

Memorandum on Abp. Coccopalmerio's letter of 4 March 2011

On March 4th, 2011, Abp. Francesco Coccopalmerio, President of the Pontifical Council for Legislative Texts, issued a short response to a letter faxed him just two weeks earlier.¹ In his brief reply, the archbishop purports to offer—in a single, parenthetical remark—a clarification of what is, in fact, a complex and controversial canonical issue, namely, the scope of clerical continence under Canon 277.² The designation of his letter as only a “clarification” indicates that no formal interpretation of Canon 277 was intended, but because the letter comes from the President of the Pontifical Council for Legislative Texts, some will take his remark as settling a controverted canonical point. I do not believe that the archbishop intended such an understanding to be accorded his brief remark, but I write for those who might be susceptible to confusion in this regard.

Below I will show that, in light of the proper procedures for settling disputed questions of canon law, a parenthetical remark, even by one who holds high dicasterial office, carries no canonical weight and remains merely a personal opinion. Given, moreover, that the prelate's remark is informal, it is not surprising that he deals with none of the substantial objections to his position; if he *did* wish his opinion to have persuasive value, it would have needed to address a number of weighty objections. Finally, and unfortunately, when addressing a related canonical issue, the archbishop's letter fails to take into account an important updating of the law.

1. The archbishop's letter carries no canonical weight

According to article 155 of John Paul II's apostolic constitution *Pastor bonus* (1988), it is the responsibility of the Pontifical Council for Legislative Texts “to publish authentic interpretations [of universal laws] which are confirmed by pontifical authority, after having heard, in questions of major importance, the views of dicasteries concerned.”

The proper interpretation of Canon 277 is undoubtedly a matter upon which the PCLT *could* act, but it has not done so here: no papal approval of the archbishop's interpretation of Canon 277 is claimed, nor is there any indication that the views of other dicasteries were sought

¹ See *Roman Replies and CLSA Advisory Opinions 2011* (Canon Law Society of America, 2011) 18-20, where the letter (albeit misidentified as falling under Canon 227 instead of Canon 277) is provided in its Italian original and an English translation. It is also available on-line at <http://www.canonlaw.info/PDF-Coccopalmerio.pdf> .

² 1983 CIC 277. § 1. Clerics are obliged to observe perfect and perpetual continence for the sake of the kingdom of heaven and therefore are bound to celibacy which is a special gift of God by which sacred ministers can adhere more easily to Christ with an undivided heart and are able to dedicate themselves more freely to the service of God and humanity. § 2. Clerics are to behave with due prudence towards persons whose company can endanger their obligation to observe continence or give rise to scandal among the faithful. § 3. The diocesan bishop is competent to establish more specific norms concerning this matter and to pass judgment in particular cases concerning the observance of this obligation.

prior to releasing the letter, even though determining the scope of clerical continence would seem to qualify as “a question of major importance”. None of the characteristics associated with the *promulgation* of an official interpretation of law (see 1983 CIC 16) is apparent, doubtless for the reason that the archbishop is *not* interpreting Canon 277 on behalf of the PCLT, let alone is he doing so on behalf of the Church.

But, even though the archbishop’s letter lacks canonical authority, it cannot simply be ignored. Having been published, in two languages, in a respected and widely distributed resource, it will inevitably be consulted by others interested in questions surrounding the clerical obligation of continence. These other persons, many of whom will not be trained in canon law, need to be cautioned against ascribing to what they will see as, after all, an archbishop’s letter on dicasterial stationery, more importance than such a document actually enjoys.

Nevertheless, even though the archbishop’s letter cannot be considered a dicasterial decision, it still seems to represent the personal views of a prominent canon lawyer on a controverted canonical issue. Now the personal opinion of a canonist is only as persuasive as his or her assertions about the matter are sound. Insofar, moreover, as it represents the views of a prominent canonist on a matter that pertains to the good of the Church (1983 CIC 212 § 3), the archbishop’s letter is an appropriate object for reply by those especially qualified to offer same (1983 CIC 218).

2. The archbishop’s letter expresses a personal opinion on Canon 277 without advancing *arguments* for that opinion

The issue actually posed to the archbishop concerning the obligation of continence for married clerics was oddly phrased: “an aspirant to the Permanent Diaconate who is a married man has declared he will not practice ‘perfect and perpetual continence’ in accordance with Canon 277. He says that he has been told that men in the diocese have been given a general dispensation from this requirement.” On the basis of this narrative, it is possible to formulate a canonical question: “Are clerics who are not celibate nevertheless obligated to practice continence?”

Substantial arguments for and against the obligation of continence among married clerics are available and deserve careful evaluation.³ The archbishop simply answers, however, literally parenthetically, that married clerics “do not have the obligation of celibacy (and therefore of continence) during the marriage.” Such a remark expresses his opinion, I grant, but it does

³ My writings on clerical continence are of secondary importance compared to the great historical and theological studies offered by various other scholars, but mine provide a succinct overview of the issues involved. See, e.g., Edward Peters, “Canonical considerations on diaconal continence”, *Studia Canonica* 39 (2005) 147-180, available in PDF at <http://www.canonlaw.info/Studia%20c.%20277.pdf>, and Edward Peters, “Diaconal categories and clerical celibacy”, *Chicago Studies* 49 (2010) 110-116, available in PDF at http://www.canonlaw.info/a_deacons5.htm. For the most concise presentations of the ancient roots of perfect and perpetual continence among clerics in the West, see Alfons Maria Cdl. Stickler (Austrian prelate, 1910-2007), *The Case for Clerical Celibacy*, trans. B. Ferme, (Ignatius Press, 1995) 106 pp., from his *Seine Entwicklungsgeschichte und seine theologischen Grundlagen* (1993).

nothing to advance discussion the central issue, for no reasons or arguments in favor of this opinion are given, and instead, it is simply proffered. Naturally, one wonders on what basis the archbishop has come to the conclusion that married clerics in the West are not bound to continence.

A single comment on the text of, not Canon 277, but rather Canon 288,⁴ provides perhaps a glimpse into the archbishop's reasoning that married clerics are not required to practice continence. The archbishop mentions three *consequences* flowing from ordination (celibacy, continence, and an impediment against marriage), and asserts that "This is why canon 277 is not included in the list in canon 288." Although the antecedent for the word "this" is ambiguous, perhaps the archbishop means that the alleged non-applicability of (only) the *continence* obligation set out in Canon 277, in the case of married *deacons* (only), explains why Canon 288 does not bother to make mention of (any part of) Canon 277.⁵ But, if so, and however the archbishop's explanation of the text of Canon 288 might fare,⁶ his claim *about Canon 277* once again merely *asserts* the alleged non-obligation of continence to married clerics, and thus fails to advance discussion of the correct meaning of *Canon 277*.

A number of scholars and canonists argue that all clerics, including those married, are bound by Canon 277 to observe perfect and perpetual continence, and have offered extensive argumentation in favor of that position.⁷ According to the conventions of discourse, the burden shifts to those who disagree with this position to make their case(s) in accord with canon law and sound reasoning. Again, because the archbishop was only offering his personal opinion on Canon 277, in a parenthetical way at that, it is understandable that he did not offer support for his position, but because some might misconstrue his opinion as indicative of ecclesiastical thinking on the matter, it seems proper to sketch some of the points that a more formal stance against clerical continence would confront.

⁴ 1983 CIC 288. The prescripts of cann. 284, 285 §§ 3 and 4, 286, and 287 § 2 do not bind permanent deacons unless particular law establishes otherwise.

⁵ Although the archbishop's letter came in response an apparent inquiry about married deacons, Canon 277 does not distinguish between married clerics and single, or between deacons and priests (or bishops, for that matter, though that issue never arises). Mindful of the maxim, *Ubi lex non distinguit nec nos distinguere debemus*, a sound interpretation of Canon 277 must suffice for deacons *and* priests, married *and* single, or, it must provide a compelling basis for distinguishing among various kinds of clerics. None of these important considerations are alluded to in the archbishop's letter.

⁶ I suggest a simpler explanation for the absence of Canon 277 from Canon 288's list of exemptions from clerical obligations: the Legislator did not intend to exempt (married) permanent deacons from the clerical obligation of continence set out in Canon 277, any more than he wished to exempt permanent deacons (married or otherwise) from the clerical obligation of obedience and reverence set out in Canon 273, or from the clerical obligation to foster simplicity of life set out in Canon 282 § 1, or from the clerical obligation to avoid things unbecoming to the clerical state set out in Canon 285 § 1, and so on. None of these canons is listed in Canon 288 because the Legislator intended no exemptions from them. These kinds of considerations, among others, must be answered by anyone who wishes to use the *absence* of Canon 277 from Canon 288's list of *exemptions* to claim that married clerics do *not* need to observe continence.

⁷ I have posted an extensive bibliography of the chief works, published and non-published, asserting the continence obligation of all clerics in the West, here: http://www.canonlaw.info/a_deacons.htm.

3. Sketch of arguments upholding the obligation of continence for all clerics in the Western Church

As noted above, many canonical, theological, and historical arguments work to uphold the obligation of continence for all Western clerics, but briefly, anyone arguing for the liceity of genital sexual activity among married clerics (including deacons, but even more so, priests) in the West, must explain how their views:

- square with the plain text of Canon 277 § 1, which expressly establishes *two* obligations, a primary one of continence for all clerics, and a secondary obligation of celibacy for (in light of other canons) most clerics;
- are consistent with the *unanimous* interpretation of all predecessor norms leading up to Canon 277 (e.g., 1917 CIC 132), whereby married clerics in the West have been required to observe “perfect chastity” after ordination;
- explain the decision by John Paul II to remove from the proposed text of Canon 277 language that would have exempted married deacons (but even then, not married priests) from observing continence and celibacy after ordination;
- account for the twice-recognized canonical *right* of the wife of a candidate for holy Orders to block the reception of that sacrament by her husband (see 1983 CIC 1031 § 2 and 1050, 3^o);
- trump (other than by resort to Canon 4, which I have argued elsewhere is bootless) the views of other canonists who have examined Canon 277 only to find, sometimes to their disquietment, that its text does, after all, require continence of all Western clerics; and,
- honor an unbroken Western tradition that scholars such as Liotta (1971), Cochini (1981/1990), Cholij (1989), Stickler (1993/1995), Heid (1997/2000), Keefe (1998), and McGovern (1998), have argued dates to the Apostolic Age and operates in protection of profound sacramental values.

4. Special difficulties with the discussion of norms for dispensation from celibacy

The final paragraph of the archbishop’s letter purports to explain the conditions under which a petition for a dispensation from celibacy can be sought by a formerly-married deacon who, after the death of his wife, wishes to marry again. Why the prelate chose to address this topic at all is not clear, for it seems not to have been raised by original inquiry. In any event, according to the archbishop’s letter, such dispensations

will eventually be granted only if the petitioner [demonstrates] one of three reasons: the great and proven usefulness of the deacon’s ministry to the diocese to which he is attached; the presence of children of tender age requiring maternal care; [or] the presence of elderly parents or in-laws requiring assistance (cf. Congregation for Divine Worship and Discipline of the Sacraments, Circular Letter of June 6th, 1997).

The archbishop's letter presents the 1997 CDWDS norms for dispensations from celibacy as reflective of current dicasterial discipline in this matter. The 1997 norms, however, are no longer in force; they were abrogated by papal directive more than years ago.

On July 13th, 2005, Francis Cdl. Arinze, then Prefect of the Congregation for Divine Worship and Discipline of the Sacraments, announced the decision of Pope Benedict XVI to replace the 1997 CDWDS dispensation provisions with new norms requiring the *concurrence* of three factors, namely, great pastoral usefulness of the cleric's ministry, and attestation of the bishop, and the presence of minor children.⁸ These and other important modifications in dicasterial practice were underscored by, among others, the USCCB's Secretariat for the Diaconate some six years ago.⁹ The invocation of abrogated norms concerning dispensations from celibacy further indicates, I think, that the archbishop's letter was not composed with the level of care commensurate with an official interpretation of law or even with the expression of a considered opinion.

Conclusion

It has been the goal of my writings on clerical continence to demonstrate, in accord with the accepted principles of canonical interpretation, that a great discontinuity has arisen between the plain text of Canon 277 (and the unanimous tradition behind that norm) and the understandings and consequent conduct of married deacons and priests in the West. I have proposed a number of ways that this discontinuity can be addressed over time, ways that, I suggest, preserve the ecclesial values behind clerical continence on the one hand, and respect the rights of married clergy and their wives on the other. I look forward to contributing to further informed discussions of this matter.

Meanwhile, Abp. Coccopalmerio's letter of March 4th, 2011, is not an official interpretation of Canon 277. As the mere expression of a personal opinion, moreover, it does not, in the absence of supporting argumentation, make a substantial contribution to this debate, though such does not seem to have been its intent. I hope that my comments on it will save others from invoking it as something more than a mere opinion concerning clerical continence.

Edward N. Peters, JD, JCD
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⁸ See "Document No. VIII: Competence for dispensations from the priesthood and diaconate", available in *Canon Law Society of Great Britain & Ireland Newsletter*, no. 143, (September, 2005) at 119. See also fn. 9.

⁹ See <http://www.bostondiaconate.org/News/CircularLetter0603.pdf>.