

THE RECONCILIATION OF SCHISMATICALLY ORDAINED MARRIED CLERGY: A JURIDICAL CURIOSITY

In the latin church, the married state is a simple impediment to the reception of orders, except in the case of a candidate to the permanent diaconate (c. 1042, 1°). This norm finds its origin in the desire to give canonical force to the ideal that those who seek ordination to the Church's ministry should profess perfect and perpetual continence for the sake of the Kingdom of Heaven. However, the unqualified realisation of this ideal through the use of impediments and irregularities does not seem certain when we consider carefully the interaction of canon 1042, 1° with other canonical principles.

A case in point is that of a married man who has been schismatically ordained to the presbyterate. We may then ask what is his canonical status; to what penalties is he subject; how and by whom may he be reconciled to the Church; what, finally, are the possibilities of his being able to exercise orders once he is reconciled.

1. Impediments to ordination

The Code of Canon Law has established impediments to the reception of orders (cc. 1041-1042). Canon 1040 establishes two kinds of impediments: irregularities, whose effects are permanent and which remain even if their cause has ceased to exist, and

simple impediments. Simple impediments, in contrast with irregularities, cease to exist when their cause ceases.

1.1 IRREGULARITIES

Canon 1041 lists permanent impediments or irregularities among which is the crime of schism (c. 1041, 2°; cf. cc. 751, 1364 §1)¹. Consequently, a man guilty of the crime of schism, in addition to being automatically excommunicated, is permanently excluded from the reception of orders.

1.2 SIMPLE IMPEDIMENTS

A married man is simply impeded from the reception of orders, except in the case of a candidate for the permanent diaconate (c. 1042, 1°); the impediment exists as long as the marriage exists and ceases when the marriage ends by dissolution² or by his wife's death.

2. Impediments to the exercise of orders received

It is important to distinguish between impediments to the reception of orders and impediments to

¹ One should note in addition cc. 1321-1330 for the conditions governing ecclesiastical crimes.

² As in the case of the papal dissolution of an unconsummated marriage. The praxis is somewhat different in regard to those who have contracted a non-sacramental marriage and afterwards seek ordination: in these cases a dispensation from the impediment to the reception of orders is given according to the merits of the case and on condition that the usual requirements for the dissolution of such marriages are met.

the exercise of orders already received, although the latter usually³ refer back to the former. Impediments to the exercise of orders already received are also classified as either simple impediments or irregularities, as explained in the previous section.

2.1 IRREGULARITIES

Irregularities for the exercise of orders already received are determined by c. 1044, §1. They are: illegal ordination while subject to an irregularity for its reception; the public crimes of apostasy, heresy or schism committed by a cleric (cf. c. 1041, 2°); and the offences indicated in canon 1041, 3°-6°.

2.2 SIMPLE IMPEDIMENTS

Canon 1044, §2 establishes two simple impediments to the exercise of orders already received: the illegal reception of orders while subject to simple impediments, as defined by canon 1042⁴, and insanity or a psychiatric illness resulting in the inability to carry out properly the ordained ministry (cf. c. 1041, 1°).

3. Dispensation from irregularities and impediments

Irregularities and impediments prohibit either the reception of orders or their exercise. Those subject to them can be released from the prohibition they contain either by dispensation (cc. 85-93), if its

³ But not always, cf. c. 1044, §2, 2°.

⁴ I.e., marriage, duties forbidden to clerics (cf. cc. 285-286) and neophytism.

cause is extrinsic to the person and established by canon law, or, equivalently, when the ordinary declares that the personal circumstances of c. 1041, 1^o and 1044, §2, 2^o no longer obtain and so the person is fit to carry out the duties of the ordained ministry.

3.1 GENERAL PRINCIPLE

The general principle is that the proper ordinary may dispense from all cases of irregularities and simple impediments, whether to ordination or to the exercise of orders already received, unless the dispensation has been expressly reserved to the Holy See (c. 1047, §4).

Canon 134 defines who are ordinaries: they are the Roman Pontiff, diocesan bishops and their equivalents, vicars-general and vicars-episcopal; major superiors of clerical religious institutes of pontifical right and societies of apostolic life of pontifical right. For sake of completeness, we may also mention the ordinaries of a personal prelature (cf. c. 295).

3.2 RESERVATION OF DISPENSATION

The Holy See has reserved to itself the power to dispense from some irregularities and impediments. The reservation first of all applies to all irregularities brought to the judicial forum (c. 1047, §1)⁵.

In addition, there are other irregularities to the exercise of orders already received the dispensation

⁵ This is understood to refer to the civil as well as the canonical forum, thus G. GHIRLANDA, *Il diritto nella Chiesa mistero di comunione — Compendio di diritto ecclesiale*, Cinisello Balsamo (Roma 1993²) 325.

from which is reserved to the Holy See (c. 1047, §3): those who have publicly attempted an invalid marriage (as defined by c. 1041, 3°), and all cases of voluntary homicide and effective abortion (as defined by c. 1041, 4°) are thus affected.

There is, finally, one simple impediment to the reception of orders the dispensation from which is reserved to the Holy See: the married state (c. 1042, 1°). On the other hand, we must observe that no simple impediment to the exercise of orders already received is reserved. Hence, it is important to note, a man who has received orders while subject to a simple impediment is only simply impeded for their exercise (c. 1044, §2, 1°), an impediment the dispensation from which is not reserved to the Holy See.

4. Reconciliation of a schismatic

If a man repents of schism, he can be reconciled to the Church.

Canon 751 gives us the definition of schism: it is to withdraw from submission to the Roman Pontiff or from communion with those subject to him.

One who has left the Catholic Church by deliberately choosing to reject the authority of the Roman Pontiff or to refuse communion with those subject to him becomes schismatic. If he has reached his majority and acts openly, freely, deliberately and knowingly (cc. 1321, 1323, 1324 and 1330), he is subject to ecclesiastical penalty, precisely, automatic excommunication (c. 1364, §1) and thereby becomes irregular for the reception of orders (c. 1041, 2°).

While in schism, it is possible for a man to receive valid orders. As is well known, churches not in communion with the Apostolic See but possessing

valid orders also admit married men to the presbyterate. It is possible then for a married man to receive valid orders schismatically.

5. Previous canonical discipline

Without going into the question of possible penalties or irregularities incurred, one may note that, until the introduction of the Code of Canon Law promulgated finally on 25 January 1983, a married man who received orders from a schismatic source was forbidden to exercise them (1917 Code, c. 132, §3).

5.1 DECLARATIONS OF THE HOLY SEE

The Church's esteem for, and insistence upon, the observance of celibacy by the ordained ministers of the latin church require no comment. They were reaffirmed by the Second Vatican Council in its Decree on the Ministry and Life of Priests *Presbyterorum ordinis*, n. 16⁶. Pope Paul VI subsequently dedicated an important encyclical to the question of priestly celibacy⁷ and introduced into the Roman Pontifical a rite for its public assumption by candidates prior to their ordination⁸.

⁶ Cf. also the Dogmatic Constitution on the Church *Lumen Gentium*, n. 42.

⁷ *Sacerdotalis cælibatus*, in AAS 59 (1967) 657-697; the Encyclical is dated 24 June 1967.

⁸ *De institutione lectorum et acolythorum; de admissione inter candidatos ad diaconatum et presbyteratum; de sacro cælibatu amplectendo*, promulgated by decree of the Sacred Congregation for Divine Worship on 3 December 1972 and published in AAS 65 (1973) 274-275.

The observance of this teaching continued to be regularly defended by replies and declarations of the Roman dicasteries. In 1979, for example, the Congregation for the Doctrine of the Faith re-affirmed that it was the policy of the Holy See never to allow the exercise of orders when they were received from schismatic sources⁹. Even when exceptions are admitted, as in the case of married clergymen converting from anglicanism, the Church insists that the discipline of celibacy holds for the latin clergy and candidates to ordination¹⁰. A reply such as that just referred to is an explanation of the law; it is not a legislative act (cf. cc. 30, 34; *Pastor Bonus* 18)¹¹. It follows therefore that, if the laws change, such a reply excluding the exercise of orders received from schismatic sources has to be understood in the light of the canons now in force.

5.2 THE PROMULGATION OF THE REVISED CODE OF CANON LAW

The revised Code of Canon Law was promulgated on 25 January 1983 and came into force on the First Sunday of Advent (27 November) of the same year.

⁹ Letter of 28 June 1979 from the Sacred Congregation for the Doctrine of the Faith to the Archbishop of Milwaukee, cf. XAVIERUS OCHOA (ed.) *Leges Ecclesiae post Codicem iuris canonici editae* VI, Rome 1987, coll. 7787-7788.

¹⁰ Cf. for instance, the statement of the Congregation for the Doctrine of the Faith, *In June 1980*, published in *L'Osservatore Romano* on 1 April 1981 (cf. *Enchiridion Vaticanum* 7/1213).

¹¹ Cf. AAS 80 (1988) 864.

5.2.1 *Abrogation of Previous Legislation (c. 6)*

Canon 6 of the revised Code establishes the juridical status of preceding legislation. The 1917 Code was thereby abrogated, as were all laws contrary to the prescriptions of the new Code (unless express exceptions were made for particular legislation), all penal legislation not contained in the new Code and all other universal disciplinary laws whose material was completely re-ordered by the Code.

Specifically, the number of reservations to the Holy See of dispensations from irregularities for the exercise of orders received was established as those discussed in 3.2 above.

5.2.2 *Legislative Power of Roman Dicasteries*

The Roman dicasteries are executive or judicial bodies¹². Congregations cannot legislate unless this power has been granted expressly to them. Their replies, on the other hand, are only a declaration of the current legislation of the Church. Hence any reply made previous to the present Code of Canon Law has now to be understood in its light. Nor, since the introduction of the revised Code, has there been legislation to change its prescriptions on irregularities, impediments and competence to grant dispensation from them. So we may summarise the consequences of the current legislation as follows.

¹² Cf. c. 135; and *Pastor Bonus* art. 18, 19, §2, *ibid*.

6. Conclusions

6.1 ORDINATION OF A MARRIED MAN

The married state is a simple impediment to the reception of orders except in the case of the permanent diaconate.

A married man who has been refused a dispensation from this law by, or is unwilling to ask for it from, the Holy See can receive the presbyterate only from schismatic sources if he nevertheless still desires ordination.

6.2 RECONCILIATION OF A SCHISMATICALLY ORDAINED MARRIED MAN

A schismatic is subject to the automatic penalty of excommunication. The penalty is not reserved to the Holy See and so, as long as it has not been declared (cf. cc. 1341-1342), it may be remitted by any ordinary to whom the man is subject or in whose territory he is present or in which he committed the offense, or by any bishop in the act of sacramental confession (c. 1355, §2).

Indeed, even if the penalty has been declared, any local ordinary may validly remit it for those present in his territory, even without consulting the proper ordinary responsible for its imposition (c. 1355, §1, 2^o)¹³. Insofar as the fact of the penalty also caused the irregularity of the subject, we may further note that dispensation from the irregularity would be reserved to the Holy See only where the penalty had been declared after judicial process (c. 1047, §1). Of

¹³ Although the canon imposes this consultation as a condition for the liceity of the dispensation.

course, the penalty consequent upon schism need not be declared at all; if it were, it is probable that the proper ordinary would use administrative rather than judicial procedure since the latter is not a legal obligation in this case nor is the penalty of its nature perpetual (cc. 1341-1342).

6.3 STATUS AFTER RECONCILIATION

After his reconciliation the irregularly ordained married man is in communion with the Church. But what precisely is his status now? He is an acephalous cleric (c. 265, cf. cc. 267, 269 and 272) and is subject to impediments to the exercise of orders received¹⁴. In this case, the priest is subject to a simple impediment to the exercise of orders because he received them while being simply impeded by being married (c. 1044, §2, 1°, cf. c. 1042, 1°). Furthermore, he is irregular for the exercise of orders on two counts (which in our case amount to the same thing): because he was irregular for the reception of orders through having committed the offense of schism (c. 1044, §1, 1°, cf. c. 1041, 2°) and because, even had he not received orders irregularly, he was nevertheless guilty of the offense of schism (c. 1044, §1, 2°, cf. 1041, 2°).

6.4 DISPENSATION FROM IMPEDIMENTS TO THE EXERCISE OF ORDERS

The general principle is that the ordinary may dispense from all impediments and irregularities ex-

¹⁴ Clearly, the impediments and irregularities for the reception of orders are no longer of interest, *except insofar as the law refers to them in defining impediments and irregularities for the exercise of orders.*

cept those specifically reserved to the Holy See (c. 1047, §4).

6.4.1 Judicial Forum

The Holy See, in the first place, reserves to itself all irregularities that have been brought to judgment. This applies to cases in the civil as well as in the ecclesiastical forum (cf. above, 3.2).

6.4.2 Other Reservations

The only other cases of irregularities for the exercise of orders reserved to the Holy See are, first, those resulting from marriages attempted by or with the persons defined in c. 1041, 3^o and, next, all cases of homicide or abortion as defined by c. 1041, 4^o.

Specifically, we must say that the irregularity resulting from the crime of schism is not reserved¹⁵, nor is that of the reception of orders while irregular because of the crime of schism. Similarly, the simple impediment of being married is not reserved to the Holy See.

6.5 POSSIBLE CONSEQUENCES

Once a schismatically ordained married man has been freed from the censure he had incurred, an ordinary can then dispense him from the simple impediment and the two irregularities prohibiting the exercise of orders. Thus we should now have a

¹⁵ Except in the very unlikely case of the declaration of penalty following a judicial process, as explained in section 6.2 above.

married man validly ordained to the presbyterate and in good standing in the Church. It would then be possible for the bishop, without consulting any higher authority¹⁶, to confer on him an ecclesiastical office, even with the ordinary care of souls. As a consequence the latin church would have a married clergy in good standing able to carry out the duties of the presbyterate and hold pastoral office, which, as is well known, is contrary to the mind of the Holy See and has been excluded regularly by its praxis.

6.6 A LAST WORD

The possibility of a married man's receiving schismatic orders in order to return to the Church and seek to exercise them was foreseen by the Church's previous legislation.

Prior to the promulgation of the revised Code of Canon Law the Holy See would never permit the exercise of orders received in these circumstances¹⁷.

¹⁶ In this context, we must be careful to distinguish between exclusive and cumulative competence. Cases may be referred by an ordinary even if they are not in fact *reserved* to the Holy See: *Pastor Bonus* 52, admittedly in another context, talks of the Congregation for the Doctrine of the Faith judging ecclesiastical crimes "*quae ipsi delata fuerint*" (cf. AAS 80, 1988, 874). Delation, of course, need not imply reservation. The same point applies to dispensations from irregularities and impediments. Although they are not necessarily reserved to the Holy See, it may be that ordinaries would tend to refer exceptional matters and that the Holy See would expect them to do so. However, such an expectation and the current praxis do not of themselves create a reservation or imply a juridical obligation.

¹⁷ As explained above in section 5.1; see also canon 132, §3 of the 1917 Code of Canon Law.

With the revised Code, such a control is no longer in effect and the possibility of thereby canonically maintaining a consistency of approach to this question throughout the latin church has been lost. It would seem reasonable from what has been written above that the reintroduction of the reservation of this dispensation to the Apostolic See should be considered¹⁸.

Certainly, the reintroduction of canon 132, §3 of the 1917 Code of Canon Law would be effective¹⁹. If this is not advisable, the matter could otherwise be resolved expeditiously by rewriting c. 1047. Paragraph three could now read:

Apostolicae Sedi etiam reservatur dispensatio ab irregularitatibus ad exercitium ordinis suscepti, de quibus in can. 1041, n. 3, in casibus publicis tantum, atque in eodem canone, nn. 2 et 4, etiam in casibus occultis.

Since it is similarly possible for married men to have received valid orders outside the Catholic Church without having incurred any ecclesiastical penalties whatever, two further modifications would

¹⁸ The hypothesis may seem remote. However, the basis for this paper was the case of a married man who, after schismatic ordination, sought to return to the Church and be appointed to pastoral office. Once I had ascertained the canonical conditions obtaining, it became clear that, if a bishop was willing to accept him, there was nothing *canonically* improper about this suggestion. It seems nevertheless contrary to the practice of the latin church and the consistently expressed position of successive popes.

¹⁹ Coniugatus qui sine dispensatione apostolica ordines maiores, licet bona fide, susceperit, ab eorundem ordinum exercitio prohibetur.

also be useful. Another number, repeating the text of c. 1042, 1°, should be placed at the beginning of c. 1044, §2. Then a new paragraph could be added after c. 1047, §3:

Eidem Sedi reservatur dispensatio ab impedimento ad ordines exercendos, de quo in can. 1044, §2, n. 1.

Thus the married state would become an impediment to the exercise of orders already received, dispensation from which would be reserved to the Holy See.

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