

**THE ORIGIN AND NATURE
OF THE SUSPENSION *AD CAUTELAM*
OF ARTICLE 4 OF THE 1980
NORMAE PROCEDURALES
FOR DISPENSATIONS FROM CELIBACY**

(continues)⁶⁵

4. Vatican Council II

The documents of the Second Vatican Council make no reference to granting dispensations from priestly celibacy or even to the process of challenging the validity of orders. Neither of the two canonical methods of seeking relief from priestly celibacy through declaring obligations null or through dispensing from them ever made it into the final schema of any document from the Council, although both were discussed at length in the debates and interventions surrounding the schema of the decree *De Sacerdotibus Lapsis*, the preliminary document concerning priests who had left active ministry.

The schema of *De Sacerdotibus Lapsis* had been proposed for discussion by the Preparatory Commission for the Discipline of the Sacraments on June 16, 1962. John XXIII and numerous bishops had specifically requested a discussion of the topic of priests

⁶⁵ The first part of the article was published in *Periodica* 94 (2005) 647-680.

who had "defected", which makes it even more surprising that the schema never made it into the published documents⁶⁶. Most of the discussion was generated by the middle section of the schema, in which certain juridic remedies were proposed for the pastoral and canonical situation of priests who had left active ministry. P.G. Magee, in an extensive study of the Council's treatment of the question of priests who had left active ministry, has commented that the discussion of the Council Fathers took one of two fundamental directions, «one which aimed at a declaration of nullity (at least of the obligation itself), the other at a dispensation»⁶⁷. After centuries of simultaneous yet separate evolution, the two canonical paths of relief from celibacy through challenging validity and through the granting of dispensations were at last part of the same discussion. Their point of convergence was approaching.

The schema of *De Sacerdotibus Lapsis* had proposed allowing for the dispensation of priests from the obligation of priestly celibacy in certain circumstances, a radical step considering that the Code did not even acknowledge that such a dispensation existed and the whole tradition of jurisprudence leaned heavily in favor of requiring some action against validity. The schema proposed that:

After ordination, a cleric who acquires some physical or psychic ailment which is certain and incurable, rendering him incapable of observing the obligation

⁶⁶ Cf. P.G. MAGEE, *Dispensation from the Obligations of Priestly Celibacy* (cf. nt. 5), 3.

⁶⁷ P.G. MAGEE, *Dispensation from the Obligations of Priestly Celibacy* (cf. nt. 5), 335.

of celibacy, should be able to apply to the Holy See for reduction to the lay state, without the obligations of celibacy or the divine office⁶⁸.

Two items should be noted here. First, the schema's proposal would not require any attempt to prove that the obligation of celibacy had been invalidly assumed. Except for the extraordinary dispensations in England in 1554 and France in 1801, such an allowance had never existed in law or even in practice. Even the *dubia* raised by the Sacred Congregation for the Discipline of the Sacraments since 1917 and the promulgation of the *Regulae servandae* of 1931 presumed that the attempt to prove invalidity on expanded grounds had at least been tried and found lacking. Secondly, the schema necessarily asked both for a reduction to the lay state and a dispensation from celibacy attached to that reduction, since by the provision of c. 213 §2, reduction alone would not release one from the obligation of celibacy.

A second proposal was similar to the first but was based on the grounds of a moral impossibility of fulfilling chastity rather than on a physical or psychic ailment. It likewise sounded quite radical in the ears of

⁶⁸ CONGREGATION FOR DIVINE WORSHIP AND THE DISCIPLINE OF THE SACRAMENTS, Schema *De Sacerdotibus Lapsis*, June 16, 1962, in P.G. MAGEE, *Dispensation from the Obligations of Priestly Celibacy* (cf. nt. 5), 15. Original text reprinted in P.G. MAGEE, *Dispensation from the Obligations of Priestly Celibacy* (cf. nt. 5), 375: «Clerico, qui sacro ordine iam recepto, morbum contraxerit physicum aut psychicum certum et insanabilem, unde evaserit impar obligationi caelibatus ferendae, via pateat ad Sedem Apostolicam pro reductione ad statum laicalem, sine ullis caelibatus ac horarum canonicarum obligationibus».

many of the more conservative Council Fathers. Like the proposal before it, this second proposal would have resulted in a clear departure from the processes governed by cc. 1993-1998 and cc. 211-214:

After ordination, a cleric who finds himself in entirely extraordinary circumstances which render it morally impossible for him to observe chastity, and given certain concurrent circumstances, may apply to the Apostolic See for reduction to the lay state without the obligations of celibacy or the divine office⁶⁹.

Lastly, the schema proposed that the *dubium* concerning other concurrant causes which had been raised for years by the Sacred Congregation for the Discipline of the Sacraments should be attached to c. 214 §1 as a way to mitigate the severity of the canon. The proposal stated:

Whether there be grave doubt about the validity of sacred ordination or about grave fear and defect of ratification, and [whether] other causes concur, so that the Holy Father should be advised to grant a dispensation from the obligations of sacred ordination⁷⁰.

⁶⁹ CONGREGATION FOR DIVINE WORSHIP AND THE DISCIPLINE OF THE SACRAMENTS, Schema *De Sacerdotibus Lapsis*, June 16, 1962, in P.G. MAGEE, *Dispensation from the Obligations of Priestly Celibacy* (cf. nt. 5), 17. Original text reprinted in P.G. MAGEE, *Dispensation from the Obligations of Priestly Celibacy* (cf. nt. 5), 375: «Clericus, in sacro ordine constitutus, qui in extraordinariis prorsus versetur adiunctis propter quae moraliter impossibile ei sit, castitatem servare, concurrentibus quibusdam adiunctis, ab Apostolica Sede reductionem ad statum laicalem, sine ullis caelibatus ac horarum canonicarum obligationibus, implorare poterit».

⁷⁰ CONGREGATION FOR DIVINE WORSHIP AND THE DISCIPLINE OF THE SACRAMENTS, Schema *De Sacerdotibus*

Cardinals Ritter, Ruffini, Ottaviani, and Spellman opposed all three proposals, arguing that they would encourage priests to find reasons to seek dispensations. Cardinals Döpfner and Coussa argued in favor of the proposals⁷¹.

In its final vote, the Sacred Congregation for the Discipline of the Sacraments voted to support a reduction to the lay state and a dispensation from all clerical obligations *except celibacy* for those priests who had lost their vocation and desired a reduction to the lay state. The Congregation also voted that priests who had violated celibacy could not be dispensed at all without proving either the nullity of their orders or of the assumption of the obligations flowing from orders. Lastly, the Congregation rejected any attempt to relax the provisions of c. 214 by attaching the proposed *dubium* to the canon⁷².

Magee observes that the final vote made it clear that although the Congregation was more lenient in regard to other obligations attached to orders, the Congregation desired to retain in full the tradition whereby release from celibacy would be based

Lapsis, June 16, 1962, note 2, in P.G. MAGEE, *Dispensation from the Obligations of Priestly Celibacy* (cf. nt. 5), 27. Original text reprinted in P.G. MAGEE, *Dispensation from the Obligations of Priestly Celibacy* (cf. nt. 5), 377: «An exstet grave dubium de validitate Sacrae Ordinationis vel de gravi metu et rati habitationis defectu aliaque concurrant causae, ita ut consilium praestandum sit Sanctissimo pro dispensatione ab oneribus Sacrae Ordinationis, in casu».

⁷¹ Cf. P.G. MAGEE, *Dispensation from the Obligations of Priestly Celibacy* (cf. nt. 5), 15-19.

⁷² Cf. P.G. MAGEE, *Dispensation from the Obligations of Priestly Celibacy* (cf. nt. 5), 26.

solely upon proving invalidity⁷³. The canonical means of granting dispensations from celibacy, although discussed at length and central to the various proposals in the schema of *De Sacerdotibus Lapsis*, was completely excluded in the final vote. In the end, parts of chapter 1 of the schema were incorporated into sections of *Optatum Totius*, *Perfectae Caritatis*, and *Presbyterorum Ordinis*, but this material merely dealt with the pastoral solicitude which should be extended to priests. No mention of any priests who had defected or of any attempts to dispense them from priestly obligations ever made it into the published documents of the Council. Though many of the Council Fathers thought these matters needed serious attention, too many others thought that they were not suitable subject matter for the Council's attention⁷⁴.

At first glance, it might appear that the Council did not advance in any way the path of development which would result in the 1980 procedural norms and their suspension *ad cautelam*, but this was not the case. In the discussions surrounding the schema for *De Sacerdotibus Lapsis*, numerous Council Fathers had argued in favor of granting dispensations under certain circumstances. Having been brought out into the open, the concept of dispensing priests from celibacy would remain on the

⁷³ Cf. P.G. MAGEE, *Dispensation from the Obligations of Priestly Celibacy* (cf. nt. 5), 28.

⁷⁴ Cf. P.G. MAGEE, *Dispensation from the Obligations of Priestly Celibacy* (cf. nt. 5), 97. See 97-108 for a particularly thorough discussion of the Council's considerations on this point.

discussion table, even though the law and the Council documents themselves continued to make no acknowledgement that such a dispensation even existed.

5. Developments under Paul VI

With the arrival of the pontificate of Pope Paul VI, the pace increased dramatically at which the two separate paths for seeking relief from celibacy were converging, i.e., the path of declaring invalid the binding force of obligations and the path of dispensing from validly assumed obligations. Listening attentively to the discussions and interventions of the Council Fathers, Paul VI was well aware of the concern that many of them had expressed surrounding priests who had left active ministry. The Pope knew that a significant number of the Council Fathers supported the idea of a remedy that would reduce inactive priests to the lay state and which would also dispense them from celibacy. At the same time, he was equally well aware that other Council Fathers opposed the idea of attaching a dispensation from celibacy to the reduction to the lay state.

After carefully considering the issues involved, Paul VI instructed the Holy Office to establish a special commission with exclusive competency over all cases concerning sacred orders or the obligations arising from them. On February 2, 1964, the Holy Office issued new norms replacing those of 1931. These norms, issued through a circular letter addressed to ordinaries and religious superiors general, were entitled *Litterae circulares et normae ad causas parandas de sacra ordinatione eiusdemque*

*oneribus*⁷⁵ and streamlined the process for challenging validity. They still followed the traditional methodology of placing all actions against orders or their concomitant obligations under the umbrella of proving invalidity. Although explicit references to invalidity are largely absent from the norms themselves, the appendix clearly speaks of declarations of the nullity of sacred ordination or of obligations arising from ordination⁷⁶.

Two years later, in the midst of a flurry of changes occasioned by the Council, Paul VI issued a *motu proprio* letter in June of 1966 entitled *De episcoporum muneribus*. In it, he extended to diocesan bishops certain faculties that had previously been reserved to the Holy See. At the same time, he also reconfirmed the reservation of certain other faculties to himself, either personally or through the Sacred Congregations of the Roman Curia. In paragraph 9, Paul VI spoke of those dispensations which he expressly reserved to himself. First in the list was the dispensation from celibacy⁷⁷. This reaffirmation of

⁷⁵ SACRED CONGREGATION OF THE HOLY OFFICE, Circ. letter *Litterae circulares et normae ad causas parandas de sacra ordinatione eiusdemque oneribus*, Feb. 2, 1964, in X. OCHOA, *Leges ecclesiasticae post Codicem iuris canonici editae*. III. *Leges annis 1959-1968 editae*, Roma 1972, no. 3162, column 4463.

⁷⁶ SACRED CONGREGATION OF THE HOLY OFFICE, Circ. letter *Litterae circulares* (cf. nt. 75), no. 3162, column 4469: «[...] declaratio nullitatis sacrae ordinationis vel onerum eidem inhaerentium».

⁷⁷ Cf. PAUL VI, M.p. *De episcoporum muneribus*, June 15, 1966, §9, AAS 58 (1966) 470: «Nobis expresse reservamus dispensationes quae sequuntur: 1° Ab obligatione caelibatus seu a prohibitionem matrimonii contrahendi, qua diaconi et presbyteri

the canonical tradition of a dispensation from celibacy *per se*, rather than a broader reference to a dispensation from obligations attached to orders, was the first explicit reference to such a dispensation in a papal document since 1749, when Benedict XIV in his encyclical letter *Inter praeteritos* had reserved to himself the right to dispense clerics from priestly celibacy⁷⁸. By 1966, it was clear that the idea of a dispensation from celibacy itself was gaining a canonical foothold, though references to dispensations from clerical obligations in general, rather than to dispensations from celibacy in particular, would remain the norm for another fourteen years.

On June 24, 1967 Paul VI issued his encyclical letter *Sacerdotalis caelibatus*, turning unprecedented attention to the question of dispensations from the obligations arising from orders. In that encyclical, he expressed concern for those priests who had not been able to observe the obligation of celibacy:

Following the example of our immediate predecessors, we also have, in certain cases concerning ordination to the priesthood, been prepared to allow inquiry to extend beyond the provisions of the present canon law to other very grave reasons which give ground for really solid doubts regarding the full freedom and responsibility of the candidate⁷⁹.

astriguntur, etiam si ad statum laicalem legitime redacti aut regressi sint».

⁷⁸ Cf. BENEDICT XIV, Encyc. letter *Inter praeteritos* (cf. nt. 28), no. 404.

⁷⁹ PAUL VI, Encyc. *Sacerdotalis caelibatus*, June 24, 1967, no. 84, AAS 59 (1967) 690: «Vestigii insistentes, proximorum Decessorum Nostrorum, decernere volumus, ut in iudiciis ad sacerdotalem ordinationem spectantibus, instituendae investi-

Paul was referring to the third *dubium* raised by the sacred Congregation for the Discipline of the Sacraments on which an increasing number of dispensations had been based. This *dubium* had opened the door for the consideration of cases where coercion through grave fear could be not proved but where a grave doubt concerning it remained⁸⁰. Although grave doubt had gradually become a part of the approach to cases seeking reduction to the lay state since the *Regulae servandae* of 1931, it had never been actually legislated as proper grounds for reduction. It remained, as the Pope had said, beyond the provisions of the current law⁸¹.

It is important to note that the language of invalidity is largely absent from *Sacerdotalis caelibatus* but the canonical framework surrounding it was still deeply rooted in processes against validity. In the encyclical, Paul VI thereby brought to the point of merger the two separate paths of seeking relief from celibacy through declaring invalidity and through dispensations. It is also important to note that in *Sacerdotalis caelibatus*, Paul VI referred to dispensations from the obligations arising from ordination in general and not to any dispensation

gationes ad alios eosque gravissimos casus et rationes extendantur, in vigenti iure canonico non recensitos, cum inde gravia ac vera dubia oriri possint de sacerdotii candidatorum plena libertate et conscientia in oneribus suscipiendis [...]». English trans. in C. CARLEN, *The Papal Encyclicals*. V. 1958-1981, Ann Arbor (MI) 1981, 216.

⁸⁰ See above, section 3.3; also, see note 58.

⁸¹ Cf. PAUL VI, Encyc. *Sacerdotalis caelibatus* (cf. nt. 79) 690, no. 84.

from celibacy *per se*, but the time for that transition was approaching⁸².

Changes were coming rapidly. By 1969, the Holy Office had received so many requests to simplify and shorten the process of reduction to the lay state and dispensation from the obligations of orders that new norms were already being developed. Simplified norms were approved by a plenary session of the Holy Office on December 3, 1969 and were distributed to bishops for their comments. Pope Paul VI approved the new norms on Dec. 14, 1970, abrogating the norms of February 2, 1964, and on January 13, 1971 the Holy Office published the new norms with an attached circular letter addressed to all Ordinaries and moderators general of religious clerics⁸³.

With the publication of these norms, Paul VI merged the centuries old separate and distinct paths of two great canonical traditions, i.e., seeking relief from clerical obligations through proof of invalidity as codified in cc. 211-214 and cc. 1993-1998, and seeking relief through dispensations, not previously codified at all. What was the result? In a sort of

⁸² Paul VI was referring to dispensations that had been granted based upon the *dubium* of the Sacred Congregation for the Discipline of the Sacraments, which were dispensations «*ab oneribus sacrae ordinationis*». Cf. note 58.

⁸³ SACRED CONGREGATION FOR THE DOCTRINE OF THE FAITH, Decree *Normae ad apparandas in Curiis dioecesanis et religiosis causas reductionis ad statum laicalem cum dispensatione ab obligationibus cum sacra Ordinatione conexis*, Jan. 13, 1971, AAS 63 (1971) 303-308. And SACRED CONGREGATION FOR THE DOCTRINE OF THE FAITH, Circ. letter *Omnibus locorum Ordinariibus et Moderatores Generalibus Religionum clericalium*, Jan. 13, 1971, AAS 63 (1971) 309-312.

canonical *coup d'etat*, the tradition of dispensing clearly emerged as the more dominant of the two. This convergence of traditions and the emergence of dispensing as the now normative means for seeking relief from clerical obligations was to have a dramatic effect on cc. 211-214 and on cc. 1993-1998, with ramifications on c. 1997 in particular along with its required prohibition *ad cautelam*. Nine years later that ramification would have enormous influence on the 1980 suspension *ad cautelam*.

Until 1971, reduction to the lay state had always been treated separately from any release from the obligations connected to orders. As indicated in their full title, *Normae ad apparandas in Curiis diocesanis et religiosis causas reductionis ad statum laicalem cum dispensatione ab obligationibus cum sacra Ordinatione conexas*, the 1971 norms combined into a single process cases for reduction to the lay state with dispensations from the obligations connected to orders. In doing so, the 1971 norms combined cc. 213 and 214 in such a way as to retain the provisions of their first paragraphs and to abrogate the provisions of their second paragraphs, respectively. Now, in a single ecclesiastical process, one could simultaneously be legitimately reduced to the lay state by rescript (c. 213 §1) and be dispensed from the obligations arising from ordination (c. 214 §1) *including celibacy* (thus abrogating c. 213 §2) *without having to prove coercion by grave fear according to the norms of cc. 1993-1998*, (thus abrogating c. 214 §2)⁸⁴.

⁸⁴ In fact, no. 5, 1° expressly stated that reduction to the lay state was inseparably joined to a dispensation from the obliga-

The text of the new 1971 norms indicated that the process would no longer take the form of a judicial process because it would no longer seek to prove invalidity and that the competent authority should not establish an actual tribunal. Speaking of the new approach, the norms stated in no. 2, 2° that, «*ipsa [investigatio] non spectat ad demonstrandam, ad normam canonum 1993-1998, invaliditatem sacrae ordinationis vel susceptionis onerum*». For the first time in the Church's history, the question of validity was completely removed from the entire process. Instead, the investigation would look, «*tantum ad dispensationem ab oneribus concedendam, si casus fert, sacerdoti qui simul ad statum laicalem reducitur*».

This paradigmatic shift in the new norms of 1971 had immediate ramifications for the prohibition *ad cautelam* required by c. 1997. By removing any question of invalidity, the new norms removed the whole process from the provisions of cc. 1993-1998, rendering c. 1997 obsolete. The Church suddenly found itself without the protection of the caution expressed in c. 1997. Since this would not be a prudent course to take, it is not surprising that the precautionary provision of c. 1997 was reinserted only two articles later in the very same 1971 norms that had removed it. In no. 2, 4°, the norms stated that, «*Orator, postquam preces suo Ordinario porrexerit et donec responsio S. Congregationis perve-*

tions connected to ordination. See SACRED CONGREGATION FOR THE DOCTRINE OF THE FAITH, Decree *Normae ad apparandas* (cf. nt. 83) 306, no. 5: «Rescriptum complectitur inseparabiliter reductionem ad statum laicalem et dispensationem ab oneribus ex sacris ordinibus manantibus».

nerit, est ad cautelam ab exercitio ordinum prohibendus (Cfr. [sic] *can. 1997*)». By reinserting the provision of c. 1997 in a document now completely removed from challenges against validity, the new norms literally lifted the prohibition of c. 1997 out of its former context of cases challenging validity and placed it into an entirely new field of dispensing from obligations. With this shift, the development of the context of the 1980 suspension *ad cautelam* was quickly catching up to the development of the content.

Because the former context had questioned validity, the prohibition *ad cautelam* had been understood to be grounded in divine law, but what if the priest were not questioning the validity of his orders or the assumption of his obligations? What if he actually believed that his orders and the force of his obligations were valid? The new norms decreed that the prohibition was still to be required *ad cautelam*⁸⁵. Even though validity was no longer being challenged, the Church continued to err on the side of caution, aware as it was that even with processes merely seeking dispensations, the process could quite possibly stumble upon the invalidity of the ordination itself. The Church could not permit ministers who had initiated such a process to continue exercising orders that might well be proved (even inadvertently) to be invalid.

These 1971 procedural norms approved by Paul VI were unique in ecclesiastical legislation surrounding clerical obligations. They broke with the juris-

⁸⁵ Cf. A. BLAT, *Commentarium textus CIC* (cf. nt. 34), 533.

prudence of centuries. By combining into a single process reduction to the lay state and relief from clerical obligations, they managed to combine what had always been separate. By divorcing relief from obligations from the need to prove nullifying force or fear, they managed to separate what had always been combined.

Very early in their implementation, the new norms of 1971 led to some confusion. On June 26, 1972 the Holy Office issued a clarification of those 1971 norms in a document entitled *Declaratio quoad interpretationem quarundam dispositionum, quae Normis, die XIII Ianuarii 1971 editis, statutae sunt*⁸⁶. Serving merely as a clarification of the 1971 norms, the declaration did not actually alter the process. Two items are of note, however. First, in just one year after the 1971 norms were issued all references to any process challenging validity were entirely gone. The tie with the prior tradition had been quite effectively and permanently severed. Secondly, although the 1972 declaration made no reference to challenging validity, it still referred consistently to the dispensation of obligations connected to sacred orders, including celibacy, rather than to a dispensation from celibacy itself. In fact, nowhere did it mention a dispensation from celibacy *per se*. The 1972 declaration from the Holy Office would prove to be the last papal document in ecclesiastical law to treat specifically of a process

⁸⁶ SACRED CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Declaratio quoad interpretationem quarundam dispositionum, quae Normis, die XIII Ianuarii 1971 editis, statutae sunt*, June 26, 1972, AAS 64 (1972) 641-643.

to request a dispensation in general from the obligations connected to orders. Beginning with Pope John Paul II, all references to a process for requesting dispensations would focus on the dispensation from priestly celibacy *per se* which would carry with it all other dispensations and also the loss of the clerical state. This would be the context in which the 1980 suspension *ad cautelam* would be situated.

6. Developments under John Paul II

6.1 *The Circular Letter and Procedural Norms of October 24, 1980*

Pope John Paul II was elected to the See of Peter in October of 1978. Very early in his pontificate, he had demonstrated a concern for priests who were having trouble fulfilling the obligations of their commitment to celibacy. On April 8, 1979 he wrote about this concern in his first Holy Thursday Letter to Priests⁸⁷, expressing compassion for priests in their difficulties while affirming the value and need for priestly celibacy. It was just over one year later when the Sacred Congregation for the Doctrine of the Faith, at John Paul's prompting, published new norms on October 14, 1980⁸⁸.

⁸⁷ Cf. JOHN PAUL II, Letter *Ad universos Ecclesiae Sacerdotes, adveniente Feria V in Cena Domini*, April 8, 1979, AAS 71 (1979) 409-411.

⁸⁸ SACRED CONGREGATION FOR THE DOCTRINE OF THE FAITH, Decree *Normae procedurales* (cf. nt. 1), 1136-1137.

These new norms were accompanied by a circular letter entitled *Per litteras*⁸⁹. As indicated in the heading on the circular letter, *De modo procedendi in examine et resolutione petitionum quae dispensationem a caelibatu respiciunt*, the 1980 procedural norms initiated a process by which a priest could petition directly for a dispensation from celibacy. Just as effectively as the 1971 norms had removed cases from processes which sought to challenge validity and placed them under the rubric of seeking reduction to the lay state with accompanying dispensations, so too the 1980 circular letter effected a transition away from processes which sought reduction to the lay state with attached dispensations from obligations in general to processes which would simply seek dispensations from celibacy.

The transition occurred in a single sentence in paragraph 2 of *Per litteras*, in which the Congregation wrote that the difficulties of recent years were such that an increasingly significant number of priests had requested a, «*dispensationem ab obligationibus ex ipsorum sacerdotali ordinatione manantibus, peculiarique modo dispensationem a caelibatu*». This sentence constituted the last reference to a process for requesting a dispensation in general from obligations flowing from ordination and the beginning of consistently referring to the dispensation from celibacy. Henceforth, every reference in the process governed by these norms would be directed entirely and exclusively toward petitioning for a *dispensatio a caelibatu*, and the loss of the clerical state

⁸⁹ Cf. SACRED CONGREGATION FOR THE DOCTRINE OF THE FAITH, Circ. letter *Per Litteras* (cf. nt. 1), 1132-1135.

as well as the dispensation from all other clerical obligations would be inseparably attached to the reception of the dispensation from celibacy⁹⁰. The possibility of petitioning for a general dispensation from the obligations attached to ordination was not actually suppressed. Rather, the circular letter and procedural norms simply ceased to speak of it.

The circular letter in paragraph 5 identified which petitions the Sacred Congregation for the Doctrine of the Faith would consider and which it would not. Essentially, the Congregation would only consider petitions from two sets of priests. The first group were those priests who had left active ministry years earlier, who could not return to active ministry now, and who desired to regularize their present state. The other group were those priests who should not have been ordained in the first place because they lacked due freedom or responsibility or because their superiors during the time of formation failed to judge prudently whether or not the candidate was fit for orders. At one point, the circular letter did hint toward questions of validity when it spoke of candidates who may have lacked freedom, and the procedural norms in paragraph 6 directed that information be asked of the petitioner which could nullify the assumption of obligations, but the other categories of petitions which the Congregation was willing to consider had little or nothing to do with questions of validity. The 1980 dispensation from celibacy would continue in

⁹⁰ Cf. V. FERRARA, «Normae Substantivae ac Procedurales nunc vigentes in Pertractandis Causis de Dispensatione a Coelibatu Sacerdotali», *Appollinaris* 62 (1989) 517.

the path established by the 1971 norms in not requiring proof of invalid ordination or invalid assumption of the obligations flowing from ordination.

The 1980 procedural norms also created a hybrid-type of canonical process, neither truly judicial nor truly administrative. The special commission set up by the Holy Office in 1964 at the direction of Paul VI had put in place a judicial *processus* for examining petitions for reduction to the lay state, complete with a collegial tribunal, an *actor* who initiated an *actio*, a judge, a defender of the bond of ordination, etc. The whole process, since the time of Benedict XIV's *Si datam*, was still being conducted analogously to the method of a marriage tribunal.

Along with the paradigmatic shift in the 1971 norms had come a corresponding shift in the type of process employed. Paragraph 2 of the 1971 norms had removed the process from the judicial sphere and given to it the nature of an administrative process⁹¹. The tribunal was replaced with the bishop or his delegate, the *actor* became instead an *orator*, the *processus* became an *investigatio*. Under John Paul II, the circular letter and new 1980 norms blurred the lines somewhat between the judicial process of 1964 and the administrative process of 1971, so that today the process is described by commentators as "quasi-judicial"⁹², being neither entirely administrative nor

⁹¹ Cf. SACRED CONGREGATION FOR THE DOCTRINE OF THE FAITH, Decree *Normae ad apparandas* (cf. nt. 83), 304, no. 2, 2°.

⁹² Cf. E. COLAGIOVANNI, «De dispensatione a coelibatu» (cf. nt. 53), 232. For a superb treatment of the comparison and contrast of the processes of 1964, 1971, and 1980, the reader is

entirely judicial. The *investigatio* has been replaced by an *instructio* and the bishop or his delegate is to function as the *instructor*, but there is no return to a tribunal and the petitioner remains the *orator* rather than the *actor*⁹³. In the context of this quasi-judicial process, article 4 of the 1980 norms requires that the petitioner (*orator*) be suspended *ad cautelam* from the exercise of sacred orders.

The prohibition *ad cautelam* of c. 1997 had been carried over essentially intact and unaltered into the 1971 procedural norms, even though it suddenly found itself as part of a process simply for a reduction to the lay state and a dispensation from obligations connected to orders. The new procedural norms issued in 1980 altered the provision of c. 1997 in several important ways. The first sentence of article 4 of the 1980 procedural norms states:

*Recepta petitione, decernat Ordinarius an sit locus procedendi, et, in casu affirmativo, oratorem ab exercitio sacrorum Ordinum ad cautelam suspendat, nisi, ad protegendam bonam famam ipsius sacerdotis vel ad bonum communitatis tuendam, huiusmodi exercitium prorsus necessarium esse iudicaverit*⁹⁴.

The first of these alterations involves a change in wording from *prohibendus est* to *suspendat*. Why

referred to this article by E. Colagiovanni. See also V. FERRARA, «L'istituto canonico della dispensa pontificia» (cf. nt. 56), 518.

⁹³ Cf. E. COLAGIOVANNI, «De dispensatione a coelibatu» (cf. nt. 53), 232-236.

⁹⁴ The remaining sentence of article 4 merely states that the bishop can instruct the case himself or choose a delegate to do so, and a notary must attest to the authenticity of the acts.

did the 1980 norms change the wording from *clericus prohibendus est* to *Ordinarius oratorem suspendat*? Commentators are silent on this point. Was there a canonical precision intended by the substitution of the concept of suspension for prohibition? It seems not.

As has been seen, the prohibition in c. 1997 and its subsequent application in the 1971 procedural norms did not convey any sense of a penalty or sanction. It simply indicated that the cleric was to cease all exercise of orders. The 1917 Code frequently used the words *prohibitio* and *prohibere* in a non-technical sense to indicate that something simply was not permitted⁹⁵. The Code likewise seemed to use the words *suspensio* and *suspendere* in the same non-technical way, though less frequently. The noun *suspensio* or some form of it appears in the 1917 Code 67 times, 44 of which appear in 31 canons of Book V (*De delictis et poenis*)⁹⁶. Of the 33 remaining canons using some form of *suspensio*, 11 deal explicitly with the penalty of a suspension from an informed conscience⁹⁷, leaving 12 non-penal uses of *suspensio*. These uses pertain to the publication of books, the halting of judicial proceedings, etc. The Code's use of the verb *suspendere* is similar. Of 67 uses, 36 are found in Book V and 2 are found in the canons dealing with suspension from an informed conscience⁹⁸. For the most part, the remaining 29

⁹⁵ See above, section 3.1.

⁹⁶ Cf. A. LAUER, *Index verborum codicis iuris canonici* (cf. nt. 32), 603-604.

⁹⁷ Cf. CIC 1917, cc. 2186-2194.

⁹⁸ Cf. A. LAUER, *Index verborum codicis iuris canonici* (cf. nt. 32), 603-604.

uses do not convey any sense of a sanction or penalty but refer instead to the ceasing or stopping of some act or action. The 1917 Code, then, used the terms *suspensio* and *suspendere* more restrictively than it used *prohibitio* and *prohibere*, but by no means was there precedent that these terms were always used to indicate a penalty.

Moreover, in the years between 1917 and 1980, the authors who commented on the prohibition *ad cautelam* in c. 1997 did so quite inconsistently, describing it at times as a suspension⁹⁹, a prohibition, or simply as a forbidding of the exercise of orders¹⁰⁰. Some authors used a number of these terms in the same paragraph¹⁰¹. Even commentators who have written about the suspension *ad cautelam* in article 4 of the 1980 procedural norms are inconsistent in their use of terms, describing it as something analogous to the withdrawal of faculties¹⁰², as a suspension analogous to the suspension in c. 1722¹⁰³, and simply as a suspension lacking any sense of a penalty or censure¹⁰⁴.

⁹⁹ Cf. J. NOVAL, *Commentarium codicis iuris canonici*. Liber IV De processibus. I. *De iudiciis*, Roma 1920, 587-588.

¹⁰⁰ Cf. S. WOYWOD, *A Practical Commentary on the Code of Canon Law* (cf. nt. 39), 389.

¹⁰¹ Cf. C. AUGUSTINE, *A Commentary on the New Code of Canon Law* (cf. nt. 34), 555-556.

¹⁰² Cf. F. SCHNEIDER, «Commentary on. c. 290», in J. BEAL – J. CORIDEN – T. GREEN (edd.), *New Commentary on the Code of Canon Law*, New York – Mahwah (N.J.) 2000, 388.

¹⁰³ Cf. M. O'REILLY, «Recent Developments in the Laicization of Priests», *The Jurist* 52 (1992) 692.

¹⁰⁴ Cf. M. ZALBA, «De sacerdotalis caelibatus dispensatione normae hodiernae», *Periodica* 70 (1981) 254, and also V. FERRARA, «Normae Substantivae ac Procedurales» (cf. nt. 90), 522.

Although the authors do not comment on the 1980 change in phrasing from *clericus prohibendus est* to *Ordinarius oratorem suspendat*, it seems reasonable to conclude that neither of these usages are used technically to convey the sense of a penalty or censure. It seems likely that canonists were simply not overly scrupulous in their use of these terms. Commentators had interchanged the terms prohibition and suspension for years, and the substitution of *suspendat* for *prohibendus est* does not seem to indicate any alteration of the sense of the norm. Like c. 1997, article 4 of the 1980 norms simply indicates that the priest (*orator*) is not to be permitted to exercise his priestly ministry. Eventually, the promulgation of the 1983 Code of Canon Law helped to clarify any confusion in this area. In a revised version of the old c. 1997, c. 1709 §2 of the new Code simply says that once the *libellus* has been sent, the cleric is forbidden to exercise orders: *Misso libello, clericus ordines exercere ipso iure vetatur*. All reference to a prohibition or a suspension has been dropped, no doubt in part to bring greater clarity. This is particularly helpful in light of the fact that article 4 of the 1980 norms and c. 1709 §2 of the 1983 Code both have the same legislator, namely, Pope John Paul II.

Another significant difference between c. 1997 and article 4 of the 1980 procedural norms concerns the object of the prohibition. Formerly, c. 1997 and the 1971 norms had prohibited the cleric *ab exercitio ordinum*, while article 4 now suspends a cleric *ab exercitio sacrorum ordinum*. Is there a difference between being forbidden to exercise orders and being forbidden to exercise sacred orders, or is the change merely semantic?

Because the 1980 procedural norms were promulgated under the 1917 Code, one must look within that Code for clues. In c. 2279 §2 the 1917 Code delineated types of suspensions understood clearly in a penal sense¹⁰⁵, and reference to the types of suspensions described there sheds light on the nature of the suspension required by article 4 of the 1980 procedural norms. Can. 2279 §2, 3° defined a suspension from orders (*ab ordinibus*) and c. 2279 §2, 4° defined a suspension from sacred orders (*ab ordinibus sacris*)¹⁰⁶. The suspension *ab ordinibus sacris* prohibited the exercise of the power of major orders only, while the suspension *ab ordinibus* simply prohibited the exercise of the power of orders, not distinguishing between minor or major¹⁰⁷. By the time of the 1980 procedural norms minor orders had already been suppressed, but most priests functioning in 1980 had in fact received minor orders. Furthermore, many lay people were now beginning to function in ministries formerly reserved to minor orders.

Did the new definition of the suspension *ab exercitio sacrorum ordinum* intend to change the object of the suspension by forbidding only the exercise of the power of major orders while permitting the exercise of ministries now done routinely by the laity but which formerly were done by clerics in minor orders? This question remains unanswered and authors fail to comment upon it, but the practice of

¹⁰⁵ Cf. above, section 3.1.

¹⁰⁶ See note 37.

¹⁰⁷ Cf. H.A. AYRINHAC, *Penal Legislation in the New Code of Canon Law* (cf. nt. 38), 110.

the Holy See can shed some light on this matter. When granting dispensations from celibacy, the Holy See has consistently forbidden "laicized" priests from exercising even those ministries now done frequently by lay persons. It seems unlikely that the 1980 norms would permit the exercise of minor orders, only to follow later with a rescript forbidding the exercise of those same minor orders. The suspension *ad cautelam* appears to remain a suspension *ab ordinibus* and not *ab ordinibus sacris*. The change in the text of the norm from *ab exercitio ordinum* to *ab exercitio sacrorum ordinum* appears to be semantic only and not substantive.

The most significant change which article 4 made in reference to c. 1997's prohibition *ad cautelam* can be found in the permission it gives to the Ordinary to use his prudent judgment *not* to suspend the priest when the petition has been accepted. The Ordinary may omit the suspension if he judges such an omission to be absolutely necessary (*prorsus necessarium esse iudicaverit*) in order to protect the good name of the priest or to safeguard the common good. The tone of this concession is clear: the Ordinary should consider the use of the concession as the exception and not the rule.

At the same time, this permission given to the Ordinary provides a key to understanding how the phrase *ad cautelam* should be understood now that the whole process has been removed from the question of validity. The concern of the Church to protect the efficacy of the sacraments was very real when a priest initiated an action challenging the validity of his orders or of his assumption of clerical obligations. Transferring the process away from questioning validity to merely granting dispensations

from celibacy understandably diminishes the Church's concern for the validity of the sacraments but does not entirely dismiss it. If the Ordinary thinks that grounds for such a dispensation exist, he is expected to forbid the priest to exercise the power of orders. As Amenta puts it, «there being the possibility that the instruction could come across elements which militate in favor of nullity, the Church desires to protect the faithful [...] from the danger of inefficacious sacraments»¹⁰⁸.

Simply put, the Church continues to be wary of the possibility that something may turn up that could call the validity of the petitioner's ordination into question. Such a discovery is less likely in petitions for dispensations from celibacy than in cases challenging the validity of obligations, but the Church continues to err on the side of caution. The Church requires the suspension *ad cautelam*, not *ad necessitatem*. The requirement, however, is no longer absolute. The legislator has extended permission to the Ordinary to use his prudent judgment in balancing the Church's concern for the validity of the sacraments with the protection of other basic principles which could also be at stake, e.g., the right to a good name (cf. c. 220) and the safeguarding of the common good (cf. c. 223).

To summarize, article 4's suspension *ad cautelam* has much in common with its canonical prede-

¹⁰⁸ P. AMENTA, «La dispensa dagli obblighi» (cf. nt. 52), 350: «Essendo possibile che dall'istruttoria possano venir fuori elementi che militino a favore della nullità dell'ordinazione, la Chiesa vuole tutelare i fedeli [...] dal pericolo della celebrazione dei sacramenti inefficaci».

cessor in c. 1997 of the old Code. Despite the change in terminology from a prohibition to a suspension, article 4 still indicates that the cleric is simply forbidden to use the power of orders. The suspension does not convey any sense of a penalty or censure. The effect of what is forbidden also remains the same, despite the fact that the language of the suspension has been changed from *ab exercitio ordinum* to *ab exercitio sacrorum ordinum*.

At the same time, the suspension *ad cautelam* also differs significantly from its canonical predecessor in several respects. To begin with, article 4 of the 1980 procedural norms is part of a process for petitioning specifically for a dispensation from celibacy itself, a delineated process that did not even exist in 1971, much less so in 1917. Furthermore, the requirement of the 1980 suspension is not absolute. The Ordinary has permission not to apply the suspension in certain circumstances, based upon his prudent judgment. The provision found in article 4 of the 1980 procedural norms is essentially a canonical innovation: a conditionally required non-penal suspension *ad cautelam* from the exercise of the power of orders.

6.2 Revision of the Code of Canon Law

While it would be inaccurate to say that the development of the process for a dispensation from priestly celibacy ceased with the promulgation of the 1980 procedural norms, no substantive changes have been made to the process since 1980. In fact, the 1980 procedural norms remain in force despite the later promulgation of the 1983 Code of Canon law. Nonetheless, a survey of the 1983 Code is in order.

The revisions of the Code of Canon Law reflected the long development of the various processes by which a cleric could seek relief from his obligation of celibacy. The number of cases against validity had steadily decreased, while the number of petitions for dispensations had sharply increased. A striking piece of evidence demonstrates just how far the practice had shifted. The members of the Pontifical Commission for the Revision of the Code of Canon Law actually inadvertently omitted the entire content of cc. 1993-1998 CIC 1917 from the 1977 schema of the revised Code. After this fact had been called to their attention, the consultants acknowledged the *lacuna* and the need to fill it¹⁰⁹. On February 29, 1980 the Commission proposed five canons which they drew largely from the 1931 *Regulae servandae* and which entered the final draft of the Code essentially unchanged¹¹⁰. The *Regulae servandae* of 1931,

¹⁰⁹ Cf. PONTIFICAL COMMISSION FOR THE REVISION OF THE CODE OF CANON LAW, «Acta Commissionis», *Communicationes* 12 (1980) 199: «Consultores censent in novo Schemate de Processibus haberi lacunam quae compleri debent. Desunt scilicet canones de causis contra validitatem sacrae Ordinationis».

¹¹⁰ Cf. PONTIFICAL COMMISSION FOR THE REVISION OF THE CODE OF CANON LAW, «Acta Commissionis» (cf. nt. 109), 199-200. The text of the first proposed canon became c. 1708, and was altered from its proposed form only insofar as the verbs were changed from subjunctive to indicative mood. The first paragraph of the second proposed canon (which became c. 1709 §1) and the text of the third proposed canon (which became c. 1710) were altered to drop the word "Sacra" from "Sacra Congregatio" to reflect the change in nomenclature of the dicasteries of the Roman Curia. To compare the texts of the 1980 and 1982 schemata see PONTIFICAL COMMISSION FOR THE REVISION OF THE CODE OF CANON LAW,

which the norms of February 2, 1964 merely streamlined but left essentially unchanged, had been the last legislation to deal specifically with a process rooted in challenging validity and as such reflected the most recent canonical jurisprudence concerning matters treated in the former cc. 1993-1998.

The Commission did propose several alterations in the revision of cc. 1993-1998 CIC 1917, including a revision of c. 1997 with its prohibition *ad cautelam* which they accepted without comment. The revised canon was now attached as a second paragraph to a norm instructing that the *libellus* be sent to the competent Congregation. The text of the newly proposed canon stated, «*Misso libello, clericus ordines exercere ipso iure vetatur*»¹¹¹. The proposed changes did clarify a number of somewhat ambiguous points. First, any question as to the penal nature of *prohibendus est* had finally been put to rest by substituting the phrase *ipso iure vetatur*. Secondly, the object of the canon remained the same, i.e., the exercise of orders (*ordines exercere*). Thirdly, the phrase *ad cautelam* had been removed, perhaps because it was thought unnecessary, although the reason for caution still remained and the reason for the removal of the phrase was never explained. Lastly, the original text in c. 1997 CIC 1917 had never specified who was to prohibit the

Codex iuris canonici. Schema novissimum, Vatican City 1982, and PONTIFICAL COMMISSION FOR THE REVISION OF THE CODE OF CANON LAW, *Schema codicis iuris canonici*, Vatican City 1980.

¹¹¹ PONTIFICAL COMMISSION FOR THE REVISION OF THE CODE OF CANON LAW, «Acta Commissionis» (cf. nt. 109), 199.

cleric from the exercise of orders, but the new c. 1709 §2 clarified this, stipulating that the law itself forbade the exercise of orders.

An additional proposed change was far more substantial. The new canons would retain a process for entering cases against the validity of orders, but no longer would there be mention of any process for entering cases against the validity of the obligations that arise from orders¹¹². A canonical practice centuries old was simply dropped from the Code without comment. This alteration in practice was reflected in the name of the new Title containing cc. 1708-1712 CIC 1983: *De Causis ad Sacrae Ordinationis Nullitatem Declarandam* and was made possible by the 1971 procedural norms which had created a process for dispensing from obligations, thus eliminating the need to prove invalidity.

The revised Code contained not only revisions for cc. 1993-1998, but also for cc. 211-214. The phrase "reduction to the lay state" was removed from the 1983 Code because, as many authors note, it was not consistent with a post-Conciliar view which no longer understood the status of the laity as inferior to that of the clergy¹¹³. It was agreed that the concept of "loss of the clerical state" more accurately reflected a Conciliar understanding and all of the consultors agreed to change the title of these

¹¹² Cf. K. LÜDICKE (ed.), *Münsterischer Kommentar zum Codex Iuris Canonici*. V, Essen 1985, c. 1708/1.

¹¹³ Cf. G. LOBINA, «Cessazione dell'esercizio del ministero e perdita dello stato clericale (canoni 290-293)», *Monitor Ecclesiasticus* 109 (1984) 175; P. AMENTA, «La dispensa dagli obblighi» (cf. nt. 52), 334.

canons from *De reductione clericorum ad statum laicalem* to *De Amissione Status Clericalis*¹¹⁴.

In the revision of the former cc. 213-214, all references to the loss of clerical privileges were simply expunged from the Code. Likewise, the fact that relief from clerical obligations no longer required proof of nullity rendered the former c. 214 §2 obsolete, and it was also expunged from the Code. The 1983 Code combined the remaining elements from the former cc. 213 §1 and 214 §1 into a single canon: the new c. 292, treating the loss of clerical rights (cf. the former c. 213 §1) together with the loss of clerical obligations (cf. the former c. 214 §1)¹¹⁵. In doing so, the Code follows the lead set by the 1971 procedural norms. The text of the new c. 292 reads:

Clericus, qui statum clericalem ad normam iuris amittit, cum eo amittit iura statui clericali propria, nec ullis iam adstringitur obligationibus status clericalis, firmo praescripto can. 291; potestatem ordinis exercere prohibetur, salvo praescripto can. 976; eo ipso privatur omnibus officiis, muneribus, et potestate qualibet delegata.

¹¹⁴ Cf. PONTIFICAL COMMISSION FOR THE REVISION OF THE CODE OF CANON LAW, «Acta Commissionis», *Communications* 2 (1971) 196-197.

¹¹⁵ For the text of c. 213 §1, see note 47. For the text of c. 213 §2, see note 48. The text of c. 214 §1 is as follows: «Clericus qui metu gravi coactus ordinem sacrum recepit nec postea, remoto metu, eandem ordinationem ratam habuit saltem tacite per ordinis exercitium, volens tamen per talem actum obligationis clericalibus se subiicere, ad statum laicalem, legitime probata coactione et ratihabitionis defectu, sententia iudicis redigatur, sine ullis coelibatus ac horarum canonicarum obligationibus». For the text of c. 214 §2, see note 51.

At first glance the phrase «*clericus [...] potestatem ordinis exercere prohibetur, salvo praescripto can. 976*» prohibiting former clerics from exercising orders except when absolving someone who is in danger of death (cf. c. 976 CIC 1983) might appear to be related to the prohibition or suspension *ad cautelam* from the former c. 1997 and article 4 of the 1980 procedural norms, but the two should not be confused. The prohibition in c. 292 presumes that the clerical state has already been lost, whereas the former c. 1997 and article 4 of the 1980 norms do not.

If the new c. 292 combined the first paragraphs of the former cc. 213 and 214, and the second paragraph of the former c. 214 was simply expunged from the Code, what happened to the second paragraph of the former c. 213? It had stipulated that reduction to the lay state did not include relief from the obligation of celibacy. The provision was incorporated into the new c. 291, which continued to maintain that loss of the clerical state does not automatically confer release from the obligation of celibacy.

Although the principal font of c. 291 is the former c. 213 §2, the new canon has one very important difference from its predecessor: while the old Code did not even acknowledge that such a thing as a dispensation from celibacy existed, the new Code makes explicit reference to it in c. 291, which states: «*Praeter casus de quibus in can. 290 n. 1, [whereby the ordination itself is proved to be invalid] amissio status clericalis non secumfert dispensationem ab obligatione caelibatus, quae ab uno tantum Romano Pontifice conceditur*». The schema for this revised canon first actually appeared as c. 266 of the 1980

schema¹¹⁶, several months prior to the promulgation of the 1980 procedural norms for a dispensation from celibacy. Although the acts of the Pontifical Commission are silent on the matter, it appears likely that those who drafted the 1980 schema for this canon must have been aware of the revisions already underway which would be promulgated later that same year in the 1980 procedural norms. One other point is noteworthy: the 1980 schema would have allowed the local Ordinary to grant a dispensation from celibacy to a cleric in danger of death. By the time of the publication of the 1982 schema, this provision had been struck and the canon achieved its present form, reserving to the Pope alone the faculty to dispense from celibacy.

As for the 1980 procedural norms, they do not appear in the Code at all. This fact is not surprising, because procedural norms are too prone to amendment and development to be adequately codified. By virtue of the norm of c. 6, the 1980 norms still govern the process of petitioning for a dispensation from celibacy since the 1983 Code did not completely reorder this material¹¹⁷. The paradigmatic shift of the 1971 procedural norms separating dispensations from any process proving invalidity and the further development of that

¹¹⁶ PONTIFICAL COMMISSION FOR THE REVISION OF THE CODE OF CANON LAW, *Schema codicis iuris canonici*, Vatican City 1980, c. 266: «Praeter casus de quibus in can. 265, n. 1, amissio status clericalis non secumfert dispensationem ab obligatione coelibatus, quae ab uno tantum Romano Pontifice conceditur, firmo tamen praescripto can. 1032».

¹¹⁷ Cf. c. 6 §1: «Hoc Codice vim obtinente, abrogantur: [...] 4°. ceterae quoque leges disciplinares universales materiam respicientes, quae hoc Codice ex integro ordinatur».

shift in the 1980 procedural norms allowing for dispensations from celibacy itself are now codified in cc. 291-292 and cc. 1708-1712 CIC 1983, even though the procedural norms as well as the suspension *ad cautelam* remain extra-Codal legislation.

6.3 *Post CIC 1983 legislation*

There were a few developments following the promulgation of the new Code of Canon law in 1983. In 1988, through the apostolic constitution *Pastor Bonus*, the Congregation for Divine Worship and the Discipline of the Sacraments indirectly received from John Paul II the competency for examining all petitions for a dispensation from celibacy entered after March 1, 1989¹¹⁸. Cases entered before March 1, 1989 would remain under the Congregation for the Doctrine of the Faith. On February 8 of that year, the Secretary of State confirmed the competency of the Congregation for Divine Worship and the Discipline of the Sacraments and instructed that the circular letter and procedural norms which had been issued by the Congregation for the Doctrine of the Faith in 1980 would now bind both Congregations simultaneously¹¹⁹. The provision of the suspension *ad cautelam* in article 4 would remain binding.

¹¹⁸ In truth, *Pastor Bonus* gave the Congregation for Divine Worship and the Discipline of the Sacraments competency for cases concerning the nullity of sacred ordination. No mention was made of cases petitioning for a dispensation from celibacy. Competence for these cases was confirmed by the Secretary of State in a letter on Feb. 8, 1989. Cf. *Notitiae* 25 (1989) 485.

¹¹⁹ See note 118 above.

Two years later, in 1991, the Congregation for Divine Worship and the Discipline of the Sacraments distributed to the United States' Bishops' Conference a letter in English entitled *Documents Necessary for the Instruction of a Case for the Dispensation from the Obligation of Priestly Ordination*¹²⁰. The document was essentially a checklist of materials to be included in the acts of such a case. The fourth item in that checklist describes:

a document that demonstrates that the Petitioner has been suspended from the exercise of the sacred ministry, once the Ordinary has reviewed the Curriculum and decided to accept the formal request of the Petitioner for a dispensation – thereby avoiding all possible scandal and protecting his reputation.

This fourth item clearly refers to the suspension *ad cautelam* required in article 4 of the 1980 procedural norms, though it does not actually mention article 4 or use the phrase *ad cautelam*. The 1991 letter from the Congregation does not require any decree of suspension, but merely a document demonstrating that the priest has been suspended. Some authors even suggest that it would suffice for the Ordinary merely to inform the priest that he is to cease exer-

¹²⁰ Cf. CONGREGATION FOR THE DIVINE WORSHIP AND THE DISCIPLINE OF THE SACRAMENTS, Letter *Documents Necessary for the Instruction of a Case for Dispensation from the Obligations of Priestly Ordination* (presented to president and vice-president of NCCB April 1991), in K. VANN – L. JARRELL (edd.), *Roman Replies and CLSA Advisory Opinions 1991*, Washington (DC) 1991, 2-4. The document was presented to the president and vice-president of the NCCB in April of 1991 during their visit to Rome. The document was written in English. No Latin original was provided.

cising his ministry, and to make note of this fact for the acts of the petition¹²¹. Identical copies of this same letter from the Congregation were distributed again to United States bishops during their *ad limina* visits throughout the year 2004.

7. Developments under Benedict XVI

Following the death of Pope John Paul in April of 2005, Pope Benedict XVI was elected as the Supreme Pontiff. On July 13, 2005, less than three months after Benedict's election, the Congregation for Divine Worship and the Discipline of the Sacraments sent a letter to the presidents of episcopal conferences and superiors general informing them that the Holy Father desired to transfer competency for cases petitioning for priestly and diaconal dispensations to the Congregation for the Clergy. The transfer of competency would become effective with those cases entered after August 1, 2005, while cases entered before that date would continue to be handled by the Congregation for Divine Worship and the Discipline of the Sacraments¹²².

With this change of competency, Benedict XVI completed a transition seemingly twenty-five years in the making, though in reality centuries long in its evolution. The transfer of competency for cases seeking dispensations from celibacy had first been given

¹²¹ Cf., e.g., M. O'REILLY, «Recent Developments in the Laicization of Priests» (cf. nt. 103), 692.

¹²² Cf. CONGREGATION FOR DIVINE WORSHIP AND THE DISCIPLINE OF THE SACRAMENTS, Letter to the Presidents of the Conferences of Bishops and to the Superiors General, Protocol No. 1080 / 05, July 13, 2005.

to the Congregation for the Doctrine of the Faith in 1980, then to the Congregation for Divine Worship and the Discipline of the Sacraments in 1989, and finally to the congregation for the Clergy in 2005. This transition has gradually confirmed that the evolution of relief from priestly celibacy, sought for centuries through ecclesiastical tribunals impugning validity, has evolved into a largely administrative function of the granting of a simple dispensation, a favor bestowed by the Supreme Pontiff in response to the humble and penitent request of an individual priest.

8. Conclusion

With the issuing of the letter of July 13, 2005 announcing the transferring of competency to the Congregation for the Clergy, the last document affecting the development of a process for the dispensation from priestly celibacy and its required suspension *ad cautelam* was in place. With roots reaching back as far as the first millennium, these norms and their required suspension *ad cautelam* are the product of two canonical traditions which finally merged in 1971 and which produced in 1980 a new process for petitioning for dispensations from celibacy *per se*.

The suspension *ad cautelam* found in article 4 of the 1980 procedural norms provides a unique focal point to see how various traditions and concepts merged to form today's norm. On the one hand, the suspension *ad cautelam* contains within itself seeds born in such theological and juridic concepts as the validity or invalidity of sacraments, the binding force of vows and obligations, and the mitigating effects of force or fear. On the other hand, the suspension *ad*

cautelam is immersed within a process rooted in the concept of dispensation from law, in the Church's need to extend a pastoral hand to relieve the suffering even of her own priests insofar as divine law allows, and in the need to balance the common good of the individual with that of the community.

Over the course of centuries, the relief of priests from the obligation of celibacy had been grounded first in the proof of nullity, then later in a reduction to the lay state with a general dispensation from the obligations attached to orders including celibacy, and finally in 1980 in a dispensation from celibacy proper. In fact, by 1980 the situation had so reversed itself that the only process commonly in use today is that of petitioning for a dispensation from celibacy. As of 1980, all other effects such as the loss of the clerical state and release from other priestly obligations are attached inseparably to the rescript granting the dispensation from celibacy.

All the while that this development was occurring there was slowly emerging a sense that a priest who was seeking relief from celibacy should not be exercising sacred orders. This caution was solidly rooted in the need to ensure the validity and efficacious character of the sacraments. Not until 1917 was this caution ever spelled out in law, in c. 1997 of the 1917 Code as part of a process for challenging the validity of orders or the validity of the obligations connected to orders.

The prohibition of the former c. 1997 had remained exclusively in the theological and juridic milieu of cases challenging validity until 1971, when the path of seeking relief from celibacy by questioning the validity of orders and their attached obligations merged with the path of seeking relief through the granting of simple dispensations. In the 1971 norms, the prohibition *ad cautelam* of c. 1997 was literally

lifted out of the tradition of challenging validity and was inserted into the tradition of granting dispensations, creating a whole new context and application for the prohibition. Nine years later, in the circular letter and procedural norms of 1980, a new dispensation from celibacy itself appeared, and the provision of c. 1997 was modified into its present form. What had simply been a required prohibition *ad cautelam* is now a conditionally required non-penal suspension *ad cautelam* from the exercise of the power of orders which attempts to balance the good of the individual cleric with the common good of the faithful while preserving the efficacy of the sacraments, all at the prudent judgment of the Ordinary.

Many priests have profited by the convergence of the traditions that gave rise to the 1971 and 1980 procedural norms. No longer required to prove that they had either been invalidly ordained or had invalidly assumed their priestly obligations, they can now be reconciled to the Church by means of a dispensation from celibacy with the loss of the clerical state and loss of all other clerical rights and duties inseparably attached. The story of the origin and development of the suspension *ad cautelam* of article 4 of the 1980 procedural norms shows ways in which theology and law interact, law develops, and different canonical traditions combine and interact. Lest one overlook what might be the most important aspect of all, this story also sheds some light upon the way in which God continues to guide the Church in the midst of the present moment, so that by its compassion and fidelity to the Gospel, the Church may reflect God's compassion and mercy, not only to the laity at large but to her priests as well.

EDWARD LOHSE