

## **LACK OF DUE DISCRETION IN MARRIAGE. CURRENT CATHOLIC TRIBUNAL PRACTICE**

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The Catholic Church approaches the question of marriage invalidity due to psychological causes on three levels; the new Family Code of the Philippines approaches the question on two levels. The 1983 Code of Canon Law specifies three categories of persons who are incapable of validly contracting marriage. This article will first describe the three canonical categories and then concentrate on lack of due discretion, the most common grounds in canonical annulments but not mentioned in the Family Code.

### **CANONICAL CATEGORIES**

#### *Lacking Sufficient Use of Reason*

The first and most traditional category includes those who lack sufficient use of reason. For valid marriage more is required than the simple use of reason which the law presumes to be attained by age seven. "Sufficient for marriage" requires an understanding of marriage as a community of conjugal life for the good of the spouses and the generation and education of children (Cn. 1055, 1). Such use of reason could be lacking temporarily, due, e.g. to alcoholic intoxication, or permanently, due to profound mental retardation or serious brain damage.

#### *Lack of Due Discretion*

The second category of persons incapable of valid consent are persons who suffer from a grave lack of due discretion concerning the essential matrimonial rights and duties to be mutually given and accepted (Cn. 1095, 2). This differs from the simple lack of

sufficient reason because lack of due discretion involves both the will and the intellect. The intellect must make a mature judgment and the will must consent freely.

### *Psychic Incapacity*

The third category mentioned in Canon Law as incapable of a valid matrimonial consent are those who are "unable to assume the essential obligations of marriage for causes of psychological nature" (Cn. 1095, 3). Such persons may understand and appreciate what marriage involves but they are incapable of assuming and fulfilling the obligations. The "personalist" aspects of marriage are beyond them. In particular these include self-revelation, understanding and caring, both regarding the spouse and the children. Respect for one's self, for one's spouse, seeing and accepting the other as a separate person without striving to possess and dominate the other, sharing one's life in mutual respect and affection — these are the personalist elements which are so much valued in contemporary marriage and reflected in Canon Law. Being incapable of this interpersonal relationship invalidates one's consent.

#### FAMILY CODE: UNSOUND MIND/PSYCHIC INCAPACITY

The Family Code uses almost identical language in declaring void from the beginning a marriage wherein the person was "psychologically incapacitated to comply with the essential marital obligations" (art. 36). If either party was of "unsound mind" at the time of the ceremony, the marriage is voidable, unless after coming to reason the party freely cohabited with the other as husband and wife (art. 45, 2).

### *Agreement and Disagreement*

Both the Church Law and the Family Code agree in accepting psychological incapacity as invalidating from the very beginning. They differ with regard to the juridical effect and perhaps the very meaning of "unsound mind" and "lack of sufficient reason." Only Church Law explicitly holds "lack of due discretion" as invalidating. This has come to be *de facto* the most common grounds for the Church Tribunals actually declaring marriages null and void.

Thus the most common grounds in Church Law are not mentioned in the new Family Code. Civil jurisprudence may develop in this unexplored area of psychological grounds but at present, taking the law literally, there is no mention of the lack of due discretion as Canon Law knows it.

### *Time Element*

The time element also must be noted. Both Canon Law ("unable to assume") and the Family Code ("at the time of the celebration of the marriage") look to the very beginning of the marriage, to the actual wedding ceremony. Any subsequent serious psychological incapacity due, for example, to an accident or grave illness or some terrible traumatic experience, would not necessarily be linked to the wedding ceremony. Such subsequent psychological incapacity would be part of the "for better or for worse, in sickness and in health" of the marriage covenant.

As the Family Code explicitly states, the psychological incapacity may be manifested only after the wedding. If it were concealed deliberately, there may be reason for declaring the marriage null and void due to fraud which is explicitly provided for both in Canon Law (Cn. 1098) and in a more restricted manner in the Family Code (art. 45). An incapacitating psychological disorder could be manifested after the wedding ceremony because the very assumption of marital responsibilities could activate the latent weakness in the spouse's personality. Every experienced marriage counsellor has met the case of the newlywed who begins to manifest strange behavior almost as soon as they realize what obligations (restrictions?) they assumed in marriage. In such cases the post-wedding manifestations can clearly indicate the incapacity present at the time of the ceremony.

Granted this double emphasis on the essential obligations of marriage and the incapacity being present at the time of the ceremony, there is still the very challenging problem of determining who is psychologically incapacitated to assume/comply with the essential obligations of marriage. How to prove such basic incapacity?

## *Presumptions*

We should all start with the presumption that a person is normal until the opposite is proven. Likewise we should assume that a normal adult is capable of understanding and fulfilling the obligations of marriage. Whoever would deny this has the burden of proof.

In canonical terms every marriage entered into in the Church is presumed to be valid. "Marriage enjoys the favor of the law. Consequently, in doubt the validity of a marriage must be upheld until the contrary is proven" (Cn. 1060).

Granted these presumptions, how can they be overridden? How can Church lawyers decide cases which involve matter of psychology and/or psychiatry?

Canon 1680 mandates the use of the services of one or more experts in a marriage case involving impotence or defect of consent due to mental illness, unless it is obvious from the circumstances that this would be useless.

Thus expert psychologists or psychiatrists must be consulted by the Matrimonial Tribunal Judge whenever the case involves a defect of consent which, according to Cn. 1095, includes a lack of due reason, lack of due discretion and lack of psychological capacity.

The role of the expert is to describe the nature and gravity of the psychological impairment; that of the Judge is to evaluate its juridical relevance, namely its effect on practical judgment concerning marriage. The Judge is the "expert of the experts" (*peritus peritorum*). Canon 1579 directs the Judge "to weigh attentively not only the conclusions of the experts, even when they are concordant, but also the other circumstances of the case. . . . His decision must include the reasons which prompted him to admit or reject the conclusions of the experts" (Cn. 1579, 2). The decision always pertains to the Judge, not to the experts.

### MOST COMMON GROUNDS: LACK OF DUE DISCRETION

Since it is so common in Church annulment process here and around the world, it might be worth examining this "lack of due discretion" more in detail and looking at actual marriage cases decided on these grounds. Twenty years of Tribunal experience in

the Church throws much light on the real meaning of the law and how it is understood in practise.

One of the biggest surprises for most people is that a person can be capable of good judgment in other areas of life, such as his/her profession, business, personal health, and the like, but be generally incapable of good judgment in regard to interpersonal relationships and specifically with regard to the unique relationship demanded by Christian marriage. It is not merely a matter of consenting to a wedding, but it is a question of a decision about his or her life and the life of the marriage partner. The failure to evaluate critically the decision to marry, that is, not weighing well the consequent obligations and responsibilities, could indicate an invalid consent.

### *What Must Be Evaluated?*

To be evaluated are: his/her motivation for the wedding, personal strengths and weaknesses, as well as those of the other party, and his or her ability to live up to the demands of marriage. The discretion in judgment must be proportionate to the marriage to be contracted, proportionate to the requirements of the interpersonal relationship to be established, with a view to creating a community of their whole life, as marriage is now described in Vatican II, "The Church in the Modern World," no. 48, and in Cn. 1055, 1.

### EXAMPLES: TRIBUNAL DECISIONS

#### *Immaturity as Invalidating*

One Roman Rotal decision of 1985 affirms as invalid for lack of due discretion the marriage of a young man who manifested such immaturity that it gravely impaired his judgment.<sup>1</sup> He was excessively dependent on and attached to his parents, wanting to go home the day after the wedding. His affective immaturity and overdependence on his parents was so excessive that babyish unstable personality traits persisted in his adult life.

1. "Jurisprudencia Romanae Rotae, coram A. Stankiewicz," *Monitor Ecclesiasticus* 111, Series 21, nos. 1-2 (1986) 163-72.

### *Grave Emotional Disturbance as Invalidating*

Since it is an existential judgment, the critical judgment concerning marriage depends on the emotional and psychological state of those getting married.<sup>2</sup> It requires that a person learn from his/her life experience. It presupposes freedom from mental confusion, undue pressure, or grave fear in contemplating marriage.

Grave fear can so limit one's internal freedom that marriage is chosen in a true state of mental confusion. The poor judgment shown in the consent can be invalidating.

### *Strange Behavior at Wedding Ceremony*

A 1985 Roman Rotal decision declared invalid the matrimonial consent given by a woman who was shocked by her spouse's very strange behavior at the actual wedding ceremony.<sup>3</sup> He had suddenly refused to go ahead with the wedding unless all the guests were sent away and only the priest and two witnesses allowed to stay. The Tribunal ruled that her highly changed emotional state at the time of the wedding put her in a state of shock and made her incapable of a human act of consent in the circumstances even though she had wanted to marry immediately before the incident.

### *Chronic Alcoholism*

*Chronic alcoholism* can easily interfere with the judgment concerning any serious step in life and especially marriage where another person's happiness is involved. An interesting case decided by the Westminster Tribunal in England on June 30, 1983 shows how devastating alcoholism can be in a person's life.<sup>4</sup> The expert consulted, a psychiatrist who specialized in alcoholic problems, showed how the subject had established a psychological dependence on alcohol by the time he was eighteen. His drinking had become pathological by the time of the wedding and it was mani-

2. *The Code of Canon Law. A Text and Commentary*, Commissioned by the Canon Law Society of America, ed. James A. Corliden, Thomas J. Green, Donald E. Heintschel (Mahwah, N.J.: Paulist Press, 1985) 776.

3. "Jurisprudentia Romanae Rotae, coram Di Felice," *Monitor Ecclesiasticus* 111, Series 21, nos. 1-2 (1986) 153-62.

4. *Matrimonial Decisions of Great Britain and Ireland for 1983*, 19 (1983), Circulated by the Canon Law Society of Great Britain and Ireland, 102-4.

fested by drunkenness, selfishness, deceitfulness, and above all denial, with a suggestion of psychopathology. By definition, the psychiatrist explained, alcoholism is a condition which deteriorates progressively unless abstinence is achieved. It was his expert opinion that the subject's alcoholism was of sufficient intensity at the time of the marriage to have interfered with his judgment in weighing the consequences of any serious step and marriage in particular, which demands a commitment to sharing and acting in a responsible fashion.

The subject himself was surprisingly honest in describing his condition, affirming that he was more committed to alcohol than to his bride at the time of marriage. "Alcoholism is a disease, an illness which is self-inflicted," he stated and admitted that it had led to the breakdown of his previous civil marriage and now of his Church marriage. "It was committed to alcohol and in the end it wore her down" was his final judgment on his own destructive addiction.

The Tribunal declared the marriage null and void on both grounds: lack of due discretion and psychic incapacity.

### *Drug Addiction*

The widespread use of drugs has inevitably resulted in many marriage being considered for annulment. When a person has become completely addicted to drugs, it will normally seriously disturb and even undermine the judgmental capacity. The Tribunal-appointed psychiatric expert in a case in Westminster, England in 1983 stated that it "is always difficult to know the extent to which drug taking is a result of or cause of infantile behavior: whether it results from or causes personality disorder. The answer is nearly always both."<sup>5</sup> Drug taking can result in a vicious circle, leading to an irresponsible and uncaring life style, the exact opposite of a marital commitment to love, care for and be responsible for another person. The drug addict cannot even be responsible for himself. The mental and moral standing of the person is so debilitated as to seriously interfere with and undermine the judgmental capacity.

5. Ibid. 113-17.

The judgment of the Tribunal was in agreement with the psychiatric assessment that the respondent's spoiled upbringing led to poverty of development of his personality, aggravated by drug taking. The decision for annulment was affirmative on the grounds of lack of due discretion. It was also affirmative on the grounds of inability to assume and fulfill the obligations of marriage.

### LACK OF DUE DISCRETION AND INCAPACITY CLOSELY LINKED TOGETHER?

Very frequently by the very nature of the case as the 1983 decision just cited states, the two grounds for nullity are closely associated. What affects the judgment negatively can also weaken the will to such an extent that the person is incapacitated. He cannot assume the marital obligations. The same evidence and arguments which would demonstrate lack of due discretion may at times support the claim for incapacity, especially in the case of addiction to drink or drugs or long standing psychiatric imbalance, all of which can cause a serious deterioration of the whole person.

The Roman Tribunal in 1984, in another case involving drugs, likewise declared the marriage null and void for lack of due discretion.<sup>6</sup> The Judge noted the break between the "inner world" of the drug addict and social reality, the barrier which they establish between the self and others by drug dependence. It is their escape mechanism, the way they run away from the burdens of life and fulfill their infantile demand for instant gratification.

#### *Violence: Compulsive, Incapacitating*

In a case decided on appeal to the Tribunal of Dublin in 1983 the main cause of the breakdown of the marriage was the physical violence of the husband.<sup>7</sup> The Tribunal declared the marriage null and void based on incapacity rather than on lack of due discretion. The husband was brutal, and compulsive in his frequent wife-beating. He admitted that he did not know how to stop beating his wife and win back her love. He said that "he never imagined

6. "Jurisprudentia Romanae Rotae, coram Aemilio Colagiovanni," *Monitor Ecclesiasticus* 109, Series 19, nos. 1-2 (1984) 327-34.

7. *Matrimonial Decisions of Great Britain and Ireland for 1983*, pp. 108-11.



that these beatings could happen." He desperately wanted his wife to love him, and he knew he was destroying that love by his continuous beatings but could not help himself. He was the victim of an unstable personality, of his feelings of jealousy, suspicion and insecurity.

In this case the compulsive violence had reached so deeply into the respondent's psyche that he was clearly incapable of entering a marriage covenant which "of its own very nature is ordered to the well-being of the spouses . . ." (Cn. 1055, 1). His deep-seated personality disorder, which led to such brutal compulsive wife-beating, made a mockery of the Pauline teaching that a man should love his wife the way Christ loves the Church (Eph 5:25).

### *What Sufficient Discretion Involves*

Put positively, sufficient discretion for marriage requires "some general appreciation of the fact that marriage is a permanent heterosexual partnership — involves obligations to another person, including being truthful and self-revelatory with the spouse, understanding and appreciating the spouse as a separate person, and caring for the spouse's welfare."<sup>8</sup>

### *More Examples of Lack of Due Discretion*

The failures in marriages for lack of due discretion are frequently among the young and/or immature persons, among those who have an identity problem or personality disorder at least of moderate degree. At times there are certain extrinsic factors connected with lack of due discretion including premarital pregnancy or abortion; unhappy homelife with a desire to escape; a brief courtship; reluctance to marry, together with family or social pressure or fear of embarrassment, fear of "what people would say or think." Often the spouses are still in their teens, their studies incomplete, and they marry "to escape from all their problems."

A girl may marry a high school dropout who is on drugs and in trouble with his family. She believes his promise to reform but without any real basis for trusting him. She manifests grave lack

8. Laurence G. Wrenn, *Annulments*, 4th ed. rev. (Washington, D.C.: Canon Law Society of America, 1983) 23.

of due discretion in her unreal expectations, ignoring the evidence of his many broken promises, his need of professional help. She is often blinded by her pity for him and her strong maternal instinct which she may confuse with love.

Some marry to escape from their parents only to end up forced by sheer economic necessity to live with their parents, thus showing how immature and defective was their judgment about their acceptance of duties and obligations in marriage. They had not even planned where they would live or how they would support themselves!

Lack of freedom could mean lack of psychological freedom, for example, a homosexual marries to hold his job or to prove he is heterosexual. A lack of internal freedom would be, for example, in the case of a girl made pregnant by a member of her own family who runs off with the first man she meets. Peer pressure, even indirect, realizing she is the only one in her group who is not married, could lead an immature girl to enter a foolish marriage. Getting revenge on the one who jilted him/her could lead to an equally foolish marriage, invalid for lack of due discretion.

#### INSUFFICIENT GROUNDS FOR ANNULMENT

A Roman Rotal decision of 1984 rejected as insufficient the evidence which tended to prove that the man was difficult to live with in the period after the wedding.<sup>9</sup> All the signs pointed to a man who freely, out of love, and without any sign of doubt, chose to marry. The marriage was judged to be valid even though there were some problems in the interpersonal relationship.

A 1986 article in the Gregorian University *Periodica* by G. Versaldi spells out the difficulty in making a judgment in such cases where a psychological problem is manifestly present but not clearly grave.<sup>10</sup> The minimal requirement may be present even though the relationships will not be a perfect one, free from all difficulties. These may be a less severe form of narcissism, pathology of character, neuroses, which may cause the relationship to be unhappy at times and difficult but they do not exclude that mini-

9. "Jurisprudentia Romanae Rotae, coram Di Felice," *Monitor Ecclesiasticus* 109, Series 19, nos. 1-2 (1984) 426-31.

10. "Via et ratio introducendi integram notionem christianam sexualitatis humanae in categorias canonicas," *Periodica* 75 (1986) 409-41.

mal capacity for relationship, which alone is required for validity. The author suggests an analogy with sexual impotency as being in order in making such an evaluation.

*Bisexuality* would not *per se* be invalidating. The tendency towards the same sex could be a serious problem and complicate or intensify the struggle for fidelity in marriage. But as long as the heterosexual attraction was normal and healthy there would be no question of invalidity of matrimonial consent.

A rough manner, a certain boorishness, crudeness in speech and manner, boastfulness, moodiness, being lazy, lacking in ambition, content with mediocrity — all of these can be a source of frequent conflict and unhappiness for a partner who is exactly the opposite, refined, cultured, reasonably ambitious, etc. But the marriage would not be considered invalid. The incompatibility would have to be accepted and an adjustment made just as the husband would have to accept his wife's poor cooking or housekeeping, her neglect of her appearance after marriage, her partiality for her own relatives, and so forth.

## CONCLUSION

A deeper understanding of the human aspect of marriage has emerged in the post-Vatican II Church. Respect for the personalist dimension, appreciation of the contemporary concern for the person and the value placed on interpersonal relationships, have all contributed to enriching the Catholic teaching concerning the meaning of the sacrament of matrimony. People expect more from marriage, and because of psychological or emotional problems it is easier to fail to measure up even to the minimal demands for a valid marriage. Those concerned with helping young couples enter good marriages must be aware of the danger signals that indicate too high a risk and contraindicate a marriage. In the modern world immaturity and irresponsibility, especially among teenagers, should not be difficult to detect. Someone truly concerned for the long range welfare of such couples would politely but firmly refuse to cooperate in such a wedding. Lack of due discretion is often all too evident *post factum*. When it is recognized beforehand and the marriage is refused or postponed, we will have taken a giant step towards strengthening the family, the "domestic church," which is under attack from so many sources in the modern world.