

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

1. Introduction

Given today's well-established practice of dispensing priests from priestly celibacy, it is difficult to imagine that no delineated process for requesting that dispensation existed prior to 1980. Although dispensations from celibacy had existed for centuries, no clear canonical process had existed by which to request or obtain them. On October 14, 1980, in response to a growing pastoral need to facilitate the request and reception of dispensations from priestly celibacy, the Congregation for Divine Worship promulgated the first procedural norms specifically designed to govern petitions requesting dispensations from priestly celibacy¹. These procedural norms remain in force today.

Contained within article 4 of those same 1980 procedural norms is a requirement that the Ordinary

¹ Cf. SACRED CONGREGATION FOR THE DOCTRINE OF THE FAITH, Circ. letter *Per litteras*, Oct. 14, 1980, AAS 72 (1980) 1132-1135 and SACRED CONGREGATION FOR THE DOCTRINE OF THE FAITH, Decree *Normae procedurales*, Oct. 14, 1980, AAS 72 (1980) 1136-1137.

suspend the petitioning priest *ad cautelam* if the petition is accepted for instruction. What is the *ratio legis* behind this suspension? Where did it come from? What are its nature and role in the present law? What currents of theology, history, and law converged to form its foundation? The answers to these and similar questions bring to light the origin and nature of a type of suspension quite unusual in the Church's canonical tradition.

2. Historical development up to the CIC 1917

2.1 Key distinctions

The suspension *ad cautelam* found in the 1980 procedural norms has roots that extend far back in canonical history, not just along one path but along two paths, each of which provided means for seeking relief from the obligation of clerical celibacy: relief by means of a dispensation or relief by means of a declaration of nullity. The distinction between these two canonical paths is foundational in the development of the 1980 suspension *ad cautelam*, because it was the twentieth century merger of these historically separate paths that gave rise to the suspension in its current form.

The 1917 Code of Canon Law defined a dispensation as a relaxation of law in a particular case² and

² Can. 80 CIC 1917: «Dispensatio, seu legis in casu speciali relaxatio, concedi potest a conditori legis, ab eius successore vel Superiore, nec non ab illo cui iidem facultatem dispensandi concesserint».

the 1983 Code of Canon Law echoes that same definition, adding that the relaxation pertains only to merely ecclesiastical law, since no one can dispense from a divine law³. Dispensations had been in use by the Church as far back as the *Decretals* of Gregory IX⁴. By their nature, dispensations presume that the law being relaxed is both binding and valid, so that lacking a dispensation one is morally and canonically bound to observe it⁵. On the other hand, declarations of nullity are based upon the judgment that some invalidating factor has rendered a thing not binding and not valid. A declaration of nullity declares that the juridic act, sacrament, or other matter under discussion has produced no real effect either in divine or ecclesiastical law.

A second key distinction concerns those obligations which are connected to orders in general and the obligation of priestly celibacy in particular. This distinction becomes critical when examining how the Church has released clerics from the obligation of the clerical state. Those obligations of the clerical state have included a broad set of duties and responsibilities which at various points in history would encompass such diverse things as the obligation to

³ Can. 85: «Dispensatio, seu legis mere ecclesiasticae in casu particulari relaxatio, concedi potest ab iis qui potestate gaudent executiva intra limites suae competentiae, necnon ab illis quibus potestas dispensandi explicite competit sive ipso iure sive vi legitimae delegationis».

⁴ Cf. X 1, 6, 20.

⁵ Cf. P.G. MAGEE, *Dispensation from the Obligations of Priestly Celibacy*. An Investigation of the Case of Those Who Should Not Have Received Priestly Ordination According to *Per Litteras* §5, Roma 1988, 278.

dress in clerical attire, to wear tonsure, and to recite the Divine Office⁶. When releasing clerics from the obligations of the clerical state, the Church more often than not released such clerics from other obligations *but not from celibacy*. Consequently, when encountering the phrase "obligations connected to orders" or "obligations arising from orders" one must ask whether or not the obligation of celibacy is included among them, especially if it is a question of the cessation of obligations. Even today, loss of the clerical state does not necessarily bring with it a dispensation from celibacy⁷, so that one can lose the clerical state and still be bound by celibacy⁸.

Thirdly, it is important to distinguish between the often confusing use of the terms "celibacy" and "continence". Celibacy can be defined as «the religious practice of non-marriage or the choice of a commitment to the single life for specifically religious reasons»⁹. In other words, celibacy technically excludes the possibility of marriage. Continence, on the other hand, does not rule out the possibility of

⁶ Cf. F.P. SWEENEY, *The Reduction of Clerics to the Lay State*, Washington (DC) 1945, 11-13.

⁷ Cf. c. 291: «Praeter casus de quibus in can. 290, n. 1 amissio status clericalis non secumfert dispensationem ab obligatione caelibatus, quae ab uno tantum Romano Pontifice conceditur».

⁸ In fact, the 1917 Code of Canon Law saw this as the only possible result of reduction to the lay state by means of a rescript. Cf. c. 213 §2 CIC 1917: «Clericus tamen maior obligatione coelibatus tenetur, salvo praescripto can. 214». Can. 214 CIC 1917 deals with impugning the validity of orders and its attached obligations.

⁹ D. GOERGEN, «Celibacy», in J. KOMONCHAK – M. COLLINS – D. LANE (edd.), *The New Dictionary of Theology*, Wilmington (Delaware) 1987, 174.

marriage but simply requires sexual abstinence either within or outside of marriage. Despite this distinction, the two terms have often been used interchangeably in Christian culture for over a thousand years and many people still see them as synonymous, which can lead to a great lack of clarity. Throughout much of the *Corpus Iuris Canonici*, the term continence (*continentia*) meant the same as it does today, i.e., sexual abstinence either within or outside of marriage. Clerics were expected to be continent, but not necessarily unmarried, even up to and after the Council of Trent. On the other hand, celibacy (*coelibatus* or *caelibatus*) understood as specifically excluding marriage did not enter canonical usage until after the Council of Trent¹⁰. Again, when examining historical canonical sources, one should question how these terms were used at the time and exactly what was meant by them.

Lastly, remembering that the term "cleric" has meant different things at different times in history, one needs to ask who might be included by the use of the term at any given time. The suspension *ad cautelam* of the 1980 procedural norms governs dispensations from priestly celibacy, so that any investigation into its origin and nature naturally will limit itself to priests. The minor orders of porter, lector, acolyte, and exorcist in the Latin Church had their own expectations and norms governing celibacy, and even today separate norms exist for the petition of deacons seeking relief from the obligation of clerical (though not priestly) celibacy.

¹⁰ Cf. A. STICKLER, *The Case for Clerical Celibacy*, Fort Collins (Colorado) 1995, 53.

2.2 *The canonical development of challenging the validity of clerical obligations*

As stated above, the suspension *ad cautelam* of the 1980 procedural norms grew out of a merger of two historically separate canonical paths used to seek relief from clerical celibacy. Of these two paths, the far more ancient is that of declaring invalid the binding force of the obligations placed upon a cleric at the time of his ordination. In the early attempts at such a process, one finds the most ancient font of the 1980 procedural norms for seeking dispensations from priestly celibacy and the suspension *ad cautelam* contained within those norms.

Although the concept of celibacy as the exclusion of marriage is of more recent origin, the history of a clerical obligation toward continence can be traced as far back as the Council of Elvira (Illiberis) around the year 300, which had established the norm that clerics were to be continent, suggesting to scholars that the custom behind the norm reaches back even farther¹¹. By the time of Gratian's *Decretum*, clerical continence was already an ancient custom in the West, and Gratian himself treated the topic in Distinctions 26-34 and 81-84¹².

¹¹ Cf. A. STICKLER, *Clerical Celibacy* (cf. nt. 10), 22. Stickler cites canon 33 of the Council of Elvira: «It has seemed good absolutely to forbid the bishops, the priests, and the deacons, i.e., all the clerics engaged in service at the altar, to have [sexual] relations with their wives and procreate children; should anyone do so, let him be excluded from the honor of the clergy».

¹² Cf. D. 26-34, concerning married bishops, subdeacons, deacons and priests and their obligation to live purely and chastely; e.g. D. 28. c.3 («[...] ut caste et pure vivant sub timore

By the end of the thirteenth century, an awareness was arising of factors that could nullify a cleric's obligation to continence. It had generally become accepted by canonists that a cleric ordained through grave force or fear was not necessarily bound by continence¹³. Raymond of Penyafort distinguished between a cleric ordained while married and one ordained while still single, arguing that the one already married would not be held to continence if ordained by force or fear, but the one who was ordained while still single would be held to continence¹⁴. Iohannes Teutonicus took a more lenient position in arguing that no one could be bound to practice continence if he had not willingly agreed to it beforehand¹⁵. No one bothered to specify exactly how a cleric was to prove such force or fear or whose permission he needed in order to be released from continence, but it had been established that the obligation of continence was not always binding if force or fear could be proved¹⁶. The growing awareness of this possibility at the end of the thirteenth century would develop in time into a process for seeking to declare invalid a whole range of obligations attached to orders. This budding process from the thirteenth century is the

Dei»), D. 31 c. 2. («Sacerdotibus, ut semper valeant altare assistere, semper ab uxoribus continendum, semper castitas observanda precipitur») and D. 81-84, concerning those unsuitable to be ordained and crimes of clerics.

¹³ Cf. F.P. SWEENEY, *The Reduction of Clerics* (cf. nt. 6), 14-18.

¹⁴ Cf. F.P. SWEENEY, *The Reduction of Clerics* (cf. nt. 6), 17.

¹⁵ Cf. D. 31, c. 1: «Quod mihi durum atque incompetens videtur, ut, qui usum continentiae non invenit, neque castitatem promisit, compellatur a sua uxore separari, atque per hoc (quod absit) in deterius cadat».

¹⁶ Cf. F.P. SWEENEY, *The Reduction of Clerics* (cf. nt. 6), 18.

most distant font of the suspension *ad cautelam* found in article 4 of the 1980 procedural norms.

The Council of Trent three centuries later did nothing to advance this awareness that clerical obligations might sometimes have been invalidly assumed because of force or fear. Instead, the Council simply chose to concern itself with the question of clerical privileges¹⁷. The Council Fathers did insist that those being advanced toward the subdiaconate, diaconate, and priesthood be fully aware of the obligations which they were undertaking¹⁸ and that they be trained in everything regarding the exercise of their respective orders so that, with the help of God, they could live a celibate life¹⁹. In time, this insistence lessened the number of those who through force or fear had invalidly assumed the obligations attached to orders, including celibacy.

According to Alfons Cardinal Stickler, Trent's greatest contribution in the realm of clerical celibacy is actually found in session 23, canon 18, where the Council mandated that every diocese should establish its own seminary. As dioceses throughout the

¹⁷ Cf. F.P. SWEENEY, *The Reduction of Clerics* (cf. nt. 6), ix.

¹⁸ COUNCIL OF TRENT, session 23, cc. 11-14, in N. TANNER (ed.), *Decrees of the Ecumenical Councils*, London – Washington (DC) 1990, II, 748-749, esp. c. 11: «Cumque hinc ad altiores gradus et sacratissima mysteria sit ingressus, nemo iis initietur, quem non scientiae spes maioribus ordinibus dignum ostendat».

¹⁹ COUNCIL OF TRENT, session 23, c. 13, in N. TANNER (ed.), *Decrees of the Ecumenical Councils* (cf. nt. 18), II, 749: «Subdianconi et diaconi ordinentur habentes bonum testimonium et in minoribus ordinibus iam probati, ac litteris et iis, quae ad ordinem exercendum pertinent, instructi, qui sperent, Deo auctore, se continere posse».

Church slowly implemented this requirement, married candidates for ordination gradually decreased and after a while they ceased to exist altogether. In the process, the concept of clerical celibacy took on its modern connotation. As Cardinal Stickler writes:

Henceforth the concept of celibacy, which could mean either the obligation of complete continence in regard to the use of a marriage contracted before ordination or the prohibition of a future marriage, was now restricted to this latter understanding. This is how it is generally understood in the mind of today's faithful, that is, that clerical celibacy is commonly understood only as a prohibition against marriage²⁰.

The dispensation from celibacy provided for in the 1980 procedural norms understands celibacy in this post-Tridentine sense, i.e., not as simple continence but as an exclusion of marriage itself.

Following the Council of Trent, canonists continued to be aware that certain circumstances could invalidate a cleric's assumption of obligations at the time of his ordination, but still there existed no juridic process by which a cleric could initiate and pursue such a case. This situation changed markedly on March 4, 1748. On that date, Pope Benedict XIV (1740-1758) promulgated his apostolic constitution *Si datam*. Adapting procedures already in place for challenging the validity of marriage, Benedict XIV established for the first time a specific juridic process for challenging the validity of solemnly professed religious vows²¹.

²⁰ A. STICKLER, *Clerical Celibacy* (cf. nt. 10), 54.

²¹ Cf. BENEDICT XIV, Apost. const. *Si datam*, §2 in P. GASPARRI, *CICFontes*, II, no. 385: «Quemadmodum itaque pro

Benedict XIV made no reference in *Si datam* to priestly ordination or to the obligations attached to orders, since his concern was for the solemn vows of religious rather than the obligations of clerics. Nonetheless, in a sort of trickle down effect, he unintentionally managed to establish a process for cases raised against the obligations attached to orders as well as for cases against the validity of an ordination itself. Such cases would be entered analogously following the provisions established in *Si datam*²². Not until the promulgation of the Code of Canon Law in 1917 would there exist provisions specifically designed for these cases. Within those provisions of the 1917 Code would be found the direct canonical predecessor of the suspension *ad cautelam* of article 4 of the 1980 norms.

Matrimonii carnalibus a Nobis provisum fuit, ita nunc de spiritualibus animarum nexibus, de Religiosis videlicet utriusque sexus Regularium Professionibus, pari ratione statuere decrevimus: nimirum certam normam ac methodum tradere, quam observare debeant Iudices Ecclesiastici, quoties iudicia super nullitate Professionum in aliquo Ordine Regulari a Sede Apostolica approbata factarum, coram ipsis agitari contingat». For material concerning the history of impugning religious vows, see J. KOWAL, *Uscita definitiva dall'istituto religioso dei professi di voti perpetui*. *Evolutione storica e disciplina attuale*, Roma 1997.

²² The authors provide a consistent historical witness to this fact by their constant reference to Benedict XIV's *Si datam* as the guiding legislation on which to base all cases against orders or against the obligations connected to orders. Cf., e.g., D. BOUX, *Institutiones juris canonici in varios tractatos divisae*. V. *Tractatus de iudiciis ecclesiasticis*, II, Paris 1855, 469. Also F.X. WERNZ, *Ius decretalium*. *Ad usum praelectionum in scholis textus canonici sive iuris decretalium*, II. Part 1, Prato 1915³, 128.

2.3 Canonical development of the dispensation from priestly celibacy

The suspension *ad cautelam* found in the 1980 procedural norms owes much of its *content* to the development of processes for declaring clerical obligations to be invalid, but it owes much of its *context* to the canonical path of seeking dispensations from those obligations. The roots of this second path reach back to the time of the Council of Trent but not beyond.

As has been seen, canonists prior to the Council of Trent had begun to consider questions of grave force or fear at the time of ordination which could nullify the obligation to practice continence²³. But what if the validity of the ordination and the valid assumption of obligations attached to it were clear from the outset? A dispensation would be required. The earliest examples of the granting of dispensations from the obligation of priestly celibacy occurred during the Council of Trent itself. In 1554, Pope Julius III gave to his legate for England the faculty to dispense from the obligations of the clerical state those English priests who had entered into invalid marriages following Henry VIII's break with the Catholic Church. These clerics were all in invalid marriages, by virtue of the fact that the Second Lateran Council had declared major orders to be an impediment to subsequent marriage²⁴. In this case the dispensation from the obligations of the cleri-

²³ Cf. notes in F.P. SWEENEY, *The Reduction of Clerics* (cf. nt. 6), 14.; D. 74. c. 7; D. 45. c. 5; X, c. 3 *de baptismo et eius effectu*.

²⁴ Cf. LATERAN COUNCIL II, 1139, c. 7, in N. TANNER (ed.), *Decrees of the Ecumenical Councils* (cf. nt. 18), I, 198:

cal state specifically *included* rather than excluded celibacy. The dispensations were intended only to validate the marriages which clerics had already attempted and did not permit any further marriage if a cleric's wife should die²⁵. These dispensations of English priests constitute the earliest evidence of the granting of true dispensations from the validly assumed obligation of priestly celibacy.

A second great wave of dispensations followed nearly 250 years later. In 1801, at the time of the restoration of the French hierarchy through the concordat with Napoleon, Pope Pius VII delegated his legate to dispense numerous French priests who had already invalidly attempted marriage following the tumultuous upheaval of the French revolution. The dispensations were given under the same conditions as those in England, i.e., that the clerics never again exercise the power of orders, that they be deprived of all ecclesiastical benefices, offices, and privileges, that they be considered ever after as members of the

«Ut autem lex continentiae et Deo placens munditia in ecclesiasticis personis et sacris ordinibus dilatetur, statuimus quatenus episcopi presbyteri diaconi subdiaconi regulares canonici et monachi atque conversi professi, qui sanctum transgredientes propositum uxores sibi copulare praesumpserint, separentur. Huiusmodi namque copulationem, quam contra ecclesiasticam regulam constat esse contractam, matrimonium non esse censemus».

²⁵ Cf. F.P. SWEENEY, *The Reduction of Clerics* (cf. nt. 6), 32 and A. STICKLER, *Clerical Celibacy* (cf. nt. 10), 52. Neither Sweeney nor Stickler cite any specific source text of Julius III for this dispensation, and no such text is reported in P. GASPARRI, *CICFontes*. Stickler reports that the faculty to dispense from celibacy was also given on behalf of German priests.

laity, and that they be forbidden to remarry in the event of the death of the spouse²⁶.

Several points should be noted concerning the dispensations of 1554 and 1801. First, the motive for each was the Pope's pastoral concern for the welfare of souls, arising from the fact that so many priests had found themselves out of the good graces of the Church²⁷. Secondly, these dispensations had a two-fold effect in bringing about the loss of the clerical state while simultaneously dispensing from the obligations arising from orders, including celibacy. Thirdly, these dispensations were true dispensations in that they did not question the validity of the ordinations or of the obligations which the clerics had assumed, but merely relaxed the law in light of the welfare of souls.

Other than on these two occasions, nearly all dispensations from celibacy granted between the Council of Trent and the publication of the Code in 1917 were connected to cases in which an individual cleric had initiated an action against the validity of his priestly obligations but had failed to prove his case sufficiently in order to receive the two conforming sentences required (by analogy to *Si datam*) for a declaration of nullity. The only recourse left to the cleric at that point was to petition the Holy See for a dispensation from celibacy²⁸. Most cases were not successful. Occasionally the dispensation was granted,

²⁶ Cf. F.P. SWEENEY, *The Reduction of Clerics* (cf. nt. 6), 31.

²⁷ Cf. F.P. SWEENEY, *The Reduction of Clerics* (cf. nt. 6), 31.

²⁸ Benedict XIV had reaffirmed that the faculty to dispense from priestly celibacy was reserved to the Holy See. Cf. BENEDICT XIV, Encyc. letter *Inter praeteritos*, Dec. 3, 1749, §41, in P. GASPARRI, *CICFontes*, II, no. 404.

but only after the attempt to declare nullity had been attempted and had failed²⁹.

2.4 *The eve of the promulgation of the 1917 Code of Canon Law*

By the eve of the publication of the new Code of Canon Law in 1917, the two separate canonical paths for seeking relief from celibacy, either through a declaration of nullity or by means of a dispensation, stood at very different points of development. In reference to the first, a canonical jurisprudence had developed by analogy to *Si datam* for initiating cases against the validity of the obligations attached to orders, including celibacy. That practice would cease with the publication of the Code of Canon

²⁹ Cf. F.X. WERNZ, *Ius decretalium* (cf. nt. 22), II. Part 1, 308, and F.P. SWEENEY, *The Reduction of Clerics* (cf. nt. 6), 36. Examples of successful cases for dispensation brought by clerics can be found in SACRED CONGREGATION OF THE COUNCIL, *Ipren.*, Dec. 2 and Dec. 16, 1719, in P. GASPARRI, *CICFontes* (cf. nt. 21), V, no. 3195, and SACRED CONGREGATION OF THE COUNCIL, *Parisien.*, Jan. 25, 1721 and July 12, 1721, in P. GASPARRI, *CICFontes*, V, nn. 3220 and 3228. Of particular note is the first case (*Ipren.*) in which Maximilianus Carolus de Coupigni was only able to prove conditional and not absolute force at the time of his ordination. The judgment, citing the learned doctors, recalled that absolute coercion was required to nullify the obligations attached to orders, and so the obligations were valid. The judgment did decide, however, that the conditional coercion constituted grounds for sending to the Holy Father a request for a dispensation from celibacy. An example of an unsuccessful petition can be found in *Acta Sanctae Sedis* 1 (1865) 328-335.

Law in 1917. Such cases would no longer be handled by analogy to *Si datam* but according to a proper canonical process of their own.

The jurisprudence for handling relief from clerical obligations through dispensations, however, had developed very little. Outside of the dispensations of 1554 and 1801, clerics had only rarely successfully petitioned the Holy See for a dispensation from obligations attached to orders (including celibacy), and that came only after an action against validity had failed to attain two conforming sentences in favor of nullity. Not only would the new 1917 Code of Canon Law fail to present any legislation dealing with dispensing priests from obligations attached to orders, but the Code would not even acknowledge that such a dispensation existed. The roots of much of the content of the 1980 suspension *ad cautelam* would appear in the 1917 Code, but not the roots of its context. The Code would legislate the method for seeking declarations of the nullity of clerical obligations, but would be silent on the possibility of dispensing from the valid obligation of celibacy.

3. The 1917 Code of Canon Law

3.1 *Canons 1993-1998: Toward establishing the content of the 1980 suspension ad cautelam*

The Code of Canon Law in 1917 included written norms by which a priest could initiate a case seeking relief from his clerical obligations, including celibacy. Those norms were found in cc. 211-214 and cc. 1993-1998. They specified the process by which a cleric could attempt to prove that he had invalidly

assumed his obligations. Canons 1993-1998 actually governed cases against the validity of ordination itself. Of them, only cc. 1994 and 1997 dealt with challenging the validity of obligations attached to orders. These canons were included in Book VI (*De processibus*), Part I (*De iudiciis*), Section 2 (*De peculiaribus normis in certis quibusdam iudiciis servandis*) of the 1917 Code of Canon Law. They constitute the whole of Title 21 (*De causis contra sacram ordinationem*). The preceding titles dealt with methods of avoiding contentious trials (Title 18), with criminal trials (Title 19), and with matrimonial cases (Title 20). These other titles had long histories of written norms and numerous fonts. Only Title 21 was new, consisting entirely of cc. 1993-1998. Indeed, the entire list of fonts for cc. 1993-1998 includes only two references: Pius X's apostolic constitution *Sapienti consilio* of June 29, 1908 and the *Ordo Servandus in S. Congregationibus, Tribunalibus, Officiis Romanae Curiae* of September 29, 1908³⁰.

Of the material in cc. 1993-1998, the text of c. 1997 is especially important in the evolution of the 1980 suspension *ad cautelam*. Can. 1997 required a prohibition *ad cautelam* from the exercise of orders for those clerics who had initiated a case against obligations arising from ordination. The text of c. 1997 stated:

Quamvis actio instituta fuerit non super ipsamet sacrae ordinationis nullitate, sed super obligationibus tantum ex ipsa sacra ordinatione exsurgentibus, nihilominus clericus est ad cautelam ab exercitio ordinum prohibendus.

³⁰ Cf. *CIC 1917*, citation of fonts for cc. 1993-1998.

Through insisting that a cleric who has initiated a case against the obligations arising from his ordination is to be prohibited *ad cautelam* from the exercise of orders, c. 1997 legislated a juridic practice that would lead directly to the suspension *ad cautelam* required sixty-three years later in the 1980 procedural norms for petitioning for a dispensation from celibacy.

Almost immediately, several important questions come to light which are crucial for understanding the *ratio legis* both of c. 1997 and of the suspension *ad cautelam* found in article 4 of the 1980 procedural norms. First, c. 1997 refers to a cleric who has initiated a case against his obligations (*super obligationibus tantum*). Does this refer only to cases against validity or also to cases seeking a dispensation? Secondly, does the phrase *clericus est prohibendus* convey a penal sense or something else? Thirdly, exactly what is to be prohibited? Lastly, what was the concern of the Church that gave rise to the precautionary nature of the prohibition *ad cautelam*? Each of these questions must be examined in turn.

To begin with, when c. 1997 refers to cases against the obligations arising from ordination (*super obligationibus tantum ex ipsa sacra ordinatione exsurgentibus*), does it refer only to cases against validity or also to cases seeking a dispensation from priestly obligations? Though the answer is not clear from the text of the canon itself, the placement of the canon does shed some light on the answer. The other canons in Title 21 (*De causis contra sacram ordinationem*) all deal with cases against validity, not with petitions for dispensations. This is true even of c. 1993 §1, which at first glance seems to distinguish between cases against obligations and

cases against validity when it states, «*In causis quibus impugnantur obligationes ex sacra ordinatione contractae vel ipsa sacrae ordinationis validitas [...]*». Canon 1994 §2 eliminates this confusion when it envisions only one possibility for cases against obligations: only those clerics who believed their obligations never to have been contracted in the first place, i.e., to be invalid, could petition for a declaration of nullity³¹. Thus, all of the canons in Title 21 deal with cases against validity, and the placement of c. 1997 under the same title illustrates that c. 1997 was intended solely for cases against the validity of obligations connected to orders, not for cases petitioning for a dispensation from those obligations.

The second question surrounding c. 1997 concerns its use of the phrase *clericus est prohibendus*. Again, it is not clear from the text itself whether the canon intends to place the cleric under the canonical sanction of a prohibition or merely indicates that the cleric is to be forbidden to exercise orders, i.e., to be prohibited in the ordinary use rather than the canonical use of the word. In examining how the 1917 Code used the words *prohibitio* and *prohibere* in other contexts, one finds that some form of the noun *prohibitio* occurs 19 times, 6 of which are found in Book 5 (*De delictis et poenis*). More often than not, the remaining uses refer to such things as forbidding the publication of books, forbidding the celebration or reception of the sacraments by those unable or

³¹ Can. 1994 §2 CIC 1917: «Solus clericus, qui existimet se ex sacra ordinatione obligationes ordini adnexas non contraxisse, potest declarationem nullitatis onerum petere».

incapable, etc. The Code used some form of the verb *prohibere* 108 times, of which 23 are found in Book 5. The remaining 79 appearances mostly refer to the publication of books, to general norms, and especially to things that are specifically *not* to be prohibited³². These uses clearly do not carry any penal sense of a prohibition as defined by c. 2298, 1° and 7° which describe vindictive penalties applicable only to clerics³³.

All of this illustrates that the 1917 Code was not at all consistent in its use of the words *prohibitio* or *prohibere*, sometimes indicating a vindictive penalty and at other times simply meaning to forbid something without any penal sense at all. Authors and commentators are unanimous in their interpretation that the phrase *clericus est prohibendus* in c. 1997 does not carry a penal sense, but simply means that for the cleric in question the exercise of orders is not permitted³⁴. Moreover, if c. 1997 intended the vindictive penalty described in c. 2298, 1°, that prohibition would have no effect outside of the jurisdiction of the Ordi-

³² Cf. A. LAUER, *Index verborum CIC*, Vatican City 1941, 488-489.

³³ Can. 2298 CIC 1917: «Poenae vindicativae, quae clericis tantum applicantur, sunt: 1° Prohibitio exercendi sacrum ministerium praeterquam in certa ecclesia» and «7° Prohibitio commorandi in certo loco vel territorio».

³⁴ For a more detailed discussion of this point, see A. BLAT, *Commentarium textus CIC. IV. Liber IV De processibus cum declarationibus authenticis usque ad diem 24 maii 1927*, Roma 1927, 533; M. CONTE A CORONATA, *Institutiones iuris canonici. Ad usum utriusque cleri et scholarum. III. De processibus*, Roma 1956, 515; C. AUGUSTINE, *A Commentary on the New Code of Canon Law. IV. On the Sacraments (Except Matrimony) and the Sacramentals*, St. Louis 1925³, 555-556.

nary who imposed it³⁵. This clearly is not the intent of c. 1997's use of the phrase *clericus est prohibendus*.

Thirdly, what does c. 1997 actually prohibit? Can. 1997 states that a cleric is to be prohibited *ab exercitio ordinum*. What is included under this prohibition? The 1917 Code never actually defined the exercise of orders, being content merely to acknowledge in c. 210 that the power of orders could not be delegated or subdelegated except by expressed consent³⁶. What can help to shed light on the phrase *ab exercitio ordinum*, however, is the Code's treatment of the various kinds of suspensions. Can. 2279 §2, 1°-9° identified and defined numerous grades of suspensions, including suspensions from jurisdiction in general (*a iurisdictione*), from divine functions (*a divinis*), from orders (*ab ordinibus*), and from sacred orders (*ab ordinibus sacris*)³⁷.

Based upon its wording, c. 1997's reference to a prohibition *ab exercitio ordinum* would corre-

³⁵ G. MICHIELS, *De delictis et poenis*. Commentarius libri V Codicis Juris Canonici. III. *De poenis in specie – canones 2241-2313*, Tournai 1961, 414.

³⁶ Can. 210 CIC 1917: «Potestas ordinis, a legitimo Superiore ecclesiastico sive adnexa officio sive commissa personae, nequit aliis demandari, nisi id expresse fuerit iure vel indulto concessum».

³⁷ These types of suspensions were delineated in the 1917 Code as follows: c. 2279 §2, 1°: «A *iurisdictione* generatim, vetat omnem actum potestatis iurisdictionis pro utroque foro tam ordinariae quam delegatae»; c. 2279 §2, 2°: «A *divinis*, omnem actum potestatis ordinis quam quis sive per sacram ordinationem sive per privilegium obtinet»; c. 2279 §2, 3°: «Ab *ordinibus*, omnem actum potestatis ordinis receptae per ordinationem»; and c. 2279 §2, 4°: «Ab *sacris ordinibus*, omnem actum potestatis ordinis receptae per ordinationem in sacris».

spond most closely to the suspension *ab ordinibus* (c. 2279 §2, 3°) rather than to the suspensions *a iurisdictione*, *a divinis*, or *ab ordinibus sacris*. H.A. Ayrinhac describes the suspension *ab ordinibus* as the prohibition to exercise the power received by one's ordination, distinct and separate from that received by way of a privilege or from the power of jurisdiction. It prohibits the exercise of any power of orders received through any ordination (*receptae per ordinationem*). On the contrary, the suspension *ab ordinibus sacris* prohibits only that power of orders received through major orders, i.e., through ordination as a subdeacon, deacon, or priest (*receptae per ordinationem in sacris*). Likewise, the suspension *ab ordinibus* forbids those acts of the power of orders which flow from a valid ordination while continuing to permit those acts whose exercise depends solely upon an Apostolic indult and not upon ordination. A suspension *a divinis*, on the other hand, prohibits both³⁸. The prohibition in c. 1997, then, forbids a cleric who has initiated a judicial process against the validity of the obligations arising from his ordination to exercise any power of orders received by that ordination. Can. 1997 does not forbid the exercise of jurisdiction or the placing of acts that are based solely upon jurisdiction³⁹.

³⁸ Cf. H.A. AYRINHAC, *Penal Legislation in the New Code of Canon Law*, New York – Cincinnati – Chicago 1936, 110 and also E.G. RAINER, *Suspension of Clerics*, Washington (DC) 1937, 86.

³⁹ Cf. S. WOYWOD, *A Practical Commentary on the Code of Canon Law*. Revised by C. Smith, New York 1952, 496.

In the fourth and final question in regard to c. 1997, one must address the meaning of the phrase *ad cautelam*. What concern prompted the Church to require that the cleric be prohibited from the exercise of the power of orders as a precautionary measure? The answer can be found in the Church's concern for the valid celebration of the sacraments in light of their efficacy for the salvation of souls. In promulgating *Si datam*, Benedict XIV had not needed to prohibit religious clerics from the exercise of orders when they entered cases against the validity of their vows, for the obvious reason that religious vows do not effect the efficacy of the sacraments. Cases against the validity of orders or against their attached obligations, on the other hand, were another matter altogether.

By 1917, various authors were commenting that divine law itself forbade a cleric from exercising orders if he actually thought that he might be invalidly ordained⁴⁰. Commentators agree that the prohibition *ad cautelam* of a cleric who has challenged the validity of his own orders has its origins in divine law. M. Conte a Coronata noted that «a cleric who has a positive doubt concerning the validity of his ordination is required by divine law to abstain from the exercise of sacred orders»⁴¹. The reason is obvious, in that the power of orders, flow-

⁴⁰ Cf., e.g., A. BLAT, *Commentarium textus CIC* (cf. nt. 34), IV. 533.

⁴¹ M. CONTE A CORONATA, *Institutiones iuris canonici* (cf. nt. 34), 515: «At clericus, si vere dubitet positive de valore ordinationis, tenetur iure divino abstinere ab exercitio ordinum sacrum».

ing as it does from a valid ordination, is absent if the ordination is invalid⁴². Along the same lines, Albert Blat wrote:

The caution is reasonably enjoined which c. 1997 establishes beyond the necessity arising from divine law. It is certain that a cleric prudently doubting the validity of his priestly ordination must before God abstain from the exercise of his ministry, because if his ordination were in truth invalid, he would neither be able to effect the consecration [...] nor truly absolve those faithful [who are] rightly disposed⁴³.

The fact remains, however, that c. 1997 did not govern actions against the validity of ordination itself, but only against the obligations connected to ordination. Such actions would not automatically call into question the validity of the sacraments. Nonetheless, the Church chose to err on the side of caution. The prohibition was required *ad cautelam*, not *ad necessitatem*. As Blat went on to explain, the prohibition was required *ad cautelam* because the Church was concerned that an action which began simply by opposing the validity of the binding force of obligations connected to an ordination could quite possibly end up demonstrating the invalidity of the ordination itself. The Church could not permit minis-

⁴² Cf. E.G. RAINER, *Suspension of Clerics* (cf. nt. 38), 86.

⁴³ A. BLAT, *Commentarium textus CIC* (cf. nt. 34), IV. 533: «Cautela iniuncta est rationabiliter, quam ultra necessitatem ex iure divino exurgentem statuit can. 1997. Certum est clericum dubitantem prudenter de validitate ordinationis presbyteralis debere coram Deo abstinere ab exercitio illius ministerii, quia si eius ordinatio fuerit reapse invalida, nec consecrationem peraget [...] nec vere absolvet fidelis rite dispositos».

ters who had initiated such a process to continue to exercise orders that might well be proved to be invalid⁴⁴. The authors all agree that the prohibition *ad cautelam* was well placed, arising in divine law and appearing for the first time in ecclesiastical law in c. 1997 of the 1917 Code.

3.2 *Canons 211-214: Toward setting the context of the 1980 suspension ad cautelam*

Canons 211-214 also dealt with the process of seeking relief from the obligation of the clerical state. Their significance in terms of the evolution of the 1980 suspension *ad cautelam* lies not so much in the content of the 1980 suspension but rather in its context. The 1980 suspension *ad cautelam* is a provision situated within the context of a canonical process to petition for a dispensation from priestly celibacy. Canons 211-214 demonstrate how even just sixty-three years prior to the promulgation of the 1980 procedural norms, the 1917 Code of Canon Law seemed utterly unaware that such a thing as a dispensation from celibacy even existed.

These four canons formed Title VI (*De reductione clericorum ad statum laicalem*) of Book II (*De personis*), Part I (*De clericis*) of the 1917 Code. Canon 211 §1 provided the only specific reference in the entire 1917 Code to the reduction of validly ordained clerics. The canon listed three possible means by which a validly ordained cleric in major orders could be reduced to the lay state: by rescript,

⁴⁴ Cf. A. BLAT, *Commentarium textus CIC* (cf. nt. 34), IV, 533.

by decree, or by the penalty of degradation⁴⁵. The fonts of c. 211 refer only to the permanent character of the indelible mark of holy orders and to the penalty of degradation, making no reference to rescripts and demonstrating how seldomly such rescripts were actually used⁴⁶.

Can. 213 details what is lost to the cleric reduced to the lay state and what is retained. Can. 213 §1 states that the cleric reduced to the lay state would lose all offices, benefices, clerical rights and privileges, and was forbidden (*vetantur*) to wear clerical attire or tonsure⁴⁷. Can. 213 §2, however, tells what is not lost: A major cleric is still held to the obligation of celibacy, observing the prescript of c. 214⁴⁸. In other words, reduction to the lay state by rescript or by any other means might deprive a validly ordained

⁴⁵ Can. 211 §1 CIC 1917: «Etsi sacra ordinatio, semel valide recepta, nunquam irrita fiat, clericus tamen maior ad statum laicalem redigitur rescripto Sanctae Sedis, decreto vel sententia ad normam can. 214, demum poena degradationis». The penalty of degradation was distinguished from the penalty of deposition (see cc. 2303-2305 CIC 1917). A deposed cleric was still bound by all of the obligations of the clerical state and remained a cleric, while a degraded cleric was permanently returned to the lay state.

⁴⁶ Cf. COUNCIL OF TRENT, session 23, c. 4, in N. TANNER (ed.), *Decrees of the Ecumenical Councils* (cf. nt. 18), II, 746, and *Pontificale Romanum*. Summorum pontificum iussu editum et a Benedicto XIV Pont. Max. recognitum et castigatum. *Degradationis forma*, Roma 1848, 103-112.

⁴⁷ Can. 213 §1 CIC 1917: «Omnes qui e clericali statu ad laicalem legitime redacti aut regressi sunt, eo ipso amittunt officia, beneficia, iura ac privilegia clericalia et vetantur in habitu ecclesiastico incedere ac tonsuram deferre».

⁴⁸ Can. 213 §2 CIC 1917: «Clericus tamen maior obligatione coelibatus tenetur, salvo praescripto can. 214».

major cleric of offices, benefices, and clerical rights and privileges, but it certainly did not release him from his obligation of celibacy. A cleric reduced to the lay state could be released from celibacy only according to the provision of c. 214.

What is that provision? According to the text of c. 214 §1, a cleric could be reduced to the lay state by means of the sentence of a judge without being bound any longer to the obligations of celibacy or the liturgy of the hours, but only under certain conditions. The text of c. 214 §1 reads:

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.

Thus, according to c. 214 §1, the cleric had first to demonstrate that he had received sacred orders coerced by grave fear and that after the fear had been removed, he had never subsequently ratified his ordination even tacitly by an act of the power of orders. Such a ratification after the removal of force or fear would constitute a free acceptance of the clerical obligations⁴⁹. The 1917 Code provided only one means of relief from the obligation of celibacy for validly ordained clerics: they had to prove that the obligations attached to orders had been invalidly assumed.

⁴⁹ Cf. P.G. MAGEE, *Dispensation from the Obligations of Priestly Celibacy* (cf. nt. 5), 277.

But would the grave fear mentioned in c. 214 §1 be sufficient to invalidate the binding force of the obligations? Ordinarily, grave fear alone would not necessarily invalidate, but a lack of intention would, and the key to understanding c. 214 §1 is the phrase *volens tamen per talem actum obligationis clericalibus se subiicere*. The canon concerns itself not so much with grave fear itself but with the cleric's intention to bind himself to clerical obligations once the fear is removed. While it is true, as Peter Magee notes, that c. 214 §1 does not actually state that a lack of intention would invalidate the binding force of the obligations⁵⁰, one can reasonably conclude this from the second paragraph of the canon. Can. 214 §2 directs that the coercion by fear and the lack of ratification spoken of in c. 214 §1 must be proved according to the norms of cc. 1993-1998, i.e., according to canons governing cases challenging validity⁵¹. This interpretation is affirmed by P. Amenta, who writes:

Under determined conditions a cleric constituted in major orders was able to introduce a judicial action [...] not toward a declaration of the nullity of ordination, but toward the *nullity of the assumption of the obligations* [emphasis in original], and this precisely in the case of a cleric having been coerced by grave fear: this is the case envisioned by c. 214⁵².

⁵⁰ Cf. P.G. MAGEE, *Dispensation from the Obligations of Priestly Celibacy* (cf. nt. 5), 277.

⁵¹ Can. 214 §2 CIC 1917: «Coactio autem et defectus rati-habitionis probari debent ad normam can. 1993-1998».

⁵² P. AMENTA, «La dispensa dagli obblighi della sacra ordinazione e la perdita dello stato clericale», *Periodica* 88

Considering that the only other canon in this Title (c. 212) merely considers the competency of various dicasteries in reducing clerics to the lay state, it becomes evident that the 1917 Code simply did not acknowledge the existence of a dispensation from celibacy. The only means of relief from the obligation of priestly celibacy acknowledged by the Code was through proving invalidity, either of the ordination itself or of the assumption of obligations attached to orders. Obviously the dispensation from celibacy existed because it had been granted on rare occasions for centuries, but the 1917 Code failed to make any mention of it. As P. Amenta has noted, «The old law had not codified any possibility of a dispensation from celibacy in the case in which an ordination had to be considered valid or in which it was not possible to demonstrate the coercion undergone and the lack of ratification»⁵³.

By the end of 1917, then, the Church possessed a delineated canonical process for seeking relief from

(1999) 338: «A determinate condizioni perciò il chierico *in maioribus ordinibus constitutus* poteva introdurre un'azione giudiziale [...] non alla dichiarazione di nullità dell'ordinazione, bensì alla *nullità dell'assunzione degli obblighi*, e questo precisamente nel caso del *clericus metu gravi coactus*: è il caso previsto dal c. 214».

⁵³ P. AMENTA, «La dispensa dagli obblighi» (cf. nt. 52), 340: «La vecchia normativa non aveva codificato alcuna possibilità di dispensa dal celibato nel caso in cui l'ordinazione avesse dovuto considerarsi valida oppure non fosse stato possibile dimostrare la coazione subita ed il difetto di ratifica». See also E. COLAGIOVANNI, «De dispensatione a coelibatu sacerdotale iuxta novas Normas», *Monitor Ecclesiasticus* 106 (1981) 230: «C.J.C. anni 1917 de dispensatione sacerdotum a caelibatu silet».

the obligation of clerical celibacy, but by one means alone: through proof that a cleric had invalidly assumed the obligation because he had been coerced by grave fear. Furthermore, the Church directed that the cleric initiating such a process be prohibited *ad cautelam* from exercising the power of orders. The roots of the content of the 1980 suspension *ad cautelam* were coming to light in the Code's treatment of cases challenging validity, but the roots of its context set in a process petitioning for dispensations from priestly celibacy remained invisible, much like the dispensations themselves.

3.3 *Developments from 1917 to the start of Vatican Council II*

Despite the exclusion of any reference in the 1917 Code to the existence of dispensations from celibacy, such dispensations continued to be granted. For pastoral reasons following the First World War, Pope Benedict XV had dispensed a few priests whose lives were cast into turmoil as a result of the war⁵⁴. As the decades of the twentieth century unfolded, it became increasingly apparent that more needed to be done to assist priests who lacked the ability to fulfill their obligations, though only gradually did the concept of dispensing from the obligation come into the light.

The first major development following the promulgation of the 1917 Code came on June 9, 1931

⁵⁴ Cf. P.G. MAGEE, *Dispensation from the Obligations of Priestly Celibacy* (cf. nt. 5), 296.

when the Sacred Congregation for Sacraments issued new norms creating a special procedure for treating cases against the nullity either of ordination or of the obligations connected to ordination. These new norms were titled *Regulae Servandae super nullitate Sacrae Ordinationis vel onerum sacris ordinibus inhaerentium a sacra congregatione de disciplina editae*, or *Regulae servandae* in short⁵⁵. They combined together two internal *ad hoc* procedural policies established by the Sacred Congregation for Sacraments in 1924 and 1930, respectively⁵⁶.

The new 1931 norms clarified in great detail the process specified in cc. 1993-1998 without making any substantive changes in the process. They never even mentioned the prohibition *ad cautelam* of c. 1997. A significant development came, however, by way of three *dubia* which the Sacred Congregation for Sacraments had been raising since 1917 concerning cases initiated against the obligations arising from ordination. The 1931 norms did not include these *dubia* directly but were clearly influenced by them. The three *dubia* asked whether such a case would a) result in establishing nullity of the ordination itself as in c. 1998 §1 or b) at least result in establishing grave fear and a lack of ratification as in

⁵⁵ SACRED CONGREGATIONS FOR THE SACRAMENTS, Decree *Regulae servandae super nullitate Sacrae Ordinationis vel onerum sacris ordinibus inhaerentium a sacra congregatione de disciplina de sacramentorum editae*, Dec. 5, 1931, AAS 23 (1931) 457-473.

⁵⁶ V. FERRARA, «L'istituto canonico della dispensa pontificia dal celibato e dagli altri obblighi dell'ordinazione», *Apollinaris* 67 (1994) 505.

c. 214 §1 or c) at least result in establishing that *a grave doubt* exists concerning the validity of sacred ordination or concerning grave fear and the lack of ratification, *and other causes concur, so that a recommendation for dispensation from the obligations of sacred ordination should be furnished to the Pope*⁵⁷ [emphasis added].

The 1931 norms continued to place the scope of the proceedings clearly under the rubric of challenging the validity of the binding force of obligations, directing the process toward proving or disproving the invalidity because of a lack of intention, or because of compulsion, fear, or some defect of consent, and that each case was understood to be a case against the validity of sacred ordination or of obligations⁵⁸. Nonetheless, the text of the norms included phrases that resonate with the text of the third *dubium* concerning the situation in which other

⁵⁷ Latin text of the *dubia* are reported in P. AMENTA, «La dispensa dagli obblighi» (cf. nt. 52), 340-341, but no original reference is cited. The Latin text is:

- an constet de nullitate in casu, et quatenus negative;
- an saltem constet de gravi metu et de ratihibitionis defectu, et quatenus negative;
- an exstet grave dubium de validitate sacrae ordinationis vel de gravi metu et ratihibitionis defectu

aliaeque concurrant causae, ita ut consilium praestandum sit SS.mo pro dispensatione ab oneribus sacrae ordinationis in casu».

⁵⁸ Cf. SACRED CONGREGATION FOR THE SACRAMENTS, Decree *Regulae servandae* (cf. nt. 55), no. 12: «Inquisitio versari debet circa omnia, quae eandem nullitatem ob intentionis defectum vel coactionem aut metum aut aliud consensus vitium probant, vel huiusmodi accusationi contradicunt»; and no. 64: [...] nullitatis sacrae ordinationis vel onerum causa».

causes concur (*aliaeque concurrant causae*) beyond grave fear and lack of subsequent ratification. This third *dubium* sought to widen the grounds on which the Sacred Congregation could recommend a case to the Pope for dispensation from the obligations of sacred ordination. Though not actually citing the *dubium*, the 1931 norms themselves incorporated this expansion of the acceptable grounds, referring in no. 12 to nullity on the grounds of some other defect of consent and asking in no. 58 for proof of some hereditary illness⁵⁹.

According to P. Amenta, these phrases opened the door for clerics to be relieved from their priestly obligations for reasons other than coercion by grave fear. In fact, Amenta and others see in the 1931 *Regulae servandae* the «first nucleus of the future juridic institution of the dispensation from the obligations of ordination»⁶⁰. The 1931 *Regulae servandae* put a crack in a wall that had been standing solidly for centuries. For the first time in the Church's history there entered into written legislation an acknowledgement that one could seek a dispensation from priestly obligations for reasons other than a failed attempt to prove nullifying force or fear. The wall

⁵⁹ Cf. SACRED CONGREGATION FOR THE SACRAMENTS, Decree *Regulae servandae* (cf. nt. 55), no. 12: «[...] ob [...] coactionem aut metum aut aliud consensus vitium [...]»; and no. 58: «[...] de morbo aliquo, quem hereditatem vel atavicum vocant [...]».

⁶⁰ P. AMENTA, «La dispensa dagli obblighi» (cf. nt. 52), 341: «L'aggiunta di questo terzo dubbio è da considerarsi il primo nucleo del futuro istituto giuridico della dispensa dagli obblighi dell'ordinazione». See also E. COLAGIOVANNI, «De dispensatione a coelibatu» (cf. nt. 53), 230.

was still standing, and the provisions of cc. 1993-1998 and cc. 211-214 remained firmly in place, including c. 1997's prohibition *ad cautelam*, but the wall had a crack in it. The path not only to the content but also to the context of the 1980 suspension *ad cautelam* was becoming clearer.

Following the Second World War and during the 1950's, further developments in the law regarding clerics seeking relief from their clerical obligations were hindered by the increasing infirmity of Pope Pius XII. Feeling that the process was still too rigorous, the Pope was especially concerned about seeking some remedy for those priests who should never have been ordained in the first place because they were not suited to the obligations of the priesthood⁶¹. Pius XII suggested to the Holy Office during an audience on April 3, 1953 that changes be made in the process to make it more responsive to the needs of priests⁶². The Holy Office set out to prepare the changes which Pius had requested, but due to Pius' increasing infirmity, those changes were never promulgated⁶³. By the eve of the Second Vatican Council, the concern which had been expressed in turn by the Sacred Congregation for the Sacraments, by Pius XI and by Pius XII for a less rigorous process had not borne fruit⁶⁴. With the opening of

⁶¹ Cf. P.G. MAGEE, *Dispensation from the Obligations of Priestly Celibacy* (cf. nt. 5), 296.

⁶² Cf. P.G. MAGEE, *Dispensation from the Obligations of Priestly Celibacy* (cf. nt. 5), 296.

⁶³ Cf. P. AMENTA, «La dispensa dagli obblighi» (cf. nt. 52), 342.

⁶⁴ The only real development of the 1950's occurred on January 6, 1950 when Pope Pius XII promulgated the section

the Second Vatican Council, it would soon become apparent that many bishops shared the growing concern that something needed to be done to ease the plight of suffering priests.

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of Oriental law containing the norms for processes against the validity of orders or the obligations connected to them. See PIUS XII, M.p. *Sollicitudinem nostram*, AAS 42 (1950) 5-120. These norms for the Oriental Churches were found in cc. 501-506 and were copied verbatim from cc. 1993-1998 of the Latin Code except for those changes needing to be made in respect to Oriental terminology, (e.g., *dioecesis* became *eparchia*), and reflecting the different numbering of canons in the Oriental law. In truth, these norms produced no development at all, insofar as they made no changes in the process. Relative to the prohibition *ad cautelam* mandated by c. 1997 of the Latin Code, the text was reproduced exactly in c. 505 of the Oriental law with the exception that the word *prohibendus* from the Latin Code was printed as *prohibendum* in AAS. The change is grammatically incorrect and most likely represents a simple typographical error.