

OUTLINE — DISCUSSION CLASS 3

TEXTS ABOUT MARRIAGE

Two Texts from the Carolingian Period

Pope Nicholas I, Reply to the Bulgarians (866)¹

Avoiding the verbiage that would be necessary to rehearse the custom that you say that the Greeks have in marital unions, we will strive immediately to show you the usage that the Holy Roman Church had of old and still has in this kind of union. Our people, both men and women, do not wear on their heads filigree of gold or silver or any other kind of metal when they contract nuptial covenants, but after espousals, which are the promised covenants of future nuptials,² are celebrated by the consent of those who contract these things and with that of those in whose power they are, and after the espoused man gives earnest to the espoused woman by placing a ring on her finger of faith, and [after] he has handed over to her before those who are invited the *dos*³ that was agreed on with a writing containing this thing, either soon or at an appropriate time, lest such a thing be presumed to be done before the time defined by law,⁴ both are led to the nuptial covenants. And first they stand in the church of God with offerings, which they ought to offer to God by the hand of the priest, and then at length they receive the blessing and the heavenly veil, after the example of the Lord who blessed the first men in paradise, saying “Increase and multiply, etc.” [*Genesis* 1:28: “And God blessed them and said: ‘Increase and multiply’, etc.”] Indeed, Tobias, also, before he came together with his wife, is said to have prayed to the Lord with her. [*Tobias* 8:6–10] Nevertheless, those who are marrying for the second time do not receive the veil. Afterwards they leave the church carrying crowns on their heads, crowns that are commonly kept in the church.⁵ And the nuptial feast having been celebrated, they direct their way to leading an undivided life thereafter,⁶ the Lord willing. These are the laws of nuptials (*iura nuptiarum*); these are the solemn pacts of marriage unions (except for other things that I do not at present remember). We do not say, however, that it is a sin if all of these things are not present in a nuptial covenant, as you say that the Greeks are instructing you, particularly when such great poverty can constrain some people that they do not have the means to prepare these things, and for this [reason], the consent alone of those whose joining is at stake suffices

¹ Boris Michael, the khan of the Bulgarians, became a Christian a couple of years prior to the date of this letter. He sought to distance himself from the influence of the Greeks who had converted him and posed 106 questions of Pope Nicholas I. This is the answer to the third question.

² This is probably a reference to D.23.1.1: “Espousals are the proposal and promise back of future nuptials.” If it is, it is the last time that the *Digest* is cited in the West until Ivo of Chartres does so in the late 11th century. The following material on parental consent may also be from D.23.1, but it need not be, because the same requirement is to be found in JI.1.10pr (*Materials* I-6).

³ *Dos* in classical Roman law was dowry, a payment made by the bride or the bride’s father (or relatives) to the groom. Here, a payment by the bridegroom seems to be contemplated. Such payments were known to the classical Romans, at least in the later Empire, but they are never called *dos* but “gift before nuptials” (*donatio ante nuptias*). On the basis of this text, it has been suggested that the Germanic custom of the husband’s making a marriage payment had penetrated as far south as Rome in the mid-ninth century.

⁴ There was no fixed period in Roman law that had to elapse between the espousal and the nuptials. This is either a reference to the minimum ages for marriage fixed by Roman law (12 for the bride, 14 for the groom) or it is a reference to the period fixed by the agreement of espousals (the word *lex* being used in Roman law not only for laws passed by the Roman people but also those to which parties bind themselves by private agreement).

⁵ Nicholas does not say how these crowns differ from those that he says the Greeks wear and the Romans do not.

⁶ Perhaps an echo here of the definition of nuptials in JI.1.9.1: “Nuptials, moreover, or matrimony is the joining of man and woman, involving an undivided habit of life.”

according to the laws.⁷ If this consent alone is lacking, everything else, even if it is accompanied by carnal union, is frustrated, as the great doctor John Chrysostom testifies when he says “Carnal union does not make marriage but will.”⁸

Pseudo-Evaristus to all the bishops of Africa⁹

. . .

Likewise we have it held and handed down that a wife be lawfully joined to a man. As we have taken from the fathers and find handed down by the holy apostles and their successors, a marriage cannot otherwise be legitimate unless the wife is sought from those who have lordship over the woman and by whom she is protected; and she is espoused by her near kin and dowered; in accordance with the laws, and she is sacerdotally blessed at the proper time, as is the custom (*mos*), with prayers and offerings by a priest; and, accompanied by bridesmaids, as custom (*consuetudo*) teaches, and escorted and accompanied by those closest to her, she is solemnly given and received at a suitable time according to the laws. Let them spend two or three days in prayer and preserve their chastity, so that good offspring might be produced, and they may please the Lord and beget not bastard sons, but lawful and legitimate heirs. Therefore, most beloved sons and those of high status by merit, know that marriages performed in this manner, the catholic faith supporting, are lawful; but have no doubt that unions made otherwise are not presumed to be marriages, but either adulteries, or concubinages, or lusts or fornications rather than lawful marriages, unless proper will supports and lawful vows undergird.

New Testament Texts on Marriage

The *logia* on divorce

Mark 10:9: “What God has united, man must not divide.”

Mark 10:11–12: ““The man who divorces his wife and marries another is guilty of adultery against her. And if a woman divorces her husband and marries another she is guilty of adultery too.”

Luke 16:18: “Everyone who divorces his wife and marries another is guilty of adultery, and the man who marries a woman divorced by her husband commits adultery.”

Matthew 5:32: “Everyone who divorces his wife, except for the case of fornication, makes her an adulteress; and anyone who marries a divorced woman commits adultery.”

Matthew 19:6: “What God has united, man must not divide.”

Matthew 19:9: “The man who divorces his wife—I am not speaking of fornication—and marries another, is guilty of adultery.”

1 Corinthians 7:10–12: “A wife must not leave her husband—or if she does leave him,

⁷ It is probably significant that Nicholas says “according to the laws” (*leges*) and not “according to the canons” (*canones*), i.e., he is referring to Roman law.

⁸ Not by John Chrysostom but by an anonymous author of a collection of homilies on Matthew’s Gospel. The mistaken attribution is old, and probably antedates Nicholas. That Nicholas is citing a great father of the Greek Church in the context of an argument with the Greeks will not escape notice. In context, this passage is less powerful than it seems because the author of the homily is arguing that separation without remarriage does not violate the prohibition on divorce found in *Matthew* 19:9. See C.27 q.1 c.1, quoted below.

⁹ Evaristus was the bishop of Rome, traditionally from 99–107. The first pope to write extensively in Latin is Damasus (d. 386). The first pope known to have written at all in Latin is Victor I, probably 189–199. This text first appears in the collections known as Pseudo-Isidore, written around 850 and hence roughly contemporary with the letter of Nicholas I. There are no known exact parallels prior to Pseudo-Isidore, though similar requirements appear in earlier canonical collections, all from Northern Europe or Ireland.

she must either remain unmarried or else make it up with her husband—nor must a husband send his wife away.”

Hypothetical reconstruction of the earliest form of the more common *logion*: “The man who divorces his wife and marries another is guilty of adultery.”

The context of the *logia* in Matthew

Matthew 19:3–12. ³Some Pharisees approached him, and to test him they said, “Is it against the Law for a man to divorce his wife on any pretext whatever?” ⁴He answered, “Have you not read that the creator from the beginning made them male and female [Gn 1:27] ⁵and that he said: This is why a man must leave his father and mother, and cling to his wife, and the two become one body? [Gn 2:24] ⁶They are no longer two, therefore, but one body. So then, what God has united, man must not divide.”

⁷They said to him, “Then why did Moses command that a writ of dismissal should be given in cases of divorce?” ⁸“It was because you were so unteachable” he said “that Moses allowed you to divorce your wives, but it was not like this from the beginning. ⁹Now I say this to you: the man who divorces his wife—I am not speaking of fornication—and marries another, is guilty of adultery.”

¹⁰The disciples said to him, “If that is how things are between husband and wife, it is not advisable to marry.” ¹¹But he replied, “It is not everyone who can accept what I have said, but only those to whom it is granted. ¹²There are eunuchs born that way from their mother’s womb, there are eunuchs made so by men and there are eunuchs who have made themselves that way for the sake of the kingdom. Let anyone accept this who can.”

Note: Mishna Gitin 9:10 (c. 200CE), as reported in the Babylonian Talmud Gitin 90a (Soncino trans. modified by CD): “The school of Shammai say: a man should not divorce his wife unless he has found her guilty of some unseemly conduct, as it says, because he hath found some *unseemly* thing in her. [See Deuteronomy 24:1]. The school of Hillel, however, say [that he may divorce her] even if she has merely spoiled his food, since it says, because he hath found *some* unseemly *thing* in her. R. Akiba says, [he may divorce her] even if he finds another woman more beautiful than she is, as it says, it comes to pass, if she find no favour in his eyes. [Again, a reference to Dt 24:1.]” Dt 24:1 reads in the NRSV: “Suppose a man enters into marriage with a woman, but she does not please him because he finds something objectionable about her, and so he writes her a certificate of divorce, puts it in her hand, and sends her out of his house” The Hebrew is more ambiguous.

Marriage as a “mystery”

Ephesians 5:25–33: “Husbands should love their wives just as Christ loved the Church and sacrificed himself for her to make her holy. He made her clean by washing her in water with a form of words so that when he took her to himself she would be glorious, with no speck or wrinkle or anything like that, but holy and faultless. In the same way, husbands must love their wives as they love their own bodies; for a man to love his wife is for him to love himself. A man never hates his body, but he feeds it and looks after it; and that is the way Christ treats the Church, ³⁰because it is his body—and we are its living parts. *For this reason, a man must leave his father and mother and be joined to his wife, and the two will become one body.* [Gn 2:24] This mystery has many implications; but I am saying it applies to Christ and the Church. ³³To sum up; you too, each one of you, must love his wife as he loves himself; and let every wife respect her husband.”

The Collection in 74 Titles

74T¹⁰

TITLE 62: ON LAWFUL MARRIAGES *Evaristus to all bishops*. A marriage cannot otherwise be legitimate unless the wife is sought from those who have lordship over the woman and by whom she is protected; and she is espoused by her nearest kin and lawfully dowered; and she is sacerdotally blessed at the proper time with prayers and offerings by a priest; and, accompanied by bridesmaids and escorted by those closest to her, she is solemnly given and received at a suitable time. Let them spend two or three days in prayer and preserve their chastity, so that good offspring might be produced, and they may please the Lord and beget not bastard sons, but lawful and legitimate heirs. Therefore, most beloved sons, know that marriages performed in this manner are lawful; but have no doubt that unions made otherwise are not marriages, but are adulteries, concubinages, lusts or fornications rather than lawful marriages, unless full consent is given and lawful vows are made.

TITLE 63: ON MARRIAGES FOR SOME REASON SEPARATED *Bishop Leo to Bishop Nicetas of Aquileia*. The scourge of war and the terrible onslaughts of hostility have so disrupted some marriages that wives have been left all alone when their husbands were taken prisoners of war, and because they came to believe that their husbands were either dead or that they would never be released from their captivity, they entered another union because of their own need and anxiety. If ever any of those who were considered dead return, we should of necessity believe that the unions of their lawful marriages should be restored and, after the evils which the hostility brought have been removed, each should have what he lawfully had. However, no one should be judged culpable and considered an intruder into another's right if he married the wife of a husband who was thought no longer to exist. If, however, wives are so enraptured with love for their second husbands, that they prefer to live with them rather than return to their lawful union, they are rightly to be censured so that they are deprived of ecclesiastical fellowship until they return to their lawful union.

TITLE 64: THAT MARRIAGES MUST NOT BE DISSOLVED FOR THE SAKE OF RELIGION. *Gregory to the Patrician Theotista*. There are some who say that marriages ought to be dissolved for the sake of religion. Truly, it must be known that even if human law permitted this,¹¹ nevertheless divine law prohibited it. For the Truth himself says, "What God joined let no man separate."¹² He also says, "A man is not allowed to put away his wife, except by reason of fornication."¹³ Who, therefore, would contradict this heavenly legislator? We know that it is written, "They shall be two in one flesh."¹⁴ If, therefore, husband and wife are one flesh and for the sake of religion the husband dismisses his wife or the wife her husband, leaving them to remain in this world or even to move to an illicit union, what is this religious conversion when one and the same

¹⁰ I.e., The Collection in 74 Titles, a canonical collection written sometime around 1073 in Italy that we discussed in Wednesday's lecture.

¹¹ The reference may be to Novel 128.40.

¹² Matt. 19:6.

¹³ Matt. 5:32.

¹⁴ Matt. 19:5.

flesh¹⁵ in part moves to continence and in part remains in pollution? If they both agree to lead a life of continence, who would dare fault them? But if the wife does not follow the continence which the husband seeks, or the husband refuses what the wife seeks, the union may not legally be broken, because it is written, “The wife does not have the power of her body but the husband; and similarly the husband does not have the power of his body but the wife.”¹⁶

LIKEWISE ABOUT THE SAME MATTER. *Gregory to the Notary Adrian of Palermo*. The woman Agathosa has complained that her husband was converted to the monastery of the Abbot Urbino against her will. Therefore, we order your honour to conduct a diligent inquiry, lest perchance he was converted by her wish or she herself promised to change. And if he learns this was so, let him both arrange for the husband to remain in the monastery and compel the wife to change as she promised. If, indeed, it is none of these, and you find that the aforesaid woman did not commit any crime of fornication on account of which it is lawful to dismiss a wife, in order that his conversion should not be an occasion of damnation to the wife left in the world, we wish you to return her husband to her even if he has already been tonsured, dismissing all excuses, because although the secular law orders that a marriage can be dissolved for the sake of conversion, even if one party is unwilling, nevertheless the divine law does not permit this to happen. Except for fornication it in no way allows a husband to dismiss the wife¹⁷ because after the consummation of marriage husband and wife are made one body, which cannot be partly converted and partly remain in this world.

LIKEWISE ABOUT THE SAME MATTER. *Gregory to Felix, bishop of Siponto*. It has come to our attention that your nephew Felix seduced the daughter of Evangelus your deacon. If this is true, although he ought to be punished with the full force of the law, we want the rigour of the law to be somewhat relaxed, in this way, that is, that either he should take the woman he seduced as his wife or, if he considers that he must refuse this, he should be severely and corporally punished and excommunicated, and put away in a monastery where he should do penance and from which he shall have no right to depart without permission.

¹⁵ Gilchrist adds ‘both’ here, without warrant in the Latin text.

¹⁶ 1 Cor. 7:4.

¹⁷ Matt. 5:32.