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A NEW JURISPRUDENTIAL ASPECT OF ANTISOCIAL PERSONALITY DISORDER IN RELATION TO MARRIAGE†

REVEREND AUGUSTINE MENDONCA*

The juridical principles concerning an individual's incapacity to contract marriage are now officially embodied in the new Code of Canon Law.¹ Canon 1095 of the new Code states:

The following are incapable of contracting marriage: those who lack sufficient use of reason; those who suffer from a grave lack of discretionary judgment concerning the essential matrimonial rights and obligations to be mutually given and accepted; those who, because of causes of a psychological nature, are unable to assume the essential obligations of marriage.²

† This article comprises a brief commentary on the rotal decision of April 20, 1979, *coram* Pinto (S.R.R. 1979). The sentence was published in 104 M.E. 383-95 (1980). A similar jurisprudential approach to cases involving psychological disorders may be found in two recent sentences. *See c. Pinto* (S.R.R. Dec., Dec. 18, 1979), December 18, 1979, in 104 M.E. 375-88 (1980) (Borderline Personality Disorder); *id. c. Stankiewicz*, (S.R.R. Dec., July 23, 1981), in 107 M.E. 176-85 (1982) (Passive-Aggressive Disorder).

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¹ CODE OF CANON LAW (Can. Conf. of Cath. Bishops trans. 1983) [hereinafter cited as CODE].

² *Id.* Canon 1095.

In the past, matrimonial tribunals dealt with the grounds determined at the beginning of the procedure. The actions of the individual were then examined to determine whether the ground of nullity alleged by the petitioning spouse could sufficiently support, to a moral certainty, a declaration that the marriage was null. Even the psychological condition of the person(s) was assessed in relation to the predetermined grounds. It is only in recent years, that the rotal judges,³ in particular, have discovered that a marriage alleged to be invalid on grounds of juridical incapacity to consent may indeed be null on more than one *caput*.⁴ It has become clear to rotal judges that many psychic disorders affect not one, but several essential elements of matrimonial consent. The rotal decision of April 20, 1979, *coram* J.M. Pinto is illustrative of this progressive trend.⁵

This case originated in Mexico and came before the Rota for a hearing in the second instance. Because of the respondent's erratic behavior both before and after the marriage, the union had lasted less than a year. On January 20, 1975, the petitioning spouse requested the local matrimonial tribunal declare her marriage a nullity on the basis of "[d]efect of consent, on the respondent's part, due to his psychic incapacity to fulfill the essential obligations flowing from the very nature of marriage."⁶ The respondent, after initially protesting the introduction of the case, failed to cooperate in the process.

On February 28, 1976, the court of first instance held that there was enough evidence to declare the marriage null. The Defender of the Bond insisted on a second hearing and the petitioner requested that this appeal be heard by the Rota. By a decree of November 8, 1976, the Rota admitted the case for an ordinary examination in the second instance. All efforts to obtain a deposition from the respondent proved futile and, therefore, the *turnus coram* Pinto, having obtained an expert psychiatric opinion based on the information provided by the petitioner and the witnesses in the first instance, proceeded to examine the case. In an affirmative decision, the Rota stated that the marriage was null on two distinct grounds: "[d]efect of discretion of judgment," and "incapacity to assume the essential right and obligation of the *communio vitae*."⁷

³ The Sacred Roman Rota is an appellate tribunal that hears cases appealed to the Holy See. T. BOUSCAREN, A. ELLIS, & F. KORTH, *CANON LAW: A TEXT AND COMMENTARY* 169 (4th ed. 1963). The court is comprised of judges, who are priests appointed by the Pope and who act as a collegiate tribunal; the judges who hear a particular case are determined by a rotation system. *Id.* The Rota has jurisdiction to hear matrimonial cases appealed from the diocesan courts of first instance. *Id.* at 170, Canon 1444.

⁴ A *caput* is one's civil condition or status. BLACK'S LAW DICTIONARY 192 (5th ed. 1979). In Roman law, it consisted of the elements of liberty, citizenship, and family. *See id.*

⁵ *See* C. Pinto (S.R.R. Dec., April 20, 1979), in 104 M.E. at 383.

⁶ *Id.* at 383; *see* CODE, *supra* note 1, Canon 1095; *infra* text accompanying notes 10-11.

⁷ *See* C. Pinto (S.R.R. Dec., April 20, 1979), in 104 M.E. at 383; CODE, *supra* note 1, Canon

The approach adopted by Pinto in his sentence takes into consideration recent developments not only in canonical doctrine and jurisprudence, but also in the behavioral sciences. In light of the recent advances in the psychiatric and psychological sciences, Pinto dismissed the rationale against admitting into canonical jurisprudence the so-called "constitutional immorality," that is, "moral insanity," enunciated by Wynen in his rotal decision of February 25, 1941.⁸

Thus, Pinto made a conscious effort to integrate without bias the progress made in the canonical and behavioral sciences. This approach may be seen more clearly in the *in jure* section of the sentence which contains many juridical principles recently clarified and formulated.⁹

First, Pinto emphasizes the distinction between the three principal defects of consent that have been incorporated into the new matrimonial legislation: incapacity to utilize sufficiently the faculties of reason, incapacity to consent caused by a serious defect in discretionary judgment, and incapacity to assume the essential obligations to marriage.¹⁰ The first two designations deal with the subjective act: the psychological process involved in forming and presenting the act of consent. The third, while it presupposes existence of the capacity to form the act of consent, concerns itself only with the defect in the object of consent, which the contractant is unable to give because he cannot fulfill the obligations entailed. This juridical incapacity may arise from any serious psychic abnormality.¹¹

Second, since the marriage under consideration was declared null on two distinct grounds: "lack of discretion of judgment," and "incapacity to assume the essential obligations of marriage," the judges had to justify

1095; *infra* text accompanying notes 10-11.

⁸ See C. Wynen, in 33 S.R.R. Dec. (1941), at 144-68. Pinto has stated:

The fact of the existence of sociopaths who, affected by neither psychosis nor neurosis for lack of affectivity, violate the norms of social living without remorse of conscience and any hope of change is universally acknowledged. They easily commit crime, but do not necessarily become criminals. Since they are capable of understanding and of willing in a juridical sense and, therefore, have the freedom, their penal imputability is considered to be perfect in actual civil jurisprudence. The born criminal described by Lombroso does not exist. Similarly, neither does an organ of moral sense exist for we are dealing either with spiritual affects (according to the scholastics) or with sensitive affects (according to the moderns). Whether, besides defective affect, there is also intellectual defect; whether the abnormal behaviour should be explained as the result of psychogenic and sociogenic causes rather than of personality disorder; whether, at least sometimes, sociopaths could be cured, are disputed questions The ecclesiastical judge, therefore, may depend on certain tested principles.

C. Pinto (S.R.R. Dec., April 20, 1979), in 104 M.E. at 383-95.

⁹ See C. Pinto (S.R.R. Dec., April 20, 1979), in 104 M.E. at 384-90; CODE, *supra* note 1, Canon 1095.

¹⁰ CODE, *supra* note 1, Canon 1095.

¹¹ See C. Pinto (S.R.R. Dec., April 20, 1979), in 104 M.E. at 394.

their decision that these two juridical incapacities could coexist in a person with a serious psychic anomaly. Pinto admitted that the autonomy of the *caput* of "incapacity to assume the essential obligations" is still being disputed both in doctrine and in jurisprudence. Nevertheless, he made it clear that the two juridical principles could be said to coexist, if the experience of cases involving this *caput* were taken into consideration.¹²

In other words, Pinto argued that in cases of this nature the two grounds of nullity (that is, defect of discretion of judgment and incapacity to assume the essential obligations of marriage), are distinct and can coexist, and the marriage would be null on both grounds. In certain other types of cases, however, this principle may not be applicable.

Only the incapacity to assume the obligations occurs when the contractant is unaware of his incapacity, in the sense that it had never appeared before (e.g., psychic impotence became manifest when the couple decided to consummate the marriage), or when, after sufficient experience, he thought that he had been cured of his incapacity, or still if he had learned from an expert that marriage might cure the incapacity which he thinks he has. An example of the second hypothesis is found in the case of a bisexual who, from his daily experiences, thought that he had become heterosexual and contracted marriage. After the marriage, because of a psychic trauma he suffered, he became an exclusive homosexual, absolutely incapable of heterosexual relationship.¹³

In *coram* Parisella,¹⁴ the contractant was found to be radically incapable of fulfilling the obligation of perpetuity of the right to "conjugal acts" and to "*communio vitae*." At the time of the wedding, however, as a result of positive and reassuring experiences, he thought it would be possible for him to enter into a heterosexual relationship. The faculties of his mind were intact. He could form and give consent. His act of consent, therefore, could not be regarded as having been vitiated in the strict sense. Nevertheless, the consent was invalid because of the defect in the object that he intended to exchange.

Pinto's analysis, while progressive, fails to deal with persons who, because of some serious personality disorder, are not only unaware of their

¹² *Id.* at 384-85.

The incapacity to give consent coexists with the incapacity to assume the obligations when the person marrying, being aware of his incapacity, decides to go ahead with the wedding, thus acting irrationally. This has been verified in the case of a neurasthenic psychopath who, fully conscious of the fact that he was suffering from psychic impotence, contracted marriage led by pathological motivation, whence there was lack of consent. The *caput* of impotence cannot be denied.

Id.; cf. C. Lefevure (S.R.R. Dec., December 2, 1967), in 59 M.E. 799 (1967).

¹³ C. Pinto (S.R.R. Dec., April 20, 1979), in 104 M.E. at 385 (emphasis in original); cf. C. Parisella (S.R.R. Dec., May 11, 1978), in 89 II I.D.E. 3-17 (1978).

¹⁴ C. Parisella (S.R.R. Dec., May 11, 1978), in 89 II I.D.E. at 3-17.

incapacity to consent but, because of severe lack of insight and self-knowledge, are also incapable of knowing their defect. This is especially true in the case of "antisocial personality disorder."¹⁵

Third, Pinto explained that the incapacity to give consent may be verified:

- 1) In the phase of consideration of marriage or of the motives for it:
 - a) Because the intellect cannot have adequate understanding of the essential rights and obligations of marriage;
 - b) Because of the disturbance of memory or of fantasy which may hinder one from being able to assess the motives for contracting or not contracting;
 - c) Where the motives have been pathological (e.g., delusional, predominant, obsessive, dissociative ideas);
- 2) In the phase of deliberation or election;
 - a) In case of disturbance of conscience, especially on account of hypnosis or twilight state;
 - b) Due to defect in the critical [faculty] which impedes adequate estimation of the motives, that is, from adequate deliberation;
 - c) When, due to disturbed affectivity, motives lack in quality and in intensity an adequate affective base, and the will remains, therefore, indecisive;
 - d) Where an impulsive choice is made without prior or, at least, adequate deliberation;
 - e) Due to loss of will-power.¹⁶

Fourth, the justification of the declaration of the nullity on the basis of "incapacity to assume the essential right and obligation of *communio vitae* depended on the judges' acceptance of the juridical relevance of the Conciliar teaching on marriage as expressed in the Pastoral Constitution on the Church in the Modern World, *Gaudium et Spes*. Pinto summarized the opinion of the court as follows:

The Second Vatican Council, intending to restore to the institution of marriage its authentic value, decided to combine the existential-personalistic aspects of the 'good of the spouses,' which has been so highly esteemed in our time, with the traditional juridico-social aspect of the 'good of the child.' Therefore, it gave the following existential definition of marriage: 'In-

¹⁵ An antisocial personality disorder is defined as:

[a] disorder characterized by the inability to get along with other members of society and by repeated conflicts with individual persons and groups. Common attributes include impulsiveness, egocentricity, hedonism, low frustration tolerance, irresponsibility, inadequate conscience development, exploitation of others, and rejection of authority and discipline.

H. KAPLAN, A. FREEDMAN, & B. SADOCK, 3 COMPREHENSIVE TEXTBOOK OF PSYCHIATRY 3310 (1980).

¹⁶ C. Pinto (S.R.R. Dec., April 20, 1979), in 104 M.E. at 386.

timate community of life and conjugal love'; it defined matrimonial consent, that is, marriage *in fieri*, as a human act by which spouses give themselves to each other and accept each other; it speaks of marriage *in facto esse* as: 'Thus man and woman, who through their conjugal covenant, 'are no longer two but one flesh' . . . by the intimate union of their very persons and tasks, offer to each other mutual help and service, experience and attain the fullness of that unity from day to day.'¹⁷

The concept of the "right to *communio vitae*"¹⁸ is important to Pinto's analysis. Pinto conceded that, in accordance with the spirit of the Second Vatican Council, the study group concerned with matrimonial legislation added the "right to *communio vitae*" to the obligations that had been traditionally acknowledged as essential. This right is distinct from cohabitation. Referring to the statement made by the consultors at their meeting of May 20, 1977, Pinto stated that the right to "communion of life" encompasses those "rights which pertain to essential interpersonal relations of the spouses and which, in today's context, are considered as a complex of rights distinct from other rights which were commonly enumerated in the traditional doctrine."¹⁹ Therefore, the right to "*communio vitae*" described by the Council can exist even without cohabitation, but is limited to its essential elements without which the conjugal partnership could not exist or, at least, would be morally impossible. Pinto did not attempt to detail these essential elements. He did, however, draw two important juridical principles from the substance of canons 1048 and 1049 of the 1980 *Schema*, canon 1095 of the new Code, relevant to the *caput* of incapacity to assume marital obligations:

i) It is sufficient that the psychic disorder causing the juridical incapacity to assume the essential obligations be true and antecedent to the act of consent. In other words, the disorder itself does not have to be incurable.

ii) The norms contained in those two canons may be legitimately applied even before they are promulgated because they are derived from the general principles of natural law and pertain to the very essence of

¹⁷ *Id.* at 386 (quoting *Gaudium et Spes* (The Church in the Modern World) part II, ch. 1, para. 48).

¹⁸ *Gaudium et Spes*, *supra* note 17. The community of life is the essence of the marriage covenant. Haring, *Fostering the Nobility of Marriage and the Family*, in 5 COMMENTARY ON THE DOCUMENTS OF VATICAN II 232 (H. Vorgrimler ed. 1969). "The contractual agreement is understood now not just as a cerebral, verbally communicated intention, but as a disposition that involves the spiritual, the psychological, and the physical. It is a much broader consent, complimenting a growth in understanding . . ." Perry, *The Canonical Concept of Marital Consent: Roman Law Influences*, 25 CATH. LAW. 228, 235 (1980); see also 9 NEW CATHOLIC ENCYCLOPEDIA 265-66 (D. Eggenberger ed. 1967) (formal object of consensual agreement extended to "right of a life partnership").

¹⁹ C. Pinto (S.R.R. Dec., April 20, 1979), in 104 M.E. at 387; 19-N.1 COMMUNICATIONES 375 (1977).

marriage.²⁰

Fifth, Pinto clearly identified the respondent's psychic disorder as "antisocial personality" as understood in North American Psychiatry, or "affectionless psychopath" as in K. Schneider's classification. It is uncommon for a rotal sentence to contain such a clear identification of a common diagnostic concept underlying two different psychiatric labels used by two different systems of diagnostic classification.²¹

Drawing from a clinical description provided by H. Cleckley in his article in the *American Handbook of Psychiatry*,²² Pinto identified eight principal clusters of antisocial traits.²³ Interestingly, this description corresponds to the profile of the "affectionless-psychopath" given by K. Schneider as well as the profile of an "antisocial personality" provided in *DSM III*.²⁴

Pinto offered the following practical and jurisprudentially important guidelines as an aid to assessing cases involving *personality disorders* in general:

- i) In such cases, the perceptual and representational processes within the brain are partially defective, thereby affecting the subject's capacity to make a deliberate and free choice.
- ii) The thought process of such a person is markedly stunted and displays a tendency toward simplification, poor inhibitory control and impul-

²⁰ C. Pinto (S.R.R. Dec., April 20, 1979), in 104 M.E. at 387.

²¹ *Id.* at 389. Pinto states:

In reference to our case, the principal diagnostic criteria should be kept in mind. The best clinical description is given by H.M. Cleckley . . . , which, in the European system corresponds to the 'affectionless' type, and in the American system is called 'antisocial'

Id.

²² Cleckley, *Psychopathic States*, in 1 AMERICAN HANDBOOK OF PSYCHIATRY 581-83 (S. Arieti ed. 1959).

²³ C. Pinto (S.R.R. Dec., April 20, 1979), in 104 M.E. at 384-90. The clusters of antisocial traits may be summarized as follows: Good intelligence and absence of any thought-disorder at the theoretical level; habitual and inadequately motivated and, at times, even self-destructive antisocial behavior; gross irresponsibility in serious matters despite any apparent positive impression he may succeed in creating in others' minds; incapacity to maintain the trust and security he may have gained through good behavior for a short time; utter lack of concern for truth; readiness to accept blame for his behavior, if caught in the act, and to promise reparation and amendment, but an inability to make good his promises; inability to accept responsibility for hurting others; lack of genuine feelings of remorse or shame; incapacity for critical judgment when he has actively to participate in real life situations; failure to learn from experience; pathologic egocentricity and incapacity for genuine, oblation love; incapacity to establish stable and intimate personal relationships; lack of insight which seriously affects his capacity to reflect upon his own behavior and to recognize the pain and sufferings he causes to others.

²⁴ THE COMMITTEE ON NOMENCLATURE AND STATISTICS OF THE AMERICAN PSYCHIATRIC ASS'N, *DSM III: DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS* 317-21 (3d ed. 1980).

sivity in making decisions without taking into consideration the available alternatives or countermotives.

iii) It is impossible to give a general rule because the degree and the quality of the disorder vary from case to case. The judge should carefully examine the report of the expert and establish clearly the degree, quality and effects of the disorder as manifested in the psychopathic behavior.²⁵

After having carefully weighed the antecedent, concomitant, and subsequent circumstances relevant to the marriage, the judge should answer the following questions:

Was the contractant capable of understanding the substance of marriage, that is its essential obligations and their ethical value (affecting his conscience and not merely his theoretical knowledge)?

Was he able to consider at least the main, commonly foreseeable difficulties that could arise in a marital relationship?

Could he adequately assess and compare the objective motives in favor of the wedding here and now (practical judgment) and freely choose the celebration of marriage?

And, finally, was he, at the time of the celebration, capable of fulfilling the essential obligations of marriage?²⁶

In the *in fact* section of the sentence Pinto analyzed the respondent's behavior according to the clinical criteria of antisocial personality. A brief summary of the respondent's antisocial traits can be presented as follows: the respondent had proved himself antisocial by his frequent violations of norms of morality both before and after the marriage. He had lied, embezzled, cheated, deceived and incurred, without real necessity, large debts. Through his irresponsible living, both before and after the marriage, he appeared unconcerned with fulfilling the essential obliga-

²⁵ C. Pinto (S.R.R. Dec., April 20, 1979), in 104 M.E. at 388-89.

²⁶ *Id.* at 388. After making an accurate assessment of the acts of the case, the *peritus* diagnosed in the respondent:

A psychopathic personality [personality disorder] which is dominated by the elements of emotional and affective instability, of inconsistency in the determination of the will, of a tendency to lie and to be untruthful, of incapacity to assume a definite role in relation to the decisions which are said to have been made Therefore, morbid manifestations prevail in the realm of affect, will and moral structure. All the same, he can be placed among the following types (according to Schneider): the 'emotionally labile', the 'unstable', the 'weak-willed', the 'histrionic', the 'mythomaniac', the 'liar', the 'amoral'. Such conditions of lack of character and of personality are largely constitutional and they certainly predate the marriage.

It is evident that the defect of his personality, his grossly superficial judgments concerning the common events of life, his dishonesty in different situations and the abuse of trust which was given to him repeatedly have rendered the respondent psychologically incapable of making an adequate evaluation of the obligations which he was undertaking when he expressed his consent.

Id. at 393.

tions of marriage. Associated with his irresponsibility was pathological instability. He frequently changed his course of studies, his career, his jobs, and his cars, and was extremely volatile in making and abiding by his decisions. His religious practice was likewise inconsistent. Although there were many verbal expressions of love toward the petitioner, they were never matched by acts. He contributed little to the physical, psychological, and spiritual well-being of the petitioner and showed little concern about the possibility of having and bringing up children. Rather, his lifestyle was characterized by extreme egocentricity.

The expert's opinion seemed to emphasize the respondent's psychic defect primarily in the area of critical evaluation of the marital obligations. As a clinician, however, he also could have addressed more specifically the objective aspect of the consent. Assumption of the obligations presupposes that the contractant possesses the necessary natural psychic capacity required to fulfill the obligations. In the absence of such psychic capacity, the obligations cannot be fulfilled and, therefore, cannot be assumed. It is not surprising that the rotal judges came to a twofold conclusion:

(1) The respondent was incapable of giving matrimonial consent since, because of the severity of the disorder, he was unable either to understand the ethical value of the essential obligations of marriage in a manner affecting his conscience, or to estimate sufficiently the difficulties either present or future, generally foreseeable at the time, so that he could deliberate adequately and choose rationally the celebration of marriage.²⁷

Thus, the disorder of "antisocial personality" severely impaired the respondent's psychological process involved in the act of consent in the phase of understanding, deliberation, and choice. The judges acknowledged that the respondent was not insane, but, on the contrary, being endowed with good intelligence, he was able to understand the substance of the marital obligations. Nevertheless, this capacity to understand did not go beyond the theoretical plane. His "constitutional immorality" — the inner disposition that later evolved in environmental conditions conducive to form a fixed behavior-pattern — caused him to act as if he had no conscience. According to Schneider, "affectionless psychopaths" are "remorseless" and "conscienceless."

In sum, respondent suffered from an "antisocial personality disorder," cared little about weighing the difficulties involved in a particular situation and rushed into action without any reflection or forethought. He lacked the capacity for deliberation proportionate to the nature of his decisions. The respondent lacked discretion of judgment proportionate to the obligations he was assuming by the act of his matrimonial consent.

²⁷ *Id.*

Moreover, the respondent was, at the time of the wedding, incapable of binding himself to hand over the *essential right to the communion of life*. This is not, as it may seem, in respect to the intimate union of persons (which is known as interpersonal integration, and is entirely necessary), but as this concerns the union of tasks without which conjugal life could not exist. Consequently it was impossible to achieve the good of the spouses in its essence, thereby also impeding the perpetuity of the good of the children. However, this was not because the respondent did not want to fulfill [the essential obligations of marriage] but because he was unable to do so.²⁸

Pinto referred, in his conclusion, to one distinct, essential element: the *union of tasks*. The respondent, through the antisocial behavior, proved incapable of cooperating in the tasks (*opera*) essential to the realization of conjugal and parental duties. As a result, the "good of the spouses" in its essence, the physical, psychological, and spiritual well-being that should naturally ensue from a genuine conjugal relationship, could not be achieved. He was also incapable of caring for the good of the children. In the absence of the capacity to cooperate in the essential conjugal and parental tasks, the "right to communion of life," was denied to his spouse. Therefore, his consent was invalid for the lack of the object of consent. In other words, the respondent was incapable of fulfilling an essential obligation relative to the realization of the "communion of life" of the spouses.

Further clinical and juridical analysis of the case may enable identification of the respondent's psychic incapacity to fulfill and, therefore, to assume several essential obligations of marriage. For example, Pinto, supported by authoritative psychiatric and psychological sources, indicated that a person with a serious antisocial personality disorder is radically impaired in many areas of psychic life and, therefore, lacks intrapsychic integration. This intrapsychic disturbance generally renders the affected person incapable of establishing an authentic interpersonal relationship. Therefore, this marriage could have been examined under the test of "incapacity to assume the essential right and obligation of interpersonal relationship." Alternatively, the case may have been examined under the juridical designation of "incapacity to assume the right and obligation of *bonum prolis*."²⁹ In view of the nature and extent of the effects of "antisocial personality disorder" on the various components of one's psychic life, many more juridical titles could be added to the list. Even though such an approach may enhance jurisprudential acumen, in a particular

²⁸ *Id.* at 394.

²⁹ Haring, *supra* note 18, at 234. The bond of marriage, however, is grounded in the community of love and not solely on the *bonum prolis*, the blessing of children, as put forth by many old natural law treatises. *Id.*

case, it is important and sufficient that a fair decision be rendered on the existence or nonexistence of the matrimonial bond on trial.

The fact that the court declared this marriage null on two grounds demonstrates that if judges approach cases of this kind with an open mind and in a scholarly manner, the nature of the particular psychic disorder and its relation to matrimonial consent may be seen and assessed in clearer perspective.