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Anglo-Norman Canonical Views on Clerical Marriage and the Eastern Church

Maroula Perisanidi¹

Introduction

The Eastern and Western Churches shared much of their conciliar tradition, including both ecumenical and local ancient councils. These formed the basis of the twelfth-century canonical commentaries in Byzantium, while in the West they shaped the law both as authorities in support of newer conciliar decrees and through their inclusion in canonical collections, such as the *Collectio Lanfranci*, Ivo of Chartres' *Decretum*, the *Tripartita*, and the *Panormia*.² Gratian's *Decretum*, the single most important canonistic work of the Middle Ages, quoted almost 200 chapters from Eastern councils, ranging from Nicaea I (325) to Constantinople IV (869-70), including eighteen references to the council in Trullo (691/2) which fixed the rules of clerical marriage for the Orthodox Church.³

¹ This work was kindly funded by a Leverhulme Trust Early Career Fellowship.

² N. Tanner, 'Eastern Influences upon the West: Canonical Evidence from ecumenical and general councils, and some other sources, during the Middle Ages', in *Proceedings Esztergom 2012* 661-668; Nicolas Álvarez de las Asturias, 'The Greek Councils in the *Collectio Lanfranci*', *Proceedings Esztergom 2012* 603-607; Christof Rolker, *Canon Law and the Letters of Ivo Chartres* (Cambridge Cambridge Studies in Medieval Life and Thought, 4th Series 76; Cambridge 2010) 100-151.

³ P. Landau, 'Gratian and the Decretum Gratiani', *The History of Medieval Canon Law in the Classical Period, 1140-1234: From Gratian to the Decretals of Pope Gregory IX*, ed. Wilfried Hartmann and Kenneth Pennington (Washington, D.C. 2008) 26; P. Landau, 'Überlieferung und Bedeutung der Kanones des Trullanischen Konzils im westlichen kanonischen Recht', *The Council in Trullo Revisited*, ed. George Nedungatt and Michael Featherstone (Rome 1995) 215-227 at 216-217, 220-221; Anders Winroth, *The Making of Gratian's Decretum* (Cambridge Studies in Medieval Life and Thought, 4th Series, 49; Cambridge 2000).

This shared tradition meant that long after the last ecumenical council, there was still legal interaction between the Western and Eastern Churches, at least in the minds of the canon lawyers who were confronted with laws advocating practices alien to their own.⁴ In this article, I will focus on one such alien practice - clerical marriage - in the commentaries of two Anglo-Norman decretists, Master Honorius and the author of the *Summa Lipsiensis*.⁵ At the end of the twelfth century, when these commentaries were written, clerical marriage was still a contentious issue in the West. As such, a hostile attitude might be expected, not only towards the practice itself, but also towards the Eastern clergy who still adhered to it.

In what follows, I will argue that these Anglo-Norman decretists referred to the Eastern Church and its married priests much

⁴ It was rare to see participants from the East in Lateran councils. One exception was Lateran III to which Emperor Manuel Komnenos (r. 1143-1180) sent Nektarios, abbot of Casula, as an observer. In Lateran IV, another Byzantine made an appearance in the conciliar list, Theodore of Negroponte, a bishop who had yielded to Latin control after the Fourth Crusade and was there to accompany Gervais, the Latin patriarch of Constantinople (1215–1219). See Raymonde Foreville, *Latran I, II, III et Latran IV* (Paris 1965) 256, 392.

⁵ *Magistri Honorii Summa "De iure canonico tractaturus"*, ed. R. Weigand, P. Landau, W. Kozur, 3 vols. (Vatican City 2004, 2010) hereafter *Magistri Honorii* I for volume 1, and so on. *Summa 'omnis qui iuste iudicat' Sive Lipsiensis*, ed. P. Landau et al., 3 vols. (Vatican City, 2007, 2012, 2014) hereafter *Summa Lipsiensis* I for volume 1, and so on. Master Honorius is believed to have been a native of Kent and might have been a rector of Willesborough from 1184 or 1185. His commentary on Gratian's *Decretum* was written between 1188 and 1190 when he was studying at the Parisian school of canon law. The *Summa Lipsiensis* was completed around 1186 and has been called the most elaborate commentary on Gratian before Huguccio. See S. Kuttner and E. Rathbone, 'Anglo-Norman Canonists of the Twelfth Century', *Traditio*, 7 (1949-51) 279-358 at 304-5 and 295-296. It has recently been suggested that its author was Rodoicus Modicipassus. See P. Landau, 'X. Rodoicus Modicipassus - Verfasser der Summa Lipsiensis?', *ZRG Kan.*, 92:1 (2006) 340-354.

more often than one might expect, given the relative absence of interactions between Byzantium and the Anglo-Norman realm, and that they did so without hostility.⁶ Their references include comments that sprang directly from the text of Gratian that they had in front of them, as well as more imaginative speculations about faraway priests. They accepted clerical marriage in the East as a tradition that was different from their own, but one that was also valid. In their treatment of the Western clergy, they adopted a moderate position. Regarding two of the most important issues of the reform period, Church property was often mentioned, but the question of purity was rather muted. These attitudes towards Eastern and Western clerics and their marriages were likely to have stemmed from the two decretists' understanding (correct or not) of the historical development of clerical marriage, as well as their, perhaps inevitable, focus on the law. On the one hand, they thought that clerical celibacy was a man-made imposition; on the other, their purpose was to explore the limits of the laws, rather than to adopt a polemical stance. Finally, I will contrast this inter-

⁶ The views on clerical marriage of these and many other canonists between the time of Gratian's *Decretum* and Ramón de Peñafort have been studied by Liotta, who discussed in particular the importance of vows, the emergence of the obligation of continence and possibilities for dispensation, as well as sanctions imposed on incontinent clerics. Filippo Liotta, *La continenza dei chierici nel pensiero canonistico classico. Da Graziano a Gregorio IX* (Milan 1971). See also Stickler's synthesis on this topic in Alfons M. Stickler, 'L'évolution de la discipline du célibat dans l'église en occident de l'âge patristique au Concile de Trente', *Sacerdoce et célibat. Études historiques et théologiques*, ed. Joseph Coppens (Gembloux-Louvain 1971) 373-442 at 416-424. For some interactions between England and Byzantium, see J. Shepard, 'The English and Byzantium: a study of their role in the Byzantine army in the later eleventh century', *Traditio* 29 (1973) 53-92; K. N. Ciggaar, *Western Travellers to Constantinople: The West and Byzantium, 962-1204, Cultural and Political Relations* (Leiden 1996) 129-160.

est in the East to the rather indifferent and, if anything, hostile attitude that the twelfth-century Byzantine canon lawyers exhibited towards the marital customs of the West. This study hopes to be a useful addition to Brieskorn's recent article on Western canonical attitudes towards the Eastern Church in the *Liber Extra* (1234) which also noted a rather positive and lenient attitude towards the married clergy in the East.⁷

Rules and Background: West and East

In the West, bishops, priests, deacons, and eventually subdeacons were expected to observe complete sexual abstinence. This had been the theory since at least the late fourth century, when we find the first legislation concerning priests who were still allowed to be married, but were prohibited from having sex with their wives.⁸ A re-iteration of such rules continued periodically and with limited success until the eleventh and twelfth centuries, when the papacy became more able to force Western clergy to play by the rules. In

⁷ Brieskorn found that the Eastern Church came up in three different contexts: (1) when there was discussion of areas in which Greeks and Latins lived next to each other; (2) when there was conflict within the ecclesiastical hierarchy; (3) when rules affected the Greek Church and applied both within the Latin empire and the Patriarchate. When it came specifically to clerical marriage, we find some remarkable laws. In one decretal (X. 5.38.7), Pope Clement III (r. 1187-1191) demanded that Greek priests look after their offspring properly and set strict penance for those whose infants were smothered in the cradle. In another (X. 3.3.6), the sons of Greek clerics born in legitimate matrimony were allowed to join the Western Church, as long as no objection was voiced by the local clergy. See N. Brieskorn, "'Licet Graecos (...)': Wie der Liber Extra die Beziehungen zur griechisch-orthodoxen Kirche regelt", *Proceedings Esztergom 2012* 609-619.

⁸ David G. Hunter, 'Married Clergy in Eastern and Western Christianity', *A Companion to Priesthood and Holy Orders in the Middle Ages*, ed. Greg Peters and C. Colt Anderson (Leiden 2016) 96-139.

this period, celibacy rather than continence was expected and the marriage of clerics in major orders was presented as sinful, polluting, and ultimately invalid.⁹ In some cases, priests, deacons, and subdeacons who refused to separate from their wives were forbidden to celebrate mass and were deprived of their benefices, while the faithful were encouraged to refuse their ministrations.¹⁰ In terms of papal councils, a turning point was reached at Lateran I (1123), which made ordination a diriment impediment to marriage. Previously, there would have been penalties for ordained clerics who chose to take a wife, but their marriage was still considered valid. The same rule was repeated at Lateran II (1139), which also included subdeacons among the list of clergy who needed to be celibate.¹¹ At Lateran IV (1215), Pope Innocent III reaffirmed the Gregorian commitment to celibacy.¹² By the end of the twelfth century, opposing voices on both sides of the English channel were quieting down.¹³ Even those who wished for a relax-

⁹ On the Gregorian reforms and clerical marriage, see U. R. Blumenthal, 'Pope Gregory VII and the Prohibition of Nicolaitism', *Medieval Purity and Piety: Essays on Medieval Clerical Celibacy and Religious Reform*, ed. Michael Frassetto (London 1998) 239–267.

¹⁰ For an early example, see the encyclical letter sent out by Pope Nicholas II to disseminate the canons of the 1059 Synod of Rome, in MGH *Constitutiones et acta publica imperatorum* 1.547.

¹¹ Canon 7 of Lateran II in Foreville, *Latran* 189.

¹² Chapter 14 in Antonio García y García, *Constitutiones Concilii quarti Lateranensis una cum Commentariis glossatorum* (Vatican City 1981) 145.

¹³ B. Meijns, 'Opposition to Clerical Continence and the Gregorian Celibacy Legislation in the Diocese of Thérouanne: Tractatus Pro Clericorum Conubio (c.1077-1078)', *Sacris Erudiri* 47 (2008) 223-290. On eleventh-century polemics, see also Anne L. Barstow, *Married Priests and the Reforming Papacy: The Eleventh Century Debates* (New York 1982); L. Melve, 'The Public Debate on Clerical Marriage in the Late Eleventh Century', *JEH* 61 (2010) 688-

ation of the rules of clerical celibacy were obliged to toe the reformist party line.¹⁴ However, it was by no means the case that clerical marriage was altogether eradicated.¹⁵

In Byzantium, the rules valid in the eleventh and twelfth centuries had been more or less fixed at the council in Trullo (691/2).¹⁶ According to canon 6 of this council, clerics in sacred orders who wished to have a wife needed to get married before their ordination to the subdiaconate.¹⁷ According to canon 13, priests, deacons, and subdeacons were not obliged to make a vow of continence upon their ordination, but were allowed to keep their lawful wives and to continue having sexual intercourse with them at appropriate times.¹⁸ This meant that they were only bound to temporary continence during an unspecified time before service at the altar. Canon 12 decreed that bishops had to observe absolute

706. E. van Houts, 'The Fate of Priests' Sons in Normandy', *The Haskins Society Journal* 25 (2013) 57-105.

¹⁴ J. W. Baldwin, 'A campaign to reduce clerical celibacy at the turn of the twelfth and thirteenth centuries', *Études d'histoire du droit canonique dédiées à Gabriel*, II (Paris 1965) 1041-1053.

¹⁵ C. N. L. Brooke, 'The Gregorian Reform in action: clerical marriage in England, 1050-1200', *Cambridge Historical Journal* 12 (1956) 1-20; J. Barrow, 'Hereford Bishops and Married Clergy c.1130-1240', *Historical Research* 60 (1987) 1-8; B. R. Kemp, 'Hereditary Benefices in the Medieval English Church: A Herefordshire Example', *Bulletin of the Institute of Historical Research* 43 (1970) 1-15. See also Julia Barrow, *The Clergy in the Medieval World* (Cambridge 2015) 115-157.

¹⁶ Constantin Pitsakis, 'Clergé marié et célibat dans la législation du Concile in Trullo: le point de vue oriental', *The Council in Trullo Revisited*, ed. George Nedungatt and Michael Featherstone (Rome 1995) 263-306.

¹⁷ *Discipline générale antique (IIe-IXe s.). Les canons des conciles œcuméniques*, ed. Périclès-Pierre Joannou (Rome 1962) 131-132.

¹⁸ *Les canons des conciles œcuméniques* 140-143.

continence and as such needed to put their wives away in a monastery.¹⁹ Initially, subdeacons had not been explicitly included in the lists of clerics who needed to observe temporary abstinence or who were forbidden to marry.²⁰ In fact, even deacons were at first treated more leniently. Acknowledging the difficulty of deciding for celibacy at a young age, canon 10 of the council of Ancyra (314) allowed deacons to declare during their ordination their wish to marry at a later date.²¹ This practice was prohibited in the sixth century by Emperor Justinian (r. 527-565), but seems to have continued.²² In the late ninth century, Emperor Leo VI (r. 886-912) still had to forbid the custom of *priests* being able to marry within two years of their ordination.²³ Although in the twelfth century we no longer hear any contemporary complaints about this issue in the Byzantine canonical commentaries, the right of Eastern clerics

¹⁹ *Les canons des conciles œcuméniques* 138-139.

²⁰ For example, canons 5 and 17 of the Apostles (c. 380) referred to ‘bishops, priests and deacons’, or to ‘bishops, priests, deacons, and any other of the sacerdotal list’. See *Discipline générale antique (IVe–IXe s.). Les canons des synodes particuliers*, ed. Périclès-Pierre Joannou (Rome 1962) 10, 16. Similarly, the Council of Carthage promulgated three canons on clerical abstinence and two of them omitted any mention of subdeacons. See canons 3, 25, and 70 of Carthage in *Les canons des synodes particuliers* 216-217, 240-241, 312-131. In theory, however, an implicit prohibition to marry after the subdiaconate had been included already in the canons of the Apostles under canon 26 which did not mention subdeacons alongside readers and singers who were given permission to take a wife. See *Les canons des synodes particuliers* 19-20. This was further assumed in Justinian’s civil legislation, but the council in Trullo (691/2) was the first to put it into canon law.

²¹ *Les canons des synodes particuliers* 64.

²² Nov. 123.14.

²³ Nov. 3 in *Les nouvelles de Leon VI le Sage*, ed. P. Noailles and A. Dain (Paris 1944) 18-21.

in major orders to marry was falsely assumed by Western canonists, as we will see in what follows.²⁴

The Eastern Church in Explanations of Ancient Canons

The Eastern Church (*ecclesia orientalis*) often came up in Master Honorius and the *Summa Lipsiensis* as part of discussions of ancient canons that were in favour of clerical marriage. These canons were strange by definition, as they supported a discipline that advocated the opposite of contemporary Western law. As we will see, this strangeness could lead to false assumptions about the Eastern ‘other’, as well as to legal gymnastics aiming to explain away the contradictions. The usual explanations *ex tempore*, *ex loco*, and *ex causa* could have a distancing effect, taking away some of the awkwardness of being faced with a canon that advocated clerical sex, but they did not always work in a straightforward way.²⁵ What is more, sometimes they led to an opposite result: confronted with the description and justification of how things worked in the East and/or the past, both Anglo-Norman decretists could appear remarkably accepting of the Eastern married clergy. That is to say, the strangeness of the canons led not simply to misunderstandings or quick dismissals of a distant condition, but to a frequent and rather amicable engagement with the rules of the East, the common past of the Churches, and their separate development.

²⁴ *Σύνταγμα τῶν θείων καὶ ἱερῶν κανόνων*, ed. G. A. Rhalles and M. Potles, 4 vols. (Athens, 1852–4) hereafter *Syntagma* I for volume 1 and so on. Here *Syntagma* III.39–41.

²⁵ In general there were twelve different ways to explain discordant canons: ‘Hanc autem discrepantiam maxime pariunt duodecim: causa, tempus, locus, persona, rigor, dispensatio, preceptio, prohibitio, consilium, permissio, nouitas, antiquitas.’ *Summa Lipsiensis* I.3.

A common false assumption that cropped up in explanations of ancient canons was that Eastern clerics in major orders could contract marriages. It is difficult to locate where this assumption came from. However we can see it in action in the discussion of canons 6 and 13 of the council in Trullo, which as I have mentioned was crucial in fixing the marital law of the Eastern clergy:

Canon 6 (D. 31 c. 7): Si quis eorum, qui ad clerum accedunt, uoluerit nuptiali iure mulieri copulari, hoc ante ordinem subdiaconatus faciat.

If anyone of those who accede to the clergy wishes to be joined to a wife through marital law [i.e. get married], let him do this before his ordination to the subdiaconate.

Canon 13: (D. 31 c. 13 §2) Si quis igitur presumpserit contra apostolicos canones aliquos presbiterorum, diaconorum priuare a contactu et communione legalis uxoris suæ, deponatur.

If anyone therefore presumes to deprive, against the apostolic canons, any priests or deacons from contact and intercourse with their legal wife, let him be deposed.

According to Master Honorius and the *Summa Lipsiensis*, these canons were to be understood *ex loco* and no longer applied in the West.²⁶ Discussion could therefore have ended at that. Nevertheless the two decretists chose to investigate the topic further. They perceived a contradiction between the two canons. This is a confusion since in fact they refer to two different issues: the first canon talks about the right of clerics to contract marriage before but not after their accession to the subdiaconate; the second refers to continence within marriage and affirms the rights of Eastern priests and deacons to have sexual intercourse with their spouses.

²⁶ ‘intelligi debent hec capitula ex loco’ *Summa Lipsiensis* I.120; ‘in orientali ecclesia; ad occidentalem namque hec sententia non porrigitur, scilicet ad ordinatis uxores habentibus’ *Magistri Honorii* I.109.

This was not, however, the interpretation of the *Summa Lipsiensis*.²⁷ The cause of the confusion was the word ‘copulari’ in canon 6 which can mean both ‘to contract marriage’ and ‘to have sexual intercourse’. I have translated it as ‘to get married’, but the decretist most likely understood ‘nuptiali iure mulieri copulari’ to mean ‘to have sexual intercourse with his wife according to his marital right’.²⁸ With this meaning of ‘copulari’, canon 6 would appear to prohibit Eastern clerics in sacred orders from having sex with their wives, while canon 13 clearly allowed that very thing. This problem did not exist in the original Greek, despite the fact that a similarly ambiguous word was used (συνάπτω). The meaning of the phrase in canon 6, γάμου νόμῳ συνάπτεσθαι γυναικί (‘to be joined with a woman according to the law of marriage’), became obvious from the beginning of the canon, which was not included in the Latin:²⁹

²⁷ ‘deponatur: Sexta sinodus dicit contra in prox. Si quis eorum.’ *Summa Lipsiensis* I.120.

²⁸ He may have been prompted to do this by the use of ‘copulantur uxoribus’ in the beginning of canon 13 of Trullo (D. 31 c. 13): ‘Quoniam in Romani ordine canonis esse traditum cognouimus, eos, qui ordinati sunt diaconi uel presbiteri, confiteri, quod iam non suis copulentur uxoribus [...]’, ‘Because we recognise that in the order of the Roman canon it is handed down that those who have been ordained deacons or priests profess that they will no longer have intercourse with their wives [...]’. Here ‘suis ... uxoribus’ makes it clear that we are not talking about contracting marriage.

²⁹ ‘Ἐπειδὴ παρὰ τοῖς ἀποστολικοῖς κανόσιν εὐρηται, ‘τῶν εἰς κληρον προαγομένων ἀγάμων, μόνους ἀναγνώστας καὶ ψάλτας γαμεῖν,’ καὶ ἡμεῖς τοῦτο παραφυλάττοντες, ὀρίζομεν ἀπὸ τοῦ νῦν μηδαμῶς ὑποδιάκονον ἢ διάκονον ἢ πρεσβύτερον μετὰ τὴν ἐπ’ αὐτῷ προερχομένην χειροτονίαν, ἔχειν ἄδειαν, γαμικὸν ἑαυτῷ συνιστᾶν συνοικέσιον· εἰ δὲ τοῦτο τολμήσοι ποιῆσαι, καθαιρείσθω.’ The canon continues ‘Εἰ δὲ βούλοῖτό τις τῶν εἰς κληρον προερχομένων γάμου νόμῳ συνάπτεσθαι γυναικί, πρὸ τῆς τοῦ ὑποδιακόνου ἢ διακόνου ἢ πρεσβυτέρου χειροτονίας τοῦτο πραττέτω.’ See *Les canons des conciles œcuméniques* 131-132.

Since one finds in the apostolic canons that of those who are advanced to the clergy unmarried, only readers and singers are able to marry, we also, maintaining this, determine that henceforth it is in no wise lawful for any subdeacon, deacon or presbyter after his ordination to contract matrimony, but if he should dare to do so, let him be deposed.

Canon 6 clearly referred to contracting marriage, not marital intercourse. There was no contradiction between the two canons, but the author of the *Summa Lipsiensis* had reasons to think there was, given the abbreviated text he had to work with.

Master Honorius had the same problem. When commenting on canon 6 of Trullo (D. 32 c. 7) he asked ‘But is it not the case that the sixth synod elsewhere prohibits that continence may be imposed?’ The answer is ‘yes’ and the reader is pointed towards canon 13 of Trullo (D. 31 c. 13).³⁰ The word ‘continence’ (*continentia*) makes it clear that, like the author of the *Summa Lipsiensis*, Master Honorius understood ‘copulari’ in canon 6 of Trullo as referring to having sexual intercourse, not contracting marriage. This meant that both the *Summa Lipsiensis* and Master Honorius missed the point that Eastern clerics were not allowed to marry after their ordination to the subdiaconate.³¹

In terms of how the two decretists resolved the apparent contradiction, we know from their comments elsewhere that, for

³⁰ ‘Set num vi. sinodus alias prohibet ne indicatur continentia? Resp.: Sic, ut di.xxxi. Quoniam.’ *Magistri Honorii* I.114.

³¹ The same confusion over the meaning of ‘copulari’ can be found over another set of canons: D. 31 c. 14 and D. 32 c. 7. In this case, Master Honorius understands the verb to mean ‘contract marriage’ on both occasions, thus again creating a contradiction. This contradiction dissolves if we understand the verb to mean ‘contract marriage’ in one case and ‘have intercourse’ in the other. ‘*Aliter* etc: Ex hoc capitulo etiam habetur ordinatos posse contrahere, quod tamen ibi dicitur non fieri, arg. di. prox. Si quis eorum.’ *Magistri Honorii* I.109.

all their misunderstanding about when Eastern clerics could contract marriage, they were perfectly aware of their right to have sexual intercourse with their wives and abstain from them only temporarily.³² So in their eyes the contradiction was resolved in favour of canon 13 of Trullo. How then did they explain the existence of canon 6? They suggested that the contradictory canons only *appeared* to be part of the same council.³³ This was possible in the case of the council in Trullo because of its rather complicated history. The two decretists knew from Gratian (D. 16 cc. 6, 7) that the ‘sixth council’ was convened in two parts, first by emperor Constantine IV (r. 668-685) in 680/1 and then a few years later by his son Justinian II (r. 685-95, 705-11). Yet, they also knew that the first session did not produce any canons and all 102 canons came from the second session. Master Honorius argued that there were in fact three councils: the first only condemned some heretics; the second promulgated 102 canons; the third promulgated some extra canons for the heretics that the first council had condemned. Although we are told that this information comes *ex cronicis*, it is a fanciful reconstruction of what happened at the council in Trullo.³⁴ Master Honorius further went on to report a contemporary speculation about the existence of another

³² See for example *Summa Lipsiensis* I.99.

³³ ‘Set due erant sinodi, quarum utraque sexta dicebatur, ut d. xvi. Habeo. Vel respectum habuit sexta sinodus ad loca diuersa et secundum hoc diuersas dedit sententias.’ *Summa Lipsiensis* I.120. ‘Set cum non nisi eadem vi. dici possit, quia non nisi una sexta, scilicet qui media fuit celebrata, condidit canones de ecclesiastica institutione, ut contra di.xvi. Habeo.’ *Magistri Honorii* I.114.

³⁴ ‘Vnde dici potest sicut ex cronicis habetur, quod cum fuit celebrata primo sub patre, et tantum dampnauerunt hereticos et nullos fecerunt canones, postmodum idem patres iterum conuenerunt sub filio, et condiderunt canones centum et duos. [...] Post ad suggestionem Iustiniani, ne sinodus habita sub patre sine nomine remaneret, conuenerunt iterum tertio et condiderunt canones de fide contra monotelitas, et primo habitam sinodum confirmauerunt.’ *Magistri*

emperor also named Justinian, who would be the father of Constantine IV and who would have convened the first of the three councils.³⁵

Such reconstructions show the creative interpretations that the two decretists could produce in order to reach legal concord, but are also a sign of their interest in the Eastern past. A similar example comes from the commentary on the council of Ancyra (314), where the same misconception, that Eastern clerics can contract marriages after their ordination to the subdiaconate, led Master Honorius to argue that parts of the same canon referred to two different Churches, East and West, without explicitly stating so. Canon 10 of the council of Ancyra (D. 28 c. 8) decreed:³⁶

(1) Any who are ordained deacons, if they protested during their ordination, saying that they wanted to take wives and that they were unable to observe continence, and if they have since married, are to continue in their ministry, because the bishop gave them licence to do so.

(2) Any however who are silent and receive the imposition of hands professing continence, if they afterwards proceed to marriage, these shall cease from the ministry.

Honorii I.50. A somewhat different explanation was given in *Summa Lipsiensis* I.50. For background on the council of Trullo, see Michael T. G. Humphreys, *Law, Power, and Imperial Ideology in the Iconoclast Era, C.680-850* (Oxford 2014) 39-80.

³⁵ 'Dicunt enim quidam patrem Constantini fuisse Iustinianum, sub quo conuentum in prima que fuit quinta, sub isto Constantino sexta, sub Iustiniano Constantini filio ultima, que septima dicitur.' *Magistri Honorii* I.51. Constantine IV's father was Constans II (r. 641-668).

³⁶ D. 28 c. 8: 'Diaconi quicumque ordinantur, si in ipsa ordinatione protestati sunt, dicentes, se uelle habere uxores, nec posse se continere, hi, si postea ad nuptias uenerint, maneant in ministerio, propterea quod his licentiam dederit episcopus. Quicumque sane tacuerint, et susceperint manus inpositionem professi continentiam, si postea ad nuptias conuenerint, a ministerio cessare debent.'

Master Honorius claimed that the canon could be understood *ex loco*, with part 2 referring to the Western Church, and part 1 referring to the Eastern Church assuming that the words ‘protested’ and ‘licence’ were superfluous (*ex habundanti*). These qualifications were necessary because, according to the decretist, in the Eastern Church a tacit vow would not lead to an obligation of continence (2), nor were any protestations or licence necessary (1).³⁷ Alternatively, Master Honorius suggested that the whole canon could have been addressed to the Eastern Church; but if so, we would need to accept that the second part referred to clerics who after their ordination took an explicit vow of continence, completely independent of that ordination.³⁸ Again here it is Master Honorius’ assumption that ordained clerics were allowed to marry that makes this later explicit vow necessary.

In addition to this rather contrived explanation *ex loco*, Master Honorius suggested that the canon could be understood *ex tempore*, but pointed out problems about its chronology: ‘it is asked whether at the time of that council continence had been introduced or not’.³⁹ The *Summa Lipsiensis* raised the same issue and focused in particular on the part of the canon allowing a bishop to give a deacon licence for a later marriage. The decretist made clear that this was not the case at his time, as bishops no longer

³⁷ ‘uel dicas esse locale ut principium referatur ad orientalem et ex habundanti dicitur *protestati, licentiam*, quia sine omni protestatione possunt contrahere, finis ad occidentalem.’ *Magistri Honorii* I.101.

³⁸ ‘Vel totum legatur secundum orientalis ecclesie statum et dicatur *professi* expressim, scilicet post ordinationem.’ *Magistri Honorii* I.101.

³⁹ ‘Queritur utrum tempore illius concilii introducta erat continentia uel non.’ *Magistri Honorii* I.101.

had the power to give licence even to subdeacons to contract marriage.⁴⁰ He then went on to ask how a bishop could ‘dispense’ someone from a vow in the first place: if continence had been decreed for the diaconate as an order, a simple bishop would not have the power to dispense individual cases; if continence had not yet been decreed, no dispensation would be necessary, nor would there be need to protest explicitly.⁴¹ Neither of the two decretists, therefore, knew whether at the date of the council of Ancyra clerical continence was already a requirement.⁴² Such problems of chronology were common, and complicated their efforts to understand the history of both their own and the Eastern Church’s discipline.

Yet, their inquisitive legal minds meant that such problems did not just cloud their view of the East, but also encouraged them to further reflect upon it. There are some instances where this reflection revealed a surprisingly conciliatory attitude towards the Eastern rules. One such example comes from the commentary on canon 4 of the council of Gangra (340) (D. 28 c. 15) which anathematised those who refused to partake of the eucharist offered by

⁴⁰ ‘Hodie non posset aliquis episcopus licentiam dare ut subdiaconus contraheret, ut dicitur in illo c. De illo.’ *Summa Lipsiensis* I.104.

⁴¹ ‘Item queri solet quomodo episcopus iste potuit dispensare contra uotum, quia si erat recepta continentia in diaconis, non poterat dispensare, si non erat recepta, non erat opus dispensatione nec sibi preiudicassent ex taciturnitate.’ *Summa Lipsiensis* I.104-5.

⁴² Elsewhere, however, he cites this law as an example of a rule that was acceptable at a time when the prohibition of marriage was still recent and the Christian faith new. ‘Quidam excusant Petrum dicentes quod, licet precepta legalia eo tempore prohibita fuerant, tamen, quia recens erat prohibitio et nouelli erant in fide, dispensare potuit Petrus; arg. supra xxviii d. Diaconus (D. 28 c. 8)’ *Summa Lipsiensis* II.175.

a married priest.⁴³ The *Summa Lipsiensis* explained this canon *ex causa*: at the time of its promulgation there was a particular need for it, because of the heresy of the Manicheans who despised marriage.⁴⁴ Presumably, when that cause disappeared, with it disappeared also the need for the rule.⁴⁵ This kind of explanation of a canon valuing the work of married priests was likely to favourably dispose Western canonists towards the discipline of the East. The heretics here are those who are against marriage not the married priests themselves. Indeed, the author of the *Summa Lipsiensis* cited canon 4 of Gangra to explain a chapter from the *Decretum* (D. 23 c. 2) which asked for candidates to the episcopacy to be men who do not prohibit lay marriage, on the grounds that it was

⁴³ Master Honorius skips canon 4 of Gangra in his comments of this distinction and does not cross-reference it anywhere else in his commentary. *Magistri Honorii* III.156.

⁴⁴ ‘pr. *Illud*: Determinat illud capitulum supra Si quis docuerit et illud Si quis discernit dicens illa debere intelligi ex causa. Supponit autem multa decreta, in quibus ostendit plurimas hereticorum superstitiones et eas elidit. Omnia autem ista capitula Gangrensis concilii ex causa debent intelligi propter heresim Manicheorum, qui nuptias condempnabant et alia reprobanda probabant.’ *Summa Lipsiensis* I.112. ‘p.c.7 *Quod autem* usque *illud*: Superius dictum supra d. prox. Si quis docuerit et Si quis discernit, quod non sunt reprehendende sacerdotum nuptie. Hoc causa Manicheorum fuit institutum, qui nuptias uituperabant.’ *Summa Lipsiensis* I.118. The author of the *Summa Lipsiensis* gave also an alternative interpretation: this canon could apply to clerics who married before ordination and who observe continence with their wives. ‘*Si quis* usque *docuerit*: quod faciebant Manichei. Hoc capitulum et sequens loquitur de illis sacerdotibus qui, habentes uxores quas prius duxerant, earum copula non utebantur; uel secundum primitiuam ecclesiam, uel secundum orientalem loquitur.’ *Summa Lipsiensis* I.109.

⁴⁵ The heresy of the Manicheans comes up several times in Gratian’s *Decretum*. The author of the *Summa Lipsiensis* does not discuss it in detail and would not necessarily have had a more in depth knowledge of it, putting aside what he read in Gratian. Indeed, the suggestion that the canon should be understood *ex causa* was already present in Gratian (D. 30 pr.).

‘heretics who used to say that no one with a wife is saved’.⁴⁶ This normalises clerical marriage by reapplying a dictum about it to lay marriage.

Immediately afterwards the author of the *Summa Lipsiensis* adds a second citation from early legal thinking about clerical marriage to support lay marriage, stating that ‘marital intercourse is chastity’. This makes direct reference to the story of Paphnoutios from the council of Nicaea (325). Although this council did not promulgate canons on the question of clerical marriage, it is the stage for an anecdote which made an influential contribution to the topic. According to this, the council of Nicaea was about to impose continence on bishops, priests, and deacons before the intervention of an unmarried ascetic, Paphnoutios, who insisted on the sanctity of marriage and the dangers of fornication, and persuaded the council to allow clerics to continue having sexual intercourse with their wives. This story, which is now widely accepted as fiction, was first recorded in the fifth-century history of Socrates Scholasticus, but circulated in the West through the *Historia Tripartita* produced for Cassiodorus.⁴⁷ Both Master

⁴⁶ ‘*si nuptias non prohibeat: ut heretici qui dicebant neminem cum uxore saluari, ut d. xxviii. Si quis discernit, cum castitas sit concubitus coniugalis, ut d. xxxi. Nicena.*’ *Summa Lipsiensis* I.78.

⁴⁷ See Socrates Scholasticus’ *Church History* 1.11 in PG 67.102-4. For the inauthenticity of the story of Paphnoutios’ intervention, see F. Winkelmann, ‘Paphnutios, Der Bekenner und Bischof’, *Probleme der koptischen Literatur*, ed. P. Nagel (Halle 1968) 145-153. See also Roman Cholij, *Clerical Celibacy in East and West* (Leominster 1988) 85-92. The story enjoyed some popularity as part of the polemical literature of the Gregorian period. See L. Melve, ‘The Public Debate on Clerical Marriage in the Late Eleventh Century’, *JEH* 61 (2010) 688-706. It was condemned a year or so later by Gregory VII at a synod in 1079, but was ultimately included in Gratian’s *Decretum* (D. 31 c. 12). Surprisingly, it did not enjoy a similar popularity in the East. The council

Honorius and the author of the *Summa Lipsiensis* accepted the authenticity of this anecdote.⁴⁸

Two points of interest emerge from their commentaries. The first involves the definition of ‘castitas’ within Paphnoutios’ story. He claimed that to have sexual intercourse with one’s own wife is chastity (*castitatem dicens esse cum propria coniuge concubitum*). In their comments, both decretists accepted the possibility that sex within marriage can be called chaste, even though it is *clerical* marriage that is in question here. According to the *Summa Lipsiensis* sexual intercourse is not blameworthy when it is done for the procreation of children or for the rendering of the marital debt.⁴⁹ Master Honorius adds sexual intercourse motivated by the wish to avoid adultery, and states that it would be a sin if the spouses were only motivated by lust.⁵⁰ Both decretists apply here

in Trullo made no reference to this account, nor did the twelfth-century canonical commentators. We find the first later reference to it in 1335 in Matthaios Blastares’ *Syntagma* IV.152-153.

⁴⁸ The two decretists were not uncritical about authenticity. For example, both knew from Gratian that the Western Church accepted the canons of the Apostles (c. 380) only in part; they were not made by the apostles themselves and were apocryphal texts: *Magistri Honorii* I.114; *Summa Lipsiensis* I.126. The most controversial apostolic canon in terms of marriage included in the *Decretum* was canon 5 (D. 28 c. 14) which anathematised those who taught priests to despise their wives. Master Honorius simply skipped this canon altogether and did not cross-reference it anywhere else in his commentary: *Magistri Honorii* III.156. The *Summa Lipsiensis* paired it up with canon 4 of Gangra and treated it *ex causa*: *Summa Lipsiensis* I.112.

⁴⁹ ‘*castitatem*: idest quiddam simile castitati, ne sit in xxvii. q. i. Nuptiarum contra. Et talis castitas est in concubitu coniugatorum, ut si fiat causa prolis commixtio illa, ut d. xiii. Nerui, uel si exactus reddat debitum, ut xxxiii. q. v. Si dicat.’ *Summa Lipsiensis* I.120.

⁵⁰ ‘*Nicena castitatum*: Idest cum castitate fieri, quod tunc est uerum cum fit ab exacto, ut xxxii. Q.v. c.i. Sic quando fit causa prolis, ut di.xiii. Nerui, quando enim causa uitande fornicationis, ut supra di.xxv. Qualis. Secus si causa libidinis, ut xxxii. Q.iiii. Origo.’ *Magistri Honorii* I.109. Master Honorius repeats this definition of chastity elsewhere: ‘Vel distinguitur sic: Si

to the Eastern clergy their own ideas of sexual morality and borrow these from their criteria for *lay* marriage. Although these are different from the definition we would find in Byzantium, their willingness to accept that marital sex in the case of clerics can be redeemed is a remarkable example of their lack of hostility towards the Eastern Church and its tradition.

The second point of interest involves the two decretists' justification of their own practice in relation to the Paphnoutios story which supported clerical marriage and sex within it. The *Summa Lipsiensis* acknowledged the great importance of the council of Nicaea, insisting that it had the same authority as the four gospels. To explain the departure from it, he latched on to the wording of the story in Gratian's *Decretum*: 'Nicena sinodus uolens corrigere uitam hominum in ecclesiis commorantium, *posuit leges*', 'The Nicene synod, wanting to correct the life of ecclesiastics, *proposed laws*'. The council only proposed (*posuit*) but did not fix (*statuit*) the laws.⁵¹ This meant that later generations of ecclesiastics could change them. Master Honorius also justified the Western Church's change of attitude since Paphnoutios, by taking advantage of the difference between 'permissio', 'preceptum', and 'prohibitio'. Asking whether it was allowed for the Western Church to introduce continence, he argued that it was, because while one may not go against a precept or a prohibition, one does not need to exercise the right afforded by a permission.⁵² Both decretists, then, accepted the practice of clerical celibacy as

quis diaconus cum uxore incontinens inuenitur, cum alia scilicet quia cum propria esse castitate, ut et adulter enim in orientali ecclesia deponitur.' See *Magistri Honorii* I.159.

⁵¹ '*Nicena* usque *posuit*: non tamen *statuit*, quia si hoc factum esset, non posset fieri contra, quia comparatur hoc concilium quattuor euangeliiis' *Summa Lipsiensis* I.119.

⁵² '*permisit*: Num contra hanc permissionem licitum fuit introducere? Sic, ut dictum est supra de indulgentia Apostoli di.xxviii. De hiis.' 'Set num liceret contra Apostolum introducere quod connexa esset continentia? Resp: Sic contra permissionem, quod contra perceptum uel prohibitionem non liceret.' *Magistri Honorii* I.109, 100.

an innovation of the Western Church, and justified its validity in legal terms.

This accepting attitude towards Eastern married clerics was most likely conditioned by the two decretists' understanding of the historical development of clerical celibacy in East and West. They believed that Western celibacy had not always been the rule and that it was progressively introduced by the papacy at different times for different grades.⁵³ This was clearly stated in the *Summa Lipsiensis*:⁵⁴

In summary, it ought to be known that in the past it used to be the case, and it is now still observed in the Eastern Church, that clerics in sacred orders could lawfully contract marriages and did not cease from their ministry because of this, provided however that they abstained from marital intercourse during times of service. Later on, continence was received in the Western Church among the priests, as we see in D. 28 c. 6. After a while after abstinence became more and more pleasing, continence was received among deacons, as we see in D. 28 c. 7. Then with chastity flourishing, the third grade of the subdeacons was added, as we see in D. 32 cc. 11, 14.

The Eastern Church was following a different, more ancient, tradition.

The Travelling Priest and Other Questions about the East

On all of the occasions we have so far examined, the reflections of the two decretists on the Eastern Church were prompted by the

⁵³ Liotta has shown the similarities on this topic between the views of the *Summa Lipsiensis* and Rufinus. See Liotta, *La continenza dei chierici* 158.

⁵⁴ 'In summa autem est sciendum quod olim ita erat et adhuc in orientali ecclesia observatur, quod licite matrimonium poterant contrahere in sacris ordinibus positi nec propterea a ministerio cessabant, dum tamen tempore quo ministrabant a coniugali officio cessarent. Post in occidentali ecclesia recepta est continentia in presbyteris, ut infra d. prox. c. Assumi. Postmodum cum magis ac magis placuisset castimonia, recepta est continentia in diaconis, ut infra d. prox. Preterea. Deinde florente castitate tertius gradus adiunctus est subdiaconorum, ut infra d. prox. Nullus.' *Summa Lipsiensis* I.99.

text in front of them, as they were trying to make sense of contradictions one distinction at a time. Their comments, far from turning a blind eye to laws that did not apply to them, are often particularly full, partly because explanations *ex loco, tempore, and causa* did not always work easily. However, the inquiries of Master Honorius and the author of the *Summa Lipsiensis* went beyond responding to prompts and led them to ask imaginative questions about far away Eastern clerics. What would happen if a cleric from the West were to move to the East or vice versa? Would he have to follow the rule of his mother Church or would he need to adapt to the rules of his new environment?

Such questions appear in a number of commentaries on Gratian's *Decretum* and are introduced by the phrases 'queritur' (it is asked), or 'queri solet' (it is often asked), which indicate that they were part of the *quaestiones decretales*. This subgenre of legal writing dealt with particular scenarios which could be fictional or real and were often used to clarify contradictions in the sources.⁵⁵

Rufinus, one of the sources of the Anglo-Norman decretists, writing around 1164, had briefly dealt with the question of the travelling cleric in his comments on canon 70 of the council of Carthage, which asked bishops, priests, deacons, and subdeacons to abstain from sexual intercourse in accordance with previously established law (*priora instituta*), but allowed all other clerics to

⁵⁵ See Kenneth Pennington and Wolfgang P. Müller, 'The Decretists: The Italian School', *The History of Medieval Canon Law in the Classical Period, 1140-1234: From Gratian to the Decretals of Pope Gregory IX*, ed. Wilfried Hartmann and Kenneth Pennington (Washington, D.C. 2008) 164-166. On Master Honorius and his particular use of this genre, see Kuttner and Rathbone, 'Anglo-Norman Canonists of the Twelfth Century' 311-313.

follow the custom of their own church.⁵⁶ In his commentary, Rufinus started with a more local example concerning readers and acolytes who moved from a church which had a long custom of celibacy in minor orders to one which permitted marriage. Would they be allowed to take a wife? The answer is ‘yes’, but they would be advised to do so after some time had passed, in case they seemed like ‘indecorous enthusiasts’ for marriage.⁵⁷ Rufinus hastens to point out, however, that the answer would be entirely different in the case of subdeacons who travelled to the Eastern Church. Unlike acolytes, they would not be allowed to marry because a vow of continence was annexed to their ordination to the subdiaconate.⁵⁸

This reasoning is premised upon the assumption that Eastern subdeacons were allowed to contract marriages, which is also

⁵⁶ In the Greek version the equivalent of ‘secundum priora statuta’ is ‘κατὰ τοὺς ἰδίους ὅρους’ which is taken by the twelfth-century Byzantine commentators to mean according to their liturgical schedule. As such, in the Byzantine Church, this canon is compatible with temporary continence of clerics in sacred orders. See Joannou, *Les canons des conciles œcuméniques* 312; *Syn-tagma* III.482-484. Here the difference between East and West had been introduced early on, already at the level of the text of the canon, rather than the level of the commentary.

⁵⁷ ‘Querit solet, si predictum clericum contigat in aliam provinciam transire, que in minoribus ordinibus continentiam non receperti, ibique habiturus sit, an tunc uxorem accipere possit? Et dicimus quod, cum primum ierit, hoc attentare protinus non debet, ne nuptiarum importunus appetitor esse videatur, sed procurrente tempore irreprehensibiliter uxorem suo matrimonio consociabit.’ *Die Summa decretorum der Magister Rufinus*, ed. H. Singer (Paderborn 1902) 75-76. On Rufinus, see also R. Deutinger, ‘The Decretist Rufinus - a Well-known Person?’, *BMCL* 23 (1999) 10-15.

⁵⁸ ‘Sed obicitur quia equo modo de subdiacono dicendum erit, ut si ab occidentali ecclesia, ubi subdiaconi continent, in orientalem ecclesiam habiturus venerit, nuptias contrahere valebit. Sed secus in subdiacono quam in acolito discernendum est; subdiaconus namque votum etsi non expressum vel tacitum facit, dum annexum votum suscipit: quod utique in acolito notari nullatenus potest.’ *Magister Rufinus* 76.

followed by the author of the *Summa Lipsiensis* and Master Honorius who pick up where Rufinus left off with this question by focusing on clergy in sacred orders.⁵⁹ Master Honorius started with the following question: ‘It is asked, if an Eastern priest were to come here with his wife, would he be able to minister?’. The answer is ‘no’, because such a thing would cause scandal for the rest of the clergy; it was only if the priest was willing to abstain from sexual intercourse that he would be allowed to serve the Church. But such a decision depended not only on him, but also on his wife.⁶⁰ Master Honorius was here making a reference to the marital debt, which meant that spouses were to have sex with each other on demand and could not unilaterally decide to abstain.⁶¹ He continued to ask whether a Western cleric who went to the East would be allowed to get married following local custom. The answer was again in favour of continence, which ‘surpasses the custom of that Church’.⁶²

The question of custom also came up in the comment of the author of the *Summa Lipsiensis* on the same topic. He argued that the custom of the Church to which a cleric had come was to take precedence. The example he gave to support this came from

⁵⁹ Although this seems like a more far-fetched scenario when it comes to the Anglo-Norman realm, it would not have been that strange in Italy to find priests moving between areas of Roman and Byzantine control.

⁶⁰ ‘Queritur si sacerdos orientalis cum uxore huc uenerit, an possit ministrare? Resp.: Non, quia scandalum pararet, nisi uelit continere, quod tamen non potest nisi uxor consentiat.’ *Magistri Honorii* I.109.

⁶¹ On the marital debt, see John W. Baldwin, ‘Consent and the marital debt: five discourses in Northern France around 1200’, *Consent and Coercion to Sex and Marriage in Ancient and Medieval Societies*, ed. A. Laiou (Washington, DC. 1993) 257-270; E. M. Makowski, ‘The conjugal debt and medieval canon law’, *Journal of Medieval History* 3 (1997) 99-114.

⁶² ‘Set quid si noster presbiter illuc transiret? Resp.: Necessesse haberi continere, quia consuetudinem illius ecclesie preuenit.’ *Magistri Honorii* I.109.

advice that Ambrose (c.339-397) gave to Augustine, when the latter was living in Milan with his mother, St Monica.⁶³ The Romans used to fast on Saturdays, but the Milanese did not. The discrepancy bothered Monica, so Augustine turned to Ambrose, who stated that when he visited Rome, he fasted on Saturday, when he was in Milan he did not. The ‘When in Rome’ principle was to observe the custom prevailing in the Church you came to in order not to give offence with your conduct. For the author of the *Summa Lipsiensis* this applied to clerical marriage as it applied to fasting, showing that he considered both to be questions of custom rather than doctrine. In the opposite case, however, the *Summa Lipsiensis* used the same argument as Rufinus: a Western cleric travelling to the East would not be able to observe the local custom, because of his vow of continence.⁶⁴

Other questions that the two Anglo-Norman decretists asked and answered about Eastern clerics included the following:

- (1) If an Eastern cleric contracted a second marriage, contrary to the custom of his own church, would his marriage be valid?⁶⁵
- (2) If an Eastern married cleric was convicted of a crime, would he have to enter a monastery?⁶⁶

⁶³ ‘Solet queri, si clericus orientalis ecclesie ad partes istas ueniret, an posset uxori adherere et celebrare. Et dici potest quod non, quia morem illius ecclesie debet seruare, ad quam uenit, ne sit aliquis ut d. xii. Mater’ *Summa Lipsiensis* I.120.

⁶⁴ ‘Item quid, si clericus occidentalis ecclesie ueniret ad ecclesiam orientalem? Possetne uxorem habere ut alii ibi habent? Non, quia uotum precessit.’ *Summa Lipsiensis* I.120.

⁶⁵ ‘Item queritur, si clericus orientalis ecclesie contra consuetudinem ecclesie secundas nuptias contraxerit, an debeat matrimonium stare.’ *Summa Lipsiensis* I.120.

⁶⁶ ‘Item queritur, si iamdictus clericus uxoratus fuerit de crimine conuictus, an debeat retrudi in monasterium, ut d. lxxxii. Dictum.’ *Summa Lipsiensis* I.121.

(3) Can an Eastern cleric perform penance without the consent of his wife?⁶⁷

In addition to such questions, both decretists brought up the Eastern Church in their comments on canons which were not in contradiction with the Western Church and as such did not need to be explained away. To give just one example, when commenting on canon 8 of the council of Neocaesarea (315) (D. 34 c. 11), which decreed that clerics whose wives committed adultery had to cast them away or suffer the loss of their ministry, Master Honorius explained that this referred to clerics in minor orders in the West, but to all orders in the East.⁶⁸ Then he went on to venture that Eastern clerics who did not follow the rule would not be allowed to minister, but might not be deposed.⁶⁹ In contrast to the cases that we saw in the previous section, here Master Honorius could have explained this canon with no reference to Eastern clerics. It was his choice to juxtapose the Eastern and Western examples.

For the two Anglo-Norman decretists, talking about the Eastern clerics seems to have been an opportunity to reflect on topics of contemporary interest, such as the nature of laws and customs, tacit and explicit vows, and the marital debt. The divergent laws of the Eastern Church allowed them to explore different possibilities and to verbalise concerns about their own condition. Eastern clerics could be said to have been ‘creatures less clearly defined and less securely bounded by the structures that held men

⁶⁷ ‘Set queritur, an presbitero orientali indici possit penitentia sine consensu uxoris?’ *Magistri Honorii* I.109.

⁶⁸ ‘*si in clericatu: minorum ordinum si fuerit occidentalis; uel in quocumque ordine si fuerit orientalis.*’ *Magistri Honorii* I.120.

⁶⁹ ‘*non potest perfrui: Non ministrabit, set forte non deponetur orientalis.*’ *Magistri Honorii* I.120.

in place in society', and as such they were 'good to think with'.⁷⁰ This meant that contemplating the situation in the East could help Western clerics familiar with such *quaestiones decretales* to understand and accept their own fate as celibate clergymen, or it could give them ammunition to question it.⁷¹

Property and Purity

I have so far considered the two decretists' discourse about clerical marriage largely in isolation from the main bugbears of many Western ecclesiastics: property and purity. In the eleventh and twelfth centuries, married clerics were often accused of alienating the property of their church for the benefit of their wives, the dowries of their daughters, and the advancement of their sons. In addition to these more material problems, married clerics in major orders were expected to be celibate in order to maintain themselves

⁷⁰ The words inside the first quotation marks were used by Peter Brown to describe women in the first centuries of the Church, but could easily be applied to the Eastern clerics. See Peter Brown, *The Body and Society: Men, Women, and Sexual Renunciation in Early Christianity* (New York 1988) 153. The phrase 'good to think' goes back to Lévi-Strauss' *Le totémisme aujourd'hui*, where he argued that the animals in totemism are not only objects of symbolism or sources of food, but serve an intellectual function, which can be understood within the more general problem of 'how to make opposition, instead of being an obstacle to integration, serve rather to produce it'. See Claude Lévi-Strauss, *Totemism*, trans. Rodney Needham (London 1962) 89.

⁷¹ Many of these issues come up in Gerald of Wales and Thomas of Chobham. When they refer to the Greeks, they do so bringing up more or less the same topics as the two decretists, but they go further in their questioning of the *status quo*. See in particular *The Jewel of the Church: a Translation of Gemma Ecclesiastica by Giraldus Cambrensis*, trans. J. J. Hagen (Lugduni Batavorum 1979) 144-145 and *Thomae de Chobham summa confessorum*, ed. F. Broomfield (Paris 1968), 377-378. For context, see also J. W. Baldwin, *Masters, Princes, and Merchants: The Social Views of Peter the Chanter & His Circle I* (Princeton 1970).

in a state of purity. Ideally, virginal hands were needed to handle the virginal body of Christ in the form of the eucharist.⁷² However, neither of these issues seems to come up in relation to the Eastern Church in the two Anglo-Norman decretists. The question of property was raised several times and in quite some detail when it came to the *Western* clergy and their need for celibacy. Master Honorius and the *Summa Lipsiensis* asked in which cases a cleric could lose his office and/or benefice because he got married; whether a priest with a family could become bishop despite the financial risk that came with his marital status; to what extent a cleric could provide for his former wife after his ordination, and so on.⁷³ The question of purity, on the other hand, came up very little, even in the case of Western clergy. The *Summa Lipsiensis* tells us that Pope Gregory the Great (r. 590-604) extended celibacy amongst the subdeacons (D. 31 c. 1) ‘out of reverence for the sacraments and for the sake of the purity of ministers’.⁷⁴ Similarly, in the same chapter, he says that the ‘works of incontinence... are described as “evil” because of the law of shame (*turpitudinis*)’ that accompanies them.⁷⁵ Elsewhere, he repeats Gratian’s assertion that clerics must

⁷² Chapter 2 in Hugh M. Thomas, *The Secular Clergy in England, 1066-1216* (Oxford 2014) 17-36.

⁷³ Comment on D. 28 c. 2 in *Summa Lipsiensis* I.102 and *Magistri Honorii* I.99; Comment on D. 28 c. 13 in *Summa Lipsiensis* I.108-109 and *Magistri Honorii* I.103; Comment on D. 28 c. 14 in *Summa Lipsiensis* I.109 and *Magistri Honorii* I.104.

⁷⁴ ‘Hoc autem licite poterat statuere propter reuerentiam sacramentorum et munditiam ministrorum’ *Summa Lipsiensis* I.117.

⁷⁵ ‘*quatenus preterita mala: idest incontinentie opera, que lege turpitudinis mala esse dicuntur*’ *Summa Lipsiensis* I.117.

always observe chastity because they must always serve the altar.⁷⁶ But such statements are rare in the *Summa Lipsiensis* and even rarer in Master Honorius' commentary.⁷⁷ In sum, the reformist agenda of the eleventh century appears to have left remarkably little trace on the question of clerical marriage in the East in these decretists.

What did Byzantine Canonists Think?

The active engagement of the two Anglo-Norman decretists with the Eastern Church also contrasts starkly with the practice of the twelfth-century Byzantine canon lawyers who, as much as possible, avoided talking about the marriage customs of the Western Church, even when prompted by the canons they were commenting on.

Ioannis Zonaras (d. after 1150) and Theodoros Balsamon (c.1140–after 1195) mentioned Western celibacy very briefly at the beginning of their commentaries on canon 13 of Trullo, following their custom of rephrasing what the canon itself had said. Balsamon continued by referring the reader forward to another fuller comment on clerical celibacy, which, however, focused on 'barbarian churches' (ἐν ταῖς βαρβαρικαῖς ἐκκλησίαις).⁷⁸ This was a comment on canon 30 of Trullo, which acknowledged that celibacy was an acceptable choice, but expressed suspicion as to its feasibility and asked those clerics who wished to remain chaste to

⁷⁶ 'Agit etiam de iugi continentia sacerdotum, ut semper castitatem, ex quo semper altari debent assistere.' *Summa Lipsiensis* I.116.

⁷⁷ For example, see Master Honorius' comments on D. 81 c. 6 and c. 23, where he emphasises that no matter whether the priest himself is polluted, the sacraments are not affected by his impurity. *Magistri Honorii*, I, 229, 231.

⁷⁸ Canon 13 of Trullo in *Syntagma* III.336.

stop living with their wives. Instead of praising that choice, the canon presented it as a concession, stating that ‘we have conceded this to them on no other ground than their narrowness of spirit, and foreign and unsettled manners’.⁷⁹ Balsamon was also sceptical but acknowledged that celibacy was a pious practice and that what is done out of piety should not be dismissed, but supported and recommended. Nonetheless, he did not advocate its widespread adoption.⁸⁰

Note this therefore as something that was said specifically, and ought to be understood in reference only to those who are priests in barbaric regions, not to the rest. I asked several bishops who had come from Russia about this, and even the metropolitan of Alania, and learnt that the terms of this canon are not valid for those regions, despite the fact that they are barbaric. But like our priests they also keep their wives, even after ordination.

Like Balsamon, we are not entirely sure whom the council in Trullo was referring to in this canon.⁸¹ In the twelfth century, Balsamon did not associate the ‘barbarian churches’ with the West,

⁷⁹ ‘Πρὸς τοῦτο δὲ αὐτοῖς οὐ δι’ ἄλλο τι ἢ διὰ τὴν τῆς γνώμης μικροψυχίαν καὶ τὸ τῶν ἡθῶν ἀπεξενομένον καὶ ἀπαγές ἐνδεδώκαμεν.’ *Syntagma* II.369.

⁸⁰ ‘Σημείωσαι οὖν τοῦτο, ὡς ἰδικῶς ἐκφωνηθὲν, καὶ ὀφείλον ἐξακούεσθαι εἰς μόνους τοὺς ὄντας ἱερεῖς ἐν χώραις βαρβαρικαῖς, οὐ μὴν καὶ εἰς τοὺς λοιπούς. Ἐγὼ δὲ ἐρωτήσας διαφόρους ἐπισκόπους περὶ τούτου, ἀπὸ Ῥωσσίας ἐλθόντας, ἀλλὰ μὴν καὶ τὸν μητροπολίτην Ἀλανίας, ἔμαθον, μὴ ἐνεργεῖν τὰ τοῦ παρόντος κανόνος εἰς τὰς τοιαύτας χώρας, καὶ ταῦτα οὕσας βαρβαρικάς· ἀλλὰ κατὰ τοὺς ἡμετέρους ἱερεῖς κάκεινους ἔχειν τὰς οικείας γυναῖκας καὶ μετὰ τὴν χειροτονίαν.’ *Syntagma* II.370.

⁸¹ Judith Herrin has suggested that it was clerics living in areas under either Western or Arab control. If it referred to the West, it could have meant the areas of southern Italy, Sicily, and the diocese of eastern Illyricum which embraced the Balkans, Greece, and the Aegean islands. These areas remained formally under Rome until the eighth century and should have followed Roman customs. Alternatively, in the eastern provinces that had been overrun by the Arabs during the second half of the seventh century, Christian priests might have tried to demonstrate their commitment to the faith by separating

but with Russia. Even so, this would have been a good place to make some comment about the situation in the West, as the canonist knew that Western clergy too had to be celibate. Yet, he chose to make no mention of the Roman Church here.

In fact the relationship between Western and Byzantine practices of clerical celibacy was largely avoided, and led to no introspection comparable to what we saw in the two Anglo-Norman decretists. This can be seen in another rare mention of the Western Church, in a comment on canon 4 of the Council of Carthage, which referred to the Roman custom of celibacy. There is here an explicit contradiction between Eastern and Western custom and the canonists observe that the Westerners ‘are wrong about this, as they are about other things’.⁸² They cite in support canon 5 of the Apostles, and then reluctantly admit that ‘perhaps someone will say that also amongst us bishops do not have wives’.⁸³ This could have been a point of reflection on the similarities as well as the differences between Eastern and Western practices of clerical continence. But the canonists simply continued by quoting verbatim what the council of Trullo had said on this point on canon 12: ‘And we say this, not to abolish and overthrow things which were established of old by Apostolic authority, but as caring for the salvation of the people and their advance to better things, and lest the ecclesiastical state should suffer any reproach.’⁸⁴ After this citation they continued with an accusation pointing out that canon 70 of the council of Carthage also ‘refutes the Latins, who

from their wives. See Judith Herrin, “‘Femina Byzantina’: The Council in Trullo on Women, *Dumbarton Oaks Papers*, 46 (1992) 97-105 at 102.

⁸² ‘σφάλλονται δὲ καὶν τούτῳ, ὥσπερ καὶ ἐν ἑτέροις’ *Syntagma* III.303.

⁸³ ‘καὶ ἴσως ἔρεῖ τις, ὅτι καὶ παρ’ ἡμῶν οἱ ἐπίσκοποι γυναῖκας οὐκ ἔχουσιν’ *Syntagma* III.303.

⁸⁴ *Syntagma* III.303.

think wrongly about this' and then directed the reader towards a canon which asked for temporary continence.⁸⁵

As we have seen, this attitude is in stark contrast to the two Anglo-Norman decretists' choice to talk about and sometimes imagine the different customs of the Eastern Church in detail. Perhaps it was too difficult for the Byzantine canon lawyers to explain why the practice of the Western Church, which was not barbaric, was not superior to their own, and as such they preferred to avoid any comments. To some extent their reluctance to expand can be attributed to more general differences in the way that Eastern and Western canonists worked: imaginary scenarios were not a feature of the Byzantine canonical commentaries, as they were in the West.⁸⁶ But they did go into more detail on other issues concerning the Western Church, particularly ones associated with the liturgy, such as the reception of the eucharist, the use of leavened or unleavened bread, baptism, burial, fasting, and so on. More importantly perhaps, the Byzantines did not feel the need to justify a change; clerical marriage was for them the apostolic tradition. They had not deviated from an ancient rule still followed by the Western Church, and as such their practice did not need to be explained away.

Conclusion

Master Honorius and the author of the *Summa Lipsiensis* often referred to the Eastern Church in their explanations of the ancient

⁸⁵ 'Καὶ ὁ ἑβδομηκοστὸς δὲ κανὼν τῆς παρούσης συνόδου ἐλέγχει τοὺς Λατίνους, περὶ τούτου κακῶς φρονοῦντας' *Syntagma* III.303.

⁸⁶ See Clarence Gallagher, 'Gratian and Theodore Balsamon: two Twelfth-Century Canonistic Methods Compared', in *Byzantium in the 12th Century: Canon Law, State and Society*, ed. N. Oikonomides (Athens 1991) 61-89.

canons on clerical marriage, and they were not hostile or dismissive towards it. Their views on the situation of the Eastern clergy were obscured by false assumptions, problems of chronology, abbreviated canons, and ambiguous vocabulary. But they did not sweep difficulties under the carpet. For example, in their explanation of canon 10 of Ancyra, when faced with chronological uncertainty and the false assumption that Eastern deacons could marry, they found imaginative ways to twist the laws and make them fit, even if it meant assuming that different parts of the same canon could refer to different Churches without explicitly saying so. Such legal gymnastics encouraged them to probe deeper and to engage further with the legal development of both Eastern and Western discipline.

Despite, or perhaps because of, the two decretists' efforts to understand the situation in the East, many misconceptions remained, and they ended up with a rather polarised image of the Eastern Church. According to their understanding, Eastern clerics were less restricted than in reality: not only could they continue to have sex with their wives, but they could also choose to marry at any point in their career. This made them perfect subjects for thought experiments: the different rules of the Eastern Church increased the variety of questions that could be discussed. Scenarios such as the one of the travelling priest satisfied the decretists' legal curiosity while allowing them to investigate contemporary topics, such as the vows of continence or the marital debt.

In these explorations of the Eastern 'other', Master Honorius and the author of the *Summa Lipsiensis* appeared remarkably accepting of alien customs. They acknowledged that it used to be heretical to refuse the eucharist from a married priest and that marital sex can be a form of chastity, even in the case of clerics. This more positive attitude was perhaps a result of their

understanding of the historical development of the discipline of clerical celibacy: a man-made innovation that was introduced progressively by the papacy into the different grades of the Western clergy. This attitude contrasts with that of the Byzantine canon lawyers who remained almost silent about the more recent marital customs of Western clergy. But they did not have a legal shift to justify: as they saw it, they had remained steadfast in the apostolic command of clerical marriage; and even though their introduction of episcopal celibacy was acknowledged as an innovation, it was a change that had also been made by the Western Church.

The accepting attitude of the two decretists contrasts also with the reformist discourses of the eleventh and twelfth centuries. The implications of clerical marriage for Church property, more than the question of ritual purity, were occasionally discussed, but mostly in relation to the Western rather than the Eastern clergy. The impact of reformist discourses on Master Honorius and the author of the *Summa Lipsiensis* might have been more subtle: the recent attempts to enforce this older ‘innovation’ of clerical celibacy may have fuelled their interest in the East and the past, making the Eastern clerics ‘good to think with’.