2017).

A jurist and theologian, he engineered an even more radical reform of family life than Luther had during his involvement with the new protestant regime ruling in the Swiss city of Geneva. These reforms – including restrictions on"lewd" art, bawdy songs, and inappropriate courtship – influenced religious and legal developments in Protestant communities across Europe and North America over the next few centuries. Like Luther, Calvin rejected a sacramental view of marriage. And like his German fellow-reformer, he saw divorce and remarriage as permissible at least in principle. Calvin was committed to the public nature of marriage and insisted on taking engagements as serious contracts (requiring two witnesses), hosting public church weddings, and having the community involved in the rearing of children in the faith. However, marriages could be dissolved, and people should not be prevented from entering second marriages if they had divorced on legitimate grounds (Pitkin, 2017, p. 218). In Calvin as in Luther the permission of divorce and remarriage was accompanied by the opinion of the necessity of parental consent.[50]

5.4 Summary of the Evidence

Tables 2 and 3 summarize the evidence from our previous discussion. They provide an overview of the positions expressed by theological and canonical authorities in Eastern and Western Christianity, going back to the second century, on the issues of the indissolubility of marriage and the necessity of parental consent to marriage. As Table 2 shows, until Trent, Councils and Synods, in Latin and Greek lands alike, did not rule on whose consent was necessary and/or sufficient for marriage. They did, however, often address the issue of indissolubility. With few exceptions, the local Churches in the West consistently taught unexceptive indissolubility while the Eastern ones took the exceptive view. Table 3 shows that on the issue of indissolubility, East and West differed since the earliest times, with the unexceptive view being already prevalent among the Western Fathers. Among the Eastern fathers, during the same period, the exceptive view was more prevalent instead. We see no such discrepancy during this time on the issue of spousal consent. To be sure, few of the Fathers wrote explicitly on this issue, but those few emphasized parental consent, be they Eastern or Western. This is not true of the Late Medieval period. Starting with Ivo of Chartres, we see that spousal consent became the dominant view among theologians and canonists in the West until the Reformers Luther and Calvin entered the scene. In the East, we observe no similar development.

[50] However, Calvin thought that parental consent was not sufficient. Bride and groom must consent to the union also (Witte Jr, 2006, p. 584).

Table 2: East-West Comparison of Conciliar Marriage Doctrine Development

East					West				
Location	**Year(s)**	**Scope**	**Indissolubility**	**Consent**	**Location**	**Year(s)**	**Scope**	**Indissolubility**	**Consent**
Ancyra	314	Regional	Exceptive	NA	Elvira	305/306	Regional	Ambiguous	NA
Neocaesarea	314-325	Regional	Exceptive	NA	Arles	314	Regional	Ambiguous	NA
Laodicea	343-380	Regional	Exceptive	NA	Carthage	407	Regional	Unexceptive	NA
					Angers	453	Regional	Ambiguous	NA
					Ireland	456	Regional	Unexceptive	NA
					Vannes	465	Regional	Unexceptive	NA
					Agde	506	Regional	Unexceptive	NA
					Orleans	533	Regional	Unexceptive	NA
					Hertford	673	Regional	Unexceptive	NA
					Toledo	681	Regional	Unexceptive	NA
					Soissons	744	Regional	Unexceptive	NA
					Verberies	753	Regional	Exceptive	NA
					Compiegne	756	Regional	Exceptive	NA
					Aachen	789	Regional	Unexceptive	NA
					Friuli	791	Regional	Unexceptive	NA
					Rome	826	Regional	Ambiguous	NA
					Paris	829	Regional	Unexceptive	NA
					Words	829	Regional	Unexceptive	NA
					Nantes	9th century	Regional	Unexceptive	NA
					Tribur	895	Regional	Unexceptive	NA
					Bourges	1031	Regional	Ambiguous	NA
					Rheims	1049	Regional	Unexceptive	NA
					Tours	1061	Regional	Ambiguous	NA
					Lateran (Rome)	1215	Ecumenical	Unexceptive	NA
					Florence	1438-1445	Ecumenical	Unexceptive	NA
					Trent	1545-1563	Ecumenical	Unexceptive	Spousal

Note: Sources for every entry are in Table A.1 in the Appendix.

Table 3: East-West Comparison of Marriage Doctrine Development

East					*West*				
Author	**Year(s)**	**Description**	**Indissolubility**	**Consent**	**Author**	**Year(s)**	**Description**	**Indissolubility**	**Consent**
Basil of Caesarea	330-379	Bishop & Theologian	Exceptive	Parental	Hermas	2nd century	Writer	Unexceptive	NA
Gregory of Nazianzus	329-390	Bishop & Theologian	Exceptive	NA	Tertullian	155-220	Theologian	Exceptive	Parental
John Chrysostom	347-407	Bishop & Theologian	Unexceptive	NA	Ambrose of Milan	339-397	Bishop & Theologian	Unexceptive	NA
Justinian	482-565	Emperor	Exceptive	NA	Innocent I	350?-417	Pope	Unexceptive	NA
Zonaras	1070-1140	Theologian & Canonist	NA	Parental	Jerome of Stridon	342-420	Priest & Theologian	Unexceptive	NA
Balsamon	1130-1199	Bishop & Canonist	Exceptive	Parental	Augustine of Hippo	354-430	Bishop & Theologian	Exceptive	NA
					Pseudo-Ambrose	5th century	Anonymous Pauline Commentator	Exceptive	NA
					Zachary	679-752	Pope	Unexceptive	NA
					Ivo of Chartres	1040-1115	Bishop & Theologian	Unexceptive	Spousal
					Gratian	1100-1144	Canonist	Unexceptive	Spousal
					Peter Lombard	1096-1160	Bishop & Theologian	Unexceptive	Spousal
					Alexander III	1100-1181	Pope	Unexceptive	Spousal
					Luther	1483-1546	Monk & Theologian	Exceptive	Parental
					Calvin	1509-1564	Lawyer & Theologian	Exceptive	Parental

Note: Sources for every entry are in Table A.1 in the Appendix.

6 Conclusion

Many scholars have argued that the Catholic Church's rules about marriage played a consequential role in the trajectory of European development. However, we are the first to isolate the essential contractual features of the Church's view of marriage – unexceptive indissolubility and dispositive spousal consent – and to analyze their relationship to one another. Although the Church taught that marriage was an indissoluble contract from the beginning, it wasn't until Church authorities claimed jurisdiction over family and marriage law in the 11th and 12th centuries that its doctrine of spousal consent began to develop and spread. In the following centuries, culminating with the Council of Trent (1545), the Church transformed the European marriage market by insisting that only spouses who freely consent to a marriage may contract it validly.

We present a formal theoretical model of marriage choice under indissolubility-no consent and indissolubility-consent rules, confirming the economic intuition that entering an indissoluble marriage contract with a spouse (partially or completely) selected by a third party would be a bad deal from the perspective of most individuals. Because the courts (the Church authorities) have an incentive to maximize total marital surplus, they will look for ways to attract more couples to marriage. A rule of dispositive spousal consent accomplishes that objective.

We find no evidence of dispositive spousal consent in Jewish, Roman, Germanic, Orthodox, or Protestant traditions, which we explain through the absence of the doctrine of unexceptive indissolubility. In a world where individuals can exit low-quality matches and face the prospect of remarriage, emphasizing the pre-bond quality of the match is less important. In these context, parental authority plays a larger role in the selection of spouses.

The contemporary notion that marriage requires free consent from both spouses, but none others, traces its origins to the medieval Church. Yet, there is much left to learn about the social import of spousal consent rules, especially at a time when the marriage rate is declining across those very societies from which it initially spread. Our paper highlights the importance of analyzing the features of marital contracts in relation to one another, in addition to deepening our understanding of the role that third-party enforcers of marital contracts (such as the Church) can play.

A Sources for Tables 2 and 3

Table A.1: Historical Sources on Marriage, Divorce, and Consent

Author/Council	Died	Location	Description	Source (Divorce & Remarriage)	Source (Consent)
Hermas	150	Rome	Writer	(Hermas, 1885, II.4)	
Tertullian	220	North Africa	Theologian	(Mackin, 1984, pp. 134-7)	(Olsen, 2001, p. 158)
Council of Elvira	306	Granada, Spain	Regional Council	(Bevilacqua, 1967, p. 288)	
Council of Arles	314	Arles, France	Regional Council	(Bevilacqua, 1967, p. 289)	
Council of Ancyra	314	Turkey	Regional Council	(Mackin, 1984, p. 182)	
Council of Neocaesarea	325	Turkey	Regional Council	(Mackin, 1984, p. 182)	
Basil of Caesarea	379	Byzantine Empire	Bishop & Theologian	Basil of Caesarea (1895a) [Canon 38 of the Canons of the Holy Fathers]	(Laiou, 1998, pp. 130-131)
Council of Laodicea	380	Turkey	Regional Council	(Mackin, 1984, p. 183)	
Gregory of Nazianzus	390	Byzantine Empire	Bishop & Theologian	(McGuckin, 2017a, pp. 126-127)	
Ambrose of Milan	397	Italy	Bishop & Theologian	(Mackin, 1984, pp. 160-161)	
Eleventh Council of Carthage	407	Carthage	Regional Council	(Bevilacqua, 1967, p. 290)	
John Chrysostom	407	Byzantine Empire	Bishop & Theologian	(Guroian, 2017, p. 94)	
Innocent I	417	Rome	Pope	Ybarra (2019)	
Jerome of Stridon	420	Rome	Priest & Theologian	Ybarra (2019); Jerome (1893)	
Augustine of Hippo	430	North Africa	Bishop & Theologian	(Hunter, 2017, p. 78); Ybarra (2019); Augustine (1998)	
Council of Angers	453	Angers, France	Regional Council	(Bevilacqua, 1967, p. 290)	
First Synod of St. Patrick	456	Probably Armagh, Ireland	Regional Synod	(Bevilacqua, 1967, p. 291)	
Council of Vannes	465	Vannes, France	Regional Council	(Bevilacqua, 1967, p. 291)	
Ambrosiaster	500	NA	Anonymous Pauline Commentator	(Hunter, 2017, p. 79)	
Council of Agde	506	Agde, France	Regional Council	(Bevilacqua, 1967, p. 292)	
Second Council of Orleans	533	Orleans, France	Regional Council	(Bevilacqua, 1967, p. 293)	
Justinian	565	Byzantine Empire	Emperor	(Sarris, 2017, p. 109); (Reynolds, 1994, p. 56)	
Council of Hertford	673	Hertford, England	Regional Council	(Bevilacqua, 1967, p. 293)	
Twelfth Council of Toledo	681	Toledo, Spain	Regional Council	(Bevilacqua, 1967, p. 293)	
Council of Soissons	744	Soissons, France	Regional Council	(Bevilacqua, 1967, p. 294)	
Zachary	752	Rome	Pope	Ybarra (2019); (Mackin, 1984, pp. 191-192)	
Council of Verberies	753	Verberies, France	Regional Council	(Bevilacqua, 1967, p. 294)	
Council of Compiegne	756	Compiegne, France	Regional Council	(Bevilacqua, 1967, p. 295)	
Synod of Aachen	789	Aachen, France	Regional Synod	(Bevilacqua, 1967, p. 295)	
Council of Friuli	791	Friuli, Italy	Regional Council	(Bevilacqua, 1967, p. 296)	
Council of Rome	826	Rome, Italy	Regional Council	(Bevilacqua, 1967, pp. 296-297)	
Sixth Council of Paris	829	Paris, France	Regional Council	(Bevilacqua, 1967, p. 297)	
Synod of Words	829	Worms, Germany	Regional Synod	(Bevilacqua, 1967, p. 297)	
Council of Nantes	850	Nantes, France	Regional Council	(Bevilacqua, 1967, p. 298)	
Council of Tribur	895	Mainz, Germany	Regional Council	(Bevilacqua, 1967, p. 298)	
Council of Bourges	1031	Bourges, France	Regional Council	(Bevilacqua, 1967, p. 298)	
Council of Rheims	1049	Rheims, France	Regional Council	(Bevilacqua, 1967, p. 299)	
Council of Tours	1061	Tours, France	Regional Council	(Bevilacqua, 1967, p. 299)	
Ivo of Chartres	1115	France	Bishop & Theologian	(Duby, 1993, pp. 163, 166)	(Duby, 1993, pp. 170-172)
Zonaras	1140	Byzantine Empire	Theologian & Canonist		(Laiou, 1998, p. 137)
Gratian	1144	Italy	Canonist	(McGuckin, 2017b, pp. 142-143)	(McGuckin, 2017b, p. 140)
Peter Lombard	1160	France	Bishop & Theologian	(Silano, 2017, p. 153)	(Silano, 2017, p. 151)
Alexander III	1181	Rome	Pope	(Donahue, 2017, p. 175)	(Donahue, 2017, p. 175)

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Author/Council	Died	Location	Description	Source (Divorce & Remarriage)	Source (Consent)
Balsamon	1199	Byzantine Empire	Bishop & Canonist		(Laiou, 1998, p. 139)
Lateran IV	1215	Rome	Ecumenical Council		(Fourth Lateran Council, 7 31, canons 50-52)
Florence	1445	Florence	Ecumenical Council		Council of Florence (1445)
Luther	1546	Germany	Monk & Theologian	(Ozment and John Witte, 2017, p. 205)	(Ozment and John Witte, 2017, p. 205)
Trent	1563	Trent	Ecumenical Council	(Tanner, 2016, pp. 753-759)	(Tanner, 2016, pp. 753-759)
Calvin	1564	Switzerland	Lawyer & Theologian	(Pitkin, 2017, p. 218)	(Witte Jr, 2006, p. 584)

References

Allen, D. W. (1990). An inquiry into the state's role in marriage. *Journal of Economic Behavior & Organization*, 13(2):171–191.

Allen, D. W. (1995). Order in the church: A property rights approach. *Journal of Economic Behavior & Organization*, 27(1):97–117.

Allen, D. W. (2005). An economic assessment of same-sex marriage laws. *Harv. JL & Pub. Pol'y*, 29:949.

Anderson, S. and Bidner, C. (2023). An institutional perspective on the economics of the family. In *Handbook of the Economics of the Family*, volume 1, pages 443–500. Elsevier.

Angold, M. (1995). *Church and Society in Byzantium under the Comneni, 1081-1261*. Cambridge University Press.

Arruñada, B. (2009). Specialization and rent seeking in moral enforcement: The case of confession. *Journal for the Scientific Study of Religion*, 48(3):443–461.

Augustine, S. (1998). *The city of God against the pagans*. Cambridge University Press.

Barro, R. J. and McCleary, R. M. (2019). *The Wealth of Religions: The Political Economy of Believing and Belonging*. Princeton University Press.

Basil of Caesarea (1895a). Letter 188. Original work written ca. 374 CE.

Basil of Caesarea (1895b). Letter 199. In Schaff, P. and Wace, H., editors, *Nicene and Post-Nicene Fathers, Second Series, Volume 8*. Christian Literature Publishing Co. Accessed February 19, 2025.

Becker, G. S., Landes, E. M., and Michael, R. T. (1977). An economic analysis of marital instability. *Journal of political Economy*, 85(6):1141–1187.

Berman, H. J. (1983). *Law and Revolution: The Formation of the Western Legal Tradition*. Harvard University Press.

Bevilacqua, A. J. (1967). The history of the indissolubility of marriage. *Proceedings of the Catholic Theological Society of America*.

Brinig, M. F. and Crafton, S. M. (1994). Marriage and opportunism. *The Journal of Legal Studies*, 23(2):869–894.

Brugger, E. C. (2017). *The indissolubility of marriage and the Council of Trent*. CUA Press.

Brundage, J. A. (2009). *Law, sex, and Christian society in medieval Europe*. University of Chicago Press.

Brundage, J. A. and Eichbauer, M. H. (2022). *Medieval canon law*. Routledge.

Burtsell, R. L. (1907). Affinity (in canon law).

Cassidy, L. M., Russell, M., Smith, M., Delbarre, G., Cheetham, P., Manley, H., Mattiangeli, V., Breslin, E. M., Jackson, I., McCann, M., et al. (2025). Continental influx and pervasive matrilocality in iron age britain. *Nature*, 637(8048):1136–1142.

Catholic Church (2000). *Catechism of the Catholic Church*. USCCB Publishing, 2 edition. Original work published 1992.

Chapman, J. (1910). Hermas. Retrieved September 16, 2025.

Cohen, L. R. (2002). Marriage: The long-term contract. *The Law and economics of marriage and divorce*, pages 10–34.

Council of Florence (1431-1445). Ecumenical council of basel-ferrara-florence.

d'Avray, D. (2005). *Medieval marriage: symbolism and society*. OUP Oxford.

d'Avray, D. (2015). *Papacy, Monarchy and Marriage 860–1600*. Cambridge University Press.

de Tocqueville, A. (2012). *Democracy in America*. Library of America.

Dnes, A. W. and Rowthorn, R. (2002). *The law and economics of marriage and divorce*, volume 30. Cambridge University Press Cambridge.

Donahue, C. J. (2017). Popes alexander iii and innocent iii. In *Christianity and family law: an introduction*, pages 161–178. Cambridge University press.

Dorff, E. N. (2017). Moses, the prophets, and the rabbis. In *Christianity and family law: an introduction*, pages 16–35. Cambridge University press.

Du, S. (2023). (un) health from parental intervention: Does the marriage formation pathway influence married people's health? *Social Science & Medicine*, 336:116250.

Duby, G. (1978). *Medieval marriage*. Johns Hopkins University Press.

Duby, G. (1993). *The knight, the lady and the priest: the making of modern marriage in medieval France*. University of Chicago Press.

Duby, G. (1994). *Love and marriage in the Middle Ages*. University of Chicago Press.

Edlund, L. and Lagerlöf, N.-P. (2006). Individual versus parental consent in marriage: Implications for intra-household resource allocation and growth. *American Economic Review*, 96(2):304–307.

Ekelund Jr, R. B., Hébert, R. F., and Tollison, R. D. (1992). The economics of sin and redemption. *Journal of Economic Behavior and Organization*, 19(1):1–15.

Ferrero, M. (2011). The infallibility of the pope. *Economics of Governance*, 12(1):89–99.

Fourth Lateran Council (2025-07-31). Constitutions. Translation taken from *Decrees of the Ecumenical Councils* (ed. N. P. Tanner).

Gallagher, C. (2019). *Church law and church order in Rome and Byzantium: a comparative study*. Routledge.

Goody, J. (1983). *The development of the family and marriage in Europe*. Cambridge University Press.

Grzymała-Busse, A. M. (2023). *Sacred foundations: The religious and medieval roots of the European state*. Princeton University Press.

Guroian, V. (2017). St. john chrysostom. In *Christianity and family law: an introduction*, pages 85–99. Cambridge University press.

Henrich, J., Heine, S. J., and Norenzayan, A. (2010). The weirdest people in the world? *Behavioral and brain sciences*, 33(2-3):61–83.

Hermas (1885). The shepherd of hermas. Original work composed in the 2nd century CE.

Huang, F., Jin, G. Z., and Xu, L. C. (2012). Love and money by parental matchmaking: Evidence from urban couples in china. *American Economic Review*, 102(3):555–560.

Huang, F., Jin, G. Z., and Xu, L. C. (2017). Love, money, and parental goods: Does parental matchmaking matter? *Journal of Comparative Economics*, 45(2):224–245.

Hughes, P. (2021a). *A History of the Church, Volume I: The Church and the World in Which it Was Founded.* Cluny Media, Providence: RI.

Hughes, P. (2021b). *A History of the Church, Volume II: The Church and the World it Created.* Cluny Media, Providence: RI.

Hunter, D. (2017). St. augustine of hippo. In *Christianity and family law: an introduction*, pages 69–84. Cambridge University press.

Jace, C. E. and Piano, E. E. (2021). In persona christi capitis: Agency problems when god is the principal. *Journal of Economics, Management and Religion*, 2(01):2150002.

Jerome (1893). Letter 77 : To oceanus. Original letter written 399 CE.

Karras, R. M. (1990). Concubinage and slavery in the viking age. *Scandinavian Studies*, 62(2):141–162.

Lafortune, J. and Low, C. (2023). Collateralized marriage. *American Economic Journal: Applied Economics*, 15(4):252–291.

Laiou, A. E. (1998). *Consent and coercion to sex and marriage in ancient and medieval societies.* Dumbarton Oaks.

Landes, E. M. (1978). Economics of alimony. *The Journal of Legal Studies*, 7(1):35–63.

Leeson, P. T. and Pierson, J. (2016). Prenups. *The Journal of Legal Studies*, 45(2):367–400.

Leeson, P. T. and Pierson, J. (2017). Economic origins of the no-fault divorce revolution. *European Journal of Law and Economics*, 43:419–439.

Levine, É. (2009). *Marital Relations in Ancient Judaism*, volume 10. Otto Harrassowitz Verlag.

Levmore, R. and Gotlib, S. (2024). Divorce and agunah: Halakhic responses to modernity. *The Oxford Handbook of Jewish Law.*

Li, B., Zhou, C., and Luo, J. (2022). Way of love and after-marriage well-being: Evidence from china. *International Studies of Economics*, 17(3):394–410.

Mackin, T. (1984). *Divorce and remarriage.* Paulist Press.

Matouschek, N. and Rasul, I. (2008). The economics of the marriage contract: Theories and evidence. *The Journal of Law and Economics*, 51(1):59–110.

McGuckin, J. A. (2017a). Theodore balsamon. In *Christianity and family law: an introduction*, pages 116–133. Cambridge University press.

McGuckin, J. A. (2017b). Theodore balsamon. In *Christianity and family law: an introduction*, pages 134–145. Cambridge University press.

Meyendorff, J. (1990). Christian marriage in byzantium: The canonical and liturgical tradition. *Dumbarton Oaks Papers*, 44:99–107.

Meyendorff, J. (2024). *Byzantine theology: Historical trends and doctrinal themes*. Fordham Univ Press.

Møller, J. and Doucette, J. S. (2022). *The Catholic church and European state formation, ad 1000-1500*. Oxford University Press.

Noonan, J. T. (1973). Power to choose. *Viator*, 4:419.

Olsen, G. W. (2001). Marriage in the barbarian kingdom and christian court: Fifth through eleventh centuries. In Olsen, G. W., editor, *Christian Marriage: A Historical Study*, pages 91–120. Crossroad Publishing.

O'Malley, J. W. (2012). *Trent: What happened at the council*. Harvard University Press.

Örsy, L. M. (1988). *Marriage in canon law: texts and comments, reflections and questions*. Gracewing Publishing.

Ozment, S. and John Witte, J. (2017). Martin luther. In *Christianity and family law: an introduction*, pages 195–210. Cambridge University press.

Piano, C. and Piano, E. E. (2021). In persona christi capitis: Agency problems when god is the principal. *The Journal of Economics, Management, and Religion*.

Piano, C. E., Behr, R., and West, K. R. (2024). The supply and demand of marital contracts: the case of same-sex marriage. *Public Choice*, 198(3):237–268.

Pitkin, B. (2017). John calvin. In *Christianity and family law: an introduction*, pages 211–228. Cambridge University press.

Pius V (1982 [1566]). *Catechism of the Council of Trent for Parish Priests*. TAN Books.

Portaliè, E. (1907). St. augustine of hippo. *The Catholic Encyclopedia*. Accessed: March 11, 2025.

Reynolds, P. L. (1994). *Marriage in the Western Church: The Christianization of marriage during the patristic and early medieval periods*, volume 24. Brill.

Reynolds, P. L. and Witte, J. (2007). *To have and to hold: marrying and its documentation in western Christendom, 400–1600*. Cambridge University Press.

Sarris, P. (2017). Emperor justinian. In *Christianity and family law: an introduction*, pages 100–115. Cambridge University press.

Schulz, J. F. (2022). Kin networks and institutional development. *The Economic Journal*, 132(647):2578–2613.

Schulz, J. F., Bahrami-Rad, D., Beauchamp, J. P., and Henrich, J. (2019). The church, intensive kinship, and global psychological variation. *Science*, 366(6466):eaau5141.

Schuster, E. (1910). The history and present condition of the german divorce law. *Journal of the Society of Comparative Legislation*, 10(2):229–238.

Shaw, B. D. and Saller, R. P. (1984). Close-kin marriage in roman society? *Man*, pages 432–444.

Silano, G. (2017). Peter lombard. In *Christianity and family law: an introduction*, pages 146–160. Cambridge University press.

Tanner, N. P. (2016). *Decrees of the Ecumenical Councils: Volume Two, Trent to Vatican II*. Sheed & Ward and Georgetown University Press.

Tornau, C. (2024). Augustine of Hippo. In Zalta, E. N. and Nodelman, U., editors, *The Stanford Encyclopedia of Philosophy*. Metaphysics Research Lab, Stanford University, Summer 2024 edition.

Wilhelm, J. (1908). General councils.

Winroth, A. (2009). Marital consent in gratian's *Decretum*. In Brett, M. and Cushing, K. G., editors, *Readers, Texts and Compilers in the Earlier Middle Ages: Studies in Medieval Canon Law in Honour of Linda Fowler-Magerl*, pages 111–121. Routledge.

Witte Jr, J. (2006). Honor thy father and thy mother? child marriage and parental consent in calvinâs geneva. *The Journal of religion*, 86(4):580–605.

Witte Jr, J. and Hauk, G. S. (2017). *Christianity and family law: an introduction*. Cambridge University Press.

Ybarra, E. T. (2019). Divorce & Remarriage in the Church Fathers. Blog post.