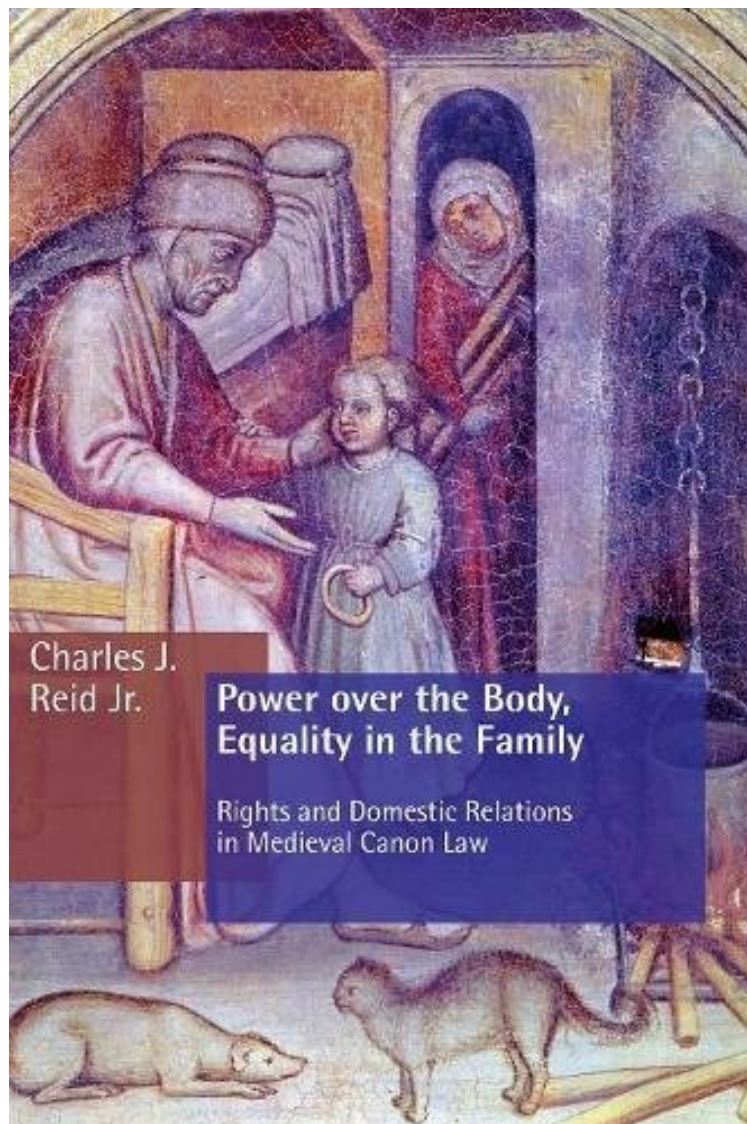


[Download pdf] Power over the Body, Equality in the Family: Rights and Domestic Relations in Medieval Canon Law

## Power over the Body, Equality in the Family: Rights and Domestic Relations in Medieval Canon Law

*Charles J. Reid Jr.*

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**Charles J. Reid Jr. : Power over the Body, Equality in the Family: Rights and Domestic Relations in Medieval Canon Law** before purchasing it in order to gauge whether or not it would be worth my time, and all praised Power over the Body, Equality in the Family: Rights and Domestic Relations in Medieval Canon Law:

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medieval Church laws regarding sexuality in general and marriage in particular knows that research into any aspect of these topics must start with an examination of the works of James A. Brundage, John T. Noonan, and Pierre Payer. In many ways, the current generation of scholars is deepening the study of issues that were, at the very least, surveyed by these three authors. The new book by Charles J. Reid is a very good example of such a work. Reid is interested in a specific subject: "the use of rights language in the formation and living out of the marital relationship" in the Middle Ages, particularly in the twelfth and thirteenth centuries. This is a period in which, on one hand, canon law becomes an academic field following the publication of the *Decretum* of Gratian in 1140, and, on the other hand, a renaissance of Roman law occurs in Europe, following a period of five hundred years in which it was practically unknown. The publication of the *Decretum* attracted the attention of many brilliant minds of the mid twelfth century, the so-called "decretists", who published their own comments on it. At the same time, popes also began to issue a growing number of legal decisions. Less than a hundred years after the publication of Gratian's work, it was already evident that a new compilation of these scattered decisions and canons was needed. Not one but five major collections were made, until, in 1234, Pope Gregory IX promulgated a new collection that was supposed to take the place of these five. Thus, a new collection, the *Liber Extra*, became the most important compendium after the *Decretum*. Unsurprisingly, it did not take long until new commentaries on this new *Liber Extra* began, again, to flourish. The heart of Reid's book is devoted to the works of three commentators of the *Liber Extra*, all of whom were born around 1200: the *Glossa ordinaria* of Bernard of Parma (d. 1266), the *Apparatus* of Sinibaldo of Fieschi, also known as Pope Innocent IV (d. 1254), and the *Lectura* of Henri of Susa ("Hostiensis", d. 1271). Although there were other important legal writings, Reid shows that the works of these three form the very core of the Catholic marriage laws to this day. After a comprehensive introduction, Reid examines four subjects: the right of freedom to contract marriage, the right of paternal power, the rights of women, and testamentary freedom and the inheritance rights of children. The first chapter explores the right to get married despite objections of others (parents, family members, lord), and the right to not be coerced into a marriage. Reid shows the radical change made by the canonists in the twelfth century: despite the fact that Roman law considered a coerced marriage valid, and Germanic law considered the role of parents as a decisive factor in the formation of a new couple, canonists insisted, using Gratian, that it is the free decision of spouses that makes a marriage valid. Without it, no bond can be created. The chapter also discusses important related issues such as clandestine marriages, cases of women (often, girls) who were subjected to threats if they objected to an arranged marriage, and more. The second chapter deals with the *patria potestas*, the "paternal power." Here, Reid extensively explores the various stages in the development of the idea that the father has an exclusive power over his (extended) family, including his wife. Examining the different meanings of this power in Roman law, and particularly the right to abandon ("expose") an offspring, Reid shows the complexity of this legal concept even before the Christianization of the Empire, and the various changes it went through in medieval legal thought. Many thinkers raised new questions: is the "paternal power" a natural right? Exactly what rights does the father have? What is the just balance between a man's rights and his obligations towards his family? Can he lose these rights altogether? Can a son or daughter perform acts that will limit a father's power? The chapter shows how, successively, a relatively strict Roman concept of the rights of the *paterfamilias* was transformed by authors bound to Christian ideas, leaving the father with no less obligations than rights. The third chapter in this thorough book deals with a particularly wide topic: the rights of women. Once again, Reid starts with an exploration of the sources and traditions medieval thinkers had to contend with, coming from the Bible and early Church fathers. In fact, two well known statements by St. Paul provided Christian authors a pretty difficult starting point, having to find some balance between Paul's declaration that "the head of a woman is her husband" (1 Cor 11:3), and his affirmation that in Christ "there is neither male nor female" (Gal 3:28). Heading into the Middle Ages, Reid examines topics such as "conjugal right," including the very common idea that spouses, and particularly women, "owe" sexual relations to their partner. This "debt" and its implications were dealt extensively in medieval literature, both when the "debt" was paid, and when, for various reasons, it was not. What happens when a wife, or even a newly-wed, categorically refuses the physical advances of her spouse? Does a difference exist if her spouse is struck with leprosy, or if he previously renounced his right? Reid moves then to subjects such as the right of a woman to choose her own burial place. Here, as in many places in the book, the author offers careful analysis and summaries of the opinions expressed by a large number of medieval canonists. These summaries are not always an easy read, but they certainly will be a useful source for present and future generations of scholars. Reid closes the chapter with a lengthy but careful analysis of women's rights to seek divorce, reminding us that, according to canon law, "both men and women may depart from marriage under certain circumstances. Christians, however, may not remarry." Reid's fourth and last chapter checks rights which are mostly monetary, unlike many of those explored previously. In this chapter, he investigates the testamentary rights of a person, and the ways they were shaped by medieval authors in accordance with both the right of inheritance that they generally considered a natural right, and the good of the larger society (and Church). In this chapter, a long discussion is centered on the rights of adopted children, as well as those born out of wedlock, to inherit. Indeed, the very idea that a child has intrinsic rights of inheritance that may overcome the parent's decisions is a crucial one in medieval canon law. As Reid shows clearly, ideas by some that the Church should be the major beneficiary of dying Christians were generally

rejected. At most, the Church should be considered as an "additional child," a solution that resembles, in some ways, inheritance taxes today. Throughout the book, Reid argues convincingly that many contemporary aspects of family laws owe much to medieval canonists. He is certainly right. Having said that, this fascinating book, well written by a scholar with a remarkable mastery of medieval Church law, will be beneficial not only to those interested in medieval or modern legal systems. It will enrich all those interested in the ways relations between men and women, parents and children, take legal form. [Dr. Evyatar Marienberg, *The Medieval Review*, [...]]

The term "conjugal rights" has long characterized ways of speaking about marriage both in the canonistic tradition and in the secular legal systems of the West. This book explores the origins and dimensions of this concept and the range of meanings that have attached to it from the twelfth century to the present. Employing far-ranging sources, Charles Reid Jr. examines the language of marriage in classical Roman law, the Germanic legal codes of early medieval Europe, and the writings of canon lawyers and theologians from the medieval and early modern periods. The heart of the book, however, consists of the writings of the canonists of the High Middle Ages, especially the works of Hostiensis, Bernard of Parma, Innocent IV, and Raymond de Peafort. Reid's incisive survey provides a new understanding of subjects such as the right of parties to marry free of parental coercion, the nature of "paternal power," the place of bodies in the marriage contract, the meaning and implications of gender equality, and the right of inheritance.

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