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**MARRIAGE AND CANON LAW:
CONSANGUINITY, AFFINITY
AND THE MEDIEVAL CHURCH
(996-1215)**

**A Thesis
Presented to
The Faculty of the Department of History
San Jose State University**

**In Partial Fulfillment
of the Requirements for the Degree
Master of Arts**

**By
Robert Cirivilleri
May 2000**

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ABSTRACT

CANON LAW AND MARRIAGE: CONSANGUINITY, AFFINITY AND THE MEDIEVAL CHURCH 996-1215

By Robert Cirivilleri

This thesis examines the Church's laws governing consanguinity and affinity during the era of Gregorian reform, focusing on a number of high-profile cases that involved disputes between the papacy and various European monarchs. It traces the evolution of the Church's policy on this issue, which began with a strict enforcement of the incest laws in the first 150 years of the period, followed by an increasing use of papal dispensations to mitigate the strictness of the prohibitions after ca. 1150. Ultimately, the Church reduced the prohibitions at the Fourth Lateran Council in 1215, thus bringing the laws into closer conformity with prevailing marriage practices.

These case studies reveal a clash between two opposing concepts of marriage, one reflecting predominantly ecclesiastical concerns, the other representing secular concerns. Paradoxically, although the Church opted to relax its prohibitions, it nonetheless succeeded in establishing an authoritative and enduring influence over the institution of marriage.

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Abbreviations

CIC	<i>Corpus Iuris Canonici</i> . Ed. Emil Friedberg. 2 vols. Leipzig: B. Tauchnitz. 1879. Reprint, Graz, Austria: Akademische Druck- u. Verlagsanstalt, 1959).
Cod.	<i>Codex Justinianus</i> In <i>Corpus Iuris Civilis</i>
Cod. Theod.	<i>Codex Theodosianus</i> , 3 vols. Ed. P. Krüger and T. Mommsen. Berlin: Weidmann, 1905.
CSEL	<i>Corpus Scriptorum Ecclesiasticorum Latinorum</i> . Vienna: F. Tempsky. 1866- .
DDC	<i>Dictionnaire de Droit Canonique</i> . Eds. A. Villein. E. Gagnin, and R. Naz. 7 vols. Paris, 1935-65.
Decretum	Gratian. <i>Decretum</i> . In <i>Corpus Iuris Canonici</i> . Ed. Emil Friedberg. 2 vols. Leipzig: B. Tauchnitz, 1879. Reprint, Graz, Austria: Akademische Druck- u. Verlagsanstalt, 1959.
Dig.	<i>Digestum Seu Pandekta</i> . In <i>Corpus Iuris Civilis</i>
DMA	<i>Dictionary of the Middle Ages</i> . Ed. Joseph R. Strayer. 13 vols. New York: Charles Scribner's sons, 1989.
DTC	<i>Dictionnaire de Theologie Catholique</i> . Eds. A. Vacant, E. Mangenot, and E. Amman. 15 vols. Paris, 1899-1950.
Inst.	<i>Institutiones Justiniani</i> . In <i>Corpus Iuris Civilis</i>
Mansi	<i>Sacrorum Conciliorum Nova et Amplissima Collectio</i> . Ed. Giovanni Domenico Mansi. 60 vols. Paris: Hubert Welter, 1901-27).
MGH	<i>Monumenta Germaniae Historica</i> (Hannover: Hahn, 1828-
Conc.	<i>Concilia</i>
Ep.	<i>Epistola</i>
Ep. Sel.	<i>Epistola Selectae</i>

	Leg.	<i>Leges</i>
	Schr.	<i>Schriften</i>
	SS	<i>Scriptores</i>
Migne. PL		<i>Patrologiae cursus completus, series Latina</i> . Ed. J. P. Migne. 221 vols. Paris: J. P. Migne. 1844-64.
NAB		<i>New American Bible</i> . New York: Catholic Book Publishing Co., 1991.
NCE		<i>New Catholic Encyclopedia</i> . 16 vols. New York: McGraw-Hill, 1967).
RHDF		<i>Revue Historique de Droit Francais et Etranger</i> .
RHGF		<i>Recueil des Historiens des Gaules et de la France</i> . Eds. Martin Bouquet et al. 24 vols. 2 nd ed. Revised. Léopold Delisle. Paris: V. Palme (imprint varies), 1840-1904.
RS		<i>Chronicles and Memorials of Great Britain and Ireland during the Middle Ages</i> . Rolls Series. 198 vols. London, 1858-99.

Introduction

Shortly after his arrival on the shores of England in 597, Augustine, the first missionary sent to convert the pagan Anglo-Saxon kingdoms by Pope Gregory the Great, wrote back to Rome seeking advice concerning problems he was facing in his efforts to adapt the new converts to certain Christian practices. One question Augustine posed involved a custom of the Anglo-Saxons, which apparently allowed the marriage of close kin. Within what degree, Augustine asked, may the faithful marry their kindred, and is it lawful to marry a stepmother or a sister-in-law? Pope Gregory responded that although a certain Roman law had allowed marriages between cousins, both experience and scripture militated against unions between any persons related within the third or fourth generations.¹ However, because many such marriages did previously exist among the English peoples, Gregory advised only that they be informed of the evil nature of such unions and warned against continuing the practice in the future. Nevertheless, Gregory continued, they should not be “deprived of the communion of the sacred Body and Blood of the Lord for this cause, lest they seem to be punished for sins which they committed through ignorance, before they received the washing of baptism.”²

Gregory then gave a summary of the Church’s position, which, perhaps unwittingly, was destined to foreshadow the future development of the Church’s laws on consanguinity and affinity. Gregory states:³

Thus, at this time the Holy Church corrects some things through zeal, some things it tolerates through gentleness, some things, upon reflection, it keeps secret and endures, so that, by concealing them and enduring them, it may restrain the evil that it opposes.

Gregory's flexible policy was almost certainly necessitated by the fact that, at the end of the sixth century the papacy was still in its infancy as a political or social force outside of Italy.⁴ Although the pope began at this time to assume an exalted and venerated position as the spiritual head of the Church, communication was difficult and information scarce about activities in Rome, especially in the farther reaches of Christendom. However, Gregory's policy was also in keeping with the spirit of his deeply held conviction that a diversity of customs could exist within the unity of the one Christian faith.⁵

In the six hundred years that separate Augustine's mission to the Anglo-Saxons from the height of the Gregorian reform movement, which began in the eleventh century, the Church had taken on a much altered form.⁶ It had made great strides toward freeing itself from the hands of lay control and taking on a more authoritative, legalistic and more bureaucratic form of government to rival those of secular powers. It had also begun to attack the internal rot of its own house by lashing out against abuses that were widespread among the clergy.⁷

Related to these changes was the Church's growing influence over the institution of marriage, which, until the tenth century, had been a predominantly secular concern. One important development arising out of this new ecclesiastical preoccupation with marriage involved the Church's laws concerning incestuous or "consanguineous" unions as well as the unions of those related through marriage (affinity). During this period, the Church extended its prohibitions against consanguineous marriages, and adapted a much more restrictive means of calculating the "degrees" of blood relationships.⁸ At the same

time, these new laws began to be enforced more vigorously at all levels of society by popes and bishops throughout the areas of Western and Eastern Europe under Catholic control.

This thesis will examine the Church's heightened interest in consanguineous unions, focusing on the period extending from the highly publicized case involving King Robert II of France (996-1031) to the relaxation of the laws of consanguinity and affinity at the Fourth Lateran council in 1215. An examination of cases during this period reveals a curious trend: a strict enforcement of the incest laws in the first one hundred and fifty years of the period, followed by an increasing use of dispensations and "dissimulation" by popes to mitigate the strictness of the prohibitions after ca. 1150. The new policy, however, gave rise to circumstances unforeseen by Church leaders, as members of the upper levels of society began to manipulate ecclesiastical laws in an attempt to further their own political or dynastic aims. This study will attempt to explore the possible reasons which, beginning in the latter half of the twelfth century, prompted the Church to adopt, at least in practice, a more lenient policy regarding marriages that involved consanguinity and affinity. It will examine several crucial clashes that ensued between the papacy and various members of Europe's royal houses during this period over the Church's incest laws. These cases, which highlight the growing conflict between royal marriage strategies and ecclesiastical law governing marriage, compelled the Church to refine its policy on consanguineous unions and in the process, more fully develop its understanding of the nature of marriage as an institution. Finally, it will examine the factors which ultimately led the Church to adjust canon law by reducing prohibitions

against such unions and thus, bring it into closer conformity with prevailing marriage practices.

The two hundred year period following the turn of the second millennium, in fact, proved to be a momentous turning point not only for the Church but also for the entire history of Western Europe. An intense surge of growth and transformation swept through virtually every sector of medieval society beginning in the decades after the year 1000. This growth was spurred on, in part, by the cessation of barbarian invasions which had plagued Christendom during the preceding three centuries. As the threat from external attack subsided after the tenth century, the peoples of Western Europe entered into an era of greater security. The more stable conditions produced by this situation resulted in an increase in population, a revival of trade and the rise of new urban centers.⁹ This economic upswing was accompanied by a great intellectual awakening in the fields of theology and law, a trend that ultimately gave rise to the creation of the first universities and the birth of the scholastic movement.¹⁰ An important byproduct of this increased activity in the intellectual, religious, and economic spheres of medieval society was the extraordinary proliferation of written documentation, much greater than any preceding era in medieval history. Scholars, theologians, royal bureaucrats, and court historians, among others, produced a wealth of new works covering a wide variety of subjects.¹¹

One area greatly affected by this increased literary output was the emerging study of canon law.¹² Within this general category, law relating to marriage, especially the subject of consanguinity and affinity, received a surprisingly large degree of attention. This fact has an important bearing on the present study. The primary source material

covering marriage law during the era of reform is enormous, consisting of a vast collection of canon law texts, papal decretals, conciliar legislation, royal court narratives, private theological treatises and ecclesiastical judicial rulings. To attempt to undertake a systematic examination of all the available sources relating to the topic of incest during this period would be an endeavor beyond the scope of the present work. It may be helpful, therefore, to state at the outset the more modest framework and goals of this study as well as its limitations.

The introductory chapter consists of an examination of the nature and types of primary sources relating to consanguinity and affinity from the beginning of the Christian era to the thirteenth century, followed by a brief historiographical essay detailing recent research and opinions about the development of the Church's laws governing incest. Chapter Two traces the evolution of consanguinity and affinity laws from the Roman Imperial period to the beginning of the thirteenth century, focusing on the Church's extension and hardening of its prohibitions against what it viewed as incestuous unions. It also touches on the practice of certain popes in the latter half of the twelfth century of dispensing with a strict interpretation of canon law in cases where the impediment did not fall within four degrees of consanguinity.

The evidentiary and analytical foundation of the study is found in Chapters Three and Four, both of which lay out the main argumentation of the thesis. These chapters consist of specific case studies involving disputes between popes and kings over the issue of consanguineous or affinal unions. The focus has been limited to those cases involving the papacy and monarchy for several reasons that will be examined in some depth at the

beginning of Chapter Three. Briefly stated, those conflicts taking place between kings and popes at the upper levels of society generated a high degree of attention and interest among the general populace and thus became the subject of much written commentary. Consequently, we have the most detailed and plentiful sources for these high profile cases. Secondly, because of the exalted and influential place which kings, as divinely ordained rulers, occupied in the medieval hierarchy, their attitudes and behavior had an impact that reverberated down to the lower orders of society. This phenomenon proved to be particularly true concerning royal attitudes towards marriage, an institution which had been controlled for centuries by secular interests and traditions.¹³ For the Church effectively to assert its authority over marriage practices of the faithful, such as those involving the marriage of close kin, it first had to counteract the harmful influence exerted by those members of the various European monarchical houses who indiscriminately flouted the Church's prohibitions against such unions. Thus, cases between the papacy and the monarchy held a special importance since their outcomes possessed a strong potential for shaping attitudes concerning endogamous marriage at every level of medieval society. These cases also provided a forum for the Church to adjust and refine its own policy on such unions, as well as its methods for effectively enforcing that policy. The conclusion recapitulates the main threads of the evolution of the Church's incest laws up to the point when they achieved a fixed form at the Fourth Lateran Council, offering some general observations on the Church's motives for enforcing, dispensing from, and ultimately modifying its laws governing consanguineous and affinal unions. It argues that while the Church's reduction of the prohibitions against

consanguineous unions was a concession to the realities of the time, the Church's ability to adjust the marriage laws successfully also reinforced its position as the most important authority in determining the parameters and nature of the institution of marriage. An inevitable consequence of this trend towards greater Church authority was a decrease in the influence of secular authority within this sphere.

Speculation among scholars over the Church's shifting position on consanguinity and affinity has focused on a wide range of possible explanations. Theories range from the view that the Church used these laws as a means of accumulating property by countering the inheritance strategies of the land-owning aristocracy,¹⁴ to the belief that the Church wished to encourage a wider distribution of marriageable women throughout all sectors of society.¹⁵ But if the Church meant to enforce these laws to its advantage whether spiritual, political or economic, the curious fact remains that its relaxation of the consanguinity laws coincided with the period of its greatest temporal authority and influence. This authority could have facilitated a more rigorous adherence to the incest prohibitions advocated by many lawyers and theologians. Instead, the Church adopted a policy closer to that of Gregory almost six hundred years earlier. In cases of mild consanguinity, the Church chose to promote toleration "so that by concealing them and enduring them, it may restrain the evil that it opposes."¹⁶

Chapter One Sources and Historiography

The term consanguinity derives its meaning from the Latin word *consanguinitas*, which translates as “blood relationship.”¹⁷ The *degree* of consanguinity between two persons can be calculated in several ways.¹⁸ If the two persons are related in a *direct line*, such as father to son or grandmother to granddaughter, one simply counts the generations that separate them to determine the degree of consanguinity. Thus father and son are related in the first degree, grandmother and granddaughter in the second degree of the direct line. If the two persons do not descend directly from one another but trace their descent through a common ancestor, the line is called indirect or *collateral*, and the means of calculation can be subject to variation, as the history of consanguinity demonstrates. The method used by the Romans involved counting up to (but not including) the common ancestor and then back down the collateral line to the second party to determine the degree of relationship. A much more restrictive method employed by the Germanic peoples, which was subsequently adopted by the Medieval Church, involved only counting the generations back to the common ancestor to determine the degree of consanguinity. Thus, whereas according to the Roman method a brother and sister are related in the second degree, they are related in the first degree according to the Germanic method. Since virtually no culture, ancient or modern, has allowed marriages between persons related in the direct line, consanguinity arising from this type of relationship will not be examined here. Consanguinity in the collateral line, however, has

been viewed by many societies as an impediment to marriage when the persons attempting to contract such a union are considered by that society to be too closely related.¹⁹

A second marriage prohibition, which was closely associated with consanguinity, was the impediment of affinity, or relationship through marriage.²⁰ Unions with in-laws or stepchildren were viewed as no less incestuous than those unions between blood relatives.²¹ Though casting a much smaller net of prohibitions over possible marriage partners, the laws concerning relationships of affinity nonetheless developed in conjunction with those of consanguinity and played a determining role in many marriage disputes in the period under consideration.

The influence of consanguinity and affinity on marriage and family during the Middle Ages, broadly speaking, can be divided into three periods. During the first period, extending from the late first century A. D. until about the fifth, Roman law and, to a lesser extent, Mosaic or Jewish law, had a predominant influence on the early Christian laws of marriage.²² With the end of the Western Roman Empire, there followed a period of Germanic assimilation into and influence over the Christian Church, which continued until the end of the millennium. The last period, which extended from the beginning of the eleventh century up to the Fourth Lateran Council in 1215, was marked by the appearance of urban revival, by the beginnings of a great intellectual awakening and by the spread of a powerful movement for reform within the Church. Most importantly, it witnessed the birth of the science of canonical jurisprudence. This impacted the development and understanding of virtually every aspect of Christian marriage, including

the Church's position on consanguineous unions. The twelfth and thirteenth centuries witnessed a series of legally trained popes who put the new developments in canon law to effective use. A high point in this activity was achieved at the Fourth Lateran Council, convened in 1215 by Pope Innocent III, arguably the most powerful and influential pontiff of the high Middle Ages. With the promulgation of Canon 50 at that council, the regulations governing consanguinity and affinity became fixed and would endure without modification until the twentieth century.

This simple tripartite division, however, belies the complex and sometimes confusing evolution of Christian theology and Church law, which sought to define and govern consanguineous unions. The early Christian Church was slow to develop its concept of marriage in any comprehensive sense, including its position regarding consanguinity. For the most part, it continued to look to Mosaic Law and Jewish custom as guides to practice, while also no doubt incorporating local forms of matrimonial ritual, both Roman and provincial as Christianity spread throughout the Empire.²³ The conversion of Constantine to Christianity in the early fourth century and Christianity's subsequent elevation to the status of the "official" religion in the empire under Theodosius I in 390 greatly increased the influence of Roman law over the development of Christian marriage. Source material for this period primarily consists of various Roman laws of incest and inheritance scattered throughout the law codes of the imperial period up to the *Codex Justinianus* in 534.²⁴ Alongside of these are the works of Church Fathers such as Ambrose, Augustine, and Isidore of Seville whose writings reflect a considerable degree of Roman influence. The Patristic writers, however, also relied

heavily on Scripture, particularly the Old Testament books of Genesis, Leviticus and Numbers to determine the early Church's position regarding forbidden degrees of kinship.²⁵

Sources for the second period, the Church in the Germanic kingdoms, include the law codes of the various Germanic tribes who occupied Europe after the fall of the Western Roman Empire. The laws of the Visigoths, Ripuarian and Salian Franks, Lombards and others, which, in this period assumed written form, contain numerous regulations on incest and inheritance.²⁶ Though the influence of Roman law can be traced throughout these codes, they nonetheless retained much traditional Germanic custom and law, a fact nowhere more apparent than in their laws on consanguinity. The Germanic method of reckoning degrees of kinship was to exert a decisive influence on Church laws governing consanguineous unions.²⁷

The sixth century saw the first appearance of incest regulations in the councils of the Church. Canon 61 of the council of Aige, which was held in 506, forbade marriages between first and second cousins. From Aige until the Fourth Lateran Council in 1215, laws touching on various aspects of marriage with near kin appear in a multitude of councils and synods. The impact of these early laws, however, was predominantly felt on a local and regional level.²⁸ An examination of these various conciliar decrees demonstrates that the gradual evolution of the Church's position on prohibited degrees of kinship was neither uniform nor consistent. In general, however, it moved in the direction of widening the prohibitions rather than reducing them. The subject of consanguinity appeared occasionally in secular legislation as well. Both Pepin and

Charlemagne made brief references to prohibitions concerning incestuous unions in various capitularies.²⁹

Papal letters and decrees during this period also provide information about the Church's attitude concerning situations involving consanguineous unions. The correspondence of Gregory the Great (590-614),³⁰ Gregory II (726),³¹ Zacharias (741-752),³² Leo IV (847-55),³³ and Nicholas I (858-867)³⁴ all refer to consanguinity and the various effects it had on issues ranging from the Church's missionary activity to the marriage policies of the Frankish kings. Regulations governing incest can also be found in penitential literature. This appeared first in the sixth century and exerted a powerful influence on Church doctrine concerning sexual matters.³⁵ These handbooks of penance were used to guide priests in their pastoral duties as confessors, and thus sometimes gave considerable attention to issues of incest.

Nevertheless, the compilers of canon law texts, who made their first appearance at the end of the ninth century, exerted the most decisive influence over the future course of consanguinity and affinity laws, indeed on all canon law.³⁶ Collections of law texts and writings by Church fathers, popes, theologians and others were not new or unique to this period. Earlier collections such as that of Dionysius Exiguus and the Pseudo-Isidorian Decretals had circulated widely during the early Middle Ages.³⁷ The appearance around 906 of Regino of Prüm's work, *Libri duo de synodalibus causis et disciplinis ecclesiasticis* (*Two Books concerning Synodal Investigations and Ecclesiastical Instructions*), however, marked the beginning of an important transition to a more systematic approach to Church law.³⁸ Regino's work contained a much more extensive

collection of texts than any of his contemporaries. More significant for the future of canonical jurisprudence, he was among the first canonists to begin looking to Roman law as a source of authority. Citations from both the *Codex Theodosianus* and the *Sententiae* of Paulus appear throughout his two books of Instructions.³⁹ Regino's work was also one of the earliest to devote a substantial amount of attention to marriage and sexual matters. His *Ecclesiastical Discipline* contains several texts dealing with the subject of incest.⁴⁰

The trend begun by Regino achieved a more fully developed form in the eleventh century in the collections of Burchard of Worms and Ivo of Chartres, both of whom utilized Regino's works as a source.⁴¹ The works of Burchard and Ivo, however, were not only more extensive and comprehensive than Regino's, they also clearly bore the imprint of the new reform movement which began spreading throughout Europe after the turn of the second millennium. A key goal of the reformers was to make the Church the most powerful governing force in Christian society. The reformers' expanded vision of the Church, however, required the renewal and systemization of canon law to help support their increasing jurisdictional claims. The compilations of Burchard and Ivo were a direct response to this need of the reform movement.⁴² Like Regino, Burchard and Ivo also included a significant number of texts dealing with consanguinity and affinity in their collections. Ivo was personally involved in many practical cases dealing with the issue of incest as well.⁴³ The most important case concerned the marriage of Philip I of France to his second wife, Bertrade. Ivo's strenuous opposition to this union on the grounds of affinity resulted in his subsequent imprisonment.⁴⁴

The pinnacle of this canonical activity, however, was reached with the publication of Gratian's *Concordia discordantium canonum* (*A Harmony of Conflicting Canons*) around the year 1140.⁴⁵ Gratian made an important advance beyond the work of his predecessors. He not only brought together a wide variety of authorities on Church law, but also made the first attempt to reconcile the many inconsistencies that arose from those authorities' frequently divergent positions. The *Decretum* (the title by which Gratian's work subsequently became known) was a crucial turning point in the study of canon law because it "gave it an intellectual coherence that it had previously lacked."⁴⁶ The *Decretum* was a massive work, consisting of 3,823 chapters. Gratian devoted a significant portion of the second part of his work to the topic of marriage.⁴⁷ His position on many marital concerns, including consanguinity and affinity, would wield a critical influence on the course of the debate concerning this issue over the next one hundred years.

The advent of these collections of law texts coincides precisely with the period that witnessed the hardening of the laws of consanguinity and affinity. The Church definitively set the number of prohibited degrees at seven and also fully embraced the "canonical" method of calculation based not on the Roman model, but on the much more restrictive Germanic means of reckoning. Popes and councils in their official pronouncements relied extensively on these canon law collections to support and give authority to their positions as they continued to work out more comprehensive and more stringent laws concerning consanguinity and affinity. The toughening of the Church's

incest laws, however, was also matched by a papal tendency towards more lenient enforcement, particularly in the period following Gratian's *Decretum*.⁴⁸

The influence of canon law collections on the Church's developing position regarding close kin marriages is also readily apparent in other sources from this period. For instance, the correspondence of reform popes such as Alexander III and Innocent III, whose deeds greatly affected the issue of consanguinity and affinity, shed light on the motivations and intentions underlying their actions.⁴⁹ Many of these papal letters, known as decretals, were later incorporated into authoritative canon law collections, such as the *Liber Extra*, compiled in 1234 under the direction of Gregory IX.⁵⁰ There are also the canonistic commentators who followed Burchard, Ivo, and Gratian, and built upon their foundation, men such as Rufinus (c. 1155),⁵¹ Stephen of Tournai (1160),⁵² Bernard of Pavia (1177),⁵³ and Peter the Chanter (d. 1197).⁵⁴ These writers provide important information about the shifting attitudes on canon law concerning marriage in the period leading up to the Fourth Lateran Council. Lastly, other theologians and churchmen such as Peter Damiani,⁵⁵ Anselm of Canterbury,⁵⁶ and Peter Lombard,⁵⁷ whose personal reputations lent considerable weight to their stances, wrote on consanguineous unions.

The increased preoccupation with the laws of consanguinity and affinity, a distinct characteristic of this third period, was paralleled by a dramatic increase in the number of actual cases concerning consanguineous unions. Annalists and theologians record and comment extensively on the highly public matters of kings and aristocrats who sought to contract marriages within the prohibited degrees.⁵⁸ The Church's stance on

such unions affected virtually every royal house in Western Europe in this period, from Louis VII and Philip I of France to king Ottocar of Bohemia.⁵⁹

Aristocratic families also felt the effect of the Church's restrictive policies concerning marriage to close kin. In the ninth century, the Church had begun encouraging the construction of family trees among the faithful in order to avoid accidentally entering into consanguineous unions.⁶⁰ Many aristocratic houses took up the practice of tracing their genealogies and family histories, but their motives were not always in harmony with those of the Church, and compliance was far from universal. The effect and influence of the Church's consanguinity laws on the behavior of the lower orders of society in the same period are more difficult to gauge. Although ecclesiastical courts had by the twelfth century taken great strides toward securing exclusive jurisdiction in marriage litigation, no detailed records survive.⁶¹ In the absence of court records and other official documents, our main sources of information concerning actual cases remain the accounts of chroniclers and the correspondence of kings, popes and bishops. Although these sources generally occupy themselves predominantly with the affairs of the upper sectors of society, they do sometimes address themselves to situations involving non-aristocratic individuals or communities.

In sum, the final period leading up to the reforms of the Fourth Lateran Council in 1215, which constitutes the main focus of this study, saw the considerable proliferation of two types of source material concerning consanguinity and affinity. The first type, dealing with the theory of consanguinity, one finds mainly in the canonistic and theological writings of the period. The second type of material concerned itself with the

practical application of that theory to a variety of situations, which arose in all levels of society throughout Western Europe during the eleventh, twelfth and thirteenth centuries.

The reasons for the Church's prohibitions against consanguineous marriages, which gradually broadened and grew stricter from the sixth century to the thirteenth, have been the object of considerable debate by historians in recent years. The earlier groundwork for such interest had been laid with the publication of exhaustive studies on medieval marriage by French, German and English scholars.⁶² In dealing with the issue of consanguinity, these earlier works focused on the question of the Church's gradual shift in prohibited degrees from four to seven as well as the change from the Roman method of calculation to the more prohibitive "canonical" method. Although this shift has been debated at length, scholars have failed to achieve a firm consensus as to the reasons for it, though most agree that Germanic customs concerning incest and inheritance played an influential role.⁶³

A new approach concerning the Church's position on consanguinity appeared with the publication of *The Development of the Family and Marriage in Europe* by the English anthropologist Jack Goody.⁶⁴ Goody postulated that the Church's highly restrictive ban on incestuous marriages was intended as a means of accumulating property. By limiting the strategies of marriage (and, by extension, inheritance) available to land-owning families, the Church's policy was able to accomplish two goals. First, it was able to stem the accumulation and safeguarding of property among the nobility. Secondly, and more importantly for Goody's argument, it increased the transfer of land into ecclesiastical hands by means of both donations, and bequests from the wills of

heirless families. Goody's thesis provoked much discussion among sociologists and medieval historians, both positive and negative. The idea that the Church promoted exogamy in an effort to break up large concentrations of property among the aristocracy, particularly from the ninth century on, has been accepted as plausible given the resistance that this policy generated in that sector of society. The contention that the Church used consanguinity as a means to accumulate property has been more difficult to sustain. Although clear instances exist where ecclesiastics profited materially from the Church's policy of exogamy, little evidence exists demonstrating that such a policy existed on any large or consistent scale, especially dating from as early as the fourth century, as Goody maintains.

Historians such as David Herlihy have contended that Goody's supposition of a united, monolithic, and efficient Church, capable of carrying out such a conscious strategy, is anachronistic. Instead, Herlihy sees the Church's insistence on exogamy as a means of promoting the circulation of women beyond the narrow confines of aristocratic families out into a wider sector of society.⁶⁵ However, Herlihy neither give an explanation for the Church's reasoning behind such a policy, nor does he demonstrate why his own theory might not also be considered a unified strategy on the part of the Church. The German historian, Michael Mitterauer, has demonstrated that, contrary to Goody's contention that the Western Church was unique and revolutionary in its extension of incest bans, a tradition of exogamy existed in several other eastern religions, both Christian and non-Christian.⁶⁶ Mitterauer downplays the economic motivation, and

instead, emphasizes Christianity's rejection of the Jewish religious belief that legitimacy within the community and, ultimately, one's salvation depended on blood descent.

The French historian Georges Duby contributed much to the debate with his construction of two theoretical models of medieval marriage based chiefly on sources from the north of France during the eleventh century.⁶⁷ Duby envisioned an ecclesiastical model, characterized by a tendency toward strict exogamy, and indissolubility of marriage pitted against a lay model which promoted family control of marriage choice, easy divorce and remarriage, and encouraged unions with near kin, to safeguard family inheritance. Duby agrees with the contention that the consanguinity and affinity laws were weapons used by the Church to stem the endogamous practices of aristocratic families. However, Duby saw as more important the Church's use of consanguinity as a means by which the ecclesiastical model was able to supersede the lay model and gain control of the institution of marriage by bringing it under the exclusive jurisdiction of the ecclesiastical courts. The shortcomings of Duby's models stem mainly from his restricted focus on the northern French nobility of the eleventh century to the exclusion of other countries and other sectors of medieval society.⁶⁸ Despite this, they have won a cautious acceptance as "useful constructs for organizing and analyzing the evidence of law and practice in the eleventh century."⁶⁹

Two other works are pertinent to the history of consanguinity and affinity during the three centuries of Church reform leading up to the Fourth Lateran Council in 1215, the period which constitutes the main focus of the present thesis. Charles Edward Smith's work, *Papal Enforcement of Some Medieval Marriage Laws*, gives an extensive

and detailed account of sources relating to consanguinity and affinity from the Roman period up to the fourteenth century.⁷⁰ He gives special attention to disputes involving consanguineous unions during the period from the ninth to the thirteenth century, noting a trend which will form an important focus of this study. Smith identifies a strict enforcement of the consanguinity and affinity laws from the beginning of the reform era up to the period of Gratian in 1140. In the decades following the dissemination of Gratian's *Decretum*, however, popes and bishops began regularly granting dispensations in cases where the couple fell between four and seven degrees of consanguinity. This tendency towards leniency culminated in a relaxation of the consanguinity and affinity laws from seven prohibited degrees to four at the Fourth Lateran Council. Smith's work provides an invaluable source of information highlighting the great diversity of situations that the Church had to face in its attempt to apply its theories of consanguinity and affinity to actual cases.⁷¹

Another characteristic of the period between Gratian and the Fourth Lateran Council was the increasing criticism raised by canonists and theologians about the Church's marriage laws. Regulations governing consanguinity in particular were a target of censure for many reformers who felt that the Church's overly strict prohibitions were leading to corrupt practices by the burgeoning legal profession who used the consanguinity laws as a means of procuring easy annulments. The work of the historian John Baldwin focuses on the Parisian theologian, Peter the Chanter, a harsh critic of many of the Church's laws, including those governing marriage, who formed around him a circle of influential thinkers at the end of the twelfth century.⁷² Baldwin traces the

shifting of views concerning consanguinity in the writings of the decretists and theologians in the decades after Gratian. This group of reform-minded churchmen, who included Peter the Chanter and his circle, began advocating the use of dispensations and “dissimulation” as a way of mitigating the difficulties inherent in the prohibitive laws. The precepts of the canonists were, in turn, taken up and applied to specific cases by reform-minded popes such as Alexander III, who refused to dissolve marriages that were consanguineous beyond the third degree. Peter himself made specific proposals for the reform of the consanguinity laws, which eventually were adopted by Pope Innocent III at the Fourth Lateran Council. Baldwin’s work emphasizes the point that resistance to the laws on consanguineous marriages came not only from the lay sector of society but also from a large and influential faction within the Church itself.

Paradoxically, the precise moment which the Church chose to relax the impediments of consanguinity from seven degrees to four coincided with the period when the reformers were most successful in shifting the institution of marriage out of the sphere of secular control and bringing it under the influence of ecclesiastical authority. It was also the moment when the medieval papacy was at the zenith of its temporal power and thus in the most advantageous position from which to enforce such laws, if it felt this was in its best interests. However, the reasons behind the Church’s relaxation of the laws of consanguinity and affinity involved a series of complex motivations and its decision was made only after considerable hesitation and thought.

Chapter 2

An Overview of the Development of Consanguinity and Affinity Laws from the Early Church to the Fourth Lateran Council

1. The Church in the Roman Empire

In the first three centuries of their existence, the widely dispersed communities of Christian believers appear to have been influenced in their attitudes toward marriage between close kin by two very different systems of legal thought – Jewish Mosaic law and Roman imperial law. Yet, at the same time, the early Church began to incorporate its own perspective, which would in turn exert an influence over Roman law in the period following the Roman Empire's adoption of Christianity.

In light of an almost complete absence of reference to consanguineous unions in New Testament writings,⁷³ it appears that early Church leaders turned instead to the Hebrew books of Genesis, Leviticus and Numbers as sources of authority on questions of marriage between relatives. Jewish laws of incest set up prohibitions in two different directions. In one direction it forbade marriages outside one's tribe, and in the opposite direction it forbade marriage within one's extended family or possibly, household.⁷⁴ Moses declared that the women of Israel "may marry anyone they please, provided they marry into a clan of their ancestral tribe, so that no heritage of the Israelites will pass from one tribe to another, but all the Israelites will retain their own ancestral heritage."⁷⁵

The book of Leviticus, on the other hand, prohibits marriage with one's mother, sister, granddaughter, stepsister, paternal and maternal aunt, uncle, daughter-in-law and stepdaughter.⁷⁶ Mosaic Law did, however, encourage the practice of levirate marriage, that is, the marriage of a man to his deceased brother's wife for the purpose of continuing his heritage, if there was no male heir.⁷⁷

The development of Roman laws concerning incest basically divides into three periods. In the period of the Republic before the Second Punic War (509-219 BC) marriage prohibitions between relatives extended up to second cousins.⁷⁸ After the Second Punic War, marriages between first cousins appear to have gradually become more common,⁷⁹ and this trend continued through the end of the Republic and up to the conversion of the Empire to Christianity. In an unusual circumstance during the principate of Claudius (41-54 AD), a *senatus consultum* was passed by the Emperor which allowed him to marry his niece, Agrippina, but whether this gave way to similar occurrences among the Roman populace is not known.⁸⁰ In the fourth century, following Constantine's elevation of Christianity to a favored position within the Empire, the prohibitions against incest widened slightly, due most likely to the influence of the new religion. In 342, the emperors Constantius and Constans forbade marriages between a man and his brother's daughter on pain of death, thus nullifying the Claudian law.⁸¹ During the reign of Theodosius the Great (379-395) the marriage of first cousins was prohibited,⁸² but Theodosius' son, the eastern emperor, Arcadius, abolished this law in 405.⁸³ Four years later, Honorius reinstated the law in the west.⁸⁴ However, in the east, cousins remained free to marry under the Justinian Law Code (533).⁸⁵

The writings of the early Church Fathers dealing with consanguineous unions clearly reflect the influence of both these legal traditions. Christian writers readily relied on the Hebrew scriptures to develop their positions on consanguineous unions. Both Ambrose and Augustine cite passages from the Hebrew Bible as sources to support their positions on incest. Ambrose attempted to use Leviticus to support his view that the marriages of blood relatives were contrary to divine law.⁸⁶ Augustine's main argument against incestuous marriages, based on Genesis, was that they prevented the bonds of affection from multiplying by means of marriages with non-relatives.⁸⁷

Both Christian and Jew looked upon Scripture as authoritative; however, the marriage practices of the two religions did not follow a parallel course. Despite the apparent tension existing between the two currents of Jewish tradition at the tribal level and at the family level, the general cast of Jewish incest laws appears to have been in the direction of endogamous marriage (marriage with relatives). This attitude seems to fly in the face of a Christian tendency towards exogamy, which existed in the apostolic and early patristic eras, but which began to exert a much stronger influence after the fifth century. A possible explanation for this may be the Christian rejection of the Jewish belief in purity of descent as a key factor in determining membership in the community, establishing an inherited priesthood, and as a prerequisite for salvation. In promoting a religion based, not on descent, but on conversion and "spiritual kinship," Christianity minimized the importance of blood ties, and consequently, the practice of intermarrying to preserve them.⁸⁸ Mosaic Law, thus, appears to have had both a positive and a negative impact on early Christian attitudes towards close-kin marriage.

Rome, likewise, appears to have exerted an influence that cut both ways. The writings of the Church Fathers indicate that Christian attitudes towards Roman laws on incest were generally positive and accepting, though Rome was seen to be, perhaps, too lax.⁸⁹ Ambrose praises the Theodosian law against cousin marriage comparing it (erroneously) to Levitical law.⁹⁰ Augustine declares that in his day, though permitted by law, “marriages between cousins were of rare occurrence because of moral scruples.”⁹¹ The early Church seems to have been willing to accept the authority of Roman law, since virtually no Christian laws regulating consanguineous unions existed at this period.⁹² However, after Christianity became the official religion of the empire, it began to exert subtle pressure to extend prohibitions up to at least second cousins.

The most important legacy to come from Roman law to the Church was the Roman method of reckoning degrees of kinship,⁹³ derived not from the Roman laws on incest but from the laws concerning intestate succession. The Roman jurist Paulus in the third century outlined the Roman system of calculating relationships which counted each generation as one degree on both sides of the common ancestor up to the seventh degree.⁹⁴ Paulus’ method of computation was intended primarily for the purpose of determining the order of inheritance and succession since Roman law did not forbid marriage up to the seventh degree. However, as early as the sixth century, the Church would adopt the Roman system of calculation and begin applying it to its prohibitions against consanguineous marriages.

2. The development of Church legislation in the period of the Frankish Kingdoms

The period following the collapse of the Western Roman Empire witnessed two crucial developments that greatly affected the Church's laws on consanguinity and affinity. First, the Church extended its prohibitions against consanguineous unions from four degrees (the equivalent of marriage between first cousins, according to the Roman calculation) to seven degrees. Secondly, the Church changed its method of calculating the number of degrees between blood relations. It shifted from one based on the Roman model to a much more restrictive method, which bears the strong influence of Germanic law and custom. The history of these two changes, however, is difficult to trace with any certainty. Both evolved unevenly in different places and at different times. The sources provide a variety of confusing and sometimes, contradictory, information. Much of the terminology used to define relationships remained ambiguous, developing only over the course of several centuries. Lastly, the Church as a monolithic, authoritative and effective institution still lay in the future. Until the advent of the reform era, it was hesitant and perhaps, unable to assert a definitive position on the subject of consanguineous unions. What seems certain, however, is that both changes came about only very gradually and they were achieved in the face of considerable resistance.

The appearance of independent legislation dealing with incestuous unions in the councils of the Church coincides with the dissolution of the Roman Empire in the west.

The earliest canons, which date from the sixth century, show a gradual widening of the restrictions beyond the limits enumerated by Ambrose and Augustine. The first Church council to incorporate regulations against incest was the council of Aige, which in 506 prohibited marriages between extended cousins (*consobrinae*).⁹⁵ This limit was repeated in a number of councils and synods throughout Gaul and Spain over the next two centuries.⁹⁶ Other councils remained more vague and general in their prohibitions, simply stating that incestuous unions were to be forbidden without naming specific relationships.⁹⁷ Hence, the question of precisely how far the restrictions on marriages between relatives should extend remained a point of dispute and confusion.

This difficulty was compounded by the fact that at some unspecified point in time, the Church began to shift from using the Roman method of calculating degrees of relationship in favor of a much stricter method of reckoning based on Germanic law. According to this method, the number of degrees separating two related persons was calculated by counting the number of generations back to the common ancestor on only one side. Since the Romans counted generations on both sides of the common ancestor, the shift to the German method had the effect of doubling the extent of the prohibitions. Thus by the Germanic reckoning, first cousins were related, not in the fourth degree (as was the case according to the Roman method), but in the second degree, since on one side, only two generations separated cousins from the common ancestor, in this case, the grandparents.⁹⁸

The Germanic peoples, like the Romans, used this method of calculation mainly as a means of determining succession, and the laws varied among the different tribes.⁹⁹

The *Lex Baiuvariorum* and the *Lex Langobardorum* recognized succession down to the seventh degree. The laws of the Salian Franks extended rights of inheritance down to the sixth degree, the Thuringians, only to the fifth degree.¹⁰⁰ One late law from the Visigothic code does specifically state that “it shall not be lawful to defile the blood of such as are related even to the sixth degree, either by marriage or otherwise.”¹⁰¹ However, the extreme laxity of marriage restrictions within the Merovingian royal house and among the Frankish nobility seems to indicate that the application of this method to the incest laws was by no means consistent among the Germanic peoples.¹⁰²

When the change took place from the Roman to the Germanic method has been debated at length by scholars, some opting for as early as the sixth century, others maintaining that it did not occur until the eleventh. The earliest example of the use by a churchman of reckoning by “degrees” to determine relationship is found in the writings of St. Isidore of Seville (ca. 560-636). Isidore reasoned that, since the world contained six ages (*aetates mundi*), the number of degrees within which relationships should be restricted was six.¹⁰³ In applying this reasoning to the collateral line of descent, Isidore, following the plan of the Roman jurist Paulus, clearly employed the Roman method of calculation.¹⁰⁴

At about the same time, Gregory the Great sent his response to Augustine of Canterbury concerning consanguineous unions among the Anglo-Saxons. In it, Gregory stated that necessity forbade “a closer marriage than that between the third or fourth generation, while the second generation, as we have said, should wholly abstain from marriage.”¹⁰⁵ The authenticity of this passage, which first appeared in Bede’s

Ecclesiastical History over a hundred years after Gregory's death, has been disputed since the eighth century. Some churchmen at the time doubted whether Gregory would have allowed marriages between such close relations.¹⁰⁶ Many modern scholars believe the passage is a later interpolation since it does not appear in the oldest manuscripts of the *Libellus*.¹⁰⁷ Nevertheless, transmitted through Bede's text, the response circulated widely throughout Europe in the early Middle Ages and appeared in the collections of many later canonists.¹⁰⁸

Several scholars who support the authenticity of the Gregorian document have argued that the shift from the Roman to the German method of calculating degrees began to occur at this time and that Gregory may have been the first to use it.¹⁰⁹ Gregory, however, does not seem to be reckoning according to a new system since he specifically sets his prohibition in opposition to the Roman law permitting cousin marriage (i. e. second generation marriage, or marriage within four degrees according to the Roman calculation).¹¹⁰ Furthermore, as is shown below, later popes continued to calculate degrees according to the Roman method. It is important to note that in this letter, Gregory's attitude is more lenient than that of Isidore and also that his restrictions are less strict. Such inconsistencies among different authorities within the Church would later result in much confusion.¹¹¹

During the eighth century, Church leaders became increasingly strict regarding incestuous unions, assuming a position more in line with Isidore than Gregory the Great. The issue appears in the letters of Gregory II (715-731) and Gregory III (731-741) to St. Boniface, the missionary to Germany. Gregory II, who had issued extensive prohibitions

against incestuous unions at a Roman council in 721.¹¹² granted a dispensation to the newly converted German people five years later in 726, allowing marriages “after the fourth generation.”¹¹³ In allowing this exception, Gregory, in line with earlier popes, calculated according to the Roman method.¹¹⁴ However, in 732, the newly elected pope, Gregory III withdrew his predecessor’s concession, reinstating prohibitions up to the seventh generation, and the more strict line continued to be supported by subsequent popes.¹¹⁵

Two decades after these events, there appeared the first indications of a shift in the method of reckoning used by the Church to determine blood relationship. The council of Verberies (753) issued prohibitions against incestuous marriages using the German measure of *genicula* to determine the extent of consanguinity.¹¹⁶ These prohibitions, which extended to the third *geniculum*, were equivalent to the seventh degree restrictions according to the Roman calculation. The reasons behind the council’s adoption of this new terminology are not known but the calculation according to *genicula* shows that the Church leaders were familiar with the German method. By extending the prohibitions only up to the third *geniculum*, they clearly understood the distinction between the two methods. The councils of Compiègne (757) and Mainz (813) repeated the injunctions of the council of Verberies using similar terminology.¹¹⁷

This use of *genicula* as a means of determining blood relationship seems to indicate the beginning of a transition from the Roman method of calculation to one based on Germanic laws of succession and incest. Although, as has been stated earlier, the details of this gradual change are difficult to recover, the general reasons behind it seem

clear. As the Church came into contact with the Germanic peoples, and slowly began to convert them to the Christian faith, a process of assimilation took place between Christian traditions and practices and Germanic custom.¹¹⁸ This process is well documented in many areas such as the development of cult practices surrounding local saints, festivals and relics.¹¹⁹ Christian laws concerning many aspects of marriage may have been particularly vulnerable to influence since the Church did not yet possess a dominant role in that institution. As the Church slowly took on the role of legislator for the Germanic peoples, it incorporated aspects of their law and custom into its own laws. Thus, it appears that in the midst of this gradual blending of the two traditions, the Germanic method of calculating degrees to determine eligible marriage partners came to replace the Roman one. The impact of the German influence on the Western Church's laws of consanguinity is further confirmed by the fact that in the Eastern Church, the Roman method of calculation continued to be used throughout the Medieval period.¹²⁰ However, the difference in methods of calculation between the Eastern and Western Churches may also be related to the fact that, during this period, the Western Church was gaining an increasing sense of independence from Constantinople.

Although the first reference to the Germanic method of reckoning by the Church appears in the eighth century, the adoption and widespread application of this method would not come about for another two hundred years, and even then with much difficulty. The prohibition of unions as far as the seventh degree, likewise, continued to be inconsistently applied among Church leaders. However, its gradual acceptance seemed to move at a faster rate, both in the writings of theologians and in the legislation of the

Church. The Carolingian scholar Rabanus Maurus (780-856) conceded that there had been recent papal letters containing prohibitions up to the seventh generation, but he believed that the prohibitions were not decreed according to “divine law.”¹²¹ Warning against the dangers of such extensive restrictions, he argued that the prohibitions should be fixed at the fifth generation. However his position was in opposition to those of many churchmen. The author known as Benedictus Levita (Benedict the Levite), who was active in the west Frankish kingdom in the middle of the ninth century, supported the extension of prohibitions up to the seventh generation.¹²² In addition, the widely circulating collection of Pseudo-Isidorian Decretals contained a letter allegedly written by Gregory the Great to Felix of Messana, which stated that his concessions granted to the Anglo-Saxons were only meant to be temporary. Those fully initiated into the faith were obliged to observe prohibitions up to the seventh generation. Hincmar, the influential bishop of Rheims, cited this letter in a tract dealing with the marriage of a certain count Stephen, in order to justify his support for the seven degree restrictions.¹²³

In 874, the council of Douzy, reflecting the position of Hincmar and Benedictus, stated that marriages between persons related within the seventh generation were considered incestuous.¹²⁴ Yet, other councils in this period demonstrate that variation and ambiguity still existed in the Church’s position. The council of Cologne in 922 prohibited unions only up to the fifth degree,¹²⁵ while the synod of Bourges one hundred years later set the restrictions at six or seven degrees.¹²⁶ This council, however, which took place in 1031 on the eve of the great Gregorian reform movement was the last to employ vague or ambiguous language in its restrictions on consanguineous unions.

3. The Development of Church Law during the Era of Reform

The most powerful force shaping the development of the Church's laws on consanguinity and affinity from the eleventh century to the Fourth Lateran Council was the newly enhanced institution of the papacy that emerged during the era of Gregorian reform. The decisions of such popes as Alexander II, Gregory VII, Alexander III and Innocent III exerted a greater practical influence on the definition and enforcement of consanguinity laws than any other authority, lay or ecclesiastical. It will thus be necessary to examine briefly the events and characters that led to the elevation of the papacy to a position of unsurpassed spiritual and temporal authority over the Western Church.

In 1046, fifteen years after the synod of Bourges, the German ruler Henry III arrived in Italy for the purpose of being crowned Holy Roman Emperor. He found himself, however, intervening in the muddled politics surrounding a disputed papal election in Rome. He deposed three rival claimants to the chair of St. Peter, and placed instead his own candidate on the throne, Bishop Suidger of Bamberg, who took the name of Clement II.¹²⁷ Clement was the first of a series of exceptional German popes steeped in the ideas that had been born a century earlier in the great monastic reform movement which had taken place in the monasteries of Cluny, Gorze and others.¹²⁸ The reform movement sought to renew monastic life by distancing it from the corruption of worldly influence and returning it to the purity of the primitive Church. In order to achieve the

realization of their goals, the leaders of the reform enlisted both lay and ecclesiastical support. The Cluniac reformers, in particular, placed themselves under the protection of the pope, in an attempt to free themselves from the control of powerful diocesan bishops. The papacy's actual jurisdictional authority in the tenth century, however, was still largely restricted to the confines of Rome and central Italy. Although many communities of monks were able to enlist the spiritual authority and influence of the pope to gain "monastic exemption" from local episcopal demands, the papacy's overall participation in the monastic reform movement was peripheral at best.¹²⁹

This began to change under the influence of the new German popes. Surrounded by a circle of reform-minded and highly influential advisors, who came from Germany with Henry, the new popes shifted the focus of reform from monastic renewal to the revitalization of the papacy.¹³⁰ On a practical level they sought to halt the abuses arising from three burning issues which were the subject of intense controversy in the life of the Church at the time – simony (the sale and purchase of ecclesiastical office), clerical marriage, and the investiture of Church offices by lay authorities. However, the more exalted ambition of the new reform-oriented popes, beginning with Leo IX and Nicholas II and culminating with Gregory VII, was to assert the authority of spiritual powers, above all, the authority of the papacy, above secular authority.

Key to the success of papal claims to effective leadership over the universal Church was the expansion of its jurisdiction and authority in legal matters. To accomplish this, the reformers took two important steps. First, they began an "institutionalization" of the papal office. An electoral decree was passed in 1059 creating

a college of cardinal bishops and priests in an effort to standardize the process for selecting the pope and eliminate the corrupt influence of both foreign and local interests in papal elections.¹³¹ Also, the Roman curia supporting the pope underwent a radical transformation. The influential staff of advisors which had surrounded the German pontiffs since Clement II slowly began to take on the structure of an administrative body that resembled the secular bureaucratic governments arising in such countries as England and France.¹³² Secondly, the new reformer popes began turning to the highly influential collections of canon law texts both to justify their enhanced conception of papal power, and to extend the practical enforcement of papal authority over the entire Church.

Collections of Church law containing such source material as Biblical texts, the writings of Church Fathers, conciliar decrees as well as papal decisions, had existed as far back as the second century. The earliest compilations of Church documents in the West were private collections exerting a predominantly regional influence. However, several notable ones, in particular, the *Collectio Dionysia* achieved a much wider circulation and would be drawn upon as source material by later collections. During the Carolingian era, Charlemagne used the *Collectio Dionysio-Hadriana*, an augmented version of the earlier collection sent to him by Pope Hadrian I, as a means of both unifying and reforming the Frankish Church. Following the breaking up of the Carolingian Empire at the end of the ninth century, the ecclesiastical center of power shifted to local and regional bishops who utilized canon law collections as instructional tools for their dioceses. The most influential collections circulating at this time were either compiled by bishops or commissioned by them. Regino of Prüm compiled his *Libri duo de synodalibus causis et*

disciplinis ecclesiasticis in 906 at the request of Archbishop Ratbod of Trier. Bishops Burchard of Worms and Ivo of Chartres produced two of the most influential collections of canon law before the twelfth century. These new, more comprehensive collections also differed from their predecessors because they were born out of an intellectual awakening at the turn of the millennium that was to witness the rediscovery of Roman law and the beginnings of the development of systematic canon law.

Among the many topics treated by the canonistic writers in their collections, the issue of consanguinity and affinity received a considerable amount of attention. Regino's *de synodalibus causis* contains a number of canons drawn from Church councils, theological tracts and papal letters, which deal with the subject of incestuous unions. Included are Gregory's letter to Augustine permitting the Anglo-Saxons to marry within the third or fourth generation, several letters of Rabanus Maurus which show him to favor exceptions within the seven degree rule, and the canons of numerous other councils which recorded various prohibitions against incestuous unions.¹³³ Regino makes no comment himself on the extent of prohibited degrees or the means of calculating them.

The *Decretum* compiled by Burchard of Worms around the year 1000 contains a significantly larger number of texts dealing with consanguinity and affinity. Book Seven of the *Decretum* is devoted exclusively to the subject of incest and includes a chart for calculating the degrees of relationship in the appendix based on the reckoning of Isidore of Seville. The weight of Burchard's texts, which include many conciliar decrees, excerpts from Isidore's *Etymology* and several letters of Gregory the Great, support prohibitions up to seven degrees.¹³⁴ All marriages contracted within the proscribed

degrees are declared invalid, and those entering into such unions are to suffer excommunication.¹³⁵

The collections of both Regino and Burchard began circulating widely around the time that the reform movement moved from the monasteries of Germany and France to the papacy in Rome. The reformers were quick to recognize the potential of the collections to enforce the new legalistic authority of the papal office that they sought to promote. Using authoritative documents to support their positions, the popes began exhibiting a new legislative assertiveness, which had an immediate impact on the Church's attitude towards consanguinity and affinity. The Roman councils of 1059 and 1063 under popes Nicholas II and Alexander II both issued forceful and unequivocal prohibitions against consanguineous unions, forbidding marriages up to the seventh degree of relationship.¹³⁶

Alexander II, in particular, was to play a pivotal role in the solidification of Church prohibitions against consanguineous unions up to the seventh degree of the German or "canonical" calculation. Up to this point, widespread confusion apparently continued to exist over the correct method to be used to determine consanguinity in questions of marriage. Paradoxically, canonists such as Regino and Burchard helped, in part, to encourage this confusion because of the inconsistency of positions on consanguineous unions by councils, popes and other authorities that were cited in their works. Furthermore, although the canonists generally supported the stricter interpretation, the revival of Roman law that they had helped to produce was apparently

giving support in many areas to the use of the Roman method of calculation in matters concerning consanguinity and affinity.¹³⁷

Alexander forcefully attacked this trend in 1063 in a letter addressed to bishops and judges throughout Italy, but in particular, to the clergy at Naples, where a dispute had erupted over the issue.¹³⁸ In the letter, Alexander clearly distinguishes between the two methods of calculating degrees. The first one, which he calls the “legal” means of computation (*computatio legum*), is derived from Roman law. According to this method, brothers and sisters are related to each other in the second degree, their sons and daughters, in the fourth degree. The other, which he states had been “handed down by the holy fathers and the ancient Church,” he calls the “canonical” method (*computatio canonum*).¹³⁹ According to this method, which only counts up to the common ancestor, attributing one degree for each generation (and, thus, is identical to the German method of reckoning), brothers and sisters are related in the first degree.¹⁴⁰ Alexander called upon those responsible for employing the legal method, which he argued, was instituted by Justinian for the purpose of determining succession and inheritance, to halt this practice. In questions of marriage, only the canonical method was to be used.

In another letter to the Neapolitan clergy, Alexander reiterated his position, citing Biblical genealogies from the book of Genesis to show that justification for the canonical method was rooted in Scripture.¹⁴¹ The Italian theologian Peter Damiani (ca. 1007-72) strenuously backed Alexander on this issue, echoing the pope’s Biblical arguments in a treatise entitled *De Parentelae Gradibus* (On Degrees of Relationship).¹⁴² Significantly, Damiani and Alexander both supported their positions with authorities drawn from

Burchard's *Decretum*. In particular, they cited the writings of Pope Gregory the Great. However, they both came to the conclusion that Gregory could not have been calculating according to the Roman method since he had elsewhere explicitly forbidden cousin marriages.¹⁴³ Damiani had been an energetic proponent of the reform movement since the time of Clement II, interacting with popes and other leading figures in the papal curia. Damiani and Alexander II worked together on several issues of reform during this period despite a somewhat antagonistic relationship that existed between the two men.¹⁴⁴ It appears, however, that they were of one mind on the issue of consanguinity, although who was the greater influence on whom is not altogether clear.

Thus, by the middle of the eleventh century, the Church had definitively set the prohibitions against consanguineous marriages at seven degrees using the canonical method of reckoning. Subsequent popes would continue to support the strict enforcement of these prohibitions for the next one hundred years. Despite the Church's firm stance, however, the restrictive nature of the laws continued to incite defiance and opposition. Gregory VII, the greatest reforming pope of the eleventh century, appears to have closely monitored cases involving consanguinity not only in Italy but also in other regions throughout Western Europe. In 1074, Gregory commended William, Count of Poitiers for voluntarily separating from his wife after discovering that they were related within the prohibited degrees.¹⁴⁵ Five years later, the pope sent another letter to Centullus, the Count of Bearn pronouncing his recent marriage to his ward invalid on the grounds of consanguinity.¹⁴⁶ Later popes followed in the footsteps of Gregory. Paschal II (1099-1118) issued several decrees against incestuous marriages taking place in France and

Spain, including one that involved the marriage of the daughter of Alfonso, King of Castile.¹⁴⁷

Paschal II also took part in a notorious marital dispute that took place at the end of the eleventh century, involving Philip I of France and his second wife, Bertrade. The main charge initially leveled against Philip was adultery, since he had illegally separated from his first wife, Bertha, and, in addition, his new wife, Bertrade, was still married to Count Fulk of Anjou at the time of their union. Moreover, Philip was charged with the crime of incest because he was related to Bertrade in the third degree of affinity.¹⁴⁸ One of the main participants in this dispute was Bishop Ivo of Chartres (1040-1115) who played an important role in the Church's effort to uphold the laws of consanguinity and affinity. Ivo's *Decretum*, compiled at the end of the eleventh century, proved to be the most comprehensive and influential collection of texts before the time of Gratian.¹⁴⁹ Like Burchard's earlier work of the same name, Ivo's *Decretum* contains a considerable number of texts dealing with the issues of consanguinity and affinity.¹⁵⁰ While Ivo incorporated the bulk of Burchard's canons on the subject into his own work, he also augmented them with many other, more recent texts. In particular, he included the writings of Alexander II, whose positions on the number of prohibited degrees and the canonical method of calculation he firmly supported. This is clear from other writings of Ivo, particularly his letters to various powerful figures, including King Henry I of England, which deal with the issue of consanguineous unions. Advising Henry against the prospective marriage of his daughter to Hugh of Gervais, Ivo employs the canonical method of calculation to show that the two were related within the sixth degree.¹⁵¹ Both

the influence of Ivo's *Decretum* and his active participation in many of the high profile cases of the period helped to reinforce and spread the Church's more rigorous prohibitions which had solidified during the pontificate of Alexander II.

Within thirty years of Ivo's death, however, this trend experienced a subtle but critical shift. The dissemination of a new work in the mid-twelfth century entitled the *Concordia discordantium canonum* (*A Harmony of Conflicting Canons*) initiated a revolution in the study of Canon law. Compiled by a Bolognese monk named Gratian around the year 1140, the *Decretum* (as his work was subsequently known) differed from earlier collections by Burchard and Ivo. Gratian did more than simply bring together a vast array of authoritative texts, covering a multitude of theological and liturgical topics. Applying techniques borrowed from proponents of the newly emerging scholastic theology, he attempted to reconcile differences among the sources by including his own analysis and conclusions.¹⁵² Gratian's method typically consisted of presenting a hypothetical situation or problem, followed by a series of authoritative texts that supported different solutions to the problem. He then inserted *dicta* containing a discussion of the differences between the conflicting sources, and ending with his own view on the proper way in which the question should be resolved. The sense of order and logic employed by Gratian in his *Decretum* helped produce, more than any previous work, a new intellectual cohesion in the study of canon law.

Gratian's work was destined to introduce several new elements into the Church's laws of consanguinity and affinity. The second book of the *Decretum* was divided into thirty-six cases or *causae*, the last ten of which, dealt with the subject of marriage. The

thirty-fifth case is specifically devoted to questions of consanguinity and affinity. Like his predecessors, Gratian fully supported both the prohibition of consanguineous unions up to seven degrees and the use of the canonical method to determine the nearness of the relationship. However, Gratian expanded on the views of earlier canonists in two ways. First, he made a distinction between those regulations rooted in divine law, and thus immutable, and those regulations which were products of positive, or ecclesiastical law and thus open to change or modification. Gratian maintained that the prohibitions, which the Church had erected against consanguineous unions, fell into the second category. The second innovation that Gratian introduced proceeded logically from this first supposition. Although he adhered to the strict interpretation of the consanguinity laws, Gratian disapproved of divorce as a means of separating couples found related within the forbidden degrees of kinship. Instead, he believed that, since the consanguinity laws were products of ecclesiastical legislation, the Church could and should exercise its power to grant dispensations to such unions, particularly in cases of mild consanguinity or affinity (i. e. beyond the fourth degree), or where the marriage was contracted in ignorance.¹⁵³ Only in cases of close blood relationship, which more often than not involved deception on some level by one or both parties, did Gratian recommend that the marriage be dissolved. Both Burchard and Ivo had also been reluctant to allow divorces to married couples for any reason, even in cases involving consanguinity and affinity. However, neither suggests the idea that Church might employ dispensations in these cases. Instead, they focused on the Church's need to prevent such marriages in the first place.¹⁵⁴

Gratian's preoccupation with marital issues, including consanguinity and affinity, reflected the growing interest on the part of the Church concerning the formation, character and nature of marriage. This interest, which emerged during the era of the reforming papacy and fully flowered in the twelfth and thirteenth centuries, was heightened considerably by the impact of the *Decretum's* immediate and widespread popularity. Gratian's work became the standard textbook for the study of canon law, along with Justinian's *Institutes*, at the newly emerging universities at Bologna, Paris and elsewhere. Scholars drawn predominantly from the faculty of these new universities began producing both supplementary works and extensive commentaries on the *Decretum*.

The school of legal studies that arose during the 1140s at Bologna, Gratian's place of residence, produced the earliest works on the *Decretum*. Paucapalea, a scholar and teacher of law at Bologna's emerging university produced a short commentary, or *Summa*, on Gratian's text around 1148.¹⁵⁵ Other important works by law faculty members at Bologna followed shortly thereafter. The *Summae* composed by the canonists Rolandus (fl. ca. 1150),¹⁵⁶ Rufinus (fl. ca. 1157-59),¹⁵⁷ Simon of Bisignano (fl. ca. 1177), and Huguccio (fl. ca. 1188)¹⁵⁸ all expand on the *Decretum*, providing additional texts and extensive analysis. Within a decade of this activity, a second highly influential body of legal scholars at the university school in Paris began producing commentaries on Gratian. Works from this school include the *Summa* of Stephen of Tournai (fl. ca. 1160),¹⁵⁹ an anonymous work known as the *Summa Parisiensis* (fl. ca. 1160),¹⁶⁰ as well as commentaries by Sicard of Cremona and Peter of Blois (fl. ca. 1180).¹⁶¹

Although canonists from the Parisian school came to differ sharply from the Italian canonists on important questions involving the formation and character of Christian marriage, both schools adopted Gratian's position on the issue of consanguineous unions. While supporting prohibitions to the seventh degree according to the canonical method of calculation, the French and Italian canonists followed Gratian in advocating the use of dispensations in cases of slight consanguinity or affinity. Expanding on *Decretum*, the canonists formulated several conditions, which were required to qualify such marriages for a dispensation. The couple entering into the marriage had to be ignorant of any possible consanguineous relationship beforehand. The marriage had to have endured over a long period of time. Lastly, the marriage must have produced children. Unions meeting these conditions might "remain uncontested by special papal permission."¹⁶²

The development of canonical jurisprudence as a science, separate from theology which grew rapidly following in the wake of Gratian and the early decretists, paralleled the apogee of papal power under the reform popes. The two developments were, in fact, closely interrelated. As has been seen, in the eleventh century the reforming papacy looked to the compilers of authoritative texts like Burchard and Ivo to both buttress the primacy of the papal office and to formulate and defend Church law. By the end of the twelfth century, the work of Gratian and those canonists who followed him became the standard reference source in the formulation of ecclesiastical law at a time when the bureaucratic and legislative orientation of the Church was reaching its peak.¹⁶³ At the

same time, many of the new popes either possessed a fair amount of legal training or, in some cases, were drawn directly from the ranks of the burgeoning legal community.¹⁶⁴

Not surprisingly, the post-Gratian period saw a huge outpouring of new canon law, much of it in the form of papal decretals. Decretals were papal letters dealing with a wide range of legal and moral questions that concerned the Church. Many of these letters, which were ultimately collected and circulated widely throughout Latin Christendom, came to assume the binding force of canon law. From the mid-twelfth century on, popes issued decretals in large numbers. Alexander III, the first of the great lawyer-popes, who reigned from 1159 to 1181, composed a considerable number of decretals, many dealing with marital questions. A former student of law and theology, Alexander was thoroughly versed in the positions of both the French and Italian schools on marital issues, including their position on consanguinity and affinity. Alexander not only supported the use of dispensations under the conditions laid out by the canonists, he granted a number of them himself, and even ceded the authority to dispense in such cases to local bishops.¹⁶⁵ Alexander also seems to have begun a practice similar to dispensation, which was followed by subsequent popes, known as dissimulation. According to this method, a pope could “recognize an irregular affair impossible of remedy and by simulating ignorance refuse to take action against it.”¹⁶⁶ In a letter to the papal legate, Gerard of Salonne, concerning a consanguineous marriage under his jurisdiction that was apparently causing a scandal, Alexander instructed the Archbishop to “pass over such marriages with silence and dissimulation because of the obduracy of the people, although they were against the institutions of the sacred canons.”¹⁶⁷ Thus,

through this process of dissimulation, popes could allow slightly consanguineous marriages to stand in situations that might potentially have threatened the interests or security of either the Church or the Christian community.

However, despite the adoption of a more flexible interpretation of the Church's consanguinity and affinity laws by popes and canonists following the publication of Gratian's *Decretum*, a strong movement to have the laws themselves modified only emerged at the end of the twelfth century. A major factor in this opposition involved the response to the growing corruption within the legal profession in cases involving marriage litigation. Many ecclesiastical judges and officials were making profits by using consanguinity and affinity laws in order to grant divorces for those willing to pay.¹⁶⁸ Such instances seem to have been particularly prevalent in the churches of the French kingdom.¹⁶⁹ The most celebrated case took place at the highest echelon of French society, within the royal house of the Capetians. It involved King Philip Augustus (1180-1223) and his queen, Ingeborg whom he tried to repudiate on grounds of affinity in 1195, after only three months of marriage.¹⁷⁰ Although the Archbishop of Rheims officially dissolved the marriage, Ingeborg appealed to Pope Celestine III, charging the king with having falsely computed the couple's degrees of affinity. Philip was eventually compelled by Celestine's successor, Innocent III, to receive Ingeborg as his lawful wife, but only after a protracted struggle extending over a period of twenty years.

Two ecclesiastics who participated in the affair, one a pope and one a theologian, played key roles in the final stage of development of the Church's laws on consanguinity and affinity during this period, which culminated in the pronouncements of the Fourth

Lateran Council. The first figure was Peter the Chanter, a prominent Parisian theologian and one of a group of judge delegates appointed by Pope Celestine III in 1196 to rule in the case of Philip's divorce. The delegation, which proved unsuccessful in resolving the case due to Philip's resistance, nonetheless helped shape the views of Peter the Chanter on the issue of consanguinity and affinity. Addressing the issue in several of his works, Peter questioned the extension of the prohibitions beyond the fourth degree, maintaining that such extensions were the product of "positive" law (i. e. ecclesiastical law ordained by men), not divine law. The Chanter argued that positive law was not permanent, but subject to variation depending on the circumstances. Thus, where positive law gave rise to confusion or abuse, one must return to the fundamental principles found in Scripture to adjust the laws.¹⁷¹ In light of the many abuses, which he asserted arose from the confusing nature of the Church's consanguinity and affinity laws, the Chanter recommended that any extension of the incest prohibitions beyond Scriptural limitations (in other words, beyond the fourth degree) be removed.¹⁷²

During his years at Paris, the Chanter gathered around him a circle of scholars and students from France and England who subsequently reiterated in their own works, his position on the Church's incest laws.¹⁷³ By far the most important person influenced by the Chanter on questions of consanguinity and affinity was Lothario dei Segni, the future Pope Innocent III. Lothario, who studied theology and law at both Paris and Bologna, is thought to have been a student of the Bolognese canonist Huguccio.¹⁷⁴ His stay in Paris in the mid-1180's coincided with the time that Peter the Chanter both taught as a master and held the influential position of chanter at the Cathedral of Notre Dame. While it is not

definitively known whether the future pope was at any time a pupil of Peter's (the only Parisian master acknowledged by Innocent was Peter of Corbeil). he reportedly questioned the Chanter specifically on the subject of marriage.¹⁷⁵ It is also highly probable that he interacted with the Chanter while a cardinal at Rome during the pontificate of Celestine III. when Peter came to argue the morality of ordeals before the College of Cardinals.¹⁷⁶

Once elevated to the papacy, Innocent III devoted a considerable amount of attention to the subject of Christian marriage, including the issues of consanguinity and affinity. He took up and favorably concluded the struggle with Philip Augustus of France over his divorce from Ingeborg, which, unresolved by the death of his predecessor, Celestine III, remained. He also intervened in numerous cases dealing with consanguineous unions, which involved such powerful figures as King Alfonso IX of Leon (1188-1230), Ottocar of Bohemia, and Otto IV of Brunswick.¹⁷⁷ Innocent's most important action affecting the canon laws concerning consanguinity and affinity, however, came at the Fourth Lateran Council, convened in 1215. Innocent introduced legislation, which reduced the prohibitions in cases concerning consanguinity from seven to four degrees. In cases involving affinity, the prohibitions were reduced from four degrees to one. The wording of Canon 50 which lays out the council's reasons for modifying the laws clearly reflects the influence of Peter the Chanter's arguments.¹⁷⁸

It should not be judged reprehensible if men's decrees are varied at some time or other in accordance with changing circumstances, especially when urgent necessity or evident advantages requires it, since God himself, of the things he decreed in the Old Testament, has changed some in the New. Since therefore the prohibitions about contracting marriage in the second or third degree of affinity and about uniting the offspring of a second

marriage to the kindred of the first husband frequently lead to difficulty and sometimes endanger souls. we, inasmuch as when the prohibition ceases the effect ceases, revoke with the approval of the holy council decrees published on this subject and by the present constitution decree that contracting parties connected in these ways may in future be freely united. Also the prohibition of marriage shall not in future exceed the fourth degree of the consanguinity and affinity, since in grades beyond that such prohibition cannot now be generally complied with without grave harm.

Echoing the Chanter's proposition that positive laws (i. e. "men's decrees"), by their very nature, lacked permanence, and thus were subject to variation.¹⁷⁹ the Council moved to alter the Church's laws on consanguinity and affinity in order to respond to the "changing circumstances" of the times. The Council's promulgation of Canon 50, which reduced the prohibitions on incestuous unions, put into place the precise proposals advocated by Peter the Chanter and the Parisian theologians who followed him. In doing so, the Church brought to an end a long and complex evolution of canon law concerning incestuous unions and set prohibitions at limits that would remain unaltered for seven hundred years.

Chapter Three

Marriage Disputes between Papacy and Monarchy, 996-1106

The preceding overview of the development of the Church's consanguinity and affinity laws has attempted to highlight a trend which began in the eleventh century and reached its apogee in 1215 with the promulgation of the decrees of the Fourth Lateran Council. That trend involved, in general, a marked increase of interest and involvement by the Church in the marriage practices of the faithful throughout western Christendom. In particular, it witnessed a significant increase of Church involvement in cases dealing with marriages between close kin. The most celebrated instances of Church intervention during this period, and consequently, those for which we have the most information, occurred at the highest level of medieval society. These cases pitted the papacy against various royal houses of Western Europe.

Although evidence suggests that marriages between close kin occurred in varying degrees at both the aristocratic and lower levels of society as well, the focus of the following sections is limited to cases involving kings and popes for several reasons. First of all, as stated above, the sources for royal cases are more plentiful and thus allow for a more thorough and detailed evaluation of the factors that may have motivated both the lay and ecclesiastical participants. This naturally is important for the historian who attempts to reconstruct a given case accurately, but it also had a contemporary relevance which impacted the ability of the Church to enforce its incest laws. Although Church

officials had encouraged all the faithful to construct family trees in order to avoid contracting consanguineous unions as early as the council of Ingelheim in 948.¹⁸⁰ this practice does not seem to have been widespread below the level of the royal or high aristocratic houses until much later. As a result, knowledge of one's more distant blood relations for most members of medieval society, cannot have been very extensive. Certainly knowledge of one's relatives up to the seventh degree, the farthest extent of the Church's prohibitions, must have been extremely difficult to ascertain for the lower sectors of medieval society who hardly possessed the motivation or the means of calculating, recording and preserving their lineage. Of the relatively small number of cases for which we have evidence from the tenth to the thirteenth century dealing with consanguineous unions below the royal level, most show the couples to have been ignorant of the existence of blood ties within the prohibited degrees at the time of the union.¹⁸¹ The Church attempted to combat this by requiring such practices as the publishing of wedding bans prior to the ceremony as a means of detecting impediments. Wedding bans were announcements of the betrothed couple's intention to marry, stated publicly over a period of three Sundays prior to the wedding in order to give a wider public than those present at their engagement the opportunity to bring forth objections to the proposed union.¹⁸² In the meantime, the priest was directed to pursue his own investigation into the couple's suitability for marriage.¹⁸³ This procedure, however, did not become a common practice until the thirteenth century, when it was incorporated into canon law at the Fourth Lateran Council.¹⁸⁴ Hence the Church's ability to monitor and enforce its far-reaching prohibitions against consanguineous unions below the aristocratic

level of medieval society were greatly inhibited by a lack of genealogical records. In addition, even where an impediment may have been known, the means to regulate such unions had to await the extension and enhancement of the Church's jurisdictional authority as well as the development of its ecclesiastical court system, both of which still lay in the future.¹⁸⁵

In contrast to this, the royal genealogies of European monarchs were recorded and monitored carefully. Knowledge of royal lineages held an obvious importance to any reigning monarchical house for dynastic reasons. This not only benefited the immediate royal family, but also more distant relatives of the king, since blood ties to the royal house potentially could carry considerable political and social weight. In fact, the complex web of blood ties between members of royal houses, even distant relatives, appears to have been a matter of considerable knowledge among a wide sector of medieval society. This seems to have been particularly true among the Church hierarchy for whom such information made it much easier to calculate the genealogies of royal houses for ecclesiastical purposes. An outstanding example that will be examined in more detail below, concerned Bishop Ivo of Chartres, who was capable of tracking the family tree of King Henry I of England as far back as the sixth generation to determine the suitability of a prospective marriage partner for his daughter.¹⁸⁶ As this example demonstrates, access to such information greatly enhanced the Church's ability to detect the existence of a consanguineous union at the royal level.

A second reason for focusing narrowly on the cases dealing with popes and kings, which will be more fully developed below, concerns the impact which royal behavior had

on the aristocratic and lower orders of society. Integral to the argument of this thesis is the notion that the marriage practices of kings and princes were emulated by the aristocracy, which in turn slowly reverberated down to the lower classes.¹⁸⁷ Because royal marriages were momentous events in the life of a kingdom, generating widespread attention, a union tainted by consanguinity that went unchallenged by the Church might naturally give rise to confusion and set a misleading precedent for the rest of the populace. Thus the monarchical tendency to disregard ecclesiastical laws against consanguineous unions, which was particularly prevalent from the end of the tenth century to the Fourth Lateran Council in 1215, potentially inhibited the Church's ability to enforce prohibitions across the entire spectrum of Christian society. However, by challenging consanguineous marriages at the royal level and attempting to make highly visible examples of kings, the papacy was able to effectively communicate its prohibitions against such unions much more extensively. Also, papal use of the ecclesiastical weapons of excommunication and interdict against recalcitrant monarchs affected not only the king but also his kingdom, since the interdict resulted in a general suspension of the sacraments among the entire populace. This proved an effective means of reinforcing, on a wide scale, the consequences of contravening Church laws against consanguineous unions.

The following two sections will focus on a selection of important, high profile cases involving consanguineous unions within the royal houses of Europe which resulted in papal intervention during the transitional two hundred year period from the eleventh to the thirteenth centuries. The cases presented here highlight the Church's shift from a

general policy of strict enforcement of prohibitions against consanguineous unions in the first half of the period to a more lenient policy of granting dispensations in certain cases in the second. An attempt will be made to examine and compare the various circumstances and the outcomes of each case, to highlight the problems faced by popes when judging them, and to evaluate the possible motivations that may have influenced papal decisions. Furthermore, an examination will be made of the tools and procedures developed by the papacy for hearing cases that dealt with consanguineous or affinal unions and for enforcing and disseminating papal decisions and authority. Additionally, the cases as a whole will be analyzed in order to determine whether a general pattern may have existed in the Church's policy regarding consanguineous unions. What circumstances led to the granting of dispensations and how did the Church use them to advance its theological aims for governing the institution of marriage? How did the European monarchs ultimately take advantage of the Church's laws as a means of procuring divorces? Lastly, an attempt will be made to examine the reasons behind the Church's decision to modify the prohibitions against consanguineous and affinal unions at the Fourth Lateran Council.

1. Robert the Pious and Bertha of Burgundy

At the end of the tenth century on the eve of the great reform movement that was destined to alter the papacy's position within the power structure of Western Europe, a

papal dispute arose over the issue of consanguinity which proved to be a harbinger of future events. It involved the Capetian dynasty of French kings who, following the death of the last Carolingian ruler, Louis V, had only recently succeeded to the West Frankish throne with the election of Hugh Capet in 987. Three years after his election, Hugh arranged a marriage between his fifteen-year-old son, Robert, and the daughter of King Berenger II of Italy, Rozalla-Suzanna.¹⁸⁸ Although Hugh had gone to considerable lengths to secure a bride of royal blood for his son,¹⁸⁹ the marriage did not last, possibly because of the considerable age distance between Robert and the much older Rozalla-Suzanna.¹⁹⁰

The couple separated in 991, and five years later, around the time of his father Hugh's death, Robert married Bertha, the daughter of Conrad, the king of Burgundy. This marriage, however, was tainted by incest, since Robert was related to Bertha within three degrees of consanguinity. Within a year of its celebration, Pope Gregory V convened a council at Pavia and condemned the union of Robert and Bertha despite the fact that the Archbishop of Tours had consecrated the marriage.¹⁹¹ Robert, who by all contemporary accounts possessed a reputation for great devotion and piety, apparently became greatly disturbed by the pope's censure.¹⁹² Although he sent a delegation to Rome headed by the monk, Abbo of Fleury to negotiate the issue, however, he did not separate from Bertha. At the council of Rome in 998, Gregory issued a suspension against the Archbishop of Tours and all other bishops who sanctioned the marriage. Against Robert, however, he merely imposed a seven-year penance, although he did threaten anathema against the king if he continued to disregard the papal injunction.

Robert's relationship with Bertha over the next several years is unclear. It appears, however, that despite the pope's condemnation of the marriage, the two remained together because the censure remained in place until Gregory's death in 999, and then continued under Gregory's successor, Sylvester II (Gregory's threat of anathema was apparently never carried out). In addition, a charter dated for the year 1001 contains the names of both Robert and Bertha.¹⁹³ Yet in 1004, shortly after the death of his first wife, Rozalla-Susanna, Robert married a third time. His new wife, Constance of Arles, possessed ties to the Carolingians through her mother Adelaide, who had been briefly married to Louis V, the last Carolingian king. Robert remained with Constance until his death in 1031, and the marriage produced two sons. However, one source reports that Robert briefly attempted to return to Bertha in 1010 which indicates that some sort of relationship may have continued to exist between the two even after Robert's marriage to Constance.¹⁹⁴

At the time of these events, the Church's position with regard to both the number of prohibited degrees of consanguinity and the means of calculating them was in its final stage of evolution (Alexander II would firmly establish the prohibition to the seventh degree according to the canonical method by the middle of the eleventh century). Robert's relationship to Bertha, however, was within the third degree of consanguinity and so fell easily within the hardening bounds of the Church's prohibition. It is difficult to gauge exactly what Robert's intentions were in sending a delegation to Rome following Gregory V's condemnation since at this early date no record exists of the papacy granting dispensations in cases of consanguinity and affinity. Indeed, the

papacy's prerogative to dispense from canon law, in both theory and fact awaited both the future revival and expansion of legal studies, and the enhancement of papal judicial authority and institutions to act in such a capacity, which came out of the Gregorian reform movement. However, in evaluating Robert's possible motivations, several factors stand out which appear to have exerted a strong influence over the French king's actions.

First of all, at the end of the tenth century, the Capetians were still very weak, controlling little more than the Isle de France, the small island of territory that surrounded Paris. The fledgling Capetian monarchs were surrounded by powerful dukes, whose large territorial possessions and fierce autonomy enabled them to effectively challenge royal authority within their jurisdictions. In order to counterbalance this threat to royal power, the Capetians looked to the Church and to a lesser extent, the papacy to legitimize their position as divinely ordained successors of the Carolingians.¹⁹⁵ In the absence of material wealth and resources, the support of the pope served to buttress their royal authority to rule over the West Frankish kingdom. Since the Capetians were still only recent claimants to the French throne, and their dynasty remained in a fragile position, they certainly could ill afford to jeopardize the support of the pope. However, Robert's marriage to Bertha brought about the very strain that the Capetians were hoping to avoid. In light of this, Robert's delegation to Rome clearly was an attempt to temper Gregory's harsh opposition to the marriage in order to maintain friendly relations with the papacy, which were vital to the Capetians' survival.

A second factor, even more vital to the Capetian's hold on the French crown was Robert's pressing need to produce a legitimate heir to succeed him as king.¹⁹⁶ His first

wife, Rozalla-Susanna had failed to bear him the desired son: this, coupled with the fact of their age difference, most likely prompted Robert to repudiate her. Robert's second wife Bertha was closer to his age, possessed a suitably distinguished lineage and, as seems clear from later events, the two shared a strong attraction for each other. These factors no doubt played a part in the king's decision to ignore the Church's consanguinity prohibitions in the first place, and then later, in the face of continued papal opposition, to refuse to disavow the union.¹⁹⁷

However, when after seven years, Robert's marriage to Bertha failed to produce any offspring, the French king was again compelled to take action to protect the interests of the Capetian dynasty. Robert separated from Bertha and married Constance who over the next several years fulfilled the king's urgent desire for heirs to the French throne by giving him two long-awaited sons. In a strange twist of circumstance, Robert's separation not only helped to secure the Capetian succession but also brought him back into compliance with the papacy's long standing demand that he terminate his relationship with Bertha. Thus, Robert was able to reconcile himself to the Church and at the same time achieve his dynastic aims. Although Robert's actions mended relations with Rome, nevertheless, the French king's overriding motivation for repudiating Bertha in favor of Constance clearly seems to have been to secure the Capetian succession with a legitimate heir. To accomplish this objective he was willing to subordinate all other considerations, which included the loss of papal political support, his personal desire to remain obedient to Church law, and even his seemingly strong feelings toward Bertha.

On the side of the Church, popes Gregory and Sylvester throughout the course of Robert's marital affair, remained firm in their position that the king's marriage to Bertha was invalid. Despite Rome's opposition, however, the French king was able to act freely, unencumbered by the ecclesiastical censures that the papacy attempted to impose upon both him and his subjects.¹⁹⁸ For, although the pope was revered throughout Christendom as the spiritual head of the Church, effective papal jurisdiction at the end of the tenth century was still largely confined to Rome and its environs.¹⁹⁹ As was stated earlier, although Pope Gregory threatened to excommunicate Robert, and place an anathema on France, no such action was ever actually carried out against the king.

The papacy's opposition to Robert's union was clearly motivated by the closeness of their blood ties, which was an obvious contravention of the Church's incest laws. However, several other motives have been suggested which may have contributed to the papacy's obstinate perseverance in its long and frustrating battle with the French king. Duby argues that Pope Gregory, who was the cousin of the German emperor, Otto III, used the charge of consanguinity to "blackmail" Robert into repudiating his marriage with Bertha.²⁰⁰ According to this reasoning, the pope and the emperor sought to prevent the union because they viewed it as an attempt by Robert to enhance the legitimacy of the Capetian dynasty by introducing Carolingian blood into its line through Bertha (the granddaughter of the Carolingian King, Louis III). However, the Capetians already possessed blood ties to the Carolingians through Rosalla-Suzanna, who was a descendant of Charlemagne.²⁰¹ In addition, in comparison to the Capetian's weak position in France at the end of the tenth century, the Ottonian rulers were at the height of their power.

Neither Otto nor Gregory had any real reason to feel threatened by the king of France who was busy defending the royal patrimony against the encroachment of powerful local lords. On the contrary, the Ottonians appear to have originally supported the Capetians' bid for the Frankish crown in order to further their own territorial aspirations in the west. This support apparently paid off, for once Hugh Capet was elected as king of West Francia, he gave up all claims to the province of Lotharingia, a territory which had been the subject of a long standing battle between the Ottonians and the Capetians' predecessors, the Carolingians.²⁰²

In addition, Emperor Otto III and Pope Gregory, despite cooperating in their efforts to promote reform in Germany, did not always share similar views in other areas. Gregory, a zealous reformer, sought to establish his independence from the emperor, and his attempts to further his own ecclesiastical agenda of reform at times set him at odds with Otto.²⁰³ Furthermore, during the latter period of Robert's reign, the relations between the German and French polities grew much closer. At one point, Robert and Otto's successor, Henry II, planned to come together at a projected council for the purpose of ecclesiastical reform, but the meeting never took place due to the death of Robert in 1031.²⁰⁴

Another possible reason for Gregory's actions has been sought in a series of events which took place within the episcopal politics of the West Frankish kingdom before Robert became king. In 991, Robert's father, Hugh, in defiance of papal wishes, deposed bishop Arnulf of Rheims, who had supported Hugh's rival for the French crown, Charles of Lorraine. Hugh replaced him with a pro-Capetian candidate, Gerbert. Despite

papal opposition to Gerbert's elevation to the bishopric, he retained his episcopal seat at Rheims and continued there as bishop into the reign of Robert. The motive behind Gregory's condemnation of Robert's marriage is thus seen to be the result of the lingering strife and ill feeling that this affair caused between the papacy and the French monarchy. However, it is by no means apparent that Rome's opposition to Hugh's actions created a deep-seated or lasting animosity between Gregory and Hugh, or that such animosity carried over into Robert's reign following the death of Hugh in 996. First of all, Gerbert, Hugh's candidate to replace Arnulf, had strong ties to the pro-papal court of the Emperors Otto II and Otto III.²⁰⁵ Otto III lent his support to Gerbert during the Rheims affair and as a consequence of this, Gregory V removed Gerbert from Rheims and elevated him to the archbishopric of Ravenna in 997.²⁰⁶ Concerning Robert's marital dispute, during the time he spent in France as bishop of Rheims, Gerbert in fact sided with the papacy on the issue by voicing his opposition to Robert's union with Bertha.²⁰⁷ Gerbert himself later became pope following the death of Gregory in 999, taking the name of Sylvester II. As has been seen above, while holding the papal office, he maintained his opposition to Robert's marriage.²⁰⁸

Despite the successful outcome of the affair from the papal perspective, the inescapable conclusion remains that papal attempts to intervene over the course of the affair proved to be largely ineffective. Consistent with the pervading political and ecclesiastical reality of the time, the papacy was not yet strong enough to impose its position with authority in matters such as marriage, which continued to be viewed by lay kings and aristocrats as a purely secular concern. Papal authority in fact was so weak in

France that the Archbishop of Tours, who at the outset of the affair sanctioned the union of Robert and Bertha, was able to successfully ignore Gregory's suspension over the issue of the king's marriage.²⁰⁹ Whether Robert's eventual separation from Bertha was motivated by Bertha's inability to give him a son to succeed to the throne, or whether it was due to his own spiritual remorse over the situation, it does not appear that he was compelled to succumb under the pressure of papal authority.

2. William of Normandy and Nicholas II

The papacy's position within the political sphere of western European powers began to experience a perceptible shift towards the end of the fifty-year period that separated the pontificate of Gregory V and Leo IX (1048-1054). The short reigns of Leo's predecessors, Clement II and Damasus II, both of whom had come to Rome with the German Emperor Henry III in 1046, prevented them from initiating any type of permanent modification to the papal office.²¹⁰ It was left to Leo IX to fully launch the ambitious plan for reform which was destined to transform the papacy's position within the western Church. Leo and his circle of reforming German clergymen loosely modeled their program on the monastic reform movement that had swept through France and Germany during the previous century, and had given rise most notably to the new order of Cluniac monks.²¹¹ Over the next one hundred and fifty years, the papacy would be propelled to a position of unparalleled spiritual and temporal authority under the

leadership of a series of talented, zealous popes, and supported by a newly centralized, efficient curia.

Leo, who succeeded Damasus in 1048, was the first pope in over two hundred years to cross the Alps in an attempt to make the papacy's presence felt in the ecclesiastical regions of Northern Europe.²¹² At a council held at Rheims in October of 1049, Leo attempted to assert papal authority in a marital affair involving William, the Duke of Normandy (and future King of England). The pope issued a prohibition against a projected marriage between William and Mathilda, the daughter of Count Baldwin V of Flanders.²¹³ Although the precise nature of the impediment was not specified in the council's report, it is generally held that the marriage was forbidden on grounds of consanguinity that existed between William and Mathilda. Three theories have been formulated as to the precise nature of William and Mathilda's consanguineous ties, but the one most agreed upon by scholars (though it is not definitive) postulates that the two were related through William's grandfather, Richard the Good. Mathilda's grandmother, Eleanor, who married Count Baldwin IV of Flanders, is thought to have been Richard's daughter. Mathilda would thus be related to William within three degrees. The contemporary chronicler, Ordericus Vitalis alludes to the consanguineous nature of the relationship, and it is further supported in the writings of William of Jumièges.²¹⁴

Nonetheless, despite Leo's prohibition, the two were married sometime before 1053 and as a result, were placed under ecclesiastical ban. William, likewise, faced opposition to the marriage from the Norman Church which, unlike the French episcopacy in the case of Robert fifty years earlier, supported the papal position.²¹⁵ The situation

changed in 1059, when through the mediation of Lanfranc, the abbot of Bec, Pope Nicholas II (1059-61) granted William and Mathilda a dispensation, on the condition that they each construct and endow a monastery at Caen.²¹⁶ The couple agreed to comply with Nicholas's demand, and in 1060 the ecclesiastical ban was lifted. The two resulting monasteries, the abbey of St. Etienne and the nunnery of St. Trinité, were both completed and consecrated by mid-1066, on the eve of William's expedition across the channel to capture the English throne.

The reconciliation between William and the papacy was, to a considerable extent, brought about by political conditions which prevailed in the decade preceding William's conquest of England. At the time of Leo IX's original condemnation of the proposed marriage between William and Mathilda in 1049, the papacy was closely allied to the German empire.²¹⁷ Leo, formerly Bishop Bruno of Toul, had originally been put forth as a papal candidate by Emperor Henry III, his cousin. The emperor supported the papacy, both in its ecclesiastical reform program and in its territorial struggle against the Norman invaders of Southern Italy. Leo may have been inclined to oppose William's marriage as part of an overall anti-Norman policy, since William still had ties with his Norman cousins in the south.²¹⁸ But the pope and the emperor might have also felt threatened by William's alliance with Baldwin, the count of Flanders. Baldwin at this time was shifting his focus away from the Empire and towards France. A marriage between Baldwin's daughter, Mathilda, who was the niece of Henry I, the king of France, and William, who at this time was the French king's loyal vassal, may have been viewed as a potential threat to the empire.²¹⁹

By the time Nicholas II became pope in December of 1058, the situation had changed significantly. The papal-imperial alliance had suffered a major setback in June of 1053 when Leo IX's army suffered a humiliating defeat against the Normans at Civitate and Leo was forced to spend a year in a Norman prison.²²⁰ Three years later, Henry III died leaving his six-year old son Henry, on the imperial throne. Immediately following his election as pope, Nicholas sought to take advantage of this lull in the empire's leadership to effect a radical change in the political alliance of the papacy. He shifted away from reliance on the Holy Roman Empire as papal protector and turned to Rome's former enemies, the Normans of Southern Italy.²²¹

The political scene in Normandy, likewise, underwent a significant shift in the ten year span between William's marriage and his reconciliation with the papacy. William's position in Normandy at the time of his betrothal to Mathilda was far from secure, despite the fact that he had only recently defeated a coalition of hostile Norman counts with the help of the French King Henry I. at Val-ès-Dunes in 1047.²²² His position was further imperiled when, five years later, Henry, turned against him (in alliance with the powerful count of Anjou, Geoffrey). In the decade long war for survival that ensued, William's alliance to Baldwin, the count of Flanders through his marriage to Mathilda took on added importance. The hostilities between William and Henry continued on and off until Henry's death in 1060, but the duke permanently gained the upper hand following a decisive victory at Mortemar in 1054.²²³ By 1059, William's control of Normandy was undisputed and he had already begun to focus his attention across the Channel at his chances of becoming Edward the Confessor's successor to the English throne.²²⁴

It is against this backdrop of events that the reconciliation of William and the papacy should be placed. Nicholas viewed friendly relations with the Duke of Normandy as a key component in his overall plan to cement the papacy's alliance with the Normans of Southern Italy. As such, he was willing to legitimize William's marriage to Mathilda by means of a dispensation in order to gain his support for the alliance. William, on his part, was also eager to mend the breach with Rome. In order for him to gain legitimacy in his bid for the English throne, it was vital that William obtained the support of the papacy. As the English historian, Sir Richard Southern so aptly observed: "Events were to show that papal support at the time of the Norman invasion of England was of the utmost importance for its success: so it was a correct appreciation of the situation on both sides which brought them together at this time. Both the duke and the pope were in a hurry."²²⁵

Thus the political factors which influenced Pope Nicholas' granting of a dispensation in the marriage of William and Mathilda were of considerable importance. However, in addition to political considerations, Nicholas also possessed powerful ecclesiastical motives, which lay behind his efforts to mediate a successful resolution to the duke's marital affairs. When he took the step of shifting his alliance away from the Empire, the pope wished to eliminate imperial interference not only in political affairs but also in ecclesiastical ones. The most evident example of this lay in his creation of the Electoral College of Cardinals in 1059 in an attempt to exclude the participation of both the German emperor and the Roman nobility from the papal election process.²²⁶ The larger objective of the papal reform program, which began to gather momentum during

the pontificate of Nicholas II, however, aimed not only at asserting the papacy's independence from lay control but also sought to enhance Rome's authority in matters that it considered primarily ecclesiastical in nature.²²⁷ Marriage was one such sphere into which the Church was to make decisive inroads against secular control over the next two hundred years and it is precisely at this time that ecclesiastical interest and involvement in this area increased dramatically.

Nicholas was certainly an astute participant in the politics of his age, but he was also deeply committed to the spiritual aims of the reform movement. He asserted papal leadership in the theological controversy over the Eucharist instigated by Berengar of Tours.²²⁸ He sought to hold the clergy to higher moral standards by passing strong legislation against simony and clerical marriage.²²⁹ Directly pertinent to the marriage of William and Mathilda, he promulgated a decree prohibiting consanguineous unions up to seven degrees at the council of Rome in 1059.²³⁰ In the same year, Nicholas assumed the role of judge over the legitimacy of William's marriage in a case, which it is generally agreed involved this very issue. In granting William a dispensation, Nicholas made one of the earliest successful attempts to assert the supremacy of papal authority in the marital affairs of a powerful lay ruler. In William's case, Nicholas demonstrated that papal prerogative might even supersede the authority of previously enacted conciliar law (in this instance, Nicholas' own legislation).²³¹

However, it would be presumptuous and inaccurate to assume that Nicholas' prime motive for his involvement in the marital affairs of William and Mathilda was to assert the superiority of papal authority in marriage issues. As has been shown above,

politically much was at stake for both the pope and the duke. Yet Nicholas's action also demonstrated the considerable degree to which the prestige and scope of papal jurisdictional power had been enhanced since the time of Robert the Pious. By assuming the role of supreme judge concerning the legitimacy of the Duke of Normandy's marriage, Nicholas successfully set the papacy up as the final authority in what was still largely a secular sphere.

3. Philip I of France and Bertrade

Once the papacy began to actively involve itself in the marital affairs of the European royal houses, the pace of this involvement increased rapidly. The papal reformers, who viewed the extension of papal judicial power as a vital cornerstone of the papal reform program, began laying down the foundations for this extension during the pontificate of Gregory VII. The earliest statement of papal jurisdictional primacy can be found in Gregory's memorandum, *Dictatus Pape*, issued in 1075. In it Gregory draws on the writings of Pope Gelasius I (c. 496), and the traditions stemming from the pseudo-Isidorian decretals to claim papal jurisdiction over all other churches.²³² Gregory further asserts that "the pope's sentence must be retracted by no one," and the pope himself "must be judged by no one."²³³ During his pontificate, Gregory took on the role of judge in several matters involving consanguineous unions among the high aristocracy of Italy and elsewhere.²³⁴ The next major struggle between the papacy and a European monarch,

however, came during the pontificate of Urban II (1088-1099) and Paschal II (1099-1118), and again it involved the Capetian dynasty of France.

In 1072 Philip I of France (the grandson of Robert the Pious) married Bertha, the daughter of a Frisian duke. Over the next twenty years, Bertha gave Philip two children, a son and a daughter. However, for reasons that remain unclear, Philip repudiated Bertha in 1092 claiming that an impediment of relationship existed between him and his wife.²³⁵ In the same year, the king began a relationship with Bertrade, the wife of one of his vassals, Count Fulk of Anjou. The sources disagree as to whether Philip initially forced Bertrade into the relationship, or whether she willingly took up with the king.²³⁶ Whatever the circumstances may have been that brought the two together, the papacy and the stricter members of the French clergy promptly censured the union, charging Philip not only with adultery (since Count Fulk was still alive), but also with the charge of incest. Philip and Fulk were related within three degrees of blood relationship, which caused Bertrade to be related, through her marriage with Fulk, to Philip in the third degree of affinity. The king responded to these charges by issuing threats to those among the French clergy who remained reluctant to support him and by throwing Ivo of Chartres, the most vocal bishop among the opposition, into prison.²³⁷

At any event, the two were married sometime before 1094 and Philip persuaded the bishop of Senlis to consecrate the union.²³⁸ Pope Urban II reacted to the marriage by condemning Philip's actions as "public adultery," by chastising the French episcopacy for its acquiescence in the matter and threatening the French king with interdict if he did not release Ivo at once.²³⁹ Early in 1093, Philip complied with the pope's demand for Ivo's

release, at the same time sending his royal chamberlain, Wido, to Rome to mediate a resolution to the affair. The negotiations between the two powers broke down, however, and in 1094 the papal legate, Hugh of Die excommunicated Philip at the synod of Autun.²⁴⁰ A year later in 1095, Pope Urban, in the face of continued disobedience by Philip, reaffirmed the sentence at the council of Clermont.²⁴¹

The king and pope were briefly reconciled twice before the death of Urban II in 1099. The first occurred when the two met at the Easter council held at Nîmes in 1096 and Philip renounced his relationship with Bertrade. This endured only a short time, however, for Philip soon returned to Bertrade and as a result of this, the Archbishop of Lyons, Hugh of Die, who was still acting as papal legate, renewed the excommunication in 1097.²⁴² A second reconciliation took place the following year when the king again gave satisfaction to the pope. This remained the state of affairs until the death of Urban in 1099.

The situation again changed following the accession of Urban's successor, Paschal II, to the papal throne, when Philip once again rejoined Bertrade. Paschal sent legates to France to look into the matter of the king's compliance with his pledge to remain separated from Bertrade. As a result of the investigation, a council was convened at Poitiers in 1100, and the papal legate, John, excommunicated Philip for the third time.²⁴³ The opposition and threats of violence directed by the count of Poitiers against the assembled clergy who pronounced the sentence against the king indicate that Philip in the intervening period seems to have won much support among both the French laity and much of the ecclesiastical community for his marriage.²⁴⁴

Over the next four years, a faction of the French clergy led by Ivo of Chartres worked to mediate an end to the schism between Paschal and Philip.²⁴⁵ Their efforts bore fruit in August of 1104 when, at a synod held in Orléans, Philip and Bertrade agreed to separate.²⁴⁶ Several months later, both appeared before an assembly of French clergy at Paris where, by means of a papal letter, Paschal confirmed the actions of the French episcopacy and granted Philip and Bertrade absolution. The two swore to end all intercourse between them (*colloquium et contubernium*), thus bringing to a successful conclusion the papacy's twelve-year struggle to enforce the Church's position in the face of powerful resistance from the French king.²⁴⁷

The marriage of Philip and Bertrade has proven to be a rich source of information concerning the Church's evolving attitude regarding medieval marriage practices. As a result of this, it has been the focus of much scholarly attention in the past few decades.²⁴⁸ For the more narrow purposes of this study, the following section will analyze in depth three aspects of the case which relate to the development of papal attitudes towards consanguinity and affinity. First, this section will focus on the political factors that played a role in the positions of both the papacy and the French king concerning Philip's repudiation of his first wife and his remarriage. Secondly, it will undertake an examination of Philip's marriage in light of the growing conflict between the marriage practices of European monarchs and aristocrats and the evolving Church law governing marriage. Third, it will attempt to highlight those aspects of Philip's case which illustrate the development at this time of the papal judicial and legislative machinery as a means of

enforcing the new marriage laws, and in particular, the Church's laws concerning consanguinity and affinity.

At the time of Philip's repudiation of Bertha and his remarriage to Bertrade, the papacy was occupied by Urban II, a former Clunaic monk who through his support of Gregory VII's reform program rose to the positions of cardinal bishop and papal legate before becoming pope.²⁴⁹ Urban was elected pope in 1088 in the midst of the conflict between the papacy and the emperor, Henry IV, over lay investiture. As a result of his allegiance to the Gregorian program of reform, Urban placed himself at odds with Henry and was forced to spend the earlier part of his papacy in exile. The pope's patience and resourcefulness, however, eventually enabled him to gain the advantage over Henry and his anti-pope, Clement III, and by the end of 1093 he was able to re-enter Rome. Urban's pontificate, in fact, proved to be a turning point for the beleaguered reform movement, which since Gregory VII's death had suffered serious setbacks.²⁵⁰ His restructuring of the Gregorian program proved instrumental in reversing its declining fortunes.²⁵¹ The papacy not only regained the upper hand against the opposition of the emperor during Urban's tenure as pope, it was also able to maintain good relations with other European rulers, thanks to the pope's accommodating policies and moderation.²⁵²

Perhaps the best known and most important assembly to occur during Urban's pontificate was the council of Clermont, which was called by the pope in 1095 for the purpose of launching a crusade to liberate Jerusalem from Muslim control.²⁵³ As has already been seen, Urban utilized the same council to publicly reaffirm the excommunication of Philip for his marriage to Bertrade on the grounds of incest and

adultery.²⁵⁴ That Urban chose this occasion to pronounce this sentence against Philip is noteworthy for several reasons. First of all the council was held in France where King Philip appeared to enjoy considerable support for his marriage from both laity and clergy. Urban thus took a chance that such a potentially unpopular move might endanger the success of the council's main objective, the calling of the crusade. Secondly, Urban must certainly have been cognizant of the fact that the cooperation of Western Europe's leading rulers would both enhance the prestige of such an undertaking as well as increase its chances of success. Yet, his continuing conflict with Henry IV precluded the possibility of aid from the German kingdom.²⁵⁵ The successor to William the Conqueror in England, William Rufus, showed no interest in taking up the crusading banner (although his older brother, Robert Curthose, did ultimately join).²⁵⁶ At the time of his summoning of the first crusade, Urban's relations with the French crown were perhaps the friendliest and closest to any royal house in Europe.²⁵⁷ Yet the pope's excommunication of Philip opened up a serious breach with French king and effectively eliminated the possibility of his cooperation as one of the leaders of the crusade at a time when Urban had few supporters among the rulers of Western Christendom. As events turned out, Philip ultimately did not take part in the crusade, and Urban's sentence certainly contributed to the loss of the French king's support.

In comparing Urban's situation with that of his predecessor Nicholas forty years earlier, several similarities are readily apparent. Both popes sought to intervene in the marital affairs of a powerful European ruler by evoking the papacy's right to rule on the legitimacy of their marriages. Both interventions came on the eve of momentous military

undertakings that carried with them tremendous political ramifications. Nicholas ruled on William's marriage on the eve of the Norman duke's invasion and conquest of England, and Urban ruled on Philip's situation at the same assembly which he utilized to launch the first crusade. Both popes stood to achieve a political advantage by ruling favorably in their respective cases. Yet Urban, unlike Nicholas, did not grant a dispensation in Philip's marriage to allow him to remain with Bertrade. Instead he chose to enforce the Church's laws on marriage in a situation where it might have been politically expedient to either overlook Philip's relationship or adopt a more conciliatory approach in order to gain Philip's support. Whereas Nicholas chose to grant a dispensation in the case of William of Normandy's marriage in order to gain, at least in part, a political advantage, Urban did not consider such a move despite the fact that it might have earned him Philip's cooperation.

Nevertheless, both popes were consistent in their contention that Rome possessed the legitimate authority to intervene in the marital affairs of a secular ruler. Furthermore, although they exercised their papal powers in different ways, both Nicholas and Urban succeeded in defending the Church's position as the final authority on the institution of marriage. In Philip's case, the papal position remained firm throughout the pontificates of Urban and his successor, Paschal II. Neither succumbed to pressure from the French king, nor were they lulled into complacency over the issue by Philip's promises or by his temporary concessions. In the end this policy was successful.

The second point to be considered concerning Philip's marriage is that in repudiating Bertha and remarrying Bertrade, the French king was taking steps that, even

as late as the beginning of the twelfth century were not unusual for kings and aristocrats of the time.²⁵⁸ He was simply adhering to marriage practices that had long been a part of the monarchical tradition. His grandfather, Robert, in repudiating his first wife, Rosala-Suzanna, had been acting according to the same tradition. Kings held it to be their prerogative to behave in such a way for several reasons. First, before the era of reform in the eleventh century, the Church remained to a large extent at the mercy of powerful lay interests. The king's ability to appoint and invest bishops with their symbols of office was only one area where ecclesiastical concerns were in the control of secular leaders before the advent of Gregorian reforms.²⁵⁹ Also, the great synthesis of ecclesiastical canon law and its transformation into an instrument of papal authority was still only in its beginning stages. Ivo of Chartres, who participated in Philip's case, was one of the earliest compilers of canon legal texts and his work, the *Decretum*, would exert a tremendous influence over the movement to both systematize and institutionalize canon law.²⁶⁰ Yet, until the period following the dissemination of Gratian's *Decretum*, Church laws concerning issues of marriage and divorce were, to a considerable extent, still in flux.

Secondly, monarchs based their authority on the reigning theological principle of divine or "theocratic" kingship, which embodied the belief that the king was ordained by God to rule over his kingdom.²⁶¹ Interpreted from the royal standpoint, this gave the king authority to either personally dictate or control the ecclesiastical policy of his realm, or to act freely in areas where Church law remained ambiguous or silent. One such area involved the institution of marriage. Here, as we have seen, popes, bishops and

theologians were just beginning to address questions concerning the spiritual nature, formation and purpose of marriage. From the royal perspective, however, marriage considerations vitally impacted one of the king's most important political concerns - the continuation of the royal dynasty. If, for example, the king's present marriage was not serving the needs or future interests of the house (i. e. the queen was unable to produce an heir), he felt justified in resorting to whatever was necessary, including divorce or concubinage to ensure the continuity of succession.²⁶² This need to secure the dynastic succession appears to have played an important role in the marriage strategies of Robert the Pious and Philip Augustus.²⁶³ Since a disputed succession produced a highly unsettled situation, one which could easily result in disruption, bloodshed and even war, kings were often able to gain the support of the populace for irregular marital practices that, in the eyes of the Church, seemed questionable or objectionable.²⁶⁴

Although the bold marital practices of the Capetian kings of France frequently came under attack from the Church, they were far from alone among European rulers in utilizing such means to ensure the continuity of their dynasty. Their predecessors, the Carolingian kings had pursued marriage strategies that called for fluidity and flexibility in the sphere of marital relationships.²⁶⁵ The Ottonian and Salian dynasties of the east Frankish kingdom also used strategies such as close kin marriages and easy divorce as a means of ensuring the continuity of the house.²⁶⁶ Nor was the question of maintaining the dynasty the only consideration considered by kings when choosing marriage partners for themselves or their children. Marriages were arranged for purely economic reasons (such as the merging of lands and resources), for political reasons (such as the cementing

alliances with powerful vassals or other lay lords), and even military reasons (to end feuds).²⁶⁷

The aristocracy likewise began to pattern their marriage strategies after the royalty as they became more lineage conscious. This began occurring within aristocratic circles throughout Christendom, but it was particularly true in the west Frankish kingdom following the disintegration of the Carolingian Empire. As Georges Duby persuasively has demonstrated for the Maçonnais region of northern France, aristocratic society underwent a gradual shift over a period of two hundred years from the late ninth to the eleventh century.²⁶⁸ It moved from a horizontal construct where social status and mobility depended upon personal relationships and closeness to the royal house, to a more vertical construct where status was dependent upon blood, lineage and inheritance. Not only social status but property holdings were passed on, and safeguarded, by means of arranged marriages. Patterned to a certain extent after the example of the royal houses of Europe, the endogamous marriage practices of the aristocracy, used as a means of keeping property within the family, would likewise eventually lead to conflict with the new, more spiritual conception of marriage disseminated by the reformed papacy.

The more celebrated battles involving the Church's notion of sacramental marriage and the traditional lay conception of that institution, however, did not occur at the aristocratic level. It occurred at the level of Western Christendom's royal houses, among kings and princes.²⁶⁹ Ironically, although the Gregorian reforms were initiated through the patronage of Henry III, the greatest opposition to the papacy's reform agenda eventually came from the ruling dynasties of Europe who saw papal aims as an

encroachment on their divinely ordained sphere of authority. In its attempt to establish preeminence over secular rulers in what it considered ecclesiastical concerns, the Church, led by the newly powerful papacy, found its ability to assert its authority in marital affairs to be a valuable weapon.²⁷⁰

The Church also targeted kings and princes precisely because of their exalted position as God's elect (a concept that was to enjoy a long life). This position set them up as examples to be emulated by the rest of the populace.²⁷¹ Consequently, the Church felt justified in attacking Europe's royal houses, where the flagrant disregard of its marriage laws was not uncommon, in order to enforce at the pinnacle of the social order where influence was potentially the greatest, its concept of the permanence of marriage, its sacral nature, as well as its notion of what constituted a valid union. Philip's repudiation and remarriage took place in the midst of these contending social and theological dynamics, at a time when the lay tradition of marriage began conflicting with the new model of marriage being formulated by canonists and ecclesiastics and which would ultimately be embraced by the reformed papacy in Rome.

Also during this period the Church began developing the instruments with which to disseminate the ecclesiastical model, and more importantly, through which it could enforce its authority in questions of marriage. Two of the most important tools developed by the reformed papacy to extend its judicial authority throughout the farthest reaches of Latin Christendom were the papal synod and the papal legate. Both played an instrumental part in the papal efforts to uphold the charges of incest and adultery against Philip I and Bertrade. The papal synod of the pre-reform period was largely a local

assembly, involving bishops and prelates from Rome, its outlying suburbs and occasionally, from the surrounding regions of northern Italy.²⁷² A key transformation took place, however, during the pontificate of Leo IX, which resulted in the creation of one of the papacy's most important vehicles of reform, the universal synod. Unlike earlier papal councils, the universal synod was an assembly "attended by bishops from outside the Roman ecclesiastical province and from outside the imperial territories, an assembly under the sole presidency of the pope, the decrees of which were regarded as binding on the whole of Latin Christendom."²⁷³ Leo's council held at Rheims in 1049, at which he condemned William of Normandy's marriage, was the first such synod held by a reform pope to include bishops from outside of Italy and the Empire.²⁷⁴ It was also the first council through which the pope attempted to exercise his authority as supreme judge over the entire Church.²⁷⁵ Gregory VII accelerated the use of the universal synod as a tool of reform, calling several each year throughout his papacy.²⁷⁶

However, it was during the pontificate of Urban II that the influence and reach of the papal synod attained a powerful new dimension. Urban's councils, for the first time, "brought the churchmen of Latin Christendom in direct contact with the supreme judicial authority of the pope on a scale hitherto unknown."²⁷⁷ The synods of Urban's pontificate were able to accomplish this because they differed from previous councils in two ways. First, throughout almost Urban's entire pontificate, the Emperor Henry IV controlled Rome through the agency of his anti-pope, Clement III. Consequently, Urban was forced to spend most of his papacy in exile.²⁷⁸ This situation, however, did not prevent Urban from continuing the conciliar tradition begun by his predecessors. The pope overcame

this difficulty by holding the majority of his councils in cities away from Rome, predominantly in southern Italy and in France. In a manner reminiscent of the itinerant practices of kings, who perambulated incessantly throughout their realms to enforce their authority, enhance their charismatic image with the local populace and to cement their bond with local magnates, the pope was able to make his presence felt in churches by personally presiding over and exercising his papal authority in synods and councils distant from Rome.²⁷⁹

Moreover, evidence indicates that his councils were both larger and better attended than previous councils.²⁸⁰ Urban's pronouncements were consequently able to be disseminated more quickly and reach a wider audience of Catholics, both lay and ecclesiastic. Urban's council held at Clermont at which he pronounced his excommunication of Philip was perhaps the largest and most important of his pontificate, attended by ecclesiastics from all over Western Christendom. Clermont gave the pope an unsurpassed forum in which he could demonstrate his authority in front of a diverse group of leaders and ecclesiastics, as well as a means of speedily propagating his sentence.²⁸¹ At another papal council held at Nîmes in 1096, Philip humbled himself in person before Urban and agreed to separate from Bertrade. It seems highly likely that Urban's physical presence at the council contributed to Philip's acquiescence because shortly after the pope departed, the French king once again went back on his pledge and returned to Bertrade.

Urban's "wandering pontificate" also facilitated the use of another crucial tool of papal reform, the papal legate. The legate was a special envoy, usually a bishop or

cardinal drawn from the papal curia, commissioned by the pope to act as his representative to a specific kingdom or region.²⁸² Fully launched during the pontificate of Gregory VII, the papal legate was used by the reform papacy "on an unprecedented scale to implement its decrees and to promote its conception of the papal primacy throughout Christendom."²⁸³ Many of the popes during the reform period had previously acted as papal legates, including both Urban II and Paschal II who had headed legatine missions to Germany and Spain respectively before becoming popes.²⁸⁴ During Urban's conflict with Philip I, he utilized the French bishop, Hugh of Die as permanent papal legate to enforce the papal position concerning Philip's marriage.²⁸⁵ Acting as the pope's representative, Hugh called a council at Autun in 1096 after Philip went ahead with his marriage to Bertrade against the pope's command. At the council, following a short investigation, Hugh pronounced the sentence of excommunication against the French king.²⁸⁶ He renewed it the following year from his see at Lyons, where he continued to act as legate. Paschal II also utilized papal legates in his efforts to uphold his predecessor's sentence against Philip. He sent two legates to France, who convened a council at Poitiers and pronounced anathema against Philip, despite threats of violence by the local clergy.²⁸⁷ As will be seen below in the examination of Innocent III's pontificate, the use of both papal legates and the universal synod became an integral part of the papal judicial system. Together, they proved effective instruments in the service of papacy's efforts to stem the endogamous practices of European kings.

During the conflict between Philip and the papacy, although Philip was charged with three crimes, adultery, bigamy and incest, most contemporary criticism early

focused mainly on the king's "public adultery." Following the death of Philip's first wife, Bertha, however, the focus of Church leaders gradually shifted from the king's adultery and bigamy to the sole charge of incest, even though Bertrade's husband, Fulk, was still alive. Georges Duby has focused on the writings of Ivo of Chartres in particular to follow the progress of this shift.²⁸⁸ As has been seen, Ivo was an active participant in the affair of Philip and Bertrade as well as many other cases involving consanguinity and affinity. Over the course of his episcopal career, Ivo gradually came to be regarded by fellow ecclesiastics as a figure of authority in matters dealing with incest, advising Henry I of England and others, concerning their prospective marriage arrangements. Duby's examination of the bishop's letters reveal that in the case of Philip I, although Ivo initially attacked the king for his adultery and bigamy, he gradually switched to an emphasis on consanguinity as the main charge.²⁸⁹ Ivo's shift, Duby maintains, was directly tied to a growing movement emanating from the newly reformed Church and papacy to promote, above virtually all other considerations, the principle of indissolubility within marriage. In keeping with this trend, Ivo ultimately embraced the position that the king's adultery and bigamy were insufficient to dissolve Philip's consensual union with Bertrade. Incest thus became the only remaining impediment with which the Church could legitimately attack the validity of Philip's marriage. The Church's increased preoccupation with the indissolubility of the marital bond, which Duby highlights in his examination of Philip's case, was to have important consequences for the development of ecclesiastical laws against incest.

Although the debate over the permanent nature of marriage had existed within the Church from its earliest days, ecclesiastical leaders were slow to enact strong restrictions against divorce and remarriage.²⁹⁰ Both Augustine and Ambrose defended the indissoluble nature of marriage, citing Christ's admonition in the gospel of Matthew that remarriage following divorce constituted adultery.²⁹¹ Yet these practices continued to be tolerated throughout the early Middle Ages despite sporadic opposition from Church leaders and even lay rulers.²⁹² With the advent of the era of reform in the tenth century, the Church's position on indissolubility which had slowly crystallized over the preceding 900 year period, began to achieve a more institutionalized form, as it was gradually incorporated into new ecclesiastical law governing marriage.²⁹³ Along with the Church's efforts to prohibit consanguineous marriage practices, the principle of indissolubility became one of the fundamental tenets of a new ecclesiastical model of marriage, which the Church sought to promote. Where the two tenets came into conflict, however, instances of close consanguinity (i.e. within four degrees) continued to be viewed as legitimate impediments to a valid union. Thus the Church in certain circumstances upheld the impediment of consanguinity over the principle of indissolubility. In other circumstances, however, such as the committing of adultery by one of the marriage partners, Church leaders no longer *de facto* accepted such to be a valid reason for dissolving a marriage.

Moreover, what the Church did not anticipate was that over the next century, consanguinity would become a powerful tool in the hands of lay monarchs and aristocrats for the purpose of ending undesirable unions, thus undermining its campaign to promote

the indissoluble nature of marriage. Yet by the middle of the twelfth century the papacy was confronted with a marital dispute at the royal level that confronted precisely this issue, and once again it involved the Capetian rulers of France.

Chapter Four

Marriage Disputes between Papacy and Monarchy- 1148-1215

1. Louis VII and Eleanor of Aquitaine

The interest of the reforming Church in the eleventh century had early focused on the use of the impediments of consanguinity and affinity as a means of countering the traditional marriage practices of kings. This was part of a broader effort by the Church to assert its authority over the institution of marriage above the authority of secular rulers. About the time of the papacy's involvement in the marital affair of Philip I of France, a shift appeared within the movement away from a focus on the use of impediments such as consanguinity to a new emphasis on the indissolubility of marriage. Thus, in cases where mild consanguinity or affinity existed, in order to preserve the permanence of the union, the Church began resorting to the practice of granting dispensations. It thus held that, within certain parameters, safeguarding the indissolubility of a union was more important than the enforcement of the Church's incest laws. In cases where the nature of the impediment was not known when the couple was married, but only discovered later, a dispensation could be an effective and welcome means of preserving a marriage. Conversely, charges of consanguinity and affinity (both real and fabricated) also began to be used by kings and aristocrats as a means of procuring divorces to rid themselves of undesirable unions. Under these circumstances, the granting of a dispensation by the

Church, where the impediment was found to truly exist, was neither welcomed nor desired by those seeking a separation. By refusing or ignoring a dispensation, the party tacitly compelled the Church to adhere to its own laws against consanguineous unions, thus forcing it to acquiesce in situations which were counter to its policy of promoting the indissolubility of marriage.

Such a situation occurred in 1151, during the pontificate of Eugenius III involving the marriage of Louis VII of France and his wife, Eleanor. The two had been hastily married in 1137 shortly after Eleanor's father, Duke William of Aquitaine, died leaving the fifteen-year-old Eleanor as principle heiress of his strategic and valuable lands. The union between Eleanor and the seventeen-year-old Louis, heir to the French throne, achieved the political objective of joining the provinces of Aquitaine and Poitou to the royal domain. Eleanor, however, was related to Louis in the fourth and fifth degrees respectively, a fact which, despite the speed with which the wedding took place, may have been known at the time.²⁹⁴ The marriage apparently began to unravel in 1149 while the two were on crusade in the Holy Land. Although it is not entirely clear who was principally responsible for the breach, the root cause of the discord between Louis and Eleanor apparently resulted from their strikingly dissimilar personalities. Louis originally had been destined for the monastic life before his elder brother, Philip, died in a hunting accident, leaving him next in line to succeed to the French throne. His monkish personality, cultivated during his early years spent in the cloister set him sharply apart from that of his vivacious, worldly and ambitious wife, Eleanor.²⁹⁵

The initial difficulties between Louis and Eleanor occurred en route to Jerusalem in the principality of Antioch, which was ruled over by Eleanor's uncle, Raymond of Toulouse. Shortly after arriving in Antioch in the spring of 1148, Louis and Raymond had a falling out concerning the projected strategies and objectives of the crusading armies.²⁹⁶ In addition, Louis, who according to contemporary chroniclers "loved the queen almost beyond reason," became jealous over the attention that Raymond was paying to his niece Eleanor, who had been spending a considerable amount of time in the count's company.²⁹⁷ At this point, Eleanor announced her wish to remain in Antioch with her uncle, citing her close kinship with Louis as the reason why it was "not lawful for them to remain together as man and wife."²⁹⁸ Louis responded, however, by hastily departing Antioch for Jerusalem, and forcing his reluctant wife to accompany him. Nothing more is heard of the dispute between the king and queen for the duration of the crusade, which occupied Louis for the next year.

Passing through Italy in August of 1149 on their return voyage from Palestine, the two met with Pope Eugenius at Tusculum, and Eleanor, against the king's wishes, again raised the issue of separation from Louis on the grounds of consanguinity. Eugenius, however, after listening to the complaints of both parties sought instead to reconcile the royal couple. To the delight of Louis, the pope dispensed with the Church's prohibition and "forbade any future mention of their consanguinity: confirming their marriage, both orally and in writing, he commanded under pain of anathema that no word should be spoken against it and that it should not be dissolved under any pretext whatever."²⁹⁹

Eugenius then blessed their union and persuaded them to share their bed during their stay in Rome.

While Louis consistently opposed the idea of separation from Eleanor throughout this episode, it was the French king who three years later initiated the proceedings that resulted in his divorce from Eleanor on the grounds of consanguinity. Louis' terrible remorse over the issue of consanguinity is emphasized in the official French account. The most likely explanation for the king's change of attitude toward Eleanor, however, was the fact that over the course of their fifteen-year marriage the queen had given him no male heir.³⁰⁰ The Archbishop of Sens solemnly sanctioned the divorce at a synod held at the castle of Beaugency in March 1152. The cause officially cited for the separation was the consanguineous relationship between Eleanor and Louis, a fact witnessed to by the king's men. The sources do not record what reaction, if any, the divorce evoked from Pope Eugenius.

The ramifications of Louis' divorce from Eleanor were catastrophic to the political aims of the French crown, a fact commented upon by all contemporary sources.³⁰¹ Within eight weeks of her divorce from Louis, Eleanor remarried the French king's most formidable adversary, Henry Plantagenet, the count of Anjou, duke of Normandy and future king of England. Henry thus united his lands in Anjou, Poitou and Normandy with the Eleanor's province of Aquitaine, which had reverted back to her following the divorce. It seems highly improbable, however, that the possibility of such an alliance played any part in Eugenius' decision three years previously to reconcile Louis and Eleanor, since the prospect of Eleanor's union to the house of Anjou was at

that time remote. The motives for the pope's actions must be sought elsewhere. As has been seen above, the Church's increasing emphasis on the indissolubility of the marital bond began to accelerate at the end of the eleventh century, spurred on by the writings of Churchmen such as Ivo of Chartres. By the time of Eugenius' pontificate, indissolubility had achieved a preeminent place in the ecclesiastical definition of marriage. Eugenius was one of the earliest popes, whose decisions reflected the Church's new emphasis on indissolubility above other considerations such as adultery, impotence and, under certain conditions, consanguinity. In the case of the French king and queen, the contemporary account of John of Salisbury strongly suggests that Eugenius' main motive for involving himself in Louis and Eleanor's marital problems was for the purpose of guarding the permanence of their union.³⁰² To accomplish this he made use of a papal dispensation to nullify the impediment of consanguinity

Two other consanguinity cases which Eugenius took part in help to support this view of the Pope's attitude regarding indissolubility. The first case, which occurred in 1150, involved Hugh of Molise, the count of Apulia, who appeared before the pope in order to obtain the dissolution of his marriage on the grounds of incest.³⁰³ The precise relationship between Hugh and his wife cannot be determined because the identity of his wife is uncertain. Nevertheless, whatever truth Hugh's claim may have possessed, Eugenius refused to allow the count's witnesses to swear to the existence of consanguinity. Instead, in a scene reminiscent of his meeting with Louis and Eleanor a year earlier, the pope made an emotional appeal to reconcile Hugh to his wife.

According to John of Salisbury, who was an eyewitness to the scene, Hugh succumbed to the pope's plea and "bathed in tears, promised to obey with reverence and joy."³⁰⁴

A second marital dispute presided over by Eugenius involved Count Ralph of Vermandois, who repudiated his first wife, Leonara, on the grounds of consanguinity.³⁰⁵ and remarried Petronilla, the sister of Eleanor of Aquitaine. Leonara's uncle, Theobald of Champagne, successfully challenged the charge of consanguinity, and Ralph was excommunicated by Pope Innocent II in 1142.³⁰⁶ The pope ruled that Ralph's first marriage could not be dissolved and charged the count with adultery and bigamy. When Eugenius III became pope in 1145, he reconfirmed the sentence against Ralph, thus reiterating the principle of indissolubility with regard to the count's marriage to Leonara. The issue reemerged in 1148, when Louis VII took up arms against Theobald, successfully forcing him withdraw his opposition to the divorce. Under pressure from the French king, Eugenius was compelled to reopen the case. A series of rather peculiar hearings ensued, marked by the pope's reluctance to take part in the proceedings.³⁰⁷ In the end, however, Eugenius succumbed to the opposition of the king and count and pronounced Ralph's divorce to be valid. Although Eugenius ultimately gave in to the dissolution of the count's first marriage, he clearly was compelled to act against his will, and throughout the entire episode, the pope showed himself to be a hostile participant.³⁰⁸

Although the outcomes of all three cases Eugenius adjudicated produced different results, the pope's insistence in each case on the indissolubility of the marital union remained consistent. In the case of Hugh of Molise, Eugenius successfully prevented the divorce of Hugh by convincing him to remain with his wife. In the case of Ralph of

Vermandois, Eugenius struggled to maintain the validity of the count's first marriage and only acquiesced to its dissolution when compelled by political pressure from the king and count to do so. Likewise with Louis and Eleanor, Eugenius fought, albeit unsuccessfully, to preserve their marriage, hoping to pressure the royal couple into resolving their marital difficulties by reiterating the Church's position on the permanence and sanctity of the union.

The silence of the papal court following the French king's divorce from Eleanor is highly unusual given the efforts Eugenius himself expended to reconcile the two. It seems reasonable to assume, moreover, that the papacy would be concerned over the potentially destabilizing political consequences for the kingdom of France which could (and ultimately did) result from the divorce. Yet for reasons not known or recorded, Eugenius did not carry out his original threat of anathema against the royal couple. It can be inferred by the pope's inaction that Louis and Eleanor, by insisting on and successfully carrying out their separation, were apparently within the dictates of canon law, even though they had been granted a dispensation by the pope. If, following the king and queen's divorce, Eugenius had attempted to force the issue of the dispensation, he would have placed himself in the awkward position of enforcing the *relaxation* of Church law against the wills of the party involved. In this case he would have opposed both Eleanor, whose desire to divorce Louis had never completely been suppressed, and Louis, with whom he had already come into conflict over the divorce of Ralph of Vermandois. In the end, the political pressure exerted by the king of France appears to have again taken its toll on the aged pope. When the news of the divorce ultimately

reached Rome, instead of attempting to force the king and queen to honor the dispensation, Eugenius chose to remain silent.

2. From Alexander III to Innocent III

The pontificate of Eugenius III came at the end of an important stage in the history of the reformed papacy. As has been stated above, the initial reform of the Roman Church had been inspired by, and was, in many respects, an extension of the great reform movement that had originated in the monasteries of France and Germany in the tenth century. The popes who led the early reform movement had enjoyed close ties to the new religious orders. Of the eleven popes from Gregory VII to Eugenius III, all had been associated with a religious community as either a monk or a canon before assuming the papal office.³⁰⁹ As such these popes were all, to one extent or another, promoters of the monastic ideals that had driven the earlier movement and they sought to bring many of these ideals to the reform of the papacy. They involved a renewed spirituality, a stronger sense of morality, and a purification of the Church from the corruption and sinfulness arising from its secular, worldly ties. Most importantly for the Roman reformers, the papacy was to become the unifying and guiding component in this renewal. Presiding over the Church, aloof from involvement in the prejudices and petty struggles of contending factions, the pope would bring together all the divergent sectors of Christian society under one head.³¹⁰

In the second half of the twelfth century the situation began to change. The papacy, increasingly burdened by the growing mass of cases directed towards Rome, found it more and more difficult to remain above the fray of litigation. As a result of these circumstances, a new type of pope began to ascend the chair of St. Peter. Unlike the monastically oriented popes of the earlier period, these new popes had been trained in the rising university schools of Paris and Bologna, receiving an education in both the new scholastic theology, and, more importantly, the burgeoning field of canon and Roman law. The advent of these new canon law schools, which in turn gave rise to a new professional class of decretists, lawyers and administrators, coincided precisely with the rapid growth of the reform papacy's administrative structure. The Roman Church began to draw many of the most promising members of this new class of legally trained professionals into the papal curia as the pace of papal administrative activity began to significantly increase after around 1130.³¹¹ As a result of this new influx of talent, the character of the papal bureaucracy began to shift to a more legalistic orientation. These new clerics and administrators, with their background in canon law, began to occupy the upper echelons of the papal curia, the College of Cardinals and ultimately, the papacy itself.

The first pope who possessed a formal education and training in canon law was Rolandus Bandinelli. He was elected in 1159, six years after the death of Eugenius III, and took the name Alexander III.³¹² Although Alexander had been a protégé of Eugenius, the two men could not have come from more different backgrounds. Eugenius had begun his career as a Cistercian monk, and was a devoted pupil of Bernard of Clairvaux, one of

the most important figures of the twelfth century. Bernard had cast a powerful shadow of influence over a whole generation of popes. A man of austere and rigorously traditional inclinations, he was one of the earliest and strongest critics of the “vast ocean of litigation” which, since the beginning of the twelfth century, had begun to feed into the growing papal bureaucratic “machine.”³¹³ In 1150, he wrote a letter to Eugenius about the alarming expansion of legal disputes in which the papacy was beginning to involve itself:³¹⁴

I ask you, what is the point of wrangling and listening to litigants from morning to night? And would that the evil of the day were sufficient for it, but the nights are not even free! Your poor body scarcely gets the time which nature requires for rest before it must rise for further disputing. One day passes on litigation to the next, one night reveals malice to the next; so much so that you have no time to breathe, no time to rest and no time for leisure. I have no doubt that you deplore this situation as much as I, but that is in vain unless you try to remedy it. In the meantime, however, I urge you constantly to beware that you never become hardened toward the demands of your office because of their persistence.

Eugenius was not the first pope to begin to feel the ponderous burden of activity that began to impose itself upon the papacy and curia. Yet however much he may have agreed with Bernard, he was ill equipped by temperament and training to stem the flow of litigation that was becoming part of the papacy’s daily routine. Alexander, however, was cut from different cloth. A native of Siena, the future pontiff received a thorough education in both theology and law before being brought to Rome by Pope Eugenius in 1148.³¹⁵ There he quickly rose in the administration, being named cardinal in 1150 and Roman Chancellor in 1153. On the death of Hadrian IV in 1159, Bandellini was elected pope in a contentious and disputed election, the first of many crises that occurred during

his eventful pontificate. Yet the new pontiff's perseverance, skillful diplomacy and keen intellect enabled him to weather the many difficult situations that arose during his years as pope and to exert a powerful influence over the future direction of the papal office.

Alexander's legal background and training had a profound impact on his view of the pope's judicial and legislative role. Unlike his predecessors, who displayed a strong aversion to the papacy's growing involvement in litigation, Alexander "plunged into the intricacies of legal business with incomparable skill and zest. By the time of his death in 1181 the pattern of papal activity was fixed for the rest of the Middle Ages."³¹⁶ Alexander's background enabled him to bring both an intense interest and a considerable expertise in canon law to the papacy. Although he addressed a wide variety of legal topics throughout his twenty years as pope, perhaps his most significant contributions came in the area of marriage law. Certainly he was more prolific on this subject than any of his predecessors.³¹⁷

The general thrust of his policy was to facilitate the ability to contract marriages by freeing them from the external control of parents or others, while at the same time making it more difficult to dissolve unions once entered into.³¹⁸ In cases involving consanguinity and affinity, Alexander adopted Eugenius' practice of granting dispensations in order to preserve the indissolubility of the marital union as long as the impediment did not fall within the fourth degree. However, whereas Eugenius, in his dealings with Louis and Eleanor, had relied upon emotional appeals and the prestige of the papal office, Alexander, in his handling of this issue, drew upon his knowledge of canon law, in particular, his understanding of Gratian, to defend his position.

Alexander approached the issue of dispensation from a legal standpoint, buttressing his position with arguments drawn from the *Decretum* and other canon law writings. He then employed the instrument of the papal decretal to disseminate and give legal force to his position. Acting on Gratian's notion that the pope may set down laws, but also has the right to dispense from them,³¹⁹ Alexander basically adopted Gratian's distinction between human law and divine law, placing consanguinity and affinity in the former category. Where human laws conflicted with divine law (in this case, the indissolubility of the marriage bond), those human laws were open to modification.

In the decretal entitled *Pervenit ad audientiam*, Alexander addressed a case involving the consanguineous union of Hugh de Ralegh, the sheriff of Devon and his wife Muriel.³²⁰ The letter's purpose was to advise Bartholemew, the bishop of Exeter on how to properly weigh evidence and circumstances in the case, but Alexander also stressed a fundamental principle which he felt must be considered when dealing with laws such as those concerning consanguineous unions. Alexander states: "It is more tolerable to allow some people to remain joined contrary to human ordinances than to disjoin legitimately married persons contrary to the Lord's law."³²¹ This clearly reflects Gratian's distinction between divine law and human law, and it is also consistent with his position that consanguinity and affinity laws fell into the second category.³²²

In addition to his preoccupation with theoretical distinctions within the law, Alexander also sought to inject the principles of fairness, discrimination and common sense into the legal process when dealing with complicated and potentially scandalous issues such as consanguinity and affinity.³²³ In cases where ignorance of the impediment

at the time of the marriage existed, or knowledge of a consanguineous or affinal union might give rise to scandal to the Church or Christian community. Alexander recommended that dispensations be employed to resolve the issue.³²⁴ Also, as a means of encouraging their more widespread use, he extended the right to grant dispensations to local bishops.³²⁵

Alexander's pontificate in the third quarter of the twelfth century coincided with a period that witnessed the huge expansion of the legal profession throughout Europe. The appearance of many new collections and treatises on canon law was accompanied by the emergence of a new class of ecclesiastical judges, administrators and lawyers as well as a proliferation of cases involving marriage disputes. Cases decided at the local level presented potentially profitable business opportunities for ecclesiastical lawyers and judges, and the system was open to charges of corruption and fraud.³²⁶ In cases concerning consanguinity and affinity, the Church's stringent prohibitions were being manipulated by laymen and Church officials to obtain easy divorces (though often at a price). Thus Church law was being used to defeat its own (now) fundamental doctrine of the indissolubility of the marriage bond. The Church's response, beginning on a large scale with Alexander, was to employ dispensations in consanguinity cases where the impediment did not fall within the fourth degree. During his pontificate, Alexander dealt with a number of minor cases from both aristocratic and ordinary litigants involving marriages between close kin, but was never confronted with a similar case at the royal level.³²⁷ The situation changed significantly, however, during the reigns of Alexander's immediate successors.

The end of the twelfth century witnessed a proliferation of disputes between the papacy and various royal houses of Europe over marriages involving consanguinity and affinity. During the pontificates of Celestine III (1191-1198) and Innocent III (1198-1216), the papacy simultaneously became entangled in marriage conflicts with the rulers of France and Bohemia, the Spanish king of Leon, as well as the contending royal factions within the Holy Roman Empire. These conflicts took place amidst a profusion of activity and agitation that was sweeping throughout every sector of European society. Although the transformation of the papacy and curia, initiated by the reform movement a century earlier had reached its highest level of attainment and the papal government was at its peak of power and efficiency, the Church nonetheless faced formidable challenges to its authority from every direction.³²⁸ The rise of towns and cities produced new economic prosperity and growing aspirations for political and religious autonomy that created a potential rival to Church authority and values. The explosion of new ideas in theology, philosophy and law pouring out of the universities presented challenges to traditional Catholic teaching and forced the Church to contend with the increasing volume of business from a legal profession that was difficult to regulate and open to abuse.³²⁹ The intensifying threat to the tottering Christian states in Palestine and the spread of heretical movements in France and Italy continued to give urgency to the ideal of the crusade.³³⁰ Lastly, the rise of powerful new centralized monarchical governments in France, Germany and England, each led by energetic and able rulers gave new impetus to the ongoing struggle between Church and State.³³¹

The man who became pope in the midst of these tumultuous changes was Lothario dei Segni, a thirty-seven year old cardinal descended from an aristocratic Italian family who had trained in the schools of Paris and Bologna.³³² Assuming the name of Innocent III upon his election in 1198, the new pope tackled the challenges faced by the Church with unparalleled energy, confidence and ability. Innocent was a man of exceptional intellect whose extraordinary range of activities, interests and achievements during his eighteen-year pontificate is staggering. The six thousand extant letters which survive from his period in office attest to the fact that he was certainly one of the busiest and most prolific medieval pontiffs.³³³

Innocent was a fierce advocate of the superiority of *sacerdotium* over *regnum*, and as pope, he sought to enforce the preeminence of spiritual over temporal authority within both the religious and secular sphere:³³⁴

Just as the founder of the universe established two great lights in the firmament of heaven, a greater one to preside over the day and a lesser to preside over the night, so too in the firmament of the universal Church, which is signified by the word heaven, he instituted two great dignities, a greater one to preside over souls as if over day and a lesser one to preside over bodies as if over night. These are the pontifical authority and the royal power. Now just as the moon derives its light from the sun and is indeed lower than it in quantity and quality, in position and in power, so too the royal power derives the splendor of its dignity from the pontifical authority.

Precisely where Innocent drew the limit to the extension of papal authority within secular affairs is unclear and the question remains a subject of heated and often partisan debate among scholars.³³⁵ He did not hesitate to utilize papal authority and prestige where he saw fit in order to further the temporal and political aims of the Church.³³⁶

In general, Innocent envisioned papal government as monarchical in structure, akin to other secular governments in its use of law as a principle means of ruling. As head of the Church, the pope's duty was to guide and shape Christian society through the instrument of canon law. Innocent greatly enhanced and extended the jurisdiction of the ecclesiastical court system.³³⁷ The role of the Emperor, and to a lesser extent the other Christian secular rulers, was to act as the pope's right arm whose duty it was to protect and defend the Roman Church. If a weak or hostile Emperor threatened the security of the papacy or Church, the pope possessed the authority to depose him.³³⁸ If, as was the case during Innocent's pontificate, the succession to the imperial title became disputed, the pope had the right to arbitrate between rival claimants, and he had the last word on ultimate choice.³³⁹ Innocent came closer than any of his predecessors to realizing this ideal vision of the papacy and his reign marks the high point of papal power during the Middle Ages.

Like Alexander III, Innocent brought an intense passion for the law to the papacy. One of the areas of law where he made the most impact was on the marriage laws.³⁴⁰ He generally remained faithful to Alexander's basic ideas on the formation and indissolubility of marriage and from the beginning of his pontificate he showed himself willing to follow Alexander's and Eugenius' lead in the granting of dispensations in marriage cases involving consanguinity and affinity. However, during his pontificate the corrupt trends of the legal profession became glaring on the one hand, and on the other, the consanguineous tendencies of European monarchs, dormant for a generation, again surfaced with a vengeance. The goal of the following section is to outline briefly the

main events of the four royal disputes involving consanguinity or affinity which took place during Innocent's pontificate and examine Innocent's response to each. Next, an attempt will be made to explore the background and influences which may have motivated Innocent to act as he did in each case, and to note patterns, similarities and inconsistencies in his overall policy regarding consanguineous and affinal unions. Of the four cases, three were linked to events in the German Empire involving a dispute which had broken out over the imperial election. Since this momentous conflict impacted Innocent's handling of these three marital disputes, we will begin by examining the case which had the most direct link to the dispute, and involved one of the contenders for the vacant imperial throne, Otto of Brunswick.

3. Innocent III and Otto of Brunswick

The event that cast a long shadow over much of Innocent's pontificate was the disputed imperial election of 1198, which ensued in the aftermath of the Emperor Henry VI's sudden death at the age of thirty-two in 1197, a year before Innocent became pope.³⁴¹ One of the papacy's great fears over the preceding fifty years had been the possibility of a union of the German and Sicilian crowns, a move which would effectively entrap papal lands between two powerful polities having the same ruler.³⁴² This had become a reality under the ambitious Staufen emperor, Henry VI, following his marriage to Constance, the daughter of the late king of Sicily, William II, and heiress to the Sicilian throne. However, his early demise shortly thereafter momentarily halted the

momentum of events, the direction of which now hinged on the successor to Henry. The two contenders who ultimately emerged from field of possible candidates were Philip of Swabia, Henry's brother and the guardian of his two-year-old future heir, Frederick, and Otto of Brunswick, the leading candidate of the powerful German Welf faction, and also the nephew of the King of England. In 1198, each was designated emperor in separate elections by their supporters, thus producing an imperial schism.

Like all his recent predecessors, Innocent viewed the election of an emperor friendly to the Church as vital to the papacy's interests and even to its survival as an independent entity. When the division over the elections broke out between Philip and Otto, Innocent maintained that the right to judge between the two disputants belonged to the papacy. His position, which is emphatically laid out in his correspondence with the contending factions following the outbreak of the schism, was based on his conception of the pope's monarchical and sacerdotal authority, embodied in title "Vicar of Christ."³⁴³ The emperor's role was to both "assist the papacy in its work of extending the Christian religion and maintaining a just society," and to serve as the pope's "protector."³⁴⁴ Innocent argued, therefore, that the ecclesiastical implications of the election justified the pope's role as arbitrator. However, despite his claims to impartiality, Innocent early showed a strong preference for Otto over Philip of Swabia for several reasons. In the first place, Philip had been excommunicated by Innocent's predecessor, Celestine III several years earlier because of the Duke's hostility to the German Church, a sentence which still hung over his head at the outbreak of the schism.³⁴⁵ Secondly, given the recent history of Staufen aggression directed against the papacy, the pope feared Philip's

strength and harbored understandable misgivings about his motives. Otto's position, on the other hand, was more fragile than Philip's. He depended heavily on papal support, and showed himself willing to make considerable concessions to the Church in exchange for papal recognition. In the first several years of his pontificate, Innocent attempted to mediate between the opposing factions, but as Philip gained momentum and Otto's position became more endangered, Innocent declared for Otto in January of 1201.³⁴⁶ Far from settling the dispute over the imperial title, the pope's recognition of Otto rather accelerated the complex pattern of shifting alliances both within the German Church and nobility, and among foreign monarchs. Over the next ten years, the effects of the schism, which had from its beginnings reverberated beyond the borders of the Empire, ultimately embroiled all the leading powers of Europe in the dispute.

Against this backdrop of events, Innocent involved himself in the marriage plans of Otto of Brunswick, his preferred candidate for the imperial throne. In 1200, Otto became engaged to Mary, the daughter of the duke of Brabant. The proposed marriage ran into complications, however, when shortly thereafter allegations arose claiming that the two were related within the forbidden degrees of consanguinity. In December of that year, Innocent personally wrote to the duke to allay his fears concerning the complaints of consanguinity, and instructed him to proceed with his plans to betroth his daughter to Otto.³⁴⁷ The letter is ambiguous regarding the truth of the accusations, but the pope's wording seems to indicate that the charges of consanguinity were indeed well founded. However, Innocent decided to dispense from strictly enforcing the impediment, stating as his reason, the "great usefulness which we hope will be procured from this marriage."³⁴⁸

The plans for the union stalled a second time, however, when the duke, apparently prompted by Philip of Swabia, again reneged on his promise to Otto. The reason became clear in October of 1204, when the pope, in a letter to the duke, accused him of collaborating with Philip to have his daughter betrothed to the boy Frederick, son of the late Emperor, Henry VI.³⁴⁹ Henry's widow Constance had entrusted the regency of Frederick to Innocent, shortly before her own death in 1198 and the pope had made plans for Frederick to be married to the sister of the king of Aragon.³⁵⁰ He therefore threatened to take ecclesiastical measures against the duke if he continued to drag his feet in the matter. When these actions produced no results, he advised Otto in September of 1205 to proceed with the planned marriage without the duke's cooperation, once the young girl reached the legal age for marriage.³⁵¹

By 1206, however, Innocent's confidence in Otto began to wane, as the German prince's support dwindled and Philip continued to win adherents to his side. At the same time, Philip began to make peace overtures to Rome, tacitly acknowledging that the pope possessed a special authority as Vicar of Christ and demonstrating a willingness to make amends for past actions.³⁵² The pope, for his part, rekindled the possibility of a hearing between the two contending parties, at which Innocent would act as arbitrator. In January of 1208, Philip agreed to submit to papal arbitration, and a tribunal was set to meet with representatives of both Philip and Otto in Rome, presided over by the pope.³⁵³ However, the council never took place because in June of 1208, Philip of Swabia was murdered in a private quarrel with Otto of Wittelsbach, the count of Bavaria.³⁵⁴

Although Otto now stood alone as the sole candidate to the imperial title, Germany continued to be agitated by partisan strife between the various aristocratic factions. In an attempt to quell the unrest, a new marriage was proposed between Otto and Philip of Swabia's daughter, Beatrice to "stabilize the concord between the king and princes by an indissoluble bond."³⁵⁵ However, the two were related within four degrees of consanguinity, since Otto's father, Henry the Lion, was cousin to Frederick Barbarossa, Beatrice's grandfather.³⁵⁶ The German clergy petitioned Innocent for a papal dispensation to allow the two to be married, and in December of 1208, the pope gave his approval to the union, citing as his reasons, the hope that it would facilitate "the restoration of peace in the Empire."³⁵⁷ The papal legate, Cardinal Hugh of Ostia, pronounced the formal dispensation before an assembly of German lay princes and clergymen in May of 1209, five months before the pope crowned Otto Emperor in Rome.³⁵⁸ However, the marriage of Otto and Beatrice was not destined to take place for another three years. Once Otto was securely on the imperial throne, he promptly turned against the papacy, reneging on agreements he had made with Innocent prior to his coronation, and began preparations to invade Italy. Otto's marriage to Beatrice was also put on hold, although the Emperor did publicly acknowledge her as queen before an assembly of German dukes.³⁵⁹ Otto's duplicity against his former ally proved disastrous, as Innocent now switched his support to the young heir apparent, Frederick. The position of the German Emperor declined drastically over the next several years, and in 1212, as part of an attempt to regain the support of the German nobility, Otto finally married

Beatrice. However, the union was short lived because ten days after the ceremony, his new wife died.³⁶⁰

4. Innocent III and Philip Augustus

When Innocent came to the papal throne in 1198, two royal cases dealing with consanguinity and affinity had been left unresolved by his predecessor, Celestine III, one involving the king of Leon and the other involving the king of France. The French affair pitted Innocent against Philip Augustus, perhaps the most powerful and ambitious European monarch of the period and, in many ways Innocent's most formidable rival for power and authority.³⁶¹ Like the pope, Philip was also deeply involved in the contested imperial election that absorbed so much of Innocent's attention throughout his papacy. The two men however found themselves on opposite sides of the schism with Philip supporting Philip of Swabia and Innocent backing Otto of Brunswick.³⁶² Inevitably, their rivalry over the disputed election impacted the pope's handling of Philip's marital dispute.

Like many of his Capetian ancestors, Philip was married young, at the age of fourteen, to Isabella, the daughter of the count of Hainault in 1180. She bore him one son, Louis, in 1187 before meeting a premature death three years later, attempting to give birth to twins.³⁶³ When Philip returned from the third crusade in 1193, he began searching for a new bride to reinforce the Capetian dynasty, which now rested solely on the delicate and sickly prince, Louis.³⁶⁴ He ultimately chose Ingeborg, the sister of the Danish king,

Cnut, and the two were married in August of 1193.³⁶⁵ However, on the day after the wedding, for reasons which remain unclear, Philip abruptly repudiated his new wife and immediately sought to obtain an annulment on the grounds of affinity. At the council of Compiègne, convened three months later and presided over by the Archbishop of Rheims, Philip was granted a legal separation from Ingeborg on the basis of a relation by affinity.³⁶⁶ The charge was based on a genealogy produced by the French court, the accuracy of which was sworn to by fifteen bishops.³⁶⁷ Ingeborg, who had spent the intervening period imprisoned in a monastery outside Paris, rejected the ruling and appealed to Rome, claiming that the genealogy was incorrect. Although Pope Celestine corresponded by letter with both sides concerning the issue over the next several years, it was not until 1196 that he sent papal legates to France to convene a council to judge the case.³⁶⁸ Philip, however, resisted the pope's attempts to resolve the dispute, and only a month after the council met, contracted a new marriage with Agnès of Méran in defiance of a papal prohibition.³⁶⁹

This was the situation when Innocent became pope in 1198. The new pontiff immediately sent a letter to Philip, informing him that before he could petition for an annulment in his first marriage he must separate from Agnès and seek a reconciliation with Ingeborg.³⁷⁰ Backing up this admonition with a threat of interdict in the event Philip refused to comply, Innocent sent his papal legate, Peter of Capua, to France to confront the king on the issue. When Philip failed to respond, his kingdom was placed under interdict by the papal legate in January of 1200.³⁷¹ The devastating effects of the papal sentence on the French Church and populace, which proved equally detrimental to both

king and pope, quickly brought both sides to the negotiation table.³⁷² In the ensuing talks, however, Innocent was able to gain an important advantage for the papacy because Philip agreed to return to Ingeborg, in exchange for a new hearing presided over by a different papal legate to rule on Philip's plea for an annulment.

A new trial was convened at Soissons in March of 1201 to consider Philip's case, but the proceedings dragged on inconclusively over a period of two weeks due to delaying tactics by Ingeborg's defenders.³⁷³ As the situation began to look less and less favorable for the French king, he suddenly departed taking Ingeborg with him, stating later that the slowness of the proceedings and the maneuvers of his opponents were obstructing his right to a fair trial.³⁷⁴ The situation once more shifted when, four months after the inconclusive hearing, Agnès died, after giving birth to a boy, her second child by Philip. Agnès's death effectively eliminated the bigamous circumstance of Philip's marital situation and led to the reopening of negotiations between the king and the pope. Anxious to further strengthen the Capetian line of succession, the French king's first move was to petition Innocent to legitimize his children from his union with Agnès. Unexpectedly, Innocent responded by promptly acceding to Philip's request, stating that the stability of the Capetian dynasty was vital to the security of the French kingdom. However, the pope was at this time also heavily involved in the upcoming imperial election in Germany. His anxiousness to soften Philip's opposition to his candidate, Otto of Brunswick no doubt influenced his conciliatory attitude towards Philip's case.³⁷⁵ Yet Innocent also emphasized that, although he was willing to grant the king's petition, his

action of legitimizing Philip's children by Agnès would not alter the status of Ingeborg's case.³⁷⁶

Despite these positive gestures by both sides, the case was allowed to lapse and little progress was made toward a resolution of the dispute over the next twelve years although the pope continued a steady correspondence with both Philip and the Danish party representing Ingeborg.³⁷⁷ In 1205, however, Philip switched his attack against the queen from a charge of affinity to one of non-consummation, claiming that Ingeborg had bewitched the king, rendering him unable to have sexual relations with her (a charge vehemently denied by Ingeborg).³⁷⁸ Innocent showed himself willing to hear evidence on both charges, instructing his papal legate in 1208 to begin an investigation but Philip again proved uncooperative, and proceedings once more were halted.

The situation remained unchanged until 1213, when in an unusual turn of events, the French king abruptly brought the case to its final resolution. On the eve of his projected invasion of England, in a move as sudden and unexpected as the one that began the affair twenty-five years earlier, Philip announced his decision to take Ingeborg back.³⁷⁹ The king's sudden turnabout almost certainly was linked to his pending expedition against the English King John, which was being launched with papal support.³⁸⁰ It seems probable that Philip, about to undertake a dangerous venture, wished to allay his conscience by resolving the outstanding conflict with the pope. In addition, the question of the succession was no longer a pressing issue since he now had two legitimate sons, Louis and Philip, who stood as heirs to the French crown.³⁸¹ Despite the suddenness of his turnabout, Philip continued to be true to his word in the matter of

Ingeborg, remaining with her until his death in 1226. She was reinstated as Queen of France and continued to enjoy royal privileges until her own death ten years after Philip.³⁸²

5. Innocent III and Ottocar of Bohemia

Concurrently with his involvement with Philip's marriage, Innocent also intervened in a marital dispute involving Ottocar, the king of Bohemia and his queen, Adela.³⁸³ As was the situation with the king of France, Innocent's attitude towards Ottocar's case was influenced by political factors arising from the imperial schism. In 1199, after twenty years of marriage, Ottocar petitioned for a divorce from Adela, on the grounds of consanguinity. The archbishop of Prague speedily granted the divorce,³⁸⁴ and shortly thereafter, Ottocar married a Hungarian princess named Constance. Adela responded to the king's actions by appealing to Pope Innocent, claiming that no consanguineous relationship existed between herself and Ottocar. In September of 1199, Innocent instructed the metropolitan archbishop of Magdeburg to begin gathering testimony in Adela's case, which was to be forwarded to Rome for investigation.³⁸⁵

At the time of Innocent's first involvement in the marital dispute between Ottocar and Adela, the Bohemian King was in the midst of establishing friendly ties with Philip of Swabia, one of the two claimants to the imperial throne.³⁸⁶ Although Innocent had not yet thrown his support behind the other candidate, Otto, he clearly favored him over Philip. However, the degree to which these factors influenced the pope's handling of

Ottocar's case is difficult to determine for several reasons. First of all, Ottocar's political loyalties over the next nine years were inconsistent, vacillating between the two rivals for the imperial title. Although Philip had supported Ottocar's claim to the Bohemian throne, and presided over his coronation ceremony at Nuremburg in 1199, Ottocar deserted Philip in 1203 and went over to the side of Otto of Brunswick.³⁸⁷ By 1205, however, following a devastating military defeat, Ottocar was back in the camp of Philip.³⁸⁸ and two years later, the Bohemian king betrothed his son, Wenceslaus, to Philip's daughter, Guenegundis. This act led to Philip's assassination the following year by the Bavarian count, Otto of Wittelsbach, who had at one time been engaged to Guenegundis.³⁸⁹ With Philip's death and the subsequent coronation of Otto of Brunswick as Emperor in 1209, the imperial schism, and Ottocar's involvement among the rival factions, ceased to be a pressing issue.

Secondly, the sources are silent concerning events involving Ottocar's marital affair between 1199 and 1206. Mention of the dispute only reappears in April of 1206 in a papal letter written in to the Archbishop of Salzburg, instructing him to commence a new hearing on the case and to submit the findings to Rome.³⁹⁰ The letter also describes the Bohemian king's contradictory behavior concerning the affair over the past seven years. Ottocar apparently at first refused to cooperate with papal representatives. Later, however, having encountered "great adversity," he vowed in a personal letter to the pope to take Adela back, only to renege on his promise a short while later.³⁹¹

The results of the new hearing ordered by Innocent are not known, but it appears that Ottocar continued to defy papal directives in the case, for he was subsequently

excommunicated by the local Bohemian clergy for his contumacious behavior.³⁹² The king appealed to Innocent, and once again, at the end of 1208, the pope agreed to set up an inquiry into both Ottocar's marriage and his sentence of excommunication.³⁹³ A final hearing began in Rome in 1210, attended by Ottocar's representatives.³⁹⁴ The court, however, never came to a final decision in the matter because Queen Adela died in 1211, causing the proceedings against the king to be halted.³⁹⁵

6. Innocent III and Alfonso IX of Leon

The final case to be examined here began in the pontificate of Innocent's predecessor, Celestine, and unfolded concurrently with the affair of Philip Augustus and Ingeborg. It involved the king of Leon, Alfonso IX, who in 1190, in an attempt to end fighting between the kingdoms of Leon and Portugal, married Theresa, his niece and the daughter of the Portuguese king, Sancho.³⁹⁶ Pope Celestine condemned the marriage in 1191; shortly thereafter, the union was declared invalid at a council held at Salamanca and presided over by a papal legate.³⁹⁷ Alfonso, however, ignored the decision of the council and continued to live with Theresa, despite Celestine's subsequent pronouncement of excommunication against the two, and his imposition of an interdict against the kingdom of Leon. Five years later, following a destructive war with neighboring Castile, Alfonso dismissed Theresa and within two years, married another of

his nieces, Berengaria, the daughter of King Alfonso VIII of Castile, again for the political purpose of securing peace between the two realms.³⁹⁸ This union, which took place in 1197, resulted in a new sentence of excommunication against Alfonso as well as several Spanish bishops who supported the king's marriage.³⁹⁹

Shortly after Innocent became pope in 1198, he sent the papal legate Rainerius to Spain in an attempt to persuade both kings to renounce the incestuous union, while at the same time meeting with representatives from Leon and Castile who had come to Rome hoping to obtain a dispensation for the marriage.⁴⁰⁰ However, the negotiations between the pope and Spanish kings, which were prolonged over a period of two years, in the end proved unsuccessful.⁴⁰¹ Innocent maintained the sentence of excommunication against the participants in the affair, but greatly reduced the conditions of the interdict, which were causing unrest and hardship within the Spanish Church.⁴⁰² The situation remained unchanged until 1204 when Alfonso's wife, Berengaria unexpectedly separated from the king and petitioned Innocent for absolution in the affair.⁴⁰³ The petition was granted, apparently with the acquiescence of Alfonso, who swore under oath not to take her back, and both excommunication and interdict were lifted.⁴⁰⁴

7. The Modification of Canon Law governing Consanguinity and Affinity during the Pontificate of Innocent III

By the time of Innocent's pontificate, the position of the pope to act as the highest authority in questions of marriage was well established, at least in theory, and papal involvement in the marital affairs of the European monarchy, commonplace. Yet kings

and princes continued to defy the Church's prohibitions against consanguineous unions or manipulate them to further their own dynastic or political ambitions. Under Innocent, the prestige and authority of the papacy as an institution and by extension, the papal ability to enforce or modify Church law, reached its apogee. In marital cases dealing with consanguinity or affinity that involved kings or rulers, Innocent asserted this enhanced papal authority in four different ways.

First, he used the prohibitions against consanguineous or affinal unions to forbid marriages where an impediment was known to exist, either before the unions took place or after they had been made known to the papacy. Consistent with the trend begun by his predecessor, Alexander III,⁴⁰⁵ Innocent generally adhered to a strict interpretation of canon law where the impediment fell within four degrees, while being more lenient in instances where the relationship was more distant. The affair involving Alfonso IX of Leon provides an example of a case where Innocent rigidly upheld the laws against consanguineous unions, since both Alfonso's marriages were within two degrees of consanguinity.⁴⁰⁶ In dealing with the king of Leon, Innocent could look back to the dispute between Gregory V and Robert the Pious over his marriage to Bertha to find a precedent where the papacy strictly enforced prohibitions against a royal marriage tainted by close consanguinity (Robert and Bertha were related in the third degree). As was pointed out earlier, Robert's case occurred at a time when the potency and reach of papal authority was much more restricted and papal intervention in the marital affairs of kings, rare.⁴⁰⁷ However, by the thirteenth century, with the reformed papacy at the height of its prestige and power, few would dispute the Church's contention that the institution of

marriage was a valid ecclesiastical concern, although many in the lay sector might argue with the Church's view that it belonged within the sphere of ecclesiastical jurisdiction. The Church's understanding of marriage as sacramental in nature, which had been hinted at since the beginning of the Christian era,⁴⁰⁸ achieved its full expression at this time in the writings of such prominent theologians and canonists as Peter Lombard, Hugh of St. Victor, and Rufinus.⁴⁰⁹ In keeping with this heightened ecclesiastical involvement with the institution of marriage, Innocent considered himself fully justified to intervene in marital issues such as Alfonso's, particularly where the violation was so blatant and potentially scandalous to the Church.

Whatever else may have motivated him to interfere in Alfonso's marriage, it does not appear that Innocent stood to gain much politically from his firm stance against the king. Indeed, the political consequences of Innocent's excommunication and his interdict against the kingdom of Leon were potentially very dangerous. The Archbishop of Toledo, who had journeyed to Rome in 1199 to represent Alfonso IX, had pointed this out to Innocent, warning him that, from the Spanish Archbishop's perspective, the unrest and disruption created by the pope's harsh sentence would invite the spread of heresy and encourage Muslim aggression against the Christian kingdom. Innocent responded by greatly tempering the severity of the interdict, while maintaining the excommunication against Alfonso.⁴¹⁰ In the end, Innocent's patience and resolve allowed him to successfully assert papal jurisdiction over the validity of king's marriage.

Second, the pope used his authority to uphold validly contracted marriages in instances where kings attempted to use consanguinity or affinity laws to obtain a divorce.

Both Philip Augustus and Ottocar of Bohemia separated from their wives, claiming (falsely) the existence of an impediment by relation. Having been granted a divorce by the local episcopate, both kings then went on to contract second marriages. In each case, the repudiated spouses, Ingeborg and Adela respectively, rejected the decision of the local ecclesiastical court and appealed to Rome for justice. Innocent responded by initiating his own investigation, refusing in the meantime to recognize the validity of the separation and ordering each king to return to his wife pending a papal decision.⁴¹¹ When both kings disregarded the pope's directives, Innocent resorted to the standard means of ecclesiastical censure available to him, excommunication and interdict. Again, Innocent possessed a papal precedent for his actions in the case between his predecessors, Urban II and Paschal II, and Philip Augustus' ancestor, Philip I, who a hundred years earlier had repudiated his wife Bertha, claiming an impediment of relationship, and had contracted a new marriage in the face of papal opposition.⁴¹² That dispute, which had extended over a twelve-year period, had been brought to a successful conclusion through the papacy's perseverance and tenacity in asserting its position despite continued and sometimes violent resistance by the French king.

Innocent's involvement with Philip Augustus and Ottocar also stretched over an entire decade, and like his predecessors, he persistently defended the papal right to act as final authority in the matter of the two kings' marriages. On the question of whether Innocent's preference towards Otto of Brunswick in the imperial schism prejudiced his handling of the two marriage disputes, several observations may be made regarding the pope's actions. In the case of Ottocar of Bohemia, the most evident effect of the schism

actually seems to have been to divert Innocent's attention away from events in Bohemia and inhibit his ability to take active part in the proceedings. This may explain the seven-year silence on the part of the papacy concerning Ottocar's case.⁴¹³ If Innocent entertained hopes of gaining the Bohemian king's support for Otto in the dispute, however, Ottocar's erratic and self-serving shifts in allegiance between the two rival contenders from 1200 to Philip of Swabia's death in 1208 must have cast serious doubts on Ottocar's value as an ally.

The effects of the Imperial schism on Innocent's attitude toward Philip Augustus are more involved and complex. Unlike the Bohemian king, who was a figure of secondary importance on the chessboard of European politics, Philip possessed a power and influence that potentially could have proven crucial in determining the schism's outcome.⁴¹⁴ Certainly the pope stood to lose much more by alienating the French king, who alone among the European monarchs reigning at the beginning of the thirteenth century, matched Innocent in talent, drive and prestige. In the contest over the imperial title, Philip opposed Otto of Brunswick, who was nephew to Philip's arch-rival, King John of England. Innocent had good reason to tread lightly with Philip over his marriage to Ingeborg, since the French king's alliance with Philip of Swabia posed a serious threat to Innocent's aspirations for Otto. If the pope was unable to procure French support for Otto, he hoped at least to blunt Philip's opposition to him.⁴¹⁵ A secondary consideration not directly related to the Imperial schism involved the Albigensian heresy, a movement which spread throughout southern France at the beginning of the thirteenth century.⁴¹⁶ Greatly alarmed at its growing popularity and rapid diffusion, Innocent was eager to

launch a crusade to combat it, a venture for which he needed the French king's support.⁴¹⁷ Both of these considerations potentially may have impacted Innocent's attitude towards Philip. How did these factors affect the pope's handling of the case?

Throughout the entire affair over Ingeborg, Innocent remained adamant and uncompromising in his demand that Philip submit to papal justice. Against the French king and his subjects, he did not hesitate to employ the powerful ecclesiastical weapons of excommunication and interdict to achieve his objectives.⁴¹⁸ These measures were wielded by Innocent vigorously and persistently in order to force the king's compliance. Yet, although he was stern and uncompromising with Philip, Innocent nonetheless showed himself to be sympathetic to the French king's dynastic concerns. The pope's legitimization of Philip's children by Agnès of Méran in 1201 allayed the French king's fears concerning the succession by increasing the number of eligible Capetian heirs to the French Crown.⁴¹⁹ This act however was not without its advantages to the papacy, since the legitimate status of a potential future king of France now derived its authority from a papal pronouncement.⁴²⁰

Innocent even proved receptive to Philip's charge that Ingeborg had "bewitched" him, holding out the possibility of annulment if Philip could prove that non-consummation through sorcery had occurred.⁴²¹ In 1208, he instructed the papal legate, Guala, to include this charge in the investigation of Philip's case.⁴²² However, Philip remained wary of Innocent's unyielding adherence to strict judicial procedures, and following the assassination of Philip of Swabia in June of that year, he again halted the proceedings. Despite the complex twists and turns which Philip's case took over the

course of twenty years. Innocent remained steadfast in his defense of the queen's right to a fair hearing, and in his insistence that Philip comply with papal adjudication in the matter of his marriage. Philip held out against papal intervention for over two decades, but ultimately, as was the case with Ottocar of Bohemia and Alfonso of Leon, Innocent's patience and persistence paid off, and Philip at last succumbed.⁴²³

The third means used by Innocent to assert papal authority over royal marriages involving consanguinity was to grant papal dispensations allowing otherwise prohibited unions. This method is most evident in Innocent's handling of Otto of Brunswick's marital affairs.⁴²⁴ Innocent initially dispensed with the impediment of consanguinity between Otto and Mary, the daughter of the duke of Brabant, in order to facilitate their marriage.⁴²⁵ However, despite the pope's efforts to bring Otto and Mary together, this union never took place. Several years later, in the aftermath of Philip of Swabia's assassination, Innocent issued a new dispensation to allow Otto to marry Beatrice, the daughter of the late duke in an effort to halt the disruption caused by the remaining rival factions in the imperial dispute.⁴²⁶ In both cases involving Otto, Innocent granted dispensation where the impediment did not fall within four degrees, in keeping with the trend regularized by Alexander III.

Although Alexander was the first pope to attempt to establish a legal foundation for the papacy's use of dispensations in cases involving consanguinity, and also the first pope to grant dispensations on a consistent basis, earlier examples of papal dispensations existed of which Innocent in all likelihood had knowledge. Two centuries earlier, Nicholas II had lifted the ecclesiastical ban against William of Normandy's unlawful

marriage to Mathilda, the daughter of the count of Flanders.⁴²⁷ Only fifty years before Innocent's pontificate, Pope Eugenius had dispensed with the impediment of consanguinity that had tainted the marriage of Louis VII of France and Eleanor of Aquitaine.⁴²⁸ These cases differed from those of Innocent in that the marriages of both Louis of France and William of Normandy received dispensation long after the initial union took place. Innocent, on the other hand, granted dispensation for Otto of Brunswick's two unions before they were officially contracted.⁴²⁹

As was seen in the previous chapter Eugenius' attempts to use a papal dispensation to keep Louis and Eleanor together proved unsuccessful. Within two years of the pope's decree, the king and queen divorced and shortly thereafter, each contracted a new marriage.⁴³⁰ Eugenius, meanwhile, stood silently by, seemingly helpless to stop them. Innocent encountered similar frustration in his attempt to use a papal dispensation to bring about the marriage of Otto and Mary. After the pope nullified the consanguineous impediment to their proposed union, Mary's father, the duke of Brabant, retreated on his promise to betroth his daughter to Otto. Although Innocent instructed Otto to go forward with the marriage despite the duke's resistance, the pope failed to bring about the desired union.⁴³¹ Innocent's use of a papal dispensation in 1208 to facilitate the marriage of Otto and Philip of Swabia's daughter Beatrice initially appeared to be more successful. However, this union, which continued to be delayed an additional three years after the pope authorized the marriage, likewise proved short-lived and unsustainable. In addition, the political peace that Innocent hoped to gain in the German Empire from it did not materialize. Within a year of receiving the imperial title from

Innocent. Otto turned against the papacy, reneging on his promises to respect ecclesiastical rights and privileges in both Germany and Sicily and by launching an expedition into Italy.⁴³² His marriage to Beatrice was put on hold, although Otto did recognize her as queen. The whole affair came to a ruinous conclusion in 1212, with the death of the queen only days after the wedding ceremony.⁴³³ In the end, the papal use of dispensation to facilitate consanguineous unions, whether for political reasons or whether to further spiritual and theological aims, proved unworkable. Both Eugenius' and Innocent's use of dispensations for these purposes ultimately ended in failure.

Innocent's struggles against various European monarchs over issues involving consanguinity and affinity spanned almost his entire pontificate.⁴³⁴ Following examples and precedents set by many of his predecessors, the pope utilized a variety of approaches to assert the papacy's right to set boundaries in marriages involving close kin. While fierce in defending the Church's interests, both ecclesiastical and political, he nonetheless showed himself willing at times to act in a manner that was sympathetic to the political and dynastic concerns of those rulers involved.⁴³⁵ Towards the end of his pontificate, however, despite his success in asserting the authority of the papacy to judge in marital cases involving consanguinity and affinity, Innocent no doubt viewed his struggles against the rulers of Leon, Bohemia, France and the Empire with frustration and disappointment. In addition, he faced growing discontent within the ecclesiastical legal community over the widespread abuses in marriage cases involving consanguinity and affinity.⁴³⁶ Ultimately, Innocent chose to resort to a fourth and more radical means available to him of exercising papal authority over the Church's marriage laws. He

utilized his authority as pope to modify the Church's prohibitions against incestuous unions. In November of 1215, Innocent convened a general council of the Universal Church in the Basilica of St. John Lateran in Rome that was comprised of the largest and most diverse gathering of lay and ecclesiastical representatives to date in the history of the medieval Church. The dual purpose of the assembly, which ultimately became designated as the Fourth Lateran Council, was to call for a fifth crusade to recover the Holy Land and to enact wide ranging reforms within the body of the Church's canon law.⁴³⁷ The council, which met in three sessions between November 11 and November 30, issued seventy-one *capitula*.⁴³⁸ most of which later became part of the authoritative collection of canon law officially compiled under the direction of Pope Gregory IX in 1234, known as the *Decretals* or *Liber Extra*.⁴³⁹

The Fourth Lateran Council marks the high point of Church involvement within the institution of marriage during the era of Gregorian reform.⁴⁴⁰ The council was, in many ways, the culmination of the reform movement's efforts to institutionalize ecclesiastical authority and to set Church teaching governing the care of souls on a firm legal and canonical foundation. Moreover, the council also afforded the Church a chance to assess the results and the impact of its drive to extend ecclesiastical authority and jurisdiction over institutions such as marriage, which for centuries had been shaped by secular norms and controlled by secular interests. Among the council's several decrees which touch upon questions of marriage, Canon 50 addressed the issue of the Church's prohibitions against consanguineous and affinal marriages. In a stark reversal of the direction which the Church had taken since it first began issuing prohibitions against

incestuous unions, the decree lowered the restrictions governing consanguineous unions from seven degrees to four. In unions affected by affinity it reduced the restrictions from four degrees to one degree.⁴⁴¹

The most important question to be addressed concerns the part which Innocent played in determining the council's decision to relax the prohibitions against consanguineous and affinal unions. Unfortunately, the few primary source documents that exist for the Fourth Lateran Council make it difficult to determine in general the procedures followed in the council's decision making process. Despite the intense preparation which preceded the council, the tremendous number of participants, both lay and ecclesiastical, who attended it, and the far reaching impact which it had over the future course of the medieval Church, details concerning the assembly's deliberations and progress are disappointingly sparse.⁴⁴² No official transcripts of the sessions were kept, and only two contemporary eyewitness accounts of the proceedings exist.⁴⁴³ Nonetheless, according to the widely accepted view among scholars of the Fourth Lateran Council, Innocent dominated the council's agenda and exercised an overwhelming influence over the decisions that came out of it. Although the evidence indicates that discussion and even disagreement among various groups over several of the council's proposals occurred,⁴⁴⁴ the ultimate decision on the final shape of decrees issued by the council clearly rested with Pope Innocent and a small circle of his closest advisors. In keeping with the nature of medieval councils before the fourteenth-century conciliar movement, those representatives who attended the assembly's three sessions were expected for the most part to act as the supporters and implementers of Church policy.⁴⁴⁵

Concerning Canon 50 dealing with consanguinity and affinity, several factors point strongly to Innocent's hand in the drafting of the decree. As was shown above, the wording of the decree closely echoes the sentiments and opinions of the Parisian theologian, Peter the Chanter and his school concerning the Church's marriage laws and its prohibitions against incestuous unions.⁴⁴⁶ Innocent had come under the influence of Peter and his followers while a student at Paris and clearly was receptive to his proposition that the Church's incest prohibitions fell within the category of positive law, and thus were subject to modification or change under certain circumstances.⁴⁴⁷ In addition, while studying theology and canon law in Paris, the future pope was, in all likelihood, made aware of the corruption rampant in the ecclesiastical courts over divorces procured through false claims of consanguinity and affinity, which had initially spurred Peter the Chanter's opposition to the Church's existing incest laws.⁴⁴⁸

Once elevated to the papacy, Innocent acted upon the Chanter's notion that the Church's incest prohibitions were examples of positive law and thus lacked the permanence and rigidity of divine law. In 1201, the pope issued the decretal *Gaudemus*, in which he forbade those who had converted to Christianity to repudiate earlier marriages which fell within the prohibited degrees, stating that the prohibitions did not constitute divine law but ecclesiastical positive law.⁴⁴⁹ He did not immediately adopt the Chanter's solution to universally change the law, however, but followed the precedent of Pope Alexander III in his use of dispensations to relax restrictions in certain cases such as those of Otto IV of Brunswick. However, throughout Innocent's entire pontificate, the Church's laws governing consanguineous and affinal unions continued to give rise to

both corrupt practices within the legal profession and criticism and opposition from detractors, both lay and ecclesiastical. In addition, the pope experienced the abuses of the Church's incest laws first-hand through his personal involvement in those difficult, drawn-out battles with various European kings and rulers examined above. These considerations appear to have motivated Innocent to use the Fourth Lateran Council as a vehicle to enact the changes in the Church's laws governing incest advocated by the Chanter and others during the previous fifty years.

From a practical perspective, the most important effect of the council's new laws governing consanguineous unions was that they significantly widened the pool of prospective marriage partners across the entire spectrum of medieval society.⁴⁵⁰ For the lower orders, who had a more restricted access to papal or episcopal courts for the purpose of gaining a dispensation than those among the aristocratic and royal sectors, the law made possible many marriages which would have been unobtainable under the Church's former laws. In addition, the Church's reduction of the prohibitions represented an attempt by the Church to adjust canon law to certain social realities of thirteenth century Europe. The extension of the incest laws that preceded the Fourth Lateran Council so severely limited the choice of a marriage partner at all levels of the social order that it became increasingly difficult to contract a marriage that did not violate canon law.⁴⁵¹ This phenomenon, which had become widespread among the royal and aristocratic houses over the previous three centuries, began, by the thirteenth century to equally affect the lower echelons of society, the vast majority of which lived in small rural communities, which were both isolated and immobile.⁴⁵²

Among the upper strata of medieval society, however, Canon 50 in many ways merely rendered acceptable *de jure* practices that already functioned *de facto*, since dispensations in cases involving slightly consanguineous unions had become more widely available to the aristocracy and royalty from the time of Alexander III.⁴⁵³ Nevertheless, the Church's relaxation of prohibitions against consanguineous and affinal unions also accomplished several other ecclesiastical objectives. By reducing the scope of unions which fell within the Church's definition of incest, the law greatly diminished the number of marriages that could be invalidated by claims of consanguinity and affinity. This significantly restricted the ability of potential litigants to obtain a divorce in ecclesiastical courts using such claims. That the new law produced precisely this result is borne out in the fact that in the years following the Fourth Lateran Council the number of court cases and petitions involving these impediments declined considerably.⁴⁵⁴

In addition, the new law resolved the dilemma that had been faced by Pope Eugenius in dealing with the marriage of Louis VII and Eleanor of Aquitaine. In that case, although the pope granted a dispensation to allow the continuation of what the Church considered a mildly consanguineous union, both Louis and Eleanor were evidently still within their rights to seek a divorce at a later date. The reduction of the restrictions eliminated the possibility of a couple being granted a dispensation to contract a mildly consanguineous marriage validly, while retaining the option of later dissolving the union on the grounds of incest.⁴⁵⁵ By closing this loophole in canon law, the Church avoided being placed in a position of forcing the couple to honor the dispensation, a step that it apparently was not willing to take.

The laws passed at the Fourth Lateran Council under the tutelage of Innocent III were in one sense a concession of power by the Church to the social realities of the time. This seems paradoxical given the council's far ranging importance in the history of the medieval Church and the exalted position that Innocent himself holds as the perhaps the most powerful medieval pope.⁴⁵⁶ However, when considered in light of the Church's drive to regulate the institution of marriage and to assert indissolubility as a fundamental tenet to be achieved in all such unions, the Church's incest laws in the end proved instrumental in the furthering of that goal. The ultimate shape of the laws as they stood following the Fourth Lateran Council, in fact, powerfully contributed to the Church's success in this policy because they inhibited claims of consanguinity and affinity from being used as a means of obtaining a separation or divorce. Although the question of close-kin marriages continued to be a subject of debate and study among canonists and theologians, it ceased to be a practical or pressing issue among the growing number of litigated cases in the medieval ecclesiastical courts.

Conclusion

At the beginning of the eleventh century, the Church began to use its only recently solidified laws on consanguinity and affinity to assert its authority over the institution of marriage, an area which, up until that time, had been largely controlled by lay authority and had predominantly reflected secular concerns. More specifically, the Church sought to curb what it viewed to be unorthodox marriage customs prevalent among the European aristocratic and ruling classes – one of which was the marriage of near kin. For centuries, medieval rulers had sought out suitable brides for themselves and their offspring among the network of royal houses throughout Christian Europe in order to further their dynastic, political, economic and even military objectives.⁴⁵⁷ The strategies of kings were in turn emulated by much of the European aristocracy whose interests (particularly dynastic ones) came to mirror those of the royal houses. However, by the ninth century, intermarrying among royal families had greatly decreased the number of available spouses who did not fall within the Church's tightening definition of incest. This created a situation in which fewer and fewer unions could be contracted without violating ecclesiastical prohibitions against consanguineous unions.⁴⁵⁸ Yet despite Church law, kings and princes continued to contract such unions to obtain political or material advantages. However, they were also emboldened by the belief that as God's divinely ordained rulers they were empowered to act as they saw fit to safeguard their kingdoms.

This reigning principle of theocratic kingship went largely unchallenged before the eleventh century advent of the so-called Gregorian reform movement, which reformed the papacy and elevated it to an unparalleled position of power and authority, one commensurate with that of kings and emperors. Until the papacy began seeking to restrict powerful lay rulers' ability to regulate ecclesiastical activities within their kingdoms (practices over which those rulers felt they had a legitimate right of control), kings continued to intervene in and direct the local and regional ecclesiastical institutions within their realms. In matters pertaining to marriage, such as unions between close kin, they also continued to manage freely what they viewed as their own private affairs, unencumbered by Church interference. Nonetheless, this period did experience occasional clashes between lay and ecclesiastical authorities over marriages contracted within the prohibited degrees. The dispute between Robert the Pious and Gregory V over the Capetian king's marriage to his second cousin, Bertha, provides an example of attempted papal intervention in a royal marital affair. In such contests the papacy, though respected and revered, made little practical headway to enforce the canon law on marriage or prevent such unions from taking place.

The appearance of a powerful movement to reform the Roman Church and papacy, launched in the middle of the eleventh century by popes Clement II, Leo IX and Gregory VII, altered the balance of secular and ecclesiastical power. The restructured and re-energized papacy, which emerged from this movement, began to assert its authority more effectively against irregular marriage practices current among the European royal class, particularly those involving consanguinity and affinity. As a result

of this, the occurrence of marriage disputes involving popes and kings became more frequent. Over the next one hundred years, the papacy engaged in a number of different strategies aimed at preventing royal marriages between partners who were closely related. In general, the popes attempted to assert their authority over such unions by strictly interpreting the Church's prohibitions on incestuous marriages, and buttressing their positions with citations from the authoritative collections of canon law, which had begun to be compiled in the tenth and eleventh centuries. Some rulers remained carefully within the strictures of Church law when arranging marriages for themselves or their family. Henry I of England sought the advice of the French bishop Ivo of Chartres on the suitability of marriage partners for his daughters.⁴⁵⁹ Others, however, resisted the Church's attempts to interfere with their marriage policies, forcing the papacy to retaliate using ecclesiastical sanctions. Urban II and Paschal II successfully upheld the laws in the face of open defiance by Philip I of France. Paschal also defended the Church's prohibitions in a case involving the daughter of the king of Castile.⁴⁶⁰

On occasion, however, the papacy opted to utilize the only recently established practice of granting dispensations to allow slightly consanguineous unions to be contracted or maintained. This might potentially serve a number of papal objectives, as it did in the affair between Pope Nicholas II and William, duke of Normandy. In that case, by granting William a dispensation to maintain his marriage to Mathilda, the daughter of Duke Baldwin of Flanders, the pope was able to better Rome's relations with both the Normans in northern France and in the Norman kingdom of Sicily, and thus advance his political aim of freeing the papacy from imperial control. Moreover, it furthered one of

the primary ecclesiastical objectives of the reformers. By assuming the role of judge over the validity of William's marriage, Nicholas successfully asserted the right of the papacy to act as the final authority in the marital affairs of a powerful secular ruler.

The flexible and somewhat haphazard enforcement of the laws by the Church supports the supposition that the Roman papacy did not possess a premeditated or organized plan to impose its authority over the marriage practices of the Christian faithful. In reality, Church leaders only slowly and gradually worked their way towards a systematic theology governing the institution of marriage. From a vaguely defined movement to bring marriage practices under greater ecclesiastical control and jurisdiction by freeing them from the influence of secular concerns, the Church gradually moved towards a redefinition of the institution itself, recasting it in terms of its spiritual nature.

The twelfth century witnessed the development of several trends that crucially impacted the Church's laws governing incest. First, within the Church, a more comprehensive and cohesive ecclesiastical theology of marriage began to emerge which contained among its key principles, the belief in the fundamentally indissoluble nature of the marriage bond. In practice the Church sought to promote the permanence of the marital union by restricting the circumstances under which divorce or separation could be obtained in the ecclesiastical courts. This shift within the Church's developing theology of marriage, it seems, in turn produced an effect that was destined to have a profound impact on the ecclesiastical laws governing incest. Until this time, any existence of consanguinity and affinity within the Church's restrictions was considered by ecclesiastics to be a legitimate reason for preventing a union from taking place or for

dissolving an already contracted union. However, as a result of the Church's new emphasis on indissolubility, ecclesiastical restrictions against incestuous unions, in certain circumstances, became subject to modification where they conflicted with its goal of upholding the permanence of the marital union. In cases of mild consanguinity or affinity, in order to prevent the dissolution of a marriage, the Church adopted the policy of granting dispensations. Alongside these shifts within the Church, a third trend developed from without which threatened the Church's promotion of indissolubility. The royal and aristocratic sectors of society, long resistant to the Church's restrictions against endogamous marriages, began using ecclesiastical incest laws to their advantage in order to dissolve undesirable unions. The most common means used by kings and nobles to obtain divorces in the ecclesiastical courts consisted of claiming (often falsely) the existence of impediments of consanguinity or affinity, and then procuring false witnesses to support their claims. A similar circumstance which threatened the Church's doctrine of indissolubility arose when a couple who had been granted a dispensation to contract or preserve a slightly consanguineous union, opted at a later date to ignore the dispensation and have the marriage annulled. In such situations, the papacy evidently showed itself unwilling to compel the couple to honor a dispensation, since technically they were within their legal rights to separate according to a strict reading of canon law.

As we have seen, both of these situations occurred at the royal level during this period, the first in the case of Philip I, and the second involving Louis VII and Eleanor of Aquitaine. In the course of the twelfth century, similar practices began to occur with greater frequency within the aristocracy and lower orders, whose behavior and attitudes

reflected those of the royal houses. Although canon law governing marriage became more systematic and comprehensive during this period, encouraged by “lawyer popes” such as Alexander III, the Church seemed unable to stem the tide of abuses that were being perpetuated particularly among the upper sectors of lay society. Nor could it curb the rise of corrupt practices involving incest cases which began to appear within the emerging legal profession. The situation came to a head in the transitional decades that straddled the twelfth and thirteenth centuries during the pontificate of Innocent III, arguably the most powerful and influential pope of the Middle Ages. Over the course of Innocent’s tenure as pope, abuses within the legal profession involving false charges of incest to obtain divorces multiplied. In addition, Innocent himself became entangled in a number of cases involving several members of Europe’s ruling families over this issue.

An examination of those occurrences indicated that when evaluating each case, the pope followed certain guidelines, influenced by his own legal background, as well as by precedents initiated by his predecessors, most notably Alexander III. Where a marriage fell within four degrees of consanguinity, the pope strictly upheld the law forbidding such unions. Where the impediment fell outside of four degrees, the pope exercised his authority to issue a dispensation in order to allow the marriage to be preserved (or contracted, if the case involved a future betrothal). Thus, by rendering it more difficult to dissolve unions on the grounds of consanguinity and affinity, the pope acted in accordance with the Church’s goal of promoting the permanent nature of the marriage bond. Against the royal strategy of using the Church’s incest laws to dissolve undesired marriages, Innocent imposed ecclesiastical sanctions to enforce the Church’s

authority against defiant monarchs. However, the pope's guidelines, intended to promote both the Church's model of Christian marriage as well as the Church's right to regulate marriage as an institution, produced varied results. In some cases the pope was able to successfully impose the will of Rome on those who flaunted the Church's position. In other instances, Innocent's attempts to carry the papal position through to a successful conclusion met with frustration and failure. As we saw in the previous chapter, Innocent ultimately concluded that the Church's restrictions against incestuous unions, as products of positive, not divine law, needed more drastic modification. At the Fourth Lateran Council convened in 1215, the pope promulgated the reduction of the Church's prohibitions against consanguineous unions from seven to four degrees, and in cases involving affinity, from four degrees to one.

In assessing papal motives for enforcing as well as modifying canon law regarding incestuous unions during the two hundred year period from the turn of the second millennium to the Fourth Lateran Council in 1215, several key factors stand out as having exerted a decisive influence. The first and most important factor influencing papal attitudes was certainly the Gregorian reform movement. Spearheaded by the newly empowered papacy, the movement sought to cleanse the Church of corruption and excess, to divest it of lay control and interference and, most importantly, to extend the Church's authority over areas and institutions of medieval life that were felt to belong within the ecclesiastical sphere of jurisdiction. However, in attempting to extend its control over the institution of marriage, the papacy collided with a deeply entrenched, centuries-old tradition of lay influence and control. Even though ecclesiastical laws

governing incest had existed since the early days of the Church, decisions concerning the suitability of marriage partners continued to be determined by parents, lords and kings. The success of the Gregorian reform movement in both enhancing the authority of the papacy and extending the reach of canon law enabled the popes to gradually diminish these powerful secular influences. The Church's incest laws, in fact, became a valuable tool used by the papacy as a means of regulating marriage practices, starting with the upper levels of the social order and permeating down gradually throughout all of medieval society.

Secondly, the Church's own evolving understanding of the spiritual nature of marriage, which was likewise borne out of the reforming impulse, also influenced the way in which the papacy enforced and modified its incest laws. As the Church gradually embraced the principle of indissolubility as a fundamental and indispensable component of the marital bond, popes began tempering their strict enforcement of prohibitions against consanguineous union (where the impediment was deemed "mild") in order to preserve the permanence of the union. The popes accomplished this by issuing dispensations under certain circumstances, a practice which furthered the reformer's agenda of enhancing papal authority since it demonstrated the pope's ability to modify existing Church law.

As was seen above, however, this shift in papal policy brought about unforeseen circumstances which compelled the popes to reassess the practicality and efficacy of the Church's position on consanguineous unions. The laws in fact proved to be a hindrance to the Church's enforcement of the indissolubility of the marital union, since they

facilitated the ability of the royal and aristocratic sectors of society to obtain a divorce or annulment. In addition, the loopholes created by the ambiguities existing within the consanguinity laws not only began to be used by litigants to secure divorces, they also proved to be a lucrative business for dishonest lawyers and judges.⁴⁶¹ Practices of extortion and bribery seem to have been common in order to ensure favorable decisions or special consideration. Finally, the Church was hesitant to establish a firm position on the dilemma of whether or not a dispensation granted to a couple in a slightly consanguineous marriage could be overruled or ignored at a later date in order to end a marriage. In other words, in a confrontation between canon law and the papacy's authority to dispense from a strict interpretation of it, the question arose as to which, in practice, had the more binding force. As was shown in the case of Louis VII and his queen, Eleanor, the Church was unable or unwilling to resolve this dilemma unequivocally.

The adverse impact of these disturbing trends weighed heavily on the twelfth century popes' ability to successfully enforce the incest laws. More importantly, however, it forced them to reassess whether or not the present laws were beneficial to the long-term interests of the Church. Ultimately, it fell to Innocent to conclude that the laws as they stood were, from a practical point of view, both unreasonable and unenforceable. The extent of the prohibitions had rendered it nearly impossible for many persons to find suitable marriage partners. This was certainly the case at the royal and aristocratic levels, where intermarrying between the monarchical and noble houses of Europe had occurred for centuries. However, it also began to be true among the lower orders of medieval

society, where, within the closed, immobile and isolated rural villages scattered throughout Western Europe, it apparently proved no less difficult to find an acceptable mate. The Church was not unsympathetic towards these difficulties, a fact illustrated by its willingness to grant dispensations in cases of mild consanguinity and affinity. In the end, however, this policy only caused more problems for the Church, and further hampered its efforts to regulate and spiritualize the institution of marriage. Thus at the Fourth Lateran Council it opted to adjust the Canon law governing incestuous unions to the reality of the time.

Yet, while seemingly bowing to the momentum of events, the council's decisions nonetheless successfully reinforced the Church's position as the sole authority responsible for determining the parameters of the institution of marriage. At the same time, Innocent's reduction of the prohibited degrees greatly contributed to the papacy's goal of circumventing the ability of kings and aristocrats to manipulate Church law to suit their political, social, economic and dynastic needs. Ultimately, the far-reaching influence of the Fourth Lateran Council enabled the Church to leave a lasting imprint on the institution of marriage, evident in areas ranging from attitudes on divorce and indissolubility to the growing emphasis on the necessity of free consent between partners to make a valid union. This influence has continued down to the present to exert a powerful influence over Western society's understanding of the nature of marriage.

Although the Church successfully employed its laws governing consanguineous and affinal unions to achieve certain spiritual objectives, the question remains as to whether other, more materially profitable motives existed which prompted the Church to

intervene in and attempt to regulate the marital affairs of the faithful. To say that the Church and papacy did not often profit politically, and sometimes even economically, by the policy of restricting endogamous marriages would be a partisan misreading of the evidence. As has been shown above in the examination of cases from the pontificates of Nicholas II, Urban II, and Innocent III, the papacy was frequently motivated by political circumstances when it ruled on the validity of a royal marriage, or in its use of dispensations. Economic advantages gained by the Church's restrictions against marriages between close kin are more elusive and difficult to substantiate in the sources and thus difficult to prove in any conclusive sense, especially as a systematic and premeditated plan orchestrated by the Church.⁴⁶² Moreover, it cannot be stressed too forcefully that a clear-cut division between ecclesiastical and secular spheres of activity is a modern outlook that would have been alien to the medieval mind. The Church and particularly the papacy were political entities, fully immersed in and critically impacted by the affairs of secular kingdoms. For better or worse, its interests were inextricably intertwined with the politics and economics of the age. Neither pope nor king thought in terms of the modern separation of Church and State, nor did either desire it.

Thus the Church held that in order for it to thrive and prosper spiritually, it needed to protect its political and economic status. At times, caught in-between the conflicting, aggressive policies of contending secular rulers or kingdoms, it sought to further its political position, in order to preserve its ability to carry out its spiritual mission. These spiritual goals were never far from the minds of even the most politically motivated pontiffs such as Gregory VII and Innocent III. Innocent used the Church's laws on incest

to advance the temporal aspirations of the papacy, particularly in the marital affairs surrounding the imperial schism. Nevertheless, the pope's overarching goal was to defend the authority of the papacy and Church against the encroachment of secular powers in spheres such as marriage where it felt it had legitimate spiritual interests. Although a fierce defender of canon law, Innocent proved equally willing to adjust the letter of the law to the reality of the time for the purpose of furthering the spiritual mission of the Church. Like Gregory the Great, his distant predecessor six hundred years earlier, Innocent envisioned the Church's mission to be multidimensional, requiring flexibility and empathy on the part of the papacy in order to respond to the changing needs of the Christian faithful. For Gregory, the Church's task of restraining "the evil that it opposes" had required that it "correct some things through zeal." But Gregory had also acted on the belief that the Church's zeal must be tempered with tolerance and the ability to endure in the face of adversity. Innocent's evolving policy regarding the regulation of consanguineous and affinal unions likewise caused him to sometimes correct, to sometimes tolerate, but most of all, it required him to endure.

Endnotes

¹ Bede, *Ecclesiastical History of the English People*, ed. Bertram Colgrave and R. A. B. Mynors (Oxford: Clarendon Press, 1969), 1. 27. 5. The entire text of Gregory's replies to Augustine was included by Bede in his *Ecclesiastical History*. However, the authenticity of Gregory's fifth *responsum*, which deals with consanguineous unions, has been a point of dispute among scholars since the eighth century (see below, Chapter 2, 28-29). For a detailed analysis of the questions surrounding this passage, see Paul Meyvaert, "Bede's text of the *Libellus Responsionum* of Gregory the Great" in *England Before the Conquest, Studies in Primary Sources Presented to Dorothy Whitelock*, eds. Peter Clemoes and Kathleen Hughes (Cambridge: Cambridge University Press, 1971). For a general discussion of the Frankish Church and marriage, see J. M. Wallace-Hadrill, *The Frankish Church* (Oxford: Clarendon Press, 1983), 403-411.

² Bede, *Ecclesiastical History*, 1. 27. 5.

³ Ibid., "In hoc enim tempore sancta ecclesia quaedam per feruorem corrigit, quaedam per mansuetudinem tolerat, quaedam per considerationem dissimulat, atque ita portat et dissimulat, ut saepe malum quod aduersatur portando et dissimulando conpescat"

⁴ For the early development of the papal state, see Thomas F. X. Noble, *The Republic of St. Peter* (Philadelphia: University of Pennsylvania Press, 1984); See also Bernhard Schimmelpfennig, *The Papacy*, trans. James Sievert (New York: Columbia University Press, 1992), 1-52.

⁵ Meyvaert, "Bede's text of the *Libellus Responsionum*", 18.

⁶ For purposes of clarity, I use the term "Gregorian Reform" to refer to the great movement for reform which was launched by a series of popes beginning in the middle of the eleventh century, and which continued into the thirteenth. The reform traditionally was named after Pope Gregory VII who was one of its leading proponents, and was involved in several of the most famous incidents which occurred during this period. However, recent scholarship has highlighted the considerable contributions of other popes and churchmen to the success of the reform movement. See Schimmelpfennig, *the Papacy*, 130-98.

⁷ See Gerd Tellenbach, *The Church in Western Europe from the Tenth to the Early Twelfth Century*, trans. Timothy Reuter (Cambridge: Cambridge University Press, 1993); idem, *Church State and Christian Society*, trans. R. F. Bennett (Oxford: Basil Blackwell, 1940); Uta-Renate Blumenthal, *The Investiture Controversy, Church and Monarchy from the Ninth to the Twelfth Century* (Philadelphia: University of Pennsylvania Press, 1988).

⁸ For the definition of "degree" and the different methods of calculating degrees in blood relationships, see below, 8-9.

⁹ Tellenbach, *The Church in Western Europe*, 135-141; James A. Brundage, *Law, Sex, and Christian Society in Medieval Europe* (Chicago: The University of Chicago Press, 1987), 176-79.

¹⁰ David Knowles, *The Evolution of Medieval Thought* (New York: Vintage Books, 1962), 71-206.

¹¹ See M.T. Clanchy, *From Memory to Written Record: England, 1066-1307* (Oxford and Cambridge: Blackwell Publishers, 1979), 5-16. Although the focus of Clanchy's book is England, he acknowledges the European wide phenomenon of an increase of both literacy and written sources after the turn of the millenium. Regarding the increase in canon law sources concerning marriage, see Charles Duggan, "Equity and Compassion in Papal Marriage Decretals to England" in *Love and Marriage in the Twelfth Century*, eds. Willy Van Hoecke and Andries Welkenhuysen (Louvain: Leuven University Press, 1981), 59-87.

¹² See Stephan Kuttner, "The Revival of Jurisprudence", in *Renaissance and Renewal in the Twelfth Century*, eds. Robert L. Benson and Giles Constable (Cambridge: Harvard University Press, 1982), 299-323; Paul Fournier, "Un Tournant d'Histoire du Droit, 1060-1140" in *Revue Historique de Droit Français et Étranger*, 3d ser., 41 (1917), 129-80.

¹³ See Georges Duby's two important works *Medieval Marriage: Two Models from Twelfth-Century France*, trans. Elborg Forster (Baltimore: Johns Hopkins University Press, 1978); idem, *The Chivalrous Society*, trans. Cynthia Postan (Berkeley: University of California Press, 1977).

¹⁴ Jack Goody, *The Development of the Family and Marriage in Europe* (Cambridge: Past and Present Publications, 1983).

¹⁵ David Herlihy, *Medieval Households* (Cambridge: Harvard University Press, 1985), 79-88. Both Goody's and Herlihy's arguments will be analyzed in fuller detail in Chapter 1, 17-18.

¹⁶ Bede, *Ecclesiastical History*, 1, 27, 5.

¹⁷ C. T. Lewis and C. Short, *A Latin Dictionary* (Oxford: Clarendon Press, 1996), s. v. "Consanguinitas."

¹⁸ The best treatment of terms and definitions relating to consanguinity is Francis X. Wahl, *The Matrimonial Impediments of Consanguinity and Affinity* (Washington, DC: The Catholic University of America, 1934), 1-8; see also Charles Edward Smith, *Papal Enforcement of Some Medieval Marriage Laws* (Baton Rouge: Louisiana State University Press, 1940), 1-3, 23-34; Ernest Champeaux, "Jus Sanguinis: Trois Façons de Calculer le Parenté au Moyen Âge", *Revue Historique de Droit Français et Étranger*, 4th ser., 12 (1933), 241-90.

¹⁹ For examples of incest regulations during the Classical period, see Brundage, *Law, Sex, and Christian Society*, 10-50; For a comparison between Medieval regulations against incest and the regulations of cultures other than that of Western Europe during the Medieval period, see Michael Mitterauer, "Christianity and Endogamy", *Continuity and Change* 6 (1991), 295-333.

²⁰ The Catholic Church during the Middle Ages recognized four types of impediments to marriage that may arise out of relationship between the two principles: consanguinity (blood relationship); affinity (relationship by marriage); public honesty (relationship through betrothal, which prevents a person from marrying any relative of someone to whom he was previously betrothed); and the impediment of spiritual relationship (arising from association through joint participation in the ceremonies of baptism [Godparents] or confirmation [sponsors]). See, Smith, *Papal Enforcement*, 5-6.

²¹ Not only Rome, but many of the Germanic peoples possessed laws forbidding marriage between persons related by affinity. See Brundage, *Law, Sex and Christian Society*, 36, 130; William Burge, *The Comparative Law of Marriage and Divorce*, eds. Alexander Wood Renton and George Grenville Phillimore (London: Sweet & Maxwell, 1910), 5; P. D. King, *Law and Society in the Visigothic Kingdom* (Cambridge: Cambridge University Press, 1972), 233. An exception to this attitude can be found in the Jewish practice of Levirate marriage (Deuteronomy 25, 5-10), which obligates a man to marry his sister-in-law in the event of his brother's death for the purpose of continuing his family line. See below, Chapter 2, 22-3.

²² Wahl, *Matrimonial Impediments*, 9-13.

²³ Michael Sheehan, "Choice of a Marriage Partner in the Middle Ages: Development and Mode of Application of a Theory of Marriage", in *Studies in Medieval and Renaissance History* 1 (1978), 1-33.

²⁴ Incest laws are found in a wide variety of law collections, which include the *Institutiones* of Gaius, the *Codex Justinianus*, the *Codex Theodosianus*, and the *Sententiae* of Paulus. Specific laws will be discussed in detail below, Chapter 2, 24-26.

²⁵ For specific examples of both Jewish and Roman influence in the writings of Ambrose, Augustine and Isidore, see below, Chapter 2, 24-5, 28.

²⁶ See below, Chapter 2, 27-28. Many of the Germanic law codes have been translated into English. These include *The Burgundian Code*, trans. Katherine Fischer Drew (Philadelphia: University of Pennsylvania Press, 1949, reprint, 1972); *The Lombard Laws*, trans. Katherine Fischer Drew (Philadelphia: University of Pennsylvania Press, 1949, reprint, 1973); *The Laws of the Alamans and Bavarians*, trans. Theodore John Rivers (Philadelphia: University of Pennsylvania Press, 1977); *The Visigothic Code*, trans. S. P. Scott (Boston: Boston Book Co, 1910); *The Laws of the Salian and Ripuarian Franks*, trans. Theodore John Rivers (New York: AMS Press, 1986). A good general introduction to the history of the Visigoths in this period can be found in P. D. King, *Law and Society in the Visigothic Kingdom*.

²⁷ The Germanic method of calculating degrees will be discussed in detail in Chapter 2, 27.

²⁸ The transition from the pre-reform papal synod, which was mainly a provincial council concerned with the local affairs of the Roman church and its immediate environs, to the great general councils of the reform period, which were ultimately attended by bishops from all over Western Christendom and whose decrees were considered applicable to all Latin Christians, did not begin to take shape until the pontificate

of Leo IX (1049-54). See Ian Stuart Robinson, *The Papacy, 1073-1198: Continuity and Innovation* (Cambridge: Cambridge University Press, 1990), 121-26.

²⁹ For synods and legislation during the reign of Pipin, see *Monumenta Germaniae Historica* (Hannover: Hahn, 1828-), *Leg.*: 1, 30-31 (hereafter, MGH); Karl Josef von Hefele, *Conciliengeschichte*, 6 vols. (Freiburg: Breisgau, 1873), 3, 593 (hereafter, Hefele, *Conciliengeschichte*). For enactments during the reign of Charlemagne, see MGH *Leg.*, 1: 91; Hefele, *Conciliengeschichte*, 3: 743, 763; *Sacrorum Conciliorum Nova et Amplissima Collectio*, ed. Giovanni Domenico Mansi, 60 vols. (Paris: Hubert Welter, 1901-27), 14: App. 257 (hereafter, Mansi).

³⁰ See Introduction, p. 2-3, notes 3 and 4.

³¹ *Patrologiae Cursus Completus, Series Latina*, ed. J. P. Migne, 221 vols. (Paris: J. P. Migne, 1844-64), 89: 524-25 (hereafter, Migne, PL).

³² *Bibliotheca Rerum Germanicarum*, ed. P. Jaffé, 6 vols. (Berlin: Weidmannos, 1864-73), 3, 121.

³³ Migne, PL 115: 668.

³⁴ Migne, PL 119: 919-20, 1131-33.

³⁵ See *Medieval Handbooks of Penance*, eds. and trans. John T. McNeill and Helena M. Gamer (New York: Columbia University Press, 1936; reprinted, New York: Octagon Books, 1965); *The Irish Penitentials*, ed. Ludwig Bieler, *Scriptores Latini Hiberniae*, vol. 5 (Dublin: Dublin Institute for Advanced Studies, 1963); Pierre Payer, *Sex and the Penitentials, The Development of a Sexual Code, 550-1150* (Toronto: University of Toronto Press, 1984).

³⁶ For the development of canonical collections, see Paul Fournier and Gabriel Le Bras, *Histoire des Collections Canoniques en Occident*, 2 vols. (Paris: Recueil Sirey, 1931-32); Jean Gaudemet, *Les Sources du Droit de l'Église en Occident du IIe au VIIe Siècle* (Paris: Sirey, 1985); James Brundage, *Medieval Canon Law* (London: Longman, 1995); Constant Van de Wiel, *History of Canon Law* (Louvain: Louvain Theological & Pastoral Monographs 5, 1991); Roger E. Reynolds, "Law, Canon: To Gratian", *Dictionary of the Middle Ages*, 16 vols. (New York: Charles Scribner's sons, 1986), 7: 395-413.

³⁷ See Schafer Williams, *Codices Pseudo-Isidoriani: A Palaeographico-Historical Study*, in *Monumenta Iuris Canonici*, series C: Subsidia, vol. 3 (New York: Fordham University Press, 1971); Horst Fuhrmann, *Einfluß und Verbreitung der Pseudoisidorischen Fälschungen*, in MGH *Schr.*, 24: 1 (Stuttgart: Anton Hiersemann, 1972-4); Dionysius Exiguus, *Decreta Gregorii Papae Junioris*, in Migne, PL 67: 343-4; Brundage, *Law, Sex and Christian Society*, 171-2.

³⁸ Regino of Prüm, *Libri Duo de Synodaliibus Causis et Disciplinis Ecclesiasticis*, ed. F.G.A. Wasserschleben (Graz, Austria: Akademische Druck-u. Verlagsanstalt, 1964).

³⁹ Regino, *Libri Duo*, 2, c. 129, 148-50 (Paulus); 2, c. 144-47, 175 (*Cod. Theod.*).

⁴⁰ Regino, *Libri Duo*, 2, c. 191-247.

⁴¹ Burchard of Worms, *Decretorum Libri XX*, in Migne, PL 140: 557-1058; Ivo of Chartres, *Decretum* in Migne, PL 161:47-1043, and *Panormia* in Migne, PL 161:1045-1344.

⁴² James Brundage gives an excellent overview of the reformers' agenda concerning the regulation of marriage and sexual matters in the eleventh, twelfth, and thirteenth centuries. See *Law, Sex, and Christian Society*, 176-416; See also *Prefaces to Canon Law Books in Latin Christianity: Selected Translations, 500-1245*, trans. Robert Sommerville and Bruce Brasington (New Haven and London: Yale University Press, 1998), 59-75.

⁴³ Several of Ivo's letters to various noblemen outline the Church's position on consanguineous unions and warn against proposed marriages that fell within the prohibited degrees. Ivo, *Ep.* 129, 211, 261 in Migne, PL 162: 139-40, 215-216, 265-66.

⁴⁴ This case is discussed in detail in Smith, *Papal Enforcement*, 85-98.

⁴⁵ The standard edition of Gratian's *Decretum* is found in the *Corpus Iuris Canonici*, ed. Emil Friedberg, 2 vols. (Leipzig: B. Tauchnitz, 1879; reprinted, Graz, Austria: Akademische Druck- u. Verlagsanstalt, 1959) (hereafter, *Decretum*).

⁴⁶ Brundage, *Law, Sex and Christian Society*, 229. See also Walter Ullmann, *Law and Politics in the Middle Ages: An Introduction to the Sources of Medieval Political Ideas* (London: The Sources of History, Ltd., 1975), 133-34.

⁴⁷ The second part is divided up into thirty-six cases (*causae*), the last ten of which deal with marriage. The University of Berkeley Law Library, Robbins Collection contains an unpublished translation of Gratian's Marriage decretals by Judge John T. Noonan, which was immensely helpful to the sections of this study dealing with Gratian's views on consanguinity and affinity.

⁴⁸ See below, 20.

⁴⁹ Smith, *Papal Enforcement*, 105-44; See also John W. Baldwin, *Masters, Princes, and Merchants: The Social Views of Peter the Chanter and His Circle*, 2 vols. (Princeton: Princeton University Press, 1970), 1: 333-36.

⁵⁰ See below, Chapter 4, 122 and n. 440.

⁵¹ Rufinus, *Summa Decretorum*, ed. Heinrich Singer (Paderborn: Ferdinand Schöningh, 1902; reprinted, Aalen: Scientia, 1963).

⁵² Stephen of Tournai, *Summa über das Decretum Gratiani*, ed. Johann Friedrich von Schulte (Giessen: Emil Roth, 1891; reprinted, Aalen: Scientia, 1965 [partial edition]).

⁵³ Bernard of Pavia, *Summa de Matrimonio*, in *Summa Decretalium*, ed. Lasperys (Ratisbon, 1860).

⁵⁴ Peter the Chanter, *Verbum Abbreviatum*, in Migne, PL 205: 23-370; See also, Baldwin, *Peter the Chanter*, 1: 333-6.

⁵⁵ Peter Damiani, *De Parentis Gradibus*, in Migne, PL 145: 191-208.

⁵⁶ Anselm of Canterbury, *Ep.* 884: *Anselmi ad Henricum Regum Anglorum*, in Migne, PL 159: 243; *De Nuptiis Consanguineorum*. In Migne, PL 158: 557-60.

⁵⁷ Peter Lombard, *Libri Quatuor Sententiarum*, Spicilegium Bonaventurianum, 3d ed., vols. 4-5. (Grottaferrata: Collegium S. Bonaventurae, 1971-81); Migne, PL 192: 937.

⁵⁸ Brundage, *Law, Sex and Christian Society*, 191-92.

⁵⁹ Smith, *Papal Enforcement*, 77-187. For cases involving the French royal and aristocratic houses during this period, see Duby, *Medieval Marriage*, 1978).

⁶⁰ Duby, *Medieval Marriage*, 88-110: Several of Duby's conclusions have recently been challenged by Constance Bouchard, who maintains that the French nobility, as a rule, neither disregarded nor willfully contravened the Church's laws of consanguinity and affinity. Rather, many noble families took considerable pains to comply with them when arranging marriages. See Constance Bouchard, "Consanguinity and Noble Marriages in the Tenth and Eleventh Centuries," *Speculum* 56 (1981), 268-87.

⁶¹ Brundage, *Law, Sex and Christian Society*, 223. For the much better documented thirteenth and fourteenth centuries, see Charles Donahue, "The Canon Law and the Formation of Marriage and Social Practice in the Later Middle Ages", *Journal of Family History* 8 (1983), 144-58; Michael Sheehan, "Marriage and Family in English Conciliar and Synodal Legislation," in *Essays in Honor of Anton Charles Pegis*, ed. J. Reginald O'Donnell (Toronto: The Pontifical Institute for Medieval Studies), 1974, 205-14; idem, "Marriage Theory and Practice in the Conciliar Legislation and Diocesan Statutes of Medieval England" in *Medieval Studies* 40 (1978), 408-60.

⁶² The most important earlier works on marriage in this period are Adhemar Esmein, *Le Mariage en Droit Canonique*, 2 vols., ed. R. Génestal (Paris: Sirey, 1929-35; reprinted, 1965); George Joyce, *Christian Marriage* (London: Sheed and Ward, 1948); Edward Westermarck, *The History of Human Marriage*, 3 vols. (New York: Allerton Book Co., 1922); Jean Dauvallier, *Le Mariage dans le Droit Classique de L'Église, depuis de Decret de Gratien (1140) jusqu'à le Mort de Clement V (1314)*, (Paris: Sirey, 1933); Joseph Freisen, *Geschichte des Kanonischen Eherechts*, 2nd ed. (Paderborn, 1893; reprinted, Aalen: Scientia, 1963).

⁶³ Joyce, *Christian Marriage*, 510-13; Wahl, *Matrimonial Impediments*, 14-15; Bouchard, "Consanguinity", 270.

⁶⁴ Goody, *The Development of the Family and Marriage*.

⁶⁵ Herlihy, *Medieval Households*, 79-88.

⁶⁶ Mitterauer, "Christianity and Endogamy", 295-333.

⁶⁷ Duby, *Medieval Marriage*, 1-22.

⁶⁸ Bouchard, "Consanguinity", 272; Brundage, *Law, Sex and Christian Society*, 192-3.

⁶⁹ Brundage, *Law, Sex and Christian Society*, 194.

⁷⁰ Smith, *Papal Enforcement*.

⁷¹ Smith, *Papal Enforcement*, 199-200.

⁷² Baldwin, *Masters, Princes, and Merchants*.

⁷³ In the Gospels of Matthew and Mark, John the Baptist is shown to be opposed to the marriage of Herod Antipas to the wife of his brother, Philip. Yet John's main charge is one of adultery, not incest. See Mark 6:17; Matt. 14: 3-12. Later, Jesus shows no explicit opposition to levirate marriage, as is seen in his reply to the Sadducees' question in Matt. 22:30. *New American Bible* (New York: Catholic Book Publishing Co., 1991): 77, 34, 51 (hereafter, NAB).

⁷⁴ A comprehensive overview of the development of Jewish incest laws can be found in Louis Epstein, *Marriage Laws in the Bible and the Talmud* (Cambridge: Harvard University Press, 1942), 220-274.

⁷⁵ Numbers, 36:6-7, NAB.

⁷⁶ Leviticus, 18: 7-17 NAB. An exception to this can be found in the story of Tamar and Amnon, in which Tamar proposes a marriage between Amnon and her half-brother. See 2 Sam. 13: 1-22, NAB.

⁷⁷ Deut. 25: 5-10 NAB.

⁷⁸ P. E. Corbett, *The Roman Law of Marriage* (Oxford: Clarendon Press, 1930), 48. Though earlier disputed, the point was confirmed after the discovery of a fragment of Livy 20, discovered by P. Krüger and cited in full by Corbett.

⁷⁹ Livy, *The History of Rome from its Foundation, Books 31-45: Rome and the Mediterranean*, trans. Henry Bettenson (Harmondsworth, Middlesex, England: Penguin Books, 1976), 42, 34; Cicero, *pro Cluentio*, 5; Plutarch *Brutus*, 13, and *Antonius*, 9; Tacitus, *Annales*, 12, 6.

⁸⁰ Gaius, *Institutes*, trans. Francis De Zulueta (Oxford: Clarendon Press, 1946), 1, 58-62; see also Tacitus, *Ann.*, 12, 5.

⁸¹ *Codex Theodosianus*, 3 vols., eds. P. Krüger and T. Mommsen (Berlin: Weidmann, 1905), 3, 12, 1.

⁸² *Cod. Theod.*, 3, 10, 1; 3, 12, 3.

⁸³ *Cod. Theod.*, 5, 4, 19.

⁸⁴ *Cod. Theod.*, 3, 10, 1.

⁸⁵ During the reign of Justinian (527-65), the entire accumulated corpus of Roman law up to the early sixth century was systematically revised. The final product, which was not complete until several years after the emperor's death, comprised of four works: the Code, the Digest, the Institutes, and the Novels. This revised edition, which later acquired the name of *Corpus Iuris Civilis*, continues to be indispensable to the study of Roman law. See Brundage, *Law, Sex and Christian Society*, 113. For regulations on incest found in the *Corpus*, see *Inst.*, 1, 1, 10; 2, 3, 5; *Dig.*, 23, 2, 17, 39 in *Corpus Iuris Civilis*, eds. Theodor Mommsen and Paulus Krueger, 3 Vols. (Berlin: Weidmann, 1867-1954).

⁸⁶ Ambrose of Milan, *Epistola* 60: *Ad Paternam* in Migne, PL 16:1184.

⁸⁷ Augustine, *De Civitate Dei*, 15, 16 in Migne, PL 41: 459. See also Joyce, *Christian Marriage*, 509-510; Smith, *Papal Enforcement*, 8-9.

⁸⁸ Mitterauer, "Christianity and Endogamy", 295-333.

⁸⁹ Joyce, *Christian Marriage*, 509; Wahl, *Matrimonial Impediments*, 13.

⁹⁰ Ambrose, *Ep.* 60: *Ad Paternam*, in Migne, PL, 16: 1183-1186.

⁹¹ Augustine, *De Civitate Dei*, 16, 16, in Migne, PL 41: 458.

⁹² Joyce argues that independent Church legislation concerning consanguineous unions began at an early date, citing decrees from the councils of Elvira (300) and Neo-Caesarea (314) as well as the so-called "Apostolic Canons." These decrees, however, deal with cases of close affinity, and in particular, the Jewish practice of Levirate Marriage, not consanguinity. See Joyce, *Christian Marriage*, 509.

⁹³ See above, Chapter 2, 8.

⁹⁴ Paulus, *Sententiae*, in *Fontes Iuris Romani Ante-Justiniani*, 4, 11, 8; Wahl, *Matrimonial Impediments*, 13; Smith, *Papal Enforcement*, 23-28; Joyce, *Christian Marriage*, 508.

⁹⁵ The council of Aige (506) in Mansi, 8: 335, Canon 61. The term *consobrinae* can mean both cousin and extended cousin. It is frequently used in conjunction with *sobrinae* which specifically refers to one's first cousin usually on the mother's side. Though the council of Aige uses only the word *consobrinae*, both words are found together in almost all subsequent councils.

⁹⁶ Other councils which specify prohibited relationships include the council of Epaon (517) in Mansi, 8: 562, c. 30; council of Auvergne (535) in Mansi, 8: 861, c. 12; the councils of Orléans (538 and 541),

Mansi, 9: 14, c. 10 and Mansi, 9: 118, c. 27; council of Tours (567), Mansi, 9: 800, c. 21; council of Paris (614), Mansi, 10: 542, c. 14; council of Rome (721), Mansi, 12: 263, c. 8. See also, Wahl, *Matrimonial Impediments*, 13-16. The most thorough treatment of individual councils can be found in Karl Joseph von Hefele, *Histoire des Conciles d'après les Documents Originaux*, ed. Henri Leclercq, 9 vols. in 18 (Paris: Letouzey et Ane, 1907-31); Smith, *Papal Enforcement*, 9-18.

⁹⁷ For example, the council of Toledo (517) in Mansi, 8: 786; council of Rheims (624), Mansi, 10: 595.

⁹⁸ This method is thought to have derived from the German use of *genicula*, or joints (articulations) in the human body as a means of illustrating the number of degrees in a relationship for the purpose of determining inheritance. The head represented the common ancestor and the number of degrees was determined by counting the joints down to the fingertips, the total number being six. See Wahl, *Matrimonial Impediments*, 14-15; Joyce, *Christian Marriage*, 511-13.

⁹⁹ See King, *Law and Society in the Visigothic Kingdom*, 233; Katherine Fischer Drew, "The Law of the Family in the Germanic Kingdoms", *Studies in Medieval Culture* 11 (1977), 17-26; Alexander Callander Murray, *Germanic Kinship Structure: Studies in Law and Society in Antiquity and the Early Middle Ages* (Toronto: Pontifical Institute of Mediaeval Studies, 1983).

¹⁰⁰ Freisen, *Geschichte des Canonischen Eherechts*, 401, n.1: *Lex Salica*, tit. 47, 3 (Canciani, *Leges Barbarorum*, t. 2, 88); *Lex Thuringorum*, 34, in MGH *Leg.* 5: 128; *Lex Baiuvariorum*, 15, 10 (ibid., 3, 321); *Lex Langobardorum*, Rotharis, 153 (ibid., 4, 35).

¹⁰¹ *Leges Visigothorum*, 3, tit. 5 1; MGH *Leg.*: 1, 1, 159. The translation here is from Scott, *The Visigothic Code*, 106. This law was enacted during the reign of King Chindaswind (642-653).

¹⁰² For examples of polygamous and incestuous marriage practices among the Frankish royal and aristocratic houses, see Joyce, *Christian Marriage*, 513, 536.

¹⁰³ Isidore of Seville, *Etymologiarum*, Lib. 9, c. 6, n. 29 in Migne, PL 82: 363-64.

¹⁰⁴ Wahl, *Matrimonial Impediments*, 14, n. 28.

¹⁰⁵ Bede, *Ecclesiastical History*, 1, 27, 5. "Unde necesse est, ut iam tertia vel quarta generatio fidelium licenter sibi iungi debeat; nam secunda, quam praediximus, a se omnimodo debet abstinere."

¹⁰⁶ The authenticity of the Gregorian document was called into question shortly after Bede's death in 735 by the English missionary to Germany, St. Boniface, as well as by Pope Zachary, who states that he was unable to discover a copy of it in the Roman archives. See Meyvart, "Bede's text of the *Libellus Responsionum*", 15-17.

¹⁰⁷ J. M. Wallace-Hadrill, *Bede's Ecclesiastical History of the English People: A Historical Commentary* (Oxford: Clarendon Press, 1988), 40-41. For the view favoring the authenticity of the letter, see Joyce, *Christian Marriage*, 514, n. 4.

¹⁰⁸ Burchard of Worms, *Decretum*, 7, 19-20 in Migne, PL 140:782-3; Ivo of Chartres, *Decretum*, 9, 20 in Migne, PL 161: 661; Gratian, *Decretum*, C. 35, q. 5, c. 2, in *Corpus Iuris Canonici*, ed. Emil Friedberg, 2 vols. (Leipzig: B. Tauchnitz, 1879; reprinted, Graz: Akademische Druck-u. Verlagsanstalt, 1959), 2: 1273 (hereafter, *Decretum*).

¹⁰⁹ Petrus Gasparri, *Tractatus Canonici de Matrimonio*, 2 vols. (Paris: Beauchesne, 1904), n. 691; Goody, *The Development of Family and Marriage*, 53-60.

¹¹⁰ In the eleventh century, Pope Alexander II argued that in this letter, Gregory was calculating according to the "canonical" (i. e. German) method, not the Roman method. However, since it can be shown that that Gregory's successors over the next century were still using the Roman method, it is unlikely that Gregory was instituting a new means of calculation. Furthermore, since Gregory was the first pope to initiate on a large scale missions to convert the Germanic tribes, it seems highly premature to assume that a transformation from the Roman method to one based on a Germanic model had already taken place.

¹¹¹ The confusion was compounded by the existence of another letter attributed to Gregory the Great that was circulating at this time in the collection known as the Pseudo-Isidorean Decretals. In this second letter, which was written to Felix of Messana, Gregory states that his concession to the Anglo-Saxons was meant to be temporary and that those fully initiated into the faith must observe prohibitions up to the seventh generation. *Decretales Pseudo-Isidorianae et Capitula Angilramni*, ed. Paul Hinschius (Leipzig: B. Tauchnitz, 1863; reprinted, Aalen: Scientia, 1963), 749.

¹¹² Council of Rome (721), Mansi, 12: 263, c. 8. The council forbids marriages between "extended cousins" (*consobrinae*). Joyce interprets Gregory II's use of this term to mean any relation within "seven (or at most eight) degrees of Roman computation." He supports his position with detailed and persuasive evidence, and his view had gained support from many subsequent scholars. See Joyce, *Christian Marriage*, 515-516; Wahl, *Matrimonial Impediments*, 16; Franciscus Wernz, *Jus Decretalium*, vol. 4 in 2 (Prati: Ex. Off. Lib. Giochetti, 1911-1913), 409, n. 42.

¹¹³ MGH *Ep.* 3: 275. "Dicimus quod oportuerat quidem, quamdiu se agnoscunt affinitate propinquos, ad huius copulae non accedere societatem; sed quia temperantia magis et presertim in tam barbaram gentem, placet plus quam districtione censurae, concedendum est ut post quartam generationem jungantur."

¹¹⁴ Joyce, *Christian Marriage*, 515; Wahl, *Matrimonial Impediments*, 16.

¹¹⁵ MGH *Ep.* 3: 279; Pope Zachary (741-52) reiterated Gregory III's position both through conciliar legislation and in a letter to Pipin and the German Bishops. See Mansi, 12: 373; MGH *Ep. ad Pipinum, Episcopos et Proceres Francorum*, n. 22, 3, 485.

¹¹⁶ MGH *Leg.*, 2 (1): 40. "In tertio genuculum (*sic*) separantur, et post poenitentiam actam, si ita voluerint, licentiam habent aliis se conjungere. In quarta autem conjunctione, si inventi fuerint, eos non separamus, sed poenitentiam eis judicamus. Attamen si factum non fuerit, nullam facultatem conjungendi in quarta generatione damus." For the significance of the term *genuculum*, see above, 27, n. 98.

¹¹⁷ Council of Compiègne, MGH *Leg.*, 2 (1): 37. "Si in quarta progenie reperti fuerint conjuncti, non separamus" (c. 1). "In tertia vero si reperti fuerint, separantur." (c. 2); The Council of Mainz repeats the same injunction in Mansi, 14: 75, c. 54.

¹¹⁸ See James C. Russell, *The Germanization of Early Medieval Christianity: A Sociohistorical Approach to Religious Transformation* (New York: Oxford University Press, 1994).

¹¹⁹ Peter Brown, *The Cult of the Saints: Its Rise and Function in Late Christianity* (Chicago: The University of Chicago Press, 1981); Patrick J. Geary, *Before France and Germany: The Creation and Transformation of the Merovingian World* (New York and Oxford: Oxford University Press, 1988), 136-37; Edward James, *The Franks* (New York: Basil Blackwell, 1988), 124-27.

¹²⁰ Wahl, *Matrimonial Impediments*, 15.

¹²¹ Rabanus Maurus, *Ep. ad Humbertum* in Migne, PL 110: 1086; Joyce, *Christian Marriage*, 517-18; Smith, *Papal Enforcement*, 25.

¹²² Benedictus Levita, *Capitularium* in Migne, PL 97: 759.

¹²³ Hincmar of Rheims, *De Nuptiis Stephani* in Migne, PL 126: 141.

¹²⁴ Council of Douzy in Mansi, 17: 282.

¹²⁵ Freisen, *Geschichte*, 392-3.

¹²⁶ Council of Bourges (1031) in Mansi, 19:505.

¹²⁷ Blumenthal, *The Investiture Controversy*, 55-58; Tellenbach, *The Church in Western Europe*, 135-184.

¹²⁸ For an excellent treatment of the earlier reform movement and its influence on later papal reforms, see, Tellenbach, *The Church in Western Europe*, 111-121.

¹²⁹ On the difficulty of determining the papacy's influence over the institution of "monastic exemption", see Tellenbach, *The Church in Western Europe*, 114; C. E. Lawrence, *Medieval Monasticism: Forms of Religious Life in Western Europe in the Middle Ages* (London and New York: Longman, 1989), 87-89; Blumenthal, *The Investiture Controversy*, 11, 15-18, 66.

¹³⁰ The close link between the monastic reform movement and the papal reforms is evidenced by the fact that eleven of the nineteen popes between the years 1073 and 1198 were former monks. See Robinson, *The Papacy*, 211.

¹³¹ Blumenthal, *The Investiture Controversy*, 76, 92-96; Tellenbach, *The Church in Western Europe*, 151-2.

¹³² Schimmelpfennig, *The Papacy*, 137, 160; Blumenthal, *The Investiture Controversy*, 76-9.

¹³³ Regino, *Libri Duo*, 288-311.

¹³⁴ Included are both Gregory's letter granting concessions within the third and fourth generation to the Anglo-Saxons, and his letter to Felix of Messana which reiterates a general prohibition of marriages up to the seventh generation. These two seemingly contradictory letters were played off against each other in subsequent centuries by both sides of the debate. See especially the letters of Alexander II above, 16.

¹³⁵ Burchard, *Decretum*, book 7 in Migne, PL 140: 779-88.

- ¹³⁶ Council of Rome (1059) in Mansi, 19: 898; Council of Rome (1063) in Mansi, 19: 1026.
- ¹³⁷ Joyce, *Christian Marriage*, 520.
- ¹³⁸ The text is recorded in its entirety in Gratians *Decretum*, C. 35, q. 5, c. 2.
- ¹³⁹ Ibid.
- ¹⁴⁰ "Namque duo gradus legales unum gradum canonicum efficiunt. Fratres itaque, qui secundum leges seculares dicuntur in secundo gradu, iuxta canones numerantur in primo. Filii fratrum, qui illic numerantur in quarto, hic computantur in secundo: nepotes uero, qui ibi in sexto, istic numerantur in tertio: sic deinceps, qui legibus scribuntur in octauo et decimo, in canonibus diffiniuntur in quarto et quinto." Ibid.
- ¹⁴¹ Migne PL 146: 1402. The text of this argument is discussed in detail in Smith, *Papal Enforcement*, 30-31.
- ¹⁴² Peter Damiani, *De Parentelae Gradibus*, in Migne, PL 145: 191-208.
- ¹⁴³ Ibid., 197-8. For Alexander II's letter, see *Corpus Iuris Canonici*, ed. Emil Friedberg, 2 vols. (Leipzig: B. Tauchnitz, 1879; reprinted, Graz: Akademische Druck-u. Verlagsanstalt, 1959), 2, 1274-75. The Gregorian writings cited by Damiani and Alexander are found in Burchard's *Decretum*, Book 7, c. 19-21, in Migne, PL 140: 782.
- ¹⁴⁴ Alexander felt that Damiani's position on certain sexual and marital issues was too extreme. He at one point tried to block the dissemination of Damiani's *Book of Gomorrah*. See Brundage, *Law, Sex and Christian Society*, 212-14. For general introductions to Peter Damiani's life and works, see Lester K. Little, "The Personal Development of Peter Damian," in *Order and Innovation in the Middle Ages: Essays in Honor of Joseph R. Strayer*, eds. William C. Jordan et al., (Princeton: Princeton University Press, 1976), 332; Owen J. Blum, *St. Peter Damian: His Teaching on the Spiritual Life* (Washington, DC: The Catholic University of America Press, 1947); Joseph J. Ryan, *Saint Peter Damiani and His Canonical Sources: A Preliminary Study in the Antecedents of the Gregorian Reform* (Toronto: Pontifical Institute of Mediaeval Studies, 1956).
- ¹⁴⁵ *Bibliotheca Rerum Germanicarum*, 2: 109, 111.
- ¹⁴⁶ Gregory VII, *Register* 6, 20 in MGH *Ep. Sel.*, 2: 431-2. Other cases involved such important persons as Countess Mathilda of Tuscany, the Bishop of Pavia, and Alfonso VI of Castile and León. See Brundage, *Law, Sex and Christian Society*, 192.
- ¹⁴⁷ Migne, PL 163: 134, 280.
- ¹⁴⁸ The details of Philip's case are discussed below, Chapter 3, 70-84.
- ¹⁴⁹ Concerning Ivo's influence, see *Prefaces to Canon Law Books in Latin Christianity: Selected Translations, 500-1245*, trans. Robert Somerville and Bruce Brasington (New Haven and London: Yale University Press, 1998), 105-15.
- ¹⁵⁰ The ninth book of the *Decretum* deals exclusively with the subject of incestuous unions. Ivo, *Decretum*, book 9 in Migne, PL 261:655-90.
- ¹⁵¹ Ivo, *Ep.* 261 in Migne PL 162: 265-66.
- ¹⁵² Most scholars have followed the lead of Stephan Kuttner who convincingly has argued that, in developing his method, Gratian was heavily influenced by Peter Abelard's *Sic et Non*. See Stephan Kuttner, "The Father of the Science of Canon Law", *The Jurist* 1 (1941), 2-19. For excellent works detailing Gratian's influences and the impact of his work on twelfth century Europe, see Stanley Chodorow, *Christian Political Theory and Church Politics in the Mid-twelfth Century: The Ecclesiology of Gratian's Decretum* (Berkeley: University of California Press, 1972), and D. A. Luscombe, *The School of Pierre Abelard: The Influence of Abelard's Thought in the Early Scholastic Period*, Cambridge Studies in Medieval Life and Thought, vol. 14 (Cambridge: Cambridge University Press), 1969.
- ¹⁵³ Gratian, C. 35, q. 8-9.
- ¹⁵⁴ Brundage, *Law, Sex and Christian Society*, 287.
- ¹⁵⁵ *Die Summa des Paucapalea über das Decretum Gratiani*, ed. Johann Friedrich von Schulte (Giessen: Emil Roth, 1890).
- ¹⁵⁶ *Die Summa Magistri Rolandi nachmals Papstes Alexander III*, ed. Friedrich Thaner (Innsbruck: Wagner, 1874).
- ¹⁵⁷ Rufinus, *Summa Decretorum*.

- ¹⁵⁸ Both Simon's and Huguccio's works remain unpublished. For partial editions and pertinent literature on these two decretists, see Brundage, *Law, Sex and Christian Society*, 257, n.6 and 7.
- ¹⁵⁹ Stephen of Tournai, *Summa über das Decretum Gratiani*.
- ¹⁶⁰ *The Summa Parisiensis on the Decretum Gratiani*, ed. Terence P. McLaughlin (Toronto: Pontifical Institute for Medieval Studies, 1952).
- ¹⁶¹ Brundage, *Law, Sex and Christian Society*, 258, n. 11.
- ¹⁶² Baldwin, *Masters, Princes, and Merchants*, 1: 334.
- ¹⁶³ General Introductions on this period can be found in Stephan Kuttner, *History of Ideas and Doctrines of Canon Law in the Middle Ages* (London: Variorum Reprints CS 113, 1980); Robert Somerville, *Papacy, Councils and Canon Law in the 11th and 12th Centuries* (London: Variorum Reprints, CS 312, 1990). On the subject of the development of marriage law during this period, see Brundage, *Law, Sex and Christian Society*, 325-415.
- ¹⁶⁴ Brundage, *Law, Sex and Christian Society*, 325-46; See also Kenneth Pennington, *Popes, Canonists and Texts, 1150-1550* (London: Variorum Reprints CS 412, 1993).
- ¹⁶⁵ See cases in Smith, *Papal Enforcement*, 162; Baldwin, *Masters, Princes and Merchants*, 1: 333.
- ¹⁶⁶ Baldwin, *Masters, Princes and Merchants*, 1: 334. Baldwin cites a specific case involving the king of England who was able to obtain a dispensation for a marriage between two baronial families from the papal curia.
- ¹⁶⁷ Migne, PL 200: 627-28, cited in Smith, *Papal Enforcement*, 162.
- ¹⁶⁸ *Ibid.*, 334-5; see also Brundage, *Law, Sex and Christian Society*, 289.
- ¹⁶⁹ The Parisian theologian Robert of Courson, who studied under Peter the Chanter in the late 1190's remarked in his *Summa* that the practice of hiring false witnesses to testify in divorce hearings was a common occurrence in the French ecclesiastical courts. See Baldwin, *Masters, Princes and Merchants*, 1: 335.
- ¹⁷⁰ The case is discussed in Smith, *Papal Enforcement*, 105-129; Duby, *Medieval Marriage*, 83-90.
- ¹⁷¹ "The Lord has given certain and inviolable laws of matrimony which excluded twelve persons from marriage (Lev. 18: 6-18 and 20: 11-21), to which we have added as exceptions the fifth, sixth, and seventh degrees [of consanguinity]." Peter the Chanter, *Verbum Abbreviatum*, in Migne, PL 205: 164 (quoted from Baldwin, *Masters, Princes and Merchants*, 1: 336, n. 186).
- ¹⁷² The Chanter was particularly concerned with the abuses that were rampant in the field of marriage litigation. He felt that the laws, which were subject to the arbitrary will of the ecclesiastical judges, were being manipulated for profit. See Baldwin, *Masters, Princes and Merchants*, 1: 334-6.
- ¹⁷³ *Ibid.*, 1: 335-6. Students faithful to the Chanter's position include Robert of Courson, Raoul Ardent, Thomas of Chobham and Robert of Flamborough.
- ¹⁷⁴ On the questions of Innocent III's law background, and whether or not he studied under Huguccio, see Kenneth Pennington, "Innocent III and Canon Law" in *Innocent III: Vicar of Christ or Lord of the World?* ed. James M. Powell (Washington, DC: The Catholic University of America Press, 1994), 105-110.
- ¹⁷⁵ Baldwin, *Masters, Princes and Merchants*, 1: 336.
- ¹⁷⁶ *Ibid.*, 1: 342.
- ¹⁷⁷ Smith, *Papal Enforcement*, 130-44.
- ¹⁷⁸ The Fourth Lateran Council, Canon 50 in *English Historical Documents, 1189-1327*, ed. Harry Rothwell (London: Eyre and Spottiswoods, 1975). The translation used here can be found in *Readings in Medieval History*, ed. Patrick Geary (Ontario, Canada: Broadview Press, 1997), 437.
- ¹⁷⁹ Cf., Gratian, C. 35, q. 8-9; see above, 42.
- ¹⁸⁰ Council of Ingelheim (948), in *MGH Conc.*, 5: 6.1, 916-60, ed. Ernst-Dieter Hehl (Hannover: Hahnsche Buchhandlung, 1987), 135-63; Bouchard, "Consanguinity", 268-87.
- ¹⁸¹ Donahue, "The Canon Law and the Formation of Marriage", 144-58; Sheehan, "Marriage and Family", 205-14; idem, "Choice of a Marriage Partner in the Middle Ages: Development and Mode of Application of a Theory of Marriage", 87-117.
- ¹⁸² Sheehan, "Marriage Theory and Practice", 145-54; idem, "Choice of a Marriage Partner", 87-117.
- ¹⁸³ Sheehan, "Choice of a Marriage Partner", 110-12.

- ¹⁸⁴ The Fourth Lateran Council, Canon 51, in *English Historical Documents, 1189-1327*, ed. Harry Rothwell (London: Eyre and Spottiswoods, 1975), translated in *Readings in Medieval History* ed. Patrick Geary (Ontario: Broadview Press, 1997), 438; see also, Brundage, *Law, Sex and Christian Society*, 415.
- ¹⁸⁵ Brundage, *Law, Sex and Christian Society*, 225-28, 319-23.
- ¹⁸⁶ See below, 82.
- ¹⁸⁷ Duby, *Medieval Marriage*, 25-108.
- ¹⁸⁸ The main primary source for the events surrounding Robert's marriages is *Richeri Historiarum*, in MGH SS, 3: 651-94. Differing interpretations of Robert's marriage to Bertha can be found in Duby, *Medieval Marriage*, 45-54; Bouchard, "Consanguinity", 273-77; Smith, *Papal Enforcement*, 77-83. An old but still reliable account of Robert's reign, including the affair involving Bertha can be found in Charles Pfister, *Études sur le Règne de Robert le Pieux* (Paris: Vieweg, 1885).
- ¹⁸⁹ Unable to find a suitable royal bride among the royal houses of Western Europe, Hugh wrote a letter to the Byzantine Emperor, hoping to arrange a marriage between Robert and the emperor's daughter but the letter went unanswered. The reason that no acceptable wife could be found in the west was due to the fact that the Capetians were related within the prohibited degrees to virtually every royal house in Western Europe. See Bouchard, *Consanguinity*, 274-5.
- ¹⁹⁰ The exact age difference between Robert and Rozalla-Suzanna is not known but Bouchard speculates that she was "perhaps twice his age: he was not yet twenty, while she had first been married before he was born and had a son old enough to assume the office of count of Flanders"; Bouchard, *Consanguinity*, 276.
- ¹⁹¹ *Richeri Historiarum*, 4, 87 in MGH SS, 3: 694.
- ¹⁹² Duby, *Medieval Marriage*, 47.
- ¹⁹³ *Ex Historia Francicae Fragmentum*, in *Recueil des Historiens des Gaules et de la France*, 24 vols., eds. Martin Bouquet et al., 2nd ed.; revised, Léopold Delisle (Paris: V. Palme [imprint varies], 1840-1904), 10, 211 (hereafter, RHGF), cited in Smith, *Papal Enforcement*, 81; see also Duby, *Medieval Marriage*, 124, n.73.
- ¹⁹⁴ Odoranus of Sens, *Chronique*, in *Opera Omnia*, ed. Robert Henri Bautier (Paris: Éditions du Centre National de la Recherche Scientifique, 1973), 100-102, cited in Duby, *Medieval Marriage*, 46, n. 75.
- ¹⁹⁵ Robert Fawtier, *The Capetian Kings of France: Monarchy and Nation, 987-1328*, trans. Lionel Butler and R. J. Adam (London: Macmillan, 1960), 60-168; Schimmelpfennig, *The Papacy*, 124-5; Tellenbach, *The Church in Western Europe*, 41-5.
- ¹⁹⁶ In this assessment of Robert's main motivations, I am in agreement with Duby who strongly emphasizes the French king's desire to produce an heir: see Duby, *Medieval Marriage*, 49-51.
- ¹⁹⁷ Another possibility, though remote, exists for Robert's embassy to Gregory. The French king may have been attempting not to gain a dispensation for his marriage to Bertha, but to secure from the pope legitimate status for any prospective children that might issue from the union. In a similar situation occurring two hundred years later, Robert's descendant Philip Augustus successfully petitioned Pope Innocent III to legitimize his children from a marriage that had been forbidden by Rome. In 1201, Innocent granted the French king's request to have his children by Agnès of Méran legitimized. However, at the same time he maintained the Church's opposition to Philip's marriage to Agnès. See below, 108-9.
- ¹⁹⁸ Duby, *Medieval Marriage*, 48-49; Smith, *Papal Enforcement*, 79-83.
- ¹⁹⁹ Tellenbach, *The Church in Western Europe*, 22-26.
- ²⁰⁰ Duby, *Medieval Marriage*, 47.
- ²⁰¹ Bouchard, *Consanguinity*, 276.
- ²⁰² Timothy Reuter, *Germany in the Middle Ages: 800-1056* (London and New York: Longman, 1991), 265.
- ²⁰³ J.N.D. Kelly, *The Oxford Dictionary of Popes* (Oxford: Oxford University Press, 1986), 134-5.
- ²⁰⁴ In 1023, Robert and Emperor Henry II met at the border of the French and German kingdoms to discuss Church reform. The two rulers made an agreement to convene a council along with Pope Benedict VIII at Pavia, but the proposed meeting never occurred because in 1024, the Emperor and Pope both died. See Hartmut Hoffman, *Mönchskönig und Rex Idiotus, Studien zur Kirchenpolitik: Heinrichs II. Und Konrads II.* (Hannover: Hahnsche Buchhandlung, 1993), 59 and n. 174; Georges Duby, *France in the Middle Ages*, trans. Juliet Vale (Oxford and Cambridge: Blackwell, 1991), 2, 14.

- ²⁰⁵ *The Letters of Gerbert with his Papal Privileges as Sylvester II*, trans. Harriet Pratt Lattin (New York: Columbia University Press, 1961), 6. Lattin's introduction provides a concise summary of the events surrounding the dispute over the see of Rheims. See Introduction, 5-16.
- ²⁰⁶ *The Letters of Gerbert*, Introduction, 15-17.
- ²⁰⁷ *Richeri Historianum*, 3. 4. 87 in MGH SS, 3: 651; see also, Duby, *Medieval Marriage*, 46.
- ²⁰⁸ Duby, *Medieval Marriage*, 47-8; Smith, *Papal Enforcement*, 79.
- ²⁰⁹ Duby, *Medieval Marriage*, 47.
- ²¹⁰ Blumenthal, *The Investiture Controversy*, 64.
- ²¹¹ Ibid., 65-79; Schimmelpfennig, *The Papacy*, 114.
- ²¹² Tellenbach, *The Church in Western Europe*, 65-68.
- ²¹³ Hefele, *Conciliengeschichte*, 4. 731; Hefele-Leclerc, *Histoire des Conciles*, vol. 4 (Paris, 1911, 1913), 1018. See also Blumenthal, *The Investiture Controversy*, 147.
- ²¹⁴ William of Jumièges, *Gesta Normannorum Ducum*, ed. J. Marx (Paris: A. Picard and J. Marx, 1914), 88; Ordericus Vitalis, *Historia Ecclesiastica*, eds. A. Le Prévost and L. Delisle, 5 vols. (Paris: Société de l'histoire de la France, 1838-55), 181-2. A thorough discussion of the three theories and an accompanying family tree can be found in David C. Douglas, *William the Conqueror* (Berkeley and Los Angeles: University of California Press, 1964), 75-80; appendix C, 391-3.
- ²¹⁵ Douglas, *William the Conqueror*, 79; R. W. Southern, *Saint Anselm: A Portrait in a Landscape* (Cambridge: Cambridge University Press, 1990), 21.
- ²¹⁶ For an excellent overview of the entire political background to William's reconciliation with the papacy and, in particular, Lanfranc's role in it, see Southern, *Saint Anselm*, 19-24.
- ²¹⁷ Interestingly, Henry III, himself, was accused of marrying his third cousin by the abbot, Siegfried of Gorze. Henry was able to convince his German bishops that the accusation was false, and Rome remained silent on the issue. However, modern scholarship supports Siegfried's contention that Henry's and his wife's grandmothers were half sisters. See Bouchard, "Consanguinity", 271.
- ²¹⁸ Southern, *Saint Anselm*, 21.
- ²¹⁹ Douglas, *William the Conqueror*, 77-78.
- ²²⁰ Blumenthal, *The Investiture Controversy*, 81.
- ²²¹ Schimmelpfennig, *The Papacy*, 143; Blumenthal, *The Investiture Controversy*, 82-4.
- ²²² Douglas, *William the Conqueror*, 49-54.
- ²²³ Ibid., 67-76.
- ²²⁴ William's claim to the English throne had its roots in the long standing ties between the English kingdom and the Norman duchy. In 1002, the English king, Ethelred II (978-1016) married Emma, the sister of William's grandfather, Richard II. When the kingdom was invaded by the Scandinavian ruler, Sweyn Forkbeard in 1013, Emma and her two sons, Alfred and the future Edward the Confessor fled to Normandy, followed shortly thereafter by Ethelred. Edward spent a number of years at the court of William's father, Robert I before he returned to Enland in 1043 following the death of the ruler, Harthacnut, and was himself proclaimed king. In 1051, the childless Edward nominated William of Normandy as his heir. William, however, was in the midst of his own struggle for survival in Normandy and over the next decade, Edward's rivals succeeded in diverting the English succession away from the Norman duke and back towards the West Saxon royal house. The question of the rightful successor to Edward continued to be hotly disputed at the time William finally gained undisputed control of Normandy in late 1059. See Douglas, *William the Conqueror*, 159-80.
- ²²⁵ Southern, *Saint Anselm*, 24.
- ²²⁶ Blumenthal, *The Investiture Controversy*, 92-95; Schimmelpfennig, *The Papacy*, 135-36. See also, Kennerly M. Woody, "Sagena Piscatoris: Peter Damiani and the Papal Election Decree of 1059", *Viator* 1 (1970), 33-54.
- ²²⁷ Tellenbach, *The Church in Western Europe*, 194.
- ²²⁸ Ibid., 318; see also Southern, *Saint Anselm*, 24-6, 44-7.
- ²²⁹ Blumenthal, *The Investiture Controversy*, 95-7.
- ²³⁰ Council of Rome (1059) in Mansi, 19: 898.

- ²³¹ On the pope's position as both "chief lawmaker of the Church" and as the "person who deemed when and how much deviation from these rules was to be allowed", see Schimmelpfennig, *The Papacy*, 138-9.
- ²³² Walter Ullmann, "Romanus Pontifex Indubitanter Efficitur Sanctus: Dictatus Papae 23 in Retrospect and Prospect", *Studi Gregoriani* 6 (1959-61), 229-64; Schimmelpfennig, *The Papacy*, 134-5; Blumenthal, *The Investiture Controversy*, 117-18.
- ²³³ Gregory VII, Registrum II, 55a, cited in Robinson, *The Papacy*, 180, n. 4.
- ²³⁴ See above, Chapter 2, 39.
- ²³⁵ Smith, *Papal Enforcement*, 86.
- ²³⁶ *Chronicon Turonensis*, in RHGF, 12: 465; *Gesta Consulum Andegavensium*, in RHGF, 12: 499; Ordericus Vitalis, *Ecclesiastica Historia*, 2, 3: 386, cited in Smith, *Papal Enforcement*, 86-7.
- ²³⁷ *Epistolae Urbani II Papae*, 23: Ad Rainaldum, in RHGF, 14: 702.
- ²³⁸ Ordericus Vitalis, stated that it was Odo, the bishop of Bayeux, who presided over the marriage, but in his letter, Pope Urban II accuses not Odo, but the bishop of Senlis. See Smith, *Papal Enforcement*, 89.
- ²³⁹ *Regesta Pontificum Romanorum ab Condita Ecclesia ad Annum Post Christum Natum MCXCVIII*, 2 vols., ed. P. Jaffé (Leipzig: Veit, 1885-88), no. 5469; RHGF, 14: 702-3. Duby asserts that early on, the pope could not make up his mind over whether to charge the king with adultery or incest, but ultimately settled on the latter. This seems unlikely, however, since only a short time earlier, Urban, in a letter to the archbishop of Rheims, specifically accused the king of "public adultery." See Duby, *Medieval Marriage*, 33-34; c.f. Smith, *Papal Enforcement*, 92.
- ²⁴⁰ Smith, *Papal Enforcement*, 89-92.
- ²⁴¹ Gilbertus Montensis, *Chronica*, in MGH SS: 21: 503; Blumenthal, *The Investiture Controversy*, 163.
- ²⁴² Bertholdus Constantiensis, *Chronica*, in RHGF, 14: 685.
- ²⁴³ *Vita Sancti Hilarii Pictavensis*, RHGF, 14: 104; 15: 104, cited in Smith, *Papal Enforcement*, 95.
- ²⁴⁴ Ibid.
- ²⁴⁵ Ivo of Chartres, *Ep.* 141, 144 in Migne, PL 162:148, 150; Duby, *Medieval Marriage*, 40.
- ²⁴⁶ RHGF, 15: 197.
- ²⁴⁷ Duby, *Medieval Marriage*, 30; Smith, *Papal Enforcement*, 96-97.
- ²⁴⁸ Georges Duby, in particular, has argued that the struggle between Philip I and the Church proved to be a crucial turning point in the history of medieval marriage. Duby maintains that during this struggle, the ecclesiastical "model" of marriage, emphasizing the permanence of the institution and discouraging marriages between close kin overtook the lay model, which promoted endogamy and easy dissolution of marriage ties in the interest of continuing family lineage and passing on property. See Duby, *Medieval Marriage*, 1-22.
- ²⁴⁹ The authoritative biography of Urban II by the German historian Alfons Becker entitled *Papst Urban II* (Stuttgart: MGH Schr., 19.1, 1964) remains untranslated. However, good short essays on Urban's life and pontificate can be found by Robert Sommerville in the *Dictionary of the Middle Ages*, 13 vols., ed. Joseph R. Strayer (New York: Charles Scribner's sons, 1989), 12: 302-4 (hereafter, DMA), and by Marshall W. Baldwin in *New Catholic Encyclopedia*, 16 vols. (New York: McGraw-Hill, 1967), 10: 477-78 (hereafter, NCE). On Urban's role in the development of canon law, see Francis J. Gossman, *Pope Urban II and Canon Law* (Washington, DC: The Catholic University of America, Canon Law Studies, 403, 1960).
- ²⁵⁰ Blumenthal, *The Investiture Controversy*, 135-7.
- ²⁵¹ Schimmelpfennig, *The Papacy*, 134-5; Sommerville, *Urban II*, in DMA, 12: 303; Baldwin, *Urban II*, in NCE, 10: 477.
- ²⁵² Blumenthal, *The Investiture Controversy*, 138-9; J.N.D. Kelly, *The Oxford Dictionary of Popes* (Oxford: Oxford University Press, 1986), 159-60.
- ²⁵³ See Jonathan Riley-Smith, *The First Crusade and the Idea of Crusading* (Philadelphia: University of Pennsylvania Press, 1986), 13-57; Steven Runciman, *A History of the Crusades: Volume one, The First Crusade and the Foundation of the Kingdom of Jerusalem* (Cambridge: Cambridge University Press, 1951), 106-18; Robert Sommerville, "The Council of Clermont and the First Crusade", *Studia Gratiana* 15 (1972).
- ²⁵⁴ See above, 70.
- ²⁵⁵ Blumenthal, *The Investiture Controversy*, 142.

²⁵⁶ Ibid., 142, 156; Tellenbach, *The Church in Western Europe*, 258-9.

²⁵⁷ Much of Urban's period of exile during the first half of his pontificate was spent in France where he enjoyed considerable support from the French church. His relationship with Philip was, on the whole, better than with most of the other rulers in Western Europe at the time, despite the ongoing battle over the king's marriage. See Blumenthal, *The Investiture Controversy*, 135-42.

²⁵⁸ Duby, *Medieval Marriage*, 37.

²⁵⁹ R. W. Southern, *Western Society and the Church in the Middle Ages* (Harmondsworth, Middlesex, England: Penguin Books, Ltd. 1970), 27-41; Schimmelpfennig, *The Papacy*, 15-129; Tellenbach, *The Church in Western Europe*, 1-141. A beautifully concise summary of the relations between the Church and European secular authority up to and including the period of the Norman invasion can be found in David Knowles, *Thomas Becket* (Stanford: Stanford University Press, 1970), 10-12.

²⁶⁰ See above, Chapter 2, 40-41.

²⁶¹ It is important to note that in many kingdoms, particularly Germany, the idea of theocratic kingship was accepted from both the royal and ecclesiastical perspective, and that "the harmonious cooperation between king and ecclesiastics was appreciated as a perfectly natural, mutual complementarity of two closely allied divine institutions."; Blumenthal, *The Investiture Controversy*, 34, 49-53. See also, Tellenbach, *The Church in Western Europe*, 23-37.

²⁶² In the case of a son whose mother was a royal concubine, bastards could still legitimately succeed to a position of kingship during this period. William the Conqueror, who was accepted first as duke of Normandy and later as King of England, is the most outstanding example of an illegitimate offspring attaining royal status. See Douglas, *William the Conqueror*, 3-8.

²⁶³ For the case involving Robert the Pious, see above, 57-8; for the case involving Philip Augustus, see below, Chapter 4, 106-110.

²⁶⁴ In the case of Philip I, violence was threatened at Poitiers against the papal legate who pronounced the king's excommunication by the local count and populace. See above, 70.

²⁶⁵ For cases occurring during the Merovingian and Carolingian periods, see Smith, *Papal Enforcement*, 54-76; Jo Ann Mc Namara, and Suzanne F. Wemple, "Marriage and Divorce in the Frankish Kingdom," in *Women in Medieval Society*, ed. Susan Mosher Stuard (Philadelphia: University of Pennsylvania Press, 1976)s.

²⁶⁶ For the case involving the marriage of Henry III, see above, Chapter 3, 64, n. 217; see also Bouchard, "Consanguinity", 271.

²⁶⁷ See Charles Donahue, "The Canon Law and the Formation of Marriage and Social Practice in the Later Middle Ages" in *Journal of Family History* 8 (Summer, 1983), 145-46; and idem, "The Policy of Alexander the Third's Consent Theory of Marriage" in *Proceedings of the Fourth International Congress of Medieval Canon Law*, ed. Stephen Kuttner (Vatican City: *Monumenta Iuris Canonici*, Series C: Subsidia 5, 1976), 251-81.

²⁶⁸ Duby has devoted a number of works and articles to this topic. See especially "Lineage, Nobility and Knighthood: The Mâconnais in the Twelfth Century—a Revision", in *The Chivalrous Society*, trans. Cynthia Postan (Berkeley: University of California Press, 1977); Duby, *Medieval Marriage*, 1-24.

²⁶⁹ Duby, *Medieval Marriage*, 25.

²⁷⁰ James A. Brundage, *Law, Sex, and Christian Society*, 225-28.

²⁷¹ Duby, *Medieval Marriage*, 25.

²⁷² Robinson, *The Papacy*, 121-2; Tellenbach, *The Church in Western Europe*, 23.

²⁷³ Robinson, *The Papacy*, 122.

²⁷⁴ Tellenbach, *The Church in Western Europe*, 188-90.

²⁷⁵ Blumenthal, *The Investiture Controversy*, 70-74.

²⁷⁶ Robinson, *The Papacy*, 125.

²⁷⁷ Ibid.

²⁷⁸ Sommerville, *Urban II*, in DMA, 12: 302-3; Baldwin, *Urban II*, in NCE, 10: 477; Robinson, *The Papacy*, 100, 415-20.

²⁷⁹ Urban presided over eleven papal synods, only three of which were held in Rome. The rest were held mainly in Southern Italy and in France. Robinson, *The Papacy*, 124-5.

²⁸⁰ Robinson, *The Papacy*, 125-7.

²⁸¹ Riley-Smith, *The First Crusade*, 31-3.

²⁸² During the Reform period, three types of papal legate emerged, each possessing a varying degree of authority. The most utilized by the reform popes and the most powerful was the *legatus a latere*, literally "legate from the side of the pope", who was entrusted with missions to key regions or kingdoms such as France, England or Germany. Acting as a "vice-pontiff", the *legatus a latere* was expected to be received in his province "as if he were our self, or rather, St. Peter, in person" (Gregory VII, *Registrum* II, 55a). The other two types, the *legatus missus* and the *legatus natus*, although less powerful, were still effective means of extending the pope's authority throughout Western Europe. See Robinson, *The Papacy*, 146-78.

²⁸³ Schimmelpfennig, *The Papacy*, 160; Tellenbach, *The Church in Western Europe*, 208-11; Robinson, *The Papacy*, 146.

²⁸⁴ Fifteen of the nineteen popes between the years 1073-1198 had earlier in their career acted as legates: Robinson, *The Papacy*, 147.

²⁸⁵ Smith, *Papal Enforcement*, 91-4; Blumenthal, *The Investiture Controversy*, 163-4.

²⁸⁶ See above, 70.

²⁸⁷ Smith, *Papal Enforcement*, 95.

²⁸⁸ The ideas put forth in this section are heavily indebted to Duby's groundbreaking work on marriage practices of the medieval French aristocracy and royalty. Duby's important books, *Medieval Marriage*, and *The Knight, the Lady and the Priest: The Making of Modern Marriage in Medieval France*, trans. Barbara Bray (New York: Pantheon Books, 1983), which analyze the affair involving Philip and Bertrade in minute detail, both give thorough descriptions of his concept of the "lay" and "ecclesiastical" models of marriage. See above, Chapter 1, 19; Duby, *Medieval marriage*, 1-22, 26-45; and idem, *The Knight, the Lady and the Priest*, 23-74.

²⁸⁹ The letters of Ivo which Duby examines are as follows: Ivo of Chartres, *Ep.* 125, in Migne, PL 162: 137; *Ep.* 155, in PL 162: 158-9; *Ep.* 158, in PL 162: 163-4; *Ep.* 166, in PL 162: 169-70; *Ep.* 167, in PL 162: 170; *Ep.* 180, in PL 162: 173; *Ep.* 211, in PL 162: 215-6; *Ep.* 221, in PL 162: 226; *Ep.* 230, in PL 162: 233; *Ep.* 245, in PL 162: 153-4; *Ep.* 246, in PL 162: 253-4; *Ep.* 253, in PL 162: 258; *Ep.* 261, in PL 162: 265-6. See Duby, *Medieval Marriage*, 42-45 and notes.

²⁹⁰ See James A. Coriden, *The Indissolubility Added to Christian Marriage by Consummation: An Historical Study of the Period from the End of the Patristic Age to the Death of Pope Innocent III* (Rome: Officium Libri Catholici, 1961); Aries, Philippe, "Le Mariage Indissoluble", *Communications* 35 (1982), 123-37.

²⁹¹ Augustine, *De Nuptiis et Concupiscentia*, 1: 10, 11, in *Corpus Scriptorum Ecclesiasticorum Latinorum* (Vienna: F. Tempsky, 1866), 42: 222-23 (hereafter, CSEL); *De Bono Coniugali*, 7: 6, 15: 17, 29:32, in CSEL, 41: 196, 209-10, 227; *De Adulterinis Coniugiis*, 1:1, in CSEL, 41:348; Ambrose, *Expositio Evangelii Lucae* 8: 5-6, in CSEL, 32/4: 394; Marie-François Berrouard, "Saint Augustin et L'Indissolubilité du Mariage: Évolution de sa Pensée", *Recherches Augustiniennes* 5 (1968), 139-55; Brundage, *Law, Sex, and Christian Society*, 95.

²⁹² Brundage, *Law, Sex, and Christian Society*, 115, 135, 143-5.

²⁹³ Ibid., 199, 225.

²⁹⁴ Both Louis and Eleanor ironically traced their ancestry back to Robert the Pious, who had likewise run into opposition from the Church on the charge of consanguinity. Louis was four generations removed from Robert, Eleanor was five generations distant. Duby maintains that the consanguineous nature of Louis and Eleanor's relationship was "apparently known by everyone at the time of their marriage in 1137": See Duby, *Medieval Marriage*, 55. However, the earliest mention of Louis and Eleanor's consanguineous relationship does not occur until 1143, six years after the marriage, in a letter of Bernard of Clairvaux. Bernard castigated King Louis for forbidding the marriage of the daughter of one of his vassals, Count Theobald of Champagne, on the grounds of consanguinity. Bernard writes: "How is it that the king is so scrupulous about consanguinity in the case of Theobald's heirs, when everyone knows that he himself has married his cousin in the third degree?" (Bernard is incorrect in his reckoning here by one degree); Bernard of Clairvaux, *Ep.* 224, in Migne, PL 182: 394. John of Salisbury, in his *Historia Pontificalis*, gives further details concerning the affair. He states that Bartholemew, the bishop of Laon, had performed the

calculation of degrees. However, in contrast to Bernard's statement, he asserts that "it was not certain whether the reckoning was true or false." The probable reason for this statement is the fact that the Bartholemew's reliability as a witness had been called into question regarding several other marital disputes: John of Salisbury, *Historia Pontificalis*, trans. Marjorie Chibnall (London: Thomas Nelson and Sons Ltd., 1956), 53.

²⁹⁵ Amy Kelly, *Eleanor of Aquitaine and the Four Kings* (Cambridge: Harvard University Press, 1950), 2-72.

²⁹⁶ Raymond wanted the forces of Louis to immediately undertake the rescue of the Latin county of Edessa, which had been captured by the Muslims in 1144, as well as shore up the defenses of Raymond's principality against any future attack. Louis, who had undertaken the crusade principally as a means of expiating his guilt over his part in the destruction of the town of Vitry, which he had burned down in 1141, killing all of its inhabitants, intended first and foremost to go as a pilgrim to Jerusalem. See William of Tyre, *A History of Deeds Done Beyond the Sea*, trans. E. A. Babcock and A. C. Krey, eds., 2 vols. (New York: Columbia University Press, 1943), 2, 180; See also Kelly, *Eleanor of Aquitaine*, 52-61.

²⁹⁷ John of Salisbury, *Historia Pontificalis*, 53.

²⁹⁸ *Ibid.*, 53.

²⁹⁹ *Ibid.*, 53: "Discordiam regis et regine, quae Antiochie concepta fuerat, auditis querelis utriusque seorsum omnino sedauit, prohibens ne de cetero consanguinitatis inter eos mentio haberetur; et confirmans matrimonium tam uerbo quam scripto, sub anathematis interminatione inhibuit ne quis illud impetens audiretur et ne quacunque solueretur occasione." John of Salisbury was accompanying the pope in Tusculum when he met with Louis and Eleanor. His account is thus based on first-hand knowledge of the meeting. John is also the principle source for the events that took place in Antioch. However, he is silent about the ensuing divorce of Louis and Eleanor three years later. The account of Louis' separation from Eleanor in 1153 comes from the *Historia Gloriosissimi Regis Ludovici VII*, an official document of the French court, composed by an anonymous monk from the abbey of Saint-Germain-des-Prés. However, the *Historia* fails to mention the discord which broke out between the king and queen in Antioch or the encounter with the pope in Tusculum: see *Historia Gloriosissimi Regis Ludovici VII*, ed. August Moliner in *Vie de Louis le Gros par Suger* (Paris: A. Picard, 1887), [hereafter, *Historia Gloriosissimi*].

³⁰⁰ The *Historia* gives two reasons for the divorce and Louis' subsequent remarriage: Louis was concerned with his "salvation"; and Louis feared that "the kingdom of France might come to be ruled by an heir not issued from his seed": *Historia Gloriosissimi*, 18: 166. See also Duby, *Medieval Marriage*, 55-56.

³⁰¹ *Historia Gloriosissimi*, 16: 163-66; Richard the Poitevin, *Universal Chronicle*, in RHGF, 13: 43; William of Tyre, *Historia Hierosolymitana*, Lib.16, 27, in Migne, PL 201: 670; William of Newburg, *De Rebus Anglicis, Libri II*, in RHGF, 13: 101-2; Gervais of Canterbury, *Chronicle*, in RHGF, 13: 125; Gerald of Wales, *De Instructione Principis*, in RHGF, 18: 155-6; Duby, *Medieval Marriage*, 61-2.

³⁰² In John's account, Eugenius commanded that the marriage of Louis and Eleanor "should not be dissolved under any circumstance." John of Salisbury, *Historia Pontificalis*, 61.

³⁰³ John of Salisbury, *Historia*, 82. See also Marjorie Chibnall's analysis of Hugh's divorce in appendix 5, 99.

³⁰⁴ *Ibid.*

³⁰⁵ The degree of relationship between Ralph and his first wife is not known, but one source, Herimann, the abbot of Saint Martin of Tournai, claims that the witnesses swearing to the consanguineous relationship, incorrectly calculated the degrees: Herrimann of Saint Martin of Tournai, *Liber de Restauratione Monasterii Sancti Martini Tornacensis*, in MGH SS, 14: 343.

³⁰⁶ The whole affair involving Ralph of Vermandois and Eugenius is recounted in John of Salisbury, *Historia Pontificalis*, 12-13. For a slightly different view of the affair, see Duby, *Medieval Marriage*, 64-73.

³⁰⁷ John of Salisbury, *Historia Pontificalis*, 13.

³⁰⁸ *Ibid.*

³⁰⁹ Gregory VII had been a monk, probably in the Cluniac order; Victor III and Gelasius II had both been monks at Monte Cassino; Urban was the former grand-prior of Cluny; Pascal II was also a monk, although where is uncertain; Calixtus had been the Archbishop of Vienne; Honorius II, Innocent II, Lucius II and

Hadrian IV were all former canons; and Eugenius III was previously a Cistercian monk, a student of Bernard of Clairvaux. See Robinson, *The Papacy*, 211-212.

³¹⁰ Southern, *Western Society*, 110.

³¹¹ Walter Ullmann, *A Short History of the Papacy in the Middle Ages* (London: Meuthen, Ltd., 1972), 98-200, 207-10; Schimmelpfennig, *The Papacy*, 166; Southern, *Western Society*, 106.

³¹² The two intervening popes between Eugenius and Alexander were Anastasius IV (1153-54) and Hadrian IV (1154-59). Neither effected any significant change to the situation as it had existed under Eugenius.

³¹³ See Hadyn V. White, "The Gregorian Ideal and Saint Bernard of Clairvaux", *Journal of the History of Ideas* 21 (1960), 321-48; Southern, *Western Society*, 111; see also the introduction by Peter Munz to *Boso's Life of Alexander III*, trans. G. M. Ellis (Totowa, NJ: Littlefield, 1973), 6-8.

³¹⁴ Bernard of Clairvaux, *Five Books on Consideration: Advice to a Pope (De Consideratione ad Eugenium Papam Tertiam Libri Quinque)*, trans. John D. Anderson and Elizabeth T. Kennan (Kalamazoo, Michigan: Cistercian Publications, 1976), 29; See also, Southern, *Western Society*, 111.

³¹⁵ On Alexander's life, see *Boso's Life of Alexander III*, and Marshall W. Baldwin, *Alexander III and the Twelfth Century*, in *The Popes through History*, vol. 3 (Glen Rock, NJ: Newman Press, 1968). For good short essays on Alexander, see Baldwin, "Alexander III" in NCE, vol. 1: 288-90; and Brundage, *Law, Sex and Christian Society*, 332-7.

³¹⁶ Southern, *Western Society*, 111.

³¹⁷ On Alexander's prolific output of marriage-related documents during his pontificate, see Charles Donahue, Jr., "The Dating of Alexander the Third's Marriage Decretals: Dauvillier Revisited after Fifty Years", *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Kanonistische Abteilung* 68 (1982), 69-124.

³¹⁸ Brundage, *Law, Sex, and Christian Society*, 333.

³¹⁹ Gratian, C. 25, q. 1, *dict. Post.* c. 16; Duggan, "Equity and Compassion in Papal Marriage Decretals", 60.

³²⁰ *Pervenit ad Audientiam*, in *Regesta Pontificum Romanorum*, eds. P. Jaffé, S. Loewenfeld, et al., 2 vols. (Leipzig: B. Tauchnitz, 1888), n. 13887; *Decretales Gregorii IX*, in *Corpus Iuris Canonici*, ed. Emil Friedberg (Leipzig: B. Tauchnitz, 1879; reprinted, Graz, Austria: Akademische Druck-U.S. Verlagsanstalt, 1959), 4:2.5, c. 1175. See also, Duggan, "Equity and Compassion", 70.

³²¹ *Regesta Pontificum Romanorum*, 14214, I comp. 4: 19.3; Brundage, *Law, Sex and Christian Society*, 341; Duggan, "Equity and Compassion", 70.

³²² Gratian, C. 35, q. 8-9.

³²³ Concerning Alexanders "leniency and common sense" in all of his judicial dealings, but particularly in his rulings concerning consanguinity, see A. Morey, *Bartholemew of Exeter: Bishop and Canonist* (Cambridge: Cambridge University Press, 1937), 67-68.

³²⁴ Duggan, "Equity and Compassion", 70-73; Smith, *Papal Enforcement*, 162.

³²⁵ Baldwin, *Masters, Princes and Merchants*, 1: 333.

³²⁶ See below, 121, n. 436.

³²⁷ Selected cases are examined in Duggan, "Equity and Compassion", 61-87; see also Donahue, "The Dating of Alexander the Third's Marriage Decretals", 69-124; idem, "The Policy of Alexander the Third's Consent Theory of Marriage", 251-81.

³²⁸ A good general background on the papacy during the period leading up to the pontificate of Innocent III can be found in Ullmann, *A Short History of the Papacy*, 173-200; see also, Southern, *Western Society*, 100-169. For a good general overview of the political, economic, and social and religious movements taking place throughout western Europe during this period, the best introduction can be found in the various sections of Malcolm Barber's book *The Two Cities: Medieval Europe, 1050-1320* (London and New York: Routledge, 1992), 60-82, 101-9, 195-364.

³²⁹ Schimmelpfennig, *The Papacy*, 197-8; Brundage, *Law, Sex and Christian Society*, 337.

³³⁰ Barber, *The Two Cities*, 119-40.

³³¹ Schimmelpfennig, *The Papacy*, 170-82.

³³² It is universally accepted that Lothario dei Segni studied theology at Paris in the early 1180s, although which teachers he may have studied under is not certain. Possible candidates include Peter the Chanter, Peter of Poitiers, Melior of Pisa and Peter of Corbeil. His studies in Bologna, however, have been called

into question by some scholars: see, for example, Kenneth Pennington, "The Legal Education of Pope Innocent III" in *Innocent III, Vicar of Christ or Lord of the World*, ed. James M. Powell (Washington DC: The Catholic University of America Press, 1994). The evidence supporting Lothario's stay in Bologna is nonetheless overwhelming. The *Gesta Innocentii Papae III* explicitly states that Innocent was educated at Bologna's law university. In addition, Innocent's own highly legalistic writings and statements, as well as his practice of promoting lawyers both to the cardinalate and within the papal curia, all point to a strong background in law. See Jane Sayers, *Innocent III: Leader of Europe, 1198-1216* (London and New York: Longman, 1994), 20-22.

³³³ Many of Innocent's letters and writings can be found in Migne, PL 162, 214, 215 and 216, as well as in *Die Register Innocenz III*, 5 vols., ed. Othmar Hageneder (Graz: Verlag der Österreichischen Akademie der Wissenschaften, 1994). For English translations of some of Innocent's letters to the English Church, see *Selected Letters of Pope Innocent III concerning England (1198-1216)*, eds. C.R. Cheney and W. H. Semple (London: Thomas Nelson and Sons, Ltd, 1953). On the enormous literary output of Innocent III, see Sidney R. Packard, *Europe and the Church under Innocent III* (New York: Russell and Russell, 1927), 4.

³³⁴ Innocent III, Letter to the patriarch of Constantinople (1199) in Migne, PL 214: col. 759, cited in Brian Tierney, *The Crisis of Church and State, 1050-1300* (Englewood Cliffs, N.J: Prentice-Hall, Inc., 1980), 132. See also, Packard, *Innocent III*, 8.

³³⁵ In addressing this subject in his letters to the King and bishops of France, Innocent seems to take a much more conciliatory stance, stating that no man should "imagine that we intend to diminish or disturb the king's jurisdiction and power, when he is obliged not to hinder or curb our jurisdiction and power. When we cannot fully discharge our own jurisdiction, why should we wish to usurp another's?"; Cheney and Semple, *Selected Letters of Pope Innocent III*, 63-64. See also *Idem*, 56-59. For a wide selection of differing views by historians over the last one hundred years on Innocent III, see the collected essays in *Innocent III, Vicar of Christ or Lord of the World*, ed. James M. Powell (Washington, DC: The Catholic University of America Press, 1994).

³³⁶ See Hans-Joachim Schmidt, "The Papal and Imperial Concept of *plenitudo potestatis*: The Influence of Pope Innocent III on Emperor Frederick II", in *Pope Innocent III and his World*, ed. John C. Moore (Brookfield: Ashgate, Hofstra University, 1999), 305-14. It is, however, helpful to remember that the modern distinction between Church and State was alien to the political thought of the Middle Ages, and the idea that "the papacy should be above politics would have made no sense to the people of the medieval world," Sayers, *Innocent III*, 92.

³³⁷ Sayers, *Innocent III*, 3-6, 94-124; Deirdre Courtney-Batson, "Per Venerabilem: From Practical Necessity to Judicial Supremacy", in *Pope Innocent III and his World*, 287-304.

³³⁸ Sayers, *Innocent III*, 40-48.

³³⁹ Sayer, *Innocent III*, 49-70, 87-93; Schimmelpfennig, *The Papacy*, 170-74.

³⁴⁰ On Innocent III and marriage law, see Brundage, *Law, Sex and Christian Society*, 337-41.

³⁴¹ Friedrich Kempf, "Innocenz III. und der Deutsche Thronstreit", *Archivum Historiae Pontificiae* 23 (1985), 63-91.

³⁴² Sayer, *Innocent III*, 49-65; Barber, *The Two Cities*, 205-17, 242-3; See also, Brian A. Pavlac, "Emperor Henry VI (1191-97) and the Papacy: Similarities with Innocent III's Temporal Policies", in *Pope Innocent III and his World*, 255-70.

³⁴³ A collection of Innocent's letters at this time are found in the *Register concerning the imperial question (Regestum super negotio Romani imperii)*, a secret archive containing papal correspondences dealing with the imperial schism which began to be compiled by the papal curia in the summer of 1199. See *Das Register Papst Innocenz' III über den Deutschen Thronstreit*, ed. Walter Holtzmann (Bonn: Universitätsverlag, 1947-8), (hereafter, RNI); Sayer, *Innocent III*, 54-55.

³⁴⁴ Sayers, *Innocent III*, 45, 55.

³⁴⁵ *Ibid.*, 53; Clayton, *Innocent III*, 85.

³⁴⁶ Sayers, *Innocent III*, 56-7.

³⁴⁷ Innocent, Register 23: *Nobili Viro Duci Brabantiae et Uxori Ejus*, in Migne, PL 216: 1022.

³⁴⁸ Ibid.: "Ad nostram noveritis audientiam pervenisse quod quidam genealogiam vestram a longe calculantes, dilectam in Christo filiam nostram nobilem mulierem [Mariam] filiam vestram charissimo in Christo filio nostro Ottoni filio quondam illustris memoriae [Henrici] ducis Saxoniae sponso suo electo et coronato in regem affinitatis linea ultra quartum gradum, quod vos non recognoscitis, mussitant pertinere, licet matrimonium ipsum nullus accuset. Ut autem conscientia vestra non tam purgetur quam consolidetur, fuit postulatum a nobis ut super hoc diganremur misericorditer dispensare. Si ergo res ita se habet, secure, propter multam et magnam utilitatem quae de ipso matrimonio proventura speratur, ad consummationem ipsius cum divini nominis reverentia procedatis."

³⁴⁹ Ibid., 1114-16.

³⁵⁰ Smith, *Papal Enforcement*, 164.

³⁵¹ Innocent, Register 128: *Illustri Regi Ottoni in Romanorum Imperatorem*, in Migne, PL 216: 1128.

³⁵² Sayers, *Innocent III*, 62.

³⁵³ RNI, no. 131-50, cited in Sayers, *Innocent III*, 62.

³⁵⁴ Sayers, *Innocent III*, 62.

³⁵⁵ *Otonis Frisingensis Continuatio Sanblasiana*, in MGH SS, 20: 332, cited in Smith, *Papal Enforcement*, 165.

³⁵⁶ Ibid.

³⁵⁷ "Cum de matrimonio contrahendo inter te ac primogenitam quondam Philippi ducis Sueviae in nostra praesentia tractaretur, tuis et ipsius consentientibus nuntiis ita providimus, ut potestatem dispensandi super linea consanguinitatis, quae te ac illam contingit, committeremus legatis qui erant in Teutonium regressuri. Licet autem, eodem duce defuncto, dispensandi necessitas ex majori parte cessaverit, quia tamen adhuc ad illam aspiras, sicut per tuas nobis litteras intimasti, nos ex illa gratia speciali quam ad tuam regalem personam et habuimus et habemus, quod tunc circumspecta deliberatione providimus, etiam nunc provida circumspeditione volumus adimplere, committendo legatis nostris duobus vel uni, quos aut quem ad praesentiam tuam pro negotiis Ecclesiae ac imperii propossumus destinare, ut si urgens necessitas vel evidens utilitas postulaverit, super hoc auctoritate nostra dispensent." Migne PL 216: 1157.

³⁵⁸ Ibid., 333, cited in Smith, *Papal Enforcement*, 166-7.

³⁵⁹ Arnoldus Lubecensis, *Chronica Slavorum*, in MGH SS, 21: 247, cited in Smith, *Papal Enforcement*, 167-9.

³⁶⁰ Walterus de Coventria, *Memoriale*, in *Chronicles and Memorials of Great Britain and Ireland during the Middle Ages*, Rolls Series, 198 vols. London: Longman, 1858-99 (hereafter, RS), 2: 204, cited in Smith, *Papal Enforcement*, 168.

³⁶¹ An excellent one-volume treatment of Philip Augustus' life and influence can be found in John Baldwin, *The Government of Philip Augustus* (Berkeley: University of California Press, 1986).

³⁶² Baldwin, *The Government of Philip Augustus*, 204-6; Sayers, *Innocent III*, 53, 56, 58, 63-4.

³⁶³ Baldwin, *The Government of Philip Augustus*, 15-16, 26.

³⁶⁴ L. Elliot Binns, *Innocent III* (London: Methuen & Co., Ltd., 1941), 105.

³⁶⁵ Philip's affair with Ingeborg received much attention in the primary sources. Accounts can be found in Roger de Hoveden, *Chronica*, in RS, 3: 113, 137, 148, 224-5, 307; *Gesta Innocentii Tercii*, in Migne, PL 214: col. 44, 48, 50; Rigordus, *Gesta Philippi Augusti*, Soc. Hist. Fr. Vol. 2. For good summaries of the affair, see Baldwin, *The Government of Philip Augustus*, 82-7, 206-10; Binns, *Innocent III*, 95-109; Smith, *Papal Enforcement*, 105-129, and R. Davidsohn, *Philip II, August von Frankreich und Ingeburg* (Stuttgart: Kröner, 1888).

³⁶⁶ *Annales Aquicinctensis*, in RHF., 18, 546; Baldwin, *The Government of Philip Augustus*, 83.

³⁶⁷ Davidsohn undertakes an extensive examination of the opposing genealogies; see Davidsohn, *Philip II*, 297-30.

³⁶⁸ Rigordus, *Gesta Philippi Augusti*, Soc. Hist. Fr., 2: 125; *Scriptores Rerum Danicarum*, 8 vols., ed. J. Langebek (Hafnia, 1772-1834), 4, 82-6. See also, Smith, *Papal Enforcement*, 109-10.

³⁶⁹ Rigordus, *Gesta Philippi Augusti*, 2, 125; *Gesta Innocentii Tercii*, in Migne, PL 214: col. 50; Roger of Hoveden, *Chronica*, 307; Baldwin, *The Government of Philip Augustus*, 84..

- ³⁷⁰ Innocent III, Register 4: *Ut Illustrem Francorum Regem Moneat et Inducat ad Recipiendum Reginam Uxorem suam, quam Ejecerat*, in Migne, PL 214: 3-5; Register 71: *Ut Repudiata Pellice, Legitimam Uxorem Recipiat*, in PL 214: 148-50.
- ³⁷¹ *Gesta Innocentii Tercii*, in Migne PL 214: col. 51; Sayers, *Innocent III*, 80.
- ³⁷² Smith, *Papal Enforcement*, 115; Baldwin, *The Government of Philip Augustus*, 85.
- ³⁷³ *Annales Aquicinctensis*, in RHGF, 18, 552; Rigordus, *Gesta Philippi Augusti*, 149; Roger de Hoveden, *Chronica*, 148; Baldwin, *The Government of Philip Augustus*, 86-7.
- ³⁷⁴ Rigordus, *Gesta Philippi Augusti*, 149; Roger de Hoveden, *Chronica*, 148; Binns, *Innocent III*, 104.
- ³⁷⁵ *Ibid.*, 117; Sayers, *Innocent III*, 57; Davidsohn, *Philip II*, 151.
- ³⁷⁶ Innocent III, *Regestorum*, Lib. 5, in Migne, PL 214: 1191; Baldwin, *The Government of Philip Augustus*, 87, 209-210; Davidsohn, *Philip II*, 170-80.
- ³⁷⁷ Smith, *Papal Enforcement*, 121-7.
- ³⁷⁸ *Ibid.*, 122; Baldwin, *The Government of Philip Augustus*, 206; Davidsohn, *Philip II*, 209.
- ³⁷⁹ Baldwin, *The Government of Philip Augustus*, 208-10.
- ³⁸⁰ Davidsohn, *Philip II*, 251.
- ³⁸¹ Smith, *Papal Enforcement*, 127-28; Baldwin, *The Government of Philip Augustus*, 210; Duby, *Medieval Marriage*, 79-80; Sayers, *Innocent III*, 116.
- ³⁸² Binns, *Innocent III*, 108.
- ³⁸³ Sources for Ottocar's case can be found in the *Canonicorum Pragensium Continuatio Cosmae*, in MGH SS, 9: 169 (hereafter, *Canonicorum*); Arnoldus Lubecensis, *Chronica Slavorum*, in MGH SS, 21: 216; Migne, PL 214: 737; PL 215: 872-73. See also the sources cited in Smith, *Papal Enforcement*, 138-42.
- ³⁸⁴ Migne, PL 214: 737.
- ³⁸⁵ *Ibid.*
- ³⁸⁶ Sayers, *Innocent III*, 83; Smith, *Papal Enforcement*, 139-41.
- ³⁸⁷ *Canonicorum*, 9: 169; Sayers, *Innocent III*, 83; Smith, *Papal Enforcement*, 140.
- ³⁸⁸ *Canonicorum*, 9: 169; Arnoldus Lubecensis, *Chronica Slavorum*, 216.
- ³⁸⁹ *Canonicorum*, 9: 169; Heinricus Heimburgensis, *Annales*, in MGH SS, 17: 713.
- ³⁹⁰ Innocent III, *Registorum*, Lib. 9, 60: *Salzburgensi Archiepiscopo, et Abbati Salzburgerensis Dioeceseos, et Decano Gurcensi*, in Migne, PL 215: 872-3.
- ³⁹¹ *Ibid.*: "Sed, quoniam idem rex nuntios eorum, ut asseritur, fecit inhoneste tractari, ipsi non processerunt amplius super causa. Interea vero, praefatus rex correctus a Domino, sicut dicitur, et, magna contra ipsum adversitate surgente, reversus ad ipsum, dixisse proponitur: Merito haec patior, quia legitimam uxorem meam sine causa dimisi, et propter hoc filios meos, filiasque confudi: cumque reatum suum taliter recognosceret, convocatis majoribus terrae suae, nihilominus etiam liberis et ministerialibus fratris ejusdem uxoris suae, juravit ipse fecitque jurari per suos, quod superinductam expelleret, et legitimam revocaret: quod postmodum non implevit, licet illud per litteras signatas sigillo proprio confirmari."
- ³⁹² Smith, *Papal Enforcement*, 141.
- ³⁹³ Innocent III, *Registorum*, Lib. 11, 184: *Maguntino et Magdeburgensi Archiepiscopis, De Matrimonio Regis Boemiae*, in Migne, PL: 215:1499-1500.
- ³⁹⁴ Innocent III, *Litterae Crucesigna Torum*, in Migne, PL: 238-42, cited in Smith, *Papal Enforcement*, 142.
- ³⁹⁵ Smith, *Papal Enforcement*, 142.
- ³⁹⁶ Sources for the affairs involving Alfonso IX and Innocent III can be found in Roger de Hoveden, *Chronica*, RS, 3: 90 and in the *Gesta Innocentii Tercii*, in Migne, PL 214: 79-83, 115, 373-5, 610-15. For an excellent overview of the whole affair, see Joseph F. O'Callaghan, "Innocent III and the Kingdoms of Castile and Leon", in *Pope Innocent and his World*, 317-35; and Smith, *Papal Enforcement*, 130-38.
- ³⁹⁷ Roger de Hoveden, *Chronica*, 90.
- ³⁹⁸ *Ibid.*; O'Callaghan, "Innocent III", 320.
- ³⁹⁹ The excommunication was pronounced by Celestine's legate, Cardinal Gregory of S. Angelo against not only Alfonso IX, but also bishops Lope of Astorga, Vidal of Salamanca, Mauricio of Leon, and Martin of Zamora. Migne PL 214: 79-81; O'Callaghan, "Innocent III", 320.
- ⁴⁰⁰ Migne PL 214: 79; Peter Lindehan, *History and the Historians of Medieval Spain* (Oxford: Clarendon Press, 1993), 243-57.

- ⁴⁰¹ O'Callaghan, "Innocent III", 321; Smith, *Papal Enforcement*, 134-5.
- ⁴⁰² O'Callaghan, "Innocent III", 322-3; Migne PL 214: 610-15.
- ⁴⁰³ Ibid., 345-46.
- ⁴⁰⁴ Ibid., O'Callaghan, "Innocent III", 324.
- ⁴⁰⁵ See above, 95-7.
- ⁴⁰⁶ O'Callaghan, "Innocent III", 319-20; Smith, *Papal Enforcement*, 130-1.
- ⁴⁰⁷ See above, Chapter 3, 61-2.
- ⁴⁰⁸ The idea of marriage as a religious, sacred bond dates back to the first and second century writings of Saint Ignatius of Antioch and Tertullian, both of whom envision it as a ceremony to be presided over by the Church. However, Saint Augustine, writing in the fifth century, gave the most extensive defense of the sanctity of Christian marriage against criticisms raised by the heretical movements of the Manichaeans and Pelagians, among others. See Augustine, *De Moribus Ecclesiae Catholicae et de Moribus Manichaeorum*: 389; *De Bono Coniugalitatis*: 401; and *De Nuptiis et Concupiscentia*: 419, 420. For the influence of Ignatius and Tertullian, see Brundage, *Law, Sex and Christian Society*, 64-8; Ludwig Ott, *Fundamentals of Catholic Dogma*, trans. Patrick Lynch (Rockford: Tan Books and Publishers, Inc. 1960), 461-2.
- ⁴⁰⁹ Peter Lombard, *Libri Quatuor Sententiarum*, 3d ed., (Grottaferrata: Collegium S. Bonaventurae, 1971-81), 4, 27, 2; *Hugh of St. Victor on the Sacraments of the Christian Faith*, trans. Roy J. Deferrari (Cambridge: Mediaeval Academy of America Publications, no. 53, 1951), 1.9.2, 2.11.1-3; Rufinus, *Summa Decretorum*, 75. See also Nicholas M. Haring, "The Interaction between Canon Law and Sacramental Theology in the Twelfth Century", in *Proceedings of the Fourth International Congress of Medieval Canon Law*, ed. Stephan Kuttner (*Monumenta Iuris Canonici*, series C: Subsidia, vol. 5, Toronto, 21-25 August, 1972), 483-494; Seamus P. Heany, *The Development of the Sacramentality of Marriage from Anselm of Laon to Thomas Aquinas* (Washington, DC: The Catholic University of America Press, 1963); Brundage, *Law, Sex and Christian Society*, 269-70; Ott, *The Fundamentals of Catholic Dogma*, 336-41, 460-69.
- ⁴¹⁰ Migne, PL 214: 610; See also Linchan, *History*, 255-6; Sayers, *Innocent III*, 84.
- ⁴¹¹ See above, 107, 110.
- ⁴¹² See above, Chapter 3, 69-71, 74.
- ⁴¹³ See above, 111; Smith, *Papal Enforcement*, 139.
- ⁴¹⁴ Baldwin, *The Government of Philip Augustus*, 86-7.
- ⁴¹⁵ See above, 108; Binns, *Innocent III*, 117; Sayers, *Innocent III*, 57; Davidsohn, *Philip II*, 151.
- ⁴¹⁶ W. L. Wakefield, *Heresy, Crusade and Inquisition in Southern France, 1100-1215* (London: Allen and Unwin, 1974); Barber, *The Two Cities*, 183, 186, 188-9;
- ⁴¹⁷ Baldwin, *The Government of Philip Augustus*, 206; Sayers, *Innocent III*, 85-6.
- ⁴¹⁸ Sayers examines Innocent's use of excommunication and interdict at some length; see Sayers, *Innocent III*, 77-80.
- ⁴¹⁹ Innocent also legitimized the children of Berengaria following her separation from Alfonso IX, one of which became the future king of Castile and Leon, Fernando III. Joseph F. O'Callaghan, *A History of Medieval Spain* (Ithaca and London: Cornell University Press, 1975), 245.
- ⁴²⁰ Duby regards this as the most important factor in Innocent's decision, while Baldwin views it as an attempt by the pope to win Philip's goodwill over the matter of the imperial schism. See Duby, *Medieval Marriage*, 78; Baldwin, *The Government of Philip Augustus*, 86-7.
- ⁴²¹ Baldwin, *The Government of Philip Augustus*, 206-7.
- ⁴²² Ibid., 207.
- ⁴²³ Binns, *Innocent III*, 106-9.
- ⁴²⁴ See above, 101-6.
- ⁴²⁵ Migne, PL 216: 1022, 1073.
- ⁴²⁶ Migne, PL 216: 1147-48; Smith, *Papal Enforcement*, 165-6.
- ⁴²⁷ See above, Chapter 3, 62-8.
- ⁴²⁸ See above, 85-92.
- ⁴²⁹ Smith, *Papal Enforcement*, 164-7.
- ⁴³⁰ Eleanor married Louis's rival, Henry Plantagenet eight weeks after her divorce. Louis was remarried shortly thereafter to the Spanish princess, Constance; Kelly, *Eleanor of Aquitaine*, 90.

⁴³¹ See above, 103-4.

⁴³² Sayers, *Innocent III*, 62-4;

⁴³³ Smith, *Papal Enforcement*, 164.

⁴³⁴ The cases involving Alfonso IX and Philip Augustus both began in the pontificate of Innocent's predecessor, Celestine III, who died in 1198. Alfonso was excommunicated twice before Innocent even became pope, the first incidence occurring over his marriage to Theresa in 1191, and the second involving his marriage to Berengaria in 1197. Philip's affair over his marriage to Ingeborg began in 1193. Before Innocent's pontificate was two years old, the two other cases involving Ottocar of Bohemia and Otto of Brunswick had commenced, the first in 1199, and the second in 1200. Thus, between 1200 and 1204, when the case involving Alfonso IX was resolved, Innocent found himself simultaneously involved in four different royal cases over consanguinity or affinity. The last case to be settled was the one involving Philip Augustus, which did not conclude until 1213, two years before the Fourth Lateran Council and three years before Innocent's death. Innocent thus was compelled to deal with cases involving this issue during fifteen of his eighteen years as pope.

⁴³⁵ Particularly in the cases involving Philip Augustus and Otto of Brunswick. See above, 105, 108-9.

⁴³⁶ The Fourth Lateran Council ultimately issued prohibitions against a wide variety of practices involving both marriage practice and marriage litigation. Included were canons against clandestine marriages (c. 51), the presentation of evidence in marriage cases, for the purpose of suppressing false witnesses (c. 52), and profiteering from false litigation involving marriage impediments: see Baldwin, *Masters, Princes, and Merchants*, 1: 335-36.

⁴³⁷ Although these were the two largest general concerns of the pope and clergy, many other matters were addressed at the Fourth Lateran Council. Other issues included papal recognition of Frederick II as emperor in place of the now excommunicate Otto IV, the dispute over the count of Toulouse's lands following the suppression of the Albigensian heretics, and the situation in England following the pope's condemnation of the Magna Carta. See Sayers, *Innocent III*, 95-101.

⁴³⁸ For an English translation of the council's complete set of canons, see *Readings in Medieval History*, ed. Patrick J. Geary (Ontario, Canada: Broadview Press, 1997), 421-46. Secondary works on the council include R. Foreville, *Latran I, II, III et Latran IV: Histoire des Conciles Oecumeniques*, 6 (Paris: Éditions de L'Orante, 1965); Stephan Kuttner and A. Garcia y Garcia, 'A New Eyewitness Account of the Fourth Lateran Council' *Traditio* 20 (1964), 115-178; Ullmann, *A Short History of the Papacy*, 221-3, 240. See also the chapter on the council in Baldwin, *Masters, Princes and Merchants*, 1: 314-43.

⁴³⁹ On the compiling of the *Liber Extra*, see Brundage, *Law, Sex and Christian Society*, 327.

⁴⁴⁰ See Baldwin, *Masters, Princes and Merchants*, 1: 332-7.

⁴⁴¹ See above, Chapter 2, 48-49.

⁴⁴² The Council was attended by 412 bishops and archbishops from both Western and Eastern Europe, as well as over 800 abbots, priors and other representatives from the Church's religious orders. In addition, the Fourth Lateran Council was the first assembly of the high Middle Ages to include lay representatives and dignitaries. Among the participants were envoys from the kings of England, France, Hungary, Sicily and Aragon, as well as from the emperor Frederick II and the Latin emperor of Constantinople. See "Councils, Western (1215-1274)" in DMA, 12: 639-41; "Lateran Councils" in NCE, 10: 407-9; Sayers, *Innocent III*, 95-101.

⁴⁴³ Sayers, *Innocent III*, 98-9.

⁴⁴⁴ Ibid.

⁴⁴⁵ "The Fourth Lateran Council was the first ecumenical council of the medieval period where the two orders, clerical and lay were summoned, but they were there essentially to witness declarations of the faith, not to treat." Ibid., 97.

⁴⁴⁶ See above, Chapter 2, 48-9.

⁴⁴⁷ Baldwin goes so far as to imply that Innocent can be included within the Parisian circle of Peter the Chanter. See Baldwin, *Masters, Princes and Merchants*, 1: 343.

⁴⁴⁸ Ibid., 1: 148-9, 333-6.

⁴⁴⁹ Brundage, *Law, Sex and Christian Society*, 340.

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- ⁴⁵⁰ Baldwin, *Masters, Princes, and Merchants*, 1: 335-6; Brundage, *Law, Sex and Christian Society*, 355-6, 373-4.
- ⁴⁵¹ Baldwin, *Masters, Princes and Merchants*, 1: 333.
- ⁴⁵² Brundage, *Law, Sex and Christian Society*, 355-6, n. 153.
- ⁴⁵³ Duby argues that the more relevant social reality that the law addressed was the tendency of the medieval aristocracy to ignore the Church's prohibitions and contract endogamous marriages rather than seek dispensations to satisfy Church law. However, Constance Bouchard has demonstrated that many important houses among the medieval French nobility went to considerable lengths to conform to the Church's laws against marriages between close kin. See above, n. 60; Duby, *Medieval Marriage*, 80-81; Bouchard, *Consanguinity*, 268-87.
- ⁴⁵⁴ Brundage, *Law, Sex and Christian Society*, 373, n. 241 and 242.
- ⁴⁵⁵ *Ibid.*, 415.
- ⁴⁵⁶ Ullmann, *A Short History of the Papacy*, 207-9; Schimmelpfennig, *The Papacy*, 170-1; Sayers, *Innocent III*, 1-7; Brundage, *Law, Sex and Christian Society*, 337-8.
- ⁴⁵⁷ A seeming exception to this was the Merovingian dynasty's practice of frequently taking wives from humble origins. See Lawrence, *Medieval Monasticism*, 50.
- ⁴⁵⁸ Baldwin, *Masters, Princes and Merchants*, 1: 333.
- ⁴⁵⁹ See above, Chapter 3, 82. For Ivo's letters concerning Henry's daughters, see Ivo of Chartres, *Ep.* 261, in Migne, PL 162: 265-66.
- ⁴⁶⁰ Migne, PL 158: 280; see also Smith, *Papal Enforcement*, 98-99.
- ⁴⁶¹ See above, Chapter 4, 121 and n. 436.
- ⁴⁶² Brundage, *Law, Sex, and Christian Society*, Appendix 2, 606-7.

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