

## CANON 277 §1

### OBLIGATION OF CONTINENCE FOR VALIDLY MARRIED CLERICS

*After reading on the internet that all permanent deacons are obliged by the code of canon law "to observe perfect and perpetual continence," a deacon and his wife are most disturbed and distressed to say the least. No one had told them that they could not live as husband and wife once he was ordained, but would have to live as brother and sister.*

*Does c. 277 § 1, which states "clerics are obliged to observe perfect and perpetual continence for the sake of the kingdom of heaven," apply to legitimately married permanent deacons as well as to those married deacons and priests, who had been non-Catholic clergy, but are now in full communion with the Catholic Church and have been ordained with permission from the Holy See?*

### OPINION<sup>1</sup>

According to c. 17, "Ecclesiastical laws must be understood in accord with the proper meaning of the words considered in their text and context. If the meaning remains doubtful and obscure, recourse must be made [... to the] circumstances of the law, and to the mind of the legislator."

**[1]** First a word about the context and circumstances of c. 277. For centuries the Western Church did not permit married men to receive sacred orders. In rare cases a married man was permitted to be ordained if his wife approved and gave up all marital rights. Usually their separation had to be recognized by civil law, provision for the raising of their children had to be guaranteed, and the wife had to enter a convent or make a perpetual vow of chastity. A famous example is that of an American couple Pierce and Venerable Cornelia Peacock Connelly, foundress of the Society of the Holy Child Jesus.

**[2]** During the 1950s, Pius XII authorized a number of married former Lutheran ministers in Germany who had entered full communion with the Church, to be ordained and to continue to live as married men. There were similar cases in Denmark and Sweden. Paul VI gave the same permission to several former Anglican priests in Australia, and John Paul II allowed a number of former Protestant ministers and Anglican (Church of England, Episcopalian) priests in Canada, the United Kingdom, and the U.S.A. to be ordained. In 2009 Benedict XVI with *Anglicanorum coetibus* authorized the ordinary of an ordinariate in the case of former Anglican deacons, priests, or bishops coming into full communion, and who fulfill the requisites established by canon law and are not impeded by irregularities or other impediments, to accept them as candidates for Holy Orders in the Catholic Church. The

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<sup>1</sup> For a canonical position contrary to that proposed in this article cf. Edward N. Peters <http://canonlawblog.blogspotcom/> and two carefully reasoned and written articles by him which can be downloaded from his web page: "Canonical Considerations on Diaconal Continence," *Studia Canonica* 39 (2005) 147-180; and "Diaconal Categories and Clerical Celibacy," *Chicago Studies* 49 (2010) 110-116. The author presents very valuable considerations concerning the opportuneness of the ordination of married men in the Western Church and the repercussion on clerical celibacy.

ordinary can also petition the Roman Pontiff, as a derogation from can. 277 §1, for the admission of other married men to the order of presbyter on a case by case basis, according to objective criteria approved by the Holy See (VI, §§ 1 and 2). It would seem that a derogation from can. 277 § 1 for the admission of "other married men," i.e., not previously ordained as Anglican deacons, priests, or bishops, includes both continence and celibacy. The circumstance and context in these cases was pastoral, i.e., to facilitate their full communion with the Church and the needs of the faithful. None of the official documents, including those subsequent to the promulgation of the 1983 code of canon law, have mentioned explicitly or implicitly, the obligation of continence for married men receiving orders.

**[3]** Because of pastoral needs Vatican II in *Lumen gentium* authorized the restoration of the permanent diaconate with the possibility of conferring the diaconate "on men of more mature age, even those living in the married state" (*in matrimonio viventibus*) (no. 29). Neither Vatican II nor any of the pontifical documents implementing the restoration of the permanent diaconate and its conferral on married men, mentioned an obligation of continence for married deacons. To the contrary the very words of *Lumen gentium* "*in matrimonio viventibus*" implicitly imply that married deacons and their wives would lead a normal married life, i.e., without an obligation of continence. This has been and is the common understanding by both clergy and laity. Only recently the contrary has been proposed as an interpretation of c. 277 § 1. If the contrary were the case, the obligation of continence for married deacons would have been stated clearly. One commentator states "Married deacons...are not obligated to keep perfect continence and may continue their normal married life."<sup>2</sup>

**[4]** Although c. 277 does not explicitly exclude legitimately married Latin priests and deacons from the obligation of perfect and perpetual continence, such an obligation is implicitly excluded by the circumstances and the whole context in which the law was written. This is confirmed by the almost universal understanding of the clergy and faithful, as well as that of most canonists when the permanent diaconate was restored, the code was revised, and married non-Catholic deacons, priests, and bishops have been accepted in full communion and ordained as deacons and priests in the Catholic Church.

**[5]** It would be most surprising, if not impossible, for Blessed John Paul II, who as a Council Father, voted to approve the restoration of the permanent diaconate for mature men *in matrimonio viventibus*, to have intended with the promulgation of the 1983 code of canon law (by stealth as it were, without warning) to oblige married deacons "to observe perfect and permanent continence." The same is true for his dispensing a widowed permanent deacon with young children and seeking to marry in order to have a mother for his children from the impediment c. 1087 invalidating attempted marriage, and at the same time to oblige the deacon and his new wife "to observe perfect and permanent continence." It would be most extraordinary for the Holy Father to permit married non-Catholic clergy men, who have come into full communion with the Church, to be ordained and oblige them "to observe perfect and permanent continence" without beforehand clearly and explicitly saying so.

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<sup>2</sup> Jorge de Oladuy, "Commentary on Canon 277," in *Exegetical Commentary on the Code of Canon Law*, ed. Ernesto Caparros, et al. (Chicago and Montreal: Midwest Theological Forum and Wilson & Lafleur, 2004) 2:349