

## 1 Lothar, Theutberga and Waldrada

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Lothar II ruled a middle kingdom north of the Alps and between France and Germany. The Carolingian polity was in pieces but the Christianisation programme had affected attitudes and perhaps this celebrated case, the first one in which a king answered to prelates for his marital behaviour. Lothar gave up his partner Waldrada for a political marriage (855) to Theutberga, whose brother could block an attack over the Alps. As fears of that faded, Lothar went back to Waldrada, but he had to justify breaking off his marriage. His wife was accused of crimes so awful as to free him, it was argued, but she survived a trial by ordeal (858) and Lothar had to turn to an ecclesiastical tribunal. Things moved fast in 860. Theutberga's confessor (a very senior prelate) claimed she had revealed the heinous crimes to him. She decided or was pressured into saying she wanted to become a nun, which Lothar claimed would entitle him to remarry. However, she escaped to her brother who ruled the kingdom to the west (roughly modern France), and appealed to the pope, the first such appeal by a queen that we know of, though not the last. The greatest prelate of that kingdom, Hincmar of Reims, wrote a treatise on 'the divorce', more or less in her favour.

In his own middle kingdom Lothar's faithful bishops backed him up. In 862 a council of clergy and laymen found in his favour and he married Waldrada. In the same year Pope Nicholas I was gearing up to put a stop to it all. He thought Theutberga had been wronged, and sent legates to a synod in Lothar's kingdom where the case would be judged afresh. His instructions to them focused on the question of whether a genuine marriage to Waldrada had preceded the union with Theutberga. This reformulated the issue: it was no longer whether she had committed sodomy with her brother or would become a nun (# 862–863). Around that time, Lothar changed his line. Previously, he had concentrated on Theutberga's infamy. Now he argued that Waldrada had indeed been his wife, not just a partner. To Nicholas I's fury, the synod found in Lothar's favour and sent two great prelates to the pope with a little book full of

12 Lothar, Theutberga and Waldrada

their legal arguments. Nicholas was not interested: it looks as though he trusted his instinct that the whole thing was a set-up and that even his legates had been corrupted by bribes, but he did not trust the legal resources in Rome to rebut the king's case. This explains much about the character of the letters by Nicholas translated below (**# 862, November 23 – 867, October 31**). They are rhetorical narratives designed to win over the clerical elites north of the Alps, and the great laymen who might listen to these learned clerics.

Most of the passages translated are transmitted by a manuscript (Paris, Bibliothèque nationale de France, Lat. 1557) containing letters to top people in Frankish kingdoms and collected in the circle of a man who must have been following the controversy, Hincmar of Laon, nephew of Hincmar of Reims who wrote about the divorce. The aim must have been to win elite opinion by telling the tale with passionate force, rather than to allow due process to take its course – because due process hardly existed as yet. Nicholas had some success: Lothar was forced to take Theutberga back, though he seems to have gone on working to get her sidelined, and clearly still hankered after Waldrada.

The letters of Nicholas translated below should ideally be read in conjunction with the following passages from the *Chronicle* of Regino of Prüm, which are easily available in a good recent translation with scholarly annotation: Simon MacLean, *History and Politics in Late Carolingian and Ottonian Europe: The Chronicle of Regino of Prüm and Adalbert of Magdeburg* (Manchester, 2009): under year 864, pp. 140–1 (relating to 862); under year 865, pp. 141–3. See also his introduction pp. 43–4.

### Historiographical highlights

The bibliography on this famous case is enormous, so the following highlights have to be more than usually selective. There is a recent full-scale monograph by Karl Heidecker, *The Divorce of Lothar II: Christian Marriage and Political Power in the Carolingian World* (Ithaca, NY, 2010), translated by Tanis M. Guest from a fuller Dutch version. 'Act V', pp. 149–72, deals with Nicholas I's role. Heidecker provides a substantial bibliography of earlier studies. Among the more recent ones two are notable for robustly arguing that there was a strong case for dissolving Lothar II's marriage to Theutberga, the implication being that Nicholas I was mainly interested in asserting papal power: Thomas Bauer, 'Rechtliche Implikationen des Ehestreites Lothars II.: Eine Fallstudie zu Theorie und Praxis des geltenden Eherechts in der späten Karolingerzeit. Zugleich ein Beitrag zur Geschichte des frühmittelalterlichen Eherechts',

*Zeitschrift der Savigny Stiftung f. Rechtsgeschichte, kanonistische Abteilung* 80 (1994), pp. 41–87, and Raymond Kottje, ‘Kirchliches Recht und päpstlicher Autoritätsanspruch. Zu den Auseinandersetzungen über die Ehe Lothars II.’ in H. Mordek (ed.), *Aus Kirche und Reich. Studien zu Theologie, Politik und Recht im Mittelalter: Festschrift für Friedrich Kempf zu seinem fünfundsiebzigsten Geburtstag und fünfzigjährigen Doktorjubiläum* (Sigmaringen, 1983), pp. 97–103. I am not convinced by their interpretations which will be discussed (on the basis of the letters translated below) in *Papacy, Monarchy and Marriage*. Stuart Airlie, ‘Private Bodies and the Body Politic in the Divorce Case of Lothar II’, *Past and Present* 161 (1998), pp. 3–38, makes a point that tells against the views of Kottje and Bauer: namely, that the (non-royal) name ‘Hugh’ given to Lothar’s son by Waldrada suggests that he did not regard their partnership as the definitive one (p. 17). Airlie develops other thought-provoking ideas, notably that once Lothar II had moved the argument into the religious realm, to his own ends, he found himself constrained by logic that he might not otherwise have bothered about, and that his argument that he could not be expected to live without sex turned against him, because a man who could not control his own body could not be trusted to control the body politic. For good general background in the same scholarly tradition as Airlie, see Rachel Stone, *Morality and Masculinity in the Carolingian Empire* (Cambridge, 2012), ch. 8, ‘Marriage’. Ruth Mazo Karras, *Women, Men and Sexual Unions in the Middle Ages* (Philadelphia, 2012), pp. 38–42, discusses the case as illustrating the range of possibilities beyond indissoluble marriage as conceived by the likes of Nicholas I. The fine edition by Letha Böhringer of Hinkmar of Reims, *De Divortio Lotharii regis et Theutbergae reginae, MGH Concilia IV, Supplementum I* (Hannover, 1992), is a central background source. In my view the best account of Nicholas I’s part in the events reflected in the letters translated below is in a book nearly a century old: Ernst Perels, *Papst Nikolaus I. und Anastasius Bibliothecarius: Ein Beitrag zur Geschichte des Papsttums im neunten Jahrhundert* (Berlin, 1920), a balanced interpretation with a first-hand feel – unsurprisingly since he was also the scholarly editor of the *Monumenta Germaniae Historica* (MGH) edition of the letters.

### The translation

Unless otherwise indicated, the translations that follow are from ‘Nicolai I. Papae Epistolae de Rebus Franciae, Praecipue de Divortio Lotharii II. Regis’, *Monumenta Germaniae Historica Epistolarum*, ed. Ernst Perels, vol. VI: *Karolini Aevi* (Berlin, 1925), pp. 268–351.

14 Lothar, Theutberga and Waldrada

**# 862, November 23, Letter 3, pp. 268–70**

In Paris, Bibliothèque nationale de France, Lat. 1557. Nicholas I urges the bishops assembled in Metz to reach a just judgement under the presidency of the legates he is sending.

Nicholas, bishop, servant of the servants of God, to all the most reverend and holy archbishops our brothers and bishops present at the council which is being celebrated at Metz.

Due honour is rendered to the reverence of the sacerdotal office when we see that they hold the scales of mercy with the balance of rectitude in all things that ought to be done by them taking full account of equity, and in holding it, be not turned away from the path [**'iustitiae quoquomodo' p. 269**] of justice by any man's favour or moved by terrors of anyone whatsoever or even by great quantities of money or by having honours heaped upon them. For, in proportion to the responsibility<sup>1</sup> which is conceded to them in watchfully monitoring<sup>2</sup> their neighbours, should, without doubt, be the magnitude of the anxious attention which should be applied by them<sup>3</sup> to this responsibility,<sup>4</sup> without privileging anybody,<sup>5</sup> with zeal for righteousness, lest they seem to forget the text of St Paul: 'Let each get his reward according to his labour.' For since<sup>6</sup> our apostolic spirit is extended among cases of many different ecclesiastical affairs which are seen to pertain to the salvation and the firmness of the faith of the people of God, the account of a dispute between certain women, namely, Theutberga and Waldrada, as also between certain men who recounted it,<sup>7</sup> won our full attention, since our pastoral care had moved us to listen, and – lest the flock of the Lord be tormented by any sickness of violence on account of inaction – lead us with the fire of charity burning up intensely, to restore health by healing. For the aforesaid Theutberga has made great efforts again and again to appeal to the apostolic see with tearful letters,<sup>8</sup> in which she says, her words full of grief, that she is pure and innocent of the crime of which she is accused. For this matter and

<sup>1</sup> 'cura'.    <sup>2</sup> 'discutiendo'.

<sup>3</sup> 'his': ablative pronoun standing for the bishops, rather than dative standing for the neighbours.

<sup>4</sup> 'sui'.

<sup>5</sup> 'sine personarum acceptione' (Stone, whose preferred translation would be 'without respect for persons', points out that 'this is a frequently used phrase in Carolingian discussions of secular justice').

<sup>6</sup> 'cum': one could also translate as 'although', with the sense that, busy as he was, the pope found time for this dispute between the two women.

<sup>7</sup> 'sicut quorundam referentium': the phrase is thrown into the sentence rather awkwardly. The best way to interpret it seems to be that controversy extended to divergent accounts given to the pope.

<sup>8</sup> It or they do not survive: cf. Perels, *MGH* edn, p. 269, note 2.

for a discriminating judgement, as we recently decided to remind you, brothers, through an apostolic letter,<sup>9</sup> we want you and in our apostolic office urge you that you should, endowed with apostolic authority, unite to celebrate a synod there,<sup>10</sup> with the legates<sup>11</sup> who are coming from us in our office as pope presiding together with your brotherly selves, and that together with them you may give every effort with their consent to defining and establishing without doubt, what you are able to find together with the aforesaid legates to be more just or true, doing this with great vigilance, without the stain of deceit or the heat of envy or being consumed by hatred, all of which can twist men away from the path of truth and, alas, deflect them from the road of righteousness; having God always before your eyes, despising the persons of princes and terrors which arise for a time and end in time; fearing the words that the prophet says [Isa. 5:20]: 'Woe to you who call good evil and evil good, who put darkness for light and light for darkness, who call sweet bitter and bitter sweet.' For the words of the Gospel, among other things that instruct us on how to live well, remind us, saying [John 7:24]: 'Judge not according to the appearance, but judge just judgement'; and the Psalmist too says [57: 2]: 'If in very deed you speak justice: judge right things, ye sons of men.' Therefore, though there are many things of which we can put you in mind, brothers, not passing judgement on you as being forgetful or ignorant, but giving ourselves over fully to our charitable zeal, we think that these suffice, because<sup>12</sup> we have no doubt that in such matters you can be transported by memory beyond them to many teachings found by reading the Gospel, St Paul,<sup>13</sup> and the prophets. This is the whole thing: that with equitable justice in the present investigation, without any deceit or stain of ill-will, as we said above, since you are assembled in the presence of God, you should, together with our aforementioned legates, strive to decide in a God-fearing manner the cases of your neighbours in so just and irreproachable manner that their<sup>14</sup> and your own holinesses' agreed decision and judgement may be seen to shine out with its equity. For if we see you or them falling away from the rules<sup>15</sup> established in the canons and by the Holy Fathers to favour one party for the sake of a favour from anyone whatsoever – and we hope it will not be so – we will not hesitate to pursue the matter. If however in this same council matters relating to other needs of the Church should come up, deal with them as they deserve with attention and strive to settle them in a God-fearing

<sup>9</sup> Dr Rachel Stone pointed out to me that 'apices' could refer to more than one letter.

<sup>10</sup> 'synodicam . . . celebrationem . . . adunare': literally bring together the celebration of a synod. The sense of this convoluted sentence would seem to be that the council already meeting at Metz should be transformed into a synod led by papal legates.

<sup>11</sup> 'missis'. <sup>12</sup> 'ideo . . . quia' construction. <sup>13</sup> 'apostolicae'.

<sup>14</sup> i.e. the legates'. <sup>15</sup> 'institutionibus'.

16 Lothar, Theutberga and Waldrada

way. But if any dispute should arise in it in respect of which you may perchance be unable to reach a definitive judgement, we rule that it be reserved to our judgement. We order, however, that you should inform us as supreme authority<sup>16</sup> without delay in the order in which it happened of everything that is done or decided in the same council, so that if we see them to have been decided [**'ea iustitiae pulchritudine'** p. 270] in the beauty of justice and by a decree which can meet with approval, we may give thanks to Almighty God, but if things have been done in a spirit of injustice – and we hope this will not be the case – and contradiction – we may absolutely order that they be done again.<sup>17</sup> We were indeed unable to send the legates<sup>18</sup> from our pontifical office that we referred to in our first letter to your beloved selves, because of certain needs of the Church with which we were kept busy. But with Christ's help we have now decided to send as legates men endowed with great ability and worthy of the utmost reverence on account of their knowledge and teaching, namely, Radoald and John, bishops, who enjoy our favour and give us counsel, who are keen to celebrate the aforesaid council, as I have said above, with your holy selves. May Almighty God, through whom you adorn the highest office of sacred government, fill your blessed hearts with the brightness and beauty of rectitude and justice, so that in all your acts you may be seen to sparkle with the fullness of equity.

Given on the 9th Kalends of December, indiction 11.

#### # 863 (early) (a), Letter 10, pp. 275–6

In Paris, Bibliothèque nationale de France, Lat. 1557. Nicholas commands all the archbishops and bishops in France and Germany to reach a canonical judgement on the Lothar marriage dispute.

Nicholas, bishop, servant of the servants of God, to all the archbishops and bishops throughout France and Germany.

We do not believe it is unknown to you how, on account of the two wives of Lothar the king, the face of God's Church has been spattered with the stain of an illicit marriage, or how the same king rejected one and most wickedly joined the other to himself. The first of them, Theutberga by name, grieving bitterly because she had been repudiated, sought the judgement of our see by having a message brought to me<sup>19</sup> about this

<sup>16</sup> 'nostro praesulatu'.

<sup>17</sup> 'ea renovare': I would have expected 'renovari'. <sup>18</sup> 'missos'.

<sup>19</sup> 'per emissam legationem'. Stone suggests 'a legation sent', on the grounds that 'Theutberga had fled to West Francia, under Charles the Bald's protection, by this point, so might have had access to legates'.

matter. On that account, it was our view that it would be entirely uncanonical to judge the case of one party without the other. We therefore ordered that you, brothers,<sup>20</sup> collected at Metz, together with our legates,<sup>21</sup> should hear the case of the same Lothar and agree on a canonical judgement. And so, when, in accordance with our decision, we sent those two bishops our brothers to those regions, it happened to come to our attention, that Lothar, after rejecting his legitimate and first woman,<sup>22</sup> had taken to himself a second wife, neither awaiting the judgement of our see that had been asked and promised, nor submitting in any way to canonical judgement. How else can this be interpreted than that where he anticipates the judgement of many, he judges himself to be guilty by his own judgement.<sup>23</sup> And therefore, as an open message<sup>24</sup> we send this letter endowed with apostolic authority to you, brothers, so that, burning with zeal for the Christian faith, you may set out to Metz, like<sup>25</sup> our legates, and, summoning Lothar there, you may give him a hearing and pass a canonical judgement on him. And if he puts off coming and absents himself from the synod when our legates are present, and makes absolutely no effort to return to penance and satisfaction by hastening to the synod in person to come before our legates to do satisfaction and to cease to do wrong, we will excommunicate him from then on, and, as long as he remains excommunicate, we will exclude him from any part in the fellowship of the whole Church.

### # 863 (early) (b), Letter 11, pp. 276–7

The letter is edited by Perels from Paris, Bibliothèque nationale de France, Lat. 1458, minus the memorandum for the investigation (*Commonitorium*), though the original must have included it. He edits the *Commonitorium* from Berlin Lat. fol. 197, fol. 84.

*Here Nicholas I instructs his legates what to do at the Synod in Metz*

To the most reverend and holy Radoald and John, bishops.

As you are faithful men of the holy Roman Church and columns of the apostolic see, keep it so,<sup>26</sup> hurry to carry out everything in accordance with our previous order, and at Metz at the synod summoned by apostolic authority, carry out our commands. But if the synod of bishops fails to

<sup>20</sup> 'fraternitatem vestram'.    <sup>21</sup> 'legatis'.    <sup>22</sup> 'muliere'.

<sup>23</sup> 'iudicium . . . iudicio . . . iudicat'.    <sup>24</sup> 'universaliter'.

<sup>25</sup> 'pariter cum': probably going with 'set out' ('profiscamini'), rather than 'burning with' ('accensi').

<sup>26</sup> 'ita custodite'.



18 Lothar, Theutberga and Waldrada

gather there, or Lothar puts off coming to it, then you should make every effort to go to him and to declare our commands and what we have laid down; and then, when you have gone on to Charles [the Bald] for the sake of the Baldwin case, show to that glorious king, in the presence of all, the synodal letters<sup>27</sup> and the letter we are sending you now together with the memorandum for the investigation; and making this known not only to him but to all the bishops and all the faithful make every effort to read them and announce them openly. Know besides that two letters have been sent by us to your holy selves in place of the ones taken away,<sup>28</sup> one to King Charles and the second to his wife. We send another<sup>29</sup> [no. 10, above] however to the bishops of France and Germany together with this one addressed to you.

*Memorandum for investigating the case of King Lothar II*

King Lothar claims that he received<sup>30</sup> Waldrada from her father<sup>31</sup> and afterwards took<sup>32</sup> the sister of Hucbert. Here first inquire with diligent investigation and, if you find, in all respects, that the same glorious king received Waldrada with a dowry being given beforehand, and in front of witnesses, according to the law and the customary rite for celebrating weddings, and the same Waldrada was taken as his wife publicly and openly,<sup>33</sup> it remains for you to examine why she was repudiated or the daughter of Boso [father of Theutberga] was taken. But since the same king says that he took Theutberga out of fear, you remember those words of the Gospel where the Lord says [Matt. 10:28]: 'Do not fear those who kill the body', and again he says [Matt. 16:26]: 'What does it profit a man, if he gains the whole world, but suffers loss to his own soul?' In these texts of our Lord one should consider that if those who slay the body are not to be feared when they drive man against justice, and if the gain of the whole world does not benefit a man if his soul is lost, how much less ought so great a king out

<sup>27</sup> Perels, *MGH* edn, p. 276, note 11, identifies these with letters 3–6 in his edition.

<sup>28</sup> Perels, *MGH* edn, p. 277, note 1, identifies these with Letters 7 and 8 in his edition (not translated here). They deal with another marital cause célèbre, the elopement of Baldwin, Count of Flanders, with Judith, daughter of King Charles the Bald of West Francia: for a good summary see Janet L. Nelson, *Charles the Bald* (Harlow, 1992), 203–4.

<sup>29</sup> Perels, *MGH* edn, p. 277, note 2, refers to Letter 10; see above # 863 (early) (a).

<sup>30</sup> 'acceppisse'.

<sup>31</sup> her father: no possessive pronoun, so grammatically could be 'his father'.

<sup>32</sup> 'admisisse'. <sup>33</sup> 'publica manifestatione . . . in matrimonium ipsius admissa'.



of fear of one man, against the Lord's command, be plunged into a dreadful precipice! Without doubt he showed himself to be more reprehensible in that he puts the love of God after the love of the World. If that is where the matter stands,<sup>34</sup> the only command we give you, if the king is convicted<sup>35</sup> by what he has himself revealed,<sup>36</sup> is that you should judge his case definitively in accordance with canon law,<sup>37</sup> acting on our behalf. But if on the other hand it is by no means proved that Waldrada was the legitimate wife nor that she was joined to our son Lothar by<sup>38</sup> a marriage celebrated in accordance with custom, with the blessing of a priest that is, put it to him, that he should not object to his legitimate wife being reconciled with him, if she should be seen to be innocent; nor in this should he submit to the voice of the flesh, but rather, in obedience with the Lord's commands, he should be ashamed, and indeed very afraid, to rot away in the ordure of lust and by following his own will to render a strict account before the tribunal of Christ. Besides, we want you to know that the aforesaid Theutberga has twice and three times appealed to the apostolic see<sup>39</sup> and complained that she had been unjustly cast away by the aforesaid glorious king and that, compelled by force, she had composed a false confession of crime.<sup>40</sup> For at the time<sup>41</sup> when she sent her appeal<sup>42</sup> to the apostolic see, in which she made it clear that she had not indeed yet confessed, but that she was being forced to make a false accusation against herself, adding furthermore [= she furthermore added]:<sup>43</sup> 'And if I am forced to undergo further compulsion, know that I may say<sup>44</sup> what they want not because it is true but out of fear of death and in the desire to escape, because I cannot do so otherwise. You should remember my saying this to you.' Therefore I command you that when the same Theutberga comes to the synod that has been arranged, as I laid down, you should subject her case to

<sup>34</sup> 'Ubi': the translation tries to bring out the undoubted fact that Nicholas was sceptical of Lothar's story.

<sup>35</sup> Literally 'the . . . king having been convicted': my translation supplies the conditional from context.

<sup>36</sup> 'manifestatione sua'. <sup>37</sup> 'secundum canonicam auctoritatem'.

<sup>38</sup> The Latin is a simple ablative, so one could also translate: 'in a marriage . . .'

<sup>39</sup> Perels, *MGH* edn, p. 277, note 7, here refers to Letter 10; see above # 863 (early) (a).

<sup>40</sup> 'confession of crime': 'piaculum'. <sup>41</sup> 859 (Perels, *MGH* edn, p. 277, note 8).

<sup>42</sup> Not extant, according to Perels, *MGH* edn, p. 277, note 9.

<sup>43</sup> The Latin seems to lack a main clause. <sup>44</sup> dicam] future or subjunctive.

20 Lothar, Theutberga and Waldrada

diligent examination; and if the objection is made to it<sup>45</sup> that that she had confessed that she admitted<sup>46</sup> to some crime, and, on the contrary, she proclaims that she has had to bear violence, or if she testifies that those judges were her enemies, then make a fresh judgement according to the norm of equity, so that she may not be oppressed by the might of injustice.

### # 863, c. October 30, Letter 18, pp. 284–6

Here Nicholas I narrates what happened at Metz and afterwards: the rude awakening of the two archbishops who presented the synod's decisions to him in Rome and the sanctions against those involved. The letter is not in Paris, Bibliothèque nationale de France, Lat. 1557, but note that it is transmitted in Bibliotheca Apostolica Vaticana, Reg. Lat. 566, compiled by Ado of Vienne, in Lotharingia.<sup>47</sup> The Annals of St-Bertin report that Nicholas sent the decisions translated below to 'Hincmar of Reims, Wenilo of Rouen and . . . the archbishops and bishops established in the realm of the glorious King Charles': see Janet L. Nelson, *Ninth-century Histories*, vol. I: *The Annals of St-Bertin* (Manchester, 1991), pp. 107. Nelson provides a different (but good) translation of the decisions *ibid.*, 107–110. Nicholas also sent the same letter to the prelates of the kingdoms of Lothar's uncle, Charles the Bald, in West Francia (Perels, *MGH* edn, Letter 19, p. 286) and Ludwig the German in East Francia (Perels, *MGH* edn, Letter 20, p. 287), and also to those of France,<sup>48</sup> Germany and Italy generally (Perels, *MGH* edn, Letter 21, p. 287). Thus he is attempting to win over the episcopate of all the Carolingian successor states.

Nicholas, bishop, servant of the servants of God, to our most reverend and holy brother Ado archbishop of Vienne.

The crime is known to all that was committed in respect of two women, namely Theutberga and Waldrada, by King Lothar – if indeed someone can truly be called a king who does not restrain the appetites of his body with any healthy control, but instead yields with sinful weakness to its illicit impulses. But also, recently, almost all the world, streaming from all sides to the papal court<sup>49</sup> or apostolic see, reports that he had as guides and supporters in this deed the bishops Theutgaud [of Trier] and Gunther [of Cologne], with people also informing us in our official apostolic capacity in writing from afar of the same thing. Our refusal to

<sup>45</sup> 'ei': so 'to her' is also possible.

<sup>46</sup> 'confessed that she admitted': the pleonasm is in the Latin.

<sup>47</sup> See Jasper, in Detlev Jasper and Horst Fuhrmann, *Papal Letters in the Early Middle Ages* (History of Medieval Canon Law) (Washington, DC, 2001), p. 111.

<sup>48</sup> 'Galliam', as elsewhere. <sup>49</sup> 'ad limina'.