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# DISCRETION AND CONSENT IN MARRIAGE

JOHN B. SCANLAN, M.D.\*

A LARGE PERCENTAGE OF THE MATRIMONIAL CASES brought to trial at the Archdiocesan Tribunal in New York involve the question of lack of due discretion on the part of one or both parties at the time of the marriage contract. Most of these cases are concerned with the possibility of mental illness on the part of one of the contractants at the time of marriage.

What must be established in such cases is the existence of a mental illness which impaired cognition or will to the extent that the person was unable to give valid matrimonial consent. It is not sufficient to establish the existence of a grave mental disorder before or after the ceremony; it must be clearly demonstrated that the illness was present precisely at the time of the contract. This requirement is based on the idea that even in the most severe mental disorders which occur without a primary disturbance of brain function, there can be so-called "lucid" periods in which a person's cognition and will are sufficiently intact for him to enter a valid contract of marriage.

The psychiatric consultant, or expert, is an agent of the court whose duties are: (1) to examine the entire record of the case, including the medical records and testimony of both medical and non-medical witnesses; and (2) to submit a written report of his findings and then testify under oath before the court. On some occasions the psychiatric expert has the opportunity to examine the allegedly incompetent party but, except in cases where diagnostic differences exist among previous examiners, such examinations may prove of little value to the court in arriving at its decision. It should be remembered that ordinarily the psychiatric expert is appointed long after the marriage was contracted.

Undoubtedly, the most valuable evidence in cases of this sort are medical records—usually, but not always, from a hospital—which have existed prior to the marriage. The testimony of individual psychiatrists who have seen either party subsequent to the marriage will, in general, be somewhat less impressive to the court. In any case, the medical

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records become infinitely more valuable if they are more than mere statements of diagnostic findings but rather include specifics to document the diagnosis: statements and behavior of the patient, specific responses on psychological testing, etc. Medical records often give a rather complete history of the life of the patient. Obviously, this can be extremely helpful in reaching a conclusion about the diagnosis at the time of marriage. This history has added value since it has not been obtained in relation to the annulment procedure itself.

To many psychiatrists, the Church court's attitude seems rigid, unyielding, and out of keeping with our knowledge of the extent to which unconscious and pre-conscious forces can determine behavior. A similar fundamental disagreement exists in the area of the responsibility of the criminal under current civil law. Changes seem to be occurring in the interpretation of canon law as well as civil law, and mention will be made later of changes which seem possible in the future.

We may, for purposes of this discussion, divide mental disorders into three large categories: psychoses, psychoneuroses, and personality disorders. A psychotic disorder may be defined as one in which the personality, in its struggle for adjustment to internal and external stresses, utilizes extreme emotional states (like mania and melancholia), withdrawal from reality, so-called "autistic" thinking (as distinguished from "realistic" thinking) and/or the formation of delusions or hallucinations. The psychotic disorders include: (1) the schizophrenic reactions, by far the most common psychoses; (2) the manic-depressive reac-

tions, which are considerably less common; and (3) the paranoid reactions, the least common.

The schizophrenic reactions are characterized by withdrawal from reality, bizarre and unrealistic thought processes, blunted and grossly inappropriate emotions and emotional responses which are frequently inconsistent with the apparent thoughts of the person. It is important to emphasize here that schizophrenic disorders very frequently exist without apparent delusions and hallucinations, and that these disorders are not necessarily any less incapacitating because delusions and hallucinations are absent. At the present time, it is widely recognized that almost all schizophrenic disorders are essentially lifelong, in the sense that they have their beginnings in the very earliest years of life but often do not become strikingly apparent until the adolescent and adult period when the ego is called upon to deal independently with reality and with the internal demands for sexual and emotional intimacy with other human beings. The schizophrenic's impoverished sense of self and his basic mistrust of himself and of everyone else—these, rather than grossly delusional thinking or hallucinations—are the things which render him incapable of mature living and true marriage. These cases at present constitute the bulk of those in which annulments are granted for psychiatric reasons, but even in these cases we are frequently hard put, in the absence of conspicuous signs such as delusions and hallucinations, to convince the courts involved of the person's incapacity. It should be added, however, that if the existence of a schizophrenic reaction prior to marriage can be estab-

lished, so-called "lucid" periods are not presumed and would indeed be extremely difficult to prove to a court.

The manic-depressive reactions are psychoses characterized by severe mood swings, extreme elation (euphoria) or profound depression, or an alternation of both. Disturbance of thinking is not usually a conspicuous feature of this disorder, except to the extent that the patient has no insight into the unreality or absurdity of his emotional response. As I said before, such cases are much less frequent than the schizophrenias and, I might add, are somewhat more treatable. Because of the cyclical nature of this disorder, it can be much more difficult to prove that the psychosis was in existence at the time of marriage.

The paranoid reactions, least common of all, are characterized by delusions of a grandiose or persecutory nature, ordinarily without hallucinations, and, unlike schizophrenia, the emotional response and behavior are consistent with the ideas held. This diagnosis is rarely made at the present time, and the likelihood of its occurring in connection with marriage cases is so slight that we may safely ignore it.

The psychoneurotic disorders, since they do not present gross disorganization of the personality and do not exhibit gross distortion or falsification of external reality, are for all practical purposes never considered grounds for annulment proceedings. Afflicted with a psychoneurosis, the person suffers from anxiety or from a variety of symptoms which defend him against anxiety, but he is well aware of the unreasonableness or the irrationality of his emotional state.

Psychic impotence, which is sometimes grounds for annulment, may be symptomatic of a neurosis or of a more severe pathological state.

Another group of emotional disorders, which are the most difficult to deal with in or out of court, are the so-called personality disorders. These disorders are characterized by development defects or pathological trends in the structure of the personality, with minimal subjective anxiety and little or no sense of distress. In most instances, the disorder is manifested by a lifelong pattern of action or behavior rather than by emotional symptoms. These people are difficult to live with and difficult to treat. Furthermore, despite their often conspicuous emotional incapacity for mature living, it is most difficult at present to convince courts of their incapacity for contracting a valid marriage.

The types of personality disorders that we encounter in marriage cases include the so-called sociopathic personalities. Symptomatic of these disorders are: (1) antisocial reaction; (2) dyssocial reaction; (3) sexual deviation; and (4) addiction (alcoholism and drug addiction).

In sociopathy we are dealing with individuals whose behavior is chronically deviant from what our society defines as acceptable. In the cases of addiction and sexual deviation, the aberrant behavior is essentially confined to one area (although frequently, through absurd laws or absurd law enforcement, both the addict and the sexual deviate are pushed into other kinds of antisocial behavior).

In the antisocial or dyssocial personality there is a much wider range of transgression—to such an extent that the person can appear to be totally unrelated to so-

ciety or totally at war with it. In psychoanalytic terminology, these people have developed little or no super-ego (roughly equivalent to conscience).

The difficulty—at present we might say the relative impossibility—of obtaining an annulment on the grounds of a pre-existing personality disorder results from the lack of gross disturbance of verbalization or thinking, and this despite the fact that a personality disorder can be much more disturbing to a marriage than many cases of schizophrenia. The homosexual husband or the chronically antisocial husband can frequently disrupt and destroy a marital relationship more quickly than a psychotic husband.

This brings me to my concluding remarks. There must be a rethinking of the whole problem of the psychiatric grounds for annulment, perhaps roughly paralleling the rethinking that is being done in the civil area in regard to emotional disorders and responsibility in criminal cases.

The central issue is: What is it that incapacitates an individual from contracting a valid marriage? It is certain that it is not simply the absence of or the loss of reason. We might point out that the canonical age for marriage is a good many years beyond the so-called age of reason. Therefore, it seems to be assumed that the simple possession of the rational faculty is not in itself sufficient to render a person capable of valid marriage. Is there here an implied recognition that there must be a certain level of maturation of the personality, beyond the mere possession of the power of thinking logically, in order for a valid marriage to occur? I think there is. I have stated before that many psychiatrists would consider the

current attitude of most Church courts too narrow and too rigid. I refer, of course, to the tendency to annul only where there is very clear evidence of a grossly psychotic condition before or at the time of marriage. Surely it is not only the grossly psychotic individual who is incapable of fulfilling the terms of the marriage contract. The homosexual, the antisocial personality, the schizophrenic who is not delusional or hallucinated—all of these may be likewise incapable. Even beyond these categories, there may be individuals whose lack of recognition or control of certain emotional reactions in themselves renders them incapable of a mature and satisfying marriage and parenthood.

All of this suggests very strongly that there must be far more clarification and definition of what a person must *be* and *possess* in order to contract a valid marriage. This clarification and definition can occur with the aid of our growing psychiatric knowledge and, also, with a greater knowledge on the part of psychiatrists of canonical thinking.

I hope there will be changes in the future; for example, that the personality disorders mentioned will, in some cases, be found to be sufficient grounds for invalidity. Most of the changes may have to come through the slow evolution of processing individual cases in court, although it is not inconceivable that some sort of joint commission of canon lawyers and psychiatrists might be able to evolve a new or more clearly defined and stated law. In any case, change will come as psychiatrists are better informed about the thinking of the courts and, concurrently, as the courts become better informed about current psychiatric thought.