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THE EFFECTS OF INCEST  
ON MATRIMONIAL CONSENT

by  
Nira SANGAL

A dissertation submitted to the Faculty of Canon  
Law, Saint Paul University, Ottawa, Canada, in partial  
fulfillment of the requirements for the degree of  
Doctor of Canon Law

 Nira Sangal, Ottawa, Canada, 1993



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## ABBREVIATIONS

<i>AAS</i>	<i>Acta Apostolicae Sedis</i>
<i>AC</i>	<i>L'Année canonique</i>
<i>ASS</i>	<i>Acta Sanctae Sedis</i>
<i>CLD</i>	<i>Canon Law Digest</i>
<i>CLSGBI</i>	<i>Canon Law Society of Great Britain and Ireland</i>
<i>CS</i>	<i>Chicago Studies</i>
<i>EIC</i>	<i>Ephemerides iuris canonici</i>
<i>ME</i>	<i>Monitor ecclesiasticus</i>
<i>Proceedings</i>	<i>Proceedings of the Canon Law Society of America</i>
<i>PS</i>	<i>Philippiniana sacra</i>
<i>RDC</i>	<i>Revue de droit canonique</i>
<i>SC</i>	<i>Studia canonica</i>
<i>SRR Dec</i>	<i>Sacrae Romanae Rotae Decisiones</i>

## INTRODUCTION

The Second Vatican Council's inspired description of marriage found in *Gaudium et spes* characterized it as a "community of love" (n. 47) and "an intimate community of life and married love" rooted in the "conjugal covenant of irrevocable personal consent" (n. 48).

Although the Council speaks of the "benefits and purposes" (n. 48) of marriage, these are not prioritized. The traditional *tria bona* of marriage continue to find expression in this constitution which speaks of the good of the spouses and their offspring, as well as the unitive and sacramental aspects of this bond (n. 48). These elements express the nature of marriage and it is in the 1983 *Codex iuris canonici* that these concepts find juridic expression.

Since marriage is a human reality, the Church has always recognized the natural right of all persons who are "not prohibited by law," whether divine, ecclesiastical or secular to enter this union. It has also recognized the need to protect this right. There are factors, however, which can affect the exercise of this right or the ability to establish a marital union. The Church has always been conscious of this fact and has recognized certain divine law impediments. For various reasons it has also promulgated its own list of

impediments to marriage. At the same time, the Church may or may not recognize barriers to marriage established by some societies.

Among the factors militating against marriage and its establishment are those which have a negative effect on the psyche of an individual. These in turn can alter a person's capacity to contract marriage or adversely influence their motivation to enter marriage. Certain traumatic childhood experiences can affect an individual so that the "mutual gift" of the partners that constitutes marriage (*Gaudium et spes*, n. 48) becomes almost an impossibility. The experience of violence in childhood which has many consequences on the personal and interpersonal aspects of human development is such a deterrent.

The last fifteen years have seen a media explosion concerning the sexual violation of children. Most of these revelations pertain to incest and have focused on the abusive father-daughter relationship. Clinical and research data concur that the overwhelming majority of perpetrators of child sexual abuse are men (95%). Girls are more likely to be victimized within the family (i.e., incest) than boys. Because fathers represent authority and security to children,

their betrayal of the parental role has been shown to be one of the most devastating types of child sexual abuse.

Sociological, psychiatric and psychological studies are beginning to confirm the profound effect sexual abuse has on the personality of its victims. A deep distrust of others and low self-esteem prevent them from giving to or accepting others as equals. Self-destructive behaviours such as substance abuse or suicide attempts can also be a result of incest. Several psychiatric disorders such as borderline and multiple personality disorders have also been linked to incest as well as various sexual dysfunctions which seriously affect the intimate union of marriage.

Victims of incest often "block out" the experience. In such cases the actual memory of the incestuous abuse is not readily available to the conscious mind, although patterns of personal and interpersonal difficulties may be present. While many victims enter marriage with the best of intentions, many of these unions fail. Other victims use marriage as an opportunity to escape the parental home, with the same resulting marital failure.

Many perpetrators of incest also enter marriage bringing with them painful family experiences and poor abilities to

form healthy interpersonal relationships. As children they themselves are often victims of physical and/or sexual violence or come from homes in which adult male figures are absent. As adults, they display marked difficulties in many areas of interpersonal interaction, including the marital relationship. They also show a poor understanding of the responsibilities involved in the parental role. These problems inevitably lead to adversity in conjugal life.

For the purpose of this study, we raise the following questions relevant to these facts:

- 1) What is the nature of marriage as presently understood by the Church?
- 2) What is the nature of incest?
- 3) What are the factors motivating perpetrators of incest and how is their psychological status related to their ability to give valid matrimonial consent?
- 4) Are incest victims capable of giving valid consent and establishing a marital union as the Church understands it?
- 5) What are the precise psychological factors of the abuse which affect the ability to establish such a union?
- 6) What are the elements of marriage as the Church teaches it that are beyond the capabilities of these persons?

It is the hypothesis of this study that, within the specific criteria established by law and jurisprudence, those who experience an incestuous relationship during childhood may be unable to posit valid matrimonial consent due to the

lasting effects of such maltreatment. It is also advanced that those who perpetrate incest against children may similarly be found unable to consent validly to marriage.

To present the effects incest has on matrimonial consent two factors will be examined, namely, the Catholic Church's traditional teaching on marriage in its theological and canonical aspects as enhanced by the teachings of the Second Vatican Council and contained in post-conciliar documents, and the nature of a human act and the grounds of nullity which might be proposed in a cause with an incestuous element.

Next, the nature of father-daughter incest will be identified. This specific relationship is being studied as it is considered by both clinicians and the general public to be the most traumatic form of incestuous abuse. The results of recent studies regarding the prevalence and incidence of incestuous abuse in Canada, the United States of America and England and Wales will be presented. Availability of research data determined that these countries in particular would be the focus of this thesis. A discussion of some of the major causal theories of incestuous behaviour will follow.

This will lead to an examination of the development of the human personality. The short-and long-term effects that

sexual abuse has on the developing personality will be outlined. Since treatment of incest victims is varied in its modalities and results, only some of the major types designed to assist the child and adult victim will be explored.

Jurisprudence in the area of incest is growing. An examination of the decisions of the Rotal judges in such causes, and any available decisions of lower courts will conclude this study. Other cases, particularly those in which incest can only be obliquely indicated, will also be considered since they can contribute to a developing jurisprudence.

Since the mid 1970s, much has been written on the experience of incest. These early works have been valuable for the information provided regarding the effects incest has had on the lives of the authors. However, their anecdotal approach excluded the rigours of a scientific approach to the study of the problem. By the mid 1980s scientific research began to be published on an inter-professional scale. Earlier studies examined the nuclear family unit in their search for the cause of the problem. Later research narrowed its focus to the perpetrator and victim, while at the same time broadening the search into the wider societal attitude towards violence, especially when it had sexual overtones and was

directed towards less physically strong members of the community.

A picture of the short and long-term effects of incest is slowly emerging. Painstaking and detailed studies using the rigorous research methods of the scientific community are yielding consistent, verifiable results.

Although research continues in the fields of psychology, psychiatry, social work, medicine, nursing and secular law in the civil and common law traditions, little has been written on the subject in the domain of canon law. Recent canonical writings have examined the effect psychological disorders including homosexuality, psychic impotence, immaturity, antisocial personality, schizophrenia and trauma can have on the ability to consent to marriage. However, no major canonical study has been undertaken demonstrating the effect incest has on matrimonial consent.

Many victims of incest come to Catholic marriage tribunals searching for an answer regarding the validity of the matrimonial union they have entered. They bring with them the scars caused by the most intimate and painful memories. It is incumbent upon ecclesiastical judges and tribunal personnel to have access to a base of scientific knowledge

regarding the consequences of this experience. It is only within this framework together with a solid understanding of the Church's teaching on marriage that an answer regarding the validity of a specific marriage can be found.

CHAPTER ONE  
THE NATURE OF MARRIAGE

INTRODUCTION

The Second Vatican Council presented a theology of marriage that was at once both new and faithful to the Church's traditional teachings. The eminently pastoral document *Gaudium et spes* using terms such as "intimate community of life and love" and "covenant of conjugal love,"<sup>1</sup> reflected the growing existential movement to a more personalist philosophy than had been used to describe this human reality. Traditionally, the Sacred Scriptures and the writings of the early Church Fathers presented and commented upon the mystery that is marriage<sup>2</sup> but those writings seemed to have little juridical import. With the promulgation of the 1917 *Code of Canon Law*, the juridical elements required for a valid marriage represented the minimum to establish a marital contract. It took the Second Vatican Council to re-discover the richness of biblical and theological terminology to

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<sup>1</sup>SECOND VATICAN COUNCIL, Pastoral Constitution on the Church in the Modern World, *Gaudium et spes* (=GS), 7 December 1965, n. 48, in AAS, 58 (1966), p. 1067 (English translation adapted from A.P. FLANNERY (ed.), *Documents of Vatican II* [=FLANNERY], Grand Rapids, MI, William B. Eerdmans, 1975, p. 950).

<sup>2</sup>Ephesians 5:22-33.

describe what is for most of humanity a profound and intimate relationship.

This presented a problem to those who had the task of revising the *Code of Canon Law* and especially the canons on marriage. After all, rich theological phrases rarely translate well into precise juridical language. Could, in fact, *Gaudium et spes* be used at all in considering revisions to the Church's legislation on marriage? The debate was lively and continues to this day among various Rotal judges as is reflected in their respective sentences.

In the following pages the magisterial and juridical understanding of the nature and elements of natural and Christian marriages will be discussed. Cognizance will also be taken of conjugal consent. Finally, the various grounds under which the validity of a marriage may be challenged in a case in which one of the parties either suffers from incestuous anomaly or has been subjected to an incestuous relationship during childhood will be examined.

#### 1. THE INTIMATE COMMUNITY OF CONJUGAL LIFE

"The intimate community of life and love"<sup>3</sup> is the way the

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<sup>3</sup>FLANNERY, p. 950.

Fathers of the Second Vatican Council chose to describe marriage. The particular terminology used in this document is not new to Catholic thinking on marriage,<sup>4</sup> but it was a refreshing rediscovery of the descriptive language of prior vintage. Marriage as a *consortium omnis vitae* is a Roman law concept that is found in the *Corpus iuris civilis*.<sup>5</sup>

However, far beyond its Roman law roots, the terminology has profound biblical connotations. The union of the spouses is described as the "two become one flesh" (Genesis 2:18).<sup>6</sup> With this revealed truth in mind the Pontifical Commission for

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<sup>4</sup>See LEO XIII, Encyclical letter, *Arcanum divinae sapientiae* (=Arcanum), 10 February 1880, in ASS, 12 (1879-1880), pp. 385-402; PIUS XI, Encyclical letter, *Casti connubii* (= *Casti connubii*), 31 December 1930, in AAS, 22 (1930), pp. 539-592.

<sup>5</sup>MODESTINUS' definition as found in the *Digest* is: "Nuptiae sunt coniunctio maris et feminae et consortium omnis vitae, divini et humani iuris communicatio" (*Digest*, 23, 2, 1). Another formulation found in Justinian's collection is attributed to ULPIAN, which states, "Nuptiae autem sive matrimonium est viri et mulieris coniunctio, individuum consuetudinem vitae continens" (*Institutes*, 9, 1). In comparing the two formulations, Fellhauer concludes that Modestinus' phrasing is stronger in meaning than that of Ulpian. Although both refer to a sharing of life, *consortium* means more a sharing of a common lot (con+sors), whereas *individua consuetudo* (common customs) is a weaker expression of the same sharing of life. See D.E. FELLHAUER, "The '*consortium omnis vitae*' as a Juridical Element of Marriage," in *Studia canonica* (=SC), 13 (1979), p. 15-16.

<sup>6</sup>The New Testament teachings on marriage and divorce confirm these intentions of the Creator as His will "from the beginning." See Mt. 5:31-32; 19:3-9; Lk. 16:18; Mk. 10:2-12; Eph. 5:22-33.

the Revision of the Code of Canon Law undertook the task of revising the marriage canons. The earliest drafts of the revision replacing C. 1013 of the 1917 Code<sup>7</sup> revealed a description of marriage, reminiscent of *Gaudium et spes*: "Marriage is an intimate union of the whole of life between a man and a woman by its nature ordered toward the procreation and education of offspring."<sup>8</sup>

By 1977, the *coetus* working on marriage legislation made textual changes regarding the ends of marriage, so the text read: "Marriage is an intimate union of the whole of life between a man and a woman by its nature ordered toward the good of the spouses and the procreation and education of offspring."<sup>9</sup> At the same time the working group decided that the Roman law concept of *coniunctio* rather than the *Gaudium et spes* language of *communitas* or *communio* would be used. The 1980 *Schema* of the Code however, moved away from *coniunctio* to

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<sup>7</sup>All references to canons of the 1917 Code will be styled C. for canon and CC. for canons, followed by the canon number[s].

<sup>8</sup>"Matrimonium est intima totius vitae coniunctio inter virum et mulierem, quae, indole sua naturali, ad prolis procreationem et educationem ordinatur" (PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Communicationes* [=Communicationes], 3 [1971], p. 70).

<sup>9</sup>"Matrimonium est viri et mulieris intima totius vitae *coniunctio* quae indole sua naturali ad bonum coniugum atque ad prolis procreationem et educationem ordinatur" (*Communicationes*, 9 [1977], p. 123, emphasis added).

*communio*.<sup>10</sup> After much deliberation, the *coetus* came to the conclusion that *consortium* was a preferable term since it avoids the ambiguity which could be associated with the word *communio* and the Code Commission adopted it in the 1981 *Relatio*.<sup>11</sup> This same wording found expression in the revised Code as c. 1055, § 1:

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.<sup>12</sup>

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<sup>10</sup>"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, a Christo Domino ad sacramenti dignitatem inter baptizatos evectum est" (PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Schema Codicis iuris canonici iuxta animadversiones S.R.E. cardinalium, episcoporum conferentiarum, dicasteriorum Curiae romanae, universitatum facultatumque ecclesiasticarum necnon superiorum institutorum vitae consecratae recognitum* [=Schema, 1980] [Patribus Commissionis reservatum], Romae, Libreria Editrice Vaticana, 1980, p. 231).

<sup>11</sup>See PONTIFICA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Relatio complectens synthesim animadversionum ab em.mis atque exc.mis Patribus Commissionis ad novissimum schema Codicis iuris canonici exhibitarum, cum responsionibus a Secretaria et consultoribus datis* (=Relatio, 1981) (Patribus Commissionis stricte reservata), Città del Vaticano, Typis Polyglottis Vaticanis, 1981, pp. 244-245.

<sup>12</sup>"Matrimoniale foedus, quo vir et mulier inter se totius vitae consortium constituunt, indole sua naturali ad bonum coniugum atque ad prolis generationem et educationem ordinatum, a Christo Domino ad sacramenti dignitatem inter baptizatos evectum est" (*Codex iuris canonici auctoritate Ioannis Pauli P.P. II promulgatus, fontium annotatione et indice analytico-alphabetico auctus*, Romae, Libreria Editrice Vaticana, 1989), (English translation in *Code of Canon Law*,

The sometimes subtle differences in these terms have been studied by J. Huber who has concluded that *consortium* is the most appropriate juridical term with which to describe marriage. According to his study, the word *coniunctio* denotes a union of mind and bodies; *communio* reflects a communion of many other aspects excluding a communion of bodies (the term is used many times in the revised Code in relation to eucharistic and ecclesiastical communion); whereas *consortium* reflects a communion of goods, life and fortune to be experienced and sustained in perpetuity.<sup>13</sup>

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Latin-English ed., translation prepared under the auspices of the CANON LAW SOCIETY OF AMERICA, Washington, DC, Canon Law Society of America, 1983. All references to canons of the 1983 Code will be styled c. for canon and cc. for canons, followed by the canon number[s]).

A remarkably similar description of marriage can be found in the Code of Canons of the Eastern Churches which was promulgated on 18 October 1990. Canon 776 presents marriage as follows:

"§ 1-Matrimoniale foedus a Creatore conditum eiusque legibus instructum, quo vir et mulier irrevocabili consensu personali totius vitae consortium inter se constituunt, indole sua naturali ad bonum coniugum ac ad filiorum generationem ed educationem ordinatur.

"§ 2-Ex Christi institutione matrimonium validum inter baptizatos eo ipso est sacramentum, quo coniuges ad imaginem indefectibilis unionis Christi cum Ecclesia a Deo uniuntur gratiaque sacramentali veluti consecrantur et roborantur"  
(*Codex canonum ecclesiarum orientalium auctoritate Ioannis Pauli P.P. II promulgatus*, Romae, Typis Polyglottis Vaticanis, 1990).

<sup>13</sup>J. HUBER, "Coniunctio, communio, consortium: observationes ad terminologiam notionis matrimonii," in *Periodica*, 75 (1986), pp. 401-408.

Semantics aside, the concept of marital *consortium* remains open-ended, "so that doctrine and jurisprudence will have ample scope to gradually identify its constitutive elements."<sup>14</sup> Several attempts have been made in jurisprudence and in canonical literature to identify some of the essential elements of the *consortium totius vitae*. One of the earliest was in a sentence by Rotal Judge L. Anné, who on 25 February 1969 identified the *consortium totius vitae* as an essential right and obligation of marriage whose specific element involves a most intimate personal relationship.<sup>15</sup> In attempts to delineate some of the elements of this most intimate union, G. Lesage presented several broad categories within which a relationship could be examined in a matrimonial tribunal.<sup>16</sup>

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<sup>14</sup>A. MENDONÇA, "The Theological and Juridical Aspects of Marriage," in *SC*, 22 (1988), p. 274.

<sup>15</sup>c. ANNE, 25 February 1969, n. 16, in *SRR Dec*, 61 (1969), pp. 183-184 (English translation in L.G. WRENN, *Decisions*, Toledo, OH, Canon Law Society of America, 1980, pp. 99-100. See also U. NAVARRETE, "De iure ad vitae communionem: observationes ad novum schema canonis 1086, § 2," in *Periodica*, 66 (1977), p. 269; A. MENDONÇA, "The Theological and Juridical Aspects of Marriage," pp. 275-276.

<sup>16</sup>G. LESAGE, "Questions actuelles de jurisprudence matrimoniale," in *SC*, 5 (1971), p. 8. In an important article entitled, "The '*consortium vitae conjugalis*': Nature and Applications," this author enumerated fifteen examples of "concrete elements which are essential to a *consortium vitae conjugalis* and to which the marriage partner has a right." See *SC*, 6 (1972), pp. 103-104. These he further reduced to five main categories in "Évolution récente de la jurisprudence matrimoniale," in SOCIÉTÉ CANADIENNE DE THÉOLOGIE, *Le divorce: l'église catholique ne devrait-elle pas modifier son attitude séculaire à l'égard de l'indissolubilité du mariage?*, *Travaux du Congrès de la Société canadienne de Théologie tenu à*

Whatever the difficulties involved in attempting to specify the actual elements of marriage, there seems to be general consensus among canonists that the *consortium totius vitae* is the new understanding of marriage as presented by the Church.<sup>17</sup>

a. Conjugal love

The most notable feature about marriage in the constitution *Gaudium et spes* is its insistence on the importance of conjugal love (nn. 47-51) as the orientation of the spouses to each other in a loving relationship that perfects the partners and is naturally oriented towards new life. Once again, this recognition of the centrality of love

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Montréal du 21 au 24 août 1972, Montréal, Fides, 1973, pp. 47-48.

<sup>17</sup>See D.E. FELLHAUER, "The '*consortium omnis vitae*' as a Juridical Element of Marriage," pp. 157-158; F.G. MORRISEY, "Preparing Ourselves for the New Marriage Legislation," in *The Jurist*, 33 (1973), pp. 345-346; C. MURTAGH, "The Jurisprudential Approach to the *consortium vitae*," in *SC*, 9 (1975), pp.322-323; G. ROBINSON, "Unresolved Questions in the Theology of Marriage," in *The Jurist*, 43 (1983), pp. 90-92; W.A. SCHUMACHER, "Interpersonal Communication in Marriage: A Commentary on the Rotal Decision of April 5, 1973, *coram* Serrano," in *SC*, 9 (1975), pp. 18-20; G. SHEEHY, "Animadversiones quaedam in '*matrimonii essentielle aliquod elementum*'," in *Periodica*, 75 (1986), pp. 124-126 to name but a few canonists and jurists who have accepted this opinion.

in married life is not a new direction of magisterial teaching, but rather a reiteration of a constant teaching.<sup>18</sup>

In a continuation of the same theme after the Council, Pope Paul VI issued the encyclical letter *Humanae vitae* on 25 July 1968 in which he emphasized that married love was fully human, total, faithful and exclusive, and creative of life.<sup>19</sup> Pope John Paul II, in the apostolic exhortation *Familiaris consortio* of 22 November 1981, spoke of the family as a "community of persons" with love as its core.<sup>20</sup> However, throughout all of these pronouncements, conjugal love was never acknowledged as a necessary juridical element of marriage.

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<sup>18</sup>See *Arcanum*, p. 395; *Casti connubii*, pp. 548-549; PIUS XII, Allocution to the Italian Catholic Union of Midwives, 29 October 1951, in *AAS*, 43 (1951), pp. 835-854.

<sup>19</sup>PAUL VI, Encyclical letter, *Humanae vitae* (=HV), 25 July 1968, n. 9, in *AAS*, 60 (1968), pp. 486-487 (English translation in A. FLANNERY (ed.), *Vatican Council II: More Postconciliar Documents* [=Postconciliar Documents], Grand Rapids, MI, Wm. B. Eerdmans, 1982, p. 401).

<sup>20</sup>"Amor inter virum et mulierem in matrimonio et, ratione inde manante et amplificata, amor inter ipsius familiae participes -- [...] -- animatur atque impellitur intimo perennique vigore dinamico, qui familiam perducit ad *communione*m in dies arctiorem impensioemque, quae est fundamentum et vis communitatis coniugalis et familiaris" (JOHN PAUL II, Apostolic exhortation, *Familiaris consortio* [=FC], 22 November 1981, n. 18, in *AAS*, 74 [1982], p. 101. English translation in *Postconciliar Documents*, p. 828).

It was the decision of V. Fagiolo of 30 October 1970 that finally brought conjugal love into juridical prominence. In this sentence, V. Fagiolo determined that conjugal love is an essential element of conjugal life,<sup>21</sup> and is in fact like consent, the efficient cause of marriage.<sup>22</sup> He continues: "where conjugal love is lacking, the consent is either not free, or not truly internal, or it excludes or limits the object which must be integral in order that the marriage be valid."<sup>23</sup> This love, however instrumental it may be in forming a valid marriage consent, in no way affects the bond validly forged should it perish during married life.<sup>24</sup> It also cannot be judged by the values of one particular culture, since conjugal love can manifest itself in a myriad of ways.<sup>25</sup>

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<sup>21</sup>c. FAGIOLO, 30 October 1970, in *SRR Dec*, 62 (1970), pp. 978-990.

<sup>22</sup>*Ibid.*, n. 6, p. 982. See also C. MURTAGH, "The Judicial Importance of '*amor conjugal*'", in *SC*, 7 (1973), pp. 52-53.

<sup>23</sup>c. FAGIOLO, 30 October 1970, n. 7, in *SRR Dec*, 62 (1970), p. 985 (English translation in W.J. LA DUE, "Conjugal Love and the Juridical Structure of Christian Marriage," in *The Jurist*, 34 [1974], p. 57).

<sup>24</sup>c. FAGIOLO, 30 October 1970, n. 9, pp. 985-986.

<sup>25</sup>See P.F. PALMER, "Needed: A Theology of Marriage," in *Communio*, 1 (1974), p. 248; L. ÖRSY, *Marriage in Canon Law: Texts and Comments, Reflections and Questions (=Marriage in Canon Law)*, Wilmington, DE, Michael Glazier, 1986, pp. 51-52 (esp. footnote 7 on p. 52).

With a differing view on the place of conjugal love in valid marriage consent, I. Palazzini delivered a decision on 2 June 1971, in which he denied that love is a juridical element in marriage.<sup>26</sup> This sentence relied heavily upon the study of U. Navarrete who concluded that love is an integrative, not constitutive, element of the *bonum fidei*. It is admitted, however, that while conjugal love has no juridical moment and is not essential to the validity of marriage it is often the motivating factor in consent.<sup>27</sup> The controversy continues, however, with several prominent canonists, namely, J.M. Serrano,<sup>28</sup> Z. Grocholewski,<sup>29</sup> G. Versaldi,<sup>30</sup> L.G. Wrenn<sup>31</sup> and A. Mendonça<sup>32</sup> arguing from

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<sup>26</sup>c. PALAZZINI, 2 June 1971, in *SRR Dec*, 63 (1971), pp. 467-479.

<sup>27</sup>See U. NAVARRETE, "Structura iuridica matrimonii secundum Concilium Vaticanum II," in *Periodica*, 57 (1968), pp. 215-216. See also PAUL VI, Allocution to the Sacred Roman Rota, 9 February 1976, in *AAS*, 68 (1976), pp. 204-208; F.G. MORRISEY, "Proposed Legislation on Defective Matrimonial Consent," in *Proceedings*, 36 (1974), p. 74.

<sup>28</sup>See J.M. SERRANO, "Le droit à la communauté de vie et d'amour conjugal comme objet du consentement matrimonial: aspects juridiques et évolution de la jurisprudence de la Sacrée Rote Romaine," in *SC*, 10 (1976), pp. 296-297.

<sup>29</sup>See Z. GROCHOLEWSKI, "De 'communione vitae' in novo schemate 'De matrimonio' et de momento iuridico amoris coniugalis," in *Periodica*, 68 (1979), p. 479.

<sup>30</sup>See G. VERSALDI, "Elementa psychologica matrimonialis consensus: momentum iuridicum vitae affectivae, praesertim subconsciae, eiusdemque influxus in intellectum et voluntatem," in *Periodica*, 71 (1982), pp. 252-253.

philosophical and juridical principles for the juridical importance of love in marriage *in fieri* and *in facto esse*.

b. The *bona*

i. Good of offspring

"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."<sup>33</sup> With these words the Second Vatican Council placed the good of offspring (*bonum prolis*) among the goods of marriage. This *bonum* was not placed at the top of a list of the *bona*, but rather emphasized as an important and indispensable part of marriage.<sup>34</sup> Paul VI spoke of married

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<sup>31</sup>L.G. WRENN, "Refining the Essence of Marriage," in *Proceedings*, 48 (1986), pp. 21-24.

<sup>32</sup>A. MENDONÇA, "The Theological and Juridical Aspects of Marriage," pp. 280-281.

<sup>33</sup>GS, n. 48, p. 1068 (English translation in FLANNERY, p. 950). See also GS, n. 50, pp. 1070-1071: "Matrimonium et amor coniugalis indole sua ad prolem procreandam et educandam ordinatur. Filii sane sunt praestantissimum matrimonii donum et ad ipsorum parentum bonum maxime conferunt."

<sup>34</sup>V. FAGIOLO, "Essenza e fini del matrimonio secondo la costituzione pastorale 'Gaudium et Spes' del Vaticano II," in *EIC*, 23 (1967), pp. 176-179; D.E. FELLHAUER, "The '*consortium omnis vitae*' as a Juridical Element of Marriage," p. 114; B. HARING, "Fostering the Nobility of Marriage and the Family," in H. VORGRIMLER (ed.), *Commentary on the Documents of Vatican II*, vol. 5, Freiburg, Herder, 1969, pp. 233-234.

love as being "creative of life";<sup>35</sup> and John Paul II called children "a living reflection of [the couple's] love, a permanent sign of conjugal unity and a living and inseparable synthesis of their being a father and mother."<sup>36</sup> Consequently, the unitive and procreative elements of marriage are inseparable. It is in the conjugal act completely open to offspring that the couple truly express their complete donation to and reception of the other.<sup>37</sup>

The first aspect of this *bonum* is the right to the conjugal act<sup>38</sup> which does not admit limitations nor conditions.<sup>39</sup> However, this right is distinguished from the

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<sup>35</sup>*HV*, n. 9, pp. 486-487 (English translation in *Postconciliar Documents*, p. 401).

<sup>36</sup>*FC*, n. 14, p. 96 (English translation in *Postconciliar Documents*, p. 825).

<sup>37</sup>See C. BURKE, "Procreativity and the Conjugal Self-Gift," in *SC*, 24 (1990), pp. 47-49; T.P. DOYLE, "The Moral Inseparability of the Unitive and Procreative Aspects of Human Sexual Intercourse," in *ME*, 109 (1984), pp. 456-457; Id., "The Theology of Marriage: Where We Are Today," in *The Priest*, vol. 39, n. 11, (1983), p. 37; G. LESAGE, "Questions actuelles," pp. 16-17; F. TESTERA, "The Nature of Christian Marriage," in *PS*, 21 (1986), p. 74.

<sup>38</sup>See PIUS XII, Allocution to the Italian Catholic Union of Midwives, 29 October 1951, n. 3, p. 845.

<sup>39</sup>See D. STAFFA, *De conditione contra matrimonii substantiam*, Romae, Apud custodiam librariam Pont. Instituti Utriusque Iuris, 1952, p. 8; c. FILIPIAK, 22 November 1963, n. 4, in *SRR Dec*, 55 (1963), p. 850.

"use" of the right, which may be interrupted as a mutual act of responsible parenthood.<sup>40</sup>

The second aspect of the *bonum prolis* was pointed out by Pius XI when he stated that this *bonum* "is not completed by the mere begetting [of children], but something else must be added, namely the proper education of offspring."<sup>41</sup> Unfortunately this latter aspect has been largely ignored in jurisprudence, due in large part to the difficulty involved in legally defining "education." While the 1917 *Code of Canon Law* included both the "procreation" and "education" of children as the primary end of marriage (C. 1013, § 1),<sup>42</sup> the object of consent was defined only as the exclusive and perpetual right to the acts apt for the generation of children (C. 1081, § 2).<sup>43</sup>

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<sup>40</sup>HV, n. 10, p. 487.

<sup>41</sup>*Casti connubii*, pp. 543-544 (English translation in A. MENDONÇA, "The Theological and Juridical Aspects of Marriage," p. 288). See also St. Thomas AQUINAS, *Summa theologiae*, *Supplementum*, q. XLIX, a. 2.

<sup>42</sup>"Matrimonii finis primarius est procreatio atque educatio prolis; secundarius mutuuum adiutorium et remedium concupiscentiae" (*Codex iuris canonici, Pii X Pontificis Maximi issu digestus, Benedicti Papae XV auctoritate promulgatus, praefatione, fontium annotatione et indice analytico-alphabetico ab Em.mo Petro Card. Gasparri auctus, Romae, Typis Polyglottis Vaticanis, 1933*).

<sup>43</sup>"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 prolis generationem." (Ibid.)

According to the present Code marriage is ordered toward the "procreation and education of offspring" (c. 1055, § 1), but there is no mention of the object of consent as being the right to the acts apt for the generation of children. Rather, the object of consent has become marriage itself, with its profusion of rights and duties related to the four *bona*, the properties and the essential elements of marriage (c.1057, § 2). The Legislator has given some indication as to what the "education" of children must include by stating in c. 1136 that parents have the right and duty to ensure the physical, social, cultural, moral and religious needs of their children.

In a Rotal decision dated 13 May 1969, A. Di Felice has stated that to enter marriage validly, each partner must be capable of conjugal love not only directed to procreation, but must be able to care for, love and educate the children.<sup>44</sup> Similarly, in his sentence of 20 March 1980, I. Raad concluded that the moral and religious education of a child is as important as its generation, and an inability to provide these elements is an indication that this good in its totality has been denied.<sup>45</sup> A. Mendonça has suggested that future studies

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<sup>44</sup> c. DI FELICE, 13 May 1969, in *SRR Dec*, 61 (1969), pp. 481-487.

<sup>45</sup> c. RAAD, 20 March 1980, in *ME*, 105 (1980), pp. 177-183.

ought to focus on the cultural aspects of this *bonum*, as "education" may differ from culture to culture.<sup>46</sup>

ii. Good of fidelity

As one of the traditional Augustinian *bona* of marriage, the good of fidelity found expression in modern-day language in *Gaudium et spes* when it declared that marriage "as a mutual gift of two persons, and the good of children demand total fidelity from the spouses [...]."<sup>47</sup> Although traditionally the societal goods were advanced as the main reasons for fidelity in marriage, now the personalist element is being emphasized.<sup>48</sup> As I. Kelly has stated: "fidelity and indissolubility are not just social and juridical requirements, but, first and foremost requirements of love itself; they are a necessary dimension of married love as implying total self-giving."<sup>49</sup>

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<sup>46</sup>See A. MENDONÇA, "The Theological and Juridical Aspects of Marriage," p. 291.

<sup>47</sup>GS, n. 48, p. 1068 (English translation in FLANNERY, p. 950).

<sup>48</sup>See W.J. LA DUE, "Conjugal Love and the Juridical Structure of Christian Marriage," p. 40.

<sup>49</sup>I. KELLY, "The Church's Understanding of Marriage," in SC, 9 (1975), p. 277.

Theologically, the *bonum fidei* has traditionally been considered more than the mere refraining from extra-marital sexual activity. For St. Augustine it consisted in the presence of an intimate friendship and total mutual dedication.<sup>50</sup> For Pius XI, in *Casti connubii*, it pointed to the mutual perfection of the spouses.<sup>51</sup>

In the early stages of canonical development during the post-Augustinian age, the *bonum fidei* was considered as an obligation directly related to the living out of marriage. Later jurisprudence concerned the obligations arising from the right to fidelity included in matrimonial consent.<sup>52</sup> This means not only those rights involved in the act of sexual intercourse, but also the other essential elements of *consortium totius vitae*.<sup>53</sup> Exclusion of the good is said to occur either when the obligation to fidelity has been substantially rejected, or limited in terms of time or persons. These principles have been recognized in c. 1101, §

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<sup>50</sup>See T.P. DOYLE, "A New Look at the '*bonum fidei*'," in *SC*, 12 (1978), p. 9.

<sup>51</sup>See *Casti connubii*, p. 550; see also *HV*, n. 9, p. 486 (English translation in FLANNERY, p. 401); *FC*, n. 11, p. 91-93 (English translation in FLANNERY, p. 822).

<sup>52</sup>See T.P. DOYLE, "A New Look at the '*bonum fidei*,'" p. 10; see also c. RAAD, 26 May 1977, in *SRR Dec*, 69 (1977), pp. 308-314.

<sup>53</sup>See U. NAVARRETE, "De iure ad vitae communionem," p. 256.

2, which states that exclusion of marriage itself or some essential element of marriage renders marriage invalid.

iii. Good of the sacrament

The Second Vatican Council placed the good of the sacrament (indissolubility) in the context of the other two goods of matrimony when it stated that "unbreakable oneness" between the spouses as well as fidelity is demanded by the good of the spouses and of the children (GS, n. 48). It went on to proclaim that marriage as "an unbreakable compact between persons, and the welfare of the children, both demand that the mutual love of the spouses, too, be embodied in a rightly ordered manner, that it grow and ripen" (GS, n. 50), thereby situating -- but not exclusively -- conjugal love within the realm of the *bonum sacramenti*.<sup>54</sup>

The firm belief in this property of marriage<sup>55</sup> is

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<sup>54</sup>Further statements regarding this traditional good may be found in *Casti connubii*, pp. 550-556; see also *HV*, n. 9, pp. 486-487 and *FC*, n. 20, pp. 102-104.

<sup>55</sup>Although it is not our purpose to delve into the complex issue of intrinsic versus extrinsic indissolubility of marriage, it is useful to revisit the statement made by the International Theological Commission in 1977. The intrinsic indissolubility of marriage was considered under various aspects (on the part of the spouses, on God's part, on the part of Christ and on the part of society) and reaffirmed as an essential property of marriage. See COMMISSIO THEOLOGICA INTERNATIONALIS, "Propositiones de quibusdam quaestionibus

reiterated in the 1983 Code under c. 1056. Furthermore c. 1101, § 2 states that exclusion of this property by a positive act of the will results in an invalid marriage. Paragraph one of the same canon states that the external acts of a person are presumed to conform to his or her internal orientation. After a brief examination of the definitions of simulation in various Rotal decisions, J.G. Johnson concludes: "the nature of simulation is to be found in the discrepancy between the words or signs used in the marriage ceremony and the internal attitude of the simulating party."<sup>56</sup> The main problem in every case of simulation is attempting to determine juridically at which point the positive act of the will (of the simulator) overrides the presumption of conformity.<sup>57</sup>

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doctrinalibus ad matrimonium christianum pertinentibus, mensis decembris 1977," in I. GORDON and Z. GROCHOLEWSKI (eds.), *Documenta recentiora circa rem matrimonialem et processualem, cum notis bibliographicis et indicibus, vol. alterum*, Romae, Pontificia Universitas Gregoriana, 1980, nn. 5061-5065, Section 4.3 (English translation in *CLSGBI Newsletter*, 38 [1978], pp. 19-21).

For further discussions regarding the concept of extrinsic indissolubility, see G. CANDELIER, "Mariage et divorce: problèmes actuels," in *Revue théologique de Louvain*, 19 (1988), pp. 448-450; L. ÖRSY, "Christian Marriage: Doctrine and Law. *Glossae* on Canons 1012-1015," in *The Jurist*, 40 (1980), pp. 328-332; Id., *Marriage in Canon Law*, pp. 275-277.

<sup>56</sup>J.G. JOHNSON, "Total Simulation in Recent Rotal Jurisprudence," in *SC*, 24 (1990), p. 389.

<sup>57</sup>See L. DE LUCA, "The New Law on Marriage," in *The Catholic Lawyer*, 30 (1985), p. 88.

Traditionally, a distinction is made between the sphere of the intellect and the sphere of the will. Jurisprudentially, it was determined that a positive act of the will against marriage had to be posited at the time of exchanging consent before its nullity could be declared. Recent advances in the science of psychology have led to the conclusion that these areas are not so separate, and that an error in the understanding of an essential property of marriage can so affect the will that an invalid marriage is contracted.<sup>58</sup> This can happen to a person so immersed in a culture which holds views contrary to the Christian understanding of marriage (e.g., the hippy culture, a polygamous society, a divorce mentality) that he or she cannot help but attempt marriage with these opinions at the time of consent. Rotal jurists have accepted this phenomenon as resulting in the invalid attempt at marriage.<sup>59</sup>

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<sup>58</sup>See c. FELICI, 17 December 1957, n. 3, in *SRR Dec*, 49 (1957), p. 844. See also G. CANDELIER, "Les nullités de mariage par exclusion de l'indissolubilité dans la jurisprudence Rotale," in *RDC*, 38 (1988), p. 156.

<sup>59</sup>See c. STANKIEWICZ, 29 April 1982, in *SRR Dec*, 74 (1982), pp. 245-254; *Id.*, 23 July 1982, in *SRR Dec*, 74 (1982), pp. 421-432; c. DE LANVERSIN, 18 February 1984, in *SRR Dec*, 76 (1984), pp. 99-107.

## iv. Good of the spouses

The 1917 *Code of Canon Law* presented a hierarchical ordering of the goods of marriage such that the *bonum coniugum* -- seen as a mutual remedy for concupiscence -- was rendered subordinate to the *bonum prolis*.<sup>60</sup> The primary end of marriage (i.e., the good of offspring) became the only aspect developed in the jurisprudence of that time, although, Pius XI declared: "this mutual interior formation of the spouses, this serious effort to perfect each other, can in all truth be said to be [...] the primary cause and reason for marriage."<sup>61</sup>

The Fathers of the Second Vatican Council said marriage, by its very nature, is oriented to the "good of the spouses and of their offspring, as well as of society," and its "various benefits and purposes [...] all have a very decisive bearing on the [...] personal development and eternal destiny of the individual members of a family" (GS, n. 48). They also said conjugal love is "eminently human" and directed to the

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<sup>60</sup>C. 1013, § 1. U. NAVARRETE, in an in-depth study of the *fontes* of the marriage canons of the 1917 Code concluded that the Code was the first magisterial document to speak of the "primary" and "secondary" ends of marriage, essentially subordinating the *bonum coniugum* to the *bonum prolis*. See his "Structura iuridica matrimonii secundum Concilium Vaticanum II," in *Periodica*, 56 (1967), pp. 368-369.

<sup>61</sup>*Casti connubii*, pp. 548-549 (English translation taken from A. MENDONÇA, "The Theological and Juridical Aspects of Marriage," p. 285).

"good of the whole person" (GS, n. 49). By examining these and other magisterial expressions regarding the *bonum coniugum* in marriage, one can conclude that the personal good of the spouses has been considered, albeit in a subordinate mode, among the "goods" of marriage.<sup>62</sup>

With the renewed understanding of the *bona* during the Second Vatican Council, the revisors of the Code decided early on that the new legislation would not use the terminology of primary and secondary ends of marriage.<sup>63</sup> The revised Code explicitly endorses the *bonum coniugum* as an essential element of marriage by stating that marriage is "a partnership of the whole of life [which] is by its nature ordered toward the good of the spouses and the procreation and education of offspring" (c. 105<sup>5</sup>, § 1). As L.G. Wrenn writes: "we now know that there is a fourth *bonum* which is equally essential to marriage, namely the *bonum coniugum*."<sup>64</sup> The new challenge is that of identifying the specific nature and juridical implications of this *bonum*.

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<sup>62</sup>See also *HV*, n. 8, pp. 485-486 and *FC*, n. 22, pp. 106-107.

<sup>63</sup>See *Communicationes*, 3 (1971), p. 70.

<sup>64</sup>L.G. WRENN, "Refining the Essence of Marriage," p. 14.

Several canonical writers have already attempted to name some components which might make up this *bonum*. T.P. Doyle writes: "certain basic attributes are to be expected: heterosexual companionship, interpersonal friendship, spiritual and material support."<sup>65</sup> To L. Orsy it is an all-embracing expression which includes the physical, emotional, intellectual, and spiritual welfare of the couple. "To achieve this common good, each must be intent on promoting the good of the other."<sup>66</sup> L. De Luca says that it must be seen above all as the spiritual good of the spouses.<sup>67</sup> L.G. Wrenn has discussed what he considers to be the more obvious qualities that might constitute the essence of the *bonum coniugum*, namely, partnership, benevolence, companionship, friendship, caring and love.<sup>68</sup> Undoubtedly, jurists will continue to explore this *bonum* keeping in mind the new understandings of human interaction and interdependence uncovered by the auxiliary sciences of psychology, psychiatry and cultural anthropology.

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<sup>65</sup>T.P. DOYLE, "Marriage," in J.A. CORIDEN, T.G. GREEN and D.E. HEINTSCHEL (eds.), *The Code of Canon Law: A Text and Commentary*, Mahwah, NJ, Paulist Press, 1985, p. 741.

<sup>66</sup>L. ORSY, *Marriage in Canon Law*, p. 53.

<sup>67</sup>L. DE LUCA, "The New Law on Marriage," p. 74.

<sup>68</sup>L.G. WRENN, "Refining the Essence of Marriage," pp. 16-24.

## c. Sacramental dignity

In discussing the sacramentality of marriage, the Second Vatican Council taught that Christ comes into the lives of married Christians through the sacrament of matrimony. As Christ handed Himself over for the Church He loves (Ephesians 5:25), so His presence gives to the couple the strength and grace to hand themselves over to each other in a perpetual and exclusive relationship. Through the redeeming power of Christ, not only do the couple advance their own perfection, but they are also strengthened in their role as mother and father (GS, n. 48).<sup>69</sup> The marriage of Christians not only benefits the entire community of believers, but as "the sacrament of marriage is a sacrament of the Church, itself the sacrament of universal salvation, the matrimonial grace brought about in married Christians is a further sacramental symbol of that matrimonial grace which God offers to all married people in the world."<sup>70</sup>

The juridical significance of the sacramentality of marriage is that it has been traditionally tied to the

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<sup>69</sup>See also SECOND VATICAN COUNCIL, Dogmatic Constitution on the Church, *Lumen gentium* (=LG), 21 November 1964, n. 11, in AAS, 57 (1965), pp. 15-16 (English translation in FLANNERY, p. 362).

<sup>70</sup>T. HORVATH, "The Sacrament of Marriage as Revelation of God," in *Heythrop Journal*, 11 (1970), p. 390.

marriage contract "as a necessary corollary."<sup>71</sup> The situation had been that if a couple did not intend the sacrament, indeed even if they deliberately excluded it, the marriage could not automatically be considered null. By placing their marriage under the sign of something sacred, the parties at least had the intention of doing what Christians do.

The present Code repeats C. 1012, § 1 of the 1917 Code in stating that the marriages of the baptized are by that fact sacramental.<sup>72</sup> In the revised Code, sacramentality has been linked with the essence of the Christian marriage: canon 1056 states that the essential properties of unity and indissolubility in a Christian marriage acquire a special firmness by virtue of the sacrament. Furthermore, c. 1099 declares that error regarding the sacramental dignity of marriage does not invalidate consent as long as the error did not determine the will of the contractant. Canon 1101, § 2 stipulates that should an essential property of marriage be

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<sup>71</sup>L. DE LUCA, "The New Law on Marriage," pp. 75-76.

<sup>72</sup>Although the issues of contract, faith and sacrament arose during the revision of the Code, the Code Commission decided that such theological issues could not be decided in the legislative arena (21 February 1977, *Communicationes*, 9 [1977], p. 122).

excluded by a positive act of the will the marriage would be rendered invalid.<sup>73</sup>

L. De Luca discusses the situation of a baptized person who has no faith or is indeed hostile to the Church or the Catholic religion. Such a person can be presumed to have a habitual negative intention. In this case, he writes:

[...] recourse could not be had to the presumption that everyone who enters marriage by means of a religious ceremony has the 'general intention of doing what the Church does,' which is the minimum that is required for a sacrament to result. [We] should rather presume a 'general negative intention' against the sacramentality of the bond.<sup>74</sup>

This is certainly a change from the thinking and jurisprudential practice during the era of the 1917 Code. Hence, one can conclude that although sacramental dignity is still considered an essential property of Christian marriage, error which determines the will or the deliberate exclusion of sacramentality does invalidate consent.<sup>75</sup>

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<sup>73</sup>See U. NAVARRETE, "Structura iuridica matrimonii secundum Concilium Vaticanum II," in *Periodica*, 56 (1967), p. 561.

<sup>74</sup>L. DE LUCA, "The New Law on Marriage," p. 92.

<sup>75</sup>See, for example, c. PASQUAZI, 28 July 1960, n. 3, in *SRR Dec*, 52 (1960), p. 429; c. MASALA, 20 November 1969, n. 4, in *SRR Dec*, 61 (1969), p. 1034; c. POMPEDDA, 9 May 1970, n. 3, in *SRR Dec*, 62 (1970), p. 476; c. PINTO, 6 November 1972, n. 4, in *SRR Dec*, 64 (1972), p. 673; c. AGUSTONI, 27 May 1980, in *SRR Dec*, 72 (1980), p. 391.

For some recent analysis regarding the issue of faith and sacrament, see M.F. POMPEDDA, "Fede e sacramento del

## 2. THE NATURE OF CONSENT

Canon law clearly states that marriage is brought about by the legitimately manifested consent of two people who are legally capable of doing so.<sup>76</sup> This represents the consistent teaching of the Church.<sup>77</sup> Marital consent is defined as "an act of the will by which a man and a woman, through an irrevocable covenant, mutually give and accept each other in order to establish marriage."<sup>78</sup> In this statement one finds reference to both the nature of the act of consent and the

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matrimonio -- mancanza di fede e consenso matrimoniale: aspetti giuridici," in *Quaderni studio rotale*, 2 (1987), pp. 41-71 (English translation in J.A. ALESANDRO [ed.], *Marriage Studies: Reflections in Canon Law and Theology*, vol. 4, Washington, DC, Canon Law Society of America, 1990, pp. 33-65); D. FALTIN, "L'esclusione della sacramentalità del matrimonio con particolare riferimento al matrimonio dei battezzati non credenti," in *Quaderni studio rotale*, 4 (1989), pp. 5-39 (English translation in J.A. ALESANDRO [ed.], *Marriage Studies*, vol. 4, pp. 66-104).

<sup>76</sup>See c. 1057, § 1.

<sup>77</sup>See St. Thomas AQUINAS, *Summa theologiae, Supplementum*, q. XLV, a. 1; q. LI, a. 1; C. 1081, § 1; P. GASPARRI (cura), *Codicis iuris canonici fontes*, vol. 1, Concilia Generalia -- Romani Pontifices, usque ad annum 1745, Romae, Typis Polyglottis Vaticanis, 1926, p. 76; *Casti connubii*, p. 541; GS, n. 48, p. 1067.

<sup>78</sup>c. 1057, § 2. This definition was foreshadowed in some Rotal sentences published after the Second Vatican Council. The most notable of these was that of c. ANNE, dated 25 February 1969, in which marital consent was defined as: "actus voluntatis quo vir et mulier foedere inter se seu irrevocabili consensu constituunt consortium vitae coniugalis, perpetuum et exclusivum, indole sua naturali ad prolem generandam et educandam ordinatum" (*SRR Dec*, 61 [1969], n. 16, p. 183).

object of the act of consent. Each of these shall be briefly examined in the following pages.

a. The act of consent

The first element of marriage *in fieri* is that it must be a human act. According to St. Thomas Aquinas, this is an act that is performed by one who is master of all personal actions through reason and will. Indeed, the free will is defined as the faculty of the will and reason. Therefore, those actions are properly called human which proceed from a deliberate will.<sup>79</sup>

Clearly, two distinct qualities of the human mind are enunciated in the above explanation of the human act, namely the intellect and the will. The intellect must be able to comprehend and reach a minimum level of understanding regarding the object of the act (c. 1096). The will, since it is a rational appetite, requires the judgment and evaluation of the intellect to move itself. It is the will, however, which moves the intellect to consider this particular object (i.e., an evaluation is made at the speculative level at the

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<sup>79</sup>See St. Thomas AQUINAS, *Summa theologiae*, Ia-IIae, q. I, a. 1.

urging of the will). This practical judgment then determines the will about the desirability of the object here and now.<sup>80</sup>

A practical judgment can be *speculativo-practicum* or *practico-practicum* (the latter being a judgment regarding the object proposed to the subject such that the subject chooses this object infallibly). L. Anné has stated that it is the latter that is required for a juridical act to be fully rational.<sup>81</sup> As A. Mendonça writes, "[w]hile prescind[ing] from the philosophical dispute, it may be rightly said that for the 'will-act' (the final choice) to be truly human, it should be preceded by a mature practical judgment concerning the desirability of the object to the subject here and now."<sup>82</sup> Thus, in addition to the cognitive faculty the critical faculty is required which apprehends all the facts and combines the various judgments made by the intellect to arrive

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<sup>80</sup>See P. SIWEK, *Psychologia metaphysica*, Editio septima aucta et emendata, Romae, Apud Aedes Universitatis Gregoriana, 1965, pp. 458-459; G. VERSALDI, "Elementa psychologica matrimonialis consensus," pp. 179-198; St. Thomas AQUINAS, *Summa theologiae*, Ia-IIae, q. I, a. 1; q. IX, a. 1; q. XIV, a. 1. See also c. WYNEN, 25 February 1941, n. 5, in *SRR Dec*, 33 (1941), pp. 146-147; c. DORAN, 1 July 1988, in *ME*, 114 (1989), p. 332.

<sup>81</sup>c. ANNÉ, 28 June 1965, n. 4, in *SRR Dec*, 57 (1965), p. 503. See also c. PINNA, 21 December 1959, n. 2, in *SRR Dec*, 51 (1959), p. 623 and c. EGAN, 29 May 1976, n. 6, in *SRR Dec*, 68 (1976), pp. 237-238.

<sup>82</sup>A. MENDONÇA, "Antisocial Personality and Nullity of Marriage," in *SC*, 16 (1982), p. 90.

at a new conclusion concerning the object at hand.<sup>83</sup> These two entities, although separately identifiable, belong in one subject, and as such belong to the unity of the subject. They do not operate in isolated spheres, but rather impinge on one another so that should one area be disturbed, the whole process of deliberation and volition in forming the human act is disturbed.<sup>84</sup>

In addition to the use of reason, the discretion of judgment proportionate to the object of consent is also required for a human act.<sup>85</sup> In marriage, one is considering

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<sup>83</sup>See c. FELICI, 3 December 1957, n. 3, in *SRR Dec*, 49 (1957), p. 788; c. MASALA, 12 March 1975, n. 6, in *SRR Dec*, 67 (1975), pp. 133-135. For a brief history of the notion of 'critical faculty', see J.R. KEATING, *The Bearing of Mental Impairment on the Validity of Marriage: An Analysis of Rotal Jurisprudence*, Rome, Gregorian University Press, 1964, pp. 116-123.

<sup>84</sup>c. MATTIOLI, 20 December 1962, in *SRR Dec*, 54 (1962), pp. 706-725; M.B. AHERN, "Psychological Incapacity for Marriage," in *SC*, 7 (1973), p. 229; L. ORSY, "Matrimonial Consent in the New Code: *Glossae* on Canons 1057, 1095-1103, 1107," in *The Jurist*, 43 (1983), pp. 37-38.

<sup>85</sup>St. Thomas AQUINAS identified due discretion with maturity of judgment, and stated that this discretion admits of degrees by which less discretion is required for an act of an existential bearing, while more is required for acts which have future and lasting implications (*Summa theologiae, Supplementum*, q. LVIII, a. 5). See c. PRIOR, 14 November 1919, n. 6, in *SRR Dec*, 11 (1919), p. 174; c. SABATTANI, 24 February 1961, n. 5, in *SRR Dec*, 53 (1961), p. 118; c. PINTO, 4 February 1974, n. 4, in *SRR Dec*, 66 (1974), pp. 37-39; C. LEFEBVRE, "De defectu discretionis iudicii in rotali jurisprudentia," in *Periodica*, 69 (1980), pp. 559-560; G. VENNES, "Mariage et discernement," in *SC*, 10 (1976), pp. 331-344.

a permanent, exclusive, interpersonal relationship in which the potential for the creation and responsibility for new life exists. Therefore, it is the psychological maturity of the parties marrying which needs to be assessed, not just the chronological age (although it must be stated that to some extent maturity does accompany the progression of age).<sup>86</sup> This has been the consistent interpretation of due discretion in recent years by Rotal jurists and canonists alike.<sup>87</sup>

This brief study of the act of consent shows that when the intellect and will function harmoniously the object of consent (marriage) is correctly understood in its abstract sense and deliberately willed in the existential order.

#### b. The object of consent

As stated above, and as found in c. 1057, § 2, the object of consent is marriage itself. This definition closely

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<sup>86</sup>For a brief look at the development of this ability, see J. O'NEILL, "A Basic Look at Lack of Due Discretion," in *CLSGBI Newsletter*, 33 (1977), pp. 41-43.

<sup>87</sup>See c. DI FELICE, 8 March 1975, n. 2, in *SRR Dec*, 67 (1975), pp. 86-87; c. FELICI, 3 December 1957, n. 3, in *SRR Dec*, 49 (1957), p. 788; c. MASALA, 10 May 1978, n. 3, in *SRR Dec*, 70 (1978), pp. 256-257; c. STANKIEWICZ, 5 April 1979, n. 4, in *SRR Dec*, 71 (1979), p. 169; R. GUIRY, "Immaturity, Maturity, and Christian Marriage," in *SC*, 25 (1991), pp. 93-114; G. VERSALDI, "Elementa psychologica matrimonialis consensus", pp. 179-209, 231-253.

follows that found in *Gaudium et spes*, and is far more complex than that found in the 1917 Code.<sup>88</sup> Since marriage is understood as a partnership of the whole of life (c. 1055, § 1), it is logical to conclude that it is this partnership, with its corresponding rights and duties, that has become the object of marital consent. Some of the component parts of this relationship (e.g., the intimate community of conjugal life, conjugal love, the four *bona* and sacramental dignity) have been outlined earlier in this chapter. Now the nature of this relationship as the object to which the parties consent will be examined.

On 25 February 1969 L. Anné issued a sentence in which he defended the use of *Gaudium et spes* as the basis for juridical development.<sup>89</sup> He stated that the pastoral constitution proved: "marriage is an *extremely personal relationship*, and

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<sup>88</sup>C. 1081, § 2 stated that consent was the "actus voluntatis quo utraque pars tradit et acceptat *ius in corpus*, perpetuum et exclusivum, in ordine ad actus per se aptos ad prolis generationem" (emphasis added). Compare this definition with that found in *Gaudium et spes*, n. 48: "Intima communitas vitae et amoris coniugalis [...] foedere coniugii seu irrevocabili consensu personali instauratur. Ita actu humano, quo coniuges sese mutuo tradunt atque accipiunt, institutum ordinatione divina firmum oritur, etiam coram societate" (AAS, 58 [1966], p. 1067, emphasis added). For a detailed analysis of the differences in the two formulations, see A. STANKIEWICZ, "De causa iuridica foederis matrimonialis," in *Periodica*, 73 (1984), pp. 203-234.

<sup>89</sup>See c. ANNÉ, 25 February 1969, in *SRR Dec*, 61 (1969), pp. 174-192 (English translation of law section in L.G. WRENN, *Decisions*, pp. 94-102).

that the matrimonial consent is an act of the will by which the spouses 'mutually bestow and accept each other.'<sup>90</sup> It is this formal substantial object (*matrimonium in facto esse*) which must be at least implicitly intended in marriage *in fieri*. He writes: "It is true that in marriage 'in facto esse' the communion of life can be absent, but *the right to the communion of life can never be absent.*"<sup>91</sup> He underlined his point by stating again: "the formal substantial object of this consent is not only the right to the body [...] but it embraces also the right to the communion of life."<sup>92</sup>

J.M. Serrano has undertaken to describe more fully the nature of this "extremely personal relationship" in several of his sentences. In one dated 5 April 1973<sup>93</sup> he wrote: "the most characteristic element of the marriage covenant [...] is interpersonal"<sup>94</sup> and that this interpersonal relationship is an "essential property" of marital consent.<sup>95</sup> His understanding of this relationship is as follows: "a

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<sup>90</sup>Ibid., n. 13, p. 182.

<sup>91</sup>Ibid., p. 183.

<sup>92</sup>Ibid., n. 16, pp. 183-184.

<sup>93</sup>c. SERRANO, 5 April 1973, in *SRR Dec*, 65 (1973), pp. 322-343. (English translation of law section in *CLD*, 8 [1973-1977], pp. 692-711).

<sup>94</sup>Ibid., n. 3, p. 323.

<sup>95</sup>Ibid., n. 8, p. 327.

relationship between two persons in which the rights of another over himself and his rights over the other are correctly understood, deliberately pursued, and exchanged by mutual giving and accepting."<sup>96</sup> J.M. Serrano emphasizes that, in order to constitute consent, one must have the ability both to hand over the rights and duties of marriage and to accept these rights and duties.<sup>97</sup> Here the focus has shifted slightly from the formal object of consent to the material object, that is, the spouses themselves and their capacity to elicit such a consent validly.

In a sentence dated 9 July 1976, J.M. Serrano pursued this point by introducing the notion of judgmental or affective maturity as essential for valid matrimonial consent.<sup>98</sup> In paragraph nine of this decision, he quotes Harry Stack Sullivan<sup>99</sup> in stating that the last development in a mature personality is the appearance and the growth of the need for intimacy and collaboration with at least one other person. J.M. Serrano suggests that when studying marriage

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<sup>96</sup>Ibid., n. 12, p. 331.

<sup>97</sup>Ibid., n. 3, p. 323. See also c. SERRANO, 19 May 1978, n. 7, in *SRR Dec*, 70 (1978), pp. 322-323.

<sup>98</sup>See c. SERRANO, 9 July 1976, in *SRR Dec*, 68 (1976), pp. 308-327.

<sup>99</sup>H.S. SULLIVAN, *The Interpersonal Theory of Psychiatry*, New York, Norton, 1953.

cases, one should examine the attainment of psychological maturity in evaluating an individual's aptitude for making and living out the commitment to that specific interpersonal relationship which is the marriage covenant.<sup>100</sup>

In these two sentences and in one dated 19 May 1978<sup>101</sup> J.M. Serrano based his understanding of the interpersonal nature of the object of marriage consent on magisterial documents such as *Gaudium et spes*, *Humanae vitae*, the Rotal sentences by Lefebvre, Anné, Prior, Teodori and Jullien, and the writings of well-established psychologists. His conclusions suggest that before an interpersonal relationship can be established, intrapersonal integration of the individual is necessary. (This aspect of consent was presented earlier during the discussion on the nature of the act of consent.)

It is perhaps useful to recall the caution expressed by I. Gramunt and L.A. Wauck:

In determining then the object of matrimonial consent, we should be careful not to require either too much or too little. By requiring too much, one risks denying that marriage is within the range of a normally developed personality since nature itself inclines a person to marriage. By requiring too little (e.g., the simple biological capacity to

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<sup>100</sup> See c. SERRANO, 9 July 1976, nn. 7-11, pp. 312-317.

<sup>101</sup> c. SERRANO, 19 May 1978, pp. 319-329.

generate), one would deny the rationality of human marriage.<sup>102</sup>

In the preceding discussion the magisterial teachings regarding the nature of marriage, some of the elements of marriage delineated in developing jurisprudence, and the nature and the object of marital consent by which marriage comes into being have been examined. The focus of the following pages shall be the various grounds of nullity under which the validity of a marriage may be challenged in a case where childhood sexual abuse has been a feature in the background of at least one party. Some of the grounds presented may also be proposed in cases in which one of the parties has been an incest perpetrator.

### 3. DEFECTS OF MARRIAGE CONSENT

Canon 1095 reflects the recognition given by ecclesiastical law to the behavioural sciences in understanding the human decision-making process. It is a generic statement regarding a person's capacity to elicit a

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<sup>102</sup>I. GRAMUNT and L.A. WAUCK, "Capacity and Incapacity to Contract Marriage," in *SC*, 22 (1988), p. 153. See also c. HEARD, 27 April 1946, n. 8, in *SRR Dec*, 38 (1946), p. 263; c. MATTIOLI, 4 April 1966, in *ME*, 92 (1967), p. 433; c. AGUSTONI, 20 February 1979, in *ME*, 104 (1979), pp. 302-314.

valid matrimonial consent, and awaits further determination by qualified jurisprudence.<sup>103</sup> It states:

They are incapable of contracting marriage:

1° who lack the sufficient use of reason;

2° who suffer from grave lack of discretion of judgment concerning essential matrimonial rights and duties which are to be mutually given and accepted;

3° who are not capable of assuming the essential obligations of matrimony due to causes of a psychic nature.

Each of these will be examined briefly in the following pages as grounds of nullity for cases in which an incestuous relationship has affected at least one of the parties.

**a. Lack of sufficient use of reason**

This ground finds its source in Roman law which formulated three principles regarding the "insanity" test.<sup>104</sup>

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<sup>103</sup>JOHN PAUL II, 26 January 1984, in an address to the officials of the Roman Rota stated: "There still remain canons of great importance in matrimonial law, however, which have been necessarily formulated in a generic way and which await further determination, to which especially the qualified jurisprudence of the Rota could make a valuable contribution. I think, for example, of the determination of the 'grave lack of discretionary judgement', of 'the essential matrimonial rights and obligations' mentioned in c. 1095, as well as the further clarification of c. 1098 on deceit, to mention only two canons." (*The Pope Speaks*, 29 [1984], p. 177).

<sup>104</sup>See J.R. KEATING, "Marriage of the Psychopathic Personality," in *CS*, 3 (1964), pp. 21-23.

The first principle stated that consent was the indispensable element in contracting marriage, and that an insane person is incapable of such consent.<sup>105</sup> The Roman jurist Paulus put it bluntly: "Insanity does not allow one to contract marriage because it requires consent." The second principle was that a marriage already contracted was not rendered null by subsequent insanity.<sup>106</sup> The third principle (although it did not specifically address marriage) was that an insane person could contract validly during lucid intervals.<sup>107</sup>

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<sup>105</sup>"Furiosi [...] nulla voluntas est" (*Digest*, 50, 17, 40).

<sup>106</sup>"Furor contrahi matrimonium non sinit, quia consensu opus est; sed recte contractum non impedit" (*Digest*, 23, 2, 16).

<sup>107</sup>"Sed per intervalla, quae perfectissima sunt, nihil curatorem agere, sed ipsum posse furiosum, dum sapit, et haereditatem adire et omnia alia facere quae sanis hominibus competunt" (*Digest*, 24, 3, 22).

Ecclesiastical law did not elaborate on these three basic principles, and until the decretal *Dilectus* by Pope Innocent III (1198-1216), the legal test of insanity for marriage was probably that which was commonly called the "wild beast" test. That is, only the marriage of one attempting to contract during a frankly psychotic state would be considered null. With the above-mentioned decretal came the understanding of the differences between real lucid intervals and apparent lucid intervals, and thus the legal test of the "wild beast" no longer applied. See J.R. KEATING, "Marriage of the Psychopathic Personality," p. 23.

Today, once insanity has been established to have existed before and after the wedding, there is a presumption against lucid intervals at the time of the wedding. See R. BROWN, *Marriage Annulment in the Catholic Church: A Practical Guide*, Leigh-on-Sea, Essex, Kevin Mayhew Publishers, 1977, p. 45.

An increased awareness of human mental functioning led to the notion that the capacity to contract marriage hinged on "due discretion"; but the question arose: what degree of mental discretion was required to contract validly? St. Thomas stated that it required more discretion to bind oneself to a betrothal contract than to commit a mortal sin. Logically, commentators extended this to the contract of marriage. It seems that for a valid marriage St. Thomas required more than the simple use of reason of the average seven-year-old child.<sup>108</sup> However, Thomas Sanchez maintained that only the simple use of reason was needed to elicit valid matrimonial consent<sup>109</sup> and it was this "mortal sin" norm that was used for nearly three centuries when evaluating the validity of marriages due to insanity.<sup>110</sup>

The present canon states that those lacking the sufficient use of reason are incapable of contracting marriage. Using *amentia* to describe this state of incapacity P. Mattioli states: "The word 'amentia' in itself does not indicate or necessarily signify a sickness, but rather a

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<sup>108</sup>See St. Thomas AQUINAS, *Summa theologiae, Supplementum*, q. LVIII, a. 5.

<sup>109</sup>See T. SANCHEZ, *De matrimonio*, Lib. I, Disp. VIII, n. 5.

<sup>110</sup>See A. MENDONÇA, "The Incapacity to Contract Marriage: Canon 1095," in *SC*, 19 (1985), p. 263.

particular state or condition of the mind, sometimes of short duration, that can be attributed to many and various causes: for instance, sleep, drunkenness, most vehement passion, [...] to sickness of diverse types and severity."<sup>111</sup> In a decision dated 4 February 1974, I.M. Pinto lists the following categories of persons who suffer from this radical incapacity:

1) Adults who have not reached the use of reason or who have seriously lost it after having reached it. This abnormality of a quantitative order can be found: in the first case, in oligophrenia, i.e., phrenasthenia, and in the second case, in *dementia*.

2) Adults who have a seriously disturbed reason. This anomaly of a qualitative order can be found in cases of psychosis.

3) Adults habitually enjoying the use of reason who, nevertheless,<sup>112</sup> are impeded by an actual disturbance of the mind.

He maintains we are dealing, therefore, with cases in which the contracting party is incapable of eliciting a human act.

It seems obvious from the above that, whatever the cause of the incapacity, the mind must be so disturbed before or at the level of the critical faculty that no deliberation is

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<sup>111</sup>c. MATTIOLI, 6 November 1956, n. 2, in *SRR Dec*, 48 (1956), p. 873. (English translation in F.G. MORRISEY, "The Incapacity of Entering into Marriage," in *SC*, 8 [1974], p. 14.)

<sup>112</sup>c. PINTO, 4 February 1974, n. 3, in *SRR Dec*, 66 (1974), pp. 36-37.

possible. J.R. Keating has noted that Rotal jurisprudence has developed a three-fold structure of proof for such cases:

1) the disorder must be proved to have existed at the time of consent;

2) it must be proved to have affected the person in the specific sphere of psychic activity which produces matrimonial consent;

3) it must be proved to have been of such gravity as to deprive one of the minimum level of discretion required for giving consent.<sup>113</sup>

The basic principles which can be gleaned from the above discussion are that the cause of the *amentia* may be intrinsic or extrinsic, but must be of such a nature as to disturb the ability to place a human act, and must be present at the time of consent (whether permanent or transitory). It is possible that the marriage consent of a person labouring under a serious personality disorder caused by the incest trauma could be proven null under this ground of incapacity. (This possibility is raised as some disorders involve a dissociation of the mind, similar to that involved in schizophrenia. Schizophrenia is often cited as the classic example of an illness which renders consent void under this ground.)<sup>114</sup>

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<sup>113</sup>J.R. KEATING, *The Bearing of Mental Impairment*, p. 63.

<sup>114</sup>See E.M. EGAN, "The Nullity of Marriage for Reason of Insanity or Lack of Due Discretion of Judgement," in *EIC*, 39 (1983), p. 45; I. GRAMUNT and L.A. WAUCK, "Capacity and Incapacity to Contract Marriage," p. 163; A. MENDONÇA, "Recent Developments in Rotal Jurisprudence on the Juridical and Psychological Aspects of Canon 1095," (unpublished paper),

b. Grave lack of due discretion

There are disturbances of the mind which can vitiate marital consent, but are not so severe as to deprive a person of the use of reason. I. Prior in a decision dated 14 November 1919, stated that even when a person could elicit a "simple human act," matrimonial consent (a "qualified human act") could be invalid if a person lacked "discretion of judgment or of freedom" relative to marital obligations.<sup>115</sup> Thus, more than the simple use of reason was needed to posit a valid act of consent.

As discussed earlier, the act of consent requires health and maturity in both the intellectual and volitional spheres. Moreover, it requires sufficient self-knowledge, i.e., the individual must be capable of knowing the self as a possible subject for marriage.<sup>116</sup> Canonical jurisprudence has

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1991, pp. 103-106; F.G. MORRISEY, "Proposed Legislation on Defective Matrimonial Consent," p. 75; M. THERME, "Les causes de nullité d'ordre psychologique dans les sentences rotales de 1968," in *AC*, 24 (1980), p. 336 to name but a few.

<sup>115</sup>c. PRIOR, 14 November 1919, n. 6, in *SRR Dec*, 11 (1919), p. 174.

<sup>116</sup>See c. DI FELICE, 17 January 1976, nn. 2-3, in *EIC*, 32 (1976), p. 284: "Nupturientes igitur, qui talis facultatis oblativae suiipsius pro vita coniugali tempore celebrationis matrimonii ob gravem defectum psychopathicum sunt expertes, consensum matrimonialem tradere et accipere non valent, neque apta facultate critica perpendere suum possunt defectum [...] Caret proinde discretione iudicii matrimonio proportionata,

identified the psychic components of "discretion of judgment" as being:

- 1) sufficient cognitive knowledge of the object and the subject;
- 2) sufficient critical evaluation of the object, motives and subject in relation to the contract;
- 3) sufficient internal freedom to evaluate the motives, or to control impulses or internal limitations.<sup>117</sup>

For some canonists, the difference between the defect of the use of reason and the grave defect of discretion of judgment is only quantitative. As R.L. Burke writes: "both refer to a defect in the development of practical judgment in the person, particularly with respect to the decision to marry. The difference between the two is of degree: lack of sufficient use of reason is the lowest degree of lack of discretion of judgment."<sup>118</sup>

A person's "discretion of judgment" may be impeded either by a transitory or habitual impairment. Situations in which

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quae est unica mensura sufficientis consensus."

<sup>117</sup>See M.F. POMPEDDA, "Maturità psichica e matrimonio nei canoni 1095, 1096," in *Apollinaris*, 57 (1984), p. 134.

<sup>118</sup>R.L. BURKE, "Canon 1095: Canonical Doctrine and Jurisprudence, Part I: Canon 1095, 1° and 2°," in *Proceedings*, 48 (1986), p. 100. L. ORSY points out that "judgment is the final outcome of a long process towards reaching the truth, or towards appropriating a value. A serious defect anywhere on the road can fatally vitiate the final judgment" ("Matrimonial Consent," p. 42). See also A. STANKIEWICZ, "L'incapacità psichica nel matrimonio: terminologia, criteri," in *Apollinaris*, 53 (1980), p. 67.

a temporary lack of discretion of judgment may be present at the time of consent include intoxication,<sup>119</sup> pregnancy or parental pressure.<sup>120</sup> A habitual defect of discretion of judgment is often the result of mental illnesses of a psychotic or neurotic nature or of mental retardation.<sup>121</sup> A. Mendonça notes that a legal presumption has been established in relation to cases involving psychosis: "When a person is proved to have been at the manifest or qualified phase of the illness at the moment of consent or prior to it, he/she is presumed at least to have lacked discretion of judgment proportionate to marital obligations."<sup>122</sup> In cases involving neuroses, the psychiatric and behavioural sciences have determined that the volitional sphere can be adversely affected while leaving the intellect untouched. Canonical

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<sup>119</sup>See R.L. BURKE, "Canon 1095: Canonical Doctrine and Jurisprudence," p. 102.

<sup>120</sup>See F.G. MORRISEY, "Proposed Legislation," p. 76.

<sup>121</sup>See I. GRAMUNT and L.A. WAUCK, "Capacity and Incapacity to Contract Marriage," p. 164. R. KENYON notes several psychological causes of defect of discretion of judgment cited in recent Rotal jurisprudence, including "schizophrenia, paranoia/paranoid personality, manic-depressive psychosis, psychosis with brain trauma, neuroses, psychopathy/psychopathic personality, and epilepsy." See "The Nature and Nullity of Matrimonial Consent: Arguments Based Upon Primary Sources," in *SC*, 14 (1980), p. 117.

<sup>122</sup>A. MENDONÇA, "Incapacity to Contract Marriage," p. 276.

jurisprudence has taken cognizance of this fact.<sup>123</sup> As far as the effects of personality disorders are concerned, it seems that jurisprudence has recognized that either sphere (or both) may be affected, as may the ability to fulfill the obligations of marital life.<sup>124</sup>

Psychological or psychiatric disorders such as those discussed above can be the result of the incest trauma. While the existence of such psychological or psychiatric conditions may assist the judge in achieving moral certitude regarding a particular cause of nullity, the illness itself is not the ground of nullity as such. It is the effect that the illness has had on the particular individuals involved which must determine the status of the union.<sup>125</sup>

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<sup>123</sup>Cf. *c. ANNÉ*, 26 January 1971, in *SRR Dec*, 63 (1971), p. 67; *c. DE JORIO*, 19 December 1961, n. 4, in *SRR Dec*, 53 (1961), p. 613; M.F. POMPEDDA, "Nevrosi e personalità psicopatiche in rapporto al consenso matrimoniale," in *Perturbazioni psichiche e consenso nel matrimonio canonico*, Roma, Officium Libri Catholici, 1976, pp. 67-74.

<sup>124</sup>See *c. PINTO*, 26 June 1969, n. 10, in *SRR Dec*, 61 (1969), p. 660; *Id.*, 20 April 1979, in *SRR Dec*, 71 (1979), pp. 189-202; *c. STANKIEWCZ*, 23 July 1981, in *SRR Dec*, 73 (1981), pp. 383-391.

<sup>125</sup>See R. BROWN, *Marriage Annulment*, p. 48; F.G. MORRISEY, "L'évolution du texte des canons 1055 et 1095," in *SC*, 19 (1985), p. 26.

c. Inability to assume the essential obligations of marriage

The two grounds of incapacity studied above, namely, lack of reason and grave lack of due discretion, focus on the act of consent itself and the interplay between the spheres of the intellect and the will. By contrast, the present incapacity looks beyond the act of consent to the ability to bind oneself to the object of consent, that is, the object of marriage. This inability is rooted in the natural law principle codified in Roman law: "There is no obligation to the impossible"<sup>126</sup> and was initially applied to physical impotence. Through a slow and complex developing jurisprudence serious psychological disorders began to be recognized as rendering persons incapable of assuming the obligations of marriage, even though their cognitive and volitional spheres remained relatively unscathed.<sup>127</sup>

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<sup>126</sup>"Impossibilium nulla obligatio est." (*Digest* 50, 17, 185). See also A. STANKIEWICZ, "De accommodatione regulae 'impossibilium nulla obligatio est' ad incapacitatem adimplendi matrimonii obligationes," in *Periodica*, 68 (1979), pp. 649-672.

<sup>127</sup>For a study of the development of this *caput* (which is beyond the scope of this paper), see C. LEFEBVRE, "La jurisprudence rotale et l'incapacité d'assumer les obligations conjugales," in *AC*, 19 (1975), pp. 1-8; A. MENDONÇA, "The Incapacity to Contract Marriage: Canon 1095," pp. 279-293.

Canon 1095, 3° speaks of incapacity due to "causes of a psychic nature." Draft versions of this canon had spoken of "a mental defect,"<sup>128</sup> "serious psychosexual anomaly,"<sup>129</sup> and "serious psychic anomaly,"<sup>130</sup> all of which gave rise to a great deal of discussion and conflict.<sup>131</sup> The final version is, as D.E. Fellhauer writes: "a product of compromise."<sup>132</sup> The point of the canon seems to be that the incapacity must be rooted in psychological causes. Even this, however, is a source of controversy when the exact meaning of *ob causas naturae psychicae* comes under scrutiny.<sup>133</sup> Some would argue

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<sup>128</sup>See *Communicationes*, 7 (1975), pp. 44 and 49.

<sup>129</sup>*Ibid.*, pp. 49-52.

<sup>130</sup>*Ibid.*, 9 (1977), pp. 369-370.

<sup>131</sup>See F.G. MORRISEY, "Proposed Changes in Canonical Matrimonial Legislation," in *The Catholic Lawyer*, 20 (1974), p. 37; U. NAVARRETE, "'Incapacitas assumendi onera' uti caput autonomum nullitatis matrimonii," in *Periodica*, 61 (1972), pp. 67-72.

<sup>132</sup>D.E. FELLHAUER, "Canon 1095: Canonical Doctrine and Jurisprudence, Part II: Canon 1095, 3°," in *Proceedings*, 48 (1986), p. 109.

<sup>133</sup>See L. ORSY, "Matrimonial Consent," p. 43: "What is the correct translation of *causas naturae psychicae*? Is it 'for causes of *psychic* nature,' or 'for causes of *psychological* nature'? *Psychic* in English implies some disposition in the *psyche* which is out of the ordinary although not necessarily abnormal. *Psychological* indicates no special disposition, just a movement in the *psyche*, a rather ordinary event which may interfere with the act of consenting. Subtle as this distinction is, it has down-to-earth practical consequences. If 'causes of *psychic* nature' are required to impede consent, the judge may well start searching for out-of-the-ordinary dispositions, such as obsession, narcissism, etc.; if 'causes of *psychological* nature' are enough he may

that only a very serious mental disorder can destroy the capacity to enter a state to which humanity is naturally oriented.<sup>134</sup> Others would maintain that as long as the individual was impeded from assuming marital obligations, the nature of the cause itself is juridically unimportant.<sup>135</sup>

Theological and canonical doctrine have attempted to identify some of the obligations of marriage to which this canon refers. These have been discussed above in the sections entitled "The nature of marriage" and "The object of consent." Jurisprudence has also endeavoured to delineate some of the essential elements of marriage such as:

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take into account rather ordinary events, e.g. transient emotional disturbances, stresses and tensions originating in a physical illness, etc."

F.G. MORRISEY argues that since the word "anomaly" has been omitted in the new Code, precise psychiatric/psychological nomenclature is not absolutely necessary when dealing with cases under this canon. This is especially valuable as cases are often dealt with in third instance in other countries where medical terminology may differ. See "L'évolution du texte des canons 1055 et 1095," in *SC*, 19 (1985), p. 27.

<sup>134</sup>See for example, J.M. PINTO GOMEZ, "Incapacitas assumendi matrimonii onera in novo C.I.C.," in *Dilexit iustitiam. Studia in honorem Aurelii Card. Sabattani, curantibus Z. GROCHOLEWSKI et V. CARCEL ORTI*, Città del Vaticano, Libreria editrice Vaticana, 1984, pp. 34-35; c. PINTO, 27 May 1983, in *ME*, 110 (1985), pp. 328-338.

<sup>135</sup>See, for example, E. OLIVARES, "Incapacitas assumendi obligationes essentielles matrimonii, debetne esse 'perpetua'?", in *Periodica*, 75 (1986), pp. 167-169.

- a) the right and obligation to an interpersonal relationship;<sup>136</sup>
- b) the right and obligation to an interpersonal heterosexual relationship;<sup>137</sup>
- c) the right and obligation to the conjugal act;<sup>138</sup>
- d) the right and obligation to the perpetuity of the conjugal relationship;<sup>139</sup>
- e) the right and obligation to the exclusivity of the conjugal relationship;<sup>140</sup>
- f) the right and obligation to the conjugal acts *mensura normali et modo naturali*;<sup>141</sup>
- g) the right and obligation to the *bonum prolis*;<sup>142</sup>

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<sup>136</sup>See, for example, c. ANNÉ, 22 July 1969, in *SRR Dec*, 61 (1969), pp. 865-867; c. SERRANO, 5 April 1973, in *SRR Dec*, 65 (1973), pp. 322-343; c. LEFEBVRE, 31 January 1976, n. 4, in *SRR Dec*, 68 (1976), pp. 39-40.

<sup>137</sup>See, for example, c. PARISELLA, 11 May 1978, in *SRR Dec*, 70 (1978), pp. 288-295; c. RAAD, 13 November 1979, nn. 11-15, in *ME*, 105 (1980), pp. 36-39.

<sup>138</sup>See, for example, c. POMPEDDA, 6 October 1969, in *SRR Dec*, 61 (1969), pp. 916-918; c. ANNÉ, 25 February 1969, n. 11, in *SRR Dec*, 61 (1969), p. 181; c. PARISELLA, 11 May 1978, n. 11, in *SRR Dec*, 70 (1978), p. 291.

<sup>139</sup>The sentences mentioned in footnote 137 also dealt with this aspect of conjugal life. The individuals involved were unable to provide this right in perpetuity due to the illnesses they suffered.

<sup>140</sup>See, for example, c. HEARD, 5 June 1941, n. 7, in *SRR Dec*, 33 (1941), p. 494; c. ANNÉ, 17 January 1967, n. 11, in *SRR Dec*, 59 (1967), pp. 29-30; c. RAAD, 20 March 1980, in *ME*, 105 (1980), pp. 177-180.

<sup>141</sup>See, for example, c. LEFEBVRE, 19 December 1959, n. 2, in *SRR Dec*, 51 (1959), p. 610.

<sup>142</sup>See, for example, c. RAAD, 20 March 1980, pp. 178-180.

h) the right and obligation to the *bonum coniugis*.<sup>143</sup>

Chapter Three will examine some of the disorders which may affect an incest survivor's ability to assume the obligations under this *caput*. Obviously the cause of the disruption in any of these elements will differ with each case, as it is conceivable that a similar cause may lead to very different effects in different relationships. Each case must be judged on its own merits.

Finally, a brief word must be said about the question of "incurability" of the psychic disorder. The canon itself does not mention perpetuity as an essential characteristic of the incapacity as in c. 1086 regarding impotence. To some canonists incurability of the disorder is not a requirement for this ground of nullity; it is only necessary that the disorder be actually present at the time of consent.<sup>144</sup> However, others would argue, that given this canon's historical link with physical impotence, perpetuity of the

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<sup>143</sup>See, for example, c. ANNÉ, 25 February 1969, in *SRR Dec*, 61 (1969), pp. 174-192; c. POMPEDDA, 22 December 1969, in *SRR Dec*, 61 (1969), pp. 1187-1194; c. EWERS, 15 January 1977, nn. 2-5, in *SRR Dec*, 69 (1977), pp. 2-4.

<sup>144</sup>See, for example, M. POMPEDDA, "De incapacitate adsumendi obligationes matrimonii essentielles: potissimum iuxta Rotalem iurisprudentiam," in *Periodica*, 75 (1986), pp. 151-152. For a more detailed look at this question, see A. MENDONÇA, "Incapacity to Contract Marriage," pp. 303-308.

incapacity is required.<sup>145</sup> As D.E. Fellhauer concludes, all one can do at this point is acknowledge that the debate constitutes a genuine uncertainty in the still-developing jurisprudence on the canon, and as a result one is justified in taking the position that one finds most compelling.<sup>146</sup>

Two principles have been given as guidelines in the application of canon 1095 in matrimonial causes by the Holy Father. In his address to the Roman Rota on 5 February 1987, he said: "only incapacity and not difficulty in giving consent and in realizing a true community of life and love invalidates a marriage." He also stated, "the hypothesis of real incapacity is to be considered only when an anomaly of a serious nature is present which, however it may be defined, must substantially vitiate the capacity to understand and/or to consent."<sup>147</sup> With these principles, it is possible for matrimonial tribunals to instruct and judge the very difficult cases involving incest trauma which are presented to them.

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<sup>145</sup>See, for example, c. ANNÉ, 25 February 1969, nn. 17-19, in *SRR Dec*, 61 (1969), pp. 184-185; c. JARAWAN, 19 June 1984, in *SRR Dec*, 76 (1984), pp. 371-373; c. PINTO, 27 May 1983, n. 4, in *ME*, 110 (1985), p. 330.

<sup>146</sup>See D.E. FELLHAUER, "Canon 1095: Canonical Doctrine and Jurisprudence," p. 112.

<sup>147</sup>JOHN PAUL II, Allocution to the Roman Rota, 5 February 1987, in *L'Osservatore romano*, English edition, 23 February 1987, p. 7.

#### d. Simulation

One of the several presumptions found in the Code about marriage is expressed in c. 1101, § 1 which states that the external acts of the marriage ceremony coincide with the internal act of consent.<sup>148</sup> It is a presumption of law which cedes to contrary proof. In paragraph two are found the elements by which a marriage may be invalidly contracted with regard to this particular presumption.

There are many ways in which one party or both may simulate consent:

1) "total simulation" in which marriage itself is excluded;

2) "partial simulation" in which some essential element of marriage is excluded i.e., the good of the spouses or the good of children;

3) "partial simulation" in which some essential property of marriage is excluded i.e., unity, indissolubility, or sacramentality.

The essence of simulation "consists in the fact that there is a discrepancy or lack of conformity between the external act by which marriage is contracted and the interior

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<sup>148</sup>See also St. Thomas AQUINAS, *Summa theologiae*, *Supplementum*, q. XLV, a. 2.

act of the will."<sup>149</sup> Hence, two separate acts are occurring simultaneously: the external act of the words of consent, and the internal act of the will by which marriage (as understood in c. 1055, § 1) or an essential marital element or property is positively excluded. R. Brown is emphatic in stating that neither the mere absence of an *intentio contrahendi* nor a habitual disposition is enough to vitiate consent. He argues: "the whole point behind this stress on the positive act of the will to simulate [...] is that if marriage itself is made by consent, and consent is an act of the will, then an equally definite act of the will is required to override the one by which marriage is regarded as being made."<sup>150</sup>

There are several motives for which a party may simulate consent: to establish something other than a Christian marriage (i.e., a purely civil union), to establish a union for the legitimization of a child, to avoid military draft, to gain citizenship, to attain financial gain.<sup>151</sup> R.A. Kenyon

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<sup>149</sup>B. COURTEMANCHE, *The Total Simulation of Matrimonial Consent*, Canon Law Studies, n. 270, Washington, DC, Catholic University of America Press, 1948, p. 14. See also J.M. HUELS, *The Pastoral Companion: A Canon Law Handbook for Catholic Ministry*, Chicago, IL, The Franciscan Herald Press, 1986, p. 208.

<sup>150</sup>R. BROWN, "Total Simulation -- A Second Look," in *SC*, 10 (1976), pp. 242-243.

<sup>151</sup>For further discussion on this subject, see B. COURTEMANCHE, *The Total Simulation of Matrimonial Consent*, pp. 76-77. See also c. FELICI, 5 December 1951, in *SRR Dec*, 43

notes the reasons for internally withholding consent: aversion toward the marital state, partner, or children; lack of trust or grave fear of future marital anguish; extreme individualism, uncertainty or insecurity.<sup>152</sup> Included among the reasons to simulate consent could be the desire to escape a sexually violent parental home. However, it seems the psychological repercussions of this particular situation are more likely to affect the individual's capacity to consent or the level of freedom which is exercised due to force or grave fear.

**e. Force or grave fear**

St. Thomas observed: "since there is no place for consent where fear or compulsion enters in, it follows that where a person's consent is required, every pretext for compulsion must be set aside."<sup>153</sup> For marriage consent to be valid, it

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(1951), pp. 751-757; c. BRUNO, 8 July 1975, in *SRR Dec*, 67 (1975), pp. 473-484; c. DE LANVERSIN, 17 March 1982, in *SRR Dec*, 74 (1982), pp. 118-125 for examples in which marriage was contracted solely to legitimate a child; c. FIORE, 17 June 1981, in *SRR Dec*, 73 (1981), pp. 326-333; c. SERRANO, 11 December 1981, in *SRR Dec*, 73 (1981), pp. 623-630 for examples of cases in which marriage was entered into as an escape from unhappy residential circumstances.

<sup>152</sup>See R.A. KENYON, "The Nature and Nullity of Matrimonial Consent," p. 135.

<sup>153</sup>St. Thomas AQUINAS, *Summa theologiae, Supplementum*, q. XLVII, a. 3.

must be freely given. The *Code of Canon Law* embodies this understanding in c. 1103 in which the elements of fear that invalidate marriage are enumerated: "a marriage is invalid if it is entered into due to force or grave fear inflicted from outside the person, even when inflicted unintentionally, which is of such a type that the person is compelled to choose matrimony in order to be freed from it."<sup>154</sup>

Firstly, it must be *grave*.<sup>155</sup> In a decision dated 16 January 1953, D. Staffa listed the conditions:

- 1) the evil feared must be grave;
- 2) the one causing the fear must be capable and presumably will execute his threat;
- 3) the one intimidated is not easily able to resist the fear.<sup>156</sup>

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<sup>154</sup>It is interesting to note that in a response dated 23 April 1987 the Pontifical Council for the Interpretation of Legislative Texts replied in the affirmative to the question: "Whether the defect of consent referred to in c. 1103 can be applied to the marriages of non-Catholics?" (in *AAS*, 79 [1987], p. 1132). For a comment on the contribution this answer has made to the discussion as to the natural law origins of this canon, see U. NAVARRETE, "Responso Pontificiae Commissionis Codici Iuris Canonici Authentice Interpretando," in *Periodica*, 77 (1988), pp. 497-510.

<sup>155</sup>See also c. WYNEN, 30 May 1945, n. 3, in *SRR Dec*, 37 (1945), p. 313.

<sup>156</sup>c. STAFFA, 16 January 1953, n. 2, in *SRR Dec*, 45 (1953), p. 44.

Jurisprudence has determined that not only absolute grave fear<sup>157</sup> (i.e., that evil which is feared by everyone), but also relative grave fear<sup>158</sup> (i.e., that which is perceived as such by the individual involved, though others may not be as intimidated by the situation) is to be considered as invalidating marriage consent.

Secondly, the source of the fear must be outside the individual concerned, that is, it must be extrinsic. The external source may be another person or a group of persons, but it must be a free agent. The fear may be inspired subserviently (i.e., from an authority-figure such as a socially or physically superior person) or reverentially (i.e., from a respect-figure such as a parent or guardian).<sup>159</sup>

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<sup>157</sup>See, for example, c. PECORARI, 7 March 1945, n. 2, in *SRR Dec*, 37 (1945), pp. 181-182; c. JULLIEN, 26 May 1945, n. 2, in *SRR Dec*, 37 (1945), p. 298; c. JANASIK, 5 January 1942, n. 2, in *SRR Dec*, 34 (1942), p. 48.

<sup>158</sup>See, for example, c. CAIAZZO, 24 February 1943, n. 2, in *SRR Dec*, 35 (1943), p. 145; c. PECORARI, 6 December 1944, n. 4, in *SRR Dec*, 36 (1944), p. 699; c. PECORARI, 7 March 1945, n. 2, pp. 181-182.

<sup>159</sup>See R.A. KENYON, "The Nature and Nullity of Matrimonial Consent," p. 145. See also R. KNOPKE, *Reverential Fear in Matrimonial Cases in Asiatic Countries: Rota Cases*, Canon Law Studies, n. 294, Washington, DC, Catholic University of America Press, 1949; c. PARISELLA, 20 April 1978, in *ME*, 103 (1978), pp. 387-389.

Thirdly, the 1917 Code (C. 1087) specifically stated that the fear had to be unjust. During the revision of the Code, the Commission decided that this word was unnecessary as any fear inducing marriage under threats is unjust.<sup>160</sup>

Fourthly, the ground of force or grave fear applies even if the fear was inflicted unintentionally (*haud consulto*). This is a new provision in the Code which has broadened the scope of the canon. Hence, this canon would be applicable even if the person inflicting the fear had no idea that his/her actions or attitudes were creating such trepidation in the other party that the latter would feel compelled to choose marriage as an escape from it.<sup>161</sup> Such a situation may arise in the case of a young person who marries to escape an incestuous father, although the father himself does not want the child to leave home.

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<sup>160</sup>See U. NAVARRETE, "Schema iuris recogniti 'De matrimonio': textus et observationes," in *Periodica*, 63 (1974), pp. 639-640.

<sup>161</sup>For a brief discussion of *metus indirectus*, see M.S. POMPEDDA, "La giurisprudenza come fonte di diritto nell'ordinamento canonico matrimoniale," in *Quaderni Studio rotale*, 1, Rome, Libreria Leoniana, 1987, p. 58 (English translation in J.A. ALESANDRO [ed.], *Marriage Studies: Reflections in Canon Law and Theology*, vol. 4, Washington, DC, Canon Law Society of America, 1990, p. 119; see also L. ORSY, *Marriage in Canon Law*, p. 147; c. MATTIOLI, 29 February 1960, in *SRR Dec*, 52 (1960), pp. 132-140.

Finally, the law requires that marriage be the only choice open to the party experiencing the force or fear. It is not required that this be objectively determined, but rather that the individual believes that marriage is the only option.<sup>162</sup> It seems in judging such a case, it would be necessary to delve into the mental condition of the party to discover if he/she really was able to perceive the options that may have been obvious to others.

One of the classical methods of proving the existence of force or grave fear is the person's aversion to the partner or marriage itself. It is an indirect method of proof which indicates that aversion was overcome only by grave fear.<sup>163</sup> In fact, D. Staffa has written that the strongest sign of fear is that a person has overcome an aversion in order to escape an impending evil.<sup>164</sup> Using this fact and the above criteria

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<sup>162</sup>See T.P. DOYLE, "Marriage," p. 790; J.M. HUELS, *The Pastoral Companion*, p. 214.

<sup>163</sup>See c. QUATTROCOLO, 20 January 1943, n. 6, in *SRR Dec*, 35 (1943), pp. 40-41; c. HEARD, 26 June 1943, n. 5, in *SRR Dec*, 35 (1943), p. 496; c. PECORARI, 15 March 1944, n. 5, in *SRR Dec*, 36 (1944), p. 180.

<sup>164</sup>See c. STAFFA, 22 March 1957, in *SRR Dec*, 49 (1957), pp. 216-223. For a more detailed discussion of some of the principles involved in evaluating the presence of aversion, see J. DENIS, "Chronique de jurisprudence: sentences rotales de 1964," in *AC*, 19 (1975), pp. 218-219 and his "Chronique de jurisprudence: sentences rotales de 1965," in *AC*, 20 (1976), pp. 203-207.

it is possible that a matrimonial cause in which incest is involved could be tried on the ground presented in c. 1103.

### CONCLUSION

The twentieth century has seen many changes in secular society and in the Church. It is perhaps not too far-fetched to say that, in various areas, each society has informed the other, and thus shaped the lives of the faithful who must live in both. A new self-awareness developed which has changed the way individuals and whole societies view themselves and their place in the world. It is the realization of one's place on the space-time continuum. With this new knowledge has come a willingness to look backward as well as forward in time, to examine where we (as societies) have been and where we are going. In secular society this has manifested itself in movements such as those concerned with peace, social justice and the environment. In the Church the most obvious manifestation of these changes was at the Second Vatican Council.

It was at the time of the Council that the Church eloquently spoke to all the people of the world. In language resonant with biblical beauty, the Council addressed the concerns of the modern world in light of the mystery of

salvation. The goals of peace and social justice and the Church's moral obligation to all humanity to help it achieve these aims were clearly presented. However, the Council spoke not only of broad social aims, but also to individuals in their most private and personal lives. It reminded each person that the love of God is present and active in each life, that strength and guidance will be granted to all.

One of the most personal areas of one's life is the marital relationship. In it one finds hope and love; unfortunately, many also find pain and despair. The Second Vatican Council did not shy away from such intimate and delicate matters. On the contrary, knowing that it is in the most personal matters that one turns to God, the Church spoke movingly of this unique and profound human experience. It described marriage as an "intimate partnership of married life and love." It reached backward and brought into the present the traditional teachings on marriage, all the while grounding this relationship in the love of God and the relationship of Christ to His Church.

Although jurists have had some difficulty incorporating the pastoral writings of the Council into their work, the 1983 *Code of Canon Law* has ably presented these in its canons regarding marriage. In this chapter, the description of

marriage as a *consortium totius vitae* has been discussed. Conjugal love, though difficult to measure, continues to be an important (and often motivating factor) in marriage. The traditional *tria bona* of marriage have been updated to include the good of spouses, and the sacramental dignity of Christian marriage has been re-iterated. The scholastic understandings of marriage consent have been informed by the science of psychology, and it is this science which will aid the canonist in judging the marriage of those who have suffered childhood abuse. Some grounds under which the validity of the marriage of these people may be challenged have been discussed. The following chapter will examine in greater detail the nature of father-daughter sexual abuse.

CHAPTER TWO  
THE NATURE OF INCEST

INTRODUCTION

Denial of the incest trauma has a history dating back almost one hundred years. On 21 April 1896, Sigmund Freud gave a paper before his colleagues at the Society for Psychiatry and Neurology in Vienna entitled, "The Aetiology of Hysteria"<sup>1</sup> in which he proposed a radical new theory: the origin of neurosis lay in early childhood sexual trauma. This theory, later known popularly as the "seduction theory," was unacceptable to Freud's colleagues, and Freud himself eventually recanted most, though significantly not all, of the notions presented that night.<sup>2</sup>

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<sup>1</sup>S. FREUD, "The Aetiology of Hysteria," in *The Standard Edition of the Complete Psychological Works of Sigmund Freud*, vol. 3, translated under the general editorship of J. STRACHEY, in collaboration with A. FREUD, assisted by A. STRACHEY and A. TYSON, London, Hogarth Press and the Institute of Psychoanalysis, 1962, pp. 191-221.

<sup>2</sup>For a thorough discussion of the events leading to this fateful recantation, see J.M. MASSON, *The Assault on Truth: Freud's Suppression of the Seduction Theory*, New York, Farrar, Straus and Giroux, 1984. See also J.L. HERMAN with L. HIRSCHMAN, *Father-Daughter Incest*, Cambridge, MA, Harvard University Press, 1981; H. LERMAN, "The Psychoanalytic Legacy: From Whence We Come," in L.E.A. WALKER (ed.), *Handbook on Sexual Abuse of Children: Assessment and Treatment Issues*, New York, Springer, 1988, pp. 37-52; F. RUSH, "The Freudian Cover-Up," in *Chrysalis*, 1 (1977), pp. 31-45; F. RUSH, *The Best Kept Secret: Sexual Abuse of Children*, Englewood Cliffs, NJ, Prentice-Hall, 1980.

The Oedipal theory replaced the seduction theory as the explanation of hysteria. According to this framework, the child fantasized sexual behaviour with the parent of the opposite sex. Hysteria was now seen to be caused by the failure to set aside the incestuous fantasies of the Oedipal period of childhood. This explanation placed the blame for incestuous feelings on the child.<sup>3</sup>

The theory advanced the viewpoint that children always fantasize sexual assaults, or else play an active role in living out their desires.<sup>4</sup> As L. Swanson and M.K. Biaggio point out, this theory has been used effectively in legal proceedings against the victim. "In the legal arena, Freud's fantasy concept provided additional credibility to the offender's typical defense of denial: 'It never happened; the kid's got an active imagination.'"<sup>5</sup>

It was not until the 1970s that a victim-oriented viewpoint was presented due in large part to the Women's

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<sup>3</sup>See A. ROSENFELD, "Sexual Misuse and the Family," in *Victimology: An International Journal*, 2 (1977), p. 227.

<sup>4</sup>L. BENDER and A. BLAU, "The Reactions of Children to Sexual Relationships with Adults," in *American Journal of Orthopsychiatry*, 7 (1937), pp. 500-518.

<sup>5</sup>L. SWANSON and M.K. BIAGGIO, "Therapeutic Perspectives on Father-Daughter Incest," in *American Journal of Psychiatry*, 142 (1985), p. 668.

Movement.<sup>6</sup> Autobiographical accounts by women who survived the horrors of incest were published.<sup>7</sup> Serious research into the problem was begun, although most studies were hampered by small or unrepresentative population samples.<sup>8</sup>

In this chapter, several definitions of the incest phenomenon will be presented as well as the problems of definition in both the legal sphere and the sociological/psychological sphere. This will be followed by a review of the available data regarding the prevalence and incidence of incest both in North America and abroad together with the findings of several large-scale studies conducted

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<sup>6</sup>See C.R. BAGLEY and R.J. THOMLISON, "Introduction: Understanding and Preventing the Sexual Abuse of Children," in C.R. BAGLEY and R.J. THOMLISON (eds.), *Child Sexual Abuse: Critical Perspectives on Prevention, Intervention, and Treatment*, Toronto, Wall and Emerson, 1991, pp. 2-3; D. FINKELHOR, *Child Sexual Abuse: New Theory and Research*, New York, Free Press, 1984, pp. 3-4; J. HAUGAARD and N. REPUCCI, *The Sexual Abuse of Children: A Comprehensive Guide to Current Knowledge and Intervention Strategies*, San Francisco, Jossey-Bass, 1988, p. 3; D.E.H. RUSSELL, *The Secret Trauma: Incest in the Lives of Girls and Women*, New York, Basic Books, 1986, p. 3; D. WATTS and C. COURTOIS, "Trends in the Treatment of Men Who Commit Violence Against Women," in *Personnel and Guidance Journal*, 60 (1981-1982), p. 246.

<sup>7</sup>For example, K. BRADY, *Father's Days: A True Story of Incest*, New York, Dell, 1979; S. FRASER, *My Father's House: A Memoir of Incest and Healing*, Toronto, Doubleday, 1987; E. WARD, *Father-Daughter Rape*, London, Women's Press, 1984; C. VALE ALLEN, *Daddy's Girl*, Toronto, McClelland & Stewart, 1980.

<sup>8</sup>See K.C. MEISELMAN, *Incest: A Psychological Study of Causes and Effects with Treatment Recommendations*, San Francisco, Jossey-Bass, 1978.

during the late 1970s and 1980s. Finally, some of the prevailing theories regarding incestuous behaviour in father-daughter incest will be presented. The canonical and theological definitions of incest will not be addressed since research has shown that both ecclesiastical history and legislation on incestuous behaviour almost invariably focus on matters of consanguinity and affinity.<sup>9</sup>

## 1. DEFINITION OF THE PROBLEM

### a. Legal definition

Juridical definitions tend to be precise and narrow statements against which individual events are compared and judged in a legal setting. In various jurisdictions the definitions used in cases of incest almost invariably involve some form of intrafamilial sexual intercourse.<sup>10</sup>

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<sup>9</sup>This fact is well presented in a comprehensive article by G. OESTERLE, entitled "Inceste," in *Dictionnaire de droit canonique*, vol. 5, 1935-1965, cols. 1297-1314. While the 1917 *Code of Canon Law* expressly addressed the issue of incest and included penalties for offenders (e.g., CC. 2357-2359), the 1983 Code does not. The revised Code does, however, permit the matter to be adjudged under c. 1399.

<sup>10</sup>Since it is generally recognized that the involvement of children in sexually exploitive activity is always harmful, irrespective of whether intercourse has taken place, incest and other forms of sexual maltreatment are generally prosecuted under broader legal umbrellas such as sexual abuse or child sexual abuse. See D. EVERSTINE, L. EVERSTINE and R. GREGG, "Legal and Ethical Considerations," in D. EVERSTINE and I. EVERSTINE, *Sexual Trauma in Children and Adolescents: Dynamics and Treatment*, New York, Brunner/Mazel, 1989, pp.

i. In the United States

Three types of statutes provide legal definitions of child sexual abuse: 1) child sex offence statutes; 2) incest statutes; 3) child protection statutes. A fourth type of statute regarding domestic violence and sexual psychopaths may be invoked to protect children from incestuous assault.<sup>11</sup>

Child sex offence statutes prohibit sexual activity with children by adults in every state. Many states use a tiered structure of offences and penalties based on the age of the victim or perpetrator or both. In spite of ongoing reforms to these statutes, definitions and penalties vary dramatically across the states.<sup>12</sup>

Although legal definitions of incest vary from state to state,<sup>13</sup> all states except New Jersey have incest laws. Each state limits the act of incest to sexual intercourse.<sup>14</sup>

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174-196.

<sup>11</sup>See J. HAUGAARD and N. REPPUCCI, *The Sexual Abuse of Children*, p. 19.

<sup>12</sup>*Ibid.*, p. 20.

<sup>13</sup>See J. BULKLEY (ed.), *Child Sexual Abuse and the Law*, 5th ed., Washington, DC, American Bar Association, 1985, provides state-by-state information on all laws regarding this matter in the United States.

<sup>14</sup>*Ibid.*, p. 21.

Prosecutions involving other sexual activities must be brought under other laws (such as incestuous activity in the state of New Jersey). Recently, reforms have been enacted which reflect the desire to protect children from abuse by guardians, adoptive parents or others acting *in loco parentis* as well as blood relations. As in the case of sex offence statutes, definitions and penalties vary widely from state to state, and revisions to the laws are ongoing.

The primary purpose of child protection statutes is to safeguard abused and neglected children.<sup>15</sup> Reporting laws and juvenile or family court jurisdiction acts are typical examples of these statutes. Legal provisions such as these place the onus of protecting children from further abuse on persons who work with or care for children.

#### ii. In Canada

In Canada the legislation pertaining to incest is as follows:

Everyone commits incest, who knowing that another person is by blood relationship his or her parent, child, brother, sister, grandparent or grandchild, as the case may be, has sexual intercourse with that person [...]. In this

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<sup>15</sup>J. HAUGAARD and N. REPPUCCI, *The Sexual Abuse of Children*, p. 22.

section 'brother' and 'sister' respectively, includes half-brother and half-sister.<sup>16</sup>

The case of step-parent and step-child sexual interaction is not considered incest by the Criminal Code; nevertheless it does constitute an offence in Canadian law.<sup>17</sup> This legislation has been criticized as being too narrow, ignoring the range of sexual activity that can occur between adult and child other than intercourse.<sup>18</sup> However, recent attempts to update the law have been unsuccessful for a variety of reasons.<sup>19</sup>

Most of the incest cases in Canada are handled by provincial child welfare provisions.<sup>20</sup> The legislation in each province defines a "child in need of protection."<sup>21</sup> A

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<sup>16</sup>Criminal Code of Canada, Section 150, (1) and (4), in *Martin's Annual Criminal Code 1984*, with annotations by E.L. GREENSPAN, Aurora, Canada Law Book, 1984, pp. 134-135.

<sup>17</sup>See Criminal Code of Canada, Section 153, (1)(a), in *Martin's Annual Criminal Code 1984*, p. 135.

<sup>18</sup>See COMMITTEE ON SEXUAL OFFENCES AGAINST CHILDREN AND YOUTHS, *Sexual Offences Against Children: Report of the Committee on Sexual Offences Against Children and Youths*, vol. 1, Ottawa, Supply and Services Canada, 1984, pp. 30-31.

<sup>19</sup>For a thorough discussion on the current legislation and attempts at reformation, see G. MacDONALD, *Incest and the Law: The Legislation Pertaining to Children* (Master of Arts Thesis), Ottawa, University of Ottawa, 1984, pp. 8-16.

<sup>20</sup>*Ibid.*, p. 3.

<sup>21</sup>For example, the definition of a child in need of protection in Ontario is found in The Child and Family Services Act, c. C.11, s. 37 (2). See ONTARIO, *Revised*

child so designated becomes a ward of the state, which then places him or her in care of provincial Children's Aid Societies. Provincial legislation does not identify incest as a specific cause resulting in a child being declared "in need of protection." Instead, the broader concepts of sexual abuse or molestation by anyone against a child are used.

Provincial laws also cover protection of the child through the obligation to report suspected abuse cases.<sup>22</sup> The definition of "abuse" varies across the country,<sup>23</sup> providing those who work with or are responsible for children with diverse responsibilities.

Many provincial child welfare legislations provide for the establishment of child abuse registers which record the names and details of abuse cases which are known to the

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*Statutes of Ontario 1990*, vol. 1, Toronto, Queen's Printer for Ontario, 1991, pp. 821-823.

<sup>22</sup>The obligation to report suspected child abuse in Ontario is covered under Section 49 of The Child Welfare Act, 1978. ONTARIO MINISTRY OF COMMUNITY AND SOCIAL SERVICES, *Child Abuse Reporting Laws: The Child Welfare Act, 1978*, Toronto, Ministry of Community and Social Services, 1979, pp. 821-823.

<sup>23</sup>For example, the legal criteria for "abuse" in Ontario is defined in Section 47, (1), of The Child Welfare Act, 1978. See ONTARIO MINISTRY OF COMMUNITY AND SOCIAL SERVICES, *Child Abuse Reporting Laws: The Child Welfare Act, 1978*, p. 2.

Children's Aid Society.<sup>24</sup> When a suspected abuse case is reported to the authorities, reference can be made to the register to ascertain whether those named in the present case are already known to child protection services, either in the local jurisdiction or in any other jurisdiction of the province. The purpose of the register is to ensure that a complete history of a situation is available to the local child protection authorities.

### iii. In England and Wales

In England and Wales, incest is said to have occurred when sexual intercourse takes place between a male and a female whom the man knows to be his daughter, sister, half-sister, grand-daughter or mother.<sup>25</sup> If the female is less than thirteen years of age the crime carries a possible life sentence; if she is over thirteen, seven years imprisonment is the maximum sentence. Attempted incest carries a maximum sentence of seven years if the female is under thirteen, and two years if she is over thirteen. Intercourse by a woman

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<sup>24</sup>See, for example, The Child and Family Services Act, c. C.11, s. 75 for the guidelines in the province of Ontario.

<sup>25</sup>For a study of child sexual abuse legislation in other European countries, see J.E. DOEK, "Sexual Abuse of Children: An Examination of European Criminal Law," in P.B. MRAZEK and C.H. KEMPE (eds.), *Sexually Abused Children and their Families*, Oxford, Pergamon Press, 1981, pp. 75-82.

over sixteen years of age with her father, brother or half-brother, son or grandfather is also legally defined as incest in English law.<sup>26</sup>

As in North American legislation, sexual offences involving children outside of this strict definition are prosecuted under broader child sexual abuse laws. Interestingly, even the relationship of step-father/step-daughter sexual intercourse does not fall under the category of incest but rather under that of "unlawful sexual intercourse" if the child is under sixteen years of age.<sup>27</sup>

Child protection registers exist in jurisdictions across England and Wales. Children are reported to these registers in order that they may be safeguarded from further abuse or neglect. Statistics are gathered nationally in order to keep track of the number of abuse cases coming to the attention of authorities.<sup>28</sup>

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<sup>26</sup>See J. RENVOIZE, *Incest: A Family Pattern*, London, Routledge & Kegan Paul, 1982, p. 24.

<sup>27</sup>*Ibid.*, p. 26.

<sup>28</sup>In the year ending March 1990, the Health Minister reported an increase of 17% in the number of children recorded on child protection registers across England; of the new cases reported, 16% were related to child sexual abuse. See "Children at Risk of Abuse Rise by 17pc," in *Daily Telegraph* (London), 23 November 1990, p. 9.

As can be seen from the foregoing discussion, incest legislation tends toward extremely narrow definitions, many of which seem to acknowledge only sexual intercourse between blood relations as felonies. Sexual activities outside of these definitions are considered under general child sexual abuse legislation.

**b. Sociological definition**

In contrast to the legal definitions of incest, the definitions used in clinical settings and research studies are broad and lack of mutual consent is the common, recurring notion. Most clinics and studies identify incest as a form of child sexual abuse in which family members are involved. Sexual abuse has been defined as the involvement of dependent, developmentally immature children and adolescents in sexual activities that they do not fully understand and to which they are unable to give informed consent or that violate the social taboos of family roles.<sup>29</sup>

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<sup>29</sup>See M. SCHECHTER and L. ROBERGE, "Sexual Exploitation," in R.E. HELFER and C.H. KEMPE (eds.), *Child Abuse and Neglect: The Family and the Community*, Cambridge, MA, Ballinger, 1976, p. 129.

Another formulation of the problem comes from P.B. MRAZEK: "The sexual use of a child by an adult for his or her sexual gratification without consideration of the child's psychosocial sexual development" (See "Definition and Recognition of Sexual Child Abuse: Historical and Cultural Perspectives," in P.B. MRAZEK and C.H. KEMPE [eds.], *Sexually Abused Children and their Families*, p. 12).

R.S. Kempe and C.H. Kempe have defined incest as: "any physical sexual activity between family members. Blood relationship is not required: the term 'family' is used in its broad social connotation as well as to describe the actual living arrangement of the involved persons. Thus, stepfathers or stepmothers and nonrelated siblings living together, often as a result of their parents' previous marriages, are included in the definition of incest. So are other relatives who do not permanently live with the child -- uncles, aunts, and grandparents, for example."<sup>30</sup> Incest is also said to occur "[...] when a child of any age is exploited by an older person for his own satisfaction while disregarding the child's own developmental immaturity and inability to understand the sexual behavior."<sup>31</sup>

The most striking aspect of incest -- and all child sexual abuse -- is the unequal power relationship between the perpetrator and the victim. Reporting on a study conducted by the Harborview Medical Center, Seattle (1977-1979), J. Renvoize stated that of the children suffering intrafamilial sexual abuse, 16% were made to submit by the use of physical

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<sup>30</sup>R.S. KEMPE and C.H. KEMPE, *The Common Secret: Sexual Abuse of Children and Adolescents*, New York, W.H. Freeman and Co., 1984, p. 10.

<sup>31</sup>B. STEELE, "Notes on the Lasting Effects of Early Child Abuse throughout the Life Cycle," in *Child Abuse and Neglect*, 10 (1986), p. 284.

force or by the showing of a weapon, 16% were threatened with force, 63% were coerced "by adult authority," 3% by a "tangible enticement" and the remaining 2% in unspecified ways.<sup>32</sup> A.W. Burgess et al. write: "Children are taught from an early age to be obedient to adults. They learn that if they do what the adult tells them to do, they will be rewarded by gaining the adult's approval. Not to obey an adult may result in punishment. Therefore, it is not surprising that offenders can pressure children into sexual activity by telling them it is 'okay to do.'"<sup>33</sup> Developmental immaturity coupled with economic and social dependence renders the child completely vulnerable to the actions of adults.

The issue of consent is intimately connected to this dependence on adults. Children are incapable of giving informed consent to engage in sexual activity, in spite of what "sexual liberationists" would have one believe.<sup>34</sup> They

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<sup>32</sup>See J. RENVOIZE, *Incest*, p. 27.

<sup>33</sup>A.W. BURGESS et al., *Sexual Assault of Children and Adolescents*, Lexington, MA, D.C. Heath and Co., 1978, pp. 86-87.

<sup>34</sup>On 13 November 1990, the Dutch Parliament voted for a law which lowered the age of sexual consent for girls and boys from sixteen to twelve. Defenders of this reform of the Morality Act of 1840 pointed to "the earlier maturity of today's teenagers." Opponents of the bill cited the difficulty children have in saying "no" to their elders. See N. TYRER, "Should Sex Begin At 12?" in *Daily Telegraph*, 14 November 1990, p. 17.

are ignorant about sex and sexual relationships. Furthermore, they are unaware of the social meanings attached to sexuality. Children also do not understand the "natural history" of sexual relationships and are uninformed about the criteria to be used in selecting a sexual partner. Finally, they have no way of knowing what effect this relationship will have for them in the future.<sup>35</sup> It is clear that even when children submit to sexual activity, they have not given a judicious consent.

While there will be variations on the definition of incest in each setting, it is crucial to understand the scope of the definition used by a particular setting (clinic or research study) before any meaningful comparisons can be made. Some factors vary: 1) the type of sexual activity involved; 2) the nature of the relationship between the participants; 3) the duration of the abuse; 4) the degree of violence and threats; 5) the ages and relative developmental level of the participants and 6) the familial and cultural context in which the actions have occurred.<sup>36</sup>

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<sup>35</sup>For a thorough discussion regarding the issue of consent, see D. FINKELHOR, *Child Sexual Abuse*, pp. 17-22.

<sup>36</sup>See K. MACFARLANE et al., *Sexual Abuse of Young Children: Evaluation and Treatment*, New York, Guilford Press, 1986, p. 4.

G. WYATT and S. PETERS compared the definitions of incest used in the four most-often cited large-scale studies (Finkelhor, 1979, 1984; Russell, 1983; Wyatt, 1985). Their

## 2. PREVALENCE AND INCIDENCE RATES OF INCEST

### a. Prevalence rates

#### i. In the United States

Given its secretive nature and the sociological taboo associated with it there is perhaps no way to ascertain with accuracy the scope of the problem of intrafamilial child sexual abuse. One of the earliest attempts to calculate the prevalence of the problem was undertaken by A.C. Kinsey in 1948.<sup>37</sup> He discovered that approximately 0.5% of his adult female population had endured "sexual contact" with their fathers before the age of fourteen.<sup>38</sup> This study, however, has been highly criticized both in its methodology and in its somewhat lax attitude toward incest.<sup>39</sup> In his classic study of 1955, S.K. Weinberg estimated one case of incest per

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analysis showed that the variations in the results of prevalence rates could be attributed solely to the definition employed by each research study. See "Issues in the Definition of Child Sexual Abuse Research," in *Child Abuse and Neglect*, 10 (1986), pp. 231-240.

<sup>37</sup>See A.C. KINSEY et al., *Sexual Behavior in the Human Female*, Philadelphia, W.B. Saunders, 1953.

<sup>38</sup>The actual number of incest cases is difficult to obtain from the Kinsey study since it reported figures as percentages which add up to 107. For a reconstruction of the Kinsey data, see D.E.H. RUSSELL, *The Secret Trauma*, p. 63.

<sup>39</sup>See J.L. HERMAN with L. HIRSCHMAN, *Father-Daughter Incest*, p. 17; D.E.H. RUSSELL, *The Secret Trauma*, pp. 5-9, 64-65.

million persons in 1930 in the United States.<sup>40</sup> F. Ferracuti estimated in 1972 that between one and five cases of incest per million persons occur every year throughout the world.<sup>41</sup>

In 1978, sociologist D. Finkelhor conducted one of the first large-scale studies from a nonclinical setting to determine the prevalence of father-daughter incest. Self-administered questionnaires were completed by 796 social sciences students at six New England colleges. Of the 530 female students, 19% reported some kind of sexual victimization; 11% of these had been with adults when they were under the age of twelve. Between the ages of thirteen and sixteen, 6% of the women had been victimized by a person at least five years older than themselves, and 4% by adults at least ten years their senior. In addition, some of the women had multiple experiences. Few were victimized by strangers. In fact, 44% of these experiences were with family members. D. Finkelhor concluded that 9% of all women are sexually victimized by a relative, and 1.5% by their fathers.<sup>42</sup>

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<sup>40</sup>See S.K. WEINBERG, *Incest Behavior*, rev. ed., Seacaucus, NJ, Citadel, 1976, p. 39.

<sup>41</sup>See F. FERRACUTI, "Incest Between Father and Daughter," in H.L.P. RESNICK and M.E. WOLFGANG (eds.), *Sexual Behaviors: Social, Clinical, and Legal Aspects*, Boston, Little, Brown, 1972, pp. 169-183.

<sup>42</sup>See D. FINKELHOR, *Sexually Victimized Children*, New York, Free Press, 1979, pp. 58, 83 and 88.

An even larger study based on a representative sample was conducted in 1978 by D.E.H. Russell. Acting as a probability sample, 930 women residents of San Francisco were interviewed about any experience of sexual abuse they may have had at any point in their lives. Sixteen percent of the sample reported at least one experience of intrafamilial sexual abuse before 18 years of age, and 12% had been sexually abused before they were fourteen.<sup>43</sup> Russell calculated 4.5% of the women in the sample had been victims of their father.<sup>44</sup> G. Wyatt and S. Peters obtained remarkably similar results in their study of 1984.<sup>45</sup>

#### ii. In Canada

In 1983 the Canadian government commissioned a nationwide survey to determine the extent of child sexual abuse in this country. Over 2000 questionnaires were distributed in 210 communities asking participants detailed questions

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<sup>43</sup>See D.E.H. RUSSELL, *The Secret Trauma*, p. 60.

<sup>44</sup>See D.E.H. RUSSELL, "The Incidence and Prevalence of Intrafamilial and Extrafamilial Sexual Abuse of Female Children," in L.E.A. WALKER (ed.), *Handbook on Sexual Abuse of Children: Assessment and Treatment Issues*, p. 27. For a comparison of the results of this study with those of D. Finkelhor, see D.E.H. RUSSELL, *The Secret Trauma*, pp. 65-67.

<sup>45</sup>See G. WYATT and S. PETERS, "Issues in the Definition of Child Sexual Abuse Research," pp. 231-240. See also G.E. WYATT, "The Sexual Abuse of Afro-American and White Women in Childhood," in *Child Abuse and Neglect*, 9 (1985), pp. 507-519.

regarding their sexual history. Subsequent analysis of the data revealed that 2.7% of female respondents had been victimized by their father or step-father before the age of 16.<sup>46</sup> These figures echoed the results obtained by the large-scale studies conducted in the United States reported above. The magnitude of this problem would appear to be the same for both of these nations.

### iii. In England and Wales

In England and Wales, attempts have been made to establish a national prevalence rate of child sexual abuse. A study conducted by Channel Four Television concluded that approximately 12% of females suffer sexual abuse as children. Although the rate of father-daughter incest specifically was not reported in this study, 14% of all sexual abuse reported was intrafamilial, with female children being at a significantly greater risk than male children.<sup>47</sup>

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<sup>46</sup>These figures were calculated using the data provided in C. BAGLEY, *Child Sexual Abuse in Canada: Further Analysis of the 1983 National Survey*, Calgary, University of Calgary, 1987, p. 45. It is believed the prevalence rate obtained in this study are an underestimation of the true extent of the problem in Canada. See *Ibid.*, pp. 9-14.

<sup>47</sup>A. BAKER and S. DUNCAN, "Child Sexual Abuse: A Study of Prevalence in Great Britain," in *Child Abuse and Neglect*, 9 (1985), pp. 457-467.

The results of a study conducted for the Economic and Social Research Council regarding child sexual abuse were published in 1991. This study asked 1,244 people between ages 16-21 about their unwanted sexual experiences. Over 50% of female respondents suffered sexual abuse before 18 years of age, where sexual abuse was defined as "any unwanted sexual event/interaction that the young person experiences." Two percent of the sample (21 women and 3 men) reported incestuous abuse involving a parent or a sibling. Another four percent revealed abuse by grandparents, uncles and other close family members.<sup>48</sup>

Most investigations into the prevalence of child sexual exploitation are based on small samples obtained in penal or clinical settings. In a 1981 review of the literature on prevalence studies (based on nonrepresentative samples) conducted since 1940, J. Herman concluded: "One-fifth to one-third of all women reported that they had had some sort of childhood sexual encounter with an adult male. Between four and twelve percent of all women reported a sexual experience

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<sup>48</sup>See L. KELLY, L. REGAN and S. BURTON, *An Exploratory Study of the Prevalence of Sexual Abuse in a Sample of 16-21 Year Olds*, London, Child Abuse Studies Unit, Polytechnic of North London, 1991.

with a relative, and one woman in a hundred reported a sexual experience with her father or step-father."<sup>49</sup>

It is widely accepted that such figures represent the tip of the iceberg.<sup>50</sup> D.E.H. Russell reported that only 2% of the incest cases revealed in the 1978 study were brought to the attention of law enforcement agencies.<sup>51</sup> Given the extremely low reporting rate of these crimes, it would seem the best manner in which to determine the magnitude of the problem is the backward-looking prevalence study which asks adult populations about their childhood experiences.

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<sup>49</sup>J. HERMAN, *Father-Daughter Incest*, p. 12.

<sup>50</sup>See H.L. BRUCKI, "An Overview of Incest with Suggestions for Occupational Therapy Treatment," in *Occupational Therapy in Mental Health*, vol. 5, n. 4 (1985-1986), pp. 64-65; L.T. FARRELL, "Factors that Affect a Victim's Self-Disclosure in Father-Daughter Incest," in *Child Welfare*, 67 (1988), pp. 462-463; D. FINKELHOR, *Child Sexual Abuse*, p. 1; R. KRUGMAN and D.P.H. JONES, "Incest and Other Forms of Sexual Abuse," in R.E. HELFER and R.S. KEMPE (eds.), *The Battered Child*, Chicago, The University of Chicago Press, 1987, p. 287; J. RENVOIZE, *Incest*, pp. 42-44; D.E.H. RUSSELL, *The Secret Trauma*, pp. 85-91; H. VAN GIJSEGHEM, "L'inceste père-fille," in *La vie médicale au Canada français*, 4 (1975), p. 263.

<sup>51</sup>See D.E.H. RUSSELL, "The Incidence and Prevalence of Intrafamilial and Extrafamilial Sexual Abuse of Female Children," p. 31.

b. Incidence rates

i. In the United States

Due to low reporting rates and variations in the definition of incest,<sup>52</sup> there is no accurate way to determine the incidence rate of intrafamilial sexual abuse. In 1972, the American Humane Association estimated a total of 200,000 to 300,000 cases of female child molestation (including unreported cases) in the United States annually, at least 5,000 of which are father-daughter incest cases.<sup>53</sup> Referring to a 1974 study at the Child Sexual Abuse Treatment Program in Santa Clara, California, R. Shapshay and D. Vines wrote: "the national incidence of father-daughter incest is estimated to be greater than 36,000 cases per year."<sup>54</sup> During the 1980s, the number of intrafamilial child sexual abuse cases coming to professional attention skyrocketed, reaching close to 100,000 in the United States in 1985.<sup>55</sup>

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<sup>52</sup>See M. DE CHESNAY, "Father-Daughter Incest: Issues in Treatment and Research," in *Journal of Psychosocial Nursing and Mental Health Services*, vol. 22, n. 9 (1984), pp. 9-16.

<sup>53</sup>See AMERICAN HUMANE ASSOCIATION, *National Symposium on Child Abuse*, Denver, American Humane Association, Children's Division, 1972.

<sup>54</sup>R. SHAPSHAY and D. VINES, "Father-Daughter Incest: Detection of Cases," in *Journal of Psychosocial Nursing and Mental Health Services*, 20 (1982), p. 23.

<sup>55</sup>See L.M. WILLIAMS and D. FINKELHOR, "The Characteristics of Incestuous Fathers: A Review of Recent Studies," in W.L. MARSHALL, D.R. LAWS and H.E. BARBAREE (eds.), *Handbook of*

## ii. In Canada

The major sources of national statistics on child sexual abuse are provincial and territorial child protection agencies and law enforcement agencies. Unfortunately, the definitions of intrafamilial child sexual abuse vary widely from jurisdiction to jurisdiction, as do reporting laws. The Report of the Committee on Sexual Offences Against Children and Youths noted some interesting discrepancies between the number of cases of child sexual abuse reported in national surveys and those reported to the provincial child abuse registers. Of the eight provinces having registers by law,<sup>56</sup> 2300 cases of child sexual abuse were reported in 1982. For the same year 3300 cases were reported in national surveys.<sup>57</sup> It must be reiterated that the number of reported cases represent only a small fraction of actual incidence.

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*Sexual Assault: Issues, Theories and Treatment of the Offender*, New York, Plenum Press, 1990, p. 231.

<sup>56</sup>These provinces include Newfoundland, Nova Scotia, Quebec, Ontario, Manitoba, Saskatchewan, Alberta and British Columbia.

<sup>57</sup>See COMMITTEE ON SEXUAL OFFENCES AGAINST CHILDREN AND YOUTHS, *Sexual Offences Against Children*, p. 569. The report did not specify the number of father-daughter sexual abuse cases coming to the attention of authorities during the same time period. See also COMITÉ DE LA PROTECTION DE LA JEUNESSE, *Le traitement des cas d'inceste père-fille: un pratique difficile*, Québec, Gouvernement du Québec, Ministère de la Justice, 1986.

## iii. In England and Wales

As in the United States and Canada, incidence figures in England and Wales are difficult to obtain. In 1977 the British Home Office reported 295 cases of incest, where incest was defined as an act of intercourse taking place between a man and certain family females (excluding brother-sister intercourse).<sup>58</sup> In 1981, the results of a postal survey of family doctors, paediatricians, child psychiatrists and police surgeons regarding the number of child sexual abuse cases they encountered in their practice was published. The authors of this report estimated an annual incidence of 1,500 cases. Unfortunately, the number of father-daughter abuse cases was not reported.<sup>59</sup>

From the preceding discussion it may be concluded that the crime of father-daughter incest is not a rare occurrence. Although exact figures are unavailable due to various obstacles, the estimated prevalence rates of 1% to 5% represent hundreds of thousands of sexually exploited female children in North America alone. Many of these women will

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<sup>58</sup>See J. RENVOIZE, *Incest*, p. 42.

<sup>59</sup>See P.B. MRAZEK, M. LYNCH and A. BENTOVIM, "Recognition of Child Sexual Abuse in the United Kingdom," in P.B. MRAZEK and C.H. KEMPE (eds.), *Sexually Abused Children and their Families*, pp. 35-50.

enter into marital unions which might be presented before the ecclesiastical courts for judgement. The effects of such abuse on the individual (hence on marriage consent) will be studied in the next chapter.

Of immediate concern are the men who violate their parental responsibilities in this manner. There are many theories as to why such behaviour manifests itself. An understanding of these theories will aid the canonist in determining the capacity or motivations of a perpetrator to contract valid marriage.

### 3. THEORIES OF INCESTUOUS BEHAVIOUR IN FATHERS

Until recently, there has been very little research conducted on incestuous fathers.<sup>60</sup> Despite their usefulness in the past, clinical reviews about the etiology of sexual

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<sup>60</sup>Caretaking and nurturing responsibilities belong to both biological fathers and father-figures in a parent-child relationship. Canon 110 states: "Children who have been adopted according to the norm of civil law are considered as being the children of the person or persons who have adopted them." Canon 1136 reminds parents of 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." Children trust the adults who are seen by society as their caretakers in both the legal sphere and in the emotional realm. For this reason natal fathers, adoptive fathers and step-fathers are considered as "fathers" in the following presentation. Studies in which significant differences between natal fathers and father-figures have been found will be discussed appropriately.

abuse and the characteristics of incestuous fathers provide little in the way of solid empirical evidence which could lead to a comprehensive understanding of such behaviour.<sup>61</sup>

During the 1980s the pace of research into intrafamilial sexual abuse accelerated and it is from this new body of knowledge that various theories of incestuous behaviours will be presented. The specific areas to be examined are the childhood experiences of the perpetrator, his family and social relations, psychological characteristics and sexuality.

#### a. Childhood experiences

The belief that adults sexually assault children because they had the same experiences in childhood seems to be a prevailing notion among clinicians and the general public.<sup>62</sup>

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<sup>61</sup>See S. BUTLER, *Conspiracy of Silence: The Trauma of Incest*, San Francisco, New Glide, 1978; J. HERMAN, *Father-Daughter Incest*; N. LUSTIG et al., "Incest: A Family Group Survival Pattern," in *Archives of General Psychiatry*, 14 (1966), pp. 31-40; K.C. MEISELMAN, *Incest: A Psychological Study of Causes and Effects with Treatment Recommendations*, 1978; R. SUMMIT and J. KRYSO, "Sexual Abuse of Children: A Clinical Spectrum," in *American Journal of Orthopsychiatry*, 48 (1978), pp. 237-251.

<sup>62</sup>For a discussion on the concept of fathers as "carriers" of incestuous behaviour, see I. COOPER and B.M. CORMIER, "Inter-generational Transmission of Incest," in *Canadian Journal of Psychiatry*, 27 (1982), pp. 231-235. See also L. SWANSON and M.K. BIAGGIO, "Therapeutic Perspectives on Father-Daughter Incest," p. 669.

For this reason, several studies have probed this possibility with varying results.

i. Sexual abuse

D.A. Baker found that 35% of offenders in a sample of 20 had been sexually abused during childhood.<sup>63</sup> This, however, is the highest percentage reported among recent studies. For example, in a sample of 39 offenders, R.N. Lee found not one admitted to being sexually abused as a child.<sup>64</sup> K.D. Kirkland and C.A. Bauer reported that only 1 in 10 offenders had been molested as a child.<sup>65</sup> Studies by C.S. Brandon,<sup>66</sup> and R.

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<sup>63</sup>See D.A. BAKER, "Father-Daughter Incest: A Study of the Father," (Doctoral dissertation, California School of Professional Psychology, San Diego), in *Dissertation Abstracts International*, 46 (1985), p. 951B.

<sup>64</sup>See R.N. LEE, "Analysis of the Characteristics of Incestuous Fathers," (Doctoral dissertation, University of Texas at Austin), in *Dissertation Abstracts International*, 43 (1983), p. 2343B. M.G. GROFF and L.M. HUBBLE also found that a cross-generational pattern of incest was not often detected in their study, with only 2 offenders from a sample of 42 having reported being sexually abused as children. See "A Comparison of Father-Daughter and Stepfather-Stepdaughter Incest," in *Criminal Justice and Behavior*, 11 (1984), pp. 471-472.

<sup>65</sup>See K.D. KIRKLAND and C.A. BAUER, "MMPI Traits of Incestuous Fathers," in *Journal of Clinical Psychology*, 38 (1982), pp. 645-649.

<sup>66</sup>See C.S. BRANDON, "Sex Role Identification in Incest: An Empirical Analysis of the Feminist Theories," (Doctoral dissertation, California School of Professional Psychology, Fresno), in *Dissertation Abstracts International*, 47 (1987), p. 3099B.

Langevin et al,<sup>67</sup> both reported a 21% abused rate in their respective samples. With this variety in the sexual assault background of offenders, it is difficult to conclude with any certainty that only those who are sexually abused go on to abuse others.<sup>68</sup>

There are, however, data which indicates that those who witness sexual abuse against other family members repeat the behaviour in their own families. S.R. Bennett,<sup>69</sup> C.S. Brandon,<sup>70</sup> and V.L. Pelto<sup>71</sup> have all reported this particular form of violence as a feature in the childhood of offenders.

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<sup>67</sup>See R. LANGEVIN et al., "Are Incestuous Fathers Pedophilic, Aggressive and Alcoholic?" in R. LANGEVIN (ed.), *Erotic Preference, Gender Identity and Aggression*, Hillsdale, NJ, Erlbaum, 1985, pp. 161-180.

<sup>68</sup>For further discussion on this topic, see D. FINKELHOR, *Child Sexual Abuse*, p. 47.

<sup>69</sup>See S.R. BENNETT, "Cognitive Style of Incestuous Fathers," (Doctoral dissertation, Texas Tech University), in *Dissertation Abstracts International*, 47 (1986), p. 778B.

<sup>70</sup>See C.S. BRANDON, "Sex Role Identification in Incest: An Empirical Analysis of the Feminist Theories," p. 3099B.

<sup>71</sup>See V.L. PELTO, "Male Incest Offenders and Non Offenders: A Comparison of Early Sexual History," (Doctoral dissertation, U.S. International University), Order No. 8118142, Ann Arbor, University Microfilms, 1981, reported in L.M. WILLIAMS and D. FINKELHOR, "The Characteristics of Incestuous Fathers," p. 239.

This seems to be borne out in the anecdotal evidence presented to many clinicians.<sup>72</sup>

### ii. Physical abuse

It would seem that physical abuse is a more common factor in the background of incestuous fathers than sexual abuse. H. Parker and S. Parker found that 59% of their sample of incestuous fathers reported "perceived mistreatment" at the hands of their parents.<sup>73</sup> Separate studies conducted by C.S. Brandon<sup>74</sup> and M.D. Mandel<sup>75</sup> also reported that over 50% of their samples experienced physical abuse during childhood. One of the lowest rates of abuse reported was that found by R.N. Lee whose study found 36% of offenders had been

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<sup>72</sup>See, for example, J. RENVOIZE, *Incest*, p. 73; I. COOPER and B.M. CORMIER, "Inter-Generational Transmission of Incest," p. 232; L.A. WELLS, "Family Pathology and Father-Daughter Incest: Restricted Psychopathy," in *Journal of Clinical Psychiatry*, 42 (1981), p. 198.

<sup>73</sup>See H. PARKER and S. PARKER, "Father-Daughter Sexual Abuse: An Emerging Perspective," in *American Journal of Orthopsychiatry*, 56 (1986), pp. 531-549.

<sup>74</sup>See C.S. BRANDON, "Sex Role Identification in Incest: An Empirical Analysis of the Feminist Theories," p. 3099B.

<sup>75</sup>See M.D. MANDEL, "An Object Relation Study of Sexually Abusive Fathers," (Doctoral dissertation, California School of Professional Psychology, San Diego), in *Dissertation Abstracts International*, 47 (1986), p. 2173B.

physically mistreated as children.<sup>76</sup> From the preceding figures, physical abuse would appear to be a more recurrent theme among incest offenders than sexual abuse.

### iii. Parental relationship

Less specific themes regarding unhealthy family-of-origin relationships have also appeared in the recent literature. A.R. Berkowitz reported incestuous fathers as having had significantly more experiences of abandonment, powerlessness, maternal seduction and paternal rejection. This study also found a nonsignificant trend for more domestic violence as compared to control groups.<sup>77</sup> D.A. Baker also found paternal rejection in the offenders' background as well as alcohol misuse in 35% of the families.<sup>78</sup> Disturbed paternal relationships were also found in the study conducted by M.D.

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<sup>76</sup>See R.N. LEE, "Analysis of the Characteristics of Incestuous Fathers," p. 2343B.

<sup>77</sup>See A.R. BERKOWITZ, "Incest as Related to Feelings of Inadequacy, Impaired Empathy, and Early Childhood Memories," (Unpublished Doctoral dissertation, University of Southern California, Los Angeles), 1983, reported in L.M. WILLIAMS and D. FINKELHOR, "The Characteristics of Incestuous Fathers," p. 239.

<sup>78</sup>See D.A. BAKER, "Father-Daughter Incest: A Study of the Father," p. 951B.

Mandel, whereas this study found no significant disturbance in the maternal relationships of these men.<sup>79</sup>

Information is even less clear regarding paternal absence. The Baker study found that 65% reported separation from father, while only 30% were separated from their mothers.<sup>80</sup> However, H. Parker detected a significant trend regarding maternal -- but not paternal -- absence.<sup>81</sup>

From the preceding discussion, it seems dysfunctional family dynamics are in the background of a high percentage of men who become incest offenders. The forms of this dysfunction vary and include one or several of the following: experience of or witness to sexual abuse, physical abuse, emotional or physical distance from parents, parental alcohol abuse or spouse abuse. These data lends credence to the belief that violence is a learned behaviour.

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<sup>79</sup>See M.D. MANDEL, "An Object Relation Study of Sexually Abusive Fathers," p. 2173B.

<sup>80</sup>See D.A. BAKER, "Father-Daughter Incest: A Study of the Father," p. 951B. See also T. COHEN, "The Incestuous Family Revisited," in *Social Casework*, 64 (1983), p. 155.

<sup>81</sup>See H. PARKER, "Intrafamilial Sexual Child Abuse: A Study of the Abusive Father," (Doctoral dissertation, University of Utah), in *Dissertation Abstracts International*, 45 (1985), p. 3757A.

b. Family and social relations

i. Marital relationships

There seems to be an almost universal assumption that an unsatisfactory marital relationship "causes" the father to turn to his daughter for emotional fulfillment. However, the results of studies undertaken to investigate this belief do not confirm the hypothesis.

In a controlled study of incestuous fathers, B. Saunders, S. McClure and S. Murphy found that 44% of their sample registered in the pathological range on the Dyadic Adjustment Scale (a measure of intimate interpersonal skills) and 37% in the pathological range on the Index of Sexual Satisfaction.<sup>82</sup> A study conducted by K.D. Kirkland and C.A. Bauer also reported marital dissatisfaction among their population of incest offenders as compared to the control group.<sup>83</sup>

However, H. Parker and S. Parker found no significant differences in the quality of the marital relationships of

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<sup>82</sup>See B. SAUNDERS, S. McCLURE and S. MURPHY, *Final Report: Profile of Incest Perpetrators Indicating Treatability -- Part 1*, Charleston, SC, Crime Victims Research and Treatment Center, 1986, reported in L.M. WILLIAMS and D. FINKELHOR, "The Characteristics of Incestuous Fathers," p. 246.

<sup>83</sup>See K.D. KIRKLAND and C.A. BAUER, "MMPI Traits of Incestuous Fathers," pp. 645-649.

incest offenders compared to non-incest offenders in the same penal and psychiatric facilities.<sup>84</sup> This would suggest that although marital difficulties exist in the relationships of incest offenders, they are no worse than those experienced by men with other interpersonal problems. L.M. Williams and D. Finkelhor also point to the fact that reports of marital satisfaction are obtained after the incestuous behaviour has been made public. The strain that disclosure puts on the marriage relationship may be what is being reflected in the current studies since no study has yet been undertaken to evaluate the marital relationship prior to this revelation.<sup>85</sup>

#### ii. Family dynamics

New interest in the family systems theory has directed some research into the dynamics of incestuous families. Generally speaking, to outward appearances incestuous families are stable, well-adjusted units. However, this is only a façade to conceal extreme chaos and disorganization.<sup>86</sup>

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<sup>84</sup>See H. PARKER and S. PARKER, "Father-Daughter Sexual Abuse: An Emerging Perspective," pp. 542-543.

<sup>85</sup>See L.M. WILLIAMS and D. FINKELHOR, "The Characteristics of Incestuous Fathers," pp. 246-247.

<sup>86</sup>See T. COHEN, "The Incestuous Family Revisited," pp. 154-155.

Members of such families tend to be cowed by domineering fathers who espouse traditional male-female roles within the family unit. The wives of these men are usually rendered powerless through battering, mental or physical disability, repeated childbearing, and a social climate which promotes economic dependence on their husbands.<sup>87</sup> In the face of maternal disability, fathers in these families tend not to assume parental responsibilities.<sup>88</sup> The helplessness of children in this environment has been discussed earlier in this chapter.

In a rare study which observed and recorded family interaction, V.A. Olson found that incestuous families were significantly different from the control group in the

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<sup>87</sup>See M. DE CHESNAY, E. MARSHALL and C. CLEMENTS, "Family Structure, Marital Power, Maternal Distance, and Paternal Alcohol Consumption in Father-Daughter Incest," in *Family Systems Medicine*, 6 (1988), p. 456; J. HERMAN, "Father-Daughter Incest," in *Professional Psychology*, 12 (1981), p. 77; J. HERMAN and L. HIRSCHMAN, "Families at Risk for Father-Daughter Incest," in *American Journal of Psychiatry*, 138 (1981), p. 969; J.W. SELBY et al., "Families of Incest: A Collation of Clinical Impressions," in *International Journal of Social Psychiatry*, 26 (1980), p. 14; L. SWANSON and M.K. BIAGGIO, "Therapeutic Perspectives on Father-Daughter Incest," p. 669; E. WATTENBERG, "In a Different Light: A Feminist Perspective on the Role of Mothers in Father-Daughter Incest," in *Child Welfare*, 64 (1985), pp. 206-207.

<sup>88</sup>See Y. BOGOPOLSKY and B.M. CORMIER, "Economie relationelle de chacun des membres dans une famille incestueuse," in *Revue Canadienne de psychiatrie*, 24 (1979), pp. 65-70; J. HERMAN and L. HIRSCHMAN, "Families at Risk for Father-Daughter Incest," p. 968.

following areas: 1) an unusual degree of parent-child coalition; 2) low empathy; 3) unresolved conflict; 4) hostile-depressed tone; 5) low efficiency in their negotiations; 6) inability to accept responsibility; 7) tendency to make intrusive comments and to obliterate others' autonomy.<sup>89</sup> T.M. Quinn found conflict avoidance, low community involvement and low adaptability and cohesion in families with incestuous behaviour.<sup>90</sup> B. Saunders, S. McClure and S. Murphy reported the same adaptability and cohesion problems as well as a chaotic structure and social isolation masked by religiosity and similar external controls.<sup>91</sup> J.W. Selby et al. reported poor relationships between incest victim with both parents, with little affection expressed toward children by parents in such families.<sup>92</sup> L.M. Anderson and G. Shafer noted a lack of impulse control, lack of verbal expression of feelings, callous disregard for others, conflicts about dependency and

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<sup>89</sup>See V.A. OLSON, "An Exploratory Study of Incest Family Interaction," (Doctoral dissertation, California School of Professional Psychology, Los Angeles), in *Dissertation Abstracts International*, 43 (1982), pp. 1995B-1996B.

<sup>90</sup>See T.M. QUINN, "Father-Daughter Incest: An Ecological Model," (Doctoral dissertation, California School of Professional Psychology, Fresno), in *Dissertation Abstracts International*, 45 (1985), p. 3957B.

<sup>91</sup>See B. SAUNDERS, S. McCLURE and S. MURPHY, *Final Report: Profile of Incest Perpetrators Indicating Treatability -- Part 1*, reported in L.M. WILLIAMS and D. FINKELHOR, "The Characteristics of Incestuous Fathers," p. 247.

<sup>92</sup>See J.W. SELBY et al., "Families of Incest: A Collation of Clinical Impressions," p. 14.

an inability to tolerate intimacy in the dynamics of the members of incestuous families.<sup>93</sup>

The common picture which emerges from these studies is that of a family experiencing poor communication, unequal power-sharing, isolation, conflict, antagonism and disorganization. As in the case of marital satisfaction, it is difficult to determine whether these problems emerged before or after disclosure of the incestuous behaviour. It is important to remember that not all families displaying such dysfunction are necessarily incestuous. However, it can be concluded that serious dysfunction is an underlying factor in incestuous family dynamics.

### iii. Substance abuse

Alcohol and drug abuse are two variables commonly associated with violent sexual behaviour. This is due to the fact that offenders and their sympathizers often invoke drug dependency as the excusing factor for the crime.<sup>94</sup> Whether

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<sup>93</sup>See L.M. ANDERSON and G. SHAFER, "The Character-Disordered Family: A Community Treatment Model for Family Sexual Abuse," in *American Journal of Orthopsychiatry*, 49 (1979), p. 438.

<sup>94</sup>In a controversial decision handed down on 14 November 1989, Vancouver County Court Judge P. van der Hoop pronounced a suspended sentence to a man convicted of sexually molesting a three-year old girl he was babysitting. In his sentence the

there is a relationship between substance abuse and violent sexual behaviour has yet to be determined by empirical studies.

Some studies confirm higher levels of alcohol and drug abuse among incest offenders. K.D. Kirkland and C.A. Bauer reported that alcohol abuse was a factor in 70% of the incest cases in their research study.<sup>95</sup> M. de Chesnay, E. Marshall and C. Clements noted that paternal alcohol consumption was significantly related to the form of incest committed: "The more alcohol consumed per week, the more forceful was the abuse."<sup>96</sup> R. Langevin et al.,<sup>97</sup> R.N. Lee<sup>98</sup> and V.C. Strand<sup>99</sup>

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judge cited the perpetrator's alcohol consumption as the causative factor for the assault: "[Y]ou were under the influence of alcohol to a fair extent at the time [...]. Your major problem is alcohol and I think you realize that." See K. MacQUEEN, "Child Sex Abuse: Courts too Lenient, Say Judge's Critics," and "Text of Judge's Reasons for Judgment, Sentence," in *Ottawa Citizen*, 2 December 1989, p. B8.

<sup>95</sup>See K.D. KIRKLAND and C.A. BAUER, "MMPI Traits of Incestuous Fathers," p. 647.

<sup>96</sup>See M. DE CHESNAY, E. MARSHALL and C. CLEMENTS, "Family Structure, Marital Power, Maternal Distance, and Paternal Alcohol Consumption in Father-Daughter Incest," p. 460.

<sup>97</sup>See R. LANGEVIN et al., "Are Incestuous Fathers Pedophillic, Aggressive and Alcoholic?" pp. 161-180.

<sup>98</sup>See R.N. LEE, "Analysis of the Characteristics of Incestuous Fathers," p. 2343B.

<sup>99</sup>See V.C. STRAND, "Parents in Incest Families: A Study in Differences," (Doctoral dissertation, Columbia University), in *Dissertation Abstracts International*, 47 (1987), p. 3191A.

also found higher levels of alcohol and drug abuse among these offenders.

However, other studies have failed to find any correlation between substance abuse and incest. M.G. Groff and L.M. Hubble did not find a significant incidence of alcohol abuse among incest offenders.<sup>100</sup> H. Parker and S. Parker also discovered that the use of alcohol and drugs was not a contributory factor to incestuous behaviour.<sup>101</sup> Studies conducted by J. Herman and L. Hirschman,<sup>102</sup> and M.D. Mandel<sup>103</sup> arrived at similar conclusions regarding the lack of significant correlation between the two variables.

The studies conducted to analyze substance abuse and the onset of incest used different definitions of alcohol and drug dependency, as well as incest itself. This may account for the apparently contradictory results. Consequently, there is no conclusive study pointing to a causative relationship between the two behaviours, even when they co-exist.

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<sup>100</sup>See M. GROFF and L. HUBBLE, "A Comparison of Father-Daughter and Stepfather-Stepdaughter Incest," p. 471.

<sup>101</sup>See H. PARKER and S. PARKER, "Father-Daughter Sexual Abuse: An Emerging Perspective," p. 543.

<sup>102</sup>See J. HERMAN and L. HIRSCHMAN, "Families at Risk for Father-Daughter Incest," p. 968.

<sup>103</sup>See M.D. MANDEL, "An Object Relation Study of Sexually Abusive Fathers," p. 2173B.

#### iv. Parent-child bonding

Recently a few studies have been undertaken to look at the possible correlation between caretaking activities by the father in the daughter's infancy and subsequent incestuous assault. The most comprehensive study was conducted by H. Parker and S. Parker.<sup>104</sup> Thirty-six percent of the incestuous sample reported being absent from the home during the first three years of their daughter's lives (a possibly critical period for parent-child bonding) as compared to only 6% absenteeism among nonincestuous fathers. Among incestuous fathers who were at home during this stage, 36% were present only part of the time or almost never; a mere 7% of nonincestuous fathers were present at this level of infrequency. Furthermore, only 5.4% of the abusers and 37% of nonabusers were frequently involved in performing three or more childcare and nurturing activities and abusers were significantly more uncomfortable with performing these tasks than the comparison group. Two other studies seem to confirm the general findings of a lack of empathy and bonding, but these are based on the reportings of abused daughters whose

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<sup>104</sup>See H. PARKER and S. PARKER, "Father-Daughter Incest: An Emerging Perspective," pp. 531-549.

view of pre-abuse behaviour may be coloured by the subsequent abuse.<sup>105</sup>

The idea that step-daughters are at greater risk for sexual abuse by their step-fathers (since characteristically step-fathers enter their daughters' lives at a later stage) seems to be supported by the hypothesis that early childcare involvement lowers risk of incestuous behaviour. H. Parker and S. Parker noted that the biological status of the father was not significantly associated with abuse among those who were with their step-daughters during the early socialization period.<sup>106</sup>

Research into the area of paternal childcare behaviour, bonding and incest is sparse at the moment. However, it seems

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<sup>105</sup>See R.S. HEATH, "Perceived Parental Nurturance, Parent Identification and Sex-Role Orientation for Female Victims of Sexual Abuse," (Doctoral dissertation, North Texas State University), in *Dissertation Abstracts International*, 46 (1986), p. 4015B; B.R. WICKES and R. MADIGAN, *Paternal Bonding, Self-Esteem and Sexual Abuse: A Retrospective Study* (Paper presented at the American Psychological Association, Los Angeles, CA, August 1985), reported in L.M. WILLIAMS and D. FINKELHOR, "The Characteristics of Incestuous Fathers," p. 248.

<sup>106</sup>See H. PARKER and S. PARKER, "Father-Daughter Sexual Abuse: An Emerging Perspective," p. 541. See also D. FINKELHOR and L. BARON, "High-Risk Children," in D. FINKELHOR et al. (eds.), *A Sourcebook on Child Sexual Abuse*, Newbury Park, CA, Sage, 1986, pp. 60-88; D.E.H. RUSSELL, "The Prevalence and Seriousness of Incestuous Abuse: Stepfathers vs. Biological Fathers," in *Child Abuse and Neglect*, 8 (1984), pp. 15-22.

plausible that if primary childcare activities were more evenly shared by men and women, sexual exploitation of children might be drastically reduced.

#### v. Social isolation

Social isolation and lack of social skills are repeatedly cited as descriptive of child molesters in general,<sup>107</sup> and incestuous fathers in particular. J.H. Panton ascertained high levels of social introversion characterized by inadequacies in social skills, shyness and difficulty in making decisions without vacillation.<sup>108</sup> K.D. Kirkland and C.A. Bauer found elevated scores associated with social alienation, lack of basic social skills and avoidance of close relationships in incestuous fathers as compared to nonabusive fathers.<sup>109</sup> H. Parker's study revealed that 31% of incest offenders reported having almost no close friends, as compared to only 11% of the control group.<sup>110</sup> V.C. Strand confirmed

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<sup>107</sup>See S. ARAJI and D. FINKELHOR, "Abusers: A Review of the Research," in D. FINKELHOR et al. (eds.), *A Sourcebook on Child Sexual Abuse*, pp. 89-118.

<sup>108</sup>See J.H. PANTON, "MMPI Profile Configurations Associated with Incestuous and Non-Incestuous Child Molesting," in *Psychological Reports*, 45 (1979), pp. 337-338.

<sup>109</sup>See K. KIRKLAND and C. BAUER, "MMPI Traits of Incestuous Fathers," pp. 647-648.

<sup>110</sup>See H. PARKER, "Intrafamilial Sexual Child Abuse: A Study of the Abusive Father," p. 3757A.

the poor quality of interpersonal relationships experienced by incestuous fathers, as well as low levels of group activity and participation.<sup>111</sup> Studies conducted by R. Langevin et al.,<sup>112</sup> and R.L. Scott and D. Stone<sup>113</sup> confirmed the above findings.

H. Parker and S. Parker offer the only contrary evidence. They did not find significant differences in the degree of social participation by incestuous and non-incestuous fathers.<sup>114</sup> However, the members of the control group were non-abusive fathers from the same penal or social-psychiatric facilities as the sample, indicating that men experiencing other interpersonal difficulties may not vary in this area from incest abusers.

The evidence is fairly consistent that men who sexually molest their daughters have extremely poor social skills, low

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<sup>111</sup>See V.C. STRAND, "Parents in Incest Families: A Study in Differences," p. 3191A.

<sup>112</sup>See R. LANGEVIN et al., "'Are Incestuous Fathers Pedophillic, Aggressive and Alcoholic?" pp. 161-180.

<sup>113</sup>See R.L. SCOTT and D. STONE, "MMPI Profile Constellation in Incest Families," in *Journal of Consulting and Clinical Psychology*, 54 (1986), pp. 364-368.

<sup>114</sup>See H. PARKER and S. PARKER, "Father-Daughter Sexual Abuse: An Emerging Perspective," p. 543.

levels of participation in society, few (if any) close friends and generally high levels of social alienation.

A brief review of the preceding data reveals that men who incestuously abuse their daughters: 1) are experiencing marital difficulties; however, it has not been determined whether these difficulties pre-date or are a result of the disclosure of incestuous abuse; 2) are heads of families which have poor communication, unequal power-sharing, isolation, conflict, antagonism and disorganization; 3) are frequently found to abuse alcohol or drugs, although the correlation between substance abuse and sexual abuse has not been established; 4) rarely participate in the childcare activities of their victims during their infancy; 5) have extremely poor interpersonal skills, few friends and tend to remain socially isolated.

### **c. Psychological characteristics**

Theories attempting to explain incestuous behaviour often look to the psychological make-up of offenders in order to hypothesize on possible motivations. Several studies have examined the personality traits, mood disturbances and cognitive status of perpetrators in order to further the

scientific community's understanding regarding sexually abusive fathers. The results of some of these studies follow.

i. Psychopathy

Research which has examined the psychopathic deviance of incest offenders seems remarkably consistent. Existing studies support the image of a person having no regard for the feelings of others and low levels of guilt feelings when violating social norms. R. Langevin et al. (applying the Minnesota Multiphasic Personality Inventory) reported that 47% of their incestuous sample had mean T scores greater than 70 (this is considered to be significantly deviant from the normal population) on the psychopathic deviate (Pd) scale, although they did not differ significantly from extrafamilial child molesters.<sup>115</sup> These high scores echo the findings of J.H. Panton<sup>116</sup> who also found no difference between the incest sample and the extrafamilial child molester sample. R.N. Lee discovered that while incestuous fathers deviated from the norm on Pd scales, they did not differ from

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<sup>115</sup>See R. LANGEVIN et al., "Are Incestuous Fathers Pedophillic, Aggressive and Alcoholic?" pp. 161-180.

<sup>116</sup>See J.H. PANTON, "MMPI Profile Configurations Associated with Incestuous and Non-Incestuous Child Molesting," p. 337.

physically abusive fathers.<sup>117</sup> Studies conducted by M.G. Groff and L.M. Hubble,<sup>118</sup> and K.D. Kirkland and C.A. Bauer<sup>119</sup> also detected elevated Pd scores.

The research regarding the psychopathy of fathers who commit incest seem to correspond to the earlier discussion on impaired empathy. Insensitivity to the feelings and needs of others combined with lack of remorse appear to be characteristic of this group of fathers.

#### ii. Passivity

Studies and clinical reports indicate that incestuous fathers often display passivity, dependency and feelings of inadequacy. T.M. Quinn found that dependency was the major characteristic which distinguished the sample from the control group.<sup>120</sup> More than half of the sample studied by B. Saunders, S. McClure and S. Murphy scored in the pathological

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<sup>117</sup>See R.N. LEE, "Analysis of the Characteristics of Incestuous Fathers," p. 2343B.

<sup>118</sup>See M.G. GROFF and L.M. HUBBLE, "A Comparison of Father-Daughter and Stepfather-Stepdaughter Incest," pp. 468-472.

<sup>119</sup>See K.D. KIRKLAND and C.A. BAUER, "MMPI Traits of Incestuous Fathers," pp. 647-648.

<sup>120</sup>See T.M. QUINN, "Father-Daughter Incest: An Ecological Model," p. 3957B.

range for lack of assertiveness.<sup>121</sup> R. Langevin et al. reported that the personality disorder immature-inadequate was the most common psychiatric diagnosis for the incest offender.<sup>122</sup>

### iii. Aggression

In seeming contradiction to the findings reported above, the behaviour of incestuous fathers has often been described as being dominant, aggressive and abusive. However, few studies have found aggression to be characteristic of incest offenders in particular. D.L. Truesdell, J.S. McNeil and J.P. Deschner reported that 73% of the mothers of incest victims had been physically abused by their partners.<sup>123</sup> R.N. Lee also found high levels of spouse abuse in incestuous families,

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<sup>121</sup>See B. SAUNDERS, S. McCLURE and S. MURPHY, *Final Report: Profile of Incest Perpetrators Indicating Treatability -- Part 1*, reported in L.M. WILLIAMS and D. FINKELHOR, "The Characteristics of Incestuous Fathers," p. 241.

<sup>122</sup>See R. LANGEVIN et al., "Personality Characteristics and Sexual Anomalies in Males," in *Canadian Journal of Behavioural Science*, 10 (1978), pp. 222-238; R. LANGEVIN et al., "Are Incestuous Fathers Pedophillic, Aggressive and Alcoholic?" pp. 161-180.

<sup>123</sup>See D.L. TRUESDELL, J.S. McNEIL and J.P. DESCHNER, "The Incidence of Wife Abuse in Incestuous Families," in *Social Work*, 31 (1986), p. 140.

but these levels were comparable to those found in families in which fathers physically abused their children.<sup>124</sup>

One is presented with the difficulty of resolving the contradictory image of a passive, dependent man with that of a violent, domineering one. Two explanations are possible: 1) both passive and aggressive traits reside in the incest offender and 2) there are two different types of incest abusers. The consistency in clinical reportings by mothers and daughters of high levels of physical and verbal abuse cannot be denied. Future studies will have to focus on dominance and aggression in incestuous men in order to explain this dichotomy satisfactorily.

#### iv. Paranoia

Although paranoid personality disorder is rarely noted in the profile of the incest offender, a tendency to externalize blame is a common feature in these men. Studies have found elevated paranoia (Pa) scores in the test results of perpetrators. J.H. Panton reported that while incestuous fathers exhibited elevated Pa scores, they were not

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<sup>124</sup>See R.N. LEE, "Analysis of the Characteristics of Incestuous Fathers," p. 2343B.

significantly different from extrafamilial child molesters.<sup>125</sup> Relatively high scores were also reported by K.D. Kirkland and C.A. Bauer,<sup>126</sup> and M.G. Groff and L.M. Hubble.<sup>127</sup> Other studies have also found evidence of paranoid ideation: R. Langevin et al.,<sup>128</sup> B. Saunders, S. McClure and S. Murphy,<sup>129</sup> and R.L. Scott and D. Stone.<sup>130</sup> Some of the paranoia expressed by incestuous men may be the result of the seemingly intrusive penal and social agencies which become involved with the family upon disclosure. However, the consistent findings suggest there is an element of paranoid thinking in the inner dynamics of the incest offender.

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<sup>125</sup>See J.H. PANTON, "MMPI Profile Configurations Associated with Incestuous and Non-Incestuous Child Molesting," p. 337.

<sup>126</sup>See K.D. KIRKLAND and C.A. BAUER, "MMPI Traits of Incestuous Fathers," pp. 647-648.

<sup>127</sup>See M.G. GROFF and L.M. HUBBLE, "A Comparison of Father-Daughter and Stepfather-Stepdaughter Incest," pp. 468-472.

<sup>128</sup>See R. LANGEVIN et al., "Are Incestuous Fathers Pedophillic, Aggressive and Alcoholic?" pp. 161-180.

<sup>129</sup>B. SAUNDERS, S. McCLURE and S. MURPHY, *Final Report: Profile of Incest Perpetrators Indicating Treatability -- Part 1*, reported in L.M. WILLIAMS and D. FINKELHOR, "The Characteristics of Incestuous Fathers," p. 242.

<sup>130</sup>See R.L. SCOTT and D. STONE, "MMPI Profile Constellation in Incest Families," pp. 364-368.

## v. Mood disturbances

Incest offenders appear to be clinically anxious and depressed people. Whether this is as a result of disclosure or an enduring feature is debatable, since the research has not been able to study pre-disclosure emotional status. Studies examining specifically for anxiety have consistently reported elevated levels. J.H. Panton found moderately high levels of anxiety in both incestuous and extrafamilial child sex abusers.<sup>131</sup> K.D. Kirkland and C.A. Bauer reported high levels of trait anxiety and apprehension among incest perpetrators.<sup>132</sup> M.G. Groff and L.M. Hubble,<sup>133</sup> R. Langevin et al.,<sup>134</sup> B. Saunders, S. McClure and S. Murphy,<sup>135</sup> and R.L.

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<sup>131</sup>See J.H. PANTON, "MMPI Profile Configurations Associated with Incestuous and Non-Incestuous Child Molesting," pp. 336-337.

<sup>132</sup>See K.D. KIRKLAND and C.A. BAUER, "MMPI Traits of Incestuous Fathers," pp. 647-648.

<sup>133</sup>See M.G. GROFF and L.M. HUBBLE, "A Comparison of Father-Daughter and Stepfather-Stepdaughter Incest," p. 468.

<sup>134</sup>See R. LANGEVIN et al., "Are Incestuous Fathers Pedophillic, Aggressive and Alcoholic?" pp. 161-180.

<sup>135</sup>See B. SAUNDERS, S. McCLURE and S. MURPHY, *Final Report: Profile of Incest Perpetrators Indicating Treatability -- Part 1*, reported in L.M. WILLIAMS and D. FINKELHOR, "The Characteristics of Incestuous Fathers," p. 243.

Scott and D. Stone<sup>136</sup> have all recorded significantly elevated scores testing for anxiety in this population.

Depression seems to be a common clinical symptom among incest perpetrators. Research which measures for this mood disturbance has found significantly elevated levels. J.H. Panton discovered higher levels of depression among incestuous and other child molesters than that usually found in prison populations upon admission. It is suggested that this reflects a more marked and less situational-type depression.<sup>137</sup> Elevated depression (D) scores were also noted by K.D. Kirkland and C.A. Bauer,<sup>138</sup> and M.G. Groff and L.M. Hubble.<sup>139</sup> Forty-seven percent of incestuous fathers scored extremely high on depression scales in a study conducted by R. Langevin et al., as compared to only 19% of the control group.<sup>140</sup> The clinical impression of a depressed

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<sup>136</sup>See R.L. SCOTT and D. STONE, "MMPI Profile Constellation in Incest Families," pp. 364-368.

<sup>137</sup>See J.H. PANTON, "MMPI Profile Configurations Associated with Incestuous and Non-Incestuous Child Molesting," pp. 336-337.

<sup>138</sup>See K.D. KIRKLAND and C.A. BAUER, "MMPI Traits of Incestuous Fathers," p. 647.

<sup>139</sup>See M.G. GROFF and L.M. HUBBLE, "A Comparison of Father-Daughter and Stepfather-Stepdaughter Incest," pp. 468-472.

<sup>140</sup>See R. LANGEVIN et al., "Are Incestuous Fathers Pedophillic, Aggressive and Alcoholic?" pp. 161-180.

population among incest offenders is supported by the empirical evidence of scientific studies.

vi. Cognitive status

Research shows that simplistic thinking and an inability to problem-solve effectively seem to be characteristic in incest offenders. The proportion of mentally impaired individuals in offender samples has decreased in recent years as prison populations have been replaced by large, out-patient clinical samples for study. Nevertheless, low intelligence seems to be a factor in at least some offenders. R. Langevin et al. found offenders to be less imaginative than controls, and less intelligent than both community controls and nonfamilial child molesters.<sup>141</sup> S.R. Bennett noted illogical and simplistic thinking in the study sample and an inability to solve problems as effectively as controls.<sup>142</sup> R.N. Lee reported that while incestuous fathers' average intelligence was no less than that of fathers who physically abused their daughters, 10% of the incestuous sample tested below 69 on the

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<sup>141</sup>Ibid.

<sup>142</sup>See S.R. BENNETT, "Cognitive Style of Incestuous Fathers," p. 778B.

Wechsler Adult Intelligence Scale whereas none of the physically abusive fathers scored this low.<sup>143</sup>

#### d. Sexuality

It would seem to be a logical assumption that people who molest their children have an abnormal sexual attraction to children. However, the few studies conducted to ascertain this have not been conclusive. There does seem to be some empirical evidence to support the hypothesis that an attraction to children indicates a disinterest in adult sexual relations. Moreover, research has revealed some interesting facts regarding the self-identity of offenders in terms of their masculinity. Results of studies investigating these three areas of the sexuality of offenders are presented below.

#### i. Sexual attraction to children

In 1981, G. Abel et al. published the results of a study involving six incestuous fathers which indicated they possessed inappropriate sexual preferences.<sup>144</sup> Using a

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<sup>143</sup>See R.N. LEE, "Analysis of the Characteristics of Incestuous Fathers," p. 2343B.

<sup>144</sup>See G.G. ABEL et al., "Identifying Dangerous Child Molesters," in R.B. STUART (ed.), *Violent Behavior: Social Learning Approaches to Prediction, Management and Treatment*, New York, Brunner/Mazel, 1981, pp. 116-137.

sample of 34 incest offenders, R. Langevin et al. found between one-quarter and one-third had pedophillic erotic preferences.<sup>145</sup> The studies conducted by W.L. Marshall, H.E. Barbaree and D. Christophe on the sexual preferences of incest perpetrators found that they were much closer to controls in their sexual preference than they were to extrafamilial child molesters.<sup>146</sup> Where these men differed from the controls was in their unusually low levels of attraction to adult females. They did not make as much differentiation between pubescent females and adults as the controls, and in this respect resembled extrafamilial child molesters.

From these few studies it would appear that there is at least a subset of incest offenders that does have a deviant sexual preference for children, although one cannot conclude with any certainty on the extent of this tendency.

#### ii. Sexual relationships with adults

A study conducted by W.L. Marshall, H.E. Barbaree and D. Christophe found low levels of arousal by incestuous fathers

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<sup>145</sup>See R. LANGEVIN et al., "Are Incestuous Fathers Pedophillic, Aggressive and Alcoholic?" pp. 161-180.

<sup>146</sup>See W.L. MARSHALL, H.E. BARBAREE and D. CHRISTOPHE, "Sexual Offenders Against Female Children: Sexual Preferences for Age of Victims and Type of Behaviour," in *Canadian Journal of Behavioural Science*, 18 (1986), pp. 424-439.

towards adult women.<sup>147</sup> R. Langevin et al. also noted more disgust regarding sexual relations with adult women among incest offenders than among controls or paedophiles.<sup>148</sup> D.A. Baker reported that while 50% of incestuous fathers associated frustration and failure with adult sexual experiences, this was not significantly different from a comparison group of other men receiving psychotherapy.<sup>149</sup> It would seem that a substantial number of incest abusers express frustration and dissatisfaction in sexual relationships with adult females. However, it is not clear whether this is a result of low arousal to women or the cause of a low arousal to women and an attraction to children.

### iii. Masculine self-image

Although it might seem logical that men who abuse their daughters would hold stereotypical views of male superiority and authority over women and girls, this has not been borne out in studies specifically testing the masculine self-identity of offenders. C.S. Brandon did not find elevated levels of masculine stereotyped self-identification in

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<sup>147</sup>Ibid., pp. 430-431, 435.

<sup>148</sup>See R. LANGEVIN et al., "Are Incestuous Fathers Pedophilic, Aggressive and Alcoholic?" pp. 161-180.

<sup>149</sup>See D.A. BAKER, "Father-Daughter Incest: A Study of the Father," p. 951B.

incestuous fathers as compared to normal men or other sex offenders.<sup>150</sup> V.C. Strand also did not find that incestuous child molesters endorsed stereotypical views regarding masculinity or femininity.<sup>151</sup>

What these researchers did find among their incestuous samples is low scores on measures of masculine behaviours. C.S. Brandon reported these men scored low on attributes traditionally ascribed to males only, such as aggressiveness, dominance, indifference to the opinions of others and feelings not easily hurt. This led to the suggestion that a diminished sense of their core masculine identification was at work in these offenders.<sup>152</sup> Incestuous fathers were disproportionately represented in the "undifferentiated" category of masculine identity in the study conducted by V.C. Strand.<sup>153</sup> These studies indicate that incestuous fathers, rather than having over-identified with stereotyped masculine sex roles, actually lack a healthy, stable male identity.

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<sup>150</sup>See C.S. BRANDON, "Sex Role Identification in Incest: An Empirical Analysis of the Feminist Theories," p. 3099B.

<sup>151</sup>See V.C. STRAND, "Parents in Incest Families: A Study in Differences," p. 3191A.

<sup>152</sup>See C.S. BRANDON, "Sex Role Identification in Incest: An Empirical Analysis of the Feminist Theories," p. 3099B.

<sup>153</sup>See V.C. STRAND, "Parents in Incest Families: A Study in Differences," p. 3191A.

The psychological picture which emerges from the above data is that of a population which: 1) demonstrates disregard and insensitivity for the feelings and needs of others and low levels of guilt when violating social norms; 2) characteristically lacks assertiveness skills, and displays passivity and dependency needs; 3) sometimes gives indications of an immature personality disorder; 4) is reported by spouses and children as being aggressive and domineering, although this trait has not been found to be significantly greater in incest offenders than other child abusers; 5) displays elements of paranoid thinking and tends to externalize blame; 6) demonstrates elevated levels of anxiety and depression on clinical scales; 7) has extremely poor problem-solving skills, demonstrates simplistic thinking and low intelligence although the latter may not be characteristic of all offenders; 8) may have pedophilic tendencies and more often does not differentiate between pubescent and adult females; 9) has been shown to have low levels of arousal to adult women and express frustration and even disgust in sexual relationships with adult women; 10) lacks a healthy, stable male identity, scoring low on masculine behaviour measures.

**CONCLUSION**

Study of the incest phenomenon is not new. Early studies were produced with detachment. The real and serious implications of sexual abuse by parents against their children had been largely ignored or ridiculed. In recent decades incest has been taken out of the anthropological and sociological context and brought into the realm of psychology and psychiatry. With the help and confidence engendered by the Women's Movement, victims of this crime have been able to bring their experiences to public attention. Due to public pressure, more study has been given to the phenomenon.

The legal system has been slow to change. Most laws against incest still consider only vaginal intercourse between parent and child as felonies. The wide range of sexual activity a parent is capable of inflicting on a child is thus legally ignored.

Many females in North America alone have been subjected to unwanted sexual acts with their fathers. These acts, whether isolated incidents or daily family patterns, have left their scars on every victim. Studies would seem to indicate that fathers also carry a heavy burden of pain. It may be hypothesized that such men lack male confidence and identity

and they embrace violence in a futile attempt to feel better about themselves. Although both state and church strongly disapprove of such activities, these fathers are vindicated in their actions by a society that indirectly condones violence and advocates the inferiority of females of all ages.

The judging of canonical cases involving incest can be complicated. Those who commit incest would seem to be men of such low self-esteem that they are unable to attain their emotional needs in healthy, adult relationships based on equality of power. Therefore, it would have to be determined that the male party carried with him into the union an abusive childhood, inept social skills, an abnormal psychological make-up, and/or a deviant sexuality so severe as to affect the consent given in marriage. This would involve extremely careful, articulate and sensitive auditing of the case.

The next chapter will present the effects of father-daughter incest on the victim. It is conceivable that females who were subjected to such violence in their childhood would carry the scars of their trauma into marriage. A knowledge of these effects will aid the canonist in understanding the woman whose matrimonial consent is now in question.

CHAPTER THREE  
THE EFFECTS OF INCEST ON PERSONALITY

INTRODUCTION

The human personality develops simultaneously on several planes and continues to grow and change over a lifetime. Several social scientists and child psychologists have conducted careful study and research within the broad categories of the cognitive, social and psychosexual aspects of this developmental process. This chapter will examine this complex process through the works of J. Piaget, E.H. Erikson, G.W. Allport and various researchers who have examined the psychosexual development of the human person.

In reviewing the literature written on the effects of sexual abuse on children and adults, D. Finkelhor and A. Browne noted the lack of an underlying conceptual framework in the research.<sup>1</sup> Investigators tended to cast a wide net in a search for effects without attempting to formulate a model of how the experience of childhood molestation might lead to these effects. In an effort to focus the research, they have

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<sup>1</sup>See D. FINKELHOR and A. BROWNE, "Assessing the Long-Term Impact of Child Sexual Abuse: A Review and Conceptualization," in L.E.A. WALKER (ed.), *Handbook on Sexual Abuse of Children: Assessment and Treatment Issues*, New York, Springer, 1988, p. 62.

developed a model to fill this *lacuna*. They propose that the injury of child sexual abuse can be broken down into four components termed "traumagenic dynamics": 1) traumatic sexualization; 2) stigmatization; 3) betrayal; 4) powerlessness.<sup>2</sup> In this chapter, these dynamics along with the findings of other research on short-term and long-term consequences of child sexual abuse will be presented.<sup>3</sup>

## 1. CHILD DEVELOPMENT

### a. Cognitive development

Swiss naturalist Jean Piaget was one of the first scientists to study systematically the cognitive development of children. In the 1920s, by observing his own children he developed a theory of how cognition evolves through a series of stages as children mature.<sup>4</sup> He noted that during the first two years of life there is a close interplay between motor

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<sup>2</sup>See D. FINKELHOR and A. BROWNE, "Assessing the Long-Term Impact of Child Sexual Abuse," pp. 62-69.

<sup>3</sup>It must be noted that the framework proposed by D. Finkelhor and A. Browne is a relatively new concept designed to aid researchers in their task. Many of the studies presented in this chapter have not used this framework. For this reason, while the elements of this framework will be presented where appropriate, research not utilizing it will not be "fitted" into the model, but will be presented as published.

<sup>4</sup>See J. PIAGET, *The Origins of Intelligence in Children*, translated by M. Cook, New York, International Universities Press, 1952.

activity and perception and designated this period the "sensorimotor stage." During this stage infants<sup>5</sup> are busy with activities involving the relationships between sensations and motor behaviour. For example, they learn how far to reach to grasp an object and what happens when they push their food dish to the edge of the table. They learn to differentiate themselves from objects and gradually become aware of the relationship between their own actions and their effects on the environment so that they can act intentionally and make interesting events last longer. They also develop the concept of object permanence, i.e., that objects continue to exist even though they are no longer visible.

J. Piaget identified the two-to-seven years stage as "preoperational." Although three and four year-olds can think in symbolic terms, their words and images are not organized in a logical way. They do not yet comprehend "operations," i.e., a mental routine for transposing information. Their understanding of the world is dominated by visual impressions. For example, if two lines of an equal number of checkers are placed before a child and then one of the lines is clustered together, the child will indicate that the single line contains more checkers than the one grouped together. It is

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<sup>5</sup>The term "infant" is usually used for children between the ages of newborn and two years of age. See K.S. BERGER, *The Developing Person*, New York, Worth, 1980, pp. 171-270.

only at the end of this stage that a child grasps the principle of conservation.

During the ages seven to twelve (the "concrete operational stage"), the child becomes capable of logical thought. The concept of conservation is mastered in progressive order: numbers at age six, mass at age seven, and weight at age nine.<sup>6</sup> They learn to classify objects and understand relational terms. G.W. Allport notes an important development at this stage, namely an awareness of self as a rational agent: "It is true that from early months the child has been able to solve simple problems, but only now does he fully realize that he has a rational capacity to bring to bear upon them. Previously he *thought*, but now he *thinks* about thinking."<sup>7</sup>

The ability to think in abstract terms, follow logical propositions, and reason by hypothesis begins around the ages of twelve and up. At this stage, called "formal operational,"

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<sup>6</sup>These ages are approximate and will vary from child to child. Experimentation with children of different backgrounds confirms J. Piaget's theory regarding sequence of development and has shown that attempts to push children into the next stage are successful only if the training coincides with the child's natural maturation process. See R. GLASER and L.B. RESNICK, "Instructional Psychology," in *Annual Review of Psychology*, 23 (1972), pp. 207-276.

<sup>7</sup>G.W. ALLPORT, *Pattern and Growth in Personality*, New York, Holt, Rinehart and Winston, 1961, p. 124

children isolate the elements of a problem and systematically explore all possible solutions. This ability to conceive of possibilities beyond what is present in reality permeates adolescent thinking and explains the tendency of adolescents to be concerned with metaphysical and ideological problems and their questioning of the way in which adults run the world.<sup>8</sup>

**b. Affective development**

Affect is a term used by psychologists to refer to the feeling dimension of life.<sup>9</sup> According to J. Piaget, there is a constant parallel between the affective and the intellectual life throughout childhood and adolescence. In fact, they are indissociable and constitute the two complementary aspects of all human behaviour.<sup>10</sup> The development of emotions is progressive through childhood into adolescence and adulthood.

Emotional expression is present at birth. This expression, termed "general excitement" to all stimuli quickly

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<sup>8</sup>See E.R. HILGARD, R.L. ATKINSON and R.C. ATKINSON, *Introduction to Psychology*, 7th ed., New York, Harcourt Brace Jovanovich, 1979, p. 75.

<sup>9</sup>See R. ORNSTEIN, *Psychology: The Study of Human Experience*, San Diego, CA, Harcourt Brace Jovanovich, 1985, p. 437.

<sup>10</sup>See J. PIAGET, *Six Psychological Studies*, translated by A. Tenzer, Sussex, Harvester Press, 1980, p. 15.

differentiates into expressions of distress (at 3 weeks), anger (3 months), disgust (3-6 months), fear of strangers (7-8 months) and jealousy and envy (15-18) months.<sup>11</sup> J. Piaget notes that this development is reflective of the infant's growing awareness of the self as separate from the environment.<sup>12</sup>

During early childhood (ages 2 to 7) the interpersonal emotions of sympathies and antipathies appear as does unilateral respect for authority figures.<sup>13</sup> Middle childhood (7 to 12) marks a period of organization and stabilization of the interpersonal feelings from the unilateral to the mutual. Mutual respect among youngsters changes their feelings: rules depend on co-operation and justice becomes "distributive."<sup>14</sup> This stage also heralds an organization of will, "which culminates in a better integration of the self and a more effective regulation of affective life."<sup>15</sup> The affective dimension developed during childhood becomes integrated into

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<sup>11</sup>See R. ORNSTEIN, *Psychology: The Study of Human Experience*, p. 440.

<sup>12</sup>See J. PIAGET, *Six Psychological Studies*, p. 16.

<sup>13</sup>Ibid., p. 34.

<sup>14</sup>See M.A.S. PULASKI, *Understanding Piaget: An Introduction to Children's Cognitive Development*, New York, Harper & Row, 1980, p. 137.

<sup>15</sup>J. PIAGET, *Six Psychological Studies*, p. 55.

the personality during adolescence. Due to the increased cognitive abilities of the teenager, he/she is now able to apply sympathies, values and will power beyond the present and familiar to the wider world of humanity in general.<sup>16</sup>

c. Social development

"The broad area of social development refers to the child's expanding interpersonal world and, thus, is directly related to the child's attachment to its parents and subsequent caregiver and to peer relationships."<sup>17</sup> E.H. Erikson identified eight stages of social development through which a human being passes from birth to old age.<sup>18</sup> The first year of life presents the infant with the task of solving the problem of "basic trust versus basic mistrust." During this time, through consistent and loving parenting, the child must establish enduring patterns for the balance of basic trust over basic mistrust of the world, and of the self.

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<sup>16</sup>Ibid., pp. 64-70; M.A.S. PULASKI, *Understanding Piaget*, p. 138.

<sup>17</sup>W.N. FRIEDRICH, *Psychotherapy of Sexually Abused Children and their Families*, New York, W.W. Norton, 1990, p. 49.

<sup>18</sup>See E.H. ERIKSON, "Growth and Crises of the Healthy Personality," in *Psychological Issues*, 1 (1959), pp. 50-100. The discussion of social development in a person will be restricted to the stages up to and including adolescence as it is during this time that a child is vulnerable to sexual abuse from a parent.

The physiologic development of muscular control combines with the evolution of language skills to produce the independence characteristic of a child during toddlerhood. E.H. Erikson identifies the task to be accomplished now as "autonomy versus shame and doubt." At the end of their first year children become increasingly aware of their separateness from the world, which prepares them for their impending sense of autonomy. Children delineate their world into "I" and "you" and it is up to the parents to exercise appropriate control at this stage. Erikson writes, "from a sense of *self-control without loss of self-esteem* comes a lasting sense of autonomy and pride; from a sense of muscular and anal impotence, of loss of self-control, and of parental overcontrol comes a lasting sense of doubt and shame."<sup>19</sup> G.W. Allport has identified this sense of self-identity as a striking feature in the development of personality. During the first three years children display an exploratory drive and a desire to manipulate their environment in an attempt to establish their self-esteem. He believes that the child's personal identity is unstable until the age of four.<sup>20</sup>

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<sup>19</sup>Ibid., p. 68.

<sup>20</sup>See G.W. ALLPORT, *Becoming: Basic Considerations for a Psychology of Personality*, New Haven, Yale University Press, 1964, p. 44.

Children of four and five years of age are faced with the next crisis -- namely, "initiative versus guilt" according to E.H. Erikson. By this age the locomotor and language skills are well advanced allowing their imagination to expand over so many things that they frighten even themselves.<sup>21</sup> "The danger of this stage is a sense of guilt over the goals contemplated and the acts initiated in one's exuberant enjoyment of new locomotor and mental power."<sup>22</sup> Children must emerge from this stage with a sense of unbroken initiative as a basis for a high and yet realistic sense of ambition and independence. G.W. Allport notes the egocentricity of children during this stage as well as the emergence of conscience indicating that children slowly become aware of parental expectations and their own shortcomings. Through this self-centeredness, children begin to extend the concept of self, learning to identify with family, groups and country.<sup>23</sup> They also begin to lay the foundations for the intentions, goals, sense of moral responsibility and self-knowledge that will later play

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<sup>21</sup>See E.H. ERIKSON, "Growth and Crises of the Healthy Personality," p. 75.

<sup>22</sup>Id., *Childhood and Society*, New York, Norton, 1963, p. 255.

<sup>23</sup>See G.W. ALLPORT, *Pattern and Growth in Personality*, p. 122; Id., *Becoming*, p. 45.

a prominent part in their personality, though there is no clear image of self or a formed conscience.<sup>24</sup>

The next stage of child development involves the entry of the child into the formal education system. At school, children come into contact with their peers and with teachers, thus expanding their social circle. E.H. Erikson identifies this period as "industry versus inferiority." Children now have a desire to be useful, to do things to the best of their ability by themselves and with others. However, the danger at this stage is the development of a sense of inadequacy and inferiority. Peer relations as well as adults can contribute to the latter, as children become extremely sensitive to the criticism of others.<sup>25</sup> During the ages between six and twelve children become aware of social standards and whether or not they meet those standards. For example, they are aware and hurt when they are victims of religious, racial or economic prejudice.<sup>26</sup> It is conceivable that during this stage of social development a sexually abused child will become aware of the taboo nature of a sexualized father-daughter

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<sup>24</sup>See G.W. ALLPORT, *Pattern and Growth in Personality*, p. 123.

<sup>25</sup>See E.H. ERIKSON, "Growth and Crises of the Healthy Personality," pp. 82-88.

<sup>26</sup>*Ibid.*, p. 88; K.S. BERGER, *The Developing Person*, pp. 436, 438-440.

relationship and feel isolated from and inferior to her peer group.<sup>27</sup>

Puberty initiates the stage identified by E.H. Erikson as "identity versus identity diffusion." The task of the young person is to establish a sexual, moral, political and vocational identity that is stable, consistent and mature. The successful completion of each of the previous stages contributes to a positive self-esteem and leads to the "conviction that one is learning effective steps toward a tangible future, that one is developing a defined personality within a social reality which one understands."<sup>28</sup> To prevent identity diffusion while in this stage, a young person may temporarily resort to overidentification with a peer group and rebel against parental authority.<sup>29</sup> E.H. Erikson stresses that in American society the development of a healthy personality depends on a certain degree of *choice*, that is, a certain hope for an individual *chance*, and a certain

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<sup>27</sup>See C.A. COURTOIS and J.E. SPREI, "Retrospective Incest Therapy for Women," in L.E.A. WALKER (ed.), *Handbook on Sexual Abuse of Children: Assessment and Treatment Issues*, New York, Springer, 1988, p. 276.

<sup>28</sup>E.H. ERIKSON, "Growth and Crises of the Healthy Personality," p. 89.

<sup>29</sup>Ibid., p. 92; G.W. ALLPORT, *Pattern and Growth in Personality*, pp.124-125.

conviction in freedom of *self-determination*.<sup>30</sup> G.W. Allport points out that while life goals need not be rigidly focused, the central theme of striving needs to be present.<sup>31</sup>

#### d. Psychosexual development

Since researchers have suggested that increased sexualized behaviour is one symptom related to sexual abuse,<sup>32</sup> it is important to understand the normal developmental stages of human sexuality. Although there is no overt sexual behaviour in children before the onset of puberty, investigators have noted prepubertal sexual interest and reactions. M. Rutter reported erections in male infants as young as five months old.<sup>33</sup> Curiosity about their own and others' genitalia was found in preschoolers of both sexes, as

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<sup>30</sup>See E.H. ERIKSON, "Growth and Crises of the Healthy Personality," p. 93.

<sup>31</sup>See G. ALLPORT, *Pattern and Growth in Personality*, p. 126.

<sup>32</sup>See A. BROWNE and D. FINKELHOR, "Impact of Child Sexual Abuse: A Review of the Research," in *Psychological Bulletin*, 99 (1986), pp. 68-69; J.R. CONTE and J.R. SCHUERMAN, "Factors Associated with an Increased Impact of Child Sexual Abuse," in *Child Abuse and Neglect*, 11 (1987), p. 206; W.N. FRIEDRICH, A.J. URQUIZA and R.L. BEILKE, "Behavior Problems in Sexually Abused Young Children," in *Journal of Pediatric Psychology*, 11 (1986), pp. 53-54.

<sup>33</sup>See M. RUTTER, "Normal Psychosexual Development," in *Journal of Child Psychology and Psychiatry and Allied Disciplines*, 11 (1971), p. 261.

were undressing or sexual exploration games. Children were asking questions about sex by the age of five.

This curiosity continues into the early school age period. J. Money and A.A. Ehrhardt viewed three to six years of age as "the developmental stage when children can be outrageously flirtatious and seductive, impersonating mannerisms of parents, older siblings, television actors, or whoever."<sup>34</sup> As children grow older they learn the cultural standards and conceal their interest in sexuality. They become modest, sometimes demanding bedroom and bathroom privacy, and adopt the cultural values even if their own parental household avows "liberal" attitudes towards sex and nudity.<sup>35</sup>

As children mature, they begin to display a gradual increase in sexual interest and exploration. M. Rutter reported increasing masturbation and heterosexual play activity by the age of thirteen. Homosexual play was also noted in up to 25% to 30% of thirteen-year-old boys.<sup>36</sup>

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<sup>34</sup>J. MONEY and A.A. EHRHARDT, *Man and Woman, Boy and Girl*, Baltimore, Johns Hopkins University Press, 1972, p. 186.

<sup>35</sup>See W.N. FRIEDRICH, *Psychotherapy of Sexually Abused Children and their Families*, p. 52.

<sup>36</sup>See M. RUTTER, "Normal Psychosexual Development," p. 263.

The onset of puberty marks an increased overt interest in sexual identity. In an extensive survey of sexual attitudes among Americans between the ages of thirteen and nineteen covering 200 communities, R. Sorenson discovered that although a majority believed sexual activity should reflect a total relationship, the idea of recreational sex with no commitment was accepted by significantly more males than females.<sup>37</sup> Researchers have also found that teenage males are more likely to engage in masturbation and experience feelings of guilt, shame or abnormality for doing so than females.<sup>38</sup>

Cognitive, affective, social and psychosexual development of the human person continues into young adulthood. By then the foundations for a healthy personality have been laid. G.W. Allport identified the following as the characteristics of a mature personality: 1) extension of the sense of self, i.e., a diversity of interests and concerns beyond one's own

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<sup>37</sup>Twenty-four percent of the males (compared to only six percent of females) surveyed were what the researcher labelled "sexual adventurers" i.e., those who move freely from one sexual intercourse partner to another. See R. SORENSON, *Adolescent Sexuality in Contemporary America: Personal Values and Sexual Behavior, Ages Thirteen to Nineteen*, New York, World, 1973, p. 249.

<sup>38</sup>See A. HASS, *Teenage Sexuality: A Survey of Teenage Sexual Behavior*, New York, Macmillan, 1979, pp. 84-86, 98; W.R. MILLER and H.I. LIEF, "Masturbatory Attitudes, Knowledge, and Experience: Data from the Sex Knowledge, and Attitude Test (SKAT)," in *Archives of Sexual Behavior*, 5 (1976), pp. 452, 458.

needs; 2) relationship of self to others, i.e., displaying an ability for both intimate and non-intimate contact; 3) emotional security and an acceptance of oneself; 4) realistic perception, effective problem-solving skills and meaningful work or employment; 5) the ability of self-objectification using both insight and humour; 6) a unifying philosophy of life, i.e., an undercurrent of consistent values by which one lives one's life.<sup>19</sup>

It is clear from the above discussion that the cognitive, affective, social and psychosexual aspects of human development are inextricably linked. A disruption in one area necessarily has a deleterious effect in each of the other realms. Incest is one such disruption which has been proven to have detrimental effects in each of these fields. Having traced the progression of the human personality from birth to young adulthood, the short and long-term consequences of sexual assault on the developing personality will now be examined in light of the data gathered.

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<sup>19</sup>See G.W. ALLPORT, *Pattern and Growth in Personality*, pp. 275-304. A.H. MASLOW has also identified the traits which can be closely correlated to those presented by G.W. Allport in healthy, "self-actualizing" people. Cf. A.H. MASLOW, *Motivation and Personality*, New York, Harper & Row, 1954, pp. 199-260.

## 2. SHORT-TERM EFFECTS OF CHILD SEXUAL ABUSE

The immediate effects of sexual assault on children are difficult to assess accurately, because few studies have been conducted in this area.<sup>40</sup> More focus has been placed on the long-term consequences of such experiences due to the belief that young children seem to possess the resilience to cope with trauma. D. Finkelhor calls this preoccupation with long-term effects of abuse "adult ethnocentrism."<sup>41</sup> He calls for more research in the area of childhood trauma as "it is a noxious event of childhood, serious for its immediate unpleasantness, if nothing else, not necessarily for its long-term effects."<sup>42</sup>

Children who have been sexually abused exhibit a variety of responses.<sup>43</sup> These can be categorized into four broad

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<sup>40</sup>In this chapter, short-term effects are those which are exhibited by sexually abused children up to the age of 18. Long-term effects are those which are manifested in adults 18 years of age and over. Some consequences carry over from one stage to the next and are discussed in both sections.

<sup>41</sup>See D. FINKELHOR, *Child Sexual Abuse: New Theory and Research*, New York, Free Press, 1984, p. 198.

<sup>42</sup>Ibid.

<sup>43</sup>Fewer studies have been conducted in the area of short-term effects of father-daughter incest than in child sexual abuse in general. For this reason, this and the following section regarding long-term effects will present the data available on the general area of child sexual abuse. Studies which have focused on incestuous assault (or even more

areas: a) self-esteem; b) physical; c) behavioural/social; d) sexual.

a. Self-esteem

R.C. Summit presents the hypothesis that children develop a negative self-image in order to integrate the experience of sexual abuse into their lives. This researcher believes that children cannot accept the abuse as being the perpetrator's fault because in so doing the child would have to conclude that the person in whose care he/she has been entrusted is bad. Instead, the child changes his/her own self-concept to that of being evil and helpless.<sup>44</sup> Another theory held by D. Finkelhor and A. Browne proposes that the dynamic of "stigmatization," i.e., the negative connotations of badness, shame and guilt surrounding experiences of molestation are communicated to the child and become incorporated into his or her self-image.<sup>45</sup>

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specifically on father-daughter sexual assault) will be mentioned as the data is discussed.

<sup>44</sup>See R.C. SUMMIT, "The Child Sexual Abuse Accommodation Syndrome," in *Child Abuse and Neglect*, 7 (1983), p. 184.

<sup>45</sup>See D. FINKELHOR and A. BROWNE, "Assessing the Long-Term Impact of Child Sexual Abuse," pp. 62-65.

There can be little doubt that the experience of sexual abuse in childhood results in a negative self-concept. In a study of father-daughter incest victims, L.S. Brunngraber noted that the majority of victims experienced marked to severe negative immediate effects on their sense of self. The most commonly reported feelings included having an extremely negative self-image, powerlessness, feeling fat, unlovable and lacking self-respect. All the victims also reported suppressing or denying their feelings, having episodes of overwhelming emotions, and feeling confused, ashamed, self-conscious and dirty.<sup>46</sup> In a study of teenage father-daughter incest victims K.L. James noted that all exhibited very low self-esteem, low tolerance to teasing and joking about their personal traits, and had the conviction that they were "bad" women.<sup>47</sup> G.E. Edwall and N.G. Hoffmann compared drug-dependent adolescent female incest victims to nonincest

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<sup>46</sup>See L.S. BRUNNGRABER, "Father-Daughter Incest: Immediate and Long-Term Effects of Sexual Abuse," in *Advances in Nursing Sciences*, 8 (1986), pp. 25,27. See also H.L. BRUCKI, "An Overview of Incest with Suggestions for Occupational Therapy Treatment," in *Occupational Therapy in Mental Health*, 5 (1985-1986), pp.68-69; B.J. KNITTLE and S.J. TUANA, "Group Therapy as Primary Treatment for Adolescent Victims of Intrafamilial Sexual Abuse," in *Clinical Social Work Journal*, 8 (1980), pp. 237-238; M.J. PAULSON, "Incest and Sexual Molestation: Clinical and Legal Issues," in *Journal of Clinical Child Psychology*, 7 (1978), p. 178.

<sup>47</sup>See K.L. JAMES, "Incest: The Teenager's Perspective," in *Psychotherapy: Theory, Research and Practice*, 14 (1977), p. 147. See also, B. BOATMAN, E.L. BORKAN and D.H. SCHETKY, "Treatment of Child Victims of Incest," in *American Journal of Family Therapy*, vol. 9, n. 4 (1981), p. 48.

victims and found that 25% of both populations showed markedly negative views of self. However, the incest group demonstrated significantly more negative feelings about parental affection: 30% of the incest group vs. 42% of the nonincest group felt their parents usually had respect for them, 42% of the incest group vs. 17% of the nonincest group believed their parents were often or usually ashamed of them and 80% of the incest group vs. 92% of the nonincest group thought their parents usually loved them.<sup>48</sup> D.E.H. Russell recorded statements of self-blame and guilt by 12% of incest victims, even though this researcher did not specifically ask about such feelings.<sup>49</sup>

Another short-term response by victims of sexual abuse is that of self-hatred, manifested through self-mutilation, suicide ideation and suicide attempts. Among adolescent incest victims as compared to nonincest victims in a substance abuse treatment setting, G.E. Edwall and N.G. Hoffmann reported significantly higher rates of suicidal thoughts (77%

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<sup>48</sup>See G.E. EDWALL and N.G. HOFFMANN, "Correlates of Incest Reported by Adolescent Girls in Treatment for Substance Abuse," in L.E.A. WALKER (ed.), *Handbook on Sexual Abuse of Children: Assessment and Treatment Issues*, New York, Springer, 1988, p. 102.

<sup>49</sup>See D.E.H. RUSSELL, *The Secret Trauma: Incest in the Lives of Girls and Women*, New York, Basic Books, 1986, p.135. K.L. JAMES found 100% of incest victims studied blamed themselves for the incestuous attacks by their fathers. See K.L. JAMES, "Incest: The Teenager's Perspective," pp. 151-152.

vs. 51%) and suicide attempts (55% vs. 27%). These authors speculate that depression related to incest may consist of a greater sense of hopelessness and helplessness than depression in nonincest victims.<sup>50</sup> A study made by F.H. Lindberg and L.J. Distad found that almost 60% of incest victims engaged in self-mutilation, namely, burning themselves with cigarettes, cutting their wrists or stomachs, or putting their hands through windows.<sup>51</sup> L.S. Anderson, commenting on the high rates of suicide attempts and self-mutilation in sexually abused clients, writes: "Feeling depressed and guilty [...] they sought to damage their bodies, which they saw as sullied, or to render their bodies less attractive and therefore less tempting."<sup>52</sup>

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<sup>50</sup>See G.E. EDWALL and N.G. HOFFMANN, "Correlates of Incest Reported by Adolescent Girls in Treatment for Substance Abuse," pp. 100-101.

<sup>51</sup>See F.H. LINDBERG and L.J. DISTAD, "Survival Responses to Incest: Adolescents in Crisis," in *Child Abuse and Neglect*, 9 (1985), p. 523. S. SHAPIRO reported almost identical findings in "Self-Mutilation and Self-Blame in Incest Victims," in *American Journal of Psychotherapy*, 41 (1987), p. 48. See also J. HERMAN and L. HIRSCHMAN, "Families at Risk for Father-Daughter Incest," in *American Journal of Psychiatry*, 138 (1981), p. 969; B.J. KNITTLE and S.J. TUANA, "Group Therapy as Primary Treatment for Adolescent Victims of Intrafamilial Sexual Abuse," p. 239; R. KRUGMAN and D.P.H. JONES, "Incest and Other Forms of Sexual Abuse," in R.E. HELFER and R.S. KEMPE (eds.), *The Battered Child*, 4th ed., Chicago, The University of Chicago Press, 1987, p. 289; J. SPENCER, "Father-Daughter Incest: A Clinical View from the Corrections Field," in *Child Welfare*, 57 (1978), pp. 582-583.

<sup>52</sup>L.S. ANDERSON, "Notes on the Linkage Between the Sexually Abused Child and the Suicidal Adolescent," in *Journal of Adolescence*, 4 (1981), p. 158.

b. Physical

Physicians are becoming increasingly alert to the physical signs of sexual abuse in children. Although it may be premature to suspect sexual abuse when one or more of these symptoms is present, the physician must consider this as a possibility and investigate accordingly.

In general children respond in nonspecific ways to specific stresses placed upon them. In addition to behavioural changes they may exhibit sleep or appetite disturbances, generalized fear or temper tantrums.<sup>53</sup> They may also complain of headaches or stomachaches.<sup>54</sup> L.S. Brunngraber noted that in conjunction with pain in the back and anal region, adolescents suffered from dysmenorrhoea, amenorrhoea and premenstrual syndrome during the period of incest.<sup>55</sup>

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<sup>53</sup>See R. KRUGMAN and D.P.H. JONES, "Incest and Other Forms of Sexual Abuse," p. 289. See also H.L. BRUCKI, "An Overview of Incest with Suggestions for Occupational Therapy Treatment," p. 68.

<sup>54</sup>See A.W. BURGESS, A.N. GROTH and M.P. McCAUSLAND, "Child Sex Initiation Rings," in *American Journal of Orthopsychiatry*, 51 (1981), p. 115.

<sup>55</sup>See L.S. BRUNNGRABER, "Father-Daughter Incest: Immediate and Long-Term Effects of Sexual Abuse," pp. 25-26.

R. Krugman and D.P.H. Jones have presented several medical diseases or conditions which may indicate sexual abuse.<sup>56</sup> The most obvious of these is venereal disease in prepubescent children and pregnancy in early adolescence (12-15 years of age). They write: "Gonococcal or syphilitic infections in prepubertal children are almost pathognomonic of sexual abuse."<sup>57</sup> Infections by chlamydia, trichomonas, herpes virus, or venereal warts may have other modes of transmission, but are enough to warrant strong suspicion of abuse. Recurrent urinary infection, symptoms of urethral irritation, and enuresis may also be indicative of abuse. Encopresis is a common accompaniment to child sexual abuse, especially when the anus and rectum are sites used in the abusive acts.

Hysterical seizures is another immediate effect of incest drawing the attention of medical personnel. J. Goodwin, M. Simms and R. Bergman speculate that at least 10% of such seizures are associated with prior incest.<sup>58</sup> According to these researchers, the amnesia experienced by the victim during these attacks strengthens the defences of repression,

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<sup>56</sup>See R. KRUGMAN and D.P.H. JONES, "Incest and Other Forms of Sexual Abuse," pp. 289-290.

<sup>57</sup>Ibid., p. 289.

<sup>58</sup>See J. GOODWIN, M. SIMMS and R. BERGMAN, "Hysterical Seizures: A Sequel to Incest," in *American Journal of Orthopsychiatry*, 49 (1979), p. 698.

denial and dissociation which are often used to forget the original sexual attack. Also, by having the "epileptic attack" in public, the child can release some of the tension associated with keeping the sexual abuse secret.<sup>59</sup> M. Gross noted that the incest victims became indifferent to the seizures which are developed unconsciously and do not seek psychiatric assistance. In fact, they experienced secondary gains such as fitting into the sick role, escaping from the abusive fathers and getting sympathy from their mothers. The author surmised that the symptoms were precipitated by the constant fear under which the incest victims lived enabling them to forget their traumatic experiences.<sup>60</sup>

### c. Behavioural/social

Changes in behaviour patterns and social interaction can be indicative of sexual abuse in children as well. These often include running away from home, decreased academic performance, truancy, withdrawal from friends and family, and substance abuse.

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<sup>59</sup>Ibid., p. 702.

<sup>60</sup>See M. GROSS, "Incestuous Rape: A Cause for Hysterical Seizures in Four Adolescent Girls," in *American Journal of Orthopsychiatry*, 49 (1979), pp. 706-707.

Many researchers have discovered that running away from home is common among incest victims.<sup>61</sup> A study of incest victims made by K.L. James showed that they had been committed to juvenile institutions for repeatedly running away from home.<sup>62</sup> Incest victims in a drug-dependency program were more likely to have been arrested (62% as compared to the 33% ascribed to nonincest victims). They also show more arrests for status offences (32% vs. 8%), indicating a greater likelihood of having run away from home.<sup>63</sup> D.E.H. Russell, commenting on the danger which runaways face on the streets writes: "The fact that many runaway girls do not return home despite the abuse they are often subjected to on the streets is a measure of how much they hate what was happening to them at home."<sup>64</sup>

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<sup>61</sup>See H.L. BRUCKI, "An Overview of Incest with Suggestions for Occupational Therapy Treatment," p. 68; J. HERMAN and L. HIRSCHMAN, "Families at Risk for Father-Daughter Incest," p. 969; R. KRUGMAN and D.P.H. JONES, "Incest and Other Forms of Sexual Abuse," p. 289; J. RENVOIZE, *Incest: A Family Pattern*, London, Routledge & Kegan Paul, 1982, p.157; J. SPENCER, "Father-Daughter Incest: A Clinical View from the Corrections Field," p. 583.

<sup>62</sup>See K.L. JAMES, "Incest: The Teenager's Perspective," p. 147.

<sup>63</sup>See G.E. EDWALL and N.G. HOFFMANN, "Correlates of Incest Reported by Adolescent Girls in Treatment for Substance Abuse," pp. 103-104.

<sup>64</sup>See D.E.H. RUSSELL, *The Secret Trauma*, p. 210.

Decreased academic performance, truancy and withdrawal are behaviours teachers in particular may notice among incest victims. R. Krugman and D.P.H. Jones posited that an inability to concentrate on school work can be an indicator of sexual abuse,<sup>65</sup> while H.L. Brucki commented that learning disabilities may emerge as a result of such abuse.<sup>66</sup> Other authors point to such "acting out" behaviours as truancy and hyperactivity.<sup>67</sup> R.L. Scott and D.A. Stone found that adolescent victims of father-daughter incest scored close to the pathological range on a measure of psychological disturbance indicated by such behaviours as excitability, irritability, elevated mood, flight of ideas, brief periods of depression and purposeless behaviours.<sup>68</sup>

Withdrawal from society is the opposite reaction to disruptive behaviour. The isolation that victims often feel results in detachment from peers and siblings. Most of the

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<sup>65</sup>See R. KRUGMAN and D.P.H. JONES, "Incest and Other Forms of Sexual Abuse," p. 289.

<sup>66</sup>See H.L. BRUCKI, "An Overview of Incest with Suggestions for Occupational Therapy Treatment," p. 68.

<sup>67</sup>See, for example, J. RENVOIZE, *Incest: A Family Pattern*, p. 157; H.L. BRUCKI, "An Overview of Incest with Suggestions for Occupational Therapy Treatment," p. 68.

<sup>68</sup>See R.L. SCOTT and D.A. STONE, "MMPI Measures of Psychological Disturbance in Adolescent and Adult Victims of Father-Daughter Incest," in *Journal of Clinical Psychology*, 42 (1986), pp. 256-258.

victims of incestuous assault studied by L.S. Brunngraber reported feeling isolated and different from others often believing that others would not understand their experiences or share similar feelings.<sup>69</sup> Their low self-esteem convinces them that no one would want to associate with them if the truth were discovered. Consequently, they seek to alienate themselves and hide their terrible secret.<sup>70</sup> J.J. Haugaard and N.D. Reppucci report that incest victims also feel isolated from their siblings because of their perception that their siblings resent the increased attention the victims receive from the perpetrators.<sup>71</sup>

Withdrawal from mainstream society into the world of substance abuse is not uncommon among children and adolescents who have been sexually abused. Research conducted by J. Benward and J.D. Densen-Gerber supports a high correlation

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<sup>69</sup>See L.S. BRUNNGRABER, "Father-Daughter Incest: Immediate and Long-Term Effects of Sexual Abuse," p. 25.

<sup>70</sup>See B. BOATMAN, E.L. BORKAN and D.H. SCHETKY, "Treatment of Child Victims of Incest," p. 48; B.J. KNITTLE and S.J. TUANA, "Group Therapy as Primary Treatment for Adolescent Victims of Intrafamilial Sexual Abuse," p. 237.

<sup>71</sup>See J.J. HAUGAARD and N.D. REPPUCCI, *The Sexual Abuse of Children: A Comprehensive Guide to Current Knowledge and Intervention Strategies*, San Francisco, Jossey-Bass, 1988, p. 67.

between early sexual trauma and later drug abuse<sup>72</sup> and several authors include substance abuse as an indicator of sexual abuse among children and teenagers.<sup>73</sup> Significant differences in substance use were found in a study comparing incest victims and nonincest victims admitted to a treatment programme. G.E. Edwall and N.G. Hoffmann noted that incest victims were significantly more frequent users of alcohol (26% were daily users to 9% who were nonincest) and also were characterized by greater daily use of stimulants (29% to 9%).<sup>74</sup> They also report that significantly more incest victims began using alcohol by age 9 (45% vs. 21%) and there is a trend for earlier use of other drugs. They conclude: "The significantly more frequent use of both alcohol and stimulants on the part of incest cases appears consistent with hypotheses that they have become fundamentally detached from their physical experiences and feelings in order to reduce

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<sup>72</sup>See J. BENWARD and J.D. DENSEN-GERBER, "Incest as a Causative Factor in Antisocial Behavior: An Exploratory Study," paper presented at the American Academy of Forensic Sciences annual meeting, Chicago, 1975, reported in J. SPENCER, "Father-Daughter Incest: A Clinical View from the Corrections Field," p. 583.

<sup>73</sup>See H.L. BRUCKI, "An Overview of Incest with Suggestions for Occupational Therapy Treatment," p. 69; J. HERMAN and L. HIRSCHMAN, "Families at Risk for Father-Daughter Incest," p. 969; R. KRUGMAN and D.P.H. JONES, "Incest and Other Forms of Sexual Abuse," p. 289; J. RENVOIZE, *Incest: A Family Pattern*, p. 157.

<sup>74</sup>See G.E. EDWALL and N.G. HOFFMANN, "Correlates of Incest Reported by Adolescent Girls in Treatment for Substance Abuse," p. 100.

their pain. Such persons may simultaneously attempt to sedate themselves, as with heavy alcohol use, and also to escape into the transient high afforded by stimulants, which may be the only safe and predictable way to have any experience of feeling."<sup>75</sup>

#### d. Sexuality

There is a widely held belief that children who have been sexually abused display age-inappropriate sexual behaviour. This appears to be validated by therapists who deal with such children. D. Finkelhor and A. Browne who call this phenomenon "traumatic sexualization" define it as: "the process by which a child's sexuality is shaped in developmentally inappropriate and interpersonally dysfunctional ways."<sup>76</sup> They propose that children learn this behaviour when they are repeatedly rewarded by the abuser for age-inappropriate sexual behaviour, or when parts of a child's anatomy are fetishized and given distorted importance and meaning. It also occurs through misconceptions regarding sexual behaviour and morality transmitted from the abuser to the victim. Finally, children experience traumatic sexualization when they associate very

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<sup>75</sup>Ibid., p. 99.

<sup>76</sup>D. FINKELHOR and A. BROWNE, "Assessing the Long-Term Impact of Child Sexual Abuse," pp. 62-63.

frightening or painful memories and events in their minds with sexual activity."

The results of traumatic sexualization are manifested in a myriad of ways. Researchers have discovered that sexual preoccupation and masturbation in children aged three to twelve years are significantly greater in sexually abused children than in those who have not been mistreated in this manner.<sup>79</sup> Moreover, this behaviour persists even after therapy.<sup>80</sup> Some children display sexually provocative behaviour towards older males after having been abused.<sup>80</sup> Therapists who have noticed this believe a variety of factors may be present to produce such behaviour. Firstly, the sexual focus may have become the child's typical method of gaining attention and nurturance, a method which is then carried into other settings including the therapeutic one. Secondly, the child may take an active rather than a passive role in dealing

<sup>79</sup> *Ibid.*, p. 63.

<sup>80</sup> See W.X. FRIEDRICH and R.A. REAMS, "Course of Psychological Symptoms in Sexually Abused Young Children," in *Psychotherapy*, 24 (1987), pp. 163-164; A. YATES, "Children Provoked by Incest," in *American Journal of Psychiatry*, 139 (1982), p. 482.

<sup>81</sup> See W.X. FRIEDRICH and R.A. REAMS, "Course of Psychological Symptoms in Sexually Abused Young Children," in *Psychotherapy*, 24 (1987), p. 165.

<sup>82</sup> See M. DeYOUNG, "Counterphobic Behaviors in Multiply Molested Children," in *Child Welfare*, 63 (1984), pp. 336-338.

with adults hoping to exercise some control in these situations. Finally, it may be a method of testing the adult by asking: "Is this place safe? Will you protect me from dangerous and frightening impulses? Can I feel helpless and needy without having to take care of you?"<sup>81</sup>

Although fear of sexual activity is considered to be a long-term effect of child sexual abuse in adults, D.E.H. Russell found this fear to be present in children during their abuse as well. This study reported that twice as many incest victims as nonincest victims (42% vs. 21%) demonstrated fear of sexual assault in their childhood years and concluded: "This finding could be useful as a diagnostic question. When children demonstrate a fear of sexual assault, it may indicate that they have been -- or are being -- sexually assaulted."<sup>82</sup>

As this brief review demonstrates, virtually every area of a child's life is immediately affected by sexual abuse. His or her understanding of the world as a safe place is destroyed. The resulting diminished self-esteem is manifested by convictions of being "bad," unlovable, shameful and self-conscious. These children entertain thoughts of suicide and

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<sup>81</sup>M.J. KRIEGER et al., "Problems in the Psychotherapy of Children with Histories of Incest," in *American Journal of Psychotherapy*, 34 (1980), pp. 84-85.

<sup>82</sup>D.E.H. RUSSELL, *The Secret Trauma*, pp. 162-163.

attempt suicide more often than nonvictims and often mutilate their bodies as a symbol of their self-hatred. They may have unusual physical problems, such as sleep, appetite or behavioural disturbances. They may also suffer from venereal disease, other infections or even extreme psychiatric disorders such as hysterical seizures. Furthermore, many children display behavioural changes, such as running away from home, withdrawal from friends and substance abuse. Finally, the victims demonstrate age-inappropriate sexual knowledge and activities.

Subsequent to its immediate effects, childhood sexual abuse also inevitably has consequences for the adult survivor. Some of these long-term repercussions will now be examined.

### 3. LONG-TERM EFFECTS OF CHILD SEXUAL ABUSE

A number of variables have been postulated as playing a role in determining the impact of child sexual abuse on adults. N. Groth contended that the greatest trauma occurs when sexual abuse: a) continues over a long period of time; b) is perpetrated by a closely related person; c) involves penetration; d) is accompanied by aggression.<sup>83</sup> There has

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<sup>83</sup>See A.N. GROTH, "Guidelines for Assessment and Management of the Offender," in A. BURGESS et al. (eds.), *Sexual Assault of Children and Adolescents*, Lexington, MA,

been some disagreement in the literature, however, regarding the importance of these variables on resulting trauma.

There have been conflicting reports concerning the effect duration of the abuse has on the degree of trauma experienced by the victim. D.E.H. Russell found that the degree of trauma was in direct proportion to the duration of the abuse.<sup>84</sup> However, other studies have found no correlation between duration and trauma.<sup>85</sup> This discrepancy can be explained by the fact that many other factors are concurrently at play (e.g., relationship of perpetrator to victim, frequency, violence) which may mute the effects of this single variable.

There does seem to be support for the hypothesis that abuse committed by fathers and stepfathers results in greater

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Lexington Books, 1978, p. 28.

<sup>84</sup>See D.E.H. RUSSELL, *The Secret Trauma*, pp. 145-147. This same result was reported by M. TSAI, S. FELDMAN-SUMMERS and M. EDGAR, "Childhood Molestation: Variables Related to Differential Impact of Psychosexual Functioning in Adult Women," in *Journal of Abnormal Psychology*, 88 (1979), pp. 410, 415-416.

<sup>85</sup>See C. ADAMS-TUCKER, "Proximate Effects of Sexual Abuse in Childhood: A Report on Twenty-Eight Children," in *American Journal of Psychiatry*, 139 (1982), p. 1253; D. FINKELHOR, *Sexually Victimized Children*, New York, Free Press, 1979, p. 104.

trauma than abuse by others.<sup>86</sup> Outside this hypothesis, consanguinity, however, does not seem to be significantly related to the degree of trauma reported by victims.<sup>87</sup> The explanation of the insignificance of consanguinity may lie in the level of trust which has been betrayed by the act of abuse. For example, abuse by a trusted neighbour may be more betraying than abuse by a distant uncle or grandfather.<sup>88</sup>

Sexual abuse involving intercourse is more traumatic than other forms of abuse according to clinical studies. D.E.H. Russell found that 63% of incest victims reported extreme trauma associated with intercourse as compared to only 19% who reported extreme trauma from sexual kissing or touching of clothed body parts.<sup>89</sup> C. Bagley and R. Ramsey also found penetration to be the variable most predictive of impairment

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<sup>86</sup>See C. ADAMS-TUCKER, "Proximate Effects of Sexual Abuse in Childhood: A Report on Twenty-Eight Children," p. 1253; D. FINKELHOR, *Sexually Victimized Children*, pp. 101-102; D.E.H. RUSSELL, *The Secret Trauma*, pp. 148-149.

<sup>87</sup>See D. FINKELHOR, *Sexually Victimized Children*, pp. 101-102, 107, 144; D.E.H. RUSSELL, *The Secret Trauma*, p. 150; M. TSAI, S. FELDMAN-SUMMERS and M. EDGAR, "Childhood Molestation: Variables Related to Differential Impacts on Psychosexual Functioning in Adult Women," p. 410.

<sup>88</sup>See D. FINKELHOR and A. BROWNE, "Assessing the Long-Term Impact of Child Sexual Abuse," p. 60.

<sup>89</sup>See D.E.H. RUSSELL, *The Secret Trauma*, p. 144.

in adulthood.<sup>90</sup> Other studies have also found greater trauma to be associated with genital contact, but have not always distinguished between intercourse and other types of genital touching.<sup>91</sup>

There is general contention in the literature that use of force is directly related to the degree of trauma suffered by victims.<sup>92</sup> These results cast doubt on the notion that victims who are forced find it easier to cope since they are less likely to attribute blame to themselves.<sup>93</sup> It would seem that the experience of fear and powerlessness due to force increases rather than decreases long-term trauma.

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<sup>90</sup>See C. BAGLEY and R. RAMSEY, *Disrupted Childhood and Vulnerability to Sexual Assault: Long-Term Sequels with Implications for Counselling*, paper presented at the Conference on Counselling the Sexual Abuse Survivor, Winnipeg, Canada, 1985, reported in D. FINKELHOR and A. BROWNE, "Assessing the Long-Term Impact of Child Sexual Abuse," p. 60.

<sup>91</sup>See J. LANDIS, "Experiences of 500 Children with Adult Sexual Deviants," in *Psychiatric Quarterly Supplement*, 30 (1956), pp. 91-109; M.E. FROMUTH, *The Long Term Psychological Impact of Childhood Sexual Abuse*, unpublished doctoral dissertation, Auburn University, Auburn, AL, 1983, reported in D. FINKELHOR and A. BROWNE, "Assessing the Long-Term Impact of Child Sexual Abuse," p. 60.

<sup>92</sup>See C. BAGLEY and R. RAMSEY, *Disrupted Childhood and Vulnerability to Sexual Assault: Long-Term Sequels With Implications for Counselling*, reported in D. FINKELHOR and A. BROWNE, "Assessing the Long-Term Impact of Child Sexual Abuse," p. 60; D. FINKELHOR, *Sexually Victimized Children*, pp. 104-105, 107; D.E.H. RUSSELL, *The Secret Trauma*, pp. 147-148.

<sup>93</sup>See K. MacFARLANE, "Sexual Abuse of Children," in J.R. CHAPMAN and M. GATES (eds.), *The Victimization of Women*, Beverly Hills, CA, Sage, 1978, pp. 93-94.

The preceding discussion indicates some of the factors which might be involved in the long-term impact of child sexual abuse on adults. The following will present some of the responses seen in adult survivors of such abuse. These responses can be broadly categorized as: a) psychological; b) social; c) sexual.

a. Psychological

Empirical studies confirm that depression is a common outcome of childhood sexual abuse in adult women.<sup>94</sup> E.R. Gold found more depression among sexually abused women than in the nonabused sample.<sup>95</sup> Several studies have reported elevated depression scores in adult victims of father-daughter incest.<sup>96</sup> S.D. Peters noted that women molested in childhood

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<sup>94</sup>For example, M. TSAI and N.N. WAGNER, "Therapy Groups for Women Sexually Molested as Children," in *Archives of Sexual Behavior*, 7 (1978), pp. 421-422.

<sup>95</sup>See E.R. GOLD, "Long-Term Effects of Sexual Victimization in Childhood: An Attributional Approach," in *Journal of Consulting and Clinical Psychology*, 54 (1986), p. 473.

<sup>96</sup>See K.C. MEISELMAN, "Personality Characteristics of Incest History Psychotherapy Patients: A Research Note," in *Archives of Sexual Behavior*, 9 (1980), p. 196; R.L. SCOTT and J.V. FLOWERS, "Betrayal by the Mother as a Factor Contributing to Psychological Disturbance in Victims of Father-Daughter Incest: An MMPI Analysis," in *Journal of Social and Clinical Psychology*, 6 (1988), pp. 150-152; R.L. SCOTT and D.A. STONE, "MMPI Measures of Psychological Disturbance in Adolescent and Adult Victims of Father-Daughter Incest," pp. 256-258.

experienced more episodes of depression and had been hospitalized more often for depression than nonvictims.<sup>97</sup>

Other studies noted that these same women concurrently display low ego strength and elevated scores on pathological scales. R. Scott and G. Thoner suggest that low ego strength scores indicate that these individuals are less well adjusted psychologically and have extremely limited personal resources for coping with problems.<sup>98</sup> Elevated scores on the "psychopathic deviate" (Pd) scale (of the MMPI) are common findings, implying a tendency to act out hostility in antisocial, immature and egocentric ways.<sup>99</sup> Incest victims

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<sup>97</sup>See S.D. PETERS, *The Relationship Between Childhood Sexual Victimization and Adult Depression Among Afro-American and White Women*, unpublished doctoral dissertation, University of California, Los Angeles, 1984, reported in D. FINKELHOR and A. BROWNE, "Assessing the Long-Term Impact of Child Sexual Abuse," p. 58.

<sup>98</sup>See R. SCOTT and G. THONER, "Ego Deficits in Anorexia Nervosa Patients and Incest Victims: An MMPI Comparative Analysis," in *Psychological Reports*, 58 (1986), p. 843.

<sup>99</sup>See K.C. MEISELMAN, "Personality Characteristics of Incest History Psychotherapy Patients: A Research Note," p. 196; R.L. SCOTT and J.V. FLOWERS, "Betrayal by the Mother as a Factor Contributing to Psychological Disturbance in Victims of Father-Daughter Incest: An MMPI Analysis," pp. 150-152; R.L. SCOTT and D.A. STONE, "MMPI Measures of Psychological Disturbance in Adolescent and Adult Victims of Father-Daughter Incest," pp. 256-258; R. SCOTT and G. THONER, "Ego Deficits in Anorexia Nervosa Patients and Incest Victims: An MMPI Comparative Analysis," p. 844; M. TSAI, S. FELDMAN-SUMMERS and M. EDGAR, "Childhood Molestation: Variables Related to Differential Impacts on Psychosexual Functioning in Adult Women," p. 413.

also characteristically display elevated scores on the "schizophrenia" (Sc) scale (of the same test), indicating identity confusion, a likelihood of feeling alienated and remote from the social environment and interpersonal relationships, and a preoccupation with feelings of vulnerability and inadequacy.<sup>100</sup> In addition, R. Scott and G. Thoner reported elevated "paranoia" (Pa) scores reflecting oversensitivity, projection and problems of interpersonal trust.<sup>101</sup>

Guilt and low self-esteem were two immediate psychological consequences of child sexual abuse. As studies and clinical samples verify, these feelings continue into adulthood. M. Tsai and N.N. Wagner noted that guilt (universally experienced by their sample) was related to keeping the sexual activity a secret and the duration of the

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<sup>100</sup>See K.C. MEISELMAN, "Personality Characteristics of Incest History Psychotherapy Patients: A Research Note," p. 196; R.L. SCOTT and J.V. FLOWERS, "Betrayal by the Mother as a Factor Contributing to Psychological Disturbance in Victims of Father-Daughter Incest: An MMPI Analysis," p. 152; R.L. SCOTT and D.A. STONE, "MMPI Measures of Psychological Disturbance in Adolescent and Adult Victims of Father-Daughter Incest," pp. 256-257; R. SCOTT and G. THONER, "Ego Deficits in Anorexia Nervosa Patients and Incest Victims: An MMPI Comparative Analysis," p. 844; M. TSAI, S. FELDMAN-SUMMERS and M. EDGAR, "Childhood Molestation: Variables Related to Differential Impacts on Psychosexual Functioning in Adult Women," p. 413.

<sup>101</sup>R. SCOTT and G. THONER, "Ego Deficits in Anorexia Nervosa Patients and Incest Victims: An MMPI Comparative Analysis," p. 844.

abuse.<sup>102</sup> Many studies confirm that higher rates of poor self-image are reported by women incestuously assaulted in childhood than those who have had no such experience.<sup>103</sup> H.L. Brucki states that perpetual low self-esteem can inadvertently lead to feelings of worthlessness, dependency and suicide ideations.<sup>104</sup>

Another psychological reaction to sexual abuse is repression, a common protective mechanism used by victims of childhood trauma. Incest, unlike other childhood traumas such as medical illness, accidents or loss of a loved one, is rarely reminisced about or shared. Deliberate silence on the part of all who know is more common and this silence makes repression more likely to occur.<sup>105</sup> Amnesia-like memory

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<sup>102</sup>See M. TSAI and N.N. WAGNER, "Therapy Groups for Women Sexually Molested as Children," p. 421. See also H.L. BRUCKI, "An Overview of Incest with Suggestions for Occupational Therapy Treatment," p. 69; L.S. BRUNNGRABER, "Father-Daughter Incest: Immediate and Long-Term Effects of Sexual Abuse," p. 25.

<sup>103</sup>See P.C. ALEXANDER and S.L. LUPFER, "Family Characteristics and Long-Term Consequences Associated with Sexual Abuse," in *Archives of Sexual Behavior*, 16 (1987), pp. 241-244; L.S. BRUNNGRABER, "Father-Daughter Incest: Immediate and Long-Term Effects of Sexual Abuse," p. 27; J.L. HERMAN with L. HIRSCHMAN, *Father-Daughter Incest*, Cambridge, MA, Harvard University Press, 1981, p. 97; M. TSAI and N.N. WAGNER, "Therapy Groups for Women Sexually Molested as Children," pp. 421-422.

<sup>104</sup>See H.L. BRUCKI, "An Overview of Incest with Suggestions for Occupational Therapy Treatment," p. 69.

<sup>105</sup>D.E.H. RUSSELL, *The Secret Trauma*, p. 34.

impairment is a result of repression and is seen in the clinical setting after years have elapsed since the sexual trauma.<sup>106</sup> Sometimes repression is selective, and the victim's feelings are inaccessible while the events themselves can be remembered. D.E.H. Russell noted that 9% of the incestuously abused sample reported the acts to be "not at all upsetting." However, their further statements indicated that they had indeed been negatively affected by the abuse. This researcher points to the defences of denial and repression as explanations for these contradictory statements by victims.<sup>107</sup> Other researchers have reported the same finding among the incestuously abused population.<sup>108</sup>

The more extreme reactions include development of borderline personality disorders (BPD)<sup>109</sup> and multiple

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<sup>106</sup>See M.J. PAULSON, "Incest and Sexual Molestation: Clinical and Legal Issues," p. 178.

<sup>107</sup>See D.E.H. RUSSELL, *The Secret Trauma*, p. 138.

<sup>108</sup>See, for example, L.S. BRUNNGRABER, "Father-Daughter Incest: Immediate and Long-Term Effects of Sexual Abuse," p. 25; M.J. PAULSON, "Incest and Sexual Molestation: Clinical and Legal Issues," p. 178.

<sup>109</sup>The *Diagnostic and Statistical Manual of Mental Disorders* describes borderline personality disorder as a personality disorder in which there is instability in a variety of areas, including interpersonal behaviour, mood and self-image. Interpersonal relations and mood are varied and unpredictable. Identity disturbances may be manifested by uncertainty in areas of self-image, gender identity, or long-term goals or values. See AMERICAN PSYCHIATRIC ASSOCIATION, *Diagnostic and Statistical Manual of Mental Disorders*, 3rd ed.

personality disorders (MPD).<sup>110</sup> C.P. Barnard and C. Hirsch have noted the following characteristics in families of patients with BPD: less functional parents than parents of control groups including neurotics and paranoid schizophrenics; the inability of parents to provide basic nurturance, protection and empathic caring for children; the assumption of parental responsibilities by the child identified as borderline; blurred, ambivalent and inconsistent communications among family members.<sup>111</sup> The researchers then alluded to the literature which identifies many of these characteristics in families where children are sexually

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rev., (= *DSM-III-R*), Washington, DC, The American Psychiatric Association, 1987, p. 346.

<sup>110</sup>See the *DSM-III-R* that identifies multiple personality disorder as a dissociative disorder whose major feature is the existence within an individual of two or more distinct personalities, each of which is dominant at a particular time. Usually the original personality has no knowledge of the existence of any of the other personalities (subpersonalities). When there are two or more subpersonalities, they may be aware of each other to varying degrees. The original personality and subpersonalities are cognizant of lost periods of time, but will seldom volunteer this information. It is considered to be more chronic than other dissociative disorders and recovery is typically less complete. See *DSM-III-R*, pp. 269-270.

<sup>111</sup>See C.P. BARNARD and C. HIRSCH, "Borderline Personality and Victims of Incest," in *Psychological Reports*, 57 (1985), pp. 715-716.

abused.<sup>112</sup> Sixty-eight percent of their BPD sample had been victims of father-daughter or stepfather-daughter incest.<sup>113</sup>

Multiple Personality Disorder almost always arises as a result of severe, prolonged childhood abuse. M. Rivera reports that in one MPD sample 98% had been sexually abused.<sup>114</sup> Incidence of this disorder in the general population has been estimated to be as high as one in every hundred.<sup>115</sup> Dissociation is accomplished by self-hypnosis during the sexual attack. Eventually, with long-term abuse, separate identities emerge to cope with the trauma and allow the person to continue functioning. These identities are often of different ages and are both male and female. They hold memories of the abuse and are often shielded from public view by the adult personality.<sup>116</sup>

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<sup>112</sup>Ibid., p. 716.

<sup>113</sup>Ibid., p. 717. S. SHAPIRO reports that many young women hospitalized and subsequently diagnosed with BPD have histories of self-abuse related to incest. See S. SHAPIRO, "Self-Mutilation and Self-Blame in Incest Victims," p. 51.

<sup>114</sup>See L. DOTTO, "A Life of Sharing Confusion," in *University of Toronto Magazine*, vol. 18, n. 4 (1991), p. 12.

<sup>115</sup>Ibid., p. 12. The *DSM-III-R* considers it to be "not nearly so rare as it has commonly been thought to be." See *DSM-III-R*, p. 271.

<sup>116</sup>See L. DOTTO, "A Life of Sharing Confusion," p. 13. See also R.C. SUMMIT, "The Child Sexual Abuse Accommodation Syndrome," pp. 184-185.

## b. Social

Many victims of incest feel inadequate in social settings. These feelings stem from the childhood experience of isolation and secrecy demanded by the family or the abusing parent. L.S. Brunngraber noted that the majority of incest victims reported marked to severe long-term negative after-effects in the area of social interaction. These included feeling different from others, having difficulty making friends, feeling "bad" and inferior, feeling self-conscious, insecure and panicky in social situations.<sup>117</sup> This finding has been confirmed by other clinical and empirical studies.<sup>118</sup>

Discomfort in social situations is especially evident in victims' statements regarding their relationships with men. The traumagenic dynamic of betrayal which D. Finkelhor and A. Browne define as: the dynamic in which children discover that someone on whom they were vitally dependent has caused them

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<sup>117</sup>See L.S. BRUNNGRABER, "Father-Daughter Incest: Immediate and Long-Term Effects of Sexual Abuse," p. 25.

<sup>118</sup>See, for example, J.L. HERMAN with L. HIRSCHMAN, *Father-Daughter Incest*, pp. 96-97; M. TSAI and N.N. WAGNER, "Therapy Groups for Women Sexually Molested as Children," p. 422.

... may well be a factor affecting this area of an individual's life. The sense of betrayal leads to mistrust of a man and several studies relate negative long-term reactions against males such as hostility, distrust and avoidance of emotional or physical contact with men. ... These facts also noted that only with therapy or successive relating relationships with men were victims finally able to have a healthy association with men. ...

Parental status also seems to be slightly different between incest and nonincest victims. D. E. H. Russell found that incest victims became mothers at an earlier age than nonincest victims. The former first gave birth at the average

See C. RUSSELL and A. BROWN, 'Assessing the Long-Term Impact of Child Sexual Abuse,' p. 6. These authors propose that this dynamic can occur when a child comes to the realization that a trusted person has manipulated them through unrealistic representations of moral standards. It can also happen when they realize that they had been treated with extreme disregard by someone whom they loved or whose affection was important to them.

See M. BROWN, 'An Overview of Incest with Suggestions for Occupational Therapy Treatment,' p. 49. L. BROWN, 'Father-Daughter Incest: Immediate and Long-Term Effects of Sexual Abuse,' p. 19. E. C. WILKINSON, 'Incest: A Psychological Study of Causes and Effects with Treatment Recommendations,' San Francisco, Jossey-Bass, 1978, p. 111. W. RUSSELL and A. BROWN, 'Therapy Groups for Women Sexually Abused as Children,' p. 111.

See M. BROWN, 'Father-Daughter Incest: Immediate and Long-Term Effects of Sexual Abuse,' p. 19. W. RUSSELL and A. BROWN, 'Therapy Groups for Women Sexually Abused as Children,' p. 111.

age of 22.5 years compared to the latter whose average age was 24.2 years.<sup>122</sup> However, incest victims were not more likely to have been mothers than women who had never been likewise victimized, nor was there a significant difference in the number of children raised by these two groups of women.<sup>123</sup>

Women who have been incestuously abused often express feelings of inadequacy related to childrearing skills. In an empirical study designed to analyze these feelings, P.M. Cole and C. Woolge: concluded that mothers with a history of incest tended to score higher on autonomy promotion scales than mothers with no history of incest. They endorsed extreme statements requiring independence from children much earlier than is normal in development. The authors proposed several explanations for this finding: 1) incest survivors may feel both resentful of their children's desire for indulgence and inadequate in providing what they themselves never received; 2) they may set high expectations for themselves and their children, with unrealistic ideas regarding child autonomy; 3) given their own precocious exposure to trauma they may be more motivated to prepare their children for early self-

122 See D E H RUSSELL, *The Secret Trauma*, p 118

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sufficiency.<sup>124</sup> Incest victims also scored lower in child acceptance than nonincestuously abused women. The authors noted that while these women expressed desires to be warm and loving parents, they did not have the necessary skills due to lack of positive role models in their own families.<sup>125</sup>

As mentioned earlier, a short-term consequence of incestuous assault is the social or behavioural problem of substance abuse. This addiction often continues into adulthood and is commonly found among this population. The Odyssey Institute in New York found that 44% of female drug users experienced incest as children.<sup>126</sup> J.L. Herman with L. Hirschman also reported a higher incidence of alcohol abuse and drug addiction among victims of child sexual abuse than among their nonvictimized counterparts.<sup>127</sup>

<sup>124</sup>See P.M. COLE and C. WOOLGER, "Incest Survivors: The Relation of their Perceptions of their Parents and their Own Parenting Attitudes," in *Child Abuse and Neglect*, 13 (1989), p. 414.

<sup>125</sup>*Ibid.*

<sup>126</sup>See J. REXVOIZE, *Incest: A Family Pattern*, p. 160.

<sup>127</sup>See J.L. HERMAN with L. HIRSCHMAN, *Father-Daughter Incest*, p. 99. See also H.L. BRUCKI, "An Overview of Incest with Suggestions for Occupational Therapy Treatment," p. 69.

## c. Sexuality

Many empirical studies have shown that women who have been traumatically sexualized in childhood experience sexual difficulties as adults. J.V. Becker et al. found that a significantly higher proportion of incest victims (33%) developed secondary nonorgasmia than rape victims (0.0%). They also had a higher incidence of primary nonorgasmia which suggested that the early nature of their sexual assault significantly inhibited their development of orgasmic capabilities. Both the early nature of their sexual assault and the chronicity may be factors responsible for the development of primary nonorgasmia.<sup>128</sup>

Aversion to or fear of sex is another reaction women often experience as a result of incest.<sup>129</sup> J.V. Becker et al. report that 75% of incest victims experienced fear of sex.<sup>130</sup> M. Tsai and N.N. Wagner write that many women

<sup>128</sup>See J.V. BECKER et al., "Incidence and Types of Sexual Dysfunctions in Rape and Incest Victims," in *Journal of Sex and Marital Therapy*, 8 (1982), p. 73. See also M. TSAI and N.N. WAGNER, "Therapy Groups for Women Sexually Molested as Children," p. 423.

<sup>129</sup>See D.E.H. RUSSELL, *The Secret Trauma*, p. 168.

<sup>130</sup>See J.V. BECKER et al., "Incidence and Types of Sexual Dysfunctions in Rape and Incest Victims," p. 70. See also L.S. BRUNNCRABER, "Father-Daughter Incest: Immediate and Long-Term Effects of Sexual Abuse," p. 26

molested as children reacted to sex with abhorrence and "casual terror" and developed an active avoidance of sexual situations.<sup>131</sup> Research has also uncovered the occurrence of arousal dysfunctions,<sup>132</sup> poor sexual satisfaction and sexual self-esteem,<sup>133</sup> homosexuality<sup>134</sup> and the problem of flashbacks.<sup>135</sup>

<sup>131</sup>See M. TSAI and N.N. WAGNER, "Therapy Groups for Women Sexually Molested as Children," p. 423.

<sup>132</sup>J.V. BECKER et al. reported 41.7% of incest victims experienced this dysfunction. See J.V. BECKER et al., "Incidence and Types of Sexual Dysfunctions in Rape and Incest Victims," p. 70. See also M. TSAI and N.N. WAGNER, "Therapy Groups for Women Sexually Molested as Children," p. 423.

<sup>133</sup>See D. FINKELHOR, *Child Sexual Abuse: New Theory and Research*, pp. 192-193; E.R. GOLD, "Long-Term Effects of Sexual Victimization in Childhood: An Attributional Approach," p. 473; C.J. LANGMADE, "The Impact of Pre- and Postpubertal Onset of Incest Experiences in Adult Women as Measured by Sex Anxiety, Sex Guilt, Sexual Satisfaction and Sexual Behavior," in *Dissertation Abstracts International*, 44 (1983), p. 917B.

<sup>134</sup>See L.S. BRUNNGRABER, "Father-Daughter Incest: Immediate and Long-Term Effects of Sexual Abuse," p. 26; S. FINCH, "Sexual Activities of Children with Other Children and Adults," in *Clinical Pediatrics*, 3 (1967), p. 102.

<sup>135</sup>See L.S. BRUNNGRABER, "Father-Daughter Incest: Immediate and Long-Term Effects of Sexual Abuse," p. 26; D. FINKELHOR and A. BROWNE, "The Traumatic Impact of Child Sexual Abuse: A Conceptualization," in *American Journal of Orthopsychiatry*, 55 (1985), p. 534; J.L. HERMAN with L. HIRSCHMAN, *Father-Daughter Incest*, p. 103; K.C. MEISELMAN, *Incest*, p. 243; M. TSAI and N.N. WAGNER, "Therapy Groups for Women Sexually Molested as Children," p. 423-424.

Authors often mention promiscuity and prostitution among females as results of childhood sexual exploitation.<sup>136</sup> L.S. Brunngraber reported promiscuity as a long-term negative effect.<sup>137</sup> D. Finkelhor and A. Browne, however, report a study which found that although many sexual abuse victims described themselves as promiscuous, the actual number of their sexual partners and experiences did not differ significantly from those of their peers.<sup>138</sup> The authors suggest that the promiscuity of abuse victims may be more a function of negative self-labelling than a representation of actual behaviour patterns.<sup>139</sup>

The hypothesis that child sexual abuse can lead one into prostitution seems to be supported by clinical data. J. James and J. Meyerding found that 52% of their sample of prostitutes

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<sup>136</sup>See, for example, H.L. BRUCKI, "An Overview of Incest with Suggestions for Occupational Therapy Treatment," p. 69; J. RENVOIZE, *Incest: A Family Pattern*, pp. 157-158; D.E.H. RUSSELL, *The Secret Trauma*, p. 167.

<sup>137</sup>See L.S. BRUNNGRABER, "Father-Daughter Incest: Immediate and Long-Term Effects of Sexual Abuse," p. 26. See also J.L. HERMAN with L. HIRSCHMAN, *Father-Daughter Incest*, p. 100; K.C. MEISELMAN, *Incest*, pp. 227-232.

<sup>138</sup>See M.E. FROMUTH, *The Long Term Psychological Impact of Childhood Sexual Abuse*, unpublished doctoral dissertation, Auburn University, Auburn, AL, 1983, reported in D. FINKELHOR and A. BROWNE, "Assessing the Long-Term Impact of Child Sexual Abuse," p. 57.

<sup>139</sup>See D. FINKELHOR and A. BROWNE, "Assessing the Long-Term Impact of Child Sexual Abuse," p. 57.

had been victims of child sexual abuse.<sup>140</sup> They concluded that being used sexually at an early age produces the guilt, shame and loss of self-esteem which would likely lessen any resistance to view oneself as a saleable commodity.<sup>141</sup> Sexuality also becomes something to be used to gain money, favours or rewards of some kind. Consequently, by alienating a victim from her sexuality and programming her to expect bribes in exchange for sexual submission, incestuous abuse can serve as a perfect training ground for prostitutes.<sup>142</sup>

The literature supported by empirical studies validates the phenomenon of revictimization among women sexually abused in childhood. D.E.H. Russell found that 65% of incest victims compared to 36% of nonincest victims were subsequently raped. This study also found higher rates of wife rape and wife beating among this population.<sup>143</sup> Similar results are

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<sup>140</sup>See J. JAMES and J. MEYERDING, "Early Sexual Experience as a Factor in Prostitution," in *Archives of Sexual Behavior*, 7 (1977), p. 35. See also D. FINKELHOR and A. BROWNE, "The Traumatic Impact of Child Sexual Abuse: A Conceptualization," p. 534.

<sup>141</sup>J. JAMES and J. MEYERDING, "Early Sexual Experience as a Factor in Prostitution," p. 41.

<sup>142</sup>See D.E.H. RUSSELL, *The Secret Trauma*, p. 167.

<sup>143</sup>*Ibid.*, pp. 158-161.

reported by P.C. Alexander and S.L. Luper.<sup>144</sup> The traumagenic dynamic of powerlessness (or disempowerment) may explain this occurrence. This dynamic refers to the "process in which the child's will, desires and sense of efficacy are continually contravened."<sup>145</sup> A basic kind of powerlessness takes place when a child's territory and body space are repeatedly invaded against the child's will. It is reinforced when the victim's attempts to halt the abuse fail.<sup>146</sup> D. Finkelhor and A. Browne hypothesize two consequences of this powerlessness: 1) the child's perception of self as victim; 2) a lowered sense of efficacy.<sup>147</sup> According to these authors, it is also likely that sexual abuse, through its impairment of self-esteem, self-protection and trust, makes victims vulnerable to abusive individuals or unable to anticipate dangerous sexual situations.<sup>148</sup>

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<sup>144</sup>See P.C. ALEXANDER and S.L. LUPFER, "Family Characteristics and Long-Term Consequences Associated with Sexual Abuse," pp. 242, 244. See also M. TSAI and N.N. WAGNER, "Therapy Groups for Women Sexually Molested as Children," p. 422-423.

<sup>145</sup>See D. FINKELHOR and A. BROWNE, "Assessing the Long-Term Impact of Child Sexual Abuse," p. 64.

<sup>146</sup>Ibid.

<sup>147</sup>See D. FINKELHOR and A. BROWNE, "The Traumatic Impact of Child Sexual Abuse: A Conceptualization," p. 536.

<sup>148</sup>See D. FINKELHOR and A. BROWNE, "Assessing the Long-Term Impact of Child Sexual Abuse," p. 58.

#### d. Marital relationships

The sexual repercussions of incest can also affect the marital relationship. Marital status is an interesting but less-researched area in the lives of incest victims. D.E.H. Russell investigated the marital status of respondents and found that the degree of trauma suffered during abuse seemed to be related to a woman's decision to marry. Those who reported the most severe trauma were more likely to marry. Specifically, 78% of victims reporting extreme or considerable trauma had married compared to 62% of those who reported only some or no trauma.<sup>149</sup> There also seems to be a linear relationship between degree of trauma and likelihood of being divorced: 37% of those who reported extreme trauma were divorced or separated compared with 31% who reported considerable trauma, 22% who reported some trauma and 7% who reported no trauma.<sup>150</sup> At the time of the interview 28% of incest victims were more likely to be separated or divorced

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<sup>149</sup>See D.E.H. RUSSELL, *The Secret Trauma*, p. 194.

<sup>150</sup>Ibid., pp. 194-195. These results were mirrored in a later study which showed that 35% of women who had experienced child sexual abuse involving intercourse reported "marital disruption" compared with 23% of sexually abused women who had not experienced intercourse as part of the abuse. The study also reported that only 17% of nonvictims experienced marital disruption. See D. FINKELHOR et al., "Sexual Abuse and its Relationship to Later Sexual Satisfaction, Marital Status, Religion, and Attitudes," in *Journal of Interpersonal Violence*, 4 (1989), p. 382.

compared to 16% of nonincest victims.<sup>151</sup> A caution regarding these results is sounded by K.L.P. Gelster and L.L. Feinauer, whose study found that among couples already experiencing marital difficulties, there was no difference in marital satisfaction or marital adjustment between those who had endured childhood sexual abuse and those who had not.<sup>152</sup> They suggest that once a couple is having marital difficulties, it should not be assumed that those who have suffered childhood sexual abuse will experience greater difficulties than those who do not have this background.<sup>153</sup>

This brief review of the long-range effects of incest shows clearly that the psychological, social and sexual areas of a victim's life are negatively influenced by the experience. Victims often suffer from depression and develop characteristic defence mechanisms and personality disorders. They feel socially isolated and inadequate as friends, parents, sexual partners and spouses. Many abuse drugs and experience revictimization by their husbands, boyfriends or

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<sup>151</sup>See D.E.H. RUSSELL, *The Secret Trauma*, pp. 118-119.

<sup>152</sup>See K.L.P. GELSTER and L.L. FEINAUER, "Divorce Potential and Marital Stability of Adult Women Sexually Abused as Children Compared to Adult Women not Sexually Abused as Children," in *Journal of Sex and Marital Therapy*, 14 (1988), pp. 274-276.

<sup>153</sup>*Ibid.*, p. 276.

other men. Virtually no area of an adult's life is left untouched by the trauma of incest.

#### 4. TREATMENT OF INCEST VICTIMS

##### a. Treatment of the child and adolescent victim

Recovery from incestuous assault usually occurs through the therapeutic process.<sup>154</sup> Treatment can take place on an individual level, in a group setting or within the context of family therapy. Individual therapy is particularly helpful for young children. Play therapy is often used, as the very young (under 10 years of age) have difficulty with the abstract symbolic thinking required in verbal psychotherapy.<sup>155</sup> Older children and adolescents benefit from individual counselling when they feel safe, are able to talk about the abuse and have a context which is supportive and prepared for the changes which will occur as a result of

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<sup>154</sup>An in-depth analysis of the various treatment modalities dealing with incestuous abuse is beyond the scope of this work. Some of the broad categories of therapy which have proven successful in the clinical setting will be presented in this section. It is hoped that with this knowledge, the canonist may be able to ascertain whether appropriate or adequate help has been received by the victim prior to, during, or after marriage.

<sup>155</sup>See L.E.A. WALKER and M.A. BOLKOVATZ, "Play Therapy with Children Who Have Experienced Sexual Assault," in L.E.A. WALKER (ed.), *Handbook on Sexual Abuse of Children: Assessment and Treatment Issues*, New York, Springer, 1988, p. 249.

therapy.<sup>156</sup> The goals of individual therapy include helping the child "make meaning" of the abuse experience, enhancing the child's accurate perception of self, decreasing the likelihood of further abuse, teaching healthy interpersonal skills and addressing specific behavioural goals.<sup>157</sup>

Group treatment is successful in alleviating feelings of isolation and mistrust in older children and adolescents.<sup>158</sup> K.L. James reported that all victims in a teen's group demonstrated increased self-esteem and comfort in talking about their experiences as a result of group therapy.<sup>159</sup> A group setting also enhances social skills and allows the victim to focus temporarily on another's problem rather than one's own difficulties.<sup>160</sup>

Family therapy involves treatment of each family member as well as the interrelationships between members. One

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<sup>156</sup>See W.N. FRIEDRICH, *Psychotherapy of Sexually Abused Children and their Families*, New York, W.W. Norton, 1990, p. 148.

<sup>157</sup>*Ibid.*, pp. 148-164. See also J.J. HAUGAARD and N.D. REPPUCCI, *The Sexual Abuse of Children*, pp. 236-246.

<sup>158</sup>See J.J. HAUGAARD and N.D. REPPUCCI, *The Sexual Abuse of Children*, pp. 265-269.

<sup>159</sup>See K.L. JAMES, "Incest: The Teenager's Perspective," pp. 150-154.

<sup>160</sup>See W.N. FRIEDRICH, *Psychotherapy of Sexually Abused Children and their Families*, p. 210.

successful model of family therapy is that of H.A. Giarretto, founder of the Child Sexual Abuse Treatment Program in Santa Clara County, California.<sup>161</sup> H.A. Giarretto insists that individual counselling (especially for the victim), mother/child counselling, marital counselling and father/child counselling must take place before or during family therapy.<sup>162</sup> Success in any family therapy model is determined by cessation of abuse, healthier family structure with greater individual autonomy, enhanced communication, improved conflict resolution skills, improved marital relationship and decreased victim's parentification and increased self-esteem and assertiveness.<sup>163</sup>

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<sup>161</sup>See H.A. GIARRETTO, "Humanistic Treatment of Father-Daughter Incest," in *Journal of Humanistic Psychology*, 18 (1978), pp. 59-76; Id., "A Comprehensive Child Sexual Abuse Treatment Program," in P.B. MRAZEK and C.H. KEMPE (eds.), *Sexually Abused Children and their Families*, New York, Pergamon Press, 1981, pp. 179-198.

<sup>162</sup>Several authors support this view: L.M. ANDERSON and G. SHAFER, "The Character-Disordered Family: A Community Treatment Model for Family Sexual Abuse," in *American Journal of Orthopsychiatry*, 49 (1979), p. 443; B. BOATMAN, E.L. BORKAN and D.H. SCHETKY, "Treatment of Child Victims of Incest," pp. 46-48; S. FRIEDMAN, "A Family Systems Approach to Treatment," in L.E.A. WALKER (ed.), *Handbook on Sexual Abuse of Children: Assessment and Treatment Issues*, New York, Springer, 1988, pp. 336-341.

<sup>163</sup>See W.N. FRIEDRICH, *Psychotherapy of Sexually Abused Children and their Families*, pp. 206-207.

b. Treatment of the adult victim

The adult victim of incest can receive therapy in either the individual or group setting. The goals in individual therapy include the establishment of a therapeutic alliance, acknowledgment and acceptance of the abuse; exploration of issues of responsibility and complicity; breakdown of feelings of isolation; recognition, labelling and expression of feelings; catharsis and grieving; cognitive restructuring of faulty beliefs; insight and behavioural change; education and information-giving; separation and individuation.<sup>164</sup> A wide variety of treatment approaches have been successful in the individual treatment setting. These include: Gestalt exercises, psychodrama techniques, psychodynamic and cognitive approaches, social learning formulations, transactional analysis, humanistic psychology, behavioural approaches, hypnosis, guided imagery and expressive therapy.<sup>165</sup> Some victims need psychiatric therapy for disorders which have developed as a result of incest. They require sensitive

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<sup>164</sup>See C.A. COURTOIS and J.E. SPREI, "Retrospective Incest Therapy for Women," pp. 270-280. See also J.J. HAUGAARD and N.D. REPPUCCI, *The Sexual Abuse of Children*, p. 256.

<sup>165</sup>See C.A. COURTOIS and J.E. SPREI, "Retrospective Incest Therapy for Women," pp. 298-299; C.A. COURTOIS and D.L. WATTS, "Counseling Adult Women Who Experienced Incest in Childhood or Adolescence," in *Personnel and Guidance Journal*, 60 (1981-1982), p. 278.

treatment by medical personnel and ongoing sexual abuse counselling.<sup>166</sup>

As for child and adolescent victims of incest, group therapy offers adult survivors an opportunity to interact with people who have had similar experiences.<sup>167</sup> It is effective in reducing depression, alleviating distress and enhancing social adjustment among members.<sup>168</sup> It is also successful in diminishing guilt feelings, increasing self-esteem and improving sexual relationships with male partners.<sup>169</sup>

Treatment for the sexually abused child or adult is a long, arduous process. The canonist should bear this in mind when evaluating the effectiveness of therapy received by the contractant. If the victim was in treatment for only a short time or if some of the effects of incest described above

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<sup>166</sup>See C.A. COURTOIS and J.E. SPREI, "Retrospective Incest Therapy for Women," p. 298; L. DOTTO, "A Life of Sharing Confusion," p. 14.

<sup>167</sup>See C.A. COURTOIS and J.E. SPREI, "Retrospective Incest Therapy for Women," p. 302.

<sup>168</sup>See P.C. ALEXANDER et al., "A Comparison of Group Treatments of Women Sexually Abused as Children," in *Journal of Consulting and Clinical Psychology*, 57 (1989), pp. 481-482.

<sup>169</sup>See M. TSAI and N.N. WAGNER, "Therapy Groups for Women Sexually Molested as Children," p. 425. See also C.A. COURTOIS and D.L. WATTS, "Counseling Adult Women Who Experienced Incest in Childhood or Adolescence," p. 278.

persist, then treatment was either inappropriate or terminated prematurely.

### CONCLUSION

In this chapter the development of the human personality and how it can be affected by sexual abuse has been presented. Children's cognitive abilities change and grow over a period of almost eighteen years. Likewise, their understanding of trauma is influenced by the phases of cognitive development as they are passed. Although research has been conducted regarding children's cognitive understanding of divorce, no such study has been undertaken with regard to incestuous assault. When one considers the serious short- and long-term consequences of this type of abuse, one realizes that such research is sorely needed in order to assist the innocent victims of these crimes.

The healthy development of social skills is dependent on mature parenting. Children whose parents are anxious, impatient or demanding become insecure and inept in this area of interaction. As has been presented in this chapter, women who have been incestuously abused tend to have poor parenting skills due to their own lack of healthy role models. Fathers who sexually assault their daughters disrupt the healthy

progression of social development, leading to a host of short- and long-term problems which victims carry into their adult lives. These include low self-esteem leading to self-mutilation, suicide ideation and suicide attempts and behavioural problems such as decreased academic performance, runaway/withdrawal actions and substance abuse, and feelings of isolation and difficulties relating to men.

Research has shown that sexual identity also progresses through phases over a period of nearly two decades. An understanding of normal development helps to explain the seemingly sexualized behaviour of children in their pre-school and early school age years. Children's curiosity and play becomes latent during the school age years until puberty when sexual interest becomes overt. An interruption of the normal development of sexual identity results in serious complications and lasts well into adulthood. Children become confused and display age-inappropriate sexual behaviour, and may express fears of sexual assault. As adult women the incest survivors experience many psychological difficulties, including low ego strength, various pathological disturbances, denial/repression/suppression defence mechanisms, borderline personality and multiple personality disorders. They also have problems in the sexual arena which weaken their abilities to form healthy, lasting relationships with men. They suffer

not only from sexual dysfunctions, but their low self-esteem can lead them into liaisons with violent men or even into the dangerous world of prostitution.

Matrimonial cases involving incest require careful auditing. Before questioning the adult victim about his or her past, the auditor or judge should have a general understanding of normal personality development so as to better appreciate and perceive the effects a disruption in that normal development has had on the individual. Inquiry into the childhood experience requires sensitivity since victims carry the scars of trauma for the rest of their lives. Although details of the assaults are unnecessary, determination of the short- and long-term effects is imperative. For example, if a marriage took place during adolescence, many self-esteem and behavioural (perhaps even physical) effects should be explored in order to determine the motivation for marriage. A victim may be experiencing intense fear, or possess an inordinate wish to escape the home so as to constitute simulation, or a psychological disturbance grave enough to disrupt the discretionary process. An adult victim may enter into marriage suffering from any of the above, or may display a more serious psychological or sexual defect so great as to render the individual incapable of assuming the essential obligations of marriage.

This chapter has attempted to present the development of the healthy personality and some of the immediate and long-range consequences that sexual assault has on a person. A brief review of the treatment modalities offered to the child and adult victim of incest and their effectiveness has also been presented. The following chapter will review the jurisprudence on the canonical effects of father-daughter incest.

CHAPTER FOUR  
JURISPRUDENCE ON CASES OF INCEST

INTRODUCTION

The term "jurisprudence" comes from two Latin words: *iuris* and *prudencia* which, when combined, denote "prudence concerning the law."<sup>1</sup> The noted Roman law definition referred to it as "the authority inherent in the fact that many cases have always been similarly decided."<sup>2</sup> H.C. Black's definition of jurisprudence presents it as the science of law, and its function is to determine the principles on which laws are based. Furthermore, according to Black, it falls to jurisprudence to resolve uncertainties arising from new or doubtful situations, keeping before it the good of the community for which the laws are enacted.<sup>3</sup>

The interpretive role of jurisprudence in ecclesiastical law is clearly delineated in c. 16, which states:

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<sup>1</sup>J.B. SYKES (ed.), *The Concise Oxford Dictionary of Current English*, Oxford, Oxford University Press, 1982, p. 545.

<sup>2</sup>"Auctoritas rerum perpetuo similiter iudicatarum." See *Digest*, 1, 3, 38.

<sup>3</sup>H.C. BLACK, *Black's Law Dictionary: Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern*, 5th ed., St. Paul, MN, West Publishing, 1979, p. 767.

§ 1- Laws are authentically interpreted by the legislator and by the one to whom the legislator has granted the power to interpret them authentically.

§ 3- [...] an interpretation contained in a judicial decision or an administrative act in a particular matter does not have the force of law and binds only the persons and affects only those matters for which it was given.

In this regulation, one is reminded that the judge is not a legislator, but rather an interpreter of laws already enacted. It must be noted here that the Roman Rota enjoys an authority over lower courts in the Church by virtue of its function as the judicial organ of the Apostolic See. However, even this court does not have the delegated power to enact legislation.<sup>4</sup>

It is not unusual for judges to interpret innovatively the legislation they enforce. In this vein, John Paul II declared that any innovation in the law, whether substantive or procedural, which did not find support in the jurisprudence or praxis of the tribunals and dicasteries of the Holy See would be considered rash.<sup>5</sup> In this statement, the moral authority of the Rota is upheld. M.F. Pompemma takes this one step further and postulates that the opposite is also true,

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<sup>4</sup>See PAUL VI, Allocution to the Sacred Roman Rota, 31 January 1974, in AAS, 66 (1974), pp. 84-88, esp. p. 87 (English translation in *The Pope Speaks*, 19 [1974-1975], pp. 88-92).

<sup>5</sup>See JOHN PAUL II, Allocution to the Roman Rota, 24 January 1981, in AAS, 73 (1981), p. 232 (English translation in *Origins*, vol. 10, n. 34 [1981], pp. 541-544).

namely, an innovator derived from the tribunals or dicasteries of the Holy See can be regarded as legitimate.<sup>6</sup>

The authority of the Roman Rota has been upheld in c. 19 which states:

[...] if an express prescription of universal or particular law or a custom is lacking in some particular matter, the case is to be decided in light of [...] the jurisprudence and praxis of the Roman Curia [...].

This canon seems to introduce the possibility of jurisprudence as a supplemental source of law in the event of a *lacuna* in the legislation. The Holy Father, in an address to the Roman Rota on 26 January 1984, referred to this role:

[...] the judge plays a very important role in deciding the meaning of the law. Above all, the sentence represents an authentic interpretation of the law for the parties. [...] The interpretative power [...] is to be placed, above all, in the formation of jurisprudence, that is, of that ensemble of concordant sentences which [...] plays a notable role in filling possible *lacunae* in the law. The value of the Rotal jurisprudence in the Church has always been noteworthy [...].<sup>7</sup> Canon 19 of the new code expressly confirms this.

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<sup>6</sup>See M.F. POMPEDDA, "La giurisprudenza come fonte di diritto nell'ordinamento canonico matrimoniale," in *Quaderni Studio rotale*, 1, Rome, Libreria Leoniana, 1987, p. 55 (English translation in J.A. ALESANDRO [ed.], *Marriage Studies: Reflections in Canon Law and Theology*, vol. 4, Washington, DC, Canon Law Society of America, 1990, p. 116.

<sup>7</sup>JOHN PAUL II, Allocution to the Roman Rota, 26 January 1984, in AAS 76 (1984), p. 647: "[...] al giudice spetta una partecipazione molto rilevante nel fissare il senso della legge. Anzitutto la sentenza rappresenta per le parti una autentica interpretazione della legge. [...] Ma la forza interpretativa è da riporsi soprattutto nella formazione della

It does appear, that by giving the Rota the power to supply legal solutions in situations where existing legislation falls short, the Supreme Legislator is allowing jurisprudence to be a supplemental source of law. As M.F. Pompdedda concludes:

[...] canon law [...] expressly admits [...] the possibility of overcoming *lacunae* in the law through, among other sources, the adoption of jurisprudence; and since, in that hypothesis, the jurisprudence would truly supply for the nonexistent norms or the missing custom, we can logically conclude that the jurisprudence of the tribunals of the Holy See, and specifically that of the Roman Rota, as well as the praxis of the dicasteries of the Roman Curia, constitute a true font of law.<sup>8</sup>

Hence, it can be concluded that jurisprudence plays not only an interpretative role but also acts as a supplemental source of law. As stressed in the legislation and in canonical writings, these roles strictly apply to the judicial organs of the Apostolic See. Lower courts are to take guidance from

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giurisprudenza, cioè di quell'insieme di sentenze concordanti che [...] ha tuttavia un notevole ruolo nel riempire le eventuali *lacune legis*. Il valore della giurisprudenza rotale nella Chiesa è stato sempre notevole [...]. Il can. 19 del nuovo Codice la consacra espressamente." (English translation in *The Pope Speaks*, 29 [1984], pp. 176-177.

<sup>8</sup>M.F. POMPEDDA, "La giurisprudenza come fonte di diritto nell'ordinamento canonico matrimoniale," p. 59: "[...] la normativa canonica [...] espressamente ammette [...] la possibilità di ovviare alle lacune della legge attraverso, fra le altre fonti, l'adozione della giurisprudenza; e poiché questa, in simili ipotesi, altro non può essere che una vera opera di supplenza a norme non esistenti o alla consuetudine, è logico concludere che la giurisprudenza dei Tribunali della Santa Sede, in specie della Rota Romana, come anche la prassi dei Dicasteri della Curia Romana, costituiscono fonte legislativa." (English translation in J.A. ALESANDRO, *Marriage Studies*, p. 121).

these courts and to refrain from venturing away from accepted jurisprudence.

This does not mean that there is no value to the jurisprudence of lower tribunals. Indeed, it is often at the levels of first and second instances that new situations are brought to the attention of the Church, which must then deal with them canonically and pastorally. A. Sabattani has recognized the quality and creativity of the jurisprudence of lower tribunals. At the 1967 Canadian Canon Law Society's annual convention, he commented:

Not only at the Commission of Vigilance for Ecclesiastical Tribunals of the Holy See, but also in reviews, including your own [*Studia canonica*], I have had the occasion to read sentences for marriage nullity cases containing an excellent study *in iure* and a profound examination *in facto*: they are so well structured, and written with such quality that they could appear in a collection of rotal sentences.

This chapter will present Rotal and local matrimonial sentences in which incest has been a factor in the union.

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<sup>9</sup>A. SABATTANI, "L'évolution de la jurisprudence dans les causes de nullité de mariage pour incapacité psychique," in *SC*, 1 (1967), p. 143: "Non seulement à la Commission de Vigilance sur les Tribunaux ecclésiastiques près le Saint-Siège, mais dans des revues et aussi dans la vôtre, m'a-t-il été donné de lire des sentences de causes matrimoniales contenant une excellente étude *in iure* et un examen approfondi *in facto*: elles sont si bien charpentées et rédigées avec une qualité telle qu'elles pourraient figurer dans un recueil de sentences rotales."

The jurisprudential principles used by the Judges in the application of the law in these cases will be demonstrated. Possible alternate grounds under which some of these cases could have been impugned will also be discussed.

## 1. ROTAL JURISPRUDENCE

### a. Case 1: *coram* Raad, 13 November 1979

A case judged *c. Raad* on 13 November 1979 from Graz-Seckau, Austria, deals with the effects of repeated sexual assault on the victim's ability to posit valid matrimonial consent.<sup>10</sup> At age fifteen the Respondent had been raped and was also the victim of three subsequent attempted rapes. She later met and married the Petitioner at the age of twenty-two. Immediately after the birth of their first child the Respondent became depressed, began to withdraw from the Petitioner and neglected her parental duties. Four years later she attempted suicide twice and insisted that her husband divorce her. He reluctantly agreed and eventually petitioned for a declaration of nullity. The grounds upon which the Rotal court judged this case were the lack of due

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<sup>10</sup> *c. RAAD*, 13 November 1979, in *ME*, 105 (1980), pp. 30-45. Although this case involves rape rather than incest, it has been included in this chapter because the psychological effects of repeated sexual assaults are similar to those experienced by some incest victims.

discretion and/or the inability to fulfill the duties of marriage on the part of the Respondent.

In the *in iure* section Raad acknowledges that the event of rape can lead to serious psychosexual problems especially when it occurs during adolescence in one who is already suffering from some psychopathology or affective neuroses.<sup>11</sup> He then indicates what is required in the *acta* to arrive at a conclusion regarding the effects of sexual assault on the validity of matrimonial consent. He writes:

What must be demonstrated is the prenuptial existence of a grave psychic or psychosexual anomaly, its connection with the marriage, with the surrounding circumstances of the marriage and the events after the marriage. These must all be taken from the testimonies of witnesses, parties, doctors and experts. The expertise acquires a particular weight when the expert adheres to principles of Catholic doctrine. [...].

In judging the act of consent, the judges cannot separate the intellect, will, affect, psychic or psychosexual anomalies; rather, consent arises from the whole of the person. [...].<sup>12</sup>

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<sup>11</sup>Ibid., n. 14, p. 38.

<sup>12</sup>Ibid., n. 15, p. 39: "Ad probationem quod attinet, demonstrari debent praenuptialis existentia gravis anomaliae psychicae vel psychosexualis, eiusdem connexio cum matrimonio adiunctis antecedentibus concomitantibus et subsequenter, quae omnia desumuntur ex declarationibus partium, testium, medicorum a curatione et peritorum. Peritia maius pondus acquirit ubi peritus principiis doctrinae catholicae imbutus est. [...]."

In actu consensus perpendo, iudex non separatim partem intellectus, voluntatis, affectus, anomaliae psychicae vel psychosexualis considerare debet, sed cunctum consensum ex tota persona procedentem. [...]."

The facts of the case reveal that the Respondent lived with the Petitioner and his family prior to marriage. During that time she attempted to commit suicide several times and always kept a bottle of sleeping pills nearby, with the intent of consuming them should she be victimized by another sexual assault. She is presented as an immature, vacuous person who suffered from depression, but was considered normal by the Petitioner and his family. The Parties loved one another, but the Respondent admitted that she married the Petitioner out of gratitude for his kindness and the safety she felt with him.

The Petitioner testified that the Respondent was always somewhat averse to sexual relations and began to withdraw from this area of conjugal life before the birth of their child. This intensified after the birth along with the bouts of depression. After attempting suicide, she was treated by several doctors who concluded, along with the court-appointed expert, that the Respondent was suffering from psychopathy of a schizoid type with phobic tendencies and a psychosexual anomaly. They stress that these disorders are constitutive of her personality and are in part related to the traumatic sexual experiences she endured as a teenager. The doctor, expert and Judges agreed that the disorders were present prior to and at the time of consent. While they did not affect her understanding or willingness to enter marriage, the disorders

did render her incapable of fulfilling the obligations of the marital state. The case received an affirmative decision.<sup>13</sup>

b. Case 2: *coram* Raad, 20 March 1980

A case judged *c. Raad* on 20 March 1980 from Pittsburgh, U.S.A.,<sup>14</sup> alleged that the husband (Respondent) had incestuously assaulted his two daughters. The Petitioner challenged the validity of the union on the grounds that her husband was incapable of matrimonial consent due to mental incapacity.

In his sentence, Raad notes that among the essential duties of marriage is the education of children.<sup>15</sup> He further states:

The person who after marriage has committed sins of a sexual nature cannot for that simple reason be judged to be incapable of fulfilling the duties of the marital state which must be dealt with from the point of view of free will and indissolubility.

Incest is an anomaly not in the fulfillment of the sexual act itself but in the choice of the partner among the members of one's own family.

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<sup>13</sup>This case was appealed by the Defender of the Bond and judged on 27 March 1981. The affirmative decision was confirmed. See *c. BRUNO*, 27 March 1981, in *SRR Dec*, 73 (1987), pp. 187-200.

<sup>14</sup>*c. RAAD*, 20 March 1980, in *ME*, 105 (1980), pp. 177-183.

<sup>15</sup>*Ibid.*, n. 5, p. 178.

[...] Even though sometimes incest can be a true perversion, it is however, most of the time, a psychopathology which can be considered as a kind of deviation. In the sexual sphere we are dealing with a perversion when the anomaly is exclusive or prevalent in the subject's sexual life, prevailing over a normal sexual life.[...]

Incest can render marriage invalid if it can be proven that the person about to marry, at the time of marriage was already an incestuous person seriously engaged in that kind of activity and in a way that is incurable. Such sexual perversion would be opposed both to the good of fidelity to the extent that it is contrary to the exclusive right of the partner, or the good of the children to the extent that it is contrary to their education. It is enough that the perversion in question, grave and incurable, was present at the moment of marital consent even though it came to light subsequent to consent.<sup>16</sup>

In this statement Raad makes several points that are relevant to the judging of incest cases. He maintains that the fact of incest alone is not enough to render a marriage

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<sup>16</sup>Ibid., nn. 6-8, p. 179: "Qui post coniugium peccata ordinis sexualis committit nequit sic et simpliciter iudicari incapax adimplendi onera status conubialis, alioquin actum esset de libera voluntate et de indissolubilitate.

Incestum est anomalia non in actu sexuali perficiendo sed in comparte seligenda ex propria familia. [...]. Etsi aliquando incestum esse potest vera perversio, tamen habitualiter psychopathologia id considerat tamquam declinationem. In sphaera sexuali habetur perversio ubi anomalia exercetur vel exclusive vel praevalenter prae activitate sexuali normali [...].

Incestum potest matrimonium irritum facere si probetur nupturientem, iam tempore nuptiarum, incestuosum gravem et insanabilem fuisse, cum talis perversio sexualis adversetur sive bono fidei quatenus est contra consortis ius exclusivum, sive bono prolis quatenus est contra educationem [...]. Satis est ut haec perversio graviter et insanabiliter iam 'insit contrahenti momento matrimonii, etsi tempore consequenti in lucem emerget [...].'

null. After defining incest as an anomaly which limits the choice of sexual partners, Raad emphasizes that the incestuous anomaly must be present and incurable at the time of consent. Furthermore, he states that the incestuous disorder is contrary to both the good of fidelity and the good of children and implies that if these goods are denied, then the marriage can be declared invalid.

In the present case, the Petitioner and the sister of the Respondent admitted that he was egotistical, vulgar and avaricious before the marriage, but that he never showed signs of mental illness. Although the acts of the case revealed that the Respondent was discharged from military service due to several long-standing mental disturbances, before the marriage, the Judges concluded that these were not serious enough to disrupt his understanding of marriage nor his ability to will or assume the duties associated with the married state of life.

After eighteen years of being a good husband and father (as attested to by the Petitioner, two daughters and other witnesses), the Respondent suddenly began to fondle the breasts of his two daughters in public and eventually molested his two-year-old granddaughter. The Judges noted that the Respondent never attempted "to go all the way" with them. The

examination of an expert concluded that the Respondent was not suffering from schizophrenia, sociopathic or psychopathic personality disorders. The Judges accepted that the Respondent had "vices of character and indulge[d] in incestuous behaviour," but that this manifested itself only after eighteen years of marriage. Until that time he shared normal sexual relations with his wife and gave his children a good education. Raad stresses that any mental problems the Respondent may have had at the time of the marriage were not incurable had he sought psychotherapy. He concludes that to invalidate the marriage, a change in the structure of the personality must be considered impossible to achieve. The *turnus* concluded that this was not the situation in this marriage and, accordingly, rendered a negative decision.

c. Case 3: *coram* Gianneccchini, 28 May 1985

A case judged *c. Gianneccchini* on 28 May 1985 from Benevento, Italy, alleged a brother-sister incestuous relationship on the part of the Respondent (husband).<sup>17</sup> The Petitioner challenged the validity of her union on the grounds that her husband was incapable of assuming the essential

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<sup>17</sup> *c. GIANNECCHINI*, 28 May 1985, in *SRR Dec*, 77 (1985), pp. 260-270. Although this case concerns brother-sister incest, several principles regarding the sexual relationship within marriage are outlined in the sentence and are applicable to cases involving father-daughter incest.

obligation of "exclusivity" or the *bonum fidei* due to the incestuous anomaly.

In the *in iure* section, Giannecchini states an important juridical principle regarding the role of sexuality in the exchange of conjugal consent:

Matrimonial rights and duties are intimately linked with the sexual sphere. It is evident, therefore, that a defect in exchanging them can affect the very act of consent. A defect or absence of mutual exchange of conjugal duties caused by an anomaly, even if it be unknown, vitiates or impedes consent.

There are several illnesses in the sphere of sexuality, different in their manifestation or causes, which can affect either the freedom of choice or the very object of the contract. Among these is incestuous tendency which may be found in such a degree, form, and severity that it eliminates the very good of fidelity. Incestuous anomaly *per se* does not affect the capacity to perform conjugal acts, but it diminishes the freedom of choice in regard to the partner who is to be found among the blood relatives. In such a hypothesis, if a person, presumed to be suffering from incestuous anomaly, marries any other person who is not a blood relative, he or she cannot effectively exchange the rights and obligations.<sup>18</sup>

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<sup>18</sup>Ibid., n. 2, p. 261: "Cum autem iura et officia matrimonii stricte connectantur cum ordine sexuali, iam patet quod vitium in eorum commutatione ipsum consensum attingere potest. Defectus seu absentia traditionis et susceptionis onerum coniugalium ob anomaliam in actu matrimonii existentem, etsi ignoratam, consensum irritat seu potius impedit.

Plures sunt morbi in ambitu sexuali consensum, diverso quidem modo ac causa, afficientes, qui vel ipsam libertatem electionis in contrahente vel ipsum obiectum contractus attingunt, inter quos tendentia incestuosa, tali gradu, forma et gravitate exstet ut ipsum bonum fidei detrectet.

In this passage, Giannecchini makes several important points. First, that an anomaly which interferes with the sexual life of the couple can impede matrimonial consent, even if it was unknown at the time of consent. This is significant as incest often does not occur until several years after consent. Second, Giannecchini explicitly recognizes incest as an anomaly which can vitiate consent. Specifically, if severe enough, it can eliminate the good of fidelity exchanged during consent. Finally, the disorder itself does not affect the ability to perform the conjugal act with one's partner, but it does diminish the internal freedom of choice with regard to one's sexual partner. It is in this area that matrimonial consent can be rendered invalid.

In the present case, the Petitioner and her witnesses alleged that the Respondent had an incestuous relationship with his sister. These allegations were denied by the Respondent and his witnesses. In the face of contradictory evidence and the lack of supporting expert testimony, the Judges ruled that the existence of the anomaly in this case

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Anomalia incestuosa per se non tangit capacitatem actus coniugalis exercendi, sed potius adimit libertatem compartem eligendi, quae inter consanguineos invenienda esset. Si, ex hypothesi, praesumptus incestuosus, cum qualibet alia persona extra consanguineos matrimonium celebrat, commutationem iurium et obligationum perficere non potest" (English translation in A. MENDONÇA, "Recent Rotal Jurisprudence on the Effects of Sexual Disorders on Matrimonial Consent," in *SC*, 26 (1992), p. 231).

could not be presumed. The Judges emphasized that the presence of a serious anomaly must be proved with the help of experts. Furthermore, it must be permanent and severe enough to impede the conjugal right of exclusivity. It is juridically and scientifically inaccurate to ascribe nullifying effects to any light anomalous condition.<sup>19</sup> A negative decision was rendered due to lack of proof of the incestuous anomaly.

d. Case 4: *coram* Giannecchini, 17 June 1986

The most recent Rotal decision which mentions incest is a case from Bologna, Italy, judged *c.* Giannecchini on 17 June 1986.<sup>20</sup> Various statements given by those involved in the case imply the existence of an incestuous relationship between the Petitioner and his mother, and that this attachment of son and mother interfered with the marital relationship. The marriage, which lasted less than one year, was impugned

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<sup>19</sup>*c.* GIANNECCHINI, 28 May 1985, n. 2, in *SRR Dec*, 77 (1985), p. 262: "Ad hoc tamen ut haec anomalia vim habeat ut causam proportionate gravem constituat irritandi matrimonium necesse est ut legitime probetur per peritos. Non sufficit nempe adumbratio vel suspicio alicuius actus incestuosi, sed necesse est ut extra omne dubium existentia et gravitas status incestuosi ponatur, seu conditio permanens quae exclusivatatem iurium coniugalium impediat. Secus quaelibet vel levis anomala ratio ad modum agendi ('complexo'), qui contrahentem afficeret, nullitatem matrimonii inferre deberet. Quod iuridice et scientificamente falsum est [...]."

<sup>20</sup>*c.* GIANNECCHINI, 17 June 1986, in *SRR Dec*, 78 (1991), pp. 378-390.

initially on the grounds of condition and an intention *contra bonum sacramenti*. The cause was re-instructed and impugned on a grave lack of discretionary judgment regarding the rights and duties of marriage on the part of the Petitioner.

In the *in iure* section the *ponens* observes that an individual from an unusual home situation who is contemplating marriage could be motivated by two reasons: the person could use marriage as an escape or is so overwhelmed by the parental bond that it affected the desire or ability of the contracting party to give himself/herself completely in the conjugal relationship.<sup>21</sup>

At the age of ten, the Petitioner promised his dying father that he would look after his mother. He took this pledge seriously and the Petitioner admitted that he could never make any life decision which excluded his mother. Claiming that he was assuming his filial duties as directed by the fourth commandment of the decalogue, the Petitioner vehemently denied an incestuous relationship.<sup>22</sup> While it was alleged that the Petitioner and his mother shared the same bed since he was sixteen years old, the Judges found no evidence of an incestuous relationship. In fact, there were only

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<sup>21</sup>Ibid., n. 5, p. 382.

<sup>22</sup>Ibid., n. 9, p. 386.

passing references to this type of alliance in the *acta*. Consequently, the Judges dismissed the allegation and did not address the issue.<sup>23</sup> Since the majority of the evidence from witnesses and experts indicated a grave affective immaturity in the Petitioner, the Judges rendered an affirmative decision based on this disorder.

## 2. LOCAL JURISPRUDENCE

### a. Incest perpetrated by husband/father against daughter

#### i. Case 1: *coram* Fortin, Ottawa, 15 January 1992

A case judged *c. Fortin* at Ottawa, Canada, on 15 January 1992<sup>24</sup> considered the situation in which the Respondent committed incest against his daughter. The twelve-year union was challenged on the ground of a grave lack of discretionary judgement on the part of the Respondent (*c. 1095, 2°*). Having successfully concealed his alcohol and drug abuse from the Petitioner during the courtship, the Respondent entered marriage. Immediately after the wedding, his substance abuse became manifest. He was repeatedly unfaithful to the

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<sup>23</sup>Ibid., n. 12, p. 388.

<sup>24</sup>This case is cited with the permission of Reverend Jean Trudeau, Judicial Vicar of the Ottawa Ecclesiastical Tribunal (personal communication, 3 July 1992). All identifying details have been omitted in order to protect the privacy of those involved.

Petitioner, sexually assaulted his niece and committed the same offence against his daughter ten years into the union.

In the law section, Fortin asserts that mature deliberation regarding the decision to marry requires both intrapersonal and interpersonal integration.<sup>25</sup> He points out that the lack of due discretion may be caused by a "defective home situation which stunts the child's emotional and affective growth." He continues: "Recent studies are bringing out more and more the significance of family systems upon the affective development of the child and its eventual maturity, a factor so necessary for a successful marriage."<sup>26</sup> Borrowing from the psychological findings regarding the emotional development of children in an alcoholic family, Judge Fortin quotes from Dr. J. Woititz's well-known treatise on adult children of alcoholics observing that these adults:

- 1) have to guess what normal behaviour is;
- 2) have difficulty following a project through from beginning to end;
- 3) lie when it would be just as easy to tell the truth;
- 4) judge themselves without mercy;
- 5) have difficulty having fun;
- 6) have difficulty with intimate relationships;
- 7) overreact to changes over which they have no control;
- 8) constantly seek approval and affirmation;
- 9) feel they are different from others;
- 10) are either super responsible or super irresponsible;

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<sup>25</sup>c. FORTIN, 15 January 1992, (Ottawa), P.N. H188/91 (unpublished), nn. 3-7, pp. 38-39.

<sup>26</sup>Ibid., n. 8, p. 39.

11) are extremely loyal even in the face of evidence that the loyalty is undeserved;

12) are impulsive and tend to lock themselves into a course of action without giving serious consideration to alternative behaviours or possible consequences.<sup>27</sup>

Furthermore, Fortin notes that the same characteristics can be found in some of the children where there is physical, psychological or sexual abuse in the family. He posits that some childhood experiences can so stunt maturation in the area of affectivity that the person cannot grasp the true meaning of marriage, and consequently, cannot enter a valid union at the time.<sup>28</sup>

The *ponens* argues that the lack of discretion of judgement in the Respondent stems from his dysfunctional childhood. The father was an illiterate alcoholic who physically and sexually violated his wife and children. By age seven the Respondent was smoking cigarettes and was a drug and alcohol abuser by the time he entered marriage at the age of twenty-two. The Petitioner and witnesses attested to the "hidden" incest among family members, and all believed the Respondent was desperate for the love he lacked at home. Even after marriage he continued to search for love through

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<sup>27</sup> See J. WOITITZ, *Adult Children of Alcoholics*, Pompano Beach, Health Communications, 1983, pp. 104-105.

<sup>28</sup> *c.* FORTIN, 15 January 1992, (Ottawa), P.N. H188/91 (unpublished), n. 8, p. 40.

innumerable sexual partners and eventually turned his attention towards two children. The Judge concludes: "His dependence on alcohol, his sexual promiscuity, his lack of communication are sufficient in themselves to prove his serious lack of intrapersonal and interpersonal integration, which he inherited from a childhood and adolescence without discipline or principles."<sup>29</sup> Thus, lacking integration the Respondent could not critically evaluate/judge his own abilities to realize the implications of marriage.

ii. Case 2: *coram* Slevin, Dublin, 12 January 1988

In a case from Dublin, Ireland, judged *c. Slevin* on 12 January 1988,<sup>30</sup> the incapacity to assume the essential obligations of marriage was alleged on the part of the Respondent (*c. 1095, 3°*). The Parties had been childhood friends and were married after a three-year courtship. There were problems from the beginning since the Respondent seemed to make no effort to sustain the relationship. After five and a half years, the Petitioner left the union. Following the

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<sup>29</sup>"Sa dépendance de la boisson, sa promiscuité sexuelle, son manque de communication suffisent en soi pour prouver son manque sérieux d'intégration intrapersonnelle et interpersonnelle qu'il a héritée d'une enfance et d'une jeunesse sans discipline ni principes," (*Ibid.*, n. 14, p. 42).

<sup>30</sup>*c. SLEVIN*, 12 January 1988, in *Matrimonial Decisions of Great Britain and Ireland*, 24 (1988), pp. 142-150.

separation, the Respondent was convicted of committing incest against his daughter. During the course of the civil trial, it was further disclosed that he had similarly assaulted his five-year-old nephew.

In the law section, Slevin reiterates that marriage is brought about by the consent of two people. He goes on to add: "Marital consent [...] must include the *possibility* of delivering perpetually and exclusively the substance of that consent."<sup>31</sup> Thus, the substance of the conjugal *consortium* consists of two essential elements, namely, the good of the spouse and the procreation and education of children.<sup>32</sup>

In this case, the Parties encountered sexual difficulties in the marriage. In addressing this issue, the *ponens* points out that sexual intercourse performed *humano modo* is an essential right and obligation of marriage. He uses the text of *Familiaris consortio* (n. 11) within which to frame this part of the law section:

'[S]exuality is by no means something purely biological, but concerns the innermost being of the human person as such. The total physical self-giving would be a lie if it were not a sign and fruit of a total personal self-giving, in which the whole person, including the temporal dimension is present.' [...] In this case there is mention of

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<sup>31</sup>Ibid., n. 6, p. 143.

<sup>32</sup>Ibid., n. 7, p. 143.

incest [...]. However, the Judges recall that *incest, of itself, does not invalidate conjugal consent nor render a marriage null and void.*<sup>33</sup>

Slevin declares that it is possible for personality defects or disorders of a psychological nature to take away a person's ability to assume and fulfil the essential obligations of marriage. He points out that it is not enough to show that the personality anomaly, which is at the root of the inability to assume, was present during the marriage. Rather, and more importantly, its existence must be demonstrated at least latently at the time of consent, even though it may only later manifest itself. It is also necessary to show that the anomaly did affect the fulfilment of the essential obligations of marriage. A final significant factor in the decision regarding the validity of marriage is that:

It is not the particular psychiatric or psychological tag that counts, but the ability to put a finger on a grave pathology which continues and is visibly considered as the premier factor in the marriage breakdown. It is *not for the Judges to establish the presence of a specific mental illness or personality disorder*, which pertains to the medical/psychological field, but to establish the juridic inability to assume the essential obligations of marriage.<sup>34</sup>

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<sup>33</sup>Ibid., n. 10, p. 145 (emphasis added).

<sup>34</sup>Ibid., n. 15, p. 145 (emphasis added).

Having examined the evidence in the case, the Judges reached an affirmative decision regarding the nullity of this marriage. Several important factors are present in the arguments of this case. Firstly, the Respondent did not make the slightest effort to establish a minimum of that intimate union of persons that is marriage. He kept himself at an unusual and unnatural distance from his wife; his conduct was unreliable, irresponsible, childish and strange. Secondly, the Respondent did not give totally of himself in the sexual sphere. The fact that he sexually abused his child had been fully established.

However, each of the above, taken severally or together, do not prove invalidity of conjugal consent and nullity of marriage. Another question remains to be answered: *was the Respondent's behaviour by free deliberation and choice?*

The Judges accept that the evidence proves that this was not so. On the contrary, the evidence proves that his behaviour was due to his disordered personality. [...] Doctor H. had no hesitation in concluding [...] that the Respondent is a psychopath.<sup>35</sup>

Most importantly, Slevin contends that the disorder was determined to have existed at the time of consent. The total lack of communication in the early days of marriage was a carry-over of his behaviour in his parents' home. The evidence clearly showed that the Respondent came from an

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<sup>35</sup>Ibid., nn. 36-37, pp. 149-150 (emphasis added).

extremely dysfunctional family in which, a medical report concluded, sexual abuse had likely occurred. He had problems in school and was asked to leave; he had problems with girlfriends, with co-workers and with work itself. All these problems manifested themselves before the marriage. "In other words, there is ample circumstantial and consistent evidence to prove that the Respondent was, at the time of the wedding, a seriously disordered personality unable for marriage."<sup>36</sup>

A final observation in this sentence is also significant. The Advocate's brief stressed the occurrence of incest as the primary evidence of the Respondent's inability to assume the essential obligations of matrimony. Slevin reverses the importance, stating that based on the evidence presented, the Respondent's psychological inability for marriage took place long before the occurrence of the sexual abuse. "His conduct with his child simply confirms the evidence of his inability to establish a marital relationship. Further, the court has to be careful to avoid being excessively influenced by the very repulsive nature of child-abuse in this case."<sup>37</sup>

Although these two cases were judged on different grounds, they illuminate some general principles, which will

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<sup>36</sup>Ibid., n. 38, p. 150.

<sup>37</sup>Ibid., n. 39, p. 150.

be summarized later, regarding the examination of marriages in which a father has committed incest against his child.

b. Incest victim enters marriage as an adult

i. Case 1: *coram* Colli, St. Catharines,  
2 December 1991

A case judged *c. Colli* in St. Catharines, Canada, on 2 December 1991<sup>38</sup> demonstrates some of the effects that child sexual abuse can have on the marital relationship. The validity of this union was challenged on the grounds of grave lack of discretionary judgement on the part of the Respondent (c. 1095, 2°). The Respondent had been raped at the age of nine by drunken friends of her alcoholic father. She and the Petitioner were expecting their first child at the time of consent. After twenty-one years of marriage, she left the union to enter a homosexual relationship.

In the *in iure* section, Colli uses the following description concerning the nature of the discretion of judgement required in the act of marital consent:

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<sup>38</sup>This case is cited by the permission of Reverend Fred Colli, Associate Judicial Vicar of the Toronto Regional Marriage Tribunal, St. Catharines Branch Office (personal communication, 27 June 1992). All identifying details have been omitted in order to protect the privacy of those involved.

In its etymology, the word "discretion" seems to derive from *discernere*, the power to discern, to distinguish, to see things clearly and distinctly. It is, in short, the power of insight. Discernment, then, is an essential element of human act, which assesses or weighs up the value of an object (e.g., the married state) with respect to its desirable and undesirable aspects. Such discernment or discretion is absolutely necessary for a freely-willed act, e.g., the contracting of marriage. The second element of a human act is *election* or choice by the will which is sufficiently moved by the discernment of the intellect just mentioned.<sup>39</sup>

The description provides two main elements required for valid matrimonial consent. Firstly, anyone who enters marriage must have assessed marriage accurately as a desired state. Secondly, the person must be free from all internal pressure when making the marital choice. Colli uses both these aspects of consent to demonstrate that the effects of childhood sexual abuse can render marriage consent invalid.

Judge Colli argues that the personality of the Respondent was severely disturbed as a direct result of the sexual abuse she suffered as a child. He notes that the testimony is unanimous in describing the Respondent as a shy, introverted and moody person. All witnesses (the Respondent did not participate in the trial) attested to the rape she experienced at the age of nine. The testimony described an extremely

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<sup>39</sup>C. COLLI, 2 December 1991, (St. Catharines), P.N. 2578/90 (unpublished), p. 50.

disruptive childhood of sexual abuse that caused the Respondent to run away repeatedly from home. During the courtship, she had difficulty expressing affection. The couple quarrelled frequently and decided to marry only upon the discovery of the Respondent's pregnancy.

The Respondent continued to be very moody throughout their married life. She had extreme difficulty in expressing affection and with the sexual aspects of the marriage. She often needed alcohol in order to enter into sexual relations with her husband. She grew distant from the Petitioner and abandoned family responsibilities. According to one testimony she became a "recluse," and her unhappiness was evident to all witnesses. She eventually left the Petitioner and entered into a lesbian relationship claiming she had never loved him and no longer wanted a heterosexual union.

Colli concludes that the Respondent's abusive, unloved childhood rendered her unable to discern and choose marriage freely. "With the rape [...], the difficulties in her home life, the alcoholism of her father, the sexual abuse, the lack of the love, and the desire to get away, it is no wonder that the Respondent would have a difficulty relating properly to men."<sup>40</sup> The decision was affirmative.<sup>41</sup>

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<sup>40</sup>Ibid., n. 14, p. 57.

ii. Case 2: *coram* Brennan, Nottingham, 7 March 1990

A case from Nottingham, England, demonstrates not only the effects of father-daughter incest on marital consent, but also the method by which moral certitude was established in the face of a paucity of witnesses. On 7 March 1990 the validity of this union was challenged on the grounds of grave lack of discretionary judgement and inability to assume the essential obligations of marriage on the part of the Petitioner and Respondent (cc. 1095, 2° and 3°). The court rendered an affirmative decision on c. 1095, 2° on the part of both parties.<sup>42</sup>

The Petitioner came from a home in which the father drank heavily and physically abused his wife and five children. He was eventually convicted of incest against his daughters. The Petitioner suffered his indecencies and was also raped by a neighbour at the age of fifteen which resulted in the birth of her first child. She met the Respondent at the age of

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<sup>41</sup>Ibid.: "The evidence concluded that there is a psychological problem with the Respondent, and that homosexuality is a part of that problem, therefore, we question whether she was ever capable of entering into a proper marital relationship."

<sup>42</sup>This case is cited by the permission of Monsignor Edward Walker, Judicial Vicar of the Nottingham Diocesan Matrimonial Tribunal (personal communication, 16 June 1992). All identifying details have been omitted in order to protect the privacy of those involved.

seventeen, bore his child within two years and married him seventeen months later. Their conjugal life was an unhappy one and a constant financial struggle because the Respondent drank and gambled away his earnings. The Petitioner left the union after six and a half years.

In the *in iure* section of this decision, Brennan establishes the seriousness of the mutual *donatio* which is involved in matrimonial consent. While maintaining the importance of the critical faculty regarding marriage in the "here and now," he suggests that an adverse childhood can seriously disrupt the ability of an individual to posit an intellectual and freely-willed consent.<sup>43</sup>

Sometimes a person has throughout childhood and adolescence experienced and witnessed the extreme opposite of exemplary parenthood, and then displays insufficient maturity of judgement regarding his or her own marriage. In such a case then the Judges will be concerned to see to what extent the immaturity, perhaps an inevitable consequence of an extremely adverse family environment, has led to a lack of the necessary discretion for marriage. If they consider one or both of the parties lacked sufficient judgemental ability concerning the obligations of marriage, and at least a minimal knowledge of what discharging these obligations would mean to him or her, then the Judges would find the marriage to be invalid.<sup>44</sup>

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<sup>43</sup>c. BRENNAN, 7 March 1990, (Nottingham), P.N. 4/89 (unpublished), nn. 5-6, p. 34.

<sup>44</sup>Ibid., n. 7, p. 34.

In this paragraph, the *ponens* observes that an adverse family environment can result in immaturity so great as to render conjugal consent invalid on the grounds of a lack of the discretionary judgement required for marriage.

It also states that for valid matrimonial consent the parties must be capable of fulfilling the marital obligations.<sup>45</sup> If they cannot, the Judges must evaluate the cause of the incapacity by examining the parties' behaviour with the aid of experts, if necessary.<sup>46</sup>

The Respondent declined to participate in the proceedings and testimony was received only from the Petitioner and her older sister. The Judges rightly acknowledged that in such a case the credibility of the witnesses was paramount. They proceeded to explain their reasoning for accepting the evidence presented.

Everything hangs on the credibility of the two sisters in this case, so it is the first task of the Judges to examine their reliability as witnesses. The Petitioner gave [...], an experienced auditor, the satisfactory impression of being very honest in her replies, and it is not surprising that [the Petitioner] has perhaps closed her mind as much as possible to the highly unpleasant experiences she is said to have endured in her adolescent years. The Judges also note that at the time of the interview she was undergoing

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<sup>45</sup>Ibid., n. 8, p. 35.

<sup>46</sup>Ibid., n. 10, p. 35.

instructions to become a Catholic and feel that on balance this fact is likely to add to her credibility.

[...], the elder sister of [the Petitioner], gave evidence on oath [...]. [The auditor] gave her a very favourable De Fide, referring to [...] as a very good witness who gave him no reason to doubt her veracity. [This witness], as the eldest of the five children in the [...] household, was only 17 months older than [the Petitioner], and is able to confirm from her own unfortunate experience most of what [the Petitioner] has to say about their home background.<sup>47</sup>

In their statements, the Judges not only acknowledge that the impressions of experienced auditors are valuable and reliable when assessing the credibility of witnesses, but also recognize that one of the effects of abuse can be a lapse of memory regarding some details of childhood. This latter should not be used as a rebuttal of the victim's veracity, but rather appreciated as an established consequence of maltreatment.

Having established the credibility of the evidence, Brennan argues that the violent home life of the Petitioner led to her lack of discretionary judgement. Both she and her sister were sexually assaulted from the age of eleven and subjected to intercourse with their father by age fourteen. At the age of fifteen, the Petitioner was raped by a local garage mechanic and bore a child. At the same time, their

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<sup>47</sup>Ibid., nn. 13-14, pp. 35-36.

battered mother left her husband, which prompted him to move his oldest daughter to his bed.

Although the Petitioner had doubts about marrying the Respondent due to his irresponsible behaviour, the birth of their child and family pressure prompted the union. An important effect of incest is accepted by the *ponens*: "It would also seem from [the] evidence that [the Petitioner] did not have an opinion of her own, having learned the hard way as a child not to answer back or argue, so she just went along with what [the Respondent] said. All this supports the case for Lack of Due Discretion in the Petitioner."<sup>48</sup>

iii. Case 3: *coram* Walker, Nottingham,  
15 October 1986

Another case from the Nottingham Diocesan Tribunal,<sup>49</sup> judged on 15 October 1986, demonstrates an effect of incest which can vitiate matrimonial consent. In this case the Petitioner, an incest victim, entered marriage after a three year courtship with the Respondent. After a few months, the

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<sup>48</sup>Ibid., n. 22, p. 38. The Judges concluded that the Respondent also lacked discretion of judgement regarding marriage. However, neither party was deemed unable to assume the obligations of marriage, and both seem to have settled into better relationships with a second partner.

<sup>49</sup>See footnote 38.

Respondent left the Petitioner to be with another woman. The Petitioner initially challenged the validity of her marriage on the grounds that her husband was lacking in due discretion and/or unable to assume the essential obligations of marriage (c. 1095, 2° and 3°). However, after revealing her own childhood experiences, she subsequently allowed the marriage to be impugned on the same grounds on her part.

A key paragraph of Walker's *in iure* section declares that incest can create a fear which is carried into marriage:

Where a child who is innocent and unaware of the true nature of sexual intercourse is exposed to some kind of sexual abuse it is to be expected that he or she will fear the worse and for a girl that worse must be the fear of pregnancy. What happens in childhood or adolescence [...] is most likely to have a very serious effect and to have long term consequences for the child. With a girl it may leave her with a tremendous fear about pregnancy which may develop into a phobia which she carries into her marriage and which really prevents her having an openness to children in the marriage. If that can be proven then the Judges may well conclude that either she was lacking in the discretion for marriage or (and perhaps as well) she is unable to assume the obligations of marriage.<sup>50</sup>

Here Walker notes that childhood experiences can have consequences which are carried into adult relationships. He also acknowledges that a child's innocence regarding sexual matters can result in a phobia of pregnancy which might be

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<sup>50</sup>c. WALKER, 15 October 1986, (Nottingham), P.N. 40/83 (unpublished), n. 4, p. 39.

severe enough to affect the contractant's ability to intend the *bonum prolis*.

The facts of this case reveal that the Petitioner had been subjected to sexual activities with her father since adolescence. Although he never attempted vaginal intercourse, the Petitioner's innocence led her to believe that she was in constant danger of becoming pregnant. This fear became a phobia she brought into marriage. During the courtship, the witnesses observed that there seemed to be "something missing in that there was no great desire for the other."<sup>51</sup> From the beginning of the union the Petitioner showed a reluctance for children. The marriage was over in four months when the Respondent announced he was leaving.

The Defender of the Bond argued that the Petitioner's phobia resulted in an intention *contra bonum prolis* rather than the grounds agreed. Walker holds that the experiences marked her so deeply that they deprived her of freedom, rather than result in a decision not to have children.

The Judges would say that the prime source of nullity is her inability to assume the obligations of marriage but they also see a lack of due discretion in that she could not adequately imagine

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<sup>51</sup>Ibid., n. 1, p. 38.

a marriage involving children for her. Accordingly, they find the marriage null on these grounds.<sup>52</sup>

In the cases that follow, the more extreme reactions to sexual abuse illustrate how the defence mechanisms of repression, denial and regression, and the emergence of personality disorders can militate against valid matrimonial consent.

iv. Case 4: *coram* Wharton, Toronto,  
17 December 1991

On 17 December 1991, the Toronto Regional Marriage Tribunal judged a case in which the Respondent had repressed her incestuous experiences so deeply that she was unaware of her past at the time of consent. The Petitioner had married her after a three year courtship. Fourteen years later they separated and the marriage was impugned on the grounds of the Respondent's inability to assume the essential obligations of matrimony due to causes of a psychic nature (c. 1095, 3°).<sup>53</sup>

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<sup>52</sup>Ibid., n. 6, p. 40. The Judges also noted that the Petitioner, with the help of her current spouse has overcome this fear and is expecting their first child. They concluded *non constat* on the grounds against the Respondent.

<sup>53</sup>This case is cited with the permission of Reverend Brian D. Clough, Judicial Vicar of the Toronto Regional Marriage Tribunal (personal correspondence, 17 June 1992). All identifying details have been omitted in order to protect the privacy of those involved.

Judge Wharton delineates some of the elements which must be fulfilled for valid matrimonial consent:

The elements to be considered in cases of this nature are the obligations of conjugal life in the sense of heterosexual friendship and charity which is also of the supernatural order, and consequent rights and duties:

- the right to sexual intercourse which is a total expression of love (*ius ad corpus*);

- the right to community life, which is something perceptible and provable, and, consequently, can be verified either by the court or by the psychiatrist (*ius ad vitae communionem*).<sup>54</sup>

At the same time, Wharton made use of the psychiatric literature to interpret the evidence regarding the incapacity of the Respondent. Studying E.H. Erikson's stages of development, Judge Wharton observes that childhood trauma can seriously disrupt normal development and that long-term aftereffects of trauma can militate against the assumption and fulfilment of usual spousal obligations. Wharton writes:

Unless [the Respondent] had received psychiatric help to deal with her earlier negative experiences, we doubt [the Respondent] would have had much sense of self-identity when she met [the Petitioner], and certainly would have had little idea of normal spousal and parental roles because of the<sup>55</sup> dysfunctional behaviour of her own parents.

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<sup>54</sup> C. WHARTON, 17 December 1991, (Toronto), P.N. 358/91 (unpublished), n. 8, p. 2.

<sup>55</sup> Ibid., p. 5.

In this paragraph Wharton acknowledges that the development of a healthy self-identity is essential to posit valid matrimonial consent. Furthermore, he stresses the importance of parents as role models for future marriage and contends that the family-of-origin is where one initially learns spousal and parental roles. Hence, serious disturbances in the home environment may require psychiatric assistance before a right understanding of the obligations of marriage can be grasped.

The facts of the case reveal that the Respondent had been sexually abused and brutalized by her father from infancy. As a child she learned to dissociate and thus repress memories of the abuse. Although she had a poor relationship with her parents, she had no recollection of maltreatment when she entered marriage at the age of twenty-two. In a letter to the Tribunal, she admitted that she ignored the lack of intimacy in her marriage as well as feelings of inadequacy and self-doubt. The experience of childbirth triggered memories of the abuse, causing her to withdraw sexually and emotionally from the Petitioner. The couple attended counselling, but after several temporary separations their marriage ended. The Respondent continued therapy and entered into a lesbian relationship which also ended.

The Judges concluded that at the time of consent the Respondent was unconsciously suffering from the effects of the abuse she had experienced. These effects, though dormant, were severe enough to militate against the consent she gave. Wharton writes:

The sexual abuse experienced early in her life led to a latent condition that prevented the Respondent from transferring in a permanent manner the responsibilities of marriage especially conjugal, sexual responsibilities and the responsibilities of conjugal friend.<sup>56</sup>

The marriage was declared null on the grounds of the incapacity of the Respondent to assume the essential obligations of matrimony.

v. Case 5: *coram* Lapierre, Victoria,  
19 November 1990

A case judged on 19 November 1990 in Victoria, Canada,<sup>57</sup> illustrates denial and regression as consequences of incest and neglect. After a five year courtship and an eleven year marriage, the Respondent declared she could no longer cope with the demands of conjugal life. The marriage was impugned on the grounds of a serious lack of discretionary judgement

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<sup>56</sup>Ibid., n. 29, p. 14.

<sup>57</sup>This case is cited with the permission of Reverend Michael Lapierre, Director of the Victoria Marriage Tribunal (personal communication, 17 July 1992). All identifying details have been omitted in order to protect the privacy of those involved.

concerning the essential matrimonial rights and obligations to be mutually given and received on the part of both parties (c. 1095, 2°).

In the *in iure* section of his sentence, Lapierre affirms that immaturity can lead to a lack of discretionary judgment regarding marriage. He continues:

[...] lack of due discretion can and does occur frequently without the presence of psychic problem. Classic cases of lack of due discretion would be a young person who is pregnant, or a young person who is suffering at home and looks to marriage as an escape. These are pressures either internal or external which greatly influence the reasoning process. They tend to overbalance the weight of choice and lead one to act unreasonably because they have created a type of intellectual blindness. Marriage is looked upon and sought as a haven of relief, as a harbour in the storm of troubles and anxieties; it is a shield of protection and escape rather than a total commitment. This choice would then be made rashly without due discretion; hence, an invalid marriage.<sup>58</sup>

In this paragraph, the Judge acknowledged that a serious psychic disorder is not required to disrupt the discretionary process. Often an unhealthy home environment is enough to push a party into marriage. In such a situation, the person is more aware of what he/she is leaving than of what he/she is entering.

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<sup>58</sup> c. LAPIERRE, 19 November 1990, (Victoria), P.N. 4/90 (unpublished), n. 16, p. 94.

The facts of this case reveal that the Respondent was raised in a chaotic environment of substance abuse and violence. The Respondent was sexually abused by her father, her mother's boyfriends and her brother. The witnesses testified that she was a kind person who seemed unable to show feelings. She was emotionally distant and the Parties experienced sexual difficulties early in the marriage. While she loved and wanted children, she felt wholly inadequate and uncomfortable with her parenting skills when the children were born. The Respondent was unhappy and often mutilated herself with cigarettes and knives. She attempted suicide and eventually admitted herself into a psychiatric hospital. At this point she chose to end the marital relationship.

The Judges maintained that the Respondent's dysfunctional family life led to her inability to function in a healthy marital relationship.<sup>59</sup> M. Lapierre writes:

As we are all aware such experiences, in most cases, become the hidden side of an individual, buried deep within the subconscious. Because of the inability to deal with such experiences, denial and regression become the only means of survival. Such individuals appear to function normally in most if not all situations. However, when their adult life becomes greatly stressed and situations undertaken by them become too great, oppressive, and reminiscent of their early childhood, they lose total control and are unable to function at all. In these cases the cover-up has been revealed and

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<sup>59</sup>Ibid., n. 84, p. 101.

they are forced to seek help and deal with the problem.<sup>60</sup>

This paragraph clearly recognizes that the Respondent's increasing inability to cope with married life, having been rooted in her childhood, was present at the time of consent. The Judges concluded that the marriage was null on the ground mentioned in c. 1095, 2° on the part of the Respondent.

vi. Case 6: *coram* Baillargeon, London,  
17 March 1992

In a case judged on 17 March 1992 in London, Canada,<sup>61</sup> the Respondent was an incest victim who was subsequently diagnosed as suffering from personality disorders and substance abuse at the time of consent. The Parties dated for two years during which time the Respondent was involved in a court case for incest against her father. Feeling sorry for her, the Petitioner entered into marriage against the advice of family and friends. The marriage was an unhappy one and terminated after eight years. The validity of the union was challenged on the grounds that both parties were incapable of

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<sup>60</sup>Ibid., n. 85, p. 102.

<sup>61</sup>This case is cited by the permission of Reverend Paul Baillargeon, Associate Judicial Vicar of the Toronto Regional Marriage Tribunal, London Branch Office (personal communication, 29 June 1992). All identifying details have been omitted in order to protect the privacy of those involved.

contracting marriage due to a grave lack of discretionary judgement concerning the essential matrimonial rights and duties which are to be mutually exchanged (c. 1095, 2°), and an inability to assume the essential obligations of matrimony due to causes of a psychic nature (c. 1095, 3°) on the part of the Respondent.

Judge Baillargeon notes that personality disorders are characterized by ineffectual responses to emotional, social, intellectual and physical demands. Inadaptability, ineptness, poor judgment, social instability and lack of emotional stamina are manifested in these cases. Furthermore:

Persons afflicted with such disorders have never achieved fulfilling and satisfactory close human relationships as these relationships have been distorted from the beginning. [...] At a very early stage, they have unconsciously set up defenses, maladaptive patterns of behaviour, to deal with others. These patterns of behaviour in turn continue to frustrate their emotional development. Consequently, [...] personality disorders cause a person to be unable to make an adequate judgment about entering into the permanent relationship of marriage because he has never up to that time known the true meaning of interpersonal relationships. In practice, the person actually keeps seeking the distorted relationships, judging them as objectively good and adequate for marriage, whereas they are not.<sup>62</sup>

In this paragraph, the *ponens* declares that persons labouring under a personality disorder have difficulty entering into

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<sup>62</sup>c. BAILLARGEON, 17 March 1992, (London), P.N. 1873/91 (unpublished), n. 16, p. 102.

healthy relationships. Due to the defence mechanisms they have unconsciously built to protect themselves, they are emotionally unable to share thoughts and feelings, an ability essential to the development of a community of conjugal life. Moreover, these defences thwart their ability to assess themselves, others and marriage.

The relationship between personality disorders and the inability to fulfil the obligations of marriage is also addressed. Baillargeon points out that if the personality disorder is truly disruptive of common conjugal life and makes such life impossible, it makes matrimonial consent impossible. Controlled by self-perpetuating behaviour patterns, the victim of such a disorder is unable to offer the self in an open, reciprocal manner necessary for the community of life.<sup>63</sup>

Substance abuse is also discussed as possibly contributing to the incapacity to posit valid matrimonial consent. The severity, antecedence, and perpetuity of the abuse must be determined before its effect on consent can be established.<sup>64</sup>

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<sup>63</sup>Ibid., nn. 17-18, pp. 102-103.

<sup>64</sup>Ibid., nn. 19-24, pp. 103-105.

The acts of the case disclose that the Respondent had been physically and sexually abused by her father, grandfather and brothers. One year prior to the wedding, she secured a conviction against her father for incest. However, she herself was abusing prescription drugs and alcohol. Although the Petitioner pushed for the marriage, the Respondent admitted she wanted to escape her unhappy home situation. The Respondent continued to abuse drugs and remained in bed all day, thereby neglecting her parental duties. The Petitioner left the union when the Respondent confessed she had been unfaithful. The Judge concluded that both Parties were immature and gave insufficient thought to what marriage would be for them. The marriage was declared null on the grounds of the incapacity mentioned in c. 1095, 2°.

Baillargeon also found that the Respondent had been rendered incapable of assuming the essential obligations due to her upbringing. The diagnoses of the court-appointed expert was cited.

The very well written, detailed and conclusive report of [...], the Court-Appointed Expert [...], clearly established the fact that due to her horrific and traumatic upbringing in an incestual and abusive home, the Respondent clearly was incapable of marriage. The Expert points to a number of probable psychological disorders, namely, Borderline Personality Disorder, Narcissistic Personality Disorder, Dysthymia, Psychoactive Substance Abuse Disorder and Hypersomnia. It is clear that all of these psychological impairments on the part of the Respondent are rooted in her

past home life. The fact that she was clearly dependent upon alcohol and drugs, even throughout the courtship and married life, and her clear inability to fulfil even the simplest of obligations as a wife and mother, all clearly support her incapacity.<sup>65</sup>

In this decision, Baillargeon has acknowledged the serious effects that sexual abuse can have on the individual and marriage. The emergence of personality disorders and substance abuse were clearly linked to the Respondent's upbringing. These in turn, rendered her incapable of assuming her responsibilities as spouse and parent.

vii. Case 7: *coram* Dionne, Quebec, 2 March 1988

A case from the diocese of Quebec, Canada, illustrates how the disorder of transsexualism can affect matrimonial consent.<sup>66</sup> The Parties married in spite of the fact that the Respondent, an incest victim, did not love the Petitioner and was not secure in her sexual identity. After seventeen years, she left the union and pursued the medical treatment necessary to change her gender. The validity of this union was challenged on the grounds of the inability of the Respondent

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<sup>65</sup>Ibid., n. 34, pp. 106-107.

<sup>66</sup>This case is presented with the permission of Reverend Jacques Pelletier, Judicial Vicar of the Ecclesiastical Tribunal of Quebec (personal correspondence, 23 June 1992). All identifying details have been omitted to protect the privacy of those involved.

to assume the essential obligations of matrimony due to causes of a psychic nature (c. 1095, 3°).

In the *in iure* section, Dionne acknowledges that certain psychic disorders, if serious, can prevent one from assuming the essential obligations of matrimony. Such a person is unable to give of the self in an open and permanent manner in order to create a community of life and honour the commitments undertaken, not because of a lack of will, but because of a moral impossibility.<sup>67</sup>

Judge Dionne turns to the *Diagnostic and Statistical Manual of Mental Disorders* to explain the Respondent's condition. He points to the associated features of anxiety and depression, and the problems of gender identity which these individuals have and become aware of as children. The Judge also notes the frequent impairment of social and occupational functions due in part to accompanying psychopathology and to the problems of trying to live in the desired gender. Significantly, transsexualism seems always to

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<sup>67</sup>c. DIONNE, 2 March 1988, (Quebec), P.N. 491/85 (unpublished), n. 5, p. 2: "Certains troubles psychiques, s'ils sont sérieux, peuvent empêcher un conjoint d'assumer les obligations essentielles du mariage. Dans de tels cas, le sujet, du fait même de sa personnalité, est incapable de mettre en oeuvre de façon satisfaisante et en permanence une communauté de vie conjugale. Ainsi, il ne peut honorer les engagements pris, ceux-ci non pas en vertu d'un acte volontaire, mais en raison d'une impossibilité morale."

develop in the context of a disturbed parent-child relationship.<sup>68</sup> Jurisprudentially, Dionne writes:

In order to render marriage invalid, the psychic disorder must be serious enough to prevent the establishment of the community of life, must be rooted in the personality of one of the parties, and must be present at the time of consent even if it becomes manifest later.<sup>69</sup>

The Petitioner, Respondent and two medical reports provided the evidence in this case. The Respondent had been sexually and physically abused throughout her childhood and adolescence by her adoptive father and other members of the family. In addition, she exhibited marked tendencies towards masculinity, preferring the play activities of male children. These feelings continued into adolescence, during which she fell in love with another female. Ignoring these feelings, she entered into marriage with the Petitioner whom she regarded as a friend and towards whom she hoped loving feelings would grow.

Conjugal life was difficult because of the Respondent's depression and continuous denial of her sexuality. After

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<sup>68</sup>Ibid., n. 5, pp. 2-3.

<sup>69</sup>Ibid., n. 6, p. 3: "Pour rendre le mariage invalide, le désordre psychique doit être sérieux au point d'empêcher l'édification d'une communauté de vie conjugale, enraciné dans la personnalité de l'un ou de l'autre conjoint, présent chez la personne au moment du consentement, même si l'anomalie ne se manifeste que plus tard."

sixteen years, she began to receive hormone therapy to change her gender. She left the union and began living as a male which was reflected in her dress and hairstyle. Three years later the Respondent was legally registered as a male.

M. Dionne avows the importance of the psycho-sexual and psychiatric reports admitted into evidence. Having been examined by a psychologist and psychiatrist, the Respondent was diagnosed as a transsexual one year before the end of conjugal life. The Judge indicates that one report clearly links the Respondent's condition to her childhood abuse; that the condition was evident in her behaviour as a child. He concludes:

The cause of the breakdown of this marriage has been identified: the psycho-sexual troubles of the wife. The disorder was deeply ingrained in her personality since her tender childhood; this disorder was so serious that it not only rendered sexual relations impossible, but it also prevented the building of a community of conjugal life.<sup>70</sup>

The decision validated the conclusion that incestuous abuse can lead to serious psycho-sexual disorders which can prevent the establishing of the community of conjugal life.

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<sup>70</sup>Ibid., n. 12, p. 5: "La cause de l'échec du mariage a été identifiée: le trouble psycho-sexuel de l'épouse. Chez elle, l'aberration était profondément inscrite dans sa personnalité depuis sa tendre enfance; cette aberration était à ce point sérieuse qu'elle n'a pas seulement vicié les rapports sexuels, mais elle a empêché l'édification d'une communauté de vie conjugale."

It also demonstrates the importance of medical literature in determining the etiology of some disorders. When a disorder is known to have originated in childhood experiences, the effects on matrimonial consent can possibly be determined.

c. Prohibitions in marriage nullity sentences

Very little is found in the Code regarding the placement and removal of prohibitions against future marriages of parties who have received a declaration of nullity. Canon 1684 states that parties are free to marry immediately after a declaration of nullity has been confirmed at the appellate level unless a prohibition is attached to the sentence or it is prohibited by the local Ordinary.<sup>71</sup> Canon 1685 directs that a declaration of nullity and any prohibitions which have been determined must be recorded in the appropriate parish registers.<sup>72</sup> It is clear that the legislation refers only to *vetitum* and does not seem to concern itself with the pastoral

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<sup>71</sup>Canon 1684, § 1: "Postquam sententia, quae matrimonii nullitatem primum declaravit, in gradu appellationis confirmata est vel decreto vel altera sententia, ii, quorum matrimonium declaratum est nullum, possunt novas nuptias contrahere statim ac decretum vel altera sententia ipsis notificata est, nisi vetito ipsi sententiae aut decreto apposito vel ab Ordinario loci statuto id prohibeatur."

<sup>72</sup>Canon 1685: "[...] Is autem curare debet ut quam primum de decreta nullitate matrimonii et de vetitis forte statutis in matrimoniorum et baptizatorum libris mentio fiat."

exhortation known as a *monitum*.<sup>73</sup> However, one may postulate that the term *vetitum* could be understood in a generic sense thereby subsuming the lesser term *monitum*. Furthermore, since only the supreme authority of the Church can add an invalidating clause to a prohibition, any marriage contracted in violation of a *vetitum* would be considered valid.<sup>74</sup>

The use of prohibitions is evident in some marriage cases which involve incest. Due to the nature of the psychic disorder which might be present in the perpetrator or victim at the time of the declaration of nullity, a court may impose

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<sup>73</sup>J. HOPKA defines a *vetitum* as "a prohibition to marry. It is a decree by competent ecclesiastical authority that an impending marriage is forbidden." He describes a *monitum* as "a warning that an impending marriage should take place only after the greatest caution has been exercised to make sure that the parties are able to marry" (J. HOPKA, "The *Vetitum* and *Monitum* in Matrimonial Nullity Proceedings," in *SC*, 19 [1985], p. 357).

<sup>74</sup>Canon 1077, § 2. According to J. Hopka it is not clear whether the tribunals of the Roman Curia are considered part of the "supreme authority of the Church." If they are, then it is possible that the Roman Rota can impose such a prohibition with an invalidating clause in a particular case. For an examination of the practice of the Rota in this regard, see J. HOPKA, "The *Vetitum* and *Monitum* in Matrimonial Nullity Proceedings," pp. 372-383.

It would seem that by the directives of cc. 1684 and 1685, the Supreme Legislator has anticipated the use of prohibitions by lower tribunals. As discussed earlier in regard to jurisprudence, lower tribunals should look to the Rota for the manner in which such prohibitions are to be applied.

certain restrictions on any subsequent union.<sup>75</sup> It is interesting to note that of the Rotal cases studied in this chapter, only one had a prohibition placed against any future union. This indicates the seriousness with which the Rota regards limiting the natural right to marry.<sup>76</sup>

Local tribunals also used *vetita* in cases in which serious psychological disorders had been proven. Of the two cases studied which involved the husband/father as the perpetrator of incest, only c. Fortin decreed a *vetitum*, stating that any future marriage could only take place with the "consent" of the Ordinary of the place of marriage.<sup>77</sup> Several cases in which the victim of incest had been one of the parties, a prohibition relative to marriage was attached. In one case this was determined necessary due to the present

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<sup>75</sup>This intervention is in no way designed to deny the natural right to marry enjoyed by all persons. However, even this right is not limitless, as c. 1058 stipulates. If a person is incapable of contracting marriage (c. 1095), it is prohibited to celebrate the marriage even if there is not a *vetitum* or *monitum* (see c. 1066).

<sup>76</sup>Obviously, prohibitions were not placed on those cases which received a negative decision. The one case which did receive an affirmative decision involved a Respondent who had been subjected to several sexual assaults prior to marriage. See c. RAAD, 13 November 1979, in *ME*, 105 (1980), p. 45.

<sup>77</sup>See c. FORTIN, 15 January 1992, (Ottawa), P.N. H188/91 (unpublished), p. 43.

lesbian lifestyle of the victim.<sup>78</sup> In two other cases, while no psychological diagnosis had been made, the judges imposed *vetita* due to the serious psychological difficulties experienced by the victims.<sup>79</sup> Diagnoses of personality disorders and transsexualism in the victims led to prohibitions (*vetitum*) in two other cases.<sup>80</sup> Finally, two victims of incest had no prohibitions imposed upon them as they were currently in stable unions and showed no incapacity to enter marriage validly.<sup>81</sup>

The above study indicates that no tribunal made use of the pastoral exhortation regarding future marriages. It can be speculated that, due to the serious nature of the various effects of incest, tribunals deemed that stronger measures were needed before new unions should be entered.<sup>82</sup> However,

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<sup>78</sup>See *c. COLLI*, 2 December 1991, (St. Catharines), P.N. 2578/90 (unpublished), p. 57.

<sup>79</sup>See *c. WHARTON*, 17 December 1991, (Toronto), P.N. 358/91 (unpublished), p. 15 and *c. LAPIERRE*, 19 November 1990, (Victoria), P.N. 4/90 (unpublished), p. 103.

<sup>80</sup>See *c. BAILLARGEON*, 17 March 1992, (London), P.N. 1873/91 (unpublished), p. 108 and *c. DIONNE*, 2 March 1988, (Quebec), P.N. 491/85 (unpublished), p. 5.

<sup>81</sup>See *c. BRENNAN*, 7 March 1990, (Nottingham), P.N. 4/89 (unpublished), p. 39 and *c. WALKER*, 15 October 1985, (Nottingham), P.N. 40/83 (unpublished), p. 42.

<sup>82</sup>As complete psychological profiles were not provided in the cases involving husband/father perpetrators and as only two cases were studied, it is impossible to come to any conclusion regarding the motivation behind the imposition of

it would seem that such prohibitions should be applied only in extremely serious cases. The natural right to marry would not be jeopardized by the imposition of *monita*, which would alert local Ordinaries to take particular care in the preparation of some individuals as they plan to enter new unions. The decision of judges regarding the imposition of prohibitions or warnings would be greatly aided if cases were audited in such a manner that the current psychological status of the perpetrator or victim were included in the acts of the case.

### 3. ALTERNATE GROUNDS

While the cases presented above have been judged on the basis of c. 1095, it is possible that consent could be challenged on grounds other than incapacity. A person may attempt to contract marriage while excluding marriage itself or some essential element or property of marriage (c. 1101, § 2). For example, a perpetrator of incest may enter a union with a woman solely to gain access to her child from a previous union. This possibility exists when the perpetrator has strong paedophillic tendencies and is attracted to the child. Another example may be that a woman may enter marriage solely to escape an incestuous home. In these situations,

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a prohibition in one case but not in the other.

either marriage itself or one or more of the *bona* have been excluded.

In judging such a case the motivation to establish the union must be clearly proven. Two separate acts occur simultaneously at the moment of consent: the external act of the words of consent and the internal act of the will by which marriage or an essential marital element or property is positively excluded.<sup>83</sup> Experts may be used to determine the mental state of the party at the time of consent and to ascertain the presence, severity and permanence of any disorder which may be found.<sup>84</sup> It must be remembered that if one is incapable of contracting marriage due to a disorder, then one is not able to posit the act of the will required for simulation. Thus, a marriage cannot be declared null on the grounds mentioned in c. 1095 and c. 1101, § 2 on the same party.

The validity of a marriage in which incest has played a part may also be impugned on the grounds of force or grave fear (c. 1103). A person may enter marriage to escape an intolerable and even dangerous situation. For example, the

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<sup>83</sup>See R. BROWN, "Total Simulation -- A Second Look," in *SC*, 10 (1976), pp. 242-243.

<sup>84</sup>See c. GIANNECCHINI, 28 May 1985, n. 2, in *SRR Dec*, 77 (1985), p. 262.

Petitioner in Case 6 cited above indicated that the Respondent had never loved him and had married him only to get out of her abusive home.<sup>85</sup> Although the presence of several disorders was determined in that case, it does represent the type of motivation a woman may have to marry a man she does not love.

In judging a case on the ground mentioned in c. 1103, the Judges must remember that either absolute or relative grave fear must be present to invalidate consent.<sup>86</sup> Fear of further abuse is a common long-term effect of incest. Thus, a woman may constantly fear the advances of her father, even though he has not behaved in such a manner for a period of time. This canon also requires the source of the fear to be extrinsic. In a case where it has been established that a father assaulted his daughter, the court could conclude that the fear experienced by the woman is a direct result of the actions of her father, i.e., external to herself. The law also stipulates that marriage be the only option open to the party. However, this need not be objectively determined. It is sufficient that the contracting party saw marriage as the

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<sup>85</sup>A similar situation can also be determined in Case 7. The Respondent was unsure of her sexuality and married a man whom she considered a friend.

<sup>86</sup>For example, c. CAIAZZO, 24 February 1943, n. 2 in *SRR Dec*, 35 (1943), p. 145; c. PECORARI, 6 December 1944, n. 4, in *SRR Dec*, 36 (1944), p. 699.

solution to her situation.<sup>87</sup> The strongest sign of fear is when a person has overcome an aversion to escape an impending evil.<sup>88</sup> Consequently, the court must determine that a woman married a man she did not love solely to escape her incestuous father.

This brief analysis shows that marriages in which incest has been a factor may be impugned on grounds other than incapacity. However, the jurisprudential requirements of those canons must be met in order to declare the union null.

#### CONCLUSION

Jurisprudence is a scientific study of the legal principles which must be employed when the law is applied to a particular case. This chapter has attempted to demonstrate how both Rotal and local sentences provide guidelines which can be utilized when judging cases involving incest. Hence, in determining the validity of a union in which the husband/father has perpetrated incest against his child the following principles are operative:

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<sup>87</sup>See T.P. DOYLE, "Marriage," in J.A. CORIDEN, T.J. GREEN and D.E. HEINTSCHEL (eds.), *The Code of Canon Law: A Text and Commentary*, Mahwah, NJ, Paulist Press, 1985, p. 790.

<sup>88</sup>See c. STAFFA, 22 March 1957, in *SRR Dec*, 49 (1957), pp. 216-223.

1) the four *bona* of marriage must be within the capacity of the contracting parties: specifically, a healthy sexual relationship and the good of children as understood by c. 1136 must be within the capacity of the party;

2) the presence of an incestuous anomaly or another disorder which results in incest must be established -- experts should be used to determine this fact;

3) the anomaly or disorder must be present at the time of consent;

4) the anomaly or disorder must be serious enough to hinder the capacity or motivation to enter marriage;

5) the anomaly or disorder must be grave enough to disrupt seriously conjugal life;

6) the mere act of incest does not invalidate the conjugal consent.

Jurisprudence has also developed some principles in adjudicating cases in which the wife has been a victim of incest, namely that:

1) the four *bona* of marriage must be within the capacity of the party;

2) incest can seriously disrupt the development of personality and interfere with the ability to form interpersonal relationships;

3) the factors which led to the breakdown of the union must be rooted in the childhood experience of the party;

4) experts should be used to determine the effects of incest on the victim and the presence of these effects at the time of consent;

5) these effects must be grave enough to disrupt seriously the conjugal life;

6) these effects must be serious enough to vitiate the capacity to enter marriage.

The causes and effects of incest are varied and serious. The disrupted personality development of both perpetrator and victim has significant implications on their ability and motivation to enter a marital relationship. The canonist, with the help of experts, can play an important role in the understanding and healing of this painful reality in the lives of both parties.

## GENERAL CONCLUSION

What are the canonical effects of incest on matrimonial consent? At the outset of this study, a hypothesis was postulated that those who had experienced an incestuous relationship during childhood may be unable to posit valid matrimonial consent due to the lasting effects of such maltreatment. It was also advanced that those who perpetrated incest against children may similarly be found unable to consent validly to marriage.

The Church's understanding of marriage found in canon 1055 of the *Code of Canon Law* describes marriage as a partnership of the whole of life which, by its nature, is ordered toward the good of the spouses and the procreation and education of offspring. These concepts are well known to theologians and canonists as are the elements and properties of the marital covenant, namely, the four *bona* of marriage (the good of the spouses, the good of children, unity and indissolubility). In cases concerning baptised persons, marriage is also sacramental. Flowing from its belief that the various aspects of marriage are rooted in the will of God, the Church has upheld them in its magisterium.

The Church also teaches that the act of consent by which marriage is brought about (c. 1057, § 1) requires healthy

functioning in the spheres of intellect and will. The object of consent, namely, marriage as perceived by the Church, must also be correctly understood and be within the abilities of those persons who establish a marital union.

As the Church's pastoral ministers know, not all married persons are able to establish a true union. The parties may have had childhood experiences which psychologically damaged one or both. Such a marriage might be impugned before a competent ecclesiastical authority on the grounds of a lack of capacity. Likewise, a marriage might also be investigated if an intention against marriage itself or any of its essential properties or elements was present at the time of consent, or if it was entered into as a result of force or grave fear.

Although incest remains a taboo subject in our society, victims are slowly piercing the silence. With this societal breakthrough, this matter is now coming to the attention of the Church's tribunals, usually in an indirect fashion during the testimonial procedure. Ecclesiastical tribunals might be faced with the question: does incest have any bearing on a person's capacity to consent to marriage? Research has enabled the following points to be offered for consideration.

First, according to many legal definitions, incest is

perceived to be sexual intercourse between closely related persons restrained from marriage by civil law. The secular law prohibitions on incestuous actions parallel and find basis in ecclesiastical teaching. Recognizing the harmful nature of incest, the United States, Canada, and England and Wales -- the countries associated with this study -- have enacted legislation which legally, albeit indirectly, protects all children from sexual abuse.

Second, the sociological understanding of incest is broader than the legal definitions. It recognizes the wide range of sexual activity which adults can impose on children, as well as the varied relationships which can exist within a family unit, whether or not these relationships are legally acknowledged. Experts hold that the precise nature of incest involves the unequal power status of the perpetrator and victim. The child is cognitively, affectively, physically, socially and sexually immature and therefore unable to consent to sexual activity. Emotionally and economically dependent on the perpetrator, the victim is vulnerable to abuse. Incest is not confined to the nuclear family; it also exists in the extended family in which case the effects on the victim are directly related to the importance and proximity of the perpetrator.

Third, studies have discovered several factors consistently found in the background and personality of incest perpetrators. Their families-of-origin are usually dysfunctional in which they themselves have witnessed or experienced sexual abuse and may have been subjected to physical abuse. There may also have been spousal abuse or alcoholism. As adults, they may inflict physical abuse on their spouse or engage in substance abuse, often repeating the type of behaviour they witnessed as children. Their psychological profile may include personality disorders, passivity/aggression, paranoia, anxiety and depression, and a cognitive status marked by simplistic thinking and poor problem-solving skills. Sexually, they may show a pedophilic preference but their main characteristic is a low attraction to adult females. Perpetrators of incest generally engage in incestuous activity in a futile attempt to feel powerful and enhance self-esteem.

Fourth, due to their poor self-image, inept social skills, inadequate cognitive skills and possible psychological disorders, the perpetrators' lack of ability to give valid matrimonial consent is directly related to their psychological status. Scientific research shows that they do not understand marriage as a partnership of equals, that is, a relationship which involves rights and obligations on the part of both

parties. Furthermore, they may lack the capacity to assume these rights and obligations due to various psychological disorders. Perpetrators may also enter a union excluding marriage itself or some essential element or property.

Fifth, regarding those persons who experience incest, the question arises whether they are capable of giving valid consent and establishing a marital union as the Church understands. The various theories and research findings concerning the victims' personality traits may assist the canonist to understand the underlying problems and to determine whether the party was capable of contracting marriage in accordance with the jurisprudence developed on c. 1095. The victims may also have entered a union excluding marriage itself or some essential element or property of marriage or agreed to marriage due to force or grave fear. It seems the occurrence of incest in the history of one of the parties to a marriage may well vitiate marital consent.

Sixth, there are precise psychological factors associated with incestuous abuse which would ultimately affect the ability to establish a marital union. The immediate effects of incest would seem to be relevant only when marriage has been entered at a time close to the assaults. These short-term effects include various medical ailments specific to sexual

activity and psychiatric sequelae such as hysterical seizures. As adolescents and young adults, victims may display behavioural symptoms such as running away from home, decreased academic performance, truancy, withdrawal from family and friends or substance abuse. They may also engage in age-inappropriate sexual behaviour. However, the overwhelming psychological finding among victims is that of low self-esteem which can lead to self-mutilation and suicide attempts.

Seventh, ecclesiastical tribunals may be asked to investigate cases in which a party is experiencing the long-term effects of intrafamilial sexual abuse. Among the lingering effects of incest are numerous psychological disturbances, including chronic depression and feelings of guilt and low self-esteem. Psychological testing has revealed that victims may display poor coping skills and act out hostility in antisocial, immature or egocentric behaviour. A protective mechanism of repressing memories of abuse is also to be found among the long-term psychological problems, as is the development of borderline or multiple personality disorders. Studies indicate that victims report feeling inadequate in their social interactions with both men and women and in the area of childrearing. Sexually, many victims experience orgasmic dysfunction or a generic fear of sex causing difficulties in the conjugal relationship.

Eighth, it seems marriage as the Church teaches is beyond the capabilities of these victims. Since marriage is a relationship which requires intrapersonal and interpersonal integration, victims of incest lack the personal insight required to give of the self and accept the other. Specifically, they are often unable to give and to receive the rights associated with an interpersonal relationship and the conjugal act. Furthermore, they have grave difficulty in comprehending and animating the obligations arising from the elements and properties of marriage concerning the partner and progeny.

Ninth, Rotal decisions involving incest have presented general principles which offer guidance to lower tribunals. The learned Judges insist that any disorder arising from or leading to incestuous activity must be present, at least latently, at the time of consent. Strictly interpreted, this means that perpetrators may not be found incapable of contracting marriage since incestuous behaviour rarely is exhibited prior to consent (*c. Raad*, 20 March 1980). However, the Judges have acknowledged that sexual assault, especially in childhood or adolescence, can result in disorders which are present at the time of marital consent and which consequently invalidate the consent (*c. Raad*, 13 November 1979). Furthermore, Rotal jurisprudence demands that the incestuous

activity be firmly established either by credible witnesses or by expert testimony (c. Raad, 13 November 1979 and 20 March 1980; c. Giannecchini, 28 May 1985 and 17 June 1986). In reviewing the local jurisprudence of various European and Canadian tribunals pertinent to incest, this study found that these tribunals echo the Rotal understanding concerning the effects of incest on marriage consent. Local tribunals usually recognise that the victims or perpetrators of incest are often unable to consent to marriage because their evaluative faculties are disturbed or because they are unable to assume the essential obligations of marriage.

It is the conclusion of this study that those who perpetrate incest are often found to be incapable of positing marital consent due to their impoverished understanding of interpersonal relationships and their difficulties in assuming the responsibilities of the marital state. Similarly, those who have suffered the incest trauma often display a misunderstanding of marriage and are frequently determined to be incapable of fulfilling the rights and obligations of marriage as the Church teaches. The use of experts who are conversant in the latest research findings of this complex area of human interaction can greatly aid tribunal personnel in understanding both the perpetrator and the victim. From such testimony, the validity of the marriage under

consideration can be determined.

## APPENDIX

The purpose of this appendix is to present a law section for use in sentences dealing with incest. It will be adapted to two situations, namely, the psychological and jurisprudential findings regarding those who perpetrate incest followed by a study of the victims who subsequently enter marriage. This will be preceded by a presentation of the Church's theological and canonical teaching on marriage. The *in iure* section finds its juridical foundation in c. 1095, 2° and 3° of the *Code of Canon Law*.

### *In iure*

1. The Fathers of the Second Vatican Council described marriage as an "intimate union of life and love" (*Gaudium et spes*, n. 48), reiterating and capturing anew the biblical notion that two become one flesh (Genesis 2:18). Interwoven in this relationship is the conjugal love shared by the spouses, a love which perfects the partners and is oriented towards the creation of new life (*GS*, nn. 47-51; *see also Humane vitae*, nn. 8-9; *Familiaris consortio*, nn. 18, 22). While the good of spouses (*bonum coniugum*) may be considered a recent addition to St. Augustine's traditional *tria bona*, it was recognized as an important component of the marital

relationship in pre-Vatican II magisterial teaching (*Casti connubii*, pp. 548-549).

2. Mutual perfection of the spouses (*bonum coniugum*) and the openness to new life (*bonum prolis*), the *bonum sacramenti* (indissolubility) and the *bonum fidei* (unity) comprise the four *bona* of marriage. They have been given canonical recognition in cc. 1055 and 1056:

c. 1055 § 1 - 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.

c. 1056 - The essential properties of marriage are unity and indissolubility, which in Christian marriage obtain a special firmness in virtue of the sacrament.

The *bonum prolis* consists of an openness to the transmission of life and the education of children (St. Thomas AQUINAS, *Summa theologiae, Supplementum*, q. XLIX, a. 2; *Casti connubii*, pp. 543-544; *GS*, n. 48; *HV*, n. 9; *FC*, n. 14). The Legislator has given some indication as to what the education of children entails:

c. 1136 - 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.

The good of the sacrament has been described as the "unbreakable oneness" of the marriage bond (GS, n. 48). The firm belief in this property is embodied in canon law by the stipulation that exclusion of the *bonum sacramenti* by a positive act of the will results in an invalid marriage (c. 1101, § 2).

The good of fidelity recognizes the exclusivity and stability of the union. Achievement of the four *bona* in any marriage is dependent upon the spouses' capacity for total and exclusive self-giving. Consistent magisterial teachings uphold this traditional and enhanced theological understanding of the intimate union of marriage (*Casti connubii*, p. 550; GS, n. 48; HV, n. 9; FC, n. 11).

3. Canon 1057 provides the means by which valid matrimonial consent is posited:

§ 1 - Marriage is brought about through the consent of the parties, legitimately manifested between persons who are capable according to law of giving consent; no human power can replace this consent.

§ 2 - Matrimonial consent is an act of the will by which a man and a woman, through an irrevocable covenant, mutually give and accept each other in order to establish marriage.

St. Thomas Aquinas taught that reason and will are required in order to place a human act (*Summa theologiae*, Ia-

IIae, q. I, a. 1). The intellect must be able to comprehend and reach a minimum level of understanding regarding the object of the act (c. 1096). The will, being a rational appetite, requires the judgement and evaluation of the intellect to move itself. It is the will, however, which moves the intellect to consider the particular object. Both the cognitive faculty and the critical faculty are required so that the facts and the desirability of the object may be brought together to reach a conclusion regarding the choice to be made.

4. Canon 1095, 2° stipulates that a grave lack of discretion of judgement concerning the essential matrimonial rights and duties to be exchanged renders a marriage null. In addition to the healthy functioning in the spheres of the intellect and the will, sufficient self-knowledge is also required for the decision regarding marriage (c. DI FELICE, 17 January 1976, nn. 2-3, in *Ephemerides iuris canonici* [=EIC], 32 [1976], p. 284). Canonical jurisprudence has identified the psychic components of "discretion of judgement":

a) sufficient cognitive knowledge of the object and the subject;

b) sufficient critical evaluation of the object, of the motives and of the subject in relation to the contract;

c) sufficient internal freedom either to evaluate the motives, that is, to deliberate or to control impulses or internal limitations.

5. The object of consent is marriage (c. 1057, § 2). Rotal Judge L. Anné established that in matrimonial consent the parties mutually bestow and accept each other (25 February 1969, n. 13, in *Sacrae Romanae Rotae Decisiones [=SRR Dec]*, 61 [1969], p. 182). He went on to state that while *in facto esse*, the communion of life may be absent, the *right* to the communion of life at the time of consent can never be absent (Ibid., p. 183). Canon 1095, 3° stipulates that one who cannot assume the essential obligations of matrimony due to causes of a psychic nature contracts invalidly. This incapacity directly concerns the object of marriage. If the rights and obligations required to establish marriage *in facto esse* are beyond the capabilities of one party at the time of consent, then consent is invalid. Jurisprudence has delineated some of the essential elements of marriage *in facto esse*:

a) the right and obligation to an interpersonal relationship (c. ANNÉ, 22 July 1969, in *SRR Dec*, 61 [1969], pp. 865-867);

b) the right and obligation to an interpersonal heterosexual relationship (c. PARISELLA, 11 May 1978, in *SRR Dec*, 70 [1978], pp. 288-295);

c) the right and obligation to the conjugal act (c. POMPEDDA, 6 October 1969, in *SRR Dec*, 61 [1969], pp. 916-918);

d) the right and obligation to the perpetuity of the conjugal relationship (c. PARISELLA, 11 May 1978, in *SRR Dec*, 70 [1978], pp. 288-295);

e) the right and obligation to the exclusivity of the conjugal relationship (c. HEARD, 5 June 1941, in *SRR Dec*, 33 [1941], p. 494);

f) the right and obligation to the conjugal acts *mensura normali et modo naturali* (c. LEFEBVRE, 19 December 1959, in *SRR Dec*, 51 [1959], p. 610);

g) the right and obligation to the *bonum prolis* (c. RAAD, 20 March 1980, in *Monitor ecclesiasticus* [=ME], 105 [1980], pp. 178-180);

h) the right and obligation to the *bonum coniugum* (c. ANNÉ, 25 February 1969, in *SRR Dec*, 61 [1969], pp. 174-192).

6. If any of the above rights and obligations are beyond the capabilities of one party, then a true marriage has not been established. However, one must remember that genuine incapacity, not mere difficulty, is required by c. 1095, 3° (JOHN PAUL II, Allocution to the Roman Rota, 5 February 1987, in *L'Osservatore romano*, English ed., 23 February 1987, p. 7).

7. Rotal jurisprudence has determined that the psychological difficulties which might lead to an incapacity to assume the obligations delineated above must be rooted in the personality, be serious, be actually present in the contractant and affect matrimonial consent at the time of its exchange. As DI FELICE indicated in a decision dated 17 January 1976, "mild characterological disturbances...in no way remove the ability to assume conjugal duties." (See c. DI FELICE, 17 January 1976, in *EIC*, 32 [1976], pp. 284-285.)

For these requirements to be met, three things must be proved: 1) the illness certainly existed before the marriage;

2) the illness certainly existed after the marriage; 3) the nature of the illness is such that it is chronic and does not allow long intermittent remissions. It is not necessary that the disorder be manifest at the time of consent, but it must exist, even if only in a latent or causal state.

8. Incest has been defined as:

[...] any physical sexual activity between family members. Blood relationship is not required: the term 'family' is used in its broad social connotation as well as to describe the actual living arrangement of the involved persons. Thus, stepfathers or stepmothers and nonrelated siblings living together, often as a result of their parents' previous marriages, are included in the definition of incest. So are other relatives who do not permanently live with the child -- uncles, aunts, and grandparents [...]. (R.S. KEMPE and C.H. KEMPE, *The Common Secret: Sexual Abuse of Children and Adolescents*, New York, W.H. Freeman and Co., 1984, p. 10.)

The prevalence of father-daughter incest has been estimated at between 1.5% to 4.5% (See D. FINKELHOR, *Sexually Victimized Children*, New York, Free Press, 1979, pp. 58, 83 and 88; D.E.H. RUSSELL, *The Secret Trauma: Incest in the Lives of Girls and Women*, New York, Basic Books, 1986, pp. 65-67). While a profile of a "typical" incest offender is difficult to draw, scientific research has uncovered some characteristics regarding their backgrounds, personality and attitudes which might be useful to the canonist.

9. A high percentage of men who become incest offenders come from backgrounds with gravely dysfunctional family dynamics. The forms of this dysfunction vary and include one or several of the following: childhood experience of or witness to sexual abuse, physical abuse, emotional or physical distance from parents, parental alcohol abuse or spouse abuse. As adults, they head families which tend to have marital difficulties, poor communication, unequal power-sharing, isolation, conflict, antagonism and disorganization. They rarely participate in childcare activities, especially during the infancy years of their children. They have poor social interpersonal skills and are frequently found to be substance abusers. Psychologically, they show insensitivity to the feelings and needs of others, display passivity and dependency needs, sometimes give indications of immature personality disorder or paranoid thinking. Family members report them as being violent or domineering and have poor problem-solving skills. In the area of sexuality, the men may show paedophilic tendencies, but more often do not differentiate between pubescent and adult females, show low levels of arousal to adult women and express frustration and even disgust in sexual relationships with adult women. (See L.M. WILLIAMS and D. FINKELHOR, "The Characteristics of Incestuous Fathers: A Review of Recent Studies," in W.L. MARSHALL, D.R. LAWS and H.E. BARBAREE [eds.], *Handbook of Sexual Assault:*

*Issues, Theories, and Treatment of the Offender*, New York, Plenum Press, 1990, pp. 231-255.)

10. Rotal jurisprudence has demonstrated that incest offenders may lack due discretion or may be unable to assume the essential rights and obligations of marriage. Raad, in a decision dated 20 March 1980, noted that the incest anomaly is opposed both to the good of fidelity to the extent that it is contrary to the exclusive right of the partner, and the good of children in that it is contrary to their education (see *c. Raad*, 20 March 1980, in *ME*, 105 [1980], pp. 177-183). Similarly, Giannecchini has acknowledged that the incest deviation diminishes the freedom of choice in regard to the partner who is to be found among the blood relatives. He concluded that a person found to be suffering from this aberration cannot effectively exchange the rights and obligations of matrimony (see *c. Giannecchini*, 28 May 1985, in *SRR Dec*, 77 [1985], pp. 260-270). Both of these Judges agree that the anomaly must be present and grave at the time of consent, even if it subsequently comes to light.

11. It is important to determine the presence, severity and incurability of the incestuous behaviour.

a) The presence of the behaviour may be confirmed by a civil prosecution against the father. However, in the absence of such evidence, medical reports and the testimony of the

wife and witnesses may be accepted if they are deemed to be trustworthy in the opinion of the Judge(s).

b) The severity of the incestuous behaviour would be best determined with the help of experts. Tribunals should look for dysfunctional families-of-origin (including physical or sexual abuse, neglect or alcoholism). The presence of violence, unequal power-sharing, nonparticipation in domestic and childcare duties, and a tendency to isolate oneself should be demonstrated in the current relationship. The abuse of alcohol or drugs must be explored. Psychopathology may be indicated by an insensitivity to the feelings of others. Immature personality disorder or paranoid thinking could also indicate the presence of the incestuous anomaly. The quality of the sexual relationship of the parties will have to be investigated. While paedophilia may be determined by past behaviour or through clinical investigation, more significant will be the attraction and arousal of the perpetrator to adult females. In other words, is he desirous of and capable of healthy sexual interactions with women?

c) The incurability of the behaviour is also best determined by the help of experts. Treatment strategies include modification of behaviour and cognitive distortions, hormonal therapy, social-skills enhancement, substance abuse therapy and family therapy. Success (measured as lack of recidivism) depends on the perpetrator's acceptance of his behaviour as deviant and the availability of treatment programs. The present attitude of the perpetrator regarding the offence and his accusers can be an indicator of the likelihood of relapse.

12. Data on these aspects of the offender's life, along with a satisfactory psychological assessment by experts will assist the Judge(s) in the deliberations regarding the validity or invalidity of the union under consideration.

13. While paragraphs 7-12 considered the valid matrimonial consent of the incestuous father, the following section presents psychological and canonical data with regard

to the incest victim. The prevalence of father-daughter incest has been estimated at between 1.5% to 4.5% (See D. FINKELHOR, *Sexually Victimized Children*, New York, Free Press, 1979, pp. 58, 83 and 88; D.E.H. RUSSELL, *The Secret Trauma: Incest in the Lives of Girls and Women*, New York, Basic Books, 1986, pp. 65-67). The short and long-term effects of incest vary, but research has uncovered many common consequences of such an assault on the developing personality.

14. The short-term effects of incest include a negative self-concept (feeling fat, unloveable, powerless, lack of self-respect), self-hatred demonstrated by acts of self-mutilation and suicide attempts, specific medical problems (such as sleep or appetite disturbances, menstrual disruptions, venereal diseases), psychiatric disorders (for example, hysterical seizures), and behavioural disturbances (including running away from home, truancy, substance abuse, age-inappropriate sexual behaviour). (See L.E.A. WALKER [ed.], *Handbook on Sexual Abuse of Children: Assessment and Treatment Issues*, New York, Springer, 1988, xxix, 448 p.) These manifestations will be of significant interest to the canonist when investigating the childhood of the contractant. They may also play a role regarding the psychological state at the time of consent, if consent took place during the adolescent years while the contractant was still suffering these effects.

15. The long-term consequences of incest include the psychological problems of depression, feelings of guilt and low self-esteem, denial/repression/suppression defence mechanisms and disorders such as borderline or multiple personality disorders. Many victims feel uncomfortable in social settings, experience distrust of others, believe they possess inadequate parenting skills and often abuse drugs or alcohol. The long-term sexual effects of incest include orgasmic dysfunctions, fear of or aversion to sex, promiscuity and prostitution. (See D.E.H. RUSSELL, *Incest in the Lives of Girls and Women*, New York, Basic Books, 1986, xviii, 426 p.)

16. Jurisprudence has demonstrated that those suffering from incest may lack due discretion or may be unable to assume the essential rights and obligations of marriage. Raad acknowledged that multiple sexual assaults prior to marriage, could result in an inability to fulfill the obligations of marriage, especially if the outcome is a psychosexual anomaly determined to have existed at the time of consent (see c. Raad, 13 November 1979, in *ME*, 105 [1980], pp. 30-45). Likewise, Giannecchini has noted that a person may experience an unusual parent-child relationship which might affect the desire or ability of the person to give himself/herself completely in the conjugal relationship (see c. Giannecchini, 17 June 1986, in *SRR Dec*, 78 [1991], pp. 378-390). In this

latter case, the Judges found that, while incest could not be proven, the existence of an affective immaturity related to the parent-child relationship did result in an invalid consent due to a grave lack of discretionary judgement.

17. It is important to determine the presence, severity and incurability of the negative effects of incest.

a) The presence of the effects of incest can be determined by the self-report and behaviour of the victim, as well as the testimony of reliable witnesses. By matching the known consequences of incest to the data available in the *acta*, the canonist can ascertain whether or not the party is (or was) suffering from the aftermath of incest.

b) The severity of the effects of the incest experience can be concluded with the help of experts. Tribunals should look for disturbances in the psychological, social and sexual areas of the victim's life as these are the realms which are most affected by this childhood ordeal.

c) The incurability of the effects of incest is also best determined by the help of experts. Treatment strategies include individual and group therapy and self-help groups. While some consequences are amenable to treatment (such as depression, low self-esteem, guilt, social interaction with peers and spouses), others are proving difficult to resolve (for example, personality disorders). It is becoming clear that recovery from incestuous abuse is a slow, arduous process.

18. Data on these aspects of the victim's life, along with a satisfactory psychological assessment by experts will assist the Judge(s) in the deliberations regarding the validity or invalidity of the union under consideration.

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#### PSYCHOLOGY AND CIVIL LAW

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