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Should We Abstain? Spousal Equality in Twelfth-Century Byzantine Canon Law

Maroula Perisanidi

Spousal equality was not an ideal to which medieval societies generally aspired. In both the Christian East and West, writings about social order advocated a strict hierarchical structure in which the man was the head of the household and the master of his wife. When, for example, Eustathios, Archbishop of Thessalonike (c. 1178–1195/6), considered the dangers of social equality, he argued that if students were to stop respecting their teachers and the congregation their shepherd, fathers could end up being subservient to their children, masters to their servants, the old to the young, or, even worse, a husband, who had been appointed as the head of his wife, could find himself prostrate at her feet and ‘everything would thus turn topsy-turvy’.¹ The same hierarchy of genders can be found in Western sources. Gratian’s *Decretum*, the most influential medieval collection of ecclesiastical laws (c. 1140s), repeats St Augustine’s statement that ‘it is the natural order among people, that women should serve their husbands and children their parents’.²

¹ ‘καὶ ἀναλλα τρῶπῳ τοιῶδε τὰ πάντα γενήσονται.’ See ‘De obedientia magistratui christiano debita’ in Theophil. [Gottlieb] Lucas Fridericus Tafel (ed.), *Eustathii Metropolitae Thessalonicensis Opuscula* (Frankfurt, 1832), p. 28. On Eustathios, see the relevant chapter in Michael Angold, *Church and Society in Byzantium under the Comneni, 1081–1261* (Cambridge: Cambridge University Press, 1995), pp. 179–96.

² ‘Est ordo naturalis in hominibus, ut feminae seruiant uiris, et filii parentibus’, see C. 33 q. 5 c. 12 as well as C. 33 q. 5, cc. 13–20 for similar pronouncements in Emil Friedberg (ed.), *Decretum Magistri Gratiani* (Leipzig, 1879), pp. 1254–56. This reference appears in both of Gratian’s recensions. For more on the two authors of the *Decretum*, see Anders Winroth, *The Making of Gratian’s Decretum* (Cambridge: Cambridge University Press, 2004), p. 226. For an evaluation of the place of gender in medieval canon law (with some mention of Byzantine canon

Did this subservient state of the wife extend to all spheres of family life or was there a space where spouses could act as equals?³ In this article I examine one aspect of Byzantine spousal relations: the marital bed. I will argue that there was a difference between the wives of laymen and those of clerics. Among the Byzantine laity, the two spouses were equally responsible for deciding whether to engage in sexual intercourse. Among the clergy, the husband's duties sometimes required him to decide unilaterally in favour of abstinence. Priests, deacons, and subdeacons were allowed to have wives but were expected to abstain from sexual intercourse before their service at the altar.⁴ This led to limitations which need to be taken into account in discussions of gender inequality.

The main source used for this study will be ecclesiastical law and in particular the commentaries of Theodore Balsamon and John Zonaras, the two most important Byzantine canon lawyers of the twelfth century.⁵ In these commentaries, Zonaras and Balsamon offered

law) concerning marriage formation, married life, and dissolution of marriages, see Sara McDougall, 'Women and Gender in Canon Law', in Judith M. Bennett and Ruth Mazo Karras (eds), *The Oxford Handbook of Women and Gender in Medieval Europe*, (Oxford: Oxford University Press, 2013), pp. 163–78.

³ Spouses seem to have been treated as equals, at least in theory, when it came to raising and educating children within the home. John Chrysostom, for example, accords this role to the wife with a considerable amount of dignity and authority. See his homilies on marriage and family life: on 1 Corinthians 7, Ephesians 5: 22–33, Ephesians 6: 1–4, and Colossians 4:18 in Catherine P. Roth and David Anderson (trans.), *St John Chrysostom: On Marriage & Family Life* (Crestwood: St Vladimir's Seminary Press, 2003), pp. 25–80.

⁴ On clerical marriage in Byzantium, see Peter L'Huillier, 'The First Millenium: Marriage, Sexuality and Priesthood', in Joseph. J. Allen (ed.), *Vested in Grace: Priesthood and Marriage in the Christian East*, (Brookline: Holy Cross Orthodox Press, 2001), pp. 23–65.

⁵ On Zonaras and Balsamon, see Spyros Troianos, 'Byzantine canon law from the twelfth to the fifteenth centuries', in Wilfried Hartmann and Kenneth Pennington (eds), *History of Byzantine and Eastern Canon Law* (Washington D.C.: The Catholic University of America Press, 2012), pp. 176–83; Ruth Macrides, 'Nomos and Kanon on Paper and in Court', in

their re-interpretation of canons promulgated in ecclesiastical councils from the third to the eighth centuries. They did this by rephrasing certain expressions whose meaning was no longer obvious for a twelfth-century audience; by adding references to other similar or seemingly contradictory laws, both civil and ecclesiastical; and by commenting on the application of these laws in their own day.⁶ Zonaras' commentaries came first and clearly had an influence on Balsamon, who sometimes copied them verbatim. Both canonists, however, offered their own unique angle, formed to a large extent by their personal circumstances and careers. Zonaras wrote his commentaries as a monk in the monastery of St Glykeria, where he retired after playing an active role in public life as president of the court of the hippodrome (megas droungarios tes viglas) and head of the imperial secretariat (protasekretis). Despite his monastic status, he cannot be said to have represented a pro-monastic perspective.⁷ In fact, his writings were often hostile to monks whom he considered ignorant and unqualified to

Rosemary Morris (ed.), *Church and People in Byzantium*, (Birmingham: Centre for Byzantine, Ottoman and Modern Greek Studies, University of Birmingham, 1990), pp. 61–85. Their work has been edited in Georgios A. Rhalles and Michael Potles (eds), *Σύνταγμα τῶν θείων καὶ ἱερῶν κανόνων*, 4 vols. (Athens, 1852–4), hereafter referred to as *Syntagma*, I for vol. 1, *Syntagma*, II for vol. 2, and so on.

⁶ Odysseus Lampsides, 'Πῶς εἰσάγουσιν εἰς τὰ κείμενά των οἱ ἐξηγηταὶ τῶν κανόνων τὰς εἰδήσεις διὰ τὸν σύγχρονόν των κόσμον', in Nikos Oikonomides (ed.), *Byzantium in the 12th Century: Canon Law, State and Society*, (Athens, 1991), pp. 211–27; Robert Browning, 'Theodore Balsamon's Commentary on the Canons of the Council in Trullo as a Source on Everyday Life in Twelfth-Century Byzantium', in Christine Angelidi (ed.), *Ἡ καθημερινή ζωὴ στο Βυζάντιο*, (Athens, 1989), pp. 421–7.

⁷ We are not certain of Zonaras' motivations for writing his canonical commentaries and there is debate about the date of their composition. See Thomas M. Banchich, 'Introduction: The Epitome of Histories', in Thomas M. Banchich (ed.), *The History of Zonaras*, tr. Eugene N. Lane, (London: Routledge, 2009), p. 7.

receive confessions, a prerogative reserved for the ordained clergy.⁸ Balsamon's perspective was more clearly that of the official Church hierarchy. As nomophylax (literally 'the guardian of law') and chartophylax (literally 'the guardian of the charters') of the Hagia Sophia and later as Patriarch of Antioch, Balsamon was knowledgeable in ecclesiastical law more generally and marital issues in particular.⁹ His commentary on the Nomokanon of Fourteen Titles received both imperial and patriarchal sanction and at least on one occasion he was considered an apt advisor in ecclesiastical law for his fellow Patriarch, Mark of Alexandria.¹⁰

⁸ Syntagma, IV, pp. 598–9. It was the secular clergy that he thought to have been the rightful intercessors between God and men, 'propitiating the Divinity towards other men, and requesting both the salvation of the faithful and peace for the world', 'ἐξιλεούμενοι τὸ θεῖον τοῖς ἄλλοις, καὶ σωτηρίαν αἰτούμενοι τοῖς πιστοῖς, καὶ εἰρήνην τῷ κόσμῳ'. See Syntagma, III, p. 301. See also Hans-Georg Beck, 'Zur byzantinischen Mönchschronik', in C. Bauer, Laetitia Boehm and Max Müller (eds), *Speculum historiale: Geschichte im Spiegel von Geschichtsschreibung und Gesichtsdeutung*, Festschrift (Freiburg: Alber, 1965), pp. 188–197. On the competition between monastic and secular clergy in the twelfth century, see also Paul Magdalino, *The Empire of Manuel I Komnenos, 1143–1180* (Cambridge: Cambridge University Press, 1994), pp. 318, 374–7, 388; Marie Theres Fögen, 'Unto the pure all things are pure: the Byzantine canonist Zonaras on nocturnal pollution', in Jan M. Ziolkowski (ed.), *Obscenity: Social Control and Artistic Creation in the European Middle Ages*, (Leiden: Brill, 1998), pp. 272–4.

⁹ As chartophylax he had juridical and administrative control over marriages; he was, for example, in charge of gathering the documents necessary for the celebration of weddings. See Jean Darrouzès, *Recherches sur les officia de l'église byzantine* (Paris: Institut Français d'Études Byzantines, 1970), p. 338. On the office of nomophylax, see Spyros Troianos, 'Η νεαρά Κωνσταντίνου του Μονομάχου ἐπὶ τῇ ναδείξει καὶ προβολῇ τοῦ διδασκάλου τῶν νόμων', *Βυζαντινά Σύμμεικτα* 22 (2012), pp. 254–5.

¹⁰ Balsamon's canonical commentary on the Nomokanon in Fourteen Titles was commissioned by Emperor Manuel I Komnenos (1143–1180) and Patriarch Michael III Anchialos (1170–1178). Nomokanones contained both civil and canon laws on ecclesiastical matters and Balsamon was asked to examine which of the civil laws contained in this collection continued to be in effect and which ones had been abolished. See Troianos, 'Canon Law to 1100', pp. 138–41; Troianos, 'Twelfth to the Fifteenth Centuries', p. 181 and p. 201 for Balsamon's canonical answers to Mark.

Together, Zonaras' and Balsamon's commentaries offer an interesting insight into twelfth-century society and have much to say about the relations of husband and wife. This focus on the Byzantine material will be broadened with occasional references to the West. This will draw attention to the special circumstances in the East and will frame the topic within wider discussions on marital relations in the Middle Ages.¹¹

The Woman as an Object

Sexual relations within marriage were not closely regulated in Byzantium. Although certain forms of behaviour, such as intercourse during menstruation or unusual coital positions, might have met with the Church's disapproval, they were not explicitly discussed by the canons or their commentators.¹² The question of marital intercourse came up only in relation to the sacred. Two types of questions were asked: the first was when abstinence was to be observed; the second, whether communion was to be received after intercourse had taken place. But to whom were these regulations addressed and whom do they cast as the agent of the sexual act? Several gender historians, such as Laiou and Beaucamp, have recently argued that it was up to the husband to decide when it was time to abstain and this prerogative has been seen as a sign

¹¹ Western medieval authors discussed in particular the nature of marital sex and the spouses' rights towards each other. See Charles J. Reid, *Power over the Body, Equality in the Family: Rights and Domestic Relations in Medieval Canon Law* (Cambridge: Cambridge University Press, 2004), esp. p. 28. More generally on law and sexuality in the West, see James A. Brundage, *Law, Sex, and Christian Society in Medieval Europe* (Chicago: University of Chicago Press, 1987).

¹² There is a great contrast on this issue between Eastern and Western canonical commentators. See Chapter 3 in Maroula Perisanidi, *Clerical Continence: a Comparison of Twelfth-Century England and Byzantium*, Unpublished PhD thesis, University of Nottingham, 2014.

of spousal inequality. More specifically, Laiou has observed that, although ‘the family never seems to have been patriarchal or patrilineal in the Byzantine empire’, the subordinate position of women can still be seen in terms of certain ‘diachronic ideological norms’:

In family life, it has been noted, the point of view projected by the sources is that of the man: thus, for example, the prescription regarding abstinence from sex before communion is addressed to the man, who should abstain from his wife, not to women.¹³

Laiou follows Beaucamp who argues that Byzantine women were rarely the true addressees of canon law except in cases where their physiological specificities set them apart from men.¹⁴ More specifically, Beaucamp sees an inequality between men and women both when deciding to abstain from marriage and when deciding to abstain from sex within marriage. To substantiate her first point she gives as an example Zonaras’ commentary on canon 51 of the Holy Apostles (c. 380):

¹³ According to Laiou, Byzantine society was not patriarchal because the father did not have the extensive rights of a Roman *pater familias* over the members of his household and it was not patrilineal because status or property were not transmitted only through the male line. See Angeliki E. Laiou, ‘Family Structure and the Transmission of Property’, in John Haldon (ed.), *The Social History of Byzantium* (Malden: Wiley-Blackwell, 2009), p. 57.

¹⁴ For example, women were addressed in canons relating to menstruation and birth. See Joëlle Beaucamp, ‘Les femmes et l’église: droit canonique, idéologie et pratiques sociales à Byzance’, Mutter, Nonne, Diakonin: Frauenbilder im Recht der Ostkirchen, Kanon, XVI (Egling an der Paar: Kovar, 2000), pp. 87–112; Joëlle Beaucamp, ‘Exclues et aliénées: les femmes dans la tradition canonique byzantine’, in Dion C. Smythe, *The Byzantine Outsider* (Aldershot: Ashgate, 2000), pp. 87–103, at pp. 96–7.

None of the things which have been made by God is bad; instead it is the bad usage that we make of them that is harmful. If women and wine and other things were a cause of evil, they would not have been created by God. And so, he who slanders what God has made, blasphemes against his creation.¹⁵

The original canon, which condemned extreme ascetic behaviour, referred to ‘marriage’ not ‘women’. Beaucamp sees Zonaras’ substitution as a reification of women who are placed at the same level as wine: the woman becomes a product created by God and made available for man. She concludes that the choice of asceticism does not concern all human beings, but applies only to men.¹⁶

¹⁵ ‘οὐδέν γὰρ τῶν παρὰ Θεοῦ γενομένων κακόν· ἀλλ’ ἢ τούτων παράχρησις, βλαβερόν. Εἰ δὲ κακίας αἰτία ἦν ἡ γυνή, καὶ ὁ οἶνος, καὶ τὰ λοιπὰ, οὐκ ἂν παρήχθησαν παρὰ τοῦ Θεοῦ. Ὡστε ὁ διαβάλλων τὰ ποιήματα τοῦ Θεοῦ, κατὰ τῆς αὐτοῦ βλασφημεῖ δημιουργίας.’ See Syntagma, II, pp. 67–8. (my stress)

¹⁶ Beaucamp, ‘Exclues et aliénées’, p. 98. The issue of the woman being a ‘product’ comes under the more general question of whether women were created in God’s image. There is no uniformity in patristic tradition on this issue. For example, Diodore of Tarsus and Theodore of Mopsuestia denied that women were created in God’s image, citing 1 Cor 11.7 and identifying the image with authority, while Theodoret of Cyrrhus maintained that if man is God’s image, woman is at least an image of the image. See Nonna Verna Harrison, ‘Women, Human Identity, and the Image of God: Antiochene Interpretations’, *Journal of Early Christian Studies* 9 (2001), pp. 205–49. For Chrysostom’s view on the issue see Nonna Verna Harrison, ‘Women and the Image of God According to St. John Chrysostom’, in Paul M. Blowers, Angela Russell Christman and David G. Hunter (eds), *Dominico Eloquentio – In Lordly Eloquence: Essays on Patristic Exegesis in Honor of Robert Louis Wilken* (Grand Rapids, Mich: Eerdmans, 2002), pp. 259–79.

However, the views Zonaras expresses in this passage must be considered within their particular context and are not necessarily representative of his wider ideological position. The canon in question is in the first place addressed to a very specific category of men: clerics. It reads:

If some bishop, or priest, or deacon, or any other of the sacerdotal list, should abstain from marriage, meat, or wine, not for the sake of asceticism, but because they abhor them, forgetting that everything created by God is good and that He made both male and female, and should they slander creation through their blasphemy, they are either to correct themselves or be deposed and removed from the Church. The same holds also for the laity.¹⁷

We can see that it is only at the very end of the canon, almost as an afterthought, that the laity is included in the discussion. In fact, 76 out of a total of 85 canons in this compilation deal with the clergy, with the laity being almost completely ignored.¹⁸ Zonaras' comment talks

¹⁷ 'Εἴ τις ἐπίσκοπος ἢ πρεσβύτερος, ἢ διάκονος, ἢ ὄλως τοῦ καταλόγου τοῦ ἱερατικοῦ, γάμου, καὶ κρεῶν, καὶ οἴνου, οὐ δι' ἄσκησιν, ἀλλὰ διὰ βδελυρίαν ἀπέχηται, ἐπιλαθόμενος, ὅτι πάντα καλὰ λίαν, καὶ ὅτι ἄρσεν καὶ θῆλυ ἐποίησεν ὁ Θεὸς τὸν ἄνθρωπον, ἀλλὰ βλασφημῶν διαβάλλη τὴν δημιουργίαν, ἢ διορθούσθω, ἢ καθαιρείσθω, καὶ τῆς ἐκκλησίας ἀποβαλλέσθω. Ὡσαύτως καὶ λαϊκός.' See Syntagma, II, p. 67.

¹⁸ The aim of the apostolic canons seems to have been primarily to discipline the clergy. See See Heinz Ohme, 'Sources of the Greek Canon Law to Quinisext Council (691/2): Councils and Church Fathers', in Wilfried Hartmann and Kenneth Pennington (eds), *The History of Byzantine and Eastern Canon Law to 1500* (Washington D.C.: The Catholic University of America Press, 2012), pp. 24–114, at p. 31.

specifically about clerics and the only punishment mentioned is that of deposition.¹⁹ He does not address lay women but neither does he address lay men. Since his topic of discussion focuses on an entirely male clerical group, it is perhaps not surprising that he should talk about ‘women’ specifically rather than ‘marriage’ more generally.

What is more, there are other examples where Zonaras follows the canon and addresses both men and women, advising them to abstain from marriage. In his commentary on canon 16 of the council of Chalcedon, he writes that ‘the canon wishes that those who have vowed virginity, whether they are men or women, should preserve their vow, bringing themselves before God as an offering’.²⁰ Similarly, in his commentary on canon 19 of Ancyra (314), he says: ‘those who have made a profession of virginity, whether they are men or women, if they break their profession, they should be submitted to the same penance as those who have been twice-married’.²¹ Furthermore, in his commentary on canon 44 of the Council in Trullo (691/2), which talks only about men, Zonaras uses the plural (*τοὺς ὁμολογήσαντας παρθενεύειν*) ‘those who have vowed virginity’, which could also refer to women, and quotes

¹⁹ It is clear from Zonaras’ comment that the punishment of excommunication refers to clerics rather than laymen. The canonist writes: ‘if he does not correct himself, he is to be deposed and removed from the church; for he is not only deemed worthy of deposition, but he is not to be admitted to church, as he is a heretic’, ‘εἰ δὲ μὴ διορθοῦται, καθαιρεθήσεται, καὶ τῆς ἐκκλησίας ἀποβληθήσεται· οὐ μόνον γὰρ καθαιρέσεώς ἐστιν ἄξιος, ἀλλ’οὐδὲ προσδεκτέος εἰς ἐκκλησίαν, ὡς αἰρετικός.’ See *Syntagma*, II, pp. 67-8.

²⁰ ‘Τοὺς ὁμολογήσαντας παρθενεύειν, κἂν ἄνδρες εἴεν, κἂν γυναῖκες, ὡς ἀνάθημα ἑαυτοῦς προσαγαγόντας τῷ Θεῷ, βούλεται ὁ κανὼν τὴν ὁμολογίαν φυλάττειν’, see *Syntagma*, II, p. 256.

²¹ ‘Οἱ παρθενεύειν ἐπαγγελόμενοι, κἂν ἄνδρες εἴεν, κἂν γυναῖκες, ἀθετοῦντες τὰς ἐπαγγελίας αὐτῶν, τῷ ἐπιτιμίῳ τῶν διγάμων ὑποβαλλέσθωσαν.’ See *Syntagma*, III, p. 60.

canon 60 of St Basil, which specifically mentions women (*ἡ παρθενίαν ὁμολογήσασα*, ‘she who has vowed virginity’).²² For Zonaras, then, women were not barred from the choice of leading an ascetic life, but were addressed in at least some of his commentaries alongside men.

Beaucamp further claims that when canons concern the married couple, the woman is not the grammatical subject, but the object, and appears as such deprived of any autonomy.²³ Her only example comes from Title 3, Chapter 21 of the Nomokanon of Fourteen Titles which asks: ‘When should someone abstain from his wife for the sake of communion?’²⁴ This is very clearly an instance where the law addresses the man. The woman is the grammatical object of her husband’s action. It is difficult, however, to place this law within a specific timeframe. The original version of the Nomokanon of Fourteen Titles is believed to have been completed by 641 but has not survived. This version was expanded around 882/883 by the addition of the canons that had been issued in the intervening period. A third edition was made in 1089/1090 by Theodore Bestes, which included passages from the Basilika, a late ninth-century collection of civil laws which had also been revised in the early eleventh

²² Syntagma, II, pp. 409–10.

²³ ‘Quand les prescriptions concernent un couple, la femme n’en est pas le sujet (grammaticalement parlant), mais l’objet ou le support. [...] La femme apparaît privée de toute autonomie.’ See Beaucamp, ‘Exclues et aliénées’, p. 97.

²⁴ ‘Πότε δεῖ τῆς γαμετῆς διὰ τὴν κοινωνίαν ἀπέχεσθαι.’ See Syntagma, I, p. 120. The best edition for the Nomokanon in Fourteen Titles is Jean-Baptiste Pitra (ed), *Iuris ecclesiastici graecorum historia et monumenta*, vol. 2 (Rome: Bardi, 1868; rp. 1963), pp. 433–640, at pp. 507–8.

century.²⁵ It is Balsamon's commentary, based on Bestes' version, that is most relevant for the current discussion. But Balsamon did not offer any comment on this specific chapter. As such, the wording of this question tells us little about twelfth-century views on the topic. It might reflect the conditions of the seventh century, when it was probably written. Or, it could be said to have received some validation in subsequent centuries by not being removed from later revisions of the canonical collection.²⁶ In any case, as we shall see, it represents an exception rather than the rule.

The Couple as a Unit

If we look instead at other canons on sexual abstinence and intercourse on which both Balsamon and Zonaras comment, we get a very different picture: husband and wife are addressed as a marital unit.²⁷ Canon 3 of Dionysios, bishop of Alexandria (d. 264/5), uses the term *οἱ γεγαμηκότες* (those who have been married) and, following St Paul, asks the spouses to abstain from each other (*ἀπέχεσθαι ἀλλήλων*) in order to engage in prayer.²⁸ Zonaras, commenting on this canon, talks of 'those who live in lawful matrimony' (*τῶν ἐν γάμῳ*

²⁵ See Troianos, 'Canon Law to 1100', pp. 139–40. On the two versions of the Basilika, see Spyros Troianos, *Οἱ Πηγές του Βυζαντινού Δικαίου, Τρίτη έκδοση συμπληρωμένη* (Athens, 2011), p. 259.

²⁶ This wording was already present in the 882/883 version. See Ohme, 'Sources of the Greek Canon Law to Quinisext Council', pp. 26-7; Syntagma, I, p. 120.

²⁷ More generally on Balsamon's depiction of women in his commentaries, see Patrick Viscuso, 'Theodore Balsamon's Canonical Images of Women', *Ostkirchliche Studien* 39 (1990), pp. 81–288.

²⁸ Syntagma, IV, p. 9.

νομίμῳ βιοῦντων) or simply ‘those who live together’ (*τούς συνοικοῦντας*).²⁹ When he wants to make a distinction between the spouse who wishes to have sexual intercourse and the spouse who wishes to abstain, he uses a neuter word to do so and emphasises their complementarity by referring to each partner as a ‘part’ of a whole (*τὸ μὴ βουλόμενον τὴν συνουσίαν μέρος, τὸ ταύτην ἐπιζητοῦν*).³⁰ Even when he quotes Exodus 19:15, which in the Septuagint version explicitly addresses the husband asking him to abstain from his wife (*μὴ προσέλθῃτε γυναικί*), he uses the plural form *τῶν γαμετῶν*, which is the same for masculine and feminine and can be translated as ‘husbands’, ‘wives’, or ‘spouses’.³¹ As such it is not obvious that the original quotation refers specifically to men; thus it can be taken as referring to the couple. Zonaras also quotes Joel 2:16 ‘Let the bridegroom leave his room and the bride her chamber’ which specifically addresses both husband and wife.³² Balsamon seems to have had a slightly different version of the canon of St Dionysios in front of him. Due most likely to a spelling error in the manuscript which Balsamon used, the canonist reads *γεγηρακότας* (the old) instead of *γεγαμηκότες* (the married). Nonetheless, he explicitly interprets this phrase as referring to old married couples. For him in this context it makes perfect sense to refer to

²⁹ ‘τούς συνοικοῦντας’ had become a synonym for being married. See Geoffrey William Hugo Lampe, *A Patristic Greek Lexicon* (Oxford: Oxford University Press, 1961), p. 1335. Zonaras uses it with that meaning very clearly when talking about divorce. See Syntagma, II, p. 7.

³⁰ Syntagma, IV, 10. This is different from the distinction we find in Western sources, where the partner who exacts the debt is differentiated from the one who renders through the assignment of different levels of sin. See below.

³¹ Alfred Rahlfs (ed.), *Septuaginta*, vol. 1 (Stuttgart: Württembergische Bibelanst., 9th edn., 1935), p. 119. ‘Καὶ τοῖς Ἰουδαίοις δὲ μέλλουσιν ἀκοῦσαι τῶν ἐν τῷ ὄρει θεῶν φωνῶν, ἀπέχεσθαι τῶν γαμετῶν ἐπετάχθη.’ See Syntagma, IV, p. 10.

³² ‘ἐξελθέτω, προσέθετο, νυμφίος ἐκ τοῦ κοιτῶνος αὐτοῦ, καὶ νύμφη ἐκ τοῦ παστοῦ αὐτῆς.’ See Syntagma, IV, p. 10.

the couple as a unit, rather than refer only to old men.³³ He then hastens to add that young married couples should also follow this rule.³⁴ Like Zonaras, then, Balsamon talks explicitly of ‘spouses’ (*τούς συζύγους* or *όμοζύγους*).³⁵

Canon 5 of St Timothy, archbishop of Alexandria (d. 385) also deals with this issue. Here the canon addresses husbands and wives separately, starting with the woman: ‘If a woman joins together with her husband during the night or a man with his wife, and intercourse takes place, should they receive communion, or not?’³⁶ The wife’s agency is clear. She appears as the grammatical subject of the sentence and is held responsible for her actions. In fact husband and wife occupy exactly parallel positions in the sentence, before they are referred to together through the plural verb *όφείλουσι*. Balsamon in his commentary also refers to the couple as ‘those who have lain together lawfully’ (*περι τῶν ἐννόμως συνευναζομένων*), ‘those who joined with each other’ (*συνελθόντες ἀλλήλοις*), and ‘those who live together and have lain together’ (*οἱ συγγεγόμενοι σύνοικοι*).³⁷ Similarly, canon 13 of Timothy talks of ‘those who have been yoked in marriage’ (*τοῖς ζευγνυμένοις εἰς γάμου κοινωνίαν*), while Balsamon refers again to ‘those who live together’ (*τοῖς συνοικοῦσιν*) and uses the plural verb *ἀφέζονται*.³⁸

³³ Syntagma, IV, p. 10.

³⁴ Syntagma, IV, p. 11.

³⁵ Syntagma, IV, pp. 10-11.

³⁶ ‘Ἐὰν γυνή συγγένηται μετὰ τοῦ ἀνδρὸς αὐτῆς τὴν νύκτα, ἢ ἀνὴρ μετὰ τῆς γυναικὸς, καὶ γένηται σὺνάξις, εἰ ὀφείλουσι μεταλαβεῖν, ἢ οὐ;’ See Syntagma, IV, p. 334.

³⁷ Syntagma, IV, p. 334.

³⁸ Syntagma, IV, p. 338.

It is much more common, then, for the canons and their twelfth-century commentators to address the lay couple as a unit, rather than the husband alone.³⁹ In fact, apart from Beaucamp's example, I have found only one more instance amongst Balsamon's writings where the husband is addressed instead of the couple: this occurs in one of the questions submitted by Mark, patriarch of Alexandria (1180–1209).⁴⁰ Mark's question 11 asks: 'is he who has had carnal intercourse with his lawful wife worthy of receiving the blessings on that very day, or not?'⁴¹ In the absence of the original letter sent by Mark, it is difficult to know exactly whose perspective this question represents. Was this Mark's original phrasing or has the question been rewritten? The issue is further complicated by the fact that Balsamon was not the first person to have answered Mark's questions. Another set of answers has been attributed to John Kastamonites, metropolitan of Chalcedon.⁴² It seems that Mark did not

³⁹ Another example can be found in Balsamon's commentary on canon 4 of the Council of Carthage. He referred to a decree (1169) of Patriarch Luke Chrysoberges (1157–1169/70) which stated that those 'who were about to partake of the divine blessings' (τοὺς μέλλοντας μετασχεῖν τῶν θεῶν ἀγιασμάτων) needed to abstain three days before communion and emphasised that this applied also to the bridal pair (τοὺς νυμφίους) on the day of their wedding. The text of this decree has not survived. We only know about it through Balsamon's mention. See Syntagma, III, p. 304. See also, Venance Grumel and Jean Darrouzès (eds), *Les registes des actes du patriarcat de Constantinople, I: Les actes des patriarches, fasc.ii et iii: Les registes de 715 à 1206* (Paris: Institut Français d'Études Byzantines, 1989), p. 526 n. 1083.

⁴⁰ On the genre of Questions and Answers, see Yannis Papadoyannakis, 'Instruction by Question and Answer: the Case of Late Antique and Byzantine Erotapokriseis', in Scott Fitzgerald Johnson (ed.), *Greek Literature in Late Antiquity: Dynamism, Didacticism, Classicism* (Aldershot: Ashgate, 2006), pp. 91–105

⁴¹ 'Ὁ μετὰ τῆς νομίμου συμβίου αὐτοῦ σαρκικῶς συναφθεὶς, ἀξιοθεῖη αὐθημερὸν τῆς τῶν ἀγιασμάτων μεταλήψεως, ἢ οὐ;' See Syntagma, IV, p. 456.

⁴² The questions and answers survive in five manuscripts. See Gerardus Petrus Stevens, *De Theodoro Balsamone: Analysis operum ac mentis juridice* (Rome: Libreria editrice della Pontificia Università Lateranense 1969), pp. 112–3.

address Balsamon himself but a Church synod in Constantinople. The synod asked Kastomonites to prepare the answers which were eventually read aloud probably in the presence of Mark.⁴³ These answers were not, however, deemed altogether satisfactory and their rewriting was taken up by Balsamon.⁴⁴ Along with the answers, some of the questions were also rewritten. This rephrasing of the questions could have happened during the synod or could have been taken up by Balsamon himself. The authorship then is not clear; the question could represent the influence of Mark, Kastamonites, Balsamon, or/and the synod.⁴⁵

Even in this collection of questions and answers, however, the issue of marital abstinence and communion comes up on two more occasions, in questions 51 and 52, both of which talk of the spouses (*ὁμόζυγοι*) not the husband.⁴⁶ In fact, it may be possible to explain the alternative wording of the different sections by looking at their placement within the set. The majority of questions address ecclesiastical issues and are more concerned with clerics

⁴³ Venance Grumel, 'Les réponses canoniques à Marc d'Alexandrie. Leur caractère officiel. Leur double rédaction', *Échos d'Orient* 38 (1939), pp. 321–33; Stevens, *De Theodoro Balsamone*, pp. 112–9; Vassilis Katsaros, *Ἰωάννης Κασταμονίτης. Συμβολὴ στὴ μελέτη τοῦ βίου, τοῦ ἔργου καὶ τῆς ἐποχῆς του* (Thessalonike: Κέντρο Βυζαντινῶν Ἐρευνῶν, 1988), pp. 349–400.

⁴⁴ Grumel, 'Les réponses canoniques à Marc d'Alexandrie', pp. 329–30.

⁴⁵ Since Kastamonites' version survives, it can act here as a point of comparison. Instead of the three questions on the topic which we find in Balsamon, there were only two in Kastamonites. Incidentally, these were the only two questions to have been omitted from Gedeon's edition of the manuscript, but were eventually edited by Katsaros. See Katsaros, *Ἰωάννης Κασταμονίτης*, pp. 366–7. The first question asked whether spouses (*ὁμόζυγοι*) should abstain on Sunday evening, Wednesday, and Friday. The second was addressed only to men and asked whether a husband should abstain from his wife during Lent. These correspond to questions 51 and 52 of Balsamon, both of which as we have seen were addressed to the couple rather than the husband. Both Balsamon and Kastamonites include an instance where the man is addressed individually but also questions where the couple is addressed as a unit.

⁴⁶ Syntagma, IV, p. 485.

than they are with laymen. Questions which involve other categories of people, such as the laity or women in particular, most often form separate clusters. Questions 51 and 52 seem to be within one such cluster (questions 44 to 56) which deals with issues concerning the laity.⁴⁷ Question 11 on the other hand is part of a cluster (questions 1–43) which addresses predominantly ecclesiastical issues with occasional references to laymen. What is more, question 11 comes right after a question on nocturnal emissions, an exclusively male issue. It is not surprising then that the author would take an androcentric perspective. Even so, in his answer Balsamon goes on to address again the couple as a unit, using the word *ὁμόζυγοι* no less than six times.⁴⁸

Overall, the examples given by Beaucamp, along with the ones we have added here, are not enough to argue that women were denied agency by canon law in the case of marital abstinence and sex. Although sometimes the canons and the canonists seem to neglect the woman's perspective, on other occasions they make a real effort to incorporate it, either by addressing men and women in parallel, or even more frequently by addressing them as a couple. The overall picture suggests that husband and wife were mutually responsible for their sexual life.

⁴⁷ For example, the set contains two questions about bigamy and three about confession. Instead of being placed together, these are placed in two different bunches depending on their target group: one amongst other questions which deal primarily with clerics (question 8 and questions 21 and 22) and the other amongst questions concerning the laity (question 44 and question 50).

⁴⁸ Syntagma, IV, pp. 456–7.

Mutual Responsibility

This mutual responsibility of the Byzantine spouses becomes clearer when we compare it to the situation in the West.⁴⁹ In Western canon law either the husband or the wife could unilaterally decide to have sex; the rules favoured the partner who wished to engage in intercourse, rather than the one who wished to observe continence.⁵⁰ The question most often asked was not whether the couple should abstain, but rather whether each spouse should render or exact what was called the ‘marital debt’. We read for example in Gratian the following question: ‘Can one render the debt to one’s wife during times of prayer?’⁵¹ This concept of marital sex as a debt that was owed, rendered, and exacted, does not seem to have developed in Byzantium.⁵² In the West, it was already present in the writings of St Augustine,

⁴⁹ For an overview of ideas on sexuality in Anglo-Norman England, see Robert Bartlett, *England under the Norman and Angevin Kings 1075–1225* (Oxford: Oxford University Press, 2000), pp. 566–72.

⁵⁰ For example, Robert of Flamborough (d. 1224) wrote in his *Liber Poenitentialis*: ‘I believe that wherever and whenever you are asked, you are bound to render the debt, unless you can get out of it peacefully’, ‘Credo tamen quod, ubicumque et quandocumque exactus fueris, reddere tenearis, nisi cum omni pace evadere possis.’ See J. J. Francis Firth (ed.), *Robert of Flamborough, Liber Poenitentialis* (Toronto: Pontifical institute of Mediaeval Studies, 1971), p. 97.

⁵¹ ‘Quarto, si tempore orationis quis ualeat reddere coniugii debitum?’ C. 33 q. 4 d.a.c. 1 p. Friedberg, *Decretum Magistri Gratiani*, p. 1148.

⁵² I have explained elsewhere the reasons why I do not believe that the concept of the marital debt can be applied to the Byzantine context. See Maroula Perisanidi, ‘Was there a marital debt in Byzantium?’, *Journal of Ecclesiastical History*, forthcoming (July, 2017). On the concept of the marital debt in the West, see Elizabeth M. Makowski, ‘The conjugal debt and medieval canon law’, *Journal of Medieval History* 3 (1977), pp. 99–114; Brundage, *Law, Sex, and Christian Society in Medieval Europe*, pp. 242, 358–60; James A. Brundage, ‘Implied Consent to Intercourse’, in Angeliki E. Laiou (ed.), *Consent and Coercion to Sex and Marriage in Ancient and Medieval Societies* (Washington, D.C., 1993), pp. 245–56, at p. 249; J. W. Baldwin, ‘Consent and the Marital Debt: Five Discourses in Northern France around 1200’, in *Consent*

but it was from the twelfth century onwards with the flourishing of canon law that more sophisticated regulations developed.⁵³ Much emphasis was placed on who had initiated sex and whether the act was undertaken willingly by their partner. The spouse who rendered the debt (preferably unwillingly) was most often considered sinless; the partner who exacted it committed a sin which ranged from venial to mortal.⁵⁴ We read, for example, in Rufinus' *Summa Decretorum*, an influential commentary on Gratian's *Decretum*:

‘If therefore someone has intercourse with his wife, because she wishes to exact the debt, he does not commit a sin, not even a venial one, as it is decreed to render the debt to a wife who demands it [...] Similarly, he does not sin at all, if [he has intercourse] willingly and after consideration only for the procreation of children [...].

and *Coercion to Sex and Marriage in Ancient and Medieval Societies*, ed. Angeliki E. Laiou (Washington D.C.: Dumbarton Oaks, 1993), pp. 257–70.

⁵³ ‘While continence is of greater merit, it is no sin to render the conjugal debt, but to exact it beyond the need for generation is a venial sin’, see Elizabeth Clark (ed.), *St. Augustine on Marriage and Sexuality* (Washington D.C.: The Catholic University of America Press, 1996), p. 48. See also Augustine's letter to Ecdicia in Wilfred Parsons (tr.), *Fathers of the Church: Volume 32: Augustine: Letters: Volume 5 (204–270)* (New York: Fathers of the Church, Inc., 1956), pp. 262–3.

⁵⁴ Intercourse between spouses was considered deviant unless it was meant for the procreation of children. According to Gratian those who married solely for the enjoyment of sexual intercourse within marriage were not really married at all. The central problem with sex was lust, which was seen as polluting. The views of the different canonists changed in terms of the levels of sin they assigned. The most extreme view comes from Huguccio who argued that married couples could never enjoy sexual relations without sin because of the pleasure derived from coitus. See James A. Brundage, ‘Carnal delight: Canonistic theories of sexuality’, in Stephan Kuttner and Kenneth Pennington (eds), *Proceedings of the Fifth International Congress of Medieval Canon Law, Salamanca, 21–25 September 1976* (Vatican City: Biblioteca Apostolica Vaticana, 1980), pp. 364–5.

If, however, [he has intercourse] because of incontinence, he commits a sin, albeit a venial one [...]. When, on the other hand, he has sex with his wife in order to satisfy his lust, he is made guilty of mortal sin'.⁵⁵

Such pronouncements were common in canonical commentaries, but can also be found in writings on pastoral care, such as manuals for the instruction of confessors.⁵⁶ Thomas of Chobham (d. before 1236), for example, writes in his *Summa Confessorum*: 'what if the husband or the wife demand the debt at that time? Should it be rendered [during feast days]? We think that during great solemnities they sin by rendering, but in lesser ones it is the person who exacts who sins, but not the person who renders'.⁵⁷ Western canon law, then, saw

⁵⁵ 'Si itaque quis exactus cognoscat uxorem, nullum committit peccatum etiam veniale, pro eo quod precipitur exigenti uxori debitum reddere [...]. Si vero spontaneus et intuitu duntaxat suscipiende sobolis, nullum similiter peccatum facit [...]. Si autem causa incontinentie, committit peccatum, sed veniale [...]. Cum autem pro saturanda libidine uxori commisceatur, mortalis peccati reus constituitur [...].' See Heinrich Singer (ed.), *Rufinus von Bologna (Magister Rufinus): Summa Decretorum* (Paderborn: Ferdinand Schöningh, 1902, rp. Aalen: Scientia Verlag, 1963), p. 480. Rufinus' *Summa*, completed sometime around 1164, was the most influential commentary on the *Decretum* in Bologna during the 1160s and 1170s. See Kenneth Pennington and Wolfgang P. Müller, 'The Decretists: The Italian School', in Wilfried Hartmann and Kenneth Pennington, *The History of Medieval Canon Law in the Classical Period, 1140–1234: From Gratian to the Decretals of Pope Gregory IX* (Washington D.C.: Catholic University of America Press, 2008), pp. 135–7.

⁵⁶ For another example, see Rudolf Weigand, Peter Landau and Waltraud Kozur (eds), *Summa 'omnis qui iuste iudicat' Sive Lipsiensis* (Vatican City: Biblioteca Apostolica Vaticana, 2007), i, p. 44. On the author of the *Summa Lipsiensis* see Peter Landau, 'X. Rodoicus Modicipassus – Verfasser der *Summa Lipsiensis*?', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Kanonistische Abteilung xcii* (2006), pp. 340–54.

⁵⁷ 'Sed quid si tali hora exigat vir vel mulier debitum, debetne reddi? Credimus quod in maioribus sollempnitatibus peccaret reddendo, in minoribus autem sollempnitatibus ille peccaret qui exigeret, non ille qui redderet'. See F. Broomfield, *Thomae de Chobham summa confessorum* (Paris: Beatrice-Nauwelaerts, 1968), p. 365. Thomas of Chobham was a subdean

husband and wife as individuals, not as a couple. The difference was not necessarily one of gender, since both had the right to initiate sexual intercourse, but one of separate responsibilities and repercussions.⁵⁸ In Byzantium, on the other hand, the responsibility for deciding whether to abstain or have sex was, at least in principle, shared. This is evident both in the different language used to describe sexual intercourse, but also in the different provisions taken in the case of sinning. Byzantine canons do not talk much about who initiated intercourse and why. Balsamon, when discussing the penance to be assigned to those who do not abstain from their spouses during periods of fasting, suggests that the confessor

of Salisbury Cathedral who had experienced life both in France, where he studied, and in England, where he was a member of episcopal households and the royal entourage. For more information on his life, see John W. Baldwin, *Masters, Princes, and Merchants: The Social Views of Peter the Chanter & His Circle*, vol. 1 (Princeton: Princeton University Press, 1970), pp. 32–5.

⁵⁸ For Brundage, the marital debt helped legitimise female sexuality by acknowledging that it was natural for women as well as men to experience sexual urges. It also acted as a stepping stone towards further equality, by encouraging the progressive extension of equal rights from the conjugal bed to other aspects of family life. See James A. Brundage, 'Sexual Equality in Medieval Canon Law', in Joel Thomas Rosenthal (ed.), *Medieval Women and the Sources of Medieval History* (Athens: University of Georgia Press, 1990), pp. 70–2. Similarly, Baldwin has argued that the marital debt introduced a second element of gender symmetry into the Christian definition of marriage, adding to the need for the mutual consent of the spouses. See John W. Baldwin, 'Consent and Marital Debt: Five Discourses in Northern France around 1200', in Angeliki E. Laiou (ed.) *Consent and Coercion to Sex and Marriage in Ancient and Medieval Societies* (Washington D.C.: Dumbarton Oaks, 1993), p. 258. Others have been more sceptical about the actual equality of husband and wife in relation to the marital debt. For example, McLaughlin, focusing on Thomas Aquinas (d. 1274), emphasised certain cases where wives were explicitly refused their right to exact, while husbands kept theirs. See Eleanor McLaughlin, 'Equality of Souls, Inequality of Sexes: Women in Medieval Theology', in Rosemary Ruether, *Religion and Sexism: Images of Woman in the Jewish and Christian Traditions* (New York: Simon and Schuster, 1974), pp. 225–8.

should take into account the individual's circumstances and needs.⁵⁹ Husband and wife, then, could end up with different types of penance, but so could, for example, men of different ages, as young men could more easily be forgiven than old ones for their sexual appetites.⁶⁰ This raises the question of whether female sexuality would have been accepted and recognised as an alleviating factor. Were women considered to be more or less sexually inclined than men? Was it acknowledged that they experienced the same urges, or were they seen primarily as a potential danger?⁶¹

Female Sexuality

In talking about the couple's decision to abstain or engage in sexual intercourse, there is an implicit assumption that women too were sexual beings. They were not only receptacles for their husband's desires. This can be seen more explicitly in several places in the canonical commentaries where Zonaras and Balsamon depict sexual urges as something that affects both men and women. For example in his commentary on canon 30 of the Council of Laodicea (before 380) Zonaras writes: 'for the sight of naked women rekindles passions and

⁵⁹ 'νομίζω δὲ, ὅτι κατὰ τὴν διάκρισιν τοῦ τὴν ἐξαγορίαν δεχομένου, ἡ θεραπεία γενήσεται πρὸς τὰ πρόσωπα, καὶ τὴν ἀνάγκην τῆς φύσεως.' See Syntagma, IV, p. 11.

⁶⁰ See for example Balsamon's and Zonaras' comments on canon 25 of Carthage, where they agree with St Basil that an old man who is not chaste is to be considered greatly incontinent. Syntagma, III, pp. 369–72.

⁶¹ Beaucamp used canon 77 of the Council of Trullo and Zonaras' comment on it to argue that women were primarily seen as a sexual danger, while their own sexuality was downplayed: 'Et l'interdit est justifié par le fait que toute femme représente un danger potentiel pour l'équilibre masculin; la femme est pensée par rapport à l'homme, sans qu'il y ait réciprocité.' See Beaucamp, 'Exclues et aliénées', p. 96. She mentions, however, in footnote 42 of the same page canon 30 of Laodicea as a counterexample to her argument.

lights the fire of the flesh in men and similarly in turn [the sight of naked] men in women'.⁶²

Zonaras uses very similar words in his comment on canon 47 of the Council in Trullo which prohibits men from going into female monasteries and women from going into male ones:

And if we throw fuel into [the fire], it will grow, and will consume us as easily as if we were grass. For what will be a more effective fuel for men towards the fire of their desire than a woman; or for women in turn, [what will be more effective] than a man for the kindling of their flame? And in this way monastics will create causes for scandal for each other, and they will also scandalise others who will see women spending the night in men's lodgings, or men doing the same in women's monasteries.⁶³

Men are considered as dangerous for women as women are considered for men. The words *αὐθις* and *ὁμοίως* show this symmetrical position. Similarly, in their comments on canon 48 of the Council in Trullo, which asked episcopal wives to withdraw to a monastery after their husband's ordination as bishop, the canonists argued that greater proximity would ignite in

⁶² 'Τὸ γὰρ γυμνὰς ὀρᾶσθαι γυναῖκας παρὰ ἀνδρῶν, καὶ ἄνδρας ὁμοίως αὐθις παρὰ γυναικῶν, ἀναφλέγει τοὺς ἔρωτας, καὶ τῆς σαρκὸς ἀνάπτει τὴν πύρωσιν.' See Syntagma, III, p. 197.

⁶³ 'Εἰ δὲ ἡμεῖς αὐτῶ παρατιθέαμεν ὑπεκκαύματα, λάβρον ἔσεται, καὶ καταπρήσει ὡς χόρτον ῥαδίως ἡμᾶς. Τί δ' ἂν ἔσται ἀνδράσι πρὸς τὸ τῆς ἐπιθυμίας πῦρ δραστικώτερον ὑπέκκαυμα γυναικὸς, ἢ γυναιξὶν αὐθις, ἀνδρὸς πρὸς ἕξαψιν τῆς τοιαύτης φλογός; Καὶ οὕτω μὲν ἀλλήλοις οἱ μονασταὶ λαβὰς σκανδάλου παρέξουσιν· ἐτέρους δὲ σκανδαλίσουσιν, ὀρῶντας γυναῖκας ἐν ἀνδρῶν καταγωγίσις διανυκτερευούσας, ἢ ἄνδρας ἐν ἀσκητηρίῳ γυναικῶν ὁμοίως ποιοῦντας.' See Syntagma, II, pp. 416–7.

both husband and wife their desire for each other. More specifically, Zonaras wrote: ‘for seeing each other constantly, will no doubt remind them of their previous way of life and of their cohabitation, and will rekindle their passion’.⁶⁴ Furthermore, when talking about widows who wished to become deaconesses, Zonaras advised caution, because ‘the widow having greatly enjoyed the bed of a man, and having tasted the pleasure of intercourse with a man, is more inclined to passion’.⁶⁵

These examples fit with wider developments within this period which saw the reintroduction of eroticism in Byzantine writing.⁶⁶ Erotic desire was explored in a variety of genres, such as historiographical narratives, letters, medical treatises, novels, and hagiographies. Laiou has noted that the eleventh and twelfth centuries were also a period of a new and intense interest in the sexual aspects of marriage. Female sexuality in particular was perceived and represented as something normal. A woman’s only lawful outlet for these sexual urges was of course the marital bed. But there was still an acknowledgement that women had certain rights, such as the right to expect and enjoy sexual intercourse with their husbands.⁶⁷

⁶⁴ ‘τὸ γὰρ ἀλλήλους ὄρᾱν συνεχῶς, ἀναμιμνήσκειν μέλλει πάντως αὐτοὺς τῆς προτέρας διαγωγῆς τε καὶ συμβίωσης, καὶ ὑπεκκαίειν σφίσι τὸν ἔρωτα.’ See Syntagma, II, pp. 419–20.

⁶⁵ ‘Ἡ δὲ χήρα, εὐνής ἀνδρώας καταπολαύσασα, καὶ γευσαμένη τῆς ἐξ ἀνδρώας μίξεως ἡδονῆς, μᾶλλον ἂν εἴη πρὸς τὸ πάθος ἐπικλινῆς.’ See Syntagma, II, p. 255. On deaconesses, see Valerie A. Karras, ‘Female Deacons in the Byzantine Church’, *Church History*, 73 (2004), pp. 272–316.

⁶⁶ See Stratis Papaioannou, ‘Michael Psellos on friendship and love: erotic discourse in eleventh-century Constantinople’, *Early Medieval Europe* 19 (2011), pp. 43–61; Paolo Odorico, ‘L’amour à Byzance: Un sujet de rhétorique?’, *Europe* 75 (1997), pp. 34–46,

⁶⁷ Laiou, *Mariage, amour et parenté*, pp. 102–3. There remained some less accepting monastic voices in the twelfth century. See Catia S. Galatariotou, ‘Holy Women and Witches: Aspects

Lay versus Clerical Wives

In contrast to the examples that we have seen so far relating to the abstinence of lay couples, all instances of abstinence involving a cleric and his wife in the twelfth-century canonical commentaries are addressed to the husband.⁶⁸ We read for example in canon 13 of the Council in Trullo that ‘subdeacons, who handle the Holy Mysteries, and deacons, and priests should abstain from their wives following their own rules’.⁶⁹ Balsamon similarly comments on this canon that priests, deacons, and subdeacons ‘should not have intercourse with their wives indiscriminately, but should abstain from them, during the periods of their service, that is during the periods when they perform the sacred duties’.⁷⁰ One could argue, then, that there is not so much a distinction between men and women as there is between laity and clergy. The difference in the way they are addressed becomes clearer when we look at Balsamon’s comment on canon 4 of the Council of Carthage (419). The canon itself talked about clerical continence: ‘It seems good that bishops, priests, and deacons, and all who handle the holy

of Byzantine Conceptions of Gender’, *Byzantine and Modern Greek Studies* 9 (1984), pp. 55–94, esp. pp. 84–5.

⁶⁸ See for example, Title 9, chapter 22 of the *Nomokanon* in *Syntagma*, I, p. 187 and canons 12 and 13 of the Council in Trullo, in *Syntagma*, II, pp. 330–7.

⁶⁹ ‘[...] ὥστε τοὺς ὑποδιακόνους, τοὺς τὰ ἱερά μυστήρια ψηλαφῶντας, καὶ τοὺς διακόνους, καὶ πρεσβυτέρους, κατὰ τοὺς ἰδίους ὅρους καὶ ἐκ τῶν συμβίων ἐγκρατεῦσθαι.’ See *Syntagma*, II, p. 334.

⁷⁰ ‘μὴ ἔχειν τούτους τὴν μετὰ τῶν ὁμοζύγων αὐτῶν συνάφειαν ἀδιάφορον· ἀλλὰ ἀποδιΐστασθαι τούτων, κατὰ τὸν καιρὸν τῆς ἐφημερίας αὐτῶν, ἥγουν καθ’ οὓς ἱερουργοῦσι καιρούς.’ See *Syntagma*, II, p. 336.

should abstain from their wives as guardians of modesty'.⁷¹ In his commentary Balsamon turns the discussion from the clergy to the whole of the laity: 'Abstaining from women is decreed by the apostle not only for those in orders, but for all faithful at the time associated with holy communion'.⁷² Although the term 'faithful' (*πιστούς*) could refer to both husbands and wives, the syntax of the first part of the sentence predetermines that it is the men, clerical and lay, who abstain from women. However, after giving some quotations from the Old and New Testament, Balsamon sums up his point of view: 'therefore from all these it is concluded that the spouses who come together in a carnal way are not thought to be worthy of Holy Communion on that day'.⁷³ Having moved from the clerical to the lay couple, Balsamon is again talking about the 'spouses'.

Although there is a clear difference in the way that the law addresses the clergy and the laity in the case of spousal abstinence, I would suggest that this has nothing to do with any fundamental difference between clerical and lay marriage. In fact, the law addresses the person whose relationship with God is at stake. When it comes to lay couples, both husband and wife are equally expected to receive communion and to pray. As such, they can decide

⁷¹ 'Ἀρέσκει, ἵνα ἐπίσκοπος, καὶ πρεσβύτερος, καὶ διάκονος, καὶ πάντες οἱ τὰ ἱερὰ ψηλαφῶντες τῆς σωφροσύνης φύλακες, γυναικῶν ἀπέχωνται.' See Syntagma, III, p. 302.

⁷² 'Τὸ ἀπέχεσθαι γυναικῶν, μὴ μόνον τοὺς ἱερωμένους, ἀλλὰ καὶ πάντας τοὺς πιστοὺς κατὰ τὸν καιρὸν τῆς ἁγίας μεταλήψεως, καὶ τῷ Ἀποστόλῳ νενομοθέτηται', see Syntagma, III, p. 303. The passage in question is offered as an alternative interpretation of canon 4 of Carthage which decreed which clerics ought to abstain from sex with their wives. It was most likely written by Balsamon as it is very similar to his answer to the same question posed by Mark Patriarch of Alexandria. According to Beveridge, other alternative interpretations were also attributed to Balsamon rather than Zonaras. See PG 137, coll. 69–74.

⁷³ 'Ὅστε ἀπὸ τούτων ἀπάντων συνάγεται, ὅτι οὐδὲ αὐτοὶ οἱ ὁμόζυγοι συνελθόντες σωματικῶς, τῆς ἁγίας ἀξιοθήσονται μεταλήψεως κατ' αὐτὴν τὴν ἡμέραν.' See Syntagma, III, p. 304.

together. Clerical husbands, however, have a liturgical responsibility towards their flock. They are always addressed by the law because abstinence in this case is linked to their need to prepare themselves for the performance of their clerical duties. It has little to do with the wife's relationship with God. She may or may not have chosen to receive the Eucharist or to engage in prayer. That was a more personal decision. Clerics, on the other hand, had to adjust their sexual needs to their liturgical schedule.⁷⁴ Priests, deacons, and subdeacons were allowed to be married and have sexual intercourse with their wives as long as they observed continence before their service at the altar. To ensure this, canon law decreed that in big churches, ministrations were to be divided into weekly shifts: one week clerics were expected to sleep in the church and focus on their liturgical duties and the other they could sleep in their homes with their wives, focusing on their role as husbands and fathers.⁷⁵ For the majority of priests who served smaller churches and always slept at home, it would be their responsibility to resist temptation.⁷⁶ Although there is evidence to suggest that the rules of continence were not strictly enforced in the twelfth century, in theory it was the clerical husband's ability to deny sex to his wife that made the system of temporary continence possible and as such allowed for the continuation of clerical marriage in Byzantium.

It should be evident, then, that the marital life of Byzantine clerical wives would have been different from that of the spouses of laymen. Their experiences cannot be fully

⁷⁴ This would be comparable to lay people when performing penance which involved abstinence.

⁷⁵ Syntagma, III, pp. 482–4.

⁷⁶ However Balsamon also tells us that pluralism was rampant in Constantinople and many priests would end up serving in more than one churches. See Syntagma, III, p. 484.

understood out of context and as such cannot serve as yet another example of female suppression. A notable case in point is that of the episcopal wife. According to the Council in Trullo the wife of a priest had to enter a monastery after her husband's ordination to the episcopate, but did not have to become a nun. This changed in 1186 with a decree of Isaac II Angelos which asked for the wife to be tonsured.⁷⁷ Although the canonists commenting on this rule placed much emphasis on the ability of the wife to refuse her husband's accession to the episcopate (and as such her own entrance into a monastery), modern historians have seen this as an example of the lack of freedom of Byzantine women.⁷⁸ Judith Herrin has likened it to the enclosure of prostitutes and adulteresses into monasteries as a form of punishment.⁷⁹ Beaucamp has described this as an instance where 'the problem is considered in relation to the bishop (the man) and not the woman'.⁸⁰

⁷⁷ Syntagma, II, pp. 420–3.

⁷⁸ See also Laiou, *Mariage, amour et parenté*, pp. 126–7 where she discusses other contemporary opinions on this issue and possible practices.

⁷⁹ 'Apart from those imprisoned for serious crimes, women whose only sin was to have married a future bishop were also relegated to nunneries. [...] While the council took care not to presume their agreement, it clearly considered the nunnery a suitable place for these ex-wives in what became in effect confinement.' This comes in a section which evaluates the decline of recognised, public roles for women. See Judith Herrin, 'Public and Private Forms of Religious Commitment among Byzantine Women', in her *Unrivalled Influence: Women and Empire in Byzantium* (Oxford: Oxford University Press, 2013), p. 148.

⁸⁰ 'le problème est pensé en fonction de l'évêque (de l'homme), et non pas par rapport à la femme', see Beaucamp, 'Exclues et aliénées', p. 95. A similar example where the canonists emphasise the woman's right to refuse her husband's desire to become a priest comes from the 'barbaric' churches, where clerics had to be celibate. Balsamon says: 'But someone may ask: since the canon says that the separation should take place by common consent and agreement, is the canon not valid if the wife does not wish for this to happen? Solution: I think that it is not right to force the wife to abstain from her own husband, because of the above-mentioned apostolic canon and because of the Justinian Novel which does not allow marriages to be broken by mutual consent.' 'Ἐρωτήσῃ δέ τις, ὡς τοῦ κανόνος λέγοντος, κατὰ συμφωνίαν κοινήν καὶ

However, it is the husband's clerical status that limits the couple's options, not the fact that he is a man. A similar example taken from the opposite perspective illustrates this. Canon 8 of Neocaesarea (c. 318) states:

If a layman's wife, having committed adultery, is clearly convicted, her husband cannot enter the ministry. But if she committed adultery after his ordination, he ought to put her away. If he continues to live with her, he cannot take part in the ministry which has been entrusted to him.⁸¹

Here it is the wife's action that determines the fate of her husband. Especially in the case of the layman, his wife's infidelity strips him of his free choice to join the clergy. In the case of someone who has already been ordained, the situation is similar to that of the bishop's wife. If he wants to remain in service he has to put his wife away and 'choose' a life of celibacy for himself. Neither the cuckolded husband nor the episcopal wife have done anything blameworthy, but continence is imposed upon them. Of course the adulterous woman is also

ἀρέσκειαν γίνεσθαι τὴν διάζευξιν, ἐὰν οὐ θέλη τοῦτο γενέσθαι ἢ γυνή, ἀπρακτῆσουσι τὰ τοῦ κανόνος; Λύσις· Οἶομαι μὴ δίκαιον εἶναι καταναγκάζεσθαι τὴν γυναῖκα τοῦ οικείου συζύγου ἀποδίστασθαι, διὰ τε τὸν ἄνωθεν ρηθέντα ἀποστολικὸν κανόνα, καὶ διὰ τὴν Ἰουστινιάνειον νεαράν, τὴν μὴ παραχωροῦσαν κατὰ συναίνεσιν λύεσθαι τὰ συνοικέσια.' See Syntagma, II, p. 370.

⁸¹ 'Γυνή τινος μοιχευθεῖσα λαϊκοῦ ὄντος, ἐὰν ἐλεγχθῆ φανερῶς, ὁ τοιοῦτος εἰς ὑπηρεσίαν ἐλθεῖν οὐ δύναται. Ἐὰν δὲ καὶ μετὰ τὴν χειροτονίαν μοιχευθῆ, ὀφείλει ἀπολῦσαι αὐτήν· ἐὰν δὲ συζῆ, οὐ δύναται ἔχεσθαι τῆς ἐγχειρισθείσης αὐτῷ ὑπηρεσίας.' See Syntagma, III, p. 82.

punished; this was certainly an unwelcome outcome for her too.⁸² Yet the point remains that the woman's position seems to determine the outcome in this case. It is she who has made the decision to commit adultery and it is she who is the grammatical subject of this regulation. In Zonaras' comment on the canon, the man is the object of the woman's action: 'A layman's wife who commits adultery and is openly convicted stops her husband from entering the ministry'.⁸³ In fact the husband is at a worse state compared to the episcopal wife, since he has presumably not given his consent to the adultery. The wife of the bishop, theoretically at least, has the right to refuse her husband's ordination.

Here, then, is an example where the husband's freedom appears to be limited because of his wife. But again it is rather clerical status, not gender, which is the determining factor. The issue is considered not so much from the point of view of the man or the point of view of the woman but it is determined by the clerical function itself, which precludes adultery as it precludes second marriages. As these last two examples show, it is dangerous to make an argument about the treatment of women by the law based purely on syntax; the clerical status of her husband also needs to be taken into account.

⁸² It has often been argued that adultery is one of the areas where the inequality between husband and wife is most obvious. This is true for both East and West. See Bernard Stolte, 'Desire denied: marriage, adultery, and divorce in early Byzantine law', in Liz James (ed.), *Desire and Denial in Byzantium: Papers from the Thirty-first Spring Symposium of Byzantine Studies*, University of Sussex, Brighton, March 1997, (Aldershot: Ashgate, 1999), pp. 81–4; Brundage, *Law, Sex, and Christian Society in Medieval Europe*, pp. 294–5.

⁸³ 'Ἄνδρὸς λαϊκοῦ γυνὴ μοιχευθεῖσα, καὶ φανερωῶς ἐλεγχθεῖσα, κωλύει τὸν ἄνδρα αὐτῆς εἰς ὑπηρεσίαν ἐλθεῖν', see Syntagma, III, p. 82.

Conclusion

It is often difficult to tell whether a law was addressed only to men or was meant to apply also to women. Terms such as the laity (*οἱ λαϊκοί*), the faithful (*οἱ πιστοί*) or Christians (*οἱ Χριστιανοί*), although in the masculine gender, can grammatically encompass both men and women. This can create the impression that there is little space for women in Byzantine canon law. The examples which we have examined here do not address men or women on their own but focus instead on the marital couple. They do not talk as much of the ‘husband’ (*ἄνθρωπος*) or the ‘wife’ (*γυνή*), as they do of the ‘spouses’ (*ὁμόζυγοι* and *σύζυγοι*). As we have seen, when it came to sexual intercourse or abstinence, twelfth-century Byzantine canon law treated husband and wife as a unit, not as individuals. Spouses were meant to reach a common decision and were both equally barred from communion and prayer if they decided not to abstain. Occasionally it was the husband alone who was asked to observe continence in the canons, but the commentaries redressed this imbalance. A major exception involved clerics. In this case it was always the husband who was asked to abstain from his wife. This was due to his clerical duties: abstinence was a necessary part of his liturgical and pastoral function. In the end, we can conclude that the law addressed the person or persons whose relationship with God could be enhanced by such abstinence. For lay couples, this responsibility was shared since neither spouse was expected to have a more intense religious life. Husband and wife would, in theory, pray and receive communion with the same frequency. As a result it became their mutual responsibility to decide when to abstain from sexual intercourse. Clerics and their wives, however, were not entirely in control of their sex lives. Pastoral and liturgical considerations meant that the flock’s needs had to come first. For the law it was the cleric’s

duty to ensure that this happened and as such it was he who was addressed and asked to abstain from his wife. The clerical function added restrictions and limitations; but these regulations reduced the power of both spouses and cannot be interpreted simply as a sign of gender inequality. The issue of marital abstinence in Byzantium presents us with an example where gender needs to be considered alongside another identity marker, that of clerical status, in order to obtain a more accurate understanding of how the relationship between husband and wife was defined and experienced. Similar questions could be asked about the relations between clerics and their children. Did the cleric's authority as spiritual father of his flock affect his position as head of the family? Was the role of the mother different for a woman married to a layman compared to one married to a cleric? More generally, the differences imposed by clerical status on a man's place within his family call for a wider reconsideration of our understanding of both gender equality and masculinities in Byzantium. If we accept that a man's role as husband and father is important for the definition of his gendered identity, it is time to start thinking about clerical masculinity in parallel to other types of secular male gender identities.