

**Clerical Celibacy
in East and West**

by
Roman Cholij

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Abbreviations

Abbreviations

AAE	Akty, sobrannye v bibliotekax i arxivax Rossijskoy Imperii Arheografičeskoju Ekspediceju Imperatorskoj Akademii Nauk.
AAK	Akty istoričeskie sobrannye i izdannye Arheografičeskoju Kommissieju.
AAS	Acta Apostolicae Sedis.
CC	Corpus Christianorum.
CJC (J)	Corpus Juris Civilis: Codex Justiniani repetitae praelectionis (a. 534); Digesta (Pandectae) (a. 533); Institutiones Justiniani (a. 533); Novellae.
CLO	Congregatio Super Correctione Librorum Ecclesiae Orientalis.
CSEL	Corpus Scriptorum Ecclesiasticorum Latinorum.
DACL	Dictionnaire d'Archéologie Chrétienne et de Liturgie.
DDC	Dictionnaire de Droit Canonique.
DTC	Dictionnaire de Théologie Catholique.
GCS	Griechische Christliche Schriftsteller der ersten drei Jahrhunderte.
MGH	Monumenta Germaniae Historica.
NCE	New Catholic Encyclopaedia.
PG	Migne, Patrologia Graeca.
PL	Migne, Patrologia Latina.
PO	Patrologia Orientalis.
PSP	Polnoe sobranie postanovlenij i rasporjaženij po Vedomstvu Pravoslavnogo Ispovedanija
RIB	Russkaja istoričeskaja biblioteka.
SOCG	Scritture originali riferite nelle Congregazioni Generali

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Foreword

I am pleased to introduce to the reader: *Married clergy and ecclesiastical continence in light of the Council in Trullo (691)*,* a very thorough piece of research which was submitted to and accepted by the Gregorian University of Rome as a doctoral dissertation in Canon Law. Its author is Fr. Roman Cholij of the Ukrainian Exarchate of Great Britain.

This work aims to illustrate the manner by which the tradition of married clergy in the Eastern church has undergone progressive changes down the centuries; as viewed in relation to the discipline of the early Church and that of the Eastern Council of Trullo. As such, it forms the complement to the recently published work of Fr. Christian Cochini S.J. on the apostolic origins of priestly celibacy.

The novelty of Fr. Cholij's study lies, firstly, in the way the norms of interpretation from canonical science are used to argue for and to strengthen the tradition of the apostolic origin of celibacy and, consequently, to show the innovation of the later Greek discipline of married clergy. This approach which invokes the logic and consistency of ecclesiastical discipline, prior to and subsequent to the legislation of Trullo, throws an original light on the history of the development of ecclesiastical continence.

Secondly, a wide variety of interrelated themes are presented, many of which are totally neglected in the general literature on celibacy, especially in the Eastern Church; examples being the canonical norms relating to a cleric's wife, the discipline of compulsory marriage for secular Greek clergy and the laws of temporary continence. Many readers will hear of these disciplines for the first time; disciplines which Fr. Cholij has interpreted and harmoniously integrated into the general theme of his research.

Of the conclusions reached, the most interesting for the canonist, perhaps, is the contention that the sole doctrinal reason for the law of the impediment of orders is the law of perpetual continence. This would have immediate implications for both the Oriental and Western Churches. Once again the common origin of the tradition of celibacy in both Churches receives impressive confirmation. Yet, of even more actual importance are the acute observations made on Canon 58 of the schema "De clericis" of the proposed Oriental Code of Canon Law (Schema Codicis Iuris Canonici Orientalis (1986), c. 371). For this reason alone the present study has been most timely.

In my opinion the works of both Fr. Christian Cochini S.J. and of Fr. Roman Cholij are to be considered the two definitive studies on celibacy of the clergy in the Christian Church. They are of outstanding value because of their

* Editor's note: this was the original title of the present work.

Foreword

complete consideration of all the aspects concerning this problem, which historically is very complicated, and because of the scientifically integrated method never used before in so consistent a fashion in similar studies.

These two studies surpass, therefore, all the preceding ones which are often one-sided and even historically wrong, and will constitute in the future the new, scientifically certain basis for every safe statement in this delicate field with all its different and even opposed subjective meanings and objective difficulties.

Thus I earnestly recommend the wide diffusion of this work, with the hope that scholars and non-scholars alike will study carefully Fr. Cholij's arguments and conclusions.

Alfons M. Card. Stickler SDB
Librarian and Archivist of the
Holy Roman Church
20th November 1986

Preface

The work on priestly celibacy which Father Cholij presents to the public will cause no little surprise to many of its readers. It is widely known that the practice of the Latin Church, which requires of its priests a total and irrevocable commitment to celibacy, differs only from that of the Orthodox churches which requires such a commitment only from its bishops and those who take monastic vows, the secular clergy being free to marry. It is also generally believed that the Eastern tradition is the more ancient, with the Latin discipline coming to be imposed at a comparatively late date. During the Second Vatican Council and the years which followed it the rule of obligatory celibacy was widely questioned and openly debated. In the new perspectives opened up by ecumenical contacts with churches where a married clergy was the norm, could not the Catholic Church - especially in the context of declining vocations - make celibacy a free option for her priests? It was necessary for the Holy See to give a magisterial response to this debate. Both the encyclical letter of Pope Paul VI "Sacerdotalis Coelibatus" (1967) and the 1971 Synod of Bishops' document "The Ministerial Priesthood", signalled in the most categorical way that there would be no change in the Church's practice. In his thesis

Fr Cholij goes beyond defending the Western discipline. He addresses himself to the question that will have perplexed many. How and why did the divergence of practice come about, and how is it to be explained that the Eastern tradition insists rigidly on a celibate episcopate but encourages a married clergy? Why is it right for a priest to be married but wrong for a priest to marry? Are there two parallel traditions, Eastern and Western, both with equal authority, or is there only one and that of apostolic origin?

In defending the latter proposition Fr Cholij bases himself upon a rigorous examination of the canonical legislation of the Council in Trullo (691). He is by no means the first scholar to argue for the apostolic origin of the rule of clerical celibacy but the works of those who have preceded him in this field are not well known, nor are they so fully developed. There is a widely held opinion that the law of celibacy is a mere disciplinary matter which the Church could easily change. The implications of Fr Cholij's work argue on the contrary that there is a solid doctrinal base for the law which can be traced back to the teaching of the apostles. His view is supported by the eminent canonist Cardinal Stickler, formerly prefect of the Vatican library, and by Fr Christian Cochini S. J., whose thoroughly researched historical treatment "Origines apostoliques du célibat sacerdotal" (Paris 1981) will appear in English in Spring 1990 from Ignatius Press, San Francisco.

Readers of the present work should not allow themselves to be deterred by the canonical technicalities of the subject. They are likely to learn many things which will be new to them concerning the customs of the clergy in the first centuries of the Church's history. For instance it was common in East and West for priests and bishops to be married - Jerome lamented the shortage of good celibate candidates for the episcopate - but when they were ordained conjugal relations ceased and the exercise of perfect continence was the rule, the wife having given her previous consent. It was never permitted for a man to marry, or for a widower to remarry,

after he had been ordained. Fr Cholij makes the vital distinction between celibacy in the narrow sense of being unmarried, and the broad sense of practising permanent continence in a total consecration of the body and soul to God. The married bishops, priests and deacons could even continue to cohabit with their wives - although this was more strongly discouraged in the East - but all were bound by the rule of continence. Fr Cholij argues convincingly that the impediment of orders prohibiting marriage arises solely from the rule of perpetual continence which would prevent the marriage being consummated.

What happened at Trullo to bring about a divergence of practice between East and West? The Byzantine Fathers meeting in the Emperor's palace 'under the cupola' were concerned to restore clerical discipline after a period of decadence. They reaffirmed the obligatory celibacy of bishops and the prohibition of marriage for those already in orders. What was novel, and contrary to all previous canonical tradition, was the legislation of canon 13 which permitted the use of marriage to priests and deacons. With regard to the first two rules they were in full accord with the Church's tradition, and not the least fascinating part of Fr Cholij's treatment is his detective work showing how anxious the Trullan Fathers were to anchor the change of practice to the apostolic tradition, even to the extent of misquoting the canons found in the Council of Carthage of 419. The synoptic presentation of this appears in the text.

The ecumenicity of the Council of Trullo with its many anti-Roman overtones has been debated, but canon 13 and other canons were never approved by the popes. However the consequences for the Eastern churches were far reaching. The freedom for the married clergy to exercise their conjugal rights led to the obligation for priests to marry before their ordination, in practice limiting the choice of bishops to those who had taken monastic vows. There followed also rules of temporary continence before the celebration of the liturgy, still witnessing in mitigated form to the apostolic tradition but leading to an almost levitical conception of the priesthood. A further consequence was the decline of daily celebrations which would have required a total continence now no longer demanded.

The author draws important conclusions from his research. He holds that the Western Church's discipline of ordaining only single men - saving rare exceptions by dispensation - is solidly grounded in a tradition stemming from the practice of continence which reaches back to apostolic times. Fr Cholij writes as a canonist, and it is in the contribution of canon law that the originality of this study lies. His book deserves to be widely read and fully discussed. It will be for those who find his arguments inadmissible to refute them with an equally rigorous scholarship. The resulting debate can only serve the best interests of truth.

Michael Napier
of the Oratory

Preface to the Second Edition

When an excellently composed book, written by a highly qualified author about an important subject happens to be published at precisely the moment that its subject gyrates on crests of discussion frothing with diehard opposite views, confusion, ignorance, emotionalism and historical presumptions, with marvellous understatement we call such a book "timely".

Within just such parameters, it is safe to say that few books published in the last twenty-five years can match Roman Cholij's *Clerical Celibacy in East and West* for its astounding timeliness, because in the current Christianity of East and West there is no element of dogmatic belief and legislated practice except perhaps the Petrine Office and the controversy about it that can match the issue of clerical celibacy for its potential to up-end and eviscerate the Roman Catholic institutional structure.

The brute fact of life in this last decade of Roman Christianity's second millenium is that a triple crisis (the controversy about celibacy is at its heart) has beset the Catholic priesthood, and threatens to corrode the very innards of the Catholic body ecclesiastic.

There is, first of all, the crisis of vocations. Simply put, the annual supply of priests is now well below zero-growth level. Second, there is the crisis of the seminaries. Overall, theological instruction and spiritual formation in American (and many European) seminaries is gravely deficient dogmatically, ecclesially, morally. More often than not, the ethos of seminaries is overtly anti-Roman and anti-Papal.

Both these crises could be solved with relative ease if due attention and strenuous care were exercised by pastors of dioceses and parishes.

With the third crisis, however, we step onto dangerous terrain for the priesthood. At issue is the relationship between priesthood and celibacy and, with that, the heart and essence of priesthood itself, i.e., what the Christian priesthood is, and what significance Christ, who alone instituted the Seven Sacraments, intended this one to have for priests and people alike.

This crisis is of the gravest kind, not only because it involves one of the Sacraments and the perennial Catholic Apostolic tradition about it, but because, inevitably, it involves those who alone may confect the other Sacraments, particularly the Sacrament of the Eucharist in the Holy Sacrifice of the Mass—priests themselves.

In ordinary, theologically unadorned language, the crux of the matter appears to be a question of simple fact: Is the present Roman Catholic law of obligatory clerical celibacy simply man-made: much as, say, the former Friday Abstinence, the present rule about episcopal retirement at age 75, the disposition about Communion-in-the-hand, or the ineligibility of octogenarian cardinals to vote in papal Conclave? Or is the law of priestly celibacy so fundamental to the Apostolic Catholic faith that the magisterium has enshrined it in positive law?

In other words, is it merely a prudential measure legislated by the Church in a certain age and for certain cultural climes, but changeable and easily abrogated, or never required in other ages and climes? Or is it an integral part of the precious deposit of *divine* Revelation made personally by Christ and communicated through His Twelve Apostles?

Clearly, this is a capital point. For the Church teaches that Jesus revealed to The Twelve all the facts and beliefs necessary for salvation; and that they, in turn, handed on those essential facts and beliefs to His Church. It is commonly held, therefore, that Christ's Revelation continued after His Ascension until the death of the last Apostle — presumably Saint John the Evangelist. Then, and only then, divine Revelation was closed.

The Church's perennial and only source for knowing the facts and beliefs of that Revelation is twofold: the Holy Scriptures as interpreted by the Church, and the Church's living tradition.

Thus, already in its long history, the Church has categorically and infallibly stated that the Immaculate Conception and Assumption of the Blessed Virgin Mary, the infallibility and primacy of the Roman Pontiff are *facta apostolica*, that is, facts revealed by Christ and come to us from the Twelve Apostles who transmitted Christ's teaching throughout the Church.

Is obligatory priestly celibacy such a *factum apostolicum*, an apostolic given? If that is so, then it would be obligatory by *divine* mandate, *de jure divino*. At the very least, the Church has codified clerical continence in positive law, but it could not (without violating apostolic tradition) make priestly celibacy optional or eliminate such a *factum apostolicum* altogether.

The crisis over priestly celibacy is massive in Western Christianity today, as is obvious in the wake of theological confusion since the Second Vatican Council. And the situation in the United States is typical.

Individual American bishops have made their anti-celibacy, pro-clerical marriage attitude quite clear. At least one bishop retains as active parish priests "in good standing" certain members of his diocesan clergy who have taken wives and had children by them. More than one American and Canadian bishop has already performed a very private "ordination" ceremony of some women. Already such "ordained" women celebrate "Mass"—some of them in conjunction with Wicca worship of the "Earth Goddess", Gaia.

More brazenly, more than one eminent churchman—cardinals included—when questioned about clerical celibacy have referred to it as (in their minds) merely a man-made law erasable from the books.

Retired Bishop William E. McManus of Fort Wayne-South Bend, Indiana (site of the nominally Catholic Notre Dame University) spoke for some of his colleagues when, in December, 1989, he stated that it was time to consider ordaining women priests and making celibacy optional. Certain U.S.-based organizations of "ex-priests" have solicited and obtained the moral support of more than half the current 302 U.S. bishops for an official abrogation of the celibacy obligation. Quiet, behind-the-scenes cooperation between such activists on this matter has been a rule for some years now.

The full-page *Call for Reform in the Catholic Church — Call to Action* advertisement in the February 28, 1990 *New York Times*, contained a proposal for a married clergy. This "ad" was signed by 4,505 Catholics, including clergy, nuns and Emerson Moore, Auxiliary Bishop of New York. No American bishop responded to the advertisement nor took action against its signers, no more so than did the late Cardinal John Dearden of Detroit in 1976, when the original "Call to Action Conference" took place in his city, with his participation (and with the same recommendation for optional celibacy, i.e., marriage).

There are currently several well-known tenured theologians on university faculties who, without fear of episcopal disapproval (much less action) openly advocate the marriage of priests, a married pope and, to be sure, a woman pope. It is neither alarmist nor rash to observe that episcopal permissiveness and silence ("*Qui tacit, consentit*") is a sure indication of the mindset and decision ("*Quod scripsi, scripsi*") of the body of bishops both those who actively favor a married clergy, and those who do not but who are afraid to openly oppose their "brother" bishops.

This widely shared (and actively promulgated) attitude of prelates, priests and laity as regards priestly celibacy has been facilitated because of a drastic devaluation of priesthood, evident since the end of the Second Vatican Council, under the influence of a new ecclesiology according to which the relationship of priests and laity has been radically altered.

As a result, the signification—the meaning—of the priesthood has necessarily, deliberately been demeaned. According to the new ecclesiology, in the words of modernist former Jesuit, Bernard Cooke (*National Catholic Reporter*, May 18, 1990), "The entire faith community performs the Eucharist." The function of the priest, as "presider" and "minister of the table," is "to orchestrate a unified profession of faith by the community," and "to symbolize (sacramentalize) the bond between the Eucharist and the worldwide Church." In the absence of such a "presider/minister/orchestrator," the "community of believers in itself is able to celebrate the Eucharist."

In this heterodox, unapostolic understanding of the priesthood, the traditional figure of the priest is distorted and destroyed. Were this altogether un-Catholic view to prevail (and there clearly are some in the Church who wish that) it would clearly, unequivocally signal the end of the Roman Catholic priesthood as the Church has known it for nineteen hundred and ninety years!

Roman Cholij's careful and dispassionate study arrives like a clear, vibrant ray of light not a moment too soon amid this confused scene. He makes it clear that clerical celibacy is an Apostolic fact, one of the beliefs handed on to the early Church by the Twelve Apostles.

In the light of Cholij's researches, primitive (i.e., Apostolic) authenticity must be conceded to the clerical celibacy of the Western Church, and denied to the later Eastern Orthodox (Greek and Russian) permission for priestly marriage which, Cholij demonstrates, was a conscious violation of that primitive Apostolic fact, and no more than a deliberate concession to human frailty. Let it also be said, that the recent admission of married deacons in the Western Church also seems to lose any genuine Apostolic verification. Documentary and archeological evidence underscores this.

Cholij's conclusions are by no means exclusively negative. They are, in fact, rich in positive doctrine about the sacramentality of marital continence, the abomination of the contraceptive mentality, and the mystical quality of the marital act, and—above all—about the supreme quality of celibacy as the individual's human answer to Christ's gift of the priesthood.

Only in this Apostolic light is it possible to draw out the consequences of the keynote description Jesus gave of Himself as High Priest of the New Covenant, when He said that God the Father had set a seal of authority upon Him (Jn. 6:27). And as St. Paul reiterates (2 Cor. 1:22), "It is all God's doing; it is God also who has set His seal upon us, and as pledge of what is to come has given the Spirit to dwell in our hearts." So, in the final analysis, celibacy must be seen as the faithful, loving act of the human priest for the Great High Priest: in a spiritual sense the "*Quid retribuam Domino pro omnibus quae retribuit mihi?* What shall I give back to the Lord for all He has given me?" (Roman Mass, *Canon*).

No one and no deliberative body in the Church can afford to ignore or brush aside Cholij's findings. They can enlighten an entire generation of bishops, priests and theologians as to the summary danger of continuing their already febrile tampering with so vital an element of Christianity as this "gift" of priestly celibacy.

Father Charles C. Fiore
President, IDEA, Inc.
Madison, Wisconsin



Married Clergy and Ecclesiastical Continence in Light of the Council in Trullo (691)

Introduction

When the author began researching material for this doctoral thesis, furthest from his mind was the thought of undertaking a detailed study of the history of the legislation on celibacy and married clergy in the Eastern Church. Apart from the complexity of the subject, the author was also under the impression that such a study had already been very well researched. The original task which he had set himself was to study the question of celibacy in the Eastern Catholic Churches, especially the Ruthenian and Ukrainian, in Europe and North America during the past century. For this purpose a substantial amount of research material was collected. The earlier history of this subject was to have been summarily treated in the introductory chapter. During his research, however, and particularly after having been requested to give some attention to the legislation of the Council in Trullo (691/2), new avenues of research were opened to him. The more time spent in this secondary area of research the more engaging and, indeed, surprising were the results. The ideas that were beginning to form – quite unexpectedly – appeared to be of much greater importance in the understanding of celibacy in the Eastern Churches than the fruits of the author's previous research, and would also provide the necessary background for the latter. For this reason, together with reasons of a more external nature, the author decided to develop what was to be merely an introduction into this present thesis.

It is commonly believed that in the Eastern Churches (apart from special cases) there exists no law of celibacy, and that this state of affairs has existed since apostolic times. The discipline of these Churches, furthermore, is also a point of reference for any discussion on ecclesiastical celibacy. The author's research, however, pointed to a new way of understanding this discipline; it revealed how celibacy is actually a much more intimate part of Eastern clerical discipline than had hitherto been suspected.

The Eastern Churches not only have laws concerning clerical marriage, but also laws of clerical celibacy. Pope Paul VI in his encyclical letter *Sacerdotalis Caelibatus* (24 June 1967) had made this point quite clear:

Further, it is by no means futile to observe that in the East only celibate priests are ordained bishops, and the priests themselves cannot contract marriage after their ordination to the priesthood. This indicates that these venerable Churches also possess to a certain extent the principle of a celibate priesthood. It shows too that there is a certain appropriateness for the Christian priesthood, of which the bishops possess the summit and the fullness, of the observance of celibacy.¹

This 'principle of a celibate priesthood' is found, above all, in the legislation of the Council of Trullo (or Quinisext) which provides the basic legislation for clerical marriage and celibacy for the Churches of Byzantine Christendom, and provides the model for the whole Orthodox Christian world. Most of the canons of this Council express traditional pre-Trullan legislation. One of the canons, Canon 13, stands out from all the rest. This canon expressly grants priests the faculty of using their marriage and, therefore, of not being bound to the law of celibacy. Celibacy, it has to be noted, meant in the early Church absolute continence for a cleric who was married or not. A married man, once he received orders, was bound by the law of celibacy in this wide sense of absolute or perpetual continence, to abstain totally from relations with his wife, his wife having previously consented to this before the ordination. Canon 13, on the other hand, permitted normal married life; this permission was not, however, unconditional. Temporary continence is prescribed, especially at those times when the priest or cleric exercises his ministry at the altar.

Careful analysis of this canon revealed to the author interesting features. Its discipline seemed to be, as research progressed, more and more at odds with the traditional legislation regulating clerical marriage and with the rest of the Trullan corpus itself. The canon itself misrepresented other legislative sources (the Canons of Carthage and Apostolic Canon 6) in order to anchor its discipline in apostolic and early ecclesiastical tradition. It was this; together with the stimulating work of recent authors who have argued anew the thesis of the apostolic origin of celibacy, that led the author to this present study and the conclusions contained therein. These conclusions add their own weight to this thesis.

The canons of the Council of Trullo dealing with clerical marriage have been carefully analysed. They have been studied in the immediate context of the other canons and in the more remote context of pre- and post-Trullan legislation and praxis. Particular attention is paid to the discipline of temporary continence. Although not alluded to by Pope Paul VI, and generally unknown to those unfamiliar with the Eastern Churches, it is this alone, the author believes, that provides the clue to the real difference in the Eastern and West-

¹ AAS 59 (1967), 657-697. English translation taken from *Encyclical letter of Paul VI on priestly celibacy*, (London, Catholic Truth Society), 20.

ern disciplines concerning ecclesiastical celibacy. It is this that shows how closely celibacy is related to the priesthood in the Eastern Church, and it provides, indirectly, a key to the understanding of the real nature of the rest of the corpus of legislation regulating clerical marriage and, most particularly, the impediment of orders to future marriage. It also provides an important insight into the reasons for the introduction of celibacy in the Oriental Churches in union with Rome.

Our study begins with an analysis of Canon 3 of Trullo and the traditional conditions for clerical marriage. The second chapter is devoted to the discipline of Canon 6 of Trullo and to the question of the impediment of orders to future marriage. Chapter Three re-examines classical objections to the thesis of the apostolic origin of celibacy and the universal law of continence in the early Church. These objections are indirectly objections to the proposed solutions of the problems raised in the preceding two chapters. Chapter Four presents a detailed survey and analysis of the law of continence for all higher clerics in the Eastern Churches and a final evaluation of the canonical value of Canon 13 of Trullo. Suggestions concerning the proposed Oriental Code of Canon Law are also made.

Particular attention is paid, when dealing with the post-Trullan Eastern Church, to the Slav-Byzantine Church. The reason for this is, firstly, a personal one – the author himself belongs to the Slav Christian tradition (Ukrainian Catholic Church) – and, secondly, because this group of Churches is numerically the most representative of all Eastern Christendom.

Numerous Eastern authorities and sources are cited in this study, such being its nature. In this way, an approach is made in understanding the Eastern discipline of clerical marriage and celibacy from within the Eastern Church itself. A technical drawback of such a study is the presentation of texts in their original languages. Expediency finally prevailed in dictating the method (unavoidable in the circumstances of writing, but admittedly, not totally satisfactory) of presenting texts, especially if they are in Greek, in translation (usually Latin) in the footnotes. The source for the original text, in these cases, is always cited. The original texts for the Trullan canons are given in the Appendix. Furthermore, Slavic texts and references, when cited are written in transliterated characters, using the International System of transliteration. The English translation of many of the cited texts is (unless otherwise indicated), for the most part, original. When words are given in bold-face, this indicates emphasis not found in the original text.

The method employed in this study is critico-interpretative. No attempt has been made to adhere strictly to a historical method when presenting the legislation of the different centuries. Not only would this have been superfluous in view of the studies that have already done this (especially those dealing with the first seven centuries) and outside our immediate interest, but

such a method would also have been unfeasible (given the wide span of history encompassed), for a study of this nature. However, space has thereby been uncovered for historians to fill out the gaps which have been intentionally left. Historical explanation, where it is offered, is given only in its bare essentials and only where it was judged essential for the legislation to be properly understood.

Chapter One

The Conditions for Clerical Marriage and the Council in Trullo

1. Introduction. The Council in Trullo: Convocation and Canonical Value

In any attempt to understand and to trace the origins of Eastern ecclesiastical legislation regulating the marriage of clerics, prime importance has to be given to the canons of the Council of Quinisext or Trullo, considered to be both the 'fons primus' and the last word on such legislation.¹

The Council was convoked towards the end of the year 691² by the Emperor Justinian II (685-711) with the express purpose of promulgating disciplinary decrees to complete, thereby, the work of the Fifth and Sixth Ecumenical Councils (553, 680-681). From this it received the name, in Byzantine canonical tradition, of the 'Quinisext' (Penthekte) Council; a more popular denomination, however, is the Council 'in Trullo', referring to the hall, with its domed roof, in the Emperor's palace where the bishops convened.

Despite the presence of a small group of bishops from Rome, and of the representatives of other Oriental Patriarchs, the Council was essentially a Council of the Byzantine Empire.³

The 102 canons promulgated had, as their particular end, the correction of a number of errors and abuses. After an introduction which confirmed past legislation (canons 1 and 2), abuses among the clergy (cc. 50-102) were condemned. There is no doubt that the legislation was also of a particularist spirit; on questions of liturgical and clerical discipline the Council attacked practices of the Armenian and Roman Churches. The tone of the Council was at times particularly hostile to the Roman Church.⁴ Canon 36, for example, had

¹ Cf. E. VACANDARD, *Les origines du célibat ecclésiastique*, Paris 1913, 101; A.M. STICKLER, *Historia Iuris Canonici Latini*, I, *Historia Fontium*, Roma 1950, 70; V. LAURENT, *L'oeuvre canonique du Concile in Trullo (691-692)*, source primaire du droit de l'église orientale, in: *Revue des Études Byzantines* 23 (1965) 7-41.

² P.P. JOANNOU (ed.), *Discipline Général Antique (IIe-IXe siècle)*, I,1: *Les canons des conciles oecuméniques (= Pontificio Commissione per la redazione del codice di diritto canonico orientale, Fonti 9)* Grottaferrata 1962 (henceforth cited as JOANNOU I 1) 98.

³ LAURENT 12-13.

⁴ JOANNOU I 1, 98; H. ALIVIZATOS attempted to argue that the Trullan Council had intended simply to state the differences between the Greeks and Latins without passing

reinstated Canon 28 of Chalcedon giving the New Rome privileges equal to those of the Old Rome⁵ and Canon 55 had threatened excommunication for those who presumed to fast on Saturdays during Lent (a practice found at that time in Rome). Canon 13 rejected the law of clerical celibacy and condemned those Churches, such as the Roman, who imposed it.

There is no doubt that the intention of Emperor Justinian II was to convoke a council of ecumenical character in which the legislation was to be binding on the whole Church.⁶ This is evident from the opening words of the canonical decree in which the Council identifies itself as "holy and ecumenical",⁷ and from the fact that notification was given to the reigning Pope (Sergius II, 687-701) of its convocation.⁸

The Pope, himself of Oriental origin (Syrian), nonetheless adamantly refused to sign the acts on account of those canons which were "contrary to the order of the Church".⁹ For the first time in history, a formal disavowal of the Oriental discipline was made by Rome.¹⁰ Pope John VII (705-707), himself a Greek, returned the acts that had been sent to him by Justinian, without sign-

judgement and without intending to be polemical; *Studi bizantini e neoellenici V (Atti del V Congresso internazionale di studi bizantini)* 1939, 582-583. This "irenic" opinion was rejected forthrightly by C. GIANNELLI, *Studi bizantini e neoellenici VII*, 1953, 103, fn. 1. For a list of the canons considered inimical to Roman usages, see JOANNOU I 1, 549, fn. 27; J.S. ASSEMANI, *Bibliotheca Iuris Orientalis*, I 413-445.

⁵ Joannou gives examples of Byzantine intolerance to whatever was not its own – the result, the author maintains, of the (sociological) transformation of the Roman Empire into a Byzantine culture with a population that was essentially Greek. Concerning Canon 36, he states how this undermined the Roman Primacy: "Consideré en lui-même le canon ne présente donc rien de nouveau, mais pris dans l'ensemble de la législation trullane, qui, animée d'un particularisme byzantin, s'oppose pour s'affirmer à toute autre tradition - romain ou arménienne - le canon se place dans la ligne de la pentarchie égalitaire: Le siège de Rome est le premier de tous, certes, mais l'ensemble des patriarches lui serait dans l'estimation des pères de ce concile supérieur, puisque le concile prétend légiférer contre les usages des Romains et leur imposer la discipline byzantine . . .": *Ibid.* 548-549.

⁶ LAURENT 15; JOANNOU I 1, 101; 125.

⁷ JOANNOU I 1, 101.

⁸ The fact alone of the emperor convoking an ecumenical council, rather than the Roman Pontiff, did not necessarily detract from its authority. Such a synod had been convoked by Emperor Theodosius I (Constantinople I [381]) and was celebrated without the participation of Rome. It was, however, given subsequent approval. On this, see LAURENT 10-11. On the essential elements of an ecumenical council, see JOANNOU I 1, 489-548, esp. 525-526.

⁹ A.D. MANSI, *Sacrorum conciliorum nova et amplissima collectio*, XII 3c: . . . *eo quod quaedam capitula extra ritum ecclesiasticum fuerant in eo [concilio] annexa.*

¹⁰ C. COCHINI, *Origines apostoliques du célibat sacerdotal*, Paris 1981, 433.

ing them.¹¹ Papal approbation of the Trullan canons appears to have been first given by Pope Adrian I (772-795) after having received the Profession of Faith from the Patriarch of Constantinople. He approved the canons, which he attributed to the Sixth Ecumenical Council, though not those which were unacceptable to the Roman Church.¹² This condition of acceptance was expressed most clearly by Pope John VIII (872-882): those canons only are approved which are in accord with previous law, the Roman decrees, and not opposed to good morals.¹³

The Fathers of Trullo themselves were, without doubt, of the conviction that all the canons without exception were a legitimate completion of the Sixth Ecumenical Council,¹⁴ and certainly the Fathers of the Seventh Ecumenical Council (Nicaea II, 787) considered the Trullan canons as part of the ecumenical tradition.¹⁵ Thereafter in the Byzantine Church the canons were always considered as ecumenical: by Patriarch Nicephorus (806-815),¹⁶ by St. John Damascene¹⁷ and St. Theodore Studite,¹⁸ by Patriarch Photius (d. 891)¹⁹ and Emperor Leo VI (886-912),²⁰ and by leading Byzantine theologians and canonists.²¹ Ecumenical authority was given to these canons on the assumption that the Roman Pontiff had given his full approval.²²

¹¹ MANSI XII 164.

¹² Pope Adrian I referred to the canons as if they were a part of the Sixth Ecumenical Council in a letter to Patriarch Tarasius (784-804), on the occasion of the convocation of Nicaea II. MANSI XII 1080a: *Quare et easdem sanctas sex synodus suscipio cum omnibus regulis quae jure ac divinitus ab ipsis promulgatae sunt.* Cf. LAURENT 36.

¹³ MANSI XII 982d (cf. 49a): *Ergo regulas quas Graeci a sexta synodo perhibent editas ita in hac synodo principalis Sedes admittit ut nullatenus ex his illae recipiantur quae prioribus canonibus vel decretis sanctorum Sedis huius pontificum aut certo bonis moribus inveniantur adversae.*

¹⁴ J.B. PITRA, *Iuris Ecclesiastici Graecorum Historia et Monumenta*, Romae 1868, II 16

¹⁵ MANSI XIII 40-44.

¹⁶ MIGNE, *Patrologia: Series Graeca* (henceforth referred to as PG) Paris 1857-1866, 100, 848a.

¹⁷ PG 94, 1417d; 1420a.

¹⁸ PG 99, 377d.

¹⁹ PITRA, *Monumenta* II 448.

²⁰ Cf. B. DEUTSCH, *Ecclesiastical Law in the Novels of Leo the Philosopher*, in: *The Jurist* 21 (1961) 141-169; 311-361.

²¹ E.g. The Greek scholiasts of the 12th century John Zonaras, Alexius Aristenus and Theodore Balsamon (whose commentaries on the ecumenical councils are found in PG 137) and Matthew Blasthars of the 14th century (PG 144). Cf. LAURENT 16-17; 25; 38.

²² Cf. SOCRATES, *Historia Ecclesiastica* II 17; SOZOMEN, *Historia Ecclesiastica* III 10; St. Theodore STUDITE, in: PG 99, 1019c; 1419a-b. See also, the commentary in the Greek

In the Western Church, on the other hand, the corpus of Trullan canons was usually considered separately from the work of the Sixth Ecumenical Council and, because of their anti-Roman character, often condemned. The Venerable Bede, for example, called the Synod 'synodus erratica'²³ and Cardinal Humbert of Silva Candida completely rejected it.²⁴ The canonists Christian Lupus, Thomas Sanchez, Cardinal De Lugo and Cardinal Pitra likewise denied its ecumenicity.²⁵ The Maronite canonist, Joseph Simon Assemani, vehemently condemned the whole Synod.²⁶ Nonetheless, it is accepted today that the Trullan canons do have canonical force, those falling within the clause of John VIII excepted. Some of the canons were included into the *Collectio Tripartita* of Pope Gregory VII (1073-1085) from which they found their way into the *Decretum Gratiani*.²⁷ Popes Innocent III (1198-1216) and Gregory IX (1227-1241) also made use of them.²⁸ An edition of the canons was published in 1540 and approved by Apostolic Brief of Pope Gregory VIII in 1580. Pope Sixtus V (1585-1590) accepted the Trullan discipline as part of the canonical tradition of the East.²⁹ It was variously cited by the synods of the Oriental Catholic Churches and referred to by the great canonist-pope, Pope Benedict XIV.³⁰

Pope Benedict, though recognizing Trullo, was emphatic in not attributing ecumenical value to the Council. Those canons which had been accepted by Rome were accepted in virtue of their "intrinsic good qualities" and not in virtue of the authority of the Council.³¹

Corpus of Canon Law, Pedalion (The Rudder), English translation by D. CUMMINGS, Chicago 1957, 287-289.

²³ MIGNE, *Patrologia: Series Latina* (henceforth referred to as PL) Paris 1844-1855, 90, 568d.

²⁴ PL 145, 402.

²⁵ C. LUPUS, *Synodorum Generalium ac Provincialium Decreta, Venetiis 1724*, III 168-173; T. SANCHEZ, *De Sancto Matrimonii Sacramento Disputationes, Venetiis 1737*, lib. VII, disp. 28, n. 7; disp. 72, n. 1; DELUGO, *Tractatus de virtute fidei divinae*, disp. XXII, sect. 2, n. 14., in: *Disputationes Scholasticae et Morales*, Paris 1868; PITRA, *Monumenta II* 82.

²⁶ *Bibliotheca Iuris Orientalis I* 55-348.

²⁷ LAURENT 37.

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ Cf. Pope Benedict XIV's constitution *Allatae sunt* (26th July, 1755), n. 31: *Iuris Pontificii de Propaganda Fide*, ed. R. DE MARTINI, Romae 1888-1909, III 613-614.

³¹ Benedict XIV *Papae Opera Inedita*, ed. Franciscus HEINER, Friburgi Brisgoviae 1904, 398: "e ciò, non per l'autorità del Conciliabolo Trullano, ma per la loro intrinseca buona qualità che in sé avevano precedentemente." Benedict's predecessor, Pope Clement XII (1730-1740), held the same official view. In 1731 during a session of the special Com-

Some scholars today do believe that the Trullan collection can be ascribed to the Sixth Ecumenical Council, at least in a qualified sense, arguing that Councils not infrequently completed their work by separate disciplinary decrees. Such is the opinion of Laurent³² and of Joannou.³³ Even if this opinion is not shared by all, nobody would deny the place of the canons of Trullo, taken as a whole, within the corpus of Byzantine Canon Law or deny their juridical value.³⁴

2. *Conditions for a Married Clergy: A Study of Canon Three of Trullo*

Having discussed the Council in Trullo in a general manner, the particular canons which are of interest to us will be studied in turn. The first of such canons is Canon Three.

Canon 3: On the place in the sanctuary of priests who have contracted a second marriage or who have married after ordination, and of those who have espoused a widow or a dismissed woman.

Our Pious and Christian Emperor has addressed this Holy and Ecumenical Council in order that it might provide for those who are in the list of the clergy, through whom the graces of the sacraments are transmitted to others, that they be pure and blameless ministers, and worthy of the spiritual sacrifice of the

mision of the Congregation of the Propagation of the Faith, assembled to examine and correct the liturgical books of the Greeks, the following question was studied: *Emendandus ne sit locus eiusdem synaxarii ubi synodi Trullanae seu Quini Sextae canones laudantur, et a Concilio VI Oecumenico editi esse dicuntur?* The answer was in the affirmative: . . . *qui quidem canones plura continent, quae ab antiquis Patrum regulis abhorrent, et a Romanae Ecclesiae disciplina, quas Graeci per summum nefas quodammodo abrogare conari fuerunt, sunt aliena.* The canons were not to be ascribed to the VIth Ecumenical Council: Congregatio Super Correctione Librorum Ecclesiae Orientalis, (CLO) Rescripta, April 15th, 1731., III (1730-1731), ff. 98-99; 126; 147-150 (v). cf. Vol 4, ff. 149-153.

³² 41.

³³ 507 et passim.

³⁴ Cicognani writes: "Innanzi tutto non si vuole qui toccare la questione dell'approvazione o meno del sinodo Trullano o Quinisesto, ma si vuole unicamente dire che i cento due canoni trullano hanno avuto valore giuridico per le comunità orientali. Naturalmente . . . rimane in pieno vigore la clausola apposta della S.Sede all'approvazione della disciplina orientale." Codificazione Canonica Orientale, Fonti, fasc. IX. Disciplina generale antica (sec. II-IX), Roma 1933, viii-ix. P. WERNZ also writes: "Synodus ergo Trullana canonesque eius toto invocari possunt tamquam fons legitimus iuris orientalis, excludendo utique canones qui nunquam approbationem Romanam acceperunt, nec accipere possunt sine fidei corruptione": cited by A.M. PETRU, *De impedimento disparitatis cultus in iure orientali antiquo*, Romae 1952, 50.

great God, victim and high priest at the same time, and that it may purify them from the stains of their unlawful marriages.

Now whereas they of the most holy Roman Church propose to maintain discipline most strictly, but those who are under the throne of this heavenly protected and Imperial city follow the rule of humanity and condescendence, we have merged both tendencies into one so that gentleness may not degenerate into licence nor austerity into harshness, having in mind the fault of ignorance that has reached no small number of men: we decree that those who are involved in a second marriage and, slaves to sin, up to the fifteenth of the past month of January in the fourth Indiction begun in the year six thousand one hundred and nine, and have not resolved to repent of it, be subjected to canonical deposition; but they who are involved in this disorder of a second marriage, but before our decree have acknowledged what is fitting, and have cut off the evil besetting them, putting away far from them this foreign and illegitimate union, or they whose wives by second marriage are already dead, or who have turned back to God of their own accord, having learnt continence, and having quickly put away from their minds their former iniquities: if they be priests or deacons or subdeacons, these we have determined should cease from all priestly functions and activities after having done penance for a certain time; they should nonetheless have part in the honours of their seat and position, being satisfied with this presidency and imploring the Lord with tears to pardon their iniquity committed through ignorance; for it would be unfitting that he who has to tend his own wounds should bless another.

But those who have been married to one wife, if she was a widow, and likewise those who after their ordination have unlawfully entered into marriage, that is presbyters, deacons, and subdeacons, after a short time of suspension of their sacred functions, and of penance, shall be restored again to their proper rank, never advancing to any further rank, their unlawful marriage being evidently dissolved.

From our episcopal authority we have formulated these rules concerning those who are involved in the aforementioned faults up to the fifteenth (as we have said) of the month of January of the fourth Indiction, and we decree this from this moment and renew the canon which declares: "He who has been joined in two marriages after his baptism, or has had a concubine, cannot be a bishop or presbyter or deacon, nor in any way be a member of the clergy." And similarly: "He who has taken a widow or a woman dismissed by her husband, or a harlot or a servant or an actress, cannot be a bishop or presbyter or deacon, nor in any way be a member of the clergy."³⁵

This long text contains several points of clerical discipline which will be analysed minutely. We note, as a preliminary observation on this canon, that the discipline which had regulated the marriage of clerics in the past had been seriously neglected and transgressed. A reform was necessary since the

³⁵ English translation based on H. PERCIVAL ed., *Nicene and Post-Nicene Fathers, Series II, Vol. 14: The Seven Ecumenical Councils*, New York 1900, 362-363. See JOANNOU I 1, 125-130 for Greek and Latin texts (reproduced in the appendix of this work).

dignity of clerics required that "they be pure and blameless ministers and worthy of the spiritual sacrifice of the great God". Indeed, considering the social and political turbulence of the period,³⁶ it is hardly surprising that clerical discipline had suffered. The last ecumenical council that had enacted any disciplinary decrees was Chalcedon, over 200 years before in 451, and since then 'no small number of men' had acted in ignorance of, and transgressed, the law of the Church. The fact that the Fathers of the Council had decided to put into effect their decree 'from this moment' and wished to reestablish the discipline of the ancient canons, suggests that the Church had until then tolerated many illicit marriage-situations of men in the higher ranks of the clergy.³⁷ The canon imposes sanctions on these clerics.

The positive law to which all clerics are subject is restated without any need being felt to justify such legislation. This indicates a desire on the part of the Fathers not to innovate on a tradition which they considered to be of apostolic origin: explicit reference is made to the Apostolic Canons (nos. 17 and 18).³⁸

³⁶ Cf. A.A. VASILIEV, *History of the Byzantine Empire*, Madison, Wisconsin 1952, 193-223.

³⁷ COCHINI 438-439.

³⁸ Cf. JOANNOU, *Discipline Général Antique*, T.I, Pt.2: *Les Canones des synodes particuliers*, (henceforth cited as JOANNOU I 2), 16. The Fathers of the Council were not aware of the apocryphal nature of the canons. Forming 85 in number, they were originally a part of the eighth Book of the 'Apostolic Constitutions' (4th/5th century). These Constitutions were the work of a semi-Arian author who used sources such as the Didascalia, Didache and Doctrine of the Twelve Apostles. Their origin was falsely attributed to the apostle Peter and transmitted by St. Clement of Rome (92-101). They were unknown, or at least ignored, in the West until as late as the 16th century. Trullo rejected them as a canonical source, save the 85 Apostolic Canons. The canons are in the form of conciliar decisions and reflect in large part the canons of the Council of Antioch (341) and Laodicea (c. 364) and, more generally, much of the unwritten tradition of the dioceses of the Orient prior to the 4th century. The first 50 canons were translated into Latin by Denis the Little (Dionysius Exiguus) and inserted into his first edition of the *Collectio Dionysiana* (first half of 6th century), stating in the preface that they were inserted "because used by the Roman Pontiffs." They were not included, however, in the 2nd edition since Pope Gelasius (492-496) had subsequently decreed that they were apocryphal. The East, on the other hand, accepted their authenticity. All 85 Canons were incorporated into the *Synagoga* (Collection) of 50 chapters of John III Scholasticus (c. 550) and were adopted by Justinian in his Novels 6 and 137. The Council in Trullo in its 2nd canon not only incorporated the collection into its authentic corpus of canons but, in accepting their apostolic origin, gave it priority even before the Council of Nicaea. Cf. COCHINI 338; H. LECLERCQ, *Constitutions apostoliques*, in: *Dictionnaire d'Archéologie Chrétienne et de Liturgie* (DACL) III 2732-2748; JOANNOU I 2, 1-2; 121; G. BARDY, *Canons apostoliques*, in: *Dictionnaire de Droit Canonique* (DDC) II 1290.

The discipline and sanctions in the Trullan canon are directed to two main groups of offenders: those who are involved in a second marriage, and those whose marriages are considered illicit, for a cleric, on account of the defective qualities of the wife. Included also are those who have married but once, but after having received orders; this group is subject to the mitigated sanctions of the canon but not to its positive legislation. A separate canon (Canon 6) deals specifically with these clerics.

3. *Prohibition of Digamy*

The sanctions levied against those who have been involved in a second marriage are justified by recalling Apostolic Canon 17:

He who has been joined in two marriages after his baptism, or has had a concubine, cannot be a bishop or presbyter or deacon, nor in any way be a member of the clergy.³⁹

The canon has in mind those who married a second time before ordination.⁴⁰ The ecclesiastical law of the prohibition to ordination of digamists (successive bigamists)⁴¹ was an early practice of the Church, testified to by numerous ancient authorities.⁴² The scriptural foundation for such a law is quite evidently the Pauline principle of "a man of one wife" (*unius uxoris virum* [or *viri* or *vir*])

"A bishop must be irreproachable, married but once"⁴³

³⁹ JOANNOU I 2, 16. The Latin rendering is: *Si quis post baptismum secundis fuerit nuptiis copulatus aut concubinam habuerit, non potest esse episcopus aut presbiter aut diaconus, nec prorsus ex numero eorum qui ministerio sacro deserviunt.*

⁴⁰ The canon does not, in our judgement, concern itself with men who married a second time after already having received orders. Cf. *infra*. It would seem, nonetheless, that the Fathers of the Council wished to accommodate the sense of the canon to include such marriages. On the question of the impediment of orders, see Chapter 2 of this study.

⁴¹ Bigamy, properly speaking, can only be successive. Canonists distinguish between 'true' bigamy, which is a repetition of valid matrimony after the death of the first spouse or the annulment of the first marriage, and 'interpretative' bigamy which is a 'fictio iuris' and involves illicit relations with a 'fictitious' wife, or relations with one's lawful wife given certain circumstances; F. WERNZ, *Ius Decretalium*, Tomus II, pars prima, Romae 1906, 180-183. Cf. Pedalion, commentary on Apostolic Canon 17: 28-29. To avoid possible confusion we have chosen to use the term 'digamy' to designate successive bigamy.

⁴² Cf. Tertullian, *Ad Uxorem*, I, 7; Origen, *Homelia in Lucam*, 17; *Contra Celsum*, 3, 48; Clement of Alexandria, *Stromata*, 1, III 12; Ambrose, *Epistula* 63, 63; Jerome, *Comment. in Tit.* I 6; *Adv. Iovin.* I 14; Chrysostom, *Homelia X in I Tim.* iii 2; Basil the Great, Canon 12; Augustine, *De bono coniug.*, 18; Epiphanius, *Adv. Haer.*, lix 4; *Expositio fidei* 21; *Apostolic Constitutions VI*, chap. 17; etc.

⁴³ I Tim 3, 2 ('mias gynaikos andra').

"Deacons may be married but once"⁴⁴

"A presbyter must be irreproachable, married but once"⁴⁵

The meaning of this phrase *unius uxoris vir* has been the subject of much dispute down the ages.⁴⁶ Some, in the early centuries, had interpreted this Pauline principle as only excluding polygamy,⁴⁷ others considered it as meaning the election of a man who lived contentedly with one wife, whether she be from his first or second marriage.⁴⁸ The most predominant interpretation however, and that which was officially sanctioned by the early Church in its legislation, was that the injunction excluded from orders any man who had taken a second wife after the decease of the first.⁴⁹

The Apostolic Canon, furthermore, specifically restricted this impediment to ordination to the candidate who had already been baptised. The practice in the Western Churches, on the other hand, was to exclude even those who had contracted their first marriage before having received baptism.⁵⁰ The reasoning behind the Greek practice, as given in the Apostolic Canon, is represented by the 12th century scholiasts Balsamon, Zonaras and Aristenus, who simply assert that Baptism washes away all sin and iniquity,⁵¹ the type of life led

⁴⁴ I Tim 3, 12 ('mias gynaikos andres').

⁴⁵ Tit 1, 6 ('mias gynaikos aner').

⁴⁶ Cf. C. KNETES, Ordination and matrimony in the Eastern Orthodox Church, in: *Journal of Theological Studies* 11 (1910) 366-380.

⁴⁷ *Ibid.* 367.

⁴⁸ This interpretation is given by Theodore of Mopsuestia (cf. John Chrysostom, *Comment. in epist. I ad Tim.*, cap 3, Hom. X: PG 62, 547ff.) and by his disciple Theoderet of Cyrrihus (PG 83, 1305).

⁴⁹ KNETES 368 ff.; J. BOBAK, *De coelibatu ecclesiastico deque impedimento Ordinis Sacri apud Orientales et praesertim apud Ruthenos, Romae* 1941, 20-21; E. HERMAN, *Célibat des clercs (droit oriental)*, in: DDC 3, 150-151. There were instances where the Pauline injunction was taken to mean that clerics were obliged to marry, e.g. by the 16th century Protestant reformers. Cf. BOBAK

⁵⁰ Ambrose, *Epist.* 1xiii 63; Pope Innocent I, *Epist.* II, cap. 5/6; Pope St. Leo, *Epist. to African bishops*, VI 3; Pope Gregory the Great, *Lib II, epist.* 54. This was the discipline of the Latin Church in all succeeding centuries. Cf. Gratian, *Decretum*, dist. 26, c. 13; WERNZ 179-180.

⁵¹ *Commentary on Apostolic Canon 17*: PG 137, 72a; 73b. Cf. *commentary on Ancyra 12*: *ibid.* 1153d-1160a. Theodore Balsamon (c. 1105-1195) was a deacon of Hagia Sophia, Constantinople, and served the Patriarch as chief legal advisor or chartophylax. His chief work was the commentary on the Photian Nomocanon of 14 Titles. He was elected Patriarch of Antioch when he was in his 80's; E. HERMAN, DDC 2, 76-83. John Zonaras (d. after 1160) was perhaps the greatest of the 12th century canonists, on whose commentaries Balsamon also relied; E. AMANN, DTC 15.2, 3705-3708. Alexis Aristenus compiled his commentaries on the Synopsis canonum under the Emperor John Comnenus (1118-1143); DTC 1, 1864.

before receiving this sacrament is therefore, by implication, of no consequence. Unlawful marriages, nonetheless, were to be dissolved. St. Jerome was of this same opinion.⁵² Yet Jerome, together with the Fathers of the Eastern Church, took a very strict view of second and subsequent marriages which, though licit, were regarded as the effect of incontinence.⁵³ They understood St. Paul to the letter:

To widows I have to say: it would be well if they remain as they are, even as I do myself; but if they cannot exercise self-control, they should marry. It is better to marry than to be on fire.⁵⁴

For this reason the discipline of the Eastern Church on second marriages was generally severe: tolerating rather than approving them. A certain period of penance was given to these digamists.⁵⁵ With so much more reason would the Church disapprove the second marriages of clerics.

In the Western Church the attitude towards second marriages was generally more benign: digamists were not subject to penance. Yet the discipline against digamist clerics was severer. A possible explanation for this is that the Latin Fathers, especially those who followed Augustine, considered a second marriage as being defective in its full sacramental meaning of the perfect union of Christ with his Spouse, the Church.⁵⁶ Thus it is on account of the *defectum sacramenti* and, only secondarily, *propter suspicionem incontinentiae* that digamy was disfavoured. The Latin Fathers were also quite aware that a pre-baptismal marriage in itself was quite legitimate, but insisted that a marriage contracted before baptism was still a marriage and subject, therefore, to the Pauline injunction.⁵⁷ The thinking of the Eastern Church was in actual fact not altogether different from that of the West since illicit marriages

⁵² Epist. Ad Oceanum. PL 30, 290.

⁵³ Cf. J. DAUVILLIER - C. DE CLERCQ, *Le mariage en droit canonique oriental*, Paris 1936, 195-200.

⁵⁴ 1 Cor 7, 8-9.

⁵⁵ Cf. Ancyra (314), c. 19; St. Basil the Great, Canon 4; Neocaesarea, c. 3; Laodicea, c. 1. See DAUVILLIER - DE CLERCQ.

⁵⁶ WERNZ 178-179. Cf. St. Paul, Eph 5, 32; St. Augustine, *De bono coniugii*, cap. 13.

⁵⁷ Leo the Great, for example, writes: "And this we are extremely anxious should be observed [Paul's injunction], so as to do away with all place for excuses, lest any one should believe himself able to attain to the priesthood who has taken a wife before he obtained the grace of Christ, and on her decease joined himself to another after baptism. Seeing that the former wife cannot be ignored, nor the previous marriage put out of the reckoning, and that he is as much the father of the children whom he begat by that wife before baptism as he is of those whom he is known to have begotten by the second after baptism." PL 54, 618c. (English translation from *A select library of the Nicene and Post-Nicene Fathers of the Christian Church*, second series, ed. H. WACE - P. SCHAFF, 12 [Oxford/New York, 1895], 5.)

contracted before Baptism had to be dissolved at the time of the reception of the sacrament.⁵⁸

Apostolic Canon 17 not only excluded digamists from the ranks of the clergy, but also all those who had had concubines. The fact that concubinage and a second (lawful) marriage are equated in this canon does suggest that the underlining reason for the prohibition of the latter is on account of *suspicionem incontinentiae*.

The Greek scholiasts, when commenting on this canon, do not emphasise the irregularity of the status of the future cleric in his cohabitating with a woman to whom he was not lawfully married, so much as the fact of his fornication.⁵⁹ In other words, the impediment to orders is the defect in the virtue of chastity, required in a special way by the ministers of the Church.

Canon 9 of the Council of Neocaesarea (314-325) stated that a priest who after ordination confesses to having committed a carnal sin before he received ordination is to be prohibited from celebrating the Eucharist, though he is to retain his priestly position.⁶⁰ Canon 10 of the Council deposes deacons for the same fault.⁶¹ Canon 9 of the First Ecumenical Council of Nicaea (325) prohibited ordination to those who had confessed sins that were regarded as impediments to orders since as clerics they were to be "irreproachable".⁶² Greek commentators have interpreted this canon to include not only sins against chastity which are of public knowledge, but even occult ones known

⁵⁸ Theophilus of Alexandria (385-428), Canon 5: text and commentary in Pedalion 907-908. Cf. Apostolic Canon 19: "Whoever marries two sisters or a niece may not be a clergyman". JOANNOU I 2, 17.

⁵⁹ E.g. Balsamon, in: PG 137, 69d-72a.

⁶⁰ JOANNOU I 2, 79. Cf. Pedalion 514-516.

⁶¹ JOANNOU I 2, 80. Cf. the Spanish Council of Elvira (c. 305), Canon 76, which has a similar discipline within a context where clerics were to abstain totally from their wives. H.T. DRUNS, *Canones Apostolorum et Conciliorum saeculorum IV-VII*, Berlin 1839, II 12.

⁶² Pedalion 177: "If some persons have been promoted Presbyters without due examination, or when given a hearing confessed their sins, and after they confessed, the (bishop) . . . acting contrary to the canon laid hands upon such persons, the canon will not admit them. For the Catholic Church insists upon irreproachability." Cf. *ibid.* 178. Canon 35 of the penitential canons of Patriarch Nicephorus the Confessor (d. 815) establishes fornication as an impediment to orders: "Any man who even once only has committed fornication ought not to be made a priest, even though he has given up the sin. For Basil the Great asserts that such a man cannot be made a priest even though he bring dead men back to life." *Ibid.* 969. Cf. Canon 69 of St. Basil, which prohibits a lector from being promoted if he lies with his betrothed before marrying her: *ibid.* 832. See also Canons 3 and 9 of Theophilus of Alexandria on the impediment to priestly ordination of adultery and fornication: *ibid.* 906; 909.

only to the confessor.⁶³ This strictness was to ensure that the future priest would be able to live well the virtue of chastity in the way demanded by his state.⁶⁴

4. *Trullo Canon 3 and the Qualities Demanded of a Cleric's Wife*

The other source cited by the canon is Apostolic Canon 18:

He who has taken a widow or a woman dismissed by her husband or a harlot or a servant or an actress, cannot be a bishop, or presbyter or deacon nor in any way be a member of the clergy.⁶⁵

The scriptural precedent for this canon is the Levitical precept:

The priest shall take a wife in her virginity. A widow, or one divorced, or a woman who had been defiled, or a harlot, these he shall not marry; but he shall take to wife a virgin of his own people.⁶⁶

Knetes, a theologian of the Orthodox Church of the Patriarchate of Constantinople, maintained that despite the dependence of the Apostolic Canon on the Levitical precept, the law of the Church was based on grounds different from those of the Old Dispensation.⁶⁷ A divorced woman, he states, is assimilated to the widow (especially if the separation took place on account of the husband's culpability)⁶⁸ because in both cases the husband, even though a monogamist, would be involved in a "digamous situation" on account of his wife and therefore subject to the canonical disabilities of second marriages in general, and the Pauline injunction in particular.⁶⁹ These disabilities are not found as such in the Old Dispensation. Presupposed by Knetes is that a divorcee was able to enter into a second marriage; the author, none-

⁶³ Ibid. 179.

⁶⁴ Cf. John the Faster, Patriarch of Constantinople, (d. 619), Canon 10: *ibid.* 938-939 (esp. fn. 2).

⁶⁵ JOANNOU I 2,16: *Si quis viduam aut eiectam acceperit aut meretricem aut ancillam vel aliquam de his quae publicis spectaculis mancipantur, non potest esse episcopus aut presbiter aut diaconus, aut ex eo numero qui ministerio sacro deserviunt.*

⁶⁶ Lev 21, 13-14; cf. v. 7 and Ezek 44, 22. There is some similarity also to New Testament teaching: "he who marries a divorced woman commits adultery" (Mt 19, 9); "Do you not know that he who joins himself to a prostitute becomes one body with her?" (1 Cor 6, 16). Linguistic analysis, however, reveals a stricter dependence of the Apostolic Canon on the Levitical rule. Cf. KNETES 382 and fn. 8.

⁶⁷ Ibid. 382.

⁶⁸ This, according to KNETES 383, is what is implied by the term 'divorced' (*ekbeblymeny*). The Latin term *eiectam*, nonetheless, suggests the very opposite.

⁶⁹ A 'digamous situation', where a monogamist marries a woman who had previously been married, is called 'interpretative' or 'fictitious' bigamy. WERNZ 181.

theless, acknowledges that the legality of the marriage of the innocent party of the separation was at best doubtful.⁷⁰ Catholic doctrine teaches that such a marriage would always be considered adultery.

According to this same author, marrying a widow (or divorcee) would not reflect well on the husband for it would be taken to encourage the incontinence which is held to be implied in every second marriage, nor would it be conducive to the desired harmony of family life⁷¹ (especially when there are children from the wife's first marriage). Marriage to a woman considered to be of loose morals, such as an actress, or to a courtesan, would likewise not reflect honourably on the character of the man who contracts it. Marriage to a slave woman would also be inconsistent with the desired harmony of family life since, owing to the legally recognized disparity of social conditions of that time, a slave woman even if she were to marry a freeman would remain, with her children, the property of her master.⁷² Thus, according to Knetes, Apostolic Canon 18 guarantees exemplary and harmonious family life. The Russian canonist, Bishop Nikodim, gives a similar exegesis.⁷³

The above explanation of the Apostolic Canon accords well with the condition required by St. Paul: that bishops, presbyters and deacons exhibit exemplary family life.⁷⁴ Notwithstanding this, an even more immediate and obvious reason for the prohibition suggests itself. Already hinted at by Knetes,⁷⁵ the canon guarantees principally, in our opinion, the cleric's chastity. The women listed in the canon are all those who, under one aspect or another, are known to be, or are suspected of being, incontinent – thereby endangering the priest's chastity.⁷⁶ This is the interpretation given by the Greek scholiasts. Balsamon, for example, writes:

This canon requires not only that he who has been ordained be modest and chaste ('sofronein'), but also his wife: and indeed it prohibits the women who are included here to enter marriage with these men since it is believed that they are unable to live chastely on account of their baseness and dishonesty. Whoever therefore has married such a woman is not worthy of the priesthood.⁷⁷

⁷⁰ 382.

⁷¹ Ibid. 383.

⁷² Ibid. 386.

⁷³ Pravila pravoslavnoj cerkvi s tolkovanijami Nikodima, I S. Petersburg 1912, 80.

⁷⁴ Cf. I Tim 3,2-8; Tit 1,6-9.

⁷⁵ 383.

⁷⁶ The widow is suspect because of her desire to enter a second marriage; the slave because she may have been violated by her master (cf. Can. 49 of St. Basil the Great); the others because of their loose morals.

⁷⁷ PG 137, 74c: *Nota praesentem canonem. Vult enim non solum eum qui est sacratus esse modestum et continentem, sed etiam ejus conjugem: et ideo mulieres, quae hic comprehenduntur, prohibuit cum sacratis hominibus matrimonio conjungi, utpote quod eas conti-*

Matthew Blasthares, the 14th century Greek canonist, interprets this canon in exactly the same sense.⁷⁸ This seems to be the reasoning, furthermore, of the discipline expressed in Canon 8 of the Synod of Neocaesarea (314-325):

If the wife of a layman has committed adultery and has been clearly convicted, such (a husband) cannot enter the ministry; and if she commits adultery after his ordination, he must put her away; but if he retains her, he can have no part in the ministry committed to him.⁷⁹

nenter vivere non credatur, propter earum sordes et improbitatem. Si quis ergo cum ejusmodi muliere matrimonio conjunctus fuerit, sacerdotio non dignabitur, et post sacerdotium deponetur. Cf. commentary of Zonaras and Aristenus: *ibid.* 76b.

⁷⁸ PG 144, 1154a: *Caeterum 18 apost. canon ait: Nec qui viduam duxit, vel ejectam a marito suo, vel meretricem, vel servam vel aliquam ex iis quae artem ludicram exercent, ac propterea, quod parum honeste vivant, non creduntur esse castae, potest episcopus esse vel presbyter vel omnino clericorum in consortio.* (Little is known of the life of Blasthares other than the fact that he was a priest and monk on Mt. Athos and the Isaiah monastery at Thessalonica. He completed his *Syntagma alphabeticum* in 1335: an encyclopaedic compilation of ecclesiastical and civil law to which he added his own commentary which was much influenced by Zonaras and Balsamon. Cf. NCE, 2, 609b; L. PETT, DTC 2.1, 916-917.)

⁷⁹ JOANNOU I 2, 80. English translation from Percival (ed.), *Nicene and Post-Nicene Fathers*, II 14, 82. Van Espen in a note on this canon (83) states that the Eastern Church requires of its priests " . . . the highest conjugal continency, as is seen from this present canon. For here it is evident that the Fathers wished even the smallest possible kind of incontinence to be absent from men dedicated to holiness." Note that the author speaks of 'continence' and not 'chastity'. Knetes, on the other hand, emphasises the point that the crime has to be publicly proven. Since such a crime of public knowledge imperils the reputation of the husband, this, he states, is the reason ordination is forbidden (384). It is to be noted, however, that since adultery was generally regarded, in the early Church, as an extremely serious offence bringing with it a very heavy penance and serious consequences to a priest (whether he himself was guilty or, as in this case, his wife), justice required that there be public proof involving a determined procedure and a certain number of qualified witnesses. Cf. Pedalion 79; for the procedure in the Latin Church, see, for example, Hincmar of Rheims: PL 126, 780c-785c. It doesn't follow, then, that the punishment (e.g. prohibition of ordination) should be the effect of the judicial process. Certainly, if there was question of public scandal this would be but an added reason for the suitability of this particular sanction, but not its principal cause. A wife given to adultery, one could affirm, would imperil the future continence of the priest, especially if he were to live celibacy while still living under the same roof as his wife. Cf. COCHINI 218-219 and fn. 28. This same discipline is found in Canon 65 of the Council of Elvira (300-305): Bruns II 10. Canon 33 prescribes total continence: *ibid.* 6. In later Spanish Councils, such as Braga II (572), Canon 28, the Neocaesarean canon is textually reproduced within a general disciplinary setting of celibacy. The canon is therefore a guarantee primarily against temptations against absolute continence and only secondarily to protect the good name of the priest. An exception nonetheless is provided by Patriarch Photius in his canonical responses to Leon, Archbishop of Calabria (885 or 886) in which he writes that if a wife had been viola-

The wife of the future priest had, therefore, to be a chaste virgin when entering marriage; this discipline was in vigour in the early Church, with the same strictness as the law prohibiting digamy.⁸⁰ Indeed, to speak of *unius uxoris vir* was immediately to imply that the wife be *unius viri uxor* (the wife of one husband), as the Levitical law had required.⁸¹ It is not without some interest to us that St. Paul also, in the same letter to Timothy, speaks of the qualities required for women to be listed as widows, indicating that they are to have been 'married but once';⁸² this is stipulated within a context that strongly suggests that this was a precaution against future incontinence.⁸³

The parallelism between Paul's injunction for widows and that for clerics in I Tim 3, 2 can be proffered as evidence to further the thesis that the Pauline injunction was a guarantee for future chastity by clerics who, once ordained, were to live as if they had no wife or as brother and sister.⁸⁴ This in-

ted by a barbarian and she was made pregnant by this, or if she gave in through weakness, then separation is prescribed or the minister deposed. Even if it was not the fault of the woman, mutual separation was still advised for reasons of public order. Photius was speaking at a time when conjugal relations were permitted to the Greek Clergy. PG 102, 773-781.

⁸⁰ Cf. Pope Siricius, *Directa*, cap. XV: PL 13, 1145b: *quicumque bigamus, quicumque vidua maritus ad sacram militiam indebite et incompetenter irrepsit*. See also, cap. VIII: *ibid.* 1141; Pope Leo the Great, Ep. XII, *universis episcopis per Africam constitutis* 3: PL 54, 659b. An English translation of this is found in *Nicene and Post-Nicene Fathers*, 12 (ed. C. FELLTOE) 13: "He may nevertheless in no wise ascend either to the grade of deacon, or the dignity of the presbytery, or to the highest rank of the bishopric, if it has been spread abroad that he himself is not the husband of one wife, or that his wife is not the wife of one husband." Cf. Ep. IV 2: PL 54, 612a; Ep. VI 3: PL 54, 618b.

⁸¹ Cf. Pope Leo the Great, *ibid.*

⁸² I Tim 5,9.

⁸³ I Tim 5,11-12.

⁸⁴ Thus Pope St. Leo the Great writes in his Letter to Rusticus of Gallia Narbonensis (Ep. CLXVII 3.3): "The law of continence is the same for ministers of the altar as for bishops and priests who when they were laymen or readers, could lawfully marry and have offspring. But when they reached the said ranks, what was before lawful ceased to be so. And hence in order that their wedlock may become spiritual instead of carnal (*ut de carnali fiat spirituale conjugium*) it behoves them not to put away their wives but to 'have them as though they had them not' (*ut et qui habent sint tamquam non habentes* [1 Cor 7,29]), whereby both the affection of their wives may be retained and the marriage relations cease.": PL 54, 1204a. (English translation from *Nicene and post-Nicene Fathers* 12, 110) Cf. Council of Girone (517), Can. 6, where the term 'sister' first appears in conciliar legislation to describe the relations of the higher cleric with his wife: BRUNS II 19. Cf. COCHINI 357-358. See also, A. STICKLER, *Il celibato ecclesiastico* (2), in: *L'Osservatore della Domenica*, supplement to *L'Osservatore Romano*, 13 Maggio 1979; *Tratti salienti nella storia del celibato in: Sacra Doctrina* 15 (1970) 588.

terpretation of *unius uxoris vir* being *propter continentiam futuram* is found explicitly in certain early ecclesiastical documents.⁸⁵ A recent work, by Christian Cochini, has attempted to reestablish the theory of the apostolic origin of celibacy, giving thereby much greater weight to such an exegesis than it has generally had in recent times. Using a particularly rigorous critical method, and appealing to patristic, conciliar and pontifical tradition, Cochini presents a detailed dossier of evidence supporting this theory.⁸⁶

A line of evidence for this theory, the author believes, can be found precisely in the legislation of Trullo Canon 3 which we have been analysing. Undeniable is the fact that the cleric was to have the qualities that would allow

⁸⁵ For example, the decretal *Cum in unum* of Pope Siricius (c. 386): "Perhaps one may think that [priests and levites can have relations with their spouses] since it is written: "The husband of one wife (I Tim 3,2)". but [Paul] was not speaking [of a man] who would persist in his desire to procreate; he spoke in view of the continence that he would have to practice." (*Fortē hoc creditur quia scriptum est unius uxoris virum* (I Tim 3,2). *Non permanentem in concupiscentia generandi dixit, sed propter continentiam futuram*): PL 13, 1160a-1161a. Also Pope Innocent I to the Bishop of Rouen (404): PL 20, 475c-477a, and to the Bishop of Toulouse (405): *ibid.* 496b-498a, both of which were directly inspired by the decretals of Siricius. Cf. the acts of the Council of Agde (506), c. 9: *Corpus Christianorum* (CC) 148, 198 ff. The same exegesis is found in certain Patristic writers. For example, St. Ambrose writes: "I have set down these things which I have been told are to be avoided, but the Apostle is the Master of Virtues, and he teaches that gainsayers are to be convinced with patience, who lays down that one should be the husband of a single wife, not in order to exclude him from the right of marriage (for this is beyond the force of the precept), but that by conjugal chastity he may preserve the grace of his baptismal washing; nor again that he may be induced by the Apostle's authority to beget children in the priesthood; for he speaks of having children, not of begetting them or marrying again.": PL 16, 1205b-c. (Engl. trans.: *Nicene and post-Nicene Fathers* 10, 465). A testimony of the Eastern Church is found in the voice of St. Epiphanius of Constantia (Salamis), d. 402: "Since the Incarnation of Christ, the holy Word of God does not admit to the priesthood those monogamists who, after the death of their wife, have contracted a second marriage; and this on account of the exceptional honour of the priesthood. This (rule) the Holy Church of God observes with great exactness without flinching. She does not accept as deacon, priest, bishop and subdeacon, be he the husband of a single wife, the man who continues to live with his wife and to beget children; the Church accepts him who, as monogamist, observes continence or widowhood; this is observed above all wherever the canons of the Church are kept faithfully." *Panarion* (*adversus Haereses*), Haer 59,4: GCS (*Griechische Christliche Schriftsteller der ersten drei Jahrhunderte*) 31, 367. See also Ambrosiaster, *In Epistolam B. Pauli ad Timotheum primam* III 12-13: PL 17, 470b-471b; COCHINI, 33, fn. 18; A. STICKLER, *Tratti salienti nella storia del celibato* 588-589; 617, fn. 8.

⁸⁶ *Origines apostoliques du célibat sacerdotal*, Paris 1981. See the Preface of A. STICKLER: 3-7; Chapter One: "Position du problème: Le célibat des clercs remonte-t-il aux apôtres?" 23-38; Chapter Two: "État de la question" 39-68; Chapter Three: "Précisions méthodologiques" 69-87.

him to persevere in living chastely according to his state in life. The qualities of his wife were calculated to give the same guarantee. Was perpetual continence (celibacy in the 'broad' sense) to be part of the new state of life of the cleric? Cochini is firmly of such a conviction. Alfons Stickler believes this to be the case.⁸⁷ The legislation of the early Church does not deny such a hypothesis; on the contrary, taken alone it lends support. In the great canonical collections of the Middle Ages the content of the Apostolic Canons was clearly understood as providing guarantees against incontinence for those bound to perpetual continence.⁸⁸ Supportive of this contention, the author believes, is the praxis of the Church concerning the widow of a priest.

5. The Impediment to Second Marriage for a Priest's Widow

In both the Eastern and Western Churches ordination has always been considered an impediment to marriage and remarriage for the ordinand.⁸⁹ The same appears to have been the case for the cleric's wife who had the misfortune of losing her husband.

The first written legislation on the impediment to second marriage for a cleric's widow is found in the Spanish Provincial Council of Toledo I (400), Canon 18.⁹⁰ Several other documents of the Western Churches from the following centuries testify to this same prohibitive law.⁹¹ The prohibition is al-

⁸⁷ In "Il celibato ecclesiastico" (2) 8, Stickler notes that the word 'enkrateis' (self-control), used in Tit I,7-8 ("He must be irreproachable . . . and self-controlled"), is the same word as used in I Cor 7,9, where St. Paul advises marriage to those who cannot remain continent. Continence, according to this exegesis, was therefore prescribed by St. Paul.

⁸⁸ Cf. Gratian, Decretum, I, Dist. 34, dictum post c. 7: *Quod ergo de pellice et meretrice (apud Gregorium et Innocentium scribitur) propter spem futurae incontinentiae constitutum creditur, quia difficile continentiam servat qui se illicito concubitu maculare non metuit.* See also, Dist. 32, c. 14.

⁸⁹ Cf. Chapter Two 35 ff.

⁹⁰ BRUNS II 206: *Si qua vidua episcopi vel presbyteri aut diaconi maritum acceperit, nullus clericus, nulla religiosa persona cum ea convivium sumsat, nunquam communicet; morienti tamen ei sacramenta subveniant.* Cf. Gratian, Decretum I, Dist. 28, c. 28.

⁹¹ E.g. the Council of Epaon, Gaul (517), c. 32: *Relicta presbyteri si diaconi si cuicumque renupserit eatenus ab ecclesia pellatur, donec a conjunctione illicita separetur, marito quoque ejus simili usque ad correctionem severitate plectendo.*: BRUNS II 171; Council of Autun (589), c. 22: *Non licet relictas presbyteri nec relictas diaconi nec subdiaconi post ejus mortem maritum accipere.*: *ibid.* 239. Cf. WERNZ, *Ius Decretalium* IV (1904) 597, fn. 60, where other references are given.

ways in association with the discipline of perpetual continence which was lived by the wife while her husband was alive.⁹²

The fact that written legislation first appears around the year 400 does not necessarily mean, either, that the praxis of the Church began at this time. To identify, a priori, the origin of a praxis with its first (extant) written expression would be a serious methodological error, especially in the setting of the early Church.⁹³ If this is true with the first expressions of ecclesiastical discipline in general, it must be true for the discipline dealing with clerical marriage in particular; unless the contrary is evident.⁹⁴ There is no reason to suppose that the legislation prohibiting remarriage to a cleric's widow was not an expression of earlier praxis.⁹⁵

The reason for the impediment is clearly, in the tradition of the Western Church, the fact of the wife's promise or vow of perfect chastity which was made (at least implicitly) at the time of giving her consent for her husband to be ordained.⁹⁶ This requirement was an important act of justice, and a *sine qua non* for the husband's ordination, for otherwise the husband's continence would injure the marital rights of the wife.⁹⁷ Thus, it was clerical celibacy that

⁹² Cf. Toledo I, c. 1: BRUNS I 203; COCHINI 299 ff.

⁹³ STICKLER, *La continenza dei diaconi*, in: *Salesianum* 26 (1964) 277-278; COCHINI 86 and passim.

⁹⁴ Thus, for example, the Apostolic Canons contain the first Eastern legislative expression of several unwritten laws of the early Church. Cf. JOANNOU I 2,3.

⁹⁵ A parallel reasoning can be used for this discipline to that applied to Canon 33 of Elvira (c. 305) which is the first extant legislative expression of the law of celibacy/continence. The canon reads: *Placuit in totum prohibere episcopis, presbyteris et diaconibus vel omnibus clericis positis in ministerio abstinere se a coniugibus suis et non generare filios; quicumque vero fecerit, ab honore clericatus exterminetur.*: BRUNS II 6. As with this canon, the negative formulation prohibiting the widow of a cleric from remarrying suggests a re-affirmation of a known discipline which had been transgressed. Furthermore, no reason is given for this discipline; this omission does seem to imply that the law is not new, for otherwise some justification would be expected. Finally, there is no evidence of a contestation or opposition to this discipline. See also A. BONI, *Sacralità del celibato sacerdotale*, Genova 1979, 121-122.

⁹⁶ Cf. WERNZ IV 597-598; F. CAPPELLO, *Tractatus Canonico-Moralis de Sacramentis* III 1, Romae 1939, 517. The earliest known documentation of an explicit profession of chastity to be made by the husband is found in the Council of Orange (441), 2nd Council of Agde (506) and Tours I (461). This profession was required probably as a guarantee that there be no possible ignorance of the obligation of perfect continence. (COCHINI 302-304) In Canon 16 of the Council of Agde the explicit consent of the spouse is required (*etiam uxorum voluntas ita requirenda est*). CC 148, 201. This, believes Cochini, represents an advance in legislation of the guarantee of the rights of the spouse: 365-366.

⁹⁷ STICKLER, *Nota storica sul celibato dei chierici 'in sacris'*, in: *L'Osservatore Romano* n. 51., 2/3 Marzo 1970, n. 5.

was the material cause of the impediment to the widow's remarriage. Her own free promise to live this discipline was the direct cause of the impediment. The general disdain of the Church towards remarriage, undoubtedly heightened in the case of a cleric's widow, could only have been a secondary reason for the impediment. St. Paul had allowed widows to remarry,⁹⁸ especially if they were young⁹⁹ or had honest motives.¹⁰⁰ The Western Church had also been relatively benign towards second marriages. This indicates that, had the wife of a cleric not been bound by a promise of perpetual and perfect chastity she, as with other Christian women, would have been permitted to enter a second marriage.

The Popes and the Fathers of the early Church were very conscious of the Levitical precepts concerning priestly marriage.¹⁰¹ It is unlikely that they were unaware of the clause in the Levitical law of Ezekiel which permitted a priest's widow to remarry:

They shall not take for their wives either widows or divorced women, but only virgins of the race of Israel; however they may marry women who are the widows of priests.¹⁰²

The widow of the priest would have had the proven qualities that were required for her to live an exemplary marital chastity, but involving only temporary continence. The priests of the tribe of Levi were likewise bound to live continence only at certain times, above all when it was their turn of service,¹⁰³ but otherwise had a sacred duty to beget children in order to continue the priestly line.¹⁰⁴ Given the hypothesis, contrary to the one presented, that the wife of a priest of the New Testament was at some period able to use her marital rights, there would be a precedent in the Levitical law for allowing remarriage. The absence of any evidence for this ever having been the case would indicate that both the law of continence and its effect, the impediment

⁹⁸ I Cor 7,8-9; Rom 7,3.

⁹⁹ I Tim 5,14.

¹⁰⁰ I Cor 7,39: "If her husband dies she is free to marry, but on condition that it be in the Lord." The phrase 'in the Lord' is interpreted by St. Basil the Great as indicating a marriage with another Christian who is free to marry, the motives of which are honest, and not simply to remedy concupiscence. Cf. Commentary in the Pedalion on Canon 41 of St. Basil 820-821.

¹⁰¹ E.g. Origen, Ambrose, Jerome, Ambrosiaster, Innocent I, Leo the Great, Gregory the Great etc. Cf. COCHINI, 250, 263-264, 325 and passim.

¹⁰² Ez 44, 22.

¹⁰³ Each of 24 classes of priests performed liturgical services for a week at a time, at least twice a year. Cf. I Chr 24,7-18; Lk 1,8,13. See J. STEINMUELLER, in: NCE 11, 777.

¹⁰⁴ This was the reason, as commonly given in the first centuries of the Church, why only temporary continence was required of the Levitical priesthood.

to remarriage, were the normal disciplines regulating clerical marriage in the early Church.

The causal relationship existing between the law of continence and the impediment to remarriage is quite clearly shown in a letter of Pope Gregory the Great (590-604) to the subdeacon Peter of Sicily (591) in which the Pope says that to expect of, and to impose on a subdeacon a life of perpetual continence (and, therefore, also for his wife) when such a subdeacon had not made this decision and promise at the time of his ordination, would be hard and inopportune (*durum atque incompetens*).¹⁰⁵ Three years later, in a letter written to Leo, Bishop of Catania, the Pope writes that the widow of a subdeacon, who had not promised perpetual continence, should be at complete liberty to unite herself in a second marriage.¹⁰⁶ In the mind of Pope Gregory,

¹⁰⁵ The text reads: *Ante triennium subdiaconi omnium ecclesiarum Siciliae prohibiti fuerant ut more Romanae ecclesiae nullatenus suis uxoribus miscerentur. Quod mihi durum atque incompetens videtur ut qui usum ejusdem continentiae non invenit, neque castitatem ante promisit, compellatur a sua uxore seperari atque per hoc (quod absit) deterius cadat. Unde videtur mihi ut a praesenti die episcopis omnibus dicatur, ut nullum subdiaconus facere praesumant nisi qui se victurum caste promiserit.* Epistola I 42, Monumenta Germaniae Historica (MGH), Gregorii I Papae registrum epistolarum 1, Berlin 1891, 67; Gratian, Decretum Dist. 31, c. 1. Cf. BONI, 140-141. G. GERYCH has written recently (in Ukrainian) that "Gregory the Great considered celibacy a difficult law (*durum atque incompetens mihi videtur*) which was difficult to put into effect, and that married clergy was a fact which the Church had to take into account." Svitylnyk Istyny 3 (St. Clement University [Rome] 1983), 285. The author has taken the phrase 'durum atque incompetens mihi videtur' out of context. The Pope was speaking of a question of justice and not of human weakness. Furthermore, Gerych betrays conceptual confusion as to the very meaning of celibacy in the early Church. The question was not so much whether there was a married clergy or not (celibacy in the strict sense), but whether they were bound to absolute continence (celibacy in the broad sense). He also states that "Elvira took a position in Canon 33 that all higher clerics, that is deacons upwards, could not marry (*ne mohly zenytyts*)", and that Arles (314), c. 29 took a similar stand. Ibid., 285. These councils, we must note, had no word to say about the prohibition of marriage as such. They prohibited the use of marriage.

¹⁰⁶ Ep. IV 36. MGH *ibid.* 269-270; PL 77, 710c-711b. English transl. from Nicene and Post-Nicene Fathers 12, 158-159: "We have found from the report of many that a custom has of old obtained among you for subdeacons to be allowed to have relations with their wives. That anyone should any more presume to do this was prohibited by the servant of God the deacon of our See, under the authority of our predecessor [Pelagius II] . . . that those who at that time had been coupled to wives should choose one of two things, that is, either to abstain from their wives or on no account whatsoever presume to exercise their ministry. And according to report, Speciosus, then a subdeacon, did for this reason suspend himself from the office of administration, and up to the time of his death bore indeed the office of notary, but ceased from the ministry which a subdeacon should have exercised. After his death we have learnt that his widow, Honorata, had been relegated to a monastery by thy Fraternity for having associated herself with a husband. And if so, as is said,

therefore, the only reason for the impediment was the promise of continence the wife had made at the time of her husband's ordination.

6. Prohibition of the Remarriage of a Cleric's Widow in the Eastern Church

Unlike the case in the Western Churches, the origin of the impediment to the second marriage of a cleric's widow is far less clear. Knetes writes:

A priest's widow is not allowed to marry again . . . in the Eastern Church this regulation, strictly speaking, prevails only as a custom; for there exists no canon whatsoever enjoining it. Hence to trace its origin in the history of the Eastern Church is no easy matter.¹⁰⁷

The clearest authority in the Byzantine Church on this matter is undoubtedly Balsamon who brings up the subject in connection with his commentary on Canon 48 of the Council of Trullo. This canon required that a bishop, before he is consecrated, should send his wife away to a monastery.¹⁰⁸ In Balsamon's opinion, the wife of a bishop is to receive the tonsure so as to ensure that she, as a religious, does not enter a second marriage. He then goes on to say that, in his opinion, this canon also prohibits the wives of priests from entering a second marriage, contrary to the opinion of those who think this to be permissible.¹⁰⁹

Canon 48 of Trullo itself makes no mention of the requirement of tonsure – compelling the wife to become a nun – and it was only with the legislation enacted by the Byzantine Emperor Isaac II Angelus in 1187, contemporary to Balsamon, that this was so.¹¹⁰ In Balsamon's mind the need for tonsure was in

her husband suspended himself from ministration, it ought not to be to the prejudice of the aforesaid woman that she has contracted a second marriage, especially if she had not been joined to the subdeacon with the intention of abstaining from the pleasures of the flesh. If then you find the truth to be as we have been informed, it is right for you to altogether release the aforesaid woman from the monastery that she might be at liberty to return to her husband without any fear."

¹⁰⁷ Ordination and Marriage, 399.

¹⁰⁸ JOANNOU I 1, 138-139. Cf. PG 137, 684b-688c for Balsamon's commentary.

¹⁰⁹ PG 137, 687b: *Nota ergo haec omnia, et maxime propter eos qui existimant sacerdotum uxores posse etiam secundo nubere. Existimo enim quod ab hoc canone eis secundo nubere non permittetur.*

¹¹⁰ Also required was the written consent of the wife, failing which the bishop could not be consecrated. Cf. PG 137, 685b; Rhallis and Potlis, *Syntagma* 2, 421; Zachariae, *Ius Graeco-Romanum* III 515. (For biographical details of Isaac Angelus, see P. CHARAMIS, in: NCE 7, 660-661.) Note that Pope Alexander III (1158-1181) had already before this time required the bishop's wife, in the Latin Church, to take the monastic veil: *Decretales Gregorii IX*, Lib. III 32, 5.

order to make the separation of the wife from her bishop-husband definitive and secure;¹¹¹ yet it was not this religious consecration that was the first source of the impediment to remarriage,¹¹² for even ordinary priests' wives, according to Balsamon, were bound by the same prohibition, without any suggestion that they too be tonsured. He does not, however, attempt to explain the reason for the impediment.¹¹³ This Balsamon attempts to do elsewhere, in his commentary on Canon 44 of St. Basil the Great.

Canon 44 of St. Basil deals with the punishment to be given a deaconess who fornicates with a pagan.¹¹⁴ In his commentary, Balsamon expresses the opinion that, just as a deaconess once consecrated to God, and even if subsequently deposed, cannot marry or use her marital rights (if she were married), so with monks, clerics, nuns and women ascetics who have abandoned their vocation.¹¹⁵ Not only are these, moreover, forbidden to enter a second marriage, but so too are the wives of priests on account of the fact that they, being 'one body and one flesh' with their priest-husbands, whom Balsamon

¹¹¹ Ibid. 687a: *Quoniam autem per consecrationem divortium elegit, per tonsuram coetur seperationem perficere, et non ludere ubi non est ludendum.* Tonsure prevented any future resumption of married life, and of remarriage during the life time of the bishop-husband, made possible by the divorce laws of that time in Byzantium.

¹¹² The editors of the Pedalion, in their footnote on Canon 48 of Trullo, 348-349, give us a parallel case of a woman who consents to her husband becoming a monk: "But that the consequence . . . is that the wife of one who is destined to become a monk is herself compelled to become a nun . . . is something that is equally manifest. For the agreement she made with her husband that he might become a monk compels her perforce to refrain from getting married thereafter and to remain unmarried throughout the rest of her life. And this celibacy, again, in order to ensure its being preserved inviolable and free from danger and suspicion, necessitates her departing from the world and entering a convent and getting tonsured as a nun." It is the agreement made with her husband, and not the fact of entering the convent, that is considered the source of the impediment.

¹¹³ Balsamon merely indicates that remarriage would be contrary to the 'divine canons'. 688b.

¹¹⁴ The canon reads: "A deaconess who has been fornicating with a Grecian is admissible to communion [to church] but to the sacrificial offering she will be admissible in the seventh year, that is if she lives in chastity. But a Grecian who after his conversion again indulges in sacrilege (is like a dog that) returns to his vomit. We therefore no longer permit the body of the Deaconess to be put to carnal use, on the ground that it has been consecrated." Pedalion 821-822.

¹¹⁵ PG 138, 719c: *Quamobrem eam, quae semel Deo est dedicata, etiamsi fuerit deposita, nullo modo sinit alicui conjungi, quod sit corpus ejus consecratum, et servari debeat ab omni coitu, et omni usu carnali juxta universalem regulam quae dicit 'Quod sanctum est non fit pollutum'. Nota ergo haec propter clericos et monachos, qui transformant et mutant habitum, imo et monachas etiam, et ascetrias volentes legitimis uxoribus aut viris conjungi.*

considers as 'consecrated' or 'professed' to God, are as if they were consecrated too.¹¹⁶

The reasoning that Balsamon uses is of some interest. Although not providing a convincing explanation of the reason for the impediment, there are elements which have internal cogency and consistency and which could very easily be developed into a full explanation. Thus the priest's wife was unable to remarry, according to the scholiast, because she was in some way 'consecrated' to God through her assimilation to the state of her husband. Her husband, even if he happens to reject his own priesthood, has consecrated his body to God and is therefore not free to remarry. Likewise with the wife who, by legitimate marriage, is of the same priestly body and flesh.

That Balsamon should explain the impediment in terms of 'consecration' is curious. The very notion of 'consecration' implies a total giving of self, by conscious choice, to God and the service of his Church in a way that makes the object of consecration 'separated' from ordinary use, being for the exclusive use or possession of God. Consecration of the body is an integral part of this act and results in the duty and responsibility of living in a state of virginity or perfect continence.¹¹⁷ This theology of the consecrated life explains quite adequately why deaconesses, nuns, women ascetics and monks are prohibited from contracting marriage or of using it: this would be a profanation of the pact made with God to live in perfect, integral chastity. The consecrated body has to be preserved from every carnal use according to the universal law that "what is holy [separated] is not to be defiled".¹¹⁸ Balsamon attempts to use

¹¹⁶ *Ibid.*, 720d-722a: *Existimo autem eas ab hoc canone recte secundo nubere prohibendas, nec sacerdotum enim uxores, sicut nec qui sunt sacriati sacerdotium recusantes, permittentur vivere ut laici, et secundo matrimonium contrahere: sacerdotum enim uxores unum corpus et una caro sacerdotalis, per legitimam sacerdotii conjunctionem appellatae, et ea de causa veluti consecratae, non profanabuntur per secundas nuptias. Sacerdotes autem, qui semel secundas nuptias, eo quod Deo sunt consecrati (hierothenai), rejecerunt, et Deo hoc utique professi sunt, non sinentur per carnalem cupiditatem sacerdotalem dignitatem repudiare, et quam Deo fecerunt professionem infimare et carnali libidini servire: sed etiamsi semel sacerdotio renuntiaverint, corpora sua, quae sunt Deo semel consecrata (hierothenta), prohibebuntur secundis nuptiis profanare.*

¹¹⁷ Cf. N. LOHKAMP, in: NCE 2, 209; BONI 61-67.

¹¹⁸ *Ibid.* 719d. In his commentary on Canon 19 of St. Basil, which deals with monastic profession, Balsamon says that in his opinion celibate clerics (of the bishop's tribunal) tacitly make a profession of 'not contracting marriage after ordination'; PG 138, 653d. This tacit profession is the effect of the cleric's consecration. Such a consecration has a different quality from that of the married priest; it is effected not by the fact of ordination but by the donning of the 'rason' or outer monk's garment. From the 11th century, celibates were prohibited from ministering in village parishes and were to be considered 'monks', having at least taken the rason. This practice developed solely as a result of the legislation of the 11th century compelling all secular ordinands to be married. The obligation to chastity was

this same theology to explain the prohibition of second marriages to both priests, and to their wives. Their bodies, he says have been consecrated; second marriage would therefore be a 'profanation', a 'repudiation' of priestly dignity, a destroying of that which was promised to God.

Balsamon's explanation would be thoroughly consistent and indeed quite obvious but for one fact: priests and other clerics, by dint of Trullo Canon 13, were allowed to use their marriage rights and therefore did not live perfect celibacy.¹¹⁹ Only a celibate could be considered as being truly 'consecrated'.¹²⁰ Balsamon tried to give a doctrinal concordance of the various disciplinary norms of the Byzantine Church including Trullo 13. The fact that there is doctrinal inconsistency in the theology used by Balsamon does not, in the judgement of this author, throw a disfavoured light on the latter but rather, as we will demonstrate later, highlights the inconsistency of the discipline of this canon.¹²¹ It is because of the priest's consecration of his body at the moment of his ordination that he was bound to celibacy; his wife took her own part in this act by promising perpetual continence. Without celibacy, the impediment to remarriage is unintelligible.

St. Paul had counselled marriage partners to abstain for a time from relations with each other so as to devote time exclusively to prayer. This was to be done only where there was mutual consent.¹²² The law of continence in the Western Church would be a grave injustice to the wife and an injury to the holiness of the sacrament of matrimony if there was not mutual consent and mutual consecration of the body to God.¹²³

Balsamon had argued that the wife is, in some way, consecrated because of her union in marriage with her husband-priest. It is interesting to note the analogous reasoning of his contemporary, Pope Alexander III (1139-1181), in a document conserved in the Decretals of Gregory IX. The Pope states that no one who is married can enter the monastery to become a monk unless his wife also consecrates herself (*similiter convertatur*) for, he states, it is incon-

therefore associated with this monastic ceremony and widowers also were eventually required to enter the monastery. Cf. PG 138, 653d; Pedalion 341-343; KNETES 506. See also, Chapter 4.

¹¹⁹ JOANNOU I 1, 140-143; PG 137, 560-561.

¹²⁰ Cf. *supra*, fn. 118.

¹²¹ Cf. Chapter 4: commentary on Canons 12 and 13 of Trullo.

¹²² I Cor 7,5.

¹²³ Boni writes on this point: "Nell'ordinazione dei chierici uxorati, la legislazione canonica non intendeva assolutamente che venissero defraudati i diritti delle loro mogli. I diritti e i doveri di questi matrimoni, infatti, potevano essere sospesi soltanto da un patto di reciproco consenso stipulato tra i coniugi, espresso in un impegno di continenza . . . dinanzi alla comunità ecclesiale." *Sacralità* 144-145.

gruous that one partner consecrates himself to God while the other remains in the world, since by conjugal union both have become one and the same body, and this, he adds, would destroy the conjugal pact. This being the case with monks, how much more so is it with clerics who are of even greater dignity than monks.¹²⁴ This reasoning of Alexander III explains perfectly why a priest's wife cannot enter a second marriage: being of one and the same body through matrimony, she becomes one and the same spirit through her own consecration (which occurs through her own binding promise of perpetual continence at the time of her husband's ordination). Balsamon could have been led to the same conclusion had it not been for the discordance produced by the praxis of married priests based on Trullo Canon 13.¹²⁵

This reasoning on the part of Balsamon, though undeveloped, became traditional in Greek canonical interpretation. It was accepted by Matthew Blasthars¹²⁶ and the Pedalion editors¹²⁷ without any attempts being made at clarification. The Russian canonist S. Trojckij, however, thinks quite differently on the matter.¹²⁸ Balsamon, he maintains, was mistaken in arguing that the impediment against second marriage was based on anything other than the requirement for the bishop's wife to receive monastic tonsure – the effect of the legislation of Emperor Isaac Angel. Nor did Trullo Canon 48 imply a prohibition of second marriage, Trojckij continues; Balsamon did not base himself on the history of the question, but only on contemporary practice; for only in the 12th century did the fact of orders become an impediment for the

¹²⁴ *Decretales Gregorii IX, Lib. III 32, 6: Coniugatus ad monasterium converti desiderans, prohibetur suscipi, nisi uxor eius (similiter) convertatur. Nam, dum unum utrorumque corpus coniugii copulatione sit factum, incongruum est, partem converti, et partem in saeculo remanere; nec recipietur apud Deum illius viri conversio, cuius sequitur coniugalis foederis prostitutio. Quum igitur coetus clericorum longe praeemineat coetui monachorum ita ut aliquando bonus monachus vix bonum clericum faciat, nullus coniugatorum est ad sacros ordines promovendus, nisi ab uxore continentiam profitente fuerit absolutus, ut fiat deinceps de carnali copula spirituale coniugium.*

¹²⁵ A similar 'impasse' of reasoning is found in a curious passage of a document of 15th century Rus. Metropolitan Photius had written to the city of Pskov in 1422 (or 1425): "But it would be foolish for the wife of a priest to enter into a second marriage; because beforehand she was of one body with her husband, and is (now) as if (she had) half the body of the deceased." HERMAN, *Textus selecti iuris ecclesiastici russorum, Fonti, Serie II, Fasc VII, c. 6, 86* (in Latin).

¹²⁶ Syntagma letter <gamma>, cap. 17: PG 144, 1200b.

¹²⁷ Pedalion 349: "From this canon, Blasthars rightly infers that neither ought the wife of the deceased priest marry a second time."

¹²⁸ *Vtorobračie klirikov. Istoriko-kanoničeskoe izsldovanie*, S. Petersburg, 1912, 210-215.

wife to enter a new marriage. Before this time, the author claims, there is no certain evidence of such an impediment in the East, and it probably became so under the influence of Western practice.¹²⁹

Trojckij's conclusions are reasonable in terms of the logic of post-Trullan legislation and praxis, but defective if only on historical grounds. Balsamon was sure that the impediment was a long standing practice of the Eastern Church. He writes that the "sacred canons" prohibit the priest's widow from marrying again (though he gives no reference to these canons).¹³⁰ Furthermore, there is evidence of this impediment in the early centuries: the Armenian Council of Chahabivan (444) prohibited a priest widower from entering a second marriage and also a widow of a deceased priest from marrying again.¹³¹ The Armenian Church was still in close communion with Rome in the 5th century and it is not improbable that the reasons for this discipline were the same as those in the Roman Church – celibacy.¹³²

If the impediment to second marriage of a priest's widow was born in a legislative context of celibacy (as was clearly the case in the Western Churches), any vestige of this impediment argues for a primitive discipline of celibacy which gave the impediment its theological rationale. The terminology which had developed to denominate the wife of the cleric in both Churches (bishops, priestesses, deaconesses and sub-deaconesses) is an interesting indication of the unity of spirit and, it is to be suspected, the unity of discipline that existed prior to the 6th century.¹³³ The Byzantine Church reflects this ancient unity of discipline, given our hypothesis, by its custom of prohibiting priests' widows from marrying again.

¹²⁹ Ibid., 211-213.

¹³⁰ Syntagma IV 563-564; PG 137, 688b.

¹³¹ *Canones Synodi Armeniorum*, c. 2: A. Mai, *Scriptorum Veterum Nova Collectio*, Romae 1838, X 2, 292: *Si presbyter moriatur, uxor eius alio viro nubere non audeat, neque presbyter aliam sibi ducere uxorem.*

¹³² See also COCHINI 309-310.

¹³³ In the 17th century there was a tradition in the Greek Church, already well established, of calling the wife of the priest 'popadias' and the wife of the deacon 'diachonissas'. J. GOAR, *Euchologian sive Rituale Graecorum*, Paris 11647, 264. The same equivalent terms were found in the Western Church in the 6th century, in a context of absolute continence: 'episcopia', 'presbytera', 'diaconissa', 'subdiaconissa'. Cf. Council of Tours (567), Canons 14 and 20: CC 148A, 181; 183-184. This terminology was developed, no doubt, to honour the cleric's wife who had accepted a vocation for herself and her husband involving perfect chastity. It was a public fact that she would not be able to remarry. In the Greek Church of the 17th century, if a cleric's wife remarried she would be deprived of her title. GOAR *ibid.*

7. Canon 3 of Trullo and the Sanctions against Transgressors

To conclude our commentary on Canon 3 of Trullo, mention must be made of the sanctions imposed by the Fathers against those clerics who had contravened the discipline reaffirmed therein. In the canon we read:

Now whereas they of the most holy Roman Church propose to maintain discipline most strictly but those who are under the throne of this heavenly protected and Imperial city follow the rule of humanity and condescendence, we have merged both tendencies into one so that gentleness might not degenerate into licence nor austerity into harshness, having in mind the fault of ignorance that has reached no small number of men . . .

The canon goes on to say that those who are implicated in a second unlawful marriage,¹³⁴ if they repent and effectively amend their irregular situations before a determined time,¹³⁵ are to be restored to the honours of their position after a certain time of penance, though remaining suspended from priestly functions. If they remain contumacious they are to be simply deposed. Those, however, who have but one wife, whether she were a widow or whether she were a wife taken already after the reception of orders,¹³⁶ after a short time of penance may be restored to their rank without, however, the possibility of advancing further.

The inspiration for this part of the canon comes from Canon 27 of St. Basil which is repeated verbatim in Canon 26 of Trullo:

If a presbyter has through ignorance contracted an unlawful marriage, while he still retains the right to his place, as we have defined in the sacred canons, yet he must abstain from all sacerdotal work. For it is sufficient if to such a one indulgence is granted. For he is unfit to bless another who needs to take care of his own wounds, for blessing is the imparting of sanctification, but how can he impart this to another who does not possess it himself through a sin of ignorance? Neither then in public nor in private can he bless nor distribute to others the body of Christ (nor perform any other ministry); but being content with his seat of honour let him lament to the Lord so that his sin of ignorance be remitted. For it is manifest that the nefarious marriage must be dissolved; neither can the man have any carnal relation with her on account of whom he is deprived of the exercise of his priesthood.¹³⁷

¹³⁴ In this study we do not wish to enter the debate on whether marriages considered unlawful in the canon were invalid, or simply illicit. On this subject see BOBAK.

¹³⁵ 15th January of the year 6109 = 692 (COCHINI 438); Gryson gives the date as 15 Jan. 691 (117) as does Joannou (I, 1, 98). Cf. HEFELE - LE CLERCQ, *Histoire des Conciles* 3, 560-561.

¹³⁶ See Chapter 2.

¹³⁷ JOANNOU I 1, 156-157. Cf. I 2, 127-128, for the canon of St. Basil. It is to be noted that the words "For it is manifest that the nefarious marriage must be dissolved; neither can the man have any carnal relation with her on account of whom he is deprived of the

St. Basil's canon is interpreted in Greek tradition as referring to unlawful marriages entered into before ordination,¹³⁸ but there is some disagreement as to the type of unlawful marriage meant. Canon 3 of Trullo interpreted 'unlawful' in a wide sense to include all those marriages embraced by Apostolic Canons 17 and 18 as well as those contracted after the reception of orders. The scholiast Aristenus mentions, together with those prohibited by the Apostolic Canons, all those prohibited by the other 'sacred canons', namely marriages with the impediments of consanguinity or affinity.¹³⁹ In this case the mitigated sanctions imposed in Canon 3 would still be in effect after the date of January 15 of the year 692.¹⁴⁰ The contrary view appears to be held by Zonaras, who states, in his commentary on this canon:

What things pertain to this third canon are only adapted to the time in which the canon was passed, and afterwards are of no force at all. But what things the Fathers wished to be binding on posterity are contained in the 17th and 18th Canons of the holy Apostles which having been neglected during the course of time this Synod wished to renew.¹⁴¹

Zonaras, along with Balsamon, restricts the extension of the term 'unlawful' as used by St. Basil to categories exclusive of those found in the Apostolic Canons.¹⁴² The Pedalion editors accept the same interpretation.¹⁴³

On the other hand, if the authentic interpretation of St. Basil's canon is that of Aristenus,¹⁴⁴ then a possible explanation of the differences of opinion could be in the fact that the Council Fathers, intent on establishing Canon 26 as a distinct and independent canon from Canon 3, perhaps unwittingly caused the need for a restrictive interpretation of the Canon of St. Basil; this would give sense to the time limit for the sanctions in Canon 3. Other offenders, outside the scope of Canon 26, are to be deposed: by force of the Apostolic Canons and Canon 6 of Trullo (for the attempted marriage of ordained

exercise of his priesthood" have been added by the Fathers of the Council, and are not found in St. Basil.

¹³⁸ Cf. commentary of the scholiasts on Canon 27 of St. Basil: PG 138, 677b-681a, and on Canon 26 of Trullo: PG 137, 600b-601c; Pedalion 31 & 319; also COCHINI 247.

¹³⁹ Commentary on Canon 27 of St. Basil: PG 138, 680d-681a, and on Trullo 26: PG 137, 610c.

¹⁴⁰ Cf. PG 137, 601c. This is the view that Gryson would seem to hold: 118.

¹⁴¹ PG 137, 529b.

¹⁴² In particular to marriages in which there is the impediment of consanguinity or affinity. Balsamon: PG 138, 677b; Zonaras: *ibid.* 680c-d. Cf. PG 137, 599-602.

¹⁴³ 31 & 319. (Interpretation of Apostolic Canon 19 and Trullo 26, respectively).

¹⁴⁴ Cf. COCHINI 248. Allowance is also made by this author for the possibility that St. Basil was concerned principally with marriages entered into after ordination, rather than before ordination.

clerics).¹⁴⁵ It is assumed that there can be no ignorance of the law in these cases.

The Council Fathers had prefaced their canon with the remarks that their discipline was one of "humanity and condescendence", opposing this to the austerity and strictness of the Roman discipline. Yet such a statement with its polemical overtones is somewhat misleading. In fact the positive discipline of the canon (as with Canon 6) is of the same "austerity" as that of Rome.¹⁴⁶ The discipline of Trullo was already found in the imperial legislation of Emperor Justinian (527-565) who, in giving civil effect to Church law, claimed fidelity to the tradition of the Apostolic Church.¹⁴⁷ These laws were essentially identical to the laws and tendencies of the Roman Church.¹⁴⁸ The Emperor, moreover, did not hesitate to impose new severe sanctions to enforce the traditional discipline of the Church, for example in declaring illegitimate the children born of a marriage contracted after the reception of orders.¹⁴⁹ The Western Church in its various provinces also had severe legislation. At a time of deteriorating clerical discipline, the Spanish Councils of Toledo VIII (653) and IX (655) had declared that an incontinent wife would be sold as a slave and the children deprived of hereditary rights and made slaves of the Church.¹⁵⁰ Certainly this discipline was harsh in the extreme, but it was not shared by Rome. Furthermore, the Spanish prelates would admit of no ignorance of the law (especially if continence was to be expressly professed at the time of ordination). The Fathers of Trullo, on the other hand, were concerned with those who were in ignorance of the laws of the Church to whom they wished to show a measure of leniency. Indeed the Western Church itself had always shown such clemency towards those who had displayed this ignorance.¹⁵¹ The part of Trullo Canon 3 regarding the transgressions of monogamists seems, in fact, to have been inspired by this Western tradition; to the author's knowledge there is no trace in early Eastern legislation of any canon which permitted these offenders to retain their ranks and to continue their sacred func-

¹⁴⁵ Cf. Chapter Two.

¹⁴⁶ COCHINI 439.

¹⁴⁷ *Ibid.* 391.

¹⁴⁸ *Ibid.* 454-455.

¹⁴⁹ To the Perfect Julian (18 Oct. 530): Codex Justinianus I 3, 44. CJC (J) 2, 30-31. For other imperial sanctions, cf. COCHINI 384-401.

¹⁵⁰ COCHINI 426-431. The author notes that the severity was due to the involvement of the secular powers, and to the mentality of the times.

¹⁵¹ Cf. Pope Siricius, *Directa*, cap. XV: PL 13, 1145b-1146a; Pope Innocent I, Letter to the bishop of Toulouse (405): PL 20, 497-498; Pope Gregory the Great, Letter to Peter, subdeacon in Sicily, Ep. I, 42: MGH I 67. (cf. COCHINI 406).

tions.¹⁵² In early Western legislation, on the contrary, there is such a precedent.¹⁵³

¹⁵² In the documents cited in the previous footnote, the sanctions imposed on incontinent clerics (Innocent, Gregory) and husbands of widows (Siricius – though digamists are also included by the Pope) involved preservation of rank but a prohibition to receive higher orders. Justinian does have similar legislation for lectors (Novel 137, chaps 31 & 32; cf. PG 137, 72b-c). The same discipline was found in the West in the 6th century (eg. Bracara II (572), c. 43: BRUNS II 52).

¹⁵³ Cf. *supra*, fn. 151; Toledo I (400), Can. 1 (BRUNS I 203); Turin (398 or 401), Can. 8 (CC 148, 58). We have not found any such concessory canon for a higher cleric attempting marriage after ordination. This seems unique to Trullo 3, unless Canon 27 of St. Basil also extended to such cases; cf. COCHINI 248-249. St. Basil, however, did not permit exercise of the ministry to such presbyters.

Chapter Two

Celibacy and the Impediment of Orders Prohibiting Marriage

1. A Study of Trullo Canon Six

The sixth canon of the Council in-Trullo reads as follows:

Since it is declared in the Apostolic canons that of those who are advanced to the clergy unmarried, only lectors and cantors are able to marry, we too maintaining this determine that henceforth it is in nowise lawful for any subdeacon, deacon or presbyter after his ordination to contract matrimony, but if he shall have dared to do so, let him be deposed. And if any of those who enter the clergy wishes to be joined to a wife in lawful marriage, let it be done before he is ordained subdeacon, deacon or presbyter.¹

The Apostolic Canon referred to in the text is Canon 26: "As to bachelors who have entered the clergy, we allow only lectors and cantors to marry."² The Fourth Ecumenical Council of Chalcedon (451), in its Canon 14, gave a similar authorisation:

In as much as lectors and cantors in some provinces have been permitted to marry, the holy Council has made it a rule that none of them be allowed to take a wife that is of a different faith . . .³

The discipline is here presented as being a particular custom restricted to certain provinces only.⁴ What is affirmed in both these canons indirectly is

¹ JOANNOU I 1, 131-132. (English translation: Nicene and Post-Nicene Fathers 14, 364). For Greek and Latin text see appendix.

² Item I 2, 19 (given as Canon n. 27; in the Pedalion it is given as n. 26: 38). The Greek terms for lector and cantor are 'anagnost' and 'psalt' respectively. In Herman's article on celibacy, in: DDC 3, 148 an error is made (probably typographical) when it is stated: ". . . nous avons la preuve dans le 5^e canon apostolique qui restreint la liberté de prendre femme aux seuls chantres et lecteurs".

³ JOANNOU I 1, 80.

⁴ Cf. COCHINI 292-295. This author notes that the universal discipline as indicated in Canon 26 of the Apostolic Canons was unknown to the bishops of the Oriental Churches present at the Council; this indicates that the collection probably appeared after the time of the Council. The general discipline in the East, therefore, appears to have been severer than that in the West. Confirmatory of this view is the fact of there being other Eastern documents of the early 5th century: Canon 3 of the Persian Council of Seleucie-Ctesiphon (410) and the Doctrina Aeddei (c. 400). Cf. Ibid. 311, 343. The Pedalion authors, on the

that higher clerics, from the subdiaconate onwards, were prohibited from marrying. Earlier regional councils had already legislated to this effect in a clear way. The Council of Ancyra (314) decreed deposition for a deacon if he attempted marriage unless this option was declared and permitted at ordination:

Those who have been made deacons, if at the moment of their ordination they declared that they need to marry, not being able to remain single, and afterwards marry, they may continue in their ministry because the bishop had permitted this to them. But if at the moment of their ordination they remained silent, undertaking to live as they were and afterwards proceeded to marry, these are to be dismissed from the functions of the diaconate.⁵

The Council of Neocaesarea (314-325), following in the wake of Ancyra, complemented the legislation of the latter⁶ by decreeing in its first canon:

If a presbyter marry, let him be removed from his order; but if he commit fornication or adultery let him be altogether cast out and submitted to penance.⁷

In the Western Church the first documents which legislate on celibacy contain no explicit prohibition of marriage after the reception of orders. The first conciliar document on celibacy, Canon 33 of the Spanish Council of Elvira (c.305) reads:

We decree that all bishops, priests and deacons and (vel) all clerics engaged in the ministry are forbidden entirely to have conjugal relations with their wives and to beget children; whoever shall do so will be deposed from clerical dignity.⁸

The discipline of celibacy is to refrain from the *use* of marriage. In the first pontifical documents, likewise, there is no special mention of the law prohibiting virgin clerics from contracting marriage. The reason for the omission is, however, quite obvious, given that if clerics were to be perpetually continent,

other hand, give a rather obscure interpretation (259): "Notwithstanding that Ap. c. XXVI commands that Anagnosts and Psalts may marry after being installed by chirothesy, it appears from what the present canon says that this was not permitted everywhere (and especially in Africa, according to its c. XIX)". An assumption is made that the discipline of the Apostolic Canon was in effect throughout the Orient at the time of the Council. Also see *ibid.* 51 ff.

⁵ JOANNOU I 2, 64: *Quicumque diaconi constituti, in ipsa constitutione testificati sunt et dixerunt, oportere se uxores ducere, cum non possint sic manere, ii si uxorem postea duxerint, sint in ministerio, eo quod hoc sit illis ab episcopo concessum. Si qui autem hoc silentio praeterito, et in ordinatione, ut ita monerent, suscepti sunt, postea autem ad matrimonium venerunt, ii a diaconatu cessent.*

⁶ COCHINI 203.

⁷ JOANNOU I 2, 75.

⁸ BRUNS II 6: *Placuit in totum prohibere episcopis, presbyteris et diaconibus vel omnibus clericis positus in ministerio abstinere se a coniugibus suis et non generare filios: quicumque vero fecerit, ab honore clericatus exterminetur.*

once ordained, then *a fortiori* marriage could not be contracted because it could not be consummated. Given the strong preference that the early Church always had for strict (virgin) celibates,⁹ this omission would indeed otherwise appear inexplicable. Neocaesarea Canon 1 was but an explication of what was clearly implied in Elvira Canon 33. The fact that writers have often confused these distinct prohibitions demonstrates how very closely they are related. It is our contention that in the Eastern Church, as much as in the Western Church, the prohibition of marriage after the reception of orders was but the direct consequence of the law of continence.

2. *Causal Relationship between the Prohibition of Marrying and Continence.*

The causal relationship existing between the impediment of orders to marriage and the law of continence is quite clearly seen in a letter of Pope Leo the Great to Rusticus of Narbonne:

The law of continence is the same for the ministers of the altar as for bishops and priests, who when they were laymen or readers could lawfully marry and have offspring. But when they reached the said ranks what was before lawful ceased to be so.¹⁰

Here the ideas of continence and lawful marriage are inversely related. Where there is a law of continence there is no possibility of having lawful offspring through a lawful marriage; if there is no such law of continence there is no impediment to lawful marriage.

Another example is given us in the *Quaestiones Veteris et Novi Testamenti* attributed to Ambrosiaster (366-384):

But perhaps someone will say: if it is permissible and is good to marry, why is it that priests are not allowed to marry?; in other words, why is it that ordained men can no longer join (with their spouses)?¹¹

⁹ Cf. *Canones ecclesiastici SS. Apostolorum* (c. 300): PITRA, *Juris ecclesiastici Graecorum historia et monumenta*, I Romae 1864, 82-86; Epithanius of Constantia (315-403), *Exposito de fidei*, 21: GCS 37, 522; St. Jerome, *Adversus Vigilantium*, 2: PL 23, 340b-341a; Gregory of Nazianzus, *Discourse 40*: PG 36, 396b; *Testamentum Domini Nostri Jesu Christi* (end of 5th cent.): I.E. RAHMANI, T.D.N.J.C., *texte syriaque et traduction latine*, Mayence 1899, 27, 79-81. Canon 10 of Ancyra itself attests to the practice of ordaining celibates.

¹⁰ PL 54, 1204a: *Lex continentiae eadem est ministris altaris quae episcopis atque presbyteris, qui cum essent laici sive lectores, licito et uxores ducere et filios procreare potuerunt. Sed cum ad praedictos pervenerunt gradus, coepit eis non licere quod licuit.*

¹¹ CSEL (*Corpus Scriptorum Ecclesiasticorum Latinorum*) 50, c. 127, 414-415; PL 35 (II) 2391-2392: *Sed forte dicatur: Si licet et bonum est nubere, cur sacerdotibus non licet uxores habere? Id est, ut ordinatis jam non liceat convenire?*

In the Sixth Novel of the Byzantine Emperor Justinian, written in 535, in which the discipline of the Church is synthesized, the very textual juxtaposition of the discipline of continence with the prohibition of marriage suggests a clear causal relationship:

... in fact nothing is (looked for) as much in the holy ordinances as men living in chastity or who do not cohabit with a spouse or of whom the woman, if they were or are still married, and as monogamists, has chosen chastity herself, which the divine canons have made into a first principle, the foundation and rock of all other virtues. If it happens therefore that a priest, a deacon or a sub-deacon should take a wife or concubine, let him be immediately removed from his rank and treated thereafter as a layman.¹²

It is to be noted that the language employed in this text does not indicate simply a preference for those who live continence – and therefore leaving candidates with a choice – but rather a factual statement of the emphasis found in tradition (the ‘holy ordinances’) of the need in clerics for perfect chastity.¹³ The modes of living this chastity are then explicated.¹⁴ Taking a wife or concubine (a slave girl, for example) would breach the discipline of absolute continence, for which the penalty is expulsion from the clerical state.

In the Western penitentials of the 6th-9th centuries the relation of the one discipline to the other is, from the very presentation of the texts (with the one closely following on the other), strikingly suggestive.¹⁵

Even a cursory reading of some of the many patristic sources concerning virginity and celibacy, although less explicit, suggests the same line of thinking. Thus, for example, St. Jerome (347-419) writes:

What are the Churches of the East to do? What is to become of the Egyptian Churches and those belonging to the Apostolic See which accept for the minis-

¹² Novel 6, chap. 5: CJC (J) 3, 42-43.

¹³ Later in the same text Justinian writes: "The life of chastity is actually for us a matter of concern over and above all others . . . one will find without difficulty among a crowd of good men (subjects) worthy of being promoted to the priesthood". Loc. cit. Cf. COCHINI 392-394.

¹⁴ In commenting on this canon, Lea says: ". . . and though the strongest preference is expressed for those who though married preserve strict continence the very phrase employed indicates that this is altogether a matter of choice and that previous conjugal relations were not subject to legislative interference": H.-C. LEA, *The History of Sacerdotal Celibacy in the Christian Church*, London 1884, 87. Bilaniuk, basing himself on Lea, writes: "Also, preference was to be given to married clergy who lived in strict continence but the continuation of the previous marital relations were not subject to legislative interference": P. BILANIUK, *Celibacy and Eastern Tradition*, in: G. FREIN (ed.): *Celibacy: the necessary option*, New York 1968, 87. This interpretation seems to us to be quite gratuitous.

¹⁵ Cf. A. STICKLER, *The evolution of the discipline of celibacy in the Western church from the end of the Patristic Era to the Council of Trent*, in: J. COPPENS (ed.), *Priesthood and Celibacy*, Milano 1972, 511-517.

try only men who are virgins or those who practise continency, or, if married, abandon their conjugal rights?¹⁶

The Apostles had either been virgins or, though married, had lived celibate lives. Those persons who are chosen to be bishops, priests and deacons are either virgins or widowers or, at least, when once they have received the priesthood are vowed to perpetual chastity.¹⁷

Eusebius of Caesarea (265-339/340) writes:

For a bishop, says Scripture, must be the husband of one wife. Yet it is proper that those who belong to the sacred ministry and those who are occupied in the service of God should abstain from the commerce of matrimony.

.....

As for those who have not been judged worthy of a ministry so holy, Scripture concedes to them (conjugal relations) letting them know clearly that marriage is honourable and the nuptial bed undefiled, (and that) God judges debauchers and adulterers.¹⁸

If it could be shown that there was an exclusive cause and effect relationship between the prohibition to marry once in orders and the law of absolute continence, the latter being the only intelligible reason for the former, a firm argument would be produced to demonstrate that the law of celibacy was a universal norm of the early Church. Apart from the considerations already made, various other arguments can be brought forward to support this contention. Five of these will now be presented.

a) *Same Motivation for the Prohibition of Digamy and Post-ordination Monogamy.*

Canon 1 of Neocaesarea as it stands makes no distinction between a priest who had once been married, now a widower, and a man who had never been married (a 'strict' celibate). Good methodology requires one to refrain from making distinctions where the law itself makes none, unless the context makes it obvious. Thus we may assume that both categories of celibates are sub-

¹⁶ *Adversus Vigilantium*, 2: PL 23, 340b-341a. English trans. taken from *Nicene and Post-Nicene Fathers VI* 418.

¹⁷ *Apologeticum ad Pammachium* Ep 49, 21: CSEL 54, 386-387. For an exegesis of this and the previous text see COCHINI 324-330. Engl. trans.: *Nicene and Post-Nicene Fathers* 79.

¹⁸ *De Demonstratione Evangelica* 1, 9: GCS 23, 43. English translation taken from W.J. FERRAR, *The proof of the Gospel being the Demonstratio of Eusebius of Caesarea*, *Translations of Christian Literature. Series I, Greek texts*, 1 New York 1920, 53-54. For a detailed analysis of this text and of the thought of Eusebius, see COCHINI 205-207.

ject to the prohibition to marry.¹⁹ In like manner, we are justified in assuming that the reason or motivation for the same censure, of deposition, is the same for both cases. According to Balsamon, the reason for the prohibition of a second marriage of a widower priest is his 'consecration', analogous to the consecration of virgins, deaconesses and monks.²⁰ This reasoning applies *a fortiori* to strict celibates. Our own analysis in this study of the reason for the legislation of Apostolic Canons 17 and 18 strengthens the hypothesis of the Pauline injunction *unius uxoris vir* being *propter continentiam futuram*. This would apply *a fortiori* to the strict celibate.

b) *Argument from Scripture*

The prohibition against digamists is clearly based on New Testament scripture. But on what scriptural grounds could the prohibition (rather than counsel) be extended to strict celibates, unless the former prohibition was understood as *propter continentiam futuram*? Such a prohibition would appear to be an injury to the right of a man to take a woman in lawful wedlock²¹ and, indeed, would appear to contradict the very injunction of St. Paul: 'man of one wife'. Furthermore, the Levitical law required only that the Levite priest, in taking a wife, be certain that she had the prescribed qualities.²² There is no indication in the texts of Leviticus to suggest that the marriage had to be celebrated before the assumption of sacerdotal office.²³ In fact a literal reading of the text: "The priest shall marry a virgin" could suggest the very opposite. Would not the Fathers of Neocaesarea be contradicting scripture by not allowing a priest, once a priest, to marry a virgin? One would be inclined to think so, unless the explanation was, one ventures to suggest, that the Levite priest was quite legitimately permitted to marry, since, as a priest, he was not

¹⁹ Ancyra itself does not distinguish between widower and non-widower celibates, but given that in the canon marriage can be conceded to the deacon, and given the rule against digamists, we may safely assume that only virgin celibates were being considered in this case.

²⁰ PG 137, 720-721a; see also Chapter 1, on the impediment to remarriage of the cleric's wife.

²¹ Cf. 1 Cor 7, 1; 7; 28; St. Ambrose, Ep 63, 62: PL 16, 1257a.

²² Lev 21, 7; 13.

²³ In Israel, the Levitical priesthood was an office or profession which one was born into. There was, however, a rite of installation when the priest assumed his office. A.G. WRIGHT, *Priest and Priesthood, Israelite*, in: NCE 11, 772-773. Cf. Roland DE VAUX, *Ancient Israel, Its Life and Institutions*, trans. by John Mc HUGH, London 1961.

bound by a law of continence (except temporarily).²⁴ The New Testament priest, on the other hand, being required (if he had been married) with the consent of his wife to give up his marital rights, would not then have been able to enter into a first marriage if he had been a strict celibate; still less would the widower priest be able to engage in a second marriage.

c) Argument from Conciliar Documentation of the Persian Church

A consideration of the 5th century Councils of the Church of Persia (Chaldean Church) leads, the author believes, to an indirect confirmation of his hypothesis. In the year 410 the first Council of the Persian Church, Seleucia-Ctesiphon, issued a canon which demonstrates that the discipline of celibacy-continence was strictly obligatory in this remote Oriental Church in the early fifth century.²⁵ Clerics were forbidden to marry.²⁶ Seventy years later the situation changed dramatically. The Persian Church had, in the meantime, broken off from the mainstream of Christianity by rejecting the Ecumenical Council of Chalcedon (451). In going its own way in matters of doctrine, it also went its own way in matters of discipline.

Barsauma, the Nestorian Metropolitan of Nisibis, had taken to himself a nun as wife. In his desire to legitimize his marriage, he convoked a Council in 484 which proceeded to give licence to all clerics and nuns to marry.²⁷ Although the Council itself was annulled a year later, this particular discipline was ratified in the Council held under Mar Acacius in 486, Canon 3, and in the Council held under Mar Babai in 497.²⁸

Canon 3 of Mar Acacius is a long tract on clerical marriage. The first part is dedicated to describing the deplorable state in which clerical discipline and

²⁴ Using a similar line of reasoning we would not expect the Levite priest to be prohibited from entering a second marriage, given that a priest's widow was allowed (Ez 44, 22), and especially if the priest had had no progeny from his first marriage. Indeed, such a prohibition did not exist. One could argue perhaps, that since there was no sacrament of matrimony as such in the O.T., there could be no possibility of a 'defectum sacramenti' in taking a second wife. This reason, though, would only be of secondary importance.

²⁵ The text of the canon (c. 3) is found in J.B. CHABOT, *Synodicon orientale ou Recueil de synodes nestoriens* (= *Notices et extraits des manuscrits de la Bibliothèque nationale et autres bibliothèques* 37) Paris 1902, 264. The canon is a restrictive interpretation of Canon 3 of Nicaea requiring clerics to live separately from all women without any exception. Also see COCHINI 311-312; 343-344.

²⁶ Cf. DAUVILLIER - DE CLERCQ, *Le mariage en droit canonique oriental*, Paris 1936, 174.

²⁷ COCHINI 312.

²⁸ *Ibid.* 312-313.

morality had fallen and in which fornication and adultery were rife. The bishops are reminded that they, knowing their own weaknesses, should be understanding towards the weaknesses of others. The Council then immediately recalls the teachings of scripture: "Christ Our Lord replied to the Apostles, who had asked him whether it was a useful thing to disengage themselves from their marriage ties, saying 'Not everyone is capable of this' . . . and the Apostle instructs the Corinthians saying: 'Concerning the matters you wrote to me about, a man is better off having no relations with a woman: but to avoid fornication, every man should have his own wife and every woman her own husband' . . . 'truly it is better to marry than to burn with concupiscence'."²⁹ The text then goes on to say:

Each of us is to choose one of two things: perfect continence or a regular marriage . . . Every deacon who has already received ordination to the diaconate is also permitted to unite himself to a woman by a regular and legitimate marriage and to exempt himself from the ancient rule which, on account of the spread of immorality, is blamed and held in derision by the people. We being all of the same conviction (wish) to put an end to . . . harmful traditions and to establish just and correct rules for those who are married and for the celibates of our dioceses. Whoever voluntarily chooses to separate himself from marriage must live alone and without distraction in a monastery (living) in purity and continence. (To such a one) if . . . after this open permission to contract a legitimate marriage and to engender children he is convicted of adultery or fornication he will be submitted to the punishment provided for in the canons . . . If a priest has not yet married and wishes to marry lawfully and to beget children lawfully, or if his first wife having died, he wishes to take a second, his bishop has no right to oppose this desire of his ; for legitimate marriage and the procreation of children, be it before or be it after sacerdotal orders, is a good thing and acceptable before God. (Such) a brother (priest) is to be considered as if he had been united but to a single wife . . . even though he has taken two, one after another. We prescribe and teach that this be so in order that the choice of perfection in preference to marriage, to a legitimate union and the procreation of children, be free from all constraint and hindrance. If anyone reacts against this true doctrine . . . let him be censured and anathematized.³⁰

The first observation to be made on this canon is that the Council Fathers were quite aware that the discipline they were introducing was a novelty: 'permission' is granted so that a cleric might 'exempt himself from the ancient

²⁹ CHABOT 303-304.

³⁰ Ibid. 304-306. Eleven years later, the Council of Mar Babai (497) added the following: "All of us bishops . . . have made the reforms relative to marriage and the procreation of children which were needed by our people and flock, and have permitted that from the Patriarch down to the last of the hierarchy everyone may openly contract a chaste marriage with one woman in order to beget children and to use (the marriage)". Ibid. 312. Cf. COCHINI 317-318.

rule', for scripture allows such a concession and, besides, the traditions are considered 'harmful' given the poor spiritual level of the clergy. It is also clear from this canon that the rule of celibacy was previously in force and that very many of the clergy were strict celibates. That clerics could be accused of being 'incontinent' also gives us to understand that married clerics were expected, previously, to abstain totally from relations with their wives.³¹

Canon Three of Mar Acacius illustrates the interpretative principle of how, whenever a radically new discipline is introduced which deeply affects the lives of clerics or the rest of the faithful, some justification of the change would be expected. This canon introduces not only a new law (of concession) but one which was opposed to both the legislation of the main stream of Christianity (as expressed in Ancyra, Neocaesarea and Chalcedon) and its own earlier legislation. For this reason much of the canon is given over to justification.³²

Another observation to be made on this canon is that for the first time in any conciliar legislation there appears the net distinction between monks and secular clergy based not on a difference of charism and vocation, but on the respective material guarantees of perseverance in living celibacy. Anyone who 'voluntarily chooses to separate himself from marriage' is required to 'live alone and without distraction in a monastery'. Those choosing to 'separate' themselves from marriage included, from the context of the canon, both the unmarried and those who – according to the earlier rule and tradition – had lived in continence within marriage. The monastery is now considered the only ambient which could provide the means for a celibate to persevere in his holy vocation. The diocesan clergyman from now on was expected to live in marriage and be free to use his marital rights.³³ The 'choice of perfection in preference to marriage' was now the exclusive prerogative of the monk.³⁴

³¹ This was clearly the law at the time of the Council of Seleucia-Ctesiphon(410) before the schism.

³² A parallel example, in our opinion, is Canon 13 of Trullo.

³³ The 6th century Palestinian church historian Zachary the Rhetor (c. 465 - c. 536), in his *Life of Severus of Antioch* (Patriarch between 512-518), writes of Barsauma: "In order to please the Persian king, and irritated by the great number of Christians who were abstaining from marriage, he dared impose upon them contrary laws which obliged every bishop, every cleric, every monk, and, in a general way, all Christians to unite with a woman through marriage and live with her. At this time Acacius, who was Patriarch of that imperial city . . . condemned (these canons) as in no way agreeing with apostolic tradition". GRAFFIN - NAU, *Patrologia Orientalis* (PO) II 112.

³⁴ By the mid 6th century the concession was withdrawn from the Patriarch and bishops, since they were to be chosen from among the monastic clergy. DAUVILLIER - DE CLERCQ 175; Cf. COCHINI 380-381.

The final observation on this canon, and the one most directly pertinent to the question of the impediment of orders, is that the Council, in conceding to clerics the possibility of contracting a legitimate marriage after having received orders, adds several times the adjoiner: 'to beget children', 'for the procreation of children' 'to use (the marriage)'. Would not this explicative be superfluous if married clerics hitherto had not been bound by the law of continence, given that the primary end and main reason for marriage is precisely to have children? Indeed this is the very point of innovation, in our judgement. The redactional style of the canon is made more intelligible if the earlier discipline had been for a cleric to be permitted marriage and its use before the reception of orders, but not after. The permission accorded the celibate in orders to take a first or even second wife and the abrogation of the prohibition of ordaining to the priesthood digamists is but a logical consequence of the concession to clerics of using their marriages.

Once the law of absolute continence is abolished, the impediment to orders of digamy and the impediment to marriage of orders lose their *raison d'être*.³⁵ Conversely, the practical reason for the impediment to orders of digamy, and for the prohibition of marriage after the reception of orders can only be on account of consecrated celibacy, *propter continentiam futuram*.

d) Argument from Difficulties of Adhering to Law of Prohibition

If a married priest's training is such that there is no specific formation for a life of celibacy, the strict prohibition against remarriage, be it before or after ordination, might appear overly rigid and even unjust. One author has written *a propos* of this:

what . . . if the wife of the man married before ordination dies? Should he be punished by this circumstance and lead a celibate life to which he was not called?³⁶

Indeed, the conflict between this prohibition and the licence married priests had had since the time of Trullo (Canon 13) to use their marriages while their wives were alive had been resolved in some Eastern Churches by requiring that the widower enter a monastery to protect him from dangers to his new state of celibacy. This was the case, for example, in the Kievan Byzantine Church: Metropolitan Peter (1308-1326) in a letter to his clergy had written:

³⁵ Nestorian Chaldean priests are permitted to marry even today. DAUVILLIER - DE CLERCO inform us that after the death of their first wife priests could marry up to "seven and half wives", "the number seven indicating the virgins and the fraction designating a widow" (!). Ibid. 175-176, fn. 4.

³⁶ BILANJUK 48.

If a priest's wife dies, let him enter a monastery and thus retain his priesthood; if he has to remain in weakness and yield to earthly voluptuousness, let him not sing (officiate).³⁷

In the Armenian Church of the 12th century the Catholicos Nerses Snorhali addressed an encyclical letter to his clergy (1166) in which he advised widower priests, if they were young, to enter a monastery so as to avoid temptations to their chastity.³⁸

The reality, nonetheless, despite the severe prohibitions and precautions, was that ordained men who had lost their wives not infrequently entered into a second marriage.³⁹ In the case of those Oriental Churches that had reunited

³⁷ Russkaja istoričeskaja biblioteka (RIB) VI S. Petersburg 1908, 161. Cf. I. ŽUŽEK, *Kormčaja Kniga, Studies on the Chief Code of Russian Canon Law*, (= *Orientalia Christiana Analecta* 168) Roma 1964, 153-154 & fn. 42.

³⁸ DAUVILLIER - DE CLERCQ 178. In the Armenian Penitential of David of Ganjak (early 12th century), chapter 73, a precise prescription on this matter was given: "In the case of a young priest whose wife dies, let him not tarry in the world, but depart immediately to a hermitage, that he may not obtain and establish as housekeepers many women in place of the deceased wife; and all his confessants among the women he shall leave to a married priest, and he shall not acquire [any others] and shall not baptise or marry. He who dares to do this is anathema. If his wife dies [when he is] at the age of sixty, he shall not leave his church, but shall stand in purity before the Lord and shall tend the people of the Lord who He redeemed by His blood. And his dwelling at night shall be a single room at the door of the church." CSCO (*Corpus Scriptorum Christianorum Orientalium*) 216, 'Scriptores Armeniaci' 3, *The Penitential of David of Ganjak*, C.J.F. DOWSETT (ed.), Louvain 1961, 51-52.

³⁹ The Fathers of the Council of Trullo had set out to correct these abuses (Canon 3) at a time when the practice of use of marriage had already been well established (cf. Chapter 4). In the 9th century a practice had introduced itself in the Byzantine Church whereby a major cleric could take a wife freely during the first two years after his ordination. Such a practice was condemned by the Emperor Leo VI the Wise (886-911) in his 3rd Novel: ZEPPOS (ed.), *Jus Graecoromanum: Novellae et Aureae Bullae imperatorum post Justinianum*, Athens 1930, I 59. According to Johannes Andrea (d. 1384), the last of the great decretalists, many Greek clerics in the 14th century contracted marriage unlawfully: *Nam licet Graeci in sacris utantur matrimonio prius contracto, in sacris tamen non contrahunt . . . licet apud multos Graecos servetur contrarium*. *Glossa ad III 3, 7 (Decretales Gregorii IX)* Ed. Venetiis, 1581, fol. 15ra. In the Kievan Rus Church of the 13th century there were many abuses and problems of clerical morality condemned by the Synod of Vladimir (on the Kliazma) in 1274 including (implicitly) illegal marriages: KULCZYNSKI, *Specimen Ecclesiae Ruthenae*, Paris 1859, 197-198 (c. 2); 199 (c. 3); 200 (c. 7). Second marriages were condemned by the Kievan Metropolitan Photius: *Letter to the city of Pskov (1425?)*, RIB VI 430, 433 and HERMAN - WUYTS, *Textus Selecti iuris ecclesiastici russorum, Fonti Serie II, Fasc. VII Romae* 1944, 85 (n. 294) and 86 (n. 298). Cf. Synod of Moscow, 1503 in *Akty, sobrannye v bibliotekax i arxivax Rossijskoj Imperii Arxeografičeskoju Ekspediciju Imperatorskoj Akademii Nauk (AAE)* 1 St. Petersburg 1836, 486-487; Synod of Vilna (1509): *Akty*

with Rome this situation led to intensive study of the question of the validity of such marriages⁴⁰ and to the formation of a special jurisprudence.⁴¹

In the Byzantine Churches a doctrinal current, as well as a tendency in praxis, has long subsisted in favour of the second marriage of widower priests.⁴² In 18th century Russia, for example, a decree of the highest authority of the Church expressly stated:

The Canons of the Holy Fathers do not prohibit a second marriage to priests and deacons; therefore there is no reason for blaming those who, becoming widowers, contract a second marriage because they are still young.⁴³

The synodal members had based their argument on the traditional norms received within the Russian Church and, in particular, on Novel 79 of Leo the Wise from the Syntagma of Matthew Blasthars.⁴⁴ In this Novel the Emperor had abrogated the punishment of reduction to the lay state for a cleric who attempted marriage, allowing him instead to take part in ecclesial duties, though not the exercise of (higher) orders.⁴⁵ A decree of Tsar Peter I (1672-1725) was also referred to, in which widower priests and deacons who married a second time might be accepted for curial duties for which ordination was

istoričeskie sobrannye i izdannye Arxeografičeskoju kommissieju (AAK) 1 St. Petersburg 1841, 527; Synod of Moscow, 1551: E. DUCHESNE, *Le Stoglav ou les cent chapitres* (=Bibliothèque de L'institut Français de Petrograd 5) Paris 1920, chap. 80, 223-225. Cf. J. MACHA, *Ecclesiastical Unification*, in: OCA 198 (1974) 150: "The canonical rule forbidding priests to remarry was widely ignored". For other Oriental Churches see DAUVILLIER - DE CLERCQ, 174-179. In the Western Church, too, whenever clerics refused to live continence they also demanded the right to take a wife (first or second). For the 8th century: *Monumenta Germaniae Historica* (MGH) Ep. 3, 303; for the 11th century: MGH *Libelli de lite Imperatorum et Pontificum* I 254-260; II 436-448.

⁴⁰ Pope Benedict XIV in his Constitution *Eo quamvis tempore* (4 May 1745), addressing the problem which arose from the custom among the Copts of ordaining as deacons infants, of whether in later years they could validly marry, admitted that among theologians and canonists there was no agreement as to whether in the Oriental Church marriage entered into after the reception of orders was simply illicit or illicit and invalid. *Iuris Pontificii de Propaganda Fide* (R. DE MARTINIS, ed.) III 228 (par. 38). For a discussion of this problem see BOBAK 140-165 (also the recension by HERMAN in *Orientalia Christiana Periodica* 1941, 227). Cf. J. BILANYCH, *Synodus Zamostiana an. 1720*, *Analecta OSBM Sect. 1, 11*, Romae 1960, 77-83.

⁴¹ The marriage would often be convalidated *ad cautelam*. DAUVILLIER - DE CLERCQ 173.

⁴² *Ibid.* 173.

⁴³ Decree of August 23 1766: *Polnoe sobranie postanovlenij i rasporjazenij po Vedomstvu Pravoslavnago Ispovedanija* (PSP), Ib, St. Petersburg 1870, 317.

⁴⁴ Letter <gamma>, chap. 4.

⁴⁵ PG 144, 1153c.

not needed.⁴⁶ A similar interpretation of the ancient discipline had already been introduced the previous century by the Moscow Synod of 1666-1667.⁴⁷

Contrary to what might be suggested by these decrees, neither the 'Canons of the Holy Fathers' nor the Novel of Leo the Wise had permitted the digamist cleric to continue living with his second wife.⁴⁸ The synodal members had permitted second marriage, which had been considered concubinage in previous centuries, in order to ease the grave problems that had arisen from the situation of widower priests. The same Synod of 1666-1667 which permitted marriage to widowers likewise abrogated the law requiring that widowers enter a monastery.⁴⁹ Subsequently widowers who wished to marry again could apply to their bishop for permission to be reduced to the rank of a minor cleric. This practice was also confirmed by the Synod of Moscow held in 1917-1918.⁵⁰

In the 19th century Rumanian Catholic Church of the Byzantine Rite there were church prelates who believed that unless, at the time of ordination, solemn profession of 'widower' chastity had been made, a priest – or any other married cleric – could on the decease of his wife lawfully marry again, though renouncing his ministry. This they believed was of apostolic tra-

⁴⁶ The decree of April 30 1724 is found in PSP IV 1252.

⁴⁷ ŽUŽEK 250 and fn. 100; cf. idem 178.

⁴⁸ Apostolic Canons 17 and 26; Trullo 6 and 26; St. Basil Canon 27; Novel 6 of Leo the Wise; Cf. Pedalion 299-300.

⁴⁹ ŽUŽEK 179. cf. idem 143-144.

⁵⁰ Ibid. 250-251. HERMAN - WUTYS, *Textus selecti iuris ecclesiastici russorum* 87-88 (n. 302). M. PFLIEGLER has written that in the Eastern Church when the wife dies "if the priest wishes to marry again he must relinquish his office and can be given some lower office in the church or be placed in the chancery. This custom is also adhered to in the churches in union with Rome." *Celibacy, Theological Meditations*, H. KÜNG (ed.), trans. C. TANSLEY (London Sheed and Ward, 1967), 28-29. Apart from the Russian practice, which was a 17th century innovation and contrary to earlier tradition (the Patriarchs of Alexandria and Antioch were also present at the Moscow Synod of 1666/1667 which introduced this practice: see ŽUŽEK 171), the Catholic Oriental Churches rejected this practice. Cf. BOBAK 140-165; BILANYCH 77-85; Benedict XIV, *Eo quamvis tempore* and *Etsi Pastoralis*. The Rumanian Provincial Synod of Zamosc (1720) had this to say: *Si quis autem presbyter post collatos ordines matrimonio iungi, aut prima uxore defuncta, secundas incoestas nuptias inire praesumpserit, per episcopos a communione atque altari arceatur, captivetur et aliis poenis canonicis afficiatur, ut peregrinam spuriamque coniunctionem abiciat*. De Matrimonio n. 7., *Collectio Lacensis* II 45b. The last statement of Pflieger concerning Oriental Catholic Churches is clearly without foundation (unless he based himself on the anomalous case of the Rumanian Church; see infra).

dition and confirmed by ancient Councils.⁵¹ The practice was severely reprobated by Rome⁵² and condemned in 1872, in the first Provincial Synod of Alba-Julia and Fogaras, held in Blaj.⁵³

The doctrinal movement for the recognition of second marriage has had its expression in more recent times in the publication of a work, in 1907, written by the well known Serbian canonist, Bishop Nicodemus Milaš.⁵⁴ The argumentation employed in this work, although displaying at times grave defects,⁵⁵ seems nonetheless to express a need for a legislation for married clerics which is completely consistent with itself.

The inevitability of the challenge to the law prohibiting marriage after reception of orders, expressed down the centuries in praxis and, more recently, in attempts at doctrinal justification, follows, in the author's judgement, from the innovation of Canon 13 of Trullo permitting the use of marriage and the consequent loss of the very reason for the impediment of orders to matrimony.

e) Argument from Reasons given by Eastern Authors for the Impediment

The third Novel of the Byzantine Emperor Leo VI the Wise (866-912), written about the year 894, is one of the first extant documents after Trullo which adduces a clear reason why ordination should be considered an impediment to marriage:

It is not right that, after spiritual ascent [by reception of orders] from carnal humbleness [of matrimony], the ordained should then return to such a state. But rather, the opposite should be the case so that the divine ministry might rise from carnal lowliness to a sublime ascent.⁵⁶

⁵¹ Cf. Ponenza of the Sacred Congregation of Propaganda Fide (Section for Oriental affairs) on the Rumanian Ruthenian Provincial Synod of Alba-Julia and Fogaras (1872), *Nota Archivi*, n. 98: MANSI 42, 677-680.

⁵² Instruction of the Sacred Congregation P. F., 24 March 1858: *Collectanea S. Congregationis de Propaganda Fide I Romae* 1907, n. 1158, 677-680.

⁵³ Mansi 42, 584.

⁵⁴ *Rukopoloženje kao smetna braka*, Mostar 1907.

⁵⁵ The author attempts to argue that St. Paul had only prohibited simultaneous bigamy (polygamy). ТРОЈКЛЈ was commissioned by the Russian Orthodox hierarchy to reply to this work, which he did in his *Vtorobračie klirikov*, S. Petersburg 1912, esp. 74-105. Other authors followed. Cf. BOBAK 145, fn. 16.

⁵⁶ Novel 3, in J.D. ZEPOS, *Jus Graecoromanum: Novellae et Aureae Bullae Imperatorum post-Justinianorum*, Athens 1931, I 59; Cf. KNETES 397; *Pedalion* 300. See *infra*, fn. 63, in which citation the Latin text is given.

This 'spiritual' explanation became traditional in the Byzantine Greek Church.⁵⁷ A Syrian document of the late 8th century is more explicit. The author, John of Dara, presents his case for celibacy, arguing first of all that priests are required to separate from their wives as Moses did and as did Peter and the Apostles after receiving their calling from the Lord:

If Moses as soon as he was called by God . . . separated from his wife . . . how much more should priests of the Church do the same. Peter and the other married apostles did not approach their wives again after having followed the Lord: just as priests ought to abstain from carnal union and unite themselves only to God. For, says the Apostle, 'he who unites himself to the Lord rejoices with the Lord, and he who unites himself to his wife thinks of pleasing his wife . . .' It is through virginity that priests are to please God, like monks . . . Virginity (celibacy) is much praised even among the Israelites . . . Furthermore the priest is the father of all the faithful, men and women. Whoever occupies this dignity among the faithful and then marries a woman, is like someone who has married his own daughter. And this is a great scandal.⁵⁸

In another Syrian work, the 'Chronicon Ecclesiasticum', written in 1286 by the Jacobite Bar-Hebraeus⁵⁹, an account is recorded of a dialogue between the 6th century Persian Catholicos Mar Aba (540-551) and the then Persian Monarch Chosroe. The Patriarch explains why the Councils had allowed second marriages, before and after the reception of orders: St. Paul having said that 'it was better to marry than to burn' and that only polygamy had been forbidden. The King in reply retorted:

None of these arguments hold . . . as for the (phrase) 'it is better to marry', the Apostle pronounced these words for the sons of the world who are under the impulse of carnal concupiscence; yet he who is established among the rank of the Apostles has to burn with love of God, and not with the desire for a spouse.⁶⁰

From the Coptic Church an interesting text is provided in the short ecclesiastical encyclopaedia entitled 'The Precious Pearl of Ecclesiastical Sciences' written by the Jacobite Ibn Sabā'ibn Zakariya at the end of the 13th century.⁶¹ In the 43rd chapter devoted to the argument of second marriages, we read:

If the priest wishes to marry a second time after the death of his first wife, he cannot fulfil any of his priestly functions. The reason is that the dignity of the priesthood is extremely great: it is like that of the inhabitants of heaven, namely

⁵⁷ Repeated by Balsamon in one of his canonical answers: RHALLIS - POTLIS, Syntagma ton theion kai ieron kanonon IV Athens 1856, 477; cf. Pedalion 300; KNETES 397.

⁵⁸ John of Dara, De Sacerdotio IV 10: Codificazione Canonica Orientale, Fonti, Serie II, Fasc. XXVII, Disciplina Antiochena Antica Siri, III (Textes concernant les sacrements), Vatican 1941, 229-230.

⁵⁹ For bibliographical note, see DAUVILLIER - DE CLERCO 17-18.

⁶⁰ Bar Hebraeus, Chronicon Ecclesiasticum III 92-96 (taken from COCHINI 381, fn. 64).

⁶¹ R. GRAFFIN - F. NAU, Patrologia Orientalis 16, 593-760.

the angels and the twenty-four Elders who, standing before the throne of the Majesty, intercede for all creatures . . . Now, the priest who is called to be an intercessor is raised to the rank of the angels, and when a man is promoted to the dignity of the angels in glorifying and blessing the Creator before the immolated Lamb, he becomes a terrestrial angel, a celestial man; but when he gives himself to the passions (of the body) and to carnal commerce, he falls from the society of man to that of the animals . . .⁶²

In these texts, which come from the Churches of Byzantium, Antioch and Alexandria, there is a clear sense of the very high dignity of the priesthood and the need for a certain 'separateness' from conjugal relations. The text of John of Dara is the most explicit in this regard, for celibacy even within marriage is prescribed. Marriage after the reception of priestly orders is likened to an incestuous union because of the priest's spiritual paternity. The other texts do not exclude conjugal relations within the first marriage and yet they contain, by the very premises for the prohibition of marriage after orders, the theological-spiritual reasons for such exclusion.

Ibn Sabā, in likening the priest to a 'terrestrial angel' and a 'celestial man', would appear to deny him the faculty of giving himself to any sort of carnal commerce. Bar Hebraeus expresses what he considers ancient theology: that the priest 'burn with the love of God and not with the desire for a spouse'. This reasoning is also implicit in the text of Leo VI. These last two authors speak specifically of the reasons for prohibition of second marriage, yet their logic would also preclude the use of the first marriage.⁶³ The negative light in which marriage (especially second marriage) appears is to be understood in its relation to the sublime dignity of the priesthood and not to a negative appraisal of marriage as such. As a sacrament, marriage could never be opposed to the sacrament of orders. In virtue of priestly consecration, the exercise of

⁶² Ibid. 737-738. Cf. Rev 5, 6-8.

⁶³ For this reason, the 17th century canonist Pietro Arcudio, when commenting on the text of Leo VI, calls this reasoning 'ridiculous' if carnal relations within marriage are not excluded: *Ridicula quoque est ratio Leonis Imperatoris cognomento Sapientis, qui in tertia sua Novella reddit rationem cur Presbyteri post sacros Ordines matrimonium contrahere non valeant . . . Non enim, inquit, dignum est, ut postquam humilitas corporalis evecta est ab ascensu spirituali, hi rursus ad carnalem abiectiorem delabantur. Sed contra potius convenientius fuerit, ut divinum ministerium ex corporali abiectiione in ascensum altum conscendat. Sic ille. At si copula includat per se sacros ordines, certe ministerium sacrum non ascendit, sed potius descendit; ergo exercitium matrimonii hoc efficit, ut gradus altior descendat, non ipsum matrimonium quod est sacramentum. Et optima ratio esset, si copula, propter quam fit matrimonium excluderetur; tunc recte dixerit aliquis, non esse dignum ut qui secularibus negotiis implicatus est, quale est etiam matrimonium, is divino munero fungatur, et contra, qui ad tam altum gradum evectus est ut ad carnis sordes descendat et se abiiciat.* Petrus ARCUDIUS, *De Concordia Ecclesiae Occidentalis et Orientalis in septem Sacramentorum administratione VI De Matrimonio*, Paris 1626, 579, a-c (rt. col).

the rights of matrimony become incompatible with the pact of consecration and therefore the consummation of first or second marriage after orders would be incompatible with this pact.⁶⁴ It is this rather than any other reason, in our judgement, that creates the reason for the impediment.⁶⁵

If marriage after orders is consummated, this is likened by John of Dara to incest ('like someone who has married his own daughter'). It is noteworthy

⁶⁴ Writing on the concession that Trullo Canon 13 gave to priests to use their marriages, Arcudio states: *Concilium autem, quandoquidem voluit concedere illis usum coniugii, sine ullo scrupulo permisit quoque uxorem ducere. Nam si est contra Canones hoc posterius, multo magis est illud primum, propter quod vetatur hoc secundum. Matrimonium enim, quae est matrimonium, non adversatur sacramento Ordinis nisi ratione exercitii. At nos concedimus permittere Ecclesiam Graecis post susceptos ordines usum matrimonii. Quid ergo mirum, si Concilium etiam matrimonium ipsum concesserit, cum istud non prohibeatur, nisi propter illud? Unde ridiculum est, quod aiunt Canonistes Graecorum, abrogatum fuisse hunc Canonem per sextam synodum generalem. Nam illi Quinisexti Concilii, et posteriores Graeci, dum incauté permittunt usum matrimonii post susceptos sacros ordines, et prohibent tamen contrahendum matrimonium, parum sibi constare videntur. Si quidem sacramentum matrimonii, ut dixi, non repugnat aliis sacramentis, nisi ratione actus secundi, et copulae: item propter incommoda, quae comitantur hoc sacramentum, et necessario annexa sunt. Quae cum Graeci post susceptos ordines admittunt, non est cur coniugium prohibeant: prohibuerunt autem illud antiqui Canones, quod nimirum etiam usum coniugii, et exercitium vetarent.* Ibid. 579, c-d (lf. col), a (rt. col).

⁶⁵ Other reasons that have been put forward, but which do not provide a convincing explanation, include: The Synod of Moscow (1917-1918). This gives as its first reason the fact of the apostolic precepts (1 Tim 3,2; Tit 1,6) and the ecclesiastical canons. It adds as a reason the unity of marriage, and the high dignity of the clerical state. *Decretum de secundis nuptiis clericorum in sacris constitutorum*, in HERMAN - WUYTS, *Textus selecti* 87, n. 302. Herman states that the Eastern Church regarded marriage after orders as being at least "indecent". DDC 3, 147. Knetes states that the prohibition was to avoid 'distraction': "but at the same time she [the Church] requires her clergy to be devoted wholly to their sacred calling and not distracted by the desire of securing conjugal unions in the future. To this practice has been applied the analogous expression of St. Paul, that a man should abide in the state in which a sacred vocation has found him (1 Cor vii, 20)". 597. Equally unconvincing as a full justification of the discipline is the reason adduced by the well known contemporary Orthodox author John Meyendorff: "... a man desiring marriage, and seeking a wife, necessarily lacks stability ... Dating, preferential treatment, preoccupation with externals are legitimate and unavoidable aspects of his behaviour. But these cannot be considered as legitimate for a man in charge of human souls, and who is supposed to be dedicated only to bringing them into the kingdom of God. The prohibition of marriage after ordination is, of course, of different nature than that which requires that a priest be married only once ... while in the first case, what is involved is only pastoral propriety and discipline, in the second case the Church, by requiring absolute monogamy of the clergy, protects the scriptural, doctrinal and sacramental teaching on marriage." J. MEYENDORFF, *Marriage, An Orthodox Perspective*, New York 1984, 67.

that in the West, for example in the Church of Gaul, a similar terminology had long since developed to describe the return to conjugal relations of a higher cleric with his lawful wife. The Council of Clermont (535) described this return, which "prejudices the high dignity of the priesthood" as a type of "incest" (*incesti quodammodo crimine*) and "vomiting".⁶⁶ This latter term echoes the vivid language of St. Basil who described the infidelity of consecrated persons in such terms.⁶⁷ The Spanish Council of Toledo IV (633) described the same as 'fornication'.⁶⁸ More traditional and widespread was the term 'adultery'.⁶⁹ The language would be applicable *a fortiori* to any higher cleric attempting marriage.

In the Eastern Church exactly the same language was used to describe the breaking of a pact of a consecrated person: fornication or adultery was the crime of indulging in prohibited carnal relations.⁷⁰ A person in higher orders was considered, in this regard, a consecrated person⁷¹ and the punishment imposed on a cleric for this act was generally the same as that imposed on a religious.⁷² Nor is there any distinction made between an unmarried cleric

⁶⁶ CC 148A, 108; Cf. COCHINI 370-371. Justinian, five years previously, had also called marriages contracted after reception of orders "incestuous": Letter to the Prefect Julian (18 Oct. 530), CJC (J) 2, 30-31.

⁶⁷ Canon 44. Cf. *supra* 26.

⁶⁸ Canon 21; BRUNS I 230. Cf. COCHINI 424-425.

⁶⁹ St. Augustine, *De Conjugiis adulterinis* II 22: CSEL 41, 409; St. Jerome, *Adversus Jovinianum* I 34: PL 23, 257a-c. The term was frequently used in the Penitentials of the 6th-9th centuries, e.g. in the *Parisiense*, Can. 113: *Si quis clericus vel superioris gradus uxorem habuerit et post clericatum eam agnoverit, sciat se adulterium commisisse*. H.J. SCHMITZ, *Die Bussbücher und die Bussdisziplin der Kirche*, Mainz 1883, I 693.

⁷⁰ St. Basil the Great, c. 18 (on lapsed virgins and widows); c. 19 (on monks), and commentary in *Pedalion* 805-808; Chalcedon, c. 16; cf. Ancyra, c. 19 and its commentary in *Pedalion* 499-501.

⁷¹ Cf. Canon 6 of St. Basil and the *Pedalion* commentary 793; Balsamon's commentary on St. Basil Can. 44: PG 138, 720-721a. The 11th century Maronite *Nomocanon*, *Book of Guidance*, considers marriage after the reception of orders as 'adultery': DAUVILLIER - DE CLERCQ 177.

⁷² St. Basil establishes the censure for adultery to be excommunication for seven years (Can. 20; but see *Pedalion* 501), and the same for fornication (*ibid.* 807-808). This sanction is found in the 4th century Armenian Church for a priest who attempts marriage: Canon 2 of Gregory the Enlightener, A. MAI, *Scriptorum veterum nova collectio, e Vaticanis codicibus edita*, Romae 1825-1838; X 2, 269. A consecrated virgin was punished even more severely by St. Basil (Can. 18), but Chalcedon in its 16th canon allowed bishops to mitigate the penance for lapsed monks and virgins. A more mitigated penance still is given in Apostolic Canon 25 for clerics. It envisaged deposition but not excommunication for a cleric caught in the act of fornication. Canon 1 of Neocaesarea established the same penance for a priest who married. In the second part of the canon it levies excommunication if he

and one attempting a second marriage;⁷³ this leads us to suppose that the theological and disciplinary reason for the sanction was the same in the early Eastern Church: the fact of consecration and its corollary – consecrated celibacy. The texts that have been cited lead, by the force of the reasoning given, to this very conclusion. From the text of John of Dara conjugal relations – even within an otherwise legitimate marriage – are regarded, by implication, as being ‘incestuous’ if the partners have truly been consecrated. A similar necessary conclusion is drawn from the legislation of the Emperor Justinian. In his Imperial Ordinance to the Prefect Atarbe (1st March 528), the Emperor states that a bishop is the ‘spiritual father of all the faithful’. Nor is he to have, for reasons of public order, his own children.⁷⁴ If married, he was forbidden to beget children or indeed to cohabit with his own wife.⁷⁵ Such relations, given the spiritual paternity of the bishop, would also in some way be ‘incestuous’. To the extent that the same paternity is predicated of a priest, his relations with his wife would fall within the same category. Nor can the spirit of Justinian’s legislation be thought to be an innovation. In Greek mentality, any married person who with the consent of his wife consecrated his body to God – as was the case certainly with married bishops and monks – a return to conjugal life was considered, at the least, fornication or adultery.⁷⁶

We conclude, therefore, by reiterating our contention that the logic of the legislation prohibiting marriage after the reception of orders indicates that, at least in the first centuries, a cleric by the fact of his ordination was ‘consecrated’ to God with the full implication of such consecration – total continence. Ordination would be conferred if the wife agreed to this life of celibacy which she also freely chose to take upon herself. This explanation, in the author’s

commits fornication or adultery. Here the prohibited marriage is not assimilated to fornication and adultery; the Pedalion authors (37) explain this part of the canon in relation to Apostolic Canon 25 by interpreting it as referring to a second or third offence. For them, forbidden marriage is likened, therefore, to a ‘first’ act of adultery.

⁷³ The Pedalion authors specifically liken unmarried subdeacons and deacons to consecrated monks: 808. The spirit of the legislation, however, would assimilate even widowers and married men living continence to monks in this matter. Cf. *Ibid.* 305; 343; 793; Canon 2 of Gregory the Enlightener: MAI.

⁷⁴ Codex Justinianus I 3, 41. CJC (J) 2, 25-26.

⁷⁵ Letter to the Prefect John (29 July 531): Codex I 3, 47. CJC (J) 2, 34.

⁷⁶ Commenting on the prohibition of cohabitation of a consecrated bishop with his wife (Trullo c. 12), the Pedalion editors note that separation is needed “. . . because as a result of living with her he may . . . be prompted to fall so low as to have carnal intercourse with her, which is no longer lawful intercourse as it was formerly, but on the contrary such intercourse is considered fornication and adultery on account of the violation of the agreement and promise which he had made to observe continence with her”: 305. The same is said concerning a married monk: commentary on Trullo 44: 343, fn. 1.

opinion, is the only satisfactory explanation for the prohibitory law against clerical marriage. The Orthodox author Knetes intuited this same explanation, just as Balsamon had done. In considering the number of transgressions of this law in the Eastern Church, he writes:

... had the interdiction of marriage after ordination been found incompatible with the general views of the Eastern Church, in which the use of marriage contracted before ordination was never forbidden to deacons and priests? The fact is that nothing certain can be said, as there is complete absence of contemporary evidence.

Individual writers, indeed, may yet adduce reasons [for the impediment] but, with the exception of Leo the Philosopher, neither the canons nor any ancient ecclesiastical author dealing with this subject give any reason for this disciplinary regulation. At any rate, the rule indisputably dates back to the early days of the Church and, whatever explanation of it may be given, it remains certain that here, as elsewhere, the facts precede the theory, and the theory is based upon already existing practice.⁷⁷

Knetes clearly sees the use of marriage as the difficulty in understanding the rationale of the law of prohibition. Accepting that priests in the Eastern Church had always had the faculty to use their marriages creates an insurmountable conceptual difficulty. On the other hand, if our explanation is correct, given that Knetes as with most authors⁷⁸ dates this discipline from the earliest days of the Church, substantial weight is given to the thesis of the apostolic origin of priestly celibacy.⁷⁹

3. *Canon Six of Trullo and Lower Clerics*

Canon Six of Trullo had prohibited the clergy from subdeacon onwards to marry. If the rationale of the legislation was the discipline of continence, then some examination of the early discipline regarding lower clerics must be made to see whether our thesis can be supported by the available data. There is some obscurity with regard to lower clerics since documentation concerning them in this question is less abundant than for priests and deacons.

Only at the end of the 4th century do we have some explicit mention of the marriage discipline for lectors. The *Codex Canonum Ecclesiae Africanae*

⁷⁷ KNETES 395 and 397.

⁷⁸ BOBAK 144, writes: *Ecclesia iam propter ipsum S. Ordines vetebat sacerdotes contrahere matrimonia. Generatim etenim communis inter Doctores est sententia, secundum quam constitutiones et decreta, quibus regitur impedimentum Ordinis, Apostolicae sunt originis.*

⁷⁹ Some of the difficulties and objections to such a thesis will be examined in Chapter Three of this work.

(419)⁸⁰ had collected together the ordinances of past African Councils. In this collection, Canon 16,⁸¹ taken from the Council of Hippo (393), reads in its last part: "It has pleased the Council to decree that lectors upon arriving at the age of puberty be obliged either to marry or to vow chastity."⁸² The legislation had in view the case of children who had expressed their desire to become clerics. The same considerations are found in a letter of Pope Siricius written a few years earlier (in 385) which circulated in Spain⁸³ and which dealt with the same matter.⁸⁴ A child desirous of spending his life in the ministerial service of the Church was to be baptised and given the ministry of the lectorate. He would be ordained deacon at the age of 30 if he had proved himself worthy, having been made acolyte and subdeacon when adolescent (probably around the age of 20), and having married but once to a virgin.⁸⁵

The Fathers at the Council of Hippo had, in their legislation, provided for a guarantee of the worthiness of the candidate to the priesthood by requiring that, already in the first years of his teens, a decision be made concerning his state of life so that there would be ample time to test the candidate's capacity to assume the future responsibilities of total continence.⁸⁶ As to when this obligation began, Canon 4 of the Council of Carthage (401), corresponding to

⁸⁰ See *infra*, 118-119.

⁸¹ The numeration of the canons differ in the different manuscripts. We have chosen to follow Joannou, who gives a concordance with the Pedalion (JOANNOU I 2, 191-193). The last part of Canon 16 is given as Canon 19 in the Pedalion.

⁸² JOANNOU I 2, 230.

⁸³ The decretal *Directa*: PL 13, 1131b-1147a. The Roman Pontiff had directed that the letter be circulated to the 'Carthaginians' (1146b). Gryson points out that what is meant here is not Carthage in Africa but one of the provinces of Spain which had a similar name. 136-137.

⁸⁴ *Directa* Cap. IX. *Ibid.* 1142b-1143a. The text reads: *Quicumque itaque se Ecclesiae vovit obsequiis a sua infantia, ante pubertatis annos baptizari, et lectorum debet ministerio sociari. Qui accessu adolescentiae usque ad tricesimum aetatis annum si probabiliter vixerit, una tantum et ea quam virginem communi per sacerdotem benedictione perceperit, uxore contentus, acolythus et subdiaconus esse debet; postque ad diaconii gradum si se ipse primitus continentia praeunte dignum probarit, accedat. Ubi si ultra quinque annos laudabiliter ministrarit, congrue presbyterium consequatur. Exinde, post decennium, episcopalem cathedram poterit adipisci, si tamen per haec tempora interitas vitae ac fidei ejus fuerit approbata.*

⁸⁵ *Ibid.*, 1142b. An interesting text that may date from the middle of the 4th century has a somewhat similar discipline. Canon 7 of the so-called *Canons of Hippolytus* establishes that a subdeacon is not to be ordained if he is a celibate unless his neighbours have testified that he has kept away from all women up to the time that he attains his maturity (30 years?). Cf. COCHINI 233-234. Text (in French) in PO 31, fasc. 2, 259-361.

⁸⁶ Cf. COCHINI 297-298.

Canon 25 of the *Codex*, had affirmed that – as ‘had been confirmed in several (previous) synods’ (*placuit quod in diversiis conciliis firmatum est*) – subdeacons who ‘touched the sacred mysteries’ (*qui sacra ministeria contrectant*) were held to total continence.⁸⁷

Pope Siricius in his letter to Himerius of Spain seems to have required the same: “. . . and afterwards let him approach the rank of deacon if he has first proved himself worthy with his preceding (life of) continence” (*postque ad diaconii gradum si se ipse primitus continentia praeunte dignum probarit, accedat*).⁸⁸ The subdeacon, therefore, was to embrace celibacy before receiving diaconate ordination. Did the obligation begin just before the reception of diaconate? A literal reading of the text, in our opinion, would not oppose an interpretation whereby it is understood that the married lector, once he approached subdiaconate ordination, was required to make this commitment, – as in the African Church – for the subdeacon, when he approached diaconate ordination, was already to have proved himself over a period of time to have been able to live continence.⁸⁹

Canon 4 of the Council of 401 also added the words: “As for the rest of the (lower) clergy they are not to be compelled to this unless they be of mature age.”⁹⁰ Although Pope Siricius in his letter to Himerius had given instructions concerning those who were quite old in years (*qui vero jam aetate grandaeuus . . .*),⁹¹ which without too much hesitation we could interpret as requiring ce-

⁸⁷ JOANNOU I 2, 240-241.

⁸⁸ PL 13, 1142b.

⁸⁹ The sense of the phrase: *Qui accessu adolescentia . . . si probabiliter vixerit, una tantum . . . uxore contentus, acolythus et subdiaconus esse debet* would then be understood as: “whoever has lived honourably as a lector, having been content with the one wife whom he married when she was a virgin, according to the rites of the Church, is then to receive acolyte and subdiaconate ordination as he approaches adolescence, (from whence the obligation to continence begins).” The office of acolyte was closely associated with that of subdeacon, both of which were developments of the diaconate, and both of which were attached to the service of the altar. Cf. BANDELIER, Acolyte in: *The Catholic Encyclopaedia*, 1 London 1907, 106-108.

⁹⁰ *Ceteros autem clericos ad hoc non cogi nisi maturiore aetate*. Joannou, *ibid*.

⁹¹ Cap. X., PL 13, 1143a-1143b: *Qui vero, jam aetate grandaeueus, melioris propositi conversione provocatus, ex laico ad sacram militiam pervenire festinat, desiderii sui fructum non aliter obtinebit, nisi eo quo baptizatur tempore, statim lectorum aut exorcistarum numero societur, si tamen eum unam habuisse vel habere et hanc virginem accepisse, constet uxorem. Qui dum initiatus fuerit, expleto biennio, per quinquennium aliud acolythus et subdiaconus fiat, et sic ad diaconium si per haec tempore dignus iudicatus fuerit, provehatur.*

libacy beginning from the lectorate,⁹² the requirement for continence of those of *maturiore aetate* (around the age of 30)⁹³ is not expressly found.

Cochini suggests that one reason for the restriction on the liberty to use marital rights for lectors of mature age was to encourage these to advance in orders, since they would be among the oldest of married lectors not yet ordained to the subdiaconate.⁹⁴ This text would then be the first piece of legislation which expressly demanded total continence for all ranks of the clergy, concession being given only to young lectors.

Later in the same legislative text (Canon 70 of the *Codex*) we read:

Moreover, since incontinence has been charged against some clergymen with regard to their own wives, it has seemed right that bishops, presbyters and deacons should according to the statutes already made (*secundum priora statuta*) abstain also from relations with their own wives; and, unless they do so, that they should be removed from clerical office. But the rest of the clergy shall not be forced to this, but the custom of each church in this matter shall be followed.⁹⁵

The tradition in the North African Church had been that subdeacons were bound to the obligation of total continence. The above text, by only expressly listing bishops, presbyters and deacons, as is the case in fact with most early conciliar and patristic texts, seems to imply that the African discipline of obligatory continence for all ranks of the clergy, with the exception of young lectors, was not a universal discipline at the time of this Council.⁹⁶ Nonetheless, certain facts have to be borne in mind. First of all, it is important to recall that Canon 14 of the Ecumenical Council of Chalcedon (451) appears to have regarded the practice of permitting a lector (and cantor) to marry as being a concession found in some provinces only: "In as much as lectors and cantors in some provinces have been allowed to marry . . ." ⁹⁷ The fact that subdea-

⁹² The candidate had been *melioris propositi conversione provocatus*, which suggests the idea of a total consecration of one who is anxious to give himself totally and immediately to the service of the Church: *ex laico ad sacram militiam pervenire festinat*: Idem. Cf. *infra* fn. 93.

⁹³ Cf. Pope Siricius on the question of the ordination of monks: PL 13, 1144b; Toledo II (531), c. 1: BRUNS I 207-208. The 12th century Greek scholiasts, on the other hand, interpret the council as having meant men of very advanced years: PG 138, 124b-125b. The Latin text, nonetheless, does not demand such an interpretation.

⁹⁴ COCHINI 289-299.

⁹⁵ JOANNOU I 2, 312-313.

⁹⁶ In the council held under Bishop Genethlius in 390 there was no express mention of subdeacons or lectors (Can. 2 = *Codex* Can. 4). JOANNOU I 2, 217-218.

⁹⁷ JOANNOU I 1, 80. The 12th century scholiasts, believing the Apostolic Canons (Can. 26 included) to have long pre-dated this council, interpret these words to mean the very opposite, namely that there was an indirect lamentation that such marriages were not

cons are not mentioned here leads one to conclude that there was no general practice of allowing subdeacons to marry and conversely, according to our thesis, of subdeacons being able to use their marriage.⁹⁸ The Greek historian Sozomen (c. 400-450), who completed his *Ecclesiastical History* before this Council, also includes subdeacons on the list of those who were not permitted to marry in his account of the episode of Paphnutius.⁹⁹ Socrates (c. 380-450) does not specifically mention subdeacons when giving his same account of the Paphnutius episode, but this omission does not necessarily mean that they were not included implicitly.¹⁰⁰ As for lectors and cantors, Socrates makes no explicit reference to them but he does not make a special exception of them either when he writes about "those who are inscribed into the clergy (who are) no longer permitted to marry according to the ancient tradition of the Church"¹⁰¹ On the other hand, evidence is supplied by St. Basil the Great to show that at least he was familiar, in the Church of Caesarea of the last decades of the 4th century, with the practice of allowing lower clerics to marry.¹⁰² The Western discipline was therefore also represented in the East. In the light of Chalcedon, however, we are compelled to assume that this was not yet a generally accepted discipline throughout the East.

If, in Canon 4 of the Carthaginian Council of 401, subdeacons are included in the list of clerics in which the "the custom of each Church in this matter [of continence] . . . [is to] be followed", it does not follow by strict necessity that in the non-African Churches subdeacons were indeed allowed to use their marriages. There is no positive evidence we know of to suggest this. The (probably) universal discipline of prohibition of marriage to subdeacons does suggest otherwise.

On the other hand, if it could be shown that subdeacons were allowed to use their marriages, as might be argued from the omission of their inclusion

permitted in all provinces. PG 137, 437d-441c. The literal sense of the words seem, in our judgement, to oppose this interpretation. Cf. *supra*, 35-36, fn. 4.

⁹⁸ Cf. *supra*.

⁹⁹ Lib. I., cap. 23: PG 67, 925. Cf. Chapter Three, our discussion on Paphnutius.

¹⁰⁰ PG 67, 101b-104b.

¹⁰¹ *Ibid*.

¹⁰² St. Basil, in his third canonical letter to Amphilochius (Canon 69), writes: "As for a lector (anagnost), if he has anything to do with his betrothed before the wedding, after being suspended from duty for one year, he shall be permitted to read, though he shall forfeit the right to be advanced to any higher status . . . The same treatment shall be given to any other servant of the Church." PG 138, 765b. The 12th century scholiasts, basing themselves on Apostolic Canon 26 – which permitted marriage only to lectors and cantors – believed the impediment of the subdiaconate to have been of apostolic origin, and thus not included by St. Basil among the 'servants of the Church'. *Ibid.*, 765b-769b.

within the list of clerics expressly bound by continence in several texts, this could possibly be explained by assuming that the functions of subdeacons had not yet sufficiently evolved to warrant distinguishing them essentially from lectors.¹⁰³ To the extent, then, that lectors were permitted to marry, and therefore use their marriages, subdeacons would also, in such cases, be given this concession. Possible evidence for such having been the case in the East would be the addition of the word 'subdeacon' made by Sozomen in the Paphnutius episode, which is absent in Socrates.¹⁰⁴ In favour of this hypothesis is the fact that something similar appears to have occurred in the Western Churches where the function of subdeacon had undergone an evolution (although unequally in the various provinces) giving it, eventually, a clear configuration as a ministry strictly related to service at the altar.¹⁰⁵ At such a time the legislation for continence (and prohibition of marriage) was made for subdeacons in an unequivocal and explicit way.¹⁰⁶ The instructions of Pope Siricius, if to be understood as implying continence for subdeacons, could, therefore, only have been applicable in that case wherever the role of subdeacon was sufficiently and essentially distinct from that of lector. Such seems to have been the case at least in the Roman and African (and Spanish?) Churches of the 4th-5th centuries.¹⁰⁷

If, originally, marriage was a 'concession' to lectors and not a strict right of the lectorate, as Canon 14 of Chalcedon implies, 'lector-subdeacons' would have enjoyed this same privilege. Since there is no legislative text permitting

¹⁰³ Cf. Pedalion 309-310.

¹⁰⁴ HERMAN cites this, together with Apostolic Canon 26 (not '5', as is printed), as evidence to show that only about the time of Sozomen, in the mid 5th century, did the subdiaconate become an impediment to marriage. DDC 3, 148.

¹⁰⁵ Cf. COCHINI 449-451 and passim. As the figure of the subdeacon evolved it took over functions previously reserved to the deacon. See A. MEEHAN, *The Catholic Encyclopaedia* 1, 107.

¹⁰⁶ COCHINI, *ibid.*

¹⁰⁷ Cf. *supra*, 55-56. The letter of Pope St. Leo to Anastasius of Thessalonica (444) uses the prohibition of conjugal relations for the 'fourth order' as an a fortiori argument for the continence of higher clerics; Pl 54, 672b-673a: *Nam quum extra clericorum ordinem constitutis nuptiarum societati et procreatione filiorum studere sit liberum ad exhibendam tamen perfectae continentiae puritatem nec subdiaconis quidem connubium carnale conceditur ut et qui habent sunt tanquam non habentes, et qui non habent permaneant singulares. Quod si in hoc ordine qui quartus est a capite, dignum est custodiri quanto magis in primo vel in secundo tertiove servandum est.* The Pontiff does not indicate in his letter that this discipline is 'new' or 'an extension' of a discipline hitherto only applied to the first three orders, nor even that the distinctiveness of the 'fourth order' role is something new. For the situation in Spain at this time see COCHINI 451.

marriage for lectors and cantors before the end of the 4th century,¹⁰⁸ this praxis, we might suggest, developed only during the fourth century (perhaps the effect of the practice of enrolling children as lectors?); at the time of the First Ecumenical Council of Nicaea (325) all clerics would have still been bound to strict continence.¹⁰⁹

The fact that many legislative and patristic texts dealing with celibacy make no explicit reference to these lower orders at this time in history could also be explained by the fact that they were considered as merely transitory and probational periods for accession to higher orders¹¹⁰ and that there was not, therefore, sufficient warrant to give them the same kind of attention as the better defined (and more permanent) roles of priest, bishop and, to a lesser extent, deacons warranted. The abuses of incontinence and the legislation to remedy this indiscipline would then have as their natural objects only these three higher orders.¹¹¹ There may also have been the practice, in some Churches, of ordaining a candidate directly to the diaconate or to the priesthood.¹¹²

The Council of Neocaesarea had been silent on the question of the prohibition of marriage for deacons and legislated only for priests. One would be employing mistaken methodology if one were to conclude from this alone that the Council therefore implicitly recognized the right of deacons and all lower clerics to contract marriage.¹¹³ Priests, only, were the specific concern of the Fathers in this canon, the preceding Council of Ancyra having already

¹⁰⁸ Cantors were an institution that developed in the 4th century, appearing in the canons of Laodicea (343-381), esp. in Canons 15, 23 and 24. They appeared as the needs of the Christian liturgy grew. Cf. CORBINI, Cantor in Christian Liturgy in: NCE 3, 71.

¹⁰⁹ Cf. *infra*, 78-85.

¹¹⁰ Cf. Pope Siricius, PL 13, 1142b; 1143b; 1144b-1145a.

¹¹¹ Canon 33 of Elvira (305?) reads: *Placuit in totum prohibere episcopis, presbyteris et diaconibus vel omnibus clericis positus in ministerio abstinere se a coniugibus suis et non generare filios*. BRUNS II 6. COCHINI believes the words *vel omnibus clericis positus in ministerio* to be merely explicative of the three major orders already listed. 184. If marriage was allowed to lectors only later in the century, then there is no reason to suppose that this council had not legislated for lower clerics too, to abstain from all carnal commerce.

¹¹² Perhaps this was the reason why Pope Siricius gave instructions on this very point. *Ibid.* In the 6th century the First Council of Bracara (563) had established in its Canon 20: *Item placuit ut ex laico ad gradum sacerdotii ante non veniat nisi prius anno integro in officio lectorati vel subdiaconati disciplinam ecclesiasticam discat; nam satis reprehensibile est ut qui necdum didicit jam docere praesumat, dum et antiquis hoc patrum institutionibus interdictum est*. BRUNS II 36. Evidently there was an abusive practice at that time of ordaining laymen directly to the priesthood.

¹¹³ As did Gratian: *Decretum*, Dist. 28, cc. 7-9; 13.

dealt with deacons.¹¹⁴ Despite the fact that the discipline of permitting marriage to lectors and cantors seems to have been already widespread in the West by the first decades of the 5th century¹¹⁵ and in the East by the mid 5th century,¹¹⁶ the Church of Gaul had no express legislation on the matter in the first seven centuries,¹¹⁷ and the Church in Spain only in the 6th century.¹¹⁸ We conclude from this that the silence of legislation on the discipline of continence and its corollary, prohibition or permission to marry, can be sufficiently explained by the notoriety of fact – in this last case by the well known praxis of permitting marriage to lower clerics.

Whatever historians may eventually decide to have been the original discipline binding lectors, the lectorate as a minor order was nonetheless ordinarily considered as a transitional step towards higher orders. If Apostolic Canons 17 and 18, binding on all clerics, had envisaged future continence (as we have previously argued) then a lector (and perhaps a subdeacon) would have been bound to this discipline precisely because he was expected to be promoted. Thus at the time of Pope Leo IX (1048-1054), Cardinal Humbert of Silva Candida, writing to the Greek polemicist Nicetas Stethatos in 1054, could attest to the traditional discipline of the Roman Church by stating that lower clerics (doorkeepers, lectors, exorcists and acolytes) could marry if they had not previously vowed celibacy and provided the wife was a virgin, since otherwise they would be barred from advancement to the subdiaconate, from whence the obligation to continence began.¹¹⁹ If on the other hand, the cleric who could use his marriage did not intend, or was not permitted, to proceed further, then one would expect to see a modification of the ancient discipline, for the same guarantees for priestly chastity would not be strictly relevant.

There is no legislation, to the author's knowledge, which has in view a permanent lower clerical state. There is legislation, however, which forbids

¹¹⁴ JOANNOU I 2, 64.

¹¹⁵ Pope Leo, in his letter to Rusticus, bishop of Gallia Narbonne, alluded to the possibility of readers marrying as if it were a common and normal practice: PL 54, 1204a.

¹¹⁶ After the Council of Chalcedon (451), and especially with the appearance of Apostolic Canon 26.

¹¹⁷ COCHINI 448.

¹¹⁸ Council of Toledo II (530), c. 1. BRUNS I 207-208.

¹¹⁹ Humbertus, Cardinalis contra Nicetam, Cap. 32: PL 143, 999d-1000a: *Clericos tantum ostiarios, lectores, exorcistas et acolythos, si extra votum et habitum monachi inveniuntur et continentiam profiteri nolunt, uxorem virginem ducere cum benedictione sacerdotali permittit: non autem viduam et repudiatam; quia propter hoc solum deinceps nec ad subdiaconatum provehi poterunt, nec laicus non virginem sortitus uxorem aut bigamus ad clericatum. Quod si quis praefatorum ordinum desiderat ad subdiaconatum ascendere, nequibit hoc sine consensu uxoris suae, ut de carnali deinceps conjugium spirituale, nemine eos ad hoc cogente...*

advancement if the other guarantees for priestly chastity are not met. Thus, Canon 69 of St. Basil the Great forbids a lector who had committed fornication (with his spouse-to-be) from being promoted, although after a suitable penance he is not forbidden the practice of his ministry.¹²⁰ Such a possibility was denied to priests and deacons by the Council of Neocaesarea.¹²¹ The First Spanish Council of Toledo (400) forbade a lector from being advanced if he had married a widow, although he could continue with his ministry.¹²² The Second Council of Bracara (572) repeated this same canon, adding that the same applies if the lector were a digamist.¹²³ For the Byzantine Church, Emperor Justinian made similar provisions in his Novel 123 (in 546). He established that if a lector takes a second wife, or a first wife who was a widow or a divorcee or otherwise forbidden by the Canons, such a lector cannot be promoted.¹²⁴ In the 12th century, Balsamon testifies to the practice of 'conceding' to a digamist lector the practice of his ministry without the possibility of advancement; this referred to those who were already lectors when they married for a second time.¹²⁵

These provisions harmonize with the general spirit of the legislation from previous centuries. The fact that these various concessions were made for a lector – who otherwise would have been deposed or required to dismiss his wife – is already an indication of innovation with regard to the discipline of continence. This innovation would have been precisely in permitting the lector to marry and to use his marriage.

To conclude, the purpose and consistency of the corpus of legislation on married clerics was not, in our judgement, significantly affected by the fluctuating discipline of the lower orders.

¹²⁰ PG 138, 765b.

¹²¹ Canons 9 and 10: JOANNOU I 2, 80-81.

¹²² Canon 3. BRUNS I 204: *Item constituit sancta synodus, ut lector fidelis si viduam alterius uxorem acceperit amplius nihil sit, sed semper lector habeatur aut forte subdiaconus.* Note that the lector could, exceptionally, be made a subdeacon. It is probable that the subdeacon at this time was not bound by total continence. Cf. Canon 4. Ibid.

¹²³ Canon 43: BRUNS II 52: *Lector si viduam alterius uxorem acceperit, in lectoratu permaneat aut si forte necessitas sit subdiaconus fiat, nihil autem supra; similiter et si bigamus fuerit.* Cf. Pope Siricius, *Directa*, c. XI: PL 13, 1144a.

¹²⁴ Novel 123, chap. 14: CJC (J) 3, 605. Cf. Novel 22, chap. 42: CJC (J) 3, 176.

¹²⁵ PG 137, 72b (commentary on Apostolic Canon 17).

4. The Impedimentum Ordinis and the Golden Age of Canon Law

If the reason for the prohibition of marriage was indeed the obligation to live in total continence, whether the cleric was married or not, the discipline of Canon 13 of Trullo which permitted the use of marriage created, for the first time in legislative form, a rupture between this prohibition and its cause. This would have serious consequences for later canonical theory when a reason is sought to justify the *impedimentum ordinis*.

Gratian, the 12th century Camaldolese monk and Master of the School of Law of Bologna, is generally regarded as the Father of the science of Canon Law because of his opus magnum: *Concordia Discordantium Canonum*, better known as the *Decretum Gratiani* (completed around 1142). The importance of this work cannot be overestimated for, despite the fact that it always remained a 'private' collection, it became the foundation for the classical law of the Latin Church. Ten years after its appearance it was used in schools and synods, soon afterwards becoming the manual of the Roman Curia, and it stimulated a wave of canonical writing.¹²⁶ The treatment that Gratian gave to the questions of clerical continence and the impediment to marriage is therefore of some importance to us, for it had significant influence in the Latin Church.

Gratian dealt with the question of clerical celibacy chiefly in the Pars Prima, distinctions 26-34 and 84. His method was to collect texts (*canones*) and to explain their sense by providing summaries and his own expositions (*dicta*). In this way he ordered or concorded a mass of texts which often seemed to contradict each other. A weakness in his work, however, was that he used texts whose authenticity he simply took for granted. Thus, for example, he adopted the episode of Paphnutius and gave it equal value to conciliar texts.¹²⁷ He also gave to Canon 13 of Trullo ecumenical value.¹²⁸

With Gratian, therefore, the Greek or Oriental praxis regarding celibacy was not only accepted but thoroughly legitimized. The text of Trullo Canon 13, presented by Gratian, established this praxis as being of apostolic origin. Furthermore, the episode of Paphnutius was given an authority which it did not have even in the Eastern Churches.¹²⁹

The effect of Gratian's presentation of the Eastern discipline of celibacy was to sanction in the mind of future canonists the theoretical impossibility of a cause and effect relationship between the law of continence and the impe-

¹²⁶ Cf. A. STICKLER, *Historia Iuris Canonici Latini* I 199-200; L.E. BOYLE, *History of Canon Law: classical period*, in: NCE 3, 41-42.

¹²⁷ Dist. 31, c. 12.

¹²⁸ *Ibid.* c. 13.

¹²⁹ See *infra*, 85-92.

dimentum ordinis. Not only did the decretists and decretalists of the Golden Age of Canon Law (1150-1350) recognize the difference in Greek legislation and praxis, but they attempted to thoroughly accommodate it in a canonical theory that would also explain the law of celibacy in the Latin Church. The differences of the two major Churches were regarded as being legitimate and as expressing different ecclesiastical traditions, of which the Greek was assumed to antedate the Latin.

Beginning with Gratian, the Greek and Eastern praxis became the point of reference to which earlier conciliar texts and Latin discipline were to be compared, and in the light of which they were to be explained. Thus, according to Gratian, at the time of the Councils of Ancyra and Neocaesarea continence for ministers of the altar had not yet been introduced, and neither was a deacon and subdeacon (absolutely) prohibited from marrying.¹³⁰ According to him, by only prohibiting the priest from entering marriage, Neocaesarea thereby permitted the deacon to marry;¹³¹ nor in the Western Church was the use of marriage always prohibited (although this was an assumption and not a necessary conclusion from the texts Gratian cites).¹³² He deduced that the law forbidding marriage, and still more the law imposing continence on married clerics, had been introduced in the West at a fairly late date.¹³³

The Decretists, without critically judging the Greek texts presented by Gratian, adopted the Master's opinions. The most influential of these authors was Rufinus (d. c. 1192) on whose writings others drew and whose opinion was that all clerics in the early Church were permitted to marry and use their marriage rights; the prohibitions were introduced only gradually beginning first with bishops and priests, then deacons, and finally subdeacons.¹³⁴ Other authors who investigated the origin of the law of celibacy attribute the law to the Apostles, but the prohibition of all marital relations to Siricius.¹³⁵

In all these various authors, the immediate (and necessary) relation between continence and the impediment to marriage seems to have been lost or heavily obscured. Nor could they reach any agreement as to the origin of these obligations. A passage from the *Summa Duacensis* (c. 1200) is enlightening, for it does not attempt to justify the discipline of that epoch by re-

¹³⁰ Dist. 28, dictum post c. 13.

¹³¹ Ibid.: *item in Neocaesariensi concilio presbyter ducens uxorem, non diaconus jubetur deponi . . . patet quod nec diaconi nec subdiaconi sunt prohibendi a conjugio.*

¹³² Ibid. Note especially the example used by Gratian in the canon: Pope Pelagius I (556-561) to Cethagus Patricius. Dist. 28, c. 13; cf. PL 79, 414.

¹³³ Ibid.; cf. Dist. 31, ante c. 1.

¹³⁴ Cf. Liotta FILIPPO, *La continenza dei chierici nel pensiero canonico classico da Graziano fino a Gregorio IX*, Milan 1971, 58 ff.

¹³⁵ Ibid. 114 ff and 230 ff.

ference to the past (as others had done), but admits that sufficient information to form a safe judgement is lacking; it specifically denies that the Oriental discipline had always been as it then was.¹³⁶

Canonical theory during this period developed an explanation of the impediment to marriage constituted by orders which relied heavily on the theory of the *votum*, also developed in the 12th century.¹³⁷ Gratian, for example, held that a candidate for the subdiaconate could not be admitted without a vow of chastity (*sine voto castitatis*).¹³⁸ The *professio/promissio castitatis* of former centuries was now assimilated to the *votum* in a strict sense.¹³⁹ It was this now which rendered orders an obstacle to future marriage. A variation of this theory was that of the *votum adnexum*, the vow attached to orders, whereby a candidate would be bound by the vow by virtue of receiving orders. Among the difficulties of this theory was the inability to provide a sufficiently exhaustive explanation for the impediment among the Greeks who were not bound by any vow of continence.¹⁴⁰

This difficulty was a major cause for the development of another theory which appeared towards the end of the 12th century in which the basis for the obligation to continence was said to be in ecclesiastical law. Huguccio of Pisa (d. 1210), one of the best known of decretists, was the primary exponent of this theory. By an ecclesiastical *constitutio* promulgated *ratione ordinis* the obligation to celibacy was attached to the order. The candidate, in accepting orders, would be bound by law to observe continence; his commitment could be solemnized by a vow.¹⁴¹ The Eastern Churches, in such a theory, would not have attached to order any such obligation to continence, but only a law prohibiting marriage.

¹³⁶ Ibid. 240: *Falsum est quod dicunt glose quod ab initio fuit et adhuc est in orientali ecclesia quod licite matrimonium in sacris ordinibus contrahebant et utebantur in contracto, dum tamen tempore vicis suae ministrantes ab amplexibus cessarent . . . Dicit etiam huguccio quod apostoli preceperint ne in sacris ordinibus constituti contraherent . . . Verius tamen est quod a quo tempore fuit hoc preceptum ignoratur.*

¹³⁷ See L. OTT, Untersuchungen zur theol. Briefliteratur der Frühscholastik, in: Beitr. zur Geschichte PhThM 34 (1937) 303-313. Cf. L. HÖDL, Lex Continentiae 719-726.

¹³⁸ Dist. 28, dictum ante c.1.

¹³⁹ Cf. Council of Orange (441), c. 21: CC 148, 84; Council of Arles II (442-506), c. 43: CC 148, 122; Council of Agde (506), c. 16: CC 148, 201; Gregory the Great, to Peter the subdeacon (591): MGH, Gregorii I Papae registrum epistolarum, I (Berlin, 1891), 67 (PL 77, 505-506); Toledo IV (633), c. 27: Bruns, I, 231. Cf. Hödl 722.

¹⁴⁰ Cf. Dist. 28, dictum post c. 13: *orientalis ecclesia non suscipit generale votum castitatis.*

¹⁴¹ A. STICKLER, The evolution of the discipline of celibacy in the Western Church, in: Priesthood and Celibacy 558, 565-566; Cf. Hödl, ibid. 724.

The greatest of the 13th century theologians, St. Thomas Aquinas (d. 1274), synthesized the doctrine of the various canonists when treating of the problematic: *utrum ordo impediatur matrimonium*:

But what impedes matrimony is the law of the Church (ex constitutione Ecclesiae habet). However, it binds the Latins in a different way from the Greeks; for, among the Greeks the impediment to contracting marriage comes solely from the force of orders (vi ordinis) whereas among the Latins the impediment is both from the force of orders and from the vow of continence which is attached to sacred orders; so that if someone verbally does not take [the vow], by the very fact of his receiving the order according to the rite of the Western Church it is understood that he has taken it. And again, among the Greeks and other Orientals holy orders impedes the contracting of marriage but not the use of previously contracted marriage, for they can use this marriage even though they cannot contract marriage again.¹⁴²

Since the time of the Second Lateran Council (1139) sacred orders, as well as the votum, has been held to be an invalidating (diriment) impediment to marriage.¹⁴³ The Council did not, however, intend to legislate for the Eastern Churches. Whether orders is an invalidating impediment or not in all Eastern Churches was a much disputed question which was settled for the Oriental Catholic Churches in a definitive manner by the Motu Proprio *Crebrae allatae* of Pius XII in 1949.¹⁴⁴

Another effect of Gratian's influence on canonical and theological thought was the seeking of a theological justification for the gradual imposition of the law of celibacy on Western clerics. Gratian himself gives as the reason the purity (*munditia*) that was required of the priest in order to allow him to be able

¹⁴² Summa Theologiae, Suppl., 53, 3: *Sed quod impediatur matrimonium ex constitutione Ecclesiae habet. Tamen aliter apud Latinos quam apud Graecos. Quia apud Graecos impedit matrimonium contrahendum solum ex vi ordinis. Sed apud Latinos impedit ex vi ordinis et ex voto continentiae, quod est ordinibus sacris annexum: quod etiam si quis verbotenus non emittant, ex hoc ipso quod ordinem suscipit secundum ritum Occidentalis Ecclesiae, intelligatur emisisse. Et ideo apud Graecos et alios Orientales sacer ordo impedit matrimonium contrahendum, non tamen matrimonii prius contracti usum: Possunt etiam matrimonio prius contracto uti, quamvis non possint matrimonio de novo contrahere.*

¹⁴³ Canon 7. Conciliorum Oecumenicorum Decreta, J. ALBERIGO et al. (ed.), Bologna 1972, 198. The Council of Pisa, held four years previously in 1135, was the first council to explicitly declare *matrimonium non esse* if clerics and monks contracted marriage. Mansi, XXI, 489 ff. The First Lateran Council (1123) did not – as many have interpreted it – explicitly nullify such marriages. Cf. STICKLER, *ibid.*, p. 548. For an opposing view, see A. BONI, *Sacralità del celibato* 149-166 et passim.

¹⁴⁴ Canon 62 reads: 1) *Invalide matrimonium attentant clerici maiore ordine aucti 2) Subdiaconatui aequae ac maioribus ordinibus vis dirimendi matrimonium tribuitur.* AAS 41 (1949) 102; cf. *Cleri Sanctitati*, 2 June 1957, c. 70. AAS 49 (1957) 457.

to pray freely each day, basing himself on the theology of St. Paul and on Pope Siricius.¹⁴⁵ A theology of the 'holiness' of orders was also developed around this time, receiving stimulus from this consideration.¹⁴⁶ Given that the discipline of continence was regarded generally as not being of apostolic origin, nor attached in any strictly necessary way to the exercise of orders, the theological reasons in favour of celibacy could only be regarded, at most, as reasons of 'fittingness' or 'congruence'.¹⁴⁷ The relationship between the law of continence and the impediment to marriage of orders was, as a result, not regarded as being exclusively 'ex rei natura', but mediated by law attached to order. A theology of celibacy dependent more immediately on the nature of sacred order itself was rendered impossible by the fracture of the two mutually dependent aspects of celibacy: continence and prohibition of marriage.

If the canonists and theologians of the 12th and 13th centuries had not been presented with the difficulty of the Greek discipline, legitimized above all by Gratian, it is quite conceivable that they would have had little hesitation in attributing the law of continence to the Apostles and relating the impediment to this law alone. Any promise, profession or vow of continence would then have been understood to be an external expression and guarantee of a commitment to be freely taken, but 'demanded' by the very nature of the priestly vocation at the time of reception of orders. The law of continence would have been explicatory of this 'demand' of the nature of order which invited total 'consecration' on the part of the recipient of the sacrament.¹⁴⁸ The vow would have had the same purpose.

In classical theory *ordo* simply has an 'onus' attached to it whereby marriage is prohibited, otherwise existing as an impediment in the Latin Church only in relation to the vow of continence which it renders solemn.¹⁴⁹ In the Oriental Church the 'onus' stands in isolation, for all were agreed that Orien-

¹⁴⁵ Dist. 31, c. 1: *Causa vero hujus institutionis munditia sacerdotalis fuit, ut libere cunctis diebus orationi possint vacare. Si enim (ut Paulus ait) ab uxoribus est cessandum, ut expeditius orationi vacent, ministris utique altaris, quibus quotidiana necessitas orandi incumbit, numquam conjugali officio vacare permittitur.* Cf. Pope Siricius, PL 13, 1138a-1141a.

¹⁴⁶ HÖDL 716-719.

¹⁴⁷ St. Thomas writes: *Respondeo dicendum quod ordo sacer de sui ratione habet, ex quadam congruentia, quod matrimonium impedire debeat: quia in sacris ordinibus constituti sacra vasa et sacramenta tractant, et ideo decens est ut munditiam corporalem per continentiam servent. Sed quod impediatur matrimonium ex constitutione Ecclesiae habet.* Summa Theol., Suppl. 53, 3.

¹⁴⁸ The question of how closely continence might be related to the very nature of the priesthood will be brought up in our general conclusions.

¹⁴⁹ HÖDL 725; Pope Boniface VIII, In VI^o, III, 15, un.

tals, unless they were monks, did not take vows.¹⁵⁰ Abstracted from the obligation to total continence it is hard to discover any theological justification for this 'onus'. Can one sacrament render nefarious another sacrament when both are sources of grace and sanctification? Can the sanctity of the sacrament of marriage be protected in such a legislative scheme? Unless a consecratory pact between the cleric and God is effected at the time of reception of orders, the law of prohibition of marriage can only be regarded as a vestigial positive discipline expressing that simpler ancient discipline which harmonized the natural relation which exists between the priesthood and celibacy. The fact that Canon 13 of Trullo required at least temporary continence at the time of the exercise of orders is, we believe, a vestige of this original harmony.¹⁵¹

Furthermore, if it is only the Western Rite ordination ritual which requires a candidate to accept (by vow) the discipline of continence, it follows that an Oriental celibate, who is not a monk, would be bound to chastity and prohibited from marrying by two separate dispositions of the law attached to order. Is such theoretical complexity necessary? It is completely obviated by the evident unity and causal relationship between the two disciplines.

The impediment to marriage in Oriental canonical discipline, detached from its theological reason, and where according to Trullan discipline clerics are able to use their marriages, appears little more than juridical formalism. Knetes writes:

Moreover, if marriage contracted before ordination is allowed to continue in all orders except the episcopate [Can. 13 of Trullo], why should unmarried members of those orders be forbidden to marry after their ordination [Can. 6]? This legislation would not be intelligible if considered from a dogmatic point of view, while its seeming contradictions disappear when we reflect that the intention of the [Eastern] Church was not to rest her disciplinary enactments on such principles, but rather to codify existing rules of custom . . .¹⁵²

Knetes, therefore, also admits to the rupture between doctrine and discipline which is found in Trullo, even though he stops short of saying that it was Trullo itself that created this rupture. Yet that is the conclusion to be drawn.

The Latin Church, we believe, unwittingly inherited this rupture in its own canonical theory; and this it did because of its uncritical recognition of Greek praxis.

¹⁵⁰ Cf. Gratian, *Decretum*, Dist. 31, cc. 13 and 14. According to the Greeks only monks took vows of continence; cf. Balsamon, commentary on Carthage, 38 (41 in Migne): PG 138, 164d-168a.

¹⁵¹ Cf. *infra*, 115 ff.

¹⁵² KNETES 508.

Chapter Three

Classical Objections to the Thesis of the Apostolic Origin of Celibacy

1. Introductory Remarks on Methodology

In the previous chapter we sought to prove that the prohibition of marriage after the reception of orders was due in the early Church to the law of continence. We believe the internal cogency of our argument, based on what we have considered to be the spirit of all the legislation regulating clerical marriage so far examined, supports this contention. The argument of 'cumulative probability' is perhaps the strongest possible argument for this kind of thesis. The character of the evidence in any argument has to accord with the nature of the debate. Omission of unambiguous historical evidence or clear legislation often admits of various explanations, one of which is the notoriety of facts. Not only does positive evidence not always give the full explanation of a lived discipline or doctrine, but too much evidence sometimes even casts doubt on authenticity.¹ In the question of the history of celibacy in the Eastern Churches, where there is certainly a good deal of obscurity, it is more important than with other arguments to take evidence not in isolation but as a whole and, more importantly, to interpret what is obscure by what is sure and not vice-versa. Where there is prima facie evidence for congruity this, according to sound methodology, must be first accepted and other pieces of evidence, whether full or partial, ought to be interpreted in this light unless, or until, the contrary is proved. The various aspects of the legislation regulating clerical marriages form, we believe, one whole congruous complex. The whole complex, furthermore, illustrates the early universal discipline of celibacy. Particular pieces of evidence of this being the case in the Eastern Churches (especially in the Byzantine Church) may indeed be inconclusive in themselves, but – when taken together – they amount to firm evidence, since they are interrelated and shed mutual light on each other. Canons 3 and 6 of Trullo do just this. This methodological principle of 'cumulative probability' is most aptly expressed by the great Englishman, Cardinal John Henry Newman (1801-1890), who wrote in *An Essay on the Development of Christian Doctrine*:

¹ J.H. NEWMAN, *An Essay on the Development of Christian Doctrine*, 1974 ed., Penguin Books, 190-191.

Those who will not view the beginning in the light of the result, are equally unwilling to let the whole elucidate the parts. The Catholic Doctrines . . . are members of one family, and suggestive, or correlative, or confirmatory, or illustrative of each other. In other words, one furnishes evidence to another, and all to each of them; if this is proved, that becomes probable; if this and that are both probable, but for different reasons, each adds to the other its own probability . . .

Moreover, since the doctrines all together make up one integral religion, it follows that the several evidences which respectively support those doctrines belong to a whole, and must be thrown into a common stock, and all are available in the defence of any. A collection of weak evidences makes up a strong evidence; again, one strong argument imparts cogency to collateral arguments which are in themselves weak . . . ²

Among the doctrines that Newman considered to be of apostolic origin was priestly celibacy.³

Objections to a thesis such as this present one come from the supposition that no such binding discipline existed in the early Church, especially in the East. This assumption was given authority in the late 19th century by the German author Franz-Xaver Funk (1821-1907) during his protracted debate with Gustav Bickell (1838-1906), who held the opposing position. According to Funk, celibacy was not of apostolic origin, but appeared for the first time as an obligatory discipline in the 4th century with the Council of Elvira (c. 305).⁴ This thesis was not entirely new,⁵ but it was argued in such a close manner that it found favour amongst the general scientific public, principally

² Ibid. 198.

³ Ibid., 199. Cf. *Apologia Pro Vita Sua*, Boston, 1956, 70.

⁴ *Cölibat und Priesterehe im Christlichen Altertum*, in: *Kirchengeschichtliche Abhandlungen und Untersuchungen* 1. Cf. *Der Cölibat keine apostolische Anordnung*, in: *ThQ* 1879, 208-247; *Der Cölibat noch lange keine apostolische Anordnung*, in: *ThQ* 1880, 202-221.

⁵ The thesis had been proposed by MÖHLER, HEFELE and PROBST. FUNK, *Cölibat und Priesterehe* 121-122. The controversy on continence itself had had a much longer history, beginning in the Latin Church in a special way with the opposition to the Gregorian reform and the decisions of the Roman Synod of 1074: Pl 148, 1079-1104. The controversy with the Greeks begins also in a special way at this time (see *infra*). The most important work against celibacy produced by the Protestant reformation was the *De Conjugio Clericorum Liber* of George CALIXTE (Helmstadt, 1631). In the early 19th century the work of the Theiner brothers, which attempted to prove the non-Christian origin of celibacy, had notable influence: Johann Anton THEINER - Augustin THEINER, *Die Einführung der erzwungenen Ehelosigkeit bei den Christlichen Geistlichen und ihre Folgen*, Altenburg 1828; reedited in 1897 and 1932. Henry-Charles LEA wrote *The History of Sacerdotal Celibacy in the Christian Church*, London 1867, which has had a wide diffusion in the anglo-saxon world through several editions (most recently in 1966). This work, nonetheless, is only pseudo-scientific. Cf. COCHINI 39-68.

through those authors that followed Funk: Vacandard⁶ and Henri LeClercq;⁷ more recent authors who follow Funk to some degree include Gryson⁸ and Denzler.⁹ Most authors appear to follow this same line.¹⁰

More recently, this generally accepted thesis has been seriously challenged by authors such as Deen, Stickler, Cochini and Boni¹¹ who in various degrees have re-instated and redeveloped the thesis of Bickell and his predecessors.¹² Our own study and its conclusions favours this last group of authors, and adds to their arguments.

It is beyond the scope and purpose of this thesis to reproduce the arguments found in these works. The objections faced by these authors are those of a more strictly historical character. Some of these objections will be dealt with in summary fashion; others – those from conciliar legislation – are analysed more thoroughly in light of Eastern tradition.

⁶ E.-F. VACANDARD, *Les origines du célibat ecclésiastique*, in *Études de critique et d'histoire religieuse*, 1 Paris 1905 (5th edition: Paris, 1913, 71-120); *Célibat ecclésiastique*, in: *DTC* 2, Paris 1905, 2068-2088.

⁷ Cf. *Histoire des conciles d'après les documents originaux*, II 2 Paris 1908, Appendix VI 1321-1348. *Dictionnaire d'Archéologie Chrétienne et de Liturgie (DACL)* II 2802-2832.

⁸ R. GRYSON, *Les origines du célibat ecclésiastique du premier au septième siècle*, Gembloux 1970. (The author follows Theiner and Funk.).

⁹ G. DENZLER, *Das Papsttum und der Amtszölibat: Päpste und Papsttum*, 5, I, II Stuttgart 1973, 1976.

¹⁰ For example, E. HERMAN: *Célibat des clercs (Droit Oriental)*, in: *DDC* 3 Paris 1942, 145-156. This author writes: "La réfutation de ces opinions (i.e. of obligatory perpetual continence from apostolic times) a été faite d'une façon définitive par M.F.-X. Funk . . . et par M.E. Vacandard . . ." *ivi*, c. 145. A Ukrainian author, following Herman, writes: "Therefore all attempts to trace and find a proof for celibacy of the clergy in the times of the apostles failed miserably and have been convincingly refuted". P. BILANIUK, *Celibacy and the Eastern Tradition*, in: *Celibacy: the Necessary Option*, ed. G. FREIN, New York 1968, 37. The author cites Funk, Vacandard and Herman. Also cf. P. DELHAYE, *Celibacy, History of*, in: *NCE* 3, 369b-374c.

¹¹ Henri DEEN, *Le Célibat des Prêtres dans les Premiers Siècles de l'Église*, Paris 1969. For Stickler, Cochini and Boni: *opera citata*.

¹² G. BICKELL, *Der Cölibat eine apostolische Anordnung*, in: *Zeitschrift für Katholische Theologie (ZKTh)* e (1878) 26-64; *Der Cölibat dennoch eine apostolische Anordnung*, in: *ZKTh* 3 (1879) 792-799. One of the first complete defences of the apostolic origin of celibacy is found in the letters of Bernold of Constance (1079-1104): *De prohibenda sacerdotum incontinentia*, PL 148, 1079-1104. Other studies were undertaken by the following; the commission of theologians of the Council of Trent; Robert Bellarmine; Cesar Baronius; Stanislas Hosius; Louis Thomassin; Alexandre Noel; Jean Stilnick; Francesco Zaccaria; Roskovany, and others. For details of these authors and their works see COCHINI, 39-68.

2. Objection One: The Apostles were Married

The New Testament offers no certain information on the marital status of the Apostles, other than that Peter had been married (Mk 1, 29-31; Mt 8, 14-15; Lk 4, 38-39). As for the other Apostles, patristic writers differed among themselves as to who they thought were married and who unmarried. An exception concerns John whom the Fathers almost unanimously describe as a virgin, and St. Paul, whom the majority claim to have been a strict celibate, or at the very least, a widower.¹³

If an Apostle was married, did he continue using his marriage rights? Some authors have claimed that he did, citing as their authority St. Paul, who wrote in his first Letter to the Corinthians: "Do we not have the right to be accompanied by a believing woman ('adelphēn gynaika') like the other Apostles and the brethren of the Lord and Cephas?"¹⁴ Yet most contemporary exegetes, for linguistic reasons alone, assert that the believing woman spoken of does not refer to a wife.¹⁵ Even if it could conceivably have referred to a wife, the Fathers have an impressive testimony in unanimously attesting that the Apostles, if they were married, lived in total detachment:

And Peter said, "Lo, we have left our homes and followed you." And he said to them, "Truly I say to you, there is no man who has left house or wife or brothers or parents or children for the sake of the kingdom of God, who will not receive manifold more in this time, and in the age to come eternal life."¹⁶

This meant living in perfect continence.¹⁷

3. Objection Two: Bishops and Priests were Married in the Early Church.

The meaning of *unius uxoris vir* of St. Paul (1 Tim 3, 2; 12; Tit 1,6) is a question that has been the object of interpretation throughout this study. An objection to the contention that St. Paul's injunction was *propter continentiam futuram* is the phenomenon of married clerics in the early Church. Since the law of continence was binding on married men only from when they received ordination, it has to be determined whether the children of these clerics were born before the reception of orders or not. If in the affirmative, then the cases of married bishops, priests and deacons present no difficulty to the thesis.

¹³ COCHINI 90-104, 107.

¹⁴ 1 Cor 9, 5.

¹⁵ COCHINI 104.

¹⁶ Lk 18, 28-30; cf. Mt 19, 27-29.

¹⁷ Cf. COCHINI 104-108.

A careful study of known married clerics in the early Church has been undertaken by Cochini.¹⁸ In summarising his conclusions, this author, basing himself on what information the texts themselves provide, asserts that in the 1st to 3rd centuries there is insufficient evidence from the few cases known to be able to demonstrate beyond any doubt that continence was lived in all cases. By the same token, however, there is insufficient evidence to affirm the contrary.¹⁹ Many more cases of married clerics are known from the 4th century. In a number of cases there is insufficient information to ascertain whether the wife was still living at the time of ordination, still less whether continence was lived or not. Within this group fall the cases of Gregory of Nyssa (d. 379) and Gregory the Elder of Nazianzus (d. 374).²⁰ On the other hand, there are documented cases which clearly show an absence of conjugal activity.

An interesting case that illustrates absence of conjugal activity is the succession to the patriarchal throne of the descendants of Gregory the Enlightener (d. c. 328), the first Catholicos of Armenia. For four generations the throne passed from father to son, a fact that some have taken to prove the absence of a law of continence.²¹ Yet a more careful study of each Catholicos has shown that at the time of their elevation to the throne they all ceased marital activity. Gregory, the first Catholicos, had been separated from his wife for a long time before his enthronement (he had had two sons in his youth). He was succeeded by Aristakes, who was a celibate. The third Catholicos was the other son of Gregory, Verthanes, who was already an old man when elevated. Yousik, son of Verthanes, was already a widower at the time of his enthronement, as was the next Catholicos, Nerses the Great.²² This case shows how necessary it is to keep in mind the distinction between the married state (or the fact of having been married) and the use of marriage when dealing with the question of celibacy in the early Church.

One testimony to the fact that conjugal abstinence was required in the West in the 4th century is provided by Gregory of Tours (538-594) in his "His-

¹⁸ 109-158: Chapter V: "Exemples de clerics mariés et pères de famille aux sept premiers siècles de l'église".

¹⁹ Ibid. 148-149.

²⁰ Ibid. 118, 150, 270-272. P. DELHAYE has stated that Gregory of Nazianzus the Younger was born after his father had already been made bishop. NCE 3, 370. In his sources Delhaye lists the work of E. HERMAN (DDC 3, 145-156), who on this particular case clearly states that the chronological data is unfavourable to such an interpretation (148-149). Herman, in turn, refers to Knetes. The latter had written: "... yet chronological facts do not allow us to accept the belief that his [Gregory the Elder's] eldest son, Gregory the Theologian, was born after his father's consecration." Ordination and Matrimony 484-485.

²¹ Delhaye seems to imply this in using this example. 370b.

²² COCHINI 119-120; 122-123; 152-153.

tory of the Franks". In writing *a propos* of Urbicus, bishop of Clermont (who did not persevere in continence and was deposed as a result), Gregory writes: "He had a wife who, according to ecclesiastical custom, having renounced cohabitation . . . lived religiously" (*quae juxta consuetudinem ecclesiasticam remota a consortio sacerdotis, religiose vivebat*).²³

Other similar examples could be cited from the 5th and 6th centuries. The fact alone, therefore, that bishops and other clerics were married and had children cannot be taken as evidence that there was no law of celibacy in force in the early Church.²⁴ Knetes writes on this point:

. . . several examples of married bishops have been adduced in defence of the contention that until the 4th century it was not required that bishops should abstain from their wives. It should however be remarked that almost all these examples owing to the lack of sufficient evidence are of little or no value. It cannot be denied that continence was considered a useful discipline in the Church, and it has accordingly been assumed that, though married, the clergy did not cohabit with their wives after ordination. It is therefore hazardous to lay stress on the mere mention in writers or canons of the name of a bishop's wife or of his children, without any further confirmation.²⁵

4. *Objection Three: Patristic Texts*

After a summary examination of chosen patristic texts, Herman, in his study on celibacy in the Eastern Church, writes:

It becomes quite evident from these citations that a great part of the clergy, perhaps most, practised, also in the East, ecclesiastical celibacy during the first four centuries. If we are not able to accept the point of view of those authors who believe that there was a general law or universal custom which imposed

²³ *Libri Historiarum Decem* I 44. (MGH, scr. mer., I 1, ed. 2a, 1951, 28-29). Cf. COCHINI 122, 151-152. This author notes that the custom spoken of referred to separation of domicile; already presupposed was perfect conjugal abstinence. (151).

²⁴ Cf. COCHINI 154, 156-157. For the case of Synesius of Cyrene (d. 414) see 131-132, 334-338. The case of Germanus of Auxerre (378-448) may serve as a 5th century example: Germanus, a married man, was holder of the supreme office of the Roman Province when he was chosen bishop in 418: "He received the fulness of the priesthood under compulsion, as a conscript; but this done, immediately he made the change complete. He deserted the earthly militia to be enrolled in the heavenly; the pomps of this world were trodden underfoot; a lowly way of life was adopted, his wife was turned into a sister, his riches were distributed to the poor and poverty became his ambition." From the *Life of St. Germanus of Auxerre* by Constantius of Lyons (written c.480), in: *The Western Fathers*, translated and edited by F.R. HOARE, Sheed and Ward 1954, 287.

²⁵ KNETES 484.

this rule on all major clerics, it is because there are other texts which say the contrary.²⁶

These patristic sources which, Herman maintains, argue against a general law of continence have been the object of detailed study by Cochini in his recent work, "Origines Apostoliques du Célibat Sacerdotal", in which this conclusion of Herman is seriously challenged.

5. Objection Four: From Ecclesiastical Legislation

Concerning the objections proceeding from ecclesiastical legislation of the early centuries Herman has also written:

It is to be noted that it is, above all, ecclesiastical laws, the holy canons, which prove that celibacy was not obligatory in the Eastern part of the Church. In establishing certain prohibitions, they define at the same time what was not prohibited.²⁷

The texts that Herman uses to defend his contention are Canon 10 of the Council of Ancyra, the episode of Paphnutius at Nicaea, Canon 4 of the Council of Gangra and Canon 6 of the Apostolic Canons.²⁸ These texts will now be studied in turn.

a) Canon Ten of the Council of Ancyra (314)

The text of Canon 10 of Ancyra reads:

Those who have been made deacons: if at the moment of their ordination they declared that they need to marry, not being able to remain single and afterwards marry, they may continue in their ministry because the bishop had permitted this to them. But if at the moment of their ordination they remained silent, undertaking to live as they were and afterwards proceeded to marry, these are to be dismissed from the functions of the diaconate.²⁹

²⁶ HERMAN 147: "Il résulte avec évidence de ces citations qu'une très grande partie du clergé, peut-être la majorité, a pratiqué aussi en Orient, pendant les quatre premiers siècles, le célibat ecclésiastique. Si nous ne pouvons pas accepter le point de vue des auteurs qui croient à une loi générale ou à une coutume universelle qui aurait imposé à tous les clercs majeurs cette règle, c'est que d'autres textes disent le contraire."

²⁷ Ibid.: "Il est à remarquer que ce sont surtout les lois ecclésiastiques, les saints canons qui prouvent que le célibat n'était pas obligatoire dans la partie orientale de l'Eglise. En établissant certaines prohibitions, elles définissent en même temps ce qui n'était pas défendu."

²⁸ Ibid. 147-148.

²⁹ JOANNOU I 2, 64.

From this text many authors have inferred that the use of marriage was permitted to the clergy.³⁰

The canon establishes as the general rule the law that was found also in the West at that time.³¹ The exception to the law poses problems. The first observation to be made on this is that in the late 6th century (in 572) there appeared a version of this canon significantly different from that cited, translated from an ancient Greek manuscript by the orientalist Martin of Dume, Archbishop of Braga.³² In this version we read: "... if someone is chosen for the ministry of the diaconate ... declaring that he cannot persevere in chastity, let him not be ordained ..."³³ This text together with other important considerations prompted Cochini to conjecture another reading of the canon of Ancyra which would obviate the need to provide an explanation of the exception to the law which provokes our difficulty.³⁴ The fact remains, nonetheless, that the canon was received, at least in later centuries, in its present form.³⁵

Our next observation is that the exception to the general law, if it did ever have legal effect in the early Church, was abrogated by Canon 14 of the Council of Chalcedon (451)³⁶ and similarly by Apostolic Canon 26.³⁷ Furthermore, in its own disciplinary enactments the Byzantine Church of the first seven centuries never made mention of any such possible concession. Certainly, by virtue of Canon 6 of Trullo such a practice was rejected.³⁸ Justinian, in 546, had even threatened a bishop with deposition if he ever dared allow a deacon to marry.³⁹ Nor did the Armenian or even Chaldean Churches seem to know of such a discipline.⁴⁰

³⁰ E. VACANDARD, *Les origines du célibat ecclésiastique*, Paris 1913, 92-93. Cf. COCHINI 202, fn. 91.

³¹ The disciplinary content of the canons of Ancyra, which dealt with *lapsi* and sins of the flesh, have a parallel in the Councils of Elvira (305?) and Arles (314).

³² COCHINI 196.

³³ Cf. Braga II, Canon 39. BRUNS II 52.

³⁴ COCHINI 194-202 (esp. 201).

³⁵ For the various manuscript traditions see COCHINI 194-195, fn. 71.

³⁶ JOANNOU I 1, 80.

³⁷ JOANNOU I 2, 19.

³⁸ Cf. the commentary of the Greek scholiasts: PG 137, 1149d-1151; 536d-538a; Matthew Blasthars: PG 144, 1149c.

³⁹ Novel 123, chapter 14. CJC (J) 3, 605.

⁴⁰ No mention was ever made in the early councils of the Chaldean Church (e.g. Mar Acacius, 486). In the 4th century Armenian Church the diaconate was an impediment to marriage without any exception. DAUVILLIER - DE CLERCQ 178.

Only in later centuries do we find any explicit reference to this canon with its exception. The Coptic Church, for example, received the canon into its legislation (although in a somewhat altered form).⁴¹ This legislation guaranteed the right, to children not yet of marriagable age, but already ordained deacons according to local custom, to be able to choose their state of life.⁴² The Ethiopian Church, strictly dependent in its legislation on the Coptic Church, received the same discipline.⁴³ The Armenian Church also adopted the canon. The Syrian Church, in its turn, appears only to have tolerated the canon.⁴⁴ It is to be noted that when the canon appears in the collections of the Middle Ages the practice of use of marriage was a universal discipline in all Eastern Churches.

In the 4th century, when Ancyra was celebrated, there is no evidence to suggest that this discipline was ever in effect in these Oriental Churches. The Church of Alexandria had in the first centuries close relations with the Church of Constantinople,⁴⁵ and it is improbable that this discipline, contrary to the discipline of the latter, would have been tolerated by the same. Furthermore, at this time the Church of Egypt did not tolerate the use of marriage for its clerics, as is clear from patristic sources.⁴⁶ The Ethiopian Church, therefore, with its close bonds with Alexandria, would probably not have had such a discipline at this time either. Nor was it found in the Armenian

⁴¹ The Coptic Nomocanon of Ibn-al-Assal, written in 1236, gave the canon in the following sense: If the deacon, it states, makes a declaration that he will not marry, and then does, he will be deposed. The obligation to remain in his state is thereby made into a positive act; Nomocanon VII, V. Taken from DAUVILLIER - DE CLERCO 177. For information on the Coptic Nomocanon see A. COUSSA, *Epitome praelectionum de iure ecclesiastico orientali* 1 Grottaferrata 1934, 172-173; SCANDAR, *Coptic Rite*, in: NCE 4, 315.

⁴² DAUVILLIER - DE CLERCO, *ibid.* Cf. Benedict XIV, *Instructio ad missionarios inter Coptos* 'Eo quamvis tempore', 4 May 1745, nn. 36 and 39.

⁴³ The *Fetha Neghest*, the main source of canon law for the Ethiopian Church, is a translation of the Nomocanon of Ibn-al-Assal. Cf. COUSSA 175; MALONEY, *Ethiopian Rite*, in: NCE 5, 586-588.

⁴⁴ John of Dara writes that it is "on account of the feebleness of the body that the 9th [sic] Canon of the Synod of Ancyra . . . permitted a deacon to marry". *Fonti*, serie II, Fasc. 27, 230. The Nomocanon of Bar Hebraeus quoted Canon 1 of Neocaesarea with deacon included, such that if he were to marry he would be immediately deposed. Nomocanon VII 5.

⁴⁵ Cf. SCANDAR, *ibid.*

⁴⁶ For example, St. Jerome writing in 406 says: "What are the Churches of the East to do? What is to become of the Egyptian Churches and those belonging to the Apostolic See, which accept for the ministry only men who are virgins or those who practice continence, or if married abandon their conjugal rights?" *Adversus Vigilantium* 2: Pl 23, 340b-341a.

Church.⁴⁷ If the concession of Ancyra 10 was authentic, it quickly fell into disuse, as Gryson has rightly noted.⁴⁸

With these considerations made, we can affirm that the concession envisaged in the canon, in the form most generally accepted, was clearly regarded in the early Church as contrary to tradition and an abuse. Any opinion that seeks to justify the use of clerical marriage in the early Church on the basis of this canon is, therefore, arguing on unsure evidence.⁴⁹ We may note, besides, that in the polemic between the Greeks and Rome over celibacy in the 11th and 12th centuries this canon was not used as an argument.⁵⁰ We are led to conclude, therefore, that the legislation of Ancyra 10 does not produce any serious objection to our thesis.

b) *The Council of Nicaea (325)*

Canon 3 of the First Ecumenical Council of Nicaea reads:

The Great Council has strictly forbidden any bishop, priest or deacon, or any member of the clergy from having a subintroduced woman (*syneisaktos*) unless she be a mother, sister, aunt or a person who is above suspicion.⁵¹

⁴⁷ DAUVILLIER - DE CLERCQ 178. In the 14th century an abuse which allowed deacons to take virgin wives before receiving priestly ordination was corrected by the Synod of Sis (1342): MANSI 25, 1261. It is not inconceivable that Ancyra 10 was used as a justification of the abuse. A late (century?) Armenian redaction of Ancyra 10 reads: "When deacons are led to be ordained and they declare that 'we are not able to be celibate', they shall be allowed to be ordained and remain so until such time as they are properly married, because conjugal beds are undefiled and marriage is honourable . . . Kanonagirq Hayots, ed. VAZGEN HAKOBYAN, Erevan 1964, 161 (in Armenian), cited by Tiran NERSOYAN, Notes on marriage and celibacy of priests, New York 1969, 6. The addition of the last words on the honourableness of marriage (inspired by Heb 13, 4) has an exact parallel in Trullo Canon 13.

⁴⁸ R. GRYSON, *Les origines du célibat ecclésiastique du premier au septième siècle*, Gembloux 1970, 125.

⁴⁹ For example, Gratian in Dist. 28, c. 8. Concerning Gratian's method, Stickler has written: "As for Gratian's method, and that of his followers, it does not seem that they seriously questioned the authenticity of the texts with which they deal. They give credence to the documents, and if there are obscurities and discrepancies to be resolved then they fall back on subtleties and fine distinctions". The evolution of the discipline of celibacy in the Western Church 561.

⁵⁰ Zonaras in his commentary on Canon 19 of St. Basil gives the essence of (the interpreted version of) Ancyra 10 when he writes: *Nisi enim denuntient prius atque testentur qui ordinandi sunt se virginitatem servare haud posse, et antequam ordinentur uxores ducant, postquam sacro ordini ascripti sunt nuptias inire haud licet*. PG 138, 655c.

⁵¹ JOANNOU I 1, 25-26.

This canon is the only one of the Council which deals in some way with clerical chastity, its purpose being to provide for and guarantee the good reputation and the chastity of the clergy. We include this canon in our study because of its relation to the episode of the intervention of Paphnutius at this Council and because of the canon's disputed interpretation.

Our point of departure is the observation that in this canon, among the persons enumerated who are considered to be 'above suspicion', the wife of the cleric is not mentioned whereas among these 'syneisaktoi' (women introduced into the company of someone)⁵² are mentioned mother, sister and aunt. Given also the fact that no distinction is made between a married and unmarried cleric, the question naturally arises as to whether the wives were, therefore, expected not to cohabit with their clerical husbands so as to guarantee their continence or were wives implicitly included among the general category of persons above suspicion?

One line of interpretation has been that the canon deals with the widespread but abusive custom of 'spiritual marriage' with a consecrated virgin.⁵³ Celibates – laymen as well as clerics – would live in the company of these spiritual sisters ('adelphē' or 'agapetē') who cared for all domestic needs.⁵⁴ Church authorities, however, always reacted with vigour in condemning this practice.⁵⁵ Canon 3 of Nicaea does not, nonetheless, seem to refer specifically to this practice, but more generally to all cases of cohabitation with women by married and unmarried clerics alike.⁵⁶

In Western canonical tradition the Nicene canon has always been associated with the discipline of celibacy,⁵⁷ particular care having been taken not to

⁵² Cf. C.W.H. LAMPE, *A Patristic Greek Lexicon*, Oxford 1965, 1317-1318; H. STEPHANO, *Thesaurus graecae linguae*, (London, 1819-1821), 866-867. COCHINI 211, fn. 8.

⁵³ BILANIUK, citing Lea, writes: "... it is clear that this canon is directed against those members of the clergy who used to play the role of celibates but kept agapetae or concubines in their households." 41. The editors of the *Pedalion* also have this interpretation: commentary on Canon 3 of Nicaea, 165-168.

⁵⁴ COCHINI 211.

⁵⁵ For example, St. Cyprian at Carthage, Ep. 4 (CSEL 3-2, 472-478); Ancyra (314) Canon 19 (JOANNOU I 2, 70); Council of Carthage (345/8), Canon 3 (CC 149, 5); St. John Chrysostom, *Contra eos qui subintroductas habent virgines, et quod regulares feminae viris cohabitare non debeant* (PG 47, 495-514; 513-532); St. Jerome, Ep. 22 *Ad Eustochium* (CSEL 54, 143-211). (COCHINI 211, fn. 8).

⁵⁶ COCHINI 211-212. Cf. Balsamon, PG 137, 232b. JOANNOU, on the other hand, has given an interpretation of *syneisaktos* in his translation, which he renders as 'sister-companion': I 1, 25-26.

⁵⁷ STICKLER, *Tratti salienti nella storia del celibato*, in: *Sacra Doctrina* 15 (1970) 600; Cf. *The evolution of celibacy in the Western Church* 531 and 541. COCHINI 212-216.

contradict in any way the spirit of this important first ecumenical council.⁵⁸ In this tradition, wives who had professed perpetual continence were included among those persons who were considered above suspicion.⁵⁹ Only in the 12th century, in the context of concerted effort to eradicate clerical incontinence, is the wife expressly excluded from this category in general law.⁶⁰

In the Eastern Church only two texts are known from the years between the Council of Nicaea and the Council of Trullo which treat the question of *subintroductae*. The first is from the Persian Synod of Seleucie-Ctesiphon (410):

On the subject of *subintroductae* we will do all that is indicated in the Council [of Nicaea]: henceforth every bishop, priest, deacon, subdeacon or cleric who lives with women, and not alone in chastity and in holiness, as befits a minister of the Church, men (living) separately with other men, will be excluded from ministering in the Church.⁶¹

The Synod clearly envisaged perfect continence for its married clerics, a discipline, it seems, that was found in all the ranks of the clergy. The canon is more severe than its corresponding source.

The other text is from the Armenian Synod of Chahabivan (444) which appears to recognize the legitimate presence of the spouse in the home of the cleric without specifying whether she was to have made a profession of continence or not.⁶² Other sources provide evidence that this probably was the case.⁶³

In the Theodosian Code (438) the Nicene canon is reproduced with the spouse specifically included:

... a chaste love further suggests that those women who, before the ordination of their husband, were worthy (of being united to him) by legitimate marriage be not abandoned; it is not without reason that they are associated with clerics, they who by their conduct rendered their husbands worthy of the priesthood.⁶⁴

⁵⁸ Cf. ORTIZ DE URBINA, *Nicée et Constantinople*, Paris 1963, 117; HEFELE - LECLERCQ, *Histoire des conciles I 2*, Appendix VI: "Diverses rédactions des canons de Nicée", 1139. COCHINI 212-213.

⁵⁹ For example, Arles II (442-506), Canon 4 reads: *Si quis clericum a gradu diaconatus in solacio suo mulierem praeter aviam, (matrem), sororem, filiam, neptem vel conversam secum uxorem habere praesumpserit, a communione alienus habeatur*. CC 148,114. Cf. COCHINI 215.

⁶⁰ Lateran Council I (1123), c. 7. Conc. Oecu. Decreta, 167.

⁶¹ J.B. CHABOT, *Synodicon* 259-260.

⁶² Canon 13. A. MAI, *Scriptorum veterum nova collectio X 2*, Romae 1838, 295. COCHINI 218.

⁶³ COCHINI 218, fn. 37.

⁶⁴ *Codex Theodosianus* 16, 2, 44.

Although some have concluded from this text that conjugal relations were permitted to the clergy of the Byzantine Church, such an interpretation rather begs the question, for in the Western Church of the 5th century wives of clerics were not dismissed for essentially the same reasons given by Theodosius. Wives were, however, bound to continence. The fact, likewise, that the text appears inspired by the sixth Apostolic Canon cannot be taken to confirm such an hypothesis.⁶⁵ This text was later inserted into the Justinian Code.⁶⁶

The legislation of the Emperor Justinian (527-565) sees another development in the presentation of the discipline of Nicaea. In Novel 123 (546), chapter 29, we read:

As for priests, deacons, subdeacons and all those who, not having a wife, have been enrolled in the clergy in conformity with the sacred canons, we too, in accordance with the sacred canons, forbid them to have in their house any woman, with the exception of a mother, daughter, sister, or other persons who are beyond suspicion.

.....

As for the bishop, we do not permit him in any way to have a woman live with him.⁶⁷

At first sight this legislation appears to be directed only to clergy who have no wife, that is to strict celibates and widowers.⁶⁸ If, on the other hand, we bear in mind the legislation of Novel 6, chapter 5, written eleven years previously and which seems to have required married candidates for the priesthood to completely abstain from relations with their wives,⁶⁹ another reading is possible. With the exception of the bishop, who is subject to legislation stricter than that found in the original Nicene canon,⁷⁰ the discipline appears to be in complete conformity with the latter, as interpreted in the Western tradition, with an adaptation conforming to the changed discipline regarding lower clerics.

⁶⁵ COCHINI 349-350. Cf. *infra*, 97 ff.

⁶⁶ Codex Justinianus I 3, 19: CJC (J) 2, 20.

⁶⁷ CJC (J) 3, 615-616: *Presbyteris autem et diaconibus et subdiaconibus et omnibus in clero conscriptis non habentibus uxorem secundum sacros canones interdiciamus etiam nos secundum sanctarum regularum virtutem mulierem aliquam in propria domo superinductam habere tamen citra matrem aut sororem aut filiam et alias personas quae omnem suspicionem effugiunt . . . Episcopum vero nullam penitus mulierem habere aut cum eo habitare permittimus.*

⁶⁸ Most authors seem to assume this, including COCHINI 398 and STICKLER (*Tratti salienti* 601).

⁶⁹ CJC (J) 3, 42-43. See *supra*, 38.

⁷⁰ See *infra*, 106 ff.

Nicaea had forbidden any 'bishop, priest, deacon or any member of the clergy' from having a *subintroducta*. Justinian adds the term 'subdeacon' to the list. The qualification of 'not having a wife' can be taken to be predicated of those members of the clergy other than the ones listed (from bishop to subdeacon), namely the other lower clerics. A literal reading of the text does not, it would seem, oppose this interpretation. Thus the law of Justinian would have been directed to all the higher clergy, whether married or not, and to all lower clergy if they were celibates. This being the case, one can understand how, despite appearances, Justinian reproduces the earlier discipline exactly.

If Canon 3 of Nicaea, then, guaranteed clerical chastity (i.e. continence) and included the wife implicitly in those 'above suspicion' once she had professed total continence, and this for all ranks of the clergy,⁷¹ then once any rank of the clergy was permitted to use marriage rights and to enter into marriage, this group would fall outside the immediate scope of the canon. Since lectors and cantors belonged to such a group (this being, as we have argued, a concession, and post-dating Nicaea) only the celibates among them would be considered directly subject to the canon. Higher clerics, married or not, would all be subject to the canon since they were bound by the law of continence. This would also be the reason why Justinian adds 'subdeacon' to the list, since anyone in this order was unable to enter marriage or, conversely, to use his marriage. The discipline of Apostolic Canon 26 allowing lectors and cantors to marry, on the other hand, was confirmed by Justinian.⁷²

Admittedly, this interpretation we have given is not the obvious one. It is more than possible that Justinian did intend to legislate only for celibates, giving, then, a strict interpretation of Nicaea which purposely excluded 'wife' from the list of women above suspicion. Nonetheless, a celibacy hermeneutic renders the alternative interpretation possible too.

Canon 5 of the Council of Trullo also reproduces the discipline of Nicaea:

Let none of those who are on the sacerdotal list possess any woman or maid-servant, beyond those who are enumerated in the canon as being persons free from suspicion, preserving himself hereby from being implicated in any blame . . . and let eunuchs also observe this same rule . . . if they are laymen let them be excommunicated.⁷³

⁷¹ COCHINI 221,fn. 46.

⁷² E.g. in Novel 22, chap. 42: CJC (J) 3, 176.

⁷³ JOANNOU I 1,130.131.

This canon adds to that of Nicaea in above all specifically including eunuchs (who could be laymen) within its compass.⁷⁴ In the light of Canon 13 of the same Council which expressly permitted use of marriage (bishop excepted), Canon 5 would require interpretation taking this discipline into account. Cochini affirms that the canon has to be interpreted, and this for the first time in history, as categorically not implying total continence for a married cleric.⁷⁵

On the other hand, it may just be that the canon was probably not intended to be applied to married clerics at all; and it is this interpretation, in fact, which became traditional in the Eastern Church. The addition of a clause on eunuch celibates to the traditional canon appears to lend support to this view. From this time onward, therefore, to make provision for the discipline of Canon 13 of Trullo, a new interpretation, not found, it seems, before the time of Trullo,⁷⁶ was developed for Canon 3 of Nicaea in which the subjects of law were celibates only.

In the 2nd Council of Nicaea (787) a canon similar to the one being considered has as its subjects celibate bishops and monks:

Do not offend even outsiders, says the Apostle (1 Cor 10, 32). But for women to be dwelling in bishoprics or in monasteries is a cause for giving offence to everyone. If, therefore, anyone be caught having a female servant or a free woman in a bishopric or monastery for the purpose of some service or ministration, let him be penanced; and if he persists, let him be deposed from office. If, on the other hand, it transpires that in the suburbs there are women and a bishop or abbot is to go there, let no woman perform any kind of service at all during the time the bishop or abbot is present, but let her keep to another place until the bishop takes his departure; this to avoid any reproach.⁷⁷

This canon is a restrictive interpretation of Canon 5 of Trullo and echoes the discipline of Canon 12 of the same Trullan Council which forbade a

⁷⁴ For ecclesiastical legislation on eunuchs cf. Can. 1 of Nicaea; Apostolic Canons 21, 23, 24; Pedalion, commentary on Ap. Can. 21, 33.

⁷⁵ COCHINI 220: "Depuis 325, c'est la première fois, à notre connaissance, qu'une tradition disciplinaire affirmée en concile interprète de façon explite le 3^e canon de Nicée dans un sens qui n'implique pas la continence parfaite pour les clercs intéressés et leur épouses." Cf. STICKLER, *Tratti salienti* 601.

⁷⁶ In the Chaldean (Persian) Church after the Synod of Mar Acacius (486), which allowed the use of marriage, the sense of Canon 3 of Nicaea also changed. In the Synod of Gregory I (605), clerics were forbidden to be in the company of the 'suspect'. The company however is interpreted as referring to those who lack the integrity of the Nestorian faith, and does not refer to women. CHABOT 477. Cf. *Fonti*, Serie II, fasc. 14, *Discipline Chaldéenne* 47.

⁷⁷ Canon 18. Pedalion 446; JOANNOU I 1, 276-277; PITRA, *Monumenta* II 117-118.

bishop from cohabiting with his spouse 'in order not to give offence to Jews or Greeks or to the Church of God'.⁷⁸ It also reflects the Justinian legislation which prohibited a bishop from having any woman at all in his household.⁷⁹ No exceptions are made for women above suspicion, since presumably both bishop and abbot would have sufficient male assistance from other clerics or monks for their needs.⁸⁰

Greek commentators seem to have always shown the tendency to interpret the Nicene canon as applying to strict celibates or widowers only. Although Balsamon, in the 12th century, informs us that an exegesis did exist which regarded the canon as including within its compass married men,⁸¹ he himself, as with Zonaras and Aristenus, appears to have held the celibate interpretation.⁸² In commenting on the canon, particular attention is paid to a passage of St. Basil the Great in his Canonical Letter to the presbyter Gregory:

The respectability of celibacy consists in this, that it prevents association with women. So that if anyone professing it verbally does the same things done by those who cohabit with women, it is plain that he is forfeiting the respectability of virginity that resides in the appellation, and is not actually abstaining from improprieties in the matter of sensual pleasure.⁸³

It is only with Matthew Blasthares in the 14th century that we see for the first time an *express* restriction of the canon to celibate and widower clerics; and, from then on, this interpretation became quite traditional in the Greek

⁷⁸ JOANNOU I 1, 138-139.

⁷⁹ CJC (J) 3, 615-616.

⁸⁰ The risk of alienation of the temporal goods of the diocese to the profit of the family of the bishop would be lessened as well. Cf. COCHINI 397.

⁸¹ This we infer from the fact that Balsamon quotes an opinion which gave to the word *subintroducta* the sense of a woman who passed herself off as a legitimate wife, but yet did so for the purpose of fornication. PG 137, 232b.

⁸² In no place do they actually restrict the scope of the canon to strict celibates and widowers (neither does the canon itself do so literally), yet nothing is said of the cleric's wife either. The sources they quote, nonetheless, seem to deal only with celibates: Justinian, Novel 123; Ancyra 19 (in which virgins are prohibited from acting as 'spiritual sisters'); Trullo Canon 5; Nicaea II, c. 18; St. Basil's canonical epistle (c. 88) to the presbyter Gregory. PG 137, 232b-233b.

⁸³ PG 138, 824b. The presence of a woman (a virgin), the saint adds, might not induce the man to sin in every case but it could be the occasion of sin for others. Idem. In quoting this source, Balsamon appears only to want to demonstrate that prohibited *subintroductae* are not necessarily women of evil intention. PG 137, 232b.

and Slav Churches.⁸⁴ This interpretation was also adopted by Oriental Catholics and by the Roman Congregations when dealing with them.⁸⁵

c) *Episode of the Intervention of Paphnutius*

It is only in the 11th century, and especially with the opponents of the clerical reform promoted by Pope Gregory VII (1073-1085) that there was sustained opposition to the traditional interpretation of Canon 3 of Nicaea and to the discipline of celibacy.⁸⁶ In this context, authority was given to the episode recounted by the 5th century Greek historian Sozomen concerning Paphnutius, who supposedly intervened at the Council of Nicaea to oppose any plan to impose the discipline of absolute continence on all married clerics.⁸⁷ If this account were true, then certainly Canon 3, assuming it did deal with celibacy, could not have encompassed married men with their wives.

Sozomen received the story of Paphnutius from Socrates (d. c. 450), his contemporary, who in his *Ecclesiastical History* recounted it in a somewhat more elaborate form than that given by Sozomen. This original version of the episode runs thus:

As we have promised to make some mention of Paphnutius and Spyridon, it is time to speak of them here. Paphnutius then was bishop of one of the cities in Upper Thebes: he was a man so divinely favoured that extraordinary miracles were performed by him. In the time of persecution he had been deprived of one

⁸⁴ Blasthars writes: *Vocat autem extraneas vel introductitias quae cohabitare cum expertibus conjugii sacerdotibus eligunt dum in illis operam suam eis exhibent quae necessarios ad usus spectant.* Syntagma alphabeticum, letter <gamma>, c. 19: PG 144, 1202d. Cf. Pedalion, commentary on Nicaea 3, 165-168. Knetes writes: "Among the enactments of the Nicene Council the third canon refers only to clergymen without wives, viz. to those who are unmarried or widowers at the time of their ordination, and those who became widowers after ordination." 355. Blasthars' Syntagma not only had wide diffusion in the Greek Church, but it was soon translated into the various Slav languages: Serbian (1340-1348), Bulgarian (14th/15th centuries), Rumanian (15th century) and Russian (16th century). J. HERMAN, in: DDC 2, 922-923; Cf. NIKODIM I 176-181.

⁸⁵ This can be seen from the approval given to the Melkite (Catholic) Synod of Aintrazen (1835): *Renovamus sancta et ecclesiastica decreta. eaque plurima, quae omnibus clericis cohabitationem cum mulieribus extraneis interdicunt, maxime Concilii Oecumenici Nicaeni I, canonem 3 . . . sed insuper Concilium Nicaenum II, Oecumenicum VII, canone 18, vetat, ne eadem illae mulieres cohabitent cum episcopis . . . Quae duae prohibitiones Oecumenicae haud dubie illo tempore omnibus clericis (exceptis parochis coniugatis) communes et ita declaratae erant, ut ad omnes eorum habitationes pertinere intelligerentur.* MANSI 39, 329-330; Fonti, Serie I, fasc. 15, Discipline Byzantine Melkite, 51, n. 93.

⁸⁶ Cf. STICKLER, The evolution of celibacy in the Western Church 531 ff.

⁸⁷ Ibid. 537.

of his eyes. The Emperor honoured this man greatly and often sent for him (to come) to the palace, and kissed the part where the eye had been torn out. So great a piety characterized the Emperor Constantine. Let this single fact respecting Paphnutius suffice: I shall now explain another thing which came to pass in consequence of his advice both for the good of the Church and the honour of the clergy.

It seemed fitting to the bishops to introduce a new law into the Church, that those who were in holy orders, I speak of bishops, presbyters and deacons, should have no conjugal relations with the wives whom they had married while still laymen. Now, when discussion on this matter was impending, Paphnutius having arisen in the midst of the assembly of bishops, earnestly entreated them not to impose so heavy a burden on the ministers of religion: asserting that 'marriage itself is honourable and the bed undefiled', urging before God that they ought not to injure the Church by too stringent restrictions. "For all men", he said, "cannot bear the practice of strict continence, neither perhaps would the chastity of the wife of each be preserved", and he termed the relations of a man with his lawful wife 'chastity'. It would be sufficient, he taught, that those who were inscribed into the clergy be no longer permitted to marry according to the ancient tradition of the Church: but that none should be separated from her to whom, while yet not ordained, he had been united.

And these sentiments he expressed, although himself without experience of marriage, and to speak plainly, without ever having known a woman, for from youth he had been brought up in a monastery and was especially renowned before all men for his chastity.

The whole assembly of the clergy assented to the reasoning of Paphnutius: they therefore silenced all further debate on this point, leaving it to the discretion of those who were husbands to exercise abstinence towards their wives if they so wished. Thus much concerning Paphnutius.⁸⁸

Given the importance of the Council of Nicaea in the history of the Church the episode of the intervention of Paphnutius would certainly, if authentic, have to be numbered among the most authoritative arguments – if not actually the most authoritative – for optional celibacy/continence in the early Church. Before expressing judgement on its authenticity, a number of observations have to be made.

The text of Socrates indicates that absolute continence in the 5th century was a practice which was lived, at least among some of the clergy, and evidently not practiced by all. What was left to the 'discretion' of married clerics was not the practice of temporary continence (this was already required from all married lay people),⁸⁹ but the practice of absolute or "strict" continence. In the 5th Book of the same *Ecclesiastical History*, Socrates affirms that clergy and bishops in the East do abstain from their wives, but freely and of their

⁸⁸ Socrates, *Historia Ecclesiastica* I 11. PG 67, 101b-104b. English translation based on Nicene and Post-Nicene Fathers 2 (1891) 18.

⁸⁹ See *infra*, 144-156.

own accord, in contrast with certain regions (he enumerates Thessaly, Thessalonica, Macedonia and Greece) where sanctions were applied if absolute continence was not lived.⁹⁰ The context also makes it clear that Socrates is speaking of absolute continence. The point of Paphnutius' intervention, then, is that clergy (including bishops) should not be obliged, under the threat of censure, to live total continence should they judge it to be beyond their moral strength.

Our next observation is that the discipline envisaged by Paphnutius was itself contrary to even that permitted in the Council of Trullo. Trullo was the basis and model for all subsequent Eastern praxis. Such a point is worth emphasizing, since it has been claimed that the episode should not be dismissed as a falsification, simply on the ground that it is "quite in harmony with the practice of the Church and in particular with the practice of the Greek Church on the subject of clerical marriage."⁹¹ Yet the only element of the account which is beyond any doubt in harmony with Eastern ecclesiastical legislation is the prohibition of those in orders (apart from the lower ones) from contracting marriage, and also the doctrine of the honourableness of marriage. No more can be said of the text. Canon 12 of Trullo had specifically prohibited bishops not only from having relations with their wives, but from having any kind of cohabitation and requiring that the wife be sent to a monastery.⁹² Secondly, for all other grades of married clerics absolute continence was regarded as an aberration. Not only was it not recommended at the 'discretion' of the cleric, but it was actually considered to be a barbarous custom.⁹³

Significant also is the observation that the Council of Trullo makes no reference to or citation of this account at all. Even though the discipline of the Council was different in significant details, yet it could have given a selective citation of Paphnutius in the same way as it did for the Carthaginian canons and Apostolic Canon 6.⁹⁴

⁹⁰ Hist. Eccl. V 22. PG 67, 637a. The author says that continence is lived but "not by the necessity of any law", and argues this from the fact that a number of bishops had children by their lawful wives during their episcopacy. Idem. This fact alone, however, could be taken to show that there was no effective higher authority to apply sanctions to bishops who did not live the law of continence, rather than proving the latter did not exist. Cochini indicates several documents of the Eastern Church from the 4th and 5th centuries which indicate that there was such a law, and most particularly for bishops. 352. This author also points out other factual inaccuracies related by Socrates in this same account. 351.

⁹¹ HEFELE - LECLERCQ, *Histoire des conciles* I 1, 624. Cf. R. GRYSO 92 (COCHINI 226, fn. 57); HERMAN, DDC 3, 147.

⁹² JOANNOU I 1, 138-139 & 186.

⁹³ Ibid. 140-143 (Canon 13); 160-161 (Canon 30).

⁹⁴ See *infra*, 115-128.

The fact of the omission of any reference to Paphnutius is suggestive that the Fathers of the Trullan Council regarded the episode as a fable, for, otherwise, given the polemical tone of the Council, the account would have served well to emphasize the point that was being made. Equally surprising, if the account were authentic, is the total silence on this episode in the polemical writings of the Greeks. Up to the 14th century we are unaware of any single Greek polemical author who ever mentioned Paphnutius – Nicetas Stethatos included.⁹⁵ Nor is it found in any printed version or, to our knowledge, in any of the manuscript versions of the Slav *Kormčaja Kniga*, the most important and influential canonical collection of the Slav Churches up to the 19th century,⁹⁶ even though other polemical tracts against Latin celibacy are

⁹⁵ It is not found in the following texts which we have examined: Photius (820-891), Encyclical to Oriental Patriarchs, c. 31. PG 102, 733-736; Nicetas Stethatos (Pectoratus) (c. 1000-1080), *Libellus contra latinos editus* (Dialexis): PG 120, 1019 ff.; the first known polemical tract dedicated exclusively to celibacy (Nicholas, Archbishop of Reggio Calabria, [contemporary of Nicetas?]), in: C. GIANELLI, *Reliquie dell'attività 'letteraria' di uno scrittore Italo-Greco del sec. XI Med.* (Nicola Arcivescovo di Reggio Calabria?), in: *Atti dell'VIII Congresso Internazionale di studi Bizantini*, in: *Studi Bizantini e Neoellenici* 7 (1953) 93-119; Michael Cerularius: PG 120 740a-c, 791b-793a; *Opusculum contra Francos*, n. 18, J. HERGENRÖTHER, *Monumenta graeca ad Photium ejusque historiam pertinentia*, Ratisbonae 1869, 67 (this tract is usually attributed by scholars to Cerularius; cf. GIANELLI 105); Alexis Aristenus, John Zonaras and Theodore Balsamon: *Syntagma canonum*, PG 137 and 138, *passim*. We have also consulted the Slavonic polemical writings of this period: Archbishop Leo (Leontij) of Rus/Tmutorokan (989-1004?), *Letter to the Romans or Latins about Azymes*, n.18, in: *Russkaja istoričeskaja biblioteka* (RIB), 36 Petrograd 1920, 98-99; Metropolitan John II of Kiev (1081-1089): *Letter to Pope Clement (III)*, n. 7, in A. Pavlov, *Kritičeskie opyty po istorii drevnejšej greko-russkoj polemiki protiv latinjan*, S. Peterburg 1878, 177-178; Georgios, Metropolitan of Kiev (c. 1069-1072?), *Polemic against the Latins in Eighty Numbers*, n. 8, in Pavlov, *ibid.* 193 (in this text there is a reference to the First Holy Council which, we read, decreed that subdeacons, deacons and priests who were legally married were to be ordained. The council, however, made no such decree. Paphnutius is not mentioned). It is to be noted that these letters are nothing more than translations from Greek originals of the 11th century and later. The first cited Slavonic letter, for example, was attributed to Archbishop Leo only in later centuries in order to attempt to localize differences between the Churches of Rome and Kiev from the beginnings of the latter's existence. The fact is, moreover, that the native Church of Rus was incapable of understanding the reasons for the tension in relations between Constantinople and Rome, and no original polemical work was written by the hand of a Slav before about the 14th century. Cf. PAVLOV 26 ff., K.K. VISKOVAŤYI, *Quelques remarques sur la question de l'auteur et du temps d'origine de la 'Lettre à Izjaslav au sujet des latins'*, in: *Slavia, Časopis pro slovanskoj filologii*, Ročnik XVI 1939, sesit 4, Prague, 537-538.

⁹⁶ ŽUŽEK, *Kormčaja Kniga* 232 and *passim*. When the first printed edition of the *Kormčaja* was being prepared in the mid 17th century, the family of manuscripts known as the 'Rjazanskaja', dating from the 13th century and of Serbian origin, was chosen to be the

found.⁹⁷ Either the account of Paphnutius was unknown to the Slavs in the first centuries of the development of their canonical discipline or, if and when known, given little importance.⁹⁸

In the 11th century polemic in the Western Church, on the other hand, the story of Paphnutius was used as an arm against the reformers. At the Roman Synod of 1077, Pope Gregory VII condemned the episode as one of the two most important falsifications used by the opponents of the reform.⁹⁹ Bernard of Constance (d. c. 1088) rejected it as false since it was against the tradition of the Apostles and of the Fathers (*est evangelicis et apostolicis scripturis atque sanctorum patrum statutis adversum*) and because a rule of (conciliar) authenticity was whether it was opposed to canonical certitude (*nullum caput canonicae veritati contrarium pro authentico est recipiendum*).¹⁰⁰

Gratian, on the other hand, accepted the episode and incorporated it into his *Decretum* without questioning its authenticity nor apparently being aware of Gregory's condemnation of it.¹⁰¹ His followers did not question it either.¹⁰² The *Decretum*, being a private work, was never approved by the Roman Pontiffs as an authentic source of canon law. This is a point deliberately emphasized by Pope Benedict XIV, precisely in reference to Gratian's uncritical acceptance of the episode.¹⁰³ Despite its private character, the *Decretum* achieved very wide recognition. In view of this, it seems to us not unlikely that Matthew Blasthares himself was familiar with the work, given that he also set

basis for the printed collection of ecclesiastical law. Some parts of Blasthares' Syntagma were included but not the episode of Paphnutius. Nor do we find in the other families of manuscripts, listed with their contents and analysed by Žužek, any trace of this episode. Cf. *ibid.* 14-51 and *passim*.

⁹⁷ For example, the tract against latin celibacy given in the commentary to Carthage Canon 71 (73): Chapter 15, 1650 ed. (reprinted in Moscow 1912) fol 143b-148b.

⁹⁸ Cf. VISKOVAŤYJ, *ibid*; J. HERMAN, in: DDC 2, 922-923; *supra*, fn. 96.

⁹⁹ Cf. Bernaldus Constantientis, *Chronicon*, MGH, *Scriptores V*, 436. The other falsification was the writings of Pseudo Ulrich: *Epistola Pseudo-Uldarici de continentia clericorum*, MGH, *Libelli de lite Imperatorum et Pontificum I* 254-260. Cf. Sigebert of Gembloux, *Apologia contra eos qui calumniantur missas coniugatorum sacerdotum*, MGH *Libelli II* 436-448.

¹⁰⁰ MGH *Libelli II* 20; 24. STICKLER, *The evolution of celibacy in the Western Church* 541-542.

¹⁰¹ Pars I, Dist. 31, c. 12. Gratian took the episode from the *Historia Tripartita* of Epiphanius Cassiodorus (late 6th century).

¹⁰² STICKLER 561.

¹⁰³ *Benedicti XIV Papae Opera Inedita* ed. F. HEINER, *Friburgi Brisgoviae*, 198.

out to compile a concordance of Greek ecclesiastical law.¹⁰⁴ We might suspect also that it was precisely from Gratian that Blasthares received the idea of including the episode of Paphnutius into his *Syntagma Alphabeticum*, for in this work appears for the first time in Greek canonical literature, as far as we are aware, this account of Paphnutius.¹⁰⁵

Gratian had inserted his account in conjunction with Canon 13 of Trullo, and had formed one argument with it. Blasthares also juxtaposed the two texts (although in reverse order) to form one argument.¹⁰⁶ What is also significant is that Blasthares departed from the 12th century scholiasts in giving the Carthaginian canons (which gave Canon 13 of Trullo its central structure), their true meaning. The canons clearly legislated for absolute continence, and yet the Trullan Fathers misrepresented and selectively cited them as legislating only for temporary continence.¹⁰⁷ Blasthares called them 'obscure' and, if taken to mean absolute continence, to be rejected.¹⁰⁸ The 12th century scholiasts, on the other hand, were quite insistent on giving these canons the sense that Trullo had wanted from them;¹⁰⁹ and so it seems not unlikely that it was Gratian, in his clear exposition of these canons, who actually persuaded Blasthares of their true (or at least more probable) meaning.¹¹⁰ Nor does Blasthares allude directly to other traditional Greek arguments against the Latin discipline, especially Apostolic Canon 6 and Gangra Canon 4.¹¹¹ Gratian had explained these texts in a way that concurred with Latin discipline.¹¹² Blasthares' strongest argument, therefore, in defending the discipline of Canon 13 of Trullo (apart from its presumed ecumenicity) was precisely this episode of Paphnutius.¹¹³

Another (external) reason why we suspect Blasthares took the episode from a non-Greek source is the observation that the *Pedalion*, the Greek

¹⁰⁴ The *Syntagma*, completed in 1335, groups laws (ecclesiastical and civil), with their commentaries, into twenty four headings according to the letters of the Greek alphabet. The heading under which clerical marriage is treated is the letter <gamma>. Cf. HUNTER, in: NCE 2, 609; HERMAN, in: DDC 2, c. 920-925.

¹⁰⁵ *Syntagma*, letter <gamma>, cap. 2. PG 144, 1149a-c.

¹⁰⁶ *Ibid.* 1148d-1149c.

¹⁰⁷ Cf. *infra*. 115-128.

¹⁰⁸ Cap. 18., *ibid.* 1200d-1201a.

¹⁰⁹ Cf. the commentary of the scholiasts on Canon 3 of Carthage: PG 138, 32b-37a.

¹¹⁰ Dist. 31, c. 3 (in the context of canons 1-7).

¹¹¹ Cf. *infra*, 92-105.

¹¹² *Ibid.* cc. 8-11. Cf. Dist. 28, cc. 14 and 15.

¹¹³ Scriptural arguments were also used and a vague reference to the sacred canons *tum apostolicis tum synodicis*. PG 144, 1202a.

equivalent of the Slav *Kormčaja Kniga* and the official source of canon law since the early 19th century in the Patriarchate of Constantinople,¹¹⁴ makes no allusion in its main texts to Paphnutius, even though Blasthares is used as a source in other matters.¹¹⁵ Blasthares, therefore, appears to stand alone among Greek canonical authorities of the first centuries of the second millennium in giving authority to the episode of Paphnutius. Summarising, we may say that in the mainstream of canonical tradition in both Greek and Slav Churches, the episode of the intervention of Paphnutius is given minimal importance, to the extent that one may query from this external argument alone the supposed authority and authenticity of the episode.

Historians have often given their own critical reasons why the episode cannot be regarded as authentic, but rather a fabrication. None of the church Fathers had ever made any reference to the episode, including the Greek historian Eusebius of Caesarea, who was personally present at the Council.¹¹⁶ In recent times the German professor Friedhelm Winkelmann has produced a study in which, using purely external criteria, he concludes that the episode is

¹¹⁴ Cf. MALONEY, Greek Rite, in: NCE 6, 751; ŽUŽEK 8. The Pedalion collected the corpus of laws with commentaries of preceding centuries, translated into modern Greek. Notes were added by the two editors, Nicodemus and Agapius, monks of Mount Athos, and produced in 1800. The first English edition (used throughout this thesis) appeared in 1957. Cf. Pedalion viii-xii.

¹¹⁵ The editors, however, in two footnotes do allude to the episode: not in conjunction with Nicaea 3 (or Trullo 13), but with Apostolic Canon 5 (6). Ibid. 8. The episode, though, is misquoted and misrepresented. Footnote 1 reads: "... from the time of the first council it appears that the custom prevailed of not letting those in holy orders marry, especially if prelates; it applied, however, to those who consented to it voluntarily, and not by reason of any necessity; as is plain from the words addressed by St. Paphnutius the Confessor and bishop of the cities of upper Thebes to that first council." In footnote 2 we read: "Sozomen in his Book I, ch. 23 says 'Paphnutius the Confessor of the first council of Nicaea would not let the marriage of priests be forbidden, though some wanted this, but said that marriage of priests is sanity, and each must be left to his choice, in accordance with the ancient tradition of the Church'." We do not know what the source was which was used in this quotation, but in the original (and as found in Blasthares) we read: "... and he reminded them that according to the ancient tradition of the Church, those who were unmarried when they took part in the reception of holy orders were required to remain so, but those who married were not to put away their wives." (GCS 50, 44). Cf. Socrates, PG 67, 101b-104b. The editors also confuse the notions of marriage and the use of marriage.

¹¹⁶ Cf. STICKLER, Tratti salienti 603; "Nota storica sul celibato dei chierici 'in sacris'", in: L'Osservatore Romano, 2-3/4 marzo, 1970, c. 7. On the various authors who rejected this episode, and their opponents, see COCHINI 40-68.

the "product of a progressive hagiographical confabulation".¹¹⁷ His conclusions have also been generally well received in scientific circles.¹¹⁸

For all these reasons, the author believes that the episode of Paphnutius' intervention at Nicaea was a fabrication used as a justification for the non-observance of the law of celibacy.

d) Canon Four of the Council of Gangra (c. 340)

The 4th Canon of the Provincial Council of Gangra (Asia Minor) reads:

If anyone affirms that one should not receive communion during the holy sacrifice (of the mass) celebrated by a married priest, let him be anathema.¹¹⁹

The first time, to the author's knowledge, that this canon was used in a polemical context against the discipline of mandatory celibacy was in the year 867 when Photius, Patriarch of Constantinople (858-867, 878-886), condemned in synodal form the 'errors' propagated by Latin missionaries in Bulgaria.¹²⁰ The Bulgarian ruler, Boris I, christened Michael, (852-893) had been recently baptised (in 865) by a bishop sent to him from Constantinople, but he had not as yet definitively decided on whom to show full ecclesiastical dependence: on Byzantium or Rome. Greek priests had been sent to him, but

¹¹⁷ Cf. F. WINKELMANN, Paphnutios, der Bekenner und Bischof. Probleme der koptischen Literatur (= Wissenschaftliche Beiträge der Martin-Luther-Universität Halle-Wittenberg 1968/1 (K2) 145-153. Cf. COCHINI 224-225, fn. 56. Winkelmann's arguments are essentially: a) the person of Paphnutius was progressively elaborated upon, b) his name did not appear with any consistency in the lists of the participants of the council, in particular in the earliest ones, c) 4th century manuscripts give Paphnutius as a confessor of the faith. After this, hagiographical legend presented him as a miracle worker and a participant at Nicaea. Ibid.

¹¹⁸ Cf. COCHINI 225. In light of this, together with our other reasons, we find the following statement of Herman concerning this episode somewhat brash: "Des doutes ont été élevés par M. Bickell et d'autres au sujet de l'authenticité de ce récit, mais ils n'ont d'autre fondement que cette idée préconçue d'après laquelle il existait une loi universelle imposant le célibat." DDC 3, 148a. The very opposite could, we feel, be justly said, namely that the insistence that this episode must be authentic - in the face of so much contrary evidence - is due to a preconceived idea that there was no such universal law (!). Bilaniuk writes that the opposition of many 'Latins' to its authenticity was due to their preconceived notions on celibacy. 40-41. Yet it seems that it is precisely from the Latins that the episode was received as authentic, and it was the Eastern Church that had held the episode suspect.

¹¹⁹ JOANNOU I 2, 91.

¹²⁰ PG 102, 732d; cf. 734c-d.

he requested Latin missionaries from the Frankish Empire (in 866) and dispatched envoys to Pope Nicholas I.¹²¹

Being recently converted, Boris had several questions to put to the Pope concerning ritual and disciplinary matters. These the Pope answered in the *Responsa Nicolai ad Consulta Bulgarorum*.¹²² One of the questions asked of the Pope was whether married priests ought to be sustained and honoured or, on the contrary, rejected.¹²³ The Pope's answer was that they need not be rejected, even though they deserved to be reprehended (*licet ipsi valde reprehensibiles sint*) and that this was a matter for the bishops to act upon, adding that the Lord himself had said that the sun rises both on the good and bad and that it rained on both the just and unjust (Mt 5, 45).¹²⁴

In understanding this reply of Pope Nicholas, it has to be borne in mind that Western legislation had never condemned married priests for the mere fact of being married; its condemnation was for those married priests who failed to keep the law of continence.¹²⁵ It is inconceivable, therefore, that the Pope should have condemned these Greek priests merely because they were married. What was reprehensible was the fact that they used their marriages, contrary to all Western legislation (but in accord with Canon 13 of Trullo).

The question was most probably brought up in the first place by the Frankish missionaries who found despicable the 'practice of fornication' among the Greek clergy.¹²⁶ It has to be remembered here also that for a consecrated priest to return to having relations with his wife after his ordination was always regarded as fornication or adultery, given that both he and his wife had professed perpetual continence.¹²⁷ This fact was probably not properly understood or appreciated by Photius, even though it was clear for the Greeks themselves that a breaking of a promise of perfect chastity undertaken by a

¹²¹ Cf. Dimitri OBOLENSKY, *The Byzantine Commonwealth, Eastern Europe, 500-1453*, New York 1971, 117-121.

¹²² PL 119, 978-1016.

¹²³ *Ibid.* 1006c (n. 70).

¹²⁴ *Idem.*

¹²⁵ Cf. STICKLER, *The evolution of celibacy in the Western Church 511-532*, where there is a summary of the chief sources of such disciplinary norms (of the 8th - 10th centuries): penitentials, capitularies, regional councils, diocesan synods and papal interventions.

¹²⁶ As recounted by Photius: PG 102, 732d.

¹²⁷ Eighth century penitentials had canons which regularly began; *Si quis clericus vel superior gradus qui uxorem habuit et post conversionem vel honorem iterum eam cognoverit, sciat se adulterium commisisse*. See STICKLER 513-516, fns. 7 & 25. In 1022 Pope Benedict VIII would write: *Adulteria non est solum cum aliena peccare coniuge sed omne quod non habet potestatem coniugis*. MANSI 17, 353.

married bishop or by a married monastic candidate, with the consent of the wife, was equally a crime of adultery or fornication.¹²⁸

In light of this, it is highly probable that the Pope's following response (n. 71), which answered the question whether the faithful could receive communion from the hands of a priest apprehended or suspected of adultery,¹²⁹ was in fact motivated by charges made by the missionaries that married priests continued to have conjugal relations with their wives, and who therefore were committing 'adultery'. In the 11th century, Cardinal Humbert made exactly the same charge against Greek priests.¹³⁰ The missionaries had probably not even heard of the Trullan canon which permitted this practice,¹³¹ nor, from the question posed, does it seem likely that Tsar Boris knew of it.

From the question asked whether the laity could in good conscience receive communion from the hands of such priests, it is clear that a discipline must have existed in the Western Church at this time which prohibited reception from the hands of an incontinent priest.¹³² The Pope's response shows moderation and good judgement when he declares that judgement of priests should not be too rash, and, besides, an unworthy priest does not by that fact contaminate the sacrament itself.¹³³

Photius' response to the charge of the Latin missionaries was to cite Canon 4 of Gangra. Nonetheless, it would seem that Photius was quite unable to appreciate why the laity were recommended by the missionaries not to receive communion from his priests. He was justified in his reaction in so far as a presbyter, who had not vowed perpetual and perfect chastity, could not be condemned for living married life. He was mistaken, however, in not seeing that the problem was more subtle than a simple Latin intolerance towards married priests, in favour of strict celibacy.¹³⁴ To Photius, therefore, a presen-

¹²⁸ See Pedalion 305 and 343, fn. 1.

¹²⁹ PL 119, 1006d.

¹³⁰ In his response to the polemical essay of Nicetas Stethatos, the Cardinal writes: *Sed jam videamus capitula quibus putas defendi adulteria sacerdotium, non conjugia*. PL 143, 997d.

¹³¹ No Latin translation of the Trullan canons seems to have been generally available in the mid 9th century. LAURENT, *L'oeuvre canonique du Concile in Trullo* 28.

¹³² In 1059 Pope Nicholas II prohibited the laity from attending the mass of an incontinent priest. Cf. MANSI 19, 897 ff. Presumably this norm (at least that part which excluded possibility of receiving communion) had been already in force long before.

¹³³ PL 119, 1006d-1007a.

¹³⁴ In his letter to Pope Nicholas in 869 Photius writes: *Legitimis nuptiis presbyter Romae uxori conjunctus non invenitur: nos vero eos qui unico coniugio vitae suae moderati sunt, edocti sumus in presbyteri gradum efferre, eosque qui hoc in discrimine ponunt, ac se secernunt, ne ab his Domini corporis participationem capiant, undique excludimus, eodem loco ducentes eos qui aut legem fornicationem sanciant, aut nuptiarum tollunt*. PG 102, 606a.

tation of the text of Gangra 4, in conjunction with Trullo 13, was sufficient to prove the 'errors' of the missionaries.¹³⁵

This same charge, of inciting the laity not to receive communion from the hands of married priests, was laid against the Latins by Michael Cerularius (1043-1058) in a synodal edict of July 1054.¹³⁶ The Metropolitan of Kiev, John II (1081-1089), himself a Greek, makes the same charge and confronts the Latins with the text of Gangra 4.¹³⁷

In the other polemical texts of his period that have been consulted during research, the Council is not alluded to as an argument to prove the freedom of priests to use their marriages.¹³⁸ Nor do the 12th century scholiasts ever use it as a supporting argument in their commentaries on Trullo 13 or the corresponding African canons.¹³⁹ Nor is any specific commentary made on the text of Gangra 4 itself.¹⁴⁰ Blasthares, in the 14th century, does not mention the canon at all when he deals with the question of the marriage of priests,¹⁴¹ nor does the *Pedalion* ever use it as an argument against Latin celibacy.

In Greek tradition, therefore, and beginning with the Council of Trullo itself which makes no mention of the canon, Gangra 4 has never been considered a direct and self-sufficient argument to prove that priests could always use their marriages. Whenever it was used in the polemic with the Latins, it was with one specific purpose in mind: to illustrate the error, as it was so understood, of prohibiting the faithful from receiving communion from priests because they were married. The censure in the Latin Church, however, was directed against married priests only when they did not abstain from the use of marriage.

It is also worth pointing out that the spirit of the Latin discipline was not opposed in fact to Eastern discipline. Canon 27 of St. Basil, reproduced ver-

¹³⁵ Ibid. 732d. The text itself is lost but mention of it and its contents is made in the Letter to Oriental Patriarchs (867), *ibid.* 734c-d.

¹³⁶ Ibid. 740a-c. Cerularius uses the text in defence of the married state of his priests. He was under the (mistaken) impression that it was this state that was prohibited by Rome rather than the use of the rights of the state. Thus he could write: *Ad haec sacerdotum nuptias prohibent, hoc est, qui uxorem habent sacerdotii dignitatem non suscipiunt, sed conjugii expertes esse debent qui volunt sacrari . . . Et vero nec illud laudamus aut admittimus si verum est quod sacerdotes qui legitimas habent uxores non sinuntur sacra tractare.* Letters to Peter III of Antioch: *ibid.* 791b-794a; 807a.

¹³⁷ PAVLOV 177-178.

¹³⁸ We have consulted the texts as listed above, fn. 95 of this chapter. In particular there is no mention of the council in the essay of Nicetas Stethatos; PG 120, 1019 ff.

¹³⁹ PG 138, 32-37a; 124b-125b; 269c-272c; PG 137, 561-565d.

¹⁴⁰ PG 137, 1248a.

¹⁴¹ Cf. esp. PG 144, 1148c-1149c; 1200d-1201c.

batim in Canon 26 of Trullo, specifically prohibited a priest from distributing communion to the faithful on account of his unlawful marriage. St. Basil had in mind, quite certainly, a marriage with a person who could not guarantee the priest's chastity.¹⁴²

As for Gangra itself, the Council was celebrated at a time when there was abroad the dangerous and heretical doctrine of Eustathius of Sebaste (300-c.380). This bishop had preached that marriage debar from salvation and that the state of virginity and perfect continence was the only possible state of life for a Christian seeking salvation. As a result of this doctrine, some Christian couples who had attempted to live accordingly by separating, found themselves giving in to immorality and to adultery. Furthermore, the ascetics of this sect refused to pray in the houses of married people or to take part in the eucharistic sacrifice celebrated in these houses. Married priests, in their eyes, were unworthy of the ministry and they therefore refused to receive communion from their hands.

The Council Fathers severely condemned this sect. Canon 1 of the Council, for example, reads:

If anyone shall condemn marriage or abominate and condemn a woman who is a believer and devout, and who has relations with her own husband, as though she could not enter the Kingdom, let him be anathema.¹⁴³

Canon 9 of the same Council reads:

If any one shall remain a virgin, or observe continence, abstaining from marriage because he abhors it, and not on account of the beauty and holiness of virginity itself, let him be anathema.¹⁴⁴

The legislators of this Council had tried to preserve the just balance between the traditional Christian doctrine of the goodness and holiness of the sacrament of marriage and the excellence of virginity and continence practised with the correct intention. The text of Canon 4, in this setting, cannot be interpreted, in our judgement, to imply anything more than a condemnation of those misled ascetics who opposed the ministry of priests because of their married state. Priests were, according to these ascetics, to set the example for the faithful of the best way of living the Christian vocation. It would be forcing the literal meaning of the text to insist that the Council Fathers were implicitly authorising marital relations for the clergy.¹⁴⁵ The true mind of the Fathers on this point can only be ascertained without ambiguity by examination of other contemporary patristic and legislative documents. These sour-

¹⁴² Cf. *supra* 31-32; 16-20 and *passim*.

¹⁴³ JOANNOU I 2,89.

¹⁴⁴ *Ibid.* 93.

¹⁴⁵ As KNETES does, for example: 354.

ces, we believe, indicate that the priests of Gangra 4 were indeed bound to total continence.¹⁴⁶

e) *Apostolic Canon Six (c. 400?)*

Apostolic Canon 6 (or 5)¹⁴⁷ reads:

Let no bishop, priest or deacon send his spouse away under the pretext of piety; if he does so let him be excommunicated, and if he persists, let him be deposed.¹⁴⁸

As with Gangra Canon 4, this canon, which assumed some importance in the Greek-Latin polemics of later ages, cannot be interpreted 'in abstracto', but according to the disciplinary context of the time. The sense of the canon *prima facie* is that higher clerics, being forbidden to send away their spouses, were entitled to use their marital rights in the same way as before their ordination. Yet already at about the same time as the appearance of the Apostolic Canons, Pope St. Leo the Great had made a similar stipulation, though in a clear context of continence, in a letter written in 458 or 459 to Rusticus, Bishop of Narbonne:

Question III: Concerning those who minister at the altar and have wives, whether they may lawfully cohabit with them?

Reply: The law of continence is the same for the ministers of the altar as for bishops and priests who when they were laymen or readers could lawfully marry and have offspring. But when they reached to the said ranks, what was before lawful ceased to be so. And hence, in order that their wedlock may become spiritual instead of carnal (*ut de carnali fiat spirituale conjugium*), it behoves them not to put away their wives but to 'have them as though they had them not', whereby both the affection of their wives may be retained and the marriage

¹⁴⁶ KNETES considers Gangra immediately after a discussion of the Paphnutius episode and interprets it in this context: 352-352. The opposite interpretation can be drawn by considering, for example, the writings of Epiphanius of Constantia (315-403) who, in condemning the exaggerated asceticism of the Cataphrygian sect, defends the honour of monogamous marriage, while at the same time recalling the norm of absolute continence. Pannarion, Haer. 48, 9; GCS 31, 219-241. Cf. COCHINI 253-256; 256-261. The canon of Gangra was taken up by the African collection Brevatio Ferrendi (546), where the legislators saw no contradiction in including it together with other canons prescribing absolute continence for clerics. COCHINI 356.

¹⁴⁷ The numeration of this canon varies according to the different manuscript collections. Cf. JOANNOU I 2, 4.

¹⁴⁸ JOANNOU I 2, 10.

functions cease (*quo et salva sit charitas connubiorum et cesset opera nuptiarum*).¹⁴⁹

The spirit of this legislation is also perfectly in accord with other contemporary sources such as the *Opusculum de Septem Ordinibus Ecclesiae* of Pseudo-Jerome (c. 417)¹⁵⁰ and the 2nd Council of Arles (442-506), Canon 3.¹⁵¹ It is in this spirit, likewise, that Western canonical tradition interpreted Canon 3 of Nicaea as permitting cohabitation with a wife vowed to perfect continence.¹⁵² Husband and wife were to live as 'spiritual brother and sister'.¹⁵³ In these texts we also find elements of a spirituality for these 'celibate' married priests and their wives, a spirituality as sublime as it was demanding.

This type of discipline, which combined cohabitation with absolute continence, was the rule in the 5th to 7th centuries not only in Rome, but in the provinces of Gaul, Spain and Africa.¹⁵⁴ Within this disciplinary context, Western canonical collections received Canon 6 of the Apostolic Canons without hesitation and without any suggestion of contradiction.¹⁵⁵ We are entitled to ask whether perhaps this was not the sense of the Theodosian Code when it says: "A chaste love further suggests that those women who, before ordination of their husband were worthy (of being united to him) by legitimate marriage be not abandoned."¹⁵⁶

In the same collection of Apostolic Canons, Canon 51 reads:

If any bishop or presbyter or deacon, or anyone at all on the sacerdotal list abstains from marriage, or meat or wine, not on account of personal discipline (mortification) but out of abhorrence, forgetting that all things are exceedingly good, and that God made man male and female, but blasphemously misrepresents God's work of creation, either let him mend his ways, or let him be de-

¹⁴⁹ Epistola ad Rusticum Narbonensem episcopum, Inquis. III, et Resp. PL 54, 1204a. English trans. from Nicene and Post-Nicene Fathers 13, 110.

¹⁵⁰ The author, a cleric from the region of Arles-Marseille, writes to a layman about to be made a bishop: *Amanda quidem uxor est, sed sicut Ecclesia aut Templum Dei, orandum cum ea, legendum, abstinendum, communicandum in altario, non in opere; spiritu, non carne vivendum*. PL 30, 159c-d. Cf. COCHINI 344-346.

¹⁵¹ CC 148, 114.

¹⁵² Cf. supra, 78-85.

¹⁵³ Cf. the councils of Girone (517), Can. 6: BRUNS II 19; Clermont (535), Can. 13: CC 148A, 108.

¹⁵⁴ COCHINI 342.

¹⁵⁵ E.g. the 7th century African collection, Concordia Cresconii. PL 88, 840b. Cf. COCHINI 417-420.

¹⁵⁶ Codex Theod. 16, 2, 44. Cf. supra, 80-81.

posed from office and expelled from the Church. Let a layman be treated similarly.¹⁵⁷

This particular canon was not received in the West (only the first 50 canons of the collection were), but in the East it was known through, for example, the "Synagoga in 50 titles" of John the Scholastic (c. 550) which included all 85 canons and was accepted by Trullo.¹⁵⁸ A problem of interpretation is immediately posed: is the abstinence from marriage understood as temporary, of the sort that was required of all the married faithful,¹⁵⁹ or was perpetual continence meant? And does the canon implicitly permit clerics conjugal relations?

The canon appears to have been a response to one of the exaggerated ascetical movements of the early Church such as that which prompted the intervention of the ecclesiastical authorities at Gangra in the 4th century. These sects did not permit moderate use of earthly goods, but required a total abstinence. This being the case, it is legitimate to presume that the Apostolic Canon was directed against those who abstained totally; whether from marriage, meat or wine. Abstinence from meat or wine would have been a purely personal discipline in imitation of true ascetics and monks.¹⁶⁰ If perpetual continence was practised, was it practised by all clerics by reason of their clerical state? Apostolic Canon 26 had allowed lectors and cantors to marry so that if there were a discipline of celibacy at the time of the appearance of this canon these lower clerics were exempt. On the other hand, Canon 26 may have been an innovation with respect to Canon 51.¹⁶¹ Nothing can be deduced from the canon about the obligatory nature or not of the discipline of continence. Nonetheless the canon is of interest in that it would appear to throw light on Canon 6.

In Canon 6 the same clerics (though lower clerics are not included) are prohibited from sending away their wives on account of piety. The type of piety that the legislator had in mind would be, it seems, that which is condemned in Canon 51 – a false asceticism that found legitimate pleasures abhorrent, especially those of marriage. Such an attitude would injure the dignity of marriage and the work of creation. To insist on separation on this ac-

¹⁵⁷ JOANNOU I 2, 35-36: *Si quis episcopus vel presbyter vel diaconus, vel omnino ex sacerdotali numero, a nuptiis, carnibus et vino non propter exercitationem, sed propter abominationem abstinet, oblitus quod omnia valde bona, et masculum et feminam fecit deus hominem, sed blasphemans calumniatur opificium, aut corrigatur aut deponatur et ex ecclesia eiiciatur. Similiter et laicus.*

¹⁵⁸ Trullo Canon 2: JOANNOU I 1, 121.

¹⁵⁹ On the discipline of temporary continence for lay people: see *infra*, 144-156.

¹⁶⁰ Cf. Pedalion, commentary on Apostolic Canon 51: 91-95.

¹⁶¹ Cf. *supra*, 35 ff (esp. fn. 4).

count, with this false piety, is the object of reproach in both canons. It is quite possible to assert, in conclusion, that Canon 51 does not exclude, by its language, there being a preceptive general norm of continence for clerics; it simply affirms that whoever practices continence should do so in a spirit of true piety and not in a spirit of abhorrence.¹⁶²

Trullo and Apostolic Canon 6

With the Council in Trullo an interpretation of Apostolic Canon 6 was given which departed from the Western (Leonine) practice. In Canon 13, as a justification for the anti-Latin discipline, we read (towards the end):

If therefore anyone shall have dared, contrary to the Apostolic Canons, to deprive any of those who are in holy orders, that is to say presbyter or deacon or subdeacon, of cohabitation and conjugal relations with his lawful wife, let him be deposed. In like manner also if any presbyter or deacon on pretence of piety has dismissed his wife, let him be excluded from communion; and if he persevere in this let him be deposed.¹⁶³

To understand this text properly it is necessary to set it within the context of the whole canon, where the Fathers of Trullo attempt to present their discipline as being not only ancient, but also apostolic.¹⁶⁴ To this end they do not hesitate to reinterpret and, in fact, to modify the sources they cite. The most glaring example of this is their unfaithful use of the canons of the African Church. The text of these canons form, in the author's judgement, the most important argument for or against the intrinsic authority and credibility of the whole canon¹⁶⁵ These African canons were accepted by the Fathers as representing an early tradition faithful to the Apostolic Church. Reference to the Apostolic Canons, therefore, was but a supportive argument confirming the discipline of the African Church.

There is nothing in the apostolic collection, contrary to what is stated in the Trullan canon, which corresponds to the anathema against those who dare deprive clerics of conjugal relations with their wives. This, it seems, is already an interpretation of Apostolic Canon 6 which is then textually cited. It is to be noted, however, that this citation purposely omits any mention of the

¹⁶² Balsamon accepted that abstention may not necessarily be *propter abominationem* of the marital act, but *propter exercitationem et quamdam religionem*. PG 137, 142. It is also possible that the canon refers to those who chose to remain unmarried before receiving orders but not for the right reasons. In light of Apostolic Canon 6 this interpretation would seem nonetheless to be less likely.

¹⁶³ JOANNOU I 1, 142-143.

¹⁶⁴ See *infra*, 115-128.

¹⁶⁵ *Idem*.

bishop. The selective use of the Apostolic Canon is easily explained by the fact that in Canon 12 of the same Council bishops were required not only to dismiss their wives, but to place them in a convent.¹⁶⁶

What is of interest is that in Canon 12 the Council Fathers rule that the consecrated bishop is to separate from his wife in order not to give scandal and offence to the people, adding:

and we say this not to abolish and overturn what things were established of old by apostolic authority . . . but as caring for the (spiritual) health of the people

...¹⁶⁷

The apostolic authority that is meant is without question Apostolic Canon 6.¹⁶⁸ Authors have been quick in pointing out the doctrinal inconsistency of the Trullan Fathers.¹⁶⁹ To save disciplinary consistency the Fathers were obliged to re-edit the Apostolic Canon. Yet they do demonstrate, perhaps unwittingly, that celibacy within marriage does not contradict the spirit of the canon.

If we consider that Canon 13 was directed against what the Greeks considered a forced obligation on clerics of the Roman Church to separate from their wives,¹⁷⁰ the Apostolic Canon appeared to be an apt argument against such a practice.¹⁷¹ Yet the Greek Fathers were quite conscious that separation, when there was sufficiently grave and honest motivation, was permissible and even necessary. Hence the discipline of bishops in Canon 12. In Canon 30 of the Council the Fathers accepted that there were priests who did live, or tried to live, continence with their wives. These priests, according to the Fathers, thought "they ought to go beyond the Apostolic Canon concerning the not putting away of a wife on the pretext of religion and piety, and to do beyond what is commanded . . ." ¹⁷² Separation was demanded by the Fa-

¹⁶⁶ JOANNOU I 1, 138-139.

¹⁶⁷ Ibid.

¹⁶⁸ Cf. Balsamon, Zonaras and Aristenus. PG 137, 556a-560a; COCHINI 435.

¹⁶⁹ Cf. HEFELE - LECLERCQ, III, 1, 565, fn. 1; GRYSO 20; H. CROUZEL, *Celibacy and ecclesiastical continence in the Early Church: the motives involved*, in: *Priesthood and Celibacy* 492.

¹⁷⁰ Cf. Pedalion 308.

¹⁷¹ The Council Fathers, however, showed a lack of understanding of the spirit and purpose of the Western legislation and its history. See Chapter 4, discussion of Canon 13 of Trullo.

¹⁷² JOANNOU I 1, 160-161. The whole canon reads (in translation): "Wishing to do all things for the edification of the Church we have determined to take care even of priests who are in barbarian Churches. Wherefore if they think that they ought to exceed the Apostolic Canon concerning the not putting away of a wife on the pretext of piety and religion, and to do beyond that which is commanded, and therefore abstain by agreement with their wives from conjugal relations, we decree they ought no longer to cohabit in any way,

thers "to afford us a perfect proof of their promise."¹⁷³ Thus here, as in Canon 12, separation is not condemned but is regarded as a logical consequence of the discipline of continence. What is tolerated is the fact that priests should decide to practise this discipline at all, in those 'barbarian' countries where this was the custom.¹⁷⁴

The delicate balance which had been achieved in the legislation of the West between continence and cohabitation was regarded here as impracticable; it was suspect (Canon 12) and did not give sufficient guarantee against incontinence (Canon 30). Thus, despite first appearances of the Trullan legislation, the practice of continence within marriage was acceptable (if it was not motivated by false or 'barbarian' asceticism).¹⁷⁵ Nor can this be regarded as contravening the spirit of Apostolic Canon 6.

Canon 3 of Trullo also required priests who had been involved in illegal marriages to separate and to live in perpetual continence. In the early Church married couples were permitted to separate, if there was mutual consent, in order to live in absolute continence for the sake of religion.¹⁷⁶ This was permitted also in the Greek and Slav Churches of later centuries.¹⁷⁷

In commenting on Trullo Canon 30, Balsamon states that separation is needed for married priests living in continence in order to prove that their chastity, which had been vowed to God, had a pure and sincere religious mo-

so that hereby they may afford us a perfect demonstration of their promise. But we have conceded this to them on no other ground than their pusillanimity and foreign and unsettled manners." Nicene and Post-Nicene Fathers 14, 379.

¹⁷³ Idem.

¹⁷⁴ Idem.

¹⁷⁵ The Pedalion authors write: "Besides, even if one of the priests, with the consent of his wife, gets a divorce or abstains for a time the work is acceptable." 308.

¹⁷⁶ Cf. Rabula, Bishop of Edessa (d. 435): *Mulier nupta non accipiat professionem absque voluntate mariti sui; neque vir, absque voluntate uxoris suae*, in Bar-Hebraeus, *Nomocanon*, VII, 10: Mai, X, 2, 58. Severus Patriarch of Antioch (d. 538), Letter to Aba, in *Fonti*, Serie II, fasc. 26, chap. VI, 366-367. Leo the Wise, Novel 20: *ZACHARIAE, Ius Graeco-Romanum*, III Lipsiae 1856-1884 [7 vols.], 61-62. Also cf. *Pedalion* 347-349 for references to St. Basil the Great, St. Augustine, St. Jerome and Justinian.

¹⁷⁷ Thus the 11th century Metropolitan of Kiev, John II, permitted a lay man to separate from his wife in order to embrace the monastic life and then the priesthood. *Otvit*, n. 12: V. BENEŠEVIČ, *Sbornik pamjatnikov po istorij cerkovnago prava*, Petrograd 1915, 113. According to Balsamon, the wife of such a monk – if she remained in the world – would be free to engage in another marriage. *Commentary on Trullo 48*: PG 137, 686b. This contradicts Catholic theology and tradition on the indissolubility of the consummated marriage bond. Cf. M. JUGIE, *Theologia Dogmatica Christianorum orientalium ab ecclesia Catholica dissidentium*, III Paris 1930, 462.

tive.¹⁷⁸ He thereby gave his own implicit approval. In his commentary on Canon 48 of the Council he affirms that a bishop should live in continence and separate from his wife, but only with her consent.¹⁷⁹ It is this mutual consent which renders the discipline acceptable and consistent with the nature of marriage. Indeed it is the only juridical and theological justification for the separation.¹⁸⁰ It is this mutual consent which also, according to Greek authors, saves Canon 12 (and 30) from openly contradicting Apostolic Canon 6.¹⁸¹

To understand the original intent of the Apostolic Canon, one has to understand the historical context in which it was written. Precise information on its origin is lacking, but it is not unlikely that it appeared within a context similar to that of Gangra (as with Apostolic Canon 51). The ascetic currents of the Christian East in the 4th and 5th centuries tended to exaggerate the value of virginity and to devalue marriage. It is possible that clerics who had been affected by these movements assumed a negative and intolerant attitude towards their wives (and children), to the extent of deliberately neglecting their material well-being.¹⁸² This neglect and rejection of family concerns, with its heterodox motives, would have been a cause of real scandal to the orthodox faithful. In this context, any separation could have been interpreted negatively by the faithful. Ecclesiastical authorities, therefore, laid down measures to prevent a cleric from giving scandal. If Apostolic Canon 6 demanded that the

¹⁷⁸ PG 137, 609c. He adds, though, that this should be the case only in 'barbarian' lands and not elsewhere. *Idem*.

¹⁷⁹ PG 137, 685a-c

¹⁸⁰ Severus of Antioch writes, for example: "... and those who have been united in marriage, seeing that marriage 'is honourable and the bed undefiled' ought not to desire to separate from one another by reason of religion except where there is consent. For the divine Apostle says: Deprive not one another except it be by consent for a time in order that you may give yourselves up to prayer, and again come together ... It is therefore manifest that unless the husband consents, the wife who separates has no forgiveness, and she makes herself a cause of his turning aside to fornication. If then your husband consents, you are permitted to place yourselves under the yoke of piety: there is no one who will find fault with so praiseworthy and admirable a choice. But if the husband cannot restrain his body and therefore will not permit you to do this, put up with the marriage state: such intercourse that saves the husband is better than an abstinence from pleasures that is unknown to the canons". Letter to Aba, *ibid*.

¹⁸¹ Cf. Pedalion, commentary on Trullo 12: 303-305; commentary on Apostolic Canon 5(6): 7; Balsamon's commentary on Trullo 30: PG 137, 609d-611a.

¹⁸² Canon 15 of this council reads, for example: "If anyone should abandon his own children or fail to devote himself to feeding his children and fail, to the extent that it falls on him, to bring them up piously with respect for God, but under the pretext of ascetic exercise should neglect them, let him be anathema." JOANNOU I 2, 95.

married cleric remain in his own home so as not to give scandal to the faithful, in a different context Canon 12 of Trullo required the very opposite of the bishop but for the same motive: not to give scandal. The two canons, therefore, show the same spirit expressed in opposite ways due to opposite historical circumstances. Yet we are entitled to believe the underlying discipline was the same – the law of continence.

This interpretation we have given is in complete harmony with the explanation of the canon given by Cardinal Humbert, legate of Pope Leo IX, in response to the attacks of Nicetas Stethatos. The Cardinal writes:

We altogether confess that it is not permitted for a bishop, priest, deacon or subdeacon to reject from his care his own wife on account of religion; that is to say, that he is to supply her with necessary provisions and food, but not that he have carnal relations with her.¹⁸³

Gratian also accepts this interpretation.¹⁸⁴

The Council of Trullo, as we have seen, used Apostolic Canon 6 in a selective way in order to reject the Latin discipline of celibacy. The very use of this text appears to have been dictated not so much by the unambiguous meaning of the discipline formulated within it as by its supposed apostolic authority. The text was thereafter used in Greek polemic (and through the Greeks adopted by the Slavs) as a direct result, we believe, of the authority (presumed to be ecumenical) of Canon 13 of Trullo.¹⁸⁵ In the ultimate analysis, nonetheless, the Greek Church had an understanding of this canon which was not fundamentally opposed to its meaning as interpreted by the praxis of the Western Church. Canon 48 of Trullo had required that the bishop care for the material needs of his wife from whom he had separated on account of his consecration. The Fathers of Trullo and the Greek commentators were at pains to show that this discipline was still in conformity with the true spirit of

¹⁸³ PL 143, 997d; Gratian, *Decretum*, Dist. 31, c. 11.: *Omnino confitemur non licere episcopum, presbyterum, diaconem vel subdiaconem uxorem propriam causa religionis abjicere a cura sua, scilicet ut rei victum et vestitum provideat, non ut cum illa ex more carnaliter jaceat.*

¹⁸⁴ Dist. 31, c. 9. In commenting on Canon 9 of Gangra, which anathematised anyone embracing the life of virginity or continence solely because of abhorrence towards marriage, Gratian writes: *Potest et aliter intelligi illud, quod in canone apostolorum legitur, ut iste sit sensus capituli: Si quis docet sacerdotem uxorem suam contemnere, non quam uxorem in sacerdotio accepit, sed quam dum adhuc esset laicus (vel in minoribus ordinibus constitutibus) sibi copulavit, cum qua continentiam professus est, quum ad sacros ordines ascenderet, quam nullus debet contemnere, hoc est ab animo et cura sua abjicere, quin et necessaria provideat.*

¹⁸⁵ This is certainly the case with Nicetas Stethatos; it is presented on its own in the letter attributed to Archbishop Leo of Rus/Tmutorokan (which, besides, is strictly dependent on the former). Photius, Cerularius and Metropolitan John II do not directly allude to the text on its own but only indirectly through Canon 13 of Trullo. Cf. supra, 88 fn. 95.

the Apostolic Canon.¹⁸⁶ The Latin Church, with its own discipline for bishops and all other higher clerics, shared the same view.

¹⁸⁶ Trullo Canon 12 (JOANNOU I 1, 138-139); Commentaries of the 12th century scholiasts and those of the Pedalion on Trullo Canons 12 and 48.

Chapter Four

The Law of Clerical Continence in the Eastern Church according to the Spirit and Letter of the Council in Trullo

This chapter will consider the discipline of continence for bishops and for all other clerics. Post-Trullan legislation on the compulsory marriage for secular priests, an effect of the Trullan legislation, will then be considered. A corollary of this discipline, the dismissal of unmarried widower priests, will also be considered. A particular study on the discipline of temporary continence for laymen as well as priests will then be presented. Finally, a judgement will be offered on the canonical value of Canon 13 of Trullo, and implications for present discipline given.

1. The Law of Continence for Bishops

The celibacy discipline for bishops in the Council in Trullo is found in Canons 12 and 48. Canon 12 reads:

Moreover, this also has come to our knowledge, that in Africa and Libya, and in other places the most God-beloved pastors (bishops) in those parts do not refuse to live with their wives, even after their consecration, thereby giving scandal and offence to the people. Since therefore it is our particular concern that all things are to be done for the edification of the people committed to our care, it has seemed good that henceforth nothing of this kind should ever occur again. And we say this not to abolish and overthrow what things were established of old by apostolic authority, but as caring for the spiritual health of the people and their progress in virtue, and lest ecclesiastical discipline suffer any reproach. For the blessed Apostle says: 'Do all to the glory of God, give offence to no one, neither to the Jews nor to the Greeks, nor to the Church of God, even as I please all men in all things, not seeking my own profit, but the profit of many that they may be saved. Be ye imitators of me, even as I also am of Christ'. But if any shall have been observed to do such a thing, let him be deposed.¹

Canon 48 legislates more specifically on the wife of the bishop:

The wife of him who is advanced to the episcopal dignity shall be separated from her husband by their mutual consent, and after his ordination and con-

¹ JOANNOU I 1, 138-139. English translation based on PERCIVAL (ed.), *Nicene and Post-Nicene Fathers* 14, 370. For the Greek and Latin texts see appendix.

secration to the episcopate she shall enter a monastery situated at a distance from the abode of the bishop, and there let her enjoy the bishop's provision. And if she is deemed worthy, she may be advanced to the dignity of a deaconess.²

In the course of this study, we have already had recourse to these canons.³ Of Canon 48 no further comment will be offered.

Canon 12 reprehends the practice of cohabitation of bishops with their wives, for this, according to the Fathers, gives "scandal and offence" to the faithful. In the 6th and 7th centuries, in fact, the bishop's residence had taken on the organizational physiognomy of a monastery, especially in Gaul and Spain where all female presence was excluded.⁴ In other localities, such as in Africa and Libya, the rule of Pope St. Leo, in keeping with the letter of Apostolic Canon 6, was still in force allowing cohabitation as 'brother and sister'. The Fathers of Trullo do not expressly condemn the incontinence of the bishops in these places – although in some instances there may have been abuses – but they condemn the circumstances which in their view do not sufficiently guarantee a life of total continence. This same concern is expressed for priests living in 'barbarian' countries, in Canon 30. Trullo, by this disposition, preceded the Latin Church in first imposing this strict discipline of total physical separation of husband and spouse.

The immediate precedent for this law is without doubt the legislation of Justinian which, more than a century earlier, had forbidden such cohabitation.⁵ Given that the bishop had the responsibility for the administration of church goods and property,⁶ strict measures were taken by Justinian to ensure that there be no danger of dissipation of these goods to the advantage of the bishop's own immediate family. The emperor therefore prohibited the elevation to the episcopate of any man who was the father of a family.⁷ Although the Council Fathers did not repeat this last disposition, the civil law remained in effect until its abrogation by Emperor Leo VI in the late 9th century.⁸

The Council, therefore, did not require that bishops be celibates in the strict sense, but its legislation, as with that of Justinian, fostered the tendency

² JOANNOU I 1, 186. See appendix.

³ 25-26; 101-104.

⁴ COCHINI 434-435.

⁵ Novel 132, c. 29: CJC (J) 3, 615-616.

⁶ Cf. D. HERLIHY, Church Property, in: NCE 3, 849-853.

⁷ Letter to the Prefect Atarbe (528), Codex Justinianus I 3, 41: CJC (J) 2, 25-26; Letter to the Prefect John (531), Codex I 3, 47: CJC (J) 2, 34; Novel 6 (535), c. 1: CJC (J) 3, 36-37.

⁸ Novel 2 reads: *Ut secundum sacros divinosque canones, quem episcopali dignitate dignum testatus de caetero vitae integritas, is ab honore non prohibeatur ob liberos ex legitimo connubio suscepto.* J.D. ZEPOS (ed.), Jus Graecoromanum I 58.

to promote only strict celibates. A parallel movement in fact took place also in the Western Churches. In the sixth century it was already generally deemed improper for a married cleric with children to be consecrated a bishop; this was due to the fear that the temporal goods of the Church would be misused.⁹ With time this same consideration seems to have been the dominating factor in prompting church authorities to deny to all married clerics (but especially to those who still cohabited with their wives) positions of responsibility, clerical privileges and church administration.¹⁰ Lower clerics were deprived of their benefices if they married: it was considered that they would be more in the service of their wives than in the service of the Church.¹¹ In this way, strict celibacy would gradually become the norm for clergy in the Latin Church.¹²

In the Eastern Church the preference for strict celibate bishops did not begin with Trullo or Justinian.¹³ Already at the beginning of the fourth century the "Ecclesiastical Canons of the Holy Apostles" (c. 300), known also by various other names, had established that it was better if a bishop were not married.¹⁴ St. Epiphanius of Constantia (c. 315-403) had expressed preference for all priests to be either virgins or monks, or failing this, monogamists who would have to live in continence.¹⁵ The same preference was expressed by St. Gregory of Nazianzus (d. 389 or 390) in his "Oration on Baptism",¹⁶ as also by St. Jerome (d. c. 420), who had profound knowledge of the Eastern Churches.¹⁷ That strict celibates were preferred was not due primarily for fear of alienation of church property. This would have been but a secondary reason. The prime reason was the esteem that the Church had always had for the charism of virginity, as being theologically more excellent than the state of

⁹ Pope Pelagius I (556-561) permitted the episcopal consecration of a married man with children, requiring that there be sufficient guarantee that church property not be misappropriated, and stipulating that the children would not be able to inherit such property. *Epistola Pelagii Papae Cethego patricio*: PL 79, 414. Cf. Gratian, *Decretum*, Dist. 28, c. 13.

¹⁰ Cf. *Decretales Gregorii IX*, Lib. III 4, c. 8 (and c. 2); Clement III: 2 *Compilatio antiqua*, III 2, 2; Honorius III: 5 *Comp. ant.* III 2, 1&2.

¹¹ 5 *Comp. ant.* III 2, 2.

¹² It is not inconceivable that given the same sociological conditions, and had Trullo not issued its Canon 13, the very same would have eventually occurred with the Eastern clergy.

¹³ Cf. *Pedalion* 304.

¹⁴ *PITRA*, *Monumenta* I 82-86. Cf. COCHINI 229 ff.

¹⁵ *Expositio de fide*, 21: GCS 37, 522.

¹⁶ PG 36, 396b.

¹⁷ *Adversus Jovianum* I 34: PL 23, 257a-c.

marriage.¹⁸ The writings of the Fathers on this question, nonetheless, give witness also to the honourableness and goodness of marriage, defended against heretical ascetical doctrines. St. John Chrysostom, for example, writes: "Marriage is good and this is why virginity is excellent, since it is superior to a good thing."¹⁹ Early councils such as Gangra protected the dignity of the sacrament of marriage while also giving virginity and celibacy their place of excellence. Eastern tradition always conserved this doctrine and kept this ideal alive, judging that strict celibacy was a more excellent way of living the priesthood.²⁰

The *Pedalion* editors, in commenting on the Trullan discipline for bishops, note:

Accordingly . . . this council . . . prefers unmarried men . . . for the prelacy; it does not want the married men not because it has any fault to find with marriage or because it blames and opposes marriage, but because it prefers celibacy as something better.²¹

The 12th century scholiasts also have an illuminating comment on the reason for the absolute continence demanded of a bishop. Aware that Canon 12 of Trullo appears to contradict the Apostolic Canon, which in Canon 13 had been used as a defence for the use of marriage for clerics, they write that the only reason the Apostles had formulated such a discipline in the first place (the scholiasts were not aware of the apocryphal nature of the canons) was on account of the "weakness and instability" of the faith of the newly converted Jews and Greeks who had been accustomed to their priests being married and begetting children. With the growing evangelization and strengthening of

¹⁸ On this question see P.T. CAMELOT, *Virginity*, in: NCE 14, 701-704.

¹⁹ *De Virginitate* IV: PG 48, 536. St. Jerome writes: "Suppose I say 'it is better to be a virgin than a married woman'; in this case I have preferred to what is good what is still better . . . virginity is related to marriage as better is to good". *Apologeticam ad Pammachium* Ep. 49, 17. Gregory Nazianzen writes: "We do not dishonour marriage because we give a higher honour to virginity. I will imitate Christ, the pure Groomsman and Bridegroom, as he both wrought a miracle at a wedding and honours wedlock with his Presence". *Oration on Holy Baptism*, chap. 18.

²⁰ Cf. the 12th century scholiasts: commentary on Trullo 12, PG 137, 556b-560a; *Pedalion* 303-305; *Essay against Latin celibacy of Nicola, Archbishop of Reggio Calabria* (?): in GIANELLI 103; the *apologia for celibacy and virginity of Patriarch Lucas Chrysoberges (1157-1170)* in his *Letter to Prince Andrij Bogoljubskij* (c. 1161): RIB 16 (= *Pamjatniki drevne-russkago kanoničeskago prava* 1), 69-73 (in Slavonic). (see also V. GRUMEL, *Les registes des actes du patriarcat de Constantinople, 1 Chalcedoniae 1947*, n. 1052); *Letter of the Patriarch of Constantinople Germia in reply to the Lutherans of Wittemberg* (who attacked celibacy): Martin CRUSIUS, *Acta et Scripta Theologorum Wittembergensium et Patriarchiae Constantinopolitani, Wittemberg 1584*, 134., cited in F.A. ZACCARIA, *Nuova giustificazione del celibato sacro Fuligno 1785*, 96.

²¹ *Pedalion* 304-305.

the faith of the converts this 'concession' was no longer necessary, and so it was proper to require total abstinence from the bishops.²²

In light of this commentary on Canon 12, it is very surprising that the same consideration should not have been applied to priests and other clerics. We see here the attempt of the scholiasts to simply give a concordance to existing discipline. Canon 30 of Trullo had accused priests who lived in continence of having a 'weak and insecure' faith. The scholiasts repeat the words of the canon in their commentary.²³ And yet precisely the same reasons are forwarded to explain, in their commentary on Canon 12, why continence, which should have been the rule from the very beginning of the Church, was not in fact so (according to them). Nor did the scholiasts attempt to explain why in the Greek Church bishops should be considered apart from priests and deacons in the matter of celibacy when in patristic writings and early councils they were treated together. Certainly, bishops, being the highest of the ecclesiastical orders and having the fullness of the priesthood, were considered to be under special obligation to live the virtues to the full, especially in regard to chastity, and to follow the evangelical and apostolic teachings in these matters,²⁴ yet in terms of the strict sacerdotal functions of celebrating the eucharistic sacrifice and exercising mediatorship between God and man the bishop's dignity was no greater than that of the ordinary priest. Zonaras writes on this function of mediatorship in his commentary on Canon 3 of the African Canons, which required perfect continence for higher clerics:

These [bishops, priests and deacons] are in effect intercessors between God and men who, in conciliating the divinity with the rest of men, earnestly beseech peace for the entire world and salvation for the faithful. If, the canon says, they practise all the virtues and thus dialogue in all confidence with God, they will obtain from Him all that they will have requested.²⁵

²² Zonaras writes: . . . *quasi divinos scilicet apostolos, nascente ac emergente tum primum fide, neque adhuc sonitu divinae praedicationis latius evulgato mitius cum iis, qui fidem amplecterentur, ac remissius egisse, nec ab eis omnes perfectionis numeros exigentes, aliquid tum imbecillitati ipsorum, tum inveteratae apud omnes gentes, atque adeo apud ipsos Judaeos, consuetudini indulsisse affirmant. Nam et Summis Judaerorum Sacerdotibus uxores habere per leges licebat, neque id vero Graecorum sacrificulis ulla constitutione interdictum fuit. Nunc vero longe lateque propagata religione, ac diligentius quae ad sanctiorem vitae normam pertinent constitutis, augescente in dies evangelico cultu, serverioribus inquirunt, vitam suam continentiae legibus astringere ipsi quoque episcopi debent, ut non modo ab alienis uxoribus abstineant, sed ab iis quoque, quas tori consertes habuere; neque solum lecti socios non admittant, sed nec sub eodem tecto aut iisdem aedibus degere patiantur.* PG 137, 558a-c. Cf. Balsamon, *ibid.*, 556b; Pedalion 304.

²³ PG 137, 609b-612d.

²⁴ Cf. Pedalion 304.

²⁵ Pg 138, 31c: *Sunt hi namque inter Deum et homines concilians fidelibus salutem, universeque terrarum orbi pacem deprecantur. Si se igitur in omni virtutum genere, inquit,*

Several other Eastern texts could be adduced to confirm in what sublimity the priesthood was always regarded.²⁶ The doctrinal inconsistency, therefore, existing between Canon 12 and Canon 13, discipline being often but a juridical expression of doctrine, is very plain. The Pauline reason given by the Pedalion editors for the celibacy of the bishop - "he that is married careth for the things of the world, how he may please his wife" (I Cor 7, 33)²⁷ - was a classic text traditionally used in the Church (both East and West) for defending and promoting virginity and priestly celibacy.²⁸ That this text should not have been applied to other clerics by the Greek commentators is intelligible in light of Canon 13, with its supposed ecumenical authority, which they wished to avoid contradicting.

2. *The Episcopate and Monasticism*

In the Eastern Churches a custom arose by which bishops should always be monks. Trullo had established no such regulation and only required that married bishops be separated from their wives. The origin of this custom is therefore somewhat enigmatic, for in the second millenium it became, practically, a universal norm for all Eastern Churches. The problem is compounded by the presence of legislation of the 9th century, Canon 2 of the Council summoned in the Church of St. Sophia at Constantinople (879), under Patriarch Photius, in which bishops were expressly prohibited from accepting the monastic tonsure with its vows while at the same time retaining the bishopric. This was considered to be incompatible with the episcopal dignity because of

exerceant Deumque proinde fidenter alloquantur, ita prosus ab eo quae postulaverint, impetrabunt.

²⁶ E.g. the text of Leo VI, John of Dara, Bar Hebraeus and Ibn Saba (see supra). Reference should be made to the classic treatise on the priesthood of St. John Chrysostom, as well as the writings of other Eastern and Western Fathers. Cf. J. COPPENS, *Christian Priesthood, its origins and development, in Priesthood and Celibacy* 107 ff.

²⁷ Pedalion 304. The commentary reads: "And because the trouble of taking care of a wife, of children and of a whole household prevents them from giving due attention to the matter of exercising proper diligence on behalf of their flocks, since as St. Paul says: 'he that is married careth for the things of the world how he may please his wife (1 Cor 7,33)' . . ."

²⁸ E.g. John the Faster, Patriarch of Constantinople (582-595), in his exhortation to nuns: *PITRA* II 226. Cf. John of Dara and Bar-Hebraeus: 49 of this study; H. CROUZEL, *Celibacy and ecclesiastical continence in the Early church: the motives involved, in: Priesthood and Celibacy* 457.

the subordination and discipleship inherent in monasticism.²⁹ The Council clearly evidenced the distinctiveness of the monastic vocation and the vocation of a bishop. Nonetheless, the Council did not rule total incompatibility between the two, for it does not prohibit the bishop from being elected from among the rank of monks.

In the early Church after the spread and growth of monasticism, in the 4th and 5th centuries, not infrequently are great Church leaders found to have been monks: Athanasius the Great, Basil the Great, John Chrysostom and Gregory of Nazianzus, to name but a few. That bishops should be chosen from the rank of monks is not at all surprising considering their ascetical training and proven moral qualities, especially of chastity.³⁰ That several examples of monastic bishops are known does not, however, permit us to conclude that the majority of bishops in these centuries were monks, as some authors do.³¹ That strict celibates were preferred for the episcopate means that wherever possible unmarried men, but not necessarily monks, were elevated to this dignity. Failing this, married men who lived strict continence were chosen.

In the sixth century in the Church of Byzantium the legislation of Justinian appears at first sight to show a certain preference for monks as candidates for the episcopate. In his Novel 6, written to Epiphanius, Archbishop of Constantinople (16th March 535), and of which copies were sent to Alexandria, Antioch and Jerusalem, a series of instructions are laid down for the qualities

²⁹ JOANNOU I 2, 484-485. The canon reads: "Though hitherto some bishops having descended to the habit of monks, have been forced nevertheless to remain in the heights of the prelacy, they have been overlooked when they did so. But, with this in mind, this holy and ecumenical Council, with a view to regulating this oversight, and readjusting this irregular practice to (accord with) the ecclesiastical statutes, has decreed that if any bishop or anyone else in a prelate's office desires to descend to monastic life and take up the practice of penitence and penance, let him no longer cherish any claim to prelatical dignity. For the monk's conditions of subordination represent the relationship of pupilship and not of teachership or of presidency; nor do they undertake to govern others, but are content with being governed. Wherefore, in accordance with what was said previously we decree that none of those who are on the list of prelates and are enrolled as pastors shall lower themselves to the level of the pastored and repentant. If anyone should dare to do so, after the delivery and the discrimination of the decision hereby being pronounced, he having deprived himself of his prelatical rank, shall no longer have the right to return to his former status, which by actual deeds he has vitiated." English translation from Pedalion 478.

³⁰ KNETES writes 478: "When monastic life made its appearance and won universal reverence, the Church availed herself of its vigour, and since celibacy formed one of the many virtues of the monastic life, monks were naturally considered more fit than other persons for the fulfilment of episcopal duties, and so were admitted more freely to the hierarchy of the Church".

³¹ For example the Russian canonist Nikodim: Pravila I 464.

needed in a bishop. He is to be blameless and have a good reputation among the people. He is to be a celibate who has always lived in virginity or, if married, having a wife with all the qualities demanded by the Church in the ancient canons, and he is to be without children. The instruction then goes on to say that he must either have taken the monastic profession or to have been a member of the clergy for at least six months without being tied to a spouse (living in continence?). Towards the end of the instruction Justinian repeats that the candidate to be ordained a bishop is to be chosen either from among the monks or from the clergy.³²

In our reading of this instruction, Justinian does not give an unqualified preference for monks as candidates for the episcopate. The beginning of the instruction simply speaks of celibacy being required. When Justinian first mentions monastic profession the context is of a candidate who is not yet a cleric, reflecting the practice of choosing laymen directly for ordination as bishops.³³ A minimum guarantee for the candidate's suitability is prescribed in the requirement that he should have been a cleric for at least six months, during which time he could demonstrate his good qualities. The alternative to this, and preferable, is that the candidate should have taken monastic profession.

Justinian does not indicate how long the candidate is to have been professed a monk. His thinking seems to be that the very fact of having taken monastic vows is guarantee enough that the candidate has sufficient moral qualities to persevere in them. The fact of profession, with its publicly assumed obligations to live according to the spirit of the Gospel, would be guarantee enough for the moral integrity of the future bishop, especially with regard to chastity. If he was married the vow would immediately bind him to strict continence and to separate from his wife. The fact, therefore, that Justinian requires that candidates be chosen from among monks or from the clergy does not, in our opinion, necessarily express a preference *simpliciter* of monks over

³² Novel 6, chap. 1: CJC (J) 3, 36-37: "*Sancimus igitur sacras per omnia sequentes regulas, dum quispiam sequenti omni tempore ad ordinationem episcopatu adducitur, considerari . . . 3. Et neque uxori alii copulatus sed aut in virginitate degens a principio, aut uxorem quidem habens ex virginitate autem ad eum venientem et non viduam, neque se junctam a viro, neque concubinam. 4. Neque filios aut nepotes habens neque cognitos legi neque illi odibiles . . . 7. Prius autem aut monachicam vitam professus, aut in clero constitutus non minus mensibus sex, uxori tamen non cohaerens, aut nepotes habens . . . Igitur ordinandus episcopus aut ex monachis, aut ex clericis sit, etiam in hujusmodi vita testimonii boni, vita bonus et honestus, et gloria fruens bona, et hoc fundamentum pontificatus deponens suae animae.*"

³³ This practice was vindicated at the Council of St. Sophia (879) by Zacharias of Chalcedon when answering the objections of Rome to the election of Photius as patriarch while he was still a layman. KNETES 501.

secular clergy. Justinian would seem to express a preference for monastic profession for *laymen* when they are chosen for the episcopal dignity.

Knetes has shown, in his dossier of patriarchs of Constantinople, that of the twenty patriarchs that reigned from the beginning of the 7th century to the end of the 8th century only four were elected from among monks, the rest being higher clergy (mostly unmarried).³⁴ On the other hand, he maintains that there was, by the early 9th century, a strictly enforced custom for those elected to the episcopate from among the laity to first receive the monastic habit.³⁵ These facts appear to favour our interpretation of Justinian's legislation. An additional factor that certainly influenced the formation of this custom was the renewed influence of monasticism over the Church from the epoch of iconoclasm (717-843). It was primarily due to the efforts of monks that this heresy was overcome.³⁶

After the period of the iconoclastic controversy there was a conspicuous preference for monks to be chosen for the patriarchal throne, although there were some exceptions.³⁷ To the end of the 14th century there were still some instances of patriarchs who were not professed monks, but the custom of restricting the dignity of the episcopate to monks became even stronger. In the first half of the 15th century it was rare to see a member of the secular clergy being raised to this dignity, and if he was he would be required to take on the monastic habit.³⁸

This custom of the Greeks, very much in disfavour of secular clergy, cannot, in our opinion, be solely explained in terms of the influence of monasticism. The legislation of Trullo did not discriminate against secular clergy such as to practically exclude them totally from the episcopate. Indeed, there would always be celibate and widower clergy who would have the requisite moral and intellectual qualities for this position, but who did not feel the attraction of a monastic vocation. As for married clergy, by the nature of the case few would be expected to give up their married lives voluntarily, when the law of absolute continence had not been previously prescribed for them. The most important reason for this state of affairs, in the author's opinion, is the custom that had developed since Trullo, having the force of law by the 11th and 12th centuries, which required that all secular clergy marry before receiving orders. Celibates necessarily were to take on the monastic habit.³⁹ Many of these celibates were employed in the bishop's chancery and tribunal

³⁴ Ibid. 501-502.

³⁵ Ibid 504.

³⁶ Ibid. 502-503.

³⁷ Ibid. 502.

³⁸ Cf. Symeon, Archbishop of Salonica: PG 155, 489; 954. KNETES 504.

³⁹ Cf. *infra*.

and were monks but in name. They took on the monastic habit and were thereby juridically attached to a monastery but they did not receive the benefits of a monastic training.⁴⁰ That they should be considered monks was but a juridical fiction which met the requirements of legislation. From amongst this number 'monk' bishops were presumably elected. From these chancery priests there were, not infrequently, nominations made by the bishop for the honour of Archimandrite, or head of a monastery, which was in practice but a titular role to which a benefice was attached.⁴¹

The juridical and theological anomaly of this legislation for secular priests was corrected in the Russian Church in the second half of the 19th century.⁴²

Up until the 17th century neither were widowers eligible as a rule to the episcopate in the Greek and Slav Churches, for when their wives died even their sacerdotal ministry was deprived from them.⁴³

3. Trullo and the Law of Continence for Priests: A Study of Canons 13 and 30

By far the most important canon of all the Trullan legislation on clerical marriage, determining both by its letter and by its spirit Greek praxis for priestly celibacy in all the centuries to follow, is Canon 13. The importance of this canon, in our judgement, cannot be overestimated. It is the hinge on which all the rest of the Greek discipline hangs and its effect on both canonical theory as well as praxis has left its mark to our own day. Several times in this study we have made mention of this canon and now we wish to analyse it in greater depth. The text reads:

Since we know it to have been handed down as a rule of the Roman Church that those who are deemed worthy to be advanced to the diaconate or presbyterate should promise to no longer cohabit with their wives we, preserving the ancient rule and apostolic perfection and order, will that the lawful marriages of men who are in holy orders be from this time forward firm, by no means dissolving their union with their wives nor depriving them of their mutual relations

⁴⁰ KNETES 506-507. Balsamon considered tribunal clerics to be monks even if they had made no explicit monastic vow: commentary on St. Basil Canon 19, PG 138, 653d.

⁴¹ Cf. *Kristijanskoe čtenie, čto takoe arximandrit i kak on postavljajetca*, St. Petersburg 1870, 756; Gerhard PODSKALSKY, *Im Spiegel der Zeit: Der Archimandrit in der Griechischen Kirche. Marginalien zur gegenwärtigen Diskussion um den priesterlichen Zölibat*, in: *Geist und Leben* 42 (1969) 387-390.

⁴² The Holy Russian Synod, in a decree of 16 April 1869, allowed celibates to become deacons and priests without taking the monastic habit if they were not less than 40 years old. The Synod of Moscow of 1917-1918 reduced this age limit to 30 years. HERMAN-WUYTS, *Textus selecti iuris ecclesiastici russorum Fonti*, Serie II, fasc. 7, 88.

⁴³ Cf. *infra*, 138-141.

at a convenient time. Wherefore, if anyone shall have been found worthy to be ordained subdeacon or deacon or presbyter, he is by no means to be prohibited from admittance to such a rank, even if he shall live with a lawful wife. Nor shall it be demanded of him at the time of his ordination that he promise to abstain from lawful relations with his wife lest we should insult marriage constituted by God and blessed by his presence, as the Gospel says: "What God has joined together let no man put asunder", and the Apostle says: "Marriage is honourable and the bed undefiled", and again, "Art thou bound to a wife? Seek not to be loosed."

But we know, as they who assembled at Carthage said, caring for the honest life of the clergy, "that subdeacons who wait upon the Holy Mysteris, and deacons and presbyters, should abstain from their spouses during the periods particularly (assigned) to them, so that what has been handed down through the Apostles and preserved by ancient custom, we too likewise maintain, knowing that there is a time for all things and especially for fasting and prayer. For it is proper that they who assist at the divine altar should be absolutely continent during the time when they are handling holy things, in order to obtain in all simplicity what they ask for from God".

If therefore anyone shall have dared, contrary to the Apostolic Canons, to deprive any of those who are in holy orders, presbyter or deacon or subdeacon, of cohabitation and relations with his lawful wife, let him be deposed. In like manner also if any presbyter or deacon on pretence of piety has dismissed his wife, let him be excluded from communion; and if he persist in this let him be deposed.⁴⁴

The first observation to be made on this canon is that the Fathers, in what certainly appears to be a defiant attitude towards Rome,⁴⁵ accuse the latter of breaking the marriage bond of its clerics by its insistence that they promise, at the time of their ordination, to abstain from (previously lawful) relations with their wives. The canon is not therefore strictly speaking a defence of the rights of married men to be ordained, but a defence of the lawful use of marital relations by these ordained married men. The Fathers accuse Rome of sundering the marriage bond by its law of continence and they use scriptural

⁴⁴ JOANNOU I 1, 140-143. Engl. translation based on PERCIVAL, *Nicene and Post-Nicene Fathers* 371. See appendix for Greek and Latin texts.

⁴⁵ Cf. GRYSO 122. A contrary view is expressed by Alivastos who writes: "Le concile constate tout simplement l'existence d'une tradition locale de l'Église de Rome sur la question du mariage des clercs, sans la considérer comme une hérésie ou une irrégularité essentielle, cars dans le cas contraire, conformément à l'habitude d'alors, la différence d'usage serait sévèrement jugée et vivement maudite. Mais rien de tel . . . sur ce point le canon, en condamnant les clercs et les laïques, considère ceux de l'Église d'Orient et entre eux ceux qui ont voulu changer la tradition locale, mais nullement les clercs et les laïques de l'Église de Rome qui suivaient la tradition de leur propre Église." *Studi bizantini e neollenici V* (= *Atti del V congresso internazionale di studi bizantini*) 1939, 583. For a reply to this, see GIANELLI, *Studi bizantini VII* (1953) 103, fn. 1.

arguments to this end. Yet the doctrinal weakness and inconsistency of this procedure is clearly evinced when the text is confronted with that of Canon 12, where the Fathers defend this very same discipline of continence which they now attack. It would seem that the Fathers intentionally desisted from elaborating on the possible merits of living marital continence for the sake of religion in order not to weaken their arguments in defence of the use of marriage. The Roman discipline, in the minds of the Fathers, was an unnecessary imposition of positive law.

In actual fact in none of the Western Churches was marriage ever considered to be dissolved by the law of continence, nor was such a law ever considered as a rejection of marriage, still less as a rejection of a *quid impurum*. The reason for the law in the Roman Church was the very same as that given by the Trullan Fathers in Canon 12, and commented on by the Greek scholiasts: the special nature of the ministry. Furthermore, the free consent of both parties to this law was always presumed.⁴⁶ Nonetheless, the Fathers criticized what they considered to be a forced imposition of Rome on its clerics. Perhaps the Fathers felt this caused such clerics to lead immoral lives.⁴⁷ Since there had been no absolutely clear legislation in the Eastern Churches on the matter of continence, comparable to that in the West, it was assumed, perhaps in light of the then current Greek practice, that such an ecclesiastical discipline had never universally existed as a law. To justify the use of marriage two authorities are invoked: apostolic tradition and the Council of Carthage.

The invocation of apostolic tradition is not without its equivocation. In light of the commentaries of the Greek scholiasts on Canon 12, as well as the very text of the canon, it seems ironic that the Fathers should appeal to 'the ancient rule and apostolic perfection and order' when, according to the former it was precisely perfect continence that constituted the perfection of apostolic discipline.⁴⁸ Nor are the scriptural quotations in defence of the dignity of marriage *ad rem*, since the discipline of continence for clerics had its own transcendent motives. In Greek as well as in Western tradition the consecration of the body to God of two marriage partners, if undertaken with pure religious motives, was considered not only as not harming the dignity of marriage but, because of the honour rendered to God by this sacrifice, as even enhancing it. The purpose of the canon with its scriptural quotations,

⁴⁶ Cf. Pope Gregory to the subdeacon Peter; Ep. 1, 42: MGH, Gregorii I Papae regis-
trum epistolarum, I Berlin 1891, 67, where it is stated that if orders were received with the
parties being unaware of the law, and if subsequently they refused to accept it, their mar-
riage rights remained intact but the higher order received could not be exercised. Cf. Ca-
non 30 of Trullo; 1 Cor 7, 5.

⁴⁷ Cf. Pedalion 308.

⁴⁸ PG 137, 556b; 558a-c.

was to help justify a discipline (especially before the authorities in Rome) which, in terms of earlier discipline, was really a concession.

Canon 13, therefore, is not dissimilar, in some ways, to Canon 3 of the Persian Nestorian Council of Mar Acacius (486).⁴⁹ The latter had also permitted the use of marriage for its clerics (and its logical corollary, marriage after ordination) as an attempted remedy to clerical immorality. Canon 3 of Trullo also recognized that clerical morality and discipline had fallen very low and that certain concessions and indulgences were to be given to the clergy to help rectify the situation.⁵⁰ The clear difference between the two Councils, in the author's opinion, is that, whereas the Persians were clearly aware that their discipline was a concession to weakness and a departure from ancient tradition,⁵¹ the Trullan legislators portrayed their discipline as being truly ancient and apostolic.⁵² Nor would the Trullan Fathers admit in their canon, perhaps for fear of lessening its authority, that celibacy and married continence was the more perfect discipline for clerics, as did the Fathers of the Persian Council.⁵³

Apostolic Canon 6 is also quoted in the canon, to which reference was made in our previous chapter,⁵⁴ which serves to further anchor the discipline in apostolic tradition. This canon could not be used as a principal argument for the reasons already noted.⁵⁵ Of far greater importance than this canon is the reference to the assembly of Carthage.

4. Trullo 13 and the Canons of Carthage

The assembly of Carthage to which the Fathers of the Council make reference is the most important authority cited in the canon. It gives the discipline of Canon 13 a structure, it provides a theological reason for temporary continence and, perhaps most importantly, it is the canonical source which provided the Fathers with a conciliar precedent for their discipline of clerical continence.

⁴⁹ CHABOT, *Synodicon orientale* 303-306.

⁵⁰ JOANNOU I 1, 125-130.

⁵¹ Cf. *supra*, 42-43.

⁵² Unlike with Mar Acacius, the Trullan Fathers did not permit marriage after ordination. In this they were faithful to tradition.

⁵³ CHABOT, *ibid.* Those living in celibacy were, however, required to live apart from their spouses, and in a monastery.

⁵⁴ 100-104.

⁵⁵ *Idem.*

The assembly which is referred to was held on 25 May 419 and which met under the presidency of Aurelius, bishop of Carthage, to deal with a matter in connection with the presbyter by name of Apiarius. A series of canons were issued by the council, called by one author the 'Apiarian Codex'.⁵⁶ Despite the belief that this council had reissued the canons of past councils also held under Aurelius during his episcopacy (c. 391-427) – considered to be the classical period of canonical legislation in the African Church –,⁵⁷ the appearance of the the African Codex referred to by the Fathers of Trullo has in fact a different origin.⁵⁸ Evidence suggests that it was Dionysius Exiguus who first created the impression that the canons of earlier councils were reissued at this assembly; the canons had already been collected into a Codex before the council and were not re-promulgated. With the translation into Greek of the Codex of Dionysius (second recension) some time before 582,⁵⁹ and which included the codified canons as part of the *Concilium habitum apud Carthaginem*, the African Codex was thereafter attributed by the Greeks to the Carthaginian Council of 419.⁶⁰

The part of the text of Canon 13 which quotes the African Codex is of special interest to us. The text is easily identifiable as being taken from Canons 25 and 3 of the Codex from the Council of Carthage of 401 (c. 4) and of 390 (c. 2) respectively. Canons 70 and 4 of the Codex contain the same discipline but without express mention of subdeacons. A synoptic presentation of these texts with the text of Trullo will make the dependence clear. (Characters in boldface highlight the differences in the texts; underlined phrases emphasise the similarities of the ideas)

Council in Trullo

Codex canonum Ecclesiae Africanae

Aurelius the bishop said: we add most dear brethren, moreover, since we have heard of the incontinence of certain clerics even of readers towards their wives, it seemed good that what had been enacted in diverse councils should be confirmed, namely,

⁵⁶ F.L. CROSS, History and fiction in the African Canons, in: *Journal of Theological Studies* 12 (1961) 234-235; 240.

⁵⁷ *Ibid.* 228.

⁵⁸ *Ibid.* 228; 235-236.

⁵⁹ Probably by the same author who first composed the Canonical Syntagma of XIV Titles. Cf. ŽUŽEK 73.

⁶⁰ Cf. T.V. BARSOV, O Pravilax Karfagenskago Sobora in Xristianskoe čtenie, 1879, part 1, 220-224.

But we know, as they who assembled at Carthage said, caring for the honest life of the clergy: that subdeacons who wait upon the Holy Mysteries and deacons and presbyters, should abstain from their spouses during the periods particularly (assigned) to them

that subdeacons who wait upon the Holy Mysteries and deacons and presbyters as well as bishops according to the ordinances which concern them, should abstain from their wives so that they should be as though they had them not: and unless they so act, let them be removed from office.⁶¹ (Can. 25)

Aurelius the Bishop said: when at the past council the matter of continence and chastity was considered, those three grades, which by a sort of bond are joined to chastity by their consecration, namely bishops, presbyters and deacons . . .

so that what has been handed down through the Apostles and preserved by ancient custom we too likewise maintain, knowing that there is a time for all things and especially for fasting and prayer. For it is proper that they who assist at the divine altar should be absolutely continent during the time they are handling holy things in order to obtain in all simplicity what they ask for from God."

So it seemed that it was fitting that the sacred rulers, priests of God as well as the deacons, or those who are at the service of the divine sacrament should be absolutely continent in order to obtain in all

⁶¹ English translation (slightly adapted) from PERCIVAL 545. The original text reads: *"Aurelius episcopus dixit: Addimus, fratres karissimi praeterea: cum de quorundam clericorum, quamvis lectorum erga uxores proprias incontinentia referretur, placuit quod in diversis conciliis firmatum est, subdiacones qui sacra ministeria contrectant et diacones, presbyteri sed et episcopi secundum propria statuta, ab uxoribus se contineant, ut 'tanquam non habentes videantur esse', quod nisi fecerint, ab ecclesiastico removeantur officio. Ceteros autem clericos ad hoc non cogi nisi maturiore aetate. Ab universo concilio dictum est: confirmamus. JO-ANNOU I 2, 240-241. Canon 70 has a similar discipline, and reads: Praeterea cum de quorundam clericorum, quamvis erga uxores proprias incontinentia referretur, placuit episcopos et presbyteros et diaconos secundum priora statuta etiam ab uxoribus continere: quod nisi fecerint ab ecclesiastico removeantur officio . . . Ibid. 312-313.*

simplicity what they ask for from God; so that what the Apostles taught and antiquity itself has observed we might also keep.⁶²
(Can. 3)

The text of the Carthaginian Codex, in particular Canon 3, is of special importance since the discipline of continence which it expresses purports to be apostolic and faithful to antiquity.⁶³ The Trullan Fathers accept this and use the canon to give authority to their own canon. Yet two major discrepancies are found in the Trullan text vis-a-vis the Carthaginian canons. The first is that there is deliberate silence on the question of bishops. The original texts could not have been clearer in requiring the same continence for all the higher grades of the clergy. The reason is found in the particular interpretation given to one phrase – and this constitutes the second major discrepancy – which changes the sense of the whole African canon. The phrase in question is, in the Latin original: *secundum propria statuta* (in some manuscripts: *secundum priora statuta*). The Greek translation of this is: 'kata tous idious orous'. The sense given these words by the Trullan Fathers was: "during the periods particularly (assigned) to them". The Latin translation of this would be: *in propriis terminis*⁶⁴ or *secundum proprios terminos*.⁶⁵ The original text *secundum propria statuta* translates quite differently: "according to the ordinances which concern them" or, with the other version, "according to prior statutes". Given this new sense to the words, bishops who were bound to perpetual continence would necessarily be excluded from the discipline of Carthage.

The change in meaning of these words was not an indifferent matter. The sense of the canon is radically altered from that of absolute continence to

⁶² PERCIVAL 444. The Latin text reads: *Aurelius episcopus dixit: Cum praeterito concilio de continentiae et castitatis moderamine tractaretur, gradus iste tres, qui constrictione quadam castitatis per consecrationes adnexi sunt, episcopos, inquam, presbiteros et diaconos ita placuit, ut condecet sacros antistites ac Dei sacerdotes nec non levitas vel qui sacramentis divinis inserviunt, continentes esse in omnibus, quo possunt simpliciter quod a domino postulant impetrare; ut, quod apostoli docuerunt et ipsa servavit antiquitas nos quoque custodiamus. JOANNOU I 2, 216-217. Canon 4 of the Codex reads: *Faustinus episcopus ecclesiae Potentinae dixit: Placet ut episcopus, presbiter et diaconi vel qui sacramenta contrectant, pudicitiae custodes ab uxoribus se abstineant. Ab universis episcopis dictum est: Placet et in omnibus et ab omnibus pudicitia custodiatur qui altari deserviunt. Ibid. 217-218.**

⁶³ Zonaras remarks that the Fathers of Carthage wished to base their legislation on a well established custom or law, being anxious to conserve tradition carefully. PG 138, 32d.

⁶⁴ PG 138, 559c.

⁶⁵ PG 138, 34c. JOANNOU gives *secundum easdem rationes*: I 1, 142.

that of periodic or temporary continence.⁶⁶ In the tradition of the Western Church the Carthaginian canon of 390, and the other three canons directed to this subject (Canons 25, 70, and especially Canon 4) have always, without any hesitation, been interpreted as demanding absolute, not periodic, continence. The letter of Pope Siricius, *Cum in Unum* (386), received by the Spanish bishops just before the canon of the Council of 390 was issued (Can. 3 of the Codex), and a few years before the canon of the Council of 401 (Can. 25 of the Codex), leaves no doubt that the African bishops legislated in accord with the spirit of the celibacy legislation of the Roman Pontiff.⁶⁷ In the event of the opposite hypothesis one would have expected reaction from Rome, and reference to this text by opponents to celibacy in later centuries. In fact one finds the very opposite: not only were these canons received in subsequent Latin canonical collections without alteration,⁶⁸ but church authorities frequently referred to them when reaffirming and defending the antiquity of the discipline of absolute clerical continence.⁶⁹

The authors of the Trullan canon had not hesitated to cite deliberately in a partial and selective way Apostolic Canon 6 and Canons 3 and 25 of the African Codex by omitting all reference to bishops. With this in mind one is justified in asking whether the authors did not also in fact know the authentic meaning of the words "kata tous idious orous"?

Commentators have often given the Council Fathers the benefit of the doubt in this matter, attributing the changed sense to ambiguity in the Greek text or to ignorance of the Latin language or of the original text.⁷⁰ On the

⁶⁶ Cf. GRYSON 122.

⁶⁷ Absolute continence was prescribed in this letter, which communicated the decisions taken by the Council of Rome: PL 13, 1155b-1162a.

⁶⁸ E.g. the Corpus Canonum of Dionysius, the Brevatio Ferrandi (c. 546), the Concordia Cresconii (7th century). Cf. COCHINI 355-356; 417-420. Gratian in his decree gives the text of Canon 25 and Canon 70 of the Codes with the words *secundum priora statuta*. Dist. 84, c. 4: Dist. 32, c. 13. The immediate context of the canons leaves no doubt at all as to their meaning absolute continence.

⁶⁹ For example the promoters of the Gregorian reform, the theologians of the Council of Trent and Pope Pius IV: COCHINI 25. It has to be noted, nonetheless, that the change was not always commented upon. When in the 19th century the text of the Rumanian Provincial (Ruthenian) Synod of Alba-Julia Fogaras (May 1872) was being examined by the Propaganda Fide (section for Oriental affairs), Canon 25 (in Pedalion, Can. 33) was footnoted as authenticating the discipline of temporary continence for married clerics. MANSI 42, 584 & fn. 3.

⁷⁰ "Ma o sia stata ignoranza della lingua Latina, o altra cagione, eglino falsamente citarono questo Concillio . . ." F. ZACCARIA, *Storia polemica del celibato sacro*, Roma 1774, 170; HERMAN writes: "Une traduction erronée en avait changé le sens". DDC 3, 152a. Cf. also KNETES 354; COCHINI 444.

other hand the very texts of the Carthaginian canons, in which degradation is adjoined as a penalty for those who transgress the rule, immediately suggest the more obvious interpretation of perpetual continence.

Furthermore, since the beginning of the 7th century there had been in circulation a preface (in Greek) to the Greek collection of canons that the Fathers had probably consulted in drawing up the text.⁷¹ In this preface the author, probably the same person who compiled the Greek collection ("Syntagma in XIV titles"),⁷² quite unambiguously states that the African canons which had been included in the collection at times expressed customs and laws which were of only local character. The example given by the author is the canons that required (absolute) continence from clerics above the order of reader; a law which was not found in the Eastern Church (according to the author) as a strict precept.⁷³ Given that this preface was the only one in circulation (that has been preserved) before the appearance of the Preface to the Syntagma written by Photius (in 883),⁷⁴ it would be surprising if the authors of Canon 13 had not known about it. Another fragment of evidence to suggest the same is provided by the collection of 'summary' texts, known as the *Synopsis canonum*, which predates Trullo⁷⁵ in which the text of Canon 70 of the African Codex (essentially the same as Canon 25) is summarily presented as "Bishops, priests and deacons are to abstain from their own

⁷¹ The first recension of the Nomocanon in XIV titles – comprising the Syntagma and civil laws ('nomoi' taken from the Collectio Tripartita of Imperial laws) – appeared about 629. Cf. STICKLER, *Historia iuris canonici latini* 71-72; C. DECLERCO, *Byzantin (Droit)*, in: DDC 2, 1171-1172. The Nomocanon became the most important collection of the Greek Church, undergoing at least four redactions, commented on by the scholiasts and translated into Slavonic.

⁷² KNETES 354, fn. 6; ŽUŽEK 73. The preface was written between the years 578 and 610 by an unknown author who knew the Dionysian collection and the Latin language well. Cf. PITRA, *Monumenta* II 446, fn. 1.

⁷³ RHALLIS-POTLIS, *Syntagma* I 6; Prologus illius qui collegit canones in XIV Titulos, PITRA, *Monumenta* II 446: *Sacrem autem synodem Carthagine in Libya . . . multa statuentem et quae multum utilitatis vitae humanae afferre possunt (ex ipsi tamen etsi quaedam ad unicam proprii loci indolem consuetudinemque pertineant, quaedam vero ab iis quae aut communi aut singulari lege sancita sunt et in aliis diocoesibus aut eparchiis praevaluerunt, abhorrentem inducant ecclesiasticae disciplinae rationem: inter quae hoc unum ab hisce definitum est, ut iis qui supra ordinem lectorum clero cooptantur, abstineatur e legitimis, coniugibus ante huiusmodi ordinationem matrimonio iunctis: haud enim vi praecepti sed libera voluntate horum hominum unusquisque aut continentiam religiosae intuitu asceseos aut inculpabilem coniunctionem quae apud nos fit ob nuptiarum honorem amplectitur nulli prorsus reprehensioni ex hac re obnoxius) huic demum operae adiunxi.*

⁷⁴ ŽUŽEK 67.

⁷⁵ STICKLER, *Historia* 71; ŽUŽEK 32, fn. 51.

wives, or be removed from ecclesiastical office. As for other clerics, they are not to be compelled to the same but custom is to be observed".⁷⁶ No qualification is given concerning abstinence even though the full version of this canon includes the words 'kata tous idious orous'. This implies that continence was understood to be total.⁷⁷

The 12th century Greek scholiasts nonetheless interpreted the Carthaginian canons in the sense that Trullo 13 had given them, thereby also accommodating them to the latter.⁷⁸ In pursuing this exegesis, Balsamon is presented with the difficulty of how to understand the censure of removal from office of incontinent clerics.⁷⁹ In the case of a cleric bound to total continence the fact that his wife should subsequently give birth to a child was evidence enough that the cleric had transgressed the law. But what of the case of a cleric who is bound only to temporary continence? How could transgression of the law be proved publicly? Aware of this difficulty, Balsamon tries to solve it by giving as his opinion that those who are in orders are not to celebrate the sacred mysteries each day, for, being married and living with their wives, it would be presumed that they did not live total continence and daily celebration would be a cause of scandal to the faithful. In this way, married clerics were subject to the Carthaginian discipline.⁸⁰

In answer to Balsamon it is to be noted that the discipline in Carthage at the end of the 4th century did not require separation of domicile for major clerics who were also bound to complete continence, and it is known that since the time of St. Cyprian (d. 258) the Eucharist was celebrated each day in Carthage and perhaps throughout North Africa.⁸¹ Balsamon's explanation of the African discipline appears, in consequence, quite forced.

⁷⁶ PG 138, 272b.

⁷⁷ The synopsis of Canon 25 does include, unlike that of Canon 70, the phrase 'kata tous idious orous' and is therefore to be understood in this sense. PG 138, 125b.

⁷⁸ PG 137, 561a-564d; PG 128, 333a-37a; 124b-125b; 296c-272c. Migne, following Beveregius, accommodates Canon 25 (28) to Trullo 13 by giving as the Latin translation: *in propriis terminis*. PG 138, 123a (cf. 270b). Cf. G. BEVEREGIUS, *Synodicon, sive Pandectae canonum SS. Apostolorum et conciliorum ab Ecclesia Graeca receptorum; nec non Canoniarum SS. Patrum Epistolarum, una cum Scholiis Antiquorum in singulis eorum annexis*, I Oxonii 1672, 549.

⁷⁹ PG 138, 269d.

⁸⁰ *Idem*.

⁸¹ GRAYSON 177 and fn.3; R. TAFT, The frequency of the Eucharist throughout history, in: *Concilium* 172 (1982) 13-14.

5. Carthage and the Slav Churches

In the Slav Churches there is a long tradition of a similar interpretation of the Carthaginian canons. The Slavs were strictly dependent on Greek canonical sources for their own legislation, a dependence that was manifested at the beginning of their Christianity and lasted until at least the 15th century, with Greek influence continuing well beyond.⁸²

The Greek praxis of married clergy and its justification was accepted into the Slav Churches quite uncritically. This is most apparent in the *Kormčaja Kniga* (printed edition) where the polemical tracts of the Greeks against celibacy are reproduced in Slavonic translation. As for the canons of Carthage, these are given in synoptic form together with the commentaries (with some modification) of Aristenus.⁸³ The influential Serbian manuscript tradition on which the printed *Kormčaja Kniga* is based, in presenting the commentaries of Aristenus together with the canons, gave to the former an authority almost equal to that of the canons themselves.⁸⁴ It was due to Aristenus' influence that the words 'kata tous idious orous' were translated into a Slavonic form in perfect conformity with the Greek sense: *v podobnaja vremena* (in the assigned times).⁸⁵

The Russian canonist Nikodim also gives an exegesis of the Carthaginian canons according to this same tradition.⁸⁶ Canons 4 and 70 are given only in synopsis form (perhaps indicating that Nikodim used the *Kormčaja* as a source)⁸⁷ and no mention is made of Balsamon's difficulty of interpretation.⁸⁸

In the Slav Churches another manuscript tradition of the *Kormčaja*, the *Efremovskaja* family (possibly of Bulgarian origin and from the 9th century), preserved the full texts of the Carthaginian canons found in the "Nomocanon

⁸² Cf. ŽUŽEK 111-116. This author writes: "Conformity to the Greek Church was so strictly observed that one should agree with Golubinskij's opinion that Russia took over from Greece, without too much reasoning or distinction between canonical and non-canonical practices, Greek traditions based both on Greek civil laws and on the canons . . . one should never forget that the Russians, when speaking about indefectibility of the canons, meant the canons interpreted according to the Greek traditions, which not infrequently were mistaken." Ibid. 114-115.

⁸³ ŽUŽEK 33-35.

⁸⁴ Ibid. 147. The Serbian *Kormčaja* takes its origin from the work of the 13th century founder of the Serbian Autocephalous Church, Archbishop Sava.

⁸⁵ *Iže sščennox prikasajuščasja ot svoix žen v podobnaja vremena da vozderžajutsja*. *Kormčaja Kniga*, 1650 ed., fol. 128a, pravilo 25. Cf. MIGNE, Synopsis of Can. 25, PG 138, 126b: *Qui res sacra tractant, etiam a propriis uxoris suis terminis abstineant.*

⁸⁶ Pravila I 479-480; II 147; 172-173; 223.

⁸⁷ Ibid. II 147; 222-223.

⁸⁸ Cf. supra.

in XIV titles" (pre-Photian recension without any commentary).⁸⁹ An interesting feature of the translation of the canons is that the translation of 'kata tous idious orous' of Canons 25 and 70 of the African Codex is an exact and unambiguous translation corresponding to the Latin 'secundum propria statuta': *po svoim zapovědim*.⁹⁰ More surprising still is that this rendering is given also in Canon 13 of Trullo.⁹¹ This translation, which predates the commentaries of the Greek scholiasts, opposes the meaning given to the canons by the latter. It also, perhaps unwittingly, undermines the consistency of the Trullan canon itself.

6. *Doubt Cast on the Trullan Interpretation of Carthage*

The first Greek we know of to have cast doubt on the accepted Greek interpretation of the Carthaginian canons is Matthew Blasthares. In his *Syntagma Alphabeticum*, letter <gamma>, chapter 18, he gives the content of Canon 3 of the Codex and interprets it in the same way as the 12th century scholiasts.⁹² He then immediately adds that the other three canons, viz. 4, 25 (28) and 70 (73) are written in an 'obscure' way giving the Latins a pretext to require separation of clerics from their wives. Then he states: "If these canons do mean this, then they ought to be withdrawn from the (collection of) sacred canons, both apostolic and synodal, which teach the very opposite".⁹³

Blasthares does not attempt to accommodate the sense of these canons to Trullo 13 as the earlier scholiasts did; this is rather surprising considering the great authority of the scholiasts, and the importance of the discipline in dispute. To explain this departure we believe that Blasthares must have been familiar with a work, such as the *Decretum* of Gratian, which presented these doubts.⁹⁴

In the *Pedalion* we have a clear affirmation of what was for Blasthares still but a doubt. In the interpretation given to Canon 3 of the Codex we read:

The continence which the present canon requires bishops, priests and deacons to maintain is that they shall make a promise when they are being ordained that

⁸⁹ ŽUŽEK 23-25.

⁹⁰ V.N. BENEŠEVIČ, *Syntagma XIV Titulorum sine scholiis secundum versionem palaeo-slovenicam, adjecto textu Graeco e vetustissimis codicibus manuscriptis exarato*, I Petropoli 1906, 329 & 373.

⁹¹ *Ibid.* 154.

⁹² PG 144, 1200d; cf. Zonaras, PG 138, 32c-d.

⁹³ PG 144, 1201a. The Latin translation reads: *Quod si canones isti ita sentiant, ipsi potius digni sunt a sacris canonibus, tum apostolicis tum synodicis removeri, quod iis omnino contraria doceant*. *Ibid.* 1202a.

⁹⁴ Cf. *supra*, 90-91.

they will never have any carnal intercourse with their wives, by agreement of the latter, but on the contrary will remain continent, or more explicitly, will hold aloof from them after the manner of virgins . . .⁹⁵

A little further on in the same commentary we read:

The Sixth Ecumenical Council, on the other hand, referring to the continence of those in holy orders which is specified in the present canon to an obedience to Christ and making this local custom an ecumenical canon has taken it in its Canon 13 for the continence which those in holy orders ought to maintain in the time of their incumbency.⁹⁶

In the interpretation given to Canon 25 and 70 we read that clerics are to maintain a state of "virginity" and keep away from their wives by common consent "in accordance with the terms and vows they made before their ordination".⁹⁷ The editors also state in their appended note on the commentary of Trullo 13:

. . . but this Ecumenical Council improving the decisions of that Council, which was a regional one, took the expression "their own rules" to signify "at the time of divine services and their own curacy" as Zonaras and Balsamon interpret it.⁹⁸

We see in these passages that in later Greek tradition the interpretation of the 12th century scholiasts had been clearly abandoned and that the sources used by Trullo 13 were permitted to have their original meaning.

Knetes also was very clear on the true meaning of the Carthaginian canons. He writes:

But this Council [Trullo] without doubt was able by its authority to alter any disciplinary enactment to suit the requirements of the moment; and it exercised its authority in this case. Moreover, the decisions of the Synod of Carthage referred only to local practice, while those of the Council of Trullo are of a general application. The latter evidently modified the canons of Carthage and, by adding a few words, changed their original meaning, so that they were made to accord with the Council's own views on the subject.⁹⁹

There is no clearer statement in the literature which shows Trullo to have modified purposely the canons of Carthage.

7. Trullo's Use of the Canons of Carthage

The redactors of Canon 13 of Trullo were, we conclude, quite aware that they were deliberately altering the sense of the Carthaginian canons. The Trullan Fathers used Carthage because of its authority and its recognized fidelity to

⁹⁵ Pedalion 606. Cf. commentary on Canons 25 and 70 (i.e. Can. 33), *ibid.* 624.

⁹⁶ *Ibid.* 607.

⁹⁷ *Ibid.* 624.

⁹⁸ *Ibid.* 308.

⁹⁹ KNETES 355; cf. *ibid.* 354.

tradition: "so that what the Apostles taught and antiquity itself has observed we might also keep". It was this desire to give the Trullan discipline apostolic authority that probably dictated the choice of this source. Perhaps the Fathers did not think it at all improper to modify their source in the genuine belief that their discipline was of apostolic origin. The discipline which was promulgated was in fact essentially the discipline, from apostolic times, of the christian virtue of periodic marital continence practised by all the faithful: "knowing that there is a time for all things and especially for fasting and prayer".¹⁰⁰ The Fathers of the Council were probably confident that their mitigated celibacy discipline (in respect to the Roman discipline), which still required sexual abstinence at times of fasting and administration of the sacraments, had its justification in apostolic praxis precisely because of this apostolic counsel of temporary continence for all married couples.¹⁰¹ Without hesitation the Fathers could then threaten anyone who should dare oppose this discipline – of apostolic origin – with sanctions. The modified discipline of Carthage truly represents Greek conviction and praxis. Apostolic Canon 6 gives even greater weight to this conviction.

The doctrinal inconsistencies of the Trullan canon, which appear from the very handling of the cited authorities, were no doubt quite unintentional. The purpose was to codify and reinforce law and custom in the Greek Church of the time. In the final analysis it was only by the authority of the Council itself, and not by any authority quoted by the Council, that the discipline within Canon 13 was established as the authentic law of the Greek Church and of the Churches which accepted or were influenced by Trullo. Regarding the value of the argumentation used within the canon, one recent author has written: "... finally and conclusively, all the arguments used by the Trullan Fathers can be turned against them".¹⁰² The ecumenicity of the canon is, therefore, the only solid basis for the discipline of clerical use of marriage and ultimately on its ecumenicity must its value stand or fall.¹⁰³

8. Canon 30 and the Practice of Absolute Continence

To be taken in association with Canon 13 of Trullo is another canon, Canon 30, which gives a special stipulation for priests who practised total abstinence:

¹⁰⁰ Cf. 1 Cor 7, 5.

¹⁰¹ See *infra*, 144 ff.

¹⁰² H. CROUZEL, *Celibacy and ecclesiastical continence in the Early Church: the motives involved* 492.

¹⁰³ Cf. KNETES 509.

Wishing to do all things for the edification of the Church we have determined to take care even of priests who are in barbarian churches. Wherefore, if they think that they ought to exceed the Apostolic Canon concerning the not putting away of a wife on the pretext of piety and religion, and to do beyond that which is commanded, and therefore abstain by agreement with their wives from conjugal relations, we decree that they ought no longer to cohabit in any way, so that hereby they may afford to us a perfect demonstration of their promise. But we have conceded this to them on no other ground than their pusillanimity and foreign and unsettled manners.¹⁰⁴

This canon has already been the object of some commentary,¹⁰⁵ to which we now wish to add other considerations.

Any Latin ecclesiastic looking at this canon would perhaps immediately infer that the Trullan Fathers were, as with Canon 13, at least indirectly attacking the discipline of the Western Churches. The phrase 'barbarian churches' ('babarikais ekklesias') would therefore include Rome.¹⁰⁶ Although the discipline of both these canons certainly did run counter to that of the Roman Church, yet according to authors of the Byzantine Churches the term 'barbarian church' did not necessarily or principally refer to the well-established apostolic Churches such as the Roman Church; they maintain that the term refers rather to the recently evangelized lands which fell outside the immediate jurisdictions of the Patriarchate of Constantinople and of Rome.¹⁰⁷ Among Latin authors, Arcudius¹⁰⁸ and Pitra¹⁰⁹ likewise affirm that Latins of the Roman rite were not included by this term. The Council Fathers acknowledged that celibacy was practised in these 'barbarian' regions. According to Pitra, not only did the neighbouring Franks practise the law of continence but so too did the Slavs, Scythians and, perhaps, those of the most northerly European regions.¹¹⁰ In the mid-5th century the Greek historian Socrates had specifically named the regions of Thessaly, Thessalonica, Macedonia and

¹⁰⁴ JOANNOU I 1, 160-161; Percival 379.

¹⁰⁵ Cf. supra, 101-103.

¹⁰⁶ GRYSON writes: "Les pays 'barbares' ou 'étrangers', ce sont évidemment aux yeux des Grecs qui rédigent ce canon les pays latins". 120. Cf. C-J. HEFELE, *Konzilgeschichte*, Freiburg 2 1877 III 335.

¹⁰⁷ ALIVASTOS, *Studi bizantini e neoellenici*, V 1939, 584; Nikodim, *Pravila*, I 511. Cf. A. PAVLOV, *Mnimye sledy katoličeskago vlijanija*, Moskva 1892, 21.

¹⁰⁸ *De Concordia Ecclesiae Occidentalis et Orientalis in Septem Sacramentorum Administratione*, Paris 1626, 576.

¹⁰⁹ *Monumenta II*, Annotationes 94.

¹¹⁰ *Ibid.* 92: *Immo dum pro sua mira humanitate permittunt imbecilliores presbyteros barbarorum in continentia et sobrietate vivere, testimonium est etiam apud Scythas Slavosque aut vicinos Germanos, forte et usque ad hyperboreos tractus, floruisse clericorum virginitatem.*

Greece as regions where strict continence was practised.¹¹¹ A highly interesting Slavonic text also gives us evidence that total abstinence was the rule at the very beginnings of the mission of Cyril and Methodius to the Slavs in the 9th century:

If any cleric or one receiving a higher order had separated from his wife, accepts orders, and takes her (to himself) again if he be a deacon let him do penance for seven years; if a priest let him do penance for ten years.¹¹²

The text in question is found in the Great Moravian Kormčaja of the Museum of Rumjanev in Moscow (code-named RUM 230), the language of which dates to the time of the brothers Cyril and Methodius.¹¹³ It is found as Canon 12 of a collection of canons entitled *Constitutions of the Holy Fathers (Zapovědi Svjatyx Otec)* and written in the style of the early penitentials.¹¹⁴ In fact the Russian canonist N. Suvorov had maintained that the collection was a Slavonic translation of the Frankish penitential of the 8th century known as the *Poenitentiale Merseburgense*.¹¹⁵ Canon 12 of this penitential reads (in the Latin):

*Si quis clericus vel cuiuslibet superioris gradus qui uxorem habuit, et post conversionem et vel honorem iterum eam agnovit, sciat se adulterium commisisse. Idcirco si diaconus V annos peniteat, tres ex his in pane et aqua, si sacerdos VII, III in pane et aqua.*¹¹⁶

This canon does show strong similarities to the Slavonic text quoted, but it is not identical. Pavlov, another Russian canonist, contesting the theory of Suvorov argues for a purely Greek origin of this canon, especially in light of Canon 30 of Trullo.¹¹⁷ Whatever may be the precise origin of the Slavonic canon (and it certainly does bear the marks of the Western penitential tradition) its translation into Slavonic occurred most probably at about the same

¹¹¹ *Historia Ecclesiastica* 5, 22.

¹¹² *Ašče kotoryi pričtnik ili vjaščšju čit' imija, ostavl' ženou, čit' priimet' i paki ju priimet ašče jest djakon, 7 lit da pokajet'sja; ašče li pop, 10 lit da pokajet'sja.* PAVLOV, *ibid.* 20-21; 166, n. 12.

¹¹³ ŽUŽEK 14-20; PAVLOV 1 and 22.

¹¹⁴ Manuals for confessors giving penance for specified sins. They originated in the Celtic Church and the earliest known date from the 6th century. From there they spread to the continent. Cf. BIELER, *Penitentials*, in: NCE 11, 86-87; STICKLER, *Historia* 84-95; 104-106; 110-112. Penitential canons were also found in the East, e.g. the Penitential attributed to John the Faster (d. 595). See HERMAN in OChP 19 (1953) 71-127.

¹¹⁵ N.S. SUVOROV, *Slědy zapadno-katoličeskago cerkovnago prava v pamjatnikax drevnago ruskago prava*, Jaroslav 1888, 7 and passim; PAVLOV 1; Cf. STICKLER, *Historia* 104.

¹¹⁶ H.J. SCHMITZ, *Die Bussbücher und die Bussdisziplin der Kirche*, (Mainz, 1883) II, 352; F. WASSERSCHLEBEN, *Die Bussordnungen der abendländischen Kirche*, Halle 1851, 419.

¹¹⁷ PAVLOV 20-22 and passim.

time as the writing of the other contents of the Great Moravian *Kormčaja*, perhaps by the brothers Cyril and Methodius themselves (or their immediate followers).¹¹⁸

Authors, particularly those of Bulgarian origin, have argued for a Bulgarian origin of some of the Slavonic texts of the RUM 230 manuscript, especially that part entitled "Penal Code for Laymen" (*Zakon Sudnyj Ljudem*).¹¹⁹ The relation between this and the *Responsa ad Bulgaros* of Pope Nicholas I has already been well established.¹²⁰ In light of this we could hypothesize that Canon 13 of the 'Constitutions' could have been issued (or translated from a Western penitential) in response to the question of Tsar Boris I to the Pope concerning married priests.¹²¹ Although no mention is made of such a canon by the Pope, yet it would have been much desired by the Latin missionaries wishing to establish and to regulate the discipline of clerical celibacy in the lands of the Bulgars at the very beginnings of their evangelization. The Pope could have commissioned the writing of this law in Slavonic. The penitential books would have served as a model.

The discipline of absolute continence for Slav priests, if it ever was observed as a general discipline, soon disappeared. Greek legislation, as contained in the Nomocanon of XIV Titles, permitted the use of marriage. Some authors hold that a Slavonic translation of the complete unabridged version of the Nomocanon (in a pre-Photian recension) was already commissioned by Tsar Boris I.¹²² With time the discipline of Trullo 13 certainly gained greater prominence than that of Trullo 30 which was, for the Greeks, but a 'tolerated' discipline.

In his commentary on Trullo 30, Balsamon tells the reader that information received, on enquiry from various bishops of the lands of Rus', whom Balsamon had met, and from the Metropolitan of the neighbouring Alans,¹²³ indicated that at that time, in the 12th century, no discipline of absolute continence was in effect even though these lands were considered 'barbarian'.¹²⁴ That the praxis in these lands followed exactly that of the Patriarchate of Constantinople is hardly surprising given the influence of Greek legislation

¹¹⁸ Cf. ŽUŽEK 18-19.

¹¹⁹ RUM 230, folia 55a-61b. Cf. ŽUŽEK, *ibid.*

¹²⁰ ŽUŽEK 20, fn. 21.

¹²¹ Cf. *supra*, 92-93.

¹²² ŽUŽEK 24.

¹²³ The Alans were a people from the North of the Caucasus who were evangelized, it appears, at the beginning of the 10th century by Greek missionaries. A Metropolitanate existed at least until the end of the 16th century. S. VAIKHÉ, Alania, in: DHGE 1 (1912) 1334-1338. Cf. OBOLENSKY, *The Byzantine Commonwealth* 234-235 and *passim*.

¹²⁴ PG 137, 609d.

and, in particular, the praxis which was now in effect of excluding secular clerics from the very possibility of remaining strict celibates. To this new praxis we will now turn our attention.

9. *Post-Trullan Legislation and Custom: The Compulsory Marriage of Priests*

The legislation of Trullo did not in itself forbid the celibacy of priests and other clerics, and yet the tone of the canons and the spirit of the legislation was such that priests were expected to be married and to live their conjugal lives like the rest of the lay faithful. This counsel, calculated to protect the morality of the clergy and to prevent scandal, had by the 11th century the effect of a precept.

It is the Greek polemicist Nicetas Stethatos (*Pectoratus*) that first displays the spirit of the Trullan legislation in its most developed form. Writing in his essay against the Latins (*Libellus contra Latinos*) he states:

Who is it that, taught you to prohibit and to dissolve the marriage of priests? Which of the Doctors of the Church taught you such depravity? Only unless a man marries may he receive the imposition of hands. And thus legitimately does a man who is ordained unmarried rush into marriage. Are you doing this according to the Canons which prohibit such marriages? If, however, the ordinand previously had a wife and persevered in chastity and in a noble life (and) you dissolve his marriage, you transgress (the law), as I will demonstrate to you from the precept of the Apostolic Canons. For in the Sixth Book of the Ordinances of Clement, which were written by him, in the seventeenth chapter the Apostles say the following: "We declare that a bishop, priest and deacon who have one wife are to be ordained even though their spouses are alive (or) even though they have died; it is not permitted that they after the imposition of hands be unmarried [even though they have died it is not permitted that after the imposition of hands they be unmarried], nor afterwards to contract marriage, or if they were married to engage in another marriage, but let them approach ordination content with the wife they have."¹²⁵

¹²⁵ PL 143, 981; PG 120; 1019c (there is no Greek version in MIGNE): *Quis ille est qui tradit vobis prohibere et abscindere nuptias sacerdotum? Quis ex doctoribus Ecclesiae hanc vobis tradit pravitatem? Siquidem nisi nupserit, manus impositionis accipiet. Et ita ad nuptias ruit, qui ordinatus est innuptus, legitime. Hoc et secundum canones facitis, huiusmodi nuptias prohibentes? Si autem ante habuerit uxorem ille qui ordinatus est sacerdos, perseveraveritque in castitate magnaue vita, nuptias ejus solvitis, transgredimini, ut ex praecepto apostolicorum canonum ostendam vobis. In sexto enim libro Clementis Ordinationum quae ab eo conscriptae sunt, juxta septimum decimum caput Apostoli haec dicunt: 'Episcopum et presbyterum et diaconum dicimus, qui unam habent uxorem ordinari quamvis vivant eorum conjuges quamvis defunctae, non licet eos post manus impositionem innuptos esse, nec insuper ad nuptias ire, aut si nupserint, alteras amplecti, sed sufficere quas habent cum ad ordinationem*

Three hundred and fifty years had already passed since Trullo had, for the first time in the Greek world, definitively rejected the discipline of clerical celibacy of the Latin Church for its own priests, deacons and subdeacons. As with that Council, Stethatos here regards the discipline as an imposition which not only dishonours marriage, but leads to grave abuses. The charge is made that the Latin Church permits celibates to marry even after ordination; a charge which is vigorously denied by Cardinal Humbert of Silva Candida (d. 1061) in his reply to the Studite monk.¹²⁶ This same accusation was made in a contemporary polemical essay, the *Opusculum Contra Francos*, (of unknown authorship),¹²⁷ in which we read:

Those who are ordained deacons and priests and bishops send away their wives, and they [the bishops] decree throughout the regions subject to them that their priests are to send away their wives; these [priests] on the other hand not only do not accept the edict of the bishops but even, after the decease of their first wives, openly take a second, (and) some even a third; and they freely, and with impunity, celebrate the sacraments.¹²⁸

The complaint of the Greeks was not without foundation. The corruption and immorality found among a number of the clergy, vividly described and fiercely condemned by Peter Damien in his *Liber Gomorrhianus contra imtemperantes Clericos*,¹²⁹ was precisely the object and the reason for the Gregorian Reform. Although both Churches, Greek and Latin, identified the need to stamp out immorality and abuses, the means employed differed very greatly between the two. The Latin Church did not consider the discipline of celibacy to be at fault, and on the contrary the reformers constantly re-affirmed the legislative tradition of celibacy and introduced new measures cal-

venerunt'. It is to be noted that the second section of this text, "For in the Sixth Book of the Ordinances of Clement etc.", does not read smoothly. Linguistic analysis and comparison with the original text of the 'Ordinances of Clement' reveals textual interpolation (cf. infra, 138-139 and fn. 153 for the original text); this renders the rest of the section awkward and inconsistent. Logically, this interpolated section ought to read: "... We declare that a bishop, priest and deacon who have one wife are to be ordained as long as their spouses are alive; if they have died then it is not permitted that they, after the imposition of hands, be unmarried ..." Such a reading corresponds to subsequent Greek praxis (see 138 ff).

¹²⁶ PL 143, 997b: *Ante omnia autem comprobamus te esse mentitum ipsi veritati, in eo quod dixisti nostros prius ordinari deinde uxores sortiti.*

¹²⁷ In some manuscripts the work is attributed to Photius but scholars commonly attribute it to the epoch of Michael Cerularius and Nicetas. Cf. GIANELLI 159.

¹²⁸ J. Hergenröther, *Monumenta graeca ad Photium eiusque historiam pertinentia* . . . , Ratisbonae 1869, 67, n. 18: *Qui ordinatur diaconi et presbyteri et episcopi uxores dimittunt suas; et per omnes subjectas ipsis regiones edixerunt, ut sui sacerdotes dimittant uxores; hi tamen non solum horum edictum non receperunt, sed insuper defunctis prioribus uxoribus secundas palam accipiunt, nonnulli vera et tertias; et impune ac libere sacra peragunt.*

¹²⁹ PL 145, 159-190.

culated to protect the dignity of the clerical state and the chastity expected and demanded of its members. Incontinence and immorality were severely punished.¹³⁰

The Greek Church was aware of the problems of clerical discipline and morality within its own fold. It developed its own means to correct the abuses. In the 9th century, the Byzantine Emperor Leo VI had to intervene with imperial legislation to arrest the abusive custom, developed since Trullo, of those in major orders reserving to themselves the right of taking a wife within two years of their ordination. The emperor prohibited this and at the same time re-affirmed the traditional law of prohibition of marriage after orders.¹³¹ Clerics were either to remain celibate or, if they wished to marry, they were to do so before ordination.¹³² In the 9th-10th centuries there were no prohibitions preventing celibates from being ordained.

It is not unreasonable to assume that it was precisely in response to the lack of perseverance in perfect chastity on the part of some (Greek) celibates, and their entering illegal marriages, together with the example of the problems of the time in the Latin Church, that prompted the Greek ecclesiastical authorities to prohibit men from being ordained to the secular priesthood if they were unmarried. It was from the perspective of *remedium concupiscentiae*, therefore, that marriage was considered a suitable state for the priesthood, for then it would obviate these illegal marriages. Clerics were now prevented from choosing freely a life of celibacy.¹³³ Candidates, according to Cardinal Humbert, would be interrogated and if found to be celibate were forced to marry.¹³⁴ Nicetas Stethatos had found justification for this discipline in attributing apostolic authority to it: "The Apostles say . . . 'it is not permitted that after the imposition of hands they be unmarried'".¹³⁵ If celibacy was considered to be an 'imposition' in the Roman Church, marriage and its use could certainly be considered an 'imposition' of the opposite kind in the Greek Church.

¹³⁰ Cf. STICKLER, *The evolution of the discipline of celibacy* 544 ff.

¹³¹ Novel 3. Zepos (ed.), *Jus Graecoromanum* I 59.

¹³² *Ibid.* *Ut secundum ecclesiae statutum qui sacerdotes creentur aut vitam caelem acturos se polliceantur aut, si matrimonio jungi vellint, prius copulentur et sic ad ordinationem accedant.*

¹³³ For the Ruthenian Church, see V. HOLUBKOVA, *O brak i bezbračii svjaščennosluzhitelej*, in: *Xristianskoe čtenie* 50, 1 (1870) 798; BOBAK 133.

¹³⁴ PL 143, 100c: . . . *adeo ut ad sacri altaris ministerium ordinandos interroget an habeant uxores. Qui respondentes se non habere compelluntur primum ducere, et sic impositionis manum accipere.*

¹³⁵ Cf. *infra*, 138-139, on the authenticity of this text. We may note that here, just as with the discipline of Canon 13 of Trullo, apostolic authority is sought for this new discipline.

Two canonical texts from this century illustrate the new discipline that had developed in the Greek Church. In the *Statutes of Georgios, Metropolitan of Kiev* (c. 1069-1072), of Greek origin, a canon reads:

If anyone is unmarried he is not worthy to be a priest; once he has taken a wife let him be ordained a priest, for it is good to marry, and that there be children.¹³⁶

Metropolitan John II of Kiev (1081-1089) also has a canon requiring higher clerics to be married. The canonical answers of this Metropolitan, also a Greek, formed part of the *Novgorodskaja* or *Russian Kormčaja* and exercised considerable influence in the lands of Rus' in the 11th-13th centuries.¹³⁷ Response number 10 reads:

As to subdeacons, care is to be taken that in future in no way are they to be ordained before they have married; if, however, they take a wife after ordination they are to be dismissed from their rank. As to those who acted (in this way) before now, deal with the matter as you wish, and as you see fit.¹³⁸

From these texts it is evident that in the 11th century in both Greek and Slav Churches celibates could now no longer be ordained for the secular clergy.¹³⁹ Greek legislation and praxis likewise set the example for the other

¹³⁶ "Ašče (kto) ne vėnčalsja budet, ne dostoin popovstva. Da vėnčavsja s ženou stanet popom, dostoin bo sja vėnčati, ašče i dėti budut. E. GOLUBINSKI, *Istorija Russkoj Cerkvi I*, Moskva 1901, 460 and fn. 1.

¹³⁷ Cf. ŽUŽEK 40; 146.

¹³⁸ *Quoad subdiaconos, curandum est ut in postremum nullo modo ordinetur priusquam nupserit; si enim post ordinationem mulierem sumunt, ordinem suum amittunt. Quoad illa quae prius acta sunt, dispone sicut vis, et bonum tibi videtur.* WUYTS - HERMAN, *Textus selecti iuris ecclesiastici russorum* 86, n. 5; Greek and Slavonic texts found in RIB VI 5 and in V. BENEŠEVIČ, *Sbornik pamjatnikov po istorii cerkovnago prava Petrograd* 1915, 110. The Slavonic text differs slightly from the Greek. On this text, see also A. PAVLOV, *Otryvki grečeskago teksta kanoničeskix otvėtov russkago Mitropolita Ioanna, II S. Peterburg* 1876, 1-4.

¹³⁹ In 1910 VACANDARD had written: "Il est d'usage, sinon de règle écrite, que les fonctions pastorales ne soient confiées qu'à des prêtres mariés . . . Cette pratique . . . fut officiellement consacrée au concile russe de 1274". art. Célibat ecclésiastique, in: *Dictionnaire de Théologie Catholique II* (1910) c. 207. M. Pfliegler repeats this same assertion. Celibacy, *Theological Meditations* 27. Vacandard quoted as source P. STRAHL, *Geschichte der russischen Kirche*, Halle 1830, 262. STRAHL, in turn, gives a summary translation of Chapter VII of the Synod of Vladimir (1274) from the Latin text of I. KULCZYNSKI, *Specimen Ecclesiae Ruthenicae*, Paris 1733. The text in question begins: *Unusquisque ordinandus hoc modo examinari debet: An vitam castam in juventute duxerit? an virginem intactam in uxorem sibi copulaverit? . . . utrum ante nuptias cum legitima uxore virginitatem suam corruperit? utrum cum variis mulieribus concubuerit aut in statu conjugali adulterium expleverit?* ivi. 200 [1859 ed.]. These questions express the traditional canonical requirements of the first centuries for married candidates to be ordained to the priesthood. In themselves they do not prescribe marriage. It is true that the absence of express mention of celibate candi-

Eastern Patriarchates to imitate.¹⁴⁰ On the basis of this praxis Balsamon, in the 12th century, would be able to write: "Those who are continent are called monks".¹⁴¹ Celibates who wished to remain such would either have to enter a

dates does suggest that marriage was regarded as the normal state for a priest – as indeed it was at this time – but the Council established nothing more. Vacandard is incorrect in suggesting that this council was a prime legislative source for the discipline of mandatory marriage.

¹⁴⁰ Although it is beyond the bounds of this dissertation to attempt to trace the possible causal relationship of the Greek praxis of married clergy with that of the other Eastern Patriarchates, nevertheless Greek influence on the latter is indisputable. Cf. LAURENT, *L'oeuvre canonique du Concile in Trullo*, in: *Revue des Études Byzantines* 23 (1965) 28. It is probably highly significant that by order of Emperor Michael Cerularius the *Libellus Contra Latinos* of Nicetas Stethatos was diffused throughout the Orient. Cf. JUGIE, *Theologia dogmatica*, I 268-269. Greek leadership in Eastern canonical discipline in the following century is exemplified by Balsamon's canonical directives to Mark, Patriarch of Alexandria: PG 138, 952a-1012. Balsamon himself was Patriarch of Antioch at this time. In the 11th and 12th centuries the Alexandrian and Antiochian Churches theoretically still permitted secular celibates. Cf. DAUVILLIER - DE CLERCQ 176-177. It is probable that in actual practice the Greek praxis predominated. In the Armenian Church of the 13th century, Canon 6 of the Council of Jaguc Vank (c. 1270) required that candidates to the secular priesthood marry at the age of 15 and then receive all the minor and major orders. *Ibid.* 178. The same discipline seems to be reflected a century later in the Council of Sis (1342) which reads: *Semper apud nos in acolytatus ordine qui volunt sacerdotes saeculares fieri accipiunt uxores virgines, et deinde subdiaconi et diaconi fiunt*. MANSI 25, 1261. In the Chaldean (Nestorian) Church an effective prohibition of secular celibate priests existed already in the 5th century.

¹⁴¹ "Enkrateuomenoi legontai oi monachoi": Commentary on Carthage can. 38 (41): *Ut clerici vel continentales ad virgines vel viduas non accedant*, PG 138, 164d (cf. JOANNOU I 2, 258). Canon 19 of St. Basil the Great is cited as the authority for this statement. The canon of St. Basil reads: "We do not recognize the profession of men who seem to have tacitly promised celibacy, other than those who number themselves in the order of monks. But even in these it seems to me proper that they be questioned and clear profession be received from them, such that if later they turn back to a libidinous and voluptuous life they may be subject to the punishment for fornicators". *Pedalion* 807. Balsamon (and Zonaras) conclude from this canon that Basil denies that there can be any male living a promise of perfect continence who is not at the same time a monk. PG 138, 165a-d. Clerics of the bishop's tribunal do make at least a tacit vow of celibacy according to this author (commentary on Canon 19 of St. Basil: *ibid.* 653d) thus making them also monks. Balsamon's exegesis seems to have been directly influenced by the Greek praxis of the time. In our reading of this canon, St. Basil does not necessarily equate continence with monasticism; he simply provides for punishment of transgressions of consecrated virginity (or continence). To be subject to these penalties, a layman has to be numbered among the order of monks, who ought then to make public profession of chastity. Just the fact of being a monk is sufficient to make him subject to the canonical punishment. St. Basil does not seem to be primarily interested in clerics in this canon.

monastery or, if they were permitted to do so, work in the bishop's tribunal after having taken the monastic habit or at least the rason.¹⁴² In law the latter were considered to be monks. The impediment to marriage was considered to be, in the case of these clerics, not in priestly ordination, but in the taking of the habit.¹⁴³

All priests who lived in village parishes were required to be married; their sons furnishing future candidates for the clerical state. In this way the sacerdotal 'profession' was transmitted from father to son. Indeed, society expected the son to follow the father's profession, with the latter providing the necessary formation and education.¹⁴⁴ In this way there developed a 'ius natiuitatis' by which young men, by the very fact of being the sons of priests, had the right to ordination. In 17th century Russia, Tsar Peter the Great reinforced this practice by establishing special schools for the sons of priests. If the candidate completed his studies he had yet another 'title' to ordination. Evidently, with such a practice, there could not have been much of an emphasis on the supernatural aspect of the priestly vocation.¹⁴⁵ Indeed, a number of these priests lacked true priestly spirit and were defective in their training.¹⁴⁶ One effect of this state of affairs was that all higher positions in the Church became reserved for celibate monks who were generally better trained, as well as being free from family ties. This situation not infrequently gave rise to marked antagonism between the two 'castes' of clergy: the 'black' (monastic) clergy, and the 'white' (married secular) clergy.¹⁴⁷

In Greece, civil legislation enacted in 1923 prohibited celibates from being nominated to a parochial curacy.¹⁴⁸ Around this time, other Orthodox communities also required marriage as a necessary condition for the exercise of pastoral ministry.¹⁴⁹

¹⁴² Cf. *supra*, 114-115.

¹⁴³ Cf. PG 138, 653d; Pedalion 630.

¹⁴⁴ Cf. GOLUBINSKI I 1, 449-450, 459; M. HRUSHEVSKY, *History of Ukraine-Rus*, 3 New York 1954, 319 & 330.

¹⁴⁵ BOBAK, *De caelibatu* 133; GAGARIN, *The Russian Clergy*, translated into English from the French by Ch. MAKESPEACE, London 1872, 14-20; HOLUBKOVA 808 ff.

¹⁴⁶ BOBAK *ibid*; GAGARIN *ibid*; HOLUBKOVA 803, 816 and *passim*.

¹⁴⁷ Cf. GAGARIN 14 ff; P.A. PALMIERI, *Il monachismo e la riforma dell'episcopato russo*, in: *Rivista Internazionale di scienze sociali e discipline ausiliare* 14 (1906) 161-162.

¹⁴⁸ Cf. E. HERMAN, in: DDC 3, 153.

¹⁴⁹ *Ibid*. As far as we can ascertain, even to this day the Orthodox Churches – in practice without exception – keep to this rule. Celibacy is regarded as being a monastic ideal.

10. *In the Spirit of Compulsory Marriage: Dismissal of Widower Priests*

The logic of the discipline of compulsory marriage, if it was indeed thought to be the only solution to clerical incontinence and illegal post-ordination marriage, would be to absolutely exclude anyone from the ministry who could not guarantee a chaste life, namely any cleric (apart from monks) who was without wife. A layman who had once been married but who had lost his wife would be excluded from ordination. Even if he then remarried he would be excluded by virtue of the law prohibiting the ordination of digamists.¹⁵⁰ A cleric, likewise, who had lost his wife no longer, according to the spirit of the discipline, had sufficient guarantee of living chastely. One would expect, then, that a widower priest or deacon would be barred from the exercise of his ministry. This, indeed, was the case. A discipline developed, in perfect harmony with that of compulsory marriage, in which widowers were forced to abandon their ministry.

It is, according to the evidence we have, Nicetas Stethatos who first expresses the precedent for this discipline when he cites the 'Ordinances of Clement': "no one after the imposition of hands can be unmarried".¹⁵¹ In actual fact, the text that Stethatos cites is a corrupt version of a passage in what is commonly called the *Apostolic Constitutions*, an apocryphal work belonging to the end of the 4th century or the beginning of the 5th, and of Syrian or Palestinian origin.¹⁵² The passage concerned is from the 17th chapter of the 6th Book, the uncorrupt version of which reads:

We have said that one must institute as bishops, priests and deacons monogamists, whether their spouses be still alive or whether they be dead; if these men were celibates it is no longer permitted that after the imposition of hands they contract marriage, or if they were married to contract another marriage; but when they approach the imposition of hands let them be content with the wife that they have [let them be content to approach the imposition of hands while having a wife].¹⁵³

¹⁵⁰ In our opinion, this illustrates the complete breakdown in the logic and coherence of the law. Compulsory marriage would dictate also the abrogation of the law against the ordination of digamists.

¹⁵¹ PG 120, 1019c; PL 143, 981.

¹⁵² Cf. COCHINI 338.

¹⁵³ PITRA, Monumenta I 325: *Episcopum et presbyterum et diaconum praecipimus esse viros unius matrimonii, sive vivant eorum uxores, sive dicesserint; non licere autem iis si post ordinationem sine uxore fuerint, ad nuptias transire, vel si antea nusperint, cum aliis coniungi, sed eo contentos esse quod quum haberent ad ordinationem venerunt.* Cf. PG 2, 956a-957a; F.X. FUNK, *Didascalia et Constitutiones Apostolorum*, I Paderborn 1905, 349-351. For a critical study of this text, especially of the last phrase, see COCHINI 339-341.

The difference that this text displays in relation to the version quoted by Nicetas Stethatos is found above all in the phrase: "If these men were celibates (unmarried) it is no longer permitted that after the imposition of hands they contract marriage", whereas Stethatos has: "it is not permitted that they after the imposition of hands be unmarried (celibate)". The former uncorrupt version expresses apostolic tradition and the universal and undisputed discipline of the Church. The latter version has no precedent at all in tradition: it was promptly condemned by Cardinal Humbert who expressed irony at the ludicrous inconsistencies of such a discipline with historical fact.¹⁵⁴ A priest, furthermore, according to the version of Nicetas, could only remain as a ministering priest while his wife was still alive.

In the Slav Church this discipline did not, it seems, have immediate effect but was accepted gradually. In the *Questionary of Kirik*, a 12th century Russian document which contains the canonical responses of Nifont, Bishop of Novgorod (1130-1156), the following question and answer is found:

Question: (What is to be done if) a secular priest without wife happens to fall (into sin) but once, or becomes drunk, or something similar?

Answer: Even if he were to bring the dead back to life he cannot minister as a priest; the same for deacons . . .¹⁵⁵

The inspiration for this answer seems to have come from Canon 35 of Nicephorus the Confessor (d. 828):

Any man who even but once commits fornication ought not to be made a priest even though he has given up the sin. For Basil the Great asserts that such a man cannot be made a priest even though he bring the dead back to life.¹⁵⁶

The question of Kirik, however, deals with an already ordained priest and one who is without wife. It is probable that the unmarried status of the priest refers to widowhood rather than to strict celibacy.¹⁵⁷ The 'falling into sin' most certainly refers principally to fornication or adultery.¹⁵⁸ This canon, therefore, deals with the problems of indiscipline on the part of widower priests and excludes them from the ministry only in so far as they give in to licence.

In the 13th century widowers were in practice excluded from ordination along with other celibates.¹⁵⁹

¹⁵⁴ PL 143, 997c.

¹⁵⁵ *Bšlec' pop bes ženy, ašče sja slučit' emu pasti edinoju tokmo, ili pjanu, ili kako? Ašče i mrtvyja, reče vskrešaj, ne možet' popom byti, takože i djakonom.* K. KALAJDOVIČEM, *Pamjatniki rossijskoj slovesnosti XII vika*, Moskva 1821, 190.

¹⁵⁶ *Pedalion* 969.

¹⁵⁷ Although this possibility is not to be completely excluded, since compulsory marriage may not yet have been a general precept in all eparchies.

¹⁵⁸ Cf. Apostolic Canon 27, Neocaesarea 1 etc.

¹⁵⁹ HOLUBKOVA 805.

By the 14th century the custom of prohibiting widower priests and deacons from continuing their ministry seems already to have been well established. This is evidenced by the *Canonical Instruction* of Peter, Metropolitan of Kiev (1308-1326):

If a priest's wife dies, let him enter a monastery and thus retain his priesthood; if he has to remain in weakness and yield to earthly voluptuousness let him not sing (officiate).¹⁶⁰

In this instruction not only is it assumed that a widower priest would give himself up to an intemperate and 'voluptuous' life, but a condition for continuing the exercise of the priesthood is entry into a monastery.

In an instruction written in 1425 (or 1422), Metropolitan Photius (1408-1431) is even more explicit concerning the reason why a widower cannot continue with his ministry. He explains that the "traditional teaching of the Holy Fathers" required widower priests to enter a monastery, of if they remained in the world not to officiate any longer. This tradition was justified in that: "when God takes away their wives . . . half their bodies are already dead, buried in the earth as food for worms". They too ought to bury themselves in a monastery, the Metropolitan adds, for "secular priests retain their priesthood as long as God grants them life with their spouses".¹⁶¹

In 1503 the Synod of Moscow issued a decree, based on the two aforementioned authorities, with the purpose of stamping out the scandal of concubinage on the part of widower clerics. Widower priests and deacons were forbidden to officiate in church; they could exercise the ministry in a monastery if they received this special favour from the bishop and if they had received the monastic tonsure.¹⁶² This decree was reissued in the Synod of Moscow in 1551 (the 'Stoglav' Synod).¹⁶³ The Synod of Vilna of 1509 contained, substantially, the same discipline.¹⁶⁴

¹⁶⁰ RIB VI 161; ŽUŽEK 154 & fn. 42.

¹⁶¹ RIB VI 434; ŽUŽEK 154 & 139.

¹⁶² AAE I 486-487.

¹⁶³ Cf. E. DUCHESNE, *Le Stoglav ou les cent chapitres, Recueil des décisions de l'assemblée ecclésiastique de Moscou, 1551, Traduction avec introduction et commentaire*, Paris 1920, chap. 80, 223-225; 225-227.

¹⁶⁴ AAK I 527. The chapter of this Synod 'on priests with no wives' condemns the immorality and irregular marriages of the clergy; it cites Trullo 6 and St. Basil 27. The Synod Fathers then refer to the discipline of the Church of Constantinople which, they say, is also followed in Rus, adding that priests with no wives are not to minister: *Jako že i nyni vse-lenskaja velikaja Konstantinopol'skaja Cerkov deržit': vsi tamo suščii svjaščennicy ne imušče žen, ne svjaščensvujut'*. These priests are to enter the monastery, otherwise they are to be laicised: *Ili vo mnišeskij čin da idut, i togda svjaščenstvujut; ašče li ni, togda k prostoju čadi pričitajutsja*. BOBAK is mistaken when he quotes this synod as saying *nemo ad sacerdotium admittantur nisi prius uxorem duxerit*. 132. The Synod is clearly dealing with widowers and

In his commentary of the Synod of 1503 Žužek writes:

there is little in the history of the Russian Church more strange than the treatment prescribed here for priests and deacons whose wives predeceased them.¹⁶⁵

The discipline, however, is nothing more than a logical corollary to the discipline of compulsory marriage. Furthermore, the reference made by Metropolitan Photius, and then by the Moscow Synods, to the authority of the "Holy Apostles and Fathers"¹⁶⁶ is quite explicable in light of the *Ordinances of Clement* cited by Nicetas Stethatos in his polemical essay. A Slavonic translation of this essay was available to the Metropolitan and to the Synods.¹⁶⁷

An effect of this legislation was the overcrowding of monasteries by clerics who were there involuntarily and who had no monastic vocation.¹⁶⁸ This contributed to the serious problems of discipline in the monasteries and to the general decline in the vitality of monastic life.¹⁶⁹

11. Change in the Law for Widowers

In the 17th century the Synod of Moscow of 1666-1667 abrogated the decrees concerning widower priests and deacons issued by the Synods of 1503 and 1551. They were declared "uncanonical" although necessary at the time be-

their priestly ministry and not with ordination. The mistake comes from not having consulted the primary source and having misunderstood the secondary source which itself is not altogether clear on this point: *ne dopuskat neženatyx svjaščennikov do svjaščennodyjstvija* ("do not allow unmarried priests to minister"): HOLUBKOVA 802.

¹⁶⁵ 154.

¹⁶⁶ Cf. AAE I 486.

¹⁶⁷ ŽUŽEK 86-87. Metropolitan Photius may have consulted the original Greek text. Cf. *Ibid.* 139.

¹⁶⁸ In the 16th century the widower priest George Skripica of Rostov had written a very acid reaction to the synodal decision of 1503: "The Holy Apostles and the Fathers of the seven ecumenical councils did not condemn priests by reason of their wives' death, nor did they remove them from office . . . where is there written anything that chaste priests and deacons should be deposed from office and forced to become monks?" The synod made out, according to Skripica, that a "married priest is chaste, an unmarried one is unchaste, and yet a wifeless monk is pure". O. BODJANSKII, *Napisanie vdovago popa Georgija Skripicy iz Rostova grada o vdovstvujuščix popex*, in: *Čtenija v imperatorskom obščestve istorii i drevnosti rossijskix pri moskovskom universitete*, 1848, part 6 (1847, t.3), SMES 46-47.

¹⁶⁹ Cf. *Šematizm provincij sv. Spasytelja čyna sv. Vasylija Velykoho v Halycij . . . y korotkij pohljad na monastyri i na monašestvo ruske*, Lviv 1867, 229-231; J. Macha, *Ecclesiastical Unification*, in: OChA 198 (1974) 150.

cause of the particular problems of that century.¹⁷⁰ The same Synod, however, permitted second marriage to priests and deacons under the condition that they accept being reduced to the rank of a minor cleric.¹⁷¹

The Moscow Synod of 1766 gave express permission to widowers to contract a second marriage on these same terms. This was also confirmed by the Synod held in 1917-1918.¹⁷²

The problem of widower incontinence was thereby solved in the Russian Church by legislation for yet another new discipline: allowing higher clerics to contract a second marriage while still retaining clerical status and keeping their wives. Not only was such a concession against previous Slav tradition but it was also contrary to the universal tradition of the Church and to the legislation of the Oriental Catholic Churches.¹⁷³

At the time of Union of the Ukrainian (or Ruthenian, as it was known at that time) Orthodox Hierarchy with Rome, at the Union of Brest-Litovsk in 1595/6, the problems of clerical discipline and the abuse of prohibiting ordination or exercise of priestly ministry to unmarried men was known to Rome.¹⁷⁴ The promoters of the Union on the part of the Ukrainian Hierarchy, notably the Metropolitans of Kiev, Ipaty Potiy (1660-1613) and Joseph Velamin Rutskyj (1613-1637), had among their first priorities the promotion of celibacy among the secular clergy.¹⁷⁵ The law which prohibited celibates

¹⁷⁰ ŽUŽEK 179.

¹⁷¹ Ibid. 178 & 250;

¹⁷² Cf. supra 46-47.

¹⁷³ For more information on the question of widower priests in Russia see LAVROV, *Vdovye svjaščennoslužiteli*, in: *Xristianskoe čtenie* 1870, 1019-1056; 1871, 343-382.

¹⁷⁴ The Polish Jesuit Peter Skarga (d. 1612) had noted in 1577: *Neminem uxore carentem ad sacerdotium admittunt, nec ullum Popam cui Popadia non sit habent, quo facto castitatem, excelsam Novi Testamenti virtutem, contemnunt, donum Dei corrumpunt, quodque idem Deus large nonnullis dare potest, id omnibus detrahunt, et a sacerdotali dignitate reiiciunt*. *Erores Graecorum et Russorum quos Petrus Skarga Theologus Societatis Jesu in libro suo anno domini 1577 Vilnae excusso: de uno pastore unitate ecclesiae etc., Graecorum ab illa secessione, cap. 2-do partis 3tiae enumerat, ex lib. certo rerum polonicalium latino idiomate conscripto typis impresso imo fideliter transcripsi, n. 16., in A. WELYKYJ (ed.), *Congregationes Particulares ecclesiam catholicam ucrainae et bielarusjae spectantes 1 (1622-1728)*, *Analecta OSBM, series II, sectio III Romae* 1956 153. Cf. the observation made in P. ARCUDIUS, *De Concordia ecclesiae occidentalis et orientales, Liber VII, cap. XLI, 593.**

¹⁷⁵ Ipaty Potiy's views on celibacy are expressed in a letter of 1599 to Meletius, Patriarch of Alexandria. *List Meletija Patrijarcha Aleksandrijskoho do Ipatija . . . i otvit Ipatija Meletievi, Lvov* 1896, 103-108. Cf. also Antiriz ili Apologija, in: *RIB* 19 (1903), 739-754; S. STUDZINSKI, *ze studyów nad literatura polemiczna, in: Rozprawy Akademii umięjetności wydział filologiczny, serya 2, 26 (1906), Krakow* 93-95. Metropolitan Rutskyj planned to introduce celibacy by means of a Seminary which he wished to found. He wrote to the Sa-

from being ordained and which dismissed priest and deacon widowers from their parochial charges was evidently abrogated by the very act of Union since it was regarded by Rome as a grave abuse and was in complete opposition to the discipline of the Catholic Church.¹⁷⁶

In the various Synods of the Oriental Catholic Churches, especially in the 18th and 19th centuries, celibacy was promoted and encouraged as the preferential state for a candidate to the secular priesthood. Oriental prelates were reminded that clerical students were not to be compelled to take wives.¹⁷⁷ In this way attempts were made to alter the deeply rooted traditions of accepting only married men into parochial curacy, and to change the sociological prejudices against secular celibates.¹⁷⁸

12. *The Discipline of Temporary Continence: Origin and Development*

Canon 13 of Trullo had legislated that priests, deacons and subdeacons were to abstain from their wives during the periods of liturgical service. No exact norm was given for the length of time involved. Subsequent legislation concretised this norm using as a model the period of continence expected of all married lay people. To understand the discipline of "partial celibacy" for

cred Congregation for the Propagation of the Faith: *Utilitates dicti Seminarii isthaec sunt: introducet per istos seminaristas clerus saecularis coelebs, quod a plurimis non modo annis, sed saeculis in ritu graeco auditum non est et tamen a multis desideratum est et nunc ab ipsimet Ruthenis unitis praesertim unice in votis habetur.* Epistolae Josephi Velamin Rutzkyj, Metropolitanae Kioviensis Catholici (1613-1637), ed. HALUŠČYNSKYJ - WELYKYJ, *Analecta OSBM*, series II, sectio III, Romae 1956, 114; HARASIEWICZ, *Annales Ecclesiae Ruthenae*, Leopoli 1862, 296-297.

¹⁷⁶ Just the custom of permitting any priest, if he had chosen to marry, to use his marriage was but tolerated. Much less could the discipline which forced all priests to have a wife and to use the marriage be permitted.

¹⁷⁷ For example, in the Maronite Synod of Mount Lebanon (1736) it was stated: *Idcirco non interdicimus nostris ut qui in minoribus constituti sunt, matrimonium contrahant; qui vero in sacris ordinibus contracto jam matrimonium utantur; sic tamen ut qui caelibes esse vellent, ad matrimonium nequaquam compellantur, sed ad caelibatum potius adhortationibus inducantur.* Colletio Lacensis II 241-242. Cf. Synod of Mount Lebanon (1806). MANSI 789; Regola IV, cap. 1 of the seminary rules approved by the Maronite Synod of St. Salvador (1811). MANSI 46, 909.

¹⁷⁸ These prejudices persisted into the 19th century. Cf. *Vota per la commissione del concilio ecumenico (Vaticano I): De ordinis sacramento etc.*, Marzo, 1870, nos. 55-60; mentioned in MANSI 42, 906. Against persisting prejudices in the 20th century, Canon 68 of the *Motu Proprio Cleri Sanctitati* states: *Caelibatus clericorum eorundem statui ac divinatorum ministeriorum exercitio dignius aptiusque respondens, prout fert unanimis Ecclesiae tum Orientalis tum Latinae traditio, ab omnibus in honore habendus est.* AAS 41 (1949) 102.

priests of the Eastern Churches a study of the discipline for lay people will be helpful. Following this the law of temporary continence and its effect on the clergy will be studied. The relationship between this law and the introduction of strict celibacy in the Oriental Catholic Churches will then complete our analysis.

a) *Temporary Continence for Married Lay People*

St. Paul in his first Epistle to the Corinthians had written: "Do not deprive one another unless perhaps by mutual consent for a time, to devote yourselves to prayer. Then return to one another . . ." ¹⁷⁹ This counsel for married people to practise continence periodically for the purpose of prayer played not an indifferent role in the subsequent formation of a specifically Christian and biblical ethic concerning conjugal chastity and the regulation of the use of marriage. ¹⁸⁰ Leaving aside the immoderate doctrinal teaching of heretical sects (such as the Gnostics, Montanists, Encratites and Manicheans, who condemned marriage and proclaimed total abstinence to be obligatory for all Christian married couples) a common doctrine is discernible in the writers of the early centuries where periodic continence is considered to be an important Christian practice and virtue. ¹⁸¹

That periodic continence was regarded as normal practice for Christian couples in the early centuries is attested to by the Popes and the Fathers of both Western and Eastern Churches. ¹⁸² St. John Chrysostom, for example, explains the Pauline counsel in his 19th Homily on the first Epistle to the Corinthians. Commenting on Chapter 7, he writes:

¹⁷⁹ 1 Cor 7, 5. In some Greek manuscripts, from the 11th century onwards, the words "for fasting and for prayer" (τῆ νῆστεια καὶ τῆ προσευχῆ) are found. Cf. A. MERK, *Novum Testamentum Graece et Latine*, Roma 4 1942, 563 and footnote.

¹⁸⁰ Cf. J. Van PAASSEN, *Continence*, in: NCE 4, 265.

¹⁸¹ For a discussion on the possible motives for continence cf. H. CROUZEL, *Celibacy and ecclesiastical continence* 451-497.

¹⁸² E.g. Pope Siricius in *Cum in unum* (386): PL 13, 1160a-1161a; *Dominus inter* of Pope Innocent I (?): PL 13, 1186a; Gregory the Great, *Letter to Augustine of Canterbury* II 56, 8 (question 10): MGH, *Epist.* 22, 340, 19-341, 11-342, 3; St. Ambrose: PL 17, 217; 605; St. Augustine, PL 38, 1052; PL 39, 1976; PL 40, 368; St. Jerome, PL 22, 506; PL 25: 968-969; PL 40, 1204 (cf. CROUZEL 467-477). Also, Origen, *Homily on the Book of Numbers* 23, 3; St. Cyril of Jerusalem, *Catechetical lectures* 4, 25; Epiphanius, *Against Heresies* 59, 4, 1-7; St. Gregory Nazianzen, *Oration on Holy Baptism* 18; St. John Chrysostom, *Homily on I Corinthians* 19; etc.

That one should practise continence against the will of the other is defrauding; but not so with the other's consent . . . since he only defrauds who takes against another's will and by force.

Where is all the gain of the fasting and continence if a breach is being made in charity? There is none . . . It is prayer with unusual earnestness which (Paul) means here. For if he is forbidding those who have conjugal relations with one another to pray, how could 'Pray without ceasing' (1 Thess 5, 17) have any place? It is possible then to live with a wife and yet give heed unto prayer. But by continence prayer is made more perfect. For he did not say merely 'That ye may pray' but 'That ye may have leisure for it', as though what he speaks of might cause not uncleanness but much occupation . . . for the uncleanness is not in the bodies wherein there is communion, but in the mind and the thoughts.¹⁸³

Paul's advice to married couples, therefore, was not to be interpreted as if marriage in itself could in any way be an obstacle to prayer. St. Gregory Nazianzen also has something to say on this matter:

Are you living in Virginité? Be sealed by this purification [baptism]; make this the sharer and companion of your life . . . Honour it so that it may honour you, that it may give to your head a crown of graces . . . Are you living in wedlock? Be bound by the Seal [of baptism]; make it dwell with you as a guardian of your continence . . . Art thou not yet wedded to flesh? Fear not this consecration; thou art pure even after marriage . . . We do not dishonour marriage because we give higher honour to virginity. I will imitate Christ, the pure Groomsman and Bridegroom, as he both wrought a miracle at a wedding, and honours wedlock with his presence. Only let marriage be pure and unmingled with filthy lusts. This only I ask; receive safety from the Gift, and give to the Gift the oblation of chastity in its due season when the fixed time of prayer comes round, and that which is more precious than business. And do this by common consent and approval. For we do not command, we exhort . . .¹⁸⁴

According to Gregory, marriage is honourable when it is lived chastely. Both he and John Chrysostom would seem to regard continence, when motivated by charity, as a practice that predisposed one in a particular way to prayer, guaranteeing, at the same time, the real dignity and supernatural worth of marriage. Care is taken to stress that this is a counsel only and not a strict obligation. Pope St. Gregory the Great expressed himself in a similar vein two centuries later.¹⁸⁵

¹⁸³ Commentary on verses 5 and 15: PG 61, 152d-154c; 155c. Translation taken from A library of the Fathers of the Holy Catholic Church anterior to the division of the East and West, 4 Oxford 1839, 247-248; 251.

¹⁸⁴ Oration on Holy Baptism, (oration 40) 18: PG 36, 381b-384a. English translation: C.G. BROWNE, J.E. SWALLOW, A select library of Nicene and post-Nicene fathers of the Christian Church, Series II, ed. H. WACE and P. SCHAFF, VII Oxford/New York 1894, 365.

¹⁸⁵ Epistle LXIV to Augustine of Canterbury, Question 10. Cf. GRYSON 168-170 who gives his own exegesis and observation on Gregory's attitude towards marriage.

It was expected of Christian couples, nonetheless, that they heed the Apostle's counsel especially when it was time to gather in the Assembly for the purpose of celebrating the Memorial of the Lord's passion and death.¹⁸⁶ It was above all the fear that conjugal relations might have been used with less than honest motives, thereby staining the conscience, that led some writers to insist that there should be abstinence before receiving the eucharist.¹⁸⁷ Yet even by these writers it was not regarded as absolutely obligatory when the consciences of the partners were free from blame.¹⁸⁸ Besides, in the early centuries lay people would receive the eucharist frequently, if not daily,¹⁸⁹ which presupposed that married Christians lived their married lives in such a way that they had constantly the right disposition to receive the sacrament. St. John Chrysostom, for example, recommended this frequent reception.¹⁹⁰

In the Church of Alexandria canonical norms soon appeared which dealt with these matters. Dionysius of Alexandria (d. 265) had, in the same spirit as other church Fathers, exhorted the faithful to follow St. Paul's counsel. He left the matter, nonetheless, to conscience.¹⁹¹ St. Athanasius (d. 373) required the laity to abstain from conjugal commerce before participating in the Sacred Mysteries. If, he says, God had commanded through Moses that the people of Israel should prepare themselves to meet the Lord by abstaining from relations with their wives for three days (Ex 19, 15), and David was told by the priest that the bread of proposition could only be eaten if the men had abstained from relations with their wives (Cf. 1 Sam 21, 5), with how much more reason should Christians abstain from conjugal relations before receiving the eucharist?¹⁹² Timothy of Alexandria (381-385) expresses clearly in his *Canonical Answers* what church discipline was in this matter. In his Canon 5

¹⁸⁶ Cf. Cyril of Jerusalem, *Catechetical lectures* 4, 25: PG 33, 488a-b; Jerome, Ep. 48, n. 15: PL 22, 506.

¹⁸⁷ E.g. St. Jerome, *ibid.*, St. Gregory the Great, *ibid.*

¹⁸⁸ *Idem.*

¹⁸⁹ Cf. R. TAFT, *The frequency of the Eucharist throughout history*, in: *Concilium* 172 (1982) 13-24; N. IUNG, *Communion, communion fréquente*, in: DDC 3, 1159-1162; E. HERMAN, *Eucharistie, droit oriental, la communion*, in: DDC 6, 530-531; E. DAY, *Communion, Frequency of*, in: NCE 4, 38.

¹⁹⁰ *Homilia de beato Philogomio* 4: PG 48, 755; In *epist. I ad Corinth.* 28, 1: PG 61, 233; In *epist. ad Hebraeos* 17, 4: PG 63, 131.

¹⁹¹ Canon III, *Epistola Dionysii Archiep. ad Basilidem Episcopum*. PITRA, *Monumenta I 544-545: Porro et qui nupserunt, debent esse sui idonei iudices. Quod enim a se invicem ex consensu ad tempus abstinere conveniat, ut vacent orationi et rursus conveniant. Paulum dicentem audiverunt.*

¹⁹² PITRA I 575. St. Gregory the Great used precisely the same *a fortiori* argument in his *Epistle to Augustine of Canterbury*.

he prohibits a married couple from receiving communion on the morning following the evening in which the marital debt was rendered.¹⁹³ Couples were also required, he states in Canon 13, to abstain from each other on each Saturday and Sunday, since on these days the Spiritual Sacrifice is offered to the Lord.¹⁹⁴

Not only was the eucharistic celebration a time in which married couples were to give themselves to intense prayer, but also times of fasting and penance. These were also times for conjugal abstinence.

In the early centuries Christians practised fasting and abstinence (especially from flesh meats) in imitation of Christ himself (Mt 6, 16; Mk 2, 20; 9, 29) and the Apostles (Acts 13, 2; 14, 23). Regular weekly fasts were practised on Wednesday and Friday, although in the Roman Church the Wednesday fast was replaced, by the 5th century, by the Saturday fast.¹⁹⁵ The major fast of the year was the Great Lent which had, by the 4th century, taken on a well defined character as being a time of intense preparation and cultivation of the spiritual life in anticipation of Easter.¹⁹⁶ Originally, not all of this time was for strict fasting, but liturgical services were celebrated more frequently and communion was more frequently received.¹⁹⁷ Two other minor lents were also observed by the 6th century: in preparation for Christmas and in preparation for the Ascension and Pentecost. During these periods, too, the married faithful were expected to express their spirit of penance by abstaining from conjugal relations.¹⁹⁸

¹⁹³ Timotheis, Canon 5: PITRA I 631; JOANNOU II 242-243: *Interrogatio 5: Si uxor cum suo marito noctu cohabitavit, vel maritus cum uxore, et fiat coitio, debentne communicare an non? Responsio: Non debet, cum clamet Apostolus: Ne fraudete vos invicem, nisi ex consensu ad tempus, ut vacetis orationi; et rursus ad idem conveniatis ne tenet vos Satanas propter incontinentiam vestram.*

¹⁹⁴ PITRA I 633; JOANNOU II 248-249: *Interrogatio 13: Iis qui matrimonio junguntur, in quibusnam septimanae diebus proponere oportet, ut a mutuo congressu abstineant, et quibusnam potestatem habeant? Responsio: Quod ante dixi nunc quoque dico. Dicit Apostolus: Ne fraudate vos invicem, nisi ex consensu ad tempus, ut vacetis orationi; et rursus ad idem conveniatis ne tenet vos Satanas propter incontinentiam vestram. Necessario autem sabbato et die Dominico abstinere oportet, quod spirituale in eis Domino offeratur.*

¹⁹⁵ Cf. P. CLANCY, *Fast and Abstinence*, in: NCE 5, 847d-848c.

¹⁹⁶ Cf. J. JUNGSMANN, *The early liturgy to the time of Gregory the Great*, transl. F. BRUNNER, London 1959, 254.

¹⁹⁷ *Ibid.* 256.

¹⁹⁸ Cf. St. Ambrose, PL 17, 217 & 605; St. Augustine, PL 38, 1052; PL 39, 1976; St. Jerome, PL 25, 968-969.

The Discipline of Continence in the Western Church

By the 6th century some of the practices of Christian piety and in particular devotion to frequent communion, characteristic of earlier centuries, had begun to wane. The Irish penitentials re-affirmed the need for Christian couples to practise periodic continence during times of prayer and spiritual exercise, adding to the discipline a certain monastic austerity. In the *Penitential of Finnian* (prior to 550?) we read the following:

We prescribe and exhort that there be continence in marriage since marriage without continence is not lawful but sin, and (marriage) by the authority of God is permitted not for lust but for the sake of children, as is written: 'And they shall be two of one flesh', that is, in the unity of flesh for the generation of children . . . Married people, then, should mutually abstain during the three forty-day periods in each single year by consent for a time, that they may be able to have time for prayer for the salvation of their souls; and on Sunday night or Saturday night they shall mutually abstain . . . if they shall fulfil this instruction then they are worthy of the Lord's body, if they fulfil matrimony, that is, with alms and by fulfilling the commands of God . . .¹⁹⁹

Holy communion was not always received each week,²⁰⁰ but continence for the purpose of prayer at weekends was still expected of lay people.²⁰¹ The

¹⁹⁹ Penitentialis Vinniani, n. 46 in *The Irish Penitentials, Scriptorum latini hiberniae*, V, ed. L. BIELER, Dublin 1963, 90-92: *Continentiam esse in matrimonio precipimus et exortamur, quia matrimonium sine continentia non legitimum sed peccatum est et non ad libidinem sed causa filiorum Deo auctore concessum est, sicut scriptum est: Et erunt duo in carne una. Id est in unitate carnis per generationem filiorum et non libidine concupiscentiae carnalis. Oportet enim tres quadragisimas in anno singulo abstinere se invicem ex consensu ad tempus ut possint orationi vacare pro salute animarum suarum et in nocte dominica vel sabbati abstineant se ab invicem . . . si autem perficerent secundum istam sententiam, tunc digni sunt Domini corpore, si cum bonis operibus expleant matrimonium, id est cum elemosinis et mandatis Dei implendis.*

²⁰⁰ Several councils and ecclesiastical authorities issued norms regulating a minimum reception of holy communion at least three or four times a year (Christmas, [Holy Thursday], Easter and Pentecost). Cf. N. IUNG, in: DDC 3, 1161; E. DAY, in: NCE 4, 38. For the 9th and 10th centuries cf. Regino of Prum (840-915), *Libellus de Ecclesiasticis disciplinis et religione christiana collectus. Libri duo.*, I 58: PL 132, 189d; Ratherius of Verona (d. 974); *Synodica ad Presbyteros* 10 & 15: PL 136, 562a & fn. 963; 566a.

²⁰¹ The spirit of this discipline is expressed by Paulinus of Aquila: *Concilium forojulense a sancto paulino P. Aquileiensi (796)*, PL 99, 300d-301a: *Diem autem Dominicum inchoante noctis initio id est vespere sabbati, quae in prima lucescit sabbati, quando signum insonuerit, vel hora est ad vespertinum celebrandum officium, non propter honorem sabbati ultimi sed propter sanctam illam noctem primi sabbati, hoc est Dominici diei, cum omni reverentia et honorifica religione venerari omnibus mandamus christiani. Abstinere primum omnium ab omni peccato et ab omne opere carnali, etiam a propriis conjugibus, et ab omni opere terreno et ad nihil aliud vacare, nisi ad orationem, concurrere ad ecclesiam cum summa*

inclusion of the obligation to live continence during the three lents in preparation for Christmas, Easter and Pentecost had as its end an intense spiritual preparation for these feasts with the reception of communion on the feast-days themselves. The celebration of Matrimony was also prohibited during these times of abstinence, consummation of the marriage evidently being contrary to the penitential spirit.²⁰² In the *Penitential of Finnian*, as with the other penitentials of the following two centuries, the practice of continence was not motivated simply by the anticipation of the reception of the eucharist; it was related but distinct.²⁰³ Wednesdays and Fridays were days for continence (being penitential days) but communion was not prescribed.²⁰⁴ In the *Bigotian Penitential*, widely circulated on the continent during the 8th and 9th centuries, holy communion whenever it was to be received was to be preceded by a three day period of conjugal abstinence.²⁰⁵ This norm, inspired by the episodes in the Old Testament of Moses (Ex 19, 15) and David (I Sam 21, 5), seems to have been widely practised in Europe.²⁰⁶

During Great Lent and the Paschal Season the faithful were exhorted to frequent communion.²⁰⁷ During other times of the year, despite the three day

mentis devotione, cessante omni causarum strepitu, cum charitate et dilectione benedicere Deum Patrem et laudare totis medullis cordis unigenitum Dei Filium, qui istam diem per gloriosam suam sanctificavit resurrectionem, et hymnum dicere sancto Spiritui, qui eam benedixit per admirabilem suam adventum, quando in igneis linguis super beatos descendit apostolos.

²⁰² Cf. *Bigotian Penitential*, 10 (*De nubendo in dominico*): L. BIELER, *The Irish Penitentials* 222; *Responsa Nicolai ad Consulta Bulgarorum*, 48: PL 119, 999a; Peter Lombard, *Sententiarum Libri Quatuor*, Lib. IV, Dist. 32, 5: PL 192, 924.

²⁰³ Cf. *Penitential of Cummean* (7th century), c. 30: BIELER 116-117; *Capitula Herardi* (858): PL 121, 768d. *Old Irish Penitential*, (8th century) c. 36: *ibid.* 36.

²⁰⁴ *Penitential of Cummean*, c. 30. *Ibid.* *Old Irish Penitential*, c. 36. *Ibid.* Cf. Theodore, Archbishop of Canturbury, *Poenitentiale Capitula*, 32: PL 99, 946c; Abedoc et Ethel Volfus abbates Hiberni: *canones selecti ex antiqua collectione ex Libro 44 XI*: PL 96, 1303d.

²⁰⁵ *Qui in matrimonio sunt tres noctes abstineant se a coniunctione antequam communicent*. Cap. 9, c. 1, *Paenitentiale quod dicitur Bigotianum*: BIELER 222.

²⁰⁶ Cf. Halitgarius episcopus cameracensis (d.831), *De vitiis et virtutibus et de Ordine Poenitentium*. *Libri Quinque*, IV, *De Poenitentia*, c. 24; PL 105, 685c: *Qui in matrimonio sunt, tribus noctibus ac diebus abstineant se a conjunctione antiquam communicent*; *Codex Diplomaticus beati Caroli Magni Imperatoris Capitulare Aquisgranense*, an. 801, c. 27: PL 97, 220d-222a. Regino of Prum has this norm in his *Libri duo de synodalibus causis et disciplinis ecclesiasticis*: *Omnis homo ante sacram communionem a propria uxore abstinere debet VII aut V aut III dies*. Lib I, c. 331. PL 132, 256c.

²⁰⁷ Theodulf of Orleans (d. 821), *Capitula ad presbyteros parochiae suae*, 41: PL 105, 204d: *Singulis diebus Dominicis in Quadragesima, praeter hos qui excommunicati sunt, sacramenta corporis et sanguinis Christi sumenda sunt, et in Coena Domini et in Parasceve, in*

norm in many places, elsewhere the exact period of continence was left to the judgement of the spouses and their pastors.²⁰⁸ Since at this time in history the reception of communion was a relatively rare event in the course of the year, it was judged fitting that though one day of abstinence was the very minimum, three days or longer should precede reception.²⁰⁹

Since periodic continence, as a part of conjugal chastity, was regarded as normal practice for Christian couples, and not just as a preparation for the reception of the eucharist, it does not seem that the penitential norm of abstinence before communion was in itself a contributing cause for the decline in the frequency of reception in these centuries. Rather, we would think that it was precisely because reception was infrequent that the prescribed periods of continence were longer. This would help accentuate the value and divine character of the eucharist and the need for proper spiritual disposition.²¹⁰

By the 11th century the norms of the preceding centuries had become part of traditional discipline and doctrine on marital chastity.²¹¹ Communion was still received very infrequently and the norms for continence certainly by this time did not encourage more frequent reception. The canon of Regino of

vigilia Paschae, et in die Resurrectionis Domini penitus ab omnibus communicandum, et ipsi dies paschalis hebdomadae omnes aequali religione colendi sunt.

²⁰⁸ Cf. Regino of Prum, *Libellus de ecclesiasticis disciplinis*, n. 59: PL 132, 189d & 457; *Codex Diplomaticus*, n. 27: PL 97, 220d-222a.

²⁰⁹ For more information cf. art. *Communion eucharistique (fréquent)*, in: DTC 3, 515-526.

²¹⁰ DAY thinks that that the norms for continence were a significant factor for the decline in the frequency of reception of the eucharist in these centuries. NCE 4, 38. Yet this author does not take into account, in our opinion, the spirit of this legislation and the fact that continence was to be lived at other times too; nor does he consider the possible reverse causal relationship.

²¹¹ In the Sentences of Peter Lombard (1095-1160) we read the following: *Quibus temporibus cessandum sit a coitu. Et licet debitum poscenti semper sit solvendum non licet tamen qualibet die poscere. Unde Augustinus in lib. de Quaest. novi et vet. Test., c. 127. Propter processionis enim dies et jejuniorum aliquando non licet convenire; quia etiam a licitus abstinentium est, ut facilius impetrari possit quod postulatur: Idem: Quoties enim vel dies Nativitatis, vel reliquae festivitates advenerint, non solum a concubinarum consortio sed etiam a propriis uxoribus etc.* Sententiarum libri quatuor, IV, dist. 32, 3: PL 192, 923-924. Cf. Council of Salinestad (1022), c. 1-3. MANSI 19, 397; Gerard, bishop of Cambrai and Arras, *Acta Synodi Atrebalensis in Manicheos* (1025), Acta X, De Connubiis. PL 142, 1299d-1300b; Acts of the Council of Reims (1092). MANSI 20, 747a; Liber Decretorum Brocardus V 19-22. PL 140, 756c-757a; Decretum Ivonis Carnutensis II 27-29. In the Panormia Ivo of Chartres has the following norm: *Omnis homo ante sacrum communionem a propria uxore abstinere debere tres aut quatuor aut octo diebus. Quod inter Catholicos non connumeretur qui in istis tribus Pascha, Pentecoste et Natali Domini non communicaverit.* Pan. I, 151 (PL 161, 1247d-1248a). This canon is wrongly ascribed to the Council of Elvira, can. 3. Cf. DDT 3, 526 ff.

Prum (840-915) which required abstinence for three, five or even seven days²¹² was adopted by Burchard of Worms (c. 965-1025) in his *Decretum Collectarium*,²¹³ and from there was received into the *Panormia* of Ivo of Chartres (written c. 1095).²¹⁴ In the 12th century Gratian took this canon from the *Panormia* and included it in his *Decretum*.²¹⁵

The obligation to continence was at times interpreted very strictly. The *Roman Penitential* of Antonius Augustinus, for example, prescribed a penance of twenty days of fasting on bread and water for married people if they failed to abstain for 5 or 7 days before receiving communion.²¹⁶ Such strictness was not representative of all views, however. Some felt it ought to be left ultimately to the judgement of the confessor.²¹⁷ This attitude encouraged more frequent communion.²¹⁸ Indeed, the fact that throughout the period from the 13th century to the time of the Council of Trent (1545-1563) frequent communion was constantly recommended to all Christians²¹⁹ suggests that the norms for continence were regarded more and more as counsels rather than as strict obligation (although this did not apply to abstinence from food).

The Council of Trent recommended frequent communion²²⁰ and reception at every mass attended.²²¹ The periods in which solemn celebration of marriage was prohibited were reduced.²²² The reason for the prohibition at other times (first Sunday of Advent to Epiphany, and Ash Wednesday to the Paschal Octave) was still, it seems, because of the general Christian obligation to practise marital continence.²²³

In the first half of the 17th century, authors were still divided as to whether married couples could or should approach communion immediately after

²¹² *Libri duo de synodalibus causis et disciplinis ecclesiasticis* I 331. PL 132, 256c. Cf. supra, fn. 206.

²¹³ Known later as the *Brocardus*, composed between the years 1007-1014.

²¹⁴ *Liber V*, cap. 22: PL 140, 757a.

²¹⁵ *Decreti tertia pars, De Consecratione*, Dist., II, c. 21.

²¹⁶ *Totam quadragesimam te non sustinisti, et postea in aliis temporibus, aut septem dies aut quinque ante acceptionem Corporis Domini, viginti dies debes poenitere in pane et aqua.* Tit. VII, c. 10: in Louis THOMASSIN, *Traitéx historiques et dogmatiques sur divers points de la discipline de l'Église et de la morale chrétienne*, I Paris 1685, 520.

²¹⁷ This was the view of the Abbé Vasein of Liège writing in the 12th century. Cf. THOMASSIN, 519-520.

²¹⁸ In the 13th century it was precisely in Flanders and Liège that a revival of the practice of frequent communion took place. Cf. E. DAY, in: NCE 4, 38d.

²¹⁹ DDC 3, 1162.

²²⁰ Session XIII, cap. VIII.

²²¹ Session XXII, cap. VI.

²²² Session XXIV, cap. X.

²²³ Cf. THOMASSIN 522.

having rendered the marital debt. Sound moral theology, however, taught that if the married couple acted with upright and honest intention then this could not be an obstacle.²²⁴ A declaration of the Sacred Congregation of the Council, in the decretum *Cum ad aures*, of 12 Feb 1679, re-affirmed this doctrine and permitted frequent communion to married couples according to the judgement of their confessors.²²⁵ The decretum was aimed at correcting the errors of the Jansenists.²²⁶ Finally, on 20 Dec 1905 Pope St. Pius X issued a decretum, *Sacra Tridentina Synodus*, which recommended and promoted daily reception of the eucharist, including for married couples.²²⁷

The Discipline of Continence in the Eastern Church

In the Eastern Church essentially the same discipline as in the Western Churches developed with regard to the practices of fasting, penance and marital abstinence.

At first it was Wednesday, Friday and the time of Great Lent that were designated as periods of fasting and penance.²²⁸ During these times the celebration of Marriage was forbidden since it was a time for abstinence from conjugal relations.²²⁹ By the 8th century the minor lenten fasts of Advent, of the

²²⁴ Cf. Antonii de Escobar et Mendoza, Vallisoletani, *Universae theologiae moralis*, 3, I, lib. 25, sect. II Lugduni 1663, 145-146.

²²⁵ GASPARRI, *Fontes C.I. C.*, V Romae 1930, n. 2848, p. 378: *Et propterea quod negotiatores ipsos attinet, frequens ad sacram alimoniam percipiendam accessus, confessarium secreta cordis explorantium iudicio est relinquendum, qui ex conscientiarum puritate, et frequentiae fructu, et ad pietatem processu; laicis negotiatoribus et conjugatis, quod prospiciant eorum saluti profuturum, id illis praescribere debebunt.*

²²⁶ Cf. DAY 38d-39a.

²²⁷ AAS 39 (1906) 400-401.

²²⁸ Nicaea, Can. 5; Apostolic Can. 69; Laodicaea, Can. 50; Dionysius, Canon 1; Canon 89 of St. Peter the Martyr; Trullo Can. 89 etc. Cf. J. VAZ, *Jeune*, in: DDC 7, 139-140; A. VILLIEN, *Abstinence*, in: DDC 1, 129-132; Pedalion, commentary on Apostolic Canon 69: 122-127.

²²⁹ Cf. Laodicaea, Can. 52; *Responsa Nicolai ad Consulta Bulgarorum*, nos. 48 & 50: PL 119, 999a-c; Balsamon, *Responsa ad Interrogationes Marci*, nos. 50, 54 & 55: PG 138, 997b-c, 1001c-1004b. In answer 54, Balsamon says *Proprie continentia, jejunium est*; Pedalion 124-125 (and fn. 1 on p. 125), 366. In the Syrian document *The Precious Pearl* (13th century) the author writes that even if a man cannot endure the full rigour of the 40 day fast yet he can still abstain for 40 days and nights from carnal pleasure, since the true end of the fast, the author says, is to weaken the outbursts of concupiscence. PO, 16, chap. 32, 672-678. In the Armenian Penitential of David of Ganjak (12th century) it is stated that it is proper for laymen "to abstain from the marriage bed during Lent and Pentecost, on every feast of the Lord and the martyrs, and on Sundays and also Fridays and Wednes-

Apostles Peter and Paul and of the Dormition (15 days) were added; these were not as strictly observed as the Great Lent.²³⁰

The period of Great Lent was, in some provinces, designated as an aliturgical time when the Divine Liturgy was not to be celebrated (except Saturday and Sunday).²³¹ Other liturgical services were celebrated and the eucharist could be received each day.²³²

In the early Church, often, the eucharist was received frequently. When the Liturgy was not celebrated frequently during the week the faithful would still be able to receive communion by taking home the consecrated eucharistic bread. According to patristic sources, daily communion was a well established custom in the Church of Alexandria.²³³ The discipline of continence established by Timothy of Alexandria and by St. Athanasius before him, could only have had in mind the eucharistic liturgy rather than the reception of communion as such (if these norms are to be understood as preceptive), otherwise daily communion would not have been possible for the ordinary Christian. If, on the other hand, the habit of daily communion had already diminished, then the norms for continence would have had a purpose similar to the obligatory pre-eucharistic fast from food and drink: this positive ecclesiastical law had as its purpose the fostering of the best possible dispositions for the weekly reception of the eucharist and communal worship. Canon 2 of the Council of Antioch (c. 330-332) and Canon 9 of the Apostolic Canons required that all who participated at the eucharistic liturgy should receive communion.²³⁴ The counsel of St. Paul was probably understood to be more or less of the nature of a precept according to how frequently the faithful attended Liturgy. Certainly, since frequent communion was always recommended and encouraged by the Eastern Fathers and ecclesiastical authorities, se-

days". *Corpus Scriptorum Christianorum Orientalium* 216, *Scriptores Armeniaci* 3, ed. C.J.F. DOWSETT, Louvain 1961, 36.

²³⁰ P. CLANCY, in: NCE 5, 848c; Pedalion 124, 756; Balsamon, *Responsa* n. 53: PG 138, 1001a-b; *Responsa Nicolai* 4: PL 117, 980d-981c. Continence, nonetheless, was still expected to be lived during these times. Nicephorus the Confessor states: *Quos coniuges oportet continere se omni tempore per quadragesimas sive Magna, sive Christi natalium, sive sancti Philippi, et insuper xerophagium teneant stricte, tam in prima quam in sacrarum passionum hebdomade.* Canon 150. PITRA II 341.

²³¹ Laodiceae, Can. 49. Cf. TAFT 15-17.

²³² Cf. HERMAN, in: DDC 5, 511. Trullo Canon 52 prescribed the celebration on each aliturgical day of the Liturgy of the Presanctified. Cf. *Responsa Nicolai* 9. PL 117, 983d; TAFT 16.

²³³ According to Clement of Alexandria and Origen. cf. HERMAN, in: DDC 6, 530.

²³⁴ PITRA I 456; 14.

xual abstinence from the night before could only have been regarded as a counsel in these cases.²³⁵

The norm for continence was found in all Eastern Churches.²³⁶ In the 12th century Balsamon considers the norm to be preceptive²³⁷ and gives Canon 2 of Antioch and Canon 9 of the Apostolic Canons a wide interpretation such that lay people, and even lower clerics, were not required to receive communion at each eucharistic Liturgy.²³⁸ Nonetheless, he does concede to lay people the possibility of receiving as often as they like – provided they have the required dispositions.²³⁹

As a general rule, married lay people did not receive communion frequently in that century. The three day period of abstinence decreed by Patriarch Lucas Chrysoberges in 1168 seems to have reflected a practice of infrequent communion.²⁴⁰ The norm was regarded as being preceptive, since in the same decree the Patriarch subjects to penances any newly married couple who consummate their marriage on the same day as their wedding, after having received communion.²⁴¹ The decree on three day abstinence, however, does not seem to have been efficacious since Balsamon, writing a few years later, only insists on one night and one day of continence.²⁴²

In the following centuries eucharistic fervour among lay people greatly diminished despite exhortations to receive frequently.²⁴³

In the Slav Churches the basic norm for continence was that contained in Canons 5 and 13 of Timothy of Alexandria.²⁴⁴ The decree of Lucas Chry-

²³⁵ HERMAN, *ibid.* 531; cf. 525.

²³⁶ *Ibid.* 525; *Responsa Nicolai*, 58; *ibid.* 1004a.

²³⁷ Synodal response to Mark, Patriarch of Alexandria, 10 & 49: PG 138, 961b- 964a; 997a. Cf. V. Grumel, *Regestes du patriarcat byzantin*, fasc. III, n. 1184, 184-186.

²³⁸ RHALLIS-POTLIS, *Syntagma III* 127; HERMAN, *ibid.* 533.

²³⁹ Synodal response n. 16: PG 138, 968c-969b.

²⁴⁰ PG 138, 36b. The actual text of the decretum is no longer extant. Cf. GRUMEL 1083, 131.

²⁴¹ *Idem.*

²⁴² Synodal response n. 10: PG 138, 961b-964a; cf. HERMAN 525.

²⁴³ Matthew Blasthæres in the 14th century complained that the good customs of ancient times were no longer to be found and that people did not usually receive communion at the Divine Liturgy. *Syntagma Alphabeticum*, letter <kappa>, c. 25. PG 141, 1377b-d. The *Apostolos Makrakis*, in his commentary on reception of the eucharist in the *Pedalion*, reproaches the clergy for their lack of piety and for their ignorance in allowing the practice of frequent communion to fall into desuetude. *Pedalion* 367; cf. 21-22. The Slavonic *Kormčaja* had a translation of the exhortation to frequent communion of St. Basil the Great in chapter 24, and of Anastasius of Sinai (d. c. 700) in chapter 69/68. Cf. ŽUŽEK 76; 99.

²⁴⁴ Cf. *Kormčaja Kniga*, chapter 32.

soberges, requiring three days of continence before communion, seems to have been unknown to the Slavs before the 16th century.²⁴⁵ In the Slavonic penitential *Rules for Confessing (spiritual) Sons and Daughters*, a collection from the 13th-14th centuries, continence was to be observed before and after the reception of communion, on Saturday and Sunday evenings, on the feast days of the Lord and of the most important saints, and during Great Lent. Fasting (which included continence) was also prescribed for the 15 days before the feast of the Dormition and on Wednesdays and Fridays. Communion was to be received on each Sunday of Great Lent, on Holy Thursday and Holy Saturday, Easter Day, the Ascension and Pentecost, during the Lent of St. Peter and on the feast day of St. Peter, on the feast day of Sts. Boris and Gleb, the Transfiguration, the Dormition, the Exaltation of the Holy Cross, the feast day of St. Demetrius, the presentation of the Holy Virgin Mary, the feast day of St. Nicholas, Christmas day, Epiphany and the feast of the Circumcision.²⁴⁶

In 19th century Russia, priests were instructed to inform their faithful that they ought to remain continent before receiving communion for a period of seven days, or at least three days or, according to local custom, one day.²⁴⁷ This norm is remarkably like the norm for lay people in the Western Churches of earlier centuries. It is probable that it was taken from a Western source.²⁴⁸ Continence was also practised during the other traditional times.²⁴⁹ Not only was frequent communion not practised in the Russian Church at this time, but it was even regarded as based on erroneous doctrine.²⁵⁰ The practice of continence was therefore a penitential discipline to be lived in the

²⁴⁵ In 1518 Maximus the Greek came to Russia with Photius' *Nomocanon* and Balsamon's commentary on it. Balsamon is the only scholiast to have ever mentioned the decree (in his commentary on Carthage 4). Cf. ŽUŽEK 43.

²⁴⁶ *Zapověd ko ispovědajuščimsja synom' i dšcerem'*, nos. 8, 9, 13 & 14, in: S.I. SMIRNOV, *Materialy dlja istorii drevne-russkoj pokajannoj discipliny, Teksty i zamětki*, Moskva 1912, 114; 116.

²⁴⁷ L. ZABELIN, *Prava objazannosti presviterov po osnovnym' zakonam xristianskoj cerkvi*, Kiev/S. Peterburg 1899, 135.

²⁴⁸ Cf. supra, 151-152. We suspect the norm was based on Latin sources since the traditional norm in the Eastern Churches was for one day of continence. The instructions for priests are also perfused with Western moral theology. Cf. ZABELIN 127.

²⁴⁹ The Pedalion editors note and commend the "holy custom" still found in Moscow (in the early 19th century) of living continence during novational (easter) week, and the prohibition of weddings during this time. This custom, by implication, was evidently no longer found in the Greek Church. Pedalion 366.

²⁵⁰ Cf. G.A. MOLONEY, in: NCE 14, 1114a.

same spirit as the pre-eucharistic fast in preparation for communion that was infrequently received.²⁵¹

Oriental Catholic Churches accepted Catholic doctrine and discipline on frequent communion, there being no strict requirement for continence since the 17th century, and especially since the eucharistic reform of St. Pius X.

b) Temporary Continence and Clergy of the Oriental Churches

Canon 13 of Trullo, in regulating the celibacy discipline for major clerics, had prescribed continence for times of prayer and fasting and, in particular, for the periods of liturgical service: "For it is proper that they who assist at the divine altar should be absolutely continent during the time when they are handling holy things in order to obtain in all simplicity what they ask for from God".²⁵² The norm for continence was certainly considered preceptive; the penalties inflicted upon those who transgressed the discipline of continence, which were part of the disciplinary heritage of the Carthaginian canons, leave no doubt on the matter.

The 12th century Greek scholiasts Balsamon and Zonaras offer the Canon of Dionysius of Alexandria as a source for this discipline.²⁵³ The Canons of Timothy of Alexandria and the decree of Patriarch Lucas Chrysoberges are also added.²⁵⁴ These norms, however, refer to the norm of continence for married lay people. The Canon of Dionysius is specifically interpreted, in conjunction with the Carthaginian canons, as referring to priestly continence, and yet the text itself of this norm (which is not given) does not evoke such an interpretation.²⁵⁵ Matthew Blasthars also presents the text of Dionysius as if the latter were regulating the use of marriage for priests.²⁵⁶ Yet, in 3rd century Egypt, when the Canon of Dionysius was written, all clerics were bound to absolute and perpetual continence.²⁵⁷

²⁵¹ In the Greek Church where pre-eucharistic continence was practised for three days, three days of fasting was also recommended. Pedalion 306-307, fn. 1.

²⁵² Canon 13 of Trullo. Cf. Aristenus, commentary on Carthage 4: PG 138, 36d; commentary on Trullo 13: PG 137, 564c.

²⁵³ Commentary on Trullo 13: PG 137, 561b, 564b; commentary on Carthage 70 (73): PG 137, 269c, 272b.

²⁵⁴ Commentary on Carthage 4, *altera interpretatio*: PG 137, 33d-36c.

²⁵⁵ Cf. *supra*, 146-146 and fn. 191.

²⁵⁶ PG 141, 1202c. Blasthars writes: *Tertius autem canon sancti martyris Dionysii episcopi Alexandrini sacerdotes sibimet ipsis idoneos dat iudices, cum ad reverenda sunt accessori mysteria, suis ab uxoribus abstineant, ex communi tamen consensu, secundum verbum hoc illius magni Paulus: 'maritus proprius corpus non habet in potestate', et quae sequuntur.*

²⁵⁷ See COCHINI 274 and *passim*.

It is without doubt of some significance that there is no norm pre-dating Trullo to which the scholiasts can refer that specifically sets a minimum period of continence for clerics.²⁵⁸ Given the preoccupation of the Church from the very first centuries to give norms of periodic continence for married lay people, the apparent deliberate silence of legislation for clerics, who were of more immediate concern to the church hierarchy, strongly argues for a very distinct discipline for them, namely total continence. Thus in the same way as the Greeks had changed and accommodated the meaning of the canons of Carthage to the Trullan discipline, the traditional norms of continence for lay people were interpolated to do the same.

By the 12th and 13th centuries, clear norms for the temporary continence of clerics can be found in all Eastern Churches.²⁵⁹ The general norm was abstinence for one day during the time of service, apart from the other times of prayer and fasting to which all married Christians were bound. Occasionally longer periods than one day were set.²⁶⁰ The norm was always strictly applied. In the Syrian (Jacobite) Church, a priest who neglected this precept would be punished with the penance given to adulterers.²⁶¹ In the Slav Churches, a priest or deacon who approached his wife on the same day after celebrating the eucharistic Liturgy would be penanced by forty days of fasting on bread and water.²⁶² By the 15th century, the penance was much severer.²⁶³ Nor

²⁵⁸ The only norms that did exist which had some bearing were norms concerning nocturnal pollution. Cf. Pedalion 721-722 and *passim*. Such norms, however, are also found in the Roman Missal. *Missale Romanum ex decreto S.S. Concilii Tridentini*, (2nd edition, 1887), *De defectibus dispositionis corporis* ix 5, 1-li.

²⁵⁹ HERMAN, in: DDC 6, 507.

²⁶⁰ In the 12th century Penitential of David of Ganjak a priest was to remain continent for three or five days before celebrating mass. DOWSETT 36 and fn. 2. Canon 13 of the Canons of the Apostle Thaddaeus also requires a period of abstinence of 3 days for a married priest before he celebrates. H. GHEDIGHIAN, *Collectio canonum Ecclesiae Armenae: Canones apostolici*, *Fontes*, II 21 Romae 1941, n. 158, p. 101. The oldest extant manuscript in which this canon is found dates from the 11th century (Monastery of the Holy Saviour, Julphae, Persia). *Ibid.* p. VI. The collection itself appears to have been translated from the Syrian in the 5th or 6th century. G. DASCIAN, *Doctrine of the Apostles . . . and the Canons of Thaddaeus*, Vienna 1896, 184 ff, 202-237 (in Armenian). Interpolation of this canon in later centuries cannot be ruled out, especially since other canons of this collection are known to have been inserted in later centuries.

²⁶¹ Penitential Canon 28 of Denys bar-Salibi (d. 1171). *Fonti*, serie II, fasc. 26 (*Disciplina Antiochena antica*, Siri, II), 27.

²⁶² Cf. *Pravilo o cerkonom' ustroenii*, 12. SMIRNOV 82 & 98; *O popovëx služby radi*, (13th century) *ibid.* n. 17. Cf. *ibid.* 380-381.

²⁶³ SMIRNOV 381, fn. 4.

could daily mass be celebrated by married priests since it was always assumed that they used their marriage rights.²⁶⁴

In the Armenian Church, according to a penitential of the early 12th century, if a priest had had conjugal relations he was not even to administer holy communion to others that day unless through necessity.²⁶⁵ Nicephorus the Confessor, Patriarch of Constantinople (806-815), counselled the married priest never to give communion at any time to his own wife if there were other priests available.²⁶⁶ Perhaps this was a concession to the delicacy of feeling of the simple faithful.²⁶⁷ This advice was however specifically rejected by Pseudo-Zonaras, possibly as a consequence of the polemic with the Latin Church and the polemical use to which Canon 4 of Gangra was put.²⁶⁸

In the 12th century Rus', as in the Greek Church, the rule of continence was that abstinence be observed for one night before celebration of the Liturgy and the rest of the same day. A certain mitigation of the full discipline was allowed if the priest wished to celebrate every second day.²⁶⁹

²⁶⁴ Balsamon, commentary on Carthage 70 (73), PG 138, 269d; HERMAN 507; Nicephorus the Confessor, *Capitula de variis argumentis*, V. PITRA II 321-322; Questionary of Kirik 12. RIB VI 391.

²⁶⁵ Penitential of David of Ganjak, DOWSETT n. 25, p. 22: "If a priest has had marital relations and on that day it becomes necessary for him to administer communion, there being no other to do it in his stead, no harm is done, but for the sake of conscience he shall purify himself for three days in accordance with the canon by genuflexions, without remaining outside, and shall then commune. If any priest should be unworthy and none of the clean priests is available, it is proper for him to give communion by virtue of his orders".

²⁶⁶ Canon 143, PITRA II 340: *Non peccat sacerdos, suam si uxorem communicaverit, alio non occurrente sacerdote.*

²⁶⁷ This we may infer from the consideration that Balsamon makes on married priests who 'presume' to celebrate mass each day. PG 138, 269d. Cf. SMIRNOV 381.

²⁶⁸ Canon 60 of Pseudo-Zonaras (d.?) was taken up in the Russian penitential nomocanon in the Great Ritual, Canon 142. A. PAVLOV, *Nomocanon pri Bolšem Trebnike*, Moskva 1897, 280. Cf. *ibid.* 281-283; see also *supra*, 92-97.

²⁶⁹ Canon 12 of the Questionary of Kirik reads: *An sacerdote noctu cum uxore concumbenti mané ecclesiam ingredi licet? R. Lavet prius eam partem quae sub umbilico est [cf. Lev. 15, 18] ecclesiam ingrediatur, Evangelium legat, ad altare vero accedere, vel celebrare prohibeatur. Volens autem sacerdos diebus Solis et Martis celebrare, poterit Lunae cum uxore concumbere, et sic deinceps.* RIB VI 391. Cf. *Zapověd Ašče episkop'* (nomocanon of the 14th century): *Ašče pop xoščet liturgisati v vtornik, to v ponednik da soxranitsja ot ženy* ("If a priest wishes to celebrate Liturgy on Tuesday let him abstain from his wife on Monday"). (*Zapověd syjatyx otec*), n. 17, SMIRNOV, *op. cit.*, p. 137. A curious reason is given for the continuation of abstinence on the day after the celebration of mass: the fact that the Lord who, unlike the foxes who have holes and birds who have nests, has nowhere to lay his

By the 17th century, the period of continence expected of a priest was now three days. The first mention of this norm is in the 1646 *Trebnik* (Ritual) of Petro Mohyla, Orthodox Metropolitan of Kiev (1633-1646). This norm, the *Trebnik* states, is binding under pain of mortal sin.²⁷⁰

The *Trebnik* was written in imitation of the *Rituale Romanum*, using the same scholastic method and language.²⁷¹ The instruction on marriage, for example (on pp. 369-396), is an almost exact translation of the instruction 'De Sacramento Matrimonii' of the *Rituale Romanum*.²⁷² The moral theology of Mohyla was also, in the main, Catholic.²⁷³ Given these considerations, it seems highly likely that Mohyla based the norm of three day continence on the Clementine Instruction to Italo-Greeks, *Sanctissimus Dominus* of 31 August 1595,²⁷⁴ with which he would probably have been acquainted.²⁷⁵ The *Trebnik* exercised considerable influence, especially in Kiev and Lviv where it was considered a model for all *Trebniks*.²⁷⁶

Despite the clear prescription of three day continence in the Mohyla *Trebnik*, it was not included in the rubrics for the priest for the dispositions of body and soul before the celebration of the eucharistic Liturgy. These rubrics are included in the 'Služebnik' (Liturgicon) used by priests and deacons when celebrating the Liturgy.

The rubric (or ordo) found at the beginning of the text of the eucharistic Liturgy of St. John Chrysostom was composed in the 14th century by the Patriarch of Constantinople Philotheus (1354-1376). This 'Diataxis' was first translated into Slavonic by the Metropolitan of Kiev, Cyprian (1381-1382, 1390-1406), at the end of the 14th century and included in his *Služebnik*.²⁷⁷ From that time onwards, the Diataxis was found in all *Služebniks* down to the present time. The text of the rubric, as found in the Roman 'typical' edition of 1942, reads:

The priest who desires to celebrate the Divine Mystery must be reconciled with all men and have nothing against anyone. As far as is possible he must have

head and desires to remain in the heart of the priest (!): O popovĕx služby radi, document n. 17 (no pagination); *Pravilo o cerkovnom ustroenii* XIII 12, *ibid.* 82.

²⁷⁰ *Trebnik*, Kiev 1646, fol. 222: . . . vsjak lerey imyi ženu, otsmĕšenija jeja tri dni pred lyturgisaniem vozderžatisja vsjako dolžen est, nevzderžajai bosja, islužai, tjažko sohrišajet.

²⁷¹ A. RAES, *Le Rituel Ruthène depuis l'Union de Brest*, in: *OChP* 1 (1935) 362, 375-376.

²⁷² ŽUŽEK 91.

²⁷³ ŽUŽEK, *Moral theology, Russian Orthodox*, in: *NCE* 9, 1126a.

²⁷⁴ *Bullarium Romanum* V 2, 73. Cf. *infra*, 168-169.

²⁷⁵ Cf. P. MAILLEUX, *Moghila, Peter* in: *NCE* 9, 998c-999b.

²⁷⁶ RAES 376.

²⁷⁷ A. RAES, *Le liturgicon ruthène depuis l'Union de Brest*, in: *OChP* 8 (1942) 95.

kept his heart free from all evil thoughts, abstained from the evening and been vigilant until the time of service . . .

This text is very faithful to the earliest known Slavonic version of the Diataxis.²⁷⁸ The words 'abstained from the evening' are of interest to us. Herman believed that they referred specifically to the practice of continence.²⁷⁹ The version that he refers to is the Greek Diataxis in Jacob Goar's *Euchologion sive Rituale Graecorum* in which the phrase 'enkrateusas te ath eaperas', translated into Latin as 'ac a vespere continuisse', does lend itself to this interpretation.²⁸⁰ Yet Goar had edited out the adverb 'micron' which is found not only in the earliest extant version of the Diataxis,²⁸¹ but in all the non-Roman editions (which were consulted) of the Liturgicon²⁸², both Greek and Slavonic (with the exception of Cyprian's version). The sense of the phrase could only be, therefore, 'abstaining, (eating) a little, from the evening'.²⁸³ If this were not the meaning then one would have expected modification of this particular rubric according to the variations of the rule for continence.²⁸⁴ Herman, in our judgement, was therefore mistaken.

The reason why Mohyla's prescription for three day continence was not added to the ordo of the Služebniks was probably first, the unwillingness to add to an ancient and traditional formula and secondly, because it would have been judged superfluous if priests were generally held to the same norms of continence as lay people. Furthermore, the strict three day norm

²⁷⁸ The text is found in Sergij MURETOV, *Istoričeskij obzor' činoposlėdovanija proskomidii do ustava liturgii Konstantinopolskago Patriarcha Filoteja*, Moskva 1895, 37.

²⁷⁹ DDC 6, 507.

²⁸⁰ *Euchologion Venice* 21730, 47.

²⁸¹ MURETOV 36.

²⁸² We have consulted, among others, the following: 1) Greek Euchologies: Venice edition of 1571, 1705 and 1745; Athens edition of 1980; 2) Slavonic Služebniks of Vilna (1617), Kiev (1629, 1639, 1762), Moscow (1780), Cernihov (1754). In these latter manuals the Greek word "micron" is rendered accurately as "malo".

²⁸³ C.W.H. LAMPE, in: *A Patristic Greek Lexicon*, Oxford 1961, 403, translates 'enkrateis,e' as 'fast' or 'abstinence' in this very same example. In most of the other cases he gives as translation 'continence'.

²⁸⁴ MURETOV understands the rubric as referring to fasting, noting that the notion of 'vigilance' was a vestige of the ancient custom of keeping night vigil before the eucharistic Liturgy on Sundays and feastdays. *Ibid.* 116. Cf. Joannis BONA, *Opera Omnia: Rerum Liturgicarum*, Venice 1764, Lib. II, cap 1, III-IV 271. The Ruthenian Provincial Synod of Lviv (1891) translated the rubric thus: . . . *cor etiam pro viribus purum conservare debet a pravīs cogitationibus, et praesertim a media nocte usque ad sacrificii tempus ab omni cibo et potu abstinere teneatur omnino sub gravi*. Titulus V, De Sacra Liturgia, Acta et decreta Synodi provincialis Ruthenorum, Galicae, habitae Leopoldi 1891, Romae 1896, 78-79. (The fasting rubric is taken from the *Rituale Romanum*. Cf. 1887 ed, n. ix, l-li).

was not equally adopted in all eparchies. Metropolitan Dimitrij Tuptalo of Rostov (d. 1709), of Ukrainian origin, did counsel three days of abstinence but prescribed a minimum of two, or at the very least, one day of abstinence. The priest or deacon was also forbidden to have conjugal relations on the same day following celebration.²⁸⁵ The rule of one day continence was prescriptive and not left to the conscience of the priest or deacon.²⁸⁶ In 19th century Russia a Manual for Clergy prescribed an undetermined period of 'several days' of preparation for the eucharistic Liturgy and on the day itself of celebration. Incontinence was judged to be a 'grave sin'.²⁸⁷ Evidently the Eucharist was not celebrated frequently.

In the Chaldean Church of the 18th century a period of eight days of abstinence was customary.²⁸⁸ In the Armenian Church of the 17th and 18th centuries the periods of continence were long protracted; norms of three days, eight days and even forty days before and after celebration existed.²⁸⁹

The Law of Temporary Continence and Daily Liturgical Celebration

In the centuries following the apostolic age, when the faithful were no longer permitted to take the eucharist to their homes in order to receive communion each day, daily or frequent communion always presupposed, in any one locality a daily or frequent eucharistic liturgy. There are numerous indications of the practice in the Eastern Churches (of the early as well as later centuries) of daily liturgical celebration.²⁹⁰ The texts, for example, which speak of concelebration lead us to suppose that where the latter was practised there was frequent if not daily liturgy, since the very reason for concelebration was the rule

²⁸⁵ Sočinenija s. togo Dimitrija, Mitropolita Rostovskago 1 Kiev 1895, 202.

²⁸⁶ The Metropolitan relates a legend of St. Epiphanius of Constantia. This saint, the legend states, was accustomed to see the Holy Spirit descend upon the Holy Gifts during the celebration of the Divine Liturgy. One day he was greatly perturbed when the Holy Spirit failed to manifest Himself visibly. The saint realized that it was the presence of the assisting deacon that was the cause of the loss of this special grace. The deacon in fact confessed that he had had relations with his wife the night before. (!) Ibid. 202-203. Epiphanius did in fact prescribe total continence for his clerics. This fact was also known to Russian authors. Cf. *Xristianskoe čtenie*, 1870, pt. 2, 768.

²⁸⁷ Cf. ZABELIN 127.

²⁸⁸ MANSI 42, 908.

²⁸⁹ Cf. *infra*, 169-170.

²⁹⁰ TAFT 14-16.

that there was to be but one liturgy on one altar in any one church.²⁹¹ The canonical regulations prohibiting the celebration of mass more than once in a day also testify to the practice of daily celebration.²⁹² The admonitions to the clergy to fulfill their obligations of celebrating the Liturgies for which they received stipends also attest to frequent celebration.²⁹³

In the 12th century, Balsamon witnesses to frequent and daily liturgies in the churches of towns.²⁹⁴ This practice of daily celebration was also found among the secular clergy of Rus' who celebrated in the 'Sobor' of the town.²⁹⁵

Not only was there a daily liturgy, but – at least in Constantinople – secular priests celebrated on a daily basis; a practice condemned by Balsamon since the rule of continence for these married priests, which they presumably did not keep, was in net opposition.²⁹⁶ Balsamon also informs us that the organization of the clergy into 'weekly groups', such that daily mass could be celebrated by a priest, but only during the week designated to him, was the consequence of the prescription of temporary continence.²⁹⁷

Whatever may have been the factors which led to a decrease in eucharistic devotion and to a celebration of the Liturgy no more frequent than the minimum prescribed (at weekends and on feastdays),²⁹⁸ it is quite certain that

²⁹¹ Cf. HERMAN, in: DDC 6, 504. This did not necessarily mean that any one priest in a town parish would always celebrate 'sacramentally' (pronouncing the formula of the anaphora) each day. He might have celebrated each day at least 'ceremonially' and received communion. Ibid. On the distinction of sacramental and ceremonial concelebration see J.M. HANSSENS, *De concelebratione eucharistica in Periodica de re morali, canonica, liturgica* 16 (1927) 143 ff.

²⁹² Thus, for example, a ninth century Byzantine tomos synodikos has: "The priest should celebrate only once a day, not more". GRUMEL (ed), *Les Regestes du patriarcat de Constantinople I 2 Kadikoy* 1936, n. 588. Cf. TAFT 16.

²⁹³ Cf. HERMAN 506; Pedalion 848-849 & footnote.

²⁹⁴ Commentary on Carthage 70 (73), PG 138, 269d. According to Cedrenus' *Historiam compendium*, in 1044 Emperor Constantine IX Monomachus (1042-1055) established revenues for a daily eucharistic liturgy in Hagia Sofia. PG 122, 340; TAFT 15.

²⁹⁵ S. SENYK, *The Eucharistic Liturgy in Ruthenian Church Practice*, in: OChP 51 (1985) 125.

²⁹⁶ Commentary on Carthage 70 (73). Ibid.

²⁹⁷ Ibid.: *Quapropter mea est sententia ut sacris initiati non perpetue sacra celebrent . . . Et idcirco in magnis et catholicis ecclesiis sacratorum ministeria divisa sunt. Qui enim quotidie sacra celebrent canonici sunt obnoxii ex praesumptione, quod cum uxoribus cohabitant, et aperte populos offendunt.* Cf. HERMAN, in: DDC 6, 507; also SENYK 125-126.

²⁹⁸ Thus, for example, the preoccupation of the married clergy with their own households, working their own farm land etc. could not have helped foster the sort of religious devotion in the community which would seek expression in a more frequent celebration of mass.

the prescriptions of temporary continence for priests who otherwise were free to use their marriages disfavoured more frequent celebration and made daily celebration, as a regular habit, impossible.²⁹⁹

Already in the 9th century, Nicephorus the Confessor, Patriarch of Constantinople (806-815), had forbidden secular (married) priests to celebrate on a daily basis: they were permitted to do so when their 'turn' came. The only reason for the prohibition was a practical one: the fact was that these priests were not permitted to use their conjugal rights at all times (as this would contravene Trullo 13). A three day period of continence seems to have been counselled.³⁰⁰ We can infer from this text that the Divine Liturgy was celebrated daily, though illicitly. The same prohibition is re-affirmed by Balsamon in the 12th century, also implying that the daily celebration was practised illicitly by married priests.³⁰¹

The penitentials of the Church of Rus' of the 12th to 14th centuries regulate how often a priest is permitted to celebrate.³⁰² These penitentials bear witness to the practice of celebrating the Liturgy during the week.

The editors of the *Pedalion* (at the turn of the 18th century) inform us of the force of the prohibition of celebrating mass when the discipline of continence has not been kept. In their note to Canon 13 of Trullo they write in a polemical tone:

... for when it comes to the nation of the Marionites [sic] situated round about Mt. Lebanon and Phoenicia, and adherents of the Latin faith, they [Rome] allow the priests of the Marionites to mingle carnally with their own wives and on the same day to conduct sacred services, thus clashing with St. Paul and the Ca-

²⁹⁹ The only times a priest would be able to celebrate daily were the general seasons of fasting and/or continence to which all married couples were bound. When the priest is first ordained the custom was (at least in 17th century Greece) for the priest to celebrate continuously for seven days. GOAR, *Euchologion* (ed. 1647) 301, fn. 24.

³⁰⁰ Nicephori CP. *Capitula de variis argumentis*, V: PITRA II 321-322: *Scito etiam illud, non oportere a sacerdote sacra fieri singulis diebus, sed tantum ipsius vice recurrente, quia ad tempus quidem ille, non vero ad omne tempus uti uxore permittitur. Ita et Dominus per Moysen ait: 'Dic plebi meae paratos eos esse post tres dies, neque accendendum mulieribus'. Et quando David manducaturus est sanctificatos panes, ipse et qui cum eo erant interrogati sunt, an puri essent a consortio mulieris, et quum respondissent: Ita in veritate, ipse et viri sui comederunt.* Nicephorus also prohibited a married priest from exercising any spiritual ministry to monks: *Presbyter saecularis, qui habet uxorem, nec spiritualis pater esse potest, nec tondere monachos sive minoris sive maioris habitus, nec confessiones ulla excipere eum oportet, aut quamcumque vestem conferre monasticam: id enim quod quisque non habet, qui valet aliis dare?* Canon 156, PITRA II 341-342.

³⁰¹ PG 138, 269d.

³⁰² Cf. supra 158 & fn. 269.

nons, including this one and c. III of Dionysius and cc. V and XIII of Timothy which forbid this . . .³⁰³

Canon 13 of Trullo had, by its discipline, implicitly prohibited the celebration of the eucharistic Liturgy to a cleric that had not kept continence. The reason given for this is that in this act of mediatorship they should 'obtain in all simplicity what they ask for from God'. By extension of this argument, any act of the priesthood – in so far as it is an act of sacerdotal and ministerial mediatorship – should require the same dispositions from the priest. The administration of the other sacraments would thereby be included. Indeed, in the original Carthaginian canon (Can. 3) bishops, priests and deacons *vel qui sacramentis divinis inserviunt* were bound to continence because of their very consecration (*qui constrictione quadam castitatis per consecrationes adnexi sunt*). Their consecration was ordered to their (ministerial) mediatorship. This is expressed above all in the administration of the sacraments and in any other act which is or can be understood as being specifically an exercise of the 'consecrated' ministry. Continence, therefore, was not purely a function of the eucharistic ministry but expressed the specific nature of the total ministry of mediatorship (although this tends to the former). Trullo, on the other hand, would seem to imply that the only ministry which can be considered to be truly 'priestly' and 'mediatory' is the celebration of the Liturgy. Only in the celebration of the Eucharist, therefore, when the priest lives continence is the priesthood exercised in all its unique specificity. The very discipline of Canon 13 restricts this specific exercise of the priestly ministry and, thereby, the very priestly ministry itself.

This reasoning, which seems to us to be implicit in the Trullan canon, finds its expression not only in praxis (the necessarily infrequent celebration of the Eucharist) but also in a very telling phrase from an 11th century Greek polemical work. An unknown author (possibly Archbishop Nicola of Reggio, Calabria) had written in his essay against celibacy that a priest was an

... angel of God, but only when he announces to the people the divine demands: in everything else he is exactly like all other men.³⁰⁴

Since it is continence that likens a person to the angels (Cf. Mt 22, 30) it is only at the 'periods particularly assigned to priests' (Cf. text of Trullo 13), namely the time of liturgical celebration when the priest announces these divine demands, that the priest is considered to be a priest. The times of celibacy, implicit in the thought of this author, are the only times when the priesthood as such is exercised. What we see here, furthermore, is a tendency

³⁰³ Pedalion 308.

³⁰⁴ Given by GIANELLI 104: "Sappiamo anche noi, incalza l'anonimo, che il sacerdote è un angelo di Dio, ma soltanto quando annunzia al popolo i divini voleri; nel resto è in tutto simile agli altri uomini".

to understand the priesthood in somewhat functional terms. Trullo itself, by changing the celibacy praxis of Carthage, which was consistent with doctrine, unwittingly prepared the way for a change (at least in emphasis) in the very theology of the priesthood: from an ontological category to a functional one.

In the 4th century, on the other hand, it was precisely the emphasis on the priesthood being considered as a continual and uninterrupted ministry that provided an argument for perpetual continence. Five texts are here presented on this question which speak for themselves and do not require, for our special purpose, much commentary. The first text is the decretal *Directa* of Pope Siricius (385) in which the Pontiff answers an objection to celibacy which uses as its argument the practice of the Levites:

To these men [the Levites], once the time of their service was fulfilled, the practice of conjugal relations had been allowed with the sole aim of guaranteeing descendants, it being that nobody outside the members of the tribe of Levi could be admitted to the divine ministry. That is why after the illumination of his coming, the Lord Jesus formally testified in the Gospel that he had not come to abolish the Law but to perfect it; and that is also why he wanted the beauty of the Church, whose bridegroom he is, to shine with the brilliance of chastity . . . It is by the indissoluble law of these decisions that we all, priests and deacons, are bound from the day of our ordination (and held) to place our hearts and bodies at the service of sobriety and purity: so that we may be able to be agreeable to God in all things, in the sacrifices that we offer daily.³⁰⁵

In the decretal *Cum in Unum* (386) the same Pope writes:

Moreover, as it is a worthy, chaste and honest thing to do we advise this: that priests and levites do not have relations with their wives, being that they are absorbed in the daily duties of their ministry. Writing to the Corinthians, Paul indeed says: 'Abstain in order to devote yourselves to prayer' [1 Cor 7,5]. If therefore continence is required of laymen, how much greater the reason for the priest to hold himself in readiness at all moments and, thanks to a stainless purity, not to have to dread being obliged to offer the sacrifice or to baptise.³⁰⁶

The Roman Synodal decree *Dominus Inter* (late 4th/early fifth century) has this to say:

Here is what has been decided first and foremost with regard to bishops, priests and deacons: to those who are responsible for divine sacrifices and through whose hands is conferred the grace of baptism and the body of Christ consecrated, the Divine Scriptures and not just ourselves make (for these) the obligation of being chaste; the Fathers also commanded that they keep corporal continence. Let us not overlook this point but let us explain its reason.

With what effrontery would a bishop or priest dare to preach to a widow or a virgin continence or integrity, or still (how would he dare) to exhort husbands to chastity in the conjugal bed, if he himself has been more preoccupied with

³⁰⁵ PL 13, 1138a-1139a.

³⁰⁶ Ibid. 1160a-1161a.

begetting children for the world than with begetting them for God? . . . it goes without saying that (the observance of purity) is always necessary for them; whether they have to confer baptism or to offer the sacrifice . . . it is evident that the priest must hold himself in readiness to fulfill his celestial functions, he who has to pray for the sins of others in order not to find himself unworthy. In effect, if it is said to lay people: 'Abstain for a time in order to devote yourselves to prayer', those men who place themselves first and foremost at the service of human generation might well carry the name of priests, but not the dignity of such a name . . .³⁰⁷

The author known as Ambrosiaster (366-384) writes the following in his commentary on the first Letter of Paul to Timothy:

In the old days indeed, levites or priests were allowed to have relations with their spouses because they only attended for a short time to their ministry or priestly duties. There were a vast number of priests and an abundance of levites, and each one would ensure the fulfillment of the divine ceremonies at a given period of time, according to what had been set down by David [1 Sam 6, 31-32] who in effect instituted twenty-four categories of priests each doing their duty in turn . . . Now, however, there have to be seven deacons, a few priests (two per church) and just one bishop per city; this is why they must abstain from conjugal intercourse: they have to be present at the church every day . . . They have to offer the sacrifice every week for the local population, and even if not every day for strangers, it's at least twice a week for the local population. And furthermore, there is no shortage of sick people to baptise nearly every day . . . If (the Apostle) orders laymen to abstain temporarily (from conjugal relations) in order to attend to prayer, how much more (incumbent is it) on deacons and priests, they who have to pray day and night for the people entrusted to them . . . They have, therefore, to be purer than the others, for they are the representatives of God (*actores Dei sunt*).³⁰⁸

Finally, in the work entitled "Questions of the Old and New Testament" the same author writes:

And for a Christian sometimes it is allowed and sometimes not that he join with his wife. Indeed, it is sometimes not permissible to unite (with one's spouse) because of the days when one is in worship, given that one must abstain even from licit things in order to be able to obtain more easily what one asks (of God). That is why the Apostle tells (married couples) that (they) must abstain for a time, in order to attend to prayer.

Is all that is allowed in the presence of others also allowed in the presence of the Emperor? So much the more is it so in the affairs of God. That is the reason why God's priests must be purer than others; indeed he appears as his personal representative, and he is effectively his vicar; so that what is permitted to others is not permitted to him. It is necessary that he take the place of Christ

³⁰⁷ Ibid. 1184a-1186a.

³⁰⁸ PL 17, 470d-471b.

every day; whether by praying for the people or by offering the sacrifice or administering baptism . . . ³⁰⁹

These texts, to which others could be added, are very clear in considering the priestly ministry as an exclusive and continual act of men who have been chosen to be Christ's 'representative' or 'vicar'. It is also clear that the ministry is not expressed uniquely at the time of offering the Sacrifice but also generally when administering the sacraments (of which baptism has prime importance). The priest is also considered a man of prayer who should be found each day in church, continually interceding before God for those in his charge. The texts here are not referring to monks, but to priests within parishes.

The *a fortiori* arguments used for the discipline of continence are of interest to us in light of our preceding study. It is precisely because the priesthood of the New Testament has surpassed that of the Old Testament that continence has to be perpetual rather than temporary. The ministry to which the cleric has been called requires a total dedication – and not partial. The priest is 'on call' perpetually in virtue of his ordination, and not only at the times of his 'turn of service'. If continence is to be lived during times of worship even by lay people (even though marital relations in themselves are, at such times, quite licit), then with so much more reason should priests of God who are consecrated to a life lived in a spirit of perpetual worship be characterised by this immolation of self.

These reasons perhaps, taken in themselves, only give a partial explanation for the reason of the discipline of celibacy. The celebration of the Eucharist, the most sublime act of the priesthood, is the converging point for all other acts of the ministry and the most important and effective act of priestly mediatorship. It is not, in our opinion, the need for 'cultic purity' (understood as a bodily disposition required for worship) which dictates the requirement of continence. It is precisely the nature of the priesthood itself, understood as total consecration of self to God in the ministerial service of the Church, that dictates the offering or immolation of that which in itself is not an obstacle to the ministry. Chastity lived in this way by lay people also renders their worship – with personal sacrifice involved – more pleasing to God. A priest's consecrated continence, involving sustained personal sacrifice, is an eloquent and proper sign of the sustained personal sacrifice of the Virgin Christ whom he commemorates in the Divine Liturgy, and with whom he, as a priest, is in strictest union.

³⁰⁹ PL 35, II 2391b-2392a.

c) *Temporary Continence in the Oriental Catholic Churches and the Introduction of Celibacy*

The first intervention of the Roman authorities in the regulation of the discipline of continence for Catholic priests of the Oriental Churches (Rites) is contained in the Clementine Instruction of August 31 1595: *Perbrevis Instructio super aliquibus ritibus Graecorum* . . . ³¹⁰

The purpose of the Instruction was to regulate the discipline of the Albanians of the Greek Rite and to solve difficulties that had emerged in the Latin dioceses where, since the 15th century on the account of Turkish oppression, many Albanians had emigrated and had since returned to union with the Catholic Church. The Congregation *de Rebus Graecorum* established by Gregory XIII in 1573 had studied the various problems and produced the Instruction as the fruit of their study.³¹¹

Paragraph 27 reads:

A married Greek priest before celebrating the sacred sacrifice or holy mass is to abstain from [relations with] his wife for a week or for three days.³¹²

The prescription of Pope Clement VIII, though faithful to the spirit of the Greek Church since Trullo, is nowhere to be found in the canonical sources of the Greek Church in precisely this form. We suspect that it was taken, in adapted form, from the discipline of temporary continence for lay people perhaps current at that time in Southern Italy and based on a source such as the *Decretum Gratiani*.³¹³ Thus, in the same way as in the East priests lived the norms which had been established originally (we believe) only for lay people, so too, in the new circumstances within Latin territory and so as not to cause consternation, Greek priests were to live the same norms as the surrounding Latin population.

The Provincial Synod of Mount Lebanon held by the Maronites in 1736, during the pontificate of Pope Clement XII (1730-1740), incorporated the

³¹⁰ The full title of the instruction is: *Perbrevis Instructio super aliquibus ritibus Graecorum, ad Revmos Patres Dominos Episcopos Latinos, in quorum civitatibus vel diocesis Graeci, vel Albanenses Graeco ritu viventes degunt, ac Literae quaedam Apostolicae, ad ipsos Graecos et eorum ritus pertinentes, necnon Forma professionis Fidei orthodoxae a Graecis ad unitatem S.R.E. venientibus faciendae. Mandato S.N.N.D. Clementis Papae VIII, simul excusae.*

³¹¹ Cf. *Fonti, Serie I, fasc. IX, Disciplina Bizantina IV. ITALO-ALBANENSI 245-250; M. PETTA, Italo-Albanian Rite, in: NCE 7, 747-749.*

³¹² *Collectio Lacensis I 450; Bullarium Romanum V, 2, 73: Presbyter Graecus conjugatus ante sacrum sacrificium seu sanctam missam celebrandum vel per hebdomadam, vel per triduum abstinere ab uxore.*

³¹³ In the *De Consecratione, Dist. II, c. 21*, we read: *Omnis homo ante sacram communionem a propria uxore abstinere debet tribus aut octo diebus . . . Cf. supra 151.*

same norm as for the Italo-Greeks, while extending it to include a deacon whenever he ministered at the altar and received communion.³¹⁴ Pope Benedict XIV (1740-1758) confirmed this rule for the Maronites when he approved the Synod *in forma specifica* in 1741.³¹⁵ In his Constitution to the Italo-Albanians, *Etsi Pastoralis* of 26 May 1742, Benedict XIV reproduced the norm of the Clementine Instruction almost verbatim.³¹⁶

Whenever an Oriental Church had its own custom in the matter of priestly continence, the Popes – in keeping with their express desire not to introduce changes foreign to the discipline or spirit of that Rite³¹⁷ – declared that such customs were to be followed. Thus when the Armenian bishop of Hispahan wrote to the Sacred Congregation for the Propagation of the Faith requesting that it regulate the period of continence before and after the celebration of the Liturgy, declaring that there were great inconveniences in adhering to the local prescription of 40 days of abstinence before and 40 days after, the Congregation replied with a decree, dated 9 August 1704, declaring:

No innovation is to be made and let the bishop fulfill his pastoral office [in reminding] Armenian married priests that they observe their Rite.³¹⁸

Among the Armenians of the city of Lviv the custom existed in the 17th century of an abstinence of three days before celebrating the Liturgy and three days after.³¹⁹ On the other hand, those who were under the jurisdiction

³¹⁴ Constitutiones et Canones S. Synodi Montis Libani, a. 1736, Pars II, cap. XIV, n. 35, Collectio Lacensis II 241: *Quod vero ad ministerium presbyteri legitimo matrimonio conjuncti spectat, servandum ducimus quod a Clemente VIII Pontifice statutum est: Presbyter conjugatus, ante sacrum sacrificium seu sanctam missam celebrandam, vel per hebdomadam vel triduum abstinere ab uxore. Idem dicendum de diacono conjugato, quando ad altare est ministraturus et communionem sacram percepturus.*

³¹⁵ Benedicti XIV Bullarium I Prati 1845, 100-104. Cf. A. COUSSA, *Epitome Praelectionum de iure ecclesiastico orientali*, 1 Romae 1948, 187 & fn 265.

³¹⁶ Constitutio *Etsi Pastoralis* VII 28: Bullarium Romanum, XV 207: *Presbyter Graecus conjugatus antequam ad sacrum sacrificium seu sanctam missam accedat, vel per hebdomadam, vel per triduum ad uxorem curet abstinere.*

³¹⁷ Cf. Benedict XIV, *Allatae Sunt* (26 July 1755), 6-15: *Iuris Pontificii de Propaganda Fide*, DE MARTINIS (ed) I 599-602. What were considered abuses, however, were evidently the object of eventual correction.

³¹⁸ Nota Archivii, n. 94 of the First Provincial Synod of Alba-Julia and Fogaras (1872), MANSI 42, 907: *Nihil esse innovandum et episcopus curet pro sui pastoralis officii munere, ut presbyteri coniugati armeni ritum suum observent.* The origin of this custom of eighty days of abstinence was quite obscure.

³¹⁹ Synodus provincialis archidioecesis Leopoliensis Armenae habita a. 1689, caput VII, n. 5. HEFELE-LECLERCQ, *Histoire des Conciles XI 1-2: Conciles des Orientaux Catholiques*, Paris 1949, Appendice, 464.: *Sacerdotes uxorati qui saltem in posterum ordinabuntur, triduo ante et triduo post sacrificium abstinere debent a consortio uxoris, juxta laudabilem Ec-*

of the Armenian Archbishop of Constantinople, as those under the Archbishop of Caesarea, were to abstain for eight days before celebration and eight days after.³²⁰ The Sacred Congregation for the Propagation of the Faith issued a rescript after an audience with Benedict XIV on 5 May 1748 which reduced this period of continence to eight days before celebration only.³²¹ A *gratia* was requested some years later (1782) to have this reduced to three days.³²²

In the 18th century Chaldean Catholic Church a period of eight days was the customary time of conjugal abstinence for priests. In 1714 the Sacred Congregation reminded the Chaldean Catholic Patriarch that the prescriptions of his Rite were to be followed according to the decree issued for the Armenians in 1704.³²³ In 1758 a rescript was issued following on the petition of the Hierarchy in which the period of abstinence was reduced to a minimum of three days.³²⁴

In the Ukrainian Catholic Church the norm for continence, at least from the time of Mohyla, appears to have been three days before celebration. In the Questionnaire for use of visitators included with the Acts of the Provincial Synod of Zamošć (1720), the visitator was to inquire whether married priests practised continence for three days before celebration.³²⁵ Evidently this norm was regarded as customary for this Church. In the late 18th century an Instruction Manual for Catholic priests included this norm in the rubric for the worthy celebration of the eucharistic Liturgy.³²⁶ Cited as authorities of this particular norm are the Instructions of Popes Clement VIII and Benedict XIV and the synodal decree of Patriarch Lucas Chrysoberges, as recorded by Balsamon.³²⁷ The very need to give justification for this discipline by citing these authorities seems to indicate that the discipline was not being properly observed.

clesiae Orientalis consuetudinem, quatenus puriores accedant mente et corpore ad hoc tremendum missae sacrificium.

³²⁰ Nota Archivii, 94. MANSI 42, 908.

³²¹ Ibid. The rescript took into consideration both the account of a missionary who had reported that the custom in Armenia was for the priest to remain in church (i.e. the rectory) for one week only, and the difficulty experienced by priests of adhering to the longer period.

³²² Ibid. c. 908-909. The *gratia* appears not to have been granted.

³²³ Ibid.

³²⁴ Rescript of 24 September 1758, Nota, c. 909: *Curet archiepiscopus ut saltem per tres dies, antequam celebrent, abstineant ab uxoribus, donec aliter provideatur.*

³²⁵ Synodus provincialis Ruthenorum habita in civitate Zamosciae Anno MDCCXX, in: *Collectio Lacensis* II 71.

³²⁶ *Poučenie o obrjadax xrystianskix*, Počaeu, 1779, chap. 6.

³²⁷ In his commentary on Carthage Canon 4: PG 138, 36b.

The same norm of three day abstinence was prescriptive also in the Rumanian Ruthenian Church.³²⁸

These norms evidently precluded the possibility of celebrating the Liturgy frequently and, *a fortiori*, each day. In the Oriental Catholic Churches, nonetheless, the faithful often demanded a daily Liturgy, especially in the larger towns. The Patriarch of the Chaldeans had, in 1714, petitioned Rome for his married priests to be able to celebrate daily Liturgy.³²⁹ Ten years earlier the Armenian bishop of Hispahan had requested a change in the continence discipline since there were so few priests in some places.³³⁰ Elsewhere where there was a demand for daily Liturgy, married priests would completely ignore the discipline causing scandal both to the Oriental Catholic faithful and to the Orthodox.³³¹

The resolution of these difficulties was not to be found in relaxing the norms of continence. The Sacred Congregation, writing in 1782 to the Patriarchal Vicar of the Armenians, expressed itself thus:

The Sacred Congregation wishes that you insist with all vigour on the maintenance of this most religious discipline, the relaxation of which cannot but lead to scandal and contempt towards our priests not only from the schismatics but also from Catholic lay people.³³²

The only possible solution to the increasing demands of more frequent celebration while maintaining the thousand year old Oriental discipline on priestly continence was to increase the number of celibates. Celibacy, certainly, was desirable on other accounts too, but the disciplinary conflict between continence and frequent liturgical celebration was undoubtedly a very important factor in the movement to introduce strict celibacy within the Oriental Catholic Churches.

In 1647 instructions were given to Ruthenian prelates that celibate seculars were to be preferred to married men for parochial appointments.³³³ The Ar-

³²⁸ Nota c. 905. The Provincial Synod of 1872 did not determine the exact period for abstinence but the obligation was very strict: . . . *canones presbyteris coniugatis strictissimam imponunt obligationem sese ab usu matrimonii abstinendi, quoties ad sanctum altare sine celebrandae sacrae liturgiae accedere intendunt.* Caput IV (94). Mansi 42, 584.

³²⁹ Nota c. 908.

³³⁰ Ibid. c. 907.

³³¹ Ibid. c. 908-909; cf. Pedalion 308.

³³² Nota c. 908-909: "Vuole dunque la sagra congregazione ch'ella insista con tutto il vigore sul mantenimento di questa religiosissima disciplina, dal cui rilasciamento non può venire che scandalo, e disprezzo verso i nostri sacerdoti non solo appresso gli scismatici, ma ancora presso i secolari cattolici."

³³³ *Instructio peculiaris pro visitatione Ruthenorum Catholicorum, Romae 2. IX. 1647, in Monumenta Ucrainae Historica XI (1633.1659), Supplementum, ed. J. SLIPIYI, Romae*

menian Synod of Lviv celebrated in 1689 goes even further, in establishing that celibates who work closely with the bishop, even if they are young and only recently ordained, should always have precedence over married clergy in rank and major ecclesiastical appointments.³³⁴ The reason for this discipline is given in an earlier canon of the Synod. After establishing that married clerics are to abstain from conjugal relations for three days before celebration of the Liturgy, and three days after, the Synod Fathers state that according to immemorial Oriental tradition, which is to remain inviolate, all married priests are 'incapaces' for the episcopate and for parishes and chapels where there is attached the obligation of celebrating mass more than once a week. Furthermore, according to this same ancient Oriental praxis such priests are to be prevented from assuming any ecclesiastical office since they are 'divided', having to think both of the things of God and of their wife and family; they are thus not able to take on any ecclesiastical office which requires the full application of the mind.³³⁵ Since married priests cannot consequently receive the benefices of these offices, nor receive stipends for daily mass, and being prohibited from trading or begging – these being contrary to the dignity of the priesthood – the Synod stipulates that in future only those married men will be ordained who have a secure and perpetual patrimony which is sufficient to sustain the priest and his family.³³⁶

1974, 435: *Quoad clerum saecularem, ut presbyteri celibes praeferantur uxoris in parochiarum provisione.*

³³⁴ Caput VII, n. 6. HEFELE-LECLERCQ 465: *Postremo omnes sacerdotes coelibes juxta ecclesiasticam hierarchiam etiam si juniores et recenter ordinati tam in ecclesia quam extra et in omnibus praecipue ecclesiasticis muneribus, praecedentiam habere debet, supra quoscumque uxoratos.*

³³⁵ Caput VII, n. 5. Ibid. 464: *Inhaerendo ordini circa regimen et officia ecclesiastica obeunda nostrae Orientalis Ecclesiae, ab immemorabile tempore, hucusque inviolabiliter servatum, declaramus omnes praefatos uxoratos incapaces praelaturarum in Ecclesia ac parochiarum tum et capellaniae secum habentis annexam obligationem celebrandi missam pluries quam semel in hebdomada. Denique, juxta praxim antiquam Orientalem, arcendi sunt etiam a munere concionandi siquidem cum sint divisi, cogitare debentes quae Dei sunt et quae uxoris ac familiae, parum essent apti ad exercenda ecclesiastica munera quae totam exigunt mentis applicationem.*

³³⁶ Ibid. 464-465: *Quapropter aliunde consulendo praedictorum sacerdotum uxoratorum sustentationi, ne quotidiana elemosyna missarum carentes aliisque ecclesiasticis proventibus necessitate cogantur vel turpiter mendicatum iri, aut negotiationes sive mercaturas exercere contra propriam sacerdotalem dignitatem et ecclesiasticas inhibitiones, quas omnino servare debemus, statuimus ut nullus in posterum, in conjugati statu existens, promoveri possit ad sacros ordines nisi prius constet evidenter habere certum et perpetuum patrimonium sufficiens ad sustentationem nedum personae sacerdotalis, sed etiam totius prolis et familiae, independenter a quavis elemosina, vel simplici ecclesiastico beneficio.*

It is to be noted that the Synod, in legislating in favour of celibates (and though resembling to some extent the measures adopted by the Gregorian reform in promoting strict celibacy), does not radically innovate on ancient Oriental discipline. Whereas before, it had been monastic clergy who had held the major positions and offices in the Church (who were in many cases really seculars, and monks only in name),³³⁷ secular celibates were now to gradually take their place. In 1622 Metropolitan Rutskyj of the Ukrainian Church had written to Rome describing this same state of affairs which had always persisted in his Church.³³⁸ The very condition of the married clergy, with their obligations towards their families and their inability to celebrate mass frequently, had led to this system in which they were deprived of positions of responsibility.

Apart from favouring celibacy in legislation, the obvious way of promoting the same was by constructing seminaries where future secular celibates would be able to receive an adequate spiritual and ascetical training to be able to live their celibacy. This itself was an important effect of the work of the Council of Trent,³³⁹ but the founding of seminaries was a slow process in the Oriental Catholic Church. The Urban College in Rome, founded in 1605, provided in the interim the possibility of training a few celibates.

In 1758 the Chaldean Archbishop of Diarbekir regarded an increase in the number of secular celibates in his Archdiocese as the only possible solution to eradicate the disciplinary abuse of daily celebration by married priests, while at the same time maintaining this daily celebration. The number of students at the Urban College, he states, will have to be augmented.³⁴⁰ This preoccupation was shared by prelates of other Oriental Churches: a century earlier Metropolitan Rutskyj of the Ukrainian Church had thought of constructing a seminary to increase the number of celibates in his Province.³⁴¹ His plan was adopted by the Synod of Kobryn (1626)³⁴² but could not be put into effect; a small number of celibates could nonetheless receive their formation in Rome.³⁴³

³³⁷ Cf. supra 115;136-137.

³³⁸ *Memoriale Metropolitanae Rutskyj et co-episcoporum eius a. 1622*, in: *Monumenta Ucrainae Historica* 9-10 (1075-1632) Supplementum 358, n. 291; A. WELYCHYJ, *Supplicationes* 1 (1600-1699) 6-7, n. 2.

³³⁹ Session 23, *De Seminariis*, c. 18: COD 726 ff. Cf. STICKLER, *Evolution* 511.

³⁴⁰ *Nota*, c. 909.

³⁴¹ Cf. supra 142 & fn. 175.

³⁴² Cf. HALUŠČYNSKYJ-WELYKYJ, ed., *Epistolae Josephi Velamin Rutskyj* n. 82, 184-187.

³⁴³ Cf. P. MARTYNJUK, *Nepodilne serce svjaščenyka v službi boha i cerkvy*, Žovkva 1935, 156 ff.

In the 19th century there were still many difficulties in training a celibate clergy. Prejudices of a sociological nature were still strong, especially in regard to appointing celibates to village curacies when there was still no possibility of giving them the benefits of a seminary training.³⁴⁴ Nonetheless, it appears that in general the Oriental Hierarchy were in favour of promoting celibacy.³⁴⁵ The increased personal piety of the priests and daily celebration of the Eucharist were among the principal desired benefits of this promotion.³⁴⁶

Vatican Council I and Celibacy in the Oriental Churches

At the time of the First Vatican Council (December 8 1869 – September 1 1870) and during its preparation (from mid-1867) the question of the celibacy of the Oriental clergy was discussed. In the fourth Congress of the Commission 'super missionibus et ecclesiis ritus orientalis', held on January 23 1868, Monsignor Valerga, Latin Patriarch of Jerusalem (1847-72), presented a study in which the question of celibacy had been treated. In it he stated that Oriental bishops were generally in favour of celibacy for their own clergy.³⁴⁷ Indeed, the previous year a conference of Armenian bishops had met (July 3-19 1867) in which satisfaction had been expressed by the bishops at the growing number of celibates. Some dioceses no longer had any married clergy, and, where they were still to be found, the bishops resolved to reduce their number and increase the number of celibates.³⁴⁸

One of the consultors of the Commission, Augustine Theiner, proposed that one way of promoting celibacy would be through the institution of Cathedral Chapters (which, he stated, ought to correspond more to the Oriental institution of the *presbyterium* than to the Latin institution of the chapter) composed solely of celibates.³⁴⁹ Monsignor Simeoni, another consultor, proposed that monastic institutes be restored or reformed. The example of the Ruthenian Basilians was given, where these monks had occupied all the important posts within the bishop's curia and provided the only candidates

³⁴⁴ Cf. decisions of the Synod of Mount Lebanon of 1806, MANSI 46, 789; cf. 790 fn; Nota Archivii, 906c; Acts of the preparatory commission for Vatican I: Mansi 49, 997d, 1003d, 1008c.

³⁴⁵ Cf. infra. For the Ruthenian (Ukrainian) Church, cf. MARTYNJUK 154 ff.

³⁴⁶ See, for example, Synod of Mt. Lebanon (1896): *ibid.* 789d; the oration of the Ruthenian Rumanian bishop, Joseph Papp-Szilagy at the 17th General Congregation of Vatican I (27 Jan. 1870): MANSI 50, 545; cf. 42, 905.

³⁴⁷ MANSI 49, 1003d.

³⁴⁸ *Ibid.* 40, 957-958.

³⁴⁹ *Ibid.* 49, 1003d.

for the episcopate. The Synod of Zamošć in 1720 required that every bishop be religiously professed unless dispensation was received from the Holy See.³⁵⁰ Since the time of Pius VII (1800-1823) many such dispensations had been obtained.³⁵¹

In the 7th Congress held on 23 December 1868, the President of the Commission, Cardinal Alessandro Barnabo, recommended a study of the ways of introducing celibacy among the Oriental clergy, given the "painful experience" of the real conflict between the spirit proper to the priesthood and the occupations of the married state.³⁵²

During the General Congregation of 3 February 1870 in which the schema *De vita et honestate clericorum* was discussed, the Armenian Archbishop Melchior Nasarian declared that the absence of a law of celibacy in the Oriental Churches was a true "wound", experience proving that grave ills in the life of the Church were produced as a result. Married priests, he continues boldly, cared more for their wives and families than for the people accredited to them. The zeal of the celibate clergy (in the majority in his Church) was the reason why the Armenian Catholic Church had grown and prospered so much since the time of Benedict XIV. They were able to give themselves completely to the service of God and to the propagation of the faith. The Archbishop also requested that the problems due to the lack of a law of celibacy be openly discussed in the Council, so that the wounds be healed the more quickly.³⁵³

³⁵⁰ Titulus VI, De episcopis, Collectio Lacensis II 46: *Nemo deinceps, nisi a Sancta Sede dispensationem obtineat, Episcopus esse possit qui professionem religiosam non fecerit.*

³⁵¹ Ibid. 1004c.

³⁵² Ibid. 1013b: *L'esigenza, diceva egli, dello stato matrimoniale mal si accordano collo spirito di annegazione e col distacco dalle cose mondane che debb'esser proprio del sacerdote. Una dolorosa esperienza conferma questa verità in Oriente.*

³⁵³ MANSI 50, 683d-684d: Part of the Archbishop's oration reads: . . . *verum enim vero vulnus istud est defectus legis coelibatus in clero orientali, ex quo defectu experientia teste plura mala atque indecentias quotidie evenire nostris oculis cernimus, vehementissime dolenti corde et animo deploramus. Quamquam per Dei misericordiam in tota mea dioecesi et in aliis quibusdam omnes presbyteri sint coelibes; haec tamen mala quae ex defectu legis sacri coelibatus oriuntur, nolo hic singula enumerare; ac propterea hoc tantum meminisse me sufficiat. Presbyteri uxorati magis provideat suae familiae, quam suae ecclesiae; presbyteri uxorati suarum uxorum ornatus plus quaerunt, quam sacrorum altarium; presbyteri uxorati maiorem gerunt curam de filiis suis, quam de populo fidei ipsis credito. Haec, venerabiles patres, quae vidi et audivi, et experientia (iuxta meam aetatem loquor) mihi constant, vobis manifestavi . . . Nam ut optime scitis, si clerus sit coelebs, animum et mentem facilius ad Deum elevat, et cum Deo unitur, et ideo Dei gloriam quaerit et fidei propagationem assidue procurat. Non ita tamen si clerus sit uxoratus. Gratias agimus Deo nos Armenii episcopi, quod in ecclesia nostra ista consuetudo non per legem sed per modum facti iam aboleri coepit.*

In May of that year, the 37th Congress of the Commission had resolved, in answer to the dubium: *Quid de coelibatu sacrorum ministrorum etc.*, that the Oriental Churches were not yet "mature" enough to accept the law of celibacy but that the Council ought to pronounce some words in its favour, praising those Oriental bishops who had begun to promote it among their clergy and encouraging them in their task. A petition to this effect was to be directed to Cardinal Patrizi of the Central Commission.³⁵⁴

The question of celibacy in the Oriental Churches was not brought up in the final event during the general sessions of the Council due to its abrupt conclusion on account of the Franco-Prussian war. Nonetheless, the resolutions of the Oriental Commission of the Vatican Council were put into effect in another way. Already during the 7th Congress held in 1868 the President had ordered the publication of an instruction issued on 24 March 1858 for the Rumanian Archbishop of the Ruthenian Province of Alba-Julia and Fogaras. In this instruction the question of clerical continence and celibacy was thoroughly treated. The instruction recalled the need to observe the ancient Oriental discipline of prohibition of marriage to those already in orders. It also noted the pre-Trullan tradition of perpetual clerical continence in those Churches where the bishop's authority had been effectively exercised.³⁵⁵ This instruction would become a working document for subsequent synods of the Oriental hierarchies in which, by the desire of the Congregation, and following the resolution of the Oriental Commission of the Council, celibacy would be promoted.

The Rumanian Synod of Alba-Julia and Fogaras of 1872 was the first Synod to implement these directives. In its section 'De vita clericorum' the Synod stressed that celibacy was a more perfect and exemplary state of life for a cleric³⁵⁶ and gave practical counsels for living the state of celibacy well.³⁵⁷ At the same time, traditional norms for the married clergy were restated.³⁵⁸ The Synod did not feel the time was right for a full implementation of

³⁵⁴ Ibid. 103d (1159d)-104a (1160a): *Convenendo che le chiese orientali non sono ancora mature per accettare la legge del celibato, tutti però opinarono che il concilio abbia a pronunciare una parola a suo favore, nel senso di lodare i vescovi che cominciarono già a promoverla nel loro clero e d'incoraggiarli nella santa impresa.*

³⁵⁵ MANSI 49, 1013c. The instruction is found in *Collectanea S. Congr. de Propaganda Fide, I Romae 1907, 627-630, n. 1158.*

³⁵⁶ Titulus VII, caput III. MANSI 42, 582c: *Quoniam apostolus dicit: 'Qui sine uxore est sollicitus est quae Domini sunt, quomodo placeat Deo', idcirco qui in se magnum isthoc Deo qua coelibes ac proinde a curis familiae immunes serviendi donum sentirent, meminerint, ipsum eorundem maioris perfectionis statum, vitam omni sub respectu magis exemplarem, atque ab omni vel minima suspicionis umbra remotam exigere.*

³⁵⁷ Ibid. 582d.

³⁵⁸ Ibid. 582b-c.

the law of celibacy, time being needed for the maturation of the idea of celibacy, and fears being expressed that it might cause obstacles to the propagation of the Union. It was agreed, however, to promote the idea itself.³⁵⁹

A Synod of Armenian bishops meeting in 1890 followed this same course.³⁶⁰ So too did the Provincial Ruthenian Synod of Lviv in 1891.³⁶¹ The Syrians, however, went a step further. Since most of their clergy were already celibate, the Fathers of the Synod of Sharfeh (1888) decided that celibacy should become general law. Those priests and deacons who were married at the time of the Synod could continue with their marriages, and for other cases where necessary the Patriarch could give dispensations.³⁶² The Coptic Catholic hierarchy, meeting in Cairo in 1898, also established a law of mandatory celibacy, exception being made only for those who were already married at the time of the celebration of the Synod and for those Orthodox priests and deacons who joined the Union. The conflict between the duties of a priest as father of a family and husband, on the one hand and pastor of a congregation devoted to prayer and daily liturgy, on the other, are among the motives given for this prescription.³⁶³

By the end of the 19th century, the discipline of clerical continence in the Oriental Catholic Churches had in practice begun to take a full swing back to the discipline of the early centuries, expressed most clearly in the various councils of the Western Church. Daily liturgy and daily priestly ministry presupposed perpetual continence. The Council of Arles (314), for example, following the same tradition as that of the Council of Elvira in Spain (305?), states in its Canon 29:

Furthermore, with a care for what is worthy, pure and honest, we exhort our brothers (in the episcopate) to act in such a way that priests and deacons have no relations with their spouses, given that they are engaged each day in the ministry. Whoever acts contrariwise to this decision will be deposed from the honour of the clerical state.³⁶⁴

³⁵⁹ Ibid. 906c-d.

³⁶⁰ Cf. Acta synodi part. Armeniorum Chalcedonae XI 33, in: HEFELE-LECLERCQ, XI 2, 717.

³⁶¹ Titulus VIII, cap. 2, nos. 13-14. Acta et decreta synodi provincialis Ruthenorum Galiciae, habitae Leopoli 1891, Romae 1896, 138-139.

³⁶² Synodus Sciarfensis Syrorum in Monte Libano celebrata, 1888, Romae 1896, 202-203.

³⁶³ Synodus Alexandrina Coptorum habita Cairi in Aegypto, 1898, Romae 1899, 148-149.

³⁶⁴ CC 148, 25: *Praeterea, quod dignum, pudicum et honestum, suademus fratribus ut sacerdotes et levitae cum uxoribus suis non coeant, quia ministerio quotidiano occupantur. Quicumque contra hanc constitutionem fecerit a clericatus honore deponatur.* CC 148, 25. For a discussion of this canon, see COCHINI 186-194.

The Oriental Churches had learnt from experience that the Trullan and post-Trullan law of temporary clerical continence led to an unresolvable conflict with the priesthood conceived as a daily ministry and as one entailing a total 'undivided' dedication to the Church. The Latin Church had also much experience of the problems of its own married clergy. Divided loyalties could not help bring about the needed reforms in the Church. With the Gregorian reform and especially after the Council of Trent strict celibacy became in practice the only satisfactory mode of life for a cleric in the Latin Church. Celibacy was understood to be a free acceptance of a commitment attached to orders, now involving total freedom from family responsibilities, received in the spirit of the Gospels, with the acceptance of the obligations which provided the means of living and protecting this demanding way of life. The Oriental Churches in union with Rome had, since the 17th century onwards, begun to travel along this same evolutionary path which leads to absolute celibacy. The transition to this discipline was more rapid, and inevitably more traumatic, since an intermediary stage of a married clergy living in total continence was not traversed. Furthermore, a long and deeply engrained tradition of (compulsory) married clergy had resulted in the institution of the married clergy becoming a characteristic mark of the very identity of an Eastern Church.

The evolution towards absolute celibacy was, in our judgement, an inevitable process not only because of the influence of the Latin Rite (which certainly had its part to play) but because of the very inner exigencies and growing dynamism of Eastern ecclesial life and discipline.

In those Oriental Churches where this path to celibacy had been slow, the real disciplinary conflict between the increasing demands for daily liturgical celebration and the ancient Oriental discipline of continence persisted. When Pope Pius X issued his decretum on daily communion in 1905 the demands for daily mass increased correspondingly. Married lay people could receive daily if their consciences permitted them to. Wherever the number of celibates was small this led to the practice of the married clergy celebrating daily. And yet this practice was in direct contradiction to the 1200 year old tradition of the Oriental Churches.

If the theological reasons for priestly continence are substantially no different from those that led to the discipline of temporary continence for lay people (ie., to help the inner dispositions of the recipient of communion), then certainly from the doctrinal point of view there could be no fundamental objection. If, on the other hand, the theological reasons for priestly continence (the discipline of which had always been preceptive) are of a different order to those of a general ascetical counsel and are more intimately associated with the priesthood itself being understood as a qualitatively different consecration to that of the Christian vocation of baptism, then this radical

break from traditional discipline cannot be regarded as other than an anomaly still in need of resolution.

13. The Canonical Value of Canon 13 of Trullo

The last section of our study will deal with one question that still remains, namely the canonical value in the Universal Church of Canon 13 of Trullo and its discipline of temporary continence.

The Greeks had always based their claim of the legitimacy of their discipline on clerical continence on the ecumenicity of Canon 13 of Trullo. This was not only their principal source in justification of the discipline during the 11th and 12th century polemic with Rome, but indeed it was and remains the only secure argument for it.³⁶⁵ Nicetas Stethatos, for example, presented the canon as ecumenical and approved by Rome.³⁶⁶ In the early 20th century the Russian canonist Nikodim claimed that same authority for it.³⁶⁷

Whatever may be said for the ecumenicity of the Council as a whole,³⁶⁸ it is clear that no ecumenical value can be attributed to any individual canon which contravenes the rule of Pope John VIII:

*Ergo regulas quas Graeci a sexta synodo perhibent editas, ita in hac synodo principalis sedes admittit, ut nullatenus ex his illae recipiantur quae prioribus canonibus vel decretis sanctorum sedis huius Pontificum aut certo moribus inveniantur adversae.*³⁶⁹

To determine whether Canon 13 was such a canon which could not, and cannot, be received and therefore is to be considered without approbation and necessarily without ecumenical value, the principal pontifical documents referring to this canon or to its discipline must be examined. The opinions of other authorities are to be taken into account, too. From such a study one will then be in a position to express a judgement on the actual juridical value of the canon. To avoid any ambiguity in presentation, citations will be given in the original Latin.

1) The attitude of Pope Nicholas I. In his letter to Tsar Boris I of the Bulgars (886) the Pontiff had written:

*Consulendum decernitis utrum presbyterum uxorem habentem debeatis sustentare et honorare, an a vobis projicere: quo respondemus quoniam licet ipsi valde reprehensibiles sint vos tamen Domini imitari convenit . . .*³⁷⁰

³⁶⁵ Cf. supra 128.

³⁶⁶ PL 143, 982a.

³⁶⁷ Pravila I 480.

³⁶⁸ Cf. supra, 6-9.

³⁶⁹ MANSI 12, 982d (XLII, 723). Cf. CICOGNANI, Fonti, CCO, Serie I, Fasc. IX, viii-ix.

³⁷⁰ PL 119, 1000c. Cf. supra, 92-94.

It is clear that this Pontiff considered the Greek discipline as not being in conformity with canonical tradition, but on the contrary 'reprehensible' and therefore, at most, only to be tolerated.³⁷¹

2) Pope Leo IX (1048-1054). In so far as the attitude of this Pontiff was accurately expressed by his legate Cardinal Humbert of Silva Candida³⁷² who considered the Greek discipline to be the heresy of the 'Nicolaites', it is certain that the Pope could not have given approval to it and, at most, but tolerated it.³⁷³

3) Pope Stephanus IX (1057-1058). To this Pope is attributed the following statement concerning clerical marriage:³⁷⁴

*Aliter se habet Orientalium Ecclesiarum traditio, aliter huius sanctae Romanae Ecclesiae. Nam eorum sacerdotes, diaconi atque subdiaconi matrimonio copulantur; istius autem Ecclesiae vel Occidentalium nullus sacerdotum a subdiacono usque ad episcopum licentiam habet coniugium sortiendi.*³⁷⁵

Pope Stephan does not in this document reprove the Oriental praxis of the use of marriage. But neither does he expressly approve it. There is a simple statement of fact concerning the divergence of the disciplines.

During the period of the Gregorian reform, which lasted from the mid-11th century and continued until the first decades of the 12th century, every effort was made to try and stamp out clerical incontinence. The fact that in the Eastern Churches higher clerics continued using their marriages – which was severely reprobated in the West – could not have been accepted with indifference by the reforming Popes, and as an alternative and parallel discipline of equal standing to that which was being reinforced with so much difficulty. The condemnation by Gregory VII at the Roman Synod of 1077 of the Paphnutius episode, declaring it to be a serious falsification, shows that the Oriental discipline could not have been looked upon as being grounded in early tradition nor favourably regarded. It could not therefore have been expressly approved.

4) Clement III (1185-1191). In writing about the imposition of penance for Greek priests who maltreated their children, the Pope states:

³⁷¹ The literal sense of the text does not admit of an interpretation by which the Pope is understood to be condemning only clerical concubinage. Cf. *Ibid*; Benedict XIV, *Opera Inedita*, 393; Petrus Arcudius, 563d-564a; STICKLER, *Evolution* 530.

³⁷² Gratian presents the reply of the Cardinal to Nicetas under the name of Pope Leo XI: *Decretum*, I, Dist., 31, c. 11; Dist., 32, c. 14.

³⁷³ PL 143, 996d. The Nicolaites were members of a libertine sect of the early Church who engaged in immoral practices. Cf. SIEGMAN, *Nicolaites*, in: *NCE* 10, 459b-d.

³⁷⁴ The text had often been attributed to Pope Stephan III (768-772) from the Lateran Council held in 769. The Council, nonetheless, had nothing to say on this matter. *Fonti, Serie III, I, Acta Romanorum Pontificum, Romae* 1943, n. 374, fn. 2.

³⁷⁵ *Ibid.* n. 374.

*Quaesitum est a nobis utrum sacerdotibus Graecis quibus legitimo matrimonio licet uti, publica sit poenitentia imponenda, si eam postulent pro filiis oppressis iungi . . .*³⁷⁶

The fact that priests can use their legitimate marriage is simply affirmed but without expressing approval or disapproval.

By the time Pope Clement had written his instruction, the Decretum of Gratian had already been written and widely used. In Distinction 31 (chapters 12-13) of the first part of this work, Gratian had reported the episode of Paphnutius without commenting on its authenticity, and had presented the text of Canon 13 of Trullo, implicitly attributing ecumenicity to it, and stating: "Orientalis enim ecclesia cui VI Synodus regulam vivendi praescripsit, votum castitatis in ministris altaris non suscepit".³⁷⁷ The discipline of the Oriental Churches was thereafter regarded by the canonists of the Middle Ages as being legitimate and without need to question. It is in this general context that one has also to understand the statements of the Popes of this age, of Pope Clement as of his successor Pope Innocent.

5) Pope Innocent III (1198-1216). Writing to a bishop of Southern Italy concerning the promotion of the son of a Greek priest, Innocent writes (in 1203).

*Cum olim ad nostram audientiam pervenisset . . . Nos igitur attendentes, quod orientalis ecclesia votum continentiae non admisit, quoniam orientales in minoribus ordinibus contrahunt et in superioribus utuntur matrimonio iam contracto . . . mandamus quatenus nisi pro eo quod inter Latinos Graeci huiusmodi conversantur, regionis consuetudo repugnet . . .*³⁷⁸

During the Fourth Lateran Council (November 1215) the question of clerical continence had been brought up. At the end of the canon, which was issued by the Fathers of the Council (and under the presidency of Pope Innocent) a propos continence, sanctions were imposed on unchaste clerics and the following words are found:

*Qui autem secundum regionis suae morem non abdicarunt copulam conjugalem, si lapsi fuerint gravius puniantur, cum legitimo matrimonio possint uti.*³⁷⁹

In this text, as in the previous, there is a simple acknowledgement of the "custom" of the Oriental Church of allowing the use of legitimate marriage. There is no express approval nor condemnation.

³⁷⁶ MANSI 22, 560; Acta Romanorum Pontificum, n. 397.

³⁷⁷ Dist. 31, dictum post c. 14: cf. Dist. 28, c. 16.

³⁷⁸ Fonti, Serie III, II, Acta Innocentii PP. III, Romae 1944, n. 40; Decretal. Greg. IX. Lib III, Tit III *De clericis coniugatis*, VI.

³⁷⁹ Decretales Greg. IX, III, I; *De vita et honestate clericorum*, cap. 13. HEFELE-LECLERCQ V 1344-1345.

6) At the Union Councils of Lyons (1274) and Florence (1439), held under Popes Eugene IV and Gregory X respectively, the marriage discipline of Oriental clerics was not judged to be an obstacle to union.³⁸⁰

The authorities we have examined up to this point do not provide us with any sure ground to be able to affirm that the Popes, in recognising the different discipline of the East, thereby gave their approval to it in such a way as to give Canon 13 of Trullo ecumenical value. The most that could be said from Pope Stephan IX onwards is that there is an unwillingness to prohibit the discipline.

It could perhaps be argued, by recognising the existence of Eastern discipline, the Popes of the Middle Ages were thereby giving their implicit approval to it. On the other hand, if Trullo did introduce a new law which abrogated a universal law of apostolic origin – as we have argued – then it would seem that the universal lawgiver (in this case, the Pope approving the decisions of an ecumenical council) would have to have the express intention of abrogating the former law. Was there such an intention with these Popes? Was the mere absence of disapproval or prohibition equivalent to an intentional implicit approbation? Considering the lack of certain knowledge among the canonists of that time concerning the Trullan origin of the Oriental discipline, or of the latter's legal force, it seems quite unlikely that the Popes had any intention of innovating on or, indeed, legislating in any way on this discipline.

Pope Benedict XIV (1740-1758), in his personal reflections on the attitude taken by these Popes of the Middle Ages, states that their pronouncements had been made "so as not to give occasion to the Greeks, always inclined to schism, to separate themselves from unity".³⁸¹ Their attitude, according to him, rather than approving the discipline, was only one of "tolerance".³⁸²

7) Pope Gregory XIII (1572-1585). This Pope follows the same policy of the previous Popes, although he is more explicit in admitting the exceptional character of the Oriental discipline. Writing to the Patriarch of the Maronites, he states:

Cum Stephanus Papa tradat Orientalium veterem esse traditionem, ut eorum Sacerdotes matrimonio copulati sint, cumque id illis numquam interdixerit Ecclesia, nec videtur interdicendum Maronitis; lex enim coelibatus semper gravis visa est Graecis, propterea coniugium permissum est illis ... Permittendum id itaque

³⁸⁰ Cf. Ben. XIV, Opera Inedita 393.

³⁸¹ Ibid. 392-393: ... e non avendo creduto i Romani Pontefici ben fatto l'impegnarsi a proibirlo, per non dare occasione ai Greci, sempre inclinati allo scisma, di seperarsi dall'unità, questa è la base, e questo è il fondamento su cui si è fabbricato e per anche si mantiene la gran fabbrica del matrimonio di Subdiaconi, Diaconi e Preti.

³⁸² Ibid. 393.

*videntur Maronitis, dummodo ad matrimonium non compellantur, qui coelibes esse vellent, sed ad id potius piis hortationibus inducantur.*³⁸³

The 'permission' given by the Pope to the Maronite Patriarch is to be understood in context as nothing more than the declaration of the intent of the Pontiff not to innovate on the attitudes of those previous Popes who did not reprove or prohibit the Oriental discipline.

8) Pope Clement VIII (1592-1605). Under this Pope, the Union of the Ukrainian (Ruthenian) Church took place. In the Union document *Magnus Dominus* of January 1595, Article 9 states: *Matrimonia sacerdotalia ut integra constant, exceptis bigamis.*³⁸⁴

This article of Union gave an assurance to the Ruthenian Church that its married clergy would be accepted within the Catholic Church as an institution not meriting condemnation. There is, however, no express approbation of the institution. The right which is expressed in this article is of a negative sort: the right not to be impeded by any ecclesiastical authority in continuing with this tradition. If, on the part of Rome, the concession made in this article was regarded as a concession to a tolerated discipline (tolerated for reasons of prudence), then the discipline of the Ruthenians cannot be regarded strictly speaking even as a 'privilege', since what is tolerated has no legal force.³⁸⁵ Nor was this discipline considered as being integral to the Rite itself.

That Rome did indeed consider the discipline as being but 'tolerated' is shown in a document dating a few years after the signing of the Union. In the Acts of a meeting of the General Congregation of the Propaganda Fide held in 1624, we read:

*Conditiones quas Ruthegni [sic] priusquam ad unionem accederent temporibus Clementis Ottavis Pontif. maximi a Romana Eccl.a requierebant:
n.6^a Matrimonia sacerdotalia excepta bigamia tollerari postulabant.*³⁸⁶

Furthermore, the very promoters of the Union on the part of the Ruthenians, including one of the signatories of the Articles of Union, had very clear ideas on the desirability of introducing celibacy.³⁸⁷ They could not, therefore, have understood that Act of Union as guaranteeing in perpetuity the institution of married clergy as if it were an integral part or privilege of their Rite. If on the other hand, it was an institution which for reasons of prudence at the time of Union was tolerated, not only Rome, but also the Ruthenian hierarchy themselves, would be within their rights in introducing celibacy, whether

³⁸³ In Benedict XIV, *Eo quamvis tempore* 34. *Iuris Pontificii Propaganda Fide* III 227.

³⁸⁴ *Documenta Unionis Berestensis Eiusque Auctorum (1590-1600)*, ed. A. WELYKYJ (= *Analecta OSBM* II, III) 1808, n. 60.

³⁸⁵ A. VAN HOVE, *De legibus Ecclesiasticis* (= *Commentarium Lovaniense in Codicem Iuris Canonici* I 2) Romae 1930, 60.

³⁸⁶ SOCG 337 (Polonia, Russia, Vallachia e Moldavia), f. 408r.

³⁸⁷ Cf. supra 142 & fn. 175.

by fact or by law, when circumstances allowed or dictated its advisability; and this without violating the Act of Union or the true rights and privileges of the Ruthenian Church. Thus in 1927, the Sacred Congregation *pro ecclesia orientali* defended a bishop of Western Ukraine, Josaphat Kocylowskyj, after he had introduced mandatory celibacy into his own eparchial seminary. The Congregation declared that the bishop had not contravened any general law of the Oriental Church or any of the dispositions of the Holy See.³⁸⁸

Seven years later, the same Congregation sent a letter to Bishop Takach of the Ruthenian Diocese of Pittsburgh, U.S.A., concerning Article 12 of the decree *Cum data fuerit* of March 1 1929 in which the prohibition of married clergy in the U.S.A. was reiterated. The Congregation writes:

And moreover, when the Holy See recognized the particularities of the Greek Ruthenian Church and guaranteed them, it intended principally - as is evident from the Decree of Union of 1596 during the Pontificate of Clement VIII, and from the Brief of Paul V of 1615 - to recognize and guarantee the ritual tradition of the Ruthenians. As regards their particular canonical discipline, the Holy See could not have affirmed its integral application at all times and in all places, without taking into account the different exigencies and circumstances. Thus one can well understand how a married clergy permitted in those places where the Greek Ruthenian Rite originated and constitutes a predominant element, could hardly seem advisable in places where the same Rite has been imported and finds an environment and a mentality altogether different.³⁸⁹

9) Benedict XIV (1740-1758). This Pope, the great canonist Lambertini, was very clear in his wish not to prohibit the Eastern institution of married clergy (permitting the use of marriage), given the particular circumstances of the Oriental Churches in Union. In his Constitution *Etsi Pastoralis* of May 26 1742 he had written:

Etsi expetendum quam maxime esset, ut Graeci qui sunt in Sacris Ordinibus constituti castitatem non secus ac Latini servarent: nihilominus ut eorum Clerici, Subdiaconi, Diaconi et Presbyteri uxores in eorum ministerio retineant, dummodo ante

³⁸⁸ Protocollo N. 1174/27., May 9 1927, S. Congregazione *pro ecclesia orientalis* to Cardinal Lorenzo Lauri, Apostolic Pro-Nuntio in Warsaw, *Analecta Ord. S. Basilii Magni*, an. 1927, 592-599: *Quanto poi riguarda all'accusa circa il Seminario, o meglio circa il celibato dei chierici che intendono salire al sacerdozio nello stato celibe . . . Questa S.C. . . riconosce e dichiara che Mons. Vescovo di Premisla, colle disposizioni prese per il suo seminario, non ha mancato a nessuna legge generale della Chiesa Orientale, ne a quello stato di cose finora rispettato della S. Sede. The letter continues: Pertanto la S. Sede e questa S.C. che già conosceva a conosce bene quanto Mons. Kocylowski ha fatto ed ordinato nella sua diocesi . . . deve dichiarare che in tutto questo egli nulla ha fatto di contrario alle leggi della Chiesa ed alle disposizione della S. Sede.*

³⁸⁹ Prot. N. 572/30., June 23 1934, S. Congregation to Archbishop A.G. Cicognani, Apostolic Delegate in Washington, cited by V. POSPISHIL, Clerical celibacy in the Eastern Rite Catholic Dioceses of the United States and Canada, in: *Diakonia* 2 (1976) 144.

*Sacros Ordines virgines non viduas neque corruptas duxerint, Romana non prohibet Ecclesia . . .*³⁹⁰

In the same Constitution the Pope renewed for all Italo-Greek clergy the regulation of Clement VIII on temporary continence.³⁹¹

In the Constitutiones *Eo quamvis tempore* of 4 May 1745³⁹² and *Allatae sunt* of 26 June 1755,³⁹³ essentially the same disposition is found. In the latter, the Pontiff writes:

*Romani siquidem Pontifices perpendentes id nequaquam adversari divino aut naturali iuri, sed tantum ecclesiasticis sanctionibus, opportunum censuerunt consuetudinem hanc inter Graecos et Orientales vigentem ferre, ne auctoritate apostolica ad eam evellendam interposita, illis occasio ab unitate recedendi praeberetur . . .*³⁹⁴

The rule of Pope John VIII for the acceptance of the discipline of Trullo required that it not be *prioribus canonibus vel decretis sanctorum sedis . . . adversae*. The marriage discipline for Oriental clerics in this last document is described as *adversari . . . ecclesiasticis sanctionibus*. The customs of the Greeks and Orientals are therefore, far from being given positive approval, only 'permitted' so as not to give occasion for separation from the Roman Church.

In his private writings, the thoughts of the Pope are made very clear on this subject. Writing already as Pope, Benedict XIV states, with some irony, that the Greeks insult the Latins by pretending to base their discipline on apostolic tradition rather than on the "benign condescendence of the Holy See".³⁹⁵ It is the Latin Church that 'permits' this discipline.³⁹⁶ Yet the Greeks evoke Canon 13 of Trullo as giving precedence for this discipline rather than 'the tolerance of the Holy See', for they believe the canon to be ecumenical which, the Pope affirms, has never been proved by the Greeks nor ever will be proved.³⁹⁷

The Special Commission set up by Benedict XIV in 1731, to revise the liturgical books of the Greeks, specifically referred in one of its sessions (15 April 1731) to Trullo's disavowal of the (complete) discipline of celibacy as

³⁹⁰ *Etsi Pastoralis*, VII, 26. *Collectio Lacensis* II 516-517; *Iuris Pont. de Prop. Fide* III 67.

³⁹¹ Chapter 28. *Ibid.*

³⁹² Chapter 34. *Iuris Pont. de Prop. Fide* III 227.

³⁹³ Chapter 22. *Ibid.* 606.

³⁹⁴ *Idem.*

³⁹⁵ *Opera Inedita* 397: *Vedasi dunque, con quanta buona fede possano i Greci . . . pretendere d'insultare i Latini, e sostenere, che ciò che fanno, lo fanno in vigore degli antichi Canonì, e non mai per benigna condiscendenza della Sede Apostolica.*

³⁹⁶ *Ibid.*

³⁹⁷ *Ibid.*: . . . *quando mai dal Canone del Concilio Trullano si pretendesse, non appoggiarsi la loro disciplina alla tolleranza della Santa Sede, ma ad un Canone di un Concilio universale . . . che non è mai stato provato dai Greci, né mai si proverà.*

one of the main reasons why the Council could never be accepted by Rome as ecumenical.³⁹⁸

The Pope had also, like his predecessors, sanctioned the discipline of temporary continence. This was clearly not intended to give approval, even implicitly, of the Trullan canon itself. Given the concession – for grave reasons – of use of marriage, norms were set to condition this very concession. The approval involved was approval of the vestigial discipline of celibacy found in Canon 13 of Trullo, this being only indirectly the object of the canon. It should be noted, besides, that it was in fact the mitigated law of celibacy, in its negative aspect as mitigated, permitting use of marriage, which the Roman Pontiffs tolerated rather than the institution or status of married clergy as such.³⁹⁹

10) The Preparatory Oriental Commission of Vatican I. In the 4th Congress of the Commission held on January 23 1868, Monsignor Valerga had stated that it was desirable that the Orientals be included in the Conciliar decrees, even the disciplinary ones, *salvis ritibus et consuetudinibus cuiusque ecclesiae approbatis vel approbandis ab apostolica sede*. This would mean, he adds, that institutions proper to the Latin Church such as 'chapters' would not ordinarily have any place in the Oriental Church. Nor would it mean, he goes further, that certain practices of the Orientals would be immediately eliminated which could not be considered approved. Among those practices which could never receive approbation, but only be tolerated, Valerga gives as example the marriage of priests. This praxis, he continues, was tolerated by the indulgence of the Holy See as Benedict XIV in his *Eo quamvis tempore* had shown.⁴⁰⁰

11) Synods of the Oriental Catholic Church of the 19th century. These Synods also confirm the 'indulgent tolerance' attitude that the Holy See had always seemed to have taken towards the Trullan discipline. Thus, for example, the Syrian Synod of Sharfeh (1888) declared:

³⁹⁸ CLO 3 (Rescripta, 15 April 1731), folia 98-99: *Qui quidem canones plura continent quae ab Antiquis Patrum regulis abhorrent et a Romanae Ecclesiae disciplina, quam Greci per summum nefas quodammodo abrogare conari fuerunt, sunt aliena. Ausi enim fuerunt de coelibatu sacrorum ministrorum et Sabbati Jejuniu abrogando itemque de aliis disciplinis capitibus canones ferre quos Romana Ecclesia se nullatenus probare posse demonstravit. Qua ex re factum est ut Trullana Synodus erratica et Pseudo synodus fuerit appellata.*

³⁹⁹ Cf. F. WERNZ, *Ius Decretalium* II 1, Romae 1906, 300.

⁴⁰⁰ MANSI 49, 1002a, 1002d: . . . *né si elimineranno ad un tratto alcune pratiche degli Orientali, le quali mal si direbbero approvate, essendo piuttosto tollerate, né riporterranno mai l'approvazione, come il matrimonio dei preti, il quale deve dirsi solo tollerato per indulgenza usata della santa sede (come dimostra Benedetto XIV nella costituzione 'Eo quamvis tempore')*.

Quamquam autem Pontifices Romani non condemnauerunt Orientalium disciplinam quae permittit diaconis et presbyteris cum suis uxoribus manere, neque eorum consuetudinem prohibuerunt . . . Attamen Synodus haec non prohibet presbyteris et diaconis qui sunt hodie coniugati cum suis uxoribus manere.

.....

Tandem diaconos et presbyteros quibus permissum est cum suis uxoribus manere
401

The Ukrainian (Ruthenian) Provincial Synod of Lviv (1891) declared:
*Haec Synodus firmiter quidem profitetur status coelibem perfectiorem esse statu coniugali . . . Cum tamen Ecclesia Catholica ex gravibus rationibus siverit et sinat ut clerici nostri ritus ante manuum impositionem . . . libertatem habeant . . . vel in coelibatu perpetuo manere . . . vel uxorem virginem ducere . . .*⁴⁰²

12) Canonists up until the 20th century. Canonists seem to have been unanimous in considering the Trullan Canon as being but 'tolerated' and not positively approved. This is the case with the canonists of Trent,⁴⁰³ of Arcudius,⁴⁰⁴ Assemani,⁴⁰⁵ Zaccaria (who calls Canon 13 *Il vergonoso canone*),⁴⁰⁶ Laurin and Wernz⁴⁰⁷ and others.⁴⁰⁸

From the sources examined to this point, especially those from the 16th century onwards, it is clear that the Oriental discipline of married clergy was always regarded as an exception to general law, towards which Rome showed its indulgence. If this discipline was merely tolerated, – and there are good grounds for believing this to have been the case – then the discipline was but a custom of fact, devoid of any legal force. At most, one could perhaps argue that the discipline was legitimate as a concessionary 'privilege' or 'indult'. Even if this were the case, there would still be little ground to argue that Rome thereby implicitly gave its approbation to Canon 13 of Trullo. A privilege or indult permits a practice which is outside of, or contrary to law. There is no question of abrogation of the law of which the indult is an exception. To approve Trullo on the other hand, would be to abrogate the universal law of continence.

If we consider the Oriental discipline in terms of 'custom' (*consuetudo*) and consider the possibility that prolonged unwillingness on the part of the Ro-

⁴⁰¹ Synodus Sciarfensis Syrorum in Monte Libano celebrata, a. 1888, Romae 1876, 202-203.

⁴⁰² Acta et decreta Synodi provincialis Ruthenorum, Galiciae habitae Leopoli 1891, VIII 2 Roma 1896, 138.

⁴⁰³ Cf. NCE 3, 374a.

⁴⁰⁴ De Concordia 564a, 614a.

⁴⁰⁵ Bibliotheca Iuris Orientalis, I. Romae 1717, 419-423.

⁴⁰⁶ Storia polemica del celibato sacro . . . , Roma 1774, 166; 173.

⁴⁰⁷ WERNZ, Ius Decretalium II 300 and fn. 202.

⁴⁰⁸ Cf. Benedict XIV, Opera Indita 389 ff (for authors of the 18th century and before).

man Pontiffs to prohibit Oriental praxis would be tantamount to an implicit approval (leading to the establishment of legitimate custom), it must be kept in mind that Oriental discipline, from the 11th century onwards, meant not only the use of marriage, but also compulsory marriage for secular priests. Is it feasible that the latter, an integral part of the 'custom', would be the subject of approval? Furthermore, a theoretical question presents itself: can there be a legitimate custom which, besides being against general law, is contrary to apostolic tradition? Keeping these considerations in mind, we turn to the 20th century.

13) Pope Pius XI (1922-1939). The first important document of the 20th century concerning our theme is Pius XI's encyclical letter *Ad catholici sacerdotii*, 20th December 1935. In that section of the encyclical where the Pontiff speaks of the excellence of the discipline of celibacy, the following words are found:

*Nihilo secius que adhuc, ecclesiasticum caelibatum commendantes, verba fecimus non idcirco intellegi volumus, ac si Nobis in mente esset absimilem illam disciplinam quodammodo improbare ac redarguere, quae in Orientalem Ecclesiam legitime invecata est; sed revera animus Noster eo unice spectat, ut eam veritatem efferamus, quam et praeclarissimam ducimus catholici sacerdotii gloriam . . .*⁴⁰⁹

The reference to the discipline of the Eastern Church comes within a context of exhortation to the contrary discipline of absolute celibacy. The phraseology of this reference is negative: the Pontiff does not wish to 'blame' or 'disapprove' Eastern discipline. In this, the Pope follows a long tradition. Yet, in this document the discipline is described as legitimate. This term must now be interpreted.

The doctrine prevalent at the time of Pius XI was that facultative celibacy (in its widest sense) was of apostolic origin. In this case, the legitimacy of Eastern praxis would not be subject to question. An effect of this is that there could be no real ground to consider Eastern praxis as being merely 'tolerable'. The Pope, therefore, simply expressed what was accepted doctrine, without intending to innovate in any way. It could be argued, therefore, that if the Pontiff was subject to material error concerning the juridical value of Eastern praxis, no innovation would have been made. His encyclical was of a pastoral nature, and not juridical. On the other hand, the fact that the discipline should be considered 'legitimate' should also be understood in light of another curial document issued a few years previously during the same ponti-

⁴⁰⁹ AAS 28 (1936) 28. The English translation reads: "Notwithstanding all this, We do not wish that what We have said in commendation of clerical celibacy should be interpreted as though it were Our intention in any way to blame, or, as it were, disapprove the different discipline legitimately prevailing in the Eastern Church. What We have said has been meant solely to exalt in the Lord something We consider one of the purest glories of the Catholic priesthood . . ."

ificate: the Decree *Cum data fuerit* of March 1 1929.⁴¹⁰ In this Decree, Oriental married priests were forbidden to exercise their ministry in the U.S.A.⁴¹¹ Oriental praxis could not have been understood to have had the force of general law, for Rome would have been much more cautious and circumspect with regard to this American regulation. Two private letters of the Sacred Congregation for the Oriental Church, written during this pontificate, appear to confirm this view.⁴¹² 'Legitimacy' did not change the 'exceptional' and 'conditional' nature of the discipline. The statement of Pius XI, therefore, can not be interpreted to imply an implicit approval of Canon 13 of Trullo.⁴¹³

14) Oriental Code of Canon Law. The *Motu Proprio Cleri Sanctitati* of 2 June 1957 has these two canons:

Canon 71: *Quod attinet ad coniugatos . . . hae Litterae Apostolicae nihil innovant circa vigentem in unoquoque orientali ritu disciplinam.*

Canon 72: *In ritibus in quibus non admittuntur clerici coniugati . . .*⁴¹⁴

The Code does appear to establish the legitimacy of Eastern discipline, in line with the encyclical of Pius XI. Nonetheless, there is no positive indication to suggest that the canon of Trullo has received any approbation. The fact that the Code recognises that some Rites do not accept married clergy indicates that there is no such recognized general law for all Eastern Churches.

15) The Second Vatican Council. In the Decree on the Priestly Ministry and Life, *Presbyterorum Ordinis*, n. 16, the following words are found:

*Dum vero ecclesiasticum coelibatum commendat Sacrosancta haec Synodus nullo modo absimilem illam disciplinam immutare intendit quae in Orientalibus Ecclesiis legitime viget, omnesque illos permanenter hortatur qui in matrimonio presbyteratum receperunt, ut, in sancta vocatione perseverantes, plene et generose vitam suam gregi sibi commisso impendere pergant.*⁴¹⁵

⁴¹⁰ AAS 21 (1929) 152-159.

⁴¹¹ Article 12: *Interim, sicut iam pluries statutum est, sacerdotes ritus graeco-rutheni, qui in status Foederatos Americae septentrionalis proficisci et commorari cupiunt, debent esse coelibes.*

⁴¹² Cf. supra 184.

⁴¹³ In 1929 a Cardinal's Commission was set up by the Roman Pontiff to prepare for the codification of Oriental canon law. In the preface of one of the volumes of the official *Fontes* (Fasc. IX, 1933, viii-ix) Cardinal Cicognani, who was then Assessor to the Oriental Congregation, reaffirmed that the rule of Pope John VIII was to be applied in considering the canonical value of the canons of Trullo.

⁴¹⁴ AAS 49 (1957) 457.

⁴¹⁵ AAS 58 (1966) 1015-1016. In translation the text reads: "While recommending ecclesiastical celibacy this sacred Council does not by any means aim at changing that contrary discipline which is lawfully practised in the Eastern Churches. Rather the Council affectionately exhorts all those who have received the priesthood in the married state to persevere in their holy vocation and continue to devote their lives fully and generously to

The Council purposely included these words concerning Oriental married priests so as not to create the impression that the exhortation to celibacy, which is the subject of this part of the Decree, is an indirect criticism of the Eastern discipline.⁴¹⁶ Nonetheless, attempts to suggest absolute equivalence in these different modes of living the priesthood were deliberately rejected.⁴¹⁷ Reference to the Eastern discipline, therefore, remains as an interpolation to the main text of this part of the Conciliar Decree.⁴¹⁸

It is interesting to note that the last schema to the one definitively adopted had no mention at all of the "legitimacy" of Eastern discipline. This schema, which was discussed in mid-October 1965, was the result of several prior modifications; these, in turn, were the fruit of a protracted period of deliberation and reflection on the part of the Fathers of the Council and the Commission.⁴¹⁹ Between October 19th and November 9th there were no fewer than 5671 comments or 'modi' to the schema to be processed. The Council was to end on December 8th and the Fathers were to receive the emended text on November 30th.⁴²⁰ Five Fathers had requested that the words of the encyclical *Ad catholici sacerdotii* be inserted into the text, with a few added words to approve and confirm this divergent discipline.⁴²¹ In the extremely short time that it had to study the matter, the Commission decided to adopt the proposal to include some of the words of the encyclical, but without adding anything to suggest equity of the two disciplines.⁴²²

Although the text of *Presbyterorum Ordinis*, n. 16, recognises Eastern discipline as being 'legitimate', there would seem to have been no intention to go any further than Pius XI did in commenting on the juridical status of the married priesthood. As with Pius XI, general doctrine taught the apostolic origin of optional celibacy. Perhaps, had there been a more profound knowledge of the historical evolution of this Eastern canonical institution (including, for

the flock entrusted to them." A. FLANNERY (ed.), *Vatican Council II, the Conciliar and Post Conciliar Documents*, Fowler Wright 1981, 892.

⁴¹⁶ Cf. *Acta Synodalia Sacrosancta Concilii Oecumenici Vaticani Secundi IV 4 Typis Polyglottis Vaticanis 1977*, 386, n. 14; H. VORGRIMLER (ed.), *Commentary on the Documents of Vatican II 4 London 1969*, 204.

⁴¹⁷ *Acta Synodalia IV 7*, 207-209; VORGRIMLER 285.

⁴¹⁸ VORGRIMLER 284.

⁴¹⁹ For the history of the redaction of the text, see VORGRIMLER 183-297.

⁴²⁰ *Ibid.* 296-297.

⁴²¹ *Acta Synodalia IV 7*, 208. These Fathers wanted the following words to be inserted: *Verba veroquae facimus ecclesiasticum coelibatum commendantes non idcirco intelligi volumus, ac si Nobis in mente esset absimilem illam disciplinam quodammodo improbare et redarguere, quae in Orientales Ecclesias legitime invecta est, sed e contra Sacrosancta haec Synodus eam comprobat et confirmat.*

⁴²² *Ibid.* 209.

example, the discipline of compulsory marriage), there would have been other suggestions for the redaction of this text. At any rate, even with the text as it stands, the Council falls short of giving an unequivocal juridical approbation of the Eastern discipline, such as would possibly give Canon 13 of Trullo ecumenical value.

16) Pope Paul VI (1963-78). Soon after the Vatican Council this great Pope issued the encyclical letter *Sacerdotalis Caelibatus*, 24 June 1967, in which the following statement is found:

*Quodsi aliae prorsus leges in orientali Ecclesia de disciplina sacrii coelibatus vigent, quas tandem Trullanum Concilium anno DCXCII sanxit quasque nuper Oecumenicum Concilium Vaticanum II publice agnovit, aliis id certe rerum locorumque adiunctis, ad electissimam hanc partem Catholicae Ecclesiae pertinentibus, est tribuendum, quibus sane omnibus Sanctum Spiritum provido supermoque auxilio suo praefuisse credimus.*⁴²³

For the first time in the 20th century there is express mention in a papal magisterial document of the laws of Trullo. Furthermore, Canon 13 is footnoted together with Canons 6, 12 and 48.⁴²⁴ It would seem, therefore, that in this document Canon 13 had finally and unequivocally been recognized as an authentic law of the East, removing any doubt on the matter.

Although this possibility must be recognized, and indeed the possibility that perhaps it is in light of this document that previous documents of the Holy See ought to be interpreted, certain observations ought to be made. Firstly, the Pope's intention was not to settle a disputed canonical question, nor, it would seem, to go beyond what the Second Vatican Council itself had established on the question of Eastern married clergy.

Secondly, the Pope's mention of Trullo could be understood as being no more than a convenient reference which, in alluding to a historical legislative expression of what was considered to be an early Church discipline, expressed the insufficiently critical views of the historians of celibacy rather than the positive doctrine of the ordinary magisterium. Any historical error or inadvertence of these scholars would then appear in the encyclical as a material error. This was the case, in our opinion, with the unqualified mention in the encyclical of the laws of Trullo. Furthermore, an authoritative treatment of Eastern discipline would necessarily have to include Canon 3 of Trullo. The

⁴²³ AAS 59 (1967) 672-673. In translation the text reads: "If the legislation of the Eastern Church is different in the matter of discipline with regard to clerical celibacy, as was finally established by the Council of Trullo held in the year 692, and which has been clearly recognized by the Second Vatican Council, this is due to the different historical background of that most noble part of the Church, a situation which the Holy Spirit has providentially and supernaturally influenced." Encyclical letter of Paul VI on priestly celibacy 19.

⁴²⁴ AAS 59 (1967) 672.

fact that this canon was not included in the footnote, despite the important and traditional discipline found there, strengthens the view that the Pope had no real intention of giving authoritative teaching on the canonical nature of Eastern discipline. Undoubtedly motivated by ecumenical reasons, the Pontiff, in reaffirming the traditional legislation of the Latin West, wished simply in a pastoral way to reaffirm the Roman Church's fraternal benevolence towards the married clergy of the East.

17) The Synod of Bishops of 1971. After the meeting of the 3rd World Synod of Bishops a document, *The Ministerial Priesthood*, was issued on December 9 1971 in which the only reference to married Oriental clergy consisted in the words:

Celibatus in Ecclesia Latina Servandus.

*Salve maneant Ecclesiarum Orientalium traditiones prout nunc vigent in variis territoriis.*⁴²⁵

Simple recognition of Eastern discipline is made without any development of the theme.

In conclusion, in answer to the question of what is the canonical value of Trullo Canon 13 and the discipline of clerical temporary continence, we would offer the following opinion. If, on the one hand, the rule of Pope John VIII is to be rigorously adhered to, it could be stated without too much hesitation that Canon 13 has failed up until our own day to qualify for full approbation by Rome on the grounds that it is opposed to the Canons and Decrees of the Holy See in regard to the Roman discipline of celibacy. On the other hand, in those documents where the Holy See has considered the Trullan discipline of married priests, full acceptance and approval would be demonstrated, in this author's opinion, if it was shown to have been respected as being not only different, but 'indifferently' different. The discipline would then be regarded as being of equal canonical standing to the discipline of the West. Until the 20th century this condition seems never to have been fulfilled, the prevalent attitude of Rome being one of 'indulgence'. During this century, Rome's attitude underwent somewhat of a change, but not to such an extent as to be able to exclude all ambiguity or ambivalence in this same attitude. The conclusion to be drawn, therefore, is that whatever may be the canonical value of the Trullan collection as a whole - ecumenical or otherwise - a full and deliberate approval of the discipline of Canon 13 cannot be sufficiently proved to warrant considering the Eastern institution of married clergy as ecumenically sanctioned. The Eastern discipline today can thus at most be considered to have no more force than that of particular law.

⁴²⁵ AAS 63 (1971) 916.

14. The New Code of Oriental Canon Law

The Commission for the redaction of the Code of Oriental Canon Law has proposed the following canon dealing with celibacy (Can. 58 of the schema *De clericis*):

*Dum ubique permagni faciendus est clericorum caelibatus propter regnum coelorum delectus et sacerdotio tam congruus prout fert Ecclesiae universae traditio, item status clericorum matrimonio iunctorum Ecclesiae primaevae et saeculari Ecclesiarum Orientalium praxi sancitus in honore habendus est.*⁴²⁶

In light of our study certain critical observations can be made. The redaction of this canon is quite evidently inspired by *Presbyterorum Ordinis*, n. 16.⁴²⁷ In the process of the redaction of this Conciliar text, all mention of married Apostles was deliberately deleted from the main text in deference to those Fathers who objected that it was quite certain that the Apostles gave up their conjugal rights and lived celibacy.⁴²⁸ The same consideration could have been made about the early Church in general. To equate the Oriental praxis of married clergy with the institution of married clergy in the early Church is an historical error. The same equivocation is found in the proposed canon. The first observation, therefore, is that the words *Ecclesiae primaevae* should be removed from the text.

The next observations are much graver. The words *item status clericorum matrimonio iunctorum . . . in honore habendus est*, which appear to be doctrinally correct concerning the sacrament of matrimony and which express due respect to married clergy, transferred into the juridical context of a Code of Canon Law, take on a precise juridical meaning. Firstly, this phrase would be equivalent to saying: *institutio clericus uxorati . . . plene approbata est*. Thus the Oriental Code would be giving full and unambiguous legal approbation to this institution as known today (for the first time in history?). If there was any doubt about the canonical status of Oriental married priests, this would be completely removed. Arguably, the Code would be giving ecumenical authority to Canon 13 of Trullo. This being the case, there would be a clear objection and obstacle - the first and only one - to the discipline of celibacy as found in Oriental Catholic Churches, and to its development in the future.

Concerning the use of the expression *in honore habendus est*, the Commission has gone even further than the Council did in (unwittingly) establishing an exact equivalence between the celibate priesthood and the non-celibate priesthood. It is true that, theologically, there is but one priesthood. But by

⁴²⁶ Nuntia, Pontificia Commissio Codici Iuris Canonici Orientalis Recognoscendo 20, 109. (= Schema Codicis Iuris Canonici Orientalis (1986), c. 371: Nuntia, 24-25 (1987), 71).

⁴²⁷ Ibid. 108.

⁴²⁸ Cf. Acta Synodalia IV 4, 386.

appropriating a phrase for married clerics that tradition had reserved for the defence and promotion of the theologically more excellent state of consecrated virginity and celibacy, a great deal of doctrinal confusion could ensue. An example of the traditional use of the expression is Canon 437 of the 1917 Code of Canon Law. This reads:

Status religiosus seu stabilis in communi vivendi modus quo fideles, praeter communia praecepta, evangelica quoque consilia servanda per vota obedientiae, castitatis et paupertatis suscipiunt, ab omnibus in honore habendus est.

Another example is Canon 68 of *Cleri Sanctitati*, which uses the expression in defence of clerical celibacy:

Caelibatus clericorum eorundem statui ac divinorum ministeriorum exercitio dignius aptiusque respondens, prout fert unanimis Ecclesiae cum Orientalis tum Latinae traditio, ab omnibus in honore habendus est.

The same expression had been proposed by the Commission for the reform of the Latin Code in precisely the same sense.⁴²⁹

An alternative redaction of the proposed canon of the Oriental Code would have to take into account these considerations, if true, in order to guarantee all aspects of historical, juridical and theological reality. Thus we might propose a reading which runs:

Permagni faciendus est clericorum caelibatus propter regnum coelorum delectus et sacerdotio tam congruus prout fert Ecclesiae universae traditio. Clerici autem matrimonio iuncti iuxta saecularem Orientalem praxim dum matrimonium sancte servant in sua vocatione plene et generose respondeant.

A rendering such as this would solve and obviate the difficulties of the proposed text.

⁴²⁹ Schema, *Novi Canones de Institutis Vitae Consecratae*, 1977, Can. 2.

General Conclusions

In the very abundant literature which has been written on the origin and nature of celibacy and throughout ecclesiastical tradition (both of the East as well as the West), it is accepted that when clerical celibacy is embraced as a very particular gift from God and accepted in the spirit of evangelical freedom and subsequently lived in this same spirit, it is a jewel that adorns the Church, spouse of Christ.

As an ecclesiastical discipline of the Western Church, theologians and spiritual writers down the centuries have found abundant reasons to attest to the particular suitability or appropriateness of celibacy for the sacrament of order, admitting also that it demands both human and spiritual maturity.

In the Eastern Church, on the other hand, there is generally speaking no law of celibacy such as is found in the West. A question thus immediately poses itself: if celibacy is *per se* so suited to the clerical state, why is it that in the Eastern Churches priests are generally married? Is, therefore, the theology of spiritual writers and, indeed, of the papal magisterium concerned only with a 'Latin' priesthood with no immediate bearing on an 'Eastern' priesthood? Or is not the priesthood one and the same in both Churches; that is, the priesthood of Christ? Pope Paul VI gave a partial answer to this perplexing question when he wrote, in his encyclical letter *Sacerdotalis Caelibatus* of June 24 1967:

Further, it is by no means futile to observe that in the East only celibate priests are ordained bishops, and the priests themselves cannot contract marriage after their ordination to the priesthood. This indicates that these venerable Churches also possess to a certain extent the principle of a celibate priesthood. It shows too that there is a certain appropriateness for the Christian priesthood, of which the bishops possess the summit and the fullness, of the observance of celibacy.¹

The question, nonetheless, remains: should not priests even of the Oriental Churches be celibate if celibacy is indeed the most adequate and fruitful way

¹ *Praetereaque ad illud non erit utilitate vacuum animum attendere, quod et in Oriente caelibes tantummodo sacerdotes in episcoporum ordinem ascribuntur iidemque post initium sacerdotium nuptias facere vetantur. Quod quidem non obscure probat aliquem saltem locum et apud illas venerandas Ecclesias obtinere rationes sacerdotii cum caelibatu coniungendi vel etiam cuiusdam convenientiae cum christiano sacerdotio, cuius summum fastigium ac plenitudo penes episcopos sint. AAS 59 (1967) 673, n. 40. English translation from Encyclical Letter 20.*

of living the priesthood of Christ? If the celibate priesthood is related closely to the priesthood of the Gospel, and infused with the Gospel spirit, and the Church has always desired the best for the priesthood, namely strict celibacy, how is it that the 'Eastern' priesthood is in effect excluded from this vision and these ideals?

In the Eastern Churches this priestly ideal does indeed exist; it is found with bishops and with monks. The reason for the exclusion of the majority of secular priests from the ideal of celibacy has been closely examined in this thesis, in which we have sought to discover the genesis of the Eastern praxis of married priesthood as known today. Canon 13 of the Council of Trullo has been the focus of our study from which discipline the whole of Eastern marriage legislation for clerics has been examined. The results of our research have been surprising.

Canon 13 of Trullo did not lay the foundation for a married clergy in the Eastern Church. A married clergy in greater or lesser numbers had always existed in the Church, both in the Eastern and (until relatively recent times) in the Western Church. And yet, according to our evidence, these married clergy (at least in the early Church) were always required to live in perpetual continence by a general law or custom of the Church. The marked preference for celibates expressed in many early church documents did not, therefore, imply that the rest of the clergy were permitted to live married lives and to beget children. The preference was for unmarried celibates over 'married' celibates. The law of Trullo established, for the first time in conciliar history (if we exclude the Nestorian Church of Persia), that secular clerics other than the bishop should always be free to use their marriage apart from the times when continence was expected to be lived; this meant especially during the times of service at the altar. This disposition of law was a complete novelty and created a rupture in the internal consistency of the rest of the corpus of marriage law for clerics. It also had a profound effect on the subsequent discipline of clerical marriage in the Churches of Byzantium and those which were under its legislative influence.

The corpus of legislation for married clerics is effectively condensed in the Council of Trullo, especially in its Canons 3, 6, and 12. The mutual consistency and internal logic of this discipline was broken, this author believes, with the inclusion of Canon 13. The guiding norms for the choice of a marriage partner, that she be a virgin and not a widow, not an actress etc., were motivated, it has been argued, by the future obligation that both partners would freely assume to live perpetual continence on the ordination of the husband. The same reason, that of *propter continentiam futuram*, likewise dictated the exclusion of digamists from the priesthood according to the injunction of St. Paul: *unius uxoris vir* (Tit 1, 6). With the Trullan canon these prescriptions remain as prescriptions of propriety, but no longer retain their

original practical sense of guaranteeing the chastity needed to persevere in married continence (celibacy in its wide sense).

The most developed argument to demonstrate the loss of the original sense of the pre-Trullan marriage laws is our contention that the only intelligible reason why marriage should be prohibited to those already in orders is that ordination itself had always, since apostolic times, brought with it the obligation to perfect and total continence. The reason for the prohibition or impediment to marriage, whether applying to a strict celibate or to a widowed cleric, was purely practical: namely, the impossibility of consummation, given that a cleric by ordination professed himself to total continence. The sacrament of orders itself cannot, we believe, theologically render marriage invalid or illicit, since both are sources of grace and holiness. Trullo 13 created a fracture between doctrine and discipline on this most important of laws. By the 11th century, the original sense of the spirit of this early legislation had been so completely lost that it was not marriage that was curtailed by orders because of celibacy, but the very reception and exercise of orders was curtailed by celibacy. Marriage, which by now in the Byzantine Churches was compulsory, was considered to be the only guarantee for continence outside of marriage and, therefore, the only guarantee for the worthy exercise of the priestly ministry.

The traditional arguments raised by canonists against the possibility of a universal law of continence of apostolic origin have been re-examined: the argument of the fact of married apostles and married bishops, Canon 10 of An-cyra, Canon 3 of Nicaea and the episode of Paphnutius, Canon 4 of Gangra and Canon 6 of the Apostolic Canons. Examination of these traditional difficulties has shown that the thesis of an apostolic origin and universal extension of the law of continence in the early Church can still be held.

In examining Canons 12, 13 and 30 of Trullo, it was shown how the Council fell into doctrinal inconsistency with regard to the reasons for the differential extension of the law of celibacy. The reasons why bishops were held to absolute continence were the traditional ones which bound all clerics, in the early Eastern and in the Western Church, to the same. In justification of the concession of use of marriage for other clerics the Council had to deliberately re-edit ancient texts. The canons of Carthage which legislated for absolute continence were represented as laws for temporary continence. These canons form the central structure of Canon 13 and were chosen probably because of their express fidelity to apostolic tradition. The discipline of temporary continence had, therefore, no authority other than the authority of the Council itself. This, we concluded, has probably never been ecumenical, at least not for this particular canon. The merit of the canon is in its preservation of the relationship of celibacy to the ministry when exercised. By the very premises of the canon, a priest who lived his priesthood daily in the daily celebration of

the eucharistic Liturgy would necessarily be bound to total continence. Fourth century documents illustrate that that was already one reason proffered why, in the early Church, priests and deacons were bound to celibacy; they were totally given to their ministry. Conversely, the fact of living married life necessarily placed restrictions upon the exercise of the sacerdotal ministry. In the Oriental Catholic Churches the introduction of absolute celibacy was a logical and even necessary move to guarantee, according to the spirit of Trullan and Oriental discipline, daily celebration of the Liturgy, the demand for which was growing more and more. For a married man to celebrate daily or frequently was always considered an abuse.

The effects of the legislation of Trullo 13 were of far greater consequence than perhaps generally thought. The harmony existing between doctrine and legislation was certainly upset. In the absence of a law of absolute continence, the law prohibiting marriage after orders became very onerous. Problems arising from this discipline have been acute in the Eastern Churches ever since. This is understandable given the loss of the theological and practical reason for the impediment of orders.

Marriage became a necessary condition for orders for a secular priest. This curious requirement, which is certainly contrary to apostolic tradition and ecclesiastical tradition of the first millenium (the Nestorian Church excepted), was a distant effect of the discipline of Trullo. If the use of marriage was permitted to clerics, not on account of the innate dignity of marriage and its rights (celibacy was not regarded even by the Council as destroying this dignity) but because it wished to preserve its clerics from unlawful incontinence, then the marriage state itself, and its use, would be eventually considered as the normal and even necessary state for a cleric. Confidence was shown in the possibility of living celibacy (which was still regarded as the more perfect state) only when protected by the monastic profession and by the monastery walls. This attitude clearly reflects the problems of a particular age. Following this same disciplinary spirit, not only were unmarried men barred from the ministry but priests and deacons who lost their wives were barred from exercising their ministry and were required, in many cases, to enter the monastery. In the Russian Church of the 17th century, a second marriage was eventually permitted to priests and deacons provided they accepted demotion. The peculiarities and uncanonical nature of compulsory marriage eventually led to an equally uncanonical and untraditional concession to enter marriage after orders. According to the consistency of logic, nonetheless, such a concession was inevitable, we believe.

When speaking of the nature of celibacy, authors, since the Middle Ages, have usually thought of the Eastern discipline of the use of marriage as demonstrating that celibacy is not demanded by the very nature of the priesthood. There is obviously no doubt at all that celibacy in its strict sense

(of being unmarried) is not demanded by the priesthood of itself: apostolic tradition and the witness of the first millenium in the Latin Church are clear proof of this. Nonetheless, there would appear to be a more intimate link between celibacy in its wider sense of continence and the priesthood.

Even when the use of marriage was sanctioned by Trullo, its use was not unconditional. Whenever the priest acted specifically in his ministerial role as a priest (in the celebration of Divine Liturgy), he had to live a discipline of partial celibacy. This law of temporary continence has always, until very recent times, been a universal precept of the Eastern Churches. Even though the discipline was modelled on the more general discipline of periodic continence for all lay people, especially during times of communal worship, there are good grounds to believe that the underlying theological reason for this discipline is of quite a different order. This reason, we believe, is in fact the same reason, in the ultimate analysis, why a higher cleric had always been barred from entering marriage after his ordination: the fact of his bodily consecration which originally always qualified and accompanied the reception of the sacrament of order.

Studies have been done in which the true motives for priestly continence have been sought.² Attention is frequently focussed on the cultic or liturgical role of the priest. The Book of Leviticus required both corporal and moral integrity on the part of a priest. Thus it has been the 'levitical motifs' which have so often been developed by writers, whether of the 4th century, or 16th century or 20th. Levitical theology of the priesthood would then explain why a priest who serves at the divine altar is to be continent. Gratian, in the 12th century, considered celibacy as an *institutio munditia sacerdotalis* that gave the minister of the altar the 'freedom' to be unceasing in ministerial prayer.³ St. Thomas Aquinas had considered it fitting that those who 'handle sacred vessels and the sacraments' should also live this same *munditia corporalis* through continence.⁴ The priesthood is here thought of in its aspect as an extension and development of the Sacerdotium of the Temple.

A question poses itself: could it not have been precisely the Trullan discipline, which had restricted the requirement of continence to when ministers

² One such recent study is H. CROUZEL, *Celibacy and ecclesiastical continence in the Early Church: the motives involved*, in: *Priesthood and Celibacy*, COPPENS (ed.) 451-502.

³ Dist., 31, c. 13: *Causa vero hujus institutionis munditia sacerdotalis fuit, ut libere cunctis diebus orationi possint vacare. Si enim (ut Paulus ait) ab uxoribus est cessandum, ut expeditius orationi vacemus, ministris utique altaris, quibus quotidiana necessitas orandi incumbit, numquam conjugali officio vacare permittitur.*

⁴ *Summa Theologiae, Supplementum 53, 3: Respondeo dicendum quod ordo sacer de sui ratione habet ex quadam congruentia, quod matrimonium impedire debeat: quia in sacris ordinibus constituti sacra vasa et sacramenta tractant, et ideo decens est ut munditiam corporalem per continentiam servent.*

'touched or approached the altar and the sacred mysteries', that led writers such as St. Thomas to postulate only a 'fittingness' or 'convenience' for total continence according to levitical theology? Certainly, the Trullan discipline led in practice to a levitical type of priestly ministry.⁵ If the Trullan Fathers had been faithful to the original text of the Carthaginian canons which they refer to and to the discipline expressed therein, there would have been conceivably more stress placed on the nature of the priesthood itself rather than on the exercise of the sacred ministry when seeking a theological reason for continence; for nature gives rise to, and specifies, action (*actio sequitur naturam*).

The theology of the priesthood in recent decades has placed a new emphasis on the christological rather than the levitical aspects of the priesthood. Certainly the Eucharist, as the centre and the origin of the life of the Church, is necessarily the centre of the life of any priest.⁶ The redemptive act of the cross and resurrection, commemorated by the Eucharist, was also the central event in the life of Christ. The priest, by virtue of his ordination, has a unique sacramental configuration or ontological identification with Christ that allows him *agere in persona Christi capitis*.⁷ Now the priest, as a result, exercises not only the *munus sanctificandi*, with its supreme expression in the eucharistic celebration, but also the *munera docendi* and *regendi*.⁸ This already suggests a motive for continence which is more embracing than the *munditia corporalis* required for liturgical worship.

The consecration of a priest gives him a title to act, *in persona Christi*, as the 'good pastor' who gives his life for his sheep, who spends his life in pastoral charity and fecund paternity towards all without distinction, leading them towards the destination of the earthly pilgrimage.⁹ The priest's consecration renders him a 'man of God' whose principal preoccupation is the well-being of the Church entrusted to him.

The married man or married priest can certainly excel in supernatural charity. However, the passage of St. Paul: "The unmarried man is busy with the Lord's affairs, concerned with pleasing the Lord; but the married man is busy

⁵ This is evidenced in the system of weekly 'turns' of celebration in large churches and the prohibition of celebrating mass frequently on account of marriage: cf. supra 162-164. In the nineteenth century the situation of the Russian married clergy was such that the French jesuit priest Gagarin could describe it as 'leviteism'. The Russian Clergy, London 1872, 31.

⁶ Cf. *Presbyterorum Ordinis*, n. 14.

⁷ *Ibid.* n. 2. Cf. *Lumen Gentium* n. 10.

⁸ *Presbyterorum Ordinis* 2, 4-6.

⁹ Cf. Alvaro del PORTILLO, *Consecrazione e missione del sacerdote*, Milano, n. d., 58 ff.

with this world's demands and occupied with pleasing his wife" (1 Cor 7, 32-33) is an invitation to those who have received a special calling to devote all their time and energy to the immediate service of the Church and to avoid the more immediate concerns of family life (though these themselves have their own sanctifying value).¹⁰ The call to continence for married clerics in the early Church was a means to this end, living with their wives as if they were not married: "those with wives should live as though they had none" (1 Cor 7, 29). It was an expression of their new 'consecration'.

The priesthood has always been seen, in ecclesiastical tradition, as the most sublime and exalted state possible within the Church. Consequently, theologians have not hesitated in demanding from the priest a holiness that surpasses even that of a religious.¹¹ If religious lived in a 'consecrated' state, as did the virgins and widows of the early Church, is it conceivable that the priest, who rendered present in the community Christ himself, could have been considered 'less' consecrated and not have been required to live, once ordained, the counsel of perfect continence as a sign of his consecration?

Vatican II, in its decree *Presbyterorum Ordinis*, n.16, had stated:

It is true that it [celibacy] is not demanded of the priesthood by its nature (suapte natura). This is clear from the practice of the primitive Church and the tradition of the Eastern Churches where in addition to those – including all bishops – who choose from the gift of grace to preserve celibacy, there are also many excellent married priests.¹²

A distinction that the Council did not make was that married clergy of the primitive Church lived perpetual continence: even those who deny the thesis of the apostolic origin of celibacy admit that absolute continence was much favoured. Furthermore, *Lumen Gentium*, n. 42, had already established the obligation for all the faithful, whether priests or not, married or not, to strive for holiness and perfection in their state of life.¹³ Thus it would seem that it is only the tradition of the Eastern Churches, or rather the Trullan discipline, which prevents a closer association being made between celibacy and the priesthood.

¹⁰ Cf. LEGRAND, St. Paul and Celibacy, in *Priesthood and Celibacy* 427-450.

¹¹ Thus St. Thomas Aquinas: ST, 2, 2ae, 184, a 8 corpus.

¹² A. FLANNERY (ed.), Vatican Council II, the Conciliar and Post Conciliar documents, 1981, 892.

¹³ Ibid. 402: "Therefore all the faithful are invited and obliged to holiness and the perfection of their own state of life. Accordingly let all of them see that they direct their affections rightly, lest they be hindered in their pursuit of perfect love by the use of worldly things and by an adherence to riches which is contrary to the spirit of evangelical poverty, following the apostle's advice: let those who use this world not fix their abode in it for the form of this world is passing away."

Wherever and whenever the priesthood is considered to be a 'consecration' in its fullest sense, it would seem that perfect committed chastity would have to be considered as belonging to the very structure of priestly ordination; as a total giving of self in order to render possible the full exercise and actualization of the gift of order received. It is evident, on the other hand, that the sacramental conferral of priestly character is not of the same nature as a religious profession which requires, by definition, the promise or vow of perfect chastity. After all, priestly character could even be conferred on children who are morally incapable of being bound by a vow of chastity. Nor could married men be obliged to renounce their marriage rights by the fact of having the priestly character alone (although in both cases exercise of orders could be prohibited). And yet priestly character would seem to demand, by its very dignity and the charism it constitutes, a perpetual disposition on the part of the recipient to always render present *in actu*, for the benefit of all the Church, that for which the gift of orders is given. In other words, there would seem to be an almost 'connatural' requirement on the part of the ordinand to correspond to the gift of order being received through personal consecration of body and soul to God, with its obligation of living in perfect chastity. For a married man this necessarily presupposes the free consent of his wife. If the Church did not always bind its priests to a life of perfect chastity, this was a 'concession' made for 'grave reason'. Celibacy, therefore, would seem to be the natural state for the priest, for only then could he be truly considered a minister totally given to his vocation or 'consecrated' to God for the service of the Church. It would seem that in the early Church, since apostolic times, this was how the priesthood was understood in relation to celibacy. The long tradition of temporary continence in the Eastern Churches, together with the other aspects of the marriage legislation for Eastern clerics, not only does not deny such a understanding of priestly celibacy but indeed does, in fact, support it. The Eastern Churches have, since Trullo, demonstrated the very close tie between celibacy and the priesthood; traditionally, when at least partial celibacy (temporary continence) has not been lived, exercise of the ministry is prohibited. And this on account of the dignity of the priesthood.

The question which we set ourselves at the head of this section of conclusions was whether the married priesthood of the Oriental Churches can be legitimately excluded from the developed theology of the celibate priesthood. Our thesis, we believe, shows that the legislation of these Churches does in fact include their clergy within such a theology, even if not explicitly or in its totality. The celibacy theology and praxis of the Oriental Churches, likewise, we believe, tends in its ultimate consequences to the same discipline as is found today within the Latin Church. If in practice the situation is still very different, this we believe is due to the circumstances of history. The same esteem for the priesthood is to be found in the East as in the Latin Church.

The desirability of celibacy as being the best way of living the priesthood, given the right circumstances, appears to be equally present.

In stating that the Eastern Churches possess "to a certain extent the principle of a celibate priesthood", Pope Paul VI was saying more than is immediately apparent. He could, we think, with every justification have said the Eastern Churches possess "to a certain extent the very reason for a celibate priesthood".

Appendix

*Greek and Latin Texts of Canons 3, 6, 12, 13, 26, 30, 48 of the Council in Trullo**Taken from Joannou I. 1.*

Περὶ ἱερέων καὶ κληρικῶν

De sacerdotibus et clericis

Γ

III

Περὶ καθέδρας πρεσβυτέρων τῶν διυσι γάμοις προσυμλοῦντων ἢ μετὰ τὴν χειροτονίαν συνάλλαγμα γαμικὸν ποιουμένων καὶ τῶν χήραν ἢ ἐκβεβλημένην λαμβανόντων.

De sede presbyterorum, qui secundas nuptias inierant, vel qui post ordinem habitum matrimonium contraxerant, et de eis qui viduam aut dimissam a marito nupserant.

Ἐπειδὴ δὲ ὁ εὐσεβὴς καὶ φιλόχριστος ἡμῶν βασιλεὺς τῇ ἁγίᾳ ταύτῃ καὶ οἰκουμενικῇ προσεφώνησε συνόδῳ, ὥστε τοὺς ἐν κλήρῳ καταλεγόμενους καὶ ἄλλοις τὰ θεῖα διαπορθμεύοντας καθαρούς ἀποφῆναι καὶ λειτουργοὺς ἀμώμους καὶ τῆς νοεῖας τοῦ μεγάλου θεοῦ καὶ θύματος καὶ ἀρχιερέως θυσίας ἀξίους, ἀνακαθᾶραι τε τὰ ἐξ ἀθέσμων γάμων τούτοις ἐπιτριβέντα μύση· πρὸς τοῦτό τε τῶν τῆς Ῥωμαίων ἀγιωτάτης ἐκκλησίας τὸν τῆς ἀκριβείας τηρηθῆναι κανόνα προτιθεμένων, τῶν δὲ ὑπὸ τὸν τῆς θεοφυλάκτου ταύτης καὶ βασιλίδος πόλεως θρόνον τὸν τῆς φιλανθρωπίας καὶ συμπαθείας, εἰς ἐν ἀμφοτέρα μίξαντες πατρικῶς ὁμοῦ καὶ θεοφιλῶς, ὡς μήτε τὸ πρᾶον ἐκλυτον, μήτε στύφον τὸ αὐστηρὸν

Et quoniam pius a Christoque amatus imperator noster hanc sanctam et universalem synodum allocutus est, ut eos qui in clerum relati sunt et aliis divina transmittunt, puros et irreprehensibiles ministros efficiat, et magni dei, qui est et sacrificium et pontifex, sacrificio illo rationali dignos, quaeque ex nefariis nuptiis iis inusta sunt dedecora repurget; et praeterea qui quidem sanctissimae romanorum ecclesiae sunt exactissimum canonem servandum proponant, qui vero sub hoc a deo custoditæ et regiae civitatis throno sunt canonem humanitatis et misericordiae, nos, utroque paterne simul et religiose mixto, ut neque quod est mite ac mansuetum, dis-

καταλείψομεν, καὶ μάλιστα τοῦ ἐξ ἀγνοίας πτώματος εἰς οὐκ ὀλίγον ἀνδρῶν πλήθος διήκοντος, συνορῶμεν, ὥστε τοὺς μὲν δυσὶ γάμοις περιπαρέντας καὶ μέχρι τῆς πεντεκαίδεκάτης τοῦ διελθόντος Ιανουαρίου μηνὸς τῆς παρελθούσης τετάρτης ἰνδικτιῶνος, ἔτους ἑξακισχιλιοστοῦ ἑκατοστοῦ ἑνενηκροστοῦ ἑνάτου, δουλωθέντας τῇ ἀμαρτία καὶ μὴ ἐκνηῆσαι ταύτης προελομένους, καθαιρέσει κανονικῇ ὑποβαλεῖν.

Τοὺς δὲ τῷ τοιοῦτῳ μὲν τῆς διγαμίας πάθει περιπεσόντας, πρὸ δὲ τῆς ἡμῶν συνελεύσεως τὸ συμφέρον ἐπεγνωκότας καὶ τὸ κακὸν ἐξ ἑαυτῶν περικόψαντας καὶ πόρρω τὴν ξένην ταύτην καὶ νόθον συμπλοκὴν ἐκδιώξαντας, ἣ καὶ ὧν αἱ κατὰ δεῦτερον γάμον γυναῖκες ἤδη τετελευτήκασιν, ἣ καὶ αὐτοὶ πρὸς ἐπιστροφὴν εἶδον, μεταμαθόντες τὴν σωφροσύνην καὶ τῶν πρώην αὐτοῖς παρανομηθέντων ταχέως ἐπιλαθόμενοι, εἴτε πρεσβύτεροι εἴτε διάκονοι εἴτε ὑποδιάκονοι ὄντες τυγχάνοιεν, τούτους ἔδοξε πεπαῦσθαι μὲν πάσης ἱερατικῆς λειτουργίας ἥτοι ἐνεργείας, ἤδη ἐπὶ ῥητόν τινα χρόνον ἐπιτιμηθέντας, τῆς δὲ τιμῆς τῆς κατὰ τὴν καθέδραν καὶ στάσιν μετέχειν, ἀρκουμένους τῇ προεδρείᾳ καὶ προσκλαίοντας τῷ κυρίῳ συγχωρηθῆναι αὐτοῖς τὸ ἐκ τῆς ἀγνοίας ἀνόμημα· εὐλογεῖν γὰρ ἕτερον τὸν τὰ οἰκεία τημελεῖν ὀφείλοντα τραύματα, ἀνακόλουθον.

Τοὺς δὲ γαμετῇ μὲν μιᾷ συναφθέντας, χήρα δὲ ἣ προσληφθεῖσα ἐτύγχανεν, ὡσαύτως δὲ καὶ τοὺς μετὰ τὴν χειροτονίαν γάμῳ ἐνὶ παρανό-

solutum, neque quod est austerum, asperum relinquamus, et maxime cum ex ignorantia lapsus in non exiguam hominum multitudinem pervadat: de omnibus decernimus, eos qui secundis nuptiis implicati fuerunt et usque ad XV praeteriti mensis Ianuarii praeteritae IV indictionis anni VICXCIX peccato servierunt et non ab eo resipiscere voluerunt, depositioni canonicae subiicere.

Eos autem, qui tali quidem digamiae probro implicati fuere, ante nostram autem congressionem id quod est utile agnoverunt et malum a se absciderunt et hanc alienam et adulterinam congressionem procul abegerunt; vel eos etiam, quorum uxores in secundis nuptiis iam mortuae sunt, vel ipsi etiam ad conversionem respexerunt et continentiam didicerunt et priorum suarum iniquitatum obliti sunt; sive sint presbyteri sive diaconi sive subdiaconi, eos ab omni quidem sacerdotali ministerio sive exercitio iam cessare, praefinito aliquo tempore punitos, honorem autem in cathedra et statione participare, prima sede contentos et cum fletu a domino postulantes, ut eis condonetur peccatum ignorantiae; neque enim convenit, ut is alteri benedicat, qui debet propria curare vulnera.

Eos vero qui uni quidem uxori copulati sunt, vidua autem erat quae accepta est, similiter et eos qui post ordinationem uni illegitimo matri-

μως προσομιλήσαντας, τουτέστι πρεσβυτέρους και διακόνους και υποδιακόνους, ἤδη ἐπὶ βραχύν τινα χρόνον εἰρχθέντας τῆς ἱερᾶς λειτουργίας και ἐπιτιμηθέντας, αὐθις αὐτούς ἐν τοῖς οἰκείοις ἀποκαταστήν.κι βαθμοῖς, μηδαμῶς ἐν ἐτέρῳ μείζονι προκόπτοντας βαθμῶ, προδήλως διαλυθέντος αὐτοῖς τοῦ ἀθέσμου συνοικεσίου.

Ταῦτα δὲ ἐπὶ τοῖς καταληφθεῖσι μέχρι τῆς πεντεκαιδεκάτης, ὡς εἴρηται, τοῦ Ἰανουαρίου μηνὸς τῆς τετάρτης Ἰνδικτιῶνος ἐν τοῖς προδηλωθεῖσι πταίσμασι και μόνον ἱερατικῶς ἐτυπώσαμεν, ὀρίζοντες ἀπὸ τοῦ παρόντος και ἀνανεούμενοι τὸν κανόνα τὸν διαγορεύοντα. ' τὸν δυσὶ γάμοις συμπλακέντα μετὰ τὸ βάπτισμα ἢ παλλακὴν κτησάμενον μὴ δύνασθαι εἶναι ἐπίσκοπον ἢ πρεσβύτερον ἢ διάκονον ἢ ὅλως τοῦ καταλόγου τοῦ ἱερατικοῦ. ' ὡσαύτως και ' τὸν χήραν λαβόντα ἢ ἐκβεβλημένην ἢ ἐταίραν ἢ οἰκέτιν ἢ τῶν ἐπὶ τῆς σκηνῆς, μὴ δύνασθαι εἶναι ἐπίσκοπον ἢ πρεσβύτερον ἢ διάκονον ἢ ὅλως τοῦ καταλόγου τοῦ ἱερατικοῦ. '

ζ

Περὶ τοῦ μὴ ἐξεῖναι πρεσβυτέροις ἢ διακόνους μετὰ τὴν χειροτονίαν γάμῳ συναλλάσσειν.

Ἐπειδὴ παρὰ τοῖς ἀποστολικοῖς κανόσιν εὔρηται, ' τῶν εἰς κλῆρον προαγομένων ἀγάμων μόνους ἀναγνώστας και ψάλτας γαμεῖν, ' και ἡμεῖς τοῦτο παραφυλάττοντες, ὀρίζομεν, ἀπὸ τοῦ νῦν μηδαμῶς ὑποδιάκονον ἢ διάκονον ἢ πρεσβύτερον μετὰ τὴν ἐπ' αὐτῶ προερχομένην χειροτονίαν, ἔχειν ἀδεια γαμικὸν ἑαυτῶ συνιστᾶν συνοικεσίον· εἰ δὲ τοῦτο τολμήσοι

monio se applicarunt, hoc est presbyteros, diaconos et subdiaconos, brevi aliquo tempore a sacro ministerio prohibitos et poenitentiae submissos, rursus propriis gradibus restitui, ad alium gradum nequaquam promovendos, eis videlicet nefario dissoluto coniugio.

Haec autem in iis qui deprehensi sunt usque ad XV, ut dictum est, mensis Ianuarii IV indictionis in prius tantum declaratis delictis ex sacerdotali auctoritate statuimus, abhinc definientes et renovantes canonem, qui dicit: «Eum qui secundis nuptiis post baptismum implicatus fuerit, vel concubinam habuerit, non posse esse episcopum vel presbyterum vel diaconum vel omnino ex sacerdotali catalogo»; Similiter et «qui viduam acceperit vel dimissam vel meretricem vel servam vel scenicam non posse esse episcopum vel presbyterum vel diaconum vel omnino ex sacerdotali catalogo».

VI

Quod non liceat presbyteris et diaconis post ordinem habitum matrimonium inire.

Quoniam in apostolicis canonibus scriptum invenitur, «eorum qui non ducta uxore in clerum promoventur, solos lectores et cantores postea uxorem posse ducere», et nos hoc servantes decernimus ut deinceps nulli penitus subdiacono vel diacono vel presbytero post peractam sui ordinationem coniugium contrahere liceat; si autem fuerit hoc

ποιῆσαι, καθαιρείσθω. Εἰ δὲ βού-
λοιτό τις τῶν εἰς κλῆρον προερχο-
μένων γάμου νόμῳ συνάπτεσθαι γυ-
ναικί, πρὸ τῆς τοῦ ὑποδιακόνου ἢ
διακόνου ἢ πρεσβυτέρου χειροτονίας
τοῦτο πραττέτω.

IB

Περὶ τοῦ μηδένα ἐπίσκοπον μετὰ τὴν
χειροτονίαν τῇ ἰδίᾳ γυναικί συνοικεῖν.

Καὶ τοῦτο δὲ εἰς γνῶσιν ἡμετέραν
ἦλθεν, ὡς ἐν τε τῇ Ἀφρικῇ καὶ
Λιβύῃ καὶ ἑτέροις τόποις, οἱ τῶν
ἐκεῖσε θεοφιλέστατοι πρόεδροι συν-
οικεῖν ταῖς ἰδίαις γαμεταῖς, καὶ
μετὰ τὴν ἐπ' αὐτοῖς προελθοῦσαν
χειροτονίαν οὐ παραιτοῦνται, πρόσ-
κομμα τοῖς λαοῖς ἐντεῦθεν τιθέν-
τες καὶ σκάνδαλον. Πολλῆς οὖν ἡ-
μῖν σπουδῆς οὕσης τοῦ πάντα πρὸς
ὠφέλειαν τῶν ὑπὸ χεῖρα ποιμνίων
διαπράττεσθαι, ἔδοξεν, ὥστε μηδὲ
μῶς τὸ τοιοῦτον ἀπὸ τοῦ νῦν γίνε-
σθαι. Τοῦτο δὲ φαμεν οὐκ ἐπ' ἀθε-
τήσει ἢ ἀνατροπῇ τῶν ἀποστολικῶς
νενομοθετημένων, ἀλλὰ τῆς σωτη-
ρίας καὶ τῆς ἐπὶ τὸ κρεῖττον προ-
κοπῆς τῶν λαῶν προμηθούμενοι, καὶ
τοῦ μὴ δοῦναι μῶμόν τινα κατὰ τῆς
ιερατικῆς καταστάσεως· φησὶ γὰρ
ὁ θεῖος ἀπόστολος· « Πάντα εἰς δό-
ξαν θεοῦ ποιεῖτε· ἀπρόσκοποι γί-
νεσθε καὶ Ἰουδαίοις καὶ Ἑλλησι καὶ
τῇ ἐκκλησίᾳ τοῦ θεοῦ, καθὼς καὶ γὰρ
πάντα πᾶσιν ἀρέσκω, μὴ ζητῶν τὸ
ἑμαυτοῦ συμφέρον, ἀλλὰ τὸ τῶν πολ-
λῶν, ἵνα σωθῶσι· μιμηταὶ μου γί-
νεσθε, καθὼς καὶ γὰρ Χριστοῦ. » Εἰ δὲ
τις φωραθεῖ τὸ τοιοῦτον πράττων,
καθαιρείσθω.

ausus facere, deponatur. Si quis
autem eorum qui in clerum acce-
dunt, velit lege matrimonii mulieri
coniungi, antequam subdiaconus vel
diaconus vel presbyter ordinetur,
hoc faciat.

XII

Quod nulli episcopo liceat post or-
dinationem una cum uxore habitare.

Porro hoc quoque ad nostram co-
gnitionem pervenit, quod in Africa et
Libya et aliis locis quidam ex iis
qui illic sunt deo amantissimi prae-
sules cum propriis uxoribus, etiam
postquam ad eos processit ordina-
tio, una habitare non recusant, ex
eo populis offendiculum et scanda-
lum afferentes. Cum itaque studium
nostrum eo magnopere tendat, ut
omnia ad gregis nobis traditi utili-
tatem fiant, visum est ut nihil eius-
modi deinceps ullo modo fiat. Hoc
autem dicimus, non ad ea abolenda
et evertenda, quae apostolice antea
condita sunt, sed populorum salu-
tem et ad meliora progressionem pro-
curantes et ne status ecclesiasticus
ullo probro afficiatur: dicit enim di-
vinus apostolus: « Omnia ad dei
gloriam facite, sine offendiculo esto-
te et Iudaeis et Graecis et dei ec-
clesiae, quemadmodum et ego in
omnibus placeo, non quaerens meam
utilitatem, sed multorum, ut salven-
tur; imitatores mei estote, sicut et
ego Christi ». Si quis autem tale
quid agere deprehensus fuerit, de-
ponatur.

IF

XIII

Περὶ πρεσβυτέρων καὶ διακόνων καὶ ὑπο-
διακόνων τὰς ἰδίας γαμετὰς ἔχειν.

Quod presbyteri, diaconi et subdia-
coni suas uxores habere possint.

Ἐπειδὴ ἐν τῇ Ῥωμαίων ἐκκλησίᾳ ἐν τάξει κανόνος παραδεδοσθαι διέγνωμεν, τοὺς μέλλοντας διακόνου ἢ πρεσβυτέρου ἀξιουῖσθαι χειροτονίας καθομολογεῖν, ὡς οὐκέτι ταῖς ἑαυτῶν συνάπτονται γαμεταῖς, ἡμεῖς τῷ ἀρχαίῳ ἐξακολουθοῦντες κανόνι τῆς ἀποστολικῆς ἀκριβείας καὶ τάξεως, τὰ τῶν ἱερῶν ἀνδρῶν κατὰ νόμους συνοικέσια καὶ ἀπὸ τοῦ νῦν ἐρρῶσθαι βουλόμεθα, μηδαμῶς αὐτῶν τὴν πρὸς γαμετὰς συνάφειαν διαλύοντες, ἢ ἀποστεροῦντες αὐτοὺς τὴν πρὸς ἀλλήλους κατὰ καιρὸν τὸν προσήκοντα ὁμιλίαν. Ὡστε, εἴ τις ἀξίος εὐρεθῆι πρὸς χειροτονίαν ὑποδιακόνου ἢ διακόνου ἢ πρεσβυτέρου, οὗτος μηδαμῶς κωλυέσθω ἐπὶ τοιοῦτον βαθμὸν ἐμβιβάζεσθαι, γαμετῇ συνοικῶν νομίμῳ· μήτε μὴν ἐν τῷ τῆς χειροτονίας καιρῷ ἀπαιτεῖσθω ὁμολογεῖν, ὡς ἀποστήσεται τῆς νομίμου πρὸς τὴν οἰκείαν γαμετὴν ὁμιλίαν, ἵνα μὴ ἐντεῦθεν τὸν ἐκ θεοῦ νομοθετηθέντα καὶ εὐλογηθέντα τῇ αὐτοῦ παρουσίᾳ γάμον καθυβρίζειν ἐκβιασθῶμεν, τῆς τοῦ εὐαγγελίου φωνῆς βοώσης· « Ἄ ὁ θεὸς ἔξευξεν, ἄνθρωπος μὴ χωριζέτω » καὶ τοῦ ἀποστόλου διδάσκοντος· « Τίμιον τὸν γάμον καὶ τὴν κοίτην ἀμίαντον, καὶ· « Δέδεσαι γυναικί; μὴ ζητεῖ λύσιν. »

Ἴσμεν δέ, ὡσπερ καὶ οἱ ἐν Καρθαγένῃ συνελθόντες, τῆς ἐν βίῳ σεμνότητος τῶν λειτουργῶν τιθέμενοι πρό-

Quoniam in Romana ecclesia pro canonis ordine traditum esse cognovimus, ut diaconi vel presbyteri, qui ut ordinentur digni existimati sunt, profiteantur se non amplius suis uxoribus coniungendos, nos antiquum canonum apostolicae perfectionis ordinisque servantes, hominum qui sunt in sacris coniugia etiam ex hoc temporis momento firma et stabilia esse volumus, nequaquam eorum cum uxoribus coniunctionem dissolventes vel eos mutua tempore convenienti consuetudine privantes. Quamobrem si quis dignus inventus fuerit qui subdiaconus vel diaconus vel presbyter ordinetur, is ad talem gradum assumi nequaquam prohibeatur, si cum legitima uxore cohabitaret. Sed neque ordinationis tempore ab eo postuletur, ut profiteatur se a legitima cum propria uxore consuetudine abstenturum, ne ex eo a deo constitutas et sua praesentia benedictas nuptias iniuria afficere cogamur, evangelica voce exclamante: « Quae deus coniunxit, homo ne separet », et apostolo docente: « Honorabiles nuptias et thorum immaculatum », et: « Alligatus es uxori? noli quaerere solutionem ».

Scimus autem, quod et qui Carthagine convenerunt, ministrorum gravitatis in vita curam gerentes dix-

νοϊαν, ἔφασαν, 'ὥστε τοὺς ὑποδιακόνους, τοὺς τὰ ἱερὰ μυστήρια ψηλαφῶντας, καὶ τοὺς διακόνους καὶ πρεσβυτέρους κατὰ τοὺς ἰδίους βρους καὶ ἐκ τῶν συμβίων ἐγκρατεύεσθαι,' 'ἵνα καὶ τὸ διὰ τῶν ἀποστόλων παραδοθὲν καὶ ἐξ αὐτῆς τῆς ἀρχαιότητος κρατηθὲν, καὶ ἡμεῖς ὁμοίως φυλάξωμεν, καιρὸν ἐπὶ παντὸς ἐπιστάμενοι πράγματος καὶ μάλιστα νηστείας καὶ προσευχῆς· χρῆ γὰρ τοὺς τῷ θυσιαστηρίῳ προσεδρεύοντας ἐν τῷ καιρῷ τῆς τῶν ἁγίων μεταχειρήσεως ἐγκρατεῖς εἶναι ἐν παῖσιν, ὅπως δυναθῶσιν, ὃ παρὰ τοῦ θεοῦ ἀπλῶς αἰτοῦσιν, ἐπιτυχεῖν.'

Εἴ τις οὖν τολμήσῃ, παρὰ τοὺς ἀποστολικούς κανόνας κινούμενος, τινὰ τῶν ἱερωμένων, πρεσβυτέρων φάμεν, ἢ διακόνων ἢ ὑποδιακόνων, ἀποστερεῖν τῆς πρὸς τὴν νόμιμον γυναῖκα συναφείας τε καὶ κοινωνίας, καθιρεῖσθω· ὡσαύτως καὶ εἴ τις πρεσβύτερος ἢ διάκονος, τὴν ἑαυτοῦ γυναῖκα προφάσει εὐλαβείας ἐκβάλλῃ, ἀφοριζέσθω· ἐπιμένων δέ, καθιρεῖσθω.

Κς

Περὶ τοῦ μετέχειν καθέδρας μόνης τὸν κατ' ἄγνοιαν ἀθέσμῳ γάμῳ περιπαρέντα πρεσβύτερον.

Πρεσβύτερον τὸν κατὰ ἄγνοιαν ἀθέσμῳ γάμῳ περιπαρέντα, καθέδρας μὲν μετέχειν, κατὰ τὰ ὑπὸ τοῦ ἱεροῦ κανόνος ἡμῖν νομοθετηθέντα, τῶν δὲ λοιπῶν ἐνεργειῶν ἀπέχεσθαι· ἀρκετὸν γὰρ τῷ τοιούτῳ ἢ συγγνώμῃ εὐλογεῖν δὲ ἕτερον τὸν τὰ οἰκεία τημελεῖν ὀφείλοντα τραύματα, ἀνακόλουθον· εὐλογία γὰρ ἁγιασμοῦ

runt: «Ut subdiaconi, qui sacra mysteria contrectant, et diaconi et presbyteri secundum easdem rationes a consortibus abstineant», «ita ut et nos quod traditum est per apostolos et ab ipsa usque antiquitate servatum, similiter servemus, tempus pro omni re decernentes et maxime in ieiunio et oratione; oportet enim eos qui divino altari assident, in sanctorum tractandorum tempore esse in omnibus continentes, ut possint id quod a deo simpliciter petunt, obtinere». Si quis ergo praeter apostolicos canones incitatus sit aliquem eorum qui sunt in sacris, presbyterorum, inquam, vel diaconorum vel subdiaconorum coniunctione cum legitima uxore et consuetudine privare, deponatur; similiter et si quis presbyter vel diaconus suam uxorem pietatis praetextu eiecerit, segregetur; et si perseveret, deponatur.

XXVI

Quod presbyter ex ignorantia illicitis nuptiis implicatus sola cathedra participet.

Presbyterum qui per ignorantiam illicitis nuptiis est implicatus, esse quidem cathedrae participem, secundum legem a nobis sacro canone datam, a reliquis autem operationibus abstinere; eiusmodi enim clerico satis est si venia detur; ut is autem benedicat, qui debet propria curare vulnera, non est consen-

μετάδοσις ἐστίν, ὁ δὲ τοῦτο μὴ ἔχων διὰ τὸ ἐκ τῆς ἀγνοίας παράπτωμα πῶς ἑτέρῳ μεταδώσει; Μήτε τοίνυν δημοσίᾳ μῆτε ἰδίᾳ εὐλογεῖτω, μῆτε τὸ τοῦ Χριστοῦ σῶμα κατανεμέτω ἑτέροις, μῆτε τι ἄλλο λειτουργεῖτω· ἀλλ' ἀρκούμενος τῇ προεδρίᾳ, προσκλαιέτω τῷ κυρίῳ συχωρηθῆναι αὐτῷ τὸ ἐκ τῆς ἀγνοίας ἀνόμημα. Πρόδηλον γὰρ ὡς ὁ τοιοῦτος ἄθεσμος γάμος διαλυθήσεται καὶ οὐδαμῶς ὁ ἀνὴρ μετουσίαν ἔξει πρὸς τὴν δι' ἧς τῆς ἱερᾶς ἐνεργείας ἐστέρηται.

A

Περὶ τοῦ μὴ συνοικεῖν τοὺς ἐκ συμφωνίας σωφρονεῖν ἐπαγγελομένους.

Πάντα πρὸς οἰκοδομὴν τῆς ἐκκλησίας βουλόμενοι διαπράττεσθαι, καὶ τοὺς ἐν ταῖς βαρβαραῖς ἐκκλησίαις ἱερέας οἰκονομεῖν διεγνώκαμεν. Ὡστε, εἰ τὸν ἀποστολικὸν κανόνα, τὸν περὶ τοῦ 'προφάσει εὐλαβείας τὴν οἰκίαν γαμετὴν μὴ ἐκβάλλειν,' ὑπερανταβαίνειν οἴονται δεῖν καὶ πέραν τῶν ὀρισθέντων ποιεῖν, ἐκ τούτου τε μετὰ τῶν οἰκείων συμφωνοῦντες συμβίῳν τῆς πρὸς ἀλλήλους ὁμιλίας ἀπέχονται, ὀρίζομεν, τούτους μηκέτι ταύταις συνοικεῖν καθ' οἷονδήποτε τρόπον, ὡς ἂν ἡμῖν ἐντεῦθεν ἐντελεῖ τῆς ὑποσχέσεως παρέξοιεν τὴν ἀπόδειξιν. Πρὸς τοῦτο δὲ αὐτοῖς οὐ δι' ἄλλο τι ἢ διὰ τὴν τῆς γνώμης μικροψυχίαν καὶ τὸ τῶν ἡθῶν ἀπεξενωμένον καὶ ἀπαγῆς ἐνδεδώκαμεν.

taneum; benedictio enim sanctificationis impertitio est, qui autem istam propter delictum ex ignorantia non habet, quomodo alteri impertiet? Nec ergo publice nec privatim benedicat, nec corpus domini aliis distribuat, nec aliquid aliud ministerium obeat; sed prima sede contentus, domino defleat, ut illi ex ignorantia peccatum remittatur. Manifestum enim est, quod nefarium coniugium dissolvetur, nec vir cum ea ullo modo consuetudinem habebit, per quam sacris operandis privatus est.

XXX

Quod mutuo ex consensu continentiam coniugalem promittentes una non habitent.

Ad ecclesiae aedificationem omnia facere volentes, etiam sacerdotes qui sunt in barbaricis ecclesiis dispensare constituimus. Quare, si apostolicum canonem de « uxore non eiicienda pietatis ac religionis praetextu » se transgredi debere existimant et ultra ea quae constituta sunt facere, et ideo communi cum suis consortibus consensu inito, a mutua consuetudine abstinent, statuimus, eos non amplius cum illis ullo modo cohabitare debere, ut ex eo nobis perfectam sui promissi demonstrationem praebeant. Hoc autem illis non propter aliud quam propter eorum pusillanimitatem, externosque ac non satis firmos mores concessimus.

MH

Ὅτι δεῖ τὴν κατὰ κοινὴν συμφωνίαν δια-
 ζευθεῖσθαι τοῦ χειροτονηθέντος ἐπισκόπου
 ἐν μοναστηρίῳ εἰσεῖναι.

Ἡ τοῦ πρὸς ἐπισκοπῆς προεδρίαν
 ἀναγομένου γυνή, κατὰ κοινὴν συμ-
 φωνίαν τοῦ οἰκέλου ἀνδρὸς προδια-
 ζευθεῖσα, μετὰ τὴν ἐπ' αὐτῷ τῆς
 ἐπισκοπῆς χειροτονίαν ἐν μοναστη-
 ρίῳ εἰσὶτω πόρρω τῆς τοῦ ἐπισκόπου
 καταγωγῆς ὠκοδομημένῳ, καὶ τῆς
 ἐκ τοῦ ἐπισκόπου προνοίας ἀπο-
 λυέτω· εἰ δὲ καὶ ἀξία φανείη, καὶ
 πρὸς τὸ τῆς διακονίας ἀναβιβαζέ-
 σθαι ἀξίωμα.

XLVIII

Quod communi consensu separata
 uxor episcopi iam ordinati monaste-
 rium ingredi debeat.

Uxor eius qui ad episcopalem digni-
 tatem promotus est, ex communi
 consensu a viro suo prius separata,
 postquam hic in episcopum est con-
 secratus, monasterium ingrediatur
 procul ab episcopi habitatione ex-
 structum et episcopi providentia
 fruatur; sin autem digna visa fue-
 rit, etiam ad diaconatus dignita-
 tem provehatur.

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