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Was There a Marital Debt in Byzantium?

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According to Western canonists, husband and wife had a debt towards one another: they were obliged to render sexual intercourse on demand. This article looks at the differences and similarities of the *'marital debt'* in Byzantium and the West in order to evaluate whether this concept can be applied to Byzantine couples. It argues that, contrary to the West, in Byzantium there was no fixed linguistic terminology or sophisticated rules to describe a sexual obligation between spouses. Ultimately, there was also less need for one as sexual intercourse within marriage was not considered sinful and needed no justification.

In a chapter on sexual coercion, Angeliki Laiou used the concept of the marital debt to explain Byzantine understandings of what we now call marital rape.¹ She took as an example a married couple from the village of Govlastou, in the diocese of Naupaktos. Eirene and Konstantinos had been married for a year but had not

PG = Patrologia Graeca; PL = Patrologia Latina; Syntagma = *Σύνταγμα τῶν θείων καὶ ἱερῶν κανόνων*, ed. G. A. Rhalles and M. Potles, Athens 1852–4

¹ A. E. Laiou, 'Sex, consent, and coercion in Byzantium', in Angeliki E. Laiou (ed.), *Consent and coercion to sex and marriage in ancient and medieval societies*, Washington, DC 1993, The idea of marital rape is a modern one and does not have a straightforward equivalent in the Middle Ages. Ruth Karras has noticed that, unlike other forms of mistreatment, what we call marital rape is notably absent from Western medieval sources. This does not mean that sexual violence by husbands never took place, but that 'the husband's unquestioned right to sexual relations with his wife, coupled with the legal and social dominance of the man within the relationship' would have been coercion enough in most of the cases: *Sexuality in medieval Europe: doing unto others*, Abingdon 2005, 86.

managed to consummate their union. Bishop John Apokaukos (d. 1233), who was in charge of this case, tells us that Eirene had come to hate her husband and refused to sleep with him. She would bite and scratch him when he tried to approach her, so that Konstantinos came to believe that even her voice and sight had better been avoided.² Eirene seemed impervious to the jeering of the community and the threats of the Church's administrators who, tired of words, would often lock the two spouses in a room hoping that intimacy would ensue. The marriage was never consummated and Apokaukos granted the couple a divorce. Laiou saw this as a case where, in the eyes of the couple's contemporaries, the exaction of the marital debt justified marital rape. She suggested that, although neither the canons nor their commentators sanction the use of force, this mode of thinking might have made it acceptable: 'perhaps the issue would have been seen less as forcing the unwilling partner and more as ensuring the payment of the marital debt'.³

As used by Western medievalists, the 'marital debt' refers to the obligation of both spouses to have sex with each other on demand. This was an idea that emerged from Paul's instruction in 1 Corinthians vii.3–5 and was further elaborated by Western canon lawyers starting with Gratian in the mid-twelfth century.⁴ The concept of the marital debt was defined clearly in linguistic terms: in the context of marriage 'debitum' unambiguously referred to sexual intercourse.⁵ It was also defined clearly in terms of the rules of rendering and

² Nikos A. Bees, 'Unedierte Schriftstücke aus der Kanzlei des Johannes Apokaukos des Metropoliten von Naupaktos (in Aetolien)', *Byzantinisch-neugriechische Jahrbücher* xxi (1976), 65.

³ Laiou, 'Sex, consent, and coercion', 183.

⁴ For the marital debt in the West see Elizabeth M. Makowski, 'The conjugal debt and medieval canon law', *Journal of Medieval History* iii (1977), 99–114. For more on Gratian see Anders Winroth, *The making of Gratian's Decretum*, Cambridge 2004.

⁵ There are numerous examples in legal sources. For Gratian see in particular causa 33 which discusses whether a woman can leave a man because he cannot have intercourse and whether a husband can render the debt to his wife during times of prayer. One clear instance of the language of debt is 'Secundum uerba apostolica, etiam si uir continere uoluisset, et tu noluisse, debitum tibi reddere cogeretur, et illi Deus inputaret continentiam, si non suae, sed tuae cederet infirmitati, ne in adulterium caderes' ('According to the words of the Apostle, even if your husband wanted to observe continence, and you did not, he would be compelled to render you the debt, and God would impute continence to him, if it

exacting: when, where, and how spouses should engage in sexual intercourse.⁶ In fact, it was so well understood that it could be used without further explanation to frame other religious questions. Do you render the debt to a penitent spouse?⁷ Can

is not to his own but to your weakness that he yielded, lest you fall into adultery.’): *Corpus iuris canonici: pars prior: Decretum magistri Gratiani*, C.33 q.5 c. 5, ed. E. Friedberg, Leipzig 1879, 1252. For a decretal of Pope Alexander III (1159–81), where he advises that a husband who cannot render the debt should live with his wife as brother and sister see ‘*Super eo vero, quod de illo nobis significasti, qui cum procreare velit filios, uxori suae nunquam carnis debitum reddidit vel reddere potuit, [...] consuetudo est Romanae ecclesiae in similibus taliter tenere, quod si non potest eam sicut uxorem habere, ipsam habeat sicut sororem*’ (‘Concerning the issue you indicated to us about the man who, though he wishes to beget sons, has never rendered or been able to render the carnal debt to his wife, [...] it is the custom of the Roman Church in similar cases to hold that if he cannot keep her as a wife, he should keep her as a sister.’): *Quinque compilationes antiquae, comp. I lib. IV tit. XVI*, ed. E. Friedberg, Leipzig 1882, 51. For a non-legal source written for the instruction of clerics see Gerald of Wales’s *Gemma ecclesiastica* (d. c. 1223), a compendium of spiritually beneficial precepts and examples. ‘*Item exemplum de responso Hugonis Lincolniensis episcopi cuidam matronae facto, cui super impotentia mariti, quia debitum ei reddere non poterat, conquerenti [...]*’ (‘A further example regards the response given by Hugh bishop of Lincoln to a wife, when she complained about her husband’s impotence, since he could not render the debt to her [...]): d. II. ch. 18 in *Giraldi cambrensis opera*, ed. J. S. Brewer and others (Rolls Series, 1861–91), ii. 250. Note that the translation of this text renders ‘*debitum ei reddere non poterat*’ as ‘her husband’s inability to have sexual intercourse [with her]’, obscuring the reference to the marital debt. See *The jewel of the Church: a translation of Gemma ecclesiastica by Giraldus Cambrensis*, trans. John J. Hagen, Leiden 1979, 190.

⁶ For example see the section in Thomas of Chobham’s *Summa confessorum* entitled ‘*Quod abstinendum est ab amplexibus quibusdam temporibus*’ (‘That one should abstain from embraces at certain times’), in *Thomae de Chobham summa confessorum*, ed. F. Broomfield, Louvain–Paris 1968, 364–6.

⁷ ‘*Qui adulterae reddit debitum tribus annis peniteat. [...] Si quis uxorem suam scit adulteram, et non uult dimittere eam, sed in matrimonio habere, tres annos peniteat, et quamdiu illa penitet, abstineat se ab illa*’ (‘Let the man who renders the debt to an adulterous wife do penance for three years. [...] If someone knows his wife to be an adulteress and does not want to dismiss her, but wants to keep her in marriage, let him do penance for three years, and while she is doing penance, let him abstain from her.’): *Decretum magistri Gratiani*, C.32 q.1 c.4 at p. 1117. See also ‘*Et dicit decretalis una quod si crimen fuerit manifestum debet fieri separatio tori, si autem fuerit occultum non debet fieri separatio sed iniungendum est corruptori ut nunquam exigat debitum sed reddat*’ (‘And one decretal says that if the sin is openly known they ought to sleep apart, if however it was secret they should not sleep apart, but the perpetrator is enjoined never to exact the debt, but to render it.’): *Thomae de Chobham summa confessorum*, 171.

you divorce a spouse who cannot render the debt because of their frigidity?⁸ Can you deprive your husband or wife of their debt by taking a vow of chastity?⁹ For many canonists rendering the debt came before any other consideration.¹⁰ Indeed, by the mid-thirteenth century, it had become so important that it was theoretically permissible for couples to have sexual intercourse in a church, if no other place was available at that time.¹¹ Although profaning sacred space was still considered a sin, it was seen as a lesser evil than denying one's right to the marital debt. This was a time-sensitive question: sexual intercourse had to be performed there and then.

Can we talk of a marital debt along these lines in a Byzantine context, as Laiou did, or is the term misleading, implying more about the relationship between husband and wife than can be inferred from the sources? It is reasonable to assume that in both societies there was an expectation that spouses would engage in sexual intercourse.¹² It is less clear, however, that there was in Byzantium an obligation to have sex on demand like the one we find in the West.

⁸ 'De his autem, qui causa frigiditatis uxoris debitum reddere non possunt, statuit Gregorius Papa, ut uterque eorum septima manu propinquorum tactis sacrosanctis reliquiis iureiurando dicat, quod numquam permixtione carnis coniuncti una caro effecti fuissent. Tunc mulier secundas nuptias poterit contrahere; uir autem, qui frigidae naturae est, maneat sine spe coniugii' ('In the case of those who cannot render the debt to their wives because of frigidity, Pope Gregory decreed that each member of the couple should take an oath, after touching sacred relics, supported by seven oath-helpers, saying that they had never become one flesh through carnal intercourse. The woman will then be able to contract a second marriage, but the husband, whose nature is frigid, would remain without hope of marrying.'): *Decretum magistri Gratiani*, C.27 q.2 d.p.c. 28, at p. 1071.

⁹ For examples of this see the section entitled 'Sophisticated regulations?.'

¹⁰ James A. Brundage, *Law, sex, and Christian society in medieval Europe*, London 1987, 242, 358–60.

¹¹ Dyan Elliott, 'Sex in holy places: an exploration of a medieval anxiety', *Journal of Women's History* vi/3 (1994), 6–34 at p. 30 n. 47. See also Pierre J. Payer, *The bridling of desire: views of sex in the later Middle Ages*, Toronto 1993, 101–2, 229.

¹² Note, however, that views on spiritual marriages varied across the Middle Ages and that both societies had saints who had formed sexless marriages: Dyan Elliott, *Spiritual marriage: sexual abstinence in medieval wedlock*, Princeton, NJ 1993; Anne P. Alwis, *Celibate marriage in late antique and Byzantine hagiography*, London 2011; Alexander Kazhdan, 'Byzantine hagiography and sex in the fifth to twelfth centuries', *Dumbarton Oaks Papers* xlv (1990), 131–43.

In the rest of this article, I will look at the differences and similarities in the notion of the marital debt in Byzantium and the West in order to evaluate the usefulness of this term. Focusing primarily on legal sources, it will be argued that whereas in the West the expectation of marital sex was transformed into an imperative, the Byzantines did not develop a rigid concept of sexual obligation. The main period under consideration will be the twelfth and thirteenth centuries when the sources used by Laiou were written. However, given that many Byzantine ideas on marriage and sexuality developed in late antiquity, frequent reference will be made to earlier authors. Particular attention will be paid to John Chrysostom (d. 407) whose works continued to be influential throughout the Byzantine period.¹³ Most of the examples for the West will come from twelfth-century England. But, in this period, Western Europe shared to a great extent a common legal culture and similar examples could be found from Northern France.¹⁴

A linguistic concept?

The Byzantines do not seem to have had a fixed term associated with the marital debt. A good place to start looking for one would be references to 1 Cor. vii.3, since the word ‘debitum’ was taken from the Vulgate translation of Paul’s verse: ‘uxori vir debitum reddat similiter autem et uxor viro’ (‘let the husband render the debt to his wife and similarly the wife to her husband’). John Chrysostom uses in his homilies on the Bible a variety of expressions to refer to Paul’s debt, notably ὀφειλή (debt), ὀφειλομένη τιμή (due honour) and ὀφειλομένη εὔνοια (due favour).¹⁵ The things owed, εὔνοια and τιμή, are not suggestive of sexual intercourse. The word εὔνοια is used in Chrysostom in a variety of contexts

¹³ More than 5,000 Greek manuscripts contain works attributed to John Chrysostom: Guillaume Bady, ‘Les Manuscrits grecs des œuvres de Jean Chrysostome d’après la base de données Pinakes et les Codices Chrysostomici Graeci VII: Codicum Parisinorum pars prior’, *Eruditio Antiqua* iv (2012), 65–82.

¹⁴ It was in fact very common for English ecclesiastics to be educated in Paris or Bologna. That was the case for the authors used here, including Thomas of Chobham and Gerald of Wales. See John W. Baldwin, *Masters, princes, and merchants: the social views of Peter the Chanter & his circle*, Princeton 1970, i.

¹⁵ On Chrysostom’s use of these words see also Will Deming, *Paul on marriage and celibacy: the Hellenistic background of 1 Corinthians 7*, 2nd edn, Cambridge 2004, 115 n. 36.

referring to familial favour or to the good will that God shows towards man and man towards God.¹⁶ In the context of 1 Cor. vii.3-5, Chrysostom defines the term as follows:

When Paul says, 'Let each woman have her own husband', he adds, 'Let the husband show his wife the good will which is due [τὴν ὀφειλομένην εὖνοιαν]'. What does he mean when he says this? Is it to preserve her access to her money? Is it to keep her dowry intact? Is it to provide her with expensive clothes, or an extravagant table, or a conspicuous display when she goes out? Is it to have her attended by many servants? What do you say? What kind of good will do you seek? [ποῖον εὖνοίας εἶδος ζητεῖς;] All of these things show good will [εὖνοίας], do they not? I do not mean any of these, Paul says, but chastity and holiness [τὴν σωφροσύνην καὶ τὴν σεμνότητα]. The husband's body is no longer the husband's, but the wife's. Therefore he must keep her property intact, without diminishing it or damaging it.¹⁷

Here Chrysostom seems to have a different debt in mind. What is owed is marital fidelity rather than marital sex. Spouses are not asked to have intercourse on demand, but to preserve their chastity and to remain faithful to each other, to preserve their body, the property of their spouse, intact. Interestingly, the second

¹⁶ For a reference to fatherly favour see 'πατέρα προσεῖπε τὸν Ἀβραάμ ὁ πλούσιος, καὶ ἦς εἰκὸς ἀπολαῦσαι τέκνον πατρικῆς εὖνοίας, οὐκ ἠδυνήθη' ('The rich man addressed Abraham as father; but was not able to enjoy the paternal favour which a son commonly receives'): Chrysostom, 'De Lazaro', PG xlviii. 1005. For the good will shown by God to man see "Ὅπερ γὰρ λέγων οὐδέποτε ἐπαυσάμην, τοῦτο καὶ τήμερον ἐρῶ, ὅτι οὐχ ἡ ἀπαλλαγὴ τῶν δεινῶν, ἀλλὰ καὶ ἡ συγχώρησις τούτων ἀπὸ τῆς εὖνοίας γίνεται τοῦ Θεοῦ' ('For as I have never stopped saying, and I will say this again today, it is not only deliverance from terrible things, but also forgiveness for them that comes from the love of God'): Chrysostom, 'Ad populum Antiochenum', PG xlix. 144. For the good will shown by man to God see 'Καὶ τὴν συναγωγὴν αὐτὸς ᾠκοδόμησε, τὴν πρὸς τὸν Θεὸν εὖνοιαν ἐνδεικνύμενος.' ('And he built the synagogue himself, showing his love for God'): Chrysostom, 'In centurionem', PG lxi. 770. For other authors see also Geoffrey W. H. Lampe (ed.), *A patristic Greek lexicon*, Oxford 1961, 571.

¹⁷ For the translation see *St John Chrysostom: on marriage and family life*, trans. Catharine P. Roth and David Anderson, Crestwood, NY 1986, 86–7. For the Greek see PG li. 214.

consideration that comes up in this quotation is linked to money. The term εὔνοια is more generally associated with the husband's duty to provide for his wife financially.¹⁸ Men should consider their money to be shared with their wives and women should not think that their husbands owe them extravagant luxuries. This is a recurrent theme in Chrysostom's homilies on marital life, where husbands and wives are advised to marry people of similar economic backgrounds and to focus on spiritual quests rather than the vanities of the world.¹⁹

The topics of marital fidelity and household finances are also brought together in Chrysostom's Homily 19 on 1 Cor. vii where the words τιμή and ὀφειλή are used:²⁰

Let the husband render to his wife her due honour [ὀφειλομένην τιμήν]; similarly the wife to her husband. But what is this due honour? The wife does not have power over her own body; but is both slave (δούλη) and mistress of her husband. And if you avoid this servitude [δουλείας] which is your due, you offend God. But if you wish to avoid it, it should be when your husband allows it, even if it is for a short period of time. For this reason he called this thing a debt [ὀφειλήν], to show that no-one is master of themselves but that they are each other's slaves. When therefore you see a harlot tempting you, say: 'My body is not my own, but my wife's'. Let also the wife say the same to those who want to undermine her chastity: 'My body is not my own, but my husband's'. So if neither

¹⁸ Paul Schroeder has noted that sex and money were the two areas in which Chrysostom gave mutual authority to husband and wife through the use of this Pauline instruction: 'The mystery of love: paradigms of marital authority and submission in the writings of St John Chrysostom', *St Vladimir's Theological Quarterly* xliv (2000), 143–68 at pp. 159–61.

¹⁹ For example see 'Homily 20 on Ephesians 5:22–33' and 'How to choose a wife' in *St John Chrysostom: on marriage and family life*, 49–50, 97–101.

²⁰ The term τιμή is usually translated as 'honour', 'dignity', 'value' or 'esteem' and does not bear sexual connotations. It appears in John Chrysostom in the context of marriage only rarely. For example, Chrysostom uses it in his Letter to a young widow reminding his addressee that while her spouse was alive she had enjoyed the customary 'honour and care' [καὶ τιμῆς καὶ προνοίας] due to the wives of good husbands. It is God now who will take his place and provide her with his protection: Jean Chrysostome: *A une jeune veuve; Sur le mariage unique*, trans. Bernard Grillet and ed. Gérard H. Ettliger, Paris 1968, 124–5, 116–17.

husband nor wife has power over their bodies, they have even less power over money. Listen, all you who have husbands and wives: if you cannot have your own body, you can certainly not have your own money.²¹

Chrysostom, then, used a variety of words to refer to marital duties, but none of them was specifically associated with an obligation to engage in marital sex. If sexual intercourse sprang to mind when referring to 1 Cor. vii.3-5, marital fidelity and household finances would have done the same.²²

Contrary to the situation in the West, this vocabulary was not adopted in a legal context. The terms *ὀφειλή*, *ὀφειλομένη εὐνοία* and *ὀφειλομένη τιμή* are not associated with marital sex in the twelfth-century canonical commentaries of John Zonaras and Theodore Balsamon.²³ In them, they come up in different contexts.

²¹ ‘Τῆ γυναικὶ ὁ ἀνὴρ τὴν ὀφειλομένην τιμὴν ἀποδιδότω· ὁμοίως καὶ ἡ γυνὴ τῷ ἀνδρὶ. Τί δὲ ἐστὶν ἡ ὀφειλομένη τιμή; Ἡ γυνὴ τοῦ ἰδίου σώματος οὐκ ἐξουσιάζει, ἀλλὰ καὶ δούλη καὶ δέσποινα ἐστὶ τοῦ ἀνδρός. Κἂν ἀποστῆς τῆς δουλείας τῆς προσηκούσης, προσέκρουσας τῷ Θεῷ· εἰ δὲ ἀποστῆναι βούλει, ὅταν ὁ ἀνὴρ ἐπιτρέπη, κἂν πρὸς βραχὺ τοῦτο γίνηται. Διὰ γὰρ τοῦτο καὶ ὀφειλὴν τὸ πρᾶγμα ἐκάλεσεν, ἵνα δείξῃ μηδένα κύριον ὄντα ἑαυτοῦ, ἀλλ’ ἀλλήλων δούλους. Ὅταν οὖν ἴδῃς πόρνην πειρῶσάν σου, εἰπέ· Οὐκ ἔστι τὸ σῶμα ἐμόν, ἀλλὰ τῆς γυναικός. Ταῦτα καὶ ἡ γυνὴ λεγέτω πρὸς τοὺς βουλομένους αὐτῆς διορύξει τὴν σωφροσύνην· Οὐκ ἔστιν ἐμόν τὸ σῶμα τὸ ἐμόν, ἀλλὰ τοῦ ἀνδρός. Εἰ δὲ σῶματος οὐκ ἐξουσιάζει ὁ ἀνὴρ ἢ ἡ γυνὴ, πολλῶ μᾶλλον χρημάτων. Ἀκούσατε ὅσα ἀνδρας ἔχετε, καὶ ὅσοι γυναῖκας. Εἰ γὰρ σῶμα ἔχειν ἴδιον οὐ χρή, πολλῶ μᾶλλον χρήματα’; Chrysostom, ‘In epistulam I ad Corinthios’, PG lxi.152.

²² The same can be said about John Damascene who also associates 1 Cor. vii.3–5 with marital fidelity and presents the spouses’ bodies as each other’s property which they need to preserve intact: ‘Καὶ τὸ ῥῆμα γράψον εἰς τὸ πρόσωπόν σου, καὶ εἰπέ τῇ πόρνη· Τί με καλεῖς; οὐκ ἔστι τὸ σῶμα ἐμόν, ἀλλὰ τῆς γυναικός μου. Οὐ τολμῶ τὸ ἀλλότριον προδοῦναι. Τὴν προῖκα αὐτῆς οὐ τολμᾶς μειῶσαι, οὐδὲ τὰ πράγματα αὐτῆς τολμᾶς δαπανῆσαι, καὶ τὸ σῶμα αὐτῆς τολμᾶς μολῶναι;’ (‘And write this phrase on your face, and say to the harlot: “Why are you calling me? My body is not my own, but my wife’s. I do not dare to give away what is someone else’s.” You do not dare to diminish her dowry, nor do you dare to spend her property, but you dare to pollute her body?’): PG xcvi. 257.

²³ On Zonaras and Balsamon see Spyros Troianos, ‘Byzantine canon law from the twelfth to the fifteenth centuries’, in Wilfried Hartmann and Kenneth Pennington, *History of Byzantine and Eastern canon law*, Washington, DC 2012, 176–83, and Ruth Macrides, ‘Nomos and kanon on paper and in court’, in Rosemary Morris (ed.), *Church and people in Byzantium*, London 1990, 61–85. For many interesting articles on the Byzantine canonical commentaries see also the collection edited by Nikos Oikonomides, *Byzantium in the 12th century*:

The word τιμή is frequently used to refer to ecclesiastical honour.²⁴ The term ὀφειλή appears almost exclusively in its verb form, ὀφείλει, meaning ‘ought to’.²⁵ Instead of the word εὐνοια, the term ἔρωσ is often used to refer to sexual love.²⁶ Similarly, Apokaukos uses neither εὐνοια nor τιμή when talking about Eirene and Konstantinos: what a wife owes (ὀφείλει) her husband is φιλίαν (love) and ὑποταγήν (obedience).²⁷ The opposite of this love is μῖσος (hatred), something which according to Apokaukos is unnatural for a wife to feel and comparable to a son raising his hand against his father.²⁸ Clearly, this wifely love or hatred referred to something more than sexual intercourse. In fact, despite the nature of the issue at hand, Apokaukos does not talk specifically of a sexual obligation. The biblical references he gives in support of his argument are Ephesians v.23 ‘For the husband is the head of the wife as Christ is the head of the Church’ and Genesis

canon law, state and society, Athens 1991. The commentaries are available in Syntagma.

²⁴ ‘μήτ’ ἄλλο τι ἱερατικὸν ἐνεργεῖν· ἀρκεῖσθαι δὲ τῇ τιμῇ τῆς προεδρίας’ (‘nor should he practise any other of his ecclesiastical duties, but should be satisfied with the honour of his seat’): Balsamon in Syntagma, iv.163; ‘Ταῦτα, φησὶν ὁ κανὼν, ἐπὶ σωτηρία ὀρισθέντα, καὶ κατὰ τὸ πρέπον τῇ τάξει καὶ τῇ τιμῇ τῇ ἱερατικῇ’ (‘The canon says that these things have been decreed for the sake of salvation and according to what is suitable for the sacerdotal rank and honour’): Zonaras in Syntagma, iii. 281; ‘Ἐὰν δὲ στάσεις κινῶσι πρὸς τοὺς ὄντας ἐκεῖ ἐπισκόπους, τότε καὶ τῆς τοῦ πρεσβυτέρου τιμῆς στρεῖσθαι αὐτούς, καὶ γίνεσθαι ἐκκηρύκτους, τουτέστι καὶ τῆς ἐκκλησίας ἐκπτώτους.’ (‘But if they rebel against the bishops in post there, they should be deprived even of the honour of the priesthood, and they should be denounced, that is to say banished from the church.’): Zonaras in Syntagma, iii. 58.

²⁵ We also find the noun form ‘ὀφείλημα’ in the Lord’s Prayer: ‘Καὶ τοῦτο τῆς αὐτῆς ἀπονοίας ἐστὶ, τὸ λέγειν, ὅτι οἱ ἅγιοι εὐχόμενοι, Ἄφες ἡμῖν τὰ ὀφειλήματα ἡμῶν, οὐχ ὑπὲρ ἑαυτῶν τοῦτο λέγουσιν, ἀλλ’ ὑπὲρ τοῦ λαοῦ.’ (‘And it is also senseless to claim that the saints who pray “Forgive us our trespasses” say it not for themselves, but for the people.’): Zonaras in Syntagma, iii. 569.

²⁶ We can find an example of the term εὐνοια meaning ‘good will’, in the canonists’ discussion of priests who usurp episcopal power, pretending to do so out of good will for the people: ‘ὡς τάχα τοῦτο δι’ εὐνοίαν τὴν πρὸς αὐτοὺς ποιοῦντες, ἥτις εὐνοια ἄτακτος ἐστίν.’ (‘pretending to do this out of favour for them, a favour which is lawless’): Zonaras and Balsamon in Syntagma, iii. 434. See also Syntagma, iv. 523. For the use of ‘ἔρωσ’ see Syntagma, ii. 419, 279; iii. 1971; iv. 307.

²⁷ Bees, ‘Johannes Apokaukos’, 65.

²⁸ Ibid. 64–5.

iii.16 ‘Your desire will be for your husband, and he will rule over you’, rather than 1 Cor. vii.3.

Byzantine spouses were of course expected to have sex with each other; this was after all part of ensuring marital fidelity and avoiding familial strife. But by associating Paul’s command with chastity, marital fidelity, love and obedience Byzantine authors switched the emphasis, allowing for a looser interpretation where frequent sexual intercourse between spouses was expected but did not have to take place every time one of them wished to. As such, it seems misleading to reduce these various interpretations linguistically to a ‘marital debt’, given the sexual connotations of that term.

Sophisticated regulations?

We get another hint of why talking of a ‘marital debt’ might be misleading in a Byzantine context by looking at the far-reaching impact that this concept had in the West. The claim to one’s marital debt was so well established that it could not be neglected even for pious reasons, such as taking vows.²⁹ In the case of vows of fasting, Thomas of Chobham, an early thirteenth-century dean of Salisbury, emphasised that ‘the wife is not allowed to weaken her body through abstinence to such an extent that she will be less able to render the debt to her husband’.³⁰ In the case of monastic vows, both spouses had to agree to give up their claim to the marital debt, before one of them could enter a monastery. Gratian stated explicitly that once this consent had been given, neither spouse could subsequently change their mind ‘because in the conjugal debt the wife has equal power to her husband, just like the husband to his wife’.³¹ Similarly, in the case of vows of pilgrimage, Ivo of Chartres (1090–1115), the most important canonist of the age of the First Crusade, emphasised the need for mutual consent before the husband’s

²⁹ See also Elliott, *Spiritual marriage*, 143–6, 155–67.

³⁰ ‘non potest mulier ita attenuare corpus per abstinentiam quod sit minus habilis ad reddendum viro debitum’: *Thomae de Chobham summa confessorum*, 560.

³¹ ‘quia in debito coniugii eque mulier habet potestatem uiri, sicut et uir mulieris’: *Decretum magistri Gratiani*, C. 33 q.5 d.p.c.11 at p. 1254.

departure.³² Such advice must have been followed all too often, as at the time of the Fourth Crusade Pope Innocent III (1198–1216) had to issue a special dispensation for husbands who wished to participate without their wife's permission. This was done 'lest the relief of the Holy Land should be thoroughly impeded or further delayed' by the right of wives to exact their marital debt.³³

This emphasis on the marital debt had consequences also for the clergy. It made it impossible for Western clerics to observe temporary continence, as was the case in Byzantium.³⁴ Temporary continence would have involved abstaining from sex with their wives before performing the liturgy. But what would happen in the case of a priest who was asked to render the marital debt the night before the celebration of the eucharist? He would have the following options: (1) have sexual intercourse with his wife and then perform the liturgy, thereby sinning; (2) deny his wife her marital debt and perform the liturgy, thereby sinning; (3) have sexual intercourse with his wife and postpone the performance of his ecclesiastical duties, thereby neglecting his flock. This scenario could no longer occur in the West, where the marriage of clerics in major orders was considered invalid.³⁵ But it was the topic of debate which involved a fictional Eastern cleric

³² He warned a nobleman who had vowed to take the cross that men often fell into vice while striving for virtue: an angel of Satan 'urges certain people not to render the conjugal debt to their wives, so that under the veil of chastity he may send them to illicit affairs, or he may incite their wives to commit adultery' ('suadet quibusdam non reddere debitum conjugale uxoribus suis, ut sub velamine castitatis mittat eos ad supra illicita, vel uxores eorum ad perpetranda adulteria'): PL clxii. 251–3.

³³ 'ne terrae sanctae impediatur subsidium penitus vel diutius differatur': Corpus iuris canonici: pars secunda: Decretalium collectiones, X.3.34.9, ed. E. Friedberg, Leipzig 1881, 595. See also James A. Brundage, 'The crusader's wife: a canonistic quandary', *Studia Gratiana* xii (1967), 425–41.

³⁴ Gratian states clearly the impossibility of the situation: if laymen were expected by Paul to abstain from their wife in order to devote themselves to prayer, this was all the more the case for priests who had to pray daily and 'were never allowed to devote themselves to their marital office' ('numquam coniugali offitio uacare permittitur'). If a priest had been married while still in minor orders he was allowed to provide for his wife financially, but 'could not render what was due' ('debita uero reddere non ualent'): *Decretum magistri Gratiani*, D. 31 d.a.c. 2 at p. 111; *Decretum magistri Gratiani*, D. 31 d.p.c. 11 at p.114. See also Filippo Liotta, *La continenza dei chierici nel pensiero canonistico classico: da Graziano a Gregorio IX*, Milan 1971, 8.

³⁵ See canon 7 of the second Lateran Council of 1139: 'Hujusmodi namque copulationem, quam contra ecclesiasticam regulam constat esse contractam,

returning to the East after having been ordained in the West. How was he to behave toward his wife? The author of the *Summa Lipsiensis*, a late twelfth-century commentary on Gratian's *Decretum*, preferred a radical version of option 3: such a cleric would need to respect his wife's right to the marital debt by completely giving up his clerical office.³⁶

We do not find such detailed instructions regarding the sexual life of lay and clerical spouses in Byzantium. To a certain extent, this could be explained through differences in literary genre.³⁷ Fictional scenarios, such as the one mentioned above, were more frequent in the West, where they were used as part of teaching and were meant to help students to think in a systematic fashion.³⁸ The Byzantine canonical commentaries did not have, as far as we know, a primarily instructive function.³⁹ Zonaras and Balsamon go through the canons of the

matrimonium non esse censemus' ('For we do not consider that intercourse of such a kind, which, it is agreed, has been contracted against ecclesiastical law, constitutes marriage.'): *Sacrorum conciliorum nova et amplissima collectio*, ed. J. D. Mansi, repr. Graz 1960–1, xxi.523.

³⁶ 'Item quid, si clericus illius ecclesie ordines hic susciperet et postea rediret ad propriam ecclesiam? Possetne uxorem accipere et celebrare uel debetne debitum denegare uxori? Posset dici quod deberet ab officio abstinere. Nullum autem preiudicium deberet fieri uxori, licet quidam contrarium dicant' ('Likewise, what would happen if a cleric of that church were to receive orders here and afterwards return to his own church? Would he be able to take a wife and celebrate [the liturgy] or should he refuse the debt to his wife? It could be said that he ought to abstain from his office. But his wife should not be prejudiced, although some may say the opposite.'): *Summa 'omnis qui iuste iudicat' Sive Lipsiensis*, ed. P. Landau and others, Vatican City 2007, i. 120. 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), 340–54.

³⁷ For a comparison of the different approaches followed by Gratian and Balsamon see Clarence Gallagher, 'Gratian and Theodore Balsamon: two twelfth-century canonistic methods compared', in Nikos Oikonomides (ed.), *Byzantium in the 12th century: canon law, state and society*, Athens 1991, 61–89.

³⁸ The above example would have been part of the *quaestiones disputatae*, disputations held by masters of law outside their regular lectures in the schools, often on a Friday or a Sunday: Kenneth Pennington and Wolfgang P. Müller, 'The Decretists: the Italian School', in Wilfried Hartmann and Kenneth Pennington (eds), *The history of medieval canon law in the classical period, 1140–1234*, Washington, DC 2008, 164–70.

³⁹ Balsamon's commentary was commissioned by Emperor Manuel I Komnenos (1143–80) and Patriarch Michael III Anchialos (1170–8) and its initial aim was to ascertain which parts of the *Nomokanon* in fourteen titles remained in

different councils, rephrasing them and explaining any words which might have changed meaning, supporting them with further evidence from ecclesiastical and civil laws, and occasionally complaining about the fact that the rules were no longer kept in their time.⁴⁰ They do not indulge in the elaboration of imaginary scenarios. Instead, they encourage the application of *oikonomia*.⁴¹ According to this principle, in imitation of divine mercy, in certain cases the letter of the law can be relaxed and moral concessions can be made. When this happens depends on the particular situation and is left to the discretion of the clerics or even lay people involved.⁴² Indeed, in the case of abstinence from marital sex, canon 3 of Dionysios of Alexandria (d. 264–5) asks the spouses to be their own judges; and Balsamon comments that any penance to be imposed should depend on the couple’s individual circumstances.⁴³ This was to a certain extent similar to the

force: Spyros Troianos, ‘Byzantine canon law to 1100’, in Wilfried Hartmann and Kenneth Pennington (eds), *History of Byzantine and Eastern canon law to 1500*, Washington, DC 2012, 138–40; Macrides, ‘Nomos and kanon’, 73–4. We are not sure what Zonaras’s motivations were for writing his canonical commentaries and there is considerable debate about his date of writing: Thomas M. Banchich, ‘Introduction: the Epitome of Histories’, in *The History of Zonaras*, ed. and trans. Thomas M. Banchich and trans. Eugene N. Lane, London 2009, 7.

⁴⁰ See also Odysseus Lampsides, ‘Πῶς εισάγουν εἰς τὰ κείμενά των οἱ ἐξηγηταὶ τῶν κανόνων τὰς εἰδήσεις διὰ τὸν σύγχρονόν των κόσμον’ (How the commentators of the canons introduce in their texts news about the contemporary world), in Nikos Oikonomides (ed), *Byzantium in the 12th century: canon law, state and society*, Athens 1991, 211–27.

⁴¹ Dagron has nicely expressed the difference between East and West: ‘Nous sommes [à Byzance] du côté de l’avocat qui cherche à montrer que la loi n’a pas à s’appliquer au client qu’il défend, et non pas du côté du juge temporel ou spirituel qui examine tous les rapports entre un cas et les prescriptions de la loi. Par cette disjonction qu’elle cherche à justifier entre la règle et son application, l’économie byzantine diffère profondément de l’analyse des “cas” qui fleurit dans la littérature juridique de l’Occident aux XIIe–XIIIe siècles, et de ce qu’on appellera dans le domaine religieux la casuistique’: ‘La Règle et l’exception: analyse de la notion d’économie’, in Dieter Simon (ed.), *Religiöse Devianz: Untersuchungen zur sozialen, rechtlichen und theologischen Reaktionen auf religiöse Abweichung im westlichen und östlichen Mittelalter*, Frankfurt 1990, 1–18 at p. 11.

⁴² On the concept of *oikonomia* see also Carolina Cupane, ‘Appunti per uno studio dell’*oikonomia ecclesiastica a Bisanzio*’, *Jahrbuch der Österreichischen Byzantinistik* xxxviii (1988), 53–73.

⁴³ On Dionysios and the four canons found in his letter to Basilides see Heinz Ohme, ‘Greek canon law to 691/2’, in Hartmann and Pennington, *Byzantine and Eastern canon law to 1500*, 89–90. ‘νομίζω δὲ ὅτι κατὰ τὴν διάκρισιν τοῦ τὴν ἐξαγορίαν δεχομένου ἢ θεραπεία γενήσεται πρὸς τὰ πρόσωπα

Western concept of dispensation, which could allow specific individuals to act contrary to canon law, while at the same time preserving the validity of the law in its general form. For example, clerical sons who were forbidden to join the secular clergy could even succeed their father in his church, if they obtained a dispensation.⁴⁴ But dispensations were mostly granted by the pope and were as such difficult to obtain.⁴⁵ On the other hand, the application of *oikonomia* was much more widespread. When Dionysios asked the spouses to be their own judges, he gave them to a certain extent permission to apply the principle of *oikonomia* upon themselves. Such was also the case for unordained monks who, in receiving confessions and granting penance, took it upon themselves to attenuate the power of the law when they saw fit.⁴⁶

Although this reflected a wider legal difference, it still had an impact on the way in which people perceived marital relations. It meant that by not refining the concept of the marital debt through the creation of sophisticated rules, Byzantine ideas on marital intercourse remained more fluid. As such, they were less likely to be used to influence decisions, such as the taking of monastic vows. We can see on this topic a clear difference with the West. Byzantine husbands and wives had the right to ask for a divorce in order to enter a monastery without any mention of their sexual responsibilities towards each other.⁴⁷ In his comment on

καὶ τὴν ἀνάγκην τῆς φύσεως·’ (‘but I think that the cure will be administered according to the person and the needs of their nature, based on the discernment of he who receives the confession’): Syntagma, iv. 11.

⁴⁴ See also Kathryn Ann Taglia, “‘On account of scandal . . .’: priests, their children, and the ecclesiastical demand for celibacy”, *Florilegium* xiv (1995–6), 57–70 at p. 66.

⁴⁵ At the time of Alexander III bishops were allowed to grant a dispensation to sons of priests in minor orders, while reserving to the pope the right to grant it to those in major orders. See Everett U. Crosby, *The king’s bishops: the politics of propaganda in England and Normandy, 1066–1216*, New York 2013, 54. See, for example, the dispensation granted by Alexander III to a cleric in the diocese of Lincoln: *Decretalium collections*, X 1.17.10 at p. 138.

⁴⁶ Dagron, ‘La Règle et l’exception’, 15–16; Cupane, ‘Appunti per uno studio dell’*oikonomia*’, 57–8.

⁴⁷ An exception to this can be found in hagiography. In the *Life of Patriarch Euthymios (907–12)*, we read that the saint advised Theophano, the first wife of Leo VI, to reconsider, for the sake of her husband, her decision to enter a monastery. The patriarch referred specifically to 1 Cor. vii. 4 and argued that this would tempt Leo to fall into adultery. This is particularly interesting given that Leo had long fallen into adultery with his mistress Zoe Zaoutzaina and that it was

chapter 4 of title 13 of the Nomokanon, which discusses the separation of spouses in order to enter monastic life, Balsamon does not focus on any marital debt, but talks instead about the couple's financial responsibilities and the division of their property.⁴⁸ These are of course cases where there had been common consent to the divorce and the entrance of the spouse to the monastery. But even when one spouse was unwilling, the 'right' of their partner to the 'marital debt' did not come up. We read, for example, in the Peira, an eleventh-century legal collection, that if a wife has taken refuge in a monastery without her husband's consent and he wants to take her back he can try to convince her but is not allowed to force her: 'he may go to her and flatter her with words and sit near her at the table and employ every way in order to ignite the old flame, without however using violence or laying his hands on her'.⁴⁹ There is no mention of the husband's right to have sex with his wife or of a debt that ought to be exacted or rendered.⁵⁰

Exacting the debt?

The absence of violence in the above-mentioned account can be significant. According to Western ideas the very notion of exacting the marital debt implied a certain violence done to the unwilling partner and that violence was indeed sanctioned by the Church. When Thomas of Chobham defined this concept in his *Summa confessorum*, he noted that:

the term 'exaction' implies violence, whence exactors are called those who extort something through violence of punishment or fear. If therefore a

most likely Theophano herself who did not want to grant a divorce: P. Karlin-Hayter, *Vita Euthymii patriarchae CP: text, translation, introduction and commentary*, Brussels 1970, 37–9. See also L. Garland, *Byzantine empresses: women and power in Byzantium, AD 527–1204*, London 1999, 109–11, and S. Tougher, *The reign of Leo VI (886–912): politics and people*, Leiden 1997, 138–40.

⁴⁸ Syntagma, i. 297.

⁴⁹ 'τὸν δὲ ἄνδρα προσέρχεσθαι πρὸς αὐτὴν καὶ κολακεύειν τοῖς λόγοις καὶ παρατίθεσθαι αὐτῇ τράπεζαν καὶ πάντα τρόπον ποιεῖν, ὥστε τὸν πάλαι πόθον ἀνάψαι, χωρὶς μέντοι βίας καὶ χειρῶν ἐπιβολῆς': *Ius graecoromanum*, ed. I. Zepos and P. Zepos, Aalen 1962, vi. 93.

⁵⁰ Similarly, Manuel's Novel 79 on this topic makes no mention of any sexual obligations: *ibid.* i. 426.

husband who cannot exact the debt from his wife rouses her through flattery and promises and incites her to consent to have intercourse with him, he is not said to have exacted the debt.⁵¹

It is likely that in practice Byzantine husbands would have felt that they too could forcefully impose their will upon their wives, but their Church did not openly sanction such behaviour. What we find in the Byzantine canonical commentaries is an expectation that husband and wife will have sex, but not a positive obligation to do so. For example, question 5 of the erotapokriseis of Timothy of Alexandria (d. 385) and Balsamon's comment on it deal with whether a couple should receive communion after they have had sex.⁵² The opposite question is also posed: when should the spouses abstain?⁵³ The expectation here is that outside the times set out for abstinence, husband and wife will have sexual intercourse.⁵⁴ But this is not described as a debt rendered by one spouse and exacted by the other. Rather, husband and wife decide together when to have sex.

The closest the canonists come to talking about a marital debt is in their commentaries on canon 3 of Dionysios of Alexandria. They state that

⁵¹ 'Et debent scire sacerdotes quid sit exigere debitum. Verbum enim exactionis violentiam importat, unde exactores dicuntur qui per violentiam pene vel timoris aliquid extorquent. Si igitur ille qui non potest exigere debitum ab uxore blanditiis et promissis sollicitat uxorem suam et inducit eam ut consentiat ei in concubitu, non dicitur exigere': Thomae de Chobham summa confessorum, 171–2.

⁵² On this genre see Yannis Papadoyannakis, 'Instruction by question and answer: the case of late antique and Byzantine erotapokriseis', in S. E. Johnson (ed.), *Greek literature in late antiquity: dynamism, didacticism, classicism*, Aldershot 2006, 91–105. On Timothy of Alexandria see Ohme, 'Greek canon law to 691/2', 107–8. On Balsamon's comment on question 5 see Syntagma, iv. 334.

⁵³ Zonaras answers that abstinence is required when spouses wish to devote themselves to prayer accompanied by tears and suffering: 'ἀλλ' οὐ περὶ πάσης προσευχῆς ἐνταῦθά φησιν ὁ Ἀπόστολος, περὶ δέ γε τῆς σπουδαιοτέρας, ἣν ἐν δάκρυσι καὶ κακοπαθείαις δεῖ γίνεσθαι.' ('but here the apostle does not speak about any prayer, but about the more earnest type which ought to be accompanied by tears and suffering'): Syntagma, iv. 10.

⁵⁴ The exact time necessary to abstain is not entirely clear. Patriarch Luke Chrysoberges (1157–69/70) decreed in a synod in 1169 that spouses needed to abstain three days before communion: Syntagma, iii. 304. But Balsamon, in an answer to Mark, Patriarch of Alexandria, advocated two rather than three days of abstinence: *ibid.* iv. 456–7.

if abstinence does not take place by mutual consent, the party which does not wish to engage in sexual intercourse completely deprives the party which seeks it; and how can the party which seeks intercourse when it is not granted think that it rules over the body of the party which does not grant [it].⁵⁵

The real power lies with the partner who refuses intercourse. The canon rebalances this by recommending a process of negotiation. The spouse who wants sexual intercourse should not be completely deprived.

There is, however, no evidence that husbands or wives always had to acquiesce to their partner's demands. In fact, if we look at the cases that Apokaukos dealt with, we can see that Byzantine spouses tended to be quite patient with each other.⁵⁶ We read, for example, about abandoned wives who waited years before they asked for divorce. One of them, Eudokia, had been married for ten years to Theodoros, who came to Naupaktos to see her only rarely, making her pregnant and disappearing again, caring little about the sustenance of her and her children. In the last five years Theodoros had disappeared altogether and Eudokia was now asking for divorce. In his description of this case, Apokaukos mentioned that Eudokia was young and beautiful and experienced carnal passions, but made no mention of any marital debt.⁵⁷

He came closer to that in his description of another abandoned wife and her husband, Xiphilinos, where he referred specifically to 1 Cor. vii.3-5:

⁵⁵ 'εἰ γὰρ μὴ ἐκ συμφώνου γίνωιτο ἡ ἀποχή, ἀποστερεῖ πάντως τὸ μὴ βουλόμενον τὴν συνουσίαν μέρος, τὸ ταύτην ἐπιζητοῦν· καὶ πῶς ἂν δόξη ἐξουσιάζειν τοῦ σώματος τοῦ μὴ συγχωροῦντος μέρους, τὸ τὴν συνάφειαν ζητοῦν καὶ μὴ συγχωρούμενον;': *ibid.* iv. 10, 11.

⁵⁶ On Apokaukos and his decisions on marriage see also Michael Angold, 'Η Βυζαντινὴ Εκκλησία καὶ τὰ προβλήματα τοῦ γάμου' ('The Byzantine Church and marital problems'), *Δωδώνη* xvii (1988), 179–94; Spyros Troianos, 'Οἱ Λόγοι Διαζυγίου στο Νομολογιακό Ἔργο τοῦ Ἰωάννου Απόκαυκου' ('Reasons for divorce in the work of John Apokaukos on case law'), *Βυζαντινά* xvi (1991), 43–63; and Evangelos Katerelos, *Die Auflösung der Ehe bei Demetrios Chomatianos und Johannes Apokaukos*, Freiburg 1991, 187–227.

⁵⁷ S. Pétridès, 'Jean Apokaukos: lettres et autres documents inédits', *Izvestija Russkogo Archeologiceskogo Instituta v Konstantinopole* xiv (1909), no. 29.

[...] Xiphilinos did not have sexual intercourse with her, did not live with her, did not even visit her. And the Apostle teaches [us] that spouses should not deprive each other, unless by common consent. It is evident that for this reason a man marries a woman, so that he may produce children for the succession of his line, and so that they can help each other against the abuses of the flesh and so that they may not fall into fornication. For why else would He have created woman as a helpmeet to man, and would consider her to be his own member [μέλος], following Paul's teaching? But when for so many years [ἐπί τοσούτοις ἔτεσιν] the husband neither has intercourse with his own wife nor provides for her food and clothing, fornication is given free reign entirely because of the husband's fault and the husband becomes most responsible.⁵⁸

Apokaukos acknowledges the husband's obligation to have sexual intercourse with his wife, both in order to produce children and to protect her and himself against adultery. He does not, however, use the vocabulary of 'debt'; rather, when talking about μέλος, he refers to Paul's instruction (Eph. v.28) that husbands ought to love their wives as their own bodies.⁵⁹ Importantly, we can see here the different time frame within which intercourse was expected to take place in a

⁵⁸ '[...] ὁ Ξιφιλῖνος μὴ συνελθὼν αὐτῇ, μηδὲ συνοικήσας, μηδὲ ταύτην ἐπισκεψάμενος· καὶ ὁ μὲν Ἀπόστολος διδάσκει, μὴ ἀποστερεῖν ἀλλήλους τοὺς συναφθέντας, εἰ μὴ τι ἂν ἐκ συμφώνου. δῆλον δέ, ὡς διὰ τοῦτο ἀνὴρ συνάπτεται γυναικί, ἵνα καὶ παῖδας ἀπογεννήσῃ πρὸς τὴν τοῦ γένους διαδοχὴν καὶ πρὸς τὰς τῆς σαρκὸς ἐπιηρείας ἀντιβοηθῶσιν ἀλλήλοις καὶ μὴ πρὸς πορνείας ἐκπίπτουσιν. τί γὰρ ἄλλο βούλεται τὸ πλασθῆναι τὴν γυκαῖκα βοηθὸν τῷ ἀνδρί, καὶ τοῦτον ὡς οἰκεῖον μέλος ταύτην λογίζεσθαι, κατὰ τὴν τοῦ Παύλου διδασκαλίαν; ἔνθα δὲ ἐπὶ τοσούτοις ἔτεσιν οὔτε πρὸς τὴν ἑαυτοῦ γυναῖκα εἰσέρχεται ὁ ἀνὴρ, οὔτε ταύτης ἐπιμελεῖται τὰ εἰς τροφήν, τὰ εἰς περιβλήματα, ἐκεῖσε πάντως παρὰ τὴν τοῦ ἀνδρὸς αἰτίαν καὶ πορνεία παρρησιάζεται καὶ τὸ πλεῖστον ὑπὸ εὐθύνην γίνεται ὁ ἀνὴρ.' : Bees, 'Johannes Apokaukos', no. 28.

⁵⁹ Although the wording of Ephesians v.28 refers to the wife as σῶμα rather than μέλος ('Οὕτως ὀφείλουσι, φησίν, οἱ ἄνδρες ἀγαπᾶν τὰς ἑαυτῶν γυναῖκας, ὡς τὰ ἑαυτῶν σώματα' ('Men, he says, should love their wives just like their own bodies')), the reference to this verse here is clear. For example, Chrysostom, in his commentary on the Epistle to the Ephesians says 'ἡ ἀγαπῶσα φοβεῖται ὡς κεφαλὴν καὶ ἀγαπᾷ ὡς μέλος, ἐπεὶ καὶ ἡ κεφαλὴ μέλος τοῦ παντός ἐστὶ σώματος' ('she who loves, fears him as being the head, and loves him as being a member, since the head itself is a member of the body at large'): PG lxii. 141.

Byzantine context. Xiphilinos had not had intercourse with Eudokia ‘for so many years’; this is what made this situation truly problematic.

Apokaukos also tells us about couples who remained for years in unconsummated marriages. An unnamed couple waited twelve years before they finally asked to be separated; Anna and Konstantinos Vlassopoulos waited five years; Theodoros Fragopoulos and Euphemia waited seven years.⁶⁰ Indeed, the latter was a case addressed to Apokaukos by one of his suffragan bishops who did not know himself whether seven years was enough time to wait. According to Byzantine law in such cases it would have been enough for the spouses to wait three years before they could ask for divorce.⁶¹ The great amounts of time that the couples in Apokaukos’s cases were willing to wait shows that marital sex was not thought of as something that could be exacted there and then.

The case of Eirene and Konstantinos also falls under this category. The couple had never had sex. This makes their example even more unsuitable as, according to Gratian, the obligation to have sexual intercourse came into being only after consummation.⁶² Konstantinos, then, had never established his right to exact the marital debt. This rule stemmed from Western ideas on the formation of marriage which predicated that physical consummation along with consent was necessary to validate a marital union.⁶³ Even if we were to assume that the Byzantines had a concept of the marital debt, we would need to determine when this concept came into being within marriage – after the blessing of the couple or after consummation? This then is a further reminder that the use of the term

⁶⁰ Pétridès, ‘Jean Apokaukos’, nos 30, 31; Bees, ‘Johannes Apokaukos’, no. 39.

⁶¹ See Syntagma, i. 296–7. No time-frame for waiting before the couple can be separated because of frigidity is given in the West. For Western legislation on impotence and divorce see Brundage, *Law, sex, and Christian society*, 290–2.

⁶² James A. Brundage, ‘Implied consent to intercourse’, in Laiou, *Consent and coercion*, 249.

⁶³ The necessity of consummation was hotly debated in the West during this period. See Brundage, ‘Implied consent’, 246–8. See also Irven M. Resnick, ‘Marriage in medieval culture: consent theory and the case of Joseph and Mary’, *Church History* lxix/2 (2000), 350–71. For some differences between Eastern and Western ideas on the nature of marriage, divorce and remarriage, and mixed marriages see Clarence Gallagher, ‘Marriage in Eastern and Western canon law’, *Law & Justice* clvii (2006), 7–16.

‘marital debt’ cannot be borrowed from the West and applied to the East in an uncomplicated way.

A necessary debt?

One reason why the concept of the marital debt did not develop in Byzantium is that Byzantine ecclesiastics had less use for it compared to their Western counterparts. In both societies the Church would have wanted to encourage married couples to engage in sexual intercourse in order to avoid extra-marital affairs. In the West, however, there was an extra incentive. As James Brundage has argued, the need for a sophisticated system of rendering and exacting arose out of the moral scruples that medieval canon lawyers showed regarding sexual pleasure.⁶⁴ Following Augustine, Western ecclesiastics believed that in the postlapsarian state sexual intercourse, even within marriage, was always accompanied by concupiscence. Three goods of marriage were recognised: sexual fidelity, procreation of offspring, and indissolubility (‘bonum fidei, prolis et sacramenti’).⁶⁵ The marital debt was linked to the first of them. Yet, this did not automatically render sexual relations within marriage blameless. The level of sin depended on several factors, such as the time, place and manner of sexual intercourse. It would be worse for example for a spouse to exact or render their debt during Lent, in a sanctified place, or choosing an unusual coital position.⁶⁶ The views of canon lawyers were generally stricter than those of theologians, as most of the latter considered sex for procreation and rendering the debt sinless

⁶⁴ James A. Brundage, ‘Sexual equality in medieval canon law’, in Joel T. Rosenthal (ed.), *Medieval women and the sources of medieval history*, Athens, GA 1990, 69.

⁶⁵ St Augustine, ‘De genesi ad litteram’, lib. 9, cap. 7, PL xxxiv.397. For more on Augustine’s views on sexuality see David G. Hunter, ‘Augustinian pessimism? A new look at Augustine’s teaching on sex, marriage and celibacy’, *Augustinian Studies* xxv (1994), 153–77, and Peter Brown, ‘Sexuality and society in the fifth century AD: Augustine and Julian of Eclanum’, in E. Gabba (ed), *Triacorda: scritti in onore di Arnaldo Momigliano*, Como 1983, 49–70.

⁶⁶ Payer, *Bridling of desire*, 98–110; James A. Brundage, ‘Let me count the ways: canonists and theologians contemplate coital positions’, *Journal of Medieval History* x/2 (1984), 81–93.

irrespective of the circumstances in which it occurred.⁶⁷ On the other hand, the Byzantine Church did not have to justify sexual intercourse between spouses. It was not considered sinful, but was sanctified through the sacrament of marriage. Although this is a topic deserving of a separate study, it is worth giving here some examples of how Byzantine ecclesiastics understood marital intercourse.

For John Chrysostom, procreation did not have to be one of the aims of sex amongst spouses:

At the beginning, the procreation of children was desirable, so that each person might leave a memorial of his life ... But now that resurrection is at our gates, and we do not speak of death, but advance toward another life better than the present, the desire for posterity is superfluous ... So there remains only one reason for marriage, to avoid fornication, and the remedy is offered for this purpose.⁶⁸

Chrysostom also defended the purity of the marital bed. There was nothing sinful about engaging in sexual intercourse with your spouse:

How do they become one flesh? As if she were gold receiving the purest of gold, the woman receives the man's seed with rich pleasure, and within her it is nourished, cherished, and refined. I know that my words embarrass many of you, and the reason for your shame is your own wanton licentiousness. 'Let marriage be held in honour among all, and let the marriage bed be undefiled'.⁶⁹

The purity and honour of the marital bed continued to be defended in subsequent centuries. St John Damascene (c. 675–748) encouraged married couples to have sexual intercourse, repeating John Chrysostom's advice in his florilegium of

⁶⁷ Especially on the Parisian theologians, and their rejection of any sin associated with the marital debt, see John W. Baldwin, 'Consent and the marital debt: five discourses in Northern France around 1200', in Laiou, *Consent and coercion*, 261.

⁶⁸ St John Chrysostom: on marriage and family life, 85–6.

⁶⁹ *Ibid.* 76.

biblical and patristic texts: ‘Let each man enjoy his own wife. And he should not feel shame, but should enter and occupy the bedchamber day and night.’⁷⁰

Similarly, Zonaras emphasised the right of spouses to experience sexual pleasure in a treatise against some overly pious monks:

But you, I suppose, will also judge impure the man who has had intercourse with his own wife, when he rises from his bed; and you will not admit him for prayer, but you even close the doors of the temple against him. You will not take into account that it is stated that marriage is honourable and the bed undefiled, but you will condemn the innocent man because in this case too there is emission of sperm, indeed a pleasurable one.⁷¹

One of the main differences, then, between East and West was that in the former marital sex was not viewed as sinful in itself and did not need justification through the marital debt. In the West, it seems that the acceptance of one sin led to the creation of another: spouses sinned when they desired or enjoyed sexual intercourse, but they also sinned if they refused to render it when their partner demanded it. In Byzantium, not having sex with your spouse would only become a sin if it led to their committing adultery. Otherwise, it was not a sin for spouses to have sexual intercourse, as it was not a sin to refuse it. This left more room for a process of negotiation where Paul’s common consent could actually be reached.

We can conclude then that in Byzantium there was an expectation but not necessarily a rigid obligation to engage in marital sex. There was no fixed linguistic concept; there were no sophisticated rules. Spouses were encouraged to enjoy sexual intercourse, which was primarily meant as a means to avoid adultery and preserve chastity. The marital debt did not emerge as a clearly defined concept because there was little need for it. As such, the use of the term in a Byzantine context is misleading.

⁷⁰ “Ἐκαστος ἀπολαυέτω τῆς ἰδίας γυναικός. Καὶ οὐκ αἰσχύνεται, ἀλλ’ εἰσέρχεται, καὶ καθέζεται εἰς τὴν εὐνήν νύκτα καὶ ἡμέραν”: PG xcvi.257.

⁷¹ “Ὑμεῖς δ’ οἶμαι, καὶ τὸν συνευνασθέντα τῇ ἑαυτοῦ γαμετῇ τῆς κοίτης ἐξανιστάμενον, κρινεῖται ἀκάθαρτον, καὶ εἰς προσευχὴν οὐ προσήσεσθε, ἀλλὰ καὶ τὰς τοῦ ναοῦ θύρας τούτω ἐπιζυγώσετε· οὐδ’ ὅτι τίμιος ὁ γάμος εἴρηται, λογιεῖσθε, καὶ ἡ κοίτη ἀμίαντος, ἀλλ’ ὅτι κἀνταῦθα σπέρματος ἐκροή, καὶ μᾶλλον σὺν ἡδονῇ, καταδικάσετε τὸν ἀναίτιον.” See Syntagma, IV, 602.