

Memorandum regarding Dcn. Duderstadt's remarks on Canon 277 and clerical continence

Deacon Peery Duderstadt's essay in the current *Chicago Studies*, "A Modest Proposal", attempts to reply to an article I wrote last year for *Chicago Studies*, "Diaconal Categories and Clerical Celibacy".¹ Duderstadt's work is poorly conceived and very poorly executed. While it would be tedious to discuss all of the flaws in his essay—let alone to ask *Chicago Studies* to publish my reactions—I feel that some response to him is in order. My criticism of Duderstadt's essay must, I fear, be blunt. I have no desire to embarrass anyone, of course, but it might be instructive for others to see, from time to time, just what kind of ineptitude is wont to present itself, even in respected venues, as informed refutation of my (and others') interpretation of the law.

Although I have read Duderstadt's essay carefully, I am still not sure what his "Modest Proposal" is. He made several proposals (some of which overlapped with mine), but none seemed to stand out as *the* "modest proposal" for purposes of reply. Taking, in any case, what might be his theme (namely, not to worry about the "crisis" that I allege concerning the future of celibacy in the West), Duderstadt does not believe there *is* a "crisis", *et voila*, crisis resolved. I, however, simply repeat my original observation: in the space of hardly two generations, the Roman Church has gone from many centuries of having only a few married clergy in her ranks to having *tens of thousands of married clerics* (including scores of married priests) in her ranks. If Duderstadt does not see this dramatic shift as a "crisis" for the future of clerical celibacy, fine, but the burden is on him to *show* us why it is not. Simple math suggests the opposite.

That said, though, Duderstadt's main concern is not so much, I think, with my observations on celibacy, but with a deeper point I made in an earlier *Studia Canonica* article² and briefly alluded to in my *Chicago Studies* piece. Basically, I argued in *Studia* that Canon 277 of the 1983 Code³ obliges all clerics in the West, even married clerics, to "perfect and perpetual continence"; I showed that the canonical tradition behind Canon 277 *unanimously* understands the obligation of clerical continence this way; and I suggested that the current, near-total disconnect between canon law and tradition on one hand, and actual clerical practice on the other, cannot long stand without eventually doing damage to either or both considerations. All of this I set out in great detail in my *Studia* article and briefly referenced in *Studies*. I see no evidence, however, that Duderstadt understood, or even read, the *Studia* article. He certainly has made no coherent attempt to grapple with the numerous points I have presented therein.

¹ Peery Duderstadt, "A Modest Proposal—A Reply to 'Diaconal Categories and Clerical Celibacy'", *Chicago Studies* 50 (2011) 236-241, and Edward Peters, "Diaconal Categories and Clerical Celibacy", *Chicago Studies* 49 (2010) 110-116, in searchable PDF here: <http://www.canonlaw.info/Chicago%20Studies.pdf>.

² Edward Peters, "Canonical considerations on diaconal continence", *Studia Canonica* 39 (2005) 147-180, searchable PDF here: <http://www.canonlaw.info/Studia%20c.%20277.pdf>.

³ 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.

As a result of his obliviousness to my *Studia* arguments on continence, Duderstadt seems unaware that many claims which he offers in rebuttal of my *Studies* article were anticipated and answered in the *Studia* article. But rather than rehash those points for a Memorandum audience that is likely well familiar with the flow of this discussion, I will instead offer readers a sense of the futility associated with trying to debate a highly complex matter with someone who seems quite unprepared even to discuss it. From a plethora of examples in Duderstadt's essay, I mention only the following concerns.

Much of Duderstadt's terminology is highly idiosyncratic. I don't know what he means by, for example, "the pre-ordination exercise of the diaconate"—nor, I suspect, does anyone else. The phrase makes as little sense as "the pre-wedding exercise of matrimony". Nor do I know what Duderstadt means when he writes "Whatever the intention of the Council Fathers, the restored deacons stand-alone, not advancing to the priesthood." Who are "restored deacons" and how do they "stand-alone"? And what does one make of Duderstadt's flatly false claim about Canon 277, namely, that no continence "requirement [was] ever put in place such as the one Professor Peters suggests." Good grief! The clerical continence requirement was *deliberately* established by Pope John Paul II as I *proved* by reviewing the legislative history of Canon 277!⁴ One can hardly reply to Duderstadt's assertions if one has no idea what he's talking about, and if, for that matter, he seems not to know himself.

Beyond offering readers these kinds of strange and/or plainly erroneous claims, however, at least some of Duderstadt's comments simply defy comprehension. Consider his remarks on Canon 288.

Canon 288 grants exemptions to permanent deacons from five basic clerical obligations which are set out in other canons.⁵ Now, as best as I can tell, Duderstadt thinks that three of these obligations, namely those in cc. 285 § 3 (which Duderstadt misidentifies as 255 § 3), 286, and 287 "should stand as stated for deacons." In other words, it seems, Duderstadt thinks that deacons should *not* be exempt from these clerical obligations. Okay, I think his opinion here is shortsighted, but it is intelligible.

But, having just told us that the list of exemptions set out for permanent deacons in Canon 288 should be *reduced*, Duderstadt then writes: "If we are looking [to] have a level playing field, then the exemptions stated in Can. 288 should apply equally to all clerics period, whether priest or deacon, celibate or married." What can Duderstadt possibly mean now? If the selective exemptions set out in Canon 288 apply to *all* clerics under *all* circumstances, then Canons 284, 285 §§ 3 and 4, 286, and 287 § 2 simply disappear, in that a law for clerics from which all clerics ("period", no less) are exempt, is an absurdity. Again, it should not be the task of Duderstadt's readers to try to figure out, time and again, what he is trying to say; it is his responsibility to express himself competently.

But beyond these and many other violations of the basic norms for written expression, many of Duderstadt's other assertions reveal his pervasively poor grasp of the most basic issues in this debate. Consider this Duderstadt comment against clerical continence for married clergy: "Why constrain what is an inherent component, what in fact is a requirement for the validity (canonical) and legality (civil) of the sacrament at the time of its being covenanted?"

Where to begin?

⁴ Besides my *Studia* article, at pp. 167-171, see also <http://www.canonlaw.info/PDF-MEMO%20on%20277.pdf>.

⁵ 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.

- With his first phrase, Duderstadt tosses out more than 800 years of unbroken canonical interpretation—in place since the School of Paris prevailed over the Bolognese masters⁶—that *consent* to marriage (duly offered by persons capable at law), and *not sexual relations*, makes marriage *valid*. Whether one looks back to the marriage of St. Joseph and Our Lady, or forward to the Johanno-Pauline Code,⁷ it is legitimate *consent* that gives rise to valid marriage, *not* sexual intercourse. Moreover, once consummation has occurred, even a life-time of continence has absolutely *no* effect on the validity of any marriage or on the extrinsic indissolubility of Christian marriage.⁸
- As for Duderstadt’s assertion that continence impacts the “legality (civil)” of marriage, I have no idea what he’s talking about. Duderstadt brought it up, though, so it is for him to tell us how civil law takes cognizance of sexual relations in assessing the “legality (civil)” of marriage.
- Finally, neither the canon law on consummation nor any civil law factors *whatsoever* determine whether a marriage is a “sacrament”.

If someone wishes to be taken seriously as a contributor to this important and complex discussion, he must first understand these elementary aspects of law and theology. It should not be incumbent on a few of us to keep explaining such basic concepts to every interlocutor who thinks he has an opinion worth expressing.

The one resource to which Duderstadt makes resort is the *Our Sunday Visitor Catholic Encyclopedia* (1991). Now, the OSVCE is a handy desk reference (indeed, I have one in arm’s reach!) and I am proud to have contributed more than 200 entries to it, but the OSVCE does not rank, or pretend to rank, as a *scholarly* reference work on par with the kinds of resources that I and several others have brought to bear on this matter. But, humoring Duderstadt’s invocation of the OSVCE as an authority, he seems to have completely missed the very point of the OSVCE passage on “continence” that he quoted and italicized: “The term continence is also used to refer to complete abstention from sexual pleasure. *Attention to the context* will determine the sense in which the term [continence] is meant.”

Exactly. And the *context* of the obligation of clerical continence as set out in Canon 277 is *holy orders*, *not marriage*. Grasp that, and one has the essence of the thing.

Now, to prolong this reply would be to risk rehashing points that I have already made in copious detail in *Studia Canonica*, to a lesser degree in *Chicago Studies*, and in various articles and essays available on my website.⁹ If Duderstadt wishes to study those pieces and then try to offer *informed* criticism of them, I would be quite open to hearing from him. But continuing this level of discussion is not a good use of anyone’s time. + + +

Edward N. Peters, JD, JCD
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⁶ See, e.g., George Joyce, *Christian Marriage: an historical and doctrinal study* (Sheed & Ward, 1933) 58, 64-65.

⁷ 1983 CIC 1057. § 1. The consent of the parties, legitimately manifested between persons qualified by law, makes marriage; no human power is able to supply this consent.

⁸ Edward Peters, “A note on some misapplications of *Presbyterorum ordinis* 16”, *Fellowship of Catholic Scholars Quarterly* 34/2 (Summer 2011) 33-35, on-line at <http://www.canonlaw.info/FCSQ%2034.2.pdf>.

⁹ See generally http://www.canonlaw.info/a_deacons.htm.