

**„Doch das bei weitem schwierigste Ehehindernis ist das der Verwandtschaft“:
*Forbidden Marriage Between Incest Taboo and the Fortune of the Noble
Family in 17th-18th-Century Germany***

by

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During the 17th and 18th century the German nobility called a planned marriage a project of marriage, because marriages had a long phase of planning, in which more than two people were involved. Noble projects of marriage had at least the function to create everlasting friendship between two noble families. This custom was part of the economic and political strategies of the families involved and had often effects on the development of whole territories. Noble projects of marriage consequently concerned the family law as well as the law of the nobility and the church.

I shall discuss the strategies of marriage of a special social group, the so-called Catholic German *Reichsritterschaft* during the 17th and 18th centuries. This noble group was regarded as a strong partner of the German Imperial Catholic Church, the *Reichskirche*. Last but not least its members owed their remarkable political careers to the Church, but their idea of marriage were never-the-less in opposition to the canonical marriage laws; in fact, in planning exactly these political careers, which they owed to the Church, their concept of marriage clashed with the impediments to marriage that too close kinship posed. My paper aims at analysing the marriage law of the Church as a papal instrument of influence over this special group of nobles.

At first I want to give a short overview of the role of the German *Reichskirche* during the early modern period; secondly, I wish to characterize the Catholic *stiftsfähige Reichsritterschaft*, by which is meant the *Reichsritter*, who were able to start Church careers, and their function in the *Reichskirche*; thirdly, I will analyse the marriage-projects of the *Reichsritterschaft*; and finally, I wish to exemplify the papal right of dispensation of the impediment of marriage concerning too close kinship.

1. The role of the German *Reichskirche* during the early modern period

Today the great importance of German territories ruled by the *Reichskirche* during the early modern period is too much neglected.¹ This is remarkable because around 1800 three million people lived in the 22 or 24 German bishoprics,² where the bishop was both the ecclesiastical and the secular lord of the territory. Around 13% of the population of the German Empire lived in this kind of German principality.³ Beside the three archbishops of Cologne, Mainz and Trier, who were part of the electoral group, who chose the German emperor, all the bishops belonged to the German Council of the Realm, the *Reichstag*, and some of them had the right to summon the German *Reichskreise* – regional subdivisions of the German Empire – and as chancellor of the Empire the archbishop of Mainz especially influenced imperial policy.⁴ These some short remarks just to stress the importance of the German bishops.

How did one become bishop in the German Empire? In general, the German Imperial Catholic Church was a church ruled by the nobility. 99% of the bishops (181 persons) officiating between 1648 and the end of the German Empire were noble.⁵ The cathedral chapter, the *Domkapitel*, which consisted exclusively of noblemen, had, since the middle of the 15th century, enjoyed the exclusive right of electing the bishop.⁶ The cathedral chapter also participated in administering the bishopric. In general the cathedral chapter elected a member of its own group as bishop. Thus the noble composition of the cathedral chapter was decisive for the noble quality of the bishop. Consequently, cathedral chapters dominated by the *Reichsritterschaft* elected *Reichsritter* as bishops. Keeping this in mind the members of the cathedral chapter, the *Domkapitulare*, and their families became very important for candidates beginning an ecclesiastical career with the aim of obtaining a bishopric. To be a member of the cathedral chapter meant not being allowed to marry, but also receiving remarkable allowances and privileges, which in turn had important consequences for his entire family. To be a member of the cathedral chapter or to be related to a member of the cathedral chapter meant political influence, which could be used to benefit the family, promised rewards when electing the

¹ See Stephan Kremer, *Herkunft und Werdegang geistlicher Führungsschichten in den Reichsbistümern zwischen Westfälischem Frieden und Säkularisation*, Freiburg 1992, Herder, 13. For example, in the book written by Heinz Duchhardt as part of the *Enzyklopädie Deutscher Geschichte* about *Altes Reich und europäische Staatenwelt 1648-1806*, München, Oldenbourg, 1990, 87-90 the territories ruled by the *Reichskirche* were totally neglected as part of the “Third Germany” between Wien, Berlin, Versailles and Petersburg.

² Since 1648 the bishoprics were Augsburg, Bamberg, Basel, Brixen, Chur, Eichstätt, Freising, Hildesheim, Köln, Konstanz, Lüttich, Mainz, Münster, Osnabrück, Paderborn, Passau, Regensburg, Salzburg, Trient, Trier, Worms and Würzburg. The monasteries Fulda und Korvey became bishoprics in 1752 and 1794.

³ See Egon Johannes Greipl, ‘Zur weltlichen Herrschaft der Fürstbischöfe in der Zeit vom Westfälischen Frieden bis zur Säkularisation’, *Römische Quartalschrift*, 83, 1988, 252-264.

⁴ To explain the organisation of the *Reichskirche* see Hans Erich Feine, *Die Besetzung der Reichsbistümer vom Westfälischen Frieden bis zur Säkularisation 1648-1803*, Stuttgart, Enke, 1921.

⁵ For the social background of the bishops see Kremer, *Herkunft* (note 1).

⁶ The basic law of the elections in the bishoprics was the Wiener Konkordat of 1448 till the end of the Old German Empire.

“right” bishop and even provided the opportunity for becoming related to a future bishop and prince. As a bishop could support his family by donating feudal territories or honourable positions, becoming a close relation to a bishop could not be overestimated. No wonder that the families, who could meet local requirements for entrance, aimed at getting a seat in the cathedral chapter.⁷

In trying to fulfil the requirements of membership, the families of the candidates – especially the women of the families – and the projects of marriage became important. To become a *Domkapitular* in the bishoprics dominated by the *Reichsritterschaft*, in Bamberg, Eichstätt, Mainz, Speyer, Trier, Worms or Würzburg, the candidates had to study at a university usually abroad, but above all they had to prove, that the ancestors of the previous two or three generations were members of the families qualified to join the cathedral chapter, and this condition must be fulfilled by the male and female ancestors of the candidates.⁸ Consequently among the *Reichsritterschaft* the “right” choice of a spouse and future mother of one’s children determined the possibilities for careers of one’s sons. If the requirement of the right ancestry was fulfilled, the candidates and their families had to wait till a seat in the cathedral chapter became vacant and then hope for or make certain that the pope⁹ or the responsible member of the cathedral chapter¹⁰ would make the desired nomination. Long-term diplomatic and informal efforts were necessary to acquire the desired seats in the cathedral chapter for members of the family. To count as many *Domkapitulare* as possible as good friends of the family consequently increased the chances to win an election as bishop. I will come to the consequences of these strategies later on.

2. The *stiftsfähige Reichsritterschaft*

These were the families of the *Reichsritterschaft* who were able to win a seat in a cathedral chapter. Between 670 and 680 families competed for the 740 to 780 seats of the cathedral chapter during the last 200 years of the German Empire. There were always more candidates than vacant seats. There were 5725 appointments between 1601 and 1803 but as a *Domkapitular* could be a member of several cathedral chapters, only 3675 persons became a

⁷ See Helmut Hartmann, ‘Der Stiftsadel an den alten Domkapiteln zu Mainz, Trier, Bamberg und Würzburg’, *Mainzer Zeitschrift*, 73:4, 1978/79, 99-138.

⁸ In the mentioned chapter 56% to 96% of the members were *Reichsritter* during the last two hundred years of the German Empire. In Augsburg, Basel and Konstanz 40% to 50% of the *Domkapitulare* were *Reichsritter*. See Peter Hersche, *Die deutschen Domkapitel im 17. und 18. Jahrhundert*, 3 vol., Bern, Selbstverlag, 1984, see vol. 3, 174 f.

⁹ During February, April, June, August, October and December the bishop in Mainz held this privilege.

¹⁰ During January, March, May, July, September and November the cathedral chapter itself had the privilege to nominate the new member. Each *Kapitular* had this privilege in a special turnus.

Domkapitular.¹¹ About 2100 appointments fell to *Reichsritter* from 260 families. Of these, 50 *Reichsritter*-families were exceptionally successful. They got more than 10 to 15 seats in the cathedral chapter and were often winners of episcopal elections.

The, often successful, competition for the bishopric shows the strong position of the *Reichsritterschaft*. Despite the large number of competing candidates many families were able to place their own members in the cathedral chapter for more than two hundred years. Especially the above mentioned 50 families were able not only to count on a multitude of male family-members in the cathedral chapter, but also managed to dominate the episcopal elections.¹² Between 1648 and 1803 44 bishops (85%) of Bamberg, Mainz, Worms and Würzburg were members of these 50 families.¹³ The noble family Schönborn was especially successful. They won 12 bishoprics in three consecutive generations.¹⁴ To be able to maintain the requirements of membership of the cathedral chapter and to win seats during 200 years – this shows an extremely effective family and career planning in this power struggle.

What characterizes the strategies of obtaining power in the bishoprics controlled by the *Reichsritterschaft*? And what kind of roles do men and women play in these strategies? Overall, it was a sort of dynastical system of securing power, which was not orientated towards the territories of the family. The main focus lay on strategies to obtain positions and functions repeatedly. These positions and the accompanying status and income ranked high above the importance of estates and territories of an ordinary *Reichsritter*-family. The positions were open only to men. Thus the planned family-strategies of getting or retaining power were focused on the careers of few male family-members, who had to stay unmarried. By doing so their careers benefited the entire noble family in the present and in future. This system of planning was orientated towards careers in the Catholic Church, towards its system of participation in the exclusive circle ruling the bishopric and above all towards integrating the

¹¹ Every fifth nomination to the cathedral chapter named a member of this exclusive circle and about a quarter of the higher positions of the cathedral chapter was taken by them. The noble family Eltz was the leading among the successful families of the *Reichsritterschaft* with 31 persons placed in the chapter, 21 *Kapitularen*, 30 seats in the chapter and numerous positions in the hierarchy of the bishoprics. The noble family Waldbott von Bassenheim, successful in a similar manner, set free 29 members of its own for church careers temporary at least and won 32 seats for 22 persons and won 9 higher positions in the cathedral chapter. The noble families Dalberg, Frankenstein, Frenz, Freyberg, Guttenberg, Kesselstadt, Metternich, Schenk von Castell, Schönborn, Sickingen, Speth von Zwiefaltern, Stadion, Ulm und Walderdorff gained about 20 to 30 seats. Most of the families also included a bishop at one point. See Hersche, *Die deutschen Domkapitel* (note 8), 3. vol. Personallisten, 207 ff.

¹² See Hersche, *Die deutschen Domkapitel* (note 8) und Hartmann, *Der Stiftsadel* (note 7) 131.

¹³ See Hersche, *Die deutschen Domkapitel* (note 8), there the following numbers and sums too.

¹⁴ See Sylvia Schraut, *Das Haus Schönborn. Eine Familienbiographie. Katholischer Reichsadel 1640-1840*, Paderborn, Schöningh, 2005.

entire family, men and women, in the power politics of a noble family. This system was characterized by elaborated planning measures for the future of the family.¹⁵

It was necessary to build and cultivate a solid network with the responsible *Domkapitulare* and their families to support the future careers of sons or nephews in the bishoprics. In general, these networks were aimed at a balance of power. Reciprocal help was typical for organising the administration and the government, the diplomatic services and the social life. Powerful members of the cathedral chapter did not only try to help their own families but also tried to support enough friends among the *Domkapitulare* through mutual obligation, which could be activated whenever necessary. To ensure that these networks functioned beyond the day-to-day interests, they had to be secured permanently through kinship.

3. Strategies of marriage of the “Reichsritterschaft”.

These strategies did not only secure the right of admission to the cathedral chapter by the required genealogy, but they also had the function of supporting the existing networks as well as dissolving conflicts through relationship. The networking was done especially by the women. As many of the sons and nephews had to remain unmarried for their future careers in the Church, the more marriages of the daughters and nieces within the families ruling the bishoprics were made, the more opportunities for obtaining fortune for the whole family. Marriage projects were the topic of many and intensive discussions among family members.

Each link through marriage with the family of a *Domkapitular* promised profits in planning elections in the bishoprics. To create marriages, which would not arouse competition with other families, but would be useful for their own, demanded strategic skills and genealogical knowledge of the social circles ruling the bishoprics. Every marriage of a female family member that resulted in kinship ties with a ruling or future bishop guaranteed support for her brothers and nephews. Therefore, many bishops of the *Reichsritterschaft* looked for a marriage between a niece and a member of the family of their possible successors. Conversely, many of the future bishops had increased their electoral chances by arranging a marriage between their sister and a member of the family of the ruling bishop. Consequently, to secure dynastically the political power of a bishop meant to secure the election of a nephew, and if not possible, to arrange for a marriage into the family of the successor. For example: one sister of Johann Philipp von Schönborn, bishop of Würzburg and Mainz, was married to the brother of the previous bishop of Mainz, one niece of Schönborn was married to the

¹⁵ The final development of this system at the end of the 18th and the loosing of the seats in the cathedral chapters during the 19th century is described by Heinz Reif, *Westfälischer Adel 1770 - 1860: vom Herrschaftsstand zur regionalen Elite*, Göttingen, Vandenhoeck und Ruprecht, 1979.

brother of his successor in Mainz, another niece was married to the nephew of the previous bishop of Würzburg. The more sisters and nieces were part of the marriage-projects among the nobility ruling the bishoprics, the better the chances of finding enough friends, who would be helpful in supporting the family in future. Looking at the Schönborn family it is quite obvious, that having many sons planning careers in the Church and many daughters cleverly married was very useful for the fortunes of the entire family. Each of the two archbishops of Mainz of the Schönborn family had 12 respectively 14 nephews and nieces at their disposal for planning their careers and marriages. Both of them involved the descendants of their married brothers and if possible of their married sisters in their system of power politics thus securing the social and political position of the Schönborn family. Under the reign of Johann Philipp von Schönborn the family built a network within the bishoprics through seven marriages of his nieces. Under the reign of his nephew, Lothar Franz von Schönborn, four of the five nephews starting careers in the Church were elected bishops.

Obviously the elaborated system of securing power and influence of a noble family in the bishoprics had consequences for the networks of kinship. As the powerful families tried to prevent the entrance of newcomers, kinship ties among the families related to the bishops grew closer and closer. It was common to marry among each other, and noble families of the *Reichsritterschaft* looked for sons and daughters-in-law from within the *Reichsritterschaft* related to the *Domkapitularen*. Noble families of the *Reichsritterschaft* able to provide a bishop looked for marriages within their own social group. Consequently, the marriage-strategies of important families became more and more exclusive and the relationship between the above mentioned 50 families grew closer and closer. At the end of the 18th century all families of this inner circle were more or less related. The analysis of family trees shows this phenomenon (Figure 1). In the picture of the Schönborn family marriages of the men are marked and among these especially marriages with women related in the 2. degree using the canonical counting.

These strategies were rational and orientated towards the fortune of the family, but this practise clashed with the Catholic law of marriage.

4. Canon law of marriage and practise of dispensation

To discuss the interaction between marriages and practise of dispensation among the *Reichsritter* I will look first at the canon law of marriage, especially the development of the concept of forbidden marriage. The idea, that too close kinship could prevent a marriage had been present in the Church since its foundation. In general, the Church copied the concepts of

contemporary society. At the Lateran Council in 1215 rules concerning impediments to marriage were finally agreed upon and these rules were confirmed at the Council of Trent (1545/63) and remained valid until the 20th century.¹⁶ According to these rules, marriage among the relatives in direct line were strictly forbidden and in collateral lines forbidden in the fourth degree using the canonical counting.¹⁷ The prohibition of marriage in direct line was regarded as divine law and was neither to be discussed nor be changed.

But the forbidden marriage concerning collateral lines was topic of many discussions. The group of relatives, who should not marry among each other, can be seen in Figure 2. Apart from prohibiting marriage based on too close kinship the Church forbade marriages between legal relatives or between relatives connected by the so-called spiritual kinship¹⁸ and the Church even forbade marriages between adopted¹⁹ or relatives by law.²⁰ Thus, it could be very difficult for small elitist groups to find wives or husbands among their own social group, who were not related in some way or other.

Many arguments in clerical or religious literature focused on the impediments to marriage of too close kinship.²¹ They referred to Augustine who had criticized the egoism of families, who preferred marriages among relatives on material grounds, instead of creating relationship between all Christians. Forbidden marriages in direct line were against God's will and against the law of nature. Citing Thomas Aquinas they explained that marriages in collateral lines went against moral feelings,²² that too close kinship weakened the health of the descendants, and that marriages among relatives would undermine the authority of the parents. „Denn wie wollte ein Sohn die Mutter, und die derselben gleich, als Mutter veneriren, welche er als sein Weib, der er zu gebieten, unterwürffig gemacht, und wie wollte die Tochter, und die an Tochter statt ist, den Vater als Vater veneriren, mit welchem sie gleiches Recht in toto

¹⁶ Canon law was fixed as Corpus Juris Canonici (CIC) in 1580 and renewed only in 1917; see Knut Wolfgang Nörr, "Die kanonistische Literatur", in *Handbuch der Quellen und Literatur der neueren europäischen Privatrechtsgeschichte*, vol. 1, ed. Helmut Coing, München, Beck, 1973, 365-382 and 835-846.

¹⁷ Since the 11th century the Church used the canonical (Germanic) *computatio*. According to this the number of births between two persons in direct line determined the degree of relationship (grandfather – granddaughter: kinship of second degree). In the collateral line two persons were related in the same degree, as they were related to the common ancestor (children of sisters: relationship of second degree). In the unequal collateral line the degree of relationship was determined by the person, who had the furthest relationship to the shared ancestor (uncle – niece: relationship of second degree).

¹⁸ For example godfathers.

¹⁹ For example adopted children.

²⁰ Thus the wife is related to the relatives of her husband in the degree, in which he is related with them and vice versa.

²¹ Referring to the questions of this paper only authors writing about topics of the law of the church will be analysed here; for other discourses of incest since the baroque see Sabean, David, *Inzestdiskurse vom Barock bis zur Romantik*, in: *L'Homme* 13:1, 2002, 7-28.

²² See the traditional list of arguments in Christoph Mousang, *Das Verbot der Ehen zwischen Verwandten*, Mainz, Kirchheim, 1863.

und subordinatam venerationem bey der gantzen Familie und denen Kindern haben soll?²³ But the most important argument to forbid marriage among relatives had nothing to do with the incest taboo in its true meaning: As Johann Weber wrote in 1886, the Church wanted a private, close and intimate family life, which would not be connected or endangered by sexuality,²⁴ thus making it apparent, that the Church was deeply engaged in controlling the social life and the social behaviour between relatives and related friends. By working and celebrating together, by living and sleeping under one roof, families have created a kind of semiprivate area during the Middle Ages and the early modern period, not a private sphere in modern sense, but eluding the moral control of the parish priest or other moral authorities. The method at hand to control this area seemed to be a sexual taboo formulated as impediment to marriage of too close kinship.

The Catholic Church maintained this concept for a long period. As late as 1836 Pope Gregory XVI passionately refused to reduce the impediments to marriage of too close kinship or too close kinship in law citing the danger to morality.²⁵ When the church law was reformed 1917 the incest taboo was confirmed.²⁶ Only in 1983 did the reform of the church law bring about the abolition of the impediments to marriage of too close kinship in law and reduced the number of relatives, who could not marry each other.²⁷

As a consequence the common practice of marriage of the Catholic *Reichsritterschaft* ruling the bishoprics was incompatible with the existing canon law and would actually have led to excommunication. But the clerical effort to control the moral behaviour by law didn't prevent the church from suspending this law in individual cases and to formulate rules for suspension.

Parallel to the formulation of the system of forbidden marriages, the Church formulated its exemption with the right of dispensation. Accordingly, the pope as head of Church

²³ Johann Karl Naeve, *Ius conjugum oder das Ehe-Recht*, Chemnitz, Stössel, 1709, 274.

²⁴ Weber, *Die kanonischen Ehehindernisse* (note 22) 54 f.

²⁵ „Unserer Betrachtung ist das Bedenken nicht entgangen, daß man durch Erleichterung der Heirathserlaubnis in solchen Fällen, besonders unter Personen niedrigen Standes, unter denen der Umgang freier und weniger zurückhaltend zu sein pflegt, jede Schranke der Unsittlichkeit niederreißen würde, die so sehr vermehrt wird durch die fortdauernde Gelegenheit und die größere Bequemlichkeit, sie zu befriedigen, wenn erst die zuversichtliche Erwartung hinzutritt, durch Knüpfung eines Ehebandes die unglücklichen Folgen und zugleich die vorausgegangene Schuld wieder gut zu machen.“ Pope Gregorius XVI., 22.11.1836, quoted by Nikolaus Knopp, *Vollständiges katholisches Eherecht*, 3rd ed. Regensburg, Manz, 1864, 230.

²⁶ New version of the church law in 1917 as *Codex Iuris Canonici (CIC 1917)*, *Acta Apostolicae Sedis (AAS)* AAS 9, Pars II, 11-521.

²⁷ *Codex Iuris Canonici (CIC 1983)* published as *Codex Iuris Canonici – Codex des Kanonischen Rechtes. Lateinisch-deutsche Ausgabe*, 4th ed. Kevelaer, Butzon und Bercker, 1994. In 1983 the prohibition of marriage between relatives in law disappeared. Because the Germanic counting was changed into the Roman counting, which is usual in civil law, now only marriages between relatives by blood in collateral line to the fourth degree Roman counting (cousin with cousin) are forbidden.

had the right to grant dispensation in special cases but not in relationship of direct line.²⁸ During the early modern period frequent struggles occurred between the pope and the German bishops about the responsibility of dispensation,²⁹ with the pope winning in general. The German bishops were only able to grant dispensation, if they got special permission by the pope and only in their own bishopric. The elaborated rules of dispensation which were developed over the centuries indicate how often dispensations were applied. The nobility especially needed dispensations even for cases of the second degree of kinship.³⁰

Since the Council of Trent dispensations should be given without any fee, but the Datarie of the Vatican earned a lot of money from dispensations.³¹ The canon law divided the applicants in three social classes, the nobles, who had to be granted dispensations *in forma communi*, the rich people in a second class and the ecclesiastical poor, that is those who had to work for a living.³² The latter had to pay the smallest sum. Often – and in the 19th century in general – the right to grant dispensation to members of the third class was delegated to the authorized bishop by the pope.³³ Research on the Middle Ages had shown that the popes made frequent use of the right of dispensation.³⁴ Till now, no historical analyses on the use of the dispensation in the German Empire during the early modern period have been made.³⁵ The publications of the papal files are limited to the Middle Ages.³⁶ Thus a major research project would be necessary to study the papal practise of dispensation during the early modern pe-

²⁸ For dispensations see Anaklet Reiffenstuel, *Ius Canonicum Universum*, published in numerous editions during the 18th century. In this paper vol. 4, 3rd ed. Ingolstadt, sumptibus Ioannis Andreae de la Haye, 1738, 223-332 is used.

²⁹ See Johann Kutschker, *Das Eherecht der katholischen Kirche*, 5th vol, 2nd ed. Wien, Braumueller, 1857, 18-27.

³⁰ Kutschker, *Das Eherecht* (note 31) 84, with reference to Reiffenstuel.

³¹ To grant dispensations was the task of the Datarie or in case of punishable marriages the task of the Poenitentiary.

³² See Kutschker, *Das Eherecht* (note 31) 284 ff.

³³ Only the CIC (1917) changed the right of dispensation and defined the right of dispensation as the privilege of the bishops, the pope should grant dispensation only in special cases (for example the dispensation of the vow of chastity).

³⁴ See for example Anneliese Esch, *Die Ehedispense Johannes XXII. und ihre Beziehungen zur Politik*, Berlin, Erbering, 1929; Dieter Veldtrup, *Zwischen Eherecht und Familienpolitik, Studien zu den dynastischen Heiratsprojekten Karls IV*, Warendorf, Fahlbusch-Hölscher-Rieger, 1988. As Esch wrote Johannes XXII granted dispensations in more than 150 cases of relationship in the third degree. See also Elisabeth Archibald, *Incest and the medieval imagination*, Oxford, Clarendon Press, 2001.

³⁵ For North-Europe respectively the Protestant area of the early modern periode see the articles by Már Jónsson, 'Incest and the Word of God: Early Sixteenth Century Protestant Disputes', *Archiv für Reformationsgeschichte (ARG)* 85, 1994, 96 ff., 'Defining incest by the word of God: Northern-Europe 1520-1740', *History of European Ideas*, 18, 1994, 853-867; and 'Incest in Iceland 1500-1900 Margaret and Richard Beck Lecture University of Victoria', March 23, 1998, <http://kabul.library.uvic.ca/beck/media/text/incest.html> (checked June 12th, 2005); for Northern-Europe in the Middle Ages see Kirsi Salonen, "Finnish Illegal Marriages 1449–1523", in *Nordic Perspectives on Medieval Canon Law*, ed. Mia Korpiola, Helsinki, Matthias Calonius Society, 1999, 151-167; Michael H. Gelting, "Marriage, Peace and the Canonical Incest Prohibitions: Making Sense of an Absurdity?", in *Nordic Perspectives on Medieval Canon Law*, ed. Mia Korpiola, Helsinki, Matthias Calonius Society, 1999, 93-124.

³⁶ See the series *Regesta Imperii*, published by Johann Friedrich Böhmer since the late 19th century at Stuttgart, Cotta.

riod. But it seems probable that successful applications from all social classes were common during that period. If dispensations were common, the question arises why the Church held on to the impediment of marriage of too close kinship?

An answer to this question would touch on the role of the Church as a moral authority and its legal and spiritual means to controlling sexuality successfully. Neither is the topic of this paper. But looking at the consequences, it is apparent that canonical marriage-law became a useful political instrument of the pope and the Church, either intentionally or unintentionally. As we can see in Figure 3 an application for dispensation mentioned not only questions of relationship but also the moral and religious behaviour of the two applicants and their connections to the Church.

Religious, ecclesiastical and political interests were interwoven to form a religious and political power in the German Empire and in the German Catholic Church. „Bei dem doppelten Charakter der ehelichen Verbindung als einer gleichzeitig geistlichen und weltlichen Einrichtung wurde die Dispensation, in ihrem Kern eine rein kirchliche Angelegenheit, in der Hand der Päpste zum bedeutenden Machtmittel über die weltlichen Verhältnisse der Gläubigen. Bei den fürstlichen Ehen musste die Dispensgewalt ihnen einen bedeutenden Einfluß auf die Politik sichern,“³⁷ as Anneliese Esch wrote in 1929 about the medieval papal policy of dispensation concerning the marriage-strategies of princes.³⁸ If needed, the right to grant dispensation to the aristocracy was used in return for political support.³⁹

On a lower political level this is also true for the *Reichsritterschaft*. If one analyses for example marriages of the Schönborn family between relatives or relatives in law of the second degree one can detect the interest behind these marriages (Figure 4). The first example involves a widowed man without children, who married the niece of his late wife. This second marriage probably helped him keep the possessions of his late wife. The second example offered the family the opportunity to inherit a territory of a count by marrying a male Schönborn with his cousin. The cousin was widowed and she herself had inherited this territory from her late husband and the Schönborns were eager in getting this territory under their control. In the third example the couple had the same grandparents and their marriage was planned at a time, when the German Empire was declining and the social status of the former nobility of the Empire had to be balanced anew. For these nobles it was better to marry each other until their new status among the European aristocracy of the 19th century had stabilized.

³⁷ Esch, *Die Ehedispense* (note 36) 4.

³⁸ See also Hans Erich Feine, *Kirchliche Rechtsgeschichte*, 5th ed. Köln, Böhlau 1972, 432.

³⁹ For example Esch, *Die Ehedispense* (note 36) 31.

These examples demonstrate the importance of marriages within the family for the Schönborns even in the second degree of relationship. We may assume that the Schönborn family, having received the desired dispensations also responded favorably to wishes of the pope. There were numerous chances to show gratitude for getting a dispensation or to show loyalty through the political behaviour of a bishop and prince concerning the politics of the German Empire, his behaviour at negotiations concerning war and piece and his function as a mediator between the Vatican and princes of the Empire before asking for a dispensation in cases concerning seats of the cathedral chapter and elections of interest in the bishoprics. As marriages between relatives belonged to the fundamental strategies of the *Reichsritterschaft* during the early modern period, the canon law of marriage and of dispensation supplied the Vatican with an important instrument for influencing the representatives of the German Catholic Church. This instrument and its consequences still lack a closer look.

Figure 1: The family tree of the noble house Schönborn (from Schraut, *Das Haus Schönborn* (note 14) 414)

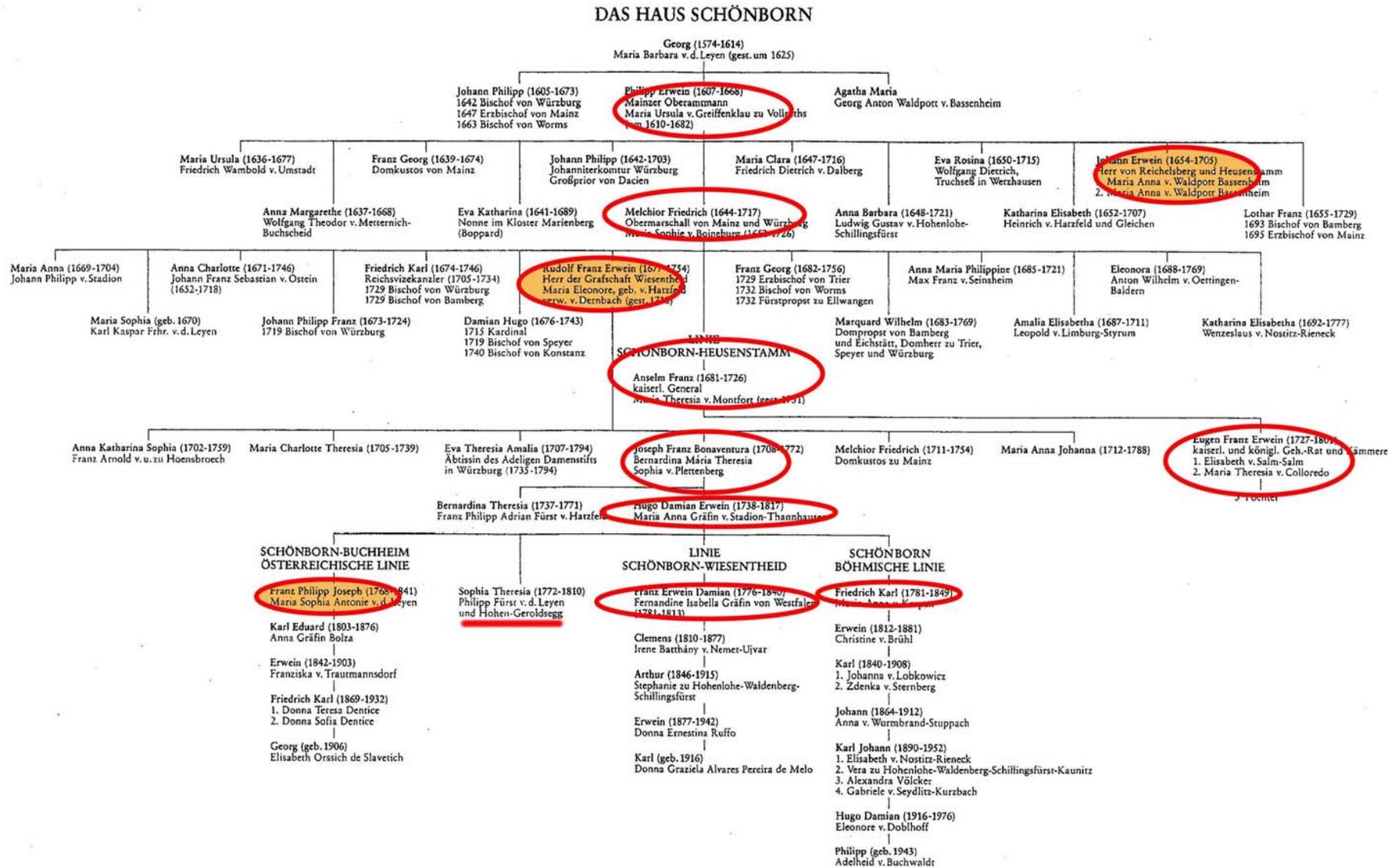


Figure 2: Tree of relationship by blood (canonical law)

(Johann Weber, *Die kanonischen Ehehindernisse*, Freiburg, Herder, 1886, 71)

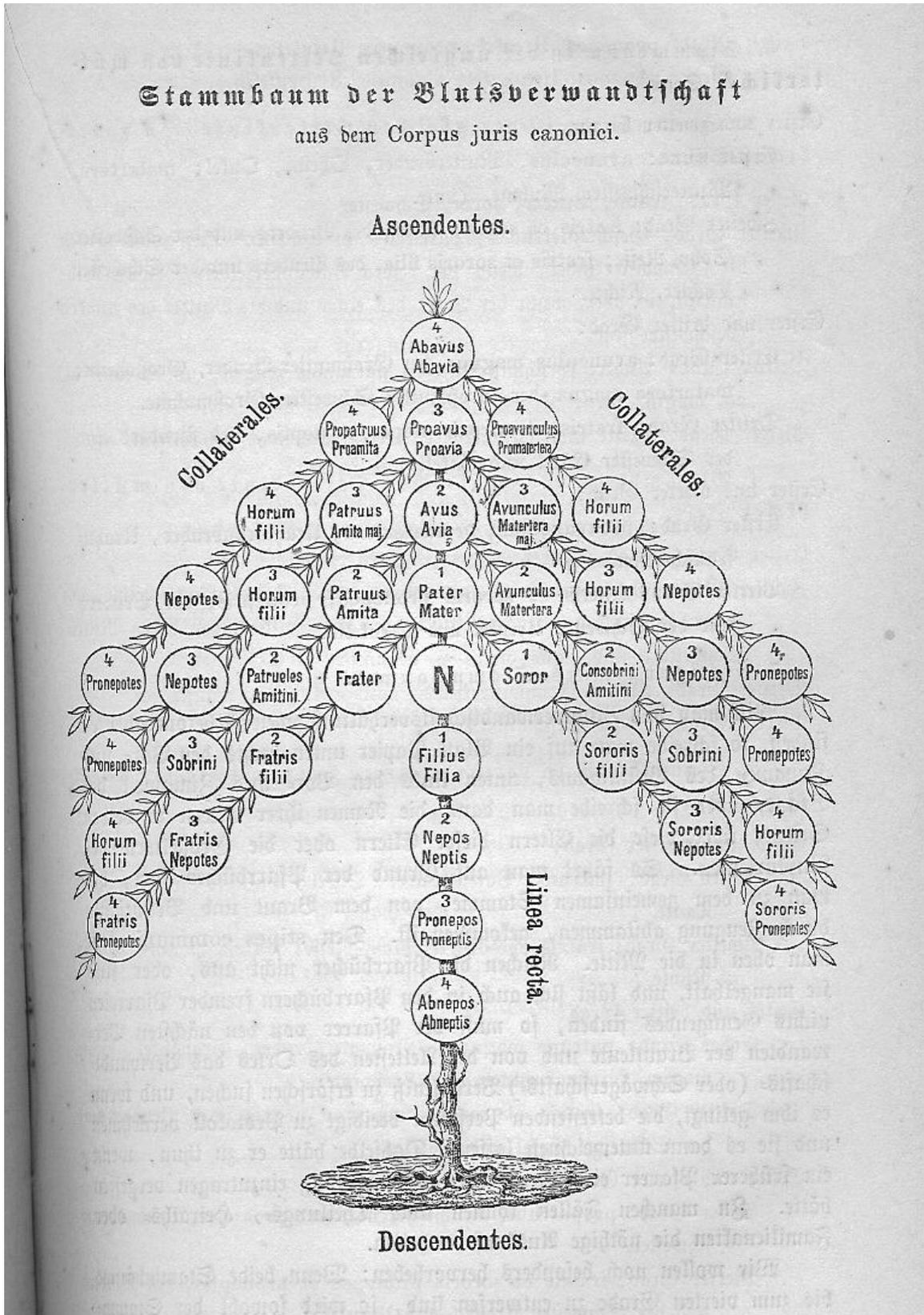


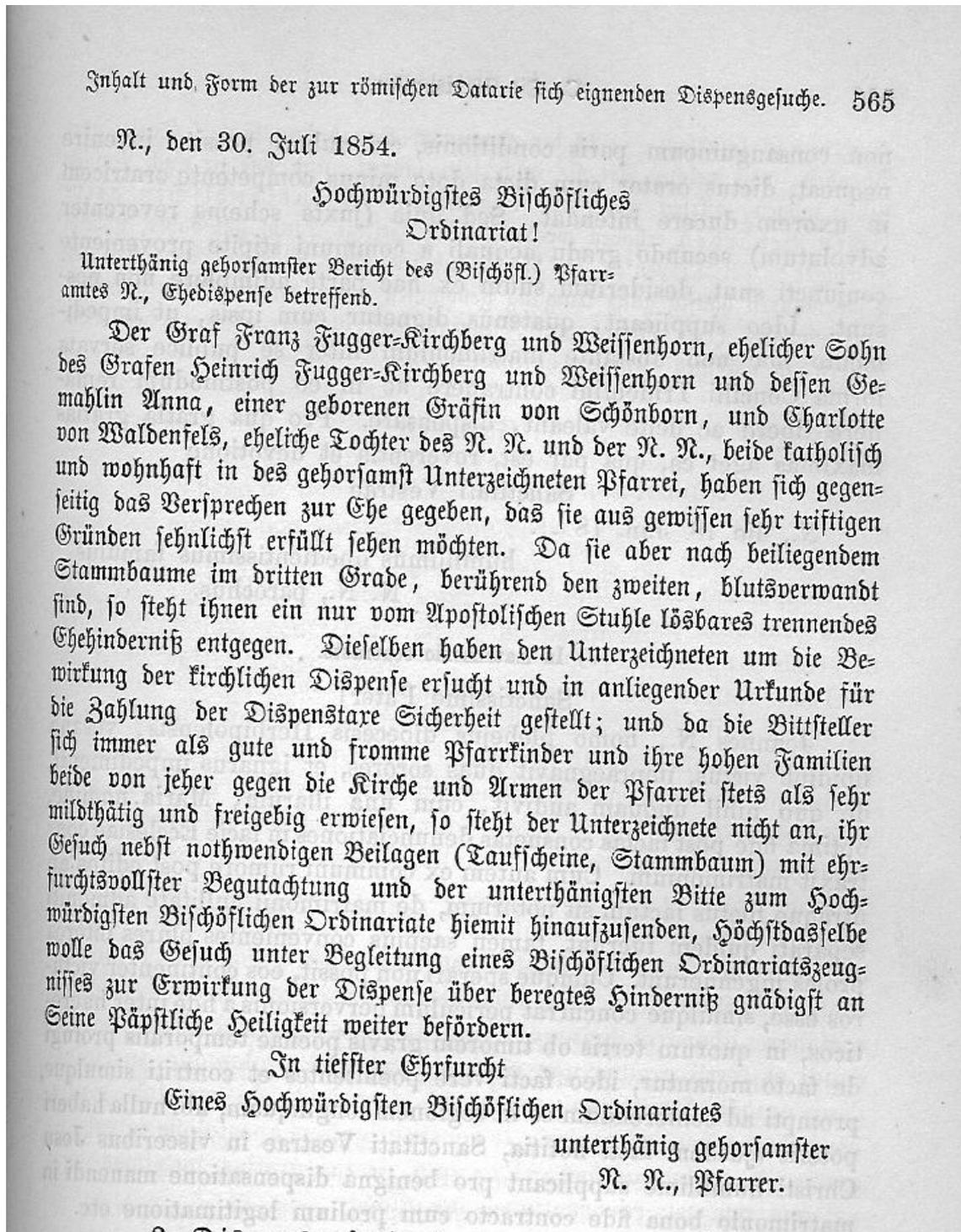
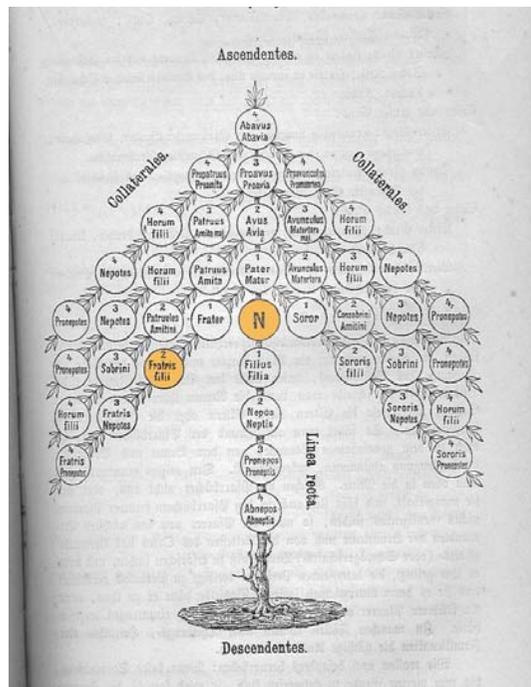
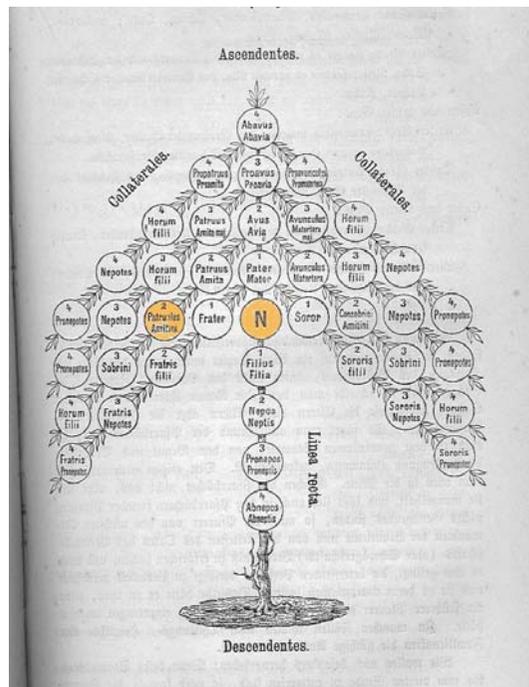
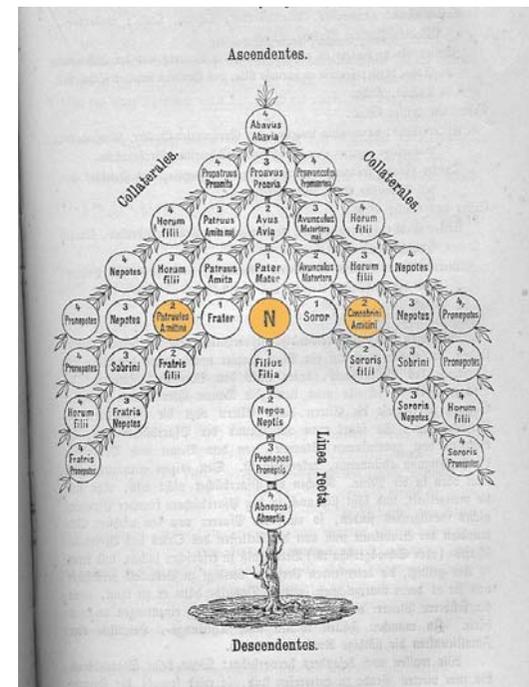
Figure 3: Request for dispensation in forma nobilium (1854)(Weber, *Die kanonischen Ehehindernisse* (note 22) 565.)

Figure 4: The noble house Schönborn: Example of marriages between relatives by blood and by law1. Relatives by law 2nd degree2. Relatives by blood 2nd degree3. Relatives by blood 2nd degree**1. Marriage relatives by law**

Johann Erwein von Schönborn

* 1654

∞ 1. marriage 1675

Ma. An. Waldbott v. Bassenheim

∞ 2. marriage 1702

An. Magd. Waldbott v. Bassenheim

niece of the late wife

2. Marriage relatives by blood

Rudolf Franz Erwein von Schönborn

* 1677

∞ 1. marriage 1701

Ma. Eleonore v. Hatzfeld

Cousin

same grandparents

in paternal line

3. Marriage relatives by blood

Sophie Theresia v. Schönborn

* 1798

∞ 1. marriage 1818

Erwein von der Leyen

Cousin in paternal and maternal line

same grandparents in paternal and

maternal line