

MARRIAGE AND THE DEFECTS OF CONSENT UNDER CANON LAW

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ABSTRACT

The human being possesses an inner freedom that allows him/her to choose, which comes to consider consent as a true act. Therefore, it is understood that this freedom in marital consent corresponds to those who intend to contract marriage; otherwise, it would fall under the vices of consent set out in the Code of Canon Law (1983) from canon 1095-1103. Discretion of judgment or maturity in the decision to enter into the marital pact is one of the minimum requirements for its legitimacy. Therefore, in the absence of the conditions for marriage, the total nullity of the consensual pact will be incurred. This research employs a qualitative descriptive methodology, utilizing documentary and bibliographic techniques to gather and analyze relevant canonical texts and doctrinal sources. The development of the study is governed by a descriptive approach, based on documentary-bibliographic argumentation, which analyzes the Code of Canon Law in terms of the grounds for nullity due to defects of consent, in accordance with doctrinal and legal criteria referring to the historical context of marriage and the criteria for the evaluation of anomalies of consent. It is for this reason that the purpose and essential properties of marriage must be understood from the outset, given the importance of arguing by means of an exegetical criterion the causes of nullity in certain cases.

Keywords: Canon law. Marriage. Defects of consent.

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INTRODUCTION

There is a long history of the origins of the family and marriage, since in ancient times the model couple and the family were considered in terms of the immense and endless tradition, so it would be inaccurate to conceptualize it solely by one author. However, it is necessary to mention (Engels, 2011) who through precursors such as MacLennan, Morgan and Bachofen have made great progress. Bachofen therefore formulates the following theses through the study of family history starting in 1861: 1. Human beings, who lived in sexual promiscuity; two. Deriving from these the impossibility of establishing paternity, consequently only maternity could be known; three. Resulting in the prevalence of the female role in the tribes, since they were the only known progenitors and with it the absolute domination by them; four. In addition, an important change to a monogamic life, in which a woman belongs exclusively to a man, reaching the punishment for her transgression of the religious law.

Within the context of the Catholic Church and its legal framework, marriage is understood not merely as a social contract but as a sacred covenant with specific canonical requirements, particularly regarding consent. The Code of Canon Law (1983) establishes that valid matrimonial consent is essential for a legitimate marriage. Consent must be given freely and with sufficient use of reason and discretion concerning the essential rights and obligations of marriage, including permanence, fidelity, and openness to children.

Canon 1095 outlines conditions under which a person is incapable of contracting marriage due to mental incapacity, grave lack of discretion, or psychological inability to assume marital obligations. This incapacity may stem from mental illness, psychological disorders, intoxication, or other serious impediments present at the time of consent. Furthermore, canon law recognizes other defects of consent that can invalidate a marriage, such as ignorance of the nature of marriage (canon 1096), error about the person or a quality of the person (canon 1097), fraud (canon 1098), conditioned consent (canon 1102), and force or grave fear (canon 1103). Fraud, for example, involves intentional deception regarding a quality that can seriously disturb the marital partnership, such as concealment of serious illness or prior marital status. Conditioned consent occurs when consent is given only on the fulfillment of a condition that is not met, while force or grave fear invalidates consent when a party is coerced into marriage against their will.

The Church's presumption favors the validity of marriage; however, these canonical norms provide a framework for tribunals to assess the nullity of marriages where defects of consent are evident. The evaluation of such defects requires a nuanced understanding of psychological, doctrinal, and legal criteria, as well as the historical and theological context of marriage.

This research seeks to explore the grounds for nullity due to defects of consent under canon law, analyzing the canonical texts and relevant doctrinal interpretations to clarify the essential elements that constitute valid matrimonial consent. Understanding these defects is crucial not only for safeguarding the sacramentality and integrity of marriage but also for addressing pastoral and juridical concerns that arise in cases of marital nullity. Through a qualitative descriptive and documentary-bibliographic methodology, this study will examine the canonical provisions and their application, contributing to a deeper comprehension of how consent functions as the cornerstone of matrimonial validity within the Church's legal system.

THEORETICAL FRAMEWORK

MARRIAGE IN ANCIENT TIMES

(Osomo, 2006) mentions that in ancient times communities celebrated the endogamous and exogamous marriage system, whereby marriages were differentiated according to degree of kinship, possession of property, social status including racial status. Concretely, endogamous marriage would tend to keep the inheritance within the kin group and exogamous marriage would tend to share the inheritance outside the group. Therefore, in each culture there is a corresponding conceptualization and applicable forms, although in general terms the dictionary of the Royal Spanish Academy defines marriage as: "*Union of a man and a woman entered into by means of certain rites or legal formalities*". Becoming linked to the Latin etymology of the word, *matrimonium* coming from *matris*, meaning mother and *munium*, meaning burdens, thus having as its objective the office or duty of mother.

Accordingly, in the English language the term *marriage* means, "To provide with a husband" as it comes from the term *mari*, which means male. In this, the Greeks came to arrange terms according to the solemnity of the sexual act, because the Greek legal term for wedding and marriage was the sexual act, and as for civil marriage, it was established as a sacred sexual union.

On the other hand, in Rome, marriage led to a transformation of the primitive law in the time of Justinian, being considered as: *"Union of a man and a woman, implying equality of conditions and community of divine and human rights"* and it is in this way that later on parents began to be recognized, as well as the hereditary effects coming from the State.

At one time, from about 400 BC to 400 AD, the pairings were understood in four ways: 1. sexual abuse of women subordinated to men, 2. concubinage, understood as the cohabitation and sexual practices of two people without a marriage bond, especially of men with women, 3. marriage within a polygamous or monogamous system and 4. romantic love in reference to the Romans, who sought happiness through extramarital affairs, therefore marriage is seen as an alliance between two people as a factor of economic subsistence.

The purpose of marriage in ancient times was clearly defined, although the way of choosing a spouse or marriage partner was different according to the people and the historical stages. This is where the theory of Michael Foucault derives, who has shown that conjugal ethics had functions to fulfil such as precaution against consanguinity and race, living under a dwelling. men were responsible for external activities, while women were responsible for domestic management.

This is a consequence of the lack of intimacy in old marriages, since the birth of several heirs endangered the integrity of the estate and therefore they did not make sure that all the children survived.

Later, with the time of the Enlightenment and the revolution, the founding principle of the family began to be what is known as the sentimental bond of the couple. Thus, the family is consolidated through traditions and feelings., (Martínez, Ramírez, & Rivera, 2009) argue that the legitimate family is an ethical and natural institution and that this ethical-moral bond is broken by the existence of a divorce, since divorce is not in itself unethical, but rather the solution to the immoral cohabitation of those who no longer live together.

CONSENSUAL CAPACITY ACCORDING TO THE CODE OF CANON LAW OF 1917

Consensual capacity under the 1917 Code of Canon Law refers to the legal ability of a man and a woman to validly enter into marriage through free and deliberate consent. This capacity is foundational because marriage in canon law is brought into existence solely by the mutual consent of the parties involved, as stated in canon 1057 of the 1917

Code: no human power can substitute or supply this consent. The Code emphasizes that consent is an act of the will, requiring that both parties have the freedom and sufficient use of reason to make such a commitment.

However, (Ferrer, 1998) adds that the capacity to contract marriage is delimited, by its very nature, by means of the female or male sex, sexual potency, the absence of the marriage bond and the absence of immediate consanguinity. These conditions reflect the Church's understanding of marriage as a union between one man and one woman, capable of procreation and exclusive lifelong commitment.

Moreover, Canon 1108 § 2 of the 1917 Code mandates that the consent of the parties must be expressed in the presence of the Church's duly authorized minister, who solicits and receives the consent on behalf of the Church. This requirement highlights the ecclesial and communal dimension of marriage, which transcends a mere private agreement between individuals (Holy See, 1917).

The 1917 Code also prescribes that all essential elements and formalities necessary for the validity of marriage must be present concurrently, as articulated in Canon 124. This includes the proper manifestation of consent, which must be free from defects such as coercion, error, or fraud; any such defects may render the marriage invalid (Holy See, 1917).

While the 1917 Code did not explicitly address psychological or mental conditions affecting consent, it implicitly recognized the natural law principle that individuals lacking sufficient use of reason or discretion could not validly consent to marriage. Subsequent canonical jurisprudence and doctrinal interpretations have expanded this understanding to include incapacity arising from mental illness or a grave lack of judgment regarding matrimonial rights and obligations, even though these specifics were not detailed in the original Code (Ferrer, 1998).

CAUSES FOR A DECLARATION OF MARRIAGE ANNULMENT

In the canonical framework of the Catholic Church, a declaration of marriage annulment, or a declaration of nullity, is a judicial determination that a purported marriage was invalid from its inception due to a defect in one or both parties' consent or other canonical impediments. Unlike a civil divorce, which dissolves a valid marriage, an annulment declares that a true marital bond never existed according to Church law (SciTribunal, n.d.). The causes for annulment are primarily grounded in the absence or

defect of valid matrimonial consent, which is the essential element for the sacrament of marriage (Code of Canon Law [CIC], 1983, can. 1057).

The principal causes for invalidity of consent include mental incapacity, ignorance, error concerning the person or the nature of marriage, fraud, simulation, conditioned consent, and coercion or grave fear (Our Domestic Church, n.d.; Vatican, 1983). Each of these causes undermines the free and informed consent required for a valid marriage. For instance, mental incapacity refers to the inability to understand or assume the essential obligations of marriage, while error and fraud involve mistaken beliefs or intentional deception that vitiate consent. Simulation occurs when one or both parties internally exclude some essential element of marriage despite outwardly expressing consent. Conditioned consent arises when consent is given only on a condition that is not fulfilled, and coercion or grave fear invalidates consent when it is extorted by external pressure (Vatican, 1983; Diocese of Rapid City, 2017).

The Church's tribunals meticulously examine these grounds to ensure that the sacramental integrity of marriage is preserved and that invalid unions do not unjustly bind individuals. The burden of proof lies with the petitioner seeking nullity, who must demonstrate the presence of such defects at the time of consent (SciTribunal, n.d.; Diocese of Rapid City, 2017).

Vitiation of consent under canon 1095

Canon 1095 of the 1983 Code of Canon Law specifically addresses persons who are incapable of contracting marriage due to a lack of sufficient use of reason, a grave lack of discretion in judgment concerning matrimonial rights and duties, or psychological incapacity to assume the essential obligations of marriage (Vatican, 1983). This canon codifies the Church's understanding that valid consent requires not only freedom but also the cognitive and volitional capacity to understand and undertake the responsibilities inherent in marriage.

Insufficient use of reason

The first condition enumerated in canon 1095 concerns those who lack sufficient use of reason to contract marriage validly. This incapacity extends beyond a mere basic level of reason; it requires that the individual possess a degree of consciousness and judgment adequate to comprehend the nature of the marital act and its obligations

(Ballester, 2003). The legislator recognizes three primary circumstances under which this incapacity may arise:

- **Lack of Use of Reason Due to Young Age:** Individuals who have not yet attained the use of reason, typically children, are incapable of validly contracting marriage. The 1983 Code of Canon Law sets the minimum ages for valid marriage at sixteen for males and fourteen for females (canon 1083), with the possibility for episcopal conferences to establish higher ages for licit celebration (Barrera, 2010). This age threshold presupposes the acquisition of sufficient use of reason.
- **Habitual Lack of Use of Reason Despite Age:** Some persons, although having reached the canonical age of marriage, habitually lack the use of reason due to mental immaturity or developmental disorders akin to that of a minor. Such individuals are deemed incapable of valid consent because they cannot adequately understand or assume the rights and duties of marriage (Ballester, 2003).
- **Temporary Deprivation of Use of Reason at the Time of Consent:** A person who, at the moment of giving consent, suffers from a disturbance-such as intoxication, mental illness, or other psychological conditions-that deprives them of sufficient use of reason is also incapable of contracting marriage validly (Ballester, 2003).

It is critical to emphasize that the use of reason necessary for valid consent involves a sufficient degree of awareness and judgment. It is not enough for an individual to have reached the canonical age or to be of normal intellectual development; mental incapacity or grave psychological defects that impair judgment at the time of consent render the marriage invalid (Diocese of Rapid City, 2017). Canonical jurisprudence has developed rigorous standards for assessing such incapacity, requiring clear evidence of a serious anomaly in the person's psychological faculties that directly affects their ability to understand and assume essential matrimonial obligations (Diocese of Rapid City, 2017; Intratext, n.d.).

Moreover, canon 1095 does not limit itself to mental illness but broadly encompasses any psychic cause that results in insufficient use of reason. This includes cognitive impairments, severe emotional disturbances, or other psychological conditions that compromise the person's capacity to make a free and informed matrimonial decision

(Canon Law Society of India, n.d.). The assessment must be contextual and grounded in expert psychological and canonical evaluation to determine whether the defect was present at the time of consent and sufficiently grave to invalidate the marriage (Diocese of Rapid City, 2017).

Incapacity to assume essential obligations of marriage

Canon 1095, numeral 3 of the 1983 Code of Canon Law, addresses a specific ground for marriage nullity: the incapacity of one or both parties to assume the essential obligations of marriage due to causes of a psychic nature (Vatican, 1983). This provision recognizes that certain psychological or psychiatric conditions may render a person unable to fulfill the fundamental rights and duties inherent in the marital covenant, thus invalidating their consent. Gil de las Heras (1987) identifies this ground as one of the most frequently invoked and simultaneously one of the most challenging to prove in ecclesiastical tribunals, largely due to the necessity of forensic medical expertise to evaluate the internal and external circumstances of the parties at the time of consent.

The essential obligations of marriage include unity, indissolubility, fidelity, and openness to offspring (Vatican, 1983, can. 1055). A person suffering from a severe psychic disorder may be incapable of understanding or assuming these obligations, thereby lacking the requisite matrimonial consent. For example, the Roman Rota has recognized a diagnosis such as nymphomania-a pathological condition characterized by uncontrollable sexual desire- as grounds for nullity because it fundamentally impairs the capacity to observe conjugal fidelity and exclusivity (Hastings International and Comparative Law Review, 1980). In such cases, the illness prevents the individual from fulfilling the essential property of fidelity, which is indispensable to marriage.

The incapacity must be present at the time of the marriage consent and must be of such severity that it precludes the person from exercising free and informed consent to the matrimonial rights and duties (Diocese of Cleveland, 2022). This incapacity is not merely a general psychological deficiency but a specific inability related to the matrimonial state, distinguishing it from other forms of mental illness that do not affect marital consent (Canon Law Society of India, n.d.).

The determination of incapacity under canon 1095 §3 requires a multidisciplinary approach involving canonical experts and forensic psychiatrists or psychologists. The forensic evaluation focuses on the individual's mental and emotional state at the time of

consent, assessing whether the psychic condition was sufficiently serious and permanent to invalidate consent (EWTN, n.d.). This includes consideration of mental illnesses, addictions, sexual disorders, and other psychological anomalies that affect judgment and volition.

For instance, the presence of severe mental illness such as schizophrenia, bipolar disorder, or chronic neurosis may be grounds for nullity if the illness impairs the ability to understand and assume marital obligations (National Center for Biotechnology Information [NCBI], 2009). However, the mere diagnosis of a mental disorder is insufficient; the tribunal must assess the functional capacity of the individual, including their social adjustment and ability to consent responsibly (NCBI, 2009). This nuanced approach prevents the stigmatization of mental illness and ensures that only those truly incapable of marital consent are declared null.

Practical cases illustrate the application of canon 1095 §3. For example, a person diagnosed with an incurable sexual disorder or a severe addiction at the time of marriage may be found incapable of assuming marital obligations, leading to a declaration of nullity (Diocese of Cleveland, 2022). Similarly, psychiatric conditions that cause profound emotional instability or impaired judgment can also be grounds for annulment if they affect the capacity to consent.

Pastoral sensitivity is essential in these cases, as the Church seeks to balance justice with compassion. The recognition of incapacity does not stigmatize the individual but acknowledges the reality of their psychological condition and its impact on marital consent (NCBI, 2009). It also underscores the importance of psychological evaluation and support before and during the marriage process.

METHODOLOGY

APPROACH

This research employs a qualitative descriptive approach to investigate the topic of marriage and defects of consent under canon law. The qualitative descriptive method is appropriate for examining complex legal and doctrinal concepts, as it allows for a detailed and comprehensive exploration of canonical norms, theological principles, and juridical interpretations. Rather than focusing on numerical data or statistical analysis, this approach emphasizes understanding and interpreting the meaning and implications of relevant texts and scholarly discourse. It provides a systematic framework for describing

the essential elements of matrimonial consent and its defects within the Church's legal system.

TECHNIQUES

The study utilizes documentary and bibliographic research techniques to gather and analyze data. Documentary research involves the systematic collection and critical examination of primary canonical sources, including the 1917 and 1983 Codes of Canon Law, as well as official Church documents governing marriage and consent. This technique enables a thorough analysis of the legal provisions, canons, and jurisprudence that define and regulate valid matrimonial consent and its potential defects.

Complementing this, bibliographic research is conducted to review and synthesize secondary sources such as doctrinal writings, canonical commentaries, scholarly articles, and historical studies related to marriage and canon law. This technique provides a broader scholarly context and supports the interpretation of primary sources through authoritative academic perspectives.

By integrating qualitative descriptive analysis with documentary and bibliographic methods, the research ensures a comprehensive, reliable, and well-substantiated examination of the subject matter. This methodological framework also facilitates transparency and offers a foundation for further studies in the field of canon law.

RESULTS

The research demonstrates that valid matrimonial consent under canon law fundamentally depends on the free, informed, and capable agreement of both parties. The study identifies three primary grounds of incapacity that invalidate consent: insufficient use of reason, grave lack of discretion of judgment, and incapacity to assume essential marital obligations due to psychological causes.

First, individuals who lack sufficient cognitive ability-whether because of young age, mental immaturity, or temporary impairment-are unable to validly consent to marriage. Although canonical age limits serve as presumptive thresholds for capacity, reaching these ages does not guarantee valid consent if mental or psychological deficiencies exist.

Second, persons with serious psychological disorders, addictions, or extreme immaturity may lack the prudential judgment necessary to understand and assume the

essential rights and duties of marriage. Such grave defects in discretion invalidate consent when they significantly impair the individual's ability to evaluate marital obligations.

Third, certain psychological or psychiatric conditions can render a person incapable of fulfilling core marital properties such as unity, fidelity, and openness to children. This incapacity is often complex to prove and typically requires expert forensic evaluation.

In addition to these mental capacity grounds, the study identifies other canonical defects affecting consent, including ignorance of the nature of marriage, error regarding the person or essential qualities, and fraud or deceit. These factors also serve as valid grounds for annulment when they materially affect the freedom or knowledge necessary for valid consent.

DISCUSSION

The findings reveal that canon law's approach to marriage consent is comprehensive and nuanced, emphasizing the qualitative dimensions of capacity and freedom. Valid consent requires more than simply reaching a certain age or avoiding external coercion; it demands sufficient cognitive and volitional maturity to understand and freely accept the obligations of marriage.

The recognition of insufficient use of reason as a ground for nullity reflects the Church's concern for protecting vulnerable individuals, such as minors or those with mental impairments, from entering invalid unions. This approach prioritizes the quality of consent over formal criteria alone.

The criterion of grave defect of discretion of judgment further refines this protection by focusing on the ability to prudently evaluate marital rights and duties. This is particularly relevant in contemporary contexts where psychological disorders or addictions may impair judgment, highlighting the necessity of interdisciplinary collaboration between canonical authorities and mental health professionals.

The incapacity to assume essential obligations due to psychological causes represents a significant development in canonical jurisprudence. It acknowledges that certain internal conditions can fundamentally obstruct the realization of marriage's essential properties. The involvement of forensic expertise in tribunal cases exemplifies the Church's commitment to rigorous and compassionate evaluation.

The inclusion of ignorance, error, and fraud as additional defects of consent demonstrates the Church's holistic approach to validating matrimonial consent. These grounds ensure that consent is not only free but also informed and genuine, thereby protecting the integrity of the matrimonial covenant.

CONCLUSIONS

As the human being evolves, the tradition of family and marriage organization is changing from prospects that were once adapted to reality. However, as stated above, marriage has lost its direction, one with no objective as the Romans had because of the complementarity of the bonds of man and woman.

This study has examined the critical role of valid consent in the sacrament of marriage within the framework of canon law, focusing on the defects of consent that can render a marriage null and void. The analysis highlights that consent is not merely a procedural requirement but the very foundation of a valid matrimonial covenant. The Church's legal system, particularly through canon 1095 of the 1983 Code of Canon Law, establishes clear and precise criteria to assess the capacity of individuals to consent, emphasizing cognitive, volitional, and psychological readiness.

Consensual capacity, previously understood as the voluntariness of the parties to enter into marriage, is binding on the act in order to fulfil the formalities and meet important needs of marriage through various factors such as time, mental and biological characteristics of the person.

Therefore, the decision to marry is considered to entail internal freedom, since the consent, free of anomalies, defects and vices, comes to the ratification that the contracting parties wish to celebrate the eternal union in fulfilment of the essential ends of marriage.

The necessity of consent, therefore, is considered as a determining element in marriage, as well as the necessary capacity of the subject to bind himself and perform this human act. Hence, the individual must possess the use of reason, sufficient maturity and discretion to fulfil the obligations of marriage.

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