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# THE INCIDENCE OF MENTAL DISORDER ‡

MSGR. MARION J. REINHARDT\*

ON APRIL 16, 1970 at Niagara Falls, New York, at the convention of the Eastern Regional Conference of the Canon Law Society of America, we read a paper entitled, "Essential Incompatibility as Grounds for Nullity of Marriage."<sup>1</sup> The thesis was based on well known canonical principles. No one could oblige himself or be obliged to do the impossible. The impossibility could be rooted in the psychic as well as in the physical. Permanence is an essential property of marriage. To these principles we added that to exchange permanent rights with each other, husband and wife must be able to lead some "common life" together. They must at least be able to lead the minimum conjugal life together, i.e. to engage in marital intercourse in a truly human fashion. Later *Anné*, in a celebrated Rotal Decision, published November 10, 1970 (but decided on February 25, 1969) spoke of a basic capacity for the community of conjugal life as being necessary for a valid marriage contract.<sup>2</sup>

In the paper on essential incompatibility we spoke of a "constitutional incapacity," signifying an inability based radically in the structure of the personality, not so much in the genes as in the environmental development of the personality. We concluded that two persons, relative to each other, could be so constituted in their personalities, that they were psychically incapable of leading a common life together. We pre-

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‡ A paper read at the Fifth Annual Spring Conference of the Canon Law Society of Great Britain on May 17, 1972 at Myddelton Lodge, Ilkey, Leeds, England.

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<sup>1</sup> 16 CATHOLIC LAWYER 173 (1970).

<sup>2</sup> S.R.R. Decisio, Marianopolitana, coram *Anné*, 25 February 1969, *cf.* *Ephemerides Iuris Canonici*, An. xxvi, 419-22 (1970).

sumed that "such incompatibles" singly considered, might have the power of due discretion to bind themselves to the contract although relative to each other they could not fulfill the essential terms of the contract. We suggested psychological testing in depth to establish such relative constitutional incapacity to fulfill.

The historical origin of this paper is the following experience of the Brooklyn Tribunal. In almost every case where the parties claimed that they were unable to continue common life together because they were incompatible and where they were also willing to undergo psychological testing in depth,<sup>3</sup> the tests revealed some severe psychopathology in one or both of the parties . . . such psychopathology as to severely interfere with the power of due discretion in the area of marriage . . . such a condition from which the court could find the marriage null and void from the lack of consent on the part of one or both of the parties. These were our consistent findings from the results of testing in from two to three hundred cases. In other words, the priest-attorneys pleading before our court, searching for proof of a relative incapacity of bride and groom to live together in a permanent and human fashion, found that they did not have to argue their cases on a relative incapacity, but that, if the parties cooperated sufficiently, there was generally sufficient evidence to prove that at least one

party alone lacked the capacity to marry at the time of the marriage.

We were deeply surprised at the findings which resulted from psychological testing and from clinical studies by psychiatrists. Actually, if we had a sufficient background in psychology and psychiatry, we should not have been. Some of the experts, who had helped us prepare the paper on incompatibility and who appeared frequently before our court, had warned us about this. Dr. Frederic L. Gannon had said, "I would seriously doubt that the individual parties possess sufficient power of discretion if it does result in incompatibility." Dr. Walter J. Coville, a clinical psychologist, stated that "if the fact is accepted that the basis for essential incompatibility may be rooted deeply in the unconscious aspects of personality, then it follows that these unconscious and compelling forces do in fact impair due discretion to bind oneself to the marriage contract because all the facts are not available to the consciously functioning judgment of the couple." Dr. William S. Davis, psychiatrist, asked whether the fact that two essentially incompatible people contract marriage indicates that one or both lacked that degree of due discretion necessary to contract marriage, answered that in his estimation one of the partners lacked the due discretion necessary to bind himself to a contract as serious as marriage. Dr. Pasquale D. Lotesta, psychiatrist, also affirmed that the very fact that a married couple is incompatible indicates that one or both lacked that degree of due discretion necessary for a valid contract. Dr. Edward F. Falsey, psychiatrist, asserted that the fact that two people are essentially incompatible does strongly suggest that one or

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<sup>3</sup> The psychological tests usually administered were: Wechsler Adult Intelligence, Bender Visual Motor Gestalt, Figure Drawing, Word Association, Minnesota Multiphasic Personality Inventory, Sentence Completion, Thematic Apperception, Rorschach Examination and Marriage Adjustment Inventories.

both lacked that degree of discretion necessary to bind oneself to a contract as serious as marriage.

The psychiatrists who appear before the Brooklyn Tribunal are not unique in their opinions. Doctors Dorothea C. Leighton and Alexander H. Leighton, writing in the *Comprehensive Textbook of Psychiatry*, testify that "there is a popular idea that there must be something wrong with one or both of the parties who break up a marriage."<sup>4</sup> Jaco made a study of psychotic subjects in Texas and he found that the annual incidence rates of psychotic subjects were highest for the divorced, followed by rates for the single, the separated, the widowed, and finally for the married.<sup>5</sup> Doctors Srole and Langner have found in the so-called "Midtown Study" conducted in New York that the divorced of both sexes have the highest mental morbidity rate of all the four marital status categories. The incidence of impairment among the divorced was twice as high as that among the married between the ages of 30 and 49.<sup>6</sup> The Doctors Leighton conclude that the "Midtown Study" shows that divorce and poor mental health are closely associated.<sup>7</sup>

Returning to our own experience in the Tribunal of Brooklyn, I wish to say immediately that not all of those whom we found

lacking in the necessary judgmental capacity to contract marriage were suffering from psychosis. Among those who found their marriages to be unlivable and who were willing to cooperate in our psychological and psychiatric examinations, psychosis was found to be present in approximately one-third of the cases. In the remaining cases of unsuccessful marriages that were examined, the cause of the break-up was found in the so-called "personality disorder." The personality disorder not only had made the continuance of common life impossible, but as we have been assured by our psychiatric experts that those inflicted with such disorders in general also lacked the judgmental capacity to enter marriage. This incapacity resulted not from the fact that they were insane—because they were not psychotic—but from the fact that the personality disorder itself prevented them from recognizing certain essential facts about themselves, and frequently about the other party, which were necessary to make a prudent judgment about the advisability of marriage.

First of all, what are these personality disorders which were found in approximately two-thirds of the marriage cases presented for our adjudication? According to the Diagnostic and Statistical Manual of Mental Disorders,<sup>8</sup> published by the American Psychiatric Association, personality disorders are characterized by deeply ingrained maladaptive patterns of behavior that are perceptively different in quality

<sup>4</sup> FREEDMAN & KAPLAN, *COMPREHENSIVE TEXTBOOK OF PSYCHIATRY* 1530 (1967) [hereinafter FREEDMAN & KAPLAN].

<sup>5</sup> RUSSELL SAGE FOUNDATION, *THE SOCIAL EPIDEMIOLOGY OF MENTAL DISORDERS* 122-23 (1960).

<sup>6</sup> L. SROLE, *MENTAL HEALTH IN METROPOLIS, THE MIDTOWN MANHATTAN STUDY* 185 (1962).

<sup>7</sup> FREEDMAN AND KAPLAN, *supra* note 4, at 1530.

<sup>8</sup> AMERICAN PSYCHIATRIC ASSOCIATION, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS* (3d ed. 1968) [hereinafter *MENTAL DISORDERS*].

from psychotic and neurotic symptoms. Generally, these are life-long patterns, often recognizable at the time of adolescence or earlier.

Dr. Norman Cameron of the Institute of Human Relations, Yale University, states that in the personality disorders some distortion of the personality develops early in life and persists as a person's style, as a characteristic way in which he copes with his environment and defends himself. Persons with such disorders must live in accordance with their fixed patterns of behavior. There is unquestioning conformity. Everyone adopts certain habits of behavior, but the individual who achieves normal, effective adulthood is able to adapt his behavior to meet the demands of changing circumstances. When conformity to a fixed pattern of behavior is a must from which one cannot deviate in spite of the fact that circumstances would warrant otherwise, there is present a personality disorder rather than a simple personality habit or trait.<sup>9</sup>

Among the more common personality disorders listed by the American Psychiatric Association in their Diagnostic and Statistical Manual of Mental Disorders are the following: paranoid personality, cyclothymic personality, schizoid personality, obsessive-compulsive personality, hysterical personality, passive-aggressive personality, anti-social personality, inadequate personality, sexual deviation and alcoholism.<sup>10</sup>

Confronted with so many unhappy marriages where psychological testing has shown that one or both of the parties were suffering from a personality disorder, we asked Dr. Francis C. Bauer, a psychiatric expert who has been appearing before our Court for twenty years, to explain the effect of such pathology on the contractual ability of a party entering marriage. I quote now from Dr. Bauer:

The building up of the personality is a matter of control by the conscious mind of the fundamental urges of the unconscious. Through inhibiting activity, various asocial urges are hindered and the demands of social adjustment are met. The domestication of aggressive and certain sexual strivings makes for social serviceability.

The devastating effect of personality disorders is the individual's lack of awareness of the defect. Since the psychopathology is not known to the individual, he is unable to compensate at the conscious level. The disorder constitutes a blind spot in the mental apparatus.

The youngster confronted simultaneously with a bright, shiny penny and a well worn dollar bill will inevitably choose the former. His reaction is predictable and is based on his lack of capacity to know the intrinsic value of either object. But he does not know that this knowledge is relevant and he thinks that he is making a free choice. He is unaware of the fact that his choice is not free, but really determined entirely by the superficially attractive aspects of the object of his selection.

In similar fashion, the schizoid personality does not know that he is narcissistic and self-absorbed as a result of which he is unable to sustain the close interpersonal relationship and the intimate sharing of the emotional life demanded in marriage. Nor can he know that these demands will disturb his life adjustment, upset his equilibrium and cause him great discomfort after he enters the married state. He does

<sup>9</sup> N. CAMERON, PERSONALITY DEVELOPMENT AND PSYCHOPATHOLOGY, A DYNAMIC APPROACH 638 (1963).

<sup>10</sup> MENTAL DISORDERS at 9-10.

not even suspect that whatever love he can generate he must redirect toward himself because of his personality disorder and that there will be no love available to direct toward his spouse. Accordingly, he is attracted by the ideas of marriage and reinforced by the attitude of society toward that institution. He also experiences the physical attraction of the opposite sex and is encouraged by the love directed toward his partner. Like the shiny penny, his reaction is predictable. Lacking all of the information necessary to make a rational decision, however, his choice is inevitable, not free.

In the case of the antisocial and inadequate personality disorders, we are faced with similar situations. Such individuals have not the slightest intimation that their personalities are in any way defective. They cannot know that they are unresponsive to the value system of their society by virtue of disordered personalities. They are not aware of their chronic disregard for the consequences of their behavior. They, in fact, perceive themselves as normal, mature individuals. When the harsh intrusion of reality makes them aware of the inadequacy of their behavior, they are truly surprised. Usually they project responsibility for the difficulties they have caused onto others or onto some institution of society or vaguely to "the system."

Lacking the capacity to develop guilt feelings, which anxiety makes people responsive to ethical norms, people with this type of psychopathology are blissfully unconcerned about the consequences of their behavior and lack a sense of responsibility. Emotionally they are not impressed with rewards for good behavior or punishment for bad. But they are unaware of their incapacities. For these reasons then they cannot be said to judge freely since they are in all matters not choosing between alternatives but reflexively behaving according to the pleasure principle.

These conditions are difficult to comprehend because such individuals seem to be deliberately and purposefully flaunting the

traditions of society and breaking its laws in a malicious and willful manner. But they are not. The essence of the personality disorder is that they cannot act otherwise.

What Dr. Bauer has stated about the schizoid, anti-social, and inadequate personalities can be said in general of all of the personality disorders. They lack insight into their personal incapacities to lead a married life. Did you ever try to convince a person addicted to alcohol or to drugs of the severity of his affliction? Even if somewhat convinced, he is still unaware of the basic personality disorder, usually passive-aggressive, which led him to abuse of alcohol or drugs. The homosexual also might have some knowledge of his deviation, but when we examine the motives which prompted him to marry, we must admit that they are far from reasonable.

Dr. Bauer's analysis of the personality disorder indicates two legal approaches to the invalidity of a marriage. Both of these are centered on the "lack of due discretion." In the first instance he argues that personality disorders cause "blind spots" which make it impossible for those afflicted to know or to acknowledge their incapacities in regard to the essential obligations of marriage. In these cases the principle of "caveat emptor" does not apply because the personality disorder itself blinds the contractant to his disabilities. Very frequently the personality disorder causes the person afflicted to wrongly judge the other contractant. Our jurisprudence holds that all anomalies of the personality which seriously interfere with the power of understanding and the power of judgment could cause invalidity. These very same anomalies which cause the contractants to

lack the necessary information also cause, according to our experts, married life to be unbearable.

Dr. Bauer also argues from the point of free volition. Those suffering from personality disorders frequently do not make a free choice either in entering marriage or in choosing a suitable mate. Again our canonical jurisprudence holds that to enter a valid marriage one must be able to freely choose, for reasonable motives, whether he wishes to marry and with whom he wishes to marry. If the marriage in question is predetermined by reason of an incapacitating personality disorder, freedom of choice could be lacking and nullity would result.

There is a third ground for nullity implied in the argument of Dr. Bauer. Because of the rigidity of the manner of acting caused by a personality disorder, the personality disorder itself most frequently causes the failure of the marriage, i.e., causes common life to be impossible. If the court can honestly find this to be the case, it would be justified in finding for nullity because no one can be obliged to do the impossible.

In this third case, where we consider the personality disorder as the true cause of the failure of the marriage, one is confronted with the difficulty that the inability to fulfill must be perpetual. If the disorder is curable, it is not perpetual.

Concerning the curability of a personality disorder one must also study the individual case, but in general one must not be over-optimistic in finding such a condition curable. Dr. Norman Cameron of Yale University states: "If a person with a

character disorder seeks therapeutic help, it is because he has for some reason become dissatisfied with the way he is organized, or with the way he operates, and because he hopes through therapy to acquire a different, happier, and more effective way of living. Nowadays it is this hope that motivates a large percentage of patients who turn to psychotherapy and psychoanalysis. This hope is an ambitious one. It implies the possibility of making fundamental changes in a personality organization that has determined the patient's very style of life, perhaps from childhood. Sometimes such a hope can be fulfilled; more often it cannot. If a patient's hope can be so modified that he expects improvement rather than a radical change, his chances of reaching his goal will be greatly increased and the chances of therapeutic disillusionment may be correspondingly lessened."<sup>11</sup>

Dr. Eugene B. Brody and Dr. Lindbergh S. Sata of the University of Maryland stated that "[P]ersonality-disordered patients place perhaps the greatest demands on psychotherapists. The rewards for continued, devoted work with such patients have been relatively small to date. The tendency for the therapist to become annoyed, discouraged, or preoccupied with his own therapeutic impotence is great."<sup>12</sup>

There is also danger in therapy for personality disorders. Dr. Cameron states, "[i]n entering upon the treatment of personality or character disorders one must

<sup>11</sup> N. CAMERON, *PERSONALITY DEVELOPMENT AND PSYCHOPATHOLOGY, A DYNAMIC APPROACH* 640 (1963).

<sup>12</sup> Cf. FREEDMAN AND KAPLAN at 939.

bear in mind the risk of a psychotic regression resulting from therapeutic disturbance of the pathological equilibrium. Effective psychotherapy and psychoanalysis often involve risks, as surgical interference does. The therapist who takes such inevitable risks into account is not to be blamed if, in spite of all reasonable precaution, they materialize in the course of therapy. . . . No psychotherapist or psychoanalyst opens up the old conflicts, crystallized in personality distortion, without endangering his patient's equilibrium; but without this danger there can be no effective psychotherapy or psychoanalysis."<sup>13</sup>

I do not wish to give the impression that once the court is confronted with a diagnosis of a personality disorder, it can immediately declare the marriage null and void. We are more or less accustomed to do this in the case of schizophrenia as long as we are satisfied that the illness existed in a "full blown" condition before the marriage. On the other hand, questioning by the court as to the severity of the disorder, its incapacitating effect on the marital life, the patient's knowledge of the condition, its effect on the intellectual, volitional, and judgmental aspects of the consent, will frequently lead the court to moral certitude that there could have been no true marital consent or that one or both of the parties was incapable of fulfilling the essential obligation of marriage, especially that of permanence. For this, psychological testing

in depth is of great assistance to the psychiatrist who advises the court. The manner of interrogating the medical expert is also helpful: Did you find psychopathology? Was it severe? Did it affect the understanding of marriage, the will, the judgment? Was the psychopathology the substantial cause of the consent? "But for" the psychopathology, would the disordered person have married this person, at this time? Was the condition reasonably curable considering the therapy available and the person's motivations, financial status and usual place of residence? How much therapy would be required? Was there reasonable hope of success? Was there danger in therapy? How much danger?

The question is immediately raised as to the percentage of cases which are successful on the grounds of a personality disorder. Without giving exact numbers—because I cannot—I must say that it is very high—at least ninety per cent of the cases argued on these grounds are successful. The lack of success more frequently is caused by a lack of cooperation of one or both of the parties. Success many times depends on the psychological tests, because only too frequently clinical observations by a psychiatrist cannot detect the severity of the disorder. Sometimes clinical observation alone is sufficient. All experts appearing before our court agree that these personality disorders can be more disruptive of marital life than neuroses and psychoses. The internal necessity to act in a definite, positive manner without regard for the changing circumstances of life, as is found in the schizoid or passive-aggressive personalities or, on the contrary, the internal

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<sup>13</sup> N. CAMERON, PERSONALITY DEVELOPMENT AND PSYCHOPATHOLOGY, A DYNAMIC APPROACH, 641-42. Cf. Bauer, "The Problem of Change in Therapy," PROCEEDINGS OF THE MENTAL HEALTH INSTITUTE ON PSYCHOTHERAPY 19-28 (1965).

necessity to act on the "pleasure of the moment" principle as is had in sociopaths, makes married life impossible. If the marriage does continue, we are advised, it is often only because both parties are equally disabled.

A final point I would like to consider is the incidence of mental illness. If we are convinced that mental illness does have a bearing on the contractual ability of a person or on his ability to fulfill the commitments he makes in the marriage contract, the prevalence of mental illness should give us some indication of the problems which face ecclesiastical tribunals today.

To begin the consideration of incidence of mental disorders, I am sorry to say that I have been able to find no reliable statistics about the prevalence of the so-called personality disorders which cause such havoc with so many marriages.

All I can state in regard to prevalence of personality disorders is that in the cases of unsuccessful marriages which have come to the attention of the Brooklyn Tribunal and where the parties have been willing to cooperate in an investigation of the causes of the failure, especially by psychological testing, the cause of the failure of the marriage has been found in a "personality disorder" in approximately two-thirds of the cases. The cases of personality disorders were twice as numerous as psychoses. In almost every action where the argument was based on a personality disorder the plaintiff, or more properly his attorney, was able to show that the power of discretion was severely compromised or that the disorder caused a permanent inability to fulfill the contract. Questioned

about this, our psychiatrists in unison have responded that if two mature persons commit themselves in marriage to each other, they are able to adapt themselves to each other in reasonable fashion. A psychosis or a personality disorder normally does not permit such adaptability.

To the best of my knowledge three major studies have been conducted on the prevalence of mental disease. One was made by the University of Lund in Sweden and consisted of a person-to-person interview with 2,550 men, women and children of two rural Swedish parishes.<sup>14</sup> This study indicated that psychiatric abnormality was absent, at the most, in fifty per cent of the population. Abnormality was evident in eight to nine per cent, probable in thirteen to twenty-four per cent, and conceivable in twenty-six to twenty-eight per cent of the population.<sup>15</sup> One wonders what the results would have been if these 2,550 rural inhabitants would have been willing to submit to psychological testing rather than a personal interview.

A second scientific study was made in Sterling County, a rural area in Canada. Here it was found that there was almost certain psychiatric disorders in thirty per cent of the population. Almost certain psychiatric disorders were found in twenty-one per cent of men and forty per cent of women. Probable psychiatric disorders were found in another twenty-six per cent

<sup>14</sup> Cf. FREEDMAN AND KAPLAN at 1521-22. Reference is made to Essen-Moller, "Individual Traits and Morbidity in a Swedish Rural Population," ACTA PSYCHIATRICA ET NEUROLOGICA SCANDINAVICA, Supplementum 100 (1956).

<sup>15</sup> *Id.*

of the males and in another twenty-five per cent of the females. Twenty per cent of the males and fifteen per cent of the females in Sterling County were found to be almost certainly free of psychiatric disorder.<sup>16</sup>

A third study, known as the "Midtown Study," was conducted in New York City. This study indicated that nineteen per cent of the population had no indication of psychiatric symptom formation; thirty-six per cent had mild symptom formation but were functioning adequately; twenty-two per cent had moderate symptom formation with no apparent interference with life adjustment; twenty-three per cent in addition to showing symptoms also showed impairment in life adjustment. Of the twenty-three per cent who showed psychiatric symptoms interfering in life adjustment, thirteen per cent evidenced marked impairment; in seven per cent the impairment was severe; in three per cent the impairment was incapacitating.<sup>17</sup>

There are difficulties in evaluating these diverse studies. Doctors Dorothea C. Leighton and Alexander H. Leighton conclude that between one third and two thirds of the population studied showed symptoms of disorders recognizable by psychiatrists.<sup>18</sup> I think that from our viewpoint as canonists, they show severe impairment in at least ten per cent of the population. The significance of moderate impairment of behavior on married life must be left to future studies.

<sup>16</sup> Cf. FREEDMAN AND KAPLAN at 1523-25. Reference is made to A. LEIGHTON, *THE CHARACTER OF DANGER* (1963).

<sup>17</sup> L. SROLE, *MENTAL HEALTH IN THE METROPOLIS, THE MIDTOWN MANHATTAN STUDY* at 138 (1962).

<sup>18</sup> Cf. FREEDMAN AND KAPLAN at 1525.

If we are willing to admit that ten per cent of the population of our dioceses are *severely* impaired in their general behavior, what are we to conclude as to the effectiveness of our Tribunals?

As canonists, generally we feel more secure when we are faced with cases of schizophrenia. The jurisprudence is clear: schizophrenia deprives a person of that power of discretion necessary for marriage; if schizophrenia is proved before and after the marriage, it is presumed to be present at the time of the marriage; a person once recognized as schizophrenic is presumed always to be schizophrenic. What is the prevalence of schizophrenia?

It is conservatively estimated that the prevalence of schizophrenia is approximately 150 cases for 100,000 population. A recent study in Yugoslavia indicated 329 persons afflicted with schizophrenia per 100,000 population.<sup>19</sup>

Another study indicates that the chances that any individual of a given age may be hospitalized for schizophrenia between birth and age 75 are 800 to 1,200 per 100,000.<sup>20</sup> It must be pointed out that this estimate of 800 to 1,200 per 100,000 is for hospitalized cases of schizophrenia. We are certain that many schizophrenics have never been and never will be hospitalized.

A highly scientific study of the prevalence of mental illness was made recently in Dublin, Ireland. The study consisted of gathering and analyzing the data concerning persons admitted to mental hospitals *for the first time* during the year 1962.

<sup>19</sup> Cf. FREEDMAN AND KAPLAN at 599.

<sup>20</sup> Cf. FREEDMAN AND KAPLAN at 600.

Dublin at the time had an approximate population of 720,000. In 1962, 1,427 persons were admitted for the first time. Of this number 703 were psychotic, 191 were neurotic, 232 had organic disorders, 253 had personality disorders and 48 had mental subnormality.<sup>21</sup> Knowing the tendencies of all hospitals to give a less serious diagnosis where possible, I personally believe that the number of psychotics admitted to hospitals for the first time in Dublin was much higher than 703. Do neurotics and those who have personality disorders generally require hospitalization? We must also consider that many potential patients are not admitted to hospitals who would fall into the category of the seriously disturbed.

Considering the number of mentally disturbed persons, realistically we must ask ourselves how many of the seriously disturbed are married persons. The Dublin study shows that one-half of those admitted to hospitals for mental illness in 1962 were married.<sup>22</sup> A fairly logical conclusion would be that in Dublin where in one year 703 persons were admitted to the hospital for the first time for psychotic illness, there would exist at least 350 actionable cases—on the grounds of psychosis. We say nothing of those neuroses and personality disorders which with future work-ups might eventually be considered psychoses. Nor do we consider in these numbers those who came to the hospital because they were disturbed but were not admitted, nor those who never approached a hospital for treat-

ment because their behavior did not cause social problems.

What practical conclusions are we to draw from our considerations? First of all let us consider the possibility of cases on the grounds of schizophrenia. If we take a conservative figure of 150 cases of schizophrenia per 100,000 population, and if we say that at least one half of these are married, do we not have a potential of 75 cases of nullity per 100,000 population? With these numbers the Diocese of Brooklyn with one and one half million catholics would have a potential of 1,125 cases, solely on the grounds of schizophrenia. If we add to these our findings in personality disorders there would be about 3,375 cases which warrant hearing. If we accept the more liberal numbers of about 1,000 schizophrenia per 100,000, and if we consider one half to be married, we would have in the Diocese of Brooklyn a potential of 7,500 cases on the grounds of schizophrenia and another 15,000 on the grounds of personality disorders. If we use the finding that 10 per cent of a population is seriously disturbed and half of these are married, are there not potentially in the Diocese of Brooklyn 75,000 marriage cases. Of course, these would include addiction, neuroses, mental subnormality, manic depressive psychoses, etc. These figures would have to be lowered to some extent because of the high incidence of mentally disordered people marrying others with similar afflictions.

I certainly am not suggesting here a new Inquisition to separate all couples who are invalidly married. But I am asking this question: how often do we as priests try to keep together people who just cannot

<sup>21</sup> Cf. FREEDMAN AND KAPLAN at 600.

<sup>22</sup> Cf. 115 BRITISH JOURNAL OF PSYCHIATRY 449-56 (1969).

live together, who have a right to a decree of nullity and, possibly, to remarriage. We must also remember that if we try to conciliate parents who in actuality are seriously disturbed and are unsuited for each other, the possibility of disturbed children from such a union is highly increased.

In an interview, Cardinal John Wright, head of the Vatican's Congregation for the Clergy, stated that with the new knowledge of psychiatry and psychology, the Catholic Church may eventually broaden its attitude on divorce and remarriage. He added that with the new knowledge there may be people who go through a marriage contract unfit to do so. He concluded that we may come to see that such marriages were not valid from the beginning, because of the immaturity of the people who were married, because of their lack of freedom in any full sense or because of their incapacity for marriage.<sup>23</sup>

I personally believe that the day which Cardinal Wright foresaw in 1970 has already arrived. To convince ourselves, we need only ask our clients to undergo psychological testing in depth. When the results of these tests are properly interpreted for us by psychiatric experts, I believe that the very number of those who deserve relief from our courts will of necessity force us to re-think the canonical process of nullity even in its recently simplified form. The transcribing of all of the acts, collegiate tribunals of three judges, long written

decisions, *necessary* appeals by the defender of the bond, all these, I am convinced, will have to cease if we are to fulfill our obligations to recognize and declare the rights of those who come to us for relief.

If collegiate tribunals are to remain, and I believe that in some cases they should, the opinions of the two associate judges should be limited to a judgment of the facts. When an appeal is lodged against a judgment of the court of first instance, the court of second instance in reviewing the case should follow the principle of judicial restraint. The facts of the case as found by the trial court should remain unless they are "clearly erroneous," because the trial court is in the best position to understand and to interpret the facts, and to judge the credibility of the parties and witnesses.<sup>24</sup>

There are certain dangers of abuse or error in the procedural proposals I have made. But has there not been error and abuse for many centuries in forcing people to remain together in marriage when, in fact, they humanly could not? The local bishop, by his own personal and continuous surveillance and by his appointment of trained and conscientious judges and defenders of the bond, can correct any errors and abuses that might arise whether they be against the interest of the individual or against the interest of the ecclesial community.

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<sup>23</sup> U.S. NEWS & WORLD RPT., Aug. 31, 1970, at 58.

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<sup>24</sup> Cf. FED. R. CIV. P. 52(g); *United States v. United States Gypsum Co.*, 333 U.S. 364, 394-95 (1948).