

# CONSIDERATIONS ABOUT THE MARRIAGE REGULATIONS OF CANON LAW AND THE APOSTOLIC PENITENTIARY IN LATE MIDDLE AGES

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### I. OBSERVATIONS ABOUT THE APOSTOLIC PENITENTIARY

The Apostolic Penitentiary<sup>1</sup>, *Poenitentieria Apostolica*, has often been described by scholars as «the supreme papal court of law in the matters of conscience». It was one of many offices within the medieval papal curia, especially in the late middle ages, and its faculties allowed its officials to deal with cases concerning Canon Law and everyday life: marriage, illegitimacy, promotions to an ecclesiastical career, as well as certain cases of violations of Canon Law including murder or violence, apostasy, and sacrilege. In these —and many other— instances, the Penitentiary was authorized to grant absolution, dispensation, special license, and declaration (mostly of innocence) to Christians who turned to it with their petitions<sup>2</sup>.

1. Concerning the Penitentiary, see for example E. GÖLLER, *Die päpstliche Pönitentiarie von ihrem Ursprung bis zu ihrer Umgestaltung unter Pius V.*, Bibliothek des Königl. Preuss. Historischen Instituts in Rom, Bände 3, 4, 7, 8, Rom 1907/1911; L. SCHMUGGE-P. HERSPERGER-B. WIGGENHAUSER, *Die Supplikenregister der päpstlichen Pönitentiarie aus der Zeit Pius' II (1458-1464)*, Bibliothek des Deutschen Historischen Instituts in Rom, Band 84, Rom 1996; K. SALONEN, *The Penitentiary as a Well of Grace in the Late Middle Ages. The Example of the Province of Uppsala 1448-1527*, Suomalaisen Tiedeakatemia Toimituksia 313, Saarijärvi 2001.

2. More precisely about the faculties of the Penitentiary see K. SALONEN, *Penitentiary*, pp. 58-77.

The medieval archives of the Penitentiary —now kept in the Vatican Secret Archives<sup>3</sup>— contain nearly 100 thick register volumes. The earliest Penitentiary register dates from the year 1409, but the systematic registration of the cases started only in 1449. The documents registered in these volumes are abbreviated copies of original supplications and they are divided in each volume into several different petition categories according to what kind of case is in question. Petitions concerning marriage matters are registered under the title *de matrimonialibus*<sup>4</sup>.

## II. THE MARRIAGE MATTERS IN THE CANON LAW

Marriage matters were reserved to the papal authority because the Catholic Church considered marriage matters of a great importance for, according to St. Paul, the Christian marriage between a man and a woman was the living image of the indissoluble union between Christ and the Catholic Church<sup>5</sup>. The right of the popes to make decisions and grant dispensations and absolutions in marriage matters arose from the fact that the marital impediments were not based on the Divine law of the Holy Bible but on the later decisions made by the popes, for example Alexander III (1159-1181) and Innocent III (1198-1216), as well as the church councils, the fourth Lateran Council, held in Rome in 1215, being the most important<sup>6</sup>. If the marriage matters had been regulated by the Divine law the popes could not have dispensed anyone from them.

According to the regulations of Canon Law the basic rule for a legal marriage was that both parties were entering the matrimony by their own free will. If not, the Church did not consider the union valid. Canon Law regulated the validity of marriages in numerous other ways, too. It stipulated several fundamental impediments which prevented a cou-

3. The series is called: ASV, *Penitenzieria Ap., Reg. Matrim. et Div.* There is no published general index about the archives of the Penitentiary but a list of the medieval register volumes of the Penitentiary and their contents can be found in K. SALONEN, *Penitentiary*, pp. 425-426.

4. More precisely about the different categories, see L. SCHMUGGE-P. HERSPERGER-B. WIGGENHAUSER, *Supplikenregister, passim* and K. SALONEN, *Penitentiary, passim*.

5. Eph. 5.21-33.

6. Canons 50 and 51, edited in G. ALBERIGO ET ALII (ed.), *Conciliorum Oecumenicorum Decreta*, 3rd ed., Bologna 1973, pp. 257-258.

ple from being legally married. Some of these impediments could be overcome with a papal dispensation, some not<sup>7</sup>.

The first marital impediment was consanguinity, too close relation by blood (Lat. *consanguinitas*). Spouses who were too close relatives could marry. Canon Law did not permit persons related to each other by the fourth degree of consanguinity (or closer) to be wed. In practice this meant that marriages between siblings, cousins, second cousins, and third cousins (just to mention some examples within the same generation) in horizontal line were considered illegal<sup>8</sup>. The impediment of consanguinity was dispensable in horizontal line, but if the relationship was in vertical line (for example, between parents and children or grandparents and grandchildren) it could not be overcome by dispensation<sup>9</sup>.

Affinity (Lat. *affinitas*) was the second marital impediment and it refers always to second marriage of at least one of the spouses in question. The regulations concerning affinity forbade marriages in cases when a person was about to marry a close relative to his/her previous husband or wife or even lover or mistress. Canon Law stipulates that marriages were forbidden between persons related to them by affinity until the fourth degree of affinity. The degree of affinity was counted according to the degree of consanguinity between the new and former partner – third degree of consanguinity between the ex and new wife or husband resulted third degree of affinity and so on. Like the impediment of consanguinity, also affinity was dispensable<sup>10</sup>. The impediment of lack of public honesty (Lat. *impedimentum publicae honestatis iustitia*) was a form of affinity. According to Canon Law nobody could marry a person closely related to his or her previous fiancé or fiancée. This impediment was also dispensable<sup>11</sup>.

7. Most of the ecclesiastical legislation concerning marriages that was valid (also) in the Late Middle Ages can be found in X 4. and VI 4, edited in FRIEDBERG II, pp. 661-732 and 1065-1068.

8. The concept of consanguinity within the four degrees is very complex and contains dozens of different possibilities of consanguinity. In *Corpus Iuris Canonici I* there is an appendix called *Arbor consanguinitatis* which gives all the possible combinations for the different degrees of consanguinity. See FRIEDBERG I, pp. 1425-1426.

9. About the Canon Law regulations concerning consanguinity, see X 4.14.1, 8, edited in FRIEDBERG II, pp. 700-701, 703-704.

10. About the Canon Law regulations concerning affinity, see X 4.14.1, edited in FRIEDBERG II, pp. 700-701.

11. X 4.1.4, 8, edited in FRIEDBERG II, pp. 662, 663.

The fourth marital impediment was spiritual relationship (Lat. *cognatio spiritualis*), and it involved several different possibilities of relationship. The spiritual relationship was based on a tie caused by a holy sacrament, Baptism or Confirmation, and it made impossible marriages between a child and his/her godparents or their close relatives. However, also this impediment but could be overruled by a dispensation<sup>12</sup>.

Numerous other marital impediments existed in Canon Law. One of them was so-called legal relationship (Lat. *cognatio legalis*) or legal fraternity (Lat. *fraternitas legalis*), which existed between couples related to each other by the tie of adoption. This impediment was dispensable<sup>13</sup>. Moreover, a marriage contracted after bride-robbery was not considered valid because at least one of the spouses had not acted voluntarily, but these cases became dispensable if the robbed spouse later gave her/his consent<sup>14</sup>. Certain persons were not considered suitable to marry anyone under any circumstances because of some sort of physical defect, for example impotence, frigidity, or madness, and this impediment was not dispensable<sup>15</sup>. Minority was also considered a physical impediment, but it could be dispensed because it was «healed automatically» when the individuals in question reached the required age of consent<sup>16</sup>. Men in Holy Orders or persons who had entered monastic career could not marry because they had to observe celibacy<sup>17</sup>.

When two persons desired to marry, it was at the first place the task of the local parish priest to determine that there was no impediment between them. Canon Law stipulated that before a priest could celebrate matrimony he had to read aloud the banns in the church on three Sundays and if someone knew something against the marriage they were supposed to express their doubts or information about the spouses' relationship under the pain of being *ipso facto* excommunicated<sup>18</sup>.

12. X 4.11, edited in FRIEDBERG II, pp. 693-696. Concerning the different forms of spiritual relationship, see also E. DE LEÓN, *La «cognatio spiritualis» según Graciano*, Pontificio Ateneo della Santa Croce, Monografie giuridiche 11, Milano 1996.

13. X 4.12, edited in FRIEDBERG II, p. 696.

14. X 4.1.21, edited in FRIEDBERG II, pp. 668-669.

15. X 4.1.24, edited in FRIEDBERG II, p. 670 and X 4.15, edited in FRIEDBERG II, pp. 704-708.

16. Concerning marriages of minors: X 4.2, edited in FRIEDBERG II, pp. 672-679.

17. X 4.6, edited in FRIEDBERG II, pp. 684-687.

18. X 4.1.27, edited in FRIEDBERG II, p. 671.

The record of the Penitentiary from the pontificate of Pius II (1458-1464) contains 4,195 petitions for receiving a grace concerning marriage matters. In the supplications presented to the Penitentiary the most important details concerning the marriage are always given. The names of supplicants and their home diocese are noted at the beginning of each entry. After them are recorded details that were important for the handling of the case: first, supplicants had to indicate whether they were planning to marry or whether they had already contracted marriage. In the last case they had to tell if they had been aware of the impediment or not. Nothing this difference is important, for couples who wanted to get married only required dispensation from their impediment. Instead, already married couples had to request dispensation that would allow them to continue in their marriage or re-marry despite the impediment. Moreover, if the couple at the moment of their marriage had known about the impediment, they also had to ask for absolution for having knowingly acted against the rules of Canon Law and thus incurring *ipso facto* excommunication. Those who married in ignorance of the impediment needed dispensation only<sup>19</sup>.

After that is indicated the second important fact, what kind of impediment existed between the couple. In the case of consanguinity or affinity it was necessary to explain how close the relationship was (2nd degree was the closest dispensable and 4th degree still needed dispensation). In the case of spiritual relationship, the quality of relation had to be given, i.e. whether the relationship was based on the sacrament of Baptism or Confirmation.

The already married supplicants (and in certain cases also those who had not yet married but had been living together for a long time) sometimes indicate in their petition, whether they had consummated their marriage or not and if they had children. This fact, however, has not been included into all entries, for this information did not affect the decision of the Penitentiary and therefore certain scribes did not consider it important to copy this fact into the registers.

Normally the last information given in the entries is whether the couple wanted to legitimize their heirs. This was very important for it en-

19. About the Penitentiary and marriage, see L. SCHMUGGE-P. HERSPERGER-B. WIGGENHAUSER, *Supplikenregister*, pp. 68-88; K. SALONEN, *Penitentiary*, pp. 103-118.

sured that their children were legitimate and could legally inherit from them without problems. In certain entries the fact is just mentioned simply with a phrase that the couple desired to legitimize their heirs. In other cases is specified that they wished to legitimize their future children or both existing and future children. Also this fact as well has quite often—depending on the copyist—left out of the Penitentiary records.

Until now all details included into the entries in the Penitentiary registers have been related to the petitioners and to their needs, details that were necessary in decision-making. After these details, at the end of each entry we find the result of the petition process: the decision of the Penitentiary together with the name of the person who was responsible of the decision.

Let us now proceed and examine those 4,195 petitions that were registered into the records of the Penitentiary during the pontificate of Pius II. Where did the petitioners come from, which impediments were most often dispensed and what kind of graces did the supplicants request. The analysis will follow the same order than the details appear in the petitions: provenance of the petitions, status of the petitioners, impediments, and graces requested. In the end is discussed who were the decision-makers.

### III. PETITIONERS AND DECISIONS: THE CASES

Another way to study the reception and understanding of ecclesiastical marriage regulations among the Christians is to analyze what kind of couples have presented their petitions to the Penitentiary and what did they want. Had the supplicants already broken against the marital regulations of Canon Law or did they only wish to get married despite an impediment? What kind of impediments were the most common?

Let us start with the background of the supplicants. Marriage petitions can be divided into two groups: to those where the supplicants were asking for a dispensation in order to be married and to those where they already were married. In 1,832 supplications (c. 44%) the couples desired to marry despite an impediment and asked for a dispensation that granted them the right to get married. These couples were thus honest and acted according to the regulations of Canon Law.

Getting the dispensation before the weddings did not, however, always mean that the couples had behaved according to the norms of the Church. 273 (15%) of the 1,832 couples who requested a dispensation to marry admitted in their petition that they had already knew each other carnally, having committed the sin of fornication. 206 couples simply admitted that they had committed fornication, while 42 couples confessed it by saying that they already had children. In 94 cases the guiltiness came out because the couples asked for legitimization for their already existing children<sup>20</sup>.

Interestingly the phenomenon of committing fornication can be connected to certain regions. The majority, 116 couples (43%), who had admitted fornication, came from Ireland, while 15% of supplicants lived in France, 14% in Northern Italy, 10% in Germany, 7% in Spain, 4% in Central Italy and Scandinavia, 2% in Southern Italy and 1% were from unknown provenance. The high figures suggest that in those societies, like in Ireland, it was especially common to live together and have children before getting married in church.

More than half of the couples (2,352 pairs, c. 56%) who turned to the Penitentiary had already married and thus acted against the norms of the Catholic Church. The regulations of Canon Law stipulate that couples who had married in ignorance of the impediment were not considered guilty because they did not violate the norms of the Church on purpose. Thus these couples did not incur excommunication, as did those who married each other knowing about the existence of an impediment. Therefore, already married couples who turned to the Penitentiary had two possibilities: those who had married in ignorance of the impediment only needed dispensation, while those who had married knowing that there was an impediment between them were obliged to ask for dispensation and absolution.

Most of the already married couples (1,504 pairs, 64%) who turned to the Penitentiary claimed to have contracted their marriage in ignorance of an existing impediment. One third of the couples (734 pairs, 31%), instead, had married knowing that an impediment existed betwe-

20. In several cases the couple both confessed fornication and asked for legitimization for their offspring and therefore the number of the couples who had carnally known each other is not the sum of the three mentioned possibilities.

en them. In 21 cases (1%) only one of the spouses acted knowingly and the other one in ignorance, while in 93 entries (4%) this fact was not expressed. Thus all those 734 couples that had knowingly violated Canon Law were supposed to ask for dispensation and absolution so that they could legally continue in their marriage with clear conscience. Some of the pairs, who had married in ignorance, were obliged to ask for both dispensation and absolution. In many cases, they had learned of the impediment after their marriage, but in spite of it, had continued living together and consummating their marriage. This means that they had sinned and violated the regulations of Canon Law and, consequently, needed absolution. Nevertheless, the great majority of petitioners who turned to the Penitentiary had not broken the ecclesiastical norms on purpose and did not need absolution.

Absolution was, however, needed when a couple who were related to each other in a forbidden way had contracted a clandestine marriage. Clandestine marriages were forbidden in Canon Law, because getting married in secrecy meant that the banns were never read in public and that made it difficult for the priests to determine whether there was an impediment between the spouses. Even though the Church did not tolerate clandestine marriages, they were all but rare during the Middle Ages. Even the records of the Penitentiary from the pontificate of Pius II contain 154 cases where the couple had contracted a clandestine marriage. 58 of these couples had done so even though they were aware of the existence of an impediment. The Penitentiary records suggest that clandestine marriages were more common in certain territories than in others. 71 supplications originated from Germany (46%), 47 from France (30%), 24 from Northern Italy (16%), six from Spain (6%), two from Southern Italy and from Scotland (1%), one from Central Italy, and another one from an unknown diocese. Thus the western Europe is over-represented, when compared to the number of population. This result allows us to conclude that the clandestine marriages were more common in Germany and France than in the other parts of Christendom.

Consummation, according to canonists, was an important aspect for making a marriage legal. A consummated marriage was in practice often considered «more valid» than a non-consummated one. Also the entries concerning marriages refer to this fact. 1,852 (79%) couples decla-



red in their supplication that they had already consummated their marriages, 398 (17%) said that they had not consummated it, and only in 102 (4%) cases was this fact not expressed. In theory the consummation of a marriage should not have affected the decision of the Penitentiary, but in cases when a couple had knowingly consummated their marriage despite an impediment, consummation of the marriage meant that the petitioners had sinned and needed to be absolved. If, on the other hand, a couple had married knowing about an impediment, but they had not consummated their marriage, their sin was considered less severe. In any case the consummation must have been an important issue in a medieval marriage, for the fact was mentioned in 94% of the petitions.

The requests of couples were varied, but in the overwhelming majority of instances (4,166) the Penitentiary granted dispensation to petitioners. Thus almost every couple turning to the office had been provided with a dispensation. In 10 cases the entry in the register was incomplete, and hence only in 19 cases a dispensation was not requested or granted: 9 couples asked only for an absolution, seven couples for a declaration, one couple for legitimization for their offspring and in one case is question about a miss-registration.

In 2,826 petitions the supplicants asked only for dispensation so that they could marry despite an impediment, or that an already married couple, who had married in ignorance of an existing impediment, could continue in their marriage. Dispensation and absolution were asked together for 645 times. In most of these petitions there was question of an already contracted marriage where the spouses knew about the existence of an impediment. On the other hand, also couples who had married each other in ignorance but continued living together and had children after they had learned about the impediment had sinned and needed both dispensation and absolution. 578 couples had asked for a dispensation and a special declaration, while 118 couples asked for both dispensation, absolution, and declaration. The letter of declaration was not needed in every case, but it was, according to a constitution of Pope Clement VI, necessary only in cases where the couples were related to each other by the impediments of third and fourth degrees of consanguinity (or often also affinity)<sup>21</sup>.

21. L. SCHMUGGE-P. HERSPERGER-B. WIGGENHAUSER, *Supplikenregister*, p. 87.

The Penitentiary had also the right to grant legitimizations for the issue of the couples who were legalizing their marriages through a dispensation or/and an absolution. Asking for an official legitimization for one's offspring was very common, for this request is included in five petitions out of six. Furthermore, it seems that the absence of reference to this issue does not mean that the couple was not interested in legitimizing their offspring, but that some scribes have not copied this fact into the entries.

The most common reason why the petitioners were asking for dispensation/absolution was consanguinity, mentioned as an impediment in 3,014 petitions (71%). The second most common impediment was affinity, accounted for in 1,355 petitions (35%). 374 cases (9%) involved spiritual relationship, while 192 cases (5%) contain reference to the impediment of public honesty. In many supplications there was question of a combination of two or more different impediments. A combination of different impediments is always an interesting situation, for it meant very strict parenthood in the community where the couples came from and tells about a local custom of marrying persons to whom one was already related.

Normally the Penitentiary records do not give any reference as to why supplicants desired to marry despite an impediment, but sometimes some indications can be found. Quite often we meet in the petitions a wording «in order to avoid quarrels between the families of the spouses». This kind of phraseology can be interpreted as reference to an organized marriage. In one supplication is expressed clearly the reason why the spouses wanted to get married with each other even though they were related to each other. They told that there had been a pestilence in their hometown (Campagnano in the diocese of Nepi in Central Italy) and so few people had survived that they could no more avoid marrying someone to whom they were already related<sup>22</sup>.

22. ASV, Penitenzieria Ap., Reg. Matrim. et Div., vol. 11, fol. 112r: «*Dominicus Bartholomei de Pincolo laicus et Flora Antonii de Cepo mulier loci de Campagniano Nepesin. dioc. desiderantes invicem matrimonialiter copulari sponsalia inter se contraxerunt, sed quia 3<sup>o</sup> affinitatis gradu invicem se actinent eorum in hac parte desiderium adimplere non possunt sine dispensatione, propter quod supplicatur e. s. v. pro parte eorundem, quatenus cum ipsis ut dicto impedimento non obstante eorum desiderium adimplere et matrimonium inter se contrahere possint cum legitimatione prolis. Ac-tento quod in dicto castro propter pestem est deffectu personarum cum quibus contrahere valeant*».

Petitions where are involved combinations of different and multiple impediments are very interesting, because they can be locally connected almost exclusively to Ireland and Scottish Isles. In these supplications the couples requested for dispensation (and absolution) because they were related to each other by many different impediments, just as Theobaldus de Burgo and Honora Testantona from the diocese of Tuam who were related to each other by third degree of consanguinity and by double fourth degrees of consanguinity as well as by double third degree of affinity and five times by the fourth degree of affinity<sup>23</sup>. Such circumstances could result from two different possibilities. Firstly, the community where the spouses came from was simply so small that there was very limited choice of partners who were not yet related. Secondly, this kind of tendency can result from custom of marrying someone within the family in order to keep the family property in the hands of the members of the same family.

In most (2,381 petitions) of 3,014 cases where consanguinity was involved was question of the fourth degree of consanguinity, while the third degree of consanguinity was involved in 626 cases. Of these 508 were cases where there was question of combined fourth and third degree. The still dispensable second degree of consanguinity was involved only in seven petitions. This shows that marriages between relatives were common, but those between very close relatives were only exceptional.

A similar pattern can also be seen among affinity petitions. Of the 1,355 cases in which affinity was involved, 933 referred to the fourth degree of affinity and 410 to the third degree (195 of which were combined third and fourth degree cases) while 12 petitions concerned the second degree of affinity. These cases also refer to the fact that it was common to remarry, and that it was also quite common to choose the future spouse from the same family to which the person had already been connected, but that choosing a very close relative of the former partner was not common.

As mentioned earlier, the impediment of spiritual relationship could result from a relationship through a Christian Sacrament, such as

23. ASV, *Penitenzieria Ap.*, *Reg. Matrim. et Div.*, vol. 8, fol. 70v: «Theobaldus de Burgo laicus et Honora Testantona mulier Tuamen. dioc. scientes se 3o et duplici 4o consanguinitatis gradibus invicem fore coniunctos ac duplici terciò necnon quinquies quarto affinitatis ...».

baptism or confirmation. The Penitentiary granted 374 dispensations (and absolutions) to couples who were related by a tie formed by a sacrament. In 346 petitions (93%) the reason for the impediment was a relationship caused by Baptism, i.e. the parents (or very seldom grandparents) of one of the spouses were godparents of the other part. Only 25 cases (6%) referred to a relationship caused by confirmation. In three cases the relationship was not mentioned. In nine cases there was question, besides the spiritual relationship, of some other kind of impediment. In six cases the couples were also related by the fourth degree of consanguinity, in one case by both third and fourth degree of consanguinity, in one case by third degree of affinity, and in one case by the impediment of public honesty.

The petitions concerning the spiritual relationship come in the first place from Germany (120 cases) and Italy (119 cases), 32% of the total each. On the third place is France with 86 petitions (23%) and after it comes quite far the Iberian Peninsula with 39 supplications (10%). From the other territories there are only very few petitions: British Isles 6 cases and Eastern Europe 3 cases. One petition could not be connected to any diocese. This pattern suggests that in Germany, Italy, as well as France, marriages between two families that were already bound to each other by the tie of one of the sacraments was relatively common, while in the other regions this practice was used seldom. This result can, however, be interpreted also in other terms. In the other regions the parents may have chosen the godparents for their children among close relatives, preventing thus any possibility of future impediments.

The fourth most common impediment which affected Penitentiary supplicants was the impediment of public honesty, which existed when a person desired to marry (or in some cases had already married) a close relative of his/her *ex fiancée/fiancé*. We meet this impediment 192 times. In four instances the supplicants were related to each other both by the impediment of public honesty and some other impediment: once by fourth degree of consanguinity, once by third and fourth degree of consanguinity, once by six fold fourth affinity, once by both triple fourth consanguinity, double third affinity and double fourth affinity and once by the spiritual relationship.

There are some significant differences in the provenance of supplications involving the impediment of public honesty. The majority of

cases, 79 (41%) come from Italy, while 59 (31%) originate in the Iberian Peninsula. On the third place we find France with 35 cases (18%), while from the other territories there are very few cases: Eastern Europe with 8 petitions (4%) and both Germany and British Isles with 5 cases (3%). In one case the provenance was not clear. These differences can be interpreted so that in those territories with many petitions related to the impediment of public honesty, i.e. Italy, Spain and Portugal, it was relatively common to strengthen the relationship between two families through marriages, and in case when one of the thought spouses died, another suitable person from the same family was chosen in his/her place. In the other territories, on contrary, this seems not to have been common practice. This could be an indication to organized marriages.

Apart from the above mentioned impediments, the Penitentiary handled 71 cases in which there was a question of other impediments, or in which the impediment was not mentioned. These form only 2% of all cases, but they raise a number of interesting points, despite their statistical insignificance.

Quite interesting cases are those two where there was clearly question of organized marriages. In both instances, the female supplicant who «desired» to be married was a minor, and therefore the couple needed a dispensation from the defect of age, *defectus aetatis*<sup>24</sup>. In the first petition the dispensation from the defect of age was asked for an 11-year-old girl, Margarita Brechite, daughter of Simon, from the diocese of Nice<sup>25</sup> while in the second instance the girl, Agnes de Bonafe from the diocese of Clermont, was no older than seven years at the time when she was about to be married, which the Penitentiary took into account when granting the grace, for the wording in the decision says that the grace would only be valid after she has reached the age of con-

24. Canon Law did not allow children to get married before the age of seven and to begin the married life before the age of puberty, which for the boys was 14 and for the girls 12 years (X 4.2.2).

25. ASV, *Penitenzieria Ap.*, *Reg. Matrim. et Div.*, vol. 7, fol. 100r: «Michael Caxconus filius Anthonii et Margarita Brechite filia Simonis in xi sue etatis anno constituta Anicien. dioc. exponunt quod ipsi certis de causis desiderant ad invicem matrimonialiter copulari sed propter defectum etatis quem ipsa Margareta patitur eorum desiderium adimplere non possunt sine dispensatione. Supplicant igitur ut impedimento huiusmodi non obstante in eorum matrimonio procedere possint dispensare dignemini».

sent stipulated in Canon Law<sup>26</sup>. In the later case there is also involved a question of a marriage between relatives, that can be considered as a clear sign of an organized marriage. Although both examples are French, which is just a coincidence here, they do not allow us to draw any conclusions about French marriage customs in comparison to the other territories.

Five couples turned to the Penitentiary because they had violated Canon Law by committing bigamy<sup>27</sup>. In only one case the couple was really guilty of bigamy in its full meaning: being knowingly married to two persons at time. In two cases there was question of a couple that had married after the first partner of the other had caught leprosy. In these cases the second marriage was understandable, because lepers were shut out of the community and thus the couple could no more live together.

The Penitentiary granted also dispensation and absolution from monastic or chastity vows (or better, promises) to persons, who after taking a vow, decided to marry<sup>28</sup>. The entries in the registers do not always tell the reasons for breaking the promise<sup>29</sup>, but a total of 11 such cases suggest that it was not extremely rare. In some cases the reason for breaking the vow is expressed indirectly when explaining the reason for making the vow. Quite often a man or a woman made a vow to enter a monastery when they were in an extremely difficult situation, and when the worst had passed, they realized that they could not keep what they had promised. This kind of false devotion often led to the process of asking for absolution and dispensation from the vow<sup>30</sup>.

26. ASV, *Penitenzieria Ap.*, *Reg. Matrim. et Div.*, vol. 11, fol. 51v: «*Ludovicus de Lambertie laicus et Agnes de Bonafe mulier septem annorum Claromonten. dioc. desiderantes copulari sponsalia inter se contraxerunt, sed quia 4o consanguinitatis gradu invicem sunt coniuncti eorum in hac parte desiderium adimplere non possint sine dispensatione, propter quod petunt secum dispensari ut eo non obstante eorum desiderium adimplere possint cum legitimatione prolis. Fiat de speciali, cum pervenerit ad etatem a iure permissam.*».

27. About the Canon Law regulations concerning bigamy, see X 4.4.1-5, edited in FRIEDBERG II, pp. 680-682.

28. About the regulations of Canon Law related to the marriages of those who had made a religious vow, see X 4.6.3-7, edited in FRIEDBERG II, pp. 685-687.

29. Mostly the wording in these cases is only changed his/her mind «*mutato proposito*».

30. ASV, *Penitenzieria Ap.*, *Reg. Matrim. et Div.*, vol. 7, fol. 36v: «*Petrus de Platis laicus civis Mediolanen. exponit quod cum ipse alius in quodam periculo sui corporis constitutus fuisset ut ab eodem liberaretur vovit aliquam religionem non tamen exprimendo intrare quod votum dum ab huiusmodi periculo evasisset minime in animo suo confirmavit, deinde matrimonium cum quadam muliere contraxit et illud carnali copula consumavit ac prolem procreavit. Cum autem dictum vo-*

Certain petitions were submitted by couples who desired to marry despite having a sexual relation while the late wife or husband of one the parties was still alive. After the death of the cheated partner, the couple wished to legalize their relationship, but due to the regulation of Canon Law they could not do it without a dispensation and absolution<sup>31</sup>. In similar kind of situation were those who had killed their wife or husband and wanted to remarry. 12 couples were obliged to turn to the Penitentiary for getting married after the death of the deceived spouse.

Three persons turned to the Penitentiary in order to remarry after they had received dispensation for their previous marriage from the Penitentiary. These petitions are related to the wording in the letter of grace saying that the grace was granted on the condition that the couple could no more remarry after the death of either partner. In certain cases, for example when the first spouse had died too soon after the marriage, the widows wished to get remarried despite the wording of the letter of grace, and so they returned to the office that had authority to nullify its previous decision.

Annulment of the first marriage in order to remarry someone else was the motive behind the petitions of seven persons/couples. In most of these cases there was question of organized marriages, which the partners had contracted when they were still so young that they had not even been able of consummating their marriage. As both parts wished to marry someone else, they asked together from the Penitentiary an annulment of their previous «marriage»<sup>32</sup>. Remarrying and especially the need of le-

*tum non ratificavit desideretque in dicto matrimonio remanere. Supplicat igitur quatenus dictum votum in alia pietatis opera commutare et in eodem matrimonio libere et licite remanere dispensare dignemini».*

31. X 4.7.1-8, edited in FRIEDBERG II, pp. 687-690.

32. ASV, Penitenzieria Ap., Reg. Matrim. et Div., vol. 7, fol. 57v-58r: «Ludovicus Atier filius quondam Andree Atier laicus et Anna filia Raymondi Martini mulier Viennen. dioc. exponunt quod ipsi in infancie etatis videlicet Ludovicus quinque et Anna quatuor annorum constituti essent mediantibus quibusdam eorum parentibus matrimonium inter se contraxerunt, nunc autem ad etatem perfectum devenerunt nolentes certis de causis matrimonium huiusmodi adimplere nam etiam illud matrimonium seu promissionem de futuro per dictos eorum parentes ipsis innocentibus factam numquam gratam habuerunt nec ullomodo consumarunt. Supplicant igitur quatenus ipsos a promissione seu matrimonio de futuro huiusmodi dissolvi eosque in quantum opus sit absolvi necnon cum eisdem ut alibi ubi eis placuerit et videbitur honestius expediendum secundum iuris dispositionem matrimonium congrahere possint dispensare dignemini. Fiat de speciali si ita est quod non consenserint ad invicem».



galizing the new marriage was important and therefore four other cases were also related to the question of getting remarried. Three supplicants requested absolution because of committing fornication outside marriage, while one woman tried to separate an already married couple. The remaining 18 cases were such that the impediment was not mentioned because of the lack of registration.

The petitions registered in the records of the Penitentiary tell many things about how marriage regulations of Canon Law were followed and respected in different parts of Christendom. Generally, the norms were respected quite well. In total, 44% of petitioners were asking for a dispensation before getting married, as required by Canon Law. The remaining 56% of supplicants turned to the Penitentiary after getting married, but the majority of them (64%) had not been aware of the existence of the impediment at the moment they had contracted their marriage. Thus only about 20% of supplicants had intentionally contravened the marriage regulations of Canon Law, marrying knowingly and intentionally despite an impediment.

Certain supplicants needed absolution for other reasons: for committing fornication or having contracted a clandestine marriage. It is worth noting that these violations seem to be connected mainly to certain regions of Christendom. The majority of the petitions concerning fornication came from Ireland, while those concerning clandestine marriages were mostly German (an also French). This suggests that old regional habits, which were forbidden by Canon Law, had not yet disappeared from these regions. On the contrary, it seems that the ecclesiastical marriage regulations were well established in the Mediterranean area, for there are hardly any Italian, Spanish, or Portuguese petitions related to these matters.

The petitions directed to the Penitentiary are testimony of another general phenomenon, too – about the need to legalize one's marriage. Supplications provenient from every corner of Christendom demonstrate that marriage regulations had been adapted everywhere. At the same time when the couples wanted to legitimize their relationship they also legitimized the position of their offspring, for the marriage dispensation granted by the Penitentiary also legitimized the children of the couples in question.



When it comes to the reasons why Christians turned to the Penitentiary in marriage matters, the Penitentiary supplications illustrate that two impediments were much more common than other: consanguinity and affinity. There are no bigger territorial differences concerning these two impediments, but the problem of marrying a distant relative or a distant relative of one's ex wife or husband existed everywhere. The only special trend that could be noticed in the Penitentiary material was that in certain regions, as in Ireland and the Scottish Isles, the impediments of consanguinity and affinity tended to be multiple, which means that the persons—living in small communities where the choice of partner was not very big—were related to each other by multiple family ties.

The impediment of spiritual relationship was much less numerous among the petitions, but still relatively common. But there were quite big regional differences in this respect. Marriages between two persons related to each other by the tie of a sacrament were especially common in Germany and Italy. In the other regions it was more common to choose one's partner from other circles. The fourth commonest impediment among the Penitentiary material was the impediment of public honesty. These kinds of petitions were common mostly in Italy and Spain, are probably an indication that in these regions organized marriages were quite common. Other impediments are very rare in the Penitentiary material. However, the fact that some couples occasionally turned to the Penitentiary because of these impediments shows that also these regulations were known and respected.

All petitions brought to the apostolic authority were directed to the pope, even though they were handled by different offices within the Curia. Therefore, the decisions made in the Curia were normally made in the name of the pope, and, consequently, letters of grace were issued in his name too. The only exceptions in this respect were graces granted by the Penitentiary.

Even though officials of the Penitentiary had received their decisive authority from the popes, they did not make the decisions in the name of the pope but in their own name. Thus each petition was signed by the decision-maker, which allows scholars to know who handled each individual case in the Penitentiary. This information exists only in the

registers of the Penitentiary and in the few original petitions preserved to our times. In the letters of grace granted by the Penitentiary the decision-maker is not expressed, because all letters of graces were issued in the name of the Cardinal Penitentiary.

Studying the registers of the Penitentiary from the pontificate of Pius II allows us to see who the men who granted graces in marriage matters were. Table 1 below lists the names of the officials of the Penitentiary who granted marriage dispensation and absolution and indicates in how many cases they were involved.

Table 1. *Decision-makers in the Penitentiary during the Pontificate of Pius II*

<i>Decision-maker</i>	<i>Cases</i>	<i>%</i>
A. ep. Aprutin.	212	5%
A. ep. Reatin	3	0%
A. prothon. Pisan. / el. Balneoregin.	85	2%
B. ep. Regin.	52	1%
F. ep. Feltren.	34	1%
F. ep. Sassinaten.	8	0%
G. de Gonzaga	9	0%
G. prothon. de Oddis	440	10%
Ja. Ep. Vigintimilien.	73	2%
Jo. abb. S. Bernardi	32	1%
Jo. ep. Castellan.	451	11%
Jo. ep. Placentin.	7	0%
M. Alexan.	113	3%
Phi. S. Laurentii in Lucina	2,400	57%
Phi. Arelaten.	21	1%
Pius II	83	2%
S. aep. Mediolanen.	22	1%
Ste. Ep. Lucan.	93	2%
?	57	1%
Total	4,195	100%

Source: ASV, *Penitenzieria Ap.*, *Reg. Matrim. et Div.*, vol. 7-11, 13.

It can be seen that in 83 cases the decision was made by Pope Pius II (36 times he made the decision himself and 47 times the decision was made in his presence and signed by the referendarius Agabitus de Cenci Rustici). The existence of these cases in the Penitentiary

registers does not mean that the pope had himself led the decision-making in the Penitentiary. These cases have actually been approved in other papal offices (Chancery or Datary that could handle similar cases) and after the decision-making the cases were transferred to the Penitentiary for expedition. This exceptional arrangement was normally made in such cases where the pope or his advisers considered the supplicants so poor that they might not have been able of paying the high fees of the Chancery or Datary. The Penitentiary, instead, could make the expedition with lower costs. This is the reason why the Penitentiary has sometimes been called «the office for poor petitioners»<sup>33</sup>.

In almost six cases out of ten the decision-maker was the Cardinal Penitentiary, Philippus Calandrini (2,400 petitions that make 57% of the total of 4,195 cases). His signature can be found in cases from the beginning of the registration until the end of the pontificate of Pius II in August 1464. The numerous cases signed personally by the Cardinal Penitentiary is testimony that the cardinal was very active in his office and did not just leave the daily business to the officials.

Other officials of the Penitentiary handled much less cases than the Cardinal Penitentiary. Johannes de Glanderonibus, bishop of Città di Castello (*Castellanensis*) was the most active, for he signed 451 petitions during his almost 2-year-period as the regent of the Penitentiary, from May 1462 until February 1464. Galeottus de Oddis, a papal protonotary, who acted as regent of the Penitentiary from November 1459 until November 1463 has been almost as active, for he signed 440 petitions. These two persons acted as regents of the Penitentiary for a long time and traveled with the pope from place to place, for they signed cases in many different places.

Other signatories held the office of regent of the Penitentiary only for relatively short periods (from one to 5 months) —mostly acting

33. About the cases handled by Pius II among the Penitentiary entries, see K. SALONEN, «The Decisions of Pope Pius II in the Penitentiary Registers», in A. MEYER-C. RENDTEL-M. WITTMER-BUTSCH (eds.), *Päpste, Pilger, Pönitentiare. Festschrift für Ludwig Schmutge zum 65. Geburtstag*, Tübingen 2004, pp. 515-530.

only in one place— and, as such, made also relatively few decisions. The only exception is Antonius Fatatis de Ancona, bishop of Teramo (*Aprutinis*) who managed to sign 212 cases, even though his career as the regent lasted only circa half a year, from April until October 1460. All cases signed by him were handled in Siena, while Pius II stayed there.

The small number of decision-makers in the Penitentiary suggests that the decisions must have been made according to the general rules stipulated in Canon Law and there cannot have been too much variation. The continuity in decision-making can also be seen in the formulas of approval that were regulated through the regulations of the Penitentiary and arose from the different faculties given to the office. The officials signed the cases throughout following the regulations given to them. The studied petitions did not indicate that there would have been any kind of difference in the use of the formularies or decisive authorities that would have depended on the person who has made the decision. All decisions were made according to the faculties the Penitentiary had, and according to the formulary the office was allowed to use. Most of the graces (3,367; 80%) have been granted with the formulary *Fiat de speciali*, referring to the special authority of the Penitentiary that allowed them to make decisions of matters normally reserved only to the Pope. The second common form of decision was *Fiat de speciali et expreso*, and it refers to a special authority the office had received from the pope orally, *vive vocis oraculo*. This formulary was used 664 times (16%). There are also few other kind of formularies among the marriage petitions, but they are extremely rare<sup>34</sup>. Three kind of formulas of approval are related to the Pope Pius II: He has himself signed with the signature reserved to the popes, *Fiat ut petitur* (36 cases), or simply *Fiat* (14 cases). Those decisions that were made in his presence but not signed by him are formulated *Concessum in presentia domini nostri pape ut petitur* (47 cases). In 52 petitions the signature is missing.

34. A formulary referring to the general authority of the Penitentiary, *Fiat in forma*, is used seven times. *Fiat ut infra* and *Fiat de speciali ut petitur* are used once. In one petition is question about getting a declaration concerning the marriage and this petition is signed with *Declaratur ut petitur*. In five cases the matter is committed to the local bishop with the formulary *Agat ordinarius*.

## RESUMEN-ABSTRACT

A causa de que el Derecho canónico ha sido entendido a menudo como una colección homogénea de normas, que habrían sido interpretadas de forma similar a lo largo de la cristiandad, se han estudiado poco las diferencias en la interpretación de las normas del Derecho canónico. El propósito de este artículo es determinar la comprensión de las regulaciones canónicas medievales del matrimonio entre cristianos, especialmente desde la perspectiva de si (y cómo) fueron aplicadas e interpretadas de manera diferente en las distintas partes del Occidente cristiano en la Edad Media tardía. La fuente material para este estudio se basa en las peticiones presentadas ante la Penitenciaría Apostólica—uno de los principales oficios de la Curia papal, especialmente en la Edad Media tardía—, durante el pontificado de Pío II (1458-1464), casi 4.200 casos en total.

*Palabras clave:* Penitenciaría Apostólica, Pío II, Impedimentos matrimoniales.

Because of that Canon Law is often understood as a homogeneous collection of norms that were interpreted similarly throughout Christendom and, therefore, the differences in interpreting the norms of Canon Law have been studied too little. The aim of this article is to determine the understanding of medieval marriage regulations of Canon Law among Christians, especially from the view point if (and how) they were applied and interpreted differently in diverse parts of the Christian West in the late Middle Ages. The source material for this study is based on petitions submitted to the Apostolic Penitentiary—one of the most important offices within the papal curia, especially in the Late Middle Ages— during the pontificate of Pius II (1458-1464), altogether almost 4,200 cases.

*Keywords:* Apostolic Penitentiary, Pius II, Marital Impediments.

