

**THE CHURCH’S RESPONSE TO CHILDLESS COUPLES: CANONICAL AND PASTORAL
CONSIDERATIONS ON STERILITY IN THE UGANDAN CONTEXT (C. 1084, §3)**

by

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ABSTRACT

Sterility is one factor which has the potential to disrupt the “partnership of the whole of life” (c. 1055, §1). In both Ugandan and Western societies, couples enter marriage with a strong desire to have children. In Western societies, childless couples seek medical tests and treatment for temporary infertility. Others who do not succeed in begetting children opt for the use of artificial means of reproduction. In developing countries such as Uganda, childless couples seek traditional means of enabling men to have children outside wedlock. It is noted that none of these options is approved by the Church. For this reason, canon 1084, §3, *CIC* 1983 which stipulates: “Sterility neither prohibits nor nullifies marriage” poses a challenge to apply.

This thesis is an attempt to address the challenge and to make recommendations for the Church in Uganda. The first chapter discusses the development of the understanding of marriage as hierarchically ordered with procreation as the primary end. When the personalist dimension was incorporated into this understanding, procreation became one of the two ends of marriage: the good of the spouses and the good of children. However, in Uganda, procreation remains the primary end of marriage. As discussed in the second chapter, the good of the children is not always attained due to impotence and sterility. Since sterility is not an impediment to marriage, its potential to disrupt marital partnership is brought about by other canonical factors such as error, deceit and condition. These make sterility juridically relevant to the validity of marriage.

With the advancement of science, sterile spouses may seek medical help in order to have a biological child. Out of the scientific means discussed in the third chapter, the Church accepts NaPro Technology, or any other means which treats the symptoms of infertility and enables conception to take place naturally. In the fourth chapter, this work discusses the Church’s documents which unequivocally state her stand on sterility and the use of artificial means of reproduction. In order to advance the teaching and legislation of the Church, recommendations are made for the Church in Uganda. It is hoped that by incorporating sterility in marriage preparation, integration of canon law to local marriage customs, and having functional and accessible tribunal services, it would be possible to address the questions raised by childless couples in the Ugandan context.

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LIST OF ABBREVIATIONS

<i>AAS</i>	<i>Acta Apostolicae Sedis</i>
<i>Amoris laetitia</i>	FRANCIS, Post-Synodal Apostolic Exhortation on Love in Marriage <i>Amoris laetitia</i>
Art. / artt.	Article / articles
ARTs	Artificial Reproductive Technologies
c. / cc.	Canon / canons
<i>Catechism</i>	<i>Catechism of the Catholic Church</i>
<i>CCEO</i>	<i>Codex canonum Ecclesiarum orientalium</i>
CDF	Congregation for the Doctrine of the Faith
<i>Charter</i>	<i>The Charter for the Rights of the Family</i>
<i>CIC 1917</i>	<i>Codex iuris canonici, Pii X Pontificis Maximi iussu digestus</i>
<i>CIC 1983</i>	<i>Codex iuris canonici, auctoritate Ioannis Pauli II promulgatus</i>
<i>CLD</i>	Canon Law Digest (1934 -)
<i>CLSA</i>	Canon Law Society of America
<i>CLSA Comm1</i>	J. A. CORIDEN, T. J. GREEN and D. E. HEINTSCHEL (eds), <i>The Code of Canon Law: A Text and Commentary</i>
<i>CLSA Comm2</i>	BEAL, J. P., J. A. CORIDEN and T. J. GREEN (eds.), <i>New Commentary on the Code of Canon Law</i> , Commissioned by the CLSA.
<i>Coram</i>	Judgements of the Tribunal of the Roman Rota
<i>Dignitas personae</i>	CONGREGATION FOR THE DOCTRINE OF THE FAITH, Instruction on Certain Bioethical Questions <i>Dignitas personae</i>
<i>Donum vitae</i>	CONGREGATION FOR THE DOCTRINE OF THE FAITH, Instruction on Respect for Human Life in its Origin and on the Dignity of Procreation, Replies to Certain Questions of

	the Day <i>Donum vitae</i>
ed., eds.,	Editor, editors, edition, edited by
<i>EIC</i>	<i>Ephemerides iuris canonici</i>
Engl. transl.	English translation / translator/ translated by
<i>Exegetical Commentary</i>	A. MAZROA et. al. (eds.), <i>Exegetical Commentary on the Code of Canon Law</i>
<i>Familiaris consortio</i>	JOHN PAUL II, Apostolic Exhortation on the Role of the Family in the Modern World <i>Familiaris consortio</i>
FLANNERY1 / 2	A. FLANNERY (gen. ed.), <i>Vatican Council II, Conciliar and Post-Conciliar Documents</i> , vols. 1, 2
<i>Gaudium et spes</i>	SECOND VATICAN COUNCIL, Pastoral Constitution on the Church in the Modern World <i>Gaudium et spes</i>
<i>Humanae vitae</i>	PAUL VI, Encyclical Letter on the Regulation of Births <i>Humanae vitae</i>
<i>IVF</i>	<i>in vitro fertilization</i>
<i>Mitis Iudex</i>	FRANCIS, Apostolic Letter <i>motu proprio</i> by Which the Canons of the Code of Canon Law Pertaining to Cases Regarding the Nullity of Marriage Are Reformed <i>Mitis Iudex Dominus Iesus</i>
<i>Mitis misericors Iesus</i>	FRANCIS, Apostolic Letter <i>motu proprio</i> by Which the Canons of Eastern Churches Pertaining to Cases Regarding the Nullity of Marriage Are Reformed <i>Mitis et Misericors Iesus</i>
no. / nos.	Number / numbers
<i>Periodica 1991</i>	<i>Periodica de re canonica</i> (since 1991)
<i>Periodica 1990</i>	<i>Periodica de re morali canonica liturgica</i> (before 1990)
<i>PL</i>	J. P. MIGNE (ed.), <i>Patrologiae cursus completes, series latina</i>
<i>RRT Dec.</i>	<i>Sacrae Romanae Rotae Decisiones and Rotae Romanae Sacrae Romanae Rotae Decisiones</i>

GENERAL INTRODUCTION

The title: “The Church’s Response to Childless Couples: Canonical and Pastoral Considerations on Sterility in the Ugandan Context (c. 1084, §3)” suggests that there is a question or a situation to be addressed. Many who have been childless due to sterility continually seek to have children using different means. Some couples who are exposed to scientific advancement tend to use artificial means of reproduction. Other couples who have no access to artificial reproduction tend to use traditional means of begetting children. These two ways of having children are not sanctioned by the Church. Yet, they reveal the intrinsic desire to have children in scientifically and economically developed societies as well as in those that are less developed.

It is this strong desire for children that creates an important question: What should the couple do when the legitimate means of having biological children fail? Childless couples continually seek an answer to sterility from science, culture, and the Church. The aim of this work is to examine the Church’s understanding of marriage and the difficulties which childless couples face in Uganda where people wish to be sincerely Christian in their cultural context.

In the Pastoral Constitution on the Church in the Modern World *Gaudium et spes*, the Second Vatican Council considered marriage to be an “intimate community of life and conjugal love,”¹ and taught: “Marriage and married love are by their nature ordered

¹ SECOND VATICAN COUNCIL, Pastoral Constitution on the Church in the Modern World *Gaudium et spes*, December 7, 1965, in AAS, 58 (1966), 1025-1115 (= *Gaudium et spes*), Engl. transl. in A. FLANNERY (gen. ed.), *Vatican Council II, Constitutions, Decrees, Declarations*, vol. 1, new rev. ed., (=FLANNERY 1), Northport, New York, Costello Publishing Co., 1996, 903-1001, no. 48.

to the good of the spouses and to the procreation and education of children.”² Through their mutual irrevocable consent, the spouses constitute an enduring communion of life. The word *consortium*, which is translated as “partnership,” is used in c. 1055, §1, *CIC* 1983 (c. 776, §§ 1-2, *CCEO*) to describe the nature of this communion in a juridical sense. This expression reflects the conciliar teaching on the equality of the spouses, without emphasizing the hierarchically ordered ends of marriage.

In *CIC* 1983 the Legislator stipulates: “Without prejudice to the provisions of c. 1098, sterility neither forbids nor invalidates marriage” (c. 1084, §3 *CIC* 1983).³ The reference in this norm to c. 1098 indicates that when there is deception about the party’s fertility,⁴ and the deceit is intended to obtain consent, this action makes consent invalid. Since the canon does not specify who the deceiver is, it can be interpreted to be the intending spouse or even a third party as long as the intention is to obtain marital consent. It is this fact of deception, and not the condition of sterility, which invalidates consent.

In the Ugandan context as well as Western societies, sterility is one of those human conditions that has the potential for disrupting the partnership of the whole of life. This disruption happens due to a strong desire for children and the inability to have children through legitimate means. The desire for children in Ugandan societies is so

² *Gaudium et spes*, no. 50, in FLANNERY 1, 950.

³ Canon 1084, §3 *CIC* 1983 reads: “Sterilitas matrimonium nec prohibet nec dirimit, firmo praescripto can. 1098.”

⁴ The words “infertility” and “sterility” are not synonymous. Infertility is not permanent: a person may be infertile today and will be fertile tomorrow when the cause of his or her infertility is addressed. Sterility is rather a permanent condition in a male or female. While discussing the difference between the two terms, J. Baughan wrote the following: “In terms of pregnancy, sterility is the permanent, irreversible inability to produce children. A woman with irreparable ovary damage is considered physically sterile. A man with an uncorrectable sperm count of zero is sterile.” J. BAUGHAN, *A Hope Deferred, A Couple’s Guide to Coping with Infertility*, Portland, OR, Multnomah Press, 1989, 14. When the term “sterility” is used in this work, it refers to that permanent inability to have children, after all legitimate attempts to have a child have been made in vain. Some authors use the words “infertility” and “sterility” synonymously.

strong that couples often enter marriage with a deeply held conviction that marriage without children is incomplete. With sterility in a spouse, the marital partnership is interrupted and in most cases it is terminated. Yet, sterility has not been given much attention by canonists as well as the Church leadership in Uganda.

The reality of a sterility in marriage raises the following questions: What juridic relevance does fertility have to marriage? How does sterility impact the *consortium totius vitae* in the Ugandan context? Is it possible for the condition of infertility to affect marital consent of couples? What is the canonical status of childless marriages in Ugandan societies? What is the Church's response to couples when their marriage is disrupted by childlessness? These questions are important in addressing the subject of sterility and its possible impact on marital consent within Ugandan cultures. Therefore, the main question for this thesis is: *What is the Church's response to sterile couples in the Ugandan context?* To answer this important question, this study has been guided by a deeper study and application of c. 1084, §3, *CIC* 1983 to the Ugandan cultural context. To achieve this end, the answer to this question is structured in four chapters.

The first chapter presents the Church's description of marriage from the codification of canon law in 1917 to the present legislation. This chapter is a presentation and an analysis of the canonical doctrine and jurisprudence on marriage as a partnership of the whole of life and the nature and elements of marital consent. The mutual irrevocable consent of the spouses brings marriage into existence. This covenant has been understood in terms of the primary and secondary ends. In *CIC* 1983, this hierarchical ordering of the ends of marriage is abolished. Yet, the two ends remain as the two elements of marriage, which are of equal importance and juridical relevance in a marital

covenant.

The second chapter deals with the juridical relevance of impotence and sterility to canonical marriage. Impotence and sterility appear in the same canon but each one impacts marriage differently. The bond of partnership that arises from a valid marital consent is hindered by impotence, and its fruitfulness is impeded by sterility. A historical and current framework provides the context for the legal assertion that sterility has no impact on the partnership of the whole of life. Particular attention is paid to c. 1084, §3 *CIC* 1983 which indicates the relevance of sterility to marital consent. Therefore, this chapter discusses impotence and sterility, and explores each one's impact on marriage. The chapter also includes an analysis of error (c. 1097), deceit (c. 1098) and condition (c. 1102) in *CIC* 1983 because of their potential to viciate marital consent among sterile couples.

The third chapter presents the medical and scientific considerations of sterility and its potential for disrupting marriage. The Church continually appears to be in conflict with modern science in the use of artificial reproductive technologies (ARTs). The purpose of this chapter is to analyze scientific developments and the use of ARTs, most of which contradict the Church's teaching and legislation. It is this scientific environment in which infertility can be diagnosed and its causes treated. When treatment fails and is spouse is sterile, the quest for having a biological child does not stop. It should be noted that ARTs do not treat infertility but bypass its causes and enable pregnancy by artificial means. Such procedures employed to overcome childlessness are considered illegitimate. While applying c. 1084, §3 *CIC* 1983, the Church could conflict with scientific advancement. Therefore, an analysis of the scientific procedures of artificial reproduction

forms a basis for the Church's stance in promoting medical research that is aimed at resolving causes of sterility and enabling the couples to conceive naturally, or to make choices regarding parenthood. It should be noted that even if this chapter utilizes scientific sources and presents scientific facts, it approaches the subject of sterility in marriage from a canonical point of view.

The fourth chapter focuses on the means in which the Church could respond to questions that are posed by sterility in the Ugandan context. In addition to scientific advancement, another area where the Church has difficulties in applying c. 1084, §3 *CIC* 1983 are the various cultural contexts in which she exists. Because of the strong cultural need for children, sterility has the potential of disrupting both canonical and customary or natural marriages in Uganda. While making reference to recent scientific advancement in artificial reproduction, the Church responded to childless couples in different ways. This chapter analyzes these responses, and proposes what more could be done in the Ugandan context. This study makes use of cultural, sociological, and anthropological sources from different authors and identifies and evaluates the gravity of the cultural need for children. It is this gravity that confronts the Church in Uganda in applying c. 1084, §3 *CIC* 1983, and makes it difficult for sterile couples to cope with sterility. The chapter ends with a proposal for an integral approach to the questions that sterility presents to couples not only in Uganda, but also to the universal Church.

There are major studies on the subject of marriage. However, none of them addresses directly the issue of sterility in marriage as disruptive to marital consent in some cultural contexts. Therefore, this study differs from other studies in several ways. It discusses sterility in marriage with its impact on the "partnership of the whole of life." It

also analyzes the impact of error, deceit, and placing a condition to marital consent regarding sterility, and their potential to seriously disrupt conjugal life. On one hand, this study examines the theological and canonical doctrine from which the canons on marriage are drawn, and examines the recent developments in canon law and jurisprudence on the subject. On the other hand, it seeks to apply the legal and theological doctrine to the scientific and cultural contexts where sterility has a high potential of disrupting conjugal life. Finally, this work is an attempt to find an answer to the questions which are raised by sterile spouses who may have entered marriage with a strong desire to have children.

This study has employed a mixed method. It has proceeded with the analysis of the canonical, theological, sociological, and anthropological sources. The study makes an analysis of these sources in view of the procreative end of marriage, and sterility, an obstacle to achieving this end. Such an approach led to obtaining the desired information and to reach accurate conclusions. This information was then applied to the particular cultural context of Uganda so that c. 1084, §3, *CIC* 1983 does not pose an obstacle for people who wish to live good Christian lives in their own cultural milieu.

However, this study is not a complete treatise on the subject of sterility. It is rather an initiative toward addressing the cultural need for children *vis à vis* the status of canonical marriage among sterile couples. Since the subject of marriage is broad, this study has been limited to those canons in the *CIC* 1983 which substantiate the theme of sterility and contribute to answering the researched question. With cc. 1055 and 1084, *CIC* 1983 as the main focus, cc. 1097, 1098 and 1102, *CIC* 1983 were studied and analyzed by way of application. References to the canons of the *Pio-Benedictine Code of*

Canon Law of 1917,⁵ and the *Code of Canons for the Eastern Churches* of 1990⁶ were made where necessary for the sake of comparison. In addition, the study focused on Uganda,⁷ a country with various cultures that are equally affected by sterility.

This study had its own limitations. First, there are inadequate resources from marriage tribunals in Uganda. There are very few functioning tribunals in the country, and those which function have limited resources, facilities and personnel. For this reason, very few cases have been judged at these tribunals, and no cases have been judged where sterility was a factor in marriage breakdown.⁸ Second, the subject of sterility in marriage has not received much attention from canonists.⁹ Perhaps, the statement: “Sterility neither

⁵ This *Codex iuris canonici* of 1917 (=CIC 1917) was abrogated by the promulgation of the *Codex iuris canonici* of 1983 (=CIC 1983) according to the latter’s c. 6, 1°. Therefore, references to CIC 1917 are intended only to understand the historical basis of the parallel canons in the CIC 1983.

⁶ This work is based on the canons in the CIC, 1983 being a revision of the CIC 1917. However, references are made for the *Code of Canons for the Eastern Churches* (=CCEO), promulgated in 1990 by way of showing the development in the understanding of the parallel canons where they are referenced in this work.

⁷ Since the ethnic peoples of Uganda belong to the wider group of other African societies, generalizations are made depending on the latter.

⁸ This information is based on the private consultations made with the Judicial Vicars of the following tribunals: Msgr. Landas Bwambale, Judicial Vicar, Kasese Interdiocesan Tribunal, private communication, March 18, 2013; Rev. Edward Ssekabanga, Judicial Vicar, Diocese of Masaka, private communication, March 25, 2013; and Rev. Andrew Kato, Judicial Vicar, Interdiocesan Tribunal of Kampala, private communication, March 28, 2013. They revealed that bishops are aware of the gravity of the problem of sterility and have opened other interdiocesan tribunals in the Northern and Eastern Ecclesiastical Provinces as referenced in the Chapter Four.

⁹ Perhaps the reason for this inattention to the problem of sterility is lack of statistics. R. Freedman acknowledges lack of statistics regarding fertility in “preindustrial societies.” However, he concludes: “Despite the lack of statistical data, it can be asserted with some confidence that fertility rates have been moderately high to very high in almost all preindustrial societies throughout history.” R. FREEDMAN, “Fertility,” in L. SILLIS (ed.), *International Encyclopedia of Social Sciences*, vol. 5, New York, The Macmillan Company & The Free Press, 1968, 371-382, here on 373. E. Ainebyoona believes that “in Uganda, 10-15 percent of couples cannot have children due to infertility.” E. AINEBYOONA, “Mulago to Start Low Cost Infertility Treatment,” in <http://www.monitor.co.ug/News/National/Mulago-to-start-low-cost-infertility-treatment/688334-3828778-11hvynhz/index.html> (February 27, 2017). Whereas there are few statistics for Uganda, it is estimated that in the developed countries, “one in six couples of childbearing age at any given time are infertile.” Cf. J. BAUGHAN, *A Hope Deferred, A Couple’s Guide to Coping with Infertility*, 15. Studies on the prevalence of sterility in Uganda have shown a decline from 19% for people who were born before 1903 with primary sterility to 5.1% among those who were born 1940-1945; and to

prohibits, nor invalidates marriage” (c. 1084, §3, *CIC* 1983) seems to be obvious and easy to apply to every context.

The Church in Uganda has been silent with regard to answering the questions that are posed by infertile and sterile spouses. In addition, there was a limitation of language proficiency. While there exist some resources in languages other than English, this study has not quoted extensively from them; only a few were selected which contributed to present thesis. In spite of these limitations, this study has attempted to answer the research question and also to create an awareness of the difficulty in applying c. 1084, §3 *CIC* 1983 in particular contexts, such as Uganda.

2.1% for those who were born in 1953-1958. See R. G. WHITE et. al., “Modelling the Dramatic Decline of Primary Infertility in Sub-Saharan Africa,” in J. T. BOERMA and Z. MGALLA (eds.), *Women and Infertility in Sub-Saharan Africa: A Multi-Disciplinary Perspective*, Amsterdam, KIT Publishers, 2001, 117-148, here on 120. See Appendix VII (A/B).

CHAPTER ONE: THE CHURCH'S CONTEMPORARY UNDERSTANDING OF MARRIAGE AND PROCREATION

Introduction

In the 20th century, there was a development in the understanding of marriage. This happened in three stages. First, there was the codification of previous Church legislation into the *CIC* 1917, which ordered the ends of marriage as primary and secondary. Second, there were canonical and theological discussions leading up to the Second Vatican Council (1962-1965) where personalist views of marriage were considered. Third, there was the promulgation of the present *CIC* 1983 for the Latin Church and *CCEO* for the Eastern churches in 1990.¹ At each of these stages, there was development in the understanding of marriage, as well as new emphasis on one or more aspects of marriage. Both the canonical and theological discussions shifted emphasis from the procreative end of marriage as primary, to a vision of marriage as a partnership with the good of the spouses and the good of the children as its ends. With the personalist description of marriage, this partnership means that these goods became equal ends of marriage. Thus, the hierarchical ordering of marriage was eliminated.

It is noted that the personalist consideration of marriage carries with it Roman-Western view of marriage. When faced with incidents of sterility, for example, Christian couples often find themselves with choices to make which contravene the indissolubility of marriage. This is the basis of the present consideration of sterility *vis à vis* the validity

¹ For a deeper insight in the principles that guided the formulation of *CCEO*, see COMMISSION PONTIFICALE POUR LA RÉVISION DU CODE DE DROIT ORIENTAL, “Principes directeurs pour la révision du Code de Droit Canon Oriental,” in E. LORA (ed.), *Enchiridion Vaticanum: Documenti ufficiali della Santa Sede 1974-1976*, 5 (1980), 146-164.

of marriage.

Therefore, the contemporary understanding of marriage is based on the personalist concept as found in the canons, in commentaries on marriage, in rotal jurisprudence,² as well as theological authors. Chapter One highlights this development in the description of marriage at various stages in the century-long period. It can be observed generally that an emphasis was placed on marriage as a natural reality, which at the same time has been “raised to the dignity of the sacrament between the baptized” (c. 1055, *CIC* 1983). This work examines and analyzes the respective canons themselves, papal pronouncements, conciliar declarations, individual theological and canonical authors, and authoritative jurisprudential decisions.

Chapter One is divided into five sections. The first section is a historical synopsis of the understanding of marriage in the 20th century. This synopsis utilizes canonical and theological sources together with magisterial documents. These documents offer a summation of the contemporary understanding of marriage in canonical and theological terms.

The second and third sections focus on the theological teaching of marriage in the documents of the Second Vatican Council. In the middle of the 20th century, a personalist theology of marriage was developed, and it was echoed in these documents. Then, personalist considerations were made in the revision process and formulation of *CIC* 1983. The views of theologians and canonists of the last mid-century who promoted

² The term “jurisprudence” is the English equivalent of the Latin word *iurisprudentia*, which is derived from two words *iuris* and *prudentia*, which means prudence concerning the law. H. F. Doogan explains that jurisprudence is used in two ways: first, to refer to the “proved uniform norm of applying law or of practical interpretation and application of laws in tribunals,” or generally, a mere theoretical science of the law. Cf. H. F. DOOGAN (ed.), *Catholic Tribunals: Marriage Annulment and Dissolution*, Newtown, NSW Australia, 1990, 12. In this work, jurisprudence refers to the authoritative interpretation and application of canon law by the tribunal of the Roman Rota.

conjugal love over procreation were considered in drafting of *Gaudium et spes*.

The fourth section outlines the new understanding of marriage as a “partnership of the whole of life” (c. 1055, §1, *CIC* 1983). The nature of the marital partnership as well as its essential elements and properties are presented and discussed. This section utilizes theological statements as presented by Paul VI and John Paul II. These serve as the main sources for the tone found in the new legislation regarding marriage.

The fifth and final section discusses the canonical doctrine of *bonum prolis* as an end of marriage. Traditionally, the generation of offspring has been considered as the “primary end” of marriage to which the secondary end was subordinated. With the promulgation of *CIC* 1983, the generation of offspring becomes one of the two ends of marriage. The question which this work seeks to answer remained after 1983: Is marital consent affected when its primary end is not achieved because of sterility? Before an answer is attempted, this chapter gives a theological and canonical basis on the nature of marriage as described by the Church.

1.1 — Description of Marriage according to the *CIC* 1917

In order to understand the canonical view of sterility and its implications on marital consent, it is necessary to look at the way in which canon law describes marriage. As will be discussed later, marriage is rather described than defined by canon law. In this section, an analysis is made on how the Church has described marriage at the various stages of the 20th century. This description forms the background to the legal prescription that sterility in itself has no negative impact on marital consent; it neither impedes it, nor invalidates it (c. 1084, §3, *CIC* 1983).

1.1.1 — The Hierarchical Ends of Marriage

The *CIC* 1917 did not give an explicit definition but rather a description of marriage.³ It is canonical authors and rotal jurisprudence that have provided definitions of marriage. Marriage has been described in the traditional Romano-Christian understanding⁴ by several authors. For example, J. P. Martin supports the traditional

³ Since there is no explicit definition of marriage but rather its description, the word “definition” is employed here to refer to a mere description of marriage. One author K. W. Schmidt explored the question whether marriage is defined in the canons on marriage and suggests that since the *CIC* 1983 does not define marriage: “Very important to examine the canons themselves to arrive at a juridical definition of marriage. In the canons, the Legislator refers both to marriage *in fieri* and marriage *in facto esse*.” K. W. SCHMIDT, *Educatio prolis as an Essential Element of Marriage*, JCD diss., Ottawa, Faculty of Canon Law, Saint Paul University, 1993, 111. See also M. F. POMPEDDA, “Incapacity to Assume the Essential Obligations of Marriage,” in R. M. SABLE (ed.), *Incapacity for Marriage: Jurisprudence and Interpretation, Acts of the III Gregorian Colloquium (September 1-6, 1986)*, Rome, Pontificia Universitas Gregoriana, 1997, 149-218, here on 186. In 1977, the commission of cardinals who were consulted regarding offering of a definition of marriage in the revised law replied: “Circa primam quaestionem Patribus placuit ut in can. 243 praebeatur notioae matrimonii, quae tamen notioae debet esse descriptiva seu in oblique et respicere debet matrimonium ‘in fieri,’ quoad eiusdem tantum elementa essentialia. Inter haec elementa essentialia placet tut recenseatur ‘coniunctio vitae’ (vel consortium vitae vel communio vitae), dummodo vitentur expressionis quae ansam praebere possint falsis interpretationibus in iurisprudencia.” *Communicationes*, 10 (1978), 125. There seems to be a deliberate decision to give only a description of marriage, and it was left for jurisprudence to give interpretation and application of canons on marriage. However, C. J. SCICLUNA, in his work *The Essential Definition of Marriage according to the 1917 and 1983 Codes of Canon Law: An Exegetical and Comparative Study*, refers to various descriptions of marriage as definitions.

⁴ In his article, D. E. Fellhauer gave a synthesis of the Roman law definition of marriage and how the early Church incorporated some concepts into canonical definition of marriage. See D. E. FELLHAUER, “The *Consortium omnis vitae* as Juridical Element of Marriage,” in *Studia canonica*, 13 (1979), 7-171, here on 13-18. He explains: “It was in some ways fortunate for the early Church to find itself situated in a society where the law of marriage was the Roman law. There was much about Roman marriage which the Church could readily accept. It was monogamous, in principle permanent, in design procreative. It was ideally a complete community of man and wife, a *corporum-coniunctio totius vitae*, which implied the duty of conjugal love” (17-18). See also C. J. SCICLUNA, *The Essential Definition of Marriage According to the 1917 and 1983 Codes of Canon Law: An Exegetical and Comparative Study*, JCD diss., Rome, Pontificia Universitas Gregoriana, 1995, 45-46; T. MACKIN, *Marriage in the Catholic Church: What is Marriage?* New York, Paulist Press, 1982, 76-79. Romans saw marriage as an *individua consuetudo vitae*, and a *consortium omnis vitae*. As it will be discussed later, these concepts were useful in describing Christian – canonical marriage. For J. F. Castaño, there are several elements in Roman law regarding contract which have been incorporated into the canons on marriage. Cf. J. F. CASTAÑO, “Il matrimonio e contratto,” in *Periodica* 1991, 82 (1993), 431-476, especially 453-458; L. ÖRSY, “Matrimonial Consent in the New Code, *Glossae* on Canons 1057, 1097-1103, 1107,” in *The Jurist*, 43 (1983), 29-68, especially 33. In Roman law, “marriage existed for the sake of the procreation and education of children, and this supposition occasionally manifested itself in Roman legislation and jurisprudence.” P. L. REYNOLDS, *Marriage in the Western Church, the Christianization of Marriage during the Patristic and Early Medieval Periods*, New York, E. J. Brill, 1994, 15. This understanding of marriage is parallel to the canonical description of marriage in terms of its primary end in c. 1013, §1, *CIC* 1917 and the procreative element of marriage in c. 1055, §1, *CIC* 1983. For more on this discussion, see J. T. NOONAN, “Novel 22,” in W.T. BASSETT (ed.), *The Bond of Marriage*, Notre Dame, University of Notre Dame Press, 1968, 42-96. For further study about

Romano-Christian description of marriage. He write that marriage is: “Permanent joining of man and woman in the unity of an undivided principle for the procreation and upbringing of children.”⁵ Another author, M. Rosset, defined marriage as: “A bond whereby man and woman are joined to each other in a single and undivided complete principle for the generation of offspring.”⁶ F. X. Wernz, P. Vidal and F. Aquirre’s definition went further to define marriage as: “The lawful and undivided contract of man and wife for the generation and education of offspring.”⁷ These authors bring out two main elements in the Church’s understanding of marriage: indissolubility or permanency of a marital relationship and the primary purpose of marriage, the procreation of children.

the influence of Roman law on canon law, see A. GAUTHIER, *Roman Law and its Contribution to the Development of Canon Law*, 2nd ed., Ottawa, Faculty of Canon Law, Saint Paul University, 1996. With regard to what makes marriage, Roman tradition is that “nuptias non concubitus, sed consensus facit,” which means that “consent, not sexual intercourse, makes marriage.” *Digest*, 50, 17, 30. See also F. SCHULZ, *Classical Roman Law*, Oxford, Clarendon Press, 1951, 110-114.

⁵ The original text reads: “Permanens viri et mulieris coniunctio in unitate individui prolis generandae ac informandae principii.” J. P. MARTIN, *De matrimonio et potestate ipsum dirimendi Ecclesiae soli exclusiva propria*, Lugduni, Perisse, 1844, vol. 1, 8-9. See also T. MACKIN, *Marriage in the Catholic Church: What is Marriage?* 202. It was J. P. Martin who took the description of marriage further when he defined *matrimonium in fieri* as: “A legitimate contract, whereby a man and woman, legally capable, unite with each other and are joined in a single and undivided principle of the procreation and upbringing of children.” He defined *matrimonium in facto esse* as: “A marital union of a man and woman between persons legitimately joined, persevering in an undivided sharing of life.” Cf. T. MACKIN, *Marriage in the Catholic Church: What is Marriage?* 202-203.

⁶ M. ROSSET, *De Sacramento matrimonii tractatus dogmaticus, moralis, canonicus, liturgicus et iudiciarius*, vol. 1, Sancti Joannis Maurianae Sabaudia, Apud Auctorem, 1895-1896, 18. The full text reads: “Sane est omnium potissima, quia simul essentiam matrimonii in facto esse et praecipuam eius proprietatem explicat, scilicet nexum quo ad invicem colligantur vir et femina in unum et individuum prolis generandae principium completum, et simul indissolubilitatem huius nexus.” Engl. transl. in D. E. FELLHAUER, “The *Consortium omnis vitae*,” 74. One author Rosset is quoted to have added to the discussion on the definition of marriage by making an emphasis on marriage as “an indissoluble bond” that is created by the couple when they marry. He emphasizes the heterosexual nature of marriage and that it is intended for the generation of offspring and for their upbringing. Cf. T. MACKIN, *Marriage in the Catholic Church: What is Marriage?* 203.

⁷ F. X. WERNZ, *Ius matrimoniale*, Prati, Giacheti, 1912, 23-24: “Contractus legitimus et individuus maris atque feminae ad generandam et educandam prolem.” For T. J. O’Donnell, when marriage is defined as a “lawful contract,” it refers to a “bilateral agreement between two people which is in accord with the natural, divine positive, and ecclesiastical law.” See T. J. O’DONNELL, *Medicine and Christian Morality*, New York, Alba House, 1976, 214. The author also indicates that since these laws are either forbidding or prohibiting certain marriages, marriage cannot be entered into in a manner that is contrary to these laws.

It can be noted that these authors have based their definitions of marriage on the views of Cardinal Pietro Gasparri, one of the influential canonists who contributed to the description of marriage.⁸ In his work *Tractatus canonicus de matrimonio*, he describes marriage as both *matrimonium in fieri* and *matrimonium in facto esse*. *Matrimonium in fieri* is the lawful contract between man and woman bringing about an indissoluble intimacy of life (*individua vitae consuetudo*). *Matrimonium in facto esse* is the resulting *vitae consuetudo*, namely the matrimonial bond.⁹

Looking at the discussions preceding the *CIC* 1917, the canonical doctrine of marriage revolved around two major aspects. The first one is the right and obligation to carnal copula, that is, marital intercourse in view of offspring. The second one is the living together in a union of wills through mutual love and in a certain union of possessions. Cohabitation creates a conjugal society of the spouses. In addition, Gasparri contributed to this debate when he addressed the question whether the permanent exclusion of cohabitation in the giving of marriage consent is invalidating. His view is

⁸ Cardinal Pietro Gasparri (1852 – 1934), was a canonist and Vatican Secretary of State (1914-1930). He was responsible for overseeing the codification of the *Pio-Benedictine Code of Canon Law* which was promulgated on May 27, 1917 (*CIC* 1917). In that process, he wrote extensively on marriage even before the publication of *CIC* 1917 and after. Among his major writings which offer a description of marriage, the following have relevance to the subject of marriage: *Codex iuris canonici PII X Pontificis Maximi iussu digestus*; *Codicis iuris canonici fontes* and *Tractatus canonicus de matrimonio*. He also made several addresses and wrote papers on various subjects of canon law such as on the Eucharist and on the *Catechism* of the Catholic Church. Cf. D. E. FELLHAUER, “The *Consortium omnis vitae* as Juridical Element of Marriage,” 76. For detailed discussion on Gasparri’s contribution to the codification of Church Law, see T. MACKIN, *Marriage in the Catholic Church: What is Marriage?* 204-207. As Mackin observed: “After seventeen centuries Gasparri’s precision has finally displaced Modestinus’ vagueness in saying that a marriage is a man’s and a woman’s sharing of life. Gasparri did not mean to get rid of these ancient and almost axiomatic definitions,” (210). Therefore, Gasparri’s affirmation is that marriage is: “An act of the will” and: “Marriage is created by the consent of the parties” (cf. c. 1081, *CIC* 1917) give a clear description of marriage.

⁹ P. GASPARRI, *Tractatus canonicus de matrimonio*, Rome, Typis polyglottis Vaticanus, 1891, vol. 1, 2: “*Matrimonium in fieri est contractus legitimus inter marem et feminam individuum vitae consuetudinem afferens. Matrimonium in facto esse est inde resultans vitae consuetudo, et nominatim vinculum matrimoniale.*”

that such marriage is valid as long as the right to the body (*ius in corpus*) is not excluded.¹⁰ This is because the *communio* of habitation, board and bed does not belong to the substance of marriage; any two people can cohabit without being married.¹¹ Canonically speaking, the right to conjugal act, ordered to procreation, is the essential element of a valid marriage.

During the formulation of *CIC* 1917, there were two canons that describe well the essential nature of marriage. C. 1013, §1, *CIC* 1917 lists the primary¹² and secondary ends of marriage: “The primary end of marriage is the procreation and education of children; the secondary [end] is mutual support and a remedy for concupiscence.”¹³ Another important canon that describes marriage is c. 1081, §2, *CIC* 1917; it provides the

¹⁰ See P. GASPARRI, *Tractatus canonicus de matrimonio*, vol. 1, 5: “At vero jus coeundi mutuum cum relative obligatione, exclusivum et perpetuum et per se ordinatum ad prolem generandam et postea educandam, est objectum formale essential contractus matrimonialis, licet de facto per accidens proles non enascatur et nec enasci queat, e. g., ob absolutam sterilitatem.” See also D. E. FELLHAUER, *The Consortium omnis vitae*, 78; T. MACKIN, *Marriage in the Catholic Church: What is Marriage?* 206.

¹¹ In Roman law, “sleeping together does not make marriage, but consent does.” Cf. D. 50.17.30; 24.1.32.13. Gasparri seems to have this principle of Roman Law in mind. See also J. E. GRUBBS, *Women and the Law in the Roman Empire, A Sourcebook on Marriage, Divorce and Widowhood*, London, Routledge, 2002, 82.

¹² The “primary end” of something is that end or purpose which is immediately sought for itself and not for the sake of something else. It is that to which the action or work or institution is destined by its very nature and for which it is necessary. This explanation was given by C. A. SCHLECK, *The Sacrament of Matrimony: A Dogmatic Study*, Milwaukee, WI, Bruce Publishing, 1964, 24. When procreation is referred to as the “primary end” of marriage, it means that marriage exists solely for the sake of procreation.

¹³ “Matrimonii finis primarius est procreatio atque educatio prolis; secundarius mutuum adiutorium et remedium concupiscentiae.” Engl. transl. in E. PETERS, *The 1917 Pio-Benedictine Code of Canon Law, in Engl. translation with Extensive Scholarly Apparatus*, San Francisco, Ignatius Press, 2001, 352. All Engl. translation of the *CIC* 1917 canons is obtained from this work, unless noted otherwise. B. A. Siegle finds the reference of the secondary end of marriage as “remedy of concupiscence” misleading and offensive. He thinks that “it gives one the impression that God instituted marriage to remedy concupiscence. The notion which *remedium concupiscentiae* conveys is offensive because it gives the idea that marriage is permission to engage in activities which are shameful, sinful and improper... Yet, to speak of it as ‘concupiscence’ or a desire in need of a remedy, namely marriage, is to imply that it is a human weakness, or that something is lacking, or that something is defective in man.” B. A. SIEGLE, *Marriage Today, A Commentary on the Code of the Canon Law*, 3rd rev. ed., New York, Alba House, 1979, 26. In his view, it is for this reason that the expression “primary” and “secondary” ends of marriage were eliminated in the *CIC* 1983 and substituted with “the ends of marriage are the procreation and education of offspring and mutual love between the spouses” (*Ibid.*, 26).

constitutive elements of marital consent in descriptive terms. It reads: “Matrimonial consent is an act of the will by which each party gives and accepts perpetual and exclusive rights to the body, for those actions that are of themselves suitable for the generation of children.”¹⁴ These two canons specify the essential formal object of matrimonial consent and distinguish marriage from other relationships.

In his study on the *CIC* 1917, U. Navarrete has discovered that closely examining the sources (*fontes*) for the above mentioned canons, one finds no mention of the hierarchical ends of marriage. He concluded that the *CIC* 1917 is the first magisterial document to use the terminology *finis primarius* and *finis secundarius* while referring to marriage.¹⁵ For example, the draft for c. 1013, §1, *CIC* 1917 reads: “The primary end of matrimony is not only for procreation and also education of offspring, but also for mutual help and the remedy of concupiscence.”¹⁶ Similarly, the *fontes* for c. 1081 do not contain the *ius in corpus* or *copula* as the object of matrimonial consent.¹⁷ At this point, there is no reason given for the hierarchical ordering of the ends of marriage¹⁸ as primary and

¹⁴ “Consensus matrimonialis est actus voluntatis quo utraque pars tradit et acceptat ius in corpus, perpetuum et exclusivum, in ordine ad actus per se aptos ad proles generationem.” Engl. transl. in E. PETERS, *The 1917 Pio-Benedictine Code of Canon Law*, 372.

¹⁵ U. NAVARRETE, *Structura iuridica matrimonii secundum Concilium Vaticanum II*, in *Periodica* 1990, 56 (1967), 357-388, 554-578, here on 368-369. See also T. MACKIN, *Marriage in the Catholic Church: What is Marriage?* 212-214. For C. J. SCICLUNA, the 1913 *Schema* did not determine any hierarchy in the ends of marriage. Cf. C. J. SCICLUNA, *The Essential Definition of Marriage According to the 1917 and 1983 Codes of Canon Law: an Exegetical and Comparative Study*, 299.

¹⁶ *Ibid.*, 366: “Matrimonium finis non modo est procreatio atque educatio proles, sed mutuum quoque adiutorium et remedium concupiscentiae.” Engl. transl. by self.

¹⁷ These *fontes* for c. 1081 cite the biblical examples of Jacob and Leah in the Old Testament, and the Blessed Virgin Mary in the New Testament. She entered a valid marriage with Joseph, while excluding *copula carnalis*, but gave “consensus cohabitandi et individuum vitae consuetudinem retinendi.” This view is supported by B. Krempel. See B. KREMPEL, *Die Zweckfrage der Ehe in neuer Beleuchtung, Begriffe aus dem Wesen der Leiden Geschlechter im Lichte der Beziehungslehre des hl. Thomas*, Einsiedeln, Benziger, 1941, 256, no. 491.

¹⁸ The view of G. Robinson is that the first person to formulate the doctrine of the three ends of

secondary in the *CIC* 1917.¹⁹

As a corollary, matrimonial consent in the *CIC* 1917 is directed to those conjugal acts that are suitable for the generation and education of children. This is the reason for establishing a conjugal society which is distinct from other forms of cohabitation. It is a *societas permanens*, or *vita coniugal*is which is established only for begetting children. Other terms like *communio vitae*, *consortium vitae* and *consuetudo vitae* (cc. 1129, 1130 and 1131, *CIC* 1917 respectively) generally refer to cohabitation.

Another discussion on the *CIC* 1917 was about the meaning of the “indissoluble intimacy of life” (*individua vitae consuetudo*) as a special form of cohabitation (c. 1128, *CIC* 1917).²⁰ It consists in the mutual right and obligation towards the other’s body with a view of procreation of offspring. This discussion introduced questions regarding the object of consent and the societal aspect of canonical marriage. In his commentary on the object of consent, F. M. Cappello indicates that the triple *communio* of bed, board and habitation is what is meant by *individua vitae consuetudo*; this aspect does not belong to the essence of marriage, but only to its integrity.²¹

marriage was probably St. Isidore of Seville (ca. 636) when he wrote: “There are three reasons (causae) to take a wife. The first is for offspring, as it is read in Genesis: ‘And he blessed them, saying: increase and multiply’ (Gen. 1:28); the second reason is assistance, as it is likewise said in Genesis: ‘it is not good for a man to be alone; let us make him a helpmate similar to himself’ (Gen. 2:18); the third reason is incontinence: whence the Apostle says that he who does not remain continent should marry.” *Etymologiae*, lib. 7, cap. 7, *De Coniugal*is, 27; PL, vol. 82: 367. Cf. G. ROBINSON, “Unresolved Questions in the Theology of Marriage,” in *The Jurist*, 69 (1983), 69-102, here on 75.

¹⁹ Cf. D. E. FELLHAUER, *The Consortium Omnis Vitae as a Juridical Element of Marriage*, 120.

²⁰ Spouses are obliged to maintain a communion of conjugal life, unless a just cause excuses them (c. 1128, *CIC* 1917: “Coniuges servare debent vitae coniugalis communicationem, nisi iusta causa eos excuset”). See also c. 1151, *CIC* 1983.

²¹ As Cappello writes: “Is the communion of bed, board, and habitation an essential object of the matrimonial contract? There have been authors who taught this but surely incorrectly. This communion belongs only to the integrity of marriage contract, that is, to the perfection of the conjugal life.” Cf. F. M. CAPPELLO, *Tractatus canonico-moralis de sacramentis*, 4th ed., vol. 3, pars 1, Rome, Marietti, 1939, 6. Engl. trans. in D. E. FELLHAUER, *The Consortium Omnis Vitae as a Juridical Element of Marriage*, 123.

It can be concluded that *CIC* 1917 is the source of the hierarchical ordering of marriage. When it affirmed the primary and secondary ends of marriage, *CIC* 1917 reflected the traditional teaching of marriage where procreation was elevated above the secondary end. In addition, this legislation distinguishes between the community of life which is marriage, and the other forms of living together which do not constitute marriage. Living together as married people requires that the couple has an intention of begetting children together. There must be at least an intention to bear children for cohabitation to be considered marriage. For children to be born and nurtured in an ideal environment, this *societas* called family must have the character of indissolubility and permanence.²²

1.1.2 — Pius XI's Encyclical Letter on Christian Marriage *Casti connubii*

The Encyclical Letter on Christian Marriage *Casti connubii*²³ is not a legislative document. However, a close look at this document reveals some canonical issues that the

For C. Burke, *bonum coniugum* is the maturing of the spouses for the ultimate purpose of life and is only an end of marriage, not part of its essence. Cf. C. BURKE, "The *Bonum Coniugum* and the *bonum prolis*: Ends or Properties of Marriage," in *The Jurist*, 49 (1989), 708.

²² Canon 1082, *CIC* 1917 mentions *societas permanens* which is a reference to the indissoluble bond of marriage in which children are born. Cf. D. E. FELLHAUER, *The Consortium Omnis Vitae as a Juridical Element of Marriage*, 120. This means that the marital society that is created by marriage is not a casual or transitory relationship, but a permanent union. Cf. I. GRAMUNT, J. HERVADA and L. A. WAUCK, *Canons and Commentaries on Marriage*, Collegeville, MN, The Liturgical Press, 1987, 139; G. M. SHERBA, *Canon 1096 on Ignorance: Application to Tribunal and Pastoral Practice*, JCD diss., Ottawa, Faculty of Canon Law, Saint Paul University, 2000, 140; L. WRENN, *The Invalid Marriage*, Washington, DC, The Canon Law Society of America, 1998, 137.

²³ PIUS XI, Encyclical Letter on Christian Marriage *Casti connubii*, December 31, 1930, in AAS, 22 (1930), 539-592. Engl. transl. in C. CARLEN (ed.), *The Papal Encyclicals 1939-1958*, Wilmington, NC, McGrath Pub. Co., 1981, 391-414. In general, encyclical letters are not legislative documents. They belong to the pope's ordinary teaching authority and are intended only to give counsel or to shed light on points of doctrine. This explanation was provided by F. G. MORRISEY, *Papal and Curial Pronouncements: Their Canonical Significance in Light of the Code of Canon Law*, Ottawa, Faculty of Canon Law, Saint Paul University, 1995, 11. For a deeper study and analysis of *Casti connubii*, see T. MACKIN, *Marriage in the Catholic Church: What is Marriage?* 215-218; R. G. DE HARO, *Marriage and the Family in the Documents of the Magisterium*, 2nd ed., Engl. transl. by W. E. May, San Francisco, CA, Ignatius Press, 1993, 107-145.

letter was intended to address. In *Casti connubii*, the pope affirmed the primacy of the procreative aspect of marriage and contributed to the on-going debate on the hierarchical ends of marriage. Pius XI emphasized the importance of the Augustinian three goods of marriage (*tria bona matrimonii*)²⁴ as well as the primacy of procreation and education of children. He taught that offspring should be begotten lovingly and educated religiously as prescribed in the Code of Canon Law and that the primary end of marriage is the procreation and education of children.²⁵

In this encyclical letter, Pius XI paid considerable attention to another dimension

²⁴ The three goods of marriage according to Saint Augustine are: offspring, fidelity and sacrament. Mackin explains the three goods of marriage as held by Saint Augustine in the following way: “The good of the offspring (*proles*) denotes procreation, which includes not only the bringing of children onto the world but also their proper nurture. The good that is fidelity (*fides*) designates in a general way that the spouses will keep marital fidelity, but more particularly each one’s honoring the other’s exclusive right to the former’s sexual acts. The good that is *sacramentum* designates the perseverance, the permanence of marriage commitment, even the unbreakable character of the marital bond.” T. MACKIN, *Marriage in the Catholic Church: What is Marriage?* 138. J. McAreavey also explains these goods as proposed by Saint Augustine: “Fidelity means that one refrains from sexual contact outside marriage bond; offspring, that (the child) is lovingly received, tenderly nurtured, religiously brought up; the sacrament, that marriage is not broken and the abandoned spouse marry another, not even for the sake of having children. This can be considered the rule of marriage, by which natural fecundity is adorned and the baseness of sexual disorder is restrained (De genesi ad litteram, lib 9, Can. 7, no. 12).” Cf. J. MCAREAVEY, *The Canon Law of Marriage and the Family*, Dublin, Four Courts Press, 1997, 19. While writing against the Pelagians who glorified sex, Saint Augustine labored to explain that concupiscence, man’s urge for sex is evil; yet, he had to “defend marriage and the sexual activity in marriage while simultaneously maintaining the sinfulness of a casual or disordered use of sex. This accounts in great part for the ‘dualism’ which some detect in Saint Augustine’s moral theology and his teaching on marriage in general.” Cf. D. E. FELLHAUER, “The *Consortium Omnis Vitae* as a Juridical Element of Marriage,” 20. Saint Augustine himself explained: “Hoc autem tripartitum est: fides, proles, sacramentum. In fide attenditur ne praeter vinculum coniugale, cum altera vel altero concubatur; in prole, ut amanter suscipiatur, benigne nutriatur, religiose educetur; in sacramento autem, ut coniugium non separetur, et dimissus aut dimissa nec causa prolis alteri coniungatur. Haec est tanquam regula nuptiarum, qua vel naturae decorator fecunditas, vel incontinentiae regitur pravitas.” Cf. SAINT AUGUSTINE, *De bono coniugali*, c. 24, no. 32; in J. P. MIGNE (ed.), *Patrologiae cursus completus, series latina*, vol. 40, Paris, Garnier Fratres, 1865, 373-396, here on 394. Therefore, sexual activity in marriage is excused because of its results, or the objective toward which it tends – procreation. Saint Augustine taught that “sexual activity is always an evil. Nevertheless, man can make it into a good through rational use. This is done by the good things which can flow from it.” Cf. G. ROBINSON, “Unresolved Questions in the Theology of Marriage,” 71. This explains how the early Fathers attributed to marriage a moral value, while refuting the Gnostic and Manichean tendencies which claimed that matter was evil.

²⁵ PIUS XI, Encyclical Letter on Christian Marriage *Casti connubii*, 539-592. The pope specifically taught: “In prole [attenditur], ut amanter suscipiatur [...], religiose educetur, quod quidem ipsum in Codice iuris canonici quoque nervosa edicitur: Matrimonii finis primarius est procreation atque educatio prolis” (546).

of marriage, namely, the *bonum fidei*. The pope described the “good of fidelity” in terms of the sum total of personal benefits of marriage when he referred to the secondary ends of marriage. He wrote: “For in matrimony as well as in the use of the matrimonial rights there are also secondary ends, such as mutual aid, the cultivating of mutual love, and the quieting of concupiscence which husband and wife are not forbidden to consider so long as they are subordinated to the primary end and so long as the intrinsic nature of the act is preserved.”²⁶ Furthermore, the document introduced the term *foedus* to express the firmness of marriage contract. Authors, both canonists and theologians, are of the opinion that the word *foedus* was a better expression of *matrimonium in fieri*, given that marriage is a socio-juridical reality.²⁷

Although not a legal document, this encyclical letter still presented an authoritative teaching on marriage. Its canonical significance can be noted in presenting the canonical doctrine of marriage and making a direct quotation of c. 1103, *CIC* 1917. The pope clarified that the blessing of offspring is not completed by begetting them but that something else must be added, namely, their education. In addition, Pius XI taught

²⁶ Ibid., 561: “Habentur enim tam in ipso matrimonio quam in coniugalibus iuris usu etiam secundarii fines, ut sunt mutuum adiutorium mutuusque fovendus amor et concupiscentiae sedatio, quos interdere coniuges minime vetantur, dummodo salva semper sit intrinseca illius actus natura ideoque eius ad primum finem debita ordinatio.” Engl. transl. in D. E. FELLHAUER, *The Consortium Omnis Vitae as a Juridical Element of Marriage*, 128.

²⁷ One of these authors is W. Kasper. He writes that “a covenant is both private and public. The covenant of marriage is not simply a personal bond or covenant of love – it is also a public or legal matter concerning the whole community of believers.” Cf. W. KASPER, *Theology of Christian Marriage*, London, Burns and Oates Ltd., 1980, 40-41. This view illustrates the personal and public character of marital consent. Therefore, this aspect is better expressed in the term “contract” when it is applied to marriage. Other theologians include: B. HÄRING, “Fostering the Nobility of Marriage and the Family,” in H. VORGRIMMER (ed.), *Commentary on the Documents of Vatican II*, vol. 5, Freiburg, Herder and Herder, 1967-1969, 225-245, here on 33; G. ROBINSON, “Unresolved Questions in the Theology of Marriage,” 95. Canonical authors who supported this view include: C. L. SCICLUNA, *The Essential Definition of Marriage According to the 1917 and 1983 Codes of Canon Law*, 226; F. G. MORRISEY, “The 1978 Proposal: Revising Church Legislation on Marriage,” in *Origins*, 9 (1979-1980), 210-218, here on 211.

that marriage is a “communion of life” between husband and wife and that love is a higher dimension of mutual sanctification in the supernatural order. Human life is the “primary cause and reason” for marriage.²⁸

Pius XI also pointed out the relationship between the conjugal act and the “good of the children.” He stated: “Since, therefore, the conjugal act is destined primarily by nature for the begetting of children, those who in exercising it deliberately frustrate its natural power and purpose, sin against nature and commit a deed which is shameful and intrinsically vicious.”²⁹ This means that conjugal love, which must inform the entire married life and the mutual obligations of the spouses, cannot be but one; and it is perfected by conjugal charity which leads the spouses to imitate the holiness of Christ.³⁰ Thus, Pius XI condemned the “errors” of the time which are opposed to the good of the children. These are: temporary marriage, experimental marriage and companionate.³¹

In conclusion, it can be noted that the Pius XI upheld the primacy of the procreative end of marriage and the secondary end was subordinate. However, he did not mention what happens to the partnership when there is no offspring. Pius XI’s encyclical

²⁸ Cf. PIUS XI, *Casti connubii*, in C. CARLEN (ed.), *The Papal Encyclicals 1939-1958*, 399. While making a study on this encyclical, De Haro clarified: “The encyclical emphasizes that this good occupies the ‘first place,’ precisely because it is the ‘primary end’ of marriage; and it is always the end that determines the characteristics of any plan.” R. G. DE HARO, *Marriage and the Family in the Documents of the Magisterium*, 119. See also B. A. SIEGLE, *Marriage Today, A Commentary on the Code of the Canon Law*, 30. Regarding the Church’s teaching that marriage as an institution created by God from the beginning, see LEO XIII, Encyclical Letter on Christian Marriage *Arcanum Divinae Sapientiae*, February 10, 1880, in AAS, 12 (1879-1880), 388-389, Engl. transl. in THE MONKS OF SOLESMES, *Papal Teachings – Matrimony*, Boston, MA, St. Paul Editions, 1963, 132-165.

²⁹ PIUS XI, *Casti connubii*, no. 54, in C. CARLEN (ed.), *The Papal Encyclicals 1939-1958*, 399.

³⁰ Cf. R. G. DE HARO, *Marriage and the Family in the Documents of the Magisterium*, 123-124.

³¹ *Casti connubii*, no. 50, in C. CARLEN (ed.), *The Papal Encyclicals 1939-1958*, 399. The Pope also noted that the root cause of these “errors derive from a hedonistic mentality that regards children as a burden and not as a good and leads to crimes against the life of the child to be born.” R. G. DE HARO, *Marriage and the Family in the Documents of the Magisterium*, 131.

not only contributed to the personalist notion of marriage but also emphasized the procreative end of marriage as primary. He also brought out the quality of “fidelity” as an enhancement to marriage as understood and taught by the Church.

1.1.3 — Rotal Decision *coram Wynen* of January 22, 1944

The rotal auditor A. Wynen’s decision came out at the time when the “personalist”³² view of marriage was being debated by canonists and theologians. Canon 1013, *CIC* 1917 did not specify what the secondary end(s) of marriage entail and how such ends can be applied to *matrimonium in facto esse*.³³ Wynen’s decision offered an explanation which seemed to settle this question, and it was published in its entirety in the *Acta Apostolicae Sedis*.³⁴

The case at hand involved parties who never lived together. The woman respondent had been diagnosed with a contagious and incurable disease, and the man was persuaded to marry her because of a child born out of wedlock. This man presented a

³² Personalism, while referring to marriage, is an approach which places greater emphasis on the relationship between husband and wife, on the role and aspirations of conjugal love, and on their personal fulfillment. This is opposed to the “institutional” approach where marriage is seen as an institution where children are born and nurtured. Cf. C. BURKE, *The Theology of Marriage: Personalism, Doctrine and Canon Law*, Washington DC, The Catholic University of America Press, 2015, 52.

³³ Canonists distinguish between *matrimonium in fieri* to mean the act of constituting marriage at the moment of its celebration, or the contract; and *matrimonium in facto esse* to mean marriage bond that arises from this contract, or marriage as a state of life. Cf. J. MCAREAVEY, *The Canon Law of Marriage and the Family*, 19.

³⁴ TRIBUNAL OF THE ROMAN ROTA, *coram WYNEN*, January 22, 1944, in AAS, 36 (1944), 179-200; *Sacrae Rotae Romanae Decisiones seu Sententiae 1908-1980*, 36 (1944), 55-79. For centuries, the Roman Rota Tribunal has taken on three different names. Two others are: *Apostolicum Rotae Romanae Tribuna*, *Decisiones seu Sententiae* (1981-1992) and *Rotae Romanae Tribunalis, Decisiones seu Sententiae* (1993—). In this work, all judgments of the Tribunal of the Roman Rota from 1908 to the present will henceforth be abbreviated as “*RRT Dec.*” Mackin explains the importance of publishing this rotal decision in its entirety when he writes: “This relationship of secondary to primary in the mode of controlled subordination waited for its elaboration, after the promulgation of the Code and after *Casti connubii*, for the jurisprudence of marriage courts and for declarations by the Church’s magisterium. This jurisprudence reached a kind of apex, found its most thorough explanation, in a decision on a petition for nullity handed down on January 22, 1944 by the Roman Rota.” T. MACKIN, *Marriage in the Catholic Church: What is Marriage?* 219.

petition under the ground of force/fear and simulation of consent. Eventually the case was tried at the Roman Rota in second instance on the second ground. It was judged that the couple's decision not to live together was mutually agreed upon, so the right to the body (*ius in corpus*) had not been denied and so the doubt was answered in the negative. Thus Wynen explained what the ends of marriage entailed.

According to Wynen, marriage can have only one principal end (*finis operis*), to which all other ends are ordered. It is this principal end which determines the nature of marriage and all other ends are subordinated to it. Consequently, the procreation and education of offspring is the primary end of marriage.³⁵ The secondary end is the mutual aid (*mutuum adiutorium*). This includes elements like living together or cohabitation, the use of material goods, the earning and administration of the means of support and a more personal assistance in the physical and emotional spheres of life, and even in spiritual matters.

Wynen's decision also addressed the relationship between the two ends of marriage. He noted that mutual aid and cohabitation – which are secondary ends – do not constitute marriage. This is because the partnership of the whole of life (*totius vitae consortium*) between a man and a woman can be achieved even outside marriage. This means that the secondary ends are achieved only in view of the primary end; it is procreation and education of offspring that are accomplished within the *consortium* of married people. Therefore, the right to cohabitation (*vitae consortium*), to a communion of board and bed, and to help in all the necessities of life arises only in view of the

³⁵ Wynen indicated that he utilized as his primary sources *The Roman Catechism*, c. 1013, §1, *CIC* 1917, PIUS XI's encyclical letter *Casti connubii*, PIUS XII address to the Roman Rota on October 3, 1941, and the *Supplementum* of Thomas Aquinas. For the discussion regarding Thomas Aquinas' contribution to the description of marriage, see G. ROBINSON, "Unresolved Questions in the Theology of Marriage," 76. See also THOMAS AQUINAS, *Supplementum*, q. 48, art. 1.

primary right, which is generation. What comes first is the primary end which is fulfilled in the context of the secondary one.

According to Wynen, marriage can be entered validly even if the secondary end is not given, because it is dependent on the primary one. With this conclusion, Wynen brought together the traditional doctrine on the two ends of marriage and explained their relationship. He went beyond simply giving the mutual aid to presenting it as a natural consequence of the primary end. Though this decision did not constitute an authentic interpretation of c. 1013, §1, *CIC* 1917, it was a thorough commentary on it so far and was widely quoted by subsequent authors and other auditors of the Roman Rota.³⁶ However, Wynen did not explain what happens to marital consent in cases of sterility, when the primary end is not achieved.

1.1.4 — Theological Discussions Leading up to the Second Vatican Council

In the decades leading to the Second Vatican Council, there were questions regarding whether marriage should be defined in terms of its hierarchical ends, or whether it should be defined in terms of its personalist dimension.³⁷ Two theologian authors are considered here for their thoroughness and straightforwardness in presenting a personalist view *vis à vis* the hierarchical ends of marriage. Their views and the reaction of the Church are discussed in this section.

³⁶ For example: *coram* SERRANO, April 5, 1973, in *RRT Dec.*, 65 (1973), 322-343; *coram* PINTO (J. M. PINTO), November 12, 1973, in *Periodica* 1990, 64 (1975), 503-577; *coram* MASALA, March 12, 1975, in *Ephemerides iuris canonici* (=EIC), 32 (1976), 271-279.

³⁷ Personalist view of marriage states that the meaning or essence of marriage is first and foremost a communion of life, and its purpose must be placed in this context. Two sexually distinctive persons form a community that embraces the whole human being from the spiritual sphere, and the physical as well. The Holy Office in response to these theological assertions responded that the secondary ends are not essentially subordinate to the primary end, but are equally principal and independent. See SACRED CONGREGATION OF THE HOLY OFFICE, Decree on the Ends of Marriage *De finibus matrimonii*, April 1, 1944, in *AAS*, 36 (1944), 103; Engl. transl. in T. MACKIN, *Marriage in the Catholic Church: What is Marriage?* New York, Paulist Press, 1982, 235-236.

1.1.4.1 — Personalist Views of H. Doms and B. Krempel

The first opinion was put forward by H. Doms, a theologian – not a canonist. He advanced a theory that the *bonum coniugum* would be given more important consideration in the scheme of matrimonial finality. Doms is of the view that man and woman form a human society, and the presence of sexual activity makes it a marital community. When two adult persons of different sexes come together, they form an indivisible and indissoluble community of life in which they can fulfill and help each other. The supreme point of intimacy in this community occurs when they become one in marriage act. He believes that marital copula, not procreation, forms a profound relationship between the spouses.³⁸

Doms suggests that marriage is intended to achieve at least two ends: one a personal one and the other a biological one. The personal end consists in the perfection and completion of the partners on all levels of their being – spiritual, psychic, sensual, physical or corporal.³⁹ The other end concerns the perpetuation of the species; it consists in the procreation and the education of children. Since the procreative end of marriage is not always attained (as in the case of sterility), the proximate end of the conjugal act is the unity of the two persons. Doms wrote that the sexual act is not to beget offspring but

³⁸ H. DOMS, *The Meaning of Marriage* (Engl. transl. by G. SAYER), New York, Sheed and Ward, 1939, 94-95. This work first appeared in German as *Vom Sinn und Zweck der Ehe*, 1935, and in French as *Du sens et de la fin du mariage*, 1937. Doms pointed to the purpose of marriage as “the conjugal two-in-oneness of husband and wife which is a living reality and the immediate object of marriage ceremony and their legal union. This vital two-in-oneness is to some extent a purpose in itself” (95).

³⁹ Doms argues from the metaphysical and sociological point of view: “Marriage is something unique, and entirely *sui generis* and independent of the advent of the child. This is because marriage act has a meaning of its own, and also distinct meta-physical characteristics. It is therefore incorrect to say that the child is the only purpose capable of transforming the relationship of man and woman into real marital unity. Nor is it correct to say that the parent’s attitude towards the child is that which chiefly distinguishes marriage from friendship without sexual intercourse.” *Ibid.*, 88-89. For more information and analysis of Doms’ views, see C. A. SCHLECK, *The Sacrament of Matrimony: A Dogmatic Study*, 15.

rather first and primarily to effect the supreme union of husband and wife.⁴⁰ He wrote: “Marriage has two ends, both equally primary, and one is not subordinate to the other.”⁴¹ At the face value, this view does reflect a personalist opinion of marriage and does not support the traditional teaching of the hierarchical ends of marriage. If one follows this opinion, then sterility does not have an impact on marital consent.

The second opinion was presented by B. Krempel, another influential theologian whose work advanced the discussion on the personalist description of marriage. He wrote: “Procreation and the education of the child is not a unique and essential end of marriage; it is rather a vital union of the two persons or the communion of life of two persons of different sex which is ordered directly to the completion and perfecting of both.”⁴² Krempel held that it is not the mutual perfection which is the end of marriage, but, rather, the mutual and full communion of life. The generation and education of the child is the generic end.⁴³ This opinion denies the hierarchical ordering of the ends of marriage and the primacy of the procreative end as stipulated in canon 1013, *CIC* 1917.

⁴⁰ Dom’s view: “Sexual intercourse in marriage is in itself a value, because it is the realization of the two-in-oneness, the means by which a community *sui generis* is formed and husband and wife consummated as sexual beings.” *Ibid.*, 96. It should be noted that Doms did not deny that the two ends of marriage exist; rather, he insisted that marriage has its own meaning apart from the procreative end. He wrote: “The constitution of marriage, the union of two persons, does not consist in their subservience to a purpose outside themselves for which they marry. It consists in the constant vital ordination of husband and wife to each other until they become one. If this is so, there can no longer be sufficient reason, from this standpoint, for speaking of procreation as the primary purpose (in the sense in which Thomas Aquinas used the phrase) and for dividing off the other purposes as secondary [...] perhaps it would be best if in the future we gave up using such terms as ‘primary’ and ‘secondary’ in speaking of the purpose of marriage.” H. DOMS, *The Meaning of Marriage*, 87-88.

⁴¹ Cf. C. E. CURRAN and R. A. MCCORMIC (eds.), *Readings in Moral Theology: Dialogue about Catholic Sexual Teaching*, New York, Paulist Press, 1993, 78.

⁴² C. A. SCHLECK, *The Sacrament of Matrimony: A Dogmatic Study*, 17.

⁴³ B. KREMPEL, *Die Zweckfrage der Ehe in neuer Beleuchtung*, 258. The pertinent text reads: “Dann geht er über zum persönlichen Zweck, dem der gemeinschaftliche Artzweck untergeordnet: der gegenseitigen innern Formung der Gatten” (no. 258). A brief presentation of Krempel’s teaching and Engl. transl. from the original German is in C. A. SCHLECK, *The Sacrament of Matrimony: A Dogmatic Study*, 14.

However, the views of both authors, Doms and Krempel,⁴⁴ were not accepted by the Church.⁴⁵ While commenting on the work of these two authors, C. A. Schleck explained that the reason for disapproval is that these authors failed to see the distinction between the object of marriage and the end of marriage. The object of marriage is the right to one another's bodies (*ius in corpus*) in regard to acts that are *per se* apt to generate children. The end of marriage, however, is the procreation and education of children.⁴⁶ It is for this reason that marriages can be entered into validly even though children cannot possibly be generated as in the case of sterility.

The Church's reaction to the views of Doms and Krempel was contained in the Decree of the Holy Office on the Ends of Marriage, April 1, 1944. This decree came out months after the decision *coram* Wynen was published. It addressed the theological writings which asserted: "The primary end of marriage is not the procreation and education of children, or that the secondary ends of marriage are not subordinate to, but

⁴⁴ Authors who contributed to this theological debate include: G. REIDECK, *Die Hierarchische Struktur der Ehe*, Monaco, Zinc, 1953; L. LOCHET, "Les fins du mariage," in *Nouvelle Revue Theologique*, 73 (1951), 449-465.

⁴⁵ The works of these two theologian authors prompted the issuing of a decree on the erroneous understanding of the ends of marriage, being an official response from the Sacred Congregation of the Holy Office on April 1, 1944; cf. AAS, 36 (1944), 103. As Curran and McCormick observed, these authors were not named in the decree, but it is clear that their positions were being rejected. Cf. C. E. CURRAN and R. A. MCCORMICK (eds.), *Readings in Moral Theology: Dialogue about Catholic Sexual Teaching*, 78. This decree indicated that it was approved by the Supreme Pontiff in *forma specifica*, and he authorized its publication with the following formula: "Et in audientia, feria V, die 30 eusdem mensis et anni, Exc.mo ac Rev. mo Domino Adessori Santi Officii impertita, Ss.mus D/ N. D. Pius, divina Providentia Papa XII, de omnibus habita relatione, praesens decretum adprobare dignatus est, ac publici iuris fieri iussit" (103). The decree was accompanied by an explanation (*Annotationes*) which cited the views of Doms and Krempel and indicated that these opinions are against the traditional teaching of the ends of marriage as primary and secondary. See SACRED CONGREGATION OF THE HOLY OFFICE, "Annotationes," April 20, 1944, in *Periodica* 1990, 33 (1944), 219-228. Schleck indicates that the works of the two authors were ordered withdrawn from circulation. See C. A. SCHLECK, *The Sacrament of Matrimony, a Dogmatic Study*, 35. Another work that was disapproved by the Church was by E. MICHAEL, *Ehe Eine Anthropologie der Geschlechtsgemeinschaft*, Stuttgart, Klett, 1950. This work, which contains the same theology of marriage like that of Doms was placed on the index of forbidden books. Cf. Sacred Congregation of the Holy Office, December 3, 1952, in AAS, 44 (1952), 879.

⁴⁶ C. A. SCHLECK, *The Sacrament of Matrimony, a Dogmatic Study*, 35.

are independent of the primary end.”⁴⁷ The Holy Office noted that this departure in thought and speech was liable to occasional errors and uncertainties. Therefore, the Holy Office, in the plenary session Wednesday, March 29, 1944, considered the question proposed as follows: “Question: whether the opinion of certain modern writers can be admitted, who either deny that the primary end of marriage is the generation and education of children, or teach that the secondary ends are not essentially subordinate to the primary end, but are equally principal and independent. Reply: in the negative.”⁴⁸

It can be concluded that whereas these theological propositions of Doms and Krempel seemed to be correct explanations of the secondary end of marriage, they were contrary to the Church’s traditional teaching found in the magisterial documents and legislation on marriage in *CIC* 1917. For this reason, these views were disapproved by the Holy Office and were not adopted in the Church’s teaching on marriage.

1.1.4.2 — Response of Pius XII

Pius XII also got involved in the debate when he sought to clarify the Church’s position on the ends of marriage. He reiterated the traditional teaching on the ends of

⁴⁷ Two examples of “published writings” were given as those written by Doms and Krempel. Even though it was the writings of Doms and Krempel that were cited, the decree intended to address all the opinions that were similar to these and were seeking to define marriage in personalist terms. The Holy Office (established by Paul III on July 21, 1542, by an apostolic *Licet ab initio*, it was named Supreme Sacred Congregation of the Holy Office in 1904 by Pius X and is presently known as Congregation for the Doctrine of the Faith). This Congregation further stated that “it could not be admitted that the secondary ends are not essentially subordinate to the primary end, but are equally principal and independent.” The full text reads: “An admitti possit quorundam recentiorum sententia, qui vel negant finem primum matrimonii esse prolis generationem et educationem, vel docent fines secundarios fini primario non esse essentialiter subordinatos, sed esse aequae principales et independentes; respondendum decreverunt: *Negativa*.” Cf. SUPREMA SACRA CONGREGATIO SANCTI OFFICII, *Decretum, De finibus matrimonii*, April 1, 1944, in AAS, 36 (1944), 103. An Engl. transl. of the entire decree is found in T. MACKIN, *Marriage in the Catholic Church: What is Marriage?* 235-236.

⁴⁸ AAS, 36 (1944), 103: “An admitti possit quorundam recentiorum sententia, qui vel negant finem primum matrimonii esse prolis generationem et educationem, vel docent fines secundarios fini primario non esse essentialiter subordinatos, sed esse aequae principals et independentes; respondendaum decreverunt: *Negativa*.” Engl. transl. *Canon Law Digest* (= CLD), vol. 3 (1944), 401-404.

marriage as hierarchically ordered. He did not write an encyclical letter or another major document on marriage; however, he addressed the writings of these “modern authors” cited above in most of his speeches during his pontificate. For example, on October 3, 1941, he addressed the Roman Rota, urging them to avoid two extreme tendencies:

First the one which, in examining the constituent elements of the act of generation, considers only the primary end of marriage, as though the secondary end did not exist, or were not the *finis operis* established by the Creator of nature himself; and secondly the one which gives the secondary end a place of equal principality, detaching it from its essential subordination to the primary end – a view which would lead by logical necessity to deplorable consequences.⁴⁹

In an allocution to newlyweds on March 18, 1942, Pius XII referred to procreation as the “essential and primary end” of marriage. The theme of “essential and primary end” as well as the essential subordination of the secondary end to the primary one was reflected in his speeches on the finality of marriage. Other speeches included his address to newlyweds on March 22, 1942;⁵⁰ address to a group of French fathers on September 18, 1951;⁵¹ and October 29, 1951, to the Italian Catholic Union of Midwives.⁵² In the address to midwives, the pope pointed towards the new understanding of the secondary end of marriage:

⁴⁹ PIUS XII, Allocution to the Sacred Roman Rota, October 3, 1941, in AAS, 33 (1941), 421-426; Engl. transl. W. H. WOESTMAN, *Papal Allocutions to the Roman Rota 1939 – 2011*, Ottawa, Faculty of Canon Law, Saint Paul University, 2011, 11-22; here on 13. All subsequent Engl. translations of the papal allocutions will be quoted from this text (= WOESTMAN, *Papal Allocutions*). In this allocution, Pius XII addressed the issues brought about by theologians such as Doms and Krempel and reiterated the traditional hierarchical ends of marriage.

⁵⁰ PIUS XII, Address to the Newlyweds, in I. TUBALDO (ed.), *Discorsi e radiomessage di Sua Santità Pio XII*, vol. 4, Vatican City, Tipografia polyglotta Vaticana 1955-1959, 1943, 43-49; Engl. transl. in MONKS OF SOLESMES, *Papal Teachings: Matrimony*, Boston, MA, St. Paul Editions, 1963, 340-346, here on 345.

⁵¹ PIUS XII, Address to a Group of French Fathers, September 18, 1951, in AAS, 43 (1951), 730-734, here on 733.

⁵² PIUS XII, Address to the Italian Catholic Union of Midwives, October 29, 1951, in AAS, 43 (1951), 835-854.

To reduce the communal life of man and woman and their marital relations to nothing more than an organic function for transmitting life-germs would be to convert the home, this sanctuary of the family, into a mere biological laboratory [...] The marital act, in its natural structure, is a personal action, a simultaneous and direct co-operation of husband and wife which, because of the very nature of the agents and the distinctive character of the act, is the expression of the mutual self-giving that, in the words of Scripture, makes them “one flesh.”⁵³

Like his predecessor Pius XI, Pius XII addressed the errors resulting from scientific advancements of his time as major causes of marital problems. In particular, the pope singled out contraception, abortion and sterilization. He was of the view that “the contraception mentality” is destructive to marital life. As De Haro observes: “Pius XII reaffirms the perennial doctrine of the Church in the face of a growing contraceptive mentality; then, drawing inspiration from the principles that have always informed it, he studies the new problem of the use of marriage during the infertile periods.”⁵⁴

In conclusion, Pius XII reaffirmed the procreative finality of marriage. However, he can be regarded as the strongest proponent of the personalist notion of *bonum coniugum* so far.⁵⁵ He went beyond his predecessors and previous authors to explain the personal-conjugal dimension of marriage and to give it a practical juridical value. Yet, he disapproved the personalist views of theologians of his time who implied that marriage is not based on its primary end, the procreation of children, and that the secondary ends are

⁵³ Ibid. Engl. transl. in *The Clergy Review*, 36 (1951), 379-391, and 37 (1952), 45-51; here in 37 (1952), 47-48.

⁵⁴ R. G. DE HARO, *Marriage and the Family in the Documents of the Magisterium*, 157. The author also notes that this teaching was carried forward by other Church documents such as *Gaudium et spes*, *Humanae vitae* and *Familiaris consortio*.

⁵⁵ In his study on the notion of *bonum coniugum*, K. Lüdicke explains that the personalist dimension of marriage is based on the understanding that marriage is a community of two persons, who have willed to unite themselves in a common destiny of life. Therefore, marriage needs to fulfil no other end but to join the lives of two persons together. Cf. K. LÜDICKE, “Matrimonial Consent in Light of a Personalist Concept on Marriage: On the Council’s New Way of Thinking about Marriage,” in *Studia canonica*, 33 (1999), 473-503. See also, K. LÜDICKE, “A Theory of *Bonum Coniugum*,” in *The Jurist*, 69 (2009), 703-730, especially 707.

independent and not subordinate to procreation. Pius XII's teaching stood in the middle of the debate, which would continue through the revision process of *CIC* 1917.

1.2 — Description of Marriage in the Teaching of the Second Vatican Council

The Second Vatican Council formed a link between *CIC* 1917 and *CIC* 1983. Before *Gaudium et spes* was promulgated, canonical and theological discussions pointed out the need for the revision of canons on marriage. It was therefore necessary for the Council to offer a theological – canonical definition of marriage which was needed to guide the revision of *CIC* 1917. This section is not intended to offer a detailed study of the Second Vatican Council's discussions, but to highlight and analyze its fruits. This approach helps to indicate the Church's contemporary understanding of marriage.

1.2.1 — Marriage in the Pastoral Constitution *Gaudium et spes*

When John XXIII convoked the Second Vatican Council, it emerged that one of the issues at hand was the revision of the law of the Church.⁵⁶ Curial offices including the Holy Office and the Sacred Congregation for the Discipline of the Sacraments submitted their proposals and indicated that marriage was one of their concerns. The initial *Schema*⁵⁷ presented by the Holy Office treated marriage from the sacramental and moral

⁵⁶ John XXIII announced his plan to hold an Ecumenical Council on January 25, 1959. He announced three intentions: 1) to hold a synod for the Diocese of Rome; 2) to convoke an Ecumenical Council; and 3) to update the code of canon law. See B. HUEBSCH, *Vatican II in Plain English*, Allen, TX, Thomas More, 1997, 53. In his own words, the pope indicated: "This will also lead to a bringing up-to-date of the code of canon law, which will accompany and crown these other two events." This announcement was given to only 17 Cardinals who had gathered at St. Paul Basilica outside the walls. This announcement was reported in *L'Osservatore Romano* French edition: "Pour répondre à ces nécessités pressantes du peuple chrétien, le Souverain Pontife, s'inspirant des coutumes séculaires de l'Église, a annoncé trois événements de la plus grande importance: savoir un synode diocésain pour Rome, la célébration d'un Concile Œcuménique pour l'Église Universelle, et la mise à jour du code de Droit canon, précédé par la prochaine promulgation du Code de Droit Oriental" (*L'Osservatore romano*, January 30, 1959), 1. John Paul II recalled and acknowledged his predecessor's desire at the promulgation of the *CIC* 1983, in *Sacrae disciplinae leges*. See E. CAPARROS et. al. (eds.), *Code of Canon Law Annotated*, 2nd rev. ed., Montréal, Wilson & Lafleur Litée, 2004, 1-11, here on 3.

⁵⁷ This section is not intended to give a chronological presentation of *Gaudium et spes*, nor an

perspectives as a way to combat modern errors. It sought to clarify the origin, purpose, essential properties and the use of marriage.⁵⁸ These proposals were discussed by the Theological Commission under the title *De castitate, virginitate, matrimonio, familia*.⁵⁹ The section on the ends of marriage (*Matrimonii fines*), among other things, stressed the fact that the ends of marriage are divinely established and that the primary end is solely the procreation and education of offspring, even if a particular marriage might not result in children.⁶⁰

However, the section on the ends of marriage was not discussed.⁶¹ The Theological Commission put together an amalgamation of six previously composed *Schemata* into what was known as the *Decretum De matrimonii sacramento*. This new text was presented to the bishops in form of a brief (*votum*). On November 10, 1964, the final brief *De matrimonii sacramento* was distributed to the Council Fathers. It included matrimonial impediments, mixed marriages, the form of marriage and pastoral

exhaustive process of the revision of marriage legislation. A detailed study of the same can be found in C. L. SCICLUNA, *The Essential Definition of Marriage According to the 1917 and 1983 Codes of Canon Law: An Exegetical and Comparative Study*, 155-213. For a history of *Gaudium et spes*, especially texts regarding marriage, see R. G. DE HARO, *Marriage and the Family in the Documents of the Magisterium*, 211-215.

⁵⁸ *Acta et documenta Concilio Oecumenico Vaticano II apparando*, series 1, vol. 3, Vatican City, Typis polyglottis Vaticanis, 1960-, 13. These proposals were intended to review canons on marriage but did not include its finality.

⁵⁹ *Ibid.*, 90. In January 1963, the Central Preparatory Commission requested that the proposals in this *Schema* be gathered into a single text and this task was given to the Commission for the Discipline of the Sacraments. See B. G. O'LOUGHLIN, *Marriage, a Covenant and Consortium Totius Vitae: Scriptural Basis, Conciliar Teaching and the Revised Code of Canon Law*, JCD diss., Ottawa, Faculty of Canon Law, Saint Paul University, 1985, 236.

⁶⁰ *Acta et documenta Concilio Oecumenico Vaticano II apparando*, series 1, vol. 3 series 2, vol. 3, pars 1, 90. The text made references to the encyclical *Casti connubii* and addresses of Pius XII. It also included those theories to be condemned, those which assert that conjugal love is the primary end.

⁶¹ Cf. *Acta Synodalia Sacrosancti Concilii Oecumenici Vaticani II*, Vatican City, Typis polyglottis Vaticanis, 1970-, 653.

preparation for marriage. This text was recommended to the Holy Father to be incorporated in the future revision of the Code of Canon Law.⁶²

The early draft of the Pastoral Constitution *Gaudium et spes* where the section on marriage is contained was drafted as *Schema 17*.⁶³ The final text distributed to the Council Fathers was *Schema 13, De Ecclesia in mundo huius temporis*.⁶⁴ It can be noted that this section avoided the previous discussion of the ends of marriage and made reference to marriage as a community of love, even though it made reference to the decree of the Holy Office of April 1, 1944. While discussing this document, one group of Cardinals defended the previous teaching on the primary and secondary ends of marriage,⁶⁵ while another group spoke for the “personalist” description of marriage.⁶⁶

After much discussion, three positions emerged: the minority wanted to retain the hierarchy of the ends of marriage with procreation as the primary end; others wanted the

⁶² The history of this text is found in *Ibid.*, 670, 675, and 1147-1158. The amended texts are found on 467-475. The *Schema Decretum de Matrimonii De Sacramento* was prepared by the *Commissio Conciliaris de Sacramentorum disciplina*. It consisted of five chapters: impediments to marriage, mixed marriages, matrimonial consent, the form of marriage celebration, and marriage processes. Cf. C. L. SCICLUNA, *The Essential Definition of Marriage According to the 1917 and 1983 Codes of Canon Law: An Exegetical and Comparative Study*, 156. The author noted that this *Schema*, other than repeating the classical definition of matrimonial consent of canon 1081, §2 avoided the use of *ius in corpus* and instead speaks of the *ius coniugii proprium* (*Ibid.*).

⁶³ This *Schema* called *De praesentia efficaci Ecclesiae in mundo hodierno* included chapter 3 on marriage: *De matrimonio et familia*. It is in this draft that we find much treatment on marriage without the categorization of primary and secondary ends. See C. MOELLER, “History of the Constitution,” in H. VORGRIMMER (ed.), *Commentary on the Documents of Vatican II*, vol. 5, 1969, 18-19.

⁶⁴ Cf. C. MOELLER, “History of the Constitution,” 37. *Schema 13* was one of those texts that caused heated debates during the fourth session of the Council. As O’Loughlin reports, the *Schema* comprised much of what we have today as texts on marriage in *Gaudium et spes*. Cf. B. G. O’LOUGHLIN, *Marriage, a Covenant and Consortium Totius Vitae: Scriptural Basis, Conciliar Teaching and the Revised Code of Canon Law*, 240.

⁶⁵ Cardinals Ruffini, Ottaviani, and Browne stressed the procreative aspect of marriage, as reported by D. E. FELLHAUER, “The Consortium omnis vitae,” 105. See also M. G. LAWLER, *Marriage and Sacrament, A Theology of Christian Marriage*, Collegeville, MN, The Liturgical Press, 1993, 52.

⁶⁶ Cardinals Léger, Suenens, Alfrink, Patriarch Maximus and Bishop Reuss defended this view. *Acta Synodalia sacrosancti Concilii Oecumenici Vaticani II*, vol. 3, periodus 3, pars 5, 129-168.

document to stress the importance of love and the personal dimension of marriage; and others wanted a combination of both positions.⁶⁷ As a compromise, the document united the two goods of marriage, procreation and love, eliminating the preeminence of the former.⁶⁸ In December 1965, the text was presented to the Fathers of the Council for final approval and the result was: 2047 *placet* and 155 *non placet*.⁶⁹

This brief history of the text on marriage indicates the internal discussions leading to the promulgation of *Gaudium et spes*, nos. 47-51 under the title: *The Dignity of Marriage and the Family*. These articles are relevant to the description of marriage. First, article 48, refers to marriage as an “intimate community of conjugal life and love” (*intima communitas vitae et amoris coniugal*is), as a sacred bond (*vinculum sacrum*), and as a marital covenant (*foedus coniugale*). Second, article 50 calls marriage a communion of the whole of life. Thus the partnership that is created by valid consent is “rooted in the covenant of the spouses by means of their irrevocable personal consent.”⁷⁰

⁶⁷ Cf. J. RENKEN, *The Contemporary Understanding of Marriage*, JCD diss., Rome, Pontifical University of Saint Thomas Aquinas, 1981, 350.

⁶⁸ This explanation is given in the *Acta Synodalia*, vol. 4, periodus 4, pars 1, 435-482. Other authors who have done this study include: J. RATZINGER, *Theological Highlights of Vatican II*, (Engl. transl. by H. TRAUß), New York, Paulist, 1966; B. HÄRING, “Fostering the Nobility of Marriage and the Family,” 227; P. DELHAYE, “Dignité du mariage et de la famille,” in *L’Église dans le monde de ce temps*, 2 (1968), 410-416.

⁶⁹ This decision is found in *Acta Synodalia sacrosancti Concilii Oecumenici Vatican II*, vol. 4, periodus 4, pars 6, 474-491. For detailed information and analysis of the Second Vatican Council sessions, debates on the sacrament of matrimony, and their outcome, and commentary on *Gaudium et spes*’ chapter on marriage, see T. MACKIN, *Marriage in the Catholic Church: What is Marriage?* 248-271.

⁷⁰ *Gaudium et spes*, no. 48: “Intima communitas vitae et amoris coniugalis, a Creatore condita suisque legibus instructa, foedere coniugali seu irrevocabili consensu personali instauratur.” Engl. transl. in FLANNERY 1, 950. Scicluna is of the view that the term “totius vitae” is to be interpreted in the sense of the “*omnis vitae*” of the Roman Law definition attributed to Modestinus when he defines marriage as: “*Coniunctio maris et feminae et consortium omnis vitae, divini et humani iuris communicatio*” (D. 23, 2. 1). W. W. BUCKLAND, A. D. MCNAIR and F. H. LAWSON, *Roman Law and Common Law: A Comparison in Outline*, Cambridge, University Press, 1965, 31. See also C. J. SCICLUNA, *The Essential Definition of Marriage According to the 1917 and 1983 Codes of Canon Law: An Exegetical and Comparative Study*, 182. The Code Commission explained that the term is preferred because it has been traditionally employed.

Thus, *Gaudium et spes* emphasized the importance of conjugal love as the basis for this *communio*. J. A. Renken concludes: “The Pastoral Constitution, more than any other conciliar documents in the entire history of the Church, places repeated and great emphasis upon *amor coniugal*.”⁷¹ However, married love is not equated to marriage itself.

It can be noted that the promulgated text of *Gaudium et spes* did not contain the hierarchical ends of marriage. Rather, it indicated a close relationship between the procreative purpose of marriage and its personalist dimension, the *bonum coniugum*. The pertinent text reads: “By its very nature, the institution of marriage and married love is ordered to the procreation and education of the offspring and it is in them that it finds its crowning glory [...] The intimate union of marriage, as a mutual giving of two persons, and the good of the children demand total fidelity from the spouses and require an unbreakable unity between them.”⁷²

Communicationes, 9 (1977), 221: “Verbum ‘totius’ manere etiam debet; aequivalet verbo ‘omnis’ in definitione iuris romani substantialiter a traditione recepta; ‘consortium omnis vitae.’”

⁷¹ J. A. RENKEN, *The Contemporary Understanding of Marriage*, 408. The author also concluded that conjugal love is related to the divine, because it comes from God and it witnesses the love of Christ for the Church; it is related to the couple as it permeates their entire married life; and it is related to procreation to which marriage is directed by its natural character. These conclusions indicate that even if *amor coniugal* does not constitute marriage, it plays an important role in married life (Ibid).

⁷² *Gaudium et spes*, no. 48: “Indole autem sua naturali, ipsum institutum matrimonii amorque coniugal ad procreationem et educationem prolis ordinantur iisque veluti suo fastigio coronantur. Vir itaque et mulier, qui foedere coniugali «iam non sunt duo, sed una caro» (Mt. 19, 6), intima personarum atque operum coniunctione mutuam sibi adiutorium et servitium praestant, sensumque suae unitatis experiuntur et plenius in dies adipiscuntur. Quae intima unio, utpote mutua duarum personarum donatio, sicut et bonum liberorum, plenam coniugum fidem exigunt atque indissolubilem eorum unitatem urgent.” Engl. transl. in FLANNERY 1, 950. Scicluna explains that “the pastoral constitution presents the procreation and education of offspring as an end connatural to marriage and love. It provides a more personalist rendering of the *mutuum adiutorium* which is assumed in the more general notion of the expression and fostering of conjugal love. The *remedium consupiscentiae* is not mentioned by name, albeit the Council did opt to emphasize the goodness of conjugal acts and specifically excluded hedonism from the category of true love.” C. J. SCICLUNA, *The Essential Definition of Marriage According to the 1917 and 1983 Codes of Canon Law: An Exegetical and Comparative Study*, 172.

The above text did not include hierarchical ends of marriage but introduced the properties of marriage: indissolubility and fidelity. It also mentioned that marriage is endowed with “various goods” but made no further mention of the hierarchy of ends of marriage in the rest of the document. The “goods” of marriage were not spelled out either. Instead, the procreative end of marriage was emphatically presented as part of the very nature of marriage (*indole sua naturali*) and conjugal love. Thus, the Council finally concluded that marriage is an intimate community of life and love (*intima communitas vitae et amoris coniugal*) which, initiated by the marital covenant (*foedus coniugii*) is naturally ordered to the procreation and education of offspring (*ad procreationem et educationem prolis*).⁷³

Therefore, the procreative and personalist aspects of marriage were brought together as related and essential to the institution of marriage. In so doing, the Council presented marriage in terms of community of love (*communitas amoris*),⁷⁴ intimate community of life and conjugal love (*intima communitas vitae et amoris coniugal*) and communion and intimacy of the whole of life (*totius vitae consuetudo et communio*) to include the different views of the Council Fathers.⁷⁵ These different terms which were

⁷³ *Gaudium et spes*, no. 48.

⁷⁴ The Council’s emphasis on love as belonging to the essence of marriage is explicitly presented in *Gaudium et spes* no. 48. Häring is of the view that the Council attributes a prominent role to love more than the previous magisterial pronouncements. However, marriage is not dissolved when love ends, “because the objective meaning of matrimonial consent is an acceptance of marriage as a community of love. Therefore, if love becomes extinct, the partners have to do everything to re-learn it. In any case, the chapter repeatedly makes it clear that merely emotional love is not what is meant.” See B. HÄRING, “Fostering the Nobility of Marriage and the Family,” 234.

⁷⁵ Cf. J. A. RENKEN, *The Contemporary Understanding of Marriage*, 500. See also U. NAVARRETE, “De iure ad vitae communionem: Observationes ad novum *Schema* canonis 1086, §2,” in *Periodica* 1990, 66 (1977), 249-270: “Terminus *communitas vitae*, vel termini haud longe dissimiles *consortium vitae*, *consuetudo vitae*, *Coniunctio vitae*, sunt termini vel conceptus in tota traditione canonice et theologica adhiberi soliti ad definiendum matrimonium” (265). It can be noted that the expression *consortium vitae* was given legal significance in a rotal decision dated February 25, 1969, written by L.

used to refer to marital life brought out the Council's intention to include personalist considerations in the description of marriage. C. P. O'Donnell concluded: "The Council's approach undoubtedly reflects the highly personalist accent characterizing much recent popular writings on marriage, but it may more appropriately be regarded as a long overdue official reaction to the one-sided, wholly juridical emphasis found in most formal treatises on marriage."⁷⁶

Gaudium et spes no. 50 is specifically devoted to the procreative dimension of marriage. It asserts that marriage and conjugal love are by their nature ordered to the procreation and education of offspring. Therefore, children are the supreme gift of marriage, and they contribute substantially to the welfare of the parents. The text also did not include the hierarchy of the ends of marriage and put the two ends on equal status in the following words: "But marriage is not merely for the procreation of children: its nature as an indissoluble compact between two people and the good of the children demand that the mutual love of the partners be properly shown, that it should grow and mature."⁷⁷

The Council Fathers were aware of the discussions regarding the ends of marriage and sought to settle these questions by putting the procreative and conjugal-personal ends

Anné. As D. E. Fellhauer wrote: "The following year the sentence was published in the periodical *EIC*; and since that time the notion has been taken up not only in the Roman Rota, but also in the local matrimonial jurisprudence of a number of countries." D. E. FELLHAUER, "The *Consortium omnis vitae* as Juridical Element of Marriage," 7. Whereas this analysis was given in 1979 when *CIC* 1917 was in force, the concept has been incorporated in the *CIC* 1983.

⁷⁶ C. P. O'DONNELL, *The Church in the World*, Milwaukee, WI, The Bruce Publishing Company, 1967, 79.

⁷⁷ "Matrimonium vero, non est tantum ad procreationem institutum; sed ipsa indoles foederis interpersonas indissolubilis atque bonum proles exigunt, ut mutuus etiam coniugum amor recto ordine exhibeatur, proficiat et maturescat." Engl. transl. in FLANNERY 1, 954. The text stressed the importance of the procreative finality of marriage while avoiding the previous description of marriage.

of marriage on equal footing. Some authors think that the question was not settled, because the text “maintained a deliberate and conspicuous silence on the problem of the relative importance and hierarchy of the *finis matrimonii*.”⁷⁸

In J. Ratzinger’s view, the elimination of ancient categories (of the hierarchical ends of marriage) was to turn towards the new modes of moral teaching. He believes: “The procreative view is here supplanted by a personalist view, which of course must not overlook the essentially social meaning of marriage if it is not to become one-sided in the other direction.”⁷⁹ However, the text of *Gaudium et spes* remained silent on the consequence of sterility, if one end of marriage is sought and desired, but not attained.

It can be concluded that *Gaudium et spes* is a primary source of the Second Vatican Council’s teaching on marriage. Marriage is presented as a communion of life and of love, and a partnership of the whole of life. This notion forms a bridge between the hierarchical ordering of the ends and the personalist views of marriage. It also forms a basis for future understanding of marriage and the canons on marriage and procreation. *Gaudium et spes* is an important document in providing the Church’s description of marriage. Consequently, CIC 1983’s description of marriage in c. 1055 is contained in

⁷⁸ See D. E. FELLHAUER, *The Consortium omnis vitae*, 114. Such authors include: U. NAVARRETE, “De iure ad vitae communionem, 382-393; V. FAGIOLO, “Essenza e fini del matrimonio secondo la Costituzione Pastorale ‘*Gaudium et spes*,’ del Vaticano II,” in *Ephemerides Iuris Canonici*, 23 (1967), 176-179. After the discussion on *Gaudium et spes* nos. 47-49, the Council Fathers decided to vote on the text “On the Nature of Marriage and Conjugal Love.” The vote was almost unanimous: placet 2052; non placet 91. Cf. T. MACKIN, *Marriage in the Catholic Church: What is Marriage?* 263.

⁷⁹ J. RATZINGER, *Theological Highlights of Vatican II*, 166-167. While commenting on the personalist notion of marriage as reflected in *Gaudium et spes*, Häring is of the view that the Council changed the theology of marriage entirely. See B. HÄRING, “Fostering the Nobility of Marriage and the Family,” 225-245. Yet canonists like Navarrete believe that there was no substantial change. Cf. U. NAVARRETE, “Structura iuridica matrimonii secundum Concilium Vaticanum II,” in *Periodica* 1990, 56 (1976), 357-383. It can be concluded that the personalist view of marriage heavily influenced the description of marriage and the consequent formulation of c. 1055, §1, CIC 1983. It is of particular importance to note the elimination of the hierarchical ordering of the ends of marriage, and the elevation of the secondary end from “remedy of concupiscence” to *bonum coniugum*.

Gaudium et spes nos. 48 and 50.

1.2.2 — Marriage in Other Conciliar Documents

In addition to *Gaudium et spes*, there are other references to the “new” understanding of marriage in other documents. These are: Dogmatic Constitution on the Church *Lumen gentium* and the Decree on Apostolate of the Laity *Apostolicam actuositatem*. A close look at these documents brings out this development, especially in portraying the nature of *matrimonium in facto esse*.

First, the Council’s notion of marriage is also found in *Lumen gentium*. In *Lumen gentium* no. 11, a theology of living a married life is presented: “Finally, in virtue of marriage by which they signify and share (cf. Eph. 5:32) the mystery of the unity and faithful love between Christ and the Church, Christian married couples help one another to attain holiness in their married life and in the rearing of their children.”⁸⁰ The above text presented the theology of marriage as a sacrament which is ordered to the model of the relationship of Christ and His Church. It did not specify the ends of marriage or state if they are hierarchically ordered.⁸¹

In *Lumen gentium* no. 41, Christian couples are urged to support each other in the

⁸⁰ The full text reads: “Tandem coniuges christiani, virtute matrimonii sacramenti, quo mysterium unitatis et fecundi amoris inter Christum et ecclesiam significant atque participant (cf. Eph. 5:32), se invicem in vita coniugali necnon proles susceptione et educatione ad sanctitatem adiuvant, adeoque in suo vitae statu et ordine proprium suum in populo Dei donum habent.” Engl. transl. in FLANNERY 1, 362.

⁸¹ So far even in *Lumen gentium*, some questions remained unanswered. First, there is no indication of when Christ the Lord elevated marriage to the dignity of the sacrament between the baptized (c. 1055, §1, CIC 1983). Second, when article no. 11 refers to the couples’ need to “help one another to attain holiness in their married life,” it is not clear if the text refers to the “personalist” dimension of marriage. Third, the help for each other to attain holiness indirectly refers to the right to communion and to the partnership of the whole of life (*ius ad communionem* et *ius ad consortium omnis vitae*); together, they help in each other’s needs – the totality of needs so that the universal call to holiness (*Lumen gentium*, no. 39, FLANNERY 1, 396) is attained by both. Gasparri discusses the biblical foundations of marriage as a sacrament when entered in by baptized Christians. Cf. P. GASPARRI, *Tractatus canonicus de matrimonio*, 23. However, he did not indicate when or how marriage as a natural reality was “elevated” to that dignity by Christ the Lord.

grace of faithful love, to accept children lovingly from God and to train them in the faith. While outlining the responsibility of each of the categories of the Christian faithful and how to attain holiness, the Council passed on the responsibility of parenting to married couples in the following words:

Christian married couples and parents, following their own way, should support one another in grace all through life with faithful love, and should train their children (lovingly received from God) in Christian doctrine and evangelical virtues. Because in this way they present to all an example of unfailing and generous love, they build up the brotherhood of charity, and they stand as witnesses and co-operators of the fruitfulness of mother Church, as a sign of, and a share in that love with which Christ loved his bride and gave himself for her.⁸²

This text, though theological in nature, brings out the element of *bonum coniugum* in the understanding of marriage and married life. In addition, it emphasizes the “fruitfulness” that is expected in marriage as *bonum prolis*, without ordering these two elements hierarchically.⁸³

Second, *Apostolicam actuositatem* also makes reference to marriage. In *Apostolicam actuositatem* no. 11, couples are called upon to enter a lasting bond of marriage because it is a sacrament and to show by their own lives the indissolubility and sanctity of marriage. The text reads in part: “The Creator of all made the married state the beginning and foundation of human society; by his grace he has made of it too a great mystery in Christ and in the Church (cf. Eph. 5.32).”⁸⁴

The first part of this article presents a teaching that marriage is a natural reality as found in the order of creation; God made it a sacrament. However, no reference is made

⁸² In FLANNERY 1, 399.

⁸³ There is no mention of the “primary” and “secondary” ends of marriage as in c. 1013, *CIC* 1917.

⁸⁴ *Apostolicam actuositatem*, no. 11, in FLANNERY 1, 778.

as to when marriage became a sacrament, and there is no scriptural reference to back up this understanding. The document encouraged couples to embrace that indissoluble bond in which they enter when they marry. This bond is as indissoluble and as holy as the one Jesus Christ has with His Church.⁸⁵

It can be concluded that the Second Vatican Council did not alter substantially the traditional teaching on marriage, but rather clarified it. In the three documents discussed above, the Council taught: “Marriage has been established by the Creator and is qualified by the divine law, and that its benefits and purposes come within the ambit of that law.”⁸⁶ T. J. O’Donnell’s conclusion is that the Council “proclaimed again the essential meaning of marriage, offering guidance and support to those who would preserve the holiness of the married state and foster its dignity.”⁸⁷ In these three documents, the Council outlined the nature of marriage and the position of the family in the modern world. Regarding the education of children, the *Gravissimum educationis* presented the rights and duties of parents in the education of their own children.

1.3 — Description of Marriage after the Second Vatican Council

After the Second Vatican Council, it was time to implement the conciliar decrees on marriage. At the same time, the canons on marriage were being revised. For this reason, Paul VI and John Paul II offered guidance on a possible definition of marriage as the revision of canon law was on-going. Roman Pontiffs, the Roman Curia and the Roman Rota intended to respond to the questions of the time and to guide the revision

⁸⁵ A question can be raised as to whether this bond is interrupted when offspring are not born of a particular marriage as is the case with sterility. This question was not answered by this decree of the Council.

⁸⁶ T. J. O’DONNELL, *Medicine and Christian Morality*, 213.

⁸⁷ Ibid.

process of canon law. This section considers these contributions, as well as highlighting the decisions that were made at the Roman Rota, up to the promulgation of *CIC* 1983.

1.3.1 — Description of Marriage in the Papal and Curial Documents

One of canonical-theological doctrines on the finality of marriage after *Gaudium et spes* is found in Paul VI's Encyclical Letter on the Regulation of Births *Humanae vitae*. This document had been anticipated by the Second Vatican Council which requested the Holy Father to pass judgment on the moral question of the regulation of births.⁸⁸ In this encyclical letter, Paul VI did not deal directly with the question of the finality of marriage. Instead, he clarified on the the purpose of conjugal love and the conjugal act when he wrote: "In any use whatever of marriage there must be no impairment of its natural capacity to procreate human life."⁸⁹

It can be noted that *Humanae vitae* consistently used the language of *Gaudium et spes* while referring to marriage. For example, the pope mentioned conjugal love and responsible parenthood as: "Two important realities of married life,"⁹⁰ and: "The unitive significance and the procreative significance [which] are both inherent to marriage act."⁹¹ Like *Gaudium et spes*, the text was silent on the *finis matrimonii*, but also in its emphasis

⁸⁸ In March 1963, John XXIII instituted a commission for the population problems to study these problems and make recommendations to the Church's Magisterium for an appropriate response. This commission is not mentioned in the *Acta Apostolicae Sedis*, but Paul VI refers to it as "this *coetus*" in his encyclical letter on the regulation of births *Humanae vitae*, July 25, 1968, in AAS, 60 (1968), 481-503, here on 484, no. 5; Engl. transl. in A. FLANNERY, *Vatican II: More Postconciliar Documents*, vol. 2, new rev. ed., Northport, Castello Publishing Co., 1998 (=FLANNERY 2), 397-416.

⁸⁹ *Humanae vitae*, no. 11, in FLANNERY 2, 403; cfr. *Catechism*, n. 2366.

⁹⁰ "Duo haec gravia vitae matrimonialis elementa" (*Humanae vitae*, no. 7, in FLANNERY 2, 400).

⁹¹ "Quodsi utraque eiusmodi essentialis ratio, unitas videlicet et procreationis, servatur, usus matrimonii sensum mutui verique amoris sumquae ordinem ad celsissimum paternitatis munus omnino retinet, ad quod homo vocatur" (*Humanae vitae*, no. 12, in FLANNERY 2, 403).

on conjugal love and the personal dimension of marriage.⁹² However elaborate the pope was, *Humanae vitae* did not settle the question of the hierarchical ends of marriage. The document cited all other canons except c. 1013, *CIC* 1917 where the ends of marriage are identified and categorized as primary and secondary.⁹³ Sterility and its potential impact on the *finis matrimonii* were not discussed.

In 1975, the Apostolic Signatura made a decision in response to the Tribunal of Utrecht's decision which stated that love makes marriage, and when that love ends, marriage ends also. This decision from the diocese of Utrecht in The Netherlands was based on the words of *Gaudium et spes* which described marriage as a *communio* of life and of love.⁹⁴ Therefore, the Apostolic Signatura studied the case before it and offered

⁹² Cf. D. E. FELLHAUER, "The *Consortium Omnis Vitae*," 116: "Conjugal love" is defined by Pompedda as: "The virtue through which the husband and the wife desire to share reciprocally the goods proper to marriage." M. F. POMPEDDA, "The *Bonum Coniugum* in Canonical Doctrine," in W. H. WOESTMAN (ed.), *Simulation of Marriage Consent, Doctrine, Jurisprudence, Questionnaires*, Ottawa, Faculty of Canon Law, Saint Paul University, 2000, 27-41, here on 40.

⁹³ B. G. O'LOUGHLIN, *Marriage, a Covenant and Consortium Totius Vitae: Scriptural Basis, Conciliar Teaching and the Revised Code of Canon Law*, 330. The author observes that the encyclical "confirms the conciliar emphasis on the interpersonal basis of marriage and refrains from speaking of the hierarchy of ends." As Robinson observed, when he came to his (Paul VI) treatment of contraception he based his argument on the fact that conjugal love demands openness to new life and on the inseparability of the unitive and procreative meanings of the conjugal act. He did not use the argument that the primary purpose of marriage is procreation and that every marital act must therefore retain its ordering to this primary end. Cf. G. ROBINSON, "Unresolved Questions in the Theology of Marriage," 70-73. This observation recalls *Casti connubii* where Pius XII based his argument on the subordination of the ends of marriage. Cf. B. A. SIEGLE, *Marriage Today: A Commentary on the Code of the Canon Law*, 30.

⁹⁴ Supreme Tribunal of the Apostolic Signatura, First Section, November 29, 1975, in *Periodica* 1990, 66 (1977), 297-325. The Apostolic Signatura, as an administrative tribunal, has as its main function to rule in the procedural questions in diocesan tribunals, or with the Roman Rota which handles usual appeal cases. In the said case, the Tribunal of the Diocese of Utrecht, and the Second Instance Tribunal of Haarlem, both in The Netherlands, judged a case on the basis of "diminished love" which is mentioned in *Gaudium et spes*. The couple in question was originally from Italy and the Apostolic Signatura was contacted to pass on the decision of the Dutch lower tribunals to the Italian authorities for the implementation of the civil effects of the said marriage. On reading the decision, the Signatura did not approve the grounds on which the two lower courts based their judgement to declare marriage null. This intervention was a reaffirmation of the canonical prescription "consensus, non amor matrimonium facit." For further study of this intervention by the Apostolic Signatura, see T. MACKIN, *Marriage in the Catholic Church: What is Marriage?* 313-318; C. J. SCICLUNA, *The Essential Definition of Marriage According to the 1917 and 1983 Codes of Canon Law: An Exegetical and Comparative Study*, 192-196. Therefore, cases which are submitted to the tribunals for diminished or lack of love are to be judged on the ground of

guidance to the Tribunal of Utrecht. The Cardinal members explained that marriage bond endures and continues to exist independent of conjugal love; it is the consent that makes marriage (c. 1081, *CIC* 1917).⁹⁵

In 1976, Paul VI addressed the Roman Rota under the title *Magna cum laetitia*.⁹⁶ This address indicated that Paul VI was aware that a discussion was going on regarding the meaning of conjugal love and the spouses' responsibility towards procreation. He advised that the Church should employ secular sciences in order to enhance her knowledge of conjugal love and employ it to the canonical meaning of marriage.⁹⁷ He also warned that some have erroneously so extolled conjugal love that procreation takes a

simulation or fear. Cf. *coram* ABBO, July 3, 1969, in *RRT Dec.*, 61 (1969), 703-710, here on 706; *coram* PINTO (J. M. PINTO, November 26, 1970, in *RRT Dec.*, 62 (1970), 1086-1093, here on 1087; *coram* POMPEDDA, February 24, 1975, in *RRT Dec.*, 67 (1975), 75-84, here on 76.

⁹⁵ Apostolic Signatura, Response on November 29, 1975, Engl. transl. in *CLD*, 8, (1978), 768-790. Earlier, the Apostolic Signatura had written to the Primate of The Netherlands, Cardinal Alfrink on the procedures that were used in the tribunals in his country. These decisions in favor of the nullity of marriage were based on the fact that where there is no more love, the community of life which is marriage is no more (Response of the Apostolic Signatura, Dec. 30, 1971, Engl. transl. in *CLD*, 7 (1974), 706-711. This response underlines the relationship between marital consent and marital love. Even if marital love plays an important role in marriage, it does not make marriage, but marital consent does. It can also be observed that this decision did not diminish the importance of marital love in favor of procreation. After both ends had been upheld by the Second Vatican Council, this same view would be reflected in the formulation of the canons on marriage in the *CIC* 1983. Tribunal judges held that the Second Vatican Council's insertion of *affectio maritalis* in the understanding of marriage depended on the couple's will to maintain it. This means: "As long as by their *affectio* they willed marriage, it endures, and continues to exist. If and when they withdrew it, marriage went out of existence." Cf. T. MACKIN, *Marriage in the Catholic Church: What is Marriage?* 321. Thus the Apostolic Signatura clarified: "The love which belongs to the essence of marriage is the act of the will by which the parties exchange the right to their sexual acts" (319). This means that *Gaudium et spes* never changed the Church's teaching on the nature of marriage that it is "consent which makes marriage" (c. 1081, §1, *CIC* 1917; c. 1057, §1, *CIC* 1983).

⁹⁶ PAUL VI, Allocution to the Roman Rota, February 9, 1976, in *AAS*, 68 (1976), 204-208; Engl. transl. in W. H. WOESTMAN, *Papal Allocutions*, 133-137. In his address, Paul VI used the term "*foedus*" instead of "*contractus*" to refer to matrimonial consent, which indicates a shift in the understanding of marriage covenant.

⁹⁷ "Et enim eo quod e scientiis vestris elucet felices exitus, qui in colendis disciplinis iuridicus, biologicis, psychologiis et socialibus habit sunt – per quas matrimonium melius congritum est et perspectum secundum veram suam naturam ut communitas amoris" *Ibid.*, 205).

secondary place, or it is entirely dismissed;⁹⁸ others have concluded that when conjugal love ceases, marriage has ended.⁹⁹ The pope emphasized that it is consent, not love, that makes marriage.¹⁰⁰

In 1978, the International Theological Commission published Propositions on the Doctrine of Christian Marriage. This commission reiterated the extrinsic indissolubility of a ratified and consummated marriage *ratum et consumatum*. In these propositions, the commission emphasized that the Church's refusal to allow divorce "does not derive from a purely disciplinary law or from a type of legalism. It is rather a judgement pronounced by Jesus himself (Mk. 10:6). Understood this way, this harsh norm is a prophetic witness to the irreversible fidelity of love which binds Christ to his Church."¹⁰¹ This pronouncement was important in asserting the Church's teaching on marital indissolubility, a position that is reflected in c. 1056, *CIC* 1983.

John Paul II's apostolic exhortation *Familiaris consortio*¹⁰² is another source of

⁹⁸ The pope indicated: "The supporters of these (personalist) opinions at times lay undue emphasis on conjugal love and the perfection of the spouses. They go so far as to neglect or even completely eliminate children as a basic value of marriage. They consider conjugal love to be so important, even in law, as to make the validity of marriage depend on it. Thus, they open the door to divorce almost without taking anything else into consideration." See W. H. WOESTMAN, *Papal Allocutions*, 134; *Casti connubii*, no. 23. Pius XI noted that the purpose of marriage can also be understood in a broader sense, a less restricted sense, as referring to the mutual perfection, the growth in holiness of the spouses.

⁹⁹ PAUL VI, Allocution to the Roman Rota, February 9, 1976, Engl. transl. in W. H. WOESTMAN, *Papal Allocutions*, 134. The pope indicated: "In their view, once love – or, more accurately, the original feeling of love – ceases, with it goes the validity of the irrevocable conjugal covenant brought into existence by free and full consent of love."

¹⁰⁰ *Ibid.*, 135.

¹⁰¹ INTERNATIONAL THEOLOGICAL COMMISSION, "Propositions on the Doctrine of Christian Marriage," in *Documenti 1969-2004*, Bologna, 2006; Engl. transl. in *Origins*, 8 (1978-1979), 235-239, here on 239. Even if this commission had a theological task, it made canonical pronouncements on the indissolubility of marriage. This emphasis makes clear the teaching of the Church on the ends of marriage and its indissolubility, even in cases of sterility.

¹⁰² JOHN PAUL II, Apostolic Exhortation on the Christian Family in the Modern World *Familiaris consortio*, November 22, 1981, in AAS, 74 (1982), 81-191, Engl. transl. in FLANNERY 2, 815-898. See also

the Church's description of marriage before the promulgation of the *CIC* 1983. In 1980, John Paul II convened a synod of bishops in Rome, which discussed the role of the Christian family in the modern world. Following the discussion, he defended in his apostolic exhortation the institution and nature of marriage and highlighted the responsibility of the spouses. In this document, John Paul II referred to marriage in personalist terms; both as *foedus coniugal*is and *foedus coniugal*is amoris.¹⁰³

When referring to marriage *in facto esse*, the pope used the word *communio* 21 times in *Familiaris consortio*.¹⁰⁴ There is no reference to the hierarchical listing of the ends of marriage. Like in *Humanae vitae*, the pope emphasized that human sexuality is not purely biological but total self-giving. Thus, sexual intercourse should be a sign and a fruit of totally self-giving. Marriage then is a “covenant of conjugal love or the free and conscious decision, by which man and woman accept the intimate community of life and love willed by God Himself.”¹⁰⁵ Marriage covenant was instituted by the Creator from

J. GROOTAERS and J. A. SELLING, *The 1980 Synod of Bishops “on the Role of the Family:” An Exposition of the Event and an Analysis of Its Texts*, Leuven, Leuven University Press, 1983. The authors present a detailed analysis of the history and recommendations that were given to the Holy Father. Many of these were incorporated in *Familiaris consortio*.

¹⁰³ Cfr. FLANNERY 2, 823. These two ways of referring to marriage had been employed by *Gaudium et spes*, and they were being considered as good descriptions of marriage to be included in the *CIC* 1983. According to B. Häring, the Council favored the term *foedus* over *contractus* because the former “is less legalistic and more accessible to modern man.” As quoted by C. J. SCICLUNA, *The Essential Definition of Marriage According to the 1917 and 1983 Codes of Canon Law: An Exegetical and Comparative Study*, 226.

¹⁰⁴ Cf. E. KACZYNSKI, “Le mariage et la famille: la communion de personnes,” in *Divinitas*, 26 (1982), 317-331, here on 318.

¹⁰⁵ *Familiaris consortio*, no. 11 reads: “Amoris conjugalis foedus vel conscia ac libera election, qua vir ac mulier in se recipient vitae amorisque communitatem intimam.” Engl. transl. in FLANNERY 2, 823. In nos. 12 and 13, the pope stressed that this intimate community has a quality of a sacrament if the parties are baptized. However, this is a sacrament that is celebrated differently from the others; the ministers are the spouses when other sacraments require a minister and the candidates.

the beginning;¹⁰⁶ it was part of the economy of creation.

In conclusion, the Roman Pontiffs and the Roman Curia helped the discussion on the description and purpose of marriage to move further. In *Humanae vitae*, as well as *Familiaris consortio*, the popes clarified the traditional doctrine on the purpose of conjugal love and the conjugal act; they are intended for marriage and procreation. This love is at the service of marriage and not for itself, because love does not constitute marriage as the Tribunal of Utrecht had implied. In these papal documents, marriage was described in terms of *foedus*, a covenant of life and love and a *communio* of the married couples and their children. It can be noted that these concepts were already guiding the revision of the canons on marriage and were reflected in the promulgated text.

1.3.2 — Description of Marriage in the Revision Process of the CIC 1983

The revision process of canon law began soon after the announcement of the Second Vatican Council.¹⁰⁷ In March 1963 John XXIII established a Pontifical Commission for the Revision of the Code of Canon Law. With regard to marriage law, the *Coetus de matrimonio* had two topics to address: the description of marriage as a communion of the whole of life and of love and the question regarding the ends of marriage.¹⁰⁸ As early as 1966 and 1971, the commission had decided to eliminate the hierarchical ends of marriage.¹⁰⁹

¹⁰⁶ Ibid: “Prae ceteris sacramentis haec sunt eisdem matrimonii sacramenti peculiaria et propria [...] est idem foedus coniugale a Creatore institutum in principio.”

¹⁰⁷ See the original announcement as reported in *L'Osservatore Romano*, January 30, 1959, 1.

¹⁰⁸ Proceedings of this commission was published in *Communicationes*.

¹⁰⁹ This decision was summarized by P. Huizing, the relator of the *Coetus de Matrimonio*: “The majority of the committee members finally agreed to affirm the nature of marriage as an intimate union of the whole of life between a man and a woman which, of its very nature, is ordered to the procreation and education of children. Following the Constitution (*Gaudium et spes*), the committee decided that in this

In the spring of 1975, a *schema* containing norms on sacramental law¹¹⁰ was sent to bishops, dicasteris, and Catholic universities for consultation. These norms were accompanied by the *praenotanda* which indicated the *Schema*'s principal orientations and a proposed pontifical document *Sacramentorum celebratio*.¹¹¹ Following the teaching of *Gaudium et spes*, the commission proposed that marital consent be defined as: "An act of the will whereby a man and a woman mutually pledge to enter a partnership of married life (*consortium vitae coniugal*) perpetual and exclusive, which of its very nature is ordered to the generation and education of offspring."¹¹²

In 1975, canon 1013, §1, *CIC* 1917 was in the process of being revised as c. 243 of the 1975 *Schema*.¹¹³ Canon 243 of 1975 *Schema* did not include the two ends of

paragraph (c. 1013, §1, *CIC* 1917), the idea of the primary end, that is the procreation and education of children, and the secondary end, namely mutual help and the remedy for concupiscence, should no longer be so expressed." P. HUIZING, "The Relator's Report," in *Communicationes*, 3 (1971), 70. As early as 1971, the *coetus* charged with preparing the new marriage legislation decided that it would not speak of primary and secondary ends of marriage. See *Communicationes*, 3 (1971), 70.

¹¹⁰ PONTIFICAL COMMISSION FOR THE REVISION OF THE CODE OF CANON LAW, *Schema documenti pontificii quo disciplina canonica de Sacramentis recognoscitur*, Rome, Typis polyglottis Vaticanis, 1975 (= *Schema* 1975). The *Schema* in c. 243: §1: "Matrimonium, quod fit mutuo consensus de quo in canos. 295 ss., est (intima) totius vitae coniunctio inter virum et mulierem, quae, indole sua naturali ad proles procreationem et educationem ordinatur." §2 was the same as c. 1056, *CIC* 1983.

¹¹¹ See *Communicationes*, 7 (1975), 27-40. T. Green, who was leading the United States of America's Committee for discussing this *Schema*, discusses in detail what each stage of the preparation involved. Cf. T. GREEN, "The Revision of Marriage Law: An Exposition and Critique," in *Studia canonica*, 10 (1976), 362. The full report that was submitted to the bishops of the United States is found in: J. A. ALESANDRO et. al., "Report of a Special Committee of the Task Force of the Canon Law Society of America on marriage Canons of the Proposed *Schema documenti pontificii quo disciplina canonica de Sacramentis recognoscitur*," in *CLSA Proceedings*, 37 (1975), 205-217.

¹¹² *Schema* 1975, 13. The introduction to the 1975 draft, instead of listing the ends of marriage, describes marriage *in facto esse*, that is, of the way in which the personal relationship of the spouses and the ordering of marriage to offspring are related to each other.

¹¹³ Title 7 of this *Schema* was called *De Matrimonio*. Canon 243, §1 of the *Schema* reads: "Matrimonium, quod fit mutuo consensu de quo in can. 295 ss., est (intima) totius vitae coniunctio inter virum et mulierem, quae, indole sua naturali, ad proles procreationem et educationem ordinatur." *Communicationes*, 9 (1977), 122. In this text, the reference to *matrimonii fines* as primary and secondary was not included; instead, as the above text indicates, marriage was described in terms of *matrimonium in facto esse*. It was described in terms of the personal dimension, the relationship of the spouses and its ordination to *bonum proles*. Canon 295 of this *Schema* mentioned within this text was a revision of c. 1081,

marriage as hierarchically ordered. Instead, it offered a description of *matrimonium in facto esse*, where both the procreative and personal dimensions of marriage are asserted. In the discussions on this formulation, a new expression of the good of the spouses (*bonum coniugum*) was added as one of the elements to which marriage is ordered.¹¹⁴

In 1977, the *coetus* made reference to the right of the couple to communion of life (*ius ad vitae communionem*) as necessary for marriage. This *coetus* also described married life as a communion or partnership of life (*communio* or as *consortium vitae*).¹¹⁵ As the discussions continued, the commission decided to incorporate in a single canon a description of marriage as well as the notion of its sacramentality.¹¹⁶ Thus, *Schema* 1977 c. 243, §1 was formulated as: “Marriage covenant, whereby a man and a woman together bring about a communion of the whole of life, and which of its very nature is ordered to the good of the spouses and to the procreation and education of offspring, has been raised by Christ the Lord to the dignity of a sacrament for baptized persons.”¹¹⁷

§2, *CIC* 1917 which defines matrimonial consent as: “An act of the will by which each party gives and accepts perpetual and exclusive rights to the body, for those actions that are of themselves suitable for the generation of children.” This new draft c. 295 read as follows: “Consensus matrimonialis est actus voluntatis quo vir et mulier foedere inter se consitiunt consortium vitae coniugalitatis, perpetuum et exclusivum, indole sua naturali ad prolem generandam et educandam ordinatum.” *Schema* 1975, 82.

¹¹⁴ “Matrimonium est viri et mulieris intima totius vitae coniunctio quae indole sua naturali ad bonum coniugum atque ad proles procreationem et educationem ordinatur.” *Communicationes*, 9 (1977), 123. Discussions on this process are found in *Communicationes*, 9 (1977), 117-125.

¹¹⁵ *Communicationes*, 9 (1977), 375. The Commission agreed that there should be a description of marriage in the *CIC* 1983, referring to its essential elements, and that the expressions *consortium vitae* or *communio vitae* also be included.

¹¹⁶ For R. G. Cunningham, “sacraments are acts of faith,” and a sacrament is “understood to be a vital reality, instituted by Christ in its essential substance. Composed of matter and form, a sacrament is a visible sign of invisible grace.” R. G. CUNNINGHAM, “Marriage and the Nescient Catholic Questions of Faith and Sacrament,” in T. P. DOYLE (ed.), *Marriage Studies: Reflections in Canon Law and Theology*, vol. 3, Washington, DC, CLSA, 1985, 20-59, here on 20. Cunningham’s analysis means that for a sacrament to be called so, faith on the part of the recipient is required.

¹¹⁷ “Matrimoniale foedus, quo vir et mulier intimam inter se constituent totius vitae communionem, indole sua naturali ad bonum coniugum atque ad proles procreationem et educationem

At this time, the commission consciously excluded the hierarchical ends of marriage and also gave the expression “partnership of the whole of life.” It is this expression of marriage as a partnership that appeared in the promulgated text. However, the commission did not resolve the question of what exactly entails the right to the partnership of life, the *ius ad consortium vitae*. It was left to jurisprudence to determine.¹¹⁸ An observation could be made here that the potentiality of sterility to interrupt this *consortium* was not discussed.

With the revision of the section on marriage, there was a question of defining marriage *in fieri* in the *CIC* 1983, something that had not been settled by *Gaudium et spes*. On May 24-25, 1977, the Plenary Congregation of Cardinals of the Code Commission was asked if marriage *in fieri* was to be expressed in the *CIC* 1983, and whether a definition of marriage should include an element of *coniunctio vitae*, *communio* or *consortium*.¹¹⁹ The Commission replied that marriage is to be presented at least in a descriptive and oblique form (*potius forma descriptive et in oblique*) and that it should regard marriage *in fieri* and be limited to the element of the *coniunctio vitae* or

ordinatam, a Christo Domino ad sacramenti dignitatem inter baptizatos evectum est.” *Communicationes*, 10 (1978), 125-126. Engl. transl. by self.

¹¹⁸ McAreavey concluded: “The Revision Commission left it to ecclesiastical jurisprudence to determine what was meant by ‘the good of the spouses.’” J. MCAREAVEY, *The Canon Law of Marriage and the Family*, 26. After the Second Vatican Council, rotal jurisprudence described marriage as an “intima communitas vitae et amoris.” The decision *coram* BEJAN, March 1, 1967, in *RRT Dec.*, 59 (1967), 133-134, for example, asserted that *mutuum adiutorium* does not belong to the substance of marriage, and procreation is said to be the “sole specifying element of the marital contract.” See also Decision *coram* ANNÉ, February 25, 1969, in *RRT Dec.*, 61 (1969), 174-192.

¹¹⁹ “Questions: 1. Whether the notion of marriage is to be included in the *CIC* 1983? If so, 2. Whether in this definition should be included the element of *coniunctio vitae* as an expression of the personal aspect of marriage (*Gaudium et spes* no. 48)? If so, 3. What is the strength of this element for the validity of marriage?” See *Communicationes*, 9 (1977), 79-80. The answer is contained in *Communicationes*, 9 (1977), 212.

other words like *consortium vitae*, *communio vitae*.¹²⁰

The 1975 *Schema* had the content of c. 1013, §1, *CIC* 1917 proposed as c. 243, §1: “Marriage, which comes into being through the mutual consent of the spouses to which reference will be made in c. 295, is [an intimate] joining of the whole of life between a man and a woman which, by its very nature, is ordered to the procreation and education of children.”¹²¹ The notable change in this draft is that there is no mention of the primary and secondary ends of marriage and no mention of the “remedy of concupiscence.” Instead, the draft introduced the notion that this intimate joining of the whole of life is ordered to the procreation and education of children. This alludes to the concept of *bonum coniugum* as we find in the promulgated text.¹²²

The 1977 *Schema* presented marriage in precise terms which considered the previous discussions on the definition of marriage, as well as in jurisprudence. The 5th General Assembly of the Synod of Bishops decided that marriage in the *CIC* 1983 should reflect the teaching of *Gaudium et spes*. Therefore, the terms *coniunctio vitae*, *consortium*

¹²⁰ The 1980 *Schema* of then c. 1008 reads: “Matrimoniale foedus, quo vir et mulier intimam inter se constituunt totius vitae communionem, indole sua naturali ad bonum coniugum atque ad prolis procreationem et educationem ordinatam.” E. N. PETERS (comp.), *Incrementa in Progressu 1983 Codicis iuris canonici, with Multilingual Introduction*, Montréal, Wilson & Lafleur Litée, 2005, 954. This draft is closer to the promulgated text of c. 1055, *CIC* 1983. The decision to give at least an oblique description of marriage had been made in the drafting process of *Gaudium et spes*. In the *Schema Receptum* of April 1965, it was suggested that “quo inter se (vel: inter proprias personas) specifica iura et official mutuo atque legitime tadunt et accipiunt coniuges, etiam coram societate in matrimonio legitimo constituentur, vincula divino coniuncti.” C. J. SCICLUNA, *The Essential Definiton of Marriage According to the 1917 and 1983 Codes of Canon Law: An Exegetical and Comparative Study*, 167. The reason for using this “oblique” description of marriage was that the object of matrimonial consent was not the persons of the spouses but rather the acts of their persons.

¹²¹ Canon 243, §1: “Matrimonium, quod fit mutuo consensus de quo in canos. 295 ss., est [intima] totius vitae conjunctio inter virum et mulierem, quae, indole sua naturali, ad prolis procreationem et educationem ordinatur.” §2 remained unchanged. *Communicationes*, 3 (1971), 70.

¹²² Cf. c. 1013, *CIC* 1917. When compared to c. 1055, §1, *CIC* 1983, this categorization of the ends of marriage does not exist.

vitae, communio vitae were to be incorporated into the description of marriage.¹²³ The following were the canons in the *Schema*:

Canon 1, §1: Marriage covenant, whereby a man and a woman establish between themselves a *communio* of the whole of life ordered by its nature to the good of the spouses and the procreation and education of children, has been raised by Christ the Lord to the dignity of a sacrament.

§2: For this reason there can be no valid marriage contract between the baptized without being by that very fact a sacrament.

Canon 2: The essential properties of marriage are unity and indissolubility, which in Christian marriage acquire a distinctive firmness by reason of the sacrament.¹²⁴

These two canons were brought into a single canon in the 1980 *Schema* with no changes.¹²⁵ In the promulgated text, c. 1 above became c. 1055, and c. 2 became c. 1056.

The final redaction was done on these two *Schemata*. These two canons were brought into one in the 1982 revision *schema* as c. 1055, §1, *CIC* 1983 with few changes: the word *communio* was changed to *consortium*; the word *intima* was removed; the word *procreationem* was changed to *generationem* and *ordinatam* was changed to

¹²³ *Communicationes*, 9 (1977), 79-80; 212. The 5th General Assembly of the Synod of Bishops took place on October 20, 1977. Discussions of the *coetus* on this draft can be found in *Communicationes*, 9 (1977), 117-146; 345-378; and in 10 (1978), 86-127.

¹²⁴ Canon 1, §1: “Matrimoniale foedus, quo vir et mulier intimam inter se constituent totius vitae communionem, indole sua naturali ad bonum coniugum atque ad proles procreationem et educationem ordinatam, a Christo Domino ad sacramenti dignitatem inter baptizatos evectum est.”

§2: “Quare inter baptizatos nequit matrimonialis contractus validus consistere, quin sit eo ipso sacramentum.” Canon 2: “Essentiales matrimonii proprietates sunt unitas ac indissolubilitas, quae in matrimonio christiano ratione sacramenti peculiarem obtinent firmitatem.” The content of this canon was entirely promulgated in the text of c. 1055, §1, *CIC* 1983, while §2 of the *Schema* became c. 1056.

¹²⁵ In the *Schema* 1980, c. 1008 read §1: “Matrimoniale foedus, quo vir et mulier intimam inter se (constituent totius vitae communionem) indole sua naturali ad bonum coniugum atque ad proles procreationem et educationem ordinatam, a Christo Domino ad sacramenti dignitatem inter baptizatos evectum est.” §2: “Quare inter baptizatos nequit matrimonialis contractus validus consistere, quin sit eo ipso sacramentum.” Engl. trans. “§1: The matrimonial covenant is one by which a man and a woman establish between themselves a partnership for the whole of life. By natural inclination this covenant is ordered toward the good of the spouses and toward the procreation and education of offspring. Such a covenant between baptized persons has been raised by Christ the Lord to the dignity of a sacrament.” §2: “For this reason a matrimonial contract cannot validly exist between baptized persons without it also being a sacrament by that fact.” Engl. transl. in PONTIFICIA COMMISSIO CODICIS IURIS CANONICI RECOGNISCENDO, *Schema Codicis Iuris Canonici* (=Schema *CIC* 1980), Rome, Libreria editrice Vaticana, 1980, 221.

ordinatum.¹²⁶ However, these changes did not gravely affect the content of the proposed canon in the previous *Schema*, but made the description of marriage more precise as in the present c. 1055, §1, *CIC* 1983.

It can be observed that the reason for this change by the Commission for the Revision of the Code of Canon Law was, first, to remove the ambiguity surrounding the expression *communio*.¹²⁷ As the commission explained, the word *communio* in the rest of the *CIC* 1983 referred to the Church and the Eucharist, and conformed better to the juridic tradition.¹²⁸ Second, the commission wanted to express the notion of marriage in a juridically more precise terms because of its traditional roots.¹²⁹ On March 25, 1982, the text was presented to the Holy Father.¹³⁰ Minor changes were made, and the word *ac* was changed to *et* making a link of unity and indissolubility, the properties of marriage as in c. 1056, *CIC* 1983.

The promulgated text of c. 1055 described marriage in terms of a partnership of the whole of life which is established for the good of the spouses and the good of the children. It reads:

§1: Marriage covenant, by which a man and a woman establish between themselves a partnership of their whole of life, and which of its own very nature is ordered to the well-being of the spouses and to the procreation and upbringing of children, has between the baptized, been raised by Christ the Lord to the dignity of a sacrament.

§2: Consequently, a valid marriage contract cannot exist between baptized persons

¹²⁶ Cf. *Communicationes*, 9 (1977), 120-124; 15 (1983), 219-222.

¹²⁷ Cf. A. MENDONÇA, "Theological and Canonical Aspects of Marriage," in *Studia canonica*, 22 (1988), 265-304; here on 272.

¹²⁸ See *Communicationes* 15 (1983), 222. However, *Gaudium et spes* did not use the term: *consortium totius vitae*, but *totius vitae consuetudo et communio* in no. 50, FLANNERY 1, 954.

¹²⁹ *Ibid.*

¹³⁰ The draft presented to John Paul II contained c. 1055, *CIC* 1983 as it was promulgated. Cf. PONTIFICAL COMMISSION FOR THE REVISION OF THE CODE OF CANON LAW, *Codex Iuris Canonici, Schema Novissimum* [...] *Summo Pontifici presentatum*, 1982, 189.

without its being by that very fact a sacrament.¹³¹

In this text, we find only a description of the partnership of marriage and the purpose for which it is established. There is no definition provided. Instead, c. 1057, §2, *CIC* 1983 defines marital consent: “Matrimonial consent is an act of the will by which a man and woman mutually give and accept each other through an irrevocable covenant in order to establish marriage.”

With the promulgation of the *CIC* 1983, the legislator made clear the understanding of marriage in the Catholic Church. The final text reflects a personalist approach to marriage; it avoids the hierarchical ordering of the primary and secondary ends of marriage. It states: “The marital *consortium* is ordered by its very nature to the good of the spouses and the procreation and education of children.”¹³² The *ius in corpus* was replaced by *bonum coniugum*. The word *consortium* (partnership) was inserted in the final text; it reflected the pope’s decision on the nature of *bonum coniugum* as had been debated. The sacramentality¹³³ of a valid marriage now includes all baptized Christians

¹³¹ Canon 1055, §1, *CIC* 1983: “Matrimoniale foedus, quo vir et mulier inter se totius vitae *consortium* constituunt, indole sua naturali ad *bonum coniugum* atque ad proles generationem et educationem ordinatum, a Christo Domino ad sacramenti dignitatem inter baptizatos evectum est.” §2: “Quare inter baptizatos nequit matrimonialis *contractus* validus consistere, quin sit eo ipso sacramentum.” C. 776, §1, *CCEO* reads: “Matrimoniale foedus a Creatore conditum Eiusque legibus instructum, quo vir et mulier irrevocabili consensus personali totius vitae *consortium* inter se constituunt, indole sua naturali ad *bonum coniugum* ac ad filiorum generationem et educationem ordinatur.” *CCEO* differs from *CIC* 1983 in describing marriage when it includes the phrase “established by the Creator and ordered by His laws.” As P. J. Connolly observes, *CCEO* is inspired by *Gaudium et spes* 48 where it certainly referred to *matrimonium in facto esse*. What is different in the wording is that where *Gaudium et spes* speaks of marriage having been “endowed by the Creator with its own proper laws,” the canon speaks of it as having been endowed by the Creator “by His laws.” Cf. P. J. CONNOLLY, *The Nature of Marriage as Proposed in the Codex Iuris Canonici and in the Codex Canonum Ecclesiarum Orientalium*, JCD diss., Ottawa, Faculty of Canon Law, Saint Paul University, 1995, 224. However, this distinction does not change the meaning and application of the canon.

¹³² Cf. T. P. DOYLE, “Marriage [cc. 1055-1165],” in J. A. CORIDEN, T. J. GREEN and D. E. HEINTSCHEL (eds.), *The Code of Canon Law, A Text and Commentary, Commissioned by the CLSA*, New York / Mahwah, Paulist Press, 1985, 737-826, here on 738.

¹³³ The sacramentality of marriage has been held in the traditional teaching of marriage. Cf. L.

and not only Catholics.¹³⁴

However, the *CIC* 1983 did not provide answers regarding the following questions: When did Christ raise marriage to the dignity of the sacrament? What does *educatio prolis* mean? What is involved in the good of the spouses (*bonum coniugum*)? And what is the implication of sterility to the understanding of marriage as a partnership of the whole of life? These questions have been subjects of discussion by canonists and theological authors.

In conclusion, it can be noted that the revision of canons on marriage was neither easy, nor unanimous. There was debate on what the definition of marriage should entail, on the elimination of the hierarchical ordering of marriage, and on embracing the personalist approach to marriage. In the promulgated text, marriage is described as a “partnership of the whole of life,” whose properties are unity and indissolubility. In order

ÖRSY, “Faith, Sacrament, Contract and Christian Marriage: Disputed Questions,” in *Theological Studies*, 43 (1982), 379-398, here on 394; E. SCHILLEBEECKX, *Christ the Sacrament*, London, Sheed and Ward, 1980, 47-132. E. Schillebeeckx offers a historical analysis of the sacramentality of marriage as originating from the eleventh century canonists and theologians. Two factors contributed to this development. First, the Augustinian concept of the *sacramentum-signum*, the sign of sacred things or events began to exert an influence on the theology of marriage in the West and second, the reaction of the Church against the various Manichean tendencies of the Catharist and Albigensian sects which regarded marriage as a fundamental evil. Therefore the Church had to make a definite pronouncement on the matter. Cf. 312-313. Yet, as B. G. O’Loughlin observed, *CIC* 1917 asserted this historical fact regarding the institution of the sacrament, “but no attempt was made to determine just when marriage was raised to the dignity of a sacrament.” See B. G. O’LOUGHLIN, *Marriage, a Covenant and Consortium Totius Vitae; Scriptural Basis, Conciliar Teaching and the Revised Code of Canon Law*, JCD diss., Ottawa, Faculty of Canon Law, Saint Paul University, 1985, 6. A. H. Van Fliet and C. G. Breed admit that “the time of institution (as a sacrament) is uncertain. It is a dogma that Christ raised it to the dignity of a sacrament.” A. H. VAN FLIET and C. G. BREED, *Marriage and Canon Law: A Concise and Complete Account*, London, Burns and Oates, 1964, 7. In the revision process, both *schemata* 242 and 243, and c. 1055, §1, *CIC* 1983 repeat the historical assertion on the sacramentality of marriage without indicating how and when Christ raised this natural reality into a sacrament.

¹³⁴ Canon 1055, §1, *CIC* 1983. The words “between the baptized” (*inter baptizatos*) were included in the canon. Thus, the sacramentality of a valid marriage is not limited to Catholics, but it applies to all those who are validly baptized (cf. c. 1012, §1, *CIC* 1917). While the Catholic Church teaches that matrimony is one of the seven sacraments, reformers such as Martin Luther and Calvin were emphatic in denying the sacramental character of marriage. For further discussion on these reformer’s views, see C. A. SCHLECK, *The Sacrament of Matrimony*, 66-69.

to stress these properties, the marital contract has been referred to as *foedus*, a covenant of life and of love. This terminology reflects the biblical foundation of the institution of marriage. The procreative end of marriage is no longer considered as the “primary end,” but another good of marriage; the secondary end is no longer understood in terms of “remedy for concupiscence,” but in terms of the “good of the spouses,” and “mutual assistance.”

1.3.3 — Marriage in Rotal Jurisprudence before *CIC* 1983

Before the *CIC* 1983 was promulgated, canonists utilized *CIC* 1917, *Gaudium et spes* and rotal jurisprudence in addressing canonical issues on marriage. This was because of two possible reasons. First, since the rotal auditors who were well versed with the revision process did not want to make decisions against the incoming canons. Second, they did not want to preempt the outcome of the revision process. This section highlights some of the points that were considered in applying the laws that were being revised.

According to jurisprudence, marriage is understood in terms of *intima communitas* as a perfecting element of marriage. For example, in the rotal decision *coram Fiore*, the *turnus* asserted:

Although today there are many who believe that in the light of the Constitution *Gaudium et spes* (no. 48) the ‘*intima communitas vitae et amoris coniugal*is’ is the essence of the matrimonial contract, the Fathers [of the rotal *turnus*] are of the opinion that this is to be completely denied; the reason is that the *communio* of habitation, bed and table belongs to the essence and integrity of the *individua vita* [...] an effect of validly-given consent.¹³⁵

One of the rotal auditors who offered an explanation on the silence of *Gaudium et spes* regarding the ends of marriage is V. Fagiolo. While citing earlier magisterial statements on this subject, he clarified: “Although procreation is not the entirety of marriage, the

¹³⁵ Decision *coram* FIORE, November 30, 1968, in *RRT Dec.*, 19 (1969), 198-199.

right to carnal copula for procreation is necessary for a valid union.”¹³⁶

In the years 1969-1982, the partnership of life (*consortium vitae*) was introduced in the discussion, adding juridical value to this dimension of marriage.¹³⁷ A decision *coram* Anné contributed greatly to this discussion. Anné was of the view that the object of marital consent as the exclusive and perpetual right to the body (*ius in corpus, perpetuum et exclusivum*) did not mean that married life should be limited to the biological dimension. Anné saw marriage as a personal relationship, an act of the will whereby spouses mutually hand over and receive each other.¹³⁸

Therefore, the “community of life” can be lacking in marriage, but the right to a community of life can never be absent, if consent is to be valid. To this end, Anné provided a definition of marital consent in the following words: “An act of the will whereby a man and a woman establish by a mutual pledge or irrevocable consent, a *consortium vitae coniugalis* which is perpetual and exclusive and which of its very nature is ordered to the generation and education of offspring.”¹³⁹ For the couple to make a valid

¹³⁶ Decision *coram* FAGIOLO, July 2, 1968, in *RRT Dec.*, 60 (1968), 525-532. His decision, which was given after *Gaudium et spes*, did not give a final settlement to the question of the hierarchical ends of marriage; canonists as well as theologians continued to discuss the hierarchical ordering of the ends of marriage.

¹³⁷ The interpersonal personalist dimension of marriage is what came to be termed as “the good of the spouses” (*bonum coniugum*) in c. 1055, §1, *CIC* 1983.

¹³⁸ Decision *coram* ANNÉ, February 25, 1969, in *RRT Dec.*, 61 (1969), 174-192. The original text reads: “Id denotat matrimonium esse relationem maxime personalem consensumque matrimoniale esse actum voluntatis quo coniuges ‘sese mutuo tradunt atque accipiunt’” (182). The decision was on alleged homosexuality, based on the incapacity of the homosexual partner(s) to give and receive the right to the body (*ius in corpus*).

¹³⁹ *Coram* ANNÉ reads in part: “Consensus matrimonialis definitur: actus voluntatis quo vir et mulier foedere inter se seu irrevocabili consensus constituent *consortium vitae coniugalis*, perpetuum et exclusivum, indole sua naturali ad prolem generandam et educandam ordinatum” (*coram* ANNÉ, February, 1969, in *AAS*, 61 (1969), 174-192, here on 183. This definition is similar to canon 295, §2 of *Schema* 1975. It can be observed that Anné was a member of the *coetus* for the revision of matrimonial law *Coetus de sacramentis*. He may have had a significant input in the formulation of this *Schema*.

consent to marry, they must be capable of this interpersonal relationship, the *consortium*. While Anné does not offer what that *consortium* entails, canonists and jurisprudence have attempted to fill in the gap.¹⁴⁰

Another rotal decision to consider is *coram* Pompedda. In a sentence regarding a case of *intentio contra bonum prolis*, which was given on December 22, 1969, Pompedda indicated that the secondary end of marriage is essential to the primary one, and so this acknowledgement should not be ignored. This is because the *ius in corpus*, though being considered as a necessary consequence of marriage, creates an intimate union between married couples.¹⁴¹ This union is physical as well as spiritual, and the spouses intend it when they give their consent.

In his decision, April 5, 1973, J. M. Serrano Ruiz advanced further the notion of

¹⁴⁰ For example, G. LESAGE, "The *Consortium vitae conjugal*: Nature and Applications," in *Studia canonica*, 6, (1972), 99-113, here on 103-104. G. Lesage goes beyond the description of the *consortium* and offers a list of the following 15 elements that would constitute the *consortium omnis vitae*. If one of them is lacking, this would render marriage invalid: "1. Oblatory love, which is not simply egoistic satisfaction, but which provides for the welfare and happiness of the partner; 2. Respect for conjugal morality and for the partner's conscience in sexual relations; 3. Respect for the heterosexual personality or "sensitivity" of marriage partner; 4. Respective responsibility of both husband and wife in establishing friendship; 5. Respective responsibility of both husband and wife in providing for the material welfare of the home: stability in work, budgetary foresight, etc.; 6. Moral and psychological responsibility in the generation of children; 7. Parental responsibility, proper to both father and mother, in the care for, love and education of children; 8. Maturity of personal conduct throughout the ordinary events of daily life; 9. Self-control or temperance which is necessary for any reasonable and "human" form of conduct; 10. Mastery over irrational passions, impulses or instincts which would endanger conjugal life and harmony; 11. Stability of conduct and capability of adapting to circumstances; 12. Gentleness and kindness of character and manners in mutual relationships; 13. Mutual communication or consultation on important aspects of conjugal or family life; 14. Objectivity and realism in evaluating the events and happenings that are part of conjugal or family life; 15. Lucidity in the choice or determination of goals or means to be sought for jointly." However, it can be concluded that this list presents a standard of conduct that cannot be perfectly observed. If one followed this list, its lack of applicability would result in several declarations of the invalidity of marriage based on the failure to achieve *bonum coniugum*. As Anné observed, the complication to achieve *bonum coniugum* based on a determined list is rather difficult to establish because of the "fact that many elements of communion of lives are culturally conditioned." Cf. *coram* ANNÉ, February 25, 1969, in *RRT Dec.*, 61 (1969), 184.

¹⁴¹ Decision *coram* POMPEDDA, December 22, 1969, in M. F. POMPEDDA, *Quaedam decisiones rotales circa mentum et simulationem coram POMPEDDA (1969-1972)*, Rome, Pontificia Universitas Gregoriana, 1972, 165-186. However, Pompedda did not spell out what "intimate union" entails.

marriage as a partnership of life. In his view, the interpersonal dimension of marriage is the most distinctive trait: a spouse must not only be able to give “marriage rights” but must also be able to receive them.¹⁴² This means that consent creates rights and obligations which are given and received by two people who are capable (*habilitas*). In this decision, and two subsequent ones, Serrano Ruiz quoted extensively from a decision *coram* Anné, *Gaudium et spes* and *Familiaris consortio*. Consequently, he vigorously presents and defends the idea of *consortium omnis vitae*, the interpersonal dimension of marriage as equally part of the *consortium*.

Whereas most rotal auditors after the Second Vatican Council advocated for concept of *consortium omnis vitae* as having a juridical value to the description of marriage, two of them did not. These were J. M. Pinto¹⁴³ and S. Masala.¹⁴⁴ In their decisions during the period of 1973-1983, they held the “traditional view” of marriage regarding the primary and secondary ends. In their view, the *communio vitae* is not easily distinguished from other elements which merely perfect the conjugal life and do not belong to the nature of consent. This opposition of the “new emerging view” of marriage was in favor of the traditional one.¹⁴⁵

In this short synopsis of the discussions that link the Second Vatican Council to

¹⁴² Cf. *coram* SERRANO RUIZ, April 5, 1973, in *RRT Dec.*, 65 (1973), 322-343.

¹⁴³ For example: *coram* PINTO, November 12, 1973, in *Periodica* 1990, 64 (1975), 503-517; *coram* PINTO, April 14, 1975, in *ME.*, 102 (1977), 39-48; Dec. *coram* PINTO, October 28, 1976, in *RRT Dec.*, 68 (1975), 382-392. Since there are two rotal auditors with a similar name “Pinto,” this work specifies them: J. M. Pinto and P. V. Pinto.

¹⁴⁴ For example: Decision *coram* MASALA, March 12, 1975, in *EIC*, 32 (1976), 271-279.

¹⁴⁵ This distinction was made for three reasons: there is no justification in canon law or in Magisterial teaching; it cannot be juridically distinguished from cohabitation; and such a notion would lead to declaring marriage null because the couples are unhappy. See *coram* STAFFA, November 29, 1975, in *Apollinaris*, 49 (1976), 31-48.

the period leading to the revision of the canons on marriage, there is a development in the description of marriage as well as stagnation. These discussions emerged mainly because *Gaudium et spes* remained silent on the hierarchical ends of marriage and leaned towards the placing of *bonum coniugum* on equal footing with *bonum prolis*. The majority of the rotal auditors moved towards the inclusion of *consortium omnis vitae* to the description of marriage. Few others still held the traditional hierarchical ordering of these ends. What then is the future of the notion of marriage as *consortium*?¹⁴⁶

From these points raised in the rotal jurisprudence, it can be concluded that auditors at the Roman Rota already implemented the decisions made in the revision process. There was much stress on the interpersonality of the partnership of life. The word *consortium*, which was not used in *Gaudium et spes*, was used often in their decisions. One can notice a shift away from the terminology “right to the body” to “the right to those acts that are apt to the procreation of the offspring.” Another important observation is that, while they did not see marriage in terms of its primary end, there was a deliberate proposition that the secondary end is as essential as the primary one in marriage. However, some rotal auditors such as Pinto and Masala still held the traditional view of marriage as hierarchically ordered; possibly they were waiting for the promulgation of the new law so that they could follow it. Another point of contention was divergence in the reasons why the Second Vatican Council remained silent on the hierarchical ordering of the ends of marriage.

¹⁴⁶ This personal dimension of marriage remained in the hands of the Commission for the revision of the Code of the law on marriage. However, these discussions remained silent on subject of sterility, or it should be said that they took for granted that it does not affect marital consent.

1.4 — Marriage as Partnership of the Whole of Life in the *CIC* 1983

The conciliar reference to marriage as a *consortium totius vitae* became an important step in the new legislation on marriage.¹⁴⁷ This section seeks to explain the nature of this partnership, as well as its essential elements and properties. There are various canonical authors and Church documents which explain the nature of the partnership. An examination of these documents is necessary in order to understand the Church's doctrine and legislation regarding sterility and its potential impact on marital consent.

1.4.1 — Nature of the Partnership

C. 1057, §2, *CIC* 1983 provides a description of marriage which is close to a definition. Marital consent is described as: “An act of the will by which a man and a woman by an irrevocable covenant mutually give and accept one another for the purpose of establishing a marriage.” This means that marriage is a “human act” enacted by two consenting human beings, a man and a woman, with a clear intention of entering into a marital partnership. This act involves both reason and will; the reason perceives and

¹⁴⁷ The sacramentality of marriage has been debated in various canonical *fora*. When c. 1055, §2, *CIC* 1983 assigns automatic sacramentality to marriage of every baptized person, this excludes the necessity of faith on the part of those contracting marriage. The Commission for the revision of the *CIC* 1917 acknowledged this debate (*Communicationes*, 15, [1983], 219-222). Siegle, made the following contribution to the debate on automatic sacramentality: “Marriage to be called sacramental, should be contracted in faith in order to receive the grace, otherwise we are putting false labels, as it were, on products which are absent. For example, we can have two non-Catholics baptized in infancy, but never had, or have no connection with Christianity whatsoever. Could we put a label on such a marriage that it is sacramental? [...] the canon should read: when two believing, validly baptized persons contract marriage, this marriage becomes by the very fact a sacramental marriage.” B. A. SIEGLE, *Marriage Today: A Commentary on the Code of the Canon Law*, 24-25. The author raises an important consideration while asserting the automatic sacramentality of marriage of the baptized. However, since faith is an internal affair, it would be difficult to determine if one has faith or not, and how much faith is needed for the sacrament of matrimony to be valid. The Second Vatican Council's constitution on the sacred liturgy *Sacrosanctum concilium* no. 59 requires that there should be minimum faith in order for the sacrament to be valid. Yet it is difficult to determine personal faith in an individual when considering marriage. For further discussion on this matter, see. R. G. CUNNINGHAM, “Marriage and the Nescient Catholic questions of Faith and Sacrament,” 25-37.

informs the will, and the will freely makes a choice to embrace that which is perceived as good.

The *CIC* 1983 does not define marriage; it gives a description of marriage, which has been called a formulation *in obliquo*.¹⁴⁸ As A. Mendonça points out: “Canon 1055 describes marriage only incidentally, but properly, while attempting to determine the object of the conjugal covenant which constitutes between a man and woman a partnership of the whole of life.”¹⁴⁹

The 1975 *Schema* had included the term *coniunctio* which is another expression of the bond *vinculum* as proposed by Thomas Aquinas to be the essence of marriage.¹⁵⁰ Yet, c. 1055, *CIC* 1983 included the notion that marriage is a natural reality,¹⁵¹ which

¹⁴⁸ Scicluna calls this lack of definition a “handicap” because the Code simply gives an indirect formulation of marriage, other than a definition. See C. L. SCICLUNA, *The Essential Definition of Marriage According to the 1917 and 1983 Codes of Canon Law: An Exegetical and Comparative Study*, 297. On 304, he concluded with a note on the failure of the *CIC* 1983 to define marriage. While comparing *CIC* 1917 and *CIC* 1983, Scicluna concluded: “While the 1917 Code declined to give a legal definition of marriage and yet provided consistent terminology and a clear indication of the essential formal object of marriage consent, the 1983 Code purports to provide a definition in oblique which has more of a description than an essential definition and leaves the determination of the essential elements of marriage and the corresponding essential rights and obligations for canonical doctrine to determine” (304-305).

¹⁴⁹ A. MENDONÇA, “The Theological and Juridical Aspects of Marriage,” in *Studia canonica*, 22 (1988), 269.

¹⁵⁰ Thomas Aquinas used the following definition of marriage: *matrimonium est consortium communis vitae*.” Cf. AQUINAS, Suppl. Q. 44, art. 3. The Commission revising marriage law used these terms synonymously to mean the effect of marriage, the *matrimonium in facto esse: coniunctio, vinculum, communio and consortium*. In the final redaction of canon 1055, *CIC* 1983, the Pope preferred the word *consortium* and used it in the promulgated text.

¹⁵¹ While reflecting on marriage as a natural reality, Reynolds made the following observations. Marriage in the Christian tradition was both sacred and secular. In the Jewish tradition, marriage was a domestic rather than a priestly rite, and in the Roman society, getting married was an entirely secular event. Members of the early Christian community got married in the same way as their non-Christian neighbors. There is no evidence that the Church required any special rite or even that Christians customarily observed one. Thus, persons who were already married before they converted to Christianity entered the body of Christ as married persons. It was the Medieval Church which tried to ensure that persons married *in facie ecclesiae*. Cf. P. L. REYNOLDS, *Marriage in the Western church: the Christianization of Marriage during the Patristic and Early Medieval Periods*, xiii-xxx. So the writer concludes: “When the bishops at the Council of Trent made clandestinity an impediment, they were explicitly innovating” (xix). Therefore: “Modern canon law considers it meaningful to ask whether a particular marriage is sacramental or non-sacramental, and it determines that if neither partner is a baptized Christian, marriage must be valid

existed from the beginning; it is a bond which arises out of the covenant¹⁵² relationship of the spouses. It is this natural reality that Christ elevated to the dignity of the sacrament (*The Catechism of the Catholic Church*, nos. 1603, 1639-1640). Therefore, a valid marital contract cannot exist between the baptized without being a sacrament.¹⁵³ As J. I. Bañares explained: “This conclusion refers not to the inseparability, but rather to the identity between the conjugal pact and the sacramental reality; there cannot be between the baptized, a merely natural marriage.”¹⁵⁴

The description of marriage as *consortium totius vitae* in *CIC* 1983 sheds light on the element of *bonum coniugum*.¹⁵⁵ Marriage as a *consortium* underlines a personalist

regardless of what the spouses do or feel or think” (xxi). These observations underline the fact that in the first place, marriage as a natural reality existed before Christianity; so Christ raised it to the dignity of the sacrament (c. 1055, §§1-2); *Catechism of the Catholic Church*, Revised in Accordance with the Official Latin Text Promulgated by Pope John Paul II, Washington, DC, United States Conference of Catholic Bishops, 2000, nos. 1603, 1639-1640). The new catechism was promulgated by John Paul II’s Apostolic Constitution *Fidei depositum*, October 11, 1992, in *AAS*, 86 (1994), 113-118. The *Editio typica* was promulgated by John Paul II’s apostolic letter *Laetamur magnopere* in which the Latin typical edition of the *Catechism of the Catholic Church* is approved and promulgated *Laetamur magnopere*, August, 15, 1997, in *AAS*, 89 (1997), 819-821. The New Catechism is in this work henceforth referred to as *Catechism*.

¹⁵² The use of the word “covenant” indicates “quality of the ever-deepening relationship, since persons give themselves to each other and such personal giving is inexhaustive.” Cf. M. LOWERY, “The Nature and Ends of Marriage: A New Proposal,” in *The Jurist*, 65 (2005), 98-118, here on 100; P. F. PALMER, “Christian Marriage: contract or Covenant?” in *Theological Studies*, 33 (1972), 617-665.

¹⁵³ Canon 1055, §2, *CIC* 1983. The sacramentality of marriage had been affirmed by the Council of Trent, but in a different way: “Si quis dixent, matrimonium non esse vere et proprie unum ex septem legis evangelicae sacramentis a Christo Domino institutum, sed ab hominibus in ecclesia inventum, neque gratiam conferre; anathema sit.” H. J. SCHROEDER, *Canons and Decrees of the Council of Trent, Original Text and Translation*, St Louis and London, B. Herder Book Co., 1941, 452. Engl. transl: “If anyone says that marriage is not truly and properly one of the seven sacraments of the evangelical law, instituted by Christ the Lord, but has been devised by men in the Church and does not confer grace: let him be *anathema*,” (181). On the automatic sacramentality of marriage according to c. 1055, §2, *CIC* 1983, cf. I. GRAMUNT, J. HERVADA and L. A. WAUCK, *Canons and Commentaries on Marriage*, 4; L. ÖRSY, “Faith, Sacrament, Contract, and Christian Marriage: Disputed Questions,” in *Theological Studies*, 43 (1982), 379-398. See also J. P. KALLIKATTUKUDY, *Fraud and Nullity of Marriage in Canon Law and Indian Civil Law: A Comparative Analysis*, JCD diss., Ottawa, Faculty of Canon Law, Saint Paul University, 2004, 26.

¹⁵⁴ J. I. BAÑARES, “Commentary on cc. 1055-1062,” in MARZOA, A. J. MIRAS and R. RODRIGUEZ-OCAÑA (EDS.), *Exegetical Commentary on the Code of Canon Law*, vol. 3/2, Montréal, Wilson & Lafleur Litée, 2004, 1055-1109, here on 1052.

¹⁵⁵ Morrissey gives a description of the development of the c. 1055, *CIC* 1983. See F. G.

dimension of marriage and how it relates to marriage *in facto esse*. The term contains “theological echoes with biblical roots, it also clearly refers to an action between persons: it points to an anthropological dimension sustained in freedom.”¹⁵⁶ This *consortium* takes place in a heterosexual relationship (*quo vir et mulier*) when two sexually distinctive persons come together to form this partnership of marriage. The two spouses establish between themselves this “partnership” as man and woman, in their conjugality.

While asserting marriage as partnership established by a man and a woman, *CIC* 1983 stipulates heterosexual union as central to marriage, and marriage cannot be true marriage when this union is lacking, or if it is excluded.¹⁵⁷ The origin of the partnership is the two persons – man and woman. The difference in sex mentioned here means that the act of the will which the two make is unified by the complementarity of the sexual act and by the same end (*finis*) of the covenant, which is the partnership.

The word *consortium* is translated as “partnership.” While commenting on this translation, Örsy explained that it is impossible to translate correctly; it has no equivalent in English.¹⁵⁸ The Latin word *consortium* comes from two words: *con* which refers to a sharing, and *sors* which means sharing a common lot, in life, or simply sharing of a

MORRISEY, “L’évolution du texte des canons 1055 et 1095,” in *Studia canonica*, 19 (1985), 16-23.

¹⁵⁶ J. I. BAÑARES, “Commentary on cc. 1055-1062,” 1053. He points out six juridic elements that can be deduced from this fact: a) Plurality of subjects; b) Free union of wills of these subjects; c) Agreement regarding future goals and behavior; d) Establishment of a new relationship between the members of the pact; e) The natural tendency to permanency; and f) Objective nature of this covenant.

¹⁵⁷ Canon 1135, *CIC* 1983 complements this statement in the following words: “Each spouse has an equal obligation and right to whatever pertains to the partnership of conjugal life.” C. 1057, §2, *CIC* 1983 explicitly mentions heterosexual union as necessary for marriage. This canon however does not mention the procreative function of marriage.

¹⁵⁸ L. ÖRSY, *Marriage in Canon Law, Texts and Comments, Reflections and Questions*, Wilmington, DC, Michael Glazier Inc., 1986, 5. The author also explains that when the Romans used the word *consortium*, they did not intend to use it in a personalist way as employed in modern personalist philosophy.

person's lot.¹⁵⁹ Therefore, persons joined in a *consortium* are sharing life together, and the sharing of this life experience is actualized by the loving and continuous life donation of the partners.¹⁶⁰ When canon law uses this term, it describes a marital relationship that aims at the ideal of the perfect union of minds and hearts; it also denotes the reality of the couple's external relationships in living out their *bonum coniugum*. Canon 1055, *CIC* 1983 uses *consortium* not to describe an act of marriage, but a state of married life, the *matrimonium in facto esse*.

The Pontifical Commission for the Revision of the Code of Canon Law considered the use of the three terms: *coniunctio*, *communio* and *consortium*. It also clarified that there is no significant difference between them.¹⁶¹ However, canonists distinguish between the three, with varied emphasis. J. Huber, for example, noted that the term *coniunctio* denotes the union of bodies and minds, a personal fusion which occurs in the consummation of marriage. To him, *communio* signifies the theological relations, the totality of rights and duties of marriage, common living and *communio* of minds excluding the communion of bodies. Finally, he is of the view that *consortium* denotes

¹⁵⁹ J. I. BAÑARES, "Commentary on cc. 1055-1062," 1053. See also, D. E. FELLHAUER, "The *Consortium omnis vitae* as Juridical Element of Marriage," 15. See also G. ROBINSON, "Unresolved Questions in the Theology of Marriage," 70.

¹⁶⁰ One author A. Abate offered the word root of the term *consortium* in A. ABATE, *Il matrimonio nella nuova legislazione canonica*, Rome, 1985, 13-14. See also J. HUBER, "Coniunctio, communio, consortium: observationes ad terminologiam notionis matrimonii," in *Periodica* 1990, 75 (1986), 397-401. J. Huber made an extensive study of the terms used in the revised *CIC* 1983. See also G. F. READ, "*Totius vitae consortium*: the Implications for Jurisprudence," in *Studia canonica*, 20 (1996), 123-146, here on 128. These authors indicate that the term "*consortium totius vitae*" has its roots in Roman law. For example, the *Digest of Justinian* stipulates: "Nuptiae sunt coniunctio maris et feminae et *consortium omnis vitae*, divini et humani iuris communicatio," (D. 23.2.1). See also G. F. READ, "*Totius Vitae Consortium*: The Implications for Jurisprudence," 128.

¹⁶¹ *Communicationes*, 9 (1977), 212.

communion of goods, life and fortune, to be maintained perpetually.¹⁶² In the end, he concludes that *consortium* is the term which best describes marital life in juridic terms by revealing that other terms were rejected.¹⁶³

The term “partnership” offers certain advantages over other possible descriptions of marriage, and it avoids ambiguities. Bañares, in agreement with Huber, offers a satisfactory explanation of why *consortium* best suits the description of marriage:

It makes reference to a reality of a relational nature, and, more concretely, to a relationship with a societal character, to a community. Yet it is itself in keeping with its consensual origin founded in the will of the parties, but at the same time it points to a solid and objective quid, which is already constituted. It includes, moreover, an explicit allusion to a unique life project, to a ‘common lot.’ Thus, regarding the past, it refers to the willed origin of the pact; regarding the present, it points out the constitutive character of the pact; and regarding the future, it indicates the pact’s capacity to extend itself fully into the future. Finally, the term partnership in itself does not harken back to any usage found in law that is ambiguous, or contradictory to what is set forth here.¹⁶⁴

The Pontifical Commission for the Revision of the Code of Canon Law preferred the term *consortium* to refer to marriage itself, or to the totality of the rights and obligations of marriage.¹⁶⁵ This term is a better description of the nature of marriage as “partnership.” Navarrete observed that *consortium* includes the communion of bodies,

¹⁶² J. HUBER, “Coniunctio, communio, consortium: Observationes ad terminologiam notionis matrimonii,” 393-408 reads: “Ex exegesi fontium clare apparet: ad mentem Romanorum vox ‘consortium’ societatem vitae significant secundum omnes aspectus et materiales et spirituales, incluso aspect temporis, ita ut vox aptissima sit ad notionem matrimonii efformandam” (405-406). Pompedda believes that *consortium* is more than *societas*, or companionship; it denotes a co-participation. See M. F. POMPEDDA, “Determining What Are Essential Obligations,” in R. SABLE, (ed. and transl.), *Incapacity for Marriage, Jurisprudence and Interpretation, Acts of the III Gregorian Colloquium*, September 1-6, 1986, Rome, 1987, 157-218, here on 190-191.

¹⁶³ “Elaboratione procedente Consultores verbum “consortium” praeferunt, aliis vocabulis reiectis.” J. HUBER, “Coniunctio, communio, consortium: Observationes ad terminologiam notionis matrimonii,” 408.

¹⁶⁴ J. I. BAÑARES, “Commentary on cc. 1055-1062,” 1053.

¹⁶⁵ U. NAVARRETE, “De iure ad vitae communionem: observationes ad novum *Schema canonis* 1086, §2,” in *Quaedam problemata actualia de matrimonio*, 3a ed., Rome, Pontificia Universitas Gregoriana, 1979, 207.

that is, the exclusive and perpetual right over the body for acts which are naturally apt for the generation for offspring with all rights and duties related to it.¹⁶⁶

Some authors have commented on the commission's choice of words *consortium*, *mutuum auditorium* and *foedus*. They find the term *consortium* a better description of marital partnership when it is employed to mean the "communion of souls," of persons, with the right to mutual assistance (*mutuum adiutorium*).¹⁶⁷ The commission did not specify what mutual assistance entails. Therefore, it would be jurisprudence to specify what "*mutuum auditorium*" would consist of since individual elements of mutual assistance depend on society, culture and personality.¹⁶⁸ In spite of this, certain standards are expected of married couples: heterosexual companionship, interpersonal friendship and spiritual and material support.¹⁶⁹

¹⁶⁶ Ibid., 207-208.

¹⁶⁷ Ibid., 207-208. Navarrete explains different elements involved in the communion of souls as: the union of affective, psychological, and spiritual dimensions of the spouses. This is what constitutes *bonum coniugum*. See also L. ÖRSY, *Marriage in Canon Law*, 53. Wrenn proposed six qualities of *bonum coniugum*: partnership, benevolence, companionship, friendship, caring and love in L. WRENN, "Refining the Essence of Marriage," in *The Jurist*, 46 (1986), 537-547. For O'Loughlin "The Commission left to legislation and jurisprudence the delineation of the essential elements of the *consortium*." See B. G. O'LOUGHLIN, *Marriage, a Covenant and Consortium Totius Vitae: Scriptural Basis, Conciliar Teaching and the Revised Code of Canon Law*, JCD diss., Ottawa, Faculty of Canon Law, Saint Paul University, 1985, 378.

¹⁶⁸ One of such lists was proposed by G. LESAGE, "The *Consortium Vitae Coniugal*is: Nature and Applications," in *Studia canonica*, 6 (1972), 99-113. The list of 15 elements that he proposes as required in forming a *consortium* is not exhaustive but these elements are deemed adequate. He categorized these elements as follows: 1) the balance and maturity required for a genuinely human conduct; 2) the relationship of interpersonal and heterosexual friendship; 3) the aptitude for adequate collaboration with respect to conjugal assistance; 4) the mental equilibrium and sense of responsibility required for the material well-being of the family; and 5) the psychological capacity of each partner in his or her own normal way to see to the well-being of children. Cf. G. LESAGE, "L'évolution récente de la jurisprudence matrimoniale," in SOCIÉTÉ CANADIENNE DE THÉOLOGIE, *Le Divorce*, Montréal, Fides, 1973, 13-58; Engl. transl. B. G. O'LOUGHLIN, *Marriage, a Covenant and Consortium Totius Vitae: Scriptural Basis, Conciliar Teaching and the Revised Code of Canon Law*, 383. Wynen had suggested that *mutuum adiutorium* involves elements such as cohabitation, the use of material goods, mutual use of means of support, personal assistance in the emotional and physical dimensions of life as well as in spiritual matters. Cf. *coram* WYNEN, January 22, 1944, in AAS, 36 (1944), 187-188.

¹⁶⁹ These standards are listed as "attributes" by T. P. DOYLE, "Marriage [cc. 1055-1165]," 741.

Another element of discussion during the drafting period was distinction between *consortium totius vitae* and *intima communitas vitae et amoris* as explained in *Gaudium et spes*. The main difference between the two lies in the use of the word “love.” The new formulation avoids the expression “communion of life and of love” as employed by the *Gaudium et spes*. This is because love exists in the sphere of psychological emotions, and cannot be regulated by law.¹⁷⁰ However, love is one among other elements that forms the *bonum coniugum*. Whereas love can end any time, the *consortium* is intended to last forever, because it is for the “whole of life.” *CCEO* also describes marriage in terms of a *consortium* that is intended to last forever.¹⁷¹

One of the debates that took place during the formulation of c. 1055, *CIC* 1983 concerned the use of the term *foedus* and not *contractus* to refer to the nature of the partnership.¹⁷² In Roman law, *foedus* was used for agreements of a higher significance,

¹⁷⁰ Fagiolo explains that the word “love” may have many meanings and can be claimed even when there is little or no commitment to marry. See *coram* FAGIOLO, October 30, 1970, in *RRT Dec.*, 62 (1970), 978-990. Anné adds that using “love” as a measure of validity of marital consent is not the best approach. Love belongs to the psychological condition pertaining to affections or emotions. However, conjugal love acts as the primary motivation to making lasting commitment and giving each other the right to a community of life. See *coram* ANNÉ, December 4, 1975, in *EIC*, 33 (1977), 182-183. Cf. C. J. MURTAGH, “The Judicial Importance of *amor conjugal*,” in *Studia canonica*, 7 (1973), 49-58.

¹⁷¹ Cf. I. ŽUŽEK, *Index analyticus Codicis canonum Ecclesiarum orientalium*, Rome, Pontificium Institutum orientalium studiorum, 1992, 74. A deeper comparative study of the definition of marriage according to both the *CIC* 1983 and the *CCEO* was made by P. J. Connolly. He points out that while the *Codex Iuris Canonici* for the Latin Church uses the term *consortium* in four canons (cc. 1055, §1, 1096, §1, 1098 and 1135, *CIC* 1983) the Code of Canons for the Eastern Churches employs the term in eleven canons (cc. 776, §1, 777, 816, 819, 821, 849, §2, 863, §§1-3, 864, §3, 866, 1362 and 1381, *CCEO*). See P. J. CONNOLLY, *The Nature of Marriage as Proposed in the Codex Iuris Canonici and in the Codex Canonum Ecclesiarum Orientalium*, 198. He also observes that the phrase “*consortium totius vitae* has been traditionally used to describe the effects of marriage rather than its essence, which more often than not was referred to as the *coniunctio* (see THOMAS AQUINAS, Suppl., q. 44, art. 3),” 199. This means that even if marriage was not defined by canon law as a *consortium*, the Church has taught it as such. Thus in the revision of the *CIC* 1983, as well as the formulation of the *CCEO*, this understanding of marriage was canonically expressed.

¹⁷² The revision Commission indicates that the terms *contractus* and *consortium* refer to the same reality. See *Communicationes*, 15 (1983), 222 at c. 1008, §2, *CIC* 1917: “Ut vitetur tamen ambiguias, quae forte oriri potest ex verbo ‘communio’ in *Schemate* non semper uno sensu adhibito, praeferendum videtur

such as treaties between nations or peoples, pacts with religious significance, etc.¹⁷³ When the Second Vatican Council employed this term to describe marriage, the contractual nature of marriage was not diminished¹⁷⁴ but the notion of marriage as contract was maintained in *CIC* 1983.

CIC 1983 used the term “covenant” in only three canons; 1055, §1, 1057, §2 and 1063, 4°. Yet, the “contractual language” is employed several times in cc. 1055, §, c. 1086, §3, 1097, §, 1121, §3, and 1122, §1, *CIC* 1983. The term “covenant” was chosen to signify the deeper union that exists between married couples with the covenant between God and His people or Jesus and His Church as examples to emulate.¹⁷⁵

verbum ‘consortium,’ quod melius exprimit matrimoniale convictum et maius suffragium invernitis in traditione iuridica.”

¹⁷³ L. ÖRSY, *Marriage in Canon Law, Texts and Comments, Reflections and Questions*, 4. Two definitions of marriage in Roman law have been attributed to Modestinus and Ulpian. First: “*Nuptiae sunt coniunctio maris et feminae et consortium omnis vitae, divini et humani iuris communicatio*,” *Digest*, 23.2.1. Engl. transl. reads: “Marriage is a union of male and female and a partnership of all life, a sharing of divine and human law.” Second: “*Nuptiae autem sive matrimonium est viri et mulieris coniunctio, individuum consuetudinem vitae continens*.” Engl. transl. reads: “Marriage or matrimony is a union of a man and a woman, involving an undivided way of living.” Engl. transl. in G. ROBINSON, “Unresolved Questions in the Theology of Marriage,” 70. The terms “*consortium*” and “*coniunctio*” form the basis of the canonical descriptions of marriage as “partnership” of the whole of life as in c. 1055, §1, *CIC* 1983. It can be noted here that the word “*totius*” is used in canon law as an equivalent term for “*omnis*” as used in the Roman Law description of marriage as “*consortium omnis vitae*.” Cf. *Communicationes*, 9 (1977), 375. For more on the adoption of the Roman Law definition of marriage into canon law, see C. J. SCICLUNA, *The Essential Definition of Marriage According to the 1917 and 1983 Codes of Canon Law: An Exegetical and Comparative Study*, 31-41.

¹⁷⁴ In its ordinary usage, the word “contract” refers to “an agreement between two persons which creates an obligation to do or not to do a particular thing.” H. C. BLACK (ed.), *Black’s Law Dictionary*, St. Paul, MN, West Publishing Co., 1979, 291-292. Häring reported that the Council Fathers insisted on using the word “covenant” (*foedus*), because it corresponds to an understanding of marital intercourse as mutual self-giving. This does not refer to a single act, but to the whole community of life and love which is viewed as mutually self-giving. The stability of the covenant is explained by the “divine ordination,” which is more than a merely factual arrangement. The Council Fathers had also suggested the term “right to the body” (*ius in corpus*). However, the commission rejected it because the term comes down from a time when the wife was still listed with the husband’s possessions. Cf. B. HÄRING, “Fostering the Nobility of Marriage and the Family,” 233. See also *Communicationes*, 9 (1977), 120-121; G. ROBINSON, “Unresolved Questions in the Theology of Marriage,” 95.

¹⁷⁵ Cf. J. I. BAÑARES, “Commentary on CC. 1055-1062,” 1052. The author also explains that the term covenant: “Signifies the relationship itself of the spouses, the bond that exists between them and that constitutes them as spouses. Moreover, the material treated initially as being interconnected within the

Another reason for the preference of the biblical term *foedus* which is translated as “covenant” was at the request of the Council Fathers from the Eastern Churches.¹⁷⁶ This is because the term “contract” would pose difficulties in the oriental understanding of marriage.¹⁷⁷ “Covenant” is a richer biblical concept of relationships and expresses the deepest meaning of conjugal union. In his allocution to the Roman Rota, Paul VI expressed his opinion on the use of the term “covenant.”¹⁷⁸ However, the word

general context of the ‘sanctifying office of the Church,’ following the treatment of the other sacraments.” The unity and love which this partnership requires was highlighted by the Second Vatican Council in *Lumen gentium*, no. 11: “In virtue of the sacrament of Matrimony by which they signify and share the mystery of the unity and faithful love between Christ and the Church (sed cum familia christiana sit imago et participato foederis amoris Christi et ecclesiae (Cf. Paul’s letter to the Ephesians, 5:32), Christian married couples help one another to attain holiness in their married life and in the rearing of their children. Hence by reason of their state in life and of their position they have their own gifts in the People of God,” in FLANNERY 1, 362.

¹⁷⁶ While commenting on c. 776, §1, *CCEO*, V. J. Pospishil observed that the term covenant “embraces the prerequisites of a contract, but goes much further. It presumes in the partners a ready and willing disposition toward the sharing of their entire existence together, ‘the most intimate partnership of the whole life’ [...] Thus, the concept of covenant also includes the contract, but has been raised to a higher level.” V. J. POSPISHIL, *Eastern Catholic Marriage Law*, Brooklyn, NY, Saint Maron Publications, 1991, 188. The author’s observation clarifies the reason why the Eastern Catholics prefer the term “covenant” over “contract” while describing the sacrament of matrimony.

¹⁷⁷ J. RENKEN, *The Contemporary Understanding of Marriage: An Historico-Critical Study of “Gaudium et spes” 47-52 and Its Influence upon the Revision of the “Codex iuris canonici,”* 364. See also J. P. BEAL, “Marriage (cc. 1055-1165),” in J. P. BEAL, J. A. CORIDEN and T. J. GREEN (eds.), *The New Commentary on the Code of Canon Law, Commissioned by the CLSA*, New York/Mahwah, NJ, Paulist Press, 2000, 1239 (=CLSA Comm2). J. P. Beal, J. A. Coriden and T. J. Green observe: “Although the explicit reason given for this preference for ‘covenant’ was that it was a term more congenial to the tradition of the Eastern Churches, the term was also more in harmony with the personalist approach to marriage that suffuses *Gaudium et spes*. During the formulation of *Gaudium et spes* nos. 48-51 in the Second Vatican Council, the term ‘contract’ was rejected and the following reason was given: mention is not made of ‘the contract of marriage’ but in clear terms the text speaks of ‘irrevocable personal consent,’ following the recommendations of the Fathers. The biblical term ‘covenant’ is added to the text out of consideration for the Orientals for whom ‘contract’ presents some difficulties.” The original text reads: *Mentio non fit de “contractu matrimoniali,” sed verbis clarioribus sermo est de “irrevocabili consensus personali,” secundum vota Patrum. Additur terminus biblicus “foedus,” intuit etiam Orientalium, pro quibus “contractus” quasdam difficultates facit.* See *Acta Synodalia*, 4, 4, 1, 536. Engl. transl. B. G. O’LOUGHLIN, *Marriage, A Covenant and Consortium Totius Vitae: Scriptural Basis, Conciliar Teaching and the Revised Code of Canon Law*, 243. To this end, Cardinal P. Moeuch, Patriarch of Antioch gave a written intervention indicating this difficulty. He also proposed that the text should speak of “irrevocable personal consent.” See *Acta Synodalia*, 4, 4, 3, 150. See also *Relatio ad Schema Receptum*, no. 61, 102-103.

¹⁷⁸ PAUL VI, Allocution to the Roman Rota, February 9, 1976; in AAS, 68 (1976), 204-208; Engl. transl. in W. H. WOESTMAN, *Papal Allocutions*, 133-137; here on 135.

contractus was not eliminated from the canonical doctrine, but the Council Fathers wanted the strictly contractual elements to be incorporated in the text.¹⁷⁹ For this reason, Morrissey is of the view: “The term ‘covenant’ adds a faith dimension to the celebration of matrimony, a dimension that was previously either taken for granted or ignored ... but above all, it calls for belief and commitment ‘in the Lord.’”¹⁸⁰

In conclusion, the nature of the partnership of marriage has been well expressed in *CIC* 1983. Marriage consent is understood as an act of the will, and a human act by two capable human beings who have the full exercise of their will. It is marriage contract which is a natural human reality, that Christ elevated to the dignity of the sacrament. Therefore, when a man and a woman enter marriage, they intend a partnership – a covenant – which lasts their entire life. For this reason, *CIC* 1983 went beyond *Gaudium et spes* in describing marriage as a “partnership of the whole of life,” and not simply a “communion of life and of love.” Even when the contractual language was minimized, *CIC* 1983 retained the notion of contract while referring to marriage; however, it is a

¹⁷⁹ Discussions on the use of the term *foedus* over *contractus* have been recorded by different authors. They include: L. ÖRSY, *Marriage in Canon Law, Text and Comments, Reflections and Questions*, 50; ID., “Christian Marriage: Doctrine and Law: *Glossae* on Canons 1012-1015,” in *The Jurist*, 40 (1980), 291-292; P. F. PALMER, “Christian Marriage: Contract or Covenant,” in *Theological Studies*, 33 (1972), 618-619; B. G. O’LOUGHLIN, *Marriage, A Covenant and Consortium Totius Vitae: Scriptural Basis, Conciliar Teaching and the Revised Code of Canon Law*, 242-245. McAreavey reveals that “the use of the term ‘covenant’ also has important ecumenical implications. The Final Report of the Roman Catholic-Lutheran-Reformed study on marriage states: We all agree that the biblical concept of ‘covenant’ best describes the mystery of marriage. The Catholic Church calls this covenant a sacrament. The Reformation Churches prefer not to use this term primarily because of their definition of the sacraments, because of marriage’s special place in relationship to the sacraments of baptism and the Eucharist, and finally because of past arguments and misunderstandings. We believe that on the basis of the different mentalities and various historical situations we are able to achieve a deep, common view of marriage.” J. MCAREAVEY, *The Canon Law of Marriage and the Family*, 21. See also *Communicationes*, 32 (2000), 224.

¹⁸⁰ F. G. MORRISSEY, “The 1978 Proposal: Revising Church Legislation on Marriage,” 211. J. F. Castaño believes that both covenant and contract are now used interchangeably when referring to *matrimonium in facto esse*. Cf. J. F. CASTAÑO, “*Natura del foedus matrimoniale alla luce dell’attuale legislazione*,” in *Studia Universitatis S. Thomae in Urbe: questioni canoniche*, 22 (1984), 214-250, here on 239. See also W. KASPER, *Theology of Christian Marriage*, 41.

special contract, a covenant.

1.4.2 — Essential Elements of the Partnership

C. 1055, *CIC* 1983 (c. 776, *CCEO*) describes not only the nature of the partnership but also its essential elements. Of its own very nature, marriage “is ordered to the well-being of the spouses and to the procreation and upbringing of children.” This means that the essence of marriage is something to which the partnership is “ordered” by its own nature. This partnership requires that each spouse seeks the good of the other, including the mutual giving and acceptance of the heterosexual dimension. When two persons enter this partnership, they are open to fatherhood and motherhood, to the procreation and upbringing of offspring.

1.4.2.1 — *Bonum Coniugum* as an Essential Element of Marital Partnership

The essential elements of the *consortium* are *bonum coniugum et bonum prolis*. Canon 1055, *CIC* 1983 presents an unambiguous description of the partnership as intended for the good of the spouses and the procreation and education of children. *Bonum coniugum* as one of the three goods (*tria bona*) of marriage involves those acts which are ordered to the well-being and mutual help (*mutuum auditorium*) of the spouses. Since no examples are given in the canon itself, this *bonum* can be interpreted as consisting of sharing of possessions – those material, social and spiritual; mutual help; and intimate communion of the whole of life and of love as stated in *Gaudium et spes*, no. 48.¹⁸¹ This good is reciprocal; it involves one’s right over the other and promoting the

¹⁸¹ FLANNERY 1, 950. Wrenn goes further to suggest six elements which would constitute *bonum coniugum*: partnership, companionship, friendship, benevolence, caring and love. L. WRENN, “Refining the Essence of Marriage,” 537-547. However, it can be canonically problematic to include love because it is not possible to legislate it, or to judge whether love existed or not. While commenting on these six elements of *bonum coniugum*, Mendonça points out that these elements are only essential to the attainment of *bonum coniugum*, but are not in themselves the essence of the good of the spouses. Cf. A. MENDONÇA, “Recent Trends in Rotal Jurisprudence,” in *Studia canonica*, 28 (1994), 167-230, here on 196. The same difficulty

good of the other spouse.¹⁸² Therefore, the marital community offers this good which motivates the couple to live out their commitment.

Partnership is much more than cohabitation or simply bodily copula. Whereas it was generally accepted that marital consent gave the couples the right to the body, the emerging understanding after the Second Vatican Council offered new trends. In his decision, L. Anné held that the formal object of marital consent is more than *ius ad corpus*.¹⁸³ It is a *consortium* of entire life, a lifelong relationship, and not simply cohabitation.¹⁸⁴ Therefore, the couples must be capable of giving themselves to each other in total surrender and love. Doyle explained: “The most obvious one is the heterosexual dimension of marriage, to which the spouses have a right. Yet the joining

was expressed by Connolly when he wrote: “One real difficulty about using the term ‘love’ is the inevitable confusion which arises because the word is used in so many senses: for instance, love can refer to a force that generates the will for the mutual self-giving (matrimonial consent), but also to something which needs to be cultivated in *matrimonium in facto esse*.” Cf. P. J. CONNOLLY, *The Nature of Marriage as Proposed in the Codex Iuris Canonici and in the Codex Canonum Ecclesiarum Orientalium*, 205.

¹⁸² There are other aspects of common life that do not pertain to *bonum coniugum* at least explicitly, such as making the other party happy, achievement of personal aspirations, etc. These aspects help in the achievement of this good, but they are not juridically measurable. Canons 1055, §1, CIC 1983 and 824, §2 CCEO call for a creation of an interpersonal relationship which will enable the communion of married love to succeed. For Mendonça: “An interpersonal relationship implies a true and special relationship between two persons, a true friendship based on mutual trust and self-giving. Two persons should, before anything else, be able and willing to be friends, to love, to respect, to trust, to relate and to communicate with each other.” Cf. A. MENDONÇA, “Recent Trends in Rotal Jurisprudence,” 189.

¹⁸³ Canon law distinguishes between the right (*ius*) and the use of the right (*usus iuris*). For further discussion on these two terms, see G. ROBINSON, “Unresolved Questions in the Theology of Marriage,” 90-91.

¹⁸⁴ Cf. *coram* ANNÉ, February 25, 1969. The view of Burke is that *bonum coniugum* is only an end to marriage and not part of its essence. See C. BURKE, “The *bonum coniugum* and the *bonum prolis*: Ends or Properties of Marriage,” in *The Jurist*, 49 (1989), 708. In this article, he argues that if the concept of *bonum coniugum* is considered as part of marriage, it constitutes the fourth good in addition to other three traditional goods of marriage (*bonum prolis*, *bonum fidei* and *bonum sacramenti*). While applying the meaning of “*intima communitas vitae et amoris coniugal*is” as specified by *Gaudium et spes*, the Roman Rota judges were of the opinion that this community of life and of love is not the essence of marriage, because “the communion of habitation, bed and table belongs to the essence and integrity of the *individua vita* rather than an effect of validly given consent.” Cf. *coram* BEJAN, March 1, 1967 in *RRT Dec.*, 59 (1967), 132-144; *coram* FIORE, November 30, 1968, in *EIC*, 26 (1970), 197-208 ; *coram* FAGIOLO, May 18, 1968, in *Il diritto ecclesiastico* (=IDE), 80 (1969), 160-164.

together in the marital community is more than just a physical reality, it involves a true intertwining of the personalities.¹⁸⁵ This good is all embracing and covers all aspects of life: physical, emotional, intellectual, spiritual, economic, social, etc. In fact, *bonum coniugum* means the totality of these goods make the partnership possible.¹⁸⁶

In conclusion, it can be said that the aspects of *bonum coniugum* give rise to rights and duties of the spouses to which they commit themselves. This means that a spouse affected by a grave personality disorder is unable to assume those obligations, and this renders his/her consent invalid. Likewise, if a party is able to assume these obligations but excludes them from the marital commitment by a positive act of the will, that fact makes marriage invalid. Scicluna explains: “The aspects of the good of the spouses which are the consequence of the ordering of marriage *natura sua* to the same, give rise to corresponding essential rights and duties between the spouses to which the spouses have to commit.”¹⁸⁷

1.4.2.2— *Bonum Prolis* as an Essential Element of Marital Partnership

The second essential element of the *consortium* is the procreation and education of offspring. The fact that *bonum coniugum* is mentioned first, does not mean that it becomes the primary end, nor does it diminish the importance of *bonum prolis*.¹⁸⁸ The

¹⁸⁵ T. P. DOYLE, “Marriage (cc. 1055-1165),” 777.

¹⁸⁶ In his decision, *Coram BRUNO* explained: “The good of spouses as an end and essential element of the nuptial covenant is the sum of all goods which flow from the interpersonal relationship of the same spouses. If they do not suffer from any psychic anomaly of personality, they together, through apt interpersonal relationship, enrich each other as individual persons and the entire conjugal life.” *Coram BRUNO*, July 19, 1991, in *RRT Dec.*, 83 (1994), 463-477. Engl. transl. in J. MKHOMENI, *Sterility and the Ends of Marriage: A Study on C. 1055 and 1084 with Particular Reference to Zomba Diocese in Malawi – Africa*, JCD diss. abstract, Rome, Pontificia Universitas Urbaniana, 1996, 20.

¹⁸⁷ Cf. C. L. SCICLUNA, *The Essential Definiton of Marriage According to the 1917 and 1983 Codes of Canon Law: An Exegetical and Comparative Study*, 300.

¹⁸⁸ Cf. *Communicationes*, 15 (1983), 221.

fulfillment of this purpose of marriage does not end at physical procreation; the spouses are obliged to offer Christian education to their children. As Doyle observes, this education takes place “primarily in the context of marital community wherein the children learn the meaning of love of God and neighbor through the loving example and instruction of their parents.”¹⁸⁹ It is noted that throughout the *CIC* 1983 there is no explanation of what *bonum prolis* entails.¹⁹⁰

Canon 1055, *CIC* 1983 requires that those who enter the partnership are to live by its own nature; being ordered to procreation. Like the *bonum coniugum*, the *bonum prolis* takes a central place in the partnership of marriage; it is another element of marriage. The *CIC* 1983 in this canon fell short of the previous mention of the primacy of procreation over the good of the spouses. However, it gave the spouses the openness to procreation, to the acts suitable for it, even if no children are born of that marriage.¹⁹¹ Paul VI reaffirmed this intrinsic orientation of marriage and conjugal love when he wrote: “And finally this love is creative of life, for it is not exhausted by the loving interchange of husband and wife, but also contrives to go beyond this to bring new life into being.”¹⁹² To this end, John Paul II added the following: “This totality which is required by conjugal

¹⁸⁹ T. P. DOYLE, “Marriage (cc. 1055-1165),” 741.

¹⁹⁰ Canon 1101, §2, *CIC* 1983 mentions the exclusion of the essential elements of marriage as a cause for its nullity. If, however, either or both of the parties should by a positive act of the will exclude marriage itself or any essential element of marriage or any essential property, this exclusion invalidates marriage contract. This meant that *CIC* 1983 leaves it to jurisprudence to determine whether the *bonum coniugum* has been given, withheld or excluded in marriage. Examples of rotal decisions regarding *bonum coniugum* include: *coram* BOCCAFOLA, June 23, 1988, in *RRT Dec.*, 80 (1988), 427-431; *coram* PINTO (P. V. PINTO), June 9, 2000, in *RRT Dec.*, 92 (2000), 460-468; *coram* CIVILI, November 8, 2000, in *RRT Dec.*, 92 (2000), 609-620.

¹⁹¹ Canon 1084, §3, *CIC* 1983 indicates that the mere existence of sterility in either couple has no impact on the validity of marital consent.

¹⁹² *Humanae vitae*, no. 9, in FLANNERY 2, 401.

love also corresponds to the demands of responsible fertility. This fertility is directed to the generation of a human being, and so by its nature it surpasses the purely biological order and involves a whole series of personal values.”¹⁹³

It can be noted also that conjugal acts are not to be considered solely for procreation. In the words of Scicluna: “Even conjugal acts in their procreative function are at the service of *bonum coniugum* in their unitive aspect which should never be separated from the procreative aspect.”¹⁹⁴ Thus, consent is considered valid even when children are not born, because the procreative power is not determined by the spouses but belongs to God. The spouses have the responsibility to cooperate with God by remaining open to procreation and to engage actively in the education of the offspring. Details of the education of offspring are not spelled out in the canons on marriage but are to be determined by particular circumstances.¹⁹⁵ Canon 1136, *CIC* 1983 imposed the duty of education of children to parents in these words: “parents have the most serious duty and the primary right to do all in their power to see to the physical, social, cultural, moral, and religious upbringing of their children.”¹⁹⁶

¹⁹³ *Familiaris consortio*, no. 11; Engl. transl. in FLANNERY 2, 823.

¹⁹⁴ C. L. SCICLUNA, *The Essential Definition of Marriage According to the 1917 and 1983 Codes of Canon Law: An Exegetical and Comparative Study*, 301.

¹⁹⁵ For example, Schmidt indicates: “*Educatio prolis* consists of physical, moral, religious spiritual, civil, social, and cultural dimensions, according to the two canonical codes and Rotal jurisprudence. The jurisprudence strongly supports the consideration of components of physical education as essential elements of marriage; it almost unanimously rejects spiritual (religious) and moral education as essential; and it virtually omits any consideration of civil education (c. 1113, *CIC* 1983), or social and cultural education (c. 1136, *CIC* 1983).” K. W. SCHMIDT, *Educatio prolis as an Essential Element of Marriage*, 192. See also *coram* RAAD, March 20, 1980, in *Monitor Ecclesiasticus*, 105 (1980), 177-183; *coram* STANKIEWICZ, July 23, 1981, in *RRT Dec.*, 73 (1987), 383-391; and *coram* PINTO (J. M. PINTO), December 3, 1982, in *RRT Dec.*, 74 (1987), 565-575.

¹⁹⁶ Canon 1136, *CIC* 1983: “parentes officium gravissimum et ius primum habent prolis educationem tum physicam, socialem et culturale, tum morale et religiosam pro viribus curandi.”

This section discusses the essential elements which constitute the partnership of marriage: the good of the spouses and the good of the children.¹⁹⁷ It can be concluded therefore, that marriage, being a special partnership, is intended to last, so that these ends can be attained. *CIC* 1983 did not present these ends in a hierarchical order as did *CIC* 1917 but considers them to be equally necessary for the validity of marriage. This discussion also indicates that the *tria bona* of Saint Augustine have been upheld but modified and made equally necessary. It is these two ends, taken together that distinguish marriage from other forms of cohabitation. Marriage is now understood not in terms of the right to the body, or to children, but in terms of consent to the partnership and to those acts that are open to procreation.

1.4.2.3 — *Educatio Prolis* as an Element of Marriage

In the canonical tradition of *CIC* 1983 the elements of marital consent are the good of the spouses and the good of the children. When the couple forms a partnership of the whole of life, this partnership is ordered to these elements of marriage. This lasting bond of the man and woman is intended to form a home where children are born and nurtured. The following section discusses the nature of *educatio prolis* and as another element of marriage.

There have been discussions regarding the nature and extent of *generatio prolis* and its relationship with *bonum prolis*. These discussions posed certain questions which canonists have addressed since the promulgation of the *CIC* 1983. These questions

¹⁹⁷ Canon 226, *CIC* 1983 imposes the same duty of education of children in the same way c. 1136, *CIC* 1983 does. It reads: §1. “According to their own vocation, those who live in the marital state are bound by a special duty to work through marriage and the family to build up the people of God.”

§2. “Since they have given life to their children, parents have a most grave obligation and possess the right to educate them. Therefore, it is for Christian parents particularly to take care of the Christian education of their children according to the doctrine handed on by the Church.”

include: does the right and duty of the parents to educate their children arise because of their consent to marry?¹⁹⁸ Does *educatio prolis* involve religious education, or does it refer to the general attitude of the parents to offer education to their children? The Roman Rota has offered guidance to these questions. For example, A. De Jorio suggests that the upbringing of children (*educatio prolis*) physically constitutes a juridical element of consent, but this does not extend to moral education.¹⁹⁹ A. Stankiewicz believes that the physical good of the child is a formal aspect of *bonum prolis*, and not the social good of the child.²⁰⁰

Discussions on *educatio prolis* have included its meaning, its components, as well as its exclusion and the consequences of this exclusion.²⁰¹ The upbringing is a necessary component of the good of children; procreation requires that the parents take on the responsibility of the offspring's well-being. Some authors suggest that minimum education is required, while others prefer a more deliberate program of educating the offspring, including religious education.

¹⁹⁸ Some authors are of the opinion that this right and duty comes into existence because of procreation, not from marriage. Examples include: P. HUIZING, "Bonum prolis ut elementum essentiali obiecti formalis consensus matrimonialis," in *Gregorianum*, 43 (1962), 657-723, especially 722-723; C. BURKE, "The Essential Obligations of Marriage," in *Studia canonica*, 26 (1992), 376-399, especially 388. Stankiewicz maintains that *educatio prolis* is inherent in the canonical understanding of marriage, which is by its nature ordered toward procreation and education of offspring. Therefore, the duty and right to educate offspring does pertain to marital consent, the same consent which establishes marriage itself, and pertains moreover to the determination of its validity. See STANKIEWICZ, "L'Esclusione della procreazione ed educazione della prole," 165-166. These opinions written in Italian are quoted in Engl. transl. from K. W. SCHMIDT, *Education prolis as and Essential Elements of Marriage*, 117-118.

¹⁹⁹ *Coram* DE JORIO, June 23, 1971, in *RRT Dec.*, 63 (1971), 511-521.

²⁰⁰ *Coram* STANKIEWICZ, May 13, 1978, in *RRT Dec.*, 70 (1978), 296-308, here on 300.

²⁰¹ Some authors have discussed *bonum prolis*; for example: K. W. SCHMIDT, *Educatio prolis as an Essential Element of Marriage*, 1993; S. P. IMAGE AGI, *Bonum prolis in the Yala socio-Legal System and the Recent Teaching of the Church*, JCD diss., Rome, Pontificia Universitas Urbaniana, 1979; P. HAYOIT, "Reflexions sur le thème mariage et procreation," in *Studia canonica*, 31 (1999), 193-200; M. NARON, "Bonum prolis vs Procreatio-Educatio prolis," in *Philippine Canonical Forum*, 3 (2001), 87-116.

The education of the offspring is an inherent component of marital consent in a way that when it is excluded, it renders consent invalid.²⁰² For P. Mattioli, *educatio prolis* as part of *bonum prolis* in the following words: “In our Tribunal, the expression *bonum prolis* includes the sum of the rights and duties which parents are to hold in relation to offspring, and which are of the essence of marriage: i.e., the right and duty not to impede the conception of offspring by illicit means; to give birth in due time to the offspring conceived; and to nurture and educate the offspring born.”²⁰³

“Physical *bonum prolis*” is an expression which refers to the preservation of what has been conceived.²⁰⁴ It includes conception and the natural development of the fetus and intends the physical growth of the child to maturity. Therefore, acts like intention to abort or kill the offspring, to abandon or mutilate them, and all forms of deliberate neglect constitute exclusion of *educatio prolis* and render marriage invalid.²⁰⁵ This means that the physical good of children is extended to the following: the protection of the life and health of unborn children; not to procure an abortion; “not to kill or physically harm children after their birth; not to neglect, abandon, or expose the offspring to danger of

²⁰² Cf. A. STANKIEWICZ, “L’Esclusione della procreazione ed educazione della prole,” 165-166. Stankiewicz believes that the physical good of the offspring is part of *educatio prolis*, which goes hand in hand with their moral and spiritual well-being.

²⁰³ *Coram* MATTIOLI, May 22, 1958, in *RRT Dec.*, 50 (1958), 364-371, here on 347.

²⁰⁴ Physical *bonum prolis* refers to corporeal care of the child. This is expressed in acts like: conception, birth, nurturing and protection of the life conceived and born. This is opposed to the concept “spiritual *bonum prolis*” which is explained below.

²⁰⁵ Cf. K. W. SCHMIDT, *Educatio prolis as an Essential Element of Marriage*, 119. He cites authors who believe that religious education constitutes an essential element of marital consent, eg: P. A. BONNET, “L’Ordinatio ad *bonum prolis*,’ quale causa di nullità matrimoniale,” in *Il Diritto Ecclesiastico*, 95 (1984), 326-237; A. MENDONÇA, “*The Theological and Juridical Aspects of Marriage*, 290 and Id. “Incapacity to Contract Marriage,” 301. Others believe that religious education does not constitute the essential element of marriage eg: A. STANKIEWICZ, “L’Esclusione della procreazione ed educazione della prole,” 170-172.

death; and to feed them.”²⁰⁶

In addition to the physical good of the children, there is also the “spiritual *bonum prolis*.”²⁰⁷ Schmidt points wrote: “Procreation and education belong to the content of the *bonum prolis*.” This means that *educatio prolis* should include all behavior concerning the protection and care for a child, from the moment of its conception and thereafter.²⁰⁸ Once a child is conceived, it has the right to a Christian or Catholic education which includes moral and religious education, without which *educatio prolis* is incomplete.²⁰⁹

According to A. Canestri, *educatio prolis* “is distinguished as physical, which starts at conception, and moral, which takes its beginning at the origin of intellectual life.”²¹⁰ In practical terms, one cannot easily determine whether the parents have offered adequate moral and religious education to their children, in order to revisit the act of consent which they made at their wedding. Therefore, education of children should be defined in general terms without attaching an invalidating clause to moral and religious education.

Rotal jurisprudence has judged cases regarding *educatio prolis* in relation the nullity of marriage. Under CIC 1917, *coram* Raad upheld the invalidity of marriage

²⁰⁶ K. W. SCHMIDT, *Educatio prolis as an Essential Element of Marriage*, 246.

²⁰⁷ Children also have a right to “spiritual *bonum prolis*.” Given that a human being is not only physical but spiritual as well, children need Christian or Catholic education which comprises of ethical and religious formation. Even if this type of education is important and essential to marriage, we cannot conclude that when parents do not educate their children in a Catholic school, or do not actively educate them in the Catholic faith, this invalidates their consent. Therefore, *educatio prolis* is given in general terms, regarding the couples’ intention to the upbringing of their child is what constitutes *educatio prolis*.

²⁰⁸ Cf. K. W. SCHMIDT, *Educatio prolis as an Essential Element of Marriage*, 126.

²⁰⁹ *The Charter*, art. 4, d, in FLANNERY 2, 913.

²¹⁰ *Coram* CANESTRI, July 8, 1941, in *RRT Dec.*, 33 (1941), 600-610, here on 603. See K. W. SCHMIDT, *Educatio prolis as an Essential Element of Marriage*, 192.

because there was no proof for an incapacity to assume the obligation of *educatio prolis*.²¹¹ Another auditor Stankiewicz judged a case in favor of invalidity because the respondent was incapable to assume the essential obligations of marriage including *educatio prolis*.²¹² This means that *educatio prolis* is an important element of marriage and can be a reason for nullity if excluded from the marital consent, and when one is incapable of fulfilling it.

In addition, the concept of *educatio prolis* also refers to “integral education” without categorizing it as physical or spiritual. It consists in the entire upbringing of the child, providing his/her integral needs until maturity. In *Familiaris consortio*, John Paul II explained: “The task of giving education is rooted in the primary vocation of married couples to participate in God’s creative activity: by begetting in love and for love a new person who has within himself or herself the vocation to growth and development, parents by that very fact take on the task of helping that person effectively to live a fully human life.”²¹³

The *CIC* 1983 requires that the obligation of *educatio prolis* proceeds from the act of procreation. Spouses are presumed to have this knowledge when they express consent. C. 793, §1, *CIC* 1983 reads: “Parents, and those who take their place, have both the obligation and the right to educate their children.” This right and duty cannot be left to be fulfilled by the Church, or to any other person or entity, when the parents and those who

²¹¹ *Coram* RAAD, March 20, 1980, in *Monitor Ecclesiasticus*, 105 (1980), 177-183, here on 183.

²¹² *Coram* STANKIEWICZ, July 23, 1981, in *RRT Dec.*, 73 (1981), 383-391, here on 388.

²¹³ *Familiaris consortio*, 22, November 1981, no. 36, in *AAS*, 74 (1982), 126: “Educationis opus immittit veluti radices in primigenam coniugum vocationem, nempe ad communicandam creatricem Dei operam; in amore ex amoreque novum gignentes hominem, qui in se quoque habet vocationem ad incrementum et prograssum, parentes in se recipiunt munus efficienter eum adiuvandi ad vitam usquequaque humanam ducendam.” Engl. transl. in FLANNERY 2, 845.

take their place are available. In addition, *educatio prolis* takes place in the context of marriage and family life, the ideal place for *procreatio et educatio prolis*.²¹⁴

C. 226, *CIC* 1983 indicates that this is the “most grave obligation and right” of parents when it stipulates:

§1: According to their own vocation, those who live in the marital state are bound by a special duty to work through marriage and the family to build up the people of God.

§2: Since they have given life to their children, parents have a most grave obligation and possess the right to educate them. Therefore, it is for Christian parents particularly to take care of the Christian education of their children according to the doctrine handed on by the Church.²¹⁵

This canon draws its sources mainly from the Second Vatican Council’s Declaration on Christian Education *Gravissimum educationis*²¹⁶ where the role of the parents in educating their children is prescribed as a “grave obligation.” Other sources include the Decree on the Apostolate of Lay People *Apostolicam actuositatem*²¹⁷ and Pastoral

²¹⁴ For further analysis of the parents’ duty and right to *educatio prolis*, see P. BAILLARGEON, *The Canonical Rights and Duties of Parents in the Education of their Children*, JCD diss., Ottawa, Faculty of Canon Law, Saint Paul University, 1987; A. KOWALSKI, *Educazione della prole nella vigente legislazione canonica*, JCD diss., Rome, Pontificia Universitas Lateranensis, 1987, 3.

²¹⁵ However, this does not take away the possibility of those who help parents in this role, eg. schools, parish community, or extended family. Cf. cc. 774, §2, 793, §1, 868, §1, 1°, 874, §1, 1°, 914, and 1366, *CIC* 1983.

²¹⁶ SECOND VATICAN COUNCIL, Declaration on Christian Education *Gravissimum educationis*, October 28, 1965, in AAS 58 (1966), 728-738. Engl. transl. in FLANNERY 1, 725-737. This document is the main source of c. 226, *CIC* 1983. The pertinent text reads: “As it is the parents who have given life to their children, on them lies the gravest obligation of educating their family. They must therefore be recognized as being primarily and principally responsible for their education. The role of the parents in education is of such importance that it is almost impossible to provide an adequate substitute. It is therefore the duty of parents to create a family atmosphere inspired by love and devotion to God and their fellow-men which will promote an integrated, personal and social education of their children” (no. 3).

²¹⁷ SECOND VATICAN COUNCIL, Decree on the Apostolate of Lay People *Apostolicam Actuositatem*, November 18, 1965, in AAS 58 (1966), 837-864. Engl. transl. in FLANNERY 1, 766-798. In this document, the Council decreed: “Christian couples are, for each other, for their children and for their relatives, cooperators of grace and witnesses of the faith. They are the first to pass on the faith to their children and to educate them in it. By word and example they form them to a Christian and apostolic life; they offer them wise guidance in the choice of vocation, and if they discover in them a sacred vocation they encourage it with all care” (no. 11, FLANNERY 1, 778).

Constitution on the Church in the Modern World *Gaudium et spes*.²¹⁸ These three documents clarify that the obligation and right of education of children belongs especially to the parents. However, parents can make use of other educators and pastors in fulfilling this task. As J. H. Provost observed, schools are meant to help parents. Therefore, parents, need to cooperate closely with teachers and parents' associations in fulfilling the duties that are specified by c. 796, *CIC* 1983.²¹⁹

It can be observed that these documents differ from the general expectation of child education prior to the Second Vatican Council. The role of educating children was given first to the bishop, priests, schools and then parents.²²⁰ Currently, parents have the major role to educate their children by virtue of natural law.²²¹ When the Church or schools engage in this work, it is not a natural right, but a legal right; therefore, the primary role of child education still rests with the parents and those who take their place.

It can be concluded that the "education of children" is an integral component for *bonum proles* as presented in canon law. Canonical authors and jurisprudence have given adequate explanation of what the good of the children entails. One of the major discussions was the nature of this component: does the good of the children include religious education? Or, does the exclusion of education of children invalidate marriage?

The general approach of jurisprudence has been to answer these questions in the

²¹⁸ *Gaudium et spes*, no. 50 reads: "Married couples should regard it as their proper mission to transmit human life and to educate their children; they should realize that they are thereby cooperating with the love of God the Creator and are, in a certain sense, its interpreters. This involves the fulfilment of their role with a sense of human and Christian responsibility and the formation of correct judgments through docile respect for God and common reflection and effort." In FLANNERY 1, 953.

²¹⁹ Cf. J. H. PROVOST, "The Christian Faithful (canons 204-231)" in J. A. CORIDEN, T. J. GREEN and D. E. HEINTSCHEL, *The Code of Canon Law, a Text and Commentary*, 117-173, 226.

²²⁰ See cc. 1330-1333, *CIC* 1917. Parents were expected to send their children only to Catholic schools where Catholic education was conducted with the direct involvement of the priests and catechists.

²²¹ See c. 796, §1, *CIC* 1983; *Gravissimum educationis*, no. 9 (b), in FLANNERY 1, 734.

affirmative.²²² Therefore, the education of children is equal to integral education which a child needs to grow up physically and spiritually. Thus, the education of children is considered as an end of marriage; it is a natural consequence to their procreation.

1.4.3 — Essential Properties of Marriage

Canon 1056, *CIC* 1983 reads: “The essential properties of marriage are unity and indissolubility, which in Christian marriage obtain a special firmness by reason of the sacrament.”²²³ The *CIC* 1983 repeats the affirmation made in c. 1013, §2, *CIC* 1917

²²² For example, *coram* MATTIOLI, May 22, 1958, in *RRT Dec.*, 50 (1958), 347; *coram* CANESTRI, July 8, 1941, in *RRT Dec.*, 33 (1941), 603.

²²³ Canon 1056, *CIC* 1983: “*Essentiales matrimonii proprietates sunt unitas et indissolubilitas, quae in matrimonio christiano ratione sacramenti peculiarem obtinent firmitatem.*” C. 776, §3, *CCEO* reads: “*Essentiales matrimonii proprietates sunt unitas et indissolubilitas, quae in matrimonio inter baptizatos specialem obtinent firmitatem ratione sacramenti.*” The wording of these two canons is different, but the content is the same for both the Latin Church and Eastern Catholic Churches. There has been a slight disagreement between the Latin and Eastern non-Catholic Churches regarding remarriage after divorce. To highlight this difference in practice, the Joint Committee of Orthodox and Catholic Bishops in the USA wrote the following in their Pastoral Statement: “Our churches have also responded in diverse ways to the tragedies which can beset marriage in our fallen world. The Orthodox Church, following Mt 19:9 (“whoever divorces his wife *except for unchastity*, and marries another, commits adultery”), permits divorce under certain circumstance, not only in the case of adultery but also of other serious assaults on the moral and spiritual foundation of marriage (secret abortion, endangering the life of the spouse, forcing the spouse to prostitution and similar abusive situations). Out of pastoral consideration and in order to better serve the spiritual needs of the faithful, the Orthodox Church tolerates remarriage of divorced persons under certain specific circumstances as it permits the remarriage of widows and widowers under certain specific circumstances. The Roman Catholic Church has responded in other ways to such difficult situations. In order to resolve the personal and pastoral issues of failed consummated marriages, it undertakes inquiries to establish whether there may have existed some initial defect in marriage covenant which provides grounds for the Church to make a declaration of nullity, that is, a decision attesting that marriage lacked validity.” JOINT COMMITTEE OF ORTHODOX AND CATHOLIC BISHOPS, “A Pastoral Statement on the Orthodox / Roman Catholic Marriages,” October 5, 1990, Johnstown, PA, on <http://www.usccb.org/beliefs-and-teachings/ecumenical-and-interreligious/ecumenical/orthodox/pastoral-orthodox-catholic-marriage.cfm> (November 30, 2015). One author F. R. McManus refers to this disagreement while commenting on the property of indissolubility in the Eastern Churches: cf. F. R. MCMANUS, “Marriage in the Canons of the Eastern Catholic Churches,” in *The Jurist*, 54 (1994), 79. However, neither canon law nor theology explains when Christ made marriage a sacrament. Kasper explains: “Our understanding of marriage as a Sacrament is based above all on this understanding of marriage as a sign of God’s covenant. The sacramental nature of marriage cannot be proved by using individual words of institution. It is more important to show that marriage is sacramental because it is fundamentally related to the saving work of Jesus Christ.” W. KASPER, *Theology of Christian Marriage*, 27-28.

regarding the properties of marriage that had been defined by the Council of Trent.²²⁴ In addition to mentioning the invalidity of marriage which arises out of excluding marriage itself or an essential property, the canon includes “all rights to the conjugal act.”²²⁵ During the drafting of *Gaudium et spes*, as well as in the drafting of the *CIC* 1983, the unity and indissolubility of marriage were accepted without dissensions. These essential properties are qualities that flow from the very nature of marriage itself, so that without them there can never be a real marriage. They are essential to marriage covenant, so that excluding any of them with a positive act of the will results in the invalidity of consent (c. 1101, §2, *CIC* 1983). Equally true is the fact that being incapable to assume these properties ends in invalidity of marriage (c. 1095, §3, *CIC* 1983).²²⁶

1.4.3.1 — Unity of Marriage in Relation to Procreation

The first essential property is that of unity. Marital consent, validly given, creates a bond (*ligamen*) which cannot be broken. Unity refers to a monogamous relationship between a man and a woman which is exclusive. A husband is to have only one wife and

²²⁴ The Council of Trent taught: “Gratiam vero, quae naturalem illum amorem perficeret, et indissolubilem unitatem confirmaret conjugisque sanctificaret, ipse Christus venerabilium sacramentorum institutor atque perfectior sua nobis passion promeruit, quod Paulus Apostolos innuit dicens: Viri, diligite uxores vestras, sicut Christus dilexit ecclesiam, et se ipsum tradidit pro ea, mox subiungens: *sacramentum hoc magnum est, ego autem dico in Christo, et in ecclesia.*” The Engl. transl. reads: “By the grace which was to perfect that natural love, and confirm that indissoluble union, and satisfy the persons married, Christ Himself, the institutor and perfectior of the venerable sacraments, merited for us by His passion, which Paul the Apostle intimates when he says: *Husbands love your wives, as Christ also loved the church, and delivered himself up for it*; adding immediately: *This is a great sacrament, but I speak in Christ and in the Church.*” Engl. transl. in H. J. SCHROEDER, *Canons and Decrees of the Council of Trent: Original Text with Translation*, 180.” This text was reflected in c. 1013, §2, *CIC* 1917 which reads: The essential properties of marriage are unity and indissolubility which in Christian marriage acquire a distinctive firmness by reason of the sacrament.

²²⁵ Canon 1086, §2, *CIC* 1917: “At si alterutra vel utraque pars positive voluntatis actu excludat matrimonium ipsum, aut omne ius ad coniugalem actum, vel essentialiam aliquam matrimonii proprietatem, invalide contrahit.” The equivalent of this canon is c. 1101, §2, *CIC* 1983.

²²⁶ Cf. C. L. SCICLUNA, *The Essential Definition of Marriage According to the 1917 and 1983 Codes of Canon Law: An Exegetical and Comparative Study*, 302.

the wife only one husband. Therefore, polygamy²²⁷ of any form is incompatible to the unity that is created by the act of consent. The unity of the *consortium* also excludes any form of “group marriages” where several men marry several women,²²⁸ widow inheritance, women and men swapping, etc. Such practices violate the equal personal dignity of those spouses who give themselves in total and exclusive love.

John Paul II stressed this property in these words of *Familiaris consortio*: “Such a communion is radically contradicted by polygamy: this, in fact, directly negates the plan of God which was revealed from the beginning, because it is contrary to the equal personal dignity of men and women who in matrimony give themselves with a love that is total and therefore unique and exclusive.”²²⁹ Without unity, it is impossible for the spouses to give to each other totally and to accept each other in a covenant relationship.

The partnership of the whole of life is based on and requires total human fidelity for its existence and growth. As Doyle explained, unity “is not simply the absence of extramarital sexual involvement but fidelity to the interpersonal relationship. The total gift of self cannot be divided. It must be given and continuously expressed to one person.

²²⁷ Polygamy takes different forms. A union of one woman with more than one man is called polyandry; the union of one man with more than one woman is called polygyny. When one person has many “spouses” at the same time, this is called “simultaneous polygamy;” if one person gets a spouse after another, this is called “successive polygamy.” In any case, marriage of this sort is contrary to *bonum fidei* if a spouse reserves to himself/herself the right to be polygamous. The Council of Trent taught the following about polygamy: “If anyone says that Christians may have more than one wife at once and that it is forbidden by no divine law: let him be anathema.” See N. P. TANNER, *Decrees of the Ecumenical Councils*, vol. 2, Washington, DC, Georgetown University Press, 1990, 754. See also B. A. SIEGLE, *Marriage Today, a Commentary on the Code of the Canon Law*, 25. For B. A. Siegle, another name for “unity” of marriage is “monogamy.” This is because polygamy “not only interferes with the love and companionship of the spouse, but is also the potential cause of sterility. If there are children, the paternity is doubtful in which the case of education of children is uncertain.”

²²⁸ G. SHEEHY (ed.), *The Canon Law Letter and Spirit: A Practical Guide to the Code of Canon Law*, Collegeville, MN, Liturgical Press, 1995, 574.

²²⁹ *Familiaris consortio*, no. 19, in FLANNERY 2, 829. See also JOHN PAUL II’s homily at the Mass for the families in Kinshasha, May 3, 1980, in AAS, 72 (1981), 425; Engl. transl. in *Origins*, 10 (1980), 7-9.

Fidelity is not possible without unity, that is, one partner with whom to share one's life."²³⁰ Similarly, one who reserves to himself/herself the right to be adulterous and such actions are *contra bonum fidei*.

Gaudium et spes made particular emphasis on the element of conjugal fidelity in the context of *consortium totius vitae*. It states: "The intimate union, as a mutual self-gift of two persons, and the good of children demand total fidelity from the spouses."²³¹ This good of fidelity does not end at the exclusivity of the conjugal acts only, but extends to the bodily and spiritual union of the spouses. This understanding of *consortium* is not presented in *Gaudium et spes* nor in the new *CIC* 1983, but it is a product of jurisprudence. As Mendonça explains, the present jurisprudence has recognized the "intimate interpersonal relationship" as an essential element of *consortium totius vitae*.²³²

1.4.3.2 — Indissolubility of Marriage in Relation to Procreation

The second property of marriage is that of indissolubility. Indissolubility is distinguished as intrinsic or relative indissolubility, and extrinsic or absolute. All true marriages, whether natural or sacramental, are intrinsically indissoluble. Intrinsic indissolubility means that even the parties themselves cannot dissolve a valid marriage by withdrawing their consent. For this reason, "Christian marriage, because it is a sacrament and because it reflects that unbreakable union of Christ with his Church, is especially indissoluble."²³³ This understanding of marriage is consistent with *CIC* 1917 and *Gaudium et spes*. Intrinsic indissolubility of marriage has its origin in the Augustinian

²³⁰ T. P. DOYLE, "Marriage (cc. 1055-1165)," 743.

²³¹ *Gaudium et spes*, no. 48, FLANNERY 1, 950.

²³² A. MENDONÇA, "Theological and Juridical Aspects of Marriage," 293.

²³³ Cf. G. SHEEHY (ed.), *The Canon Law Letter and Spirit*, 574.

doctrine of *bonum sacramenti*.²³⁴ At the expression of consent, the couples enter a sacred bond that lasts forever. If the parties exclude this property, they invalidly enter marriage.

The property of extrinsic indissolubility generally means that no external power can dissolve a valid bond. Nevertheless, while all valid marriages are intrinsically indissoluble, not all of them have absolute extrinsic indissolubility. Pius XII addressed this question in his 1941 allocution to the Roman Rota:

Sacramental marriage which has been consummated is indissoluble by the law of God, so that it cannot be dissolved by any human power [c. 1118, CIC 1917]; whereas other marriages, though they are intrinsically indissoluble, still do not have absolute extrinsic indissolubility, but, under certain necessary conditions, can (it is a question, as everyone knows, of relatively rare cases) be dissolved not only by virtue of the Pauline privilege, but also by the Roman Pontiff in virtue of his ministerial power (*in virtù della sua potestà ministeriale*).²³⁵

Canon law gives four instances where a valid marriage could be dissolved by the Roman Pontiff. The external power which the Roman Pontiff has is used to dissolve the following marriages: unconsummated marriage,²³⁶ marriage of a new convert by Pauline Privilege,²³⁷ and marriage in favor of faith by Petrine Privilege.²³⁸ Lastly, the dissolution

²³⁴ Z. GROCHOLEWSKI, *De exclusione indissolubilitatis ex consensus matrimoniali eisque probatione: considerationis super recentiores sententias*, Naples, M. D'Auria, 1973, 38.

²³⁵ W. KOWAL and W.H. WOESTMAN, *Special Marriage Cases and Procedures: Ratified and Non-Consummated Marriage, Pauline Privilege, Favour of the Faith, Separation of Spouses, Validation, Presumed Death*, 4th rev. and updated ed., with appendices, Ottawa, Faculty of Canon Law, Saint Paul University, 2008, 9.

²³⁶ This concerns marriage of at least one Catholic that has been validly celebrated in the Catholic Church, or in another church with a dispensation, but for some reason has not been consummated. Canon 1142, CIC 1983 reads: "A non-consummated marriage between baptized persons or between a baptized party and an unbaptized party can be dissolved by the Roman Pontiff for a just reason, at the request of both parties or of either party, even if the other is unwilling." For the procedure of dissolution, see cc. 1697-1706, CIC 1983.

²³⁷ Canon 1143, §1, CIC 1983 reads: "In virtue of the Pauline Privilege, a marriage entered into by two unbaptized persons is dissolved in favor of the faith of the party who received baptism, by the very fact that a new marriage is contracted by that same party, provided the unbaptized party departs."

²³⁸ CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Normæ de conficiendo processu pro solutione vinculi matrimonialis in favorem fidei* Potestas Ecclesiæ, April 30, 2001, Vatican City, 2001, Engl. transl. with a commentary in W. KOWAL and W.H. WOESTMAN, *Special Marriage Cases and Procedures: Ratified and Non-Consummated Marriage, Pauline Privilege, Favour of the Faith, Separation*

which the law offers to polygamists at their conversion when they are unable to take on the first wife and may choose one from the rest (c. 1148, §1, *CIC* 1983).

The two properties of unity and indissolubility should be understood in the context of *bonum coniugum* and *bonum prolis*. The total self-giving of the spouses which is an essential element of marriage is not possible with the plurality of husbands or wives. Likewise, the ideal environment for nurturing children is not possible except in the context of a *consortium omnis vitae*. The Church teaches: “The intimate union of marriage, as a mutual gift of two persons, this intimate union, as well as the good of the children demand total fidelity from the spouses and require an unbraekable union between them.”²³⁹ The total gift of each other cannot be divided, nor can it be temporary; it must be given exclusively to one person in an exclusive and indissoluble union that lasts until death,²⁴⁰ even when offspring are not born due to sterility.

It can be concluded that *CIC* 1983 upheld the properties of marriage which were manifested by the Council of Trent and *CIC* 1917. Like the elements of marriage discussed above, these properties are linked to each other in such a way that when one of them is excluded by a positive act of the will, marriage becomes invalid. Unity points to monogamous marriage thus excluding certain cultural practices which violate the unity of a marriage contract. Indissolubility excludes divorce and affirms the dignity of every person and every marriage. Both unity and indissolubility characterize valid marriages,

of Spouses, Validation, Presumed Death, Ottawa, Faculty of Canon Law, Saint Paul University, 2008, 92–128 and in Appendix I, 209–218 (Preface).

²³⁹ *Catechism*, no. 1646. These words of the *Catechism* link the property of indissolubility (unbreakable union) to the creative end of marriage. See also *Catechism*, no. 1641; *Gaudium et spes*, no. 48 in FLANNERY 1, 950; *Familiaris consortio*, no. 20, in FLANNERY 2, 829.

²⁴⁰ It can be argued that the requirement of marital fidelity and indissolubility of every marriage is a stipulation of divine law. Cf. Gospel according to: Mark 10:9-12; Matthew 5:32; Luke 16:18.

whether it is canonical or natural/customary form.

1.5 — Papal Teaching on Marriage after the Promulgation of *CIC* 1983

Following the promulgation of the *CIC* 1983, the century-long discussions on marriage seemed to have been settled. However, the Supreme Legislator, the Roman Curia, and jurisprudence continued to offer guidance to the correct interpretations of the canons on marriage. This section examines papal allocutions to the Roman Rota and *Catechism*. The teaching of Francis in *Amoris laetitia* is discussed in Chapter Four.

In his allocutions to the Roman Rota, John Paul II emphasized marriage as a *consortium totius vitae* which he had underlined before in *Familiaris consortio*²⁴¹ and in c. 1055, *CIC* 1983. He pointed out the importance of conjugal love and complementarity of the spouses in the conjugal relations when he said: “The central core and foundation of these principles is the authentic concept of conjugal love between two persons of equal dignity, but different and complementary in their sexuality.”²⁴² In his allocution to the Roman Rota on January 27, 1997, John Paul II implied that the personalist interpretation of marriage is a basis for the interpersonal reality. He stated: “Putting the person at the center of the civility of love does not exclude the law, but instead demands it, leading to a

²⁴¹ In *Familiaris consortio*, the pope exercised his teaching authority and used this occasion to present the Church’s teaching on marriage and the family after *Humanae vitae*. In this document, the pope makes reference to *Gaudium et spes* and *Humanae vitae* and again emphasized the personalist dimension of marriage. He also sought to explain marriage and marital love as: “The total physical self-giving in which the whole person, including the temporal dimension, is present; if the person were to withhold something or reserve the possibility of deciding otherwise in the future, by this very fact he or she would not be giving totally” (no. 11, in FLANNERY 2, 822). These words of the Roman Pontiff reflect what came out in *CIC* 1983 as c. 1055, §1 regarding *bonum coniugum*. In addition, they reflect the possibility of excluding marriage or any of its essential elements or properties by a positive act of the will in simulated consent (c. 1101, *CIC* 1983) or by placing a future condition (c. 1102, §1, *CIC* 1983).

²⁴² JOHN PAUL II, Allocution to the Roman Rota, January 21, 1999, in AAS, 91 (1999), 622-627; Engl. transl. in W. H. WOESTMAN, *Papal Allocutions*, 249-253; here on 250.

discovery of marriage as an interpersonal reality.”²⁴³ In this statement, he disapproved the individualistic culture where spouses deny the existence of marriage whenever problems arise in their shared life as lack of a true vision of personalism.

The pope indicated that God is the author of marriage and has endowed it with various purposes and values, and that the *consortium totius vitae* is by its very nature ordered to the good of the spouses and the procreation and education of children (c. 1055, *CIC* 1983; c. 776, §1, *CCEO*).²⁴⁴ Therefore, he admonished what he called the “culture that rejects the indissolubility of marriage and openly mocks the couple’s commitment to fidelity.”²⁴⁵ The pope called upon the couples to observe fidelity to the words of Christ in the gospel. This means: “A ratified and consummated sacramental marriage can never be dissolved, not even by the power of the Roman Pontiff.”²⁴⁶

Benedict XVI also affirmed the indissolubility of the bond of marriage. In his allocution to the Roman Rota in 2006, he sought to counteract the pastoral “attitude of

²⁴³ JOHN PAUL II, Allocution to the Roman Rota, January 27, 1997, in AAS, 89 (1997), 486-489; Engl. transl. in W. H. WOESTMAN, *Papal Allocutions*, 241-244; here on 242. The pope’s view is that the canonical norms are a juridical expression of the underlying anthropological and theological reality of marriage.

²⁴⁴ The full text of this teaching in Italian reads: “Il magistero ecclesiale e la legislazione canonica contengono abbondanti riferimenti all’indole naturale del matrimonio. Il Concilio Vaticano II, nella *Gaudium et spes*, premesso che ‘Dio stesso è l’autore del matrimonio, dotato di molteplici beni e fini’ (no. 48), affronta alcuni problemi di moralità coniugale rifacendosi a ‘criteri oggettivi, che hanno il loro fondamento nella natura stessa della persona umana e dei suoi atti’ (no. 51). A loro volta, entrambi in Codici da me promulgate, formulando la definizione del matrimonio, affermano che il ‘*consortium totius vitae*’ è ‘per sua indole naturale ordinato al bene dei coniugi e alla generazione ed educazione dei figli’ (c. 1055, *CIC* 1983; c. 776, §1, *CCEO*).” JOHN PAUL II, Allocution to the Roman Rota, January 24, 2001, in AAS, 93 (2001), 358-365; Engl. transl. in W. H. WOESTMAN, *Papal Allocutions*, 260-266; here on 261.

²⁴⁵ JOHN PAUL II, Allocution to the Roman Rota, January 21, 2000, in AAS, 92 (2000), 350-355; Engl. transl. in W. H. WOESTMAN, *Papal Allocutions*, 254-259; here on 255. See also Mt. 19:6; Mk. 10: 11-12.

²⁴⁶ Ibid. Engl. transl. in W. H. WOESTMAN, *Papal Allocutions*, 257. The pope also made reference to his predecessors who have reaffirmed that the Pontiff’s power does not extend to ratified and consummated marriages.

pleasing the parties” which turns out to be counterproductive.²⁴⁷ Therefore: “The principle of the indissolubility of marriage forcefully reaffirmed by John Paul II pertains to the integrity of the Christian mystery” as the truth that is sometimes obscured.²⁴⁸ He also stressed the sacramental nature of marriage between Christians which is at the same time rooted in the divine plan of God of redemption. Conjugal love is closely related to the union of Christ with the Church, in the way that the “spouses are united in their sexual dimension.”²⁴⁹

In order to achieve the above, Benedict XVI taught that the couples would need to be naturally and canonically capable of entering marriage. He distinguished between capacity and difficulty. While referring to the earlier allocution of John Paul II, he concluded: “Incapacity alone, not difficulty in giving consent and in realizing a true community of life and love, invalidates a marriage.”²⁵⁰ He also exhorted the Roman Rota to stand for the “innate human capacity for marriage [because it] is itself the starting point for enabling couples to discover the natural reality of marriage and its importance for salvation.” He also explained that capacity is the “minimum needed for those marrying to give their being as a male person and a female person in order to establish

²⁴⁷ This is because declaring marriage null in order to please the parties breaks what would be potentially a valid marriage and promotes the divorce culture, thus undermining the property of marital indissolubility.

²⁴⁸ BENEDICT XVI, Allocution to the Roman Rota, January 28, 2006, in AAS, 98 (2008), 135-138; Engl. transl. in W. H. WOESTMAN, *Papal Allocutions*, 289-292; here on 291. Benedict XVI was exhorting the tribunal ministry personnel to be lovers of truth and pastorally minded as well.

²⁴⁹ BENEDICT XVI, Allocution to the Roman Rota, January 27, 2007, in AAS, 99 (2007), 86-91; Engl. transl. in W. H. WOESTMAN, *Papal Allocutions*, 293-297; here on 295.

²⁵⁰ BENEDICT XVI, Allocution to the Roman Rota, January 29, 2009, in AAS, 101 (2009), 124-128; Engl. transl. in W. H. WOESTMAN, *Papal Allocutions*, 302-309, here on 303. Cf. JOHN PAUL II, Allocution to the Roman Rota, February 5, 1987, in AAS, 79 (1987), 1453-1459; Engl. transl. in W. H. WOESTMAN, *Papal Allocutions*, 191-196, here on 194.

that bond to which the vast majority of human beings are called.²⁵¹

Finally, Benedict XVI in the last year of his pontificate dwelt on the pastoral and canonical need for marriage preparation. He believes that this preparation is good for the “integral, human and Christian good of the married couple and of their future children,” and that this is “aimed definitively at the holiness of their life.”²⁵² Regarding the objective of marriage preparation, the Roman Pontiff emphasized:

It should never be forgotten, however, that the immediate objective of this preparation is to promote the free celebration of a true marriage, that is, the constitution of a bond of justice and love between the spouses, characterized by unity and indissolubility, ordained for the good of the spouses and for the procreation and upbringing of their offspring, and which between the baptized constitutes one of the sacraments of the New Covenant.²⁵³

Conclusion

CIC 1917 described marriage in terms of its hierarchical composition, namely with its primary and secondary ends. As studies have shown, the sources for the canons on marriage did not indicate the hierarchical ordering of the ends of marriage. However, there is no explanation for this novelty. Discussions regarding a definition of marriage that adequately address the two ends of marriage began after the promulgation of *CIC* 1983.

Mid-20th century canonists still held the understanding of the ends of marriage as hierarchically ordered. From the perspective of theologians, there is a deliberate

²⁵¹ BENEDICT XVI, Allocution to the Roman Rota, January 27, 2007, Engl. transl. in W. H. WOESTMAN, *Papal Allocutions*, 303-304.

²⁵² Benedict XVI gave this exhortation while using *Familiaris consortio* no. 9 as the basis for this teaching. He also identified preparation as “remote preparation, proximate preparation or immediate preparation” (no. 66). See BENEDICT XVI, Allocution to the Roman Rota, January 22, 2011, in *L’Osservatore Romano*, January 26, 2011, 4-5; Engl. transl. in W. H. WOESTMAN, *Papal Allocutions*, 310-314; here on 312.

²⁵³ *Ibid.*, 312.

movement from this traditional understanding to a more personalist perspective of looking at marriage. These new theological ideas were not recognized by the Church but instead condemned as standing against the Church's authentic teaching on marriage. Even when this was done, popes of the time still acknowledged that the personalist dimension of the marital relationship was still relevant for the *consortium* of marriage. Therefore, the Church remained open to further considerations regarding how marriage is to be understood.

The Second Vatican Council was an important moment in the contemporary understanding of marriage. *Gaudium et spes* became a primary document in blending the two ends of marriage and placing them on an equal footing. Marriage is now understood as a partnership, a covenant and communion of life and of love, where children are born and nurtured. The "good of the spouses" and "mutual assistance" reflect the personalist view of marriage, while "the good of the children" stands for the procreative end of marriage. Thus, the hierarchical ordering of the ends of marriage was eliminated; marriage is not to be regarded as simply a place where children are born, but rather a communion of love where children are born and educated. Therefore, this document became a bridge from understanding the secondary end of marriage as "remedy of concupiscence" to "the good of the spouses" and "mutual assistance."

The Second Vatican Council did not settle the question regarding the canonical definition of marriage. Post-conciliar teaching on marriage, as seen in papal documents like Paul VI's Encyclical Letter *Humanae vitae*, emphasized the dignity of marriage as a partnership that is ideal for the upbringing of children. It lays particular emphasis on the interpersonal relationship of the spouses which reflects the personalist understanding of

marriage. John Paul II's encyclical letter *Familiaris consortio* enhanced the understanding of marital love and interpersonal communion as equally essential for marital partnership. Rotal jurisprudence helped to interpret the Second Vatican Council's teaching on marriage until this teaching was translated into the canons of *CIC* 1983.

With the *CIC* 1983 in force, there is a shift in the understanding of marriage. Instead of the *CIC* 1917's hierarchy of ends, the *CIC* 1983 text presents marriage *in facto esse* in terms of the connection between the conjugal relations and the procreative end of marriage. Following *Gaudium et spes* and c. 1055, §1, *CIC* 1983, the procreation of children ceases to be the primary end, and mutual help became equally important.

Another change is in the understanding of marriage as contract or covenant. The spouses entering marriage commit themselves to an irrevocable covenant. The use of the biblical term *foedus* does not eliminate the use of contractual language while referring to marriage in *CIC* 1983. Furthermore, marriage is now presented in terms of total self-giving (*donatio*), other than merely the giving of the right to the body (*ius in corpus*) for the generation of children. This new understanding of marriage is a fruit of both the Second Vatican Council and the revision process of the canons on marriage.²⁵⁴

The *CIC* 1983 has included the personalist understanding of marriage, the concept which had been introduced by *Gaudium et spes*. Marriage is no longer described in terms of exchange of the right of to the body; rather, it is a *consortium*, a covenant and a communion of life and of love. In the texts of the *CIC* 1983 there is continuity of the *CIC* 1917 as well as novelty in the description and application of the canons on marriage. Even if marriage is still described and not defined, this description is sufficient to

²⁵⁴ For more elaboration on this shift in the understanding of the theology of marriage, see B. A. SIEGLE, *Marriage Today, A Commentary on the Code of the Canon Law*, 27.

prescribe what the two ends of marriage and its properties of unity and indissolubility are.

These discussions leading to the promulgation of the *CIC* 1983 indicate that the contents of c. 1084, §3, *CIC* 1983 were not fully addressed. The statement: “Sterility neither impedes nor invalidates marriage” appears as clear and applicable as to need no further discussion. While the procreative end of marriage is no longer the primary end, the desire to fulfill it can be deeply rooted in the spouses’ understanding of marriage so much that sterility could disrupt the marital partnership. The pertinent question is: how can *bonum prolis* be fulfilled when children are desired and they do not come? Chapter Two offers canonical insights into this question.

CHAPTER TWO: JURIDIC RELEVANCE OF IMPOTENCE AND STERILITY TO CANONICAL MARRIAGE

Introduction

The Church has taught that the primary end of marriage is the procreation and education of offspring (*bonum prolis*). Two major obstacles stand in the way of this procreative end of marriage, namely, impotence and sterility. These two obstacles are mentioned in the same canon (c. 1084, *CIC* 1983 and c. 801, *CCEO*). However, each has a different impact on marital consent. Both impotence and sterility have different juridic implications on the “partnership of the whole of life.” This chapter makes a distinction that is necessary in order to understand childlessness which is caused by impotence or sterility. The implications of these two obstacles are then applied to the Ugandan context in Chapter Four.

The impediment of impotence is included in this chapter in order to have a complete treatment of c. 1084, *CIC* 1983 and to show its distinction from sterility. Impotence and sterility affect both men and women alike; yet, as scientific findings reveal, men and women cope with these situations differently. Both impotence and sterility are involuntary human conditions; however, impotence invalidates marital consent and sterility does not.

This chapter is divided into four sections. The first section is an analysis of impotence as defined by medical science and canonical jurisprudence. Different types of impotence are presented in this section while keeping in mind that for marital consent to be null due to impotence, specific conditions must exist. In order to understand the kind

of impotence that invalidates marriage, it is necessary to examine the characteristics of impotence as determined in the canonical doctrine and practice.

The second section is a historical inquiry into ancient theological and canonical references to sterility in marriage. The references considered in this work include Roman law, Saint Augustine and *Decretum Gratiani*. Saint Augustine and Gratian's Decree indicate the Church's perspective on sterility in marriage in the Middle Ages.

The third section explores sterility as defined presently by canon law. Keeping in mind the contemporary understanding of marriage as presented in the first chapter, this section is limited to the contemporary canonical treatment of sterility. Therefore, the section is limited to how *CIC* 1917 and *CIC* 1983 have defined sterility, and how rotal jurisprudence has interpreted and applied it to concrete marriage cases.

The fourth and final section addresses the relevance of sterility to marital consent. In this section, this work makes an application of other canons which relate to sterility. Considered here are some canons which concern human will, such as those pertaining to error, deceit and condition. These defects of the will have an impact on marital consent, more specifically, when sterility exists. This section therefore seeks to answer questions such as: Can a partner make an erroneous decision to marry based on the presumed fertility of the other? Can one party deceive the other about the quality of fecundity in order to obtain consent? Do couples who marry with a strong desire to have children place a conditional consent? An analysis of the canons on error, deceit and condition reveals the juridic relevance which sterility is likely to have on both canonical and customary marriages. This approach helps to determine how, in itself, sterility has no impact on consent unless other factors come into existence.

2.1— Canonical Understanding of Impotence

Impotence and sterility appear in c. 1084, *CIC* 1983; yet these are different human conditions, and they have different juridic consequences on canonical marriage. Both can be considered obstacles to the attainment of *bonum prolis*. This section focuses on male and female impotence and explores how canon law stipulates its negative impact on marital consent. Considerations on sterility and how the Church understands it follow.

2.1.1 — *Inhabilitas* for Marriage Due to Impotence

C. 1068, *CIC* 1917¹ addressed these two elements and specified the difference between them and the juridic relevance they have on marital consent. Impotence impedes the capacity to place in a human manner that “conjugal act which is suitable in itself for the generation of offspring to which marriage is ordered by its nature and by which the spouses become one flesh” (c. 1061, *CIC* 1983).² Therefore, impotence in relation to

¹ Canon 1068: §1: “Impotentia antecedens et perpetua, sive ex parte viri sive ex parte mulieris, sive alteri cognita sive non, sive absoluta sive relative, matrimonium ipso naturae iure dirimit.”

§2: “Si impedimentum impotentiae dubium sit, sive dubio iuris sive dubio facti, matrimonium non est impediendum.”

§3: “Sterilitas matrimonium nec dirimit nec impedit.” In the *CIC* 1917, impotence was described as “impotentia coeundi, inaptitude for conjugal relations, or for those acts which of their nature, per se, intrinsically are apt for generation,” and sterility was defined as impotentia generandi.” Cf. H. A. AYRINHAC, *Marriage Legislation in the New Code of Canon Law*, New York, Benzinger Brothers, 1918, 139. The author also mentions that sterility, “which is not of itself, even a prohibitory impediment, as has always been the common teaching and is here explicitly declared.” This statement reveals that the Church has always taught that sterility does not invalidate marriage, and the canon is now stating the obvious in legal terms. However, no source or reference for this teaching is mentioned. Thus, impotence is further classified as the inability to perform the sexual act in a physiological manner, *impotentia coeundi*, and the inability to ejaculate normal, active and motile sperm. This is called *impotentia generandi*, or procreative impotence, and is equal to sterility. Cf. T. H. VAN DE VELDE, *Fertility and Sterility in Marriage, their Voluntary Promotion and Limitation*, New York, Random House, 1931, 221. The author also defines potency in terms of four elements: “Libido, or urge for sexual activity; erection, or swelling and rising of the member; ejaculation, or emission of semen; and orgasm, or culmination of sexual pleasure” (Ibid., 222). However, it can be argued that the latter element, though implied, is not necessary for the definition of potency; besides, it cannot be canonically verified to have happened.

² This means that the conjugal act is intrinsic to the matrimonial contract. Cf. *coram* FIORE, December 4, 1984, in *RRT Dec.*, 76 (1984), 592-610. *Coram* Fiore concluded: “Copula ideo coniugalit inest in obiecto contractus matrimonialis” (594). In Roman law, male impotence was a justified reason for the woman to divorce her husband and to recover her dowry. Cf. JUSTINIAN, C. 5, 17, 10; P. E. CORBETT,

marriage is defined as: “Inability to have sexual intercourse [...] an incapacity to consummate marriage and not merely an incapacity for procreation.”³

Impotence is an impediment of natural law⁴ and affects men and women; therefore, the *CIC* 1917 sums up all that the Church has held to constitute impotence and its impact on marital consent. Sexual impotence was defined as the inability to have complete sexual intercourse.⁵ C. 1068, §1, *CIC* 1917 does not define impotence⁶ but

The Roman Law of Marriage, Oxford, Clarendon Press, 1969, 247-248.

³ H. BLACK, *Black's Law Dictionary*, 756. In medical terms, impotence is defined as: “The inability of the man to achieve a quality of erection sufficient to enable him to achieve coitus successfully.” Cf. J. MARMOR, “Impotence and Ejaculatory Disturbances,” in A. FREEDMAN, H. I. KAPLAN and J. B. SADOCK (eds.), *Comprehensive Textbook of Psychiatry II*, Baltimore, Williams and Wilkins, 1975, 1524-1528, here on 1524. Canonists define male impotence as the inability to perform a natural sexual act or to achieve an erection of the penis, penetration of the vagina by the penis and the emission of the ejaculate in the vagina. All these elements must occur in male potency. See B. A. SIEGLE, *Marriage According to the New Code*, New York, Alba House, 1986, 66; *coram* PARISELLA, July 13, 1968, in *RRT Dec.*, 60 (1968), 563-571, here on 564; *coram* LEFEBVRE, February 20, 1970, in *RRT Dec.*, 62 (1970), 174-182, here on 175.

⁴ For J. Mc Carthy: “When we say that conjugal impotence is a diriment impediment of the natural law we mean that one who is impotent is, in the very nature of things, incapable of entering marriage contract.” Cf. J. MCCARTHY, *The Matrimonial Impediment of Impotence with Special Reference to the Physical Capacity for Marriage of an “Excised Woman” and of a “Doubly Vasectomised Man,”* Rome, Officium Libri Catholici, 1948, 27. During the revision process, the Code Commission had discussions which led to the conclusion that impotence is an impediment of natural law, and so it invalidates marriage. Cf. *Communicationes*, 7 (1975), 54-56. According to *CIC* 1917, impotence was considered to invalidate marriage “by divine and not simply by the ecclesiastical law, as some had thought [...], because it means the absence of the object of marriage contract itself.” Cf. H. A. AYRINHAC, *Marriage Legislation in the New Code of Canon Law*, 140.

⁵ By “complete sexual intercourse” is meant that act of human action of generation which “consists in copula, which is best defined according to its physiological elements: the penetration of the vagina by the male organ and the emission of true semen within it.” T. L. BOUSCAREN, “Marriage,” in T. L. BOUSCAREN, A. C. ELLIS and F. N. KORTH, *Canon Law, a Text and Commentary*, 397-588, here on 467.

⁶ J. McCarthy’s study supports this view. He writes: “Canon 1068 does not define impotence. Nor do we have any formal definition in pre-code law. In fact, in pre-code times, there was no concise formulation of the law stating the impediment.” See J. MCCARTHY, *The Matrimonial Impediment of Impotence with Special Reference to the Physical Capacity for Marriage of an “Excised Woman” and of a “Doubly Vasectomised Man,”* 24. He also mentioned that etymologically and legally, impotence signifies an incapacity, a powerlessness to do or to achieve something. Matrimonial impotence means, therefore, an incapacity to achieve something in the matrimonial sphere; the ends of marriage and marriage act. In order to help in the understanding of impotence, he paraphrased canon 1068 as follows: “Inability to have conjugal intercourse – either on the part of the man or of the woman – if it predates marriage and is perpetual (in the sense that it can be cured only by a miracle, unlawful means or an operation dangerous to life) - is an invalidating impediment of the natural law” (*Ibid.*, 25). For further discussion regarding the concept of perpetual impotence and what “ordinary means” is, see B. M. ASHLEY and K. D. O’ROURKE

takes it for granted that impotence is known and does not go as far as c. 1084, §3, *CIC* 1983. It simply states: “Antecedent and perpetual impotence, either on the part of the man or on the part of the woman, whether known or not, whether absolute or relative, impedes marriage by natural law itself.”⁷ The addition of “whether known or not” in the *CIC* 1983 raises a question of retroactivity of the law for those marriages which were celebrated according to the *CIC* 1917.

The addition mentioned above indicates that if it is certain that impotence existed before the exchange of consent, and it is not for a short time but perpetual, it renders marriage invalid. The underlying principle for this invalidity is the inability of the impotent spouse to hand over and to receive the right to the body (*ius in corpus*),⁸ which is the object of marriage according to canon 1086, §2, *CIC* 1983.

Canonists distinguish between organic impotence, which originates from the physical or anatomical defects in the sexual organs, and functional impotence, which is

(eds.), *Healthcare Ethics, a Theological Analysis*, 3rd ed., St. Louis, MO, Catholic Health Association of the United States of America, 1989, 380-384; T. J. O'DONNELL, *Medicine and Christian Morality*, 50-64. This means that even if the parties in marriage are aware of impotence but are ready to go ahead with marriage, marriage would still be considered invalid. Impotence, being an impediment of natural law, cannot be dispensed. Cf. I. GRAMUNT, J. HERVADA and L. A. WAUCK, *Canons and Commentaries on Marriage*, 26. However, when the impediment ceases, marriage can be convalidated according to c. 1156, §§ 1-2, *CIC* 1983 or sanated according to c. 1163, §3, *CIC* 1983. Likewise, if a *vetitum* had been imposed upon obtaining certainty that impotency existed it should be lifted upon learning that the impediment has ceased.

⁷ I. Gramunt, J. Hervada and L. A. Wauck explain different ways of classifying impotence. They refer to impotence as: “Incapacity to perform the marital act, is classified as ‘antecedent’ if it existed before marriage; ‘perpetual’ if it cannot be cured by means that are licit and not dangerous to life; it is ‘absolute’ if it prevents a person from marital intercourse with all others, and is ‘relative’ if it prevents it only with a certain person or persons.” Cf. I. GRAMUNT, J. HERVADA and L. A. WAUCK, *Canons and Commentaries on Marriage*, 26.

⁸ The right to the body is not simply a bodily right, but a right to a specific kind of bodily use (*ius ad usum corporis alterius in ordine ad actus per se aptos ad proles generationem*). Cf. J. MCCARTHY, *The Matrimonial Impediment of Impotence with Special Reference to the Physical Capacity for Marriage of an “Excised Woman” and of a “Doubly Vasectomised Man,”* 31.

caused by defective psychological processes.⁹ An impotent person is unable to establish a partnership of the whole of life and to consummate marriage in the first place.¹⁰

Impotence may exist in a man, woman or both parties in marriage.

Another distinction can be made as to whether impotence is absolute or relative. Natural impotence is considered absolute since it is congenital and affects the physical constitution of the person. Such a condition could arise from a disease, or surgery.¹¹ An impotent person is unable to have marital relations with any member of the opposite sex. In contrast, relative impotence occurs when a person is unable to have marital relations

⁹ Organic impotence occurs when the person in question suffers injury in a way that makes him incapable of sexual intercourse, or when one simply lacks the organs needed for copulation. Functional impotence is a result of a nervous malfunction or psychological cause, when the physical organs are intact. Cf. R. C. BAUHOFF and A. MENDONÇA, "Psychic Impotence," in *Studia canonica*, 24 (1990), 205-240, here on 205-206; T. P. DOYLE, "Marriage [cc. 1055-1165]," in *The Code of Canon Law A Text and Commentary*, 737-826; see B. A. SIEGLE, *Marriage Today, a Commentary on the Code of the Canon Law*, 103. The Pontifical Commission for the Revision of the Code of Canon Law considered various interpretations of impotence in male and female persons and what constitutes marital consummation. See *Communicationes*, 6 (1974), 177-198.

¹⁰ K. E. Boccafolo is of the view that impotence, as a biological condition, does not invalidate marriage. While commenting on c. 1068, *CIC* 1917, he clarifies: "Canonically, the impediment of impotence is not the inability to have sexual intercourse, but rather the inability to hand over the right and assume the obligation to place acts *per se aptos ad prolis generationem*. Thus it is only when an organic or functional condition of the genital apparatus prevents one from assuming the rights and obligations to perfect copula that the impediment of impotence exists and nullifies marriage." K. E. BOCCAFOLA, *The Requirement of Perpetuity for the Impediment of Impotence*, JCD diss., Rome, Editrice Università Gregoriana, 1975, 115. See also *coram* STAFFA, October 12, 1951, *RRT Dec.*, 43 (1951), 626-629. *Coram* Staffa expressed this view in the following words: "Si ergo ista coniugum carnalis coniunctio impossibilis est, nec traditio et acceptation iuris ad actus per se aptos ad prolis generationis possibilis erit, quia ius ad impossibile ne concipitur quidem, et consequenter matrimonium, iure ipso naturae, impossibile erit (Ibid., 626). Both Boccafolo and Staffa provide us with a precise meaning of impotence and the distinction as to whether the impediment exists in case of an incapacity and not mere difficulty to generate offspring.

¹¹ Cf. P. V. HARRINGTON, *The Impediment of Impotency and the Notion of Male Impotency*, Washington, DC, The Catholic University of America, 1959, 193. The author lists the following conditions that cause erection malfunction, thus causing impotence: "Absolute frigidity of the man, diseases of the center controlling erection, sexual neurasthenia, progressive spinal paralysis caused by a venereal infection, anaphrodisia which prevents erection, aphrodisiac which causes too much venereal excitement with consequent premature ejaculation, and sexual anaesthesia." See *ibid.*, 326. The impediment of impotence arises from a natural and intrinsic cause and it is permanent. It is attributed to mysterious causes when the actual cause is not known. The magical cause is usually upheld by communities which have not developed medical science; so the affected party or couple have no chance to know the actual cause of impotence. In some cases, modern medicine is unable to determine the cause or to find a cure for impotence and in some instances, impotence is thought to be cured by magical intervention.

with some specific individuals or at certain times.¹²

It can be concluded from the above that impotence as determined by canon law makes it impossible for the affected party to marry. An impotent person is not able to hand over and to receive the right to those acts that are apt to generate children (c. 1081, §2, *CIC* 1917). Impotence makes one unable to have marital relations; therefore, it makes that person incapable of making a marital contract. Unless it is determined that the kind of impotence which a person suffers from can be treated and cured by ordinary means, it renders one incapable to enter marriage validly.

2.1.2 — Elements of Male Impotence

Scientifically, male impotence is divided into two categories, organic and functional impotence.¹³ The first category of impotence is called organic or instrumental impotence where one or more sexual organs required for intercourse are missing or disfigured. In some instances, the man's penis might be lacking completely, or is an abnormal size or shape, which prevents it from penetrating or ejaculating into the vagina.¹⁴ Impotence can also be a result of dyspareunia.¹⁵ This is the experience of a very

¹² Cf. T. J. O'DONNELL, *Medicine and Christian Morality*, 216. The author also explains: "Absolute impotence is a defect which makes the act of perfect copula impossible with all members of the opposite sex; e.g., the absence of the penis or the absence of the vagina. Relative impotence is a defect which makes the act of perfect copula impossible between two particular individuals, and so is an impediment to their marriage with each other only: e.g., disproportion of size."

¹³ T. H. Van de Velde broadens the classification of impotence when he offers four categories of impotence as: "Neuro-psychic impotence; Impotence due to abnormalities of the sexual impulse; Impotence caused by general morbid conditions, weakness or disease; Organic Impotence." See T. H. VAN DE VELDE, *Fertility and Sterility in Marriage, Their Voluntary Promotion and Limitation*, 224.

¹⁴ Cf. L. G. WRENN, *The Invalid Marriage*, 9. Wrenn also adds: "Retrograde ejaculation" as another form of organic impotence and indicates that this can also be the case for functional impotence. A. Bajada identifies several organic conditions that would cause organic impotence: lack of testicles, a single testicle, testicle changing its position in the body, atrophied testicles, too large testicles, epididymus, seminal ducts. Anomalies can also regard the penis, e.g.: too long, *penis crassus*, short and slender, torsion, epispadias and hypospadias, hermaphroditism, etc. For details and definitions, see A. BAJADA, *Sexual Impotence, the Contribution of Paolo Zacchia (1584-1659)*, Rome, Editrice Pontificia Università Gregoriana, 1988, 88-100.

painful sensation during intercourse and can render it impossible. When it occurs in women, it is called “coital distress” (an example of psychic impotence).¹⁶

The second category is called functional impotence, or psychological impotence. This is an physiological condition where one or more sex organs seem normal but they do not function properly or at all. This condition is a result of various causes, which include birth defects, diseases like diabetes, and medication (side effects or bad use of).¹⁷ Wrenn indicates that functional impotence can also be caused by “paraplegia, a paralysis of the lower extremities of the body resulting from disease or injury to the central nervous system and other similar infirmities which does in fact render intercourse impossible.”¹⁸

¹⁵ Dyspareunia is described as a symptom of a pathological condition which involves “persistent or recurrent pain with attempted or complete vaginal entry or penile vaginal intercourse.” S. BHASIN and R. BASSON, “Sexual Dysfunction in Men and Women,” in H. M. KRONENBERG et. al., *Williams Textbook of Endocrinology*, 12th ed., Philadelphia, PA, Saunders Elsevier, 2011, 778-816, here on 790. It is usually associated with one or some of the following: cracks, ulcerations, eczema, or other sensitive lesions, which make coitus unbearably painful. Cf. E. REYNOLDS and D. MACOMBER, *Fertility and Sterility in Human Marriages*, Philadelphia, PA, W. B. Saunders Company, 1924, 99. This is distinguished from *vaginismus*, which is “an affection characterized by painful spasm of the muscles which contract the introitus” [ie., vaginal opening]. Ibid.

¹⁶ For a detailed study of psychic impotence, see R. C. BAUHOFF and A. MENDONÇA, “Psychic Impotence,” 205-240; 293-333; *coram* SERRANO, October 22, 1971, in *RRT Dec.*, 63 (1971), 762-780; *coram* EWERS, November 16, 1974, in *RRT Dec.*, 66 (1974), 742-748; *coram* PINTO (J. M. PINTO), January 25, 1985, in *Monitor Ecclesiasticus*, 110 (1985), 456-467; *coram* SABATTANI, April 10, 1959, in *Monitor Ecclesiasticus*, 84 (1959), 616-634.

¹⁷ AMERICAN PSYCHIATRIC ASSOCIATION, *Diagnostic and Statistical Manual of Mental Disorders*, 4th ed., Washington, DC, American Psychiatric Association, 1994, 517.

¹⁸ L. G. WRENN, *The Invalid Marriage*, 9. T. J. O'DONNELL, *Medicine and Christian Morality*, 221. J. J. Brenkle defines paraplegia in the following terms: “A paraplegic is one who, as a result of disease or injury to the central nervous system is afflicted with a paralysis of the lower extremities of the body.” J. J. BRENKLE, *The Impediment of Male Impotence with Special Application to Paraplegia*, Washington, DC, The Catholic University of America Press, 1963, 135. The following seventeen aspects of determining impotence were discussed by the Code Commission for the revision of canon law: “1. The husband’s penis must be capable of penetrating the wife’s vagina; 2. The ejaculate need not contain true semen; 3. Ordinary insemination is required, without consideration of the nature of the seminal fluid; 4. The copula need not be accompanied by complete orgasm or sexual satisfaction on the part of both husband and wife. 5. True copula does not exist if it occurred violently; 6. True copula does not exist if aphrodisiac means are required; 7. True copula exists even if the wife experiences great pain, provided she consented to the act; 8. True copula and consummation do not exist when anti-conceptual devices affect the physical act itself; 9. True copula and consummation exist when the anticonceptual devices do not affect the physical act itself;

It is because of causes such as these that the man is unable to achieve or sustain an erection, a penetration and ejaculation within the vagina.

In positive terms, to be potent for a man, it is sufficient that he possesses a penis, be capable of obtaining and maintaining an erection long enough to penetrate the vagina at least partially, and to ejaculate therein.¹⁹ From the 16th century, the Church has held that a man is impotent if there is no ejaculation of the “semen elaborated in the testicles.” This ruling followed the brief of Sixtus V on the controversy regarding marriages involving eunuchs and spadones or castrated men *Cum frequenter*.²⁰ This brief was prompted by two letters from the Papal Nuncio of Spain, seeking guidance from the pope

10. Double vasectomy does not constitute masculine impotence; 11. A woman who has an artificial vagina inserted before marriage is to be considered potent; 12. A woman who has simply a closed vagina or one that is equivalent to being closed is not to be considered impotent; 13. A woman who has had a tubal ligation is to be considered potent; 14. It is not yet decided whether functional impotence constitutes a diriment impediment of impotence; 15. It is not certain whether impotence is an impediment of the natural law or an impediment arising from the very nature of marriage (new canon 283, 1); 16. If the impediment of impotence is doubtful, either by doubt of law or doubt of fact, marriage is not to be prohibited, nor, as long as the doubt remains, is it to be declared null (new canon 283, 2); 17. Sterility does not prohibit marriage or render it invalid, unless the sterility was fraudulently concealed (new canon, 3).” Cf. *Communicationes*, 6 (1974), 177-198; Engl. transl. in B. A. SIEGLE, *Marriage Today: A Commentary on the Code of the Canon Law*, 105. These 17 points of discussion by the Code Commission formed a basis for c. 1084, *CIC* 1983. Reference to impotence and sterility in rotal jurisprudential interpretation by Boccafola and Staffa as discussed above reflect the outcome of this discussion. Unless sterility is an object of deceit (c. 1098, *CIC* 1983), it has no impact on the status of canonical marriage.

¹⁹ J. P. BEAL, “Marriage [cc. 1055-1165],” in *CLSA Comm2*, 1284. J. P. Beal gave this definition of what constitutes a sexual act. Bauhof and Mendonça elaborated more on the elements of male impotence in the following words: “Male impotence is demonstrated by the inability to obtain an erection, an inability for penetration of the vagina, and/or inability to ejaculate in the vagina during intercourse [...] while some degree of penetration is necessary, it is not necessary that the entire penis penetrate the vagina. A partial penetration by the glans permitting ejaculation in the vagina fulfills the juridical requirements of penetration.” Cf. R. C. BAUHOFF and A. MENDONÇA, “Psychic Impotence,” 209; *coram* RAAD, March 9, 1978, in *EIC*, 34 (1987), 362-377. See also J. F. CASTAÑO, *Il Sacramento del Matrimonio*, Rome, Tipolitografia Pioda Giafranco, 1992, 273-287; *coram* PARISELLA, July 13, 1968, in *RRT Dec.*, 60 (1968), 563-571, here on 564; *coram* LEFEBVRE, February 21, 1970, in *RRT Dec.*, 62 (1970), 174-182, here on 175.

²⁰ SIXTUS V, Brief Regarding marriage of Eunuchs and Spadones *Cum frequenter*, June 27, 1587, in P. GASPARRI, *Codicis iuris canonici fontes*, vol. 1, Rome, Typis polyglottis Vaticanis, 1926, 298-299. See full text of the decree (some authors call it a brief and others an apostolic constitution). See also L. AZZOLINI, *De impedimento impotentiae in viro; disceptatio de Ep. “Cum frequenter,” Sixti V*, Naples, Pontificia Facoltà Teologica in “S. Luigi,” 1961, 237-344.

when marriages involving eunuchs and spadones²¹ became a point of controversy from canonists and theologians.²²

In his brief *Cum frequenter*, the pope declared as invalid such marriages on the account that those involved lacked testicles and so they cannot ejaculate semen. In this decree, the pope directed that bishops should prohibit future marriages of eunuchs and spadones (those who lacked testicles); he also nullified all marriages that had been contracted by these people.²³ Therefore, a man was considered impotent when he could not ejaculate semen articulated in his testicles, whether the incapacity was the result of a natural defect, accident or surgery.²⁴ This meant that ejaculation within the vagina is an integral part of a marriage act.²⁵ This provision regards what is required for marital consummation. If, after an accident for example, a man becomes impotent after consummation has taken place, marriage would still be considered valid.

²¹ R. CHARLAND, "La dispense du mariage non-consommé," in *Revue de Droit canonique*, 18 (1968), 30-51. See also S. GHERRO, *Il problema del "verum semen" nel breve "Cum frequenter" di Sisto V*, in *Il diritto ecclesiastico*, 77 (1966), 98-117. During the Islamic occupation of Spain, the Mohammedans had a practice of castrating young men who would be identified to be used as servants for Mohammedan women. This practice remained even after the occupation. Questions were raised as to whether these "castrati" were capable of entering marriage. For further study on the sociological background of the brief *Cum frequenter*, see M. J. CURRAN, *Conjugal Consummation in the Catholic Church: A Problem for Human and Theological Sciences*, STD diss., Rome, Pontificia Universitas Lateranensis, 1988, 77-100.

²² J. E. HUDSON, *Marital Consummation According to Ecclesiastical Legislation*, JCD diss., Ottawa, Faculty of Canon Law, Saint Paul University, 1977, 65.

²³ P. V. HARRINGTON, *The Impediment of Impotency and the Notion of Male Impotency*, 187-188.

²⁴ F. M. CAPELLO, *De Matrimonio*, Rome, Gregorianum, 1940, 343, 377. The term eunuchs refers to those whose testicles have been cut off and they are castrated. As quoted by J. Bajada, P. Zacchia described eunuchs in the following words: "Hominem ex virilium laesione (sive ea laesio per privationem, et exsectionem, contingat, sive aliter) non generantem, etiamsi unius tantummodo testis, vel articulate, et instrumenti vitio id contingeret." Cf. J. BAJADA, *Sexual Impotence, the Contribution of Paolo Zacchia (1584-1659)*, 101. Spadones are those men who are unable to procreate. They lack either one or both testicles and due to this defect are unable to exercise the sexual act (Ibid., 102).

²⁵ On March 1, 1941, the Holy Office gave a decree in response to a question whether for the purpose of marital consummation, ejaculation within the vagina is required. The reply was that semen must be deposited inside the vagina, and in a natural way (*naturali modo*). See SACRED CONGREGATION OF THE HOLY OFFICE, Decree on the Ends of Marriage *De finibus matrimonii*, 235-236.

As a consequence of this decree, those who had already married were to be separated and their marriages declared null. By nullifying the previous marriages of eunuchs and spadones, the pope indicated that the impediment of impotence is of natural law, and his directive was retroactive. All those men who were unable to ejaculate true semen (*verum semen*)²⁶ were impeded from marriage by natural law. Rotal jurisprudence of the 20th century followed the interpretation of *Cum frequenter* in giving their decisions on marriages, which involved lack of true semen.²⁷ In this interpretation, there was no unanimous agreement among the canonists and auditors of the Roman Rota.²⁸

The juridic nature of male impotence was addressed by the Congregation for the Doctrine of the Faith (CDF) in a 1977 decree.²⁹ In this decree, CDF indicated that the

²⁶ From the time Sixtus V wrote *Cum frequenter*, there was no clarity regarding what constitutes *verum semen*. It was Gasparri, who in 1903 made the first attempt to define true semen. While discussing the semen of old men and youths, he defined true semen as “that which was manufactured and elaborated in the testicles;” from then on, the phrase *semen elaboratum in testiculis* has been employed to refer to true semen. Cf. P. GASPARRI, *Tractatus canonicus de matrimonio*, 3rd ed., Paris, G. Beauchesne & Socii, 1904, no. 566. This implies two assumptions: first; testicles are the places where semen is manufactured and stored; and hence castrates and eunuchs, who lack both testicles, are incapable of emitting true semen. Therefore, they are considered impotent. Second; impotent men are those whose testicles are for some reason unable to produce semen, or if the semen that is elaborated in the testicles cannot pass to the urethral orifice because of some obstruction in the canals. Cf. P. V. HARRINGTON, *The Impediment of Impotency and the Notion of Male Impotency*, 332. For a detailed discussion on the controversy of *verum semen*, see *Ibid.*, 330-333. For Wynen, male potency is linked to ejaculation of true semen when he asserted: “Iuxta sanam doctrinam Auctorum probatorum et constantem iurisprudentiam ecclesiasticam [...] copula in sensu canonico habetur quando vir erecto suo membro vagina semen verum [...] naturali modo immediate iniundit.” Cf. *coram* WYNEN, March 25, 1946, in *EIC*, 2 (1946), 197-199.

²⁷ Examples include: *coram* GRAZIOLI, March 29, 1935, *RRT Dec.*, 27 (1935), 182-183; *coram* TEODORI, January 11, 1945, *RRT Dec.*, 37 (1945), 1-8, here on 2; *coram* FIDECICCHI, May 30, 1950, in *SRR Dec.* 42 (1950), 334- 345, here on 336; *coram* BEJAN, October 20, 1960, in *RRT Dec.*, 52 (1960), 444-456, here on 445.

²⁸ Some rotal auditors supported the traditional view, requiring the ejaculation of *semen in testiculus elaboratum*, while others held that the material composition of the ejaculate is not necessary for perfect copula. Examples of these views are reported in: C. LEFEBVRE, “L’impuissance: science medicale et jurisprudence rotale,” in *L’Année canonique*, 15 (1971), 414-427; A. MILLIONI, “Il problema del ‘verum semen’ nelle causa di nullità matrimoniale della Sacra Romana Rota,” in *EIC*, 16 (1960), 90-157; A. SILVESTRELLI, “Circa l’impotenza e l’inconsumazione nella giurisprudenza canonica anche del S. Ufficio,” in *Monitor Ecclesiasticus*, 98 (1973), 112-120. These were some of the opinions regarding *verum semen* until the CDF resolved the question by decree.

²⁹ CONGREGATION FOR THE DOCTRINE OF THE FAITH (= CDF), decree, May 13, 1977, in *AAS*, 69

impediment of impotence exists only when a man is incapable of completing conjugal intercourse and not from the composition or origin of the semen. The decree answered two questions. First: “Whether impotence which impedes marriage consists in the incapacity, antecedent and perpetual either absolute or relative, required for perfect conjugal copula.”³⁰ To this question, the Congregation answered in the affirmative. The second question posed to the Congregation was: “Whether it is true that it is necessary for conjugal copula to require ejaculation of the semen elaborated in the testicles.”³¹ The Congregation replied in the negative. The decree did not mention if it was issued with the approval of the pope *in forma specifica*; this implies that it is an act of the Congregation and did not change the law. However, Paul VI, in his allocution to the Roman Rota in 1978 indicated that he had approved the decree.³²

After the pope’s allocution, there were juridic consequences of the decree. The

(1977), 426, Engl. transl. in *CLD*, 8 (1978), 676-677 (=Decree). See full text in Appendix I (A/B).

³⁰ “Utrum impotentia, quae matrimonium dirimit, consistat in incapacitate, antecedent quidem et perpetua, sive absoluta sive relative, perficiendi copulam coniugalem.” *Decretum*, 426. For impotence to constitute a diriment impediment, it must have the three elements: antecedent, permanence and certitude. Therefore, if impotence is thought to exist, it must be proved with moral certitude that it is permanent and existed prior to the expression of consent. In the case of impotence, the couples are incapable of a meaningful mutual self-giving. In cases of sterility, the couples are capable of mutual self-giving as an essential dimension of a valid consent. See also *coram* PARISELLA, March 24, 1983, in *Monitor Ecclesiasticus*, 108 (1983), 491-502; *coram* POMPEDDA, February 6, 1992, in *RRT Dec.*, 85 (1995), 49-62.

³¹ “Quatenus affirmativa, utrum ad copulam coniugalem requiratur necessario eiactulatio seminis in testiculis elaborati.” CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Decree*, in *CLD*, 676.

³² Cf. PAUL VI, Allocution to the Roman Rota, January 28, 1978, in *AAS*, 70 (1978), 181-186; Engl. transl. in W. H. WOESTMAN, in *Papal Allocutions*, 144-149. The pope indicated his approval in the following words: “In this respect, the decree issued May 13, 1977, by the Sacred Congregation for the Doctrine of the Faith and expressly approved by us is a particular significant test (146).” By this text, the pope indicated his approval to the answer given by the Congregation. With this specific approval, the decree is considered as a papal act and a binding act of legislation. In ordinary circumstances, when the pope is to approve a document in a special way, this document should bear the words: “*in forma specifica approbabit*,” Cf. SECRETARIUS STATUS, *Regolamento generale della Curia romana*, April 30, 1999, in *AAS*, 91 (1999), 630-687. The pertinent text of the *Regolamento* reads: “Affinché consti dell’approvazione in forma specifica si dovrà dire esplicitamente che il Sommo Pontefice « in forma specifica approbavit » (art. 126, §4).” This was a revision of the same regulations made by the same office on February 4, 1992, and the above paragraph remained unchanged.

first one is that whatever seminal liquid is ejaculated suffices for perfect copula. It can also be said that it is not necessary for the ecclesiastical judge to request for scientific investigation regarding the origin and nature of the ejaculate.³³ Therefore, as long as there is ejaculation, there is potency; no scientific examination is necessary to determine the origin of the ejaculate.³⁴

The second consequence of this decree regards vasectomy. By performing vasectomy, a male person can become sterile and even impotent. If the procedure results in impotence, the man becomes unable to elicit true consent. If the person becomes only sterile and can still perform a completed conjugal act, then one can marry validly. For those who have performed vasectomy, the decree did not prohibit them from marrying.³⁵ Therefore, the mere fact of a man undergoing a vasectomy does not constitute a ground for the nullity of marriage. When vasectomy is deliberately intended to exclude children in a particular marriage, this exclusion nullifies marriage (c. 1101, *CIC* 1983).

³³ Cf. J. E. HUDSON, *Marital Consummation According to Ecclesiastical Legislation*, 193. For further discussion on “*verum semen*,” cf. P. FEDELE, “*Verum Semen*,” in *EIC*, 18 (1962), 137-157; C. J. MURTAGH, “The ‘*consortium vitae*’ and some Implications of the Jurisprudence on *Verum Semen*,” in *Studia canonica*, 8 (1974), 123-132; P. V. HARRINGTON, *The Impediment of Impotency and the Notion of Male Impotency*, 309-349; I. GORDON, *De processu super rato*, Rome, Pontificia Universitas Gregoriana, 1974, 1179; *coram* DE JORIO, October 13, 1965, in *RRT Dec.*, 57 (1965), 638-652, here on 641; *coram* LEFEBVRE, December 16, 1972, in *RRT Dec.*, 64 (1972), 791-803.

³⁴ The Congregation answered this question in the following way: “2. Quatenus affirmative, utrum ad copulam coniugalem requiratur necessario eiectio seminis in testiculis elaborati. Ad primum: *Affirmativa*; ad secundum: *Negativa*.” CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Decree*, in *CLD*, 426. The entire decree and its Engl. transl. can be found in Appendix I (A/B) of this work.

³⁵ Cf. *ibid.*, 676-677. Unless the surgical procedure of vasectomy renders the man impotent, in itself, it does not affect the validity of marital consent. Invalidity happens when this procedure is embraced as a way to exclude children according to c. 1101, §2, *CIC* 1983. The debate concerning the validity of marriage for sterile men gained momentum in the 1930’s when the “Nazi regime in Germany imposed sterilization on certain categories of men. The Holy Office permitted the celebration of marriages involving these men; however the Roman Rota declared them null on the grounds of impotence if they broke down.” Cf. J. MCAREAVEY, *The Canon Law of Marriage and the Family*, 83. This controversy was settled by the decree of the Congregation for the Doctrine of the Faith in May 1977, and now those men who have undergone vasectomy are free to marry.

The third consequence of this brief concerns the previous interpretation of *Cum frequenter*. Since there were various views of understanding “semen elaborated in the testicles” as the “true semen,” the decree offered a uniform interpretation. The contents of this decree differ from *Cum frequenter*. Whereas *Cum frequenter* insisted on “true semen” for sufficient marital intercourse, now with the CDF decree “semen elaborated in the testicles is not required for true marital intercourse.”³⁶ Thus, the current understanding of true semen is based on this decree.

However, the decree did not solve the question of retroactivity of the law regarding previous rotal decisions, which were based on the prevailing interpretation at the time they were given. Since the issue at hand is of natural law, the application of the decree should be retroactive. Some rotal auditors were of the opinion that the prohibitions (*vetita*) which had been imposed on men who could not ejaculate true semen should be lifted.³⁷

In the *CIC* 1983, impotence of both male and female has a direct impact on marital consent. Canon 1084, §1, *CIC* 1983 states: “Antecedent and perpetual impotence to have intercourse, whether on the part of the man or the woman, which is either absolute or relative, of its very nature invalidates marriage.”³⁸ This paragraph is more precise than its equivalent in the *CIC* 1917. It mentions specifically that “impotence”

³⁶ A. McGRATH, *A Controversy Concerning Male Impotence*, Rome, Pontificia Università Gregoriana, 1988, 5. What had been required for male potency for almost four centuries was changed by the Decree.

³⁷ For example, Serrano Ruiz believes that the impediment of impotence should be retroactive since it is of natural law; See *coram* SERRANO, January 27, 1986, in *RRT Dec.*, 78 (1986), 49-75.

³⁸ Canon 1084, §3, *CIC* 1983: “Impotentia coeundi antecedens et perpetua, sive ex parte viri sive ex parte mulieris, sive absoluta sive relative, matrimonium ex ipsa natura dirimit.” With impotence on either party, there is no completed marital act, which consummates marriage. This union lacks the giving and receiving of the right to those acts that are to be placed in a human manner (c. 1061, §1, *CIC* 1983) and are ordered to the procreation of children.

referred to here is the inability to have a complete conjugal act. Since marriage necessarily is heterosexual, (cc. 1055, §1; 1057, §2, *CIC* 1983), impotence means the inability of either party to have a *heterosexual* union.

It is noted that jurisprudential understanding of male impotence has remained the same after the *CIC* 1983. There was no substantial change in the respective canons, apart from the clarification that was made by the 1977 Decree of CDF regarding true semen. This means that male impotence is understood to mean the “inability to obtain an erection, an inability for penetration of the vagina, and/or an inability to ejaculate in the vagina during intercourse.”³⁹ With this decree, “the actual emission of semen is not required for marriage act to be sufficient for the validity of marriage.”⁴⁰ A potent man must be able to achieve and sustain an erection and have some degree of penetration.⁴¹

³⁹ Cf. R. BAUHOFF and A. MENDONÇA, “Psychic Impotence,” 209. See also R. BAUHOFF, *Canon 1084 and Psychic Impotence*, JCD diss., Ottawa, Faculty of Canon Law, Saint Paul University, 1988, 16; C. O'DONOGHUE, “Marriages – *Rata sed non consummata*,” in H. DOOGAN (ed.), *Catholic Tribunals – Marriage Annulment and Dissolution*, Newtown, NSW, Australia, E. J. Dwyer, 1991, 403; W. KOWAL and W. H. WOESTMAN, *Special Marriage Cases*, 21. A comprehensive description of this situation was given by U. Felice. In his decision, Felice stated: “Whatever factors inhibit sexual drive and thereby impede erection and ejaculation, render defective the sexual function and provoke functional impotence. Because of this it happens that the erection is either lost immediately or it lasts for a very short period and is insufficient to penetrate the vagina; the ejaculation however occurs either precociously at the opening or, despite some penetration, never occurs. Nor is it rare that this sexual dysfunction is related not to all but some women so that the man who is potent with respect to other women, might be impotent, for example in relation to his wife” *Coram* FELICE, July 30, 1949, in *RRT Dec.*, 41 (1949), 448-456, here on 450. See also *coram* DE LANVERSIN, March 17, 1993, in *RRT Dec.*, 85 (1993), 151-169, here on 159; *coram* DEFILIPPI, November 26, 1998, in *RRT Dec.*, 90 (1998), 772-786, here on 778.

⁴⁰ I. GRAMUNT, J. HERVADA and L. A. WAUCK, *Canons and Commentaries on Marriage*, 27. These authors further explain: “a vasectomy, therefore, whether in the man or in the woman would be considered sterility and would constitute no impediment. But a vasectomy consented to before marriage for the purpose of excluding offspring, may represent a positive act of the will to exclude one of the essential elements of marriage, this rendering consent invalid according to c. 1101, §2.”

⁴¹ Authors agree that it is not necessary that the entire penis penetrate the vagina. It suffices that a considerable portion enters and ejaculates within the female member. See J. J. BRENKLE, *The Impediment of Male Impotence with Special Application to Paraplegia*, 80; *coram* PARISELLA, July 13, 1968, in *RRT Dec.*, 60 (1968), 563-571, here on 564; *coram* LEFEBVRE, February 21, 1970, in *RRT Dec.*, 62 (1970), 174-182, here on 175. Ayrinhac explains that under the *CIC* 1917, male impotence was considered as inaptitude for conjugal relations, and “for some this inaptitude exists only when normal sexual relations, which consist essentially in the ‘*immisio membri virilis in vaginam mulieris cum seminis effusione*,’ are not possible, as in

It can be concluded that male impotence results in childlessness even if it is substantially different from sterility. Therefore, if a man is unable to achieve or sustain an erection, to penetrate the female member, and to ejaculate therein, he is impotent. Both medical and canonical understanding of impotence are consistent with the above conclusion. As discussed in Chapter Three, advances in medicine can help to cure most of the causes of impotence in men.

2.1.3 — Elements of Female Impotence

Female impotence is also classified as organic and functional. Female organic impotence consists in the absence of a female sex organ necessary for copulation. Functional impotence consists in the possession of seemingly perfect sex organs that do not function properly. The common dysfunctions are *vaginismus* and arousal disorder or dyspareunia. *Vaginismus* is the painful spasm of all the muscles surrounding and supporting the vagina, which is felt when intercourse is attempted or even when the area is merely touched and which renders intercourse impossible.⁴² Female sexual arousal disorder is described as a persistent or recurrent partial or complete failure to attain or maintain the lubrication-swelling response of sexual excitement until completion of the sexual activity.⁴³ Dyspareunia, which exists also in men, is a recurrent or persistent pain

the cases of aphrodisiac, anaphrodisia, at times of hypospadias and epispadias; of eunuchs, spadones; also of persons who have undergone the operation of vasectomy.” H. A. AYRINHAC, *Marriage Legislation in the New Code of Canon Law*, 139.

⁴² L. G. WRENN, *The Invalid Marriage*, 15-18. Bauhoff and. Mendonça have indicated, “painful intercourse in men and women can be caused by several organic problems although the psychic factors appear frequently as a cause of the pain.” Cf. R. C. BAUHOFF and A. MENDONÇA, “Psychic Impotence,” 227. For detailed treatment of female and male psychic impotence, see *ibid.*, 205-240. Wrenn categorizes the causes of this condition as symptomatic and idiopathic. See L. G. WRENN, *Marriage Annulments*, 4th ed., 1983, 8-17.

⁴³ L. G. WRENN, *The Invalid Marriage*, 15-18. Bhasin and Basson explain: “Women with *vaginismus* has persistent or recurrent difficulties in allowing vaginal entry of a penis, a finger, and/or any object, despite her expressed will to do so. There is often (phobic) avoidance, involuntary pelvic muscle

before, during or after sexual intercourse.⁴⁴ When *vaginismus* and dyspareunia make coitus impossible, this constitutes impotence. If these conditions can make sexual encounter only painful, and no children are born, this can be regarded as sterility.

Potency on the part of the woman means that she has a vagina capable of receiving the erected penis⁴⁵ and to receive what has been ejaculated therein. However, a woman is considered potent even if she lacks post-vaginal reproductive organs, either because of a defect of nature or because of surgery, or if the vagina does not open into the uterus.⁴⁶ It is generally accepted that two conditions are required for potency in women: the possession of the vagina and the capability to receive the penis into the vagina.⁴⁷ The vagina has been determined by Catholic doctrine as the essential organ for copulation, which is apt *per se* for the generation of children.⁴⁸

Discussions on female impotence⁴⁹ have centered on the question whether or not

contraction, and anticipation or fear of pain or the experience of pain.” S. BHASIN and R. BASSON, “Sexual Dysfunction in Men and Women,” in H. M. KRONENBERG et. al., *Williams Textbook of Endocrinology*, 778-816, here on 790.

⁴⁴ L. G. WRENN, *The Invalid Marriage*, 18. These two disorders can conceivably involve intolerable pain for the woman whenever intercourse is engaged in. See also AMERICAN PSYCHIATRIC ASSOCIATION, *Diagnostic and Statistical Manual of Mental Disorders*, 4th ed., 500-502, and 511-513.

⁴⁵ J. P. BEAL, “Marriage (cc. 1055-1165),” in *CLSA Comm2*, 1284. According to Bauhoff and Mendonça, female potency requires a “vagina capable of receiving the erect penis and the ejaculate. The vagina has been canonically defined as the essential organ for copulation which is apt *per se* for the generation of children.” Cf. R. C. BAUHOFF and A. MENDONÇA, “Psychic Impotence,” 210.

⁴⁶ Cf. T. J. O’DONNELL, *Medicine and Christian Morality*, 218. The author clarifies that the “absence of any or all of the post-vaginal generative organs – ovaries, fallopian tubes, uterus - does not constitute impotence, but only sterility.”

⁴⁷ L. ÖRSY, *Marriage in Canon Law: Texts and Comments, Reflections and Questions*, 107. A vagina that is too short to allow penetration even of the corona of the penis, constitutes female impotence unless this condition can be corrected by surgery. Cf. T. J. O’DONNELL, *Medicine and Christian Morality*, 218.

⁴⁸ R. C. BAUHOFF and A. MENDONÇA, “Psychic Impotence,” 210.

⁴⁹ Female impotence has been limited to the narrowness of the vagina. One author E. Friedberg writes about a letter which Gregory II sent to St. Boniface in 726 about divorce and remarriage (cf. W.

the vagina should be open towards the other internal organs to which the semen must be transmitted for fertilization. In some cases, women may lack ovaries or may have a uterus that does not allow the sperm to reach the fallopian tubes. The vagina itself may be closed due to a natural deformity, accident or surgery. The Roman Rota's decision *coram Sabattani* clarified this defect in the following words: "If the vagina itself [...] is closed by a natural defect or by surgery [...] if the vagina leads not to the uterus but to some other organ, the case is one of impotence."⁵⁰

One of the questions that has been debated is what constitutes a "true vagina." It can happen that a female person completely lacks the vagina, or she has been implanted with an artificial one. When there is a complete lack of a vagina the person is considered impotent.⁵¹ In case one possesses an artificial vagina, A. Sabattani clarifies that the mere fact that the vagina is an artificial one does not seem to always be a sufficient basis for

KELLY, *Pope Gregory II on Divorce and Remarriage*, Rome, Analecta Gregoriana, 1977, 279-294). The discussion on female impotence was proposed by Innocent III in his decree *Fraternitatis*. This decree regards the case where a woman had remarried after having had her first marriage declared null because of an "arctatio." The pope decided that the woman should return to her former husband: "Perspicaciter attendentes, quod impedimentum illud non erat perpetuum, quod praetor divinum miraculum per opus humanum absque corporali periculo potuit removeri [...] cum pateat ex postfacto quod ipsa cognoscibilis erat illi, cuius simili commiscetur" (c. 6, X, 4, 15, Friedberg, II, 706-707) as quoted in J. BAJADA, *Sexual Impotence, the Contribution of Paolo Zacchia (1584-1659)*, 130. For the history of the impediment of impotence in both men and women, see A. T. MCCLOY, *The Notion of Impotence in Canon Law*, JCD diss., Quebec, Laval University, 1951.

⁵⁰ *Coram SABATTANI*, February 22, 1963, in *RRT Dec.*, 55 (1963), 126-145, Engl. transl. in *CLD* 6 (1969), 615. During the formulation of c. 1084, §3, *CIC* 1983, the *coetus* discussed the problems associated with female impotence: 1) where a woman has an artificial vagina, made out of a natural tissue that is inserted before marriage; in such a case, the woman is to be considered potent. 2) A woman who has a closed or an equivalently closed vagina is not to be considered impotent. 3) A woman lacking postvaginal organs (*mulier excise*) is to be considered potent. Cf. *Communicationes*, 6 (1974), 196.

⁵¹ In the case where the vagina is intact but other organs e.g. ovaries are missing or closed, this is classified as sterility and not impotence. Cf. T. L. BOUSCAREN, "Marriage," 523-530. While commenting on c.1068, *CIC* 1917, Bouscaren indicates that some of the causes may include: complete retroversion or retroflexion of the uterus, deformities, abnormalities, or defects which close the passage, and finally the excision of the uterus itself, leaving the vagina intact but closed at the upper end (*ibid.*, 527). See also R. C. BAUHOFF, *Canon 1984 and Psychic Impotence*, 74-75. See also *coram* DI FELICE, April 4, 1979, in *Monitor Ecclesiasticus*, 104 (1979), 294-301; *coram* SERRANO, December 14, 1979, in *Monitor Ecclesiasticus*, 106 (1981), 30-45.

impotence. He believes: “[If] surgical procedure is used to repair or construct a missing vagina out of human elements, namely, skin taken from the hips of the person herself, or part of the intestine,” this constitutes potency in the woman.⁵²

Impotence, which invalidates marriage, must be present at the time of consent. This concerns both male and female impotence. It must be certain and perpetual. Therefore, impotence that comes after valid consent has been exchanged and marriage has been consummated does not invalidate consent. As c. 1084, §2, *CIC* 1983 indicates, the presence of impotence must not be presumed but proved to exist if marriage is to be considered null; therefore where doubt exists, marriage should not be stopped or delayed.⁵³

It can be concluded from the above that childlessness can be caused by impotence or sterility. It is only impotence which renders marriage invalid. Potency in women means the capacity to receive the male sexual organ and receive the ejaculate. This constitutes a completed act of sexual intercourse in a woman; whether pregnancy occurs or not, this act makes marriage valid. The impotent spouse is incapable of performing

⁵² Cf. *coram* SABATTANI, February 22, 1963, in *RRT Dec.*, 55 (1963), 126-145, Engl. transl. *CLD*, 6, 612-616.

⁵³ Cf. c. 1060, *CIC* 1983: “Marriage possesses the favor of law; therefore, in a case of doubt, the validity of a marriage must be upheld until the contrary is proven.” See also P. V. HARRINGTON, *The Impediment of Impotency and the Notion of Male Impotency*, 208. Investigation is required in order to ascertain the presence and nature of impotence. Siegle suggests that after prudent investigation has been carried out, and the doubt remains, marriage should proceed even if impotency is an impediment of natural law. Cf. B. A. SIEGLE, *Marriage Today: A Commentary on the Code of the Canon Law* 104. Therefore, the impediment of impotence cannot be dispensed, since it is of natural law. See I. GRAMUNT, J. HERVADA and L. A. WAUCK, *Canons and Commentaries on Marriage*, 27. Regarding doubtful impotence, Ayrinhac wrote: “Often impotency will remain doubtful. If it is question of a marriage to be contracted, doubtful impotency will not prevent it, whether the doubt be one of right or one of fact, as explicitly stated by the law, because no person is to be supposed abnormal unless he be proved to be so. Thus, the Church permits marriage to women whose ovaries have been totally amputated, although according to many it would constitute perpetual impotency. If it is question of a marriage already contracted, it will be held as valid until all reasonable doubt is removed.” See H. A. AYRINHAC, *Marriage Legislation in the New Code of Canon Law*, 141; T. J. O’DONNELL, *Medicine and Christian Morality*, 216.

acts open to children and is, at the same time, unable to offer *mutum adiutuum*. Sterility, even if it has the potential of harming the partnership, does not affect the marital consent of the parties.

2.2 — Sterility in the Traditional Teaching of the Church

Before the advancement of modern science, there was little knowledge about the process of human reproduction. Conception or fertilization were considered works of nature and could not be included in the human contract. Fertility was simply beyond the understanding of any human being.⁵⁴ This section explores the status of sterile marriage as found in Roman law and the medieval Church writings by Saint Augustine and in the *Decretum Gratiani*.

2.2.1 — Sterility and Marriage in Roman Law

In the early centuries of Christianity, the Church existed and operated in the Roman Empire. Because of this, Christians, like any other citizens in the Roman Empire, had to adhere to the Roman laws including those regarding marriage.⁵⁵ The starting point of Roman law legislation is that marriage existed for the sake of procreation. For example, “Justinian explains that marriage confers ‘artificial immortality’ upon human kind and renders human nature eternal insofar as this is possible. For this reason, marriage is sacred and a fitting object of concern for the emperor.”⁵⁶ However, there is no

⁵⁴ Cf. L. ÖRSY, *Marriage in Canon Law: Texts and Comments, Reflections and Questions*, 111.

⁵⁵ Regarding the church’s use of Roman law, P. Stein pointed out: “The personal law of the Church, as an institution, was always Roman according to the principle *ecclesia vivit lege romana* [Lex Rip. 61 (58) 1]” and: “A considerable amount of Roman law was incorporated into Canon Law in the process of compilation.” P. STEIN, “The Eclipse in the West,” in W. J. McDONALD, *New Catholic Encyclopedia*, vol. 7, New York, McGraw-Hill Book Company, 1967, 600-602, here on 601.

⁵⁶ Cf. P. L. REYNOLDS, *Marriage in the Western Church, the Christianization of Marriage During the Patristic and Early Medieval Periods*, 17. The author quotes Plato, *Symposium*, 206e-207d.

mention of procreation as the reason to marry in Justinian's definition(s) of marriage.

It is reported that both sterility and impotence would end the marital contract. Just as impotence was considered an impediment to marriage,⁵⁷ sterility was a reason for amicable separation (*divortium bona gratia*).⁵⁸ Reynolds reports: "Although sterility on the part of the woman was never included as one of the formal grounds for divorce, it is likely that sterility was in fact a common enough reason for divorce [...] Valerius Maximus tells us that the very first divorce in Rome was for sterility."⁵⁹

Every citizen in the Roman Empire was expected to marry and to raise children for the advancement of the empire; therefore, celibacy and childlessness were often punished. Emperor Augustus (31 BC – 14 AD) decreed:

All male citizens between the ages of twenty-five and sixty and all female citizens between twenty and fifty were to be married. Widows were to marry within two (or perhaps three) years of their husband's death, divorcées within eighteen months. Those who had not married by that time were penalized financially; they could not receive inheritances or legacies from those whom they were not related within six degrees of relationship. Those married but childless could receive only half of any such legacies, and childless married couples could only inherit one-tenth of each other's property.⁶⁰

As Reynolds explains: "The most significant penalties pertained to the testamentary

⁵⁷ *Digesta Iustiniani*, 23.3.39.1.

⁵⁸ *Digesta Iustiniani*, 24.1.60-62.

⁵⁹ P. L. REYNOLDS, *Marriage in the Western Church, the Christianization of Marriage During the Patristic and Early Medieval Periods*, 16. The author makes reference to Valerius Maximus, II.1.4. He adds that divorce was considered reprehensible by some; therefore, "the desire for offspring should not be set above marital fidelity." Ibid. This view was taken later by Saint Augustine (SAINT AUGUSTINE, *De bono conjugali*, no. 17), and cc. 1068, §3, *CIC* 1917 and 1084, §3, *CIC* 1983: "sterility does not impede or invalidate marriage."

⁶⁰ J. E. GRUBBS, *Women and the Law in the Roman Empire, A Sourcebook on Marriage, Divorce and Widowhood*, 84. This legislation, compelling all Roman citizens to marry was intended to raise children for the Roman Empire. However, this legislation did not result in more children for the Empire. As J. E. Grubbs remarked: "Marriages and the bringing up of children did not increase for that reason, as childlessness was very prevalent." Ibid., 86. Those who would be punished included Christian ascetics; with growing popularity of asceticism in the fourth century, Emperor Constantine repealed the penalties on the unmarried and the childless. See *ibid.*, 103. With Constantine's abrogation of penalties for celibacy and childlessness, childless persons had the same constitutional "right to accept bequests from a testator other than wife or husband." P. E. CORBETT, *The Roman Law of Marriage*, 121.

succession: childless persons could only inherit half of what had been left to them, while unmarried persons could only inherit from those related to them by marriage or by blood within seven degrees.”⁶¹

When running for public office, Romans preferred citizens who were married, and those who had many children. Every adult citizen had to marry for the sake of begetting children and to enhance one’s position in the State. As Cobbett observed: “Every man must marry in order to have legitimate offspring – *sui heredes* – to continue his estate and his cult, and to provide that worship necessary to the peace of the spirit which survived his death.”⁶² He adds: “In the election of magistrates, the division of magisterial duties, and in the assignment of provinces to pro-magistrates, the married man was preferred to the unmarried and the man with more children to the man with less.”⁶³

In Roman law, only those who married after an advanced age, or who remained childless until the age of sixty for men, and fifty for women, would not be punished. For Corbett: “The Julian laws specifically exempted men over sixty and women over fifty from the penalties of celibacy and childlessness.”⁶⁴ It was understood that at that advanced age, people are not physically able to beget children. All persons below the prescribed age were expected to marry and beget children for the Roman Empire.

It is noted that Roman law had an influence on the canonical understanding of

⁶¹ P. L. REYNOLDS, *Marriage in the Western Church, the Christianization of Marriage During the Patristic and Early Medieval Periods*, 16. However, Constantine repealed the penalties for childlessness in AD 320, having been motivated by the Christian consideration of virginity which some Christians had embraced (CJ 8, 57.1). For more discussion on the rights of the persons who remained childless to inherit only a portion of the family’s estate, see P. E. CORBETT, *The Roman Law of Marriage*, 119.

⁶² P. E. CORBETT, *The Roman Law of Marriage*, 107.

⁶³ *Ibid.*, 107. Cf. GELLIUS, 2, 15, 4; TACITUS, *Annals*, 15, 19; SUETONIUS, *Augustus*, 44.

⁶⁴ P. E. CORBETT, *The Roman Law of Marriage*, 52.

marriage. In both legal systems, impotence was considered an impediment and sterility does not impede marriage. However, in Roman law, sterility was considered a reason to take another wife, or to beget children with a mistress or a slave. By allowing polygamy or amicable separation (*divortium bona gratia*) on the ground of sterility,⁶⁵ Roman law is similar to customary marriage practice in Uganda which permits divorce and remarriage, polygamy or extramarital children in case of sterility.⁶⁶

In conclusion, there is notable similarity in Roman law and canon law regarding the procreative purpose of marriage. As every Roman citizen was expected to marry for the sake of procreation, the Church elevated the procreative end of marriage as the primary end (c. 1013, §1, *CIC* 1917). Both Roman law and the Church held primacy of procreation in marriage. However, the Church did not allow divorce or amicable separation or marriage with a mistress in the case of sterility as Roman law did.

2.2.2 — Sterility and Marriage in the Works of Saint Augustine

Saint Augustine's doctrine of sexuality, marriage and procreation were largely influenced by the Manichean and Pelagian philosophies of his time. Manichean Christians believed that the body is evil and so is sexuality, marriage and procreation. They taught: "The body is the work of the devil, and so its propagation is evil; marriage, considered as the institutional means of procreation, is also evil."⁶⁷ In his defence of marriage, Saint Augustine taught: "Conjugal intercourse is good precisely because

⁶⁵ P. L. REYNOLDS, *Marriage in the Western Church, the Christianization of Marriage during the Patristic and Early Medieval Periods*, 16.

⁶⁶ Cf. S. MBITI, *African Religions and Philosophy*, 2nd ed., London, Heinemann Publishers, 1991, 142. See also B. KISEMBO, L. MAGESA and A. SHORTER, *African Christian Marriage*, London and Dublin, Geoffrey Chapman, 74.

⁶⁷ C. BURKE, *The Theology of Marriage: Personalism, Doctrine and Canon Law*, 128.

procreation is good.”⁶⁸

According to Saint Augustine, marriage has three goods (*tria bona matrimonii*): generation, mutual help, and the remedy for concupiscence.⁶⁹ Out of these goods of marriage, generation of offspring is the principle *bonum*; it is the reason for marriage.⁷⁰ Saint Augustine wrote that “matrimony surely takes its name from this, that a woman should marry for no other reason than to become a mother.”⁷¹ A question arises as to what happens to marriage when this principal good of marriage is not achieved because one spouse or both are sterile.⁷²

To the question raised above, Saint Augustine’s view is: “It is better to die

⁶⁸ SAINT AUGUSTINE, *De bono coniugali*, III, III, in PL 40:375. He called “concupiscence” a disorder which was not created by God but is a result of sin. Cf. Saint Augustine, *Contra duas epistolas Pelagianorum*, I, XVII, XXXIV.

⁶⁹ Cf. D. E. FELLHAUER, “The *Consortium omnis vitae* as Juridical Element of Marriage,” 22. It is important to know the context in which Saint Augustine used the word “concupiscence.” As J. J. Hugo explains: “Saint Augustine looks at marriage as he looks at all human problems, concretely, in the actual historical situation of man fallen, and bearing, even after his restoration, certain consequences of the Fall, including concupiscence.” J. J. HUGO, *Saint Augustine on Nature, Sex and Marriage*, Chicago, Scepter, 1969, 80. According to Saint Augustine, sexual desire became concupiscence after the fall; therefore, sexuality is not intrinsically evil. Sexual intercourse is good and is intended for procreation. It becomes a venial sin, when it is aimed at satisfying concupiscence. Cf. 109-115. Saint Augustine believes that sexual desire involves physical pleasure (*delectatio carnalis*), but when it is moderated and directed to procreation, it is no longer a sin. See D. G. HUNTER, “Augustinian Pessimism? A New Look At Augustine’s Teaching On Sex, Marriage and Celibacy,” in A. D. FITZGERALD (ed.), *Augustinian Studies*, 24 (1994), 153-177, here on 161.

⁷⁰ While making reference from the biblical story of creation, Saint Augustine argues that God’s purpose for creating male and female, with bodies of different sexes, it was for the very purpose of beggetting offspring. Cf. SAINT AUGUSTINE, *De Civitate Dei*, XIV, XXII, Engl. transl. in M. DODS, *The City of God*, New York, The Modern Library, 1978, 469.

⁷¹ “Matrimonium quippe ex hoc appellatum est, quod non ob aliud debeat feminam nubere, quam ut mater fiat.” Cf. SAINT AUGUSTINE, *Contra Faustum manichaeum*, lib. 19, c. 26, 365. For Saint Augustine, the etymology of the word “matrimony” is a Sacrament in which a man takes a wife so that she becomes a mother.

⁷² Saint Augustine looks at sterility as a source of sorrow, when he discussed “the sorrows of consequent sterility” of Proserpine. Cf. SAINT AUGUSTINE, *De Civitate Dei*, XX. See also SAINT AUGUSTINE, *De virginitate*, XVI.

without children than to seek offspring from an unlawful bed.”⁷³ He also compared begetting children outside of marriage to eating food which is offered to the idols when he wrote: “Just as it is better to die of hunger than to eat food that has been sacrificed to idols, so too, it is better to die without children than to look for descendants by an illicit union.”⁷⁴ For this reason, the Church still affirms that childlessness due to sterility does not affect the validity of marriage (c. 1084, §3, *CIC* 1983).

In addition, Saint Augustine taught that even if the spouse(s) is sterile, the bond of marriage remains intact. In *De bono coniugali*, he wrote: “The bond of marriage remains, even if offspring, for which marriage was entered upon, should not follow because of a clear case of sterility, so that it is not lawful for married people who know they will not have any children to separate and to unite with others even for the sake of having children.”⁷⁵ As long as the right to the body is not denied, marriage bond endures. Saint Augustine wrote: “Although the husband and wife now know that they will not have children, they are still not allowed to divorce and enter a relationship with someone else, not even for the purpose of having children. If they do this, they commit adultery.”⁷⁶ The sacramentality of marriage is the supreme value of marriage since “it surpasses the good of offspring and in no case can it be broken, not even for the sake of begetting children if

⁷³ SAINT AUGUSTINE, *Decreti*, Secunda Pars, c. XXX, Q. IV, c. VIII.

⁷⁴ SAINT AUGUSTINE, *De bono conjugali*, no. XVIII, Engl. transl. in R. KEARNEY, *The Works of Saint Augustine, a Translation for the Twenty-First Century*, New York, Augustinian Heritage Institute, 1999, 47.

⁷⁵ “Manet enim vinculum nuptiarum etiamsi proles, cuius causa initum est, manifesta sterilitate non subsequatur, ita ut iam scientibus coniugibus non se filios habituros separare se tamen vel ipsa causa filiorum atque aliis copulare non liceat.” SAINT AUGUSTINE, *De bono conjugali*, XVII, Engl. transl. in E. A. CLARK, *Saint Augustine on Marriage and Sexuality*, Washington, DC, The Catholic University of America Press, 1996, 56.

⁷⁶ SAINT AUGUSTINE, *De bono conjugali*, XV, Engl. transl. in R. KEARNEY, *The Works of Saint Augustine, a Translation for the Twenty-First Century*, 47.

the union proves to be sterile.”⁷⁷

It can be noted that Saint Augustine wrote clearly against divorce and remarriage because of sterility. He emphasized the importance of procreation⁷⁸ but also affirmed that if, for whatever reason, there are no children, conjugal love retains its value. In *De bono conjugali*, he wrote: “In a good marriage, although one of many years, even if the ardor of youth has cooled between man and woman, the order of charity still flourishes between husband and wife. Nor is childlessness a reason for divorce and remarriage.”⁷⁹

R. Kearney summarizes the Augustinian teaching:

In the City of our God, however, where marriage is sealed by the first act of intercourse between the two persons, once marriage has been entered into it cannot be dissolved by any means except by the death of one of them. Marriage bond remains, even if because of evident infertility no children result, despite the fact that this was the reason for entering into marriage. Although the husband and wife know that they will not have children, they are still not allowed to divorce and enter a relationship with someone else, not even for the purpose of having children.⁸⁰

In his writings, Saint Augustine indicated that if a man divorces his wife and marries another, children born of the new relationship are legitimate. His reason is that children born of such unions, if they do not imitate the vices of their parents, and if they worship God properly, they will be respectable and saved.⁸¹ In addition, no man should

⁷⁷ Cf. SAINT AUGUSTINE, *De bono conjugali*, XXIX, Engl. transl. in C. A. SCHLECK, *The Sacrament of Matrimony: a Dogmatic Study*, 12.

⁷⁸ SAINT AUGUSTINE, *De Adulterinis Coniugiis*, 2, 12: “Propagatio itaque filiorum ipsa est prima et naturalis et legitima causa nuptiarum.” See also, *Contra Faustum Manichaeum*, 19, no. 26.

⁷⁹ Cf. J. J. HUGO, *Saint Augustine on Nature, Sex and Marriage*, 124. According to Saint Augustine, childlessness is not a reason for divorce and remarriage, even under the pretext of desiring children. Cf. SAINT AUGUSTINE, *De bono conjugali*, III, VII. He also maintains that sexual intercourse between the spouses is good for the sake of friendship, even if children are not forthcoming. Cf. *ibid.*, 140.

⁸⁰ SAINT AUGUSTINE, *De bono coniugali*, XV, Engl. transl. in R. KEARNEY, *The Works of Saint Augustine, a Translation for the Twenty-First Century*, 46.

⁸¹ “Undecumque autem nascentur homines, si parentum vicia non sectentur, et Deum recte colant, honesti et salvi erunt.” *Decreti*, Secunda Pars, c. XXX, Q. IV, c. VIII. Saint Augustine acknowledges that human beings, no matter how they are born, are a creation of God.

marry a slave for the sake of begetting children after separating with his sterile; he would be guilty of adultery.⁸²

Instead of getting involved in adultery under the pretext of having a child, Saint Augustine advocated for “spiritual fecundity” for those who are sterile. He taught: “Wherefore, not after the manner of human vows and pleasures, but by the most profound design of God, in some of them fecundity deserved to be honored, in others sterility even merited to become rendered fruitful.”⁸³ While using the image of a person stealing in order to feed the poor, Saint Augustine emphasized that there is no excuse to commit adultery in order to have children; it is absolutely unlawful as long as one’s wife is still alive.⁸⁴

It can be concluded from the works of Saint Augustine that his views on sterile marriages are similar to those in Roman law, but also different. For Saint Augustine, divorce, polygamy or any form of adultery for the sake of begetting children is prohibited. The husband may not abandon his wife because of her sterility and marry another.⁸⁵ When one marries, he/she has the right to expect the other party to have the capacity to generate offspring and is free from any infirmities that can prevent this.

⁸² SAINT AUGUSTINE, *Decreti*, Secunda Pars, c. XXX, Q. IV, c. IX.

⁸³ SAINT AUGUSTINE, *De Sancta Virginitate*, 1. Engl. transl. in E. A. CLARK, *Saint Augustine on Marriage and Sexuality*, 62. While writing about how sterility can be fruitful, Saint Augustine made reference to Old Testament texts: Genesis 18:10, 25:21; 30: 22-24. These texts indicate two facts related to sterility: the three women mentioned, that is, Sarah, Rebeca and Rachel suffered social anguish arising from their childlessness; but through God’s intervention, they were able to bear children. Their permanent inability to bear children was overcome and replaced with fruitfulness.

⁸⁴ “Sic non sunt facienda adulteria etiam uoluntate filios generandi, quemadmodum nec furta sunt facienda etiam uoluntate pascendi pauperes sanctos; quod tamen est faciendum non furta perpetrando, sed bene utendo mamona iniquitatis.” *Decreti*, Secnda Pars, c. XXX, Q. IV, c. X, v.

⁸⁵ Cf. *Decretum gratiani*, c. 18, Causa XXX, Q. 5; Causa XXX, Q. 7.

Generation of children is the reason to marry; therefore, the parties ought to enter marriage without deception about it. With cc. 1098, *CIC* 1983 and 821, *CCEO* the Church intended to safeguard the rights of the deceived party.⁸⁶ Saint Augustine's teaching is implied in the above canons. Finally, Saint Augustine's notion of "spiritual fecundity" for sterile couples was taken up by *Donum vitae* and *Familiaris consortio*.⁸⁷

2.2.3 — Sterility in and Marriage in *Decretum Gratiani*

Up to the 8th century, there was no canonical legislation regarding either impotence or sterility. In general, the Church tended to follow Roman law and incorporated in her decisions those laws that did not contradict her doctrinal principles.⁸⁸ However, Roman law allowed the dissolution of marriages because of sterility, the Church did not. This section briefly discusses these differences as found in the *Decree* of Gratian.

In the *Decree*, reference is made to the Old Testament where leaving a sterile wife and marrying another one for the sake of children is excusable.⁸⁹ The *Decree* cited an

⁸⁶ These canons apply Saint Augustine's teaching on the possibility of marital breakdown due to sterility. Canon. 1098, *CIC* 1983 reads: "A person contracts invalidly who enters into a marriage deceived by malice, perpetrated to obtain consent, concerning some quality of the other partner which by its very nature can gravely disturb the partnership of conjugal life." Canon 821, *CCEO* reads: "A person contracts invalidly who enters marriage deceived by fraud, concerning some quality of the other party which of its very nature can seriously disturb the partnership of conjugal life." These two canons slightly differ in terminology but are similar in content. Invalidity becomes evident when the deceived party is led into error regarding a particular quality. Cf. C. GALLAGHER, "Marriage and the Family in the Revised Code," in *Studia canonica*, 17 (1983), 149-170, here on 153-154.

⁸⁷ The CDF proposed "spiritual fecundity" as a last resort to those who have lost all hope for a child due to sterility. CONGREGATION FOR THE DOCTRINE OF THE FAITH, Instruction on Respect for Human Life in its Origin and on the Dignity of Procreation, Replies to Certain Questions of the Day *Donum vitae*, February 22, 1987, in AAS, 80 (1988), 70-102, Engl. transl. in *Origins*, 16 (1987), 697-711 (= *Donum vitae*), II, 5, nos. 7, 8, Engl. transl. in *Origins*, 16 (1987), 708; *Familiaris consortio*, no. 41, in FLANNERY 2, 850-851. See also *Catechism*, no. 2379.

⁸⁸ Cf. P. CORBETT, *The Roman Law of Marriage*, Oxford, 139- 141; J. MCAREAVEY, *The Canon Law of Marriage and the Family*, 45.

⁸⁹ Genesis 16:2-3.

example where Abraham decided to have extra marital intercourse with a slave girl in order to beget children from her because of Sarah's sterility.⁹⁰ Another reference to sterility in the Old Testament was the story of Jacob and Rachel. When Rachel found out that she could not conceive, she asked her husband to beget children with a slave girl.⁹¹

These two examples from the *Decree* indicate that it was permitted in the Old Testament to beget children outside marriage when the wife was found to be sterile. As Gratian argued: "Otherwise, Abraham and Jacob would be guilty of adultery."⁹² However, these two examples seem to be a justification of adultery, a sin in both the Old and New Testament.⁹³ A question could be raised as to whether adultery for the sake of begetting children is permissible; Saint Augustine answered this question in the negative.⁹⁴

Regarding justification of adultery in order to beget children when a spouse is sterile, the *Decree* provided two answers. First is the opinion that God gave a dispensation to Abraham and Jacob, so that their seed would be a source of blessing for

⁹⁰ Cf. Genesis 16: 2-3. Referring to this biblical text, Gratian stated: "Quod autem ex ancilla propter uxoris sterilitatem filios querere alicui liceat, exemplo probatur Abrahæ, qui propter sterilitatem uxoris suæ Sarai ingressus est ad Agar Egiptiani, ut ex ea filios acciperet." SAINT AUGUSTINE, *Decreti*, Secunda Pars, c. XXX, Q. IV, c. 1.

⁹¹ Cf. Genesis. 30:1-7. Gratian wrote: "Item Iacob, cum ex Rachele filios habere non posset, filios ex ancilla eius sibi suscitavit, nec solum propter sterilitatem, uerum etiam propter fecunditatem cessantem legitur intrasse ad ancillam Lia, et ex ea filios genuisse." *Decretum gratiani*, c. 18, Causa XXX, Q. 5.

⁹² The full text reads: "Ex quibus omnibus colligitur, propter sterilitatem uxoris sive ex ancilla sive ex qualibet alia licite filios queri; alioquin adulterii macula Abraham et Iacob notabuntur." Ibid.

⁹³ Exodus, 20: 14; John 8:1-11. The sin of adultery was punishable by death, a sign that it was a grave offence against God's commandments. There is no indication in the bible that Abraham and Jacob were risking losing their lives by stoning to death.

⁹⁴ SAINT AUGUSTINE, *Decreti*, Secunda Pars, c. XXX, Q. IV, c. X, p. v.

all the nations and that the seed of Abraham would possess the land of the promise.⁹⁵ Second, the *Decree* taught that Abraham sought the multiplication of the people of God from the fecundity of many women. It was for the sake of continuity of God's blessings in his children that Abraham saw it as his obligation to have as many children as God would bless him with.⁹⁶

In the *Decree*, marriages without children are valid even if one spouse or both are sterile. The reality of sterility brings sorrow to the couples. Yet, those couples who willfully employ the "poisons of sterility" to frustrate the procreative purpose of marriage are to be considered fornicators.⁹⁷ The *Decree* indicated that Pope Fabian allowed marriages of sterile couples.⁹⁸ In his analysis of the validity of sterile marriage, J. McAravaey concluded that according to the *Decree*: "Coitus without consent to marry is no marriage, nor is an exchange of consent that is not followed by intercourse. Consummation transformed the union into a 'sacrament' and hence made it indissoluble."⁹⁹

⁹⁵ Cf. Genesis 12: 3, 7. Gratian wrote: "His ita respondetur: Pro varietate temporum uaria inuenitur dispensatio conditoris. Promissum erat Abrahae, quod in semine eius benedicerentur omnes gentes; promiserat quoque se daturum semini eius terram peregrinationis suae." *Decretum gratiani*, c. 18, Causa XXX, Q. 5. Being a dispensation, such a practice cannot be extended to others for whom it was not intended. The only legitimate question now would be: is there a reason why such a dispensation is not granted to other people? This question will be discussed later under c. 1084, §3, *CIC* 1983.

⁹⁶ "Cum ergo, ceteris in idolatria relictis, Abraham et filios eius in peculialem populum sibi Dominus elegisset, rite muliarum fecunditate mulierum populi Dei multiplicatio querebatur, quia in successione sanguinis erat successio fidei." Ibid.

⁹⁷ "Sterilitatis uenena" is discussed in *Decretum Gratiani*, C. 32, q. 2, c. 7: "Fornicarii sunt, non coniuges, qui sterilitatis uenena procurant." Abortion is given as one examples of such acts, which frustrate the creative end of marriage.

⁹⁸ "Posset enim homo dimittere sterilem uxorem et ducere, de qua filios haberet, et tamen non licet. Manet uinculum nuptiarum, etiam si prole, cuius causa initum est, manifesta sterilitate non subsquantur, ita, ut iam scientibus coniugibus non se filios habituros, separare se tamen uel ipsa causa filiorum, atque aliis copulare non liceat." SAINT AUGUSTINE, *Dicreti secunda pars*, c. 32, q. 1, c. 24.

⁹⁹ J. MCARAVAEY, *The Canon Law of Marriage and the Family*, 47.

In conclusion, it can be observed that the *Decree* gave prominence to the procreative end of marriage. Like Saint Augustine, the *Decree* did not justify adultery for the sake of children in the case of a sterile spouse. The examples of men in the Old Testament who begot children from their slave girls were not acceptable in the 8th century and beyond. Engaging in adultery for the sake of begetting children remained outlawed and sinful. This affirms the traditional teaching of the Church that sterility does not affect the indissolubility of marriage.

2.3 — Canonical Understanding of Sterility

Canon law categorically stipulates that sterility¹⁰⁰ has no invalidating effect on valid marriage; in other words: “Sterility neither prohibits nor invalidates marriage.”¹⁰¹ With regard to the fact that sterility in itself has no invalidating effect on marital consent, other factors directly link sterility to the disturbance of the partnership of the whole of life or to its termination. Therefore, this section considers how sterility is defined in canon law and what impact it has on marital consent under certain situations. It is this impact that will be discussed later in chapter four as it relates to the Ugandan context.

¹⁰⁰ Sterility is defined as: “The incapacity to germinate or reproduce, it is a barrenness, or an unfruitfulness.” Cf. H. BLACK, *Black’s Law Dictionary*, 1414. With sterility, the party’s sexual organs are normal and are capable of completing the conjugal act; however, the person is unable to produce offspring. This condition may be temporary or permanent. In medical terms, sterility is referred to as a disease of the reproductive system; it is defined as the “inability to conceive after a year of frequent intercourse without contraception or the inability to carry a child to term.” Cf. K. GAY (ed.), *Encyclopedia of Women’s Health Issues*, West Point, MS, Oryx Press, 2002, 124.

¹⁰¹ Cf. c. 1068, §3, *CIC* 1917: “Sterilitas matrimonium nec dirimit nec impedit;” c. 1084, §3, *CIC* 1983: “Sterility neither prohibits nor nullifies marriage, without prejudice to the prescript of can. 1098, *CIC* 1983;” c. 801, §3, *CCEO*: “Sterility neither prohibits nor invalidates marriage, with due regard to can. 821;” In the *Catechism* nos. 2374 – 2379, the Church still teaches the validity of childless marriages. After recommending “legitimate methods” of treating infertility, the *Catechism* no. 2379 indirectly affirms the validity of childless couples by way of counsel: “The Gospel shows that physical sterility is not an absolute evil. Spouses who still suffer from infertility after exhausting legitimate medical procedures should unite themselves with the Lord’s cross, the source of all spiritual fecundity. They can give expression to their generosity by adopting abandoned children or performing demanding services for others.”

2.3.1 — Sterility in c. 1068, §3, CIC 1917

The *CIC* 1917 stipulated that marriage has two ends (*fines*): procreation, which is the primary end, and mutual assistance and the remedy of concupiscence as the secondary end (c. 1013, *CIC* 1917). Yet, c. 1068, §3, *CIC* 1917 stipulates: “Sterility neither prohibits nor renders illicit marriage” This raises a question as to what happens to marriage when its very primary end is not realized due to sterility. The second question is why did the canon not define sterility? *CIC* 1917 did not answer these two questions. Individual authors have defined sterility as “the incapacity for generation.”¹⁰²

Since *CIC* 1917 placed impotence and sterility in the same canon, canonists have defined them concurrently as they discussed their impact on marriage.¹⁰³ Both impotence and sterility have always been discussed together for the sake of making a distinction. For example, Thomas Aquinas defined impotence as the inability to have sexual intercourse in a natural way,¹⁰⁴ and sterility as the inability to produce offspring.¹⁰⁵ There is a clear distinction between the ability for sexual intercourse and the ability for procreation. The

¹⁰² J. J. BRENKE, *The Impediment of Male Impotence, with Special Application to Paraplegia*, 62. This short description differentiates sterility from impotence which is an “incapacity to perform the marital act which is potentially generative.” See also J. J. MCCARTHY, “The Impediment of Impotence in the Present-Day Canon Law,” in *EIC*, 4 (1948), 96-130, here on 99. In his commentary on c. 1068, *CIC* 1917, Siegle defined sterility as “the case when natural sexual intercourse can take place, while at the same time both parties possess all the organs necessary for generation, but are not capable of generating offspring. For example, the parties are too old; women who have reached the age when ovulation ceases; women who have no ovaries; no uterus.” B. A. SIEGLE, *Marriage Today: A Commentary on the Code of the Canon Law*, 103. Gramunt, Hervada and Wauck define impotence as: “Incapacity to perform the marital act,” and sterility as: “Incapacity for generation due to causes other than incapacity for copulation.” Cf. I. GRAMUNT, J. HERVADA and L. A. WAUCK, *Canons and Commentaries on Marriage*, 26. There is no substantial difference in these definitions provided by canonists.

¹⁰³ One of the canonists who offered the definitions of impotence and sterility with regard to *CIC* 1917 is F. Della Rocca. See F. DELLA ROCCA, *Manual of Canon Law*, Milwaukee, WI, Bruce, 1959, 272-275. See also J. E. HUDSON, *Marital Consummation According to Ecclesiastical Legislation*, 145.

¹⁰⁴ Cf. THOMAS AQUINAS, Suppl., Q. 1vii, art. 1: “impotentia coiundi naturali modo.”

¹⁰⁵ Sterility means the “incapacity for the generation” of children, the “*impotentia generandi*.” Cf. J. J. MCCARTHY, “The Impediment of Impotence in the Present-Day Canon Law,” 94.

first is the act of the human agents, and the second is the procreation of a human being, an act of nature. The first is the cause of procreation; the other is the effect.¹⁰⁶

There is a connection between the procreative purpose of marriage and the actual procreation. The procreative purpose of marriage is fulfilled when a spouse gives the right to those acts that are open to procreation. In the case of sterile couples, one considers whether this right is given, or if the sterile party is incapable of giving this right to the other party. It seems logical to hold that a right to what is impossible is not a right at all. While discussing this question with regard to c. 1068, §3, *CIC* 1917, M. Ahern concluded: “It is a mistake to treat marital relations (and, for that matter, the having of children, or, in general, marriage) solely in terms of rights and duties.”¹⁰⁷ This means that as long as the right to those acts open to children is given, marriage will be valid.

Gaudium et spes recognized marriage as not solely instituted for procreation; there are other *finis operis matrimonii*. This does not mean that the procreative purpose of marriage was undermined. Rather *Gaudium et spes* indicated that marriage is indissoluble, whether the desired children come or not; it remains a valued and indissoluble *totius vitae consuetudo et communio*.¹⁰⁸ Therefore, sterility does not invalidate marriage nor impede it.¹⁰⁹ However, this view would have further

¹⁰⁶ These distinctions were made by S. WOYWOD, “Impotency and Sterility in Reference to Marriage,” in *Homiletic and Pastoral Review*, vol. 40 (1939), 299-309, here on 300. Even if the author calls actual procreation “acts of nature,” it is appropriate to understand them as “acts of God.”

¹⁰⁷ M. AHERN, “The Marital Right to Children: A Tentative Re-examination,” in *Studia canonica*, 8 (1974), 91-107, here on 98.

¹⁰⁸ J. A. RENKEN, *The Contemporary Understanding of Marriage*, 475.

¹⁰⁹ Thus, c. 1068, §3 did not include *dolus* as an invalidating factor in the marital contract. Nevertheless, reference to such an invalidating factor is found in a general norm of a juridic act as in c. 103, §2, *CIC* 1917: “Actus positi ex metu gravi et iniuste incusso vel ex dolo, valent, nisi aliud iure caveatur; sed possunt ad normam can. 1684-1689 per iudicis sententiam rescindi, sive ad petitionem partis laesae sive ex officio.” Engl. transl: “Actions based on grave and unjustly incurred fear, or on deceit are valid unless

considerations with the revision of *CIC* 1917. During the revision process, discussions continued to address the possibility of deceit perpetuated to obtain marital consent. For example, Navarrete writes:

It seems obvious to all that in view of the nature of the conjugal partnership, it is very much in keeping with natural equity that the innocent party be effectively protected against the deceitful machinations of the other party with regard to those qualities which, of their very nature, would seriously disturb the partnership of conjugal life in the same way that it is protected against force and grave fear (*C.I.C.* 1917, c 1087).¹¹⁰

It can be concluded that during the time of *CIC* 1917, procreation was considered the primary end of marriage. However, the inability of the couple to have children due to sterility had no invalidating effect on marital consent. There was no adequate answer as to whether procreation is considered a primary end of marriage and yet it is not required for the validity of marriage. There is no satisfactory explanation for this discrepancy since an end of marriage should be attained in order for it to be considered a primary end. The reason for this argument was clarified by Schleck when he defined a primary end as: “That end or purpose which is immediately sought for itself and not for the sake of something else,” and described it as: “That to which the action or work or institution is destined by its very nature and for which it is necessary.”¹¹¹ An adequate response to this *lacuna* was offered by *Gaudium et spes*, when it implied that procreation is one of those

the law rules otherwise. They can be rescinded by the sentence of a judge according to canons 1684-1689, either at the instance of the injured party or *ex officio*.”

¹¹⁰ Cf. U. NAVARRETE, *Responsum ad propositiones Exc. mi Stewart*, Rome, Pont. Comm. *CIC* Rec., 1981, Prot. no. 81/81, unpublished, 2: “nemo non videt quod attentata natura consortia coniugalis, quam maxime congruit cum aequitate naturali ut parsinnocens efficaciter protegatur contra machinationes dolosas alterius partis circa qualitates quae natura sua natae sunt ad consortium vitae coniugalis graviter perturbandum, simili modo ac protegatur contra vim et metum gravem (can. 1087 *CIC*).” Engl. transl. in B. G. O’LOUGHLIN, *Marriage, A Covenant and Consortium Totius Vitae: Scriptural Basis, Conciliar Teaching and the Revised Code of Canon Law*.

¹¹¹ C. A. SCHLECK, *The Sacrament of Matrimony: A Dogmatic Study*, 24.

ends of marriage and eliminated the hierarchical description of marriage.¹¹²

2.3.2 — Sterility in c. 1084, §3, *CIC* 1983

With the revision of the *CIC* 1917, there was a development in the application of the canon on sterility. The initial wording of *Schema* 283, §3 remained the same as in c. 1068, §3, *CIC* 1917: “Sterility neither invalidates marriage nor renders it illicit.”¹¹³ The consultants agreed that the revised canon should include a reference to the canon on deceit of the same *Schema*: “Without prejudice to the prescription of c. 300.”¹¹⁴ In 1980, the draft canon 1037, §3 read: “Sterility neither forbids nor invalidates matrimony, although the prescription of canon 1052 retains its force.”¹¹⁵ However, it should be noted that sterility in itself is not an impediment and does not invalidate marital consent. It is rather the fact of deception in placing the juridical act of marital consent that renders marriage invalid.¹¹⁶ This addition implies that when sterility is fraudulently or deceitfully concealed for the purpose of obtaining consent, marriage becomes invalid.

During the formulation of this paragraph on sterility, the consultants emphasized:

¹¹² *Gaudium et spes*, no. 50: “Marriage to be sure is not instituted solely for procreation; rather, its very nature as an unbreakable compact between persons, and the welfare of the children, both demand that the mutual love of the spouses be embodied in a rightly ordered manner, that it grow and ripen. Therefore, marriage persists as a whole manner and communion of life, and maintains its value and indissolubility, even when despite the often intense desire of the couple, offspring are lacking.”

¹¹³ “Sterilitas matrimonium nec prohibet nec dirimit.”

¹¹⁴ “Firmo praescripto can. 300.” Cf. *Communicationes*, 7 (1975), 59. Canon 300 of the *Sechma Sacramentis* reads: “Qui matrimonium init deceptus dolo, ad obtinendum consensum patrato, circa aliquam alterius partis qualitatem, quae nata est ad consortium vitae coniugalis graviter perturbandum, invalide contrahit.”

¹¹⁵ “Sterilitas matrimonium nec prohibet nec dirimit, firmo praescripto can. 2052.” This formulation follows the previous schema (283) which referred to the same draft canon on deceit and remained unchanged in the final *CIC* 1983.

¹¹⁶ See J. E. HUDSON, *Marital Consummation According to Ecclesiastical Legislation*, 280. When a spouse desires to have children and the other spouse knows about it and deliberately deceives for the purpose of obtaining consent, this fact of deception makes marriage invalid.

“Sterility is not an impediment to marriage by its very nature (*ex ipso iure naturae*).”¹¹⁷

This formulation is intended to safeguard the rights of the would-be deceived party. However, this formulation did not reflect reality in some cultures where fertility and the attachment of procreation to the institution of marriage, are important. As Mendonça observed, some of the cultures in Africa “attribute to ‘sterility’ an important value which seems to amount to a juridical impediment to marriage.”¹¹⁸

The wording of this paragraph changed when a clause on deceit was added. The only difference was the numbering of the canons on sterility and on deceit.¹¹⁹ The addition of the word: “Without prejudice to the prescription of c. 1098” makes this a new canon and a development from the previous legislation. As J. E. Hudson noted: “It seems a logical extension of canon 1083, §2, 1°, of the Code of Canon Law, which deals with an error on the quality of a person, which becomes the equivalent of an error concerning the person and so invalidates marriage.”¹²⁰

This “new” canon does not use the word “*impedit*” as used in c. 1068, §3, *CIC* 1917, but instead uses “*prohibet*.”¹²¹ The English words “to impede” and “to prohibit”

¹¹⁷ See *Communicationes*, 9 (1977), 361. However, the decision to add reference to deceit and not to make sterility an impediment to marriage was debated at length by African Episcopal Conferences where sterility is an issue that highly disturbs marital life.

¹¹⁸ A. MENDONÇA, “The Theological and Juridical Aspects of Marriage,” 302.

¹¹⁹ In the 1980 *schema codicis*, c. 1037, §3 was on sterility, while c. 1052, §3 was on deceit. The 1982 *schema* was similar both in the numbering and in the wording of c. 1084, §3 on sterility and c. 1098 on deceit. Cf. E. PETERS, *Incrementa in Progressu 1983 Codicis Iuris Canonici*, 978.

¹²⁰ J. E. HUDSON, *Marital Consummation According to Ecclesiastical Legislation*, 281.

¹²¹ Canon 1068, §3, *CIC* 1917 reads: “Sterilitas matrimonium nec dirimit nec impedit.” C. 1084, 3, *CIC* 1983 reads: “Sterilitas matrimonium nec prohibet nec dirimit, firmo praescripto can. 1098.” The change of the word “dirimit” to “prohibit” did not change the content of the canon because these words can be used interchangeably. It is the addition of a reference to c. 1098, *CIC* 1983 which makes it a substantially new canon. This means that the deceived person is led into error while making a choice to marry. Therefore, this fact of deception and making choice while in error make one’s choice to marry null.

have similar meanings. While discussing *Schema 1975* c. 283, (and later *Schemata 1980*, 1982 and the final text of 1983), the consultants and legislator opted for consistency with c. 260, §1 which used the phrase “prohibitive impediment” and not “impedient impediment”¹²² as in c. 1036, §1, *CIC 1917*.¹²³ This means that a man who is permanently unable to secrete a testicular element, and is thereby unable to secrete spermatozoa, is sterile but can marry validly. As Hudson concludes, the addition of a deceit clause emphasizes the distinction between “impotence for coitus and sterility and should help to avert future misunderstandings on this question.”¹²⁴

Furthermore, c. 1084, §3, *CIC 1983* points to the fact that sterility is one of those qualities with the potential of disturbing the marital covenant. Concealing the fact of sterility or being deceitful about it when one party knows that fecundity is one of the qualities the other party wants in his marriage gravely disrupts conjugal life.¹²⁵ It was

¹²² Prohibitive impediments (cf. c. 1036, §1 *CIC 1917*) such as simple vows, mixed religion and legal relationship render a marriage gravely unlawful. Impedient or diriment impediments (cf. c. 1036, §2 *CIC 1917*) such as age, impotence, prior marriage, abduction, crime, consanguinity, affinity, public propriety and spiritual relationship render a marriage not only unlawful but null and void. Cf. W. A. O'MARA, “Impediments to Marriage,” in W. J. McDONALD (ed.), *New Catholic Encyclopedia*, 274-276, here on 275. See also, J. P. BEAL, “Marriage [cc. 1055-1165]” in *CLSA Comm2*, 1272. In the revision process, a change was proposed by one of the consultants to use only one classification of the impediments as reported in *Communicationes*, 7 (1975), 59. J. Fornés reports the discussion that lead to the elimination of the term “prohibitive impediments.” See J. FORNÉS, “Diriment Impediments in General,” in A. MAZROA et. al. (eds.), *Exegetical Commentary on the Code of Canon Law*, 1148-1151. Since these phrases can be used interchangeably, the meaning of the canon does not change.

¹²³ Canon 1036, §1, *CIC 1917* reads: “Impedimentum impediens continet gravem prohibitionem contrahendi matrimonium; quod tamen irritum non redditur si, non obstante impedimento, contrahatur.”

¹²⁴ Cf. J. E. HUDSON, *Marital Consummation According to Ecclesiastical Legislation*, 284.

¹²⁵ L. Chiapetta is of the view that when c. 1084, §3, *CIC 1983* makes reference to deceit, the invalidity of marriage depends on the fact of deceit as given in c. 1098, *CIC 1983*, or of simulation about sterility (c. 1101, *CIC 1983*), or placing of a condition (c. 1102, *CIC 1983*) and not due to sterility itself. Cf. L. CHIAPETTA, *Il Codice Di Diritto Canonico, Commento Giuridico-Pastorale*, vol. 2, Libri II-IV-V-VI, 3 Ed., Rom, 2011. He writes: “Il canone conferma il principio contenuto nel can. 1068, §3 del codice precedente, che cioè la sterilità non impedisce né dirime ex se il matrimonio. Aggiunge, per altro, che essa può dar luogo a invalidità in caso di solo (can. 1098) e similmente nel caso in cui la comparte contraente facesse della fecondità una vera condizione apposta al consenso a norma del can. 1102 (Comm. 9 [1977], 361, can. 283, §3.” *Ibid.*, 320.

because of this fact that the *coetus* asserted : “Sterility is certainly a quality which ‘is apt to disrupt seriously the community of conjugal life,’ and, therefore deceit concerning sterility renders marriage null.”¹²⁶

The word “quality” in this canon refers to that which is desired but does not exist in the other party, or an undesired quality which exists in him/her. To invalidate marriage, this quality must, by its nature (*quae suapte natura*), have the potential of disrupting marriage. Fertility is in many cultural contexts an objectively serious quality, which people consider while choosing to marry (c. 1097, §2, *CIC* 1983).

It can be concluded that although sterility does not in itself disrupt marital life, “it is certainly apt to do so in cases where, for example, one of the purposes of a marriage was to beget an heir.”¹²⁷ The discussions leading to the formulation of this canon indicate that sterility is recognized as potentially disruptive to conjugal life, if it is an object of deceit. This made it a new canon, because it added something that was only implied in the previous legislation. However, both c. 1084, §3 and c. 1098, *CIC* 1983 fell short of mentioning the cause of deceit regarding sterility. This *lacuna* makes it difficult to apply both canons to people who, enter marriage with a strong desire to beget children. The following section sheds light on the problem of applicability of the canon as discussed in marital jurisprudence.

¹²⁶ “Sterilitas enim certo certius est qualitas quae ‘nata est ad consortium vitae coniugalis graviter perturbandum’ et ideo dolus de sterilitate nullum facit matrimonium.” Cf. *Communicationes*, 7 (1975), 59.

¹²⁷ J. E. HUDSON, *Marital Consummation According to Ecclesiastical Legislation*, 283. Gramunt, Hervada and Wauck have given four conditions under which deceit invalidates marriage. These conditions are summed up as follows: 1) The person intending marriage has to be led into error about a quality of the other party; 2) The error about the quality should have been directly caused by deliberate deceit of the other party or by a third person; 3) Deceit should have been perpetuated to obtain consent; a manipulation of the will for an act other than giving consent would not affect the act of consent; 4) The quality about which there is error must be one that gravely disturbs the partnership of life with its essential properties and ends. Cf. I. GRAMUNT, J. HERVADA and L. A. WAUCK, *Canons and Commentaries on Marriage*, 43.

2.3.3 — Application of c. 1084, §3, CIC 1983 in Rotal Jurisprudence

The contemporary understanding of sterility becomes clearer when one refers to the Thomistic explanation of the good of children in plural (*bonum proles*). When used the plural form, *bonum proles* is understood in two senses: procreativity, intention for offspring or openness to children (*proles in suis principiis*), and the actual bearing of children or procreation itself (*proles in seipsa*).¹²⁸ This means that couples would have the right to the children, and *bonum proles* and procreativity would be considered a property of marriage. C. 1055, §1, CIC 1983 describes that marriage is ordered to *bonum proles* (the singular form), which means openness to children or at least entering marriage with an intention of bearing children.

Therefore, *bonum proles* is essentially integrated into marriage as an element, not as an end. In other words, procreativity enters the essence of marriage as one of its integral elements; actual procreation does not.¹²⁹ When couples exchange consent, they acquire a right to procreativity (*ius ad proles*) and not a right to children (*ius ad prolem*). *Bonum proles* refers to marriage where couples are open to life at the exchange of consent, and the two give each other the right to conjugal acts *per se* apt for the generation of offspring.¹³⁰ Even if procreation is the primary purpose of marriage, it is

¹²⁸ Cf. THOMAS AQUINAS, Suppl. Q. 49, art. 3. Like Saint Augustine, Thomas Aquinas wrote: "Matrimony has the procreation and education of offspring as its principal end" (*proles est matrimonii finis*); cf. *Suppl.*, q. 65, art. 1: cf. q. 49, art. 3.

¹²⁹ While discussing Thomas Aquinas' distinction of *bonum proles* and *bonum proles*, Burke wrote: "St. Thomas himself speaks of 'proles' in two senses: offspring 'in its principles' (*proles in suis principiis*) and offspring 'in itself' (*proles in seipsa*) (*Suppl.* q. 49, art 3). We follow his thought when we distinguish between procreativity (*proles in suis principiis*), and actual procreation (*proles in seipsa*). Procreativity – 'intention of offspring,' or at least 'openness to offspring' - can never be absent from marital consent, since marriage cannot exist without its essential properties; actual procreation however, although an end of marriage, is not essential to marriage, for marriage does not always necessarily achieve its end." C. BURKE, "*Bonum coniugum and the Bonum proles; Ends or Properties of Marriage?*" 712.

¹³⁰ This explanation is given by M. NARON, "*Bonum proles vs Procreatio-Educatio proles*," in

not the only purpose, and it is not always attained.

When c. 1084, §3, *CIC* 1983 states: “Sterility neither forbids nor invalidates marriage,” it means that couples do not have the right to offspring. Instead, they have the right to conjugal acts open to procreation.¹³¹ From this analysis a conclusion can be drawn that sterility does not bar marriage as long as there is the ability to have normal and human sexual intercourse between the couples. Therefore, the right to marry prevails over the right to have children.

Sterile spouses are capable of sexual intercourse (*capaces coeundi*), but they are unable to bear children. J. Huels gives examples of people who fall into this category: “This includes young people before they attain puberty, old people, women after they have reached menopause and ovulation ceases, women who have no ovaries or no uterus, etc.”¹³² To this list, the following can be added: men who have had double vasectomy.¹³³

Philippine Canonical Forum, III (2001), 87-116; here on 105.

¹³¹ *Coram* STANKIEWICZ, May 13, 1978, in *RRT Dec.*, 70 (1978), 296-308, here on 298; *coram* RAGNI, December 18, 1984, in *RRT Dec.*, 76 (1984), 622. For Wrenn, severe hypospadias is a condition that belongs to sterility and not to impotence. This condition in men involves the deformity of the penis, where the opening is underneath and makes ejaculation in the vagina impossible. Cf. L. G. WRENN, *The Invalid Marriage*, 8. However, this does not fit in the general belief that for a conjugal act to be completed, ejaculation must take place within the vagina. If this is impossible due to a physical deformity of the penis, then the case could be considered as impotence. The view of O'Donnell is that hypospadias constitutes impotence unless it can be corrected by surgery. See T. J. O'DONNELL, *Medicine and Christian Morality*, 220.

¹³² J. HUELS, *Pastoral Companion, A Canon Law Handbook for Catholic Ministry*, 4th ed., Quincy, IL, Franciscan Press, 2009, 241. Saint Augustine acknowledged age and other misfortunes as possible causes of sterility. Nevertheless, the marital bond of the sterile remains intact. Regarding this fact, he writes: “Nunc vero in bono licet annoso coniugio, etsi emarcuit ardor aetatis inter masculum et feminam, viget tamen ordo caritatis inter maritum et ux-orem.” C. 3, no. 3; J. P. MIGNE (ed.), PL, vol. 40, 375. Engl. transl. in C. BURKE, “Saint Augustine and Conjugal Sexuality,” in *Communio*, 1990, 545-565: “Now in good although aged marriage, even if the vigor of youth between man and woman has faded, the order of charity between husband and wife remains in its fullness.”

¹³³ Vasectomy is a surgical procedure that makes a man sterile, or unable to make a woman pregnant. It is generally considered at least effective as female sterilization and is simpler to perform. This procedure involves blocking the tube, called the *vas deferens*, through which sperm normally pass from each testicle on the way to the seminal vesicle, forming semen. S. J. Judd indicates that the procedure takes about thirty minutes, and it takes less than a week to recover. See S. J. JUDD, *Men's Health Concerns*

As c. 1084, §3, *CIC* 1983 prescribes, such a condition of sterility does not constitute a reason for either the validity or liceity of marriage, as long as the spouses know about it before marriage. The reason is that when couples exchange consent, they do not acquire the right to have children but the right to those acts that are open to children.

In conclusion, it can be noted that in order to apply c. 1084, §3, *CIC* 1983, it requires serious consideration of the context in which it is applied. Some people enter marriage thinking that they will acquire the right to offspring; yet canon law only recognizes the right to those acts that are open to offspring. In the case of sterility, the two rights are in conflict. In applying this canon, it has to be borne in mind that rotal jurisprudence guides the Church in clarifying that marriage only offers the right to procreativity, and couples should enter marriage open to this notion. However, this conclusion does not take away the fact that other factors such as error, deceit and condition may have a direct impact on sterile couples.

2.4 — Juridic Relevance of Sterility to Marital Consent

Sterility has no impact on marital consent (c. 1084, §3, *CIC* 1983) unless other factors are present. This section analyzes the three canonical factors that negatively affect marital consent: error, deceit and condition. First, these factors are presented in light of the prevailing jurisprudence. Second, the section indicates the way in which error, deceit and condition affect the marital consent of sterile couples. Third, this section presents an overview of sterility and its impact on canonical marriage.

2.4.1 — Sterility as an Object of Error (c. 1097, *CIC* 1983)

When the party who is in error contracts marriage, he/she chooses marriage with

incorrect information, which produces a false judgment. Where deceit is involved, the deceived party is led into error, and the latter is called error induced by deceit (*error dolosus*). The material object of marriage is the two parties, who mutually exchange themselves through their personal irrevocable covenant. Where there is error, there is misrepresentation of something that does not correspond to reality, as the party who is in error perceives it and as he/she desires it. There cannot be error of person in a sense that the person does marry the one he/she does not know about; it is rare these days to mistake the identity of the physical person one intends to marry. What is considered in this work is error regarding a desired quality. If one contracts marriage in such an error, marriage is invalid (c. 1097, §1, *CIC* 1983, c. 820, *CCEO*),¹³⁴ because one gives consent to a false reality.¹³⁵ This norm is based on the Roman law principle: “They do not consent those who err.”¹³⁶

¹³⁴ Canon 1097, *CIC* 1983 is a development from c. 1983, *CIC* 1917. It reads: Can 1083 §1. Error circa personam invalidum reddit matrimonium. §2. Error circa qualitatem personae, etsi det causam contractui, matrimonium irritat tantum: 1° Si error qualitatis redundet in errorem personae; 2° Si persona libera matrimonium contrahat cum persona quam liberam putat, cum contra sit serva, servitute proprie dicta. Engl. transl. from T. L. BOUSCAREN, “Marriage,” 501 reads: §1: Error regarding the person makes marriage invalid. §2: Error regarding a quality of the person, even though it is the cause of the contract, invalidates marriage in the following cases only: 1° If the error regarding the quality amounts to an error regarding the person; 2° If a free person contracts marriage with a person whom he or she believes to be free, but who is on the contrary in a condition of slavery in the proper sense. Under *CIC* 1917, error of fact was classified as error regarding the identity of the person, which invalidates marriage, and error regarding some quality in the person, which does not invalidate marriage unless it amounts to error regarding the person. Cf. T. L. BOUSCAREN, “Marriage,” 501. The development of this canon into c. 1097, *CIC* 1983 consists in the elimination of the phrase error of “condition of slavery” in c. 1083, §2, 2°. During the revision process, the *coetus* decided on this elimination as early as 1966. Cf. *Communicationes*, 3 (1971), 76. Navarrete explains that the *coetus* saw this norm as “useless and obsolete.” Cf. U. NAVARRETE, “Error in persona, (c. 1097),” in *Periodica* 1991, 87 (1998), 351-401, here on 389.

¹³⁵ Error mentioned in c. 1097 can be understood in two ways: error that is simply in one’s mind and does not determine one’s choice, and error, which does determine one’s choice. Örsy reveals: “Modern empirical psychology, however, has demonstrated not only that the decisions and actions of a human person can be prompted, even determined, by the unconscious self, but also that the knowledge in the conscious self always impacts our actions, whether we are aware of it or not.” L. ÖRSY, *Marriage in Canon Law: Texts and Comments, Reflections and Questions*, 141. See also J. F. CASTAÑO, *Il Sacramento del Matrimonio*, 333.

¹³⁶ “Non consentiunt qui errant.” D. 2, 1, 15. For Mendonça, the following are five classifications

Thus, the quality in the other person must be intended, both “knowingly and willingly,” and this excludes interpretative will.¹³⁷ In addition, this quality must be objectively serious and can disrupt the partnership of the whole of life.¹³⁸ As Mendonça observed, the error, which is “objectively substantial,” concerns the substance of the act. He explains: “The juridic act is invalid because the error causes a defect of consent in relation to the very substance of the act considered objectively. Therefore, the object internally willed by the will is, because of the error, substantially different from the one indicated in the external manifestation of such an act ... the error by itself invalidates the juridical act of consent.”¹³⁹

The concept of person is a complex one. On one hand it can refer to the term

of error in relation to marriage: 1) Error of fact, which occurs when the object of the error is a fact. For example, error concerning a person or a quality of person, etc. 2) Error of law is present when one wrongly understands or does not know the existence of a law or its contents or extension or precise application to a case. 3) Error of person is present when the person with whom the agreement is concluded is different from the one with whom it was declared or intended to be concluded. 4) Error of substance occurs when the error concerns the vital elements or qualities of the agreement. 5) Error of quality consists in an error about an accessory or accidental property of the object, which does not per se determine its identity. Cf. A. MENDONÇA, “A Doctrinal and Jurisprudential Analysis of Canon 1097 on Error of Fact,” in *Forum*, 16 (2005), 362-435, here on 365.

¹³⁷ A. MENDONÇA, “Error of Fact: Doctrine and Jurisprudence on Canon 1097,” in *Studia canonica*, 34 (2000), 23-74.

¹³⁸ An example of that unknown condition in the other party is sterility of the spouse, especially when the procreation of children is greatly desired by the other spouse, or when local customs place fertility among the conditions of a valid marriage. Cf. *coram* STANKIEWICZ, December 13, 1990, *RRT Dec.*, 82 (1990), 847-855; 852, no. 11. See also c. 820, §2, *CCEO*. Other qualities in the person, which are considered by jurisprudence, include: “Health, virginity, the ability to have children, intellectual ability, social status, education, profession, etc.: they are not in themselves absolute foundation of marriage, but they gravely touch the matrimonial life in which marriage *in facto esse* is being accomplished.” *Coram* FUNGHINI, November 28, 1990, *RRT Dec.*, 82 (1990), 813-822, 815.

¹³⁹ A. MENDONÇA, “Error of Fact,” 36. Induced error or imposed error interferes with the intended spouse’s freedom of action since it does not remain inactive in his intellect but rather propels him to make a wrong choice by determining his will to choose an object falsely presented to him as good. See *Communicationes*, 9 (1977), 371: “In casu doli non habetur coniunctio voluntatum in actu consensus, dum in casu erroris simplicis habetur coniunctio voluntatum.” Cf. J. CUNEO, “Deceit/Error of Person Person as a Caput nullitatis,” in *Canon Law Society of America, Proceedings of the Forty-Fifth Annual Convention, San Francisco, California, October 10-13, 1983*, Washington, DC, Canon Law Society of America, 1984,” 164.

“personality,” a psychological term that does not have a universally defined concept. On the other hand, it can refer to physical identity of a human being or “substantial identity representing one’s integral personality structure, including physical, spiritual, religious, moral, social, ethical aspects.”¹⁴⁰ In the canonical tradition, the term “person” is intended to mean “an individual physically distinct from others.”¹⁴¹

If the contracting party directly and principally intends a determined quality like fecundity, he/she indirectly subordinately directs it towards the person. With this understanding, the desired quality amounts to the person and invalidates marriage if that quality does not exist. Stankiewicz is of the view that special consideration must be given to the customs of persons and nations when evaluating the value that the spouses put on a particular quality.¹⁴²

Regarding marriage, error of quality refers to the personal quality of the other spouse, which was presumed to exist. This may also consist in the absence of the quality

¹⁴⁰ Significant contributions to these questions have been offered by: A. MENDONÇA, “Error of Fact,” 39; J. H. PROVOST, “Error as Ground in Marriage Cases,” in *CLSA Proceedings*, 57 (1995), 319. In his allocution to the Roman Rota on January 29, 1993, John Paul II stated that the term “person” used in the sense of “personality” was not in harmony with the canonical tradition. The Roman Pontiff cautioned against attributing to the terms used by the legislator (e.g. person), the meaning foreign to the canonical tradition in the following words: “However, in the matter of *error facti* too, specifically when it is a question of *error in persona* (cf. can. 1097, §1), one may not attribute to the terms used by the Legislator a meaning alien to canonical tradition; even as error in *qualitate personae*, it can impugn the consent only when a quality, neither frivolous nor trivial, was ‘directly and principally intended’ (cf. 1097, §2), that is, as *rotal jurisprudence* has effectively asserted, ‘quanto qualitas prae persona intendatur.’” JOHN PAUL II, Allocution to the Roman Rota, January 29, 1993, in W. H. WOESTMAN, *Papal Allocutions*, 223-226; and in *L’Osservatore romano*, Engl. ed., February 3, 1993, 3, no. 5. Cf. *Gaudium et spes*, no. 61, in FLANNERY 1, 965-966.

¹⁴¹ *Coram POMPEDDA*, February 6, 1992, *RRT Dec.*, 84 (1992), 49-62.

¹⁴² *Coram STANKIEWICZ*, February 24, 1983, in *RRT Dec.*, 75 (1983), 42-53, here on 50. See also *coram CANALS*, April 21, 1970, in *RRT Dec.*, 62 (1970), 370-375, especially 371; *coram STANKIEWICZ*, May 28, 1988, in *RRT Dec.*, 80 (1988), 42-53. See also M. J. REINHARDT, “Error Qualitatis in Errorem Personae Redundans,” in *CLSA Proceedings*, 35 (1973), 60-63. The term “person” does not mean only the individual person, but rather the whole of one’s social, moral and juridical qualities. Cf. *coram DEFILIPPI*, March 6, 2000, in *Monitor Ecclesiasticus*, 125 (2000), 482-487; A. STANKIEWICZ, “L’errore di diritto nel Consenso Matrimoniale e la sua autonomia giuridica in Errore Determinans Voluntatem,” in *Studi Giuridici*, XXXV (1995), 65-85.

desired or the presence of a very abhorrent quality. In either case, the quality must be of such importance that the person is considered of secondary importance in comparison to the quality. When judging a case involving error of quality, the tribunal considers the declaration of the parties, the testimony of witnesses and any other proof available, like documents. More so, the negative reaction of the party¹⁴³ who discovers the error is a strong proof. When the party disrupts partnership immediately or breaks up marriage, that constitutes strong proof. If the party leaves several years after the error was known, that constitutes weak proof, or no proof at all.¹⁴⁴

Wrenn explains the words used in the canon regarding the error that invalidates marriage: directly and principally intended. He explains: “In marriage, a quality is directly intended when the quality rather than the person is intended in and of itself; it is principally intended when the quality is more important than the person.”¹⁴⁵ This

¹⁴³ Jurisprudence refers this behavior to the “criterion of reaction” (*criterium reactionis*). This criterion is used as further proof that the intended quality was important to the deceived party or the party who chose in error. It is said to be present when “there immediately after the discovery of the problem and then the break-up occurred within five months.” Cf. K. E. BOCCAFOLA, “Deceit and Induced Error about a Personal Quality,” in *Monitor Ecclesiasticus*, 124 (1999), 709. The period of five months is simply a typical time one is considered pondering upon his new discovery; it is possible that the break-up could come much faster. See also *coram* DEFILIPPI, March 6, 2000, in *Monitor Ecclesiasticus*, 125 (2000), 471-521; *coram* STANKIEWICZ, December 13, 1990, in *RRT Dec.*, 82 (1994), 847-855. In this case which originated from India in which the petitioner wanted marriage to be declared null on the ground of sterility, *coram* Stankiewicz gave an affirmative decision on the ground of error of quality, which the petitioner principally and directly intended.

¹⁴⁴ Cf. L. ÖRSY, *Marriage in Canon Law: Texts and Comments, Reflections and Questions*, 134-138; J. J. CUNEO, “Deceit / Error of Person as a Caput nullitatis,” 162-163.

¹⁴⁵ L. WRENN, *The Invalid Marriage*, 97. See *coram* STANKIEWICZ, October 24, 1991, in *RRT Dec.*, 83 (1991), 670-690, here on 696. See also B. A. SIEGLE, *Marriage Today, a Commentary on the Code of the Canon Law*, 153. As B. A. Siegle points out, the difficulty in determining that a particular error concerns a quality that amounts to the error of the person. He remarks: “In practice, it is almost impossible to prove that an error in quality amounts to error for the person. This is possible only when the injured party can give full proof that the quality of the party amounted to a *conditio sine qua non*.” While discussing error of quality, Gramunt, Hervada and Wauck identify this quality in the following explanation: “If the alleged quality consists of an identifying quality, we have a case of false identity, which invalidates marriage [...] if the quality is the direct and principle aim intended in that marriage, the quality becomes part of the object of consent.” Cf. I. GRAMUNT, J. HERVADA and L. A. WAUCK, *Canons and Commentaries on Marriage*, 42.

criterion is used to determine whether the quality existed or not and whether the person directly intended it or not. As Pospishil concluded: “Marriage will remain invalid even if the disappointed partner, who had intended the quality, changes his/her mind, and accepts the partner as she/he is; a convalidation will be necessary (c. 846).”¹⁴⁶

For marriage to be considered invalid on the account of error of quality, the desired quality which is lacking in the other spouse must be directly and principally intended. For example, the desire to have children must have been expressed at least implicitly as a reason to marry. The same applies to the presence of an undesired quality. In addition, this quality must be grave such as fecundity, not trivial. Objectively, it must be “considered such by the society in which the concrete person lives as well as from its relationship to the nature of marriage as a partnership of the whole of life.”¹⁴⁷ Subjectively, this quality should be “serious when the person marrying attaches to it a substantial value.”¹⁴⁸

Rotal auditors are of the view that for consent to be invalid, the desired quality should be so important to the person that it amounts to the person of that intended spouse.

¹⁴⁶ V. J. POSPISHIL, *Eastern Catholic Marriage Law*, 342. The author’s conclusion forms a link between c. 820, §2, *CCEO* on error of quality to c. 826, *CCEO* on condition.

¹⁴⁷ Cf. A. MENDONÇA, “A Doctrinal and Jurisprudential Analysis of Canon 1097 on Error of Fact,” 387.

¹⁴⁸ Ibid. These invalidating qualities are not named by the canon. However, the following qualities have been considered by rotal jurisprudence as objective and grave: moral qualities of a person, civil or juridical status (for example, a person who is divorced, celibate, layperson, priest who has received a rescript of dispensation from celibacy, educational or professional status, virginity, capacity to bear children (sterility), physical or mental health, freedom from a particular disease (e.g., epilepsy, alcoholism, leprosy, AIDS, etc.), illegitimate birth, use or abuse of drugs, homosexuality, bisexuality, transverstism, etc. See E. COLAGIOVANNI, “New Grounds of Nullity in Marriage Cases,” in *Monitor Ecclesiasticus*, 122 (1997), 534-536; see also A. MENDONÇA, “A Doctrinal and Jurisprudential Analysis of canon 1097 on Error of Fact,” 388. It can be noted that sterility is one of those negative qualities which invalidate marriage.

Without that quality, such a person would be considered a different person. This means that it is not the quality, which simply distinguishes a person from others, but a more grave quality, which does or does not exist in the other spouse and which is very much desired. D. Faltin explains: “The argument in favour of equity should carry more weight than strict law [...] especially in marriage cases which concern error mentioned in c. 1097, §2, *CIC* 1983.”¹⁴⁹ In the same decision, Faltin observed: “In judging cases coming from distant countries, the Rota wants to proceed according to the principle of ‘equitable interpretation’ lest great injustice be caused from the application of most serious laws.”

While referring to cases which come from Africa, Stankiewicz explained that marriage is always contracted with an implicit condition of fertility for the propagation of the descendants. Therefore, this quality is directly and principally intended and has become a *conditio sine qua non* for every marriage.¹⁵⁰ When such a quality is missing, then the person becomes a different individual from the one to whom the partner consented. In a case, which originated from India, a woman respondent did not know that her sterility is incurable. There was no deceit involved as the husband had facilitated her search for treatment. For this reason Stankiewicz judged the case in the affirmative based on error of quality directly and principally intended.¹⁵¹

Stankiewicz made one of the important contributions to the understanding of and

¹⁴⁹ *Coram* FALTIN, May 26, 1989, in *RRT Dec.*, 81 (1989), 379-388, here on 382. The original text reads: “Immo, iuxta Nostri Fori doctrinam ac iurisprudentiam, ‘potior debet esse ratio aequitatis stricto iuri’ [...] praesertim in causis matrimonialibus, quae provinciam erroris spectant, de quo in can. 1097, §2, vigentis *CIC* (382-383).”

¹⁵⁰ *Coram* HUOT, November 24, 1987, in *RRT Dec.*, 79 (1987), 650-663, here on 659: “Si qui autem primo et principaliter vult creationem familiae christianae cum prole et verum ad hoc aptum eligit, non hunc virum directe et principaliter sed virum his qualitatibus ditatum intendit. Intentio primo et principaliter fertur in familiam Christianam tanquam finem et in virum aptum tanquam medium ad finem vel potius in qualitates ad hunc finem obtinendum necessarias.”

¹⁵¹ *Coram* STANKIEWICZ, December 13, 1990, in *RRT Dec.*, 82 (1990), 847-855.

the application of “quality that is directly and principally intended.” In the decision mentioned above, he explained that such a quality is to be evaluated in two ways: subjectively and objectively. Subjectively, the gravity of the quality depends on the party who is in error and the attachment he/she has to that quality. This criterion is not sufficient since it is hardly verified in the external forum. Objectively speaking, the “value of a quality is determined by a social, moral, juridic criterion and the demands of conjugal partnership.”¹⁵²

D. M. Huot was more specific while considering fertility as a quality, which might be principally and directly intended, and as such has the potential of invalidating consent. He believes that when one enters marriage with an intention of begetting children, the spouse is used as a means to achieve this end. He wrote: “The intention is first and foremost towards a Christian family as its aim, and towards the man as a suitable means to achieve this end, or rather towards the qualities which are necessary to achieve this purpose.”¹⁵³ It is with no doubt that fecundity is one of those qualities which the couples normally expect in each other when they marry. In African societies, this quality is so elevated that it becomes *conditio sine qua non* for marriage. Where this is the case as in Ugandan societies, a party may fear being rejected in marriage unless he/she elucidates consent by deceit.

¹⁵² Ibid. 853. Stankiewicz wrote: “Obiectum erroris redundatis plures complecti potest qualitates, quarum pondus duplicem admittit aestimationem, videlicet subiectivam, in qual valor expositulatae qualitatis unice pendet a forma mentis partis errantis, et obiectivam, in qua eiusdem qualitatis momentum criterio sociali, morali, iuridico necnon exgentia consortia coniugalis determinatur.” Engl. transl. in A. MENDONÇA, “The Importance of Considering Cultural Contexts in Adjudicating Marriage Nullity Cases with Special reference to South East Asian Countries,” in *Philippiniana sacra*, 31/92 (1996), 189-268; here on 232-233.

¹⁵³ *Coram* HUOT, November 24, 1987, in *RRT Dec.*, 79 (1989), 650-663, here on 659. See also K. E. BOCCAFOLA, “Deceit and Induced Error about a Personal Quality,” 697; *coram* FALTIN, May 26, 1989, in *Monitor Ecclesiasticus*, 49 (1993), 262-266; *coram* PARISELLA, March 24, 1983, in *RRT Dec.*, 75 (1988), 146-153; *coram* FUNGHINI, November 28, 1990, in *RRT Dec.*, 82 (1990), 813-822.

However, c. 1097, *CIC* 1983 can be read in light of c. 126, *CIC* 1983 which reads in part: “An act placed out of ignorance or out of error concerning something which constitutes its substance or which amounts to a *conditio sine qua non* is invalid.”¹⁵⁴ Regarding marriage entered in error, consent is invalid because the error causes a defect of consent in relation to the very substance of the act. When c. 1097, *CIC* 1983 speaks of the quality which is directly and principally intended, this refers not to an error concerning the substance of marriage itself, but to a quality that amounts to the substance of marriage or to the partner in marriage such as the condition of fecundity.¹⁵⁵

It can be concluded that for marriage to be rendered invalid due to error, this error must be objectively grave and should concern the quality which amounts to the error of person. This quality must be principally and directly intended. Error is an act of the intellect, which causes the will to make decision based on false information. Procreative capacity is one of such qualities which, when directly intended, will render marriage invalid when it does not exist. In addition, people who have high regard for procreation have the potential to lead their spouses into error by deceit about this quality in order to obtain consent. The following section considers the relevance of sterility regarding this quality when it is purposely concealed, and the person choosing marriage is led maliciously into error about the procreative quality in the other spouse.

¹⁵⁴ The full canon reads: “An act placed out of ignorance or out of error concerning something which constitutes its substance or which amounts to a condition *sine qua non* is invalid. Otherwise, it is valid unless the law makes other provision. An act entered into out of ignorance or error, however, can give rise to a rescissory action according to the norm of law.”

¹⁵⁵ Mendonça calls this condition *sine qua non* as accidental, not part of the substance, having its basis in Roman law. He explains: “The principle of ‘error which amounts to a condition *sine qua non*’ has its root in Roman law and in canonical tradition it refers to an error which revolves around an accidental element to which the person directs the acts of his/her prevalent will. This constitutes a true condition because through the prevalent will of the subject an erroneously perceived accidental element is introduced into the substantial object of consent.” A. MENDONÇA, “A Doctrinal and Jurisprudential Analysis of Canon 1097 on Error of Fact,” 376.

2.4.2 — Sterility as an Object of Deceit (c. 1098, CIC 1983)

Dolus, which is translated into English as fraud or deceit, is defined as the truth deliberately kept from another in order to obtain the desired effect.¹⁵⁶ Deceit is a deliberate act of deception by which a person is made to establish a juridic act, which he/she otherwise would not have made.¹⁵⁷ With regard to the intention of the deceived party, *dolus* is understood as malice or deliberate will, or an intent to do something wrong.¹⁵⁸ It is a “misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment.”¹⁵⁹ G. Michaels provided a more accurate

¹⁵⁶ *Coram DE LANVERSIN*, March 17, 1993, in *RRT Dec.*, 85 (1993), 151-169. Roman law distinguished between good deceit *dolus bonus* and bad deceit *dolus malus*. An example of a good deceit is deceiving with the purpose of getting someone out of trouble or simply tricking your enemy at war. On the other hand, a bad deceit is intended to take advantage of the other person(s). In general terms, deceit is understood in the latter sense, when it is employed in bad faith. On a deeper study of *dolus bonus* and *bonus malus*, see K. W. VANN, *Canon 1098 of the Revised Code of Canon Law: History, Development, and Implications*, JCD diss., Rome, Pontificia Studiorum Universitas A. S. Thoma Aq. in Urbe, 1985, 160-178; K. W. VANN, “*Dolus*: C. 1098 of the Revised Code of Canon Law,” in *The Jurist*, 47 (1987), 371-393; J. V. BROWN, *The Invalidating Effects of Force, Fear and Fraud, Upon the Canonical Novitiate: A Historical Concept and Commentary*, Canon Law Studies, No. 311, Washington, DC, The Catholic University of America, 1951; 104; P. T. SUMNER, “*Dolus* as a Ground for Nullity of Marriage,” in *Studia canonica*, 14 (1980), 172-173. *Dolus bonus* is attributed to Ulpian as that shrewdness which would be used against an enemy. Cf. *Corpus iuris civilis, Digesta Iustiniani*, Lib. IV, Tit. III, no. 1; K. E. BOCCAFOLA, “Deceit and Induced Error about a Personal Quality,” 694.

¹⁵⁷ Since *dolus* is a deliberate act, it has to be intentional. This principle is based on Thomas Aquinas’ explanation of *dolus malus*: “Unning [astutia] uses feints and pretences, not true and open means, to achieve an end which may be either right or wrong. In taking this course there is a double aspect to be considered. First, the plotting of it, and this, properly speaking, is the function of cunning, as also the planning of right means to a due end is that of prudence. Second, the carrying out of it in deed and this pertains to guile [*dolus*]. And so guile signifies the execution of cunning and in this way is part of it.” THOMAS AQUINAS, *Summa Theologica*, II-II, 55, 4c.; Engl. transl. in P. T. SUMNER, “*Dolus* as a Ground for Nullity of Marriage,” 178. Cf. c. 126, CIC 1983.

¹⁵⁸ The classical Roman concept of *dolus* is of “any craft or deceit employed for the circumvention or entrapping of another person.” Cf. W. W. BUCKLAND, *A Text Book of Roman Law from Augustus to Justinian*, Cambridge, English University Press, 1932, 594. This means that one can deceive by telling a lie, misleading the knowledgeable or setting up an elaborate trap. This can be done by words, deeds or concealment of truth. It can be concluded that deceit in itself is not an impediment to marriage; it is rather consent, which is given erroneously. For this reason, deceit is also called “imposed error” or “fraudulently induced error” which translates the Latin expression *error dolosus*.

¹⁵⁹ B. A. GARNER, “Deceit,” in H. BLACK (ed.), *H. Black’s Law Dictionary*, 413, 670. The dictionary also defines fraud as: “A tort arising from a false representation made knowingly or recklessly with the intent that another person should detrimentally rely on it.” *Dolus bonus* is described here as a

definition of *dolus* when applied to marriage contract when he wrote: “*Dolus* is deceit fraudulently and deliberately committed on another so that that person is led to place a determined juridic act.”¹⁶⁰ Like any juridic act, marital consent cannot be made under *dolus*.¹⁶¹ Therefore, canon 1098, *CIC* 1983¹⁶² is an example of the situation where the law explicitly forbids any marriage entered by fraud, and where fraud makes sterility an invalidating factor in marriage.

In Roman law, *actio doli* refers to “the deceitful and fraudulent manoeuvres by which a person, contemplated specifically or generally, is damaged.”¹⁶³ In making contracts, Roman law excluded all contractual acts where deceit was involved in order to

justified or allowable deceit, employed for self defense or another permissible purpose. *Dolus malus* exists where one intentionally misleads another or takes advantage of another’s error wrongfully, by any form of deception, fraud or cheating (570).

¹⁶⁰ Cf. G. MICHAELS, *Principia generalia de personis in Ecclesia: Commentarius libri II Codicis iuris canonici, canones praeliminares 87-106*, Tornaci, Desclée, 1955, 660; Engl. transl. in K. E. BOCCAFOLA, “Deceit and Induced Error about a Personal Quality,” in *Monitor Ecclesiasticus*, 124 (1999), 694. Deceit not only produces error in the other party who consents to marry, but it is also incompatible with the definition of marriage proclaimed in *Gaudium et spes*, no. 48 and enshrined in the canons on marriage (701).

¹⁶¹ According to cc. 125, §2 *CIC* 1983, and 932, §2 *CCEO*, any juridic act performed under the influence of fraud is invalid unless the law provides otherwise.

¹⁶² Canon 1098, *CIC* 1983 underwent several changes during its draft process but remained substantially the same. The *Schema Codicis Sacramentis* c. 300 reads: “Qui matrimonium init deceptus dolo, ad obtinendum consensum patrato, circa aliquam alterius partis qualitatem, quae nata est ad consortium vitae coniugalis graviter perturbandum, invalide contrahit.” In 1980, *Schema CIC* 1980 c. 1052 reads: “A person contracts invalidly who enters marriage deceived by fraud perpetrated to obtain consent, concerning some quality of the other party which gives rise to the serious disturbance of the *consortium* of conjugal life.” Engl. transl. in *Schema CIC* 1980, 221. The Latin text reads, “Qui matrimonium init deceptus dolo ad obtinendum consensum patratum, circa aliquam alterius partis qualitatem, quae nata est ad consortium vitae coniugalis graviter perturbandum, invalide contrahit.” The only change was from the word “patrato” to “patratum” (the noun *patrato-a-um* means what is ‘performed,’) which did not change the meaning. The word “patrato” was returned in the *Schema Codicis* 1982 and in the promulgated text. However, the final text came out with other innovations: “Qui matrimonium init deceptus dolo, ad obtinendum consensum patrato, circa aliquam alterius partis qualitatem, quae suapte natura consortium vitae coniugalis graviter perturbare potest, invalide contrahit.” The text makes clear which type of quality deceived about invalidate marriage: it is that quality which, of its own nature (*quae suapte natura*) gravely disturbs conjugal life.

¹⁶³ W. W. BUCKLAND A. D. MCNAIR and F. H. LAWSON, *Roman Law and Common Law: A Comparison in Outline*, 384.

make the deceived party enter into a particular contract. Marriage is one such contract. Furthermore, deceitful actions extended to those actions where it was the deceived party's agent that was deceived. Therefore, "the false representation need not have been made actually to the person who suffered if it was intended that he should act on it, but this seems to be applied in the texts only to cases where the representation was made to my procurator or agent and I suffered."¹⁶⁴ In this description of *dolus* in Roman law, there is a close similarity with the understanding of c. 1098, *CIC* 1983. Deceit invalidates marriage as long as it is induced to obtain marital consent, whether the deceiver is the partner in the marital contract or a third party.

The understanding of marriage as a "partnership of the whole of life" excludes deceit. As a partnership and an intimate interpersonal relationship, marriage requires honesty and truthfulness.¹⁶⁵ The inclusion of *dolus* as an invalidating factor in marital consent (as it appears in c. 1084, §3, *CIC* 1983) had been widely discussed before the Second Vatican Council.¹⁶⁶ Since there was no corresponding canon in the *CIC* 1917, c.

¹⁶⁴ Ibid.

¹⁶⁵ In order to establish a true *consortium totius vitae*, the parties must give themselves to each other with an intention of establishing marriage. While revising c. 1068, §3, *CIC* 1983 the *coetus* considered the devastating effects of fraud on matrimonial consent and makes the deceived party live with the person different from the one he consented to. Out of the sense of justice, and for the sake of strengthening the Sacrament of matrimony, the *coetus* voted affirmatively to include *dolus* among the grounds for the nullity of marriage. Cf. *Communicationes*, 3 (1971), 76-77; 9 (1977), 360-362. The sense of justice is further confirmed by U. Felice when he wrote: "Matrimonium enim libere contrahendum est: Ubi autem cessat liberates, urget iniustitia" (Marriage is to be entered freely. Where there is no freedom, there is no justice). *Coram FELICE*, June 14, 1955, in *RRT Dec.*, 47 (1955), 522-531, here on 524.

¹⁶⁶ These discussions centered on protecting the institution of marriage from errors concerning pregnancy and sterility, and from a party tricking the other partner into marriage. Before the Second Vatican Council, a Congress was held in Bonn, Germany, to suggest proposals for the new marriage law. This was prompted by problems, which arose of false and unfulfilled promises in marriages of mixed religion, such as pregnancy resulting from another relationship and sterility. See *Acta et documenta Concilio Oecumenico Vaticano II apparando*, series I (antepreparatoria), vol. II, pars 1, Typis polyglottis Vaticanis, 1960, no. 328. H. Flatten was the canonist who brought this problem to the attention of the German Bishops Conference. Cf. K. E. BOCCAFOLA, "Deceit and Induced Error about a Personal Quality," 699. H. Flatten proposed that qualities which invalidate consent must be grave such as concealing

1098, *CIC* 1983 (c. 821, *CCEO*) became a new addition.¹⁶⁷ Even if there was no specific canon regarding the impact of *dolus* in marriage, the *CIC* 1917 defined *dolus* and subjected to nullity any juridic act placed out of malice.¹⁶⁸ In addition, c. 103, §2, *CIC* 1917 illustrated the impact of *dolus* on a juridic act including marital consent.¹⁶⁹ A. Di

homicide, and not as trivial as deception regarding the color of one's hair. H. FLATTEN, *Quomodo matrimonium contrahentes iure canonico contra dolum tutandi sint*, Cologne, editio auctoris, 1961, 3, 11. As quoted by J. Denis and H. Flatten also mentioned: "Si quis graviter ac dolose de alterius partis qualitate magni momenti deceptus matrimonium ineat, quod revere cognita non contraheret." See J. DENIS, "Erreur sur la personne et consentement matrimonial," in *L'Année canonique*, 18 (1974), 95-113, here on 103. H. Flatten introduced the concept of deceit while referring to marriage. For more discussion about H. Flatten's proposal on the effect of deceit on marriage, cf. P. T. SUMNER, "*Dolus* as a Ground for Nullity of Marriage," 173-175.

¹⁶⁷ The new legislation on *dolus* in c. 1098, *CIC* 1983 is of natural law. See P. J. VILADRICH, "Commentary on c. 1098," in A. MARZOA, J. MIRAS and R. RODRIGUEZ-OCAÑA (eds.), *Exegetical Commentary on the Code of Canon Law*, vol. 3/2, Montréal, Wilson & Lafleur Litée, 2004, 5 vols., 1219-1451, especially 1293-1300. A question arises whether it is to be applied retroactively to marriages celebrated before November 27, 1983, when *CIC* 1983 went into force. The Revision Commission did not agree on this point during the revision process. See *Communicationes*, 3 (1977), 77. K. E. BOCCAFOLA, "Deceit and Induced Error about a Personal Quality," 701. However, there is no unanimous decision on this subject. For example, Serrano Ruiz and Pompedda are in favor of retroactivity because the matter is of natural law, as seen in *coram* SERRANO RUIZ, May 28, 1982, in *RRT Dec.*, 74 (1982), 308-325; *coram* POMPEDDA, July 26, 1996, in *RRT Dec.*, 88 (1996), 581-586. For A. Stankiewicz, this new canon should not be applied retroactively. He is of the view that if a juridical act is placed on account of substantial error caused by fraud, it is null by virtue of natural law. However, if the resulting effect from such an act is only accidental error, the act is valid unless the law provides otherwise. See *coram* STANKIEWICZ, July 22, 1993, in *RRT Dec.*, 85 (1994), 590-600; *coram* STANKIEWICZ, January 27, 1994, in *RRT Dec.*, 86 (1994), 56-76. Other rotal sentences which do not favor retroactivity of c. 1098, *CIC* 1983 include: *coram* DEFILIPPI, December 4, 1997, in *RRT Dec.*, 89 (1997), 853-865; *coram* FALTIN, October 30, 1996, *coram* POMPEDDA, July 26, 1996, in *RRT Dec.*, 88 (1996), 581-586; *coram* SERRANO, October 25, 1996, in *RRT Dec.*, 88 (649-656). J. P. KALLIKATTUKUDY, *Fraud and Nullity of Marriage in Canon Law and Indian Civil Law: A Comparative Analysis*, 130. The authoritative interpretation of this canon was given by the Pontifical Council for the Interpretation of Legislative Texts in a private response on February 8, 1986, (Prot. No. 843/86): "Inclined to regard the wording of Canon 1098 [*CIC* 1983] as of merely positive law and consequently as non-retroactive." See L. WRENN, *The Invalid Marriage*, 109. This work concludes with J. P. Beal's analysis that "canon 1098 is primarily a norm of positive ecclesiastical law and, as such, is not applicable to marriages celebrated before the revised code took effect or to marriages of two non-Catholics" [c. 11, *CIC* 1983]. J. P. BEAL, "Marriage [cc. 1055-1165]" in *CLSA Comm2*, 1309.

¹⁶⁸ Canon 2200, §1 *CIC* 1917 reads: "*Dolus* is understood here as the deliberate will to violate the law, and it is in contrast to a lack of knowledge on the part of the intellect, and a lack of liberty on the part of the will.

§2: Once an external violation of the law has been placed, *dolus* in the external forum is presumed, unless the contrary is proven."

¹⁶⁹ Canon 103, §2, *CIC* 1917: "Actions based on grave and unjustly incurred fear, or on deceit are valid unless the law rules otherwise. They can be rescinded by the sentence of a judge according to canons 1684-1689, either at the instance of the injured party or *ex officio*." According to this canon, fear, which

Felice pointed out that deceit is detrimental to marital consent: “This giving and receiving which spouses make of themselves ‘as a mutual gift of two persons’ in order to effect marriage consent absolutely cannot be consistent with such specific fraud with regard to their moral, social and juridical identity of persons, since such fraud impedes the gift of their persons and renders a stable communion of married life impossible.”¹⁷⁰

Deceit causes error because the deliberate act by the deceiver (*decipiens*) leads the deceived party into error. With deceit, the object of matrimonial consent becomes defective; the deceived party (*deceptus/decepta*) consents with erroneous information regarding the person with whom he/she is forming a marital partnership.¹⁷¹ Malicious deception can take three forms: telling an outright lie, setting a trap to obtain false information, and deliberate concealment of truth.¹⁷² This inducement of error can be perpetrated either by action or by omission if there is awareness and intentionality on the part of the deceiver.¹⁷³ Deceit is considered grave when it results in extorting consent. For

invalidates marital consent, is that which is inflicted from without the agent in such a way that it is irresistible. Fear then takes away the agent’s voluntary choice. C. 103, *CIC* 1917 “deals with grave fear which intimidates but does not destroy freedom of choice [...] It is grave fear if it arises from a grave danger which is, or is believed to be, imminent.” T. L. BOUSCAREN, “Marriage,” 89.

¹⁷⁰ *Coram* DI FELICE, January 14, 1978, in *RRT Dec.*, 70 (1978), 13-20, Engl. transl. *Newsletter, Canon Law Society of Great Britain and Ireland*, 40 (1979), 50-59.

¹⁷¹ An example of information that might be erroneous about the other party is sterility, according to c. 1084, §3, *CIC* 1983. Cf. *coram* BRUNO, November 19, 1993, in *RRT Dec.*, 84 (1993), 673-682.

¹⁷² I. Ragni summarized these criteria as follows: a) *quantum nuturiens fecerit qualitatem*; b) *quaenam perseverantia ab eodem adhibita fuerit in urgendam praetensam qualitatem usque ad nuptias necnon postea*; c) *modus se gerendi peculiariter cum altera parte* “qua doli seu deceptionis auctrice,” quando primum se invenit ipse deceptus illo bono seu qualitate absolute intent definitive orbatum exstitisse. See *coram* RAGNI, April 27, 1993, in *RRT Dec.*, 85 (1993), 288-306, here on 295.

¹⁷³ See P. J. VILADRICH, “Matrimonial Consent,” 849; E. B. GANGOITI, “Dolus, vel melius, error constituitne titulum sive causam nullitatis matrimonii?” in *Angelicum*, 50 (1973), 376-430, here on 406; J. J. CUNEO, “Deceit / Error of Person as Caput nullitatis,” in *CLSA Proceedings*, 45 (1983), 154-170, here on 166; K. W. VANN, “Canon 1098,” 195. The quality that is deceived about must be real, grave and present at the time of consent. If fraud is discovered before consent, and nevertheless consent is given, marriage is considered valid. Cf. T. P. DOYLE, “Marriage [cc. 1055-1165],” 781; R. C. BAUHOF, *Canon 1084 and Psychic Impotence*, JCD diss., Ottawa, Faculty of Canon Law, Saint Paul University, 1988, 96.

deceit to be an invalidating ground for marital consent, it must be objectively grave to the other party.¹⁷⁴ The nature of the quality deceived about should have the potential to gravely disturb the marital partnership.¹⁷⁵

Several authors agree that c. 1098 was included in the *CIC* 1983 for three reasons: to fill the *lacuna legis* that existed, to protect the sacred and lasting bond of marriage, and to prevent the injustice that the deceived partner would suffer.¹⁷⁶ One author Kallikkattukudy, who has done an extensive study of this subject wrote: “Even though there was no specific canon on fraud in the *CIC* 1917 as a factor invalidating marital consent, several cases were admitted by traditions on this ground.”¹⁷⁷ However, these

¹⁷⁴ See L. G. WRENN, *The Invalid Marriage*, 108. While considering the gravity of the quality which one party is deceived about, Doyle proposes that socio-cultural considerations be made: “Since the spouses usually come from a specific culture and live in a well circumscribed socio-economic and cultural context, certain qualities recognized as very important to the partnership of conjugal life by one particular tribe, cultural group or type of society could be considered as of minor importance by another. One cannot overlook this fact while considering the invalidating effect the presence or absence of a particular quality may have on marital consent,” T. P. DOYLE, “Marriage [cc. 1055-1165],” 781. During the preparation of the Second Vatican Council, some bishops proposed that a new impediment on error of quality be established, especially when the error concerns important qualities like a serious disease, pregnancy resulting from another relationship and sterility. See P. T. SUMNER, “*Dolus* as a ground for Nullity of Marriage,” 174; *Acta et documenta Concilio Oecumenico Vaticano II apparando*, series 1 (antepreparatoria), vol. II, pars 1, Rome, Typis polyglottis Vaticanis, 1960, no. 36. See also P. T. SUMNER, “*Dolus* as a Ground for Nullity of Marriage,” 192.

¹⁷⁵ Cf. *coram* TURNATURI, May 22, 2003, unpublished in *RRT Dec.*, Engl. transl. in *Studies in Church Law*, 1 (2005), 403-427, here on 420-421. Turnaturi explains: “One must consider in a case of grave disturbance of marriage not only the objective gravity which undoubtedly prevails, but also the subjective gravity, that is, the importance which the deceived party attributes to a determined quality due to his/her nature or opinion, must be weighed.” See also *Communicationes*, 9 (1977).

¹⁷⁶ For example: J. P. BEAL, “Marriage [cc. 1055-1165],” in *CLSA Comm2*, 1307; D. KELLY, “Marriage,” in *Canon Law: Letter & Spirit*, 614; F. G. MORRISEY, “Preparing Ourselves for marriage Legislation,” in *The Jurist*, 33 (1973), 351; P. T. SUMNER, “*Dolus* as a Ground for Nullity of Marriage,” in *Studia canonica*, 14 (1980), 184. See J. F. CASTAÑO, “Il dolo nel matrimonio,” in A. DI FELICE (ed.), *La nuova legislazione matrimoniale canonica. Il consenso: elementi essenziali, difetti, vizi*, Vatican City, Libreria editrice Vaticana, 1986, 101-115. According to J. Denis, c. 1098, *CIC* 1983 is intended to safeguard the indissolubility of marriage bond and also to protect the innocent party who might be led into error: “Flatten reconnaissait la nécessité de sauvegarder l’indissolubilité du mariage, mais devant l’injustice d’une telle conduite il estimait que l’Eglise avait le devoir d’établir une cause de nullité.” J. DENIS, “Erreur sur la personne et consentement matrimonial,” in *L’Année canonique*, 18 (1974), 95-113, here on 103.

¹⁷⁷ J. P. KALLIKKATTUKUDY, *Fraud and Nullity of Marriage in Canon Law and Indian Civil Law*:

cases were tried as an extension of the ground of error of fact as specified in c. 1083, *CIC* 1917.

While examining a marriage nullity case where deceit is involved, it is sufficient that there exists deceit for the purpose of obtaining consent, even if the deceiver is the third party.¹⁷⁸ The other spouse or even a third party may fabricate a false reality, which will appear in the deceived party as a truth. In other words, deceit leads to an incorrect comprehension of what one is consenting to.¹⁷⁹ To err about the person of the other contracting party substantially affects the object of consent to the point that he/she does not really exist. Therefore, according to natural law, marriage does not exist when one is deliberately led into error in order to obtain marital consent.¹⁸⁰

Canon 1082, *CIC* 1917 required that each marital partner should have minimum

A Comparative Analysis, 85. Siegle is of the view that prolonged courtship is one way of preventing fraudulent marriages and of minimizing the injury that could result from fraud. He offers the following solution: "Prolonged courtship is one way to offset fraud. If a party fears that he is being deceived by the party he intends to marry, he should put this condition into writing or before witnesses; make this statement on what he expects of the other, or what he does not expect of the other party. Only in such a case would fraud invalidate marriage. It is a quality of the person which is considered in this error." Cf. B. A. SIEGLE, *Marriage Today, a Commentary on the Code of the Canon Law*, 158.

¹⁷⁸ *Coram* DEFILIPPI, December 4, 1994, in *Monitor Ecclesiasticus*, 125 (2000), 430-469. See also *Communicationes*, 3 (1971), 77. This means that parents, friends or others who deliberately plan to conceal information or deceive about the (non)existence of a desired quality in order to obtain the consent of the deceived party cause the consent to be invalid. For deceit to occur, it is not necessary that either of the parties propagate it. A third party, upon knowledge that if some information may lead to not consenting to marriage, may be an agent of deceit as long as consent comes about under the influence of wrongful presentation of the facts or withholding of the same. See *coram* STANKIEWICZ, January 27, 1994, in *RRT Dec.*, 86 (1994), 56-76, no. 23a: "Quamquam in negotiis bilateralibus require sole tut dolus ab altera parte proveniat, vel saltem ea sciente patretur, habita ratione eiusdem effectus, quem provocare potest in decepto sive dolus compartis sive personae tertiae, tamquam certa opinio admittenda est iuxta quam nihil refert utrum talis dolus patratum sit a parte contrahenda an ab alia persona." *Communicationes*, 3 (1971), 77.

¹⁷⁹ *Coram* FUNGHINI, December 20, 1989, *RRT Dec.*, 81 (1989), 775-778. Funghini employs the definition of error provided by S. THOMAS, *Summa Theologica*, III, q. 51, art. 1, as: "An act of the will presupposes an appraisal or a judgment of anything on which it has a bearing." See also, P. J. VILADRICH, "Matrimonial Consent," 1278-1292.

¹⁸⁰ Cf. P. J. VILADRICH, "Matrimonial Consent," 846. This author is of the view that c. 1098, *CIC* 1983 is of natural law. For this reason, it should be applied retroactively.

knowledge in order to make matrimonial consent possible. According to c. 1098, *CIC* 1983, a marital *consortium* cannot be created out of deceit: “A person contracts invalidly who enters marriage deceived by malice, perpetrated to obtain consent, concerning some quality of the other party which of its very nature can seriously disturb the partnership of conjugal life.”¹⁸¹ When the deceived person discovers the truth, the relationship might be immediately or eventually disrupted.¹⁸² The result of deceit is that there is no joining of wills. Fraud creates a defect in consent, and the deceived partner is prevented from choosing freely.

However, c. 1098, *CIC* 1983 does not specify which negative qualities disrupt the marital partnership. One can infer from the reading c. 1084, §3, *CIC* 1983 that sterility is one of them. It was the intention of the Code Commission to leave these qualities to be specified by jurisprudence in each case.¹⁸³ Nevertheless, canonists have identified such qualities as previous marriage, age, homosexuality, mental health, sterility, pregnancy, virginity, wealth, and nobility.¹⁸⁴ In the present formulation of the canon, it is clear that

¹⁸¹ Discussions regarding the need to include *dolus* as a nullifying factor can be found in *Communicationes*, 3 (1971), 76-77; 9 (1977), 360-362; 371-373. The analysis of the implication of this development was made by T. J. GREEN, “The Revision of Marriage Law, an Exposition and Critique,” in *Studia canonica*, 10 (1976), 363-410, especially on 392. Boccafola explained: “Merely generic qualities which are expected in every spouse, such as that he be a good husband or that she be a person who can make me happy or ordinary and universal qualities do not qualify.” Cf. K. E. BOCCAFOLA, “Deceit and Induced Error about a Personal Quality,” 705. For more discussions of the Code Commission regarding the inclusion of this canon, see P. T. SUMNER, “*Dolus* as a Ground for Nullity of Marriage,” 176-177.

¹⁸² Boccafola clarified: “Induced error can concern either the absence of a quality that is normally to be expected, e.g. fertility, or the presence of some seriously disturbing concealed defect, e.g. drug addiction.” K. E. BOCCAFOLA, “Deceit and Induced Error about a Personal Quality,” 706. In either case, sterility is, according to Boccafola, an important quality which, when deceived about, would seriously disturb conjugal life.

¹⁸³ See *Communicationes*, 9 (1977), 372.

¹⁸⁴ A. MENDONÇA, “Error of Fact: Doctrine and Jurisprudence on Canon 1097,” in *Studia canonica*, 34 (2000), 23-74 esp. 55-74. Mendonça indicates that these qualities have been recognized in jurisprudence. Other canonists have included the following: “Ongoing psychiatric illness or personality disturbance, serious medical conditions such as syphilis, AIDS, pregnancy by someone else, a criminal

where *dolus* is involved, there is no joining of the wills to form a *consortium*; therefore, there is no marriage.¹⁸⁵

If marriage breaks up because of sterility, the tribunal can rely on the declaration of the parties and testimony of witnesses as well as documents to discover with moral certitude the existence of *dolus*.¹⁸⁶ Other information such as the reason for deceiving, personal history of deception or a sworn affidavit may offer additional proof that deceit was appropriated to obtain marital consent.¹⁸⁷ However, if the fact of being deceived is

record or immoral lifestyle, a previous marriage whether canonically valid or not.” Cf. G. SHEEHY (ed.), *The Canon Law Letter and Spirit: A Practical Guide to the Code of Canon Law*, 615. J. McAreavey excludes other trivial qualities such as “the fear of heights or colour-blindness.” J. McAREAVEY, *The Canon Law of Marriage and the Family*, 113. Such qualities are considered too trivial to “seriously disturb” conjugal life. While commenting on c. 821 CCEO, Pospishil identifies the qualities which, when lacking, would disturb conjugal life: “Heterosexuality, fertility, possibility to practice one’s religion.” He also identifies negative qualities which affect marital life when purposely concealed: “Homosexuality (male and female), alcoholism, drug addiction, sexual dysfunction, dangerous contagious disease, such as AIDS (acquired immunity deficiency syndrome), previous marriage, obligations toward former spouses and children, criminal past, mental illness, sterility, etc.” V. J. POSPISHIL, *Eastern Catholic Marriage Law*, 343.

¹⁸⁵ See T. J. GREEN, “The Revised *Schema De Matrimonio*: Text and Reflections,” in *The Jurist*, 40 (1980), 92-93; P. T. SUMNER, “*Dolus* as a Ground for Nullity of Marriage,” in *Studia canonica*, 14 (1980), 173-175; *coram* PARISELLA, March 24, 1983, in *Monitor Ecclesiasticus*, 108 (1983), 491-502. R. Funghini is of the view that the invalidating force of deceit arises from the Second Vatican Council’s teaching on the dignity of the person; deceit prevents the mutual self-giving of the couple and undermines the stable community of conjugal life. Cf. *coram* FUNGHINI, December 20, 1989, in *Monitor Ecclesiasticus*, 111 (1989), 456. Stankiewicz sees it as an expression of canonical equity. See *coram* STANKIEWICZ, February 24, 1983, in *RRT Dec.*, 75 (1983), 42-53, here on 49. U. Navarrete explains that deceit causes error, which in turn limits the internal freedom of a person. See U. NAVARRETE, “Canon 1098 de errore doloso estne iuris naturalis an iuris positive ecclesiae?” in *Periodica* 1990, 76 (1987), 166. L. ÖRSY sees this canon as a way of protecting the potentially deceived party (L. Örsy, *Marriage in Canon Law*, 140). Cf. J. McAREAVEY, *The Canon Law of Marriage and the Family*, 113.

¹⁸⁶ With the reformation of the CIC 1983 canons on matrimonial processes by Francis, the declaration of the parties alone, or the testimony of only one qualified witness on the existence of *dolus* can be admitted as full proof for the nullity of marriage. Cf. FRANCIS, Apostolic Letter *motu proprio* by which the Canons of the Code of Canon Law Pertaining to Cases Regarding the Nullity of Marriage are Reformed *Mitis Iudex Dominus Iesus*, August 15, 2015, in AAS, 107 (2015), 958-970; Engl. transl. in *L’Osservatore romano*, September 9, 2015, 4, c. 1678 (= *Mitis Iudex*). See also, FRANCIS, Apostolic Letter *motu proprio* by which the Canons of Eastern Churches Pertaining to Cases Regarding the Nullity of Marriage are Reformed *Mitis et Misericors Iesus* (= *Mitis et Misericors Iesus*), in AAS, 107 (2015), 946-957; Engl. transl. in *L’Osservatore romano*, September 9, 2015, 5, c. 1364, §§ 1-2.

¹⁸⁷ Cf. L. WRENN, *Annulments*, 79-80; J. J. CUNEO, “Deceit/Error of Person as a *caput nullitatis*,” in *CLSA Proceedings*, 45 (1983), 166; L. ÖRSY, *Marriage in Canon Law*, 139; E. KNEAL et. al., “A Proposed *In Iure* Section for the New Statute of Fraud,” in *The Jurist*, 42 (1982), 215-222.

discovered before marriage, and the party goes ahead to marry, this fact does not render marriage invalid.¹⁸⁸

Sumner offers the following example to illustrate the impact of deceit regarding sterility on marital partnership. A man knows that he is sterile before he enters marriage and that his fiancée loves children and wants a family of her own, but conceals this information and enters marriage. When it is clear that no children are forthcoming, the man suggests that it is his wife who is at fault. The wife, believing her husband, begins to feel inadequate, and the relationship suffers. Then the husband breaks the news, admitting his deceit concerning sterility. The wife gets upset, and the relationship completely breaks down.¹⁸⁹

The example above provided by Sumner indicates three main issues: deception for the sake of obtaining consent; the potential of sterility to gravely disturb the marital partnership; and the *criterium reactionis*. A strong reaction to the discovery of the deceit is usually the denunciation of the deceit, immediate separation, and disturbance of the partnership or its termination.¹⁹⁰ This reaction gives a strong presumption that the party

¹⁸⁸ Cf. J. J. CUNEO, "Deceit / Error of Person as a *caput nullitatis*," 154-166; T. P. DOYLE, "Marriage [cc. 1055-1165]," 781.

¹⁸⁹ P. T. SUMNER, "*Dolus* as a Ground for Nullity of Marriage," in *Studia canonica*, 14 (1980), 190. Deceit about sterility, when ascertained to have taken place in order to obtain consent, a briefer tribunal process can be used, in accordance with the norms that accompanied *Mitis Iudex* (no. 14; *Mitis et Misericors Iesus*, no. 14, §1). "Malicious concealment of infertility" is given as one of the reasons for employing a briefer process. The parties' judicial testimony regarding this concealment may have the force of full proof that infertility was maliciously concealed in order to obtain marital consent.

¹⁹⁰ Canon 1098, *CIC* 1983 provides a premise from which deceit is assessed: the object of deceit is that quality which has the capacity to "seriously disrupt the partnership of conjugal life." In his commentary on this canon, Viladrich explains: "With this formula, the legislator intends that the quality must be objectively grave and establishes the partnership of conjugal life as an objective point of reference for the gravity of the quality so that the qualities are related to the essence, properties, and ends of marriage. Therefore, those subjective qualities which cannot be objectively reconciled with conjugal partnership are irrelevant and, in this sense, they are merely arbitrary or trivial." P. J. VILADRICH, "Matrimonial Consent," 849.

was deceived about what he/she gravely desired.

Culture is another important consideration in determining the severity of a quality which might disrupt married life. Therefore, such a quality must be evaluated objectively; that is, in view of a society's particular customs and culture.¹⁹¹ Stankiewicz proposed the following nine principles of evaluation which might constitute objective criteria: 1) The person must present consent in a state of deception. 2) There must be a deliberate intention to extract matrimonial consent. 3) Fraud must be perpetrated by the contracting party or by a third party. 4) The deception may be positive or negative. 5) The quality must be essential to conjugal life itself. 6) The quality concerned is of the other spouse and not of a third party (e.g., the quality of the family). 7) The quality must be actual, certain and present at the time of celebrating marriage. 8) The quality must be such that it can seriously disturb the partnership of conjugal life. 9) The quality must be objectively serious, such as sterility which is mentioned in c. 1084, §3, *CIC* 1983. The objectivity of the deception must be determined by the common estimation of the community or society confirmed by jurisprudence and related to the very essence, properties or ends of conjugal partnership.¹⁹²

In conclusion, the development and interpretation of *dolus* as a ground for nullity of marriage indicate the nature of the *consortium* the couples enter at the exchange of

¹⁹¹ *Coram* STANKIEWICZ, February 24, 1983, in *RRT Dec.*, 75 (1983), 42-53, here on 50. Stankiewicz is of the view that in cases of sterility, the objectivity of a judgment is also required in assessing such cases as those arising from Africa where fecundity is highly regarded. Most African marriages are contracted with a condition of fertility and a desire to propagate offspring. Therefore, if there is error of quality of person or deceit regarding the quality of fecundity, this gravely disturbs marital life. See also *coram* POMPEDDA, July 22, 1985, in *RRT Dec.*, 77 (1985), 395-403, especially 401; *coram* HUOT, November 1987, in *RRT Dec.*, 79 (1987), 650-663, especially 659.

¹⁹² *Coram* STANKIEWICZ, January 27, 1994, in *RRT Dec.*, 86 (1994), 56-76. Engl. transl. A. MENDONÇA, "The Importance of Considering Cultural Context in Adjudicating Marriage Nullity Cases with Special Reference to South East Asian Countries," 252-253. The above principles by Stankiewicz are sufficient to determine the existence of deceit in various cultural contexts.

consent. The understanding of marital consent as mutual acceptance and donation of each other (*traditio et acceptatio*)¹⁹³ requires the openness needed for the constitution of the partnership. Deceit does not consist only in non-communication of some quality or in communicating wrong information. Rather, it also consists in a deliberate concealment of information regarding an important existing or nonexisting quality which will disturb the *consortium*. Sterility stands out as one such quality and the spouses need to be as open as possible before they consent to marry.¹⁹⁴ Therefore, in cases of sterility, marriage can only be invalid if it is perpetuated by fraud, rather than the fact of childlessness.¹⁹⁵ Sometimes the procreative capacity in the other spouse is placed as a condition to enter marriage as discussed below.

2.4.3 —Sterility as an Object of Condition (c. 1102, CIC 1983; c. 826, CCEO)

A condition is a quality attached to matrimonial consent, such that marriage exists or not, depending on whether the condition exists or not; a condition can regard the past, the present, or the future.¹⁹⁶ When a marriage partner places conditions which are of

¹⁹³ The interpersonal dimension of marriage is brought about by the couple's ability and willingness to give and accept each other. Cf. *coram* SERRANO, April 5, 1973, in *RRT Dec.*, 65 (1973), 322-343, here on 323. See also, THOMAS AQUINAS, *Summa Theologiae, Supplementum*, Q. 45, Art. 1.

¹⁹⁴ The law singles out one case for the application of c. 1084, §3, *CIC* 1983. Fraud where sterility is involved causes marriage to be invalid. This is different from c. 1068, *CIC* 1917 which was only concerned with the protection of the indissolubility of marriage and did not include a possibility of fraudulent marital consent. Cf. L. ÖRSY, *Marriage in Canon Law: Texts and Comments, Reflections and Questions*, 140.

¹⁹⁵ Cf. *ibid.*, 111: "The reference to canon 1098 is a reference to consent obtained through fraud; the law wants to make clear that a fraudulent misrepresentation concerning the fertility of the future partner may well cause marriage to be invalid. Still, the cause of invalidity will be in the fraud perpetrated, not in the infertility itself."

¹⁹⁶ A condition, according to C. H. Black, is a "clause in the contract or agreement which has for its object to suspend, rescind, or modify the principal obligation, or modify the diverse bequest. A qualification, a restriction or limitation modifying or destroying the original act with which it is connected." Cf. C. B. BLACK, *Black's Law Dictionary*, 154. Canonically, the following definition by Boccafoli suffices: "Thus, a condition is a qualifying circumstance attached to a legitimate act and upon which the consent is made to depend i. e. the effects of the legitimate act are either suspended or rescinded. Strictly speaking, a

the past or present, he/she intends to consent to marriage and the validity of this consent depends on whether the quality desired exists or not. In the Latin Church, past and present conditions can be placed only with the written permission of the local ordinary (c. 1102, §3). A future condition is not allowed (c. 1102, §1) because it suspends the effects of a juridic act to an unknown future.¹⁹⁷ This act of placing a condition is a positive act of the will, which is usually based on an uncertainty, or doubt that one cannot resolve at the time.¹⁹⁸ C. 1102, *CIC* 1983 forbids entering marriage under a future condition, and c. 826 *CCEO* forbids placing any condition to marital consent.

Conditions can be placed regarding past, present or future circumstances.¹⁹⁹ A

condition has the characteristic element of suspension, i.e. the effect of a legitimate act is made to depend upon a future and uncertain event.” The original text reads: “Ita, condicio est circumstantial actui legitimo adiecta, ex qua consensus pendet i.e. valor actus legitimi suspenditur aut rescinditur. Proprie loquendo, condico habet notam characteristicam ‘suspensionis,’ i.e. valor actus legitimi pendet ab evento future et incerto.” *Coram* BOCCAFOLA, May 27, 1987, in *RRT Dec.*, 79 (1987), 320-328; Engl. transl. in V. RONDENBERGER (ed.), *Rotal Jurisprudence: Selected Translations*, Washington, DC, CLSA, 2011, 1-17, here on 4.

¹⁹⁷ After the Instruction *Sacrosanctum matrimonii* of the Sacred Congregation of the Sacraments, June 29, 1941, the placing of conditions was no longer allowed, apart from exceptional cases and with the express permission of the local ordinary (AAS, 33 [1941], 297-318; Engl. transl. in *CLD*, 2 [1933-1942], 253-276). A future condition invalidates marriage due to two reasons: it subordinates the bond of marriage and makes its effects retroactive when a future condition is fulfilled. Secondly, the efficacy of marital consent remains suspended, and the emergence of the bond is deferred to a moment, which is uncertain. Cf. P. J. VILADRICH, “Matrimonial Consent,” 854. For the Eastern Churches, Pius’ *motu proprio* provided that “matrimonium sub condicione valide celebrari non potest.” See PIUS XII, *Motu proprio Crebrae allatae*, February 22, 1949, in AAS, 41 (1949), 107; Engl. transl. in V. J. POSPISHIL, *Code of Oriental Canon Law: The Law on Marriage*, Chicago, Universe Editionis, 1962, 131.

¹⁹⁸ Doyle explains that a condition in a legal agreement is a circumstance attached to it in such a way that the validity of the agreement depends on the fulfillment of the condition. See T. P. DOYLE, “Marriage [cc. 1055-1165],” 788. While giving a commentary on c. 1092, *CIC* 1917, Ayrinhac defined conditional marriage as: “A condition in a contract is a circumstance to which the consent is attached, and on which the value of the contract depends. This may be in two ways: (1) The fulfilment of the condition may put an end to the contract; we have then a *voiding condition*; or (2) The fulfilment of the condition may cause the contract, held in suspense until then, to have its effect: this is a *suspensive condition*. In relation to a contract which is indissoluble, like marriage, there can be no question of voiding conditions.” See H. A. AYRINHAC, *Marriage Legislation in the New Code of Canon Law*, 217.

¹⁹⁹ Cf. F. X. WERNZ, P. VIDAL, and F. AQUIRRE (eds.), *Ius canonicum*, vol. 5, Rome, Pontificia Universitas Gregoriana, 1938, no. 51. The authors give examples of past condition as, “I marry you if your brother is dead;” and a present condition as: “I marry you if you are a virgin.” In these examples, the efficacy of the marital act of consent takes place at the “moment when such conditions are objectively

past condition is placed when the circumstance took place at a time in the past and before the exchange of consent. A present condition is placed with regard to a situation that concerns the spouse's present condition. Finally, the future condition is placed at the time of consent, but with regard to a future expectation without which consent will not be effective. Any of these conditions can be placed either explicitly declaring it to the party or to a witness, or by an implicit expectation in the other partner. When an intention is not verifiable in the external forum, the declaration of the party or his/her reaction when the condition is not met will reveal the implicit intention.²⁰⁰

A future condition placed on marriage is said to be either suspensive, or resolutive. According to Felice, a condition is "suspensive if it postpones the effects of marital consent, pending a fulfilment of a future condition. A condition can also be resolutive, if it has been placed in order to resolve or rescind the consent which was given, by reducing it to nothing."²⁰¹ The reason for attaching any condition to one's marital consent lies in doubt or uncertainty in the mind of the person.²⁰² As H. Caiazza

fulfilled or not, even though the contracting parties do not yet know if the event has occurred or not" (Ibid.).

²⁰⁰ Cf. c. 1678, §1, *CIC* 1983 (after the promulgation of *Mitis Iudex*). This an example of where the judicial confession of a party can have a force of full proof. See B. A. SIEGLE, *Marriage Today, a Commentary on the Code of the Canon Law*, 170. In order to prove the existence of a condition on marital consent, Wrenn thinks that tribunals must rely upon the judicial and extrajudicial confession of the parties. Other information such as motive for placing the condition, circumstances and behavior of the party who discovers the condition are additional proof. Cf. L. WRENN, *Annulments*, 103-108.

²⁰¹ *Coram* FELICE, January 17, 1956, in *RRT Dec.*, 48 (1956), 58-69, here on 60: "Conditio, quae consensum negotiantis suspendit, suspensiva dicitur: quae vero consensum datum nata est resolvere, nempe ad nihilum reducere, covatur resolutive." Engl. transl. in V. RONDENBERGER, ed., *Rotal Jurisprudence: Selected Translations*, 5.

²⁰² Apart from one having a doubt, Bouscaren gives another reason why it is possible to place a condition on marital consent. While commenting on c. 1092, *CIC* 1917, he explained: "Just as in any other contract, too, in the contract of marriage, it is possible to make one's consent conditional. This is by no means licit without a grave reason, because of the grave difficulties to which it may lead. This canon is concerned not about the illicitness of conditional consent but solely with its effect upon the validity of marriage." T. L. BOUSCAREN, "Marriage," 511. To avoid such grave difficulties that c. 1102, §3, *CIC* 1983

pointed out in his rotal decision: “Unless someone has a doubt regarding a particular circumstance or quality he will not demand the existence of this element or quality under the form of a condition.”²⁰³

The *CIC* 1917 made many distinctions in conditions that are permitted and those that are forbidden. The text reads:

c. 1092: A condition once placed and not revoked:

1° If it concerns the future and is necessary or impossible or immoral, but not contrary to the substance of marriage, it is to be considered as not having been made;

2° If it concerns the future and is contrary to the substance of marriage, it renders marriage invalid;

3° If it concerns the future and is licit, it suspends the validity of marriage;

4° If it concerns the past or the present, marriage will be valid or not, according as the matter concerns which the condition is made, exists or not.²⁰⁴

While commenting on this canon, Ayrinhac explains: “Strictly speaking, conditions concerning events which are past, present, or necessary, i.e., future, but already certain, are not real conditions, since they do not suspend the consent. They are, however, spoken

requires that even placing a past or present condition be done only by a written permission from the local ordinary. Thus, the local ordinary is the one to determine the “grave cause” for placing such a condition before it is permitted. Even when c. 1092, *CIC* 1917 does not specify who determines the “licitness” of the condition being placed as moral or not contrary to the substance of marriage, this new canon clarifies the legislator’s mind on the person responsible for permitting the placement of a condition.

²⁰³ *Coram* CAIAZZO, July 11, 1950, in *RRT Dec.*, 42 (1950), 457-462, here on 458: “Nisi quis de certa quadam circumstantial seu qualitate dubitet, existentiam huius circumstantiae seu qualitatis non postulabit sub forma conditionis.” See also V. RONDENBERGER (ed.), *Rotal Jurisprudence: Selected Translations*, 6. Cf. *coram* STAFFA, June 26, 1953, in *RRT Dec.*, 45 (1953), 475-479, especially 476; *coram* ANNÉ, July 4, 1967, in *RRT Dec.*, 59 (1967), 531-534, especially 522; *coram* EGAN, March 18, 1975, in *RRT Dec.*, 67 (1975), 167; *coram* PARISELLA, April 24, 1975, in *RRT Dec.*, 67 (1975), 359-367, especially 360; *coram* STANKIEWICZ, February 15, 1980, in *RRT Dec.*, 72 (1980), 91-102, especially 94.

²⁰⁴ Engl. transl. in G. JORGENSEN (ed.), *Marriage Studies: Sources in Matrimonial Law*, vol. 5, Washington, DC, Canon Law Society of America, 2004, 185. The original Latin reads:

c. 1092, *CIC* 1917: *Conditio semel apposita et non revocata:*

1° Si sit de futuro necessaria vel impossibilis vel turpis, sed non contra matrimonii substantiam, pro non adiecta habeatur;

2° Si de futuro contra matrimonii substantiam illud reddit invalidum;

3° Si de futuro licita, valorem matrimonii suspendit;

4° Si de praeterito vel de praesenti, matrimonium erit validum vel non, prout id quod conditioni subest, existit vel non. For a detailed discussion on the invalidity of conditional consent before *CIC* 1917, see P. GASPARRI, *Tractatus canonicus de matrimonio*, vol. 2, 77-104; and H. A. AYRINHAC, *Marriage Legislation in the New Code of Canon Law*, 217-226.

of as conditions because, for us, who may often be not sure of their fulfilment, they practically do hold the contract in suspense or render it doubtful.”²⁰⁵

Canon 1102, *CIC* 1983 does not make the distinctions mentioned in c. 1092, *CIC* 1917. It does not repeat the conditions of impossibility, necessity, immorality or liceity regarding the substance of marriage; rather, the canon mentions the “conditions about the future.” The second paragraph determines whether the conditions concerning the past or the present will render marriage valid or invalid insofar as the object of the condition existed or not at the time of consent. Nevertheless, these conditions can be placed only with the written permission of the local ordinary.²⁰⁶ This requirement is only for liceity and not for the validity of consent.

In the *CIC* 1983, future conditions were eliminated. Present or past conditions can only be placed lawfully with a written permission from the local ordinary (c. 1102, §3, *CIC* 1983). When a condition of fecundity is placed, and a spouse or both spouses find out that they are sterile, marriage can only be invalid by reason of conditional consent. This is because sterility does not invalidate marriage (c. 1084, §3, *CIC* 1983), but the placing of a future condition (c. 1102, §1, *CIC* 1983) does.

Whereas c. 1102, §1, *CIC* 1983 permits past and present conditions with

²⁰⁵ Ibid.

²⁰⁶ The original text reads: Can. 1102, *CIC* 1983:

§ 1. Matrimonium sub condicione de futuro valide contrahi nequit.

§ 2. Matrimonium sub condicione de praeterito vel de praesenti initum est validum vel non, prout id quod condicioni subest, existit vel non.

§ 3. Condicio autem, de qua in § 2, licite apponi nequit, nisi cum licentia Ordinarii loci scripto data. Engl. transl: c. 1102 §1, *CIC* 1983: A marriage subject to a condition about the future cannot be contracted validly.

§1. A Marriage subject to a condition about the future cannot be contracted validly.

§2. A marriage entered into subject to a condition about the past or the present is valid or not insofar as that which is subject to the condition exists or not.

§3. The condition mentioned in §2, however, cannot be placed licitly without the written permission of the local ordinary

permission from the local ordinary, c. 826, *CCEO* eliminated the subjection of marital consent to any condition: “Marriage based on a condition cannot be validly celebrated.”²⁰⁷ While commenting on this canon, Pospishil observes that the content of this canon already existed in both *Crebrae allatae*,²⁰⁸ and *Sacrosanctum matrimonium institutum*.²⁰⁹ The instruction asked the vigilance of the parish priests and the oversight of the ordinary to scrutinize the requirements of placing any conditions.²¹⁰

Therefore, for the Eastern Churches: “Marriage based on a condition cannot be validly celebrated.”²¹¹ It is reasonable not to place a condition to marital consent, because a partnership of marriage should not be subjected to conditions that need to be verified.²¹²

²⁰⁷ Pospishil explains: “The meaning of c. 826 is, that essential features of marriage are immutably established, and if one of them was excluded by some condition stipulated by a contractant, marriage consent will be invalid.” V. J. POSPISHIL, *Eastern Catholic Marriage Law*, 536. The author added: “The Eastern Code excludes in can. 826 the possibility of entering a marriage by the addition of some condition to the consent. Should one or both partner place a true and full condition, their consent will be regarded as invalid. This is a repetition found in the preceding law of *Crebrae Allatae* (c. 83).” *Ibid.*, 357.

²⁰⁸ Cf. PIUS XII, *Motu proprio Crebrae allatae*, February 22, 1949, in AAS, 41 (1949), 107; Engl. transl. V. J. POSPISHIL, *Code of Oriental Canon Law: The Law on Marriage*, 131. V. J. Pospishil mentions that, “This is a repetition found in the preceeding law of *Crebrae allatae* (c. 83),” *Ibid.*, 357. C. 83 of *Crebrae allatae* reads: “matrimonium sub condicione valide celebrari non potest.” This text is identical to c. 826, *CCEO*.

²⁰⁹ SACRED CONGREGATION FOR THE DISCIPLINE OF THE SACRAMENTS, Instruction, *Sacrosanctum matrimonii institutum*, June 29, 1941, in AAS, 33 (1941), 297-307.

²¹⁰ *Ibid.*, 304, no. 9.

²¹¹ PIUS XII, Apostolic Letter *Motu proprio Crebrae allatae*: “*Matrimonium sub conditione contrahi nequit*.” The apostolic letter reflects what the Council of Trent had legislated. Even when this Council did not address conditional consent, its effort to do away with clandestine marriages also addressed “conditional contracts, which, taking place really when the condition is fulfilled and not when they are celebrated before the priest, would not satisfy the conciliar requirements. But canonists found a solution for that difficulty, and conditional marriages continued to be held as valid; still, they became less common; ordinarily they were not permitted except for a grave cause, and in modern times bishops reserved to themselves the right to decide when the cause was sufficient.” Cf. H. A. AYRINHAC, *Marriage Legislation in the New Code of Canon Law*, 219.

²¹² The question that remains to answer is what happened at the wedding when the parties exchanged consent since consent will be determined to be valid or not on a future date? Moreover, the party or parties placing a condition are pondering terminating marriage when the condition is not fulfilled.

The requirement of permission from the local ordinary,²¹³ and the prohibition of placing future conditions in *CIC* 1983 point to the possibility of eliminating conditional consent in the Latin Code as well.

M. Gianneccchini listed the quality of fecundity among the conditions that couples place on their consent.²¹⁴ In his sentence, Gianneccchini made an observation about a case that originated from Ethiopia, where the African expectation of fecundity in every marriage was highlighted. He also concluded that within the African societies, “fertility is also considered a valid condition of marriage.”²¹⁵ Similarly, Stankiewicz observed that in all African marriages the quality of fecundity is often placed as a condition for marriage, due to cultural expectations and the continuation of the family lineage.²¹⁶ Fecundity is an important quality, which couples can place as a condition on their marital consent and as a quality that is directly and principally intended.²¹⁷

²¹³ Pospishil is of the view that the *CIC* 1983 requirement for the local ordinary’s expressly written permission is only for lawfulness; such a condition added to the consent without this permission would be valid. Cf. V. J. POSPISHIL, *Code of Oriental Canon Law: The Law on Marriage*, 359.

²¹⁴ *Coram* GIANNECCHINI, March 4, 1994, in *RRT Dec.*, 86 (1994), 134-143; here on 136: “Et in primis ad conditions culturales, sociales, oeconomicas, ad traditionis populi et loci, etc., quaeque ad hanc vel ad illam qualitatem, circa quam error vertit, favere, praeponere aut inclinare possunt, veluti virginitatem, fecunditatem, etc.” Gianneccchini based his observation on the study by F. J. URRUTIA, “Pastoralis matrimonialis et familiaris in Africa VI Congressus Generalis SECAM,” in *Periodica* 1990, 71 (1982), 259. He also affirmed: “Nostro in casu, magni aestimandus est modus cogitandi Africanorum circa matrimonium, uod ‘fecunditatem quaerit’ iuxta commendations et conclusions in Symmposio Conferentiarum Episcopaliū Africae et Madagascar anno 1981 habito enuntiatis, quia ‘desiderium prolis, in Africa traditionali, frequenter absolutum apparet.’”

²¹⁵ *Coram* GIANNECCHINI, March 4, 1994, in *RRT Dec.*, 86 (1994), 134-143; here on 136: “Fertilitas autem consideratur tanquam conditio validi matrimonii.” Engl. transl. by self.

²¹⁶ *Coram* STANKIEWICZ, February 24, 1983, in *RRT Dec.*, 75 (1983), 41-53, here on 50. In his decision, he writes: “Quibus perpensis non desunt quidem qui contendant omnia matrimonial africana cum huiusmodi conditione foecunditatis saltem implicita semper contrahit propter momentum quod ab Africanis foecunditati tribuitur, sub pondere ambientis culturalis ac familiarum desiderio propagationis linearum generationum.”

²¹⁷ See also *coram* BRUNO, June 17, 1994, in *RRT Dec.*, 86 (1994), 337-344, here on 337: “Errore in persona et de errore in qualitate personae directe et principaliter intent.”

It can be noted that there are two positions regarding conditional consent. The Latin Church does not subject marriage to future conditions, while the Eastern Churches do not permit any conditions be placed on marital consent. Future conditions are not permitted because they postpone the effects of consent to take place at an uncertain and undetermined time. From the promulgation of *CIC* 1983, there have been debates on the relevance of canonical inclusion of conditional consent.

Conclusion

The above discussion on impotence and sterility relating to canonical marriage takes place in the context of the Church's canonical doctrine of *bonum prolis*. Questions have been raised as to what the procreative end of marriage entails and if the education of children is part of *bonum prolis*.²¹⁸ Jurisprudence has recognized the importance of fecundity among certain cultures and how sterility negatively affects marital partnership there. Yet, there were no serious discussions about the implications of this deep-rooted belief, with which couples in these cultures enter marriage.

The procreative end of marriage is prescribed by canon law and interpreted by jurisprudence as embracing both the generation of offspring as well as their upbringing. Thus, *procreatio* and *educatio prolis* are two equal elements which constitute the good of children (*bonum prolis*). This end of marriage, which has been traditionally held as the primary end, is now considered one of the two ends to which marriage is ordered. Couples are able to attain this goal when they can perform those acts that are apt to

²¹⁸ At its conclusion, the Synod of Bishops emphasized that the vocation of the family includes both the procreation of children as well as their education. The Synod Fathers declared: "In bringing up children, protection needs to be afforded to the right of parents to freely choose the type of education to be given to their children, according to their convictions, its accessibility and the calibre of education." SYNOD OF BISHOPS, OCTOBER 2015, *Relatio finalis*, no. 66.

produce children, and when they have that natural or physical capacity to do so. This is because impotence and sterility have different juridic effects on marital consent.

Canon law does not define impotence or sterility. Canonists and other authors have offered definitions of impotence and sterility and have explained the impact each of them has on canonical marriage. Impotence, whether organic or functional, temporary or perpetual, consists in the inability to perform a completed conjugal act. Sterility occurs when the sexual organs exist and seem to function properly but the party or parties are unable to beget offspring. Juridically, impotence invalidates marriage but sterility does not. This means that it is only the conjugal act, consisting in the capacity to perform conjugal acts in a human manner (*in humano modo*, cf. c. 1061, §1, *CIC* 1983), that is required for marital consummation at the time of consent.

Sterility does not juridically affect marital consent. The fact that one or both spouses are not capable of producing offspring does not invalidate their marriage. Marital consent does not give the right to offspring, but to those acts that could result in the procreation of the offspring. As long as those acts are exchanged, marriage, even of the sterile, is considered valid. This view of the Church has consistently been expressed from writings of Saint Augustine and from *Decretum Gratiani*.

The impact of sterility can be expressed in different forms in which the couples place their consent. As seen from canonical doctrine and jurisprudence, error, deceit and condition can be destructive to the partnership of the whole of life. While utilizing resources from canon law and its interpretation from jurisprudence, this chapter considered these elements, which relate directly to sterility in marriage. Thus, the juridic relevance of sterility to marital consent is well expressed.

When consent is obtained fraudulently, even by the third party, then consent is invalid (c. 1098, *CIC* 1983). This canon which is new in the *CIC* 1983, and in the *CCEO*, is an application of c. 1084, §3. Rotal jurisprudence makes this application when considering cases involving sterility, error of quality and deceit. Error becomes an invalidating factor when it concerns a quality in the other spouse that is principally and directly intended. In addition, if a quality is lacking, or if the other person has an undesired quality and it is concealed for obtaining consent, the act of deceit invalidates marriage. The same happens when the party places a future condition of fecundity on marital consent. Marriage, which is entered with a future condition such as fecundity, is rendered invalid because procreation is a future event.

However, a question arises as to whether this juridic interpretation of c. 1084, §3, *CIC* 1983 by rotal jurisprudence can be applied to cultural contexts where marriage and procreation are considered equal. The answer to this question is discussed in the Church's response to childlessness as presented in the Chapter Four. This response has as its basis the recent medical-scientific developments which attempt to find a solution to childlessness using scientific means.

CHAPTER THREE: MEDICAL DIAGNOSIS AND THE MEANS OF RESOLVING STERILITY

Introduction

Any meaningful consideration of sterility in marriage should include scientific – medical dimensions. In order for infertility to be considered perpetual and incurable, this certainty must be established by medical science. Couples can be declared sterile only when all possible means of treating their infertility have failed. It can be deduced from the discussion below that the process of diagnosing the cause of a childless couple's infertility and proposing an appropriate treatment may take a long time. This chapter considers scientific means of treating temporal infertility, and also the means of coping with childlessness.

This chapter analyzes the medical discoveries and the means of reproduction as they relate to couples who are infertile due to sterility. Throughout her history, the Church has been concerned with the implications of scientific discoveries and how they impact her doctrine. A careful study of the scientific issues relating to sterility and the means of fertility treatment reveals that the Church is concerned about the theological and moral aspects of such means. As such, the Church tries not to regulate the life of individuals, but to guide them in holding on to what she considers moral and licit. Given that the present work is not a medical – scientific treatise but a canonical reflection on sterility, the scientific references given here are not in no way exhaustive.

In order to make this analysis, this chapter is divided into five sections. Section one considers the diagnosed causes of sterility as established by medical science. Sterility, which is either primary or secondary, has a number of causes and exists in both

men and women. These causes can be a result of the body's malfunction due to maldevelopment of the reproductive organs, the effect of an infectious disease or accident, or exposure to toxic elements which impact these organs negatively.

Section two analyzes the available means of diagnosis and treatment of infertility. A number of infertility conditions can be treated by ordinary means such as oral and injectable medicine or corrective surgery, while others remain untreatable. These means are administered by professional medical workers and have a high chance of success when performed properly and in time.

Section three presents alternative therapies for infertility treatment. In treating infertility, surgery and medication may not be sufficient in enabling conception. Professional medical workers and therapists have invented other means of addressing infertility. These include stress management, lifestyle change, nutrition, and herbal medicine. When all these means of treatment fail, one can be considered sterile.

Section four is a summary of the artificial reproductive technologies that are used to conceive a child when fertility treatments have failed to cause pregnancy. These means do not treat the causes of sterility, but bypass them and offer the couple a chance to have a child. These technologies tend to replace the natural means of reproduction and are termed "artificial." In contrast, NaPro Technology aims at treating causes of infertility so that the child is conceived naturally.

Finally, section five considers the professional means of helping childless couples through counseling.¹ Counseling is administered before and during marriage and especially after a spouse or both are diagnosed sterile. Counseling assists childless

¹ Some authors use the word "counseling" while others use "counselling." In this work, the word "counseling" has been used for consistency.

couples in coping with the stress of not having a child, and to help them make choices that are available to them.

3.1 — Medical Diagnosis of Sterility

Sterility² is one of the causes of childlessness in most African societies.³ This condition is so undesirable that it has a profound impact on marital partnership which is intended for life. Consequently, sterility disrupts the partnership of marriage and, at times, ends it. In societies where people do not find a medical explanation for childlessness,⁴ they will continue to seek a cause. In the the African mind-set, “everything has a cause.”⁵ The following section discusses the classifications of sterility as primary and secondary and identifies the medical causes of sterility in both men and women. However, since this work is not a treatise in reproductive medicine or science, it only outlines the causes of

² The terms “sterility” and “infertility” have been used interchangeably. Medical authors tend to use the term “infertility” rather than “sterility.” Sterility is irreversible, a permanent inability of an individual to reproduce; it is normally used only in relation to demonstrate a pathology. Infertility is used in the sociological and medical literature to connote the failure of a woman to achieve pregnancy or carry a child to term, or of a man to cause pregnancy. Infertility is not a permanent condition as such; it can be reversed as will be demonstrated in the following sections. Cf. J. H. MONACH, *Childless: No Choice, the Experience of Involuntary Childlessness*, London, Routledge, 1993, 4. In this work, the two terms are used interchangeably, keeping in mind that the term “sterility” is used in canon 1084, §3, *CIC* 1983.

³ U. Larsen, H. Raggars have pointed out: “Infections from sexually transmitted diseases (STD), following either a childbirth or an abortion, were the major causes of infertility in sub-Saharan Africa.” Cf. U. LARSEN and H. RAGGERS (eds.), “Levels and Trends in Infertility in Sub-Saharan Africa,” in J. T. BOERMA and Z. MGALLA (eds.), *Women and Infertility in Sub-Saharan Africa: a Multi-Disciplinary Perspective*, Amsterdam, KIT Publishers, 2001, 25-69, here on 26.

⁴ Healthy couples are usually considered infertile after regular unprotected sexual intercourse for a year. Some researchers indicate that the couples should be concerned after the woman has become pregnant after a year of trying. Cf. A. L. SUTTON, *Women’s Health Concerns Sourcebook*, 2nd ed., Detroit, MI, Omnigraphics Inc., 2004, 328. The author quotes a recent study presented at Europe’s leading reproductive medicine conference. This research, which was led by a team from the National Institute of Environmental Health Sciences in North Carolina, analyzed data on 782 couples from seven European cities. This study concluded that among women who are between 35 and 39 years of age, 1 in 10 failed to conceive after 2 years of regular sexual intercourse.

⁵ In his study of African cultures, L. Magesa indicates that Africans generally believe that it is God who is responsible for all good things. Misfortunes happen only with his knowledge. Cf. L. MAGESA, *African Religion, The Moral Traditions of Abundant Life*, N.Y., Orbis Books, 1997, 41.

infertility⁶ as presented by medical science.

3.1.1 — Primary and Secondary Sterility

There are two kinds of sterility, namely primary and secondary. Primary sterility refers to the permanent inability to have a child among “couples who have never had children – they have never been able to conceive after a year of unprotected intercourse or to carry a pregnancy to a live birth.”⁷ The term “live birth” points to the possibility of women who may conceive but have never given birth to a live child. Therefore, the “standard definition of (primary) infertility also includes women who have repeated miscarriages. In medical terms, these incidents are referred to as spontaneous abortions.”⁸ T. F. DiGeronimo extends the meaning of sterility to women who have had repeated miscarriages and have never given birth to a live child. Women who conceive but are

⁶ Most of the scientific authors referenced in this work do not distinguish between the term “infertility” or the temporary inability to bear a child and “sterility” the permanent inability for a person to bear a child. While quoting these authors, infertility and sterility will be used interchangeably.

⁷ T. F. DIGERONIMO, *New Hope for Couples with Infertility Problems*, Roseville, Prima Publishing, 2002, 8. For more on this distinction, see H. CATON, H. BUTTRAM and D. DOWNING, *The Fertility Plan, Holistic Program for Conceiving a Healthy Baby*, New York, Simon & Schuster, 2000, 82; J. C. DANILUK, *The Infertility Survival Guide*, Oakland, New Harbinger Publications, Inc., 2001, 5. See also T. W. HILGERS, *Reproductive Anatomy and Physiology for the Natural Family Planning Practitioners*, Omaha, NE, Creighton University Natural Family Planning Education & Research Center, 1981, 77. F. E. Igbineweka looked at these causes from a theological perspective using the discovery of modern medicine. His conclusions, even when based on Nigeria, a West African nation, are relevant to Uganda. See F. E. IGBINEWEKA, *The Sacrament of matrimony and Childlessness in Edo Pastoral Problem and Possible Solutions*, STD diss., Rome, Pontificia Università Lateranense, 1987, (97-113). The author makes distinctions in the notion of sterility as both primary and secondary. Sterility is called “primary” when the person cannot have a child at all. Secondary sterility occurs when a person has one child or two but cannot have any more children when he/she is still of child bearing age, and is physically/psychologically fit. Whether sterility is primary or secondary, it has no impact on canonical marriage.

⁸ T. F. DIGERONIMO, *New Hope for Couples with Infertility Problems*, 8. Injury that is incurred during “unsafe” abortions can also cause sterility in women. Cf. T. H. VAN DE VELDE, *Fertility and Sterility in Marriage, Their Voluntary Promotion and Limitation*, 193. Sutton is of the view that procured abortion is another cause of infertility, especially in Eastern European countries which used to make up the Soviet Union. Apart from abortion, the contraceptive pill is also known to be responsible for secondary sterility, even up to two years after the woman has discontinued its use. Cf. A. SUTTON, *Infertility and Assisted Conception, What You Should Know: Answers to Questions About Medical Techniques of Assisted Conception*, London, The Catholic Joint committee on Bio-Ethical Issues, 1993, 42.

unable to carry the fetus to a viable age are considered sterile. According to the United States of America government statistics, primary infertility becomes more prevalent as women age. One in five married women in her late twenties and early thirties has difficulty conceiving.⁹

Secondary sterility is the inability to have a child when the couple already has one. Medically understood, “secondary infertility is defined as having difficulty conceiving or carrying a pregnancy to term after already having had at least one successful pregnancy and delivery.”¹⁰ DiGeronimo observes: “For some women, this inability to conceive again is directly related to earlier pregnancy and childbirth; a postpartum infection, for example, can cause adhesions in the uterus or fallopian tubes and interfere with future fertility.”¹¹ Secondary sterility means that one has his/her reproductive organs functioning well and has had at least one child. But after the first

⁹ G. S. BERGER, M. GOLDSTEIN and M. FUERST, *The Couple's Guide to Fertility*, 3rd ed., New York, Broadway Books, 2001, 307. The author indicates that once a woman has delivered a baby, her chances of not being able to deliver again are just under 10 percent, according to the government (USA) statistics (107). He further states: “Most couples who experience secondary infertility probably used contraception for a period of time before trying a second pregnancy” (308). Some authors reveal that some women delay childbearing well into and beyond their years of fertility. K. Elrod and P. Carpentier are of the view that, “Fertility in women peaks at age twenty-two, and declines as a woman ages, especially after thirty-five. By age thirty, a woman has only a 20 percent chance of becoming pregnant in a given month, and by age forty, it falls to 5 percent.” See K. ELROD and P. CARPENTIER, “The Church's Best Kept Secret: Church Teaching on Infertility Treatment,” in E. BACHIOCHI (ed.), *Women, Sex and the Church. A Case for Catholic Teaching*, Boston, MA, Pauline Book and Media, 2010, 121-140, here on 124.

¹⁰ D. ARONSON et. al, *Resolving Infertility*, New York, HarperCollins Publishers Inc., 1999, 317. Secondary sterility is usually caused by inflammatory diseases and disorders in the genital tract which develop after the previous birth of a child. Van De Velde identifies agents responsible for secondary sterility: “The chief agents in causing such diseases and disorders are gonorrhea and septic puerperal infections. These cause local inflammations (in women) which may entirely close the tubes, or so injuriously affect the ovaries that fertilization or, in some cases, ovulation becomes impossible.” T. H. VAN DE VELDE, *Fertility and Sterility in Marriage, Their Voluntary Promotion and Limitation*, 171.

¹¹ T. F. DIGERONIMO, *New Hope for Couples with Infertility Problems*, 8. The author further wrote: “A 1997 study of women receiving fertility treatments found that those who already had children were more likely to give birth again than those who hadn't. The difference was greatest for women under 35 (whose chances were about 7 percent higher) and smallest for those over 40 (for whom the increase was only 2 percent).” Ibid., 9.

successful pregnancy, one may develop a problem that prevents any more pregnancy.¹²

Secondary sterility is more common than primary sterility.¹³ However, the emotional trauma that is caused by the two is similar in intensity.¹⁴ In a marriage where there is secondary sterility, the spouses are under stress to provide their child with a sibling and playmate. This often causes guilt or stress to the parents, since they cannot bear another child.¹⁵ As L. L. Deveraux and A. J. Hammerman found in their study, “clients experiencing secondary infertility often express a sense of having failed to accomplish something they were once able to accomplish, as though their prior ‘success’ was completely under their control.”¹⁶ This creates guilt and may lead the couple to continually try to conceive another biological child.

The cause of sterility, whether it is primary or secondary include accidental injury in surgery, the side effect of a particular medication. V. Davajan and R. Israel categorized the four causal factors of infertility: “The female factor, the male factor, combined male and female factors, and infertility of undetermined cause.”¹⁷ Despite the cause and nature

¹² Cf. G. S. BERGER, M. GOLDSTEIN, M. FUERST, *The Couple's Guide to Fertility*, 307.

¹³ D. ARONSON et. al, *Resolving Infertility*, 318.

¹⁴ Ibid. Secondary sterility is known to be caused by lowered or diminished fertility due to depressing systemic diseases, such as, for instance, diabetes, and from the effects of the auto-infections, such as those of chronic appendicitis, cholecystitis, etc. When this happens after a previous successful pregnancy and delivery of a child, secondary sterility is also known as “one-child sterility.” Cf. E. REYNOLDS and D. MACOMBER, *Fertility and Sterility in Human Marriages*, Philadelphia, PA, Saunders, 1924, 199.

¹⁵ Ibid. Berger, M. Goldstein and Fuerst advise the couples to approach a fertility specialist and go through the same medical evaluation as those couples suffering from primary sterility to determine the cause of their sterility. Cf. G. S. BERGER, M. GOLDSTEIN and M. FUERST, *The Couple's Guide to Fertility*, 308-310.

¹⁶ L. L. DEVERAUX and A. J. HAMMERMAN, *Infertility and Identity, New Strategies for Treatment*, San Francisco, Jossey-Bass Publishers, 1998, 117.

¹⁷ V. DAVAJAN and R. ISRAEL, “Diagnosis and Medical Treatment of Infertility,” in L. STANTON and C. DUNKEL-SCHETTER (eds.), *Infertility Perspectives from Stress and Coping Research*, New York,

of sterility, medical practitioners believe sterility has a negative impact on a marital partnership.

3.1.2 — Causes of Male Sterility

Male infertility refers to “any condition in which the man adversely affects the chances of initiating a pregnancy with his female partner.”¹⁸ This condition may be a result of several medical factors: “a surgery gone wrong, a side effect of a particular medication, defects in the reproductive system, hormonal deficiencies,”¹⁹ or illness or trauma that might be impairing fertility. It is estimated that in the United States of America, infertility affects 15 percent of couples who try to conceive a baby. Half of these couples are infertile due to male-related reproductive issues.²⁰ This section briefly explores the causes of sterility in men.²¹

One of the common reproductive problems in men is sperm disorders. In some men, sperm may be underdeveloped, abnormally shaped, or unable to move properly. In addition, the reproduction of sperm may take place but the sperm count may be too low (oligospermia).²² There may be a complete lack of sperm in the semen

Plenum Press, 1991, 17-28, here on 18.

¹⁸ S. J. JUDD, *Men's Health Concerns Sourcebook*, 410.

¹⁹ Ibid., 411. The author indicates that hormones produced by the pituitary glands are responsible for stimulating the testicles to make sperm. When the hormone levels are severely low, it results in poor sperm development.

²⁰ Ibid., 409.

²¹ These causes are outlined in Ibid., 410-411. See also H. CATON, H. BUTTRAM and D. DOWNING, *The Fertility Plan, Holistic Program for Conceiving a Healthy Baby*, 82-91.

²² Oligospermia also refers to complete absence of sperm. This can happen when the man is castrated as part of prostate cancer treatment. Cf. F. LABRIE et. al., “Medical Castration in Men: the First Clinical Application of LHRG Agonists,” in R. F. HARRISON, F. BONNAR and W. THOMPSON (eds.), *Fertility and Sterility: The Proceedings of the XIth World Congress on Fertility and Sterility, Dublin, June 1983, Held Under the Auspices of the International Federation of Fertility Societies*, Lancaster, MTP Press Limited, 1984, 25-39, here on 29. The authors also view prostate cancer as the second most common cause

(azoospermia),²³ very slow moving sperm (asthenospermia), or abnormally shaped sperm (teratospermia).²⁴ In some situations, genetics play a role in men's infertility; the sperm may carry so few chromosomal numbers that it does or does not support conception.²⁵ These two conditions do not allow the man to cause pregnancy and in the end, no child will be born. As studies show: "A man may produce antibodies that attack his own sperm. These can be detected in blood serum or seminal fluid."²⁶

The maldevelopment of a reproductive organ is another cause of sterility. Even when the reproductive organs seem to be properly developed, they can be blocked causing their malfunction. Examples of this occurrence are undescended testicles²⁷ and

of death in men.

²³ S. Cabot and M. Jansiska explain these conditions in S. CABOT and M. JASINSKA, *Infertility: The Hidden Causes, How to Overcome Them Naturally*, Glendale, SCB International Inc., 2011, 209. This sterile condition can be caused by failure in sperm production, or a blockage somewhere that is preventing sperm from travelling to the penis. These authors also identify the three main causes of lack of sperm production as: hormonal problems, testicular failure and *varicocere*. A varicose vein is located in the scrotum. Sharp increase in its temperature within the testes can reduce sperm production or cause damage to the already produced sperm. This can well result in sterility on the part of the man. P. Mayaud reports a study which indicates: "Investigations of infertile men in Africa have found more than 50% of men to suffer from azoospermia or oligospermia (low sperm count or absence)." P. MAYAUD, "Infertility in Africa: the Role of Reproductive Tract Infections," in T. BOERMA and Z. MGALLA (eds.), *Women and Infertility in Africa: a Multi-Disciplinary Perspective with Special Reference to Tanzania*, 71-107, here on 87. Studies indicate that, male infertility which is caused by varicocele, is 20%, and the infertility which is a result of ductal causes (blockage of conduits of semen transport) is 11% - 49% (Ibid.).

²⁴ For detailed explanation of these terms, and their implication on men's infertility, see T. F. DIGERONIMO, *New Hope for Couples with Infertility Problems*, 27; S. J. JUDD, *Men's Health Concerns Sourcebook*, 410.

²⁵ S. Cabot and M. Jansiska have indicated that even when it is the case of recurrent miscarriage by the woman, "the male (partner) will need a blood test to check for genetic problems, called karyotyping. This test involves counting the number of chromosomes in cells and checking for structural abnormalities in the chromosomes. Along with blood tests, a man may need referral to an urologist who will perform a physical examination and ultrasound scans of the testes." S. CABOT and M. JASINSKA, *Infertility: The Hidden Causes, How to Overcome Them Naturally*, 215. Another reason for referral can be the "complexity and emotional depth of the sterile couple's marital conflict." Cf. W. T. BASSETT, *Counseling the Childless Couple*, Philadelphia, PA, Fortress Press, 1969, 88.

²⁶ J. BAUGHAN, *A Hope Differed, a Couple's Guide to Coping with Infertility*, Portland, OR, Multnomah, 1989, 46.

²⁷ Cf. E. REYNOLDS and D. MACOMBER, *Fertility and Sterility in Human Marriages*, 128. R.

phimosis.²⁸ Since testicles require a cooler environment than normal body temperature, they descend from within the body before birth or during the first couple of years of life. If this does not occur, either for hormonal or other reasons, problems with fertility can arise.²⁹ In addition, an abnormal urethral opening can cause sterility. In some cases, a man is born with a congenital abnormality that places the opening of the urethra on the under or upper side of the tip of the penis. When this happens, ejaculated sperm are not deposited directly into the cervix or into the vagina at all.³⁰

In some instances, there is a complete absence of an organ³¹ that is vital for human reproduction, the organ is too small, or it is simply misallocated. Furthermore, sterility caused by the existence of varicoceles is said to affect 16 percent of all men and is present in 40 percent of infertile men. This condition impairs sperm development by preventing proper drainage of blood. Varicoceles can be easily discovered by physical examination. They are usually enlarged and twisted enough to be visible in the scrotum.³²

Newill observed that undescended testicles, when discovered in adult life, are usually brought down into the scrotum; this can restore fertility unless they are found to have been damaged while inside the abdomen. Cf. R. NEWILL, *Infertile Marriage*, Auckland, Penguin, 1974, 124.

²⁸ Phimosis is a condition where a very tight penis foreskin in the uncircumcised males does not retract. It can be treated only by circumcision. Cf. R. NEWILL, *Infertile Marriage*, Middlesex, Penguin Books, 1974, 124.

²⁹ The above explanation was given by: H. CATON, H. BUTTRAM and D. DOWNING, *The Fertility Plan, Holistic Program for Conceiving a Healthy Baby*, 87-88. These authors also note that treatment of this condition is usually carried out before puberty and is generally successful.

³⁰ Cf. T. F. DIGERONIMO, *New Hope for Couples with Infertility Problems*, 29. This condition can be considered canonically as impotence rather than sterility.

³¹ Absence of a penis or of testicles is rare but possible. Newill observed: "Congenital absence of both testicles is very rare and clearly a man born without testicles can never hope to become a father." Cf. R. NEWILL, *Infertile Marriage*, 105. The author also notes that there can be an absence of the *vasa deferentia* in men (121).

³² Cf. T. F. DIGERONIMO, *New Hope for Couples with Infertility Problems*, 28. The author noted: "Trauma to a testicle, a hernia repair, or bladder surgery can cause the testicle to twist inside the scrotum (a condition called torsion). If left untreated, the testicle shrinks and withers away to the size of a pea, causing

However, this condition is the most treatable cause of male infertility.³³

Another cause of male infertility is “retrograde ejaculation” or “ejaculation retrograde.” This anomaly makes semen ejaculate backwards to the bladder. This anomaly can be caused by the failure of nerves and muscles into the bladder neck during orgasm. Surgery, medications, or diseases that affect the nervous system can also cause retrograde ejaculation. Judd indicates that this condition is usually caused by diabetes; some medications, including drugs used to treat high blood pressure (hypertension) and some mood-altering drugs; and surgery to the prostate or urethra.³⁴

In addition to the malfunctioning of the male organs, the male reproductive organs might have been injured either in an accident, surgical error, or medical procedure like excess X-rays or exposure to radiation.³⁵ In places where cultural practices involve circumcision, or where medical procedures involve crude methods or lack modern

infertility.” He added that occasionally, “the stagnation in the veins is sufficient to interfere with the blood-supply of the testicle.” E. REYNOLDS and D. MACOMBER, *Fertility and Sterility in Human Marriages*, 127.

³³ Cabot and Jansiska believe that surgery can successfully repair the varicocele. In addition, men should also increase their intake of nutrients that improve the structural integrity of veins, such as vitamin C, bioflavonoids and the herbs horse chestnut and butcher’s broom. See S. CABOT and M. JASINSKA, *Infertility: The Hidden Causes, How to Overcome Them Naturally*, 207.

³⁴ Cf. S. J. JUDD, *Men’s Health Concerns Sourcebook*, 407. Retrograde ejaculation “occurs when semen pushes backwards into the bladder instead of out of the penis. This is caused by the failure of nerves and muscles in the bladder neck to close during orgasm [...] retrograde ejaculation can be caused by previous surgery, medications, or diseases affecting the nervous system. Signs of this condition may include cloudy urine after ejaculation and diminished or ‘dry’ ejaculation with orgasm” (410). The author also indicates that retrograde ejaculation is uncommon compared to other causes of sterility. He makes reference to the following medical resources: L. I. LIPSHULTZ, A. J. THOMAS and M. KHERA, “Surgical Management of Male Infertility,” in A. J. WEIN et. al., *Campbell-Walsh Urology*, 9th ed., Philadelphia, PA, Saunders Elsevier, 2007, 654-717; J. J. HEIDELBAUGH, *Management of Erectile Dysfunction*, Am Fam Physician, vol. 81, 2010, 305-312; S. BHASIN and R. BASSON, “Sexual Dysfunction in Men and Women,” in H. M. KRONENBERG et. al., *Williams Textbook of Endocrinology*, 778-816, especially 788.

³⁵ Reynolds and Macomber affirm: “A few years ago, before the nature of the Roentgen rays were well understood, practically all x-ray workers were sterile.” E. REYNOLDS and D. MACOMBER, *Fertility and Sterility in Human Marriages*, 128.

technology, such “unsafe” methods can also cause infertility.³⁶ In the process of these practices, a vital organ may be injured, infected or removed. Other accidental occurrences and infections happen during surgery or male circumcision.³⁷

External infections can also cause infertility. Medical conditions like sexually transmitted diseases (STDs)³⁸ or other venereal diseases are mainly responsible for causing infertility. Other diseases such as tuberculosis (TB) and mumps³⁹ can also affect

³⁶ Cf. P. MAYAUD, “The Role of Reproductive Tract Infections,” 78-79. In African cultures where initiation into adulthood involves circumcision of male and female youths, injuries are possible. While narrating the circumcision rites among the people of western Kenya, L. Magesa describes the dangers of the practice in the following words: “As a rule, it [circumcision] involves some sort of surgery. Circumcision or scarification of parts of the body are the usual types of operation for boys. For girls initiation may involve clitoridectomy, the excision or enlargement of the labia, perforation of the ears or lips, scarification of parts of the body, or a combination of these. At any rate, the operation is always deliberately intensely painful.” L. MAGESA, *African Religion, The Moral Traditions of Abundant Life*, 98. The author also wrote: “The main features of this initiation surgery are similar throughout Africa” (Ibid.). These rites are performed in view of fertility; therefore, they are performed on sexual organs (101-102). For further description of initiation surgery in east African tribes, see J. KENYATTA, *Facing Mount Kenya*, Nairobi, Vintage, 1962, 145-146; among west African tribes, see E. G. PARRINDER, *West African Religion*, London, Epworth Press, 1969, 95-114.

³⁷ Mayaud believes that male circumcision and female genital mutilation can expose the person to infections which are responsible for infertility. He clarifies that infection may come “at the time of operation, or interference in the drainage of urine and vaginal secretions and postpartum wound.” P. MAYAUD, “The Role of Reproductive Tract Infections,” 79. Surgical mistakes and the use of unsterilized instruments may result in such an infection and eventually cause sterility. For women, this may occur when the surgical procedure is performed to cut out a cervical conization (cone-shaped portion of the cervix) which may damage the mucus glands, causing them to function improperly. See G. S. BERGER, M. GOLDSTEIN and M. FUERST, *The Couple's Guide to Fertility*, 75. Accidental damage may occur in men's urologic surgery, or while performing a vasectomy itself. Vasectomy is performed when “doctor removes about a one-inch segment of the *vas deferens* and seals the cut ends of the *vas* with stitches, heat, or clips.” See G. S. BERGER, M. GOLDSTEIN and M. FUERST, *The Couple's Guide to Fertility*, 93, 180-182.

³⁸ In their study of the impact of sexually transmitted diseases on fertility in Uganda, O. P. Arya, S. R. Taber and H. Nsanze wrote: “Gonococcal cervicitis and clinical evidence of salpingitis were significantly more common in the low fertility area.” O. P. ARYA, S. R. TABER and H. NSANZE, “Gonorrhea and Female Infertility in Rural Uganda,” in *American Journal of Obstetrics and Gynecology*, vol. 138, 1980, 929-932. This study compared women from two ethnic groups in a low fertility and a high fertility area; diseases have this impact on fertility when they are not diagnosed and treated in their early stages. It is thought that diseases such as: “Chlamydia, syphilis and gonorrhea had been introduced to sub-Saharan Africa by the end of the 19th century” and high risks of infertility due to these diseases became prevalent in the 1980s. Cf. R. G. WHITE et. al., “Modelling the Dramatic Decline of Primary Infertility in Sub-Saharan Africa,” 125.

³⁹ Cf. T. F. DiGERONIMO, *New Hope for Couples with Infertility Problems*, 27. Reynolds and Macomber believe that tuberculosis can develop in the genital tract of the woman as early as the time of puberty. If “unchecked, this disease may spread to the abdominal cavity thus leading to a tubercular

the reproductive system thereby causing infertility.⁴⁰ Certain medications can affect sperm production and ejaculation. Such medications are usually prescribed to treat conditions like arthritis, depression, digestion problems, infections, hypertension and even cancer.⁴¹ Gay confirms: “Alcohol and other drug use and exposure to some environmental toxins can reduce sperm quality” and cause infertility.⁴² Smoking is identified as another factor that may impact sperm quality. It decreases the size and

peritonitis, or in rare cases to the tissues of the uterus and cervix.” For men, tuberculosis damages the prostate and the condition is always hostile to spermatozoa. These authors believe that unless tuberculosis is treated in the early stages, it always results in sterility. See E. REYNOLDS and D. MACOMBER, *Fertility and Sterility in Human Marriages*, 83. Mumps in young males, especially “during the acute state of the disease with marked swelling and pain; and, as always in any trouble with the testicle, the spermatogenic cells are the ones first damaged.” These authors believe that treatment of mumps involves only preventative methods: the patient remains resting and quiet in bed until after the acute stages of the diseases are over. Surgical treatment is necessary when the swelling increases and should be done before the disease causes permanent sterility. *Ibid.*, 125.

⁴⁰ Cf. G. S. BERGER, M. GOLDSTEIN and M. FUERST, *The Couple's Guide to Fertility*, 19-29. In particular, syphilis “usually produces practical sterility in the form of repeated miscarriages. Gonorrhea in the female often results in complete sterility.” For details regarding the impact of diseases on human reproductive capacity, see E. REYNOLDS and D. MACOMBER, *Fertility and Sterility in Human Marriages*, 84-98. For details regarding the effects of venereal diseases on the fertility of men, see R. NEWILL, *Infertile Marriage*, 105-109. Monach suggests: “Venereal disease, gonorrhea, and chlamydia trachomatis infections are believed to be particularly implicated in infertility; all treatable but underdiagnosed problems.” J. H. MONACH, *Childless: No Choice, the Experience of Involuntary Childlessness*, 19.

⁴¹ Berger, Goldstein and Fuerst reveal: “Several of these drugs, including two of the top sellers – one for ulcers, the other for heart disease – have detrimental side effects on sperm that can impair a man's fertility [...] serious fertility-reducing side effects make most cancer treatments a problem for couples who want to have babies.” See G. S. BERGER, M. GOLDSTEIN and M. FUERST, *The Couple's Guide to Fertility*, 17. The authors also mention that cancer therapies such as radiation and chemotherapy can cure cancer but may “cause the men to become permanently sterile” (30). S. Cabot and M. Jansiska list some prescription medications that affect sperm count and may be responsible for causing infertility in men. They include Ketoconazole (an anti-fungal); Sulfasalazine (used for inflammatory bowel disease); Cimetidine (for reflux or ulcers); blood pressure drugs that are calcium channel blockers e.g. Norvasc and Adalat; Spironolactone (a diuretic); some antibiotics: erythromycin, gentamicin and nitrofurantoin; cholesterol lowering drugs, some antidepressants and steroids. See S. CABOT and M. JASINSKA, *Infertility: The Hidden Causes, How to Overcome Them Naturally*, 208.

⁴² K. GAY, *Encyclopedia of Women's Health Issues*, 124. Judd indicates that steroids taken either by mouth or by injection can shut down the production of hormones needed for sperm production. See S. J. JUDD, *Men's Health Concerns Sourcebook*, 414. This underlines how medication which is used to treat some diseases can be one of the causes of infertility in men. Caton believes that sperm quality and the overall fertility in men reduces with age. See H. CATON, *The Fertility Plan: Holistic Program for Conceiving a Healthy Baby*, 41; J. R. JENSEN and E. A. STEWART (eds.), *Mayo Clinic Guide to Fertility and Conception*, Boston, MA, Da Capo Life Long Books, 2015, 119-127.

movement of these cells and damages their DNA content. Smoking can also impact the seminal fluid ejaculated with the sperm.⁴³ Smoking sixteen cigarettes a day can “decrease sperm count and motility, increase the number of abnormal sperm, and make it less likely that the sperm will fertilize the egg.”⁴⁴

It can be concluded that some of these causes of male sterility presented above can be corrected if diagnosed in time. Thus, early diagnosis, medication, and corrective surgery can be remedies for sterility which is caused by infertility. External factors which cause infertility can be prevented, while natural factors can be cured if diagnosed at an early stage before the damage is permanent. Behavior changes such as stopping smoking can reduce the likelihood of infertility.

3.1.3 — Causes of Female Sterility

Female infertility is a disease of the reproductive system that impairs one of the female body’s most basic functions: the conception of children.⁴⁵ Conception, therefore, depends on the number of factors which make the process possible. These are: production of healthy eggs by the woman, unblocked fallopian tubes that allow the sperm to reach

⁴³ S. J. JUDD, *Men’s Health Concerns Sourcebook*, 414. Other external factors that impair fertility include environmental toxins and chemical exposure. See T. F. DIGERONIMO, *New Hope for Couples with Infertility Problems*, 85-88; S. CABOT and M. JASINSKA, *Infertility: The Hidden Causes, How to Overcome Them Naturally*, 212-213; G. S. BERGER, M. GOLDSTEIN and M. FUERST, *The Couple’s Guide to Fertility*, 46-47, 300, 313; O. GRIESE, *Catholic Identity in Health Care: Principles and Practice*, Braintree, MA, The Pope John Center, 1987, 33.

⁴⁴ W. CONKLING, *Getting Pregnant Naturally*, New York, Avon, 1999, 130; See also H. CATON, *The Fertility Plan: Holistic Program for Conceiving a Healthy Baby*, 41; T. F. DIGERONIMO, *New Hope for Couples with Infertility Problems*, 88-89. It is also believed that smoking for ten years increases the chances of impotence in men. Cf. P. J. TAYLOR and J. A. COLLINS, *Unexplained Infertility*, Oxford, Oxford University Press, 1992, 56-64.

⁴⁵ A. L. SUTTON, *Women’s Health Concerns Sourcebook*, 322. The author also indicates that polycystic ovary syndrome affects from 5 to 10 percent of American women of reproductive age (as many as 5 million in all), according to John E. Nestler, chairman of endocrinology at the Medical College of Virginia. See *ibid.*, 330.

the egg, the sperm's ability to fertilize the egg, the ability of the embryo to become implanted in the uterus, and the quality of the embryo.⁴⁶ A blockage of the fallopian tubes or the "neck" of the uterus can also prevent pregnancy.⁴⁷ If any of these organs are malfunctioning, the sexual encounter has no chance of resulting in conception.

It is estimated that about 10 to 15 percent of female partners have difficulty becoming pregnant.⁴⁸ J. A. Rosenfeld believes: "Approximately 9 million American women have impaired fertility, either primary (never having a child) or secondary (trouble having as many children as desired)."⁴⁹ These statistics provided by medical practitioners indicate a grave need to study the different causes of infertility in both men and women and to propose remedies. This becomes urgent when sterile couples spend large sums of money to conceive a child.⁵⁰

⁴⁶ S. CABOT and M. JASINSKA, *Infertility: The Hidden Causes, How to Overcome Them Naturally*, 69-78. A condition called "*Retroflexio uteri*" or the bending backwards of the uterus also prevents conception. It is "commonly found in women who have already borne children, or at least experienced one or more miscarriages. Other forms of genital abnormality are the insufficient length of the uterine ligaments (broad ligaments) – which may also be caused by subsequent inflammation – and acute ante flexion, which strongly accentuates the normal angle of the woman, which is directed forwards (while the vagina slopes upwards and backwards from introitus to fornix)." T. H. VAN DE VELDE, *Fertility and Sterility in Marriage, their Voluntary Promotion and Limitation*, 191.

⁴⁷ Cf. J. S. MBITI, *Love and Marriage in Africa*, Kampala, Makerere University, 1973, 197 – 199. Prof. Mbiti discusses possible reasons for childlessness that could be identified in African couples. In addition to those discussed above, he adds the possibility of the couple having sexual relations only during the "dry" period and they are not aware of it. Medical personnel believe: "The capacity to achieve a pregnancy relies on the following: the ability of the man to produce healthy sperm and the woman healthy eggs; unblocked fallopian tubes; the existence of good cervical fluid through which the sperm can reach and fertilize the egg; the receptivity of the endometrium (i.e. the uterine wall) to the implantation of the newly created embryo; the quality and ongoing health of the embryo; an adequate hormonal environment for the embryo to develop; and other factors." Cf. K. ELROD and P. CARPENTIER, "The Church's Best Kept Secret: Church Teaching on Infertility Treatment," 122. This means that by scientific means, these abnormalities could be rectified medically or surgically and enable the woman to obtain pregnancy.

⁴⁸ Cf. J. A. ROSENFELD (ed.), *Handbook of Women's Health, an Evidence – Based Approach*, Cambridge, Cambridge University Press, 2001, 184.

⁴⁹ Ibid.

⁵⁰ For example, *in vitro fertilization* costs between \$10,000 and \$15,000; vasectomy reversal costs between \$5,000 and \$15, 000. Cf. S. J. JUDD, *Men's Health Concerns Sourcebook*, 422. Some authors put

Some women can also suffer from Polycystic Ovary Syndrome. This is a condition in women where the follicle is supposed to break open and release the egg so that it can travel to the uterus for fertilization. But instead, the follicles remain immature and bunch together to form large cysts or lumps. The eggs mature within the bunched follicles, but the follicles do not break open to release them. As a result, the woman does not have menstrual periods, or she might have irregular periods.⁵¹ This ovarian failure can be caused by malnutrition, obesity, high blood pressure, anorexia, or a high level of insulin in diabetic women.⁵²

Another cause of female infertility is endometriosis. This occurs when a tissue which lines the inside of the uterus instead grows outside the uterus. Researchers estimate

the cost of *in vitro* fertilization to \$12,400; Deveraux and Hammerman put the expense of every attempt at \$10,000; L. L. DEVERAUX and A. J. HAMMERMAN, *Infertility and Identity: New Strategies for Treatment*, 61. It is an expensive procedure which involves highly trained professionals with sophisticated laboratories and equipment, and the cycle may need to be repeated to be successful. Cf. A. L. SUTTON, *Women's Health Concerns Sourcebook*, 324. In case the scientific means fail to bring forth a child, couples opt for adoption. It is estimated that every year, 35,000 children are adopted in the USA, and more than 10,000 are adopted from foreign countries. See J. A. ROSENFELD (ed.), *Handbook of Women's Health, an Evidence-Based Approach*, 192. The high cost of such services indicates the difficulty sterile couples in Uganda face, since such services are both expensive and not readily available. Currently, "it costs Shs. 14m (US \$4,000) in Uganda per cycle to have a child using Assisted Reproductive Technologies at about five private clinics in Kampala." E. AINEBYOONA, "Mulago to Start Low Cost Infertility Treatment," in <http://www.monitor.co.ug/News/National/Mulago-to-start-low-cost-infertility-treatment/688334-3828778-11hvynhz/index.html> (February 27, 2017). While writing about access to health care in African countries, J. Sundby wrote: "The typical care delivery site in rural Africa is variously known as the health post, the health clinic, or the health center. In these facilities [...] only those who ran family planning delivery units or were trained as nurse-midwives seemed to have a thorough understanding of how an infertility investigation should be conducted." See J. SUNDBY, "Infertility and Health Care in Countries with Less Resources, Case Studies from Sub-Saharan Africa," in M. C. INHORN and F. VAN BALEN (EDS.), *Infertility Around the Globe, New Thinking on Childlessness, Gender, and Reproductive Technologies*, Berkeley, CA, University of California Press, 2002, 247-259, here on 251-252. Given that the health care providers themselves lack adequate knowledge of infertility issues, coupled with lack of adequate testing equipment, sterile couples in such countries are not guaranteed proper diagnosis and treatment.

⁵¹ Cf. A. L. SUTTON, *Women's Health Concerns Sourcebook*, 326.

⁵² See J. A. ROSENFELD (ed.), *Handbook of Women's Health, an Evidence – Based Approach*, 184; S. CABOT and M. JASINSKA, *Infertility: The Hidden Causes, How to Overcome Them Naturally*, 132-133. Obesity in women can be accompanied by failure to ovulate; however, this can be reversed with weight loss. Cf. R. NEWILL, *Infertile Marriage*, 68.

that nearly 5.5 million women in North America have endometriosis.⁵³ This condition is not cancerous, but can affect the woman's quality of life. Endometriosis can be caused by infections which result from gonorrhea or chlamydia. These medical conditions are treatable when they are diagnosed and treated in their early stages.⁵⁴ If treatment is not obtained in time, the woman can end up with damaged reproductive organs and become sterile. Inadequate treatment of reproductive tract infections can cause an eventual damage to the organs and lead to sterility.⁵⁵

Premature ovarian failure can also cause infertility. This condition occurs when ovaries stop functioning normally in a woman before she reaches the age of menopause.⁵⁶ The ovaries stop making eggs and certain hormones. Symptoms include missed periods, which indicate that her body is not functioning properly.⁵⁷ If not treated, this condition may include risk of Addison Disease, where the body does not respond well to physical

⁵³ A. L. SUTTON, *Women's Health Concerns Sourcebook*, 326. It is estimated that endometriosis affects between 15 and 20 percent of women in their reproductive life. It is a condition where the lining of the uterus (endometrium) grows outside of the uterus. For details on this condition and why it is a common cause of infertility, see S. CABOT and M. JASINSKA, *Infertility: The Hidden Causes, How to Overcome Them Naturally*, 21-25.

⁵⁴ Other diseases that are known to lower or cause infertility in women include: severe anaemia, diabetes, tuberculosis, etc. which lower her sex hormones. For a detailed study about these diseases, see R. NEWILL, *Infertile Marriage*, 56-62.

⁵⁵ Infections that are caused by endometriosis can easily be diagnosed and treated with antibiotics. Cf. G. S. BERGER, M. GOLDSTEIN and M. FUERST, *The Couple's Guide to Fertility*, 155-156; S. CABOT and M. JASINSKA, *Infertility: The Hidden Causes, How to Overcome Them Naturally*, 21-27. As T. F. DiGeronimo wrote: "Infertility due to endometriosis is often difficult to treat" because the medications used to treat it can "turn off ovarian functions" and prevent pregnancy. Cf. T. F. DIGERONIMO, *New Hope for Couples with Infertility Problems*, 140.

⁵⁶ Authors P. J. Taylor and J. A. Collins include the age of the woman as an important factor in her fertility. These authors affirm: "After the age of 30, the probability of pregnancy declines, and the chance of a woman aged 35 years having a healthy newborn is about half that of a woman aged 25." P. J. TAYLOR and J. A. COLLINS, *Unexplained Infertility*, 162. Apparently, there is no study that links men's fertility with their age (163).

⁵⁷ A. L. SUTTON, *Women's Health Concerns Sourcebook*, 327.

stress.⁵⁸

In some women, infertility is caused by uterine fibroids. These are non-cancerous tumors which grow within the wall of the uterus. They affect women of child bearing age, and it is estimated that uterine fibroids are the cause of more than 200,000 hysterectomies each year.⁵⁹ Uterine fibroids can cause “heavy bleeding or painful periods, bleeding between periods, a full feeling in the lower abdomen (sometimes called pelvic pressure), and urinating often.”⁶⁰ Cervical and uterine malfunctions may include an abnormal uterus (bifid, bicornuate, etc.), inimical cervical mucus, or a displaced uterus.⁶¹ In some cases, there is complete absence of the uterus or ovary, and this results in permanent sterility.⁶²

The use of certain medications, smoking, alcohol, and obesity have the potential of reducing women’s fertility.⁶³ With regard to women who smoke, “studies have shown

⁵⁸ Cf. T. F. DIGERONIMO, *New Hope for Couples with Infertility Problems*, 132-137. Early treatment helps to correct the hormonal deficiencies at both the beginning and the end of the cycle, promoting normal follicle development and normal luteal function (latter phase of the woman’s productivity). Cf. G. S. BERGER, M. GOLDSTEIN and M. FUERST, *The Couple’s Guide to Fertility*, 136. J. A. McFalls cites studies which indicate that psychic stress can reduce sperm production and lower the quality and quantity of sperm. See J. A. MCFALLS, *Psychopathology and Subfecundity*, New York, Academic Press, 1979, 58-64. Addison’s Disease refers to failure of the outer parts of the adrenal glands which results in failure of ovaries, causing sterility. See R. NEWILL, *Infertile Marriage*, 57; A. D. DOMAR and A. L. KELLY, *Conquering Infertility*, New York, Penguin Putman Inc., 2002, 9-37. Domar and Kelly link stress and depression to unexplained infertility since these affect the production of reproductive hormones in both men and women (25).

⁵⁹ A. L. SUTTON, *Women’s Health Concerns Sourcebook*, 327.

⁶⁰ *Ibid.*, 327.

⁶¹ E. REYNOLDS and D. MACOMBER, *Fertility and Sterility in Human Marriages*, 101-105.

⁶² R. NEWILL, *Infertile Marriage*, 51. The author acknowledges that in the process of development, one part of the body may not fully develop when the child is still in the womb. If, for example, it is the womb that did not develop and the girl is born without it, she will be sterile. He also believes that sterility can be inherited, if the person, man or woman, comes from a family where he is the only child, or where there are cases of familial infertility.

⁶³ Cf. J. A. ROSENFELD, *Handbook of Women’s Health, an Evidence – Based Approach*, 185.

that tobacco use can decrease the supply of eggs within the ovaries, even in young women.”⁶⁴ Further studies indicate: “Increased smoking of cigarettes by women is directly related to the difficulty in conceiving.”⁶⁵ Rosenfeld quotes a recent retrospective study of more than 400 Danish couples which found out: “Drinking as little as one to five alcoholic drinks weekly significantly decreased the likelihood of pregnancy (RR=0.6) and more than five drinks weekly to less than one-third as likely (RR=0.3).”⁶⁶ In addition, the oral contraceptive pill is known to cause infertility in women. In his study, Monach concluded: “Evidence suggests there might be an interactive effect between age and oral contraception in impairing fertility, which might influence the earlier referral of these women.”⁶⁷

The final cause of sterility is the one identified by psychologists as emotional or biochemical infertility.⁶⁸ Emotional trauma and psychological immaturity can be a cause

⁶⁴ Domar and Kelly’s study indicates: “Exposure to even a small amount of chemicals in cigarette smoke may destroy a woman’s eggs in the ovaries. What’s more, smoking is suspected of contributing to early menopause, and women who smoke are less likely to have successful fertility treatment.” A. D. DOMAR and A. L. KELLY, *Conquering Infertility*, 276. See also D. ARONSON et. al., *Resolving Infertility*, 243. These authors added: “male smokers are more likely to produce sperm with an extra Y chromosome (which may be linked to impaired mental and psychological development), as well as ‘round-headed’ sperm, which have been linked to infertility [...] In women, smoking may increase the risk of miscarriage, premature birth, and low-birth-weight babies by having a long-lasting toxic effect on ovarian function.”

⁶⁵ D. HOLLANDER, “Conception May Take a Long Time Among Women Who Smoke,” in *Family Planning Perspectives*, 28 (1996), 181-182, here on 181. Van De Velde wrote: “Habitual or occupational injury to women’s power of reproduction takes two very different forms. There is ceaseless, sleepless or insufficiently sleeping, largely nocturnal pursuit of amusement, which combines immoderate dancing, too little food, too much alcoholic or other stimulants, immoderate smoking, and often excessive venery as well.” See T. H. VAN DE VELDE, *Fertility and Sterility in Marriage, their Voluntary Promotion and Limitation*, 137.

⁶⁶ Ibid. “RR” refers to “risk ratio,” when compared to those who do not consume alcohol, or those who drink a very small amount.

⁶⁷ J. H. MONACH, *Childless: No Choice, the Experience of Involuntary Childlessness*, 73.

⁶⁸ While writing about the impact of emotional disturbance on female fertility, Van De Velde noted: “We all know how greatly painful and disturbing emotional experiences may disturb menstruation, and in what diverse ways, causing either suppression of the flow (amenorrhea), acute periodic pains (dysmenorrhea) or prolonged, excessive and irregular courses (menorrhagia). We also know how easily

of infertility.⁶⁹ This type of sterility is known as “psychogenic sterility.”⁷⁰ The person concerned may have the vital organs needed for copula, but their formation may lack the substances needed for conception. When toxic antibodies exist in the woman’s body, they attack sperm and kill them thus preventing conception.⁷¹ It is believed that antibodies can also coat the sperm, thus preventing one from fertilizing the egg once they meet.⁷²

Female sterility can be caused also by accidental injury to one or more reproductive organs. This can happen during clitoridectomy, or at the time of labor, during a miscarriage, or an abortion.⁷³ These accidents can be prevented when these procedures are carefully carried out by qualified personnel, use of proper instruments, and when they take place in a safe environment.

miscarriage may occur as a result of excitement or shock [...] A woman’s emotional life may certainly diminish her capacity for being fertilized or impregnated.” T. H. VAN DE VELDE, *Fertility and Sterility in Marriage, their Voluntary Promotion and Limitation*, 177.

⁶⁹ Bassett gives several examples of how psychogenic factors can be responsible for sterility: “The first and second most frequent causes of psychogenic sterility are unconscious fear and conscious or unconscious chronic anxieties. Emotional immaturity, rejection of parental roles, repressions, intense hostilities, severe shock or excitement, unresolved oedipal situations, coitus on command, amotiveness, exaggerations of ‘integrity’ and ‘cleanliness’ and ‘psychic fatigue,’ in both men and women, are but a few of the many negative emotions which can prevent fertility.” W. T. BASSETT, *Counseling the Childless Couple*, 67.

⁷⁰ Psychogenic sterility is effected through the endocrine and the autonomic nervous systems as they upset hormonal balance and lead to involuntary spasm, contraction, and other irregular muscular functions. In each instance the psyche and soma have a reciprocal cause and effect relationship. Cf. W. T. BASSETT, *Counseling the Childless Couple*, 68-69.

⁷¹ For details on this subject, see T. F. DiGERONIMO, *New Hope for Couples with Infertility Problems*, 31.

⁷² D. ARONSON et. al., *Resolving Infertility*, 168-169. The authors mention: “Several workplace hazards – lead, chlorinated hydrocarbons, ionizing radiation, kepone, ethylene oxide and ethylene dibromide, PCBs and PBBs, and dibromochloropropane (DBCP) – are known to cause damage to the human reproductive system, but many more may have as yet unproven negative effects” (15). Rosenberg indicates that exposure to occupational hazards has had a negative impact on fertility, especially men’s sperm production. See M. J. ROSENBERG, “Occupational Hazards in Reproductive Health,” in R. F. HARRISON, F. BONNAR and W. THOMPSON (eds.), *Fertility and Sterility: The Proceedings of the XIth World Congress on Fertility and Sterility, Dublin, June 1983, Held Under the Auspices of the International Federation of Fertility Societies*, 473-474, here on 474.

⁷³ E. REYNOLDS and D. MACOMBER, *Fertility and Sterility in Human Marriages*, 88.

These are some of the causes of sterility provided by medical science. They affect women of child bearing age. Most of those conditions can be corrected to enable the woman to conceive. Medical examinations are necessary to diagnose the cause of infertility. In Ugandan customary and canonical marriages, there is a high chance that marriage would end or be interrupted after infertility has been discovered. Medical science which could assist in fertility diagnosis and treatment may not be readily available or affordable to infertile couples in Uganda. In the search for a child, and for an explanation for childlessness, some couples resign to fate and others to superstition.⁷⁴

3.1.4 — Environmental Factors that Cause Sterility

Toxins and chemicals in the environment can cause sterility. Berger, Goldstein and Fuerst wrote: “A number of industrial chemicals have been implicated in fertility problems especially in lowering a man’s sperm count.”⁷⁵ Testicles are thought to be the most sensitive organs in a man’s body when it comes to environmental exposure. Therefore, “radiation, pesticides and industrial solvents may all harm his sperm production. Many of these agents interfere with male hormone production and sperm

⁷⁴ Most African communities believe in superstition, witchcraft, magic and sorcery. They believe that some people learn the art of harnessing powers of nature, or they inherit them and use them to do harm. Without scientific means of determining the cause of sterility, such communities would believe that childlessness could have been caused by any of the above. For a detailed discussion on how these beliefs exist at the very core of such communities, see L. MAGESA, *African Religion, The Moral Traditions of Abundant Life*, 172-191. Among the Sukuma people of north-western Tanzania, infertility is linked to a snake-like creature (known as *mchango* in the local language), which interferes with the woman’s menstrual cycle and prevents procreation. See Z. MGALLA and J. T. BOERMA, “The Discourse of Infertility in Tanzania,” in J. T. BOERMA and Z. MGALLA (eds.), *Women and Infertility in Sub-Saharan Africa: a Multi-Disciplinary Perspective*, 189-200, here on 191. These are examples of superstitious approaches to sterility where biomedical diagnosis is unavailable.

⁷⁵ G. S. BERGER, M. GOLDSTEIN and M. FUERST, *The Couple’s Guide to Fertility*, 46. See also T. F. DIGERONIMO, *New Hope for Couples with Infertility Problems*, 85-88. T. F. DiGeronimo indicates that environmental toxins can be found in the “air you breathe, the water you drink, the foods you eat, and the chemicals you clean, paint, and renovate with” (85). Cabot and Jansiska are of the view that environmental chemicals are capable of causing genetic problems, and they are particularly harmful if you are deficient in certain key nutrients; particularly vitamin D, selenium, and B vitamins. See S. CABOT and M. JANSISKA, *Infertility: the Hidden Causes, How to Overcome Them Naturally*, 165.

formation, causing a loss of libido, impotence, or infertility.”⁷⁶

Sterility in men can also be caused by prolonged and repeated exposure to heat.⁷⁷

Workers at risk of heat-provoked infertility include: “Men involved in the smelting of metals and the manufacture of glass, those laboring in the engine rooms of ships, and possibly bakers, farm laborers, and long-distance truck drivers exposed to engine heat.”⁷⁸

Science also considers female sterility to be caused by change in climatic conditions⁷⁹ and modern urban life.⁸⁰

Regarding the impact of chemical toxins on women’s fertility, Berger, Goldstein

⁷⁶ Ibid. The authors further explain: “Many toxic substances, including radiation and cancer drugs, have their greatest effect on cells with the highest metabolic rates, that is, cells in the process of growing and dividing. That’s why the testicles, which make new sperm every day, are so prone to damage.” Cf. T. F. DIGERONIMO, *New Hope for Couples with Infertility Problems*, 86. The author mentions: “Occupational exposure to textile dyes, lead, mercury, and cadmium has also been associated with female infertility.” She also advises both men and women to avoid the following toxins: “Pesticides, paint and paint strippers, dry rot or woodworm treatments, glues, and chemicals such as solvents,” even household cleaning agents such as “oven cleaners, mold treatments, and ammonia-based products have been shown to have negative effects on the health of sperm and ova” (87).

⁷⁷ Heat and tight pants might be responsible for men who have a very low sperm count. Cf. R. NEWILL, *Infertile Marriage*, 126.

⁷⁸ G. BERGER, M. GOLDSTEIN and M. FUERST, *The Couple’s Guide to Fertility*, 47-48. These authors elaborate their research findings by indicating: “Normally, the temperature of the testicles is between 93 and 95 degrees Fahrenheit, or 34 and 35 degrees centigrade. Temperatures above normal body temperature (98.6 degrees F or 37 degrees C) can impair a man’s sperm count and motility and cause him to produce abnormal sperm forms. Although the impact on sperm production is generally reversible, a worker exposed on a daily basis, year after year, could experience long-term or even permanent impairment.” It is for this reason that “the testicles hang outside the body in the scrotum to keep them cooler than the rest of the body.” R. NEWILL, *Infertile Marriage*, 104.

⁷⁹ Van De Velde gives an example of change in geographical residence when he asserts: “Climate, as well as diet, has effects on feminine fertility. European women, who take up residence in tropical countries, often suffer a diminution of functional fertility which may make them childless.” See T. H. VAN DE VELDE, *Fertility and Sterility in Marriage, their Voluntary Promotion and Limitation*, 173.

⁸⁰ G. BERGER, M. GOLDSTEIN and M. FUERST, *The Couple’s Guide to Fertility*, 47. The authors point out: “The nervous strain and exhaustion of most industrial and clerical employment, the long hours in badly ventilated rooms, either too little exercise or immoderate games and athletics, frequent sexual stimulation without its natural sequences of ecstasy and repose, excessive intercourse, or none; unsuitable food and lack of sleep: all these forms of damage and neglect affect the gonads subtly, but seriously.” These conditions can affect the ovaries in women and the male organs as well. Cf. T. H. VAN DE VELDE, *Fertility and Sterility in Marriage, their Voluntary Promotion and Limitation*, 173-174.

and Fuerst believe: “Women who work in the manufacture of oral contraceptives may have altered menstrual function, and pesticides may damage a woman’s eggs, possibly leading to early menopause.”⁸¹ Substances having the potential to cause early miscarriage include: “Ethylene oxide, used in the chemical sterilization of surgical instruments; vinyl chloride, used in the plastics industry; chemical solvents used in manufacturing industries; nitrous oxide exposure among anesthetists, operating room nurses, veterinarians, dentists, and dental assistants; and metallic compounds of manganese, arsenic, and nickel.”⁸²

It can be concluded that environmental factors such as toxic chemicals can cause infertility or sterility. When men or women are exposed to them for a prolonged periods of time, the effects can include damage to the reproductive organs resulting into either temporary infertility or permanent sterilization.

3.1.5 — Risk Factors that Cause Sterility

Several lifestyle factors reduce fertility in men and women, or they cause sterility. These risk factors include too much caffeine, alcohol consumption, exposure to drugs, prescription medication abuse, and excessive weight gain or loss. It is therefore necessary that infertile spouses seek medical attention before their condition becomes permanent.

Consuming too much caffeine may cause several negative effects on the

⁸¹ G. BERGER, M. GOLDSTEIN and M. FUERST, *The Couple’s Guide to Fertility*, 47. The authors caution pregnant women against inhaling toxic fumes which may cause infertility: “Avoid painting and refinishing furniture while you are pregnant. Some research indicates that fetal brain development may be impaired by exposure to chemical fumes. Women also should avoid having their hair permed or color treated during the first trimester (of pregnancy), because the inhaled chemicals can travel throughout the expectant mother’s bloodstream” (Ibid., 300).

⁸² Ibid., 47. Other possible reasons for miscarriages include: blighted ovum or a “bad egg,” a malformed baby, hormone deficiency, defective chromosomes, defective blood supply to the womb, anatomical faults in the womb, faults in the cervix of the womb, parasites in the body, abnormal sperm, psychological causes such as anxiety, and incompatible blood groups. Adapted from R. NEWILL, *Infertile Marriage*, 134-141.

reproductive process, including a possible impairment of or delay in conception.⁸³ Coffee is considered a main source of caffeine. For example, one study found that a woman who injects “more than 500 milligrams of caffeine per day (approximately four cups of coffee) took more than 9.5 months to become pregnant compared to those who drank less”.⁸⁴

Alcohol consumption is another factor that reduces fertility in both men and women. In her study, W. Conkling says that “In women, alcohol affects the liver’s ability to clear hormonal debris, disrupting hormone levels and interfering with egg production.”⁸⁵ With regard to men, there is no doubt that long-term alcohol abuse can lead to impotence, poor sperm quality, and further fertility complications due to liver damage.⁸⁶

Medication and illicit drugs can affect the person’s overall health and cause sterility as well. Even regulated medications, prescription or over-the-counter, can affect fertility.⁸⁷ As Conkling wrote: “A number of drugs can interfere with fertility, including certain antibiotics, antiseizure drugs, antidepressive drugs, antihypertensive drugs, cortisone and corticosteroids, and anti-ulcer drugs.”⁸⁸

⁸³ Recent studies show that women who consume more than five milligrams of caffeine per day, either from coffee or smoking, have shown reduced fertility rates. The same happens to those who consume alcohol. Cf. A. D. DOMAR and A. L. KELLY, *Conquering Infertility*, New York, Penguin Putman Inc., 2002, 274 -277. See also *Nutrition Research Newsletter*, 16 (May 1997, 58.

⁸⁴ Ibid. The author also believes: “Caffeine is also known to have a generally negative effect on overall health, so it’s a good idea to give it up during this time when you want your body to be exceptionally healthy.”

⁸⁵ W. CONKLING, *Getting Pregnant Naturally*, 130.

⁸⁶ Cf. D. ARONSON et. al., *Resolving Infertility*, 244.

⁸⁷ For discussion about the use of regulated and illicit drugs, see D. ARONSON et. al., *Resolving Infertility*, 246.

⁸⁸ W. CONKLING, *Getting Pregnant Naturally*, 131. The author advises women who want to conceive to choose aspirin or acetaminophen instead of ibuprofen, a drug that may disrupt ovulation and implantation of the fertilized egg in the uterus. Illicit drugs which affect the nervous system also affect the

Other risk factors include “excessive weight loss or gain,”⁸⁹ which affects both males and females. Low weight can decrease an important hormonal message that the brain sends to the ovaries for women and to the testes for men.⁹⁰ All these lifestyle factors may have a direct effect on both men and women’s overall health including their fertility. Therefore being healthy improves one’s fertility chances.

It can be concluded that among the causes of sterility, if certain risk factors are avoided, the couple could have a child. Since these are mostly behavioral and addictive causes, a change in behavior or treatment of one’s addiction are proposed as remedies for infertility. It should be noted that conception will occur only if these risk factors are treated before permanent damage is done to the reproductive process.

3.1.6 — Psychological Causes of Sterility

Scientific research indicates: “Emotion can upset every system of the human body,”⁹¹ including the reproductive system. As Newill writes: “Emotional imbalance can cause sterility in two ways; either by the more obvious means of preventing sexual relations between man and wife; or by the recondite effect of emotion on the hypothalamus.”⁹² Therefore, psychosomatic illness⁹³ can cause infertility either by

brain’s output of both male and female hormones that control the production of reproductive hormones. They include: amphetamines, anesthetics, cocaine, barbiturates, benzodiazepine tranquilizers, ‘angel dust,’ heroin, and marijuana. Aronson et. al., wrote: “A number of products used for lubrication during intercourse, such as petroleum jelly or vaginal creams, have been shown to affect sperm function.” D. ARONSON et. al., *Resolving Infertility*, 247.

⁸⁹ T. F. DIGERONIMO, *New Hope for Couples with Infertility Problems* 91-92.

⁹⁰ Ibid.

⁹¹ R. NEWILL, *Infertile Marriage*, 147.

⁹² Ibid. On his part, Monach suggests that psychological causes of sterility can be classified under five categories: 1) personality problems; 2) stress-related problems; 3) sexual difficulties; 4) waiting list effect (those who conceive as they wait for diagnosis and treatment; 5) unexplained infertility and post-adoption conception. Cf. J. H. MONACH, *Childless: No Choice, the Experience of Involuntary*

diminishing the person's desire for coitus, or by creating disorders which make intercourse impossible or those which prevent pregnancy.⁹⁴ This section considers these factors as proposed by Newill.

First, low sexual desire, which results from lack of sexual drive affects the partner in marriage. Sexual libido, as it is called, deprives the married partners of satisfactory coitus and can result in abstinence from conjugal relations that would result in pregnancy. In women, low sexual libido "is not a cause of infertility per se but the low libido may be the result of a deficiency of estrogen and this can cause infertility."⁹⁵ This condition can be treated by administering sex hormones or by psychiatric treatment therapy.

Second, men are known to be affected by impotence and premature ejaculation. Impotence can be caused by sickness such as diabetes or a disease of the nervous system and is often caused by psychological factors.⁹⁶ Scientists identify the following factors as

Childlessness, 21-26.

⁹³ Psychosomatic illness, as described by Newill as: "Actual bodily illness which is caused by an anxious mind which cannot cope with the stresses exerted on it in everyday life." R. NEWILL, *Infertile Marriage*, 157. It is a disorder of the mind which has an impact on the body and causes it to act in a certain way. The author also believes: "Infertility is probably a much bigger problem today [1974] than it was a hundred years ago and the reason is almost certainly the pace and stress of modern life."

⁹⁴ Cf. J. H. MONACH, *Childless: No Choice, the Experience of Involuntary Childlessness*, 32-43. In this work, the author outlines the studies that have indicated that the psychological impact of sterility on the sexual life of infertile couples. He also indicates the stages through which these couples go as: surprise, denial, isolation, anger, guilt, depression, and acceptance or resolution (37). For further discussion on how sterility has a direct impact on sexual life, see P. J. TAYLOR and J. A. COLLINS, *Unexplained Infertility*, 173.

⁹⁵ R. NEWILL, *Infertile Marriage*, 148. For a detailed discussion of the sexual problems that arise from sterility, and those which result in sterility, see. J. READ, *Counseling for Fertility Problems*, 104-107.

⁹⁶ R. NEWILL, *Infertile Marriage*, 148. Medical practitioners acknowledge the psychological causes of infertility in men by affirming: "Erectile difficulties are frequent in men during infertility workup and treatment procedures. Much of the spontaneity of sexual activity is lost with couples experiencing embarrassment, and self-consciousness at thinking about directions given to them regarding intercourse during such private moments." Y. PONTICAS, "Issues in the Psychological Evaluation and Care of *in vitro* fertilization Couples," in K. W. WILDES (ed.), *Infertility: a Crossroad of Faith, Medicine and Technology*, Dordrecht, Kluwer Academic Publishers, 1997, 27-38, here on 34. M. D. Mazor believes that sexual relations between partners become strained and tense. The infertile spouse may fear actual or emotional abandonment. Cf. M. D. MAZOR, "Emotional Reactions to Infertility," in M. D. MAZOR and H. F. SIMONS

responsible for premature ejaculation: strict religious upbringing which depicts sexual intercourse as a grave sin; penile worries for men who have very small, too large, or misshapen penises; and lack of self-confidence.⁹⁷ If a man cannot sustain an erection leading to ejaculation within the vagina of his spouse, he is considered both impotent and sterile. It is recommended that such a man keeps help from specialized professionals before he becomes permanently sterile.

Third, psychosomatic infertility is also caused by frigidity and *vaginismus* in women. With frigidity, “a woman may have no desire for coitus and may never reach a climax but may, nevertheless, permit coitus and become pregnant.”⁹⁸ This means that frigidity is not a major cause of sterility, but when a woman resists every attempt at coitus, the result will be permanent infertility. *Vaginismus* is considered a “major psychological problem in women which also results into failure for coitus.”⁹⁹ This condition “may be a protective reaction resulting from actual pain or the fear of pain, but much more commonly it results from an underlying emotional problem or other psychological cause.”¹⁰⁰ Another example of a psychosomatic cause of infertility would

(eds.), *Infertility: Medical, Emotional and Social Considerations*, New York, Human Sciences Press, 1984, 23-35, here on 28. F. Van Balen points out that some authors think that infertility is caused by psychological factors, a model which is called “psychogenic infertility.” Yet others think that infertility causes psychological problems. Research findings indicate that both cases are true. Cf. F. VAN BALEN, “The Psychologization of Infertility,” in M. C. INHORN, and F. VAN BALEN, (eds.), *Infertility Around the Globe, New Thinking on Childlessness, Gender, and Reproductive Technologies*, Berkeley, CA, University of California Press, 2002, 79-98, here on 80-81.

⁹⁷ Cf. R. NEWILL, *Infertile Marriage*, 152-153.

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*, 155-156.

be the trauma that is caused by rape.¹⁰¹

From the above presentation, it can be concluded that factors that cause infertility are not limited to medical-physical but may be psychological as well. Since psyche controls most of the bodily functions, this control extends to sexual activity as well as the human ability to reproduce. Thus, psychosomatic factors which reduce procreativity should also be attended to before fertility is permanently impaired.

3.2 — Scientific Means of Infertility Treatment

The previous section points out that sterility is caused by physical, biological, and psychological conditions when infertility remains untreated. As such, infertility in both men and women can be diagnosed and treated either by medication, surgical procedures, or therapy. Infertility treatment avoids permanent damage which results in sterility. In case these procedures do not remove the obstacles to conception and birth of a child, science offers artificial means of reproduction, commonly known as Artificial Reproduction Technologies.¹⁰² This section briefly presents and analyzes these scientific means of reproduction offered by science in view of arriving at the reasons some of which are unacceptable to the Church's teaching and discipline.

¹⁰¹ This trauma can result in a woman's fear of pregnancy or of being hurt in the sexual act, or in hostility toward the male generally. Cf. R. L. HUDSON, *Marital Counseling*, Englewood Cliffs, Prentice-Hall, 1963, 91. Bassett includes "coitus on command" among the negative emotions which can cause psychogenic sterility. See W. T. BASSETT, *Counseling the Childless Couple*, 68-69.

¹⁰² Artificial Reproductive Technologies (ARTs) are sometimes referred to as Alternate Therapies for Reproduction (ATRs) or simply Alternate Reproductive Technologies (ARTs). They involve different procedures which could be summarized as follows: Artificial Insemination – Donor Sperm, Adoption, Surrogate Motherhood, Tubal Transplant, *in vitro* fertilization (IVF), Gamete Intra Fallopian Transfer (GIFT), Sperm Intra Fallopian Transfer (SIFT), Peritoneal Oocyte and Sperm Transfer (POST), Direct Intra Peritoneal Insemination, Surrogate Embryo Transfer (SET), Cryopreservation of Embryos, Pronuclea-Stage Tubal Transfer (PROST), Donor Eggs, Oocyte Cryopreservation, Sperm Injection, Cloning, Genetic Engineering, and Tubal Ovum Transfer (TOT). Most of these techniques involve one or more methods. For the glossary of these medical terminologies. Cf. A. SUTTON, *Infertility and Assisted Conception, What You Should Know: Answers to Questions About Medical Techniques of Assisted Conception*, 49-54.

3.2.1 — Treatment of Male Infertility

Treatment of male infertility depends on the diagnosis of the problem.¹⁰³ Some of the physical conditions which cause sterility are treatable, while others are not. Treatment involves one or a combination of medical intervention, surgical procedures, and assisted reproductive techniques. The Church accepts only those procedures which do not replace but rather facilitate the natural conjugal act that is apt for procreation.¹⁰⁴

One method of treating male infertility is by medical intervention. Tests for male infertility usually begin with analyzing semen to determine the quality of the sperm.¹⁰⁵ The most common male infertility factors include: a complete lack of sperm in the ejaculate (azoospermia); too weak or deformed sperm; malformed sperm cells (where some can die before they can reach the egg); and in rare cases, a genetic disease such as cystic fibrosis or a chromosomal abnormality.¹⁰⁶ In some cases, infertility is caused by

¹⁰³ Diagnosis of male infertility involves the following four procedures: 1) Examination of the testicles to ensure that they produce enough sperm cells; 2) Testing the fluid forming the rest of his semen to ensure that it allows the sperm to swim freely within it; 3) Identification of any blockage in the tubes which convey sperm from the testicles through the penis; and 4) Finding out if the penis is able to deposit the sperm inside the vagina during coitus. These procedures are adapted from R. NEWILL, *Infertile Marriage*, 104.

¹⁰⁴ Cf. *Donum vitae*, Art. II, B, no. 6: “Thus moral conscience does not necessarily prescribe the use of certain artificial means destined solely either to the facilitating of the natural act or to ensuring that the natural act normally performed achieves its proper end.” Engl. transl. in *Origins*, 16 (1987), 707. See also B. M. ASHLEY and K. D. O’ROURKE (eds.), *Health Care Ethics: a Theological Analysis*, 4th ed., Washington, DC, Georgetown University Press, 1997, 245.

¹⁰⁵ Poor semen quality is determined in the following way. A number of problems can be identified in the seminal fluid as a cause of infertility. The sperm count may be low (<20,000,000/cc), or the motility of the sperm may be low (less than fifty percent), or the number of abnormal sperm may be too high (greater than thirty percent). Some causes of male infertility are correctable. Cf. T. W. HILGERS, *Reproductive Anatomy and Physiology: a Premier for Fertility Care Professionals*, Omaha, NE, Pope Paul VI Institute Press, 2002, 78. For more information on the criteria for semen analysis, see I. E. THOMPSON, “The Medical Workup: Female and Combined Problems,” in M. D. MAZOR and H. F. SIMONS (eds.), *Infertility: Medical, Emotional And Social Considerations*, New York, Human Sciences Press, 1984, 3-12, here on 5.

¹⁰⁶ A. L. SUTTON, *Women’s Health Concerns Sourcebook*, 323. See also E. REYNOLDS and D. MACOMBER, *Fertility and Sterility in Human Marriages*, 130-132; R. A. NEWTON, “The Medical Workup: Male Problems,” in M. D. MAZOR and H. F. SIMONS (eds.), *Infertility: Medical, Emotional and Social*

antisperm antibodies or an infection. When sperm production is impaired because of damage to the sperm producing areas of the testicles, drug treatment is used, but it is usually not successful.¹⁰⁷

Medication can be taken orally or by intravenous injection. Oral medication is used to treat conditions such as retrograde ejaculation and immunologic infertility.¹⁰⁸ When the man's bladder neck does not close as it should during ejaculation, the seminal fluid is propelled backward into the bladder instead of continuing down the urethra and out the tip of the penis. When this happens, semen is then mixed with the urine in the bladder where the urine's acidity kills the sperm which are then excreted during urination.¹⁰⁹ Medication such as clomiphene or gonadotropin are used to treat pituitary hormone deficiency which results in infertility. In men who have low sperm producing ability, doctors can administer a follicle-stimulating hormone to stimulate the testicles to produce sperm.¹¹⁰

Considerations, 13. For a detailed scientific discussion on the impact of genetic factors on reproduction, see N. C. NEVIN and N. O'HANRAHAN, "Genetics in Reproduction," in R. F. HARRISON, F. BONNAR and W. THOMPSON (eds.), *Fertility and Sterility: The Proceedings of the XIth World Congress on Fertility and Sterility, Dublin, June 1983, Held Under the Auspices of the International Federation of Fertility Societies*, 469-474.

¹⁰⁷ Regarding general treatments for infertile men, see T. F. DIGERONIMO, *New Hope for Couples with Infertility Problems*, 141. Sutton is of the view that antisperm antibodies can exist either in the man's semen or in the mucus of the woman's reproductive tract, which render the sperm inactive and so prevent the sperm (completely or partially) from reaching the normal site of fertilization. See A. SUTTON, *Infertility and Assisted Conception, What You Should Know: Answers to Questions About Medical Techniques of Assisted Conception*, 4-5. This condition can be treated using medication.

¹⁰⁸ S. J. JUDD, *Men's Health Concerns Sourcebook*, 412.

¹⁰⁹ Treatment of this condition involves medication which helps to tighten the muscles around the bladder. See T. F. DIGERONIMO, *New Hope for Couples with Infertility Problems*, 141-142. However, retrograde ejaculation also happens when the man's penis lacks an opening at the front tip. Then, an opening can be surgically made, and the penis can function normally. See S. BHASIN and R. BASSON, "Sexual Dysfunction in Men and Women," in H. M. KRONENBERG, et. al., *Williams Textbook of Endocrinology*, 778-816, hrer on 788.

¹¹⁰ Ibid. See also H. CATON, H. BUTTRAM and D. DOWNING, *The Fertility Plan, Holistic Program*

Another method of treating men's infertility is surgery. In situations where scrotal veins (varicoceles) are dilated, a minor surgical procedure is administered to repair or unblock these veins. This impairment of the drainage into spermatic veins can be successfully corrected. Thus, when they are repaired or opened, the sperm movement, concentration, and structure are improved.¹¹¹ In some cases, obstructions causing infertility can also be surgically corrected. In addition, surgery is also used to reverse a previous vasectomy.¹¹²

It can be concluded that the above means of treating infertility serve only to overcome the obstacles in male reproduction capacity. These methods aim at treating the causes of infertility when the wife is diagnosed as fertile. Where artificial reproductive technology is used, the spouse's sterility is not cured. These means only bypass the cause of infertility and enable the woman to become pregnant using the husband's sperm. In using this method, infertility remains, even though a child is born.

3.2.2 — Treatment of Female Infertility

Infertility in women can be treated in three ways. First, with medication; second, with reproductive surgery; and third, with assisted reproductive therapy. Choice of these options always depends on the nature and cause of infertility. In some instances, the

for *Conceiving a Healthy Baby*, 128.

¹¹¹ Cf. T. F. DiGERONIMO, *New Hope for Couples with Infertility Problems*, 142-143. DiGeronimo here confirms: "Treatment, if needed to improve fertility or to decrease scrotal swelling, is primarily surgical. During a varicocelectomy, the dilated veins are tied off (ligated) through a small incision in the scrotum. This procedure usually can be done on an outpatient basis and is relatively free of complications."

¹¹² Vasectomy is a minor surgical procedure in which the sperm duct, or *vas deferens*, is cut in order to achieve sterility. This is usually performed on men who decide not to have any more children. In the event that they change their mind, for example after remarriage, this condition can be surgically reversed. Therefore, vasectomy reversal restores fertility by reconnecting the ends of the severed *vas deferens* which is located in each side of the scrotum, or by connecting the *vas deferens* to the epididymis, the small organ on the back of the testis where sperm matures. Cf. S. J. JUDD, *Men's Health Concerns Sourcebook*, 418; G. F. DiGERONIMO, *New Hope for Couples with Infertility Problems*, 143.

doctor can determine that a particular patient can be treated with a combination of two or more methods. DiGeronimo is of the view that when surgery is combined with fertility drug therapy, the pregnancy rates are as high as eighty percent.¹¹³

The most common cause of infertility in women is hormonal disorder.¹¹⁴ In this case, the first step in treating infertility is to administer medication that can remove the underlying cause such as thyroid disease which causes hormone imbalances.¹¹⁵ When the drug is administered, it enables the body to produce hormones that induce ovulation to boost egg production and make the uterus more receptive to embryo implantation. Such treatment is effective for women who do not menstruate regularly and those whose partners have very poor sperm quality. Fertility medication is also administered to women who have irregular menstrual periods and the disorder can be corrected.¹¹⁶

Some women will not achieve pregnancy because they are not ovulating. In such cases, the absence of ovulation will be reflected in the absence of menstruation.

¹¹³ See T. F. DiGERONIMO, *New Hope for Couples with Infertility Problems*, 133. The author also gives details about how the medication works to enable the woman to achieve pregnancy. Some of the drugs are mentioned on 134.

¹¹⁴ A. L. SUTTON, *Women's Health Concerns Sourcebook*, 323.

¹¹⁵ An example of medication that treats this disorder is Clomiphene or Clomiphene Citrate. This is a medication patients take orally. It causes the body to make more of the hormones that cause the eggs to mature in the ovaries. If a woman does not become pregnant after taking this medicine for six menstrual cycles, a health care provider may prescribe other fertility treatments. Other medicines include: Gonadotropins or human chorionic gonadotropin, and Bromocriptine or cabergoline. Cf. T. F. DiGERONIMO, *New Hope for Couples with Infertility Problems*, 132. For a detailed treatment on hormone treatments, see G. S. BERGER, M. GOLDSTEIN and M. FUERST, *The Couple's Guide to Fertility*, 123-154; J. R. JENSEN and E. A. STEWART (eds.), *Mayo Clinic Guide to Fertility and Conception*, 134-140.

¹¹⁶ Cf. T. F. DiGERONIMO, *New Hope for Couples with Infertility Problems*, 132. The author indicates: "One particular ovulatory disorder that can cause infertility is called polycystic ovary syndrome (PCOS). PCOS is characterized by many enlarged, smooth ovarian cysts, as well as an abnormal menstrual cycle. To reverse infertility in women with PCOS, doctors frequently start with fertility drug treatment [...] to regulate ovulation." She also adds that the success rate is 80%, which is good news for infertile couples with that syndrome.

Treatment is aimed at inducing ovulation.¹¹⁷ Medication is also used to treat abnormalities in the cervical mucus and antisperm antibodies. For example, in women suffering from cervicitis, the cervix may be infected and creates a mucus which is hostile to the sperm.¹¹⁸ In addition, the quantity of mucus production may be an indirect sign of ovarian dysfunction.¹¹⁹ Those who have abnormalities in the uterus are treated with medication or surgery depending on the type of the abnormality.¹²⁰

The second method of treatment is reproductive surgery for women. It is usually administered when infertility is caused by a disease of the fallopian tubes. The tubes are then repaired. Surgery can also be used to remove patches of endometriosis,¹²¹ uterine fibroids, polyps, or scarring, which can cause infertility. A rare but effective surgical

¹¹⁷ T. W. HILGERS, *Reproductive Anatomy and Physiology: a Premier for Fertility Care Professionals*, 77. See J. C. DANLUK, *The Infertility Survival Guide*, Oakland, New Harbinger Publications, Inc., 2001, 35-49.

¹¹⁸ For medical explanations of “hostile mucus,” see R. NEWILL, *Infertile Marriage*, 82.

¹¹⁹ For A. D. G. Brown, female sexual dysfunction in general is: a vasocongestive problem, orgasmic dysfunction, *vaginismus*, and ovarian dysfunction. Cf. A. D. G. BROWN, “Psychosexual Problems in Infertility,” in R. F. HARRISON, F. BONNAR and W. THOMPSON (eds.), *Fertility and Sterility: The Proceedings of the XIth World Congress on Fertility and Sterility, Dublin, June 1983, Held Under the Auspices of the International Federation of Fertility Societies*, 378.

¹²⁰ Hostile mucus does not allow the sperm to survive inside the female reproductive tract and impedes sperm transport. Sometimes, this mucus is too acidic and kills the sperm right at the cervix, and conception does not occur. Cf. S. CABOT and M. JANSISKA, *Infertility: the Hidden Causes, How to Overcome Them Naturally*, 17. A woman’s body can also create sperm antibodies which are toxic enough to kill the sperm before conception takes place. See 190. Antibodies are protective agents produced by the body’s immune system in response to a foreign substance. These antibodies can be present in both male and females. DiGeronimo confirms: “In the male, anstisperm antibodies attack the sperm and make it difficult to make the journey up to the woman’s egg. In the female, antibodies attack the sperm, believing them to be foreign invaders.” See T. F. DiGERONIMO, *New Hope for Couples with Infertility Problems*, 31-32. See also R. NEWILL, *Infertile Marriage*, 69. Newill believes: “The agent which causes the blood to produce antibodies, in this case the measles virus, is known as an antigen” when the female body produces an allergy that is hostile to the husband’s spermatozoa (69-71).

¹²¹ Endometriosis occurs when endometrial cells implant themselves outside the uterus on any structure, including the ovaries, fallopian tubes, bladder, bowel, and the lining of the abdominal cavity. Surgery or medications are used to treat endometriosis. However, doctors admit that these are not always successful. Cf. T. F. DiGERONIMO, *New Hope for Couples with Infertility Problems*, 139-140.

procedure called ovarian drilling is often used to treat infertile women.¹²²

In addition, surgery is used to remove an obstruction of the fallopian tubes. A variety of conditions (e.g. previous pelvic infection, endometriosis, previous pelvic surgery) can cause an obstruction of the fallopian tubes. Such an obstruction prevents the sperm from uniting with the ovum. Treatment is generally aimed at surgically opening the tubes (if possible).¹²³ In some cases, the woman has only one tube blocked. When this happens, and the man's sperm is within good parameters, fertilization can take place outside her body, and the fertilized egg can be transferred to her womb. This process is known as Gamete Intrafallopian Transfer.¹²⁴

The third method of treating female infertility is by assisted reproductive therapy. Berger, Goldstein, and Fuerst are of the view that there is an increasing need for "a new breed of fertility doctors who seeks to integrate conventional and alternative medical practices"¹²⁵ such as therapy. For example, therapy can be used to improve the woman's

¹²² This is done through a small incision near the belly button, with the woman under general anesthesia. A laser or electrocautery is used to destroy parts of the ovaries. For more information on ovary treatment, see T. F. DiGERONIMO, *New Hope for Couples with Infertility Problems*, 132. Uterine fibroids can have a negative impact on a woman's fertility depending on whether they are submucous, interstitial, or subperitoneal, and on their size or duration. For detailed treatment of this characterization, see E. REYNOLDS and D. MACOMBER, *Fertility and Sterility in Human Marriages*, 105-109.

¹²³ T. W. HILGERS, *Reproductive Anatomy and Physiology: a Premier for Fertility Care Professionals*, 77-78. In some women, infertility can be caused by their fallopian tubes which had been surgically "tied" to prevent pregnancy. This condition can be reversed for example if a woman changes her mind about having children, or in case she remarries.

¹²⁴ For details of this procedure, see J. C. DANILUK, *The Infertility Survival Guide*, 40. Other similar procedures include Zygote Intrafallopian Transfer and Assisted Embryo Hatching.

¹²⁵ G. S. BERGER, M. GOLDSTEIN and M. FUERST, *The Couple's Guide to Fertility*, 318. These authors believe: "By far, the majority of fertility problems are due to physiological causes, but it's becoming apparent that the mind plays a role in infertility" (Ibid., 319-320). They pointed out that "stress has been known to lower semen volume and raise the percentage of abnormal sperm forms" in men, and "can also affect a woman's reproductive function and her ability to become pregnant" (38). The purpose of therapy is to address the psychosomatic (mind/body) problems which might be the cause of infertility. Jensen and Stewart recommend lifestyle changes such as reducing weight, exercise, reducing stress, having enough sleep, and eating a proper diet as some of the therapeutic practises which increase chances of

menstrual cycle and hormone balance. It requires both medication and lifestyle changes. Women with an irregular menstrual cycle are monitored with ultrasound scans and given medication to induce regular menstruation. Women with unbalanced hormone distribution are given hormone balancing medication to facilitate egg production if there are few or no eggs being produced naturally by the body. Therapy is a combination of medication and lifestyle changes such as stress management skills, exercise, herbs, or nutrition such as vitamin supplements and complementary diet.¹²⁶

In conclusion, it is noted that female infertility is treated by the same means as men's. Infertility is treated by medicine, surgery, and by any other therapy. These means are used to treat infertility before it results in sterility; therefore, there is need for early diagnosis and treatment. Treatment involves addressing hormonal or ovulatory disorders or surgery on impaired or blocked fallopian tubes. The use of ARTs does not treat these conditions but bypasses them and enables the woman to become pregnant. In the use of NaPro Technology, the real causes of infertility are diagnosed and treated so that conception takes place naturally.

3.2.3 — NaPro Technology according to T. W. Hilgers

Natural Procreative Technology is an alternative approach to artificial reproductive technologies. Code-named NaPro Technology, this approach is associated with Hilgers, the founder and director of The Pope Paul VI Institute for the Study of

achieving conception. Cf. J. R. JENSEN and E. A. STEWART (eds.), *Mayo Clinic Guide to Fertility and Conception*, 15-42.

¹²⁶ See G. S. BERGER, M. GOLDSTEIN and M. FUERST, *The Couple's Guide to Fertility*, 321-324; H. CATON, *The Fertility Plan: Holistic Program for Conceiving a Healthy Baby*, 97-98; A. D. DOMAR and A. L. KELLY, *Conquering Infertility*, 278-280.

Human Reproduction in Omaha, NE.¹²⁷ He and other researchers have developed natural means of treating infertility within the philosophical and moral framework found in the teachings of the Catholic Church.¹²⁸

3.2.3.1 — Definition of NaPro Technology

NaPro Technology is defined as: “A science that devotes its medical, surgical and allied health energies and attention to cooperating with the natural procreative mechanisms and functions.”¹²⁹ NaPro Technology is an alternative to artificial reproductive technology: it is a means of infertility treatment that is acceptable and promoted by the Church. This section briefly presents and analyzes the NaPro

¹²⁷ Dr. T. W. Hilgers is currently serving as a Senior Medical Consultant in Obstetrics, Gynecology, Reproductive Medicine and Surgery. He has also served on the faculty of Medicine at the St. Louis University School of Medicine and the Creighton University School of Medicine. At Creighton, he founded and directed the Creighton University Natural Family Planning Education and Research Center. He and other researchers developed the Creighton Model Fertility Care System, a standardized modification of the Billings Ovulation Method. For this reason, NaPro Technology is at times used synonymously with Creighton Model of infertility treatment. The Creighton Model Fertility Care System was developed as a family planning system “that allows the couple through the use of selective intercourse, to either achieve or avoid pregnancy at those times in their lives when those decisions are appropriate to their situation. Thus, it is a system – the only system of which we are aware – that truly networks family planning with women’s health.” T. W. HILGERS, *The Medical Application of Natural Family Planning: a Contemporary Approach to Women’s Health Care*, 235. In 1994, he was appointed as a full member of the Pontifical Academy for Life and has served also on the Pontifical Council for the Family.

¹²⁸ The Church teaches that human reproduction should employ natural means which respect natural law and which assist in the process of natural human reproduction. Cf. *Humanae vitae*, nos. 11-12; *Donum vitae*, 5, II, B. 6, Engl. transl. in *Origins*, 16 (1987), 708; *Dignitas personae*, no. 13. Engl. transl. in *Origins*, 38 (2008), 441. It can be concluded that NaPro Technology is agreeable to the Church’s stand on employing the natural means of fertility treatment. Hilgers’s description of NaPro Technology is indicative of this: “In treating reproductive disorders, the fundamental principle of NaPro Technology is to work in cooperation with the natural reproductive system. The science of NaPro Technology recognizes that the human body is able to do many things that medication and surgery cannot do. At the same time, there are certain specific defects which, when identified can be cooperatively improved without suppressing or destroying the procreative system or dynamic.” T. W. HILGERS, *The Medical Application of Natural Family Planning: a Contemporary Approach to Women’s Health Care*, 141.

¹²⁹ T. W. HILGERS, *The Medical Application of Natural Family Planning: a Contemporary Approach to Women’s Health Care*, Omaha, NE, Pope Paul VI Institute Press, 1991, 233. Techniques used in this method include: “Targeting of the menstrual cycle for hormone evaluation, the scoring of the mucus cycle and its classification, the identification and categorization of the various biomarkers of the menstrual and fertility cycles. It also includes selective intercourse, which allows a couple to select a particular time for intercourse which would be the best time to engage in that activity” (234).

Technology method of treating infertility in men and women¹³⁰ and its relevance to the teaching of the Church.

NaPro Technology is described as a new women's health science that is designed to identify women's menstrual and fertility cycles. It is the first system to fully network family planning with procreative and gynecologic health monitoring and maintenance.¹³¹ The core concept of this method is to look for the underlying causes of a woman's health problems and then treat the issues. By identifying the exact cause of a man or a woman's health problem, a treatment approach can be implemented that corrects the specific problem. Elrod and Carpentier point out:

NaPro Technology begins with the premise that infertility and many other women's health issues are a result of disorders that disrupt normal ovarian and uterine function. Thus, these disorders can also interfere with the normal processes of conceiving and / or sustaining a pregnancy. Infertility is not treated as a disease in and of itself, but rather as a symptom caused by one or more pathologies in the woman's body. If not treated, these illnesses can have many short- and long-term health problems such as PMS, miscarriage, ectopic pregnancy, pelvic adhesive disease, ovarian cysts, chronic pelvic pain, and increased risk for breast, ovarian and uterine cancers.¹³²

This means that infertility is not treated as a disease in and of itself, but rather as a symptom caused by one or more pathologies in the woman's body.

In treating reproductive disorders, the fundamental principle of NaPro Technology is to work in cooperation with the natural reproductive system. The science of NaPro Technology recognizes that the human body is able to do many things that

¹³⁰ NaPro Technology focuses on treatment of female infertility. For men, treatment is only summarized here as including surgery for varicoceles and medication to improve fertility in men with hypogonadotropic disease, with sperm defects such as low motility, low morphology, and sperm antibodies. Cf. P. BOYLE, *A Family Physician Approach to Managing Infertility and Recurrent Miscarriage: A Presentation at American Academy of Fertility Care Professionals (AAFPCP) Meeting*, July 19, 2007, Wichita, 67-82.

¹³¹ T. W. HILGERS, *The NaPro Technology Revolution, Unleashing the Power of the Woman's Cycle*, New York, Beaufort Books, 2010, 25.

¹³² K. ELROD and P. CARPENTIER, "The Church's Best Kept Secret: Church Teaching on Infertility Treatment," 135.

medication and surgery cannot do. When specific defects are diagnosed, they are improved without suppressing or destroying the reproductive system. Treatment, therefore, is aimed at preventing the progression of organic and endocrine disease processes so that long term sequela of these abnormalities can be decreased.¹³³

3.2.3.2 — NaPro Technology and Reproductive Surgery

The type of treatment which is used in the NaPro Technology method also involves surgical correction of the anomaly and medical therapy as well. Hilger's method does not exclude surgery. He explains that the most effective form of treatment for most organic conditions is surgical. For example: "[With the] advent of laser laparoscopy and open laser surgery and microsurgery, conditions such as endometriosis and pelvic adhesions can be treated quite readily."¹³⁴ Distal tubal occlusion can also be treated micro surgically in most cases. Patients with endometriosis are treated without major surgery. Laser laparoscopy is a procedure in which the laser is introduced under laparoscopic control, and the areas of endometriosis are vaporized. The goal of this surgery is to repair the tissues so that adhesions do not form or resurface.¹³⁵

Hilgers observes that surgeons who are not adequately trained will tend to treat endometriosis with medication such as Danazol, Lupron, and Synarel.¹³⁶ These

¹³³ Cf. T. W. HILGERS, *The Medical Applications of Natural Family Planning: a Contemporary Approach to Women's Health Care*, 141.

¹³⁴ Ibid. Such a reconstructive pelvic surgery will take three to six hours depending upon the extent of the disease. The reason for the length of this surgery is because of its meticulous nature. NaPro Technology assumes: "Many women suffering from endometriosis are asymptomatic. Only a laparoscopy can reveal the distinct, inflamed tissue of endometriosis [because] it does not show up on ultrasounds, CT scans, or MRI scans." Cf. K. ELROD and P. CARPENTIER, "The Church's Best Kept Secret: Church Teaching on Infertility Treatment," 136.

¹³⁵ Cf. T. W. HILGERS, *The Medical Applications of Natural Family Planning: a Contemporary Approach to Women's Health Care*, 141.

¹³⁶ Berger, Goldstein and Fuerst recommend some of these medications for fertility treatment. For

medications act, in different ways, to suppress ovulation and thus suppress the hormone stimulation of the endometriosis itself.¹³⁷ According to DiGeronimo, each of these medications carry with them significant side effects. Hilgers and DiGeronimo argue that because the endocrine system is so significantly suppressed in most of these patients to begin with, they may actually cause harm.¹³⁸ At the present time, their argument is only theoretical and has not been studied with adequately performed prospective evaluations.¹³⁹ However, the best results could come from properly performed surgical forms of treatment.

Other surgical procedures include those performed on pelvic adhesions. These adhesions can be caused by previous inflammatory conditions such as previous infection, previous surgery, etc. Severe pelvic adhesions can be much more difficult to treat than endometriosis.¹⁴⁰ The only appropriate route for such treatment is surgical because there

example, they indicate that Danazol is one of the most frequently prescribed drugs to treat endometriosis. It is a synthetic derivative of testosterone that counteracts the effects of estrogen and decreases its synthesis. These authors also acknowledge some of the side effects women who take it suffer from, such as facial hair, weight gain, acne, a deepening voice, a decrease in breast size, muscle cramps and muscle enlargement, and increased blood cholesterol levels. However, there is no mention of suppressing ovulation as Hilgers says. See G. S. BERGER, M. GOLDSTEIN and M. FUERST, *Couple's Guide to Fertility*, 154-158.

¹³⁷ T. W. HILGERS, *The Medical Applications of Natural Family Planning: a Contemporary Approach to Women's Health Care*, 142.

¹³⁸ Ibid. As regards the risks of using fertility drugs, DiGeronimo identifies some of them which patients should be aware of. They include: ovarian hyperstimulation syndrome, multiple births, possible cancer risk, and ectopic (tubal) pregnancy. See T. F. DIGERONIMO, *New Hope for Couples with Infertility Problems*, 135-137.

¹³⁹ T. W. HILGERS, *The Medical Applications of Natural Family Planning: a Contemporary Approach to Women's Health Care*, 142. His criticism of other medical practitioners involved in fertility treatment is based on the Church's view.

¹⁴⁰ Microsurgery is employed to remove the scar tissue from the ovaries or other pelvic locations, in order to destroy areas of endometriosis and to repair damaged fallopian tubes; it also helps to remove the adhesions so that the tube can pick up eggs that are released from the ovary. For details about this procedure, see G. S. BERGER, M. GOLDSTEIN and M. FUERST, *Couple's Guide to Fertility*, 156-158. W. Cates et. al. conclude: "Pelvic inflammatory disease, due to sexually transmitted infection, probably accounts for half of all female infertility in many regions of the world." W. CATES and R. C. BRUNHAN, "Sexually Transmitted Diseases and Infertility," in R. F. HARRISON, F. BONNAR and W. THOMPSON (eds.),

is no medication that dissolves adhesions. In addition, tube occlusion is a condition that usually requires surgery. One cause of proximal tubal occlusions may be the collection of mucus and cellular debris in the proximal tube forming a cast.¹⁴¹ Treatment of proximal tubal occlusion includes resection of the occluded area and microscopic reanastomosis of the tubes.¹⁴²

3.2.3.3 — NaPro Technology and Reproductive Medicine

NaPro Technology does not exclusively involve surgery but medication as well. For example, when patients with abnormal mucus seek treatment, a mucus enhancer is commonly recommended. When cervical mucus is deficient or completely absent at the time of ovulation, this can result in infertility. The standard medicine use for this purpose is an oral estrogen.¹⁴³ Hilgers explains: “In our own experience with the use of oral estrogens, we have not found any improvement in the cervical mucus. In addition, they can only be given with an ovulation inducing medication such as Clomiphene Citrate otherwise they will actually inhibit ovulation.”¹⁴⁴

Fertility and Sterility: The Proceedings of the XIth World Congress on Fertility and Sterility, Dublin, June 1983, Held Under the Auspices of the International Federation of Fertility Societies, Lancaster, MTP Press Limited, 1984, 465.

¹⁴¹ This blockage is removed through a process known as tubal catheterization. Cf. D. ARONSON et. al., *Resolving Infertility*, 135. See also W. T. BASSETT, *Counseling the Childless Couple*, 61. Newill also indicates that in testing for fertility, the doctors proceed by identifying “any evidence of generalized disease which may affect fertility, in particular endocrine disorders of the thyroid gland, the adrenal and pituitary glands and the ovaries; also for diabetes, high blood-pressure and any form of anaemia.” Cf. R. NEWILL, *Infertile Marriage*, 75.

¹⁴² “Removal of a blocked portion of the fallopian tube and then rejoining the opened ends is called tubal anastomosis.” See *ibid.*

¹⁴³ Cf. T. W. HILGERS, *The Medical Applications of Natural Family Planning: a Contemporary Approach to Women’s Health Care*, 142

¹⁴⁴ *Ibid.*, 143. Other medical prescriptions include: Vitamin B6, 500 g. and Guaifenesin, used to loosen the mucus secretions. The best medication that could improve mucus production is ampicillin. Prednisone in decreasing doses for nine days creates dramatic improvement in mucus discharge. This detailed medical guide shows the various options that medical practitioners may use instead of resorting to

NaPro Technology also uses medication for ovulation induction. Hilgers observed that the fundamental defect in many ovulation disorders observed in patients with reproductive problems can be treated with ovulation inducing medications. Yet, he recognized the limitation of such medication in terms of availability and effectiveness.¹⁴⁵ Because luteal function¹⁴⁶ is often sub-optimal there is frequently a need to provide luteal support. Most of the ovulation inducing medications, because they stimulate follicular growth and development, will, secondarily, improve luteal support as well. Thus, they should always be considered in the group of medications that provide luteal support. Medication is also used in infertility treatment where women have androgen excess,¹⁴⁷ Hyperprolactinemia,¹⁴⁸ and for men who suffer from Hypospermatogenesis.¹⁴⁹

Artificial Reproductive Technologies (ARTs).

¹⁴⁵ Four basic medications are used in this area: Clomiphene Citrate (Clomid, Serophene), LH/FSH (Pergonal), FSH (Metrodin) and Gonadatropin Releasing Hormone (Factrel). Unfortunately all of these medications have both good and bad properties. T. W. HILGERS, *The Medical Applications of Natural Family Planning*, 143. For luteal support, common medicines prescribed include: HCG, Progesterone Vaginal Capsules, Progesterone in Oil by injection and Oral Micronised Estradiol-17 Beta (Estrace). Hilgers also explains that it has been shown that luteal phase Beta-Endorphin levels are substantially lower in patients with infertility versus normal fertility controls. It is assumed that the Beta-Endorphins are being absorbed into the tissues and, in fact, may be one of the key components to the blockage of FSH function. To try to correct this, medical practitioners use Naltrexone Hydrochloride (Trexan) a non-addictive, a long-acting opioid antagonist. This medication does not cause physical or psychological dependence, nor is there the development of tolerance to the opioid antagonism that it produces. Patients may discontinue its use at any time without experiencing withdrawal symptoms.

¹⁴⁶ “Luteal function” refers to the phase of the menstrual cycle when the structure on the ovary forms and remains after the follicle releases the egg at ovulation. Before ovulation, the endometrium, or uterine lining, thickens under the influence of estrogen. The luteal phase is normally the 12th to 14th days of the cycle occurring after ovulation and before the next menstruation. The luteal function defect can be treated using hormone-inducing medications. Cf. D. ARONSON et. al., *Resolving Infertility*, 99-101.

¹⁴⁷ T. W. HILGERS, *The Medical Applications of Natural Family Planning: a Contemporary Approach to Women's Health Care*, 145. In those women who have elevated androgen levels, an attempt is made to suppress the androgens and to reduce their levels. This is best accomplished with the use of Dexamethosone at a dose of 0.25 mg. PO, QD. If side effects develop with that, Spironalactone can also be used. Occasionally, even Prednisone is used for these purposes. For more information about treatment for elevated androgen levels, see G. S. BERGER, M. GOLDSTEIN and M. FUERST, *The Couple's Guide to Fertility*, 143-145.

¹⁴⁸ Elevated prolactin levels are best treated with Parlodel. This medication is a very specific prolactin inhibitor and will bring the prolactin level back to normal very quickly and reproducibly. In those

The above medical presentation, mostly from Hilger's writings, offers a comprehensive alternative to artificial reproductive technologies. NaPro Technology is used to explore natural options to diagnose and treat infertility in both men and women. This method of treatment does not interfere with the natural conjugal actions that are apt to natural procreation but makes it possible. Various NaPro Technology techniques that have been developed include:

Targeting of the menstrual cycle for hormone evaluation, the scoring of the mucus cycle and its classification, the identification and categorization of the various biomarkers of the menstrual cycle, the use of cooperative progesterone or estrogen replacement therapy, and other associated techniques which are used in cooperation with the menstrual and fertility cycles. It also includes selective intercourse, which allows a couple to select a particular time for intercourse which would be the best time to engage in that activity.¹⁵⁰

patients with very high prolactin levels, it may be sufficient to help them ovulate and eventually achieve a pregnancy; however, in those patients with only minimally elevated prolactin levels, its benefits are still not clear. Medical practitioners believe that hyperprolactinemia appears to be a less common disorder among men than women, but this may be due to the fact that tests looking for this disorder are administered much less frequently among men than women. See G. S. BERGER, M. GOLDSTEIN and M. FUERST, *Couple's Guide to Fertility*, 102, 139-141.

¹⁴⁹ Hypospermatogenesis refers to: "Abnormally decreased production of spermatozoa," or simply the condition of decreased sperm production. Cf. D. ARONSON et. al., *Resolving Infertility*, 336. Diagnosis of sperm determines whether there is no sperm production at all, or whether sperm is produced but does not ejaculate. Failure to ejaculate can be caused by "castration or absence of androgens [which] causes a loss of contractile response." See G. F. MENCHINI-FABRIS et. al., "Epididymal Function," in R. F. HARRISON, F. BONNAR and W. THOMPSON (EDS.), *Fertility and Sterility: The Proceedings of the XIth World Congress on Fertility and Sterility, Dublin, June 1983, Held Under the Auspices of the International Federation of Fertility Societies*, 245-253, here on 245. Hilgers indicates that the ovulation method plays a specific role in patients who have difficulty achieving pregnancy because the sperm count is low. In such circumstances, the male should have an adequate urologic evaluation and, if negative, should have a good hormone assessment. There are similar endocrinologic abnormalities in men that exist in women and some of the approaches to treating women also work for men. However, what is most important is the idea that identifying the time of fertility, with accuracy, assists couples where the man suffers from severe hypospermatogenesis to achieve a pregnancy. See T. W. HILGERS, *The Medical Applications of Natural Family Planning: a Contemporary Approach to Women's Health Care*, 145-147.

¹⁵⁰ T. W. HILGERS, *The Medical Application of Natural Family Planning: a Contemporary Approach to Women's Health Care*, 234. In the above text, Hilgers offers a summary of what NaPro Technology entails. This approach of identifying and treating the causes of sterility are natural and scientific. They are natural because they treat the causes of sterility so that the conjugal act takes place naturally and in a human manner (c. 1061, §1, *CIC* 1983); they are scientific because they use scientific means of procedure and they are carried out by trained medical professionals. The author also lists the activities that are not part of NaPro Technology: "Use of contraceptive agents of any type, any sterilizing procedure or abortion procedure, any of the artificial reproductive technologies such as *in vitro* fertilization, GIFT, ZIFT, intracytoplasmic sperm injection (ICSI), artificial insemination (whether by husband or donor), or any other approach which suppresses fertility or in some way disturbs the natural physical relationship (which brings unity to the couple) that is observed with intercourse." Ibid.

NaPro Technology employs the natural approach to fertility treatment, a method that is “medically safe, respectful to the dignity of women and the integrity of marriage, and effective in what it claims to do.”¹⁵¹ The United States Conference of Catholic Bishops has given a summary of the types of reproductive technologies compatible with the Catholic Teachings, those that are under discussion, and those that are in disagreement.¹⁵² Even though NaPro Technology uses advanced surgical and medical techniques, it “is natural because its primary goal is to restore a woman’s reproductive health. Once that is done, conception can take place naturally through the life-giving, lovemaking action of husband and wife.”¹⁵³

¹⁵¹ Ibid., 235. Hilgers believes that his method offers fertility treatment “in a way which is morally and professionally acceptable and does not result in high order multiple pregnancies or other ethical dilemmas, such as stored frozen embryos or stem cell research using embryological tissue or fetal cells.” See *ibid.*, 236.

¹⁵² Technologies compatible with Catholic Teachings include: observation of the naturally occurring sign(s) of fertility; general medical evaluation of both spouses for infertility; post-coital tests to assess sperm number and viability in “fertile type” mucus; appropriate evaluation and treatment of male factor deficiency; assessment of uterine and tubal structural competence by imaging techniques; appropriate medical treatment of ovulatory dysfunction; and appropriate correction of mechanical blocks to tubal patency. Those technologies that are under discussion and are neither approved nor disapproved include gamete intra-fallopian transfer and intrauterine insemination of a “licitly obtained” but technologically prepared semen sample. Those technologies that are completely in disagreement with Catholic Teachings include: obtaining a sample of seminal fluid by masturbation; artificial insemination by a non-spouse, or even by the husband if the sample is obtained and handled by non-licit means; *in vitro* fertilization; zygote intra-fallopian transfer; intracytoplasmic sperm injection; ovum donation; and “surrogate” uterus. Cf. H. KLAUS, *Reproductive Technology (Evaluation & Treatment of Infertility): Guidelines for Catholic Couples, Natural Family Planning Program of United States Conference of Catholic Bishops*, Washington, DC, USCCB, 2011. Newill disputes the Catholic stand on the use of illicit techniques when he writes: “There can be nothing immoral about submitting a sample of a body fluid for analysis when the objective is to start a family – an objective which is encouraged by [the] Church.” R. NEWILL, *Infertile Marriage*, 115. NaPro Technology falls within the category of those methods that are compatible with the teachings of the Catholic Church.

¹⁵³ K. ELROD and P. CARPENTIER, “The Church’s Best Kept Secret: Church Teaching on Infertility Treatment,” 134. For more discussion on the Church’s teaching on assisted conception, see R. RICHARDS, “A Roman Catholic Perspective on Fertility Issues: Objective Truths, Moral Absolutes and the Natural Law,” in E. BLYTH and R. LANDAU (eds.), *Faith and Fertility: Attitudes Towards Reproductive Practices in Different Religions from Ancient to Modern Times*, London & Philadelphia, PA, Jessica Kingsley Publishers, 2009, 46-49.

Regarding the success rate of NaPro Technology, Elrod and Carpentier are of the opinion that a well-trained fertility care physician can identify and eventually restore a woman's reproductive health beginning with a thorough diagnosis. These authors wrote: "In NaPro Technology, an 'unexplained' infertility diagnosis is rare and that when there is proper diagnosis, 60 to 80 percent of his infertile patients have been able to conceive after treating them of endometriosis."¹⁵⁴

It can be concluded that NaPro Technology offers a viable alternative to ARTs. NaPro Technology differs from other scientific means of fertility by addressing the root cause of infertility and cures it so that conception of a child can take place by a natural means of sexual intercourse. Instead of aiming at curing the causes of temporary infertility, ARTs aim at bypassing these causes and enable conception to take place artificially. NaPro Technology employs natural means and does not interfere with the normal acts of human reproduction as performed by the couple. Given the success rate that has been recorded by the use of this method, scientific research should continue in this direction, so that "unexplained infertility"¹⁵⁵ or sterility is permanently eliminated.

¹⁵⁴ See K. ELROD and P. CARPENTIER, "The Church's Best Kept Secret: Church Teaching on Infertility Treatment," 136. For further analysis of the successful medical references and personal stories that NaPro Technology has had over time (137-139). Studies in Europe indicate that unexplained infertility, where no abnormalities are discovered, accounts for 15% of sterile couples. Cf. E. V. VAN HALL, "The Infertile Couple and the Gynaecologist: Psychosocial and Emotional Aspects," in R. F. HARRISON, F. BONNAR and W. THOMPSON (eds.), *Fertility and Sterility: The Proceedings of the XIth World Congress on Fertility and Sterility, Dublin, June 1983, Held Under the Auspices of the International Federation of Fertility Societies*, Lancaster, MTP Press Limited, 1984, 359-368, here on 361.

¹⁵⁵ L. Speroff, R. H. Glass and N. G. Kase explained: "Unexplained infertility is said to occur when a comprehensive evaluation of an infertile couple fails to identify an etiology [...] situations in which treatment of a presumed cause for infertility (such as luteal phase deficiency, limited endometriosis, or failure to conceive after multiple attempts at donor insemination) fails to result in pregnancy." L. SPEROFF, R. H. GLASS and N. G. KASE, *Investigation of the Infertile Couple*, Birmingham, The American Fertility Society, 1991, 33. Luteal dysfunction is "a relative deficiency in secretion of progesterone by the corpus luteum" (Ibid., 16).

3.3 — Alternative Reproductive Therapies for Resolving Infertility

The third means of treating infertility is by Assisted Reproductive Therapy. This includes managing stress through counseling and lifestyle changes such as nutrition. Usually these means are employed when conventional medication fails or when it is unavailable. This section identifies four types of therapy: stress management techniques, lifestyle changes, appropriate nutrition, and traditional herbal medicine.

3.3.1 — Stress Management and Infertility

Stress can cause infertility in women as well as in men. Stress management skills include: “Relaxation [which] may have the potential for dampening arousal of the autonomic and sympathetic nervous systems, which may in turn enhance fertility.”¹⁵⁶ One of the goals of managing stress is to ensure better health in the couple to avoid negative feelings such as hopelessness. In this way, the couples are helped to live positively with their condition.

Berger, Goldstein, and Fuerst proposed: “By far, the majority of fertility problems are due to physiological causes, but it’s becoming more apparent that the mind plays a role in infertility. It is not uncommon for women to grow frustrated, develop anxiety, or suffer from stress by their prolonged inability to conceive.”¹⁵⁷ There is scientific evidence

¹⁵⁶ Cf. A. E. READING, “Psychological Intervention and Infertility,” in A. L. STANTON and C. DUNKEL-SCHETTER (eds.), *Infertility Perspectives from Stress and Coping Research*, New York, Plenum Press, 1991, 183-196, here on 188. However, the author acknowledges that the beneficial effects of relaxation on fertility have not yet been demonstrated.

¹⁵⁷ G. S. BERGER, M. GOLDSTEIN and M. FUERST, *The Couple’s Guide to Fertility*, 319-320. This means that mental stress may not be the main cause of infertility, but it is one of those mental conditions which, if they are not managed in time, cause post-traumatic stress disorder which may have adverse implications on one’s fertility. The authors give the example of female lawyers who work long hours and are five times as likely to have this kind of stress than female lawyers who work less than thirty-five hours a week. See also 36-37 where the authors discuss the effects of stress and depression on fertility. Cabot, Jasinska, mention stress as one of the causes of “anovulation,” that is, failure to ovulate. See S. CABOT and M. JASINSKA, *Infertility: The Hidden Causes, How to Overcome Them Naturally*, 19-20. Authors also see stress as the number one cause of excess prolactin production, thus predisposing a woman to anovulation

that stress can cause hormonal imbalances and tubal spasms, both potential factors in infertility.¹⁵⁸ To address stress-related health problems, medical practitioners recommend the following: “Relaxation skills, stress management, yoga, and better nutrition as ways to cope with infertility.”¹⁵⁹

High stress levels can affect many bodily functions and are known to contribute to various health conditions, such as back pain and heart disease.¹⁶⁰ On its own, stress does not cause sterility; nevertheless, “stress can contribute to infertility, both in terms of the physical changes it creates in your body and in the way it makes you feel.”¹⁶¹ Cabot and

(46-141); it reduces the production of the progesterone hormone which helps ovulation (51-52). High levels of stress in a woman increases the risk of miscarriage (116). It can also cause an imbalance in the person's immune system (157-159).

¹⁵⁸ G. S. BERGER, M. GOLDSTEIN and M. FUERST, *The Couple's Guide to Fertility*, 319-320. Cabot and Jasinska also explained: “The hypothalamus, which controls the flow and timing of reproductive hormones, is keenly sensitive to stress. Without enough estrogen, an egg will never be released or will be too immature to grow. If there is not enough progesterone, an embryo can't be implanted or stay implanted.” See also S. CABOT and M. JASINSKA, *Infertility, The Hidden Causes, How to Overcome Them Naturally*, 141. T. Hilgers identifies stress as having an “enormous impact on the ovulation and menstrual cycles.” He further considers stress as either physical or emotional, acute or chronic. Examples of physical stress include such things as sickness, strenuous activity and travel. Examples of emotional stress could be a job change, bereavement, major decisions, holidays, relatives visiting, weddings, and exams. Cf. T. W. HILGERS, *The Medical Application of Natural Family Planning: a Contemporary Approach to Women's Health Care*, 244. For a detailed discussion on stress management and sterility, see 244 -248.

¹⁵⁹ For details about stress management, see G. S. BERGER, M. GOLDSTEIN and M. FUERST, *The Couple's Guide to Fertility*, 320-325. These authors identify different therapies which treat stress, such as Traditional Chinese Medicine, Chinese Herbs, and some vitamins. Regarding individual herbs which are used for particular reasons, see T. S. DIGERONIMO, *New Hope for Couples with Infertility Problems*, 113-119. For detailed information about vitamin therapy which “cures” infertility, see E. REYNOLDS and D. MACOMBER, *Fertility and Sterility in Human Marriages*, 166-180.

¹⁶⁰ Cf. D. ARONSON et. al., *Resolving Infertility*, 239-242.

¹⁶¹ Ibid., 241. The authors further explain: “Stress can be a factor in male impotence, just as it can interfere with the intricate series of biochemical and physiological events that constitute the reproductive cycle in the female body.” Berger, Goldstein, Fuerst, noted: “Men also show the stresses and strains of infertility treatments. Sperm counts in the normal range may fall to barely fertile after a long workup and months and months of trying to achieve a pregnancy [...] stress has also been shown to impair sperm motility and morphology. High levels of stress hormones can reduce testosterone production and probably impair fertility.” G. S. BERGER, M. GOLDSTEIN and M. FUERST, *The Couple's Guide to Fertility*, 320. However, stress being a psychological factor is difficult to prove as a direct cause of sterility. These authors suggest: “Fertility doctors need to pay attention to the psychological as well as medical needs of fertility patients” (Ibid., 321).

Jasinska identified activities that can effectively reduce or eliminate stress; these include: “Yoga, tai chi, dance, meditation, and visualization. Regular exercise is one of the best ways to control stress, including running, bicycling, swimming,”¹⁶² and similar activities.

3.3.2 — Lifestyle Change and Infertility

Change of lifestyle is another means of therapy in treating male and female infertility. These include reducing body weight since “obese women have more menstrual disturbances, find it more difficult to become pregnant and have a higher risk of pregnancy and delivery complications;”¹⁶³ treatment and management of diabetes; reduction of alcohol consumption;¹⁶⁴ reduction of caffeine and harmful fats; and reduction of exposure to external toxins.¹⁶⁵ Elrod and Carpentier concluded that smoking and being overweight will more likely prevent conception. Eating disorders which lead men and women to be underweight can also cause sterility.¹⁶⁶ While quoting a study that

¹⁶² D. ARONSON et. al., *Resolving Infertility*, 242.

¹⁶³ Cf. S. CABOT and M. JASINSKA, *Infertility: The Hidden Causes, How to Overcome Them Naturally*, 128-129. Exercise and proper nutrition can help reduce one’s body weight. However, DiGeronimo warns against the dangers of too much exercise or excessive weight loss which could, in turn, yield negative results. See T. F. DIGERONIMO, *New Hope for Couples with Infertility Problems*, 91-95.

¹⁶⁴ Cabot, and Jasinska believe: “Women who drink alcohol usually take longer to conceive than women who don’t [...] alcohol reduces the production of progesterone, can inhibit ovulation and interferes with the transport of sperm through the fallopian tubes.” See S. CABOT and M. JASINSKA, *Infertility: The Hidden Causes, How to Overcome Them Naturally*, 132-139. Regarding the habits that can reduce a woman’s fertility, such as smoking, caffeine intake, alcohol, or use of illicit drugs, see T. F. DIGERONIMO, *New Hope for Couples with Infertility Problems*, 88-91.

¹⁶⁵ Cf. T. F. DIGERONIMO, *New Hope for Couples with Infertility Problems*, 85-88.

¹⁶⁶ D. Aronson et. al. explained the impact of improper body weight in the following words: “Women who are significantly underweight or overweight may have difficulty getting pregnant. Low weight can lead to an alteration in the gonadotropine-releasing hormone (GnRH) and follicle-stimulating hormone (FSH) or luteinizing hormone (LH) signals that the brain sends to the ovaries in women and testes in men. If a woman is significantly underweight, she may not ovulate (a condition known as anovulation), or the lining of her uterus may not be ready to receive a fertilized egg because of inadequate ovarian hormone production. In men, being underweight may lead to decreased sperm function or sperm count. Being overweight or obese also can affect the hormonal signals to the ovaries or testes.” D. ARONSON et. al., *Resolving Infertility*, 234.

was conducted in 1998, Elrod and Carpentier believe: “In smokers, infertility rates are higher, conception rates are reduced, and time to conception is delayed.”¹⁶⁷

In addition, medical practitioners have identified Sexually Transmitted Diseases (STDs) as another cause of sterility. One such diseases is gonorrhea, because it can “leave devastating scarring that destroys fallopian tubes. Untreated, STDs of all kinds can cause a variety of problems in the reproductive tracts of men and women.”¹⁶⁸ Most of these diseases can be treated using antibiotics; nevertheless, those infected should be treated early enough before permanent damage is done to the reproductive tracts.

3.3.3 — Nutrition and Infertility

Another means of therapy is nutrition. Nutritionists recommend foods to avoid and foods that help the body keep the hormonal balance required for pregnancy. Management of one’s nutrition addresses the “vitamin or mineral deficiency that can be responsible for infertility. It is important to correct any nutritional deficiencies before conception occurs.”¹⁶⁹ Therefore, women who wish to conceive should increase their intake of vegetables, consume adequate protein, eat plenty of good fats, eat lots of nuts and seeds, include herbs and spices in their diet, consume few gluten-free grains and starch, and consume plenty of healthy fluids.¹⁷⁰

Eating well is necessary for couples who wish to increase their chances of

¹⁶⁷ K. ELROD and P. CARPENTIER, “The Church’s Best Kept Secret: Church Teaching on Infertility Treatment,” 123. A 2007 study is quoted here also indicating that even “women who have regular cycles, and no other obvious fertility problems, still have difficulty achieving a pregnancy if they are overweight.”

¹⁶⁸ D. ARONSON et. al., *Resolving Infertility*, 242-243.

¹⁶⁹ Cf. S. CABOT, M. JASINSKA, *Infertility: The Hidden Causes, How to Overcome Them Naturally*, 141.

¹⁷⁰ These categories of food recommended by nutritionists are outlined in *ibid.*, 152-156; and D. ARONSON et. al., *Resolving Infertility*, 234-238.

fertility. Unhealthy eating may cause disorders or body defects which may in turn affect fertility in both men and women. Aronson et. al., have advised couples to evaluate their eating habits, determine nutritional needs, modify eating habits, and, if needed, make changes slowly.¹⁷¹ Both inability to conceive and repeated miscarriages may be resolved through a change in diet.¹⁷²

Complementary healthcare is another way to manage infertility. Health care practitioners have recommended traditional Chinese medicine (such as “chi”). Caton has proposed some of these therapies as: “Nutrition, lifestyle, and relaxation, as well as proposing a treatment or remedy. Most importantly, holistic methods promote responsible self-care, encouraging a health body, mind, and spirit.”¹⁷³ However, Caton cautions that there is no medical proof that such therapy actually cures infertility, but these might be helpful to counteract some of the body malfunctions and make them function better.

3.3.4 — Traditional Herbal Medicine and Infertility

Acupuncture is one traditional herbal medicine technique, basically of Chinese origin.¹⁷⁴ Acupuncturists view infertility as a state of weakening, aging, disease, or

¹⁷¹ D. ARONSON et. al., *Resolving Infertility*, 236-237.

¹⁷² For the discussion about the benefits of a good diet vis à vis fertility, see T. F. DIGERONIMO, *New Hope for Couples with Infertility Problems*, 81-85.

¹⁷³ H. CATON, *The Fertility Plan: Holistic Program for Conceiving a Healthy Baby*, 96. The author also cites therapies which enhance fertility as T'ai Chi, Yoga, chi Kung, Alexander Technique, Acupuncture, Shiatsu or Acupressure exercises. Nutritional and herbal therapies include: naturopathy, Chinese herbal medicine and food cures, Western herbalism, Ayurveda, and massage therapies. For details of what these therapies entail, see 99-109; T. F. DIGERONIMO, *New Hope for Couples with Infertility Problems*, 94-129. However, herbs can be dangerous since they are not regulated so as to determine a safe dosage for their use. While answering the question, “Can some forms of infertility be prevented?” A. Sutton said yes. The author then concludes: “In the poorer parts of the world infertility is often due to malnutrition and illness such as tuberculosis (which may cause blocked fallopian tubes). In these parts, then, infertility could in many cases be avoided by better living conditions and, in particular, by better hygiene and an improved diet.” See A. SUTTON, *Infertility and Assisted Conception, What you Should Know: Answers to Questions About Medical Techniques of Assisted Conception*, 42.

¹⁷⁴ Cf. G. S. BERGER, M. GOLDSTEIN and M. FUERST, *The Couple's Guide to Fertility*, 322. The

imbalances in the body. To improve one's fertility, [they] try to slow down or reverse the aging process and restore the body's functions.¹⁷⁵ Practitioners attempt to rebalance the flow of "vital life energy" by inserting special needles at 360 points along energy pathways or meridians.¹⁷⁶

In addition to needles, traditional Chinese medicine practitioners have used herbs to treat infertility. Chinese herbs "are usually used in combination and prescribed for specific conditions. Raw herbs, taken in a brewed tea over several weeks, are mostly prescribed for infertility conditions."¹⁷⁷ These herbs can also be prescribed in powder, capsule, pill, or tincture form.

As indicated above, infertility can be treated or reversed using three means: medication, surgery, and Assisted Reproductive Therapies. Having identified these means of assisting in fertility, one can identify those means which the Church considers legitimate and recommends, and those which are forbidden. Artificial Reproductive Technologies identified below fall in the latter category and so are not morally permissible.

3.4 — Artificial Reproductive Technologies (ARTs)

Where medical, surgical, or therapeutic intervention fail to resolve infertility, most couples explore other scientific techniques to conceive a child. It is estimated that some 7.3 million Americans, or 12 percent of the population in their reproductive years,

authors indicate that "most major American cities now have licensed acupuncturists or Doctors of Oriental Medicine who specialize in reproductive medicine."

¹⁷⁵ Ibid.

¹⁷⁶ Ibid., 322-323. Acupuncture has in some studies been as successful as hormone therapy in helping women become pregnant.

¹⁷⁷ Ibid., 323.

are infertile.¹⁷⁸ Science keeps advancing and treatments keep getting better; thus more children are being born through Assisted (or Alternative) Reproductive Technologies.¹⁷⁹ These techniques include *in vitro fertilization* (IVF) and Surrogates or Gestational Carriers.¹⁸⁰ These forms of scientific intervention are employed where conception cannot take place naturally in case of male infertility, unexplained infertility, or fear of transmitting genetic diseases.

¹⁷⁸ Daniluk estimates that infertility affects an estimated ten to twelve percent of American couples of reproductive age. He also points out that these estimates are based on only those couples who approach medical practitioners for help, and so the actual figure will never be known. See J. C. DANILUK, *The Infertility Survival Guide*, 6. He is of the view that “about half of those who experience infertility say they have also known that they wanted children,” and that many couples do not initially want children but change their minds later in age. Another group of people he specifies are those who are remarried and are advanced in age. Statistics indicates a high percentage of women in developed countries suffer from sterility. Elrod and Carpentier wrote: “According to the National Center for Health Statistics, 12 percent of all sexually active women and 15 percent of married women experienced impaired fertility in 2002; the U.S. Department of Health and Human Services reports that 33 percent of couples in which the woman is thirty-five or older and is seeking to become pregnant suffer from infertility.” See K. ELROD, P. CARPENTIER, “The Church’s Best Kept Secret: Church Teaching on Infertility Treatment,” 122.

¹⁷⁹ Assisted Reproductive Technologies include mainly artificial insemination and *in vitro fertilization*. Medical description of these technologies is given by T. F. DIGERONIMO, *New Hope for Couples with Infertility Problems*, 142-172. In addition, this author presents in detail “twenty-four ways of making a baby,” (171-172). Since our study is not a detailed medical study on infertility, we have only identified main categories of these ways. ARTs is defined by the U.S.A. Center for Disease Control and Prevention (CDC) as “all treatments and procedures that involve the handling of human eggs and sperm for the purpose of helping a woman become pregnant.” D. ARONSON et. al., *Resolving Infertility*, 175. ARTs takes on different types, such as: “*in vitro fertilization* (IVF), gamete intrafallopian transfer (GIFT), zygote intrafallopian transfer (ZIFT), embryo cryopreservation, egg or embryo donation and gestational carriers” (Ibid., 175).

¹⁸⁰ Surrogate motherhood refers to a situation where another woman also called a “surrogate mother is inseminated with the sperm of a man whose wife can’t conceive or carry a child to term. Once the baby is born, the surrogate allows the biological father and his infertile wife to adopt the baby.” See G. S. BERGER, M. GOLDSTEIN and M. FUERST, *The Couple’s Guide to Fertility*, 252-258. In such a case, the child has three parents, one father and two mothers. Surrogate motherhood is also called “renting a womb.” The process of surrogate motherhood involves the genetic father, his infertile wife, and the surrogate (and the surrogate’s husband) to enter into a written contract beforehand in case either party changes his mind. The authors also indicate that the total cost of the process can be about \$40,000. See 254. B. M. Sember puts the cost of surrogacy from \$25,000 to over \$50,000, “depending on the difficulty involved with conception, the medical issues present in the pregnancy, and what expenses and costs the intended parents are responsible for under the contract.” B. M. SEMBER, *The Infertility Answer Book, the Complete Guide to your Family-Building Choices with Fertility and Other Assisted Reproductive Technologies*, Naperville, IL, Sphinx Publishing, 2005, 65. The author also identifies one of the problems with surrogate motherhood, which is where the surrogate mother changes her mind and declines to surrender all parental rights to the woman “renting” her womb. For examples of legal suits involving surrogate mothers (see *ibid.*, 72-74).

3.4.1 — *In Vitro Fertilization*

In vitro fertilization gets its name from the fact that fertilization occurs outside of the body, in a laboratory dish, instead of the woman's womb.¹⁸¹ Fertilization that takes place inside the woman's body is called *in vivo*, meaning inside a living body. When fertilization takes place, the physician transfers the embryo into the woman's uterus for possible implantation.¹⁸² Cabot estimates that in the last 30 years, 30 million children have been born using *in vitro fertilization* worldwide.¹⁸³ *In vitro fertilization* is classified

¹⁸¹ Cf. D. ARONSON et. al., *Resolving Infertility*, 176. *In vitro*, literally means in glass, although today the laboratory dishes are plastic. Cabot and Jansiska explain: "The development, maturation and release of eggs is completely controlled with the use of hormones. Ironically, the process often begins with placing a woman on the contraceptive pill in order to inhibit natural ovulation and enable it to be timed and controlled more easily" S. CABOT and M. JANSISKA, *Infertility: the Hidden Causes, How to Overcome Them Naturally*, 227. *In vitro fertilization* can be summed up in the following procedures: pumping superovulatory drugs into the woman's body in order to harvest as many eggs as possible; extracting the woman's eggs; collecting sperm or using sperm already collected and/frozen; joining the sperm and eggs in a petri dish; monitoring the growth of the newly created zygotes in the laboratory under a microscope; taking cells from the zygotes for chromosomal analysis (in order to try to determine sex and some genetic traits); and transferring some of the embryos into the woman's uterus through the cervix. Adapted from K. ELROD and P. CARPENTIER, "The Church's Best Kept Secret: Church Teaching on Infertility Treatment," 127.

¹⁸² From the time the first "test-tube baby" Louise Brown was born, technology brought hope for sterile couples to have children. Yet, there have been legal as well as moral/ethical questions. On the legal side, governments have come up with legislations to regulate this new technology. In Great Britain for example, the Warnock Parliamentary Commission on bioethical legislation was set up for this purpose, and its report was presented in 1985; in Canada, the Royal Commission was set up in 1990. The Church too issued documents which will be discussed later in this work. One of the Church's responses in England and Wales is, "Cardinal Hume on the Warnock Report," in *The Furrow*, 1985, 599-600, and "Réponse des Évêques de Grande-Bretagne au Rapport Warnock," in *La Documentation catholique*, 82 (1985), 392-401; while referring to the Commission's recommendation, the English Bishops responded: "Nous approuvons la création d'une nouvelle autorité compétente pour réglementer et (a) les services médicaux pour la stérilité qui utilisent la FIV ou la fécondation artificielle, et (b) la recherche afférente; nous approuvons la présence d'une représentation importante du non-expert au sein de l'autorité compétente; que les services pour la stérilité précédemment mentionnés ne soient offerts que sous autorisation" (395). See also *The Tablet*, December 15, 1984, 16-17. See J. MAHONEY, *Bioethics and Belief*, London, Sheed & Ward, 1984; D. MURRAY, *A Question of Morality. Christian Morality and in vitro fertilization*, Dublin, Veritas, 1988; P. O'MAHONY, *A Question of Life. Its Beginning and Transmission*, London, Sheed & Ward, 1990; K. O'ROURKE, *Concrete Issues Facing Canon Lawyers Today in the Light of Contemporary Developments in Biomedical Technology*, paper read at Convention of Canadian Canon Law Society, Quebec, October 1990.

¹⁸³ S. CABOT and M. JASINSKA, *Infertility: The Hidden Causes, How to Overcome Them Naturally*, 222.

as either homologous¹⁸⁴ or heterologous.¹⁸⁵ The process involves “retrieving mature eggs from a woman, fertilizing them with sperm in the laboratory and implanting the embryos in the uterus 2 to 6 days after fertilization is confirmed.”¹⁸⁶

3.4.1.1 — Homologous *In Vitro* Fertilization

Homologous *in vitro* fertilization is done by uniting the sperm from the husband with the egg and transferring the embryo to the uterus of his wife.¹⁸⁷ Depending on the results of sperm analysis, a procedure called intrauterine insemination may be recommended. During this procedure, “the sperm are cleaned of any debris, concentrated, and placed directly into the woman’s uterus at the time of ovulation. This may be combined with a process known as superovulation in which your partner is treated with

¹⁸⁴ IVF became popular when the first test-tube baby, Louise Brown, was born in the UK on June 25, 1978. In the USA, Elizabeth Jordan Carr was “born” as the first test tube baby on December 28, 1981. Cf. S. C. MAGIE, *A Determination of the Liceity of Gamete Intrafallopian Transfer in the Light of Magisterial Teaching on Selected Medical Technologies*, STD diss., Rome, Academia Alfonsiana, 1991, 44-45; T. F. DIGERONIMO, *New Hope for Couples with Infertility problems*, 151. Since then, new technologies have been developed to contribute to fertilization and pregnancy. Success rates have reached 25 percent, exceeding that of the normal conception in a fertile couple in a particular cycle. See J. A. ROSENFELD ed., *Handbook of Women’s Health, an Evidence-Based Approach*, 191. It is estimated that since IVF was introduced in the USA in 1981, more than 212,000 babies have been born through this means by the end of 2000. Cf. A. L. SUTTON, *Women’s Health Concerns Sourcebook*, 324. Whereas medical practitioners have put the success rate of IVF at a higher percentage, Catholic medical activists such as A. Sutton have put this rate at only 10 percent. Cf. A. SUTTON, *Infertility and Assisted Conception, What You Should Know: Answers to Questions About Medical Techniques of Assisted Conception*, 15. Y. Ponticas reveals: “The IVF technique is offered typically after the couple (most likely the woman) has undergone several years of diagnostic and failed treatment procedures.” Y. PONTICAS, “Issues in the Psychological Evaluation and Care of *in vitro* fertilization Couples,” 27. In this statement, the author alludes to the fact that the success of IVF is not guaranteed; a couple may have to go through many procedures before pregnancy occurs.

¹⁸⁵ This is where samples e.g. egg or sperm are obtained from another person other than the partner in marriage.

¹⁸⁶ T. F. DIGERONIMO, *New Hope for Couples with Infertility Problems*, 150. The author indicates that extra embryos are either stored for future use by the couple, discarded, or given away for research purposes (166-167).

¹⁸⁷ *In vitro* fertilization (IVF) is a procedure where eggs are surgically removed from the ovary and mixed with sperm outside the body *in vitro* = Latin, meaning “in a glass.” After about forty hours, the eggs are examined to see if they have become fertilized by the sperm and are dividing into cells. The fertilized eggs, now embryos, are then placed in the woman’s uterus, thus bypassing the fallopian tubes. For details on these procedures, see A. L. SUTTON, *Women’s Health Concerns Sourcebook*, 324.

medication to increase the number of eggs released in that cycle.”¹⁸⁸

Homologous *in vitro fertilization* enables infertile women who have blocked or absent fallopian tubes to conceive. In men who have low sperm counts, *in vitro fertilization* offers an opportunity for a couple to have a biological child. It is possible that infertility can be prevented before the couple resorts to the use of ARTs. Sutton recommends: “In poorer parts of the world infertility is often due to malnutrition and illness such as tuberculosis which may cause blocked fallopian tubes. In these parts, then, infertility could in many cases be avoided by better living conditions and, in particular, by better hygiene and an improved diet.”¹⁸⁹

In conclusion, homologous *in vitro fertilization* is a method of artificial reproduction which causes less stress on the spouses. The fact that both are involved in the investigation to determine the cause of infertility and its treatment allows the couple to support each other. However, like other artificial means of reproduction, homologous *in vitro fertilization* does not necessarily cure permanent infertility. The actual causes of infertility are bypassed, and there is no possibility of natural conception. Even within marriage, homologous *in vitro fertilization* “cannot be admitted except for those cases in which the technical means is not a substitute for the conjugal act but serves to facilitate and to help so that the act attains its natural purpose.”¹⁹⁰

¹⁸⁸ J. C. DANILUK, *The Infertility Survival Guide*, 35.

¹⁸⁹ A. SUTTON, *Infertility and Assisted Conception, What you Should Know: Answers to Questions About Medical Techniques of Assisted Conception*, 42. As a solution, A. Sutton proposes the following: “In many parts of the world, also, including both poorer and richer countries, a change in sexual mores would have a beneficial effect and prevent much infertility, notably infertility caused by venereal infection, especially in women. Blocked fallopian tubes, for instance, are commonly the result of infection caused by sexually transmitted diseases” (Ibid.).

¹⁹⁰ *Donum vitae*, B, 6, Engl. transl. in *Origins*, 16 (1987), 708.

3.4.1.2 — Heterologous *In Vitro Fertilization*

Heterologous *in vitro fertilization* is done by uniting the sperm from a donor other than the husband and egg from the wife in a test tube and then transferring the embryo to the uterus. This method is used in cases where there is male infertility, male ejaculatory dysfunction, or other anomalies caused by radiation, surgery for cancer, and chromosomal abnormalities.¹⁹¹ This method is usually employed when there is unexplained infertility in the man, and there are no known problems with sperm quality or with the woman's fallopian tubes. It can be used in cases where the man suffers a low sperm count, or the sperm have poor motility.¹⁹² This type of assisted reproduction offers infertile couples another opportunity for treatment and hope for having a child.

At a certain point while trying to conceive, the spouses may realize that they are incapable of having a biological child. Sometimes there is no medical cure for eggs that can't be fertilized, or sperm that is of poor quality which cannot be corrected or bypassed. Heterologous *in vitro fertilization* is another option where the spouses produce a child who is biologically related to one of them, usually the woman. Some donors prefer to remain anonymous, and others declare their identity to the beneficiaries.

It can be concluded that heterologous *in vitro fertilization* is another scientific means of overcoming infertility. This means is chosen only when one spouse is infertile. Other factors include the scientific expertise. The Church does not accept this means of

¹⁹¹ This method is used also in cases of unexplained infertility. Cf. D. ARONSON et. al., *Resolving Infertility*, 176-177. As Brown explains: "Erectile dysfunction, which can be primary or secondary, is due to a disordered vasodilatory phase which is under parasympathetic control of the automatic nervous system, ejaculatory disorder, either primary or retarded, results from dysfunction of the sympathetically innervated orgasmic phase." A. D. G. BROWN, "Psychosexual Problems in Infertility," 378.

¹⁹² Cf. S. CABOT, M. JASINSKA, *Infertility: The Hidden Causes, How to Overcome Them Naturally*, 226-230.

artificial reproduction on the basis that [it] “Violates the rights of the child; it deprives him of his filial relationship with his parental origins and can hinder the maturing of his personal identity,” and that it is “morally illicit.”¹⁹³

3.4.2 — Third Party Reproductive Technology

Unless artificial fertilization uses specimens from both spouses in marriage, a third party is usually involved. When it is a case of a male functional impairment, fertilization becomes possible by taking sperm of a third party and using it to fertilize the wife’s eggs. If it is the wife who is experiencing fertility issues, her ovum can be extracted and fertilized by the sperm of her husband, using a third party. This section considers these procedures and evaluates their moral practicability in infertile couples.

3.4.2.1 — Third Party Reproductive Procedures

The third option for couples who fail to achieve pregnancy by medical and surgical therapies is to use Third Party Reproductive Procedures. These procedures include: donor sperm, donor eggs, donor embryos, a gestational carrier, a surrogate,¹⁹⁴ or some combination of these. Daniluk explains these procedures and cautions that most couples resort to these options only when they have done everything possible to conceive a child from their own genetic histories.¹⁹⁵ Usually infertile couples obtain eggs, sperm,

¹⁹³ See *Donum vitae*, II, A, 2, Engl. transl. in *Origins*, 16 (1987), 705.

¹⁹⁴ Surrogacy is of three types. First, gestational surrogacy occurs with a parenting arrangement in which an egg is retrieved from the wife of the intended couple, combined with her husband’s sperm, and the resulting embryo is implanted in the surrogate. The child is not genetically related to the surrogate. Second, traditional surrogacy occurs when the surrogate is artificially inseminated with the sperm from the husband of the intended couple. The child in this case is genetically related to the surrogate and the intended father. Then, the female spouse adopts the child. Third, donor surrogacy, where the embryo is created *in vitro* with the genetic material of one of the intended parents and the fertilized egg is transferred to the surrogate. The child, in this case, is genetically related to the intended parent who contributed the egg or sperm and the donor. These clarifications are given by T. F. DIGERONIMO, *New Hope for Couples with Infertility Problems*, 181-182.

¹⁹⁵ Cf. J. C. DANILUK, *The Infertility Survival Guide*, 43.

or embryos from anonymous donors. Gestational carriers and surrogacy are procedures used when an infertile woman has an irreparable uterus or ovary, and the pregnancy is transferred and carried by another person she chooses or simply by an anonymous person.¹⁹⁶

Surrogate parenting is one option for third party assisted reproductive procedures. Sometimes a woman simply cannot or should not conceive or carry a baby to term. DiGeronimo identifies some of the reasons for surrogate motherhood when she says that a woman “may not produce eggs; she may have eggs that will not fertilize; she may be afraid of passing on a genetic defect; she may have a medical condition that makes pregnancy inadvisable; she may have had a hysterectomy.”¹⁹⁷ In such cases a woman may have a genetic offspring by asking another woman to carry and give birth to a child by a surrogate mother arrangement.

There are three types of surrogate parenting. Gestational surrogacy where an egg is retrieved from the wife of the intended couple, combined with her husband’s sperm, and the resulting embryo is implanted in the surrogate. The child is not genetically related

¹⁹⁶ Cf. T. F. DiGERONIMO, *New Hope for Couples with Infertility Problems*, 181-190. Surrogacy remains controversial from moral, ethical, and religious viewpoints. The author indicates a danger of having unnatural births, such as a woman who carried triplets using “her daughter’s eggs and her son-in-law’s sperm. She ended up giving birth to her own grandchildren!” 184. For detailed USA laws regarding surrogacy, see B. M. SEMBER, *The Infertility Answer Book, the Complete Guide to your Family-Building Choices with Fertility and Other Assisted Reproductive Technologies*, 65-74.

¹⁹⁷ T. F. DiGERONIMO, *New Hope for Couples with Infertility Problems*, 181. Generally, donor insemination is done for the following three reasons: 1) insemination of women whose husbands are sterile; 2) the insemination of women whose husbands are very subfertile and unlikely to father a child; and 3) the insemination of women whose husbands are fertile but who carry severe familial or hereditary disease which it would be undesirable to pass on to a child. Cf. R. NEWILL, *Infertile Marriage*, 164. M. R. N. Prasad and E. Diczfalusy have identified Gossypol as a human drug which has a negative effect on human fertility. See M. R. N. PRASAD and E. DICZFALUSY, “Gossypol,” in R. F. HARRISON, F. BONNAR and W. THOMPSON (eds.), *Fertility and Sterility: The Proceedings of the XIth World Congress on Fertility and Sterility, Dublin, June 1983, Held Under the Auspices of the International Federation of Fertility Societies*, Lancaster, MTP Press Limited, 1984, 255-268, here on 266.

to the surrogate.¹⁹⁸ The second type is traditional surrogacy, whereby a surrogate is artificially inseminated with the sperm from the husband of the intended couple. The child is genetically related to the surrogate and the intended father. The wife of the intended couple adopts the child.¹⁹⁹ The third type is donor surrogacy, where an embryo created *in vitro* with the genetic material of one of the intended parents and a donor egg or sperm is transferred to the surrogate. This child is genetically related to the intended parent who contributed the egg or sperm and the donor. The other party adopts the child after birth.²⁰⁰

3.4.2.2 — Potential Risk Factors of Artificial Reproductive Technologies

With increased scientific knowledge of human reproduction, ARTs have been widely employed in order to enable pregnancy. However, serious side effects have been reported which increase the trauma participating couples are experiencing.²⁰¹ As reported in the following paragraphs, these risks affect both mothers and children as well.

Elrod and Carpentier remarked: “Though the American Society for Reproductive Medicine recommends the implantation of two to five embryos, depending on the age of the woman, no regulations exist that limit the number of embryos transferred into the

¹⁹⁸ T. F. DiGERONIMO, *New Hope for Couples with Infertility Problems*, 181.

¹⁹⁹ Ibid.

²⁰⁰ Ibid. These three types of surrogacy are similar to homologous and heterologous artificial fertilization discussed above. In the case of egg donation, the child will have a father and two mothers; the egg donor mother, whom the child would not know who is also the genetic mother, and the gestational mother who gave birth to the child.

²⁰¹ Failure to conceive a child can cause emotional or psychological trauma or injury to the person, his spouse or the entire family. In addition, trauma can be a result of “treatment for infertility [which] is often invasive and painful, particularly if it occurs over a long period of time. Clients experiencing infertility as a trauma must adapt to their predicament, or they are at risk for experiencing Posttraumatic Stress Disorder (PTSD).” L. L. DEVERAUX and A. J. HAMMERMAN, *Infertility and Identity: New Strategies for Treatment*, 93.

uterus.”²⁰² Thus, when women receive drugs to stimulate their ovaries to produce several eggs, several embryos could be implanted resulting in multiple births.²⁰³ One common side effect is superovulation or “ovarian hyperstimulation syndrome. This results in the enlargement of the ovaries and the side effects can range from mild to severe abdominal discomfort, nausea, and vomiting; ovarian ruptures, cysts, and cancer.”²⁰⁴

Another source of concern is from the drugs that are used to induce or to enhance ovulation. For example, Lupron is a drug which had been originally approved by the United States Food and Drug Authority for treatment of men with prostate cancer.

²⁰² K. ELROD and P. CARPENTIER, “The Church’s Best Kept Secret: Church Teaching on Infertility Treatment,” 128. In order to avoid multiple births, doctors, by means of “selective reduction,” abort some of the fetuses and leave one child to be born. Cf. A. SUTTON, *Infertility and Assisted Conception, What you Should Know: Answers to Questions About Medical Techniques of Assisted Conception*, 6. Multiple births have been reported, the highest being eight, where, Nadya Denise Doud-Suleman (referred to as “Octomom” in the press) produced octuplets in January 2009. Cf. S. T. MOHAJER, “Fertility Physician Under Investigation,” in *The Houston Chronicle*, February 8, 2009, 12. For a discussion regarding the risk of IVF treatment resulting in multiple births, see C. A. TAUER, “*Donum vitae*: Dissenting Opinions on the ‘Simple Case’ of *in vitro* fertilization,” in K. W. WILDES (ed.), *Infertility: A Crossroad of Faith, Medicine and Technology*, 126. In the USA, quintuplets were born for the first time at the Women’s Hospital of Texas on April 8, 2015, in Houston, following intrauterine insemination. A similar birth was reported in 1969 at Queen Charlotte’s Maternity Hospital in London. From: <http://www.bbc.com/news/world-us-canada-32322841> (April 15, 2015). Insemination was done after the mother had difficulties getting pregnant.

²⁰³ K. ELROD and P. CARPENTIER, “The Church’s Best Kept Secret: Church Teaching on Infertility Treatment,” 129. The authors further wrote: “Due to the often excessive implantation of embryos into the uterus, 35 percent of all IVF babies are multiples, mostly twins. There is a direct link between multiple births, prematurity, and low birth weight in infants.”

²⁰⁴ *Ibid.*, 128. Elrod and Carpentier also believe that in a case of multiple births, the mother is at a risk of “high blood pressure, anemia, preeclampsia, uterine rupture, placenta previa, and abruption” (129). As Sutton points out: “One dangerous – if rare – side-effect is ovarian hyperstimulation resulting in increased production of hormones, especially estrogen. This can lead to excess fluid collection in the chest and abdomen which may be fatal. Other side-effects are the development of cysts, blood coagulation problems, stroke, cardiac arrest, molar pregnancy (abnormal, non-fetal cell-development) and ovarian cancer.” A. SUTTON, *Infertility and Assisted Conception, What you Should Know: Answers to Questions About Medical Techniques of Assisted Conception*, 6. The author also adds that IVF procedures can also end up in tubal pregnancy, which is dangerous to the woman (13). Gay explains: “Women carrying multiple fetuses risk anemia, hypertension and labour complications that can require cesarean delivery. On average, each additional fetus shortens the usual 40-week gestation period by three and one-half weeks. A pair of twins born at 36 weeks may do fine. But as the number of fetuses increases, the kids’ gestation times and birth weights decline.” K. GAY, *Encyclopedia of Women’s Health Issues*, 124. The author also mentions that with multiple births, “infants are at significant risk for a number of adverse outcomes including preterm delivery, low birth weight, congenital malformations, fetal and infant death, and long-term mobility and disability among survivors” (125).

However, this is one of the drugs that is used by some practitioners to hyperstimulate the ovaries, and some deaths resulting from its use have been reported.²⁰⁵

Besides these dangers that may befall the mother, there are other side effects that may affect the baby before or after birth. In 2002, a study was published in the *New England Journal of Medicine* which concluded: “Infants conceived with the use of *in vitro fertilization* have twice the risk of major birth defects, such as chromosomal or musculoskeletal abnormalities, as naturally conceived infants.”²⁰⁶ The study further indicates that this is because the fertility drugs were introduced without adequate evaluation.

Another risk of artificial reproductive technologies is that of miscarriage. Babies conceived using *in vitro fertilization* are at a greater risk for being miscarried. Elrod and Carpentier wrote: “Since women are often undiagnosed or misdiagnosed at the outset, the underlying ovarian, uterine, and pelvic pathologies often do not receive adequate attention during ARTs. When embryos are placed into an unhealthy womb, many of them can be lost to miscarriage.”²⁰⁷ The risk of having premature babies is also high because “premature babies are at a greater risk of developmental problems, cerebral palsy, and blindness.”²⁰⁸

Children born of artificial means, even when they are able to cope similar to

²⁰⁵ Cf. K. GAY, *Encyclopedia of Women's Health Issues*, 128.

²⁰⁶ As quoted in *ibid.*, 129. See also A. SUTTON, *Infertility and Assisted Conception, What You Should Know: Answers to Questions About Medical Techniques of Assisted Conception*, 7.

²⁰⁷ *Ibid.*, 129.

²⁰⁸ *Ibid.* Scientific authors believe: “ABO blood-group incompatibility between husband and wife may also be a cause of infertility possibly through early rejection of the fertilized egg.” R. NEWILL, *Infertile Marriage*, 138-139.

adopted children, can suffer from identity crisis. This is because, according to the present laws in countries where IVF is practiced, the identity of the donor cannot be revealed to the child. As Sutton points out” “All that the child is told is a basic description of the main observable traits and characteristics of the donor such as his or her ethnic origin, the color of his or her skin, hair and eyes, his or her blood group and the like.”²⁰⁹

As scientific discoveries continue to be used in reproductive procedures, there is an increasing effort to make them more effective and to reduce the risk factors discussed above. Therefore, these procedures should be used after careful diagnosis by qualified personnel with appropriate skills if they are to be effective. From the perspective of their legitimacy, these procedures should not replace the natural act of procreation, but contribute to the success and fruitfulness of that act.

In conclusion, it can be observed that the use of ARTs does not cure infertility but merely bypasses it. Medical authors conclude that if it is unsuccessful “as it is in some 90 percent of cases, the patients are likely to experience a sense of failure, loss and grief as well as, quite possibly, anger and depression.”²¹⁰ Sutton further points out: “If the woman undergoes ‘selective reduction,’ her psychological well-being may be further affected by

²⁰⁹ A. SUTTON, *Infertility and Assisted Conception, What you Should Know: Answers to Questions About Medical Techniques of Assisted Conception*, 33. Besides, this practice encourages parental irresponsibility, whereby the donor cooperates in the procreation of the child and has nothing else to do with the child. Whereas such a donation is seen as an act of charity to the sterile couples, it is usually motivated by consumerism and effected by a commercial transaction. On September 30, 2000, the United States Conference of Catholic Bishops enacted a complementary norm for c. 877, §3 which specifies that the names of the natural parents should not be included in the register after the baptism of the adopted child. See <http://www.usccb.org/beliefs-and-teachings/what-we-believe/canon-law/complementary-norms/canon-877-3-recording-the-baptism-of-adopted-children.cfm>. This means that the child will know that he/she was adopted but not the identity of the donor father or surrogate mother.

²¹⁰ A. SUTTON, *Infertility and Assisted Conception, What you Should Know: Answers to Questions About Medical Techniques of Assisted Conception*, 13. Bassett advises counselors to “promote insights which help them to recognize and to affirm their humanity through an accurate appraisal of their personal limitations, failures and potentialities.” Cf. W. T. BASSETT, *Counseling the Childless Couple*, 39. Such an approach can be helpful in addressing a couple’s negative experiences with sterility.

the knowledge of the killing that has taken place in her womb and her own involvement in it.”²¹¹

3.5 — Coping with Sterility in Marriage

The fact that a couple wants a child but does not have one, together with the diagnosis procedures can cause stress and frustration. As A. L. Stanton and C. Dunkel-Schetter have pointed out, sterility is a “psychosomatic illness,” a “crisis,” and a “stressful experience.”²¹² This means that infertility requires diagnosis, treatment, and management. Couples experiencing sterility, which has no cure, typically require help to continue living normal lives without a biological child. As these authors have pointed out: “Typically, infertility characterizes the couple who is attempting conception, for although one member may carry the medically diagnosed cause, both members of the couple experience the inability to realize their goal of having a child.”²¹³ It is for this reason that sterile couples experience grief and loss and require counseling. This section, using medical and psychological data, brings this need to light and offers guidelines for effective ways in which infertile couples can be helped to cope with sterility.

3.5.1 — Psychological Impact of Sterility

It has been established by medical science and psychology that when couples want to have a child and do not achieve pregnancy, their marriage and family life can be

²¹¹ A. SUTTON, *Infertility and Assisted Conception, What you Should Know: Answers to Questions About Medical Techniques of Assisted Conception*, 13. According to Deveraux and Hammerman, making a decision to use ARTs such as IVF, couples experience stress from two fronts: loss of a potential biological child of one or both partners, and relationship identity crisis in regard to what they and the child will call the donor. They believe that even the donor remaining anonymous does not resolve this dilemma. Cf. L. L. DEVERAUX and A. J. HAMMERMAN, *Infertility and Identity: New Strategies for Treatment*, 166.

²¹² Cf. A. L. STANTON and C. DUNKEL-SCHETTER, “Psychological Adjustment to Infertility: An Overview of Conceptual Approaches,” 6-12.

²¹³ *Ibid.*, 4.

negatively impacted. The impact of this fact can be summarized in the following words of Domar and Kelly's research findings: "You feel sorry for yourself, you feel hurt, you look at your spouse and say 'is it you' is it me? And then, when you find out, like I did, that it was my fault, you feel guilty, you beat yourself up. You wish it would be him so that you wouldn't have to keep blaming yourself. It just sucks."²¹⁴ The same feeling of loss is usually felt by women who experience repeated stillbirths.²¹⁵

News of infertility is hard to bear. This is because for most people, "the sense of masculinity or femininity is closely connected to their ability to procreate. Being infertile, then, strongly challenges their self-definition and self-worth."²¹⁶ J. G. Quesnelle points out that some sterile people are hurt when they are referred to as "infertile couple" or "barren;"²¹⁷ therefore, there is a need for sensitivity towards those burdened by fertility problems. Nevertheless, couples can protect themselves by reducing stress and anxiety as

²¹⁴ A. D. DOMAR, A. L. KELLY, *Conquering Infertility*, 217. These words of a 35-year old woman who did not succeed with artificial reproductive technologies and had numerous miscarriages before having a child represent the plight of men and women in a similar situations. Deveraux, Hammerman who dealt with sterile couples conclude that whereas there is a feeling that the presence of children will solve difficulties in marriage, "this belief cannot be further from the truth. Instead, the presence of children in unstable relationships only emphasizes and complicates the problems in marriage." L. L. DEVERAUX and A. J. HAMMERMAN, *Infertility and Identity: New Strategies for Treatment*, 73.

²¹⁵ Cf. L. L. DEVERAUX, A. J. HAMMERMAN, *Infertility and Identity: New Strategies for Treatment*, 122.

²¹⁶ J. C. DANILUK, *The Infertility Survival Guide*, 12. The work of Deveraux and Hammerman summarize the psychological impact of sterility on couples in the following words: "Individuals experiencing infertility view every woman on the street and every woman in their social and familial circles as pregnant or having small children. They may be particularly in tune to crying babies and the absence of an immediately comforting parent. They may feel as though they are nothing if they are not a father or a mother." L. L. DEVERAUX and A. J. HAMMERMAN, *Infertility and Identity: New Strategies for Treatment*, 62. The feeling of helplessness and deprivation is often reported among sterile couples (107-109).

²¹⁷ Cf. J. G. QUESNELLE, "Pastoral Approaches to Infertile Couples," in POPE JOHN XXIII MEDICAL-MORAL RESEARCH AND EDUCATION CENTER (ed.), *Reproductive Technologies, Marriage and the Church*, Braintree, MA, Pope John Center, 1988, 146-163, here on 157.

much as possible before and after the bad news comes, and to keep positive.²¹⁸ To illustrate further, DiGeronimo gives the following analysis of how infertility impacts couples: “Infertility is something that some say feels like a death – the death of dreams and plans. It is the loss of control over your life’s direction and destiny. It brings with it negative feelings such as anger, rage, guilt, and envy that easily get out of control. Not surprisingly, marital family, and social relationships can also suffer.”²¹⁹

Being diagnosed as infertile can have a great impact on personal relationships. Emotions can be high, “one wrong word or insensitive piece of advice from any one – spouse, parent, or friend – can send you tumbling down into a spiral of anger, resentment, and even hate.”²²⁰ Other effects include: “Emotional reactions, feelings of loss of control, effects on self-esteem, identity, and beliefs, and effects on social relationships.”²²¹ This means that such couples need support and encouragement, and not anything that brings out feelings of guilt, shame, or loss. Some couples decide to tell their friends openly about their infertility, but others keep it to themselves or among close family and friends. When it becomes hard to tell the story or to explain the lack of a child, some couples

²¹⁸ This advice was given by A. D. DOMAR and A. L. KELLY, *Conquering Infertility*, 226. To those who suffer miscarriages, the author offers the following help: give yourself time to grieve, seek out support, ask for answers, change the way you relax, don’t underestimate this loss, and live a normal life (cf. 231-232).

²¹⁹ T. F. DIGERONIMO, *New Hope for Couples with Infertility Problems*, 213. The author also remarked: “Only those who have been diagnosed as infertile know how devastating this pronouncement can be. Only these couples know how they each, in their individual way, pull out of it and move on” (215). Childlessness is not something that is freely chosen by most couples. A recent study has shown that only two percent of married women would prefer to have no children. See L. J. LORD et. al., “Desperately Seeking a Baby,” in *US News and World Report*, 103 (1987), 58-64, here on 59.

²²⁰ T. F. DIGERONIMO, *New Hope for Couples with Infertility Problems*, 217. Infertility is highly likely a cause of discord in the family as studies have shown. Cf. L. L. DEVERAUX and A. J. HAMMERMAN, *Infertility and Identity: New Strategies for Treatment*, 62.

²²¹ C. DUNKEL-SCHETTER and M. LOBEL, “Psychological Reactions to Infertility,” in L. STANTON and C. DUNKEL-SCHETTER (eds.), *Infertility Perspectives from Stress and Coping Research*, 29-57, here on 30.

decide to withdraw, give up trying, lose self-esteem, or feel devastated or deprived.²²²

Therefore, couples should seek help to deal with the trauma of sterility “as a problem *for them* rather than as a problem *between them*. When it is faced as a problem for them, they face it together without any particular rancor towards the other party.”²²³

Several authors indicate that men and women cope with infertility differently.²²⁴

D. Peoples and H. R. Ferguson pointed out that the desire of women to be “like their mothers,” to be mothers too is common. Thus, the pursuit of motherhood can be influenced not only by a personal desire for a child, but also by family and friends, cultural pressures, and religious teachings. Therefore, being infertile may make you feel you are “less than, or not as good as.”²²⁵ The author also believes that most infertile

²²² Cf. T. F. DiGERONIMO, *New Hope for Couples with Infertility Problems*, 219-221. Women tend to be sensitive to comments, and parenthood means much more to them than to men. Another reason for this difference is that men may cope by keeping themselves busy with other things and by avoiding talking about infertility. This author stresses the fact that the “mental stress of infertility has the power to make you feel even more miserable” (225). Daniluk believes: “Women frequently react with more overt emotion to the inability to produce a child. Infertile women usually experience more anxiety and depression than their infertile partners.” J. DANILUK, *The Infertility Survival Guide*, 116.

²²³ J. G. QUESNELLE, “Pastoral Approaches to Infertile Couples,” 160. When the couple do not face the problem together, there is a possibility of increasing the trauma in the affected party or both. Newton proposes that couples should begin to acknowledge that “infertility is a problem of the couple and not specifically a female or male factor problem.” R. A. NEWTON, “The Medical Work Group: Male Problems,” 13.

²²⁴ J. Read gives a good analysis of how men and women react differently to the fact that they will not beget a biological child. See J. READ, *Counseling for Fertility Problems*, London, Sage Publications, 1995, 116-120. E. V. Van Hall concluded: “Whereas the infertile woman will tend to have feelings of failure and uselessness, infertile men tend to have feelings of not being a man and, even more so, of no longer being a sexual man.” E. V. VAN HALL, “The Infertile Couple and the Gynecologist: Psychosocial and Emotional Aspects,” 362.

²²⁵ D. PEOPLES and H. R. FERGUSON, *Experiencing Infertility, An Essential Resource*, New York, W. W. Norton & Company, 1998, 4-19. Some sterile couples end up losing interest in sexual intimacy when they learn that they are not able to produce a child. Women especially are subjected to more tests than men; this increases the feeling of inadequacy, viewing sterility as a problem between them. Cf. J. G. QUESNELLE, “Pastoral Approaches to Infertile Couples,” 162. As Rosenfeld wrote: “The stress of infertility and its treatment may exacerbate other psychiatric conditions such as mood or anxiety disorders. The ovulation-inducing agents may also exacerbate psychiatric problems or reduce the effectiveness of psychotropic medications.” J. A. ROSENFELD (ed.), *Handbook of Women's Health, an Evidence-Based Approach*, 192. From their childhood, girls are already prepared for motherhood, e.g. through the toys that they are given. When she fails to be a mother, she tends to see herself “as nothing other than an ‘infertile

women are “obsessed” by their condition, feel left out, live a life that they do not see as normal, and may want to die.²²⁶ Rosenfeld points out: “Women who have postponed childbearing to have a career may be used to being in control. When they are unsuccessful at becoming pregnant at the time they want to, they may feel frustrated and angry.”²²⁷ Such analysis shows a desperate tone in those women especially when all other means available to them fail to give them pregnancy.

In addition, infertile women usually experience deep suffering after repeated miscarriages, stillbirths, or the complete inability to get pregnant for other reasons. After such experiences, some women become afraid of getting pregnant again or seeking more help. They keep wondering whether they were not supposed to be parents, and keep seeking to know why “God did not bless them with a child.”²²⁸ Other common questions are: Why won’t God give me a baby?²²⁹ God, why have you forgotten us?²³⁰ Therefore,

woman.” See L. L. DEVERAUX and A. J. HAMMERMAN, *Infertility and Identity: New Strategies for Treatment*, 66.

²²⁶ While examining such questions, L. Flowers added: [for sterile couples] “Sadly, the answer is always a mystery, even to doctors with years of specialized training. It’s easy to get discouraged when test after test fails to reveal any abnormalities. How do you correct a problem when you don’t even know what the problem is?” L. FLOWERS, *Infertility: Finding God’s Peace in the Journey*, Eugene, Harvest House Publishers, 2003, 25. This observation expresses the grief and trauma that might be associated with sterility. In addition: “the mental and physical discomfort that accompanies visits to an infertility specialist can often be another cause of anxiety” (26).

²²⁷ J. A. ROSENFELD (ed.), *Handbook of Women’s Health, an Evidence – Based Approach*, 192. The author also points out that the impact of sterility varies according to the individual’s age, ability to cope, personality, preexisting psychopathology, and motivation for pregnancy. W. May is of the view that artificial means of reproduction, apart from being very expensive and not often successful, “do not heal or treat a pathological condition. Rather, they treat human desires.” W. E. MAY, “*Donum Vitae*: Catholic Teaching Concerning Homologous *in vitro* fertilization,” in K. W. WILDES (ed.), *Infertility: A Crossroad of Faith, Medicine and Technology*, Boston, Kluwer Academic Publishers, 1997, 73-89, here on 88.

²²⁸ D. PEOPLES and H. R. FERGUSON, *Experiencing Infertility, An Essential Resource*, 105-129.

²²⁹ Domar and Kelly found out: “Infertility is the first experience in many women’s lives when God and religion don’t seem to have the answers. They beg God to let them conceive and carry a pregnancy to term, but months and years go by without a baby. They feel that God is punishing them or abandoning them, or that infertility is proof that there is no God. They wonder if God is preventing conception or causing miscarriages because God feels they won’t be good mothers. Doubting God for the

they need help to cope with the great emotional suffering that they experience. Helping sterile couples cope with childlessness is not easy, for “one of the pastoral challenges in relating to those burdened with problems of infertility revolves around helping them understand why God permits evil, sickness, and tragedy,”²³¹ and now sterility.

Van De Velde has proposed two categories of married childless women and the impact sterility has on their lives. The first category is those women who long for motherhood and do not accept their inability to have any children. These become more easily reconciled to their deprivation in the belief that they could at least have become pregnant. These women bow to the inevitable and concentrate their maternal instinct on their husbands.²³² The second category, though diverse, is women who have the following in common: “That they cannot resign themselves to the fact that they are childless. And when this unfulfilled yearning is met by a similar definite longing for children on the husband’s part [...] robs them of all joy in life, all extraneous interests.”²³³ Van de Velde further noted that men, on their part, may long for children out of the desire for individual continuance and survival in another personality, for an

first time in their lives, many begin to question the faith they grew up with. And of course that makes them feel guilty.” Cf. A. D. DOMAR and A. L. KELLY, *Conquering Infertility*, 173. A detailed discussion of the religious dimension of coping with infertility is found on 172-188.

²³⁰ J. BAUGHAN, *A Hope Deferred, A Couple’s Guide to Coping with Infertility*, 163-177. The author indicates how desperate couples resort to prayer and to an endless search for a child, waiting for a miracle to happen.

²³¹ J. G. QUESNELLE, “Pastoral Approaches to Infertile Couples,” 159. See also J. BAUGHAN, *A Hope Deferred, a Couple’s Guide to Coping with Infertility*, 19-20.

²³² T. H. VAN DE VELDE, *Fertility and Sterility in Marriage, their Voluntary Promotion and Limitation*, 80. He observes: “Their mental balance does not suffer in this respect, nor does the happiness of their intimate married intercourse. Such women may be very happy though childless – if the husband fulfills his duty as a co-builder of married happiness.”

²³³ *Ibid.*, 80-81.

heir to carry on his name or to leave possessions with, or for the assurance of his virility.²³⁴

While describing men, Peoples and Ferguson are of the view that most men refrain from telling friends that they are infertile. Others do not care to find out the cause of infertility and what treatment options are available to them. These authors note, however, that there are men who still wish to identify themselves with their fathers and to be parents themselves.²³⁵ Even when the men's approach to sterility is different from that of women, the impact is the same. Couples who want children and do not conceive after efforts have been made, will need help coping with this condition.

Therefore, Van De Velde advises couples who want children to not defer the decision to have them for too long, for it could be too late. He is of the view: "For, although fertility in marriage is not a fundamental condition of happiness in marriage - yet children are the natural and psychologically necessary accompaniment of normal marriage between average human beings. For the individual psychic and emotional welfare of both parties, this form of life's fulfilment is important in the long run."²³⁶ This

²³⁴ Ibid., 81. With marriages of involuntary childlessness, the husband often develops inferiority complexes which impact his self-esteem and can lead to depression. Deveraux and Hammerman are of the view that sterility is a serious attack on masculinity because: "It strikes the core of their male identity." L. L. DEVERAUX and A. J. HAMMERMAN, *Infertility and Identity: New Strategies for Treatment*, 65. Childlessness can also be voluntary. Some persons are medically advised to undergo sterilization in situations such as degenerative and disabling diseases, familial-type feeble-mindedness, manic-depressive psychosis, schizophrenia, leprosy, or epilepsy. Sterilization can be permanent or restorative. Cf. W. T. BASSETT, *Counseling the Childless Couple*, 66.

²³⁵ Cf. D. PEOPLES and H. R. FERGUSON, *Experiencing Infertility, An Essential Resource*, 19-25.

²³⁶ T. H. VAN DE VELDE, *Fertility and Sterility in Marriage, their Voluntary Promotion and Limitation*, 84. The author also advises against having only one child. If it is secondary sterility, the couple should seek help in having another child. He observes that couples who opt to have only one child argue that an only child would be well brought up and all the love and resources will go to that child. Van De Velde counterargues that there is no substitute for a child's habitual association with other children; the parents risk their child will be "spoilt, pampered, oversensitive mentally and physically, yet pert, unduly precocious, lacking in self-reliance, awkward and self-conscious." See *ibid.*, 85.

advice the author gives to young couples forms a good summary of the psychological impact sterility bears on those who fail to have children.

3.5.2 — Experience of Grief and Loss

Grief is one of the experiences that childless couples have as they cope with sterility.²³⁷ In situations where a couple fails to achieve any pregnancy at all or those who fail to carry a pregnancy to term are grieved, as well as those who pursue medical treatment and are still unable to have a biological child. In their study about clients who fall in the latter category, Deveraux and Hammerman wrote: “Even though the usual treatment of infertility focused on resolution through parenting by adoption, or using reproductive technologies, resolution of the infertility experience was not possible.”²³⁸ This discovery points to the feeling of inadequacy because couples still grieve the “loss” of an imaginary biological child and the opportunity to be parents.

When a couple is experiencing grief, they need to be accompanied in the grieving process to help them to heal. Using the words of Rabbi J. S. Goodman: “Healing is used in the context of repair and restoration, integration, and wholeness. Healing is not necessarily curing. Healing is softening, opening, integrating, reaching for the depth of our feelings.”²³⁹ Scientific authors compare grief with “phobia,” whereby the “phobic

²³⁷ R. S. Lazarus and S. Folkman define the coping process as: “Constantly changing cognitive and behavioral efforts to manage specific external and/or internal demands that are appraised as taxing or exceeding the person’s resources.” R. S. LAZARUS and S. FOLKMAN, *Stress, Appraisal, and Coping*, New York, Springer, 1984, 141.

²³⁸ L. L. DEVERAUX and A. J. HAMMERMAN, *Infertility and Identity: New Strategies for Treatment*, 11. Generally, grief occurs in response to news of permanent infertility – sterility, as well as failure to obtain pregnancy in a given cycle, an unsuccessful infertility treatment session, or failure to carry a pregnancy to term. Cf. A. E. READING, “Psychological Intervention and Infertility,” 192; A. DOMAR and A. L. KELLY, *Conquering Infertility*, 217-240.

²³⁹ L. L. DEVERAUX and A. J. HAMMERMAN, *Infertility and Identity: New Strategies for Treatment*, 11. Usually it is those couples who want a child and have gone through all means of having a child in vain that experience grief. As these authors note, resolving sterility by adoption does not “resolve” sterility, but

reactions involve anxiety and prompt avoidance of objectively harmless situations.”²⁴⁰ In the event of a loss or failure to beget a child, various objects and settings serve as reminders, and similarly should be avoided. This is when the couple might need help.

Guiding the sterile couple through a grief process helps assess their needs and develop treatment plans. E. Kübler-Ross identified five stages of grief which most grieving people, including sterile couples, go through. They can be summarized as follows: denial and shock; anger and anguish; bargaining and negotiating; depression, regret, sorrow; and acceptance and integration.²⁴¹ Deveraux and Hammerman indicate, sterile couples can begin their grieving at any stage and accompanying them where they are facilitates their healing, acceptance of their situation, and coping with their sterility.²⁴² Through grief counseling,²⁴³ couples can be helped to grieve and move to the next stage:

only substitutes the company the child would offer to the parents. Flowers concurs with this view when she wrote: “As wonderful as it is, adoption does not automatically erase all the physical brokenness, theological confusion, and emotional distress that infertility causes.” L. FLOWERS, *Infertility: Finding God’s Peace in the Journey*, 204.

²⁴⁰ A. E. READING, “Psychological Intervention and Infertility,” 192.

²⁴¹ As adapted and quoted from L. L. DEVERAUX and A. J. HAMMERMAN, *Infertility and Identity: New Strategies for Treatment*, 110-114. Sember advises couples on how to deal with emotions in the following words: “be prepared to face depression and euphoria, often in the same week.” See B. M. SEMBER, *The Infertility Answer Book, the Complete Guide to your Family-Building Choices with Fertility and Other Assisted Reproductive Technologies*, 17.

²⁴² Before they accept their condition, clients tend to intensify their search for a child and this can cause worry, despair, regret, and depressed feelings. See L. L. DEVERAUX and A. J. HAMMERMAN, *Infertility and Identity: New Strategies for Treatment*, 113. See also J. H. MONACH, *Childless: No Choice, the Experience of Involuntary Childlessness*, 42.

²⁴³ J. Read believes that grief caused by sterility is more painful for the individuals concerned, because they grieve the loss of what they have not seen. Cf. J. READ, *Counseling for Fertility Problems*, 28. For this reason the author recommends the model of grief counseling and grief therapy that was proposed by J. W. WORDEN, *Grief Counseling and Grief Therapy. A Handbook for the Mental Health Practitioner*, 2nd ed., London, Routledge, 1991. This model is summarized in four goals: 1) To accept the reality of the loss; 2) To work through the pain of the grief; 3) To adjust to an environment in which the [grieved] is missing; and 4) To emotionally relocate the [loss] and move on with life. Cf. J. READ, *Counseling for Fertility Problems*, 28-30. This approach to counseling sterile couples seems appropriate and effective, while not negating other models of grief counseling.

redefining their future without a biological child.

3.5.3 — Counseling Sterile Couples

Reading has asked a question: “Is infertility sufficiently distressing to warrant the provision of psychological interventions to infertile couples?”²⁴⁴ While answering this question, the author explains that studies in general have not shown high levels of distress in infertile individuals. However, he concludes: “In spite of unremarkable profiles on psychological testing, some patients clearly find infertility very distressing.”²⁴⁵ As Sember wrote: “Many times, doctors cannot give you a complete answer as to why you cannot conceive without assistance, but it is important to arm yourself with whatever knowledge is available.”²⁴⁶ This lack of explanation can create confusion to couples who are seeking answers for their infertility.

One way of providing such information and other assistance to childless couples

²⁴⁴ A. E. READING, “Psychological Intervention and Infertility,” 184.

²⁴⁵ Ibid., 185. Reading explains this discrepancy as caused by the methodologies used which “mask” the complexities of this issue. This happens in five different ways: 1) Infertility is difficult for the vulnerable individuals as well as those in dysfunctional relationships; 2) Stress levels are not easy to determine except in psychopathological settings; 3) Respondents see such assessments as a form of screening and portray themselves in the best possible light; 4) Social desirability effects may be compounded by individual’s self-perceptions; 5) The stage at which the assessment is made may influence the results. Taking this assessment in mind, it can be concluded that infertility causes stress and that often infertile couples seek counseling to help them cope with their undesired condition. Taylor and Collins also wrote: “The great majority of patients do suffer from a greater or lesser degree of psychological distress, which will vary in intensity depending on their socio-economic background, the stage of investigation or treatment reached, the duration of their infertility, their age, their religious affiliations, and whether they are female or male.” P. J. TAYLOR and J. A. COLLINS, *Unexplained Infertility*, 172. These authors also reveal that “while the female partner often reveals her feelings, in Western society men are expected to be calm and unemotional” (Ibid.).

²⁴⁶ B. M. SEMBER, *The Infertility Answer Book, the Complete Guide to your Family-Building Choices with Fertility and Other Assisted Reproductive Technologies*, 4. Taylor and Collins emphasize that the goals of counseling are “provision of accurate information, empathetic support, vesting control in the couple, and helping them to feel that they have indeed made their very best effort – these may be the foundations of ultimate resolution.” P. J. TAYLOR and J. A. COLLINS, *Unexplained Infertility*, 178.

is through counseling. Counseling²⁴⁷ the sterile couple begins with helping a couple accept their loss and begin defining themselves more positively. This means that they will look at their sterility not as an identity which characterizes them but as a condition which they have. When such couples make the transition, they will define themselves not as “infertile” but as persons who have a condition called “infertility.”²⁴⁸ This is when the healing process begins.

While counseling sterile couples, it is important to take into consideration what technology can or cannot do for them. Sember spelled out what technology can do for childless couples is to enable them to “become pregnant; provide you with genetic material to create a baby if your body cannot do so itself; or, allow you to work with another woman to gestate your pregnancy.”²⁴⁹ Regarding to what technology cannot do for couples, Sember identified the following:

While technology can offer you new ways to become parents, it cannot change the basic facts of your circumstance. It cannot help you cope with the emotional effects of being unable to conceive on your own. Technology cannot erase basic biological facts. Technology can provide you with a baby, but it cannot always provide you with a baby that is genetically linked to both you and your partner. This can be a big stumbling block for many couples.²⁵⁰

When the couple weighs the different options available to them, they are better

²⁴⁷ Counseling is a skill whose details are not included in the present dissertation. In order that one develops the counseling skills needed to help childless couples, a recourse should be made to books and journals that are dedicated to professionally helping people with different situations. Deveraux and Hammerman proposed different helping skills such as: communication, listening, and guiding. These can be a beginning especially for non-professionals in this area. Cf. L. L. DEVERAUX and A. J. HAMMERMAN, *Infertility and Identity: New Strategies for Treatment*, 31-53.

²⁴⁸ Cf. *ibid.*, 15. These authors add: “Clients can ultimately accept the unanticipated loss of fertility, or the condition of infertility, when they are able to stop defining themselves, their feelings, and their predicaments in terms of positive or negative and instead recognize and describe these things in factual terms.”

²⁴⁹ B. M. SEMBER, *The Infertility Answer Book, the Complete Guide to your Family-Building Choices with Fertility and Other Assisted Reproductive Technologies*, 4.

²⁵⁰ *Ibid.* The purpose of obtaining this information is for the couple to be able to make an “informed consent” (*Ibid.*, 10).

able to make ethical and practical decisions. With particular reference to the use of ARTs, Sember advised the following: “These can include what you will do with extra eggs that have been harvested or frozen embryos that you have not used. Once you have reached the decision that you will not be using this material, you are faced with a choice of what should happen with it.”²⁵¹

Another element should be addressed in counseling: the couple should be prepared to deal with the risks of using any technology. It is important that one understands the risks that might be posed to oneself, to one’s partner, as well as to the possible children.²⁵² Medical risks should be discussed with medical care providers. Such risks include the possibility of an infection, problems associated with surgery, “as well as risks posed by fertility drugs used to stimulate ovulation, by pregnancy itself, and by other procedures you may encounter.”²⁵³

In addition to relating information and assisting the sterile couple in making responsible decisions, counseling aims at correcting misconceptions. Bassett advises: “The most prevalent and probably most important concepts are the often erroneous beliefs that God wills their childlessness, that their barrenness is not to be questioned or that, except for the normally expected conjugal relationships, both human responsibility

²⁵¹ Ibid., 13. The goal of sterile couples seeking treatment is to correct infertility and achieve pregnancy. As J. Read observed: “This achievement being the goal, the stress and distress experienced during the period of infertility is seen, perhaps, as being mended and healed by the pregnancy.” J. READ, *Counseling for Fertility Problems*, 243. In order to help alleviate such stress, the counseling should have at least four goals which the author identifies as: 1) Information counseling; 2) Implications counseling; 3) Support counseling; and 4) Therapeutic counseling. For a detailed discussion of these goals, see *ibid.*, 5-13.

²⁵² B. M. SEMBER, *The Infertility Answer Book, the Complete Guide to your Family-Building Choices with Fertility and Other Assisted Reproductive Technologies*, 13.

²⁵³ Ibid., 13-14. In addition to medical risks, the author, who is also an attorney-at-law, recommends understanding the legal risks. These risks are associated with the use of the procedures which involve donors or more complicated procedures of ARTs (*Ibid.*, 14).

and creaturely efforts are excluded.”²⁵⁴ Such concepts are harmfully erroneous for they may prevent efforts to seek diagnosis and treatment.

Therefore, counseling is a vital component in helping couples cope with infertility. This seems to be the only way to relay information on different options and potential dangers. Domar and Kelly clarified the purpose of counseling when they wrote that childless couples should be advised on “how to use their infertility as an opportunity to move gracefully to a more mature, more enlightened level of spirituality.”²⁵⁵ This should be the goal of the Church’s effort to help childless couples. Two options are available both in pastoral and medical practice; when they fail to beget a child by legitimate means, couples have to decide to become parents through adoption or to remain childless. These considerations are discussed in the following section.

3.5.4 — Adoption or Remaining Childless

The prevalence of ARTs is an indication that sterile couples often engage in an endless search for a child. In some societies, scientific and artificial means are available, while in others, the search for a child remains endless. After the couple have exhausted all legitimate means of overcoming infertility without success, the couple can make final considerations and choose between two options: adopting or remaining childless.²⁵⁶

²⁵⁴ W. T. BASSETT, *Counseling the Childless Couple*, 30.

²⁵⁵ A. D. DOMAR, A. L. KELLY, *Conquering Infertility*, 174.

²⁵⁶ Sember is of the view that when treatment fails, the couple may consider “becoming a family through adoption or becoming a family through assisted reproduction.” B. M. SEMBER, *The Infertility Answer Book, the Complete Guide to your Family-Building Choices with Fertility and Other Assisted Reproductive Technologies*, 12. The author suggests six considerations to think about before making final decisions pursue further ARTs, adopt, or to remain childless: 1) Consider the cost of fertility treatments versus the cost of the type of adoption you would be interested in; 2) The emotional and physical toll fertility treatments are creating on you and your spouse or partner; 3) Your doctor’s evaluation of your chances of success; 4) Your financial situation; 5) Your current situation – marital, career, health, age, and so on; and 6) The importance of your having a biological link with your child (adapted from 91).

Bassett classifies childlessness in three categories: those who are involuntarily childless yet who reject all alternatives; those who desire to adopt but cannot; and those who voluntarily choose childlessness.²⁵⁷ This section considers all the three categories without making such distinctions.

3.5.4.1 — Adoption

When the cause of infertility cannot be discovered, or when the investigation shows that one partner is incurably sterile or grossly subfertile,²⁵⁸ it is time to consider alternatives. One alternative which Newill envisions is allowing the sterile couple to divorce so that the fertile partner could remarry and produce children. Yet, in his investigation, this is not the option most couples decide to take. The majority either continue seeking ARTs hoping to get pregnant at one time, or they decide to adopt unwanted children.²⁵⁹

A decision to adopt a child or children is not an easy one. The following observations of DiGeronimo describe the general view of childless couples. He observes that sterile couples reach this decision after many failed attempts to have their own

²⁵⁷ Cf. W. T. BASSETT, *Counseling the Childless Couple*, 114. While helping the sterile couple make a decision, Deveraux and Hammerman proposed the following considerations: 1) List all the factors that you need to consider before making an important decisions (such as time, money, emotional impact, cooperation of your spouse and others, etc.); 2) List all the options you have to choose from, such as special needs, domestic, or international adoption, etc.; What are the advantages and disadvantages of each option? 3) What are the desired outcomes of this decision? 4) What steps will you need to take to ensure those outcomes? L. L. DEVERAUX and A. J. HAMMERMAN, *Infertility and Identity: New Strategies for Treatment*, 153. These steps seem to be a good starting point in counseling sterile couples as they work toward making final decisions. For legal considerations of both domestic and international adoptions, see B. M. SEMBER, *The Infertility Answer Book, the Complete Guide to your Family-Building Choices with Fertility and Other Assisted Reproductive Technologies*, 161-171.

²⁵⁸ Cf. R. NEWILL, *Infertile Marriage*, 159. Newill acknowledged the limitation of scientific investigation when the actual cause of infertility is not known, or if it is not treatable.

²⁵⁹ Cf. *ibid.*, 159. The author believes that there is a decrease in the availability of unwanted children due to liberal laws regarding abortion; many unwanted babies are not carried to term but are aborted.

biological child. These attempts include spending large sums of money, as well as enduring numerous tests and treatments. Besides, the trend of infertility is increasing and so demand for adoptable children has increased too. It is estimated that about one million children in United States of America live with adoptive parents and that between two and four percent of American families include an adopted child.²⁶⁰

The decision to adopt a child comes with its own difficulties. Newill points reveals: “Most adopted children tend to be more difficult to rear than a couple’s own natural children would be. Parents are always delighted with their adopted children when they are tiny.”²⁶¹ This is because as they grow older, children tend to develop the hereditary characteristics of their natural parents. Such children might begin asking questions about their natural parents and their heritage.

Considering adoption can involve a decision to adopt children who are born in one’s country, and who, for some reason, are unable to be cared for by their biological parents. Other children are adopted from international countries, where they live in extreme poverty. Many “foreign-born children available for adoption are members of a minority race; over one year of age; have medical, emotional, or psychological problems;

²⁶⁰ T. F. DIGERONIMO, *New Hope for Couples with Infertility Problems*, 191. This estimate puts the number of adoptions at 120,000 children per year. These adoptions are either domestic (within the USA) or international, where children are adopted from foreign countries through personal contacts and adoption agencies. Some domestic adoptions involve children who are minorities, have physical or mental disabilities, or have special medical and emotional needs (192). The picture painted here is that adoption is open to children who, for one reason or another, are unwanted by their biological parents. However, all children deserve the dignity to live in a loving home which assures for them a future despite their physical or mental condition. An estimate given by Bassett is that out of 75,000 babies adopted annually in America, most go to childless couples. Cf. W. T. BASSETT, *Counseling the Childless Couple*, 101. Within Uganda, childless couples can adopt children from their blood relatives or close friends, with no financial transaction, and with no legal process.

²⁶¹ R. NEWILL, *Infertile Marriage*, 162. The author advises that in order to prevent such children from resenting their own situation, they should be told that their natural parents died in a motor accident (163); then they will be less likely to worry about who their natural parents are. Such an advice can be seen as immoral and unacceptable in Western societies such as United States of America or Canada.

or have experienced developmental delays and are therefore classified as children with special needs.”²⁶² This fact points to the serious nature of adoption for sterile couples.

3.5.4.2 — Option to Remain Childless

In addition to choosing to adopt, some couples consciously decide to remain childless.²⁶³ Many sterile spouses prefer to refer themselves as “child free” rather than “childless.” As Deveraux and Hammerman conclude, this is because being “childless” indicates the assumption that no one would ever choose not to have children. The concept of being childless implies a loss and a sense of guilt. As such, “clients who describe themselves as child free have grieved for the loss of the imagined child, examined the short-and long-term implications of a life without traditional parenting, and affirmed the life they can go on to lead.”²⁶⁴

Sterile couples often decide to remain childless for various reasons which may

²⁶² L. L. DEVERAUX, A. J. HAMMERMAN, *Infertility and Identity: New Strategies for Treatment*, 163. These authors consider a child with special needs as: 1) a child who is over the age of two and is already forming his habits; 2), a child who has been abused, neglected, or both; and 3) a child who has medical problems.

²⁶³ While making such a decision, couples need to be aware of society’s expectation. J. Baughan believes that in most societies, couples who choose childfree living are considered as selfish or narcissistic. Cf. J. BAUGHAN, *A Hope Deferred, a Couple’s Guide to Coping with Infertility*, 138. Whereas the author believes that a childfree marriage leaves the couple free to focus more attention on each other (140), they still lack that bond which children bring into marriage. As Deveraux and Hammerman wrote, choosing a childfree lifestyle will be considered selfish by a culture which has high regard for biological parenting. Such cultures expect every adult to raise a child as one’s basic responsibility, and as a tangible contribution to society. Cf. L. L. DEVERAUX and A. J. HAMMERMAN, *Infertility and Identity: New Strategies for Treatment*, 158. As such, many sterile couples play an important role in the life of their relative’s children such as nieces, nephews, godchildren, or children of friends (159).

²⁶⁴ L. L. DEVERAUX and A. J. HAMMERMAN, *Infertility and Identity: New Strategies for Treatment*, 157. These authors describe traditional parenting as: “Biological parenting and adoptive parenting.” They define nontraditional parenting as: “Temporarily fulfilling any or all of the responsibilities fulfilled by traditional parents. Nontraditional parenting includes godparenting, foster parenting, and other capacities in which adults may act as significant role models in the life of a child” (Ibid.). Mazor reveals that the sterility may cause narcissistic fantasies in the couple or person who is sterile. Cf. M. D. MAZOR, “Emotional Reactions to Infertility,” 31.

remain personal.²⁶⁵ Some authors compare the suffering which is caused by sterility to the loss of someone through death. These couples experience denial, isolation, anger, depression and finally acceptance.²⁶⁶ DiGeronimo wrote: “Like the death of a loved one, the sense of sadness and grief that accompanies the death of the dream of parenting is something that will never disappear completely. But it does ease over time when you find new ways to compensate for this loss.”²⁶⁷ People who accompany couples in their decision to remain childless during counseling need to take this into consideration. As Domar and Kelly wrote: “Choosing childlessness is easier when both spouses agree on it ... unfortunately, there isn’t much room for compromise on an issue like this.”²⁶⁸

From the above, it can be observed that sterile couples often make efforts to have a child before they decide to adopt or choose to remain childless. This indicates that the primary desire of a couple in every cultural situation is to have a biological child.²⁶⁹ Therefore, pastoral counselors should help such couples explore all legitimate treatment means available before they make the final considerations discussed above. Church policies at the local church level should be developed to extend the counseling ministry to

²⁶⁵ For a detailed discussion regarding a conscious decision by infertile couples to not consider adoption can be found in D. PEOPLES and H. R. FERGUSON, *Experiencing Infertility, An Essential Resource*, 171-186. The author makes a distinction between the negative description of remaining “childless,” and the more positive choice of being “child free” (174-175). These distinctions do not matter with regard to couples who are childless not by choice. A. P. Zoldbrod observes that couples who decide to live “childfree” are disparaged as being “pathetic” and “selfish” because “being married without children is such an unusual choice.” Cf. A. P. ZOLDBROD, *Men, Women, and Infertility: Intervention and Treatment Strategies*, New York, Lexington Books, 1993, 98-102.

²⁶⁶ Cf. T. F. DIGERONIMO, *New Hope for Couples with Infertility Problems*, 208.

²⁶⁷ *Ibid.*, 210.

²⁶⁸ A. D. DOMAR, A. L. KELLY, *Conquering Infertility*, 269.

²⁶⁹ As J. Marshall explains: “The desire [for children] is usually stronger in the woman, but pride in paternity is widespread and deep among men.” J. MARSHALL, *Medicine and Morals, A Faith and Fact Book*, London, Burns & Oates, 1960, 53.

childless couples. Other recommendations for the Church in Uganda are presented in the following chapter.

Conclusion

Chapter Three presents a sketch of the medical causes of sterility as well as its treatment. In men, sterility is often associated with azoospermia or no sperm, faulty spermatogenesis or weak sperm, or faulty transmission of spermatozoa. Causes of male sterility arise from previous diseases especially mumps, gonorrhea, typhoid fever, syphilis and tuberculosis; endocrine disturbance; injuries to the testicles or genital tract; chronic intoxicants such as alcohol, drugs, or metallic poisons; undescended testicles; psychic impotence; congestions or varicosities; extreme external heat, or hereditary defects. In situations where these causes are identified before they do substantive damage to the male's reproductive capacity, then sterility may be averted.

As for sterility in women, common causes are associated with ovulation or blockage of the uterus. Therefore, issues like dysmenorrhea, endometriosis, endocrine disturbance, irregular menses, failure to ovulate, obstruction of the genital tract, and local infections to the uterus are considered common causes. Science has identified surgical and endocrine factors, any congenital disturbance, acute appendicitis, frigidity which repels coitus, older age, acute conditions, infectious, diseases and chronic debilitating states as some of the conditions which can prevent pregnancy.

In addition to the above, sterility in both men and women can also be caused by prolonged exposure to toxic environments and other risk factors. Through medical science, treatable infertility can be diagnosed, and in most cases treated using medicine, surgery, therapy, nutrition, and behavioral changes. To these available means for treating

sterility, Hilgers proposes NaPro Technology, which is a science that investigates the natural causes of temporal infertility and treats those causes using natural means, such as medication and surgery. NaPro Technology enables conception to take place naturally.

When the above efforts fail, there are difficult choices which childless couples have to make: either to use ARTs, to become parents by adopting children, or to remain childless. As was noted above, the use of ARTs does not always end in the conception of a child. ARTs do not cure infertility but only enable conception to take place by artificial means. The success rate depends on the couple's health condition, the professionalism of the medical practitioners, as well as the capacity of the couple to cope with the "loss" of an imaginary child. Through ARTs, the conceived child is related to at least one of the parents. However, this does not diminish the other spouse's wish have a child who is related to them.

The entire process of diagnosis, treatment and possibly conception is characterized by frustration, and, at times, depression, discouragement, and the high cost of time and money. Therefore, counseling may be needed to assist the couple in their long search for an answer to their childlessness in their quest for a child. Counseling helps childless couples make responsible choices and cope with sterility.

When a party is diagnosed as permanently unable to have a child, the couple will make final considerations – choosing adoption or remaining childless. Adoption, in itself, does not resolve the couple's sterility but enables them to become parents. Some adopt local children and others consider adopting international children. Such children are either unwanted for some reason, are orphaned, or lack adequate care from their biological parents. Some couples make a conscious choice to remain childless.

This chapter brought out the scientific – medical considerations on sterility. Science is increasingly making available artificial means of reproduction. As more couples embrace artificial means of reproduction, the Church studies these developments and prohibits the use of artificial reproduction. Both science and the Church, while addressing the same problem of infertility, employ different methods. Where science follows any means that can bring forth a child, the Church allows only those means which treat the causes of infertility so that conception can take place naturally. After a careful analysis, Bassett concludes that “more instances of sterility are preventable than inevitable.”²⁷⁰

²⁷⁰ W. T. BASSETT, *Counseling the Childless Couple*, 72. He adds: “Despite the best of preventive efforts, all causes of infertility will not be eliminated, and the search for a child continues” (74).

CHAPTER FOUR: THE CHURCH'S RESPONSE TO CHILDLESS COUPLES IN THE UGANDAN CONTEXT

Introduction

The Church teaches that marriage is ordered to the good of the spouses as well as the good of children. When children are not born due to sterility, marriage is neither prohibited nor invalidated, according to cc. 1084, §3, *CIC* 1983, 801, §3, *CCEO*. However, in Uganda, as well as the Western societies, the desire for children is so strong that sterility has the potential to disrupt the partnership of marital life. There are potential difficulties in the implementation of the above canons. In both traditional and modern Uganda, marriage is entered with an absolute desire to have children.¹ In the West, this desire is seen when childless couples seek fertility treatments and eventually end up employing ARTs.

The Church's contemporary understanding of marriage was clearly stated in the theological teaching of the Second Vatican Council and canonically prescribed in the *CIC* 1983. Considering how marriage was described in terms of the two ends: the good of the spouses and the good of the children (c. 1055, §1, *CIC* 1983), several questions arise.

¹ In Western societies, a couple, for some reason, may make a conscious decision to postpone having children indefinitely, or not to have them at all. For example a study by E. Campbell reveals: "Becoming voluntarily childless" as an alternative choice develops from childhood. During childhood, "individuals learn not only to cope with their immediate circumstances but also internalize, in anticipation of the future, programs relating to the playing of adult roles." Cf. E. CAMPBELL, *The Childless Marriage, an Exploratory Study of Couples Who Do Not Want Children*, London & New York, Tavistock Publications, 1985, 14. The author reports: "Not all childless careers begin before marriage; of the respondents, 26 men and 19 women had become childless after marriage. Childlessness may be a product of, as well as a prerequisite for, marital interaction" (22). Among the reasons for such a decision, the author cites "indefinite postponement through illness, financial worry, the desire to create a better environment in which to parent [...] those who remain childless are able to observe, evaluate, and compare the two life-styles; comparisons may reflect parenthood's darker side and provide the meanings that motivate commitment" (26-27). For more debate on the deliberate choice to remain childless, see J. BAUGHAN, *A Hope Deferred, a Couple's Guide to Coping with Infertility*, 138-144. In Uganda, voluntary childlessness probably does not exist.

First, what happens to a marriage when the second element (procreation) is not realized because of sterility? Second, how does the Church respond to cultures which regard marriage without children as incomplete, such as those in Uganda? Third, how does the Church respond to the wide use of the scientific means (ARTs) of overcoming infertility? The questions raised above are complex. In order to respond adequately to reproductive questions, one needs to consider the people's culture and modern science. This is an integral approach which involves theological, moral, ethical, and canonical considerations.

As Mendonça explained: "Even intense evangelization has not succeeded in obliterating the deeply held conception of a particular reality, related beliefs and attitudes, because culture pre-exists evangelization."² To make an appropriate response, the Church needs to consider the anthropological – sociological implications of her teaching and legislation in particular contexts. For this reason, the Church in these cultural contexts needs to employ an integral approach through marriage preparation and catechesis on the partnership of the whole of life, as well as having a functioning tribunal system.

This chapter is divided into four sections. The first section describes the people of Uganda and the importance they attach to procreation. This importance is embedded in the customary marriage process which takes several stages and may last several months. Uganda is a community with diverse cultural and tribal characteristics; yet, the importance they attach to procreation, the means to achieve it, and the impact of sterility are the same.

² A. MENDONÇA, "Cultural Concepts and Nullity of Marriage," in *The Canonist*, 3 (2013), 127-150, here on 139. A. Mendonça's analysis of the situation in some Asian countries is relevant to the Ugandan situation as well.

The second section is a presentation and analysis of the cultural need for children. Reasons such as family labor, status in the community, property inheritance, or bridewealth are commonly found in every traditional Ugandan society. When couples do not have children and see themselves as having failed to contribute children to the community, they often opt for separation or divorce, or engage in polygamous unions or widow inheritance. These irregular situations require an adequate response from the Church.

The third section is the Church's response to sterility as found in its recent teachings regarding infertility treatment. References to the Church's approach to infertility and sterility can be found in these papal and CDF documents. It is noted that these documents are not canonical in nature nor are they addressed particularly to the Church in Uganda. Their theological and moral – ethical content and their reference to sterility make them relevant to the subject under study.

The fourth section focuses on recommendations for the Church in Uganda. Suggestions are given toward an integral approach to procreation in marriage and to sterile couples. Through marriage preparation and pastoral care to sterile couples, this work presents an analysis of the psychological impact which sterility causes both in Uganda and elsewhere and offers the means of counseling them. Finally, there are recommendations which the Church in Uganda can use to respond adequately to questions raised by sterile couples. Suggestions are made for diocesan policies on marriage preparation, integration of canon law into local cultures, and also having a functioning tribunal system.

4.1 — Fecundity and Sterility in Ugandan Customary Marriage

In the cultural mentality of Ugandan societies, fecundity is the main reason most people marry. As such, it is not only undesirable but devastating to find that a spouse is unable to have a child. This means that sterility is an important factor which easily disrupts marital life. In order that the Church in Uganda responds adequately to questions raised regarding the status of sterile marriages, this mentality needs to be examined before c. 1084, §3, *CIC* 1983 can be applied to their concrete situation.

4.1.1 — The People of Uganda and Customary Marriage

As diverse as Uganda is culturally, most Ugandan ethnic communities share a common view of marriage and its fruitfulness. This is seen in the various stages and ceremonies in which marriage is celebrated. Therefore, the impact of sterility is felt in various sectors of the Ugandan population. A brief look at the demographic composition of the Ugandan cultural – ethnic component of this population lays a foundation for the assessment of their deeply rooted desire for offspring.

4.1.1.1 — The Demographic Composition of Uganda

Uganda is composed of several tribal and ethnic communities which once formed independent kingdoms in eastern Africa. The country takes its name from the central Kingdom of Buganda, which in 1894 became a seat of the British Protectorate,³ up to

³ The proclamation of Uganda as a British Protectorate began an 80 year-long colonization of Uganda. This was done by an agreement signed in 1894 between the King of Buganda, and the British Government. It was followed by marking colonial boundaries. These demarcations which were drawn in 1885 at the Berlin Conference were made on the map but did not consider the tribal and ethnic boundaries. Various communities on the borders with other countries were split. Because of this, we find tribes and cultures shared by the same people on different sides of the border. What consisted in the “making of Uganda” into a State were the agreements which the British signed with local kings: Buganda and Toro in 1900; Ankole in 1901; and Bunyoro-Kitara in 1933. For details of the history about how the individual kingdoms were united into the country Uganda, see G. N. UZOIGWE, “The Agreement States and the Making of Uganda: in Buganda,” in G. N. UZOIGWE (ed.), *Uganda, the Dilemma of Nationhood*, New York, NOK Publishers International, 1982, 57-133, here on 57.

independence when it became the Republic of Uganda on October 9, 1962. In the years following British rule and civilization, churches⁴ and schools have been the most influential instruments of development and formal education. Thus, formal education which was propagated mainly through church-founded schools became not only a means of civilization but also a means of re-shaping the prevailing cultures into their present state: half African, half Western.⁵

There are fifty-six tribal/ethnic groupings in Uganda, each with distinct languages and cultures.⁶ However, these can be grouped into three: the Luo who live mainly in the north; the Nilo-Hamites who live in the northeast; and the Bantu⁷ who occupy central,

⁴ The traditional churches in Uganda are the Anglican Church (established in 1877) and the Catholic Church (established in 1879). Other churches which were established in the 19th century include: the Orthodox, Pentecostal, and Evangelical Churches. All of these institutions aim at providing social and educational services in addition to evangelization. Thus, we see the churches as government partners in the development and provision of social services like setting up medical and educational institutions.

⁵ In his study, J. Vincent made a similar analogy when referring to the Gondo sub-tribe of eastern Uganda. In his work J. VINCENT, *The African Elite, the Big Men of a Small Town*, New York & London, Columbia University Press, 1971, he stated: "There are several clear visual indicators of elite status within the community. Paths to their homesteads are unusually wide and well cleared, and there is always plenty of beer at their homes. Deference is clearly accorded to the elite; a Big Man is always given a chair, a younger man vacating one for him if necessary" (248). Since 1971, much development has taken place. As much as such "Big Men" are still respected as living an exotic lifestyle, nowadays, this life is lived by town-dwellers: the educated, the rich, civil servants, etc., since they are no longer seen as peasants, living in rural villages. While referring to African urbanization in general, H. Janssen calls this situation a "dualistic world experience." See H. JANSSEN, "Changing Communities in the Context of Changing World Views," in A. RADOLI (ed.), *The Local Church with a Human Face*, Eldoret, AMECEA Gaba Publications, 1996, 101-112, here on 105.

⁶ Cf. UGANDA GOVERNMENT, *Constitution of the Republic of Uganda*, Kampala, 1995, 189-191. The constitution lists all the indigenous communities which existed as of February 1, 1923. Some of these tribal groupings are considered sub-groupings of larger ones, each one with a sub-culture and speaking a dialect of the major language. In spite of this diversity of culture and language, there are more or less similar customs regarding marriage and procreation.

⁷ The word "Bantu" refers to one of the largest groupings of light-skinned people that dominate a stretch of land from South Africa to the northern hemisphere mark of the Tropic of Cancer and the central part of Africa. They are united by the use of the suffix "-ntu" to refer to a human being. To this end, the plural "Bantu" means "people" or "human beings." They have thousands of languages, tribal characteristics, and cultures that distinguish them. In his article, A. B. T. Byaruhanga Akiiki presents some of the historical theories regarding the origins of the Bantu "people" and their migration within South, East and Central Africa. See A. B. T. BYARUHANGA AKIIKI, "Aspects of Bantu Marriage," in *African Ecclesial*

eastern and western Uganda. Each one of these groups shares some characteristics in their understanding of marriage and procreation. Byaruhanga Akiiki concluded: "The Bantu have always associated marriage with primarily having children is a historical fact [...] when the Bantu pray like other Africans, they pray for life, their petition always includes an explicit or implicit request for children."⁸

In spite of this cultural diversity, these tribal groups maintain their cultural beliefs and practices. Each of the larger groupings maintains a distinct set of processes which end up in the union of two married people. However, in most of these cultural practices, motivations to marry and fecundity in marriage are the same. Even with slight differences, these communities have a similar concept of marriage including the desire for children. It is in this context that Christianity was introduced. However, many missionaries did not recognize the strong sentiments that surrounded procreation in marriage.

4.1.1.2 — Initial Evangelization of Ugandan Cultures

The Anglican missionaries were the first Christian missionaries to evangelize Uganda. They arrived in the country in 1877,⁹ and with the help of the British government, the Anglican Church spread to all the parts of the country. On February 17, 1879, Catholic missionaries arrived and embarked on the work of evangelization. Catechism normally lasted four years before one was considered fully initiated in the faith and was able to explain basic tenets of the faith. For this reason, children were not

Review, 20 (1978), 261.

⁸ Ibid., 258.

⁹ Y. TOURIGNY, *So Abundant a Harvest: The Catholic Church in Uganda, 1879-1979*, Darton, Longman & Todd, 1978, 23.

admitted to baptism. The first baptism was recorded in March 1880.¹⁰ It is recalled that Muslims, mostly from Saudi Arabia, were the first outsiders to come to Uganda for trade long before Christian missionaries arrived. They persuaded only a few Ugandans to join the Islamic faith mainly for two reasons; first, these Arabs were actively involved in slave trade; and second, few Ugandan societies practiced circumcision which is a condition to become Muslim. These two factors deterred many Ugandans from becoming Muslim.¹¹

Catholic missionaries came in three groups and at different times. First, the Missionaries of Africa (also known as the White Fathers) took charge of evangelizing Central and Western Uganda and the present Northern Tanzania as Nyanza Vicariate.¹² Second, the Mill Hill Fathers took much of the eastern part of the Capital City of Kampala to the border with Kenya.¹³ Third, the Comboni Missionaries (Verona Fathers) evangelized northern and northeastern Uganda.¹⁴ Each of these groups had to learn the local languages and cultures and used that knowledge to evangelize. They encountered success as well as challenges. Success included the canonization of the Holy Martyrs of Uganda who stood for their new faith within six years of the missionaries' arrival.¹⁵

¹⁰ Ibid., 28.

¹¹ Ibid. For details of the early missionary work in Uganda, see M. S. M. KIWANUKA, *Uganda's Famous Men, Muteesa of Uganda*, Kampala, East Africa Literature Bureau, 1972, 49-56; E. ISICHEI, *A History of Christianity in Africa from Antiquity to the Present*, Grand Rapids, MI, William B. Eedmans Publishing Company, 1995, 131.

¹² D. BYABAZAIRE, *The Contribution of the Christian Churches to the Development of Western Uganda, 1894-1974*, Frankfurt am Main, Peter Lang, 1979, 46.

¹³ B. SUNDKLER and C. STEED, *A History of the Church in Africa*, Cambridge, Cambridge University Press, 2000, 854. See also A. HASTINGS, *The Church in Africa 1450-1950*, New York, Oxford University Press, 1996.

¹⁴ Ibid., 852-855, 859. See also L. BAINOMUGISHA, *The Role of the Lay Christian Faithful in the Mission of the Church in Mbarara Archdiocese (Uganda) in the Light of its First Synod*, JCD diss., Ottawa, Faculty of Canon Law, Saint Paul University, 2000, 51.

¹⁵ Young Christians were martyred in the years 1885-1887 and were canonized in October 18,

Challenges included the integration of the faith into the local customs, among them, marriage and the value of fecundity.¹⁶

One of the issues these missionaries had to deal with was customary marriage. Most of the customary marriage practices involved polygamy as a lawful alternative to monogamy.¹⁷ However, the missionaries' vision of a "monogamous nuclear family as it had evolved in the post-industrial West, in which the husband, wife and children form the basic family unit"¹⁸ was a foreign concept to Ugandans. In polygamous marriages, Ugandan men would marry many women in order to have many sexual partners, but more so to have as many children as possible.¹⁹ However, missionaries did not offer any alternative to the issues out of which this need arises. Therefore, the place of children in customary marriages remained central to the institution of marriage as explained in the

1964.

¹⁶ T. P. Ofcansky looks at these challenges from the view of the role of women in Ugandan society, when he writes: "During the colonial era, European missionaries sought to improve the status of women by agitating against the brutal practice of clitoridectomy, opposing polygamy, and instituting Western educational courses for women." See T. P. OFCANSKY, *Uganda, Tarnished Pearl of Africa*, New York, Oxford University Press, Inc., 1996, 85.

¹⁷ It is reported that missionaries "refused to recognize the way in which Africans have married from time immemorial. This to them was not marriage but 'concubinage' or 'customary union,' to be replaced as soon as possible by the real thing" [marriage]. B. KISEMBO, L. MAGESA and A. SHORTER, *African Christian Marriage*, 1977, xv. In his study, A. Hastings compares traditional or customary marriage in Africa to marriage in Europe before the 11th century, the time before church marriage was made compulsory for Christians. Cf. A. HASTINGS, *Christian Marriage in Africa, Being a Report Commissioned by the Archbishops of Cape Town, Central Africa, Kenya, Tanzania and Uganda*, London, SPCK, 1973 5-26 (=Christian Marriage in Africa).

¹⁸ A. SHORTER, *African Culture and the Christian Church: An Introduction to Social and Pastoral Anthropology*, London, Geoffrey Chapman, 1973, 163. Shorter, a missionary himself, offers a good comparison between the Western notion of marriage and African customary practices.

¹⁹ For this reason, before being admitted to baptism, it would first be ascertained that the neophytes are committed to the new faith and were ready to embrace monogamy. Cf. Y. TOURIGNY, *So Abundant a Harvest: The Catholic Church in Uganda, 1879-1979*, 29. Kisebo, Magesa, and Shorter report that converts to Christianity who were polygamists were asked to send away all their wives except one before they could receive baptism. B. KISEMBO, L. MAGESA and A. SHORTER, *African Christian Marriage*, 88.

following section.

4.1.1.3 — The Place of Children in the Ugandan Customary Marriage Process

The process of marriage in traditional Ugandan societies reveals the inherent desire for children.²⁰ The two families involved in the negotiations that lead to the actual celebration of marriage ensure that the couple is ready for procreation. As pastors prepare the couple for marriage today, they ascertain that the couple's parents approve of marriage and that other cultural requirements have been met. This ensures that there is no interruption to the wedding ceremony, that the couple is ready to marry, and that nothing stands in their way (c. 1066, *CIC* 1983). The numerous ceremonies begin with traditional *formulae* and end in the couple's expression of consent in the church and in observing the canonical form (c. 1108, *CIC* 1983).²¹ A close look at these ceremonies reveals that the entire community is wishing the couple well and looking forward to expressing their love in begetting children.

4.1.1.3.1 — Courtship and Betrothal

In Ugandan traditional communities, marriage process begins in any of the following three ways. First, the parents identified a "good" family where their child could find a spouse. The two families first discussed this casually and later formalized it when their daughter or son accepted the proposal. This practice existed in the "primitive"

²⁰ Bassett's study concludes: "When the desire for children is strong, regardless of the cause of barrenness, infertility creates a domestic situation which is heavy for the best of marriages and which is intolerable for those whose marital relationships are weak, one of the most painful emotional experiences that can come to a person is experienced when he becomes aware of his sterility." W. T. BASSETT, *Counseling the Childless Couple*, 86. This analysis points to the fact that the strong desire for children is not solely a Ugandan or African experience but is present in all sectors of humanity.

²¹ B. KISEMBO, L. MAGESA and A. SHORTER, *African Christian Marriage*, 193. These authors describe the Church wedding in Kampala, Uganda's capital city, as a white wedding which is distinguished from the customary wedding. A church wedding is usually characterized by photography, hired cars, wedding costumes, processions, etc.

periods of the societies' development and constitutes "an arranged marriage;" it is no longer practiced in Uganda today.²² Second, the man's family, noticing that he is mature enough to marry, proposes that he gets married. When he consents, the family embarks on a search for a wife.²³ Third, prospective spouses identify each other and make their parents aware of their desire to marry; they simply get from their parents a blessing to go ahead, a caution, or a denial.²⁴

Out of respect for the woman's family, some communities approach these families through an intermediary.²⁵ This intermediary acts as a link between the two families and arranges for the delegates from the two families to meet. It is here that they negotiate bridewealth or marriage gifts, make ceremony schedules, and set a date for the

²² While analyzing this customary practice, Kisembo, Magesa, and Shorter, concluded: "Whereas in the old days the choice of marriage partners was made by the parents of the families, today this system is almost utterly rejected by the young people. They insist on making their own choice and in many instances the parents cannot but give in." B. KISEMBO, L. MAGESA and A. SHORTER, *African Christian Marriage*, 124. Apart from physical maturity, another sign of the children's readiness to marry was the ability to perform household tasks. A boy ought to be able to take care of large herds of cattle, construct a house, and show that he would be able to provide for his own family. This guided the parents in making the choice for boys to marry. For girls, it sufficed that, in addition to physical maturity, a girl was able to perform the household tasks that are fulfilled by a mother: the ability to grow and cook enough food to feed the entire family.

²³ Ibid. However, today, "there is a balance between the initiative of the young people and the guiding, advising role of the parents or members of the extended family" (124).

²⁴ Ibid. In all these practices, parents do not force their children to marry, but they only propose to them. There is always room to say no, even if it carries with it social consequences. In the process of choosing a partner described above, fecundity is one of those qualities that are sought after while entering marriage. Another method of getting a spouse is by elopement. Couples may elope and live together for years and bear children. They are usually not considered married until customary formalities are done and bridewealth is paid to the wife's family.

²⁵ J. S. MBITI, *African Religions and Philosophy*, 137. This intermediary, or suitor, is also called a "marriage broker." He or she is a person known by the two families. He is chosen by the man's family to approach the girl's family and announce that the man's family wishes to get a wife and asks for special friendship. When this proposal is accepted, then delegates from the extended families begin scheduling meetings, negotiations, and other celebrations. It is customarily disrespectful for either of the two families to appear unannounced at the home one is to marry in, so the suitors make prior arrangements for any visits. Prof. J. S. Mbiti is a researcher of African traditional religions and Philosophy and has produced many writings. These writings are valuable sources to understanding African customs and traditions in general. He writes about cultures and traditions from major African tribes including those in Uganda.

church or customary wedding. The intermediary must be known to the two families and, in most cases, he/she is chosen by the man's family to "propose" or "announce" marriage plans.²⁶ This person does not need to be a family member. Among other responsibilities, the intermediary obtains information from either family and shares it so that each family may make informed decisions. One piece of crucial information to be shared is a history of bearing children in both families.²⁷

From the above, it can be concluded that the process from the beginning focuses on the capacity of the spouses to beget children. It is unlikely that a marriage proposal would be made if it is known that there is a history of barrenness in the woman's family, or if there are reports of impotence in the man's family.²⁸ If there is a history of male

²⁶ There are reasons why there is need for a broker. The proposed spouse's family is highly respected, and neither families' relatives are expected to appear unannounced. Therefore, this broker makes appointments so that the two families meet when they are prepared. Secondly, the broker must know the two families well or at least make an investigation. His goal is to have marriage succeed by identifying a "good family" where children have been born. Third, this trusted person helps to ensure that the potential spouse's families a good family; that there are no criminals, witchcraft, cases of incest, murder, and the like. Cf. C. D. KIHANGIRE, *Marriage Customs of the Lango Tribe (Uganda) in Relation to Canon Law*, JCD diss., Rome, Pontificia Universitas Urbaniana de Propaganda Fide, 1957, 61. In Lango, he/she is called *Lakwena*, the messenger. At the end of the process, he/she is remunerated and praised for the work well done.

²⁷ A family with a history of childlessness may likely have a member who carries a genetic composition of impaired fecundity. For a scientific explanation about the impact of genetics on fertility, see N. C. NEVIN and N. O'HANRAHAN, "Genetics in Reproduction," in R. F. HARRISON, F., BONNAR and W. THOMPSON (eds.), *Fertility and Sterility: The Proceedings of the XIth World Congress on Fertility and Sterility, Dublin, June 1983, Held Under the Auspices of the International Federation of Fertility Societies*, 469-472. In customary marriages, fecundity is often preferred over physical beauty. Other qualities include: hard work, the ability to love and obey her husband, and such qualities as have been exhibited by other family members who have married.

²⁸ Cf. L. MAGESA, *African Religion, The Moral Traditions of Abundant Life*, 120. Magesa believes: "If any of the men in his family is known or rumored to be sexually inadequate in any way, he is most unlikely to be accepted for marriage. Fertility is the central requirement in marriage. A marriage proposal would be even less likely if there were cases of barrenness among the female members of a girl's family. This might cast doubt on the ability of the whole family to transmit life. But the most serious impediment to marriage is witchcraft, of which impotence, sterility, barrenness, or a generally bad reputation may be considered to be symptoms." This general view of African marriages is relevant to Uganda because in the traditional Ugandan societies, there was no means of determining fertility before one was married. With improving medical facilities, the couples can discover this capacity before the final decision is made. At the moment, improvement in health facilities is rather poor. As F. Musisi reported, "World Health Organization (WHO) recommends a ratio of one doctor per 1,000 people. But the (United

infertility or impotence in his family, her family always rejects the proposal. Barrenness in the woman's family usually results in such a rejection from the man's family. This determination will help the parents in preventing the potential "collapse" of marriage due to sterility. With the two families' consent to continue with marriage of their children, the wedding process begins.

4.1.1.3.2 — The Wedding Process and the Quest for a Child

Marriage in Uganda is celebrated in public and in stages. The expression of consent is a specific moment culminating of a long process. In most Ugandan societies, it takes over a year from the time the intermediary is chosen to mediate between the two families to the expression of consent. It is for this reason that the term "wedding process"²⁹ is used. In some societies, this process begins with family meetings, negotiations, exchange of gifts/bridewealth, and ceremonies and ends in the birth of the first child.

Generally speaking, the wedding process ends with the handing over of the bride and the welcome ceremony at the groom's home. Traditionally, the handing over

Nations) UN body's recent research findings indicate Uganda's ratio of doctors to patients is 1: 24,725 in urban areas and 1:100,000 in rural areas." F. MUSISI, "Who will Save Uganda's Limping Health System?" in *Saturday Monitor*, online ed., April 4, 2015, <http://www.monitor.co.ug/SpecialReports/Who-will-save-Uganda-s-limping-health-system/-/688342/2675438/-/item/1/-/vd4t8t/-/index.html> (April 4, 2015).

²⁹ Ratzinger, in his *relatio* before the Synod of Bishops on the Role of the Family acknowledges: "Marriage in Africa is celebrated by dynamic steps, and indeed by the families, while the declaration of the parties in front of the priest is seen by them a simple solemnity." Africans, while celebrating their wedding, believe that the church wedding is a "crown" of the years-long process; therefore, Ratzinger's observation should be understood not in a sense of demeaning the canonical form of marriage. Where marriage is only customary, the giveaway ceremony is at the same time as the wedding ceremony; after that symbolic handover of the bride to her husband, they can now begin to live together. If there is a church wedding, it takes place the following day. At the same synod, Bishop Kaseba from Zaire explained what this marriage process entails: "Each of these stages has a specific reason, and is a constitutive part of the gradual elaboration of marriage bond. At each stage, the two parties acquire a certain status, with special rights and duties. Whatever the actual number of these stages in various ethnic groups, the gradual ripening of the union is always taken with the utmost seriousness: the people concerned are all involved in this process of growth which has the aim of leading them to a more solid and lasting union [...] It is the whole process that makes marriage a reality." Cf. A. KASEBA, "Marriage Bond as a Result of a Process," 40.

ceremony is a big celebration which brings the two extended families together. It includes formalities like the physical handover, where the parents of the bride “hand over” the bride to the parents of the man and indicate that she now belongs to their family.³⁰ Among the Batoro of western Uganda, for example, the bride's delegation witnesses the short rite where the new bride sits on the laps of her parents-in-law, a clear indication that she is accepted as a child in that family.³¹ This is followed by verbal pronouncements, best wishes, and blessings to be happily married and beget children. This process can be interrupted or halted at the discovery of serious issues, one of which is infertility.³²

The process described above indicates one important fact: marriage in Africa is a social celebration. It is understood as an alliance between two individuals as well as two families. Urrutia observes: “The consenting between the two families, which in the traditional celebrations precedes, accompanies, follows, and sustains the consent of the two individuals, takes place precisely *in view* and *by means* of the consent of the two individual persons.”³³ After giving the above accurate statement to explain marriage

³⁰ L. MAGESA, *African Religion, The Moral Traditions of Abundant Life*, 115-116. Bridal handover ceremonies are always accompanied by gifts in the form of a bridal shower. As soon as this ceremony is held, the spouses are considered having been “re-born” into their parents' homes and are considered as their sons and daughters.

³¹ A. B. T. BYARUANGA AKIIKI, “Aspects of Bantu Marriage,” 265.

³² Cf. A. SHORTER, *African Culture and the Christian Church: An Introduction to Social and Pastoral Anthropology*, 183. According to A. Shorter, this interruption does not constitute divorce or dissolution, but rather the fact that marriage was attempted but did not come into existence. On the contrary, when the wedding (church or customary) has already taken place, this would be considered a divorce in many Ugandan communities. This phenomenon is comparable to those Asian communities where sterility often leads to divorce and re-marriage. See A. MENDONÇA, “The Importance of Considering Cultural Contexts in Adjudicating Marriage Nullity Cases with Special Reference to South East Asian Countries,” 218.

³³ F. URRUTIA, “The Challenges on Canonical Doctrine on Marriage Arising from Africa,” in *Studia canonica*, 23 (1989), 5-26, here on 10. See also F. URRUTIA, “La pastorale du mariage en Afrique Noire, la Cinquième assemblée du SECAM, Nairobi, 24-30 Juillet, 1978,” in *L'Année Canonique*, 24 (1980), 169-213.

process in African societies, Urrutia concludes: "In such African peoples marriage does not consist of or require the consent of the individuals involved."³⁴ This conclusion is misleading because the concerned families need ample time to identify cases of sterility or any other customary impediments before they go ahead with marriage. As W. G. Blume observes: "In regard to forbidden marriages, Western secular law, as well as Canon Law, have similar rules for determining who are primary kin, that are prohibited to marry."³⁵

Another source of misunderstanding of these "successive steps"³⁶ or stages of marriage in Africa is the fact that many celebrations are involved in the same marriage. These steps or stages are celebrated at different times and venues. Each of these stages brings with it additional status, rights, and duties. These are "steps" leading up to the expression of consent in the canonical form (church wedding), and they are not to be regarded as many celebrations of a single marriage.³⁷ Once marriage process is

³⁴ F. URRUTIA, "The Challenges on Canonical Doctrine on Marriage Arising from Africa," 11. This assertion by Urrutia is not accurate. The consent of the individuals is required, in addition to the approval and support of the extended family and the entire community. The latter does not replace the consent of the individuals who marry.

³⁵ W. G. BLUME, *Forms of Marriage: Monogamy Reconsidered*, Nairobi, AMECEA Gaba Publications, 1989, 45. Cf. canon 1091, CIC 1917. In African societies, the impediment of consanguinity is extended to all members of extended family and clan.

³⁶ For a description of these marriage stages as viewed by the Catholic hierarchy in Africa, see. *African Ecclesial Review*, 23 (1981), 41-46. At various times, the church in Africa has clarified that these stages or steps of a marriage celebration are preliminary and progressive; they lead to the church wedding for Christians or to customary marriage for non-Christians. The view of Häring is that marriage stages can be compared to the stages of initiation to the religious life, the novitiate with temporary vows. See B. HÄRING, Lecture Given at Gaba National Seminary, Kampala, August 19, 1974, as reported in B. KISEMBO, L. MAGESA, A. SHORTER, *African Christian Marriage*, 26.

³⁷ Cf. B. KISEMBO, L. MAGESA and A. SHORTER, *African Christian Marriage*, 28-29. Even with couples who have married outside the Church, usually in customary ceremonies, provisions are made for them to validate or senate their marriage. Through a pastoral letter, such a practice could be regulated as was the case in one diocese in Uganda. See J. WILLIGERS (Bishop), Letter of the Bishop of Jinja, October 16, 1974, Jinja, Uganda, diocesan archives.

completed, and the child is born, that marriage should not be broken. This is different from the Church's understanding of marriage where an irrevocable covenant is established at the time of consent.³⁸

A doubt arises as to when the canonical form is observed. Urrutia expresses this doubt while quoting Ratzinger in this declaration: "Since marriage in Africa is celebrated by dynamic steps, and indeed by the families, the declaration of the parties in front of the priest is seen by them as a simple solemnity."³⁹ A clarification can be given here that, whereas the community participates in marriage process, marital consent is expressed before the priest or another authorized witness (*assistens*) by the two parties and not by the community.⁴⁰ The community only serves as a witness to marriage. Even though the entire community is "involved in witnessing to the juridical reality of marriage, it is the spouses who live the day-to-day togetherness in marriage."⁴¹ Therefore, it would be inaccurate to interpret the wedding as a "simple solemnity;" it is indeed the culmination of the entire process.

In conclusion, it should be noted that the wedding process culminates in both the expression of the couple's consent to marry and in the birth of the first child. These two

³⁸ Cf. c. 1057, §2, *CIC* 1983. Canonically, marriage is completed by the expression of consent and consumation, *ratum et consumatum* (c. 1061, §2, *CIC* 1983).

³⁹ F. URRUTIA, "The Challenges on Canonical Doctrine on Marriage Arising from Africa," 7.

⁴⁰ By their participation, the entire community "gave their assent to marriage, and expressed their expectations concerning it. They were far from passive witnesses. Together with the family, they joined in admonishing and instructing the newly-weds, in blessing and anointing them, in shouting their approval at the speeches of others, in remembering details of the rites to be performed making sure that all was done as it should be." Cf. B. KISEMBO, L. MAGESA and A. SHORTER, *African Christian Marriage*, 187. These authors summarize well the nature of the community's participation in marriage process and the reasons for doing so.

⁴¹ The community's participation is to be understood as a means of support, not as party to marriage contract. Cf. M. DEMUELENAERE, *The Canonical Significance of Marital Fidelity Among the Bantu of South Africa*, JCD diss., Ottawa, Faculty of Canon Law, Saint Paul University, 1985, 26.

occasions are observed to indicate the importance of fecundity as an object of marriage. Different tribes stipulate different lengths of time which the process will take. Nevertheless, the purpose is the same: to discover and avoid possible impediments to marriage. Sterility is one of the cultural impediments, and it is addressed by secret inquiries into the history of each family. The intermediary helps avoid anything that may impede the partnership of marriage and procreation; this indicates the importance that Ugandans place on the fruitfulness of marriage.

4.1.2 — The Importance of Procreation in Ugandan Customary Marriage

Marriage is a partnership between a man and a woman which, by its very nature, is ordered to the good of the spouses and for the procreation and education of offspring (cf. c. 1055, §1, *CIC* 1983). However, different cultures understand this partnership differently. As Mendonça observed: “In most cultures the meaning and purpose of marriage are determined by the deeply-rooted beliefs concerning the meaning and purpose of human life itself as lived within the context of a particular group.”⁴² This statement explains how to approach the tribal – cultural groups of Uganda while analyzing their concept of marriage and how they lived it in the pre-Christian and now live it in the Christian era as well.

4.1.2.1 — Marriage and Procreation: Means to Adulthood

In all Ugandan communities, marriage and reproduction are signs of adulthood. Unless one gets married and begets children, he/she is still considered a minor or one living an incomplete life. C. R. Bansikiza brings this out clearly when he affirms: “Adulthood is not determined by age, but by marital status and above all by having

⁴² A. MENDONÇA, “Cultural Concepts and Nullity of Marriage,” 139.

offspring. An adult is almost by definition, a married person.”⁴³ Since every adult is expected to marry, “failure to get married under normal circumstances means that the person concerned has rejected society and society rejects him in return.”⁴⁴ This concept of adulthood also exists in other African societies outside Uganda. For example, J. Kenyatta, while talking about the Kikuyu people of Kenya wrote the following: “The desire to have children is deep rooted in the hearts of men and women so that on entering marital union they regard the procreation of children as their first and most sacred duty.”⁴⁵

Consequently, each member of the family is expected to be fruitful. In Uganda, marriage is a means of reproduction, and every married person is blessed to perform this divinely-given duty. Procreation is called a sacred duty because of the belief that children are born through a mysterious process, which is rather inexplicable; it is God's doing. Thus, failure to beget children is not only considered a curse but also a failure to do what

⁴³ C. R. BANSIKIZA, *The Pastoral Approach to African Traditional Values of Fecundity and Marriage*, Eldoret, Gaba Publications, 1985, 2. His research is based on the people of southwestern Uganda; however, this concept of adulthood as related to marriage and reproduction is spread among other societies.

⁴⁴ J. S. MBITI, *African Religions and Philosophy*, 133. However, it should be noted that the expectation of every human being to procreate is not unique to Africans. Deveraux and Hammerman implied this while writing that “all humans will participate in reproduction,” as what society at large expects of each person. Cf. L. L. DEVERAUX and A. J. HAMMERMAN, *Infertility and Identity: New Strategies for Treatment*, 101. The authors also added theories which point to the purpose of procreation expressed in every society by the following statements: “Pregnancy is the biological destiny of women;” “Children represent a biological extension of self and the continuation of the genetic family line;” “Children are the parents' contribution to the future of the human race;” “Childbirth is a demonstration of membership in the human community;” and “Reproduction ensures the parent's immortality.” Ibid.

⁴⁵ J. KENYATTA, *Facing Mount Kenya*, 164. See also C. BURKE, “Marriage and the Family in Africa,” in *Catholic Position Papers*, 146 (1987), 1-3; P. M. WEIL, “The Staff of Life: Food and Female Fertility in a West African Society,” in *Africa: Journal of the International African Institute*, New York, Cambridge University Press, 46 (1979), 182-183. Therefore, a conscious decision not to have a child, to beget only one child, or to undergo a surgical procedure as means of making oneself unable to beget a child is a concept foreign to Africans. Such a decision can only be made for medical reasons where the health of the mother is at stake.

the divine and the larger community expect the couple to do.⁴⁶ Mbiti confirms this when he concluded: "It is in the creative dimension of marriage that you in fact become co-creator with God. In procreation, you are fostering God's creative work in the world. This is a serious and sacred responsibility."⁴⁷ He noted that many marriages break down if no children are born – although this should not happen, it often does.⁴⁸

In addition, most Ugandan societies believe that children in marriage are a means of achieving immortality.⁴⁹ Through one's children, one "lives forever." This happens mostly through male children, who coincidentally may resemble one or both parents either physically, by character, or by profession. It is not uncommon that in the traditional setting, a son takes on the profession of the father, for instance, carpentry, hunting, or blacksmithing.⁵⁰ Even without carrying a family name as is done in Western societies, the above characteristics give confidence to the community that the deceased father still lives

⁴⁶ J. S. MBITI, *Love and Marriage in Africa*, 43. This belief is so deeply rooted in the cultural mentality of Ugandans that marriages can break up if this expectation is not met.

⁴⁷ Ibid.

⁴⁸ However, Mbiti's conclusion is not backed up by statistics, because there is no central registry where such information could be obtained.

⁴⁹ M. DeMuelenaere has summarized the nature of customary marriage among the Bantu when he concluded that traditional marriage has religious, social, and personal consequences: "Religious, because it is the means by which a man's lineage is continued, an assurance of immortality in the children born of lawful wedlock; social, because it increases the numerical strength of the clan and extends its system of alliances with other groups; and personal, because it is the culmination of the individual's development in which he achieves a new status which carries with it maturity and dignity." Cf. M. DEMUENLENAERE, *The Canonical Significance of Marital Fidelity Among the Bantu of South Africa*, 2. It is a belief of all the Bantu people that when one dies, he still lives in his children. Therefore, to die childless is a bad omen.

⁵⁰ In addition to the professional sphere, the physical characteristics of the newly born baby also indicate that the child belongs to his actual parents, and that the parents, especially the father, has been reincarnated in his children. G. Parrinder has a similar conclusion in his study of West African societies when he wrote: "A newborn child is often thought to be the reincarnation of some ancestor who is seeking to return to this life, or at least part of his spiritual influence returns." See G. PARRINDER, *West African Religion: A Study of the Beliefs and Practices of Akan, Ewe, Yoruba, Ibo, and Kindred Peoples*, 95.

on in his children.⁵¹

Through this belief, families are said to be linked to the past, present and future through the “sacred” and “mysterious” act of procreation. In this perspective, procreation is vital because a “marriage only becomes fully a marriage or marriage is fully consummated only with the birth of a child. A childless marriage is not considered to be truly a marriage.”⁵² This is why the news of the first pregnancy is received with great joy, and the birth of the first child has always been a momentous occasion. This is the time when marriage is said to be fulfilled. However, this belief is different from canonical marriage which is enacted by the exchange of consent (c. 1057, *CIC* 1983) and sealed by consummation (c. 1141, *CIC* 1983).

With regard to the above, many societies consider procreation to be the “only

⁵¹ Kitembo, Magesa, and Shorter in their study of patrilineal societies in Africa wrote: “In the patrilineal societies of Africa, marriage meant the incorporation of the bride into the family or clan of the bridegroom with the consequent rights and duties belonging to the different members of the family or clan towards one another. These rights and duties were determined by the traditional customs and laws governing the clan.” B. KISEMBO, L. MAGESA and A. SHORTER *African Christian Marriage*, 101. Since Ugandan tribes are all patrilineal, a girl child grows up to produce children for her new family when she gets married. Societies following the patrilineal descent system seek wives for male members. The children born of these unions become members of the father’s descent group. This is opposed to the matrilineal descent system, where children belong to the mother’s kinship or clan. Therefore, it befalls on the male child to beget children and to carry on the family name, in the same way the family name in the Western societies is carried out through male children. In such societies, sterility is always blamed on the wife. Cf. M. GIJSELS, Z. MGALLA and L. WAMBURA, “‘No Child to Send:’ Context and Consequences of Female Infertility in Northwest Tanzania,” in J. T. BOERMA and Z. MGALLA (eds.), *Women and Infertility in Sub-Saharan Africa: a Multi-Disciplinary Perspective*, 203-221, here on 214. J. D. Mullins reports that sterility was one of the situations that missionaries faced in their initial evangelization of Ugandan societies: “A woman who had no children was neglected and despised [...] a man cared little which wife (in case of polygamous unions - sic) had children so that he was not childless, and it made no difference to the child’s position whether the mother was free or a bondwoman.” See J. D. MULLINS, *The Wonderful Story of Uganda*, 2nd ed., London, Church Missionary Society, 1908, 207.

⁵² R. R. CALVO, “The Impact of Culture in Marriage Cases,” in *CLSA Proceedings*, 55 (1993), 108-120, here on 114. Calvo’s analysis is in agreement with most of the African perspectives on marriage, and the importance that children play in every marital union. This belief was also acknowledged during the Synod of Bishops on the Family; an Engl. translation of the *Instrumentum laboris* is found in *Origins*, 10 (1980), 225-233; here on 229. The Synod Secretariat observed that in African societies, fecundity is an important factor, and that in some instances, “couples live together before matrimony so that they can be certain that they can procreate.”

purpose for marriage.”⁵³ Without children, marriage appears a failure, a curse, and simply meaningless. While considering this view of some African societies, Mbiti concluded: “In our traditional society, where procreation is at the center of marriage, a childless marriage can become a most painful and embarrassing situation in life.”⁵⁴ In addition, the African traditional attitudes and philosophy of marriage make it extremely hard for a childless marriage to be successful and happy. It is not known that a couple can agree voluntarily not to have children. To this end, Mbiti gives an important counsel which makes a bridge between the Christian – canonical view of marriage *vis à vis* the traditional view. He concluded: “Yet, however important and beautiful procreation is, it is not the only purpose for marriage and as such, a childless marriage need not be unhappy or come to an end.”⁵⁵

⁵³ Though expressed differently, this belief is also reflected in the canonical – Western tradition of procreation. For centuries, procreation has been considered the “primary end of marriage” until the last century when the “secondary end” was put on equal footing; in the present canonical doctrine, we have both ends as equally necessary for true marriage (c. 1055). In his study of marriage in African societies, W. S. Karanja concluded that children are part of the definition of marriage. He writes: “When asked for their views on a marriage in which all the ceremonies had been performed, but was childless, they seemed to feel that such a marriage was not as complete as the one blessed with children. Having children, the women insisted, was integral to the definition of a full and complete marriage and of womanhood.” W. S. KARANJA, “Outside Wives and Inside Wives in Nigeria: A Study of Changing Perceptions in Marriage,” in D. PARKIN and D. NYAMWAYA (eds.), *Transformations of African Marriage*, Wolfboro, Manchester University Press, 1987, 247-261, here on 249.

⁵⁴ J. S. MBITI, *Love and Marriage in Africa*, 43. When someone is childless, there are few roles in society assigned to that person; when he/she dies childless, there are few rituals. Kitembo, Magesa, and Shorter, reached this conclusion when they wrote: “The childless person was an object of reproach or pity. There being no descendant to carry on his name after him, such a person was consigned to oblivion after death. To transmit life was to share in the divine creative powers. It was an act of triumphing over death.” B. KISEMBO, L. MAGESA and A. SHORTER, *African Christian Marriage*, 103.

⁵⁵ J. S. MBITI, *Love and Marriage in Africa*, 43. C. Obbo’s study in Buganda (central Uganda) writes: “A woman with only one or two children is regarded as a ‘one-eyed’ person deserving pity, while a woman with no children at all is not pitied for her barrenness but may be despised as someone who has no role in society.” C. OBBO, “The Old and the New in East African Elite Marriages,” in D. PARKIN and D. NYAMWAYA (eds.), *Transformations of African Marriage*, 247-280, here on 265. Another study by J. Roscoe reveal the stigma childless women face in Buganda: “Every married woman was anxious to become a mother [...] A woman who had no children was despised and soon became a slave and drudge of the household” J. ROSCOE, *The Baganda*, New York, MacMillan and Company, 1911, 46.

In order to symbolize the regret and failure of the childless individual, funeral customs reveal a bitter frustration. As Byaruhanga Akiiki analyzed: "According to Kiga custom, it is through marriage that a man becomes a full member of society. If he remains unmarried, he is considered useless, *ekifeera* (dead), and nothing! If he dies, he is buried with hoe-handles with the belief that in the next world, he can be more industrious. Among the Ganda, Central Uganda, a bachelor who dies without children is never passed through the main door."⁵⁶ This concept does not apply to priests or religious, since their ordination and ministry excuses them from such societal obligations.

To be childless or a spinster/bachelor was not a compliment. One was considered cursed, and the curse, if not avoided, could spill over to the family. In order to avert the misfortune, for example:

The Banyankore have had a ritual known as *okugyera empango*. In this unpleasant ritual, a chosen brother to the dead childless spinster would have to simulate sexual intercourse with his sister's corpse [...] the Ganda, as well as the Batoro and Banyoro of Uganda have the custom of burying the spinster with a banana stem which symbolizes a man. These and other customs and attitudes among the Bantu are not completely dead!⁵⁷

⁵⁶ A. B. T. BYARUHANGA-AKIIKI, "Aspects of Bantu Marriage," 258. See also E. KATAHWEIRE, "The Position of Women in Kinyankore Culture, with Particular Reference to the Church of Uganda in Ankole," in L. NJINYA-MUJINYA (ed.), *The African Mind, a Journal of Religion and Philosophy in Africa*, Kampala, Sun Publishers, 1989, 199-226, here on 208. Among the Lango of northern Uganda, sterility and impotence are considered misfortunes which can be redone by the affected individual being reborn. T. T. S. Hayley describes this custom which helps a man regain his potency. Cf. T. T. S. HAYLEY, *The Anatomy of Lango Religion and Groups*, Cambridge, The Clarendon Press, 1947, 140. However, it is questionable whether belief in these rites are backed up by success stories or if they have remained myths.

⁵⁷ A. B. T. BYARUHANGA AKIIKI, "Aspects of Bantu Marriage," 258. When this author concludes that the customs are "not completely dead," this has to be put into perspective. In communities where Christianity has taken root, and where family members are educated, these customs are not performed. However, the reader should look beyond these "pagan" or superstitious beliefs and the fear of the unknown in order to realize how important having children is among the Bantu. It is the symbolism which tells the story, not the actions. See also, C. R. BANSIKIZA, *The Pastoral Approach to African Traditional Values of Fecundity and Marriage*, 3. This custom is also referred to as "ghost marriage." Magesa's exposition of the African view of marriage and procreation summarizes the need for children: "The initiation process, which turns a youth from a boy or a girl into a man or woman, points to marriage as the most basic expression of the desire to maintain life. Without its consummation in marriage, initiation remains incomplete. Whatever else a person has or is, without marriage and children, one is nothing. Indeed, such a person is seen to be damned, a lost soul [...] completely dead. Thus, marriage and procreation have the greatest importance in the moral thought of African Religion." L. MAGESA, *African Religion, The Moral Traditions of Abundant*

For this reason, all girls from such societies have always been under pressure to get married even to a polygamous husband.

4.1.2.2 — Procreation and the Extended Family System in Uganda

In all Ugandan societies, the family is viewed more in terms of the extended family beyond the nuclear family of husband, wife, and children. To this effect, the choice of the partner is made by the help of, and in consultation with, the parents and other members of the larger family.⁵⁸ A marriage partner is chosen under the criterion of fecundity: one marries with the hope of having children in order to expand the extended family. This means that marriage and procreation are inseparable.⁵⁹ It is in confirmation of this belief that Mbiti observed: “Our African societies value this as the most important purpose and meaning of marriage. Indeed, in some of our traditional societies, a marriage is not considered as such until children are born.”⁶⁰

The communitarian aspect of marriage is deeply rooted in the traditional African way of life: the extended family. While commenting on this subject, J. Njenga indicated that whereas canon law requires only two witnesses to marriage, marriage in Africa

Life, 104.

⁵⁸ Cf. L. MAGESA, *African Religion, The Moral Traditions of Abundant Life*, 115-124. The author notes that a married partner, after marriage process is completed, is fully considered to belong to the family of his/her spouse. This notion of a family, together with the expectation of the extended family to participate in marriage process of their children, is what has often been misunderstood as “marriage taking place between families.” A. Mendonça notes that the parental role in choosing a marriage partner is present in all Asian cultures, though the level of involvement differs from culture to culture. Cf. A. MENDONÇA, “The Importance of Considering Cultural Contexts in Adjudicating Marriage Nullity Cases with Special Reference to South East Asian Countries,” 208. This practice exists in all Ugandan cultures as well.

⁵⁹ Cf. A. HASTINGS, *Christian Marriage in Africa*, 27. Some authors on African marriage affirm: “Full fatherhood means a large number of children, as many as one can beget. That is why, if a marriage remains childless for a long time, marital bonds become loose. A man who cannot get children in his marriage is therefore very likely to do one of two things: either he will divorce his present wife and remarry or he will accept polygamy. Women also know how hard it is not to have children.” Cf. B. KISEMBO, L. MAGESA and A. SHORTER, *African Christian Marriage*, 103-104.

⁶⁰ J. S. MBITI, *Love and Marriage in Africa*, 42.

requires the witnessing of the entire community and blood relatives.⁶¹ Paul VI, in preparation for the first papal visit to Africa in 1969, encouraged Africans to promote the “family spirit” even in the church.⁶² The image of the “church as family” has always been commended as a source of strength for Christianity in Africa.⁶³

The traditional African sense of kinship makes the individual a child, brother, sister, father, mother, cousin, or relative to hundreds of other people. As such, when one gets married, he or she “brings together families, relatives and friends from each side of the partnership.”⁶⁴ Even with Christian marriage, all members of the extended family take part in the celebration and can give counsel or support to the couple hoping for the success of the new family. After the wedding, they look forward to the birth of the child who will become one of them.⁶⁵

⁶¹ J. NJENGA, “Customary African Marriage,” in *African Ecclesial Review*, 16 (1974), 115-122, here on 122.

⁶² See PAUL VI, Apostolic Letter to the Christians of Africa *Motu proprio date Africae Terrarum*, October 29, 1967, in AAS, 59 (1967), 1073-1097; Engl. transl. in *The Pope Speaks*, 14 (1969), 214-246.

⁶³ Cf. JOHN PAUL II, Post-synodal Apostolic exhortation on the Church in Africa *Ecclesia in Africa*, September 15, 1995, in AAS, 88 (1996), 815-855; Engl. transl. in *Origins*, 25 (1995-1996), 249-276, nos. 80-85. This image of the Church as a family is recognized as a model for Christianity and family life in Africa where communal participation and support are important.

⁶⁴ J. S. MBITI, *Love and Marriage in Africa*, 44. See also E. KATAHWEIRE, “The Position of Women in Kinyankore Culture, with Particular Reference to the Church of Uganda in Ankole,” 202-203. Katahweire performed research in a western Uganda society where he reveals that whereas a girl child is a source of wealth, she is also a link between clans and tribes. A study in Asian countries indicates the same way of looking at marriage. Mendonça concluded that “marriage is not a matter between two individuals but that of the whole family, even the whole clan.” This is true not only for Asian cultures but for African cultures as well. See A. MENDONÇA, “Cultural Concepts and Nullity of Marriage,” 140; W. UHAI, “The Value of Community in Marriage: A Moral Challenge to the Christian Family in the Light of *Familiaris Consortio*,” in *African Christian Studies*, 30 (2014), 23-39. W. Uhai wrote: “Unfortunately, the importance of community participation in marriage is dwindling because of economic hardship, social pressure, and lack of proper decision making, among other reasons” (28).

⁶⁵ Magesa indicates that the moment of conception is a time of great joy for the husband and wife, and also for the whole clan. This is because “conception indicates and assures that the universe is in good order and that the ancestors are happy. It is a very significant step not only for the validity of marriage contract, but also for its consolidation. [...] a failure to conceive can have disastrous consequences.” Cf. L. MAGESA, *African Religion, The Moral Traditions of Abundant Life*, 83. When the author mentions the

The affirmation that marriage in Uganda or Africa in general is both personal and communitarian has been a source of misunderstanding even within the Church. For example, Ratzinger, while giving his first *Relatio* at the Synod of Bishops on the Role of the Family, asserted: "Marriage is not contracted by two individuals through a decision springing from personal love, but it is a union between two families, and 'it is contracted by the whole family.'"⁶⁶ Community involvement, support and approval do not equal the whole family "contracting" marriage. Therefore, this assumption is canonically misleading.

In conclusion, marriage in Ugandan communities is still entered with the purpose of ensuring the continuation of the tribe, clan, and family lineage – the extended family. Every member is expected to contribute to this cause and to be a fruitful member of the community and society at large. This is the context in which marriage is contracted and where children are expected to be born and nurtured. Since marriage and procreation must go together, sterility is reprehended, and fruitfulness in marriage becomes the reason to marry.

4.1.2.3 — Fecundity as a Criterion for Marriage

Fecundity, which is also called "fecundability," has been defined as "the capacity

"validity of marriage contract," this is not to be understood in the canonical sense, but in the traditional African sense of customary marriage.

⁶⁶ Urrutia mentions that the Cardinal was aiming at objectivity while summarizing the presentation of the African bishops. Cf. F. URRUTIA, "The Challenges on Canonical Doctrine on Marriage Arising from Africa," (6). This offering of support, counsel, or assistance is based on the premise that two people love each other and they wish to marry. This type of approval should not be taken to mean that the entire community is contracting marriage. See A. SHORTER, *African Culture and the Christian Church*, 165-166. Shorter gave an accurate conclusion regarding the communitarian nature of marriage in Africa when he wrote: "Marriage, more than any other institution, helps to bring out the solidarity of the family groups involved. Marriage in African is communitarian, the alliance between groups" (166). L. P. Mair is more conclusive when she stated: "The great majority of African marriage procedures involves a formal public statement by the bride that she is willing to marry the man who is asking for her hand." L. P. MAIR, *Free Consent in African Marriage*, London, Colonial Office Library, 1958, 3.

of any couple to conceive”⁶⁷ or simply capacity for reproduction. Thus, every marriage is entered with the expectation of fecundity. Generally speaking, marriage in Uganda is understood as: “The union, permanent at least by intention, of a man and a woman for the purpose of the procreation and rearing of children and mutual companionship and assistance.”⁶⁸ This definition is similar to canon 1055, *CIC* 1983. Mair confirms this view when she wrote: “African marriage, like that of Europeans, is an association between two persons for mutual support and the procreation and rearing of children. But it usually has also the wider aspect of an alliance between groups of kin.”⁶⁹

However, in Uganda's customary marriages, the procreative end of marriage is stressed over the good of the spouses. Fecundity is stressed more than mutual love and companionship. As Shorter observed: “The ideal in nearly all traditional African societies was to have as many children as was physically possible. Children meant wealth, prestige, and the blessing of God and ancestors.”⁷⁰ Hastings rightly observed that this is

⁶⁷ I. E. THOMPSON, “The Medical Workup: Female and Combined Problems,” in M. D. MAZOR and H. F. SIMONS (eds.), *Infertility: Medical, Emotional and Social Considerations*, 3-12, here on 3. See also R. FREEDMAN, “Fertility,” 371. Freedman also clarifies: “Demographers distinguish fertility (actual reproduction) from fecundity (capacity for reproduction)” 371.

⁶⁸ A. HASTINGS, *Christian Marriage in Africa*, 27. His study report was based on the research he made in a few African countries including Uganda. Therefore, when “African” is used in this work, reference is made to those situations that apply to Uganda in particular. The Nyoro people of western Uganda, for example: “Think of marriage as a more or less permanent union between a man and a woman, the offspring of whom have recognized status as their children.” See J. BEATTIE, *Bunyoro, an African Kingdom*, New York, Henry Holt & Co., 1960, 55. This concept of marriage is not different from the canonical description of marriage as found in c. 1055, §1, *CIC* 1983.

⁶⁹ L. P. MAIR, *African Marriage and Social Change*, London Frank Cass & Co., Ltd., 1969, 4.

⁷⁰ A. SHORTER, *Christian Family Power in Africa, An Abridgement of African Christian Marriage*, Eldoret, AMECEA Gaba Publications, 1977, 27. This author observed that childlessness due to sterility was a cause of polygamy, and it placed an unbearable strain on a marriage in traditional Africa (*Ibid.*). Magesa complements this view when he concluded: “Conception is not seen as merely a result of man and woman coming together in the act of sexual intercourse. It is most basically understood as the result of a blessing from God and the ancestors. Without divine and ancestral blessing, conception may well not be possible. God, ancestors, mother, and father must all cooperate for conception to take place.” Cf. L. MAGESA, *African Religion, the Moral Traditions of Abundant Life*, 83.

also true in other traditional societies and canonical marriages in the past; it is not peculiar to the Uganda or Africa as such. The development of marriage as it relates to interpersonal love is rather new to Western societies and to canon law as well; the procreative dimension of marriage (*bonum prolis*) has always been stressed over the good of the spouses (*bonum coniugum*).⁷¹

What is particular to Uganda or Africa in general, is that a child is a fulfilment of the act of consent and completes marriage process. As Kihangire concluded: "Marriage is not considered complete until the wife has given birth to a child. All clan ritual observances and ceremonies were designed to produce and protect babies. It is a woman's greatest shame to be barren."⁷² He also observes: "Perhaps the strongest incentive of all is the great desire of the Lango to beget as many children as possible. The husband, as well as the wife, keenly desires offspring."⁷³ Among the Hima of western Uganda for example, the wife's position in the family is that of a child bearer. Y. Elam wrote the following with regard to barren women in Uganda: "Women who do not bear

⁷¹ Cfr. A. HASTINGS, *Christian Marriage in Africa*, 29. For example, the young in English society had no say about whom they were to marry, and they married for the continuance of the lineage and the accumulation of property, rather than for interpersonal love. In canon law, procreation has been the primary end of marriage until mid-last century, when the personalist element of marriage was incorporated in the definition of marriage. As a consequence, *bonum coniugum* replaced the "remedy of concupiscence" and became an equal end of marriage to *bonum prolis*.

⁷² C. D. KIHANGIRE, *Marriage Customs of the Lango Tribe (Uganda) in Relation to Canon Law*, 78. See also E. M. UKA, "The African Family and Issues of Women's Infertility," in *Africa Theological Journal*, 20 (1991), 189-200; here on 191. Uka reveals: "The inability to produce offspring is considered one of the greatest misfortunes in African Societies. Barrenness, sterility and the unmarried state are threats to human existence and are therefore condemned."

⁷³ C. D. KIHANGIRE, *Marriage Customs of the Lango Tribe (Uganda) in Relation to Canon Law*, 111. He also acknowledges that "Incapacity to produce offspring" is one of the grounds for divorce (118) and one of the reasons for polygamy (120). Lango is a tribal territory in northern Uganda inhabited predominantly by the Langi people.

children are more of a liability than an asset.”⁷⁴

Within Africa, there has been a discussion on the relevance of fecundity to marriage in the African context. For example, proposals were made to the 1980 Synod of Bishops, particularly with regard to the status of childless marriages. Archbishop Robert Sarah of Conakry, Guinea, speaking in the context of West Africa asserted: “Without procreation a marriage may be valid, but it is not complete [...] a sterile marriage is one which did not achieve its end.”⁷⁵ This is equally true of Ugandan societies where there is a strong conviction that the reason to marry is to beget children.⁷⁶ A question arises whether in the African context, where physical (biological) fecundity is held in such high regard, there is true consent in the case of sterility.

The desire for children is often an absolute and is sometimes a condition placed implicitly by the couples contrary to c. 1102, *CIC* 1983. This can be contrasted with the “Western society, where cognatic descent is common, perpetuation of a lineage or clan is very seldom a consideration in the choice of a marriage partner.”⁷⁷ While quoting the

⁷⁴ Y. ELAM, *The Social and Sexual Roles of Hima Women*, Manchester, Manchester University Press, 1973, 137. W. G. Blume considers procreation of children as Africa's “absolute goal or purpose of marriage.” See W. G. BLUME, *Forms of Marriage: Monogamy Reconsidered*, 63.

⁷⁵ R. SARAH, “Polygamy,” in *African Ecclesial Review*, 23 (1981), 99-102, here on 100. Ugandan bishops, even though they have not directly addressed the issue of sterility in marriage, have voiced their views at this synod.

⁷⁶ Authors who express this opinion about Ugandan societies include: E. KATAHWEIRE, “The Position of Women in Kinyankore Culture, with Particular Reference to the Church of Uganda in Ankole,” 208; A. B. T. BYARUHANGA-AKIIKI, “Aspects of Bantu Marriage,” 258; C. R. BANSIKIZA, *The Pastoral Approach to African Traditional Values of Fecundity and Marriage*, 3; J. S. MBITI, *Love and Marriage in Africa*, 42. While exploring the history of marriage in the ancient primitive peoples, E. Schillebeeckx's findings are parallel to the African – Ugandan reason to marry. He writes: “The continued existence of the household religion was thus assured by procreation. A barren marriage meant that there was a danger of the domestic religion becoming extinct; as a result, barrenness dissolved marriage.” E. SCHILLEBEECKX, *Marriage: Human Reality and Saving Mystery*, New York, Sheed and Ward, 1965, 234. This understanding of the purpose of marriage existed among the Greeks and the Romans.

⁷⁷ Cf. W. G. BLUME, *Forms of Marriage: Monogamy Reconsidered*, 42.

African bishops at the Synod of Bishops, the following rendering by Ratzinger's *relatio* summarizes well this belief in the following words:

Fertility is often seen as a participation in the great mystery of life, as a force that runs from one generation to the other, as indeed a divine force. It links the family generations, not only those actually living, but also those of the ancestors. Life is thus the basis for the virtue of piety that binds children to their parents and to the elders in the large family, as well as to the divinity. Fertility is then a question of life and death for the lineage.⁷⁸

It is generally observed that in all Ugandan cultural communities having children is considered the very reason to marry.⁷⁹ As Uka describes it: "Procreation therefore becomes the mark of God's favour on marriage. Hence, among Africans, no marriage ceremony is concluded without a request to God and the ancestors to let the new couple bear many children."⁸⁰ That is why it is considered a curse or grave misfortune when a given marriage does not produce children. A person who dies unmarried or childless is considered cut off from the human society, and loses all links with mankind.⁸¹

In conclusion, it is observed that fecundity is an important consideration in the decision to marry in all cultures.⁸² The quest for a child is not limited to African societies

⁷⁸ Quoted from F. URRUTIA, "The Challenges on Canonical Doctrine on Marriage Arising from Africa," 14.

⁷⁹ In their study among infertile women in Eastern Africa, Gijssels, Mgalla and Wambura concluded: "We know that in Africa children are highly valued and that big families are seen as a necessity. Not a single woman we interviewed did not want children. One woman expressed this as: *every woman cries for children*." See M. GIJSELS, Z. MGALLA and L. WAMBURA, "'No Child to Send': Context and Consequences of Female Infertility in Northwest Tanzania," 209.

⁸⁰ E. M. UKA, "The African Family and Issues of Women's Infertility," 190. Uka wrote in the context of West Africa, but his conclusions fit well in the Ugandan situation.

⁸¹ Cf. J. S. MBITI, *African Religions and Philosophy*, 134. Mbiti uses these strong terms to describe the general feeling when one dies childless; the same feeling is prevalent among the traditional societies of Uganda.

⁸² Monach confirms this view when he wrote: "In considering the plight of those who are unable to have children, it is essential to place them against the background of social attitudes or norms which shape our desires [...] perceptions of marriage are still almost inextricably interwoven with expectations of child-bearing." J. H. MONACH, *Childless: No Choice, the Experience of Involuntary Childlessness*, 44. This conclusion, though based on studies in Western societies, applies to the Ugandan-African context.

but also exists in Western societies.⁸³ In the latter, though marriage is entered only out of love, the practice of child adoption or surrogate motherhood reveals an inherent desire for procreation. Another indication of this strong desire for children can be observed in sterile couples who seek medical attention or resort to artificial means of begetting a child.⁸⁴ Therefore, it would be misleading to conclude that it is only Ugandans/Africans who elevate the desire for offspring at the expense of the other end(s) of marriage.

4.2 — Socio-Cultural Impact of Sterility on Customary and Canonical Marriage

In Ugandan societies, all adults are expected to marry and have children for the immediate family as well as for the extended family. Reasons for needing children include family labor, inheritance of property, and bridewealth. With the changing demographical composition and integration of Western civilization, these needs are becoming outdated and abandoned. However, the inherent desire for children by individual spouses still persists. Therefore, sterility still has a negative impact on marital unions, and the quest for children is still strong.

4.2.1 — Cultural Need for Children in Ugandan Societies

As mentioned above, every marriage in Uganda is expected to be fruitful. In traditional Ugandan societies, children are not only a blessing from God, but also a source of labor and social security; children take care of their parents in their old age or

⁸³ Deveraux and Hammerman indicate that the celebrations of childbirth such as a baby-shower foster a sense of loss and isolation among childless couples in Western culture. Cf. L. L. DEVERAUX and A. J. HAMMERMAN, *Infertility and Identity: New Strategies for Treatment*, 103-106.

⁸⁴ Ponticas, while writing in the European context, wrote: "For some couples (including Roman Catholics) the desire for a biological child supersedes any ecclesiastical prohibition while others actively struggle with their ethical concerns and seek the advice of clergy." Y. PONTICAS, "Issues in the Psychological Evaluation and Care of *in vitro* fertilization Couples," 28. This is an indication that the strong desire for children is deeply rooted in all cultures. The author also acknowledges that, "Western culture is child oriented, the emphasis often being on 'children are our future'" (27).

in case of infirmity. As cultures in Uganda evolve, the trend is changing. This change is brought about by urbanization⁸⁵ and migratory labor.⁸⁶ Some reasons for having many children are becoming irrelevant. In spite of this change, the need for children has not changed, for similar or different reasons as seen in the following sections.

4.2.1.1 — Procreation as Means of Family Labor and Social Status

The majority of Ugandans live in rural areas.⁸⁷ This means that they depend on manual cultivation of the land in order to grow food for domestic consumption as well as surplus to sell. Children are therefore a rich resource for working on farms and gardens, helping their parents to grow their own food for the stated purposes. The more children a

⁸⁵ Uganda's population is now projected to be 34.5 million people according to the annual population report which was published by the Ugandan government on October 30, 2011. It is projected to reach 43.4 million people in 2017. Uganda Bureau of Statistics, *Projections of Demographic Trends of Uganda 2007-2017*, 3. Of this figure, only 13 percent live in urban areas. Cf. UGANDA BUREAU OF STATISTICS, www.newvision.co.ug/news/18769-uganda-s-population-now-at-34-5-million.html (September 2, 2014). One of the impacts that formal education has had in Uganda is the decline in church marriages. In his study on this subject in eastern Uganda, A. Hastings observed that, where there is stability of customary marriage, people resisted the introduction of church marriage. Cf. A. HASTINGS, *Christian Marriage in Africa*, 47-50. H. Boerakker, who did a similar study in the same area, found that from 1935, when the Catholic Church in eastern Uganda started a campaign for what he termed as "good marriages" and denied Holy Communion for those who resisted, rates of church marriages started to decline. As quoted in B. KISEMBO, L. MAGESA and A. SHORTER, *African Christian Marriage*, 4.

⁸⁶ Urban migration is one of the contributing factors to fertility decline in some African countries including Uganda. In their study on the impact of urban migration in six countries: Ghana, Kenya, Mali, Senegal, Togo and Uganda, Brouckerhoff and Yang found out: "The decline in fertility among the migrants is seen as a result of improvements in the standard of living experienced by migrants after settling in the urban area and may be due in part to temporal spousal separation." See M. BROUCKERHOFF and X. YANG, "The Impact of Migration on Fertility in Sub-Saharan Africa," in *Social Biology*, 1994, 19-43, here on 41. In a study which involved women in Uganda in 1995, Larsen and Riggers noted a decline in fertility in women who reside in urban areas. The authors attribute a low fertility rate among urban dwellers due to the use of contraception rather than natural incapacity to conceive. Cf. U. LARSEN, H. RIGGERS (eds.), "Levels and Trends in Infertility in Sub-Saharan Africa," 36. They also found that primary infertility in Uganda is between 3-5% (37), while secondary infertility is between 10-14% (41). Higher prevalence of infertility in urban areas may be attributed to movement of infertile women away from their rural residence of origin to a more urban area (46). E. Nabagesera reports "10% of couples in Uganda have fertility problems." E. NABAGESERA, "Infertility Rate High in Uganda," in *The New Vision*, August 26, 2001, http://www.newvision.co.ug/new_vision/news/1027658/infertility-rate-uganda (March 16, 2016).

⁸⁷ The latest population report on Uganda indicates that only 13 percent of the 34.5 million Ugandans live in urban areas. The rest live in rural communities. Cf. *The New Vision*, www.newvision.co.ug/news/18769-uganda-s-population-now-at-34-5-million.html (September 2, 2014).

family has, the more plantations one has, the more crops one grows, the richer the family becomes. In this way, parents depend on their children for food security as well as physical security.⁸⁸ This practice is different from “child labor” which is exploitative or forced; children simply contribute to the family income and resources.

In addition to family labor, many children indicate a higher social status and dignity in society. The bearing of children does not only complete marriage process but becomes the fulfilment of the procreative end of marriage. When children are born, “the father achieves full status as a husband and father, and the mother attains full legitimacy as a mother, wife and a member of the man’s family.”⁸⁹ Besides, the man needs children for domestic work, for protection, and for the perpetuation of his lineage. Therefore, “procreation is looked at as a duty, and sexual intercourse between husband and wife or wives was looked upon by the whole clan as an act of production and not merely as the gratification of a bodily desire.”⁹⁰

⁸⁸ During the time when Uganda was only formed of tribes and chiefdoms, wars often broke out between different tribes and communities. A tribe with more people especially more young men always formed a strong fighting force; therefore, by begetting many children, communities enjoyed the privilege of victory in case of war. Nowadays, with no tribal wars, this reason is outdated. However, a family with many children feels secure. In case of a dispute with another family or families, many children are still seen as a threatening force, and the parents will always be respected or feared. For further study of ethnic/tribal wars in Uganda, see J., BARBER, *Imperial Frontier*, Nairobi, East African Publishing House, 1968; D. L. HOROWITZ, *Ethnic Groups in Conflict*, 2nd ed., Berkeley, CA, University of California Press, 1985; J. NANNYONJO, “Conflicts, Poverty and Human Development in Northern Uganda,” in *The Round Table*, 94 (2005), 473-488.

⁸⁹ C. D. KIHANGIRE, *Marriage Customs of the Lango Tribe (Uganda) in Relation to Canon Law* 44. The author’s study area is among the Lango tribe, one of the major tribes in northern Uganda. While writing about the need for children in the Lango community, Kihangire confirmed this when he added: “The Lango admire a man with many children; the more children he has, the greater is his status.”

⁹⁰ Cf. *ibid.*, 58. This view of marriage is shared by most communities in Uganda. Among the Lango people, there was reported “infant betrothal” whereby an infant’s parents made a promise to give him/her in marriage to a particular person when the two have grown up. As the children grew, they came to know about it, and they behaved carefully in order not to displease the parents and cause them to change their minds. As the author concludes, this practice is long abandoned; these days, children grow up to make their own decisions about who to marry.

The need for children for family labor has been reduced by the arrival of formal education.⁹¹ Since most children spend much time at school, they will not be expected to perform many household duties. As people begin shifting to live in towns due to urbanization, the children will have little work to do in those new circumstances. Formal education has attracted urbanization and as more and more Ugandans are educated, they realize that there are other sources of acquiring a higher status in society than children.⁹² Nevertheless, sterility still has a disruptive impact on marriages in Ugandan families, even among the educated, and those considered strong Christians.

It can be concluded that even if social and economic circumstances are rapidly changing in Uganda, rural communities still depend on family labor for their sustenance. This means that together with the other traditions to have a large family, the desire for more children for family labor is still a strong phenomenon in Uganda. The desire for offspring as a means of acquiring a higher status in society, even if it still exists, is being rendered irrelevant. Currently, it is the most educated, the rich civil servants, politicians, or businessmen who command a higher status in society; it is no longer the polygamous man or the one who has many children.

⁹¹ Education in Uganda has been dominated by church-founded schools or other religious-founded schools for a long period of time. Government and community schools existed but were either inadequately funded or inaccessible by many. In 1997, the government introduced Universal Primary Education, a measure aimed at providing basic education free for all children. Cf. UGANDA GOVERNMENT, *Government White Paper on Education*, Kampala, Ministry of Education, 1992. The program which started by supporting up to four children per family has since 2002 supported every child and has been extended to Secondary Education. These measures by the Ugandan government, even with minimal success, have increased school enrollment and reduced resources for family labor.

⁹² P. B. Lyimo observes that in African societies, "values are changing" and the new generation of men do not practice polygamy. See P. B. LYIMO, *Polygamy in Sub-Saharan Africa and the Munus Docendi: Canonical Structures in Support of Church Doctrine and Evangelization*, JCD diss., Ottawa, Faculty of Canon Law, Saint Paul University, 2011, 50.

4.2.1.2 — Male Children and Inheritance of Property

Unlike Western societies where all children acquire a family name, in Africa, male children carry forward the family legacy. In Ugandan societies, male children particularly continue the character, achievement, and fame of the deceased father. Mbiti confirmed this when he wrote: "Through children human life is preserved, propagated and perpetuated. Through it life is also deepened vertically and spread out horizontally. Therefore marriage and childbearing are the focus of life. They are the very centre of human existence, just as man is the very centre of the universe."⁹³

It is for this reason that marriage is considered a "communal and not an individual affair; it is a social duty for the survival of the family, clan and for extension of one's lineage to other future lineage."⁹⁴ Before the parents give their consent for their children to marry,⁹⁵ it is normal for each family to make secret inquiries into the other family's lineage and to ascertain that there is no impediment to beget children or a history of misfortunes. Such misfortunes include: miscarriages, stillbirths, or early child mortality.

In addition to inheriting the family legacy, male children will inherit property when their parents die. Girls usually receive a small portion of the family estate which

⁹³ Cf. J. S. MBITI, *Introduction to African Religion*, 100. The author adds: "It is a very tragic thing when no child come out of marriage. People do not consider it to be truly a marriage, and other arrangements are made to obtain children" (104-106). Such arrangements would include allowing the brother of the sterile man to beget children for him by sleeping with his wife, or allowing the husband to marry another wife to bear children on behalf of the sterile wife. Cf. A. SHORTER, *Church and Marriage in Eastern Africa*, Nairobi, 1975, 141.

⁹⁴ A. B. T. BYARUHANGA AKIIKI, "Aspects of Bantu Marriage," 262.

⁹⁵ For more information regarding the nature and scope of parental consent, see J. S. MBITI, *African Religions and Philosophy*, 136. In Roman Law, parents were allowed to betroth their children at the age of reason when they are old enough to speak: five for girls and seven for boys. However, they would not be allowed to marry until the age of fourteen. Cf. *Justinian*, D. 23, 1, 14; P. E. CORBETT, *The Roman Law of Marriage*, 2-8. Boys and girls were not forced to marry against their free will (6). Like in Roman Law, the requirement of parental consent in Ugandan communities does not equal forced marriage.

they may take to their husband's home or keep at the family home.⁹⁶ In some instances, girls are given an equal share of land, livestock, or any other assets that the family might have. Due to the questions regarding inheritance, a man who finds himself married to a barren wife or who produces only girls will take another wife. As Byaruhanga Akiiki observes: "One woman producing only girls causes her husband to marry another so he can father a son."⁹⁷ W. Goldschmidt summarizes well the cultural need for children when he writes about the Sebei of Eastern Uganda:

The Sebei say that a man who dies without children is forgotten; his name is thrown away; his spirit is dead. Worse, his spirit becomes an evil (*oynatet*), bent on doing harm to the living. [...] A man with many children will be remembered, his spirit fed happily [...] A barren wife is scorned and shamed, for reproduction is seen as her prime purpose. Although her husband may not divorce her because she has no children, he will normally treat her badly.⁹⁸

It is generally understood that inheritance of property comes with its benefits on the part of the parents. Children who inherit the property of their parents are expected to take care of these parents at the time of old age, sickness, or incapacity. Children are a source of social security if the unexpected happens, such as widowhood, blindness, or a frail old age.⁹⁹ Thus, inheritance of property becomes a means of health insurance

⁹⁶ It can be generalized, as J. C. D. Lawrance does: "Women can never inherit though they can act as co-guardians and receive and give property in that office." See J. C. D. LAWRENCE, *The Iteso, Fifty Years of Change in a Nilo-Hamitic Tribe of Uganda*, London, Oxford University Press, 1957, 228. This remains a generalization, since in many Ugandan communities, some parents allow their daughters to obtain an equal share of their inheritance.

⁹⁷ A. B. T. BYARUHANGA AKIIKI, "Aspects of Bantu Marriage," 366.

⁹⁸ W. GOLDSCHMIDT, *Culture and Behaviour of the Sebei, a Study in Continuity and Adaptation*, Berkeley, Los Angeles, London, University of California Press, 1976, 243. This quotation brings out the importance of children both in the culture of the Sebei as well as in other Ugandan cultures. However, educated people nowadays prefer to have fewer children over the increasing "costs of raising large families, particularly school fees" (244).

⁹⁹ While studying the same subject among the Zomba of Malawi, J. Mkhomeni arrives at the same conclusion. He believes: "Every member of the family is concerned about the welfare of an aged member. Parents depend especially on their children for support and protection especially at old age. Children give economic security to their parents and fight for their rights and justice." Cf. J. MKHOMENI, *Sterility and the*

especially in countries where there is no medical insurance system. This means that a childless family is not assured of care in old age. Mbiti affirms: "When the parents become old and weak it is the duty of the children, especially the heirs or sons, to look after the parents and the affairs of the family."¹⁰⁰

It can be concluded that for reasons of inheritance, most Ugandan families prefer to have male children over female children. The continuation of the tribe, clan and family depends on male children, who also have the capacity to bear their own children. One can ask if this strong desire for male children overlooks the wider picture of the other ends of canonical marriage, or if it considers principles of equal dignity and equality applied to all children, male and female. These notions are discussed in the following section.

4.2.1.3 — Female Children and Bridewealth

In all Ugandan societies, the exchange of gifts before the wedding in the form of bridewealth given to the woman's family is still a valued custom.¹⁰¹ In these societies, bride price or dowry¹⁰² is arranged and agreed upon by the families of the two persons intending to marry. When the families meet, they negotiate, and at times bargain, as to which amount or number of items are to be contributed by the man's family. In the cattle

Ends of Marriage, A Study based on Canons. 1055 and 1984 with Particular Reference to Zomba Diocese in Malawi – Africa, 110.

¹⁰⁰ J. S. MBITI, *Introduction to African Religion*, Johannesburg, Heinemann Educational Books, 1991, 109.

¹⁰¹ It should be noted that the custom of giving gifts to the bride's parents in the form of bridewealth is not peculiar to Ugandan Societies. In Ancient Rome, Greece, Egypt, Gaul, Germany and Spain, bridewealth was acceptable and commonly referred to as *donatio ante nuptias*. Cf. P. E. CORBETT, *The Roman Law of Marriage*, 205.

¹⁰² These gifts are referred to as bridewealth, bride price, and dowry are used synonymously to refer to the gifts that the man's family must contribute to the girl's family before the two are considered serious enough to marry. Whereas this exchange of gifts exists in several African cultures, it is carried out differently. In farming communities, farm products are exchanged; in urban communities, these gifts are valued in monetary terms and cash is handed over to the girl's family.

rearing communities of Uganda, bridewealth is usually paid in cows, goats, and locally brewed alcohol; in other societies, the gifts include food and household items.¹⁰³ The present trend is to value these gifts in money and that is what the man's family pays. While considering this practice, Calvo concludes: "This makes marriage, that is, the payment of the agreed amount is what makes for a "valid" customary marriage."¹⁰⁴

Hastings gave a more accurate evaluation of this practice among most African communities. He reported:

It provides a guaranty of the sincerity of the bridegroom, a symbol of friendship to the family of the bride, and some impediment to divorce. It proves to a young bride that her marriage is something of real importance and her presence in the husband's home much valued. To omit it may, in the eyes of outsiders, be a progress but to the girl concerned it may appear as an indication that she is little valued.¹⁰⁵

This "value" is enhanced by the wife's child-bearing capacity. This practice is also subject to certain abuses such as putting a strain on the poor bridegroom and his family and the appearance of the bridewealth as "wife purchasing."¹⁰⁶ The concepts in these two

¹⁰³ B. KISEMBO, L. MAGESA and A. SHORTER, *African Christian Marriage*, 184. N. Nagashima, has noted a change in the payment of bridewealth from heads of cattle to cash payment. While studying the aspects of change in bridewealth in the Iteso communities of western Uganda and eastern Kenya, he noted that the introduction of money into bridewealth appears to have provided a means of adapting to modern socio-economic situations. Cf. N. NAGASHIMA, "Aspects of Change in Bridewealth Among the Iteso of Kenya," in D. PARKIN and D. MYAMWAYA (eds.), *Transformations of African Marriage*, 183-199, here on 195. The author also noted: "Money is not a substitute but, rather, supplements the traditional bridewealth of cattle and goats." (195).

¹⁰⁴ See R. R. CALVO, "The Impact of Culture in Marriage Cases," 115. Whereas this assertion is true, it can be misleading to equate the payment of bride price with consent of the parties. With the payment of bride price, the two families officially agree to give their children in marriage. Another ceremony called "the give-away of the bride" follows months later, and this is when the girl's family gives her away in a public ceremony, and when she consents, that constitutes the wedding/expression of consent in the traditional setting. With Christian marriage, the consent of the two parties is expressed at the church wedding.

¹⁰⁵ A. HASTINGS, *Christian Marriage in Africa*, 108.

¹⁰⁶ Mbiti categorically dismisses the wrong concept of "buying a wife" by people who are foreign to African culture (J. S. MBITI, *African Religions and Philosophy*, 140). "Wife purchase" is a misleading phrase. In all Ugandan societies where bridewealth is a custom, it is firmly believed that there is no purchase value for a human being. Kihangire identifies slogans used to indicate this stance; cf. C. D. KIHANGIRE, *Marriage Customs of the Lango Tribe (Uganda) in Relation to Canon Law*, 94. This means that the exchange of gifts is a symbol of the value of the wife. One can compare this custom with the

examples can lead to domestic abuse by the man and in other cases to elopement¹⁰⁷ when the young man is unable to raise the needed bridewealth.¹⁰⁸ Consequently, the Church in Uganda takes a neutral stand on this purely customary practice; there is no deliberate effort to promote or stop the payment of bridewealth. Few bishops have advised parents to demand what is affordable in order to eliminate an undue burden on the bridegroom and his family.¹⁰⁹

The exchange of gifts has a remarkable significance in all Ugandan societies. First of all, there is no “price” for a human being, and a woman cannot have the value of few heads of cattle or goats or any other form of the gifts exchanged. The payment of these gifts is merely symbolic and becomes a seal of marriage. It acts as a commitment that makes marriage legal and valid.¹¹⁰ When the initial batch of gifts is presented and

exchange of a ring in Western societies. At times the ring is unnecessarily expensive and will be returned when the relationship ends. These are two important symbols that have equal potential for misunderstanding or abuse in both societies. Shorter made the same emphasis on the symbolism of bridewealth when he mentioned that the woman always belongs to her parents and clan, and she returns to them when marriage is over. See A. SHORTER, *African Culture and the Christian Church*, 168.

¹⁰⁷ Elopement is the decision and the living together of the couple before they marry and without the involvement and consent of the parents. When the man and his family do not have much wealth, he weighs it with his wife-to-be, and they decide to live together only with limited ceremonies at his home. These are usually done in secret and private. With time, the man's family announces to the woman's whereabouts to her family; if they do not approve, they go and return her by force. If they approve, they allow the negotiations to begin. In this case, they will demand very little bridewealth as the two are already living together. For this reason, poor men prefer to make this “short cut” as a cheap option to marriage, and later do the wedding in church.

¹⁰⁸ The authors who seem to understand the importance of bridewealth to the concerned cultures include: J. ZOA, “The Problem of the Bride Price,” *African Ecclesial Review*, (1962), 173-181; A. HASTINGS, *Christian Marriage in Africa*, 108-109.

¹⁰⁹ One such attempt was made by the Bishop of Kabale, in Western Uganda. His advice was quoted in a local diocesan newspaper, B. HALEM 'IMANA, “Enjugano,” in *Ageeteraine*, (newspaper) vol. 25, December 13, 1986, 9. “Enjugano” in Runyankore - Rukiga language means “bridewealth.” At the Synod of Bishops in 1980, Bishop A. Kaseba of Kalemie-Kirungu, Zaire, explained the meaning of bridewealth or dowry as “a pledge of marriage.” A. KASEBA, “Marriage Bond as the Result of a Process,” in *African Ecclesial Review*, 23 (1981), 40-41, here on 40.

¹¹⁰ Cf. W. GOLDSCHMIDT, *Culture and Behaviour of the Sebei, a Study in Continuity and Adaptation*, 211-220. This author affirms: “The bride price is necessary to legitimize marriage and, more

accepted, no other man will approach the woman's family and propose marriage.¹¹¹ After the gifts are given, they are shared among her close relatives, and others will be used at the various functions that being prepared.¹¹² At the end of marriage process, there is no significant monetary or physical benefit to her family. When her relatives get the news that the woman is now pregnant or has given birth to a child, they will comfortably use these gifts, since with childlessness, the woman could be divorced and the bridewealth returned.

In conclusion, female children are desired not for inheritance of property but for bridewealth. Whereas bridewealth is seen as a source of wealth for the girl's family, there is no substantive generation of wealth in the bridal gifts because they will be used in marriage process. Finally it can be observed that, in spite of the changes in the Ugandan people's cultural and demographic composition, the concept that girl children are a source of wealth has persisted. With sterility, the above benefits are not obtained and the marital partnership could be adversely impacted.

4.2.2 — Impact of Sterility on Marital Partnership in Uganda

The findings of the previous chapter indicate that involuntary sterility is a source

importantly, the children" (211). Since these people are pastoralists, their bride price consists of cattle, a sheep or goat for the mother's brother, an iron hoe and an iron bracelet for the mother, beer, tobacco, and perhaps some cloth or milk (Ibid.). This validity is not to be taken literally in the canonical sense of marriage, but in the African traditional understanding; it is a sign that the bridegroom and his family are committed to the cause of marriage. Since bridewealth symbolically seals the marital contract between the two families, it could be returned in case the wife becomes barren or if she dies before giving birth to a child; alternatively, a sororate (usually the bride's sister) would be sent to bear children for her.

¹¹¹ A marriage proposal serves two purposes: to announce the formal process of marriage and to make public the couple's own decision to marry.

¹¹² Magesa gives a sample of how such gifts are distributed among the girl's family and clan. See L. MAGESA, *African Religion, the Moral Traditions of Abundant Life*, 134. He emphasizes that the bride's father takes two-thirds of the gifts, and out of fairness, the rest is distributed among other close relatives. It is useful to note that bridewealth does not only compensate the girl's family for the loss of her labor but also provides a surplus which her brother or brothers will use to acquire their own wives.

of concern in Africa and other parts of the world. With no advanced techniques for diagnosing sterility or when all means of treating sterility fail, the quest for a child does not cease.¹¹³ Ugandans believe that nothing happens by chance; everything is caused by an agent, either divine or human.¹¹⁴ Therefore, when a couple desires a child and it does not come, and also when the community expects a child and it is not forthcoming, they continuously seek an explanation. As such, this search for a solution always carries negative consequences to the marital partnership as discussed in the following section.

4.2.2.1 — Separation, Divorce and Re-marriage

Among all the societies in Uganda, marriage is intended to be a lifelong relationship, but it is also dissoluble.¹¹⁵ Sterility is one of the major reasons for the disruption of the marital partnership in divorce. Even when a woman is divorced, she remains the wife of her husband unless and until bridewealth is returned; this is because within patrilineal societies, women often take the blame for having not conceived a child.¹¹⁶ Mutual divorce could also happen when there are accusations of cruelty, endless

¹¹³ Studies indicate that in Uganda primary sterility was estimated at 10% in 1980. This estimate is based on the number of women who have never borne a child by the end of their reproductive life. Cf. R. G. WHITE, B. ZABA, J. T. BOERMA and J. BLACKER, "Modelling the Dramatic Decline of Primary Infertility in Sub-Saharan Africa," 140. In his study, Freedman found that whereas fertility rates in preindustrial societies remains steadily high, there is a significant decline in industrial societies. He cites the general decline in fertility rates in industrial societies as due to two reasons: the transfer of functions which used to be fulfilled by the family with the help of several children to other specialized institutions and a sharp reduction in child mortality rates which ensures the survival of the desired number of children. Cf. R. FREEDMAN, "Fertility," 375.

¹¹⁴ Ugandans share the same aetiology with neighbors in northern Tanzania, who attribute every occurrence including sterility to God and/or nature, witchcraft/sorcery, and spiritual agents such as ancestors and spirits. For a discussion on aetiological beliefs in Eastern Africa, see R. POOL and N. R. WASHIJA, "Traditional Healers, STDs and Infertility in Northwest Tanzania," in J. T. BOERMA and Z. MGALLA (eds.), *Women and Infertility in Sub-Saharan Africa: a Multi-Disciplinary Perspective*, 241-255, here on 244. In order to avert sterility, such people tend to resort to prayer and to divination or herbal medicine hoping for a cure.

¹¹⁵ A. HASTINGS, *Christian Marriage in Africa*, 35.

¹¹⁶ Marshall points out that women were blamed for childlessness when it was thought that they

quarrels, sorcery, murder, or threats to one's life. Women can be divorced due to laziness, adultery, or possibly childlessness.¹¹⁷ Mbiti gives us a more acceptable conclusion: "The causes of divorce include sterility or barrenness especially on the part of the wife. This is probably the greatest single cause, since inability to bear children blocks the stream of life ... if the wife is barren, the husband may take another wife and keep the barren one which also saves the "first" marriage."¹¹⁸

were always responsible for sterility in marriage. Cf. J. MARSHALL, *Medicine and Morals, A Faith and Fact Book*, 55. In African societies, bridewealth is the payment for the productive and reproductive services of the woman to the husband's family. In their study of the impact of sterility in African communities, Gijssels, Mgalla and Wambura confirm the belief: "The husband and his family sees a woman with infertility problems as deficient, and will decide to return the woman to her family. The bridewealth must then be returned." M. GIJSELS, Z. MGALLA and L. WAMBURA, "'No Child to Send': Context and Consequences of Female Infertility in Northwest Tanzania," 219. Return of bridewealth is an act of finally withdrawing marital consent. Before the advancement of science, infertility was attributed to the women's failure to conceive. But as Baughan explains: "Medical science, of course, has come a long way, and though we don't know everything about birth and conception, we're aware of many physical causes of infertility, some of which are attributable to men. In fact, Glass and Ericsson estimate that 40-50 percent of infertility is attributable wholly or in part to a problem in the male." J. BAUGHAN, *A Hope Deferred, a Couple's Guide to Coping with Infertility*, 20. This kind of blame exists in less developed societies when there is no scientific proof of the sterile couple. Van De Velde explains this is an injustice that affects mostly women when he wrote: "The injustice of blaming the wife as a 'barren woman' – for guilt and blame are concepts which, however inadequate and painful, almost always appear, openly or implicitly, when spouses become aware that their married is sterile, against their fervent wish. Such a reproach is especially cruel, for it tends to cause inferiority complexes in the women who are sensitive, diffident and endowed with deep maternal impulses." T. H. VAN DE VELDE, *Fertility and Sterility in Marriage, their Voluntary Promotion and Limitation*, 170.

¹¹⁷ Cf. A. HASTINGS, *Christian Marriage in Africa*, 35. In the Western world, divorce is mainly a result of all forms of abuse, unhappiness in marriage, or irreconcilable differences. Byaruhanga Akiiki also indicates infertility as one of the reasons why marital partnership in Ugandan societies could be interrupted. Cf. A. B. T. BYARUHANGA AKIIKI, "Aspects of Bantu Marriage," 267. See also M. DEMUELENAERE, *The Canonical Significance of Marital Fidelity Among the Bantu of South Africa*, 53. While considering the effect of sterility on couples generally in sub-Saharan Africa from an anthropological point of view, Boerma and Mgalla concluded: "Anthropologic and demographic studies indicate that the majority of 'visible' infertility is likely to be associated with female factors. Women who do not bear children are often divorced, have multiple life-time partners, and are therefore apt to have sexual intercourse with fertile partners at some point in their lives [...] there is ample evidence that infertile women are paying a heavy price for not being able to fulfil the reproductive expectations of their husband, family, clan and community at large." J. T. BOERMA and Z. MGALLA, "Introduction," in J. T. BOERMA and Z. MGALLA (eds.), *Women and Infertility in Sub-Saharan Africa: a Multi-Disciplinary Perspective*, 13-23, here on 15-16. In the same work, Mayaud suggested: "Fallopian tube damage, or tubal factor infertility (TFI) might have a predominant role among the causes of female infertility in Africa." See P. MAYAUD, "The Role of Reproductive Tract Infections," 75.

¹¹⁸ J. S. MBITI, *African Religions and Philosophy*, 145. The author mentions other causes of divorce as: continued cruelty from the husband, the practice of magic and witchcraft on the part of the wife,

In addition, Hastings makes an accurate conclusion: "As polygamy grows less acceptable, childlessness is more likely to lead to divorce."¹¹⁹ He further suggests that part of the solution could be that "sterility should be regarded as a ground for nullity, comparable with impotence" so that marriage should be declared null "when no child arrives and the union breaks down" or childless marriages could be treated as *ratum* but not *consummatum* and therefore annulled for that reason. In addition, the author suggests that until the birth of the first child, marriage should be treated simply as "marriage catechumenate."¹²⁰ Hasting's suggestions fall short of realizing that Christianity should evangelize culture and not vice versa.¹²¹

It can be concluded that childlessness is a major cause of divorce and remarriage. Even when these practices are accepted in some cultural groups as remedies to childlessness, they go against the unity and indissolubility of marriage and do not solve the problem of childlessness due to sterility. A question can be asked whether Ugandan

and continued unfaithfulness on the part of either partner. For more information on the levirate customs in Uganda, see B. KISEMBO, L. MAGESA and A. SHORTER, *African Christian Marriage*, 78-80. These authors also indicate: "Infertility and sterility block the channel through which the stream of life flows; they plunge the person concerned into misery, they sever him from personal immortality, and threaten the perpetuation of the lineage" (105); see also L. MAGESA, *African Religion, The Moral Traditions of Abundant Life*, 143.

¹¹⁹ A. HASTINGS, *Christian Marriage in Africa*, 39. The suggestion of making sterility a ground for nullity is not acceptable, because what matters for validity is the giving of the right to the acts that are apt to generation rather than the actual generation of children. As Bassett observed: "The modern community does not support divorce for sterility, yet group pressure helps to create an atmosphere which divides childless couples." W. T. BASSETT, *Counseling the Childless Couple*, 92.

¹²⁰ A. HASTINGS, *Christian Marriage in Africa*, 88.

¹²¹ The Church has always taught that Christianity should evangelize culture. This notion has been expressed in the concept of "inculturation;" as Paul VI emphasized: "Evangelization is to be achieved, not from without as though by addition some decoration or applying a coat of color, but in depth, going to the very center and roots of life." Cf. PAUL VI, Apostolic Exhortation on Evangelization in the Modern World *Evangelii nuntiandi*, December 8, 1975, in AAS, 68 (1976), 5-76; Engl. transl. in FLANNERY 2, 711-761 here on 719. Lymo has devoted the entire chapter of his dissertation on "Evangelization in a Polygamous Society, Canonical and Pastoral Approaches." For details on how Christianity should evangelize mission societies, see P. B. LYMO, *Polygamy in Sub-Saharan Africa and the Munus Docendi: Canonical Structures in Support of Church Doctrine and Evangelization*, 189-272.

communities have any solutions which the Church can approve. As these solutions are not readily available, some sterile couples continue their endless search for a child, while turning to the Church for a solution; others still resort to polygamy.

4.2.2.2 — Polygamy

Another form of marriage practiced in Uganda is polygamy. Polygamy is often understood as a form of marriage which takes on two forms. First, one is the union of a man with two or more wives, which is polygyny. Second, one is polyandry, where a woman is married to two men at the same time.¹²² The latter case is unheard of in Ugandan societies. This work employs the word “polygamy” to refer to a union where a man is married to two or more women at the same time.¹²³ A further distinction can be made: polygamous marriage can be simultaneous, when at a given time, a man has two or more wives, living in one or several residences. Secondly, a polygamous marriage can be successive, where a man divorces his wife and marries other women.¹²⁴

Traditional and modern Christian families are faced with the dilemma of remaining childless or allowing the man to marry another woman. In some instances, the barren woman allows the husband to bring another wife into her home. She often blames

¹²² L. P. MAIR, *African Marriage and Social Change*, viii. Mair also makes these distinctions, but affirms that the same distinctions are unknown to Africa. She therefore uses the term “polygamy” in the commonly used sense of one man marries two or more wives at the same time.

¹²³ Cf. J. S. MBITI, *African Religions and Philosophy*, 142. The semantic distinction of polygyny and polyandry is rarely made by African authors. It is therefore convenient to use the general term polygamy to refer to the most common form of this practice where a man takes on two or more wives.

¹²⁴ B. KISEMBO, L. MAGESA and A. SHORTER, *African Christian Marriage*, 97. These authors explain the distinction between simultaneous and successive polygamy. According to E. Hillman, simultaneous polygamy does not necessarily involve divorce and remarriage as it is the case with successive/consecutive polygamy. For a detailed discussion on the two kinds of polygamy, see E. HILLMAN, *Polygamy Reconsidered*, New York, Orbis Books, 1975, 10-11. One example of simultaneous polygamist is King Mswati of Swaziland, a 45-year old monarch who marries every year, and he has 15 official wives. See <http://www.independent.co.uk/news/world/africa/king-of-swaziland-to-marry-his-15th-wife-8820432.html>.

herself for not bearing children for the family she has married into, and even if it is against her will, she allows this option.¹²⁵ When this happens, she retains the “status” of first wife, the man’s first choice. Then she joins her husband in grieving her situation and praying that the new wife produces children for the family.¹²⁶ This is an indirect way in which sterility seriously disturbs the partnership of the whole of life.

Hastings made this observation: “The normal response to childlessness was not divorce but the taking of a second wife.”¹²⁷ This means that in cases when the man is infertile, the family allows one of his brothers to sleep with his wife occasionally so that a child can be born.¹²⁸ As P. Kanyandago explains, the reason for this permissiveness is the belief that “children belong to the family of the man” and not of the woman.¹²⁹ Consequently, the children born are considered to belong to the infertile or impotent husband. This fact is kept as a secret and will be little known outside the family.

¹²⁵ In their study about the cultures of northeastern Uganda, Laughlin and Allegeier found out: “Most women value co-wives as, working as a unit, they reduce the overall labor for which each is responsible. An older wife also feels that additional wives offer a sort of ‘insurance’ against the time when she may become seriously ill or too old to work. Co-wives often dwell in the same home and form a team in many productive activities. The first wife is considered the senior or ‘big’ wife and to a certain extent has authority of ‘little’ wives.” See C. D. LAUGHLIN and E. R. ALLEGEIER, *An Ethnography of the So of Northeastern Uganda*, vol. 2, New Haven, Human Relations Area Files, Inc., 1979, 245. L. Magesa points out another reason where, in addition to sterility, a wife may suggest her husband get another wife to help with household work. This often happens when the wife becomes sickly or if she is advancing in age. However, the status of the “old” wife remains higher than that of newer ones. See L. MAGESA, *African Religion, the Moral Traditions of Abundant Life*, 138-139.

¹²⁶ L. MAGESA, *African Religion, the Moral Traditions of Abundant Life*, 138-139.

¹²⁷ A. HASTINGS, *Christian Marriage in Africa*, 35. The same conclusion was reached by Kanyandago, while analyzing the causes of polygamy in African societies. Cf. P. KANYANDAGO, *Evangelizing Polygamous Families, Canonical and African Approaches*, 155. He confirms that sterility, especially in women, “induces the affected African husband to resort to divorce or to take a second wife.”

¹²⁸ Cf. P. KANYANDAGO, *Evangelizing Polygamous Families, Canonical and African Approaches*, 155.

¹²⁹ Ibid. All Ugandan societies are patrilineal (also called patrilocal). The lineage of children follows the father, grandfather, etc. This creates a special problem when only men are making decisions on the fate of a childless wife, and they often side with the man unless a contrary view is obvious, e.g. impotence.

In the Ugandan traditional cultural setting, polygamy was practiced mostly by kings, chiefs, and wealthy people in society. Igneweka believes that polygamy is currently viewed as such when he writes about Nigeria: "While within the African traditional set up, polygamy has evolved as an accepted, honorable and respected form of marriage"¹³⁰ and that it is of a higher status than monogamy.¹³¹ Presently, polygamy is outdated and might cause conflict in the family. It is "most of kings, chiefs, and other leading people" that had many wives.¹³² Among the Bantu, Byaruhanga Akiiki observed: "Those who maintain polygamy are usually men of great social status, great influence and having positions of leadership. In these ranks, we find kings, chiefs, presidents, ministers, rich men, influential leaders, intellectuals, businessmen and many more talented members of society. In fact, traditional leadership has for many generations been

¹³⁰ The pride of a polygamous man lies in his show of wealth where he has many estates and each wife runs one of them. For women, it is enough pride to marry a rich man and to share in the wealth. A. Hastings discusses some examples which associate polygamy with the rich A. HASTINGS, *Christian Marriage in Africa*, 40. Modern polygamy has taken another shape: a man with a home in town and other houses upcountry on farms will look for other women to manage these other farms. Is this an effect of urbanization or tradition? W. Uhai is of the view that young people in Africa today reject polygamy because it "leads to infidelity, competition among family members, and inequality with regard to respect of wives by the husband, lack of finances to educate many children, and abuse of children by their step family members." W. UHAI, "The Value of Community in Marriage: A Moral Challenge to the Christian Family in the Light of *Familiaris Consortio*," 27.

¹³¹ See F. E. IGBNEWEKA, *The Sacrament of matrimony and Childlessness in Edo Pastoral Problem and Possible Solutions*, 110. The author discusses women infertility a serious pastoral problem in the Edo society of Nigeria and the impact of infertility on 105-113. See 108-109. See also A. HASTINGS, *Christian Marriage in Africa*, 28 and A. SHORTER, *African Culture and Christian Church*, 172-173.

¹³² A. HASTINGS, *Christian Marriage in Africa*, 36. Cf. J. S. MBITI, *Love and Marriage in Africa*, 82-190. The author appreciates polygamy as one of the remedies of sterility in Africa and does not run short of recommending it even among Christians. As he himself immediately acknowledges, this practice is outdated; in the present educated Africa, the reasons for polygamy are no longer relevant. In Uganda, few people practice it, but all societies in general do not approve of it. Most people are forced into it by serious reasons like the sterility of the wife. Lymo, in his study about polygamy in sub-Saharan Africa acknowledged the existence of "conflict, disharmony and perpetual strife within polygamous families." See P. B. LYMO, *Polygamy in Sub-Sahara Africa and the Munus Docendi, Canonical Structures in Support of Church Doctrine and Evangelization*, 49.

primarily in the hands of polygamous families and men.”¹³³

With few statistics available, it can still be affirmed that only a few men consider taking a second wife unless there is a grave cause like sterility. In northern Uganda, most childless men opt for marrying a second wife rather than seeking divorce.¹³⁴ Polygamy was one of the means that ensured the extension of the family and to have more relatives through children and their future spouses. In general, authors agree that sterility is a major cause of polygamy in African communities. Mbiti is more categorical when he asserts:

If the first wife has no children, or only daughters, it follows almost without exception that her husband will add another wife, partly to remedy the immediate concern of childlessness, and partly to remove the shame and anxiety of apparent unproductivity. To be productive, in terms of having children, is one of the essential attributes of being a mature human being. The more productive a person is, the more he contributes to the existence of society at large.¹³⁵

Some authors have supported the practice of polygamy for childless Christian marriages. They argue that polygamy enables childless marriages to survive and prosper

¹³³ A. B. T. BYARUHANGA AKIHI, “Aspects of Bantu Marriage,” 365. It should be noted that polygamy is more than having many sexual partners. The list which this researcher presents points to a situation where one is seen as having many possessions and has resources to look after many wives. When they beget children, they will be part of his “possessions.” This *status quo* does not consider the needs and rights of women, since they will be counted among possessions of that rich man. In the traditional setting of kingship, all women are considered to belong to the king, and he has the power to pick any of them as another wife at the time he chooses. Such practices are questionable at present even among the Ugandan societies, on the basis of human rights especially women’s rights and the prevalence of the HIV-AIDS pandemic. In his study of marriage and family in East Africa, A. Shorter concluded: “There is no doubt that the traditional patterns of marriage and family life in East Africa are being radically changed at the present moment.” See A. SHORTER, *East African Societies*, London & Boston, Routledge & Kegan Paul, 1974, 66. These changes in marriage structures include the movement away from customary marriage to church marriage and the new outlook on marital fertility.

¹³⁴ See C. D. KIHANGIRE, *Marriage Customs of the Lango Tribe (Uganda) in Relation to Canon Law*, 132.

¹³⁵ J. S. MBITI, *African Religions and Philosophy*, 142. See also B. KISEMBO, L. MAGESA and A. SHORTER, *African Christian Marriage*, 74. These authors on African marriage conclude: “Childlessness, therefore, is certainly a motive for polygamy, although, as we shall now see polygamy is no longer bound to traditional forms.”

without divorce. They believe that the basic unit of the conjugal family is proving compatible with both the traditional model of marriage as well as the Christian ideal, coupled with education and social developments in the Western world.¹³⁶ For example, Hastings called for an evaluation of polygamy and for an eventual acceptance of this practice in the Church. He made this recommendation based on the existence of “simultaneous stable unions contracted under a form of law, recognized as marriage by the people of the country, entered upon with a lifelong intention, and providing both a permanent home and legitimate status for the offspring.”¹³⁷ This suggestion is against the unity and indissolubility of marriage.

It can be concluded that Ugandans regard polygamy and levirate marriage¹³⁸ as solutions to childlessness that is caused by sterility. These practices seem to stabilize marriage and family life. However, in present day Uganda, where education and medical services are becoming increasingly available, those arguments that favor these practices as possible solutions to sterility and childlessness are being rendered irrelevant. Besides,

¹³⁶ These arguments have been raised by researchers such as E. KATAHWEIRE, “The Position of women in Kinyankore culture, with particular reference to the Church of Uganda in Ankole,” 208. See also J. S. MBITI, *African Religions and Philosophy*, 143. Widow inheritance for the sake of getting a child for a deceased childless man is also found among the Lugbara of Northwestern Uganda. See J. MIDDLETON, *The Lugbara of Uganda*, New York, Holt, Rinehart & Winston, 1965, 58-60.

¹³⁷ A. HASTINGS, *Christian Marriage in Africa*, 73. The above suggestion by Hastings that Christian and pastoral practice should accept this custom is misleading. Even if marriage is a natural reality and people have a natural right to marry (c. 1058, *CIC* 1983), when they become Christians, their marriage is regulated by the Church, and it follows the intention of the Creator “from the beginning.” The criterion for such recognition should not be based on the fact that “people of that country” recognize it as true marriage. This is one area where Christianity evangelizes culture and not vice versa. Such a recommendation does not conform to the understanding of the properties of marriage, its unity and indissolubility (c. 1056, *CIC* 1983).

¹³⁸ From its Latin root, the word “levirate” comes from “levir,” which means brother-in-law. “It refers to marriage of a man with the widow of his deceased brother in the event of the latter’s dying childless. The widow had to marry again within the family (Deut. 25: 5-20).” W. HOEKSTRA, “Marriage in Sacred Scripture,” in H. F. DOOGAN (ed.), *Catholic Tribunals, Marriage Annulment and Dissolution*, Newtown, NSW Australia, E. J. Dwyer, 1990, 14-24, here on 16.

there is no solution to sterility. The alternatives available can only help the spouses to become parents, but not to have a biological child. A medical inquiry is recommended to couples before they resort to polygamy or widow inheritance.

4.2.2.3 — Widow Inheritance

Though not popular, widow inheritance has been practiced in many Ugandan societies over the past centuries. This custom is evoked when a man dies young or without having any offspring. In case he leaves young children behind, the wife has no means of rearing the children unless one of her brothers-in-law marries her as a second wife.¹³⁹ In this case, she remains in her late husband's house and inherits his estates; the new husband remains an overseer and is culturally allowed to produce children with her on behalf of his late brother.¹⁴⁰ That is how she would be assured of having the material or financial means to raise her children. As Kihangire observes, this custom is no longer acceptable. Widows marry their brothers-in-law only when they want to.¹⁴¹

Africa is a fertility-oriented continent. Dying childless is still considered one of the curses that God has put on a family.¹⁴² Consequently, this curse is removed by a

¹³⁹ Widow inheritance is not an unknown concept in Christianity. Cf. Matthew 22: 24.

¹⁴⁰ This custom is also practiced in some West African societies, as Uka reveals in his study. See E. M. UKA, "The African Family and Issues of Women's Infertility," 192. Wherever this practice is culturally accepted, it is believed that children born by this union will belong to the deceased father so that he is not cut off from the chain of life. See also J. S. MBITI, *African Religions and Philosophy*, 144. Cf. L. MAGESA, *African Religion, the Moral Traditions of Abundant Life*, 141; L. MAGESA, "The Future of Inculturation in Eastern Africa," in P. TURKSON and F. WIJSEN (eds.), *Inculturation: Abide by the Otherness of African and the Africans*, Kampen, J. H. Kok, 1994, 65-66. However, this practice exists only in few primitive communities of Ugandan society. With the awareness of the HIV/AIDS disease, the practice has slowly faded away in more enlightened families.

¹⁴¹ Cf. C. D. KIHANGIRE, *Marriage Customs of the Lango Tribe (Uganda) in Relation to Canon Law*, 124.

¹⁴² A. B. T. BYARUHANGA-AKIIKI, "Aspects of Bantu Marriage," 258. See also E. KATAHWEIRE, "The Position of women in Kinyankore culture, with particular reference to the Church of Uganda in Ankole," 208.

“levirate” union, whereby a man catered to the procreative needs of his brother’s widow or widows of close relatives and siblings. Among the traditional Nilo-Hermits, “the heir inherits all wives [...] older wives are usually inherited by their deceased husband’s brothers and only the younger wives are inherited by the eldest son. A widow can, if she wishes, remain in the family of her deceased husband without being inherited by an heir.”¹⁴³

Widow inheritance provided for widows who had nobody to depend on. It is for this reason that the following findings of Magesa are applicable to the Ugandan situation:

Barrenness is universally abhorred among African women and it constitutes the greatest fear and shame for them. Impotence has similar psychological and moral effects among men. In both cases, everything possible is done to try to reverse the situation. For example, among the Lango of Uganda, impotence is interpreted as a curse or a mishandling during birth, and must be undone. The rite to ‘undo’ impotence in a man among the Lango people requires him to be ‘reborn.’¹⁴⁴

With the arrival of Christianity, this practice, which was traditionally tolerated, is considered adultery and is no longer acceptable. Besides, inheritance of widows carries a risk of contracting diseases such as HIV/AIDS.¹⁴⁵

It can be concluded that even though widow inheritance is no longer a socially acceptable practice, it still exists. Christianity and the coming of Western education have

¹⁴³ J. C. D. LAWRENCE, *The Iteso, Fifty Years of Change in a Nilo-Hamitic Tribe of Uganda*, 230. Such practices are dated in the pre-colonial era and are no longer practiced.

¹⁴⁴ L. MAGESA, *African Religion, The Moral Traditions of Abundant Life*, 144. The author gives details of how this “re-birth” is done, and this is not relevant to the present world. However this practice reveals how traumatic involuntary childlessness is among that section of the Ugandan people, and the psychological impact it has on other Ugandans who share the same view. If medical help is given to these couples in treating their infertility, it would no longer be necessary to resort to this form of divination and would lessen the trauma of being childless.

¹⁴⁵ It is for this reason, and also for promoting women’s rights that marriage and Divorce Bill (2009) categorically bans widow inheritance. See section 13(1): “Widow Inheritance is prohibited;” (2) “A man shall not marry a widow through the custom or practice of widow inheritance.” Since this bill stalled in parliament and discussions continue informally, it is hoped that when it finally passes, it will be a breakthrough away from the long cultural practice. Again, it will yield results only when there are increased efforts to help women stand on their own at the death of their husbands.

enabled people to consider it irrelevant and unacceptable. This is because it perpetuates polygamy and does not fit into the notion of *consortium totius vitae* as prescribed in c. 1055, *CIC* 1983. The Church considers these practices unacceptable and sinful. For this reason, a question could be raised as to what alternative solutions the Church offers to sterile couples. This question is answered in the following section.

4.3— Recent Teaching of the Church on Sterility and Infertility Treatment

The Church's response to questions raised by sterile couples is contained in her recent documents. These documents were addresssd to the Church in general and are applicable in the Ugandan context. A specific response from the local hierarchy on the subject of sterility is absent. It is the universal teaching and guidelines that should be applied in order to address both the traditional and scientific means employed by childless couples in order to have children. The Church has always claimed its right and obligation to guide her members in all matters that affect their life in society.¹⁴⁶ With the advancement of procreative technology (ARTs), the Church has evaluated the available scientific means and offered guidance as to which means are licit and illicit. This section addresses the Church's response to modern scientific efforts to alleviate the problem of infertility among sterile couples. The papal and magisterial documents are useful in understanding the Church's teaching on sterility and infertility treatment during the period.

4.3.1 — Papal Documents after the Second Vatican Council

Popes Paul VI and John Paul II have determined the Church's teaching on sterility and the means of infertility treatment. Paul VI's teaching on the fruitfulness of marriage

¹⁴⁶ For example, in the introduction to *Donum vitae*, the Congregation notes that it is "by virtue of its evangelical mission and apostolic duty, the moral teaching corresponding to the dignity of the person and to his or her integral vocation" that this instruction was issued to guide the faithful in matters regarding biomedical questions. See also, *Humanae vitae*, no. 4, in FLANNERY 2, 398-399.

which is outlined in *Humanae vitae* (no. 9) reflects the Second Vatican Council's pastoral constitution *Gaudium et spes* (no. 51). John Paul II's apostolic exhortation *Familiaris consortio* comprises his teaching on sex, marriage, and the family. Francis' teaching on sterility in marriage is also considered. This section also considers the documents which were written by Roman Curia. Reference is also made to the *Charter for the Rights of the Family* and the *Catechism of the Catholic Church*.

4.3.1.1 – Teaching of Paul VI

Paul VI's encyclical letter on the regulation of births *Humanae vitae* emphasized the Church's competency and authority to interpret the principles of natural moral law to the faithful.¹⁴⁷ It is for this reason that the pope asserted that God's will, which was communicated to the Church through the apostles, makes the Church authentic guardians and interpreters of the whole moral law and that the faithful should observe it for their salvation.¹⁴⁸ Thus, at the time the world was discussing the legality of artificial contraception and embracing it for the regulation of births, the pope cautioned the world on the immorality and illegality of the practice.

In this encyclical letter, the pope gives two reasons for the objection of artificial contraception methods. First, that these artificial contraception methods suppress the

¹⁴⁷ *Humanae vitae* no. 4 asserts the Church's competency in the following words: "Let no Catholic be heard that the interpretation of natural moral law is outside the competence of the Church's Magisterium. It is in fact indisputable, as Our predecessors have many times declared, that Jesus Christ, when He communicated His divine power to Peter and the other Apostles and sent them to teach all nations His commandments, constituted them as the authentic guardians and interpreters of the whole moral law, not only, that is, of the law of the Gospel but also of the natural law, the reason being that the natural law declares the will of God, and its faithful observance is necessary for men's eternal salvation." FLANNERY 2, 398-399.

¹⁴⁸ Ibid. The pope makes a footnote reference to the Gospel according to Matthew 7:21. This means that it is only those who do the will of God that will be saved because "natural law declares the will of God."

union of husband and wife.¹⁴⁹ Second, spacing of births should be according to the natural law.¹⁵⁰ Likewise, the unnatural means that are used to assist conception are rejected for the same reasons. These means do not take into consideration the unitive purpose and significance of procreation which are inherent to marriage and the marital act.¹⁵¹ Therefore, any process that interrupts the generative process already begun is not permitted.¹⁵²

Paul VI's teaching in *Humanae vitae* was intended to address the prevalent nature of the artificial means of regulating births. However, the principles he laid down regarding respect for human life sum up what the Church teaches about fertility treatment.¹⁵³ Therefore, any means of reproductive technology that alienate the conjugal act from its procreative end or seek to replace the same act are to be rendered illicit.¹⁵⁴ Medical science should, by the study of natural rhythm succeed in determining a sufficiently secure basis for the chaste limitation of offspring¹⁵⁵ or enable the conception

¹⁴⁹ Ibid., no. 11, in FLANNERY 2, 402-403.

¹⁵⁰ Ibid: "God has wisely ordered laws of nature and the incidence of fertility in such a way that successive births are already naturally spaced through the inherent operation of these laws."

¹⁵¹ Ibid., no. 12. See also *Gaudium et spes*, no. 51, in FLANNERY 1, 953-954. The pope makes direct reference to this text of the Second Vatican Council and asks all civil authorities to care for life from the moment of its conception to natural death.

¹⁵² *Humanae vitae*, no. 14: "Therefore we base our words on the first principles of a human and Christian doctrine of marriage when We are obliged once more to declare that the direct interruption of the generative process already begun and, above all, all direct abortion, even for therapeutic reasons, are to be absolutely excluded as lawful means of regulating the number of children" in FLANNERY 2, 404.

¹⁵³ The pope outlined doctrinal principles in Ibid., nos. 7-15, in FLANNERY 2, 400-405.

¹⁵⁴ The pope also clarified what the Church still considers licit treatment of bodily diseases: "But the Church in no way regards as unlawful therapeutic means considered necessary to cure organic diseases, even though they also have a contraceptive effect, and this is foreseen – provided that this contraceptive effect not directly intended for any motive whatsoever" (Ibid., no. 15, in FLANNERY 2, 404-405).

¹⁵⁵ *Humanae vitae*, no. 24, in FLANNERY 2, 410. The pope taught that there should be no contradiction between two divine laws – that which governs the transmitting of life and that which governs the fostering of married love. See also PIUS XII, Address to Family Campaign and other family

of offspring where there is infertility.

It can be concluded that even if the encyclical letter was not about fertility treatment, it indirectly addressed the subject and offered the moral principles on which to base future discussions. *Humanae vitae* brings out two relevant points for the Ugandan Church to consider: disapproval of artificial means of fertility treatment, and a recommendation for technology which does not alienate the conjugal act from its procreative end. The local hierarchy in Uganda did not make a specific response on how to implement this encyclical letter. However, it is understood that *Humanae vitae* can be regarded as an answer to those couples who are childless and intend to use ARTs. Paul VI's encyclical letter reflects the Church's stand on moral/sexual issues as they relate to the family, and its principles have been the basis of other Church documents in later decades.¹⁵⁶

4.3.1.2 — Teaching of John Paul II

John Paul II's pontificate has, through writing and preaching, been firm in promoting the Church's stand on family and family values. He convoked the 1980 Synod of Bishops on the nature of the family in the modern world. The product of this synod was an apostolic exhortation on the Christian family in the modern world *Familiaris consortio*, and the *Charter for the Rights of the Family*.¹⁵⁷ In addition, his discourses and

associations, in AAS, 43 (1951), 859.

¹⁵⁶ For example, *Familiaris consortio* quotes *Humanae vitae* seven times, in nos: 13, 29 (three times), 31, 34 and 58; *Donum vitae*, *Digintas personae*, and JOHN PAUL II, letter to families *Gratissimam sane*, February 2, 1994, in AAS, 86 (1994), 868-925 quote the document three times each. There are other numerous authors who have commented on the document, both in favor and against its present relevance in today's society; they are not cited here.

¹⁵⁷ *Charter for the Rights of the Family*, presented by the Holy See to all persons, institutions, and authorities concerned with the mission of the family in today's world, October 22, 1983, in *L'Osservatore Romano*, Engl. ed., November 28, 1983, 3-4; also in FLANNERY 2, 908-916 (=The Charter). References in

addresses contain his stand on moral issues which include the use of reproductive technology and infertility treatment. This section highlights his teachings as expressed in these three categories of his documents, as well as the content of the new *Catechism* of the Catholic Church which was produced during his pontificate.

Like *Humanae vitae*, *Familiaris consortio* was not intended to speak about infertility treatment. However, these two documents emphasize basic principles on which the Church stands while considering this subject. Even before the document came out, the pope was concerned about childless couples and included them in the list of those who need special attention from the Church.¹⁵⁸ This text raises the awareness that is needed to help childless couples and answer their individual concerns.

In *Familiaris consortio*, the pope expressed concern about the difficulties which sterile couples face in society.¹⁵⁹ Particularly, he mentioned different forms of degrading treatment and discrimination which exist in the world today. The pope cautioned against practices which degrade human dignity: “Besides, many forms of degrading discrimination still persist today in a great part of our society that affect and seriously harm particular categories of women, as for example childless wives, widows, separated

this work are obtained from FLANNERY 2.

¹⁵⁸ JOHN PAUL II, *Message to the Christian Families*, October 25, 1980, Engl. transl. in *Origins*, 10 (1980), 322-325, here on 322. In his message, the pope said the following: “[Family ministry] includes preparation for marriage; help given to married couples at all stages of married life; catechetical and liturgical programs directed to the family; help given to childless couples; single parent families, the widowed, the separated and divorced, and, in particular to families and couples laboring under burdens like poverty, emotional and psychological tensions, physical and mental handicaps.” However, the pope did not specify what kind of help to give to childless couples. This means that particular circumstances would help determine the nature of the help needed.

¹⁵⁹ The Synod of Bishops of 2015 has acknowledged the difficulties which childless couples face and the possibility of terminating the marital partnership: “In the initial phase of married life, some experience a particular discouragement which comes from the frustration of the desire to have children. Not infrequently, this situation gives rise to a crisis which can quickly lead to separation.” SYNOD OF BISHOPS, OCTOBER 2015, *Relatio finalis*, no. 60.

or divorced women, and unmarried mothers.”¹⁶⁰

Regarding the use of modern science to determine issues of human reproduction, the pope recalled the teaching of the Second Vatican Council regarding the transmission of life and the dignity of every life. He mentioned that responsibility in transmitting life requires “mutual self-giving and human procreation in the context of true love.”¹⁶¹ To childless couples, John Paul II proposed what he calls “spiritual fecundity.”¹⁶² This means that spiritual fecundity would be an inspiration for childless couples who lose hope of having a child of their own.¹⁶³

John Paul II indicated that when medical science is employed for therapeutic procedures on the human embryo, these procedures must respect its life and integrity.¹⁶⁴

¹⁶⁰ *Familiaris consortio*, no. 24, in FLANNERY 2, 834. As noted in the previous chapter, this form of discrimination exists in many societies including Uganda. Since this is a genuine concern, the pope reaffirms the Church's concern for this form of injustice toward those who desire a child but remain childless. The Synod of Bishops on the Vocation and Mission of the Family in the Contemporary World also acknowledged the difficulties sterile women face when this synod stated: “In many places, discrimination results simply because one is a woman: the gift of motherhood is penalized rather than valued. Likewise, in some cultures, sterility in a woman is the cause of social discrimination.” SYNOD OF BISHOPS, OCTOBER 2015, *Relatio finalis*, no. 27.

¹⁶¹ *Familiaris consortio*, no. 32, in FLANNERY 2, 840. These words which are quoted from *Gaudium et spes*, no. 51 (FLANNERY 1, 955) form the basis of the Church's rejection of the scientific means which interfere with the natural transmission of life and place the life of the child into the hands of doctors and not parents.

¹⁶² John Paul II observed that even when children are not born of marriage, the bond of togetherness should be equally strong enough to uphold marriage. In fact, physical sterility may be indicative of a vocation to serve mankind in other social necessities. Cf. *ibid.*, no. 14, in FLANNERY 2, 825-826. Spiritual fecundity was implied in the recommendation of the Synod of Bishops, October 2015. In their final report to the Holy Father, the Synod Fathers explained: “The choice of adoption and foster care expresses a particular kind of fruitfulness in marriage experience, beyond cases where infertility is painfully present. This decision is an eloquent sign of welcoming life, a witness of faith and fulfilment of love, and restores a mutual dignity to a bond which has been interrupted: spouses without children and children without parents.” SYNOD OF BISHOPS, OCTOBER 2015, *Relatio finalis*, no. 65.

¹⁶³ *Familiaris consortio*, no. 41, in FLANNERY 2, 851.

¹⁶⁴ “If the embryos are living, whether viable or not, they must be respected just like any other human person; experimentation on embryos which is not directly therapeutic is illicit.” Cf. *Donum vitae*, II, 4, Engl. transl. in *Origins*, 16 (1987), 706; JOHN PAUL II, “Address to a Meeting of the Pontifical Academy of Sciences,” October 23, 1982, in *Insegnamenti di Giovanni Paolo II*, 2 (1982), 889-893. In this address, the pope stated: “I condemn, in the most explicit and formal way, experimental manipulations of the human

Likewise, its survival must be assured. In his address to the World Medical Association, the pope taught that only therapeutic reproductive procedures are permissible.¹⁶⁵ Regarding the practice of disposing unwanted embryos, the pope warned that this would be tantamount to abortion, since the embryos consist of human life. Therefore, only those experiments that aim at saving life are to be permitted.¹⁶⁶

The second source of the Church's teaching on infertility treatment under John Paul II's pontificate is *The Charter for the Rights of the Family*.¹⁶⁷ Notable in this charter is the condemnation of abortion and a call to the respect of life at all stages of its development. On the scientific means of infertility treatment, *The Charter* categorically specifies: "Respect of the dignity of the human being excludes all experimental manipulation or exploitation of the human embryo."¹⁶⁸

In addition, *The Charter* declares as illicit all acts that manipulate human life even

embryo, since the human being, from conception to death, cannot be exploited for any purpose whatsoever."

¹⁶⁵ "A strictly therapeutic intervention whose explicit objective is the healing of various maladies such as those stemming from chromosomal defects will, in principle, be considered desirable, provided it is directed to the true promotion of the personal well-being of the individual without doing harm to his integrity or worsening his conditions of life. Such an intervention would indeed fall within the logic of the Christian moral tradition." JOHN PAUL II, *Discourse to the Participants in the 35th General Assembly of the World Medical Association*, October 29, 1983, in AAS, 76 (1984), 389-395.

¹⁶⁶ While addressing a Pro-Life Convention (1982), John Paul II said: "The practice of keeping alive human embryos *in vivo* or *in vitro* for experimental or commercial purposes is totally opposed to human dignity. In the case of experimentation that is clearly therapeutic, namely, when it is a matter of experimental forms of therapy used for the benefit of the embryo itself in a final attempt to save its life, and in the absence of other reliable forms of therapy, recourse to drugs or procedures not yet fully tested can be licit." JOHN PAUL II, "Address to the Participants in the Convention of the Pro-Life Movement," December 3, 1982, in *Insegnamenti di Giovanni Paolo II*, 3 (1982), 1509-1513, here on 1511.

¹⁶⁷ *The Charter* was not signed by an individual person or authority. It is possible that it was produced by one or more dicasteries or authorized by the pope.

¹⁶⁸ *The Charter*, art. 4 (b), in FLANNERY 2, 912.

before birth.¹⁶⁹ Therefore, “all interventions on the genetic heritage of the human person that are not aimed at correcting anomalies constitute a violation of the right to bodily integrity and contradict the good of the family.”¹⁷⁰ Though indirectly, *The Charter* also addresses the plight of those who completely lose hope of conceiving a child to consider adoption. Particular attention was called for adopting orphaned children in order to offer them adequate protection and means of livelihood.¹⁷¹

4.3.1.3 — Teachings of Francis

In his Post-Synodal apostolic exhortation on love in the family *Amoris laetitia*,¹⁷² Francis provided a teaching on marriage and sterility. This teaching is applicable to the Ugandan context. In this document, the pope raised three points that respond adequately to questions of marriage and sterility in the Ugandan context. First, he acknowledged that some couples enter marriage wanting children at all costs. Second, he emphasized indissolubility of marriage. Third, he advised sterile couples to consider adoption.

While referring to the *Relatio finalis* of the Synod of Bishops of October 2015 (n.

¹⁶⁹ Ibid: “Respect of the dignity of the human being excludes all experimental manipulation or exploitation of the human embryo.”

¹⁷⁰ Ibid., art. 4 (c), in FLANNERY 2, 912-913.

¹⁷¹ Ibid., art. 4 (f), in FLANNERY 2, 913: “The State, with regard to foster-care or adoption, must provide legislation which assists suitable families to welcome into their homes children who are in need of permanent or temporary care. This legislation must, at the same time, respect the natural rights of the parents.” In addition, the Church teaches that “children need security. They need a stable home. Marriage is the institution most likely to provide that stability. The couple who take their marital commitment seriously see each other as non-substitutable partners for life. Couples who live together without a formal commitment to stay together cannot offer their children the same stability.” See A. SUTTON, *Infertility and Assisted Conception, What you Should Know: Answers to Questions About Medical Techniques of Assisted Conception*, 31. The author also indicates that a child should have the right and privilege of having genetic parents; this helps the two to bond together in a relationship of mutual trust, acceptance, and oneness (32).

¹⁷² FRANCIS, Post-Synodal Apostolic Exhortation on Love in the Family *Amoris laetitia*, March 19, 2016, http://w2.vatican.va/content/francesco/en/apost_exhortations/documents/papa-francesco_esortazione-ap_20160319_amoris-laetitia.html (April 8, 2016).

65), Francis addressed “those situations where a child is desired at any cost”¹⁷³ but the spouses have remained childless. To those couples who are childless due to sterility, the pope emphasized: “We know that this can be a cause of real suffering for them.”¹⁷⁴ The Church in Uganda needs to acknowledge the suffering caused by sterility as a step toward finding the means of accompanying childless couples in their search for a child.

After acknowledging the suffering caused by sterility, Francis mentions the property of indissolubility of marriage. He wrote: “Marriage was not instituted solely for the procreation of children [...] motherhood is not a solely biological reality, but is expressed in diverse ways.”¹⁷⁵ The pope’s statement applies specifically to the Ugandan context when he mentions: “Even in cases where, despite the intense desire of the spouses, there are no children, marriage still retains its character of being a whole manner and communion of life, and preserves its value and indissolubility.”¹⁷⁶

Regarding adoption, Francis mentions at least three benefits of adopting a child. First, he mentions that adoption is an act of generosity because it gives a family to a child who has none. Secondly, adoption “expresses a particular kind of fruitfulness in marriage experience, and not only in cases of infertility.”¹⁷⁷ Thirdly, adoption brings personal self-fulfilment. Because of the above, the pope makes a personal appeal to childless couples to consider adoption: “I encourage those who cannot have children to expand their

¹⁷³ *Amoris laetitia*, no. 180.

¹⁷⁴ *Ibid.*, no. 178.

¹⁷⁵ *Ibid.* In this statement, the pope makes reference to: FIFTH GENERAL CONFERENCE OF THE LATIN AMERICAN AND CARIBBEAN BISHOPS, *Aparecida Document*, (29 June 2007), no. 457.

¹⁷⁶ *Ibid.*

¹⁷⁷ *Amoris laetitia*, no. 180. This means that traditional practices such as polygamy, widow inheritance, or having children out of wedlock contravene the indissolubility of marriage.

marital love to embrace those who lack a proper family situation.”¹⁷⁸

From these papal documents, it can be concluded that the Church does not approve the use of artificial means of infertility treatment. At the same time, she promotes the family of a man and woman, who unite in an indissoluble bond, even if they are childless. John Paul II condemned the exploitation of the embryo which violates the body, and he equated it to abortion except in therapeutic procedures. Church authorities in Uganda did not provide for the implementation of the papal documents by Paul VI and John Paul II. Instead, they taught about abortion and ARTs in their pastoral letter.¹⁷⁹ The traditional means of having children in the case of spouse's sterility of a spouse have not been addressed formally in a pastoral document.

4.3.2 – Documents from the Congregation for the Doctrine of the Faith (CDF)

The Congregation for the Doctrine of the Faith (CDF) has written at least two instructions in recent years regarding the means of treating infertile couples. The instruction On the Respect for Human Life *Donum vitae*¹⁸⁰ addresses questions that have been raised regarding ARTs. In 2008, CDF wrote another instruction On Certain Bioethical Questions *Dignitas personae*.¹⁸¹ These two documents summarize the teaching of the Church and offer a response to questions that are still being asked in Uganda and

¹⁷⁸ Ibid., no. 179.

¹⁷⁹ Cf. UGANDA EPISCOPAL CONFERENCE, pastoral letter, *The Evil of Abortion*, Kisubi, 1998.

¹⁸⁰ The background of this document as given by C. A. Tauer is that in 1897, the Holy Office responded “no” to the question: “May artificial insemination of a woman be done?” There was no explanation given; however, theologians assumed that this was related to the use of masturbation in the process. Pius XII had condemned artificial insemination in his address to the Fourth Congress of Catholic Doctors in 1949. Cf. C. A. TAUER, “*Donum vitae*: Dissenting Opinions on the ‘Simple Case’ of *in vitro* fertilization,” 127-128.

¹⁸¹ CONGREGATION FOR THE DOCTRINE OF THE FAITH, Instruction on Certain Bioethical Questions *Dignitas personae*, September 8, 2008, in AAS, 100 (2008), 858-887, Engl. transl. *Origins*, 38 (2008), 437-449 (= *Dignitas personae*).

other societies today. A brief analysis of these two documents brings out the nature and reasons for the Church's stand on the artificial means of overcoming the hurdle of childlessness and coping with sterility.

4.3.2.1 — Instruction *Donum Vitae* (1987)

The instruction *Donum vitae* is divided into three parts. The first part considers respect for human life from its first moment of existence. The second part deals with the moral questions regarding technical interventions with human procreation. The final part analyzes the relationship between the morality of artificial reproduction and civil liberties in experimenting with human embryos and fetuses. It also discusses the legitimacy of techniques used in artificial procreation. The analysis below deals with the first and the third part, since these relate directly to sterility and the use of ARTs.

The Church teaches that science should always be at the service of life.¹⁸² Yet, some scientific procedures that do not respect life but destroy it are considered reprehensible. One such procedure is the production and destruction of human embryos. CDF wrote: "The implementation of procedures of artificial fertilization has made possible various interventions upon embryos and human fetuses."¹⁸³ The aim of this scientific endeavor is to advance the knowledge of diagnosis and therapy, but it also has commercial purposes. Some of these human embryos are allowed to grow into babies, but others are frozen for scientific experimentation and are later discarded.¹⁸⁴ It is for this

¹⁸² *Humanae vitae*, no. 24, FLANNERY 2, 410.

¹⁸³ *Donum vitae*, I, no. 1, Engl. transl. in *Origins*, 16 (1987), 699.

¹⁸⁴ *Ibid.*, I, no. 4, Engl. transl. in *Origins*, 16 (1987), 700. The Congregation followed the teaching of John Paul II on scientific experimentation on embryos. Cf. JOHN PAUL II, "Address to the Participants in the Convention of the Pro-Life Movement," December 3, 1982, in *Insegnamenti di Giovanni Paolo II*, 3 (1982), 1511. Frozen embryos can be discarded when the couple changes their mind not to raise them. In 2006, the European Court of Human Rights ruled in a case where Natalie Evans and fiancé Howard

reason that the document affirmed: "Life once conceived, must be protected with the utmost care; abortion and infanticide are abominable crimes."¹⁸⁵ *Donum vitae* gives a description of the scientific practices that involve freezing and destroying embryos and considers these practices as detriments to the integrity of human life.¹⁸⁶

In addition, *Donum vitae* considers the means of artificial fertilization where the parents of the new baby would be those other than the married couple. These scientific experiments on human life are practices which are not in accord with the Church's doctrine.¹⁸⁷ Heterologous fertilization¹⁸⁸ and homologous fertilization¹⁸⁹ are not permitted

Johnson, a British couple, were in dispute regarding the use of the six embryos that had been made from their specimens. These embryos had been stored until the woman completed her ovarian cancer treatment. In the meantime, the couple separated, and the man withdrew his consent on the previous agreement to raise them into babies. The court ruled in his favor and the embryos were discarded. As reported by J. RICHARDS, "A Roman Catholic Perspective on Fertility Issues: Objective Truths, Moral Absolutes and the Natural Law," 44.

¹⁸⁵ *Donum vitae*, I, no. 4. See also CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Declaration on Procured Abortion*, November 18, 1974, in AAS, 66 (1974), 730-747, nos. 12-13. It is noted here that discarding fetuses and embryos is referred to as "abortion." This means that at conception, whether inside the human womb or in a test tube, what is conceived is considered a child. The killing of the embryo by any means is equal to abortion. The document emphasized: "From the time that the ovum is fertilized, a new life is begun which is neither that of the father nor of the mother; it is rather the life of a new human being with his own growth." When the document calls the practice of discarding human embryos a "crime," it implies culpability and that perpetrators should be prosecuted. The respect for life is also expressed in the declaration on Euthanasia. See SACRED CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Declaration on Euthanasia*, May 5, 1980, in AAS, 72 (1980), 549-550.

¹⁸⁶ Cf. *Donum vitae*, I, 6, Engl. transl. in *Origins*, 16 (1987), 703. John Paul II condemned the practice of freezing and later discarding embryos because this "reduces human life to the level of simple 'biological material' to be freely disposed of." Cf. JOHN PAUL II, Encyclical Letter On the Value and Inviolability of Human Life *Evangelium vitae*, March 25, 1995, no. 14, in AAS, 87 (1995), 401-522, no. 14, 416. Engl. transl. in *Origins*, 24 (1995), 685-711.

¹⁸⁷ "Nevertheless, in conformity with the traditional doctrine relating to the goods of marriage and the dignity of the person, the Church remains opposed from the moral point of view to homologous 'in vitro' fertilization. Such fertilization is in itself illicit and in opposition to the dignity of procreation and of the conjugal union, even when everything is done to avoid the death of the human embryo." *Donum vitae*, II, B, 5, no. 5, Engl. transl. in *Origins*, 16 (1987), 708706-707.

¹⁸⁸ This is a scientific technique used to obtain a human conception artificially by the use of gametes coming from at least one donor other than the spouses. This is done either by *in vitro* fertilizations using gametes taken from at least one donor other than the two spouses or through the transfer of sperm previously collected from her husband into the genital tracts of the wife. Cf. *Donum vitae*, II, Engl. transl. in *Origins*, 16 (1987), 704-708.

by the Church. The document goes on to state that even if good intention is involved, “this good intention is not sufficient for making a positive moral evaluation of *in vitro* fertilization between spouses.”¹⁹⁰

Finally, *Donum vitae* offers guidance to sterile couples in words similar to *Familiaris consortio*. Motherhood and fatherhood are presented as a vocation inscribed in conjugal love. Thus, when the couple loses hope of having a child, this could be considered as a difficult trial. Sterile couples need to know that marriage does not grant them a right to children, but only to those acts which are apt to the creation of children. Therefore, CDF advised: “Physical sterility in fact can be for spouses the occasion for other important services to the life of the human person, for example, adoption, various forms of educational work, and assistance to other families and to poor or handicapped

¹⁸⁹ Homologous fertilization is a technique used to obtain human conception using the gametes of the two spouses. It is also done either by *in vitro* fertilization and egg transfer or the transfer of sperm previously collected from her husband into the genital tracts of his wife. The definitions given here were working definitions in the document. Canonically, these practices are illicit because they are not a result of a conjugal act which is *per se* suitable for the generation of children to which marriage is ordered by its nature and by which the spouses become one flesh (c. 1061). An analysis of the illicitness of this practice can be found in *Donum vitae*, II, 3, B, Engl. transl. in *Origins*, 16 (1987), 705-708. These definitions are well explained in K. D. O’ROURKE and P. J. BOYLE, *Medical Ethics: Sources of Catholic Teachings*, 3rd ed., Washington, DC, Georgetown University Press, 1999, 65.

¹⁹⁰ *Donum vitae*, II, B, no. 5, Engl. transl. in *Origins*, 16 (1987), 706. Given that the means of obtaining samples are morally wrong, the practice is rejected on moral grounds. The document gives at least two reasons: “Such fertilization is in itself illicit and in opposition to the dignity of procreation and of the conjugal union, even when everything is done to avoid the death of the human embryo. Secondly, the process of obtaining samples for creating embryos includes masturbation, and destroying them is equal to abortion.” Cf. SACRED CONGREGATION FOR THE DOCTRINE OF THE FAITH, Declaration on Certain Questions Concerning Sexual Ethics *Persona humana*, December 29, 1975, in AAS, 68 (1976), 77-96, here on 86; Engl. transl. in FLANNERY 2, 486-499, here on 491-492. Bassett points out that obtaining testing and treatment samples by masturbation is prohibited by many religious denominations such as Catholics, most Protestant Churches, and Jews. It is rejected on ethical and emotional grounds. Cf. W. T. BASSETT, *Counseling the Childless Couple*, 1963, 49. May raises the question if IVF would be morally wrong if the sperm is obtained by “nonmasturbatory ways to fertilize the egg.” His answer is in the affirmative based on the argument that such ways would “seem to help a married couple’s love blossom into new life.” Cf. W. E. MAY, “*Donum Vitae*: Catholic Teaching Concerning Homologous *in vitro* fertilization,” 75. Such an assertion is misleading as the author fails to indicate the ways so that they can be evaluated on moral grounds. He also recognizes that *Donum vitae*, as did *Humanae vitae*, prohibits such acts based on the inseparability of the conjugal act from procreation (75).

children.”¹⁹¹

However, *Donum vitae* does not define or give examples of these means of “assisting” the natural conjugal act as quoted from the discourse of Pius XII. John Paul II, while addressing the bishops who gathered to study issues relating to reproductive technology in light of *Donum vitae*, specified: “It is important to distinguish artificial fertilization [...] from therapeutic techniques which aim at remedying the deficiencies of nature.”¹⁹² Moral theologians have recommended such therapies as: biochemical, psychological, and surgical interventions.¹⁹³

4.3.2.2 — Instruction *Dignitas Personae* (2008)

Just over twenty years after *Donum vitae*, the CDF issued another instruction On Certain Bioethical Questions *Dignitas personae*. This document was intended to address new questions that came up after *Donum vitae* especially in the area of biomedical research. The two documents seek to respond to the “new biomedical technologies which have been introduced in the critical area of human life and the family have given rise to further questions, in particular in the field of research on human embryos, the use of stem

¹⁹¹ *Donum vitae*, II, B, no. 7. Engl. transl. in *Origins*, 16 (1987), 708. Cf. *Familiaris consortio*, no. 14 in FLANNERY 2, 826. According to *Donum vitae*, the only morally acceptable forms of assisted conception are medical intervention which, simply “assist[s] the conjugal act whether in order to facilitate its performance or to achieve its objective, once it has been normally performed (par. II, no. 6) and thus allow the child to be the fruit of a specific act of conjugal union” (par. II, no. 4). For a discussion on the Church’s moral basis for this stand, see A. SUTTON, *Infertility and Assisted Conception, What You Should Know: Answers to Questions About Medical Techniques of Assisted Conception*, 46.

¹⁹² J. W. CARLSON, “Interventions upon Gametes in Assisting the Conjugal Act Toward Fertilization,” in K. W. WILDES (ed.), *Infertility: A Crossroad of Faith, Medicine and Technology*, 107-124, here on 108.

¹⁹³ *Ibid.*, 109. These procedures which assist natural reproduction include: Low Tubal Ovum Transfer. Other disputed methods include: Tubal Ovum Transfer, Tubal Ovum Transfer with Sperm, and Gamete Intrafallopian Transfer (109). For a discussion on the moral acceptability of these procedures, see 108-118.

cells for therapeutic purposes as well as in other areas of experimental medicine.”¹⁹⁴

Regarding techniques for assisting fertility, *Dignitas personae* no. 12 provides three criteria for their moral evaluation. First: “The right to life and to physical integrity of every human being from conception to natural death” must be taken into account. Second: “The unity of marriage, which means reciprocal respect for the right within marriage to become a father or mother only together with the other spouse.” Third: “Human values of sexuality which require ‘that the procreation of a human person be brought about as the fruit of the conjugal act specific to the love between spouses.’”¹⁹⁵

In light of the above evaluation criteria, *Dignitas personae* stipulates that techniques of heterologous and homologous artificial fertilization are to be rejected because they substitute the conjugal act.¹⁹⁶ However, any medical intervention which respects human life and dignity and which facilitates natural conception can be admitted. Thus, “homologous artificial insemination within marriage cannot be admitted except for those cases in which the technical means is not a substitute for the conjugal act, but serves to facilitate and to help so that the act attains its natural purpose.”¹⁹⁷

Dignitas personae also clarifies which infertility treatment options are licit and can be promoted. These treatment options are techniques that aid conception in case of temporary infertility. Therefore, “techniques aimed at removing obstacles to natural

¹⁹⁴ *Dignitas personae*, no. 1. Engl. transl. in *Origins*, 38 (2008), 438.

¹⁹⁵ *Dignitas personae*, no. 12. Engl. transl. in *Origins*, 38 (2008), 441. The rejection of these techniques is not merely because they are artificial but because they do not respect the dignity of the human person.

¹⁹⁶ *Ibid.*

¹⁹⁷ *Ibid.* When the specimens are obtained from the spouses, this enables them to have their own biological child. This is not sufficient reason to allow artificial fertilization since “human procreation is a personal act of a husband and wife, which is not capable of substitution.” Cf. *ibid.*, no. 16. Engl. transl. in *Origins*, 38 (2008), 442.

fertilization, as for example, hormonal treatments for infertility, surgery for endometriosis, unblocking of fallopian tubes or their surgical repair, are licit.”¹⁹⁸ These techniques are legitimate means of treating infertility and ensure that the problem which causes infertility can be resolved. The finality of such techniques is to enable the couple to engage in conjugal acts *in humano modo*, paving a way to natural conception.

Like *Donum vitae*, *Dignitas personae* suggests two possible solutions to those couples who fail to have a child. The first solution is for sterile couples to adopt children who lack a parent or a conducive home environment. The second solution is to promote research and investment which is directed at the prevention of sterility.¹⁹⁹ Both documents reject the use of ARTs on moral grounds since they involve the extraction of the male's sperm through masturbation.²⁰⁰ and by extraction from the female partner after intercourse.²⁰¹

¹⁹⁸ Ibid., no. 13. Engl. transl. in *Origins*, 38 (2008), 441.

¹⁹⁹ Cf. *ibid.* This advice parallels the one given by *Donum vitae* in the following words: “Many researchers are engaged in the fight against sterility. While fully safeguarding the dignity of human procreation, some have achieved results which previously seemed unattainable. Scientists therefore are to be encouraged to continue their research with the aim of preventing the causes of sterility and of being able to remedy them so that sterile couples will be able to procreate in full respect for their own personal dignity and that of the child to be born” (*Donum vitae*, II, B, 8, Engl. transl. in *Origins*, 16 (1987), 708). NaPro Technology is engaged in scientific efforts which aim at discovering and treating the causes of sterility in a natural way.

²⁰⁰ Commenting on the Church's stand on this matter, O'Donnell suggested two possible ways in which sperm can be collected without involving masturbation: aspiration and prostate massage from the man. “The aspiration of seminal fluid from the testes or the epididymis by means of a needle and syringe will sometimes be of some value as a method of collecting sperm [...] another method is to force some of the fluid out of the seminal vesicles and through the urethra by means of massaging the prostate gland.” T. J. O'DONNELL, *Medicine and Christian Morality*, 259. This method does not seem to violate any moral principles and seems a viable alternative to masturbation. J. F. Keenan argues: “Since prompting seminal emission even for medicinal purposes has been always considered masturbation,” then the illicitness of removing reproductive organs such as testes and tubal ligation for medicinal purposes could also be considered illicit. However, this could be resolved by Pius XII's view that removing such objects to treat prostate or tubal cancer is licit. Cf. J. F. KEENAN, “Moral Horizons in Health Care: Reproductive Technologies and Catholic Identity,” in K. W. WILDES (ed.), *Infertility: A Crossroad of Faith, Medicine and Technology*, 53-71, here on 58.

²⁰¹ “Another method of obtaining sperm specimen for examination is to have a married couple

It can be concluded that *Donum vitae* and *Dignitas personae* approve only those acts that aid procreation in a natural way and do not in themselves substitute the natural conjugal act. This means that the Church's teaching is not against scientific advancement but guides its moral considerations, particularly in the area of artificial reproduction. The documents discussed above indicate the Church's effort to respond to questions regarding fertility treatment which have arisen with the advancement of modern science. They can be used to make an appropriate response to childless couples in Uganda.

4.3.3 — Catechism of the Catholic Church (1994)

Further magisterial teaching on infertility treatment is found in the new *Catechism of the Catholic Church*. In the *Catechism*, the Church recognizes the suffering of couples who desire to bear children but fail to have any.²⁰² However, when natural means of fertility treatment have failed, the Church encourages the faithful to endure it as a cross,²⁰³ rather than resorting to artificial means. Both the *Catechism* and *Donum vitae* encourage couples who remain sterile to embrace the "theology of the cross."²⁰⁴

perform marital intercourse and then permit the doctor to collect some of the sperm from the woman's vagina by means of a syringe." T. J. O'DONNELL, *Medicine and Christian Morality*, 261. See also N. O. GRIESE, *Catholic Identity in Health Care: Principles and Practice*, 52-53. It should be noted that the Church does not require the use of such methods.

²⁰² *Catechism*, no. 2374, compares this suffering to the one that was experienced by biblical figures of the Old Testament. The text reads: "Couples who discover that they are sterile suffer greatly. 'What will you give me,' asks Abraham of God, 'for I continue childless?' And Rachael cries to her husband Jacob, 'Give me children, or I shall die.'" Cf. Genesis 15:2 and Genesis 30:1. In the Old Testament times, there were no scientific means of treating the causes of infertility.

²⁰³ *Donum vitae*, II, 5, no. 8 reads: "Spouses who find themselves in this sad situation are called to find in it an opportunity for sharing in a particular way in the Lord's Cross, the source of spiritual fruitfulness. Sterile couples must not forget: 'Even when procreation is not possible, conjugal life does not for this reason lose its value. Physical sterility in fact can be for spouses the occasion for other important services to the life of the human person, for example, adoption, various forms of educational work, and assistance to other families and to poor or handicapped children.'" Engl. transl. in *Origins*, 16 (1987), 708.

²⁰⁴ Theological authors refer to human suffering as a mystery which God resolved by Jesus' own cross. Cf. B. G. BINGHAM, "The Suffering of God and Man: A Theology of Pain," in *Living Faith Studies*, 5 (1981), 171-195, especially 186. See also JOHN PAUL II, Apostolic Letter on the Meaning of Human

The *Catechism* proposes scientific research which should be guided by moral and ethical principles and ensures that its results are at the service of life.²⁰⁵ Thus, “research aimed at reducing human sterility is to be encouraged, on condition that it is placed ‘at the service of the human person, of his inalienable rights, and his true and integral good according to the design and will of God.’”²⁰⁶

Regarding the scientific means of intervening in the reproductive process for childless couples, the *Catechism* affirms the Church's authority to offer a moral evaluation of these means. The following text explains the nature of this authority: “Techniques that entail the dissociation of husband and wife, by the intrusion of a person other than the couple (donation of sperm or ovum, surrogate uterus), are gravely immoral. These techniques (heterologous artificial insemination and fertilization) infringe the child's right to be born of a father and mother known to him and bound to each other by marriage.”²⁰⁷

Suffering *Salvifici doloris*, February 11, 1984, in AAS, 76 (1984), 201-250; P. G. HARMAN, *Towards the Theology of Suffering: The Contribution of Karol Wojtyla / Pope John Paul II*, STD Diss., Washington DC, The Catholic University of America, 2010; L. J. WATERS, “Reflection on Suffering from the Book of Job,” in *Bibliotheca Sacra*, 154 (1997), 436-451. These authors indicate that suffering, such as that of sterile spouses, is conquered by love.

²⁰⁵ *Catechism*, no. 2375 reads: “Research aimed at reducing human sterility is to be encouraged, on condition that it is placed at the service of the human person, of his inalienable rights, and his true and integral good according to the design and will of God.”

²⁰⁶ *Catechism*, no. 2375. This same principle was laid out in *Humanae vitae* no. 11 which affirms: “The church, nevertheless, in urging men to the observance of the precepts of the natural law, which it interprets by its constant doctrine, teaches that each and every marital act must of necessity retain its intrinsic relationship to the procreation of human life.”

²⁰⁷ *Catechism*, no. 2376. Artificial insemination had been condemned by Pius XII as illicit even among married couples. The pope wrote: “What of the liceity of artificial insemination in matrimony? For the moment let it suffice to recall these principles of the natural law: the mere fact that the means reaches the goal intended does not justify the use of such a means. Nor does the desire for a child – a completely legitimate desire of the married couple – suffice to prove that recourse to artificial fecundation is legitimate because it would satisfy such a desire.” PIUS XII, “Christian Norms of Morality,” September 29, 1949, in *The Human Body: Papal Teachings*, 117-119, as quoted by K. D. O'ROURKE and P. J. BOYLE, *Medical Ethics: Sources of Catholic Teachings*, 66. See also Pius XII, Allocution to the Members of the II World

The *Catechism* rejects the means mentioned above on the basis of being gravely immoral. Those experiments which are intended to aid the couple to achieve pregnancy are acceptable since they do not alienate the sexual act from its natural end. This document renders unacceptable any experiment which “entrusts the life and identity of the embryo into the power of doctors and biologists and establishes the domination of technology over the origin and destiny of the human person.”²⁰⁸

Finally, the *Catechism* gives an evangelical counsel to people facing the problem of sterility. For those “spouses who still suffer from infertility after exhausting legitimate medical procedures should unite themselves with the Lord’s cross, the source of all spiritual fecundity. They can give expression to their generosity by adopting abandoned children or performing demanding services for others.”²⁰⁹

Congress on Fertility and Sterility, May 19, 1956, in AAS, 48 (1956), 454-474, Engl. transl. in *Papal Teachings*, 387-390. Pius XII explained the rationale of the Church’s stand against artificial insemination when he said: “Artificial fecundation exceeds the limits of the right which spouses have acquired by the matrimonial contract, namely, that of fully exercising their natural sexual capacity in the natural accomplishment of the marital act.” Engl. transl. in K. D. O’ROURKE and P. J. BOYLE, *Medical Ethics: Sources of Catholic Teachings*, 231. In the United States of America, some bishops have rejected surrogate motherhood on the basis of commercialization of the human body and the right of the child to have true parents. In 1986, they wrote: “The entire concept of surrogate motherhood reduces the creation of a child, a human being, to the level of a commercial transaction. The womb is leased to produce rather than to love a child into existence. When the natural mother surrenders her child for financial remuneration, she is exploiting the most precious thing she can bring into existence, her own child [...] Every child has a right to true parents.” NEW JERSEY BISHOPS, *Statement on Surrogate Motherhood*, November 28, 1986, in *Origins*, 16 (1987), 551-552.

²⁰⁸ *Catechism*, no. 2377. The *Catechism* reflects the teaching of Pius XII in condemning artificial insemination in marriage whether the samples are obtained from the couple or from a third party. Cf. PIUS XII, Allocution to the Fourth International Catholic Doctors, September 29, 1949, in *L’Osservatore Romano*, October 1, 1949, 1, Engl. transl. in THE MONKS OF SOLESMES (ed.), *The Human Body: Papal Teachings*, Boston, MA, St. Paul Editions, 1960, 117-119. For a thorough discussion on the Church’s teaching on artificial insemination during the pontificate of Pius XII, see J. C. WAKEFIELD, *Artful Childmaking: Artificial Insemination in Catholic Teaching*, St. Louis, Pope John XIII Medical – Moral Research and Education Center, 1978, 78-102. J. C. Wakefield identifies two authors who disagreed with Pius XII’s allocution: 1) F. Hurth, who indicated that the pope condemned all acts of artificial insemination and did not provide for those acts which help to facilitate the natural act to be successful; 2) L. Renwart, who criticized the pope for not defining artificial insemination, because “this lack of a definition could argue against the universality of the Pope’s statement.”

²⁰⁹ *Catechism*, no. 2379. This article reflects the efforts of the Church to adopt abandoned

The Church's understanding and compassion to childless couples are expressed. A question arises as to whether childless couples follow this teaching or disregard it for the sake of having a child through illegitimate means. The *Catechism* seems to employ the principle: "The means justify the end" and not: "The end justifies the means." It offers moral evaluation of the artificial means and guidance to those spouses who are sterile.

In conclusion, the papal teachings, CDF documents, and the *Catechism* can be used to respond to the questions raised by science and African cultures on sterility and fertility treatment. In order to apply these documents, three principles need to be considered. First: sterility has no negative impact on the validity of marriage. Second: any means to overcome childlessness must include natural means and not involve acts that are outside the natural conjugal act. Third: such means should not compromise the unity and indissolubility of marriage. The Uganda Episcopal Conference or individual bishops can translate these documents into local languages and use them to teach their people the Church's stand on sterility and fertility treatment.²¹⁰ In addition, individual bishops can have their own documents on these two topics. For example, the United States Conference of Catholic Bishops has adapted the prescriptions of these documents

children. However, some people may prefer to adopt children from healthy relationships, given the concern of why they were abandoned. In addition, it exhorts sterile spouses who do not wish to adopt children to embrace the "theology of suffering."

²¹⁰ The Church's teaching in regard to ARTs has been summarized as follows: 1) Human procreation must take place in marriage; 2) Using artificial methods which involve a third party are not acceptable; 3) Generation of the new person should occur only through intercourse performed between husband and wife in a natural act open to procreation; and 4) Fertilization of a new human person must not occur as the direct result of a technical process which substitutes for the marital act. Cf. B. M. ASHLEY and K. D. O'ROURKE (eds.), *Health Care Ethics: a Theological Analysis*, 245.

to indicate what the Church teaches on infertility treatment.²¹¹

4.4 — Towards an Integral Approach to Sterility in the Ugandan Context

The Church in Uganda has the opportunity to use the universal Church's teaching on sterility and fertility treatment by employing an integral approach. Church doctrine and canon law need to be effectively integrated into people's faith-practices such as marriage preparation. To be effective, marriage preparation needs to include education about sterility, infertility treatment, and alternative parenting by adoption. This section creates an awareness of the need to integrate canon law with diocesan policies, while taking into account sterility as disruptive of the irrevocable partnership of marriage. This section also proposes elements for effectiveness in preparing couples for marriage and prepares them to confront marital difficulties including sterility.

4.4.1 — Sterility and Marriage Preparation (c. 1063, 2°, CIC 1983)

For marriage preparation to be effective it must be done and not neglected; it must be complete and include the essential elements and properties of marriage (c. 1056, CIC 1983). This is why c. 1063, 2° stipulates: "By personal preparation for entering marriage,

²¹¹ See UNITED STATES CONFERENCE OF CATHOLIC BISHOPS (ed.), *Ethical and Religious Directives for Catholic Health Care Services*, 5th ed., November 17, 2009, nos. 38-39. Number 38 explains the bishops teaching by stating: "When the marital act of sexual intercourse is not able to attain its procreative purpose, assistance that does not separate the unitive and procreative ends of the act, and does not substitute for the marital act itself, may be used to help married couples conceive." Number 39 reads: "Those techniques of assisted conception that respect the unitive and procreative meanings of sexual intercourse and do not involve the destruction of human embryos, or their deliberated generation in such numbers that is clearly envisaged that all cannot implant and some are simply being used to maximize the chances of others implanting, may be used as therapies for infertility." Number 43 reads: "A Catholic health care institution that provides treatment for infertility should offer not only technical assistance to infertile couples but also help couples pursue other solutions (e.g. counseling and adoption)." While studying the procreative nature of the marital act, Doyle distinguishes between "reproduction" and "procreation." He is of the view that the marital act is not intended for reproduction because human beings are not simply reproducing; they have a vocation to cooperate with God in his creating work; they procreate. Cf. T. P. DOYLE, "The Moral Inseparability of the Unitive and Procreative Aspects of Human Sexual Intercourse," in T. P. DOYLE (ed.), *Marriage Studies: Reflections in Canon Law and Theology*, vol. 3, 1985, 54-76. This understanding of marriage and procreation should be part of marriage preparation curriculum.

so that the spouses are disposed to the holiness and the obligations of their new state.” Couples should take marriage preparation as a serious obligation to be observed before they bind themselves to an irrevocable covenant. This mandatory nature of marriage preparation reflects the Church's awareness of the serious problems facing marriage.

4.4.1.1 — Necessity of Marriage Preparation

CIC 1983 gives responsibility to pastors of souls to be directly responsible for marriage preparation. Canon 1063, 2°, *CIC* 1983 expands the pastoral care that was prescribed in *CIC* 1917 regarding the pastor's role in establishing the freedom to marry²¹² and in offering spiritual assistance to couples.²¹³ Canon 1020, *CIC* 1917 reads:

§1: The pastor whose right it is to assist at a marriage ought to inquire carefully beforehand, and in good time, whether there are any obstacles to marriage.

§2: He shall interrogate both the bridegroom and the bride, separately and prudently, inquiring whether they, particularly the bride, give their consent freely, whether they are sufficiently instructed in Christian doctrine, unless this last question is deemed useless considering the quality of the persons.

§3: It is left for the ordinary of the place to lay down specific rules for this investigation.²¹⁴

²¹² Canon 1019, §1, *CIC* 1917 reads: “Antequam matrimonium celebretur, constare debet nihil eius validate ac licitae celebrationi obsistere.” It is the role of the pastor to determine the free state of those about to marry, meaning that they must be free of that which would prevent marriage from being valid or licit in the external forum. This was always done through the publication of marriage banns and interrogation of the parties. However, the canon does not specify the time when this preparation is to be done before the pastor admits the couple to the celebration of marriage. It is c. 1020, *CIC* 1917 which mentions “opportune time,” meaning, at the discretion of the pastor. Cf. M. F. CAPPELLO, *Tractatus canonico-moralis de sacramentis*, vol. V, *De matrimonio*, Taurini-Rome, 1961, 139. See also T. P. DOYLE, “The Canonical Foundations for Pre-Marriage Preparation Guidelines,” in T. P. DOYLE (ed.), *Marriage Studies: Reflections in Canon Law and Theology*, vol. 1, Toledo, OH, Canon Law Society of America, 1980, 65-77, here on 67. The author also indicates that “this canon indicates that the legislator does not presume a readiness for marriage on the part of all who request it;” so the pastors must be morally certain that the couples are ready to enter marriage as the Church sees it.

²¹³ In the revision process, it was proposed that the responsibility for marriage preparation should be given to the Episcopal Conferences. See *Communicationes*, 9 (1977), 138. In the final text of c. 1064 *CIC* 1983 the responsibility is given to the local ordinary.

²¹⁴ §1: Parocus cui jus est assistendi matrimonio, opportune antea tempore, diligenter investiget num matrimonio contrahendo aliquid obstet.

§2: Tum sponsum tum sponsam etiam seorsum et caute interroget num aliquot detineantur impedimento, et an in doctrina christiana suffieienter instructi sint, nisi ob personarum qualitatem haec ultima interrogatio inutilis appareat.

§: 3: Ordinarii loci est peculiares normas pro hujusmodi parochi investigatione dare. Engl. transl. in H. A.

Even when other requirements such as marriage banns and the instruction in the Christian Doctrine are not currently required by c. 1063, *CIC* 1983,²¹⁵ the pastor's right and duty to be involved directly in marriage preparation is emphasized. In fulfilling this responsibility, "pastors should be sensitive to the *ius connubii* stated in c. 1058; they should be aware of the principle that only the supreme authority can establish impediments to marriage (cf. c. 1075) and that neither the ordinary nor local customs have such power (cf. cc. 1076 and 1077)."²¹⁶

A question arises as to whether marriage preparation is simply necessary or is it mandatory. Some think that marriage preparation should be made mandatory as a means of ascertaining the couple's readiness for marriage. Others think that when marriage preparation is made mandatory, it is equal to creating an additional impediment.²¹⁷

AYRINHAC, *Marriage Legislation in the New Code of Canon Law*, 45.

²¹⁵ Canon 1063, *CIC* 1983 is identical to c. 783, *CCEO*. In the Eastern Catholic Churches, especially in the Byzantine tradition, a liturgical rite for betrothal is required for validity, although this is no longer legislated. Cf. V. J. POSPISHILL, *Eastern Catholic Marriage Law*, 240. There is no such requirement in *CIC* 1983. Marriage preparation canons in *CIC* 1983 and *CCEO* have at least two purposes: 1) To furnish to the future spouses all that knowledge which will enrich their married life and make them understand how marriage is a religious vocation for Christians that can bring them closer to God; 2) Guiding the spouses before marriage and accompanying them in their married life can lead to a higher degree of stability and happiness in their marriage. Cf. V. J. POSPISHILL, *Eastern Catholic Marriage Law*, 242.

²¹⁶ I. GRAMUNT, J. HERVADA and L. A. WAUCK, *Canons and Commentaries on Marriage*, 10. Therefore, pastors should take care not to create undue burden on the spouses or to create impediments. In Uganda, pastors inquire whether the intended couples have parental consent, and whether they have observed other cultural requirements. This is not contrary to c. 1058, *CIC* 1983 but complementary to it. The right to marry (*ius connubii*) prevails over cultural requirements as well as marriage preparation requirements. See T. P. DOYLE, "The Individual's Right to Marry in the Context of the Common Good," in *Studia canonica*, 13 (1979), 245-301.

²¹⁷ For example, Rincón-Pérez is of the view that it would be arbitrary and harmful to the right to marry if marriage preparation programs are made mandatory. This would constitute a marriage impediment which c. 1063, *CIC* 1983 does not intend to create. In fact, c. 1075, §2, *CIC* 1983 stipulates: "Only the supreme authority has the right to establish other impediments for the baptized." This means that not even the local ordinary can impose marriage preparation as an obligation. See T. RINCÓN-PÉREZ, "Pastoral Care and the Prerequisites for the Celebration of Marriage," in MARZOA, A. J. MIRAS, and R. RODRIGUEZ-OCAÑA (eds.), *Exegetical Commentary on the Code of Canon Law*, 1120-1121. See also, J. FORNÉS, "El

Therefore, no marriage should be denied on the basis of the spouses having failed to attend marriage preparation sessions.²¹⁸

Some authors are of the view that preparing for marriage is necessary but not mandatory. For example, Huels supports this view while citing the *Order of Christian Marriage*, no. 15.²¹⁹ He believes that preparation is necessary, but one cannot make mandatory a particular marriage preparation program. For good reasons, such as previous marriage, marriage preparation could be omitted. Rincón-Pérez comments on the obligatory attendance of marriage preparation as one of the ambiguities which the *CIC* 1983 has not solved.²²⁰ He also indicates that when the couple omits this preparation, this should not be grounds to deny them celebrating their marriage in the church. The dilemma is how ministers can determine preparedness (c. 843, *CIC* 1983) or disposition (c. 1063, *CIC* 1983) if couples do not attend particular programs. *Familiaris consortio*

Sacramento del matrimonio,” in UNIVERSIDAD DE NAVARRA (ed.), *Manual de Derecho Canónico*, 2nd ed., Pamplona, Ediciones Universidad de Navarra, Facultad de Derecho Canónico, 1988, 549-644, here on 664; M. L. MARTINEZ, “Cursillos prematrimoniales, fe y Sacramento del matrimonio,” in *Revista Española de Derecho Canónico*, 44 (1987), 565-575.

²¹⁸ If the couple fails to attend the required preparation sessions, marriage can be delayed only under certain conditions and only temporarily according to c. 1077, §1, *CIC* 1983 so that their right to marry is observed (c. 1058, *CIC* 1983). C. 1077, §1, *CIC* 1983 states: “In a special case, the local ordinary can prohibit marriage for his own subjects residing anywhere and for all actually present in his own territory but only for a time, for a grave cause, and for as long as the cause continues” (c. 1058, *CIC* 1983).

²¹⁹ J. M. HUELS, “Preparing for the Sacraments: Faith, Rights, Law,” in *Studia canonica*, 28 (1994), 33-58; for marriage preparation, 53-58, here on 57. *The Order of Christian Marriage* no. 15 reads: “For an adequate preparation for marriage sufficient time is needed and engaged couples should be made aware of this ahead of time.” Besides, marriage preparation program can be shortened to accommodate those who have good reasons, for example those working during the specified time for the sessions or those deployed abroad in the military service. M. U. Onyekuru suggest that any policy which makes “marriage preparation voluntary and not mandatory is not helpful, regardless of how strictly recommended it may be.” He opts for a compulsory policies for particular churches. Cf. M. U. ONYEKURU, *Preparation for Marriage: Canonical Perspectives*, JCD diss. excerpt, Rome, Pontificia Università Lateranense, 2004, 44-45. See also D. M. THOMAS, *Christian Marriage, A Journey Together*, Wilmington, Michael Glazier Inc., 1983, 18.

²²⁰ T. RINCÓN-PÉREZ, “Pastoral Care and the Prerequisites for the Celebration of Marriage,” 1111. He believes that obligatory attendance at premarital courses or other forms of preparation is *de facto* a canonical impediment. He also holds as “arbitrary” and against the fundamental right to the sacrament of matrimony those pre-matrimonial courses when they are mandatory (see 1120).

imposes an obligation to the pastoral ministers to offer adequate preparation to the couple (no. 66). Huels suggests that this preparation could be omitted for good reasons.²²¹

In his allocution to the Roman Rota on January 21, 2017, Francis affirmed: "Preparation for marriage should become an integral part of all the sacramental procedure of marriage, as an antidote that prevents the proliferation of null or inconsistent marriage celebrations."²²² The pope also continued to state the goal of marriage preparation as: "Rediscovering marriage and the family according to God's plan [...] This moment becomes, for all the community, an extraordinary occasion for mission. Today more than ever, this preparation is presented as a real opportunity for the evangelisation of adults and, often, for those who have drifted away." The pope did not make it a law but spelt out the necessity of marriage preparation.

Another point of discussion concerns the necessity of faith for the validity of marriage. This discussion can be looked at from two angles; one in favor of the sacramentality of marriage, and another, in favor of the natural right to marry. Like any

²²¹ As Huels noted: "There may be good reasons for omitting or modifying the catechesis depending on the circumstances of the couple, e.g., a couple who are entering a second marriage after the death of a spouse or after a declaration of invalidity; a couple who lives at a great distance from each other while attending college or serving in the military; a couple whose work schedules make it difficult or impossible for one or both to attend the regular catechetical program; etc. on the other hand, the pastoral minister must be cautious if the reason of omitting preparation is due to the couple's hostility to the Church from causes such as atheism, bias, or an obnoxious personality. Such hostility could be a sign that one or both parties might lack the necessary disposition to consent validly to Christian marriage." J. M. HUELS, *The Pastoral Companion; A Canon Law Handbook for Catholic Ministry*, 208-209. In some cases, couples can meet obstacles that prevent them from attending certain marriage preparation sessions. The exhortation from John Paul II states: "The church must therefore promote better and more intensive programs of marriage preparation in order to eliminate as far as possible the difficulties that many married couples find themselves in, and even more in order to favor positively the establishing and maturing of successful marriages." John Paul II explains that if a dispensation from marriage preparation is to be given, care must be taken so that "omitting it is not an impediment to the celebration of marriage." Cf. *Familiaris consortio*, no. 66, FLANNERY 2, 869.

²²² FRANCIS, Address to the Roman Rota, January 21, 2017, <https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2017/01/21/170121a.html#> (March 8, 2017).

other sacrament, marriage requires at least a minimal faith or intention in doing what the Church mandates. Francis determined that lack of faith can lead to error or simulation of marriage.²²³ Since it is difficult to determine the depth of someone's faith, it is presumed that those who approach the Church for marriage have sufficient faith in doing what the Church mandates.

The question of marriage's validity could arise if any couple openly expresses that they do not have any faith. As they approach the Church minister to witness to their marital consent, it is presumed that they intend to do what the Church mandates, regardless of their interior disposition. For this reason, faith or lack of it does not affect the validity of the act of consent. Thus, the right to marry applies to all people, even to Catholics who do not practice their faith.²²⁴ This right can only be restricted for reasons specified in the law.²²⁵

²²³ In the rules which accompanied *Mitis Iudex* at its promulgation, it was pointed out: "Lack of faith that can generate the simulation of consent or the error that determines the will" (no. 14, §). Therefore lack of faith can result into nullity of marriage. Thus, catechesis is a major component in preparing couples for marriage.

²²⁴ In his allocution to the Roman Rota, Francis explained: "A lack of formation in the faith and error with respect to the unity, indissolubility and sacramental dignity of marriage invalidate marital consent only if they influence the person's will (cf. CIC c. 1099)." FRANCIS, Allocution to the Roman Rota, January 22, 2016, in S. A. EUART, J. A. ALESANDRO and T. J. GREEN (eds.), *Roman Replies and CLSA Advisory Opinions 2016*, Washington, DC, Canon Law Society of America, 2016, 60-62. This means that it is not merely lack of formation in the faith which can invalidate marital consent. Instead, it is error on the properties of marriage, having been brought about by lack of formation in the faith and which influences the will, that invalidates marriage. The words of the pope can be understood as emphasizing marriage preparation and not mandating it.

²²⁵ J. M. HUELS, "Preparing for the Sacraments: Faith, Rights, Law," 55. In cases where couples express disbelief in God whatsoever, the reasonable approach should be to dissuade them from marrying in the Church (54). See also, L. ÖRSY, *Marriage in Canon Law, Texts and Comments, Reflections and Questions*, 268-270. V. P. L. Papali calls it a "dilemma of the pastor" when canon law instructs the pastor to personally prepare the couples and ensure that they are ready for marriage (c. 1063, §2, CIC 1983), but the same law gives the couples the right to marry (c. 1058, CIC 1983) even when they do not attend the required preparation. He mentions: "Thus, the priests are forced to witness to marriages of those persons, say baptised non-believers, who may be canonically free but are hopelessly unprepared." Cf. V. P. L. PAPALI, *Preparation for Marriage, a Necessary Requisite for Marriage*, JCD diss., Bangalore, St. Peter's Pontifical Institute of Theology, 1992, 49-50. As Örsy suggests: "The correct method of handling the issues of a baptised unbeliever is not by turning to the abstract principle that affirms the inseparability of the

It can be concluded that the right to marry (*ius connubii*) is a natural right which belongs to every human being by virtue of divine law (cc. 1058, 843, §1, *CIC* 1983). Unless there exists an impediment, this right to marry cannot be denied. As M. Manzelli states, a person's natural right to marry mentioned in c. 1058, *CIC* 1983 expresses a general principle of natural law, valid for all people; and c. 1063, *CIC* 1983 contains the norms for a meaningful and fruitful celebration of marriage in the Church.²²⁶ By means of pastoral preparation for marriage, spouses who might find themselves childless are helped to embrace the marital partnership which endures even without children.

4.4.1.2 — Sterility and Diocesan Marriage Preparation Policy

In order for the Church to respond adequately to questions raised by childless

contract and the sacrament, but by considering their fundamental right to marry and the duty of the Church to respect their conscience." See L. ÖRSY, *Marriage in Canon Law, Texts and Comments, Reflections and Questions*, 57. R. Finn is of the view that the validity and sacramentality of marriage should "not be made absolute but normative only for believing Christians, because marriage as a sacrament cannot be considered outside the dimension of faith. As sacrament, it is anchored in 'participation in the love between Christ and his Church.'" Cf. R. C. FINN, "Faith and Sacrament of matrimony: General Conclusions from a Historic Study," in T. P. DOYLE (ed.), *Marriage Studies: Reflections in Canon Law and Theology*, vol. 3, Washington DC, Canon Law Society of America, 1985, 95-111, here on 109-110. See also, G. J. DYER, *A Pastoral Guide to Canon Law*, Dublin, Gill and Macmillan, 1977, 66.

²²⁶ Cfr. M. MANZELLI, "Right to Marry and Required Preparation," in A. J. ESPELAGE (ed.), *CLSA Advisory Opinions, 1994-2000*, Washington, DC, CLSA, 2001, 329. G. J. Dyer suggests that when the pastor realizes that the couple is not ready or has declined to take part in the preparation, it is the time for him to delay the celebration of marriage even if the "human right to marry may be vindicated in a forum not recognized by the Church." Cf. G. J. Dyer, *A Pastoral Guide to Canon Law*, 67. Doyle cites examples of when the pastor is justified in refusing to admit the parties to marriage. While commenting on c. 1019, *CIC* 1917, he wrote: "On the other hand, the pastor had before him a party or parties who clearly refused to accept the Church's teaching on marriage, as for instance in cases of refusal to have children or to raise them as Catholics, then the pastor would be justified in refusing to admit the parties to the Catholic marriage." T. P. DOYLE, "The Individual's Right to Marry in the Context of the Common Good," 300. Doyle's conclusion is that "the right to marry is not absolute as we have already seen. It depends on the capacity to exercise the right. Capacity is determined by certain factors or standards which derive from natural law itself or from ecclesiastical (and civil) legislation" (266). Siegle adds to the discussion when he writes: "Every pastor is a teacher – he must instruct. Therefore he must have the right knowledge and understanding of the principles of Christian marriage, since the general morality and the common good depends on this." B. A. SIEGLE, *Marriage Today: A Commentary on the Code of Canon Law*, 34. Today, the above conclusions do not apply, since the *ius connubii* takes priority over marriage preparation programs: "But pastors must also understand the reasons that lead the church also to admit to the celebration of marriage those who are imperfectly disposed" (c. 1058, *Familiaris consortio*, no. 68, in *FLANNERY* 2, 872).

couples, marriage preparation should include a component that addresses these questions. The Church in Uganda can develop marriage policies, guidelines, or similar prescriptions that are published by an ecclesiastical circumscription such as a diocese or ecclesiastical province. Looking at sterility as one of the major factors that disrupts marital life, the Church in Uganda should give collective guidance, whether at the national level or at the respective dioceses.²²⁷

Since the country's independence in 1962 to 2015, the bishops of Uganda have spoken as a body under the Uganda Episcopal Conference and have written twenty pastoral letters. None of these letters addresses sterility in marriage.²²⁸ As policies are developed, it is important that the discussions in the following paragraphs are taken into consideration and potentially used as a guide.

In Uganda, marriage preparation follows the outline proposed by John Paul II's encyclical letter *Familiaris consortio*. Couples are prepared in three stages: remote, proximate, and immediate.²²⁹ As the name suggests, remote preparation includes

²²⁷ One of the goals of marriage preparation should be to address the prevalent divorce rate. In addition to sterility, divorce is one of the leading disruptions of marital partnership outside Africa. Marriage preparation should include guarding against causes of high divorce rates as they relate to the Ugandan context. M. Thomas has proposed the following four reasons for a high divorce rate: 1) Increased personal acceptance of divorce; 2) Decreased legal barriers to divorce; 3) Decreased impact of religious influence; and 4) Role shifts demanded by economic change. Cf. M. THOMAS, "Preparation for Marriage: An Analysis and Critique of Marriage Preparation Programs," in T. P. DOYLE (ed.), *Marriage Studies: Reflections in Canon Law and Theology*, vol. 1, 1-24, here on 3. For marriage preparation to be effective, these four causes should be addressed.

²²⁸ These pastoral letters have been occasioned by different social – political or moral situations, or an impending jubilee or other religious celebrations in the country. The Uganda Episcopal Conference and individual bishops have not put in writing any guidance on sterility and its impact on marriage. For an analysis of what occasioned these pastoral letters, see J. M. WALIGGO, E. M. KATONGOLE and B. SSETTUMA, "The Social Teaching of the Uganda Catholic Bishops: 1962-2012," in B. SSETTUMA (ed.), *The Waliggo Journal, a Philosophical and Theological Journal*, vol. 4, no. 2, Kampala, Catholic Major Seminaries of Uganda, 2013, 7-50.

²²⁹ *Familiaris consortio*, no. 66, in FLANNERY 2, 867-874; PONTIFICAL COUNCIL FOR THE FAMILY, "Preparation for the Sacrament of matrimony," nos. 21-59.

“infancy, childhood and adolescence, and takes place first of all in the family and also in school and formation groups as a valid assistance to the family.”²³⁰ This phase of preparation entails “character formation” where children are taught the nature and values of family life.²³¹ In Ugandan societies, this formation is done on an informal level and by the entire community. This method is effective since children’s growth and well-being are the main concern of the parents and every member of the community.

Proximate preparation takes place during the time of engagement. Culturally, it consists of specific initiation that is left to close members of the family, which normally coincides with the age of puberty.²³² As Doyle noted, marriage preparation should ensure that the engagement period is preparation for marriage and not simply for the wedding.²³³ In Uganda, several cultural groups have rites of initiation by which young people are ushered into adulthood. At the period of initiation, even with no specific spouse in mind, the candidates are taught their responsibilities as adults, and they are prepared to marry, as they grow to be men and women in society. Through liturgical inculturation, such initiation rites could be integrated into the Church’s celebrations since marriage in

²³⁰ PONTIFICAL COUNCIL FOR THE FAMILY, “Preparation for the Sacrament of matrimony,” 103. On the role of the school in offering Christian education, see also *Gravissimum educationis*, nos. 5, 8; PIUS XI, Encyclical Letter On the Christian Education of Youth *Divini Illius Magistri*, December 31, 1929, in AAS 22 (1930), 76; *The Charter*, Art. 5, in FLANNERY 2, 913-914.

²³¹ While writing about the need for marriage preparation in the African context, B. Vandenbosch noted those values that could be included in the preparation program: “Hospitality, discipline, order, obedience to authority, respect for law, respect for elders, and the joy of life.” Cf. B. VANDENBOSCH, *The City of God and the City of Man in Africa*, Kentucky, University of Kentucky Press, 1964, 15. Other elements include: “Chastity before marriage and faithfulness during marriage, hospitality, generosity, the opposite of selfishness, kindness, justice, truth, and rectitude as essential virtues, avoiding stealing, protecting the poor and the weak especially women, giving honor and respect to elder people and avoiding hypocrisy.” Cf. E. B. IDOWU, *African Traditional Religion: A Definition*, London, SMS Press, Ltd, 1978, 144.

²³² Cf. B. KISEMBO, L. MAGESA and A. SHORTER, *African Christian Marriage*, 26; 98-103.

²³³ Cf. T. P. DOYLE, “The Individual’s Right to Marry in the Context of the Common Good,” 246-301.

Uganda is considered not merely a private affair but also intended for the common good.²³⁴

Immediate preparation takes place when marriage is imminent. In most dioceses, this takes place in the last six months of the engagement. Candidates present themselves to the catechist and the priest for a short interview. The purpose is to discover whether other preliminary preparations and customary marriage rites have taken place, and whether they have the blessing of their parents to marry.²³⁵ Priests, who are entrusted with preparing couples for the celebration of marriage, exercise their discretion to determine the couple's readiness to celebrate the sacrament.²³⁶ Therefore, priests prepare the couples for the fruitful celebration of marriage liturgy and the life after.²³⁷

²³⁴ Cf. B. SIEGLE, *Marriage According to the New Code of Canon Law*, 28.

²³⁵ The purpose of ascertaining the parents' permission is to avoid any potential disruptions in case the parents are opposed to planned marriage. It is also an occasion for pastors to know what reasons, if any, parents may have in opposing marriage such as a possibility of an occult impediment. The Church does not deny a couple the right to marry if there is no impediment. J. F. A. Osom summarizes the reasons for parental consent among the Annangs of Nigeria as: "Checking the reputation of the families, avoiding marriage within the close blood relationships, and investigation regarding the fecundity of the parties." J. F. A. OSOM, *Moral Implication of High Bride-Price in Nigeria Annany [i.e. Annang]*, STD diss., Rome, Pontificia Universitas Lateranensis, 1989, 13-15.

²³⁶ Knowledge about marital relationships and potency for the conjugal acts are usually presumed. To instruct about these issues, priests can make use of lay catechists or an exemplary Christian couple experienced in married life. John Paul II recommended that sex education be an integral part of marriage preparation when he wrote: "Education in love as self-giving is also the indispensable premise for parents called to give their children a clear and delicate sex education. Faced with a culture that largely reduces human sexuality to the level of something commonplace, since it interprets and lives it in a reductive and impoverished way by linking it solely with the body and with selfish pleasure, the educational service of parents must aim firmly at training in the area of sex that is truly and fully personal: for sexuality is an enrichment of the whole person – body, emotions and soul – and it manifests its inmost meaning in leading the person to the gift of self in love. Sex education which is a basic right and duty of parents must always be carried out under their attentive guidance." Cf. *Familiaris consortio*, no. 37, in FLANNERY 2, 846-847.

²³⁷ This is the "culmination of the journey of preparation which the spouses have made and the source and origin of their marriage life. Therefore, the celebration cannot be reduced only to a ceremony, the product of culture and sociological conditioning." PONTIFICAL COUNCIL FOR THE FAMILY, "Preparation for the Sacrament of matrimony," 107. Couples need to be ready for marital life and procreativity; if they remain childless, they need to embrace their hardships without terminating their partnership of the whole of life.

For marriage preparation to be effective, it must be done by the entire community and must embrace all issues of married life including fecundity. First, pastors of souls,²³⁸ who have the canonical and pastoral responsibility to prepare for sacraments should assess the needs of the engaged couples. They should accompany them toward making an irrevocable commitment, even when they find themselves sterile. Second, the Church at the local level should use experienced lay couples, who should be trained to offer professional help and counseling to those preparing for marriage.²³⁹ Third, professionals such as lawyers, social workers, judges, school counselors, etc. should be included on marriage preparation team.²⁴⁰ This manner of proceeding ensures an integral approach to marriage preparation and can contribute to the stability of marriages including those which do not produce children.

It can be concluded that *Familiaris consortio* and c. 1063, *CIC* 1983 have given only guidelines for a marriage preparation. These guidelines ought to be adapted to particular situations and be suited to the needs of the people living in those situations. Therefore, through preaching, catechetical instruction (adapted to children, young people, and adults), and means of social communications, catechesis applicable to sterile couples should be developed as proposed in Appendix V. Therefore, appropriate catechesis is needed to present marriage as a partnership of the whole of life, even for sterile couples.

²³⁸ L. Örsy translated *Pastores animarum* as “Those entrusted with a pastoral office.” See L. Örsy, *Marriage in Canon Law, Texts and Comments, Reflections and Questions*, 73. This thesis adopts this meaning of *pastores animarum*. Örsy also explains “pastors of souls” refers specifically to “the parish priest and the bishops” (75) in view of c. 771, *CIC* 1983.

²³⁹ These people could be “men and women proven by experience and expertise” mentioned by c. 1064, *CIC* 1983.

²⁴⁰ When such people are included on marriage preparation team, they bring with them their family experience and professionalism as well.

The following section analyzes how those who are already childless can be helped pastorally to cope with it.

4.4.1.3 — Pastoral Care for Sterile Couples

There are cases where couples find out when they are already married that they are unable to have a child due to sterility. Through pastoral care of sterile couples, care should be taken with regard to the stigma, depression, or hopelessness that sterile couples can experience. This section seeks to emphasize pastoral care and counseling as a means of assisting those couples who have failed to have a biological child.²⁴¹ After analyzing the possible psychological impact of infertility on marriage and the family, recommendations are made for on-going support and counseling. Finally, this section offers recommendations with regard to the options that are available to sterile couples: adoption or remaining childless.

The possible psychological impact discussed in the previous chapter calls for the pastoral ministers' attention to sterile couples. There is need for on-going pastoral care and support for families that find themselves in every difficulty,²⁴² especially sterility. Though pastoral ministers are not necessarily professional counselors,²⁴³ they can give

²⁴¹ Some sterile couples consider themselves as: "Hopelessly sterile after one or two years of unsuccessful attempts to conceive a child." W. T. BASSETT, *Counseling the Childless Couple*, 37. Others see themselves as "normal," and hope that conception will eventually happen without any help. While counseling childless couples, these two positions need to be put under consideration.

²⁴² Pospishil identifies two main reasons why such couples need attention and help. First, he acknowledges: "Marriage is the most difficult undertaking in life because it involves the life-long partnership of two persons who continue slowly the normal human process of maturation." Secondly, he mentions: "The increasing rate of divorce everywhere in the world demands that every assistance be offered to married couples, that will make it easier to overcome all the external and internal differences which are a concomitant of such a close relationship." V. J. POSPISHIL, *Eastern Catholic Marriage Law*, 247-248. The author's analysis is based on c. 783, §3, *CCEO* which puts this responsibility on the "pastors of souls."

²⁴³ Bassett offers the following advice to pastoral ministers who encounter cases of sterile couples: "Despite the scope of his medical knowledge, the pastor does not symbolize medical authority to the

guidance as well as referral to competent counselors or medical practitioners for additional diagnosis and treatment.

After the celebration of marriage and having failed to obtain a pregnancy using natural means, couples can feel helpless, distressed, and guilty. Some of them see the failure to have a child as a grave loss. B. E. Menning observes: "Infertile couple has an unusual need for counseling, support and advocacy as they negotiate the difficult steps of investigation, treatment, and possible selection of an alternative."²⁴⁴ For this reason they should be accompanied in their grief. This can be done by individual or family counseling, or by establishing an infertility support group. DiGeronimo made a similar recommendation when he wrote: "Group support is a source of encouragement, information, and of course, support that provides a better foundation on which to build all your other relationships,"²⁴⁵ because it eliminates isolation and provides information.

In addition, support from a spouse²⁴⁶ is as important as group or family support. The infertile spouse needs support and understanding from the other partner. As Daniluk explains, infertility should be seen not as an individual problem but rather as a mutual

counselee, and he is not expected to function in such a capacity. To do so is to encounter confusion, resentment and failure as a minister." W. T. BASSETT, *Counseling the Childless Couple*, 41. After all, these pastoral ministers should be able to refer childless couples to qualified family physicians, reputable gynecologists, urologists, and psychiatrists as well as to local hospitals, fertility clinics and adoption agencies (43).

²⁴⁴ B. E. MENNING, "Resolve: Counseling and Support for Infertility Couples," in M. D. MAZOR and H. F. SIMONS (eds.), *Infertility: Medical, Emotional and Social Considerations*, New York, Human Sciences Press, 1984, 53-60, here on 59.

²⁴⁵ T. F. DIGERONIMO, *New Hope for Couples with Infertility Problems*, 223. Peoples and Ferguson also emphasize the importance of family support when one is going through the trauma of infertility and also when the couple is considering the option of adopting a child. See D. PEOPLES and H. R. FERGUSON, *Experiencing Infertility, an Essential Resource*, 191.

²⁴⁶ A. D. DOMAR, A. L. KELLY, *Conquering Infertility*, 254.

problem,²⁴⁷ just as the would-be-born child would have been the couple's child. Some couples are able to see infertility "as a problem for them rather than as a problem between them. When it is faced as a problem for them, they face it together without any particular rancor toward the other party."²⁴⁸ Couples who make decisions jointly while seeking a solution for their infertility often help each other cope with the failure to have a child. If both partners agree on how to cope with infertility, on the means of fertility treatment, remaining childless, as well as the decision to adopt.²⁴⁹

Sterility brings with it a lot of stress. Therefore, the Church could help sterile couples cope with the stress that comes from society, family, and friends. For this reason, stress management techniques²⁵⁰ should be used to help the couples. If help is given, this

²⁴⁷ Daniluk explains the importance of support from a spouse: "It is important to treat infertility not as your partner's problem or your problem but as your mutual problem – something that you need to tackle together." J. C. DANILUK, *The Infertility Survival Guide*, 115. For example, one spouse does not need to stay in the car/parking lot when the other spouse is having an appointment. Mutual support offers more opportunities to find solutions together. Some couples mutually decide to delay conception which contributes to infertility associated with aging. Authors reveal: "About 1 in 7 couples are infertile at age of 30-34; about 1 in 5 at age 35-39; and about 1 in 4 at age 40-44." Cf. L. SPEROFF, R. H. GLASS and N. G. KASE, *Investigation of the Infertile Couple*, 4. It would be useful to discourage couples who want children and are able to have them to make a conscious decision to delay pregnancy. See also S. C. MAGIE, *A Determination of the Liceity of Gamete Intrafallopian Transfer in the Light of Magisterial Teaching on Selected Medical Technologies*, 38-4; A. KAGGWA and R. NINSIIMA, "Infertility Not Just a Woman's Woe," February 11, 2016, <http://www.observer.ug/lifestyle/42555-infertility-not-just-a-woman-s-woe> (February 11, 2016).

²⁴⁸ D. G. MCCARTHY (ed.), *Reproductive Technologies: Marriage and the Church*, Baintree, MA, Pope John Center, 1988, 160. In Uganda, efforts have been made in civil society to address the trauma facing sterile women. Cf. A. KAGGWA and R. NINSIIMA, "Campaign to Tackle Infertility Stigma Launched," February 17, 2016, <http://www.observer.ug/component/content/archive?year=2016&month=2> (March 16, 2016). While quoting the World Health Organization statistics, the authors mention: "In sub-Saharan Africa, infertility in over 85 percent of affected women is caused by infections compared to 33 percent worldwide" for this reason, the Church should join efforts to address infertility and sterility which adversely affect marriage. See C. W. WANJALA, "What is Behind the Rise in Cases of Infertility?" in *Daily Monitor*, <http://www.monitor.co.ug/artsculture/Reviews/What-is-behind-the-rise-in-cases-of-infertility/-/691232/1939716/-/item/0/-/8qtv28z/-/index.html> (February 11, 2016).

²⁴⁹ Cf. A. D. DOMAR and A. L. KELLY, *Conquering Infertility*, 254. The author emphasizes the importance of mutual support given that such decisions are difficult to make. He believes that disagreement on the use of reproductive technologies intensifies when spouses belong to different religious denominations.

²⁵⁰ Some of these techniques are presented in Chapter Three. For further discussion, see G. S.

prevents the couple from an endless search for pregnancy and from hastily making decisions that are later regretted. Researchers have discussed the importance of support from family and friends as the biggest source of infertility support.²⁵¹ The Church in Uganda could establish counseling centers at parishes and health facilities and expand counseling which is offered at retreat and spiritual renewal centers.²⁵²

Finally, infertile couples should be encouraged to make behavioral changes. This constitutes avoiding situations that either cause or contribute to sterility. For example, to exercise regularly and decrease body weight,²⁵³ avoid smoking or use of harmful drugs, regulate or eliminate alcohol,²⁵⁴ reduce caffeine intake,²⁵⁵ and improve nutrition and

BERGER, M. GOLDSTEIN and M. FUERST, *The Couple's Guide to Fertility*, 320-325. These authors identify different therapies which treat stress, such as: traditional Chinese medicine, Chinese herbs, and some vitamins. Regarding individual herbs which are used for particular reasons, see T. S. DiGERONIMO, *New Hope for Couples with Infertility Problems*, 113-119.

²⁵¹ Cf. A. D. DOMAR and A. L. KELLY, *Conquering Infertility*, 118-131. These authors also cite lack of support from religion when religious beliefs and conservative ideologies discourage assisted-reproductive techniques, and call infertility God's plan (121). However, religion and religious beliefs can be a source of support when the couple fails to have a child and are helped to move on in faith. Domar and Kelly are of the view that Catholics defy their religious teaching against sperm donation and other assisted-reproductive technologies. He believes that those who disagree with the Church's teaching on assisted reproduction should "justify their resolution by interpreting the Church's policies as antiquated, and view the use of donor sperm as a kind of technological adoption" (144). Such a conclusion is not acceptable by the Church because it does not consider the rights of the child who is born artificially. The author also discusses details of a crisis of faith among sterile couples on 172-188. See also G. S. BERGER, M. GOLDSTEIN and M. FUERST, *The Couple's Guide to Fertility*, 320-325; T. S. DiGERONIMO, *New Hope for Couples with Infertility Problems*, 113-119

²⁵² Most dioceses have the centers mentioned above. Some of these have been established by the bishops directly, others by religious congregations, and others by the Catholic Charismatic Renewal movement. However, they are few and expensive for ordinary people and are not oriented toward counseling sterile couples. Further suggestions can be found in Appendices IV A and B.

²⁵³ Some doctors encourage exercise but caution that very strenuous exercise may affect fertility especially in women. This happens when the body is so strained it does not produce progesterone and this prevents embryo implantation. Therefore, moderate exercise is encouraged. See A. D. DOMAR and A. L. KELLY, *Conquering Infertility*, 271-272.

²⁵⁴ H. Caton cautions that consuming more than two alcoholic drinks a day and even social drinking affect fertility. She also affirms: "Alcohol is one of the most common causes of male impotence and sterility. It causes sperm abnormalities and reduces testosterone levels. In women, it is linked to miscarriage, stillbirth, and physical abnormalities." Cf. H. CATON, *The Fertility Plan: Holistic Program for Conceiving a Healthy Baby*, 41. The author also cautions against drug use including recreational drugs

vitamin consumption.²⁵⁶ It has been reported that environmental factors and use of drugs reduce fertility, especially in men. Counselors in behavioral change should note that “in males, cigarette smoking or nicotine consumption is associated with decreased sperm motility and count, altered sperm morphology, and altered hormonal levels.”²⁵⁷

The need for pastoral support for marriage and families was emphasized at the Synod of Bishops on the Role of the Family. With particular reference to East Africa, L. Rugambwa said:

[since] the parish is too big and too anonymous [...] the loving concern and interest of pastors, always ready to listen attentively to what married people have to say, is an essential support for families. The African tradition of the extended family has much to teach us about the way the Christian extended family, or small Christian community, should be involved in helping families. The small Christian community becomes in this way the context for Christian family life.²⁵⁸

Within the context of Uganda, effective support needs to be carried out on the different levels mentioned above. It should be the responsibility of every diocesan bishop to ensure

which have the potential of decreasing fertility.

²⁵⁵ Recent studies show that women who consume more than five milligrams of caffeine per day, either from coffee or smoking, have showed reduced fertility rates. Cf. A. D. DOMAR and A. L. KELLY, *Conquering Infertility*, 274 -277. The author also indicates that some people use unprocessed herbs with hope to improve their fertility. Since there is no way to determine their dosage or to regulate their usage, Domar and Kelly believe that they are not safe to consume and can affect one's fertility. However, Jensen and Stewart believe that to date, there is no evidence that drinking a cup or two of coffee a day, soda, or energy drinks directly reduces chances of pregnancy. They point out that specialists caution against consumption of five cups of coffee a day, or consumption of 200-300 milligrams of caffeinated drinks a day for those who are trying to conceive. See J. R. JENSEN and E. A. STEWART (eds.), *Mayo Clinic Guide to Fertility and Conception*, 40.

²⁵⁶ For details on how life-style changes can enhance fertility, see T. F. DIGERONIMO, *New Hope for Couples with Infertility Problems*, 94-95.

²⁵⁷ US. CONGRESS, OFFICE OF TECHNOLOGY ASSESSMENT, *Infertility: Medical and Social Choices*, Washington, DC, Government Printing Office, 1988, 70. Caton counts cigarette smoking among the hazards which affect fertility. She reveals: “Cigarette smoking reduces sperm numbers, sperm motility and DNA quality. Chemicals that mimic estrogen, found in items such as common pesticides and household paints as well as in cigarettes, affect fertility and may be linked to cancers of the breast, ovary, and testes.” H. CATON, *The Fertility Plan: Holistic Program for Conceiving a Healthy Baby*, 92.

²⁵⁸ L. RUGAMBWA, “Community Support for Married People,” in *African Ecclesial Review*, 23 (1981), 73. This one-page presentation at the synod proposes the African traditional model of family life where the entire community is involved in a couple's family life as models for Christian families.

that professional counselors are trained and deployed. These professional counselors could be priests, religious or medical practitioners, or others who are suited for this responsibility.²⁵⁹ In addition, counseling offices could be established at every parish and church-run health facility to coordinate fertility treatment clinics to which patients would be referred.²⁶⁰ It can be noted that this professional help would supplement the counseling which priests continually offer on the pastoral level.

In conclusion, the Church in Uganda needs to initiate on-going support and counseling programs and facilities which are helpful to sterile couples. Facilities should be available for group and individual support and counseling. Those involved in the pastoral care for sterile couples need to be trained and encouraged. Catholic medical practitioners who work at mission hospitals could be equipped with counseling skills and in order to diagnose infertility, treat it, or refer the childless couples for further counseling and treatment. Together with counselors, nurses and doctors should have some knowledge of NaPro Technology. Sterile couples need to be counseled to make final considerations such as choosing adoption or remaining childless. Particular recommendations are given in the following section.

4.4.2 — Recommendations for the Church in Uganda

Marriages in Uganda, whether canonical or customary, when faced with sterility

²⁵⁹ B. Turyomumazima recommends that pastoral counseling should be an integral part in the formation of priests, the religious, and catechists. See B. TURYOMUMAZIMA, *The Church's Pastoral Approach to the Practice of Healing Among the Banyankore of the Archdiocese of Mbarara – Toward an Integral Healing Mission*, STD diss., Ottawa, Faculty of Theology, Saint Paul University, 2005, 285-286.

²⁶⁰ See Appendix III (B). Professional counselors who have been trained at church counseling institutions could be recruited at an affordable cost. At Saint Paul University, counseling costs \$75 CDN per session (http://ustpaul.ca/en/centre-for-counselling-fees_1050_699.htm) and can be adjusted according to one's financial ability. In Uganda, a diocese could subsidize these costs by a half so that a cost-sharing fee of \$30 CND is paid by each client. This cost of establishing facility care centers and counseling could be met by additional fundraising effort and incorporated in the diocesan annual budget.

are not likely to last long. Most sterile couples disregard theological and canonical principles and yield to the cultural expectation to have children by any means. As a corollary, sterility disrupts the marital partnership that is created by the exchange of consent. After this partnership ends, the couple is likely to approach one of the regional marriage tribunals to petition for the nullity of their marriage. This section makes four recommendations for the Church in Uganda. First, it highlights the importance of diocesan policies and programs on marriage in which infertility and sterility are addressed. Second, it stipulates the need for integration of canon law into local marriage customs. Third, it makes recommendations regarding the functioning of tribunals in Uganda. Fourth, it proposes principles for a program of implementation.

4.4.2.1 — Sterility and Diocesan Marriage Programs and Policies

Today, sterility has a negative impact on canonical and customary marriages in Uganda. This is why the Church in Uganda needs to address sterility and its negative effects in marriage programs. While such impact could be addressed in pastoral practice, a diocesan policy on marriage can provide guidance for marital difficulties that are created by sterility.²⁶¹ Therefore, a few recommendations for diocesan marriage policy are proposed to address the problem of sterility in canonical marriage and local customs. In this section, it is proposed that a specialized ministry is necessary to focus on helping couples who find themselves suffering from infertility and sterility.

²⁶¹ F. A. Arinze acknowledged the difficulties the Church in Africa faces while ministering to childless couples. He called childlessness: "A critical and fundamental area of tension in relation to Church doctrine on marriage." As a solution, he proposed: "Efforts should be made to make adoption more popular and acceptable in the society and also to make civil law to promote and protect it better," and clarified: "Childlessness is not accepted as a valid ground for invalidity and not a cause for dissolution of marriage." see F. A. ARINZE, "Polygamy and Childlessness," in *African Ecclesial Review*, 23 (1981), 97-99, here on 98.

4.4.2.1.1 — Re-Evaluation of Local Customs

It can be noted that whereas the rites leading to the wedding differ by culture, the desire for offspring in every marriage is universal. For this reason, bishops at the national and diocesan level²⁶² should work together to develop similar policies to regulate marriage. Such a policy needs to take into consideration the diversity of cultures which has been referred to as: “An invaluable asset, which should be kept and developed in the present circumstances.”²⁶³ Therefore, particular churches should have and/or update their programs which enhance the sacramentality and indissolubility of marriage.²⁶⁴

With the knowledge that sterility has the potential to disrupt both customary and

²⁶² Diocesan policies should be adjusted to meet the needs of the faithful. Canon 1064, *CIC* 1983 specifies this need when it prescribes: “It is for the local ordinary to take care that such assistance is organized fittingly, after he has heard men and women proven by experience and expertise if it seems opportune.” Canon 1067, *CIC* 1983 also makes it the duty of the Episcopal Conferences to regulate marriage preparation when it states: “Norms about the examination of spouses and about marriage banns or other opportune means to accomplish the investigations necessary before marriage. After these norms have been diligently observed, the pastor can proceed to assist at marriage.” The Code Commission (October 24-29, 1966) debated the need for the pastors of souls to have common principles which would protect the institution of marriage and streamline marriage preparation. Cf. *Communicationes*, 3 (1971), 71. Particular laws regarding marriage preparation would also help to avoid the illicit celebration of marriage. Cf. *Communicationes*, 9 (1977), 138-139. For example, c. 249, 2° of *Schema* 1975 reads: “Praeparatione personali ad matrimonium ineundum, qua sponsi ad novi sui status sanctitatem et officia disponantur.” See *Communicationes*, 9 (1977), 139. It requires that spouses be prepared and disposed. This notion was carried on to c. 1063, 2°, *CIC* 1983. For more information about the duty of the diocesan bishop with regard to marriage preparation, see *Familiaris consortio*, no. 73, in FLANNERY 2, 877-890; *Catechesi tradendae*, no. 63 (FLANNERY 2, 762-814), *Christus Dominus*, nos. 17, 27, (in FLANNERY 1, 573-574, 579-580); and *Apostolicam actuositatem*, no. 26, in FLANNERY 1, 791-792.

²⁶³ Cf. R. JACQUES, “The Canonical Form of Marriage Revisited: Did the Decree *Ne Temere* Outlast Its Usefulness?” in V. G. D’SOUZA (ed.), *In the Service of Truth and Justice: Festschrift in Honor of Prof. Augustine Mendonça Professor Emeritus*, Bangalore, St. Peter’s Pontifical Institute, 2008, 367-374, here on 361. The author also points out the importance of the liturgical celebration of marriage. A fruitful liturgical celebration of marriage offers spiritual nourishment for the couple. Therefore, it should be carefully prepared and conducted. As noted above, marriage preparation takes place in three stages: remote preparation, proximate preparation, and immediate preparation. A fourth stage can be suggested: continued pastoral care after marriage (cf. c. 1063, *CIC* 1983). This paragraph spells out the need for on-going support that young families need from pastors and the ecclesial community.

²⁶⁴ Blume recommends the inclusion of formation regarding monogamy in marriage policy when he wrote: “In our planning of a pastoral policy we must first of all recognize that monogamy pertains to the essence of Christian marriage.” See W. G. BLUME, *The Unity of Christian Marriage Considered in Relation to the Polygynous Cultures of Uganda*, 42. The unity of Christian marriage should be upheld even in childless unions.

canonical marriage in Uganda, it is important to design policies which include sensitization about the indissolubility of marriage as well as the potential impacts of sterility. It would be helpful for each diocese to have a body of experts to design these policies. These can include opinion leaders and cultural experts such as elders in the community, theologians, pastors, counselors, and canonists.

Diocesan marriage policy should also be used to promote cultural values which strengthen the marital bond. Such values include high regard for the community, community involvement in the wedding process, support for childless couples by the extended family, etc. These policies could recommend that childless couples who cohabited before marriage, should undergo fertility tests before their wedding.²⁶⁵ In addition, the diocesan marriage policy could require such couples to undergo sexuality workshops where fertility issues are discussed, the cultural need for children is evaluated, and counseling is offered.²⁶⁶

4.4.2.1.2 — New Evangelization of Ugandan Cultures

Cultural practices need to be evaluated in light of the Church's teaching. The need for new evangelization is a result of changing lifestyle, westernization, urbanization, and the Church's on-going developments in the understanding of her doctrine of marriage.

²⁶⁵ Pretorius offers good recommendations which could be incorporated in diocesan marriage policies. While making recommendations for the church in South Africa with regard to helping childless couples, Pretorius proposed five elements of help which are applicable to Uganda. These elements can be summarized as follows: 1) Childless couples should be helped to understand that childless marriages are authentic unions and couples can be creative in other innumerable ways; 2) The principal end of the marital act is the expression of oneness in love; 3) Childless couples should avoid obsession or mutual reproach but satisfy their parental instincts in their relationship towards one another; 4) Childless couples should have thorough medical examination to ascertain the physical causes of sterility; 5) They should be encouraged to be socially and spiritually creative in their community; and 6) They should deepen their relationship with God through prayer. Cf. H. PRETORIUS, "Childlessness," in T. D. VERRYIN (ed.), *Church and Marriage in Modern Africa*, Groenkloof, Ecumenical Research Unity, 1975, 123-129.

²⁶⁶ Sexuality workshops could be facilitated by medical, cultural, and theological experts.

With the understanding of the ends of marriage after the promulgation of *CIC* 1983, *bonum prolis* is presented as one of the goods of marriage, even in sterile couples. Ugandan cultures still present procreation as the primary reason to marry. With this diverging understanding of marriage, the Church in Uganda needs to present procreation as another good of marriage, not the primary reason for marriage.

In this revaluation, there is need for new evangelization of Ugandan cultures and customs including those which pertain to marriage. Those customs which promote the equality and stability of the family should be encouraged,²⁶⁷ and those which do not conform to the Church's teaching and canon law should be eliminated. It is further recommended that cultural practices which promote the support of the community in the wedding process are encouraged.²⁶⁸ Pastoral care for the newly married and also for sterile spouses should be incorporated in diocesan policies. This is because the support of the church community and the extended family most likely strengthens the institution of marriage.

Cultural practices that could be eliminated include exaggerated bridewealth, widow inheritance, polygamy, and extramarital children.²⁶⁹ The local ordinary mentioned

²⁶⁷ Arinze and Fitzgerald provided examples of values in African customs which could be promoted: "Sense of the sacred, respect for life, sense of community, family spirit, a spiritual vision of life, authority as [sanctioned by the] sacred, and symbolism in religious worship." F. ARINZE and M. L. FITZGERALD, "Pastoral Attention to African Traditional Religion (ATR)," in T. OKURE, P. VAN THIEL (eds.), *32 Articles Evaluating Inculturation of Christianity in Africa*, Eldoret, AMECEA Gaba Publications, 1990, 47-51, here on 49.

²⁶⁸ Some dioceses have encouraged priests to offer Mass or a prayer service at many of the functions in the wedding process. The purpose of this encouragement is to integrate these customary practices in teaching about canonical marriage, and to strengthen the institution of marriage.

²⁶⁹ Customs that are contrary to the Church's teaching on marriage include: widow inheritance, polygamy, and extramarital children when a wife is sterile. Other negative elements practised in some communities include: "Inadequate ideas on the objects of worship, objectionable moral practices, degrading rites, polygamy, discrimination against women, human sacrifice and rejection of twins (where these are

in c. 1064, *CIC* 1983 should give the necessary guidance.²⁷⁰ For example, Bishop Barnabas Halem'Imana of Kabale in Uganda attempted to regulate the customary practice of bridewealth in his diocese. In 1986, he wrote a pastoral letter where he ordered that bridewealth should no longer exceed two cows and one bull.²⁷¹ When bridewealth is affordable, male partners and their families are not strained by the high costs of marriage and the worry of returning bridewealth in case marriage fails due to sterility.

4.4.2.1.3 — Establishment of Catholic Fertility Care Facilities

Sterile spouses need to find support from immediate family members, as well as the entire Christian community. This is why there should be fertility centers at every level of the Church in Uganda: national, diocesan, or parochial which would offer specialized

practised).” F. ARINZE and M. L. FITZGERALD, “Pastoral Attention to African Traditional Religion (ATR),” 49.

²⁷⁰ Canon 1064, *CIC* 1983 reads: “It is for the local ordinary to take care that such assistance is organized fittingly, after he has also heard men and women proven by experience and expertise if it seems opportune.” In addition to the responsibility of the pastors of souls mentioned in c. 1063, *CIC* 1983, the present canon exhorts local ordinaries to give necessary assistance to the couples as they prepare to celebrate their marriage. Couples could be helped to consider: medical testing for fecundity before marriage, the use of legitimate means of treating infertility, and proper understanding of the indissolubility of marriage even for sterile couples. Local ordinaries can ensure that this is done.

²⁷¹ B. HALEM'IMANA, “*Enjugano*,” in *Ageeteraine*, vol. 25, December 13, 1986, 9. “*Enjugano*” means bridewealth. B. Halem'Imana's pastoral letter is an example of how the local ordinary can address important cultural issues, including sterility in canonical marriage. Another bishop has been quoted suggesting the shortening of marriage process by eliminating some of the stages in order to reduce costs. Cf. W. SANYA, “Archbishop Lwanga Wants *Kwanjula*, Wedding on the Same Day,” in *The New Vision*, March 24, 2015: <http://www.newvision.co.ug/news/666230-archbishop-lwanga-wants-kwanjula-wedding-on-same-day.html> (March 24, 2015). The word “*kwanjula*” in the Luganda language refers to the introduction rite where the boy is introduced to the family of the girl. However, no diocesan policy has made an application of c. 1084, §3, *CIC* 1983 or made any other interpretation. The Church in Uganda could also use modern means of social communication such as radio which is available to ordinary Ugandans. The Church in Uganda has at her disposal Radio Maria Uganda, a branch of Radio Maria International, which has been effective in disseminating Catholic teaching in the country. Programs aimed at expounding the Church's teaching on marriage and the family could be an integral part of this radio's broadcasting (see <http://www.radiomaria.ug/about-us.aspx>). Cf. SECOND VATICAN COUNCIL, Decree on the Means of Social Communication *Inter Mirifica*, December 4, 1963, in AAS 56 (1964), 145-157, no. 3, 146; Engl. transl. in FLANNERY 1, 283-292, no. 3, 284-285.

medical care for sterile couples. These centers could be established at existing medical facilities.²⁷² At these centers, couples would obtain information and help from qualified medical personnel and counselors which are affordable.²⁷³

In addition to training the staff and volunteers for these centers, there could be monthly and annual informational workshops and counseling sessions. At these facilities, childless couples could get information and be tested for fertility, as well as receive infertility treatment.²⁷⁴ At these sessions, specialized persons could present the Church's teaching regarding ARTs, and NaPro Technology and promote the concept of adoption for sterile spouses.

In conclusion, there is a need to include policies in the diocesan pastoral planning which directly or indirectly address the pastoral needs of sterile couples. There is a need to include guidance for sterile couples in the enactment of diocesan policies and guidelines. In order to offer this guidance, fertility medical facilities personnel and counseling services should be accessible at every level of Church life. With several tribal

²⁷² In order that dioceses are not burdened by costs of establishing new structures, facility care centers should be established at the existing health facilities. In every diocese, there is a mission health facility: hospital(s), health centers, dispensaries, and clinics. These are coordinated at the national level by the Catholic Medical Bureau. See <http://www.ucmb.co.ug/>.

²⁷³ The funding of these centers could come from diocesan annual collections as well as shared cost arrangements with the couples. Among the programs to be integrated in marriage preparation schedules, the following items proposed by the United States Conference of Catholic Bishops could be useful: appropriate instruction materials, sex education, meaning of Christian intimate relationships, chastity among young people before marriage, and natural family planning methods. Cf. UNITED STATES CONFERENCE OF CATHOLIC BISHOPS' COMMITTEE FOR PASTORAL RESEARCH AND PRACTICES, *Faithful to Each Other Forever: A Catholic Handbook for Pastoral Help for Marriage Preparation*, Washington, DC, USCCB, 1989, 41. This Episcopal Conference also addressed itself to the difficulties of the time such as: "Abortion, sterilization, divorce and remarriage and the pastoral care of infertile couples." Ibid., 131-135.

²⁷⁴ The costs of testing and infertility treatment is high. Pope Paul VI Institute for the Study of Human Reproduction puts the costs at less than \$10,000 US (cf. <http://www.fertilitycarenc.org/napro-technology-vs-ivf/>). This is expensive for ordinary Ugandans. The UCMB could spearhead a special fundraising campaign to establish testing and treatment centers so that, with client a cost-sharing fee, these services become affordable. Services could begin with one center and spread as resources become available.

and cultural differences in Uganda, it is up to individual dioceses and ecclesiastical provinces to decide on the nature and content of these policies and the best way to implement them.²⁷⁵

4.4.2.2 — Integration of Canon Law and Local Marriage Customs

Canon law is promulgated by the Roman Pontiff for the universal or a particular Church, and particular law²⁷⁶ by the diocesan bishop but it is lived in concrete cultural contexts. People of different cultures and customs are expected to be governed under the same law. Therefore, there is need to apply this law to the people's life and customs. A process of integration needs to stipulate the Church's doctrine and law but also consider the cultural contexts of the people receiving the law. Thus, this section outlines three areas where the Church can help the Christian faithful receive the law and live it in their cultural context.

4.4.2.2.1 — Understanding of the Ends of Marriage

The integration of canon law into local marriage customs begins with the understanding of these customs and the reasons why things are done the way they are done.²⁷⁷ During marriage preparation, couples need to be instructed in the Church's

²⁷⁵ Uganda has 19 dioceses and four ecclesiastical provinces. These provinces are designed according to the four regions of the country: Central, Western, Eastern and Northern. See the map of Uganda showing Catholic dioceses in Appendix II. However, in each of these regions, there is remarkable diversity regarding culture and language as well as marriage customs. In spite of these differences, it is common that sterility is viewed the same way, and it affects couples and families the same way.

²⁷⁶ Particular laws in Uganda are scarce; on inquiry in different dioceses, it is not known that particular laws mentioned in c. 8, §2, *CIC* 1983 actually exist. For this reason, no such laws are referenced in this work.

²⁷⁷ This integration can take place in two ways which were proposed by H. Karlen at the Synod of Bishops on the Role of the Family in 1980. He proposed the following: 1) "Various stages in the negotiations are marked by various ceremonies. This is a welcome opportunity for progressive catechesis at each stage. 2) While the free choice and consent of the parties is in no way precluded, the inter-family relationship is an inseparable characteristic of marriage according to African custom." See H. KARLEN, "Canonical Form and Traditional Marriage," in *African Ecclesial Review*, 23 (1981), 58-60, here on 59. He

teaching on marriage and its ends. Before 1983, the Church taught that procreation is the primary end; yet marriage remains valid even if this end is not realized because of sterility. Cultures in Uganda hold that procreation is the primary reason to marry. After the promulgation of *CIC* 1983, procreation is considered as one of the ends of marriage, and sterility does not impede nor invalidate marriage. This new understanding needs to permeate the Ugandan cultural notion of marriage.

In Uganda, having children is the reason to marry. The desire for children is elevated more than the partnership of marriage which explains the disruptive effect sterility has on marital consent. Therefore, fecundity contributes to the stability and permanence of marriage. Jacques' conclusion sums up the need for the Church in Africa to make a shift in the understanding of the ends of marriage. He wrote: "The stability of the traditional wedding is something most Africans, and generally persons raised in societies where the social fabric is tightly knit, understand well; but is very often linked, in people's minds, with fecundity."²⁷⁸

4.4.2.2.2 — Identification of Areas of Integration

In Uganda, missionaries presented canonical marriage as the only valid marriage and customary marriages as invalid and sinful. As such, this resulted in a disregard for whatever belongs to customary marriage. As Jacques correctly observed: "Canon Law cannot change mentalities, at least not over one or two generations. Many saw the Catholic ritual as something foreign to them and dubbed it 'the white man's

concludes: "By christianizing the traditional marriage we might speak of a proper '*sanatio in radice*,' that is, a healing of marriage and family in its concrete cultural situation, which is the root and cell of basic communities and of the Church." (60). Whereas these suggestions apply to Africa in general, they are appropriate for the Ugandan context.

²⁷⁸ R. JACQUES, "The Canonical Form of Marriage Revisited: Did the Decree *Ne Temere* Outlast Its Usefulness?" 350.

marriage.”²⁷⁹ To remove the discrepancy between customary marriage and its practices on one hand, and canonical marriage on the other, the Church in Uganda should be encouraged to use positive elements of customary marriage and integrate them in the canonical understanding of marriage. Understood this way, canon law will achieve the purpose of bringing “Christ into the African family.”²⁸⁰

“Canonical integration” is a term similar to inculturation which applies specifically to the way in which people of a given culture live out their Christian faith.²⁸¹ However, inculturation has been used in the Church to refer mostly to the liturgical adaptation of local cultures.²⁸² Using the principles of inculturation, canonical integration would include knowledge and appreciation of those local customs that are not contrary to canon law, as a means to apply canonical principles in a given area such as marriage.

²⁷⁹ Ibid.

²⁸⁰ J. MULLIN, *The Catholic Church in Modern Africa*, London, Geoffrey Chapman, 1954, 147.

²⁸¹ John Paul II often repeated the need for this integration when he addressed the needs of the Church outside the developed world. Cf. JOHN PAUL II, Post-synodal Apostolic Exhortation on Jesus Christ and the Peoples of Oceania, *Ecclesia in Oceania*, November 22, 2001, in AAS, 94 (2002), 363-444; Engl. transl. *The Pope Speaks*, 47 (2002), 137-184, nos. 16-17; JOHN PAUL II, Post-synodal Apostolic Exhortation on the Church in Africa *Ecclesia in Africa*. In this document the pope highlighted the need to consider the positive values of African culture (nos. 42-43), the urgent need for inculturation (no. 59), criteria for inculturation (no. 62), and areas of application (no. 64). However, the section on marriage (no. 50) was very brief and did not include important considerations such as sterility. See also CONGREGATION FOR DIVINE WORSHIP AND THE DISCIPLINE OF THE SACRAMENTS, Fifth Instruction on the Implementation of the Constitution on the Sacred Liturgy of the Second Vatican Council *Varietas legitima*, January 25, 1994, in AAS, 87 (1995), 288-314, 47. Engl. transl. in *Origins*, 23 (1993-1994), 745-756.

²⁸² Culture is defined as: “That complex whole which includes knowledge, belief, art, morals, law, custom, and any other capabilities and habits acquired by man as a member of a society.” See E. B. TYLOR, *Primitive Culture*, London, University of Oxford Press, 1871, 21. John Paul II encouraged inculturation in Africa while addressing the Bishops of the continent: “You wish to be at once fully Christians and fully Africans. The Holy Spirit asks us to believe, in fact, that the leaven of the Gospel, in its authenticity, has the power to bring forth Christians in the different cultures, with all the riches of their heritage, purified and transfigured.” Cf. JOHN PAUL II, address to the Bishops of Zaire, May 3, 1980, in R. HICKEY (ed.), *Modern Missionary Documents and Africa*, Dublin, Dominican Publications, 1982, 257. For further discussion on the benefits of inculturation on Christian marriage, see A. HASTINGS, *Christian Marriage in Africa*, 72; *Gaudium et spes*, no. 58.

Since the focus of this work is on sterility in marriage,²⁸³ this integration would include the application of c. 1084, §3, *CIC* 1983.

4.4.2.2.3 — Parental Consent and Communal Wedding Process

One example of an area of integration is parental consent. Parental consent needs to be differentiated from restraint or denial of the freedom to marry. The involvement of the couple's parents as well as the extended families is a means to strengthen marriage bond which exists between them as well as the stability of their *consortium*. Therefore, Church leaders such as bishops and priests need to be aware that the involvement of the family or parents in marriage of their children does not infringe on the couple's right and freedom to marry. These leaders can promote practices such as parental blessing, bridal showers, and giveaway ceremonies as functions which do not constitute marital consent of the families but that lead to and strengthen the consent of the parties in marriage.

By way of conclusion, pastoral workers should be well aware of the cultural mentality of their people. In order to guide people in difficulties such as sterility, attention should be paid to the people's cultural milieu in which their marriage is contracted and lived. If those positive cultural practices are promoted, sterile spouses would find information and support in order that they can live a normal marital life without children.

4.4.2.3 — Importance of a Functioning Tribunal System in Uganda

Marriages in Uganda, whether customary or canonical, often break up due to

²⁸³ P. O. Kemdirim points out that one of the expectations of the Special Assembly for Africa of the Synod of Bishops (April 10-May 8, 1994) was to address the many problems which face the Church in Africa, including sterility in marriage. However, the synod discussions as well as the post-synodal message "fell short of most people's expectations" because it did not address specific local problems in the "new approach to evangelization in Africa." Cf. P. O. KEMDIRIM, "A Call to the Church in Africa to Address the Plight of Childless Couples," in *African Ecclesial Review*, 38 (1996), 235-245, here on 237. See also, H. O. OKEKE, "Mass Evangelization: The Challenge of the African Synod," in *Jos Studies*, 5 (1995), 1-12.

sterility. It is for this reason that couples whose marriage fail due to sterility or another reason should find a functioning tribunal system which is to evaluate their petitions toward the declaration of nullity. Since sterility is not a ground for nullity, a careful consideration needs to be made in order to identify other reasons that led to the demise of the marital partnership. This section makes recommendations for three areas of tribunal work: the availability of the tribunal services, development of local jurisprudence, and ongoing formation for tribunal staff.

4.4.2.3.1 — Accessibility of Tribunal Services

The tribunal system in Uganda has existed for several years, but it is still inaccessible to many people. There are a total of five interdiocesan tribunals of first instance and one appeal tribunal.²⁸⁴ Given the population of the Catholic community,²⁸⁵ these tribunals are hardly known nor accessible to many people. *Mitis Iudex* encourages each diocese to have a functioning tribunal and for the diocesan bishop to exercise his function as judge in the “briefer process” (*processus brevior*).²⁸⁶ Alternatively, a diocesan bishop can make use of the existing interdiocesan tribunals,²⁸⁷ so that the services can be accessed by as many people as possible. Therefore, there is a need for the Church in

²⁸⁴ Cf. Judicial Vicars, private responses, 2014. Up to 1996, there were two tribunals of the first instance (in Masaka Diocese and Kampala Archdiocese) the latter which acted as the second instance. Therefore, tribunal services were not known nor accessible to the majority of the Catholics who lived in the countryside. In 1996, the Uganda Episcopal Conference established three other tribunals of the first instance, one in each of the other Ecclesiastical Provinces: Western, Eastern, and Northern. On March 29, 2016, it was reported that the Diocese of Kasana Luwero opened another tribunal of the first instance. See D. WANDERA, “Luwero Gets First Canon Law Court,” in www.monitor.co.ug/News/National/Luweero-gets-first-canon-law-court/-/688334/3137146/-/11w1jl0/-/index.html (March 30, 2016).

²⁸⁵ According to Uganda population statistics for the year 2014, Catholics formed 47.9% of the total population of 34.6 million people. See <http://worldpopulationreview.com/countries/uganda-population/> (March 25, 2016).

²⁸⁶ Canons 1673, §1, 1683, *CIC* 1983 (after the promulgation of *Mitis Iudex*).

²⁸⁷ Canon 1673, §2, *CIC* 1983 (after the promulgation of *Mitis Iudex*).

Uganda to make tribunal services more accessible. Each diocese should work toward having its own tribunal by securing physical facilities, financial resources, and adequately trained staff to run it.²⁸⁸

It is further recommended that dioceses should ensure quicker administration of justice through well-established facilities. These facilities would include physical structures or offices and human resources or tribunal personnel. These structures would serve not only to process petitions but would also be a source of information with regard to sterility and marriage. Additional information regarding the area of nullity procedures should be available to all priests, since they can help in preliminary investigation.²⁸⁹

4.4.2.3.2 — Development of Local Jurisprudence

Another recommendation is to encourage the tribunal judges to develop local jurisprudence. Jurisprudence is defined as: “Philosophy of law, or the science which treats of the principles of positive law and legal relations.”²⁹⁰ From its Latin root, the term *iurisprudencia* is composed of two words: *iuris* and *prudencia* which means the

²⁸⁸ Each individual diocese may not have the personnel and resources to establish its own tribunal. Non-degreed canonists could be appointed to hold the offices allowed in canon law, such as: auditor, notary, and indulted advocates/procurators to work under a qualified canonist. The tribunal staff could also include experts such as cultural, medical, and military experts. Cf. cc. 1425, 1446, 1428, and PONTIFICAL COUNCIL FOR LEGISLATIVE TEXTS, *Instruction to be Observed by the Diocesan and Interdiocesan Tribunals in Handling Causes of the Nullity of Marriage* *Dignitas connubii*, January 25, 2005, Città del Vaticano, Typis Vaticanis, 2005, art. 30, §, 46, §2, 2°, 50, §2. Such an arrangement could facilitate availability of tribunal services as well as speedy administration of justice in the Church. *Mitis Iudex* provides that the tribunal can use assessors, who do not need to be canonists; they should be experts in legal and human sciences, have good reputations, and be approved by the bishop. Cf. cc. 1673, §4; 1676, §3, *CIC* 1983 (after the promulgation of *Mitis Iudex*).

²⁸⁹ The procedural rules which accompanied *Mitis Iudex* indicated that persons who are involved in pastoral investigation (preliminary investigation) do not need to be experts in canon law. They need to be people of good reputation and experts in human sciences or simply those approved by the diocesan bishop. See Artt. 2-4.

²⁹⁰ H. C. BLACK (ed.), *Black's Law Dictionary*, 767.

prudence or science concerning the law.²⁹¹ Cc. 19, *CIC* 1983 and 1501, *CCEO* clarify that canonical jurisprudence is one of the sources of addressing the *lacuna legis*. Thus, when there is a lack in the law regarding a matter that needs to be resolved, c. 19, *CIC* 1983 stipulates: “Laws issued in similar matters, general principles of law, jurisprudence and practice of the Roman Curia, common and constant opinions of learned persons” should be sought.

Canon 1501, *CCEO*'s wording is slightly different: “Unless it is penal matter, if an express prescription of universal or particular law or custom is lacking in some particular matter, the case is to be decided in light of the canons of the synods and the holy fathers, legitimate custom, general principles of canon law observed with canonical equity, ecclesiastical jurisprudence, common and constant canonical doctrine.” *Pastor bonus* specifies that only the jurisprudence of the Roman Rota is allowed in canonical practice, since it “fosters unity of jurisprudence and, by virtue of its own decisions, provides assistance to lower tribunals.”²⁹²

The inclusion of “legitimate customs” and “ecclesiastical jurisprudence” in *CCEO* constitutes a major difference with *CIC* 1983. In the Ugandan context, it would be advantageous to apply *CCEO* in considering legitimate local customs – those which are

²⁹¹ Cf. D. D. PRICE, “Jurisprudence: Its Development and Use,” in H. F. DOOGAN (ed.), *Catholic Tribunals, Marriage Annulment and Dissolution*, 300-312, here on 302.

²⁹² *Pastor bonus*, art. 126. The same significance also concerns the Apostolic Signatura. D. D. PRICE, “Jurisprudence: Its Development and Use,” 307. Regarding the juridic value of local jurisprudence, this author concludes: “Although can. 19 does not give official recognition to the jurisprudence that the local tribunals create, there is no doubt that in recent years, local tribunals, especially in the English speaking countries, have contributed to canonical jurisprudence with creative juridical input. If we accept that the value of jurisprudence must be based on the merits of the legal argumentation (and not only on the authority of the tribunal), then it is safe to conclude that the jurisprudence of local tribunals also has a suppletive value.” *Ibid.*, 308. With this conclusion, local tribunals in Uganda can provide “common and constant opinions of learned persons (c. 19, *CIC* 1983), and to the ecclesiastical jurisprudence, common and constant canonical doctrine” (c. 1501, *CCEO*).

not contrary to canon law (c. 24, §§1, 2, *CIC* 1983; c. 1507, *CCEO*). In addition, “ecclesiastical jurisprudence” is not restricted to the “jurisprudence and practice of the Roman Curia” as in *CIC* 1983. Therefore, *CCEO* is more applicable to the cultural context of Uganda. Furthermore, c. 1507 *CCEO* could be considered for future harmonization of *CIC* 1983 and *CCEO*.

Local jurisprudence is necessary in considering the people's customs and cultures in judging cases which involve the demise of marriage due to sterility.²⁹³ Mendonça's recommendation is useful in this regard: “While the essential elements of marriage are universal and remain constant, their perception and conceptualization may differ from culture to culture.”²⁹⁴ In addition, this can reduce sole reliance on jurisprudence of the Roman Rota for the tribunals in Uganda. Besides, few Roman Rota auditors are conversant with non-western cultures, such as African, Indian, Asian, or Hispanic. Without compromising the unity and indissolubility of marriage or promoting illegitimate interpretations of canon law,²⁹⁵ local jurisprudence would be an enriching resource even

²⁹³ The judges and assessors need to be aware of the strong cultural regard for fecundity when most people in Uganda enter marriage (cc. 1673, §4; 1676, §3, *CIC* 1983 after the promulgation of *Mitis Iudex*).

²⁹⁴ A. MENDONÇA, “The Importance of Considering Cultural Contexts in Adjudicating Marriage Nullity Cases with Special Reference to South East Asian Countries,” 203. The author gives an example of the concepts of “rights and duties” or “freedom” or “equal dignity” or “love” as understood in different cultures. Thus, in the Ugandan context, it is vital to know the concept that fecundity and marriage are inseparable among Ugandan societies. He alluded to this when he wrote: “Each cultural group cherishes its own values. For example, values such as conjugal love, procreation, family loyalty, family status, prestige, virginity, etc., have a greater degree of importance in one culture than in another” (205). See also R. R. CALVO, “The Impact of Culture in Marriage Cases,” 112.

²⁹⁵ Mendonça gives a principle that could be followed in the interpretation and applications of canon law in dealing with sterility: “Most canonical norms however are disciplinary in nature and, consequently, are adaptable to particular circumstances. This implies that before everything else, the main hermeneutical task for practitioners of canon law is to discover the values behind the law and determine whether they are really essential and universally applicable or whether, as is more likely in most cases, they are not so important and should not be allowed to hamper the growth of the Christian faith or the spiritual well-being of Christian faithful in certain cultures.” A. MENDONÇA, “The Importance of Considering Cultural Contexts in Adjudicating Marriage Nullity Cases with Special Reference to South East Asian

for other cultures.²⁹⁶

4.4.2.3.3 — On Going Formation for Tribunal Staff

A good functioning tribunal system is an institution on which the Church relies to administer justice to the Christian faithful. Diocesan bishops and bishop moderators need to ensure that there are enough qualified tribunal personnel. Those who require a canonical degree such as judges, defenders of the bond and promoter of justice should be sent to canon law faculties to obtain it. Those who do not need a canonical degree such as notaries, auditors, assessors, tribunal coordinators and experts, can be formed through training programs such as short courses, seminars, and workshops. Through these programs, the tribunal staff would have an opportunity to study sterility and how to apply c. 1084, §3, *CIC* 1983 to the Ugandan cultural context. As Matthews mentioned: “sterility is one of those unresolved questions in the discussion about marriage,”²⁹⁷ these questions are still unresolved today.

H. O. Okeke has proposed that the Church should develop an “African canon law” which will take into account the inherent beliefs of Africans. He wrote: “African’s understanding of the family, especially as regards the values of family unity and

Countries,” 198.

²⁹⁶ According to the Apostolic Constitution *Pastor bonus*, it is the Apostolic Tribunal of the Roman Rota which “fosters unity of jurisprudence, and, by virtue of its own decisions, provides assistance to the lower tribunals” (Art. 126). However, it is in order that lower tribunals have their own interpretation of the law in light of the people’s culture, as long as they do not contradict canon law. R. Brown is of the view that local jurisprudence depends on rotal jurisprudence and does not contradict it. See R. BROWN, “The Development of Local Jurisprudence,” in *CLSA Proceedings*, 31 (1969), 52-55. Development of local jurisprudence would equip the ecclesiastical judges with expertise on cultural issues such as cultural responses to childlessness in Ugandan societies.

²⁹⁷ K. MATTHEWS, “Essential Elements and Essential Properties of Marriage,” in H. F. DOOGAN, *Catholic Tribunals, Marriage Annulment and Dissolution*, 115-137, here on 119. The author indicates that, if marriage is “ordered to the procreation of children, we must have clear answers for those who are sterile, those who are impotent, those who have been sterilized, and those with a contraceptive mentality.” Ibid.

solidarity”²⁹⁸ should be the main criterion for African canon law. This suggestion reflects the fact that *CIC* 1983 and *CCEO* are based on the European marriage culture and their framework does not fit well into African ecclesiology. However, to have an African canon law does not solve a problem such as sterility because it won't change the core of the Christian doctrine on marriage, nor will it change c. 1084, §3, *CIC* 1983.

The interpretation of cultural beliefs which contradict the universal or particular law should be prohibited. Therefore, canon lawyers in Uganda should enrich their experience both with local cultures and with canon law in order to correctly judge the status of marriage when divorce occurs among sterile couples. The use of an assessor is useful in interpreting local cultures. Assessors could be employed in an ordinary process where the judicial vicar entrusts the case to a single judge (c. 1673, §4 *Mitis Iudex*), or for a briefer process. In a briefer process for example, a missionary bishop can use an assessor who is an expert in Ugandan culture (cf. c. 1687, §1, *Mitis Iudex*).²⁹⁹

In conclusion, formation in African/Ugandan culture is necessary in order to apply c. 1084, §3, *CIC* 1983. This is because the cultural need for children in Uganda is still strong and sterility can disrupt marital partnerships. The tribunal staff need to have sufficient knowledge in order to set appropriate grounds for nullity for marriages that break up as a result of sterility. This knowledge can be enhanced by the use of assessors

²⁹⁸ H. O. OKEKE, “Church-as-God’s Family: From African Ecclesiology to African Canon Law,” in *Studia canonica*, 32 (1998), 397-414, here on 401. The project of an African canon law would be viable if it is based on objective criteria, and the outcome fits in the universal teaching of the Church. This means that cultural beliefs such as polygamy, widow inheritance, divorce due to sterility, or other issues that do constitute a canonical impediment to marriage would be rejected. The author went as far as suggesting a *Lineamenta* for the African canon law project (406).

²⁹⁹ Whereas c. 1426, §4, *CIC* 1983 indicated that an assessor could be used when there is difficulty in allocating a case to a panel of judges, *Mitis Iudex* provides for a single judge “where possible” who is to employ two assessors. To date, there are three missionary bishops in Uganda.

who should be experts in the customs of a given place. In addition, they need to uphold the indissolubility of marriage, including that of sterile couples.

4.4.2.4 — Plan for Implementation

The recommendations and insights provided in this work can be of use to the Church in Uganda. It is helpful that each diocese develops a marriage policy³⁰⁰ which includes guidelines regarding childless marriages. These recommendations could be of help to the Uganda Episcopal Conference at the national level, as well as dioceses and parishes at their health institutions. These insights could be considered while making a diocesan five-year pastoral plan and also when preparing a *lineamenta* for diocesan synods.

The Uganda Episcopal Conference already has structures that could be used to establish a national desk for fertility and sterility issues. The Uganda Catholic Medical Bureau³⁰¹ is the organ charged with coordinating medical programs for all Catholic health units in the country. The first office to be established is that of a National Coordinator of Fertility Care. This person is to work under the National Director of the UCMB, but charged with oversight of fertility care programs. He/she would be responsible for administration and is in charge of overseeing diagnosis and treatment of infertility in the Church's health units once be established.

The second office to be established is that of an Assistant National Coordinator of Fertility Care. While working with a support staff, the Assistant Coordinator to be in

³⁰⁰ A sample diocesan policy is provided in Appendix V(A/B).

³⁰¹ The UCMB was erected as a public juridic person in 1955. This institution and all the lower units which operate under the direction of the Ugand Episcopal Conference have juridic personality and function in the name of the Church (c. 116, §1, *CIC* 1983). The Bureau oversees the operation of 27 mission hospitals and 232 registered lower level health units spread out in the 19 dioceses.

charge of counseling services as well as providing information and other resources needed for these programs. Given the nature of this work, this person needs to be qualified in medicine, administration, and information technology. The advantage here is to have one paid person who performs multiple tasks.

The third office to be established on the national level is a National Chaplain for fertility services. This person needs to be trained in ethics, theology, and counseling. He/she would be in charge of organizing information and prayer sessions as well as retreats on the national level. In addition, he could facilitate retreats of childless couples in collaboration with dioceses. The advantage is to have a person who can correctly assess the needs of couples and refer them to other members of his team such as counselors and fertility experts. As required by this office, he would work closely with trained medical personnel and counselors who would be deployed in health institutions to offer diagnosis and management of fertility issues.³⁰²

On the diocesan level, the diocesan bishop³⁰³ could appoint a fertility care director who would be attached to the Diocesan Health Coordinator's office. Given that all dioceses have established health offices, it suffices to have an office that deals with fertility issues, with programs managed by qualified medical experts. The fertility care director needs to be trained in medical science and administration. The role of the diocesan fertility care director is to coordinate and oversee the programs initiated at the national level and to facilitate educational and counseling programs in the diocese. A chaplain or spiritual director could be appointed at the diocesan level to offer spiritual

³⁰² See Appendix III(A). For a sample of the duties and responsibilities for the personnel at the national level, see Appendix IV.

³⁰³ Or a moderator bishop if these facilities are to be established on the regional level.

and pastoral guidance as required.³⁰⁴

Other places where fertility programs should be initiated at are mission hospitals and other church-run health units such as dispensaries and clinics. At these institutions, a fertility center should be opened and a director appointed. This director needs to be qualified in medicine and should have minimum skills in counseling. The director and members of his/her team should have basic training in NaPro Technology, Christian anthropology, and ethics. This person should have a team of full time counselors as well as volunteers who receive couples who need help with infertility or sterility. They could also organize short informational sessions and seminars as a means to disseminate information to couples seeking answers. Where possible, laboratories should be set up at mission hospitals for testing couples with fertility problems in view of offering treatment. Dioceses could subsidize the costs so that clients pay an affordable cost-sharing fee.

Finally, diocesan bishops should ensure that all priests in the diocese are informed about NaPro Technology as an alternative to ARTs. Since it is priests who first encounter sterile couples seeking counsel, they need to know where to refer them, in addition to offer basic counseling. Therefore, there should be organized seminars and workshops for this purpose in the manner determined by the diocesan director of the fertility office.

With regard to tribunals, ecclesiastical provinces which established regional tribunals need to ascertain that the tribunal personnel are appropriately trained and equipped for effectiveness. Diocesan bishops and bishop moderators need to identify capable individuals who should be trained in canon law to work in the tribunals. In addition, other capable individuals should be appointed as assessors and court experts in

³⁰⁴ See Appendix III(B). For a sample of the duties and responsibilities at the diocesan level, see Appendix IV.

order to assist ecclesiastical judges in collecting proof and evaluating it.³⁰⁵ Some of these assessors and experts could be family men and women who are of good reputation, are knowledgeable in local cultures, and qualified in psychology and counseling.

Conclusion

Uganda is a country of diverse cultures and customs. In spite of this diversity, Ugandan communities have a shared history of colonization, evangelization, and political independence. In addition, these communities share common customs regarding marriage, and the cultural need for children. Through the wedding process which begins with courtship, and by a strong extended family system, Ugandan communities aim at propagating offspring through the institution of marriage. For this reason, couples marry with a strong desire to beget children. Thus, marriage is a vocation which society expects the couples to fulfill.

In traditional thinking, most people in Uganda enter marriage for two reasons: to marry as expected of all adults in search of mutual fulfilment, and to have children. Procreation is not only a means by which adulthood is measured but also a traditional measure of one's success, pride, and status in the community. This thinking is being changed by formal education as well as by the deep-rootedness of Christianity. Uganda is going through a cultural transition which is caused by the introduction of formal education, urbanization, migrant labor, and other forms of cultural exposure.

³⁰⁵ While commenting on c. 1674, §4, *CIC* 1983 (after the promulgation of *Mitis Iudex*), Morrissey clarified that these assessors, who should be well versed in "human sciences," should not need to be "limited to psychologists, social workers, or psychiatrists. It could also, in a number of countries, refer to the village elders who know the family situation well and can replace it in context." F. G. MORRISEY, "The Motu proprio: *Mitis Iudex Dominus Iesus*," in FACULTY OF CANON LAW (ed.), *Seminar: Simplification of Marriage Nullity Procedures*, seminar held from November 19-20, 2015, Ottawa, Faculty of Canon Law, Saint Paul University, 2015, 10.

These changes in the Ugandan society include the desire for equality, justice, and human rights. Uganda is made up of patrilineal societies. In a male-dominated society, sterility is often blamed on women who have failed to produce children for the husband's family.³⁰⁶ This does not take into account the possibility that the man is sterile. Traditional means of having children when sterility is involved, such as polygamy and widow inheritance, are intended to produce children for the husband. Such practices impede the *bonum coniugum* and can be regarded as injustices to the wife. Therefore, by spearheading the effort to reduce infertility, the Church promotes equality and prevents injustices that would be committed against sterile women. In cases where the husband is sterile, his wife should not abandon the partnership in search of children of her own. Nor should the man if his wife is sterile.

The facts and beliefs expounded upon in this chapter indicate that the traditional belief in fecundity is still an important factor in marriages contracted in Uganda. Male children are desired for family labor and for property inheritance and female children for bridewealth. This cultural need for children in Uganda is elevated over the other goods of marriage to the extent of being a *sine qua non* reason to marry.³⁰⁷ The desire for children is made into a quality directly intended (c. 1097, §2, *CIC* 1983), a quality that is tantamount to the person, or is sometimes placed as a condition for marriage. Sterile spouses who do not get adequate answers from the Church and from science can easily

³⁰⁶ Bahikaho reported that a husband in Uganda was killed by his wife because he was unable to impregnate. C. BAHIKAHO, "Woman Kills Husband Over Failure to Give her a Child," March 6, 2016, http://www.newvision.co.ug/new_vision/news/1418878/woman-kills-husband-failure-child (March 6, 2016). By reason of equality and justice, no partner should be blamed for being sterile. In case it is the man who is sterile, both parties need to support each other and remain in the marital partnership.

³⁰⁷ Cf. A. B. T. BYARUHANGA-AKIIKI, "Aspects of Bantu Marriage," 258; C. R. BANSIKIZA, *The Pastoral Approach to African Traditional Values of Fecundity and Marriage*, 3; J. S. MBITI, *Love and Marriage in Africa*, 42.

abandon the Church's doctrine on the indissolubility of marriage. Such couples engage in polygamy but desire to remain members of the Church.

Polygamy and extramarital children negatively impact marital consent, whether in customary or canonical marriage. Sterility is mostly responsible for divorce, polygamy, and widow inheritance in Uganda. These practices are not congruent with the contemporary understanding of marriage as presented in Chapter One. Since these practices are as deeply rooted in people's customs, sterile couples find themselves at a crossroad. They make a decision between the cultural expectation of begetting a child by all means and loyalty to Church's teaching that sterility does not have any negative impact on marital consent. It is this dilemma that requires a response to sterile couples by the Church in Uganda.

It has been noted that the quest for a child among infertile couples is not limited to Uganda. Sterility has the potential to disrupt marital consent even in other cultures. It is for this reason that the Church on the universal level has addressed the morality of scientific – artificial means of reproduction. From the teaching of Paul VI, John Paul II, and Francis, as well as CDF documents, it is emphasized that procreation has to be natural. Those means of procreation which replace the natural act of married couples are condemned as immoral and are not permissible. These are documents that the Church in Uganda can rely on to respond to questions from sterile spouses.

The Catholic hierarchy in Uganda has remained silent on the subject of sterility and its potential impact on marital partnerships. During the 1980 Synod of Bishops on the Family, Ugandan bishops joined other bishops in Rome to discuss the future of Christian marriage. Some African bishops spoke out on the questions raised by childless couples

and the need for an appropriate response. In the end, the synod raised more questions than answers. Sterility was only identified as a major problem in the African family setting while the indissolubility of canonical marriage even among the sterile was presented as an ideal. A major challenge remains in the evangelization of the Ugandan communities where a desire for a solution to address sterility is very strong.

In light of the recent Church teaching on reproductive technologies, this chapter offers recommendations which could guide the Church in Uganda as she ministers to sterile couples. The integral approach requires that the Church helps couples, even before they discover they are infertile or sterile, to adopt the contemporary ideal of marriage. Through their policy on marriage, dioceses and parishes should reach out to those who have lost hope of having a child. Pastoral care of sterile couples should incorporate the principles of counseling and on-going support for them. Care should include distribution of information regarding the available legitimate means of treating infertility. As *Donum vitae* advises, to be promoted are only the morally acceptable acts which facilitate the conjugal act so the child would be born of the marital act of the parents.³⁰⁸ Likewise, scientific research into the causes and treatments of infertility should be encouraged.³⁰⁹

Other general and particular recommendations have been proposed. These concern the integration of canon law into local marriage customs and the improvement of

³⁰⁸ *Donum vitae*, II, nos. 4, 6. Engl. transl. in *Origins*, 16 (1987), 705-707. These acts are not named in the document. One could imagine such acts as using medical means to help the sperm's movement from the vagina to reach the uterus, perhaps using a medical tool. This would be acceptable since it does not involve illicit means of obtaining and inserting these samples, but simply facilitating their movement after a natural conjugal act.

³⁰⁹ PIUS XII, Allocution to the Members of the II World Congress on Fertility and Sterility, May 19, 1956, 469: "C'est avec plaisir que Nous voudrions mentionner ici une considération, que vous avez vous-mêmes mise en relief. Il est pleinement vrai que votre zèle à poursuivre des recherches sur la stérilité matrimoniale et les moyens de la vaincre, s'il présente un aspect scientifique digne d'attention, engage aussi de hautes valeurs spirituelles et éthiques, dont on devrait tenir compte [...] Bien plus, la stérilité involontaire du mariage peut devenir un danger sérieux pour l'union et la stabilité même de la famille."

tribunal services in the country. These could be done without alienating the elements of customary marriage as pagan and sinful, but instead promoting them as elements which enrich the overall understanding of marriage. Thus, those elements which strengthen the institution of marriage should be used to enrich it.

Though not exhaustive, this chapter has outlined the Ugandan cultural context in which questions regarding procreation are asked and a response is required from the Church. It is the beginning of the discussion about questions raised by sterile couples. There is no documented response of the bishops in Uganda with regard to these questions. NaPro Technology is not available.³¹⁰ Besides, those means available employ ARTs which are not approved by the Church. In Uganda, customary beliefs regarding procreation seem to override the canonical understanding of marriage. This conflict leads to difficulty in applying c. 1084, §3, *CIC* 1983 to the Ugandan cultural context. It is hoped that the recommendations given above are a beginning of what the Church could do to respond adequately to couples who are childless due to sterility, to assist them in remaining Christians in their own culture.

³¹⁰ Mayaud correctly observed: "Many African settings lack solutions for the investigation and management of infertility, and existing services are usually confined to a few hospitals." P. MAYAUD, "The Role of Reproductive Tract Infections," 94. Availability and affordability of the means of infertility diagnosis and management remain a challenge to sterile couples in Uganda in long run.

GENERAL CONCLUSION

According to c. 1084, §3, *CIC* 1983, “sterility neither prohibits nor nullifies marriage.” Implementing this canon’s stipulation becomes problematic in cultural contexts where procreation is the primary end of marriage. In this work, two cultural contexts have been considered: the Western context where ARTs are used to overcome childlessness, and the Ugandan context where infertile spouses use traditional means of having children for the man. In order to understand the complexity of applying this canon, it is useful to examine the cultural contexts in which people marry and where they live out their marital commitment. There is also a need to understand the historical context in which the current legislation on marriage has evolved. Then, the Church at the universal and local levels can adequately respond to the plight of sterile couples who have often engaged in a desperate search for a child. Some of these couples have employed means which the Church disapproves and condemns as immoral.

Before the promulgation of the *CIC* 1983, the Church taught that the two ends of marriage are hierarchically ordered. From early centuries, marriage has always been seen as intended to procreate offspring, and in the process, the secondary ends are attained. Saint Augustine’s teaching that the marital bond cannot be broken under the pretext of searching for a child has held over the centuries. This teaching was enshrined in the *CIC* 1917, and the Church’s magisterial teaching has defended this position. Through the jurisprudence of the Roman Rota, the hierarchical ordering of the ends of marriage and the primacy of the procreative end have been upheld.

Thus, the desire to re-examine the relevance and prominence of the secondary end

of marriage emerged for discussion by theologians and canonists after the promulgation of *CIC* 1917. In mid 20th century, theologians proposed that the personalist notion of marriage be elevated to primacy. This proposal was made on two grounds: that marriage is a partnership of the whole of life and that the family is not to be considered as a “mere factory” for children. Besides, the procreative end of marriage which was the primary end is not always attained. When procreation is not attained, as in the case of sterility, questions arose as to whether this remains a primary end and whether sterility has any impact on the partnership of marriage. If one maintains that procreation is the primary end of marriage, it follows that a childless marriage which does not realize this end can be considered incomplete or even invalid.

It is clear that the desire to elevate the personalist notion of marriage and to eliminate the hierarchical ordering of the ends of marriage was present at the Second Vatican Council. With particular reference to *Gaudium et spes*, what has traditionally been understood as the secondary end or “remedy of concupiscence” was referred to as the “good of the spouses” (*bonum coniugum*). It can be observed that this development did not take place in Ugandan cultures; they still hold that the primary end of marriage is procreation. Therefore, every adult marries with this strong desire to have offspring.

Another important step towards defining marriage was the revision process of *CIC* 1917 and the promulgation of the *CIC* 1983. In this process, compromises were made. Some canonists questioned why the Second Vatican Council Fathers remained silent on the hierarchical ordering of the ends of marriage and in offering a precise definition of marriage. Others were in favor of the “branding” of the secondary end as equally important. As a consequence, the *CIC* 1983 describes marriage as partnership or

covenant and elevates the secondary end of marriage to an equal status with the procreative end. Instead of defining marriage, *Gaudium et spes* only provided a description.

An analysis of the revision process brings out the fact that the procreative end of marriage is not determined by the spouses. Therefore, when a man and a woman exchange consent to marry, they only need to perform those acts that are apt for the generation of offspring. It is safe to conclude that the “good of the spouses” has been raised over the procreative end of marriage. As long as the good of the spouses is obtained marital consent is presumed valid even without having children. This presumption could be overturned when invalidating factors such as error, deceit, or condition exist. Therefore, sterility will not have an impact on canonical marriage if children are not born of a marriage as long as the other end of marriage is present.

In Uganda, the traditional understanding of marriage is that it was instituted with procreation as the primary end. If this procreative end is not achieved, marriage is considered incomplete and can easily be disrupted. Fecundity remains a quality which has the potential to disrupt or end marriage. Whereas childless couples in Western societies have options to overcome temporary infertility, childless couples in Uganda expect answers from their pastoral ministers. In Uganda, the means of diagnosing the causes of sterility and the means to treat them are limited.

The Catholic hierarchy in Uganda has not specifically addressed the questions raised by sterile spouses. The only response available is contained in the papal and curial documents which assert that marriage can be validly entered without the couple having children. These documents are limited because they were not addressed to the Ugandan

society in order to address specific Ugandan or African questions on sterility. Rather, they were addressed to the entire Church, focusing on scientific means of artificial reproduction as they have developed in the Western society. Sterile couples, whether in Uganda or elsewhere, who have lost the hope of having a biological child are told by the Church to embrace “the cross of Our Lord.”¹

This study has been limited to canonical and theological discussions in the 20th century regarding the traditional teaching on marriage. *CIC* 1983 considers both the ends of marriage as equally necessary for valid marital consent. These elements do strengthen the partnership of marriage and provide a framework for the understanding of sterility and how it does not adversely impact marriage. Thus the primacy of procreation as taught by theology and canon law has been for centuries the same as understood in the Ugandan cultural context. This new shift in the understanding of canonical marriage in terms of its personalist dimension still needs to reach all cultures.

Sterility is juridically relevant to marriage only when error, deceit, and condition exist in a particular union. In order to understand sterility and its relevance to marriage, c. 1084, *CIC* 1983 should be studied in its entirety by distinguishing sterility from impotence. The primary end of marriage is not always attained because of either impotence, temporary infertility, or sterility. Impotence and sterility do stand in the way of both ends of marriage. These two elements can be considered “obstacles” to the fruitfulness marriage. Impotence makes marriage impossible to attain, and sterility makes

¹ Cf. *Donum vitae*, art. II, no. 8, Engl. transl. in *Origins*, 16 (1987), 708. It has been observed that canons on marriage only reaffirm one Western/Latin model of marriage rather than being one of the several models. Cf. P. DIKOÛ, *The Status of Canonical Form of Marriage in Papua New Guinea: a Comparative Study of Customary, Statutory and Canonical Celebration of Marriage*, JCD diss., Ottawa, Faculty of Canon Law, Saint Paul University, 2005, 244. Canon law needs to integrate the positive elements in different cultures in order to apply c. 1084, §3, *CIC* 1983 to different cultural contexts.

it unfruitful. However, the traditional teaching of the Church from Medieval times indicates that sterility has no invalidating effect on marriage just as impotence has. This teaching of the Church is reflected the writings of Saint Augustine and the *Decree* of Gratian. Following these teachings, only impotence renders marriage null; but sterility does not. Sterility becomes a factor when procreation is a quality highly desired in marriage, and one offers consent while one is in error or deceived about it or when it is stipulated as a condition for obtaining consent.

With the advancement of reproductive science, the Church and science been in serious disagreement regarding the use of artificial reproduction. Whereas the Church is not opposed to scientific advancement, she adds a moral dimension to the use of scientific techniques that directly pertain to life issues. Four observations emerge from the Church's teaching on artificial reproduction. First, science should help identify the cause of infertility and propose a cure before the spouse becomes sterile; the intention is to assist the spouses to conceive naturally. Second, ARTs, which replace the natural act of procreation, are immoral and are not permitted. Third, other social consequences of artificial reproduction should be considered such as the psychological impact and the identity crisis of the artificially born children. Fourth, Christians need to know that scientific discoveries are not absolute. The low success rates of artificial reproductive technologies indicate that these technologies are not the answer to sterility but a means to continually seek an answer. Apparently, NaPro Technology seems to provide that answer; it seeks to diagnose and treat the cause of infertility, so that conception can take place naturally.

This work has analyzed the negative impact of sterility in the Ugandan context. In

all Ugandan communities, couples enter marriage with a strong desire for offspring and with a clear understanding that marriage without offspring is incomplete. Even with the influence of “westernization” currently spreading to many areas of the country, the canonical prescription that sterility has no impact on marital consent has not permeated the entire Ugandan society. The cultural need for children is still strong. It is for this reason that childless couples engage in a desperate search for a child by any means available to them. As a consequence, most childless couples address the problem in traditional ways: divorce or having extramarital children; others opt for polygamy or widow inheritance.² This study indicates that there is still a big gap between the prescription of c. 1084, §3, *CIC* 1983 and customary practices with regard to marriage. The Catholic hierarchy in Uganda has not yet guided the faithful with regard to the unity of childless marriages, the illicit use of ARTs, and the availability of NaPro Technology. Only universal Church documents have been used to address sterility in marriage.

In an attempt to find a solution, pastoral counseling can be one of the means to address sterility in Uganda and other cultures as well. Points of information should include: catechesis on marriage as a partnership of the whole of life; legitimate fertility treatment, NaPro technology and similar means which help the couples conceive naturally; and ongoing help which sterile couples need to cope with the trauma of childlessness.

Other recommendations for the Church in Uganda include the comprehensive

² Whereas these customs are unacceptable, there are positive elements in Ugandan cultures which can enrich marriage legislation. For example, the communal dimension of marriage preparation, the wedding process and the spirit of extended family all help to strengthen the institution of marriage and to reduce marital breakdowns. Individuals who enter marriage need the support of their family, friends, and the entire church community both in marriage process and after. Cf. L. A. ROBITAILLE, “Pastoral Care and those Things which must Proceed the Celebration of Marriage,” in J. P. BEAL, J. A. CORIDEN and T. J. GREEN, *New Commentary on the Code of Canon Law*, 1262.

diocesan marriage preparation policy where fertility issues are discussed and and pastoral care programs for sterile couples are implemented. It is necessary to have specialized ministry to childless couples integrated into a diocesan marriage policy. It is also recommended to have medical fertility care centers at the national, diocesan or parish levels. These centers are to ensure that accurate information and care for sterile spouses are available. It is further recommended that canon law should make use of those customs that are not contrary to canon law or Church doctrine. Given that some marriages might fail due to the strong desire for children, the couple should find a functioning tribunal system to examine the status of such marriages and to offer their judgement accordingly.

In the final analysis, it can be noted that the research question has been answered. By use of the available universal Church documents, the Church has not adequately responded to sterile couples in the Ugandan context. The strong desire for children exists in both Western and Ugandan cultural contexts. Childless couples in the Western culture make use of ARTs in search for a child while those in Ugandan culture use traditional means. In both contexts, the Church does not approve all of the means they use to have children, and at the same time affirms that the bond created by valid marriage remains even when its procreative end is not achieved. The Church in Uganda needs to integrate the prescriptions of *Donum vitae* and *Dignitas personae* into local cultures, and to continue responding to the questions raised by childless couples.

APPENDICES

APPENDIX I (A): CDF DECREE ON *VERUM SEMEN*

SACRA CONGREGATIO PRO DOCTRINA FIDEI

DECRETUM

CIRCA IMPOTENTIAM QUAE MATRIMONIUM DIRIMIT

Sacra Congregatio pro Doctrina Fidei semper retinuit a matrimonio non esse impediendos eos qui vasectomiam passi sunt aliosque in similibus condicionibus versantes eo quod non certo constaret de eorum impotentia.

Iam vero, inspecta tali praxi et post iterata studia ab hac Sacra Congregatione necnon a Commissione Codici Iuris Canonici recognoscendo peracta, Em.mi ac Rev.mi Patres huius S. Congregationis, in consessu plenario feriae IV, die 11 maii 1977 habito, propositis Sibi dubiis, quae sequuntur, respondendum decreverunt:

1. Utrum impotentia, quae matrimonium dirimit, consistat in incapacitate, antecedenti quidem et perpetua, sive absoluta sive relativa, perficiendi copulam coniugalem.
2. Quatenus affirmative, utrum ad copulam coniugalem requiratur necessario eiectio seminis in testiculis elaborati.

Ad primum: *Affirmative*; ad secundum: *Negative*.

Et in Audientia, feria VI, die 13 eiusdem mensis et anni, Summus Pontifex div. Prov. Paulus VI infrascripto Praefecto huius S. Congregationis concessa, praefatum decretum adprobavit ac publici iuris fieri iussit.

Datum Rome, ex Aedibus S. Congregationis pro Doctrina Fidei, die 13 maii 1977.

+ **Franciscus Card. Šeper,**
Praefectus

+ **Fr. Hieronymus Hamer, O.P., Archiepiscopus tit. Loriensis,**
a Secretis

Source: CONGREGATION FOR THE DOCTRINE OF THE FAITH, Decree Regarding Cases in Which Impotence Renders Marriage Null, May 13, 1977, in AAS, 69 (1978), 426.

APPENDIX I (B): CDF DECREE ON *VERUM SEMEN* (ENGL. TRANSL.)

Decree Regarding Cases in Which Impotence Renders Marriage Null

The Sacred Congregation for the Doctrine of the Faith has always held that those who have undergone a vasectomy and those who find themselves in similar circumstances, such that their impotency is not established with certainty, are not impeded from marriage.

Furthermore, having examined this position and after repeated studies conducted by this Sacred Congregation and the Commission for the revision of the Code of Canon Law, the Cardinals and Bishops, members of this Sacred Congregation, in the plenary meeting held on Wednesday, May 11, 1977, chose to respond to the following proposed doubts:

1. Whether the impotence that renders a marriage null consists in the antecedent and perpetual incapacity, whether absolute or relative, to complete the conjugal act.
2. If affirmative, whether the conjugal act necessarily requires the ejaculation of semen produced in the testicles.

Regarding the first: affirmative; regarding the second: negative.

In the Audience granted to the undersigned Prefect of this Sacred Congregation on May 13, 1977, the Holy Father by divine Providence, Paul VI, approved the above decree and ordered it to be published.

Given at Rome, from the Seat of the Sacred Congregation for the Doctrine of the Faith, May 13, 1977.

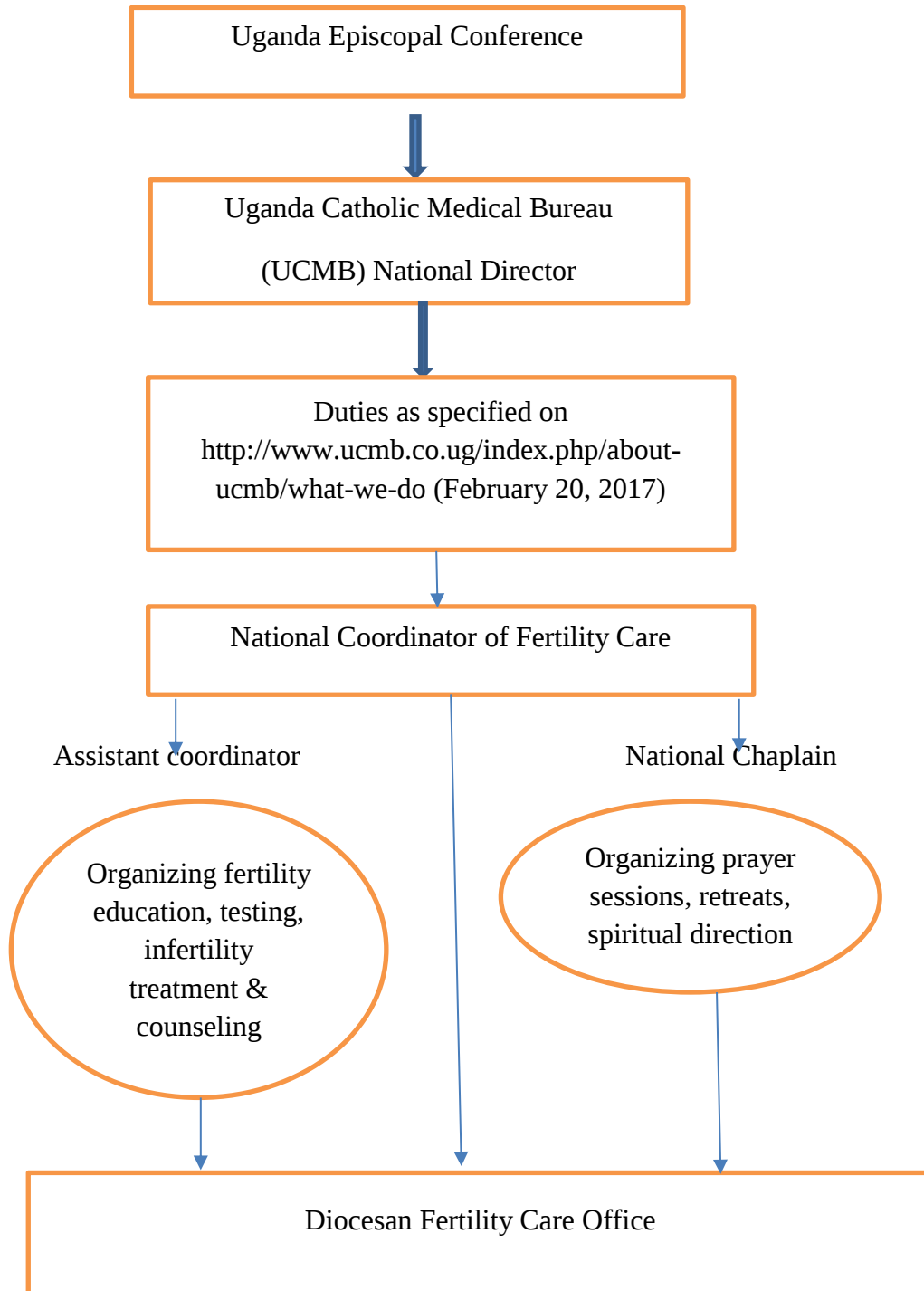
+ **Franjo Cardinal Šeper**
Prefect

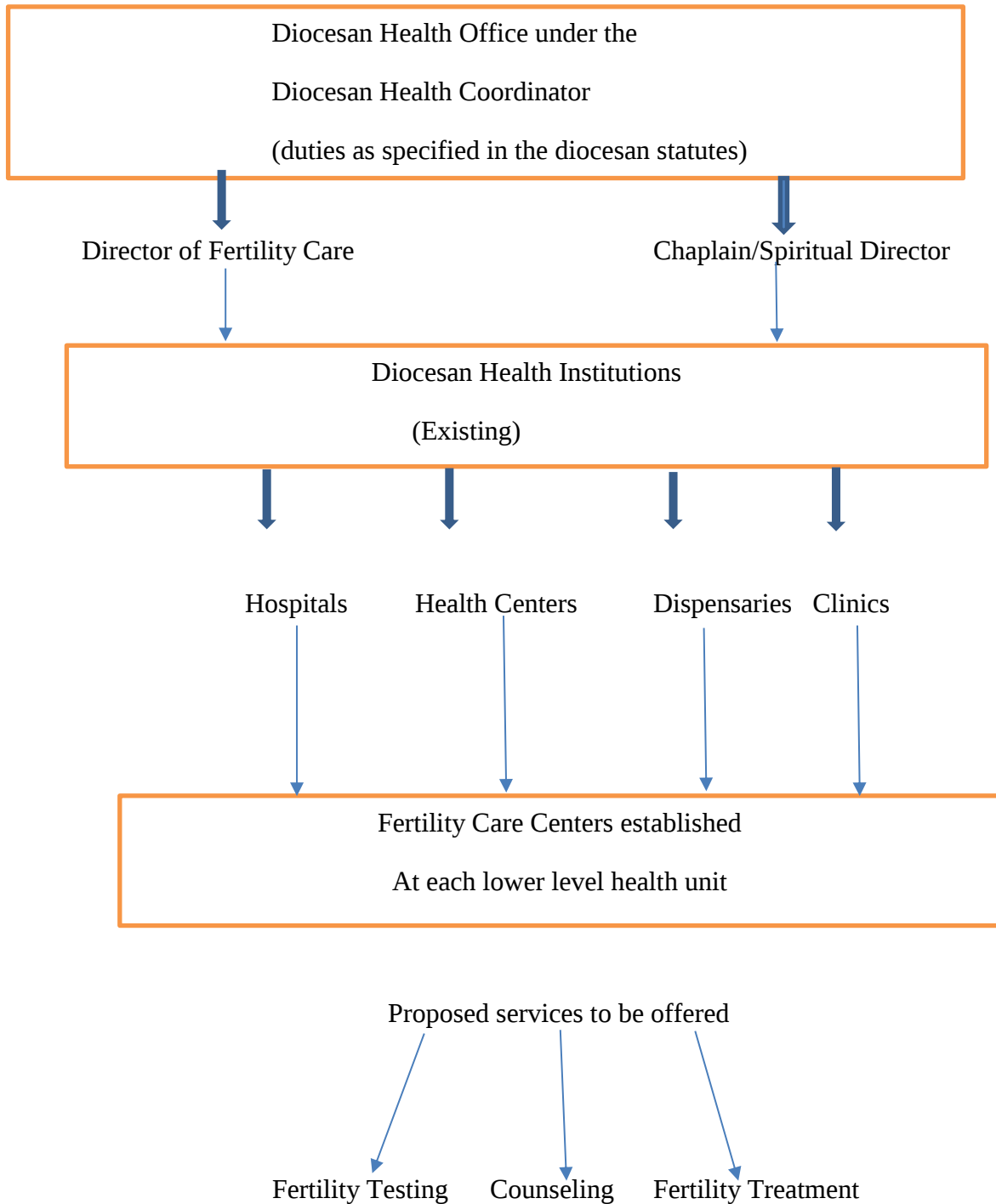
+ **Jérôme Hamer, O.P.**
Titular Archbishop of Lorum
Secretary

Engl. transl. *CLD*, 8 (1978), 676-677.

APPENDIX II: MAP OF UGANDA SHOWING THE LOCATION OF CATHOLIC DIOCESES

Source: Website of the Uganda Episcopal Conference: www.uecon.org (February 20, 2017).

APPENDIX III (A): ESTABLISHMENT OF A NATIONAL FERTILITY CARE OFFICE

APPENDIX III (B): ESTABLISHMENT OF A DIOCESAN FERTILITY CARE OFFICE

APPENDIX IV: SAMPLE JOB DESCRIPTION FOR FERTILITY CARE PERSONNEL**A. PERSONNEL FOR NATIONAL FERTILITY CARE OFFICE****I. Position Title: National Coordinator of Fertility Care**

Immediate Supervisor: National Director of the Uganda Catholic Medical Bureau

Term of office: Five years renewable

Qualifications

1. Bachelor of Medicine with working experience of 5 years
2. Knowledge of Ethics and Catholic Anthropology
3. At least a diploma in Public Administration

Duties and Responsibilities

1. General Administration of Fertility Care Services
2. Oversee infertility testing, counseling and treatment programs
3. Develop policies and procedures to be followed by Fertility Care Centers
4. Oversight for training / education programs in dioceses
5. Financial: budgeting and fundraising
6. Report to the National Director of UCMB and Bishop Chairman of Health Commission

II. Position Title: Assistant National Coordinator of Fertility Care

Immediate Supervisor: National Coordinator

Term of office: Five years renewable

Qualifications

1. Degree in Nursing or Public Health
2. Communication and leadership skills

Duties and Responsibilities

1. Organizing fertility education / information on diagnosis and infertility treatment
2. Organizing and coordinating counseling sessions

III. Position Title: National Chaplain

Immediate Supervisor: National Director of Fertility Care and Director of UCMB

Term of office: Five years renewable

Qualifications

1. At least a degree in Ethics, Theology and Catholic Anthropology

2. Certificate in counseling / spiritual direction skills
3. Knowledge of Canon Law
4. Can be a Priest, Religious or Lay, with sufficient pastoral experience
5. Must be approved by his / her Ordinary

Duties and Responsibilities

1. Organizing prayer sessions, retreats, spiritual direction
2. Coordinate pastoral activities with diocesan chaplains

B. PERSONNEL FOR DIOCESAN FERTILITY CARE OFFICE

I. Position Title: Diocesan Director of Fertility Care

Immediate Supervisors: National Coordinator of Fertility Care, Diocesan Health Coordinator

Term of office: Five years renewable

Qualifications

1. Degree in Nursing / Registered Nurse with about 10 years of work experience
2. Diploma in Public Administration / Leadership Skills
3. Knowledge of Catholic Anthropology / Ethics

Duties and Responsibilities

1. Coordinate nationally initiated programs
2. Organize education and counseling programs in the diocese
3. Oversight for fertility care activities at diocesan health institutions
4. Organize information sessions for childless couples at diocesan health institutions.
5. Oversee budgeting and local fundraising efforts in the diocese
6. Training of volunteers

II. Position Title: Diocesan Chaplain / Spiritual Director

Immediate Supervisors: National Chaplain of Fertility Care, Diocesan Health Coordinator

Term of office: Five years renewable

Qualifications

1. At least a diploma in Theology, Ethics, Counseling and Catholic Anthropology
2. Priest, Religious or Lay, with sufficient Pastoral Experience
3. Must be approved by his / her Ordinary

Duties and Responsibilities

1. Organize prayer and counseling sessions for childless couples
2. Offers spiritual direction

APPENDIX V: SAMPLE DIOCESAN MARRIAGE POLICY**Introduction**

"The matrimonial covenant, by which a man and a woman establish between themselves a partnership of the whole of life, is by its nature ordered toward the good of the spouses and the procreation and education of offspring; this covenant between baptized persons has been raised by Christ the Lord to the dignity of a sacrament" (*Catechism*, no. 1601; cf. c. 1055). Canon law exhorts the local ordinary to ensure that preparation for marriage be properly done for the the good of the faithful (cf. c.1064). In order to ensure that marriage is properly celebrated and lived, the following policy will be adopted by the Diocese of ..., three months from the date of its publication.

I. Preparation for Marriage

1. Engaged couples seeking to marry should contact their parish priest at least 6 months before the expected date for their wedding. Those who have been married before should contact their pastor before they schedule any date for their wedding.
2. The parish priest should immediately ascertain that parental consent has been granted, and that the preliminary customary ceremonies have taken place.
3. Engaged couples should attend at least two sessions with the parish priest of the parish where the wedding is to take place, or his delegate for premarital instruction. Premarital instruction should be done by him in person or through another person he delegates.
4. Premarital instruction must contain: Sacramentality of Marriage; Ends of Marriage; Indissolubility of Marriage; Natural Family Planning; Sexuality and Fruitfulness in Marriage; Fertility Testing; and NaPro Technology.
5. Engaged couples should also discuss their openness to children; history of sterility / impotence in their respective families. This includes those in cohabitation.
6. Prenuptial investigation should include filling of an application form and announcement of marriage banns (c. 1067) for 4 consecutive Sundays in the parish church where marriage is to take place as well as well as in the parishes of the spouses' baptism.

II. Required Documents

1. Baptism cards for both parties indicating their baptismal status.
2. Letter of testimonial from the Head Catechist of each party's village church. He should ascertain that the spouses parents have approved marriage, and that the preliminary customs have already been observed, or at least they are in progress.
3. If marriage is to take place in a parish other than that of their residence, each party is to present a signed letter of testimonial from the parish priest of their parish of residence indicating the absence of an impediment (c. 1066), and the person's freedom to marry (c. 1114).

III. Celebration of Marriage

1. Marriage of two Catholics should ordinarily be celebrated within Mass (cf. c. 1119 and *Ordo celebrandii matrimonium*, nos. 6 and 8.). At the discretion of the parish priest, or at the request of the spouses, other marriages can take place without Mass.
2. Every marriage must be witnessed by at least three people: Church official assisting at marriage such as a priest or deacon, or in special circumstances, another authorized person; as well as two witnesses (c. 1108). It is encouraged that the two witnesses be Catholic, but the pastor can allow non-Catholics to perform this function.
3. The two witnesses mentioned above can have other functions such as *best man* or *matron*. They must sign marriage register as witnesses.
4. Marriage should be celebrated in the parish church building or an outstation chapel within a parish. If marriage is to be celebrated in a private chapel or another suitable place, the parish priest should seek permission from the local ordinary or his delegate.

IV. Registration of Marriage

1. Immediately after marriage has been celebrated, it should be recorded in the parish marriage register (c. 1121), and a notification must be sent to the parishes of the spouses baptism (c. 1122).
2. Marriage registers should be kept in the parish archives (cc. 535, §§ 1, 4), and a duplicate copy sent to the chancery.

V. Faculties and Delegation

1. Every priest incardinated in the diocese of ... or working in the same diocese has the faculty to assist at marriage (c. 1111, §1). This faculty can be revoked by the local ordinary for grave reasons.
2. The parish priest can delegate this faculty (c. 1111, §2) to a visiting priest when he is personally known to him, or to a priest residing within the diocese after ascertaining that he is in good standing.

VI. Previous Marriages

1. Where one or both parties have been previously married even civilly or customarily, the parish priest of the parish where marriage is to take place should seek a declaration that there is no obstacle to the celebration of that marriage (*nihil obstat*) from the local ordinary or his delegate.
2. If the declaration of nullity is needed, parties should be referred to marriage Tribunal.

VII. Permission and Dispensation

1. Permission is required for marriage which involves a Catholic and a baptized non-Catholic. This permission, which may involve the celebration of marriage outside a church, may be granted by the parish priest (cf. c. 1124; c. 1118, §3).
2. A dispensation is required for marriage between a Catholic and a non-baptized party. This dispensation can only be granted by the local ordinary or his delegate (c. 1129).

VIII. Workshops for Married Couples

1. Every year, each parish should organize one day's workshop for married couples. Those who are married should be assisted to preserve the conjugal covenant and to lead holy and full life in their family (c. 1063, 4°).
2. At these workshops, counseling should be offered for couples with special needs such as those who are childless.
3. Officials from the Diocesan Fertility Care Office should be invited to answer questions related to their office.
4. Neighboring parishes can cooperate in arranging these workshops in order to share resources.

IX. Recommendations

1. In addition to these workshops, it is recommended that as part of family ministry, each parish may establish marriage support groups such as Marriage Encounter, Christian Family Movement, Mothers / Fathers Union etc.
2. Special care should be taken to support young couples in their first years of marriage experience, and those experiencing infertility problems early in marriage.
3. It is highly recommended that in every parish there should be anniversary Masses arranged for marriage jubilee celebrations: 15, 20, 25, 30, 30, 45, 50, 60 years. Jubilarians should be encouraged to attend. Liturgy should include renewal of vows and a special marriage blessing.
4. A Marriage and Family Parish Team should be formed at every parish to assist the Parish Priest in preparing couples for marriage and on-going support for young couples. They could help to animate fertility care information programs in the parish.
5. Each parish should provide an opportunity for retreats and conferences designed for young couples (See *Familiaris consortio*, nos. 69-78).

Signed: + **Bishop**

Attest: **Chancellor**

Date / Seal

APPENDIX VI: SAMPLE OF MARRIAGE APPLICATION FORM

Registration no.....

	Bride	Bridegroom
Personal Information		
1. Name		
2. Date of Birth		
3. Date/Parish of Baptism		
4. Parish of Confirmation		
5. Village of Residence		
6. Name of Village Church		
7. Parish of Residence		
8. Name of Mother		
9. Name of Father		
10. Date for wedding		
11. Names of witnesses	1.	2.
Prenuptial Inquiry		
1. Are you related by blood?		
2. Is this your first marriage?		
3. Do you have children?		
4. Do you intend to have children?		
5. Any case of sterility / impotence in your family?		
6. Have your parents allowed you to marry?		
7. Do you believe that the sacrament of matrimony lasts until death?		
8. Do you believe in what the Church teaches about the sacrament of matrimony?		
9. Are you entering marriage out of your own free will?		
10. Are customary ceremonies completed?		
11. Are marriage fees paid?		

Signed

.....

Parish Priest

.....

Bride

.....

Bridegroom**Date / Parish Seal**

APPENDIX VII(A) PERCENTAGE OF PRIMARY INFERTILITY IN WOMEN IN UGANDA BY REGION (YEAR OF STUDY: 1995)

Region	% of women with primary infertility	Sample size
Central	2	854
Eastern	4	937
Northern	4	562
Western	3	829

Adapted from: U. LARSEN, H. RAGGERS (eds.), "Levels and Trends in Infertility in Sub-Saharan Africa," in BOERMA, J. T., Z. MGALLA (eds.), *Women and Infertility in Sub-Saharan Africa: a Multi-Disciplinary Perspective*, Amsterdam, KIT Publishers, 2001, 25-69, here on 59.

APPENDIX VII(B): PERCENTAGE OF SECONDARY INFERTILITY IN WOMEN IN UGANDA BY AGE AND REGION (YEAR OF STUDY: 1995)

	Age: 20-24	25-29	30-34	35-39	40-44	
	Sample					
Central	9	13	22	42	65	833
Eastern	8	15	24	41	58	872
Northern	5	9	20	47	83	498
Western	3	8	17	31	57	793

Adapted from: U. LARSEN, H. RAGGERS (eds.), "Levels and Trends in Infertility in Sub-Saharan Africa," in BOERMA, J. T., Z. MGALLA (eds.), *Women and Infertility in Sub-Saharan Africa: a Multi-Disciplinary Perspective*, Amsterdam, KIT Publishers, 2001, 25-69, here on 66.

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