

Transcendence and nullity in marriage

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Introduction

In this study, it has been interesting to acknowledge how marriage, as regulated by canon law, presupposes some significant aspects of human relationships. Indeed, elements as reciprocity and donation constitute the essence and are laid down in legislation as essential obligations.

Under an anthropological perspective we refer to typical aspects such as maturity and duality, as well as the values of responsibility, self-giving and reciprocity.

In the first place, an achieved high level of individual maturation is the psychological functioning which constitutes a presupposition for the formation and maintenance of marriage. Such maturations shall ensure that the subject has the mental resources which allow a true anthropological encounter. Indeed, only in this way an approximation between a valid marriage and an existentially possible marriage occurs, resulting in a healthy interpersonal relationship.

In the psychological area psycho-affective maturity has to be considered as well. Such maturity does not result automatically in a perfect married life, but indeed is in continuous evolution. It is based on adaptation of the subject, who in a first moment acquires an identity and gets to know his own being, then learns to be himself amid the others, by means of a flexible adaptation: *“Being with the other is a constitutive fundament of the person, therefore maturity requires the overcoming of a typically infantile egocentrism and the capacity to love the other”* (Barbieri et al. 2017). In other words: from a symbiotic need to a need for the other as other than self. This, according to Erik Erikson, creates the conditions for mutuality, that is a *“relationship whose members depend on one another for developing their relative potentialities”*.

Strictly connected to maturity is the matrimonial decision, since only an individual who is mature in the terms described above can be regarded as ready to fully consider and evaluate the matrimonial object. Presuppositions are not only a cognitive capacity at intellectual level, but also the above-mentioned psycho-affective maturity which allows to understand the emotive-relational dimension of marriage.

Personal relationship refers to the concepts of reciprocity and alterity and to the subject being in the world as a co-being. Therefore it can be affirmed that empathy and reciprocity characterize human relationship, since they allow the couple to have a stable exchange on a project basis. The overcoming of Self is essential, resulting in the capacity to give oneself to the other. Overall, the marriage dimension implies reversal of egocentrism and realization of a totality with the other.

Coming to the juridical aspects, the *Codex Iuris Canonici* presents the institution of marriage as a formal consensual agreement, in which the genuineness of the contracting parties' consent assumes a substantive meaning. The consent consists in the will of each of the parties to give themselves, thus assuming the matrimonial rights and duties. A defect concerning such consent, of a voluntary nature or deriving from external factors, results in nullity of marriage.

The causes of marriage nullity include incapacities of the person, among which the incapacity to

assume any of the essential matrimonial obligations due to a cause of a psychic nature. Ascertainment of this typology of defects is, as it is evident, strictly connected to studies on personality disorders or physical pathologies.

Case of expertise

In the light of these considerations, a specific case of nullity of marriage is presented here, which was the object of study on the occasion of an appraisal requested by the Ecclesiastical Court. The case *de quo*, whose subsumeability within canons 1095 commas 2 and 3 was evaluated, concerns a couple that had fallen into crisis especially since the wife found some pornographic material in her husband's pc. The particularity lies in the fact that, if *prima facie* it can be thought that the finding of pornographic photos may constitute the cause of nullity of marriage, the examination of the matter led to diametrically opposite conclusions, identifying in the personalities of the two spouses the actual reason impeding an authentic marriage relationship.

As regards the marriage history, from the proceedings it emerges that Mrs Maria's family was always very united and inclined towards a Christian education. The woman specified that she had not had other affective and sentimental relationships except for the one with Dario, the person who would later become her husband.

With reference to the sexual life she declared:

"We had no opportunity to get to know each other from an intimate and sexual point of view because we chose not to have intercourses before our marriage [...]. From this point of view I must say that we lacked a concrete knowledge, which led to some surprises later during our married life". In addition: *"the difficulty which arose from the start is the one related to intimacy"*.

Indeed, during their honeymoon, they didn't have any sexual intercourse. Only after they returned, the couple began to have some intimacies, according to Mrs M. *"very mechanical"*. Anyway, in general the intimate relations were rather rare and often showed difficulty by Dario in completing the intercourse.

The decision to marry was taken with awareness, since it fulfilled the desire of both to build a family.

With the passing of time, the denigrating and aggressive attitude of D. towards his wife, the unsatisfactory sexual life as well as the finding of pornographic material in the husband's pc led to the decision to separate. The woman also filed two complaints against her husband, respectively for harassment towards their daughters and possession of pedo-pornographic material, but the complaints were dismissed.

Concerning his wife, D. stated instead: *"during our married life my figure progressively disappeared in Maria's consideration and I realized that her family of origin came before her spouse"*. Besides, the woman is described as a person who is apparently kind, but extremely touchy if presented with a different point of view. She has a strong inferiority complex and, for this reason, she refuses any constructive dialogue and also within the family she expects to take decisions in exclusion of the other spouse. Since the beginning of their married life, long before he used pornographic material, the first difficulties arose, mainly due to, according to D., his wife's character. The situation of strong stress drove the man to search for pornographic images, but not for pedo-pornographic material. The couple's sexual life, in his opinion, presented some problematics, especially because of the woman's attitude, often aggressive and blameful. This caused a performance anxiety to arise in Mr D., who even got to be afraid of facing intimacies with her.

Discussion

In the case presented, the causes of nullity pleaded are consistent with the second category of above-mentioned defects, namely the “grave defect of discretion concerning the essential matrimonial rights” (canon 1095 comma 2) and the “incapacity to assume the essential obligations of marriage” (canon 1095 comma 3). An abnormal and pathological intrinsic motivation is a cause of nullity of marriage if it is such as to prejudice the freedom of the individual in making his/her choice with respect to the bond of marriage. The various pathologies which undoubtedly limit the self-determination of the individual include also some “minor” pathologies, which may be better subsumed in comma 2 of canon 1095, as neurotic forms which involve serious difficulties in the sexual area or which manifest themselves in the form of obsessive ideas. There still remains the need for a critical evaluation in the concrete case in order to verify whether, and if so, in which terms the “minor” pathology affected the matrimonial decision.

Indeed, in the light of the above, in the present case the cause of nullity concerning a “*grave defect of discretion*” does not appear to occur. Though it is true, in fact, that Mr D used pornographic material of a sado-masochistic type and, more in general, that an impairment of the sexual sphere within the marriage clearly emerges from the proceedings, on the other hand, adopting the triple ascertainment methodology suggested by Paolo Bianchi (...), there do not exist difficulties which may nullify the matrimonial consent at the time when it was given. Specifically, the behaviour of D. close to the marriage decision does not manifest any intrinsic defect of consent, and neither does any particular clinical history of the subject emerge, on the basis of which a psychic incapacity may be reconstructed. As regards the expert evaluation with respect to his psychic conditions, surely a depressed personality emerges, yet not to the point of stating that such a pathology could have influenced the inner freedom of D. at the time of his matrimonial choice. What is decisive is the fact that, for religious reasons, both spouses decided to have sexual intercourses only after marriage and that, therefore, the first difficulties related to the intimacy sphere manifested themselves only after marriage. Also the finding of pornographic images dates back to a time that is subsequent to that of the manifestation of consent and, though serious, the interest in photos with a “hard” content of sado-masochistic nature seems to have developed in the course of married life and represents the “tip of the iceberg” of problems inherent to the couple since the beginning. In fact, the stressful situation led the man to a state of distress for which he tried to find relief by resorting to the above-said images, thus avoiding the real problem. It would seem that “*by restraining his anger in the reality, he vented his frustration in the virtual*”. This assumption is supported by the interviews and the Rorschach test, from which ultimately it is not possible to classify Mr D. as a paraphilic.

Considering comma 3 of canon 1095, instead, it is necessary to evaluate the consent which, though sufficient in its subjective profile, is not sufficient at a juridical level due to lack of its object, since for the contracting party it is impossible to perform the essential obligations of the matrimonial bond, among which unity, faithfulness and indissolubility, as well as essential elements such as *ordination to the children or to the good of the spouses*. In this regard, often some sexuality disorders and personality disorders are considered for the purposes of unassumability of the essential obligations of marriage. Indeed, the former considerably limit the possibility of an effective psycho-affective integration, at least at a minimal level (sadism or sado-masochism is also included in the disorders), whereas the latter do not allow a psycho-affective integration, in particular with respect to mutual support between spouses. Both aspects are related to the above-mentioned “*good of the spouses*”.

At a *prima facie* analysis, it would seem that in the present case the essential obligations of marriage were not adequately considered by Mr D., even just for the fact that, concerning psycho-affective and psycho-sexual integration capacity, the couple had not had the opportunity to experiment sexuality *ex ante* and, therefore, to encounter difficulties (which, inevitably, emerged only after marriage).

In addition, a disretive element for the purposes of matrimonial nullity set out by the canon can be found in the personality of the two spouses, one Depressed with Obsessive traits, the other Borderline.

It is believed that the core of the marriage “failure”, its origin, is due to such personality structures as well as, however, to a couple immaturity. In this sense, the cause of nullity is imputable to the woman, contrary to the initial approach in which it was she who filed for nullity, ascribing the causes to her husband further to the finding of the material with erotic contents in the pc.

Conclusions

The outlined picture seems to reflect that of the “uxorious husband and castrating wife”. The lack of prior sentimental experiences and evolutionary maturation resulted in each spouse projecting on the other an own ideal (there was an *I*, partially a *You*, but a *We* was missing). The marriage crisis, therefore, has its origins in these elements, and then manifests itself with sexual dysfunctions, couple difficulty as well as M. ‘s search for pornographic images. In other words, both got married with awareness at a conscious level, but without the awareness of the incapacity to manage married life at a relational level (bossy woman, submissive man), and this was certainly not due to an alteration of the sexual sphere, which instead was a consequence of the alteration of the relationship.

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