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THE NEW LAW ON MARRIAGE†

LUIGI DE LUCA*

Juridical literature, theological speculation and pastoral theology have always attached great importance to the emotional and spiritual elements of marriage. The Church, indeed, has always been committed to the spiritualization of marriage. It teaches, for example, that marriage has been elevated by Jesus Christ to the dignity of a sacrament, and it sees in marriage the symbol of the union of Christ with the Church.

When, however, the Church moves from the theological or pastoral level to the juridic level, the transition seems inconsistent. At the theological level, the Church, which has always been the highest teacher of morality, has exalted in a particular way the moral duty of spouses to cooperate in the spiritual elevation of each other. The Church has said over and over again that conjugal life is not limited to the sexual sphere. It has insisted on the spiritual value of marriage as an act of love and as a sacrament. But when the Church developed its juridic system on marriage, it reduced the object of marital consent, as was stated clearly in the 1917 Code, to the "handing over and receiving of the right to the body for those acts which are per se apt for the generation of offspring."

The dominant thought in the juridic system of the Church was the notion of "the remedy of concupiscence." The idea, it seems, was that marriage would greatly reduce the number of extramarital affairs and would thus save many people from sinning mortally. This gave rise to a teaching about the object of marital consent that was quite different from that found in Roman Law. It is clear that, even in the first half of this century, our jurisprudence, especially that of the Sacred Roman Rota, assigned priority to the sexual aspect of marriage, the "servitus corporum." Cardinal Jullien himself, for example, once made a point of noting that the mere fact that a person found his or her partner sexually repugnant would not affect the validity of the marriage.

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Canons 1082 § 1 and 1081 § 1 of the 1917 Code seem to have given credence to those who held that the legislator wished the essence of the matrimonial contract (*Matrimonium in fieri*) to consist not in the multiple elements which go together to form the concept of the "*consortium omnis vitae*" but rather to "that single element of intercourse insofar as it is ordered to children in a relationship characterized by perpetuity and exclusivity."

It is generally accepted that one may not pass from the field of ethics (and even more so from the field of poetry) over into the juridic field without making some adjustments, and it was largely with that justification that it was reaffirmed that the "union of souls" does not pertain to the integrity of marriage but only to its perfection.

During the Second Vatican Council many forceful interventions were made by several highly respected bishops. I am particularly pleased to recall the Canadian Cardinal Leger as well as statements by the Canadian Bishops DeRoo and Hacault, which stressed the necessity of overcoming the pessimistic and negative approach of the canonical legislator toward human love. These interventions insisted on the necessity of deepening our study of the gospel and of not forgetting that marriage, in which "the two become one flesh" is a mystery of interpersonal communion, strengthened and sanctified by the sacrament of matrimony. These insights found their most significant expression in the pastoral constitution, *Gaudium et Spes*, which exalts conjugal love and distinguishes it from erotic attraction. *Gaudium et Spes* further notes that in marriage the spouses "mutually give and receive each other," and it defines marriage as a mutual donation of the two persons, a mutual gift of the two selves.

It has been said that *Gaudium et Spes* was the fruit of a compromise between traditional teaching and a new idea, and like all compromises, what is given with one hand seems to be taken away with the other. It is quite natural therefore, that our post-conciliar doctrinal teaching, on the one hand, and our jurisprudence, on the other, have been shaped from interpretations of the Council that are not only different but are actually opposite.

While some have wished to reduce to a minimum the innovative value of *Gaudium et Spes*, others, taking their cue from some conciliar statements and from the words of Pope Paul VI, who declared that he had "voluntarily followed the personalist concept proper to the conciliar teaching," have given to the object of matrimonial consent the widest possible ambit.

Within the Rota itself, one decision, given on October 30, 1970 on a Chicago case, stated that "after the Council it would seem that a defect of true conjugal love results in the absence of the object of the contract." That approach, however, was rejected by a successive Turnus, and the present Dean of the Sacred Roman Rota has vigorously rejected any at-

tempts to give juridic relevance to the "defect of love." Pope Paul VI, furthermore, in his allocution to the Sacred Roman Rota of February 9, 1976 affirmed that "conjugal love has no relevance in the province of law." Such statements, however, did not undermine either the spiritualization of matrimony or the personalist concept of marriage as emphasized by the Council. On the contrary, the teaching and, in its own way, jurisprudence sought to give a formulation and a proper juridic foundation to so called "conjugal love." This was done by the use of two concepts. The first concept was that of "the communion of life and love." The second was the idea of "an interpersonal relationship."

A famous decision, *coram Anne of February 25, 1969*, a case from Montreal, awarded a "juridic sense" to the definition of marriage as "an intimate community of life and of conjugal love," and recognized the fact that the object of marital consent "includes the right to the consortium vitae, that is to say, the community of life which is properly referred to as matrimonial."

Other canonists, meanwhile, were emphasizing the concept of an interpersonal relationship as an essential element of canonical marriage. They pointed out that there was some justification for this even in the Canons of the 1917 Code which, as Serrano observed in a New Orleans case, "already alluded to that quality of interpersonality in which marriage essentially consists."

One should not forget, furthermore, that the Apostolic Signatura itself, in a decision before five Cardinals, given on November 25, 1975, affirmed that marriage "is not a society that is constituted by the spouses exchanging the right to their bodies taken only in a material sense." But then, as though worried over the fact that they had said too much, the Supreme College noted immediately that "the essential object of consent and the intrinsic purpose of the matrimonial contract is the mutual handing over of the right to the body for conjugal acts."

There is no doubt therefore that the Second Vatican Council has provided, both to doctrine and to jurisprudence, the occasion of rethinking the juridic problematic of marriage, especially by having promoted a deeper investigation of the meaning of conjugal society (*matrimonium in facto esse*). In doing this, the Council provided to the future legislator the foundation on which he could build the reform of *matrimonium in fieri*, taking into account all of the elements that are essential to marriage at the very moment in which the bond is established.

First of all, the Council paid very special attention to the *human person* and to the rights and the dignity of the human person. The Council also paid great attention to the *matrimonium in facto esse* and, in effect, expanded what we canonists call the "object" (or perhaps better the "content") of marital consent. This, of course, implied that the requisites or requirements for valid marital consent would likewise have to be

expanded.

It is important for us to understand to what degree the new Code of Canon Law has remained tied to tradition and to what degree it has received new ideas. Regarding this point we should remember that the new Code does not mention the *hierarchy* of the ends of marriage that had been included in Canon 1013 § 1 of the abrogated Code. We should also remember that it was explicitly stated by the commission, in the *relatio* on the text of the new Code, that among the essential elements of the object of consent, the exclusion of which renders invalid matrimonial consent, there ought to be added as well the "*right to the communion of life.*"

The *conservative faction* saw to it that the conciliar expression "the intimate communion of life and love" was, during the course of the preparatory stages for the revision of the new Code, gradually removed. The reference to "conjugal love" was eliminated in the very beginning, and at the very end, the expression "*intimate communion of life*" was also eliminated on the grounds that it would tend to destabilize the marriage bond.

Nevertheless the expression "the consortium or partnership for the whole of life" mentioned in Canon 1055 § 1 of the Code is an *undeniably profound innovation* and a vast improvement over the phrase used in the 1917 Code, namely the "handing over and receiving of the perpetual and exclusive right to those acts which are per se apt for the generation of offspring." This certainly indicates that the essence of marriage can no longer be seen in terms of a "servitus corporum." Rather, it implies a *joining of fortunes by two human beings of different sex for the whole of life and in every aspect of life*. The use of the adjective "totus" rather than "omnis" implies here a spatial dimension and not just a temporal dimension. If, prior to the new Code, only some Rotal sentences affirmed that marital consent is an act of the will by which the spouses "mutually hand over and receive each other" in a way that involves behavior which, as Father Navarrette said "affects in some way the whole human person," today the canonical legislator has fully endorsed this thesis.

The reaffirmation of the personal value of the spouses themselves and the juridic relevance of that personal value is thoroughly confirmed by the fact that, while the Apostolic Signatura, in its aforementioned decision, had sought to restrict as juridically irrelevant those matters which pertain to the personal good of the spouses, since marriage is ordained to the public good, today the canonical legislator has explicitly listed the *good of the spouses in first place*. Additionally, the canonical legislator noted that the partnership of the whole of life is "by its very nature ordered to the good of the spouses and to the generation and education of offspring." All of this makes perfect sense when one reflects that our legislator sees the people of God itself in terms of a "communio," so that in the last analysis one can hold that the good of the spouses is not really

distinguishable from the common good.

All authors, both conservative and liberal, regard as important the spiritual factor of the salvation of souls and, in my judgment, that "good of the spouses" of which the new legislator speaks ought to be seen, above all, as the *spiritual* good of the spouses. It is especially those who serve as judges on marriage cases who are called to reflect on this point. They should remember that their judicial conduct ought to correspond to the *spiritual good* of those who have come to them, moved by their faith, hope and charity and by their desire to be faithful to Christ's teachings.

I fear, however, that the new wording of the Code will be only partially successful in reducing the profound differences that still exist today between church teaching and canon law, differences that are perhaps more serious than the history of canon law shows. It is clear, however, that there has now been a *change of attitude* on the part of the legislator toward marriage. Marriage is no longer regarded by the legislator as an institute considered abstractly in itself but rather as an act brought into existence by *two human beings* for their *material and spiritual welfare*.

It is significant that marriage, like the other sacraments, is now treated by the legislator in Book IV, dedicated to the Church's Office of Sanctifying, and not, as was true in the 1917 Code, in Book III dedicated to "things," the same book incidentally, which treated benefices and the temporal goods of the Church. The new Code has incorporated the conciliar teaching that marriage involves the integral, reciprocal gift of two *persons* and not merely of two *bodies*.

What is necessary for a valid marriage to take place is the will to create a conjugal partnership, a partnership that involves the mutual handing over and receiving of the persons themselves, even though it is not necessary that the spouses positively intend all of the juridic consequences of that "handing over," or that they grasp all of its implications or that they understand its full meaning. The entire series of personal motives that finally bring the spouses to the altar is not *per se* relevant; but the examination of such motives can still be very useful in sorting out the real intention of those spouses. Indeed, a marriage which was celebrated in outright hatred or in considering one's future *companion only as an object* is in total contrast to the idea of marriage as a consortium of life between two people. It is clearly only this latter concept that respects the authentic personal dignity of each spouse and even of the *equal* personal dignity of the two persons.

It is a traditional teaching that, for a valid marriage, it is sufficient that there be the intention of contracting, that is to say, of establishing a partnership, while not being ignorant of the fact that it is a permanent partnership and is ordered to children. It is not necessary that one have a positive intention of obliging oneself to all those things that marriage implies. This gives rise to a problem that is present in every juridic system

that involves intention.

In Canon Law however, given the fact that there is no substitute for real consent, one should not have recourse to theories that are, in turn, based on statutes which (on the assumption that people act responsibly) are content with a simple declaration of the will. This is so because, for a valid marriage, there must always be a true *internal* consent. (See Canon 1101 § 1).

Canon Law, however, does, as we know, have recourse to a combination of presumptions. The first is that anyone who marries religiously "intends to do what the Church does." A second is that "the internal consent of the mind is presumed to be in agreement with the words or signs employed in celebrating matrimony." These presumptions, which are only presumptions "*iuris tantum*," constitute the core of the theory of matrimonial consent, because without it many, and perhaps most, marriages would not be canonically valid, since very few people who enter marriage understand the juridic consequences of the act and have full knowledge of the obligations which matrimony entails.

With time and persistence, we have gradually come to realize that these presumptions, given the state of modern society, do not fully correspond to reality, and that consequently we are, in certain cases, following presumptions that are, in fact, contrary to the fundamental elements of marriage.

It is, indeed, precisely these presumptions that permit us to maintain, on the one hand, that the intention of obliging oneself is absolutely necessary and, on the other hand, that nullity results only when one excludes an essential element of marriage by a positive act of the will.

THE CONTRACTUAL AND SACRAMENTAL ASPECTS OF MARRIAGE

The connection between the contractual and the sacramental aspects of marriage has always dominated the canon law on the institute of matrimony. As a result of this connection, it is impossible to harmonize perfectly the civil law principles on contracts with the fact that marriage for Christians is also a sacrament. In fact a truly profound and complete correspondence between the *real* will and the *manifest* will, is absolutely necessary.

One does not understand the canon law on marriage if one does not grasp the connection between the contractuality and the sacramental aspects of marriage among baptized people. Canon lawyers have, over the years, become increasingly aware of the fact that, in examining the many canonical problems relative to marriage, we must not ignore theological notions. The older canon law react almost exclusively to the *contractual* aspect of marriage, considering the *sacramentality* of marriage as a nec-

essary corollary of the contract. Even if the spouses did not intend to receive the sacrament, the contract would nevertheless be valid. Even more than that traditional jurisprudence held that from the exclusion of the sacramentality of marriage one could not automatically conclude to the nullity of the marriage itself, because the essential requisites for the existence of marriage according to the natural law would still be presumed present by reason of the fact that the parties placed their own marriage under the sign of something sacred and so, presumably, "had the intention of doing what Christians do."

The 1983 Code reaffirms both the sacramentality of marriage (Canon 1055 § 1) and the inseparability of marriage and the sacrament (Canon 1055 § 2).

It is important to note that, even before the promulgation of the new Code of Canon Law, there were attempts, under the influence of the principles of Vatican II, to provide an orientation different from the traditional one. Certain jurists, for example, wanted to view sacramentality as a particular "bonum" of marriage which, if it were positively excluded, would render null the sacrament and consequently the matrimonial contract. And the ecclesiastical tribunal of Venice issued a sentence in which it stated quite positively that "the intention of doing what the Church does" (which has always been considered sufficient for a valid marriage) cannot be presumed when a spouse has no real faith.

Natural capacity:

More than forty years ago A.C. Jemolo, in his classic volume on marriage, stated that "the capacity to consent in canon law does not require any particular degree of maturity or demand the existence of any intellectual or moral elements that would give some assurance that the groom or bride of today would be the good husband or wife or parent of tomorrow."

Today, in view of the evolution that has taken place over the last twenty years in the field of jurisprudence and particularly in view of the new Code of Canon Law, one could not make such a statement. Indeed, even before the new Code, both doctrine and jurisprudence had begun an evolution that was moving in two directions.

The first direction, based on statements of St. Thomas, looks at incapacity of consent, by which one is considered capable of marriage only if he or she is capable of understanding and freely intending that which constitutes the object or content of matrimonial consent.

The other direction, arguing from the necessity of an *integral critical faculty* (which "appears later in the human being than the cognitive faculty"), attaches special importance to the formative, dynamic process of the matrimonial intention. In this approach, it is necessary to determine, with the help of an expert, if the matrimonial intention had been formed in harmony with the various structures of the *personality* of the

spouse.

The expansion of the object of matrimonial consent, as outlined by the Second Vatican Council, has produced a notable impetus on the part of jurisprudence to reexamine the content of matrimonial consent, including the perfect, ideal type of conjugal consortium, and then to examine all of the psychological factors that could produce a *defect of the intrapersonal and interpersonal integration*, even if it is only *relative* to one's spouse.

This is the approach used in most Anglo-Saxon countries where the ground of nullity is often based on the generic reason of "psychological factors" or even on "essential incompatibility," both of which are regarded as resulting in a "lack of due discretion." While the more conservative approach, especially that of the Rota, looks unfavorably on these conclusions, still the Anglo-Saxon countries and the Rota share the same fundamental method of reasoning. Both admit the validity of the criterion of "*discretion of judgment that is proportionate to marriage*" and both also admit the integrative, dynamic criteria for investigating the way in which the intent to marry was formed.

Regarding the degree of discretion required for marriage, Canon 1096 § 1 of the 1983 Code establishes the requirements for "the identity of marriage" by stating that "for matrimonial consent to be valid it is necessary that the contracting parties at least, not be ignorant that marriage is a permanent consortium between a man and a woman which is ordered toward the procreation of offspring by means of some sexual cooperation." The necessity of such a requirement is valid both for the capable and for the incapable subject. It establishes the minimum amount of knowledge required to give valid matrimonial consent. It is not sufficient, therefore, that a spouse have the psychological possibility of knowing that minimum, but it is further required that he or she effectively not be ignorant of that minimum.

Regarding the capable subject, as we have seen, the canonical legislator states the presumption of Canon 1101 § 1 of the Code by which "the internal consent of the mind is presumed to be in agreement with the words or signs employed in celebrating matrimony" and the other presumption which states that one who marries canonically "has the general intention of doing what the Church does." This means that the law takes into consideration the possibility that one or both spouses might intend to create a relationship that does not correspond to that envisioned by the law itself. In effect, therefore, the legislator departs from the presupposition that the act in which matrimonial consent consists is the result of a free adherence to the concept of marriage proposed by the Church. Such a conclusion, however, would be altogether unthinkable in one who was incapable of choosing something other than what the Church teaches. Consequently, recourse to the "general intention" or to the presumption

mentioned in Canon 1101 § 1 becomes inadmissible in the person who is incapable. The *proportionality* of the discretion of judgment, therefore, is established in terms of that which constitutes "marriage itself, some essential element or an essential property of marriage."

The new legislator, indeed, after having established the obvious incapacity of contracting marriage for those "who lack a sufficient use of reason" (Canon 1095, 1), states that they are also incapable of marriage "who suffer from grave lack of discretion of judgment concerning essential matrimonial rights and duties which are to be mutually given and accepted" (Canon 1095, 2) and also those "who are not capable of assuming the essential obligations of matrimony due to causes of a psychic nature" (Canon 1095, 3), with the full knowledge that in the new Code, besides "the perpetual and exclusive right to the body for those acts which are per se apt for the generation of offspring" the content of matrimonial consent also includes the "*right to the consortium of the whole of life*." This means that a spouse could be regarded as lacking sufficient discretion of judgment not only when he or she is unable to understand or intend the "right to the body" or the properties of marriage but also (as would be true in the case of *narcissism* or *sociopathy* or some *egocentric pathology*) when he or she is unable to understand or intend that particular relationship of integration in which the conjugal partnership subsists.

The determination of both the *dynamic* criteria (which refer to the way in which the decision to marry is made) and also of the more *static* criteria (by which it is determined at which point a person is deprived of that discretion of judgment proportionate to marriage) must be finely calibrated or "tuned." To give valid matrimonial consent, it is not sufficient that one be not ignorant of the identity and nature of marriage, but there is also required "a maturity of judgment proportionate to the *res matrimonialis*." This may be clearly deduced from Canon 1095 of the new Code which states that it is not only those who suffer a defect of "maturity of cognition" but also those who suffer from a pathological process of the will who are incapable of marriage.

For Canon 1095, 3 clearly indicates that they are considered incapable of marriage who are not able to assume the essential obligations of marriage "due to causes of a psychic nature," which formula seems to admit the possibility that a marriage may be declared null *even when* there is present the critical capacity of understanding the substance of marriage and its obligations (as would be the case in *nymphomania*, *homosexuality*, etc.).

In recent years, many authors and jurists have, as you know, assigned an autonomous position to the incapacity of assuming and fulfilling the obligations of marriage. The legislator, indeed, foresees this hypothesis in Canon 1095, 3 in which nullity derives from the fact that the subject who is intending to contract marriage, is nevertheless, due to causes of a

psychic nature (nymphomania, for example, or sexual hyperaesthesia and some degrees of homosexuality), not subjectively able to fulfill, and consequently to assume, the essential obligations of marriage. The marriage in this case, is null because "*nobody validly assumes an obligation which he is incapable of fulfilling since it would be impossible for him.*" Personally, I am in agreement with Professor Navarete and with Professor Bonnet, who hold that *limiting this ground to anomalies of psychic origin is not* in accord with the general system of marriage outlined by the new legislator.

Precisely because the new legislator has endorsed the teachings of the psychiatric and psychological sciences (which consider aspects of cognitive life only insofar as they are part of affective life), I am of the opinion that he undoubtedly wishes to attribute *juridic efficacy* to the presence of *affective factors on the will*. It is therefore evident that the really difficult cases are not those in which it has been determined that pathological states exist which deprive one of the use of reason, or those in which it is clear that there is a grave defect of discretion of judgment due to the existence of an illness that certainly and gravely altered the process by which one intends to marry, but rather those in which the instincts or instinctive impulses (caused by *disturbances of the personality* or by outside influences or by certain subjective situations) have *prompted* the spouses to marry when, in different subjective and objective situations, he or she would certainly not have married. It is evident that what we have here are two doctrinal and jurisprudential orientations that are not only potentially, but are actually, opposite.

It is, in reality, always a problem of proportions, that is, of ascertaining if the intention to marry was sufficiently proportionate to the *res matrimonialis*, that is, to that which constitutes the substance of marriage, of which an integral part and, in a sense, an absorbing part is the consortium of the whole of life. And, in my opinion, there could be reintroduced into this category those cases in which subjective and objective factors produce a *psychic disturbance* in the spouse which *impedes* that spouse from a *critical* consideration of one's future life and of one's partner as a true companion of life and not as an object or an instrument that he or she might use to avoid certain situations.

It is here, in my opinion, under the profile of a psychic disturbance that we could find the solution for some cases in which marriage has been contracted out of fear of grave consequences, rather than having recourse to the ground of *metus ab extrinseco* (for example, the case of a young woman who marries only because she is in a state of fearing certain consequences that could befall her).

Legal capacity:

Under this heading I would simply note that the recent restriction of the concept of male impotence signals an expansion of the attitude of the

law towards marriage by placing the man on the same plane as the woman. Such expansion is in line with the conciliar principles which, as has been said, have re-evaluated the personalist aspects of marriage and have considered the sexual relationship as an expression of the communion of life.

MATRIMONIAL CONSENT

It has already been noted that canon law attempts to reduce the practical value of the principle that only the *real* and not the *declared* will of the spouse is regarded as relevant to the validity of marriage by stating that "the internal consent of the mind is presumed to be in agreement with the words or signs employed in celebrating matrimony." (Canon 1101 § 1). Such a presumption is obviously no more than a presumption *iuris tantum*. This applies, as we shall see, not only to the case of a positive contrary intention but also to the case in which there is lacking in the contract that disposition of soul that alone can legitimate the presumption.

Canon 1099 of the new Code, which modifies Canon 1084 of the 1917 Code, makes this evident and states, that "error concerning the unity, indissolubility or sacramental dignity of matrimony does not vitiate matrimonial consent," but then takes care to add "so long as it does not determine the will." If, therefore, a spouse determines to marry, even without a positive intention "against the substance of matrimony," but with the *idea* that matrimony is not a sacrament or that it does not contain the qualities of unity or of indissolubility or is not ordered towards children, then the implication is that he or she is *not disposed* to accept the essential notes of canonical marriage and consequently that the consent is null.

One can arrive at the same conclusion by arguing from Canon 1100 which, in conformity with Canon 1095 of the abrogated Code, states that "the knowledge or opinion of the nullity of a marriage does not necessarily exclude matrimonial consent." From that canon one can conclude, that "the knowledge or opinion of the nullity" does in fact, imply the nullity of the marriage whenever the contractor is *not disposed* to accept the essential obligations of marriage and when at the same time, the marriage is contracted precisely insofar as it is regarded as null.

It also seems that, in this hypothesis, one cannot legitimately suppose the existence of an explicit "intention against the substance." Why then would such a marriage be null? It would be null by reason of the principle that requires, for valid marital consent, a positive disposition of accepting the substance of marriage. The psychological mindset of such a contractor could be envisioned this way: "I believe that my future marriage is null but, if it is not, then I would not be disposed to accept the

matrimonial obligations."

With this in mind, one may conclude from this new canonical legislation that the minimum knowledge required by Canon 1096 of the new Code is sufficient to contract a valid marriage, if it is always possible to have recourse to the presumption that "whoever marries canonically has the intention of doing what the Church does." One may, in other words, always assume that the proper disposition, the "general intention" is present (albeit implicitly) in the mind of the contractor. Otherwise, the marriage of a person who effectively intended to consent only to the minimum of that Canon 1096 would not be valid.

Admitting such a conclusion, an error of law would imply the nullity of marriage *whenever* one acted from a firmly held but heterodox (and, as far as the Church is concerned, erroneous) concept of marriage, and also *whenever* one of the spouses (and this, in practice, would be fairly frequent in marriages celebrated in the Church) would be unaware that the Catholic Church sees marriage as an exclusive, interpersonal, indissoluble union ordered to offspring, and would have his or her own, *even general*, idea of marriage in *contrast* to that of the Church.

It is clear from all this that the expression "*error of law*" is, in fact, used in a two-fold sense. The first is that true error which is had when somebody holds that one can enter marriage without implying certain obligations. The other sense, in which the same expression is used in a confused way, expresses a judgment of the value of certain convictions on the part of the contractor that which are contrary to the teachings of the Church (and considered erroneous by the Church).

In this second case, we are involved in a hypothetical situation in which one could not apply the presumption of the "general intention," and it would be sufficient to show that the *personal conviction of the contractant* had influenced the will in its formative process. In such a case, indeed, the presumption that the contractant "acted according to his own lights" would prevail.

In the first case, however, namely in the presence of a true error, the error would have juridic relevance and would imply the nullity of the marriage only if it could be shown that he or she had effectively attributed essential value to the absence of an element which pertains to the substance of marriage.

In the absence of an explicit clause "against the substance of marriage," the marriage could only be declared null if it were shown that the spouse *only* entered the kind of marriage that did not include certain obligations which he or she rejected. The propriety of this conclusion is confirmed by the letter of Canon 1099 which recognizes the relevance of error of law only when it "determines the will," an expression which abrogated that of Canon 1084 of the 1917 Code which regarded error of law as irrelevant "even if it gave cause to the contract."

And this, it should be noted, was precisely the sort of error envisioned in the hypothesis we just discussed—error which “gave cause to the contract” or, as they say “*error causam dans*.”

THE DEFECTS OF THE WILL

Error

The 1917 Code (Canon 1083 § 2) stated that error about a quality is not a cause of nullity. Not even “*error causa dans*,” as was explicitly noted in Canon 1083 § 2, was considered relevant to validity or, for that matter, even to marriage. The same Canon 1083 § 2, 1 of the 1917 Code did, however, admit the relevance of error about a quality when that error “amounted to an error of person” namely, when it concerned specific requirements individuating the person of the spouse.

The jurisprudence of the Rota, especially from 1970 on, has in many decisions, criticized the traditional interpretation of the concept of “an error of quality amounting to an error of person.” These criticisms were influenced mainly by the re-evaluation of the human person and of personal liberty, and also by public opinion in the Church, which considered it unjust that people were not given the protection of the law against certain damaging situations. Such jurisprudence, however, by continuing to adhere to positive law, still refuses to recognize “*error redundans*” as an error of quality which is (at least subjectively) essential and which determines matrimonial consent.

The following errors, however, are considered relevant, so relevant, indeed, that they produce nullity of the bond: error about the virginity of the spouse (taking into account the particular social ambience in which the spouses live); error about a previous civil marriage; about the professional status of a person; about the fact that the other spouse was married civilly (and had children) in a country which does not recognize divorce; about whether the spouse is industrious, honest and pious; about having a doctorate; about whether one is really a hero; about whether the woman is or is not pregnant; about the quality of one’s public prestige or about the state of one’s health. To arrive at this point, canonical jurisprudence prior to the new Code had recourse either to an evolving interpretation of Canon 1083, §2, 1 regarding “an error of quality amounting to an error of person,” or to the theory of a “quality principally and exclusively intended” or to the idea of the moral and social personality of the integral human being.

The present Code, having modified the text contained in the Schema, which declared that error about the quality of the person did not invalidate a marriage “unless it amounted to an error of person,” and having adopted instead the principle that error about the quality of a person does not render a marriage invalid “unless that quality is directly and

principally intended," accepts the jurisprudential opinion which had admitted the relevance of error of quality when it involved a quality principally and exclusively intended, and had also admitted the relevance of error about an essential and determining quality.

Fraud

A notable innovation introduced by the new Code concerns the matter of fraud. The relevance of fraud had never previously been recognized, even though it was clear to many that such a legislative approach was unjust. Recent Rotal jurisprudence, however, recognized relevant error caused by fraud if it involved a quality which by its nature would seriously disturb the partnership of conjugal life. In the process of re-evaluating this matter, jurisprudence took into account, as one might expect, not only the social environment in which the deceived person lives but also the gravity of the error viewed from an objective standpoint.

Canon 1098 of the new Code substantially confirms the conclusions we reached regarding the relevance of an essential error about a quality that is determinative of matrimony. It states that "a person contracts invalidly who enters marriage deceived by fraud, perpetrated to obtain consent concerning some quality of the other party which of its very nature can seriously disturb the partnership of conjugal life." This law on fraud, as given by the new legislator, is prompted by the desire not only to repress the fraudulent actions of the *deceiver* but even more to safeguard the freedom of the *deceived* person, as he or she decides to enter marriage.

The fact that the error had been caused by fraud justified, in accord with Canon 1098, its being regarded as relevant error of quality, even though the quality was not directly and principally intended. Because when error is *fraudulently* caused, then greater protection should be provided the person than is necessary in the case of true and proper error. The reason for this, it seems to me, is that when a spouse has been deceived (by the other party or by a third party) about a determined quality of the future spouse, then it is clear that, at least in the mind of the deceiver, the other person attributes an essential relevance to that quality, because the whole point of concealing the existence (or nonexistence) of that quality was that, if the other person had known about it, there would have been no marriage.

It has always seemed to me, however, that the objective element here is contained in the words of Canon 1098, which requires that the quality be one which "of its very nature can seriously disturb the partnership of conjugal life." This, of course, ought always to be evaluated by taking into consideration the present subjective and social conditions of the one who is being deceived, and, in particular, the importance which the person attributes to the quality about whose existence (or nonexistence) he or she was deceived. The legislator, indeed, has not denied the relevance of

fraud in the case of a person who is described as a "*vir fatuus*," a foolish or insane man.

Violence

The new Code does not, in the area of violence, substantially change the discipline laid down by the 1917 legislator. Canon 1103 speaks of the nullity of a marriage which has been contracted "due to force or grave fear inflicted from outside the person, even when inflicted unintentionally, which is of such a type that the person is compelled to choose matrimony to be freed from it." By including the phrase "even when inflicted unintentionally," the law has attempted, it seems to me, to eliminate as much as possible the force-fear relationship as understood by the one who is inflicting the fear. Instead, it concentrates all its attention on the figure of the one who is *undergoing the fear* and on how that person acts because of the force.

As a matter of fact, within the context of the 1917 Code, which required injustice as a requisite for fear, one could discuss whether the legislator had intended more to punish the injury that has been done by the one *inflicting* the fear, than to take into account the trepidation of soul produced in the one *undergoing* the fear. Today, I would say, it can no longer be doubted that the legislator has intended to accentuate the point that the legislative discipline regarding violence has, as its special purpose, the *protection of the full freedom of the spouse*.

Such a safeguard however is not completely full and unlimited, because it does not completely guarantee the absolute spontaneity of the spouse. It is, in fact, limited to the case in which the one suffering fear becomes aware that he or she—directly or indirectly had been placed by another person in the situation of having to choose marriage. Or to be more precise, the new Code does not expressly require that the spouse's freedom of choice (based on his or her own reasons) be impeded by an action of another person who explicitly places a threat—either choose matrimony or choose certain dire consequences. What is required, however, is that the person's freedom of choice be impeded by fear (or by the suspicion of fear) caused by the occurrence of some evil that could befall the one suffering the fear, and which he or she avoids by marrying (which is the difference between error and fraud).

Of course, once the legislator no longer required that fear, in order to be invalidating, should be intentionally caused, then it was only logical that the requirement of injustice also be eliminated. In the future, therefore, even when fear is caused by a threat of an evil which a person had a right to threaten, and even when the fear was not intentionally inflicted, it still renders the marriage invalid.

CONDITION

Let me just mention here the principal innovations introduced by the new Code in the area of a condition. I would note, first of all, that before the Code, the principal characteristic both of teaching and of jurisprudence was the dogmatic systematization and determination of the juridic effects of a future licit condition.

The major difficulty in both teaching and jurisprudence consisted of the impossibility of applying to canonical marriage the distinction between validity and efficacy. In canon law, the sacrament of marriage is either valid or it is not. There is no such thing as a valid but inefficacious marriage. The concept of a "not entirely complete" marriage, to which canonists occasionally had recourse, was not able to explain the phenomenon. The fact is that a marriage, prior to the time that a suspensive condition was verified, was, in reality, not a marriage at all. This meant, in effect, that if during that period in which the condition was pending, one or the other of the two parties contracted marriage with a third person, this second marriage would not be null by reason of the impediment of prior bond, but would rather be fully valid.

Many canonists over the years held that a true condition implies that the conditioning party is aware that, in the event the condition is not verified, the marriage is a nullity. This derived as a corollary from the impossibility of conceiving a suspensive condition "together with the intention of an immediate execution, that is to say, from the absurdity of having an intention of consummating the contract along with a simultaneous intention of suspending it as long as a doubt remained about its existence."

Consequently, if in the person who subordinates the validity of a marriage to the verification of a future and uncertain event, there exists the will of execution, we should conclude that he has intended a nonperpetual interpersonal relationship; he has, in reality, the intention of bringing into existence a nonsuspensive but resolute condition. The new legislator, it seems, was entirely logical in considering absolutely null those marriages previously considered as a future condition. In practice, it is extremely difficult to imagine an intention to contract marriage under a suspensive condition that is not at the same time joined to an intention to execute. Contemporary jurisprudence regarding a future condition will no longer have to distinguish, as pre-Code jurisprudence did, between a suspensive and a resolute condition because, according to the new law, both conditions equally result in the nullity of the marriage.

The only condition that the new legislator admits (and he only admits it as something not entirely proper) is that of a past or present condition, noting that the marriage will be valid or invalid insofar as the subject matter of the condition exists or not. In this way, and within

these limits, the legislator has recognized the contractual freedom of the spouses, awarding them the right to attribute relevance to their own individual motives which have brought them to marriage, and in particular to the existence or the nonexistence of a determined personal quality of the spouse.

SIMULATION

Regarding unilateral or bilateral total simulation, Canon 1101 § 2 properly repeats the formula of Canon 1086 § 2 in the 1917 Code. The only real innovations concern to partial simulation.

The Exclusion of the Bonum Prolis

Regarding the exclusion of the *bonum prolis*, the new Code, unlike Canon 1086 of the 1917 Code, no longer contains the formula regarding the exclusion of "every right—*omne ius*—to the conjugal act," a formula which had been considered generally equivalent to "the exclusion of the right to the body" or to "the exclusion (or intention or condition) contra *bonum prolis*." It was by analyzing the word "*omne*—every" that canonists, over the years, concluded that these several formulas were, in practice, identical.

If "the procreation of offspring" does not pertain to the essence of the matrimonial contract but constitutes only a purpose of marriage, the same cannot be said about "the ordering to offspring" which definitely does pertain to the essence of the marriage.

Indeed, the legislator of the new Code, in laying down the norms for the institute of marriage, has tried to assign to "the ordering to offspring" a relevance that is, in a certain sense, considerably greater than that which is assigned to the *bonum fidei* and to the *bonum sacramenti*. For while Canon 1099 indicates that an error about the unity or indissolubility or sacramental dignity of marriage is, in effect, irrelevant, it says no such thing regarding an error about marriage being "ordered to offspring." As a matter of fact, Canon 1096 § 1 considers as a necessary psychological presupposition for valid matrimonial consent that the spouses "at least not be ignorant that marriage is a consortium . . . ordered toward the procreation of offspring by means of some sexual cooperation."

If, for the existence of valid matrimonial consent, it is necessary that the spouses know (based on the principle: *nihil volitum praecognitum*) that their act gives rise to a partnership ordered to children, then one would have to conclude that a consent to a partnership that is not ordered to children does not constitute a valid marriage. What is essential for a valid marriage, therefore, is the absence of an intention contrary to children.

It is precisely in this intention contrary to children that the invalid-

ity of matrimonial consent consists because it is always the intention that exercises a decisive importance in the formative process of matrimonial consent. This is because the conjugal act is an expression of that total and reciprocal expression of the gift of two persons in which the substance of canonical marriage exists. Consequently, because of the reasons stated so well by the Second Vatican Council, every exclusion or limitation of the right to those acts which are truly conjugal or of their "ordering to offspring" renders marriage a nullity.

The Exclusion of the Bonum Fidei

Canon 1056 of the new Code, which is based on Canon 1013 § 2 of the 1917 Code, states that unity is one of the essential properties of marriage. Just as Canon 1086 § 2 of the 1917 Code indicated the nullity of a marriage in the case of an exclusion, by a positive act of the will, of one of the essential properties of marriage, Canon 1101 § 2 repeats that same concept.

Furthermore, just as the exclusion of children or of the *bonum prolis*, in any of its forms, is referred to in Canon 1101 § 2 when it speaks of the nullity of the marriage by the exclusion of "some essential element of marriage," the exclusion of unity or of the *bonum fidei* of marriage is referred to in that same Canon when it speaks of the nullity of the marriage by the exclusion of "some essential property."

Notwithstanding the fact that the basis of the nullity of marriage by the exclusion of the *bonum fidei* consists in the fact that the parties do not have power over their own bodies since they have given it to the other spouse, rotal jurisprudence does not admit that the *bonum fidei* has been excluded in the case of the spouse who reserves the right to homosexual relationships.

The argument that is usually adduced, namely that the right of the spouse to the other's body is limited to those acts which are per se apt for the generation of offspring, is not convincing, given the wording of the new Code which, based on the statements of the Second Vatican Council, speaks of the fact that the parties "give and accept each other" (Canon 1057 § 2), indicating that there is an integral gift of oneself to the other spouse.

The Exclusion of the Bonum Sacramenti

Since indissolubility, along with unity, has been proclaimed by the Church as an essential property of marriage (Canon 1056) from the very beginning of its teaching existence, it is natural that whoever excludes such a property (Canon 1101 § 2), either by placing a term on the marriage or by placing a resolute clause, contracts invalidly, even if he or she intends to resolve the marriage by means of a divorce. This adds nothing new, rather the novelty exists in the connection between the exclusion of the *bonum sacramenti* and error of law.

In the new Code there is no longer a distinction between an "inten-

tion" and a "condition against the substance of marriage," since the legislator indicates that the term "condition" used in Canon 1092 § 2 of the 1917 Code did not express a condition in the technical sense but was more like a clause attached to the matrimonial contract, as jurisprudence had been suggesting for some time.

The central problem, which is present in every case of simulation but is particularly evident in the case of an exclusion of the *onum sacramenti*, is that of determining at what point the positive act of the will required by Canon 1101 § 2 prevails over the presumption contained in § 1 of the same canon, which says that "the internal consent of the mind is presumed to be in agreement with the words or signs employed in celebrating matrimony." If it is true that, for the validity of a marriage, in terms of indissolubility, it is not necessary that the spouse direct his or her will to such a "property" because it is a "*naturale negotii*" then, as we have seen, teaching and jurisprudence are once again giving witness to the fragility of the above mentioned presumption, which is, in turn, based on the presumption that a person who contracts a marriage in the Church has the general intention "of doing that which the Church does." The weakness of this whole approach is particularly obvious in this area of the indissolubility of marriage.

In light of Canon 1984 of the 1917 Code, which stated that "simple error regarding . . . indissolubility . . . even though it be the cause of the contract, does not vitiate matrimonial consent," jurisprudence remained firmly tied to the neat distinction between the sphere of the intellect and the sphere of the will, requiring a positive act of the will against the substance of marriage before marriage would be considered null.

For many years, that principle was repeated over and over again, both in the canonical literature and in jurisprudence. Gradually, however, it came to be realized that the unlimited application of the presumption of the general intention of doing what the Church does by everybody who celebrates canonical marriage is simply not sustainable, particularly regarding people who live in certain cultural, spiritual and social contexts.

Although it is true that a portion of the Church's teaching on indissolubility has been to offer some protection against the divorcist mentality and practice that is now so widespread, still our conscience is telling us more and more clearly these days that the presumption in favor of the general intention of doing what the Church does has, in many cases, very little value. It is anticipated that jurisprudence will now give more attention to what is really going on in the souls of the spouses and to a defining of the dichotomy between the intellect and the will. Noting, as we have, a certain dissatisfaction with the legal presumption of the general intention, jurisprudence seeks either to support this presumption with arguments of a psychological nature or to introduce other presumptions, based on the psychology of the spouse, that are contrary to that legal

presumption. For many years now it has been admitted that the presumption of "the general intention of contracting a true marriage" cedes to the truth whenever a spouse has instead "a general intention of excluding indissolubility."

In an effort to move beyond Canon 1084 of the 1917 Code, jurisprudence over the years has distinguished between simple error (which would be present in the case of a person who was ignorant of the fact that canonical marriage is indissoluble but never actually made an issue of indissolubility during the formative process of the will) and the case of the person for whom error regarding indissolubility was at least one of the motives for the celebration of the marriage. The principal obstacle to this approach was, of course, the phrase in Canon 1084 that said that error of law does not invalidate marriage "even though it is the cause of the contract."

Early jurisprudence, having recourse to the usual distinction between intellect and will, continued to regard simple error as irrelevant even if it was "*ausam dans*," since it remained in the sphere of the intellect and did not give rise to an act of the will. Over the years however, jurisprudence, from its very first admission either that "an erroneous concept about indissolubility" or "the propensity to admit divorce" could constitute a valid basis for presuming the exclusion of indissolubility, attempted to clarify the unity of the human spirit by which one may logically presume that a person wishes that which he truly believes, and therefore, if he manifests the intention of contracting marriage, the content of his intent will be marriage in so far as he conceives it. Eventually jurisprudence assigned essential value, in demonstrating the exclusion of indissolubility, to the concept of marriage in the mind of the spouse who was allegedly excluding indissolubility.

Jurisprudence, furthermore, especially more recent jurisprudence, has clearly admitted in many cases that a truly conscientious adherence to a determined concept or philosophy of life (as is true in the case of the hippies) implies the existence of an "implicit intention against the substance of marriage" and it insists that personal convictions, when they are deeply rooted, "immerse the whole person like an oil poured out" and they create "as it were a new nature of the human being and they irresistibly attract the will of the person." It is true that the great majority of rotal decisions remain firm in regarding as necessary an "occasion" to admit the passage of error into the virtual or actual intention. It is also true, however, that they recognize that it is extremely easy to admit that "occasion"; and when this is joined to the presumption that every person wishes something insofar as he conceives that something, then it is easy to overcome the legal presumption of § 1 of Canon 1101, as well as the presumption of the "general intention of doing what the Church does." Eventually, as we know, several rotal decisions came to recognize that

when an error is "pervicax," then, in effect, it is identical with a positive act of the will; and several decisions noted that the "proportional cause" for the passage from error to a positive act of the will could consist even "in the disposition of the spouse or in the impatience of the spouse with any moral law or any infringement upon freedom or of any bond." In practice, therefore, jurisprudence hardly even recognizes anymore the likelihood that there would be an act of the will that is distinct from a person's own basic convictions that are contrary to the teaching of the Church.

The formula of Canon 1101 § 2 is not different from that of Canon 1086 § 2 of the 1917 Code in requiring as necessary a "positive act of the will." Canon 1101 § 1, furthermore, repeats the presumption given in Canon 1086 § 1 of the 1917 Code. Nevertheless, as regards the connection between the divorcist mentality (which sees marriage as different from canonical marriage) and the exclusion of the indissolubility (or of the unity) of marriage, the new wording of Canon 1099 has, it seems to me, sensibly modified the old Canon 1084. The new canon no longer states that error about unity or about indissolubility, even if it is "causam dans," is irrelevant to the nullity of marriage. It says rather that such an error does produce the nullity of the bond whenever "it determines the will." This more open orientation to which jurisprudence has arrived, even under the old Code, seems, therefore, to be confirmed at least in part by the legislator himself.

The Exclusion of the Right to the Communion of Life

Canon 1086 § 2 of the 1917 Code spoke of the nullity of a marriage by reason of total simulation through the exclusion of the three goods or blessings of marriage: the *onum prolis*; the *onum fidei*; and the *bonum sacramenti*. Canons 1128 to 1130 of the 1917 Code spoke of the communion of life only in the sense of cohabitation.

However, Canon 303 § 2 of the 1975 Schema "De Sacramentis" listed (as a reason for the nullity of marriage) immediately after the exclusion of "marriage itself," the exclusion of the right to the communion of life. That right, as became clear, was not to be confused with mere cohabitation. Then Canon 1055 § 2 of the 1980 Schema (taking into account the many observations made regarding the former draft) rewrote the formula to read "but if either or both parties through a positive act of the will excludes marriage itself or the right to those things which essentially constitute the communion of life . . . the marriage is invalidly contracted." One may deduce from this that the Commission foresaw the possibility that the will could have been directed to the exclusion of various elements or better to the exclusion of some individual elements which make up the communion of life.

It is probably for this reason that in the definitive text of Canon 1011 § 2 the words "right to the communion of life" or "the right to those

things which essentially constitute the communion of life" no longer appear. These phrases are, instead, replaced by the general notion of excluding "some essential element of marriage."

This latter phrase appears to include both the right to conjugal acts and the right to the communion of life; that is to say, it includes both the physical and the spiritual element of marriage. In other words, the 1983 legislator, translating into juridic terms the expression of the Second Vatican Council about marriage as a "communion of life and love" (*Gaudium et Spes* No. 48) does not use the word "love" either when it defines what marriage is (Canon 1055 § 1) or when it indicates more particularly what marriage is not (Canon 1101 § 2). The apparent reason for this was the difficulty of expressing in juridic terms the concept of love.

Nevertheless, after having declared what is the minimum that the spouses should know, and therefore intend, in order to give matrimonial consent (with the understanding that people generally have the "intention of doing what the Church does") (Canon 1096 § 1), the legislator goes on to say in Canon 1101 § 2 that a spouse may never exclude the essential properties or elements of that "partnership of the whole of life" of which Canon 1055 § 1 speaks and which is ordered to "the good of the spouses and to the generation and education of children."

In this way, the legislator has not defined, in all its aspects, the conjugal partnership, but after having noted that the partnership ought to be ordered not only to the "*bonum prolis*" but primarily to the "*bonum coniugum*," it leaves to the judge the evaluation on a case-by-case basis of whether or not, in a particular marriage, there had been excluded those essential elements which characterize a conjugal union and differentiate it from every other interpersonal relationship. It also leaves to the judge the determination of whether, taking into consideration the equal dignity of the spouses, the union was contracted with that "*affectio conjugalis*" which characterizes the marital relationship and which promotes a mutual and complete giving and accepting of each other (Canon 1057 § 2).

An exclusion of the right to the communion of life or of the "*bonum coniugum*" can, therefore, occur even without having recourse to the hypothesis of total simulation or of the exclusion of one or more of the three goods of marriage.

It is in these cases that "the ordering to the good of the spouses" of which Canon 1055 § 1 speaks has an autonomous importance that constitutes one of the more important innovations in the new Code; a marriage is null if the right to the communion of bed, board and dwelling is excluded. Indeed, at the practical level the absolute exclusion of cohabitation is certainly a symptom of the exclusion of the right to the communion of life.

The Exclusion of Sacramentality

The exclusion of sacramentality implies the nullity of the marriage.

The new Code provides textual elements of considerable importance to sustain this thesis. Canon 1099 of the new Code, for example, states, as we have noted, that error of law about the unity or indissolubility or sacramental dignity of marriage does not imply nullity as long as that error "does not determine the will." One may reasonably conclude from this that the new legislator awards to sacramental dignity a status equal to that of unity and indissolubility. It may be regarded, in other words, as one of the "essential properties of marriage" (Canon 1056).

Since Canon 1101 § 2 of the new Code recognizes the nullity of marriage in the case of the exclusion of one of the "essential properties," we may conclude that the exclusion of the sacramentality of marriage by "a positive act of the will" also renders a marriage null. Furthermore, from this same Canon 1099, by a kind of contrary argumentation, one may conclude that if the matrimonial intention has been determined by an error about sacramentality, then once again the marriage is null.

The more subtle problem, however, is the case of a person who only implicitly excludes the sacramentality, without there being any explicit positive intention. This is especially true in the case of a marriage contracted between baptized people who have no faith or indeed are actually hostile to the Church or to the Catholic religion. Having once admitted that an intention contrary to sacramentality can render a marriage null, then we will no doubt find it helpful, in applying this notion to a particular marriage, to turn to the general principles of sacramental theology regarding the kind of intention that is necessary in those who receive a sacrament.

For the existence of such an intention, it is sufficient that it be habitual (leaving aside for the moment the question of whether it ought to be explicit—as the common opinion requires—or whether an implicit intention is sufficient). A habitual intention presupposes, of course, that the intention had actually been made at some point in the past and that it had never been retracted. One could not therefore speak of a habitual intention unless, at some time in the past, there had actually been an intention of receiving the sacrament and not just of placing some external rite. This, basically, is why a recent decision held that, in the case of a marriage of a baptized person who had no faith, recourse could not be had to the presumption that everyone who enters marriage by means of a religious ceremony has the "general intention of doing what the Church does," which is the minimum that is required for a sacrament to result. In such a case, it seems, we should rather presume a "general negative intention" against the sacramentality of the bond.

CONCLUSION

In closing, I would like to call to mind that the new Code implies an

enlargement of the right to marry and also a more ample safeguard of freedom of conscience, even in those areas which I have not been able to examine in detail here, such as impediments and mixed marriages and the separation of spouses.

Anyone who reads the section on marriage in the new Code can no longer question whether the purpose and point of the legislative innovations correspond to the profound changes which have occurred in the Church since 1917 and especially regarding the family and the relationship of a man and a woman.

The 1917 legislator, who was still legislating for the whole Catholic world, was primarily influenced by the culture and civilization of Europe. Anyone who studies the evolution of the institution of marriage over the last fifteen years and who examines both the written and the unwritten law, will see that, beyond the traditional Neolatin-European system, a new system has come into being which might be called the Anglo-American system. It is, furthermore, quite clear that this new system is much more open, than was the old, to the exigencies and to the mentality of the world in which we now live.

The canonical legislator of 1983, following the lead already afforded by extracodal legislation and by jurisprudence, has now made a marked break with the old system that was only admissible in a preindustrial society.

It is to the human person, ever more isolated in our society, that the Church turns its particular attention by reaffirming that every person has the natural right to create an interpersonal relationship in which the proper integration, assistance, and comfort for the whole of life can be found, even in a society that tends to marginalize its people.

This union, furthermore, ought to be a true "consortium" or partnership, and precisely because it is irrevocable and made with full understanding of the value of the act by which it is instituted, and because it is completely free and knowing and unmarred by any deceit or any conditions, the law awards its highest respect both to the partnership and to the personal dignity of both the spouses who reciprocally offer themselves as a gift to each other by binding themselves to a covenant that is a pact of love. Only in this way do the "two become one flesh."