

## PRIESTLY CELIBACY: GIFT AND LAW

Introduction. — Celibacy and statistics. — Priestly celibacy and Vatican II. — Traditions and continence. — The priest - another Christ. — Celibacy means continence. — Law is not only legislation. — First legislation on priestly celibacy. — Eastern Discipline. — Bishops' responsibility for priestly celibacy.

### *Introduction.*

«Fidelity to celibacy which is inseparable from chastity has, as you know from experience, its source in an intense love for Christ»<sup>(1)</sup>. These words are part of the message of the African Synod addressed to diocesan priests. In fact, the African Synod did not question the soundness of priestly celibacy nor even had it as a matter of study, although it appears as if a few people were expecting it and have made a bit of noise about it.

Is there a problem behind the understanding of priestly celibacy in Africa? On the one hand there are practical signs and symptoms of infidelity, which have led to scandal. In the published minutes of a recent workshop of Kenyan Bishops, secular clergy, and religious, lack of fidelity regarding celibacy is treated as «a serious situation» which caused «the great concern of all the participants» and demanded «helpful and effective solutions»<sup>(2)</sup>. On the other hand, and in some way consequently, we at times may hear or even read statements supporting opinions against priestly celibacy: a celibate priest, it is said, does not fit in African society; or priestly celibacy, as some statistics seem to show, is not really accepted in the Church;

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(1) *Message of the African Synod* 26, «L'Osservatore Romano» (English Edition) 19 (11 May 1994), p. 7.

(2) Cf. *Report: Workshop on «Mutual Relations»* (K.E.C., R.S.C.K., A.O.S.K., K.N.D.P.A.), A. SEQUEIRA (Ed.), Nairobi 1990, p. 13-16. This workshop took place in Nyeri Pastoral Centre (Kenya) from 1st to 4th of May, 1990.

or that the law of celibacy for priests was a medieval design; or even that the Eastern optional celibacy was the original priestly approach.

With Bishop Mtega we are aware that «the discussion of celibacy has become in the Church a serious problem», which «shows a lowering of the moral values in the modern society»<sup>(3)</sup>. And, speaking on behalf of the Bishops of AMECEA (Association of Member Episcopal Conferences in Eastern Africa) he added: «Celibacy must continue to be an integral part and condition of the vocation and life of the Catholic priest. In fact, the laity approve celibacy as a pre-eminent characteristic of the Catholic priesthood. It would be a mistake to think that our people, coming from a polygamist tradition cannot understand what celibacy is and therefore think that they demand the priest to get married. They cannot conceive a married Catholic priesthood. Our people are thirsting for holy and celibate priests»<sup>(4)</sup>.

Priestly celibacy is *a gift* of the Holy Spirit to the priest and to the Church, and *a law* of the Church accepted by the priest in order to protect that gift. As the law itself proclaims: «Clerics are obliged to observe perfect and perpetual continence for the sake of the Kingdom of heaven, and are therefore bound to celibacy. Celibacy is a special gift of God by which sacred ministers can more easily remain close to Christ with an undivided heart, and can dedicate themselves more freely to the service of God and their neighbour»<sup>(5)</sup>. Therefore it cannot be identified solely or even partially with a problem, although *the discussion of celibacy* may have become a problem in some places. «Ecclesiastical celibacy is for the Church a treasure to be carefully guarded and to be presented especially today as a sign of contradiction for a society which needs to be called back to the higher and definitive values of life»<sup>(6)</sup>. In these words of John Paul

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(3) Cf. N.W. MTEGA, in *Book Review*: J. CAPRILE (Ed.), *Synod of Bishops: On Priestly Formation*, Rome 1992 (Civiltà Cattolica); in «African Ecclesial Review» 35 (1993), p. 258. Norbert Wendelin Mtega, Bishop of Iringa, Tanzania, was expressing the opinion of the Tanzanian Episcopal Conference.

(4) *Ibid.*

(5) *Code of Canon Law (= CIC)*, can. 277 § 1. In this paper we are using *Code of Canon Law Annotated*, E. CAPARROS - M. THERIAULT - J. THORN (Eds.), Montreal 1993 (Wilson & Lafleur Limitee), by the Faculties of Canon Law of University of Navarre (Pamplona, Spain) and Saint Paul University (Ottawa, Canada).

(6) JOHN PAUL II, *Priestly identity shines in the Eucharist* (Address to the plenary

II we have a hint of what could be the source of considering celibacy as mainly a theoretical problem: Christ was and is a sign of contradiction and, with him, his life-style. «Present difficulties — the Pope added — cannot cause the rejection of such a precious gift, which the Church has made her own uninterruptedly from apostolic times, overcoming other difficult moments that threatened its preservation» (7).

### *Celibacy and statistics.*

Unfaithfulness of whatever extent cannot justify a theoretical condemnation of an institution of the Church rooted in the gospels, because if it is just a matter of practical failures, there are plenty of examples and at all levels beginning with Judas Iscariot for thirty silver pieces and Demas for love of this life, and St Simon Peter out of cowardice and St Mark out of comfort (8). Celibacy, we may say with Bishop Ndingi Mwana 'a Nzeki, «is an ideal in which perhaps we cannot hope for 100% fidelity from every priest/reli- gious (as indeed we would not expect either in the ideal of charity), but nevertheless we must not abandon the ideal. It has proved far too valuable in the church's pastoral and missionary experi- ence» (9). It is this positive consideration of priestly celibacy as *an asset for the Church* that would lead any research towards a bet- ter knowledge of this institution and, as a result, towards a better appreciation and love for it.

The understanding of Church institutions demands certain knowledge of their backgrounds. Often attacks against these institu- tions are based of false interpretations of historical data under a scientific guise, and with a lack of perception for social and legal rea- lities. That is why John Paul II has been insisting of the importance of a right method of research regarding priestly celibacy: «Cultural

assembly of the Congregation for the Clergy, 22 October 1993), «L'Osservatore Ro- mano» (English Edition) 44 (3 November 1993), p. 9, no. 7.

(7) *Ibid.*

(8) Cf. Mt 26:14-26; 2Tm 4:10; Lk 22:54-62; and Ac 15:38.

(9) R.S. NDIRI MWANA 'A NZEKI, *Presenting Christ to Africa* (2), «Mwanachi» (August 1990), p. 11. Rapahel S. Ndingi Mwana 'a Nzeki, Archbishop of Nairobi, at that time Catholic Bishop of Nakuru (Kenya), was one of the vice-presidents of the African Synod.

considerations, and the scarcity of priests in certain regions, sometimes give rise to calls for a change in this discipline. *To give decisive weight to solutions based on criteria deriving more from certain currents of anthropology, sociology or psychology than from the Church's living tradition* is certainly not the path to follow»<sup>(10)</sup>.

In fact, from the very beginning of his pontificate John Paul II made it clear that the understanding of priestly celibacy implies a kind of liberation «from the various objections that have always — as happens today too — been raised against» it, and also «from the different interpretations that appeal to criteria alien to the Gospel, to Tradition and to the Church's Magisterium — criteria, we would add, whose anthropological correctness and basis in fact are seen to be very dubious and of relative value». In that sense, not everyone is ready to accept or can accept celibacy<sup>(11)</sup>, and that is why we must not be «too surprised at all the objections and criticisms which have intensified during the postconciliar period, even though today in some places they seem to be growing less»<sup>(12)</sup>. Some voices of dissent — few though blaring and spread world-wide by the mass-media wearing some times the label of «catholic» — had somehow subsided by the time John Paul II wrote his first letter to priests.

A strong campaign against priestly celibacy was unleashed at the end of the sixties and the beginning of the seventies. For example, the Fifth Dutch Pastoral Council declaration (8 Jan 1970) against priestly celibacy was quite aired precisely as foreseen by Paul VI in his letter to the Dutch Bishops (24 Dec 1969). Consequently, the Pope reaffirmed the Church's stand of priestly celibacy in his Angelus address (1 Feb 1970), in his letter to Cardinal Villot (2 Feb 1970), and in the address to Lenten preachers (9 Feb 1970)<sup>(13)</sup>.

(10) JOHN PAUL II, *Gift of celibacy will be granted if you pray for it with humility* Address to the Bishops of Eastern Canada (8 Nov. 1993), «L'Osservatore Romano» (English Edition) 46 (17 Nov. 1993), p. 3, no. 4.

(11) Cf. Mt 19:12.

(12) Cf. JOHN PAUL II, Letter *Novo incipiente* (8 April 1979), «Acta Apostolicae Sedis» 71 (1979) 393-417. Our English version comes from JOHN PAUL II, *A priest rever*, Athlone 1984 (St Paul Publications - Ireland), no. 8; *Letter to priests* (Holy Thursday 1979), no. 8: *Meaning of celibacy*, p. 46-47.

(13) Cf. *Dossier. Documentación «1970» en torno al celibato sacerdotal*, «Pbra» 55 (1970), p. 27-35.

More recently and with a new campaign going on, the Pope insisted: «It is necessary today, too, to interpret concrete situations with faith and humility, without introducing anthropological, sociological or psychological factors that, while seeming to resolve problems, actually add to them beyond measure»<sup>(14)</sup>. In fact, not even the introduction of those factors is always correct from a scientific view-point, and often anthropological, sociological and psychological data are used as sheer elements of pressure by *self-appointed grass-root representatives from «paraecclesiastical» lobby groups*. Let us remember that the Pope spoke about it when he was addressing the plenary assembly of the Congregation of the Clergy on 22nd October 1993. Two months before, the Pope had been in the United States. His trip to Denver was preceded by a new campaign against the stand of the Church on priestly matters which was generally based on public opinion polls and personal declarations of individuals who did not share the Church's doctrine. A head-line summarises the answer to such a campaign: «It's bigotry to blame celibacy for church problems»<sup>(15)</sup>.

Also in August 1993, a so-called international congress of married priests took place in Madrid (Spain), with a wide publicity campaign and even claiming to be supported by some bishops; the Spanish Episcopal Conference had to issue a note denying any involvement of bishops in that meeting, regretting that the venue had been a (catholic) monastery, and clarifying that the majority of priests who have asked for dispensation from their priestly duties, and have had that dispensation granted, agree with the doctrine and discipline of the Catholic Church regarding priesthood<sup>(16)</sup>. We think that the understanding of the last point is particularly important — even from a sociological stand — especially for those who insist on studying celibacy mainly as a sociological problem. The majority of priests who have been discharged from their priestly duties do not identify themselves with and do not share the views of those so-called married priests.

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(14) JOHN PAUL II, *Priestly identify...*, cit., p. 9, no. 7.

(15) A. GREELEY, *A View From the Priesthood*, «Newsweek», CXXII 07 (August 16, 1993), p. 49.

(16) Cf. *Nota de prensa de la Oficina de Información de la Conferencia Episcopal Española* (3 Sept. 1993), «Palabra» 345 (1993), p. 23.

The Church has an experience of almost two thousand years and it is known, as we have already hinted, that disagreement and crisis concerning celibacy do not belong only to the twentieth century. Too many people, especially intellectuals, have fought against priestly celibacy throughout history that it would be quite impossible for us to give now a summary or to even study their intention and logic. A sample may be enough. In 1828 a group of lay professors from the University of Friburg wrote a memorandum (*Denkschrift*) to the Grand Duke of Baden, to the Parliament of Baden and to the Archbishop of Friburg, asking them to abolish celibacy in Baden (Germany). Their request originated in and was supported by the misbehaviour of a worldly and unspiritual clergy («*sehr ungeistig und ungeistlich*»). In this case the reply came from one of the best theological minds of the last century, because in 1830 Johann Adam Möhler, one of the fathers of modern ecclesiology and acumenism, answered them in his «Clarification to the memorandum on the abolition of celibacy prescribed to Catholic priest». For Möhler the defence of celibacy became a claim to the primacy of the spirit, and those who fought against celibacy were enemies of the basic Christian truths («*ein verstockter Gegner christlicher Grundwahrheiten*») (17).

Throughout the history of the Church there have been bad times for celibacy just as there have been for the Church herself. Thus the acceptance of priestly celibacy has been a kind of thermometer in the Church. Among other conclusions from his historical research on priestly celibacy, Prof. Villiger pointed out that «the celibacy of priests is closely connected with the course of Church history. The times of reform too, were the times in which the ideal of celibacy was highly respected and lived with. Times of decadence were usually accompanied also by a celibacy crisis(...). Celibacy was in the course of Church history misunderstood by many. It will remain misunderstood by many always just because of its eschatological purpose» (18). The history of priestly celibacy is parallel, in some way, to

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(17) Regarding J.A. MÖHLER, *Beleuchtung der Denkschrift für die Aufhebung des den katholischen Geistlichen vorgeschriebene Cölibates*, cf. C. FABRO, *Spiritualita ed celibato in J.A. Möhler*, «*Studi Cattolici*» 130 (1971), p. 842-846.

(18) J.B. VILLIGER, *The celibacy of the priest in the course of Church history*, Johannesburg 1983 (Pty), p. 15.

the history of the Church. The origin and development of celibacy may help us understand the fact of faithfulness down the centuries amid crises, the basis of its tradition as well, and the present stand of the Church concerning this matter. History has shown that whenever faith diminishes perseverance also slackens, and *wherever faith dies celibacy dies also* <sup>(19)</sup>.

In his *Diary*, Sören Kierkegaard wrote: « All those who truthfully have taught ideals, have praised celibacy as well » <sup>(20)</sup>. And he added: « God wants celibacy, because He wants to be loved » in such a way that « every time celibacy is actualized out of love for God, we become one with God's way of thinking » <sup>(21)</sup>. As John Paul II said: « The difficulties involved today in keeping celibacy are not sufficient reason to overturn the Church's conviction regarding its value and appropriateness, a conviction constantly reaffirmed by the Church's Magisterium, not least by the Second Vatican Council » <sup>(22)</sup>.

### *Priestly celibacy and Vatican II.*

Is priestly celibacy actually accepted in the Church? I think it is really difficult to find a period in the history of the Church when the celibacy of priests has been better studied from all points of view, and more strongly supported. In fact, with the support of the episcopate from all over the world, the last ecumenical council has defended and maintained the ideal of celibacy as the Church has been doing throughout centuries. Vatican II stressed priestly celibacy as a gift, and did not forget the legal implications of its acceptance.

Although the conciliar texts are well-known and have been deeply studied in the last thirty years, it is not inappropriate to remember in a context of historical legal research that, for instance, on the training of priests we read that « students who follow the venerable tradition of priestly celibacy as laid down by the holy and permanent regulations of their own rite should be very carefully trained for this state. In it they renounce marriage (...). They should embrace this

<sup>(19)</sup> Cf. A.M. STICKLER, *Il celibato ecclesiastico. La sua storia ed i suoi fondamenti teologici*, « Ius Ecclesiae » 5 (1993 = STICKLER), p. 29.

<sup>(20)</sup> In C. FABRO, *L'avventura della teologia progressista. 3: Eccellenza del celibato secondo Sören Kierkegaard*, Milano 1974 (Rusconi), p. 269.

<sup>(21)</sup> *Ibid.*, p. 270.

<sup>(22)</sup> JOHN PAUL II, *Gift of celibacy*, cit., p. 3, no. 4.

state, not only as a precept of ecclesiastical law, but as a precious gift of God»<sup>(23)</sup>. And on the life of priests Vatican II added that «celibacy, which at first was recommended to priests, was afterwards in the Latin Church imposed by law on all who were to be promoted to holy Orders. This sacred Council approves and confirms this legislation so far as it concerns those destined for the priesthood, and feels confident in the Spirit that the gift of celibacy, so appropriate to the priesthood of the New Testament, is liberally granted by the Father, provided those who share Christ's priesthood through the sacrament of Order, and indeed the whole Church, ask for that gift humbly and earnestly»<sup>(24)</sup>.

Actually Vatican II dealt extensively with priestly celibacy, although at the beginning it was not thought of as being one of the topics to be studied by the Council<sup>(25)</sup>. The contents of its decrees, particularly *Presbyterorum Ordinis* 16 and *Optatam totius* 10, were the result of a lengthy and well-documented study by the different teams involved, who took into consideration not only the views and requests of the Conciliar Fathers, but also unofficial studies and proposals sent to the commissions, sometimes through private persons or bodies, sometimes through Council Fathers or experts, and every effort was made to examine these — both those which were serious objective studies and those which were, understandably, impassioned, due at times to painful personal circumstances<sup>(26)</sup>.

Bishop Del Portillo explained that «taking into account all the Council documents which dealt with this subject — and the amount of time and attention it took up — it is fair to say that no ecumenical council had ever tackled the subject of priestly celibacy with such directness, in as large and representative an assembly and none was as

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<sup>(23)</sup> *Optatam totius* 10. Throughout this article we quote the documents of the Second Vatican Council in the English version of A. FLANNERY (Ed.), *Vatican Council II. The conciliar and post conciliar documents*, Leominster 1981 (Fowler Wright Book Ltd.).

<sup>(24)</sup> *Presbyterorum Ordinis* 16.

<sup>(25)</sup> On the celibacy of priests and its development during Vatican II, cf. A. DEL PORTILLO, *On priesthood*, Chicago 1974 (Scepter Press), p. 39-56 and 87-92. Alvaro del Portillo, Bishop Prelate of Opus Dei, was the secretary of the conciliar commission which worked on the documents leading to *Presbyterorum Ordinis*.

<sup>(26)</sup> Cf. *Ibid.*, p. 89, note 16.

well-furnished with working data (...). Throughout the Council the Fathers freely expressed their opinions on this subject even though celibacy was excluded from the public debates in the last session. In fact, in the course of its nine editions a total of 1,691 Fathers made suggestions for the improvements of this particular text (*Presbyterorum Ordinis* 16); and the text of the decree itself was approved by 2,390 of the 2,394 Fathers who took part in the ninth public session on 7 December 1965 »<sup>(27)</sup>.

Later on, fulfilling the promise he made to the Council Fathers, Paul VI wrote his encyclical letter on priestly celibacy *Sacerdotalis coelibatus* (24 June 1967) — a master piece on the subject — where the Pope reaffirmed the doctrine of Vatican II after examining before God opinions and petitions which had come to him from all over the world, notably from many pastors of God's Church<sup>(28)</sup>. The 1971 Synod of Bishops once again confirmed the position of the Church: «The law of priestly celibacy existing in the Latin Church is to be kept in its entirety (... and) the priestly ordination of married men is not permitted, even in particular cases »<sup>(29)</sup>.

As already mentioned, in the first letter of his pontificate addressed to all the priests of the Church on the occasion of Holy Thursday 1979, John Paul II wanted to deal specifically with priestly celibacy though «summarily, because it has already been considered in a profound and complete way during the Council, and subsequently in the Encyclical *Sacerdotalis Coelibatus*, and again at the ordinary session of the 1971 Synod of Bishops »<sup>(30)</sup>. And when he had the chance of precisely addressing African priests in his first trip to Africa in May 1980, he spoke about priestly celibacy in each of the six countries he visited<sup>(31)</sup>.

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<sup>(27)</sup> *Ibid.*, p. 39 and 41.

<sup>(28)</sup> Cf. *Sacerdotalis coelibatus* 2, in the English version of A. FLANNERY (Ed.), *Vatican Collection Vol. II. Vatican Council II. More Postconciliar Documents*, Leominster 1982 (Fowler Wright Books Ltd.), 95, p. 285.

<sup>(29)</sup> *Enchiridion Vaticanum*, IV, 1219-1220, as it is quoted in English by JOHN PAUL II, *Church committed to priestly celibacy* (General Audience 17 July 1993), «L'Osservatore Romano» (English edition) 29 (21 July 1993), p. 11, no. 5-6.

<sup>(30)</sup> Cf. JOHN PAUL II, *A priest forever...*, cit., p. 46.

<sup>(31)</sup> Cf. JOHN PAUL II, *Africa Apostolic Pilgrimage*, Boston 1980 (St Paul Editions), p. 37, 69 and 124 (Zaire); 149 and 161 (Congo); 197 (Kenya); 259 and 297 (Ghana); 334 (Upper Volta); and 364 (Ivory Coast).

In the 1990 Synod of Bishops on the formation of priests in the circumstances of the present day, the Synod Fathers clearly and forcefully, after using expressions like «priceless gift of God» and «charism» applied to priestly celibacy, stated that «the Synod does not wish to leave any doubts in the mind of anyone regarding the Church's firm will to maintain the law that demands perpetual and freely chosen celibacy for present and future candidates for priestly ordination in the Latin Rite»<sup>(32)</sup>. The Catechism of the Catholic Church gives an up-to-date summary of the Vatican II doctrine on priestly celibacy, and clearly asserts that the candidates to priesthood «are normally chosen from among men of faith who live a celibate life and who intend to remain *celibate*»<sup>(33)</sup>.

### *Traditions and continence.*

Does the celibacy of priests fit into the African society? We know that the message of Christ does not belong to any culture, although it is handed on by means of a culture. We may say what A.O. Okogie, Archbishop of Lagos, wrote: «I am convinced that God meant Christianity for Africa just as He meant Africa for Christinianity»<sup>(34)</sup>. Through a process of inculturation the Good News fits everywhere by raising and improving whatever receives it. The celibacy of priests fits into any society in so far as Christ's message fits there.

Priestly celibacy is a characteristic institution of Christ's Church, a *Christian phenomenon*, which does not depend on human cultures and even goes at times against social traditions. As Bishop Ndingi Mwana 'a Nzeki put it: «I do not think that celibacy as required of priests and religious ever existed in any tribes or nations. In an African tradition there are many things militating against it, and yet I believe, that it is the single greatest reason that the Church has spread and continues to do so (...). To the priest it is the experience of his utter dependence on, and commitment to

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<sup>(32)</sup> JOHN PAUL II, *Pastores dabo vobis* 29, note 78 (from the Synodal *Propositio* 11), as published in *I will give you shepherds*, Nairobi 1992 (St Paul Publications - Africa), p. 55. On priestly celibacy besides no. 29 (p. 54-57), cf. no. 44 (p. 85-87) as well.

<sup>(33)</sup> *The Catechism of the Catholic Church*, Nairobi 1994 (Paulines Publications Africa) (= CCC), n. 1579.

<sup>(34)</sup> Foreword to C. EPIE, *Following Christ in Africa*, Lagos 1991 (Criterion Publishers Limited), p. 6.

Christ»<sup>(35)</sup>. Celibacy in the Church has specific requirements beyond any human approach.

Obviously genuine *African traditions* do not go against chastity against continence of unmarried people. A few examples can show that «the true African tradition is one of appreciation of the value of purity in the lives of both men and women»<sup>(36)</sup>. The young men of the Nuba in Sudan, for instance, spend several years involved in wrestling activities and contests living in all-male training camps. In fact when one of them «marries, he must give up wrestling and leaves the camp to return to the village, for the Nuba are convinced that a wife saps a man of his strength to fight». Olaudah Equiano, who was taken as a slave from the Kingdom of Benin to the West Indies in the 18th century, later on wrote in his «*My Ibo Homeland*» some recollections of his African youth: «Our women too were, in my eyes at least, uncommonly graceful, alert and modest to a degree of bashfulness; nor do I remember to have ever heard of an instance of incontinence amongst them before marriage». The last example is from Chinua Achebe's «*Arrow of God*», where the young Obika was receiving his *untouched* bride: «He knew that few other young men of his age would have shown the same restraint which ancient custom demanded. But what was right was right. Obika began to admire this new image of himself as an upholder of customs»<sup>(37)</sup>.

It is true that certain degree of religious continence could be seen in *different places and cultures*, although it is also undeniable that specific religious manifestations of fertility, and even eroticism, are not alien to the same places and cultures. In most instances continence was the result of anti-body ideas by which sexual activity is considered sinful at all levels and therefore marriage has to be rejected. This body-hostile approach was found among the Jewish sect of the Essenes<sup>(38)</sup>. In the early stages of the life of the Church, something of that kind appeared among Gnostic and Manichean sects. This, for example, was the case of the Encratites — meaning the Abstinents, founded by Tatian «the Syrian», and the Marcionites in the

<sup>(35)</sup> R.S. NDIRI MWANA A' NZEKI, *Presenting Christ...*, cit., p. 3 and 11.

<sup>(36)</sup> C. EPIE, *Following Christ...*, cit., p. 78.

<sup>(37)</sup> Cf. *Ibid.*, p. 78-79.

<sup>(38)</sup> Although the Essenes represented a whole religious life-style, also «there was an priestly element among them» (R.E. BROWN, *Essenes*, «The New Catholic Encyclopedia» 5, p. 552-553).

nd century<sup>(39)</sup>. At times, however, continence would mainly have a priestly meaning as can be understood by the male wizards of Patagonia, priests of the Mosquito Islands and of ancient Mexico, Buddhist and Taoist priests, several orders of priest and priestesses among the Greek, as it was among the Roman vestals<sup>(40)</sup>. In a way there has always been «an instinctive feeling that the indulgence of our sensual nature is in a measure degrading, and that it is particularly incompatible with the perfect purity that should characterize one consecrated to the worship of the All Holy»<sup>(41)</sup>. In any case, the real meaning of Christian priestly celibacy does not fit in completely with the natural explanation nor with the body-hostile trends. As Prof. Villiger expressed it: «Even if anti-body (i.e. body-hostile) ideas have aided the institution of religious celibacy, they have never been the decisive motive why many Christians remained unmarried or lived with continence. The main reason is elsewhere; the origin of celibacy is in Christ Jesus Himself»<sup>(42)</sup>.

In fact, *Jewish tradition* was very far from being pro-celibacy even if the priests from time to time had to be continent while serving in the Temple<sup>(43)</sup>. In the Old Testament, from the very beginning, there was little room for celibacy: «Be fruitful, multiply, fill the earth and conquer it»<sup>(44)</sup>; because «a man leaves his father and

<sup>(39)</sup> The Encratites rejected «matrimony as adultery». In fact, one of them, Julius Cassianus, in his *Concerning Abstinence or Eunuchry*, refused to accept «all sexual intercourse». Marcion, recognized by St Polycarp of Smyrna as the first-born of Satan said that «salvation will be of our souls only, those souls which have learned his doctrine; but the body, because in truth it is taken from the earth, cannot possibly partake of salvation». The apocryphal literature was widely used by Gnostics and Manicheans in support and spread their doctrines. In the Gnostic *Gospel of the Egyptians* — St Clement of Alexandria comments — «they said that the Saviour Himself said: "I came to destroy the works of the female", — the female being lust and the works of lust and corruption». In the Manichean *Acts of Thomas*, «marriage is renounced and wives are persuaded to leave their husbands». Cf. J. QUASTEN, *Patrology*, Westminster - Maryland 1986 (Christian Classics, Inc.), I, p. 221, 274-275, 269, 113 and 139 respectively.

<sup>(40)</sup> The vestals were the sacred-fire-keepers in the temple of Vesta. They took a vow of chastity for thirty years. The vestal who broke her vow of chastity was cut and buried alive. Cf. M.R.P. McGUIRE, *Vestal virgins*, «The New Catholic Encyclopedia», 14, p. 632-633.

<sup>(41)</sup> Cf. J.W. MELODY, *Continence*, «The Catholic Encyclopedia» IV, p. 331.

<sup>(42)</sup> J.P. VILLIGER, *The celibacy of the priest...*, cit., p. 5.

<sup>(43)</sup> Cf. for instance 1Ch 24:5-19; Lv 8:34-35; and Lk 1:23.

mother and joins himself to his wife, and they become one body»<sup>(45)</sup>. Two women give us a good summary of the Old Testament outlook. When Rachel conceived and gave birth to her first son, Joseph, she said: «God has taken away my shame»<sup>(46)</sup>. And in similar circumstances when Elizabeth, the wife of the priest Zachariah, conceived John the Baptist she acknowledged that it had pleased God to take away the humiliation she suffered among men<sup>(47)</sup>. Moreover, among Jews, priesthood was hereditary and a tribal matter. Its functions and powers were transmitted by natural generation from fathers to sons within the tribe of Levi and the descent of Aaron<sup>(48)</sup>. Only «Jeremiah son of Hilkiah, of a priestly family living at Anathoth»<sup>(49)</sup>, can be seen as having received from God a calling to celibate life, a vocation to celibacy: «You must not take a wife or have son or daughter in this place»<sup>(50)</sup>. But not even in this exceptional case his celibacy was a priestly one. God simply wanted to spare this prophet of doom and man of tears from a new source of suffering. Marriage «would not only hamper Jeremiah in his prophetic ministry — as in the case of Osee the minor prophet — but would, on the pure human plane, prove more a burden than a blessing»<sup>(51)</sup>. We dare say that Jeremiah had to enjoy as much a strange prophetic celibacy as Hosea had to suffer an unparalleled prophetic marriage<sup>(52)</sup>.

The Church was born and had her early development within *the Roman Empire*. In their relationship with God the Romans were

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<sup>(44)</sup> Gn 1:28. In this article Scripture quotations are taken from the version of *The Jerusalem Bible*, London 1974 (Darton, Longman & Todd).

<sup>(45)</sup> Gn 2:24.

<sup>(46)</sup> Gn 30:23.

<sup>(47)</sup> Cf. Lk 1:25.

<sup>(48)</sup> Cf. Nb 3:3-4; and H. THURSTON, *Celibacy of the clergy*, «The Catholic Encyclopedia», III, p. 481.

<sup>(49)</sup> Jr 1:1.

<sup>(50)</sup> Because fathers and mothers, sons and daughters in that land were going to die of deadly diseases, unlamented and unburied; they were going to be like dung spread on the ground; they were going to meet their end by sword and famine, and their corpses were going to be food for the birds of heaven and the beast of the earth. Cf. Jr 16:1-4.

<sup>(51)</sup> H. VAN ZELLER, *Jeremias: man of tears*, London 1941 (The Catholic Book Club), p. 85-86.

<sup>(52)</sup> Cf. Ho 1:2.

asked by law to be chaste: «Approach the gods chastely (*Ad divos adeunto caste*)»<sup>(53)</sup>. But chastity was not strong point among the Romans. We gather this clearly from the pages of Juvenal, Martial, Suetonius, and Cicero. «With the Romans, immorality, even of the abnormal kind, stalked about, its repulsiveness undisguised»<sup>(54)</sup>. The legal remedy was not an incentive to celibacy either. In Roman Law and as early as 403 B.C., the consuls tried to foster marriage by fining those celibates who were becoming old, because they were not fulfilling the «natural» precept of leaving descent<sup>(55)</sup>. Later on, in order to avoid social degeneration, Caesar Augustus protected marriage and birth-rate specially by two laws: *Julia de maritandis ordinibus* (18 B.C.) and *Papia Poppaea* (9 A.D.). By that legislation, for instance, men between 25 and 60 years of age, and women between 20 and 50, had to be married and have legitimate children. Inheritance was restricted in such a way that unmarried people (*coelibes*) could not receive anything left to them, and those married and childless (*orbi*) could only get half of it<sup>(56)</sup>.

### *The priest - another Christ.*

The teaching of Jesus Christ, like his life, did not follow the Jewish pattern nor the Roman one, it was somehow original. There was something new in the life and doctrine of Our Lord Jesus Christ. Without changing the Law (*Torah*) in basic points<sup>(57)</sup>, his approach to life was a good news, a real renewal, a kind of revolution. Even some people — his beloved ones — thought him to be

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(53) Cf. PIUS XI, *Encyclical Letter "Ad Catholici Sacerdotii"* (1935), in English version *The Catholic Priesthood*, London 1962 (Catholic Truth Society), p. 24 where the Pope quotes M.T. CICERO, *De legibus*, lib. II, cc. 8 et 10: «The law orders us present ourselves to the gods in chastity — of spirit, that is, in which are all things. Nor does this exclude chastity of the body, which is implied, since the spirit is far superior to the body; and it should be remembered that bodily chastity cannot be preserved, unless spiritual chastity be maintained».

(54) Cf. J.W. MELODY, *Chastity*, «The Catholic Encyclopedia», III, p. 639.

(55) Cf. A. D'ORS, *Derecho Romano Privado*, Pamplona 1991 (Eunsa), no. 219, p. 287, note 12. That had been a common trend of pre-Christian cultures. For instance, «in Sparta, the unmarried lost civic rights and were given menial tasks» (P. DELHAYE, *Celibacy, History of*, «The New Catholic Encyclopedia» 3, p. 369-374).

(56) Cf. *Ibid.* no. 279, p. 336-337.

(57) Cf. Mt 5:17-19.

out of his mind<sup>(58)</sup>. His radical newness came from his own lips as «it was said..., but I say this to you»<sup>(59)</sup>. He gave us a new commandment<sup>(60)</sup>. He wanted us to be last and slaves, if we wish to be first and great<sup>(61)</sup>. He requested love for our enemies, to do good to those who hate us, to bless those who wrong us, prayers for those who treat us badly<sup>(62)</sup>. He asked us to lose our lives if we want to save them<sup>(63)</sup>. As a matter of fact those he appointed apostles left everything and follow him<sup>(64)</sup>. For those who do not and did not love him, this self-surrender of his sounds and sounded senseless, absurd, self-contradictory. It is precisely that denial of self that allows us to understand the attitude of his closest followers, chosen to be fishers of men, men for others.

Jesus Christ, the Son of God, was a *celibate man* and a man for others. His celibacy did not stem from a surrounding culture. Jesus is «an example for everyone, but especially for priests. He lived as a celibate, and for this reason he was able to devote all his energy to preaching the kingdom of God and to serving people, with a heart open to all humanity, as the founder of a new spiritual family (...). By his example Jesus gave an orientation to be followed»<sup>(65)</sup>. And John Paul II added on another occasion: «On the basis of her experience and reflection, the Church has discerned, with growing clarity through the ages, that priestly celibacy is not just a legal requirement imposed as a condition for ordination. It is profoundly connected with a man's configuration to Christ, the Good Shepherd and Spouse of the Church»<sup>(66)</sup>.

The Christian priest is a follower of Christ, a member of the faithful, of the People of God, who has been marked and set apart. He has been destined and consecrated to teach, sanctify and rule «in the person of Christ the Head» (*in persona Christi*

<sup>(58)</sup> Cf. Jn 7:5 and Mk 3:21.

<sup>(59)</sup> Cf. Mt 5:21-44.

<sup>(60)</sup> Cf. Jn 13:34-35.

<sup>(61)</sup> Cf. Mt 20:16.26-27.

<sup>(62)</sup> Cf. Lk 6:27-28.

<sup>(63)</sup> Cf. Mk 8:35.

<sup>(64)</sup> Cf. Lk 5:11.28.

<sup>(65)</sup> JOHN PAUL II, *Church committed to priestly celibacy*, «L'Osservatore Romano» (English edition) 29 (21 July 1993), p. 11, no. 3.

<sup>(66)</sup> JOHN PAUL II, *Gift of celibacy...*, cit., p. 3, no. 4.

*Capitis*)<sup>(67)</sup>. The priest and Christ become one — there is an identity, an absolute sameness — because the priest does not only act in the presence of Christ but in the person of Christ, on behalf of Christ (*in persona Christi, en prosopo Christou*)<sup>(68)</sup>.

Thus the priest is made another Christ, Christ himself, like every Christian can and should be, but by means of his priestly ordination in a direct way. He does and acts through Christ, with Christ and in Christ because his identity is that of Christ. Ordination is the means for the priest to lend Jesus Christ his whole being. As a result of that, it can be said that in the Holy Mass, Jesus Christ is the one changing the substance of the bread and wine into his Body and Blood. Jesus Christ is the one who forgives sins in the sacrament of Penance and it is He who speaks when the priest announces the word of God. It is again Jesus himself the one taking care of the sick, children and sinners. «The expression "*sacerdos alter Christus*", "the priest is another Christ", created by the intuition of the Christian people, is not just a way of speaking, a metaphor, but a marvellous, surprising and consoling reality»<sup>(69)</sup>. More recently the Pope insisted: «Acting *in persona Christi Capitis* (...), the priest proclaims the divine Word, celebrates the Eucharist and dispenses the merciful love of God who forgives; in this way he becomes an instrument of life, renewal and authentic human progress»<sup>(70)</sup>.

Consequently, Bishop Ndingi Mwana 'a Nzeki suggests: «A priest needs to be imbued by and incarnated in Christ, so that through the priest, Christ can be manifested and operative. Christ will be manifested to the people, to the extent that the priest strives in humility, to make himself "disappear". A priest should adopt an attitude similar to that of John the Baptist, so that Christ can be manifested to "increase", and the priest to "decrease"»<sup>(71)</sup>. Because

(67) Cf. CIC, can. 1008. Special reference is made to this point in CCC, no. 1548 1551 and in many documents of Vatican II: *Lumen Gentium* 10, 28 and 37; *Sacrosanctum Concilium* 33; *Christus Dominus* 11; and *Presbyterorum Ordinis* 2, 6 and 12.

(68) Cf. 2Co 2:10, and J. PIEPER, *L'identità del sacerdote* (2): *L'essenza dell'atto sacerdotale*, «Studi Cattolici» 136 (1972), p. 425-431.

(69) JOHN PAUL II, *A priest forever*, Athlone 1984 (St Paul Publications - Ireland no. 28: *Homily at the Ordination of Priests in Rio de Janeiro* (2 Jul 1980), p. 119.

(70) JOHN PAUL II, *Priestly identity...*, cit., no. 2.

(71) R.S. NDISINGI MWANA 'A NZEKI, *The identity and ministry of priests today* «African Ecclesial Review» 32 (1990), p. 232 and 234. Cf. Jn 3:30.

«the priesthood is a special participation in Christ's life and mission from the Father to the world. Priests are, and must be stewards of the mysteries of God. To be a true witness of Christ, a priest must intimately know, and allow Christ to mould him, as the potter does the clay. In this way, a priest can, by incorporation and representation, become Christ-like. What a priest is will be *more important than what he does*»<sup>(72)</sup>.

That is why, in the 1990 Synod of Bishops on priestly formation, the Bishops of AMECEA spoke of a danger that «can come from a too secularized and philanthropic conception of the priesthood, laying more emphasis on the service of the people and less emphasis on the sacred and sacramental dimensions». Therefore they wanted to «underline the sacredness of the priesthood and consequently the special call to holiness of the priest», and to «insist on the importance of spiritual life in which the priests will find strength and help to embrace celibacy and to remain faithful to it for the love of the Kingdom of God»<sup>(73)</sup>. In his first visit to Kenya, and to Africa, John Paul II expressed that idea applying it to priestly celibacy as follows: «My brothers in the priesthood, yours is a mission of proclaiming salvation, of building up the Church by the Eucharistic Sacrifice; yours is a vocation of special companionship with Christ, *offering your lives in celibacy in order to be like Jesus*, the Good Shepherd, in the midst of your people — the people of Kenya»<sup>(74)</sup>.

The Apostles were ready to follow Christ and leave everything and everyone as Jesus Christ himself did and demanded. Things — boats and nets — had to be left behind<sup>(75)</sup>, and people as well: «If any man comes to me without hating his father, mother, wife, children, brothers, sisters, yes and his own life too, he cannot be my disciple»<sup>(76)</sup>. We notice that *wife* is in the list. In another occasion,

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<sup>(72)</sup> R.S. NDIRI MWANA'A NZEKI, *Vocation and formation of priests*, «African Ecclesial Review», 32 (1990), p. 19. He delivered this paper in Nairobi in July 1989, to the Seminar for Rectors and Spiritual Directors of Eastern and Southern Africa.

<sup>(73)</sup> Cf. N.W. MTEGA, *Celibacy...*, cit., 258-259.

<sup>(74)</sup> JOHN PAUL II, *Africa Apostolic Pilgrimage*, Boston 1980 (St Paul Editions), p. 196-197. The stress is ours. The quoted passage comes from the Pope's address in Holy Family Cathedral (Nairobi) on 6 May 1980.

<sup>(75)</sup> Cf. Mk 1:16-20. In Mt 5:22 a reference to detachment from people, and not only from things, is also mentioned: «At once, leaving the boat and their father, they followed him».

after the rich young man went away sad having made the wrong choice, Jesus stated clearly that detachment was a must for getting into heaven. «Then Peter said, "What about us? We have left all we had to follow you". He said to them, "I tell you solemnly, there is no one who has left house, wife, brothers, parents or children for the sake of the kingdom of God who will not be given repayment many times over in this present time and, in the world to come, eternal life"»<sup>(77)</sup>. *Wife* is again in the list of St Luke. It seems that self-giving implied in some instances real surrender of one's wife, real continence for a married man. There were other possibilities, other ways, other vocations, because Jesus did not demand the same things from everyone<sup>(78)</sup>. The invitation to practical and radical renunciation is proper to the apostolic life or the life of special consecration, although Jesus, of course, required the first place in each of his followers' heart<sup>(79)</sup>.

Obviously, Jesus Christ did not ask from everybody to leave his wife, and this was not only because it was not necessary for the salvation of everyone, but also because not all the apostles had a wife<sup>(80)</sup>. For those who were not married, the surrender of wife meant precisely not to get married, celibacy (*eunuchia*) in a strict sense. The unmarried apostles were able to accept the invitation of Christ and make themselves celibate: «There are eunuchs born that way from their mother's womb, there are eunuchs made so by men and there are eunuchs who have made themselves that way for the sake of the kingdom of heaven. Let anyone accept this who can»<sup>(81)</sup>.

As we know, St Peter either was or had been a married man. It stands to reason that the presence of Peter's mother-in-law does not necessarily imply that his wife was then alive. Quite on the contrary, the fact that the mother in law got up and served them seems to in-

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<sup>(76)</sup> Lk 14:26.

<sup>(77)</sup> Lk 18:28-30.

<sup>(78)</sup> Mt 19:29 («houses, brothers, sisters, father, mother, children or land») and Mk 10:29 («house, brothers, sisters, father, children or land») do not mention «wife» in their lists.

<sup>(79)</sup> Cf. JOHN PAUL II, *Church committed...*, cit., no. 1.

<sup>(80)</sup> Cf. C. COCHINI, *Origines Apostoliques du Celibat Sacerdotal*, Paris 1981 (Le Sycamore, Editions Lethielleux - Paris, Culture et Verite - Namur) (= COCHINI), p. 89-108.

<sup>(81)</sup> Mt 19:12.

dicating that the wife was not around; otherwise she would have been the one doing so<sup>(82)</sup>. Regarding the apostles, this is the only reference to marriage and, as such, nowhere else do the Gospels speak of their wives and children. «It appears that the Twelve, destined to be the first to share in his priesthood, renounced family life in order to follow him»<sup>(83)</sup>. All these observations help us understand the evangelical basis and reason for the legislation on priestly celibacy, even if «Jesus did not promulgate a *law*, but proposed the *ideal* of celibacy for the new priesthood he was instituting»<sup>(84)</sup>.

Celibacy is not exactly the same as continence. Usually the latter comprises the former and not vice versa. A celibate, unmarried man should be continent — should abstain from the use of sex, while a married man could only be continent. As we have seen already Jesus Christ proclaimed an ideal of complete self-surrender to married and unmarried people alike. From some men specifically he demanded the giving-up of either the possibility of having a wife or the wife herself when having one. Strictly speaking his ideal was that of continence more than that of celibacy because he could not have found only unmarried men to be his successors. Jesus was in need of leaving his Church in the hands of responsible people mature enough for the job? It seems that in such a Jewish context very few were suitable if they had to be celibate and at the same time elders, *presbyters*, priests.

We are not surprised, then, to see Paul asking Titus for that required maturity from those who were going to lead the Church — to be heads of Christian communities as Christ was the Head of the Christian Community — by saying that «each one of them must be a man of irreproachable character». And he added. «he must not have been married more than once»<sup>(85)</sup>. We are still in the early stages of the Church. It seems that to have been married only once was one of the signs of *irreproachable character*. Now this expression «man of one wife (*unius uxoris vir*)» implying suitability was repeated by St Paul as a fix way of saying, which was applied to bishops and deacons as well<sup>(86)</sup>. In his decretal letter *Cum in unum*

(82) Cf. Mk 1:30, 1Co 9:5; and COCHINI, p. 90-92.

(83) JOHN PAUL II, *Church committed...*, cit., no. 3.

(84) Cf. *Ibid.*, no. 1-4.

(85) Tt 1:5-9.

(386) to the African Bishops, Pope Siricius (384-399) gave the right meaning to St Paul's *man-of-one-wife*, answering those who wanted to see it as support for keeping marital activity with their wives after ordination: «Perhaps someone may believe that this (conjugal life) is allowed because it is written: "he must not have been married more than once" (1 Tm 3:2). He (St Paul) did not say it because the procreative desire could remain, but because of the future continence (*propter continentiam futuram*) »<sup>(87)</sup>. That the candidate to Holy Orders had been married more than once could have implied that it was not going to be easy for him to live a continent life.

St Paul, who was an apostle and thus a God's representative as well, would have liked everyone to be like him — a celibate man, because «an unmarried man can devote himself to the Lord's affairs, all he need worry about is pleasing the Lord», while a married man is torn two ways — he is divided. That, it seems, was the ideal. «Yes, it is a good thing for a man not to touch a woman». Even married people could refuse each other by mutual consent and for an agreed time, to leave themselves *free for prayer*. And he was writing all these things only to help us, not to put a halter round our necks, but simply to make sure that everything was as it should be, and that we may give our undivided attention to the Lord<sup>(88)</sup>. Obviously, St Paul was not an exception. We may think, as well, of a group of celibate priests in the early Church: «These are the ones who have kept their virginity and not been defiled with women; they follow the Lamb wherever he goes; they have been redeemed from amongst men to be the first-fruits for God and for the Lamb»<sup>(89)</sup>. Therefore the married man who had to be a bishop, a priest or a deacon, and give his undivided attention to the Lord, had to be continent as the best way to be another Christ. If he was not celibate, at least he should have been married only once.

In 1190 Uguccio of Pisa commenting on Gratian's *Decretum* (1140) summarized that doctrine as follows: «The continence of cle-

<sup>(86)</sup> 1Tm 3:2.12.

<sup>(87)</sup> «Forte hoc creditur quia scriptum est unius uxoris virum (1 Tim 3,2). Nor permanentem in concupiscentia generandi dixit, sed propter continentiam futuram» (PL 13, 1160-1161). Cf. COCHINI, p. 32-33; and STICKLER, p. 50-51.

<sup>(88)</sup> Cf. 1Co 7:1.5-7.25.32-33.35; 9:1. On St Paul's state of life cf. COCHINI, p. 9:

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<sup>(89)</sup> Rv 14:4-5.

rics consists in not getting married (*in non contrahendo matrimonio*) and in not using marriage if one is already married (*et in non utendo contracto*) »<sup>(90)</sup>.

*Law is not only legislation.*

With the exception of the scene of the adulterous woman, we do not know of any instance in which Jesus Christ, directly, either wrote or asked anyone to write anything as a record of his actions. He preached and asked his disciples to do so. It seems that the Holy Spirit wanted the Good News (*good-spell*, gospel) to be put in writing for us to keep it as basic reference, though not even then was everything Jesus did written down<sup>(91)</sup>. St Paul also thought it was important to stress the relevance of oral tradition: «Stand firm, then, brothers, and keep the traditions that we taught you, whether by word of mouth or by letter»<sup>(92)</sup>. In fact, Pope Siricius (384-399) in his letter *Cum in unum* (386) to the African Bishops quoted this verse when he wanted to clarify that priestly continence had to be accepted as a law precisely because of being part of the apostolic tradition<sup>(93)</sup>.

The richness of customary law in the different traditional African societies is well known and will be better known as research continues. When customs from different tribes on a specific topic are put together, we become especially aware of being in front of a real legal system with variety of connotations and common sense of obligation<sup>(94)</sup>. In every tribe there are normative rules concerning particularly land held under customary tenure, marriage, divorce, dowry, maintenance, matters affecting status, succession, claims in contracts and tort<sup>(95)</sup>. For centuries, in these communities, social order and judicial activity have been based on that unwritten customary law which is the genuine reflection of natural law. Even concern-

<sup>(90)</sup> Cf. STICKLER, p. 5.

<sup>(91)</sup> Cf. Jn 21:25, what could be seen from a chronological view-point as the last verse of the Bible and end of the written Revelation.

<sup>(92)</sup> 2Th 2:15.

<sup>(93)</sup> Cf. STICKLER, p. 16-17.

<sup>(94)</sup> Cf. for instance E. COTRAN, *Restatement of African Law. Kenya: I. The law of marriage and divorce*, London 1968; and II. *The law of succession*, London 1969 (School of Oriental and African Studies) (Sweet & Maxwell).

<sup>(95)</sup> Cf. T. JACKSON, *The Law of Kenya. An Introduction*, Nairobi-Dar es Salam-Kampala 1976 (East African Literature Bureau), p. 19.

ing the worship of God there were specific rules that had to be followed<sup>(96)</sup>. Obviously, today's African legal systems and institutions of higher learning have been setting up different ways to ascertain and restate the customary law. Through panels of lawyers, by the appointment of special commissioners, and through research by scholars, the African customary law has been recorded and, in some way, preserved<sup>(97)</sup>.

If different circumstances, like the lack of a written language, do not allow the recording of those customs in writing and that they be sanctioned by the legitimate authority, then the customary law is the only source of social order. A lack of legislation (written law) does not mean lawlessness. Law (*ius, amri*) should not be identified with legislation (*lex, sheria*) and, in fact, only development makes the latter the main source of the former. Custom (*consuetudo, desturi*) is always, in any legal system around the world, a source of law specially at its beginnings. Legislation and jurisprudence would grow as a result of applying customs to real cases, and of recording them. The Church accepts custom not only as one of the sources of Canon Law, but also as the interpreter of legislation<sup>(98)</sup>.

In modern times, African independent countries have adopted, in different ways, other well-established legal systems. Kenya, for instance, follows the British one. Kenyan law today remains an imported legal system, unfamiliar to the vast majority of its citizens<sup>(99)</sup>. Though within certain limitations, customary law from the different tribes has remained one of the sources of Kenyan law<sup>(100)</sup>. Little by little a new Kenyan jurisprudence is being built up based, precisely, on the application of African customary law to court cases<sup>(101)</sup>. But

<sup>(96)</sup> Cf. for example J.M. LUKWATA, *The first hundred years of the Bugandan Church and her worship*, Rome 1991 (Pontifical Liturgical Institute of St Anselm), p. 9-21.

<sup>(97)</sup> Cf. F.M. MIFSUD, *Customary land law in Africa*, Rome 1967 (FAO), p. 10-17.

<sup>(98)</sup> Cf. CIC, can. 27.

<sup>(99)</sup> Cf. K.I.A. (Members of the Legal Staff), *An introduction to Kenya Law*, Lower Kabete 1975 (Kenya Institute of Administration), p. 28.

<sup>(100)</sup> On the problem for accepting customary criminal law into the legal system, cf. E. COTRAN, *The position of customary criminal law in African countries*, in G.F.A. SAWYERR (Ed.), *East African law and social change*, Nairobi 1967 (Contemporary African Monographs Series no. 6), p. 14-25.

<sup>(101)</sup> Cf. E. COTRAN, *Casebook on Kenya Customary Law*, Oxford 1987 (Professional Books Ltd & Nairobi University Press), specially case no. 88: Virginia Edith

even if we were to list down the formal sources of law, in accordance with the order in which they have appeared in the evolution of the English legal system, custom would be considered first, followed by judicial decisions (jurisprudence), and legislation (enacted law) third. Although custom was an important source of law in the early times, its importance diminished as the legal system grew. *Lex et consuetudo Angliae* was the familiar title of English legal system. Common law and custom were synonymous expressions though the former included and became essentially the judge-made law. In the early days the courts based themselves on Norman customs derived from Europe and also invoked English customs. Often the judges spoke as if their role was only that of discovering an existing rule to determine the case, a rule established by long-standing custom<sup>(102)</sup>. International Law as well accepts custom as one of its sources. The sense of legal obligation in customs is opposed to usage which is based on motives of courtesy, fairness, or morality<sup>(103)</sup>. We can even speak, in some instances, of customary international law<sup>(104)</sup>.

When we think of the beginnings of the Church, like that of any founded institution, we realize that the life of the first Christian communities was based on the effort of putting into effect the foundational ideals which were made flesh in Jesus Christ, the founder. His foundational design was made up of ideas and basic rules of behaviour, which he put into practice achieving a clear set of aims. The fidelity of those first Christians to the founder's ideals consisted mainly in imitating him. Therefore, the early life of such a community would develop those foundational principles into practical living traditions which are not mere usage but real customs. Thus they are

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Wambui Otieno v. Joash Ochieng Ougo and Omolo Siranga, p. 331-345, which is a turning point for the study and importance of customary law in Kenya. On this same case and for the full text of judgements in first and second instances, cf. S. EGAN (Ed.), *S.M. Otieno, Kenya's unique burial saga*, Nairobi 1987 (Nation Newspapers), p. 6 and 104-112.

<sup>(102)</sup> Cf. W.B. HARVEY, *Introduction to the legal system of Kenya. Structure and method.*, Nairobi 1970 (University of Nairobi), part 4, p. 1-3 and 66.

<sup>(103)</sup> Cf. I. BROWNIE, *Principles of Public International Law*, Oxford 1987 (Oxford University Press), p. 4-12 and 45-49.

<sup>(104)</sup> Cf. for instance F.X. NJENGA, *Investment Guarantees*, in G.F.A. SAWYERR (Ed.), *East African law...*, cit., p. 85.

rules of conduct and faithful expressions of the founder's mind, supported by his own authority at the very beginning — that of his successors later on, and always by the Holy Spirit, the Spirit of Truth.

*First legislation on priestly celibacy.*

Amazingly enough, Vatican Council II has been the first ecumenical council to use the expression «law of celibacy»<sup>(105)</sup>. However, the first time that the expressions «*lex coelibatus*» appeared in a conciliar text was in the Synod of Sens (Paris) in 1528<sup>(106)</sup>. Nevertheless the first written law on celibacy is in fact as old as the written law of the Church itself.

We can consider the decrees of the Council of Iliberis or Elvira (300/306) as the earliest extant canonical legislation after the Council of Jerusalem (49/50). Although there was synodal activity before Iliberis, the decrees of those early councils have not been preserved. If the pontifical legislation through papal decretals had its starting point in the letter *Directa* of Pope Siricius to Bishop Himerius of Tarragona (385), then Iliberis canons have to be accepted as the most ancient extra-biblical legislation of the Church<sup>(107)</sup>. In present day Granada, Southern Spain, the council gathered forty three bishops and priests who issued 81 decrees aiming — as has generally been accepted — at restoring discipline after the worst and last persecution under Emperor Diocletian<sup>(108)</sup>. Consequently and as far as can be as-

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<sup>(105)</sup> When speaking of the diaconate as a proper and permanent rank of the hierarchy it explains that «it will be possible to confer this diaconal order even upon married men, provided they be of more mature age, and also on suitable young men, for whom, however, *the law of celibacy* must remain in force» (*Lumen Gentium* 29).

<sup>(106)</sup> Cf. R. CHOLIJ, *El celibato sacerdotal en la Iglesia Oriental*, «La formación de los sacerdotes en las circunstancias actuales. XI Simposio Internacional de Teología», Pamplona 1990 (Servicio de Publicaciones de la Universidad de Navarra S.A.) (= CHOLIJ), p. 114. Dr. Roman Cholij of the Ukrainian Church - London is a well-known specialist in History of Eastern Canon Law. On the development of celibacy mainly in the Eastern Church, he has published, among others, *Clerical celibacy in East and West*, Herefordshire 1988 (Fowler Wright Books); and *Married clergy and ecclesiastical continence in the light of the Council of Trullo (691)*, in «*Annuario Historiae Conciliorum*» 19 (1987), p. 71-230 and 241-299.

<sup>(107)</sup> Cf. A. PAMPILLON, *The early African legislation on the trial of bishops*, «*African Christian Studies*», 9, 1 (1993), p. 47-48.

<sup>(108)</sup> Cf. J. ORLANDIS - D. RAMOS-LISSON, *Historia de los concilios de la España ro-*

certained, can. 33 of Iliberis has to be considered the first written law on priestly celibacy: «It has been agreed upon the complete prohibition by which bishops, priests and deacons (and all the clerics) who serve at the altar, should keep away from their wives and from having children. Whoever would not do it should be excluded from clerical office»<sup>(109)</sup>.

We have stated that this is the first legislation on priestly celibacy but we have to clarify what may seem obvious<sup>(110)</sup>. On the one hand the Council of Iliberis demanded continence from bishops, priests and deacons who were married, and it did not demand celibacy (*eunuchia*) in the strict sense of the word. Although some members of the clergy followed the example of Christ in the way of St Paul, others were men of *irreproachable character* who had been married only once — in accordance with St Paul's advice — and followed the example of Christ by means of continence. On the other hand this legislation cannot be considered the first instance in which

*mana y visigoda*, Pamplona 1986, p. 25-63; also V.C. DE CLERQ, *Ossius of Cordova*, «Studies in Christian Antiquity» 13, Washington 1954 (The Catholic University of America), p. 85-117; and J. GAUDEMET, *Elvire (Le concile d')*, «Dictionnaire d'Histoire et de Géographie ecclésiastiques» XV, col. 317-348. M. MEIGNE, *Concile ou collection d'Elvire?*, «Revue d'Histoire Ecclésiastique» 70 (1975), p. 361-387, does not accept the 81 decrees as belonging to the Council of Iliberis; he considers them a canonical collection and only the first 21 decrees would be genuine. D. RAMOS-LISSON, *En torno a la autenticidad de algunos cánones del concilio de Elvira*, «Scripta Theologica» 11 (1979), p. 181-186, gives a well-supported answer to Meigne, and stresses the influence of the Council of Iliberis on those of Ancyra (314), Neocaesarea (314/315), Nicaea (325) and Sardica (342-343), and not the other way round as Meigne says.

<sup>(109)</sup> «Placuit in totum episcopis, presbyteris et diaconibus (vel omnibus clericis) positus in ministerio abstinere se a coniugibus suis, et generare filios. Quicumque vero fecerit, ab honore clericatus exterminetur» (J. VIVES, *Concilios visigóticos e hispano-romanos*, Barcelona-Madrid 1963, p. 7; and PL 84, 305). The words in between brackets, though appear in most of the versions, are not included in the critical edition of the *Hispana* edited by G. MARTINEZ DIEZ - F. RODRIGUEZ, *La Colección canónica Hispana*, IV, Madrid 1984 (Consejo Superior de Investigaciones Científicas), p. 253. In our translation we have followed the sense given by E. GRIFFE, *A propos du canon 33 du concile d'Elvire*, «Bulletin de littérature ecclésiastique», 74 (1973), p. 142-145, that it is also found in Cochini, Vives, Stickler and Villiger. M. MEIGNE, *Concile ou collection...*, p. 372, contradicts completely that accepted sense. His article — in this specific point — has been refuted by D. RAMOS-LISSON, *En torno a la autenticidad...*, cit., p. 15-186; and E. GRIFFE, *Le Concile d'Elvire et les origines du célibat ecclésiastique*, «Bulletin de littérature ecclésiastique», 77 (1976), p. 123-127.

<sup>(110)</sup> Cf. A.M. STICKLER, *Il Celibato Ecclesiastico...*, cit., p. 11-12.

continence was demanded in the Church because precisely it takes into account and reflects a long tradition, and presupposes — with words of Pius XI — «a still earlier unwritten practice»<sup>(111)</sup>.

If the first written law on priestly continence is that of Iliberis, we have to accept that before it the Church was not a lawless community and in fact had a rich customary law that is reflected in that very first legislation. Juridically we cannot think of a retrocative law which steps on acquired legal rights. The Council of Iliberis decreed the continence of high ranked married clerics because continence — with full acceptance of their wives — had been a condition for their ordination. An ecclesiastical law could not have been the way of abolishing a natural and sacramental right to the use of marriage, unless that right was given up wilfully and willingly when being ordained. The loss of clerical office or deposition, as a penalty for those who did not obey what was decreed by can. 33 in its first section, can only be understood as a way to put an already existing law into force when, due to circumstances of persecution, it had not been well fulfilled and was therefore in danger.

If the restoration of traditional discipline and genuine Christian life was the aim of the Council of Iliberis, the dispositions of can. 33 were not enough to recover lapsed clerics and avoid further damage. In fact other Iliberis decrees fostered continence and chastity among the clergy. To begin with, the suitability of candidates to Sacred Orders — a concern of the Church throughout her history — was in the minds of the Ilibiritan fathers<sup>(112)</sup>. As chastity was considered a sign of fitness for a life of continence whether married or celibate, in can. 30 they did not hesitate denying access to the higher orders to those who had fornicated («*fuertint moechati*») before ordination, in such a way that, if they had been ordained after doing so, they had to be deposed<sup>(113)</sup>. If the Council of Iliberis was so interested in the purity of customs among candidates to Orders, no less demanding was it on the clerics themselves. Can. 18 — the toughest decree concerning the major clergy — established a perpetual «excommunication» fo

(111) PIUS IX, *Ad Catholici Sacerdotii* (1935), in its English translation, *The Catholic Priesthood*, London 1962 (Catholic Truth Society), p. 25.

(112) Cf. J. ORLANDIS - D. RAMOS - LISSON, *Historia de los Concilios...*, cit., p. 4

(113) «Subdiaconos eos ordinari non debere qui in adolescentia sua fuerint moechati, eo quod postmodum per subreptionem ad altiorum gradum promoveantur: fo qui sunt in praeteritum ordinati, amoveantur» (PL 84, 305).

those bishops, priests and deacons who were incontinent (*sint moechati*), such a penalty being caused not only by the sin itself but also by the subsequent scandal<sup>(114)</sup>.

Condemnation and punishment went together with specific laws to avoid occasions of incontinence. That is why can. 27 decreed that clerics should not share the same roof with strange women, which in fact meant that only a sister or daughter who was a consecrated virgin could do so<sup>(115)</sup>. Wives were not mentioned and the interpretations of this can be man. The dispositions of can. 27 were, in any case, clear measures of prudence to keep continence safe and possible. They were the result of almost three hundred years of experience. St Paul accepted the right for the ministers of God to be helped by a Christian woman, although he and Barnabas did not exercise this right<sup>(116)</sup>. According to can. 27 of Iliberis, it seems that this tradition was kept. If the wife was not around or there was no wife at all, then the cleric could claim the right to be helped by a Christian woman who customarily was his daughter or sister. The synodal fathers, then, did not hesitate to restrict women to consecrated sisters and daughters in the cleric's household<sup>(117)</sup>.

A three hundred years old customary law was also reflected in the first papal legislation through decretals and logically agreed fully

(114) «Episcopi, presbyteres et diacones si in ministerio positi detecti fuerint quod sint moechati, placuit propter scandalum et propter profanum crimen nec in finem eos communionem accipere debere» (J. VIVES, *Concilios visigoticos...*, cit., p. 5).

(115) «Episcopus vel quilibet alius clericus aut sororem aut filiam virginem dicatam /Deo/ tantum secum habeat. Extraneam nequaquam habere placuit» (J. VIVES, *Concilios visigoticos...*, cit., p. 6; and PL 84, 305).

(116) Cf. 1Co 9:5.12.

(117) Can. 65 decreed that a cleric should send his wife away if she committed adultery: «Si cujus clerici uxor fuerit moechata et scierit eam maritus suus moechari et non eam statim projecerit...» (PL 84, 308). Some have seen this disposition as contradicting the law of continence, while others do not mind to accept that continence was possible even when cleric and wife were sharing the same roof (cf. J. ORLANDIS - D. RAMOS-LISSON, *Historia de los Concilios...*, cit., p. 50). We think that can. 65 — addressing the clergy in general and not specifically bishops, priests and deacons — applied only to the lesser ranks (*inferioris ordinis*) that were common then. The most often named in the sources of the fourth century are subdeacon, acolyte, exorcist, porter, and lector (cf. K. BAUS, *The Clergy of the Church of the Empire*, in H. JEDIN [Ed.], *History of the Church*, London 1980 [Burns & Oates], II, p. 270). Strictly speaking, only higher ranks (*clerici superioris*) were under the law of continence of can. 33, while the measures of prudence of can. 27 applied to all the clerics.

with the first synodal legislation regarding continence. Pope Siricius (384-399) in his letter *Directa* to Bishop Himerius of Tarragona (385) — the first extant pontifical decretal — stressed the importance of perpetual continence among higher clergy as part of the message of the New Testament. In his letter *Cum in unum* to the African Bishops (386), Siricius made it clear that oral tradition since apostolic times had the strength of law, and that priestly continence was precisely part of that tradition<sup>(118)</sup>. The decretal letter *Dominus inter* to the Gallic Bishops has been attributed to Damasus I (366-384) and consequently regarded as the first papal decretal by some historians. Its doctrine on clerical continence is one of the clearest in the legislation of the Church. Although it has been assigned to Siricius as well, Innocent I (402-417) should be considered its true author<sup>(119)</sup>. Later on, it would be Leo the Great (440-461) who first used the expression «law of continence (*lex continentiae*)», extending this law to subdeacons<sup>(120)</sup>.

### *Eastern discipline.*

On priestly continence, therefore, the early canon law agreed with the apostolic tradition. Does it apply to the Eastern Church? As the Catechism of the Catholic Church declares: «In the Eastern Churches a different discipline has been in force for many centuries: while bishops are chosen solely from among celibates, married men can be ordained as deacons and priests»<sup>(121)</sup>. In any case, «priestly celibacy is held in great honour in the Eastern Churches and many priest have freely chosen it for the sake of the Kingdom of God»<sup>(122)</sup>. Or as worded by the Code of Canons of the Eastern Churches: «Clerical celibacy chosen for the sake of the kingdom of heaven and suited to the priesthood is to be greatly esteemed everywhere, as supported by the tradition of the whole Church»<sup>(123)</sup>. Let us also not forget that the eastern tradition ac-

<sup>(118)</sup> Cf. COCHINI, p. 28-34; STICKLER, p. 16-17; and CHOLIJ, 119-120.

<sup>(119)</sup> Cf. K. BAUS, in JEDIN - DOLAN, II, . 279; COCHINI, p. 34-38; and STICKLER, p. 17-18.

<sup>(120)</sup> Cf. CHOLIJ, p. 116; COCHINI, p. 290-292; STICKLER, p. 18-19; and K. BAUS, in JEDIN - DOLAN, II, p. 279.

<sup>(121)</sup> CCC, 1580.

<sup>(122)</sup> *Ibid.*

knowledges what is a general rule for the whole Church, that « a man who has already received the sacrament of Holy Orders can no longer marry »<sup>(124)</sup>.

If the discipline of the East is different, there should be a historical turning point that can explain it, because in the Church as far as it is apostolic, like in any other legal system, the first written law follows the initial customary law, and therefore the eastern discipline is not an exception regarding priestly celibacy. Testimonies and studies on it have been very numerous, and it is beyond the scope of this lecture to examine them all<sup>(125)</sup>. Two examples — one as a matter of law, the other as a matter of fact — may suffice.

The Council of Nicaea (325) which was the first ecumenical council and part of the eastern tradition decreed specifically against occasions for incontinence in a parallel way to Iliberis can. 27. Can. 3 of Nicaea reads as follows: « This great synod absolutely forbids a bishop, presbyter, deacon or any of the clergy to keep a woman who has been brought in to live with him, with the exception of course of his mother or sister or aunt, or any person who is above suspicion »<sup>(126)</sup>. As it happened in can. 27 of Iliberis, wives do not appear in the list but again it is not because clerics were not or could not be married. It seems that the wife was not allowed to stay under the same roof as the cleric, because bishops are mentioned first among the clerics, and we know that eastern tradition was and is clear regarding episcopal continence<sup>(127)</sup>. This was precisely the interpretation of the First Lateran Council (1123) which in its can. 7 says: « We absolutely forbid priests, deacons or subdeacons to live with concubines and wives, and to cohabit with other women, except those whom the council of Nicaea permitted to dwell with them solely on account of necessity, namely a mother, sister, paternal or ma-

<sup>(123)</sup> *Code of canons of the Eastern Churches (Latin - English Edition)*, Washington, D.C. 1992 (Canon Law Society of America), can. 373.

<sup>(124)</sup> CCC, 1580.

<sup>(125)</sup> Cf. for instance bibliography of Dr. Roman Cholij's paper, book and article of note 106.

<sup>(126)</sup> N.P. TANNER (Ed.), *Decrees of the Ecumenical Councils*, London - Washington 1990 (Sheed & Ward - Georgetown University Press) (= TANNER), p. 7, can. 3.

<sup>(127)</sup> Regarding Paphnutius' statement against the Council of Nicaea (325) declaring priestly celibacy compulsory, cfr. COCHINI, p. 221-227; and STICKLER, p. 33-36. No author gives any credit to Socrates' story.

ternal aunt, or other such persons, about whom no suspicion could justly arise»<sup>(128)</sup>.

In 406 when writing against Vigilantius — a Gaulish priest who used to despise celibacy, St Jerome defended it by specifically using as obvious evidence the practice and tradition of the Eastern Church, together with other churches, where clerics were celibate, continent or, if married, they had given up marital life («*aut virgines aut continentes aut si uxores habuerint mariti esse desistunt*»)<sup>(129)</sup>. Clearly, this and other testimonies of the like do not imply a lack of practical abuses and exceptions to the rule which have been present everywhere and throughout the history of the Church.

The Council in Trullo II or Quinisext (692) was the turning point and from then on the main source of the Eastern Canon Law regarding clerical celibacy<sup>(130)</sup>. Although in six other canons the Trullan Synod defended the continence of bishops including for example specific provisions for wives to be looked after without having to stay under the same roof, and the defence of chastity and good name of clerics, its can. 13 allowed priests, as well as deacons and subdeacons, to co-habit and have marital relationship with their wife. By misquoting and combining canons from the early African legislation the synodal canonists managed to link this new law against priestly continence with a non-existent apostolic tradition<sup>(131)</sup>. This shows that they knew about the importance of solid ground for putting up a legal structure. As matter of fact, the Church in Africa was a strong defender of priestly continence. The fathers of the Quinisext or their advisers had to fake and twist the original African canons in order to break away from a tradition with apostolic roots. As they could not find it as a basis of their new law in their own well-known legislation, they had to find it in less known though reliable code, but where it could not be easily studied non verified: in the faraway African canons where apostolicity could only have been the foundation of a legislation on continence<sup>(132)</sup>. Already in the Council of Carthage under Genethlius (390) the African bishop

(128) TANNER, p. 191.

(129) PL 23, 340-341. Cf. STICKLER, p. 21, for other passages from St Jerome.

(130) Cf. CHOLIJ, p. 117-120; COCHINI, p. 431-446; and STICKLER, p. 38-46.

(131) Cf. COCHINI, p. 442-443, note 57; and STICKLER, p. 40-41, note 60.

(132) Cf. COCHINI, p. 23-28.

had declared: « We have agreed that bishops, priests and deacons — caretakers of chastity — should as well keep away from their wife so that in everything and by everyone who serve at the altar chastity is kept »<sup>(133)</sup>. This was to be constantly present in the African legislation because of being included in the Excerpts from the Register of the Carthaginian Church (*Registri ecclesiae Carthaginensi excerpta*) — a real code of Canon Law of the early African Church, and in the Canons of Apiarius' Trial (*Canones Apiarii causae*).

*Bishops' responsibility for priestly celibacy.*

History has proven what is evident: in times of difficulty about priestly celibacy the Church has always reacted by applying pastoral and legal measures to protect it, although she has not been always successful. The Church cannot give up what belongs to Christ, and what helps her ministers to belong to Him. The law of celibacy is there to protect a gift — a charism, to protect the presence of living figures of Christ in the Church. Through her progressive teaching and law the Church has been constantly trying to help her priests to live their identification with Christ. That is why by the law of priestly celibacy, « the hierarchy, which maintains and administers the sacraments established by Jesus Christ, decides not to confer the sacrament of Order on anyone who has not the moral certainty of having received the charism of perfect continence and has not freely and responsibly committed himself to preserve and cultivate it »<sup>(134)</sup>. In fact, the Code of Canon Law makes it clear that no candidate for the priesthood should be admitted to the order of diaconate unless he has publicly before God and the Church undertaken the obligation of celibacy<sup>(135)</sup>.

It is expedient then that the hierarchy, specifically the Bishop, should feel responsible for priestly celibacy both as a subject to be taught by one who is a teacher and as a practical reality to be taken care of by the one who is the shepherd of the sheep and the lambs.

<sup>(133)</sup> « Omnibus placet ut episcopus, presbyter et diaconus, pudicitiae custodes, etiam ab uxoribus se abstineant, ut in omnibus et ab omnibus pudicitia custodiatur, qui altario inserviunt » (PL 84, 185). Cf. also C. MUNIER, *La Tradition du Heme Concile de Carthage*, « Revue des Sciences religieuses » 46 (1972), p. 193-214.

<sup>(134)</sup> A. DEL PORTILLO, *On priesthood...*, cit., p. 52.

<sup>(135)</sup> Cf. Can. 1037.

This has now become particularly important as John Paul II expressed it: «At this time, when some question the desirability of maintaining the discipline of priestly celibacy, *Bishops must courageously teach the fittingness of linking this "sign of contradiction" with the ministerial priesthood*»<sup>(136)</sup>.

The Code of Canon Law stresses that the Bishop is responsible for the suitability of candidates to Holy Orders<sup>(137)</sup>. In a way this is the beginning, though only the beginning, of his responsibility for priestly celibacy. Obviously the priest himself should be the one, in the first place, taking care of the gift he has received, which is why the present legislation regarding priestly celibacy — can. 277 § 2 — established that: «Clerics are to behave with due prudence in relation to persons whose company can be a danger to their obligations of preserving continence or can lead to scandal of the faithful»<sup>(138)</sup>. Without mentioning specific persons, as was the case in previous codifications since Ilberis, the Code gives a general rule of prudence. Then the Code adds something new — can. 277 § 3 — as a way of making more specific what has been left in general terms: «The diocesan Bishop has authority to establish more detailed rules concerning this matter, and to pass judgement on the observance of the obligation in particular cases»<sup>(139)</sup>. Commenting on can. 277 Prof. Rincon wrote: «Although the spirit of the norm remains the same, the general lines of § 2 differ considerably from the detailed list of circumstances mentioned in can. 133 of the 1917-Code of Canon Law. It is incumbent on the diocesan bishop to establish more specific norms on the subject. Previous drafts of this canon prescribed that the bishop hear the presbyteral council before establishing such norms; the present Code does not require this»<sup>(140)</sup>.

Manifestly then, the Bishop is responsible for ruling on ways that foster and protect priestly celibacy, and for making sure that his norms are implemented. In other words, because he is responsible for the welfare of his priests at all levels, he has to care for their

(136) JOHN PAUL II, *Gift of celibacy...*, cit., p. 3, no. 4.

(137) Cf. for instance Can. 1025 and 1028-1030.

(138) CIC, Can. 277 § 2.

(139) Can. 277 § 3: *Competit Episcopo dioecesano ut hac de re normas statuat magis determinatas utque de huius obligationis observantia in casibus particularibus iudicium ferat.*

(140) T. RINCON, *Commentary c. 277*, in «Code of Canon Law Annotated»..., cit., p. 231.

celibacy as well, which is an important characteristic of their identification with Christ. John Paul II has said: «Modelled on the relationship between Jesus and his disciples, *the Bishop* must treat his priests as sons, brothers and friends, being concerned above all for their sanctification, but also for their physical well-being, their peace of mind, their proper rest, and assistance in all stages and conditions of life»<sup>(141)</sup>. There is no doubt then that priestly celibacy depends mainly on sanctity, on living faith, although it is also true that mental, physical and social factors have something to do with it.

Cardinal Otunga pointed out three important realities that are integral to living celibacy, and therefore — we dare say — could be the basis for the care and ruling exercised by the Bishop namely: «*faith, occasion and formation*».

«With *faith* we look to follow Christ by sacrifice and self-denial»<sup>(142)</sup>. To identify ourselves with Christ on the Cross is a program found, for example, in Vatican II *Presbiterorum Ordinis* 12-21 on the life of priests. The Council issued «the strongest exhortation to all priests to strive always by the use of all suitable means commended by the Church towards that greater holiness that will make them daily more effective instruments for the service of all God's people»<sup>(143)</sup>.

The priest should exercise his functions sincerely and tirelessly, especially the celebration — daily one is earnestly recommended — of the sacrifice of the Mass, where he acts in a special way in the person of Christ who gave himself as a victim to sanctify men. The imitation of Christ implies for priests «to mortify their members from vices and concupiscence»<sup>(144)</sup>. The priest lends «Our Lord his voice, his hands, his whole being. It is Jesus Christ who, in the Holy Mass, through the words of the consecration, changes the substance of the bread and wine into his Body, Soul, Blood and Divinity»<sup>(145)</sup>. This is where he proclaims the mystery of faith. «The priestly identity shines forth in a very special way (...). Assimilation to Christ hinges on it; it is the basis of an ordered life of prayer and genuine

<sup>(141)</sup> JOHN PAUL II, *Priestly identity...*, cit., n. 5, p. 7.

<sup>(142)</sup> Cf. *Report: Workshop...*, cit., p. 15.

<sup>(143)</sup> *Presbiterorum Ordinis* 12.

<sup>(144)</sup> Cf. *Ibid.* 13.

<sup>(145)</sup> Cf. BLJOSEMARLA ESCRIVA, *In love with the Church*, London-New York 1989 (Scepter), no. 38-39, p. 41. This text was quoted by John Paul II in his homily during the ordination of priests in Rio de Janeiro on 2 July 1980 (cf. note 69 above).

pastoral charity»<sup>(146)</sup>. Priests are also united with Christ when they administer the sacraments and recite the Divine Office, «in a special way when they show themselves to be always available to administer the sacrament of Penance»<sup>(147)</sup>.

In addition to the meaningful carrying out of their ministry, the Church recommends, and in fact sometimes commands, other means for personal sanctification of priests. Besides the reception of the Eucharist which is common union with the Beloved, holy Scripture holds a pre-eminent place. The fruitful reception of Penance, a daily examination of conscience, spiritual reading, visit to the most Blessed Sacrament, spiritual retreat, spiritual direction, mental prayer, different forms of vocal prayer, and filial devotion to the Blessed Virgin Mary are part of the plan of the Second Vatican Council for priests «in the hope of attaining its pastoral objectives of interior renewal, of world-wide diffusion of the Gospel, and of dialoge with the modern world»<sup>(148)</sup>.

Bishops have to rule on *occasions* against chastity and fidelity, and from the very beginning, as we have seen already, the law of the Church has always been keen about it. In the area of faithfulness, what we may apply to married men who have committed themselves to one woman should be applied to priests who have committed their undivided heart to Jesus Christ. «The customs developed in many cultures to protect chastity and marriage should be observed»<sup>(149)</sup>. A wife does not think it is good for her husband to be *alone with another woman* at home (which does not necessarily mean in the bedroom), or in a car, or even in the office especially when it is late. Obviously, old age and natural close family relationship may place a woman above suspicion.

The confessional box should be *always* there in all churches, and set in an open place accessible to everyone («*semper habeantur in loco patenti*»)<sup>(150)</sup>. Confessionals constructed in accordance with the Code of Canon Law «*facilitates oral communication and at the same time separates the persons*»<sup>(151)</sup>. The parish office has to be

<sup>(146)</sup> JOHN PAUL II, *Priestly identity...*, cit., no. 3.

<sup>(147)</sup> Cf. *Presbiterorum Ordinis* 13.

<sup>(148)</sup> Cf. *Ibid.* 12 and 18.

<sup>(149)</sup> Cf. *Report: Workshop...*, cit., p. 14.

<sup>(150)</sup> Cf. CIC, can. 964.

an open place. It goes against common sense and would give scandal to find out that the priest has been with a woman in a locked office, and it doesn't matter whether she is single, religious, widowed, married or unattractive. Pastoral, catechetical or spiritual reasons are the worst excuses if we do not want to think of pathologic naiveté. Considering his priests' celibacy the Bishop has to foster rules on means of «prudence to avoid circumstances that are destructive like excessive eating and drinking, dancing, contact with those who care nothing for chastity, or fanning the passions in any way»<sup>(152)</sup>.

«*Formation* is an important means to prevent failures in the observance of celibacy (...). Basic information and formation for chastity is important. Young people need a positive catechesis in this area. The ongoing formation is more important than the initial formation (...). Bishops and Superiors often are not informed of known habits of unchastity, or leave such behaviour uncorrected for too long (...). Bishops and Superiors should correct their men in good time»<sup>(153)</sup>. A lot has been said and written lately on priestly training. All its aspects — human, doctrinal, spiritual, apostolic, ... — affect celibacy<sup>(154)</sup>. Specifically on the training of priests for celibacy Vatican II says: «They should be put on their guard against the dangers which threaten their chastity, especially in present-day society. They should learn how, with suitable natural and supernatural safeguards, to weave their renunciation of marriage into the pattern of their lives, so that not only will their daily conduct and activities suffer no harm from celibacy, but they themselves will acquire greater mastery of mind and body, will grow in maturity and receive greater measure of the blessedness promised by the Gospel»<sup>(155)</sup>.

In the post-synodal apostolic exhortation «The Church in Africa», John Paul II, once again, stressed the point: «As for the

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<sup>(151)</sup> Cf. G.B. TORELLO, *In defence of a piece of church furniture*, in «Interpress» (Lagos), III, 15/93, p. 2.

<sup>(152)</sup> Cf. *Report: Workshop...*, cit., p. 14.

<sup>(153)</sup> *Ibid.*, p. 13-14.

<sup>(154)</sup> A good approach on priestly formation for our African context can be found in the paper of R.S. NDIINGI MWANA A' NZEKI, *Vocation and formation...*, cit., p. 17-28.

<sup>(155)</sup> *Optatam Totius* 10.

Bishops, they are to see to the ongoing formation of priests, especially in the first years of their ministry, helping them especially to deepen their understanding of sacred celibacy and to persevere in living it faithfully» <sup>(156)</sup>.

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<sup>(156)</sup> JOHN PAUL II, *Ecclesia in Africa* (14 Sept 1995), in its English translation *The Church in Africa*, 97 (Paulines-Nairobi).