

Memorandum on Abp. Coccopalmerio's second letter on Canon 277 § 1¹

The above-referenced letter contains Abp. Francesco Coccopalmerio's second set of "observations" on Canon 277 § 1.² The literary form of the archbishop's letter is not clear: on the one hand, it seems to be offered as an official "clarification" of an important canonical matter presented by the president of a major episcopal conference; on the other hand, it is neither an "authentic interpretation" (per c. 16 § 1) of, nor an "instruction" (per c. 34) regarding, Canon 277. So, the canonical weight to be ascribed to the prelate's letter is uncertain.

I address here, in the spirit of Canon 212 § 3,³ several concerns I have with the archbishop's letter, but I will not reexamine the wider debate over the proper interpretation of Canon 277, nor re-present the many arguments that I and others have adduced for the conclusion that Canon 277 (and the ancient tradition behind the canon) imposes an obligation of perfect and perpetual continence on *all* clerics in the West. Those arguments have been offered in copious detail in a number of respected venues—including doctoral dissertations, scholarly monographs, academic journals, and the Vatican's own website.⁴ It is, frankly, a source of some frustration that the numerous arguments holding Canon 277 to mean exactly what it says are almost never engaged by those who take Canon 277 to represent instead a radical break with long-standing Western clerical observance. Nevertheless, the failure of most critics to engage most of the arguments offered against their view does not require us to make all of our arguments anew every time this topic comes up. Those who wish to understand this matter must commit to studying it in its entirety.⁵

We may now turn to the archbishop's second letter on Canon 277.

¹ Canon 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 See PCLT 13095/2011, substantially reproduce herein. Abp. Coccopalmerio first responded to inquires about the meaning of Canon 277 § 1 on 4 March 2011. See *Roman Replies and CLSA Advisory Opinions 2011* (Canon Law Society of America, 2011) 18-20, where the archbishop's first letter (PCLT 12959/2011) is provided in its Italian original and in an English translation. The archbishop's first letter and my reply of 27 October 2011, are available here: <http://www.canonlaw.info/PDF-Cocco%20Reply.pdf>.

³ Canon 212. § 3. According to the knowledge, competence, and prestige which they possess, [the Christian faithful] have the right and even at times the duty to manifest to the sacred pastors their opinion on matters which pertain to the good of the Church and to make their opinion known to the rest of the Christian faithful, without prejudice to the integrity of faith and morals, with reverence toward their pastors, and attentive to common advantage and the dignity of persons.

⁴ See generally the extensive resources available at http://www.canonlaw.info/a_deacons.htm.

⁵ I would recommend starting with either my "Canonical considerations on diaconal continence", *Studia Canonica* 39 (2005)147-180, on-line here: <http://www.canonlaw.info/Studia%20c.%20277.pdf>, or 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). Note: all materials produced by me on Canon 277 after the publication of my *Studia* article assume the arguments I made in that article. From time to time I have offered additional arguments on Canon 277 or addressed ancillary points raised by the clerical continence debate, only to see various persons responding to those supplemental writings as if they represented the whole of my arguments regarding Canon 277. They do not.

| <p style="text-align: center;">ABP. COCCOPALMERIO'S SECOND LETTER ON CANON 277</p> | <p style="text-align: center;">RESPONSES OF DR. EDWARD PETERS</p> |
|---|---|
| <p>I refer to your letter of April 8, 2011 in which Your Excellency has requested this Pontifical Council to clarify whether married permanent deacons, so long as their marriage lasts, are bound to observe the perfect and perpetual continence indicated by can. 277 § 1 CIC.</p> | <p>The actual question posed by Abp. Dolan (President of the USCCB) is not offered here. That might be an inconsequential omission, of course; but on the other hand, knowing what the original phrasing of the question was might have helped contextualize Abp. Coccopalmerio's answer to it.</p> |
| <p>The question was raised because some have expressed the opinion that permanent deacons are also bound to the obligation which the said canon imposes on clerics in general.</p> | <p>This phrasing risks mischaracterizing the central question.</p> <p>Strictly speaking, no one argues that married permanent deacons “are” bound by perfect and perpetual continence; rather, the question is whether <i>canon law</i> obliges all Western clerics, even those married, to perfect and perpetual continence. I grant that the distinction is subtle, but it is very important.</p> <p>Even if, as Canon 277 expressly states, and as I and others argue, all clerics in the West are canonically bound to perfect and perpetual continence, precisely insofar as the obligation of continence imposed by canon law is <i>canonical</i>, it binds married clerics and their wives <i>only in accord with canon law</i>.</p> <p>Now, because virtually no married permanent deacons or their wives were ever informed of the obligations (that I and others argue are) imposed by Canon 277, they <i>could not</i> have consented to the surrender their marital rights; therefore, in accord with natural law and canonical equity, married deacons and their wives <i>are not</i> bound to observe perfect and perpetual continence—at this time, certainly, and (depending on some others factors) perhaps ever. It's a point I've made a several times, but which is routinely missed particularly in the uncontrolled milieu of the internet.⁶</p> <p>Instead, the primary questions before us are two-fold: first, <i>whether</i> married clerics in the West are canonically bound</p> |

⁶ To take just one example from among very many, the first post regarding this question on a prominent married deacon's website cast the question this way: “Does anyone seriously think that tens of thousands of married deacons—not to mention the hundreds of married priests—are now suddenly going to commit to stop having sex with their wives?” When the question is so contentiously rephrased, is it any wonder that a measured answer is difficult to present?

| | |
|---|--|
| | <p>to perfect and perpetual continence and, if so, what should be done <i>in the future</i> in regard to enforcing—or, if the Church sees fit, to changing—that law.⁷</p> <p>If, however, one approaches Canon 277 in terms of its even possibly demanding an <i>immediate</i> cessation of marital rights among married clergy (as the matter is frequently portrayed), one can hardly resist the pressure to come up with an interpretation, <i>any interpretation</i>, of the norm that avoids such a sudden and obviously harsh result. Adopting a ‘result-driven’ approach to the interpretation of canon law, however, is to replace careful inquiry into what the law actually says and means with one’s views of the ecclesiastical common good—rightly identified or not—in a quest to achieve (or at any rate, to avoid) a given outcome.</p> |
| <p>It should be noted that often the canonical discipline on a given topic is not inferred from the wording of a single legal precept, but rather from the whole set of existing regulation on the matter in the law of the Church, always in harmony with what has been stated by the Church's Magisterium. This is what can. 17 CIC prescribes.</p> | <p>All canonists know that the answer to a canonical question is seldom found in a single canon. My own work on Canon 277 <i>expressly</i> follows the techniques laid down in Canon 17 and takes into abundant consideration many other pertinent norms, canonical and ecclesiastical history, and the Church’s Magisterium. As mentioned above, it is a source of frustration that so few others have, despite Canon 17, taken into consideration other canon laws, canonical and ecclesiastical history, and magisterial statements on Western clerical continence in reaching <i>their</i> conclusions about Canon 277.</p> |
| <p>With regard specifically to the question above, after consultation with the Congregation for the Doctrine of the Faith and having made the necessary studies, this Pontifical Council offers the following observations.</p> | <p>It would be helpful to know what were considered “necessary studies” about this matter. Perhaps both sides in this debate are unaware of resources that the other finds significant. In any case, almost none of the major sources and studies that run counter to the archbishop’s views were addressed in his letter.</p> |
| <p>1. In can. 277, § 1 CIC, the requirement of perfect and perpetual continence is inseparably linked to the obligation of celibacy to which all clerics, in principle, are bound.</p> | <p>I don’t know what the phrase “inseparably linked” is supposed to mean in this context. The statement might be unremarkable, or, it might lay the foundation for a <i>petitio principii</i>, as follows: “If the Code speaks of continence, it means celibacy, and if it speaks of celibacy, it means continence”; therefore, if one waives the requirement of</p> |

⁷ Note, the question here is not whether the Roman Church *may* change her law on clerical continence (as she can with regard to celibacy); finer minds than mine can sort that out. The only question before us now is *whether* the Roman Church *has* changed her law regarding continence among married clerics. Those who claim she has changed her law bear the burden of proof, a burden not sustainable, I suggest, by surmises, conjecture, and suggestions from silence.

| | |
|--|---|
| | <p>celibacy, one waives the requirement of continence. But such circular reasoning begs the question.</p> <p>I and others have argued that <i>continence</i> is (and in the West, always has been) the fundamental value protected by Canon 277 and the tradition behind it, and that <i>celibacy</i>, more lately and rightly valued in its own right as “a special gift from God”, is the context in which most Western clerics live the more fundamental obligation of continence. Modifying the context in which clerical continence is lived, however, does not, and in the West never has, obviated the more fundamental obligation of continence among clerics. The 1983 Code and the canonical tradition behind it distinguish between the related concepts of continence and celibacy, but the West, while modifying at times its requirement of clerical <i>celibacy</i>, has <i>always</i> expected <i>continence</i> from all of its clerics, even those married.</p> <p>There is no serious question that for at least 1,500 years leading up to and beyond Vatican II, the West has expected perfect and perpetual continence from its married clerics <i>and their wives</i>, whose <i>consent</i> to such a surrender of <i>their</i> rights was a prerequisite to their husband’s ordination. The conciliar Fathers who wrote <i>Lumen gentium</i> were raised in this tradition, the 1917 Code and the unanimous commentary on it embraced it, and Paul VI’s establishment in 1967 of the diaconate as permanent state that could accept married men left that law undisturbed. If one wishes to conclude that 1983 Code has repudiated that well-settled tradition, one must explain how, without express reprobation of the law—and indeed with essentially the same words as the obligation has hitherto been imposed!—the canonical obligation of continence was suddenly and completely cancelled for married clerics.</p> |
| <p>Also, can. 1037 CIC requires that unmarried candidates for the permanent diaconate must assume the obligation of celibacy prior to ordination. Furthermore, can. 1087 CIC establishes an impediment to marriage for those in sacred orders.</p> | <p>These points are not in dispute.</p> <p>I may note, as an aside, that the obligation of celibacy incurred by widower clerics under Canon 1087 is <i>not</i> promised by them at their ordination. Rather, the obligation of celibacy attaches to them purely by operation of law, as do, I suggest, certain other obligations in this context.</p> |
| <p>For this reason, permanent deacons who are widowers cannot marry, unless being dispensed, and therefore are bound to observe perfect and perpetual continence.</p> | <p>This seemingly simple observation requires careful reflection.</p> <p>Widowers, insofar as they are single men, are bound to perfect continence under natural law and sound moral</p> |

| | |
|---|--|
| | <p>theology, but their continence need not be “perpetual” in that widowers per se may marry again and exercise their new marital rights. But our concern here is with <i>widower clerics</i>, men bound to celibacy by Canon 1087, which celibacy prevents them from ever marrying again (absent dispensation) and thus from engaging in marital relations.</p> <p>Now, the obligation of perfect continence for widower <i>clerics</i> arises from <i>two</i> sources: first, in common with all single Catholic men, from natural law and sound moral theology; and second, I have argued, from Canon 277. <i>Either</i> source would suffice to account for the <i>entire</i> obligation of perfect continence, so, if <i>either</i> source is demonstrated, the <i>entire</i> burden of perfect continence binds.</p> <p>Similarly, the obligation of perpetual continence for widower <i>clerics</i> arises from <i>two</i> sources: first, derivatively in virtue of the celibacy to which they are bound, as noted above; and second, directly, I have argued, from Canon 277. <i>Either</i> source would suffice to account for the <i>entire</i> obligation of perpetual continence, so, if <i>either</i> source is demonstrated, the <i>entire</i> burden of perpetual continence binds.</p> <p>Therefore the fact that some widower clerics can be dispensed from the celibacy imposed by Canon 1087 does <i>not</i>, standing alone, obviate the obligation of perfect <i>or</i> perpetual continence imposed by Canon 277, if said obligation can be demonstrated in accord with that canon. The whole point of this debate is that, in my view and that of others, a canonical obligation of perfect and perpetual continence <i>can</i> be demonstrated from Canon 277, leaving the question of celibacy <i>non-dispositive</i> of the more fundamental question of continence.</p> |
| <p>The particular discipline of these two last canons, 1037 and 1087 CIC, applicable to certain situations of permanent deacons, explains on the one hand why can. 288 CIC did not exempt in a general way "all" permanent deacons from the obligation of continence established by the can. 277 § 1 CIC; and on the other hand how it is evident from all these norms that the canon wanted to exempt married permanent deacons from such obligation of continence so long</p> | <p>I do not understand this statement. Canon 1037 applies to <i>single</i> candidates for orders, so its relevance to the question of <i>married</i> candidates is not clear, while Canon 1087 applies to <i>all</i> clerics without regard to their “certain situations”.</p> <p>Beyond that, the explanation proffered for the failure of Canon 288 to include Canon 277 in its list of exemptions for married permanent deacons is simply asserted as being required by what is essentially an <i>assumption</i> about the meaning of Canon 277 itself. But if one misconstrues what Canon 277 itself holds, one can easily misconstrue why it does or does not appear in other canons.</p> |

| | |
|--|--|
| as their marriage lasts. | |
| 2. Indeed, can. 1031 § 2 CIC admits married men to the clerical state in the particular case of permanent deacons, but states nothing about a hypothetical obligation to observe perfect and perpetual continence, as the Legislator would indicate if such an obligation were to be established. | <p>The precise extent of the clerical obligation of “perfect and perpetual continence” set out in Canon 277 might be disputed, but it is certainly <i>not</i> “hypothetical”. The obligation of clerical continence appears in the text of the law itself!</p> <p>To use the word “hypothetical” to describe the clerical obligation of perfect and perpetual continence—or for that matter, of celibacy—signals, I suggest, a predisposition to <i>assume</i> an interpretation of Canon 277 and to reach subsequent conclusions in accord with that assumption.⁸</p> |
| Ultimately, the fact that in order for a married man to be admitted to the Order of the diaconate, the consent of his wife is required (cfr. can. 1031, § 2 CIC) implies that an explicit consent would have been required for reasons of justice if the condition of permanent deacon had entailed the obligation of perfect and perpetual continence (cfr. can. 1055 CIC). | <p>I see no such implication.</p> <p>In accord with the accepted principles of canonical interpretation, I have amply glossed the canonical phrase “consent of the wife” in regard to her husband’s ordination. The canonical tradition <i>unanimously</i> uses that phrase to provide protection for a wife whose right to conjugal relations will be impacted by her husband’s continence obligations subsequent to his ordination. If one wishes to assert that the canonical term of art “consent of the wife” now means something wholly other than what canon law has always understood it to mean, the burden is on that one to prove the claim, and not merely to assert it.</p> <p>One must also explain, in that case, how it comes to be the consent of a third-party (i.e., not the authorized minister and not the recipient) is required for the liceity of <i>any</i> sacrament to be conferred on a <i>sui compos</i> adult. Such authority over the right of another adult Catholic to receive a sacrament would be unconscionable, <i>unless</i> the reception of that sacrament directly impacted the fundamental <i>rights</i> of the third-party.</p> |
| 3. Naturally, this canonical discipline does not state anything apart from what the Church’s Magisterium has already affirmed in this regard. | The referent for “this canonical discipline” is not clear, so I cannot respond to whatever is being claimed here. |
| In fact, the Dogmatic Constitution | Three documents are cited herein. |

⁸ I have never seen the obligation of continence among clerics described as “hypothetical”; perhaps an analogy can illustrate why it seems inappropriate to describe that obligation, even among married clerics, in such terms: Would one describe, say, the obligation of canonical form in marriage as “hypothetical” simply because it might be dispensed in particular cases? If not, then neither should one describe the clerical obligation of continence as “hypothetical”, even if one believes (wrongly, in my view) that said obligation can be dispensed for certain clerics.

| | |
|--|---|
| <p><i>Lumen gentium</i>, n. 29 (§ 2), and other successive normative documents of the Holy See, appear to take for granted that married permanent deacons live their marriage in the ordinary way (cfr., above all, CONGREGATIO DE INSTITUTIONE CATHOLICA <i>Ratio fundamentalis institutionis diaconorum permanentium</i>, <i>Institutio diaconorum</i> of February 22, 1998 (nn. 36-38, 62-63, 68); CONGREGATIO PRO CLERICIS, <i>Directorium pro ministerio et vita diaconorum permanentium</i>, <i>Diaconatus originem</i> of February 22, 1998 (nn. 7, 27, 33, 45, 50, 59-62, and particularly n. 61).</p> | <p><i>Lumen gentium</i> says nothing about the obligation of continence among married clerics. Because the canon law of its day, however, in accord with long-standing observance, expected (what is now termed) perfect and perpetual continence of all clerics, including those married, one must construe conciliar ‘silence’ on this matter as being, if anything, <i>consent</i> to that obligation, not rejection of it.</p> <p>The joint <i>Ratio fundamentalis</i> and <i>Directorium</i> post-date the 1983 Code, and neither document satisfies the canonical criteria by which universal legislation can be modified. They are canonically irrelevant to the question of how Canon 277 itself must to be interpreted.⁹</p> <p>That said, even if one were to grant that phrases like “living in marriage” threw some light on the mind of the author(s) of these documents, one may yet ask, what description of married men <i>wouldn’t</i> have done the same? <i>Any</i> adjectival or adverbial description of married men could be used to imply that married men were acting as married in all respects. I have found, however, no canonical tradition by which such phrases must be understood (let alone must they be understood as reversing ancient and current canon law for clergy), so the point need not detain us.</p> <p>As an aside, however, should we not be clear that marriage provides a man (and a woman, but our focus is on clerics) with much, much more than merely a context for licit sex? When a married man is ordained, he and his wife (I and others have argued) give up their right to one prized aspect of their state, yes, but only one. Every other benefit of marriage (sacramental, emotional, financial, practical, familial, and so on) remains in place after ordination, and the dicasterial descriptions of the married life of clerics cited here are consistent with this traditional understanding. In an age as saturated with sex as our own, the important, but hardly all-defining, place of sexual relations in marriage seems a point too often poorly understood.</p> |
| <p>In conclusion, the current canonical discipline does not require married permanent</p> | <p>The arguments presented in this letter do not sustain this conclusion, and almost none of the many arguments <i>against</i> the holding of this letter seem to have been</p> |

⁹ May I also suggest that listing a string of document paragraph numbers (which paragraphs might or might not even mention the subject under discussion) is *not* to offer an *argument* from those passages. Arguments in a debate must be made, and not simply be left for others to surmise on their own. In any event, I am aware of the few relevant passages in these cited paragraphs (for example, the lone dicasterial use of the phrase “a certain continence”), and have addressed them in my *Studia* article and/or in other resources listed in footnote 4, above. I would be happy to consider counter observations to my discussions of these passages if any are offered.

| | |
|---|--|
| <p>deacons, so long as their marriage lasts, to observe the obligation of perfect and perpetual continence established by can. 277, § 1 CIC for clerics in general.</p> <p>I hope that these clarifications, briefly presented in this letter, may be helpful to Your Excellency in indicating what the content of the canonical discipline is at this point.</p> | <p>adequately considered. The proper interpretation of Canon 277 is still in dispute.</p> <p>Short of an authentic interpretation of Canon 277 (or papal intervention, of course), I do not see how else the dispute regarding continence among married clerics in the West can be settled. Semi-official letters from dicastery officials do not carry the canonical weight necessary to resolve a dispute of this type, and so far, neither they nor the writings of other scholars seem to have addressed, let alone defeated, the argumentation presented for upholding the long-standing canonical obligation of perfect and perpetual continence for all clerics, even those married, in the West.</p> |
|---|--|

An important omission from the archbishop’s letter

Abp. Coccopalmerio’s letter does not address the continence obligation of married priests.

When I developed my *Studia* article on diaconal continence, I considered extending the argument to priests as well, and hesitated only because I did not have what I considered sufficient documentation regarding the so-called “Pastoral Provision” by which married ministers, mostly Anglicans, were coming to full communion and being ordained first to diaconate and then to priesthood. In retrospect, I need not have hesitated to make the case for priests. Even though the obligations of clerical continence in the West have always begun at diaconate (or sub-diaconate, depending on the time period), the arguments for such obligations, that I and others consider persuasive when applied to deacons, are stronger yet when applied to priests. To make the case for obligatory clerical continence among married deacons is, by definition, to have made it, *a fortiori*, for married priests.

But to defeat the continence obligation among deacons would *not* be to defeat it for priests, too. Even if some change in the law of continence could be established in regard to deacons (and recent develops such as *Omnium in mentem* imply, in some respects, a widening wedge between diaconate and sacerdotium), nothing, *absolutely nothing*, in the Western tradition can account for the abandonment of the obligation of perfect and perpetual continence among married priests.

What I might have suggested as a response to the USCCB’s inquiry

Without the text of the original question, one can only speculate about possible responses to it, but it seems that something indicating that the dicastery was aware of the discussion concerning Canon 277 and preferred to allow qualified ecclesiastics and scholars to prudently explore the matter in accord with their expertise would have served well. The dicastery could have, if it thought necessary, observed that no fundamental right of a person can be lost without free and informed consent. That phrasing would have allayed the conscience concerns of those ordained without knowledge of Canon 277 and, by following this debate closely, might wonder about their situation, without prematurely aligning one’s office with one side of the debate.

Four possible resolutions of the question

Without attempting to outline every logically conceivable resolution of this matter, four outcomes seem most germane.

1. The long-standing canonical obligation of perfect and perpetual continence for all clerics in the West is reaffirmed, reasonable accommodations are made for those ordained without adequate formation or consent to this obligation, and future married candidates for orders and their wives are formed to embrace it. Or,

2. The long-standing canonical obligation of perfect and perpetual continence for priests in the West (but not for deacons) is reaffirmed, reasonable accommodations are made for those ordained to priesthood without formation for or consent to this obligation, and future married candidates for priesthood and their wives are formed to embrace it. Or,

3. An Eastern-like obligation of “periodic” or “Levitical” continence for priests is formally adopted in the Western Church, reasonable accommodations are made for those ordained to priesthood without formation for or consent to this mitigated obligation, and future married candidates for priesthood and their wives are formed to embrace said lesser obligation. Or,

4. Any canonical obligation of continence among married deacons or priests in the West is formally abandoned, in accord with the *de facto* situation now.

I would not presume, of course, to tell the Roman Church which of these four options she should choose; I can only suggest that the present disconnect between the plain text of the law (and the ancient tradition behind it) on the one hand, and the virtually universal conduct of Western married clerics on the other, should not, for the sake of good order in the Church and the welfare of the faithful, be allowed to stand.

Either law must be adapted to embrace the conduct, or conduct must be amended to conform with law.

Respectfully submitted,

Edward N. Peters, JD, JCD, Ref. Sig. Ap.
16 February 2012

Original copies of this Memorandum to:

Abp. Francesco Coccopalmerio, President
Pontifical Council for Legislative Texts

Abp. Timothy Dolan, President
United States Conference of Catholic Bishops

Abp. Robert Carlson, Chairman
USCCB Committee on Clergy, Consecrated Life, and Vocations

Bp. Thomas Paprocki, Chairman
USCCB Committee on Canonical Affairs and Church Governance